

Kāne‘ohe Bay Regional Council Meeting

Agenda

January 23, 2024

6:00 PM-8:00 PM

Online or call-in via ZOOM

(Zoom info listed below)

or

In-person at:

Kāne‘ohe Atrium Building

46-004 Kawa St., Ste. 104

Kāne‘ohe, HI 96744

1. Call to Order (Non-Action Item)

6:12PM meeting called to order.

Brian Neilson – DLNR DAR, Chairperson

Liko Kaluhiwa - Kāne‘ohe Bay recreational boating association, Voting member

Elena Bryant - Kāne‘ohe Neighborhood Board Rep, Voting member

Fred Reppun - Hawai‘i Institute of Marine Biology, Voting member

Joe Pickard – Kāne‘ohe Bay commercial operators, Voting member

Cedric Bertelmann - Kāne‘ohe Bay fishing panel, Voting member

Clifford Loo - Kahalu‘u Neighborhood Board Rep, Voting member

Nick Sinchek – Marine Corps Base Hawaii

Josh Hekeka – Office of Planning

Kim Fuller – DLNR DAR

Rocky Kaluhiwa – Ko‘olaupoko Hawaiian Civic Club

Kristi Kaluhiwa - Ko‘olaupoko Hawaiian Civic Club, MCBH

Kate Gonzales – DLNR DAR

Casey Ching – He‘eia NERR

2. Meeting ground rules (Non-Action Item)

Chair Neilson presented ground rules including how voting members will be given the chance to provide comments and/or discussion first, then other participants will be allowed to comment. The “raise hand” tool should be used on zoom, or the DAR representative (Kate Gonzales) at Ko‘olaupoko Hawaiian Civic Club will operate the “raise hand” tool. The meeting should remain respectful and ground rules should be adhered to.

3. Approval of January 23, 2024 Agenda (Action Item)

Member Bryant moved to approve. Member Kaluhiwa seconded. All were in favor. Motion passed.

4. Approval of Council minutes of the November 30, 2023 meetings (Action Item)

Member Reppun moved to approve. Member Pickard seconded. All were in favor. Motion passed.

5. Report from Division of Conservation and Resource Enforcement (DOCARE) on the implementation of Act 232 restricting commercial ocean use activities in Kāne‘ohe Bay

Chair Neilson shared that many members of KBRC provided testimony to this bill before it was passed. This agenda item was to address an inquiry from KBRC about how DOCARE is implementing the new

law. DOCARE is still awaiting guidance from the Attorney General's (AG) office on this matter and requested this agenda item be pushed to the next meeting. As it stands, DOCARE will continue enforcing other restrictions in existence while waiting on further guidance from the AG.

Aunty Rocky Kaluhiwa shared that illegal commercial activity is getting out of hand with many boats congregating at He'eier Pier, even on Sundays when no commercial businesses are supposed to be operating. Kristi Kaluhiwa added that it is obvious when the passengers do not offer to help set up or clean up.

6. Update on reef damage of Navy P-8A aircraft grounding in Kāne' ohe Bay (Non-Action Item)

Brian Neilson introduced Kim Fuller, the DAR O'ahu District Biologist) and DAR lead responding to the damage assessment, to provide an update on actions following the grounding of the aircraft.

Kim Fuller shared the following update regarding the November 20th, 2023 grounding.

- DAR, USFWS, and NOAA got into the water in December 2/3 to begin the impact investigation.
- The impacted area was approx. 4.6 acres, including emergency booms deployed to prevent oil spread – no oil spread occurred.
- Initial assessment is approx. 0.5 acres or less of significant coral damage.
- The team had 6-8 hours in the water to prioritize emergency restoration of uprighting coral colonies that were overturned. Navy divers assisted with larger coral colonies requiring higher levels of dive protocols.
- The team hopes to return to the site over the next few months, but are limited to weekends due to the high activity of the MCBH airstrip restricting accessibility to the area.
- DAR is coordinating with natural resource managers at MCBH for restoration efforts.
- Response restrictions include time-limited access to the site, having to coordinate across multiple agencies, capacity issues, and working around national security operations of the airfield.
- DAR will get back into the water to do more in-depth data collection soon.
- Kim Fuller pulled up the map to show where the impact occurred. A yellow-dotted area at the end of the runway was surveyed.
- Photos of before and after pictures of overturned coral colonies were shown, including photos of how they look once uprighted again.
- The damage ranged from broken fingers of coral colonies to overturned colonies.
- The substrate is difficult, so even though epoxy was brought to reattach corals, it was not conducive to properly reattach them. They hope the low-energy environment will prevent the corals from overturning again once they were returned to their upright position.

