

Environment



Hawai‘i

a monthly newsletter

Vintage Whines

When it comes to grievances, the Western Pacific Fishery Management Council has them in spades.

Too many closures. Too few dollars. Too much regulation. Not enough tuna quotas. Too many protected species.

What it lacks, however, is strict oversight. While the executive director theoretically serves at the pleasure of the council members, the fact that Kitty Simonds has been at the helm of Wespac for more than three decades makes the claim that she answers to anyone laughable.

As our reporting from the council's 191st meeting shows, the level of civil discourse during council deliberations has all but disappeared, despite the council chairman's earnest opening prayer to a Christian god to provide wisdom and guidance. Decorum has been thrown overboard.

Like other deliberative bodies from school boards to boards of aldermen – even to the highest levels of Congress – basic courtesy at the council level seems to be a quaint relic of the past. More's the pity.

Wespac Airs Grievances Over Push To Increase Closed Areas in Pacific

“Council Offended by Removal of Last Vestiges of US Ocean Waters Open to Fishing.” That was the headline on a press release issued June 23 by the Western Pacific Fishery Management Council. Members of the panel, the presser stated, were miffed at the idea that areas inside the U.S. Exclusive Economic Zone in the Pacific Ocean might be subject to increased regulations on commercial and non-commercial fishing.

Specifically, the council was “offended” by two proposals. The first involves the process of designating the marine portion of the Papahānaumokuākea Marine National Monument as a national marine sanctuary. The second involves expansion of the Pacific Remote Islands Marine National Monument, which was proposed to President Biden earlier this year by a coalition of Native Hawaiian practitioners, Chamorro cultural advocates, and others.

Accompanying the press release was a map depicting U.S. territorial waters in the

Pacific. Outside the boundaries are yellow dots, representing foreign vessels fishing in the area from October to December 2019. Pink dots show where U.S. vessels fished in the same period. Apart from a lone pink dot in the EEZ surrounding Kingman Reef and Palmyra Atoll – probably representing a U.S.-flagged purse seiner – there appeared to be no fishing in any of the EEZs outside of the Main Hawaiian Islands.

The NWHI Sanctuary

The sanctuary designation process for the Papahānaumokuākea monument is the further along of the two proposals. It was launched in 2020 following the inclusion of language in a congressional appropriations bill by Senator Brian Schatz that called on the National Oceanic and Atmospheric Administration to begin the process. NOAA has yet to finalize the designation, something not likely to occur until next year at the earliest. Even so, as part of the required process, the council

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Seabirds foraging in waters off the Pacific Remote Islands. CREDIT: KYDD POLLOCK

Environment

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NEW AND NOTEWORTHY

Remembering 'Doc' Maciolek: Dr. John A. Maciolek (1928-2021), a career biologist with the Fish and Wildlife Service and former zoology professor at the University of Hawai'i at Mānoa, died at his home last summer in Westlake, Oregon.

At UH, Maciolek regularly taught the upper division limnology course, which included field work in many Hawaiian aquatic habitats. He served as committee chair for doctoral and master's students, most of whom went on to careers in state and federal resource management agencies and academia. His legacy and that of his students in aquatic ecosystem science is rich and diverse.

His own research focused on non-marine aquatic habitats throughout Hawai'i and the insular Pacific. He described all six natural lakes in Hawai'i, which are among the highest, deepest and saltiest in the country. Together with his doctoral student Amadeo



John Maciolek

Timbol he described the complex food webs in Kahana estuary on O'ahu, one of the earliest research efforts to bring this approach to estuarine habitats.

In the early 1970s, when anchialine ecosystems were mostly unknown and unstudied throughout the world, Maciolek focused on these threatened habitats in Hawai'i and elsewhere. With Drs. Richard and Julie Brock, he described many of these ponds along the Kona coast of Hawai'i and on Maui.

Among his most lasting accomplishments was his effort, together with Hawai'i state Senator Nadao Yoshinaga, to establish the Hawai'i Natural Areas Reserves System in 1970, and to designate the 'Āhihi-Kīna'u NAR on Maui in 1973 to protect its anchialine ecosystems.

(Submitted by John I. Ford, senior associate at Haley & Aldrich, Inc., and Robert A. Kinzie III, emeritus professor of zoology at the University of Hawai'i-Mānoa.)

Hu Honua Rebuff: On June 24, the Hawai'i Public Utilities Commission issued an order denying Hawaiian Electric's motion to have it reconsider its decision of May 23, which rejected the utility's proposed power purchase agreement with Hu Honua, owner of a nearly completed power plant north of Hilo. At the same time, it also denied Hu Honua's motion for "reconsideration, clarification, and further hearing" of the May order.

The commission had ruled that Hu Honua, which would burn wood to produce its energy, did not show that it would sequester more greenhouse gases than it released, describing its claim as based on speculative assumptions and unsupported assertions. It also found that the proposed power purchase agreement "is likely to result in high costs to ratepayers, both through its relatively high cost of electricity and through the potential displacement of other, lower cost, renewable resources."

Hu Honua has undertaken an expensive public relations campaign to win public sentiment, but the PUC was unswayed. Hu Honua's claim that it relied on a previous and overturned approval of an earlier power purchase agreement to move forward with construction – an equitable estoppel argument – had no merit. "Hu Honua did not have a reasonable basis for proceeding with the project during the appeal period, given that the commission's alleged 'direction' to proceed with the project was made within the context of the terms of the amended [power purchase agreement], which provided for a tolling period until a final, non-appealable order was issued, which Hu Honua acknowledged," the PUC found.

Warren Lee, president of the company, which now calls itself Honua Ola, released a statement following the PUC decision: "We are disappointed ... but we are not giving up because Honua Ola is in the right on this issue." In late June, the company appealed to the state Supreme Court, which has already heard three appeals involving the plant.

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Quote of the Month

“The housing crisis has far more to do with global markets than water permits.”

— *Aurora Kagawa-Viviani,*
Water Commissioner

Farm Dwellings, Overnight Camps at Issue In 2 Court Cases the LUC Votes to Appeal

Two recent judicial rulings have sent the Land Use Commission back to court. The first, a ruling on May 2 by 3rd Circuit Judge Wendy DeWeese, overturned a Hawai'i County law, supported by the LUC, that banned short-term vacation rentals on lots in the state Agricultural District if the lots were not in existence prior to June 4, 1976. The second is a May 23 decision by the Intermediate Court of Appeals that determined the LUC does not have the ability to block the issuance of special permits for overnight campgrounds on Agricultural land rated high for productivity.

On June 8, the members of the LUC unanimously voted to authorize the state Department of Attorney General to appeal the decisions.



Farm Dwellings On Ag Land

In 2019, to address the uncontrolled growth of vacation rental properties, Hawai'i County enacted a law that, among other things, severely limited the ability of owners of houses on land in the state Agricultural District to rent them out as vacation homes. In short, unless a house was on an Agricultural lot of record in 1976, when state law limited houses on Agricultural land to only those dwellings directly connected with active farming or ranching, it would not qualify for permitting as a short-term vacation rental (STVR).

