

1990-05-23-HA-PEA

DLNR-LM-14-2
FILE COPY

APPLICATION FOR STATE LANDS

Hawaiian Cruises Agency

Date: January 8, 1990

TO: The Chairman
Board of Land and Natural Resources
State of Hawaii
P. O. Box 621
Honolulu, Hawaii 96813

Dear Sir:

I, the undersigned, do hereby make application for State or Public Lands under the provisions of applicable State Statutes, and Rules and Regulations of the Board of Land and Natural Resources:

Name: Hawaiian Cruises, Ltd.

Address: 74-5543 Kaiwi St.

Kailua-Kona, Hawaii 96740

Land Parcel(s) Desired: four square feet of seafloor, Kealakekua Bay


Land District: South Kona TMK: (None)

Approximate Area: four square feet of seafloor for existing mooring

Term (If Lease): _____

Proposed Use: Continued use of existing mooring
installed in Kealakekua Bay in 1953

(CDUA use permit)


Signature

If for a Corporation, Partnership, Agency or Organization, must be signed by an authorized officer.

February 1983

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621
HONOLULU, HAWAII 96809

DEPARTMENT MASTER APPLICATION FORM

FOR DLNR USE ONLY

Reviewed by _____
Date _____
Accepted by _____
Date _____
Docket/File No. _____
180-Day Exp. _____
EIS Required _____
PH Required _____
Board Approved _____
Disapproved _____
Well No. _____

(Print or Type)

I. LANDOWNER/WATER SOURCE OWNER
(If State land, to be filled in by Government Agency in control of property)

Name _____

Address _____

Telephone No. _____

SIGNATURE _____

Date _____

II. APPLICANT (Water Use, omit if applicant is landowner)

Name Hawaiian Cruises, Ltd.

Address 74-5543 Kaiwi St.

Kailua-Kona, Hawaii 96740

Telephone No. 329-6411

Interest in Property Existing mooring

(Indicate interest in property; submit written evidence of this interest)

*SIGNATURE *[Signature]*

Date January 8, 1990

*If for a Corporation, Partnership, Agency or Organization, must be signed by an authorized officer.

III. TYPE OF PERMIT(S) APPLYING FOR

() A. State Lands

(x) B. Conservation District Use

() C. Withdraw Water From A Ground Water Control Area

() D. Supply Water From A Ground Water Control Area

() E. Well Drilling/Modification

IV. WELL OR LAND PARCEL LOCATION REQUESTED

District South Kona

Island Hawaii

County Hawaii

Tax Map Key Kealakekua Bay

Area of Parcel _____

(Indicate in acres or sq. ft.)

Term (if lease) _____

V. Environmental Requirements (SEE ATTACHED)

Pursuant to Chapter 343, Hawaii Revised Statutes, and in accordance with Title 11; Chapter 200, Environmental Impact Statement Rules for applicant actions, an Environmental assessment of the proposed use must be attached. The Environmental assessment shall include, but not be limited to the following:

- (1) Identification of applicant or proposing agency;
- (2) Identification of approving agency, if applicable;
- (3) Identification of agencies consulted in making assessment;
- (4) General description of the action's technical, economic, social, and environmental characteristics;
- (5) Summary description of the affected environment, including suitable and adequate location and site maps;
- (6) Identification and summary of major impacts and alternatives considered, if any;
- (7) Proposed mitigation measures, if any;
- (8) Determination;
- (9) Findings and reasons supporting determination; and
- (10) Agencies to be consulted in the preparation of the EIS, if applicable.

VI. Summary of Proposed Use (what is proposed) (SEE ATTACHED)

V. Response to Environmental Requirements section

(1) Hawaiian Cruises
74-5543 Kaiwi St.
Kailua-Kona, Hi. 96740

(2) Board of Land and Natural Resources
State of Hawaii

(3) Department of Land and Natural Resources
State of Hawaii (for information on completing this application):
a) State Parks, Outdoor Recreation and Historic Sites Division
b) Office of Conservation and Environmental Affairs

(4) General description of action:

(a) Technical:

See Exhibit A attached for a technical description of our long established mooring (installed in 1953, before Statehood) and a chart of its location in the bay.

(b) Economic:

Hawaiian Cruises, Ltd. has been in continuous operation in Kona, Hawaii since 1953, providing both skilled ocean-oriented and land-based jobs to local Kona residents, including many in the Hawaiian community there (the company's current boat engineer, Capt. Jack Keawe, for example, started with Hawaiian Cruises in 1957 and has worked for the company for over 32 years).

Its current full and part-time staff of 31 persons includes 4 Coast-Guard-certified, full-time captains and 1 part-time captain; 9 full-time first mates, deck hands and riding engineers, 2 full-time equipment maintenance persons; 5 full-time food/bar personnel; 1 full and 1 part-time van driver; 1 full-time Hawaiian musician and 3 part-time Hawaiian musicians; 3 full-time office personnel (bookkeeping/accounting, reservations, and sales), and 1 marketing director.

In addition to the economic impact on these direct company employees and their families, Hawaiian Cruises has an important economic impact on over 40 local Big Island businesses/vendors – a number of which are small, kamaaina, family-owned businesses with deep roots in the community – which supply goods and services to Hawaiian Cruises. Among those benefitting the most from Hawaiian Cruises purchases in Kona are Honaunau Market (supplier of all vegetables for the cruises); Hilo Rice Mill (juices); Kona Meats (meats for on-board barbeques, lunches and dinners); Kona Bakery (rolls and breads); Linda Wong's Restaurant (catering for charters); Big Island Marine, Far West Marine and Incon Welding (ship and diesel engine maintenance and repairs); Akana Petroleum (fuel); Big Island Auto Parts (van fleet parts); and KTA Super Stores (general supplies).

Hawaiian Cruises continues, as it has for 36 years, to be a kamaaina employer of local Kona people, buyer of local goods and services and an important economic contributor to the Kona Coast economy.

(c) Social:

Another significant impact Hawaiian Cruises has on the Kona community is through its strong support of many charitable and civic causes. Hawaiian Cruises has been an active, continuous contributor to Kona community charities for almost four decades. It has offered free or reduced-rate use of its vessel, the Capt. Cook VII, for fundraisers to many groups, including the Kona Coast Historical Society, Hawaii Preparatory Academy, Kona chapter of the American Cancer Society, Big Island chapters of Girl Scouts and Boy Scouts, and local schools on both the Hilo and Kona sides of the island, to mention a few. Hawaiian Cruises is also one of three local sponsors (with Hawaiian Air and KTA Super Stores), of the Kona Coast Coffee Festival which generates major tourist spending for Kona coast businesses each year.

(d) Environmental Characteristics:

Hawaiian Cruises has operated a series of small and medium-sized cruise vessels on its Kona-Kealahou Bay cruise since its inception in 1953, back when Hawaii was a territory. All vessels have been, and currently are, fully Coast-Guard certified and equipped with all necessary health, safety and environmental equipment to operate in an environmentally-safe manner. In its 36 years operating in the bay, the company has never been cited for any negative environmental impact on the bay. The current vessel, the 95-foot Capt. Cook VII, is the seventh vessel to use the mooring in the bay over the last four decades.

(5) Summary Description of Affected Environment:

A good description of the affected environment, Kealahou Bay, is found in attached Exhibit B (United States Coast Pilot Handbook, June 1986) which describes the physical dimensions, shoreline characteristics, reef and sea bottom characteristics of the bay; and attached Exhibit C (Marine Atlas of Hawaii: Bays and Harbors, University of Hawaii, January 1974) which give additional information on the history and use of the bay as a traditional boat anchorage from pre-Cook days up through the mid-1970s. Attached Exhibit D (Marine Atlas of Hawaii, page 47) provides a suitable and adequate site map of the bay and its environs. Hawaiian Cruises' mooring buoy sits approximately 300 feet offshore SSE of the pali in 130 feet of water.

