

**REPORT TO THE TWENTY-SEVENTH LEGISLATURE
2013 REGULAR SESSION**

**STATUS UPDATE OF THE
STREAMLINED PERMIT PROCESS
FOR THE RESTORATION OF HAWAIIAN FISHPONDS**



Prepared by:
**THE STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS**

**In response to Senate Resolution No. 86, Senate Draft 1
Twenty-Sixth Legislature, 2012 Regular Session**

**Honolulu, Hawai`i
December 2012**

**STATUS UPDATE OF THE
STREAMLINED PERMIT PROCESS
FOR THE RESTORATION OF HAWAIIAN FISHPONDS**

PURPOSE

This report is prepared in response to Senate Resolution No. 86, Senate Draft 1, adopted in the 2012 Legislative Session, which urges the Department of Land and Natural Resources (DLNR), the Office of Planning (OP), and the Department of Health (DOH) to streamline the permitting process for the restoration of Hawaiian fishponds. This report provides a status update on that effort and outlines all activities to date, including coordination with practitioners and community organizations, efforts to coordinate with other agencies, and recommendations.

PAST ACTIONS

In response to feedback from an aquaculture workshop co-hosted in June 2011 by the Hawaiian Islands Humpback Whale National Marine Sanctuary (Sanctuary) and the University of Hawai`i Aquaculture Program, the Sanctuary hosted a meeting in March 2012 to facilitate initial discussions about the potential to streamline the permitting process for fishponds. DLNR's Office of Conservation and Coastal Lands (OCCL) and DOH participated in this meeting, along with fishpond practitioners and other agency representatives with relevant roles in the permitting process for fishpond restoration (Appendix "A"). A de facto team was formed among the National Marine Fisheries Services (NMFS) Pacific Islands Regional Office (PIRO), Office of the National Marine Sanctuaries Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS), and OCCL to continue the coordination effort among agencies, and to consider the recommendations in the Senate Resolution. The Team also supported a conference gathering of Hui Mālama Loko I`a, which is an informal statewide network of fishpond practitioners by securing funding through University of Hawai`i Sea Grant and providing input on the conference agenda to ensure discussion time for permit issues. Recognizing the need to have additional assistance to complete the necessary documentation and applications, Conservation International (Hawai`i Fish Trust) generously agreed to provide financial support to pay for a consultant to assist in the process. Honua Consulting was selected from several competitive proposals to serve as a contractor on the effort.

The team, including Honua Consulting, then attended the Hui Mālama Loko I`a conference in Waipā on Kaua`i in November 2012 to obtain additional information from the practitioners about their permitting needs. In addition to collecting numerous surveys from the practitioners about the activities taking place at the individual fishpond systems, the team worked with the practitioners to develop a declaration in support of the overall statewide effort (Appendix B).

The declaration was provided to the Office of Hawaiian Affairs (OHA), who promptly sent their support for the declaration (Appendix C).

The team has also learned that OP has concurrently initiated action to obtain a State of Hawai`i Coastal Zone Management Act (CZMA) Federal Consistency General Concurrence for Minor Federal Permit Activities for Hawaiian Fishpond Restoration, Repair, Maintenance and Reconstruction (dated November 15, 2012) (Appendix D).

AGENCY AND COMMUNITY REPRESENTATIVES CURRENTLY INVOLVED IN CONSULTATIONS

Agency or Organization	Personnel	Position
NMFS	Alan Everson	Aquaculture Coordinator
HIHWNMS	Malia Chow	Superintendent
HIHWNMS	Brenda Asuncion	Policy Specialist (also serving as liaison to Hui Mālama Loko ʻĀ)
OCCL	Sam Lemmo	Administrator
OCCL	Michael Cain	Planner
DOH	Gary Gill	Environmental Director
DOH - Clean Water Branch (CWB)	Alec Wong	Chief
Conservation International	Jason Philibotte	Director, Hawaiʻi Fish Trust
Honua Consulting	Trisha Kehaulani Watson	Consultant
Honua Consulting	Matthew Sproat	Consultant

CONTINUING ACTIONS / PROPOSED ACTIONS

In coordination with the state and federal agencies, Honua Consulting is developing an environmental assessment for a general permit for statewide programmatic restoration activities. The objective of the proposed action is the restoration, repair, maintenance and reconstruction of loko i`a (traditional Hawaiian fishpond systems) across the pae`āina of Hawai`i (Hawaiian archipelago). This action will stimulate traditional Hawaiian cultural activities, the restoration of fishpond systems and their related ecosystem services. Fishpond systems were a vital component of Hawai`i's pre-contact native Hawaiian communities; their degradation was caused by the urbanization and colonization brought and fostered by foreign contact. Fishponds are identified as valuable cultural and ecological resources that positively impact coastal ecosystems and their adjacent communities. Their restoration would significantly and positively impact coastal ecosystems and communities across Hawai`i.

