



STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII
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Stephanie Dunbar-Co
Scott Glenn (*Ex Officio*)
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I. Robin Kaye
Theresita Kinnaman
Robert Parsons
Charles Prentiss
Ron Terry
Michael Tulang
N. Mahina Tuteur

Hawai'i State Environmental Council
May 1, 2018 Meeting Minutes
Approved on October 25, 2018

Tuesday, May 1, 2018, 1:00 PM – 3:00 PM

Leiopapa A Kamehameha Bldg.

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

Members Present:

Puananionaona Thoene (Chairperson), Mary Begier (Vice-Chairperson), Stephanie Dunbar-Co, Ronald Terry, Scott Glenn (*Ex officio*), Roy Abe, Robin Kaye, Charles Prentiss

Members Absent:

Maka'ala Ka'aumoana, Theresita Kinnaman, Paulette Ka'anohi Kaleikini, Robert Parsons, N. Mahina Tuteur, Michael Tulang

EC Counsel: Edward G. Bohlen and Susan Ireland, Deputies Attorney General

Office of Environmental Quality Control (OEQC) Staff: Leslie Segundo

Public:

Mike Nakachi

Inga Gibson, Pono Advocacy; West Hawai'i Humane Society

Marissa Spies, Kewalo Marine Laboratory

Kealoha Pisciotta

Kathy Goeggel, Animal Rights Hawai'i

David Sakoda, State of Hawai'i, Department of Land and Natural Resources (DLNR)

Myra Kaichi, State of Hawai'i, Department of Agriculture, Agribusiness Development Corporation (ADC)

Andrew Goff, Deputy Attorney General for the ADC

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

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

- Chairperson Thoene called the meeting to order at 1:03 PM with a quorum of eight members. All present introduced themselves.
- Chairperson Thoene noted that a change in the order of the agenda would be Item 6 (informational briefing) before Item 4 (exemption committee report) as two members would have to leave early and quorum would be lost.

2. Review and approval of prior meeting minutes

- a. **Meeting held on April 10, 2018**

This item was deferred.

3. Informational briefing on aquarium fish collecting; presentations by

- a. Inga Gibson, Pono Advocacy; West Hawai'i Humane Society**
- b. Rene Umberger, For the Fishes**
- c. Kealoha Pisciotta, Kai Palaoa**
- d. Mike Nakachi, Moana 'Ohana**

Ms. Gibson began by discussing previous meetings with the Environmental Council in 2015 that culminated in a 2015 letter to the Department of Land and Natural Resources (DLNR) urging that it conduct an environmental assessment (EA) for the aquarium trade. She noted that the Office of Environmental Quality Control (OEQC) subsequently sent a letter to the Governor urging a moratorium pending the completion of an EA. In September of 2017, the Hawai'i Supreme Court ruled in the case of *Umberger v. DLNR* that the trade was subject to EA; the Hawai'i Supreme Court remanded the case back to the lower court. In October 2017, Judge Crabtree ruled all permits were illegal and invalid; he further ruled that the State cease issuing permits. Ms. Gibson noted that the 2017 Annual Report mentioned that the aquarium trade was suspended pending the completion of an EA.

Ms. Gibson noted that despite the lower court ruling, the aquarium trade was continuing. She attributed this to a DLNR interpretation that the Supreme Court did not explicitly prohibit the use of the rule to apply to fine mesh nets. She noted that video evidence shows continuing collection, warehousing, and air cargo shipments. Mr. Nakachi added that the DLNR rules required that boats engaged in active collecting be tagged with "AQ" on each of the hulls (indicating bottom fishing). Additionally, he noted that in West Hawai'i, a yellow pennant was required to be flown on the mast. He described DLNR's response to the continuing activity as being that DLNR's interpretation of the court ruling applied only to fine mesh barrier nets.

Member Terry inquired if anyone from the DLNR was present. Mr. David Sakoda of DLNR said he is present on behalf of the department.

An extensive discussion on marketability factors, methods of take, and impacts to areas outside of West Hawai'i ensued. Ms. Gibson noted that at the behest of the aquarium trade, SB1240 (2017) phasing out the aquarium trade using fine mesh barrier nets was vetoed by the Governor.

Ms. Gibson indicated that she has catch reports prepared by the Division of Aquatic Resources of DLNR. The data indicated that the aquarium trade is up 57% statewide and upwards of 85% on O'ahu. International shipment is governed by the U.S. Fish and Wildlife Service, which prohibits the shipment of certain wildlife. Shipments of fish leaving Hawai'i Island are required to have a sticker from the State Department of Agriculture (DOA) and record the number of fish and packages shipped. DOA data indicated that the shipments were double from prior to the Court ruling.

Ms. Gibson claimed that due to state inaction, she asked several airlines to initiate an embargo. Alaska Air has agreed to initiate one, but others have yet to follow. Ms. Gibson presented data on continued declines on a variety of species. Citing the importance of fish spawning areas, Ms. Gibson introduced graduate student and

doctoral candidate Ms. Narissa Spies who has conducted extensive research on fish spawning areas.

