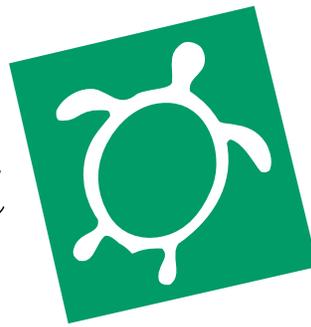


# Environment



# Hawai'i

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## Feathers Fly

A dispute between managers of the Hakalau Forest National Wildlife Refuge and a professor who has done research there for the better part of two decades has grown ugly. The professor, Lenny Freed, of the University of Hawai'i at Manoa, has taken the feud public. And in this he has gained a measure of success, with two of the most prominent scientific journals having published recent news articles casting Freed in a sympathetic light.

But our review of thousands of pages of records relating to Freed's work maintained by the U.S. Fish and Wildlife Service has revealed a more nuanced, and far more complicated, understanding of the long-simmering feud.

## UH Professor Takes Long-Running Feud With Feds into Court of Public Opinion

Headlines on recent stories about the Hawai'i 'akepa, an endangered forest bird, have been alarming. Last July, *Science*, the magazine of the American Association for the Advancement of Science, reported in online editions that researchers were exploring the "startling decline of a Hawaiian native bird."

The caption under two accompanying pictures in the shorter print version of the article read, "The native Hawai'i 'akepa is declining because of competition for food from the non-native Japanese white-eye."

And in December, the venerable British journal *Nature* took up the same subject: "Feathers fly over Hawaiian bird," read the headline over the news article, with a photo caption again stating that "the Japanese white-eye competes with the 'akepa for food."

The news articles (as distinct from scientific, peer-reviewed articles) in both *Science*

and *Nature* focused on the work of Leonard Freed, a professor of zoology at the University of Hawai'i, Manoa, his wife, Rebecca Cann, a professor of cell and molecular biology at UH, and other members of Freed's research team, mostly graduate students. For the better part of two decades, Freed has been studying the Hawai'i 'akepa (*Loxops coccineus*), a finch-sized bird found only in forests of the Big Island.

But while Freed may have been generating news, his views about the parlous state of the 'akepa and the threats posed by the Japanese white-eye (*Zosterops japonicus*) are shared by few, if any, of his peers.

In fact, aside from Freed, nearly all of the scientists most familiar with the problems faced by Hawai'i's endangered birds seem to agree that, if anything, the 'akepa population at Hakalau Forest National Wildlife Refuge,

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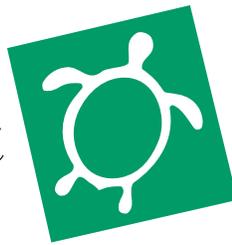
*Board Talk: Guidelines  
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The Hawai'i 'Akepa

PHOTO: © JACK JEFFREY

# Environment Hawai'i



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April 2009

## NEW AND NOTEWORTHY

**Bringing Back the Beach I:** Owners of the Sheraton Waikiki, whose beach disappeared years ago, want to bring back a beach in front of the hotel by building three 160-foot-long T-head groins along about 500 feet of shoreline, now defined by a seawall built in the 1920s. The length of the cross-bar on the "T" would be around 110 feet.

The areas between the groins, which would extend seaward at right angles from the seawall, would be filled with about 15,000 cubic yards of sand, to be pumped up from nearby deposits on the ocean floor. Altogether, about an acre of dry beach would be created, while the total area to be filled underwater with sand or rock would be about 2.7 acres.

For this, Kyo-ya Hotels & Resorts LP, which owns the Sheraton and the neighboring Royal Hawaiian Hotel, is preparing an environmental impact statement that will meet both state and federal requirements – state requirements, since



Existing shoreline near Keahi Point, looking east, showing some of the rubble placed along the shore in a failed effort to control erosion.

the project will require a Conservation District Use Permit for activity on submerged lands; and federal, since the work will be done in navigable waters, subject to the jurisdiction of the U.S. Army Corps of Engineers.

The project, estimated to cost roughly \$4 million, has already drawn criticism from surfers. The deadline for comments on the EIS preparation notice passed last January, and release of the draft EIS is months away.

**Bringing Back the Beach II:** Now, contrast the Sheraton's project to one proposed for Iroquois Point, immediately west of the Pearl Harbor entrance channel. There, Ford Housing LLC is proposing to build nine groins along 4,200 feet of shoreline that has been eroding dramatically over the last four decades. The stems of the "T," the part that runs perpendicular to the shore, would extend seaward about 140 feet, while the crosses on the "T" would be between 100 and 200 feet long.

The total volume of sand required to fill the cells between the groins and restore the dry beach is estimated to be about 97,000 cubic feet, more than six times what the Waikiki project needs. Some 4.6 acres of submerged land would be covered with stone for the groins and sand, to be dredged from Pearl Harbor.

Despite the massive scope of the work, the U.S. Army Corps of Engineers is requiring Ford Housing to prepare just an environmental assessment, a draft of which was released earlier this year. Because the area lies within the Naval Defensive Sea Area and is bordered on all sides by military reservation land, no state Conservation District Use Permit will be sought for the work. According to Dolan Eversole of the Department of Land and Natural Resources' Office of Conservation and Coastal Lands, typically the federal government exempts itself from compliance with state laws that do not have an underlying federal authority, such as the Coastal Zone Management Act or the Clean Water Act.

In this case, however, the federal government is not the proposing party. Instead, the applicant is Ford Housing, which, as the draft EA states, has obtained a 99-year lease (to expire in 2102) on the Iroquois Point housing area, developed nearly 50 years ago. The economic consequences of the loss of housing to shoreline erosion are spelled out in the DEA. Over the next 30 years or less, some 30 houses along Edgewater Drive and Iroquois Avenue will be lost. "This will in turn result in a very significant loss of rental income or proceeds from the possible sale of these homes... These homes presently rent for approximately \$2,500 per month, or \$30,000 per year. A conservative cost assumption would be that the homes are lost by year 30 of the 50-year lease life, thus losing 35 years of rental income, or \$31,500,000 (30 homes x \$30,000/year x 35 years). Estimated demolition costs of \$20,000 per home would add \$600,000 to this loss. Thus, a reasonable estimate of the No Action cost in terms of lost revenue is about \$32 million."

A copy of the draft environmental assessment is available on the Corps of Engineers' website, [www.poh.usace.army.mil](http://www.poh.usace.army.mil) (click on the public notice link, and the URL for the environmental assessment may be found in public notice POH-2005-552). Comment deadline is April 13.

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### Quote of the Month

*"They are really going to regret the decisions they have made."*

— **Lenny Freed**

*on the denial of his research permits by the Fish and Wildlife Service*

## Another Chapter in OTEC Research On the Verge of Opening at NELHA

The Natural Energy Laboratory of Hawai'i was Ground Zero for ocean-thermal energy conversion (OTEC) experiments for most of the first two decades of its life. In fact, OTEC development was one of the main reasons – if not *the* reason – for the lab's existence.

Now, after more than a decade of OTEC's conspicuous absence from the Keahole facility, on the Kona Coast of the Big Island, OTEC research may be poised for a comeback. And, to tie the knot on this closing circle, the company that is proposing to do the research is the same one involved building the only floating, net-power-producing plant built to date – the Mini-OTEC project of 1979.

At the March board meeting of the Natural Energy Laboratory of Hawai'i Authority, engineer Reb Bellinger of Makai Ocean Engineering made a pitch for giving Makai a permit to use NELHA facilities for research and development of heat exchangers, critical components of OTEC technology.

