

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

April 26, 2024

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Subject: Enforcement Action against Jim Jones, Noelani Yacht Charters, LLC, Kevin S. Albert, Kimberly L. Albert, and the Albert Revocable Trust for Stony Coral and Live Rock Damage resulting from the *Nakoa* grounding incident on February 20, 2023 outside of the Honolua-Mokulē‘ia Bay Marine Life Conservation District, island of Maui.

Summary: This submittal requests the Board of Land and Natural Resources find that Jim Jones, Noelani Yacht Charters, LLC, Kevin S. Albert, Kimberly L. Albert, and the Albert Revocable Trust violated Hawaii Administrative Rules §§ 13-95-70 and 71 by breaking and damaging 119 specimens of stony coral and 1640.5 square meters of live rock when their vessel, *Nakoa*, grounded outside the Honolua-Mokulē‘ia Bay Marine Life Conservation District, island of Maui, on February 20, 2023. To compensate the State of Hawaii for the damage to natural resources on public lands, the restoration of such natural resources, and the cost of investigation, the Division of Aquatic Resources recommends that the Board approve the proposed administrative penalty of **\$117,471.97**.

Date of Incident: February 20, 2023

Against: Jim Jones
7226 Hawaii Kai Dr., Unit B
Honolulu, HI 96825

Noelani Yacht Charters, LLC
360 Mokauea St.
Honolulu, HI 96814

Kevin S. Albert and Kimberly L. Albert, Trustees of the Albert Revocable Trust UAD 06/03/1997 and Restated 01/07/2020
c/o McCorrison Miller Mukai MacKinnon LLP
500 Ala Moana Boulevard, 4th Floor
Five Waterfront Plaza
Honolulu, Hawaii 96813

**Location of
Incident:**

Within a 1,940 square meter area directly adjacent to the Honolua-Mokulē‘ia Bay Marine Life Conservation District, island of Maui.

GPS Coordinates: 21°01’06”N, 156°38’28”W *or*
21.0186014, -156.6412556

I. INTRODUCTION

A. The July 28, 2023 Board of Land and Natural Resources Meeting

On July 28, 2023, the State of Hawai‘i’s Department of Land and Natural Resources (“DLNR”) brought an administrative enforcement action before the Board of Land and Natural Resources (“Board”) against Jim Jones, Noelani Yacht Charters, LLC, Kevin S. Albert, Kimberly L. Albert, and the Albert Revocable Trust for violations of Hawaii Administrative Rules §§ 13-95-70 and 71 when their vessel, the *Nakoa*, grounded outside the Honolua-Mokulē‘ia Bay Marine Life Conservation District, island of Maui, on February 20, 2023, breaking and damaging 119 specimens of stony coral and 1640.5 square meters of live rock.

At the conclusion of the July 28, 2023 Board meeting, Kevin S. Albert, Kimberly L. Albert, and the Albert Revocable Trust reached a tentative agreement with the Board in which they would agree to pay a settlement amount of \$117,471.97 for the damage to natural resources, the restoration of such natural resources, and the cost of the DLNR investigation. In return for this settlement payment, the Board would release Kevin S. Albert, Kimberly L. Albert, and the Albert Revocable Trust from any and all liability from current and future claims by the State deriving from the February 20, 2023 *Nakoa* grounding incident. The Board reserved its right to assess fines and penalties against Jim Jones and Noelani Yacht Charters at a later date.

Nearly six months passed since the July 28, 2023 Board meeting and, despite numerous requests to the Alberts to finalize and pay the \$117,471.97 settlement amount, the settlement did not materialize.¹ Therefore, the DLNR resubmitted its administrative enforcement action against Jim Jones, Noelani Yacht Charters, LLC, Kevin S. Albert, Kimberly L. Albert, and the Albert Revocable Trust for the January 26, 2024 Board Meeting.

B. The January 26, 2024 Board of Land and Natural Resources Meeting

On January 26, 2024, the DLNR again brought an administrative enforcement action against Jim Jones, Noelani Yacht Charters, LLC, Kevin S. Albert, Kimberly L. Albert, and the Albert Revocable Trust for violations of Hawaii Administrative Rules §§ 13-95-70 and 71.

At the conclusion of this meeting, the Board deferred final action against the Responsible Parties and directed DAR to hold a meeting with community members from West Maui to receive input on the final civil fine amount. The Board further directed DAR to resubmit the instant enforcement action to the Board after the conclusion of the community meeting.

On February 22, 2024, representatives from DAR hosted a meeting for West Maui community members at Kumulani Chapel in Lahaina, Maui. The Board and DAR sought input from attendees about how the *Nakoa* grounding incident impacted their lives and their thoughts on DAR’s civil penalty recommendation of **\$117,471.97**.²

Based on attendees’ testimony at the meeting, three general themes emerged:

¹ See Letter from R Schmitt re *Nakoa* Settlement dated 11.15.23 (Exhibit C)

² See *Nakoa* Community Meeting Minutes dated 02.22.24 (Exhibit D)

- 1) The recommended fine amount was too low; the Board should pursue the maximum fine to deter this type of behavior in the future;
- 2) Any fines paid by the Responsible Parties to the DLNR should be used for the increased enforcement of existing rules and/or for better, more durable moorings; and
- 3) If the DLNR cannot adequately police and manage Honolulu Bay, then Honolulu Bay should be closed to all commercial activities.³

The DLNR has complied with the Board's directive to hold an in-person meeting for West Maui community members and now resubmits this enforcement action against Jim Jones, Noelani Yacht Charters, LLC, Kevin S. Albert, Kimberly L. Albert, and the Albert Revocable Trust for violations of Hawaii Administrative Rules §§ 13-95-70 and 71.

C. The *Nakoa* Grounding Incident Summary

The *Nakoa* is a 94-foot luxury yacht owned by Noelani Yacht Charters, LLC ("Yacht Charters"), a luxury charter business based in Honolulu, Hawai'i. Jim Jones ("Jones") is the manager and agent for Yacht Charters. The *Nakoa* is registered under Official Number (U.S.) 1254807 and United States Coast Guard number CG1290268.⁴

On February 18 and 19, 2023, Jones was using the *Nakoa* and moored the vessel overnight inside Honolulu Bay, Maui on a mooring ball. On February 20, 2023, at approximately 5:20 a.m., the *Nakoa* detached from its mooring and became adrift. Despite efforts by Jones and the on-board captain to steer the *Nakoa* away from shore, the *Nakoa* grounded upon the rocky shoreline between Honolulu Bay and Līpoa Point, Maui ("the *Nakoa* grounding incident").

Over the course of the next two weeks, the State of Hawai'i's Department of Land and Natural Resources ("DLNR") and the United States Coast Guard ("USCG") defueled the *Nakoa*, removed its batteries, and removed the vessel from the shoreline. On February 24, 2023 the USCG federalized the *Nakoa*, thereby assuming all responsibility for decisions related to the removal of batteries and fuel. After the USCG determined that the fuel, batteries, and all other hazardous materials were successfully removed from the *Nakoa*, the USCG turned over control of the vessel to DLNR.

On March 5, 2023, two salvage ships contracted by DLNR ("salvage team") worked in tandem to move the *Nakoa* off the rocky shoreline and into open water. The *Nakoa* quickly took on water and began to list to one side. The salvage team ultimately determined that the *Nakoa* was unsalvageable and made the decision to scuttle the vessel in approximately 800 feet of water off the coast of Honolulu Bay, which is where it remains today.

³ For a more detailed account of community members' testimony on this incident, see Note 3 (Exhibit D)

⁴ Note that there is a discrepancy in the *Nakoa*'s length. The USCG's official documentation states that the *Nakoa* is 75.5 feet in length. However, the USCG's news releases on the incident state that the *Nakoa* is 94 feet in length. After consulting with the USCG, they do not know why this discrepancy exists, but suspect it was caused by human error in the initial registration in 2004. Jones and Yacht Charters own an additional vessel, the *Noelani*, which is 75 feet in length, possibly explaining the confusion.

The Maui Division of Aquatic Resources (“DAR”) conducted two site assessments to determine the damage to natural resources caused by the *Nakoa* grounding incident. The Maui DAR concluded that a total of 1,640.5 square meters of live rock⁵ was damaged and at least 119 living coral colonies were damaged or destroyed. The Maui DAR’s Final Report is attached as **Exhibit A**.⁶

II. FACTUAL BACKGROUND

A. Honolua Bay, Maui

Honolua Bay is located on the northwestern coast of Maui, approximately 10 miles north of the town of Lāhainā. Honolua Bay is famous for its world-class surfing and snorkeling and is recognized for its cultural, historic, and environmental value. Honolua Bay is part of the Honolua-Mokulē‘ia Bay Marine Life Conservation District (“MLCD”).⁷ Within this MLCD, fishing activities are restricted and damage to marine life carries elevated fines.

The *Nakoa* grounded on rocky shoreline approximately 200 meters north of the Honolua-Mokulē‘ia Bay MLCD boundary. The grounding damage to natural resources, along with the subsequent damage scars from the ingress/egress of the vessel, occurred outside of the Honolua-Mokulē‘ia Bay MLCD.

Although the *Nakoa* grounding incident occurred outside of the Honolua-Mokulē‘ia Bay MLCD, access to parts of the surrounding area was restricted to the public during certain periods between February 20 and March 5, 2023, while the salvage operations were ongoing, causing angst to many community residents who regularly frequented the area.⁸

B. The Responsible Parties

Jones registered and incorporated Yacht Charters in Hawai‘i as a Domestic Limited Liability Company on September 17, 2020.⁹ The Hawaii Department of Commerce & Consumer Affairs’ Business Registration Division lists the purpose of Yacht Charters as a “Luxury Yacht Charters” service.¹⁰

In 2020, Yacht Charters purchased its first vessel, the *Noelani*. In December 2022, Yacht Charters purchased its second vessel, the *Nakoa*. Yacht Charters purchased the *Nakoa* from

⁵ In the administrative rules, “Live rock” is defined as “any natural hard substrate to which marine life is visibly attached or affixed.” Haw. Admin. R. § 13-95-1.

