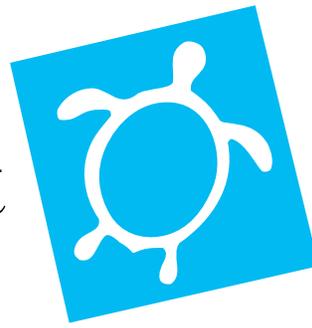


Environment



Hawai'i

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Tuna Meltdown

The recent meeting of the body charged with regulating tuna catches in the Pacific concluded last month – and for bigeye tuna and all who love them, the news is not good. That Hawai'i's own Western Pacific Fishery Management Council should have made it even more difficult for a meaningful agreement to be reached is downright appalling.

Sadly, the dissembling and delay of the tuna commission only reflect what is occurring globally. The ability of regulatory and legislative bodies to grapple with environmental issues seems to shrink even as the need to do so grows ever more urgent, as marine biologist Callum Roberts argues in the book we review in this issue.

There is good news, however. Governor Abercrombie has finally signed rules to restrict fishing in areas of West Hawai'i.

For Another Year, Pacific Bigeye Tuna Go Without Strong International Protection

In the end, no one – at least none of those who were talking – seemed satisfied. Last month, after five days of intense negotiation in the Cairns, Australia, convention center, the tenth meeting of the Western and Central Fisheries Commission closed, having achieved little if anything to reduce pressure on stocks of bigeye tuna that have been subject to a decade or more of overfishing by both longline and purse seine fleets.

Glenn Hurry, executive director of the commission, said he was disappointed by the group's failure to adopt tougher measures to constrain fishing.

Amanda Nickson, director of the Pew Charitable Trust's tuna conservation project, described the entire meeting as "enormously frustrating."

"Despite more than a decade of scientific advice on the need to reduce fishing of bigeye, the commission failed to put adequate science-based conservation measures in place," she said in a news release issued by her organization.

The European Union's representative to the commission weighed in as well, stating that the EU was "disappointed by the lack of ambition of the new Conservation and Management Measure for tropical tunas. . . [M]ore drastic reduction of effort of purse seiners and of longliners would have been necessary to reduce bigeye tuna fishing to sustainable levels."

Greenpeace International described the agreement as "a license to overfish." "Nobody will benefit from this in the long term," said Greenpeace spokeswoman Sari Tolvanen. "Fish will become harder and harder to catch as stocks decline."

There was this from the World Wildlife Fund's Bubba Cook: "It is heartbreaking to observe the various member states acknowledge the dire state in the fishery, but then take

few meaningful steps to address the problem."

On and on the withering comments came, as one after another non-governmental organization or association of fishing nations lashed out at the almost meaningless agreement that emerged from the WCPFC meeting.

Paper Cuts

That does not mean, however, that everyone left angry. There were definite winners; they probably had the good sense not to boast. Sean Martin, a Hawai'i longliner and a U.S. commissioner on WCPFC, responded to *Environment Hawai'i's* invitation to remark on the outcome with a terse "No comment."

Although all the science says that bigeye "fishing mortality" – i.e., fish that are caught – needs to be reduced 40 percent or more if stocks are to be restored to the point that reproduction is in equilibrium with removal, the Hawai'i fleet emerged relatively unscathed. In 2014, it can continue to catch up to its current quota of 3,763 metric tons. For the years 2015 and 2016, it is curbed about 5 percent (to 3,554 MT), and for 2017, it will operate under a limit of roughly 10 percent (3,345 MT).

But those limits mean little, since the Hawai'i Longline Association, representing most of the Honolulu-based boats, has executed agreements with U.S. territories in the Pacific that allow it to increase its catch by as much as 5,000 MT a year over and above its quota. According to the National Marine Fisheries Service's Pacific Islands Regional Office, the Hawai'i longliners met their 2013 quota on December 4. Everything caught since then has been attributed to the catch of the Commonwealth of the Northern Mariana Islands – and never mind that the vessels

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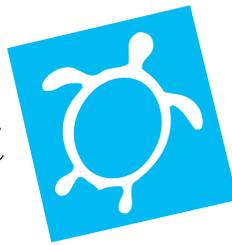
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Environment Hawai'i



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NEW AND NOTEWORTHY

Sounding Off: On December 13, the National Marine Fisheries Service authorized “the most environmentally destructive of the alternatives the Navy analyzed for training and testing in the HSTT [Hawai'i-Southern California Training and Testing] Study Area during the period December 26, 2013, to December 25, 2018,” states a complaint filed December 16 in U.S. District Court by the Conservation Council for Hawai'i, the Center for Biological Diversity, the Animal Welfare Institute, and the Ocean Mammal Institute.

That decision, they argue, was “arbitrary, capricious, and contrary to law.”

The Navy has proposed to broadcast 510,000 hours of low-, medium-, and high-frequency sonar over the next five years in the study area, which spans nearly 3 million square miles. NMFS is also allowing the Navy to set off 260,000 explosives in the area.



PHOTO: NOAA

Navy sonar likely caused a massive melon-headed whale stranding in Hanalei, Kaua'i in 2004.

The Navy's environmental impact statement for the training found that 155 marine mammals would be killed (including individuals of five species of endangered whales) and more than 2,000 would be permanently injured by the proposed exercises. What's more, marine mammals would experience disruptions to behaviors such as sheltering, feeding, breeding, migration, and nursing some 9.6 million times, the complaint states.

The final EIS found that under the Navy's preferred action, nearly 2 million marine mammals would be killed, injured or otherwise harmed each year. (It should be noted that the Navy's “No Action” alternative still would have allowed some level of training.)

The complaint notes that in comments on the draft EIS and on NMFS's proposed rule, testifiers used National Oceanic and Atmospheric Administration cetacean density and distribution maps to identify more than a dozen biologically important areas and recommended restricting activities in some of them. They also

criticized the lack of evaluation of a true “No Action” alternative.

NMFS simply disregarded those comments, the complaint argues.

The groups asked the court to vacate NMFS's authorization of the Navy's training and testing activities, issue “any appropriate injunctive relief,” and award litigation costs.

“The science is clear: sonar and live-fire training in the ocean harms marine mammals,” Ocean Mammal Institute's president Marsha Green said in a press release. “There are safer ways to conduct Navy exercises that include time and place restrictions to avoid areas known to be vital for marine mammals' feeding, breeding and resting. With a little advanced planning and precaution, the Navy can conduct training and protect marine species in the Pacific Ocean.”



Roger Imoto

Imoto Retires: Roger Imoto, acting administrator for the Department of Land and Natural Resources' Division of Forestry and Wildlife, has retired and been replaced with former O'ahu branch manager David Smith. The division has been without a permanent administrator for more than a year.

Correction: Last month's Board Talk item on the wind farm proposed by Na Pua Makani Power Partners, LLC, incorrectly affiliated the wind project with West Wind Works, LLC (3W). Although 3W was part owner as recently as 2012, Na Pua Makani Power Partners, LLC, is currently a wholly owned subsidiary of Champlin Hawai'i Wind Holdings, LLC.

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Quote of the Month

“BLNR's grant of the permit prior to holding a contested case hearing was improper because, as [Kilakila o Haleakala] alleged, BLNR 'put ... the cart before the horse.'”

