

## Hāna Update Meeting to Discuss Little Fire Ants

Posted By Wendy Osher on 12/05/14 (MauiNow.com)

Maui residents concerned about the discovery of little fire ants in Nāhiku are invited to attend a meeting on Wednesday, Dec. 10th at 5 p.m. at Helene Hall in Hāna.

The meeting will include representatives from the Hawai'i Department of Agriculture, Hawai'i Ant Lab, Maui Invasive Species Committee and the County of Maui.

The Nāhiku infestation was discovered on Sept. 18 on 20 acres of land along the Hāna Highway in East Maui.

The discovery was made while crews, who were working to eradicate the invasive miconia plant in the area, were stung by the ants.

The little fire ant is a native of south America and is considered among the world's worst invasive species because of their painful stings that can cause large welts and blindness in pets.

The state Department of Agriculture released the following chronology of the

Little Fire Ant in Hawai'i:

LFA has been found on Hawai'i Island since 1999. By the time it was identified, the ant population was deemed too widespread for eradication efforts.

October 2009 – LFA was detected on a farm in Waihe'e, Maui. The infested area involved about 1/2 acre and eradication efforts appear to have been successful and monitoring continues.

December 2013 – LFA was detected on hapuu logs (Hawaiian fern) at retail stores on Maui and O'ahu. Since its detection, O'ahu and Maui nurseries have been surveyed. Seven Oahu nurseries, three of which were in Waimanalo, were found to have small infestations of LFA, the areas were treated and are clear of the ants.

May 2014 – crews began treating a 6-acre area in Waimanalo, which included a 3.5 acre infestation area and buffer zone. Crews continue to conduct follow-up treatments at the Waimanalo site.

June 2014 – a six-acre residential area in Mililani was found to be infested with LFA and treatment of that area is also on-going.

July 2014 – A routine survey for LFA by members of the MISC detected a small infestation at a hotel in Wailea, Maui. MISC reported it found one LFA ant at a neighboring hotel. The landscaped areas are continuing to be treated and monitored.

July 2014 – Maui HDOA inspectors found LFA on some of 51 hāpu'u logs from Kea'au, Hawaii Island. Although the logs were bait-tested for LFA in Hilo and after it reached Maui, LFA was not detected in the bait traps. However, upon closer visual inspection, Maui inspectors saw what looked like LFA, which was confirmed by entomologists. The logs were frozen to kill any LFA. Inspectors trace forward two other shipments from the source. They tested 100 logs and found LFA on seven logs. The area was also surveyed and no LFA was detected. Enhanced inspections at both departing and receiving ports have been established.

August 2014 – Maui HDOA inspectors doing enhanced inspections found LFA on specialty pineapple transported from Hawai'i Island. The LFA were difficult to detect in the crown of the pineapple. HDOA inspectors continue to closely monitor similar shipments interisland.

Suspected invasive species should be reported to the state's toll-free pest hotline at (808) 643-PEST (7378).

## **Kailua development near Kawainui Marsh raises questions**

KAILUA, OAHU (HawaiiNewsNow) -

A plan for a new industrial park in Kailua is stirring some controversy. That's because the developer wants to build it right next to the largest wetland area in the state.

This 23 acres would eventually turn into nine warehouses and a base yard for light industrial companies to work. The development would be located at the current Hawaiian Earth Products site on Kapaa Quarry Road. It is part of the Kawainui Marsh which is a special management area.

Opponents point out the landowners questionable past. Its tenants have been cited and fined for illegal grading and stockpiling. There is also a state investigation accusing a tenant of illegally dumping oils and chemicals.

"I see evidence of oil spills. I don't know how any of the other government departments that go out there to look can't see it it's so obvious," said Vern Hinsvark, Kailua Neighborhood Board Member who opposes the development.

The landowner, Kapaa I LLC., says it's all been a wakeup call. They hired a sustainable design firm to help build a Leed Development incorporating environmentally friendly features. The area used to be a landfill so they will seal it up and filter the water that runs off.

"I would argue that's a much better situation than what's there now with this untreated unfiltered water that runs straight from the landfill into the marsh," said Ikaika Anderson, Honolulu City Councilmember who represents the area.

The City Council has unanimously approved the rezoning and a special use permit to clean up prior violations. Furthermore they've said the Windward side needs more industrial property.

"You can balance the needs of businesses and the needs of the environment. One does not have to suffer. Businesses don't have to suffer for the environment. The environment doesn't have to suffer for businesses to be successful," said Susan King, Kapaa I LLC.

Kapaa I also says it will educate tenants about the Kawainui Marsh and have rules to follow.

However the Kailua neighborhood board opposes the development saying the landowners can't even control the current tenants.

"If they can't take care of the land they have now I question they'll be able to maintain it on a long term basis," said Hinsvark.

"I feel like they can trust us. I hope they know they can trust us and we're going to show them that they can," said King.

Councilman Anderson vouched for the King family saying they have organized numerous community clean-ups of Kawainui Marsh and positive environmental stewards.

"I have faith this family is going to do what they said they were going to do," said Anderson.

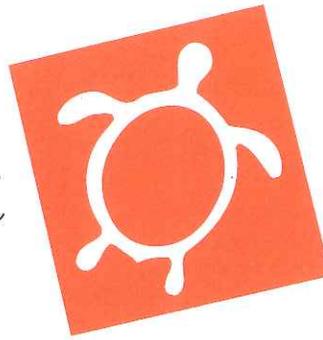
"It's like a mask. They do all these good things, but that doesn't allow them to do the bad things they do," said Hinsvark.

Kapaa I says it's still about three to four years before any buildings go up.

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# Environment



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## Power Struggle

Maybe the new approach to energy generation that the Kaua'i Island Utility Cooperative is proposing will be a game-changer, bringing cheap, reliable power to the island's residents without using fossil fuels or other non-renewable resources.