The proposed action includes the development of a Statewide Programmatic General Permit and Programmatic Agreement that facilitates the restoration, repair, maintenance and reconstruction of traditional Hawaiian fishpond systems across Hawai`i. This program would create a discretionary streamlined and simplified permitting process for obtaining approval to undertake activities related to the repair, reconstruction and maintenance of traditional Hawaiian fishpond systems. This process would provide fishpond owners and operators the option to obtain the necessary federal and state approvals for restoration, repair, maintenance and reconstruction through submitting a single application to OCCL. The application would then undergo review by an advisory panel consisting of member representatives from the following federal and state agencies:

- OCCL
- DLNR – State Historic Preservation Division (SHPD)
- CWB
- NMFS PIRO

- United States Army Corps of Engineers (USACE)
- Traditional Fishpond Practitioner
- Additional members as necessary

Activities Eligible for Application

The following range of activities would be eligible for application under this program:

- Restoration, reconstruction, repair and maintenance of fishpond walls and sluice gates, including but not limited to the placement, movement, manipulation and temporary stockpiling of necessary materials.
- Placement, movement, manipulation and temporary stockpiling of small stones or rubble for interior wall fill (ʻiliʻili).
- Silt removal by hand and/or mechanized equipment from within fishponds.
- Vegetation removal by hand and/or mechanized equipment from within fishponds and from fishpond walls.
- Periodic post-restoration maintenance activities required to facilitate the long-term use, management and operation of fishponds.
- Use of hand and/or operation of fishponds.
- Use of hand and/or mechanized equipment to conduct fishpond restoration activities.
- Placement and use of aquaculture pens, nets and/or cages within fishponds.
- Use of harvesting equipment within fishponds.
- Are we going to say anything about commercial use?

Proposed Project Areas / Geographic Areas

The proposed project areas include the coastal land areas, shoreline areas and nearshore ocean waters within the State of Hawaii where existing Hawaiian fishponds are located. The specific geographic area is defined by the type of fishpond. This geographic area was selected purposefully to be consistent with the State of Hawaiʻi Coastal Zone Management Act (CZMA) Federal Consistency General Concurrence for Minor Federal Permit Activities for Hawaiian Fishpond Restoration, Repair, Maintenance and Reconstruction dated November 15, 2012 (Appendix C).

Fishponds are categorized into six main types according to the “Hawaiian Fishpond Study” (DHM Planners, Inc. and Public Archaeology Section, Applied Research Group, Bernice Pauahi Bishop Museum, June 1989; based on information by William K. Kikuchi, 1973, Hawaiian Aquacultural System). Each fishpond type is specific to a particular geographic area.

Type I – Loko ʻĀ Kuapā: A fishpond of littoral water whose side or sides facing the sea consist of a stone or coral wall usually containing one or more sluice gates.

Type II – Loko ʻĀ Puʻuone: An isolated shore fishpond usually formed by the development of barrier beaches building a single, elongated sand ridge parallel to the coast and containing one or more ditches and sluice gates.

Type III – Loko ʻŪa Wai: An inland freshwater fishpond which is usually either a natural lake or swamp, which can contain ditches connected to a river, stream, or the sea, and which contain sluice gates.

Type IV - Loko ʻŪa Kalo: An inland fishpond utilizing irrigated taro plots.

Type V – Loko ʻŪa ʻUmeʻiki: A fishtrap which is similar to a Type I – loko iʻa kuapā and has various combinations of inward and outward leading lanes.

Type VI – Kaheka and Hapunapuna: A natural pool or holding pond.

Interagency Efforts

The team has initiated discussions with CWB and USACE in an effort to secure the blanket permits necessary to fulfill the requirements of the Senate Resolution and programmatic activities.

Status of Legislatively Referenced Activities

State Action	Agency	Status
One master conservation district use application process that applies to all Hawaiian fishponds	OCCL	In development
A coastal zone management program consistency statement for Hawaiian fishponds	OP - Coastal Zone Management (CZM)	In development concurrent to the efforts led by OCCL and NMFS
Water quality certification for Hawaiian fishponds	CWB	In development
A national pollution discharge elimination system general permit for Hawaiian fishponds	CWB / USACE	In development
Administrative rules to be applied consistently throughout the State	General Permit (Administered through OCCL)	In development

RECOMMENDATIONS

- Legislation urging the continued development of a statewide programmatic general permit consistent with the Hui Mālama Loko ʻŪa declaration.
- Urge the continued coordination among DLNR, OP and DOH.
- Urge the following agencies to sign onto a statewide programmatic general permit administered through OCCL: OCCL, SHPD, CWB, CZM, USACE, NMFS, HIHWNMS and OHA.
- Urge inclusion of the widest range of fishponds and restorative efforts as permissible under law.
- Legislative briefing on the status of this effort in March 2013.

