

## **Kāneʻohe Bay Regional Council Meeting**

**Oct 28, 2019**

Kaneohe Atrium Building

46-005 Kawa St. Ste. 104

Kaneohe, HI 96744

### **Meeting Minutes**

#### **Members Present:**

Wayne Tanaka (OHA)

Judy Lemus (HIMB)

Clifford Loo

Liko Kahuhiwa

#### **Others in Attendance:**

Brian Neilson (Chairperson)

Ernie Choy (Heʻeia Kea Harbormaster)

Aunty Rocky Kahuhiwa (non-voting representing Aha Moku)

Mahealani Cypher

Kahika Kahuhiwa

Kristi Kahale

Cedric Bertelmann

Wayne German

Mahi Kaluhihiawa

Kawika Winter (NERS representative)

Kirk Deitschman (Makai Watch)

Josh Hekekoa (Office of Planning)

Daniel Lager (minute recorder)

#### **1. Opening**

Chair Neilson called meeting to order and conducted introductions of all in attendance.

#### **2. Approval of Agenda (Action Item)**

Member Lemus motioned to approve agenda and Member Loo seconded.

**3. Approval of Council minutes of August 19, 2019 (Action Item)**

There was a notice to correct Mahealani's name which is spelled with an instead of e spelling and a spelling error in Amy Luersen's name. Also, on page 8 Kaluhiwa name was misspelled.

Liko Kahuhiwa has not been receiving email of minutes, Chair Neilson collected emails on a sheet to ensure all are getting announcements.

Member Lemus motioned to approve agenda and member Tanaka seconded.

**4. Approval of Council to issue letter to DLNR that lists overt violations of relevant rules, regulation, and plans by known violators. Additionally, the council request appropriate sanctions to include suspensions or revocations of permit (s) until all violations cease or fall into permitted activity. (Action Item)**

Chair Neilson passed out letter from DOCARE Officer Alex McBarnet– testimony of site inspection of regarding Kama'āina Care and interview with Ray Sanborn regarding the activity of commercial tours. Stated that the officer witnessed no illegal activity.

It was mentioned that Member Radke had proposed this agenda item at the previous meeting and is not present to discuss the action item.

Member Tanaka asked if there has been continued activity in the area.

Cedric Bertelmann stated that many others have been using commercial activity in the bay especially to the sandbar.

Kirk Deitschman was asked about the Officer Alex McBarnet that submitted the letter regarding Kama'āina Care, he said he would look into it. Officer Alex McBarnet is now acting district lead and has a large area to cover.

Cedric Bertelmann stated that the best way for action to be taken is to submit a complaint.

Kirk Deitschman addressed the issue of having no overnight response by DOCARE, he stressed to the Council to keep making reports to demonstrate the need for more officers and support to manage our community and to protect natural resources. He recommended the use of DLNR tip app which goes to branch chiefs, then gets sent to district chiefs. As long as its reported then it increases chances of the activity will be investigated.

Kristi Kahale asked what if we see ads for these illegal activities, she stated that there are still currently package deals to snorkel from the state park posted online.

Kirk Deitschman said that is no evidence of illegal activity. Kama'āina Care can't advertise in the state park but can legally advertise online.

Mahealani Cypher asked for clarification on the DLNR letter to Kam'aina Kids sent in the May vs the September letter.

Chair Neilson explained that in May the BLNR denied a contested hearing and then in September DLNR sent a cease and desist letter.

Mahealani Cypher addressed after hours enforcement stating that it's impossible to have documentation of a violation if there is no standby DOCARE staff after hours. It will be too late if DOCARE responds the next day. Suggested they use a calling service.

Kirk Deitschman explained that all DOCARE funding comes from legislature and they will not give more funding for after hours because there are still staff openings. DOCARE is filling 22 positions in Dec which will fill all vacancies. There is also the issue that night differential pay is more expensive.

Member Lemus asked if the council could write an advisory letter to suggest that new DOCARE officers be put to work after hours.

Chair Neilson said if the letter is on record then it can be documented there is desire from the community and/or KBRC for afterhours officers to be on duty.

Kirk Deitschman emphasized that there are other threats to the Bay's natural resources which are worth the Council's attention.

Ernie Choy stated if a permit holding company folds then the permits are eliminated. He conducts periodic counts of the customers on the tour boats and they submit logbook of the number of passengers which is submitted to the Coast Guard.

Wayne German states that a sunset clause should apply to equipment of the tour boats as well as the permits, states that there are too many people on boats, over what they are allowed to do under the permits.

Kirk Deitschman noted that six thousand feet of net has been taken out of the bay. This shows lots of serious impacts going on that the council should be focusing on.

Wayne German has reported many times on the tip app after seeing illegal net use and has never gotten any response. He states that many nets set out after sunset and picked up at 5am so there is no way for any kind of enforcement.

