

The Lowdown On the Highlands

What's going on with the Waikoloa Highlands development?

It's been more than a decade since the owners of land near Waikoloa Village sought approval from the Land Use Commission and Hawai'i County to subdivide 731 acres and develop nearly 400 house lots on the site. And it's been longer than that since anyone has actually put so much as a spade in the ground there in furtherance of any development project there.

In this month's cover story, we take a look at the stalled-out project and the, well, unusual principals behind it.

Also in this issue, we report on the most recent meeting of the Western Pacific Fishery Management Council and its dyspepsia over the expansion of the Papahānaumokuākea Marine National Monument.

Waikoloa Highlands Development At Standstill, 8 Years After LUC Action

More than eight years ago, the state Land Use Commission reclassified a 731-acre parcel just upslope of the village of Waikoloa, in the South Kohala district of the Big Island. It shifted the land use classification from Agricultural to Rural at the request of the landowners, to comply with zoning conditions imposed by the Hawai'i County Council.

As with the redistricting decision in the case of 'Aina Le'a, the beleaguered proposed development a few miles down the road, the LUC imposed another series of conditions on the developers of Waikoloa Highlands. Chief among them was the requirement that full "build-out" — i.e., all infrastructure in place, final subdivision approval in hand, and intersection improvements completed

— be achieved by June 10, 2018, ten years from the date of LUC approval."

Nowadays, anyone driving on Waikoloa Road past the land that was the subject of the LUC petition would be hard pressed to see any meaningful change in the landscape from what it was in 2006, when the then-landowner, Waikoloa Mauka LLC, submitted the redistricting petition. A rustic rail fence with rock bollards erected by the previous owner in the early 1990s, when a luxury golf-course subdivision was first proposed for the site — before the state Supreme Court banned such uses on land in the Agricultural District — has largely succumbed to the elements and a wildfire. Still standing is the impressive

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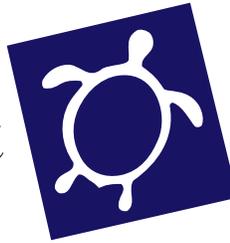
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Gates denoting the entrance to "Highlands Golf Estates," a subdivision planned in the 1990s but never built, flank the drive leading now to land where Waikoloa Estates is proposed to be built.

Environment



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NEW AND NOTEWORTHY

Hu Honua Update: Talks between Hawaiian Electric Light Company, the Big Island electric utility, and principals of Hu Honua, owner of the power plant undergoing construction at Pepe'ekeo, north of Hilo, are ongoing.

As *Environment Hawai'i* reported last month, the Public Utilities Commission refused to become involved in a dispute between Hu Honua and HELCO, which had terminated its power purchase agreement with the company effective March 1.

According to Harold "Rob" Robinson, the president of Island Bioenergy, majority owner of Hu Honua, "we do have ongoing negotiations" over renewing the PPA. In a phone interview last month, Robinson said, "We're exploring ways to get a deal done with the utility. It's been a long process, but we have discussions going on with the utility."

He added that there's no timetable as to when talks might wrap up. Ashley Kierkiewicz, a spokeswoman for the company, later told *Environment*

Hawai'i that Hu Honua had submitted a proposal in which Hu Honua would deliver electricity to the utility at 8 cents per kilowatt hour.

"Hu Honua," she continued, "is not aware of any other renewable energy project that sells, or has offered to sell, electricity priced this low to the utility."

Is work ongoing at the plant? Robinson was asked.

"There's some work going on," he answered. "A number of union people are still working," mostly doing maintenance. "One important thing is to keep all the equipment that we have and own — millions of dollars worth of equipment at this site" in good condition, he added. "We have a full maintenance program that they're performing. Also they're doing work on the plant itself that would be difficult to do if we were under full construction."

"One of the things I'd like to report," he said, "is, we'd like to get the plant built. If the issues can get resolved with the utility, our plan is to move forward."

Financing the construction has been a problem in the past, as *Environment Hawai'i* has reported over the years. Now, however, Robinson said, "a new investment group has become involved. And that's why we made announcements earlier this year that said we were fully financed."

Pepe'ekeo Permit Revision: Construction of a house being built by Scott Watson and his partner, Gary Olimpia, just a short distance north of the Hu Honua site has been on hold for most of the last three years after controversy arose over the appropriate shoreline setback boundary and placement of a public shoreline access easement.



In this 2014 photo, members of the Windward Planning Commission visit the Pepe'ekeo lot of Watson and Olimpia. Here they are shown standing on the public easement directly in front of the area proposed for the house's lanai.

Last month, however, the Hawai'i County Planning Department and the owners of the site reached an agreement that would, if approved by the county's Windward Planning Commission, allow work to resume on the house.

Central to the deal is the relocation of the public shoreline path. Instead of running right in front of the area where Watson and Olimpia have placed the foundation for the lanai of the house, along the top of a steep drop-off, the public easement would run along the northern boundary of their lot.

The plan requires that the Planning Commission approve revisions to the original Special Management Area permit issued for the larger subdivision, which states that the setback for all structures in the subdivision will be at least 40 feet from the edge of the pali.

In 2012, Watson and Olimpia obtained a shoreline survey that puts the shoreline some distance further out (seaward) of the pali. The agreement, if approved, would allow them — and them alone — an exemption from the original SMA setback conditions.

In addition, the redrawn public easement would require that a parcel consolidation-and-resubdivision map, shifting the boundaries of their parcel, the roadway belonging to the homeowners' association, and the parcel immediately to the north, would have to be approved.

Watson and Olimpia had hoped for the agreement to be presented to the commission at its meeting on November 3, but the agenda for that meeting does not mention the matter.

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Quote of the Month

"It's a new day. The monument happened, the expansion happened, and now we're moving on."

— Eric Kingma, Wespac staff

Wild Fluctuations in Tax Revenue On Waikoloa Highlands Property

In January 2014, the Hawai'i County Department of Finance prepared a list of those properties it intended to auction on January 16 for failure to pay property taxes. Ten of the 76 parcels belonged to Waikoloa Mauka, LLC.

At virtually the last minute, on January 12, the back taxes, penalties, and interest — amounting to \$1,275,870.30 — were paid off. And the payment wasn't from Waikoloa Mauka, according to a source in the Finance Department, but rather from one of its creditors, fearful that the auction would impair the value of land securing its notes.

Not included in the properties proposed for sale at auction was the 731-acre parcel where Waikoloa Mauka plans to build its Waikoloa Highlands subdivision and the 2,153-acre parcel across Waikoloa Road to the north.

To be clear, large tax arrearages did build up on those parcels as well from 2009 to 2012. By July 2012, taxes, penalties, and interest charged by the Finance Department on the smaller of the two lots came to \$135,283.84. Most of that (\$105,897.22) was in taxes, with \$9,119.34 in penalties and \$20,267.68 in interest.

On July 23, 2012, the entire arrearage was paid off on that parcel. The arrearage on the larger one was dealt with four months later, in November 2012. By then, the total amount owed came to \$143,631.64.

Since then, Waikoloa Mauka and its successor, Waikoloa Highlands, Inc., have kept current on their taxes, missing payment due dates by days only on a few occasions.

However, with the property taxes having been reduced on those two parcels together to less than \$750 a year, paying them should not be a problem.

Property taxes on the 731-acre lot were \$73,756.39 a year in 2006, immediately following its sale to Waikoloa Mauka. On the larger lot, taxes in 2006 were \$40,832.34.

By 2016, they had been reduced to \$189.63 and \$557.78, respectively.

Even though the County Council and Land Use Commission have approved zoning changes that should, if anything, have increased the value of the smaller property, the county's tax revenue took a nosedive. (A staffer with the county Finance Department explained that regardless of zoning changes, tax rates won't change until work actually starts.)

The dramatic reduction in the tax bill is a result of Stephan Martirosian, a principal of Waikoloa Mauka, having applied for an agricultural use rate starting in 2011 for the larger lot and 2013 for the smaller one.

