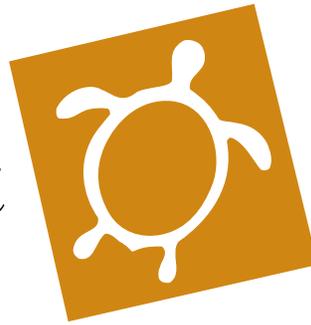


Environment



Hawai'i

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False Killer Whales Truly Endangered

When it comes to the small population of false killer whales (*Crassidens pseudorca*) that stick close to the Main Hawaiian Islands, there can be little dispute that it is endangered. That's the only possible conclusion that can be drawn from the status review of the whales conducted recently by scientists with the National Marine Fisheries Service.

The only question now is when NMFS will publish its formal finding, due October 1 but not released as of press time.

When that finding is published, the onus will be on the agency to come up with measures to rebuild this tiny population, which has remained remarkably separate from its wider-ranging pelagic cousins. Expect the usual hair-on-fire response of the commercial fishers and their servile partner, the Western Pacific Fishery Management Council – which has already judged the scientists' status review deficient.



PHOTO: DANIEL L. WEBSTER

This false killer whale, first documented in 2003, likely lost its dorsal fin through an interaction with fishing gear.

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Island False Killer Whale Population Is Found To Be at High Risk of Extinction

In the late 1980s, the longline fishing industry in Hawaiian waters exploded. And at practically the same time, the population of false killer whales (*Pseudorca crassidens*) that reside around the Main Hawaiian Islands began a spectacular decline.

Coincidence?

The answer to that question lies outside the scope of the investigations undertaken by eight scientists with the National Marine Fisheries Service to determine the level of extinction risk facing this population of false killer whales – the insular population, as it is called, to distinguish it from the open-ocean, or pelagic, false killer whales that have little interaction with them.

According to the status assessment of the insular stock of the false killer whales prepared by the Pacific Islands Fisheries Science Center in response to a petition to add them to the federal endangered species list, the threat from interactions with gear from Hawai'i's com-

mercial fleet is by no means the only factor putting their survival in jeopardy.

There is more, including:

- A decline in the amount and size of the prey fish consumed by false killer whales;
- Competition with commercial fishers for prey;
- Environmental contaminants, including persistent organic pollutants such as dieldrin, DDT, and PCBs, which accumulate in the fatty tissue of large ocean predators; and
- The possibility that changes in ocean chemistry associated with increased levels of atmospheric carbon will have a negative effect on the availability of prey.

The good news is that the level of threats posed to the insular population of false killer whales by certain activities prevalent two decades ago has been reduced. These include the live capture of the animals, which ended in the early 1990s, and the establishment in

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Environment



Hawai'i

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NEW AND NOTEWORTHY

An Irradiator in Kunia? The Honolulu Department of Planning and Permitting is considering an application from Pa'ina Hawai'i to build a food irradiator in Kunia, two and a half miles south of Wahiawa, on land once a part of the Del Monte pineapple plantation. The department's director is to issue a decision by November 17.

Pa'ina Hawai'i had planned originally to build the facility on state land lying between an active runway at Honolulu International Airport and the coast. Five years after submitting the initial application for that site to the Nuclear Regulatory Commission, Pa'ina owner Michael Kohn set his sights on property further inland, thus avoiding a need to address concerns over tsunamis, high water tables, airport accidents, and the like.

At a hearing on the application held by the DPP on October 12, Kohn attempted to compare the benefits of the irradiator he is planning to use with the benefits to the public from the use of radiation by hospitals and clinics. "Don't be fooled by environmental objectors who attempt to raise



Michael Kohn

false concerns," he said. "Ask your friends and families whose lives have been saved by the use of nuclear materials."

What Kohn did not mention, however, is that the irradiator in his facility will have more than a million curies of Cobalt-60 as its radioactive source, whereas nuclear equipment in hospitals typically has amounts of radioactive elements small enough so that the level of curies numbers in the single digits.

David Henkin, an attorney with Earthjustice who represents Concerned Citizens of Hawai'i, a group that has intervened in proceedings before the NRC's Atomic Safety and Licensing Board, noted that the irradiator is not "about saving lives." "The NRC took a look at whether this [facility] would have a positive impact, and it determined there would be no significant benefits" from its operation, he said.

If Pa'ina Hawai'i is to locate at the Kunia site, it will need to obtain a new license from the NRC. (Check the EH-Xtra column on our website for updates and details.)

Army Declares War on Coqui: The Big Island has pretty much given up on controlling coqui (*Eleutherodactylus coqui*) populations and residents have more or less resigned themselves to keeping the tiny animals at bay in their own back yards.

But, as the Army has proved, controlling coqui is possible – if you have a small enough infestation, and enough manpower, money, patience, and control over the terrain.

An infestation in Wahiawa, O'ahu had about 125 adult males at its peak and the total estimated population was about 2,000. Even so, eradicating them took the better part of six years and cost the Army \$290,000.

Jane Beachy, with the Army's natural resource program, and Rachel Neville, with the O'ahu Invasive Species Committee (OISC), described the eradication effort at Wahiawa and Schofield Barracks at the Hawai'i Conservation Conference last July.

The first coqui was heard in 2001. Ground zero was a backyard garden, adjoining Schofield Barracks. For the first two years, control efforts were limited to hand capture. When that proved ineffective, the Army and OISC began night sprays using a 16 percent solution of citric acid. Despite the control efforts, the population continued to grow, reaching its peak in 2004.

That year, the Army got serious: a seasonal spray crew was hired and "habitat modification" – including the bulldozing of infested areas – began.

In 2005, the number of calling males was roughly half the number of the previous year, and the frogs had been eradicated from 3.5 hectares.

A year later, clearing and night sprays were supplemented with daytime drenches. Just 29 calling males were heard at the peak of the season. On September 28, 2006, the last coqui was heard. Since then, ongoing monitoring and spraying of "hot spots" has continued, but no coqui have been heard in the area.

Beachy and Neville outlined some of the lessons learned. Eradication is possible, but it almost certainly requires altering habitat, a dedicated spray crew, large quantities of citric acid and an aggressive spray schedule. Also, access to all infested areas is required.

The spread and establishment of coqui is not inevitable, they said, and even where coqui populations have become naturalized, eradication is possible – "given adequate resources and staffing."

Since the Wahiawa eradication ended, the OISC has collected coqui in nearly two dozen areas around the island. They continue to arrive, Neville said, because they have become so established on the Big Island, which ships nursery stock to O'ahu. Even when plants are sprayed with citric acid or given a hot water bath, some coqui survive. Coqui also hitchhike on unwashed equipment or other items that have not been treated.

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Quote of the Month

"What do you do with an agency that doesn't follow the law?"

— Alan Murakami, NHLC

Water Commission Denies Hearing On Flow Decisions for East Maui

Camille Kalama, an attorney with the Native Hawaiian Legal Corporation (NHLC), didn't say much after the state Commission on Water Resource Management voted unanimously and without discussion to deny her clients' request for a contested case hearing. She told *Environment Hawai'i* only that they are considering their options.

Fellow NHLC attorney Alan Murakami, who couldn't attend the October 18 meeting, didn't have much to say either.