CONCLUSION

Thanks to the guidance of the Senate Resolution, this effort is developing to be a model of interagency and community cooperation.

APPENDIX A

<i>Agency or Organization</i>	<i>Personnel</i>	<i>Position</i>
Department of Agriculture	Todd Low	
Department of Health	Gary Gill	Environmental Director
Department of Land of Natural Resources Office of Coastal and Conservation Lands	Michael Cain	Planner
Department of Land of Natural Resources Office of Coastal and Conservation Lands	Sam Lemmo	Administrator
Farber and Associates	Joe Farber	Consultant
Hawaiian Islands Humpback Whale National Marine Sanctuary	Ka'au Abraham	Maui Island Coordinator
Hawaiian Islands Humpback Whale National Marine Sanctuary	Brenda Asuncion	Policy Specialist
Hawaiian Islands Humpback Whale National Marine Sanctuary	Malia Chow	Superintendent
Hawaiian Islands Humpback Whale National Marine Sanctuary	Kanani Frazier	Hawai'i Island Programs Assistant
Hawaiian Islands Humpback Whale National Marine Sanctuary, Department of Land of Natural Resources	Elia Herman	State Co-manager
Ka Honua Momona	Kauwila Hanchett	
National Marine Fisheries Services	Alan Everson	Aquaculture Coordinator
Paepae o He'eia	Hi'ilei Kawelo	Executive Director
Paepae o He'eia	Peleke Flores	Caretaker and Kū Hou Kuapā Coordinator
Paepae o He'eia	Keli'i Kotubetey	Assistant Executive Director
Papahānaumokuākea Marine National Monument	Keali'i Sagum	Cultural Specialist
US Army Corps of Engineers	Jessie Pa'ahana	Regulatory Biologist

APPENDIX B

DECLARATION OF HUI MALAMA LOKO IA

NOVEMBER 2-4, 2012

To express support for the development of an interagency programmatic agreement and related documents for the purpose of obtaining a state programmatic general permit and streamlining the permitting process for the restoration, protection, preservation, perpetuation, traditional and customary use, and/or maintenance of loko i'a (traditional Hawaiian fishpond systems) and their related biocultural resources and habitats across the paeaina o Hawaii.

WHEREAS, loko i'a are wholly unique sustainable aquaculture systems found nowhere else in the world; and

WHEREAS, loko i'a have many important lessons for modern aquaculture; and

WHEREAS, traditional loko i'a are an essential tool in the restoration of depleted coastal fish populations and fisheries;

WHEREAS, loko i'a are essential features of healthy and sustainable ahupuaa based ecosystems throughout Hawaii; and

WHEREAS, loko i'a can significantly contribute to healthy and sustainable food security and food sovereignty in Hawaii; and

WHEREAS, the restoration and reuse of loko i'a provide an opportunity to increase community-based sustainable economic development opportunities; and

WHEREAS, traditional Hawaiian fishponds are critical and essential sites of learning, traditional and ancestral knowledge, STEM (science, technology, engineering and math) education, cultural practice, healthy physical activity, and community fellowship; and

WHEREAS, traditional Hawaiian fishponds offer important opportunities for communities to engage in the sustainable management of cultural and natural resources; and

WHEREAS, traditional Hawaiian fishponds and their surrounding environments are habitats for native species and significantly contribute to biodiversity and natural resource conservation in Hawaii; and

WHEREAS, traditional Hawaiian fishponds provide significant ecological services to coastal and terrestrial environments; and

WHEREAS, traditional Hawaiian fishponds can play a role in mitigating the local impacts of sea level rise and coastal inundation; and

WHEREAS, traditional Hawaiian fishpond practitioners are an active and vibrant community of educators and practitioners; and

WHEREAS, Hui Malama Loko Ia met in Waipa in November 2012 for the 5th gathering of traditional Hawaiian fishpond practitioners across the state; and

WHEREAS, for over 20 years permitting difficulties have been identified by fishpond practitioners as one of the leading obstacles in traditional Hawaiian fishpond restoration and use;

WHEREAS, repair of many Hawaiian fishponds may require permits federal, state and county governments; and

WHEREAS, the process in obtaining a permit for the restoration of loko i'a is time consuming, complicated, costly, and confusing and varies depending upon the circumstances of the party applying for the permit; and

WHEREAS, the existing regulations and permit requirements impede community organizations and Native Hawaiian aquaculturalists from repairing and maintaining loko i'a; and

WHEREAS, Article XII Section 7 of the Hawaii State Constitution states: "The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights"; and

WHEREAS, the enforcement of state and federal regulations, including but not limited to the Endangered Species Act and the Migratory Bird Act, can hinder traditional and customary use of loko i'a; and

WHEREAS, the State has the ability to streamline the permit process and promote interagency cooperation to facilitate restoration, protection, preservation, perpetuation, traditional and customary use, maintenance, and/or leasing of fishponds to cultural and familial descendants and loko i'a practitioners; and