(6) Major impacts and alternatives considered:

No major impact on the environment in its 36 years of use. The surface buoy -- the only part of the mooring that is visible -- itself is very small (two and one-half feet diameter), rust-brown in color, and extremely unobtrusive, with virtually no visual impact at all upon the environment since only its top is above water. The below-surface twin-anchor system (see photos, Exhibit E) consists of a 250-pound steel cleat weight and a 200-pound angle-iron anchor connected together by a Y-swivel attached to 200 feet of 5/8 inch steel chain running up to the surface buoy. The two anchors weigh a combined 450 pounds so they cannot move or drag. The anchors themselves sit on flat, clear, sandy bottom with no coral nearby, as can be seen from the photos. The vessel ties its stern line to the buoy. The vessel's bow line is tied off, below the surface and out of sight, to 5/8 inch chain run around a rock that is part of the overall sea floor. Again, there is no negative impact upon the environment. The mooring receives regular maintenance to comply with insurance requirements, and all anchors, chains and anchoring points are regularly inspected for any signs of wear. No major impact on the environment has ever been noted from this mooring system during the 36 years it has been in existence.

In addition to this mooring described above, at one point in the late '70s the Kona manager of Hawaiian Cruises also wrapped a chain around a submerged rock with coral on it to create a backup, secondary bow mooring for use by the boat only when big, southern Kona swells (storm weather) were running in the bay. Although this mooring point is no longer needed by Hawaiian Cruises for its more modern *Captain Cook VII*, several other local cruise and dive boats began routinely using it. To avoid any potential damage to the coral on the rock and remove any liability to the company for the use of the mooring by other boat companies, the management of Hawaiian Cruises in December 1989 ordered the chain removed. This backup mooring no longer exists.

(7) Proposed mitigation measures:

Hawaiian Cruises asks that the State of Hawaii, Department of Land and Natural Resources, recognize the validity of the company's 36 years of continuous, uninterrupted use of its mooring in Kealahou Bay with no negative environmental impact ever recorded upon the bay. It asks that the Board do so by rightfully granting "grandfather" status to its existing mooring installed before Statehood.

The existence of the mooring has been public knowledge since its installation in August 1953, prior to Statehood, by Capt. Ed Trimper. Tourists were carried daily to the bay by the first of seven successive *Captain Cook* vessels, skippered by Mr. Trimper (Tel: 248-8576), and newspaper articles were written about the operation over the years.

The *Honolulu Advertiser* of January 13, 1954 carried a story about Hawaiian Cruises' first president, Mr. Bob MacGregor, discussing the company's Kona-Kealahou Bay cruise operation, its Kailua-Kona Hotel project and tourism's economic benefit to Kona in an address to the Territorial Aeronautics Commission and the Territorial Harbors Board.

In 1957, Capt. Jack Keawe (Tel: 329-6411), mentioned above in 4(b), joined Hawaiian Cruises as a deck hand and can attest to the fact that the Kealahou Bay mooring was already installed and in use when he joined the company 33 years ago. In the '50s, according to Capt. Keawe, there were actually three cruise boats mooring in the bay -- the *Captain Cook*, the *Jeannie Marie*, and the catamaran tour boat *Hava-Iki*. Big Island territorial officials, including harbor officials in Hilo, were aware of these Kealahou Bay tour boat operations and the three moorings.

In 1968, according to a story in the January 6th issue of the *Honolulu Advertiser*, DLNR board members toured the bay as part of an on-site inspection related to Greenwell Ranch's proposal to rezone 300 acres around the bay. No negative comment on Hawaiian Cruises' moorings in the bay were ever voiced to the company.

In early 1969, Lt. Governor Tom Gill proposed that the Kealahou Bay area be a marine life conservation zone. During the hearings that accompanied this proposal, Dr. Max Doty (*Honolulu Advertiser*, March 14, 1969) declared that the waters of Kealahou Bay were "the best of any in Hawaii". At this point, Hawaiian Cruises had been continuously and responsibly operating its mooring in the bay for almost 16 years without any damage to the bay. The draft regulations for Kealahou Bay Marine Life Conservation District later proposed by the State

would have made it unlawful to construct or install new moorings in the bay, but did not call for the removal of existing moorings. Hawaiian Cruises' mooring continued to be used, and no State official requested their removal.

A January 24, 1973 story in the Hawaii Tribune Herald noted that Kona Harbors Assistant Herbert Texiera, representing the State Harbors Division and (Hilo?) Harbor Master Dennis Ruthraff, cited four boats for mooring in Kealakekua Bay marine conservation district. Hawaiian Cruises' vessel, the Captain Cook, was not cited, even though we were continuing to moor in our existing mooring installed in 1953. In fact, the story notes that Texiera was acting on a complaint from four boat operators (which probably included Hawaiian Cruises) who said their passengers were blocked from viewing the Capt. Cook monument by the moored boats. No such complaint or citation was ever lodged against Hawaiian Cruises vessel or its mooring at any time during the incident which saw State harbors officials making inspections of the bay for several months.

A check of company files as well as newspaper records and indexes of the Advertiser, Star Bulletin, Pacific Business News and Hilo Tribune Herald from 1953 to 1989 turned up no citations of any kind given to Hawaiian Cruises for its mooring, despite clear evidence that State officials, like the general public, knew all about the company's mooring.

Indeed, ever since the Fifties, Hawaiian Cruises has continually paid various use fees and taxes on its Kealakekua Bay operation -- to the Territory first, and then the State following Statehood. It continues to this day to pay fees on its Kealakekua Bay operations to the Harbors Division.

(8) Determination:

It would appear that our existing mooring, first installed in 1953, has negative impact on the environment of the bay and thus negative determination.

(9) The findings and reasons supporting this determination:

These are described in (7) above, and in Exhibit F which includes letters of testimony from the company's founder, Mr. Robert MacGregor, and his two original partners in the business. It is important to note that **Hawaiian Cruises does not now moor its vessel overnight or permanently in Kealakekua Bay -- the Captain Cook VII is permanently moored at a State-approved, permitted mooring in Kailua Bay, off the Kona Pier. The Captain Cook VII only ties up at the mooring in Kealakekua Bay for approximately *one hour and fifteen minutes* each day during its daily morning cruise to the bay; and a similar, short length of time in the afternoon whenever the vessel has charter cruises.**

(10) EIS Applicability:

Due to the well-documented and studied environment of the bay, the small (2.5 feet diameter) size of the mooring itself, and the very limited amount of time (1 hour and 15 minutes daily) the vessel is actually moored at the mooring, the determination is that the project is minor and the preparation of an EIS is not applicable in this case.

VI. Summary of Proposed Use:

Hawaiian Cruises proposes that its mooring be rightfully be given "grandfather" status based on the detailed information provided in Section V above, and that it be allowed to continue to use its mooring as it has for the last 36 years by the Territory and the State.

INFORMATION REQUIRED FOR ALL USES

I. Description of Parcel (SEE ATTACHED)

- A. Existing structures/Use. (Attach description or map).
- B. Existing utilities. (If available, indicate size and location on map. Include electricity, water, telephone, drainage, and sewerage).
- C. Existing access. (Provide map showing roadways, trails, if any. Give street name. Indicate width, type of paving and ownership).
- D. Vegetation. (Describe or provide map showing location and types of vegetation. Indicate if rare native plants are present).
- E. Topography; if ocean area, give depths. (Submit contour maps for ocean areas and areas where slopes are 40% or more. Contour maps will also be required for uses involving tall structures, gravity flow and other special cases).
- F. If shoreline area, describe shoreline. (Indicate if shoreline is sandy, muddy, rocky, etc. Indicate cliffs, reefs, or other features such as access to shoreline).
- G. Existing covenants, easements, restrictions. (If State lands, indicate present encumbrances.)
- H. Historic sites affected. (If applicable, attach map and descriptions).

