



STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII
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David Y. Ige
Governor

Chairperson
Puananionaona Thoene

Vice Chair
Mary Begier

Members
Roy Abe
Stephanie Dunbar-Co
Scott Glenn (*Ex Officio*)
Maka'ala Ka'auomoana
P. Ka'anohi Kaleikini
I. Robin Kaye
Theresita Kinnaman
Robert Parsons
Charles Prentiss
Ron Terry
Michael Tulang
N. Mahina Tuteur

State of Hawai'i Environmental Council
June 12, 2018 Meeting Minutes
Approved on October 25, 2018

Tuesday, June 12, 2018, 12:30 PM – 3:00 PM
Leiopapa A Kamehameha Bldg.

Room 1500, 235 S. Beretania St, Honolulu, Hawai'i 96813

Members Present (11):

Puananionaona Thoene (Chairperson), Mary Begier (Vice-Chairperson), Roy Abe, Stephanie Dunbar-Co, Scott Glenn (*ex officio*), Maka'ala Ka'auomoana, Robin Kaye, Tessie Kinnaman, Charles Prentiss, Ronald Terry, Mahina Tuteur

Members Absent:

P. Ka'anohi Kaleikini, Robert Parsons, Michael Tulang

Environmental Council Counsel:

Edward Bohlen and Susan Hohmann (Deputies Attorney General)

Office of Environmental Quality Control (OEQC) Staff:

Les Segundo

Public:

Dr. Bruce Anderson, Inga Gibson, Tim Dow, Sara Bolduc, David Sakoda, Bill Walsh, Steve Jacobson

Note: **Bolded** items indicate text from the agenda.

1. **Call to order, roll call and quorum, introductions**

a. **Introduction of Dr. Bruce Anderson, Director of Health**

- With a quorum of eleven members present, Chairperson Thoene called the meeting to order at 1:00 PM. Members of the public introduced themselves.
- The Chairperson introduced the new Director of Health, Bruce S. Anderson, who spoke briefly about his prior appointments in the Department of Health (DOH).

2. **Informational briefing by the Department of Land and Natural Resources, Division of Aquatic Resources regarding the status of aquarium fishing regulations**

- Chairperson Thoene invited the Department of Land and Natural Resources (DLNR) to brief the Environmental Council on the status of aquarium fishing regulations.
- Mr. David Sakoda, Interim Administrator of the Division of Aquatic Resources (DAR), DLNR started the DLNR presentation by noting that his portion of the talk would be concerning the regulatory framework for aquarium fishing. He pointed out that the second of the two parts would be the scientific background for the aquarium fishing program presented by Dr. Bill Walsh, Aquatic Biologist with DAR in Kona. Dr. Anderson also stayed for the presentation as he was involved as DAR Administrator prior to becoming Director of Health.

At the outset, Mr. Sakoda recognized that the genesis for the present discussion arose from the 2017 decision of the Supreme Court of Hawai'i in the case of *Umberger v. DLNR*, 403 P. 3d 27. He briefly discussed the following chronological events.

- October 27, 2017. The circuit court invalidated all existing commercial aquarium permits. The use of fine mesh nets deemed illegal until an environmental assessment (EA) was completed.
- January 5, 2018. The DLNR issued a press release interpreting court ruling in light of DLNR regulations. This release also noted that DLNR declared that there would be no aquarium collecting in West Hawai'i.
- January 6, 2018. One day after the press release, the DLNR investigated a report that a collector was among other things, using gear that violated the mesh size requirement. A subsequent report concluded that the collector used gear greater than 2 inches. It was not in violation of mesh size requirement. The collector claimed ignorance of the previous day's press release by declaring that he was not notified of the ruling and press release. The DLNR decided not to prosecute the collector.

