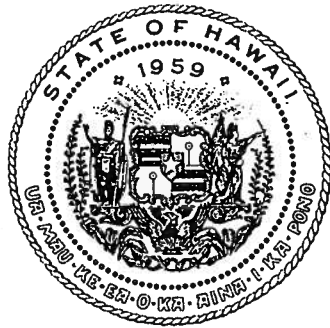


**DEPARTMENT OF TRANSPORTATION'S
FINAL REPORT TO THE LEGISLATURE
OF
THE STATE OF HAWAII
ON
THE TEMPORARY HAWAII
INTER-ISLAND FERRY OVERSIGHT TASK FORCE**



Pursuant to Act 2 of the Twenty-Fourth Legislature,
2007 Second Special Session

December 29, 2008

Final Report of the Temporary Hawai'i Inter-Island Ferry Oversight Task Force (OTF)

EXECUTIVE SUMMARY

Pursuant to Act 2, Second Special Session 2007, the Legislature formed:

[a]n oversight task force to study the State's actions regarding the establishment of the operations of any large capacity ferry vessel company as a whole, and the impact of any existing or proposed large capacity ferry vessel operations, and to report its findings to the legislature and governor.

Act 2, SSL 2007, Part I, Section 1(a)(1).

The oversight task force ("OTF") strongly believes that there are many issues and potential impacts to be studied, including natural resources, cultural resources and invasive species. However, in reality, many of these issues are beyond the reasonable scope of our purview. In our effort to fulfill our mandate, we:

- A. observed large capacity ferry vessel terminal operations in Honolulu and Maui;
- B. rode the Hawai'i Superferry from Honolulu to Kahului;
- C. received community input at meetings held on Oahu and Maui, including but not limited to input from Maui Tomorrow and Pacific Whale Foundation;
- D. obtained input from and asked questions of:
 - 1. Captain Barry Compagnoni, Captain of the Port, Station Honolulu, U.S. Coast Guard;
 - 2. Dr. Joseph Mobley, Jr. (whale expert);
 - 3. Belt Collins Hawaii, Ltd.;
 - 4. Neil Reimer, Department of Agriculture ("DOA");
 - 5. Cheryl Young, DOA;
 - 6. Rich Stacey, Prosecutor's Office, City and County of Honolulu;
 - 7. Captain Adam Parsons, Hawai'i Superferry ("HSF");
- E. reviewed the results of the Rapid Risk Assessment;

- F. reviewed the “Performance Audit on the State Administration’s Actions Exempting Certain Harbor Improvements to Facilitate Large Capacity Ferry Vessels from the Requirements of the Hawai’i Environmental Impact Statements Law: Phase I,”;
- G. reviewed the conditions on operation set forth in Act 2 and Executive Order 07-10 (EO 07-10) and assessed their operational impact and effectiveness;
- H. obtained briefings from DOT; and
- I. obtained monthly briefings from DOA, DLNR (DOCARE) and Hawai’i Superferry.

Based on the above, the OTF makes the following recommendations (as cross-referenced to the page number in this report):

- a. Establish an alternate route for vessel operations during non-daylight hours in whale season (P.8).
- b. Conduct further marine mammal studies to assess impacts (P.9-10).
- c. Permit the transport of scoop/hand and landing nets on the vessel(s) (P.17).
- d. Fund random surveillance of HSF screeners following Legislative consultation with DOA and DLNR (P.17).
- e. Continue focus on effective screening, including training and documentation (P.17-19).
- f. Give recognition and consideration to Hawaiian cultural customs and practices (P.20).
- g. Permit transport of burial materials (moepu) and lwi when permits are issued by DLNR (P.20).
- h. Establish procedures for commercial transport of marine life (P.21).
- i. Permit transport of marine life purchased from marine dealers/commercial fishermen (P.21).
- j. Limit the restrictions on the transport of fin fish, limu/seaweed and octopus for personal consumption (P.21-22).
- k. Establish a natural resource court and/or docket (P.24).
- l. Repeal the repeal date set forth in Act 2, Part 4, Section 18 (P.25).

- m. Fund additional data collection to determine future natural resource issues (P.26).
- n. Extend the Agreement between HSF and the State of Hawai`i (P.26).
- o. Schedule a joint briefing by the OTF to the leadership of the Legislature and the Legislative Transportation Committees to discuss this report and the issues and recommendations set forth herein (P.26).

The OTF believes the above recommendations are critical and essential to a safe and secure transportation system, a healthy island ecosystem and cultural vitality. The OTF strongly recommends the Legislature and Administration support and fund these initiatives and proposals, as we believe implementation of these recommendations balance the needs of the community.

TABLE OF CONTENTS

Executive Summary	2
Preface	6
OTF Goals and Recommendations	7
A. State's Actions Regarding the Establishment of the Operations of Any Large Capacity Ferry Vessel Company as a Whole	7
B. Examination of Impacts, if any, on:	
1. Ocean life and marine animals and plants, including but not limited to an existing or proposed inter-island ferry operations' whale avoidance policy and procedures;	8
2. Water resources and quality;	11
3. Harbor infrastructure;	11
4. Vehicular traffic;	15
5. Public safety and security;	16
6. The potential to spread invasive species;	16
7. Cultural resources, including hunting, fishing, and native Hawaiian resources;	19
8. Economic consequences and impact; and	23
9. Any other natural resource or community concern.	24
Conclusion and Mahalo	27

PREFACE

The OTF was created with the signing of Act 2 by Governor Linda Lingle on November 2, 2007.

