

## Hijirida, Linda M.

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**From:** Hijirida, Linda M.  
**Sent:** Monday, May 11, 2015 8:30 AM  
**To:** Wooley, Jessica E.; 'prentissc001@hawaii.rr.com'; 'C Mitchell'; Quinn, Dan S;  
'Tanya.Rubenstein@hawaii.gov'  
**Subject:** FW: Comments on DLNR proposed exemption list  
**Attachments:** image.jpg; CCH comments DLNR proposed exemptions 05 08 15.pdf

Forwarding comments.

-----Original Message-----

From: HI Office of Environmental Quality Control  
Sent: Monday, May 11, 2015 8:13 AM  
To: Hijirida, Linda M.  
Subject: FW: Comments on DLNR proposed exemption list

Forwarding to self.

-----Original Message-----

From: Marjorie Ziegler [mailto:mz@conservehi.org]  
Sent: Fri 5/8/2015 8:51 PM  
To: HI Office of Environmental Quality Control  
Subject: Comments on DLNR proposed exemption list

Aloha. See attached comments. Mahalo.

Marjorie Ziegler  
Executive Director  
Conservation Council for HawaiOi

Let them live!

<sup>3</sup>Ho Oailona<sup>2</sup> by Caren Loebel-Fried

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Conservation Council  
for Hawai'i

*Hawai'i's voice for wildlife*

*Kō Hawai'i leo no nā holoholona lōhiu*



May 8, 2015

Mark Ambler, Chair  
Office of Environmental Quality Control  
235 South Beretania Street, Suite 702  
Honolulu, HI 96813

Via Email: [oeqchawaii@doh.hawaii.gov](mailto:oeqchawaii@doh.hawaii.gov)

### Comments on the Department of Land and Natural Resources Proposed Exemption List

Dear Mark and Members of the Environmental Council,

Aloha. Conservation Council for Hawai'i submits the following comments on the Department of Land and Natural Resources proposed exemption List.

Conservation Council for Hawai'i is dedicated to protecting native Hawaiian plants, animals, and ecosystems for future generations. Although the Hawaiian Islands make up less than 0.2% of total land mass in the United States, there are more listed threatened and endangered species and probably more species extinction in Hawai'i than anywhere else in the nation. Except for some of our indigenous marine mammals, sea turtles, and seabirds, virtually all of our threatened and endangered plants and animals are unique to Hawai'i. Conservation of these species must happen here in the islands or they will be lost forever.

It is within this context that CCH supports DLNR's proposed exemptions relating to native Hawaiian species and habitat conservation. We must take bold action to save what remains of our native flora and fauna, and even then, we may not always succeed. We are confident DLNR staff members will be bold, but will also use their best judgment when applying exemptions relating to native species and habitat conservation.

We also understand that Hawai'i Administrative Rules Section 11-200-8 provides that *"All exemptions under the classes in this section are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment."* Therefore, if significant impacts may result from any given exempt action, government agencies (including the proposing agency), watchdog organizations (including CCH), and concerned citizens may invoke this provision. Good record keeping, public notice, and public access to information on specific exempt actions are also essential to protecting the environment. So far, DLNR has been open and transparent in applying its exemption list, noting specific exempt actions on Board of Land and Natural Resources meeting agenda, for example.

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Executive Director: Marjorie Ziegler | Administrator: Jonnetta Peters



We offer the following comments only on exemptions relating to native Hawaiian species and habitat conservation.

**Class 1 - Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing**

**4. Fire management**

We support the proposed revised language to exempt fire management activities, including prevention and restoration measures. We understand that fire fighting generally is already a DLNR exempt action.

**5. Rescue of threatened or endangered species**

We strongly support this exemption. By definition, if a rescue of a threatened or an endangered species is necessary, there probably would not be enough time to prepare an environmental assessment or environmental impact statement before attempting to rescue the species. Furthermore, some imperiled species have been reduced to such low numbers or to such narrow ranges of distribution, rescuing individual plants, animals, or populations could be the determining factor in whether a species continues or goes extinct. It would be a tragedy to lose a species forever because the DLNR had to prepare an environmental assessment or environmental impact statement before rescuing the species.

**Class 3 - Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small, equipment and facilities and the alteration and modification of same...**

**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 storage, equipment storage, incubators, and brooders, open-top breeding and release pens, field aviaries, 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.**

Fencing for protecting native species and related activities was approved as an exemption approximately 4 years ago, and we urge the Council to continue to support this exemption. We support the use of fences to exclude introduced feral and game mammals from sensitive watersheds and native species habitats, and to contain such animals in other appropriate areas. Fencing is one of the best tools we have to protect sensitive areas from introduced browsing and grazing mammals. Hawaiian plants, animals, and ecosystems evolved over millions of years in the absence of continental grazing and browsing mammals, and will not survive if such animals remain in native areas. Fences are also the only tool available to exclude browsing and grazing mammals from our essential watersheds. Currently, only 10% of our watersheds are protected and actively managed.

**Class 3 cont.**

- 2. Construction and location of new, small facilities or structures necessary to support or enhance natural resource management actions on state lands and waters that the Department declares are designed specifically to monitor, conserve, or enhance the status of native species or native species' habitats, such as nurseries, helispots, or other similar structures.**

Similar to fencing, we support an exemption for such facilities and structures to protect and manage native species and habitats. Without such facilities and structures, the DLNR will not be able to carry out its mandatory duty to conserve species and their habitats, including rare, threatened, and endangered species. Like most of the exemptions we are commenting on here, this one supports DLNR's efforts to prevent Hawaiian plants and animals from going extinct.

