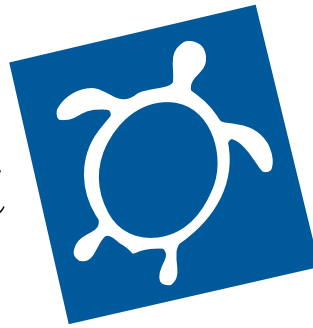


Environment



Hawai'i

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Manini Fishery, Monumental Bailout

As fisheries go, the Northwestern Hawaiian Islands bottomfish fishery is about as microscopic as you can get: eight or so boats, and an annual landed value of fish in the low six figures. Only the NWHI lobster fishery, with no revenues for a decade or more, is smaller.

But the federal bailout for the holders of permits in these two fisheries is nothing short of monumental: \$7 million – or, to put it another way, 1 percent of the total fiscal-year 2008 budget of the National Marine Fisheries Service.

Were that not enough, the most recent appropriation is the second major payout to the bottom- and lobster fishers.

Can anyone say “earmark”?

\$6.7 Million Earmark May Compensate NWHI Bottomfish, Lobster Permittees

For the second time, Congress has decided to compensate bottomfish and lobster fishers for financial losses resulting from federal regulations that limit commercial fishing opportunities in the Northwestern Hawaiian Islands.

In January, President George Bush signed the Consolidated Appropriations Act, which included an earmark of \$6,697,500 – inserted by Hawai'i Sen. Daniel Inouye – to compensate federally permitted commercial bottomfish and lobster fishers who will be displaced by the fishing regulations for the Papahānaumokuākea Marine National Monument in the Northwestern Hawaiian Islands. Under the 2006 presidential proclamation that created the monument, commercial lobster fishing harvests have been capped at zero, and all commercial bottomfish and pelagic species fishing must end by June 15, 2011.

In justifying the appropriation, the conference committee stated in its report, “For more than 30 years, fishing in the Monument area has been carefully managed by the Western Pacific Fishery Management Council based on the best available scientific information. During that time, limited and highly regulated sustainable fisheries have provided lobsters and bottomfish to Hawai'i and U.S. consumers.... The Presidential proclamation will end all commercial fishing in the Monument as of June 15, 2011. The amended bill provides specific authorization to the Secretary of Commerce to provide compensation to fishery participants who will be displaced by the 2011 closure.”

Under the act, the commerce secretary must create regulations that allow individuals with valid federal lobster and bottomfish permits to be compensated for no more than the economic value of the permits.

The regulations must also provide for additional compensation, at the option of the permit holder, based on the value of a permit holder's fishing vessel and gear, so long as the permittee agrees not to use the vessel for fishing in the future.

The \$6.7 million grant will be administered by the National Marine Fisheries Service. William Robinson, administrator for the NMFS Pacific Islands Regional Office, says that his office is still working out how the money will be distributed and plans to publish a proposed rule for the

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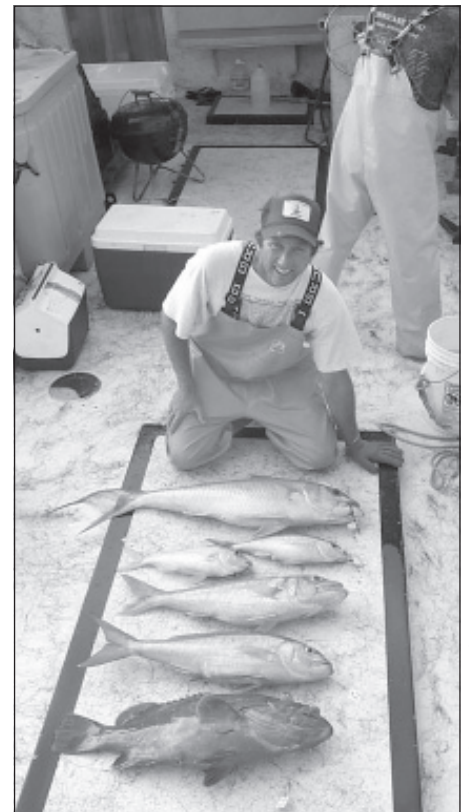
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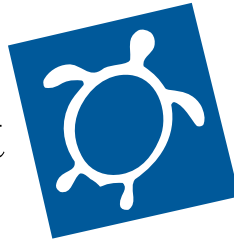
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Six of the major Hawaiian bottomfish species with a hydraulic reel used to catch them.

PHOTO: NOAA/DAVE ITANO

Environment Hawai'i



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June 2008

NEW AND NOTEWORTHY

Old 'Ohi'a: Pat Hart thinks he may have found the oldest broad-leaf trees in the Northern Hemisphere – right in his back yard. More than a decade ago, Hart, a professor of biology at the University of Hawai'i – Hilo, began studying 'ohi'a (*Metrosideros polymorpha*) at the U.S. Fish and Wildlife Service's Hakalau Forest National Wildlife Refuge, on the windward slopes of Mauna Kea. His motivating concern was to understand whether the forest at Hakalau would have enough old-growth 'ohi'a a hundred years from now to support populations of some of Hawai'i's most endangered birds, which rely on the niches and cavities in the old trees for habitat.



PHOTO: FOREST AND KIM STARR

'Ohi'a (*Metrosideros polymorpha*)

His initial impression was that the old-growth trees "seemed to be falling down," and, given the notoriously slow growth of 'ohi'a, Hart said, he was worried that at some future

point, not enough trees would be available to support healthy populations of the forest birds, particularly the 'akepa. But after measuring the growth and death rates of young trees, Hart concluded that the proportion of old-growth 'ohi'a is actually on the rise, now that cattle and pigs have been eradicated from most of the refuge. "Large trees ... are generally not falling faster than they're being replaced, which is good news for birds, trees, and people," he said at a

recent seminar.

But a funny thing happened en route to that conclusion. Hart shipped a "slice" of a recently fallen old 'ohi'a to a lab on the mainland, where tests determined the age of the tree to be around 600 years. Hart also discovered that – at least at Hakalau – the age of an 'ohi'a was closely correlated to its diameter: trees between 60 and 70 centimeters in diameter, commonly found at Hakalau, are probably around 400 years old.

That, Hart said, "makes 'ohi'a the oldest known broadleaf trees in the United States." What's more, "Hakalau may be the oldest broad-leaf forest in the Northern Hemisphere," he said. "It's a significantly ancient forest."

Food or Fuel? "The amount of wheat needed to create enough ethanol to fill the fuel tank of a single SUV would feed one person for a whole year." That statistic, cited by former Italian prime minister Romano Prodi in a speech last April, underscores the high human cost of biofuels.

And don't take Prodi's word for it. Worldwide, futures of vital food grains such as rice, wheat, and corn have soared under the double whammy of drought and growing demand for biofuel stocks.

"Something must be done," Prodi said, "to ensure that both the United States and Europe stop producing fuel in competition with food.... People can no longer be allowed to starve to death in Africa simply because there are some people in the United States or European Union who consider that the votes of farmers or landowners are worth more than the survival of millions of men and women."