Act 2, Part IV, Section 13(a) set forth the goals of the temporary Hawaii inter-island ferry oversight task force ("OTF"). Specifically, the OTF was to:

- A. study the State's actions regarding the establishment of the operations of any large capacity ferry vessel company as a whole; and
- B. examine the impact, if any, of the operations of any existing or proposed large capacity ferry vessel company on:
 1. Ocean life and marine animals and plants, including but not limited to an existing or proposed inter-island ferry operations' whale avoidance policy and procedures;
 2. Water resources and quality;
 3. Harbor infrastructure;
 4. Vehicular traffic;
 5. Public safety and security;
 6. The potential to spread invasive species;
 7. Cultural resources, including hunting, fishing, and native Hawaiian resources;
 8. Economic consequences and impact; and
 9. Any other natural resource or community concern.

Act 2, SSL 2007, Part IV, Section 13(a).

The OTF was comprised of thirteen members: five (5) members, one each representing the Department of Transportation (DOT), Department of Agriculture (DOA), Department of Land and Natural Resources (DLNR), Department of the Attorney General (AG) and a large capacity ferry vessel company; and eight (8) members, two each representing the counties of Oahu, Maui, Hawai'i and Kauai, as appointed by the Speaker of the House and the President of the Senate, with at least two members representing the environmental community, two members representing native Hawaiian cultural practices and two members representing the general business community.

The OTF was required to submit monthly status reports of its findings and recommendations to the Legislature and the Governor at the end of each month commencing December 31, 2007. These reports are located at the following DOT-Harbors website:

<http://Hawaii.gov/dot/harbors/Hawaii-inter-island-large-capacity-ferry-vessel-oversight-task-force/reports-to-the-legislature>

This report is our final report of findings and recommendations to the Legislature and Governor. Where we have made recommendations for funds to be expended, these recommendations have not been made lightly. We are, in fact, very cognizant of both State and national economic issues. We have structured the report to follow the OTF goals as set forth above.

OTF GOALS AND RECOMMENDATIONS

A. Study the State's Actions Regarding the Establishment of the Operations of Any Large Capacity Ferry Vessel Company as a Whole

The OTF was provided with a copy of the "Performance Audit on the State Administration's Actions Exempting Certain Harbor Improvements to Facilitate Large Capacity Ferry Vessels from the Requirements of the Hawai'i Environmental Impact Statements Law: Phase I" from The Auditor, State of Hawai'i, Report No. 08-09, April 2008. The OTF reviewed this audit which addressed "the flawed [Environmental Impact Statement] EIS law and rules," made recommendations for changes to the EIS rules and OEQC guidelines/processes and recommended modifications to DOT Harbors Division with respect to its record-keeping process and ease of public review. This report is located at the following website:

<http://hawaii.gov/auditor/Reports/2008/08-09.pdf>

The Phase I report did not specifically address issues regarding the overall process within DOT for establishing a large capacity ferry vessel operation or the validity of representations made by HSF. For these issues, the auditor's office reportedly encountered delays which prevented them from producing a more complete report at the time. The OTF understands that the Phase II audit report will address these issues. The OTF, having met and concluded its meetings prior to the publication of the Phase II report, believes the State of Hawaii Auditor has the necessary resources to respond fully to these issues and the OTF chooses to focus, instead, on issues not covered in the audit reports.

In addition, lawsuits have been filed in both the State and Federal courts. Factual information as to what was and was not done in accordance with the existing law is contained in the pleadings. The OTF is confident that relevant issues outside the purview of the audit and this task force will be properly adjudicated and resolved via the court systems.

B. Examine the impact, if any, of the operations of any existing or proposed large capacity ferry vessel company on:

1. Ocean life and marine animals and plants, including but not limited to an existing or proposed inter-island ferry operations' whale avoidance policy and procedures;

The DOA, DLNR/DOCARE and HSF provided data every month at the OTF meetings for the task force members to review. The reported data included information regarding passenger and vehicle counts, what items were being legally transported on the vessel, what items were not allowed to be transported on the vessel and what illegal or prohibited items were attempted to be transported on the vessel and were subsequently confiscated. The data covered both the Honolulu to Kahului and Kahului to Honolulu routes.

Both Act 2 and the Governor's Executive Order 07-10 (EO 07-10) imposed conditions on operations which included restrictions on the transport of certain items on the vessel. HSF and DLNR jointly agreed in advance that certain items would not be permitted transport on the vessel, not because the items were illegal, but because the decision as to what would be legal/permissible versus illegal/impermissible would complicate the screening process. Examples of items prohibited transport on the vessel by agreement were cut logs/branches and crustaceans. After studying the reported data for over nine (9) months, the OTF makes the following recommendations.

Recommendations for Goal B.1.

a. Changes to Executive Order 07-10, Section A, Ocean Life and Marine Animals and Plants

Based on the analysis of data provided to the OTF, as well as the testimony of Dr. Joseph Mobley, Jr. and concerned citizens/groups, the OTF recommends the following changes:

- (1) Add to Section A, EO 07-10: Between December 15 and May 15 of each calendar year (the whale season as defined by DLNR/DOBOR Hawaii Administrative Rules ("HAR")), or as recommended by the Hawaiian Islands Humpback Whale Sanctuary (HIHWS), the route used by large capacity ferry vessels (including HSF vessels) during evening (after dusk) operations should not traverse or cross Penguin Bank, unless the Master of the vessel determines that this route is in the interest of passenger safety and comfort or vessel safety. The large capacity ferry vessel company is further encouraged to work with the HIHWS, as co-managed by DLNR and NOAA, to determine if a route through Penguin Bank is a reasonable and/or acceptable alternative.

- (2) Delete from the EO 07-10, Section A.5, the use of radar as an acceptable option for a Whale Avoidance System (WAS)

b. Further Studies on Interaction with Marine Mammals.