"What do you do with an agency that doesn't follow the law? ... We honestly didn't think they would do that," he said.

Their clients — a group of native Hawaiians, East Maui residents, and farmers known as Na Moku 'Aupuni O Ko'olau Hui — had requested a contested case hearing on the commission's May 25 decisions regarding their 2001 petitions to amend the interim instream flow standards (IIFS) of several East Maui streams. The majority of the commission had voted to restore water year-round to only two of the streams, implement seasonal restoration to four, and not return any water to the remaining 13.

In June, NHLC, on behalf of Na Moku, filed a petition to address the commission's decisions on the 19 streams, noting that the IIFS "fail to restore sufficient water to the subject streams to adequately protect and promote instream public trust uses of the streams, including Native Hawaiian traditional and customary practices."

The county of Maui's Department of Water Supply, which supplies diverted stream water from East Maui to Upcountry, also applied to be a party in the contested case hearing, should one be granted.

When the commission met in October to decide whether to grant a hearing, its staff

recommended denial. According to a report by acting deputy administrator Lenore Ohye, because a contested case is not required by law in this instance, the hearing sought by Na Moku is not required.

"Neither the statutes nor the rules require the Commission to hold a hearing prior to deciding on whether to amend an interim IFS. ... Due process considerations also do not require a hearing prior to decision making by the Commission as the determination made by the Commission is what is the public interest in stream flows. There was no individualized findings with respect to specific parties that was required to be made as part of the Commission's decisions," she wrote.

Kalama, the lone testifier on the item, pointed out that the Hawai'i Supreme Court addressed this very issue in its first decision in the Waiahole Ditch case that clarified many of the commission's duties with regard to stream protection and instream vs. offstream uses. While statutes don't require a hearing, Kalama said, constitutional due process does, since the issue of how much water is in the streams affects the rights, duties and privileges of the petitioners.

Footnote 15 of the Hawai'i Supreme Court's Waiahole I decision notes that the petitioners in that case appealed the commission's decision regarding permit applications for existing and new uses, as well as petitions to amend interim instream flow standards.

The court noted that statutes and rules require a contested case hearing on existing use applications when "the quantity of water applied for exceeds 25,000 gallons per month and an objection to the application is filed by a person having standing to object."

With regard to petitions to amend IIFS, the court wrote, "[W]hile the statutes and rules do not require a hearing with respect to petitions to amend interim instream flow standards ... or 'new' use applications ... constitutional due process mandates a hearing in both instances because of the individual instream and offstream 'rights, duties, and privileges' at stake."

Ohye's report to the commission did not mention the Supreme Court's Waiahole decision. Without responding to Kalama's argument, the commission approved its staff's recommendation.

Commissioner Lawrence Miike, who had opposed most of the commission's IIFS decisions in May, as well as the commission's

decision on IIFS in West Maui, has not attended the last few commission meetings, including last month's.

Petitioners Honored

Last month, at the 9th Annual Native Hawaiian Convention in Honolulu, the Council on Native Hawaiian Advancement gave Community Advocate of the Year awards to cousins Beatrice Kekahuna and Marjorie Wallett, two of the original petitioners for stream restoration in East Maui.

Nearly a decade ago, Kekahuna, and Wallett, as well as Elizabeth Lapenia and Na Moku 'Aupuni O Ko'olau Hui, initiated a contested case hearing with the state Board of Land and Natural Resources against a long-term water lease to Alexander & Baldwin/East Maui Irrigation Co. to allow the continued diversion of East Maui streams. At about the same time, they filed petitions with the Water Commission to amend the interim instream flow standards of 27 East Maui streams.

The two women were both Honopou taro farmers and in their early 70s when they filed the petitions, which they hoped would result in more water to grow taro on their properties.

Wallett, a former communications specialist with the Navy, died on April 3 after a short illness, a little over a year after the Water Commission voted to restore water to eight of the streams and one month before the commission took action on the remaining 19.

"While she lived to see the [Water Commission] take action to partially restore Honopou [stream], today, her work to implement that decision — to give it meaning — continues through her daughter Lyn Scott," according to a speech Murakami gave at the convention.

In an interview with *Environment Hawai'i*, Murakami praised Wallett's and Kekahuna's consistency and perseverance "against some pretty tall odds" — including A&B, one of the largest landowners and employers in the state — all while maintaining a generous aloha spirit.



Commission Cites Bad Timing In Rejecting Proposed Director

Water Commission chair and state Department of Land and Natural Resources director Laura Thielen didn't want to lose momentum with so much at stake on Maui. In the midst of her staff trying to implement new stream flow standards for East and West Maui, while processing more than 100 applications from would-be users of the commission's first-ever surface water man-



Honopou Stream in East Maui.



agement area, Thielen lost her water deputy, Ken Kawahara. Kawahara, who had shepherded through some of the most important (and controversial) decisions the commission had made in years, moved to the private sector in June, leaving yet another gaping hole in an agency that has suffered severe personnel losses in recent years.

Former staff veteran Lenore Ohye stepped in as acting deputy, while Thielen made a call to Jonathan Likeke Scheuer, a former policy advocate for the Office of Hawaiian Affairs who was intimately familiar with the seminal Waiahole water case and was a key player early on in the Na Wai 'Eha contested case over West Maui water.

Thielen asked Scheuer, now a private consultant, if he would consider becoming the commission's new executive director/DLNR water deputy.

While Scheuer's expertise in Hawai'i water issues made him an attractive candidate, stances he had taken while with OHA (i.e., pushing for stream restoration over certain offstream uses) made some members of the public, and perhaps some commissioners, hesitate. The timing of his appointment also seemed to be a major concern. With a new administration coming in within a few months, would Scheuer mesh well with the commission chair and DLNR director to be appointed by the new governor? some wondered.

On September 25, when the commission met to consider Scheuer as its executive director, he explained that while he was with OHA, it was his job to be an advocate, and he assured the commission that should he become its director, he would make decisions as an impartial administrator.

He was backed by a slew of former co-workers and associates, including OHA CEO Clyde Namu'ō and trustee Collette Machado, Trust for Public Lands Hawai'i director Lea Hong (who testified as an individual and who had worked with him on OHA's acquisition of Wao Kele O Puna), a former co-worker from Kamehameha Schools, and Howard Killian from the Army Corps of Engineers (also testifying on his own behalf) who worked with him on OHA's acquisition of O'ahu's Waimea Valley.

"You will not ever be disappointed by his work... You are making a remarkably brilliant choice," Namu'ō told the commission.

Killian offered his highest endorsement, calling Scheuer "level-headed, clear-thinking, and intellectually honest."

Representatives from the Hawai'i Farm Bureau Federation and the Land Use Research Foundation, however, unsure about Scheuer's positions on the use of water for agriculture and biofuels, recommended that the commis-

sion leave the selection of a new Water Commission chair and water deputy to the incoming administration.

In response to the questions raised about the timing of hiring a new executive director, Thielen noted the enormous tasks the staff is dealing with.

"We have a number of things going on now. We have 125 Na Wai 'Eha [surface water use] permits waiting. This is not going to be simple for our staff to handle," she said, adding that many of those permits involve appurtenant rights claims, which the commission has no rules to address.