The application to be taxed at the rate for pasture use on the Highlands lot was dated August 8, 2012, 16 days after the accumulated taxes and penalties on the property had been paid.

Meanwhile, on a 10-acre Agriculture-zoned lot at the corner of Waikoloa Road and Pua Melia Street — the only Hawai'i property still owned by Waikoloa Mauka, LLC — taxes went unpaid from 2010, the year the parcel was carved out of a larger lot, until June of 2015, by which time the arrearage (taxes, penalties, interest) came to \$19,045.48. In that same period, the annual

bill went from \$2,552.60 to \$2,819.40, where it now stands.

For this property, at least, no agricultural use has been declared, meaning that although it is 1.4 percent the size of the Highlands parcel, the property tax on it is nearly 15 times that of the larger parcel.

A question arises as to why tax bills could be allowed to go unpaid years without the properties being put up for auction at county tax sales. A staffer at the Finance Department stated that as a general rule, the county will consider properties for sale after two years of delinquencies. However, he added, "it depends on the tax collectors." The Big Island has three collectors, each of whom is responsible for the tax sales in their area of jurisdiction, he continued.

"Just because something is delinquent over two years, it doesn't mean it'll be on the tax sale," he said. Other factors come into play, and, he added, "Especially if it is land only, sometimes it will be delinquent for a while before the tax collectors put it up for sale." — *P.T.*

Property Taxes and Payments for Waikoloa Mauka Land

Year	Tax	Penalty	Interest	When paid
Parcel 16: 731 acres				
2005	\$8,401.07			
2006	\$73,756.39			
2007	\$73,756.39			
2008	\$73,756.39	\$3,678.82	\$2,433.96	8/3/09
2009	\$73,756.39	\$7,375.64	\$12,981.12	7/23/12
2010	\$27,607.61	\$2,760.76	\$6,073.67	7/23/12
2011	\$27,607.61	\$2,670.76	\$2,429.47	7/23/12
2012	\$27,607.61	\$1,380.39	\$455.53	7/23/12; 5/13/13
2013	\$189.63			
2014	\$189.63	\$9.48		8/14/14; 2/25/15
2015	\$189.63			
2016	\$189.63			
Parcel 17: 2153 acres				
2005	\$593.96			
2006	\$40,832.34			
2007	\$40,832.34			
2008	\$40,832.34	\$2,041.52	\$10,106.01	8/12/11; 2/8/12; 11/21/12
2009	\$40,832.34	\$4,083.24	\$16,169.61	11/21/12
2010	\$36,749.19	\$3,674.92	\$9,701.78	11/21/12
2011	\$503.51	\$50.36	\$66.46	11/21/12
2012	\$503.51	\$25.18	\$8.31	11/21/12; 2/5/13
2013	\$557.78			
2014	\$557.78	\$27.89		8/18/14; 2/25/15
2015	\$557.78			
2016	\$557.78			
Parcel 10: 10.7 acres				
2010	\$2,552.60	\$255.26	\$1,544.32	6/15/15
2011	\$2,552.60	\$255.26	\$1,207.38	6/15/15
2012	\$2,552.60	\$225.26	\$870.44	6/15/15
2013	\$2,827.73	\$282.78	\$591.00	6/15/15
2014	\$2,827.73	\$282.78	\$217.74	6/15/15
2015	\$2,819.40	\$281.94	\$279.12	8/25/16
2016	\$1,268.73	\$140.97		8/25/16
If no date is given for payment, the taxes were paid on time. Hawai'i County bills property taxes semi-annually, with payment due February 15 and August 15 of each year. Penalties are late fees equal to 10 percent of tax owed and do not accrue. Interest continues to accrue at 1 percent per month until payment is made.				

Waikoloa from page 1

rock-wall gate marking what was to be the entrance to the Waikoloa Highlands golf community.

Yet the most recent annual reports submitted by the owners' planning consultant, Sidney Fuke, to the LUC and the Hawai'i County Planning Department state that plans are moving forward.

In the report to the LUC, dated February 29, 2016, Fuke recites the conditions the Hawai'i County Council imposed on the landowner when it approved time extensions for the project in 2007 and again in 2013. To date, he continued, "tentative subdivision approval was issued on April 5, 2007; the on-site infrastructure construction plans have been prepared; the construction plans for the roundabout improvements at the Waikoloa Road/Paniolo intersection have been completed; right-of-access to the site has been issued to the U.S. Army Corps of Engineers for the purpose of conducting remedial investigation and removal of any residual munitions ...; and efforts to dedicate 10+ acres of land situated proximate to the subject site to the County of Hawai'i for a community center and park are on-going. This is to help address the County rezoning park and recreation fair share requirement for the proposed 398-lot subdivision."

Fuke goes on to identify the conditions of LUC approval and the extent to which his client has complied with them.

Regarding project completion: "The commission required that the project be completed no later than ten years of the date of the commission's decision or June 10, 2018. 'Buildout' was defined as having completed the backbone infrastructure to allow for the sale of individual lots," Fuke writes.

"Notwithstanding the county's rezoning time extension of 50 lots by March 21, 2018, and the balance by March 21, 2023, the petitioner understands that the more stringent performance requirement of buildout by June 10, 2018 is binding. The basic on-site construction plans have been completed. The petitioner will thus work towards fulfilling that performance requirement.

"Although nothing physical has occurred on the ground to date, the petitioner has been working diligently to secure a development partner, as well as trying to address other conditions of approval ..." (emphasis in original).

Throughout the LUC hearings, none of the parties representing Waikoloa Mauka

said anything about needing to secure a "development partner." Instead, the impression given to the commissioners, in copies of federal tax filings and accountants' statements, was one of a company that at the time had assets of more than \$60 million, more than sufficient to undertake the cost of development, estimated at \$44.8 million by the R.M. Towill Corporation.

Another condition of LUC approval is that the petitioner notify the commission if there is any change in ownership. "There has been no change of ownership relative to the petitioned area," Fuke stated in the February report.

In fact, however, the land has changed hands. On October 14, 2014, the petitioner Waikoloa Mauka, LLC, organized in Delaware, executed a quitclaim deed conveying title to the petition area and an additional 2,153-acre parcel on the north side of Waikoloa Road to Waikoloa Highlands, Inc., a company incorporated in Colorado just four days earlier. The declared purchase price for the land — whose market value was estimated by the county's Finance Department at \$7,957,100 — came to an even \$1,000.

When informed of the transfer, Fuke replied that he was still dealing with the same person he had always dealt with on this project, Stephan Martirosian, and knew nothing about any change in ownership.

The Disappearing Land

The land proposed for redistricting made up a relatively small part — roughly five percent — of the nearly 14,000 acres of land in the Waikoloa area that was purchased by Waikoloa Mauka in September 2005

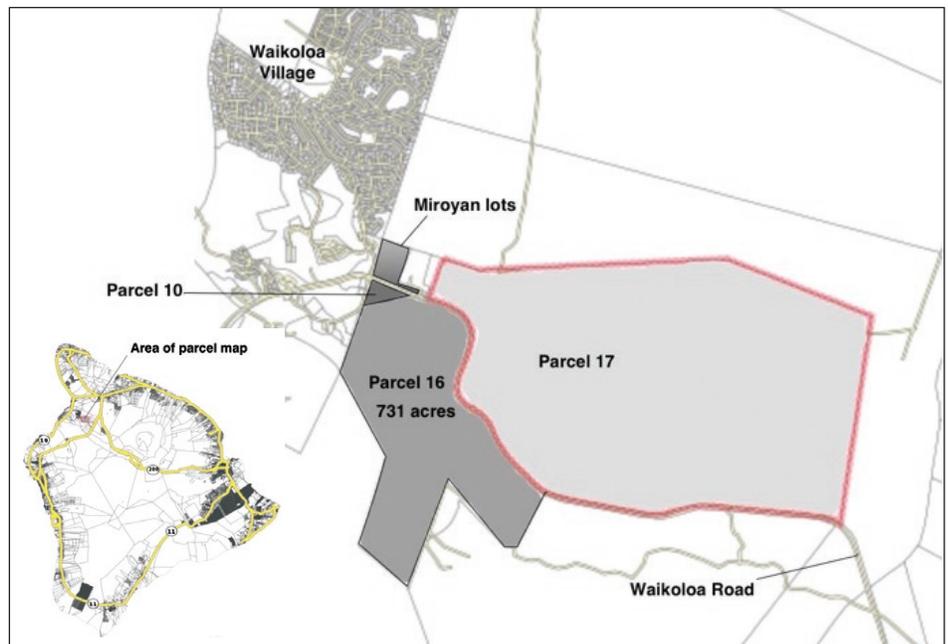
for \$56.358 million. Selling the land were two affiliated companies, Waikoloa Development Company and Waikoloa Land & Cattle Company.