Today's policies were set in motion "when we thought we were living in an energy-poor, food-rich world," he said, "but that is no longer the case today."

According to the International Food Policy Research Institute, based in Washington, D.C., if biofuel production ceased, the price of corn in world markets would drop 20 percent by 2009, while wheat would fall 10 percent.

Fuel or Fresh Water?: To many, the solution to the food vs. fuel problem surrounding biofuel production lies with microalgae, a non-food crop that theoretically has the potential to yield huge amounts of biodiesel. But according to Hawai'i Natural Energy Institute researcher Michael Cooney, those believers, which include engineers and scientists, have not seriously considered the cost of water involved in turning microalgae into fuel.

Water use and extraction of oils from algae cells are the two biggest problems this crop faces, Cooney said in a recent presentation at the University of Hawai'i. And as far as he's concerned, those two problems – which he calls the 9,000-pound gorilla and 9,000-pound Godzilla in the room, respectively – can't be overcome cost-effectively. "Too much money is raised to areas that will not deliver," he said.

With regard to water use, to grow enough microalgae to make one gallon of biodiesel would require nearly 3,000 gallons of fresh water, he said. That's roughly equivalent to 464 full household-sized water heaters for one 20-gallon tank of gas, he said, adding that if the water used is recycled wherever possible, that amount could be reduced to as little as 7.2 gallons of water per gallon of biodiesel (or 1.2 water heaters per 20-gallon tank).

Even with the reduction in water use that comes with recycling, it would take many millions of gallons of water to grow the algae on an industrial scale. And, Cooney said, "It'll take more energy to dry [the algae] than you'll get out of it."

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Quote of the Month

*"A grantee recipient of federal funds
should be honest."*

– **Scott Bloom, NMFS**

NMFS Reporting Requirements Give Council Broad Leeway over Spending

In partial response to a Freedom-of-Information-Act request by *Environment Hawai'i* filed last November, the National Marine Fisheries Service Pacific Islands Regional Office in March delivered 254 pages of records relating to Western Pacific Fishery Management Council activities. This is the second bolus of documents coughed up by the council and the agency in response to the request.

Included in the recent shipment were copies of the council's budgets for 2005 through 2009, which are presented to NMFS in the form of a five-year grant application. The budget was just shy of \$5 million for the 2005 calendar year (\$4.963 million). Increases of 5 percent were anticipated for each of the listed years, with the 2009 budget pegged at \$6.159 million. The current year's budget is given as \$5.848 million. Totals for the five-year period come to \$27,770,862.

Salaries and fringe benefits make up the largest chunk of the council budgets. For 2009, around 23 percent of the overall spending falls into this category (\$1.416 million).

But the budgets represent only a projection and not necessarily what the council actually has spent or will spend in future years. At a NMFS website showing all grants (including those for the regional fishery management councils), the five-year umbrella budget for the Western Pacific council shows up as \$14,572,465. Scott Bloom, grant program manager for the NMFS Pacific Islands Regional Office, said he believed this amount reflected funds that NMFS has paid to the council since the inception of the award in 2005. However, details of the grant (award NAO5NMF4411092 on the NOAA website, grantsonline.rdc.noaa.gov) do not support that interpretation.

Bloom also noted that the actual amounts received depend on year-to-year congressional appropriations as well as internal NMFS formulae that determine how lump-sum budget amounts are to be allocated among the regional councils.

So how much does the council really get and spend? The question may be simple. Answering it is anything but.

A Blurry Picture

Money that the council receives from the federal government is awarded in the form of

grants. In addition to the basic operational grants (budgets for which are included in the five-year proposal), the council also receives grants for specific projects, often the result of earmarking in the congressional budget process.

Since the beginning of the 2006 federal fiscal year, the council has received roughly \$10.8 million against its primary operational grant, according to the National Oceanic and Atmospheric Administration website. An additional \$2 million has been awarded to the council for assessment and management of coral reef ecosystems, adding up to some \$12.865 million, or, on average, about \$4.3 million a year.

Documents provided to *Environment Hawai'i* thus far do not show line items for the five-year umbrella grant of \$14.5 million. It is thus impossible to tell from these records alone whether any given line item on the council-proposed budget has been fully funded in a given year or has been cut.

Consider, for example, the salary of council executive director Kitty Simonds, whose 2004 base pay is stated in the budget application to have been \$121,352.73. The council's proposed budget shows her base salary increasing yearly, from \$126,328 in 2005 to \$148,355 in 2009. To this are added annual "supervisory increases" (6 percent of the previous year's base pay) plus the standard 25 percent cost-of-living adjustment, making the projected annual salary range from \$167,385 in 2005 to \$195,571 in 2009.

Over and above this are various fringe benefits, including contributions to retirement plans, "employer discretionary contributions" of 12 percent of base pay (elsewhere in the budget documents described as "profit-sharing"), and premiums for life, health, and dental insurance. (The council also pays \$29,258 for "long term care" insurance, but this is not allocated among specific employees.)

When the fringe benefits are included, Simonds' pay for 2009 rises to at least \$237,995, excluding employer contributions to Social Security and Medicare.

(A word is in order about the so-called profit sharing: along with Simonds, all other full-time regular employees of the council receive this benefit. As one internet site explains, "discretionary contributions are employer contributions that are unrelated

to employee contributions. They are analogous to contributions made by an employer to a qualified profit sharing plan, where the employer may or may not make a contribution each year." The contribution goes into a fund, much like an IRA or 401(k) plan, that can only be drawn against when a worker retires or under other restricted conditions. This is over and above the "retirement contribution" of 3 percent that council workers receive and the standard Social Security and Medicare contributions.)

But without more information, it is impossible to know exactly what Simonds has been paid since 2004.

And under the terms and conditions of the council's grant award, it would seem as though even NMFS itself does not know Simonds' salary. Bloom says that the council is obligated to provide periodic reports on its expenditures, but that these reports include only lump-sum amounts of what was spent. No breakdown of expenditures is required, he told *Environment Hawai'i*.

No Volunteers Here

Contrary to what members of the public may think, members of the council do not serve as volunteers, but instead receive pay of \$623 each day that they attend to council business or travel to or from council meetings. (Base pay is set for 2008 at \$498 a day, plus a cost-of-living adjustment of \$125 a day, which council members receive since they are regarded as federal employees for the days they "work" for the council.)

In addition to the pay they receive for council meetings, members also are paid for days they are on official council business. For example, in 2008, council chair Sean Martin is anticipated to have 12 meetings with Executive Director Simonds, and for each meeting, he will receive \$623 – even if the meeting lasts only an hour. That comes to \$7,470, over and above the \$9,345 that he receives for attending three council meetings. Whenever the council meets in a location other than Honolulu, as it did earlier this year, Martin would receive daily pay for his travel time, and, if the council meets unexpectedly – as it did in April, when it had to re-do the votes taken at the (improperly noticed) Guam meeting, Martin gets paid again. When Martin goes to Washington to discuss NMFS' budget, that, too, qualifies for five days' pay, or \$3,115 (plus the daily allowance for lodging, meals, and incidentals). When he attends the meeting of regional fishery council chairs, he racks up another \$3,115 in pay. There

Western Pacific Council Tops In Financial Grants from NOAA

Honolulu doesn't even make the list of the nation's top 10 ports when it comes to the volume of fish landed, but the Western Pacific Fishery Management Council leads the way when it comes to dollars hauled in.

