



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 1505, RELATING TO TRANSPORTATION.

BEFORE THE:

SENATE COMMITTEE ON TRANSPORTATION AND CULTURE AND THE ARTS

DATE: Tuesday, February 7, 2023 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Yvonne R. Shinmura, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of Attorney General provides the following comments.

The purpose of this bill is to authorize the Department of Transportation to deny issuing a mooring permit to any vessel that has engaged in certain activities.

Under section 266-2, Hawaii Revised Statutes (HRS), the Department of Transportation (DOT) has the power to control and manage commercial harbors belonging to or controlled by the State. Pursuant to section 266-27(a), HRS, no person shall moor a vessel in a state commercial harbor without obtaining a use permit. A vessel moored without a use permit or with a use permit that has expired or been terminated is an unauthorized vessel and may be impounded by the DOT pursuant to section 266-27(a), (c), and (d), HRS. Under Amendment V of the United States Constitution and article I, section 5, of the Hawaii Constitution, mooring permits are considered property for due process purposes. See *Brown v. Thompson*, 91 Haw. 1, 11, 979 P.2d 586, 596 (1999). Because the requirement of procedural due process exists to protect individuals against the State's deprivation of liberty and property interests, care should be taken in establishing prohibitions that will deprive a person of property.

The bill may face constitutional challenges as being too vague and overbroad to provide notice to a user of the harbor or an applicant for a permit of the prohibition and may be too unclear to allow for enforcement of the law. For example, in paragraph (1)

of the new section to be added to chapter 266, HRS, by section 2 on page 2, lines 4 through 6, of the bill, the DOT is granted the authority to deny issuing any permit for the mooring of a vessel that has "engaged" in "activity known" to violate federal, state, or county law. We recommend that the bill include wording to clarify that it is the *owner or operator* of a vessel that *has* violated any federal, state, or county law or rule pertaining to environmental protection or maritime transportation that will be subject to the prohibition.

Further, the prohibition against the "collection or extraction of undersea minerals" in the new section at paragraph (3) at page 2, line 8, is overbroad since the owner or operator of a vessel may have obtained a valid permit or license to operate the vessel to conduct that activity.

Wording such as the following would address our concerns:

Prohibitions. The department of transportation shall not issue any permit for the mooring of any vessel ~~[that]~~ to the owner or operator of any vessel who has engaged in:

- (1) Activity ~~[known to violate]~~ that has violated any federal, state, or county law or rule pertaining to environmental protection or maritime transportation;
- (2) The trafficking of illegal contraband; or
- (3) The illegal collection or extraction of undersea minerals.

Thank you for the opportunity to provide comments.



TESTIMONY BY:
EDWIN H. SNIFFEN
DIRECTOR

Deputy Directors
DREANALEE K. KALILI
TAMMY L. LEE
ROBIN K. SHISHIDO
JAMES KUNANE TOKIOKA

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 7, 2023
3:00 PM
State Capitol, Room 224

S.B. 1505
RELATING TO TRANSPORTATION

Senate Committee on Transportation and Culture and the Arts

The Department of Transportation (DOT) **supports the intent** of this measure that aims to restrict vessels that have been engaged in specific illegal activities from mooring in ports in the state's commercial harbor system.

While DOT supports the objective of limiting illegal undersea mining and trafficking illegal commodities, it recommends amendments to the bill to clarify implementation. DOT recommends that Section 2 be amended to read as follows:

SECTION 2. Chapter 266, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:
"§266- Restriction of use of facilities; illegal activities. When the department of transportation receives notice from a federal agency or a law enforcement agency that a vessel or its crew has engaged in activity that has violated any federal, state, or county law or rule pertaining to environmental protection or maritime transportation, or trafficking of illegal contraband, or the illegal collection or extraction of undersea minerals, the department may delay or deny approval for port entry or departure; provided further that in these cases the department may grant such approvals for use of any commercial harbor facility by that vessel in coordination with the federal agency or a law enforcement agency."

Thank you for the opportunity to provide testimony.

SB-1505

Submitted on: 2/4/2023 9:20:09 PM

Testimony for TCA on 2/7/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lauren Blickley	Testifying for Surfrider Foundation	Support	Written Testimony Only

Comments:

Surfrider Foundation strongly supports this bill and its intent that will prohibit the DOT from issuing permits for the mooring of vessels that have collected or extracted undersea minerals. Deep sea mining has significant environmental impacts and should not be supported by the state of Hawai‘i.

SB-1505

Submitted on: 2/6/2023 12:55:40 PM

Testimony for TCA on 2/7/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Denise E Antolini	Testifying for Malama Pūpūkea-waimea	Support	Written Testimony Only

Comments:

Aloha TCA Chair Lee, Vice Chair Inouye, and Members of the Committee,

Mālama Pūpūkea-Waime strongly supports SB1505.

We need to protect Hawai‘i's waters and marine ecosystems from the major risks of seabed mining, particularly by foreign nations.

Mahalo,

Denise Antolini

President, MPW

SB-1505

Submitted on: 2/6/2023 1:02:00 PM

Testimony for TCA on 2/7/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kahi Pacarro	Testifying for Parley for the Oceans	Support	Written Testimony Only

Comments:

On behalf of Parley for the Oceans, myself and my family, I support this bill. I've seen what DSM does to our ocean floors and the potential impacts to our oceans are devastating. The drive to mine our oceans is not being driven by consumer demand but rather by the strength of special interests focused on revenue over planet. It is important for residents of Hawaii to standup to this extractive behavior and focus on preserving that which we have left.



To: The Honorable Chair Chris Lee,
The Honorable Vice Chair Lorraine R. Inouye
Members of the Committee on Transportation and Culture and the Arts

Re: **SB 1505 – Relating to Transportation: Mooring; Permits; Prohibitions**

Position: **Strong Support**

Aloha Chair Lee, Vice Chair Inouye, and Members of the Committee,

Thank you for your leadership on this bill, SB 1505, prohibiting the issuance of permits for mooring of vessels engaged in certain activities including the collection or extraction of undersea minerals. I appreciate the opportunity to testify and express my strong support for this bill. Every new research dive to the seafloor reveals amazing wildlife and new discoveries about the role the deep sea plays in the health of our ocean and our lives. Seabed mining directly destroys whole communities of life on the seafloor, leaving behind habitat that may never recover. Mining also creates extremely large and potentially toxic sediment plumes; as well as noise, light, and thermal pollution that disrupt marine habitats. [More than 700 ocean scientists](#) have called for a halt to seabed mining citing the risks it poses to ocean health and the well-being of coastal communities. [Major companies](#) including Google, BMW, Philips, Volkswagen, and more also support an international moratorium, [alongside major NGOs](#) such as World Wildlife Fund, The Nature Conservancy, Conservation International, Pew Charitable Trusts, and many others.

This extractive industry of seabed mining poses many risks that are yet to be fully understood. The fishing and tourism industries are likely to feel the impacts of mining, which is poised to happen on Hawai'i's doorstep in an area known as the Clarion-Clipperton Zone. This bill will help to protect Hawai'i and its resources from outside interests looking to profit on the common heritage of mankind. I ask that you please pass this bill, reinforcing Hawai'i's role as leaders in environmental stewardship. Thank you for this opportunity.

Sincerely,
Douglas McCauley

A handwritten signature in black ink that reads "Douglas McCauley". The signature is written in a cursive, flowing style.

Director, Benioff Ocean Science Laboratory