

Environment



Hawai'i

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A Royal Pain For Boating Division

Intrigue shrouds the state boating permit that is being used by *Queen's Treasure* as it plies the waters off Maui's Ka'anapali coast.

Is it a forgery?

Is it legitimate?

These questions, and more, are at the heart of a lawsuit that pits the state's Division of Boating and Ocean Recreation against the owners of the spanking new luxury catamaran. Our cover story looks closely at the ongoing litigation.

And how clean are the waters that *Queen's Treasure* plies? Our second cover story addresses this.

Also in this issue, we bring readers up to date on another DOBOR scandal, this one involving an acre of land at Ma'alaea Harbor; we report on another investigation of Sen. Malama Solomon, this time for possible violations of the state Water Code; we review a recent book on forest restoration; and we question the cost of the state's sheep salvage program on Mauna Kea.

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State Pays Dearly For Sheep Salvage

Permitting Missteps Threaten to Unravel Commercial Boating Regime in Ka'anapali

Whatever the outcome, someone is going to end up heartbroken, pissed off, or both.

Since mid-November, the luxury catamaran *Queen's Treasure* has been taking passengers on snorkel and whale-watch tours off West Maui's Ka'anapali Beach under a temporary agreement with the state Department of Land and Natural Resources (DLNR).

A competing catamaran operator, Kapalua Kai, which has spent more than a decade on the state's waiting list for a Ka'anapali catamaran permit, has threatened to sue if the DLNR allows Ka'anapali Tours, LLC (KTL), which owns *Queen's Treasure*, to continue to operate without waiting its turn. (KTL owner Janice Nolan is herself number five on the list.)

Attorneys for KTL, on the other hand, claim its current, one-of-a-kind permit to



Queen's Treasure

PHOTO: QUEEN'S TREASURE FACEBOOK PAGE

operate either a monohull or a catamaran in Ka'anapali is valid, despite a host of procedural missteps surrounding its issuance and the fact that DLNR's boating rules do not seem to allow for it.

In September, after the DLNR's Division
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Lahaina Injection Wells Release Wastewater to Coast, Tests Find

The long wait has ended. Researchers have now verified what many people had suspected for years: wastewater from the Lahaina sewage treatment plant, on Maui's Ka'anapali Coast, is reaching coastal waters.

Starting in late July, scientists with the University of Hawai'i injected copious amounts of fluorescein dye—340 pounds of it—into two of the wells used by Maui County to dispose of treated wastewater at the Lahaina plant.

That was followed on August 11 by the injection of 180 pounds of rhodamine dye into a third injection well, which lies further mauka.

By putting dye into the wastewater, the researchers were seeing if they could confirm suspicions that it was reaching—and possibly contaminating—coastal waters. Those suspicions, going back more than two decades, were heightened in 2010. That year, two serious scientific studies were published that reported finding in coastal seeps downstream of the injection wells the type of chemical and biological profiles typically associated with wastewater. (For a full account of these studies, see the May 2010 issue of *Environment Hawai'i*.)

For Maui County, the reports could not have come at a worse time. The county was

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Environment



Hawai'i

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NEW AND NOTEWORTHY

East Maui Stream Update:

The Hawai'i Supreme Court has effectively overturned the decision of the Intermediate Court of Appeals regarding the efforts of Na Moku 'Aupuni o Ko'olau Hui to have judicial review of the decision of the state Commission on Water Resource Management to deny it a contested case hearing on the commission's approval of interim instream flow standards for several streams in East Maui.

On January 11, the Supreme Court determined that the commission had, indeed, issued a final, appealable decision on the contested-case request when Lenore Ohye, who in 2010 was the acting executive director of the commission, signed the commission-approved minutes of the October 18, 2010, meeting in which Na Moku's request was denied.

As *Environment Hawai'i* reported in November, the Intermediate Court of Appeals rejected Na Moku's appeal, holding that the commission's minutes had not been signed by the chairman of the Board of Land and Natural Resources or any other member of the Water Commission.

In remanding the appeal back to the ICA, the Supreme Court noted that Ohye "was authorized by the commission ... to certify the ... decision denying Na Moku's petition.... The decision ... is a final decision of the Commission for which judicial review may be sought."

Mangrove Removal Update:

Malama o Puna has received the green light for its removal of mangrove and pickleweed from 'Alula Bay, just south of Honokohau harbor on the Kona coast of the Big Island. The project is the last of several involving the proposed eradication of red mangroves from the island that were challenged in court by the Good Shepherd Foundation's Sydney Ross Singer, who has gained a reputation for his championing of invasive species, including coqui frogs, feral pigs, goats, sheep, cats, and strawberry guava.

On January 9, the Department of Land and Natural Resources' Office of Conser-

vation and Coastal Lands signed off on a Conservation District Use Permit for the work. In a narrative accompanying the permit, the OCCL notes that Singer and two other parties (one of which was his wife, Soma Grismaier), submitted critical comments after the public comment period had closed. Grismaier, the OCCL notes, stated that a lawsuit to stop the project and require an environmental assessment for it had failed but maintained "that an environmental assessment should be done anyway."

Petitions submitted by Grismaier contained "numerous entries that appear to have been signed by the same person," the OCCL continues. Also, "twenty of the twenty-five pages [of the petition] are against 'the poisoning (of) the intertidal zone and waters of Pohoiki,' on the opposite side of the island.

"OCCL has reviewed the documents that the Good Shepherd Foundation sent in support of their arguments and finds they are based on significant distortions of the scientific research regarding mangroves in Hawai'i," the narrative states.

Sandalwood Logging Update:

The sandalwood logging operation of Jawmin in the Hokukano area of the Big Island has lost what had been its chief broker, Wescorp Pacific of Australia.

According to Wescorp executive Tim Coakley, the two parted ways last October. "I am obviously disappointed, as I think, done correctly, it [Jawmin's operation] could be a terrific model for the future," Coakley told *Environment Hawai'i*.

Wescorp has developed sustainable sandalwood plantations in Australia and last year, as Jawmin was involved in bankruptcy proceedings, Coakley said that he was "absolutely comfortable that [Jawmin] is operating in a sustainable manner."

Jawmin emerged from Chapter 11 bankruptcy in September. Calls to Wade Lee, a principal of Jawmin, were not returned by press time.

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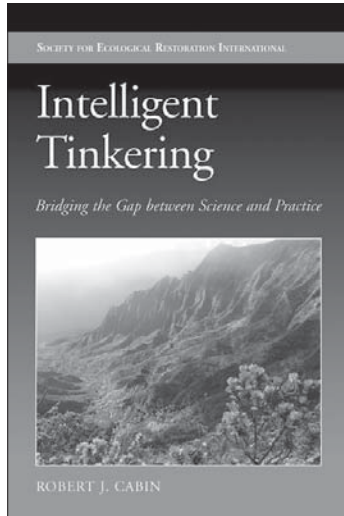
Quote of the Month

"Defendants cannot charge and accept a \$15,000.00 transfer fee from Plaintiff that permits Plaintiff's vessel to carry 49 passengers, and then restrict Plaintiff to a vessel that could not carry 49 passengers without sinking."