According to an August 2007 press release from the National Oceanic and Atmospheric Administration, Honolulu was not among the top ten commercial fishery landing ports. In terms of the value of fish

landed, it came in at fourth (\$54.6 million worth of seafood) – far behind New Bedford, Massachusetts, the leader with \$281.2 million worth of seafood landed.

But when it comes to the value of landed grants, the council takes a back seat to none. A review of information posted at NOAA's grantsonline website shows that among the eight regional fishery management councils, the Western Pacific council races ahead of the competition. The chart

Council	5-year Cooperative Agreement Awards	Coop. Agreement Payments to date	Additional Grants Since 1/1/05	Total Grant Payments for FY 05 to present
Western Pacific	14,572,465	10,780,834	2,085,038	12,865,872
Pacific	13,804,904	11,534,626	0	11,534,626
North Pacific	11,574,034	9,456,516	0	9,456,516
New England	10,390,344	7,964,463	360,000	8,324,463
South Atlantic	9,176,601	7,740,623	522,585	8,263,208
Gulf of Mexico	9,142,523	7,412,669	1,407,585	8,820,254
Mid-Atlantic	8,844,388	7,154,657	0	7,154,657
Caribbean	4,472,351	3,557,332	522,585	4,079,917

may be additional meetings he attends; the budget documents are not clear in identifying which council members are expected to attend the various tuna conferences and other meetings that are listed in the "council compensation" spreadsheet. It's probably safe to say, though, that pay for Martin alone comes to between \$25,000 and \$30,000 for the current year.

Altogether, the 2008 budget anticipates council compensation to the tune of \$152,951. This does not include travel or per-diem costs, which, as of May 1, rose to \$283 a day for Honolulu. (Per-diem rates are supposed to cover members' costs of lodging, meals, and incidentals.) Total travel costs for the council members are estimated at \$83,195 for 2008.

Ghost Employees?

For the entire five-year period of the budget, the council staff roster includes a deputy director. For 2005, the position is shown as vacant, but for 2006 and beyond, the deputy director's position is indicated to be filled at

a salary of \$105,470 in 2006, increasing to \$119,000 in 2009. At no time has the position been filled. For the four-year period from 2006 through 2009, the total amount budgeted for this position comes to roughly half a million dollars. Other positions for which funds are requested remain unfilled as well, to judge from a comparison of the staff listed on the council's website (www.wpcouncil.org) against the budget.

Do the unfilled positions mean that the council has unspent funds that accumulate? If so, what approvals, if any, are needed for the funds to be redirected to other programs?

Under standard terms and conditions of awards made by the Department of Commerce, NOAA's parent agency, recipients have to spend the money in accord with the budgets approved in the grant award process. According to Bloom, any redirection of funds has to be approved by him (as grant program officer) or by headquarters should the amount exceed 10 percent of the total grant award.

below shows the basic five-year cooperative agreements, covering most day-to-day costs, in the second column. The "received to-date" column indicates the total amounts received on the cooperative agreements as of the most recent postings on the website. The next-to-last column on the right shows additional grants received as a result of congressional earmarking. The final column shows total receipts from NOAA since January 1, 2005, for each of the councils.

The NOAA grants are not the whole story, of course. Often funds intended to support fisheries in a given region are directed to agencies other than the councils, such as university-affiliated programs and research.

In addition, in the 2008 budget, Congress inserted earmarks that will directly aid the fishing industry in certain areas. As reported elsewhere in this issue, the National Marine Fisheries Service budget was boosted by nearly \$7 million to buy out bottomfishers and lobster fishers. Another earmark directs nearly \$13.4 million to the Massachusetts Division of Marine Fisheries to help fishers who have been economically harmed by regulations in the ground-fish fishery. (The full 2008 appropriations bill and committee report, including a list of earmarks, are available online at the Library of Congress website: www.thomas.loc.gov/home/approp/appo8.html.) — P.T.

But beyond that, there seems to be little control over how the council spends its money. "We're limited by public law 106-107," Bloom said. "The only thing the grantee is required to do with financial reporting is to submit form SF272, for cash transactions. This gives us a snapshot, it tells us how much you spent. But it's a lump sum. They also submit an activities report, but they don't have to report what any given activity cost. We can't change that."

Absent evidence to the contrary, he said, NMFS has to assume its grantees exercise proper stewardship of federal funds and maintain books accurately reflecting expenditures and income. "A grantee recipient of federal funds should be honest," he said.

Still and all, he added, the loose reporting requirements "are a huge consternation, agency-wide." Efforts to obtain comment from the council's financial officer time were unsuccessful by press time.

— Patricia Tummons

If at First You Don't Succeed... The Ongoing Saga of 'Aha Kiolo

In March, *Environment Hawai'i* reported on the efforts of the state 'aha kiolo advisory committee to award a contract to Leimana DaMate, whose involvement with the puwalu series of workshops sponsored by the Western Pacific Fishery Management Council has generated some controversy.

At that time, we noted that Gov. Linda Lingle had not released any funds for the committee and the state Procurement Office had sent back the Department of Land and Natural Resources' request to award a non-bid \$220,000 contract to DaMate to manage the affairs of the advisory committee, from the date of the exemption request (January 11, 2008) through June 30, 2009. The amount represented the total sum approved by the Legislature for the two-year life of the committee.

According to DLNR staff, the contract was intended to cover all of the committee's expenses, including compensation for DaMate, a former council contractor who has assumed the role of community coordinator for the committee. The request was bumped back, without approval, to the DLNR because its Division of Aquatic Resources failed to comply with a request by the chief procurement officer for documentation that DaMate was the sole source provider of the needed services. (In a follow-up letter to the procurement office, DLNR director and Board of Land and Natural Resources chair Laura Thielen stated, "The Department considers this an unnecessary duplication because the Chairperson already approved the exemption request.")

On April 14, the DLNR again submitted a form requesting approval of a non-bid contract to DaMate. This time, the amount sought was just \$15,000, representing an estimate of expenses already incurred as well as compensation for DaMate's services so far – even though the scope of services was identical to that included in the first request for exemption. And the date of service, too, was far more limited: from April 15, 2008 to "April 2008."

This time, the non-bid contract request was sent back to the DLNR on April 22 with a clear disapproval from the chief procurement officer. "These services are administrative in nature," the explanation states, "and there is insufficient justification on

why others should not be afforded the opportunity to provide these services to the committee."

With regard to the committee's travel expenses, Director of Finance Georgina Kawamura informed the DLNR in March that it should use existing resources to cover them. And in a February 19 letter to committee chair Vanda Hanakahi, Thielen promised that her department would help reimburse expenses documented as of that date, but urged Hanakahi to stop spending money since the legislative appropriation had not been (and has still not been) released by the governor.