Chapter 205, the state's land use law, defines a farm dwelling as a single-family house that is either "located on and used in connection with a farm" or a house "where agricultural activity provides income to the family occupying the dwelling." The county ordinance relied on this when deciding to place the limit on the use of such houses as STVRs.

Almost immediately, the ordinance was challenged by a group of more than 20 property owners. This group, called the Rosehill petitioners, after the lead complainant, Linda Rosehill, argued that nothing in state law blocks farm dwellings from being rented, whether for short terms or long.

The houses owned by most of the Rosehill petitioners have no apparent connection with farming or ranching. Almost

all are owned by out-of-state, even out-of-country residents. One advertises itself to potential vacationers as the only Frank Lloyd Wright-designed house in the islands. Another boasts of a 100-bottle wine cooler, tennis court, and pool.

The Rosehill petitioners first asked the county Board of Appeals to rule on the county Planning Department's denial of their applications for STVR permits. But then both the county and the Rosehill complainants agreed to take the dispute to the Land Use Commission, asking it for a declaratory ruling on the issue.

This was not the first time the LUC weighed in on the question of "farm dwellings" on Agricultural land. In 1994, the commission determined that a multi-unit development on 10 acres of state land above Kona – the so-called Crazy Horse Ranch complex – was not permissible.

At no point does the Rosehill petition make any mention of agricultural activity. Instead, the petition focuses on the fact that the statute does not set forth a minimum period for rental. "[T]he first clause in the 'farm dwelling' definition did not impose a minimum rental period," the petition states.

In the spring of 2020, the LUC conducted hearings on the Rosehill petition and a separate petition by the county. On August 13, 2020, the commission denied the Rosehill petition. In its 32-page-long decision, the LUC takes note of the petitioners' point that Chapter 205 sets no minimum rental period for farm dwellings. But, the LUC states, petitioners "did not present to the commission a specific factual situation on which the commission could issue the declaratory order they requested... Whether the occupants are renters farming the land or whether there is agricultural activity providing income to the renters, or whether the renters are instead vacationers or tourists who are not engaged in and do not derive income from farming on the premises are some of the 'specific factual situations' which must be presented in the record."

On the other hand, the LUC found that there was nothing in the county ordinance that conflicted with state law.

The Circuit Court Ruling

The Rosehill petitioners then appealed to the 3rd Circuit Court. On May 2, Judge

DeWeese issued her decision, reversing the LUC's declaratory order. DeWeese accused the LUC of abusing its discretion in denying the Rosehill Petition as speculative, while not applying the same standard to the county petition. Also, she rejected the LUC's finding that the Rosehill petition was speculative.

This court "interprets short-term vacation rentals" to refer specifically to the statutory definition set forth by the county in the ordinance and not to an ordinary definition of a vacation rental or vacation use," she continued. "[A] dwelling may simultaneously meet the definition of a 'farm dwelling' pursuant to HRS Chapter 205 and the county's definition of 'short-term vacation rental,'" she wrote. And inasmuch as state law does not regulate the period for which a farm dwelling may be rented, DeWeese entered her final judgment in favor of the Rosehill petitioners.

The Vote to Appeal

On June 8, when the Land Use Commission met to decide whether to appeal DeWeese's ruling, none of the Rosehill petitioners or their attorneys made an appearance. Several community members did testify in support of the county's ordinance and the LUC's declaratory ruling upholding it.

Two owners of houses in the state Agricultural District offered testimony in opposition. Justin Cleveland of San Jose, California, owns a 3200-square-foot house on a little more than an acre of Agricultural land high above Kailua Bay. He stated that he and his family might be there about a quarter of the year. The remainder of the time, he said, it is rented out to "people usually from the mainland."

Commissioner Gary Okuda asked him, "Are you aware right now, as you sit here today, that in fact there is a legal requirement that if you are occupying or using agricultural land, it has to be used for agricultural purposes?"

Cleveland said he was not aware of that, but that the bylaws of the gated community his house is a part of allow short-term rentals. "That was one of the reasons we purchased the land," he said. "There was no discussion of, we had to have a farm, or anything like that."

Pressed by Okuda, Cleveland said that when he applied for a short-term rental permit, "I brought it to their attention that they basically allowed us to break the law by approving the dwelling we built. ... They basically said, 'we kinda look the other way on Ag land and we approved your permit.' I

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am aware the property we have is probably not in line with the Agricultural land use building permit structure, but the county allowed us to build it that way.”

While Cleveland agreed with Okuda that, “breaking the law is not a great thing to do,” he added: “My other big thing is, if you do buy a property you should not be told what you have to do with the property... I have several houses and I am able to rent those properties as I feel in other locations without any issues.”

Cleveland told the LUC that the people who rented his house “are very good renters. ... We’ve never had any problems with the renters. They are very respectful of the community, of the property, and the area.”

News reports earlier this year tell a slightly different story. On April 24, the *Hawaii Tribune-Herald* published an article by reporter Nancy Cook Lauer stating that the Cleveland property had been the subject of multiple complaints from neighbors.

One neighbor described it as “a great big party house,” Lauer reported, adding that Airbnb advertised it for as much as \$1,200 a night. “Neighbors say the four-bedroom, four-and-a-half bath home has hosted as many as 40 people during its parties,” the article stated.

A physician, David Hefer, who owns a house in Captain Cook, also testified against the LUC’s position, going so far as to take the commission to task for having failed to complete a five-year boundary review since 1992.

The commissioners were too polite to point out that it is not the task of the LUC to undertake the boundary review – which, in any case, was most recently completed last year. However, chair Jonathan Scheuer did suggest that Hefer take a look at the updated versions of Chapter 205.

Following an executive session, a motion to appeal was discussed. At the close of discussion, Scheuer offered a short statement:

“We are at a point in Hawai'i where the biggest question for me that is before us is, do we run Hawai'i for outside capital, for visitors, and for other outside interests? Or do we run Hawai'i for ourselves and those of us who live here and for the islands themselves?

“When we look at who is benefiting and who is losing in this transaction, it is unambiguous. The decision that was made by the LUC not only upholds the black-letter law involved but the greater idea that perhaps Hawai'i should actually be run for



Justin Cleveland's house, Palekaiko Estate, as pictured on the website advertising it, palekaikoestate.com.

the benefit of those who live here and for the islands themselves.”

The motion to appeal passed unanimously.



Camping on Ag Land

Seven years ago, the Maui County Planning Department was asked to approve a special permit to allow for overnight camping on about eight acres of land in the state Agricultural District near Lahaina. The land made up a portion of a larger, 22-acre parcel owned by Kauaula Land Company, LLC, which had leased it to the Ho'omona Foundation, a non-profit that was planning to provide temporary housing in tents to homeless people as well as commercial campers. Twenty-six pods for tents were proposed to be placed on the site, with a population of up to 80 campers a night, with homeless campers staying two to three months.

Immediately mauka of the proposed campsite lies the Pu'unoa subdivision, a gated community of upscale homes, also on land in the state Agricultural District. The Pu'unoa Homeowners Association opposed the campground and asked the Land Use Commission for a declaratory order. Specifically, the association asked the LUC whether the proposed use would require a boundary amendment – removing the land from the Agricultural District – instead of the special permit the foundation was seeking from the county.

