

Small Business Regulatory Review Board

MEETING MINUTES

December 7, 2023

December 7, 2023 ZOOM RECORDING

- I. **CALL TO ORDER:** Chair Albitz called the meeting to order at 10:03 a.m., with a quorum present.

MEMBERS PRESENT:

- Mary Albitz, Chair
- Robert Cundiff, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- James (Kimo) Lee
- Garth Yamanaka
- William Lydgate
- Mark Ritchie

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walsh
- Sanford Morioka
- Tessa Gomes

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF November 16, 2023 MINUTES**

Mr. Ritchie motioned to accept the November 16, 2023 meeting minutes, as presented. Second Vice Chair Shick seconded the motion and the Board members unanimously agreed.

III. **OLD BUSINESS**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 95, Rules Regulating the Taking and Selling of Certain Marine Resources, promulgated by Department of Land and Natural Resources (DLNR)

Mr. David Sakuda, Program Manager at DLNR's Division of Aquatic Resources (DAR), provided a summary of the proposed rules and explained what occurred at the public hearings. The purpose of the rules is to maintain a sustainable harvest of marine species, which are important food sources that are good for fishing and good for the reefs, among other reasons.

Commercial fishers and dealers were notified of the statewide public hearings, which were held from August 1st through August 7th via Zoom and in-person. There were a total of 122 testimonies, 59 oral and 63 written from 103 individuals and/or organizations.

Mr. Sakuda reviewed the various testimonies which were analyzed and broken down by topics; most of the testimony leaned towards ecosystem health and expanded protections. All the testimonies were considered and weighed based on the topics in order to come up with a final rule proposal.

DAR provided a two-phased approach to assist with the proposed rules: 1) statewide regulations, and 2) island and place-based regulations, which were discussed at length. With regards to the final proposal, no changes were made to the Kona Crab, Manini, and Kole rules. For Kala, additional considerations were made that included increasing the non-commercial daily bag limit from 2 to 4 per person per day and requiring a commercial marine license for valid permitting. For Uhu, changes to the commercial rules are similar to the changes for the Kala.

Concern for the spawning times of the species as well as enforcement was questioned. Mr. Sakuda stated that spawning seasons, commercial harvesting, and fishing were analyzed, and it was found that there is no correlation between them. Thus, the commercial fishers are not targeting spawning aggregation species as it is based on market demand and weather conditions. Regarding enforcement, DAR is responsible for enforcing permits especially if there is an excess of required bag limits.

It was confirmed that these proposed rules will be brought to the Board of Land and Natural Resources (BLNR) for final rulemaking. If BLNR approves the rules as presented, they will go to the Governor for adoption; however, it is unknown whether BLNR will approve the rules for adoption or not. Mr. Yamanaka was concerned that although the commercial fishermen were contacted, DAR was not looking at the impact on small businesses from a broader spectrum.

Mr. Sakuda noted that depending on what changes, if any, might be made to the rules at the BLNR meeting, will depend on whether the rules would proceed to the Governor or not. If BLNR does not approve the final rules and wanted DAR to start over, the state-wide rules would not move forward; only the island-based rules would move forward. Mr. Yamanaka was also concerned that without more data, it was difficult to ascertain the rule's true business impact.

Mr. Lydgate made a motion to move the rule proposal onto the Governor for adoption with two concerns: 1) there may be potential impact to small businesses that goes beyond commercial fisheries where more data may be required and collected to fully understand these impacts, and 2) the Board of Land and Natural Resources has not made a post public hearing decision yet and may still alter the rules, in which case the SBRRB would like to review the amendments. Mr. Yamanaka seconded the motion and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 15 Chapter 23, Makai Area Rules, promulgated by Hawaii Community Development Authority (HCDA) / Department of Business, Economic Development and Tourism (DBEDT)

Discussion leader, Vice Chair Cundiff, noted that these rules are after public hearing, and that it was determined at the prior Board meeting that the subject rules did not appear to have a significant small business impact but instead would likely help small businesses.

Mr. Craig Nakamoto, Executive Director at HCDA, stated that 40 testimonies, written and verbal, were received, and all were in support of the proposal. He added that there was no opposition to the rules by small businesses at the public hearing or during the rule-making process.

Vice Chair Cundiff motioned to move the proposed amendments to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 215 Kalaeloa Community Development District Rules, promulgated by HCDA / DBEDT

HCDA Executive Director Mr. Nakamoto and Director of Planning and Development Mr. Ryan Tam, described the Kalaeloa Master Plan and Rules Update. Mr. Tam explained that around the year 2,000, HCDA was given authority to develop the Kalaeloa Development District, which equates to about 3,700 acres and was, at one time, Barbers Point.