Although it is unclear how – if at all – DaMate's services can be paid for without a contract with the state, an April email from Thielen to her staff indicates that the committee's reimbursement will come from the budget of the DLNR's Division of Aquatic Resources and not from any legislative appropriation.

While the committee has prepared its 2008 interim report to the Legislature and held a number of meetings at the personal expense of committee members, as of mid-May there was no breakdown in DLNR files of the total amount spent. The DAR's Francis Oishi says, "They submitted what they thought to be acceptable receipts. We have state standards that we need to apply. We returned the receipts and asked them to essentially recompile."

Despite Thielen's request that the committee stop spending money, Hanakahi wrote Oishi on April 29 seeking about \$2,850 for airfare and lodging for seven committee members and DaMate, and for wheelchair rental for two committee members. "[A]ll personal resources of the Kiolo have been exhausted," Hanakahi wrote, adding that the committee had scheduled a meeting in Honolulu in late May to plan its activities for the coming year and to discuss the committee's funding with Lingle.

Oishi says that a decision on Hanakahi's request is pending. "They want to meet with the governor. We're not going to even consider paying [until that meeting is confirmed]," he says. — *T.D. / P.T.*

LETTER

Kitty Simonds' Misleading Answers

I'd like to clarify something that Kitty [Simonds, executive director of the Western Pacific Fishery Management Council] misrepresented at the 141st council teleconference:

The email that I sent to all council staff consisted of a page from one of the multi-year budgets, that listed all staff positions and their base pay, fringe benefits, etc. The reason why I sent this to the staff and not to Kitty was that I was trying to get an answer from someone about what the "profit-sharing" portion of some staff members' pay was. I had already asked Kitty; I had already asked Sean [Martin, council chair]. No answer. So, since it was clear that, not only Kitty but her inner circle of people were getting this fringe benefit, I decided to ask them what it was about. I did not ask how much anyone was making. I knew that al-

ready. I asked only what the profit-sharing was. I knew that other federal fishery councils did not get this benefit because I asked them. The response was no.

If, in fact, there is nothing secretive about this "profit-sharing," also listed in some places as "employer discretionary compensation," then why didn't I get a forthright answer? And Kitty's response [at the council teleconference] that the profit-sharing is merely a 401(k) is specious: as I noted at the meeting, there is a hefty retirement fund allocation in addition to the profit-sharing. And what accountant is going to list a 401(k) as profit-sharing?

So, as you see, something still stinks here.

Tina Owens
LOST FISH Coalition

EMMA'S COLUMN

Trekking Through Lava Landscapes

Recently, I trekked around Kilauea — through lava landscapes where the earth opens up like a crystal ball and we can peer into the past and future of Hawai'i.

My first trip descended Hilina Pali, the long slope that stretches towards Ka'u and faces the windy ocean, following the melted wax of new lava dribbles from the mountain to the sea. Near the bottom, the path passes dry brush and a few caves until it reaches Ka'aha, the small bay near the foot of Pu'u Kapukapu.

I came to swim in the isolated waters, which were rough and blue in the lava desert sun. After being tossed around the ocean and blown by the wind, I headed back toward Hilina Pali, tired from the long hike and exposed landscape. Suddenly, however, I found shelter and calmness in the rifted expanse of lava. I came upon a crack that was only three feet wide with a narrow and very dark pool piercing 20 feet deep. Climbing down into it, the sounds of the ocean dulled and the wind stopped. I sank in perfect

stillness into the cold water darkness with my hair floating up to the thin line of light and my fingers brushing past both sides of the lava walls. A few miles away from this spot, lava seethed underneath and above the thin crust. Here, it was cold, peaceful, and still inside the



Ka'aha bay at the base of Pu'u Kapukapu.

Bottomfish from page 1

disbursement in the next few months. The proposed rule will include a methodology for determining the economic value of bottomfish and lobster permits, he says.

There are a little over a dozen lobster permits and about eight bottomfish permits within the monument. "If there's enough money for all permittees, they'll get all the money [for permits, vessels, and gear] but if not, they would get less," he says.

With regard to the vessel and gear compensation, Robinson says that his office is also working on a methodology for determining those amounts.

When asked whether he thought it was a worthwhile program, Robinson told *Environment Hawai'i*, "There's not a whole lot I can say. Congress has decided that the fishermen whose careers are being ended potentially or that their fishing opportunities are being eliminated by the establishment of the monument are entitled to compensation for lost income. That's not an uncommon thing. There are other precedents for it around the country."

(One example is the compensation package, approved by Congress in the late 1990s,

for Alaska's Dungeness crab fishery, which was impacted by regulations intended to protect Glacier Bay. Eligible fishermen were allowed to receive the greater of \$400,000 each or the fair market value of their commercial fishing permits. Like the NWHI bottomfish and lobster fishers, the Glacier Bay permittees were also eligible to receive compensation for their gear and vessels. Unlike Hawai'i's package, the Dungeness crab fishermen could receive, in addition, the value of foregone net income based on their earnings between 1987 and 1998. On top of that, \$23 million was made available to compensate fish processors, fishing vessel crew members, communities, and others impacted by the regulations.)

The First Round

While compensating fishermen for economic losses associated with federal actions is not unusual, NWHI bottomfish and lobster fishers have already received considerable closure-related aid. In early 2007, the state's Division of Aquatic Resources began disbursing a \$5 million federal grant, encumbered in 2003, for fisheries disaster relief to fishermen or fishing groups affected by federal fishing restrictions or closures, which

earth, enclosed by darkness. Some water droplets stay trapped underground for millions of years and I shared a few moments of that existence without sound, light, or change. Then, I followed my exhale bubbles frantically back to the earth's surface, to the light and nearby crashing ocean.

A few miles north, past Halape, I traveled to another tiny landmark on the vast coast. The hike to Keauhou is a long walk through the black desert, leading to a lava rimmed beach. There, a few dwarf coconuts overlook

at the time included President Bill Clinton's establishment of the NWHI Coral Reef Ecosystem Reserve (which later became the Papahānaumokuākea monument) and the 2000 closure by NMFS of the NWHI lobster fishery to prevent overfishing. (Before then, the lobster fishery had been closed on a year-to-year basis since the mid-1990s.)

In its 2003 application for the grant, the DAR had proposed setting aside \$1.68 million to purchase permits from fishermen forced or intending to leave a fishery, but later decided that it would be too difficult to determine the market value of the non-transferable permits. Instead, NWHI bottomfish and lobster fishers ended up receiving hundreds of thousands of dollars in direct aid. In addition, NWHI bottomfishermen were to receive a significant portion of more than \$1 million in research grants under the program.

Now, although the NWHI lobster fishery has been closed for more than eight years and only a handful of active NWHI bottomfish fishers remain, Congress earmarked \$6.7 million for these same permittees by claiming that the 2006 establishment of the Papahānaumokuākea Marine National Monument further harms them.

a luminous bay - a small spot of life that seems to smile in health alone and rarely seen. Even on a cloudy day, the small bay glows fluorescent and strange as if lit from below. A lush underwater field of coral flourishes, more abundant and colorful than any other place I have ever seen. In the sunlight, the refracted light pulses and plays upon the bright reef. There, fish flit excitedly between coral clusters like the i'iwi and 'apapane chasing each other between branches of the 'ohi'a that overlook Keauhou on the slopes of the pali.