Chapter 205 specifically bars “overnight camps” on Agricultural land with a B (high) productivity rating, the association noted in its petition to the LUC. In addition, it pointed out that Maui County itself restricted occupancy of tents as temporary living quarters to no more than six consecutive nights in any 30-day period.

Both Maui County and the state Office

of Planning, however, argued that state law gave counties broad discretion to determine reasonable and unusual uses of Agricultural land.

After a hearing in February 2016, the LUC issued a declaratory order, finding that the proposed campground could not be allowed under a special permit and a district boundary amendment would be required.

Ho'omona Foundation appealed. In March 2017, 2nd Circuit Judge Rhonda Loo vacated the LUC order, finding that a campground could be allowed if the county determined the use qualified for a special permit. No boundary amendment was required, she found, citing to a 1990 Hawai'i Supreme Court opinion, *Maha'ulepu v. Land Use Commission*. That opinion found that the Land Use Commission could approve a special permit for a golf course on productive Agricultural land if it found that the golf course constituted an unusual and reasonable use – despite language in Chapter 205 stating that golf courses are not a permitted use on lands with a productivity rating of A or B. The case involved an appeal of a special permit granted by the Kaua'i Planning Commission, and affirmed by the LUC, allowing a 210-acre golf course on land adjacent to the Hyatt Regency hotel.

The LUC and the homeowners association appealed to the Intermediate Court of Appeals. On March 23, it issued its opinion.

Permitted vs. Prohibited Uses

Reading through the opinion, it would seem as though the ICA was sympathetic to the position of the LUC and the homeowners.

The court noted that the Legislature did restrict Agricultural lands with a productivity rating of A and B to 23 identified permissible uses, while specifically listing golf courses and overnight camps as not included among those uses.

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is preparing draft regulations to be forwarded to NOAA's Office of National Marine Sanctuaries.

Already commercial fishing is banned in the monument, which includes all of the waters surrounding the Northwestern Hawaiian Islands archipelago. What the council considered last month was whether and, if so, to what extent other fishing activities should be allowed, including non-commercial, cultural, and research.

As a member of the council's own advisory panel on non-commercial fishing pointed out, non-commercial fishing in the area is virtually non-existent, given the difficulty and expense of sailing up to the remote islands from the Main Hawaiian Islands.

Still, Guam council member Manny Dueñas was indignant on behalf of Hawaiians. Dueñas, the press release stated, observed that fishing serves to perpetuate Hawaiian culture, and does not "preserve it in a pickle jar."

The council eventually approved a motion that urged the Office of National Marine Sanctuaries to "clarify" certain issues relating

to the proposed sanctuary:

- Limiting the boundaries to the current area "to honor the previous agreement made with the Kaua'i fishing community;"
- "Incorporating cooperative research, where fishing is conducted along with scientists, in the Monuments [sic] and proposed sanctuary to provide additional value to assessing stocks across the entire Hawai'i archipelago;" and
- "Approaches to address Native Hawaiian Practices that include fishing within the proposed sanctuary, including considering them along with other non-commercial fishing."

Further action on proposed regulations for the sanctuary is likely to be considered at the council's next meeting in September.

The Pacific Remote Islands Area

As for the suggestion that the PRI monument be expanded, that, too, got council members' dander up.

At present, the monument consists of almost 500,000 square miles, encompassing seven islands and atolls: Baker, Howland, and Jarvis islands; Johnston, Wake, and Palmyra atolls, and Kingman Reef. Current mon-

ument boundaries extend out 50 nautical miles from land. Earlier this year, the Pacific Remote Islands Coalition proposed expanding it to 200 nautical miles, the full extent of the U.S. EEZ, increasing the protected area to more than 750,000 square miles.

Council staffer Mark Fitchett gave the council members a presentation on the proposal. The expansion area is already closed to all commercial fishing except U.S.-flagged vessels. While Hawai'i-based longline vessels on occasion fish inside the EEZ of the Pacific Remote Island areas, U.S.-flagged purse seiners also fish there.

Fitchett focused much of his presentation on the potential impact the closure of the area could have on American Samoa, where the Starkist tuna cannery is the largest employer, by far, in the territory. The U.S. purse seine fleet is already down to just 13 vessels, and the cannery relies heavily on the fish they deliver. "A further exodus of U.S.-flagged vessels jeopardizes the cannery's viability," he stated. As such, it also amounts to the perpetuation of equity and environmental injustice against Pacific Islanders, he said.

Council chair Archie Soliai – now head

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The arguments of the LUC and the homeowners' association that the lower court erred in its position that overnight camping could be addressed by a special permit "are well taken," the ICA stated, "as LUC's decision appears to be supported by canons of statutory construction." Allowing overnight camps by means of a special permit "when overnight camps were expressly excluded from a particular permitted use appears to render the express exclusion meaningless," the ICA found, "and a statute cannot be interpreted so as to render it a nullity."

Notwithstanding that, the ICA was "bound by legal precedent. Over thirty years ago, in 1990, the Hawai'i Supreme Court interpreted the same statute, HRS §205-4.5(a)(6), as applied to a golf course. In that appeal, the Supreme Court analyzed whether the provisions of HRS chapter 205 prohibit the county planning commission from issuing special use permits for golf courses on prime agricultural lands classified as Class A or B... The Supreme Court then held that HRS chapter 205 did indeed provide the authority for such permits."

The ICA opinion continued: "The Supreme Court reasoned that, although golf courses are not permitted on Class A and B agricultural lands under HRS §205-

4.5(a), subsection (b) 'nonetheless allows those uses for which special permits may be obtained under §205-6.' ... The Supreme Court explained that '[s]ection 205-6 vests in the planning commissions the authority to issue special permits for uses that, while not otherwise permitted within agricultural districts, are nonetheless 'unusual and reasonable uses that promote the effectiveness and objectives of Chapter 205.'"

Had the Legislature intended to absolutely ban golf courses from prime agricultural lands, the Supreme Court found in the *Maha'ulepu* decision, "it would have done so unequivocally by prohibiting the issuance of permits for golf courses under the special permit provisions of HRS §205-4.5(b) or by employing clearly prohibitory language."

In 2005, the Legislature amended the land use law by specifically prohibiting golf courses in the Agricultural District, other than those approved before July 1, 2005. The Legislature was silent on other uses excluded, including overnight camping.

"Thus," the ICA opinion stated, "although the Legislature effectively abrogated *Maha'ulepu's* specific application to golf courses in 2005, it did not otherwise address *Maha'ulepu's* interpretation that HRS chapter 205 provides authority for issuing special permits allowing ... exclud-

ed uses (drag strips, airports, drive-in theaters, country clubs, and overnight camps) on class A and B agricultural land. LUC is afforded deference in interpreting its own statute, but the Hawai'i Supreme Court is the final arbiter of Hawai'i statutes. ... To the extent LUC's decision is contrary to *Maha'ulepu*, it was palpably erroneous."