*—Hawai'i Supreme Court Justice
Simeon Acoba*

EDITORIAL

As Commission Dithers, Tunas Decline

Five years ago, scientists pushed for a 30 percent reduction in bigeye tuna catches made in the Western and Central Pacific. That was the amount that was required, they said, to rebuild the stock to the point it could be sustainably fished. Today, most scientists agree a 40 percent cut is required to achieve the same goal.

In other words, the Western and Central Pacific Fisheries Commission's 2008 plan to curb overfishing of bigeye has left the fish in even worse shape.

The lesson that the WCPFC should have drawn from that is that weak regulations, filled with loopholes and exemptions as the 2008 measure was, are not up to the task.

But at the WCPFC meeting last month in Cairns, that lesson seems to have been lost. Negotiators for the members that benefit most from the industrialized catch of tuna – developed nations with large longline and purse seine fleets as well as small island states that sell them fishing rights in territorial seas – came up with a final measure that, if anything, is even weaker than the admittedly ineffectual 2008 scheme.

Not to worry, though. This coming year, scientists are scheduled to make another stock assessment of bigeye tuna. The commission will revisit its rule to take account of the updated assessment, if need be, when it meets next December.

No one seriously believes that agreeing on cuts will be easier than it was at Cairns, when an agreement was hammered out behind closed doors and finalized only in the closing moments of the meeting. Year after year, as the tuna grow more and more scarce, agreements are more and more difficult to reach.

But in the meeting halls and back rooms of WCPFC, the chief concern is not for the welfare of fish stocks but for the economic value that each member nation can wring from the ongoing exploitation of an increasingly limited resource.

Bigeye are not the only fish in trouble. Pacific bluefin tuna have been fished down to a point where their population is thought to be less than 4 percent its size before fishing began. Silky sharks and oceanic white-tip sharks are so depleted they are in line for protection through the Convention on the International Trade in Endangered Species. Yellowfin tuna are deemed to be in relative

good health – so long as fishing effort on that species does not increase.

The WCPFC was intended to impose a regulatory scheme on the vast expanses of the Pacific that, until a decade ago, were not governed by any regional fishery management organization. Given the limp regulations it has approved, given its lack of sanctions for members who violate them, given its increasing lack of transparency, and most of all, given its failure to act meaningfully in the face of sharp declines in important fish populations, it may be time to rethink its rationale. Could the bigeye be in any worse trouble now than if WCPFC didn't exist?

Shame on Wespac

The United States is one of the leaders of WCPFC, but it has lost credibility among other nations at the table as a result of its staunch defense of the Hawai'i longliners. Not only were they not subject to the same cuts in 2008 as the other nations (the reasons for which go back to a closure of the Hawai'i longline fishery in the early part of the decade), but now, with the recent charter arrangements between the Hawai'i Longline Association and U.S.-flagged Pacific territories, they don't even have to comply with the modest cuts in the current management measure for bigeye. Once the National Marine Fisheries Service calculates that the WCPFC quota for bigeye has been reached by the longline fleet – which occurred December 4 last year – the catch is merely attributed to the territory.

In other words, although the longliners' nominal catch limit is 3,763 metric tons of bigeye, they can bring in another 5,000 tons without technically violating the WCPFC conservation measure. As one of the U.S. delegation members put it, any cuts imposed on the longliners are "paper cuts."

Other nations at the table are fully aware of these shenanigans, which hamper the U.S. in its efforts to rein in fishing efforts by other major players, such as Japan, Korea, and China. That the United States should be hobbled by the demands of the HLA and its agent, the Western Pacific Fishery Management Council, is shameful.

Adding to the shame was the makeup of the delegations from U.S. territories that participate as cooperating non-members in the commission. Of the ten total members in the

delegations from Guam, Commonwealth of the Northern Mariana Islands, and American Samoa, five are people who are on Wespac's payroll, are council members, or are council advisors who do not live in the territory to whose delegation they were assigned. Two more are current council members, while a third is a former council member.

At a meeting where South Pacific island states were calling on the commission to live up to the promise in the establishing treaty to help in their development, the failure to join in such demands by the U.S.-flagged islands was conspicuous. The fact that their delegations were salted with Wespac ringers insured that they would not undermine the U.S. position by joining forces with the island states with which, after all, they naturally have far more in common.

Payback

To be sure, the WCPFC is probably no worse, and perhaps even better, than other regional fishery management organizations. Indeed, whenever political bodies are tasked with working out deals that allocate limited natural resources – be they fish, timber, minerals, or water – economic interests seem to trump all others.

But as Callum Roberts so eloquently argues in his book *Ocean of Life*, there is a limit to the abuse that our living environment can take – and we are rapidly approaching that limit. "We have not yet felt the real cost of our activities but payback is on its way," he warns.

Long, long ago, a television ad for a brand of margarine featured an angry Mother Nature, fooled into thinking the spread on her bread was butter. "It's not nice to fool Mother Nature," she scolded.

Not only is it not nice to try, it is also impossible. Whatever schemes humans devise to try to fool nature, whether it be fiddling with fishery catch limits, negotiating meaningless deals over carbon emissions, or compromising sound conservation principles to accommodate economic development, in the end, we are only fooling ourselves. And more and more, nature is showing us that the consequence of that folly is catastrophic. The sooner our negotiators recognize that and put politics – and economics – in their proper place, the better off we will all be.

Land Board Approval *Before* Contested Case Is Issue In Appeals of Two Telescope Permits

The Hilo courtroom of Judge Greg K. Nakamura was packed. Mothers with small children, students, and even this reporter were sitting cross-legged on the aisle between the rows of benches. In the seats, enthusiastic supporters of the proposed Thirty-Meter Telescope found themselves pressed in cheek-to-jowl with the passionate opponents. Two sheriff's deputies stood guard at the entry.

That was the scene on the morning of December 13, when Nakamura heard opening arguments on briefs submitted by the groups appealing the Board of Land and Natural Resources' decision to permit construction of the huge telescope in the University of Hawai'i's science reserve atop Mauna Kea.

Unlike the contested case hearing on the project, held in 2011, the hearing before Nakamura was brief, with each side – the appellants, on the one hand, and the University of Hawai'i-Hilo and the Board of Land and Natural Resources, on the other – allowed 15 minutes to present its case.

Richard Wurdeman, representing the six groups appealing the permit granted in April of last year, made three points in his allotted time. First, that the Land Board had “grossly violated” the appellants' due process when it initially approved the project in 2011 before holding the contested case hearing. “This was gross error,” he told Nakamura, describing the Land Board's subsequent approval of the permit after the contested case hearing as “a rubber stamp.” His proposed remedy: vacate the decision and remand it to the Land Board, with the requirement that it conduct a new contested case hearing “before a neutral hearing officer.”

Wurdeman's second point was that the applicant for the project, the University of Hawai'i-Hilo, had not met its burden to show that the telescope's construction complied with each criterion set forth in the Land Board's rules for approval of projects in the Conservation District. The economic benefits that the telescope would bring, which have been frequently been invoked in arguments supporting its construction, do not constitute “proper mitigation,” he said.

Thirdly, Wurdeman argued that the terms of the permit did not meet the standards set by the state Supreme Court in the *Ka Pa'akai* case, since responsibility for ensuring cultural practitioners' rights to exercise their protected

activities were delegated to the university. “They passed the buck to the university ... [which is] improper delegation under *Ka Pa'akai*,” he told the court.

