

JAN 24 2024

A BILL FOR AN ACT

RELATING TO OCEAN RECREATION MANAGEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The department of land and natural resources
2 (department), division of boating and ocean recreation
3 (division) is responsible for ocean recreation management in
4 state ocean waters, among other responsibilities. Public safety
5 and marine natural resources can be impacted by a variety of
6 environmental factors and emerging ocean recreation
7 technologies, some of which may change rapidly and frequently.
8 This Act is part of a comprehensive ocean recreation management
9 package put forth by the department to ensure effective natural
10 resource protection by providing better management and
11 enforcement tools.

12 Under the existing ocean recreation management areas
13 system, the division has the authority to designate areas around
14 each island as an ocean recreation management area, which then
15 allows it to designate zones and subzones within each area that
16 specific ocean recreation activities can occur in order to
17 increase user safety and reduce user conflicts. However, the
18 current ocean recreation management areas system is a patchwork

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1 of designated and non-designated areas around each island,
2 preventing user safety measures around some portions of each
3 island. Furthermore, many residents have complained about the
4 over-commercialization of state ocean waters and their resulting
5 inability to enjoy the state ocean waters due to overcrowding
6 and commercial operators taking over ocean access points, such
7 as beach accesses and boat launch ramps.

8 Therefore, the purpose of this Act is to revise the law
9 regarding ocean recreation management areas to provide better
10 management tools to the division and to prohibit commercial
11 ocean activities statewide on weekends, state holidays, and
12 federal holidays, unless authorized by the board of land and
13 natural resources.

14 SECTION 2. Section 200-37, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§200-37 Operation of thrill craft; parasailing; water**
17 **sledding; commercial high speed boating.** (a) No person shall
18 operate a thrill craft unless the person is fifteen years of age
19 or older.

20 (b) The department shall adopt rules to designate areas
21 where, and time periods during which, thrill craft may be

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1 operated and parasailing, water sledding, and commercial high
2 speed boating may be engaged in.

3 (c) No person shall operate a thrill craft in the waters
4 of the State, except:

5 (1) In areas and during time periods designated by the
6 department;

7 (2) Through areas designated by the department to serve as
8 avenues for the ingress and egress of thrill craft
9 between the areas designated under paragraph (1) and
10 the shore;

11 (3) Authorized government personnel conducting operations
12 approved by the department;

13 (4) Authorized film production permit holders conducting
14 operations approved by the department; or

15 (5) When used to conduct ocean cleanup, as authorized by
16 rules adopted by the department.

17 To the extent that the authorization to operate thrill
18 craft pursuant to this subsection is inconsistent with any other
19 law, including section 200-38, this subsection shall control.

20 (d) No person shall:

21 (1) Engage in parasailing; or

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1 (2) Operate a motorized vessel towing a person engaged in
2 parasailing;
3 on or above the waters of the State, except on or above areas
4 and during time periods designated by the department.

5 (e) No person shall:

6 (1) Engage in water sledding; or

7 (2) Operate a motorized vessel towing a person engaged in
8 water sledding;

9 in the waters of the State, except in areas and during time
10 periods designated by the department.

11 (f) No person shall engage in commercial high speed
12 boating [~~or operate an open power boat capable of exceeding~~
13 ~~forty miles per hour for commercial high speed boating purposes]~~
14 in the waters of the State, except:

15 (1) In areas, along routes, and during time periods
16 designated by the department; and

17 (2) In accordance with a permit issued by the department.

18 ~~[(g) During all weekends and state and federal holidays, no~~
19 ~~commercial operator shall operate a thrill craft, or engage in~~
20 ~~parasailing, water sledding, or commercial high speed boating,~~
21 ~~or operate a motor vessel towing a person engaged in water~~

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1 ~~sledding or parasailing in Maunalua Bay on Oahu as provided for~~
2 ~~in section 200-38.~~

3 ~~(h) On Sundays, all commercial ocean recreation~~
4 ~~activities, including those listed in this section, shall be~~
5 ~~prohibited on Oahu in Maunalua Bay as provided for in section~~
6 ~~200-38.~~

7 ~~(i)]~~ (g) Between December 15 and May 15 of each year, no
8 person shall operate a thrill craft, or engage in parasailing,
9 water sledding, or commercial high speed boating, ~~[or]~~ operate a
10 motor vessel towing a person engaged in water sledding or
11 parasailing, or operate any commercial motorized water sports
12 equipment on the west and south shore of Maui [as provided in
13 section 200-38.] from Pu'u Ola'i Beach to Hawea Point.