Mr. Sakoda informed the Council that the DLNR regulates fishing under Section 188-31, HRS and its implementing administrative rules. The regulatory program for aquarium fishing program bifurcated into two areas: recreational permits; and commercial licenses. The program includes general net restrictions prohibiting collection using nets having mesh sizes smaller than 2 inches (to prevent catching juvenile fish).

After he had completed his presentation, Mr. Sakoda responded to questions from the Environmental Council and the public. After completion of his presentation, Mr. Sakoda introduced Dr. Bill Walsh to present the scientific-technical background behind the regulatory program.

Dr. Walsh, West Hawai'i Biologist, DAR, DLNR, discussed the biology and ecology of the fish replenishment areas that are closed to aquarium fishing. He noted that the Pet Industry Joint Advisory Council (PIJAC) has been in frequent communication with the DLNR. In response to a question, Dr. Walsh stated the most impacted fish would be the Achilles tang (pāku'iku'i), a surgeon fish herbivore that feeds on benthic algae.

He noted that as juveniles the fish are highly desirable for aquarium collection. Their territoriality would frequently lead to their capture as they stand their ground when confronted. As adults they are beneficial for their food value. The larger mature fish are of importance to the fishery since they breed and propagate the species. He noted that the second most impacted fish would be the kole or Golden ring surgeonfish. A question and answer session followed that discussed coral health and population enhancement.

Dr. Walsh noted that global warming is a factor in coral bleaching. Bleaching events will usually result in the death of the polyps resulting in dead calcium carbonate skeletons that now become subject to macroalgal invasion and eventual erosion and breakdown. The swimming coral planulae require a clean surface to settle and develop into mature polyps.

Thus, algae eaters such as the scarids (parrotfish) are essential to coral development as they clear algal surfaces providing the coral planulae with an ideal substrate for settlement and growth. To enhance the health of the herbivores, the DAR had solicited global expertise on the problem of reef health. Some crucial scientific advice was received concerning the maintenance of water quality and avoidance of takes of big herbivores. Dr. Walsh noted that as a result of the global advice received; DAR initiated the 30 by 30 roadmap whose aim would be to achieve effective management in 30% or nearshore areas by the year 2030.

In response to a query on the legislative prohibition on the use of benzophenones in sunscreens, a discussion ensued. Dr. Anderson noted while the ban is reasonable, it was ranked low amongst the practical measures to protect the health of the reefs. Dr. Anderson cited a need to prioritize effective actions in order of importance, with mitigation of ocean temperature rises being most important.

Chairperson Thoene noted that the presentation needed to conclude soon to allow the Council to complete its agenda. She invited the public to ask questions.

Ms. Gibson asked Mr. Sakoda what the current rate of aquarium collection was since the prohibition on fine mesh nets. Mr. Sakoda responded that he could not quantify an estimate, but he noted that collection still occurs. A discussion on the prohibition of hand nets for commercial use ensued. Ms. Gibson pointed out that the DLNR had about a dozen cases of standing violations. She advised the Council to invite the Chief of the Division of Conservation and Resource Enforcement to a future meeting.

Chairperson Thoene thanked Mr. Sakoda and Mr. Walsh for the presentation.

- 3. Review and approval of prior meeting minutes**
 - a. Minutes for the meeting held April 10, 2018**
 - b. Minutes for the meeting held May 1, 2018**

At the advice of the Director, Chairperson Thoene deferred this agenda item.

4. OEQC Director's Report

- On May 1, 2018, Department of Health Planner Laura McIntyre joined the office.
- From July 2-9, 2018, Director Glenn attended a Learning Laboratory on Carbon Offsets sponsored by the U. S. Climate Alliance. The laboratory was an opportunity for attendees to share lessons learned and new policies.
- A student intern from Hawai'i Pacific University in consultation with staff developed a plan to improve workflow for producing the periodic bulletin including more efficient methods for data intake.
- Two graduate students at the Department of Urban and Regional Planning at the University of Hawai'i have been retained to develop sea-level rise guidance, pursuant to Act 17 Session Laws of Hawai'i 2018, for the Chapter 343, HRS, process after the administrative rules have been finalized.
- Director Glenn met with Dr. Kieko Matteson and Dr. Sara Bolduc concerning a project to recover historical environmental documents currently being stored at the former Environmental Center at the University of Hawai'i Water Resources Research Center.
- The Office has been conducting interviews to fill the Secretary II position.