⁶ *Nakoa Vessel Grounding, Lipoa Point, Maui Damage Assessment, Field Investigative Report*, Russell Sparks and Kristy Stone, Department of Land and Natural Resources, Division of Aquatic Resources, Maui Office, April 20, 2023. (Exhibit A)

⁷ See HAW. ADMIN. R. § 13-32

⁸ <https://www.civilbeat.org/2023/03/maui-yacht-owner-i-didnt-know-what-i-was-getting-into/> “I feel his actions were extremely irresponsible,” said Maui County Council member Tamara Paltin, who has long fought to protect Honolua Bay. “I don’t think he fully understands how special a place Honolua is to so many of us and just how much aggravation he has caused our community.”

⁹ <https://hbe.ehawaii.gov/documents/business.html?fileNumber=242649C5>

¹⁰ *Id.*

Kevin and Kimberly Albert, trustees of the Albert Revocable Trust, by way of a Vessel Installment Purchase and Management Agreement dated December 29, 2022.¹¹ The purchase price of the vessel was \$1.45 million dollars, to be paid over fifteen years.¹² The *Nakoa* is listed as 94-foot long¹³ and weighing 120 tons.¹⁴

Prior to the *Nakoa* grounding incident, Yacht Charters marketed itself as a high-end, luxury charter service¹⁵ with trips starting at \$9,801.04.¹⁶ As of the date of this submittal, Yacht Charters is not offering charter services, and its website states that Yacht Charters “is no longer operational.”¹⁷

C. The February 20, 2023 *Nakoa* Grounding Incident

On February 18 and 19, 2023, the *Nakoa* moored overnight inside Honolua Bay, Maui on a mooring ball. Jones was accompanied on the *Nakoa* by his wife Isabella Jones, Captain Kimberly Kalalani Higa (“Captain Higa”), a first mate, a crew member, and four juvenile family members and friends. Captain Higa holds a 100-Ton USCG captain’s license and had previously captained Yacht Charter’s other vessel, the *Noelani*, in Honolua Bay. Captain Higa had previously captained the *Nakoa* as well, but never in Honolua Bay. Under the terms of the *Nakoa*’s insurance policy, the *Nakoa* was only to be captained by a listed and approved captain, Captain Joe Bardouche, not Captain Higa.¹⁸

On February 18 to and including February 20, 2023, Jones was using the *Nakoa* for “recreational” use.¹⁹ While moored overnight inside Honolua Bay on a mooring ball, Jones set a digital anchor alarm to alert the captain and crew if the vessel became detached from its mooring.²⁰

¹¹ Complaint, filed on March 13, 2023, at 2, *Albert Revocable Trust v Noelani Yacht Charters, et al.* Case 1:23-CV-00132 (D.Haw. 2023).

¹² *Id.* p.3.

¹³ *Id.* p.2.

¹⁴ <https://dlnr.hawaii.gov/blog/2023/02/28/nr23-40/>

¹⁵ *Id.* “We cater to these guys that are flying in on their private jets,” Jones said.

¹⁶ <https://web.archive.org/web/20230303185035/https://noelaniyachtcharters.com/maui-luxury-yacht-charters/>

¹⁷ <https://noelaniyachtcharters.com>

¹⁸ See Note 11, Complaint, *Albert Revocable Trust v Noelani Yacht Charters, et al.* p.7.

¹⁹ Answer, filed on April 4, 2023, at 2, *Albert Revocable Trust v Noelani Yacht Charters, et al.* Case 1:23-CV-00132 (D.Haw. 2023). Note that Kevin and Kimberly Albert allege Jones was using the vessel at this time for “personal use, not a commercial charter.” See Note 11, p.8. However, Jones maintains that this type of “recreational” trip was a regular occurrence and “used to check on the vessels’ systems and to make sure everything [was] being maintained properly.” Answer, p.2.

²⁰ See Note 11, Complaint, *Albert Revocable Trust v Noelani Yacht Charters, et al.* p.9. and Note 19, Answer, *Albert Revocable Trust v Noelani Yacht Charters, et al.* Addendum, p.2. Kevin and Kimberly Albert allege that Jones and Captain Higa did not take “the standard precaution of setting a manned mooring or an anchor watch...but instead relied solely on a digital anchor alarm set by Jones.” Complaint, p.10. However, Jones maintains “[s]tandard procedures were taken to secure mooring line properly to mooring ball/line,” and that “[t]he anchor alarm was set and monitored.” Answer, Addendum, p.2.

On February 20, 2023 at approximately 5:20 a.m.,²¹ the *Nakoa*'s anchor alarm sounded, alerting the crew that the *Nakoa* had become adrift. Jones and Captain Higa attempted to steer the vessel away from shore, but the *Nakoa* ultimately grounded upon the rocky coastline between Honolulu Bay and Līpoa Point. Over the course of the next two weeks, DLNR and the USCG took various steps to defuel the *Nakoa*, remove its batteries, and remove the vessel from the coastline.²²

On February 21, 2023, the Maui DAR conducted an initial site assessment to document and measure the extent of damage at the initial grounding scar.²³ Damage to this area was “patchy” and included 35.5 square meters of damaged live rock that was considered “high rugosity” habitat.²⁴

On Friday February 24, 2023, the USCG federalized²⁵ the *Nakoa*, thereby assuming all responsibility for decisions related to the removal of batteries and fuel. After the USCG determined that the fuel, batteries, and all other hazardous materials were successfully removed from the *Nakoa*, the USCG turned over control of the vessel to DLNR.²⁶

On March 5, 2023, the salvage ship *Kahi*, operated by Visionary Marine LLC, and the tugboat *Mary Catherine*, operated by Sause Brothers Inc., (“the salvage team”) worked in tandem to move the *Nakoa* off the shoreline and into open water. The *Nakoa* quickly took on water due to a breach of the hull from the grounding incident, and the vessel began to list to one side while riding “bow high.”²⁷ The salvage team ultimately decided that the *Nakoa* was unsalvageable and made the decision to scuttle the vessel in approximately 800 feet of water off the coast of Honolulu Bay, which is where it remains today.

On March 7, 2023, the Maui DAR conducted its second site assessment of the damage to natural resources caused by the *Nakoa* grounding incident. This assessment focused on the impact to

²¹ Kevin and Kimberly Albert allege the anchor alarm sounded at 5:20am while Jones asserts that the alarm sounded at 5:45am. See Note 11, Complaint, *Albert Revocable Trust v Noelani Yacht Charters, et al.* p.9 and Note 19, Answer, *Albert Revocable Trust v Noelani Yacht Charters, et al.* Addendum, p.2.

²² In Hawaii, when a private vessel runs aground, it is the vessel owner’s responsibility to remove it and to coordinate with DLNR to ensure that the vessel is removed with the least amount of damage possible to reefs and the marine environment. See <https://dlnr.hawaii.gov/blog/2023/02/21/nr23-33/>

²³ The initial grounding scar refers to the 170 square meter area of hard-bottom habitat that was scraped, or “scarred,” when the *Nakoa* initially drifted into shallow water on the morning of February 20, 2023.

²⁴ See Note 6, *Nakoa Vessel Grounding, Lipoa Point, Maui Damage Assessment, Field Investigative Report*, p.3. “Rugosity” is a measurement of the structural complexity of the substrate. Live rock with “high rugosity” often has crevices, ledges, and caves/holes.

²⁵ “Federalize” in this context means to bring under the control of the United States government.

²⁶ Under normal circumstances, the USCG will return a federalized vessel back to its owner once all batteries, fuel, and other hazardous materials are removed. The owner will then work with DLNR to determine an acceptable salvage plan. In this instance, however, Jones and Yacht Charters indicated they would not be able to contract and pay for the salvage operations, and they therefore transferred control of the *Nakoa* to DLNR. See <https://dlnr.hawaii.gov/blog/2023/02/28/nr23-38/>

²⁷ The bow, or front, of the vessel was riding much higher than normal while the stern, or back, of the vessel was nearly underwater. See <https://dlnr.hawaii.gov/blog/2023/03/06/nr23-44/>

hard bottom habitat along the secondary grounding scar²⁸ and along the salvage scar.²⁹ The Maui DAR concluded that a total of 1,640.5 square meters of live rock was damaged and at least 119 living coral colonies were damaged or destroyed. The Maui DAR's Final Report is attached as **Exhibit A.**³⁰

D. Ecological assessments of habitat damage

The Maui DAR conducted two site assessments on February 21, 2023 and March 7, 2023 to evaluate the impact to hard bottom habitat where the *Nakoa* grounded. Both assessments used the same methodology for measuring the total area impacted by the grounding incident and for assessing damage. The Maui DAR biologists used 50-meter measuring tapes to measure the length of the scars, and these measuring tapes also served as transect tapes for the more detailed damage assessments. The biologists also mapped out the entire area by hand, showing the initial impact scar, the secondary impact scar, and the salvage scar. To assess specific damage within these areas, divers swam along the transect tape while identifying all coral colonies to the species level, measuring the colonies' sizes, and photographing the evidence. A 50-cm archaeological black and white pole was used to measure coral colony size and to serve as a consistent scale in the photographs.

1. The February 21, 2023 Assessment

On February 21, 2023, Maui DAR Aquatic Biologist Russell Sparks, along with the assistance of Marine Monitoring Technician Tatiana Martinez, conducted the first site assessment of damage related to the *Nakoa* grounding incident. The biologists took photos, measurements, and notes regarding the extent of damage around the initial grounding scar. The biologists also noted the location and condition of the *Nakoa* and observed that the vessel was leaking small amounts of diesel fuel into the nearshore waters at this time.