14 ~~[(j)]~~ (h) All commercial use and operator permits issued by
15 the department for commercial thrill craft, and parasailing
16 activities shall be fully transferable upon the payment of a
17 business transfer fee in an amount determined by the department,
18 which shall be no greater than six per cent of the transfer
19 price; provided that no more than one transfer every two years
20 shall be authorized with respect to any given permit, except
21 transfers between family members for the purpose of business
22 reorganization.

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1 [~~(k)~~] (i) The department may immediately revoke a
2 commercial use permit without a hearing for any activity that
3 endangers or may endanger the health or safety of passengers or
4 the public, and may suspend or revoke a commercial use permit
5 for violation of any rules of the department if, after seventy-
6 two hours notice by the department of the violation, the permit
7 holder fails to cure the violation; provided that the permit
8 holder shall have ten days from receipt of the notice of
9 suspension or revocation to request in writing an administrative
10 hearing. The administrative hearing is solely for the purpose
11 of allowing the permit holder to contest the basis for the
12 suspension or revocation of the permit. The hearing shall be
13 held within five working days of the department's receipt of the
14 written request. The chairperson shall adopt rules pursuant to
15 chapter 91 to implement the procedures governing the
16 administrative hearing process. Within ten days after the
17 conclusion of the hearing, the department shall either:

- 18 (1) Lift the suspension;
19 (2) Suspend the permit for a period of not longer than one
20 year; or
21 (3) Revoke the permit.

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1 ~~(i)~~ (j) All new commercial use and operator permits
2 issued by the department for commercial thrill craft and
3 parasailing activities after June 18, 1996 shall be issued at
4 public auction.

5 ~~(m)~~ (k) Each commercial use and operator permit issued by
6 the department for commercial thrill craft and parasailing
7 activities shall be valid for one year from the date of issuance
8 and shall be renewed by the department for additional one-year
9 periods; provided that the permit holder meets the following
10 conditions:

11 (1) The permit holder shall be in compliance with all
12 applicable rules of the department;

13 (2) The permit holder shall have timely filed and paid all
14 applicable state taxes during the year; and

15 (3) The permit holder shall have a good safety record
16 regarding the operation of a commercial thrill craft,
17 or parasailing activity.

18 ~~(n)~~ (l) All commercial use and operator permits issued by
19 the department for commercial thrill craft, and parasailing
20 activities shall be subject to an annual review by the
21 department which shall include but not be limited to:

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- 1 (1) The permit holder's compliance with applicable rules
2 of the department;
- 3 (2) The permit holder's timely filing and payment of all
4 applicable state taxes during the year; and
- 5 (3) The permit holder's safety record regarding the
6 operation of a commercial thrill craft, or parasailing
7 activity.

8 [~~(e)~~] (m) The department shall adopt rules to encourage
9 water safety education and programs with respect to thrill
10 craft, or parasailing activities."

11 SECTION 3. Section 200-38, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§200-38 Ocean recreation management areas.** (a) All
14 ocean waters of the State within three thousand feet seaward of
15 the base line of the territorial sea are designated as ocean
16 recreation management areas. Within each ocean recreation
17 management area, the department may designate zones where
18 specific recreational and commercial ocean activities may occur.

19 (b) Unless otherwise provided by this chapter or rules
20 implemented by the department, no commercial activity, except
21 for commercial activity originating from a commercial harbor
22 under the jurisdiction of the department of transportation, may

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1 be conducted in an ocean recreation management area without a
2 use permit from the department.

3 (c) Notwithstanding any other law to the contrary, no
4 person shall engage in any type of commercial [operator shall
5 operate a thrill craft, engage in parasailing, water sledding,
6 or commercial high speed boating, operate a motorized vessel
7 towing a person engaged in parasailing, or operate a motor
8 vessel towing a person engaged in water sledding] activity in
9 any ocean recreation management area, except for commercial
10 activity originating from a commercial harbor under the
11 jurisdiction of the department of transportation, during all
12 weekends and state and federal holidays [on Oahu in Maunaloa Bay
13 from Kawaihoa (Portlock) Point to Wailupe Peninsula and
14 commercial zones a, b, and c.