HSF has enhanced its ability to avoid collisions with marine mammals beyond what was required in EO 07-10. EO 07-10, Section A.3, required the large capacity ferry vessel company: "to post two persons to act as whale lookouts on any vessel and allow for direct communications between the lookouts and the Master of the vessel." EO 07-10, Section A.1 also required the company to:

agree to request the National Marine Fisheries Service (NMFS) certified fisheries observers, currently residing in Hawaii, such as graduates and members of Alu Like's Marine Stewardship Program, be onboard its vessel to help monitor and document marine life sightings and potential impacts to marine life by its vessels, to warn the bridge in a timely manner about potential impacts, to collect data on appropriate NMFS forms of general and unusual marine life observations, to appropriately document observations, and, in the event of an interaction with an endangered species by one of its vessels, to document and follow applicable federal requirements, if any.

The observers identified in Section A.1 may serve as lookouts required in Section A.3. According to HSF, they made requests consistent with EO 07-10, Section A.1, and no certified fisheries observers have been provided by NMFS to date.

The observers are recommended to warn the Master of the vessel in a timely manner about potential impacts. In addition, Pursuant to EO 07-10, Section A.5, the large capacity ferry vessel company shall agree to "utilize radar, night vision equipment, and bow-mounted cameras to detect whales and to try to avoid collisions."

In the Rapid Risk Assessment ("RRA"), it was noted by Dr. Mobley that the optimal focused time by some of the whale lookouts using a monacle night vision device was deemed inadequate. Dr. Mobley is considered to be a marine mammal expert and has done extensive research in Hawaiian waters for many years. He is currently with the University of Hawai'i.

In October 2007, HSF purchased and installed a Whale Avoidance System (WAS). However, this system was not operational during the RRA inspection by Dr. Mobley. To assist him in evaluating the system, Dr. Mobley communicated directly with the WAS manufacturer. At the OTF meeting on November 6, 2008, Dr. Mobley summarized the system features and explained that it is a cooled sensor system, meaning the system is hypersensitive to changes in temperature. As such, Dr. Mobley believes the system should be able to detect changes in temperature up to 2 kilometers or more away. Since whale blows are warmer than the ambient temperature, the system should be able to detect whale blows, although the WAS has

not been tested on actual living whales in their environment as of the November 6, 2008 OTF meeting. HSF is the first user of the WAS for marine mammal avoidance.

Given the above, the OTF makes the following six (6) recommendations:

- (1) A study is to be conducted to determine the validity of HSF's Whale Avoidance System. This study is to be structured with Dr. Joe Mobley, Jr. or an equally credentialed person to include, at a minimum:

Four voyages during the day and four voyages during the evening (after dusk);
- (2) The study should focus on personnel observing the HSF Whale Avoidance System versus personnel performing visual observance;
- (3) The study should be conducted in February 2009, as the whale population is statistically relevant; and
- (4) funding to be provided and source determined by the Legislature;

Prior to 2004, Dr. Mobley provided DLNR with research and data on whales that was obtained from fly-overs that covered the entire state. Dr. Mobley's research indicated that whale population had been increasing until 2003, after which the population decreased. Due to a lack of funding, there has been no continuation of the research to determine if there is, in fact, an issue with whale populations in Hawai'i. Based on the above, the OTF makes the following recommendation:

- (5) A fly-over study of the Hawaiian Islands for the marine mammal population be conducted in 2009 and funded by the Legislature. The cost is estimated at \$200,000.00. This study is to be compared with previous fly-over studies last completed in 2003.

There were no collisions with endangered species during the period of time that HSF was operational in Hawaiian waters. HSF provided the OTF with scatter logs which recorded whale sightings by count and position for all transits during the month of April 2008. Based on the above, the OTF makes the following recommendation:

- (6) A large capacity ferry vessel company (including HSF) should provide scatter logs of whale sightings between December and May (of the following year) for each year. If a Whale Avoidance System can provide similar documentation as to whale locations, it is acceptable in lieu of manually compiled scatter logs. Information regarding sighting of whales is to be provided to DLNR and other appropriate governmental agencies.

B. (Continued)
Examine the impact, if any, of the operations of any existing or proposed large capacity ferry vessel company on:

2. Water resources and quality;

Recommendations for Goal B.2.

The Rapid Risk Assessment found full compliance with all conditions associated with water resources and quality contained in EO 07-10. During the course of our meetings, the OTF was not informed by the community of any issues in this area. As such, the OTF makes no recommendations as to Goal B.2.

B. (Continued)
Examine the impact, if any, of the operations of any existing or proposed large capacity ferry vessel company on:

3. Harbor infrastructure;

The State of Hawai'i Department of Transportation Harbors Division (DOT-Harbors) began harbor infrastructure improvements to accommodate a ferry service well in advance of any specific legislative appropriation in support of large capacity ferry vessels. For example, the construction of the Pier 19 passenger terminal in Honolulu began during the Cayetano administration and was dedicated at the beginning of the Lingle administration. In response to administration and legislative initiatives supporting large capacity ferry vessels as an alternative form of inter-island transportation, DOT-Harbors sought to utilize existing harbor improvements first while minimizing the impact of large capacity ferry vessel operations on scarce harbor resources, including piers and wharves.

Commercial Harbor Improvements

- a. **Honolulu Harbor**
Improvements at Honolulu Harbor to accommodate large capacity ferry vessels include the installation of a pier-side barge and ramp system for the loading and unloading of passengers and vehicles (including vehicles carrying freight) at Piers 19 and 20. In addition, the following improvements were made:
- (1) electrical improvements to provide shore-side power to the barge and ramp;
 - (2) installation of bollards; and
 - (3) a parking lot for passenger/employee use.