II. Description: Describe the activity proposed, its purpose and all operations to be conducted. (Use additional sheets as necessary). (SEE ATTACHED)

III. Commencement Date: Mooring installed in 1953 ; _____
Completion Date: mooring completed in 1953 _____

IV. TYPE OF USE REQUESTED (Mark where appropriate) (Please refer to Title 13, Chapter 2)

- ✓ (1.) Permitted Use (exception occasional use);
DLNR Title 13, Chapter 2, Section _____; Subzone Kea Takekua Bay
- 2. Accessory Use (accessory to a permitted use):
DLNR Title 13, Chapter 2, Section _____; Subzone _____.
- 3. Occasional Use: Subzone _____.
- 4. Temporary Variance: Subzone _____.
- 5. Conditional Use: Subzone _____.

Information Required For All Uses:

I. Description of Parcel:

A: Existing structures and use:

Exhibits A and E attached to this filing show photographs of the existing current mooring itself, along with a description of the materials used to make the mooring. Over the last four decades since its first installation in 1953, materials have worn out and been replaced, but the current mooring, and materials used to build it, are essentially the same type of mooring as the original mooring installed prior to Statehood.

B: Existing Utilities:

There are no utilities involved with the mooring.

C: Existing Access:

There are no roads or trails involved with the mooring, and no land access is used or requested.

D: Vegetation:

There is no vegetation involved with the mooring.

E: Topography:

Exhibits C and D attached to this filing provide contour maps of the ocean floor in the bay, and depths of the water. The floor itself where the mooring anchor rests is flat, sandy bottom.

F: Shoreline:

There is no shoreline or shoreline access involved with this mooring.

G: Existing covenants, easements:

There are no existing covenants or easements involved with this mooring.

H: Historic sites affected:

There are no historic sites involved with this sea floor mooring.

II. Description of activity and operations:

The activity proposed is the continuation of use of the existing mooring installed in 1953 and which has been continuously used by Hawaiian Cruises for over 36 years now. The mooring itself is used approximately one hour and fifteen minutes daily, around 9:45-11:00 AM, when the boat ties up to the mooring during its daily Kona-Kealahou Bay snorkel cruise. It is also used for a similar, short length of time in the afternoon when the vessel has charter cruises. Again, as explained in Section V (9) above, it is important to note that the vessel does not moor all day or overnight at the mooring: use of the Kealahou Bay mooring is less than two hours a day, resulting in no negative environmental impact, and extremely minimal visual impact, upon the bay. We ask that the existing mooring be "grandfathered" due to its 36 years existence, and the present low-impact, low-visibility operation be allowed to continue as is.

Area of Proposed Use KEALAKEKUA BAY
(Indicate in acres or sq. ft.)

Name & Distance of Nearest Town or Landmark Napoopoo Village /2 miles

Boundary Interpretation (If the area is within 40 feet of the boundary of the Conservation District, include map showing interpretation of the boundary by the State Land Use Commission).

Conservation District Subzone B
County General Plan Designation (Not applicable)

V. FILING FEE

1. Enclose \$50.00. All fees shall be in the form of cash, certified or cashier's check, and payable to the State of Hawaii.
2. If use is commercial, as defined, submit additional public hearing fee of \$50.00.

INFORMATION REQUIRED FOR CONDITIONAL USE ONLY

I. Plans: (All plans should include north arrow and graphic scale).

- A. Area Plan: Area plan should include but not be limited to relationship of proposed uses to existing and future uses in abutting parcels; identification of major existing facilities; names and addresses of adjacent property owners.
- B. Site Plan: Site plan (maps) should include, but not be limited to, dimensions and shape of lot; metes and bounds, including easements and their use; existing features, including vegetation, water area, roads, and utilities.
- C. Construction Plan: Construction plans should include, but not be limited to, existing and proposed changes in contours; all buildings and structures with indicated use and critical dimensions (including floor plans); open space and recreation areas; landscaping, including buffers; roadways, including widths; offstreet parking area; existing and proposed drainage; proposed utilities and other improvements; revegetation plans; drainage plans including erosion sedimentation controls; and grading, trenching, filling, dredging or soil disposal.
- D. Maintenance Plans: For all uses involving power transmission, fuel lines, drainage systems, unmanned communication facilities and roadways not maintained by a public agency, plans for maintenance shall be included.
- E. Management Plans: For any appropriate use of animal, plant, or mineral resources, management plans are required.
- F. Historic or Archaeological Site Plan: Where there exists historic or archaeological sites on the State or Federal Register, a plan must be submitted including a survey of the site(s); significant features; protection, salvage, or restoration plans.

II. Subzone Objective: Demonstrate that the intended use is consistent with the objective of the subject Conservation District Subzone (as stated in Title 13, Chapter 2).

DOCUMENT FOR PUBLICATION IN THE OEQC BULLETIN

Date: 1/8/90

Prepared by: Michael Schmicker

The document is a (check all that apply)

Chapter 205A Document	()	Negative Declaration	(X)
Chapter 343 Document	(X)	EIS Preparation Notice	()
NEPA Document	()	Draft EIS	()
		Final EIS	()
		Acceptance Notice	()

Is the document a supplemental EIS? Yes () No ()

Title of Proposed Action or Project: Continued use of existing mooring installed in 1953

Location: Island Hawaii District South Kona

Type of Action (check one): Applicant (X) Agency ()

Name of Proposing Applicant or Agency: Hawaiian Cruises, Ltd

Name of Contact: Michael Schmicker

Address: 74-5543 Kaiwi St

City: Kailua-Kona State: Hawaii Zip Code: 96740

Phone: (808) 329-6411

Name of Preparer or Consultant: Hawaiian Cruises, Ltd.

Name of Contact: Michael Schmicker

Address: c/o Hawaiian Cruises, Ltd 74-5543 Kaiwi St

City: Kailua-Kona State: Hi Zip Code: 96740

Phone: (808) 329-6411

Accepting Authority: Hawaiian Cruises, Ltd.

Estimated Project Cost:		Document Preparation Cost:	
Federal Funds	\$ <u>0</u>	Neg Dec/EA	\$ <u>0</u>
State Funds	\$ <u>0</u>	Draft EIS	\$ <u>0</u>
County Funds	\$ <u>0</u>	Sup Draft EIS	\$ <u>0</u>
Private Funds	\$ <u>0</u>	Sup Final EIS	\$ <u>0</u>
TOTAL	\$ <u>0</u>	TOTAL	\$ <u>0</u>

EA Trigger (check all that apply)

- () Use of State or County Lands or Funds
- () Use of Conservation District Lands
- () Use of Shoreline Setback Area
- () Use of Historic Site or District
- () Use of Lands in the Waikiki Special District
- () Use Requiring an Amendment to a County General Plan

NOTE: For answers to any question on Page 10 or 11, please contact the Office of Environmental Quality Control at (808) 548-6915.

[OEQC Form 89-01 (1/89)
Page 1 of 2]

- () Use Requiring the Reclassification of Conservation Lands
- () Construction or Modification of Helicopter Facilities
- () Other _____

Brief Description of the Proposed Action or Project which will be
Published in the OEQC Bulletin (limit of 500 words or less): _____

(Continue on another sheet if necessary)

Tax Map Key(s): Kealakekua Bay, Island of Hawaii

FOR OEQC USE ONLY

Date of Submission:
Date of Publication:
Last Day for Consulted
Party Request:
Comment Period Ends:
Acceptance Date:
Publication Date of
Acceptance:

OEQC # _____
Planner: _____

OEQC Bulletin description of project:

In August, 1953, prior to Statehood and any permit requirements, Hawaiian Cruises installed a mooring in Kealahou Bay. Since then, it has enjoyed 36 years of continuous, uninterrupted use of its mooring in Kealahou Bay with no negative environmental impact ever recorded upon the bay, and no objections voiced by any State agency. It asks that the State Department of Land and Natural Resources grant "grandfather" status to its existing mooring installed before Statehood.