Kristi Kaluhiwa suggested that if DAR has a hard time getting in contact with folks at MCBH, she can help to expedite the process of getting into the water again. Kim Fuller responded that she is in touch with Lance and Julie, who suggested that weekends are good for MCBH, but coordinating with other partner agencies (multiple boats, multiple agencies) with limited capacity is the difficult part.

Member Bryant thanked Kim Fuller for the report and asked if any additional restoration work needs to be done based on the assessment thus far. Kim Fuller responded that emergency restoration is mostly returning overturned colonies, of which they have overturned 180 colonies greater than 20cm and these metrics will be entered into the report. 10 divers were part of that effort doing the emergency restoration they could do.

Member Reppun asked if the smaller pieces of broken coral could be repurposed or relocated to a facility that could rehab them, such as HIMB. He also asked what additional resources would be needed, such as funding or space. Kim Fuller responded that she spoke with Kira Hughes and Rob Toonen at HIMB and

both offered assistance, but neither wanted source material. In addition, the Hawai'i Coral Restoration Nursery did not have the space to take on additional coral fragments. She added that there is a need to assess the effort vs. results when it comes to coral restoration from large grounding events. They wanted to prioritize the large colonies first and implement immediate action of overturning them, which required multiple divers at a time. However, they could be interested in discussing further options, such as pursuing funding, after they reassess.

Aunty Rocky Kaluhiwa commended DLNR for taking action on the day of the crash. She shared that she was at HIMB for a meeting and asked to do a blessing the day they retrieved the plane. She added that building bridges with HIMB would be good by seeing if there is somewhere we can take the corals to be reproduced again.

Member Reppun addressed the minutes from the previous meeting and requested an update about seeking compensation for the damage, where the compensation would go, and the overall timeline.

Chair Neilson thanked Aunty Rocky Kaluhiwa for her comments and added that DOCARE was also present the entire day, so it was a joint DLNR response to the event. To address Member Reppun's question, he added that coral and live rock are protected by state law even in areas under MCBH jurisdiction. Living resources fall under a public trust, and DAR is trying to complete the assessment, but the priority has been emergency restoration over data collection. As soon as the site is adequately assessed, it will be put into a report shared with the Navy and broader public, but DAR is hoping they can come to a resolution with the Navy and in consultation with the AG so the site is properly mitigated to allow for its best chance of recovery.

Aunty Rocky Kaluhiwa asked if there was not much damage. Chair Neilson responded that the damage seemed to be more isolated instead of a massive hole in the reef, and they removed the plane in a unique way that reduces the damage during removal. Kim Fuller added that the damage was nothing like a large shipping container grounding or the Honolulu Harbor dredging accident. Chair Neilson added that polarized rubble moving around in high wave energy environments cause a lot of damage, so in this case, low wave energy caused less damage.

Aunty Rocky Kaluhiwa added that she liked watching how everyone partnered together, DLNR and the military. She asked what the compensation will be spent on. Chair Neilson responded that they are continuing to work on the assessment and reiterated that restoring the site is their first priority. DAR will look into mitigation or restoration to prevent further damages, at which point they will ask KBRC for input on what activities are needed. Regarding compensation, they will cross that bridge when they get to it.

7. Approval of Letter to the Department of Land and Natural Resources encouraging the Department to seek compensation from the Navy for damages to the reef by the downed plane (Action Item)

Regarding the letter, Member Bryant suggested including activities that could be covered by this compensation, including additional staff hours until the assessment is done. Though the damage was not as bad as expected, she requested that the letter include the extent to which the Navy could help to fund community initiatives on base, such as Nu'upia Ponds.

