

# Environment



# Hawai'i

*a monthly newsletter*

## *Dead in the Water*

The body that is supposed to govern tuna fishing in a part of the world responsible for nearly two thirds of the global tuna catch has shown once more that it is not up to the task. As Teresa Dawson reports in our cover story, members of the Western and Central Pacific Fisheries Commission at times seemed to want to retreat from previously agreed-upon measures to rebuild tuna stocks, especially stocks of prized bigeye.

Our other cover article, by Patricia Tummons, revisits another area where progress seems to have stalled out: the Villages of 'Aina Le'a on the Big Island.

We take this opportunity to express our thanks to all of you who supported our work through 2015 and to wish you nothing but health and happiness for the coming year.

## Fisheries Commission Makes No Headway Toward Reducing Hauls of Pacific Bigeye

The Western and Central Pacific Fisheries Commission closed its annual meeting last month, having failed again to significantly strengthen its measure aimed at ending overfishing of tropical tunas, especially bigeye.

But it wasn't for lack of trying.

Ahead of the commission's annual meeting, held in Bali, its executive director, Feleti Teo, privately discussed ways forward with individual representatives from various member states. At the Bali meeting, commission chair Rhea Moss-Christian convened meetings of a working group on tropical tuna as early as possible (compared to last year, when then-chair Charles Karnella waited until the middle of the week to hold them).

The group's discussions of a proposal by several island states to amend the measure

degenerated after China's representative called the longline component "a joke." Moss-Christian then broadened the discussion in hopes of finding areas where there might be some agreement. When that tack started leading toward more discord than agreement, she and her staff drafted their own host of small but significant tweaks to the measure and she limited discussion on them to the heads of delegation plus one adviser each. But even the closed-door discussions — which some NGOs argued violated the commission's own policies — failed to achieve consensus on any amendment to the tropical tuna measure.

The current measure, Conservation and Management Measure (CMM) 2014-01, expires at the end of 2017. When the commission reconvenes this coming December to

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*Mahalo!*

## *Whatever Happened to...*

### The Villages of 'Aina Le'a

In 1989, the state Land Use Commission approved a redistricting petition that shifted about 1,000 acres of Agricultural land in South Kohala, on the west side of the Big Island, into the Urban district. Signal Puako, the landowner, had planned to build on that land and the surrounding 2,000 acres that remained in the Ag district six "villages" built around an equal number of 18-hole golf courses. The plan's residential component called for building 2,658 units, a mix of both large lots for higher-end single family dwellings and multifamily buildings

that would provide housing for workers at the growing number of Kohala hotels.

Two years later, the new owner, Nansay Hawai'i, proposed building the worker housing off site, with an "upscale residential community" being built on the Urban land.

Nansay eventually lost the land through foreclosure. After two more transfers of ownership, Bridge Capital ended up purchasing the land in 1999. Bridge eventually established a subsidiary company, Bridge 'Aina Le'a, to hold title and develop all 3,000 acres, more or less following the plans established by Signal Puako, with residences

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Image: An artist rendering of completed structure for Villages of 'Aina Le'a, 1989.

# Environment Hawai'i



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## NEW AND NOTEWORTHY

**Olowalu Town Nixed:** Last month, at the end of a 12-hour-long hearing, the Land Use Commission refused to accept a final environmental impact statement for a residential development of 1,500 units in West Maui first proposed more than 10 years ago and formally submitted to the LUC in May 2010.

In its decision and order on the FEIS prepared for Olowalu Town and Olowalu Ekolu, the LUC presented a long list of concerns with the document. The first to be noted was the discrepancy in acreage of the projects. "In the petition, approximately 175 acres of land were proposed to be reclassified to the state Land Use Urban District and approximately 145 acres of land were proposed to be reclassified to the state Land Use Rural District. The FEIS now states that the Petition Area consists of approximately 434 acres, an increase of approximately 114 acres since the filing of the

petition," the LUC observes in a footnote to the findings of fact.

Then there was the fact that the traffic impact analysis report had undergone extensive revisions since the draft EIS was published in 2012, and the public had had no opportunity to review the changes; the failure of the petitioner to prepare an up-to-date archaeological inventory survey; the lack of any survey of existing recreational users of the coastline; and the failure to consider the sufficiency of potable and non-potable water for cultural or other uses, including taro cultivation; and no discussion of where drainage would flow or the location of retention basins.

Also, "petitioners stated that the realigned Honoapi'ilani Highway was to be initially a two-lane road then a four-lane roadway but did not give timing or cost estimates" and "Petitioners did not clearly state where in the FEIS measures were identified to ensure that traditional and customary cultural practices on the petition area will be preserved and protected."

Although the LUC vote (six to one, with one abstention) was a setback to the developers, there are several options they can pursue to keep the petition alive. The EIS can be revised and resubmitted or the LUC decision can be appealed to the Environmental Council or Circuit Court.

**Climate Change News & Events:** Five years ago, the Federal Emergency Management Agency (FEMA) published its Climate Change Adaptation Policy statement that established an agency-wide directive to "integrate climate change adaptation planning and actions into agency programs, policies and operations."

Last month, the agency released several fact sheets advertising the various types of climate resilient infrastructure projects it now provides grants for. The projects, called



Hurricane Sandy pounds the Massachusetts coast.

PHOTO: FEMA

Climate Resilient Mitigation Activities, can include aquifer storage and recovery, flood diversion and storage, floodplain and stream restoration, and green infrastructure methods, which are sustainable approaches to "natural landscape preservation and storm water management that can be used for hazard mitigation activities as well as provide additional ecosystem benefits," the agency states.

For more information, visit <https://www.fema.gov/media-library/assets/documents/110202>.

**Mark Your Calendars:** And in other climate change-related news, a number of events dealing with its impacts in Hawai'i will be held in the coming weeks and months.

On January 26, from 1 to 4 p.m., the state's Interagency Climate Adaptation Committee (ICAC) will meet in the Land Board conference room at the Kalanimoku building, located at 1151 Punchbowl Street in Honolulu. On February 11, the ICAC has scheduled a Hawai'i Sea Level Rise Vulnerability & Adaptation workshop. For details, check [climateadaptation.hawaii.gov](http://climateadaptation.hawaii.gov). And from March 14-17, the Pacific Risk Management 'Ohana will hold its annual conference to discuss ways to build hazard-resilient communities.

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## Quote of the Month

*"It is shameful that, at the moment, we have mechanisms in place requiring identification of 'dolphin safe' tuna that effectively blocks import and export of tuna in certain countries, yet we do not even have even a remotely similar measure for 'human safe' tuna."*

— **Bubba Cook,**  
**World Wide Fund for Nature**

## Two New Alternative Energy Projects In Line for Approval by NELHA Board

The Natural Energy Laboratory of Hawai'i Authority has been transformed in the few years since its former executive director, Ron Baird, departed. At a meeting of the NELHA board last month, presentations by prospective tenants suggested the state-owned facility, now under the direction of Greg Barbour, might be returning to its mission of giving a leg up to developing energy technologies.

In the first case, Apparent, Inc., based in Novato, California, is proposing to build an ice plant powered by photovoltaic panels on about 10 acres of mauka land at NELHA, near Queen Ka'ahumanu Highway. The company, led by former Google executive George Salah, is a pioneer in the development of smart grids and microinverters.

