

SB 3044

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



GARY L. HOOSER
DIRECTOR

STATE OF HAWAII
OFFICE OF ENVIRONMENTAL QUALITY
CONTROL

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COMMITTEE ON ENERGY AND ENVIRONMENT

SB 3044, RELATING TO MARINE WATERS

Testimony of Gary Hooser
Director of the Office of Environmental Quality Control

January 31, 2012

1 **Office's Position:** The Office of Environmental Quality Control opposes SB 3044.

2 **Fiscal Implications:** Not applicable

3 **Purpose and Justification:** SB 3044 proposes to amend Section 190D-11, HRS, to
4 require the preparation of an environmental impact statement for all commercial leases
5 in state marine waters and submerged ceded lands.

6 Chapter 343, HRS, ensures that actions or activities that occur in certain areas
7 undergo a review to determine potential environmental impacts. The ultimate purpose
8 of the process is to determine whether or not there is any significant effect, and if so to
9 disclose that impact and recommend alternatives and mitigation.

10 The basic process is intended to treat all proposed actions/activities equally. The
11 process is tiered and moves forward only if potential impacts warrant further review. All
12 projects triggered by Chapter 343, and not otherwise exempted, must prepare an
13 Environmental Assessment (EA). If that EA determines there will be no significant
14 impact then that concludes the process. If the EA demonstrates the likelihood that there

1 will be potential for significant impacts, or if the agency/applicant predetermines
2 significant impacts are very likely, then a complete Environmental Impact Statement will
3 be required.

4 Thus, for any lease of state lands, commercial or non-commercial, marine or
5 otherwise, unless granted a valid exemption, an EA should always be performed to
6 determine the potential for significant effect. If it is determined that there is potential for
7 significant impacts, a full EIS should be completed. This process should be followed in
8 all cases regardless of whether the action is conducted by a commercial or non-
9 commercial enterprise. A non-commercial enterprise is not necessarily limited in size
10 and scope, and the methods used and the particular location may in fact sometimes
11 warrant a full EIS. Likewise, a proposed commercial operation may be very small in
12 size and scope, and located in an area where a basic EA may suffice.

13 In summary, the environmental review process as described in Chapter 343,
14 HRS is based on environmental impacts. The decision making criteria as to what level
15 of review should be required, should be based on potential impacts and not on the
16 nature of the management or ownership structure of the enterprise.

17 Thank you for the opportunity to testify.



UNIVERSITY
of HAWAII
MĀNOA

Water Resources Research Center
Environmental Center

January 31, 2011
RL: 2273

SB 3044
RELATING TO STATE MARINE WATERS

Senate Committee on Energy and Environment
Public Hearing – Tuesday, January 31, 2012
2:45 p.m., State Capitol, Conference Room 225

By
David Penn, Environmental Center
COMMENTS ONLY

Dear Chair Gabbard, Vice Chair English, and committee members,

The Environmental Center suggests that both the existing and proposed legislation governing ocean and submerged lands leasing may fall short of a legislative intent to “better facilitate judicious use of valuable public trust resources.” *See* SB 3004. Until the procedures for the leasing of state marine waters and submerged lands are more tightly linked with comprehensive planning and detailed policy that guide the spatial organization and cumulative effects of ocean resource development, the Board of Land and Natural Resources will continue to be faced with the added uncertainties of a first-come, first-serve application process.

In the meantime, the existing law requires that an application to lease state marine waters contain “[a]n environmental assessment or, if required, an environmental impact statement which shall be prepared and accepted in compliance with the rules adopted under Chapter 343.” Hawaii Revised Statutes § 190D-11(a)(1). This requirement correctly applies Chapter 343, under which:

- the purpose of an environmental assessment is “to determine whether an environmental impact statement shall be required,” and
- an environmental impact “statement shall be required if the agency finds that the proposed action may have a significant effect on the environment.”

Hawaii Revised Statutes § 343-5(b), (c).

SB 3044 would require that an application for a commercial lease of state marine waters contain an environmental impact statement. This requirement is essentially equivalent to a legislative finding that all commercial leases of state marine waters may have a “significant effect” on the environment. Such a finding would appear to circumvent the established Chapter 343 process for determining “significant effect,” and this circumvention could be unwarranted absent a body of scientific evidence that supports the proposed legislative finding of “significant

RE: 0810

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effect” for all commercial leases of state marine waters. If the legislature is interested in developing such a body of evidence, the Environmental Center may be able to assist.

