

**SAFE HARBOR AGREEMENT  
FOR THE REINTRODUCTION OF THE NENE  
TO PUU O HOKU RANCH, ISLAND OF MOLOKAI**

This Safe Harbor Agreement (the "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among **PUU O HOKU RANCH, LIMITED** ("Ranch"), the U. S.. **FISH AND WILDLIFE SERVICE** ("USFWS") and the **STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES** ("DLNR"), by its Board of Land and Natural Resources, hereinafter collectively called the "Parties".

**RECITALS**

A. **INTRODUCTION.** The collective desire of the Parties to this Agreement is to reintroduce the nene or Hawaiian goose (*Branta sandvicensis*) to Puu O Hoku Ranch, Molokai. Nene do not currently exist in the wild on Molokai and the reintroduction will help re-establish a wild free-ranging population. It is the hope of all Parties that the nene will prosper, expand and repopulate the Island of Molokai. This reintroduction will potentially establish a free ranging population of 200 nene on Molokai. Of those, the Parties anticipate that the Ranch property will support approximately 75 nene. The re-establishment of nene on Molokai will increase the current range of the species in the wild and restore the nene to this part of its historic range, increase the total population of nene in the State and speed the recovery of this endangered species.

This Agreement covers proposed management activities affecting lands owned or otherwise controlled by Puu O Hoku Ranch, Limited. Under this Agreement, the Ranch will maintain or improve significant amounts of nene habitat for a period of seven years by continuing cattle ranching operations, thereby maintaining open, short grass habitat; assist DLNR to establish and maintain release sites and assist DLNR to control predators around breeding and release sites. This Agreement covers only the native Hawaiian goose, or nene (*Branta sandvicensis*). The large expanse of suitable habitat on the Ranch will provide the core areas for nene to become established on the island of Molokai and from which to expand out to other appropriate habitat on Molokai, thereby achieving the long-term recovery goal of 200 nene on the island. Without this cooperative government/private landowner effort, these lands would not otherwise be utilized by nene in the foreseeable future. Under this Agreement, the Ranch is authorized the incidental take of all nene introduced to the enrolled lands, and their progeny, as a result of lawful activities at the Ranch. It is the hope of all Parties that the maximum level of incidental take authorized under this agreement will never be realized.

B. **BACKGROUND. Nene Recovery.** Nene, or Hawaiian goose, (*Branta sandvicensis*) inhabit grazed pastures and upland scrub in Hawaii on the islands of Kauai, Maui, and Hawaii. On March 11, 1967, the nene was designated an endangered species due to its low numbers and lack of self-sustaining populations. Predation and commercial hunting were major contributors to the historic decline of nene. Recent research has indicated that predation on eggs and young by rats and mongooses and adult predation by feral dogs are the most important factors limiting the recovery of

nene. In order to ensure the recovery of nene in Hawaii, the number and size of areas populated by nene must be increased.

Since 1993, the approach for expanding the range of wild nene in Hawaii has been to establish predator-resistant breeding/release pens in habitat where there is sufficient food and on-going predator control efforts. The pens are used for initial releases of goslings in these areas and are available in subsequent years as predator-protected areas for future generations to raise young.

Importance of Private Lands. Unlike endangered forest birds in Hawaii, which are usually restricted to remote forested habitats that are often under state or federal jurisdiction, nene routinely travel between open grassland areas that are privately owned. Very little good nene habitat is on lands under the jurisdiction of government conservation agencies; in fact, the majority of good nene habitat is on private lands, which are used for cattle grazing. Experience indicates that these grazed pastures are excellent for nene because cattle grazing stimulates the production of new grass shoots, which are favored nene food; water is available in stock ponds or mechanical water units; and feral dogs are less prevalent because of control efforts incidental to normal ranch activities.

A major step in the restoration of nene therefore, is to encourage the presence of nene on private lands. A significant component of this restoration is the development of a program under §10(a)(1)(A) of the Federal Endangered Species Act and §195D-22 Hawaii Revised Statutes that encourages the assistance of private landowners in the recovery of threatened and endangered species, in return for protection - a "safe harbor" - from any additional future liabilities under State and Federal endangered species law. This Safe Harbor Agreement will help the recovery of nene in Hawaii by permitting the landowner to encourage the use of the enrolled lands by nene without subjecting the Ranch to additional liability.