WHEREAS, the Senate of the Twenty-sixth Legislature of the State of Hawaii, Regular Session of 2012, urged the Department of Land and Natural Resources, Department of Health, and Office of Planning to streamline the permitting process for the restoration of Hawaiian fishponds;

WHEREAS, the Department of Land and Natural Resources Office of Conservation and Coastal Lands with the Hawaiian Islands Humpback Whale National Marine Sanctuary, the National Marine Fisheries Service Pacific Island Regional Office and Conservation International / Hawaii Fish Trust have worked in coordination with fishpond practitioners

to begin a comprehensive initiative to streamline the permit process for restoration of Hawaiian fishponds;

WHEREAS, representatives from these same agencies attended the 5th conference of Hui Malama Loko Ia to obtain support, guidance, data and input from traditional fishpond practitioners for this comprehensive initiative;

NOW, THEREFORE, WE, THE TRADITIONAL HAWAIIAN FISHPOND PRACTITIONERS AND MEMBERS OF HUI MALAMA LOKO I'A, express support for the development of an interagency programmatic agreement and related documents for the purpose of obtaining a state programmatic general permit and streamlining the permitting process for the restoration, protection, preservation, perpetuation, traditional and customary use, and/or maintenance of loko i'a (traditional Hawaiian fishpond systems) and their related biocultural resources and habitats across the paeaina o Hawaii.

DECLARED, in the ahupuaa of Waipa, on the island of Kauai, in the paeaina o Hawaii, this second, third and fourth day of November, 2012.


Signature

FRED CACHOLA
Printed Name

MAKANI HOU O KALONO-HONOKAHI
Fishpond / Organization


Signature

Gilbert P. Kea
Printed Name

Hoai, Kualu, Koloa, Kauai; Rooki #3
Fishpond / Organization


Signature

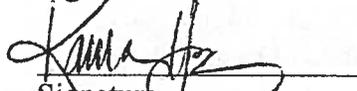
Mataka Kaamoa
Printed Name

Hanaelei Understad Hui
Fishpond / Organization


Signature

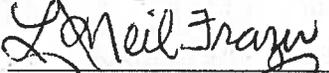
Keli Kotubetey
Printed Name

Pae'ae o He'eia
Fishpond / Organization


Signature

KAMA HO
Printed Name

Alii KATHAUA MOHONA
Fishpond / Organization


Signature

L. Neil Frazer
Printed Name

School of Ocean & Earth Science Technol
University of Hawaii at Manoa
Fishpond / Organization


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Royce Puhiz
Printed Name

Pae'ae o He'eia
Fishpond / Organization


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Kawika Winter
Printed Name

Loko Ke'e
Fishpond / Organization


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Ted Blake
Printed Name

Malamalama Oloa
Fishpond / Organization

Carlos Delacruz CARLOS ANDRADE

Signature

Printed Name

KAMAKAKUOKAANI
CENTER FOR HAWAII STUDIES
Fishpond / Organization UH MĀNOA

Jessica Casson

Signature

Jessica Casson

Printed Name

WKO EA
Fishpond / Organization

Kirsten Oleson

Signature

Kirsten Oleson

Printed Name

UH Mānoa - NREM
Fishpond / Organization

Isaac Haop

Signature

Isaac Haop

Printed Name

Aimakapa & Aiopio
Fishpond / Organization

Lulani Lastimosa

Signature

Lulani Lastimosa

Printed Name

ORIS COUNTY WAIMANALO/PALOHUA
Fishpond / Organization

Kimi Apiki

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Kimi Apiki

Printed Name

LOKO EA / ALL LIKE, INC.
Fishpond / Organization

Jenny Yagobich

Signature

JENNY YAGOBICH

Printed Name

MĀLANA PŪPŪKĀA LUAINĀA
Fishpond / Organization

Sayo Constantino

Signature

Sayo Constantino

Printed Name

Loko ea / Mēlanē loko ea
Fishpond / Organization

Brenda Azuncan

Signature

Brenda Azuncan

Printed Name

Heeia / Paepae o Heeia
Fishpond / Organization

Angela Hiki Kawelo

Signature

Angela Hiki Kawelo

Printed Name

Heeia / Paepae o Heeia
Fishpond / Organization

L'HOPE YOSHITO

Signature

L'HOPE YOSHITO

Printed Name

halulu fishpond
Fishpond / Organization

Malia Nobrega-Olivera

Signature

Malia Nobrega-Olivera

Printed Name

UHM LAMA
Fishpond / Organization

Vigora I. Alonzo-Olivera

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Vigora I. Alonzo-Olivera

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UHM LAMA
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Stacy Sproat-Bell

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Stacy Sproat-Bell

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Halulu/Waipā
Fishpond / Organization

James Kapule Torioge

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James Kapule Torioge

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Halulu/Waipā
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Joseph Farber

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Joseph Farber

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FARBER ASSOC.