In describing the proposal, Casey Francis, Apparent's regional account manager for Hawai'i, explained the decision to make ice.

"We got involved in Hawai'i when we started looking at the energy costs here. ... It's crazy for a first-world country to be paying third-world prices." By using the Apparent technology to make ice — "an energy intensive process," he noted — Apparent "wants to showcase what we can do with intelligent grid management."

In addition to making ice, which would be sold through a local grocery chain, Francis said, "we would like to develop additional thermal technologies, such as freezing ice with nighttime rates and then using that to augment air conditioning."

Initially, the ice would be made with potable water from one or more of the desalination plants at NELHA. But, Francis added, "in 10 years we'd like to be making our own desalinated water." With NELHA itself already exceeding its allowed draw on county water, "purchasing county water is not really an option," he noted.

Although at the outset, there would be no desalination of seawater, the plant would still draw on deep, cold seawater to chill the water source used for ice. "If we can cool with deep seawater," Francis said, "we can look at a 20 to 30 percent energy cost reduction by cooling water before it goes into ice production."

Overall, he said, "we're looking at a leveled cost of energy that's less than half of what everybody else is going to be paying."

The NELHA board gave its unanimous

approval in concept to Apparent's proposal. The next step will be for the company and NELHA to work out details, which will then be brought back to the full NELHA board for final approval, expected sometime this spring.



### Goodbye Sopogy, Hello Edisun

The NELHA meeting was held in the Gateway Center, the futuristic set of buildings erected at the entrance to the sprawling NELHA acreage. Immediately south of the complex lies a field of abandoned dreams — about four acres covered with mirrored troughs, all that remains of the ambitious project of Sopogy to generate energy using concentrated solar power.

Sopogy, led by Darren Kimura, was troubled from the get-go. By 2014, no one was even pretending that it could produce 500 megawatts of power, much less the two MW originally promised.

Now a new company — Edisun HelioStats, Inc. — is promising to deliver what Sopogy could not, albeit on a more modest scale. According to Laurence Sombardier of the NELHA staff, Edisun may be able to use some of the infrastructure Sopogy left behind. "They won't be using the mirror troughs," however, she added. "We would have to sell those, either for scrap or salvage." What Edisun would use would be the building, the interconnections, and footings, so there would be "minimal construction" with the new tenant, she said.

Peter Stricker, in charge of business development for Edisun, gave the board more details about the proposal, which he described as a "solar battery demonstration project," able to dispatch renewable energy both day and night at a lower cost than fossil-fuel-generated power or photovoltaic plus batteries.

This technology, he continued, "is the only renewable generation technology that can take extra power from the grid and return

it when needed."

To date, there has been one 25 kilowatt project in Pasadena, which, Stricker said, "demonstrated the first-ever day and night production. Silent. No pollution. Super modular and cost-effective even in the first project we built."

The key to the energy storage system isn't a traditional battery, but instead a vessel containing locally sourced rocks. Reflected heat from the four acres of sun-tracking mirrors — the heliostats — is received by a 40-foot-high tower and conducted to the stones, where it is stored. The heat is used then to power a high-efficiency Stirling engine, producing electricity for hours after the sun has set.

"The energy storage vessel is filled with rock and high temperature," Stricker said, "and you can get a lot of energy in a fairly small container."

Edisun wants to work out an arrangement with NELHA that will trade generated power for at least a partial rent offset, with details to be worked out in coming months. "We want to generate \$100,000 to \$150,000 a year in combined lease revenue and energy savings for NELHA," Stricker said.

Even at full production, though, it would only provide about a quarter of the energy NELHA needs to power its pumps, said Sombardier.

"If they do 100 kilowatts, that's 1 million kilowatt hours per year," she said. "This would provide 100 kilowatts over eight hours, so that's maybe one fourth of what is needed."

Barbour estimated the most Edisun could supply would be about 10 percent of NELHA's daily load.

With the unanimous blessing of the NELHA's Research Advisory Committee, the board gave the project approval in concept. Stricker said he hopes to come back with a proposal for the final go-ahead early this year.

— Patricia Tummons



### For Further Reading

*Environment Hawai'i* reported on the now defunct Sopogy project in July 2008: "Sopogy Spurns SPRBs in Push to Get Federal Tax Credits for NELHA Plant."

The article is available to read free of charge at our website, <http://www.environment-hawaii.org>.



***'Aina Le'a from page 1***

*built around six golf courses.*

*In 2005, with no construction having begun on the development, Bridge announced it had partnered with a California firm, Cole Capital/Westwood, but that the requirement that 60 percent of the units be affordable was no longer tenable. The LUC lowered the percent of affordable units, from 60 percent to 20, which translated to 385 units. At the same time, the LUC now was requiring that the affordable units be completed by November 17, 2010.*

*By 2007, Cole Capital/Westwood had dropped out of the picture and the LUC was told that a new development company, called DW 'Aina Le'a, was prepared to move forward with construction.*

*Over the next three years, the LUC grew increasingly frustrated with what it perceived as a lack of serious intent on the part of Bridge to develop the land. In 2008, it issued to Bridge an order to show cause as to why the land should not be reverted to the Agricultural district. DW 'Aina Le'a and Bridge pledged to get at least 16 of the affordable units completed by March 31, 2010.*

*When that deadline slipped, the developer sought another time extension. In 2011, the LUC refused to grant it and instead voted to have the land revert to its pre-petition status — that is, back to the state Agricultural district.*

*'Aina Le'a and Bridge challenged the action in state and federal court, with the Hawai'i Supreme Court weighing in on the matter in November 2014. Our report picks up at this point:*

More than a year has passed since the Hawai'i Supreme Court issued its ruling in the 'Aina Le'a case. That case involved the landowners' challenge to the Land Use Commission's decision to revert more than 1,000 acres in the South Kohala district of the Big Island from the Urban land use classification back to Agricultural.

The court held that because the LUC had not followed its own rules when reclassifying the property, where some development had already commenced, the reversion was void. The case was remanded back to the court of origin for further proceedings "consistent with this opinion." So far, none of the parties has made any filing with the 3<sup>rd</sup> Circuit Court. The judge who decided the case in the first instance, Elizabeth Strance, withdrew her petition to be retained on the bench last year when the Judicial Selection Commission recommended against her retention. No new judge has been assigned to the case.

While the litigation in state courts appears to be exhausted for all intents and purposes, a lawsuit is still moving forward in federal district court in Honolulu. In that case, Bridge 'Aina Le'a, LLC, which used to own most of the land at issue in the LUC case, is seeking millions of dollars in damages from the state. Last August, Judge Susan Oki Mollway ruled that the individual commissioners, whom Bridge had named as defendants, were entitled to immunity — a huge relief for some of the commissioners, who had seen their personal finances affected by the looming threat of an adverse judgment. A settlement conference in that case is set for March 23. And if that doesn't yield results, jury selection is scheduled to begin at 9 a.m. on June 8 in Judge Mollway's courtroom.

Apart from the court cases, however, the real action seems to be occurring in the realm of finance.