The ICA then remanded the matter to the LUC "for further proceedings consistent with this opinion."

An Appeal

On June 8, executive officer Daniel Orodener gave a short history of the litigation to commission members, many of whom were not on the commission when the declaratory ruling was issued.

"It is my belief that if you read the decision, the ICA was asking us to appeal further, because they didn't like what was being said, they thought the matter was confused, and they made that clear," Orodener said.

After an executive session with the deputy attorneys general who were involved in the matter before the appellate court, the commission unanimously authorizing the attorney general to file a writ of certiorari to the state Supreme Court.

— Patricia Tummons

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of American Samoa's Department of Marine and Wildlife Resources and former manager of the cannery – referred to a June 15 letter the territorial governor, Lemanu P.S. Mauga, wrote to Biden, strongly opposing the expansion.

"The tuna industry is the largest private sector employer in American Samoa, supporting jobs for nearly a third of American Samoa's workforce," Mauga wrote. "I implore your consideration to keep these U.S. waters open to commercial fishing for the U.S. fleet so our tuna industry that supports our fragile economy can continue to be sustained. Without a sustainable fish supply, our local tuna industry will collapse and our economy soon will follow. This would lead to an economic catastrophe that no U.S. state or territory has experienced in recent times."

In contrast, Hawai'i Governor David Ige expressed his strong support for the expansion in a May 27 letter to Biden. This action, he wrote, "will safeguard areas of open ocean ecosystems that are intricately connected to nearshore and terrestrial ecosystems. Expansion would also protect meaningful habitats for endangered and threatened species, such as sharks and birds, who are traveling well beyond the current boundaries to breed, forage, and rest. Additionally, the expansion will protect 98 undersea mountains, or seamounts, which serve as ecological hotspots for biodiversity."

No one spoke in favor of the expansion at the council meeting. Without dissent, it passed a motion that directed council staff to write to Biden, "requesting a comprehensive evaluation of the unintended consequences, including social and economic impacts, of a proposed expansion" of the monument. It also directed staff "to write letters to U.S. territorial governors regarding the proposal's impacts on U.S. fisheries and unintended negative consequences related to U.S. territorial economies and conservation."



30 x 30

In 2021, four federal agencies – the Departments of Interior, Agriculture, Commerce, and the Council on Environmental Quality – proposed the "America the Beautiful" plan, which, among other things, called for conserving 30 percent of the country's land and waters by 2030.

When it comes to setting aside marine areas for protection, Wespac argues, the Pacific region is doing way more than its fair

share. Council staff has estimated that the existing marine managed areas in the Pacific are already so vast that there is little need to conserve marine areas elsewhere. Should the Pacific Remote Islands monument be expanded as proposed, the council argues, the percentage of marine waters protected would reach 31 percent, with almost all of that in the Central Pacific.

"The Western Pacific region has met 97 percent of the '30x30' goal to conserve 30 percent of all U.S. lands and waters," the council stated in a press release.

Yet when it comes to the very definition of what counts as conservation, the matter is still up in the air. Council staffer Fitchett reported to the council on the discussions during meetings of the Council Coordination Committee (CCC) subcommittee on Area-Based Management, which still had not come up with a definition. (The CCC is made up of leadership and top staff of all eight regional fishery management councils.) While a suggestion had been made to adopt the definition of the International Union for the Conservation of Nature for OECM ("other effective area-based conservation measures"), the CCC subcommittee balked at that, since "many of our areas may not meet the OECM criteria," according to subcommittee meeting minutes. Subcommittee members also proposed including all of the U.S. EEZ areas under council jurisdictions – effectively all U.S. marine waters – inasmuch as the Magnuson-Stevens Act "provides conservation for 100 percent of the EEZ."

Council staff did eventually pull together a table of protected areas, including the Papahānaumokuākea monument, Rose Atoll monument (American Samoa), the Pacific Remote Islands monument, and the Marianas Trench monument, but also added in the longline exclusion areas around the Main Hawaiian Islands and the territories (the widths of which can vary from 30 nautical miles from shore to 75 miles).

Finally, the table includes the false killer whale Southern Exclusion Zone, an area of roughly 100,000 square miles – which, however, is only closed when the Hawai'i longline fleet's take of false killer whales inside the EEZ exceeds the permitted level. The SEZ, the council states, establishes "nearly full protection for pelagic ecosystem when trigger[ed] by take of false killer whales by the pelagic longline fishery."

"This area has remained closed the majority of the last three years," the council states.

Actually, the SEZ was last closed in 2018. Although the trigger for closure was met in 2021, no closure was effected because

the injury determinations for false killer whales taken late in the year were not made until 2022.



Council Budget Woes

For at least the last decade, the Council's base budget has not included funds to cover personnel costs of some of its core employees. Supplementary grants from the National Marine Fisheries Service's Pacific Islands Regional Office (PIRO) have for years paid for the council's work to protect coral reefs and sea turtles.

But budget cuts to NMFS have meant that PIRO is no longer able to supplement the council's expenses in the manner to which the council has become accustomed. Specifically, the council no longer has the funds it needs to cover these programs.

"We are taking a budget hit of \$343,000 from NMFS for this year," council executive director Kitty Simonds reported. "We have been going back and forth with our region to discuss the need for these funds, which include salary and fringes for one of our staff, our capacity-building efforts, and a share of the contract that produces the [Stock Assessment and Fishery Evaluation] report."

On hearing of the cuts on the first day of the meeting, several council members voiced their anger at NMFS. American Samoa council member William Sword wanted to know, "Where is the equity and environmental justice in that? ... This needs to be corrected. It's fundamentally wrong."

Guam council member Dueñas was outraged: "PIRO, you are the egg that came out of our okole."

PIRO director Michael Tosatto told the council that PIRO had for years used discretionary funds to support the council in a number of areas. "This reduction," he said, referring to the \$343,000 cut, "was caused by a significant reduction in PIRO's budget... PIRO took a hit."

Tosatto went on to explain that he had advised the council to include salaries for permanent employees into the council's base budget, adding that the PIRO discretionary funding was not available every year.

Two days later, during the council's more expansive discussion of its budget, Simonds said it was "very, very important" that the council receive funding for the SAFE report coordinator, its capacity-building efforts, scholarship program, summer high school outreach, and its sea turtle program.

Regarding the turtle protection efforts, Simonds continued, in 2010, "Congress pro-

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Machinery for mining the sea floor. PRESENTATION BY DOUG MCCAULEY

As Deep-Sea Mining Threats Abound, So Do Calls for Safe Zones, Moratorium

A week before Western Pacific Fishery Management Council members railed against a proposal to expand the Pacific Remote Islands Marine National Monument, a member of the council's Scientific and Statistical Committee (SSC) suggested that there was at least one aspect that might have some merit: its protection against deep-sea mining.

The proposal, initiated by a group called the Pacific Remote Islands Coalition, calls for the extension of the monument boundaries around Howland and Baker islands and Kingman Reef and Palmyra Atoll from 50 nautical miles to 200 nm, which is the outer extent of the U.S. Exclusive Economic Zone.