The *Nakoa* grounding incident resulted in a patchy initial grounding scar that extended 85 meters by 2 meters from a northwestern direction (170 square meters). Of these 170 square meters of disturbed habitat, 35.5 square meters of live rock were specifically documented and photographed as having high rugosity.³¹ Additionally, the biologists documented 18 coral colonies directly damaged or destroyed at the initial grounding scar, 10 of which belonging to the species *Porites lobata* ("lobe coral") and 8 of which belonging to the species *Pocillopora meandrina* ("cauliflower coral").

2. The March 7, 2023 Assessment

The March 7, 2023, site assessment occurred two days after the *Nakoa* was removed from the shoreline. This second site assessment was conducted by Russell Sparks and Maui DAR Aquatic

²⁸ The secondary grounding scar refers to the 1,575 square meter area of flat carbonate pavement and basalt boulder habitat located directly around the area where the *Nakoa* was grounded for fourteen days.

²⁹ The salvage scar refers to the 195 square meter area that was scraped, or "scarred," when the contracted salvage ships towed the *Nakoa* off the shoreline and into open water.

³⁰ See Note 6, *Nakoa Vessel Grounding, Lipoa Point, Maui Damage Assessment, Field Investigative Report*.

³¹ The Maui DAR team noted the presence of cliff-like structures and ledges in this area which were damaged and broken. This type of hard-bottom live rock habitat is valuable habitat for various marine life. See *Id.*, p.3.

Biologist Kristy Wong-Stone, along with assistance from Tatiana Martinez and Marine Monitoring Technician Cole Peralto. This second site assessment focused on the impact to hard bottom habitat at the secondary grounding scar and the salvage scar.

Live rock habitats were pulverized and badly disturbed in the area of the secondary grounding scar. Significant amounts of coral and live rock were damaged along the salvage scar. The Maui DAR biologists documented the damage and took detailed photographs of all damaged corals and of areas with significant live rock damage. In its assessment of the secondary grounding scar, the biologists measured 1,575 square meters of live rock that was scarred, smashed, and/or destroyed in this area.³² The biologists then assessed the salvage scar, the area where the *Nakoa* was towed from the shoreline back out into the ocean. The biologists documented 195 square meters of hard-bottom habitat that was disturbed from the salvage operations, and of these 195 square meters, 30 square meters were documented as live rock habitat with significant damage.³³ The biologists also documented 101 coral colonies that were damaged or destroyed. Of these 101 coral colonies, 77 belonged to the species *Pocillopora meandrina* (“cauliflower coral”) and 24 belonged to the species *Porites lobata* (“lobe coral”).³⁴

III. LEGAL AUTHORITY FOR ENFORCEMENT

A. Statutory and regulatory protection of stony coral and live rock

Under Hawai‘i Revised Statutes (“HRS”) Section 190-3, the DLNR is authorized to adopt rules governing the taking or conservation of live coral and other marine life. Stony coral and live rock are protected by Hawaii Administrative Rules (“HAR”) Title 13, Chapter 95, Sections 70 and 71.

In relevant part, HAR § 13-95-70(a)(1) states that “it is unlawful for any person to take, break, or damage any stony coral.” “Stony coral” is defined as “any invertebrate species belonging to the Order Scleractinia, characterized by having a hard, calcareous skeleton, that are native to the Hawaiian islands.” HAR § 13-95-1. “Break” means “to hit with, or to apply sufficient force to reduce to smaller pieces or to crack without actually separating into pieces.” *Id.* And “damage” means “to scrape, smother, poison, or otherwise cause any physical or physiological harm to the living portion of a stony coral or live rock.” *Id.*

Under HAR § 13-95-71(a)(1), “it is [also] unlawful for any person to take, break, or damage any live rock.” “Live rock” is defined as “any natural hard substrate to which marine life is visibly attached or affixed.” HAR § 13-95-1.

The Maui DAR biologists documented damaged colonies of *Pocillopora meandrina* (“cauliflower coral”) and *Porites lobata* (“lobe coral”) during their site inspections. Cauliflower coral and lobe coral are “stony corals.” Therefore, the coral colonies that were destroyed during the *Nakoa* grounding incident are stony coral species. The Maui DAR biologists also documented damaged hard bottom live rock substrate with algae attached as a result of the *Nakoa* grounding incident.

³² *Id.* p.4.

³³ *Id.*

³⁴ *Id.*

B. Administrative fines authorized for violations of HAR Title 13, Chapter 95

Section 187A-12.5(c), HRS, provides the administrative penalties for violations relating to aquatic resources,³⁵ including Sections 13-95-70 and 71, HAR, as follows:

- (1) For a first violation, a fine of not more than \$1,000;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$2,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$3,000.

Section 187A-12.5(e), HRS, also provides that “[i]n addition to subsection (c), a fine of up to \$1,000 may be levied for each specimen of all other aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder.” The definition of “aquatic life” includes coral as well as all the sessile plant and animal species that are attached to live rock. *See* HRS § 187A-1.

Under HAR § 13-95-2(b)(4), for colonial stony corals such as the colonies damaged in the grounding event, per-specimen fines may be imposed on the basis of each damaged “head” or “colony” that is less than one square meter in surface area, and for a colony greater than one square meter in surface area, each square meter of colony surface area and any fraction remaining constitutes an additional “specimen.”

Under HAR § 13-95-2(b)(5), for live rocks such as the benthic materials damaged in the *Nakoa* grounding incident, per specimen fines may be imposed on the basis of each individual live rock or, if the violation involves greater than one square meter of bottom area, each square meter of live rock.

Additionally, Section 187A-12.5(a), HRS, authorizes the Board of Land and Natural Resources (the Board) “to recover administrative fees and costs . . . or payment for damages or for the cost to correct damages resulting from a violation of” the statutes and rules pertaining to aquatic resources.

IV. APPLICATION OF LAW AND RECOMMENDED FINE**A. Maximum authorized administrative fines**

Section 187A-12.5(c), HRS, authorizes an administrative fine of \$1,000 for a first-time stony coral damage violation, as well as an additional \$1,000 per coral specimen injured.

³⁵ Section 187A-12.5(b), HRS, specifically addresses violations involving threatened or endangered species. Subsection (c) covers “all other violations.”

The maximum administrative fine for the 119 stony coral colony specimens damaged by the *Nakoa* grounding incident is therefore \$120,000.³⁶

Section 187A-12.5(c), HRS, authorizes an administrative fine of \$1,000 for a first-time live rock damage violation, as well as an additional \$1,000 per live rock specimen injured.

The maximum administrative fine for the 1,640.5 square meters of live rock damage resulting from the *Nakoa* grounding incident is therefore \$1,642,000.³⁷

HRS §187A-12.5(a) further authorizes the Board to assess and recover administrative fees and costs, including attorneys' fees and payment for damages or for the cost to correct damages resulting from a violation of the stony coral and live rock protection rules.

B. Factors to be considered in assessing fines

The Board has broad discretion in assessing administrative fines for a natural resource violation. Some of the factors that the Board may take into consideration include the value of the resource damaged, costs for the State to investigate and process the violation, level of damages to the public for whom the State holds a public trust of the resource involved, extent of the respondent's cooperation, and voluntary actions taken by the respondent to mitigate or avoid damages.³⁸

1. *Applicable violations for the instant enforcement action*

Noelani Yacht Charters, LLC, by and through Jim Jones, and Kevin and Kimberly Albert, by and through the Albert Revocable Trust, violated HAR § 13-95-70(a)(1) (damage to stony corals) when their vessel, the *Nakoa*, broke free of its mooring in Honolua Bay and grounded upon the shoreline, damaging 119 stony coral colonies.

Noelani Yacht Charters, LLC, by and through Jim Jones, and Kevin and Kimberly Albert, by and through the Albert Revocable Trust, violated HAR § 13-95-71(a)(1) (damage to live rock) when their vessel, the *Nakoa*, broke free of its mooring in Honolua Bay and grounded upon the shoreline, damaging 1,640.5 square meters of live rock.

In 2014, the Board adopted an Administrative Sanctions Schedule to facilitate the standardization of enforcement for violations of aquatic resource laws.³⁹ This schedule recommends a \$200 fine for each applicable violation.

2. *Approximate value of resources damaged*

³⁶ The total \$120,000 figure is equal to \$1,000 for the violation (damaging coral) + \$119,000 for 119 damaged coral specimens (at \$1000 per specimen). See HRS § 187A-12.5(c) and (e).

³⁷ The total \$1,642,000 figure is equal to \$1,000 for the violation (damaging live rock) + \$1,641,000 for 1,640.5 meters of damaged live rock (at \$1,000 per meter – if smaller than one meter, rounded up to one meter). See HRS §187A-12.5(c) and (e).