Ascending back towards the start of the hike, I walked past the fingers of fresh lava rivers and ascended Hilina Pali. As I rose, I noticed the 'ohi'a begin to thicken, their roots testing the new lava ground, tip-toeing between the ferns in the swirls of lava. Perhaps the hardened eddies and whirls in the pahoehoe were once molten and hidden for millions of years, but for the next million years will be hard, black, cold and silent slowly eroding and sifting back down into the sea.

After the hike, in a cold night full of clouds, I returned to Halema'uma'u crater, where a boil has opened up. The lava-filled mouth slowly released a deep red breath rising to the white moon. While the Ka'aha crevice pool allowed me to peek into a water-filled earth, this opening revealed a deeper secret — the

immense boiling sea of magma that we float upon.

The recently opened crater looked so ancient, as if it had been smoking in the night since the world began, yet the land here constantly transforms. We can imagine or hypothesize how the world was shaped by continents shifting, sinking, and rising, cut by rivers and seas. But in our life

spans, it is so rare to actually see the land being built, the lava rivers pouring out, cones, craters, and rifts appearing so suddenly in the landscape. Here in Hawai'i, we are given the chance to view great changes that would elsewhere be invisible, gradual, and take thousands of lifetimes to occur. Hawai'i has often been called a microcosm in the biological sense, but in Kilauea, it is like a microcosm of time, with vast geological events taking place in a few decades, or even moments. Here, there is a sense of power and chaos, where nature does not wait, but can sneak quickly and surprise — moving huge tracts of land and spreading poisonous fumes



The surf at Halape, looking towards Pu'u Kapukapu.

that darken the sky for hundreds of miles. In my lifetime, perhaps, the tiny bays of Keauhou and Ka'aha may be gone, under lava or sunken in an earthquake as was most of Halape, a couple decades ago. While these areas in Kilauea seem still and timeless, we may be only offered a short window to view them. What other hidden and strange formations or vibrant oases of life have been covered up, or will appear in time? Above Halema'uma'u crater, I stared into the source of all this uncertainty and potential. Under the moon and the cool wind, Kilauea offered a mysterious glimpse of the hidden undersurface world, which steamed and shone in the night. — *Emma Yuen*

In the 1990s, the NWHI lobster fishery was valued by NMFS at about \$5 million and the NWHI bottomfish fishery was worth about \$1 million. But times have changed. The economic value of the lobster fishery sank to nothing when it closed eight years ago. And the net income in 2003 for all NWHI bottomfish vessels combined came to just \$300,000, according to a November 2006 *Honolulu Advertiser* opinion piece by Jay Nelson of the Pew Charitable Trusts.

According to Inouye spokesman Mike Yuen, the \$6.7 million earmark was necessary because compensation for the NWHI bottomfishers via the federal Fisheries Disaster Relief Program was not included in a supplemental funding bill.

"This was the only vehicle," he said.

With regard to the payouts in 2007, Yuen was not able to explain by press time how those were considered with regard to the current appropriation. In any case, he said, "It all goes back to the fact that their livelihood was being shut down."

Pick a Number

Whatever the value of the fishery is today, the difficulty in determining the value of its permits may be a major stumbling block for

any permittee seeking compensation under the act. In its Winter 2008 newsletter, the Western Pacific Fishery Management Council notes that NWHI fishermen are concerned that because the act limits compensation to the economic value of the permit, they could receive little or no compensation.

The newsletter states, "Typically, the economic value of a permit is based on two things, the revenues generated by the permit and the price someone is willing to pay to obtain that permit, according to NWHI permit holder [and former council president] Jim Cook. Since NWHI lobster permits are currently subject to a zero harvest quota, the economic value of Cook's permit may be worthless. NWHI bottomfish permits could be equally worthless since permits cannot be transferred to another individual and the fishery will cease to exist after June 2011.

"Fishermen are hopeful that NMFS will take a flexible approach and design a program that will consider the revenues of each permit holder of the fisher as a whole in determining fair compensation."

Despite these obstacles, the council voted at its March meeting in Guam to

write a letter to NMFS with a copy to Sen. Inouye regarding compensation for *additional* displaced NWHI fishery participants such as sport fishing tour operators and pelagic fishermen.

The letter, which was addressed to Robinson and sent on May 1, stated that council member Rick Gaffney had identified recreational fisheries based on Midway as another affected fishery. Pelagic troll and handline fisheries may have also been impacted by the monument designation, the council wrote. The council also asked Robinson to "seek clarification on the intent of the compensation package."

In a phone interview with *Environment Hawai'i*, Yuen indicated that, although compensation for lost revenue is not mentioned in the act, the \$6.7 million amount was based on an estimate of revenue lost as a result of the monument designation. When it was pointed out that the lobster fishery has been closed since 2000, Yuen said he was referring only to the lost revenue of NWHI bottomfish fishers. He added that he was not clear on why the lobster fishers were included and was unable to get clarification on that issue by press time.

— *Teresa Dawson*

Renewable Energy Bills Take Center Stage at '08 Legislature

When it comes to environmental bills, most of those passed by the 2008 Hawai'i Legislature concerned energy. Leaving aside the special appropriations needed for state departments to keep the lights on through the end of the current fiscal year, most of the bills are intended to spur the development of renewable energy – be it from wind, waves, the sun, biofuels, photovoltaic cells, or even more exotic sources.

Here's a quick tour of the energy bills that made it to the governor's desk. Only one of them (House Bill 2502) had been signed by our press deadline. Governor Linda Lingle has until July 8 to sign the measures the Legislature passed, veto them, or let them become law without her signature.

A 'Dangerous Bill'

What's not to love about a bill that would streamline the siting of renewable energy projects, as **House Bill 2863** proposes to do?

To judge from the testimony opposing the bill, plenty.

On its face, the measure – which Life of the Land's Henry Curtis dubbed the “worst bill of the session” – adds a new chapter to Hawai'i Revised Statutes, to be called the “Renewable Energy Facility Siting Process.” In fact, it was drafted with a specific facility in mind – a huge (300 to 400 megawatt) wind farm on Lana'i that would serve both Lana'i and, via an undersea cable, O'ahu – although you can look long and hard and never find any mention of Lana'i, David Murdock, or Castle & Cooke, which owns most of the island and is proposing to build the wind farm.

Under the system set up by the bill, a new state energy resources coordinator is given the power to set salaries and hire and fire employees at will to assist in the process of shepherding applications for large-scale (200 MW plus) renewable energy facilities through to final approval at all levels of government (federal, state, and county). The coordinator's office and functions are to be paid out of fees charged to the applicants, with some portion of the fee being redistributed (at the discretion of the coordinator) to other agencies to offset their costs of processing the permits.