Man Hobaru
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Lima Ho-Last moa Gods Country Waianuoa
Printed Name Fishpond / Organization

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Rua O Eleili Pinto
Printed Name

Paepae o He'eia
Fishpond / Organization

Chenise Sana
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Chenise Sana
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MA'D Organic Farms
Fishpond / Organization

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Lea Wekbin
Printed Name

Halulu/Waripa Foundation
Fishpond / Organization

A. Chandler
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A. Chandler
Printed Name

Waipa
Fishpond / Organization

Noah Kōamōna
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Noah Kōamōna HUI MAKA'AINANA O MAKA
Printed Name Fishpond / Organization

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Chandler Forrest
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Chandler Forrest
Printed Name

Waipa / Hui Maka'ainana o Makana
Fishpond / Organization

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PELEKE FURIES
Printed Name

PAEPAE O HEEIA
Fishpond / Organization

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Kevin KJ Chang
Printed Name

Kua'aina Ulu Auamo
Fishpond / Organization

Kahiau Wallace
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Kahiau Wallace
Printed Name

Huilua Houala Aina Kupono
Fishpond / Organization

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Kekaulike P Tomich Kiholo/TNC
Printed Name Fishpond / Organization

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Chris Cramer
Printed Name

Maua'ala Fishpond Heritage Ctr
Fishpond / Organization

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Kea'au Laka'amao Leota
Printed Name

Huilua, Kahana
Fishpond / Organization

[Signature]
Signature

KINDHI PIZAPPO
Printed Name

He'eia Fishpond
Fishpond / Organization

[Signature]
Signature

Ewa'iko Leota
Printed Name

Huilua, Kahana
Fishpond / Organization

Alaka'i Tule
Signature

Ikauka Wiser
Printed Name

Pae Pae O He'eia
Fishpond / Organization

Kimono McCarty
Signature

Kimono Kuvipo McCarty
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Moli'i Kualoa Ranch
Fishpond / Organization

Kalanicus Pitte
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Kalanicus Pitte
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Kauai HLC
Fishpond / Organization

Carl Berg
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Carl Berg
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Hawaii Wildlife Tools
Fishpond / Organization

Rynn Like
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Rynn Like
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Waipa Foundation
Fishpond / Organization

Cliffen Botelho
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Cliffen Botelho
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Pae Pae O He'eia
Fishpond / Organization

Māhealani Botelho
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Māhealani Botelho
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Pae Pae O He'eia
Fishpond / Organization

Johanna Ventura
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Johanna Ventura
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Waipa Foundation
Fishpond / Organization

Theresa Jokiell
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Theresa Jokiell
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Kaloko
Fishpond / Organization

Kauka Rogas
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Kauka Rogas
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Waipa
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Fishpond / Organization

APPENDIX C

PHONE (808) 594-1888



RECEIVED FAX (808) 594-1865

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STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

November 27, 2012

William J. Ailā, Jr.
Chairperson
Department of Land & Natural Resources
1151 Punchbowl Street
Honolulu, Hawai'i 96813

2012 DEC -7 A 10:06
RECEIVED
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

Re: OHA Support of Hui Mālama Loko I'a Declaration of November 2-4, 2012

Dear Chairperson Ailā:

I write on behalf of the Office of Hawaiian Affairs (OHA) to express our strong support of the Declaration of Hui Mālama Loko I'a dated November 2-4, 2012 (Declaration), regarding a streamlined, programmatic state permitting process for the restoration, preservation, perpetuation, traditional and customary use, and/or maintenance of loko i'a (Hawaiian fishpond systems) and their associated resources and habitats. OHA affirms the findings contained within the Declaration and likewise urges all appropriate state and federal agencies to facilitate the development of a streamlined permitting process for loko i'a restoration and stewardship activities.

As background, OHA is a unique, quasi-independent state agency established by the Hawai'i State Constitution and state statutes. Our purpose is to better the conditions of all Native Hawaiians, regardless of blood quantum. Guided by nine trustees elected by the voters of Hawai'i, OHA advances the interests of Native Hawaiians and serves as a fiduciary for Native Hawaiian public trust funds and other resources.

Loko i'a contributed substantially to the local food supply prior to Western contact and are recognized as a truly unique accomplishment of the Native Hawaiian people. The variety of loko i'a designs and construction methods reflects an unparalleled understanding of engineering, ecology, and agriculture. Loko i'a required hundreds if not thousands of hands working in unity for their construction and were indications of the great wealth of the ahupua'a in which they were located. Loko i'a also held significant spiritual significance, and were considered places of

Chairperson William J. Ailā

November 27, 2012

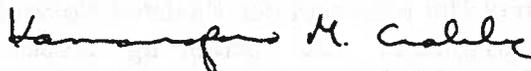
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spiritual power where akua and 'aumakua often gathered. Today, the restoration of loko i'a provides an opportunity to not only perpetuate the cultural beliefs and understandings that enabled their creation, but to also explore the potential for achieving food security and self-sufficiency in Hawai'i nei.