Ms. Spies noted that research in 2009 demonstrated that protected areas allow fish to forage without the stress of avoiding capture, and such fish reproduce at a rate that allows spillover to non-protected areas. That is the basic premise underlying the establishment Marine Protected Areas, and this was cited as the basis for the Governor's veto of a bill in 2016—noting that fish from these areas were spilling over into non-protected areas. However, additional research in 2010 has indicated that population genetics demonstrated that fish were recruiting from areas not protected such as Miloli'i and Punalu'u. The fish drift out of South Point, passing through a large eddy off the Kona coast, recruit back to the reef.

The 2014-2015 coral bleaching event in Hawai'i was the largest to date. A third of coral statewide died. West Hawai'i was hit especially hard because of the heat anomaly. 70% of West Hawai'i corals were killed while 90-95% were killed in South Kohala. After diving in these areas, Ms. Spies noted that no recovery has begun. Fish larvae recruitment back to reef is dependent on biological cues. Reef sounds – normal healthy coral reef should sound like rush hour; the reef should be a noisy busy place with parrot fish crunching away at corals. Yellow tangs heavily collected are herbivores and they clear new areas for coral recruitment. Inordinate collection of herbivores adversely impacts the establishment of coral recruitment areas.

The presenters requested the DLNR should provide orders that allow the Division of Conservation and Resources Enforcement to more effectively do its job.

Ms. Pisciotta discussion Native Hawaiian cultural concerns and the need to apply the precautionary principle in the absence of data to affirm or negate potential harm.

A discussion on the interpretation of the law ensued. Mr. Terry commented that the Council needs to hear more on the subject from the DLNR. Chairperson Thoene thanked the presenters and requested that the DLNR present to the Council at a future meeting.

4. Exemption Committee

- a. Action regarding concurrence with the State Agribusiness Development Corporation exemption list (Attachment 1)**
 - Exemption Committee Chair Prentiss reported on an earlier Committee meeting with Ms. Myra Kaichi concerning the proposed exemption list for the Agribusiness Development Corporation.

MOTION: At the recommendation of the Exemption Committee, Chair Prentiss moved that the Environmental Council concur with the exemption list (as amended by the earlier meeting). A brief discussion followed. Chairperson Thoene called for the question and the Environmental Council unanimously approved the motion (8-0-0).

b. Action regarding publication of the Hawai'i County Office of Housing and Community Development in *The Environmental Notice*

- Mr. Prentiss reported that the County of Hawai'i, Office of Housing and Community Development (OHCD) submitted an exemption list dated April 16, 2018 and requested the Environmental Council's review and concurrence. The committee met to discuss OHCD's proposed list, noting its verbiage on field ground directional lighting to mitigate adverse impacts to crepuscular and nocturnal avifauna.

MOTION: At the recommendation of the committee, Mr. Prentiss moved that the Environmental Council request that the OEQC publish the proposed OCHD list in the next available issue of the periodic bulletin to initiate a thirty-day public comment period. Mr. Kaye noted a typographical error in the date on the list. A brief discussion followed, and the Environmental Council noted that the list as printed could be the subject of comment on a typographical error in the date. Mr. Abe suggested that the asking the agency to correct the date before publication would potentially ameliorate any embarrassment on the part of the agency for a minor error. Mr. Prentiss agreed to amend his motion to allow for the OHCD to submit a corrected version of their list to the OEQC for publication. With no further discussion, Chairperson Thoene called for the question. The Environmental Council unanimously approved the motion as amended (8-0-0).

- Mr. Prentiss reported on the status of the State of Hawai'i, Department of Defense (DOD) exemption list. He expects to have the DOD list on the agenda for the next Environmental Council meeting.

5. OEQC Director's Report

a. Rules public hearing schedule and status update

- Director Glenn reported that there would be nine public hearings statewide. He noted that Environmental Council members are welcome to attend the meetings as members of the public.
- Director Glenn noted that with respect to staffing, only the Secretary II position needs to be filled. Laura McIntyre has transferred to OEQC as the Planner V. Thomas Eisen will continue as a Planner III.

Members Dunbar-Co and Begier departed, making the quorum six members and therefore ending the meeting.

6. Legislative Measures

a. Update on confirmation of reappointments of Environmental Council members:

- i. Governor's Message (GM) 700 – Mary Begier
- ii. GM 701 – Robert Parsons
- iii. GM 702 – Nichole Mahina Tuteur
- iv. GM 703 – Stephanie Dunbar-Co

b. Update on measures related to Chapters 341, 343, and 344, HRS

7. Adjournment

- a. The next meeting will be held on June 12, 2018.
- b. Possible agenda items include exemption list updates, information and outreach, and review of public comments on the proposed rules. Mr. Kay informed the Council that he would be unable to attend the June 12, 2018, meeting.