

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 11, 2013

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 13OD-121

OAHU

Consent to Merger of Oceanic Institute into Hawaii Pacific University; Mutual Termination of General Lease No. 3709, Oceanic Institute, Lessee; Issuance of Direct Lease to Hawaii Pacific University for Scientific Research and Public Exhibiting Facilities of Marine Life, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-014:004.

APPLICANT:

Oceanic Institute and Hawaii Pacific University, domestic nonprofit corporations

LEGAL REFERENCE:

Section 171-6, 43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-014:004, as shown on the attached map labeled **Exhibit A**.

AREA:

105.937 acres, more or less.

ZONING:

State Land Use District: Conservation
City and County of Honolulu LUO: P-1

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by General Lease No. ("GL") 3709 issued to Oceanic Institute for constructing, maintaining and operating a scientific research facility for the study of marine life and a public exhibiting facility of marine life, together with easements for pipeline rights-of-way for the intake and discharge of sea waters, commencing from October 21, 1962 and expiring on October 20, 2027.

CHARACTER OF USE:

Scientific research and public exhibiting facilities of marine life purposes.

LEASE TERM:

Sixty-five (65) years

COMMENCEMENT DATE:

Upon mutual termination of GL 3709.

ANNUAL RENT:

A rental reopening was conducted effective October 21, 2012, which determined the annual rent at \$140,800 or 1.5% of gross annual revenue, whichever is the greater, for the period from October 21, 2012 to October 20, 2022. Since the reopening was done recently, staff recommends the Board adopt the same rent for the first ten (10) years of the requested lease.

Further, staff recommends a fixed 30% to the base rent and 0.5% to the percentage rent increase for two subsequent ten (10) years periods, which will be followed by normal 10-year reopenings. Such rental structure is likely to enhance the fiscal planning for the lessee. The proposed rent structure is provided below:

Year 1 – 10

\$140,800 or 1.5% of gross annual revenues, whichever is the greater.

Year 11 – 20

\$140,800 x 1.30 or 2.0% of gross annual revenues, whichever is the greater.

Year 21 – 30

\$140,800 x 1.60 or 2.5% of gross annual revenues, whichever is the greater.

METHOD OF PAYMENT:

Base rent - semi-annual payments, in advance.

Percentage rent – semi-annual payments, in arrears.

RENTAL REOPENINGS:

The annual base rent and the percentage rent shall be reopened and redetermined at the end of the thirtieth (30th), fortieth (40th), fiftieth (50th), and sixtieth (60th) years.

PERFORMANCE BOND:

Twice the annual base rent amount.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." (See **Exhibit B**)

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u> x </u>	NO <u> __ </u>
Registered business name confirmed:	YES <u> x </u>	NO <u> __ </u>
Applicant in good standing confirmed:	YES <u> x </u>	NO <u> __ </u>

APPLICANT REQUIREMENTS:

None.

REMARKS:

Pursuant to a public auction held in 1962, GL 3709 was issued to Pacific Foundation for Marine Research, a domestic non-profit corporation for the purposes noted above. Oceanic Institute ("OI") became the lessee subsequently and continued to operate the research facility at the location. Sea Life Park (sublessee) and Gloria Bridal Services, Inc. (sub-sublessee) operating the theme park and the wedding chapel respectively at the location have received the Board's consent to the sublease and sub-sublease.

Hawaii Pacific University ("HPU") and OI are affiliated entities and they are planning to undergo a merger between them. Upon the merger, HPU will emerge as the sole entity and OI will only retain its trade name. HPU will assume the role of the lessee of the leased premises. Nevertheless, the forthcoming expiration date of 2027 for GL 3709

creates certain limitations on HPU in securing future grants and donations. Therefore, HPU decided to request a new 65-year lease from the Board to facilitate the continuation of the marine research activities. It is anticipated that the merger will be finalized before the issuance of the new lease. Therefore, staff recommends the Board consent to the merger for housekeeping purposes.

