

Kāneʻohe Bay Regional Council Meeting

Agenda

August 13, 2024

6:00 PM-8:00 PM

Online or call-in via ZOOM

(Zoom info listed below)

or

In-person at:

The Key Project, RM 105

47-200 Waihee Rd, Kaneohe, HI 96744

1. Call to Order (Non-Action Item)

Brian Neilson – DLNR DAR, Chairperson (nonvoting member)

Liko Kaluhiwa – Kāneʻohe Boating Association (voting member)

Clifford Loo - Kahaluʻu Neighborhood Board (voting member)

Joe Pickard - Commercial Boaters (voting member)

Cedric Bertelmann - Kāneʻohe Bay Fishing (voting member)

Fred Reppun – HIMB (voting member)

Elena Bryant – Legislative Chair of KBRC and Kāneʻohe Neighborhood Board (voting member)

Rocky Kaluhiwa – Koʻolaupoko Hawaiian Civic Club

Kimberly Fuller – DLNR DAR

Josh Hekeka – Office of Planning

Casey Ching – Heʻeia NERR

Kirk Deitschman – DLNR DOCARE Makai Watch Coordinator

Meeting called to order at 6:05 pm

2. Meeting ground rules (Non-Action Item)

Chair Neilson reviewed the ground rules for the meeting.

3. Approval of August 13, 2024 Agenda (Action Item)

Member Pickard moved to accept the agenda. Member Loo seconded. All were in favor. Motion passed.

4. Approval of Council minutes of the March 12, 2024 meetings (Action Item)

Member Reppun moved to approve the minutes. Member Bryant seconded. All were in favor. Motion passed.

5. Approval of Council minutes of the April 9, 2024 meetings (Action Item)

Member Reppun moved to approve the minutes. Member Bryant seconded. All were in favor. Motion passed.

6. Approval of Council minutes of May 14, 2024 meeting (Action Item)

Agenda item deferred to next meeting to allow KBRC time to review.

7. Update on reef damage of Navy P-8A aircraft grounding in Kāneʻohe Bay (Non-Action Item)

Chair Neilson introduced Kimberly Fuller, DAR District Biologist and lead on the response, to provide an update.

Kimberly Fuller shared a few slides with KBRC to present the following:

- Reponse looked at live rock and coral differences between impact and reference sites
- Preliminary results show more attached corals in reference areas and loose corals in impact areas
- Have projected numbers of damaged corals by species and size and m² of live rock
- The draft report completed internal review and is now undergoing review by the partner agencies including select USFWS and NOAA staff
- They hope to release details before the end of August 2024, at which point it will be shared with the US Navy, partner agencies, and the public

Aunty Rocky Kaluhiwa spoke of a recent situation where a boat was stuck on the reef in front of Heʻeia Pier and needed to be dragged off by another fishing boat. She suggested DAR look into damage to that reef from the grounding. Kim Fuller offered to show her a map allowing Aunty Rocky Kaluhiwa to identify the reef where the damage took place for DAR to investigate further. Aunty Rocky Kaluhiwa and Member Bertelmann identified the reef in front of the deli by the fuel pump, 50 yards towards Kualoa along that reef.

Member Bryant asked about next steps. Kim Fuller explained that in-place restoration was their primary goal – overturning corals because it was difficult to relocate loose corals offsite and there was no suitable environment for reattachment onsite. Given the capacity and resources available to DAR, they surveyed the initial scar delineation and did the quantification and assessments they could dedicating 270 manpower hours to the project.

Member Bryant asked if DAR will be pursuing compensation for the damages. Chair Neilson responded that the assessment is still under review, but will be shared with the Navy to start the conversation about compensation. Chair Neilson added that BLNR will look at the entire situation, the grounding, response, MCBH/Navy participation, etc. BLNR will consider all these factors when deciding how to handle reimbursement/compensation for damages.

