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**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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May 18, 2015

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LAND  
STATE PARKS

**POSTAL MAIL**

Sydney Singer  
Director, Good Shepherd Foundation  
PO Box 1880  
Pahoa, HI 96778

Re: Comments on Proposed DLNR Exemption List

Dear Mr. Singer:

Thank you for your comments dated April 8, 2015 on the Proposed DLNR Exemption List. We appreciate your participation in the public review process and have the following responses to your specific comments:

**Exemption Class 1. #5. (Rescue of threatened or endangered species)**

This exemption addresses actions relating to individual animals, such as picking up and rehabilitating Newell's shearwaters found on the ground after collision with lighting structures. No change to the exemption is proposed.

**Exemption Class 2. #22. (Replacement or renovation of existing landscaping or vegetation)**

The Department disagrees that an area limit is needed; this exemption is necessarily limited in scope by applying only to *existing* landscaping or vegetation. No change to the exemption is proposed.

**Exemption Class 3. #1. (Fences around or to manage rare, threatened or endangered plants, covered or open areas for endangered species, game birds and mammals, auxiliary buildings for food and equipment storage, incubators and brooders, open-top breeding and release pens, field aviaries, and hacking boxes, and for watershed and native forest management and restoration. Fences shall contain step-overs or other features that permit pedestrian access for cultural and recreational use)**

This is an existing exemption, concurred on by the Environmental Council in 2011. Prior to that date, the Department had prepared dozens of environmental assessments for fencing, each resulting

in a Finding of No Significant Impact. This exemption allows more funding to go directly to conservation actions that directly benefit native species. Even with the exemption, DOFAW continues to communicate regularly with the hunting community when developing new fencing alignments, to minimize impacts to hunters and reduce misunderstandings. No change to the exemption is proposed.

Exemption Class 4. #8 (Removal of invasive vegetation utilizing cutting, mowing, application of federal and state approved herbicides in conformance with label instructions, distribution of biocontrol agents approved by the State of Hawaii, and other approved methods)

This exemption is not for the initial use of a biocontrol agent. The use of biocontrol agents includes the preparation of an EA or EIS for specific targets before approval by the Department of Agriculture. This exemption is for the distribution (use) of a biocontrol agent by DLNR **after** it has already undergone an environmental assessment and been approved by the Department of Agriculture.

The Department also believes that the term “and other approved methods” is limited by the adjective “approved.” The phrase is intended so that the exemption does not unintentionally omit methods with negligible impacts on the environment that may be developed over time, much like the development of the technique to remove invasive algae through vacuum sucking. No change to the exemption is proposed.

Class 4. #12 (Establish temporary or permanent vegetative cover including trees, shrubs, grasses, and sod for landscaping, reforestation, soil stabilization, watershed protection, wildlife habitat, native ecosystem restoration, and rare plant preservation; provided, however, that this exemption shall not apply to tree plantings for which harvesting is planned or is reasonably foreseeable)

This exemption is a compilation of existing exemptions (DOFAW existing exemption Class 4, #7, DOBOR existing exemption Class 4, #3, and Parks existing exemption Class 4, #4). The Department disagrees that an area limit is necessary; the exemption is necessary to effectively implement the Department's various statutory duties (to protect native ecosystems and watershed, to promote public hunting, to provide recreational opportunities, etc.). No change to the exemption is proposed.

Class 4. #15 (Minor alteration in state waters, including restoration of native species and control of invasive weeds, algae, invertebrates, fishes, or other invasive aquatic organisms)

The Department disagrees that an area limit is necessary or that a limit on the types of control activities is needed, as the exemption applies only to *minor* alterations. Actions which would “poison an entire waterway” would not qualify under this exemption, as this would in no way be considered a minor alteration. In addition, all use of herbicides or pesticides is conducted in strict adherence with label restrictions and in accordance with existing law. No change to the exemption is proposed.

Class 4. #16 (Control of pests utilizing federal and state approved pesticides, herbicides, fungicides, and toxicants in conformance with label instructions; traps, snares, lures, and repellents; distribution of biocontrol agents approved by the state of Hawaii; and other approved methods)

You objected to the use of snares and traps as cruel; the Department utilizes best practices in the use of snares and traps to prevent harm to non-target animals and to minimize suffering of the target species. In many situations, such as the remote nesting colonies of endangered seabirds, snares and traps are the only effective tools to remove invasive predators (particularly rats and mongoose). No change to the exemption is proposed.

Class 4. #22. (Natural resource management actions that the Department declares are designed specifically to monitor, conserve, or enhance the status or native species or native species' habitats, such as removal of introduced vegetation, reintroduction of native species in to their historic range, or construction of fencing. This exemption would not apply to biocontrol of invasive species or commercial logging)

You object to this proposed exemption as too broad, with potentially significant impacts. The Department believes this exemption facilitates the implementation of conservation actions with a positive impact on the natural environment the Department is charged to protect and conserve. No change to the exemption is proposed.

Class 5. #13 (Research or experimental management actions that the Department declares are designed specifically to monitor, conserve, or enhance native species or native species' habitat)

The Department does not believe that this exemption provides a "carte blanche" for research; instead, this exemption provides the Department the flexibility to test new techniques or management strategies to determine effectiveness, potential side effects, and affordability on a small scale. Often this information is used as part of an environmental assessment before applicability on a larger (e.g., statewide) scale. Again, the use of the exemption will be limited by the terms of the Hawaii Administrative Rules defining exemption class 5 as "basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource." No change to the exemption is proposed.

Class 5. #16. (Captive propagation of birds, mammals, invertebrates or aquatic organisms; cultivation of plants. Housing, care, feeding, veterinarian examination, breeding (pairing, hatching, brooding, fledgling, rearing), cross fostering, double clutching nest, and experimental studies of native species (including those which are rare, threatened or endangered), game birds and game mammals; may involve hybridization of game birds or mammals).

This is an existing exemption. It covers the ongoing captive propagation of endangered forest birds and would facilitate a quick response if a precipitous decline in any other populations of endangered species occurs (e.g., due to a new bird disease or the spread of mongoose to Kauai). In all cases, the requirements of the federal Endangered Species Act and HRS Chapter 195D would be followed. No

changes are proposed, except to remove the clause “may involve hybridization of game birds or mammals.”

**Class 5. #18. (Research or experimental wildlife and plant management actions, including controlled grazing or burning as a management tool and outplanting)**

The Department does not believe that this exemption provides a “carte blanche” for research; instead, this existing exemption provides the Department the flexibility to test new techniques or management strategies to determine effectiveness, potential side effects, and affordability on a small scale. Often this information is used as part of an environmental assessment before applicability on a larger (e.g., statewide) scale. Again, the use of the exemption will be limited by the terms of the Hawaii Administrative Rules defining exemption class 5 as “basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.” No change to the exemption is proposed.

**Class 5. #19. Research or experimental management actions to identify, monitor, control, or eradicate introduced species.**

The Department does not believe that this exemption provides a “carte blanche” for research; instead, this existing exemption provides the Department the flexibility to test new techniques or management strategies to determine effectiveness, potential side effects, and affordability on a small scale. Often this information is used as part of an environmental assessment before applicability on a larger (e.g., statewide) scale. Again, the use of the exemption will be limited by the terms of the Hawaii Administrative Rules defining exemption class 5 as “basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.” No change to the exemption is proposed.

The Department will continue to discuss the proposed exemption list with the Environmental Council; further changes may be made before the Council concurs on a final list. Again, thank you for your participation in the public review process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Suzanne Case".

Suzanne Case  
Chairperson, DLNR

cc: OEQC