C. NET CONSERVATION BENEFIT TO THE SPECIES. This Safe Harbor Agreement will increase the likelihood that nene will recover by allowing the release of nene into suitable habitat in a remote area on Molokai, an island which is part of the historic range of the species, but currently unoccupied by nene. The hope underlying this Agreement is that the release of nene on participating land will result in the establishment of a self-sustaining permanent population of nene on Molokai, as has occurred on Kauai, the subsequent use of a significant amount of short grass habitat on the Ranch, and expansion of the population to adjacent suitable private and public lands containing nene habitat. The large expanse of suitable habitat on the Ranch will provide the core areas for nene to become established on the island of Molokai with the long-term recovery goal of 200 nene on the island. Of those, it is hoped that the Ranch Premises will support a population of approximately 75 nene.

Based on evidence from Kauai, the seven-year duration of this Agreement is considered to be sufficient to establish an incipient population on Molokai. It is hoped that the nene released under the Agreement, and any offspring they may produce, will not cease to exist on Molokai upon expiration or termination of the Agreement. Adult birds will be able to seek out suitable habitat on their own outside the release area, while young birds will be available for translocation to other

locations, if needed. It is hoped that this Agreement will result in an increase of the number of nene on Molokai and an increase in the total area of suitable habitat on private lands utilized by nene. Without this cooperative government/private landowner effort, these lands would not otherwise be utilized by nene in the foreseeable future. It will also provide an example of a mutually beneficial relationship between government agencies and a private landowner to the benefit of an endangered species, and evidence that nene can coexist with current land use practices.

It is hoped that this Agreement will result in the following benefits to the species: 1. establish a new population of nene on an island where they do not currently exist in the wild; 2. increase the current range of nene, thereby helping to protect against catastrophic loss of the species; 3. provide an opportunity to increase genetic diversity in the species; 4. increase the number of nene in the wild by at least 200 individuals; 5. provide the opportunity to determine the effectiveness of applied management techniques for threatened and endangered species; and 6. provide an additional source of nene for future management activities, if warranted. Therefore, the cumulative impact of this Agreement and the activities it covers, which are facilitated by the allowable incidental take, will provide a net benefit to the species.

D. INTENT. This Safe Harbor Agreement implements the intent of the parties to follow the procedural and substantive requirements of Hawaii Revised Statute §195D-22.

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements of the Parties herein set forth, the Parties agree as follows:

### AGREEMENT

1. PURPOSES. The purpose of this Agreement is to facilitate the restoration of nene to the wild on Molokai by, (a) establishing the terms and conditions of the release and reintroduction of nene on Ranch Premises, and (b) authorize Puu O Hoku Ranch to take nene, incidental to lawful activities on the Ranch.

2. AGREEMENT DURATION. This Agreement will be in effect for seven years following its approval and signing by the Parties .

3. DESCRIPTION OF COVERED LANDS. Enrolled lands are the lands owned or otherwise controlled by Puu O Hoku Ranch (“Ranch Premises”) on the island of Molokai which include all of the lands conveyed to the Ranch by George W. Murphy under that certain Deed dated September 9, 1987 recorded in the Bureau of Conveyances of the State of Hawaii in Liber 21112, Page 401.

4. BASELINE DETERMINATION. The baseline is the number of nene currently nesting on the Ranch Premises. As of the date of this Agreement, there are no wild nene on Molokai and no nene whatsoever on Ranch Premises. Therefore, the baseline for this Agreement is zero (0).

5. MANAGEMENT ACTIONS FOR COVERED SPECIES. This Agreement provides for cooperative management activities of the Parties including releases of nene in an approximately 735 acre portion of Ranch Premises identified by Tax Map Key No. (2) 5-8-15:1 shown crosshatched on Appendix III attached hereto and incorporated herein by reference (“Cape Halawa”) and other areas on the Ranch Premises mutually approved by the Ranch and DLNR, construction and maintenance of two nene release pens, control of predators in and around release pens and breeding areas, care of nene in release pens, medical care of nene, monitoring, and the maintenance or improvement of Cape Halawa currently managed as short-grass pasture by cattle ranching activities. The Ranch will maintain or improve Cape Halawa, which is considered to be a significant amount of nene habitat, throughout the duration of the Agreement, except in the event of a natural disaster such as a hurricane or severe drought. The Ranch will also assist DLNR, whenever possible and to the extent resources are available, in carrying out its nene management activities on the Ranch.

6. INCIDENTAL TAKE OF COVERED SPECIES. Under this Agreement, the Ranch is authorized the incidental take of any nene on or at the enrolled lands and their progeny, as a result of lawful activities at the Ranch, from the time this agreement is signed into the future. Incidental taking means any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity (50 CFR §17.3). The Ranch may continue current land use practices, undertake new ones, or make any other lawful use of the property, even if such use incidentally results in the loss of nene or their habitat covered under this Agreement.

The Ranch is specifically not precluded from conducting any activity by this Agreement. Among the activities the Ranch plans to continue, which in no way shall be considered a limitation on any other activity the Ranch desires to engage in, are the following activities that may result in an unintentional incidental take of nene: 1) cattle ranching, 2) eco-tourism, 3) recreational hunting, and 4) cultivation of agricultural crops. There is no planned modification of the short-grass nene habitat at Cape Halawa during this Agreement.

To minimize the likelihood of incidental take and help enhance the likelihood that the reintroduction of nene to the enrolled lands will result in attaining the stated goal of a population of 75 nene on the Ranch Premises, incidental take permits issued by the USFWS and DLNR will include the following conditions:

- a. Reasonable reporting to DLNR and USFWS of any incidental taking, including injury or killing of a nene and any incidental "death" of a fertile egg. Such reports of incidental injury or death will be thoroughly reviewed by DLNR and USFWS and procedures suggested to the Ranch to avoid future incidental injuries or deaths.
- b. In the event that one-third or more of the nene introduced to the enrolled lands in the first year of the reintroduction effort are incidentally injured or killed and/or one-third

or more of the progeny of the introduced birds (including fertile eggs) are incidentally injured or killed, the Ranch will:

- i. confer with DLNR regarding the activities or circumstances resulting in injury or death.
  - ii. work cooperatively with DLNR to remove and/or minimize the threats to the nene on the enrolled lands that resulted in the incidental take episodes. If mutually agreeable procedures cannot be developed, DLNR may remove nene from the areas involved.
  - iii. as a last resort, cease all attempts at establishing the population of 75 nene on Puu O Hoku Ranch, and allow DLNR to remove all live nene from the Ranch Premises.
- c. When situations arise that pose a threat of adverse impacts to nene and the Ranch, DLNR, and USFWS have actual knowledge of such situations, then the Parties shall confer within 10 working days for the purpose of developing measures to address such situations.

Without any limitation on the general nature of the incidental take authorized under this Agreement, Puu O Hoku Ranch shall not be held responsible for any death or injury of nene resulting from a *force majeure* event. The term *force majeure* means events that are beyond the reasonable control of, and did not occur through the fault of negligence of, Puu O Hoku Ranch, including but not limited to: "acts of God" or sudden actions of the elements, including fire, excessive rainfall, and drought. Should a *force majeure* event occur that results in injury or death of nene on the enrolled lands and the principals of the Ranch have actual knowledge of the event, then Puu O Hoku Ranch should simply report such an event to DLNR and USFWS within 10 days of the occurrence.

A plan to deal with injured nene and nene carcasses is attached as Appendix IV (Appendix IV. Guidelines for Handling Injured Nene and Nene Carcasses.)

#### 7. RESPONSIBILITIES OF THE PARTIES.

*Puu O Hoku Ranch* – Whenever possible during the term of this Agreement and to the extent resources are available (and without the assumption or imposition of any liability whatsoever for its actions or omissions), the Ranch will accommodate and assist the DLNR's release and reintroduction of nene by:

- a. Allow the release of nene at Cape Halawa and the Ranch may, in its sole and absolute discretion, consent to additional nene release and reintroduction activities at other areas on the Ranch Premises during the term of this Agreement;
- b. Assist DLNR in maintaining the release pens and waterlines;

- c. Assist DLNR with feeding and watering nene when they are in the pens;
- d. Provide reports to DLNR on nene mortalities, injuries, or disease observed on the Ranch Premises;
- e. Assist DLNR with the annual count of nene on the Ranch Premises;
- f. Assist DLNR in conducting predator control operations in and around the release pens, and once nene become established in the wild, assist DLNR with predator control operations in and around breeding areas within Ranch Premises;
- g. Assist DLNR in responding to requests for assistance from immediate neighbors with reports of nuisance nene, or cases requiring nene rescue;
- h. Notify DLNR within 30 days in advance of any planned land use practice (e.g., controlled burn, fencing, construction, tilling, hay operation, etc.) which the Ranch reasonably anticipates, in its sole judgment, will result in the incidental take of nene on the enrolled lands; and provide DLNR with the opportunity to capture and/or relocate any potentially affected nene;
- i. Notify DLNR at least 10 days prior to any planned activity occurring during nene breeding season (approximately October through March) that the Ranch reasonably anticipates, in its sole judgment, will adversely affect any adult, nest or goslings, in order to allow DLNR personnel an opportunity to collect eggs and/or goslings in the area;
- j. Not allow game bird hunting within Cape Halawa; and
- k. The DLNR may enter onto Ranch Premises for the sole purpose of conducting its normal nene release and reintroduction activities between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday, and pursuant to a schedule approved in advance by the Ranch. It shall be the specific responsibility of the DLNR to insure that only its employees and no other party enters onto the Ranch Premises pursuant to this Agreement, unless DLNR obtains prior written approval of the Ranch. In the event of an emergency, the DLNR may enter onto the Ranch premises to care for and protect the nene at any time. The DLNR will not interfere with any work being performed, or other operations being carried out, or use being engaged in or on Ranch Premises, by or on behalf of, or authorized by the Ranch or others entitled to use the Ranch Premises.

*DLNR-*

- a. Construct and maintain one or two nene release pens and waterlines;
- b. Provide food and ensure there is an adequate supply of water and otherwise care for the nene within the release pens;
- c. Provide physical examinations and necessary medical care for the nene;
- d. Release cohorts of banded nene in numbers necessary to establish a viable population in the area;
- e. All nene released will be banded with an aluminum USFWS band and a uniquely coded color plastic band.
- f. DLNR will conduct predator control activities, mutually agreed-upon with the Ranch, for the control of mongooses, rats, cats, and dogs in and around the nene release pens, and when feasible, in and around other breeding areas on the Ranch, within the limits of staff and funding resources;
- g. Monitor nene;
- h. Conduct monitoring and management activities in a manner not to interfere with the everyday operation of the Ranch; and
- i. Annually provide the Ranch with a list of its employees who are authorized to enter onto the Ranch Premises.

*USFWS-*

- a. Provide information on federal assistance programs and provide funding to DLNR or the Ranch when appropriate and available.

8. MONITORING. Monitoring will be conducted by DLNR personnel in coordination with Ranch personnel and Ranch activities. When birds are in the release pens, monitoring of the pens and adjacent areas will be conducted weekly, concurrent with feeding and predator control activities. Following fledging, survival of released birds will be monitored twice monthly for at least three months. During the breeding season, monthly surveys will be conducted to locate and monitor nesting sites. An annual survey of the Ranch Premises will be conducted with the assistance of the Ranch.

Telemetry will be used to locate and more easily track nene movements. Radio-transmitters will be attached to one or two nene of each group released. Transmitters will be attached using the standard "backpack" developed by DLNR biologists for use on nene in Hawaii. In order to permanently identify nene, prior to their release, goslings will receive microchips inserted by the DLNR endangered species veterinarian.

9. CHANGES IN CONDITIONS OF THIS AGREEMENT. After approval of this Safe Harbor Agreement, agencies and departments of the State, in order to protect a threatened or endangered species, may not impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to, a landowner or successor to the landowner, to mitigate or compensate for changes in the conditions or circumstances of any species or ecosystem, natural community, or habitat covered by the Agreement except as stipulated in HRS §195D-23 (a) and 50 CFR 13.23(b).

This Agreement may be modified or amended by mutual agreement of the Parties and as provided in HRS §195D-23 and 50 CFR13.23.

10. FUNDING. DLNR's activities associated with the release and management of nene on the Puu O Hoku Ranch will be funded by DLNR. The development costs of the initial nene pen and waterline construction will be covered by a current (FY01) Section 6, Endangered Species, grant E-W-2 from the USFWS. Future maintenance, e.g., salaries, will be covered by State of Hawaii General Fund LNR 402 Appropriations and federal funds from either Section 6 or Pittman-Robertson grants. Salaries and operating funds for Ranch personnel to assist with maintenance and nene management activities will be provided by the Ranch.