Kristi Kaluhiwa asked if DAR is still working with MCBH to get access to the survey area when the flight line is not active. Kim Fuller responded that all surveys needed to complete the assessment were finished in March. The QA/QC and data analysis was done after that, and final reviews are ongoing. Kristi Kaluhiwa asked who was involved in the review process. Kim Fuller

replied that she consulted a statistician, and USFWS advised on the technical development of a survey, with select staff at USFWS and NOAA currently reviewing the report through the end of the week. Kristi Kaluhiwa inquired if MCBH provided any content to the report. Kim Fuller responded that MCBH gave the team access to the site and the Navy contributed manpower to restoration, but MCBH will be included in the public release of the report to not delay the release date further.

Regarding restoration response, Kim Fuller shared that during follow-up surveys, they still overturned around 12 colonies. 180 were overturned during the initial effort. Signs of recovery were observed, with coral tissue growth over previously exposed skeleton from breakage.

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 an update on the petition.

- Passed by BLNR, but under advisement from Deputy AG (Attorney General) that aquarium collection can only be regulated, not banned.
- DAR met with petitioners to discuss how to align it with the Deputy AG
- Could not decide on a solution that met the goals of the petition, so currently on hold
- Waiting to see from petitioners how to move forward

On August 23rd, DAR will be taking the West Hawaii Aquarium Collection Permit to BLNR to request authorization of 7 permits to Aquarium collectors who complied with HEPA. The permit includes a white list of 8 species, total allowable catch, no-take areas, and a number of other conditions.

Member Pickard questioned the AG's interpretation that the State cannot ban aquarium fishing, explaining how certain types of activities associated with fishing, hunting, and marine mammals are already prohibited. He added that certain places prohibit taking of any fish, like Hanauma Bay and inquired why this could not be applied to the broader waters of Hawai'i. Chair Neilson responded that although he does not speak for the AG, DAR is authorized to regulate fishing gear, catch, bag limits, seasons, and all types of managed areas, but a statewide ban would require a Statute.

Member Pickard inquired about whether DAR should move forward with permits through BLNR, given that there is strong community support to prohibit commercial aquarium collection. He added that once a permit is issued, they are difficult to revoke, and suggested the issuing of the permits be delayed until a statute can be enacted in the next Legislative session. Chair Neilson responded that DAR will leave it up to BLNR to decide, but the fishers have already completed the EIS, so DAR will be taking it to BLNR.

Kristi Kaluhiwa asked if the EIS includes a cultural component. Chair Neilson elaborated that as part of the HEPA process, an EIS was completed. A cultural assessment was completed as part of the HEPA process. The EIS was accepted by BLNR around 2 years ago, with a split decision 3-3 which defaulted to acceptance. The Ka Pa'akai analysis will also be presented at the BLNR

meeting to address comments from previous BLNR meetings. Legislative Chair Bryant added that the EIS is pending in the Hawai'i Supreme Court.

Legislative Chair Bryant asked for clarification regarding the direction from the AG office and how it was conveyed to BLNR. Her understanding was that rulemaking should proceed in statute. Chair Neilson explained that when the petition was brought to BLNR, they went into an executive session with the AG and were advised there that they cannot ban aquarium fishing, but can regulate the activity. BLNR then came back with an acceptance. The direction may have been in compliance with a statute, but when DAR went back to BLNR for clarification, they were told they can regulate but not ban. No formal opinion has been issued by the AG office. The non-action item to get clarification from BLNR only guided DAR on how to move forward.

Legislative Chair Bryant inquired about DAR's progress. Chair Neilson responded that DAR is ready to bring the package to BLNR, but some petitioners didn't agree with the new rules and did not think it met the goals of the petition, so DAR is waiting to hear back from petitioners how to move forward.

Legislative Chair Bryant asked about the recommended conditions that are being brought to BLNR and about a solution for the enforcement issue. Chair Neilson shared that terms and conditions will be presented to BLNR. For enforcement, DAR collaborated with DOCARE and got their feedback on whether conditions are enforceable. DOCARE would enforce terms and conditions, as well as violations that result in revocation of permits. If any violators are caught, permits are revoked. Other checks and balances include notifying DOCARE before you exit the ocean so they can inspect your catch and on-water documentation of catch. These are other ways to monitor the fishery and enforce terms and conditions.

Legislative Chair Bryant shared that when BLNR was considering Monterey Bay Aquarium's request to harvest, questions and concerns were brought up about resources and ability for DOCARE to enforce. She asked if DOCARE will receive additional allocation of resources to enforce. Chair Neilson responded that there is always a capacity issue for enforcement. He added that there will not be additional capacity, but DOCARE is growing with officers added to Hawai'i Island in the past year. Legislative Chair Bryant voiced concerns that communities are being told something without the resources to back it up.

Aunty Rocky Kaluhiwa asked if Kāne'ohe Bay is still closed to aquarium fishing. Chair Neilson responded that no permitted aquarium fishing is allowed in the State. The only aquarium fishing potentially allowed would be West Hawai'i, going to BLNR on August 23rd. Other aquarium fishers are still doing their HEPA process. Kristi Kaluhiwa asked what time the BLNR meeting is on Friday. Chair Neilson responded that it begins at 9:00am, but its hard to say when the agenda item will be called.

Legislative Chair noted that with the upcoming bill this legislative session to prevent aquarium collection in Kāne'ohe Bay, the Hawai'i Supreme Court EIS appeal, and the contested case on the petition, there are 3 large unknowns about whether permitting can move forward legally. She voiced concern with how West Hawai'i is moving forward, it will become a template for O'ahu. Member Pickard suggested asking for the AG's opinion whether aquarium collection would be

allowed in light of laws which prohibit issuance of commercial permits in Kāneʻohe Bay. Legislative Chair Bryant added that the statute the AG is referring to saying BLNR cannot ban, says “may” not “shall”, where “may” is permissible and “shall” is required. This caused the disagreements with the AG’s interpretation.

Chair Neilson shared that DAR’s interpretation was that the AG’s opinion was related to rule-making. DAR has the ability to ban aquarium collection within Kāneʻohe Bay, similar to Miloliʻi. In terms of statute, it would be easier to produce bill language and ask for a review, instead of asking for an AG opinion. Chair Neilson offered to make the request if there are specific questions, but Kāneʻohe Bay specific bills were flagged because they need language to not be considered special legislation.

Legislative Chair Bryant voiced appreciation and that it could be worked on. She mentioned how in the past meetings it was shared that fishing in Kāneʻohe Bay may impact nearby fisheries, but kuleana is to Kāneʻohe Bay, though we have to be smart about the approach and how our efforts could affect others. Member Reppun offered to go back to consult with HIMB researchers who did the studies, but recollected that the recruitment of fish into Kāneʻohe Bay are from other areas nearby. He was unsure about whether Kāneʻohe Bay seeds other areas, but they are connected.

Member Reppun asked about the statute perspective and rule-making perspective with how permits issued for commercial aquarium collection differentiate from regulation of fish for subsistence. Chair Neilson responded that the statute includes language for aquarium collection, so commercial aquarium collection has language that differentiates it from food harvest. Member Reppun added that we should be cautious about creating a blanket rule that prohibits commercial harvest of food fish, since that is an important industry supported by the community.

Aunty Rocky Kaluhiwa shared that KBRC should have authority of its own. She sees fishers getting fined for fishing under the right size, whereas commercial fishers are able to catch the same thing. Chair Neilson responded that the West Hawaii Fisheries Management Council are not appointed members, this council has more statutory authority.

9. Update on Kāneʻohe Bay Makai Watch Program (Non-Action Item)

Casey Ching shared that Makai Watch is being renamed to Kāneʻohe to Kualoa Makai Watch to honor the 9 ahupuaʻa of Kāneʻohe Bay. Volunteers are only observing and collecting data and educating the public, they have no enforcement authority. Reporting has contributed to 4 illegal commercial use permit letters being issued - warning letters to folks suspected of doing commercial activity without proof of advertising. 2 Cease and Desist letters have been issued - warning letters sent when there is proof of advertising.

10. Community concerns (Non-Action Item)

Member Pickard shared that he was doing a cultural tour with Aunty Rocky and noticed suspects running tours. DOCARE officers were right there and said there wasn’t anything they could do

with no way to prove commercial activity if operators say they're with friends. The new law puts the burden on the operator to demonstrate they are not operating commercially – civil violation. DOCARE was not aware of the new law and wasn't sure if it was enforceable. Member Pickard requested a representative from DOCARE to show up to a meeting to discuss this so KBRC can better communicate to them the things we see and educate folks on the new law. Kirk Deitschman agreed that it was a good idea and asked if the council would send notice to the Chief to request that.

