



Office
1149 Bethel St., Ste. 415
Honolulu, HI 96813
877.585.2432 toll-free ph/fx

Mailing Address
P.O. Box 37368
Honolulu, HI 96837

www.KAHEA.org
kahea-alliance@Hawaii.irr.com

**S.B. 1311 Permit Exemption for Hawai'i Institute of Marine Biology
Room 309, 2:15 pm
March 17, 2009**

Aloha Chairman Chang and members of the House Committee on Higher Education,

KAHEA strongly opposes S.B. 1311 to exempt the University of Hawai'i's Institute of Marine Biology (HIMB) from permitting requirements for repair and maintenance activities at its research laboratory in Kaneohe Bay. We firmly believe that HIMB has an obligation to adhere to existing environmental protections. If natural and cultural resources are not put at risk by their activities, there is no need for an exemption. If resources are threatened, activities should be subject to the legal protections in place.

KAHEA is a network of over 6,000 concerned citizens, including kūpuna, cultural practitioners, and ocean users, working to protect Hawai'i's unique natural and cultural resources. Perpetuation of Hawai'i's unique culture depends on strong protections for Hawai'i's resources. Public oversight on decisions that affect these resources is a crucial element in the successful protection of these resources.

Unfortunately, S.B. 1311 seeks to undermine public participation and oversight of these decisions by exempting HIMB from permit requirements for repairs to their laboratory in Kaneohe Bay. This proposal is problematic for two reasons:

- (1) Though the exemption proposed in this version of the bill is narrower than previous proposals, it is still extremely broad and ripe for misinterpretation, perhaps even misuse. For example, what activities are defined as "repairs and maintenance"? What entity decides whether the proposed activity meets that definition or not? And, what process is in place to appeal such a decision, if necessary?
- (2) Allowing exemptions such as the one proposed in S.B. 1311 establishes a trend towards special treatment for certain entities and uneven application of otherwise generally applicable laws and regulations. As we have seen with other entities not fully and properly regulated (financial institutions) or held to the same standard of law as everyone else (Superferry), this type of special treatment undermines the proper operation of the system to manage and protect Hawai'i's public trust resources.

The Answer is Improved Permitting, Not Blanket Exemptions

HIMB has described excessive delays in the issuance of permits for seemingly remedial tasks. Instead of working to improve the permitting system, however, HIMB is advocating to exempt itself from the law. This avoids addressing possible problems with the current permitting system, while inviting additional problems from vague exemption language and a trend towards special treatment of certain entities. If HIMB sees flaws in the current permitting system, then HIMB should help to advocate for an improved permitting system – one that ensures public



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oversight as a check on decisions made about our public trust resources while providing for efficient decision-making.

HIMB might argue that public oversight is cumbersome for them. It is, however, public oversight and transparent process that ensures decisions on activities impacting public trust natural and cultural resources are appropriate and prudent. Even without malicious intent, exemptions such as that proposed in S.B. 1311 can easily become the loophole that leads to sweeping, unintended consequences. That a law is inconvenient for the proponent of an activity is not sufficient reason to extend a blanket exemption.

Mahalo for this opportunity to provide our testimony,

Marti Townsend
Program Director