— **Ka'anapali Tours, LLC**
in its lawsuit against
the DLNR and DOBOR staff

REVIEW

Former Hawai'i Restoration Ecologist Now Favors 'Tinkering' Over Rigor



Cabin, R.J., *Intelligent Tinkering – Bridging the Gap between Science and Practice*.

Island Press, 2011. 216 pages.

Paperback \$35.00

In his new book, Bob Cabin uses his personal involvement in the restoration of Hawai'i dry forests to illustrate the tensions that he feels exists between the science and practice of ecological restoration. It is a journey that starts out among the multi-disciplinary, multi-interest perspectives associated with a grass-roots community-based working group (Part 1, Chapter 1-3), moves into the tedium of academic rigor (Part 1, Chapter 4-5), and culminates in an “aha!” moment, when he realizes that science is of limited value for restoration (Part 1, Chapter 6). His final resting point is described in Part 2 of the book, where he offers a “Meta-Intelligent Tinkering” approach towards effective ecological restoration.

Cabin's folksy prose is often compelling and insightful. For example, in Chapter 9, “Intelligent Tinkering,” there's this: “Ecological restoration can be comprehensible or intractable, beautiful or ugly, inspiring or depressing; what is appropriate and effective at one point in time and space may or may not be in another. Thus, we need a great diversity of metaphors and perspectives to perceive and practice restoration because one vision or approach does not encompass all. We also need a healthy diversity of basic and applied restoration

scientists and practitioners (and economists, educators, philosophers, and so on) with different goals and values employing different methodologies and techniques.”

In addition, I appreciate his often witty and self-deprecating statements, such as when he relates his ongoing “cyclic internal battle to fend off a creeping wave of schizophrenia” between his role as a restoration scientist, on the one hand, and as a practitioner, on the other. Here he has captured the uncertainty we scientists often feel in trying to justify the validity and importance of our work.

The book starts out well enough. In the first chapter, “Tropical Dry Forests: Land of the Living Dead,” Cabin provides a nice overview and historical perspective of the problems of restoring dry forests with interviews from such well-known kama'aina as Hannah Springer, whose family goes back for five generations in the ahupua'a of Ka'upulehu, and Michael Tomich, her husband. Cabin asks them how they became involved in restoration efforts. They respond by relating how the late Lani Stemmermann piqued their interest when she accompanied them on visits to the National Tropical Botanical Garden's plot at Ka'upulehu. Lani, Hannah told Cabin, “knew more about the enclosure than we did.”

“We started doing little service projects, weeding around our favorite specimens, doing slide shows, Michael as a fireman, me as a public speaker, bringing people's attention to the dry land forest.”

In the second chapter, “Let's See Action!

Planning and Implementing a Research and Restoration Program,” Cabin provides a fascinating account of the inner workings of a large and diverse working group. Many readers of *Environment Hawai'i* may recognize themselves here. Having attended these meetings for a number of years, I wholeheartedly enjoyed this chapter.

But in recounting his journey from field ecologist to academic, Cabin's viewpoint grows increasingly insecure and myopic. He attempts to polarize the relationship between academically based restoration ecologists, on the one hand, and land managers and practitioners, on the other. To my thinking, his proposed solution of “intelligent tinkering” resembles gambling more than anything else.

Consider this passage from Part 2: “something shifted in my brain, and suddenly I knew what I would do if I were in charge of restoring this region of the island: I would create a Meta-Intelligent Tinkering ‘Adopt an Acre’ Program, in which each semi-independent group of self-sorted people would receive its own parcel of degraded land to restore.”

He continues: “Beyond some commonsense guidelines that everyone could agree on, there would be no a priori requirement that any group must test some general scientific hypothesis or adhere to a standardized and rigorous data collection and monitoring protocols. On the contrary, each group would have the freedom to employ whatever methodologies its members believed would best help them accomplish their particular goals, whether those were, for example, formal scientific research, preservation of endangered species, or ethnobotanic education.”

Here, many of the arguments derive from an editorial Cabin wrote that was published in 2007 in the journal *Restoration Ecology*, titled “Science-driven restoration: A square grid on a round earth?” In this,



An aerial view of some of the experimental plots at Ka'upulehu.

PHOTOS: SUSAN CORDELL

Cabin raises the question of whether formal science is an effective framework and methodology for designing and carrying out ecological restoration programs. He maintains that beyond certain side benefits, restoration science has little of practical value to offer to the practice of restoration.

Several of his former colleagues (including me) challenged his arguments in a rebuttal published in a subsequent edition of the same journal (Giardina et al., "A candle in a demon-haunted world: Response to Cabin"). We dispute Cabin's demeaning and outdated characterization of restoration science as using small "square grids" to analyze various treatment methods. We also argue that he greatly undervalues the contribution of science to restoration practice (although, to be sure, many practitioners may not appreciate it). We take strong exception to his suggestion that restoration practices can advance beyond small-scale and haphazard successes without the kind of well-designed studies that provide peer-reviewed, widely accessible information on the mechanisms that underlie successes as well as failures.

Finally, we conclude that through integration with other disciplines, restoration science will provide the tools needed to restore ecosystems at all scales, from small stands to landscapes.

Cabin fails to realize that all of the "Intelligent Tinkering" decisions that he applauds stand on the shoulders of giants, those who, over the last several hundred years of agricultural and forestry research, have shaped the way land managers make decisions and who have given land managers credible, cost-effective tools. In fact, I



Forest TEAM members from Hawai'i Community College work in an experimental plot in Ka'upulehu.

continue to be overwhelmed by the number of collaborative and highly progressive research/land manager efforts that have emerged in the past few years, most of which highlight the ways in which land managers have benefitted from relevant research on fire regimes, watershed dynamics, life-history studies and climate-change modeling. It is these successful partnerships that will move the field of restoration ecology forward.

While Cabin can be commended for his brutally honest analysis of the shortfalls of research when it comes to providing "quick fixes" for land managers, he is plain wrong when he disparages the role of academic research. Almost everyone involved – researchers and managers alike – are aware that needs precede fixes. I know of no land manager, in Hawai'i or elsewhere, who would argue that science-based research is not a critically important component of his or her management decisions.