"We need someone who knows the law ... who can guide our staff through this first-time process," she said. "I was very sad to see Ken go. Strong leadership in a water deputy is crucial... We've done a lot and I don't want to see that fall apart."

Commissioner Neal Fujiwara shared the same concerns as LURF and said that while he thought Scheuer fit the job, he'd like to see what the new administration comes up with.

To this, Thielen pointed out that she inherited Kawahara from her predecessor. "That didn't mean I didn't have a good working relationship with him," she said, adding that Scheuer "has more credentials than every prior [water] deputy."

Commissioner and state Department of Health director Chiyome Fukino added, "There is so much work that needs to be done [at the Water Commission] that I don't support a deferral... We need to use every day. I personally feel a sense of urgency."

In the end, while stating how impressed they were with Scheuer and that they believed he was highly qualified for the job, most of the commissioners were determined to wait until the next administration came in to hire a new director. Although Thielen pointed out that a deferral could mean that the commission would be without an executive director for six to nine months, commissioner Donna Kiyosaki said she was comfortable with Ohye as acting director and knew the rest of the staff was competent.

When it came time to vote, commissioners Fujiwara, Kiyosaki and William Balfour all voiced their preference for a deferral — without prejudice — until the next administration is in place. Commissioner Sumner Erdman also wanted to defer, but only for a few days to confer with his attorney on certain legal issues. The only two members supporting Scheuer's immediate appointment were Thielen and Fukino.

New Commissioner Needed

In addition to seeking a new executive director, the Water Commission needs a new at-

For Further Reading

Environment Hawai'i has given extensive coverage to East Maui water issues over the years. For more background, see the following, all of which are available on our website, www.environment-hawaii.org.

- "Water Commission Amends Flows For Six of 19 East Maui Streams," July 2010;
- "Water Commission Amends Standards for Six Diverted East Maui Streams," and "Land Board Resumes Discussion of Diversion of East Maui Water," November 2008;
- "Land Board Orders EMI to Release Water to Meet Needs of East Maui Taro Farmers," May 2007;
- "Commission Gains Funds, New Tools to Pin Down Water Use, Stream Needs," September 2006;
- "Ex-Judge Says East Maui Farmers Don't Need More Water for Taro," August 2006;
- "Water Commission is Urged to Look at Lessons from Mono Lake Dispute," August 2005;
- "Board Talk: Land Board Favors EMI Water Diversion," March 2003;
- "Board Talk: East Maui Water Dispute Heats Up with Hearing Officer's Recommendation," January 2003;
- "Board Talk: Contested Case on Renewal of EMI Water Permits," July 2001;
- "Battle Looms Over Waters Diverted from East Maui Streams" and "Complex Legal Issues Surround A&B's Taking of East Maui Water," August 1997.

large member to fill in when commissioner Kiyosaki's term expires next June. Last month, the commission began soliciting nominations. A nominating committee will narrow candidates down to at least three. The governor will pick one, whom the state Senate must then confirm.

According to a state press release, commissioners must have "substantial experience in the area of water resource management," and nominations, resumes and applications should be sent by November 22, 2010 to the Nominating Committee.

Because Kiyosaki has only held one term as a commissioner, she is eligible to reapply for the seat. — ***Teresa Dawson***

Whales (continued from page 1)

1992 of a longline exclusion zone, varying seasonally from 25 to 75 miles, around the Main Hawaiian Islands.

Gear Entanglements

The most obvious impact that fishing has on false killer whales consists of the injuries that occur when the animals have run-ins with the lines, hooks, or other gear used by fishers. The hooks, ingested when the false killer whales take bait or fish from lines set by fishing vessels, can cause serious injury or even death, depending on where the hook is lodged. Strong monofilament line can also injure the whales, resulting in disfigurement or loss of flippers or fins.

Since the imposition of the exclusion zones, however, longline gear is not so much a problem as possible interactions with fisheries that operate closer to shore, including the shortline or kaka-line fisheries, and troll and handline fisheries (including bottomfishing). Assessing this risk is difficult, however, given the fact that they are not subject to strict regulation or

the requirement to carry observers. Consequently, while the scientists placed the current overall threat from interactions with longline fisheries at 1 (on a scale of 3, with 3 being the highest), the threat from interactions with the troll, handline, shortline, and kaka-line fisheries was placed at 3.

Competition for Prey

While the likelihood of entanglement with longline gear has been reduced, the longline fishery continues to pose a threat to survival of the insular population of false killer whales by reducing the availability of prey. Scientists on the status review team judged this to have been a more serious risk (level 3) in the past than at present (level 2). Competition for prey from the smaller commercial fleets, including troll, shortline, kaka-line, and handline vessels, was also given a 2.

The scientists attempted to quantify this threat by evaluating the total energy demands of the insular population and comparing that

to what is taken by the commercial fisheries that target the same fish. "Based on a diet composed entirely of one of the most commonly observed prey (mahimahi), the energy needs of the insular population were estimated as the number of fish potentially consumed on an annual basis," the report states. "By dividing the total annual caloric needs of the whale population by the caloric value of an average-sized (8 kg) manimahi... approximately 2.9 to 3.9 million pounds of fish would be consumed annually. For comparison, this quantity of fish is similar to the current annual retained catch in the commercial troll fishery and 3 to 4 times greater than the annual catch



Wedge-tail shearwaters circle as a false killer whale chases mahimahi.

PHOTO: ROBIN W. BAIRD

in the Main Hawaiian Islands handline fishery."

To investigate further the possibility that the whales face competition for prey from the fishing industry, the scientists then looked at catch rates from the longline fishery. These rates are stated as catch-per-unit-effort (CPUE), expressed as pounds of fish caught per 1,000 hooks set. From a high of nearly 4,000 pounds per 1,000 hooks set in 1953, the longline CPUE has declined to 500 pounds per 1,000 hooks set in 2008. Even as the CPUE rate dropped, the volume of fish retained has soared: from just under 5 million pounds in 1953, to four times that in 2008. Using the CPUE rates as a proxy for the abundance of fish, the scientists concluded that overall abundance of prey available to the false killer whales has been diminished by Hawai'i fisheries.

"A primary assumption in most ecosystem approaches to understanding multispecies population dynamics is that

prey biomass fluctuations have a strong influence on predator populations," the scientists wrote. "If they do, then fishery removals of potential prey in the immediate vicinity of false killer whales (competition), as well as long-term declines in prey biomass over the range of the fish stocks (declining CPUE and biomass) both represent potential threats to Hawaiian insular false killer whales."

Decreasing Fish Size

The size of prey animals is another factor considered by the scientists on the panel that prepared the status review. "Concern

over fish size is based on the hypothesis of increased foraging success with greater energetic reward per successful predation event," according to the report. In other words, assuming that the amount of energy spent chasing a small fish is the same as that spent chasing a large fish, there's a "greater energetic reward" when larger fish are caught. If average fish size is diminishing over time, that means that more energy will have to be spent in the effort to obtain prey. In light of the fact that average sizes

of tuna and marlin caught commercially have been reduced over the last half century, the scientists assigned an overall level of 2 to this particular threat.