Waikoloa Mauka appears to have counted on obtaining the capital for development of the Highlands project by selling off much of the property it had just acquired at a higher price than that for which it was purchased. To some extent, it succeeded. In 2007, land on the south side of Waikoloa Village totaling around 45 acres was sold for \$19.5 million to a company called Metric-Passco, which had big plans for the commercial-zoned area. (That company subsequently lost the land through foreclosure.) Other parcels along Mamalahoa Highway were sold as well, bringing in \$13 million more.

Altogether, Bureau of Conveyance records indicate that by the end of 2008, Waikoloa Mauka took in more than \$40 million in property sales.

At the same time, however, the company was burdened by debt. In 2006, it gave a \$40 million, interest-only mortgage to Morgan Stanley Mortgage Capital, Inc., secured by all 13,797 acres purchased in 2005. When Morgan Stanley published a prospectus for an offer of \$1.5 billion in securitized mortgages in June 2006, the Waikoloa Mauka note was among the mortgages in the deal.

Morgan Stanley assured investors that, "Under the Waikoloa land loan, there are upfront reserves for taxes, debt service, and pre-development costs in the amount of 100 percent of projected taxes, \$5,939,000 and \$4,000,000, respectively. Additionally, Vittoil Corporation and Arch Ltd. have provid-



ed a full payment guarantee.” Vitoil, owned by Martirosian, and Arch, a Bahamas-based Russian oil company presided over by Vitaly Grigoriant, were the two entities making up Waikoloa Mauka LLC.

According to the prospectus, the commercial real estate brokerage C.B. Richard Ellis had appraised value of the land securing the mortgage at \$169,250,000.

The initial mortgage was released in 2008, but was replaced by a \$10 million mortgage given to another firm, Isis Lending (which later changed its name to Copia Lending). In 2009, the loan terms were extended as well as the amount borrowed — to \$17 million.

By January 2010, Waikoloa Mauka still had not turned so much as a spade of earth at the Waikoloa Highlands site. Yet it took out two more loans that month, one for \$30 million, another for \$40 million, from Intercep Ltd., based in the United Kingdom. Although Intercep was dissolved for failure to file required reports with the UK government eight days after the mortgages were recorded in Hawai'i — and more than three years after it had last checked in with the government — its director, Michael Dutton, still managed to assign the mortgages to a Ukrainian entity, IV Trading in March of 2011.

The parties involved — Intercep, IV Trading, and Waikoloa Mauka — were closely related. Dutton, the director of Intercep, at one point signed a satisfaction of mortgage on behalf of IV Trading. And in February 2012, the vice president of IV Trading, Remington Chase, filed with the Bureau of Conveyances notice that the loans had been satisfied and the mortgages were released. Chase, in other words, as an officer of IV Trading, was holding the notes for loans given to himself and Martirosian, as the members of Waikoloa Mauka, LLC.

The \$70 million note was off the books, but the loan held by the unrelated party, Copia, remained unsatisfied and by 2016, Waikoloa Mauka was in default. On May 26, Waikoloa Mauka signed over more than 7,000 acres of its Waikoloa holdings to a new company formed by Copia, called Waikoloa Mauka Land Corp., issuing it a deed in lieu of foreclosure. Adding up the purchase price for the dozen properties conveyed, the total value of the assignment came to \$20,645,000.

By then, however, Waikoloa Mauka LLC — the petitioner in the LUC case, and not the new Waikoloa Mauka Land Corp. — held just 10 acres: a triangular parcel at the intersection of Pua Melia Street and Waikoloa Road, abutting the Waikoloa

Companies Mentioned in this Article

Many of the companies involved in the Waikoloa Mauka deals have similar names. Here is a brief rundown of the players:

WAIKOLOA HIGHLANDS, INC. This company was incorporated in Colorado on October 1, 2014. Although it owns the property where the Waikoloa Highlands subdivision is to be developed, it is not registered with the Hawai'i Department of Commerce and Consumer Affairs (DCCA). Its business address, in Glendale, California, is one shared by other Martirosian-affiliated companies.

WAIKOLOA MAUKA, LLC. This is the Delaware-registered limited liability corporation established in 2005 to take title to roughly 14,000 acres of lands sold by Waikoloa Land & Cattle and Waikoloa Development Co. It filed annual reports with the DCCA up through last year; the DCCA now lists it as not in good standing. It holds title to 10 acres in Waikoloa, at the intersection of Waikoloa Road and Pua Melia Street. Its business address is the same as that of Waikoloa Highlands.

WAIKOLOA DEVELOPMENT, INC. This corporation was formed in Colorado on October 15, 2014, and registered to do business in Hawai'i on April 20, 2016. On October 27, 2014, it took title, by means of a quitclaim deed, to a 1,700-acre parcel immediately upland of the Highlands site. In May of this year, it gave the title to Waikoloa Mauka Land Corp., one of several transactions undertaken in lieu of foreclosure against Waikoloa Mauka, LLC. It was voluntarily dissolved in September. Its business address is also in Glendale, California.

WAIKOLOA MAUKA LAND CORPORATION. This company was established in California in January 2015 by creditors of Waikoloa Mauka, LLC. The company shares an address with the TDA Investment Group in San Mateo. Its CEO, Garry Spanner, was also CEO of Copia Lending, LLC, formerly known as Isis Lending, LLC. In May 2016, it took title to 12 parcels previously owned by Waikoloa Mauka, LLC. It is not registered with the DCCA.

Highlands parcel.

Even after freeing themselves of more than \$20 million in debt, the landowners were not in the clear. In February 2015, Envision Entertainment Corporation — a Hollywood production company owned by Chase and Martirosian — borrowed \$1.275 million from 77 Holdings, LLC of Provo, Utah, an entity formed two months earlier, pledging the two parcels still owned by Waikoloa Highlands as collateral. The note was payable as of March 1, 2016. As of press time, no release or amendment of the mortgage had been filed with the state Bureau of Conveyances.

Where Things Stand

The deadline for completing the “backbone infrastructure” for Waikoloa Highlands is June 10, 2018, under conditions set by the Land Use Commission. For completing work on the first 50 lots, the deadline is March 21, 2018, under conditions set by the Hawai'i County Council.

Before those deadlines can be met, the developer has to complete construction of a roundabout at the mauka entrance to Waikoloa Village, satisfy all fair-share contributions to the county (\$12,772.64 per lot),

install all utility lines, build the roadways, and obtain approval of subdivision maps, among other things.

With roughly a year and a half to go, odds are those deadlines won't be met.

When asked about his client's plans, Fuke told *Environment Hawai'i* only that he expected the landowner would be asking the LUC for a time extension. “Given the need to finalize construction drawings and having everything else approved, it's very likely an extension request will be made,” Fuke said.

But is the project still viable?

The company that petitioned for the redistricting, Waikoloa Mauka, LLC, no longer owns the property. The company that does own it now, Waikoloa Highlands, Inc., is apparently a stranger even to Fuke.

The movie production firm, Envision Entertainment, that has taken out the loans secured by a mortgage against Waikoloa Highlands' property, was administratively dissolved by the Wyoming secretary of state's office in March of this year, for failure to file required annual reports.

Efforts to reach Martirosian for comment were not successful by press time.