³⁸ See HAW. ADMIN. R. §13-1-70

³⁹ <https://dlnr.hawaii.gov/wp-content/uploads/2021/08/CRVS-Penalties-Schedule-DAR.pdf>

DAR utilizes a set of stony coral and live rock penalty matrices to standardize coral reef damage valuation based on coral morphology, size, rarity, benthic structure, benthic species composition, and location within a managed area. These stony coral and live rock penalty matrices are attached as **Exhibit B**.⁴⁰ These matrices provide a comparable, but more detailed, categorization of stony coral values compared to the coral value table included in the Administrative Penalty Guidelines adopted by the Board on July 22, 2009. They also add live rock values which were not included in the 2009 Penalty Guidelines. Based on these updated matrices, calculation of the value of the damaged resources is as follows:

Stony Coral (each colony constitutes a specimen)

| Species | Size (centimeters) | # of Colonies | Value per Colony | Total Value |
|----------------------------------------------------------------------|--------------------|---------------|------------------|-----------------|
| <i>Pocillopora meandrina</i> , cauliflower coral (common, branching) | 10 – 19.9 | 6 | \$100 | \$600 |
| | 20 – 39.9 | 55 | \$200 | \$11,000 |
| | 40 – 79.9 | 24 | \$400 | \$9,600 |
| <i>Porites lobata</i> , lobe coral (common, encrusting) | 10 – 19.9 | 2 | \$50 | \$100 |
| | 20 – 39.0 | 16 | \$100 | \$1,600 |
| | 40 – 79.9 | 14 | \$200 | \$2,800 |
| | 80 – 160 | 2 | \$500 | \$1,000 |
| | | | | \$26,700 |

Based on the calculations set forth above, DAR concludes that the total value of the 119 stony coral colonies damaged by the *Nakoa* grounding incident is **\$26,700**.

Live Rock (m²)

| Location | Habitat | Area | Value per m ² | Total Value |
|--------------------------|------------------------|----------------------|--------------------------|-----------------|
| Initial Grounding Scar | Pavement/High Rugosity | 35.5 m ² | \$40 | \$1,420 |
| Secondary Grounding Scar | Pavement/Turf | 1,575 m ² | \$20 | \$31,500 |
| Salvage Scar | Pavement/Turf | 30 m ² | \$20 | <u>\$600</u> |
| | | | | \$33,520 |

⁴⁰ *Coral and Live Rock Penalty Matrices*. These coral and live rock penalty matrices were created by DAR coral reef biologists with expertise in Hawaiian coral and live rock ecosystems, and the matrices have been used by DAR and the BLNR in previous enforcement actions. (Exhibit B)

Based on the calculations set forth above, DAR concludes that the total value of the 1,640.5 square meters of live rock damaged by the *Nakoa* grounding incident is **\$33,520**.

Thus, DAR estimates the Total Value of the resources damaged (including both Stony Corals and Live Rock) is **\$60,220**.

3. *Costs of the investigation itself*

Civil Service staff members from Maui DAR spent a total of 60 hours conducting surveys, entering data, analyzing data, participating in planning meetings, and preparing the DAR Damage Assessment Report for a total cost of **\$2,958.75**. Civil Service staff members from DOCARE spent a total of 1,017.5 hours patrolling Honolua Bay and Līpoa Point for a total cost of **\$47,656.27**. Civil Service staff members from DOBOR spent a total of 34 hours responding to the grounding incident for a total cost of **\$2,587.74**. Research Corporation of the University of Hawaii (“RCUH”) staff members spent a total of 18 hours conducting surveys, entering data, analyzing data, monitoring, and preparing the Impact Assessment report, for a total cost of **\$499.50**. DOCARE’s operational cost for vessel fuel was **\$249.71**. DAR/RCUH staff in Honolulu spent 10 days preparing the submittal for this incident at a rate of \$290 per day, totaling **\$2,900**. The total value of this staff time and administrative costs was therefore estimated as **\$56,851.97**, as shown in **Table 1**, below.

Table 1. Staff time and costs for the *Nakoa* assessments.

| | Unit | Rate | Total |
|----------------------------|---------------|----------------------------|--------------------|
| DAR Civil Service Staff | 60 hours | \$49.31/hour | \$2,958.75 |
| DOCARE Civil Service Staff | 1,017.5 hours | \$46.84/hour ⁴¹ | \$47,656.27 |
| DOBOR Civil Service Staff | 34 hours | \$76.11/hour | \$2,587.74 |
| RCUH Staff | 18 hours | \$27.75/hour | \$499.50 |
| DOCARE Vessel Fuel | - | - | \$249.71 |
| DAR Submittal | 10 days | \$290/day | \$2,900.00 |
| TOTAL | | | \$56,851.97 |

Accordingly, the total administrative cost incurred by the Department in investigating and processing this incident was **\$56,851.97**.

4. *Level of damage to the public*

The *Nakoa* grounding incident caused considerable angst and emotional distress to the public, especially to residents of northeast Maui. Although DAR does not have a tool to quantify emotional distress and cultural harm in monetary terms, the Board has broad discretion to impose additional “reasonable” and “appropriate” fines for violating DLNR rules.⁴² Hawaii Revised Statutes Section 171-6.15 states:

“In addition to the fines, administrative costs, and damages provided for hereinabove, for damage to or theft of natural resources, *the board may also set, charge, and collect a fine*

⁴¹ This average rate includes overtime pay and overtime at night pay.

⁴² See HRS §171-6.15

that, *in its discretion*, is appropriate considering the value of the natural resource that is damaged or the subject of the theft. In arriving at an appropriate fine, the board may consider the market value of the natural resource damaged or taken *and any other factor it deems appropriate*, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. *The remedies provided for in this paragraph are cumulative and in addition to any other remedies allowed by law.*⁴³ (emphasis added)

The DLNR does not have a tool to obtain a monetary value for emotional distress and cultural damage to the public, but DAR acknowledges the volumes of public testimony received at the July 28, 2023 Board meeting, the January 26, 2024 Board meeting, and the February 22, 2024 Maui community meeting regarding their emotional distress and loss of use. Therefore, the DLNR leaves the decision to levy additional appropriate fines against the responsible parties to the Board in its discretion.

5. *Respondent's cooperation and voluntary mitigative actions*

The DLNR is unaware of any voluntary mitigative actions by Jones or Yacht Charters to restore the areas damaged by the *Nakoa* grounding incident.

C. **Recommended Fines and Costs**

The Board has broad discretion in assessing administrative fines for a natural resource violation. In 2014, the Board adopted an Administrative Sanctions Schedule to facilitate the standardization of enforcement for violations of aquatic resource laws. This schedule recommends a \$200 fine for the applicable violation and to follow the Schedule for each colony damaged. Based on the foregoing considerations, DAR recommends fines of **\$400** for the two violations, **\$60,220** for the value of the resource, and administrative costs in the amount of **\$56,851.97** for a total assessment of **\$117,471.97** as shown in **Table 2**, below. This figure reflects a conservative estimate of the amount required to compensate the State for the damage to natural resources on public lands and the administrative costs and does not include any discretionary penalties that the Board may pursue for damage to the public under Hawaii Revised Statutes Section 171-6.15.

Table 2. Summary of settlement fines and costs.

| Category of Fines and Costs | Amount Recommended |
|------------------------------|---------------------|
| Violations | \$400.00 |
| Resource Value | \$60,220.00 |
| Administrative Costs | \$56,851.97 |
| Public Damages / Loss of Use | \$XXX,XXX |
| TOTAL | \$117,471.97 |

⁴³ *Id.*

V. RECOMMENDATIONS

1. That the Board find that JIM JONES, NOELANI YACHT CHARTERS, LLC, KEVIN S. ALBERT, KIMBERLY L. ALBERT, and the ALBERT REVOCABLE TRUST violated HAR §§ 13-95-70 and -71 when their vessel, *Nakoa*, broke free of its mooring in Honolulu Bay and grounded upon the shoreline, damaging 119 coral colonies and 1,640.5 square meters of live rock; and
2. That the Board assess an administrative fine of \$60,220 for the value of resources lost, \$400 for HAR violations, and \$56,851.97 for administrative costs for a total assessment of **\$117,471.97** against JIM JONES, NOELANI YACHT CHARTERS, LLC, KEVIN S. ALBERT, KIMBERLY L. ALBERT, and the ALBERT REVOCABLE TRUST to be paid within 60 days of the date of this submittal; and
3. That the Board delegate to the Chairperson or her designee its authority to execute all necessary documents to carry out its recommendations under this submittal; and
4. Other terms and conditions as prescribed by the Chairperson to serve the best interests of the State shall be applicable; and
5. All recommendations above and terms of the fine schedule or any payment plan shall be subject to review and approval by the Department of the Attorney General.

Respectfully Submitted,



Brian Neilson, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson
Department of Land and Natural Resources

EXHIBIT A –

Nakoa Vessel Grounding, Lipoa Point
Maui Damage Assessment
Field Investigative Report
April 20, 2023

Nakoa Vessel Grounding, Lipoa Point, Maui

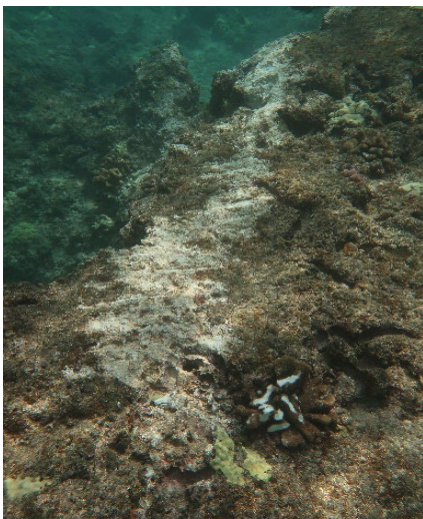
Damage Assessment

Field Investigation Report
Initial Field Assessment 2/21/2023
Final Assessment 3/7/2023
Final Report Completed 4/20/2023

Report By: Russell Sparks, Kristy Stone
Field Work By: Russell Sparks, Kristy Stone, Tatiana Martinez, and Cole Peralto
Division of Aquatic Resources, Maui Office



The Vessel “Nakoa” shown grounded on the rocky shoreline and leaking diesel fuel.



Examples of damage to live rock habitat and corals from the grounding and salvage operations.

Overview

On Monday, February 20, 2023, the Maui Division of Aquatic Resources (DAR) received information regarding a large vessel that had run aground just outside of the Honolua/Mokuleia Bay Marine Life Conservation District. Based on initial reports, the vessel named “Nakoa” was moored overnight within Honolua Bay and upon waking up in the early morning, the captain realized that the vessel had come loose from its mooring but was unable to prevent it from being pushed into shallow water and grounding near Lipoa point just outside of Honolua Bay. The grounding and subsequent salvage operation resulted in significant damage to important hardbottom habitat in the area. This report will document and discuss the findings of two separate site inspections conducted by Maui DAR staff.