The existence of the mooring has been public knowledge since its installation in August 1953, prior to Statehood. Tourists were carried daily to the bay by the first of seven successive *Captain Cook* vessels, and newspaper articles were written about the operation over the years. In 1957, Capt. Jack Keawe of Kona joined Hawaiian Cruises as a deck hand. Now an engineer with the company, Capt. Keawe has testified to the fact that the Kealahou Bay mooring was already installed and in use when he joined the company 33 years ago. In the '50s, according to Capt. Keawe, there were actually three cruise boats mooring in the bay -- the *Captain Cook*, the *Jeannie Marie*, and the catamaran tour boat *Hava-Iki*. Big Island territorial officials, including harbor officials in Hilo, were aware of these Kealahou Bay tour boat operations and the three moorings.

In 1968, according to a story in the January 6th issue of the Honolulu Advertiser, DLNR board members toured the bay as part of an on-site inspection related to Greenwell Ranch's proposal to rezone 300 acres around the bay. No negative comment on Hawaiian Cruises' moorings in the bay were ever voiced to the company.

In early 1969, Lt. Governor Tom Gill proposed that the Kealahou Bay area be a marine life conservation zone. During the hearings that accompanied this proposal, Dr. Max Doty (Honolulu Advertiser, March 14, 1969) declared that the waters of Kealahou Bay were "the best of any in Hawaii". At this point, Hawaiian Cruises had been continuously and responsibly operating its mooring in the bay for almost 16 years without any damage to the bay. The draft regulations for Kealahou Bay Marine Life Conservation District later proposed by the State would have made it unlawful to construct or install new moorings in the bay, but did not call for the removal of existing moorings. Hawaiian Cruises' mooring continued to be used, and no State official requested their removal.

Indeed, ever since the Fifties, Hawaiian Cruises has continually paid various use fees and taxes on its Kealahou Bay operation -- to the Territory first, and then the State following Statehood. It continues to this day to pay fees on its Kealahou Bay operations to the Harbors Division.

CORRECTION

THE PRECEDING DOCUMENT(S) HAS
BEEN REPHOTOGRAPHED TO ASSURE
LEGIBILITY
SEE FRAME(S)
IMMEDIATELY FOLLOWING

OEQC Bulletin description of project:

In August, 1953, prior to Statehood and any permit requirements, Hawaiian Cruises installed a mooring in Kealahou Bay. Since then, it has enjoyed 36 years of continuous, uninterrupted use of its mooring in Kealahou Bay with no negative environmental impact ever recorded upon the bay, and no objections voiced by any State agency. It asks that the State Department of Land and Natural Resources grant "grandfather" status to its existing mooring installed before Statehood.

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EXHIBIT A:

Hawaiian Cruises' mooring consists of:

- One 2.5-foot diameter steel surface mooring ball
- 200 feet of 5/8 inch steel chain
- One anchor made from a 250 lb. steel cleat
- One anchor made from a 200 lb. angle iron
- One Y-swivel connecting the two anchors to the chain running up to the surface mooring ball.
- 30 feet of 5/8 inch steel chain and shackle for bow mooring tie off.

(Photos of the mooring itself are found in Exhibit E.)

Following is a chart of the bay and the position of the mooring in the bay. *The mooring is also noted on the chart found in Exhibit D.*

71 1/2 Kawa Street
Kona, Hawaii 96745
Phone: (808) 329-6111



Hawaiian Cruises LTD.

& GLASSBOTTOM BOATS HAWAII, INC.

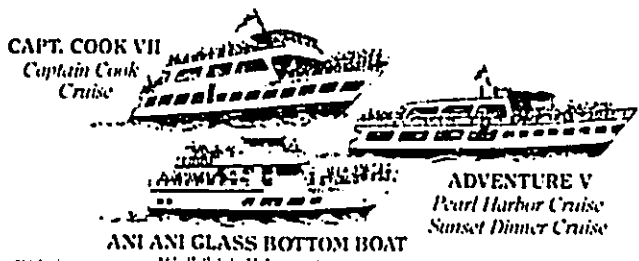
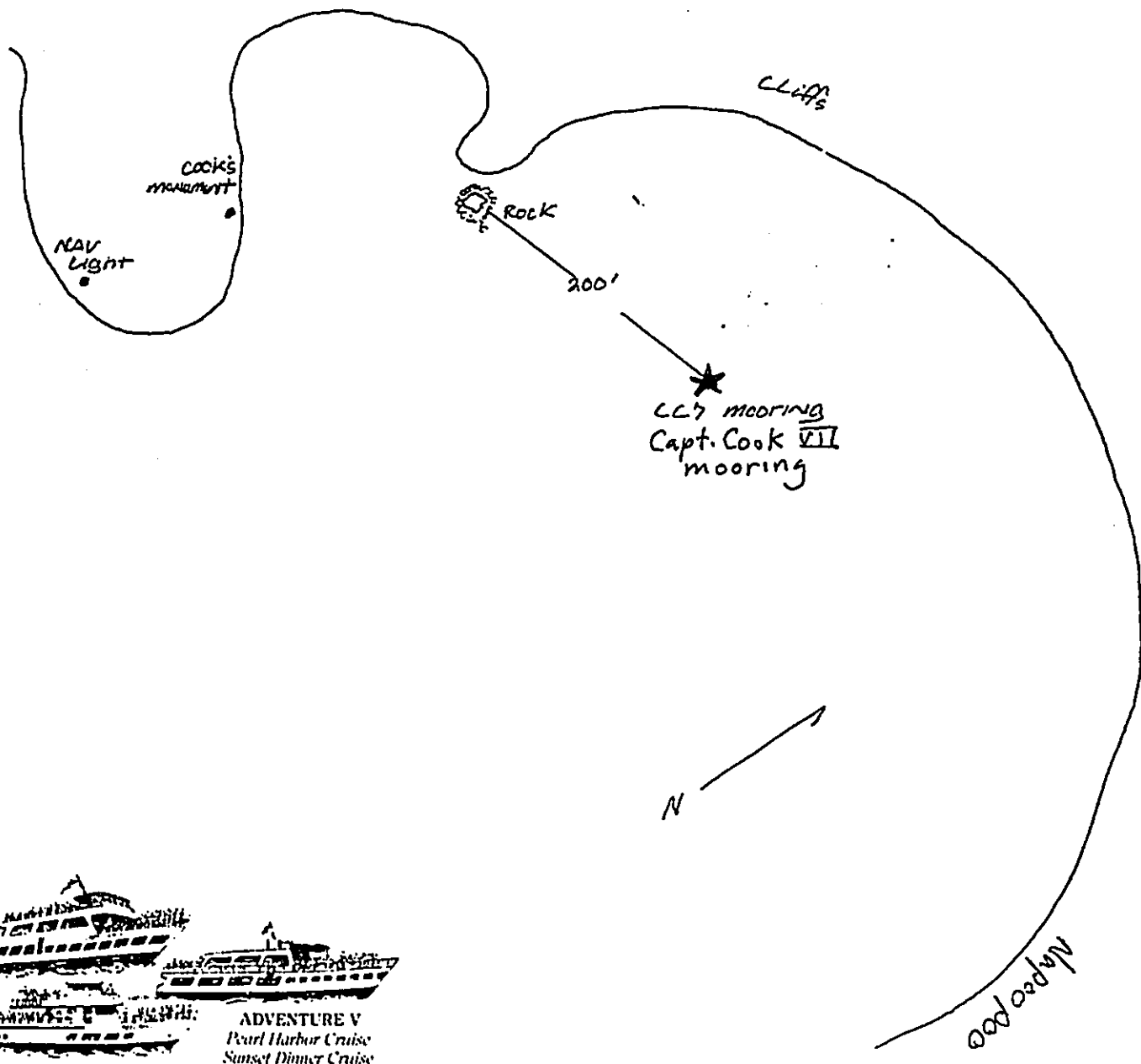


