



STATE ENVIRONMENTAL COUNCIL

DEPARTMENT OF HEALTH, STATE OF HAWAII
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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.