But before that can happen, the utility needs to surmount any number of pretty high hurdles, as Teresa Dawson explains in this month's cover story.

On the same subject of renewable power, we report on the latest legal challenges faced by Hu Honua in its efforts to develop a biomass-fueled power plant on the Big Island.

Also in this issue: We report on the refusal of the Western Pacific Fishery Management Council to bow to scientific advice with respect to setting catch limits for prized bottomfish and disclose the costs to the public of the council's lobbying efforts against the expansion of the Pacific Remote Islands Marine National Monument;

We describe an ongoing dispute in Kona over whether a permit was needed for the clearing of a four-acre parcel, said to have damaged historic sites; was it grubbing or merely "mowing," as the owner claims?

And our regular Board Talk column looks at a couple of difficult North Shore cases that recently came before the state Land Board.

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## Kaua'i Pumped Storage Project Wins Preliminary Approval of Land Lease

As a way to boost Kaua'i's capacity to incorporate more solar power onto the electrical grid, the Kaua'i Island Utility Cooperative's proposed pumped storage hydropower project using old sugar plantation infrastructure seems like a no-brainer.

But with an independent power producer closely allied with the irrigation system's manager competing for some of the same resources, a strong desire by the Department of Hawaiian Homelands to fund and build its homestead in the area, and a petition from local residents calling for an end to water waste and the return of stream flows, support for KIUC's West Kaua'i Storage Project has been far from unanimous.

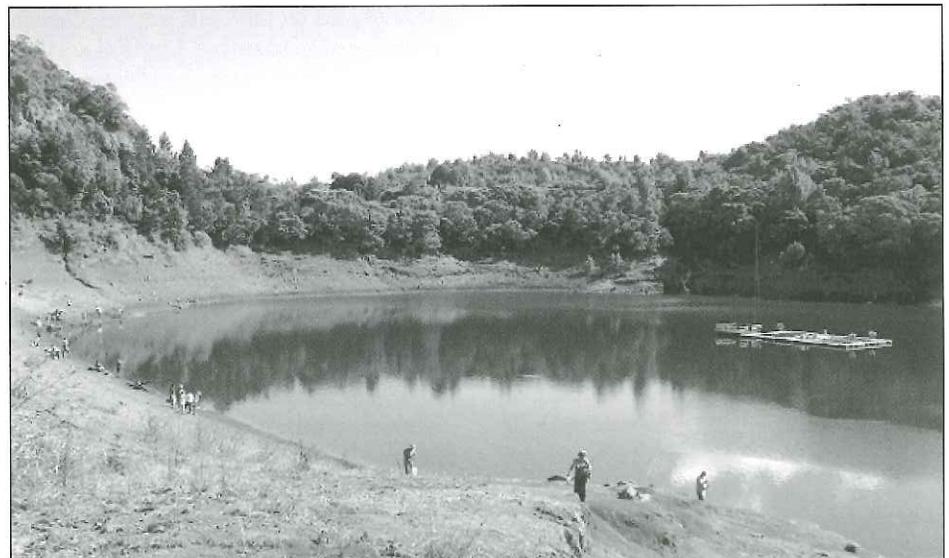
On November 14, the state Department of Land and Natural Resources' Land Division recommended to the Board of Land and Natural Resources that it approve in principle KIUC's request for a direct 65-year lease for

the state's Pu'u Lua reservoir, a pipeline easement, and a direct lease for water rights. It also recommended the issuance of a right-of-entry to allow KIUC to assess the site.

The project would use lands controlled by the DLNR and the Agribusiness Development Corporation, both state agencies, and draw water from the Koke'e Ditch. KIUC plans to restore Pu'u Lua reservoir, located on DLNR land above the Mana plain, to its original 250 million gallon capacity and to construct a new 30 million gallon reservoir at a lower elevation and a substation capable of generating 20 megawatts on ADC lands.

The ADC granted permission to KIUC consultant Joule, LLC, earlier this year to conduct site assessments and studies to aid in configuring the project. The approvals requested from the Land Board last month would allow the co-op to do the same on

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The Kaua'i Island Utility Cooperative wants to lease Pu'u Lua reservoir (pictured here) as part of a 20 megawatt pumped storage hydropower project in West Kaua'i.

PHOTO: DLNR

*Reservoir continued from page 1*

DLNR land and provide sufficient assurance to justify proceeding with the preparation of an environmental impact statement and a Conservation District Use Application.

The Land Division recommended approval, in part, because of KIUC's plan to improve the Pu'u Lua reservoir so that it meets dam safety standards, a feat that would require the state to expend millions of dollars otherwise.

Land agent Ian Hirokawa told the Land Board that his division would present a recommendation to approve or disapprove land and water leases only after the board approved the EIS and CDUA. All of those approvals would provide opportunities for public comment, he said.

KIUC CEO David Bissell said the closed-loop hydro project, which would recirculate water between high and lower elevations, was relatively innovative for Kaua'i.

He said the island was nearing its saturation rate for solar electricity, but with pumped storage, "we'll be the first in the country using PV [photovoltaics] during the day to make electricity at night."

Joule's Dawn Huff added that she has been working with the ADC and its tenant farmers to try to tailor the project to meet their irrigation needs.

**Not So Fast**

Despite the project's purported benefits, the Department of Hawaiian Home Lands argued in its testimony that the Land Division's recommendation on the water lease failed to "acknowledge, address, analyze, ensure or protect DHHL's right to water under Section 221 of the [Hawaiian Homes Commission Act] and the state's Water Code."

The DHHL owns 15,061 acres of homestead lands directly adjacent to the project area and the HHCA and Water Code provide the agency with clear legal rights to take water from the Koke'e Ditch, said Hawaiian Homes Commission chair Jobie Masagatani.