The proposed expansion area has 98 largely unexplored seamounts, which are "ecological hotspots for biodiversity" with new species being cataloged on every dive, states a coalition report.

The proposed monument expansion areas sit amidst regions abundant with

polymetallic nodules and cobalt-rich crusts.

New Zealand's Shelton Harley, an SSC member who has helped develop tuna stock assessments for the Western and Central Pacific Fisheries Commission, argued at the committee's meeting last month that simply expanding protected areas in the Pacific to meet a Biden administration goal to protect 30 percent of the nation's waters doesn't really promote biodiversity.

"Putting all your eggs in one basket, it doesn't make sense scientifically because you are not protecting representative habitats," he said. However, he added, "I wonder if there are some aspects that might have some support," referring to the proposal's focus on the threat of seabed mining.

While fishing effort within the proposed expansion areas by U.S. longline and purse seine vessels is minimal, according to tracking data compiled by Global Fishing Watch, the coalition notes that "mining interests have identified PRI's waters as a high value, and therefore high interest area."

The coalition argues that deep-sea mining threatens to damage the environment, including fisheries, and will kill deep-sea benthic organisms and create toxic wastewater tailings.

At the SSC meeting, University of California at Santa Barbara marine science professor Doug McCauley expanded on the potentially harmful impacts deep sea mining may have.

First, there's the noise pollution from the massive vessels and machinery that would be operating on 24 hours a day. "This may be one of the loudest things we've done in the ocean," he said.

With regard to the effluent plume released into the mid-water column, he said there is a lot of uncertainty over the bio-solubility of the minerals it will contain. Those minerals are likely to include copper, cadmium, cobalt, chromium, iron, nickel and zinc. Will the cadmium, a known carcinogen, build up in tuna tissue? "There are no empirical measurements one can make because it hasn't started yet," he said.

With a 1,000 kilometer-wide plume potentially clouding waters that have historically been crystal clear and "don't have an ecological history of dealing with that, would you be eroding some of the forage grounds?" he added.

A recent report published by the UNEP suggests that the plumes might be smaller, closer to tens of kilometers wide, and they could persist for a up to a year, smothering habitats and interfering with foraging.

Harley asked McCauley whether any relevant work has been done on the impact mining activities may have on carbon sequestration.

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Wespac *continued from page 6*

vided several million dollars for observers and the turtle program. The funding we received started to dwindle down until it was down to \$200,000, which covered at the time our [turtle] program coordinator," Asuka Ishizaki.

She said that the council must now dive into its regular administrative budget and find the funds to cover it. Also, she said, "we're asking headquarters to provide the region with funds for these programs."

Tosatto again attempted to explain why PIRO could no longer fund these positions.

"There are many reasons, many issues we could discuss," he told the council. "I can tell you to characterize this as a budget cut [to the council] is not the most accurate way to

portray it. It is more that these are extra funds that were provided in addition to the council's appropriated amounts of money. These are monies PIRO took out of its own budget... As Kitty stated, this reflected a long-term commitment to sea turtle conservation, which peaked at \$7 million in 2010. Now, literally, it's been absorbed into the larger NMFS budget."

Tosatto noted that the cost of running the observer program, which PIRO underwrites, has been "severely underfunded," forcing PIRO to use more of its turtle-protection funds to cover that. PIRO's core fishery management budget was cut by about \$700,000, he said, and there were no longer the discretionary funds that were once directed to the

council. "I needed that \$700,000 that had been going to the council to cover the needs of the observer program," he added.

Furthermore, redirecting funds in the council's base budget to cover items that no longer are paid for by PIRO discretionary funds is not allowed. "There is the term 'line-item integrity,'" Tosatto said. "You can't move funds across certain areas. The council can't reprogram funds without approval."

"Going forward, it would be helpful to the council to cover its base activities in its base budget. ... If activities like the high school program are desired as base activities, the council has to work that into their base budget," he said.

— Patricia Tummons

Launiupoko Irrigation Co. Raises Rates; CWRM Designates Lahaina Aquifer Sector

On June 24, the Public Utilities Commission approved a new rate schedule sought by Launiupoko Irrigation Company (LIC) for the delivery of water to its 400-plus agricultural and residential customers.

Instead of paying a flat rate of 76 cents per thousand gallons, ratepayers will be charged the following starting this month: \$1.50 per thousand gallons up to 50 thousand gallons/month, \$1.83 per thousand gallons from 50.1 to 150 thousand gallons/month, and \$2.15 per thousand gallons over 150.1 thousand gallons/month.

The new tiered rates for non-bulk users (which include all ratepayers, except for a cacao farm) will remain in effect until the commission decides on LIC's application for a general rate increase. That case is not expected to conclude for another year or so.

LIC has had to rely more heavily on groundwater to meet customer needs ever since the state Commission on Water Resource Management set a new interim in-stream flow standard for Kaua'ula Stream in March 2018 that requires more water to re-

main in the stream. Kaua'ula once provided LIC with 90 percent of its water.

LIC argued to the PUC in June 2020 that it needed a rate increase to cover its growing pumping costs and to develop new wells. The company sought to "increase its test year revenues by \$605,368.37, or approximately 125.59%," a May 2022 PUC order recounts.

Unpersuaded that LIC needed all that money to better serve its customers, the PUC decided in June 2021 to authorize a temporary increase of about 15 percent over the test year revenues, or just over \$73,000.

The company then asked the utilities commission to reconsider and provided it with more information to support the proposed rate increase. On May 23, the PUC granted, temporarily, the rate increase that LIC had initially sought, but made it clear that rate would apply only to LIC's existing ratepayers. (Kuleana landowners served by LIC's system have an agreement with the company that they would receive their water free of charge.)

Under a condition in the PUC's May

order, LIC had to propose tariffs consistent with the PUC's May order by June 6, as well as a policy to encourage water conservation and prioritize agricultural uses over landscaping and residential swimming pools. LIC complied, proposing a flat rate or a tiered rate structure for non-bulk users.

In its June 24 order approving the tiered rate structure, the commission echoed sentiments expressed by the Consumer Advocate and intervenors in the case, the non-profit organization Na Aikane O Maui and J. Ke'eaumoku Kapu.

"The Commission believes that the Proposed Tariff's tiered rate will promote conservation of a critically scarce resource and should help prioritize its utilization for legitimate agricultural uses," the order stated.

The PUC also took notice of the Water Commission's unanimous vote on June 14 to designate the Lahaina region, including Launiupoko's service area, as a surface and ground water management area.

"This designation and the current drought in West Maui raises significant questions and concerns for the Commission about Launiupoko's long-term ability to access water, even with increased pumping," the PUC order continued.

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Deep-Sea Mining *continued from page 7*

McCauley said there are at least two ways mining could affect carbon storage and capture. Carbon that has been stored in the earth for millennia will be unearthed by mining, he explained. "There's a lot of uncertainty on what it will mean for where carbon is located." He added that the industry's effluent plumes may impact communities (i.e., phytoplankton) that control the amount of carbon that is sequestered in the ocean.

The UNEP report expands on the potential for deep-sea mining to exacerbate climate change.

