



TESTIMONY ON DLNR/DOBOR RULES AND REGULATIONS
TITLE 13, SECTION 13-234 HAR
PASSENGER FEES

Aloha Chair Suzanne Case and Members of the Board of Land and Natural Resources (DLNR),

Good morning! My name is Charles Toguchi, Hawaii Representative for Cruise Line International Association-Alaska (CLIA-Alaska) and I'm here today to testify on behalf of its President, John Binkley. CLIA-Alaska is a nonprofit trade association that represents the major cruise lines in Alaska and Hawaii. Member lines include Carnival Cruise Lines, Celebrity Cruises, Crystal Cruises, Disney Cruise Lines, Holland America Line, Norwegian Cruise Line, Oceania Cruises, PONANT, Princess Cruises, Regent Seven Sea Cruises, Royal Caribbean International, Seabourn, Silverseas Cruises and Windstar Cruises. In Hawaii, member lines work to promote and provide economic opportunities as they visit harbors and ports in Honolulu, Hilo, Kailua-Kona, Kahului, Lahaina, and Nawiliwili.

CLIA appreciates this opportunity to comment on the amendments to Hawaii Administrative Rule (HAR) Chapter 13-234, Passenger Fees, proposed by DLNR-DOBOR.

The proposed changes are applicable to all DLNR Small Boat Harbors, including Lahaina, Kailua-Kona and Lanai. After more than a year of discussions on various issues, DLNR is now limiting their latest draft proposal to only passenger fee increases.

Under the current rule, passengers on cruise vessels engaged in only inter-island commerce ("domestic") are assessed \$.30 each way or \$.60 total when they visit Kailua-Kona or Lahaina Small Boat Harbors. Passengers on cruise vessels involved in international or inter-state commerce ("foreign flagged") pay \$1.00 each way or \$2.00 per passenger visiting the same DLNR small boat harbors.



In their proposal to increase fees, DLNR-DBOR is supporting a per passenger per day fee of \$3.00 at Lahaina Small Boat Harbor and \$2.00 at other DLNR small boat harbors, including Kailua-Kona. If adopted, these new fees would apply to all cruise ship passengers on domestic or foreign flagged carriers.

For NCL's Pride of America, the only large "domestic" cruise line in Hawaii, the proposed per passenger per day fee increases 400% (\$.60 to \$3.00) in Lahaina and 233% (\$.60 to \$2.00) in Kailua-Kona. For "foreign flagged" cruise lines, the proposed passenger per day fee increases 50% (\$2.00 to \$3.00) in Lahaina and there are no proposed increases in Kailua-Kona.

CLIA is concerned with DLNR's latest draft proposal to increase passenger fees. While we support fair and reasonable fees for services provided to passengers and vessels in DLNR harbors, we are not supportive of a process that does not provide a reasonable transition time to implement the new fees. It's important to note that the fee increases being proposed by DLNR are effective 14 days after the Governor's approval, following public hearings.

All passenger fees are paid for by passengers through their cruise packages. Cruise packages that have been already sold for the next two years does not include proposed fee increases. The immediate implementation of the fee increase proposal will mean a passenger fee deficit of approximately \$700,000 at Lahaina and Kona during the next two years which will have to be paid for by the cruise lines.

In order to lessen the economic impact of the proposed passenger fee increases, CLIA would like to also suggest that DLNR consider phasing in the increases, especially in Lahaina.



In summary, we are suggesting the following changes to DLNR's draft proposal on cruise passenger fees:

First, an effective date of the amended rule that will provide us the minimum lead time to incorporate the increased passenger fees into the cruise tour packages.

Second, the per passenger fee increases above \$2.00 for Lahaina be phased in over three years. Based on current Hawaii Port Call data, Lahaina anticipates receiving at least 30% more passengers beginning in 2020. A phased in fee proposal plus increases in port calls and passengers at Lahaina should generate sufficient operating revenues for DLNR at Lahaina Small Boat Harbor. For the record, it's important to note that both Lahaina and Kailua-Kona, combined, had a positive net income of over a half million dollars for each of the last three fiscal years.

Finally, we provide the following comments in context to a recent federal court ruling on the imposition of fees to cruise vessels in Alaska. In the decision, US District Judge Holland said that in order for a fee imposed upon a vessel to be permissible under the Tonnage Clause of the US Constitution, there must be compensation through a service to the vessel itself. The judge further found that, fees imposed "not for services provided to the vessel" is unconstitutional because such fees are deemed "designed to raise revenue used for general municipal service." Judge Holland's decision is also consistent with the Marine Transportation Security Act (MTSA) of 2002 which allows "reasonable fees charged on a fair and equitable basis that are used solely to pay the cost of a service to the vessel or watercraft."

We look forward to working collaboratively with the Department of Land & Natural Resources. Mahalo for this opportunity to testify on behalf of CLIA-Alaska.