



FOR IMMEDIATE RELEASE

## **Landmark Case Threatens to Reveal Illegal Activities in the NWHI Hawaii Institute of Marine Biology Requests to Cancel the Proceedings**

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Protecting

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Traditional &

Customary Rights

and our

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In a letter submitted to the Board of Land and Natural Resources yesterday, HIMB petitioned to drop its appeal of the fine against coral disease researcher, Greta Aeby, for violating NWHI State Marine Refuge regulations. The research institute cited the recent decision by a state-appointed hearings officer to expand the scope of the investigation as a key motivation for withdrawing its appeal.

The Board fined the researcher last summer for transporting live coral specimens in and out of the Refuge, which was one of several alleged illegal activities that occurred during one of the first major research expeditions in the newly created State Refuge in 2006. Federal and state officials testified that scientists from the Hawai'i Institute of Marine Biology (HIMB) -- including former state Department of Land and Natural Resources Research Coordinator, Greta Aeby, and her assistant -- cultivated coral disease bacteria in the NWHI, transported bacteria within and outside of the NWHI, and attempted to bring bacteria cultures to the Main Hawaiian Islands, in violation of the state's strict permit requirements and state and federal quarantine and customs laws regarding the transport and import of disease organisms. Officials testified that Aeby harvested, cultivated, and transported live coral within the NWHI, dumping wastewater from the coral tank overboard as they traveled between islands. These actions represent serious violations of state permit conditions designed to protect the NWHI from the spread of disease and invasive species, as well as state and federal laws.

Aeby was first found in violation by the Land Board in July 2007, and HIMB immediately filed an appeal through the Land Board's "contested case" process. After hearing arguments from HIMB, the DLNR, and KAHEA: The Hawaiian-Environmental Alliance, the hearings officer, the attorney appointed by the state to hear the case, ruled on February 21, 2008 that KAHEA had standing to participate in the contested case and that the scope of the case should be enlarged to investigate the full range of potentially illegal activities that occurred on the 2006 research expedition. The state's hearing officer set up a calendar for inspection of the research vessel and the collection of testimony from a wide range of witnesses and experts.

"We welcome HIMB's acceptance of this first enforcement action, and call for full investigation and a public hearing of the entire scope of the allegations, as put forth by the state's impartial hearings officer," said Marti Townsend, Program Director for KAHEA: The Hawaiian-Environmental Alliance. "The "do no harm" standard required in the NWHI refuge mandates full and rigorous enforcement of the rules. This holds true equally for anyone who accesses the public trust waters of the NWHI."

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Permits allowing researchers to access the state refuge are issued on a discretionary basis by the Land Board, and are considered a privilege. As part of the permit process, researchers must clearly justify their activity is beneficial to the NWHI and must describe the potential damage of their proposed actions before being granted a permit through a public hearing process. They must agree to strictly abide by the law and the provisions of their research permits. To ensure "no harm" to the NWHI and compliance with strict laws, State NWHI refuge rules mandate a strict "one strike rule" for violators of permit conditions and state law.

The investigation has not yet been closed, and charges have not yet been pressed regarding any of the more serious violations involving:

- disease cultivation,
- transport of live specimens,
- efforts by HIMB to import disease organisms in violation of state law and U.S. Customs regulations.

The investigation has, itself, been plagued by allegations of conflicts of interest, poor reporting, and the failure of DLNR staff to notify enforcement officials about the reported violations.

"The way that the state handles this case will send a message and set a precedent for all future activities in the Northwestern Hawaiian Islands. We hope and expect that the Board will clearly establish the groundwork for a culture of respect and full compliance," said Vicky Holt-Takamine, Board President of KAHEA. "The protections for state waters are the strongest protections in the NWHI. Governor Lingle was truly visionary in creating the refuge. We must ensure that this is not an empty legacy by addressing all behind-the-scenes deal-making and the failure to report violations to enforcement officials. These are public trust resources - we must fully implement and enforce these rules to protect this place for all of us and for generations to come."

This contested case is the latest chapter in the long-standing effort to fully implement the intent and purpose of protections for the Northwestern Hawaiian Islands. For more than a year, managers on the federal level have granted permits to access the NWHI with little or no opportunity for public comment and oversight. Language in the new permits specifically grant permittees blanket permission to engage in a wide range of damaging activities – including killing, dredging, dumping, etc -- that are otherwise prohibited in the Monument. In the absence of a publicly-vetted system for deciding which research projects best meet the conservation needs of the resource, requests to access the NWHI are driven by availability of research grant dollars. Unlike other research permits granted at the state and federal level, federal permits to research the NWHI do not undergo any independent, public review by experts. Despite a ban on commercial and recreational fishing in this visionary no-take marine reserve, permits now grant exceptions to allow recreational "sustenance" fishing by researchers and federal and state staff, an issue which continues to anger many local residents.

"These are public trust resources being managed with public dollars," said Holt-Takamine. "And the public demands more transparency and accountability in decision-making about how the NWHI are protected. The science conducted there should be publicly-vetted, properly prioritized, and culturally appropriate; management should include a citizen-based advisory council and a commitment to uphold the strongest protections across the Refuge and the Monument."

KAHEA, together with the NWHI hui, are calling for better implementation of the protections in the NWHI. This includes compliance measures such as daily impact logs for everything researchers harvest from the NWHI and a compliance officer onboard every research vessel. They are also advocating that the Monument function under a Monument Advisory Council similar to the long-standing, citizen-based advisory board that has been overseeing NWHI protections since 2001.