

LATE

Quicksilver

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2/6/2017

Ke Kōmike no ka Wai a me ka 'Āina
[COMMITTEE ON WATER AND LAND](#)
Kenekoa/Senator Karl Rhoads, Luna Ho'omalū/Chair
Kenekoa/Senator Mike Gabbard, Hope Luna Ho'omalū/Vice Chair

Ke Kōmike no ka Ho'okolokolo a me nā Limahana
[COMMITTEE ON JUDICIARY AND LABOR](#)
Kenekoa/Senator Gilbert S.C. Keith-Agaran, Luna Ho'omalū/Chair
Kenekoa/Senator Karl Rhoads, Hope Luna Ho'omalū/Vice Chair

Lā / DATE: Pō'akahi, Pepeluāli 6, 2017/ Monday, February 6, 2017
Hōla / TIME: 2:45 p.m.

OPPOSITION TESTIMONY

Aloha Chairs Senator Rhoads and Senator Keith-Agaran; Vice Chairs Senators Gabbard and Rhoads:

Quicksilver Charters and its affiliates (the "Company") employ close to 100 people in Hawaii's boating and tourism industries.

We agree with the intent of this bill and protecting the reef from abandoned or derelict vessels. Commercial operators are highly motivated to save their vessels and do as little damage to the reef or environment as possible. We want to see language that would protect the rights of the vessel owner to have the first right to coordinate the salvage of his own vessel. This is especially important for the commercial operators whose vessels may be worth well over a Million dollars.

We agree that competent salvage operations need to be well underway within 24 hours. In certain circumstances it may take longer than twenty four hours to complete a salvage operation. These instances are often governed by tide, winds, and swell action and availability of an appropriate tug to complete the salvage in the best way possible for the environment and the vessel. We believe it could be counterproductive to have DLNR automatically assume management of the operations mid-way through the salvage and could make the final outcome worse not better.

We would support DLNR intervention in the salvage process after 24 hours if no effective salvage operation had been initiated.

Here are some conditions that are in the present law currently imposed on the vessel owner that wished to continue to be the primary agent in salvaging his vessel after the first 24 hours. We have saved much of this language in our proposed amendment:

- Proof of a Marine Insurance policy listing the State of Hawaii as additional insured for at least \$1,000,000.
- Evidence that salvage efforts were already underway with reasonable evidence that the vessel could be saved within the next 48 hours (or longer if it could be determined that additional environmental damage was highly unlikely).

PROPOSED AMMENDMENT:

(b) Solely for the purposes of removal and with no liability to the department, the department may assume control of any vessel that is grounded on state submerged land, a shoreline, or a coral reef or in imminent danger of breaking up and the owner has not commenced effective salvage operations within 24 hours from the time the vessel is grounded.

The owner of the vessel may continue as the primary agent in salvaging the vessel after twenty four hours upon providing proof of a marine insurance policy listing the State as an additional insured in the amount of at least \$1,000,000. And proof that the owner is actively and effectively initiating a salvage effort with reasonable evidence, as determined by the department, that the vessel may be saved within seventy two hours of grounding or longer if it could be determined that additional environmental damage was highly unlikely.

Our industry council advises us that there is a due process issue with what is being proposed as well as very possibly conflicting with Maritime Salvage Law.

Our insurance advisors commented: “The State has no interest in the vessel, we should not be obligated to defend them for their own resulting actions as we cannot control how or who they contract with to perform the salvage operations. The issue is vessel owners being allowed to operate in HI without insurance or not purchased adequate insurance and in a sense penalize Insurers by causing us to defend/hold harmless the State at our own increase expense. If they destroy a vessel that would have otherwise had a remaining salvage value, botch a salvage operation all together or caused a total loss that could have been avoided (bill only seems to address “least amount of expense” for salvage), insurers should reserve the right to pursue them for the resulting damages they have caused in assuming their own salvage operations on our behalf.

Triggers for Salvage Take Over – The proposed bill as written has the potential of creating serious financial loss to insurer who are otherwise obligated and want to salvage vessels as soon as possible. The real issue is owners who do not purchase insurance and state should be more worried about making sure all Commercial Operators have insurance with adequate limits. In state of CA for example, any commercial operator must provide evidence of insurance acceptable to the Department of Transportation and if they do not they cannot operate their vessel for commercial purposes. Then the DOT is assured that adequate insurance is available for every commercial vessel operating in our waters and just as important know who to contact should a wreck be seen to cause further harm to public waterways/lands. Triggers under this bill are all

based on time and assumptions that the State can find owners/insurers without any liability whatsoever for their actions or failure to properly notice Assureds/Broker/Underwriters before they take over nor has any essence of wanting to collaborate with the Insurers efforts to salvage. Instead, seem like if time is exceeded or if they do not like the salvage methods for any reason they can take over without regard to Insurers financial loss. Insures also want to protect natural resources or the public from resulting harm and we already have the potential of reef damage penalty costs from the state for reef damage. “

If you pass this bill SB 992, please amend it to reflect the rights of the vessel owner to be the primary agent in the salvaging of his vessel as long as the owner is actively and effectively completing the salvage. Also the needs of the insurer need to be addressed or we may not be able to obtain any adequate insurance.

