MINUTES FOR THE
BRIEFING OF THE
BOARD OF LAND AND NATURAL RESOURCES

DATE:	FRIDAY, FEBRUARY 24, 2006
TIME:	8:00 A.M.
PLACE:	KALANIMOKU BUILDING LAND BOARD CONFERENCE ROOM 132 1151 PUNCHBOWL STREET HONOLULU, HAWAII 96813

Chairperson Peter Young called the briefing of the Board of Land and Natural Resources to order at 8:08 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Gerald DeMello
Mr. Ted Yamamura
Ms. Taryn Schuman

STAFF

Ms. Athline Clark, DAR
Dr. Takaori Ingrim, DAR

OTHER

Ms. Stephanie Fried
Ms. Aulani Wilhelm

Briefing on Northwest Hawaiian Islands Marine Refuge permits guidelines, application and review process by the Division of Aquatic Resources.

Athline Clark, Planner with the Division of Aquatic Resources (DAR) started off her presentation by acknowledging the efforts of Dr. Takaori Ingrim (Policy Specialist for Northwest Hawaiian Islands-NWHI) for finalizing the guidelines that are before the Board today. Ms. Clark went over the process they used in developing the guidelines and noted the guidelines were based in part to the new guidelines and permit applications being used by the US Fish and Wildlife Service. She went on to state that a workshop was held with Native Hawaiian practioners in order to get their input into the development of these guidelines. As a result of the workshop an agreement was reached in which all permits would be reviewed from a cultural and scientific perspective that recognize that science and culture was of equal importance to the NWHI. Ms. Clark

indicated the area covered by the guidelines are the same area covered by the regulations and include 0-3 nautical miles around all State waters except Midway. The permit only allows for access to state water but it does not allow for access to land. Also this permit does not eliminate the need for other State or Federal permits that may be required. Ms. Clark reminded those present that the primary goal of the guidelines is resource management. Ms. Clark spoke about the tree types of permits issued; research and education, Native Hawaiian practices and special activity permits. The research and education permits would cover any type of research, monitoring or educational activities. The Native Hawaiian practices permit would spell out what the Native Hawaiian practices are and the rule intends to, "allow Native Hawaiian cultural, subsistence and religious practices, and identification and coordination of Native Hawaiian interests that are consistent with applicable law and the long-term conservation and protection of the resources of the marine refuge." Ms. Clark pointed out the rules go on further by defining what Native Hawaiian subsistence means which is the perpetuating of traditional knowledge of how to malma honua (care for the earth). A Special Activity permit is a permit that does not fall into the other two categories. Ms. Clark pointed out anything collected as part of the permit process will become the property of State, not the permittee. As far as the permit application, staff has set up deadlines twice a year, on February 1st and May 1st. Should the need arise, the application deadline also allows a permit to be issued under special circumstances. Once the permit is received by the division it will go through a review process which will be made up of three or four divisions from the Department of Land and Natural Resources, the Office of Hawaiian Affairs, NOAA, the U.S. Fish and Wildlife Service and potential some other organizations. The permit assessment process will include another layer of scrutiny which will deal with the relevance and benefit the permit will have to the NWHI Refuge management, why does it need to be done in the NWHI and not somewhere else, what are the science, educational or cultural merits of the project, will the project harm the ecosystem and lastly all permits will receive input from other management agencies before a permit is issued. As far as general requirements all non-government permits will need to obtain wreck removal and pollution insurance, they must complete and show proof of a hull and gear inspection, be able to demonstrate the ability to track their movement within the NWHI, all personnel under the project must be listed on the permit and an expedition report must be submitted at the end of the activity. The last topic of Ms. Clark's presentation dealt with the three general guidelines of the permit process which are to minimize vessel impacts, minimize human impacts and minimize alien species introduction. In terms of minimizing vessel impacts, Ms. Clark is requesting that chase boats have gasoline filled at the mother ship and not within the atoll and also that anchoring practices be looked at. Secondly, in order to minimize human impact to the resources the guidelines would like to minimize interaction with endangered species and assess how these activities impact the resources. Lastly in hopes in minimizing the introduction of alien species, Ms. Clark is recommending teaching individual how to rinse their gear so species from one area can not be transported to another area.

Board Member Yamamura asked for clarification as to if the Board has final approval on issuing a permit. Ms. Clark noted the permit will go through two sets of reviews. First, a

research coordinator will go over the permit in terms of completion. Upon completion a second review will be conducted by the permit review committee who will make a recommendation to the Board. Should someone have any concern with a permit they would be able to appear before the Board to voice their concerns. As far as a time line, Staff anticipates the review process to take approximately two months.

Stephanie Fried, Senior Scientist with Environmental Defense and a member of the NWHI Hui came forward to testify. Ms. Fried went over her written testimony which dealt with problems in the permitting guidelines. In section A of the permitting guidelines, Ms. Fried communicated that it does not accurately reflect the purpose of the refuge as staff did not include a precautionary approach requirement of "do no harm," it does not describe Native Hawaiian access as guaranteed under the rules and it provides for permits to be issued based on the criteria of state rule (i.e. grants equal authority to permit guidelines and state rules signed by the Governor). Addressing section B, Ms. Fried made seven points: First, the section eliminates reference to "do no harm" permits language and in order to fulfill this obligation she feels the permits should be reviewed by a biologist and ecologist with knowledge of the NWHI. Second, the "special activities" category creates a new illegal use catagegory which allows extractive activities. Third the scientific research and monitoring education permits creates a new goal to further the educational value of the refuge which is not one of the goals listed in the State rules and it also violates the "do no harm" standard. Fourth, the Native Hawaiian Practice Permits violates the "do no harm" standard as it allows everything except an "unreasonable ecological impact" on sites or resources. Fifth, the Special Activity Permit does not provide criteria for the special activity permits. Ms. Fried believes the department should formulate certain standards for these permits. Sixth, VMS/GPS should be required and not be a choice. Lastly, with regards to the permit assessment process, Ms. Fried let it be known the current structure of the Permit Review Committee provides no way to meet the mandate the Governor's refuge rules. The current committee structure consists of agency representatives without any regard to qualifications in NWHI ecological and biological expertise. Ms Fried is requesting the department fine tune the guidelines to include in the review committee a recognized coral reef ecologist and marine biologist with experience specific to NWHI or at the least Hawaiian reefs with focus on marine mammal science, coral reef ecology and flora and fauna. Addressing the Conditions of Permits, she pointed out applicants are invited to continually re-apply for a permit after receiving a rejection by the Board and feels this seems to establish an inherent right for a reapplication process. She asked the department to include a question in the application that asks the permittee if they have missed any requirement for reporting or if they've had any violations. In closing, Ms. Fried asked the Board to consider the recommendations she has made to the proposed guidelines.

Aulani Wilhelm, Acting Manager of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve and Proposed National Marine Sanctuary appeared before the Board in support of staff's recommendation in developing this process. She noted the State is developing a permit process with a very high standard which is uncharted territory. Ms. Wilhelm confirmed to the Board that staff has worked closely with NOAA and the U.S. Fish and Wildlife Service in the development of this process. They stand committed in

helping the State with this process and hopes to eventually streamline the permitting process.

An identified speaker spoke of his experience in working at the NWHI area He believes the area has been over fished and is thankful for what the department is trying to do to protect the area. He feels the area does not have the habitat to support a large population.

There being no further business, Chairperson Young adjourned the meeting at 8:52 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review.

Respectfully submitted,

Terry Crowell

Terry Crowell

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources