

November 10, 2022

TO: Board of Land and Natural Resources

FROM: Inga Gibson, For the Fishes; Colleen Heyer, Conservation Council for Hawaii; Lisa Bishop, Friends of Hanauma Bay

RE: Item F.1 INCREASE FINES - Settlement Agreement with Healy Tibbitts Builders, Inc. for Stony Coral and Live Rock Damage resulting from the anchoring incident that occurred on or about May 4, 2021 outside the Honolulu Harbor entrance channel, island of Oahu.

Dear Chair Case and Members of the Board,

For the Fishes, Friends of Hanauma Bay and Conservation Council for Hawaii strongly urge the Board to **increase the fines and penalties** against Healy Tibbitts Builders, Inc. for the massive harm caused to our reef and corals, due to the extreme negligence of their dredging operations in Honolulu Harbor, as identified on May 4, 2021.

First, if not for the USFWS divers who just happened to be in the water at Honolulu Harbor in May of last year, taking water quality samples, it's likely no one would have ever known about the severe damage that was occurring beneath the surface of the ocean.

Looking at the history of reef damage in the state, the largest incident involved a US Navy missile carrier, USS Port Royal, that grounded off Honolulu airport's reef runway in February of 2009. Like the Healy Tibbitts incident, the Port Royal grounding was NOT due to extreme weather, mechanical failure or circumstances beyond one's control. Both incidents were caused by the negligence of the operators.

The Port Royal grounding caused **8371 square yards (1.45 acres) of reef and coral damage**, and the Navy was ordered to pay the largest fine in DLNR history, in the amount of **\$8.5 million dollars**.

Healy Tibbitts negligence, however, caused more than **20,896 square meters (5.1 acres) of damage to 15,628 Stony Coral colonies**, yet they are only being asked to pay **\$1,119,265.00**.

We urge the Board to seek the full fine in the amount of \$2,126,266.00

DAR staff state that they reduced the already conservative estimate of damage by 50 percent simply because the company was cooperative. Cooperation on investigations should be expected, and need not be fiscally rewarded, especially with a multi-million-dollar company who touts its long history, experience, integrity and responsibility.

Further, Healy Tibbitts is owned by the conglomerate Weeks Marine, which ranks No. 110 on the Top 400 list of US Companies, reporting \$885 million in global revenue in 2021 and, who

was just purchased by Omaha-based Kiewit, one of the largest engineering and construction companies in the world, reporting \$10.68 Billion dollars in revenue in 2021. Surely these massive corporations and their insurance companies can afford to pay, at a minimum, the already conservative value of these irreparably damaged public and cultural resources.

In addition to the Board reinstating the original fine amount, we request the following:

1. Please allocate 50 percent of the fine, in the amount of \$1,119,265 to DAR and DOCARE for resource enforcement. Both DAR and DOCARE repeatedly state that they lack the budget or staffing necessary to conduct proactive, effective enforcement of marine related violations.
2. While half of the fines are to be appropriated to a designated reef protection and recovery Trust, none of the above-named companies involved should be able to receive a tax deduction for payment of these fines, or in any way, publish or claim that these fines were a donation or gift to DLNR or the state. All written and oral statements made by the companies about these monies must be declared as fines and penalties for their negligence in the May 4th incident.

Inga Gibson, Policy Director
Rene Umberger, Executive Director
For the Fishes

Lisa Bishop, President
Friends of Hanauma Bay

Colleen Heyer, President
Conservation Council for Hawaii

Sampling of media Coverage of Healy Tibbitts Incident:

<https://www.hawaiinewsnow.com/2021/05/13/state-investigating-after-dredging-work-honolulu-harbor-damages-huge-area-coral/>

<https://www.staradvertiser.com/2021/05/13/breaking-news/officials-investigate-army-corps-of-engineers-contractor-after-coral-damage-found-in-honolulu-harbor/>

<https://dlnr.hawaii.gov/blog/2021/05/13/nr21-090/>

U.S.S. Port Royal Incident

<https://www.csaocan.com/about/projects/ports-coastal-sciences/uss-port-royal-grounding-assessment-coral-reattachment>

In February 2009, the 567-foot long guided missile cruiser U.S.S. PORT ROYAL ran aground atop a coral reef fronting the Honolulu International Airport's Reef Runway in depths of approximately 14 to 22 feet. The area where the U.S.S. PORT ROYAL ran aground is described as a complex spur and groove fringing reef (outcrops of coral interspersed with sandy areas). Numerous printed resources and the evaluation by various coral reef biologists concur that this area was one of the finest remaining spur and groove reef habitats on the island of O'ahu.

CSA Ocean Sciences Inc. (CSA) conducted an initial impacts site assessment for the Office of the Judge Advocate General, Admiralty and Maritime Law Division of the Navy (Navy) to map the impact areas and ascertain the extent of work required to repair the coral reef. **The assessment identified and mapped 8,371 square yards of impact created by the grounding.**

<https://www.staradvertiser.com/2011/02/05/hawaii-news/port-royal-fiasco-costs-navy-8-5m/>