Environmental Contaminants

The accumulation of persistent organic pollutants in fatty tissue is something that affects not just false killer whales, but all top oceanic predators. Samples of blubber taken from the insular population showed high levels of PCBs and DDTs, the status review noted. While the levels continue to grow in males throughout their lives, adult females have relatively low levels, having passed these chemicals on to their offspring. This helps explain the fact that subadult whales were found to have higher levels of many such compounds — including dieldrin, polybrominated diphenyl ethers, and hexachlorobenzene — in their blubber than adults. "These young, developing whales may be at higher risk of exposure to these toxic compounds than adults," the

review states. “First-born may be particularly at risk as they receive the highest doses of POPs from their mother compared to subsequent offspring.”

Concentrations of POPs found in three of the nine tissue samples taken from insular false killer whales were greater than the levels associated with a number of biological effects (17,000 nanograms per gram of lipid weight). And while production and use of some of the chemicals has ceased in Hawai'i, the scientists noted that many of the chemicals continue to be added to nearshore waters. “Activities related to tourism, agriculture, defense, the principal economic contributors in the Main Hawaiian Islands, as well as ongoing coastal development processes ... can be potential sources of POPs to nearshore coastal waters in this region,” they wrote.

Overall, they assigned a threat level of 2 to environmental contaminants.

Unregulated Fisheries

The lack of regulatory mechanisms was assigned a medium (level 2) risk by the review's authors. While vessels in the longline fishery have carried observers since 1994, the false killer whales with which they interact are thought to belong to the pelagic stock, not the insular population. The fisheries whose grounds overlay the region inhabited by the insular population are regulated, if at all, only lightly.

According to the status review, interactions between these fisheries and the insular false killer whales are most likely to occur in the kaka line and shortline sectors. Although catches by these two fisheries accounted for less than 2 percent of catches by troll and handline fisheries operating in the range of the insular false killer whales, “based on the similarity of [kaka and shortline fisheries] to longline fisheries with respect to gear type and target species,” the scientists wrote, “it is likely that false killer whales are involved.” An increase in the catch in 2008 “suggests that the shortline fishery could expand rapidly.” What's more, the fact that the kaka and shortline fisheries involve a series of stationary hooks “with multiple catch online at once” could make it “more attractive and rewarding to a false killer whale group than a few handlines or moving troll lines,” the authors wrote.

Small Population Effects

When populations fall below a certain level, the risk of extinction grows, and not just as a result of inbreeding. “As the number of individuals decreases,” the status report authors wrote, “there are costs,” which include the group's diminished ability to defend itself, a

possible breakdown of cooperative feeding, decreased birth rates as a result of a scarcity of potential mates, genetic issues, and combinations of these factors. With a population estimated at roughly 120 (about 50 more if the population of false killer whales around Kaua'i is included), and a breeding population of less than half that, the risk of reduced genetic diversity to the insular stock was set at level 2. Inbreeding depression and other factors associated with small population size were also assigned a score of 2. Taken together, the risk of extinction posed by the small population was deemed to be high.

High Extinction Risk

In their conclusion the authors wrote, “The small population size and evidence of a decline in Hawaiian insular false killer whales, combined with several factors that are likely to continue to have, or have the potential to adversely impact the population in the near future, describe a population that is at high risk of extinction.”



Mitigation Measures For All False Killer Whales

In July, the False Killer Whale Take Reduction Team issued its preliminary report on ways the fishing industry could lower the number of animals injured in interactions with gear. NMFS set up the 17-member team early this year, after it was sued over its failure to do so, in violation of the Marine Mammal Protection Act. (The litigation is now before the 9th U.S. Circuit Court of Appeals. A denial of the claims of the plaintiffs in U.S. District Court in Honolulu led to the appeal to the 9th Circuit. When NMFS then created the Take Reduction Team, the plaintiffs sought to have the case before the 9th Circuit declared moot. NMFS agreed, as did intervenor Hawai'i Longline Association. The motion to dismiss is pending.)

The TRT was concerned with reducing the harm to all false killer whales in the area fished by all sectors in Hawai'i's commercial fleet. Under the MMPA, the take reduction plan developed by the team has to be aggressive enough so that, within six months of its implementation, the number of animals harmed by commercial fishing is less than the maximum number of animals that can be removed each year from its population (not counting natural mortalities), while still allowing the population to reach or maintain its optimal level. (This level is called the potential biological removal, or PBR.) Within five years of the plan's implementation, levels of bycatch

should approach zero (or, in any event, no more than 10 percent of the population's PBR).

Recommendations included in the draft take reduction plan included “soft” ones (beefed-up training of owners and captains; increased reporting requirements; translation of educational materials into Vietnamese and Korean as well as “pictorial depictions” to reach illiterate crew members) and “hard” ones, involving changes in gear and fishing practices. Two of the most promising involve the use of circle hooks (which may reduce injury to animals that ingest them) and weak hooks (hooks that straighten out when a false killer whale tries to take a fish that's already hooked).

If bycatch is not reduced, the TRT has proposed closing waters to tuna-targeting longliners south of the Main Hawaiian Islands. The so-called Southern Exclusion Zone would extend out to the southern EEZ around the islands, from 154.5 degrees W (in the east) to 165 degrees W. The closure would remain in effect from the time a second serious longline interaction with a false killer whale is observed until the end of the calendar year.

According to Nancy Young of the Honolulu NMFS office, no timeline has been set for implementing the take reduction plan. However, the longline fishery has an incentive to reduce the number of animals it takes. First, there's the threat of increased restrictions if the take level is not reduced. Then, too, any measure that discourages false killer whales from taking fish off their lines means money in the hold.

— *Patricia Tummons*



For Further Reading

The NMFS *Status Review of Hawaiian Insular False Killer Whales (Pseudorca Crassidens) under the Endangered Species Act* is available online: http://www.pifsc.noaa.gov/tech/NOAA_Tech_Memo_PIFSC_22.pdf

The *Draft False Killer Whale Take Reduction Plan* prepared by the Take Reduction Team is also online: http://www.nmfs.noaa.gov/pr/pdfs/interactions/fkwrtp_draft.pdf

For more information and photos on false killer whales in Hawai'i, visit the website of Cascadia Research Collective: <http://www.cascadiaresearch.org/hawaii/falsekillerwhale.htm>.

We gratefully acknowledge the permission of Cascadia Research Collective members Dan Webster and Robin Baird for the use of photos in this article. Photos were taken under NMFS scientific research permit 731-1774.

Wespac Balks at Accepting Grim Report On Risks to Insular False Killer Whales

They may be the spitting image of their distant cousins found in warm waters across the globe, but the false killer whales (*Pseudorca crassidens*) that live around the Main Hawaiian Islands are so different that they constitute a so-called “distinct population segment” (DPS). What’s more, with a total population somewhere between 120 and 170 individuals, they are at substantial risk of extinction over the next 75 years.

The DPS finding and the determination of their extinction risk were made by a group of eight fisheries biologists, all employed by the National Marine Fisheries Service. Their exhaustive, 237-page status review report, which was released by NMFS in September, is the most recent in a series of documents addressing the health of the small Hawaiian insular false killer whale population that have been prepared in response to a petition, filed by the Natural Resources Defense Council on October 1, 2009, to list the population as endangered.