Kirk Deitschman states it's unfortunate that there was no response but by reporting the violation it will still be documented and it's important to continue the discussion and is an

additional way for the department to hear about the issues. DOCARE capacity for the Bay will likely not increase until new recruits get hired.

Wayne German observed that fishermen target areas where tour companies are feeding the fish, because it changes the behavior of the fish then they are more easily caught in nets. Also, aquarium fish are being taken out of the bay.

Aunty Rocky said there used to be a person on watch after hours. They are charged to protect the resources, 5 years ago she asked for funding for DOCARE to increase effectiveness by having after hours personnel. Resources are dwindling in the bay. The council needs to act and make sure the bay is protected. This requires a watch around the clock.

Kirk Deitschman states that's why he is present to hear these issues. He is willing to come to the next meeting and give a presentation on the Makai Watch program. He can help set priorities specifically for the bay. The best way forward is to address one illegal activity at a time until compliance increases.

Aunty Rocky brought up concern about nighttime activity at the pier including partying, loud music, racing cars and asked what can be done.

Kirk Deitschman shared that in Hanalei a large hui of organizations of managers of that space has been brought together so communities know who to contact when issues come up. If you build the connections the issues can be dealt with more effectively as a group.

Member Lemus suggests inviting Makai Watch coordinator to the next meeting.

Kirk Deitschman said he would share his email and would like to hear about what's going on and wants to continue the conversation and set times to meet.

Member Tanaka inquired about the status of a DOCARE boat team.

Kirk Deitschman said the division still has access to boats but there is no specific team dedicated to water operation.

Aunty Rocky asked about someone from the Marine Corps Base attending the council meetings and addressing their impact on the bay, which was shared by others in attendance.

Chair Neilson said he had reached out to 3 people from the base but did not get a response.

Member Lemus suggests deferring action for agenda items 4 and 5.

Member Lemus motioned to differ agenda items 4 and 5. Member Loo seconded.

Member Tanaka inquired about asset forfeiture as punishment for violations, if you break fishing laws then DOCARE can take the gear. That was challenged but DOCARE should have that authority. Without that in place a large part of the hammer is gone. This occurred back in 2012.

Kirk Deitschman said that there are things in the works for dealing with that issue.

Member Lemus asked if there were any violations associated with a boat called Crown Jewel asked if anyone knew about it and if they are doing commercial activities.

Ernie Choy said Crown Jewel is a legal tenant of the harbor with all permits.

Wayne German said will be difficult to show any illegal activity because he has a large extended family which the owner takes out on the boat.

Ernie Choy said that some commercial boats are out there on Sunday, but they will often be out there with the owners' families. Tries to document those situations such as funerals. Occurs about once every three months

Aunty Rocky stated she sees lots of moorings outside the fish pond. How many are there? Also, what is the status of the ones nearshore on the mud flats.

Ernie Choy said the moorings are at the discretion of the harbor master and all the temp boats go there. All are approved by Army Corps and Department of Health. The exact number varies. Mud flats are open with no charge if they have current registration stickers.

Mahealani Cypher stated that some of the plan in the administrative rules are different from Kāneʻohe Bay Master Plan such as commercial permit limits, she thought it was only 5. She heard rumors of glass bottom boat shutting down.

Ernie Choy said they formalized from the Kāneʻohe Bay Master Plan and they are like the administrative rules. Original number of permits is 10 which can be transfer ownership of the permits.

Wayne German said the master plan did not allow for the transfer of permits.

Ernie Choy stated that It is allowed but that any additions beyond the basic permits will revert. Glass bottom boat will continue to run and is in dry dock.

Mahealani Cypher inquired about the status of the concessions, snacks, gas and ice?

Ernie Choy said the lease is at the AG office for a permit.

Member Loo asked about a sunken boat near Waiheʻe stream, submerged for about 4 months, what is it and what is being done about it?

Ernie Choy said it will be taken care of on the next contract for removal at the cost of \$5,000, it was removed from list on the last removal sweep and is scheduled for the next round of DOBOR removals. Can't collect from the owners of these abandoned boats. Only 6 companies to work on those projects. If appraised less than \$5,000 they will crush the boat, if over they will put it up for auction. The person with the boat is no longer around and the boat is not insured.

Member's voted on deferral -all in favor of differing until next meeting for agenda items 4 and 5.

**5. Establishment of Committee (Permitted Interaction Group) to update the Kāne'ōhe Bay Master Plan (Action Item)**

Differed until next meeting.

**6. Presentation about the He'eia National Estuary Research Reserve by Kawika Winters**

Ahupua'a restoration in current context with heath and function to 20<sup>th</sup> century.  
Restoration of traditional food systems which keeps family's and community's healthy by perpetuating biocultural diversity

**7. None listed (typo in agenda)**

**8. Permitted Interaction Group update on recommendations and resolutions for further consideration by the Council (Non-Action Item)**

Member Lemus will draft a letter about the need for afterhours officers in the bay to DOCARE. Confirms that there is a way for members to contact the chair outside of the formal meeting.