Makai, Bellinger told the NELHA board, teamed up with Lockheed Martin after the Office of Naval Research awarded a contract to Makai to look into evaluating the technical and financial challenges of building a large-scale OTEC plant that would produce hydrogen or other alternative fuel. Over the last few years, about \$10 million has been invested in the project, he said.

"This has probably been the most detailed, thorough, cautious look at putting OTEC on a commercial scale that's been done in the last thirty to forty years," he told the NELHA board. "We're a conservative, cautious bunch, not into wild claims. We do things systematically."

Makai announced last year that it was proposing to build a 10-megawatt plant three to four miles offshore of O'ahu as a demonstration of OTEC technology. The reason for the relatively small project, said Bellinger, is that 10 MW "is a size we can get operating experience on, and it's scalable – that's the key thing, it has to be scalable."

"Once that's done, 100 megawatts is what we've calculated to be the smallest commercially viable size," he said. "We think the private sector will finance it. But to get there, there's a lot of work in the interim."

That work includes "big technology issues," Bellinger said. "Heat exchangers, cold-water pipes, cable-to-shore systems, environmental impacts, financing – those are some of the real challenges."

Of those, marine heat exchangers "are probably the single most important technical challenge for commercial development of OTEC," he said, with heat exchangers representing about a third of the \$100 billion cost of a 100 megawatt plant.

That's where NELHA comes into the picture.

### **No Power Plant**

What Makai wants at NELHA is a site for research on heat exchangers, not a site for a plant. That seemed to disappoint some of the board members, prompting Bellinger to explain that given the giant footprint of a commercial-scale plant, basing one on land was hardly practical.

But for research, he said, NELHA – specifically, its pipelines reaching into the deep ocean – was ideally suited. "There's no place in the world except here where research and development for heat exchangers can be conducted at an economic scale."

"A 100-megawatt plant would have over 200 sets of heat exchangers, each one about the size of a 20-foot container," he said. "Being able to test, to experiment with designs for corrosion, how to manufacture heat exchangers, we need a place like this where we have offshore conditions" similar to those under which an OTEC plant would have to operate.

Members of NELHA's Research Advisory Committee had looked over the proposal and on the whole were enthusiastically in support. Don Thomas, chairman of the committee, said that one concern raised was the possible impact of pumping up deep, nutrient-rich ocean water and then releasing it into the shallow near-shore area. "We need to get some handle on what type of impact nutrient cycling will have," he said.

"We're mindful of the fact that in large plants, there will be a large volume of water moving around," Bellinger said. But in an operating plant, "deep water will be returned to the deep, and it won't be heated up too much, so it will still be heavy and will sink." In near-shore operations, he said, "we don't want to take nutrient-rich cold water and simply dump it on the reef."

To resolve this issue, one of NELHA's aquaculture tenants might be willing to receive the deep-ocean water discharges from the Makai research area, members of the board suggested.

Another issue raised by the RAC was how

NELHA might share in the value of any "intellectual property" that Makai develops as a result of its work at the facility.

Since executive director Ron Baird took over the helm of NELHA, the push to get equity positions and/or a claim on any marketable patent or license developed by its tenants has been strong. And it has not always worked out. Early on in Baird's tenure, a simple pass-through grant (result of an earmark put into the federal budget by Senator Daniel Inouye) to a New Mexico institution became so snarled up by Baird's insistence on having a claim to intellectual property that, in the end, the earmarked funds were redirected, cutting NELHA out of the picture altogether.

More recently, a proposal to build an OTEC plant at NELHA by an O'ahu-based company, OCEES, ran aground. At least part of the reason for the foundering had to do with Baird's desire to have NELHA obtain an equity stake in the company. For now, though, the discussions between Makai and NELHA are continuing.

### **Past Overtures**

In recent years, Makai had been considering NELHA as a possible site for OTEC research, but had been concerned that commitments to OCEES might shut that door.

In July 2007, Makai vice president Joe Van Ryzin and Lockheed Martin's Robert Varley asked the NELHA board to defer committing to the construction of any OTEC power generation facility.

"Be aware of the oncoming OTEC research-and-development need," Van Ryzin said. "Realize that you possess a unique, incredibly valuable facility. You've got the only show in town, and you should position yourself to take advantage of that." A power-producing OTEC plant, he warned, would mean the end of any hope of using NELHA facilities for research. — **Patricia Tummons**

### *for further reading...*

For more on OTEC projects at NELHA, see the following articles in *Environment Hawai'i*, all available online at [www.environment-hawaii.org](http://www.environment-hawaii.org):

- August 2007, "Prospective Alternative Energy Producers Find Lava Fields of Keahole a Bumpy Road," "Plans for an OTEC Joint Venture Founder over Ownership Issue."
- May 1991, "Money Down the Tube: A Decade of OTEC Research."

## In a First, LUC Designates A&B Property On Kaua'i as Important Agricultural Lands

More than 30 years after the state Constitution was amended to require the protection of agricultural land, the state Land Use Commission has designated the first official Important Agricultural Lands. Once a land is protected with this label, any decision by the LUC or county council to place it into another land use district or zone must be made on a two-thirds vote.

"This is a landmark thing, I think, for the state," Hawai'i Farm Bureau Federation president Dean Okimoto said of the LUC's approval last month of Alexander and Baldwin, Inc.'s (A&B) petition to designate 3,773 acres of Important Agricultural Lands on Kaua'i, which is nearly 20 percent of the company's holdings on the island.

After a number of failed attempts to create a system to identify and protect important agricultural lands, the state Legislature finally passed laws – Act 183 in 2005 and Act 233 in 2008 – establishing a process and an incentives package to achieve the Constitution's goals of promoting diversified agriculture, increasing self-sufficiency, and assuring the viability of agriculturally suitable lands. With the passage of a generous incentives package last session, including loan guarantees, permit processing priority, a fast-tracked redistricting process, and millions in income tax credits, farmers and landowners were free to file petitions to have their lands designated as IAL.

Last December, A&B became the first landowner to file a petition.

The petition covers what A&B claims is the country's largest single coffee estate, located along the southern coast of Kaua'i. The farm, run by A&B subsidiary Kaua'i Coffee Com-

pany, Inc., produced three million pounds of green coffee last year, while a small portion of the land was devoted to seed corn, rice, and pasture.

After receiving favorable comments from the state Office of Planning, the state Department of Agriculture, and Kaua'i County, the LUC unanimously approved the petition on March 5 with little public fanfare. State Rep. Ezra Kanoho, who helped craft the IAL legislation, and the HFBF's Okimoto urged the LUC to approve the petition. They were the only two members of the public to testify on the matter.

Kanoho called A&B "good corporate citizens" and thanked the company for committing "a good chunk of their property" to agriculture.

Okimoto said that A&B's petition would pave the way for other landowners interested in having their lands designated.

"Several landowners are watching the process and thought it would be onerous. Your quick action in this matter will mitigate a lot of their concerns," he told the LUC, adding that large agricultural operators like A&B help support small agriculture by making imports like fertilizer cheaper.

"If we lose large agriculture, it will become a problem. They support a lot of research. IAL [designation] will be led by larger farmers...willing to help a lot of the small farmers," he said.

According to its 2008 annual filing with the Securities and Exchange Commission, A&B plans to seek IAL designation on Maui as well, where it owns 68,265 acres. Although no other petitions for IAL had been submitted

to the LUC as of mid-March, Dan Davidson, the agency's executive director, said he's aware some may be in the works.

"Everyone was watching this one," he said.

### Nitpicking

When the Legislature passed the IAL incentives package last year, one particular provision garnered harsh criticism. Jeff Mikulina, then-executive director of the Sierra Club, Hawai'i chapter,

condemned the Legislature in an op-ed piece for inserting "at the 11<sup>th</sup> hour" language allowing owners of IAL to reclassify up to 15 percent of their holdings into another district without going through the LUC's normal boundary amendment process.