The report makes it almost a foregone conclusion that NMFS will find that the population qualifies for listing under the federal Endangered Species Act. Once that occurs, the fishing industry in Hawai'i will likely face additional restrictions on its operations to protect the animals – big dolphins, really – from interactions with fishing gear.

It was hardly surprising, then, to see members of the Western Pacific Fisheries Management Council greet the report with something less than enthusiasm when it was presented to them at the council’s meeting last month. After summarizing the report’s conclusions, Erin Oleson, lead author, was grilled by council member Sean Martin, owner of several longline vessels. Martin pointed to a survey from 2009 that suggested the insular population might be more robust

than the BRT suggested, with four sightings of false killer whales made in nearshore waters.

Oleson replied that the sightings were “not adequate” for the purposes of the Biological Review Team put together by NMFS from the agency’s scientists. “There’s significant evidence of attraction to vessels” by false killer whales, she said. “And there’s no way of accounting for that.” The sightings in the survey didn’t pass muster with the BRT’s data quality assessment, she said.

Nonetheless, the council took action intended to stall NMFS’ action on the listing petition for the insular false killer whales. Martin made a motion that the status report be sent for “independent review” by the Center for Independent Experts, a private organization set up to evaluate NMFS reports.

Martin’s motion went on to say that the council “has concerns about the composition of the Biological Review Team, comprising entirely NMFS staff” and excluding “experts outside the agency knowledgeable in the field of cetacean risk assessment.” Further, the motion stated, the report’s assumption that the false killer whales compete for the same prey taken by commercial fisheries “doesn’t include an independent analysis of prey abundance,” there were “potential shortcomings” in the report’s genetic analysis of the stock, and there was a “lack of any key demographic parameters to diagnose the status and trends” of the insular population.

Laura Thielen, head of the Hawai'i Department of Land and Natural Resources who was attending her last meeting as a council member, said she had no objection to sending the report out for independent review, but “all the editorial comment” in the motion was not needed.

Mike Tosatto, acting head of the NMFS Pacific Island Regional Office, said that the report had already undergone review by independent scientists before it was released by the agency. “It won’t go out for [further] review,” he told the council.

Sam Pooley, who directs NMFS’ Pacific Islands Fishery Science Center – the office that supervised production of the re-

port – pointed out to council members that by law, “we can only include as members of the Biological Review Team federal employees. ... As Mike said, [the report] has gone out to peer review to people outside the agency. That review was incorporated into the report itself. As far as matters such as prey abundance and so forth are concerned, two experts in that area were on the panel.”

But Martin defended the language of the motion. “I am disappointed with what I felt was inadequate explanations as to why some available information was determined not to be usable. . . . In fairness to industry, this needs to be the best document it can be, and for that to be done, it does need further review. Internal review is sometimes not as objective as [review] by outside folks.”

Martin’s motion passed, with just three council members – Thielen, Tosatto, and David Itano, the only fisheries scientist on the panel – not voting with the majority.

Additional Concerns

The council then went on to adopt a motion calling for staff to convey to NMFS its concerns over the flaws in the status review report in the event that NMFS finds the animals’ situation warrants listing. Manny Duenas, council member from Guam, warned of dire consequences to sectors other than the longline fishery. “In reading the document, there was a lot of reference to fishing – every fishing you can imagine. If you look at the movement pattern of one of these false killer whales, it’s pretty close to shoreline. How would that affect the charter, handline, all these recreational boats? They might all be closed off. . . . If you have a problem with the whale sanctuary, be cautious about this decision.”

Martin agreed. “This has significant implications for other than fishers,” he said. “It does warrant pretty close scrutiny by a much larger range of interested parties than just the fishing industry.”

Again, Thielen objected, noting that it was premature to say that the council had concerns about a study before it had the benefit of independent review. No one else on the council joined with her in voting against the motion.

‘Elections,’ Council-Style

In a putsch that would have made a Latin American dictator blush, Manny Duenas, the blustering council member from Guam, anointed himself the new chairman of Wespac. On the last day of the council meet-



Fishing vessels at port in Honolulu Harbor.

Two Years and Counting: Prying Open Wespac Records Isn't for the Impatient

How long does it take to respond to a request for records under the federal Freedom of Information Act?

In the case of a request filed more than two years ago by *Environment Hawai'i*, seeking travel records for Kitty Simonds, the executive director of the Western Pacific Fishery Management Council, and several council members, it takes a very long time indeed.

Rather, the initial response took hardly any time at all. Within a matter of months, the National Oceanic and Atmospheric Administration had determined that the records were off-limits.

On April 3, 2009, NOAA received the completed appeal. Since then, the NOAA attorney handling the appeal, Sarah Schwartz, and *Environment Hawai'i* editor, Patricia Tummons, have had the following email exchanges:

May 8, 2009: "Aloha, Ms. Schwartz, I was just wondering how the appeal was progressing. Pat Tummons."

May 11: "Morning Pat. At this point, I'm afraid there is not much to report. With the new Obama standards for review in place, the process is a bit slower. We are steadily working on the appeal, however. And please feel free to keep in touch about the status. Regards, Sarah."

August 13: "Hi, Sarah. Just wondering how the appeal is going. Any info would be greatly appreciated. Thanks. Pat Tummons."

August 14: "Hi, Pat. Thank you for checking in on your appeal. We are processing the appeals

in the order in which they were received here, so we're pushing older ones out the door before the close of the fiscal year. Consequently, we have not yet completed your appeal. I do apologize for the delay, but I can assure you we are working on it. Thank you and have a nice weekend. Sarah."

November 19: "Aloha, Sarah. Any word on the status of this appeal? It's been three months since your last message. Best wishes, Pat Tummons."

November 19: "Hi, Pat. Thank you for checking back. Your FOIA appeal is actually my priority at the moment. In the course of working on your appeal and through further discussions with NMFS's FOIA office, however, NMFS realized last week that they may have a few more documents to provide. They are currently collecting those for me, thus I am waiting on documents so that I may complete the appeal. Again, I apologize for the delay. Regards, Sarah."

January 22, 2010: "Aloha. It's been more than two months since I received your message below [November 19]. Could you give me a status update, please? Thank you. Pat Tummons."

January 25: "Morning Pat. I received the documents from NOAA and have nearly finished the appeal. Once complete, I'll pass the appeal forward for final clearance. We have a multi-step review process, which can take about a month (though sometimes less). Much will depend on how many FOIA appeals are ahead in line. Have a great day, Sarah."

June 11: "Aloha, Sarah. It's been a while since our

last correspondence. Any word on when the appeal may be decided? Thanks. Pat Tummons."

June 14: "Hi, Pat. I do apologize for the delay. Our office received more documents from NMFS since my last correspondence to you, which required additional time for review. I hope to get this out to you soon, however. Thank you for checking. Sarah."

July 16: "Any ETA? Thanks. Pat T."

July 20: "Morning, Pat. We're aiming for this month or early next. Regards, Sarah."

August 18: "Aloha, Sarah. Just checking in, now that July has passed and early August is history. Pat."

August 20: "Hi Pat. We're still actively working on it. I'm waiting for NOAA to confirm one last detail. Regards, Sarah."

