



University of Hawaii at Manoa

Environmental Center
Crawford 317 • 2550 Campus Road
Honolulu, Hawaii 96822
Telephone (808) 948-7361

Office of the Director

RL:0453A

SB 561, SD 2 RELATING TO REMOVAL OF SAND

Statement for
House Committee on
Ocean and Marine Resources
Public Hearing - 29 March 1982

By
Doak C. Cox, Environmental Center
Ray Tabata, Sea Grant Advisory Service

SB 561 SD 2 would amend HRS 205-33(a), the section of the Shoreline Setback Law that deals with the removal of sand, coral and other materials in near-shore areas. This statement is based in large part on statements the Center has made on this and similar bills in this and several previous legislative sessions. The statement has been submitted for review to the Center's Legislative Subcommittee, but it does not represent an institutional position of the University.

The amendment of HRS 205-33(a) proposed in SB 561 would result in three changes, all relating to controls of sand mining:

1. Deletion of a provision "grandfathering" mining operations until a date several years ago.
2. Deletion of a provision for an experimental mining program completed several years ago.
3. Provision for certain exceptions to the present prohibition against the taking of sand within a defined area.

For obvious reasons, this statement need be concerned only with the third change.

In the present statute the taking of sand is prohibited within the shoreline setback area, which may extend 20 to 40 feet inland from the shoreline (defined essentially as the vegetation line at the top of the beach), or from offshore deposits that are either less than 1000 feet from the shoreline or at depths of less than 30 feet. The reasons for prohibition against mining of sand from beach faces are so obvious that their elucidation here is unnecessary. The prohibition was extended beyond the beach faces in recognition of the facts that: a) beaches are but parts of systems in which sand is moved back and

forth by natural processes, and b) removals of sand from any parts of these systems may affect the beaches just as much as removals from the beaches themselves. The 1000-foot distance and 30-foot depth limitation were introduced as reasonable general representations of limits to the offshore zone from which the sand may be moved by natural processes to a beach. However:

1. With advances in the understanding of the processes of sand movement, it is now possible to determine more precisely the limits of beach systems;
2. More is now known about the distribution of offshore deposits of sand; and
3. It is clear that at some places these are mineable offshore deposits of sand that lie less than 1000 feet from the shore, in water less than 30 feet in depth, or both, but from which sand cannot naturally move to the beach.

Although it is the value of sand in place on beaches and in beach systems that led to the restrictions on sand mining in the present law, it is clear that sand removals are also of value, for example to clear drainage channels and pipes, to provide construction material, and, particularly for beach replenishment. It is also clear that problems of beach retreat along some parts of the coast may be dealt with effectively by beach replenishment. SB 561 would make it possible to take sand from deposits where the taking is now prohibited for two purposes:

- a) to provide sand for the replenishment of sand on public beaches, and
- b) to clear drainage pipes.

It would also continue to allow takings of sand for reasonable, personal, noncommercial use, as does the present statute. The appropriateness of the changes proposed depends on the appropriateness of the constraints.

SB 561, SD 2 proposes four constraints that would be applicable to sand mining projects:

- a) An Environmental Impact Statement (EIS) on the project would have to be (prepared and) accepted pursuant to the State EIS law;
- b) Both a public informational meeting and a public hearing on the project would have to be held;
- c) The proposing agency would have to find "that the proposed project is in the public interest and will not have any adverse significant social or environmental impact".
- d) That the projects would be "subject to the written permission of all governmental agencies having jurisdiction thereof."

One of the recommendations adopted at a 1981 workshop on "Beach Erosion and Offshore Sand-Mining" is directly pertinent to the proposed provisions regarding sand mining. The workshop, which was sponsored by the Sea Grant Program, the Hawaii Institute of Geophysics, and the Environmental Center, was attended by persons representing groups concerned with beach conservation, sand conservation, and the environmental effects of sand mining. The pertinent recommendation was:

Provide for exceptions to 1000 feet and 30 feet criteria for permissible offshore mining in the case of state or county beach replenishment projects, providing that, for the exception to apply, it must be demonstrated that no substantial environmental detriment will result from the project, and the project has been the subject of both an informational meeting and a public hearing.

Although the language in SB 561, SD 2 differs somewhat from that in the recommendation, the constraints proposed on the bill are essentially those recommended.

Objections have been made to the proposed relaxation of the present prohibition against sand mining on the grounds that the mining projects might have adverse biological effects, or might result in changes in bottom topography that would alter wave patterns in such a way as to cause problems at the shoreline or on shore. However, the language proposed in SB 561, SD 2, would prevent the undertaking of a project that would result in such adverse effects if significant.

Demonstration that a proposed project "will not have any adverse significant social or environmental impact" will best be made through an EIS. An acceptable EIS would have to disclose, not only the possible effects of the project on beaches, but other effects of concern; and if the adverse effects were significant, the project would not be permissible. An EIS would also need to examine alternatives to a proposed project, including the option of "no action".

With respect to the proposed provisions for sand mining we have only one minor suggestion for improvement. That is to provide explicitly that the public hearing it would require for a sand-mining and beach-replenishment project may be held jointly and concurrently with any other public hearing required for the project.

The proposed allowance for sand removals to clear drainage pipes and the proposed constraint on that allowance seem appropriate. However, we have two comments on them:

- a) We wonder whether the allowance should not be extended to the clearance of the mouths of streams and drainage canals;
- b) We suggest that, where the quality of the material removed is satisfactory, it should be returned to the beach systems and not used for other purposes. We understand that sand is now removed at intervals from some stream mouths to keep them open for the passage of floods, and that the sand removed is returned to adjacent beaches.

In the light of these comments, the pertinent language might be revised to read:

(3) The clearing of sand from existing drainage pipes and canals and from the mouths of streams, provided that the sand shall be placed on adjacent beaches unless such placement would result in significant turbidity.

The present exclusion in line 17 of p. 3 of sand takings to clear drains (and streams) from the need for permission of all governmental agencies with jurisdiction should be deleted.

We have one final suggestion for the improvement of the bill. At three points it refers to the "territorial ocean" (page 2, line 18; and page 3, lines 16, 21, 22), a term

that was used in the present statute. We suggest that the term "territorial sea," whose use is now conventional, be substituted for "territorial ocean" in the first and last of the usages. Lines 14-16 on page 3 are redundant in their entirety and can be deleted.

The improvements suggested are not so great as to justify attempts to introduce them that would jeopardize passage of the bill.

We note that revisions of HRS 205-33 (a) are also proposed in HB 2653, HD 1. This House bill is intended to provide for regulation of removals of coral and seaweed. However, it is so worded that it would, if passed, delete the present prohibitions against sand mining within the prescribed area. Although it would make sand mining subject to the regulations of the Department of Land and Natural Resources, it would not provide any of the other constraints called for in SB 561, SD 2.

Care must be taken, if both HB 2653, HD 1 and SB 561, SD 2 are to be passed, to bring their sand-mining provisions into conformity, preferably as provided in SB 561, SD 2.