



# 'ELEPAIO

Journal of the  
Hawaii Audubon Society

For the Protection of  
Hawaii's Native Wildlife

VOLUME 51, NUMBER 7

JULY 1991

## Citizen Suit Provisions

by Linda M. Paul

The Hawaii Audubon Society and the National Audubon Society, on behalf of their members, recently filed suit against the United States Fish and Wildlife Service to compel it to perform its duty under the Endangered Species Act to go on to the McCandless Ranch and implement the 'Alala recovery plan. (See related story on this page.) This suit was possible because a provision in the Endangered Species Act permits citizens, or groups representing citizens, to act as private attorneys general to protect their interests in the environment. The citizen suit is one of the basic tools of environmental enforcement. Government agencies frequently fail to enforce environmental legislation, either because of lack of will or lack of resources, and Congress hoped that citizen suits would provide an alternative means of enforcement.

Citizen suit provisions are part of most of the major federal environmental legislation that came out of the 1970s, including the Endangered Species Act, the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act (Superfund), which deals with the disposal of hazardous waste. Hawai'i has passed its own version of Superfund and during the 1991 legislative session added a citizen suit provision. Only one other Hawai'i statute has such a provision, a law that empowers citizens to prevent development in violation of land use rules.

Citizen suit provisions in almost all the environmental statutes are virtually identical: they authorize "any person" to commence a civil suit to enforce the requirements of the acts against any person alleged to violate them or to require the government to perform a mandatory duty under the acts. "Person" has been interpreted by the courts to include organizations and agencies, but not corporations suing for commercial purposes.

The "person" must also have standing to sue, which means that the violation complained of must cause injury to the person and the injury must be within the zone of interest protected by the statute. The person need not allege direct harm to himself: diminished enjoyment and use of recreational resources, including for birdwatching, are enough to confer standing. However, courts deny standing to an organization alleging only a general interest in environmental protection. They do find standing if such organizations are representing members who themselves would have standing. Such an organization must be a membership organization and its members must have a voice in its policies. It is enough to allege that its members live in or use areas or resources affected by the alleged violations. There is an ongoing debate over the injury requirement. If citizens are indeed acting as attorneys general enforcing mandatory acts, why must they also assert an injury?

Generally, no suit may be commenced unless 60 days notice has been given to the government agencies charged with enforcement and to the violators of the act in question. Presumably this gives the agency the time and incentive to file its own enforcement action. A suit may not commence if the agency has already begun to diligently prosecute an enforcement action. The person giving notice may intervene by right in any government actions already commenced in federal court, and vice versa.

Citizen suits permit action against sovereign governments only to the extent that the governments consent to be sued. Most federal environmental statutes permit citizens to sue the federal government both for violating the provisions of an act and for failing to implement mandatory provisions; state governments may only be sued as violators of federal statutes, not for failing to administer them. Corporations are civilly liable for violations caused by their employees within the scope of their employment, regardless of whether  
(Continued on page 46)



## Audubon Sues to Protect the 'Alala

In April, the Hawaii and National Audubon Societies filed a lawsuit in Hawai'i Federal District Court to prevent the imminent extinction of the endangered Hawaiian Crow ('Alala). Among the defendants are the U.S. Fish and Wildlife Service and the U.S. Interior Department, the federal agencies charged with saving the 'Alala under the Endangered Species Act.

The 'Alala is in a crisis situation. It is on the federal and state endangered species lists, and there may be as few as 10 crows remaining in the wild. This remnant population is restricted to the privately owned McCandless Ranch on the Big Island. A captive population of 11 'Alala is maintained by the State at Olinda, Maui. Although the 'Alala is on the brink of extinction, the McCandless Ranch owners refuse to allow full government access to avoid the species' extinction.

Skip Spaulding, the Sierra Club Legal Defense Fund attorney handling this case, states, "The law provides that the 'Alala is a wild creature, that can roam wherever it wishes. The birds do not belong to anyone, including the McCandless Ranch owners; rather, they are a public treasure, an endangered species protected by the U.S. government."

Unfortunately, the government has abdicated its responsibility to manage this critically endangered species. This lawsuit is our last hope to prevent the 'Alala from becoming the world's next extinction victim.

# Hawaii Audubon Society

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# California Here We Come

The Hawaii Audubon Society is sponsoring a birding trip to Northern California from 9 October to 18 October, 1991. Among the places we will visit are Point Reyes National Seashore, Gray Lodge State Wildlife Refuge, Yosemite National Park and Monterey.

Black-shouldered Kite, Black and Surf Scoters, Black Oystercatcher, Tri-colored Blackbird, Wrentit, Townsend's Warbler, Osprey, Prairie and Peregrine Falcons, White-fronted Goose, Wood Duck, American Bittern, Great-horned and Burrowing Owls, Bald and Golden Eagles, Lewis' and Acorn Woodpeckers, Varied Thrush, Western Bluebird, Phainopepla, and American Dipper are among the species we expect to see.