5. Exemption Committee

a. Action regarding concurrence on Hawai'i County Office of Housing and Community Development's proposed exemption list

MOTION – Member Prentiss moved that the Council concur with the County of Hawai'i, Office of Housing and Community Development, Exemption List. Mr. Prentiss noted that although no public comments were received, the committee recommended that seawalls not be exempted under Exemption Class 2. A brief discussion ensued on across-the-board inclusion of the same language for future submittals to the Council. Chairperson Thoene called for the question. The Council unanimously approved the motion (11-0-0). Member Prentiss noted that the concurrence date would be the date when the OEQC received the revised list.

b. Action regarding publishing Hawai'i State Department of Defense's exemption list for a 30-day comment period

MOTION – Member Prentiss moved that the Council approve the publication of a notice in the periodic bulletin soliciting comments for thirty-days on a Draft Exemption List for the Department of Defense of the State of Hawai'i for a 30-day comment period. A brief discussion ensued, and Mr. Prentiss noted that the DOD had already agreed to include language under Exemption Class 6 stating that seawalls were not exempt. Chairperson Thoene called for the question. The Council unanimously approved the motion (11-0-0).

c. Action regarding Hawai'i County Department of Environmental Management's proposed list for a 30-day comment period.

- Member Prentiss reported that the Committee review this earlier. Member Terry planned to meet with the Department of Environmental Management as follow up.

d. Update on status of various agency exemption lists

- Member Prentiss distributed a chart (attached) showing the status of the various exemption lists subject to Chapter 343, HRS. There were no questions.

6. Information & Outreach Committee

a. Update regarding Stormwater pollution control programs and initiatives for O'ahu and Maui

- Member Abe discussed the Stormwater Management Plan for the City and County of Honolulu. He distributed a copy of the plan also available here: <https://www.honolulu.gov/dfmswg/aboutus/875-site-dfm-swq-cat/20922-storm-water-management-plan.html>.) Elements of the plan include:
 - Public education outreach,
 - Illicit discharge determination, and
 - Pollution prevention and good practices.
- He noted that Maui would develop their own guidance on stormwater management. Watershed management was also an issue requiring further dialogue between local and state governments. Member Abe noted that watershed areas usually involve extensive land areas hydrologically upgradient from the local sites impacted by stormwater generated in the watershed. The local government can only control measures under their jurisdiction. Watershed partnerships are effective at promoting holistic, collaborative solutions between both governments and potentially affected interests (e.g., Ko'olau Watershed Partnership).

- b. Discussion American Society of Civil Engineers (ASCE) Infrastructure Report Card for Hawai'i**
 - Member Abe discussed the Infrastructure Report Card for Hawai'i, prepared by the ASCE, Hawai'i Chapter.
- c. Discussion of suspension of HRS Chapter 343 review related to emergency declarations**
 - Member Ka'auomoana asked about the propriety of holding Chapter 343, HRS, compliance in abeyance for an inordinate amount of time during emergencies. She noted that governments have used various interpretations on the validity of an emergency declaration beyond the initial emergency. She cited an example on the north shore of Kaua'i. Member Terry noted that emergency housing on the island of Hawai'i was another example. Member Terry said that despite an emergency proclamation, emergency work should, at a minimum, include surveys by the State Historic Preservation Division and the Division of Forestry and Wildlife of the DLNR.
 - Director Glenn noted that the Sierra Club had recently commented on the draft rules on the potential of "development by disaster." Director Glenn pointed out that Professor Karl Kim of the University of Hawai'i recommended using a tool called Rapid Environmental Assessment (developed by the World Bank and others). He suggested that the use of this tool could take as little as one week, immediately after the first responders. Ms. Barker of the DOD noted that Hawai'i Emergency Management Agency (HI-EMA) would be a possible agency for such a tool. Director Glenn said he would raise the topic with General Logan of HI-EMA.