One of the most important parts of the new chapter is the imposition of a deadline for processing permits: “The permit plan shall be designed to ensure that all permits

identified in the permit plan shall be processed and either denied or approved no later than twelve months after the date that the project permit plan application is accepted by the coordinator,” the bill states in section 4, paragraph (f). The applicant can request a time extension – but no one else can. The following paragraph spells out the consequences: If six more months pass without approval or denial, and the agency that is holding things up hasn't provided a report explaining the delay to the satisfaction of the coordinator, “the permit shall be deemed approved,” the measure states.

Curtis, executive director of Life of the Land, has a problem reconciling the two paragraphs. “The first paragraph says that it is the applicant – and only the applicant – who can request a time extension,” he told *Environment Hawai'i*. “But in the next paragraph, it seems as though the coordinator on his own can allow a time extension if agencies need it.”

Many of the other problems that were raised in testimony on the bill's early drafts were removed as the measure worked its way through the hearings process. Initially, though, opposition came from a broad swath of the public – not just environmental groups, but also proponents of wind energy, of good government, other government agencies, and dozens of concerned citizens.

Amendments addressed many of the concerns raised by opponents. A provision was added allowing for a public hearing on the island where the energy facility is proposed. Public Utility Commission approvals were excluded from the streamlining process, and another exception was carved out for permits issued by the Department of Health through authority delegated by the Environmental Protection Agency. The exemption of the Department of Business, Economic Development and Tourism from contested-case procedures was deleted, and a requirement was added that calls for an environmental impact statement to be prepared and accepted before the coordinator can accept permit plan application – although the bill still names DBEDT as the accepting authority for an EIS for the renewable energy facilities, overriding any language to the contrary in the state EIS law (Chapter 343).

Here, too, Curtis sees a problem. “It's a major concern to have DBEDT be the ac-

cepting EIS authority. If a project is on public land, the Department of Land and Natural Resources has much more expertise in judging environmental impacts. DBEDT's duty is just to promote business.” Also, he noted, “If the EIS is accepted but challenged, the 12-month clock is ticking anyway. So if the judicial appeal takes more than 12 months, it would seem as though the permit is automatically approved.”

“The danger is still in the bill,” he said. “It's been dressed up to look better, but it's still an extremely dangerous bill.”

Renewable Energy

HB2502, already signed by the governor, adds “solar energy facilities” to the definition of agricultural activities allowed on lands in the state Agriculture district – but only on lands of marginal productivity (productivity class D or E). Wind farms and biofuel production were added in previous years. Closely related to that, **HB3179** amends the law defining who may receive direct leases of public lands (that is, avoid having to go through the public auction process) by adding “renewable energy producers.” Curtis argued that as a condition of the direct lease, the lessee should be required to show that the biofuel crops would be sustainably grown – “but the Legislature ducked the question,” he said.

HB2505, part of the governor's package, sets up an energy security special fund and authorizes the Department of Business, Economic Development and Tourism to hire a temporary facilitator to help in the permitting of renewable energy facilities, whose salary will be paid by the new fund. The \$112,000 that the fund was given by the Legislature is to be drawn from the environmental response revolving fund. All \$112,000 is to be used for hiring the temporary facilitator. **HB2507** lets DBEDT hire two temporary employees to help with the work of the Greenhouse Gas Emissions Reduction Task Force. The \$140,000 appropriated for these two positions is to come from the state general fund.

Three of the measures passed by the Legislature have the potential to curb energy demand at the level of individual households. One, **SB2933**, would override any private covenants against outdoor clotheslines. It sailed through to approval.

SB644 requires all new houses built after January 1, 2010, to be equipped with solar water heaters (with some limited exceptions). Finally, **SB988** requires the state Public Utilities Commission to consider setting up a system where people who install new photovoltaic systems can receive a partial rebate.

Legislature Gives DOA Tools to Fight Invasives, Beefs Up Fines for DLNR

Among the measures passed by the 2008 Legislature are ones to increase fines for violations of the Department of Land and Natural Resources' land use regulations and to beef up the Department of Agriculture's powers to control noxious plants.

By press time, just one of the measures – **HB2517** – had been signed into law by Governor Lingle. This measure lets the DOA ban the sale, and not just the importation, of plants that are on the department's restricted list. Other measures affecting the DOA include **HB2843**, which expands the list of freight subject to inspection and bases the inspection fees on the weight of the shipment; and **HB2977**, requiring agencies to coordinate in efforts to control the noisy coqui frog.

Far and away the most important measure addressing invasives is **SB2850**, which calls on the DOA to establish a biosecurity program, addressing not only imports from out of state, but also shipments between islands. Among other things, the DOA is to work with other agencies and commodity exporters from other states and countries to “establish pre-entry inspection programs” for cargo coming into the state. Such a program is already in place for the shipment of Christmas trees from selected mainland states; this measure would vastly expand that model.

In addition, the DOA is to develop port facilities where inspections can be done by all government agencies in a safe, secure, and “expeditious” manner. Not least, it is to “promote the production of agricultural com-

modities in the state to reduce cargo shipments of imported commodities.”

To get the DOA started, the Legislature appropriated \$250,000 in general revenues and \$6 million from the state's pest inspection, quarantine, and eradication special fund.

*(Other important bills, including **HB2646** if it is still alive, will be discussed in next month's issue. — The Editor)*



Increased Penalties For DLNR

Three measures increase penalties for people violating DLNR rules. **HB3177** increases fines for violations of Conservation District rules to a maximum of \$15,000 a day (up from the present \$2,000 a day) and allows additional fines based on the value (including market value) of the natural resources harmed by the violator as well as the cost of restoration. **HB3178** doubles the daily maximum fine for encroachments on state-owned land, to \$1,000 from \$500. It also increases the fine schedule for repeat violators and allows for recovery of administrative costs and damages. For people found to have engaged in activities prohibited on state land, there's a 10-fold increase in fines for first offenses – from \$500 to \$5,000, plus \$1,000 a day so long as the violation persists. Fines for second violations within a five-year period of the first are double that, while fines for third violations are trebled. In addition, the measure allows for recovery of damages to resources (at market value) and costs of resto-

ration as well as administrative costs. Both bills have exemptions for people exercising lawful native Hawaiian gathering rights.

While fines for civil penalties are increased in **HB3177** and **HB3178**, **SB1891** allows violators of Chapter 171, dealing with public lands, to be subject to criminal petty misdemeanor charges as well, carrying fines of \$500 on first conviction, imprisonment of 30 days, or both.

Fishing Regulations

Two measures address the problems that have arisen as a result of federal efforts to restrict catches of bottomfish. Both **HB3174** and **HB3175** seek to make state fishing regulations consistent with federal law. The former requires the DLNR to amend its rules to reflect federal regulations whenever a federal agency has found a fishery that includes both federal and state waters to be overfished or subject to overfishing. **HB3175** allows the department to require fishers to submit catch reports for each trip, rather than on a monthly basis, making it possible for total annual catch limits to be imposed.