"[M]arine sediments store approximately twice as much organic carbon as terrestrial soils. Sediments in abyss/basin zones account for 79 per cent of global marine sediment carbon and, as such, represent a large and globally important carbon-sink. However, the lack of protection for marine carbon makes it vulnerable to human disturbances that can lead to their remineralization to CO₂, further aggravating climate change impacts."

"I would say there are way more questions than there are answers about climate impacts," McCauley told Hawley. McCauley

added that there is a rich set of pure, industry-funded science on the biodiversity on the sea floor, but he's seen little research on potential impacts on fishing or climate.

He did note that a 2021 study published in *Marine Policy* reported that the Clarion-Clipperton Zone southeast of the Main Hawaiian Islands, which is being targeted for mining, accounts for up to 10.5 percent of the combined catches of skipjack, yellowfin, and bigeye tuna in the Eastern Pacific with an assumed "no-fishing" buffer of 200 km around the zone.

In addition to all of the potential harms McCauley described, the UNEP report warns that mining activities would also "introduce artificial light to deep sea environments that are normally light-deprived (both of which may attract or deter some fish species, and may alter normal feeding and reproduction behaviours)." They would also release oxygen-rich water into low-oxygen environments, it stated.

The U.N.'s International Seabed Authority (ISA) is meeting this month to continue its development of regulations for industry activities on the high seas, pursuant to the U.N. Law of the Sea Convention.

The ISA is pushing to get rules in place

because the island nation of Nauru indicated last year that it plans to mine polymetallic nodules in the Clarion-Clipperton Zone. With or without ISA rules, the country and its partner, The Metals Company, may apply as early as July 2023 to start mining. If approved, mining may begin the following year.

With the possibility that this new industry may break ground soon and harm the marine environment, Palau and Fiji last month called for a moratorium, according to Reuters.

Because the United States is not a signatory of the Law of the Sea Convention, it is not a member of the ISA and may merely observe its proceedings.

With regard to the possibility of deep-sea mining occurring within the U.S. EEZ around the Pacific Remote Islands, any such mining would require approval from Congress. McCauley noted that during the Trump administration, there was a significant increase at ISA meetings in the number of representatives from the United States who were interested in accelerating seabed mining.

— Teresa Dawson

In addition to requiring LIC to report relevant developments regarding the Water Commission's Lahaina designation, the PUC stated that it intends to further explore rate designs that promote conservation and agricultural uses in the general rate proceeding.

That general rate proceeding cannot begin until LIC responds to all outstanding information requests. The commission had expected that would be by March 31, but LIC failed to deliver. The intervenors still await information on the fuel LIC plans to use in the off-grid diesel generators that will be used to pump the wells, as well as how that fuel is to be stored.

To prevent further delay of the general rate proceedings, the commission directed LIC to answer all outstanding information requests by July 27. Evidentiary hearings should begin 44 weeks after that, according to the schedule agreed upon by the parties.



Lahaina Now a Designated Water Management Area

"At every site visit staff has recorded multiple properties in Launiupoko irrigating lawns during midday hours," Commission on Water Resource Management staff commented in a June 14 report.

This, at a time when Kaua'ula Stream, a source of water for Launiupoko residents and farmers, has been flowing much less than expected in recent years and rainfall throughout the entire West Maui region has been decreasing for decades. What's more, families with kuleana rights to that same water have complained they don't have enough to meet their needs.

Higher rates for the delivery of water, which the Public Utilities Commission recently approved for customers served by the Launiupoko Irrigation Company's system, may discourage such wasteful uses. But the Water Commission's decision two weeks earlier to designate the Lahaina Aquifer Sector as a surface and groundwater management area is intended to put a hard stop to them.

Designation requires water users in the region to apply for permits for existing and/or new water uses. Based on the information they provide to justify their uses, the Water Commission will decide how much water, if any, each permittee is entitled to.

In the lead-up to staff's recommendation to designate on June 14, the Maui Board of Water Supply and the Maui Coun-



Honokohau Stream, pictured here, provides water to the Maui Mahinahina water treatment facility, which had to shut down twice this year due to lack of water.

CREDIT: COMMISSION ON WATER RESOURCE MANAGEMENT.

ty Council voted in support of the proposal, and an "overwhelming majority" of those of the dozens of people who offered oral or written testimony at an April 26 public hearing in Lahaina supported designation, according to commission staff.

But shortly before the June meeting, the council was deluged with emailed testimony from those seeking to delay designation and asking that a working group be formed instead. Given the years it may take for the commission to process and approve water permits for new uses, designation could be tantamount to a moratorium on new housing, especially affordable housing, the email testimony argued.

The Maui Department of Water Supply submitted testimony opposing designation of the entire Lahaina Aquifer Sector, but supporting the designation of the Honokowai Aquifer System, which it argues is the only system within the sector where current and proposed groundwater withdrawals already exceed the sustainable yield.

While commission staff had determined that current and authorized uses in the Launiupoko system also exceeded the sustainable yield, the DWS argued that authorized planned uses and tunnel discharges had been miscalculated. The department argued that current and proposed groundwater uses represent only 57 percent of the sustainable yield.

County Conversation

At the commission meeting, Eva Blumenstein, planning program manager for the Maui DWS, explained that her agency would work closely with the county Planning Department to ensure that the new county Water Use and Development Plan (WUDP) guides future land uses.

The plan recommends developing basal groundwater wells to support planned population growth while "maintaining a buffer to sustainable yield." The development of those wells would be "guided by

available data and modeling results to optimize pumpage, mitigate salt water intrusion and preserve regional resources with adequate distribution to Launiupoko and Honolulu aquifers," according to a presentation she gave to the commission in May.

The plan also recommends supporting traditional ahupua'a management, capital improvement funding for recycled water projects, and funding for watershed management partnerships' fencing and weed eradication efforts.

Testimony submitted to the Water Commission by a team of climate scientists with NOAA's Pacific Regional Integrated Sciences and Assessments program noted, "When combined with future rainfall projections, we found that land use decisions could greatly influence and even mitigate the effects of climate change. In particular, a scenario in which urban development occurs jointly with watershed protection" — above the cloud zone, in particular — "results in increased groundwater recharge for source aquifer systems."

Blumenstein argued that designating the Lahaina sector would undermine the years of work that went into the county's WUDP.

The plan projects that the demand for potable and non-potable water in the Lahaina Aquifer Sector will grow from about 10 million gallons a day (mgd) at present to 29.6 mgd by 2035.

The plan anticipates meeting that increased demand with increased withdrawals from most of the aquifer systems — especially in Honolulu and Launiupoko — augmented with recycled water and increased water conservation.

At the June meeting, commissioner Mike Buck asked Blumenstein what authority the county had over the actions of the private water purveyors in West Maui that control 75 percent of the water used.

She replied that the county doesn't have jurisdiction but added that the WUDP

would be a tool that could guide how future land use development occurs. She then suggested that short of designation, the Water Commission still has the authority to control private groundwater withdrawals via its approvals of new well construction permits. "You can review the pump capacity, location," she said.

Commissioner Aurora Kagawa-Viviani asked what kind of monitoring the DWS does to assess whether public trust resources are being protected. "How does DWS address water shortages across non-public purveyors?" she asked.