Case History

The initial site inspection was conducted on February 21, 2023. At that time, the Nakoa was still stuck on the shallow rocky coastline, and the inspection focused on documenting and measuring the extent of the damage that occurred during the grounding incident. This assessment was conducted by the Maui DAR Aquatic Biologist Russell Sparks with the assistance of Tatiana Martinez (Marine Monitoring Technician). Images along with careful measurements and notes on the extent of damage were collected at both the initial grounding scar and at the area surrounding where the vessel was grounded. The location and condition of the vessel was also noted. The vessel was also observed to be leaking small amounts of diesel fuel into the nearshore waters at this time.

Following this initial site inspection, salvage companies were contracted to remove all the fuel, batteries, and other potential pollutants from the vessel. A successful effort to pull the vessel offshore was completed on March 5, 2023. After removal, the salvage company was unable to keep the Nakoa afloat and it sank between Maui and Molokai in approximately 800ft of water.

A second assessment was conducted on March 7, 2023, which was shortly after the removal of the vessel. This assessment focused on the impact to hard bottom habitat where the vessel was grounded and along the scar created when the Nakoa was pulled back out into deeper water. This assessment was conducted by Maui DAR Aquatic Biologists Russell Sparks and Kristy Wong-Stone, along with assistance from Tatiana Martinez and Cole Peralto (Marine Monitoring Technicians). Significant amounts of coral and live rock were damaged from the vessel grounding and subsequent salvage. This damage was documented, and detailed photographs were taken of all damaged corals and of areas with significant impact to live rock habitat.

Coral and Habitat Damage Assessment

Measurements of Damaged Area

All impacted areas were initially identified by the dive teams and then marked and measured by laying down plastic 50-meter-long measuring tapes from the start to the end of the impact scars where they could be clearly identified with evidence of damage to the substrate. These measuring tapes would then serve as transect tapes for detailed damage assessments. The entire area was then mapped out with a diagram showing the initial impact scar, the secondary impact scar (location where the vessel remained grounded), and the salvage scar (Figure 6). To assess specific damage within these areas, divers swam along the transect tape and identified all coral colonies to species level, measuring colony size, and photographing the evidence. A 50 cm archaeological black and white pole was used to measure coral colony size and to serve as a consistent scale in the photographs.

The initial grounding incident resulted in a patchy impact scar extending 85 meters by 2 meters from a northwestern direction (170 square meters). Of this total 170 square meters of disturbed habitat, 35.5 square meters of clearly damaged high rugosity live rock habitat was specifically documented and photographed (Figures 1 & 2). In addition, there were 18 coral colonies directly damaged or destroyed during this grounding. All damaged coral colonies were individually documented during the initial grounding inspection and consisted of 8 colonies of *Pocillopora meandrina* (“cauliflower coral”) and 10 colonies of *Porites lobata* (“lobe coral”).

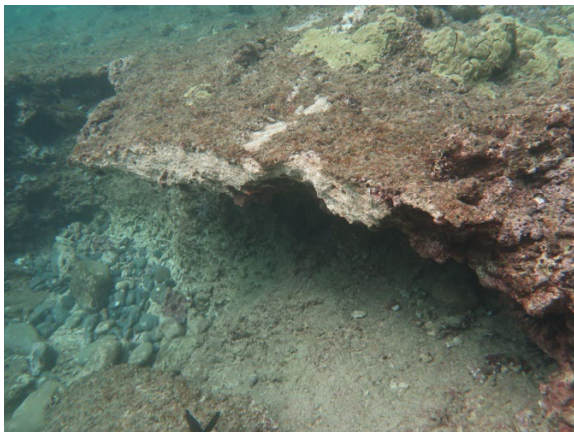


Figure 1: Photograph of an underwater shelf habitat broken off from impacts during the grounding of the vessel “Nakoa”.



Figure 2: Photograph showing a section of structured habitat Smashed by the grounding event.

The vessel then remained grounded in extremely shallow water along a basalt boulder shoreline for 14 days while salvage efforts were planned and the pollutants were removed. This area where the vessel remained stranded was composed of flat carbonate pavement and basalt boulder habitat in a high wave energy environment. In this area, a total of 1,575 square meters of live rock habitat was scarred, smashed and/or disturbed (45m long by 35 m wide) (Figure 3). There

were very few live coral colonies found in this area and the substrate was covered mostly by turf algae.

The final salvage removal operation that was conducted on Sunday, March 5, 2023, resulted in a scar to the substrate that extended an additional 75 meters in a westerly direction from where the vessel was stranded. The initial 15 meters of this salvage scar consisted of two deep trench-like scars that were about 5 meters apart and were each 1 meter wide (Figures 4 & 5). This was followed by a smaller impacted area for the next 60 meters that was limited to about 2 meters of width and extended out to a final depth of 10 feet. Within the deeper habitat, the damage was patchy and mostly composed of damage to individual coral colonies. The combined hard bottom live rock substrate impacted by this salvage scar was 195 square meters. There were significant impacts to living coral colonies all along this total salvage scar area, but the most significant impact to the live rock habitat was along the two scars that each extended 15 m x 1 m (30 square meters). Coral colonies impacted included 77 colonies of *Pocillopora meandrina* (“cauliflower coral”) and 24 colonies of *Porites lobata* (“lobe coral”) for a total of 101 impacted coral colonies within the salvage scar.



Figure 3: Underwater photograph showing the damage to hard bottom substrate at the location where the Nakoa was grounded for 6 days.



Figure 4: Aerial Photograph showing the two parallel salvage scars leading offshore from site. (photo by: Mark Deakos)



Figure 5: Underwater photograph showing coral damage along the grounding salvage scar.

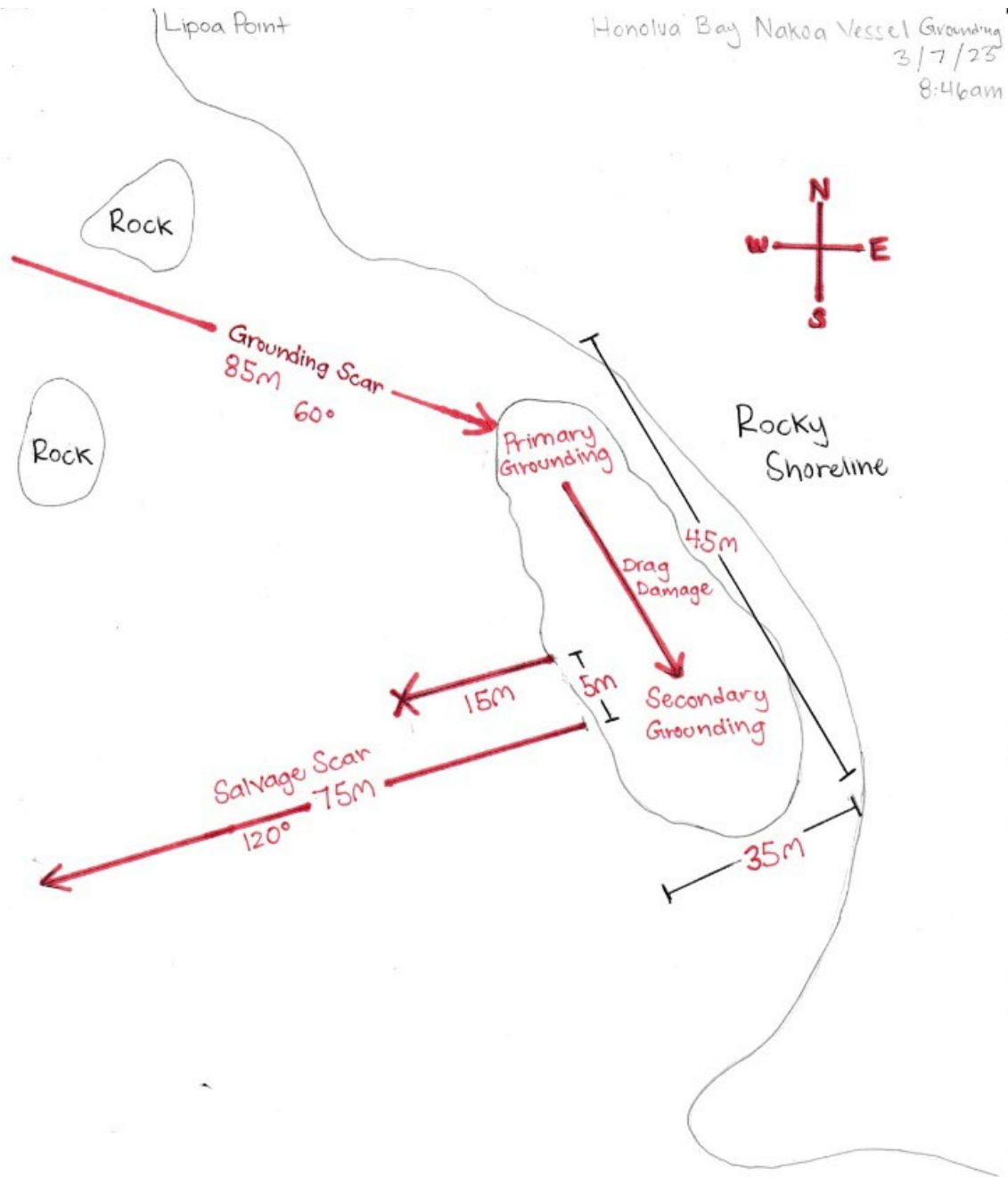


Figure 6: Detailed map of the impact area. The map shows the Initial Grounding Scar, the salvage scar, and the secondary grounding scar (where the vessel sat for 14 days along the shoreline).