Given this, Cabin's statement that he "was unable to find a single clear example in

which formal scientific research had been or was now directly practically relevant and valuable to an actual resource management program" is utter nonsense. Restoration ecology has come a long way since Cabin's "square meter plot" days, and it offers land managers exciting and valuable tools from a wide range of disciplines, including landscape ecology, fire modeling, decision support tools and remote sensing. Furthermore, as scientists continue to feel the weight of pressing ecological needs, coupled with the increase in communication and collaboration of informed stakeholders, research will only continue to become more and more relevant to the manager's needs.

Cabin's story-telling approach makes for easy reading, but at times he is rambling, repetitive, and careless. I cringed on reading that famed Hawai'i botanist Joseph Rock was from England (he was Austrian, as anyone involved with Hawai'i forests should know). Who knows what he was thinking when he describes parts of Hawai'i as "poor, insular, and reminiscent of a developing country," or when he refers to a Big Island politician "openly packing illegal firearms while trolling for votes"?

I found insulting his depiction and criticism of government workers as "being detached and out of touch." Most of the federal and state natural resource personnel in Hawai'i are dedicated, passionate about their work, and highly knowledgeable of both the resources they manage and the regulatory frameworks in which they must maneuver. Many of them have tenure far longer than Cabin's short-lived Hawai'i experience.

Though Cabin can be self-deprecating at times, there really is no denying his elevated view of himself and his role in Hawai'i. For example, he writes that when he "started educating myself about Hawaiian conservation biology, I found a plethora of personal opinions and popular writings but depressingly little real scientific literature." Really? He then goes on to say that he "wanted to do my small part to help remedy this situation."

If this book is part of Cabin's idea of a remedy, thanks, but no. While I consider Cabin a personal friend, his position is indefensible. Restoration scientists have much to offer to landowners and managers. Despite the subtitle of his book, Cabin's position does nothing to bridge the gaps. On the contrary, where bridges now exist, he would only blow them up.

— Susan Cordell



Sam Brooks and Rachel Moseley at the site of a post-fire restoration experiment in Ka'upulehu.

Susan Cordell is a research ecologist with the U.S. Forest Service's Institute of Pacific Islands Forestry in Hilo

State Continues to Pay \$1,000 a Day For Vacant, Unused Land at Ma'alaea



The lot the state leases at Ma'alaea Harbor is still vacant and unused, eighteen years after the lease took effect. (Environment Hawai'i file photo.)

In 1994, the state of Hawai'i leased a little over an acre of land at Ma'alaea Harbor. The land, then-state boating administrator Dave Parsons told the Board of Land and Natural Resources, was a valuable parcel that would be needed if Maui was to keep a fish processing firm.

The company left Maui anyway, and ever since, the land has been nothing but a costly, painful, resource-draining migraine for the state.

Ed Underwood, the current administrator for the Department of Land and Natural Resources' Division of Boating and Ocean Recreation, gets pretty worked up when he talks about the lease.

"When I came on as administrator, one of

the first things I asked was, 'how do we get out of this?'" he told *Environment Hawai'i*. "We're getting nothing out of that lot."

For "nothing," the state is paying the landowner, Don Williams, more than a thousand dollars a day under terms of a lease that, as Parsons himself acknowledged in 1997, was one-sided in its favoring the position of the lessor.

Up until the time Underwood took over the reins at DOBOR in 2006, the state had not meaningfully disputed Williams' appraisals of the land's value during rental reopenings, which occur every two years. Since he has become involved, says Underwood, the state has not agreed to raise the lease rent.

As *Environment Hawai'i* reported earlier, in 2003, the state was considering acquiring the land through condemnation proceedings. Nothing came of that, apparently because of a hiccup in the transfer of the state's own land at Ma'alaea Harbor from one agency to another. In 1991, authority for administering the state's small boat harbors shifted from the Department of Transportation to the Department of Land and Natural Resources. Somehow, the executive order (E.O.) transferring jurisdiction of the state land at Ma'alaea was delayed—and, as of mid-January, still had not been completed.

According to Underwood, condemnation

on DOBOR's behalf would be difficult if DOBOR did not have control over the surrounding land. "There's no public purpose to take it if we don't have the Ma'alaea property," he said.

Now, though, says Underwood, an E.O. transferring the state land to DOBOR's jurisdiction is imminent. Resolving the problems raised by the Williams lease, he adds, is "on the very front burner."

At the time the lease was signed, rent was \$150,400 a year. Since then, it has only gone up, no matter what has happened to real estate values in the meantime. By now, 18 years into the 30-year lease, the state has paid rent to Williams that totals more than three and a half times the land's current assessed value (\$1.45 million). In 1994, just days before entering into the lease with the state, Williams purchased the land for \$1.35 million.

What's more, for the entire time that the state has leased the land, Maui County has been deprived of the tax revenues it would otherwise generate. For the current year, the tax on the three industrial-zoned lots owned by Williams and under lease by the state would be \$10,162.80. While past valuations and tax rates for the entire period since the land was pulled off the county tax rolls in 1994 are not easily available, the lost revenues to the county as a result of the state lease is by now well into six figures.

The state may be receiving general excise tax on the amount it pays to Williams—but if so, it's paying itself. Williams charges the state for the excise tax in addition to the lease rent. —P.T.

Queen's Treasure, from page 1

of Boating and Ocean Recreation (DOBOR) blocked KTL from using *Queen's Treasure* at Ka'anapali, KTL sued the DLNR, the Board of Land and Natural Resources, its chair William Aila, Jr., in his official capacity, and DOBOR administrator Edward Underwood and Maui DOBOR chief Nicholas Giaconi in their official and individual capacities.

KTL argues in its pleadings that the DLNR/DOBOR unlawfully refused to allow the company to change its vessel of record from a 14-foot monohull Zodiac to the 65-foot *Queen's Treasure*, which KTL had ordered custom-built more than a year ago. KTL claims the cost of designing, building and delivering the catamaran exceeds \$1 million. KTL is seeking a permanent injunction preventing the DLNR/DOBOR from interfering with the operation of *Queen's Treasure*.

On April 5, U.S. District Magistrate Richard Puglisi will hold a settlement conference if

the state and KTL fail to reach an agreement before then. Should negotiations fail, the court would have to decide whether or not to allow *Queen's Treasure* to continue to operate pending the outcome of a jury trial, tentatively set to begin January 8, 2013.

Kapalua Kai, for one, does not support a settlement, at least according to its attorney, Bryan Ho.

"I don't see where a permanent settlement is possible unless the Ka'anapali Tour operators quit or put another boat [a monohull]" on the permit, he says. In either case, *Queen's Treasure* would be put out of business.

A Desperate Plea

In the 1980s, DOBOR created special rules to control the glut of ocean-related activities occurring in the tourist centers of Waikiki and Ka'anapali. In Ka'anapali, those rules cap the number of commercial catamaran vessels at ten and limit monohull vessels to five. Should any of those permits become available,

DOBOR is required to select a new permittee from a waiting list. Prospective permittees must pay to maintain their position on the list.

