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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

MEGAN WONG, et al.,)	
Plaintiffs)	CV07-00484 HG LEK
)	
v.)	Date: October 5, 2007
)	Time: 11:00 a.m.
GEORGE W. BUSH, et al.)	Ctrm: Aha Nonoi
Defendants)	
_____)	Hon. Helen Gillmor

**PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION
TO PLAINTIFFS' MOTION FOR TEMPORARY
RESTRAINING ORDER**

EXHIBIT 1

CERTIFICATE OF SERVICE

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I. ARGUMENT IN REPLY

A. The Hawai'i Superferry is not a lawful operation.

1. Defendants argue that the Hawai'i Superferry can legally operate.

Defendants argue that continued operation of the Hawai'i Superferry (HSf) is lawful. Defendants' Opposition to Plaintiffs' Motion for Temporary Restraining Order (hereinafter "Opp.") at 51 ("HSF's attempt to conduct lawful operations"); Opp. at 13 ("no legal impediments to the HSF sailing to Kaua'i at this time"); Declaration of Charles W. Ray (hereinafter "Ray Decl.") ¶5 ("no other legal prohibitions on the HSF resuming operations between Oahu and Kauai").¹

In taking that position, Defendants do not respond directly to Plaintiffs' argument that the Hawai'i Supreme Court decision in the Sierra Club v. HDOT case and the clear meaning of HRS § 343-5 require HSf cease operations. Opp., Table of Authorities vii-ix (HRS §343-5 absent); Plaintiffs' Memorandum in Support (hereinafter "Pl. Mem.") at 21.

Defendants, instead, rely on the interpretation of that opinion by the very agency that the Supreme Court found to have erred in failing to require an environmental assessment – the HDOT. Opp. at 3. ("The HDOT

¹ Defendants seek to make that argument while at the same time arguing that the issue is not before this Court. Opp. at 50 ("the legality or environmental impact of HSF's operations is being litigated in State court, and those issues are not before this court.) Defendants have placed those issue squarely before this Court. Plaintiffs herein respond.

determined, however, that the ruling did not prohibit ferry operations from occurring prior to the environmental review.”) In that reliance, Defendants did not address Plaintiffs’ challenge to the objectivity of that agency. Pl. Mem. at 21-22.²

2. An EA must be completed before any further operation of HSf.

Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of proposed action.

HRS § 343-5(b) (emphasis added). See also HAR § 11-200-23(c)

(Acceptance of a required statement shall be a condition precedent to the use of state or county lands or funds in implementing the proposed action.); see also Kepoo v. Kane, 106 Haw. 270, 291, 103 P.3d 939, 960 (2005); Kahana Sunset Owners Ass’n v. County of Maui, 86 Haw. 66, 74; 947 P.2d 378, 386 (1997); “Guidebook for the Hawaii State Environmental Review Process” (2004) published by the Hawaii Office of Environmental Quality Control at 9 (final EIS accepted before project can proceed) and 13 (environmental review process must be completed before final approval of an action can be granted).

The Hawaii Supreme Court has consistently upheld this legal

² Neither the HDOT, the Governor, nor the State Attorney General ever sought clarification from the Hawai’i Supreme Court as to whether the opinion required Superferry to cease operations. None of the Plaintiffs in this case are Plaintiffs in the Sierra Club case.

principle. See e.g. Pearl Ridge Estates Comm. Ass'n v. Lear Siegler, Inc., 65 Haw. 133, 648 P.2d 702 (1982), (voided boundary amendment because EA had not been prepared prior to approval); Molokai Homesteaders v. Cobb, 63 Haw. 453, 466, 629 P.2d 1134, 1144 (1981) (environmental compliance required "prior to a governmental approval").