She and her department's private attorney, Bill Meheula, expressed their concern that KIUC's project could adversely affect the amount of water available to DHHL for its homesteads and reduce the potential for the agency to develop its own hydropower project.

The DHHL had "engaged in several preliminary exploratory discussions with KIUC regarding the feasibility of a hydro project on these lands and the related financial and infrastructure benefits such a project could

bring to expedite the opportunity to homestead these lands," she said.

She estimated that the DHHL's hydro project, which would use the existing Pu'u 'Opae reservoir, would require an average stream flow of 15.2 million gallons a day.

Not only did the Land Division's recommendation to the board fail to acknowledge the DHHL's water rights, the DLNR violated state law when it also failed to notify the DHHL about the proposed water lease, Masagatani said. Chapter 171-58 of Hawai'i Revised Statutes requires the DLNR to inform the DHHL of its intent to execute a new lease or renew an existing lease of water rights.

The law, she continued, also states that after the DHHL consults with its beneficiaries, the two departments must "jointly develop a reservation of water rights sufficient to support current and future homestead needs."

She went on to warn against approvals-in-principle and suggested that a contested case hearing, a court-like fact-finding proceeding, would be the more appropriate way to deal with a project that might affect DHHL's rights. She also argued that state law requires the Land Board to inform the public about any proposed renewable energy project on state land with at least two meetings on the island where the project is to be located.

Finally, she testified, the Land Division's report fails to acknowledge an outstanding petition to the state Commission on Water Resource Management calling for an end to water waste by the ADC and its tenants and to amend the interim instream flow standards for Waimea River and its tributaries.

With regard to the DHHL's proposed hydro project, she told the Land Board that it would provide water to the Waimea lands, which are currently cut off from the system.

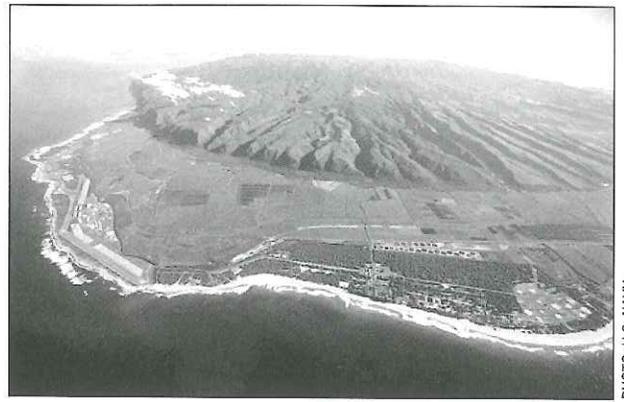
To Land Board member Chris Yuen, it seemed possible to physically achieve both projects. Because KIUC is only planning to shuffle a fixed amount of water in a closed system up and down a hill, "if Hawaiian Homes wants water from the system, the water goes back up to where it was before and is still available," he said.

Masagatani admitted that her department had only received the proposal two days earlier.

"We haven't had a chance to fully analyze the impacts on our water rights," she said.

**Competition**

Yuen argued that the way KIUC planned to



West Kaua'i.

PHOTO: U.S. NAVY

operate its hydro, with an improved Pu'u Lua reservoir, more water may actually be available to the DHHL if and when the department makes its request for a water reservation.

Masagatani then admitted that part of her problem with the project, apart from how it came to the board, was that it competed with the DHHL's project.

"If the facility is on DLNR lands, it will not be on DHHL lands [and] we do not get the benefit from opening up those lands," she said.

When asked by Kaua'i Land Board member Tommy Oi how far along the DHHL was in developing a hydro plant, Masagatani said the department had had some preliminary discussions and that it was ready a few months ago to draft a water reservation request to the Water Commission. The commission, however, felt that the request needed improving, she said.

She asked that the Land Board defer the matter to allow the DHHL to understand the KIUC project's implications.

Meheula, the DHHL's private counsel, added that the department was concerned that there might only be capacity for one hydro facility in the area and that granting an approval-in-principle would directly or indirectly harm the DHHL's ability to get financing.

"If there is only capacity for one hydro ... that could doom our project," he said.

To this, deputy attorney general Myra Kaichi noted that the ADC has been approached with several hydro projects in the area and has not approved any of them so far, although they have been given rights of entry.

"ADC did not do any type of approval-in-principle. They are sitting and waiting for definite plans to come in to analyze. There are competing plans in the area," she said.

Land Board chair William Aila asked KIUC's Bissel whether there was enough electricity demand on the island to support more than one hydro project in West Kaua'i.

Bissell hedged, "That's a difficult question to answer. ... It would totally depend on the size and characteristics of that project."

Aila then said that his department was remiss in not fully discussing the proposal with the DHHL.

In addition to the DHHL, Konohiki Hydropower also wants to develop a facility using the state's lands and irrigation system to provide pressurized irrigation water and power to the ADC tenants, and to sell excess power to KIUC. But it's been stymied so far by KIUC's repeated refusals to enter into a power purchase agreement.

Konohiki director Palo Luckett said that for the past five years, his company has developed significant irrigation system improvements in partnership with the Kekaha Agriculture Association (KAA), which represents the ADC tenants and manages the irrigation infrastructure for the agency.

Luckett stressed how important – and expensive – it was to maintain the century-old system, adding that his company already has a lease from ADC for its hydro project, which would require about 13 million gallons a day. He also asked that the Land Board defer deciding on KIUC's request.

In partnership with KAA, Konohiki has designed its pressurized irrigation system to direct flows precisely where they're needed, he said.

