

To the DLNR land board.

I would like to state for the record that I am absolutely opposed to the state of Hawaii and its current administration of taking the most irresponsible, and deliberately indifferent, path of abandoning the longstanding regulatory process that governs the Beach Boy permitting and certification for Waikiki Beach, commonly known as ORMA, "Blue Card" or the commercial operators permits. This reckless, and dangerous action "Will," not, "May" negatively affect the public safety as well as end the legend, and the iconic profession of The Waikiki Beach Boy !

The Division of Boating and Ocean Recreation chairman, William Aila in 2014 promised to meet with the advisory committee, concessionaire owners etc... to re-visit and re-examine this exact same action in 2014. The repeal of the exact same rules. HAR 13-251 (1) (2) (3) and (7). This hasn't happened YET! -(The only person that is now "NOT" in the current administration is Mr. Aila.) Not because we don't want to go over this but because the same current administrators that were under Mr. Aila have canceled meetings and promised to reschedule and haven't done so. The only thing that was passed by the board was that we, the concessionaire owners would have to pay for a commercial use permit. In other words we now have to pay for using the Waikiki Shore Waters to teach surfing and take people out for outrigger canoe rides. We still have to insure DLNR and pay the recently raised fees and don't forget taxes.

These activities in Waikiki are the number 1 reason the entire State of Hawaii became the number 1 tourist destination for most of the world since the steam ships could bring tourist to the islands. The Waikiki Beach Boy should not be extorted, or punished for their contribution to the founding of the State of Hawaii's NUMBER 1 ECONOMY , "TOURISM !!!

The Waikiki Beach Boy Legacy and Heritage, cannot be lost because of DOBAR/ The Division of Boating and "OCEAN RECREATION", is negligent in hiring personnel with subject matter experience or enforcement personnel shortages. Hawaii has the uniqueness that no other place in the world has and that's the Waikiki Beach Boy ! This is a direct threat to that legacy.

Deregulation is basically what this is, in a profession that needs it. Early on before Statehood, Waikiki Beach was like the Wild West. The old-timers called it Wildcatting. Every man for themselves. This led to regular fighting on the beach and in the water in front of the visitors and the public along with vandalism of equipment and private property. Regardless of concession stands, the Wildcatters had no respect because there were no rules for conducting business on Waikiki Beach. Pre Statehood around 1957 "The Waikiki Beach & Water Sports Safety Committee was formed in an attempt to ensure that the Beach Boys were duly qualified to be allowed to operate commercially for any of the licensed concessionaires ON THE BEACH in the waters off of the Waikiki Beach area. This was handled by Mr Howard Donnelly presumably the equivalent to the DLNR at that time. The Chairman of the Qualification Board for the Waikiki Beach & Water Sports Committee was no other than Duke Kahanamoku . This is where the history and the legacy of the Waikiki Beach Boy was meant to stand the times! The past administrators, Mr. Harrington, Mr. Bill Parsons, Mr. Ian Bernie, Mr. Peter Dolan Sr. Mr. Steven Thompson's their first concerns, where for the safety of our visitors. Not 1 ever expressed the dismantling or the deregulating of the committee or the rules. At the end of Mr. Thompson's leadership however roomers started to surface about going over the rules and reg's but that never happened. DLNR attempted under Mr. Aila's admin. to hire and retain people to re-write the rules but could not hold on to those personnel. Until Mr Aila's administration, they wanted the advisory board to be certain that the Beach Boys being qualified where ready to perform the duties of The Beach Boy.

If the DEREGULATION by this ADMINISTRATION is successful, what is to stop or insure that uncertified, uneducated, uninsured, uninsurable, uncaring, homeless, foreign bookings, or just about any individual or ENTREPRENEUR from attempting to teach surfing or attempting to control an OUTRIGGER or any another ocean or surfing activities. What kind of enforcement abilities will our short handed DLNR enforcement officers have. Imagine a total abandonment of the rules! Would you empower any of these type of individuals or entrepreneur's to take out your CHILDREN, loved ones, friends or even the acquaintance that you send to Waikiki for a great experience?! Didn't think so.

