

State of Hawai'i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife (DOFAW)  
Honolulu, Hawaii 96813

July 24, 2013

Endangered Species Recovery Committee  
State of Hawaii  
Honolulu, Hawaii

Committee Members:

SUBJECT: HAWAI'I COMMUNITY DEVELOPMENT AUTHORITY LESSEE  
KĀKO'O 'ŌIWI'S HE'EIA WETLAND RESTORATION PROJECT

BACKGROUND:

On January 5, 2012, Kāko'o 'Ōiwi (KO) contacted DOFAW for technical assistance with plans to restore agricultural and ecological productivity in a 405-acre area situated in the He'eia wetlands, island of O'ahu. DOFAW provided KO with avoidance measures to prevent take of endangered or threatened species during vegetation clearing activities. On January 25, 2012 DOFAW and the U.S. Fish and Wildlife Service (USFWS) conducted a project site visit. Approximately five taro lo'i were in production and two Ae'o (*Himantopus mexicanus knudseni*) were observed foraging in the lo'i. KO informed the agencies that no waterbirds were observed on the project site until after the lo'i were functioning.

On May 14, 2012 KO informed the agencies that an Ae'o pair had nested in a taro lo'i and requested guidance so as to avoid any take of listed species. DOFAW conducted a site visit on May 18, 2012 and provided KO with avoidance and minimization measures to include a buffer zone around the Ae'o nest site and around any chicks after hatching. One Ae'o chick successfully fledged from this nest. During the May 18 site visit, one Hawaiian coot (*Fulica alaiwas*) was also observed in a lo'i.

On April 26, 2013 KO informed the agencies of an Ae'o nest in a different lo'i than that of the previous year. KO followed the same avoidance and minimization measures as previously instructed and halted all work in the lo'i until the Ae'o chicks were hatched. One Ae'o chick successfully fledged from this nest.

On May 16, 2013 another site visit was conducted by DOFAW and USFWS. As of July 2013, four Ae'o individuals are present at the subject property.

## ANALYSIS

DOFAW encourages landowner efforts that benefit threatened and endangered species. It is reasonable to expect endangered waterbirds to continue to occupy the project area as habitat is created by lo'i construction and wetland restoration.

KO and landowner Hawai'i Community Development Authority (HCDA) are interested in seeking a Safe Harbor Agreement (SHA) with DLNR to work together towards the creation of protected wetland habitat including lo'i construction and to provide management that is sensitive to the listed species. Creation of protected wetland habitat has the potential to benefit the endangered Hawaiian stilt, Hawaiian coot, Hawaiian moorhen, and Hawaiian duck. The loss of wetland habitat has been identified as the most important cause of decline of these waterbird species.

The purpose of an SHA is to encourage landowners to voluntarily engage in efforts that benefit endangered, threatened, proposed, and candidate species. The requirements of an SHA, pursuant to HRS 195D-22(b) are the following:

1. The take would not jeopardize the continued existence of any endangered, threatened, proposed, or candidate species;
2. The take would not reduce the population of endangered, threatened, proposed, or candidate species below the number found on the property prior to entering into the agreement;
3. The agreement proposes to create, restore, maintain, or improve significant amounts of habitat for a minimum of five years for private lands and for a minimum of fifteen years for public lands;
4. There is adequate funding for the agreement and the source of that funding is identified;
5. The safe harbor agreement increases the likelihood that the endangered or threatened species for which a take is authorized will recover;
6. Any take authorized pursuant to this subsection shall occur only in the habitat created, restored, maintained, or improved; and
7. The cumulative impact of the activity, which is permitted and facilitated by the take, provides net environmental benefits.

The USFWS may enter into an agreement or some other form of take authorization, as necessary pursuant to their policies and procedures. Any take authorization that may be issued would need to come from both State and Federal wildlife agencies in order to be valid. According to landowner reports and surveys, there were no endangered, threatened, proposed, or candidate species resident on the property until construction of the lo'i. It is unclear to DOFAW if lo'i activities would result in adverse impacts (e.g., injury from man-made features or outbreaks of avian botulism) that would jeopardize the continued existence of endangered waterbirds.

It is DOFAW's concern that a sink-dynamic not be created within the KO property, wherein waterbirds may be attracted to the lo'i or restored wetland, only to be consistently injured or suffer mortality. Although cultivated taro lo'i have been reported

to attract waterbirds on other properties, no other landowners have sought or have been issued a Safe Harbor Agreement and Incidental Take License from the DLNR.

#### RECOMMENDATION

That the ESRC consider incentives (e.g., future SHA) to encourage landowner HCDA and lessee KO to voluntarily engage in efforts to restore and conserve endangered species, while providing measures to avoid and minimize to the maximum extent practicable, thus ensuring that any take would not jeopardize the continued existence of endangered waterbirds.

Respectfully Submitted,



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ROGER H. IMOTO, Administrator  
Division of Forestry and Wildlife