

Friends of Maunalua Bay

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Myth-Buster Factsheet

The Friends of Maunalua Bay offers this “Myth-Buster Factsheet” to clarify some of the misleading statements recently reported in the media regarding the expansion of the Hawaiian Islands Humpback Whale National Marine Sanctuary (“HIHWNMS”) as proposed in the March 2015 Draft Management Plan and Draft Environmental Impact Statement issued by the National Oceanic and Atmospheric Administration (“NOAA”).

- **Myth:** “**And if anyone looks at our proposal they will see that we give an exemption for dredging that related to maintenance of harbors,**” “We understand there’s a safety issue that people still need to move in and out. So we would give an exemption.”
- Malia Chow (HIHWNMS superintendent), KHON2, 6/13/15
- **Facts:** § 922.184(a)(6) of the Proposed Rules prohibits, “dredging, drilling into, or otherwise altering in any way the submerged lands” within Maunalua Bay. The “exemption” under subsection (iv) has a sunset clause of 1 year from the final rule effective date. The only other “exemption” under subsection (c) gives the Director of NOAA nearly unrestricted authority to object to dredging as “the Director deems necessary...”
- **Myth:** “**And the homeowners should not be affected,**”
- Malia Chow (HIHWNMS superintendent), KHON2, 6/13/15
- **Facts:** Homeowners on the Hawaii Kai Marina would be affected by any additional costs or regulatory hurdles associated with dredging (assuming an exception to §922.184(a)(6) is deemed applicable). Homeowners on the marina could be held responsible for “discharging or depositing any material or other matter” into Maunalua Bay under § 922.184(a)(4), and (5) as the result of the numerous drainage culverts flowing through the marina and into the bay. Many of the homeowners in Hawaii Kai visit Maunalua Bay on a regular basis and will be impacted by the prohibitions listed in § 922.184 including prohibitions on (i) fireworks displays, (ii) “altering submerged lands” which as written could literally prohibit building a sand castle below the high water mark or walking on the inner reef, (iii) on anchoring vessels in anything but sand (which is only about 10% of the bay), and (iv) scattering human remains which as currently written would require a Special Use Permit (applicant must have liability insurance or bonding).
- **Myth:** “**There’s nothing in our proposal that restricts access to the bay...**”
- Malia Chow (HIHWNMS superintendent), KHON2, 6/13/15
- **Facts:** The Prohibited Activities under § 922.184 of the Proposed Rules (as noted above) has the effect of restricting access to the bay. For example, NOAA’s own maps show approximately 10% sand cover in the bay, and boaters will be restricted to anchoring in just those areas. See, § 922.184(a)(6)(i).

- **Myth**: “**Right now anyone operating a commercial or recreational business legally now, will be exempt from the proposed regulations.**”
- Roger Mari (reporter), KITV4, 6/15/15
- **Facts**: There are no exemptions under the Proposed Rules, except for an exemption for *commercial* fishers holding “permit issued by the State of Hawai’i...” See, § 922.184(a)(6)(vi). The vast majority of recreational and subsistence fishing in Hawai’i is done legally without a permit. There are no other exemptions for commercial business operations.
- **Myth**: “**Recreational use of Maunalua Bay is not in danger. This includes fishing, anchoring, scattering of ashes and other current uses.**”
- Frazer McGilvray, ED for Malama Maunalua, KITV4, 6/15/15
- **Facts**: Recreational fishers will only be able to anchor in 10% of the bay, will not be able to lay traps or any other device on the sea floor, and could be subject to fines of up to \$100,000.00 per violation if fishing gear becomes entangled in the reef. Anchoring is clearly limited to sand under § 922.184(a)(6)(i), which according to NOAA’s own maps constitutes only about 10% of the bay. As to scattering of ashes, there is no clear exemption. Further, the “disposal of cremated human remains” requires a Special Use Permit under 15 CFR Part 922(II)(11c)(4).
- **Myth**: “**The decline of Maunalua Bay is serious - the worst in the state...**”
- Frazer McGilvray, ED for Malama Maunalua, KITV4, 6/15/15
- **Facts**: NOAA has conducted no studies on the bay. Even according to Malama Maunalua’s own website, the major ecological stressors are (i) drainage systems into the bay, and (ii) overfishing. Scientific studies have concluded that sedimentation and coastal runoff are the major stressors impacting the health of the Bay (Klemmer 1976; Wolanski et al. 2009; Swarzenski et al. 2013; Ganguli et al. 2014; and many others). NOAA’s plan and additional regulations do nothing to address either of these issues.
- **Myth**: “[Malia] Chow also says the proposal would prohibit disturbing the sea floor and discharges into the bay, *but she says scattering of ashes would be okay.*”
- KHON2, 6/13/15
- **Facts**: There is no clear exemption under § 922.184(a)(4) allowing for scattering of human remains. Further, the “disposal of cremated human remains” specifically requires a Special Use Permit under 15 CFR Part 922(II)(11c)(4).
- **Myth**: “**The proposed expansion is on the result of input from a public process that began in 2010 and has included extensive public input**”
- NOAA “Background and Key Messages” document.
- **Facts**: During the scoping process, only 54 people attended public meetings on Oahu. Only 26 public submissions were received on Oahu. The required public notice provided in the Federal Register failed to list the meeting times for seven (7) out of ten (10) of the public meetings during the scoping process.