— *Patricia Tummons*

Original Waikoloa Highlands Partners Share History of Cocaine Trafficking

April 24, 2007. At a meeting of the Waikoloa Village Association, Waikoloa Mauka, LLC, principal Stephan Martirosian made a short presentation on his company's plans for the area and presented a check for \$25,000 to association president Margaret Tigue. The two smiled at a photographer as they shook hands, and the snapshot made the front page of the association's newsletter, *Waikoloa Breeze*. Minutes of the meeting record Martirosian as assuring association members that his company "will eventually be developing 9,000 to 10,000 acres of the nearly 14,000 acres they acquired from the Waikoloa Development Company in mid-2005."

The notion that a prosperous businessman, with connections to global oil interests, had taken over development of the stalled-out Waikoloa Highlands subdivision was generally welcomed by the community, especially after Waikoloa Mauka agreed that it would drop plans for a golf course that some residents feared would compete with the one in their village.

Other evidence bolstered the idea that the company had near-infinite resources to carry out the development. When LUC interim director Rodney Maile was describing progress toward an agreement on the conditions of redistricting on March 19, 2008, the financial wherewithal of Waikoloa Mauka was practically a non-issue.

"The parties did not dispute the petitioner's financial capability to undertake the project," Maile told the commissioners.

The final decision and order noted, "Petitioner intends to use \$4 million in funds held by Morgan Stanley for pre-development costs for the Project. In addition, the Petitioner plans to use proceeds from sales of its properties to fund the Project. In conjunction with sale proceeds, Petitioner will also obtain funding from Arch, Ltd., one of the Petitioner's members, to complete the Project."

As evidence of the company's robust financial health, the petitioners had offered to the LUC a 2005 federal tax return for the company that claimed more than \$61 million in cash assets on Schedule M-2, "Analysis of partners' capital accounts."

Digging deeper into that same return, however, in a breakdown of Waikoloa Mauka's assets, this same \$61,365,680 value is described as "land for development,"

rather than cash. Additional tax statements submitted for the two entities making up the Waikoloa Mauka partnership provided details. Twenty percent of the company's assets — \$12,271,000 — were contributed by Vitoil and the remainder — \$49,084,000 — by Arch. (Although Waikoloa Mauka was incorporated in Delaware, Vitoil in California, and Arch in the Bahamas — all shared the same address in Glendale, California.)

What was missing in all the scrutiny was any consideration of the criminal history of Martirosian and other parties involved in the company. To be sure, the LUC does not generally consider this when it evaluates the fitness of petitioners to follow through on their commitments.

The sellers had, however, known of the unsavory ties of the individual who put the deal together. Michael Miroyan, then a part-time Hawai'i resident, claims to this day on his LinkedIn page that this was among his pinnacle achievements. But because of his criminal record, including a federal conviction for trafficking in cocaine, the landowners did not want to go forward with the sale if Miroyan's name was on the deed.

Martirosian and partner Vitaly Grigoriants, a Russian oil company president, then entered into a side agreement with Miroyan. Among other things, the agreement noted that Miroyan and/or two of his California businesses "were also buyers for 20 percent of the Buyer's ownership until sellers ran a 'background check' on Miroyan and requested that he be removed from the contract because of a felony conviction and the possibility of bad press."

But Miroyan retained a role as a shadow participant in the deal. Martirosian and his attorney, Kevin Kellow, agreed that Miroyan would receive a 20 percent ownership share in the business entity that would be formed to take title to the Waikoloa acreage.

By 2008, the relationship between Miroyan and his erstwhile partners had soured — in Hawai'i and in California, as well. In California, Vitoil, Martirosian's company, had sued Miroyan and his Golden Eagle Investments in a dispute over property held in Modesto, California, by Sperry Road Business Center, a company in which Miroyan was managing member and Vitoil had an interest. In that case and a counterclaim by Miroyan, Miroyan claimed Vitoil was attempting to defraud

him through business deals made while Miroyan was incarcerated. Vitoil also sued Miroyan in Los Angeles in a dispute over the sale of a building in which Miroyan held an interest.

Against that background, in July 2009, Miroyan sued Arch, Vitoil, and related entities in Hawai'i's 3rd Circuit Court, alleging that Arch and Vitoil "have orchestrated the transfer of portions of the [Waikoloa property] worth approximately \$35 million" and that they were "engaged in a pattern of selling and mortgaging (at very high interest rates and points) and cross-collateralizing the properties for less than reasonable equivalent consideration and with the intent to hinder, delay, or defraud" Miroyan.

Miroyan settled with Waikoloa Mauka. The agreement transferred to Miroyan's company Hawaiian Riverbend title to about 31 acres at the mauka entry to Waikoloa Village, at the corner of Paniolo Drive and Waikoloa Road.

In spring of 2010, Waikoloa Mauka and Miroyan entered into a joint development agreement, calling for them to work together and split the costs of subdividing the parcel and making certain other improvements. The subdivision would divide Miroyan's parcel into three lots: one of six acres fronting Paniolo Drive (where Miroyan planned to develop a 78-unit condominium complex), one of 14.6 acres (where Miroyan planned to build a shopping mall), and one of 10.7 acres, which would be developed as a park and donated to the county, to satisfy the Waikoloa Highlands rezoning condition requiring a per-lot contribution of more than \$6,000 — totaling more than \$2.45 million — to support county park and recreational facilities.

In return for donating 10.7 acres of his land, the development agreement provided for Waikoloa Mauka to transfer to Hawaiian Riverbend the triangular 10.8-acre parcel on the corner of Waikoloa Road and Pua Melia Street — the only parcel that Waikoloa Mauka now owns. The agreement, if fulfilled, would thus give Miroyan control of land on both mauka corners of the main intersection leading into Waikoloa Village.

Even before the development agreement was signed, Miroyan had transferred a 50 percent interest in Hawaiian Riverbend to Tae Kai and Kenneth Kai, trustees of the Kai Family Trust. In return, Miroyan expected to receive \$527,000, of which \$300,000 was owed to Waikoloa Mauka under terms of the settlement.

Miroyan claims he was paid only \$330,000, which caused him to be unable

Council Lobbies for Direct Compensation To Those Hurt by Monument Expansion

The Western Pacific Fishery Management Council is wasting no time seeking financial compensation for those in the fishing industry who may claim they have been harmed by President Barack Obama's expansion of the Papahānaumokuākea Marine National Monument in late August.

At its meeting last month — shortly after being advised by counsel of restrictions on lobbying legislatures or the president for funds — the council decided to send a letter to Obama highlighting the expansion's impacts on Hawai'i fishing and seafood industries and indigenous communities and requesting that the Department of Commerce mitigate those impacts through "direct compensation to fishing sectors."

The council's letter will also include a request that the ban on commercial fishing in the expansion area — which includes the waters between 50 and 200 nautical miles off the Northwestern Hawaiian Islands — be phased in. The letter will also ask for "other programs that would directly benefit those impacted from the monument expansion."

Compensation for fisheries closures in federal waters is not unprecedented. In

2005, the National Marine Fisheries Service (NMFS) reimbursed the Hawai'i Longline Association \$2.2 million for legal expenses tied to the group's lawsuit opposing a temporary closure of the swordfish fishery. Also, as part of the same \$5 million federal grant that funded the reimbursement, lobster and bottomfish fishers displaced by the Northwestern Hawaiian Islands

“Fishermen can fish elsewhere, but to move elsewhere, there are costs.”

— Justin Hospital, PIFSC

(NWHI) Coral Reef Ecosystem Reserve established by president Bill Clinton also received hundreds of thousands of dollars in direct compensation and funds for fisheries research.

With regard to the Papahānaumokuākea Marine National Monument, after it was first established by President George W. Bush in 2006, then-Sen. Daniel Inouye inserted an earmark in the Consolidated Appropriations Act of 2007 that provided more than \$6 million to NMFS for a "capacity reduction program." That program allowed vessel owners with permits to fish

for lobster or bottomfish in the NWHI to be paid the economic value of their permits if they chose to stop fishing well ahead of the date all commercial fishing was to end in the monument, June 15, 2011.