"There's definitely a gap in collaboration currently regarding a drought plan and contingency plan. That's something this [designation] initiative really brought to the surface. ... It's something we should have done a long time ago," Blumenstein replied.

With the threat of designation looming, "the private purveyors listen now. This is where we need to go. This is an opportunity to get to do this," she said.

She asked the commission for six months to develop strategies, on a local level, to balance reasonable water needs. A working group could include the state Department of Health, the Water Commission, the county Planning Department, the Department of Hawaiian Home Lands, the Maui DWS and Department of Environmental Management, as well as the private

water purveyors, she said. They could consider how to resolve conflicts, balance the water budget, employ "aggressive conservation," and distribute the burden of funding watershed protection, she added.

Commissioners Neil Hannahs lauded Blumenstein's commitment to collaboration but seemed concerned about the possibility that it may fall short.

"We're all human. Even humans with the best intentions can mess stuff up. Is there anything in designation that really precludes the collaboration you seek? You used the term we're 'undermining' you. ... We can still collaborate, can't we?"

Blumenstein reiterated her agency's concern that once designation occurs, the county's pending applications for well pump installations in Launiupoko will be treated as new uses and their approval will be stalled until the water use permit approval process for all existing uses is complete.

"We can look at that and give that some consideration," Hannahs said.

Blumenstein did not seem comforted. "I do see [designation] as a delay to affordable housing construction. We don't have existing uses. ... The department's capacity to serve planned growth and affordable housing, we don't have existing wells. We don't have the time," she said.

Hannahs replied that if the commission does not designate the Lahaina sector, people who see designation as a way to address resource issues are still going to pursue that end in whatever venues allow. "That could impede the normal process of development, planning, and permitting, couldn't it?" he asked.

Blumenstein admitted that without designation, there was still a risk someone could seek a contested case hearing on a well permit.

Like Hannahs, commission chair Suzanne Case worried that collaboration may not be enough. "I'm sincerely trying to understand how you get this overall balancing without it being sort of a wild west of private purveyors doing whatever they want. ... We have existing uses. We want to make sure they have water," she said.

"Collaboration is key," Blumenstein replied, adding that perhaps the county could enter into a memorandum of agreement with the private purveyors or conditions could be included in land use approvals.

"None of those [county planning] bodies have the focus that the Water Commission has to ensure everybody gets a reasonable and beneficial use of water. ... There's no tool to make sure people collaborate," Case said.

Discussion

After hours of public testimony, commissioner Buck announced that he was "leaning toward designation."

Commissioner Kagawa-Viviani felt the same. She noted that she was struck by the volume of last-minute opposition testimony that often repeated the same fear-mongering statements.

"As a trained scientist I was quite concerned about how data was being misconstrued. [It] undermined the credibility of the opposition," she said.

One of the most repeated claims was that designation would stop the development of much-needed affordable housing. To this, she said, "the housing crisis has far more to do with global markets than water permits."

Once designation occurs and permits are issued, permittees are required to report their usage, which helps the Water Commission track impacts to the resource.

She said that with the Red Hill fuel contamination crisis on O'ahu, the Water Commission at least has access to current use data because most of the island has been designated.

"Right now, we don't have that in undesignated areas. Say if there's a shortage, we don't even have the data to do informed planning. West Maui is a more challenging area. I'm interested in giving our staff the ability to ask for that and get it. Designation allows for that," she said.

Commissioner Meyer, who lives on Maui, seemed to prefer collaboration over designation. He said collaboration is a powerful tool that gets people to make compromises and mutual agreements more often than any other process.

"It's especially important when you're talking about citizens living in the same community," he said.

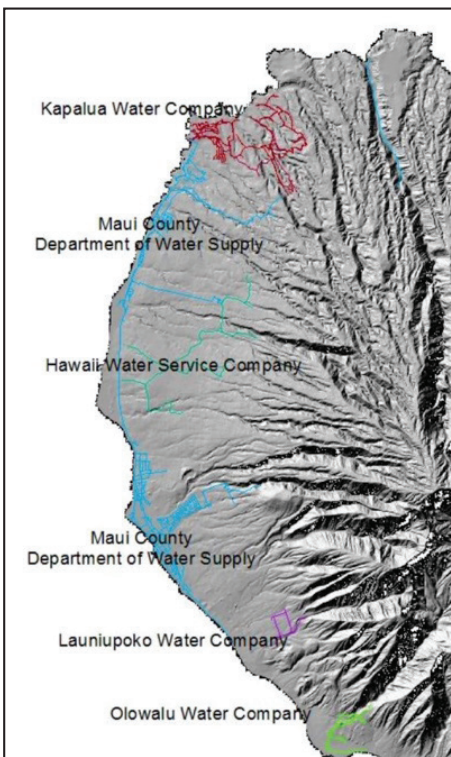
He said he saw the working group as a safe alternative and that designation would be a burden on commission staff.

Commissioner Wayne Katayama also said he felt a delay of six months would allow for some trust building.

In the end, however, when it was clear a motion to designate would pass, Katayama and Meyer voted with the rest of the commission.

(For more background, see "Water Commission Learns of Threats to West Maui Ground, Surface Sources," from our February 2022 issue.)

— Teresa Dawson



Private purveyors supply most of the water in West Maui. CREDIT: COMMISSION ON WATER RESOURCE MANAGEMENT

BOARD TALK

Land Board Heeds Community's Wishes In New Rules for Miloli'i Fishing Area

On June 9, seventeen years after the Legislature designated Miloli'i as a Community Based Subsistence Fishing Area (CBSFA), the state Board of Land and Natural Resources approved rules defining it.

In addition to establishing boundaries and various zones, the rules set size and/or bag limits for pāku'iku'i, kole, uhu, 'opihi, and ula; seasonal restrictions on kole, ōpe-lu, ū'ū, and uhu; and prohibitions on the take of terminal males (blue) of the larger uhu species, female 'a'ama with eggs, 'opihi kōele, and aquarium fish.

In February, the board approved the rules to go out to public hearings. At that meeting, over objections from some community members, the board amended the rules that the community had helped draft. The Department of Land and Natural Resources' Division of Aquatic Resources had recommended reducing the allowable take of pāku'iku'i (Achilles tang), from five to one, and to enlarge the no-take zone for the scarce fish.

During the comment period on the rules, many Miloli'i residents submitted oral and written testimony to the division supporting the CBSFA rules but calling for the reinstatement of their original proposed boundaries for the pāku'iku'i rest area. They also asked for "kapu loa (no take) of pāku'iku'i throughout the CBSFA to be established until an agreed upon sunset date of five years. This highest protection from kānaka behavior is the commitment we support to assist the recovery of their abundance," stated Ka'imi Kaupiko, executive director of the group Kalanihale, which submitted the draft rules to the DLNR.

"After a period of five years, kapu loa is to remain in place for the Pāku'iku'i Rest Area and a bag limit of five per person per day throughout the rest of the CBSFA," he wrote.