"While I applaud the local utility's efforts to incorporate more renewable energy ... it cannot be done at the expense of agriculture," he said. "An approval-in-principle to lease Pu'u Lua reservoir puts the irrigation water in the electric utility's hands and out of the hands of farmers. We respectfully request this item be deferred so discussions with the current manager of the system can be conducted."

Yuen raised the same point he made to Masagatani about the fact that KIUC's project takes a discrete amount of water.

"So what is the problem?" he asked.

"This is an irrigation system that was constructed for ag. ... An electric utility will control what happens to that system," Luckett replied.

Even if that were the case, Land Board chair Aila pointed out that there appeared to be more than enough water for everyone even if the Pu'u Lua reservoir was restored to hold only 150 million gallons.

"If the reservoir is repaired, everyone gets what they want in terms of water, maybe not income from electricity generation," Aila said.

### *Water Complaint*

To Luckett's statement that the ditches and reservoirs were part of an irrigation system,

Earthjustice attorney David Henkin pointed out, "Before it was an irrigation system, it was a river."

In July 2013, Earthjustice, on behalf of Po'ai Wai Ola/West Kauai Watershed Alliance, filed the petition with the Water Commission seeking to end what the organization's members saw as the waste of diverted stream flows by the ADC and its tenants and to amend the interim instream flow standards for the Waimea River and its tributaries, which feed the Koke'e Ditch and Pu'u Lua reservoir.

Henkin argued that before the Land Board made any decision to provide water to hydro plants, it needs to know what the public trust is.

"The board has simply no information right now to make that assessment," he said.

He added that even though the KIUC project would be a closed-loop system, it will require "make-up water" from the ditch as a result of evaporation and system losses.

The courts have ruled that when deciding on a water lease, the Land Board could either choose to make determinations on its own about how to protect the public trust, or wait until the Water Commission decides the same and independently review its findings, Henkin said.

"You can go it alone or you can wait for CWRM to make a decision and effectively tie the two [cases] together. Everyone should have a common interest in resolving that as quickly as possible," he said.

As of press time, the Water Commission's appointed investigator of the waste complaint had not fully inspected the irrigation system or taken flow measurements in both dry and wet seasons, according to Henkin.

### *Rebuttal*

Given the strong push for a deferral from the potential developers of two hydro projects, Bissell said he was concerned that there was a "co-mingling of issues today."

KIUC's pumped storage hydro project differs from the DHHL's and Konohiki's proposed run-of-the-ditch hydro projects where water simply flows in one direction through a facility, he said.

"Our project is essentially filling a water bucket, one time. It's not taking water away from DHHL [or] agriculture," he said. "I think it's very important we keep that straight."

According to Joule's Jason Hines, once that "bucket" is filled, the project wouldn't require any more water, except for about 100,000 gallons of make-up water.

As to whether the utility would consider supporting those other projects, they would

have to make sense, Bissell said.

He said the utility needed an agreement-in-principle because it will take years to develop the project and with all the conflicting interests, the co-op has a fiduciary duty to "have some assurance we're in line on this."

He added that he knows the project may fail for various reasons and there are a ton of studies that need to be done before KIUC knows whether its project is feasible.

With regard to Konohiki's project, Bissell said that although KIUC has so far rejected a PPA based on the project's merits, "they can come back. [If they] make a compelling project that works for us ... we'll sign it."

He added that KIUC would be happy to work with the DHHL, but that it wants to support only the best projects.

"The projects have to stand on their own. ... This [approval] doesn't stop those projects. The merits of those projects stop those projects," he said.

Finally, Bissell argued that KIUC's project would, indeed, help agriculture in the area because it would install a pipeline in the Mana plain.

KIUC board member Jan TenBruggencate added that the project pays to repair the reservoir and "once it's repaired, that's pure benefit to the folks downstream."

Meheula did not seem comforted by Bissell's comments.

"There is clearly a competitive problem," Meheula said.

Yuen conceded that there is competition of who would get a power contract, but not who would get the water.

"DHHL has rights to water. Not to a power contract," he said.

Even so, Meheula argued that if the Land Board gave KIUC the assurances it sought, "you're going to be giving a nod, assurance, and comfort that is going to prohibit DHHL from doing a project, prohibit DHHL from homesteading."

### *Approved as Amended*

After the Land Board held an executive session to discuss some of the legal issues the DHHL had raised, Yuen made a motion to approve the Land Division's recommendations, except for the proposed lease for water. That matter would be deferred until the Land Board fulfilled its requirements under HRS Chapter 171-58, he said.

"I would like to emphasize approval-in-principle allows the applicant to go forward with various studies and does not in any way commit the board to an action," he said.

The board unanimously approved Yuen's motion. — *Teresa Dawson*

The Molokai Dispatch, Thursday, September 18th, 2014

## Keeping an Eye on the Algae

By Catherine Cluett

On a fishing trip along Molokai's south shore in late July, fisherman Clay Ching noticed something strange. Huge masses of thick seaweed blanketed the shallow flats near Coconut Grove, protruding from the surface and covering hundreds of square yards in several large patches. As owner of local charter fishing company Hallelujah Hou Fishing and having spent decades trolling the area, Ching called it "epic proportions of growth" and said he'd never seen anything like it.

The algae invasion concerned him so much that he notified the Department of Land and Natural Resource (DLNR)'s Division of Aquatic Resources (DAR).

"[I don't want] this situation to progress to the point of no return for our precious reef ecosystem which us Molokaiians depend on for food, etc.," Ching wrote in an email to DAR Aquatic Biologist Russell Sparks. "...I depend on this exact same reef ecosystem for my livelihood... and the value of it should be perpetuated for the future generations..."

Gorilla ogo, the type of limu Ching spotted, is highly invasive with dense growth forming thick mats that choke out coral and other seaweeds. It is spread by pieces floating to a new location, and also by boaters or fishermen inadvertently transporting it on equipment, according to the DLNR. Found in Hawaii only on Molokai and Oahu, it's been on the state's radar for years.