Improvements at Honolulu Harbor made by the current large capacity ferry vessel operator include:

- (1) pier-side ferry fenders;
- (2) shore-side tents, concrete barriers, fencing and gates;
- (3) supplemental lighting in the terminal yard;
- (4) pavement striping;
- (5) transfer span ramp modification; and
- (6) installation of shore-side passenger gangway

Future improvements to accommodate a second large capacity ferry vessel, which would be home ported in Honolulu Harbor, at Piers 19 and 20, may include:

- (1) installation of additional bollards;
- (2) repositioning of loading barge and related structures;
- (3) demolition of shore-side structures adjacent to lay berth assignments; and
- (4) partial demolition of obstructing finger piers in the vicinity of Piers 17/18.

b. Kahului Harbor

Improvements at Kahului Harbor to accommodate large capacity ferry vessels include the installation of a pier-side barge and ramp system for the loading and unloading of passengers and vehicles (including vehicles carrying freight) at Pier 2C. In addition, the following improvements were made:

- (1) electrical improvements to provide shore-side power to the barge and ramp; and
- (2) installation of bollards.

Improvements at Kahului Harbor made by the current large capacity ferry vessel operator include:

- (1) shore-side tents and temporary/mobile restroom facilities;
- (2) concrete barriers, fencing and gates;

- (3) paving in the terminal operations yard (vehicle processing area);
- (4) pavement striping;
- (5) transfer span ramp modification; and
- (6) installation of shore side passenger gangway.

Future improvements at Kahului Harbor may include:

- (1) installation of additional bollards;
- (2) installation of a substitute mooring system for the Kahului barge and ramp;
- (3) construction of a shore-side ramp to mate with the vessel's stern quarter ramp;
- (4) construction of a ferry terminal as part of the Kahului west harbor development.

c. Nawiliwili Harbor

Improvements at Nawiliwili Harbor to accommodate large capacity ferry vessels include the installation of a shore-side ramp system for the loading and unloading of passengers and vehicles (including vehicles carrying freight) at Pier 1. In addition, the following improvements were made:

- (1) electrical improvements to provide shore-side power to the ramp;
- (2) modifications to the pier-side ferry fenders;
- (3) construction of a hard stand for the ramp system; and
- (4) paving in the terminal operations area.

Improvements at Nawiliwili Harbor made by the current large capacity ferry vessel operator include:

- (1) installation of pier-side ferry fenders;
- (2) tents and temporary/mobile restroom facilities;
- (3) concrete barriers, fencing and revetment work;
- (4) transfer span ramp modification; and

- (5) replacement paving and pavement striping.

Future improvements at Nawiliwili Harbor may include installation by the current large capacity ferry vessel operator of a shore-side passenger gangway.

d. Kawaihae Harbor

Improvements at Kawaihae Harbor to accommodate large capacity ferry vessels include the construction of a pier-side ramp system for the loading and unloading of passengers and vehicles (including vehicles carrying freight) at Pier 1. However, due to the October 2006 earthquake which severely damaged Pier 1, a decision was made by DOT-Harbors not to utilize the pier-side barge at Pier 1. The current large capacity ferry vessel operator subsequently installed a stern quarter ramp on their second vessel scheduled for transit to Kawaihae Harbor commencing 2010 and this ramp will be used in lieu of the barge. No decision has been made as of this date as to the specific berthing location for the large capacity ferry vessel. However, it is anticipated that ocean swells will necessitate berthing at Pier 2A during seasonal weather conditions. Earthquake repairs to Pier 1 are on-going and anticipated to be completed in early January 2009. Earthquake repairs to Pier 2A are on-going and anticipated to be completed in the third or fourth quarter of 2009. Coast Guard approval is necessary to obtain unrestricted use of the repaired Pier 1.

Future improvements at Kawaihae Harbor may include:

- (1) construction of a shore-side ramp to mate with a vessel's stern quarter ramp;
- (2) installation of a shore-side passenger gangway;
- (3) pier-side ferry fenders;
- (4) tents and temporary/mobile restroom facilities;
- (5) lighting in the terminal yard;
- (6) fencing and revetment work;
- (7) construction of a dolphin or camel to support Pier 2A operations;
- (8) pavement striping;
- (9) neighboring roadway improvements, such as cross-walks, side-walks and/or lights.

e. Other Related Commercial Harbor Impacts

- (1) Potable water systems.

Honolulu Harbor, as the home port for the vessels, provides potable water to the vessels at the rate specified in the Harbors Administrative Rules. At Nawiliwili, Kahului and Kawaihae, potable water demand is mostly associated with temporary/mobile restrooms.

(2) Wastewater systems.

Wastewater on the vessels is removed shore-side at Honolulu Harbor via a licensed tanker truck contracted by the large capacity ferry vessel company. Wastewater is disposed of into the municipal wastewater system. No permanent wastewater system is contemplated within the commercial harbor system.

(3) Electrical systems.

Shore-side power was required for the barge and ramp systems, as well as the ramp system at Nawiliwili. Supplemental lighting in terminal yard areas utilizes generators owned by the large capacity ferry vessel company.

(4) Solid Waste.

Shore-side dumpsters are provided at each harbor, the contents of which are appropriately disposed of in accordance with county/state regulations. Commercial/industrial wastes are the responsibility of the harbor user and processed through private waste collection companies.

At the November 6, 2008 OTF meeting, DOT-H informed the OTF that the State had reached the limit of the State funding authority as defined in the Operating Agreement between the State of Hawaii and HSF. As such, the State did not intend to fund further ferry specific harbor improvements in excess of the \$40 million appropriated by the Legislature.

Recommendations for Goal B.3.

Given the State's position that it has reached the limit of the State funding authority, the OTF makes no recommendations as to Goal B.3.

B. (Continued)

Examine the impact, if any, of the operations of any existing or proposed large capacity ferry vessel company on:

4. Vehicular traffic;

There were a number of vehicular traffic issues raised in the RRA that have been resolved. However, there continues to be signage and side-walk issues that are in process of being resolved by DOT.

Recommendations for Goal B.4.