15 ~~(b) Notwithstanding any other law to the contrary, all~~
16 ~~commercial ocean recreation activities shall be prohibited on~~
17 ~~all Sundays on Oahu in Maunaloa Bay.~~

18 ~~(c) Notwithstanding any other law to the contrary, no~~
19 ~~person shall operate a thrill craft, engage in parasailing,~~
20 ~~operate a motorized vessel towing a person engaged in~~
21 ~~parasailing, engage in commercial water sledding or commercial~~
22 ~~high speed boating, or operate a commercial motor vessel towing~~

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1 ~~a person engaged in water sledding between December 15 and May~~
2 ~~15 of each year in the waters of west and south Maui from Pu'u~~
3 ~~01a'i to Hawea Point.]~~, unless approved by the board.

4 (d) The department may adopt rules pursuant to chapter 91
5 to further implement this section."

6 SECTION 4. Section 200-39, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§200-39 Kaneohe Bay commercial ocean use activities;**
9 **permits; restrictions.** (a) Any other provision of this chapter
10 to the contrary notwithstanding, no person shall operate thrill
11 craft, parasailing, water sledding, or commercial high speed
12 boating unless the person meets the requirements of section 200-
13 37 and all rules adopted by the department that regulate or
14 restrict these activities.

15 (b) No person shall conduct any commercial ocean use
16 activity within Kaneohe Bay waters without a use permit issued
17 by the department.

18 (c) No person shall advertise or otherwise offer any
19 commercial ocean use activity or equipment for such activity
20 within Kaneohe Bay waters for which the person does not have a
21 use permit from the department. Advertisement in print; by word
22 of mouth; or online in any form, including through social media,

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1 of unpermitted commercial ocean use activities or commercial
2 ocean recreational equipment shall be prima facie evidence that:

3 (1) The owner of the advertised commercial ocean use
4 activity or commercial ocean recreational equipment
5 disseminated or directed the dissemination of the
6 advertisement in that form and manner; and

7 (2) The commercial ocean use activity or commercial ocean
8 recreational equipment is being operated at the
9 location advertised.

10 The burden of proof shall be on a person charged with a
11 violation of this section to establish that the equipment is not
12 being used for unpermitted commercial ocean use activity or that
13 the person's conduct is pursuant to a use permit, lease, or
14 license issued by the department.

15 (d) Permits issued by the department for commercial ocean
16 use activities in Kaneohe Bay shall be limited to the number and
17 locations, by permit type and vessel and passenger capacity,
18 provided in the Kaneohe Bay master plan developed pursuant to
19 Act 208, Session Laws of Hawaii 1990, until applicable rules
20 consistent with the master plan are adopted by the department;
21 provided that the passenger capacity for snorkeling tours and
22 glassbottom boat tours shall be set through rules adopted

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1 pursuant to chapter 91. No thrill craft permit may be
2 transferred after June 21, 1998; provided that transfers of
3 permits may be made at any time between family members.

4 ~~[(e) On Sundays and federal holidays, all commercial ocean~~
5 ~~use activities shall be prohibited.]~~

6 ~~(f)]~~ (e) All rules adopted by the department with regard
7 to Kaneohe Bay shall be drafted in consultation with the Kaneohe
8 Bay regional council. For those provisions of the Kaneohe Bay
9 master plan previously adopted by the legislature, the rules
10 adopted by the department shall be in accordance with those
11 provisions. Notwithstanding subsection (d) to the contrary, if
12 the department determines for safety or environmental protection
13 reasons that a permitted use should be relocated, the department
14 may relocate the permitted use and the department shall have
15 discretion to permit vessel substitution with a similar length
16 vessel; provided that the increase is no greater than ten per
17 cent of the current vessel length.

18 For those provisions of the Kaneohe Bay master plan
19 developed pursuant to Act 208, Session Laws of Hawaii 1990, not
20 previously adopted by the legislature, the master plan shall be
21 used as the recommended guideline in the adoption and

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1 implementation of rules with regard to the regulation of all
2 activities in Kaneohe Bay.