At the end of the day, it should be the objective of all parties is to save the vessel if possible with as little damage to the environment as possible.

Sincerely,

[Zachary LaPrade](#)

Testimony of Denver Saxton Coon, esq., on behalf of Trilogy Corporation, with Conditional Support of S.B.992, Relating to Vessels Aground

Ke Kōmike no ka Wai a me ka 'Āina
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Lā / DATE: Pō'akahi, Pepeluali 6, 2017/ Monday, February 6, 2017

Hola / TIME: 2:45 p.m.

Chairs Rhoads and Senator Keith-Agaran; Vice-Chairs Senators Gabbard and Rhoads.

Aloha. My name is Denver Saxton Coon. I am general counsel for Trilogy Corporation dba Trilogy Excursions on the island of Maui. I am testifying in **Conditional Support of S.B.992 with proposed amendments** that I believe will protect both Hawaii's marine environment and the rights of vessel owners.

S.B.992 seeks to amend §200-47.5 and allow DLNR to take immediate control of a salvage operation when a vessel "is grounded on state submerged land, a shoreline, or a coral reef or in imminent danger of breaking up and cannot be removed by the owner within twenty-four hours from the time the vessel is grounded."¹ While I agree with rule's intent to allow the state to take action to protect our aquatic resources, the bill's current form does not adequately protect the rights of vessel owners nor does it ensure that the best decisions are made in these unfortunate situations.

First, the current language of the proposed rule does not afford a vessel owner with adequate time to carry out an effective salvage operation prior to state action. As written, S.B.992 would allow the state to take control of the vessel and remove it through any means necessary² without notification to the vessel owner nor consideration for an effective salvage operation that may already be underway.³ While this raises a due process issue, the simple fact is that it does not take into account that a vessel owner may be delayed in carrying out such an effective salvage operation for various reasons out of their control. For example, there may be an upcoming high tide outside the twenty-four hour window that would allow the vessel to float off the reef. Or, an appropriate size tug may need time to transit across state in order to tow the vessel off the reef or shoreline. Accordingly, the language of the bill should limit state action to situations where a vessel owner has not begun an effective salvage operation within twenty-four hours.

¹ S.B.992 change to §200-47.5(b).

² Subsection (d) states "Once the department assumes control over the vessel, the vessel shall be removed by any means necessary to minimize damage to the natural resources and not become a hazard to navigation."

³ The fear is that "any means necessary" will lead to the total loss of the vessel despite less destructive methods of salvage being available.

Second, S.B.992 has the potential to put a vessel owner's entire livelihood in jeopardy when the proposed changes to subsection (b) are combined with the proposed addition of subsection (e) which states, "All costs and expenses of removing the vessel and damage to state or private property shall be the sole responsibility of the vessel's owner or operator." The result of this combination is that the state can take control of a vessel despite an owner's initiation of a salvage operation, can decide to cut a multi-million dollar vessel into pieces instead of trying to tow it off the reef, and then can send the vessel owner the bill for the costs of dismantling the vessel despite the fact that the vessel could have been saved. While this may be a worst case scenario, it is a possibility under S.B.992 as written and something that would conflict with our fundamental ideas of fairness.

Accordingly, I believe the following language, which uses much of the language of the rule as currently enacted, would ensure that the rights of a responsible vessel owner are protected while also ensuring that there is minimal impact to the marine environment:

"(b) The department may assume control of any vessel that is grounded on state submerged land, a shoreline, or a coral reef or in imminent danger of breaking up and the owner has not commenced effective salvage operations within 24 hours from the time the vessel is grounded.

The owner of the vessel may continue as the primary agent in salvaging the vessel after twenty-four hours upon providing proof of a marine insurance policy listing the State as an additional insured in the amount of at least \$1,000,000 and proof that the owner is actively and effectively initiating a salvage effort with reasonable evidence, as determined by the department, that the vessel may be saved within seventy-two hours of grounding or longer if it could be determined that additional environmental damage was highly unlikely.

If you pass S.B.992, please amend it to reflect the rights of the vessel owner to be the primary agent in the salvaging of their vessel as long as the owner is actively and effectively completing the salvage.

Mahalo.

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