- a. Erect permanent signage in the Ewa bound directions to Honolulu harbor;
- b. Construct a side-walk from Nimitz Highway into the HSF passenger terminal at Pier 19 to safely accommodate passengers that arrive on foot; and
- c. Make appropriate side-walk, cross-walk and/or roadway improvements at Kawaihae.

B. (Continued)

Examine the impact, if any, of the operations of any existing or proposed large capacity ferry vessel company on:

5. Public safety and security;

The Rapid Risk Assessment found full compliance with conditions in EO 07-10 associated with public safety and security. During the course of our meetings, the OTF was not informed by the community of any safety and/or security issues as they relate to operations in the commercial harbors.

Recommendations for Goal B.5.

- a. When a large capacity ferry vessel company (including HSF) commences operations to another island, the OTF recommends that traffic and public safety/security issues be discussed and adequately addressed in advance with County agencies and the community; and
- b. To ensure that emergency situations are handled with efficiency and in the best interest of public safety, the OTF encourages the large capacity ferry vessel company (including HSF), DLNR, County and State agencies, as well as the appropriate Federal agency (ies), to work together on the Facility Security Plan covering the large capacity ferry vessel operation.

B. (Continued)

Examine the impact, if any, of the operations of any existing or proposed large capacity ferry vessel company on:

6. The potential to spread invasive species;

The spread of invasive species between islands was a primary concern of the OTF. At the same time, we realize that existing and past transportation systems inadvertently allowed invasive species to be transported between the islands. The RRA highlighted issues that needed to be addressed and the monthly presentations by DOA and DLNR confirmed the concerns. DOA presented a briefing on the Little Fire Ant, which has been incorporated into their Invasive Species Group. We heard from community members of their strong concern in not wanting to have their island be the recipient of species that are currently only on one or two other islands.

In our review of the vehicle traffic traveling between Oahu and Maui we found large variances in the prevalence of muddy vehicles depending on the vehicle's point of origination. For vehicles originating on Oahu and traveling to Maui, the screeners found the vehicles relatively clean. On the other hand, vehicles originating on Maui and traveling to Oahu were more likely to be refused entry for excessive dirt and mud and either the vehicle was washed and then re-inspected or was not permitted to sail on the vessel.

Recommendations for Goal B.6.

The OTF makes the following recommendations as they relate to invasive species:

- a. Changes to EO 07-10, Section E: Invasive Species
 - (1) Revise Section E, Paragraph 12, to read: "The company shall agree that the transport of any fishing net that is designed and manufactured with the intent to capture marine life of any kind is prohibited with the exception of scoop/hand nets and landing nets. All nets should be free of debris. All nets that were not manufactured with the intent to capture marine life will be allowed. A Scoop/Hand Net is defined as a net consisting of a bag of materials attached to a frame to hold the bag open. The net further consists of a handle that is small enough to use with one hand by one person. A Landing Net is defined a hand net that is used to further secure and capture marine life, after the marine life has been hooked or otherwise detained to prevent the marine life from being unhooked or lost."
 - (2) Move the revised Paragraph 12 (as above), Section E, Invasive Species, to Section F, Cultural and Natural Resources.
- b. The Legislature should consult with DOA and DLNR to fund random surveillance of the large capacity ferry vessel screeners.
- c. DOA should continue to focus attention on invasive species issues, including but not limited to, the Coqui Frog, Varroa Mite and Little Fire Ant. DOA should

expand their focus to include all other forms of shipping that can result in these serious pests spreading to new locations within the State. DOA should continue to work with researchers and the community and continue to look for alternative solutions for the control of these pests.

- d. In addition to the requirements in Section E, Paragraphs 3 and 4, to reduce the number of vehicles being rejected for transport by the screeners, the large capacity ferry vessel company (including HSF) shall encourage the passenger, when making a vehicle reservation, to wash their vehicle prior to transport. The large capacity ferry vessel company (including HSF) should verbally discuss the importance of washing vehicles for the control of invasive species with the booking passenger(s) and/or include pop-ups on their website so that the issue is specifically called to the attention of the passenger(s). Vehicles shall include, but not be limited to: cars, trucks, trailers, off-road vehicles, watercraft, etc.
- e. The following should be added as a requirement under Section E. The large capacity ferry vessel company (including HSF) shall develop standardized training procedures.
 - (1) In order to sustain consistent screening at the various terminals, the large capacity ferry vessel company should develop written standardized screening procedures which include, but are not limited to:
 - (a) Visual and physical checks of all vehicles and their undercarriage, cab interiors, compartments and coolers and containers capable of carrying natural and cultural resources in violation of the provisions of EO -7-10;
 - (b) The requirement that screeners request passengers exit their vehicles during the screening process and assist screeners in opening all vehicle compartments and containers; and
 - (c) The requirement that screeners have personal contact with all adult passengers, checking identities and required documents.
 - (2) The large capacity ferry vessel company should establish procedures and/or protocols for the disposition of prohibited items listed in the provisions of EO 07-10, including the written documentation of such items in an incident report.
 - (3) The large capacity ferry vessel company should establish procedures and/or protocols to be followed when illegal contraband is discovered, including the notification of the appropriate State, County and/or Federal agency (ies) for further inspection, receipt and/or processing.

