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GOVERNOR OF  
HAWAII



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DEPUTY DIRECTOR - WATER

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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
SUZANNE D. CASE  
Chairperson

Before the House Committee on  
ENERGY & ENVIRONMENTAL PROTECTION

Tuesday, February 16, 2016  
10:00 A.M.  
State Capitol, Conference Room 325

In consideration of  
HOUSE BILL 2145, HOUSE DRAFT 1  
RELATING TO BEACHES

House Bill 2145, House Draft 1 proposes to amend the definition of “water pollutant” as used in Chapter 342D, Hawaii Revised Statutes (HRS), to exclude locally sourced beach sand. **The Department of Land and Natural Resources (Department) supports this measure.**

It is the mission of the Department to manage public lands and ocean resources, including beaches throughout the State. The Department is very much at the forefront of addressing impacts related to coastal erosion and beach loss in Hawai‘i. Beaches are central to our culture and economy, yet our beaches are being lost at alarming rates due natural processes and human impacts, threatening alongshore public access and upland development.

Following the Department’s Coastal Erosion Management Plan, staff is actively working with county governments and private landowners to facilitate “soft” solutions to erosion management instead of coastal armoring, which has been shown to have deleterious effects on beaches. These soft solutions include dune restoration, sand back-passing or bypassing, and stream mouth clearing. These sediment management projects utilize clean sand from a section of beach with a surplus of sand to restore a nearby eroded section of beach or dune, with careful consideration of seasonal variability and the beach and marine environment. These types of sediment management projects are currently inhibited from placing clean, locally-sourced sand below the high water line because it would be considered a discharge of a “water pollutant” triggering the lengthy Clean Water Act Section 401 Water Quality Certification (401 WQC) process. In many cases, proper restoration of a beach requires placing sand along the entire active beach profile, above and below the high water line.

There are plentiful examples in the State of projects that re-distribute or bypass sand without adverse water quality impacts: Kīkīaola Small Boat Harbor near Waimea, Kaua‘i and Kailua, Waikīkī, Mākaha, and North Shore beaches, O‘ahu, and other beaches throughout the State. These efforts are all potentially subject to State Water Quality permitting because natural beach sand is considered a “water pollutant” based on the definitions in Section 342D-1, HRS.

These types of sediment management projects are needed on beaches around the State. Often a dune restoration or sand back-passing project needs to be implemented in a matter of days or weeks in response to a sudden erosion event to restore a beach environment and protect public safety and infrastructure. It can be challenging or impossible to initiate a project in this rapid time frame because clean beach sand is considered a “water pollutant” when moved along the same beach and discharged in or near the water.

It is not the intent of the Department or this bill to undermine the provisions of the Federal Clean Water Act. In fact, sand used from an upland source or dredged from deeper off shore sand fields would continue to be regulated under the Section 401 Water Quality Certification (401 WQC) process.

The Department recognizes the vulnerability of our nearshore marine resources. In fact, the Department maintains its own environmental guidelines on sand compatibility for beach restoration projects through our Small Scale Beach Nourishment application program. We feel the State’s general interpretation of sand as a “water pollutant” in the definition in Section 342D-1, HRS, for “minor” or “non-controversial” beach management projects as described above is unjustified. A revision to the Statute through this bill will be very helpful in clarifying this interpretation and facilitating the State’s efforts to maintain and protect beach environments.

Thank you for the opportunity to testify on this measure.



**HB2145**  
**RELATING TO BEACHES**

House Committee on Energy & Environmental Protection

February 16, 2016

10:00 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB2145. This measure which would facilitate the maintenance of our shoreline areas and beaches, by exempting locally-sourced sand from water quality regulations, when used for restoration- and erosion mitigation- related activities on adjacent beaches.

Hawai‘i’s beaches and shoreline areas provide numerous benefits to the Native Hawaiian community and the public, that are critical to our cultural values and kama‘āina way of life. Our beaches and shoreline areas provide a place to bond with ‘ohana and friends, help to foster positive youth development and an early appreciation for our natural resources, and provide for a variety of recreational activities, such as surfing and fishing, that have been staples of local life for generations. Moreover, access to the shoreline and the resources of the nearshore environment is critical to the perpetuation of many Native Hawaiian traditional and customary and subsistence practices. Accordingly, OHA appreciates the intent of this measure, to facilitate the maintenance of our beach areas using appropriately-sourced sand.

OHA understands that the use of sand from stream and channel mouths to nourish adjacent beaches may, in many cases, ensure the greatest chance of success for beach mitigation and maintenance efforts, while minimizing the potential extent of adverse physical, biological, or chemical impacts. OHA can also appreciate the difficulties that may be encountered in the Department of Health’s regulatory processes for water quality protection and pollutant discharge. However, in some instances, the use of sand, even from adjacent stream or channel mouths, to nourish beach areas may potentially result in adverse and unnecessary impacts to coastal water quality and the nearshore environment. For example, fine silt or sand deposited along shorelines with high erosion rates may result in the smothering of coral and other benthic life; contaminants concentrated near the mouths of streams running through or by urban areas and landfills may be spread to less-impacted areas along the adjacent coast; and “naturally occurring” sand near stream or channel mouths may in fact contain a range of sediment characteristics that are not the most optimal for beach nourishment. **Accordingly, OHA urges the Committee to seek and consider the input of erosion control experts, aquatic biologists, and health safety officials with regards to additional safeguards or standards it may wish to incorporate in this bill.**

Mahalo nui for the opportunity to testify on this measure.



