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DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committees on
JUDICIARY
and
WAYS AND MEANS

Friday, March 3, 2023
10:00 AM

State Capitol, Conference Room 211 & Videoconference

In consideration of
SENATE BILL 94, SENATE DRAFT 1
RELATING TO SPECIAL ACTIVITY PERMITS

Senate Bill 94, Senate Draft 1 proposes to require the Department of Land and Natural Resources (Department) to approve or deny an application for a Special Activity Permit (SAP) for aquatic research within ninety days from the date that it was submitted and appropriates funds for two full-time equivalent (2.0 FTE) positions within the Division of Aquatic Resources to support the special activity permit review process. **The Department supports this bill, provided that its passage does not replace or adversely impact priorities indicated in the Executive Budget request.**

Pursuant to Section 187A-6, Hawaii Revised Statutes (HRS), the Department issues SAPs to engage in activities otherwise prohibited by law for scientific, educational, management, or propagation purposes. Prior to issuance of an SAP, the Department undertakes various internal and external review processes (e.g. biological, cultural, legal). The time it takes to review each SAP application varies from one week to over 12 months depending on the nature and scope of the proposed activity. An SAP can be reviewed, drafted, and issued within a week if language has already been drafted (e.g. a renewal of an existing SAP), if the proposed activity is simple and prioritized, or if it is for an emergency situation. Permit issuance can take several months if language has never been drafted before, if the review is complicated, or if other permits are prioritized before it.

The Department receives anywhere from 50 to 100 SAP applications each year and has issued 30 to 65 SAPs per year in recent years. Some applications do not result in permit issuance because the proposed activity is determined to not require an SAP. A few applications (less than 5 most years) result in denial of an SAP. In most cases, where the proposed activity is of concern, the Department will work with the applicant to modify the proposed activity to address the Department's concerns. This back and forth amendment process lengthens the time it takes to issue SAPs. Additionally, the Department reviews and provides comments on about 15 to 20 applications for permits to enter the Papahānaumokuākea Marine National Monument and brings about 10 of these permit applications per year to the Board of Land and Natural Resources (BLNR) for approval.

The Department currently has only one staff dedicated to processing SAPs, which includes reviewing applications for new SAPs, processing annual renewals of existing SAPs, drafting original permit and technical guidance language, drafting submittals to the BLNR, drafting HRS Chapter 343 Exemption Notices, reviewing permit reports, compiling and analyzing reported data, and coordinating consultation with staff biologists, cultural consultants, and the Department of the Attorney General. At this time, due to only having one staff person to work on SAPs, there is a back log of applications for new SAPs and renewals of existing SAPs. Establishing two new full-time positions to support the SAP process will make it possible for the Department to process most, if not all, SAP applications within 90 days.

The Department recognizes the hardship on SAP applicants caused by the lengthy SAP review process and has hired a contractor to review our process and make recommendations for improvements. The final report for this two-year project is expected to be completed in September 2024.

Mahalo for the opportunity to provide testimony in support of this measure.

SB-94-SD-1

Submitted on: 3/2/2023 1:38:34 AM

Testimony for JDC on 3/3/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Uilani Naipo	Individual	Support	Written Testimony Only

Comments:

Testimony In SUPPORT with Comments

Regarding SB94 SD1

March 1, 2023

U'ilani Naipo

JDC/WAM Committees

Aloha Chair Rhoads, Chair Dela Cruz, Vice Chair Gabbard, Vice Chair Keith-Agaran, Members of the Committee on Judiciary, and Members of the Committee on Ways and Means

I support SB94 SD1 and the much needed funding for 2.0 FTE DLNR positions to support processing and managing of the Special Access Permits.

I strongly support the comments and recommended amendments submitted by Policy Director, Inga Gibson of For the Fishes regarding the need to strengthen oversight and accountability of the SAP process. 3-year revocation is more appropriate for the serious violation of terms and conditions or false claims as the potential hundred of thousands dollar commercial benefits are worth the risk of these serious type violations. For researchers, violations without substantive consequences demonstrates the reduced value we place on our natural resources. Revocations should apply to all businesses of a violator/permit applicant, as well as to all participants on the permit.