At the Federal level, the same principle applies. Under the National Environmental Policy Act (NEPA), "[a]n assessment must be 'prepared early enough so that it can serve practically as an important contribution to the decision making process and will not be used to rationalize or justify decisions already made.'" Save the Yaak Committee v. J.R. Block, 840 F.2d 714, 718 (9th Cir. 1987) quoting 40 C.F.R. § 1502.5 (1987) (early review of environmental impacts prevents irresistible momentum from developing, options closing, and agency commitments becoming entrenched); Blue Ocean Preservation Society v. Watkins (II), 767 F. Supp. 1518 (D. Haw. 1991) (a summary judgment requiring further environmental work foreclosed proceeding with the project until the completion of the environmental work)

Plaintiffs' position is that there is no reading of HRS § 343-5 that permits the continued operation of HSf while an environmental assessment

is prepared; “condition precedent” and “concurrent are mutually exclusive terms.

B. Plaintiffs are upholding the law in the face of official lawlessness.

If Plaintiffs are correct on the law, then all actions by the Federal, State, and local governments that further the continued operation of HSf are simply aiding and abetting the breaking of the law. The activation of the security zone rule would be just such an aiding and abetting.

Faced with a breakdown on the part of those responsible for law enforcement and court processes that take time to resolve, those who entered the waters of Nawiliwili Harbor to prevent the entry of HSf and who intend to do so again, including Plaintiffs herein, acted and intend to act again, to enforce the law. Pl. Mem. at 24-26; Exhibits 19 (Declaration of Barbara Wiedner), 23 (Declaration of Richard Coon), 26 (Declaration of Megan Wong), 27 (Declaration of Noelle Wong) and 29 (Declaration of Lea Taddonio)]

In response to Plaintiffs’ intent to enforce the law, Defendants express their intent to arrest, prosecute, imprison, fine, and otherwise punish Plaintiffs and others similarly committed to enforcing the law. Pl. Mem., Exhibit 9.

Defendants ignore Plaintiffs’ notice regarding crimes the Defendants

are on the verge of committing. Pl. Mem., Exhibit 4. Defendants, instead, attempt to characterize those trying to enforce the law as lawless and violent and, therefore, subversives. Opp. at 28.

Faced with the Unified Command aiding and abetting HSf in breaking the law by assembling massive force, see e.g. Exhibit 25 [Navy Seals exhibit] and faced with arrest, Plaintiffs are entitled to assert their common law right of self help to resist an unlawful arrest. U.S. v. Garcia, 516 F.2d 318, ____ (9th Cir. 1975) (right exists when there is “bad faith, unreasonable force, or provocative conduct on the part of the arresting officer”); U.S. v. Moore, 483 F. 2d 1361, 1364 (9th Cir. 1973) citing John Bad Elk v. U.S., 177 U.S. 529, 535 (1900) (right to resist unlawful arrest well established in common law).

The purpose of the privilege is to deter abuses of police authority. Moore, supra. at 1365. The Unified Command is just such an abuse.

A second purpose is:

to preserve the sense of personal liberty and integrity inherent in our system of constitutional government by protecting from punishment persons who reasonably resist unlawful intrusions by government agents.

Id.

Rather than acting lawlessly or violently, those in the water in August simply placed themselves peacefully in the path of HSf.

If HSf returns to Kaua'i, Plaintiffs intend to again peacefully place themselves in front of the HSf to prevent HSf from breaking the law and inflicting harm on their 'aina.

Defendants intend to act in bad faith, with unreasonable force, and through provocative conduct to aid and abet the breaking of the law. That intent includes an intent to unlawfully arrest anyone trying to prevent HSf from breaking the law. Defendants intend to use the powers conferred by the adoption of a security zone rule to pursue their unlawful plan. Pl. Mem. Exhibit 9. That intent includes inflicting on Kaua'i whatever environmental or other damage can result from permitting HSf to operate.

These facts are one fundamental basis for Plaintiffs seeking a Temporary Restraining Order from this Honorable Court.

The courts provide the mechanism for the peaceful resolution of disputes that might otherwise rise to attempts at self help.

Operating Engineers Pension Trust v. A-C Co., 859 F.2d 1336, 1344 (9th Cir. 1988) citing Talamini v. All-State Insurance Co., 470 U.S. 1067 (1985) (Stevens, J., joined by Brennan, Marshall, and Blackmun, concurring).