September 20: "Hi, Sarah. Been a month since our last exchange. How are things going? Is an end in sight? Pat."

September 21: "Morning Pat. Yes, an end is in sight. I've heard from NOAA, and I'm finishing up the appeal now. Regards, Sarah."

September 28: "Hi Pat, ... Would you be willing to exclude taxpayer identification numbers and bank account numbers from the scope of your appeal? Thanks so much, Sarah."

October 12: "Hi, Sarah, Nice to hear from you. Yes, by all means exclude bank account numbers and taxpayer IDs, employer ID numbers, Social Security numbers. I really don't care about these. Any idea of when a final package will be ready? Pat."

October 14: "Hi, Pat. Thanks so much for the response. We will exclude those numbers and hopefully get a final package out within a couple of weeks. We have a review process in our office that requires a couple of steps once the appeal leaves my hands, but I'd imagine that will not take too long. Have a great day, Sarah."

— P.T.

Wespac (continued from page 7)

ing, when the agenda item "election of council officers" came up for discussion, Duenas took the microphone. "The delegates representing island units have worked on a slew of names," he said. "Sorry, Mr. Chairman," he said to current chairman Stephen Haleck of American Samoa, "there's some changes. It looks like I'm going to take over next year."

No vote was taken to ratify the slate of officers Duenas rattled off. No member voiced any objection to the process.

In the past, the council has gone through the motions of ratifying the decisions of the nominating committee (which usually was made up of the vice chairs representing the four island areas). Last October, for example, then-chairman Sean Martin asked for discussion and, when no one voiced any comments

or concerns, asked that the slate be approved by acclamation.

According to the council's Statement of Organization Practices and Procedures, the council chairman "is elected by a majority of the voting members present and voting." Vice chairmen are also to be elected, one from each of the island areas.

In his six years on the council, Duenas has forged a close relationship with Kitty Simonds. They share a strong opposition to the establishment of marine reserves in the Pacific, among other things. When public hearings were being held three years ago on the proposal for a marine sanctuary around parts of the Northern Marianas Islands, Duenas was called out for his rude behavior. Duenas later apologized to the council for his actions, saying he was not representing the council when he disrupted meetings, but rather was

acting in his role as president of the Guam Fishermen's Cooperative. (For details, see the article in the May 2008 issue of *Environment Hawai'i*, "Fisheries Council Approves Proposal to Raise Caps on Turtle Interactions.")

— Patricia Tummons



For Further Reading

To read about the council's discussions on bottomfish regulations and more, check out the EH-Xtra column on our home page, www.environment-hawaii.org.

Kona Development on Fast Track Runs Into Major Roadblock from Queen's Trust

The Queen Lili'uokalani Trust filed a petition to intervene in these proceedings, originally intending to be a friendly intervenor," attorney Ben Kudo told the state Land Use Commission at its first hearing, October 7, on a proposal to reclassify some 272 acres of land near Kailua-Kona, Hawai'i, into the Urban District. "However, during the course of the proceedings, more information came to light as far as this project is concerned... As a result of this information, we reluctantly but out of necessity had to change our position to that of opposing this particular petition."

With that, the Queen Lili'uokalani Trust threw down the gauntlet, challenging one of the state's most ambitious projects for affordable housing in recent years: Kamakana Villages near Kailua-Kona. If approved, the development, largely surrounded by land owned by the trust, would consist of some 2,350 residential units (slightly more than half of them affordable to families earning up to 140 percent of the county median income) and 197,000 square feet of commercial space. Because at least half of the planned units are planned to be within reach of families earning 140 percent of the county median income, it is seeking expedited approval under Section 201H, Hawai'i Revised Statutes, which puts affordable housing projects on a fast track and imposes on the commission a deadline of 45 days (November 5) within which to reject the proposal or approve with conditions. If neither action is taken, the project is deemed approved as described in the application.

Kudo briefly recapped the history of the trust's involvement with the project. In 1989 the Queen Lili'uokalani Trust "negotiated a deal with the state of Hawai'i to sell this parcel to the state, he said. The lands were sold to facilitate an affordable housing project, he continued, but "the original project contemplated... was very different from the project you have before you." It was to be 60 percent affordable, have no commercial development, include a regional sports complex, and a third of the land was to be used as a West Hawai'i campus for the University of Hawai'i.

At the LUC's second hearing on the project, commission chair Vladimir Devens deferred a decision on Kudo's request for a declaratory ruling that the reclassification proposal was legally defective (by virtue of

not having given adequate public notice of the action and calling into question the developer's title to the land), clearing the way for consideration of the project being proposed by the Hawai'i Housing Finance and Development Corporation and a LLC subsidiary of the giant Forest City Enterprises, Inc.

At 1:14 p.m. that afternoon, barely two hours after the deferral, the trust filed a complaint in 1st Circuit Court in Honolulu against the LUC, HHFDC, and Forest City Hawai'i Kona, LLC.

"Friendly" was about the last word one would use in describing the day and a half of hearings that followed.

A Slowdown on Traffic

Under 201H, developers are allowed not only an expedited hearing, but also are able to ask agencies to exempt them from many of the burdens imposed on developers of market-rate projects. While Forest City is

not seeking exemption from state requirements, it is asking the county for relief from more than four dozen requirements, having to do with such things as setbacks, street widths, permit fees, and the like. (At first, nearly 100 such exemptions were requested; as of late October, the number had been pared back to the low 50s. At press time, the county and developer were still in negotiations.)

As for state demands, the developer has committed to working out with the Department of Transportation an agreement to mitigate, by construction of intersection improvements, traffic impacts that are expected to result from the project. What those impacts would be, exactly, was the subject of much of the most heated exchanges in the two days of LUC hearings that followed the deferral on the Queen Lili'uokalani Trust's request for a declaratory order.

Randall Okaneku, retained by Forest City to analyze traffic impacts, was grilled by Kudo, who pointed out discrepancies between Okaneku's raw data (trip numbers obtained in traffic surveys earlier this year) and the figures used in tables showing existing levels of service. Okaneku ex-

plained that, on the basis of his two decades of experience in studying Kona traffic, he was able to determine which figures needed adjusting to fit into his models. "My position is data is data," Okaneku said. "It can't be touched.... But for model purposes, I may adjust certain movements."

Forest City attorney Steve Lim claimed his client was being ambushed, with Kudo springing on the witness a line of questioning that should have been raised in response to written testimony submitted weeks earlier. Kudo shot back that he and the traffic expert retained by Queen Lili'uokalani Trust had been going through Okaneku's traffic impact analysis report as quickly and diligently as they could.

Devens, commission chair, asked Kudo how many intersections he had identified as problematic. "We estimate 100 to 150 intersections," Kudo replied.

At that point, Kudo was ordered to share his notes with the petitioner and give Okaneku an opportunity to prepare a response by the next day. When Okaneku again testified, he acknowledged errors and typos. But, he concluded, "the discrepancies represent typos or subsequent refinements in traffic signal timing. However, the

"We've been stonewalled all the way through this... They've not played nice."

— Steve Lim

discrepancies with the proposed project do not result in any worse case than [level of service] 'D.' Therefore, they do not affect my findings." (Only in the event that the projected level of service falls below D will developers have to provide mitigation.)

