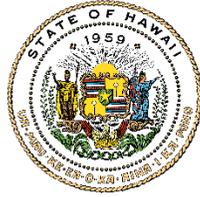


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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
DAWN N. S. CHANG  
Chairperson

Before the Senate Committee on  
WATER AND LAND

Wednesday, February 1, 2023  
1:00 PM

State Capitol, Conference Room 229 & Videoconference

In consideration of  
SENATE BILL 94  
RELATING TO SPECIAL ACTIVITY PERMITS

Senate Bill 94 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. **The Department appreciates the intent of this bill and offers the following comments.**

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, and it would not be possible to guarantee processing SAPs within 90 days without additional resources.

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.

If funding is appropriated for one or two additional full-time staff, it would be possible for the Department to process most, if not all, SAP applications within 90 days. Absent additional resources, the Department would have to deny any SAP application that could not be reviewed in this 90-day time period, potentially resulting in further delays.

Mahalo for the opportunity to comment on this measure.



February 1, 2023

WTL Committee, 1pm, Room 224

**RE: SB94; RELATING TO SPECIAL ACTIVITY PERMITS, SUPPORT WITH AMENDMENTS**

Dear Chair Inouye, Vice-Chair Elefante and Committee Members:

Special Activity Permits (SAPs) grant permission to those engaged in bona fide aquaculture or research, or educational institutions, to conduct activities involving Hawaii's important and culturally significant natural resources *that would otherwise be illegal*. SAPs confer a unique and special privilege and therefore require rigorous review and consideration prior to any permit being issued.

We support SB94 to approve or reject SAP applications within 90 days from receipt of application, however, we think it is equally important to strengthen oversight of the permits to ensure the integrity of the permitting process, and compliance and accountability with the terms and conditions of the permits. The need for greater oversight and accountability of the SAP process is exemplified in the following cases:

- An aquarium collector who was charged in 2020 with 344 counts of aquarium fish poaching in West Hawaii falsely claimed to the court that he had collected the fish for the UH Hilo aquaculture program (under an SAP). Investigations are ongoing. In a WTL/AEN legislative hearing on January 30, 2023, a separate aquarium collector and wildlife dealer falsely claimed that he was working with and under a SAP with UH Hilo.
- Serious violations of the terms and conditions for an SAP allowing fish collection in West Hawaii for aquaculture research and development occurred in March 2022. The violations included the omission of required vehicle and vessel markings and participation by collectors who were not listed on the permit (a criminal offense). These violations, coupled with the lack of required notification to DAR and DOCARE prompted a costly state and federal law enforcement response as a poaching incident. Despite DAR's knowledge of these violations, and the law enforcement response, neither the permittee, nor the unpermitted collector(s), faced any fines or consequences.
- The Seattle Aquarium has collected thousands of Hawaii fish and other reef animals for their displays every other year for many years. A review of their required reports to DLNR revealed numerous, repeated failures to report details of collected animals, per the terms and conditions of their permit, the most serious of which was the entire omission of species they had taken from Hawaii's reefs. There were no repercussions to the permittee for failing to provide the required information.

- Possession of undersize octopus, which includes any eggs and offspring, is illegal. For years the Kanaloa Octopus Farm operating at NELHA in Kailua-Kona has been operating an octopus “petting zoo” with illegally obtained octopuses, and the eggs and larval offspring of those octopuses which they claim is the result of their aquaculture research. They have never applied for an SAP. In January 2023, 6 months after learning these details, DAR issued two cease and desist letters (January 6, 17), however, they continue to operate, with hundreds of unknowing tourists continuing to visit this illegal operation.

The above examples exemplify the need for the following amendments to the SAP process:

1. Requirement for **facility inspections** by DAR in advance of SAP approval; and agreement by permittee to random inspections of facility by DAR during the permit term;
2. **3 year revocation of SAP for violation of terms and conditions**; reinstatement requires BLNR approval;
3. Any person who **falsely claims to be operating under an SAP, or fails to hold a required SAP**, shall be subject to fines and forfeiture and revocation of any permits or licenses related to the violation (i.e. cml) for at least 3 years; reinstatement of any licenses or permits shall require BLNR approval;
4. **Any new (non-renewal) SAP or out of state SAP applications shall be subject to BLNR review and approval.** The Board may also set a fee for SAPs to, at a minimum, be commensurate with staff costs for facility inspection and administration of the permits.
5. **All SAP’s shall be publicly posted in advance of DAR approval** to allow for public and cultural input prior to their issuance. BLNR agendas already are subject to the Sunshine Act so SAP review would be publicly noticed.

Thank you for your consideration of our testimony and these important amendments.

Sincerely,

Inga Gibson  
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Director, Pono Advocacy  
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