

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

December 2, 2011

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy Committee, having met on November 16, 2011, makes reference to County Communication 11-222, from Councilmember G. Riki Hokama, transmitting a proposed resolution entitled “URGING THE STATE LEGISLATURE AND THE STATE DEPARTMENT OF LAND AND NATURAL RESOURCES TO REVIEW AND STRENGTHEN THE STATE BOATING LAW AND RELATED ADMINISTRATIVE RULES”.

The purpose of the proposed resolution is to urge the State Legislature and the Department of Land and Natural Resources (“DLNR”) to review and strengthen the State Boating Law, Chapter 200, Part II, Hawaii Revised Statutes, and related administrative rules, in light of the July 31, 2011, diver fatality outside the breakwater of Kaunapau Harbor, Lanai, Hawaii.

The Chair of your Committee noted that the Lanai community is still dealing with the loss of their beloved son, and that the community is very supportive of the proposed resolution.

Your Committee received written testimony dated November 14, 2011, in support of the proposed resolution. The testifier, a resident of Lanai, detailed concerns about the lack of enforcement resources to ensure the safety of ocean users on Lanai. She also urged an overhaul of the administrative rules to address specific areas of concern, and the establishment of an environmental court to consider environmental violations and issues.

Your Committee noted that it would be important for the Legislature and the DLNR to consider the testifier’s specific comments, and recommended that her testimony be transmitted along with the proposed resolution to all named recipients.

Your Committee also recommended that the State entities consider requiring anyone who buys or operates a boat in the State, or who has a registered boat in the State, to take a safe boating course.

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Your Committee recommended that the proposed resolution be revised to include the State Director of Transportation as a recipient of the resolution, since Kaunalapau Harbor is a commercial harbor.

Your Committee voted 9-0 to recommend adoption of the proposed resolution, as revised, and filing of the communication. Committee Chair Hokama, Vice-Chair Carroll, and members Baisa, Cochran, Couch, Mateo, Pontanilla, Victorino, and White voted "aye".

Your Committee is in receipt of a revised proposed resolution incorporating your Committee's recommended revisions.

Your Policy Committee RECOMMENDS the following:

1. That Resolution _____, as revised herein and attached hereto, entitled "URGING THE STATE LEGISLATURE AND THE STATE DEPARTMENT OF LAND AND NATURAL RESOURCES TO REVIEW AND STRENGTHEN THE STATE BOATING LAW AND RELATED ADMINISTRATIVE RULES", be ADOPTED;
2. That the written testimony dated November 14, 2011, attached hereto, be TRANSMITTED along with the resolution to all recipients; and
3. That County Communication 11-222 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



G. RIKI HOKAMA, Chair

Resolution

No. _____

URGING THE STATE LEGISLATURE AND THE
STATE DEPARTMENT OF LAND AND NATURAL
RESOURCES TO REVIEW AND STRENGTHEN THE
STATE BOATING LAW AND RELATED
ADMINISTRATIVE RULES

WHEREAS, Section 13-245-9 of the Hawaii Administrative Rules requires any person engaged in underwater swimming or diving in navigable waters of the State to mark his or her position with a divers flag; and

WHEREAS, Section 13-244-9 of the Hawaii Administrative Rules limits all vessels on the waters of the State to a slow-no-wake speed, so as to create no wake of appreciable wave height, when within 200 feet of any divers flag; and

WHEREAS, despite these existing safety regulations, a diver was fatally hit by a motorized inflatable commercial Zodiac outside the breakwater of Kaunalapau Harbor on the Island of Lanai on July 31, 2011; and

WHEREAS, this accident has traumatized the victim's family and an entire community, and heightened the need for better safety practices in the ocean waters surrounding the Island of Lanai, which are frequented by boaters and divers alike; and

WHEREAS, the State Legislature has declared that the State Boating Law is necessary to promote and attain not only the full use and enjoyment of the waters of the State, but also the safety of persons and the protection of property related to their use; and

WHEREAS, by reviewing and strengthening the State Boating Law and related administrative rules, the State may help to avoid conflicting uses between boaters and divers, thus enhancing their safety, in ocean waters surrounding the Island of Lanai; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby urges the State Legislature to review and strengthen the State Boating Law, and, pursuant to Sections 200-4 and 200-36 of the Hawaii Revised Statutes, urges the State Department of Land and Natural Resources to adopt rules to promote public safety, health, and welfare on the ocean waters of the State; and

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2. That, in their review, the State Legislature and State Department of Land and Natural Resources consider imposing stricter regulations to promote the safety of divers, including the creation of a “safe zone” for free divers along the shoreline of the Island of Lanai; and
3. That, in their review, the State Legislature and State Department of Land and Natural Resources consider enhancing safety practices for the type of vessel (inflatable motorized Zodiac) involved in the fatal July 31, 2011 accident; and
4. That certified copies of this resolution be transmitted to the Honorable Neil Abercrombie, Governor of the State of Hawaii; the Honorable Shan Tsutsui, President of the State Senate; the Honorable Calvin Say, Speaker of the State House of Representatives; the Maui County Delegation to the State Legislature; William Aila, Jr., Chairperson of the Board of Land and Natural Resources; Glenn M. Okimoto, Director, State Department of Transportation; and Rear Admiral Charles W. Ray, District Commander, United States Coast Guard, Fourteenth District.

