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GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
FINANCE**

**Monday, February 25, 2013
1:30pm
State Capitol, Conference Room 308**

**In consideration of
HOUSE BILL 710
RELATING TO FISHPONDS**

House Bill 710 proposes to require the Department of Land and Natural Resources (Department), Department of Health (DOH), and Office of Planning to streamline the permitting process and facilitate the restoration of Hawaiian fishponds (loko i'a), and requires the Department to submit a report of findings and recommendations. Specifically, the bill calls for: 1) The development of one master conservation district use application process, 2) A coastal zone management consistency statement, 3) A water quality certification, 4) A general permit that conforms to the requirements for a fishpond pollution discharge system, and 5) For administrative rules to be applied consistently throughout the State. **The Department strongly supports House Bill 710.**

The Department concurs with the Legislature's findings that the State has the ability to streamline the permitting request. The Department also notes that these are similar action items that were called for in Senate Resolution 86, Senate Draft 1 from the 2012 Legislative Session.

The Department has been working actively in support of these goals. In August 12, 2011, amendments to Chapter 13-5, Hawai'i Administrative Rules, went into effect that reduced the permitting requirements for many of the activities relating to fishpond repair and maintenance.

The Department is working with the practitioners, state and federal agencies, Honua Consulting, and Conservation International to further streamline the process by:

1. Developing a three-tiered system of permitting for loko i'a maintenance, repair, and restoration that incorporates as many applicable, current, permits as possible;

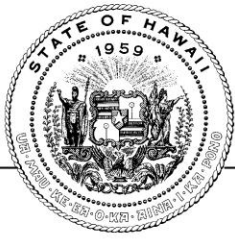
2. Developing a State Programmatic General Permit with the United States Army Corps of Engineers; and
3. Securing a blanket water quality certification permit from DOH.

Honua Consulting is currently developing an Environmental Assessment in support of this initiative, and anticipates that it will be released in the spring of 2013. More details on the process can be found in the report, “Status Update of the Streamlined Permit Process for the Restoration of Hawaiian Fishponds” that Honua Consulting prepared on behalf of the Department’s Office of Conservation and Coastal Lands in response to Senate Resolution 86, Senate Draft 1. The report is available at: <http://files.hawaii.gov/dlnr/reports-to-the-legislature/2013/OCCL13-Streamedline-Fish-Pond-Permit-Rpt.pdf>

The Report contains a declaration of support for the development of the General Permit signed by over fifty cultural practitioners (the “Declaration of Hui Mālama Loko Iʻa”), and a letter of support for the Declaration by the Office of Hawaiian Affairs.

The Department intends that the language, terms, and conditions of any general permit will be consistent with the Hawaiʻi Coastal Zone Management Program’s General Concurrence for Minor Federal Permit Activities for Hawaiian Fishpond Restoration, Repair, Maintenance, and Reconstruction.

The Department shares the legislature’s desire to facilitate the restoration of loko iʻa by streamlining of the permitting process, and thus strongly supports House Bill 710.



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Statement of
JESSE K. SOUKI
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON FINANCE
Monday, February 25, 2013
1:30 AM
State Capitol, Conference Room 308

in consideration of
HB 710
RELATING TO FISHPONDS.

Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the House Committee on Finance.

House Bill 710, Relating to Fishponds, directs the Department of Land and Natural Resources, Department of Health, and Office of Planning, in collaboration with community organizations and Native Hawaiian aquaculturalists, to streamline the permitting process and facilitate the restoration of Hawaiian fishponds.

The intent and language of HB 710 is similar to Senate Resolution No. 86 (SR86), which was adopted by the Senate on April 10, 2012. In response to SR86 and in accordance with federal regulations, the Hawaii Coastal Zone Management (CZM) Program is currently in the process of obtaining federal approval of a general concurrence for minor federal permit activities for Hawaiian fishpond restoration, repair, maintenance and reconstruction. Coastal Zone Management Act federal consistency regulations (15 CFR Part 930) establish procedures for States to issue general concurrences (15 CFR §930.53(b)) allowing similar minor work in the

same geographic area to avoid repeated review of minor federal license or permit activities which, while individually inconsequential, cumulatively affect any coastal use or resource. Federal permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification and review requirements of 15 CFR Part 930, Subpart D - Consistency for Activities Requiring a Federal License or Permit.