In the past, the Land Board issued and renewed the commercial use permits for Ka'anapali. And on May 9, 2008, the board approved DOBOR's recommendation to renew all ten catamaran (C-01 through C-10) and all five monohull (M-01 through M-05) vessel permits for Ka'anapali. All but one of the monohull permits, M-05, were for charter fishing vessels. M-05 was for a shuttle. Although the permit itself was held by Kellam Brothers, Inc., which had operated under that permit since the 1970s, the boat itself was owned by W. Kyle Bebee, a real estate investor based in Dallas, Texas.

A few months after the Land Board approval, it voted to delegate its authority to grant permits for commercial activities and uses on and off Ka'anapali Beach to the DOBOR administrator.

When it came time to renew permits in

mid-2009, DOBOR declined to reissue M-05 to Kellam Brothers, which had reportedly failed to pay its monthly permit fees to DOBOR (the higher of \$200 or 3 percent of gross receipts).

Beebe was distraught by the action and appealed to DOBOR to reinstate the permit. In a letter he sent September 30, 2009, to DOBOR, Beebe said brothers Terry and Don Kellam let his boat, *Big Kahuna*, sit for months at a time, without maintenance, while they appropriated money he had provided for DOBOR fees.

"I was furious when I recently heard that the Kellams, for a number of months, had not been using these funds to keep the permit in good standing, nor had they been filing required gross receipts statements and other necessary paperwork," he wrote.

"Permits to operate catamarans at Ka'anapali are quite valued and sought after."

— Dean Robb, attorney

Beebe claimed he had invested more than \$1 million in buying, rebuilding, and transporting *Big Kahuna* from North Carolina to Maui. He reclaimed the boat in November 2008, but failed to get the Kellam brothers to transfer permit M-05 to him.

"These problems are certainly none of the state's concern and I apologize for wasting time with the history, but I felt the need to paint the picture of the very fractured business relationship. ... Should the state decide to re-[in]state the permit, its affairs will be handled in a prompt and professional manner in every regard," he wrote.

Mutant Permit

After negotiating with boat captain Jeffrey Kirschner, who was Beebe's representative on Maui, Beebe's newly created company, Ka'anapali Tours, LLC, received a new M-05 permit. But the permit, issued on December 21, 2009, was rife with anomalies.

For one thing, the permit had become something never envisioned by DOBOR for Ka'anapali and not described in any of its rules. Permit M-05 was now a "MONOHULL/MULTIHULL" permit. And despite the cap on catamaran vessel registrations, the vessel of record for M-05 was not *Big Kahuna*, but the catamaran *Ali'i Nui*.

Had M-05 been strictly a monohull permit, it should have been offered to the two applicants on the Ka'anapali monohull permit waiting list, the first of which, LH Water Taxi, has been waiting since December 1996.

With seven applicants as of 2008, the line for a catamaran permit is even longer with the top two having waited since the early 1990s.

For another, DOBOR boating regulations officer Douglas Smith signed the permit, despite the Land Board's decision designating the DOBOR administrator as its authorized representative to sign permits.

The permit was to expire on December 20, 2010.

No sooner did Beebe get his permit back than he turned around and sold it to Janice Nolan and Amy Sutherland. Nolan, former director of operations for Ka'anapali Kai Charters, one of the more successful catamaran operators in West Maui, had herself been on the catamaran permit waiting list since February 17, 2009. (KTL's attorney, Robert Frame, declined to comment on how Nolan and Sutherland came to buy the permit without consulting them first.)

In a March 12, 2010 letter, DOBOR's

Smith spelled out exactly what kind of permit they had bought. Addressed "To Whom it May Concern" and copied to the DLNR's Lahaina office, the letter stated that DOBOR had approved the permit transfer and that all permit terms would remain intact, including "the ability of permittee to utilize either a Monohull or Multihull vessel, as well as passenger carriage for up to 115."

He added, "It is understood that the vessel 'Ali'i Nui' ... will remain as the vessel of record until which time permittee will change the vessel of record to the operating vessel, such that this change of vessel shall take place no later than 6 months after closing. This approval is subject to the payment of transfer fees in the amount of \$XX (49 passenger) to be paid at the Lahaina office of the DLNR."

Why *Ali'i Nui* was the vessel covered by the permit is unclear, since, according to Beebe, permit M-05 was for *Big Kahuna*. In any case, after Nolan paid DOBOR a transfer fee of \$15,000 on March 30, DOBOR issued a revised M-05 permit to KTL naming *Big Kahuna* as the vessel attached to the permit. DOBOR also reduced the passenger carriage limit to 49 and changed the expiration date to March 31, 2011. Again, the permit was not signed by Underwood, the DOBOR administrator. Instead, it appears to have been signed by DOBOR's Maui branch staff and by Smith.

Before that permit expired, a contractor for KTL, Gold Coast Yachts, had begun building the catamaran that KTL named *Queen's Treasure*. But when DOBOR renewed the permit on March 22, 2011, the "QT" vessel listed was not the 65-foot catamaran, but a 14-foot Zodiac.

Even so, KTL argues it was no secret to DOBOR that the vessel the company intended to operate was a catamaran. DOBOR's Underwood signed the permit on April 14.

Foul!

"QT WILL RULE WEST MAUI," wrote one commenter on *Queen's Treasure's* Facebook page on May 20. That same day, DLNR director Aila received a letter from Carlsmith Ball LLP attorney Dean Robb. Robb, who did not name a client but reportedly represented a competing catamaran company, asked Aila to investigate the circumstances and background of permit M-05.

After reviewing DOBOR's permit records, Robb had found several problems with the permit.

"The basic and most fundamental problem associated with Permit M-05 ... is that it is issued for a 'monohull/multihull' vessel," he wrote. "Somehow or other this has been translated by DOBOR as constituting State approval to operate a catamaran at Ka'anapali, Maui," despite regulations capping catamarans at 10 and requiring DOBOR to offer available slots to those on the waiting list first.

"Therefore, the first question is how and why was a permit issued for a monohull/multihull which morphed into a catamaran permit when there were already nine outstanding catamaran permits issued, and no one on the waiting list was contacted or had an opportunity to obtain a catamaran permit. Permit M-05 apparently circumvents the catamaran limits and regulations," he wrote.

If M-05 is allowed to remain as is, DOBOR's management system for Ka'anapali "has no integrity and will be perceived as such," he wrote. "Permits to operate catamarans at Ka'anapali are quite valued and sought after." Gross receipt records provided by DOBOR bear out his claim: several Ka'anapali catamarans brought in revenues between \$1 million and \$1.7 million last year.

Robb noted that DOBOR rules state that a commercial permit holder may transfer its permit only after operating continuously for one full year. The ownership of KTL was transferred only five months after it had been formed, he wrote.