Koke'e Negotiations

Over the last two years, the Board of Land and Natural Resources has struggled to figure out a way to deal with the expiration of leases for cabins at Koke'e, Kaua'i. Now the Legislature has weighed in on the contentious subject, with **HB2872**. It would require the Land Board to negotiate directly with the Koke'e lessees for lease renewals. The term of any new lease would be limited to 20 years, with rents to be set at market rates. Negotiations have to be concluded within four months of the effective date of the legislation (July 1, 2008, provided the measure is not vetoed).

— P.T.



SPRBs to the Rescue

Special purpose revenue bonds – SPRBs, or “sperbs,” for short – don't represent an expense or obligation of the state, but they do represent a boon for developers. Anyone able to sell such bonds can usually attract lenders with the expectation of reduced taxes on income from interest paid by borrowers. That translates into below-market interest rates for borrowers. The state customarily authorizes SPRBs for start-up companies whose technology holds the promise of promoting a public good.

This year, the Legislature authorized a total of some \$238 million in SPRBs for

energy projects:

- ◆ \$50 million for H2 Technologies, which is proposing to build a hydrogen production facility at the Natural Energy Laboratory of Hawai'i Authority in Keahole, Kona (**HB2168**);

- ◆ \$38 million for Hui Mana Oma'ō, a company organized by William Milks in October 2007. Milks, former consumer advocate for the state, has been vague about the nature of his project, saying only that it involves a “solar thermal facility on one site and generators converting methane to electricity on one or more other sites... the plan is to integrate energy from at least two stand-alone sites in order to make the energy ‘firm,’ or ‘dispatchable.’” The attorney general's office testified that “current tax laws will make it difficult for the special purpose

revenue bonds proposed by this bill to be tax-exempt bonds.” Nonetheless, the Legislature approved the bill (**HB2661**);

- ◆ \$100 million for Jacoby Development of Atlanta, Georgia, to develop a plasma-arc waste-to-energy plant (**HB1720**). This is the same company that is proposing to develop a large commercial-hotel development on state and Hawaiian Home Lands at Honokohau, Kona;

- ◆ \$20 million for Oceanlinx Hawai'i, LLC, to develop a wave-energy generation facility off Maui (**SB2034**); and

- ◆ \$35 million for Sopogy to develop a 10-megawatt solar energy farm on O'ahu. Last year, Sopogy received authorization for up to \$10 million in SPRBs to support development of a similar project at NELHA.

— Patricia Tummons

NARS Commissioner Warns of Harm Invasive Thrips Could Cause to Naio

The pictures of dead roadside shrubs and tortured, shriveled leaves say it all: If introduced to Hawai'i, myoporum thrips could do to naio what erythrina gall wasps did to the state's wiliwili trees.

At last March's Natural Area Reserves System Commission meeting, commissioner Lloyd Loope distributed photos of the thrips and the damage they have caused on the mainland. The injuries to the affected trees look strikingly similar to the damage caused to Hawai'i's wiliwili trees by the gall wasp. Since the discovery of the erythrina gall wasp's presence here in 2005, the invasive insects have swept through the islands and killed thousands of native and non-native wiliwili trees faster than anyone could have imagined. Like the erythrina gall wasps, the thrips lay their eggs on the leaves of their hosts, producing galls that can slow growth or kill the plants.

"It just looks so similar to the erythrina gall wasp. It was discovered in 2005; it's an invasive species of myoporum from New Zealand. In southern California, [myoporum] is planted by the thousands along roadsides and this thrip was discovered attacking them," he said.

"The technical term is 'déjà vu all over again,'" said commissioner Pat Conant, an entomologist with the state Department of Agriculture.

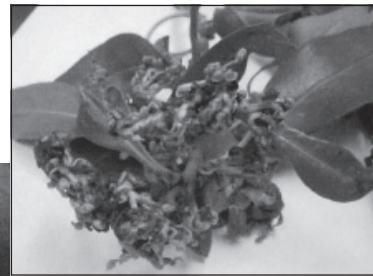
Worried that these thrips could harm Hawai'i's naio (*Myoporum sandwicense*), which is an important native species often used in restoring degraded areas, Loope brought the matter to the NARS Commission to help spread the word, and perhaps, help encourage the state Board of Agriculture to enact rules to keep the tiny bugs out.

Last year, Loope did much the same to protect 'ohi'a (*Metrosideros polymorpha*) – the most dominant tree in native Hawaiian forests – from a potentially devastating rust. His efforts eventually got the BOA to impose an interim ban on the importation of plants in the Myrtaceae family (which includes guava, eucalyptus, and 'ohi'a) from California, Florida, and South America without proof that the plants are free of the rust, *Puccinia psidii*.

"That was real good. At the time we also had the idea that the Hawai'i Department of Agriculture should protect dominant native species as much as they have in the past protected sugarcane, pineapple, coffee



Adult myoporum thrips (*Klambothrips myopori*)



Leaf galls caused by myoporum thrips (*Klambothrips myopori*)



Wai'anae Sink Hole Hides Rare Shrimp

Across the street from Wai'anae High School sits a 19.5-acre lot covered mostly in bare dirt with patches of thick kiawe in parts. Beer bottles are left on the ground and plastic bags filled with household trash were at one time stuffed into the sinkholes scattered throughout the property.

Years ago, the state transferred the land to the City and County of Honolulu so that it could become a city park. But during a survey of the sinkholes, the city found 'opae 'ula (*Halocaridina rubra*) and another rare shrimp species, *Metabetaeus lohena*, which is a candidate for the federal endangered species list. The park project was put on hold, and at the urging of the state Department of Land and Natural Resources' Division of Aquatic Resources, the state regained control of the property in January.

Now, a proposal is being drafted to designate the site as a NAR. Although it's not a particularly pristine site, NARS staff pointed out in a presentation to the commission that it does support the rare shrimp and is geologically unique – the entire area is the site of an ancient reef whose geology is characterized by sedimentary rock instead of lava. What's more, the U.S. Fish and Wildlife Service has indicated that it is willing to fence off certain sections of the sinkholes if the state decides it wants to protect the site.

At the commission meeting, NARS O'ahu branch manager Brent Lisemeyer expressed concern about the management burden this new and unusual site would add and asked if his staff would be expected to try to enhance populations of the rare species there.

DAR administrator Dan Polhemus responded, "We want to keep the sinkholes so people aren't using them as garbage dumps or luas [toilets]." Other than that, the site wouldn't need any more management. He added that his own staff could assist NARS staff with managing the area. — T.D.

BOARD TALK

Nature Conservancy Withdraws From Honouliuli Preserve Deal

The Nature Conservancy of Hawai'i has decided to refocus its management efforts on intact native habitats. And because its 3,600-acre Honouliuli preserve contains a mix of native and non-native habitat, TNCH asked the state Department of Land and Natural Resources for permission to end its forest stewardship agreement with the state.

Under the agreement, which TNCH entered into in 2002, the conservancy committed to managing the area for 30 years, but it was eligible for matching funds from the state for just 10 years. Early withdrawal is allowed, provided that the contractor repays all forest stewardship program funds received in the most recent three-year period, plus a penalty equal to 2 percent of the total contract penalty. The conservancy's total payback amount for this contract was \$132,426.