The Office of Planning reported to Senate President Mercado Kim, by letter dated January 22, 2013, as requested by SR86, our recommendations regarding regulatory streamlining for Hawaiian fishpond restoration. Based on our experience in dealing with the regulatory requirements for Hawaiian fishpond restoration, we do not believe that permit requirements are, or have been, a deterrent. Factors such as cost, economic viability, and labor, have been impediments to the widespread restoration and reuse of Hawaiian fishponds. We recommend that an existing agency with expertise in fisheries be utilized to coordinate fishpond restoration statewide. The coordinator would facilitate permitting and promote the economic benefits to ensure the viability of the restored fishponds. The coordinator or coordinating agency would not have to be newly created but could be assigned to an existing agency in this matter, such as the Aquaculture Development Program within the Department of Agriculture.

Thank you for the opportunity to provide testimony on this measure.

Aloha Representative Hanohano,

My name is Graydon 'Buddy' Keala and I have been involved with all aspects of loko i'a revitalization for 25+ years. Included in this work were several Senator Inouye supported efforts at streamlining the permit processing in 1995 and again in 2005. I would like to provide this updated information to this important Hawaiian Fishpond legislation.

The 1995 Hawaiian Fishpond Revitalization (HFR) program work included legislation and the adoption of Act 177 defining and providing certain concessions for permit streamlining. The bill authored by Rep. Annette Amaral-Makakilo and Rep. Mike White-Maui requested to exempt fishponds from the permit process in totality. HFR also held two permit streamlining symposiums (Hana Symposium I and II). The second symposium included all governmental agencies at the department head level, people who could make the changes and not staffers.

In 2000-2005, I was hired by the UH-College of Tropical Agriculture and Human Resources to co-manage a USDA grant looking at diversifying agriculture for the island of Molokai. The effort focused on the islands' 60+ Hawaiian Fishponds and putting them back into use by the people of Molokai. This project included capacity building and training of pond operators, restoration of 3 loko i'a, creating an EPA certified water quality lab on-island, a fishpond manual (attached) and extensive work at streamlining permits for fishpond restorations. The attached material contains the latest permit streamlining work to date.

I am tracking HB-710 and see where the testimony submitted doesn't include the 1995 or more importantly our 2005 work efforts. I want to submit this information so the bill discussion is in continuity of where permit streamlining for loko i'a left off. The current permitting testimony includes a 25 year old streamlining efforts, then Sarah Collins-SHPO indicates a 20 year old effort by DLNR Aquaculture Development Program...these are older documents that actually take us backwards. Our work on the Molokai fishponds included a \$1.4M funding grant by EPA Region 9 that was based around permits and streamlining them. We received an award for our efforts. (See website below)

In 2006, I applied for and received approvals for required permits in the restoration of Kauikeolani Fishpond in Hanalei, Kauai. These permits included in-water dredge work, which will be needed in many if not most loko i'a today. I am attaching several documents that I hope will help you decipher this permit process conundrum or at least provide you the most current information. The 05 permit template was put to trial on Molokai and although agreed to, was never adopted by the agencies.

A bigger more threatening thing is also happening under regulatory oversight by Federal agencies.

Hawaiian Fishponds are in jeopardy of being re-designed and re-designated wetlands and marshlands. It has already happened at Loko Ohiapilo-Molokai, Loko Kealia-Maui, Loko Nuupia and Kawainui on Oahu. While the natural processes of non-loko i'a are to fill in and become wetland/marsh-like, this is still a loko i'a, a very unique and special wahi pana important to our culture and the health of the ahupuaa & fishery. In real time today, loko i'a fulfills Hawaii's need for a self-sustainable food supply going forward.