In a related matter, Act 207 of the 2008 legislature did establish a precedent for a “direct-to-EIS” approach, adding a requirement to Chapter 343 that “for an [applicant] action that proposes the establishment of a renewable energy facility, a draft environmental impact statement shall be prepared at the earliest practicable time.” Hawaii Revised Statutes § 343-5(c). However, our research to date has not uncovered an explicit rationale for applying this approach to renewable energy facilities.

Thank you for the opportunity to testify on this proposed legislation. Please note that our testimony is advisory only and should not be construed to represent an official institutional position of the University of Hawaii.



**Testimony to the Senate Committee on Energy and Environment
Tuesday, January 31, 2012 at 2:45 p.m.
Conference Room 016, State Capitol**

RE: SENATE BILL NO. 3044 RELATING TO STATE MARINE WATERS

Chair Gabbard, Vice Chair English, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** S.B. 3044 relating to State Marine Waters.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber opposes S.B. No. 3044 which proposes to Amend Chapter 190D HRS by requiring an applicant for a lease of state marine waters to submit an application containing an environmental impact statement for commercial leases or an environmental assessment for non-commercial leases.

The triggers for an Environmental Assessment (EA) or Environmental Impact Statement (EIS) are contained in Chapter 343 HRS. The purpose of the environmental review process is to disclose impacts attributed to the proposed project. The intensity of the land use generally determines when a project will require an EIS.

We believe the proposed bill will create confusion in the statute by now triggering an EIS for a "commercial" lease and limiting a "non-commercial" lease to an EA. What happens if the non-commercial lease will result in negative impacts to the offshore environment? Under the proposed bill, the commercial/non-commercial nature of the business is the trigger rather than the impacts generated by the project.

Thank you for this opportunity to express our views.



THE SENATE
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Mike Gabbard, Chair
Senator Kalani English, Vice Chair

DATE: Tuesday, January 31, 2012
TIME: 2:45 p.m.
PLACE: Conference Room 225
State Capitol
415 South Beretania Street

RE: Testimony in opposition to SB 3044 RELATING TO STATE MARINE WATERS

Dear Chair Gabbard, Vice Chair English, and Committee Members:

The Hawaii Aquaculture and Aquaponics Association (HAAA), representing Hawaii's aquaculture and aquaponics industry statewide must respectfully testify in opposition to SB 3044, "Relating to State Marine Waters". This bill would impose an un-necessary statutory requirement for an Environmental Impact Statement (EIS) for commercial ocean aquaculture and energy projects that desire to lease State marine waters.

HAAA strongly supports the current EIS law, Chapter 343 HRS, and believes it has worked well to share detailed project information in the form of an Environmental Assessment (EA) that can be reviewed by all stakeholders for comment and then allow the Department of Land and Natural Resources (DLNR) to determine if further study is needed. While other commercial ocean users may also be affected, HAAA notes requiring an EIS for any aquaculture and ocean energy leases of State marine waters would unfairly target these industries and represent a dis-incentive to commercial development. Both ocean aquaculture and energy will play critical roles in Hawaii's sustainable future and modifying the current process to require an EIS to get a lease would discourage investment.

For these multiple reasons and more, we therefore strongly oppose SB 3044, and respectfully ask that it not be passed out of committee.

Thank you for the opportunity to comment.

Respectfully submitted,

Ronald P. Weidenbach
HAAA President



Hawaii Farm Bureau
F E D E R A T I O N

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JANUARY 31, 2012

HEARING BEFORE THE
SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

TESTIMONY ON SB 3044
RELATING TO STATE MARINE WATERS
Room 225
2:45 PM

Chair Gabbard, Vice Chair English, and Members of the Committee:

I am Brian Miyamoto, Chief Operating Officer and Government Affairs Liaison for the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,800 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

HFBF strongly opposes SB 3044, "Relating to State Marine Waters." This bill would add little additional protection for Hawaii's marine waters, while discouraging valuable and well-planned commercial uses of these waters by increasing the burdens of time, cost, and paperwork required for permit applications.