Although Mikulina expressed his worry that this provision could lead to large-scale urbanization of agricultural land, A&B, in its first petition, chose to waive the designation incentive, which allows an IAL owner to either redistrict 15 percent of its lands covered in a single petition or receive credit to redistrict other lands in the same county within 10 years of the petition's approval. Petitions seeking to place land in the Urban District must be consistent with county planning documents.

Had A&B not waived those credits, which could have allowed for the redistricting of about 566 acres, Office of Planning director Abbey Mayer told the LUC at the March meeting that his office would probably have objected to A&B's decision to include two large gulches in the petition area.

Although the state DOA had determined that the area represents a critical mass of agricultural land, most of the land is actively farmed, and the University of Hawai'i had classified more than 80 percent of the area as having high productivity soils, the OP questioned whether the rest – made up of gulches, streams, and reservoirs – deserved IAL designation. While the OP did not oppose the petition, Mayer said he and his staff wanted to make sure all of the lands were worthy.

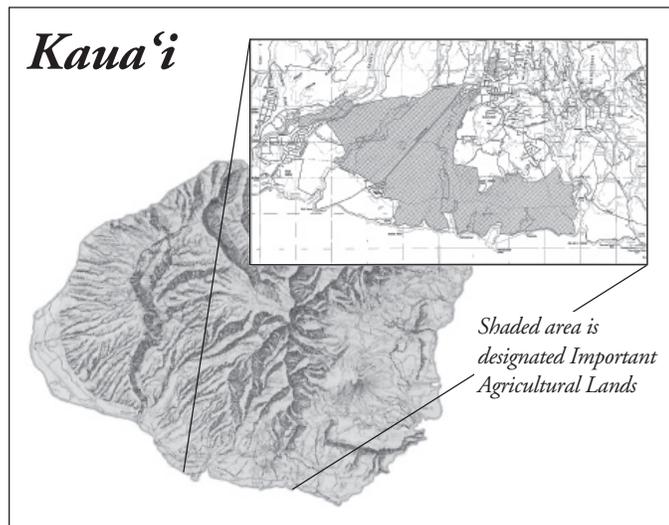
"We felt a strong need to examine lands for designation as Important Agricultural Lands... Are they all high-value ag lands or are there others included?" he asked.

In addition to the two large gulches, Mayer pointed out few other areas that might not immediately warrant IAL designation. They included reservoirs serving lands outside the petition area, gulches along the coast, and a small area near the Hanapepe Valley River where the OP was not sure there was active farming.

"We're not trying to nitpick too much, but we are forming precedent for the other cases," he said.

A&B attorney Benjamin Matsubara responded that he thought it was important to include agricultural resources, such as the reservoirs, in the petition and said that the 20 or so acres near the Hanapepe Valley River provided for recharge of the area's groundwater sources. The gulches near the ocean were also a part of the agricultural system, he said, adding, "If we didn't include it, we would be accused of planning to have luxury seaside homes there."

Kaua'i LUC member Thomas Contrades



## 'Aha Kiole Advisory Committee Nears End, But Seeks to Continue Controversial Work

Ever since the state Legislature created the 'aha kiole advisory committee in 2007 to lay the groundwork for an indigenous knowledge-based natural resource management system, the committee and its community coordinator have been hounded by controversy.

Critics first alleged (and they still do) that the federal Western Pacific Fishery Management Council orchestrated the passage of 2007's Act 212 and they accused the committee and the native Hawaiian 'aha moku resource management system described in Act 212 of being tools through which the council planned to influence the regulation of fishing in state waters. While 'aha kiole representatives have said that it has had no connection with the council since Act 212 was passed, the complaints have led the federal Inspector General for the Department of Commerce and the Government Accountability Office to launch investigations into the council's actions.

What's more, once Governor Linda Lingle appointed the committee's eight island representatives, committee members, unfamiliar with state Sunshine Law requirements and procurement procedures, ran into one procedural nightmare after another, taking actions at unnoticed meetings and trying to funnel all of their administrative expenses through a community coordinator who is neither a contractor nor a state employee. Some also

criticized the committee for behaving as though it was already a decision- and policy-making body, rather than a fact-finding, foundation-building one.

Most recently, the committee sparked the ire of cultural and environmental groups here and in the Commonwealth of the Northern Mariana Islands when it wrote to then-President George W. Bush last October opposing the designation of a national monument in the CNMI. (The Western Pacific Fishery Management Council has also vehemently criticized creation of the monument.)

With the committee set to dissolve in June, it was required to submit a final report to the Legislature before the session started. While the 75-page report addresses most, if not all, of its required tasks, concerns raised at the Legislature by other native Hawaiian and environmental organizations and government agencies suggest that the 'aha moku development process may have to undergo a few changes if it is to continue.

### *Monumental Misunderstanding*

While the 'aha kiole advisory committee was tasked only with helping develop an 'aha moku management system in Hawai'i, it appears from letters in the files of the Department of Land and Natural Resources' Division of Aquatic Resources that the group believed its job extended to commenting on former President Bush's efforts to establish a

national monument in the waters around the Mariana islands.

On October 13, 2008, the committee wrote Bush, berating him for "taking" the Northwestern Hawaiian Islands from native Hawaiians when he established the Papahānaumokuākea marine monument in the Northwestern Hawaiian Islands. The committee also criticizes the Pew Foundation's role in the establishment of both monuments.

"The Native Hawaiian communities have followed the progress of the Pew Foundation's attempts to establish another national marine monument in CNMI with anger, trepidation, and despair. These strong and passionate emotions are universally felt by Hawaiians whenever the word 'Papahānaumokuākea' is mentioned...."

"We ask that you not compound your grave mistake with Hawai'i by creating another monument in CNMI against the wishes of their people," they wrote, noting that the CNMI's governor, senate president, house speaker, and four mayors opposed the monument.

"As leaders elected by the people to represent them, why will you not listen to them? The actions of the Pew Foundation reflected by the actions of your administration show that there is no consideration for the indigenous people of CNMI—any more than there was any consideration for the Native Hawaiians. Native people have no voice with you or your administration... Please do not inflict this heartbreak and rage on another Pacific culture," they wrote.

Ignacio Cabrera, chair of a group called Friends of the [Mariana Trench] Monument,

said he was very familiar with the petition area and said he believed the questionable areas should be included.

To make sure designation credits aren't given out needlessly in the future, Mayer said that the LUC might want to adopt a threshold for gulch lands receiving IAL designation.

### *Tax Credits*

While A&B waived its designation credits because, as Matsubara told the commission, it "does not intend to have acreage placed into another category," the company does plan to take advantage of income tax credits once they become available.

At the LUC meeting, Matsubara said, "In the future, there may be an opportunity for tax credits, permit processing.... In the future, those would be utilized."

Last year, the Legislature provided income tax credits of up to \$7.5 million, to be distrib-

uted on a first-come, first-served basis, to owners of designated IAL land. Under Act 233, a single IAL owner may receive income tax credits of up to 50 percent of qualified agricultural costs incurred since July 1, 2008 or \$206,250, whichever is less. (A&B's agribusiness capital expenditures for all of 2008 totaled \$15.2 million.)

In the first year after the credits are made available, an owner of IAL may receive income tax credits for 25 percent of its agricultural costs or of \$625,000, whichever is less. In the second year, the landowner can claim 15 percent of costs or of \$250,000, and in the third year, the landowner may receive 10 percent of the lesser of agriculture costs or \$125,000. The act states that the costs upon which the tax credit is computed will be determined at the entity level. DOA deputy director Duane Okamoto told *Environment Hawai'i* that although A&B subsidiary

McBryde Sugar Company, Ltd. owns the petition area and Kaua'i Coffee Company farms the land, A&B, as the petitioner, would be the only entity eligible for the tax credits for this property.