In 2009 and 2010, DLNR's Aquatic Invasive Species Team made several trips to Molokai and organized five alien algae community clean-ups, resulting in the removal of about 29 tons of invasive seaweed. Gorilla ogo accounted for a large percentage of those pounds. Several sites around the island were targeted for the clean-up, with 17 tons of alien algae removed from Kaunakakai Harbor alone, according to a 2011 DLNR report. At that time, the team also documented the presence of gorilla ogo extending to Pala`au on Molokai's south shore.

After Ching's discovery of an influx of gorilla ogo growth in the area, Sparks agreed to plan a trip to see it for himself, along with several fellow aquatic resource experts. The visit was scheduled for Sept. 4.

When the day arrived, however, and Ching took them to the spot, they could find only small remnants of the huge masses of gorilla ogo Ching had documented the previous month.

"Limu is variable," said Sparks. "It'll be blooming and everyone is freaking out, and a month later, it'll be gone... [this growth] was not anchored to the ground – just afternoon winds could push it toward shore."

He also called this a “bizarre year” for algae, which can proliferate very quickly under certain conditions. One such condition can be warmer water temperatures, which Sparks said this year has seen.

Ching said since he’d last seen the gorilla ogo infestation, Hurricane Iselle had brought strong winds and tides to the area, and he suspected that may have diverted the floating seaweed elsewhere. Another local fisherman agreed.

Henry Paleka, who lives along the Kalama`ula shoreline, also noticed the floating masses.

“It looked like another island forming!” he said, but added that he, too, didn’t notice it after Iselle hit.

Even though there was not as much cause for concern as first expected, Sparks and his team took the opportunity to document current gorilla ogo growth to compare to previously-recorded levels along the south shore, west of the Kaunakakai wharf.

Kristy Stone, DAR monitoring coordinator, said there is still a significant amount of invasive algae growing in the area on the ocean floor. She found both gorilla ogo and another species called Acanthophora. The reddish limu has finer growth than gorilla ogo’s thick stems and while it is also invasive, Stone called it “not as bad” as ogo because it does not form the same thick mats.

But the visit also brought good news for Stone. She said she helped with the 2010 clean-up of gorilla ogo from Kaunakakai wharf and before the effort began, she said the seaweed was choking the area.

“It was so thick you couldn’t walk in it, fish couldn’t swim,” she said. Now, she’s thrilled to note that harbor is still clear of the algae four years later.

“I’m amazed at how clean it is,” she said. “I’m not sure why – maybe the hurricane also cleared it out – but I’m stoked.”

She suggested that to maintain it in a healthy state and relatively free of invasive gorilla ogo, those who use the area frequently should pull a little out at a time whenever they notice it.

“Just do a little patch,” she said. “Like your backyard, you gotta clean the weeds.”

Sparks agreed that community involvement is key.

“Meaningful control is going to have to come from community,” he said. “We’re happy to work with people for funding and training, but we just don’t have the manpower [to come over to do regular clean-ups].”

State budget restrictions have also limited the amount of work the team can do on Molokai. However, Brian Neilson, aquatic invasive species coordinator for the state, said they will explore what type of funding or grants might be available to continue efforts here.

“There’s an argument to get [gorilla ogo on Molokai] now before it spreads like on Oahu,” he said, where its growth is so invasive that efforts at irradiation have been abandoned. “This is the time to get it [on Molokai]. We could justify funding by its potential to kill the reef.”

Neilson said coming up with a plan, if it happens, would take time – as well as commitment from the Molokai community.

In the meantime, Sparks said monitoring and documentation of gorilla ogo on the island is important. While the influx of growth that Ching reported turned out to be short-lived, Sparks encouraged that type of documentation.

“If people who go there all the time see a change, that’s valuable info,” he said.

## Lava 2.4 miles from Highway 130

December 7, 2014 -  
1:01am

The June 27 lava flow was about 2.4 miles from Highway 130 on Saturday morning, according to Hawaii County Civil Defense. The flow advanced about 125 yards between Friday and Saturday.

Hawaiian Volcano Observatory said the flow has reached a relatively flat area, where multiple lines of steepest descent nearly converge.

Topography is likely the main reason for a slower advance rate during the last few days, HVO said.

“Until the flow passes this area of flat topography, the future flow path is uncertain,” the observatory said.

One of the paths goes through Pahoia Marketplace while the other would take the flow toward Hawaiian Paradise Park.

Smoke conditions were moderate with a light wind blowing smoke from burning vegetation in a south-southeast direction.

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## NMFS, Wespac Butt Heads Over MHI Bottomfish Stock Assessment

The morning of the vote, before the day's meeting officially began, members and staff of the Western Pacific Fishery Management Council huddled with staff from the National Marine Fisheries Service's Pacific Islands Regional Office. Wespac executive director Kitty Simonds, NMFS PIRO administrator Mike Tosatto, and Fred Tucher, regional counsel for the National Oceanic and Atmospheric Administration, did most of the talking, while the others leaned in to listen.

Audience members speculated over what they were discussing so intently. Most likely they were all searching for a way to set a legal, justifiable annual catch limit (ACL) that would not avoid just a lawsuit but also any significant harm to Hawai'i's commercial bottomfish industry, which generates nearly \$2 million in revenues a year.

Whether they succeeded remains to be seen. Later that day, October 23, the council chose to stick to its June recommendation that, based on a 2011 federal stock assessment, NMFS should set this year's Main Hawaiian Islands bottomfish catch limit at 346,000 pounds. This despite repeated warnings from NMFS that such a level poses too great a risk of overfishing.

As of press time, NMFS had not adopted the council's recommendation, leaving commercial bottomfish fishermen operating without a catch limit for a season that began in September.

