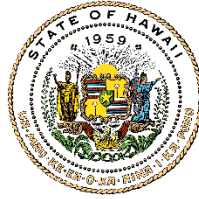


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February 21, 2025

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LAND
STATE PARKS

Endangered Species Recovery Committee
State of Hawai'i
Honolulu, Hawai'i

SUBJECT: REQUEST FOR RECOMMENDATION OF APPROVAL OF THE SAFE HARBOR AGREEMENT FOR INTRODUCTION OF ENDANGERED ORANGEBLACK HAWAIIAN DAMSELFLY (*MEGALAGRION XANTHOMELAS*) TO A CONSERVATION AREA ON THE ISLAND OF LĀNA'I

Dear Committee Members,

The Department of Land and Natural Resources Division of Forestry and Wildlife (DLNR DOFAW) is requesting the Endangered Species Recovery Committee (ESRC) review and recommend to the Board of Land and Natural Resources to approve the Safe Harbor Agreement for Introduction of Endangered Orangeblack Hawaiian Damsselfly (*Megalagrion xanthomelas*) to a Conservation Area on the Island of Lāna'i. Pūlama Lāna'i prepared the final draft of the safe harbor agreement in consultation with the U.S. Fish and Wildlife Service (USFWS) and DLNR DOFAW (collectively "The Parties") and represents a State Safe Harbor Agreement (SHA) and a Federal Conservation Benefit Agreement. The developing SHA was first presented to the Committee during the March 29th, 2023, ESRC meeting. The draft SHA was brought to the Committee during the December 6, 2024, ESRC meeting.

BACKGROUND:

The safe harbor agreement is between Lāna'i Resorts, LLC dba Pūlama Lāna'i, USFWS, and DLNR DOFAW. It includes conservation actions which will be implemented and monitored on properties owned by Pūlama Lāna'i for the Orangeblack Hawaiian damsselfly (*Megalagrion xanthomelas*) ("Damsselfly"), ae'ō (Hawaiian stilt, *Himantopus mexicanus knudseni*), 'alae ke'oke'ō (Hawaiian coot, *Fulica mericana alai*), and Assimulans yellow-faced bee (*Hylaeus assimulans*); (collectively the "Covered Species"). The agreement aims to implement conservation actions that will result in a net conservation benefit for the Covered Species under applicable law and the terms of the agreement and contribute to their recovery. This agreement furthers the conservation of the Covered Species by (1) introducing the Damsselfly to a conservation area on Lāna'i; (2) memorializing conservation measures that will be taken to

provide and maintain a net conservation benefit that furthers the recovery of each of the Covered Species; (3) describing how The Parties will work together to implement shared goals to benefit the Covered Species and create habitat; and (4) affirming that Pūlama Lāna‘i receives assurances and limited authority to cause purposeful¹ and incidental take of Covered Species associated with conservation measures and activities following the terms of this agreement and applicable law.

1. “Purposeful take” is allowed under Section 10(a)(1)(A) of the Endangered Species Act (ESA). Under this section, the U.S. Fish and Wildlife Service (Service) may permit any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species.

Table 1. Proposed Incidental Take Request for the Pūlama Lāna‘i Safe Harbor Agreement

Common Name	Scientific Name	Requested Take Authorization	Location
Pinapinao (orangeblack Hawaiian damselfly)	<i>Megalagrion xanthomelas</i>	All – with damselfly habitat as a surrogate for amount of take	Por. of TMK 2-4-9- 002-061* and Other Areas**
Ae‘o (Hawaiian stilt)	<i>Himantopus mexicanus knudseni</i>	Three (3)	Por. of TMK 2-4-9- 002-061*
‘Alae ke‘oke‘o (Hawaiian coot)	<i>Fulica americana alai</i>	Three (3)	Por. of TMK 2-4-9- 002-061*
Nalo meli maoli (assimulans yellow- faced bee)	<i>Hylaeus assimulans</i>	All	Por. of TMK 2-4-9- 002-061* and immediately adjacent areas

*The portion of TMK 2-4-9-002-061, identified as the “Conservation Area” in the Safe Harbor Agreement, is located in the Kalulu ahupua‘a, roughly southeast of the intersection of Hawai‘i Route 440 “Mānele Road” and an unnamed rural access road locally referred to as Hi‘i Road or Hi‘i Flats Trail.

**All TMK numbers listed in Appendix B of the Safe Harbor Agreement, except the portion of TMK 2-4-9-002-061 identified as the Conservation Area, are identified as “Other Areas” in the Safe Harbor Agreement. Cumulatively, the “Conservation Area” and “Other Areas” are referred to herein as the “Enrolled Property.”