Granting the Temporary Restraining Order will stop the lawlessness and remove the need for Plaintiffs to engage in self help to enforce the law.

C. Adoption of the Superferry Security Zone Rule was an *ultra vires* act.

To create a security zone to facilitate the HSf illegally continuing to

operate is an act outside the authority of the Defendants.

In addition, Defendants grant that the use of laws available to establish security zones first requires a finding that the threatened harm stems from intended subversion. Opp. at 28.

Defendants argue that the Superferry Security Zone Rule meets that test because those who entered the waters of Nawiliwili Harbor to block the entrance of Superferry are subversives. Id.

Defendants fail completely, as they must, to provide any evidence supporting a characterization of those peacefully sitting on surf boards as subversives.

Defendants also fail completely, as they must, to provide any evidence that those people are somehow a threat to national security. Superferry presents itself as a private corporate operation, not a government operation.

The adoption of the Superferry Security Zone rule pursuant to 33 CFR § 165.30 Subpart D or pursuant to the Magnuson Act, 50 U.S.C. § 191 was an *ultra vires* act on the part of Defendant Brice-OHara.³

³ Contrary to Defendants' argument, Opp. at 25-29, the security zone at issue was not created pursuant to the Magnuson Act, 50 U.S.C. § 191. Defendant Brice-OHara does not have authority under the Magnuson Act to create a security zone. 33 C.F.R. § 6.01-5 (zone is designated by Captain of the Port) compare 33 CFR § 165.30 (zone is designated by Captain of the Port or District Commander. Defendant Brice-OHara is District Commander, not Captain of the Port. Ray Decl., Exhibit A at 50879 (order signed by

D. The Superferry Security Zone Rule
Improperly Targets First Amendment Rights

United States Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

1. The Superferry Security Zone Rule is not content neutral.

Defendants first argue that the security zone at issue is content neutral.

Opp. at 41 (“The security zone does not target protestors, demonstrators or any particular message of any person.”).

Defendants then grant that

the “evil” (in the *Frisby* sense of the term) that the security zone targets is the effort of demonstrators and protestors to physically block the HSF from entering the Nawiliwili Harbor by placing their bodies and property directly in the path of the HSF.

Opp. at 44 citing *Frisby v. Schultz*, 487 U.S. 474 (1988).

The whole purpose of the security zone, according to Defendants’ inexplicable formula, is to prevent subversives from blocking the passage of a private ship. The discussion of the rule referred to the target as “non-

Defendant Brice-OHara as District Commander), Opp. at 19, n. 5 (Captain Vince Atkins is the Captain of the Port).

complaint protesters.” Ray Decl., Ex. A at 50877. Anyone else can ask permission to enter the zone. Opp. at 19.⁴

Obviously, the exclusion created by the security zone is not content neutral.

2. The Superferry Security Zone Rule is not narrowly tailored to serve a significant government interest.

A significant government interest is harmed by adoption of the rule.

Defendants argue that protection of public health and safety is a significant government interest. Opp. at 1, 43.

The only other interest present is HSf’s interest in conducting its private business. The Defendants state that interest is of no concern to the Coast Guard. Opp. at 51 [“The Coast Guard’s security zone was enacted not to vindicate HSF’s economic rights (an issue in which the Coast Guard has no interest)”]

The threat to public health and safety, however only arises if HSf returns to Kaua’i.

While acknowledging that HSf suspended operations in the face of determined citizen opposition, Opp. at 5, Defendants fail to acknowledge

⁴ The Defendants argument that the security zone does not distinguish between those wishing to protest the HSf and those wishing to praise the HSf is disingenuous. Someone requesting to enter the security zone to hold up a sign welcoming HSf would not fit into the category of people the rule seeks to exclude, i.e. opponents of the HSf.

that HSf stated that the boat would not return to Kaua'i without Coast Guard protection. Pl. Mem., Exhibit 8 at 2. Instead, Defendants ignore the statement by HSf and argue that the absence of Coast Guard protection will not prevent HSf from returning to Kaua'i. Opp. at 13.