***Selling Shares***

In November, Bridge sold most of its remaining land in the Urban district — all but 27 commercial-zoned acres — to 'Aina Le'a, Inc. That company is a subsidiary of DW 'Aina Le'a, which, since 2009, has been put forward as the developer of the property and which has had an agreement with Bridge to purchase all of the Urban acreage. (Bridge also owns about 2,000 acres of land in the Agricultural district that surrounds the core Urban land.) In exchange for the deed, 'Aina Le'a gave Bridge a promissory note for \$14 million, in addition to a down payment of at least \$10 million.

To help finance future development and to pay off part of 'Aina Le'a's existing debts, the company sought — and, in late November, received — the approval of the federal Securities and Exchange Commission to sell up to 2 million shares, at \$13.75 each. If at least 1,250,000 shares are not sold, the would-be purchasers are to receive their money back. The company is hoping to raise between \$15.5 million and \$24.75 million from this sale.

Among other things, 'Aina Le'a's filings with the SEC disclose details about the unorthodox financing mechanism used to raise capital for the development of Lulana Gardens, its first housing complex, which was to include at least 385 units of affordable housing.

"We have raised the initial capital ... through an exclusive marketing agreement with Capital Asia Group Pte., Ltd. (CAG), a land banking company headquartered in Singapore, to sell Undivided Land Fraction[s] (ULFs) to Asian investors,"

'Aina Le'a told the SEC in a November filing, adding that it paid CAG a commission of 27.083 percent of all sales proceeds.

"From 2009 through September 30, 2015, we have raised approximately \$44 million (before the fees and commissions paid) ... from approximately 1,139 investors who participated in our ULF program," the SEC was told. Proceeds from the sale of these fractional land shares would be used to complete the development of the first phase of construction, consisting of Lulana Gardens and Ho'olei Village.

The owners of the ULFs hold title to a fraction of the two lots on which these developments are proposed to be built, with their percentage of ownership proportional to the number of shares they have purchased. Also, most of the owners have agreed to contribute their deeds to one of two separate trusts, in exchange for an interest in the trust. The trusts are vested with the power to approve development and otherwise act as the agents of the ULF owners. Since April 13, 2015, Emerald Hawai'i Services, Inc. — a company that registered with the state Department of Commerce and Consumer Affairs just four days earlier — has acted as trustee.

As of mid-November, 592 of the ULF investors had been bought out or had exchanged their deeds for shares of common stock.

When the ULFs were sold, at \$9,600 each, purchasers immediately received \$500 within the first 90 days and were promised to be paid an additional \$12,000 in the earlier of 30 months or whenever the fractional interest held by the purchaser was sold — that is, when the townhouse or lot to be developed by 'Aina Le'a was actually sold to a homeowner or builder. "As a result of construction delays ... the company has not paid the \$12,000 at or prior to the end of 30 months. ... Accordingly, the company has accrued a penalty interest of 1 percent per month due on the \$9,600 original investment," 'Aina Le'a stated. "As of September 30, 2015, the company owes net principal of \$27,410,273 and net interest of \$10,377,179" to the holders of the ULFs.

"The company is in the process of negotiating a \$77 million bond issuance ... to pay off the ULF investors," 'Aina Le'a said in its prospectus. "No assurances can be made that any or all of such financings will close or that such amounts will be made."

***The China Connections***

Long after sales of ULFs slowed — the last one was recorded in February 2014 — Asia continues to be a major source of financing for 'Aina Le'a.

In November, to help raise funds needed to close on the purchase of land from Bridge, the company took out a \$6 million loan from Ms. Libo Zhang of Changchun City, in the far north of China. Under terms of the promissory note, the loan matures in a year, at an interest rate of 12 percent. In addition, “as a bonus for timely making” the loan, ‘Aina Le’a’s CEO, Robert Wessels, gave Zhang 23,091 shares of common stock—shares that, he said, had been issued to parent company DW ‘Aina Le’a Development, LLC, “in early 2013 in exchange for the funding and formation of ‘Aina Le’a, Inc.” If the loan is not repaid within six months, Wessels said, “DW ‘Aina Le’a Development, LLC, will deliver you an additional bonus of 10,000 shares” by June 12, 2016.

A year earlier, ‘Aina Le’a had raised \$16 million from the Shanghai Zhongyou Real Estate Group, which in turn received 1,280,000 shares of common stock. Of the \$16 million, \$1,460,860 went to pay commissions and operating expenses. The bulk of the proceeds, however, was “to be used by the company to acquire the remaining 1,011 acres of residential property,” the company stated. As part of the same transaction, ‘Aina Le’a obtained a “convertible note” from Shanghai Zhongyou for an additional \$9 million, convertible into 720,000 shares of common stock.

Besides the sources of capital in Asia, ‘Aina Le’a has also “closed on a two-year \$12 million construction loan” with Romspen Investment Corporation, a Canadian firm.

As of September 30, ‘Aina Le’a had drawn down \$5,330,496 from the loan, paid advance fees of \$712,112, and has accrued interest of \$98,804. Furthermore, Romspen held back \$1.25 million in an “interest reserve.” “There can be no assurance that the company will be able to make additional draws or receive the full amount of the loan,” ‘Aina Le’a said in its November SEC filing.

### *The County Concerns*

Despite the sale of stock and the debt financing, ‘Aina Le’a cannot yet move forward with additional construction on its land, stalled out for most of the last five years.

In its prospectus, ‘Aina Le’a states that “32 units [are] in various stages of vertical construction in Lulana Gardens ranging from 58 percent up to 95 percent complete. Of these, there are 24 units that are considered substantially complete.” These are part of the townhouse development that is to include 385 units of “affordable housing” under present county guidelines and were put up in the 2009-2010 time frame, when ‘Aina Le’a was attempting to show the Land Use Commission that it was serious about fulfilling conditions of redistricting. Those units remain unserved by utilities, including water and sewer. Also, the intersection with Queen Ka’ahumanu Highway leading into the property is unimproved, so the units that have been built, more than a mile from the highway, are all but inaccessible to most vehicles.

Although representatives of ‘Aina Le’a have claimed recently that they are ready

to resume construction, including required improvements to the highway intersection, until a final supplemental environmental impact statement is accepted by the Hawai’i County Planning Department, no work can be done. As a result of a lawsuit brought by the Mauna Lani Resort Association in 2011, which challenged the county’s acceptance of an EIS prepared in 2010, ‘Aina Le’a must prepare the supplemental EIS. Last month, ‘Aina Le’a’s consultant gave the county a proposed preparation notice for the supplemental EIS, but the county had not forwarded it to the state Office of Environmental Quality Control by press time.

Nor will ‘Aina Le’a be in the clear should it complete the supplemental EIS process. In May 2015, Duane Kanuha, the county planning director, notified Wessels that “payment towards the fair share contribution for Parks, Police, Fire, Solid Waste, and Road and Traffic improvements ... is due prior to the issuance of a certificate of occupancy” for any of the units ‘Aina Le’a builds. The current fair-share contribution for 432 units in the Lulana Gardens project alone came to \$3,003,525.59, Kanuha said.

