

Kāneʻohe Bay Regional Council Meeting

Agenda

June 22, 2023

6:00 PM-8:00 PM

Online or call-in via ZOOM

(Zoom info listed below)

or

In-person at:

Kāneʻohe Atrium Building

46-004 Kawa St., Ste. 104

Kāneʻohe, HI 96744

6:00PM-8:00PM

1. Opening (Non-Action Item)

Brian Neilson –DLNR DAR, Chairperson

Clifford Loo – Kahaluʻu Neighborhood Board (voting member)

Liko Kaluhiwa – Kāneʻohe Boating Association (voting member)

Sylvia Hussey – OHA (voting member (voting member)

Fred Reppun – HIMB, Heʻeia NERR (voting member)

Joe Pickard – Commercial Boaters (voting member)

Elena Bryant – Kāneʻohe Neighborhood Board (voting member)

Cedric Bertelmann – Kāneʻohe Bay Fishing (voting member)

Rocky Kaluhiwa – Koʻolaupoko Hawaiian Civic Club

Kristi Kaluhiwa - Koʻolaupoko Hawaiian Civic Club

Josh Hekekie – Office of Planning

Casey Ching – Heʻeia NERR

Trevor Johannsen – DLNR DAR

Kirk Deitschman – DLNR DOCARE

Eric Moennich

Ron Tubbs

Jessica Jimenez - MCBH

2. Meeting ground rules (Non-Action Item)

Chair Neilson reviewed ground rules with the group.

3. Approval of June 22, 2023 Agenda (Action Item)

Member Hussey moved to approve the agenda. Member Bryant seconded. All were in favor.

4. Approval of Council minutes of the May 3, 2023 meetings (Action Item)

Member Bryant moved to approve the minutes. Member Bertelmann seconded. All were in favor.

5. Approval of Council letter to Chair Dawn Chang strongly urging the Department of Land and Natural Resources to act to permanently end the commercial harvesting of reef wildlife for the aquarium pet trade in the State of Hawaiʻi. Proposed letter posted below agenda (Action Item)

Member Bryant provided background information leading to this agenda item. A previous resolution was passed by KBRC regarding aquarium collection. SB505 did not pass by Senator Awa's vote. This letter is a way to further spur action as a council and community to end aquarium trade. The effort brings together multiple neighborhood boards, civic clubs, and organizations in Kāneʻohe Bay, taking into account that exclusion of one fishery puts added pressure on neighboring areas. The letter calls to DLNR, specifically Chairperson Dawn Chang, to take action against aquarium collection.

Member Hussey thanked Member Bryant for drafting the letter, adding that the background of the issue and ask from DLNR is evident in the document. She suggested adding a letterhead identifying KBRC and some language offering KBRC's consulting assistance regarding any Kāneʻohe rule-making. Member Bryant supported the language-adding suggestion and volunteered to add that to the document. Chair Neilson volunteered to add something that makes the letter identifiable from KBRC, but suggested KBRC come up with a plan to put together a letterhead and/or logo for future use. Aunty Rocky Kaluhiwa supported the creation of a letterhead for KBRC. Member Hussey suggested involving the charter schools to help come up with a design from the community-perspective. Member Reppun volunteered to look into it with some of the schools he works closely with and Chair Neilson volunteered to work with Member Reppun to come up with something long-term.

Member Reppun inquired about a citation for a sentence in the last paragraph emphasizing how Oʻahu's reefs have been depleted by collectors. Member Bryant agreed to look for the report, forward it to the council, and add a footnote in the letter for the citation. Aunty Rocky Kaluhiwa added that she had a conversation with Rob Toonen from the Hawaii Institute of Marine Biology, who said fish populations are depleting drastically in Kāneʻohe Bay. Member Reppun volunteered to speak with Rob Toonen and others at HIMB to gather more information from his side, but asked if the group wants to wait for these conversations to take place or move forward with the letter. Member Bryant responded that she would be willing to take out the reference or amend the statement and if KBRC were to wait, she would want to schedule another meeting in short order. She deferred to Chair Neilson, to which Chair Neilson deferred to the council to avoid perceived manipulation or advisement on the process if rules were to move forward under DAR.