Late last year, however, the conservancy's Mark Fox and Suzanne Case both asked DLNR staff if that penalty could be avoided. The agreement allows for termination without penalty if the preserve is transferred or sold to a government agency committed to forest stewardship. Since TNCH is working with the Trust for Public Land, the DLNR, Kamehameha Schools, and the Office of Hawaiian Affairs to purchase the land from The James Campbell Company and perhaps transfer it to the DLNR or OHA, Fox and Case asked whether the "Sale to Government Agency" condition could be invoked.

According to reports to the Board of Land and Natural Resources, the DLNR's Division of Forestry and Wildlife recommended against a penalty waiver since, "while the preserve is for sale, it is unknown when it will sell and exactly who will be the title owner." What's more, the reports state, the reason for terminating the agreement was not tied to any sale to a government agency, but was because of the conservancy's shift in management priorities.

At the Land Board's May 9 meeting, Fox said that the conservancy was prepared to pay back the \$132,000, but asked that the money go towards management or purchase of Honouliuli. DOFAW administrator Paul Conry said that while some of that money might make its way back to the area via various division programs, he would not recommend earmarking all of the funds for Honouliuli.

Although TNCH does not plan to manage the area any longer, it indicated it might consider retaining its long-term lease of the property, which would offer some protection if a new landowner not interested in preservation buys it. If it chose to sell the lease, TNCH would give any revenue from that sale to somehow put it back into Honouliuli preserve, Fox told the Land Board.

Fox added that many of the conservancy's Honouliuli staff have joined the Army's environmental program, which is conducting a lot of restoration work at Honouliuli under its Makua Mitigation Plan, which the Army must complete as a condition of continued live-fire training in West O'ahu's Makua Valley. Fox said that the Army plans to spend \$350,000 on management of the preserve this fiscal year. The money is used for ungulate and weed control efforts, rare plant and snail monitoring, rat baiting, and native species outplanting, among other things.

"[E]ven if you approve the cancellation of this contract, we'll be there for a period of time and the Army very much wants to, and in fact, needs to be there doing management because as I understand it, this may be one of the only, if not the only locations that they can do native species outplanting under their Makua Mitigation Plan," he said.

Given TNCH's new focus, Land Board member Tim Johns asked Fox, "Should [the agreement termination] bring into question The Nature Conservancy's commitment to any of the other preserves that it has in the state?"

"No," Fox said, noting that the Honouliuli preserve was its only preserve receiving money from the forest stewardship program. TNCH's other preserves are enrolled in the state's Natural Area Partnership Program, he said.



Five Projects to Receive \$4.7M in Legacy Land Funds

The Land Board has approved five projects to receive a total of \$4.7 million in funding from the Legacy Land Conservation Program, including a controversial proposal by the Moloka'i Land Trust to purchase the 200-acre Kawaikapu Ranch. Board member Tim Johns recused himself from voting on the projects because he sits on an advisory board for the Trust for Public Land, which could receive some of the money if any of the five projects fall through.

The approved projects include:

- ◆ \$737,300 for the Wai'anae Community Re-development Corporation (MA'O Organic Farm) to buy 11 acres in Lualualei Valley;

- ◆ \$1.5 million for the County of Hawai'i to acquire 551 acres at Kawa, which would result in the preservation of nearly 800 acres along the Ka'u coastline;

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◆ \$700,000 for the Kaua'i Public Land Trust to acquire 20.5 acres at Kahili Beach as part of the Kilauea Coastal Preserve;

◆ \$994,724 to the Maui Coastal Land Trust to buy from Kaupo Ranch, Ltd. 128 acres at Nu'u along the island's southeast shore; and

◆ \$767,976 for Ke 'Aupuni Lokahi, Inc. (Moloka'i Enterprise Community) to acquire 196.40 acres at Kawaikapu in east Moloka'i, to be held by the Moloka'i Land Trust.

Should any of these acquisitions fail, the money allotted to them would be used to fund lower ranking projects approved by the Legacy Land Conservation Commission, including a request by the Trust for Public Land for \$1 million to assist in purchasing the Honouliuli Preserve. The total cost for that project is estimated to be \$6.3-6.8 million. A DOFAW report indicates that the title to the property would be held by the Office of Hawaiian Affairs.

At its May 9 meeting, the Land Board received both written and oral testimony from members of the Moloka'i community for and against the Kawaikapu project. Some of the disputes seemed to stem from personal rivalries related to the now failed La'au Point development on Moloka'i. Testimony from Ke 'Aupuni Lokahi board member Bridget Mowat, however, suggested that the organization's board never voted to authorize a request for Legacy Land funds. As a result, the Land Board included a condition in its approval that the non-profits receiving Legacy Land funds provide "evidence of the authority of the awardee's representative to sign the grant agreement..."

Although her organization stood to gain if the project did not get funded, TPL Hawaiian Island Program Director Lea Hong testified in support of the Kawaikapu purchase, as did Moloka'i Land Trust board members Colette Machado and Edwin Masaki.



Watchdog Questions Submerged Land Use in NWHI

The DLNR's Office of Conservation and Coastal Lands has jurisdiction over the state's submerged lands and any significant use of lands in that category would normally require some kind of review and/or approval by the office. It appears, however, that research activities within the Papahānaumokuākea Marine National Monument have been overlooked in this respect.

In the permit applications for the monument, applicants must indicate what kinds of activities they will be doing there and have the option to check a box for, "Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands."

Earlier this year, when Marti Townsend of KAHEA: The Hawaiian-Environmental Alliance raised concerns that the permits allow for too broad a range of potentially detrimental activities, DLNR Division of Aquatic Resources administrator Dan Polhemus assured her that anything that might alter submerged lands would require a Conservation District Use Permit.

While the Land Board has approved a number of permits for activities that include the use of state submerged lands, no corresponding CDUPs have been approved or even applied for. And at the Land Board's

May 9 meeting, Polhemus said that after talking with OCCL administrator Sam Lemmo, it appears that permittees only need site plan approval from the OCCL rather than a CDUP. Polhemus added that he believes an overall site plan approval was given by the office two years ago.

Even so, Land Board member Tim Johns asked Polhemus to look into the land use issue and board chair Laura Thielen added that the DAR needs to have a formal meeting with the OCCL on the matter. While the DLNR's DAR and DOFAW have been included in the review process for monument permit applications, the OCCL has not.



Non-Lethal Shark Control At French Frigate Shoals

Last year, after a long debate about whether it should allow the killing of one revered species to save another, the Land Board begrudgingly gave permission to researcher George Antonelis to kill several Galapagos sharks that were preying on endangered monk seal pups at French Frigate Shoals in the Papahānaumokuākea Marine National Monument. Unfortunately for the pups, the sharks proved too wily for the researchers, who didn't manage to kill any over the past year.

Because the handful of sharks continues to attack monk seal pups at FFS, Antonelis proposed this year using non-lethal deterrents, including a boat anchored in nearshore water, magnets at strategic access points, an electro-magnetic system that emits a low-level electrical field, and an underwater speaker system to broadcast boat noise. On April 25, the Land Board unanimously approved a permit for Antonelis' work. — T.D.