Chair Neilson asked if KBRC would like to see the damage assessment before the letter is drafted. Member Bryant responded yes, so they could have a better sense of what the ask would be in this letter.

She added that last November, there was concern DLNR wasn't going to pursue damages. If that is no longer a concern, it is better to wait to see the damage assessment.

Kristi Kaluhiwa asked if the damage assessment is coming from DLNR or the Navy or both. Chair Neilson responded that the DAR damage assessment is coming from DAR, but data will be collected from multiple agencies. If the Navy wants to put out their own assessment or contribute to DAR's, that could be discussed. Other damage events have hired their own consulting company to conduct assessments.

Kristi Kaluhiwa asked if KBRC could ask the Navy to provide an assessment for KBRC. Chair Neilson responded that if the Navy is doing an assessment, KBRC could request it be presented. Kim Fuller added that USFWS is also happy to conduct an assessment. Navy and DAR were discussing a joint report about restoration efforts, but USFWS and DAR feel that the natural resource agencies should be the ones taking the data for the assessment because Navy divers collecting data could be a conflict of interest. Chair Neilson added that any enforcement or settlement needs to go through BLNR, so any action would go through a community process for people to testify on a BLNR decision.

Member Bryant suggested this action item be deferred to the next meeting's agenda.

8. Update from the Division of Aquatic Resources in pursuing Ch. 91 Rule Making to ban commercial aquarium harvest statewide (Non-Action Item)

Chair Neilson shared that in December 2023, Chair Chang received a request for DLNR to initiate Ch. 91 rulemaking for a ban on aquarium fishing. It was brought to BLNR on December 8th, and BLNR approved with comments. DAR is still waiting for the minutes to see the comments on the petition. A contested case request came in later that day, but could be withdrawn or denied by BLNR. DAR is still waiting on the contested case to be resolved before moving forward. By request of KBRC members, Chair Neilson offered to send the written contested case request to KBRC and the Ko'olaupoko Hawaiian Civic Club.

Member Reppun asked about the contested case procedure. Chair Neilson responded that everyone has a right to contest a case, but there is a criteria it must meet to be accepted by BLNR. Usually, it is done orally at the BLNR meeting with BLNR voting on the spot to accept or deny it, but this one was submitted via email in addition to orally (where Member Bryant heard it). BLNR will look at the criteria and make the call on whether to accept or deny the contested case, but it could also be withdrawn. Member Bryant added that it was almost at the end of the day, after the meeting went very late, and well after the agenda item was complete.

Aunty Rocky Kaluhiwa added that an article by Ed Case talks about a legislative bill to protect ornamental reef fish in Hawai'i and that it would be good for KBRC to support. Lisa Kitagawa may also be putting something in for Kāne'ōhe Bay.

Chair Neilson asked if the permitted interaction group for the legislative session was approved during the last meeting. Member Bryant responded that the PIG was approved. She added that during the last session, a weekly standing meeting was held and canceled as needed, but it is unclear how this process changes for a PIG. Chair Neilson clarified that as long as the voting members are kept to 3 (subject to sunshine law), the PIG can meet and submit testimony on behalf of the council since KBRC has authorized Member Bryant as the legislative chair to provide testimony on all Kāne'ōhe Bay related bills. Member Bryant offered to keep any interested council members or community members in the loop.

Aunty Rocky Kaluhiwa suggested that more people show up to support KBRC-related bills at the capitol.

Member Bryant asked about the Chapter 91 process. Chair Neilson explained that proposed rules are taken to BLNR for approval to go to public hearing. During the BLNR meeting, folks can provide testimony regarding the rule proposals and BLNR decides whether to approve or amend the proposed rules for public hearing. If approved, they go through public hearing to receive in-person and online testimony. The rules are then taken back to BLNR with summarized testimony, and BLNR will amend the rules based on testimony or approve the rules. If approved, the Governor will sign it into law. Sometimes the Small Business Review Board will need to review the rule if small businesses could be affected.

Member Bryant asked how long the process will be once the contested case is resolved. Chair Neilson estimated that the entire process could take 9 months or longer. Things tend to stall with the legislative session and with the Governor signature. He added that there is no aquarium fishing in the state and since BLNR approved the petition, he is pretty sure they would not approve any aquarium fishing permits before the rulemaking petition is handled.

