



FOR IMMEDIATE RELEASE

Deputy Attorney General Finds "Maximum Penalty Entirely Appropriate" for Violations of NWHI Research Permit

Contact: Marti Townsend, Program Director
KAHEA: The Hawaiian-Environmental Alliance
Cell: 808-372-1314
Fax 888-528-6288
kahea-alliance@hawaii.rr.com
www.kahea.org

Protecting

Native Hawaiian

Traditional &

Customary Rights

and our

Fragile Environment

P.O. Box 270112
Honolulu, Hawai'i
96827-0112

ph/fx: 1-888-528-6288
kahea-alliance@hawaii.rr.com

www.kahea.org

On Friday, the Deputy Attorney General responded to the request from the Hawaii Institute of Marine Biology (HIMB) to withdraw from legal proceedings about permit violations on a 2006 research mission to the Northwestern Hawaiian Islands State Marine Refuge. The HIMB researcher, Greta Aeby, was found in violation of her permit by the Land Board in July 2007, and HIMB immediately filed an appeal through the Land Board's "contested case" process. After a state-appointed hearings officer expanded the investigation of the violations in question and recommended KAHEA: The Hawaiian-Environmental Alliance be admitted as a party to the proceeding, HIMB requested to withdraw the contested case on Tuesday.

In his response to HIMB's request to withdraw, Deputy Attorney General Wade Hargrove affirmed the maximum penalty for the violation, saying, "When studying disease, the highest priority in public health, environmental science or any other research discipline, is to prevent its spread into previously unaffected populations. This is exactly what condition #29 [the permit condition violated in this case] was designed to protect against and is the condition which should be most highly guarded. Consequently, the maximum penalty is entirely appropriate."

The Deputy Attorney General also echoed concerns about conflicts of interest in the permitting process initially raised by KAHEA, warning "it is the regulatory community, with the advice and assistance of any and all interested parties, who must determine the appropriate balance between vital research and preservation, not those who perform the research."

"We welcome HIMB's acceptance of this first enforcement action, and call for a full investigation and a public hearing of the entire scope of the allegations, as put forth by the state's impartial hearings officer," said Townsend. "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."

"It is important for the Land Board members to hear that even the attorney representing their division staff acknowledges the need for impartial implementation of the protections for the NWHI," said Marti Townsend, Program Director for KAHEA: The Hawaiian-Environmental Alliance. "We hope this signals a

new commitment to ensuring this permitting process is transparent and impartial, based on publicly-vetted standards of what is needed to better manage this delicate public trust resource."

The Land Board fined the researcher for transporting live coral specimens in and out of the Refuge, which was one of several reported violations that occurred during a 2006 voyage, one of the first major research missions conducted in the new Refuge. Federal and state officials testified that scientists from 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.

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 show 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.

Hargrove questioned HIMB's characterization of Aeby as a "responsible researcher" saying, "it remains debatable whether or not Dr. Aeby's action on board the Hi'ialakai in May of 2006 reflect the work of a 'careful and responsible researcher,'" adding that he "do[es] not accept the proposition that the Board's action 'reflected an unreasonable and unnecessarily punitive interpretation of Dr. Aeby's permit.'"

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.

About KAHEA

In 2000, in response to ongoing threats and the systematic destruction of Hawai'i's natural and cultural resources, a small group of Native Hawaiian cultural practitioners and environmentalists united their efforts to form KAHEA: the Hawaiian-Environmental Alliance.

Today, KAHEA represents a broad alliance of Kanaka Maoli and non-Hawaiians concerned with protecting Hawai'i's fragile environment and unique culture. A grassroots non-profit 501(c)3 working out of its offices in the heart of Honolulu's Chinatown, KAHEA is committed to securing the strongest possible protections for some of Hawai'i's most ecologically unique and culturally sacred places. The organization's core mission reflects the principle that "the land and the people are one" and that the extinction of a species or destruction of a sacred place portends the ultimate demise of cultural heritage.

In seven years, KAHEA has become an islands-wide alliance, linking and amplifying local voices in a common call to protect the resources upon which we depend.