These are man-made system that can only be preserved by man's manual effort. Unfortunately, when a fishpond evolves to a wetland/marsh, non-native environmentalist and Endangered Species laws to protect endangered waterfowl conflict heavily with trying to permit the loko i'a for restoration.

From my experience in both commercial marine shrimp aquaculture and traditional loko i'a practice, fishponds and endangered bird species (about 6-7 species) can coexist within the same system. But the US-Fish & Wildlife Service via the Endangered Species Act weighs heavily against loko i'a restoration and only view these traditional cultural landscapes as marshlands for bird habitat. This is a definite conflict of all fishponds as exemplified by Nuupia Fishpond where the Marines are using the pond for amphibious assault vehicle training to create bird habitats. I have asked the Department of Interior to assist our efforts by using Section 106 - Historic Preservation Act to counter the Federal Endangered Species Act.

Literally, we are losing loko i'a everyday due to the natural eutrophication process of filling up and then non-traditional eyes rededicating the land use from historic property to bird habitat by using the Federal Endangered Species Act. The laws for the argument are in favor of the loko i'a, as they meet the continuity of the land, people and the culture.

The traditional sciences and history of an indigenous practice needed on the land are at stake.

This is malama aina! This is ahupua'a! This is pono!!

I'm including Rep. Evans in this email, as well as, the Association Of Hawaiian Civic Clubs-legislative officer and Chair of OHA.

Mahalo for your support of loko i'a and the opportunity to share this mana'o. Feel free to contact me if I can do anything for you .

<http://www.greenenvironmentnews.com/Environment?Grants+and+Awards/E.P.A.+dec;ares+completion+of+Molokai+fish+pond+plan>

<http://www.epa.gov/region9/water/lokoia/permit-guide05.pdf>

<http://www.epa.gov/region9/water/lokoia/template-forms05.pdf>

<http://www.ctahr.hawaii.edu/oc/freepubs/pdf/Loko%20I'a%20Full%20Publication.pdf>

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HB710

Submitted on: 2/22/2013

Testimony for FIN on Feb 25, 2013 13:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Benjamin Shafer	Individual	Support	No

Comments:

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Kawehilani P.E. Kahanao'i
Waiākea, Hawai'i

Re: Testimony of H.B. No. 710, "Relating to Fishponds"

Aloha and thank you for your efforts to ease the process of restoring our Nā Loko I'a (fishponds) in Hawai'i. The intentions of this bill are necessary to bring hope of reviving its practice and resources to the communities of Hawai'i. I support this bill and implore that amendments be made to the outline of application process, which has prevented restoration efforts personally and within communities. Regulations and discretion is reasonable for marine and public safety during construction, use, and maintenance of a loko i'a in public land areas. The process could be streamlined by replacing a few of the Departments and documents required to progress. The community and Native Hawaiian aquaculturalists/practitioners of the restoration site would be beneficial in advising and supervising restoration efforts. Reasonable documents could include: 1) a notarized disclaimer waiving liability of land owners and Departments, 2) a detailed project proposal reviewed by community leader(s) and Hawaiian practitioner(s), and requiring educational or community use of the resources would encourage participation. It reduces the documents, costs, responsibility, and frustrations for Departments and those directing the project, while maintaining necessary documents and semi-annual / annual reports to departments.

Recent thoughts of restoring a few fishponds along the Keaukaha coastline prompted this testimony. The complications and cost of the application process is definitely a factor for delay of its progress. Improvement in directing stewardship and the abundance of resources that our future generations would benefit from is a goal that can be achieved. The children of Hawai'i would be raised with sustainable and tangible cultural identity learned through physical experience. This type of community dedication and connection with the true beauty of Hawai'i would ultimately heal generations of those who still have to learn of these cultural practices, like myself. Improving the process of restoring our fishponds will give opportunity for people to experience this, Authentic and Sustainable Hawai'i. Mahalo for your time and consideration of this testimony.