OHA has been and continues to remain committed to supporting the restoration, use, and maintenance of traditional loko i'a as an important component of cultural perpetuation, environmental stewardship, and food self-sufficiency in Hawai'i. OHA has engaged in a number of efforts to support loko i'a practitioners and community groups in recent years. This includes the submission of recommendations for Office of Conservation and Coastal Lands rule revisions to facilitate loko i'a restoration and maintenance; the sponsorship of the Paepae o He'eia executive director's attendance at a U.S. Senate Committee on Indian Affairs oversight hearing in Washington, D.C., to share her mana'o on the challenges loko i'a practitioners face in their work; the submission of testimony in support of Senate Resolution 86 and Senate Concurrent Resolution 151 of the 2012 Hawai'i Legislature, urging the streamlining of state permits for the restoration of loko i'a; and OHA staff meetings and discussions with numerous beneficiaries regarding loko i'a restoration and stewardship activities. Over the past ten years, OHA has also invested more than \$475,000 in community-based restoration, education, and outreach projects for loko i'a throughout the state. OHA will continue to support efforts to restore Hawai'i's loko i'a, and urges our state and federal agencies to do the same.

Please do not hesitate to contact Sterling Wong, Public Policy Manager, at (808)594-1908 or via e-mail at sterlingw@oha.org should you have any questions regarding this matter.

'O au nō, me ka 'oia'i'o,



Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Officer

KMC;wt

CC:

Department of Agriculture, State of Hawai'i
Department of Health, State of Hawai'i
U.S. Fish & Wildlife Service
U.S. Environmental Protection Agency
U.S. National Oceanic & Atmospheric Administration
U.S. Army Corps of Engineers



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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GOVERNOR
RICHARD C. LIM
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DEPUTY DIRECTOR
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OFFICE OF PLANNING

OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
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Fax: (808) 587-2824

Ref. No. P-13784

November 15, 2012

Lieutenant Colonel Thomas D. Asbery
District Engineer
U.S. Army Corps of Engineers, Honolulu District
Building 230
Fort Shafter, Hawaii 96858

Attention: Mr. George P. Young, Chief
Regulatory Branch

Dear Lt. Colonel Asbery:

Subject: Coastal Zone Management Act (CZMA) Federal Consistency General Concurrence for Minor Federal Permit Activities for Hawaiian Fishpond Restoration, Repair, Maintenance and Reconstruction

The Hawaii Coastal Zone Management (CZM) Program intends to issue a CZMA federal consistency general concurrence for minor federal permit activities for Hawaiian fishpond restoration, repair, maintenance and reconstruction in the State of Hawaii. The general concurrence is being established in response to Senate Resolution No. 86, adopted by the Hawaii State Legislature on April 10, 2012, which urges the Department of Land and Natural Resources, Department of Health, and Office of Planning to streamline the permitting process for the restoration of Hawaiian fishponds. The resolution also requests the Office of Planning to consider "a coastal zone management program consistency statement for Hawaiian fishponds."

Coastal Zone Management Act (CZMA) federal consistency regulations (15 CFR Part 930) establish procedures for States to issue general concurrences (15 CFR §930.53(b)) allowing similar minor work in the same geographic area to avoid repeated review of minor federal license or permit activities which, while individually inconsequential, cumulatively affect any coastal use or resource. Federal permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification and review requirements of 15 CFR Part 930, Subpart D - Consistency for Activities Requiring a Federal License or Permit.

The U.S. Army Corps of Engineers permit is the relevant federal permit for Hawaiian fishpond restoration activities. The Hawaii federal permit list includes the following U.S. Army Corps of Engineers permit authorities:

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

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HAWAIIAN COASTAL LANDS

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Rivers and Harbors Act of 1899, Sections 9, 10 and 11
Marine Protection, Research and Sanctuaries Act of 1972, Section 103
Federal Water Pollution Control Act of 1972 and amendments, Section 404

Federal consistency general concurrence procedures (15 CFR §930.53(b)) require that the applicable federal permit activities and the relevant conditions be included in the Hawaii list of federal permits subject to federal consistency review. Therefore, we are amending our federal permit list to include the general concurrence provisions for Hawaiian fishponds. The amended Hawaii CZM Program federal permit list is enclosed for your review.

We would appreciate receiving your comments within 30 days of receipt of this letter. If you have any questions, please contact John Nakagawa of our CZM Program at 587-2878.