### 'Superior' Science

In June, Annie Yau, a research biologist with the NMFS's Pacific Islands Fisheries Science Center (PIFSC), presented the council and its Scientific and Statistical Committee (SSC) with draft results of a new stock assessment for the fishery. Unlike the 2011 assessment, the new one included individual fishers' skill in standardizing the catch-per-unit-effort (CPUE) between 1994 and 2013. This change explained more than 50 percent of the variability in observed CPUE, Yau said.

To the chagrin of fishermen as well as the SSC, the "improvement" also resulted in Yau's finding that the 346,000-pound ACL that's been in place for the past few years would have to be reduced by

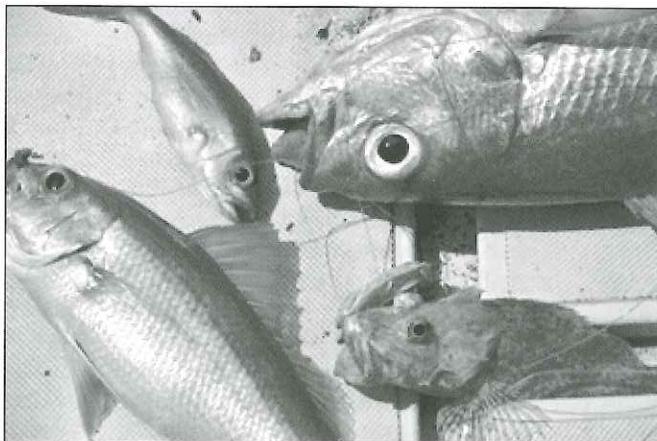
more than 80,000 pounds for the 2014-2015 season to stay below a 50 percent risk of overfishing.

Given the potentially large impact on the fishery, which last year caught about 309,000 pounds, the council voted at its June meeting to keep the ACL at 346,000 pounds, with the expectation that it would revisit the issue at its October meeting and that in the meantime the SSC would confer with NMFS scientists on its concerns over the new assessment.

On August 28, then-PIFSC director Sam Pooley wrote a letter to Tosatto advising him that the center maintained that the 2014 draft stock assessment was superior to the 2011 stock assessment upon which Wespac had based its June decision.

A day later, PIFSC backed up its position in writing in its response to the SSC's numerous proposed changes to the draft stock assessment. Point by point, the center explained how the SSC's various technical suggestions would result in bias or weak data, how they lacked any basis in published literature, how they were already accounted for, or how they simply didn't make any sense.

In one instance, PIFSC pointed out that one of the considerations the SSC proposed for inclusion was something it asked to be omitted years ago. Specifically, the SSC proposed reincorporating the effect of technological improvements in fishing gear into the 2014 stock assessment model. However, PIFSC pointed out that in the 2011, after a CPUE standardization workshop held at the SSC's request, the committee supported leaving technological improvement out of the 2011 model.



Bottomfish catch.

"This current suggestion by the SSC contradicts previous SSC comments and support, and the extensive work previously done to address those comments," PIFSC wrote. It also asked the committee for "additional justification to revisit this issue since no additional information has been available since the 2011 assessment, when an extensive exploration of this topic occurred that included discussions with fishers."

Peer review of the stock assessment is expected to be completed this month.

### A Warning

Also on August 29, NMFS's Tosatto sent a letter to Wespac chair Arnold Palacios stating that the council's decision to retain the 346,000-pound ACL contradicted National Standards 1 and 2 of the Magnuson-Stevens Fishery Conservation Act.

National Standard 1 requires conservation and management measures to prevent overfishing while maintaining a long-term optimum yield, and Standard 2 requires that those measures be based on the best scientific information available, Tosatto wrote.

Tosatto noted that under the 2014 assessment, the ACL posed a greater than 50 percent risk of overfishing. Under the 2011 assessment, it had only posed a 41 percent risk.

"Because the council's recommendation does not have at least a 50 percent chance of preventing overfishing in 2014-15, it is inconsistent with National Standard 1," Tosatto wrote.

He added that although the 2014 assessment was still a draft when the council made its ACL recommendation, his agency considers it superior to the 2011 assessment. And because the council had not yet received PIFSC's written responses to the SSC's concerns when it made its June recommendation, "the council could not adequately consider information in the 2014 stock assessment that indicated that its ACL recommendation would not prevent overfishing,"

he wrote.

"Because the Council's recommendation did not consider all of the available scientific information ... it is inconsistent with National Standard 2," he wrote.

He closed his letter by advising Wespac to revise its ACL recommendation in October to be consistent with national standards. Failure to do so would force NMFS to take secretarial action to carry out the Hawai'i Fishery Ecosystem Plan, he wrote.

### Options

At the October meeting, Wespac staffer Marlowe Sabater presented several alternatives. The council could stick to its preferred ACL of 346,000 pounds, which would result in \$2 million in overall revenue and no closure or fleet loss. It would, however, pose a 55 percent risk of overfishing under the 2014 stock assessment, he said.

A reduction to 307,960 pounds would reduce the risk of overfishing under the 2014 assessment to 49 percent, but would generate only \$1.79 million in overall revenue and result in a four-day closure. (The estimated closure length was based on the 2013-2014 catch of 309,000 pounds.) Under the 2011 stock assessment, a catch limit of 307,960 pounds entails a 32 percent risk of overfishing.

If the council wanted to reduce the risk of overfishing under the 2014 assessment to 41 percent — the standard used since 2011 — it

could legally approve an ACL of 346,000 pounds.

"We're not making a decision about a stock that is over, over healthy, but it's not in trouble, either. ... I don't want to close the fishery, but I want to be as productive as we can," he said.

### 'Loss of Faith'

For the commercial bottomfish fishermen, any ACL reduction based on the 2014 draft stock assessment would lead to a widespread loss of faith in the federal process across the industry, said Ed Watamura, head of Wespac's advisory panel.

"Imagine if I would spread the word that no matter what the fishermen say, they'll do whatever they want," he said during public testimony. Watamura said he would stop participating in the council process if it reduced the ACL, explaining that he would "no

when you put in a number and it defies what all of us fishermen are seeing, it blows my mind. ... It's like a weatherman sitting in a concrete box saying there's a 100 percent chance of sunshine and doesn't look outside and see it's pouring," he said.

"We're seeing big fish. Lots of them," he said. "I wish I had a boat big enough to take all of you and show you what's really going on."

### The Final Vote

In the end, the council, except for Tosatto, not only stuck to its June decision on the ACL and the best available science, but also endorsed the suggestions that had been made to improve the stock assessment. Those included incorporating additional types of data, exploring ways to further divide the Deep 7 species complex into smaller groupings or individual species for further stock assessment, consulting with members of the fishing community before the independent review of the draft stock assessment, and considering technological efficiency changes and the potential bottomfish biomass in the state's bottomfish restricted fishing areas in future stock assessments.

—Teresa Dawson

*"I wish I had a boat big enough to take all of you and show you what's really going on."*

— Ed Ebisui, III

would have to reduce the limit to 265,000 pounds. This would result in overall revenues of \$1.54 million and a 154-day closure, Sabater said.

When asked by council member Ed Ebisui how best to proceed, Tosatto suggested that if the council insists that the 2011 stock assessment is the best available science, it could decide that a 32 percent chance of overfishing, rather than 41 percent, is appropriate.

The resulting ACL of 307,960 pounds would be consistent with national standards, Tosatto said. Because that would result in a 49 percent risk of overfishing under the 2014 assessment, "we both get our way," he said.

Even though the 2014 assessment wasn't expected to complete peer review until December, Tosatto said his agency felt it would be supported.

The SSC and the council members were unswayed, sticking to their belief that the 2011 stock assessment represented the best available information because it had completed peer review.

NOAA general counsel Tucher, however, advised them that failure to account for superior information (such as the 2014 draft assessment) could be deemed arbitrary and capricious.

When NMFS ultimately sets the ACL, it must account for new information, he continued. "When it's own science center says it's superior, that's going to be very persuasive," Tucher said.

Tosatto could not say whether his agency

longer believe that my valuable time is worth sacrificing." He encouraged the council to "do the right thing here and fight for it all the way to the top."

Fisherman and former council chair Roy Morioka was just as, if not more, passionate. "This is a travesty, a perversion and a mockery of the Magnuson-Stevens Act," he said, especially because all involved agencies had failed to include fishermen in the stock assessment process, despite being assured they would be included.

"How would you respond if your capacity to earn was reduced by 25 percent ... by bureaucratic failures?" he asked.

He promised that if the MHI bottomfishers suffered any ACL reduction, he would no longer participate in fish-tagging, research cruises, any council or federal advisory bodies, and all federal meetings.

"We have been relegated to a status lower than corals, seabirds, marine mammal, and all other protected species," he said. "I have been a long and staunch advocate of the council process, but this matter has shaken my belief to the core."

Commercial bottomfish fisherman Ed Ebisui III, son of Wespac council member Ebisui, contended that MHI bottomfish stocks were doing just fine. And for a new stock assessment to suggest that overfishing might occur if takes aren't drastically reduced made no sense to him.

"With all due respect, Annie, thank you for all the hard work you do [but] your model,

@

### For Further Reading

The following articles are available on the *Environment Hawai'i* website, [www.environment-hawaii.org](http://www.environment-hawaii.org). Click on the "Browse Our Archives" link to be taken to the year and month of publication.

- "Council Maintains Bottomfish Catch Limit, Despite New Evidence It May Be Too High," August 2014;
- "Council Adopts New Limits on Hawai'i Bottomfish Catches," July 2011;
- "Council Once More Increases Quotas for Bottomfish in Main Hawaiian Islands," September 2009;
- "Bottomfish Restrictions May Do Little for Stocks in Main Hawaiian Islands," August 2007;
- "Council Plan for Bottomfish Takes Little Heed of State Efforts," April 2007.

## **Officials Will Have to Wait on Plan to Restrict Hawaii's Plentiful Cesspools**

UPDATED: Neil Abercrombie leaves office without signing off on rules that would ban new cesspools and require property owners to eventually upgrade to septic tanks.

NOVEMBER 30, 2014·By SOPHIE COCKE (CivilBeat.com)

The Hawaii Department of Health was hoping that outgoing Gov. Neil Abercrombie would sign new rules into law before he left office Monday that would help phase out thousands of cesspools throughout the islands that could be contaminating coastal waters with raw sewage.

The proposed rules would ban new cesspools and require property owners to convert cesspools to septic tanks within a year of a home or building being sold.

But the governor did not act on the rules, a department official confirmed Monday.

They now go to the desk of the new governor, David Ige. That, said Sina Pruder, chief of the state health department's wastewater branch, could delay or derail implementation of the regulations that the department has been working on for more than a year.

A spokeswoman for Ige indicated over the weekend that the issue is not likely to be addressed immediately.

Hawaii's cesspool problem has gained increased urgency with recent health department findings that Kahaluu Lagoon leading into Kaneohe Bay is contaminated with bacteria associated with human sewage. Bacteria levels in some areas around the lagoon have registered as high as levels detected in the Ala Wai Canal in 2006, after city officials dumped 48 million gallons of raw sewage into the waterway because a pipe burst in Waikiki.

Health officials suspect that close to 700 cesspools in the Kahaluu watershed, which isn't hooked up to the city sewage system, could be causing the pollution.