Summary

The entire grounding and salvage incident resulted in impacts to 1,940 square meters of hard bottom nearshore habitat. Of that total impacted area, we focused our assessment on important habitats with significant and highly visible damage to live rock and on all damage to individual colonies of live corals. Key areas of damaged live rock included: 35.5 square meters of damage to high rugosity live rock habitat that occurred on the initial grounding scar; 1,575 square meters of smashed and damaged shallow hard bottom pavement and basalt boulder habitat where the vessel grounded and moved around in the waves; and 30 square meters of damage where the vessel was dragged out to deeper water resulting in deep scars into the shallow flat pavement habitat in the area. This entire impacted area is covered with highly cropped turf algae and patchy coral cover.

There was a total of 119 live coral colonies that were documented as heavily damaged or destroyed (see Appendix 1 for a full listing). The corals impacted were composed of two common species of corals found in shallow high wave energy environments and consisted of 34 colonies of *Porites lobata* (“lobe coral”) and 85 colonies of *Pocillopora meandrina* (“cauliflower coral”). The overall area was categorized as having low coral area value given that it was shallow and flat with low rugosity with total coral cover below 20%. All 34 colonies of *Porities lobata* were growing in a crustose morphology. The damaged *Pocillopora meandrina* colonies were all composed of the typical robust branching morphology found with this species.

In addition to the significant damage to live rock substrate and living corals, there were unidentified impacts to the ecosystem that likely resulted from diesel fuel that leaked from the vessel into the nearshore waters. This report is not intended to assign a specific value to the ecosystem damage sustained by this event, but rather should serve as a complete documentation and accounting of the damages sustained, which can assist in the process of determining what monetary compensation is appropriate.

Appendix 1**Table 1: *Pocillopora meandrina* Corals Damaged by the Nakoia grounding. Table shows the estimated coral colony size, the picture number that documented that specific damage, and the observer who took the photo.**

| <i>Pocillopora meandrina</i> Colonies | | | |
|---------------------------------------|-----------|--------------|-----------|
| | Size (cm) | Pic # | Observer |
| 1 | 30 | 2735 | R. Sparks |
| 2 | 30 | 2736 | R. Sparks |
| 3 | 40 | 2743 | R. Sparks |
| 4 | 40 | 2746 | R. Sparks |
| 5 | 40 | 2747 | R. Sparks |
| 6 | 40 | 2751 | R. Sparks |
| 7 | 40 | 2753 | R. Sparks |
| 8 | 40 | 2755 | R. Sparks |
| 9 | 30 | 2206-2208 | K. Stone |
| 10 | 10 | 2209 | K. Stone |
| 11 | 30 | 2210 | K. Stone |
| 12 | 30 | 2211 | K. Stone |
| 13 | 20 | 2214 | K. Stone |
| 14 | 20 | 2214 | K. Stone |
| 15 | 40 | 2215 | K. Stone |
| 16 | 40 | 2217 | K. Stone |
| 17 | 30 | 2219 | K. Stone |
| 18 | 40 | 2218 | K. Stone |
| 19 | 30 | 2220-21 | K. Stone |
| 20 | 20 | 2222 | K. Stone |
| 21 | 25 | 2224 | K. Stone |
| 22 | 40 | 2225 | K. Stone |
| 23 | 20 | 2229 | K. Stone |
| 24 | 25 | 2231 | K. Stone |
| 25 | 40 | 2232-partial | K. Stone |
| 26 | 20 | 2233 | K. Stone |
| 27 | 30 | 2234 | K. Stone |
| 28 | 30 | 2235 | K. Stone |
| 29 | 20 | 2237 | K. Stone |
| 30 | 20 | 2238 | K. Stone |
| 31 | 40 | 2240 | K. Stone |
| 32 | 30 | 2240 | K. Stone |
| 33 | 30 | 2241 | K. Stone |

| | | | |
|----|----|-----------|-------------|
| 34 | 30 | 2241 | K. Stone |
| 35 | 40 | 2242 | K. Stone |
| 36 | 20 | 2244 | K. Stone |
| 37 | 45 | 2245 | K. Stone |
| 38 | 20 | 2246 | K. Stone |
| 39 | 30 | 2246 | K. Stone |
| 40 | 40 | 2247 | K. Stone |
| 41 | 40 | 2248-49 | K. Stone |
| 42 | 30 | 2250 | K. Stone |
| 43 | 20 | 2251 | K. Stone |
| 44 | 25 | 2252-53 | K. Stone |
| 45 | 30 | 2256-57 | K. Stone |
| 46 | 30 | 2256-57 | K. Stone |
| 47 | 20 | 2258 | K. Stone |
| 48 | 35 | 2259 | K. Stone |
| 49 | 35 | 2260 | K. Stone |
| 50 | 50 | 2261-62 | K. Stone |
| 51 | 40 | 2263 | K. Stone |
| 52 | 30 | 2266-67 | K. Stone |
| 53 | 30 | 2268 | K. Stone |
| 54 | 30 | 2269 | K. Stone |
| 55 | 30 | 2270 | K. Stone |
| 56 | 50 | 2270 | K. Stone |
| 57 | 30 | 2272 | K. Stone |
| 58 | 40 | 2277-78 | K. Stone |
| 59 | 50 | 2279-82 | K. Stone |
| 60 | 30 | 2283 | K. Stone |
| 61 | 40 | 2284-85 | K. Stone |
| 62 | 30 | 2286 | K. Stone |
| 63 | 20 | 2289 | K. Stone |
| 64 | 30 | 2287 | K. Stone |
| 65 | 35 | 2292 | K. Stone |
| 66 | 35 | 2294 | K. Stone |
| 67 | 25 | 2296 | K. Stone |
| 68 | 30 | 2298 | K. Stone |
| 69 | 25 | 2299 | K. Stone |
| 70 | 15 | 2301 | K. Stone |
| 71 | 40 | 2214-2219 | T. Martinez |
| 72 | 30 | 2218-2222 | T. Martinez |
| 73 | 15 | 2246-2248 | T. Martinez |
| 74 | 12 | 2249-2252 | T. Martinez |
| 75 | 25 | 2271-2273 | T. Martinez |

| | | | |
|----|----|-----------|-------------|
| 76 | 10 | 2277-2278 | T. Martinez |
| 77 | 10 | 2283-2284 | T. Martinez |
| 78 | 40 | 2294-2296 | T. Martinez |
| 79 | 35 | 2298-2302 | T. Martinez |
| 80 | 30 | 2305-2307 | T. Martinez |
| 81 | 20 | 2308-2309 | T. Martinez |
| 82 | 30 | 2310-2312 | T. Martinez |
| 83 | 20 | 2315 | T. Martinez |
| 84 | 20 | 2318 | T. Martinez |
| 85 | 30 | 2319 | T. Martinez |

Table 2. *Porites lobata* Corals Damaged by the Nakoa grounding. Table shows the estimated coral colony size, the picture number that documented that specific damage and the observer who took the photo.

| <i>Porites lobata</i> Colonies | | | |
|--------------------------------|-----------|---------|-----------|
| | Size (cm) | Pic # | Observer |
| 1 | 50 | 2737 | R. Sparks |
| 2 | 50 | 2739 | R. Sparks |
| 3 | 60 | 2742 | R. Sparks |
| 4 | 50 | 2745 | R. Sparks |
| 5 | 50 | 2745 | R. Sparks |
| 6 | 100 | 2748 | R. Sparks |
| 7 | 60 | 2749 | R. Sparks |
| 8 | 80 | 2750 | R. Sparks |
| 9 | 60 | 2751 | R. Sparks |
| 10 | 30 | 2751 | R. Sparks |
| 11 | 20 | 2209 | K. Stone |
| 12 | 50 | 2212 | K. Stone |
| 13 | 30 | 2213 | K. Stone |
| 14 | 40 | 2214 | K. Stone |
| 15 | 40 | 2216 | K. Stone |
| 16 | 50 | 2223 | K. Stone |
| 17 | 20 | 2226 | K. Stone |
| 18 | 25 | 2227 | K. Stone |
| 19 | 20 | 2228 | K. Stone |
| 20 | 30 | 2230 | K. Stone |
| 21 | 20 | 2232 | K. Stone |
| 22 | 40 | 2236 | K. Stone |
| 23 | 25 | 2239 | K. Stone |
| 24 | 40 | 2243 | K. Stone |
| 25 | 25 | 2252-53 | K. Stone |

| | | | |
|----|----|-----------|-------------|
| 26 | 40 | 2254-55 | K. Stone |
| 27 | 30 | 2264-65 | K. Stone |
| 28 | 20 | 2271 | K. Stone |
| 29 | 35 | 2275 | K. Stone |
| 30 | 12 | 2269-2270 | T. Martinez |
| 31 | 15 | 2281-2282 | T. Martinez |
| 32 | 35 | 2284-2285 | T. Martinez |
| 33 | 20 | 2313-2314 | T. Martinez |
| 34 | 30 | 2316 | T. Martinez |

EXHIBIT B –
CORAL AND LIVE ROCK PENALTY MATRICES

CORAL PENALTY MATRIX

| | Encrusting | Solitary | Branching | Digiform | Plate-Like | Massive |
|--------------------|-------------------|-----------------|------------------|-----------------|-------------------|----------------|
| 0 – 5 cm | \$10 | \$20 | \$25 | \$25 | \$25 | \$20 |
| 5 – 10 cm | \$20 | \$40 | \$50 | \$50 | \$50 | \$40 |
| 10 – 20 cm | \$50 | \$100 | \$100 | \$100 | \$100 | \$100 |
| 20 – 40 cm | \$100 | \$200 | \$200 | \$200 | \$200 | \$200 |
| 40 – 80 cm | \$200 | n/a | \$400 | \$400 | \$500 | \$500 |
| 80 – 160 cm | \$500 | n/a | \$800 | \$800 | \$1000 | \$1000 |
| + 160 cm | \$750 | n/a | \$1000 | \$1000 | \$1000 | \$1000 |