Chair Neilson suggested an amendment adding cc to the Governors's office. Member Bryant agreed. Aunty Rocky Kaluhiwa also suggested a cc to the State Senate, particularly the Water/Land and Agriculture committees.

Chair Neilson invited others to comment.

Ron Tubbs introduced himself as a researcher and aquarium fishermen prior to the ban of the aquarium trade. He shared the following thoughts about the letter:

- Disagreement with Member Bryant (referring to her occupation as an Earth Justice Lawyer) when she stated that one Senator was responsible for SB505 not being approved - several committees were present in the hearing and the overall vote was in opposition.
- Many scientists, researchers, and DLNR employees were in support of the fishery due to proof that the practice was sustainable from 20 years of fish counts from West Hawai'i Island – the proposed letter is not based on science or proper information and that many researchers would agree
- People often try to pass bills without proper information and elaborated that Earth Justice got an injunction against the aquarium fishery that was unfair, unjust, and not based on science.
- Inaccurate statements in the letter, such as "90% of the fish gone were taken for aquarium purposes"

- This issue is beyond the scope of KBRC, who is entrusted with designing a plan for Kāneʻohe Bay, but doesn't have the background or knowledge regarding the whole state.
- He loves the bay, but there are lots of issues that need to be addressed. He cannot think of a reason to give up Kāneʻohe Bay aquarium fishing, but the kūpuna of the area are biased. He agrees that Hawaiians deserve reparations and considerations, but does not agree with closing a sustainable fishery for prejudicial reasons and not based in science.
- Appreciation for every board member, but does not think it will hold water with the leg or the Governor.
- KBRC should do the research about what is being studied, including the fish count studies done by Bill Walsh, proving the fishery is sustainable in West Hawaiʻi and even highly prized yellow tangs are not affected. The fishery is disproven to affect corals or algae growth.
- The letter is based on bias and not science.

Eric Moennich introduced himself and expanded on Ron Tubbs' testimony by reiterating that KBRC should stick to Kāneʻohe Bay-related issues. He suggested the letter include references and data, specific to Kāneʻohe Bay. He added that the aquarium fishery is not just mainland folks, but local fishers that live and work here and that mainland organizations have stepped in to help with costs of work such as the EIS. He also added that it is premature to ban the issue while it is still being studied. If the study shows that culturally, it is not acceptable to catch aquarium fish in Kāneʻohe Bay, he suggested it be made illegal or banned only within Kāneʻohe Bay.

Aunty Rocky Kaluhiwa voiced that her judgement is not based on her culture, but about being present in Kāneʻohe Bay week after week. She shared that her glass-bottom boats have seen fish depletion and reiterated that Rob Toonen, and HIMB scientist, agrees. Per SB505, she added that it was a tie between two committees, with Senator Awa breaking the tie with his vote and going against the community and many civic clubs along the coastline that supported the bill. She added that the justification to lift the ban included mostly mainland people, with 4-5 from Hawaiʻi and over 100 from the mainland. She also shared that she recently went to a hearing with DLNR regarding a size limit for kole fishing, where aquarium fishers were proposed to get a reduced size restriction for kole fishing. She elaborated that local fishers getting fined for sizes that aquarium fishers are allowed to take goes against the culture.

