

NOAA/DKIRC NOS/ONMS June 17, 2015

Superintendent Malia Chow

 1845 Wasp Blvd, Bldg 176

Honolulu, HI 96818 Subject:

to [*www.regulations.gov/#!docketDetail;D=NOAA-NOS-2015-0028*](http://www.regulations.gov/#%21docketDetail;D=NOAA-NOS-2015-0028)

**Comments by Rep. Gene Ward on Draft Management Plan & Draft EIS, Especially in Regards the Proposed Maunalua Bay Special Sanctuary Management Area (SSMA)**

Aloha Ms. Chow,

Thank you for the opportunity to submit comments on the draft management plan that proposes to include Maunalua Bay as Special Sanctuary Management Area. I have the privilege of representing Maunalua Bay from Hawaii Kai to the Makapuu Lighthouse area in the State House of Representatives. The following remarks should be considered in addition to my verbal testimony provided at the NOAA public hearing held at the Waldorf School in Niu Valley on April 28, 2015.

**HUMPBACK WHALE SANCTUARY SUPPORT:**

**Firstly, I totally support** **the conservation of our marine resources and our ocean environment as a top priority of the State of Hawaii as well as my office in the State House of Representatives**. NOAA has done a terrific job of protecting, preserving and now proliferating the humpback whale in Hawaii’s waters. However this doesn’t mean that NOAA should be given cart blanche the way it has written the proposed SSMA.

**FEDERAL-STATE JURISDICTIONAL IMBLANCE AND REDUNDANCY:**

**Secondly, I believe the SSMA is written in a rather one-sided manner and it needs to be reconstructed to be a partnership between** what is being proposed for Maunalua Bay and what the existing situation is. I don’t believe some of the things proposed are necessary and the federal government appears to be over-reaching in some of its statements, and rarely, if ever, mentions the Dept of Land and Natural Resources as a partner.

**For example, the SSMA as presently written is a clear threat to Hawaii Kai as we know it.** More specifically, I am concerned that the Hawaii Kai marina will be drastically changed by the NOAA proposal. It appears that access to the Marina could be limited by virtue of no dredging is allowed by the SSMA. If dredging is prohibited, Hawaii Kai will die, not only as a concept, but its marina will become a dead sea with no outlet to the ocean. If the marina is not allowed to be dredged, it is likely that there will be some seepage into the sea, however the SSMA does not appear to allow even a bit of seepage from the marina without severe penalties. There is presently a natural flow of rainfall from the Kamilonui Valley watershed at the back of the marina which flows makai into the ocean. To prevent this natural pattern of storm water drainage without touching Maunalua Bay waters is an impossibility. Again the operative word is ‘compromise,’ and allowing some specific amendments to allow Hawaii Kai Marina to remain a marina, healthy alive, deep, and navigable. This is essential for Hawaii Kai to remain Hawaii Kai, and I am a bit surprised this was not already taken into consideration when the plan was drafted, with a perhaps too much “one-size-fits all” perspective.

**LOSS OF SOVEREIGNTY AND JURISDICTIONAL REDUNDANCY:**

**Thirdly, my concern is why do we need a new governance model for Maunalua Bay and a new federal sovereign?** What is it that the State of Hawaii cannot do by itself without this forward thrust by NOAA? I fail to see what DLNR and we the Hawaii Kai community et. al. could not do by ourselves without your assistance in this matter, especially where you state that all permitting, fines, and penalties will not be in local but federal hands. I do not see this advantageous to the people of Hawaii Kai nor the people of the state of Hawaii. Please recall that it was the people of Hawaii who took the initiative and converted Hanauma Bay into a Nature Preserve Park without any urging, assistance, or financing from NOAA. At present there is no reason why we can’t do the same with Maunalua Bay without NOAA.

**ACCURACY OF “CONGRESSIONAL MANDATE” FORGING A MAUNALUA BAY SSMA:**

**My fourth concern** **is that the proposal states that NOAA has been mandated by Congress** to include Maunalua Bay into a SSMA. Your proposal states, “When Congress designated the HIHWNMS in 1992, it **mandated** (emphasis added) NOAA to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the sanctuary.” I have searched the 1992 Act of Congress that your proposal claims mandates you to do what you are doing, but have I failed to find any such language suggesting a mandate. At most I found language that states: *“(16) The marine sanctuary designated for the conservation and management of humpback whales could be expanded to include other marine resources of national significance which are determined to exist within the sanctuary”*. The operative word in the paragraph is “could” and I fail to see how this could be interpreted as a “mandate.” Please forgive me if the word, “mandate” does appear somewhere else in the 1992 Act, but your use of the term in your SSMA proposal could be characterized as “intimidating” and gives the wrong impression that a SSMA is “required.”

**CONCLUSION:**

In summary**,** there needs to be a lot more discussion and give and take about who does what in Maunalua Bay before anything is finalized or even further considered. I don’t see benefits accruing to our environment that could not be managed and mandated by the State of Hawaii, rather than the federal government. But if the NOAA proposal to make Maunalua Bay a Special Sanctuary Management Area is the will of the people of Hawaii Kai and the people of Hawaii, they must all be represented in this dialogue. Already numerous fishermen, boaters, paddlers, and recreational users are frightened by what they have just learned about in your proposal and some have taken to the sign-waving on the streets of Hawaii Kai.

My obligation as their representative is to protect the environment and to protect the users and conservers of the environment, but let’s not make this into an environmentalists vs. bay users issue, it is much more sophisticated and nuanced than this, especially when no one in our community has been consulted about what you have been proposing, and please don’t assume that your earlier announcement in the Federal Register actually counts for a public awareness campaign, rather than the technical legality it is.

I look forward to further discussing in detail any part of this testimony and will answer any questions you may have. I conclude with the same statement I used in my April 28 public hearing at the Waldorf School: “No one has asked for this sanctuary, and no one has consulted us on the need for such a sanctuary, so why are we doing this.” I hope the outcome of all of this builds on our community’s outstanding track record for protecting our marine environment and this should continue to be the case with the NOAA proposal regardless of the outcome.

Sincerely,

Representative Gene Ward

Hawaii Kai - Kalama Valley