Unlike the bottomfish and lobster fisheries, however, the Hawai'i longline fishery catches the vast majority of its haul in waters outside the U.S. Exclusive Economic Zone (EEZ) around the NWHI. And while the reserve and original monument designations permanently closed the door on the former two fisheries, this year's monument expansion merely forces the longline fleet to shift its effort eastward at a time when

it's already doing that on its own.

Even so, Wespac is pushing for a compensation package for fishers inconvenienced by the monument expansion. Whether or not it's the council's place to ask for it is questionable. In his ethics presentation to the council given shortly before it voted to ask Obama for money for the "fishing sector," National Oceanic and Atmospheric Administration (NOAA) general counsel Fred Tucher advised the council that it cannot use its federal grant to lobby any legislature or the executive branch for more money. The council could

to follow through with development plans for the property. Despite his having given mortgages to the Kai Trust, the trust did not deliver fully on the loans secured by the mortgages, Miroyan has stated in filings made to the U.S. Bankruptcy Court.

Miroyan then turned to other parties for loans, Gang Chen and Cory TerEick, securing them with additional mortgages on his Waikoloa property.

Beginning in 2014, Miroyan's creditors initiated foreclosure proceedings, resulting ultimately in Miroyan filing an emergency Chapter 11 bankruptcy petition on April 4 of this year, forestalling a foreclosure auction in the proceeding initiated by TerEick.

The recently approved reorganization plan anticipates the sale of all three of Miroyan's lots, which he claims should bring in \$7 million. That, he says, should be more than sufficient to satisfy his creditor's claims.

Meanwhile, the Hawai'i County Department of Finance has not been able to collect taxes on Miroyan's property since just after

the subdivision occurred. As of last month, the bill for taxes, interest, and penalties for all three lots stood at \$56,754.78.

But if Waikoloa Land & Cattle was concerned about Miroyan's criminal misdeeds, those of Martirosian apparently escaped notice. Yet his record, as detailed in an article published in the January 2, 2014, issue of *LA Weekly*, is at least as long as that of Miroyan.

By then, Martirosian and his current development partner, Remington Chase, had launched a film production enterprise called *Envision Entertainment, Inc.*, incorporated in Wyoming but headquartered in the Los Angeles area. Among the films they backed are *Lone Survivor*, *End of Watch*, *2 Guns*, *Escape Plan*, *LA Weekly*, *Variety*. *LA Weekly* reporter Gene Maddaus, now with *Variety*, had done exhaustive investigative work before sitting down for an interview with the two men and their publicist.

Maddaus' article, "Drugs, Diamonds, International Intrigue — You Won't Believe Two Hollywood Producers'

Crazy Backstory," is available online. It documents, in shocking detail, the criminal lawsuits brought against both men, going back to 1989, four years after Martirosian immigrated to Los Angeles from Russia.

That year, Martirosian was arrested with four kilos of cocaine at a Border Patrol checkpoint in Texas. Again in 1993, he was accused of arranging to help transport 800 kilos of cocaine from Colombia to Florida. Martirosian told Maddaus he was only trying to buy coffee for a chain of shops in Moscow.

Chase has had additional run-ins with the law, involving everything from cocaine trafficking to forging checks to shoplifting glue.

Both men have attempted, and apparently succeeded, in getting their sentences reduced by offering their services as informers. In Martirosian's case, that included offering the FBI information on KGB activities, as evidenced in an appellate court decision on his sentencing after the Texas arrest. — *P.T.*

be in the clear since it's asking for money not for itself, but for others. In any case, co-counsel Elena Onaga told the council to run the letter by NOAA's financial assistance attorneys before sending it out.

Economic Losses

Just how much, if anything, should the federal government shell out to compensate these "fishing sectors"? Justin Hospital, head of the Pacific Islands Fisheries Science Center's (PIFSC) socioeconomic program, has done a preliminary analysis of what the economic impacts of the monument expansion might be. In a presentation to the council's Scientific and Statistical Committee (SSC) last month, he described the maximum direct economic losses likely to be suffered by the Hawai'i deep-set and shallow-set longline fleets.

Between 2010 and 2015, the fleets caught 9.2 percent of their total pounds in the EEZ surrounding the NWHI, he said. In the monument expansion area, the fleets caught less than seven percent of their total pounds.

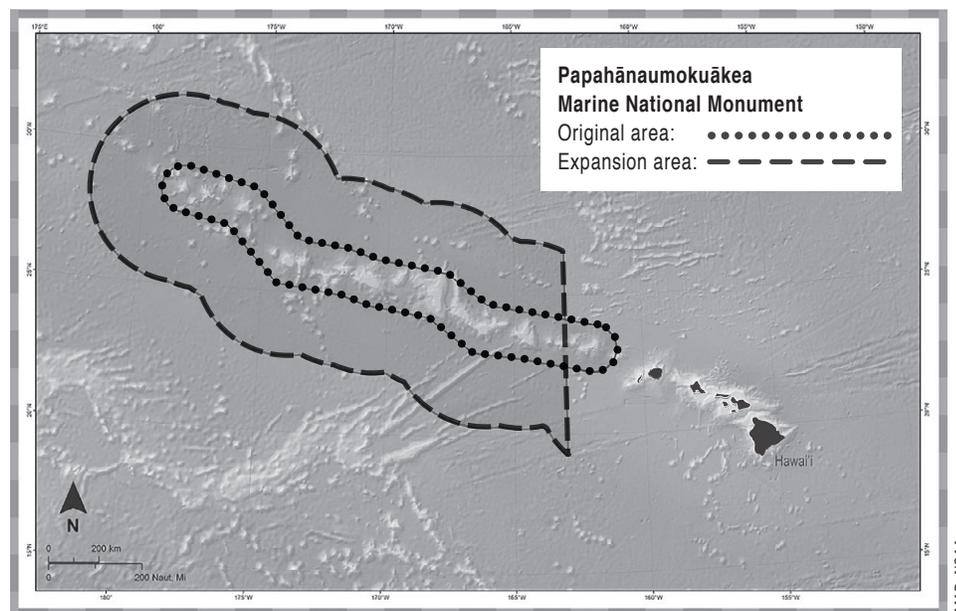
Hospital's data suggest that the expansion will affect the shallow-set fleet, which targets swordfish, more than it will the deep-set fleet, which targets bigeye tuna. The swordfish fleet got about 10 percent of its revenue from the expansion area, while the bigeye tuna fleet got about 6.2 percent of its revenue there, he said. In total, the two fleets would lose about \$7.8 million in revenue if their effort in the expansion area ended altogether, he said.

With regard to indirect economic losses, he suggested that related industries stood to lose \$9 million, household income losses could reach \$4.25 million, 75 jobs could be lost, as well as about half a million in tax revenue.

Hospital emphasized that all of his projections should be considered the "upper bounds" of potential economic impacts of the expansion. "To achieve these, we're to assume this fish is not replaced anywhere else. This is not the case. Fishermen can fish elsewhere, but to move elsewhere, there are costs," he said.

According to PIFSC, the average cost of a deep-set trip between 2004 and 2014 was \$27,842 and an average shallow-set trip cost \$53,494. Net revenues per trip were \$34,093 and \$34,055, respectively.

For the past few years, the Hawai'i longline fleet has had to move its effort outside the U.S. EEZ for nearly half the year because it has hit its international quota for bigeye in the Western and Central Pacific. How much more the monument expansion



will increase costs associated with shifting effort remains to be seen.

"These trip costs can be monitored over time to track any added costs [but] could be confounded by quota issues as well," said Dr. Minling Pan, an SSC member and a colleague of Hospital's at PIFSC.

Hospital told the SSC that his program will monitor trip costs, revenues, and other economic performance indicators to help discern continuing impacts of the expansion. The full council, however, wanted immediate answers. At its meeting held a week after the SSC met, Wespac asked PIFSC's socioeconomic program to submit by the end of last month its analysis of the monument expansion's impact on Hawai'i's longline fleet and broader fishing and seafood industries.

