

Summary of NARS Commercial Use Task Force Subcommittee Meeting

Date: Wednesday May 27, 2015
Time: 10:30am to 1:30pm
Location: DLNR Boardroom, Kalanimoku Building and teleconference from DOFAW conference room, Hilo

Attendees:

Commissioners:	Carl Christensen, Robin Newbold, Trae Menard, John Sinton
Staff:	Nick Agorastos, Linda Chow, Kirsten Gallaher, Randy Kennedy, Aaron Lowe, Chris Mottley, Emma Yuen, Marigold Zoll
Public:	Dan Purcell

The purpose of the meeting was for information gathering and to develop recommendations for commercial use of the Natural Area Reserve System (NARS) in light of the upcoming rules package.

Emma Yuen had compiled information on potential revenues, based on Na Ala Hele figures and kayak tours (primarily from Manoa Falls trail and the Mokulua Islets respectively). Kauai and Oahu were the islands with sizable revenues. During FY2007 and 2008, revenues had been \$41,000 but had since decreased to around \$3,000 per year on Kauai. The majority of revenue was from 4WD passenger vans to the arboretum which had decreased over time due to poor road quality and the economic downturn. Manoa Falls had two commercial operators and was restricted to groups of 12 with a maximum of six tours per day. Because of fears of overuse of the resources, the program was initiated with very conservative numbers but there had not been the demand or pressure initially anticipated. One of the most important considerations was social impacts – to other users and residents. Na Ala Hele had spaced groups out temporally to avoid these impacts. The revenue had funded positions, including materials and equipment that fed back into the trails. According to Trae Menard, revenue projections for kayak access could be in the region of \$120,000 a year. Other, more accessible NARS could see revenues between \$3,000 and \$50,000 a year.

The negative impacts of commercial kayaking tours on 'Āhihi-Kina'u NAR, a highly sensitive ecosystem, had been the catalyst for reopening discussions on the issue. The NARS Commission had turned down requests for commercial tours in the past because of a backlash against the 'Āhihi-Kina'u kayak operators and general sentiment that commercial use shouldn't be allowed. It was being reconsidered based on increases in NARS capacity, changes in management within the last five years and the successful Na Ala Hele pilot project.

Commercial use was only appropriate if it was consistent with the purpose of the NARS (Chapter 195-1). This included provisions that Hawaii's natural assets should be preserved 'for the enjoyment of future generations, and to provide base lines against which changes which are being made in the environments of Hawaii can be measured... to preserve in perpetuity specific land and water areas which support communities, as relatively unmodified as possible, of the natural flora and fauna, as well as geological sites, of Hawaii.' According to these definitions, it could be suggested that no modification of the NARS

should occur. However, due to the education component of the NARS mandate, commercial tours with a learning component might be considered acceptable. The certification of tour operators under the Hawaii Ecotourism Association or an equivalent system could be a requirement of criteria in the rules. This could be done by an RFP type process. Above all, commercial activity should benefit the NARS.

The process would involve identifying specific NARS in which to start, and deciding on management, monitoring and enforcement protocols. Limits could be designed for each NAR (and would not necessarily need to be included in rules). According to Linda Chow, criteria should be included in rules. If criteria were well-crafted, this would provide latitude to adjust commercial activities. Permits could be approved on an annual basis with a renewal option so as to reevaluate whether the criteria were still being met.

Aaron Lowe mentioned that for Na Ala Hele's commercial use process, a task force had determined appropriate criteria including parking, the amount of use of the trail, and whether the areas were already undergoing degradation. Knowledge was sought from advisory councils and staff closely involved with the areas. If commercial use was not considered to affect the resource or the general public taxpayer, it was considered acceptable. With regards to enforcement, the operators with permits had assisted in reporting unauthorized commercial use. Na Ala Hele then gave the operators an opportunity to obtain a permit.

There were questions about who would monitor the system to ensure impacts were within the Limits to Acceptable Change, especially given the limited NARS budget. Commercial tour operators often self-policed, and could be considered partners, for example to report monk seal sightings and harassment at Ka'ena Point. This could actually be a benefit to NARS managers in certain areas with insufficient capacity for adequate monitoring. At 'Āhihi-Kina'u, annual reef surveys had been carried out in the past. It was suggested that in such sensitive ecosystems, more frequent monitoring be required (for example, quarterly). However, it was agreed that the costs of monitoring would likely exceed the potential income; by the time the decline of a reef was picked up, it was usually too late.

The penalties for operators abusing the process were discussed and it was agreed that DOCARE needed to have the power to enforce the rules. Aaron Lowe described Na Ala Hele's experiences: In one instance they had found a pattern and made enough of case to bring it to the land board, resulting in the operator being fined \$2,500. Permitted operators would lose their permits.

Another consideration before allowing commercial activity was the creation of an industry upon which people relied for jobs. If permits were to be retracted, this could result in socio-economic issues. It also had the potential to create powerful interest groups that might overwhelm the voices supporting protecting the environment. There had been instances where permits had to be taken away when use was too high.