Member Bryant clarified her role as a KBRC voting member, and not an Earth Justice Attorney in this meeting. She also clarified that she did not say one Senator voted no, but that it was Senator Awa's vote that killed the bill. She elaborated that it was unexpected for the community, given that he represents us, who are his constituents in his district, who have supported this bill and he did not vote with his community. Regarding the science, she responded that DLNR has not accepted an EIS for Oʻahu, but rejected it due to flawed analysis. The West Hawaiʻi EIS was also first rejected, then submitted a second time with missing information, but passed on a technicality due to the DLNR decision-making processes. She added that science and analysis was lacking in the EIS and disagreed that the science should be accepted. She shared that DLNR is mandated to protect natural resources for public trust purposes, so it is not unconstitutional or prejudiced for DLNR to uphold mandates to do what they need to do to protect resources. KBRC are advocates for Kāneʻohe Bay, with the prerogative to weigh in on how resources are managed. She added that aquarium fishing is inconsistent with community and cultural values and priorities and not a good use of public trust resources. She volunteered to address Eric Moennich's concerns by changing the letter to ask for Kāneʻohe Bay to be exempted from aquarium fishing, acknowledging that exempting one area could put added pressure on our neighbors and does not entirely solve the problem. She added that KBRC has the duty to advocate for the protection, stewardship, and management of resources and should request DLNR to look into a state-wide ban, but can change the letter to specify Kāneʻohe.

Member Bertelmann supported the change and that the focus should be on Kāneʻohe Bay and not statewide. Member Bryant volunteered to change the letter to stress Kāneʻohe Bay should be exempt, while reiterating that it could pose a problem for other communities. She added that to manage resources holistically and collectively, it would be good to ask DLNR to consider a statewide ban. Member Reppun added that researchers at HIMB talk about connectivity of fisheries in Waimanalo, Kailua, and Koʻolauloa, so it is relevant to address that collection could be shifted to other areas.

Ron Tubbs provided additional background on the aquarium fishery. He stated that originally starting at 225 Oʻahu permits with approximately 80 divers in 2017, they now have 15 divers with heavy restrictions. He added that the environmental review passed in West Hawaiʻi passed, showing they were taking much less fish and previous data and studies show that the previous state of the fishery was sustainable. He disagreed that if Kāneʻohe Bay is given up, aquarium fishing will have any impacts on other areas of Oʻahu. He stated that other issues such as runoff and coral bleaching are reasons to protect the bays and estuaries, but that there are many fish replenishing the bay just outside of its boundaries. He added that aquarium fishers never catch near the deep corals and always leave the big fish to breed and repopulate, creating a highly sustainable and highly profitable fishery. He accused Earth Justice for receiving money from rich tourist groups and resorts and that small local groups are feeding misinformation to the public. He added that there are no declines and no increases in the amount of fish from 2017, because fish are supported by the food and habitat so there can only be so many fish at a time and when some are taken, others will move in. He shared that they use small hand nets, only scoop the fish they need, rotate through areas, and never break the corals. He added that they have had bag limits and size limits for many years, leave all the breeders, and have no bycatch, so if the fish have declined, it is for a different reason.

Member Hussey reminded the group of the ground rules stated by Chair Neilson, that participation should stay on the topic at hand and avoid personal comments. She also shared that related to the letter mentioning the constitution about coral reefs being public trust resources, that the aquarium fishing practice is exploitive as well as extractive and is not consistent with T&C (Traditional and Customary) practices. As the OHA representative, she stated her support that DLNR has the responsibility to keep resources with public trust.

Aunty Rocky Kaluhiwa shared that she took a group of kids out on the glass bottom boat and did not see any fish. She stated that they are not just a small group saying this, but Kāneʻohe, Kailua, Waimanalo, Kahaluʻu, and Koʻolauloa neighborhood boards all supported the ban, along with many civic clubs. Ron Tubbs replied that the diesel engine on the boat going over the same reefs and areas would deter fish, similar to how fish came back to Hanauma Bay when less people were present during covid.