Sincerely,

Mary Lou Kobayashi for

Jesse K. Souki
Director

Enclosure

- c: Mr. David Kaiser, OCRM (w/ enclosure)
- Mr. Steve Frano, OCRM (w/ enclosure)
- Department of Health, Clean Water Branch (w/ enclosure)
- Department of Land and Natural Resources
 - ✓ Office of Conservation and Coastal Lands (w/ enclosure)
 - Historic Preservation Division (w/ enclosure)

Hawaii Coastal Zone Management Program
General Concurrence for Minor Federal Permit Activities for
Hawaiian Fishpond Restoration, Repair, Maintenance and Reconstruction

Senate Resolution No. 86 (SR86), which was adopted by the Hawaii State Legislature on April 10, 2012, urges the Department of Land and Natural Resources, Department of Health, and Office of Planning to streamline the permitting process for the restoration of Hawaiian fishponds. The resolution also requests the Office of Planning to consider “a coastal zone management program consistency statement for Hawaiian fishponds.” Hawaiian fishponds are aquaculture structures, which include man-made and natural enclosures of water in which fish and other aquatic organisms are raised and harvested. Hawaiian fishponds have historic, cultural and economic significance for the State of Hawaii.

In response to SR86 and in accordance with federal regulations, the Hawaii Coastal Zone Management (CZM) Program is issuing a general concurrence for minor federal permit activities for Hawaiian fishpond restoration, repair, maintenance and reconstruction. Coastal Zone Management Act federal consistency regulations (15 CFR Part 930) establish procedures for States to issue general concurrences (15 CFR §930.53(b)) allowing similar minor work in the same geographic area to avoid repeated review of minor federal license or permit activities which, while individually inconsequential, cumulatively affect any coastal use or resource. Federal permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification and review requirements of 15 CFR Part 930, Subpart D - Consistency for Activities Requiring a Federal License or Permit.

The U.S. Army Corps of Engineers permit is the relevant federal permit for Hawaiian fishpond restoration activities. The Hawaii federal permit list includes the following U.S. Army Corps of Engineers permit authorities:

Rivers and Harbors Act of 1899, Sections 9, 10 and 11
Marine Protection, Research and Sanctuaries Act of 1972, Section 103
Federal Water Pollution Control Act of 1972 and amendments, Section 404

Federal consistency general concurrence procedures (15 CFR §930.53(b)) require that the applicable federal permit activities and the relevant conditions be included in the Hawaii list of federal permits subject to federal consistency review. Therefore, the Hawaii CZM Program is amending the federal permit list to include the general concurrence provisions for Hawaiian fishponds.

Hawaii List of Federal Licenses and Permits Subject to Federal Consistency Review

U.S. Army Corps of Engineers permits required under:

Rivers and Harbors Act of 1899, Sections 9, 10 and 11
Marine Protection, Research and Sanctuaries Act of 1972, Section 103
Federal Water Pollution Control Act of 1972 and amendments, Section 404

General Concurrence for Federal Permit Activities for Hawaiian Fishpond Restoration, Repair, Maintenance and Reconstruction

I. Federal Permit Activities

CZM federal consistency general concurrence applies to the following Federal permit activities for the restoration, repair, maintenance and reconstruction of existing Hawaiian fishponds, subject to the applicable geographic area and the relevant conditions listed below. Federal permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification and review requirements of 15 CFR Part 930, Subpart D - Consistency for Activities Requiring a Federal License or Permit.

- (a) Restoration, reconstruction, repair and maintenance of fishpond walls and sluice gates, including but not limited to the placement, movement, manipulation and temporary stockpiling of necessary materials.
- (b) Placement, movement, manipulation and temporary stockpiling of small stones or rubble for interior wall fill ('ili`ili).
- (c) Silt removal by hand and/or mechanized equipment from within fishponds.
- (d) Vegetation removal by hand and/or mechanized equipment from within fishponds and from fishpond walls.
- (e) Periodic post-restoration maintenance activities required to facilitate the long-term use, management and operation of fishponds.
- (f) Use of hand and/or mechanized equipment to conduct fishpond restoration activities.
- (g) Placement of temporary structures within fishponds which are necessary to conduct restoration activities.
- (h) Placement and use of aquaculture pens, nets, and/or cages within fishponds.
- (i) Use of harvesting equipment within fishponds.

II. Geographic Area

The geographic areas covered by this general concurrence include coastal land areas, shoreline areas, and nearshore ocean waters within the State of Hawaii where existing Hawaiian fishponds are located. The specific geographic area is defined by the type of fishpond.

Fishponds are categorized into six main types according to the "Hawaiian Fishpond Study" (DHM Planners, Inc. and Public Archaeology Section, Applied Research Group, Bernice Pauahi Bishop Museum, June 1989; based on information by William K. Kikuchi, 1973, Hawaiian Aquacultural System). Each fishpond type is specific to a particular geographic area. Refer to Figure 1, which provides a conceptual diagram and geographic area of each type of fishpond.