### *Golf Permits, CFD Financing*

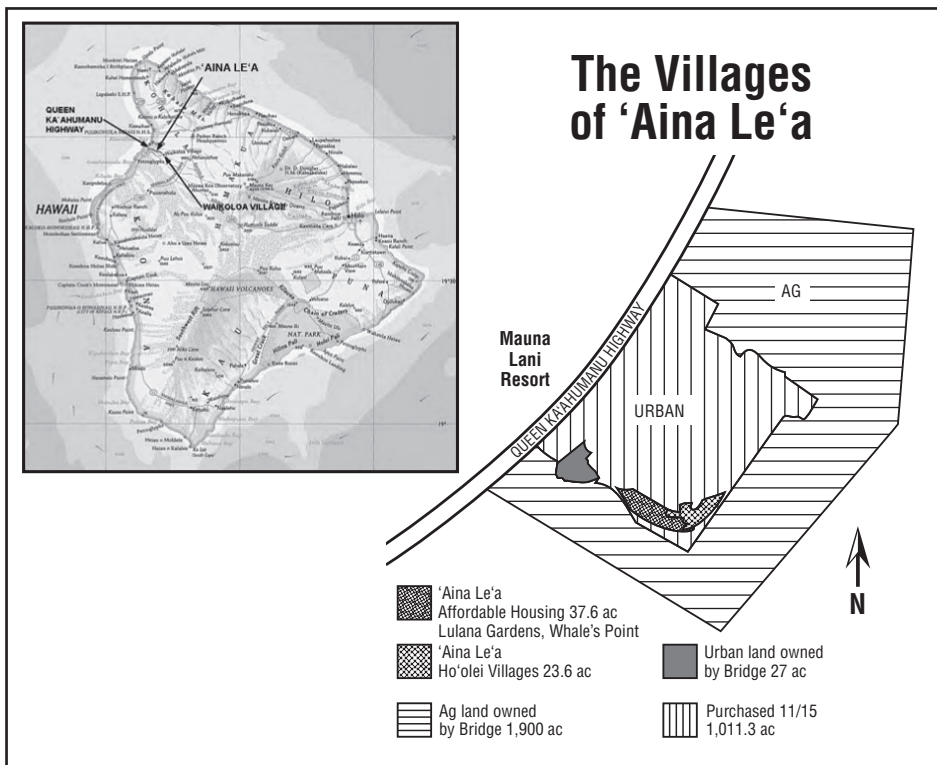
Nearly 30 years ago, when the Land Use Commission first received a petition for redistricting the land, the then-owner, Signal Puako, proposed developing no fewer than six “golf course villages” over the 3,000 acres it owned—only a third of which were the subject of the redistricting petition.

The Hawai’i County Planning Commission went along with the proposal in 1991, when it granted the developer a use permit allowing the construction of six 18-hole “championship golf courses,” a “golf teaching academy,” and other improvements. In 1996, with no work on these elements yet under way, the county granted a time extension, which required at least three of the six golf courses to be completed by September 30, 2011.

In the meantime, in 2005, the Legislature changed the state’s land use law, Chapter 205, to ban the construction of golf courses on land in the state Agricultural district, where three of the golf courses were to be sited.

Last month, the Hawai’i County planning director initiated procedures to revoke the use permit. In a memorandum to various state, federal, and county agencies announcing the move, both the failure to perform by the use permit deadline as well as the change in Hawai’i’s land use law were cited as reasons for the action. The Planning Department anticipated bringing this to the Planning Commission for action by February.

If the permit is revoked, that will throw



## Court Upholds Transfer of Bigeye Quota to Hawai'i Longline Fleet

For years, environmental groups and some members of the Western and Central Pacific Fisheries Commission (WCPFC) have groused about the Hawai'i longline fleet being allowed to skirt its international bigeye tuna quota by attributing some of its catch to U.S. Pacific island territories.

In 2014, the Conservation Council for Hawai'i, the Center for Biological Diversity, and the Turtle Island Restoration Network sued the National Marine Fisheries Service in federal court, seeking a ruling that would end the practice. But on December 23, U.S. District Judge Leslie Kobayashi denied their plea, stating in her decision that despite the plaintiffs' arguments to the contrary, all of WCPFC's conservation and management measures (CMMs) regarding bigeye seem to treat the United States separately from the territories of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. For this reason, among others, Kobayashi found that NMFS's rule—known as Amendment 7—allowing quota transfers of up to 3,000 metric tons a year from the territories to the Hawai'i fleet is not arbitrary or capricious.

Because the commission's most recent tuna conservation measures (CMM 2013-01 and

2014-01) are "ambiguous as to the issue of whether [participating territories] are separate entities from their responsible Contracting Parties for purposes of catch allocation limits," Kobayashi stated that she looked to the prior relevant CMMs, which do, indeed, separate the territories from the United States in their list of flag states.

"Requiring each [participating territory] to attribute its catch to its responsible Contracting Party would be a major policy change [that] would be contrary to other policy statements in CMM 2013-01," she wrote, referring to language in a number of WCPFC conservation measures that seeks to avoid imposing a disproportionate burden on small island developing states (SIDS) or participating territories (PT).

"Not only is CMM 2013-01 silent on the purported change in the policy regarding the allocation of the PTs' bigeye tuna catch, the Commission's Summary Report of the session during which that measure was adopted does not reflect any discussion of the purported change," she continued, adding that the commission in 2013 also adopted two measures addressing SIDS and PTs.

"Thus, the interpretation of CMM 2013-01 that Plaintiffs advocate—in which PTs are

no longer recognized as separate entities for purposes of catch allocation—is inconsistent with the Convention's and the Commission's policies, and it is not supported by the record of the Commission's session during which the measure was adopted," she wrote.

She further argued that requiring American Samoa to attribute its catch to the United States would "put a disproportionate burden of conservation efforts on it and would prejudice its ability to develop its fishery."

Given the fact that the Hawai'i fleet hit its quota early this year, "[t]he American Samoa fishery would likely be unable to catch its annual average, let alone a larger amount if it decided to responsibly expand its fishery," she wrote. "The more sophisticated Hawai'i-based longline fishery—already faced with a reduced catch limit—would likely reach the United States's annual catch limit before American Samoa reached its annual average, and the fishery for the United States and all of the U.S. PTs would be closed thereafter. Further, the Hawai'i-based longline fishery would have no incentive to support the development of the American Samoa fishery because the expansion of the American Samoa fishery would reduce the amount of bigeye tuna that the Hawai'i-based fishery could catch," she wrote. — **T.D.**

a spanner into 'Aina Le'a's plans for the overall development. A site map that was prepared as part of the master plan and included in the proposed EIS preparation notice shows several golf courses continuing to be a part of the project.

Finally, 'Aina Le'a has lost out on its bid to obtain community facilities district financing (CFD) for the infrastructure improvements that need to be installed before any of the subdivided lots may be sold. On August 3, county finance director Deanna Sako wrote Wessels, giving him the bad news: "We have reviewed your request for financing the infrastructure of the Villages of 'Aina Le'a project with tax exempt community facilities district (CFD) bonds. I am sorry to inform you that the County of Hawai'i... declines to support your acquisition of CFD financing for your project."