**9. Suggestions of Future agenda items (Non-Action Item)**

Mahealani Cypher said to make sure next agenda has current meeting's agenda items 4 and 5 included for the following meeting.

Wayne German suggested a lay net ban in the bay.

Member Tanaka said there is a specific Kaneohe Bay rules for nets already.

Chair Neilson added that there is a loop hole in the surround net rule.

Aunty Rocky suggested that there should be a change in weight limit on he'e (octopus) and increase the minimum weight to 2lbs. She has seen groups of older people catching very small he'e. She also proposed a kapu on aquarium collection at least 3 years. She described how school kids had been writing letters saying they saw no fish when they go snorkeling. She believes many aquarium collectors are going out at night.

Mahealani Cypher stated her opinion that it seems that the legislature is not facilitating good management of the resources.

Kirk Deitschman asked Aunty Rocky if she had heard about the EIS for aquarium fishing.

Wayne German told the council he still thinks people are still using fine mesh net to catch aquarium fish.

Kirk Deitschman asked Chair Neilson if someone from DAR can come and talk about fishing regulations in the bay.

Member Lemus said the Council needs an overview of existing rules in bay to be able to make informed changes.

Cedric Bertelmann said that with so many boat users on weekend causing congestion at the pier. He feels that the commercial operators should not be allowed to conduct business on the weekends to make it easier for resident recreational users.

Kirk Deitschman said there is similar sentiment at Hanalei and Hā'ena, they are pushing for no commercial activity on weekends. It would be beneficial to couple with other areas to implement a change.

Mahealani Cypher said there is a push for weekend commercial limits in Hale'iwa. She suggests an agenda item for next time should be a full weekend ban on commercial activity

**10. Discussion of Council members' term ending and potential future voting members (Non-Action Item)**

Chair Neilson noted Member Hanagami put in his resignation for representative of commercial operators.

Aunty Rocky inquired when are the terms up and how many are open.

Chair Neilson noted that there are four up next year.

Member Lemus said HIMB will have a new person to represent them next time as a new director will be appointed soon.

Cedric Bertelmann could potentially occupy the fishing panel.

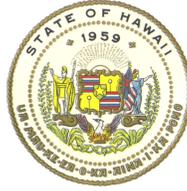
Member Tanaka said that OHA is going through a transition so not sure if he will continue his roll on the council.

**11. Scheduling of next Council Meeting**

Dec 5<sup>th</sup>, 2019 at 6pm at the Civic Club

Chair Neilson shared a map of DAR monitoring sites in the bay.

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

TO: BRIAN NEILSON, KANEOHE BAY COUNCIL CHAIR

FROM: ALEX MCBARNET, ACTING SUPERVISOR WINDWARD, DLNR/DOCARE

RE: KANEOHE BAY COUNCIL MEETING 10-28-19

Dear Chair Neilson and council members,

Please accept this written testimony for the October 28th, 2019 Kaneohe Bay council meeting.

Brief background: The State of Hawaii, Dept. of Land & Natural Resources (DLNR), Division of Conservation and Resources Enforcement (DOCARE), Windward Oahu District extends from Waimanalo to Kahuku and three miles out to sea. Currently, one acting supervisor and three field officers staff this district.

Recent concerns regarding commercial activities within Kaneohe Bay are being addressed. A complaint was made against Kama'aina Care for such alleged violations. Kama'aina Care dba Holokai Kayak has a DLNR lease for Heeia State park.

A Cease & Desist order was issued to said business from the Board of Land & Natural Resources dated 09-13-19 c/o Mr. Ray Sanborn.

I was personally assigned to follow up and investigate compliance with said order. 10-18-19, I conducted an on-site inspection at Heeia State Park and a field interview of Ray Sanborn. No illegal commercial activities were observed or advertised. Mr. Sanborn stated he received the cease and desist order and has been fully compliant. Kayaks continue to be used from stated business, however, no commercial compensation was observed. If any further evidence of said violation arises please contact DLNR/DOCARE.

Within the past several months over 6,000 feet of illegal fishing lay net has been recovered by DOCARE at Kaneohe Bay, and several suspects have been cited for lay net violations. Three illegal "sandbar" commercial tours have been cited and are pending court action. Illegal fishing during off hours continues to be a main concern for the Windward District.

DOCARE will be starting its first academy at the end of the year. More information for the council to follow at next meeting.

This report is respectfully submitted,

# Division of Aquatic Resources Kāneʻohe Bay Surveys 2019



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44 43

38

41 40 29 31 30 28 27 26

24 23 22 20 19

16 15 14 12 10 9

-  Benthic Habitat Monitoring
-  Long-term Invasive Algae Monitoring
-  Fish and Invertebrate Monitoring
-  Coral Restoration Plots

0 0.5 1 Miles