Under the heading "Recreational Advisory Committee" (13-251-1 purpose and scope (a) The purpose of these rules is to reduce conflict among ocean water users , especially in areas of high activities .) The recent devastating fire at the city's public surf board storage racks, is, in my opinion a direct result of non enforcement on the city's behalf. Ever since the city's Enterprise Services awarded both of their beach stands to one entrepreneur, that side of Waikiki has been under the Wild West State. The Wild Cats have taken over that end of Waikiki Beach and the city hasn't taken any steps what so ever to curb the situation it is currently experiencing. By allowing both stands to be operated by an entrepreneur who had never operated a Waikiki Beach Boy activities stand might have been an error on Enterprise Services part, not the entrepreneur. If awarded 1 stand, that might have been all the difference in curbing the wild cats and the new entrepreneur getting to learn and experience the Waikiki Beach Boys.

Submitted by The Administrator of the Division of Boating and Ocean Recreation Ed R. Underwood, and approved for submittal from The Chairperson of the Board of Land and Natural Resources Suzanne D. Case, is a request for the approval to repeal (HAR) 13-251 subchapters (1) (2) (3) and (7). The most often used excuses by the admin, was we have no resources or subject matter expertise, and not enough enforcement personnel to continue issuing the Blue cards. Because they stopped the way the advisory committee did their testing. Their excuse was, there were too many applicants applying for instructors. The list had about 100 people wanting to take the test. So they decided to eliminate the committee's sand demo part of the surf instructors test. Then decided that if the applicant can surf 3 waves to their approval that would be sufficient enough to pass the testing. That in turn made the test easier for the applicants to test for becoming a surf instructors. Well of course now because it was so easy the list got years longer and everyone and their mother wanted one. This is a DLNR self inflicted injury! everyone heard the saying " DO'NT FIX IT IF IT IS'NT BROKEN "

On the request for repeal, under Relevant Authority. Hawaii Revised Statutes,(HRS) section 91-3

(g) Whenever an agency seeks only to repeal one or more sections, chapters, or subchapters of the agency rules because the rules are either null and void, or unnecessary, and adopt, amend, or compile any other rules. I guess that means they can, under those circumstance repeal something. This does not apply to this situation, rules and certifications. There is no mention of lack of subject matter expertise, or lack of enforcement personnel or under staffing. What should apply is a complete restructuring and updating of the current rules and regulations for the future.

Under the caption, RECOMMENDATION :

DOBAR states: DOBAR has been working with Waikiki operators to develop regulations for the various commercial activities taking place in Waikiki Ocean Waters. It also states DOBAR believes that repealing the above mentioned subchapters would provide the best solution while replacement regulations are developed to address the issues surrounding Waikiki

Operators Permits. Again this couldn't be further from the truth! No one has contacted us at Aloha Beach Services since October and some of the other concessionaires that we work along side with have heard nothing. In October I was contacted while on vacation and asked to turn in what I thought was relevant to a question I was asked about by a representative of DOBAR. To date I have not heard anything other then this attempt again to repeal.

It is great to hear that DOBAR also thinks it would be better to repeal the above mentioned subchapter while replacement of regulations are developed to address the issues surrounding Waikiki Operators Permits. You kidding right ? Who works backwards? Your admitting that there has to be some sort of rules. Don't eliminate them and think your going to convince us that your going to make rules later . We know what is meant by that. Its a different way of saying it isn't going to happen in this life time. You don't eliminate the speed limit until a new one is replaced or developed. DOBAR has also been ADVISED by the Attorney General that issuance of the Waikiki Operators Permits "COULD" not shall, or will or must, just "COULD " impose liability on the State if customers are injured while on tour with or receiving instruction from a permit holder because Waikiki Operators Permits are issued by State agency. Some form of rules, and regulations although not perfect have been in effect for over 70 years and enforced although not regularly but the threat of enforcement was always there. Wouldn't the state be liable because they ABANDONED/ REPEALED rules instead of developing, correcting, and creating new rules and regulations to improve upon the existing. Is that a definition of DELIBERATE INDIFFERENCE?

My Name is Harry D. Robello (Didi) I am 58yrs old. I am a 2nd generation Beach Boy and a 3rd generation Kahanamoku. I own Aloha Beach Services. I received my 2nd Captain and Surf Instructors Blue Card at age 21 and it was under Ian Bernie's administration when I got my Blue Card . I have been on the Waikiki Beach Advisory Committee for over 30 years. Aloha Beach Services was founded by my father Harry S Robello around 1959. He was the last of the original Beach Boys and I hold a copy of his qualification letter from Duke Kahanamoku. We are the only Waikiki Beach concession that has been on the beach in the same area continuously since its founding.

Aloha Didi.