According to A&B's 2008 annual Securities and Exchange Commission filing, the income tax credits are sorely needed. For the first time since 1995, A&B's agribusiness section lost money, about \$13 million, A&B reported. A March press release from A&B attributes the deficit to losses at its Maui sugar company, Hawaiian Commercial & Sugar. The release also stated, "In 2009, it is expected that greater HC&S losses will be incurred due to the impact of prior drought conditions, manifested in lower sugar yields and production; a significant pension cost increase due to the 2008 decline in pension asset values; and revenue reductions in power sales."

— *Teresa Dawson*



wrote in a January 1 letter to Gov. Lingle that his organization was puzzled by the committee's request that Bush not designate the proposed Mariana Trench National Marine Monument and asked if the 'aha kiole committee's opposition was the official policy for the state of Hawai'i.

"If so, it hurts us deeply that the state of Hawai'i would oppose something that we believe holds great potential benefit to our people.

"If, on the other hand, this group is not speaking for the state of Hawai'i, who is it that they do speak for? Even if they only speak for themselves, as an entity established by the state, their actions will likely continue to be confused as an official policy position – as they have already in our media."

Cabrera said his group understood that the committee was created by the state Legislature in 2007, but added, "we have heard that there is credible evidence that this group is largely a creation of the [federal] Western Pacific Fisheries Management Council (Wespac), another group opposed to the monument that feels compelled to meddle in CNMI politics."

He cited a recent front-page story in the CNMI, which stated that the council and its executive director, Kitty Simonds, are under federal investigation for alleged lobbying to undermine the protections afforded the Papahānaumokuākea Marine National Monument.

"It appears they have continued their lobbying activities as well as their attempts to manipulate your DLNR through the 'Aha Kiole, this time to use the state of Hawai'i and native Hawaiians to interfere in the CNMI's business," he wrote.

On January 8, DLNR director Laura Thielen responded to Cabrera on Lingle's behalf. She stated that the 'aha kiole advisory committee was established to "recommend resource management best practices based on Native Hawaiian expertise."

She continued that the committee neither speaks for the DLNR nor sets policy for the state.

"Their opposition to the Marianas Trench National Marine Monument comes from their own opinions and [was] voiced without the knowledge of the State of Hawai'i. If they have used their position as those selected to perform the tasks of Act 212, SLH 2007, then it is beyond the scope of the law's directive and their appointed purpose," she wrote.

Thielen added that since Bush declared the Marianas Trench, Rose Atoll, and the Pacific Remote Island Areas national marine monuments on January 6, "it would appear that the 'aha kiole members have not seen

their views sustained and... the Friends of the Monument can now look forward to the preservation of a truly unique marine ecosystem."

In a phone interview with *Environment Hawai'i*, 'aha kiole community coordinator Leimana DaMate (a former council contractor), explained, "The kiole commented only because they were specifically asked by practitioners from CNMI who had been encouraged by Act 212. [The committee] would not have commented otherwise."

### ***Last Bill Standing***

Whether or not the 'aha kiole advisory committee has completed its job, its members, as well as some of its critics, want the development of an 'aha moku system to continue. This session, legislators introduced four bills regarding the future of the committee and its work. House Bill 1806 ambitiously sought to take the next step and establish within the DLNR an 'aha ahupua'a council task force, 'aha ahupua'a councils, 'aha moku councils, and an 'aha kiole council. Under the original bill, the Association of Hawaiian Civic Clubs would select the task force's nominees.

The task force would have conducted elections in 2010 and 2011 for the 'aha ahupua'a councils with administrative, technical, and clerical support from the DLNR. 'Aha ahupua'a council members would have then appointed a representative to an 'aha moku (an island-wide council), which would have appointed a representative to an 'aha kiole (a statewide council). The 'aha kiole would have been charged with the following:

- Advising the state on traditional natural resource and land management practices;
- Resolving issues brought by the 'aha moku council, or any issues of statewide importance, or affecting more than one island;
- Maintaining a repository for issues addressed by an 'aha moku council or an 'aha ahupua'a council; and
- Representing 'ahupua'a statewide in the state, national, and international arenas.

With strong objections from the DLNR, which would have had to foot the bill for an entire 'aha moku system that would include dozens of regional representatives, the bill was later watered down to merely extend the sunset date of the 'aha kiole advisory committee from June 30, 2009, to June 30, 2011, and require the committee to submit a final report of its work to the Legislature prior to its 2010 regular session.

Senate Bill 1108 also proposed to extend the committee's sunset date to 2011. House Bill 905 and Senate Bill 999 did the same, but also proposed moving the committee from

### *for further reading...*

For more background on the 'aha kiole advisory committee and Act 212, read the following articles, available at [www.environment-hawaii.org](http://www.environment-hawaii.org).

- "Is Fishery Council Violating Law by Lobbying? Complaint Says So." (April 2007)
- "'Aha Kiole Committee Tramples Over Public Process in Selecting Contractor" (March 2008)
- "Investigations Mount Over Council Spending" (May 2008, included in a package on the Western Pacific Fisheries Management Council)
- "If at First You Don't Succeed... The Ongoing Saga of 'Aha Kiole" (June 2008)

the DLNR to the Office of Hawaiian Affairs and appropriating funds to support the committee's work.

Testimony on all of the bills has been mixed, with those in opposition expressing concerns about the Western Pacific Fisheries Management Council's influence on the committee's actions, the exclusive right of the Association of Hawaiian Civic Clubs to select nominees, and an apparent "top-down" approach to developing the 'aha moku system, among other things. In the end, just one bill – SB 1108 – survived crossover.

DLNR director Thielen has not opposed the bill, but has testified to her department's thin personnel and fiscal resources and recent budgetary cuts, which are "already impacting departmental priorities."

DaMate, testifying on behalf of the Princess Ka'iulani Hawaiian Civic Club, argued in her testimony that an extension could have been avoided had the state only released the money appropriated in Act 212. (The governor never approved release of the funds, amounting to more than \$200,000. Although the DLNR has approved about \$4,000 in reimbursements to the committee, DaMate says it had not been paid as of mid-March.) The Association of Hawaiian Civic Clubs and the committee itself also submitted testimony in favor of the bill, the latter stating that although it held about 100 community meetings and gained support on many islands, "more time is needed to solidify the process."

While it testified in support of SB 999, the Office of Hawaiian Affairs testified against SB 1108, stating written testimony, "We do not agree that the group as it now exists is the

## 'Environmentalist Dogma'

While many might argue that the 'aha kiolo advisory committee over-stepped its bounds at times, the committee's final report to the Legislature suggests that it did most of what Act 212 directed it to do:

The committee developed best practices for the creation of an 'aha moku council system, held meetings (nearly 100) statewide to gain a perspective on establishing an 'aha moku system, and established an administrative structure, procedures, eligibility criteria for 'aha kiolo members and staff, as well as a budget.

With regard to the development of goals and objectives, which was also required under Act 212, the report makes several recommendations regarding adaptive management—where communities and government agencies work together to manage and monitor resources—and the development of informal codes of conduct, a community consultation process (via the 'aha moku structure) and educational programs to perpetuate the use of traditional knowledge in resource management. The report also describes how the development of an 'aha moku system meets several goals laid out in the Hawai'i 2050 Sustainability Plan.

The committee has not yet met its mandate to develop a consensus about the development of an 'aha moku system. Many have criticized the committee for having an agenda and for improperly using its position to advance it.