- (4) If officials from State, County and/or Federal agencies are present in the screening/inspection area when suspicious items, prohibited items enumerated in the provisions of EO 07-10 or illegal items are discovered and/or located, the large capacity ferry vessel screeners should request assistance from the appropriate official(s) for clarification of questions and/or concerns.
- (5) In the event an incident in the terminal warrants a call to any State, County and/or Federal official for investigation or response, the large capacity ferry vessel company personnel should preserve to the fullest extent possible, the scene and integrity of all evidence involved in the incident prior to the arrival of agency officials.
- (6) In order to ensure screening operations at all terminals are consistently sustained over time, the large capacity ferry vessel company should develop standard training with written materials for all screening staff, including:
 - (a) A list of all items prohibited for transport under EO 07-10;
 - (b) A description of the authorized conditions of vehicles under EO 07-10.
- (7) Training materials should include pictures of prohibited items and of unauthorized conditions of vehicles. The term "excessively" muddy is subjective and screeners would benefit from examples of vehicles that should not be transported without additional cleaning.
- (8) Training of screeners by the large capacity ferry vessel company should be mandatory for all new screeners and refresher training should be provided on a periodic basis.
- (9) Prior to commencing operations at a new port, the large capacity ferry vessel company shall certify to the State that the new operation will meet all requirements of EO 07-10.
- (10) The large capacity ferry vessel company shall establish and implement a centralized reporting system that reports: quantity, type, date and location of infractions of E.O. 07-10; whether prohibited items were voluntarily disclosed or discovered during screenings/inspections; and the ultimate disposition of the items. DOA and DLNR shall be provided the opportunity to access the data from this reporting system.
- (11) The HSF web site is currently text-heavy and pictures would help attract customers' attention as it pertains to prohibited items. Pictures could

show unauthorized items and cars that are considered "excessively dirty."

B. (Continued)
Examine the impact, if any, of the operations of any
existing or proposed large capacity ferry vessel company on:

7. Cultural resources, including hunting, fishing, and native Hawaiian resources;

Recommendations for Goal B.7.

The OTF believes this is an area that deserves a closer and more intense investigation than has occurred to date. It is also an area that elicits much emotion and varying interpretations. With this in mind, the following is an attempt to mitigate the possible impacts of a large capacity ferry vessel operation upon Hawaiian cultural resources, practices, and beliefs. While it is difficult to quantify such impacts at this time, the general belief is that there will be impacts. An amendment to Act 2 and/or EO 07-10 allowing a large capacity ferry vessel to operate should include the unique history and status of native Hawaiian people and their culture. Establishment of this unique status should include the Apology Bill from the United States (United States Public Law 103-150, November 23, 1993), as well as, State of Hawai'i Constitutional amendments and State of Hawaii Revised Statutes pertaining to Hawaiian language, culture, practices, history and status. In the same vein, Federal and State laws should be cited in relation to the transportation, possession, and disposition of cultural artifacts and human remains (HRS 6E). The State of Hawai'i Constitution (Article XII Sec. 7), referring to native Hawaiian gathering rights, should also be cited in mitigating the impacts of ferry operations on gathering in communities in which the ferry operates. As an example, current conditions in EO-07-10 prohibit the transport of stones, stones which could be used for cultural practices.

The emphasis, however, should rest solidly on restoring the Hawaiian cultural practices of resource management, caring for these resources in a responsible manner, respecting and practicing the concepts of stewardship with "aloha," and the de-emphasis of the practice of "excess" in our contemporary and achievement/individualistic-oriented society. In addition, a culture of respect, acknowledgement and practice of Hawaiian cultural values, language and protocol shall be incorporated into the operation, management and administration of a large capacity ferry vessel system.

a. **Changes to EO 07-10, Section F: Cultural and Natural Resources**

- (1) **Transport of Iwi or Bones:** With respect to Paragraph F.1, burial materials (moepu) and Iwi should be permitted transport with the permission and authorization of the State of Hawaii DLNR Historic Preservation Division. In addition, appropriate language should be crafted allowing for the transport of the recently deceased on large capacity ferry vessels.

(2) Commercial/Recreational Transport of Marine Life:

- (a) Commercial Transport of Marine Life. The large capacity ferry vessel company shall agree that all aquatic/marine life found within the waters of the State of Hawai'i is prohibited from being transported on the large capacity ferry vessel, except that live or dead fin fish may be transported with a valid Commercial Marine License or any other permit or license required of the DLNR or DOA that regulates the commercial take, sale and/or transport of fin fish. The large capacity ferry vessel company shall provide data on the transport of marine life by commercial marine licensees to DLNR.
- (b) Purchase of Marine Life from Marine Dealer and/or Commercial Fish Licensee. Live or dead fin fish found within the waters of the State of Hawai'i may also be purchased and transported for non-commercial uses provided it is accompanied with a valid receipt issued by the seller. The receipt shall include the following:
- i. Name, address and contact number of the Seller.;
 - ii. Marine Dealer and/or Commercial Marine License Number; and
 - iii. The amount and/or weight and species of marine life purchased.
- (c) Recreational Transport. Communities, particularly those that rely on the gathering of marine resources for sustenance, cultural and traditional practices, have expressed concerns regarding the impacts that a large capacity ferry vessel operation will have on the long-term sustainability of Hawai'i's fisheries. Data collected over a ten (10) month period by DLNR/DOCARE and DOA showed significant amounts of marine resources being transported on the HSF for non-commercial use. In order to support efforts to conserve, manage and protect Hawai'i's fisheries, the following limitations are recommended:
- i. Passengers: Passengers may transport marine life, except for opihi, lobsters and crustaceans found within the waters of the State of Hawai'i, subject to any and all limitations established by DLNR. Passengers may transport fresh/frozen marine life permitted in EO 07-10, subject to the following limitations:

- a) Fin fish with an aggregate count of 10 or no more than 20 pounds per passenger;
 - b) Octopus with an aggregate count of 5 or no more than 10 pounds per passenger; and
 - c) Limu/seaweed with an aggregate weight of no more than 5 pounds per passenger.
- (d) Personal Consumption. Except for opihi, lobsters and crustaceans found within the waters of the State of Hawai'i, other marine life may be transported for personal consumption if purchased from a commercial retail outlet or market that can be verified by commercial receipt, label and packaging. The OTF is concerned with the possibility of commercially purchased marine life products reaching levels that could impact sustainability; therefore, regular monitoring is strongly recommended.
- (e) Live coral and live rock may not be transported unless accompanied by permit(s) and/or license(s) issued by DLNR or the DOA.
- (f) The company shall agree to advise passengers of the above stated conditions.
- (g) Taking/Cutting of Logs: The large capacity ferry vessel company shall agree that: (i) the transport of cut logs, cut trees and tree limbs is prohibited, unless accompanied by a DLNR Permit, and (ii) shall notify passengers accordingly. "Cut tree limbs" are defined as any and all timber products that are less than 4 inches each, in diameter. The transport of no more than ten tree limbs is permitted per passenger.