Name: David Carvalho

October 14, 2022 – 9:15AM

Agenda Item: J. Division of Boating & Ocean Recreation #1

Approve to REPEAL Hawaii Administrative Rule Ch. 13-251 – to remove all certification requirements → repeal the BLUE CARD

Aloha,

My name is David Carvalho, a business owner, long time beach boy, surf instructor, Outrigger Canoe Captain of over 30 years. A Waikiki Waterman, with much experience and expertise in these waters.

I am here on behalf of Pacific Island Beach Boys and Big Wave Dave Surf & Coffee, to testify that we are IN FAVOR of REPEALING Admin Rule Ch. 13-251 subchapter 1&2.

This law that the AG office has already stated, I quote!

“DOBAR has been advised by the Attorney General that issuance of Waikiki operator permits could impose liability on the state if customers are injured while in the water with or receiving instruction from a permit holder because Waikiki Operator permits are issued by a state agency.

Removing Waikiki Operator permits requirements from administrative rules would allow commercial operators to set up their own employee qualification standards and keep the state, which is not a subject matter expert on surfing or canoe operation techniques, out of the process. “

Furthermore, we are working with DOBAR / Ed Underwood / Megan Statts on setting minimum requirements pertaining to this issue.

As it stands now many businesses have been extremely hampered or burdened by trying to get the state to license their employees. Many individuals, good hardworking waterman and women do not have an opportunity to succeed, when an individual has to wait years, 5, 10 or 15 years to get a testing opportunity? This is a joke!

We have reached out to our attorneys from Cades-Schutte and have been affirmed that in the event that any customers get injured and any lawsuits filed, the case will be pushed to the state.

We have attached a copy of the attorney’s letter to the board.

In the repeal process I will also resubmit that letter along with our submission of Repeal.

One last item we would like to bring up. this topic has come up before and had no support from any businesses, but most of us were not notified or missed it due to location.

Make it known that the local surf businesses in Waikiki are in Favor and SUPPORT this repeal, we stand with the AG and DOBAR.

We ASK to REPEAL.

Mahalo.

David Carvalho

Owner / President

Big Wave Dave Surf & Coffee

Pacific Island Beach Boys

September 1, 2022

Paul M. Saito
Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawai'i 96813-4212
Direct Line: (808) 521-9225
Direct Fax: (808) 540-5073
Email: psaito@cades.com

VIA U.S. MAIL

Mr. Edward Underwood
Department of Land & Natural Resources
Division of Boating & Ocean Recreation
4 Sand Island Access Road
Honolulu, Hawaii 96819

Re: Repeal Hawaii Administrative Rules, 13-251, Subchapters 1, 2, 3 and 7

Dear Mr. Underwood:

My firm has been working with David Carvalho and his companies and have been asked to review your Department of Land and Natural Resources, Division of Boating and Ocean Recreation's ("DOBOR") proposal to repeal Hawaii Administrative Rules §13-251, Subchapters 1, 2, 3 and 7 concerning DOBOR's Waikiki Operator Permits requirements. We agree that the DOBOR and the State have exposure to liability for injuries if it continues to set standards for issuing Waikiki Operator Permits.

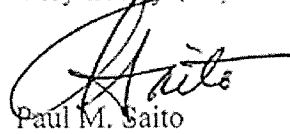
Mr. Carvalho and his companies agree and ask the DOBOR to remove the Waikiki Operator Permit requirements from administrative rules. He also agrees that requiring commercial operators to be responsible for their employee's qualifications to ensure guest safety will be important to provide high safety standards for ocean activities on Waikiki beaches. We also understand there is a backlog at DOBOR for granting permits which has prevented Dave's companies and others to staff their ocean activity positions with trained and qualified instructors and crews.

We appreciate DOBOR's efforts to work with Dave and other Waikiki operators to develop regulations for the commercial activities taking place in Waikiki Ocean Waters, and agree that repealing the abovementioned subchapters would provide the best solution while replacement regulations are developed to address the issues surrounding Waikiki Operator Permits.

Mr. Carvalho is looking forward to working with you and the DOBOR to establish new regulations to provide a safe and memorable ocean experience for our visitors.

Mr. Edward Underwood
September 1, 2022
Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read "Saito", with a long horizontal flourish extending to the right.