FMA CORAL PENALTY MATRIX

| | Encrusting | Solitary | Branching | Digiform | Plate-Like | Massive |
|-------------|------------|----------|-----------|----------|------------|---------|
| 0 – 5 cm | \$15 | \$30 | \$35 | \$35 | \$35 | \$30 |
| 5 – 10 cm | \$30 | \$60 | \$75 | \$75 | \$75 | \$60 |
| 10 – 20 cm | \$75 | \$150 | \$150 | \$150 | \$150 | \$150 |
| 20 – 40 cm | \$150 | \$300 | \$300 | \$300 | \$300 | \$300 |
| 40 – 80 cm | \$300 | n/a | \$600 | \$600 | \$750 | \$750 |
| 80 – 160 cm | \$750 | n/a | \$1000 | \$1000 | \$1000 | \$1000 |
| + 160 cm | \$1000 | n/a | \$1000 | \$1000 | \$1000 | \$1000 |

RARE CORAL PENALTY MATRIX

| | Encrusting | Solitary | Branching | Digiform | Plate-Like | Massive |
|-------------|------------|----------|-----------|----------|------------|---------|
| 0 – 5 cm | \$20 | \$40 | \$50 | \$50 | \$50 | \$40 |
| 5 – 10 cm | \$40 | \$80 | \$100 | \$100 | \$100 | \$80 |
| 10 – 20 cm | \$100 | \$200 | \$200 | \$200 | \$200 | \$200 |
| 20 – 40 cm | \$200 | \$400 | \$400 | \$400 | \$400 | \$400 |
| 40 – 80 cm | \$400 | n/a | \$800 | \$800 | \$1000 | \$1000 |
| 80 – 160 cm | \$1000 | n/a | \$1000 | \$1000 | \$1000 | \$1000 |
| + 160 cm | \$1000 | n/a | \$1000 | \$1000 | \$1000 | \$1000 |

MLCD CORAL PENALTY MATRIX

| | Encrusting | Solitary | Branching | Digiform | Plate-Like | Massive |
|-------------|------------|----------|-----------|----------|------------|---------|
| 0 – 5 cm | \$20 | \$40 | \$50 | \$50 | \$50 | \$40 |
| 5 – 10 cm | \$40 | \$80 | \$100 | \$100 | \$100 | \$80 |
| 10 – 20 cm | \$100 | \$200 | \$200 | \$200 | \$200 | \$200 |
| 20 – 40 cm | \$200 | \$400 | \$400 | \$400 | \$400 | \$400 |
| 40 – 80 cm | \$400 | n/a | \$800 | \$800 | \$1000 | \$1000 |
| 80 – 160 cm | \$1000 | n/a | \$1000 | \$1000 | \$1000 | \$1000 |
| + 160 cm | \$1000 | n/a | \$1000 | \$1000 | \$1000 | \$1000 |

LIVE ROCK PENALTY MATRIX (m²)

| | Rubble | Pavement | Reef | Basalt | High Rugosity | |
|---------------------------------|--------|----------|--------|--------|---------------|--|
| Turf / Cyanobacteria | \$10 | \$20 | \$40 | \$20 | \$40 | |
| Macroalgae | \$20 | \$100 | \$200 | \$100 | \$200 | |
| CCA - Encrusting | \$200 | \$400 | \$600 | \$400 | \$600 | |
| CCA - Rugose | \$400 | \$800 | \$1000 | \$800 | \$1000 | |
| Sponge, Bryozoan, Other Sessile | \$100 | \$150 | \$300 | \$150 | \$300 | |
| Soft Coral / Zoanthid | \$80 | \$200 | \$400 | \$200 | \$400 | |
| High Biodiversity | \$200 | \$400 | \$600 | \$400 | \$600 | |

FMA LIVE ROCK PENALTY MATRIX (m²)

| | Rubble | Pavement | Reef | Basalt | High Rugosity | |
|---------------------------------|--------|----------|--------|--------|---------------|--|
| Turf / Cyanobacteria | \$15 | \$30 | \$60 | \$30 | \$60 | |
| Macroalgae | \$30 | \$150 | \$300 | \$150 | \$300 | |
| CCA - Encrusting | \$300 | \$600 | \$800 | \$600 | \$900 | |
| CCA - Rugose | \$600 | \$1000 | \$1000 | \$1000 | \$1000 | |
| Sponge, Bryozoan, Other Sessile | \$150 | \$225 | \$450 | \$225 | \$450 | |
| Soft Coral / Zoanthid | \$120 | \$300 | \$600 | \$300 | \$600 | |
| High Biodiversity | \$300 | \$600 | \$800 | \$600 | \$900 | |

MLCD LIVE ROCK PENALTY MATRIX (m²)

| | Rubble | Pavement | Reef | Basalt | High Rugosity | |
|---------------------------------|--------|----------|--------|--------|---------------|--|
| Turf / Cyanobacteria | \$20 | \$40 | \$80 | \$40 | \$80 | |
| Macroalgae | \$40 | \$200 | \$400 | \$200 | \$400 | |
| CCA - Encrusting | \$400 | \$800 | \$1000 | \$800 | \$1000 | |
| CCA - Rugose | \$800 | \$1000 | \$1000 | \$1000 | \$1000 | |
| Sponge, Bryozoan, Other Sessile | \$200 | \$300 | \$600 | \$300 | \$600 | |
| Soft Coral / Zoanthid | \$160 | \$400 | \$800 | \$400 | \$800 | |
| High Biodiversity | \$400 | \$800 | \$1000 | \$800 | \$1000 | |

EXHIBIT C –

LETTER FROM R SCHMITT RE NAKOA
SETTLEMENT DATED 11.15.23



McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

LAND/TRANS DIV
DEPARTMENT OF

NOV 20 11:46
DIRECT AS:
PHONE - (808) 529-7422
FAX - (808) 529-8018
E-MAIL - SCHMITT@M4LAW.COM

November 15, 2023

VIA E-MAIL: danica.l.swenson@hawaii.gov

Danica Swenson
Deputy Attorney General
Land Division
Department of Land and Natural Resources
425 Queen Street
Honolulu, HI 96813

Re: **ENFORCEMENT ACTION AGAINST JIM JONES, NOELANI YACHT CHARTERS, LLC, KEVIN S. ALBERT, KIMBERLY L. ALBERT, AND THE ALBERT REVOCABLE TRUST FOR STONY CORAL AND LIVE ROCK DAMAGE RESULTING FROM THE NAKOA GROUNDING INCIDENT ON FEBRUARY 20, 2023 OUTSIDE OF THE HONOLUA-MOKULEIA BAY MARINE LIFE CONSERVATION DISTRICT, ISLAND OF MAUI**

Dear Ms. Swenson:

After a long review of the facts here, and after consultation with our clients, we do not believe it is equitable to hold them responsible for the damage done during the initial Grounding of the Vessel or require them to waive their right to recover against the Salvor for its negligence related to the Salvage of the Vessel. This letter will detail the reasons for both positions and suggest a resolution.

The Trust is not responsible for the consequences of the acts of a thief

Earlier this year, the Department of Land and Natural Resources ("DLNR") assigned an investigator, Stacey R. Yamashita, to investigate our report of the theft of the Vessel on Friday, February 17, 2023, three days before the grounding of the Vessel on Monday, February 20, 2023 ("Grounding"). We understand that the investigation is nearly complete. We are confident that the conclusion of the investigation will be that, in accordance with the plain terms of the Purchase Agreement between Mr. Jones and the Trust, the Vessel was supposed to be used exclusively for commercial charters. On the weekend of the Grounding, Mr. Jones admitted that his use of the Vessel was for a personal family weekend voyage. This use was not approved nor authorized by the Trust. In fact, neither Mr. nor Ms. Albert knew anything about this personal use until they were notified of the Grounding. Under Hawaii law, this unauthorized use

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constitutes theft. Holding the Trust responsible for the acts of a thief is not just or equitable. DLNR can pursue Mr. Jones, a Hawaii resident, for his misconduct and the damage he caused.

The Trust should not be held responsible for the negligence of the Salvor

As we detailed in our July 20, 2023 letter to the DLNR in preparation for the public hearing on July 28, 2023, it is clear from the BLNR Assessment Report that the vast majority of the damage to the coral colonies and the live rock near the shoreline and in the marine sanctuary was caused by the Salvage, not the Grounding. It was clear after the first day of trying to pull the Vessel off the shoreline that the methodology chosen by the Salvor was going to result in damage to the area and the ultimate sinking of the Vessel—which it did. Despite this, the Salvor chose to undertake a course of action which guaranteed additional damage rather than mitigating it. It is simply not right or equitable for the Albert Trust to have to shoulder the burden of paying for that damage.

Additionally, there were many items onboard the *Nakoa* following the Grounding which could have been salvaged, including a brand new \$30,000 tender. To date, no one has answered our inquiry about what happened to that small boat. In fact, there has been no accounting for the equipment and other items of considerable value which were onboard at the time of the Grounding but ultimately lost.

The Albert Trust is interested in settling the claims here, but that settlement should reflect the Trust's responsibilities. The Vessel was stolen, and the Trust had no idea it was being used by Jim Jones for his personal use. The Trust had no role in the negligent mooring or the Grounding. The Trust was also not involved in the Salvage. There were other salvage options including leaving the Vessel on the shoreline and salvaging it in place—avoiding any further damage to the Bay. DLNR did not pay for the Salvage. The Trust's insurance carrier did so directly. So, arguing that the State was "required" to select the lowest bidder is inaccurate. The Salvor could and should have undertaken a different method of salvage but since it elected not to do so and failed to conduct the Salvage in a manner which mitigated damage, it should be accountable for its negligent conduct. The Trust should not have to pay for the damage caused by the Salvor and that is why we are not willing to waive the right to pursue the Salvor.