HPU is not planning to conduct any major improvement with the exception of normal wear and tear repair to the existing improvements. For any future improvements planned for the facility which may trigger other regulatory requirements, e.g. environmental assessment, conservation district use permit, HPU is aware that they have to comply with those permit requirements. Same situation also applies to Sea Life Park and Global Bridal Services, Inc.

Exhibit C and D are the lists of achievements accomplished and federal and State grants received by OI respectively.

Staff understands there are pipelines under and across Kaupo Beach Park and the Kalaniana'ole Highway connecting the current facilities for intake and discharge of sea water as allowed in the existing lease since its commencement in 1962. However, the pipelines are not shown on the existing map for GL 3709. In March 2003, the Kaupo Beach Park was transferred to the Department of Hawaiian Home Lands while the abutting portions of Kalaniana'ole Highway were set aside in 2006 to the Department of Transportation ("DOT") pursuant to Governor's Executive Order No. 4177 for roadway improvement purposes. Upon approval of today's request, HPU will approach the respective agencies for authorization to continue using the pipelines.

In addition, OI is the lessee of a 40-foot wide strip of land within EO 4177 currently managed by DOT. The lease ("Lease 234") allows for landscaping with no buildings or structures permitted. Similar to the preceding paragraph, HPU will approach DOT regarding Lease 234 for future disposition, for example, assignment or re-issuance of new lease.

Pursuant to 171-43.1, HRS, "[t]he board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service." Applicant has provided evidence of 501(c)(3) status in the file.

Sublease and Sub-sublease

In the past, the Board has given its consent to the sublease [for Sea Life Park] and sub-sublease [for Global Bridal Services, Inc.] on the premises. Staff recommends the Board in granting approval for today's request, if applicable, require the new lease be subject to the sublease and sub-sublease until their original expiration dates or otherwise

renegotiated. HPU is in the process of obtaining written consent from the sublessee and sub-sublessee to the proposed mutual termination and issuance of new lease.

Comments from agencies

Department of Planning and Permitting notes that portion of the requested location is located in the Special Management Area, and any future improvements will be subject to the review for compliance regarding the applicable ordinance. They have no objection to the issuance of a new lease at this moment.

Board of Water Supply requires the lease be subject to access by BWS to all its facilities within the subject parcel.

Office of Conservation and Coastal Lands reminded Applicant of the need of consultation for any land use requirement. Since HPU is not planning on any new land use requirement now, and HPU is aware of the need for consultation for future land use requirement.

Department of Facility Maintenance, Division of State Parks, Department of Parks and Recreation, Division of Aquatic Resources, Department of Health have no comment or objection to the request.

Department of Hawaiian Home Lands, State Historic Preservation Division, Commission on Water Resource Management, and Office of Hawaiian Affairs have not responded to the solicitation for comment at the of writing this submittal.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Consent to the merger of Oceanic Institute and Hawaii Pacific University pertaining to General Lease No. 3709 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. Review and approval by the Department of the Attorney General; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

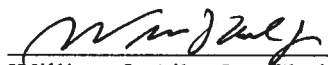
3. Authorize the mutual termination of General Lease No. 3709 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current mutual cancellation form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