Anyone who reads the report's section on natural resource management can see why.

While the core of the committee's report is a straightforward, in-depth discussion of how best to incorporate the traditional knowledge of cultural practitioners into natural resource management, its discussion of contemporary natural resource management (versus traditional Hawaiian resource management) begins with an anti-environmentalist diatribe.

It states, "The needs of humankind are the foundation of the environmental assessment of the state of the World. Plants and animals, whales and fish don't debate or participate in natural resource management decisions, people do.... The process is political and one vision of the World competes with another—a battle of values. Recognition of realities is fundamental but environmentalist dogma and the environmentalist litany have reached a point where even blatantly false and misleading information is repeated over and over and taken as truth." (Here, the plan cites Bjørn Lomborg, author of *The Skeptical Environmentalist: Measuring the Real State of the World*.)

"Basing natural resource management decisions on falsehood is detrimental to the environment and, by extension, detrimental to humankind, people and communities. Taking a broad view, environmentalist dogma fools itself by attempting to construct the concept that actions of humankind

are irreparably damaging the Earth," the plan continues.

In a more moderate tone, the report's section on traditional natural resource management describes how local communities can enhance management efforts.

"A traditional population may or may not have traditional ecological knowledge about everything that exists in the environment that the population survives in, but they will have specific traditional knowledge about those things that are important to the culture.... Resource management is site-specific and long history at a site yields important information about the site, ecological principals and patterns and cycles of abundance and scarcity. Traditional management often has a built-in conservation ethic—'take only what you need,' 'fish only in your area,' 'ask permission if not in your area,'" the plan states.

While traditional Hawaiian management fostered sustainable use of resources, the plan states that "contemporary managers should not confuse the Hawaiian system with present-day preservation campaigns that discourage resource consumption."

(The 'aha kiolo advisory committee consists of Ilei Beniamina of Ni'ihau, Sharon Pomroy of Kaua'i, Charles Kapua of O'ahu, Vanda Hanakai of Moloka'i, Leslie Kuloloio representing Kaho'olawe, Timothy Bailey of Maui, and Hugh Lovell of Hawai'i. Its community coordinator is Leimana DaMate.) — *T.D.*

correct one to do this work."

OHA continued, "If this advisory committee's lifespan is to be extended, it must be with the understanding that the committee is limited in its capacity to be advisory only, it does not speak for all Native Hawaiians on any natural resources issue, it will be task oriented, and it will support existing or proposed community-based resource management projects."

OHA recommended that if SB 1108 advanced, the governor should appoint eight new members from a list of nominations submitted by not only the Association of Hawaiian Civic Clubs, but by other native Hawaiian organizations. It also recommended that the committee be properly funded and

administratively attached to OHA, not DLNR.

(In testimony for HB 905, KAHEA: The Hawaiian-Environmental Alliance also recommended that the Legislature adopt rules restricting the use of federal funds for the 'aha kiolo system; require the 'aha kiolo to comply with state laws regarding open meetings and rulemaking; require committee members to be elected, not appointed by the governor; and limit the committee's purpose to information collection regarding traditional and customary resource management approaches in specific areas.)

Despite OHA's recommendations, the Senate Committee on Water, Land, Agriculture and Hawaiian Affairs, as well as the

House Committee on Hawaiian Affairs, passed the bill without amendments. The House committee did, however, ask OHA to actively participate in the committee's public meetings, and "work toward alleviating concerns raised regarding whether Hawai'i's communities are being properly consulted and represented in the System."

Although legislators appeared to be content with the committee's current members, DaMate said that she could agree with seeking nominations of cultural practitioners outside the AOHCC. She added that the main reasons the nominations came from AOHCC were because it is non-partisan and has an extensive membership representing many communities. — *Teresa Dawson*

BOARD TALK

# Board Adopts Schedule of Fines For Fishing, Boating Infractions

Last December, the state Board of Land and Natural Resources approved rules for a Civil Resource Violations System (CRVS) to expedite the resolution of minor infractions of state environmental laws.

At its March 13 meeting, the Department of Land and Natural Resources' Office of the Chairperson requested that the Land Board adopt the first CRVS administrative sanctions schedule for five specific violations relating to fishing and boating. However, upon the advice of deputy Attorney General Linda Chow, the recommendation was amended so that the schedule was merely a set of guidelines for the department.

Bin Li, the department's administrative proceedings coordinator, told the board that a schedule for all of the violations to be covered by the CRVS will be brought to the board "piece by piece over the next few years." Some elements may require public hearings, he said.

Under the approved guidelines, failure to file a monthly Commercial Marine License catch report could result in a fine of up to \$15 for a first offense, up to \$25 for a second offense, and up to \$100 for a third offense. If not paid within 21 days, those fines could go up to \$30, \$50, and \$200, respectively.

The same schedule was recommended for owners or operators who fail to register their vessels with the Division of Boating and Ocean Recreation and for owners of trailered vessels caught using a state launching ramp or other boating facility without a permit.

For unauthorized commercial use of launching ramps or other state boating facilities, Li proposed fines of \$25, \$50, and \$100 for first, second and third offenses and a doubling of the fines if they are not paid within 21 days.

With no testimony from the public, the board unanimously approved the guidelines.



## Mauna Kea NAR To Get Cultural Plan

In a 2005 audit of the management of Mauna Kea and its science reserve, the state auditor criticized the lack of a comprehensive



A portion of the Mauna Kea Ice Age Natural Area Reserve.

PHOTO: BETSY GAGNE

management plan for the Mauna Kea Ice Age Natural Area Reserve, which includes the Keanakakoi adze quarry, Lake Waiiau and Pu'u Pohaku.

To address this deficiency, the Land Board voted on March 13 to enter into a \$250,000 contract with Pacific Consulting Services, Inc. (PCSI) to prepare an archaeological survey report and a cultural resources management plan for the NAR.

The University of Hawai'i's Office of Mauna Kea Management hired a contractor to do similar work for the adjacent Mauna Kea Science Reserve, most of which is already complete.

In his report to the board, Division of Forestry and Wildlife administrator Paul Conry wrote that the plan will allow NARS staff to better evaluate the impacts cultural practitioners and telescope development have had and will have on the cultural landscape of Mauna Kea.

The work by PCSI and OMKM will "enhance management of these unique lands...by providing information on how the sites in the NAR and the Science Reserve interrelate," he wrote.

At the board's meeting, he added that the contract still needed to be approved by the governor and would be subject to availability of funds.

Given the controversy over the management of resources at Mauna Kea, at-large board member Samuel Gon asked whether it was DOFAW's intent to develop an integrated natural and cultural resources management plan.

Hawai'i island NARS manager Lisa

Hadway said that there is no natural resources plan yet for the NAR, but her staff has the capability to prepare one in-house, and ideally, the two plans would be integrated.

"The one thing that I think would be really important in a natural-cultural resource plan is the handling of the issue of natural resources as cultural resources. It's very difficult, especially in this place, where we see that most of the arguments spinning around Mauna Kea deal with intangibles, deal with significance of the place, which includes not just sites or historic human use, but everything that makes up that place that's considered culturally relevant and significant," Gon said.

Creating an integrated plan will be a challenge, he said. "I don't think it's ever been done really, really well."

Land Board member Tim Johns agreed, saying that natural resource management plans often talk about the cultural significance of a place in the introduction, but don't delve much further.

Conry and Gon said they believed this was an opportunity to establish a model for how management plans should be done in the future.

### A Strategic Plan

At the Land Board's February 27 meeting, the NARS received approval of a strategic plan, or as NARS manager Randy Kennedy called it, "a 'to do' list for the next five years."