Member Reppun shared that biological sustainability of fish populations shouldn't be the only criteria for making decisions on this issue. The letter brings up many cultural concerns. He added that most of the KBRC position on the issue is based on cultural concerns, which he supports. He brought up that it is difficult to apply lessons from West Hawaiʻi to Kāneʻohe Bay, since they are different areas. He asked Chair Neilson if there are stock assessments for Kāneʻohe Bay or the windward side, to pursue the question of biological sustainability of the fishery, while adding that even though researchers at HIMB would be willing to do these types of studies, it is not the main criteria or focus of the letter. Chair Neilson responded that there was a West Hawaiʻi Regional Fishery Management Area set up to manage and monitor the aquarium trade, but there is not the same level of management for Oʻahu. There are fish surveys done in Kāneʻohe Bay, but they are not specific to aquarium fishing.

Member Bryant acknowledged the different opinions and feelings on all sides. She stated that the Oʻahu EIS is being redone due to a lack of information, and agreed that what is sustainable is different to everyone without a legal definition. She shared appreciation for the comments provided by Ron Tubbs

adding that although he and his circle are being responsible, it is not the case of all collectors proven by the heavy fines DLNR has issued in the past. She added that DLNR is dealing with stressors on the bay including increased commercial activities and tourism, and that Earth Justice is not supported by hotel groups. She restated the intent of this letter, as a community priority with numerous people strongly expressing how the aquarium trade is in violation of their values. To get this moving forward, she volunteered to add a CC to Agriculture/Environment committee, Water/Land committee, and the Governor, in addition to taking out the 90% reference.

Chair Neilson summarized the suggested amendments: Reference or delete the 90% fishery depletion claim, add statement to stress aquarium fishing specific to Kāneʻohe Bay while noting that closure may shift fishing pressure to neighboring areas, and CC'ing the Senate Water/Land, Environment/Ag, and Governor. Aunty Rocky Kaluhiwa suggested adding a comment about a Ka Paʻakai analysis. Member Hussey also supported adding the Ka Paʻakai to support a statewide policy. Member Bryant agreed that the statement would further the argument for not only Kāneʻohe Bay, notwithstanding that KBRC kuleana is here.

Eric Moennich thanked the group for the suggested amendments, but clarified that the amendment he suggested was to have it specific only to Kāneʻohe Bay. He voiced appreciation for comments about why it applies to the whole state, but added that he and his group would not oppose moving forward with just Kāneʻohe Bay and would heavily oppose statewide regulation. Member Bryant responded that KBRC is advising in nature and cannot move forward with any rules. She added that any rule-making through DLNR would include a process for public participation and feedback. Eric Moennich clarified that if the letter suggests a statewide shutdown, he and his group will be opposing the letter. He reiterated that a Kāneʻohe-specific letter would not be opposed. He speaks for 15 potential applicants to be aquarium collectors on Oʻahu.

Member Hussey clarified that her comments were not for a broad ban, but in regards to references for Kāneʻohe Bay and statewide. She voiced understanding that KBRC kuleana is Kāneʻohe Bay.

Chair Neilson explained the rule-making pathways, including that a decision would go to BLNR for rules, or permits would go through BLNR, or certain areas could be excluded for collected. Member Bryant explained that the letter is written to ask DLNR to enact administrative rules statewide, but if that fails, KBRC could consider making it specific to Kāneʻohe Bay.

Member Pickard referenced the 1990 legislative session, including a law that's an amended statute that all rules adopted by DLNR in regard to Kāneʻohe Bay are drafted in consultation with KBRC. He suggested adding that "ACT 4 the 1998 legislative session, the dept. shall consult with KBRC when creating rules for AQ fishing in the Bay."

Member Loo suggested we do Kāneʻohe Bay first, then spread out the ask to Statewide. Member Reppun shared that whether they call for statewide or Kāneʻohe Bay, it would be good to add language about the populations of reef fish in Kāneʻohe Bay being highly connected to the rest of the Koʻolau areas as well as the South Shore and even Molokaʻi, so management should be on a larger scale. Member Reppun offered to send Member Bryant references.