November 14, 2011

Council Member, Riki Hokama

200 South High Street

Wailuku, Hawaii 96793

Re: Amended support of, POL-32 STATE BOATING LAW

Dear Councilman Hokama,

I appreciate the opportunity to share with you my collected thoughts regarding your attempt to urge the State Legislature and the State Department of Land and Natural Resources (DLNR) to review and strengthen the State Boating Law and Related Hawaii Administrative Rules.

I support your efforts with POL-32 State Boating Law and would like to bring to your attention that precluding any changes you may propose that "Item A", listed below is needed to enable effective enforcement of law around the coast of Lanai.

- A) The lack of enforcement resources on Lanai inhibits our ability to ensure the safety of all Ocean Users. There are currently two full time enforcement officers who are restricted due to budget constraints and work hours. Therefore enforcement is insufficient.

Currently there is only one work truck that is in disrepair and only one officer may patrol at a time. There is insufficient manpower to conduct coastal patrols. This requires a two man team by State of Hawaii policy and one additional officer is needed to be on land, a total of three officers. Therefore, a shortage of an additional officer on Lanai prohibits any Coastal patrol by boat or Jet Ski.

Furthermore, the island of Lanai does not possess any sea crafts that safely allows for any Coastal patrol. There are a significant number of commercial and recreational vessels that "Consume the resources of Lanai". These users are fully aware of the "lack of manpower, equipment and access that DLNR enforcement faces daily". So, Lanai has become a free for all!

Access to the Coast of Lanai is severely limited to 4-wheel drive vehicle and the one vehicle that DLNR has on island, barely makes the voyages required to enforce safety and conservation for the island.

Influxes of commercial and private visitors utilizing Lanai's resources have caused significant congestion and a depletion of our ocean resources. Fish, an important food, that sustain many residents, have been depleted. The increased numbers of illegal moorings have damaged our reefs. Enforcement is unable to check and monitor anchorage of the numerous boats that frequent Lanai on a daily basis.

DLNR Enforcement on Lanai is inadequate to conduct effective patrols in the coastal area. It is impossible for enforcement officers to cite a boat for a violation while being stuck on land. The amount time that it would take to call for DLNR Enforcement from Maui or Molokai is untimely and ineffective use of Maui's resource. We could address the issue from Lanai in an efficient manner. It is imperative to have manpower and equipment on Lanai, to ensure the safety and compliance for all users of ocean surrounding the island of Lanai.

- B) Hawaii Administrative Rules (HAR) for boating is in desperate need of being overhauled or developed.
- Current laws need to be refined for clarity and enforceability such as: Boat vessel speed and distance between shore, other boats and recreational users. Such as divers (shoreline, blue water and scuba), fisherman, swimmers, canoes, kayakers, surfers, etc... particularly commercial sea crafts.
 - Responsibilities of Captains and Owners of boats need to be tied, i.e.: Captains may be cited for violations however the boat owner/business owner holds no financial and moral responsibility for any accidents or infractions.
 - Designated Ocean Recreational Management Area (ORMA) may to be established for the island of Lanai. This would allow for permitted use of coastal resources.
 - Clearly defined and "Marked" (buoyed) channel entrances/exits must be installed and rules must be obeyed and enforced. The entrances to Manele Harbor and Kaumalapau Harbor are poorly define and vague at best.
 - Perhaps it is time to implement a paid licensing program for Recreational Ocean users for a small licensing fee. This would allow for every Ocean user to receive a State of Hawaii Rules and Regulations guide, to ensure the safety of all ocean users. Not to mention a means of tracking usage on our coastal

of all ocean users. Not to mention a means of tracking usage on our coastal areas to provide much needed statistical information for conservation purposes. Many other states have utilized this method for decades, which includes states with indigenous populations. Results have proven to be successful in all avenues of conservation of resources and enforcement.

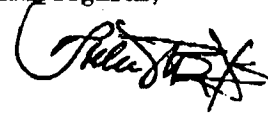
- C) Establish an environmental court to try all environmental violations and issues. Currently, all violations are handled by District General Court proceedings and many violators are dismissed with no fines or minuscule penalty i.e.: \$10 , \$20 or \$30 for illegal nets, fish under size restriction and seasonal violations

These are just a few of the many complex issues related to Boating Safety and Ocean Users that need to be addressed by the State of Hawaii.

Modifications to the HAR that may occur, will first require the ability i.e.; equipment and man power. And the enforceability i.e.; well defined rules and a court system that is sympathetic to the environment to effectively change for a safer and enjoyable ocean for years to come.

Again, thank you for your efforts and I appreciate your commitment to advocating for change for Lanai and our islands as a whole. Please contact me should you have any questions regarding this correspondence.

Warm regards,



Joelle M.L Aki Aoki

P.O. Box 631285

Lanai City, Hawaii 96763

Phone: 808-559-3711

Email: joelleaki@msn.com

Cc: file