Paul M. Saito

for

CADES SCHUTTE

A Limited Liability Law Partnership

cc: Dave Carvalho
DOBOR Board of Directors
Meghan Statts, Asst. Administrator

Submittal for J.1 10/14/2022
AGAINST REPEAL

Request Final Approval to repeal Hawaii Administrative Rule (HAR) Chapter 13-251, Subchapter 1

Questions that we would like answered pertaining to repeal.

Why is this repeal needed?

What will it's impact be?

What are your intended results you're looking for with these changes?

Have you contemplated any unintended consequences?

What is policy reasoning and is there a balance?

Yes DOBOR has proven it does not have staff or expertise, but they have never wanted to do this from the beginning.

Just like their paid and metered parking at the Ala Wai Small Boat Harbor.

DOBOR had said they did not have staff or expertise but they went out and hired a vendor. Maybe they should do the same for this. If you charge applicant a fee for applying and testing for a license, similar to driver license, this money could go to pay your vendor. I'm sure that if there is a will there is a way.

I can understand DOBOR not doing surfboards and surf instructors because of lack of expertise, but we should not use this logic for Catamaran Captains licenses whose vessels are around 45' long, 24' wide and weigh over 11 tons that go in and out through the surf maybe eight times a day is questionable. At least they have their own lane in an area known as catamaran channel though surfers and canoes fill this area when catamarans are out at sea.

Nor licensing Canoe Captains and Seconds, who are in charge of a vessel that is over 40' long and 6' wide, weighing over 1600 lbs. is scary enough. Riding waves in and paddling out through beginner and intermediate surfers most not familiar with these surf breaks, is like giving a car to someone with no license or a temporary one to drive through a busy park filled with people. This should not be acceptable in anyones mind.

The purpose of having these rules is to reduce conflicts among ocean

water users, especially in areas of high activity. Repealing will create chaos.

I know DOBOR has been working tirelessly to solve this problem. Working with an advisory group who became testers is what made it challenging.

In DOBOR'S Modernizing Ocean Recreation Management in Hawai'i Strategic Action Plan-2019 states:

Goal 1: Expand ocean recreation management to meet DOBOR's statutory mandate

Ocean recreation plays a substantial role in Hawai'i's economy, community, and culture. DOBOR needs to balance its focus between boating and ocean recreation management by shifting greater attention towards the latter. Expanding ocean recreation management will allow DOBOR to provide a safe and enjoyable experience for all residents and visitors on all State waters, not just within boating harbors and facilities.

How is getting rid of these actions expanding ocean recreation management to provide safe and enjoyable experience for all residents and visitors.

We would like these questions answered before the BLNR goes forward with this repeal to ward against unsafe practices in this highly active area of Waikiki. Please move these actions forward in a timely manner.

We feel that by answering these questions it will lead to finding the right path forward.

Mahalo,

Keone Downing spokesman

Surfing Education Association

SAVE OUR SURF

From: [Waikiki Beach Special Improvement District Association](#)
To: [DLNR.BLNR.Testimony](#)
Cc: [Rick Egged](#)
Subject: [EXTERNAL] Testimony on Item J-1-Repeal Hawaii Administrative Rule (HAR) Chapter 13-251, Subchapter 1, 2, 3 and 7.
Date: Friday, October 14, 2022 7:14:13 AM
Importance: High

This email serves as a **written request for deferment of item J-1** related to the repeal Hawaii Administrative Rule (HAR) Chapter 13-251, Subchapters 1, 2, 3 and 7. The Waikiki Beach Special Improvement District Association (WBSIDA) representing Waikiki stakeholders, **requests this item be deferred** until further evaluation and discussion can take place to understand the impacts and repercussions of repealing these subchapters.

Aloha,
Dolan Eversole
Waikiki Beach Management Coordinator
Waikiki Beach Special Improvement District Association
(808) 956-9780

From: [Didi Robello](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Fwd: Testimony
Date: Thursday, October 13, 2022 5:56:50 PM

Sent from my iPhone

Begin forwarded message:

From: Didi Robello <didirobello@icloud.com>
Date: October 12, 2022 at 4:57:38 PM

The foundation of Waikiki the Romance, Safety, Security, and our tourist industry that we all depend on is about to Parish . The romance of walking the beach at night safely is gone. Homeless and crime took over. Strolling along on Kalakaua in the evenings after an early dinner are gone. No room to walk because of the illegal peddling and sidewalk blocking entertainers. The beauty of watching the palm trees sway in the morning's are gone. You have to keep your head on the ground and pay attention to your surroundings instead of looking up into the clouds. Swimming after Sunset is gone because you can't leave your things on the beach without it being stolen. Sitting and enjoying Waikiki during the afternoon is gone. The beach and park benches are Homeless shelters and drug dealing centers. Playing in the sand and making sand castles with your kids is gone. Needles on the sand human feces and the smell of urine are what your kids play

in. The surfboard racks for all to use is gone. Because of arson immediately behind our police station. The last and final nail in the coffin of Waikiki and the foundation of our industry in a way even our heritage, is the loss of the ones who made Waikiki who made the tourists industry who put Waikiki and Hawaii on the map. Who was once world renowned, world famous, world respected. Some where Olympians and all where the founding fathers of world class watermen and lifeguards.

THE WAIKIKI
BEACHBOY! The only thing left is going to be wiped out with one swipe of a PEN a REPEAL, and Why? For the same reason everything else is gone. Lack of enforcement! Lack of hard work lack of having the heart to put the time into making it all PONO! Instead of enforcing, instead of amending for the better, Waikiki gets excuses. The powers that be look the other way, not enough enforcement personnel. We don't have enough office personnel to process what needs to be done. Excuses very poor excuses. That have been repeated for 30 + years. The excuses is what should be repealed !!! How can that be. Who are we going to entrust our kids, family, and friends, loved ones, visitors that as a state we all invite them to come! Are we going to entrust them with who ever from where ever that may no nothing what so ever about what it takes to be a Certified BEACHBOY! Someone or some company that can get their hands on a commercial use permit (CUP)

We already have seen what that led to when the city gave 2 of their concession stands to the highest bidder! That's why I'm opposed to the repeal of Hawaii Administration Rule (HAR) Chapter 13-251 "blue card"!

And Ultimately the Demise of the Waikiki Beachboy and all the heritage that they brought to all the people of Hawaii. My name is, Harry D. (Didi) Robello. Owner of ALOHA BEACH SERVICES. I am a 2nd generation BEACHBOY and 3rd generation KAHANAMOKU. Please, if any of you on the BLNR wish to talk more about what is really going to happen if the repeal goes through call me. 808-226-9427 Mahalo and Aloha. See you at the beach.

Sent from my iPhone

From: [Aaron](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] DOBOR
Date: Thursday, October 13, 2022 9:27:18 AM

Repeal of HAR 13-251, Canoe and surfing instructor permits.

Aloha,

My name is Aaron Rutledge. Owner and operator of Star Beachboys, Inc. we have been in business since 1972 and I have been a blue card holder (canoe and surf instructor) since 1990.

The license process has become very hard to obtain over the past 10-15 years or so, due to the delay of testing applicants.

When I first obtained my license, we needed to prove that we had experience and worked the beach for a number of years. Then we would approach the advisory committee and ask for them to sign for us to receive the license.

It was a way for the elder beach boys to make sure you were capable of handling yourself and the lives of the people you were taking into the ocean.

Now, all you need to do is catch 2 waves surfing and you're qualified. Not good enough in my opinion. There are professional surfers who can't teach a surfing lesson.

I am for repealing this rule, however, we need to make sure there are minimum requirements in place to be followed and the business owners must be held accountable that those requirements are met.

We currently have some business owners that provide surfing lessons and canoe rides that are not licensed or qualified themselves. We need to make sure situations like this, doesn't open the flood gates of them allowing anyone to take the lives of tourists in their hands to give a surfing lesson just to make money.

I believe that as a licensed beach boy and business owner, I should be able to decide who I allow to give a lesson or canoe ride to my customers without them having to wait years to get tested.

If I assume the responsibility of that person, then it's all on me to make sure they are qualified. Safety has always been my number 1 priority.

As for someone wanting to be able to teach lessons and canoe rides for the first time, they should be able to come and learn from the business they are going to work for and be trained properly, and only then when the business owner feels they are ready, then they should be allowed to teach.

In addition to this repeal, the requirements to follow should also include that the business owner themselves should have been a blue card holder. How can a business owner with no prior experience be able to say someone is able to teach surfing or canoe rides.

This would eliminate everyone trying to obtain a CUP just to give surfing lessons with no experience and ensure that safety in the water is being preserved.

In conclusion, I am for this repeal with the conditions that requirements will be in place that the CUP holder must meet and abide by in order to maintain safety and proper service that all of our tourists and locals deserve.

I can be reached at 808-306-3231 if anyone has any questions or concerns.

Mahalo,

Aaron Rutledge