B. (Continued)
 Examine the impact, if any, of the operations of any
existing or proposed large capacity ferry vessel company on:

8. Economic consequences and impact:

ITEM		COST
Equipment and Associated costs:	Barge and ramp systems, ramp system & other improvements	\$ 40,000,000.00
	Professional Services: Moffatt and Nichol	\$ 2,408,807.00
Environmental Services:	Rapid Risk Assessment	\$ 214,740.00
	Kahului Harbor Master Plan Supplemental EA for Traffic Impacts	\$ 71,805.61
	EIS (includes Act 2 EIS public meetings)	\$ 1,320,000.00
Security, Nawiliwili Harbor:	State Sheriffs	\$ 1,123.96
	GP Roadway Solutions	\$ 80,207.82
	Technology Integration Group	\$ 12,007.04
Screening:	State Dept of Agriculture inspectors at each harbor between 12/14/07 - 10/31/08 estimate.	\$ 37,238.40
	State DOCARE officers for HSF security at Honolulu & Kahului Harbors between 1/1/08 - 3/31/08.	\$ 31,155.98
Operational Expense, Kahului Harbor:	Tug assist at Kahului Harbor for ferry barge	\$ 503,989.33
Other misc costs	Large-Capacity Ferry Vessel Oversight Task Force	\$ 13,605.36
	Naval architect services: Hawaii Marine Co. (Brian Trenhaile)	\$ 1,774.87
	Kahului barge hull survey: ABS Americas	\$ 2,904.00
	Engineering services: Alion Science & Technology	\$ 10,982.00
TOTAL		\$ 44,710,341

Recommendations for Goal B.8.

The OTF received the current economic impact information from DOT and makes no recommendations as to Goal B.8.

B. (Continued)
Examine the impact, if any, of the operations of any existing or proposed large capacity ferry vessel company on:

9. Any other natural resource or community concern;

The OTF has additional recommendations under Goal B.9. They address the Judicial, Executive and Legislative branches of Hawai'i's government.

Recommendations for Goal B.9.

- a. Natural Resource Docket or Court.
Throughout the course of our meetings, it became clear that for the illegal taking or seizure of natural resources, the subsequent prosecution was not always a simple and straight-forward process. The individual County Prosecutor's office would make the final decision on whether there was adequate information and/or evidence to go forward with the prosecution. Often times, the Deputy Prosecutor handling the environmental or natural resource case would change mid-stream and information regarding the illegal natural resource taking would need to be repeated multiple times to multiple prosecutors. The case would thereafter go to trial, where unless the court was cognitive of all the environmental laws, there would need to be further dissemination of information. In summary, the process is long and sometimes cumbersome.

DLNR is in the process of amending their Administrative Rules to provide for civil fines via a Civil Penalty System. The OTF strongly supports this process as it will allow for something similar to a traffic ticket to be given immediately to violators. For the serious violations, prosecution is the only course of action. To assist DLNR and bring a sense of urgency and respect to natural resource protection, the OTF recommends that a natural resource docket or court be structured within the Hawaii State Judiciary and that this docket or specialty court specifically handle the prosecution of all natural resource violation cases from all Counties.

- b. Report from the Governor.
The OTF will cease existence in December 2008. Following each monthly OTF meeting, an informational report was sent to the Legislature that very closely follows the requirement of Act 2, Part I, Section 4, that: "[t]he Governor shall also review and determine the efficacy and appropriateness of all conditions or protocols established pursuant to this section and report to the legislature at the end of each fiscal quarter of the State on the efficacy and appropriateness of all conditions or protocols established pursuant to this section and the costs incurred by the State in establishing and maintaining the enforcement activities required under this section." The OTF recommends a quarterly report be transmitted from the Governor's office to the Legislature in March 2009 and at

the end of every quarter thereafter until the Final Environmental Impact Statement is issued.

c. Act 2 to Continue.

The original dates for the Draft and Final Act 2 Environmental Impact Statements (EIS) were anticipated to be within the thirteen-month period of the OTF existence. For a number of valid reasons, this will not occur. In order to ensure that there is a comprehensive public comment period and the Act 2 EIS is completed, the OTF recommends that the repeal date of Act 2 be repealed.

- d. Data Collection. The following should be added as a requirement under EO 07-10, Section F: While not required of the large capacity ferry vessel company, data was collected by DOA, DLNR (DOCARE) and HSF over the course of the last ten (10) months. In reviewing the data, the OTF observed that there are clear distinctions and trends as to what was being taken between the Oahu to Maui route and between the Maui to Oahu route. Our recommendations, which flow from our review of data collected over ten (10) months and an independent review by consultant Belt Collins (Rapid Risk Assessment ("RRA") dated August 2008), indicate a need for further information to determine a final disposition recommendation from DOA and/or DLNR. The RRA is located at the following website:

<http://hawaii.gov/dot/harbors/whats-new/rapid-risk-assessment-of-operational-compliance>

With respect to continuing data collection, the OTF makes the following recommendations:

- (1) The large capacity ferry vessel (including HSF) is to continue to track/count the following items and issues and provide data to DLNR/DOA. The purpose of the data collection is to assist in the determination of whether there should be additional changes to Hawai'i Revised Statutes (HRS) or Hawai'i Administrative Rules (HAR) for the protection of natural resources. Where practicable, the measurement reported is weight. A number count is optional. A scale shall be used. If possible, the location from which the natural resources were gathered should be ascertained. "Natural resources" for the purpose of this data collection recommendation are defined as follows:

- (a) Rock, Soil, Sand, Dirt, & Coral Rubble, with a minimum reportable size of 1 gallon.
- (b) Crustaceans, Opihi, Fin Fish, & Algae.
- (c) Dead Bees shall not be counted, but shall be preserved in DOA provided containers on both the Oahu to Maui and Maui to Oahu trips. DOA will inspect for Varroa Mites and take appropriate action.

