SB 3316 SD 1 HD 1
RELATING TO THE PROTECTION OF THE MARINE ENVIRONMENT

House Committee on Judiciary

Public Hearing - March 31, 1992
1:30 PM, Room 802 SOT

By
John T. Harrison, Environmental Center
Jacquelin Miller, Environmental Center
Ray Tabata, Sea Grant

SB 3316, SD 1, HD 1 directs the Department of Land and Natural Resources to develop rules creating an expanded marine life conservation district (MLCD) off of Waikiki. In its present form, the bill incorporates the substance of its companion, HB 3756, HD 2.

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

The Environmental Center has provided extensive comments on earlier drafts of SB 3316 and of its companion, HB 3756. The present draft partially addresses our earlier concerns about the enforceability of the seaward boundary, in that the complex reef margin/depth contour line is replaced by a straight line. However, we again suggest that the western terminus of the seaward boundary be fixed at the existing entrance buoy to the Ala Wai Channel. This will reduce the seaward region of the managed area considerably, thereby alleviating some of the controversy surrounding this measure. It will also provide an existing listed navigational aid as a marker, eliminating the need for installation and registry of a new buoy.

The present draft does not address our concern relating to the somewhat casual use of the term, MLCD. 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 DINR has pointed out, the intent of an MLCD is to virtually exclude consumptive resource use. However, this measure contains explicit provisions for commercial resource extraction in much of the regulated area. Such a characterization establishes an extremely
damaging precedent with regard to other MLCDs statewide. 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 MLCD will be irrevocably compromised.

Furthermore, 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 doctrine of governmental responsibilities for coastal waters management.

Finally, we are dismayed by the persistence of public debate over the perceived shark hazards resulting from expansion of the MLCD off of Waikiki. Since 1967, no shark incidents have been associated with MLCDs elsewhere, and no data exist to support the contention that increased standing stocks of inshore reef fish will enhance the probability of an attack. On the contrary, activities known to release aggressive behavior in sharks, such as spearfishing or the transport of dead or wounded fish, are specifically excluded from an MLCD. Legitimate concern arising from recent shark incidents appears to have been incorporated inappropriately and for political purposes into the debate over management of Waikiki's inshore marine resources. This appears to be a classic example of a "red herring", albeit a very large one.