Recommended Resolution

Thank you for your consideration and patience in this process. At this point, we believe it would be most prudent to wait for the completion of the Theft Investigation and the release of the Final Report. Depending on the results and conclusions contained in that report, we believe that the parties can make a much better assessment of liability.

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Sincerely,

McCORRISTON MILLER MUKAI MacKINNON LLP



Randall K. Schmitt

RKS

Cc: Clients (via email only)

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EXHIBIT D –

Nakoa Community Meeting Minutes –
February 22, 2024

Nakoa Grounding Civil Fines Public Input Meeting, 6:00-9:00PM, February 22, 2024

Harvest at Kumulani Chapel (1000 Kapalua Dr., Lahaina, HI 96761)

In attendance (DLNR-DAR):

Russell Sparks (Moderator – In Person)

Charlie Taylor (Presenter – on Zoom)

Diana Lopera (Logistics/Tech Support – on Zoom)

In attendance (Testifying):

Peter deAquino, John Carty, Michiko Smith, Paele Kiakona (Save Honolua Coalition), Leonard Nakoa (Juniya), KaiMaile (Precious) Makokau (sp?), Glenn Kanaka, Shawn Reid, Shannon I'i, Katie Austin, Kamanao'i'o Gomes, Jimmy Billianor, Kanolani Steward, Kalanachu Takahashi, Spencer Headley, Max Fletcher (Spencer?) on ZOOM

Introduction – 6:05PM

Russell Sparks brief intro, followed by Paele Kiakona (Save Honolua Coalition) stating hope for productive solutions, not just anger.

Charlie Taylor (DAR Legal Fellow) gave 5 minute presentation on Nakoa Grounding Incident, what happened, how we calculated fines.

Meeting then open for public comment / testimony:**General Themes of Testimony:**

1. **Almost all requested maximum fine amount; some advocated for more; many said fine amount does not reflect the desecration of a sacred space for locals/Hawaiians; how can the DLNR put a value on that?**
2. **DLNR should use the fine amount to increase enforcement capacity and/or for better moorings, more secure, better quality**
3. **If DLNR/DOCARE/DOBOR cannot adequately police Honolua Bay, then BLNR should consider restricting commercial activity in the Bay**

Testifiers and summary of their testimony in order:

KaiMaile (Precious) Makokau: She had a lot to say, not just about Nakoa, but about many other issues such as sewage disposal, solar power, electricity, whales, freshwater issues, TMKs, hihiwai, Plantation Estates, corruption, suicide rates, poverty, and veered into the wars in Ukraine, Palestine, and other non-related issues. She was very passionate.

Peter deAquino: Lahaina resident, fisherman, diver. Arrived to meeting at 4PM to ensure his voice was heard. Was baffled by the fine amounts, how can we put a value on these precious resources? Also concerned with the amount of invasives in Honolua Bay such as roi, taape. He wanted to help eradicate these but was told he could not because of HAR Rules. He was also angry about the negligence that

Jones showed by mooring inside the bay. He does not think the fines DAR recommended are adequate. Thinks the fines should be the maximum to set a precedent.

Jimmy Billianor: Born and raised in W. Maui. He was there and saw the whole incident. He had criticisms of DLNR's response as he thought the vessel could've been removed the following day. Discussed issues with easements into Honolua Bay and expressed concerns with visitors trampling the corals. Did not comment directly on fine amount.

John Carty: Save Honolua Coalition. He believes that DLNR's coral fine amounts do not reflect the sacredness of the place that was damaged. He stated enforcement is severely lacking and that DLNR needs to step up its efforts. He expressed how passionate people are about Honolua Bay and how much pain it caused. He believes anything less than the maximum fine would be a slap in the face. He thinks it should be the full \$1.6 million dollars because this was desecration of a sacred spot, and the owner did not apologize, no statement, just left his boat for the community to deal with. He said the incident severely affected him. For over 10 days it disrupted his life/business, but also had residual effects. He thanks DLNR for giving him access to the site. He also believes it's a good practice to have community members on-site who love/value the place that was damaged. Also discussed how a longtime Save Honolua Coalition board member stepped down after this incident which was a huge loss. The pain, suffering, and cultural damage to the community was immense and maximum fines should be issued for deterrent effect, use the money for more patrols, more enforcement of mooring rules. If can't do this, we should ban commercial activity in the bay, maybe ban all boats in the bay.

Michiko Smith: Grew up in the area, the Nakoia incident inspired her to go to UH Maui to study marine biology. There is no way to put a price on the value of marine organisms. Believes maximum fine should be applied to the Responsible Parties.

Paele Kiakona: Save Honolua Coalition – President of Coalition, organizer of Lahaina strong. He was one of first responders. They wanted to pull the Nakoia from the reef via jetski, but by the time they arrived the vessel had already grounded. Was upset because there was no police presence before the incident and immediately after. However, there is often heavy police presence against them as fishermen, but nothing for this yacht. He believes the proposed fine is ridiculously low. He wants the maximum fine to set a precedent. This is not a playground, it's a sacred place, it's their home, and it needs love. Acknowledges that DLNR is understaffed and underfunded. Wants the maximum fine to go towards more DLNR police presence. If not, then Honolua should not be a commercial zone. Too many people are putting a strain on the reef system.

Leonard Nakoia (Juniya): He was at previous Board meetings. He's not a fisherman. Mentioned how in his day, when people mess up they get "lickins" and these guys definitely deserve one. He feels that a fine of approx.. \$100,000 dollars is way too low for a boat that was worth 7million dollars. He wants the maximum fine.

Glenn Kanaka: Glenn could not come in person but wanted to be represented (he gave testimony at last BLNR meeting). So John Carty spoke on his behalf and played the testimony from Glenn over the phone. Glenn's BLNR testimony was very passionate, very emotional. He holds the area extremely dear, asked for forgiveness from his kapunas even though it wasn't his fault, as Honolua is sacred and was desecrated. The incident is full of pain for him and all community members. Also wanted to say that before restoring any corals, please contact him because there are protocols as it's a sacred place.

Shawn Reid: Maui residents are so tired of meetings, believes that Mr. Jones was lying about the chain of events. He was there that morning and filmed a lot of it. Recreational, cultural, ecosystem value is immense and he doesn't think it was reflected in the reports. He thinks it's a joke. Questioned what is the price for a permanent scar that now desecrates the area. He said earlier in the day (of the incident), Jim Jones was messing with a pod of whales, has no respect for the area. Strongly supported maximum fine. Said the recommended fine was a slap in the face. Use the fines for better moorings, better enforcement, etc.

Shannon I'i: Feels like it's crazy that non-locals come and do whatever they want, don't get in trouble, while locals do things and are continuously fined/harassed. Locals take care of their natural resources, talked about the coral polyps as the first thing created in the Kumulipo, we need all the resources and we understand their value. But the RP showed no care for the resources he destroyed. The locals were the ones taking care of the mess. Believes recommended fine is way too small. How can we put a price on coral? She believes should be over maximum fine.

Katie Austin: Lives near Honolua Bay, she saw the Nakoa moored the night before and it caught her off guard because it was such a massive yacht. The next morning the incident occurred. She said other captains were radioing to the Nakoa telling them to move because the mooring was not made for that, the captain was like "screw you" and didn't listen. Thinks DLNR didn't include that Nakoa was warned for PR reasons, there are too many boats in the Bay. She wants maximum fine. If it means shutting down the Bay for commercial activities, then so be it.

Kamanaoi'o (sp) Gomes: He moved Honolua in 1987 from Waikiki. Moved to Lahaina. Learned to surf in Honolua Bay. His father's ashes are spread in Honolua Bay, along with many others. It's very sacred, almost like a graveyard. Says if Jim Jones is a "local" he needs to man up and pay for what he did. Compared this event to Healy Tibbitts where we settled for over \$1million dollars. Thinks this fine should be similar. Can't just be a slap on the wrist. Strongly supports maximum fine.

Kanolani Steward: From Lahaina. Wants to echo what everyone else said. Thinks this is a joke, fine amounts are way too low. He should get maximum fines because it will show other boat owners this isn't allowed. Should utilize the funds for enforcement. Says the DLNR app doesn't work. Mentioned the DLNR mission and how we should follow that mission by issuing maximum fine. Says to not forget about the locals, now it's all tourists and too crowded.

Kalanachu (sp) Takahashi: Lives near the Bay. Read from a mele in Hawaiian. Discussed the historical/cultural beginning of fishing, corals, and history of the area and the six bays. Referred to Kumulipo, etc. Supports maximum fine. Against extractive tourism.

Spencer Headley: wasn't planning on speaking, but remembered something that happened that day, wanted to relay it to the BLNR. When the yacht initially grounded, there were community members there ready with empty tanks to help lift it off of the reef (before it got even more grounded), so this was the initial stage, but DLNR said "no" because they might spill some fuel, and then there ended up being a lot of fuel spilled anyway. So was upset that DLNR restricted the community from responding. And that some of these community members got threatened with fines. He supports the maximum fine for the RPs.

Shawn Reid: wanted to speak one more time. Owner was extremely negligent, despite what he said. “Blatant negligence”. Boat leaked for hours, assessment hasn’t been done for damage from fuel. And what toxins were eaten by fish and transferred? He said the incident made global headlines and the fine amount should too. Need to set an example, precedent.

Max Fletcher (Spencer?) on ZOOM – was not present by the time it was his turn to speak.