

Environment



Hawai'i

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Net Impacts

Canned tuna may be relatively cheap on the store shelves. But in terms of the costs to bigeye stocks in the Pacific Ocean, the price is far too high.

What is in most cans is skipjack, whose stocks are generally healthy. Bigeye, on the other hand, are an entirely different story. Juvenile bigeye hang out with skipjack and are caught along with them in the nets of the hundreds of purse seiners plying tropical and subtropical waters of the Pacific.

Figuring out how to curtail the catch of bigeye is the most important task facing the Western and Central Pacific Fisheries Commission. But, if its meeting last month is a measure of its power to achieve resolution, then there can be little hope for this species.

Also in this issue, we look at a controversy confronting the state's Agribusiness Development Corporation; criticisms of draft revisions to hunting rules; a challenge to rules regarding distributed power generation; and recent developments in sandalwood logging at Hokukano Ranch.

Bigeye Tuna Population Faces Jeopardy As International Organization Fails to Act

No doubt about it: bigeye tuna are in trouble in the central and western Pacific Ocean. Targeted by longliners when they are adult, trapped in purse seine nets when they are young, bigeye are in a steep decline, with fisheries scientists agreeing that their numbers are heading into the dreaded "red" zone of management charts—where the amount of fish caught annually exceeds the species' ability to rebound.

The Western and Central Pacific Fisheries Commission (WCPFC) is the international organization charged with regulating fishing for bigeye and other highly migratory fish species throughout the region. But its six-day meeting in Honolulu last month concluded without any significant action to stave off further harm to bigeye populations.

Several measures were proposed, any one of which would have probably had a positive impact on the conservation of bigeye:

- Japan wanted to put a moratorium on any increase in fishing capacity, on the theory that a ban on new purse seiners would cap effort at current levels. That failed.

- A coalition of eight island states representing the bulk of the territorial seas fished by the purse seiners proposed that the commission ban purse seining on some 4.5 million square miles of equatorial open ocean in the eastern part of the commission's jurisdiction. Again, that failed to win the commission's support.
- The European Union wanted to impose a three-month ban on fishing by purse seiners and the larger longline fleets. Once more, the measure failed.

Many of the arguments against further conservation measures relied on claims that the commission's efforts in 2008 to address overfishing of bigeye and, to a lesser degree, yellowfin tuna in a comprehensive conservation and management measure (CMM 2008-01) had not run their course. To achieve the 30 percent reduction in the catch of bigeye that scientists said was the minimum needed to restore stocks to health, CMM 2008-01 called generally for limiting purse seine effort through a variety of measures (including

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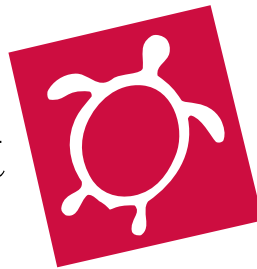
Decision Near on Sandalwood Logging



Most tuna in cans is seine-caught skipjack. But as the number of purse seiners increases, so, too, does their bycatch of juvenile bigeye, putting at risk the species' future health.

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NEW AND NOTEWORTHY

Court Gets Forest City Appeal: The Queen Lili'uokalani Trust has appealed the decision of the state Land Use Commission approving the Kona project known as Kamakana Villages, to be developed by the Hawai'i Housing and Finance Development Corporation and Forest City.

The project needed the LUC to approve its petition to reclassify into the Urban district 272 acres of Agriculture land just mauka of the village of Kailua. The petition was approved November 9; on December 8, the trust, which sold the land to the state nearly 20 years ago and which continues to have large holdings in the area, appealed to the 3rd Circuit Court.

Among other things, the appeal argues (as the trust argued before the LUC) that the notice of the petition was deficient. It also notes inconsistencies between "conditions and representa-

tions" about future use of the land made by the state at the time it bought the land and current plans for it. The trust asks the court to vacate the LUC decision and remand it for further hearing after proper notice has been given—or to reverse the decision as being clearly erroneous.

Green v. Blue: The public comment period for the City and County of Honolulu's Ko'olauloa Sustainable Communities Plan (SCP) ends on the 15th of this month. The plan is intended to guide development decisions for the communities along the northeast coast of O'ahu, from Ka'a'awa to Kawela, and was supposed to have been created through a community-based process. Instead, in collaboration with developers, the city, through its planning consultant Helber, Hastert, and Fee Planners, Inc., revised the community's draft plan, releasing the revision last October.

Minutes of the October 2010 meeting of the Ko'olauloa Neighborhood Board describe, in part, how the process unfolded. The Public Advisory Committee (PAC), which includes about two dozen representatives from the affected communities, spent nearly two years revising the plan, last updated in 1999. The minutes state that the PAC was "surprised" to find that the draft it had submitted to the city's



Supporters of residential development in La'ie, all wearing blue shirts, filled the Kahuku High and Intermediate School cafeteria during a public hearing last month on the Ko'olauloa Sustainable Communities Plan.

Department of Planning and Permitting in August 2009 had been substantially revised by Hawai'i Reserves, Inc. (HRI), a developer for the Mormon church, and Brigham Young University-Hawai'i.

The "backdoor" revisions were made to include HRI's "Envision La'ie" plans and were approved despite a vote by the PAC to exclude the HRI/BYUH plans.

Testimony at a public hearing on the plan held last month in Kahuku focused almost exclusively on the proposed Envision La'ie development, which includes nearly 900 residential units in La'ie and Malaekahana, much of it on agricultural lands. The draft SCP refers to the units as both affordable housing and workforce housing and it was not made clear at the meeting exactly how those units would be divested.

Comments should be sent to Helber, Hastert & Fee Planners, Inc. at 733 Bishop Street Suite 2590, Honolulu HI 96813. They can also be emailed to colsonorr@hhf.com or faxed to 545-2050. The plan can be purchased for \$10 at the City Municipal Bookstore, City Hall Annex at 558 South King Street, Honolulu or downloaded for free online at www.honolulu.gov/planning.

A final plan is expected to be completed early this year and must then receive approval from the city Planning Commission and County Council.

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Quote of the Month

"We make decisions, but don't implement them. Everyone goes back and it's business as usual in terms of [bigeye tuna] catches. Let's admit it. We have failed in the first step we took toward the reduction of catch. Miserably failed."

— **Satya Nandan,**
Western and Central Pacific
Fisheries Commission chair

EDITORIAL

Tuna Are in Trouble, With No Help in Sight

Too many boats. Too few tuna. In the Western and Central Pacific Ocean, the rights of countries to catch fish have outrun the fish's ability to keep up. With no one willing to give ground, the result is a giant game of chicken being played out on the seas.

Yes, it's ... chicken of the sea.

And it is a game that no one can win. Not the fish. Not the countries in whose territorial waters the fish are found; when the fish are depleted, so are their national budgets. Not the distant-water fishing nations that flag boats to take the fish. And not, ultimately, the consumers of tuna, whether canned, fresh, or frozen.

About the only winners are the private

reduction in bigeye tuna overfishing can be expected." Even if all these exceptions were erased, overfishing on bigeye would be reduced no more than 50 percent, they found.

But for every action proposed by one commission member, or bloc of members, to address the problem, there was an equal and opposite reaction, suggesting that Newton's third law applies to the realm of international negotiations as well as physics.

Freeze the number of purse seiners? Yes, say the industrialized nations, which have the greatest number of boats under their flags. No, say the small island states, which have untold numbers of purse seiners under construction in Asian boatyards, at \$20 million a pop.

"Because of the struggles, competition, and fights among members ... we cannot stop [the] uncontrolled increase in fishing capacity." — Masanori Miyahara

companies and their shareholders who own the vessels that scoop tuna by the ton from tropical waters. And if the tuna populations fail, they, too, will be in trouble.

The contradictory interests of the nations that are party to the Western and Central Pacific Fisheries Commission, the agency charged with managing highly migratory fish species in the region, make the achievement of reasonable approaches to dealing with overfishing a near impossibility. And as the resources grow scarcer, the contradictions become sharper, the parties dig their heels in deeper, and prospects for resolution fade to dark.

To the Last Fish

The contradictions were as large as the Ko Olina ballroom that held the 400 delegates and observers attending the WCPFC's annual meeting last month on O'ahu. The gathering marked the 10th anniversary of the adoption of the convention that led to the commission's establishment, but there was little cause to celebrate.

News from the fisheries scientists who advise the commission was grim. A three-year plan adopted by WCPFC in 2008 to rein in fishing effort on bigeye and yellowfin was not working, especially with respect to bigeye. Given the loopholes and exemptions granted by the commission, the scientists reported, "we estimate that only a 14 percent

Close millions of square miles of open ocean to all purse seine fishing? Yes, say the island states, which stand to benefit by pushing purse seiners out of the free zone and into their own pay-to-play waters. No, say the industrialized nations, pointing out that such a measure would not curb effort, simply make it more inconvenient and expensive.

Impose a three-month cap on all fishing? It made sense to the European Union, which proposed it, but not to those members with tuna canneries and processors whose operations would be disrupted.

In short, any and all reasonable proposals that might have had a chance of helping bigeye stocks were doomed. While the commission did agree on some worthy measures – limiting catches of bluefin tuna and North Pacific striped marlin, imposing more stringent controls on a doughnut hole in the Eastern Pacific, calling for better understanding of shark involvement in the managed fisheries – the elephant in the room at the start of the meeting was still there when the meeting closed. Bigeye tuna overfishing remains the central problem of this region and, as dire as the outlook is now, it will only worsen over the next year.

Failure Is an Option

Recently, the Secretariat of the Pacific Community (SPC) concluded a study of future scenarios for Pacific islands fisheries, ex-

tending to the year 2035. The SPC is a consortium of 26 Pacific island states and the United States that advises and assists members on matters of regional interest.

Under the worst-case scenario, the fisheries of the region collapse. "WCPFC is ineffective and there is failure to agree on effective allocation and management measures ... Yellowfin and bigeye stocks decline dramatically with major economic losses ... Range contraction and/or stock declines of yellowfin and bigeye make most domestic longline fisheries uneconomic. Skipjack fisheries decline in value due to falling catch per unit of effort and smaller fish, with an increasing risk of recruitment failure."

The report was prepared before the latest meeting of the WCPFC, which could have only tipped the scales in favor of the worst-case outlook. Japan's head of delegation, while vigorously defending his own country's interest, still managed to put on the table some of the most incisive comments about the commission's dysfunctionality:

"This commission was established to implement the collective effort by members to ensure the sustainability of resources," said Masanori Miyahara, "but in actuality, many—all—of the members are just sticking to their own interests, with almost no collective action made or taken in a timely manner."

This means more than the ongoing decline of bigeye at current rates, he continued. "Because of this vacancy of effective action," said Miyahara, "investors are looking for opportunities to build big purse seiners, one after another. One purse seiner costs \$20 million. Just one purse seiner. Of course, those investors seek the short-term profit to recover that high cost. Then they will just increase the catch. But because of the struggles, competition, and fights among members... we cannot stop that kind of uncontrolled increase in fishing capacity."

Few attending the meeting would have disagreed with Miyahara's bleak outlook.

Shifting the Burden

With a regulatory commission in paralysis, and in the face of growing, apparently unstoppable fishing effort, what actual possibilities exist for reversing this disastrous course?

Tuna from page 1

restricted fishing days, restricted fishing on fish aggregating devices, or FADs, and closure of western high seas pockets, among them) and cuts of 10 percent a year for three years in the longline catch of bigeye from a baseline calculated from catch levels in the first half of the decade.

As sound as the arguments against further conservation efforts may have been, there was no arguing with the conclusions of the commission's scientific committee: "Even if fully implemented and complied with," it found, "CMM-2008-01 is extremely unlikely to achieve its most important objective: reducing fishing mortality on the [Western and Central Pacific Ocean] bigeye tunastock" by 30 percent from the baseline levels.



The Political Economy Of Tuna

In 2009, the region under the WCPFC's jurisdiction was the source of 2.5 million metric tons of tuna into the world market, accounting for 58 percent of the global tuna catch. More than three quarters of this was caught by purse seiners, and most of the catch consisted of skipjack tuna. Longliners (including those in Hawai'i) accounted for 9 percent of the total.

While the purse seiners target skipjack, they also catch yellowfin tuna and juvenile bigeye, which tend to join skipjack schools that collect around large floating objects. These can be natural (logs, large whale sharks, cetaceans) or manmade (fish aggregating devices, buoys, or navigational guides).

Therein lies the heart of the bigeye problem. The growing haul of tuna by purse



WCPFC Chairman Satya Nandan (left) and Chairman-elect Charles Karnella.

seiners includes large numbers of juvenile bigeye. While bigeye account for around 5 percent (about 120,000 metric tons) of the total volume of tuna caught in the WCPFC area, this represents a huge increase over the proportion of bigeye taken thirty years ago, when the catch of bigeye was virtually nil. In recent years, with the increasing use of FADs, the purse seiners have taken almost as much bigeye (by weight) as the longliners, with practically all of that being juvenile fish. Even though total bigeye catch in 2009 actually fell to the lowest level since 2003 (attributed to a drop in longline catch), the fishing effort still exceeds the maximum sustainable yield (MSY) of the bigeye by more than 60 percent.

Much of the growth in purse seining activity has been fueled by industrialized nations, represented in the WCPFC by Japan, Korea, and Taiwan, with China, the United States, and the European Union participating to a lesser extent. To create a more equitable distribution of economic benefit from the exploited fish stocks, the founding documents of the WCPFC give deference to the economic needs of the so-called small island developing states (SIDS). In CMM 2008-01, for example, the same limits on fishing activity imposed on the developed

nations' fleets do not apply to the SIDS, leaving them free to order large new purse seiners, often with financial help from foreign fishing interests.

To maximize their income, the South Pacific island states sell access to their Exclusive Economic Zones, or EEZs. Purse seiners fishing under these arrangements usually receive an allotment of so-called vessel days (days in which a vessel can fish inside the EEZ of the island state). The South Pacific states thus have an economic interest in pushing effort into their EEZs and out of the high seas. (The United States, which separately has a treaty arrangement with South Pacific states, is not bound by the vessel-day scheme. According to a report by the eight island states that are Parties to the Nauru Agreement, however, U.S. purse seiners fished about 7,500 vessel days in the PNA area in 2009.) Last year, amid concerns that the vessel-day scheme was allowing too many unused days to carry over from one year to the next, the PNA set a hard cap on vessel days of 28,469 per year and bans further carry-over.

The vessel-day scheme, however, does little to reduce the take of bigeye tuna by purse seiners. To accomplish that, the commission has embraced an approach that bans setting on FADs for two months. Purse seiners can continue fishing, but they must avoid setting on FADs, which in theory means that fewer juvenile bigeye will be caught in their nets. In practice, this has been difficult to enforce.

By the commission meeting's close, members still failed to agree on any measure to reduce bigeye take. All they were able to accept was a plan on how to proceed with revisions to CMM 2008-01 over the next year while urging members to adopt voluntary measures to mitigate "the impact of their fishing activities on the sustainability of bigeye, skipjack, and yellowfin tuna."

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The European Union and Japanese delegations both made menacing comments about closing markets to tuna products from the region – but in light of Europe's mismanagement of its own fisheries and Japan's insatiable demand for tuna, it seems unlikely that either will shut themselves out of what remains the most productive ocean in the world.

When governments do not or cannot act, the door is open to consumer action. Decades ago, a move to make canned tuna products dolphin-safe in the United States had enormous positive consequences. In

face of the global crisis looming in tuna fisheries, the onus may once more fall on consumers.

So how can one individual support sustainable fisheries, in the Pacific and elsewhere?

- Learn the source of the tuna you buy, and if you don't think it was sustainably caught, leave it on the shelf. The Monterey Bay Aquarium "Seafood Watch" has consumer guides to sustainable fish on its website: www.montereybayaquarium.org. Other non-governmental organizations with information on tuna products include Greenpeace and the Marine Conservation Society (www.fishonline.org).

- Urge Congress to require labeling of tuna products, including their geographic source and method of capture. Even if the import of fish from poorly managed fisheries cannot be stopped, such a measure will open the door to market pressure, which could yield results.

But market pressure cannot be a substitute for standing up to those interests – economic and political – that lie behind the dismal state of fisheries across the globe. The nations with seats at the WCPFC table must realize, ultimately, that the race to the last fish is one that will have no winners. If that is not enough to bend wills and force compromise, Pacific tuna are doomed.



The Japanese Gambit

Perhaps the most far-reaching proposal to address the bigeye crisis was that of the Japanese, calling for a cap on the capacity of purse seiners operating in the area under WCPFC jurisdiction. In a formal proposal submitted in November to the commission, Japan called for member nations to “ensure that the level of purse seine fishing capacity in the number of their flagged vessels fishing on the high seas does not increase from the current level, and to ensure that the level of purse seine fishing effort in days fished on the high seas does not increase” beyond either the level that existed in 2004 or the average level from years 2001-2004.

The proposal also called on the island states whose EEZs make up the bulk of the seas fished by the purse seiners – the so-called coastal states – to make sure that the number of purse seiners within their EEZs would remain at current levels.

At the outset of the meeting, however, Masanori Miyahara, head of the Japanese delegation, simplified his country's proposal to where it was one sentence, imposing a cap on purse seine vessels in the region. Miyahara noted that purse seine effort had expanded 30 to 40 percent over the last three years, and that if nothing were done in the coming year, the situation of tuna stocks would be far more difficult to deal with at the next WCPFC meeting.

China's head of delegation, Liu Xiaobing, said that while China respects the “development aspirations of small island countries, ... if there's no controlled growth of purse seiners, it creates huge problems.” He noted that his government has recently been receiving reports from its industry of governments in the PNA placing orders for new purse seine vessels. “So we feel puzzled,” he said. “According to the WCPFC rules, we cannot block such applications.” On the other hand, if the vessels – “\$20 million each,” he noted – start fishing in this area, “there will be a huge amount of catch. ... So we strongly urge this organization to form guidelines for this development.”

Roberto Cesari, head of the European Union delegation, supported the freeze, as did the United States and France.

Tim Adams, head of the delegation from Nauru, objected. “Nauru is not in favor of capacity limits if this is just a return to the past,” he said. Controlling effort, on the other hand – as the Parties to the Nauru Agreement attempt to do through the vessel-day scheme – allows coastal states “more control over who fishes in our waters,” he

noted. “We're not against capacity management as such, but just against turning back the clock.” If any scheme to limit capacity is adopted, he said, “it should not limit the right of coastal states to choose which vessels are in our waters.”

Cesari replied by intimating that if limits weren't put into place, the European Union could sanction tuna products from the region. “We have some doubts, as the European Union, on some of the effectiveness of elements now in force. We are worried that, as a market state, we don't think that we are fulfilling our responsibilities in terms of conservation. ... We have the responsibility to look at what kind of products are getting to our market.” Referring to European limits on swordfish fishing, Cesari noted that what was done there was to cap the number of vessels, “and that species is not in as much danger as tropical tunas. I don't understand why we should not take the same action on more endangered stocks.”

Adams agreed that the problem of capacity needed to be addressed, and that Nauru was committed “to halting or even reversing the expansion of purse seiners in this region. We just don't feel it should be frozen in its current balance, in a form where most vessels are in foreign hands.”

Chair Satya Nandan weighed in on the topic as well: “I've been for some time hearing that there were at least 40 more purse seiners being built. They were all going to be larger than ones we have at the moment... This is a very serious thing. It does address, affect the credibility of this organization. We take decisions, but don't implement them. Everyone goes back and it's business as usual in terms of catches. Let's admit it. We have failed in the first step we took toward the reduction of catch. Miserably failed. It was touted very widely that we have taken this very important step, cut 30 percent over three years, and I regret to say that we've failed.... We have too many boats chasing too few fish.”

Addressing concerns of the SIDS, he added that any measure to cap capacity has to include a provision that allows capacity to be transferred to the developing countries. “At the moment, the distant water fishing nations are taking the fish, and there's very limited capacity for the developing countries, but there has to be a serious effort made to transfer capacity.” He urged delegates to work out a compromise and bring it back for consideration the following day.

Glen Joseph, head of the Marshall Islands delegation, said that this might be a problem. “We may find ourselves in a bit of a compromised situation here,” he said, “especially when we have two vessels in Chinese Taipei to

be built and two more in China... So if I agree with you, I would probably find myself locked out” of home on his return to Majuro.

China's Liu Xiaobing affirmed the Marshalls' order for two vessels, but added: “We need transparency. We need for all PNA countries [to] let us know what your plan is... We are very worried about ... maybe more than 100 purse seiners will be constructed.” As concerned as his government was about the protection of highly migratory species, he said, he was “also talking about the security of the investment. We should insure that Chinese investment is secure, so new purse seine vessels built by us will be accepted.”

Close the Bus!

The next day, which was also the last, Japan again tried to push for adoption of its proposed freeze on purse seine vessels. “As I mentioned again and again,” Miyahara said, “we have to take this measure. Otherwise the situation will be much worse, uncontrollable next year... If we don't take any action this year, it will be the shame of this commission. Last year, we didn't take any measure, any effective measure to control fishing effort by purse seiners. And effort increased 40 percent and is still growing at a rapid pace. Stocks are getting worse and worse.”

Papua New Guinea threw the matter back into the laps of the industrialized countries. “Capacity is a contentious issue. The distant water fishing nations must also tell this commission how they're going to reduce their existing capacity,” the representative of the delegation stated. Japan's proposal, he said, “calls into doubt the commitment of FFA members to long-term conservation.” (The South Pacific Forum Fisheries Agency consists of nearly all South Pacific states within the WCPFC area of jurisdiction.) “FFA members face the fact every day that without sustainable fisheries, our economies cannot develop and our people cannot enjoy better standards of living... We are growing tired of having to continually defend rights that we have under international law and [Conservation and Management Measure] 2008-01. We are tired of having to defend ourselves against ... others who have already depleted our resources and ... infringed on our sovereignty.”

Japan wasn't buying it. “I think we have to do something now,” Miyahara said. “We are not saying we should interfere with any coastal state... It is coastal states, definitely, who decide who should fish and how much... That's something you can do... If you want to increase your fleet, then you have to exclude distant water fishing nations from your zone. That's fine. But you have to show your strong

will to control your fishery. This is a too-crowded bus. Passengers are coming and coming and coming, and nobody is getting off. It is you who decide who should get off... Please, we already have too many boats."

The New Zealand head of delegation, Matthew Hooper, stated that FFA members had met to discuss the Japan proposal but, "after some careful consideration, FFA members were not able to find a basis for support." However, he added, "I think FFA members really want to emphasize that... we are certainly interested in further limiting capacity to complement and support the vessel-day scheme." To Miyahara, he indicated a willingness to meet later in the day to see what could be achieved before the meeting closed, but the Marshall Islands representative was firm. "This is the last day and we have other important issues," said the Marshall Islands' Joseph. "Although this is very important, we're not prepared to deal with it any further." The Solomon Islands and Kiribati delegations joined in the sentiment.

"We're not making headway," said Nandan. "The proposal is to postpone it until next session. That's where we are."

Miyahara expressed his thanks for the "candid statements" of the Pacific islanders. "If this is the case," he added, "you have to accept the near future consequences from the northern zone. We cannot accept products coming from this region as sustainable products any more. So you have to take the consequences. It's a very, very hard thing to see this meeting show the incompetence of this organization. ... That is very disappointing."



High Seas Closure Is Nixed

Last year, the eight island states forming the Parties to the Nauru Agreement agreed that, as a condition of receiving a license to fish in their exclusive economic zones, purse seine vessels would be required to avoid fishing in some 4.5 million square miles of equatorial open ocean in the eastern part of the area under WCPFC jurisdiction. It then proposed that the full commission extend the ban to vessels belonging to all parties to the WCPFC.

Because of the U.S. tuna treaty, however, the PNA measure does not apply to the 36 U.S.-flagged purse seiners fishing in the Western Pacific.

The European Union had no objection to the PNA requirement. "We don't contest your right to take your measure," Cesari said. But he went on to express some skepticism about the conservation value. "We have already seen there's not a big value in a high seas pocket closure," he said. Effort doesn't disap-

pear, he said, it simply shifts. The closure by WCPFC of two high seas pockets in the Western Pacific had not yet been shown to have any impact, he said.

Charles Karnella, head of the U.S. delegation, voiced a similar position. "We're most interested to hear about ... the scientific justification," he said.

The PNA proposal did not gain much traction at the meeting, even though some conservation groups—most notably Greenpeace—advocated strongly for its adoption.

What the commission did agree to was a proposal to beef up controls over a much smaller 45,000-square-mile high seas pocket surrounded by the territorial waters of Cook Islands, French Polynesia, and Kiribati. The Cook Islands delegation stated that the area was a zone where illegal, unregulated and unreported (IUU) fishing was occurring, with frequent incursions into territorial waters and transshipment of catches.

"This suggests to us that catches are being misrepresented," the head of the delegation stated. "Aside from the illegality of this issue, it undermines the science the commission is required to provide for sustainable management measures."

Korea and Chinese Taipei were alone in their objections, but eventually an agreement was worked out. The member countries are to adopt regulations implementing the new controls by July 1 of this year.



Little Support For Three-Month Moratorium

Roberto Cesari argued in favor of the European Union's proposal to close off most WCPFC waters to all fishing by purse seiners and most by longliners for a full three months. CMM 2008-01, he noted, has not been "particularly effective. ... What we have in place now doesn't work. We saw that when you close an area, the effort shifts. You close another area, and the effort shifts again."

The beauty of the EU proposal, he said, lies in the fact that it will have "certain and sure results, with transparency, and the possibility to monitor clearly what is happening."

Once more, South Pacific island states objected. The Solomon Islands delegation noted that a total closure, instead of merely the existing two-month ban on FAD sets, "involves substantial losses to purse seine fleets," including domestic vessels. This, he added, "undermines the sovereign rights of coastal states." What's more, he said, the FAD closure is more targeted to addressing bigeye overfishing than is an outright ban on fishing.

Nauru's Tim Adams agreed, adding that the closure would also disrupt operations of canneries. However, Adams said, the PNA might be agreeable to a closure on the high seas coinciding with the two-month FAD ban. "If you think there is too much purse seine effort," he told Cesari, "then tie up your boats."

Cesari could not let that pass. "If someone thinks the E.U. has too many vessels on the grounds, ... maybe there's too many fish in our market coming from this area. It's not exactly well managed in a sustainable way. ... It is in the interests of market states to get sustainable fish on our markets," he said. He noted that the E.U. had been cooperating with many of the island nations in this and other areas, "quite successfully. But, obviously, there is an evaluation that has to be done in Brussels about how the areas are being managed for conservation."

Japan was sympathetic, but could not go along with the E.U. option. "If we close for three months," he said, "some fishing fleets can move from west to east to continue fishing activities and then catch the same stock." Instead, he said, "Japan would like to see establishment of catch limits ... for purse seiners. This is the only assured way of reducing the actual catch."

Seeing no resolution, Nandan again put the proposal off to next year.



Whale Sharks, Cetaceans Await Protection

Australia proposed a measure that would ban the deliberate encirclement of cetaceans by purse seiners. The Republic of the Marshall Islands, on behalf of South Pacific members of the Forum Fisheries Agency, proposed banning sets on whale sharks. Neither measure won approval.

Japan strongly objected to both measures. During the discussion of the cetacean proposal, Miyahara put forth his country's position: "The cetacean is kind of a sensitive issue for Japanese government. We have lots of concerned people. ... We don't take whales in purse seine fishery. We will do every effort to release the whales alive, unhurt, and that is the purpose of the Japanese fishermen and rules of Japanese government. Please give us time."

China objected as well, with the head of its delegation wanting to defer this to the International Whaling Commission. "Our position," he said, "is [that] we don't talk about any issue relating to cetaceans. Sorry, we cannot accept this proposal."

Among the Asian nations, Korea alone

Agribusiness Committee May Reconsider Rejected Biofuels Project at Kekaha

Pacific West Energy, LLC is not going away quietly. With a handful of high-profile backers, its request to lease feedstock land for a proposed 20-megawatt power plant may yet win approval from the state Agribusiness Development Corporation.

Or it may not, depending on what an investigative committee determines.

The ADC controls several thousand acres of prime agricultural land in Kekaha, Kaua'i, that were once part of the Kekaha sugar plantation. Its tenants, known collectively as the Kekaha Agriculture Association (KAA), operate and maintain most of the infrastructure there under an agreement with the agency. Last year, the ADC asked the state Department of Business, Economic Development and Tourism to evaluate the proposal of Pac West to grow biofuel crops on 1,150 acres and a competing proposal by Pacific Light & Power, a Kaua'i based company. It recommended awarding a lease to Pac West.

But on September 15, the ADC's Kekaha committee rejected Pac West's proposal in favor of PLP's. The deciding factor appeared to have been PLP's focus on meeting the needs of area tenants, compared to Pac West's plans to sell its electricity directly to the island's utility.

Pac West had originally tried and failed to lease feedstock lands from the Gay & Robinson sugar plantation. Over the past few years, it has instead been seeking ADC and other government and private lands.

Two months after the Kekaha committee voted to support only PLP's project, Pac West president William Maloney wrote a four-

page letter requesting reconsideration and harshly criticizing the committee's decision-making process.

Maloney argued that PLP, through its relationship with KAA, had inside knowledge of the ADC's priorities for the development of its Kekaha lands, which included the preference for a tenant to provide power to KAA members. Had his company known of "this secret criterion," it would have offered to provide energy to KAA, Maloney wrote.

With the committee's decision to lease land to PLP, which proposed using 1,850 acres of the ADC's mauka lands and 1,180 acres on the Mana plain, Maloney argued that the ADC seemed to have enough lands to accommodate both projects.

When Pac West initially approached the ADC about leasing land in Kekaha, the ADC informed the company that only 750 acres of mauka land and about 450 acres of makai land were available, Maloney told *Environment Hawai'i*. Yet the Kekaha committee approved PLP's project, which sought more than twice that amount.

The fact that the committee voted at a subsequent meeting to ratify the decision by one of its tenants, seed corn company Pioneer Hi-Bred International, to relinquish its mauka lands in favor of some makai lands that Pac West hoped to occupy convinced Maloney that his company was being treated unfairly.

In his November letter, he asked that all Kekaha lease decisions be suspended and recommended that future applicants be provided all adequate information, such as the ADC's draft master plan.

On December 8, Kaua'i County council-

spoke in support, joining the United States and all the South Pacific states.

But no vote was taken on the measure. Instead, Nandan noted that this was a situation "where there is some opposition to continuing with this item today." He deferred it until the next commission meeting, in December 2011.

The proposal to ban purse seine sets on whale sharks was opposed by all six Asian nations: Japan, China, Chinese Taipei (as Taiwan is called in the WCPFC), Korea, Philippines, and Indonesia. Speaking on behalf of the bloc, Miyahara noted that they could support it only if the first four paragraphs of the measure were deleted, effectively

gutting the measure.

South Pacific states expressed their strong support for the whale shark set ban, which had already been adopted in September by the Parties to the Nauru Agreement for purse seiners in their EEZs. The head of the delegation from the Republic of the Marshall Islands requested that a photograph of a whale shark hauled up with a purse seine net be shown on the large screens surrounding the meeting hall. That, however, failed to sway the Asian bloc.

Once again, the chairman punted: "I see no movement on this. Let's leave it on the table. It can be picked up next session."

—*Patricia Tummons*

woman JoAnn Yukimura and International Longshore & Warehouse Union president Isaac Fiesta, Jr., wrote letters to the ADC in support of Pac West's proposal.

Yukimura pointed out that, if allowed to fully develop its project, Pac West could provide the island with a significant amount of liquid ethanol, as well as 30 percent of its electricity needs. The latter would help the Kaua'i Island Utility Company reach its goal of 50 percent self-sufficiency by 2023, she wrote.

Both Yukimura and Fiesta pointed out that Pac West's project could provide union-paying jobs to many former sugar plantation workers.

The committee met last month to discuss Pac West's reconsideration request and decided to appoint a committee to investigate PLP's project further before issuing a lease.

At the meeting, DBEDT's Cameron Black advocated for greater diversity in renewable energy projects. Steven Rymsha, KIUC's senior energy solutions engineer, had a lot more to say.

Rymsha complained that under the PLP plan, electricity must pass through the KAA's antiquated transmission system before it reaches KIUC's and said he wished the west side lands could play a greater part in reducing the island's reliance on fossil fuels.

Rymsha added that a proposal to install a photovoltaic system on a triangle of unused Kekaha lands has been met with resistance from KAA, despite the fact that KIUC is willing to help improve the infrastructure at Kekaha, specifically, upgrading substandard reservoirs.

"We'd love to be part of the solution if they'd just let us in," he said.

Regarding the PV project, committee chair David Rietow explained that the ADC is mandated by the state Legislature to support agriculture, not electricity production.

"We try to fix the old irrigation system to improve the ability to farm. We can't be a direct generator of electricity for KIUC," Rietow said. "Whatever it takes to farm in Kekaha is first and foremost."

ADC executive director Alfredo Lee said that the triangle parcel would have to be transferred back to the state Department of Land and Natural Resources to accommodate a PV project.

Rymsha said that while he understood the ADC's restrictions on leasing land, he did not understand how that applied to Pac West, which was proposing to cultivate biofuels.

"All the land went to one entity... Why can't we co-exist?" he asked.

KAA representatives at the meeting chose

not to speak on the matter.

In the end, after an executive session, Rietow said that it would take Pac West's request under consideration.

After the meeting, Lee explained to *Environment Hawai'i* that the Kekaha committee did not actually approve a lease to PLP in September, but merely "accepted the project." Lease terms are still being discussed, he says. "We just said, 'We like your project, we'll work with you.' There's still a long ways to go."

He adds that he doesn't know how the investigative committee plans to deal with the issues raised, although he noted that the ADC has decided that the makai plain will be used for seed production and the mauka lands for energy.

Despite PLP's proposal to use 1,850 acres of mauka land, Lee says none of Pac West's land has been allocated. What's more, there may not be that much land available. Lee says he has not yet tallied how much land Pioneer Hi-Bred gave up. He said only that the total mauka land available is more than 750 acres and possibly more than 1,500.

Maloney says the ADC lands are important to Pac West's project, representing about 10 percent of his company's total land requirement on Kaua'i. They are also very close to its mill site.

"I think there was the view that since we lost those lands, our project wouldn't go forward," he says, which is not true. "We've acquired the [mill] site, we're going to go through with it."

Still, the Kekaha committee's September decision hurt the company's credibility with people who thought it had the state's support, Maloney says.

It doesn't look good when a state agency refuses to lease lands that are important to the overall project, he says.

Maloney says that if they get a lease from the Department of Hawaiian Home Lands, which owns land adjacent to the ADC's lands, his company plans to improve the water system on those lands, which will benefit all the makai users.

While the final outcome is far from clear, Maloney says he is heartened by the ADC's promise to reconsider its decision.

"I believe that they have it within their power to facilitate both projects, and hope that their decision is a first step towards this end," he says.

Dam Liability

To some, it may appear that KAA and the ADC are in lockstep. But that's not the case. At the ADC's Kekaha committee meeting in December, they struggled to come to an

State's Proposed Hunting Rules Fail to Protect Forests, Critics Say

The state's management scheme for game mammals is in serious need of an overhaul and recently proposed revisions to hunting rules are only a minor improvement, conservationists say.

Instead of merely lifting bag and season limits in certain sensitive areas, the state Division of Forestry and Wildlife (DOFAW) should declare open season on all game mammals on state land, they argue. And except where public safety is a concern, hunters should be able to use whatever methods they want.

What's more, their claims that the state's rules aren't scientifically or rationally based is supported by new research on hunting trends over the past 125 or so years.

Rick Warshauer, a botanist and Big Island resident, recommended that the rules be approved only on condition that the Department of Land and Natural Resources present to its board by the end of July an entirely redrafted set.

The Conservation Council for Hawai'i also sees the rule revisions as an opportunity to improve the current paradigm by reducing feral ungulate damage while providing hunters with better access to animals.

"If feral ungulates and game mammals are going to continue to be managed on a sustained yield basis for hunting, these animals should be confined to appropriate hunting areas and fenced in," writes CCH executive director Marjorie Ziegler in her comments on the rules.

agreement over the emergency operation of reservoirs. Jonathan Chun, an attorney representing the KAA, had objected to language in a proposed plan that would have made the association responsible for operating the dams during times of emergency.

The ADC has no staff on Kaua'i and would need the KAA to do such tasks as manage irrigation system flows to prevent flooding during heavy rains.

The problem is, all of the ADC's Kekaha reservoirs are substandard and require upgrades.

KAA representatives said the association is concerned about the liability that comes with dam operation, noting that its memorandum of agreement with the ADC stipulates that the association would manage the reservoirs once the ADC brought them into compliance.

Comments must be submitted to the Department of Land and Natural Resources by January 10.

Shifting Policies

Unlike the mainland, where the vast majority of game species are native, all of Hawai'i's are introduced. And the native species that might have been candidates for game hunting, such as the nene, are either endangered, protected, or gone, says Christopher Lepczyk, a professor at the University of Hawai'i's Department of Natural Resources and Environmental Management.

Since the late 1700s, countless birds and ungulates have been imported to Hawai'i as game, the bulk of them arriving after World War II, according to new research by Lepczyk's graduate student, Deirdre Duffy. The boom in new game species introductions occurred as hunting was peaking on the mainland. DOFAW, trying to adopt more of a mainland-style hunting regime here, introduced mouflon, pronghorn antelope, black-tailed deer, and mouflon-sheep hybrids, Lepczyk says.

The move proved disastrous for the forests.

According to Warshauer, the decision to promote hunting in the latter half of the 1900s reversed progress made during the first half to contain and remove thousands of ungulates from Hawai'i's forests to protect watershed functions.

"A focus on hunting interests displaced traditional forest protection activities under the myth of multiple-use management," he

"If you're operating a non-complying structure, insurance goes through the roof," said KAA's Landis Ignacio.

The committee's deputy attorney general said she didn't think the state could indemnify the KAA, but it could try to work on some language that would allay the association's concerns.

"We all have to lobby for more CIP [capital improvement project] money" to upgrade the reservoirs, ADC director Alfredo Lee recommended.

(For more on the Kekaha committee's September decision, read the article in our October 2010 issue, "Agribusiness Subcommittee Approves Renewable Energy Project at Kekaha." All back issues are available online at www.environment-hawaii.org.)

—Teresa Dawson

writes in testimony to DOFAW. Forest reserve fences were left to degrade, allowing ungulates to enter and multiply. And now, "a huge portion of our native plants and animals and their habitats are threatened with extinction or already gone," he writes, with ungulates being the main cause.

"The wholesale damage to the native Hawaiian landscape by ungulates was the primary reason for the establishment of the forest reserve system in the first place, on both public and privately owned lands about a century ago," he writes.

In the 1940s, hunters were harvesting between 10,000 and 12,000 mammals a year. Today, it's down to six or seven thousand, according to Duffy's analysis of public records.

Environmental and cultural concerns stopped the introduction of new game mammals in Hawai'i in the mid-1970s, Lepczyk says. But by then, those that had become established were wreaking havoc.

Warshauer argues that the state has not only failed to control the ungulate threat, it has fueled it:

"[T]he somewhat liberalized hunting restrictions (bag limits, seasons, etc.) have received a fair amount of negative feedback in some hunter comments on this draft, but remain so restrictive that a positive change in impacts to native plants and animals still cannot be expected. Even more egregious is the long-running debacle on Mauna Kea," where ungulates have decimated the mamane trees used by the endangered palila for food.

Decades ago, the late U.S. Judge Samuel King ordered the state to remove goats, sheep and mouflon from the Mauna Kea forest reserve and palila critical habitat.

Early on, Warshauer writes, the DLNR was on the verge of eradicating ungulates from the reserve, but an apparent change in policy dropped the rate of removal below the rates of ungulate replacement. The population then grew and spread.

"They now freely re-enter the Mauna Kea [forest reserve]. In accepted game management methodology, this implementation is called sustained yield management, not removal. These hybrid animals, intentional creations of the DLNR on Mauna Kea, are capable of breaching the standard conservation fences that previously protected native biological resources from goats, sheep and pigs, rendering all such fences obsolete unless subject to expensive upgrades," he writes.

In one core palila habitat on Mauna Kea, the DLNR limited ungulate removal method to archery, "fortunately reversed in this draft," Warshauer says, since ungulate impacts have increased and the birds' population plumed

in the meantime.

Warshauer describes a similar situation with the endangered nene in the Kipuka Ainahou Nene Sanctuary. Mammal hunting there is also limited to archery, in addition to seasonal and bag limits. "The result has been a breeding ground for mouflon, which compete for food resources with the nene, another one-sided management balance where the native species lose by design," he writes.

"For decades, numerous scientific evaluations and public observations have been redundant in pointing to the many ways that these ungulates have damaged species and their habitats, and made them prone to displacement by invasive plants. This evaluation has not been subject to logical refutation by any credible DLNR studies, nor has there been real change in DLNR [forest reserve] policy or implementation of any substantive hunting rule changes to reverse the degradation. This draft is much the same," Warshauer says.

'No Rational Basis'

How the state determines appropriate take levels of game mammals in general is a mystery and one of Warshauer's biggest complaints.

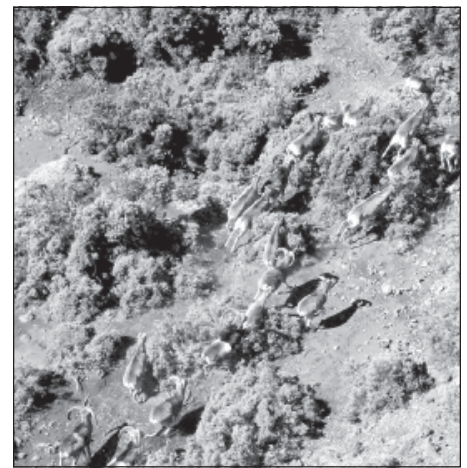
A reading of the rules reveals that hunting is treated inconsistently across different areas. For example, across the various components of the state's Natural Area Reserves System, which represents the best of the best native habitat in the state, there is no uniform approach to managing hunting.

The proposed rules eliminate public hunting without an animal control permit from all NARS units on O'ahu, Maui and Molokai. For Hawai'i island units, DOFAW proposes lifting bag and season limits, while in Kaua'i's Hono O Na Pali NAR, it would limit take to two animals per hunter per day.

DOFAW did not return calls by press time asking for an explanation of the apparent inconsistency in rules regarding the NARS. One possible reason is that the division is close to eradicating ungulates in certain NARS, for example, Pahole NAR on O'ahu.

But, writes Warshauer, "There is no rational basis for setting seasons or bag limits or requiring tags anywhere within the public lands designated for hunting. There is no field data gathering to verify or guide why such limits are appropriate in some areas but not others within this large landscape — it is all arbitrary. Even the requirement to check-in and fill out hunter-take forms is a total waste."

He argues that the DLNR has not conducted any serious studies on ungulate numbers, ranges, reproductive rates, food habits,



Mouflon sheep at the Kahuku Unit of Hawai'i Volcanoes National Park.

PHOTO: BEN KAWAKAMI, JR.

impacts or life history since retired Big Island branch chief Jon Giffin's work nearly thirty years ago. He adds that the department has not even used Giffin's data in setting hunting areas and restrictions.

"It is all determined by the seat-of-the-pants," he writes, adding that he believes the rules merely reflect the views of various fiefdoms with the department.

On the mainland, Lepczyk says, hunting license fees pay for wildlife biologists to manage wildlife populations and restore habitat and conservation officers collect data from hunters on the sex and age of animals taken, and where they were taken from. Hawai'i, which has low hunting fees, has no equivalent, he says.

Data are self-reported here and people don't report much other than number of animals harvested and a rough location, he says.

Annual harvest reports submitted to the U.S. Fish and Wildlife Service aren't consistent, he adds. "Some years, there's missing data, some years it's not very complete."

Even Duffy's numbers are probably not accurate, Lepczyk says, since he believes that hunters report only half of the game mammals they take. The other half are poached, he says.

"There is the thought that different islands and different game areas have marked differences," in terms of reporting accuracy, he says, with one possible reason being that some hunters may not want others to know how rich an area is or how much they've taken, so they under-report.

He says that the older harvest reports are much more complete than more recent ones.

"Different islands have not participated as fully at times. I think a lot of evidence suggests they're not very accurate and sometimes you can even see that in the data," he says, noting, as an example, that experts believe take levels

reported for the island of Hawai'i are much lower than they really are.

Even so, Lepczyk believes the general trends Duffy has identified are accurate. On Hawai'i island, bird takes are increasing while there's been a steep decrease in mammals hunted. Hunting is increasing for both birds and mammals on Kaua'i and decreasing on Maui. Trends on O'ahu are generally flat.

Duffy's efforts to gather hunting data have revealed some real fundamental problems, Lepczyk says.

"We don't collect data very well. ... Arguably, nobody has population estimates of any game species," he says, adding that most states try to estimate a population size for a game species and then try to manage it at some level.

He adds that even conservation organizations don't record and compile sex or age data on culls.

"Hawai'i is challenged, even with native species that we care a lot about. We don't have good monitoring. It's not something that gets funded," he says.

The Big Picture

A very small percentage – perhaps as little as 3 percent – of Hawai'i's population hunts. Even so, achieving consensus on how game species in Hawai'i should be treated is "very challenging" with so many different stakeholders, Lepczyk says. In addition to comments from conservationists like Warshauer, the state has received responses from animal rights activists calling for a ban on the use of hunting dogs.

To Warshauer and Ziegler, however, consensus is not necessarily an immediate goal. To them, the legal issues must be dealt with first of all.

Warshauer points out that the state may be liable for damages caused by animals they are charged with managing.

"As long as the state/DLNR is promoting the spread of ungulate impacts tacitly—forget the stated intent—is there not a responsibility for these impacts? Decades ago, Judge King thought so in the limited case of sheep, goats and mouflon on Mauna Kea. What will other judges and plaintiffs' attorneys think in the larger arena? Who pays if the decision goes badly for the state? This situation needs to change, and the DLNR should be a primary agent of needed change, starting now," he argues.

Ziegler adds that managing feral ungulates and game mammals in critical habitat for threatened and endangered species requires an incidental take permit and a habitat conservation plan.

— **Teresa Dawson**

Utilities Propose Stricter Standards For Distributed Generating Facilities

It may get even harder for renewable energy projects to hook up to electricity grids on O'ahu, Maui, and Hawai'i if a proposal by the utilities on those islands wins state approval.

The utilities say they are just trying to protect those grids and their workers from the problems that can arise when the amount of electricity being generated is too great compared to the demand.

But opponents aren't buying it.

On January 7 of last year, Hawaiian Electric Company, Maui Electric Company, and Hawai'i Electric and Light Company asked the Public Utilities Commission to amend the interconnection standards for distributed generating facilities.

Perhaps most significantly, the companies sought to add another threshold that would trigger an interconnection requirement study (IRS), a potentially costly and cumbersome undertaking that, according to industry experts, has scared off developers in the past.

Within two weeks of the companies' filing, the PUC received protests from the state Department of Business, Economic Development, and Tourism, the Solar Alliance, the Hawai'i Solar Energy Association, Blue Planet Foundation, and Zero Emissions Leasing, LLC. Several other renewable energy groups and companies joined the docket (2010-0015) in February.

Under current interconnection standards, which the PUC amended in May, an IRS is

required if the aggregate generating capacity of a particular part of the grid exceeds 15 percent of the annual peak load. The threshold used to be a mere 10 percent before the PUC amended it last summer, after much negotiation among the parties.

In its January proposal, the HECO companies proposed that an IRS also be required whenever generating capacity exceeds 33 percent of a circuit's minimum load when the proposed generation is available.

As distributed generating facilities are added to a circuit, the companies argued, the potential for problems with voltage regulation, the protection system, and islanding—a dangerous situation where a facility continues to generate electricity even when the grid is down—increases.

The proposed modifications are consistent with professional standards, the companies say. They based the proposed 33 percent threshold on "the physics of response of power generation equipment under the range of conditions expected to be encountered when connected to the power system."

According to DBEDT's filings, however, notwithstanding the companies' arguments, the additional threshold is unnecessary given existing design and operating requirements for the distributed generation facilities. These are specifically intended to address things like islanding and voltage disturbances, DBEDT states.

A Summary of the Proposed Hunting Rules Amendments

- **Re-establish** by rules the hunting fees that were in place on December 31, 2007, the date of an appellate court ruling on game bird hunting fees.
- **Update** conditions, seasons, new hunting areas, safety zones, and closed areas.
- **Establish** provisions for disabled hunting permits to comply with the federal Americans with Disabilities Act.
- **Add** provisions to allow temporary closure of public hunting areas to address imminent threats to public safety or natural resources or to comply with the requirements of lessees.
- **Update** the description and maps of public hunting areas to reflect current conditions, boundaries, additions, removals, or changes in land designations.
- **Remove** the Natural Area Reserves from public hunting for O'ahu, Maui, and Moloka'i. The Division will continue to issue animal control permits to the public whenever it is safe, feasible, and effective to do so.
- **Remove** the bag limits for all game mammals in all the NARS on Hawai'i Island.
- **Change** the conditions for hunting game mammals in some areas of Kaua'i to insure hunting opportunities.
- **Modify** the conditions for some units that support sensitive native resources, watersheds, and areas of federally designated critical habitat to daily hunting year round.
- **Establish** the minimum age of hunting as 10 years old.
- **Add** the Pu'u Mali Mitigation area on Hawai'i island for game bird hunting.
- **Add** agricultural lands as new public hunting areas on Kaua'i.

Hokukano Sandalwood Logging Scheme Coming to a Head in Bankruptcy Court

Within the next few weeks, a judge in federal Bankruptcy Court in Honolulu may decide the fate of a company that is logging thousands of tons of sandalwood from lands high above Kealahakua Bay, in what was once one of the densest stands of sandalwood in the islands.

The company, Jawmin, LLC, is in bankruptcy not because it has no income, but because it defaulted on a note it gave to acquire 2,800 acres at the top of Hokukano Ranch, some eight miles mauka of the

Hawai'i Belt Road at an elevation of more than a mile above sea level. Jawmin was to pay \$9 million for the land: \$1 million down, \$3.5 million due June 13, and the balance on August 12, according to the promissory note it gave to seller Tom Pace, owner of Hokukano Ranch.

A month after Jawmin missed the June payment, Pace brought a foreclosure lawsuit in 3rd Circuit Court. But before that could move forward, Jawmin filed for Chapter 11 protection in Bankruptcy Court, putting on

hold any action in state court.

More than six months later, it remains there, with a pending motion from Pace's attorneys for a court-appointed trustee to manage the company's assets and another motion, from Jawmin, asking the court to approve a reorganization plan. On January 25, Judge Robert J. Faris is scheduled to hear the motions.

'Cat Will Be Out of the Bag...'

Documents filed with the court show the behind-the-scenes maneuvers of Jawmin's principals — Wade Lee, Arthur "Jeff" Lee, Matthew Charbonneau, and Allen Gourley — to obtain the land without disclosing to Pace their interest in the sandalwood. According to a statement of Wade Lee, made in

The agency adds that the companies have provided no evidence that an IRS triggered by the 33 percent threshold would yield solutions that aren't already required.

What's more, the Blue Planet Foundation argues, the 33 percent trigger reverses gains made this past summer, when the existing threshold was increased from 10 to 15 percent. The foundation points out that HECO had also committed to the 15 percent trigger when it signed an energy agreement with the state in October 2008 to try to achieve 70 percent clean energy use by 2030.

Using the companies' own load data, the foundation determined that a 33 percent threshold would effectively reduce the 15 percent threshold to an average of 12.9 percent, 13.8 percent, and 12.2 percent for HECO, HELCO, and MECO, respectively.

And for nearly a third of the circuits on Maui, 16 percent of those on Hawai'i, and 9 percent of those on O'ahu, the IRS threshold would be reduced to below 10 percent, Blue Planet found.

To the solar industry, these thresholds have become a de facto cap on renewable energy development.

"The reason is that the risk and burdens associated with the HECO companies' IRS process, including the lengthy time frame, which undermines project financing, and uncertain costs of the study and potential required upgrades, in most cases compel renewable energy developers either to downsize the proposed project so as to fall within the penetration limit, or to abandon the project altogether. Already, the existing penetration limit has resulted in millions of dollars of commercial and residential projects not being built, with tens of millions more to follow. The bottom-line is that the feeder penetration limit or threshold is the most potent

barrier to development of distributed renewable energy projects in Hawai'i," states a joint filing by the Solar Alliance, the Hawai'i Solar Energy Association, and the Hawai'i PV Coalition.

Data offered by the Blue Planet Foundation support their argument that developers downscale their projects to avoid the need for an IRS. Of the more than 2,200 distributed renewable energy facilities that are connected to the companies' grids, interconnection studies have been done for only eight.

Even with only the 15 percent trigger, an increasing number of renewable energy facilities will be forced to conduct an IRS, the Blue Planet Foundation adds.

"Streamlining the process by consolidating IRSs and related measures — rather than adding new triggers — will be necessary to achieve Hawai'i's energy objectives," it states.

With interconnection standards in flux,

renewable energy producers have held off from participating in the state's new feed-in tariff program, which was intended to spur development, says Mark Duda, president of the Hawai'i Solar Energy Alliance.

"There's no security for the developers. The ability of the utility to pick and choose [which projects can connect] is making people skittish... People don't know what they're signing up to," he says.

What's more, no one involved in the PUC's various dockets knows when the much-awaited reliability standards working group will convene or even how its membership will be decided. The group, proposed by the HECO companies and approved by the PUC, is supposed to help determine reliability standards. Some opponents to the proposed changes have suggested that the issue be left for the group to decide.

— **Teresa Dawson**

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a November deposition, at first, he and his partners were looking at lands for sale that might be suitable for growing koa. But then “the topic of sandalwood had come up, brought up by my brother Jeff... He had heard that the sandalwood world was looking for a new supply because the Chinese had just bought out all the sandalwood in Fiji.”

Wade Lee acknowledged in the deposition that he had no prior knowledge of sandalwood markets. “To see what kind of market really existed there for Hawaiian sandalwood and what people knew about it,” he said, he advertised sandalwood for sale online, through another company of his called Keala Ke Aloha.

At this point in the process – early 2009 – Lee had no access to a source for sandalwood other than “several logs,” he said, and the only reason he made the internet posting was to test the market. When a potential buyer did come forward, Lee sent him photos of sandalwood logs belonging to someone else.

By March of 2009, emails among the Jawmin principals were focused on the presence or absence of sandalwood on the several properties in North and South Kona that were then being offered for sale. In an email dated March 19, referring to the “Pace acreage,” Jeff Lee wrote that the most important thing “is being clear that the resources are owned” when the option to purchase is exercised. “I may be a little over sensitive to undermining strategies but I believe this is a great opportunity and I know Tom [Pace] is surrounded by torpedoes.” (Pace needed quick cash to settle several outstanding claims on other properties owned by him or Hokukano Ranch.)

The “cat will be out of the bag soon enough on Sandlewood [sic],” he continued.

“... Better get the option formalized so that opportunity is protected.”

Even as Lee and his partners were calculating how much value was in the sandalwood on Pace’s upper-elevation lands, they were representing to Pace that their interest in purchasing the property was solely in reforesting the area for some “futuristic” profit, Pace said in a deposition last July. At no time, he insisted, did they show any interest in logging sandalwood.

Student Help

In his deposition, Lee described his intention to have Randy Senock prepare a thorough forest management plan sometime in the coming summer months. Senock, formerly a professor at the University of Hawai‘i-Hilo and now with California State University-Chico, has a private consulting firm called On Solid Ground that conducted a sandalwood inventory for Jawmin last year.

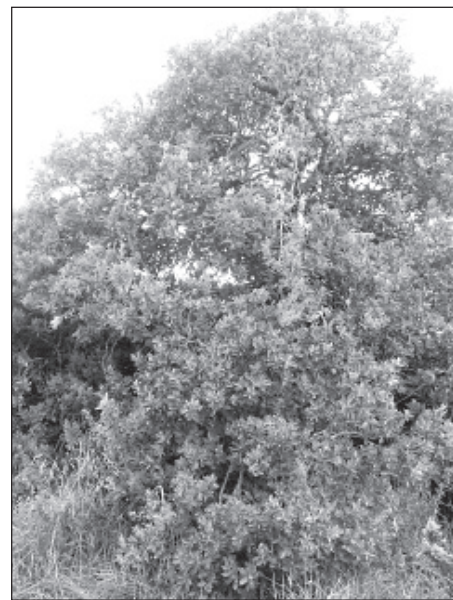
Developing the new management plan will involve, among other things, taking inventory of and grading every tree on the property, “probably 160, 170,000 trees,” Lee said.

“How much is this going to cost to mark every single tree?” Hokukano attorney William Harstad asked.

“About \$50,000,” Lee replied, adding that Senock would be doing the marking along with two assistants and 20 graduate students “on a two-credit course from the University of Hawai‘i and Chico State.”

“Are they being compensated for this?” Harstad asked.

Lee replied that they would not be, but “Jawmin is.... We’re negotiating that now, but it looks like for their one-month stint each student will pay Jawmin \$2,000 to gain the experience.” Jawmin would be paying Senock for the forest management plan, but as far as his teaching role was concerned, “the university will be paying him,” Lee said.



Sandalwood Tree

Environment Hawai‘i asked Senock about this arrangement. He acknowledged in an email message that even though this was a “private consulting project for me, I have considered trying to incorporate the project into a CSU-Chico ... intersession course offering on tropical natural resource management.” The Hokukano project would be one part of the overall course, he wrote.

The students would pay, not for the ‘privilege’ of working, he said, but for the “opportunity ... to experience firsthand the real-life issues of ecological restoration.”

Such courses, he added, need to be self-supporting, “which means that student tuitions have to have a minimum enrollment to cover most of the cost of the course, including the instructor’s salary. System employment rules/regs will not allow me to collect additional salary, and I certainly cannot and would not expect any additional compensation from Jawmin for this.” — **Patricia Tummons**