The decision, Sako continued, was based on, among other things, a review of 'Aina Le'a's disclosures to the SEC "and the numerous significant risk factors" they contained, including:

- The negative net worth of the company "and its precarious current position;"
- The "heavy, if not total reliance" on

Wessels for project implementation "and no intention of acquiring key-man life insurance;"

- The ongoing need for "debt and/or equity financing to move the project forward;" and

- "Unresolved issues, such as obtaining a certificate of occupancy for the units in Phase I."

Community facilities district bonds are floated by the county but are paid off by levies on property owners in the development.

In its November 20 filing with the SEC, more than three months after Sako's letter to Wessels, 'Aina Le'a states, "The County of Hawai'i has agreed to complete proceedings to establish a community facilities district that will issue land-secured public bonds to finance public infrastructure improvements in the Villages project. To avoid delay in the development of this project, we advanced the funds to finance the construction of the infrastructure generally paid from the proceeds of these bonds. As such, we expect to be reimbursed our advances from these bonds when issued. We currently anticipate that the community facilities district will be considered by the County of Hawai'i in late

2015 and, if approved, will be formed and we anticipate bonds will be authorized in the next 18 months."

Bridge 'Aina Le'a had proposed that the county establish a community facilities district as early as 2006. The Hawai'i County Council adopted a resolution stating its intention to designate the Villages of 'Aina Le'a as its first CFD in October 2006, and the county's Department of Public Works retained a consultant to do a preliminary report. That report, submitted to the council in early 2007, estimated that the cost of infrastructure to support development of land in the Urban district would be more than \$72 million, with the maximum authorized bond indebtedness not to exceed \$100 million.

But the resolution and the report are just the first steps in a long process. Ultimately, an ordinance authorizing the district needs to be passed, and this never occurred.

Sako, the finance director, told *Environment Hawai'i* that despite the rejection of the earlier CFD proposal, the company is able to file a new application and her department would give it due consideration.

— **Patricia Tummons**



## Commission Adopts Measures to Protect Fishery Observers in Western, Central Pacific

How many observers or crew members have to die before WCPFC takes action? ... This. Must. End. Charlie, Keith, and all the other missing observers deserve better,” the World Wide Fund for Nature’s Bubba Cook told the Western and Central Pacific Fisheries Commission (WCPFC) at its annual meeting last month in Bali.

Charlie Lasisi, an observer from Papua New Guinea, disappeared in March 2010 while serving on a Philippine fishing vessel. Six crew members were tried for his murder. A Papua New Guinea court, however, found insufficient evidence to convict them.

Keith Davis, an American observer and Cook’s friend, disappeared last September while the Panamanian-flagged vessel he was working on was in the process of transshipping in the Eastern Pacific, which is governed by the Inter-American Tropical Tuna Association (IATTC). Both vessels also fish in the WCPFC region. An investigation is ongoing.

At the WCPFC meeting, a representative from Papua New Guinea, the region’s largest supplier of fisheries observers, said his government is investigating the disappearance of still other observers, but chose not to name them out of respect for their families.

For years, NGOs have been asking the commission to adopt stronger measures to protect the health and safety of the more than 600 fisheries observers in the region who record catch and scientific data and monitor compliance with the commission’s conservation and management measures. In 2012, the Association for Professional Observers and the World Wide Fund for Nature (WWF) recommended several actions the commission could take, including adopting an Observer Bill of Rights; defining the responsibilities of observer providers and setting fines for non-compliance; developing observer health, safety, and welfare standards; establishing a blacklist of captains or crew with a history of non-compliance, especially regarding observer abuse and interference; developing a system to address and prosecute observer grievances; and developing a conservation measure that would result in vessels being placed on the list of Illegal, Unreported, and Unregulated (IUU) vessels whenever instances of bribery, threat, intimidation, assault, or harassment

of an observer were confirmed.

None of those suggestions were adopted.

But last December, following Davis’s recent disappearance, the commission for the first time gave the issue of observer safety its own agenda item and eventually adopted two of the WWF’s proposed measures.

First, as soon as possible, but no later than the end of the year, all observers aboard fishing vessels operating in the Western and Central Pacific Ocean must have their own two-way satellite communication devices and waterproof personal lifesaving beacons. This would easily improve, if not mostly solve, the problem of observer abuse, Cook argued in his testimony to the WCPFC’s Technical and Compliance Committee, which met shortly before the commission’s full meeting. Currently, observers are not required to have their own communication devices.

*“We’re talking about our own people. Anything we can do ensure their safety we have to do that. It’s not up for debate.”*

**— Rhea Moss-Christian**

“Nothing would deter any threats, harassment, or intimidation, or certainly assault against observers faster and easier than a device that allows immediate, unfettered communication with authorities as well as ‘panic button’ and personal locator capabilities,” he wrote in testimony to the committee.

“However, the issuance of this technology is not enough in itself,” he continued. “The success of its use presumes that authorities respond quickly and assertively by contacting both the observer and the vessel directly and addressing the concern if an alert is activated.”

Under WCPFC’s rules, all purse seine vessels and five percent of longline vessels must have independent observers onboard. In arguing for the adoption of the measure to equip observers with communication devices, Cook told the commission that it would cost the equivalent of two good-sized market tuna per observer per year.

According to a WCPFC Secretariat paper on the measure’s estimated capital and operation costs, providing two-way texting devices and distress beacons to all

450 observers at sea at any given time would cost less than \$350,000 for the first year. Over five years, the cost would be less than \$800,000, which works out to about \$350 per observer per year.

“I think the member states can figure out a way to pay to protect human lives at sea,” Cook told the commission, adding that it was the commission’s lack of action on observer abuse that sent a message to the fishing fleet that it can “act with impunity.”

The second measure WCPFC adopted was to require each country that provides observers to develop an emergency action plan (EAP) that establishes a process by which observers can report any emergencies, including interference, harassment, intimidation and other personal safety issues.

In addition to the two explicit safety measures, the commission also adopted a new form that observers are to use to alert flag states and relevant coastal states to alleged infractions. Upon returning from fishing trips, observers must fill out a trip monitoring summary form that asks,

among other things, whether the vessel operator or any crew abused or interfered with the observer.

The commission did not, however, tighten its monitoring of transshipment on the high seas, which some argue would go a long way toward increasing observer safety.

“Noting the recent tragic incident occurrence in the IATTC Convention Area on board a high seas transshipment carrier” — a reference to Davis’s disappearance — “the commission may be interested in considering the establishment of arrangements that would provide closer monitoring via the secretariat of high seas transshipment activities and the associated ROP [Regional Observer Program] observer activities,” the commission secretariat stated in a paper on observer safety.

The commission’s ROP working group had recommended adding more reporting requirements for carrier vessels operating in the WCPFC area, particularly those involved in high seas transshipments.

“Of relevance to observer safety, the proposal includes regular reporting by car-

rier vessels while in the Convention Area of their intended destination and activities, as well as observer details. This proposal has the potential for improving the capability of the secretariat to be monitoring ... observer placements on carriers, which could assist with observer safety and security," the paper stated.

Although the commission ultimately did not support the proposed transshipment measures, WCPFC chair Rhea Moss-Christian urged the commission to continue working to improve observer safety.

"We're talking about our own people. Anything we can do ensure their safety we have to do that. It's not up for debate," she said.