The plan requires operational plans to be done for each island (so far, Hawai'i island has the only one), and calls for the development of measures of effectiveness. It also includes a cultural component, an area that NARS chair Dale Bonar said was of particular interest to the commission, although it is not required by statute.

Bonar added that the plan was a "100 percent effort" by both NARS commissioners and staff.

When board member Tim Johns asked how the plan would be funded, Kennedy said that funding sources were left out of the plan because, "up until the recession, we were doing pretty good." (The NARS special fund receives a significant portion of conveyance taxes.) But with the real estate slump, Kennedy said the immediate plan is to "tighten our belts and survive." He added that some projects in the plan may be funded by the federal stimulus package.

DOFAW's Paul Conry added that he has spoken with more than two dozen state legislators and asked them not to raid the NARS fund or tinker with the conveyance tax. — T.D.

## Freed

(continued from page 1)

the site of Freed's work, is "stable or increasing." That was the conclusion of most participants in a two-day workshop convened by the U.S. Fish and Wildlife Service last fall to "clarify the current status of the Hawai'i 'akepa and other endangered Hawaiian forest birds at the Refuge," in light of "contradictory information over the population status of the Hawai'i 'akepa in a portion" of the refuge.

The *Nature* news article, by reporter Rex Dalton, refers to long-standing ill-will between Freed and his team, on the one hand, and refuge administration, especially Jack Jeffrey. "Clashes between academics and conservation managers are not uncommon," Dalton writes, "but rarely do relations become quite so strained."

"Since 2006, Freed has not been granted permits to work in the reserve because of the ongoing disputes," Dalton writes. "When Freed asked graduate students to follow the birds instead, Richard Waas [sic], the refuge manager at the time, demanded that they stop, saying they did not have the necessary permits. Refuge officials then threatened to call law-enforcement rangers."<sup>1</sup>

Both Wass and Jeffrey, famous for his photographs of Hawaiian birds, have retired from the Fish and Wildlife Service. And in January of this year, Freed's appeal of the suspension of his last Fish and Wildlife permit – an Endangered Species Act section 10(a)(1)(A) recovery permit – was denied, based on Freed's earlier loss of his permit to conduct research at the refuge.

## Bad Blood

A review of records at the Fish and Wildlife Service does reveal a high level of disagreement between Freed, on the one hand, and service personnel and other experts in the field of Hawai'i avifauna, on the other. And, to be sure, there is some evidence of personal

grudges having developed between refuge staff and Freed.

At one point, in late 2007, Freed complained to the service's regional director in Portland, Oregon, that more than 12 years earlier, refuge staff had denied his mother permission to visit Hakalau. When the refuge staff was asked to explain this, Wass replied that no one could remember such an event, but that "it was and is our policy to minimize personal visits to areas of the refuge that are off limits to public entry... That said, we do give permission for occasional visits by family members, etc. If Lenny asked permission tomorrow for his mother to visit the Refuge, I would probably say 'yes.' If Lenny was told 'no' in 1995, our motive could not have been construed to be retaliatory because our relationship was good at that time."<sup>2</sup>

This was not the first time Freed had complained about his mother being denied permission to visit the refuge. In 2006, in the course of appealing Wass's denial of a permit to conduct research at Hakalau, Freed told then-regional director David Allen that refuge staff was behaving "irrationally." Personal animus, he suggested, was one possible reason, "and the evidence for this is that they have let the parents of my students and interns onto the refuge, but not my mother."

So what – or, rather, what else – caused the relationship to head south?

One of the greatest problems, at least as evidenced in the review of Fish and Wildlife Service records, was what might be called a blood feud. Starting in 1988 and continuing throughout the 1990s, Freed's permits at Hakalau allowed him to take samples of blood from the birds captured in mist-nets. More than 4,000 such samples were taken and put into storage at the University of Hawai'i.

In June 2003, the Fish and Wildlife Service's regional recovery division chief sent a letter to Freed, expressing concern that of the samples collected since 1988, only 20 to 25 percent had been analyzed.

The Hakalau refuge staff was not confident in the methodology Freed was proposing to use to analyze the blood for evidence of disease and for genetic analysis. So it contracted the U.S. Geological Survey's Biological Resource Discipline (BRD) to conduct a

blind test of Freed's preferred method (which his wife developed) against two other methods. Although Freed agreed to use the best method as identified in the BRD report, when the report was released in September 2003, Freed filed a grievance. This resulted in the report being pulled back for revision. In the meantime, Freed had begun to have the samples analyzed according to his preferred method.

The cover page on the "final" USGS report tells a bit more of the story: "First Revision April 2004; Second Revision August 2004; Third Revision November 2004; Final Revision December 2004."

By mid-2005, the situation was confused enough to require a summit meeting of sorts. In July, Fish and Wildlife Service refuge staff met with Freed, Freed's department chair, Sheila Conant, and the Manoa vice chancellor for research and graduate education, Gary K. Ostrander, at the Hakalau refuge's office in Hilo. According to a write-up of the meeting by Barry Stieglitz, head of refuges in the Pacific Islands, "UH and BRD have an already signed agreement to cost share an independent study to determine the most appropriate analytical methodology for the past (and any future) blood samples." (A scientist in Sweden, Staffan Bensch, had agreed to undertake this task, and his report was expected within a few months of the meeting. His conclusions mirrored those of the USGS report, written by William Steiner, former head of the USGS BRD Pacific Island Ecosystems Research Center.)

Stieglitz also wrote that Ostrander acknowledged that Freed had to bear "some responsibility in failure to complete past reporting requirements, etc., as well as acknowledging a lack of rigor in some of the ongoing research. Similarly, I acknowledged that we ... had acted as 'enablers' by not holding Dr. Freed's feet to the fire in the past on reporting requirements, etc."

As part of the "course of action" that, in Stieglitz's view, the meeting had led up to, Freed was to be informed that his "past proposals included analysis of blood samples, and that regardless of which methodology is selected ... the Service should not be financially responsible for analyses."

In 2007, Freed finally submitted a report on 428 samples taken from endangered birds at Hakalau (noting that 117 endangered bird blood samples were lost when Cann's laboratory was damaged when devastating floods hit the university in October 2004).

Wass wanted to know what happened to the other samples, taken from species of non-endangered birds. "I request that you update your response to my [2002] request for infor-

<sup>1</sup> That did not stop Freed from pursuing his work at the refuge. In an article published last year, he writes: "All research was halted in July 2006, when [Freed] was threatened with arrest by the Fish and Wildlife Service, which suspended his endangered species permit. We observed birds for several days during 2007-2008 with visitors and students. We conducted replicate searches for 'akepa and other endangered species ... during late March and late May/early June 2008, with an additional search at the 1770 m [meter elevation] site during April." See Leonard A. Freed, Rebecca L. Cann, and Gustav R. Bodner, "Incipient extinction of a major population of the Hawai'i 'akepa owing to introduced species," *Evolutionary Ecology Research*, 2008, 10: 931-965 (October 2008). In 2008, Freed had a permit that allowed him to lead educational tours at the refuge.

<sup>2</sup> Freed's mother reappears in correspondence in 2007, when Freed opened a letter to refuge manager Richard Wass by stating: "I was in Cleveland attending my mother's funeral when your letter denying the special use permit was mailed." Freed's article on incipient extinction was dedicated "to the memory of Alice W. Freed, who the USFWS would not allow to visit the refuge."

mation about blood samples collected ... since 1988. Please list all samples collected by species and year. Note whether they are currently in your possession, lost, or consumed by analysis... For samples that have not been analyzed, describe your plans and proposed schedule for analysis.”