"This is absolutely in violation of HAR [Hawai'i Administrative Rules] 13-231-62(b)(i) and should not have been permitted, and the permit should be revoked for no other reason than this one," he argued.

Robb added that *Ali'i Nui* was not owned or leased by KTL when DOBOR issued the initial permit to KTL and that it renewed the permit in violation of HAR 13-231-61, which requires a minimum of \$85,000 in annual gross receipts as a condition of renewal.

"In fact, [KTL] reported **NO** gross income for the period in question. ... Moreover, THE BIG KAHUNA was located in Honolulu and did not generate the required minimum annual gross receipts," he wrote.

Regarding the current permit, Ross pointed out that although the QT was a 14-foot Zodiac, M-05 showed up on DOBOR records as a catamaran permit.

"So, in sum: Ka'anapali Tours first obtained a monohull/multihull permit for a vessel it had no legal interest in; that permit expired; a new permit was obtained for a vessel that never operated in Ka'anapali and, last, a permit is obtained for a 14-foot Zodiac. None of the permits are expressly for catamarans, but rather for monohull/multihull, but permit M-05 now magically shows up on the record as being a catamaran permit held by Ka'anapali Tours. ... None of the renewals of permits were supported by the required minimum gross receipts, and the transfer of ownership was illegal. And for over two and a half years, Ka'anapali Tours has been allowed to sit on a permit to operate a commercial vessel, but **NO** vessel has been operated by Ka'anapali Tours to date," he wrote. (Robb would not discuss the case with *Environment Hawai'i*, stating that he is no longer involved.)

DOBOR responded within a week, with its Maui branch chief, Nicholas Giaconi, informing KTL that the permit had been forged, KTL's court filings state.

A May 25 email from Giaconi to Bebee, however, suggests that Giaconi had only just begun to grasp what had transpired. Nolan, Giaconi said, had told him that Smith had agreed to reissue permit M-05 to Bebee after fees and penalties had been paid to the department.

"I am seeking to demonstrate that Douglas Smith responded to your request," Giaconi told Bebee and asked for any letters, memos, emails or cancelled checks showing any communication with Smith that "indicates an arrangement was discussed or agreed upon for the re-issuance of the commercial permit for Terry Kellam." Giaconi stated that he had been unable to locate any such material on Maui. (Smith no longer works for DOBOR.)

A day later, without waiting for Bebee's response, DOBOR chief Underwood informed KTL's Frame that based on a preliminary investigation, DOBOR would be asking the Land Board to cancel KTL's permit. Underwood raised some of the same concerns Robb had listed in his letter to the DLNR, i.e., KTL's failure to attain minimum gross receipts and the business transfer made before continuous commercial operation of one year. He also cited KTL's failure to submit

evidence regarding its not having attained minimum gross receipts.

"[W]e believe that at the time Ka'anapali Tours LLC was purchased by your client the company did not possess a valid commercial use permit. Under [HAR], the commercial use permit currently held by your client should have been issued to the next qualified applicant on the waitlist. During our investigation we have also noted other irregularities with the permit when it was issued to [KTL] on March 22, 2010, and renewed on March 22, 2011," Underwood wrote.

On May 31, Bebee finally responded to the DLNR, but his explanation did not change DOBOR's decision to cancel the permit.

Bebee explained that to recoup his losses, he had asked his local operator, Jeff Kirschner, to seek an agreement with DOBOR "whereby a similar permit (don't know if it was a 'replacement,' 'reissuance,' or a 'new' permit in the eyes of the DLNR) would be issued to my entity Ka'anapali Tours."

The only fee DOBOR requested was the transfer fee at the closing of KTL's sale to Nolan and Sutherland, he wrote. Regarding DOBOR's request for records of communication with Smith, Bebee stated that all communication went through Kirschner, who stopped operating his vessel in April 2010.

"I am not in communication with him. I understand he lives on the mainland today. I've never met in person, spoken with or corresponded w/ Mr. Smith," Bebee wrote.

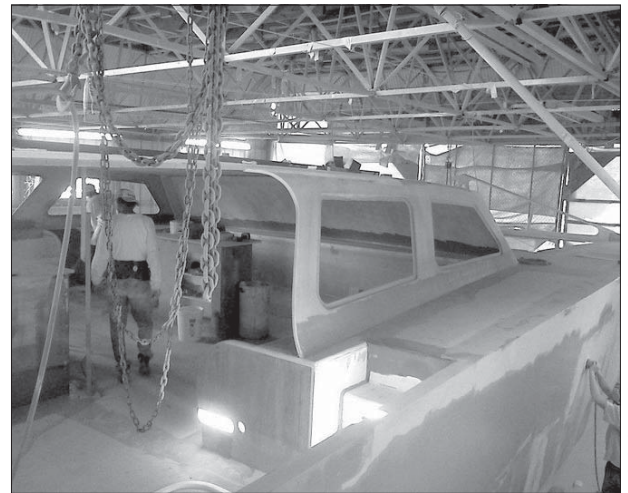
He stated that he, Nolan and Sutherland had taken as proof that the DLNR was satisfied with the legality of the situation "such that we could close on the sale to Jan with confidence that she was getting what she thought she was getting) was the actual issuance of the mooring permit and commercial permit under the signature of an authorized permit on behalf of DLNR, and subsequent delivery of those permits to the permittee," Bebee wrote.

He added that the Lahaina harbor master, Hal Silva, had also been involved in the process.

Kirschner did not respond by press time to *Environment Hawai'i's* questions about his negotiations with Smith.

Lead-up to a Lawsuit

Queen's Treasure began its sail to Maui from the Caribbean with a storm over the validity of its intended permit well underway. On



Queen's Treasure under construction.

PHOTO: QUEEN'S TREASURE FACEBOOK PAGE

June 3, Frame asked Underwood to reconsider seeking cancellation from the Land Board. Frame also argued that the administrative rules regarding minimum gross receipts and permit transfers do not apply to permit M-05.

"I am sure you are aware this was a unique situation and was resolved between the prior owner of [KTL] and DLNR before the initial permit was issued in December 2009," Frame wrote.

Although Underwood maintained that the permit should never have been issued, he held off taking the matter to the Land Board. However, in a July 7 email to KTL, he restricted the company's use of its permit to the 14-foot Zodiac. Around this time, *Queen's Treasure* arrived on Maui.

Desperate, Frame emailed Underwood again, arguing that the DLNR knew the *Queen's Treasure* was the intended operating vessel when it renewed permit M-05 in March 2010. He added that the loss of the catamaran *Kiele V* meant there was room for another one. He also pointed out that only six catamarans were actually operating at Ka'anapali.