Ocean leasing applicants are already required to submit an environmental assessment for review by the Department of Land and Natural Resources (DLNR). After considering all public comments, DLNR currently has the discretion to determine whether or not further information (including, if necessary, an EIS) is warranted. The existing permit process has worked well so far and does not need to be changed.

Ocean aquaculture is a promising technology that has great potential to provide high-quality seafood, jobs, and income to the state, while also creating a major export market. Ocean energy projects can also contribute substantially to Hawaii's goal of greater self-sufficiency. The state should not discourage investment in these important future industries by imposing unnecessary regulatory burdens. We therefore respectfully ask that SB 3044 not be passed out of committee.

Thank you for the opportunity to testify.

Testimony for ENE 1/31/2012 2:45:00 PM SB3044

Conference room: 225
Testifier position: Oppose
Testifier will be present: No
Submitted by: Bill Spencer
Organization: Hawaii Oceanic Technology, Inc.
E-mail: Bspencer@hioceanictech.com
Submitted on: 1/30/2012

Comments:

Hawaii Oceanic Technology, Inc. must respectfully testify in opposition to SB 3044, "Relating to State Marine Waters". This bill would impose an unnecessary statutory requirement for an Environmental Impact Statement (EIS) for commercial ocean aquaculture and energy projects that desire to lease State marine waters.

I strongly support Chapter 343 HRS, and believe it has worked well to share detailed project information in the form of an Environmental Assessment (EA) that can be reviewed by all stakeholders for comment and then allow the Department of Land and Natural Resources (DLNR) to determine if further study is needed.

Although my company voluntarily performed an EIS for our Conservation District Use Permit and lease of State marine waters, the expense and long review process coupled with several other permits would represent a dis-incentive to commercial development. It has taken us more than five years and \$2million plus to comply with all State permits and we are still waiting on two federal permits. Though I am glad to have achieved the highest standard of review in order to obtain the right to do business, it is a huge burden to a start-up company, especially considering all the other permitting hurdles in place.

Legislators should be thinking about how to reduce regulatory burdens on entrepreneurs trying to innovate and generate revenues, not increase them.

Both ocean aquaculture and energy will play critical roles in Hawaii's sustainable future and modifying the current process to require an EIS to get a lease would discourage investment.

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For these multiple reasons and more, I therefore strongly oppose SB 3044, and respectfully ask that it not be passed out of committee. ; ; Thank you for the opportunity to comment.



THE SENATE - TWENTY-SIXTH LEGISLATURE – 2012

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Mike Gabbard, Chair
Senator J. Kalani English, Vice Chair

DATE: Tuesday, January 31, 2012

TIME: 2:45pm

PLACE: Conference Room 225, State Capitol, 415 South Beretania Street

RE: Testimony OPPOSING SB3044 - Relating to State Marine Waters

Dear Chair Gabbard, Vice Chair English, and Committee Members,

I would like to express my strong opposition to SB3044 because this requirement imposes an onerous burden on any small, local Hawaiian company that wants to apply for a commercial lease. This would prevent any small local companies from participation in developing the offshore aquaculture industry in Hawaii, and would limit participation solely to large, well-financed companies (probably from the mainland, or overseas) that could afford to fund a full EIS. Is this the sort of offshore aquaculture we want?

In addition, this legislation would complicate the well-established precedents under law, and under 343, for determining when an EA or an EIS is required. There is ample opportunity for public input and evaluation of proposed projects under an EA, and if it has significant impacts, or generates significant controversy, then an EIS is required. Simple, no? This system ain't broke. Please don't break it by trying to fix a non-problem.

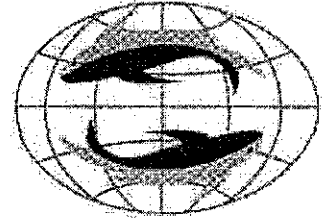
Thanks, and aloha,

A handwritten signature in black ink, appearing to read 'Neil Anthony Sims', is written over a horizontal line.

Neil Anthony Sims
Co-founder, Co-CEO

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THE SENATE
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Mike Gabbard, Chair
Senator J. Kalani English, Vice Chair

NOTICE OF HEARING

DATE: Tuesday, January 31, 2012
TIME: 2:45 p.m.
PLACE: Conference Room 225
State Capitol
415 South Beretania Street

RE: Testimony against SB 3044

Aloha Senator Mike Gabbard, Chair and Senator J. Kalani English, Vice Chair

Thank you for the opportunity to testify on SB 3044, I have been involved with Aquaculture since 1998 and I was able to obtain the very first Open Ocean fish farm lease in the State of Hawaii. I currently am still involved in many aspects of Aquaculture here in Hawaii and have seen firsthand the value of the current lease law that is in place, Chapter 190 D. I know firsthand how 190 D has both enough regulatory oversight and protections, as well as creating an environment to encourage jobs for the people of Hawaii.