In the future there may be other items that will require tracking and/or counting to determine the existence of environmental issues.

(2) It is recommended that a voluntary passenger form be developed to be completed by passengers on large capacity ferry vessels, similar to what is given to airline passengers coming into the State of Hawai'i, with information as to trip purpose, items brought along with them, etc. DBEDT/DOA/DLNR and other interested State agencies and departments are to consider developing this voluntary passenger form as an opportunity to gather relevant information on residents and visitors who travel inter-island.

- e. The OTF strongly believes there are many natural resource issues and invasive species issues that still need to be addressed. It is imperative that the Legislature consult with DOA and DLNR to fund additional personnel throughout the State to protect and sustain Hawai'i's unique natural resources.
- f. The OTF recommends that The Agreement between Hawaii Superferry, Inc. and the State of Hawai'i, executed on November 4, 2007, remain in full force and effect as long as EO 07-10 remains in force and effect. The amendment to the Agreement necessary to extend its effective date should be executed by the Attorney General's office.
- g. The OTF recommends that a joint briefing between the OTF, Legislative leaders and the Transportation Committees of the Legislature be held to further discuss this report and its contents.


CONCLUSION AND MAHALO

As members of the Oversight Task Force, we have acknowledged our responsibility in being appointed by the Speaker of the House, Calvin Say, and the President of the Senate, Colleen Hanabusa, through diligent work to the cause and we are humbled by the reliance that has been placed upon us. We have brought to this task many perspectives and varied beliefs. We did not always come to consensus and we did not always interpret the information before us the same way. We do believe, however, that each of us brought to the task force a commitment to do what was asked of us and do it well. And we all agree that we did it together!

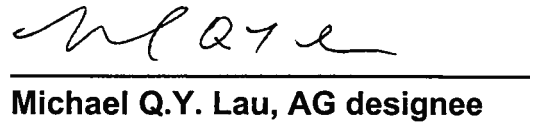
We have been greatly assisted in our process by the DOT Deputy Director for Harbors, Michael Formby, who acted as our facilitator and provided not only information, but individual resources who assisted us in understanding the information before us or provided us with specialized knowledge. To Deborah Kuwaye, Assistant to Michael Formby, who scheduled and attended every meeting, handled the reservations, made sure that when we traveled we got where we were going and returned, and handled a large number of calls and administrative e-mails from all of us, our Mahalo. The assistance and attendance of Sandra Lee Kunimoto, Chairperson, BOA, and Laura Thielen, Chairperson, BLNR, was also invaluable in providing us with the larger picture and an understanding of the opportunities for improved collaboration with their departments on large capacity ferry vessel issues. To Margaret Ahn, Deputy Attorney General, thank you for keeping us focused within the law. Your assistance is appreciated.

Finally, we want to thank Mayor Charmaine Tavares and Mayor Harry Kim for their support throughout our tenure. K. Napua Brown, Mayor Kim's Executive Assistant, was a frequent attendee who made sure we understood Hawai'i County's perspective on the issues. We also want to thank the community members from across the State who shared their issues and concerns with us, including Maui Tomorrow and Pacific Whale Foundation.

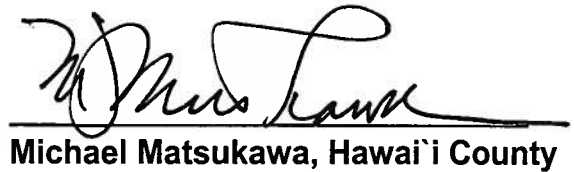

Michael D. Formby, DOT designee

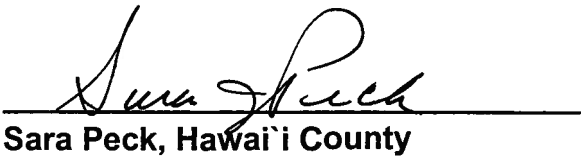

Domingo Cravalho, DOA designee

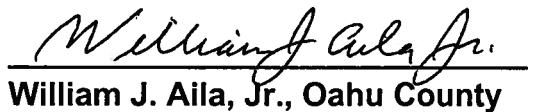

Laura H. Thielen, Chairperson, BLNR


Michael Q.Y. Lau, AG designee

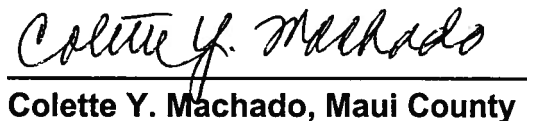

Richard R. Houck, Large Capacity Ferry
Vessel Company designee

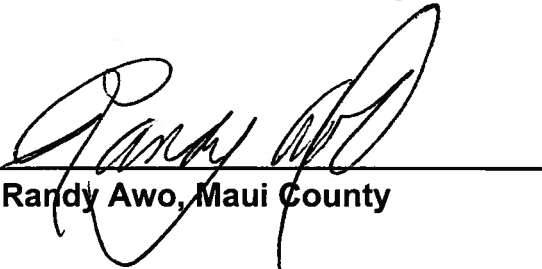

Michael Matsukawa, Hawai'i County


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William J. Aila, Jr., Oahu County


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