Trae Menard suggested that commercial use might not necessarily be classified as a revenue program, but an educational program with costs required to offset the costs of processing applications and managing the program, including monitoring and enforcement to ensure that the limits of acceptable change were not being exceeded. Monitoring would be required to ensure sufficient data was available for robust decision-making, especially if there was conflict between operators and DOFAW.

There were questions about availability of the additional funding generated by the activities. Use of the funding would require a ceiling increase for the Natural Area Reserve Fund (NARF) being approved by the

legislature. Precedents from other funds would suggest an increase would be possible, especially when revenues were not large. However, there were no guarantees. Another option would be to allow commercial use without a rule change, but revenues would not be able to be derived from this.

Nick Agorastos raised the point that the sensitivity of different NARs ranged substantially. With regards to the monitoring of impacts, substantial time was already being directed to monitor illegal activities with no additional revenue. Monitoring legal activity could therefore help to offset some of the existing costs.

Carl Christensen mentioned that the Hawaii Supreme Court had made a distinction between user fees and taxes. He suggested that if the legislature took the money generated as fees and converted it to general funds, this could defeat the purpose. Linda Chow replied that money could be transferred at the same time into the general fund appropriated to the agency. It would be possible to have funds from commercial use fees going into the NARF, but if the same thing was done the following year, none of the money would be able to be spent.

Fees would usually be averaged across all sites; because of the overlap between normal and additional duties, exact accounting based on operations costs would not be required, but fees should not be exorbitant.

It was suggested that operators should meet criteria for knowledge of the biological and cultural resources. Linda Chow added that rules would have to be drafted with an understanding of long-term standing (if, for example, the Hawaii Ecotourism Association or other did not exist in future). Naturalist certifications could be done through the Hawaii Ecotourism Association. Certification was currently a voluntary process but involved an extensive 40 page self-evaluation. A star rating system was also to be introduced. Another way of certifying operators could be the demonstration of sufficient education, shown through requisite qualifications. Some of the requirements could be addressed through compliance laws as required by the RFP process.

Less sensitive areas, such as Ka'ena Point, were suggested as potential pilot project areas. A feasibility study could be carried out to make informed decisions about future commercial use in other areas. It was desired that rules be crafted to include as much latitude as possible to select appropriate NARS. The criteria should allow for permits to not be issued if required. Commercial activities could also be confined to designated areas within each NAR. It was agreed that all NARs be listed in the rules; criteria would be crafted to control access and exclude specific sensitive resources (for example, 'Āhihi-Kina'u).

A possible way to avoid degradation of highly sensitive ecosystems such as 'Āhihi-Kina'u could be to require visitors to hire a naturalist. However, such options would likely be met by public outcry, especially if general funds were being used to support the project.

Dan Purcell suggested the use of a docent program / partnerships with educational institutions instead. As a member of the public, he was not always comfortable with commercialization. He suggested profits should come from commercial properties and leases. He was also concerned about the development of commercial / political interest groups which might outweigh the average person who cared about the environment and wanted to protect it.

Marigold Zoll noted the difficulties of managing the NARS in an 'unmodified' state and as representative examples of ecosystems. This required substantial funding which managers were lacking. Permits could be awarded on an annual basis and revoked or discontinued for non-compliance (revoking permits would

require a hearing). If there was sufficient interest, a lottery process might be required. If operators could hold on to permits, they became more valuable (and perhaps more likely to be adhered to).

Commercial activity could come in many forms, including volunteers who wanted to pay to be part of experiences and guided hunts. Hunting rules would have to be changed to allow commercial tour operators unless a rule clause stating 'notwithstanding any other rules to the contrary' was used. Activities must be consistent with purpose of the NARS.

It was agreed that consultation with the Hawaii Tourism Association and other organizations to gauge the potential demand should occur prior to rules being changed. Public interest should not be preempted. For example, there was a list of wildlife sanctuaries with commercial activities allowed and limits of commercial visitors per day.

The next meeting of the subcommittee would be convened in the fall.

Action Items:

Action by	Action	Due date
NARS Admin	Consult with Hawaii Tourism Association.	Before next Subcommittee meeting
	Research hurdles to providing guided hunts.	July 30
NARS managers:	Determine list of criteria to select operators and fee schedule	July 30
	Nominate candidate NARS (or portions) for commercial use for each island, considering ecological, cultural and political factors. Include reasoning behind suggestions.	July 30
	Determine types of commercial use to be allowed or considered.	July 30
	Determine criteria for monitoring to determine impacts and non-renewal of permits.	July 30
Subcommittee:	Evaluate staff nominations / criteria.	During next Subcommittee meeting
Aaron Lowe:	Discuss proposed commercial use and certification with Hawaii Ecotourism Association Board.	At next board meeting
	Disseminate the Sustainable Tourism Certification Program guide and statistics on user preferences and needs on trails.	

Meeting notes submitted by



Kirsty Gallaher

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