In response to a request by the Pacific Islands Forum Fisheries Agency that a conservation and management measure be drafted to guide flag state responses to alleged observer safety incidents, Russell

Smith, deputy assistant secretary for International Fisheries at the National Oceanic and Atmospheric Administration, volunteered to have the United States shoulder the task, given that the United States is both a flag state and a coastal state, as well as an observer provider. The National Marine Fisheries Service already equips many of its observers with personal locator beacons and two-way communication devices.

The Philippines also offered to help develop the CMM.

In addition to any WCPFC action, WWF's Cook has stated that his organization is pursuing external measures to end observer disappearances, "including a market policy against any supply chain in which an observer, or a crew member, goes missing at sea."

In testimony to the TCC, he issued a clear threat to the fishing industry: either shape up or lose your business.

"It is shameful that, at the moment, we have mechanisms in place requiring identification of 'dolphin safe' tuna that effectively blocks import and export of tuna in certain countries, yet we do not even have even a remotely similar measure for 'human safe' tuna. That is about to change. In the past there has been an assumption of 'if there is no body, then there is no crime.' Well, let me tell you this, from now forward, 'if there is no body, there is no market.' Let your captains, agents, and vessels know that if another observer – or crew member – of ANY nationality in ANY fishery disappears, I can assure you that the market channels for that vessel, for that agent, and for any company associated with that vessel, will dry up. If you don't believe me, TRY ME, because we've understandably got very strong support from both the NGO community as well as market partners on this proposal," he wrote. — **Teresa Dawson**

#### ***Bigeye from page 1***

discuss amending the measure and perhaps lay the groundwork for a new one, some participants have speculated that the matter might be brought to a vote, rather than offered for consensus. Up to now, measures have been adopted by consensus.

Although she did not mention a vote in her closing remarks, Moss-Christian stressed that the commission needs to "consider alternative ways to progress consistent issues we have found ourselves unable to progress. Management of the stocks, this is our key mandate. We need to try to find better ways to make progress."

Leaving things to consensus might never result in an adequate reduction in fishing effort, given some of the comments made by a number of member states during the course of the meeting. Moss-Christian noted during one particularly prickly working group session, "I don't even think we have agreed something needs to be done."

#### ***Cautiously Optimistic***

Purse seiners and longliners have been overfishing bigeye tuna in the Western and Central Pacific for more than a decade. By 2014, the stock had shrunk to 16 percent of its original, un-fished state — a level that leads many to believe the stock is not just subject to overfishing, but is in fact overfished, a much more serious condition.

Scientists with the Secretariat for the Pacific Community (SPC), which advises the commission, have determined that bigeye in

the WCPFC convention area will rebound only under the most optimistic and stringent implementation of CMM 2014-01.

The SPC's most recent modeling shows that the longline and purse seine fleets are generally on track with the fishing effort reductions called for in the measure. Longline catches overall are well below caps set by the measure, and purse seine effort, perhaps driven by economic hardships, dropped last year so that it's only about one percent greater than what the SPC estimated it would be at this time.

The SPC's Graham Pilling told the commission, "We appear to be on track. The question is, are we on the correct track?"

Under the current CMM, certain member states have exemptions and options that allow them to continue setting on fish aggregating devices (FADs) in the high seas after their use is otherwise banned, to increase FAD set limits, or to catch unlimited amounts of bigeye by longline vessels. Should they exercise those options, it isn't at all clear that the fisheries will stay on a track towards ending overfishing, he continued.

"Exemptions generally lead to worse states," he said.

What's more, the SPC needs better data to accurately assess the measure and make projections. The agency's John Hampton said he'd most like more operational-level catch and effort data from longliners. For years, a number of distant water fleets — those for China, Japan, Taiwan, Korea, and Indonesia — provided only aggregated

catch data, but in 2014, they committed to at least trying to provide operational level data.

Although some of those fleets followed through with data for 2014, Hampton said that information alone won't make a contribution to any analyses for many years.

"That [data] needs to be extended to historical data. We have historical data for purse seiners. It's important for the work that we do," he said.

Cross-checking catch data with documentation on what's offloaded from vessels would also assist the SPC in nailing down what species are being caught, he said. It's often difficult for observers to tell the difference between juvenile yellowfin and bigeye, a situation some have suggested has led to an underestimation of bigeye catches by purse seiners.

Data concerns aside, if the status quo continues for both the purse seine and longline fleets, catches of bigeye will exceed the maximum sustainable yield (MSY) by 21 percent, with a nearly one-in-three chance that the stock will remain below 20 percent of its un-fished biomass, Graham said. It's currently at 16 percent.

If the CMM measures scheduled for 2017 are fully implemented, including a ban on FAD setting on the high seas, bigeye catches would drop to seven percent below MSY after ten years, he concluded.

#### ***Easier Said Than Done***

Will fishing effort, indeed, drop to that level by 2017 and stay there for the next decade?



A number of commission members seemed doubtful. One noted that while the number of FAD sets declined in 2015, catches remained high and some member states were not adhering to the FAD closures called for in CMM 2014-01. Another pointed out that at least two of the member states with bigeye quotas for their longline fleets — including the United States — stay within their limits by engaging in charter arrangements with small island developing states or participating territories, which have no quotas.

All proposals by member states to improve the effectiveness of CMM 2014-01 have failed in large part because, as a member of the Philippines delegation stated, the commission lacked a common definition of the problem. Japan's proposal to reduce the capacity of purse seine fleets was never really discussed. And a package of longline and purse seine measures proposed by Tokelau and a coalition known as the Parties to the Nauru Agreement (PNA), which includes the Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands and Tuvalu, faced stiff opposition from member states wanting to preserve their current longline fishing levels.

Wez Norris of the Pacific Island Forum Fisheries Agency (FFA), which includes a number of PNA member countries and Tokelau, chided those in opposition for not agreeing to what he saw as a minor reduction in fishing effort. Compared to the commitments regarding tropical tunas the commission made in 2008, 2012, and 2013, "this is the easiest discussion we've had. We only need a small reduction in purse seine and longline catch," he said.

He continued that the stalemate on CMM 2014-01 "really highlights that we need to start thinking about post-2017."

In the meantime, given the consistent lack of headway on the tropical tuna measure, some FFA countries have taken to jacking up their access fees to foreign vessels as a way of limiting fishing effort while also maintaining a significant revenue stream for the countries. The result so far has apparently been somewhat effective. On the meeting's closing day, a representative from Korea confirmed that her country's fleet, at least, was suffering financial losses.

"They can't afford fees in the coastal states. It's very blunt, but it's a reality I want to register," she said.

Some of those island states announced at the meeting that they plan this year to start charging higher fees to purse seiners setting on FADs in their waters so as to direct fishing on free schools of tuna instead,

which reduces the likelihood that juvenile bigeye are caught.

With regard to longlining, although the PNA/Tokelau proposal did not target the charter arrangements that allow member states to continue fishing after they reach their bigeye quotas, representatives from the U.S. participating territories — American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands — all testified that those arrangements must continue.

"These arrangements are essential sources of funds that the U.S. Territories otherwise would not have available to pursue our fishery development aspirations," they wrote in a December 2 letter to WCPFC chair Moss-Christian.