EXHIBIT B:

"United States Coast Pilot, Pacific Coast: California, Oregon, Washington and Hawaii", U.S. Dept. of Commerce, Washington, D.C. June 1986, p.365

(Mariner's description of Kealahou Bay)

United States Coast Pilot

7

Pacific Coast: California, Oregon, Washington, and Hawaii

Twenty-second Edition
June 1986



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Ocean Service

Chart 19332.—Honaunau Bay, 37 miles NW of Ka Lae, indents the coast about 500 yards and is about 500 yards in width. The bay lies between two flat lava points. Puuhonua Point, on the S, is lower and smaller and is marked by the 12-foot-high stone walls of the City of Refuge and by a grove of tall coconut trees. The City of Refuge is of historic interest and is now maintained as a National Historical Park of about 182 acres. In former times, criminals or refugees reaching the place were safe until such a time as the king of the land took action. Vessels anchor in depths of 4 to 8 fathoms 150 yards from the S shore. Small boats can easily land on the shingle beach on the SE side of the bay during normal weather.

Palemano Point, on the S side of the entrance to Kealakekua Bay, is low and flat, with scattered coconut trees and temple ruins near its outer end. The buildings of a resort camp on the point are prominent. A mass of bare rocks extends 125 yards off the N side of the point. About 0.4 mile N of the point, an old lava flow reaches the shore.

Kealakekua Bay, 40 miles NW of Ka Lae, is marked on its N side by a light on Cook Point. The bay is about 2 miles wide between Palemano Point and Keawekeheka Point, and indents the coast about 1 mile. The shore is low, except on the NE side where a precipitous cliff between 400 and 600 feet high extends about 0.5 mile. A narrow reef fringes the shore between the S end of the cliff and Palemano Point. The bay is free of obstructions, affords good anchorage in all but strong SW winds, and is by far the best anchorage along this coast. In choosing an anchorage it is well to remember that in the daytime a sea breeze will prevail, shifting to a land breeze at night. The bottom is of coral and sand and is only fair holding ground.

Kaawaloa Cove is the N part of Kealakekua Bay and lies between the high cliff and Cook Point. It was here that Captain James Cook was killed by the natives in 1779. Cook's Monument is a concrete shaft, 25 feet high, near the shore of the inner side of Cook Point. A concrete landing, with a depth of about 6 feet alongside, affords a means for visitors to reach the monument. Kaawaloa Cove is within the boundary of Kealakekua Bay Marine Life Conservation District and Underwater Park. State regulations forbid anchoring, except in an emergency, and overnight mooring at other than designated locations within the park boundaries. A copy of the regulations can be obtained from the office of the harbor master at Hilo.

The village of Napoopoo consists of a few houses scattered among the coconut trees just S of the cliff. Water and provisions are scarce. The landing, which has a depth of about 4 feet alongside, is in the middle of the village. During a heavy swell it is best to land on the sand beach at the N end of the village. A church spire is fairly prominent from offshore.

Keawekeheka Point, on the N side of the entrance to Kealakekua Bay, is a low, bare, lava point. An extensive lava flow reaches from the point to the high cliff at the head of the bay.

Chart 19327.—Puu Ohau, 1.5 miles N of Keawekeheka Point, is a green cone, 231 feet high, near the beach. The cone has a blowhole in the middle, and its seaward side is blown out, forming a red cliff.

Keikiwaha Point, 2 miles N of Keawekeheka Point, is low, black, and jagged, with coconut trees on it. About 2 miles inland from the point, and on the highway, are a stack, a church, and the buildings of Kainaliu.

From Napoopoo to Kailua Kona is the most thickly settled section of the coast; cultivated fields of coffee extend both ways from the highway that parallels the shore 1 to 2 miles inland.

Kaukalaelae Point, 4.4 miles N of Keawekeheka Point, is low and flat. The white hotel on the point is one of the most prominent landmarks along this coast.

Keauhou Bay, 45 miles NW of Ka Lae, indents the coast 0.3 mile and is 300 yards wide between entrance points. The bay is between two lava flows at the foot of a gentle slope and, though small, is one of the best protected along the kona coast. Keauhou Bay Light (19°33.9'N., 155°57.9'W.), 35 feet above the water, is shown from a 30-foot pole on shore at the head of the bay. A three-color directional light is shown 10 feet below on the same structure; the fixed white sector of the beam marks the centerline of the entrance channel on course 066°. The channel is also marked by an unlighted range, the rear marker of which is on the same structure as the lights. The Keauhou schoolhouse on the highway 1.5 miles inland is fairly prominent from offshore. The bottom is extremely irregular and has many coral heads with depths of 5 to 6 feet over them. A reef extends 100 yards off the N entrance point. By maintaining a lookout for coral heads, boats of 4-foot draft can enter the bay for anchorage. Breakers frequently extend across the mouth of the bay. A 3-ton hoist is on the pier; fuel and a limited amount of water are available. A marine railway can handle craft up to 45 feet.

Kahaluu is a small village about 1 mile N of Keauhou.

Hualalai, in the central W part of the island, is a conical peak 8,269 feet high, covered with vegetation to its summit and prominent from any point of approach. Its W slopes terminate in a bare lava plain about 4 miles wide. The plain forms a low beach consisting of sand in some places and lava rocks in others.

Chart 19331.—Kailua Bay, 50 miles NW of Ka Lae, is a dent in the coast at the S end of the flat plain which extends N to Kawaihae Bay.

Kailua, on the N side of the bay, formerly a barge terminal, is now used by cruise and charter boats and is the home of a sport-fishing fleet. Large ships anchor offshore and ships' tenders are used for transportation to shore. Kailua Light (19°38.5'N., 156°00.2'W.), 32 feet above the water, is shown from a white pyramidal concrete tower on Kukailimoku Point, which is on the NW side of the bay entrance. Also prominent is the church spire E of Kailua pier.

EXHIBIT C:

"Marine Atlas of Hawaii: Bays and Harbors", Sea Grant College Program,
University of Hawaii, January 1974, p. 46

(History and description of Kealahou Bay).

KEALAKEKUA BAY

Kealakekua Bay, 40 miles northwest of Ka Lae, is marked on its north side by a light on Cook Point. The bay is about 2 miles wide between Palemano Point and Keawekaheka Point, and indents the coast about 1 mile.

Prominent Features

Cook Monument is a concrete shaft 25 feet high, near the shore of the inner side of Cook Point. The shore is low, except on the northeast side where a precipitous cliff between 400 and 600 feet high extends about 0.5 mile. A narrow reef fringes the shore between the southerly end of the cliff and Palemano Point.

Kaawaloa Cove is the northerly part of Kealakekua Bay. It lies between the high cliff and Cook Point.

The village of Napoopoo consists of a few houses scattered among the coconut trees just south of the cliff. A church spire is fairly prominent from offshore.

Palemano Point, on the south side of the entrance to Kealakekua Bay, is low and flat, with scattered coconut trees and temple ruins near its outer end. The buildings of a resort camp on the point are prominent. A mass of bare rocks extends 125 yards off the north side of the point. About 0.4 mile north of the point an old lava flow reaches the shore.