11. DURATION OF RIGHTS AND OBLIGATIONS. The rights and obligations under this Agreement shall run with the ownership of the Ranch Premises and are transferable to subsequent property owners pursuant to 50 CFR 13.25 and HRS §195D-22(d). The obligations under this Agreement will apply for seven years from the date of approval and signing of the Agreement. DLNR obligations under section 13 and 14 shall survive the expiration, suspension, rescission, revocation or termination of this Agreement. The rights under this Agreement to incidental take permits will hold for the duration of the Federal 10(a)(1)(A) permit and State incidental take permit issued by the USFWS and DLNR and shall survive the expiration, suspension, rescission or sooner termination of this Agreement, except as otherwise provided in this Agreement.

12. SUSPENSION OR RESCISSION OF AGREEMENT AND PERMITS. The USFWS may revoke the Federal enhancement of survival permit pursuant to 50 CFR 13.28(a). The Board of DLNR may suspend or rescind the Agreement, pursuant to §195D-22(c), if it is determined that:

- a. Parties to the Agreement have breached their obligations under the Agreement and have failed to cure the breach in a timely manner, and the effect of the breach is to diminish the likelihood that the Agreement will achieve its goals within the time frames or in the manner set forth in the Agreement; or
- b. The funding source specified in part 10 of this Agreement no longer exists and is not replaced by another sufficient funding source.

The incidental take permits issued by the USFWS and DLNR shall survive the suspension or rescission of this Agreement unless such suspension or rescission results from a breach by the Ranch

of its obligations under the Agreement or under any other agreement implementing the Agreement which the Ranch has failed to cure in a timely manner and the effect of the breach is to diminish the likelihood that the Agreement will achieve its goals within the time frames or in the manner set forth in the Agreement.

13. EARLY TERMINATION. The Ranch may terminate this Agreement due to unanticipated circumstances upon one hundred eighty (180) days' prior written notice to the other Parties, provided that the baseline conditions are not eroded and that DLNR is provided an opportunity to translocate affected nene within one hundred eighty (180) days of such notice. The Ranch's right to terminate cannot be exercised until after the fifth anniversary of the date of approval and signing of the Agreement. Upon the expiration, suspension, rescission, revocation or sooner termination of this Agreement, the DLNR shall, within ninety (90) days, remove all of the DLNR's property from Ranch Premises and restore the Ranch Premises to as good a condition as they were in prior to the DLNR's entry, occupancy and/or use thereof if requested to do so by the Ranch. The DLNR shall also take reasonable efforts to capture and translocate any nene that remain on Ranch Premises if requested to do so by the Ranch. The incidental take permits issued by the USFWS and DLNR shall survive the expiration or early termination of this Agreement.

14. STATE RESPONSIBILITIES. The State shall be responsible, to the extent permitted by law, for damage or injury caused by the State's employees or agents in the scope of their employment provided that the State's liability for such damage or injury has been determined by a court or agreed to by the State. The State shall pay for such damage and injury provided that funds are appropriated and allotted for that purpose.

15. RECORDATION OF DOCUMENTS. DLNR will record in the Bureau of Conveyances the approved Safe Harbor Agreement and other pertinent documents in a form mutually acceptable to DLNR and the Ranch.

IN WITNESS WHEREOF, the Parties hereto have executed this Safe Harbor Agreement as of the first date above written.

**PUU O HOKU RANCH, LIMITED**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**HAWAII DEPARTMENT OF LAND  
& NATURAL RESOURCES**

By: \_\_\_\_\_

Gilbert S. Coloma-Agaran, Chairperson  
Board of Land & Natural Resources

Date: \_\_\_\_\_

**U. S. FISH & WILDLIFE SERVICE**

By: \_\_\_\_\_

Rowan W. Gould, Deputy Regional  
Director, Portland, Oregon

Date: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
Deputy Attorney General  
State of Hawaii

List of Appendices:

- Appendix I. State of Hawaii Incidental Take Permit
- Appendix II. USFWS Section 10(a)(1)(A)
- Appendix III. Description of Cape Halawa.
- Appendix IV. Guidelines for Handling Injured Nene and Nene Carcasses.
- Appendix V. Schedule of Nene Releases.
- Appendix VI. Findings and Determinations Supporting This Agreement