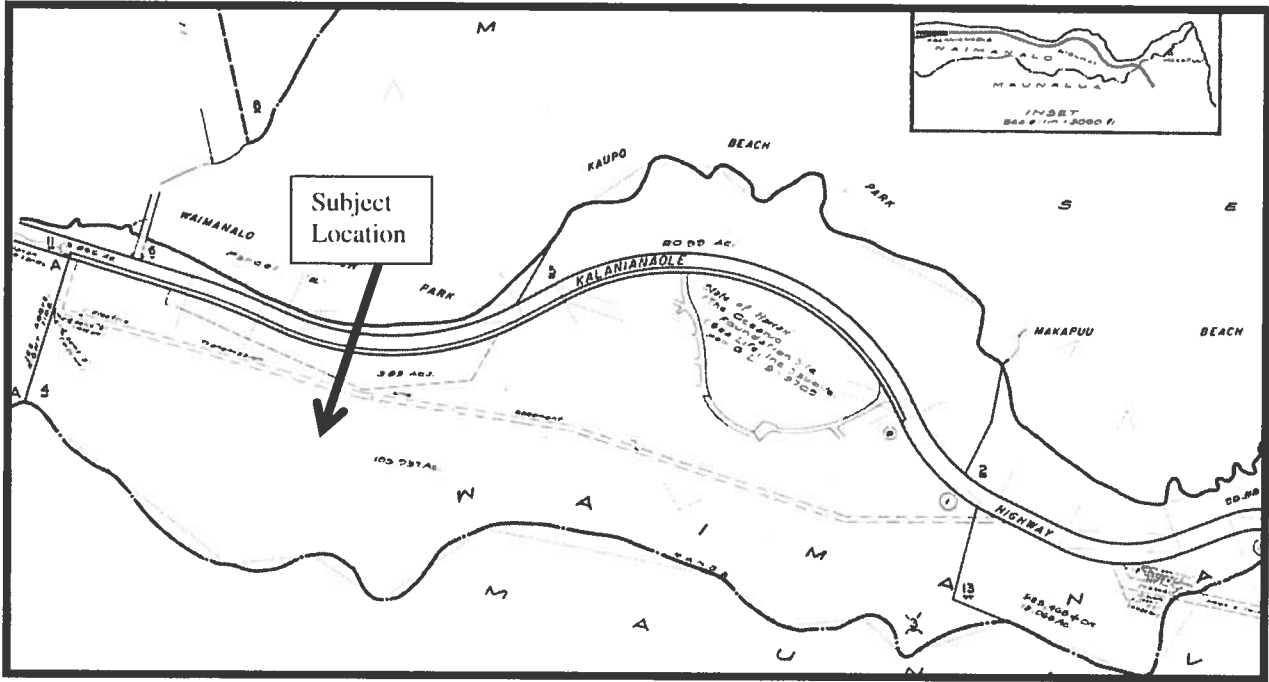
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to Hawaii Pacific University covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current (non-profit) lease document form, as may be amended from time to time;
 - B. The lease shall be subject to the existing sublease and sub-sublease entered into by the Lessee and approved by the Lessor pursuant to General Lease No. 3709 and which sublease and sub-sublease shall remain in full force and effect (provided that the new lease to HPU also remains in effect), or until such time as the sublease and sub-sublease are earlier terminated, expired, or otherwise renegotiated;
 - C. Subject to access to Board of Water Supply facilities on the premises;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson



TMK (1) 4-1-014:004

EXHIBIT A

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Direct Issuance of Lease for Scientific Research and Public Exhibiting Facilities of Marine Life

Project / Reference No.: PSF 13OD-121

Project Location: Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-014:004

Project Description: Issuance of a new lease on the existing facilities.

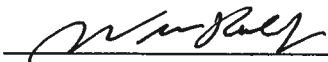
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The applicant is not planning on conducting major change to the existing topographical and vegetation condition of the property. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties Agencies as noted in the submittal

Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila Jr., Chairperson
Date 9/27/13

