HB 832, HD 1
(and SB 1310, SD 1)
RELATING TO REPLACEMENT OF SAND ON BEACHES

Statement for
Senate Committee on
Tourism
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By
Doak C. Cox, Environmental Center
J. Frisbee Campbell, Hawaii Institute of Geophysics
Frans Gerritsen, Ocean Engineering
Jacquelin Miller, Environmental Center
Ralph Moberly, Geology and Geophysics

HB 832 and its companion, SB 1310, proposed two amendments to provisions of HRS Section 205-33 that relate to the taking of sand at and near the shoreline. In earlier statements on the original bills (RL:0529 on SB 1310 and RL:0532 on HB 832) we recognized and endorsed reasons for their introduction. This statement will deal primarily with the revision, in HB 832, HD 1, of one of the amendments proposed in the original bills, but we will also comment on a third amendment that is proposed in SB 1310, SD 1. This statement on the bills does not represent an institutional position of the University of Hawaii.

Conclusions

The first of the amendments proposed in HB 832, HD 1 and in SB 1310, HD 1 is a limitation of the permissible reasonable taking of sand for non-commercial purposes to a volume of one gallon. There appears to be no disagreement with the proposed limitation and we will not comment further on it here.

The second and most important of the amendments relates to the mining of sand in shallow, near-shore waters for the replenishment of public beaches. We conclude that, with one exception, this amendment is appropriate. The exception relates to the provision in HB 832, HD 1 that beaches at Kualoa Beach Park be excluded from those that may be replenished. We conclude that the words "with the exception of Kualoa Beach Park" (p. 1, lines 14-15) should preferably be deleted from the bill before its passage.
The third amendment, which was proposed in SB 1310, SD 1, relates to projects for the clearance of sand from the mouths of streams and drainage canals. It would make unnecessary the preparation of an environmental impact statement (EIS) for such a sand-clearance project. We conclude that this amendment should preferably not be incorporated in HB 832, HD 1.

In the following comments, we present the rationale for our conclusions concerning the sand-mining and sand-clearance provisions of the bill.

Sand-mining provisions

The present law prohibits the mining of sand from shallow, near-shore deposits (less than 30 feet of depth or less than 1000 feet from shore) except, under certain conditions, for the purpose of replenishment of public beaches at Hilo, Waikiki, Ala Moana, and Hilo. The conditions would be retained by SB 1310 and HB 832, but the original versions of the bills would have allowed the sand mining for the replenishment of any public beach. Under HB 832, HD 1, however, the sand mining would still not be permitted for replenishment of the beaches at Kualoa Beach Park, at the northwest end of Kaneohe Bay, even though one of the beaches at the Park is retreating rapidly.

Restrictions were originally imposed on shallow-water, near-shore sand mining to prevent the taking of sand in areas from which sand may be returned by natural processes to the beaches. When it became possible to determine from which shallow-water, near-shore areas the natural processes were incapable of returning sand to the beaches, it was no longer necessary to prohibit sand mining in these areas. It is, in fact, highly desirable to permit sand mining for the replenishment of public beaches where the mining will not result in beach erosion and will have no other significant environmental detriments.

The present law would require that, for any sand mining project to be implemented:

1) An environmental impact statement on the project would have to be prepared and accepted;

2) The owners of nearby property would have to be informed;

3) Both an informational meeting and a public hearing, would have to be held; and

4) It would have to be found that the proposed project would be in the public interest and that it would "not have any adverse significant social, economic or environmental impact".

These requirements would apply to sand mining for the replenishment of the beaches at Kualoa as well as any other public beaches. We will, nevertheless, discuss the possible effects of sand mining in the vicinity of those beaches because of the proposal in HB 832, HD 1 to exclude the Kualoa beaches from those whose replenishment would be permissible.
The House Committees on Ocean and Marine Affairs and on Water, Land Use, Development, and Hawaiian Affairs have indicated, in Standing Committee Report No. 50, that the basis for the proposed exclusion of the Kualoa beaches was testimony "that sand mining at Kualoa would have an adverse impact on an ancient fishpond adjacent to the Kualoa Park", and have noted that this fishpond is the only ancient one that remains in full function.