Concerned that the monument expansion will perhaps increase fishing pressure on yellowfin tuna, the council also asked PIFSC to analyze the change in longline effort around the Main Hawaiian Islands due to the monument expansion in relation to troll-caught yellowfin.

Seth Hostmeyer, director of the Pew Charitable Trusts' Global Ocean Legacy, told *Environment Hawai'i* that he'd like to see proof of any economic losses in the fishing sector first. He pointed out that in 2014, Wespac representatives argued that the establishment of the Pacific Remote Island Area Marine National Monument would be devastating to the Hawai'i longline fleet, yet after the monument was created, the fleet had a record catch.

"Their messages aren't adding up," he said, adding that he doubted there will be any evidence of economic harm as a result of the Papahānaumokuākea expansion.

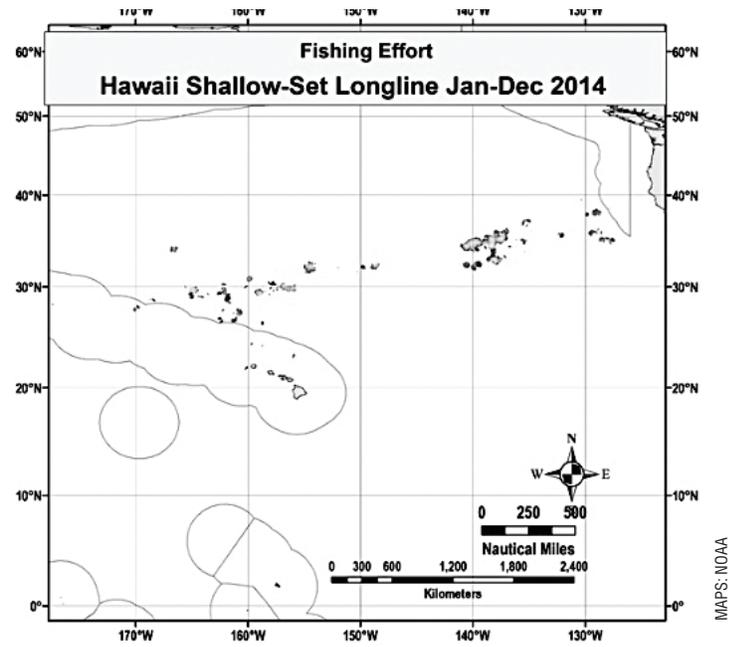
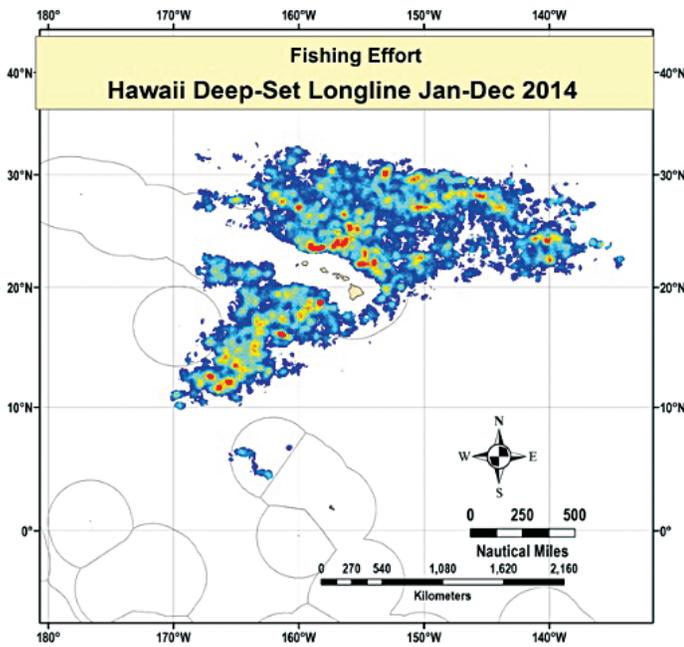
That the Hawai'i fleet recently hit its bigeye tuna quota in record time and is seeking to increase quota transfers from Pacific island territories proves that it is confident it's going to continue to catch a lot of fish, he said.

Horstmeyer speculated that even if there were proof of some economic loss, it's "highly unlikely" the federal government will provide financial compensation. In the past, such funds reached Hawai'i via earmarks, which have since been banned. He said in today's Congress, getting new money into the budget is challenging. What's more, arguing for compensation would be "hard to get when you're paying your crew 70 cents an hour or wages certainly below minimum wage," he said, citing a recent Associated Press report on poor working conditions suffered by some of the Hawai'i longline fleet's foreign crew. Paying crews the federal minimum wage might cost more than whatever additional fuel might be required as a result of the monument expansion, Horstmeyer said.



Council to Draft Monument Fishing Rules

About a week before President Obama signed the proclamation establishing the monument expansion area, Wespac had proposed alternative schemes that would fully protect the sea floor and the historic World War II relics, as well as the northern half of the waters surrounding the NWHI. But they would have allowed longlining to continue around Necker, French Frigate Shoals, and Gardner pretty much as it has



MAPS: NOAA

been. The president ultimately chose to stick with the configuration proposed by Sen. Brian Schatz, making more than 60 percent of the waters around the Hawaiian archipelago off limits to commercial fishing.

“This is the darkness and blackness” was certainly my feeling after the expansion,” Wespac National Environmental Policy Act coordinator Eric Kingma told the council’s SSC last month. Still, he continued, “It’s a new day. The monument happened, the expansion happened, and now we’re moving on.”

As hard as Wespac fought against the expansion, the agency is now responsible for recommending to NOAA fishing regulations for the area. The August 26 proclamation establishing the expansion area gives the secretaries of Commerce and Interior three years to develop regulations implementing its directives. In addition to banning commercial fishing, those directives allow for non-commercial fishing, so long as the fish caught aren’t sold, bartered, or traded. Native Hawaiian traditional, customary, cultural, subsistence, spiritual, and religious practices — which may include some fishing — are also allowed.

At the council’s SSC meeting, member Craig Severance suggested that customary exchange be allowed as it is in other monuments.

“Customary exchange means the non-market exchange of marine resources between fishermen and community residents, including family and friends of community residents, for goods, and/or services for cultural, social, or religious reasons. Customary

exchange may include cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, fuel, or food, that may be necessary to participate in fisheries in the western Pacific,” according to a NOAA fisheries compliance guide.

In the Marianas Trench, Pacific Remote Islands, and Rose Atoll marine national monuments, customary exchange is allowed under a non-commercial fishing permit. Customary exchange “helps to preserve traditional, indigenous, and cultural fishing practices, on a sustainable basis,” the guide states. Customary exchange by fishermen fishing under a recreational charter permit is prohibited. With regard to the Papahānaumokuākea monument expansion, Severance said the council may need supporting data if the consensus is to employ that concept.

Bartering—which is prohibited—seems similar to customary exchange, which has been criticized by some in the past as a means to subvert commercial fishing bans. Severance, however, argued, “barter implies a negotiated cost. Customary exchange is exchanging with family, friends ... It’s not barter, it’s culture.”

Wespac executive director Kitty Simonds, however, seemed more concerned with developing regulations for fishing by native Hawaiians.

“I think where we’ll have a problem is ‘native Hawaiian.’ The Hawaiians won’t like it. They are looking to a government to government agreement. The complexity is with the Hawaiian community,” she said.

At the full council meeting, members voted to direct staff to begin drafting op-

tions to amend the Hawai’i and pelagic Fishery Ecosystem Plans that include draft regulations that would:

- prohibit commercial fishing;
- allow non-commercial fishing;
- allow native Hawaiian traditional fishing practices, including subsistence fishing; and
- regulate other activities as appropriate.

Only one member of the public offered testimony on the matter. *Hawai’i Fishing News* writer Robert Duerr argued in an email that sportfishing is “a priority of the U.S. Congress” and should be allowed in the NWHI.