### *A New Scheme*

CMM 2014-01 expires soon and although modeling suggests the measure's fishing limits — if applied over the next decade — have the potential to end overfishing of bigeye, the United States, for one, is having difficulty staying within those limits. Last year, the Hawai'i longline fleet hit its 3,502 metric ton quota in August and had to enter into quota transfer agreements with Guam and the Commonwealth of the Northern Mariana Islands to catch up to 2,000 metric tons more of bigeye. The U.S. purse seine fleet also reached its high seas set limit before the year was half over, which had the potential to severely impact American Samoa's tuna canneries.

So at last month's meeting, U.S. representative Russell Smith asked that the SPC investigate spatial management options for longliners. A spatial management scheme, where the more heavily fished areas would be targeted for greater catch reductions, would likely raise the quotas on the Hawai'i longline fleet, which fishes in a lightly used zone.

"It would be very useful if we could get some input from SPC on how we might go about using that tool, focusing on where mortality is occurring and taking steps to reduce mortality in those areas," Smith said.

He added that the United States was concerned about how the current purse seine management scheme is negatively affecting American Samoa's tuna industry.

When considering future measures, he said, the commission must carefully consider proposals to eliminate fishing on the high seas in favor of fishing in zones of certain coastal states. Small island developing states (SIDS) have been pushing the commission to adopt high seas closures, thus forcing foreign fleets to pay them to fish in

their waters. But should the commission adopt such proposals, "this will have and continue to have a significant burden on American Samoa," Smith said.

He noted that the U.S. participating territories have a history of fishing and "it's only fair they should be able to continue. They should not be eliminated by the actions of this commission. There needs to be a balance of ensuring SIDS have a right to develop their fisheries ... and the interests of other coastal states in the fishery."

Although the pleas from Smith and the U.S. participating territories weren't particularly well-received by some SIDS representatives, the EU's Angela Martini agreed with Smith that the commission needs to explore different management scenarios.

In the end, the commission agreed to direct the SPC to study spatial management options.

— *Teresa Dawson*



### *For Further Reading*

"Editorial: Tuna Are In Trouble, With No Help In Sight," and "Bigeye Tuna Population Faces Jeopardy as International Organization Fails to Act," January 2011;

"Federal Law Gives Hawai'i Longliners Free Rein to Ignore International Quota," January 2012;

"Editorial: The High Cost of Cheap Tuna," and "Pacific Tuna Commission Cannot Agree on Meaningful Steps to Protect Bigeye," May 2012;

"Editorial: As Commission Dithers, Tunas Decline," and "For Another Year, Pacific Bigeye Tuna Go Without Strong International Protection," January 2014;

"Hawai'i Longliners' Bigeye Tuna Limit Jumps 80 Percent Under Proposed Rule," April 2014;

"Money Games' Thwart Overhaul of Bigeye Tuna Protection Measure," January 2015;

"Wespac Seeks to Further Expand Bigeye Tuna Quotas for U.S. Fleets," July 2015;

"Hawai'i Longliners' Bigeye Quota Extended for Second Time This Year," December 2015.

## Loopholes in Measures to Protect Sharks, Limit Transshipments Withstand Protests

Several years ago, the Western and Central Pacific Fisheries Commission adopted a measure ostensibly aimed at banning shark finning, a practice that has helped drive several shark species worldwide toward extinction. But at last month's annual commission meeting, as the European Union (EU) proposed ways to more effectively implement the ban, China surprised the EU when it announced it believes shark finning — where fishers cut off a shark's fins and toss the rest of the animal, which is often still alive, overboard — is perfectly acceptable under the measure.

the five percent ratio through certification, observer monitoring, or other appropriate measures, the CMM states. “[Commission members] may alternatively require that their vessels land sharks with fins attached to the carcass or that fins not be landed without the corresponding carcass,” it adds.

Such loose language, which allows detached fins to be stored and transshipped separately from carcasses, confounds efforts to enforce the five percent ratio, according to testimony from Greenpeace, which urged the commission to strengthen the measure by requiring sharks to be retained with their

fins naturally attached “in accordance with best practices established by the United Nations.”

“This loophole compromises other CMMs including those for oceanic white-tip and silky sharks,” the organization stated. (WCPFC measures

prohibit the landing of both of those species.) Allowing the transshipment of sharks and fins separately, Greenpeace continued, “compounds the difficulty in enforcing the relevant shark measures. This further reiterates the call by Greenpeace to ban all transshipment at sea (of all species including sharks) to close this loophole and support strong fisheries management, good data reporting and science and enforcement of the rules.”

Greenpeace pointed to its bust last September of the *Shuen De Ching* 888, a Taiwanese longliner that was caught illegally fishing and shark finning on the high seas.

Observer reports confirm that shark finning is still occurring in both the longline and purse seine fisheries in the Western Pacific. And the commission's Scientific Committee (SC) reported last year that it was unable to evaluate the validity of the five percent ratio “due to insufficient information for all but one of the major fleets

implementing these ratios.” As a result, the commission's Technical and Compliance Committee (TCC) was unable to assess whether the fleets were adhering to CMM 2010-07.

Before the commission's meeting in December, the TCC recommended that the commission “consider means to strengthen the CMM 2010-07 with respect to ensuring compliance with the obligation in paragraph 6,” which requires fishers to fully utilize any retained catches of sharks.

The EU's Angela Martini, who initially proposed that the measure be amended to require sharks be landed with their fins naturally attached, recommended that the SC and TCC investigate ways to improve the measure. She also urged member states that use the five percent ratio to provide detailed information to those committees on how they implement that condition. Finally, she urged the commission, following the committees' recommendations, to revise CMM 2010-07 “to ensure its effective enforcement in view of the implementation of the finning ban.”

Ray Clarke of the U.S. National Marine Fisheries Service suggested it would be redundant to ask the SC and TCC to evaluate the measure when they've already said they can't. He added that he would have preferred a stronger recommendation — specifically, a requirement that carcasses and fins be made available if they are caught in the high seas.

Japan's Takashi Koya added that Japan could not accept the recommendation that the commission revise the measure. When he suggested that the commission merely commit to reviewing it, representatives from China and Indonesia added their support.

China's Liu Xiaobing also took issue with the EU's referral to a “finning ban.”

“‘Finning ban’ is too much for us. ... There is nothing wrong [with finning]. It's consistent with management measures,” he said.

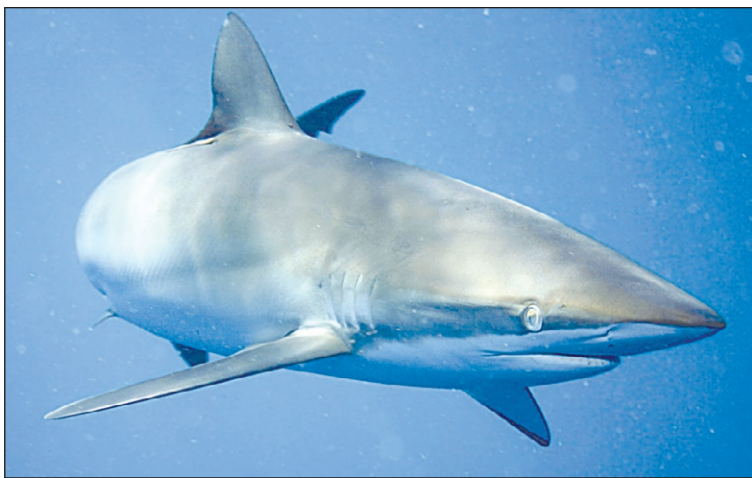
To this, Martini replied, “What do you mean there is no finning ban in the convention area? There is a finning ban. ... I'm pretty surprised by these comments.” Although she agreed to soften the language of her recommendation to remove references to a finning ban, the commission still failed to adopt the EU's overall proposal.