EXHIBIT B

Oceanic Institute Achievements

Local Impacts

- 1) Developed hatchery and nursery technologies for the Pacific threadfin (moi) resulting in the establishment of the nation's first commercial off-shore cage operation on the island of O'ahu.
- 2) Provided fish eggs, fish fingerlings, shrimp postlarvae, live algae, feed, information, and training to local farmers to assist Hawaii aquaculture businesses.
- 3) Mentored and supported local volunteers, interns, undergraduate students, and graduate students in aquaculture-related sciences to help career decisions and development.
- 4) Provided selectively bred shrimp to local companies resulting in a multi-million dollar per year shrimp broodstock industry in Hawaii which is highly regarded worldwide.
- 5) Conducted training and education workshops and provided fish fingerlings across the islands for Hawaiian fishpond revitalization projects and to inspire local Hawaiian youths to become interested in aquaculture as a cultural legacy.
- 6) Developed ground-breaking technologies to rear copepods which serve as live feed for difficult-to-rear fish species in Hawaii.
- 7) Advanced the knowledge base for the captive reproduction of marine ornamental fish, such as yellow tang and flame angelfish, to help conserve these valuable species inhabiting Hawaii's coral reefs.
- 8) Developed tag-and release technologies and protocols for the stock enhancement of mullet and moi in Hawaii's nearshore waters.
- 9) Plans to build and operate a pilot-scale feed mill in Hilo to test novel feed ingredients, including agriculture and fisheries by-products, for Hawaii's terrestrial animal and aquaculture farmers.

National Impacts

- 1) Maintains a permanent seat on the Aquaculture Committee for the American Feeds Industry Association, the largest organization representing the U.S. animal feeds industry.

EXHIBIT "C"

- 2) Collaborated with the U.S. Department of Agriculture, Agriculture Research Service, to develop aquatic feed ingredients using products and by-products from the Alaskan fisheries to assist long-term sustainability of federal marine resources.
- 3) Led administrative and key research roles in a 7-state consortium to develop shrimp farming in the U.S., funded by the U.S. Department of Agriculture, U.S. Marine Shrimp Farming Program.
- 4) With partners from Mississippi and Florida, developed preliminary captive production and stock replenishment technologies for the red snapper for restocking efforts in the Gulf of Mexico.
- 5) With partners from Hawaii, was the first to demonstrate the feasibility of open-ocean aquaculture in the U.S., setting the stage for follow-up research with commercial projects nationwide.

International Impacts

- 1) Introduced the concept of biosecurity, including the use of specific pathogen free (SPF) animals, to shrimp aquaculture, resulting in the global adoption of these strategies to a multi-billion dollar per year industry.
- 2) Played a significant role in changing the dominant shrimp species cultured worldwide from the giant tiger prawn to the Pacific white shrimp. In fact, much of the world's farmed shrimp can trace their genetic origins back to OI's shrimp breeding program.
- 3) Written and published manuals for intensive shrimp production and hatchery operations for milkfish, striped mullet, and Pacific threadfin (moi). These manuals are used by researchers and commercial farmers all over the world and have helped solidify OI's role as a world leader in aquaculture research and development.
- 4) Transferred milkfish hatchery technologies to milkfish-farming countries such as Taiwan, Indonesia, and the Philippines.
- 5) Constructed the first marine fish hatchery in Egypt and trained local technicians for sea bream, sea bass, and striped mullet culture.