Anchorage and Shore Facilities

The bay is free of obstructions, affords good anchorage in all but strong southwesterly winds, and is by far the

best anchorage along this coast. In choosing an anchorage, it is well to remember that in the daytime a sea breeze will prevail, shifting to a land breeze at night. The bottom is of coral and sand, and is only fair holding ground.

Provisions can be obtained at Napoopoo in limited quantities; fresh water is scarce. Gasoline and some marine supplies may be obtained. The landing, which has a depth of about 4 feet alongside is in the middle of the village. During a heavy swell it is best to land on the sand beach at the north end of the village.

A concrete landing with a depth of about 6 feet alongside affords a means for visitors to reach Cook Monument.

History

The village on the shore was called "Kekua" in the old days. In 1779 Captain James Cook, coasting around the island preparatory to heading home across the Pacific, sent his sailing master, William Bligh, ashore to inspect the area. Cook's two ships anchored here. Some historians believe that when Cook landed, many of the natives took him to be the incarnation of Lono, it being the time of the round-the-island Makahiki with which this god was associated.

Cook's ships left on February 4, but off Kawaihae a storm broke the mast of the RESOLUTION, and both ships put in again at Kealakekua. This time the Europeans were not so warmly received, and things went from bad to worse. Here Cook was killed by the natives. The monument which commemorates his discovery of the islands was unveiled at sesquicentennial celebrations in 1928.

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EXHIBIT D:

"Marine Atlas of Hawaii, Bays and Harbors", Sea Grant College Program,
University of Hawaii, January 1974, p. 47

(Chart of Kealahou Bay with depth contours)

"Map of Hawaii: The Big Island", University Press of Hawaii, 1979.

(Kealahou Bay in relation to Kona Coast and Hawaiian Cruises' Kailua Bay anchorage)

HAWAII COUNTY

Hawaii Island

Kealahou Bay



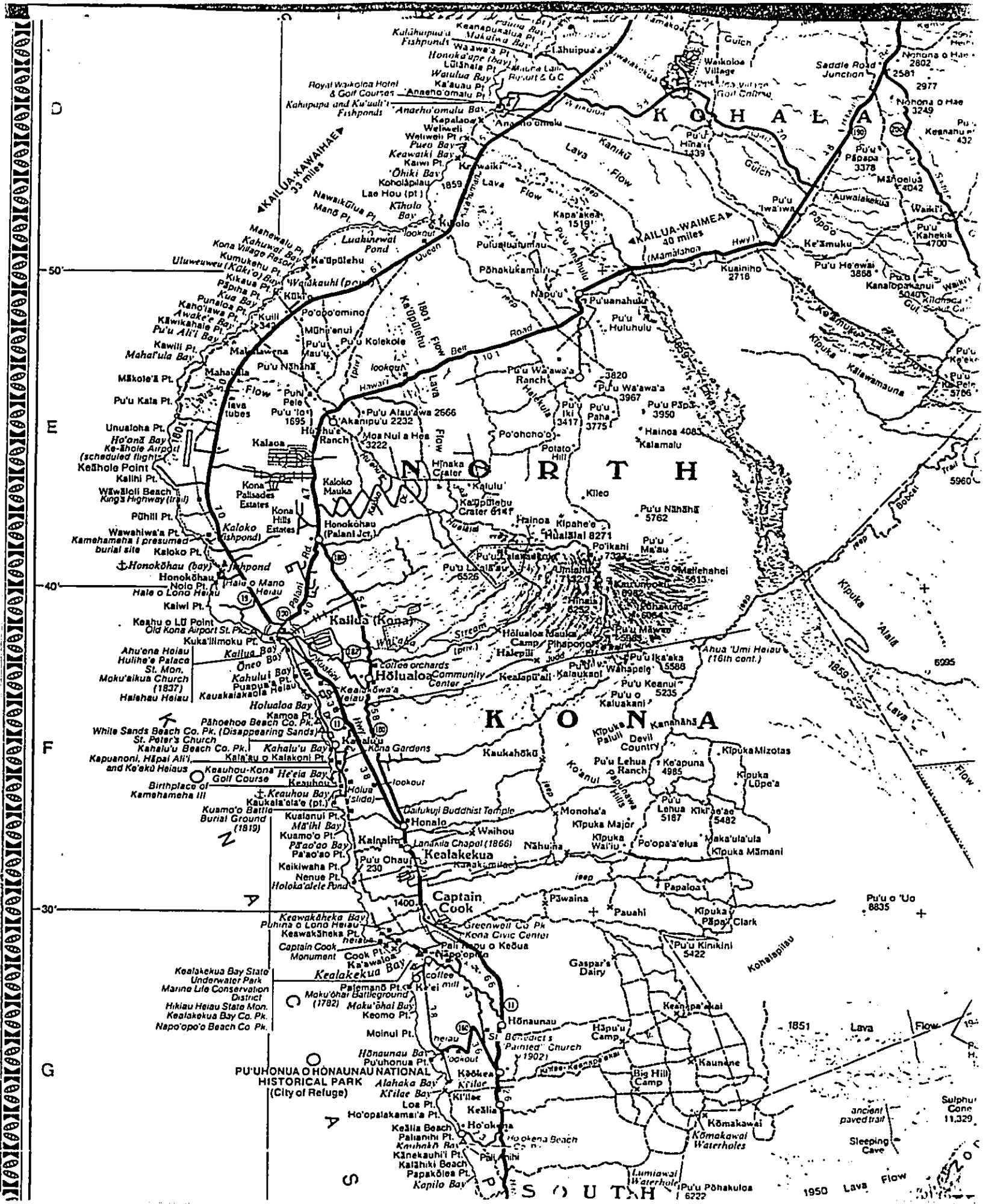
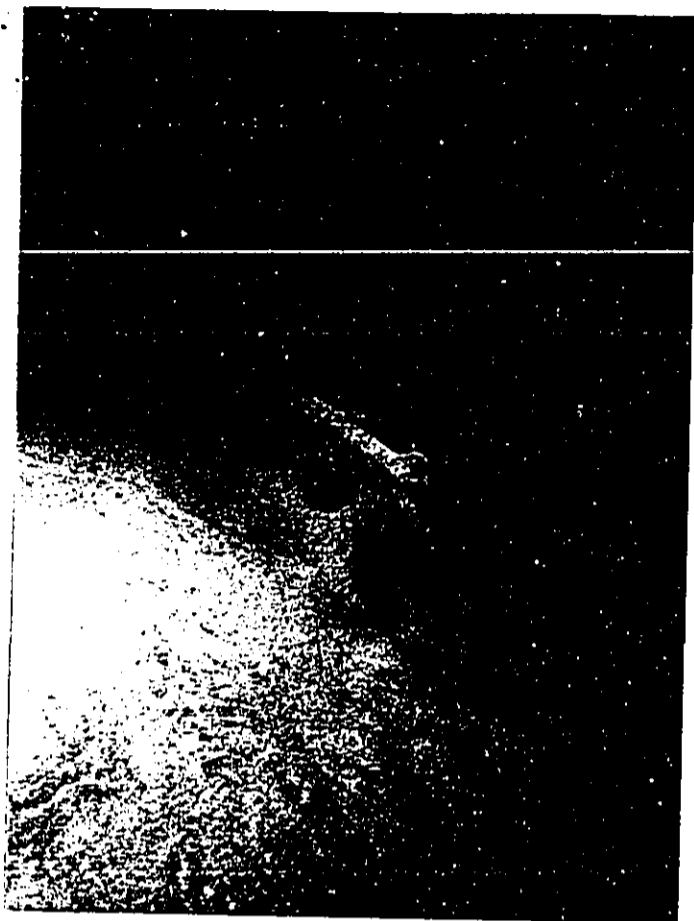