Should *Queen's Treasure* not be allowed to start operating on July 27, he wrote, KTL would suffer losses. Days later, in yet another email, he accused DOBOR of treating his client in an arbitrary, capricious, and discriminatory manner.

DOBOR didn't budge. In an August 3 letter to KTL, Underwood wrote that the DLNR and his division consider M-type permits to be monohull permits and would not sanction the use of such a permit for a catamaran.

On September 12, KTL sued the DLNR, the Land Board, Aila, Underwood, and Giaconi in U.S. District Court.

What a Mess

Relying on M-05's conditions, KTL commissioned *Queen's Treasure*, the company's attorneys stated in their motion for a jury

trial. DOBOR's refusal to allow the catamaran to operate at Ka'anapali has caused and will cause KTL to suffer substantial damages, with the full amount to be determined at trial, they stated.

Two weeks after filing its motion, KTL filed another, for a preliminary injunction forcing DOBOR to allow *Queen's Treasure* to operate pending a decision on the permanent injunction.

The parties attempted to settle the case, but came to only a temporary agreement: In exchange for KTL waiving claims to monetary damages, the DLNR and DOBOR would allow *Queen's Treasure* to operate until January 3, when U.S. District Judge Leslie E. Kobayashi was expected to hear KTL's preliminary injunction motion. On November 17, *Queen's Treasure* began operating.

To Ka'anapali catamaran operators ignorant of the temporary settlement, the sight of the elegant, new catamaran ferrying tourists around Ka'anapali must have been a shock. For Kapalua Kai Sailing, Inc., which owns a catamaran permit and is also second in line on the waiting list, it was enough to hire a lawyer.

In a December 2 letter to the DLNR, attorney Ho, representing Kapalua Kai and its principals, objected to *Queen's Treasure* operating without securing a commercial use permit. Ho argued that the vessel's continued operation was likely to financially harm Kapalua Kai because it was competing for the same market. (Kapalua Kai brought in \$1.4 million last year; DOBOR did not disclose gross receipts reported by KTL for November and December, citing the pending litigation. Frame says KTL is not required to pay DOBOR any fees pending the outcome of the motion for an injunction.) Ho urged DOBOR to take immediate action.

"How can DOBOR hold lawful permit holders to one standard of conduct and Ka'anapali Tours another? ... My clients are committed and prepared to take legal [action] as necessary to ensure their rights are protected and DOBOR fulfills its duty to the general public to implement, execute and enforce the relevant administrative rules in a fair and impartial manner," he wrote.

In its December 13 court filing, the deputy attorneys general representing the state defendants made clear that they agree that KTL is not entitled to a catamaran permit. However, they admitted that the history of permit M-05 "is convoluted and full of anomalies which reflect poorly on both KTL and DLNR."

Still, they noted that KTL's Nolan is number 5 on the Ka'anapali catamaran permit waiting list, that KTL failed to use its permits for any commercial activity despite DOBOR's "use it or lose it" rules, and that the term



A photo of a humpback whale taken during a *Queen's Treasure* tour.

PHOTO: QUEEN'S TREASURE FACEBOOK

Monohull/Multihull does not appear in other commercial use permits.

"KTL contends this term entitles KTL to switch [from monohull to catamaran]. ... [T]hat interpretation of KTL's commercial use permit for the Ka'anapali ocean recreation management area is contrary to DLNR rules and makes no sense," they wrote.

They argued that the transfer was illegal and that because the reinstated 2009 permit was not signed by the DOBOR administrator and was instead signed by a low-level planning officer, the permit was also illegal. (Notwithstanding this, DOBOR has accepted monthly permit fees in addition to the \$15,000 transfer fee from KTL.)

The state's attorneys also suggested that the current M-05 permit might be illegal since it was issued three months after the December 2009 permit expired.

"[T]he public wants and expects an orderly management of commercial boating rights," they wrote.

To these arguments, KTL's attorneys had this to say: "A 14-foot inflatable is obviously not multihulled and cannot carry 49 passengers; thus, the substitution of a vessel that could carry 49 passengers was clearly expected. No reasonable person could have issued the Permit believing QT would remain the Primary Vessel given the purpose of the Permit was to serve 49 passengers. Moreover, DLNR had repeatedly allowed and affirmed the substitution of vessels in Permit after Permit."

Regarding the state's argument that Smith lacked the authority to issue permits, KTL's attorneys argue that his acts "may be subsequently ratified by those with authority if the ratifying officials have actual or constructive knowledge of the unauthorized acts." And, they added, DLNR ratified the agreement with subsequent renewals, including the most recent renewal by Underwood.

"Defendants want the court to ignore the plain meaning of the terms and conditions of the permit and restrict plaintiff to the use of a

14-foot inflatable. Such an interpretation is ridiculous. Defendants cannot charge and accept a \$15,000.00 transfer fee from plaintiff that permits plaintiff's vessel to carry 49 passengers, and then restrict plaintiff to a vessel that could not carry 49 passengers without sinking. Defendants cannot admit the permit contains language allowing the use of multihulled vessels and then seek to restrict use of the permit to a monohulled one. Finally, Defendants cannot deny Plaintiff its right to substitute *QUEEN'S TREASURE* as the 'Primary' vessel when all the permit requires is notification of changes in inventory and Coast Guard documentation if requested," they wrote.

KTL's attorneys argued that the state defendants "intentionally and recklessly disregarded Plaintiff's constitutional and civil rights," and that the company would be forced into bankruptcy and lose its vessel if *Queen's Treasure* is not allowed to operate.

"Plaintiff's owners will lose years of hard work and planning, the goodwill established through their efforts, and this once in a lifetime opportunity to make their dream a reality," they wrote.

On January 3, Judge Kobayashi heard the motion for a preliminary injunction, but had not issued a ruling by mid-January. On January 4, Magistrate Puglisi ordered the parties to appear at a settlement conference on April 5. He ordered the parties to try to settle the case on their own in the meantime. Should they fail, each party must provide a statement of evidence likely to be presented at trial at least seven days before the settlement conference.

Until Kobayashi issues a ruling, *Queen's Treasure* will continue operating under the agreement with the state, which, Frame says, was initiated by the court. Ho says whether or not his client, Kapalua Kai, takes any legal action will depend on the court's ruling regarding the preliminary injunction.

"Our hope, of course, would be to get a permanent injunction and be allowed to operate. They've [KTL] done nothing wrong and came into this with clean hands. For whatever reason, the DLNR wants to come in [and deny them]," Frame says.

Based on DOBOR's gross receipt records, three of the ten official Ka'anapali catamaran permits could be made available to those on the waiting list this year, including Kapalua Kai. Catamaran permittee Fun Charters Inc., earned less than \$9,000 last year, Maui Navigation Co. earned nothing, and Maui Boat Co. failed to submit any gross receipts.