The traffic impact analysis report (TIAR) prepared by the developer needs to be accepted by the state Department of Transportation. Ed Sniffen, chief of the Highways Division of the DOT, said that although there were some concerns with Okaneku's TIAR, "we will work with the petitioner... until the (TIAR) is a document I can make a decision on. We're not going to let it go until we have that comfort."

The County of Hawai'i is also concerned with traffic impacts on county roads, according to its planning director, Bobby Jean Leithead-Todd. In her testimony, she noted that under a section of the county code, "if you come in with double the amount of affordable housing required... which is 20 percent... there isn't a specific requirement you have to mitigate regional impacts." Still, she went on to say, the county's director of public works "feels this doesn't mean you can't ask for some of that

mitigation. So we're looking at that and will have a recommendation both to the applicant and the County Council."

The reason for Queen Lili'uokalani Trust's concern with traffic impacts is more than academic. The trust has begun planning to develop some of its surrounding lands. If the Forest City project does not fully mitigate its traffic impacts, the trust may be burdened with having to pick up some of the slack.

Kudo put it this way to the commission: "If we have to pay for mitigation measures that aren't paid for by petitioner, whether through exemption to county or state DOT, or anybody else, that impacts the trust." And anything that impacts the trust will impact its beneficiaries – the socially disadvantaged.

But Kudo was not allowed to show the commissioners a video of the services that the trust provides to the community. When he attempted to do so, tempers flared. "I object," Lim said. "We've been stonewalled all the way through this... They tell us they have a problem, but they don't tell us what it is. They've not played nice. We're trying to do the right thing, without hurting the trust. I think it's becoming increasingly clear to us that this is less an exercise in impacts on the trust resulting from the LUC decision than it is a competitive issue for them."

"Is he making an argument?" Kudo asked. "I'm making a record," Lim replied, mentioning the complaint filed the previous afternoon in 1st Circuit Court. "They said they needed to go through the administrative process [before filing suit]. We're trying to play nice, but we're faced with the trust that acts like it's fighting for its life. That's why we're a little hardball now."

Kudo defended the lawsuit. "We did everything we said we were going to do. When the motion [for a declaratory ruling] was rejected, we went to court... We don't have the time we have in a normal proceeding. The trust is spending a lot of money doing this because we do feel it is a threat. This isn't some idle thing... When we see something that's a threat to our viability we will take action to protect it, even if some people think we're playing dirty."

Superferry Redux?

The complaint raises the same issues as the request for a declaratory order from the LUC, and the relief sought is the same – a declaratory ruling. In addition, the trust asked the court to issue a temporary restraining order preventing the commission from any further deliberations on the peti-

tion until the court issues a preliminary injunction. "This situation is analogous to what occurred in the PASH case, where the improper failure to let in an intervenor at the beginning of the proceedings led to years of litigation, or the Superferry situation, where the failure of the state initially to follow required EIS exemption procedures again led to years of litigation and the eventual loss of the entire Superferry project," the TRO request states. "Queen Lili'uokalani Trust's position is that HHFDC and the LUC should be required to do it correctly from the beginning, thus avoiding this case becoming another PASH or Superferry."

At the October 27 hearing, Judge Rhonda Nishimura denied the TRO without prejudice. "Judicial intervention is premature" at this point, she told the packed courtroom.



Closing Arguments in O'oma Petition

To judge from the crowded ballroom at the Marriott Waikoloa, you'd never have guessed that the petition to redistrict Conservation District land at O'oma, just south of the Keahole airport, was in its last stages. When the LUC met to hear closing arguments from the petitioner, O'oma Beachside Village, as to why its request for redistricting request should be granted for a development of single-family and multi-family houses and commercial development, two dozen witnesses signed up to testify.

With the commission's meeting coinciding with a school holiday, several of those testifying were youngsters – all of them opposed.

During oral arguments, only a few areas of dispute between the parties to the peti-

tion emerged. Most of the major bones of contention – mitigation of airport noise, control of runoff, traffic – had been worked out among the petitioners and intervenors some time ago.

Arguing for O'oma was attorney Jennifer Benck. "This is a kind of project unlike anything you'll see... Compact development, designed for the primary resident market. That means people like those in this room right now will be welcome to live there. It's not a luxury resort, not time shares, not a fancy hotel... It's not another sprawling development, where people have to travel for miles to get to work... I challenge you to find a residential development anywhere else along the coast, with 20 percent affordable housing on site. On site!"

Bryan Yee, deputy attorney general representing the Office of Planning, said that while noise might be a concern, "as long as the developer is willing to take the risk that there is a... market, and to waive the right to seek damages from the state if the noise increases... then OP has no objection."

Two areas of contention were pointed out by Yee. While the OP desires to have enforceable energy conservation standards (such as those of LEED) imposed, O'oma wants something less rigid. Also, the state's Natural Energy Laboratory of Hawai'i Authority (NELHA) wants to be able to put injection wells on its property adjoining the project – something that would make it more difficult for O'oma to develop wells for use in its planned reverse osmosis plant.

Benck proposed that NELHA and O'oma "split the difference.... Where NELHA wants a one-quarter mile buffer so that it may, at some undetermined point in the future install injection wells along its property boundary, we just don't think that's fair and we can't agree to it. A one-quarter mile buffer is necessary around our feed source [for the RO wells]. We've proposed... to split the difference... It's unfair that all the burden should fall on us."

As to the energy standards, Benck said, "the condition we proposed is consistent with those imposed by this commission in prior [decisions and orders]. This project is going to be green. It's going to be conservation-minded out of necessity, whether it's through LEED compliance, solar energy – there's a million different ways we can pursue to make this project energy efficient. LEED is not the only standard to use. If the state wants that, then the Legislature should decide."

The commission will make a final decision on the project in the next few weeks.

—P.T.



Kaleo Tomas

BOARD TALK

Land Board Approves Draft
Of Ha'ena Park Master Plan

We have way more vehicles than we can accommodate. It's ridiculous," said Dan Quinn about Ha'ena State Park on the North Shore of Kaua'i.

On October 14, Quinn, administrator for the state Department of Land and Natural Resources' Division of State Parks, briefed the Board of Land and Natural Resources on a new draft master plan for the park prepared in collaboration with the community.

The plan proposes a cultural advisory group, a lease with a community-based group to run the park, revenue generation through parking fees, limiting parking spaces to 108, and closing the park once a week, among other things.

Quinn said that Ha'ena is "one of the most constrained sites in the parks system due to the cultural sites." The park contains one of the state's richest archaeological complexes, which includes a hula platform, a heiau, a cemetery, house sites, and extensive agricultural sites.

At-large board member Sam Gon added that the fact the park is at the very end of Kuhio Highway creates a "huge challenge."

On Maui, for example, the main southern coastal road ends at a remote bay, Keoneoio, and cuts through the state's 'Ahihi-Kina'u Natural Area Reserve, which contains archaeological sites, anchialine pools, and coves rich with fish and coral. A few years ago, the reserve's resources were being trampled and defiled by hundreds of visitors a day and the Land Board eventually authorized an emergency closure. Earlier this year, the board voted to extend the closure of the reserve, initiated in 2008, to give the resources a chance to rest while managers prepared to implement a protection plan.