“Make it a priority to have private contractors provide air transport into Midway. The government should have designated accommodations for fishermen. If government planes are flying, seats should be available to fishermen. At the very least, catch and release should be allowed throughout the NWHI on all species. Depending on stock assessment, catch-to-eat should also be allowed with an allotment for take-away home consumption. If there are government culling programs, sport fishermen should be the first to have access,” Duerr wrote.

Although he didn’t necessarily oppose the idea of recreational fishing in the expansion area, Pew’s Horstmeyer doubted it would ever happen. “Nobody goes up there to recreationally fish,” he said.

With regard to Wespac’s request that the commercial fishing ban be phased in, Horstmeyer said he believed that the ban was supposed to become effective

immediately. (The monument expansion proclamation does not specifically include a grace period for commercial fishing, as the original monument proclamation did for commercial bottomfish and pelagic fishing.)

Funding for Co-Managers

In addition to the letter to Obama on the Papahānumokuākea monument expansion, the council voted to send letters to the Secretary of Commerce asking for more funding to help the state of Hawai'i, the Commonwealth of the Northern Mariana Islands, and American Samoa co-manage the Papahānumokuākea (and expansion area), Marianas Trench, and Rose Atoll monuments, respectively. (Given the lecture from counsel it received earlier about lobbying restrictions, the council chose to address the letter to the Secretary of Commerce rather than President Obama.)

Although the state of Hawai'i does receive some federal funding for the management of the Papahānumokuākea monument, the territories don't receive any funding for theirs, according to Mike Tosatto, head of the National Marine Fisheries Service's Pacific Islands Regional Office.

— *Teresa Dawson*

Fisheries Council Maintains Status Quo For Territorial Bigeye Quota Transfers

Having just recently survived litigation against its rule allowing Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa to each transfer 1,000 metric tons (mt) of their bigeye tuna quotas to the Hawai'i longline fleet, the National Marine Fisheries Service is wary of efforts to tinker with the status quo.

Under standards set by the international Western and Central Pacific Fisheries Commission, bigeye tuna are not only subject to overfishing, but are overfished. NMFS's management plan for the fish, however, uses a different standard to determine whether a stock is overfished — maximum sustainable yield (MSY) (versus a percentage of unfished spawning biomass). Because MSY has not been breached, NMFS continues to allow the transfers despite arguments by environmental groups that those transfers illegally circumvent the U.S. longline quota set by WCPFC.

Currently, NMFS sets quotas for those territories at 2,000 mt each and allows them to transfer up to 1,000 mt. Analysis by NMFS's Pacific Island Fisheries Science Center (PIFSC) shows that transferring all 3,000 metric tons in a given year leads to only a 1 percent change to the median stock status reference point ratios. A 2,000 mt transfer, which is what occurred last year, would result in a change of less than 1 percent.

Given the heavy scrutiny of the fishery, however, the quota transfer scheme has to be bulletproof to survive any challenge, said NMFS's Jarad Makaiau at the Western Pacific Fishery Management Council's meeting last month. Makaiau is head of the Pacific Islands Regional Office's sustainable fisheries branch. He recommended that the council, in recommending future transfer limits, should take into account the fact that the Hawai'i fishery has exceeded its allowable take of threatened green sea turtles.

With a similar warning from NOAA general counsel Fred Tucher, who also noted that an environmental impact statement would likely be required for any transfer scenarios not already evaluated by NMFS, the council voted to maintain the status quo. This is despite the fact that some of the territories argued for increasing their quotas to 3,000 mt.

A few members on Wespac's Scientific and Statistical Committee had also balked at the prospect of expanding the territorial

quotas and/or the transfer amounts. Alton Miyasaka of the state's Division of Aquatic Resources suggested that an analysis of the impacts resulting from a quota hike should be done before the council selects its preferred quota transfer scenario. Fisheries scientist John Sibert added that his personal feeling was that the catch limits set forth by WCPFC should be maintained and that "options for territories to develop their own aspirations are maintained."

While the council is not now able to prove that a further increase in the U.S. longline fleet's allowable catch won't hinder the stock's ability to rebuild, that may not be the case next year, when the Secretariat of the Pacific Community (SPC) is scheduled to provide the WCPFC with a new stock assessment for bigeye. Given the fishing data for 2015, it's possible the stock will be found to be in better shape than it is now, thereby opening the door to an argument by the United States that increasing its longline quota for bigeye won't deter the stock's recovery.

Last year, total bigeye catches in the Western and Central Pacific were the lowest they've been since 1996. The purse seiners, according to a WCPFC report, caught the lowest amount of bigeye since 2007 apparently as a result of lower effort and possibly environmental conditions. Longline effort also dropped, the report stated.

"There may be a bit more bigeye about than there was before," Wespac senior scientist Paul Dalzell told the SSC.

Factoring in the most recent catch data, WCPFC's scientific committee has tentatively determined that the spawning biomass of bigeye has improved by a hair. Instead of comprising 16 percent of its unfished state, it's now 17 percent. (Once the spawning biomass exceeds 20 percent of its unfished state, it will no longer be considered overfished.) However, this determination assumes that catches reported by other countries that fish in the Western and Central Pacific are accurate. And as Tucher told the council last month, NMFS must evaluate the impacts of the action it's authorizing "cumulatively with all other impacts in the region."

"You can have cumulatively significant impacts even though your action contributes a small portion of mortality," he said. NMFS Pacific Islands Regional Office administrator Mike Tosatto added that in a worst-case



For Further Reading

Environment Hawai'i has published many articles over the years providing additional background on the subject. All are available on our website, <http://www.environment-hawaii.org>.

Earlier ones may be read free of charge; to read more recent articles, you must be a subscriber or must purchase a two-day archive pass for \$10.

- "Debate Heats Up Over Potential Impacts of Expanded Monument on Longliners," "Wespac, Staff Members Fulminate Against Expanded Marine Monument," "Proponents Argue NWHI Monument Expansion Would Protect Sea Bed, Cultural Resources," and "NWHI Advisory Council Supports Plan to Keep Middle Bank Open to Fishing," July 2016.
- "Advisory Council Debates Details of Proposed Monument Expansion," June 2016.

scenario, Indonesia's reported bigeye catch of 10,000 mt was actually 39,000 mt. "We would have to consider that in the action we take. ... That might mean we could not approve this [quota transfer]," he said.

Bigeye Bubble

Despite all of the international regulations aimed at reducing bigeye catches, the Hawai'i longline fishery keeps growing, said Chris Boggs, director of the PIFSC Fisheries Research and Monitoring Division. Last year was the first time the fleet had to acquire quota transfers from not one, but two U.S. territories, and this year, the fishery has agreements in place for transfers from all three territories, just in case.

The reason for the multiple transfers is mainly that the fishery's catch rates in recent years have been phenomenal. But that may soon change, according to local fisheries scientists. In a presentation to the SSC, PIFSC's Jeff Polovina explained that the high catch rates are largely attributable to an El Niño event in 2012 that led to the spawning of a lot of bigeye. Those fish have finally grown large enough to be caught by the Hawai'i fleet. That "recruitment pulse," plus an increase in effort this year and ocean temperatures that may have corralled the fish into tighter bundles, contributed to the fishery this year reaching its quota in record time, he said.

