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SB 3316 S.D. 1
RELATING TO THE PROTECTION OF THE MARINE ENVIRONMENT

House Committee on Ocean and Marine Resources

Public Hearing - March 13, 1992
8:30 AM, Room 1310 SOT

By
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Jacquelin Miller, Environmental Center
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SB 3316, SD 1 directs the Department of Land and Natural Resources to develop rules creating an expanded marine life conservation districe (MLCD) off of Waikiki.

Our statement on this bill does not constitute an institutional position of the University of Hawaii.

The Environmental Center provided extensive comments on the earlier draft of SB 3316, which are appended for your reference. The most substantive amendments in the present draft limit the eastern boundary to exclude the area offshore of Diamond Head and move the seaward boundary to within thirty feet of the fringing reef.

We have a number of concerns with the present draft. As written, the seaward boundary of the proposed MLCD is extremely vague, and, consequently, unenforceable. The earlier draft based the boundary on the 100-foot depth contour west of the Diamond Head Buoy. We note that from an enforcement point of view, identification of an enclosed area by either shoreline or fixed line boundaries, such as between navigational markers, or from landmarks to surface navigational aids is far preferable. An enforcement agent will have difficulty establishing a violation of a depth-related boundary unless the agent is directly adjacent to the vessel under investigation. Hence, we would recommend establishing the seaward boundary on a straight line between the Diamond Head Buoy and the entrance channel buoy for the Ala Wai Harbor. Having noted concerns voiced by commercial fishermen over loss of fishing grounds, we expect that this suggestion may elicit similar objections. However, we point out that this proposed boundary significantly reduces the exclusion area from that originally proposed in the prior draft of this bill.

A second concern relates to the somewhat casual use of the term, MLC. Other than the area between the Natatorium and the groin at the Kapahulu-Kalakaua intersection, the present nature of fishery regulation off of the Waikiki is more accurately a Fishery Management Area (FMA). As the DLNR has pointed out, an MLC is totally closed to fishing. While this may seem a minor semantic point, we note that the designation of an MLC is still being applied to the management scenario proposed in the companion to this bill, HB 3756 HD 2. Such a characterization establishes an extremely damaging precedent with regard to other MLCs statewide, in that terms of access and resource extraction specified in HB 3756 HD 2 are diametrically opposed to the underlying principles of an MLC. We suggest that it is entirely reasonable to require DLNR to expand its FMA provisions off of Waikiki, but if any commercial resource harvesting is to be permitted, then the intent of an MLC will be irrevocably compromised.

Finally, we have serious objections to the "compromise" reflected in HB 3756 HD 2. We can envision no reasonable justification for permitting access of commercial fishermen to a management area while simultaneously excluding recreational fishermen. Apart from disenfranchising the recreational fishermen, such a provision constitutes a fundamental breach of the public trust philosophy of governmental responsibilities for coastal waters management. We urge the Committee to reject any suggestion to invoke similar provisions for SB 3316.