Member Tuteur left at 2:35 pm.

- d. Discussion of HB2106, Act 17, Session Laws of Hawai'i 2018 – relating to sea level rise in environmental review documents**

This item was discussed during the Director's Report.

7. Report on Rules Update Process

a. Report on public hearings and comments received

- Director Glenn reported that all comments received will be distributed to the Council and public at the same time. Director Glenn invited Hearing Officer Steve Jacobsen to share his impressions of the completed public hearings.
- Mr. Jacobsen noted that he presided over eight of the hearings, all except for the one held on Moloka'i. Mr. Jacobsen said that comments expressed frustration generally with environmental issues and specific concerns about the environmental review process. He would provide a short report to the Council of the hearings.

b. Action to establish a Permitted Interaction Group (PIG) to review public comments received on the Proposed Rules, HAR Title 11, Chapter 200.1

- Director Glenn informed the Council that absent a PIG, a review of all public comments received would entail two council members and the office staff (so as not to violate Sunshine Law). The work, however, would involve extensive review longer than what the project timeline permits.

MOTION: Director Glenn moved that the Environmental Council create a permitted interaction group (PIG) under the authority of Chapter 92F, Hawai'i Revised Statutes that sets forth:

- (1) the scope of work to review all public comments, extract pertinent information, evaluate each comment and recommend how this is incorporated into the rules, and report to the Environmental Council its findings;
- (2) the membership (not to exceed seven members) to be Members Begier, Dunbar-Co, Glenn, Prentiss, Terry, Thoene, and Tuteur, and;
- (3) A deadline and deliverable date of July 17, 2018 or as soon as possible thereafter.

Hearing no further discussion, Chairperson Thoene called for the question. The Environmental Council unanimously approved the motion (10-0-0). Member Terry agreed to serve as chair of the PIG. The protocol for Environmental Council members to submit comments would be through Council meetings or OEQC staff.

8. Discussion of the 2019 Annual Report

- Chairperson Thoene tabled discussion on the Annual Report.

9. Adjournment

- Chairperson Thoene announced that the next Council meeting would be on July 17, 2018, with meetings of the Exemption Committee and the Information and Outreach Committee in the morning and a full Council meeting in the afternoon.
- Chairperson Thoene adjourned the meeting at 3:06 PM.

WORKSHEET

Starting with its meeting of September 25, 2014, the Exemption Committee began a review of the status of the exemption lists of all Hawaii State and County agencies. OEQC sent a letter to all agencies asking if they wanted to create or update their list. Follow up letters were sent December, 2016 as shown in column 4. This worksheet covers State and Honolulu City and County agencies. The last column (6) below shows agency status and committee and/or Council actions based upon response or non-response from the agencies as of May 1, 2018

Department	Address		New letters sent Dec. 2016 x- Update xx- No list	EC list Concurrence Date	Committee's Action
Agribusiness Development Corporation	State of Hawaii			May 1, 2018	New list concurred May 1, 2018
Building Department	City and County of Honolulu		x	August 12, 1981	Now part of DPP DPP needs update. OEQC site still lists GP (1986) & DLU (1981) & Building Dept. (1981). DPP is updating list, 4/17
Department of Agriculture Department- Wide	State of Hawaii Department of Agriculture 1428 South King St Honolulu, HI 96814	Janice.fujimoto@h awaii.gov	x	September 17, 2008	Responded 1/4/17 to December 2016 ltr - they will review list.
Board of Water Supply			x	July 23, 2009	Responded 1/31/17 to 12/16 ltr. No need update. Sent ltr to add disclaimer 4/17. Responded that they are working on disclaimer.
Department of Agriculture Plant Industry			x	September 17, 2008	Did not respond to letter.
Department of Agriculture Resource Management			x	3/8/2000	Responded to 12/16 ltr asked if deadline, Les told them "at their convenience."