The health department has posted signs warning people to stay out of the water, while health officials continue to investigate the source of the pollution.

"It has huge implications if we discover that Kahaluu's high bacteria counts" are due to cesspools, said Gary Gill, deputy director for environmental health for the state health department. "The question is what other areas have the same kind of water quality."

Over the years, the health department has been particularly concerned about the impact that cesspools are having in Waimanalo Beach Lots, Hanalei Bay on Kauai — where cesspools are located along the river that feeds into the ocean — and Kapoho on the Big Island, said Gill.

Essentially holes in the ground that discharge raw, untreated human waste, cesspools have been phased out in many states throughout the country, according to the U.S. Environmental

Protection Agency. Hawaii has continued to permit the systems and has the distinction of having more cesspools than any other state — about 90,000 throughout the islands. More than half of the systems are located on the Big Island.

Health officials say that the untreated sewage poses a risk to drinking water aquifers, freshwater streams and coastal waters, threatening not only environmental resources, but human health. The untreated sewage from cesspools can cause Hepatitis A, conjunctivitis, salmonella, cholera and leptospirosis, a painful gastrointestinal illness.

The health department estimates that Hawaii's cesspools release as much as 23,700 pounds of nitrogen and 6,000 pounds of phosphorous into the ground each day, threatening water quality, stimulating the growth of algae and degrading coral reefs.

The proposed rules have been criticized by homeowners balking at the cost of converting to septic tanks, estimated at \$10,000 to \$15,000, as well as counties, which have expressed reservations about the impact the new rules could have on lower-income residents and home sales.

The health department has worked to address the concerns, extending how long property owners have to convert to septic tanks at the time of sale from 180 days to a year. The cost can be absorbed by the seller, buyer or both. Officials have also decreased the number of cesspools that would have to be phased out by 78 percent. Under the latest rules, only cesspools near a public drinking water well or within 750 feet of a shoreline, stream or marsh would have to be switched out for a septic tank.

The health department also plans to provide zero-interest loans and grants to help homeowners pay for septic systems.

Even if the rules are approved, Gill notes that it will probably be a slow process before Hawaii eventually gets rid of many of its cesspools. It could be decades before some properties are sold and the proposed rules don't apply to homes where ownership is transferred to family members.



fencejpg.jpg

Contributed photo

Workers have finished constructing Kauai's first predator-proof fence at Kilauea Point National Wildlife Refuge, which will protect native plant and animal communities.

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LIHUE — The predator-proof fence is up.

Now, it's a matter of removing the predators.

Rare native plant and animal communities that have inhabited a roughly eight-acre area at the Kilauea Point National Wildlife Refuge — including imperiled bird species found nowhere else on Earth — will be protected following the installation of the state-of-the-art fence east of the lighthouse.

The half-mile fence, similar to the one found at Kaena Point on Oahu, took about three months to construct and will keep introduced mammalian predators, including cats, dogs, rats and mice, out of the area so that native species such as the endangered Nene (Hawaiian Goose), the Moli (Laysan Albatross) and rare plants can flourish again in a protected environment.

In addition, the absence of introduced predators make this restored site an appropriate translocation site for the threatened Ao (Newell's Shearwater) and for the reintroduction of rare native plants.

“Predator-proof fencing is a conservation strategy that we are going to see used more and more in Hawaii as we struggle to deal with widespread non-native predator populations on very large islands,” said George Wallace, vice president of American Bird Conservancy.

The type of fencing has been used with success in other areas, such as New Zealand and at Kaena Point, where predator exclusion resulted in record numbers of seabird chicks fledging in the year immediately following the project's completion.

“To have planned, broken ground, and finished construction in a two-year timeframe is a phenomenal success and an incredible accomplishment that our partners, ABC and Pacific Rim Conservation, have made possible,” said Shannon Smith, U.S. Fish and Wildlife Service project leader.

The planned translocation of Newell's Shearwater is an important aspect of the Kauai project.

“We have seen a dramatic decline in the population of Newell's Shearwater in recent years due to a range of issues, with an estimated 75 percent decline in the last 15 years,” said Dr. André Raine of the Kauai Endangered Seabird Recovery Project. “The establishment of a new colony using predator-proof fences is an important management tool to help reverse this decline.”

The fence is about 6.5 feet tall and is built entirely of stainless steel to resist the harsh marine environment. The main panels of the fence are made with mesh so fine that even mammals as small as a two-day-old mouse cannot enter. The top of the fence has an arched hood that extends outward to prevent animals from climbing over.

With the fence in place, work can begin to humanely remove non-native predators from the enclosure and restore native plant communities.

The \$500,000 project is a collaboration between the U.S. Fish and Wildlife Service, the National Fish and Wildlife Foundation, the American Bird Conservancy, the Kauai Endangered Seabird Recovery Project and Pacific Rim Conservation.

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## Young Brothers reports double-digit increases for Kaunapali

**Y**oung Brothers, Limited report for the first half of the year raised some eyebrows statewide. Although four neighbor island ports experienced drops in cargo volume during the company's second quarter, Hilo saw an increase of 2.2 percent and Lanai shot up to a 60.4 percent increase.

The report states, "In addition to strong construction-related activity on Lanai during the second quarter, automobiles and renewable energy volume increased statewide."

Another paragraph states, "Although Lanai cargo volume made up only 5 percent of total cargo volume in the second quarter, without Lanai's strong increase, second quarter volumes would have reflected a 2 percent decrease statewide."

A Sunday barge comes to Lanai on an as needed basis to deliver construction equipment and materials. Residents planning to use the harbor for recre-



The Lanai Playhouse is just one of the many construction projects currently underway.

ational purposes such as diving or fishing should check to see if the barge is coming in that week. Call the Young Brothers Lanai office on Thursday morning, 565-6626.