On O'ahu, a community advisory group has recently proposed locking a gate to the Ka'ena Point State Park — also an end-of-the-road reserve and a popular off-roading spot — and requiring permits for vehicles seeking access.

The 65.7-acre park at Ha'ena is also being overrun. It is the third-most visited park in the state's system, with more than 740,000 visitors a year.

Chipper Wichman, a community member who also works for the National Tropical Botanical Garden, a part of which adjoins the park, explained to the board that the entire

property is a wahi pana (a legendary place, a place of spiritual power). "It's tragic to see how the state has managed it," he said. In addition to the hundreds of cars that line the road to the park and Ke'e Beach during the day, Wichman said dance parties with generators and disco lights go on at night.

Kaua'i Land Board member Ron Agor seemed to support the idea of limiting parking, but Big Island member Rob Pacheco, who runs a nature tour company, and Maui member Jerry Edlao were skeptical.

"Limiting parking does not solve the issues. You need to find a way to manage people in a responsible way," Pacheco said, adding that at Maniniowali, a popular beach destination on the Big Island, a similar approach was taken and cars continue to overflow onto the road. Edlao added that he, too, was concerned about a plan that would seem to exacerbate a parking problem.

To this, Wichman said the master plan advisory group believed the parking area should be appropriate for the park. Quinn added 108 cars are roughly what will fit in the already disturbed area of the park. "A few more could squeeze in, but 10 or 20 more isn't going to make a difference," he said.

A letter from Carl Imperato of the Hanalei-to-Ha'ena Community Association and Barbara Robeson of the Hanalei Roads Committee also expressed their concern about the parking plan, noting that DLNR data for 1999

indicates that the Ke'e area received about 1,700 visitors a day and traffic counts in 2008 found 1,550 vehicles entered the park every day, more than 90 percent of which were out-of-state visitors.

"Unless all of its resulting impacts are fully addressed in the plan and the EIS, the proposed parking limitation would simply push problems into the neighborhoods," they wrote, adding that a shuttle service should be the primary means of visitor access.

"[W]e support the vision of the plan and the process through which the plan was developed, but we also request that the environmental impact statement be required to fully address the issue of access management, rather than treat it as an afterthought," they wrote.

In the end, the Land Board approved the draft master plan and endorsed the preparation of an environmental impact statement.

Ka'ena Point Advisory Group
Proposes Limiting Access

Not long ago, controversy led by fishing interests erupted over a proposed fence for O'ahu's Ka'ena Point to keep predators like cats and rats away from the seabird colonies there and to protect as well the rare plants found throughout the coastal Natural Area Reserve.

With fence construction expected to be completed by the end of the year, it appears a battle over access to land outside the NAR may be brewing.

At the Land Board's October 14 meeting, the Ka'ena Point Advisory Group, which includes fishermen, cultural practitioners, and conservationists as well as community representatives, outlined its recommenda-



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tions to DLNR for the Ka'ena Point State Park.

Except for the fishermen, the group recommended that the DLNR secure the gate at the end of the park's paved road with a combination lock and require access permits for vehicles.

The entire group agreed to ask the DLNR to 1) install signs discouraging damage to Leina A Ka Uhane (a rock within the NAR that is believed by Hawaiians to be a departure point for souls leaping into the afterworld), 2) take appropriate actions to protect the sand dune ecosystems, and 3) protect against damage and erosion caused by "irresponsible vehicular access."

The group also wanted the DLNR to designate a road in the reserve to clarify where vehicles are allowed, but members did not reach a consensus on where that road should be.

"Ka'ena Point is at a critical point. The damage has been horrible," said group member William Aila. He explained that Leina A Ka Uhane is being damaged by visitors while the sand dunes, which contain endangered plants and possibly burials, and an area known as Manini Gulch are being degraded by off-road vehicles.

The proposed permitting system, which might require permittees to acknowledge that they understand the administrative rules for the area, is "meant to promote responsible access," Aila said, adding that since most of the off-roaders at Ka'ena are active-duty or retired military personnel, the group is working with the various military branches to reduce the off-roading pressure there.

Board member Pacheco asked Parks administrator Quinn whether other state parks had gated access. Quinn said that at Kahana in east O'ahu, hunters with permits are allowed

to take their vehicles past a locked gate and closer to the hunting area.

Summer Nemeth, who had opposed the predator-proof fence around the NAR, did not testify on any particular recommendation, but told the board that she was concerned about how the advisory group had been created and claimed that fishing group representatives had been bullied at times. She said the fishing community had created its own management plan and asked the Land Board to consider it at its next meeting.

Because the presentation was only a briefing, the board did not take action on the recommendations. Quinn said that his division would likely return to the board for approval of a plan by the stewardship group.



Management Slows At Pu'u Wa'awa'a

Progress on meeting objectives of the state's management plan for Pu'u Wa'awa'a and Pu'u Anahulu on the Big Island has slowed to a crawl over the past several months.

Pu'u Wa'awa'a management plan coordinator Mike Donoho resigned last December and the DLNR's Division of Forestry and Wildlife has been unable to replace him because his position has been frozen, according to a briefing to the Land Board on October 14 by DOFAW's Hans Sin.

In 2003, the Land Board had approved in concept a 10-year management plan for Pu'u Wa'awa'a and the makai lands of Pu'u Anahulu prepared by DOFAW and the Division of State Parks. Donoho had been the plan's coordinator since 2004. To help fill the void left by his departure, DOFAW has been working with Elliot Parsons from the Three-Mountain Alliance (a watershed partnership that includes Pu'u Wa'awa'a) to take over some of the work.

Sin said Elliot was "fresh off the boat" (he was hired in September) and would be working with Melissa Dean of the Hawai'i Experi-

mental Tropical Forest on coordinating research and management activities at Pu'u Wa'awa'a. According to the Three Mountain Alliance's job announcement, Parsons will also be responsible for outreach and education and facilitating meetings of the Pu'u Wa'awa'a Advisory Council, which, according to Sin, has not met all year.



Haseko Shrinks 'Ewa Marina, Again

Haseko, Inc., is now ready and willing to fight to shrink its marina, from 70 to 54 acres, whether in a contested case hearing or in court, according to Yvonne Izu, an attorney representing the company.

On September 9, Izu requested that the Land Board approve an amendment to Haseko's Conservation District Use Permit for its 'Ewa Marina to allow the reduction. Haseko had originally sought to shrink the marina in 2001, but rescinded that proposal after Michael Kumukauoka Lee, a cultural practitioner and longtime opponent, had requested a contested case hearing on the matter. Lee had argued that shrinking the marina might result in poor water circulation and anoxic conditions and suggested that environmental studies be done to determine the possible effects on marine life in the area.

Izu said that Lee's request came during the economic downturn and Haseko decided it didn't want to spend its resources fighting him. Now that economic conditions have improved, her client is prepared to proceed, she said.

After the board unanimously approved the request, 'Ewa Beach community association president Glenn Omalza and Lee both requested a contested case hearing. Land Board chair Laura Thielen then told Izu that should Haseko rescind its request again, it not come back to the Land Board because of the costs to her staff.

— T.D.