**Class 4 - Minor alterations in the conditions of land, water, or vegetation**

- 6. Minor vegetation clearing and management, including mowing, pruning, trimming, and application of federal and state approved herbicides in conformance with label instructions**
- 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 Hawai'i, and other approved methods.**

The actions in these two exemptions or actions similar to them appear to be exempt already. We support these exemptions because such actions are necessary to conserve native species and habitats by facilitating predator control, removing invasive species, increasing populations of native plants and animals, and monitoring native populations. Biocontrol approval by the State of Hawai'i already includes the preparation of an environmental assessment or environmental impact statement for very specific targets and application of a biocontrol agents. We do not see the need to require a second environmental assessment or environmental impact statement for the distribution (i.e., use) of the biocontrol agent once it has been approved.

- 11. Controlled burning of vegetation less than 10 acres in size to improve wildlife habitat where non-native vegetation cover constitutes greater than 75% of the area.**

Control burns in areas up to 5 acres is already exempt, and we support extending the exemption to areas up to 10 acres. However, control burns have a way of getting out of control and should be used only when absolutely necessary.

**Class 4 cont.,**

- 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.**

Most of these actions, or similar actions are already exempt which we support because they are essential to restoring essential watersheds, native wildlife habitat, native ecosystems, and rare plant populations. However, we do not support such an exemption for establishing temporary or permanent vegetative cover for the purpose of supporting introduced game birds and game mammals. An environmental assessment or environmental impact statement should be required for the establishment of temporary or permanent vegetative cover specifically to support introduced game bird and game mammal populations because of the significant impact these introduced animals have on essential watersheds, native species, and water quality in streams and nearshore waters.

- 13. Gathering plant seed, cuttings, or other vegetative matter for propagation.**

We support this existing exemption. Such actions have prevented the extinction of many endangered Hawaiian plants.

- 15. Minor alterations in state waters, including restoration of native species and control of invasive species, weeds, algae, invertebrates, fishes, or other invasive aquatic organisms.**

We support this exemption. Inaction when it comes to invasive species means they will increase in population size and range, wreaking havoc in native ecosystems and essential watersheds, and destroying or competing with native species.

- 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 Hawai'i; and other approved methods.**

Similar actions are already exempt. We support this exemption because these actions are necessary to conserve native species and habitats, including imperiled species. Some of these actions are unpopular and they should be used carefully and only as a last resort when all other feasible control methods have been employed.

**Class 4 cont.,**

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

We support this exemption because removing introduced vegetation, reintroducing native species into their historic range, and fencing are essential to conserving imperiled species and their habitats – mandatory duties of the DLNR. Many of these actions are part of a comprehensive and well-reviewed management plan.

**Class 5 - Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource**

- 13. Research or experimental management actions that the Department declares are designed specifically to monitor, conserve, or enhance the status of native species or native species' habitats.**
- 18. Research or experimental wildlife and plant management actions, including controlled grazing or burning as a management tool.**
- 19. Research or experimental management actions to identify, monitor, control, or eradicating introduced species**

We support these exemptions. Exemption 13 is a new exemption for actions designed specifically to monitor, conserve, or enhance that status of native species and their habitats. Other actions here, or similar actions are already exempt. Control burning in exemption 18 probably should be restricted to areas up to 10 acres as provided in Class 4 exemption 11 above.

In general, research and experiments have been beneficial to the Hawaiian environment. Hawai'i conservation biologists and land managers, including DLNR staff, are pioneers in island conservation biology – discovering new and successful techniques to recover and protect imperiled species. Many of the actions taken by conservation biologists in Hawai'i are part of research programs that have benefited native species and habitat, and brought in hundreds of thousands of dollars to the state for species conservation. Similarly, many of the actions taken by conservation biologists and DLNR staff are also experimental in nature because our islands, species, and conservation challenges are unique, and there are few island models and examples for us to follow. Consequently, Hawai'i is known as a world leader in conservation biology. Indeed, it was one of the reasons why the International Union for Conservation of Nature chose to hold its World Conservation Congress in Hawai'i in 2016.

**Class 5 cont.,**

- 15. Game and non-game wildlife surveys, vegetation and rare plant surveys, aquatic life surveys, inventory studies, new transect lines, photographing, recording, sampling, collection, culture, and captive propagation.**

We support this exemption. These actions or similar actions are already exempt.

- 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 nests, 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.**

These actions or similar actions are already exempt. We support this exemption with one exception. First, the hybridization of game birds or game mammals is not necessary because they are prolific. Second, the hybridization of these introduced species should not be exempt from HRS Chapter 343 because of their destructive nature and incompatibility with island species and ecosystems. For example, uncontained introduced game mammals and public hunting in the wrong areas are one of the most significant threats to our watersheds, native species habitats, health and safety, Hawaiian culture, and recreation areas.

- 17. The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated.**

We support this exemption for native species and formerly native species (presumably, those species that have been extirpated from a given area, but still occur elsewhere). However, we do not support the exemption for established species if this applies to introduced grazing and browsing mammals, and game birds. The reintroduction or supplementation of introduced game birds and game mammals should not be necessary because they are prolific, and these actions should not be exempt from HRS Chapter 343 because of the animals' destructive nature in island ecosystems and watersheds, and incompatibility with native species.

Mahalo nui loa for the opportunity to testify.

Sincerely,



Marjorie Ziegler