

ACT 6

S.B. NO. 1262

A Bill for an Act Relating to the Waianae Coast.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds it a matter of concern that along the Waianae coast, the growing population of west Oahu and the visitor industry are affecting the traditional uses of the area and are having cumulative economic, environmental, social, and cultural effects on the many communities along this coastline.

The legislature finds that the increased usage of beach parks and state boating facilities to accommodate commercial ocean recreation activities between Kalaeloa and Kaena has had a significant impact on traditional commercial fishing activities, as well as other non-commercial ocean recreational activities.

The legislature finds that the ocean waters in this area should be designated by the department of land and natural resources as an ocean recreation management area to reduce user conflicts, maintain overall public safety, and to regulate commercial activities by placing limitations on the locations, times, and types of ocean recreation activities that are permitted.

The purpose of this Act is to place a moratorium on the issuance of new commercial vessel permits in state small boat harbors involving ocean-related

activities for ocean waters between Kalaeloa point and Kaena point until the boundaries of a Kalaeloa to Kaena ocean recreation management area are designated and administrative rules on recreational boating activities and commercial vessel activities are adopted. However, the completion of a baseline environmental study is a prerequisite to the establishment of the boundaries of an ocean recreation management area and the adoption of the ocean recreation management area rules. The limited resources of the state prohibit funding for this baseline environmental study at this time. Accordingly, the legislature intends to seek a funding source to ensure that this important baseline environmental study is performed.

SECTION 2. The department of land and natural resources shall not issue any state small boat harbor facility commercial permits for vessels engaged in ocean use activities in the area from Kalaeloa point to Kaena point that would exceed the total number of permits already issued as of the effective date of this Act, until the boundaries of an ocean recreational management area for the area from Kalaeloa point to Kaena point are determined and ocean recreation management area rules are adopted pursuant to this section and chapter 91, Hawaii Revised Statutes.

SECTION 3. The department shall prepare a baseline environmental study as an informational document to be used for the preparation of draft ocean recreation management area rules in accordance with the following procedures. The baseline environmental study shall include:

- (1) A summary sheet with a concise description of the following:
 - (A) Significant beneficial and adverse impacts of ocean use activities in the area from Kalaeloa point to Kaena point (including cumulative impacts and secondary impacts);
 - (B) Proposed mitigation measures;
 - (C) Alternatives considered;
 - (D) Unresolved issues; and
 - (E) Compatibility with land use plans and policies, and listing of permits or approvals;
- (2) A separate and distinct section that includes a statement of purpose and need for the designation of an ocean recreation management area;
- (3) The following information, to the extent necessary for evaluation and review of the cultural, environmental, social, and economic impacts:
 - (A) A detailed map of the area from Kalaeloa point to Kaena point;
 - (B) A statement of objectives;
 - (C) A general description of the area's technical, economic, social, and environmental characteristics;
 - (D) Public funds or lands to be used for the designation;
 - (E) Phasing and timing of the designation;
 - (F) A summary of technical data, diagrams, and other information necessary to permit an evaluation of potential environmental impact by government agencies and the public; and
 - (G) A historic perspective;
- (4) The following restrictions or limitations on ocean use or private recreational activities, set forth in detail:
 - (A) Sub-areas within any proposed ocean recreation management area where certain types of ocean use activities may be restricted or permitted;
 - (B) The number of permits, by permit type and vessel and passenger capacity, that may be issued for different types of ocean use activities;

- (C) The months, days, and times that certain types of ocean use activities may be curtailed or prohibited; and
 - (D) Any other restrictions or limitations that the department deems appropriate;
- (5) A procedure for the resolution of user conflicts between commercial ocean use activities and private recreational use of any ocean recreation management area;
- (6) A rigorous exploration and objective evaluation of the environmental impacts of alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks and recreational and commercial use conflicts. Examples of alternatives include:
- (A) No action;
 - (B) Requiring actions of a significantly different nature that would provide similar benefits with different environmental effects;
 - (C) Those related to different boundaries or details of the proposed area that present different environmental effects; and
 - (D) Postponing the designation of the area pending further study.
- In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed area designation and each reasonable alternative;
- (7) A description of setting of any ocean recreation management area, including a description of the environment in the vicinity of the area, as it exists before the designation of the area, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the area (including natural or human-made resources of historic, archaeological, or aesthetic significance). Specific reference to related land-based projects, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall cumulative effects of the designation of the area. The department shall identify, where appropriate, population and growth characteristics of the affected region and any population and growth assumptions used to justify the action and determine secondary population and growth effects resulting from the proposed designation and its alternatives. In any event, it is essential that the sources of data used to identify, qualify, or evaluate any and all cultural, environmental, societal, and economic consequences be expressly noted;
- (8) A statement of the relationship of the proposed designation of the area to land use plans, policies, and controls for the affected area. Discussion of how the proposed designation may conform or conflict with objectives and specific terms of approved or proposed land use plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the baseline environmental study shall describe the extent to which the department has reconciled its proposed designation with the plan, policy, or control and the reasons why the department has decided to proceed, notwithstanding the absence of full reconciliation;
- (9) In a separate and distinct section, a description of the relationship between local short-term uses of the marine environment and the maintenance and enhancement of long-term productivity of the marine environment. The extent to which the proposed action involves trade-offs among short-term and long-term gains and losses shall be dis-