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov



**Testimony in OPPOSITION to H.B. 2145 H.D.1  
RELATING TO BEACHES**

REPRESENTATIVE CHRIS LEE, CHAIR  
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION  
REPRESENTATIVE RYAN I. YAMANE, CHAIR  
HOUSE COMMITTEE ON WATER AND LAND

Hearing Date: February 16, 2016  
10:00 AM

Room Number: 325

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health respectfully opposes this measure. The  
3 purpose of this measure is to amend the Hawaii Revised Statutes, Section 342D-1 definition of  
4 “water pollutant” by specifying that sand shall not be considered a water pollutant if it is  
5 naturally-occurring beach sand sourced from a Hawaiian beach, stream mouth, or channel, and  
6 utilized on the adjacent beach or littoral cell for the purposes of beach erosion mitigation,  
7 sediment management, beach restoration, erosion control or dune restoration.

8 All States are required to comply with Federal Clean Water Act (CWA) requirements.  
9 Pursuant to federal regulations, all states, including Hawai‘i’s “Water Pollution” statutes are  
10 required to be at least as stringent as the federal standards prescribed by the CWA. CWA,  
11 §502(6) defines “sand” as a “pollutant” and it does not provide exclusions for any particular  
12 types of sand.

13 CWA, Section 502 states:

14 “Except as otherwise specifically provided, when used in this Act:

15 (6) The term “pollutant” means dredged spoil, solid waste, incinerator residue, sewage,  
16 garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive  
17 materials, heat, wrecked or discarded equipment, rock, **sand**, cellar dirt and industrial,  
18 municipal, and agricultural waste discharged into water. This term does not mean (A)

1 “sewage from vessels or a discharge incidental to the normal operation of a vessel of the  
2 Armed Forces” within the meaning of section 312 of this Act; or (B) water, gas, or other  
3 material which is injected into a well to facilitate production of oil or gas, or water  
4 derived in association with oil or gas production and disposed of in a well, if the  
5 well-used either to facilitate production or for disposal purpose is approved by authority  
6 of the State in which the well is located, and if such State determines that such injection  
7 or disposal will not result in the degradation of ground or surface water resources.”

8 The CWA recognizes that sand mining and placement can have significant environmental  
9 impacts. Moving and mining sand alters the physical environment and raises ecological and  
10 erosion concerns. The placement of sand alters the biological and chemical environment. This  
11 may adversely affect the ecosystem and water quality where the sand is placed. Naturally  
12 occurring beach sand sourced from a beach, stream mouth, or channel has a high potential to  
13 contain contaminants from stream sediment and flood borne contaminants that may cause  
14 diseases. Commonly, sediments accumulated on sand adjacent to stream or channel contain other  
15 pollutants such as dirt, municipal water waste, agricultural wastes, and industrial wastes. Sand  
16 that is dredged or excavated from stream mouth contains a multitude of pollutants from  
17 upstream-sources.

18 Moreover, recent studies, including one conducted by the University of Hawai‘i,  
19 Department of Civil and Environmental Engineering in June 2013, have reported high levels of  
20 fecal indicator enterococci in Hawai‘i’s beach sand. These studies show that the enterococcus-  
21 laden sand serves as potential sources of contamination for beach water and may cause illnesses.

22 For these reasons, it is prudent for the State to continue to regulate sand mining and  
23 placement activities to prevent water pollution and to ensure that these activities comply with  
24 Hawaii Administrative Rules, Chapter 11-54 Water Quality Standards, including the stream  
25 bottom criteria.

26 Thank you for the opportunity to testify on this measure.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, February 13, 2016 6:29 PM  
**To:** EEPtestimony  
**Cc:** mjellings@hawaii.rr.com  
**Subject:** Submitted testimony for HB2145 on Feb 16, 2016 10:00AM

**HB2145**

Submitted on: 2/13/2016

Testimony for EEP on Feb 16, 2016 10:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carl M Jellings Sr	Individual	Support	No

Comments: Very Strong support Sand is vital within our nearshore ocean ecosystems. Ive seen first hand Thousands of yards of beach sand condemned for removal. this is a tragedy! sand at depths beyond 12 fathoms is critical habitat for krill. Krill are small crustaceans, approximately one to six centimeters in length, and are a dietary staple for whales, small fish, and seabirds. Krill exist in large numbers and are an integral part of the aquatic food chain. They feed on phytoplankton and are found in all the world's oceans. Carl P Jellings Sr

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