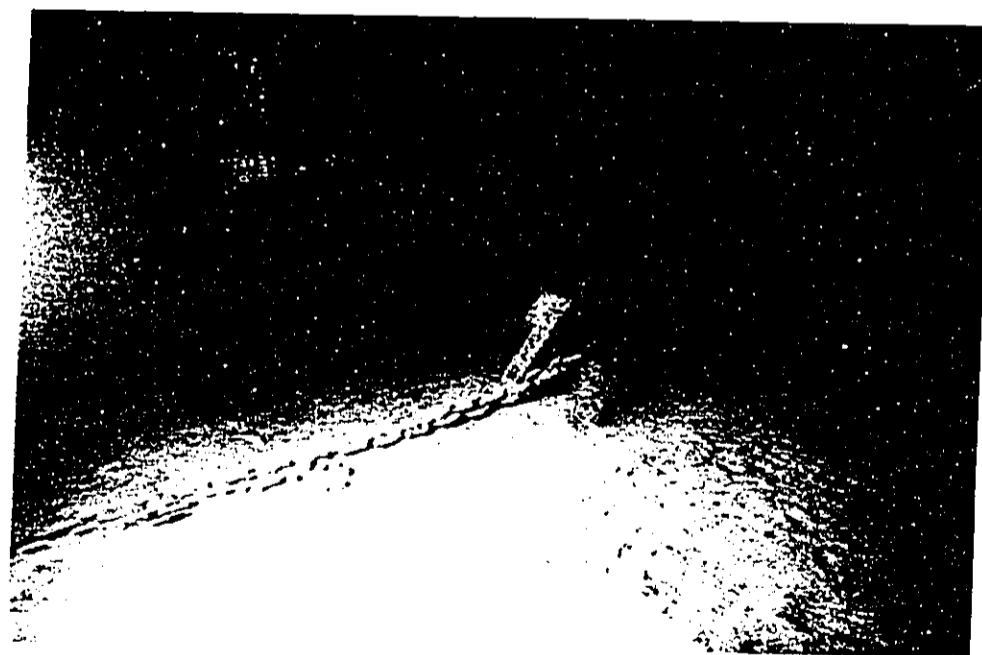
EXHIBIT E:

Photographs of Hawaiian Cruises' mooring at Kealahou Bay.



Cleat anchor and sea floor around anchor

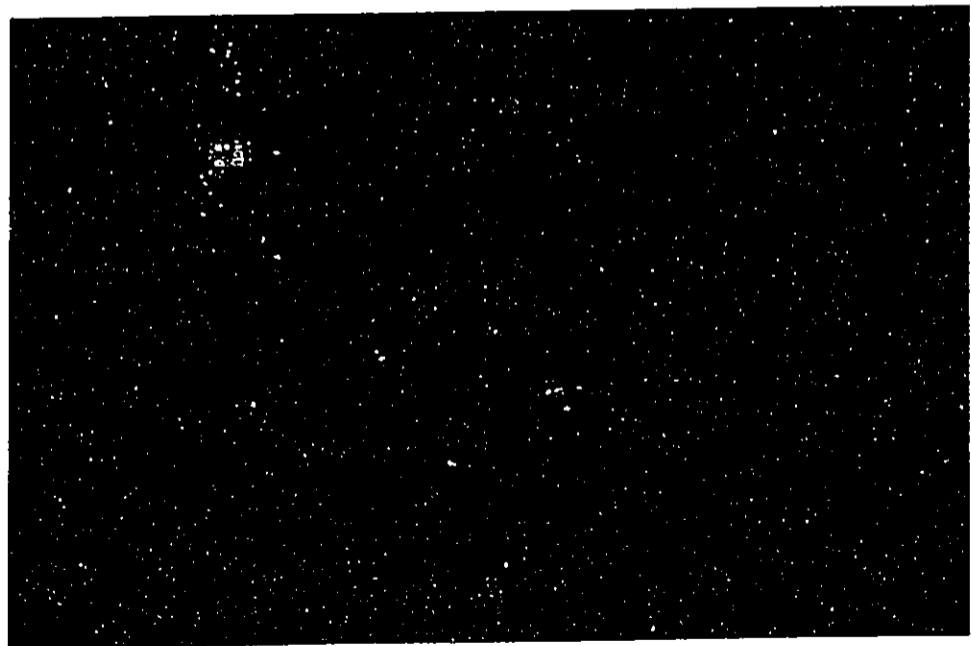
250 lb. cleat anchor with 5/8 inch steel chain