Martini was clearly disappointed.

“The TCC asked for guidance. Now we have no guidance. ... We haven't addressed a very serious issue,” she said.

### Transshipment

At last month's WCPFC meeting, not only



Silky Shark (*Carcharhinus falciformis*) off Cuba.

Conservation and Management Measure (CMM) 2010-07, a revision of a measure adopted in 2009, calls on commission member states to require their fishers to “fully utilize” — that is, keep all parts except the head, guts, and skins — any retained shark carcasses to the point of first landing or transshipment. The measure also requires members to “take measures necessary to prohibit their fishing vessels from retaining on board, transshipping, landing, or trading any fins harvested in contravention of this [CMM].”

Rather than including language requiring that sharks be landed with their fins attached — which would be the most effective way to end shark finning — the CMM merely requires vessels to carry fins totaling less than five percent of the weight of sharks on board up to the first point of landing.

Member states that don't require fins and carcasses to be offloaded together at first landing must ensure compliance with

# Greenpeace Busts Taiwanese Shark Finning Operation

Perhaps nothing highlights the need to tighten WCPFC's shark finning and transshipment measures more than Greenpeace's documentation last September 9 of the activities of the Taiwanese vessel *Shuen De Ching 888*.

"The catch log indicated only three blue sharks were caught, with a total weight of 55 kg. Note that under CMM 2010-07 (5% weight ratio) that would mean a maximum of 2.75 kg of shark fins could be legally aboard the vessel," Greenpeace reported.

Greenpeace found nine shark bodies and three sacks of detached shark fins in the freezer holds.

"The sacks were weighed on the ship's scales, and were 35 kg, 27 kg, and 33-35 kg, respectively. This amounts to 95-97 kg of detached shark fins," the report states. Based on the number of tails in the sacks, it continues, at least 42 sharks had been harvested.



PHOTO: GREENPEACE

Tail fins harvested by Taiwanese vessel *Shuen De Ching 888*.

In addition to violating the five percent weight ratio, Greenpeace suggests that the vessel also appeared to have violated the commission's ban on retaining silky sharks. Shark experts contracted by the organization identified the fins as taken from blue, silky, and scalloped hammerhead sharks.

"Given the discrepancies between the duration of the fishing trip and the amount of catch logged and present on board, Greenpeace questioned the captain about any transshipment that might have taken place. ... Initially, the captain asserted that there had been no transshipment since the vessel left from Taiwan, however upon further questioning the captain admitted that the vessel had transshipped parts of its catch four days earlier," the report states. — *T.D.*

did members debate whether or not the commission ever intended to ban shark finning, they also seemed unable to agree on whether a measure adopted almost a decade ago was, indeed, aimed at banning transshipment — which occurs when a fishing vessel offloads its catch to another vessel — on the high seas.

NGOs, including Greenpeace and the World Wide Fund for Nature, and the small island countries that make up the Pacific Forum Fishers Agency (FFA) have long argued that the commission should adopt a ban on at-sea transshipment, which by all accounts facilitates Illegal, Unregulated, and Unreported (IUU) fishing, especially on the high seas.

"Transshipment and the use of mother-ships to resupply fishing vessels at sea also facilitates forced labor and human rights abuse at sea, by allowing fishing vessels to stay at sea for months and even years, making escape impossible for fishing crews. It also exacerbates the extremely low level of observer coverage on longline vessels by making observer trips difficult to implement and allowing longline vessels to avoid port inspection from landing catches in port or transshipping in authorized transshipment ports where inspection is possible," Greenpeace stated in testimony to the commission.

In 2009, the commission established regulations on transshipment in CMM 2009-06. The measure banned transshipment on the high seas, except where a commission member state has determined — in

accordance with commission-established guidelines — that it is impracticable for its vessels to operate without being able to transship on the high seas. The measure directed the commission's executive director to draft guidelines to determine those "impracticable" circumstances. Those guidelines would then be vetted by the WCPFC's Technical and Compliance Committee and adopted by the commission.

Because those guidelines have never been adopted, some have argued, vessels transshipping on the high seas have failed to properly report their activities.

In the absence of guidelines, the Marshall Islands' Glen Joseph proposed a complete ban on high seas transshipment for longline vessels. (The CMM already bans transshipment for purse seine vessels.)

The European Union echoed the Marshall Islands' recommendation, noting that high seas transshipment is "supposed to be an exception, but it is actually the rule."

A representative from Nauru noted that the 2009 measure was a compromise following the FFA's repeated efforts to adopt a complete ban on high seas transshipment. The measure's exception to the transshipment ban has been not been used in good faith by some flag states, he said.



"It is possible for high seas longline vessels to not transship," he said, noting that the EU conducts all of its transshipments in port.

Although Japan's Takashi Koya acknowledged that high seas transshipping is used in IUU fishing, he pointed out that



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Deborah Ward; Rick Warshauer; Dave Wegner and Nancy Jacques; Paul White; Karen and Frank White; Toni Withington; James Wyban; Alan Young; William Yuen; JoAnn Yukimura.

2009-06 recognizes that transshipment at sea "is a common global practice."

"Japan cannot go along with just a simple request of total high seas transshipment ban," he said. Representatives from Korea and China echoed his feelings.

Joseph pointed out that the measure, already bans high seas transshipments. The exception to that ban would only come into play when impracticability standards are met.

According to WCPFC's legal advisor, in the absence of commission-adopted guidelines, the measure requires a vessel wanting to transship on the high seas to prove 1) significant economic hardship would be incurred without transshipment, and 2) it would have to make significant

and substantial changes to its historical mode of operation. The member states managing those vessels would also have to submit a plan detailing what steps they are taking to encourage transshipment in port in the future.

That, apparently, isn't being done. Even so, Martini said, some 3,000 to 4,000 longline vessels have reported that they are transshipping at sea.

"This measure ... is being used to allow transshipment [at sea] as the rule and that is very worrying," she said, adding that it is, indeed, a hardship to transship at port, but the EU does it because the measure sets a very high threshold for at-sea transshipment.

China countered that it also tries its

best to encourage its fleet to offload at port, but, "practically speaking, we have difficulties."

Many small island developing states (SIDS) ban the harvest or transportation of sharks, but China fishes for blue shark on the high seas. "That is something our fleet hesitates to go to the port [with]," he said. He added that another reason his country's boats can't offload in SIDS ports is because China freezes most of its catch and SIDS ports lack the capability to handle that.

WCPFC chair Rhea Moss-Christian ended the discussion with a call for the commission to review at its next meeting the impracticability guidelines that have been drafted.

— T.D.