- cussed. The discussion shall include the extent to which the proposed designation forecloses future options, narrows the range of beneficial uses of the environment, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the proposed action;
- (10) A discussion of the resolution of conflicts between recreational use of the area by residents of the area and commercial ocean use activities;
 - (11) In a separate and distinct section, a description of all irreversible and irretrievable commitments of resources that would be involved in the proposed designation of the ocean recreation management area should it be implemented. Identification of unavoidable effects and the extent to which the action makes use of non-renewable resources as a result of the designation or irreversibly curtails the range of potential uses of the environment shall also be included. The possibility of environmental accidents resulting from any phase of the designation and maintenance of the ocean recreation management area shall also be considered;
 - (12) All probable adverse environmental effects that cannot be avoided and a statement addressing these problems. Any adverse effects, such as water or air pollution, urban congestion, user conflicts, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy such as that found in chapters 128D, 205A, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, 342P, and 344, Hawaii Revised Statutes, shall be included, including those effects discussed in other actions of this paragraph that are adverse and unavoidable under the proposed designation and rules. Also, the rationale for proceeding with a proposed designation, notwithstanding unavoidable effects, shall be clearly set forth in this section;
 - (13) Other interests and considerations of governmental policies that are thought to offset the adverse effects of the proposed designation. The baseline environmental study shall also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed designation that would avoid some or all of the adverse environmental effects;
 - (14) Mitigation measures proposed to avoid, minimize, rectify, or reduce impacts and user conflicts, including provision for compensation for losses of cultural, community, historical, archaeological, and fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures to reduce significant, unavoidable, or adverse effects to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. Included, where possible and appropriate, shall be specific reference to the timing of each step proposed to be taken in the mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to ensure that the mitigation measures will, in fact, be taken;
 - (15) A separate and distinct section that summarizes unresolved issues and contains either a discussion of how the issues will be resolved prior to commencement of the designation or what overriding reasons there are for proceeding without resolving the problems;

- (16) A separate and distinct section that contains a list identifying all governmental agencies, other organizations, and private individuals consulted in the preparation of the baseline environmental study and the identity of the persons, firms, or agency assisting in the preparation of the baseline environmental study, by contract or other authorization, shall be disclosed; and
- (17) A separate and distinct section that contains reproductions of all substantive comments and responses made during the consultation process. A list of those persons or agencies who were consulted and had no comment shall be included in the baseline environmental study.

SECTION 4. The final designation of the ocean recreation management area and rules for this area shall be adopted by the department pursuant to chapter 91, Hawaii Revised Statutes, and this Act and shall include any sub-areas or restricted areas. The department shall maintain rulemaking files that shall include but not be limited to the following:

- (1) All letters received containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held;
- (2) A list of persons, organizations, and public agencies commenting on the draft rules;
- (3) The responses of the department to each substantive question, comment, or recommendation received during the rules adoption process; and
- (4) The final rules written in a format that allows the reader to easily distinguish changes made to the text of the draft rules.

SECTION 5. For the purposes of this Act, "ocean use activities" means commercial operation of thrill craft, high-speed boating, para-sailing, water sledging, sailing and snorkeling tours, glassbottom boat tours, dolphin tours, or any other similar commercial ocean recreational activity for hire.

SECTION 6. The department of land and natural resources shall submit the baseline environmental study to the legislature not later than twenty days prior to the convening of the regular session of 2007.

(Vetoed by Governor and veto overridden by Legislature on July 12, 2005.)