Aunty Rocky Kaluhiwa shared that Representatives Jarrett Keakalole and Scot Matayoshi come to their meetings. Legislators have said they would look into this. She took pictures of boats at Moku o Lo'e on Sundays who are doing illegal businesses. She is frustrated that the boats go into the lagoons and research areas. She asked to meet with Megan Donahue at Moku o Lo'e about the community's concern, but would also like clarification from DOBOR similar to Member Pickard's suggestion.

Member Bertelmann shared that Tanya Borabora (the He'eia Harbor Master) should change her work schedule to Tuesday – Saturday. He suggested KBRC to write to BLNR requesting to change her hours. Chair Neilson agreed to a KBRC request to harbor agent presence on Saturdays. Aunty Rocky Kaluhiwa voiced support for this, with so many concerns from the community about weekend activity in He'eia. Member Reppun agreed with the suggestion to change the Harbor Master's work days.

Member Reppun noted how Member Pickard has requested DOCARE to attend KBRC meetings for two meetings in a row. Member Reppun recalled that a request went to Jason Redulla, DOCARE Chief, and the O'ahu Branch Chief to attend. He asked how to make sure DOCARE is responsive. He asked how best to get DOCARE to respond and attend the meetings. Chair Neilson responded that Chair Chang may help nudge the request to have DOBOR Administrator, Megan Stats, and Chief Redulla join.

Member Loo asked when the last time they checked Waikane Stream for contaminants was, because the water is needed downstream. Member Reppun replied that he does not know how often they check those things. The Navy is supposed to walk the fenceline regularly, but the fenceline is now compromised, if that is an indication of the status of maintenance of the area.

11. Announcements (Non-Action Item)

Kim Fuller shared that a UXO was found offshore, about 1 nautical mile from Kapapa. It was found by a scuba diver recovering a dropped anchor. The Navy ordinance disposal went to confirm 500lb bomb, MK82. Current recommendation is to dispose by detonating in place. DLNR does feel it is a safety hazard, so they have drafted a request to remove the UXO. The preliminary assessment shows surrounding habitat is low rugosity live rock (pavement), 20% coral cover and occasional piles of rubble. DAR will be requesting for it to be removed.

Member Pickard requested adding an agenda item to include possibility of supporting legislation to define commercial tropical fish collection as commercial activities under laws of Kāne'ohe Bay to be prohibited.

Member Reppun shared that the He‘eia NERR applied for funding to support completing the Kāne‘ohe Bay Master Plan Update started several years ago. The funding included a facilitator to support permitted interaction group meetings, gather new people, and bring recommendations from the PIGs to KBRC to vote on whether to incorporate into the master plan. If anyone wants to be involved, contact me or Casey.

Chair Neilson shared that Kama‘āina Kids stopped kayak rentals several months ago, but officially notified DLNR of their request to terminate their lease in January 2025. DLNR and State Parks has made no future decision on future management of the park, but is exploring stewardship options and upkeep of the rental space.

Chair Neilson reviewed council members terms. Member Bertelmann expired in June, Member Kaluhiwa expired in June, and Member Reppun’s expired a year ago. An application link will be emailed to those should they wish to continue. Chair Neilson will notify terms that expire in 2025, to get applications in for the next legislative session, but existing terms can be extended. Member Reppun shared that he applied last year, but a confirmation was never scheduled. Chair Neilson responded that Governor’s office was having trouble with the portal.

KBRC decided on October 15th for the next meeting to review legislative changes.

Aunty Rocky Kaluhiwa suggested that KBRC talk to legislators before the session opens.

Chair Neilson asked about alternative in-person venues to Key Project. DAR has had a hard time getting in touch with WCC. Aunty Rocky Kaluhiwa volunteered to follow up with Ardis Eschenberg about WCC.

12. Adjournment (Action Item)

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

7:47PM adjourned.