OCEANIC INSTITUTE
Current Federal and State Grant Listing
 As of 5/23/13

Agency	CFDA No.	Grant Title	Program Manager	Period of Award		Award Amount
				Start	End	
USDA Agriculture Research Services:						
USDA-ARS	10.001	Tropical Aquaculture: Develop Feeds for Optimum Nutrition of Cultured Shrimp and Finfish	Warren Dominy Warren Dominy Dong-Fang Deng	09/29/08 09/29/09 09/29/10	09/28/09 09/28/10 09/18/13	1,002,264 921,171 921,171 2,844,606
USDA National Institute of Food and Agriculture:						
USDA-NIFA	10.200	Regional Aquaculture Center - CTSA (Year 22 & 23)	Cheng-Sheng Lee	09/01/08 09/01/09	08/31/09 08/31/12	735,379 735,322 1,470,701
USDA-NIFA	10.200	Regional Aquaculture Center - CTSA (Year 24 & 25)	Cheng-Sheng Lee	08/01/10 08/01/11	07/31/11 07/31/15	735,321 733,851 1,469,172
USDA-NIFA	10.200	Regional Aquaculture Center - CTSA (Year 26)	Cheng-Sheng Lee	08/01/12	07/31/16	733,071
USDA-NIFA	10.218	Center for Applied Aquaculture - CAA 1995	Randy Honke	04/01/98	12/31/15	2,252,368
USDC Economic Development/Administration:						
USDOC EDA	11.300	OLC Annex	Randy Honke	05/19/08	09/30/13	1,500,000
USDA National Institute of Food and Agriculture - Passthrough Pacific Biodesel:						
USDA-NIFA	10.212	Alma Mo Soil Amendment Project Year 2	Dong-Fang Deng	09/01/11	08/31/13	143,508
USDA National Institute of Food and Agriculture - Passthrough IOI CTSA Grant (Internal Subcontract):						
USDA-NIFA	10.200	Aquaculture of Opihi	Dong-Fang Deng	04/02/12	08/31/13	50,000
USDA-NIFA	10.200	Regional Aquaculture Info. Service for Education Yr6	Meredith Brooks	05/01/12	07/31/13	59,700
USDA-NIFA	10.200	Development of Diets for Hawaii Cultured Abalone	Dong-Fang Deng	06/18/12	06/17/13	73,000
State of Hawaii:						
SOH-DLNR	**	Feedmill Laboratory Project	Randy Honke	11/09/00	12/31/12	804,000
SOH-DAG	**	Feedmill: Livestock Feasibility Project/Agr/Dev Food Security	Randy Honke	02/01/13	06/30/14	450,000

EXHIBIT "D"

OCEANIC INSTITUTE
Current Federal and State Grant Listing
Fiscal Year 2012

Agency	CFDA No.	Grant Title	Program Manager	Period of Award		Award Amount
				Start	End	
USDA Agriculture Research Services:						
USDA-ARS	10.001	Tropical Aquaculture: Develop Feeds for Optimum Nutrition of Cultured Shrimp and Finfish	Warren Dominy	09/29/08 09/29/09 09/29/10	09/28/09 09/28/10 09/18/13	1,002,264 921,171 921,171 2,844,606
USDA Agriculture Research Services - Passthrough University of Alaska:						
USDA-ARS	10.001	Alaska Fisheries Byproduct Utilization Program - Feed Supplements from Fish/Coordination	Warren Dominy	09/22/09 09/22/10 10/01/11	09/30/10 09/22/11 09/30/12	235,007 225,000 200,000 660,007
USDA Payback - Unfunded Research:						
USDA-ARS	**	Pacific Threadfin Broodstock Maintenance and Fingerling Production	Charles Laidley	01/01/11	12/31/11	107,085
USDA National Institute of Food and Agriculture:						
USDA-NIFA	10.200	Regional Aquaculture Center - CTSA (Year 20)	Cheng-sheng Lee	08/01/06	07/31/11	735,381
USDA-NIFA	10.200	Regional Aquaculture Center - CTSA (Year 21)	Cheng-sheng Lee	08/01/07	07/31/12	735,377
USDA-NIFA	10.200	Regional Aquaculture Center - CTSA (Year 22 & 23)	Cheng-sheng Lee	09/01/08 09/01/09	08/31/09 08/31/12	735,379 735,322 1,470,701
USDA-NIFA	10.200	Regional Aquaculture Center - CTSA (Year 24 & 25)	Cheng-sheng Lee	08/01/10 08/01/11	07/31/11 07/31/15	735,321 733,851 1,469,172
USDA-NIFA	10.200	Gulf Coast Shrimp Project	Shaun Moss	08/01/10	07/31/11	2,117,540
USDA-NIFA	10.200	Gulf Coast Shrimp Project	Shaun Moss	08/01/09	07/31/12	2,118,240
USDA-NIFA	10.218	Center for Applied Aquaculture - CAA 1988	Randy Honke	09/01/88	03/31/11	7,404,952
USDA-NIFA	10.218	Center for Applied Aquaculture - CAA 1995	Randy Honke	04/01/98	12/31/12	2,252,368
USDA National Institute of Food and Agriculture - Passthrough Pacific Biodeseei:						
USDA-NIFA	10.212	Alma Mo Soil Amendment Project Year 2	Warren Dominy	09/01/11	08/31/13	143,508
USDC Economic Development Administration:						
USDC-EDA	11.300	OLC Annex	Randy Honke	05/19/08	05/18/13	1,500,000
USDC National Oceanic and Atmospheric Administration:						
USDC-NOAA	11.417	Hawaii Sustainable Fisheries Development 08-09	Charles Laidley	07/01/08	06/30/11	550,000
USDC-NOAA	11.444	Hawaii Sustainable Fisheries Development 09-10	Charles Laidley	09/01/09	08/30/11	730,518
USDC-NOAA	11.444	Hawaii Sustainable Fisheries Development 10-11	Charles Laidley	09/01/10	08/31/12	399,600
USDC-NOAA	11.452	Aquaponics - 2010 Marine Education	Meredith Brooks	06/01/10	12/31/11	14,950
National Science Foundation:						
NSF	47.050	CAMEO 2009	Carrie Holl	08/15/10	07/31/13	95,304
State of Hawaii:						
SOH-DLNR	**	Feed Mill Laboratory Program	Randy Honke	11/29/00	12/31/13	804,000