There are deposits of sand not far from the fishpond that probably represent accumulations in recent decades of sand transported from the retreating Kualoa Beach. To the extent that the movement sand from these deposits to the retreating beach would constitute merely a recycling of sand, the mining of sand from the deposits could not result in physical effects on the fishpond other than those to which the pond has been exposed in the past. There are, furthermore, deposits of sand elsewhere in the northwestern part of Kaneohe Bay from which sand could be mined without any conceivably significant effects on the fishpond. There are, therefore, no rational bases for the proposed exclusion of the Kualoa beaches in physical effects on the fishpond.

In the testimony referred to, it was also claimed that the sand mining would result in a risk of ciguatera poisoning due to the consumption of fish taken from the vicinity of the mining operation. The supposition that this risk is significant was based on an observed correlation between previous harbor-dredging operations and incidents of the poisoning. We note, however, that these incidents have involved dredging of bottom materials other than sand. There are natural movements of sand annually that vastly exceed the disturbances that would result from the sand mining operations. If the sand mining operations involved a significant risk of ciguatera poisoning, a strong correlation should exist between incidents of the poisoning and the natural movements of sand. So far as we know, no such correlation has been found. Hence we believe that there is no significant risk of ciguatera poisoning as a result of the sand mining whose permission would be allowed by SB 1310.

In any case, the mining of sand for the replenishment of a beach at Kualoa would require the preparation and acceptance of an environmental impact statement in which the risks of physical effects on the fishpond and of ciguatera poisoning would have to be discussed. The risks, if they existed, would have to be recognized at a public information meeting and a public hearing. Finally, it would have to be found that the mining would result in neither a significant risk of damage to the fishpond nor a significant risk of ciguatera poisoning before sand could be mined from the shallow near-shore waters for the beach replenishment.

There is no reason, therefore, why the mining from shallow-water, near-shore deposits of sand to be used in replenishing beaches at Kualoa Beach park should be prohibited altogether, as is proposed in HB 832, HD 1.
Sand-clearance provisions

The present law provides for the clearance of sand from drainage pipes, canals, and stream mouths that is needed to minimize flooding. It permits such clearance provided the sand is placed on adjacent beaches unless such placement would result in significant turbidity. The sand clearance provision would be amended by SB 1310, SD 1, to specify that the sand-clearance projects are exempt from requirements for the preparation of environmental impact statements (EIS's). The proposed specification seems quite unnecessary, and would set an unfortunate precedent.

The proposed specification is unnecessary because there is already a provision in the EIS law for exemption by administrative action. Any agency that is involved in sand-clearance projects may, with the approval of the Environmental Council, include such projects, by type, in a list of types of projects exempt not only from the preparation of EIS's, but environmental assessments as well, providing none of the projects of the type would have a significant environmental effect. An assessment of the environmental impacts of the sand-clearance projects as a type can easily show that the projects merely maintain the capacities of streams and other drainageways to pass floods, and can have no significant effect on the adjacent beaches if the sand is not removed from the beach system. Such sand-clearance projects are, in fact, already included in the exemption list of the Department of Transportation (Exemption Class 1, type D3).

A similar exemption, once included in the list of the City and County of Honolulu Department of Public Works, was cancelled because it was intended to relate to projects covered by a general permit from the Corps of Engineers that was cancelled because it was found to include some types of projects that would have significant environmental impacts. However, the Corps has since issued a general permit that does include maintenance clearing of river and stream mouths and storm drains (Subsections 2a(1) and 2b(1), General Permit PODCO-0-GP-82-1, 12 March 1982), and there is no reason why the City and County or the other counties should not include sand-clearance projects of the sort of concern in exemption lists under the EIS law.

It should be noted that, through inclusion by type in an exemption list, projects are exempt not only from EIS preparation requirements but from individual environmental assessments, whereas the exemption proposed in SB 1310 would not apply to assessments. Amendment of the sand clearance projects of HRS 205-33, as proposed in SB 1310, SD 1 would, constitute an unfortunate precedent—a modification of EIS-system requirements other than through amendment of the EIS law.