Member Reppun shared that it can be very time-sensitive as an interested party in a contested case. He asked that once the request is made, DLNR keep the community updated due to tight timeframes in joining the contested case as a party. Chair Neilson agreed to leave this item on the agenda to keep KBRC updated.

9. Community concerns (Non-Action Item)

Aunty Rocky Kaluhiwa shared that Lisa Kitagawa will reintroduce the aquarium fishing bill for Kāneʻohe Bay. Member Bryant added that she will talk with her and see if there is anything else KBRC should weigh in on.

Chair Neilson shared that DLNR had talk story sessions at WCC and many KBRC members attended. Another session at Keʻehi only had 25% in attendance, so he applauded the Kāneʻohe community and the windward side for being active in natural resource issues.

Aunty Rocky Kaluhiwa brought up concerns with Heʻeia Pier, including the bathrooms and parts of the pier that are falling through. Chair Neilson responded that he saw a DLNR news release that the sewage system at Heʻeia is being upgraded, but was unsure about improvements to the actual facilities. Aunty Rocky Kaluhiwa also added concerns about the houseless people living near Heʻeia Kea for a few years now.

Kristi Kaluhiwa asked the group about a boat on the reef that she saw on a social media site. Member Bertelmann responded that one of the commercial boats were stuck on the reef from the tide. It was one of the white catamarans that go into the reef outside of Shreider's area. Chair Neilson asked if anyone could share additional information, the DAR dive team will check out the damage, but DAR did not receive any reports of that. Member Bertelmann added that they have a permit to moor on, but during the low tide, they can't go over the reef. Member Reppun added that the south winds might have been a factor.

Member Bertelmann shared that last week, there was Christmas tree burning at the sandbar. There were about 4 trees that could be seen. DLNR DOCARE came, but the fire was out by the time they arrived. A few nights later, the same boats were doing the tree burning. One of the boats came from the yacht club, one came from Heʻeia Kea but did not have any trees on it. There were approx.. 4-5 boats, and the main vessel stayed out for a few days.

Member Pickard added that it is a community concern and brought up that he chatted with Kawika Winter about putting cameras on posts near the ramps to document some harbor activity. He asked if a formal request should be made to DOBOR to put them up. Casey Ching responded that DOBOR has cameras ready to install, but just needs help getting them up where they can't be knocked down. She added that the He'eia NERR would be happy to provide funding for any additional cameras needed, beyond the ones DOBOR has.

Member Loo asked about fumigation in Kāne'ohe Bay. Aunty Rocky Kaluhiwa added that there should be a law where no fumigation can be done on the water to protect Kāne'ohe Bay. She requested an agenda item be added to discuss it. Member Loo added that fumigation is done at nighttime when nobody is around and the Harbor Master is off duty, but Scot Matayoshi witnessed it and was upset. Member Reppun requested to put on the next agenda that KBRC look back at the previous legislative session and see which bills are related to fumigation.

Member Reppun shared that another community concern are fire ants and the coconut rhinoceros beetle. At the city level, 23-308-CD1 is scheduled to be heard tomorrow at 10am, which urges the city to provide more support to invasive species control. The work has largely fallen to the state, but Kāne'ohe could use more support at the city level for both land and sea. Department of Agriculture is also trying to get the tools it needs to address these issues, with HAR Chapter 72 adding authority to stop sale of plants and nursery plants infested with harmful pests. Member Pickard added that the coconut rhinoceros beetle has devastated coconut trees on the west side, emphasizing how horrible it is to see.

10. Announcements (Non-Action Item)

Aunty Rocky Kaluhiwa suggested KBRC meet more frequently during the legislative session. Member Reppun added that second Tuesday of each month was decided during the previous meeting.

Chair Neilson offered February 13th.

Member Bryant also added that March 12th and April 9th should also be set dates.

Chair Neilson summarized that the next meeting will have a legislative agenda item to go through any relevant bills. Additional agenda items should be emailed.

Member Bryant reminded that the written contested case request should be emailed to the group.

11. Adjournment (Action Item)

Member Bryant moved to adjourn. Member Pickard seconded. All were in favor. Meeting adjourned.