Deputy attorney general Daniel Morris declined to answer *Environment Hawai'i's* questions citing confidential personnel issues and the pending litigation. — **Teresa Dawson**

Sen. Malama Solomon Is Investigated For Unauthorized Work in Hilo Stream

Late last year, state Senator Malama Solomon was hauled before the state Board of Land and Natural Resources for seven violations of historic preservation laws and two relating to unauthorized use of public lands near her farm in Kohala. A bulldozer operator hired by Solomon in August had damaged a historic cart path and other archaeological features on state and private land. Solomon didn't contest the charges, but said the damage was unintentional. As reported in the December 2011 issue of *Environment Hawai'i*, Solomon was not fined but agreed to do remedial work to restore the sites. The Land Board also chose not to find Solomon — vice chair of the Senate committee on Water, Land, and Housing — guilty of any violations.

Now Solomon is being investigated for having done unpermitted work to alter a stream on land she owns in Hilo. The work involved building a wall along one side of an unnamed branch of Ainako Stream that runs through a residential lot where Solomon recently had a house built. Solomon pulled a permit to build the main structure in 2008. Since then, Hawai'i County issued permits for two additions, one alteration, and installation of a solar water heating system.

According to Roy Hardy, deputy director of the state Commission on Water Resource Management, the unpermitted work came to the agency's attention in late December. At that time, a preliminary meeting was held in a contested case hearing over a diversion on Ainako Stream mauka of Solomon's property by about three city blocks. Among the potential parties to the contested case was a landowner who complained about the work Solomon had done on the stream branch.

Commission staff and others who were present "walked past this property," Hardy told *Environment Hawai'i*, and took note of what seemed to be recent construction of the wall.

"Some of the parties said it was Malama Solomon's house," Hardy continued.

Hardy was asked if Solomon would receive any special treatment.

"It doesn't matter that she's a state senator," he said. "It's going to be a typical investigation."

On January 11, Solomon met with Hardy and other Water Commission staff. According to Hardy, other properties in the same area as Solomon's may have similar problems. "We want to find out what [Hawai'i County] has been approving up there," he said. "Much of what is going on up there seems to be people basically trying to do flood control on their properties. There may be neighbors of hers in the area moving streams and channelizing."

At the time that Solomon applied for the building permit for the main house, the lot was in Zone A of the Flood Insurance Rate Map published by the Federal Emergency Management Agency. Zone A depicts areas likely to be inundated in 100-year floods.

Hawai'i County requires that all structures in Zone A be built so that the lowest floor rests at least one foot above the 100-year flood elevation. Frank DeMarco, who is an engineer with the county Public Works Department and who is also its designated floodplain administrator, said that at the time that permit was issued, the elevation requirement was met.

None of the building permits sought by Solomon mentioned any construction in or

along the stream channel that cuts through her property. Work to armor the stream bank was not specifically described in any permit, although supports for one corner of the larger of two structures on her lot rest on what would have probably been a sloping bank, but for the new retaining wall.

DeMarco told *Environment Hawai'i* that his agency does not routinely check to make sure that Water Commission requirements are met. The county's primary interest, he said, is to ensure that flooding issues are addressed. The only time the county concerns itself with streams is to ensure that if any watercourse is altered, it does not increase the risk of downstream flooding, he said.

The Hawai'i County Code chapter on floodplain management states that "in flood-prone areas where special flood hazard areas have not been defined," any new construction should "be reviewed to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law." Those areas are designated flood zone X on FIRM maps. In 2010, revisions to the county FIRM maps placed Solomon's Hilo property into the X zone, but at the time the original building permit was required, with Solomon's property in the A zone, such review was not mandatory.

The only other nexus between the county code and the Water Commission occurs further down in the same chapter — Chapter 27, Section 16, paragraph (f). This states that "whenever a watercourse is to be altered or relocated, ... (2) For riverine situations, notify the State of Hawai'i department of land and natural resources (commission on water resource management) and all adjacent property owners."

Generally speaking, DeMarco said, "we don't interface with the Water Commission."

After meeting with Solomon, commission staff conducted a field investigation and met with staff from the county Department of Public Works.

"Residents may be going to the county, thinking that that is all that's required, and the county is not letting us know about changes to streams and other work done as part of a flood control effort," Hardy said.

The fact that other parties may be involved in similar practices or that the county may not be informing property owners of the need to comply with the state Water Code, governing work in streams among other things, does not let Solomon off the hook, Hardy said. But, he added, "it's still under investigation."

Environment Hawai'i was told by an aide to Solomon that the senator "has no comment at this time."

— P.T.



The newly built revetment alongside a stream fronting Malama Solomon's Hilo house.



The revetment channels the stream around one corner of Solomon's house.

Sewage from page 1

seeking to renew permits for the Lahaina injection wells, and the U.S. Environmental Protection Agency was considering whether to require the plant to obtain a National Pollutant Discharge Elimination System (NPDES) permit for it as well, given the apparent connections between the injection wells and the ocean.

The county protested that the studies were speculative and that no definitive link was established between the injection wells and the coastal seeps. The EPA backed off, agreeing to allow the dye tests to go forward and to require the county, in the meantime, to ramp up chlorination of the injected wastewater.

A Long Vigil

For the first month following the dye injection, sampling along the coastal seeps was done twice a day, according to people involved with the tests. After a month, that slipped to daily or every other day.

On October 6, Gary Gill, deputy director of the Department of Health, said at a University of Hawai'i seminar that although "gobs and gobs" of dye had been injected, "nothing's come up in the coastal area."

But the sampling of submarine springs continued, and, before the month was out, samples at some of the locations began to show elevated levels of fluorescein.

"That concentration – above the baseline levels, which told the researcher something significant is going on – has continued to rise and is now very clearly present," said David Albright, manager of the groundwater and underground injection control program for the EPA's Region IX, in San Francisco.

The rhodamine dye had not yet turned up by mid-January, but Albright explained that the well into which the rhodamine dye had been placed was about a hundred yards further inland than the two wells receiving the fluorescein. "We expected it would take longer [for the rhodamine to show up], since it had to travel further," he said in a telephone interview with *Environment Hawai'i*.

Do the long delays between the injection of the dyes and their detection at the coast give researchers an idea of the travel time required for wastewater to meet the coast, Albright was asked.

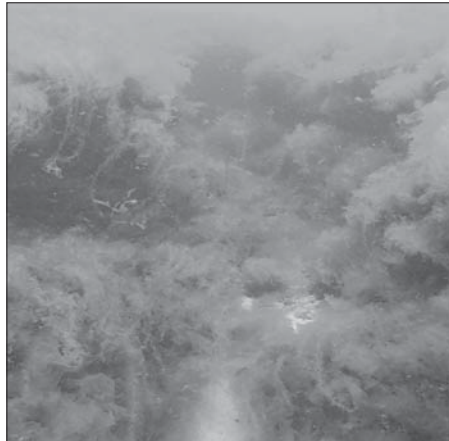
At this point, he replied, "certainly it's an indicator of travel time for something, but I wouldn't say that since the dye took this long, the injection fluid does as well."