Yet Defendants also agree that

it might be unsafe for the vessel to attempt to enter Nawiliwili harbor without the challenged temporary security zone being activated and in effect

Opp. at 13. Further, Defendants acknowledge that the HSf's master already demonstrated that he will not enter the harbor, if there are protestors present and the Coast Guard is not able to clear the channel. Opp. at 4.

The Defendants acknowledge that the security zone is required to give the Coast Guard sufficient authority to clear the harbor. Opp. at 4-5.

Thus the corporation stated it will not send the boat back to Kaua'i without a Coast Guard commitment to clear the harbor, the Captain demonstrated that he will not enter the Harbor unless the Coast Guard clears the harbor, and the Coast Guard concedes it cannot clear the harbor without the security zone authority. Absent the security zone, therefore, HSf will not return to Kaua'i.

If HSf will not return to Kaua'i without Coast Guard promising to clear the harbor of protestors, protecting public health and safety can be

easily and completely achieved by not adopting a security zone, not promising HSf protection, and not encouraging HSf to return to Kaua'i. No zone, no confrontation, no threat to public health and safety – just that simple.

When Defendants argue that there are no less restrictive means of achieving their goal, Opp. at 46, they ignore the no action alternative.

When Defendants ignore the no action alternative in favor of adopting the rule, Defendants create a situation where there is a threat to public health and safety. It is, therefore, precisely the actions of Defendants that threaten harm to the government's interest in public health and safety.

When the no action alternative does not impinge at all on Plaintiffs' First Amendment rights and the choice of the security zone does adversely affect those rights, that choice does not meet the second test of Ward v. Rock Against Racism, 491 U.S. 781, 291 (1989).

Granting a Temporary Restraining Order will essentially restore the *status quo ante* that existed prior to the adoption of the security zone rule and prevent all harm.

3. The Superferry Security Zone Rule does not permit Plaintiffs to exercise their First Amendment rights effectively.

Defendants contend that there are ample alternative channels of communication. Opp. at 46-49.

Defendants attempt to distinguish the action from the message. If people can hold up signs or otherwise manifest their feelings outside the security zone and within visible range and earshot of the Superferry, then, according to Defendants, their exercise of First Amendment rights is adequately protected. Opp. at 46-49.

Defendants failed to address the question of whether the continued operation of Superferry is lawful pursuant to the Hawai'i Supreme Court decision, other than through unsupported assertions. Opp. at 51 (“HSF’s attempt to conduct lawful operations in the face of impassioned protests”).

In failing to address that issue, Defendants lost perspective on one of the central issues in this case. See infra. pgs. 1-3.

Plaintiffs are (1) delivering a message that continued operation of the HSf is illegal after the Hawai'i Supreme Court ruling, (2) petitioning for redress of a grievance by engaging in the self help of physically preventing the illegal action from taking place, and (3) peacefully assembling in the path of HSf to be sure the message is received.

The court is dealing with a group of people who, rightly or wrongly, view themselves as victims of continuing illegal activity.

United Steelworkers v. Phelps Dodge Corp., 865 F. 2d 1539, 1553 (9th Cir. 1989) (Trott, dissenting).

To characterize the citizen law enforcement actions as subversion would be to deter future expressions of free speech and to deter legitimate self help. Ibid. at 1553-54 (“chill the very conduct ... laws are designed to protect.”)

That the Unified Command has brought together Federal, State, and local law enforcement to aid and abet HSf’s illegal operation is unfortunate. Their presence, however, does not change the intent of Plaintiffs’ exercise of their First Amendment rights nor the method required to deliver the message.