3 ~~(g)~~ (f) Citations for violations of this section or any
4 rules of the department adopted pursuant to this section may be
5 issued by any law enforcement officer. In enforcing this
6 section, any law enforcement officer shall have the power to
7 issue subpoenas and take legal custody of any personal property
8 that is the subject of or related to any violation of this
9 section or rules established by the department pursuant to this
10 section.

11 ~~(h)~~ (g) Property confiscated pursuant to this section may
12 be released only upon approval by the board or a court of
13 competent jurisdiction. Storage of confiscated property shall
14 be at the sole risk and expense to the owner. The department
15 may charge reasonable storage fees to the owner for storage of
16 any property confiscated pursuant to this section.

17 ~~(i)~~ (h) Any property confiscated pursuant to this section
18 that remains unclaimed for more than ten working days after it
19 has been released pursuant to subsection ~~(h)~~ (g) may be sold
20 at public auction. If the department does not, or is unable to,
21 sell the property at public auction, the department, after
22 giving public notice of intended disposition, if that notice was

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1 not previously included in a public auction notice, may sell the
2 property by negotiation, retain and use the property, donate the
3 property to any other government agency, or dispose of the
4 property as junk.

5 ~~[(j)]~~ (i) Any penalties established in rule pursuant to
6 this section shall be separate and in addition to any other
7 fees, charges, and fines imposed by the department.

8 ~~[(k)]~~ (j) As used in this section:

9 "Commercial ocean recreational equipment" means thrill
10 craft; watercraft for high-speed boating, parasailing, water
11 sledding, sailing, snorkeling, diving tours, fishing tours, or
12 glassbottom boat tours; kayaks; canoes; any manner of
13 surfboards, sailboards, paddleboards, or related watercraft; or
14 watercraft for any other similar commercial ocean activity.

15 "Commercial ocean use activity" means and includes:

- 16 (1) Any commercial operation of commercial ocean
17 recreational equipment, or any other similar
18 commercial ocean activity;
- 19 (2) Providing any commercial ocean recreational equipment
20 for rent or hire; or

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1 (3) Delivering for hire or pre-positioning within one
2 thousand feet of any shoreline of Kaneohe Bay for
3 hire, any commercial ocean recreational equipment.
4 "Commercial ocean use activity" shall not include commercial
5 fishing, commercial ocean activity authorized by a use permit
6 issued by the department, or activity authorized by an existing
7 lease or license issued by the department."

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect upon its approval.

11

12 INTRODUCED BY: *M. B. ...*

13

BY REQUEST

SB. NO. 3165

Report Title:

Ocean Recreation Management Areas; Commercial Ocean Activity

Description:

Designates all ocean waters of the State within 3,000 feet from shore as ocean recreation management areas (ORMAs). Prohibits commercial activity in ORMAs unless authorized by use permit. Prohibits commercial activities in ORMAs on weekends and state and federal holidays unless authorized by the Board of Land and Natural Resources.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO OCEAN RECREATION MANAGEMENT.

PURPOSE: To designate all ocean waters of the State within 3,000 feet from shore as ocean recreation management areas; to prohibit commercial activity in ocean recreation management areas unless authorized by permit; and to prohibit commercial ocean activities in ocean recreation management areas on weekends and state and federal holidays, unless authorized by the Board of Land and Natural Resources.

MEANS: Amend sections 200-37, 200-38, and 200-39, Hawaii Revised Statutes.

JUSTIFICATION: The Department administers the Ocean Recreation Management Area Program, which aims to reduce and prevent user conflict by designating particular areas where certain ocean recreation activities can occur, thereby keeping users separate and ensuring protection of natural resources by prohibiting activities in areas with more ocean life.

There has been a rapid expansion of commercial ocean recreational activity within a relatively short period of time, leading to overuse of boating facilities, strain on natural resources, and user conflicts between recreational and commercial ocean users.

The authority provided in this bill would give the Department more control over the types and locations of ocean activities in state waters in order to reduce user conflicts and preserve natural resources.

Impact on the public: This bill would help to reduce user conflicts, mainly those

between recreational and commercial ocean users.

Impact on the department and other agencies:
This bill would provide the Department more clarity on ocean recreation restrictions, as well as flexibility and options in managing, maintaining, and improving ocean recreation management.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 801.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.