Type I - Loko Kuapa: A fishpond of littoral water whose side or sides facing the sea consist of a stone or coral wall usually containing one or more sluice gates.

Type II - Loko Pu'uone: An isolated shore fishpond usually formed by the development of barrier beaches building a single, elongated sand ridge parallel to the coast and containing one or more ditches and sluice gates.

Type III - Loko Wai: An inland freshwater fishpond which is usually either a natural lake or swamp, which can contain ditches connected to a river, stream, or the sea, and which contain sluice gates.

Type IV - Loko i`a kalo: An inland fishpond utilizing irrigated taro plots.

Type V - Loko `Ume`iki: A fishtrap which is similar to a Type I - loko kuapa and has various combinations of inward and outward leading lanes.

Type VI - Kaheka and Hapunapuna: A natural pool or holding pond.

III. Conditions

1. Copies of U.S. Army Corps of Engineers permit applications for activities covered by this general concurrence must be sent by the applicant to the Hawaii CZM Program for the purpose of monitoring adherence to the required conditions.
2. Fishpond restoration activities shall be conducted in compliance with applicable State of Hawaii water quality standards and requirements of Hawaii Revised Statutes (HRS) Chapter 342D Water Pollution and Hawaii Administrative Rules (HAR) Chapter 11-54 Water Quality Standards, which are federally approved enforceable policies of the Hawaii CZM Program.

3. Fishpond restoration activities shall be conducted in compliance with applicable State of Hawaii water pollution control requirements of HRS Chapter 342D Water Pollution and HAR Chapter 11-55 Water Pollution Control, which are federally approved enforceable policies of the Hawaii CZM Program.
4. Best management practices, such as silt containment devices and turbidity control measures, shall be implemented during fishpond restoration activities to minimize impacts on surface and ocean water quality. This condition is necessary to ensure consistency with Hawaii CZM Program coastal ecosystems policies established in HRS Chapter 205A Coastal Zone Management (HRS §205A-2(b)(4)(A) and HRS §205A-2(c)(4)), which is a federally approved enforceable policy.
5. Materials used for fishpond restoration, reconstruction and repair may be from on-site and/or off-site, and shall be clean and free of waste products, debris, or any potentially hazardous materials. This condition is necessary to ensure consistency with Hawaii CZM Program coastal ecosystems policies established in HRS Chapter 205A Coastal Zone Management (HRS §205A-2(b)(4)(A) and HRS §205A-2(c)(4)), which is a federally approved enforceable policy.
6. Whenever active fishpond restoration activities are occurring, work areas shall be monitored for endangered, threatened or indigenous species protected by the State of Hawaii under HRS Chapter 195D Conservation of Aquatic Life, Wildlife, and Land Plants, and HAR Chapter 13-24 Indigenous Wildlife, Endangered and Threatened Wildlife, and Introduced Wild Birds, which are federally approved enforceable policies of the Hawaii CZM Program. If any protected endangered, threatened or indigenous species are present in the vicinity of the restoration area, work shall cease until the animal has left the area.
7. Fishpond restoration activities shall be conducted in compliance with applicable State of Hawaii conservation district requirements established in HRS Chapter 183C Conservation District and HAR Chapter 13-5 Conservation District, which are federally approved enforceable policies of the Hawaii CZM Program.
8. The State Historic Preservation Division (SHPD) shall be consulted prior to beginning fishpond restoration and any requirements of SHPD shall be complied with. This condition is necessary to ensure consistency with HRS Chapter 6E - Historic Preservation, which is a federally approved enforceable policy of the Hawaii CZM Program.
9. Fishpond restoration activities shall be conducted in compliance with special management area and shoreline setback area requirements of the respective county in which the fishpond restoration occurs. This condition is necessary to ensure consistency with HRS Chapter 205A Coastal Zone Management (HRS Chapter 205A, Part II and Part III), which is a federally approved enforceable policy of the Hawaii CZM Program.
10. Public access along the shoreline shall not be precluded by any fishpond restoration activities. If restoration work involves an area used for public shoreline access and if safe public access cannot be maintained during restoration, then provisions shall be made to

ensure that public access is provided by alternative routes and/or means. This condition is necessary to ensure consistency with federally approved Hawaii CZM Program enforceable policies for ensuring and managing public access established in HRS Chapter 205A Coastal Zone Management (HRS §205A-2(b)(1)(A) and HRS §205A-2(c)(1)(B)) and HRS Chapter 115 Public Access to Coastal and Inland Recreational Areas.

IV. General Concurrence Procedures

- (a) Federal permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification and review requirements of 15 CFR 930, Subpart D - Consistency for Activities Requiring a Federal License or Permit.
- (b) Copies of federal license and permit applications for activities subject to the general concurrence must be sent by the applicant to the Hawaii CZM Program for the purpose of monitoring adherence to the required conditions.