Freed replied by email that he “should have the data you request ready in a few weeks” and that “We have prepared archival quality DNA from almost all of the samples.” But as recently as May 2008, acting refuge manager James Glynn wrote Freed, again requesting “that you provide the information ... regarding the blood samples collected since 1988 at Hakalau Forest NWR.” Glynn reminded Freed that the blood analyses were required as a condition of the Special Use Permits Freed had been granted and that reports on those permits would be considered incomplete “until blood analysis is completed and incorporated in the final report.” As of mid-March, the refuge was still waiting to receive the report on blood analyses.

In an email to *Environment Hawai'i*, Freed said that he had finished analyzing “most of the blood samples that survived the flood.” He went on to blame Jeffrey for slow progress on this front: “Jack Jeffrey commanded us to not analyze the blood samples until they approved the methodology. It took them 7 months to approve it after Staffan Bensch, a Swedish avian malariologist, stated that any protocol could be used... We lost \$50,000 of our grant money that was allocated to finish the analyses.”

As to the reviews of Freed’s report on the 428 samples he had analyzed, well, they were scathing. Wrote one (someone not on the Fish and Wildlife Service payroll, nor a member of the Forest Bird Recovery Team): “In my opinion, it is post-hoc science at its worst ... and provides little to nothing useful to management. The report suffers from grammar and formatting errors, often unintelligible writing, misuse of statistics and wild speculation—in all honesty, I’ve graded ... lab reports that were far better. Unfortunately, I’ve reviewed a number of similarly poor-quality documents produced by Dr. Freed.”

Another reviewer touched on Freed’s bringing into the picture the grudge match he’d been waging over proper analytical methods for the samples: “The description of the methods used for collecting and preserving blood samples makes it seem the methods used by the authors are superior to those used by other researchers,” a claim rejected by the Steiner and Bensch reports. This reviewer also noted that the “sample sizes used for ‘akepa are quite small... Many conclusions in the report are minimally supported because

of the limited sample sizes or flawed because species status or condition is based on phenology [stage in the breeding cycle or other natural cycle] rather than more direct measures.”

### *Permission Denied*

Starting around 2005, Freed had begun a campaign to save the ‘akepa—and, at the same time, impugn the competence of refuge staff. For example, in the October 2005 edition of *‘Elepaio*, the publication of the Hawai‘i Audubon Society, Freed wrote, “the decline of this bird since 1999 is associated with a significant increase in numbers of introduced Japanese white-eyes compared with earlier years in the study... Hakalau Forest National Wildlife Refuge, with about 70 percent of Hawai‘i ‘Akepa remaining on the island of Hawai‘i, has chosen not to manage Japanese White-eyes. The refuge has also directed Dr. Freed to remove all artificial nesting cavities, despite the higher nesting success of Hawai‘i ‘Akepa that used them... The reasons given by the refuge for discontinuing their use will be contested.”

Yet the Hawai‘i Forest Bird Recovery Team, which advises the refuge on questions of management, was not persuaded by Freed’s data, which, according to the team leader, Eric VanderWerf, a Fish and Wildlife Service ornithologist (and former student of Freed’s), was in need of “more careful analysis.” “If his conclusions were backed up by a solid analysis, I agree it would be a huge cause for concern,” VanderWerf told *Environment Hawai‘i* in 2006, when Freed’s work was first addressed in this newsletter. But few of Freed’s peers were distressed by his findings, “which reflects a lack of confidence in his methodology and conclusions,” VanderWerf said.

Freed’s request in 2005 for three more permits to conduct research on the ‘akepa at Hakalau were denied by Wass, whose decision was upheld through several appeals from Freed.

Freed was not so easily daunted. In 2007, he again was seeking permission from Wass to research “the causes of food limitation in the Hawai‘i ‘akepa and other native species: roles of an introduced competitor and ectoparasites.”

Again, Wass asked the Forest Bird Recovery Team to review Freed’s proposal. “All but one team member thought there was little or no evidence that show the population of Hawai‘i ‘akepa has ‘crashed,’” according to a summary of the team’s work. “One reviewer thought data presented was inadequate to address this question, and only selected data sets and analyses are presented to support the specific hypothesis.... All but one team mem-

ber thought there was little or no evidence that show the population of Hawai‘i ‘akepa is severely food limited.... All but one reviewer thought there was little or no evidence that show ectoparasites have severely lowered the survival of adult Hawai‘i ‘akepa.” (The “one reviewer” consistently dissenting could have been Freed, who is a member of the team.)

Wass denied Freed the permit he had sought, citing the recovery team views as well as “reservations by refuge staff over potential shortcomings of the proposed research, and concerns expressed by former Regional Director David Allen regarding relevance to refuge and species management and rigor of scientific design.”

Freed appealed to Stieglitz, arguing that the ‘akepa faced “incipient extinction” following an “environmental change,” that is, “an increase in Japanese white-eyes and in chewing lice.”

“I am not going to deal with the comments of the Hawai‘i Forest Bird Recovery Team here,” Freed said in his appeal. “They will be embarrassed enough when the incipient extinction paper comes out. If the appeal reaches the regional director, I will recommend that he dissolve the recovery team and form a new one.”

Stieglitz rejected Freed’s appeal in September 2007. Freed appealed then to the regional FWS director, Ren Lohofener, in Portland.

Rather than uphold the decisions of lower-level managers, Lohofener met with Freed in Honolulu. Freed agreed to have Michael Scott, of the U.S. Geological Survey’s BRD in Moscow, Idaho, assess whether the ‘akepa population had indeed crashed. Lohofener, in turn, agreed to postpone any decision on Freed’s appeal until Scott had answered the question: “Has the Hawai‘i ‘akepa population declined on Hakalau Forest National Wildlife Refuge?”

Scott submitted his report to Lohofener in March 2008. He had sent material relating to 21 years of population data on the ‘akepa and white-eye to eight independent reviewers, drawing on data from both the USGS and Freed. As to the population status of the ‘akepa, Scott wrote, “There was a preponderance of evidence and opinion that there was no discernable trend in the numbers of ‘akepa for the period of the surveys 1987-2007.” One reviewer, Scott wrote, stated, “The data are not going to convince anyone that there is a major problem.” He added, “The drop in numbers by 50 percent from 2004 to 2006 was short of the low numbers recorded in the 90s and followed by a significant increase in the density reported for 2007.”

Similarly, Scott’s experts could find no

evidence that the presence of Japanese white-eye was stressing the 'akepa. "Several reviewers commented that there were indications that if anything the populations were tracking each other and increases in numbers of white-eye were coincident with increases in the numbers of 'akepa."

Scott concluded by noting that the census data alone cannot provide an answer to the question he had been given.

### A Workshop

On March 25, 2008, Lohofener wrote to Freed, attaching Scott's report. "Based on these reviews," Lohofener said, "I do not believe that the research methods you proposed are likely to produce the results needed to address the population status of the 'akepa and whether there is inter-specific competition with the Japanese white-eye... at this time I concur with the decisions by the Refuge Manager and Supervisor of Pacific Island refuges to not issue you a research permit based on the research proposal you submitted."

However, he continued, the service would be conducting a workshop to address research needs at the refuge and "I will ensure you are invited to participate. ... Future research proposals you may submit will be welcomed and objectively reviewed."

Freed did participate in the workshop, held October 8-9 in Hilo. In fact, most of the discussion – to the disappointment of many of the 37 scientists who participated – was centered on his claims about the 'akepa. Freed made his arguments (in two different presentations) that the health of populations of 'akepa – indeed, of all native birds at Hakalau – were being threatened by chewing lice and competition from Japanese white-eye, and that the decline might be masked by inappropriate census methods.