Department of Budget and Fiscal Services	Director City and County of Honolulu Department of Budget and Fiscal Services 530 South King St Honolulu, HI 96813			No list	No projects.
Department of Business, Economic Development and Tourism	Director State of Hawaii Dept. of Business, Economic Development, and Tourism P.O. Box 2359 Honolulu, HI 96804	gb@NELHA.com Greg Barbour	xx Also NELHA xx	No List (DBEDT) July 20, 2017 (NELHA)	NELHA responded to 12/16 ltr on 12/27/16 with new list 30-day comment period ended 3/28/17. No comments. Committee recommended concurrence 4/17/16. EC Concurred if new disclaimer. Concurrence date will be date of disclaimer. Letter sent 6/20/2017. Disclaimer received July 20, 2018
Department of Commerce and Consumer Affairs	Director State of Hawaii Department of Commerce and Consumer Affairs P.O. Box 541 Honolulu, HI 96809			No List	3/24/15 letter - do not use or need exemption list.
Department of Community Services	Director City and County of Honolulu Department of Community Serv. 715 South King St, Ste 311 Honolulu, HI 96813		xx	No List	No response to letters.

Department of Customer Service	Director City and County of Honolulu Customer Service Department 530 South King St Honolulu, HI 96813			No List	No projects.
Department of Defense	Adjutant General State of Hawaii Department of Defense 3949 Diamond Head Rd Honolulu, HI 96816		x	Aug 9, 2001	New list in process May 1, 2018
Department of Design and Construction	Robert Kroning, Director City and County of Honolulu Department of Design and Construction 650 South King St, 11th Floor Honolulu, HI 96813			May 10, 2016	Concurred in by EC, May 10, 2016
Department of Education	Superintendent State of Hawaii Department of Education P.O. Box 2360 Honolulu, HI 96804			November 8, 2006	Received response (Facilities Development Branch) that their 11/8/2006 list is up to date. August 20, 2015 Committee reviewed list. OK. Marked reviewed 8/20/15.
Department of Emergency Management	Melvin Kaku, Director City and County of Honolulu Department of Emergency Management 650 South King St Honolulu, HI 96813		xx	No List	No response to letter

Department of Enterprise Services	Director City and County of Honolulu Department of Enterprise Services 777 WardAve. 96813			No List	Email response 9/18/2012, no need, no projects.
Department of Facilities Maintenance	City and County of Honolulu Department of Facility Maintenance 1000 Uluohia St Ste 215 Kapolei, HI 96707			February 19, 1992	Response received 3/13/2015. They will continue to use the list of their previous department The Dept. of Public works dated 2/19/1992. Latter sent June 17, 2016 asking them to agree to change the name. Les needs to follow up.
Department of Hawaiian Home Lands	Chairman State of Hawaii Department of Hawaiian Home Lands P.O. Box 2360 Honolulu, HI 96804			June 30, 2015	Received new list. Sent to EC with recom. to publish. EC agreed to publish Jun 5, 2015. Concurred on June 30, 2015.
Department of Health	State of Hawaii Department of Health P.O. Box 3378 Honolulu, HI 96801		x	August 15, 1983	Responded that they do not exempt any projects.
Department of Health Environmental Health Administration			x	March 12, 2003	No response.
Hawaii Health Systems Corp.	3675 Kilauea Ave 96816 733-4020			No List	Received response October 19, 2015 Saying that the Aug 15, 1983 DOH list is applicable to them, & asked for processing. Reviewed 3/8/2016. Ltr sent June 17, 2016 re. needs disclaimer & request for concurrence.