We all know that there is a great demand for both Jobs and local Agriculture in the State of Hawaii, Chapter 190 D and its current requirement for an EA/EIS process has worked well since 1999. I have followed every application thus far for new potential startup Companies trying to create an offshore fish farm, not all have been issued a lease, and the process currently in place has enough oversight built into it to weed out the applications that should not be issued a lease.

There is great opportunity for Aquaculture in the State of Hawaii, the requirement for an EIS would make it very difficult for new startup Companies, as well as potentially harm small operations such as Hawaiian Fish Pounds where there is some potential for them to be revitalized. The requirement for an EIS is not needed in my opinion and would do more harm than good.

There is a process in place, it has worked well, I hope that it can stay in place and we all work together to help create and foster job growth at this vital time for Hawaii.

Sincerely,

Randy Cates

Scott Glenn
60 N. Beretania St #906
Honolulu, HI 96817

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

Hearing January 31, 2012, 2:45 PM on SB 3044

Aloha Chair Gabbard and Members of the Committee:

This testimony is submitted in opposition to SB 3044.

The hallmarks of a good process are its rationality, clarity, predictability, and generally acceptable outcomes. No justification is given for why requiring environmental impact statements (EISs) for commercial leases but environmental assessments (EAs) for non-commercial leases will result in better use of state marine waters and submerged ceded lands. In fact, making this distinction confuses and undermines the purpose of Chapter 343.

The purpose of the process is to examine the potential for significant effect. If a project is triggered by Chapter 343, and is not otherwise exempted, it must prepare an EA to determine if it has the potential for significant impacts. If so, then it should do an EIS.

For any lease of state lands, commercial or non-commercial, marine or otherwise, an EA should be performed to determine the potential for significant effect. If there is such a potential, then it should do an EIS. If there is no potential for significant effect, then it should receive a Finding of No Significant Impact (FONSI) and be allowed to proceed, regardless of what type of lease.

This bill exemplifies Hawaii's band-aid approach to the Chapter 343 process. So long as we continue to tweak which types of actions undergo which level of environmental review, we will have this kind of reactive system that misses actions likely to have a significant impact while making the process more unpredictable and expensive. Please do not treat Chapter 343 like the tax code.

If the Legislature is concerned that commercial leases should be doing EISs and not just EAs, then a better approach would be to support SB 2281, which provides for agencies and applicants to opt to bypass preparing an EA and directly prepare an EIS. This saves the agency and applicant time and money, while still providing a robust review of potential environmental impacts.

Thank you for the opportunity to testify.

Respectfully,

Scott Glenn

Testimony for ENE 1/31/2012 2:45:00 PM SB3044

Conference room: 225

Testifier position: Oppose

Testifier will be present: No

Submitted by: Dale Sarver, Ph.D.

Organization: Individual

E-mail: dalesarver@hawaii.rr.com

Submitted on: 1/30/2012

Comments:

This bill is ridiculous. To make it a requirement for any commercial lease to submit an EIS is an abuse of the environmental law. A requirement for an EIS assumes there is likelihood of significant environment effect, and there is no reason to assume this in every case of a commercial lease. An EIS is very costly and time consuming and to apply this burden to any commercial project is punitive for no reason. This bill is extremely anti-business and Hawaii does not need this.

Testimony for ENE 1/31/2012 2:45:00 PM SB3044

Conference room: 225

Testifier position: Oppose

Testifier will be present: No

Submitted by: Thorne Abbott

Organization: CoastalZone.com

E-mail: Thorneabbott@yahoo.com

Submitted on: 1/31/2012

Comments:

While possibly well-intended to facilitate restoration of fish ponds and traditional aquaculture, this amendment muddies the interpretation of Chapter 343. Further, fish pond restorations typically receive a FONSI determination given their historic use and may qualify for one of the many categorical exemptions already provided in the law.

Thank you for your consideration!