I would also like to see the adoption of the Ka Pa'akai analytical framework in the SAP process – that of which will transparently demonstrate DLNR's obligation of not just considering the impact to Hawaiian rights, traditional and customary practices, and resources for these SAP activities, but protecting these rights and resources. This analytic framework would also encourage place-based cultural experts ('ohana of the place) to be consulted, assisting DLNR for

conducting the analysis. The absence of such an analysis yet granting these special access permits is gross negligence of care for our 'āina and ourselves as kānaka 'ōiwi.

Mahalo for considering my mana'o,

U'ilani Naipo

Lineal Descendant of Miloli'i, Kapalilua

Miloli'i Community-Based Subsistence Fishing Area

SB-94-SD-1

Submitted on: 3/2/2023 9:36:32 AM

Testimony for JDC on 3/3/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Charles Young	Individual	Oppose	Written Testimony Only

Comments:

Aloha, my name is Charles Young and i am opposed to SB94.

When issuing SAP's the DLNR should be able to fully determine the validity, utility and need of the work proposed in the application and also determine if there are any impacts including possible impacts upon native Hawaiian traditiona and customary rights. Placing arbitrary time limits that may inhibit a full and proper vetting of these applications can and have led to conflicts in the areas where the work is being conducted and can and have led to longer lasting impacts on the ecosystems.

Going forward i recommend that the Legislature instead consider amending the rules governing SAP's to include the cultural impacts the Hawaii Supreme.Court ruled necessary in its Ka Pa'a Kai O Ka 'Aina decision.

Respectively

Charles Young

PO Box 505

Honauanu, HI 96726

SB-94-SD-1

Submitted on: 3/2/2023 9:39:49 AM

Testimony for JDC on 3/3/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Krista Johnson	Individual	Support	Written Testimony Only

Comments:

Aloha kākou,

I am testifying in support of the passage and enactment of SB94. I am a thirty-two year resident of Nāpo‘opo‘o on Hawai‘i island. As a fisherman, educator, and community leader it is important to me that the voices of the kanaka maoli (Hawaiians) of place are a part of this SAP process.

I ask that the Ka Pa‘a Kai Analysis be included in the language of this bill to ensure that people of specific places who are cultural practitioners in those places that will be impacted by the research projects permitted, be included from the START of the SAP process.

Mahalo,

Krista Johnson

Nāpo‘opo‘o, HI

(808) 936-8600

SB-94-SD-1

Submitted on: 3/2/2023 9:48:29 AM

Testimony for JDC on 3/3/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Charles Kealoha Leslie	Individual	Support	Written Testimony Only

Comments:

Aloha kākou,

My name is Charles Kealoha Leslie. I am a kupuna lawai‘a from Nāpo‘opo‘o and Ka‘awaloa on the island of Hawai‘i. I am also an educator and community leader for my wahi. I am in support of SB 94. I also ask that the Ka Pa‘a Kai Analysis be included in the language of this bill and that cultural practitioners from the research areas indicated in these permits be included from the start of the SAP process.

I was just recently in a meeting for an SAP where DAR did not consult with the cultural practitioners of the WHRFMA at the beginning of the SAP process, especially long-standing and well-known practitioners already working with DAR. It was not pono and caused a heated meeting for the researcher, the practitioners of place, and DAR. From that we realized that DAR needs to be held better accountable in their SAP processes. We need to be included as recognized cultural experts for our areas by DAR and should have a stake and say in what is happening in our wahi when researchers wish to enter and possibly "take" from our environment.

With that, I again ask that you include the Ka Pa‘a Kai Analysis in the language of the bill and that we are allowed to be a part of this SAP process from the start for our wahi.

Mahalo,
Charles Kealoha "Uncle Chuck" Leslie

Nāpo‘opo‘o, Hawai‘i