Department of Land and Natural Resources Department-Wide	Susan Case, Director State of Hawaii Department of Land and Natural Resources P.O. Box 621 Honolulu, HI 96809			June 5, 2015	EC voted to publish for 30-day comment period. 3/19/2015. Concurred in on June 5, 2015
Department of Parks and Recreation	Director City and County of Honolulu Department of Parks and Recreation 1000 Uluohia St, Ste 309 Kapolei, HI 96707	John Reid jreid@honolulu.gov 768-3017		December 9, 1998	Response received April 8, 2015. They said the 1998 list is current. Letter sent June 17, 2016 to add disclaimer. Received corrected list 7/20/16. Need to replace list on file with list that includes disclaimer but leave date as Dec. 9, 1998. Then mark as reviewed 7/20/16.
Department of Planning and Permitting	City and County of Honolulu Department of Planning and Permitting 650 South King St Honolulu, HI 96813		x	GP October 15, 1986, DLU Aug 11, 1981 Bldg Aug 12, 1981	Needs update. Working on new list - Alex Beatty.
Department of Public Safety	Director State of Hawaii Department of Public Safety 919 Ala Moana Blvd, Room 400 Honolulu, HI 96814		xx	No list	No response to letter
Department of Transportation	Director State of Hawaii Department of Transportation 869 Punchbowl St Honolulu, HI 96813	Mr. Norren Kato Norren.m.kato@hawaii.gov 831-7976		11/15/2000	Received response that their 11/15/2000 list is up to date. August 20, 2015 Committee reviewed list. OK. Marked as reviewed August 20, 2015

Department of Transportation Services	Department of Transportation Services 650 South King St, 3rd Floor Honolulu, HI 96813	Chris Clark 768-8359 c.clark@honolulu.gov		June 30, 2015	Response received 12/9/2014. New list submitted. Moved to EC. EC voted to publish for comments. Concurred on June 30, 2015. Working on adding HART items.
Emergency Services Department	Director City and County of Honolulu Emergency Services Department 3375 Koapaka St, H450 Honolulu, HI 96819		xx	No List	No response.
Hawaii Public Housing Authority	Becky L. Choi State Housing Development Coordinator 832-5315 Becky.l.choi@hawaii.gov			December 13, 1989	Response received 3/23/2015. Existing list is current. Letter sent April 29, 2016 asking them to add disclaimer. Responded 12/5/16 added disclaimer & asked to update file. New clean copy is not on site. Marked reviewed 12/5/16.
Hawaii Housing Finance and Development Corporation				March 12, 2008; supersedes November 18, 1997 list and concurrence	Received response 3/10/2015. Current list up to date. Committee reviewed list on agenda April 12, 2106. List is OK. Marked as reviewed 4/12/16.
Honolulu Fire Department	Honolulu Fire Department, 636 South St. 96813			June 30, 2015	Response received 12/10/14 with revision to Class #10. Exemption Committee approved 3/19/2015. EC concurred 6/30/2015.
Honolulu Police Department	Chief of Police Honolulu Police Dept. 801 South Beretania St. 96813		xx	No List	No response

Office of Culture and the Arts	Director City and County of Honolulu Office of Culture and the Arts 530 South King St Honolulu, HI 96813		xx	No List	No response
University of Hawaii	President University of Hawaii Bachman Hall 2444 Dole St Honolulu, HI 96822			3/14/2001	Response received March 30, 2015: Current list is up to date, no changes needed. On August 2016 agenda. Committee agreed list is OK. Marked as reviewed 8/9/16.
HART			xx	No list	Committee recommended that they prepare a list. Responded to ltr of 12/16. Still using recent EIS & Supplemental EIS. Repair & Maintenance now DTS. DTS is working on it.
Dept. Human Services	Honolulu C&C			No list	Received response that they do not need a list. No land.
Hawaii Tourism Authority			x	12/12/2001	No response.

File: Worksheet as of May 1, 2018