Permitting the Plaintiffs and others of like mind to stand or float to the side, while a violation of law is taking place; with the opportunity to wave signs, shout, or otherwise communicate with the law breakers; is not sufficient and forecloses “an entire medium of public expression,” Menotti v. City of Seattle, 409 F.3d 1113, 1138 (9th Cir. 2005) citing Ctr. for Fair Pub Policy v. Maricopa County, 336 F.3d 1153, 1170 (9th Cir. 2003), i.e. self help.

An alternative that merely offers citizens the possibility of protesting illegal action without permitting any activity that would actually prevent the illegal activity does not foreclose the illegal activity from taking place; the alternative does not prevent Plaintiffs being harmed. Cf. Dean v. Trans

World Airlines, 924 F.2d 805, 809 (9th Cir. 1991)

As this Court has repeatedly stated, [footnote omitted], these rights [of free speech and of assembly] are not confined to verbal expression. They embrace appropriate types of action which certainly include the right in a peaceable and orderly manner to protest by silent and reproachful presence, in a place where the protestant has every right to be

Brown v. State of La., 383 U.S. 131, 141-142 (1966).

E. The adoption of the Superferry Security Zone Rule is replete with illegalities.

1. The failure to include the effective dates within the rule is a fatal defect.

Defendants acknowledge that 1 C.F.R. § 21.30 requires the effective dates to be within “documents subject to codification.” Opp. at 30.

Defendants simply fail to take the next step and acknowledge that “documents subject to codification” refers to the specific rule or regulation being codified. Sutherland Statutory Construction § 28.5 (a code is a law). A document subject to codification is drafted “as an amendment to the Code of Federal Regulations.” 1 C.F.R. § 21.1.

The reverse scenario proves the point. An attempt to enforce a restriction that appeared only in the discussion and not in the rule or regulation would not be effective.

A Preamble or discussion outside the regulation or rule cannot be codified and is not law. The effective dates, therefore, must be within the

law, not solely set forth in the Preamble, for the law to be in effect.

Failing to include the effective dates in the rule at issue makes that rule without force or effect.

2. Defendants do not offer proof of an emergency.

Defendants argue for emergency justification for violating APA requirements by ignoring the statements of HSf management and the actions of HSf personnel. See supra. at 9-11. The *status quo* prior to adoption of the rule was a standoff. Id. There simply was no “urgency of conditions demonstrated and unavoidable limitations on time.” U.S. v. Gavrilovic, 551 F.2d 1099, 1104 (8th Cir. 1977).

Defendants falsely declared an emergency to justify violating the Administrative Procedures Act requirements for rule making.

The subsequent history supports that conclusion. This brief is being filed on October 5, 2007. The initial publication of the rule was on September 5. Ray Decl. Ex. A at 50877. Since that time, the security zone has not been activated. Thirty days have passed without any urgent need for the rule. Had the Defendants published a notice of intent to adopt the rule and opened up a comment period, that period would now be complete. This passage of time is *prima facie* evidence that no emergency existed in the first place.

3. The Superferry Security Zone Rule and the Operation of HSf are inextricably intertwined.

Defendants argue that the Coast Guard could ignore the impacts caused by HSf because the “private and federal portions of the project could exist independently of each other.” Opp. at 38 citing Wetlands Action Network v. U.S. Army Corp of Eng’rs, 222 F.3d 1105, 1116 (9th Cir. 2000).

The Wetlands case is not applicable to the situation at hand because that case involved a multi-phase project and whether a comprehensive EIS had to be prepared for all phases at once.

More importantly, the HSf had no intention of operating in Nawiliwili Harbor without effective Coast Guard support and the Coast Guard concluded that the security zone was necessary to provide such support. See supra. pgs. 9-11.

A “reasonably close causal relationship” exists because the activation of the security zone is a prerequisite to HSf returning to Kaua’i. Ocean Advocates v. U.S. Army Corp. of Engineers, 402 F.3d 846, 868 (9th Cir. 2005) citing Dep’t of Transp v. Public Citizen, 541 U.S. 752 (2004) quoting Metro. Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 774 (1983).

This relationship created an obligation on the part of Defendant Brice-OHara to consider the impacts of permitting HSf to do business on Kaua’i.

Ocean Advocates, supra. The Sierra Club case decided by the Hawai'i Supreme Court is precisely on point.

4. Defendants illegally used 33 C.F.R. § 165 to create the Superferry Security Zone Rule.

In order to justify using regulations not meant for this situation, i.e. 33 C.F.R. § 165, to create a security zone, Defendants have to stoop to characterizing peaceful protesters trying to enforce the laws as subversives. Opp. at 28; see also supra., pg. 7

The mud does not stick. The regulation used does not support the adoption of the rule under the circumstances of this case.

F. Numerous Plaintiffs have standing.

1. Numerous Plaintiffs have Article III Standing

All Plaintiffs intending to enter the waters of Nawiliwili Harbor to prevent the entry of HSf are at risk because Defendants Brice-OHara has created a security zone to bring HSf back to Nawiliwili Harbor and to provide authority for extensive illegal law enforcement action against anyone attempting to prevent HSf from entering the Harbor. Pl. Mem., Exhibit 9, Complaint at ¶¶ 41, 42, 44, 48, 49, 50, 54, 56, 60 (Plaintiffs intending to enter the water), Exhibits 19, 23, 26, 27, and 29.

Plaintiff argues that anyone at risk for attempting self help to enforce the law has standing to come before this Court and seek relief. The grant of

a Temporary Restraining Order would prevent a confrontation at Nawiliwili Harbor and, therefore, eliminate the necessity for self help. Operating Engineers Pension Trust, supra. (courts provide peaceful mechanism for resolving disputes that might otherwise lead to attempts at self help).

2. All Plaintiffs have APA standing.

When Defendant Brice-OHara falsely declared an emergency in order to adopt the rule in question immediately, she denied all Plaintiffs the opportunity to participate in the statutorily-required process of adoption.

That denial is a violation of the Administrative Procedures Act conferring standing on all Plaintiffs. 5 U.S.C. § 702

3. Numerous Plaintiffs have NEPA standing.

The Coast Guard failed to include the impacts of the Superferry when determining whether extraordinary circumstances existed warranting preparation of an EA. That failure is a procedural violation of NEPA subject to the unlawful action provisions of the Administrative Procedures Act. 5 U.S.C. § 702

The failure to adequately assess whether to prepare an EA which would examine the impacts of permitting HSf to reach Kaua'i is a concrete injury to all plaintiffs residing on Kaua'i. These two failures provide standing to all Plaintiffs who reside on Kaua'i. Douglas County v. Babbitt,

48 F.3d 1495, 1500 (9th Cir. 1995) cert. den. 516 U.S. 1042 (1996) (procedural right to protect concrete interest and underlying concrete interest give procedural standing); Citizens for a Better Forestry v. U.S. Dept. of Agric., 341 F.3d 961, 971 (9th Cir. 2003) (geographical nexus required between individual filing suit and geographical area potentially suffering environmental damage); First Amended Complaint ¶¶ 41, 42, 43, 44, 45, 48, 49, 50, 51, 52, 53, 54, 56, 58, 59, 60, and 61 (Plaintiffs residing on the Island of Kaua'i).

As far as Plaintiffs having NEPA standing based on their use of Nawiliwili Harbor, Defendants argue that the failure of Plaintiffs to request exemption from exclusion means Plaintiffs have not availed themselves of an alternative means of securing their interest. Opp. at 19-21.

With HSf changing its schedule every other day and no firm date for HSf to come back to Kauai, there is no reason for anyone to contact the Coast Guard to request an exemption.

G. The Balance of Hardships and the Public Interest Weigh In Favor of Granting Extraordinary Injunctive Relief.

In its starkest terms, the balance the Court is asked to make is loss of profits for a private corporation on the one hand and a confrontation that could stain the history of Hawai'i for years to come on the other. The blood in the water may be that of children. See Plaintiffs' Exhibit 20 ¶¶ 2-7,

Exhibit 31.

In these terms, the corporate profits hardly register on the scale.