Member Hussey suggested an amendment requesting DLNR "to take action to enact administrative rules including prohibition of aquarium fishing in Kāneʻohe Bay including implications statewide" but also with rules that are equitable and tailored to each situation to look at things holistically, but state our immediate concern of Kāneʻohe Bay.

Member Bryant shared that she made changes to two paragraphs encompassing everything shared. Member Bryant moved to approve the letter as is taking out the reference to 90%, cc'ing to Governor and aforementioned Senate Committee, include last paragraph to ask administrative rules be adopted to DLNR's constitutional mandates to Ka Pa'akai, inviting DLNR to consult with council on any rulemaking decisions, adding Member Pickard's reference, and adding Member Hussey's amendment.

Member Pickard Seconded. All were in favor. Motion Passed.

Chair Neilson volunteered to work with Member Bryant to finalize the amendemtns, post on the KBRC website, and send it out to appropriate folks.

6. Follow-up questions from May 3, 2023 Meeting (Non-Action Item)

Chair Neilson shared that his questions for DOBOR did not receive a response. He requested Member Bryant review the outstanding data and information requests.

Member Bryant shared the following outstanding questions:

- Question regarding the sewage spill event at He'eia Kea Pier last March/April. The Council requests info about the type of sewage system at the Pier, any plans to upgrade/avoid spills in the future?
- Question about the sunken canoe near the south boat ramp – any plans to remove the canoe?
- Question about kite surfers going across the sand bar and slow wake zone – does DOBOR have any information on this?
- Question about a new barge launched in the Bay on May 3 – is the barge permitted? Is the size permitted?

7. Announcements (Non-Action Item)

Aunty Rocky Kaluhiwa brought up that it is difficult for Chair Neilson to address issues such as the aquarium trade and suggested the Chair be taking turns with others in the community. Chair Neilson agreed to review the Statute which names the DAR administrator as the Chair, but approved of the suggestion and proposed it be discussed in the next legislative session. Member Pickard recalled that Act 317 of 1993 legislative session addressed the make-up of the council. Member Neilson responded that it was amended in 2014, but that he would put it as an agenda item for the next meeting.

Member Bertelmann shared that a mooring boat outside of He'eia State Park was confiscated by DOBOR, but it sank before they could remove it, causing oil on the shoreline and at the fishpond. Chair Neilson responded that he followed up with DOBOR when he heard and that emergency procurement rules don't apply, so they have to do a longer salvage bid process, and he has not been updated about since.

Member Loo shared that a large boat has been sitting in Kahalu'u regional park for about a month. Chair Neilson volunteered to ask DOBOR about it.

Aunty Rocky Kaluhiwa brought up that a boat was coming into the lagoon at Moku o Lo'e while scientists were in the water and they almost hit the pier. She suggested putting out more signage around Moku o Lo'e.

Member Hussey announced that her last day is next week Friday, so she will work with Chair Neilson to determine the next KBRC OHA seat. She would like to still participate as a community member. Chair Neilson thanked her for her hard work as a KBRC member.

Member Pickard suggested adding HB1134 that recently passed to the next agenda.

Jessica Jimenez shared a few updates from MCBH. They underwent a change of command with Jeremy Baven, who has been going to neighborhood board meetings and getting involved. He couldn't be present tonight, but will try make it to the next one. The MOU started with Paepae o He'eia to do work on restoration on the Nu'upia ponds. The Reefense project has been going on about a month, with them surveying for an artificial reef they're looking to install. MCBH is hosting a canoe regatta on July 16th, working with the community for a fun event. To answer Member Bertelmann's questions from the last meeting, they have 24 pontoons and 10 Boston whalers with no plans or room to expand. This will be Jessica Jimenez's last meeting with Major Jocelyn Mills filling in. Chair Neilson requested Jessica Jimenez connect Jocelyn Mills via email so they can correspond for future meetings.

The next meeting is set for Thursday, August 24th from 6pm-8pm.

8. Adjournment (Action Item)

Member Reppun moved to adjourn. Member Loo seconded. All were in favor.