**OCEANIC INSTITUTE
GRANT & CONTRACT AWARDS LISTING
Fiscal Year 2011**

	Award	Project Period
Federal Grants		
USDA CSREES	USDA CAA - FY1988	09/01/88
USDA CSREES	USDA CAA - FY1995	12/31/11
USDOC EDA	OLC Annex	04/15/98
USDA CSREES	CTSA Year 19	05/19/08
USDA CSREES	CTSA Year 20	08/01/05
USDA CSREES	CTSA Year 21	07/31/10
USDA CSREES	CTSA Year 22 & 23	07/31/11
USDA CSREES	CTSA Year 24	07/31/11
USDA CSREES	Shrimp Consortium	09/01/08
USDA CSREES	Shrimp Consortium	08/01/10
USDA CSREES	Shrimp Consortium	08/01/08
USDA CSREES	Shrimp Consortium	08/01/09
USDA CSREES	Shrimp Consortium	08/01/10
USDA	Shrimp Maturation Diet - \$180,000	05/01/05
USDA CSREES	Shrimp Microbial Comm Interaction - \$315,91	12/01/06
USDA ARS Hawaii	Development of Feeds for Optimum Nutrition	09/29/08
USDA ARS Hawaii	Development of Feeds for Optimum Nutrition	09/29/08
USDOC NOAA	HI Sustainable Fisheries Development	07/01/08
USDOC NOAA	HI Sustainable Fisheries Dev Project	09/01/09
USDOC NOAA	HI Sustainable Fisheries Dev Project	09/01/10
USDOC NOAA	Aquaponics - 2010 Marine Education	06/01/10
USDOC NOAA	AIP Year 1	01/01/07
USDOC NOAA	AIP	01/01/08
NSF	CAMEO 2009 - A novel tool for validating...	08/15/10
	Sub-total Federal Grants	
		\$22,198,602.00
Pass-through Grants		
UNIV of ALASKA	ARS Alaska By-Products FY2008-2009	09/30/08
UNIV of ALASKA	ARS Alaska By-Products FY2009-2010	09/22/09
UNIV of ALASKA	ARS Alaska By-Products FY2010-2011	09/22/10
Pacific Biodiesel	Alma Mo' S'oll Amendment	08/01/10
	Sub-total Pass-through Grants	
		\$865,978.00
DUNR	47455	11/09/00
	Aquatic Feed	\$804,000.00
		12/31/10