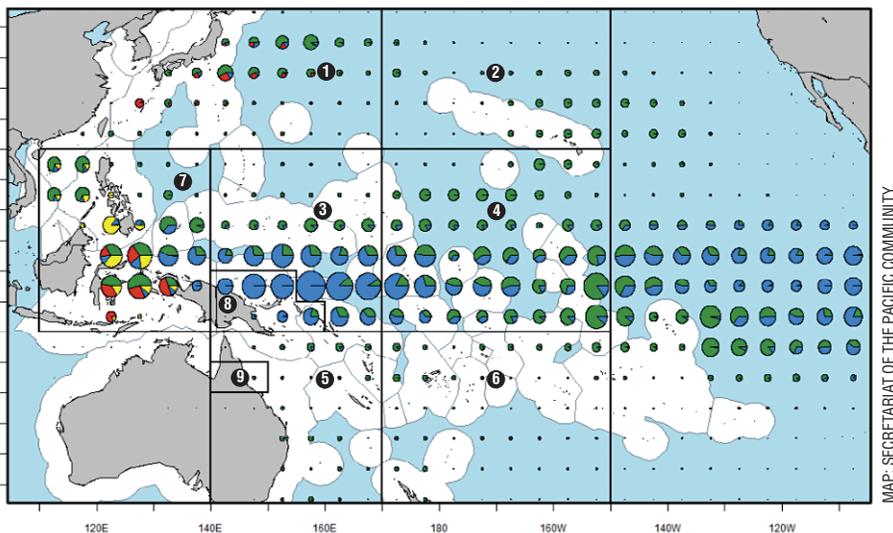
Polovina said that most of that bunch of fish spawned several years ago have been caught and "we probably peaked already in terms of catch rates. ... From what we're seeing, we don't have high expectations for 2016 going forward."



Spatial Management

The Western and Central Pacific Fisheries Commission's management measure for tropical tunas expires at the end of next year. Given the drop in fishing effort this year and last, it's unlikely commission members will make any major changes to it when it meets next month in Fiji. Even so, the United States is expected to try to lay further groundwork this year for a shift from country-based quotas to spatially based ones.

For several years, Wespac has stressed the fact that fishing effort in the region in which the Hawai'i longline fleet spends most of its time has very little impact on the overall stock status. If WCPFC, in its Conservation and Management Measure for 2018 and beyond, were to require the largest catch reductions to occur in areas where fishing pressure on



Bigeye tuna catches (2003-2012) by fishing method in each of the nine regions: longline (blue), purse-seine (green), pole-and-line (red), and other (yellow).

bigeye is the greatest and be more lenient in areas with light fishing effort, the Hawai'i fishery could operate more freely and still not hinder the stock's recovery, it's argued.

Currently, the stock assessment for bigeye in the area evaluates fishing effort in nine spatial regions. The Hawai'i fleet fishes mostly in region 2, but spills over into the top of region 4. Upon a recommendation made by the U.S. delegation at last year's WCPFC meeting, the SPC is working to identify different levels of regional longline bigeye catch that achieve fishing mortality at the maximum sustainable yield level within a certain time frame, i.e., 10 years. With that information, which should be completed by next month, the commission will be able to see how much fishing effort needs to be reduced in a given region to end overfishing. The fact that Hawai'i longline fleet's ef-

fort spans two regions may complicate any attempt to set regional limits. To simplify matters, Wespac staff suggested last month that WCPFC should re-draw the line between region 2 and 4 so that Hawai'i's entire fishery is included in region 2. Scientists with the council's SSC say data on the movement of yellowfin and bigeye tuna in the area support the boundary amendment.

SSC member John Hampton, who also works for the SPC, advised the committee that any arguments to revise the regional boundaries "are best framed in terms of what is the best scientific approach, rather than what suits the fishery needs of Hawai'i."

"There are 30-plus members of WCPFC who have their own fishery needs. [It's] easier for us to respond to a scientific argument than a political, domestic one," he said.

— T.D.



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Resolution Of Tuna Treaty Impasse May Aid American Samoa's Canneries

The National Marine Fisheries Service is on track to ratify a new South Pacific Tuna Treaty with 16 Pacific island nations that have historically allowed the U.S. purse seine fleet to fish in their waters for a set amount of days at a set cost. Last December, with vessel owners unwilling to pay anymore for that access, which had become rather costly, the United States announced that it planned to withdraw from the treaty. Since then, however, the agency has renegotiated the treaty's terms and as of last month was poised to approve final language.

Under the revised treaty, U.S. vessels will have to pay more than \$10,000 a day for access to those foreign waters. In total, they will have to pay out \$70 million, Mike Tosatto, director of NMFS's Pacific Islands Regional Office, said at last

month's meeting of the Western Pacific Fishery Management Council (Wespac). The United States will provide \$23 million in economic assistance to those countries under a separate agreement.

For the treaty to be finalized, the Senate must approve it and NMFS must develop and publish implementing regulations. Once the treaty is approved, it will remain in effect for ten years, although the number of fishing days and their cost will be negotiated annually or bi-annually, he said.

"All of those pieces take time," Tosatto said, adding that his agency will enter into a memorandum of agreement with the treaty parties to allow the U.S. fleet to operate in their waters in the meantime.

Getting access to the fishing waters around those countries is crucial for the U.S. purse seine fleet — not to mention the

American Samoa tuna canneries — since the fleet has been consistently hitting its Western and Central Pacific Fisheries Commission (WCPFC) quota for fishing days in the high seas area between 20 degrees north and 20 degrees south, known as the ELAPS, for Effort Limited Area for Purse Seine.

In May, NMFS published a rule giving the purse seine fleet 558 more days to fish

on top of its high seas quota of 1,270 days by transferring the quota WCPFC set for fishing in the waters controlled by U.S. Pacific island territories. Still, those extra days weren't enough to keep the fleet operating through the end of the year and NMFS announced on August 26 that the high seas would be closed to purse seiners on September 2.

The lack of access to the high seas and to waters controlled by the parties to the tuna treaty has devastated American Samoa's tuna canneries, which employ some 850 people. Last month, Tri Marine, owner of one of the canneries, announced it was going to suspend operations on December 11. And Starkist, which owns the other, has had to halt operations repeatedly this year due to a lack of supply.

"The tuna canning industry is highly dependent on the U.S. purse seine fleet. Access to the ELAPS is of vital importance," new Wespac member Archie Taotasi Soliai said. Sollai also works for Starkist.

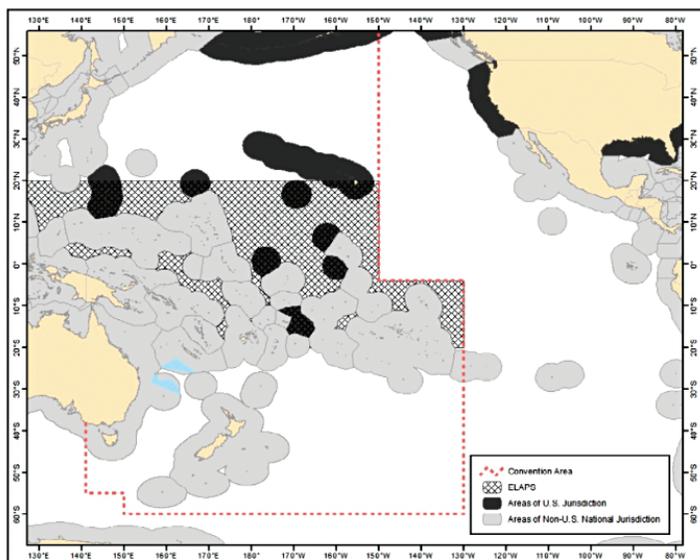
Its uncertain whether or not NMFS will be able to continue or expand the territorial quota transfers to the fleet. Tosatto said that the purse seine quota transfer measure, which was modeled on a measure used by the Hawai'i longline fleet to get around its WCPFC quota, is new and unusual to the WCPFC.

"It might not be well-received. It might be challenged. We have to make sure the I's are dotted and T's are crossed" so the measure stands up in the court of public opinion, the court of WCPFC compliance, and, literally, the courts, he said.

Shortly after the purse seine quota transfer measure was published, it was criticized by the chief executive of the Parties to the Nauru Agreement, which represents most of tuna treaty parties. Transform Aqorau said the measure was a superpower abusing the terms of WCPFC's tropical tuna conservation measure.

— T.D.

The Effort Limit Area for Purse Seine [ELAPS] in the High Seas



The dotted line indicates the jurisdiction of the Western and Central Pacific Fisheries Commission. Dark shading indicates U.S. Exclusive Economic Zones. Cross-hatched area indicates area between 20 degrees N and 20 degrees S. Light shading indicates EEZs of Pacific island states.