Table 2. Proposed Net Conservation Benefits to Covered Species

Covered Species	Net Conservation Benefit to Covered Species
Pinapinao (orangeblack Hawaiian damselfly)	<ul style="list-style-type: none"> • Creation of new, suitable damselfly habitat via establishment of a protected, fenced, ungulate-free area with aquatic breeding habitat maintained free of predatory fish • Establishment of a new population of damselfly resulting in an increase in damselfly number, distribution, and total area of occupied habitat within their historic range, and decreased risk of extinction
Ae‘o (Hawaiian stilt)	<ul style="list-style-type: none"> • Creation of small areas of predator-free habitat for foraging and potentially nesting
‘Alae ke‘oke‘o (Hawaiian coot)	<ul style="list-style-type: none"> • Creation of small areas of predator-free habitat for foraging and potentially nesting
Nalo meli maoli	<ul style="list-style-type: none"> • Creation of habitat for foraging and possible nesting as out-planted native plants mature.

(Assimilans yellow- faced bee)	
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Additional background information about this SHA, including a brief species history of the Orangeblack Hawaiian damselfly, baseline status of the conservation area, and activities covered under the SHA, was included in the ESRC submittal for the December 6, 2024, ESRC meeting.

PUBLIC TESTIMONY

DOFAW released the draft SHA for a 60-day public comment period on November 23, 2024, per the Office of Planning and Sustainable Development Environmental Review Program’s bulletin *The Environmental Notice*. DOFAW conducted a public hearing on Lāna‘i to receive public comments on January 17, 2025. During the public comment period, DOFAW received one formal comment from the public. The Master’s Report on the public hearing is included with the submittal as Exhibit 2.

ESRC COMMENTS AND RECOMMENDATIONS

The ESRC reviewed the draft SHA during the December 6, 2024, ESRC meeting. Committee members provided the following comments and recommendations:

1. The ESRC requested if success criteria metrics are not met, Pūlama Lāna‘i works with the Megalagrion Working Group to determine the appropriate adaptive management actions. Pūlama Lāna‘i will carry out the adaptive management actions and continue the effort to reintroduce the species.
 - a. Language reflecting this request is included in Table 2 of the SHA and the Incidental Take License.
2. The ESRC recommended that Pūlama Lāna‘i work with the agencies to clarify the definition in the SHA regarding purposeful take from both the federal and state perspectives and include this definition in the ITL.
 - a. Language referencing “purposeful take” was removed from Section 1.3 Hawai‘i Regulatory Framework.
 - b. The Federal and State definitions of “take” are also clarified in the Special Conditions of the Incidental Take License.
3. The ESRC recommended the applicant include language in the SHA to prohibit cat feeding at or near the conservation area.
 - a. Language prohibiting the feeding of cats was added to Appendix A, Part 11 of the SHA.
4. The ESRC encouraged the Megalagrion Working Group to maximize the genetic diversity of the translocated *Megalagrion xanthomelas* population proposed for release on Lana‘i to increase the likelihood of their survival.

- a. Language stating an effort will be made to use genetically diverse damselfly propagules from multiple populations was added to Appendix A, Part 5 of the SHA.

State of Hawai'i Safe Harbor Agreement Regulatory Framework

The Legislature of the State of Hawai'i deemed the execution of safe harbor agreements, according to section 195D-22, HRS, to provide incentives to conserve endangered species for public purposes and in the public interest of the general welfare of the state. Section 195D-22(b) authorizes the DLNR to allow the take of an endangered, threatened, proposed, or candidate species incidental to an otherwise lawful activity in or affecting the created, restored, maintained, or improved habitat, provided that specific criteria outlined in subsection (b)(1) through (7) are met.

RECOMMENDATION:

In alignment with HRS 195D-22, DOFAW seeks a recommendation from the ESRC to the Board of Land and Natural Resources to approve the Safe Harbor Agreement for the Introduction of Endangered Orangeblack Hawaiian Damselfly (*Megalagrion xanthomelas*) to a Conservation Area on the Island of Lāna'i.

Respectfully submitted,



DAVID G. SMITH
Administrator, Division of Forestry and Wildlife

Attachments:

Attachement 1: Safe Harbor Agreement/Conservation Benefit Agreement for Introduction of Endangered Orangeblack Hawaiian Damselfly (*Megalagrion xanthomelas*) to a Conservation Area on the Island of Lāna'i, between Lāna'i Resorts, LLC dba Pūlama Lāna'i, U.S. Fish and Wildlife Service, and State of Hawai'i Department of Land and Natural Resources.

Attachment 2: Master's Report on Public Hearing

Attachment 3: Incidental Take License–32