Development of this area started in September 2023. In September 2021, the establishment of a permitted interaction group began with the Board. Since that time, several community meetings have been held to discuss the rule proposal. There is also a Kalaeloa stakeholders' group that is comprised of businesses, owners and other community members located in Kalaeloa that reviews the rules on a regular basis.

The amendment process reflects community needs which includes streamlining and facilitating development and promoting livable, walkable communities. The updated regulating plan consists of the community's vision, which consists of the Transect Zones in Kalaeloa.

Mr. Tam noted that a public hearing is expected to be held in February 2024. In March 2024, the HCDA Board will have a decision-making hearing on the "final" proposed rules. The rules will then come back to this Board.

Vice Chair Cundiff motioned to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 89, Nurses, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Testifier Ms. Paige Heckathorn Choy, Associate Vice President of Government Affairs at Healthcare Association of Hawaii (HAH), submitted written and oral testimony. HAH appreciated the work of Ms. Teshima and DCCA for getting the nurses quickly licensed since the pandemic and is also appreciative of this Board investigating the concerns of HAH. The following outlines a summary of HAH's concerns:

- 1) The updated rules would decouple the temporary license application from a full licensure application;
- 2) The license will only be valid for six months; and
- 3) Any proposed rules must contain a deadline by which a temporary process is approved

Chair Albitz explained that during the 2023 legislative session, DCCA tried to pass legislation to allow the issuance of six-month permits temporarily for out-of-state licensed practical nurses and registered nurses, but it did not make it through session. Alternatively, DCCA tried to come up with and expand temporary permits to nurses to assist with the nursing shortage.

Ms. Lee Ann Teshima, Executive Officer at DCCA, explained that while the Nurse's Board and HAH work together they do not necessarily agree all the time. The purpose of the proposed rules is to create a temporary, streamlined process for the Board of Nursing to issue temporary nurse permits to individuals to fill vacancies within Hawaii's health care system in a timelier manner. This is the result of the national worldwide and local nurse shortage that began during the COVID pandemic.

To allow the Board of Nurses to issue a temporary nurse's permit through a simple application, the following is required: 1) a nurse's verification that shows there are no disciplinary actions against them, and 2) license numbers. Temporary requirements entail fingerprinting, and the national practitioner's databank self-query report, which shows any prior disciplinary actions.

Ms. Teshima also explained that prior to the pandemic, and under the statute's endorsement application, a temporary permit was required. At that time, it required submitting an endorsement application and a temporary permit application which entailed two different fees, issued within 3 to 5 business days.

After the pandemic, Hawaii was extremely short-staffed, which was compounded by the fact that DCCA had volumes of nursing applications to process. As a result, the temporary permits could no longer be issued, and only permanent nursing applications were concentrated on.

Although the Administration's bill this past legislative session addressed temporary permits, it morphed into Senate Bill (SB) 63. This is the bill that DCCA and HAH have been working on to come to some common ground. It authorizes the Board of Nursing to issue temporary permits for six-month periods to out-of-state licensed practical nurses and registered nurses.

It was confirmed that it is not possible for a nurse who is on temporary status to become permanent because it could only be procured through verification. This is because permanent licensing, fingerprinting, and other requirements would be needed (as stated above). Ms. Teshima noted that nothing prevents an individual from applying for both a temporary and permanent nursing license at the same time.

Vice Chair Cundiff stressed and encouraged DCCA to continue to engage with the stakeholders, including HAH and others in the healthcare industry, and to involve them with disclosures of any potential business impacts.

Chair Albitz motioned to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes (HRS)

1. Follow-up on Discussion with Becker Communications, Inc., regarding the Board's Outreach Purposes

Becker Communications will be contacting some of the Board members to schedule interviews for the YouTube video to be used for outreach purposes.

2. Review of the Board's current membership and expiration of terms

Deferred until next month.

3. Presentations to Industry Associations

Deferred until next month.

4. Staff's Small Business Outreach

Deferred until next month.

VI. NEXT MEETING - Thursday, January 18, 2024 at 10:00 a.m., in conference room 405 at Leiopapa A Kamehameha Building – State Office Tower – 235 S. Beretania Street, Honolulu, HI 96813.

VII. ADJOURNMENT – Chair Albitz motioned to adjourn the meeting and Vice Chair Cundiff seconded the motion; the meeting adjourned at 12:05 p.m.