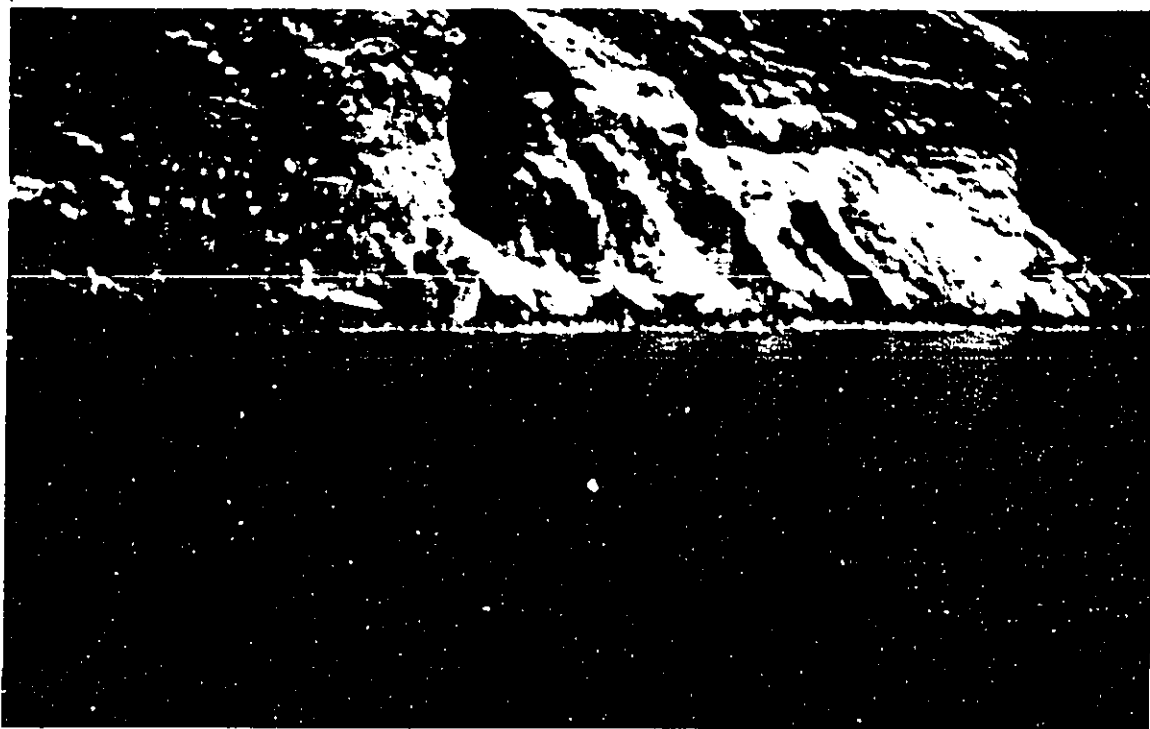




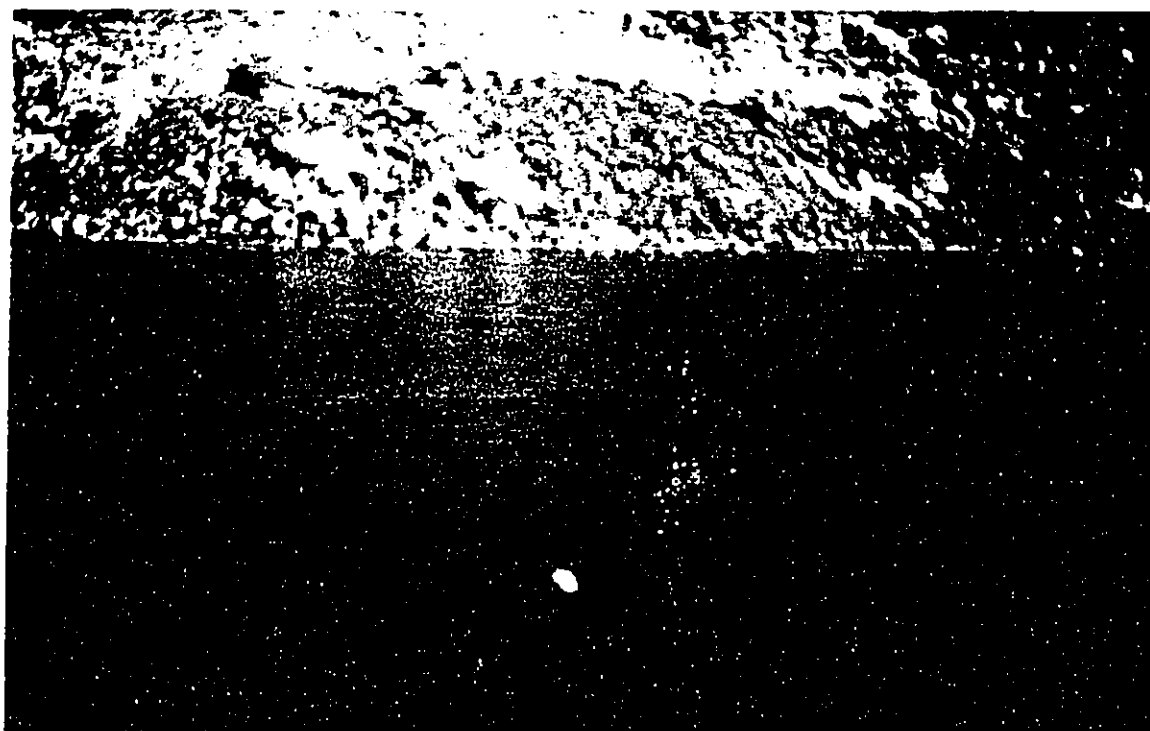
200 lb. channel angle iron anchor with 5/8 inch chain

Angle iron anchor and sea floor around anchor





Mooring float view from 25 yards away.



Mooring float from 10 yards away.

EXHIBIT F:

Correspondence between Hawaiian Cruises and State of Hawaii Harbors Division
at Hilo, Hawaii.

311 Hulen Lane
Honolulu, Hawaii 96813
Phone (808) 947-9271



Hawaiian Cruises, Ltd.

& GLASSBOTTOM BOATS HAWAII, INC.

September 23, 1988

STATE OF HAWAII
Harbors Division
Port of Hilo
Hilo, Hawaii 96720

Re: Mooring Permit - Kealahou Bay

Gentlemen:

The undersigned have been President, Vice President and Secretary/Treasurer, respectively, of Hawaiian Cruises, Ltd., owners and operators of the Captain Cook Cruise to Kealahou Bay, as well as other tour boat activities in Kona and Honolulu, since its inception in 1953.

During these past 35 years, we have used Kealahou Bay as the sightseeing and mooring point for our daily cruises, owning and maintaining the mooring there without interruption and without any previous question as to its legality. Throughout these years, we have had a succession of cruise vessels, all named "Captain Cook" (with the exception of the original which was called "Maizie C"), named for and used exclusively for tours to the Captain Cook Monument.

We do not have any documents in our files relating to a permit for a mooring in Kealahou Bay. However, the State of Hawaii Harbor Division has received continuous payments for 35 years from the Captain Cook operations originating at Kailua Bay and proceeding to Kealahou Bay. Without the Kealahou Bay mooring, this operation would not have been possible. These payments would indicate knowledge and approval of those activities by government authorities.

Very truly yours,

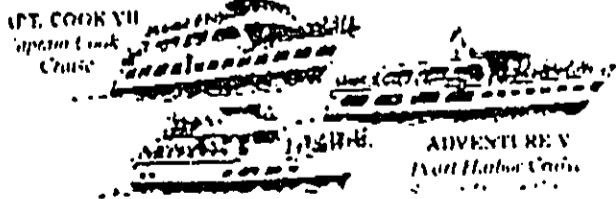
R. E. MacGregor
R. E. MacGregor, President

E. C. Lambert
E. C. Lambert, Vice President

E. M. Tremper
E. M. Tremper, Secretary/Treasurer

cc: Helen 12/15/87

REM/ad



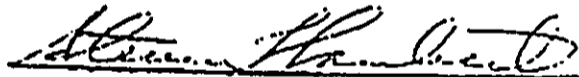
California Cruisin'

Sept. 9, 1988

To Whom It May Concern:

I was employed by Hawaiian Cruises Ltd. as the general manager of the Kona Coast Cruise operation from June, 1972 until February, 1987. During that time, the company operated daily swimming, snorkeling, and glassbottom viewing cruises from Kailua Pier to Kealahou Bay. Two different cruise vessels were operated during this time; the Capt. Cook VI (1972 - 1978) and the Capt. Cook VII (1978-present time). Throughout the 15 years I was with the company, our cruise boats tied up to a company owned and maintained mooring system that had been in place at the northeast corner of Kealahou Bay since the company began scheduled tours to Kealahou Bay in 1953.

During my years as general manager, I was not aware of any state or federal regulations that required our company to hold a mooring permit for our mooring buoy in Kealahou Bay. In fact, it was my understanding that there was some confusion over which agency (Dept. of Land & Natural Resources or Harbors Division, State of Hawaii) had jurisdiction over the northern end of the bay because of its " Marine Preserve " status.



Steven L. Lambert
Vice-Pres./Gen. Mgr.

CC: Helen 12/15/89

33



Pacific Marine

Davies Pacific Center
841 Bishop Street #1880
Honolulu Hawaii 96813
Telephone 808 531-7001
Fax 808 523-7668

P.O. Box 29816
Honolulu, Hawaii 96820

July 17, 1989

Mr. Raiston Nagata
State Parks Administrator
Division of State Parks
Department of Land and
Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, HI. 96809

Dear Mr. Nagata:

I am writing you this letter on behalf of Hawaiian Cruises, Ltd., of which Pacific Marine is a partner. Could you please send us the necessary commercial mooring application forms to apply for a permit to continue our operations at Kealahou Bay. We understand that such permits will now be issued by your department and definitely want to apply.

As the attached letters indicate, for the past 36 years -- commencing prior to Statehood -- our company has used Kealahou Bay as a sightseeing and mooring point for our daily cruises, and has an unbroken record of payments to the State of Hawaii Harbors Division related to this activity. We believe this history and our current installed mooring permit qualifies us for first consideration to any permits that might be issued, as outlined in your draft regulatory proposal (under the section entitled "Initial Permit Issuance").

I have been assigned to follow up on this matter and make sure that we fill out all necessary application forms on time. If there are any questions regarding our past or current mooring in Kealahou Bay that I could answer for you, please feel free to give me a call at 531-7001. The financial viability of our company's Kona operation and our employees' 25 jobs in Kona rest on our access to Kealahou Bay, and we want to make sure that nothing jeopardizes our current status with respect to our mooring there.

Many thanks for your help. I look forward to receiving the necessary forms to complete our application.

Sincerely,

Michael Schmicker
Vice President-Business Development

cc: DLNR, Hilo

cc: Helen 12/15/89