But, according to the write-up of the workshop by Scott, Freed's dire warnings were contradicted by other presenters. Thane Pratt, of the USGS BRD, reported that his agency had analyzed forest bird survey data since 1976, and that those data show "one consistent theme: forest bird populations in managed areas are stable or increasing; forest bird populations in non-managed areas are stable or decreasing." Richard Camp, also of the BRD, showed that long-term trends for 'akepa and all other native forest birds were stable at Hakalau, although short-term trajectories in some areas showed a decline. "We advise caution on relying on short-term trajectories to assess population status," he said, adding that Hawai'i 'akepa "showed stable to increasing densities over the study time period."

Edward Garton, of the Department of

Fish and Wildlife at the University of Idaho, directly challenged Freed's claims that the white-eye competed for food with the 'akepa. Looking at the question of competition through the lens of four different models, Garton concluded that each model showed "different levels of competition between 'akepa and Japanese white-eyes, but none of these models show any significant effect." In fact, contradicting Freed's calls for removal of white-eyes from the refuge, Garton claimed that both " 'akepa and Japanese white-eye densities increase with positive habitat changes" and that "removal of Japanese white-eyes will actually reduce 'akepa densities." If current management continues, he said, "it is unlikely that 'akepa will go extinct within the next 30 years."

At the end of the second day of the workshop, participants were asked to rank what they regarded as the most immediate threats to native birds at Hakalau. Parasites garnered two votes, and interspecific competition (i.e., competition between 'akepa and white-eye) got just one – presumably Freed's. By contrast, feral ungulates (i.e., pigs) received the highest number (24), lack of habitat was next (21 votes), invasive plants (12), and predation by rats was fourth (7 votes).

One of the workshop participants explained to *Environment Hawai'i* some of the reasons for rejecting Freed's hypotheses: "There is no recent data on the diets of white-eyes and 'akepa. These species probably do eat many of the same species of insects, but we don't know that for sure and we don't know how abundant the insects are. If insects are limited in supply, one might be able to infer competition, but one would also have to show

### for further reading...

The dispute between Lenny Freed and the Hakalau refuge staff was the subject of a cover article in the October 2006 edition of *Environment Hawai'i*, "Is Hawai'i 'Akepa on the Brink of Collapse? Alone among Peers, UH Professor Says Yes."

The article is available online at [www.environment-hawaii.org](http://www.environment-hawaii.org). Access is free to current subscribers. Others may pay \$10 for a two-day pass.

that other birds (including native species like 'amakihi and 'apapane) are not influencing insect supply. The assertion that the 'akepa and white-eye compete seems to be based mostly on Freed's data that show that there are more white-eyes in his study area and fewer 'akepa than there were before...

"Correlation does not equal causation," this source went on to say. "Freed also asserts that 'akepa are starving, but his sample sizes are small, and his study area is 33 hectares in a 13,400-hectare refuge. Even if just half of that is suitable habitat for 'akepa, that's still a huge area compared to Freed's study site. Someone suggested to me that 'akepa might be declining in Freed's study area because they've been studied so intensely. I think most biologists would say that's not likely, but I wonder what the ordinary person on the street would say."

*Environment Hawai'i* asked Freed why he thought his ideas got so little traction at the workshop. Freed stated in an email reply: "I

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think the reason why participants at the meeting disagreed is because 90 percent of the talks emphasized the survey data indicating long-term stability. Except for one that showed that the last 8 years revealed declines in every native species, but that was dismissed in preference for the long-term set. Also, the incipient extinction paper and ectoparasite paper were in press but not published at the time of the meeting.” (The references are to “Incipient extinction of a major population of the Hawai’i ‘akepa owing to introduced species,” published in *Evolutionary Ecology Research*, and “Explosive increase in ectoparasites in Hawaiian forest birds,” published in the *Journal of Parasitology*.)

He indicated that he did not give much weight to the views of his local peers. “The national and international peer review is much deeper than local peer review,” he wrote. “Interspecific competition is a difficult topic. Everybody includes it in the laundry list of threats to the birds. We had to convince some very critical community ecologists that it was occurring at an unexpected strength” to get the papers published, he wrote.

After the workshop, the regional Fish and Wildlife Service office in Portland revisited Freed’s appeal of his permit denials by staff at the refuge and the Honolulu office. Freed had raised “several science issues and we delayed responding until we could arrange for an independent review of forest bird research needs and priorities,” wrote David Wesley, acting regional director in a letter to Freed on October 27. “We have subjected your research request to a thorough review by Service staff, the Hawai’i Forest Bird Recovery Team, an independent science advisory group, as well as the recent discussions among the leading experts in Hawaiian forest birds at the

Hilo workshop. We have also evaluated your performance on previous permits. Based on this exhaustive analysis, I am denying your appeal.”

### Last Licks

Freed may not have won over the workshop participants, and his permits to work at the refuge were history, but he continued his efforts to sway public opinion, getting *Nature* to publicize his dispute in the news article in its December 11 edition. The report drew an immediate comment from UH zoology professor Sheila Conant and David Duffy, professor of botany at UH. In a posting on the *Nature* website, they faulted reporter Dalton’s article, which, they wrote, “does not appear to approach the standards one might normally associate with *Nature*.” Among other things, they suggested that had Dalton reviewed results of other analyses of bird populations at Hakalau, he would not have so readily accepted Freed’s claims as gospel. “[I]f we are to have any hope of saving the ‘akepa and other Hawaiian species, we need to insist on the best possible science and science reporting, uncomfortable as the process may be,” they concluded. “We hope that *Nature* will be part of this process.”

Freed and Cann then posted their own 1600-word comment on points raised by Conant and Duffy – and many other grievances, almost all of them having their origin in the behavior of Jack Jeffrey.

Jeffrey, they wrote, was responsible for them not conducting timely analyses of the thousands of blood samples they have taken

and he ignored their paper showing their method of blood analysis was superior to all others,<sup>3</sup> he refused to let them collect bird lice, and he required them to remove the artificial nesting cavities for ‘akepa that Freed had put up, even though they had been used by “at least eight females, who nested more successfully than females using natural cavities.” (In an email, Freed acknowledged that he was precluded from collecting ectoparasites “by a special use permit condition that forbade us from doing so.”)

Freed also blamed Jeffrey for taking away “the \$2 million field station” at Hakalau, built in the early 1990s by a grant that Freed and other UH scientists (including Conant) received with grants from the MacArthur Foundation and the National Science Foundation. (The Hakalau facility is owned by the university and has not been taken away or appropriated by the Fish and Wildlife Service.)

None of the claims Freed makes is new, and none has gone unchallenged or unexplained over the years. The requirement that Freed remove the artificial cavities, for example, was a result of Freed’s having lost the permit allowing him to conduct studies on the impact of providing artificial nests for ‘akepa. (There was no requirement to remove artificial nests that were occupied.) The university did not lose use of its field station, although Freed can no longer use it unless he has a permit.

Freed said he had applied for several permits to control white-eyes at the refuge, to see if that improves the condition of the ‘akepa and other native species. They “were both dissed by the refuge, and the dissing was upheld by the project leader in Honolulu and the regional director in Portland,” he said.

“They are really going to regret the decisions they have made,” he concluded.

— Patricia Tummons

<sup>3</sup> The paper Freed referred to was actually a “critical commentary” on blood analysis methods published in the *Journal of Parasitology* in 2003. A letter in FWS files from one of the journal’s reviewers noted that the paper “has proven to be a difficult contribution to get reviewed... [A]ltering the format a bit will reduce some of the evident bitterness in the current manuscript and will, in fact, be of much more help to the general readership than the current version, which has a bit too much of a diatribe in it.”