Permitting

Albright would not say whether the EPA would now be requiring the county to



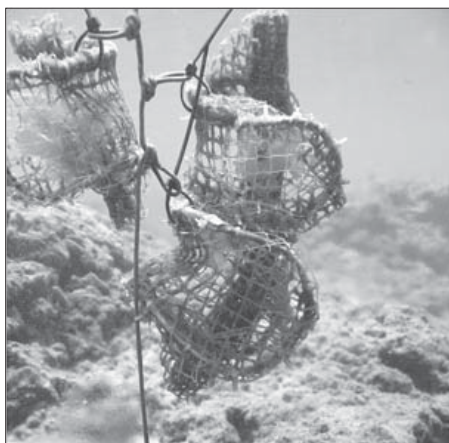
Kahekili Park, north of Ka'anapali resort area.



Summer bloom at Kahekili from 2006



Kalama Park



Algae samples in cages over freshwater seep at Kahekili

obtain an NPDES permit for the injection wells. "The detection of fluorescein confirms that there's a connection [between wells and ocean]," he said.

"But is that a trigger for an NPDES permit? I'd say it's too early to say. We need to get a sense of travel time, a sense of what is being discharged. That will be important, and that monitoring is only now starting to occur."

The Department of Health, he continued, is starting to monitor seeps for bacterial indicators, nutrients, and a number of other standard wastewater constituents. "Thus far, the data that have been collected – very preliminary, at least for pathogens – are negative, showing none of the bacterial indicators they've sampled for."

Albright acknowledged, however, that the failure to detect bacterial indicators of wastewater might be linked to the increased chlorination at the plant, which began in early October. "Pursuant to the agreement worked out between the EPA and the county," he said, "they've increased the level of chlorination to what would be R-2 level wastewater."

Warmer Water

Another area of research that has shown results, Albright said, was an infrared thermal survey of the West Maui coast. That, he said, "involved flying over the area, using sophisticated instruments to measure a thin layer of surface water for temperature variations."

The instruments were highly sensitive and accurate, and could detect very small variations in the surface water temperature, he continued.

"What they saw with the data they collected was a sizable plume of warmer water around the seeps," he said. The finding was confirmed in direct measurements of the temperature of water coming out of the seeps, where the temperatures were on the order of one to two degrees Centigrade higher than the surrounding ambient ocean water.

Groundwater is usually cooler than ocean water, so the fact that the seeps discharge warmer water also tends to confirm the presence of wastewater.

The researchers also looked at isotopes of nitrogen in the samples taken from the seeps. The results, said Albright, "were consistent with the findings of Chip Hunt and Megan Dailer," the principal authors of the two earlier studies. "Waters that migrate to the coast from the [wastewater] facility and upgradient wells are undergoing significant microbial nitrate reduction."

"Ambient ocean water has next to no nitrates," he said. — **Patricia Tummons**

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State Pays Dearly for Salvage Of Sheep from Mauna Kea Hunts

For three decades now, the state of Hawai'i has been under a federal court order to remove sheep from Mauna Kea. And for just as long, the small but screaming hunting population has decried the 'waste' of meat that occurs when the carcasses of sheep killed in state-sponsored aerial shoots are left on the mountainside.

For more than a decade, the state Department of Land and Natural Resources' Division of Forestry and Wildlife (DOFAW), which is responsible for removing the sheep from the mountain, has attempted to appease the hunters by airlifts of the carcasses to designated drop-off sites. There, people who have received salvage permits can pick up the carcasses, clean them, and deposit what they leave behind – bones, offal, et cetera – into a pit that DOFAW workers thoughtfully provide.

"We've been criticized" for the waste of meat, says Roger Imoto, administrator of DOFAW's Big Island operations. "We want to do things responsibly, in a fashion that's good with local communities, especially with lots of folks now in economic hard times."

But at what cost?

According to Imoto, the state pays a helicopter operator \$700 an hour. Typical day-long hunts can run six to seven hours. Half of that time, he says, is spent in the salvage operations.

Imoto defended the practice, saying that it provides meat to people who might not otherwise have any.

But there is nothing in the state's salvage permit that limits recipients to the needy, recipients of food stamps, or families on welfare rolls. "There's no connection" be-

tween need and the permits, he said, although, he added, "some people distribute the meat through churches."

"We're under pretty heavy scrutiny," he said. "There can't be any commercial sales of the meat," a point which, he added, concerns the state Department of Health.

Imoto estimates the cost of the salvage operations comes to about \$2,100 a day in helicopter time. "If there are 100 animals salvaged, at 25 pounds apiece, that comes to 2,500 pounds of meat," he said. Imoto says that, with "organic, free-range beef" costing between \$10 and \$20 a pound, the value of the meat delivered to the community comes to at least \$25,000 for each day of shooting.

Free-range the sheep certainly are, but without knowing what they are eating, they cannot be said to be organic. And Imoto agreed that the market value of mutton probably isn't the same as that for prime beef.

In any event, there is another cost that should not be overlooked in the state's provision of salvaged carcasses, and that is the lost value to the state of Mauna Kea's natural resources.

For each hour that the helicopter spends in salvaging carcasses, it is an hour not spent taking out live sheep, which continue to browse on the mamane trees that are the primary source of food and sole habitat for the endangered palila birds, whose population continues to decline.

Steve Hess, with the U.S. Geological Survey's Pacific Islands Ecosystem Research Center in Volcano, has surveyed the sheep populations on Mauna Kea. Despite unrestricted public hunting and no season or bag



Palila

PHOTO: © JACK JEFFREY. USED WITH PERMISSION.

limits, he said in a recent talk, "the population is sufficient to sustain this level of harvest." In fact, he said, "similar control methods and effort suggest that the population is increasing."

"When you go out and do the same thing every year, and get more animals," he said, "it suggests your numbers are growing."

Further, he said, the removal of male sheep (rams are favored by hunters) "is redundant in polygynous species," such as sheep. "Pregnancy is not limited by the number of males, and recruitment remains unabated no matter how few males are out there," he said. "In fact, the per-capita population growth may increase sharply, since if you shape the population to remove males, you have more females – and more recruitment. You're actually shaping the populations for explosive recovery."

The net effect, he said, is simply increased turnover in the population. "Managers have to run faster just to stay in the same place."

If the state did not salvage carcasses from its aerial hunts and spent the same time hunting more sheep, would that help knock back the population? Hess was asked.

"Definitely," he said.

— Patricia Tummons