This balance is particular true because there is a likelihood that the ongoing litigation in State courts will be resolved during the duration of the Temporary Restraining Order.

As far as irreparable harm, many Plaintiffs are willing to risk serious physical injury to enforce the law and prevent HSf from having its predicted effects as detailed in Defendants' brief. Opp. at 13.

As another perspective on the same question, the requirements of the security zone have already done environmental harm by canceling the availability of a cutter that was to clear debris from the ocean. Exhibit 1 hereto.

Should the HSf return to Kaua'i and an environmental catastrophe result, Opp. at 52, the catastrophe will be the Coast Guard's kuleana because but for the adoption of the security zone rule, HSf would not have returned to Kaua'i. See supra. 9-11.

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CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for a Temporary Restraining Order should be granted.

Respectfully submitted,

LANNY ALAN SINKIN

DATED: Honolulu, Hawai'I, October 3, 2007

Ferry flap nixes trip to remove sea debris

The Coast Guard cancels a cleanup voyage due to the Alakai security issue

STORY SUMMARY »

Concerns over Superferry security prompted the Coast Guard to cancel a debris-collecting voyage to the Northwestern Hawaiian Islands.

That means that the Superferry, idled over its possible environmental impact, has indirectly had an impact on the environment without moving an inch.

The Coast Guard cutter Kukui had planned a monthlong voyage to the Papahānaumokuākea Marine National Monument late last month when the mission was canceled because of surfers' protests outside Nawiliwili Harbor, Kauai, that ultimately blocked the new interisland vessel. The Kukui had been expected to collect some 10 tons of plastic, netting and other debris that poses a threat to turtles, dolphins, whales and endangered monk seals.

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FULL STORY »

By Diana Leone
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Tons of sea-life-killing marine debris will go uncollected in the Northwestern Hawaiian Islands this year because a Coast Guard voyage has been canceled due to Superferry security concerns.

The Superferry has been idled as a result of protests and court challenges over its potential environmental impact.

The canceled debris-collection voyage means the Superferry has exacted an indirect environmental toll even as it remains tied pierside.

The cutter Kukui had been preparing for a monthlong voyage to the Papahānaumokuākea Marine National Monument in late August when the mission was canceled.

Coast Guard Rear Adm. Sally Brice-O'Hara's cancellation of the trip was an "operational decision" that included the possibility the cutter would be needed to help provide security for the Superferry, Coast Guard spokesman Lt. John Titchen confirmed last week.

EXHIBIT 1

The Coast Guard has assisted the National Oceanic and Atmospheric Administration on marine debris removal trips to the Northwestern Hawaiian Islands in past years. However, "The partnership operation plan with them is based on their availability," said Seema Balwani, NOAA lead principal investigator for the marine debris removal program.

"We understand they have homeland security and state support missions," Balwani said.

On Aug. 26, protesters on surfboards outside Nawiliwili Harbor delayed the first arrival of the Superferry, and on Aug. 27, blocked it.

The Superferry had intended to resume voyages to Kauai this week, but the company announced Friday an indefinite suspension of its Kauai service pending the outcome of court cases that focus on potential environmental impacts. A judge on Maui has been hearing arguments for almost two weeks on whether the ferry Alakai should be allowed to resume serving that island while an environmental assessment is conducted.

With the Superferry idled, the Kukui, a 225-foot buoy tender, has been maintaining aids to navigation around Oahu, Titchen said.

The Kukui's voyage to Maro Reef had been expected to collect up to 10 tons of marine debris, Balwani said.

Marine debris can trap and drown or choke Hawaiian monk seals, sea turtles, whales and dolphins.

Monk seals are critically endangered, with an estimated 1,200 animals in the wild, most living in the Northwestern Hawaiian Islands protected by the national monument.

The NOAA ship Oscar E. Sette collected 24 tons of marine debris on a July-August trip to the Northwestern Islands, Balwani said. The ship is currently on a second marine debris trip and will make a final trip this year Oct. 11-Nov. 7.

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