Arguing the case for UHH was Jay Handlin. “It is extremely important to identify what is actually being reviewed here,” he reminded Nakamura. The standard for court review is whether a factual statement or a statement of mixed fact and law is “clearly erroneous – a very high threshold,” he noted.

Nor were the appellants' due-process rights violated, he continued. The Department of Land and Natural Resources' rules state that the contested case hearing must be held after the public hearing on an application. “From the practical point of view, agencies deny applications all the time,” he said. “If the appellants' view applies, ... you could have a contested case even without the need for it,” he continued. As an example, he cited a hypothetical case where the board, hearing a case involving an alleged violation of its rules, might decide no infraction occurred or might impose only a minimal fine, mooted altogether any need for a contested case.

Julie China, a deputy attorney general representing the Land Board, called the due-process complaint a “red herring.” A request for a contested case hearing may be made either before or after the board votes, she said. And if there is a contested case, following that, the board “reviews everything *de novo*,” she pointed out.

The Land Board “is unbiased,” she added. At no point did anyone suggest there was a disqualifying interest on the part of any board member.

In his rebuttal, Wurdeman raised another point, alleging that the fact that the BLNR changed its administrative rules while the contested case hearing was occurring meant that the CDUP granted to the university had to comply with the old rules, not the new ones. The fact that it was not required to do so “was error as well,” he told Nakamura.

In addition to its application, he said, “a management plan must be submitted. At some point, there was a recognition that the plan was insufficient, so the BLNR changed its rules to remedy the error.”

Handlin, however, argued that the BLNR determined that, “to the extent the requirement was for a comprehensive plan, the Comprehensive Management Plan [for Mauna Kea] met that. Then the BLNR said a

site-based plan was needed, and that condition was fulfilled.”

Throughout the entire contested case hearing, he added, the petitioners “never said a word about the TMT management plan.”

China added that the BLNR's order requires compliance with both plans.



The High Court Rules On Maui Telescope

On the same day that attorneys for the University of Hawai'i-Hilo and the Land Board were arguing that a contested-case hearing could be held *after* the board had voted, two justices of the Hawai'i Supreme Court, disagreed strongly with that position in a minority opinion.

The opinion, written by Justice Simeon R. Acoba Jr. and joined by Justice Richard W. Pollock, concurred with the majority in upholding a Maui group's right to appeal a BLNR permit issued for the construction of another telescope – the Advanced Technology Solar Telescope (ATST) on Haleakala. Acoba and Pollock wrote that the “BLNR's grant of the permit prior to holding a contested case hearing was improper because, as [Kilakila o Haleakala] alleged, BLNR ‘put ... the cart before the horse.’”

Citing constitutional protections of native Hawaiian rights and the public trust doctrine, Acoba wrote, there was no question, in their view, but that “a contested case hearing should have been held prior to the vote...” The BLNR's “initial grant of the permit determined the rights of the parties, rendering any subsequent so-called ‘contested case hearing’ meaningless,” he concluded.

The group lodging the appeal in this case, Kilakila o Haleakala (KOH), had first asked for a contested case well before the Land Board voted on the permit in December 2010. Its request was denied and the board proceeded to approve the University of Hawai'i's Conservation District Use Permit to construct the 142-foot-tall facility.

Represented by Native Hawaiian Legal Corporation attorney David Frankel, KOH sought relief in 1st Circuit Court. It asked Judge Rhonda A. Nishimura to vacate the permit and remand the matter to the Land Board, with instructions to hold a contested case and stay the permit.

Attorneys for the University of Hawai'i, joined by those for the Land Board, argued, among other things, that the court could only hear appeals of decisions made following a contested case hearing, citing Section 91-14 of *Hawai'i Revised Statutes*.



Construction of the Advanced Technology Solar Telescope on Haleakala has already begun.

In February 2011, the board voted to hold a contested case, after which Nishimura agreed with the university that the case was moot. Although she admonished the Land Board to stay the permit until the contested case hearing had been completed, the permit remained alive.

Even as preparations began for the contested case hearing, held later that year, Frankel appealed the lower court's finding that it lacked jurisdiction. The Intermediate Court of Appeals supported Nishimura's finding and dismissed the appeal in a ruling issued June 28, 2012. It was this determination that was the subject of the current appeal before the Supreme Court. (Kilakila o Haleakala also has two additional cases pending before the Intermediate Court of Appeals.)

The first issue the Supreme Court disposed of was the claim of mootness that was argued by the University of Hawai'i. Because the permit was still alive – and some associated site work has in fact begun – the appeal is not moot, Associate Justice Paula A. Nakayama wrote in the majority opinion that was signed as well by Chief Justice Mark A. Recktenwald and Justices Sabrina S. McKenna and Pollock.

“Crucially, BLNR has neither stayed nor revoked the permit, not even when KOH appealed or BLNR granted a contested case hearing on the already-issued permit. Because the permit remains in effect despite BLNR's failure to hold a contested case hearing before voting to grant the permit, UH can still build on Haleakala and KOH can still seek effective relief against UH. Consequently, we agree with KOH's position and conclude that this case is not moot.”

The second issue addressed was whether an appeal could be made to Circuit Court in the absence of a contested case hearing by an agency. On this point as well, the court sided with Kilakila o Haleakala. The BLNR's “vote to grant the permit in the face of a valid pending request for a contested case hearing” satisfies the statutory requirement of a final agency decision, it found.

The court went on to find that Kilakila had

Documents Reveal Pressure over ATST From Offices of Inouye, Abercrombie

Steven Jacobson, the hearing officer in the first contested case involving the Conservation District Use Permit for the Advanced Technology Solar Telescope, shocked all involved when he announced, after making his finding, that he had been subject to pressure from the offices of Governor Neil Abercrombie and U.S. Senator Daniel Inouye. For most observers following cases such as this, the shock came not so much from what Jacobson said as the fact that he said it at all. Usually, the involvement of people in high elective office is suspected but rarely discussed in the open.

Jacobson's disclosures were not the first to claim political involvement in the telescope's permitting process. Even before the contested case began, the former superintendent of Haleakala National Park, Marilyn Parris, said in a sworn statement that one of Inouye's aides had “strongly encouraged [her] to go along with the construction of the ATST.” When she objected, she stated, the aide indicated he “would go to the Secretary of the Interior to override [her] objections.”

In light of the statements of Jacobson and Parris, KOH sued the University of Hawai'i under the state's Uniform Information Practices Act to obtain documents, including emails, relating to the project. (KOH states elsewhere that more than 4,000 pages of documents were copied, “at considerable expense” to KOH.)

KOH's appeal of the Land Board's

2012 decision, which cites some of those records, provides details on just how some of that pressure was applied.

Even before Jacobson's findings were released – finding, among other things, that KOH was not entitled to a contested case hearing – Jennifer Sabas, an aide to Inouye, had called Land Board Chair William Aila, KOH discovered.

In the appeal to 1st Circuit Court of the Land Board's November 2012 decision affirming its earlier vote to approve the telescope permit, attorney David Frankel writes: “Sabas was clearly acting as the applicant's [University of Hawai'i] agent. Because he was worried about the loss of funding, the applicant's Mike Maberry specifically asked Sabas to talk to the hearing officer's boss's boss, Loretta Fuddy, the director of the Department of Health. Sabas admitted that she could ‘carry the uh message’ in meetings regarding the ATST.... Maberry thanked Sabas for all her ‘help and support.’ Sabas was quite worried about ensuring approval of the ATST. ‘This will be bad if we lose it.’”

Bruce Coppa, Abercrombie's chief of staff, also asked Aila to “please help” with the contested case hearing, the documents show. And in March 2012, after Jacobson's findings were released – and after his claims of political influence had been made public – both Coppa and Sabas met with Aila “to discuss the telescope, hearings officer and funding issue,” the documents say. — *P.T.*

satisfied all the procedural requirements to ensure its right of appeal and that the group did meet the legal requirements to be granted standing.

In light of its findings, the court vacated both the ICA and Circuit Court judgments and remanded the case back to the Circuit Court “for further proceedings consistent with this opinion regarding KOH's request for a stay or reversal” of the Conservation District Use Permit granted on December 1, 2010.

What Next?

The Supreme Court remand seems to instruct the lower court to review the case in a manner “consistent with this opinion regarding KOH's request for a stay or reversal” of the permit granted more than three years ago.

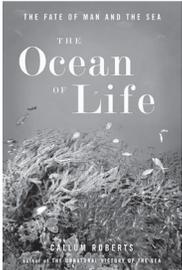
But the case is more complicated than the Supreme Court opinion suggests, since the board held a second vote on the permit – in effect, reaffirming its first one – in November 2012.

After the first contested case hearing was conducted in 2011, months passed before the hearing officer, Steven Jacobson, issued his initial proposed findings in February 2012 and a final report in March 2012. Jacobson determined that KOH was not, in the first place, entitled to a contested case hearing and that the CDUP the board had issued for the telescope could stand, with a few additional conditions.

A few days later, Jacobson claimed that he had been pressured by people within the offices of U.S. Sen. Daniel Inouye and Governor Neil Abercrombie to release his initial

BOOK REVIEWS

A Bleak Forecast from the Frontlines of Fishery Management



Callum Roberts.
The Ocean of Life: The Fate of Man and The Sea.
Viking Penguin (USA),
2013. 350 pages plus
appendices, notes,
and index.

Callum Roberts is one of the world's great fisheries biologists. More than that, he's a terrific writer, capable of translating the scientist's abstruse formulas into compelling, even heartbreaking prose.

And his message of what humans must now do – emphasizing *now* – to address the formidable challenges to the very survival of life as we know it is one that should be heeded by anyone having a stake in the outcome. Which is, of course, to say every last fish-eater, carbon-emitter, and plastics-user among us.

In 22 short chapters, plus a prologue and epilogue, Roberts, a marine conservation biologist at York University in England, spells out in depressing detail the ways in which our extravagant consumption of resources have altered the natural systems that have supported existence from the very first glimmer of life on the planet.

The most obvious, from the standpoint of a fisheries scientist, is through overfishing. Thanks to a changing baseline – where each generation measures depletion against only its own experience – we tend to lose sight of the great diminishment in fish in size, species variety, and abundance that has occurred over

time, Roberts points out. Photographs from the 19th century “show men on the West Coast thigh-deep in salmon pulled from Puget Sound.” Today, “Puget Sound’s salmon runs has dwindled to a trickle.”

“We have established regulations in the last few decades to restrain fishing power,” he continues, “but they have failed to give most species the time and space they need to reproduce... Fishing intensities are now so high that, once some species reach a level at which they can be caught, their chance of death from fishing in any given year ranges from 30 percent to 60 percent, or more.”

Politicians and fishing industry representatives bear much of the blame for ongoing depredations of overfished stocks, he notes. “In parliament and senate buildings and committee rooms across the world I have seen them dig their heels in to resist regulations that could help fish stocks recover,” he writes. “Politicians too willingly believe their claims that greater regulation would cause unnecessary hardship. In reality, failure to acknowledge and deal with the problem represents a far more serious risk to their livelihoods.”

“Daniel Pauly... describes world fisheries as a giant Ponzi scheme,” Roberts notes, referring to one of the fisheries scientists who has championed conservation. “Fraudsters in this type of scam pay investors from the capital in a fund rather than from the returns made on their investments... The fishing industry has been dependent on a constant input of new capital... But fisheries are now failing because, like in a Ponzi scheme, they are running out of new capital.”

Subsequent chapters deal just as rigorously with such topics as ocean currents, the lethal legacy of plastics on ocean-going creatures, the “biological pollution” of alien species, the creation of enormous dead zones from over-use of fertilizers, the harm caused by mercury, other heavy metals, and organic chemicals on ocean life, and the trauma wrought on marine life by the undersea roar from shipping and other human activities.

As difficult as these issues are to tackle, climate change brought about by increasing levels of carbon dioxide in the atmosphere poses even more formidable challenges. Sea-level rise will mean the further loss of coastal wetlands, unless vigorous measures are undertaken to protect existing areas and rebuild those lost in the past. The wetlands can serve as natural coastal barriers against storm surges and high tides, Roberts writes. Similarly, coral reefs can and do provide invaluable protection to coastal areas, but ocean acidification threatens their very existence. “Coral bleaching used to be what kept me awake at night,” Roberts writes. “Now it is ocean acidification. Warming seas have devastated reefs worldwide by weakening the sunlit coalition of corals and algae. Acidification is a punch in the gut to reefs that are already on their knees.”

After reading Roberts’ depressing accounts of the many and dire ways in which humans have broken critical links in the chain of oceanic life, it comes as a bit of a surprise that he should declare himself an optimist. “This book is not a catalog of unavoidable disasters ahead,” he writes. “There is much we can do to change course, if we take the opportunity now, but time is of the essence. The longer we ignore the problems, or prevaricate, the less leeway we have to avoid the direst of our possible futures.”

To help consumers make informed decisions, an appendix gives consumers a guide to making informed decisions about the fish

report before he was ready to.

In an effort to remove the hint of any undue influence, the Land Board voted to hold a second contested case hearing on the permit. Hearing officer Lane Ishida issued his report in August 2012, which was accepted by the Land Board in November of that year. Once more, the permit to construct the telescope was approved, and the university announced that it was ready to start work on the \$300 million facility.

KOH once more appealed the BLNR’s approval of the permit—an appeal that is now before the Intermediate Court of Appeals. Among other things, KOH argues that be-

cause the November 2012 permit vote was made after the Land Board had already voted to approve the project nearly two years earlier, the board was prejudiced in favor of the telescope’s construction.

Following the Supreme Court’s decision on December 13, Frankel said that he was uncertain what would come next. The university’s Michael Maberry, however, who oversees the astronomical installations on Haleakala, told *Civil Beat* that the permit approved by the Land Board in 2012 allows construction to move forward.

Separately, KOH has also challenged in court the University of Hawai’i’s failure to

prepare an environmental impact statement in connection with its management plan for the science reserve on Haleakala. In yet another legal action stemming from the ATST project, KOH sued the University of Hawai’i over the university’s denial of KOH’s request to review communications between university personnel, on the one hand, and Inouye’s and the governor’s offices, on the other, relating to the ATST. (It prevailed in that case.)

On December 15, the ATST was renamed the Daniel K. Inouye Solar Telescope.

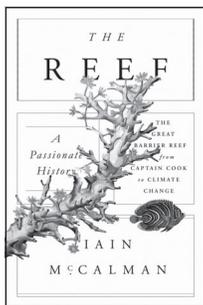
— Patricia Tummons

they eat. A second appendix lists reputable organizations working to restore health to the world's oceans.

Roberts completed work on his book in October 2011. Since then, the carbon dioxide concentration has risen to more than 400 parts per million, the predictions of continental ice melt have grown more dire, and the international regulatory agencies charged with managing ocean resources continue to give more weight to cries of hardship from the fishery sector than the warnings of overfishing from credible scientists.



The Great Barrier Reef: Can It Survive?



Iain McCalman.
The Reef: A Passionate History.
Viking Penguin, 2013
(Australia).
341 pages plus notes,
bibliography,
acknowledgements,
index.

If you haven't been to Australia's Great Barrier Reef, now might be a good time to start planning your visit. Unless something is done to stop loading the oceans with carbon dioxide, the reef will dissolve, like "a giant antacid tablet."

Charlie Veron, a scientist who has devoted his life to studying the GBR and other reef systems across the globe, made the warning in his 2008 book *A Reef in Time: The Great Barrier Reef from Beginning to End*. Iain McCalman, a historian at the University of Sydney, relies heavily on Veron's science in his more recent work, which tells the distressing history of the reef from the near-disastrous voyage of Captain Cook through its shoals in 1770 up to the present.

The Great Barrier Reef is some 2,300 miles long and covers an area of 344,000 square kilometers, or roughly half the size of Texas. For most of recent history, it tended to be regarded as a danger to shipping, a boon for fishing, or a potential source of rich minerals or cheap fertilizer.

Not until the 1960s was an effort launched by Judith Wright, a poet and also the president of the Wildlife Preservation Society of Queensland, to protect the reef. Spurred by a request from a farmer to mine an area for limestone to fertilize his canefields, Wright and a handful of likeminded activists undertook a campaign that pitted them against

some of the most powerful politicians in Australia, including the rapacious premier of Queensland, Joh Bjelke-Petersen.

"In Joh Bjelke-Petersen and his ministers," McCalman writes, Wright and her group "were pitted against one of the most ruthless and effective populist governments in modern Australian history. The premier was adept at exploiting Queenslanders' suspicions of southerners and 'interfering' federal governments, and he grabbed every opportunity to represent conservationists as 'a lunatic fringe' of 'nitwits,' 'cranks' and 'rat-bags.'"

Bjelke-Petersen hired an American geologist, Harry Ladd, to survey the impact of mining on the reef. "Ladd," McCalman notes, "managed to achieve this mammoth task in less than a month – flying over much of the area in the company of officials from the Queensland Mining Department. As the state government had hoped and the conservationists feared, Ladd in his report of March 1968 considered the outlook for oil and gas discoveries to be 'promising'. He further recommended that 'non-living' parts of the reef should be developed as sources for agricultural fertilizer and cement manufacture. A furious Judith Wright likened this to using the Taj Mahal for road gravel..."

Only in 1972, after the Australian Supreme Court upheld Parliament's approval of a measure claiming Commonwealth sovereignty over the reef, was "the Great Reef War," as McCalman calls it, effectively won. In 1975, the reef was established as a marine park, to be governed by an authority answerable to the federal government. Finally, in 1981, the Great Barrier Reef received designation as a World Heritage site from the UNESCO.

But that is not the happy ending of the story. Today, the reef is in jeopardy not only as a result of climate change, but also from further pressure from the recently elected conservative government in Canberra to dredge huge deep-water ports along the Queensland coast. Last month, Australia's environment minister, Greg Hunt, approved the dredging of three million cubic meters of seabed at Abbot Point, near the town of Bowen and smack in the middle of the GBR. The dredged spoils are to be dumped in the World Heritage area, but, according to Hunt's office, "the potential impact area in the dumping ground ... is considerably small" and other habitats "were recorded to recover from similar events."

The port is needed, Australia's mining interests say, to allow them to more easily ship coal and other minerals to Asian markets – coal that, when burned, will only add to the carbon load in the atmosphere and make the

Fish continued from page 1

catching the tuna don't need to go any further from Honolulu than an inch past the 200-mile limit of the U.S. exclusive economic zone. In other words, almost all the fresh ahi that comes to Hawai'i markets during the high season for sashimi does not count against the longliners' annual catch limits. (The law that allows these arrangements with the territories expired December 31, but it is likely that another legal framework will be developed in the next few months to allow them to continue.)

According to one participant in the tuna negotiations, the United States' adamant stance against further real cuts in the limits on Hawai'i longliners made it difficult for other parties to agree to tougher measures.

To be sure, the quota assigned to Hawai'i is the smallest of the six WCPFC member nations with substantial longline fleets. Japan's quota of more than 19,000 tons of bigeye is far and away the largest, with South Korea coming in next at 15,014 MT. That is followed by Taiwan (11,288), China (9,938), and Indonesia (5,889). None of the fleets is being asked to reduce its longline catch for 2014. For 2015 through 2016, reductions in quotas range from 17 percent (China) to 14 percent (Japan) to no reduction at all (Indonesia).

The proposed reductions are far short of what is needed to reduce bigeye fishing by 40 percent, the amount scientists say is needed to make the fishery sustainable. Taken together, by 2017, longline fishing effort will be reduced by roughly 15 percent – and that is *if* every country lives within its limits and there are no disruptions to recruitment.

Pointing Fingers

In defense of the weak cuts proposed for the longline fleets, their advocates claim that the real damage inflicted on bigeye stocks is

prospects for the reef's survival all the more precarious.

Last year, UNESCO placed the Great Barrier Reef on its list of World Heritage Sites in Danger and required the Australian government to provide it with a report on what was being done to protect the reef. The report, released in December, said the government was imposing a "net benefit policy" on all activities. The developers of the Abbot Point port, for example, will be required to pay \$32 million (Australian) in offsets over the next 40 years "to bolster the health of the reef and protect sea turtles." UNESCO will decide later this year whether the Australian plan is sufficient.

—P.T.

caused by the purse seiners that catch juvenile bigeye tuna in their huge nets deployed in the South Pacific.

In recent years, the tonnage of bigeye taken by the purse seine fleets has been roughly equal to that of the longliners. However, almost all the bigeye caught in the longline fishery are adults, while those in the purse seine nets are juveniles. That means, in terms of sheer numbers of individuals caught, the purse seiners' catch is several times that of the longliners'.

This has led to a stand-off between the member nations of the WCPFC whose economic interests are aligned with the purse seiners, on the one hand, and those where longlining is held to have greater value, on the other. The former claim that the longliners are to blame for declining stocks, since they remove the reproducing animals. The latter point to the purse seiners' removal of juveniles, which suppresses the stock's future reproductive capability. (Recent research suggests that both gear types have a roughly equal impact on the stock's status.)

Longliners also point to what is called the sub-optimal utilization of the fish taken by purse seiners. In 2012, the landed value of an adult tuna was \$10 per kilogram, while that of a juvenile was \$2/kg.

This disparity was noted in a press release issued by the Hawai'i-based Western Pacific Fishery Management Council the week before the WCPFC meeting. Council chairman Arnold Palacios stated that the "excessive purse seine catches of small bigeye means that 75 percent of the potential yield ... is being lost. These small fish could grow up and become valuable adult fish, which could bring global economic benefits."

The global economic benefits Palacios refers to are not so apparent to the purse seiners, however, which would forgo the income from the sale to canneries of the bigeye catch in order that longline profits could increase. Furthermore, since there is no feasible way to release juvenile bigeye from purse seine catches, and no surefire way of eliminating bigeye juveniles from the haul, reducing the bigeye catch would likely entail reducing the total number of purse seine sets. The United States, through Wespac, has devoted substantial funds to experiments aimed at finding a way to make purse seining more selective, but a solution remains elusive.

To address purse seine catches of bigeye, the WCPFC has restricted the practice of setting nets on fish aggregating devices, or FADs. The juvenile bigeye and also yellowfin tend to congregate with skipjack under FADs. Purse seine sets on free-swimming schools of skipjack tuna – the targeted species – tend to

have fewer associated bigeye. But whether restrictions on FAD sets have had any effect on bigeye stocks is not known yet; the last stock assessment of bigeye for WCPFC was based on 2011 reported catches.

Not surprisingly, the purse seiners, as well as the small Pacific island states that derive a major part of their revenues from licensing purse seiners to fish in their territorial seas, oppose cuts that favor longliners over purse seiners.

This point was addressed in a paper published in 2012 in the *Proceedings of the National Academy of Science*. Although adult bigeye have a much higher market value than the juveniles, the authors write, "the multitude of fishing companies and the Pacific Island developing states all have divergent interests." The authors – John Sibert of the Joint Institute for Marine and Atmospheric Research at the University of Hawai'i and John Hampton, Inna Senina, and Patrick Lehodey of the Secretariat of the Pacific Community – estimate that rebuilding bigeye stocks will take at least 15 years under the best environmental conditions.

Climate change could prolong or even derail the process, they caution. "Environmental changes induced by anthropogenic release of greenhouse gases should be clearly visible in the 2030s and will affect the BET stock... The future of the bigeye population will depend on timely implementation of effective conservation and management measures" as well as on mitigation efforts, they write.



Protection for Silky Sharks

The Asian appetite for shark fins continued to throw a wrench into negotiations over ways to protect depleted shark stocks in the Western and Central Pacific. As with proposals to conserve tunas, proposals to reduce shark finning and shark bycatch were discussed in meetings held outside the plenary sessions.

The only measure that emerged from the meeting was one to prohibit the retention, storage, transshipment, or landing of silky sharks, a species that has been severely depleted by longline fishing. That measure, proposed by the European Union, is to take effect July 1. An amendment, offered by Japan, specifies that the ban applies only to silky sharks caught in the area of the WCPFC's jurisdiction. With many fishing vessels crossing the line into the Eastern Pacific, which is regulated by the Inter-American Tropical Tuna Commission, it is difficult to know

how the ban will be enforced. While on-board observers might be able to log landings of silky sharks in the IATTC region, observers are present on only small fraction of vessels. For unobserved trips, it apparently will fall to the captain and crew to honestly report where any silky sharks were caught.

Another EU proposal would have required all sharks to be landed with fins attached naturally. This failed, as did a measure intended to protect oceanic white-tip sharks, another species that has been decimated by longline fishing.

Most of the opposition came from an alliance of Asian members, including Japan, South Korea, China, and Taiwan (or Chinese Taipei, as it is referred to in the WCPFC). While no one indicated they favored shark finning, they were unanimous in calling for more research, effectively putting off regulation for at least another year.

A representative of the Convention on International Trade in Endangered Species reminded the commission that with the listing of several species of sharks and rays, "the interaction of CITES with regional fishery management organizations has taken on new significance." Among the species whose trade will be greatly restricted among member nations beginning September 14 are oceanic white-tip, great hammerhead, smooth hammerhead, and porbeagle sharks.



Wespac Personnel Join Island Delegations

The United States delegation to WCPFC consisted of four commissioners and 24 other delegates. Among the delegates were members and staff from two regional fishery councils (Wespac and the Pacific Fishery Management Council), staff from the National Marine Fisheries Service, two State Department representatives, a Coast Guard enforcement officer, and advocates from a variety of industry, private and non-governmental organizations, including the Hawai'i Longline Association, the American Tuna Boat Association, the Hawai'i Audubon Society, TriMarine, Bumble Bee, and Chicken of the Sea.

The three U.S.-flagged territories in the Pacific—American Samoa, Commonwealth of the Northern Mariana Islands, and Guam—also had delegations at the meeting. But of the 10 total delegation members, half were not from the island territories they represented at all.

Of Guam's three delegates, just one, Joseph Cameron, holds a position in the

So, What Don't You Understand? The Difficult Language of Agreements

The negotiations over what the Western and Central Pacific Fisheries Commission calls its Conservation and Management Measure for tropical tuna – including bigeye, yellowfin, skipjack, and albacore – took place over the entire five-day meeting of the commission, and always behind doors closed to most observers.

Several of the observers were allowed inside the negotiations, but they were forbidden from talking about what went on in the discussions until after an agreement had been reached.

The final measure was not approved until the very last hour of the meeting, at which time the lead negotiators brought their draft to the floor. The commission chairman, Charles Karnella, had told the delegations that he did not want to waste meeting time discussing proposals for which there was not already reasonable assurance of passage. That meant, in effect, that the terms of the agreement approved by the commission were worked out entirely behind the scenes.

As a result, the measure has provisions that are difficult to understand – either in themselves, or in terms of the rationale behind them – for anyone not privy to the underlying discussions.

Take, for instance, the language with respect to purse seiners. As with longliners, the purse seine effort limits for 2014 remain unchanged, although the commission did prohibit the entry of new vessels from developed nations to the fishery, while it extended by one month – to four months total – the ban on fishing using fish aggregating devices (FADs).

In 2015 and 2016, nations with purse seine vessels in the region will have to choose either to extend the FAD prohibition to five months, with a limit on such sets based on a percentage of the average annual FAD sets made in 2010 through 2012, or agree to the three-month ban, with FAD sets limited again to a (smaller) fraction of the average annual FAD sets from 2010 through 2012. The exact amount of the percentage varies. With the first option, developed countries and the European Union must reduce the FAD sets to 31.5 percent of the 2010-2012 average, while most small Pacific Island developing states are required to reduce their FAD sets by around 9 percent. For the second option, the reduction for developed states is 27.5 percent, while that for the South Pacific states is around 17 percent.

Confused yet?

There's this, too. In discussing the provisions for small island developing states (SIDS), the commission agrees to "pay attention to the geographical situation of a small island developing state which is made up of non-contiguous groups of islands having a distinct economic and cultural identity of their own but which are separated by areas of high seas." The language refers clearly to Kiribati, but the special attention it is to receive is nowhere spelled out.

After the commission adopted the tuna measure, a spokesman for Greenpeace International read a statement endorsed by his group as well as the World Wildlife Fund, Pew Charitable Trusts, and the International Game Fish Association. Against all scientific advice, their statement said, the commission had failed to adopt a meaningful measure to protect fish stocks, thanks to the unbending self-interest of participants in the negotiations. The very process employed in negotiating the agreement was an insult, they added, urging the commission to begin work on a tougher new measure immediately in anticipation of next year's meeting. — *P.T.*

Guam government. The two other members were Ed Watamura, a Hawai'i fisherman and head of Wespac's Advisory Panel, and McGrew Rice, a council member representing the charter fishery and hailing from Kona.

Of the CNMI's three delegates, again, just one came from the islands. That was Arnold Palacios, who also is chair of Wespac this year. The two others were Ed Ebisui, a council member from Haleiwa, and Paul Callaghan, who heads up the council's Scientific and Statistical Committee. (Callaghan, at least, has lived and worked in the Marianas archipelago for many years.)

The American Samoa delegation was led by Claire Poumele, the territory's port administrator who was appointed last year to Wespac. William Sword, an American Samoa chief who has served on the council

many years, was another delegate as was Keniseli Lafaele, director of the territory's Department of Commerce. Rounding out the delegation was Eric Kingma, a Wespac staffer and close aide to council executive director Kitty Simonds.

One of the central issues discussed at the Cairns meeting was how to assess the burden that WCPFC regulations placed on small island developing states (SIDS) and territories. The South Pacific island nations generally banded together in pressing for recognition of their special rights, enshrined in convention language. While the U.S. territories might seem to have much in common with the SIDS, at no time did they indicate their support for the several measures proposed to elevate SIDS and territories.

Instead, they were used as a foil for the

United States, which seemed resolutely opposed to the SIDS measures. One of the chief spokesmen for the U.S. delegation was Russell Smith, deputy assistant secretary for international fisheries from the National Oceanic and Atmospheric Administration. In commenting on one proposed measure to give special consideration to SIDS, Smith played the territorial hand. "The United States has three territories that participate in the commission," he said, "and ... we look after their interests. We share concerns about the impact of our actions, and we take on board the wise counsel of our territories – their perspective."

On the rare occasions when the territorial delegations spoke up, it was usually to indicate their support for continuing discussions aimed at "progressing these important issues." — *Patricia Tummons*

BOARD TALK

Land Board Approves Agreement For Second Kahuku Wind Farm



First Wind's windmill farm in Kahuku, O'ahu.

PHOTO: LESLIE KUBA

On December 13, the state Board of Land and Natural Resources approved the general form of a development agreement for a wind farm that Na Pua Makani Power Partners, LLC, plans to construct on 232 acres of agricultural land in Kahuku, O'ahu.

The agreement gives the Santa Barbara-based company an exclusive option to lease the land.

At the Land Board meeting, attorneys representing Na Pua Makani said the development agreement needed to be approved before the end of the year for the wind farm to be eligible for federal renewable energy production tax credits. (The company is potentially eligible for nearly \$20 million in tax credits just for Phase 1 of its project.)

As of press time, final language was still being revised to address concerns, raised by a state deputy attorney general minutes before the Land Board meeting, about how the lease will be structured.

The Department of Land and Natural Resources' Land Division administrator Russell Tsuji told the board he hoped the agreement could be finalized in time to meet the end-of-year deadline. The board delegated authority to its chair, William Aila, to sign the final agreement.

The agreement fortifies an approval-in-principle the Land Board gave to the project in August 2008. At the time, the developer, Na Pua Makani predecessor West Wind Works, LLC (3W), proposed a wind farm consisting of up to 10 turbines and producing up to 25 megawatts.

The current developer, a wholly owned subsidiary of Champlin Hawai'i Wind Holdings, LLC, is proposing a 45 MW wind farm to be built in two phases across state and

private lands. The development agreement covers only the first phase, which will consist of eight 3 MW turbines. The full build-out could involve up to 15 turbines.

Under the agreement, Na Pua Makani must meet several conditions before it can exercise its option to obtain a lease from the Land Board. The company must:

- conduct appropriate due diligence;
- obtain a Conditional Use Permit from the City and County of Honolulu (if required);
- prepare a Habitat Conservation Plan and Incidental Take License for the state Division of Forestry and Wildlife (if required);
- prepare and process all environmental documents required under the state's environmental review law (Chapter 343, *Hawai'i Revised Statutes*);
- enter into a power purchase agreement (PPA) with Hawaiian Electric Company, Inc., or another qualified buyer;
- secure financing commitments;
- reach agreement with the state on the lease form;
- pay all required fees; and
- deliver a written "Exercise Notice."

The company already entered into a PPA with HECO on October 3 and sought approval from the state Public Utilities Commission on December 12. If the PUC fails to approve the PPA by June 30, 2015, however, the development agreement allows the state to terminate it.

According to Tsuji, HECO's requirement that Na Pua Makani have control of the wind farm site necessitated the agreement.

"This document is intended to put in writing certain timelines and conditions to allow the developer to have the right to lease

the property within a certain time period. ... The developer is spending way over a million dollars to get to the final point of the lease. They want some assurance they're going to get the land," Tsuji told the board.

Although not explicitly stated in the agreement, the final lease will have to receive Land Board approval, says Land Division planner Gary Martin. The Land Board must also approve the final environmental impact statement and any habitat conservation plan and incidental take license.

Hawai'i island Land Board member Robert Pacheco asked how the development agreement is different from the approval-in-principle.

"Some entities are comfortable with approval-in-principle," Tsuji said, noting that First Wind, another wind farm developer using state land, was satisfied with this. A development agreement, however, prevents competition over the land.

It takes five years to get all the necessary entitlements and at any time during that process, "theoretically, someone could come in and say I have a better project [and] there is no obligation for the state to hold the land," Tsuji said.

Opposition

Kahuku resident and Ko'olauloa Neighborhood Board member Kent Fonoimoana was the sole member of the public to testify on the development agreement. He said he lives about three-quarters of a mile from First Wind's wind farm and doesn't want to see any more built.

He said while he supported the first wind farm, the new farm would place wind turbines less than half a mile from where he lives. Anyone living within one and a quarter mile of the turbines could be impacted by infrasound, he said, referring to an ultra-low frequency sound that can travel long distances and has been linked to a variety of health problems.

"They need to be placed in the proper location," he said of the turbines, adding that Na Pua Makani also needs to have the community's support before it goes any further.

He claimed that the project's original developer, West Wind Works, did a poor job of inviting the public to comment on a draft environmental assessment done for the project in 2009. (A final EA was never completed.)

Na Pua Makani has hired Tetra Tech to prepare an environmental impact statement needed to obtain an incidental take permit from the U.S. Fish and Wildlife Service, which would shield it from prosecution in the

event of any harm caused to an endangered species by the wind farm. Na Pua Makani is also preparing an EIS for the use of state land.

To Na Pua Makani's promise that anyone living within 300 feet of the facility site will receive notices to comment on these documents, Maui Land Board member Jimmy Gomes argued that was a small distance, considering the magnitude of the turbines.

Fonoimoana added, "That's pretty much notifying nobody." He also pointed out that Phase 2 of the project, for 21 MW, is proposed to be built 1,200 feet from Kahuku High and Intermediate School.

Despite Fonoimoana's concerns, the Land Board unanimously approved the Land Division's recommendation that the development agreement be added as an exhibit to the 2008 approval-in-principle.



University Seeks Deferral On New Mauna Kea Leases

In a surprising and, to some, refreshing turnaround, the University of Hawai'i asked the Land Board on December 13 to hold off on deciding whether or not to cancel the university's current leases for more than 11,000 acres on Mauna Kea and issue new ones.

The reason: So the university could prepare an environmental impact statement on its use of state land.

When the UH came to the Land Board on November 8 seeking rent-free, brand new 65-year leases for the Mauna Kea Science Reserve and Hale Pohaku, as well as a 45-year extension of its easement over 71 additional acres, opponents packed the Land Board meeting room and testified for hours, alleging that the proposal was not only unreasonable, it was illegal.

The university had argued that having a longer tenure on the mountain would help with management, including providing a basis for developing subleases with current and future telescope projects.

Michael Kumukauoha Lee, Kalani Flores, Paul Neves, Laulani Teale, and Hanalei Fergstrom requested a contested case hearing on the proposal, for which the DLNR's Land Division had recommended approval.

The Native Hawaiian Legal Corporation, representing Flores and Neves, had argued that, among other things, the Hawai'i Environmental Policy Act required the university to conduct an environmental assessment for its proposed use of state land.

The Land Board lost quorum before it could vote; it resumed discussion of the matter at its December 13 meeting.

At the meeting, a UH representative said, "We've reflected on the testimony [and found] the public's interest is best served if UH engages in an environmental review." He then asked that the Land Board defer voting until after the university completes the process.

"Quite an interesting development," said at-large Land Board member Sam Gon.

David Goode, another at-large member, asked why the university isn't simply rescinding its request.

Attorney Ian Sandison, representing the university, responded, "So we can come back on the same issue."

"You don't anticipate any changes in the action?" Gon asked.

Again, Sandison was brief: "UH wants to move forward."

Land Board chair William Aila argued that because a number of people had asked for a contested case hearing, it would be a disservice to them to withdraw the matter.

Although he had closed public testimony on the agenda item, Aila allowed those who had requested a contested case hearing to speak on whether or not they wished to proceed given the university's change of course.

Fergstrom opted to withdraw his request. "I'm very glad the university has decided to hold back for a bit. This matter is of such large importance," he said.

Lee also withdrew his request.

Teale, Neves, and Flores, however, did not withdraw theirs. Native Hawaiian Legal Corporation attorney David Kopper said he agreed that the university's decision to start

the environmental review process was a good thing. However, he added, it would be best for the university to rescind or for the Land Board to deny the new lease/lease extension request.

"They [the university] would have to come back here anyway. ... Why have an application sitting out there?" he asked, adding that the environmental review process is going to provide information that can be included in a new staff report to the board and can be included in public testimony.

Board member Goode agreed.

The EIS process will take a minimum of one year, probably two, he said, and there will probably be new Land Board members by then and new information to incorporate into a new staff submittal.

"Withdraw it and come back fresh," he told the university, adding that he was not inclined to vote for a deferral.

"The existing [rent] request is for zero dollars ... I find that totally unacceptable. I know we won't be dealing with that for a year or two. I may not be on the board," he said.

Gon said he agreed wholeheartedly that "such a globally significant place should attract the funds that are needed to properly manage it." He also said it was very wise for the UH to do an environmental review, since the last time one was done for Mauna Kea, a full cultural assessment was not required.

In the end, the Land Board voted to defer the matter. Goode was the sole dissenter. Hawai'i island member Robert Pacheco, whose tour company has a permit from the UH to visit Mauna Kea, recused himself from the matter.



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Hokukano Easement Gets Preliminary Approval

On December 13, the Land Board gave its approval-in-principle for the purchase of a conservation easement over roughly 1,000 acres in Kealakekua, South Kona, owned by Hokukano Ranch, Inc.

The cost will be \$3.225 million or fair market value, as determined by a state-contracted appraiser, whichever is less. Funds have already been acquired from the U.S. Forest Service's Forest Legacy Program.

The approval-in-principle allows the state to proceed with its due diligence work.

Although the aim of the easement is to protect native forest, the landowner would be allowed to log. Irene Sprecher of the DLNR's Division of Forestry and Wildlife said her agency is working with the ranch on "a more sustainable harvest plan."

Hokukano Ranch's advisor Greg Hendrickson explained to the Land Board that the Forest Legacy Program aims to protect traditional forest uses, including recreation, education, and "the production of high quality wood resources."

"Do you know if the easement fee... is going into restoration efforts?" Land Board member Sam Gon asked.

Hendrickson said that, generally, a forest management plan for such a property requires a certain amount of restoration work.

"Money will be invested," he said.

Although the Land Board unanimously approved the purchase in principle, Gon said, "I will point out, it would have been great to see conservation easement attached" to the DOFAW report to the board.

Sprecher said the easement terms are still being negotiated.

Pacheco requested that the Land Board receive updates on such easements and "what's going on there."



Abercrombie Signs West Hawai'i Fishing Rules

After a long and controversial meeting, the Land Board narrowly approved new fishing rules for the West Hawai'i Regional Fisheries Management Area on June 28. The rules ban spearfishing with SCUBA gear, a practice employed by many commercial fishermen but which has also been linked to the depletion of fish stocks here and abroad. They also limit aquarium collecting to some 40 species of marine life and prohibit the take of nine other species, including the spotted eagle ray.

After the Land Board's decision, supporters and opponents of the rules pleaded their cases to Governor Neil Abercrombie, whose signature was needed for the rules to take effect. For months, nothing happened.

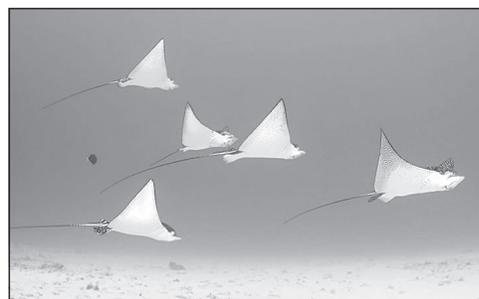
Finally, in early November, Kona resident Doug Perrine sent Abercrombie a letter asking for him to sign the rules. Perrine attached two pictures, one of a flock of rays, another of a speared ray lying on pavement.

"Attached to this message are two photographs of spotted eagle rays, both taken at Honokohau Harbor, Hawai'i Island. One shows a school of live rays flocking like undersea butterflies, demonstrating the beauty and grace that makes these animals one of the big

attractions drawing scuba divers to Hawai'i, and fueling a multi-million dollar per year non-extractive, sustainable wildlife viewing industry. What's wrong with the second picture? Answer: no laws were broken in the conversion of a beautiful living animal, worth many thousands of dollars as a live resource for eco-tourism, and also an essential component of a healthy coral reef ecosystem, into a glob of rotting flesh floating in the harbor. There would be no laws broken if the same abomination occurred tomorrow due to your failure to sign the WHRFMA rules that would protect four species of rays, five species of sharks, and over a hundred species of ornamental reef fish," Perrine wrote.

"By declining to sign these rules - an act that should have been a mere formality six weeks ago - you are disrespecting Hawai'i's natural environment, disrespecting the people of West Hawai'i who overwhelmingly supported the adoption of these rules, disrespecting the scientific community that unanimously endorsed the rules, disrespecting your own scientists who conducted the studies that proved the necessity of the rules, and disrespecting the Board of Land and Natural Resources which is given the authority to adopt such rules by the Hawai'i State Constitution and which voted to adopt the rules by a large majority," he wrote.

Gov. Abercrombie signed the rules on December 14. — *Teresa Dawson*



Photos Kona resident Doug Perrine sent to Gov. Neil Abercrombie.