When DAR brought the rules package back to the Land Board on June 9 for final approval, it recommended following the community's wishes to stick with the original pāku'iku'i rest area boundaries. The division also proposed amending the rules section on the pāku'iku'i bag limit to read: "At any time before July 1, 2027, it is unlawful to take or possess any pāku'iku'i. . . .

Notwithstanding any other more restrictive law applicable to the taking of pāku'iku'i, at any time on or after July 1, 2027, it is unlawful to take or possess. . . [m]ore than five pāku'iku'i per person per day or [a]ny pāku'iku'i less than five inches in length."

DAR recommended these changes despite its concerns, and those of Land Board chair Suzanne Case, that a pāku'iku'i bag limit of five after the no-take period is lifted may not be sustainable.

"Pāku'iku'i abundance has declined by a range of 50-95 percent in juvenile habitat areas and by 90 percent in shallow water adult habitats. . . . Additionally, surveys across West Hawai'i have indicated that juvenile recruitment of pāku'iku'i has been very low over the past two decades, indicating that recovery will be slow for this species. Pāku'iku'i is a long-lived fish, with a life span of 30-40 years, but very small in numbers, so it is extremely vulnerable to overfishing. It is a slow-moving fish, found in small clusters of several fish, in shallow reef habitat in the wash of the waves close to shore, so is very easily caught. . . . [P]āku'iku'i in any area could be easily wiped out in one day," the division states in its June 9 report to the Land Board,

"However," it continues, "the Department acknowledges that the CBSFA rules

should reflect the needs of the community proposing them and that developing regional or statewide rules for pāku'iku'i, potentially utilizing the adaptive management process . . . is a more appropriate avenue to address its concerns. That way the current rules can move forward as proposed by the Miloli'i community while DAR decides how best to address the regional decline in pāku'iku'i. DAR's efforts will include engaging in monitoring, supporting life history research, developing a management plan for pāku'iku'i, and drafting rules as determined to be appropriate from the results of the monitoring and as outlined in the management plan."

With DAR's proposed amendments, several members of the Miloli'i community and others who aided in the process testified in support of the rules, which the Land Board unanimously approved.



Legacy Land Grants

Preserving lands with a mix of public and private funding takes time. Sometimes, it takes a very long time. And in recent years, the state's Legacy Land Conservation Program has been reviewing those projects that have languished for at least five years since receiving Land Board approval for funding to determine if funding should be rescinded.

On June 24, program director David Penn asked the Land Board to defer taking any action on a project first approved in 2013, to allow the parties involved to try to

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Land Board *continued from page 11*

close the deal in the next year or so.

If they are successful, 3.4 acres abutting the Ulupō Heiau in Kailua, O'ahu, will join lands already controlled by the DLNR's Division of State Parks.

The Land Board had approved a grant of \$1 million from the Land Conservation Fund for the \$1.73 million purchase. State Parks has secured \$800,000 in federal and private matching funds.

"We have been making substantial project, albeit slowly," Penn told the board.

The deal has taken so long to close because the YMCA, which owns the property to be acquired, had to subdivide it, and State Parks has had to hire an engineer to assess the cost to rectify the impacts of a drainage canal through property.

Safety measures regarding the channel are expected to cost \$250,000 to \$300,000, but Penn said State Parks believes it has funds to address this.

In addition, a review of state Department of Health records revealed that there may be lead contamination on the property, which would require the YMCA to do a Phase 2 environmental site assessment to see if remediation is needed.

"YMCA would need to remediate before state takes title," he said.

Newbies

On May 13, the Land Board approved \$4.25 million across three grants aimed at protecting more than 900 acres.

To date, Penn said, the Legacy Land Conservation Program has conserved 43 properties statewide.

The newest grantees include the Hawaiian Islands Land Trust, which will be receiving \$3 million from the Land Conservation Fund to acquire more than 642 acres at Mahukona, along the Kohala coast of the Big Island, that encompass a navigational and ecological complex.

In April, the Land Board authorized

its chair to negotiate an agreement with the U.S. Fish and Wildlife Service to issue a sub-grant of \$4 million to the trust for the Mahukona purchase.

The \$3 million Legacy Land award is one of the largest grants the program has ever given. It's also the first application to include a fully executed conservation easement to be held by the County of Hawai'i and a grant of a conservation easement as part of the transaction, Penn said.

The trust was also expected to receive \$8 million from the Hawai'i County open space fund.

At the April meeting, DLNR Division of Forestry and Wildlife administrator Dave Smith said the Mahukona lands, which include an ancient navigational training site, were being threatened with development.

"The coastline is loaded with archaeological sites. They were going to put a resort there. I thought, 'What a shame.' Here, we have an opportunity to buy it," Smith said.

Shae Kamaka'ala, a director of the trust, added that the endangered Hawaiian hoary bat traverses the area, shearwaters nest there, and monk seals haul up along the shoreline in one of the little bays.

The Land Board also approved a grant of \$1 million to the DLNR's Division of Forestry and Wildlife to purchase nearly 258 acres of watershed on Maui. The Pohakea watershed lands are located along Honoapi'ilani Highway, across from the Maui Ocean Center, and span the ahupua'a of Ukumehame and Wailuku.

"Part of the Mālaea Conservation Corridor, the property connects with nearby landmarks such as Kealia National Wildlife Refuge, the National Marine Whale Sanctuary, Maui Ocean Center, Pacific Whale Foundation headquarters, and a petroglyph site on adjacent state land. This project is important for public safety. Under public ownership, the property will be managed to decrease risks from wildfire, erosion and flooding and will ensure long term health of the watersheds, wetlands, and coastal ma-

rine areas. If the property is sold to another private owner, there is no way to ensure future stewardship and management activities will align with the community vision," states DOFAW's report to the Land Board.

While the board approved the grant, it was not before Penn and DOFAW's Scott Fretz reported on an unfortunate wrinkle in the plan: The seller that DOFAW had been working with sold the property.

"Negotiations are in progress with a brand new landowner who just bought the property," Penn said.

Fretz said that the move was "completely unexpected." Still, he said, the new owner owns other property on Maui and is a watershed partnership member. "He's traveling. His associates encouraged us to stay the course," he said, and urged the Land Board to allow negotiations to continue.

Finally, the Land Board approved a grant of \$675,000 to Ke Ao Hali'i, a community group on Maui that is working to preserve several parcels in Hana.

The group had originally asked for about \$2.6 million to protect 126 acres. "Unfortunately, the day before the [Legacy Land Conservation Council] met to review and rank the Fiscal Year 2022 applications, the landowner sold four of the five parcels proposed in the Ke Ao Hali'i application. Based on the information presented at the LLCC meeting, the LLCC recommended an award of \$675,000 for the remaining available parcel, approximately 8.58 acres," DOFAW report states.

The lands are currently used for grazing, but Ke Ao Hali'i plans to fence the area to deter desecration of the archeological sites there. There are three known heiau in close proximity -- Hale O Lono Heiau, the Kaluanui Heiau, and Pakiokio Heiau.

The group expects to receive \$237,500 in matching funds from private sources, the Office of Hawaiian Affairs, Maui County, and others.

— T.D.