Also included is a day long pelagic trip during which we should see Black-footed Albatross, Northern Fulmar, Pink-footed, Flesh-footed, Buller's, Sooty, Short-tailed, and Black-vented Shearwaters, Wilson's Fork-tailed, Leach's, Ashy, Black, and Least Storm-Petrels, Red-necked and Red Phalaropes, Pomarine, Parasitic, and Long-tailed Jaegers, South Polar Skua, Sabine's Gull, Arctic Tern, Marbled, Xantus' and Craveri's Murrelets, and Cassin's and Rhinoceros Auklets. And then there are the other sea creatures — California and Stellar sea lions, southern sea otter, Dall's and harbor porpoises, Pacific white-sided dolphin, and blue, humpback, and Minke whales.

We also expect to see bear, deer, coyote, porcupine, and the Golden Marmot.

Our guide is naturalist David Wimpfheimer. He has done research on raptor migration in Egypt, the Great Gray Owl in Stanislaus National Forest, California, and marine birds and mammals at Point Reyes Bird Observatory, California. He has led tours of California and Arizona for Audubon chapters from across the country.

This trip is limited to 12 persons. The cost round-trip from San Francisco is \$1,275 per person, double occupancy.

## Birding in Costa Rica

Two other birding trips are scheduled. We will explore Costa Rica from 18 February to 28 February, 1992. This trip will traverse various ecological zones, including dry and cloud forests, lowlands, and marshlands.

Black and Crested Guan, White-ruffed

Manakin, Cinnamon Woodpecker, Snowcap, Fiery-throated, Cerise-throated, Volcano, and Black-bellied Hummingbirds, Emerald and Yellow-eared Toucanets, Lattice-tailed Trogon, Green Violet-ear, Black-capped, Long-tailed Silky, and Black-and-Yellow Silky Flycatchers, Sooty Robin, Black-cheeked and Flame-throated Warblers, Sooty-faced and Yellow-thighed Finches, Timberline Wren, Buffy Tuftedcheek, Peg-billed Finch, Volcano Junco, Slaty Flower-piercer, Three-wattled Bellbird, Magenta-throated Woodstar, Azure-hooded and Magpie Jays, Collared Redstart, Spangled-cheeked Tanager, Elegant Trogon, Roadside Hawk, Thicket Tinamou, Orange-chinned Parakeet, Muscovy and Black-bellied Whistling Ducks, Wood Stork, White Ibis, Roseate Spoonbill, Boat-billed Heron, Scarlet Macaw, Yellow-billed Cotinga, Black-hooded Antshrike, Baird's Trogon, Collared Aracari, Golden-naped Woodpecker and, of course, the Resplendent Quetzal, are some of the species we expect to see.

We should also encounter two-toed and three-toed sloths, anteaters, coatimundi, armadillo, crocodile, and squirrel and white-faced capuchin monkeys.

Our guide is naturalist Rafael Campos, former assistant curator for the University of Costa Rica and field assistant to Gary Stiles, author of *A Guide to the Birds of Costa Rica*. This trip is limited to 20 participants. The per person, double occupancy round trip cost is \$2,595 from Honolulu, \$1,945 from Dallas, and \$1,895 from Miami.

Finally, former Hawaii Audubon Society President and prize winning wildlife photographer Bruce Eilerts will lead an eight day trip to Arizona, scheduled for 2 May 1992 to 9 May 1992. This tour is timed to see the southeastern Arizona specialty birds, resident desert birds, and Mexican species. Highlight of the trip is a two-day stay at Cave Creek Ranch, one of the hottest birding spots in the nation. The cost of this trip, which is limited to 13 participants, is \$1,290 per person, double occupancy, round trip from Tucson.

For a complete itinerary write to Trips, Hawaii Audubon Society, 212 Merchant Street, Suite 320, Honolulu, HI 96813, and specify which trip(s) you are interested in. The cost of each trip includes a \$100 donation to the Hawaii Audubon Society.



# GREENPRINT

AUDUBON HAWAI'I CONSERVATION NEWS

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## Hawaii Longlining: Controversy Continues

by Niki Lauren

Recent increases in the longline fishing fleet and numerous reports of interactions between fishermen and animals have raised much concern over the impact of longline fishing in the Northwest Hawaiian Islands.

There are about 155 longliners in Hawai'i now compared to about 80 in 1989. With the rise in longliners has come an increase of interactions between fishermen and animals, particularly endangered Hawaiian monk seals, albatrosses, and other birds.

Longlining, not to be confused with trawling, trolling, drift gillnetting, or purse seining, is also known as flaglining.

Japanese immigrants brought longlining to Hawai'i around 1900, according to Alvin Katekaru, resource management specialist for the National Marine Fisheries Service (NMFS). It was mainly for pelagic fish such as big eye tuna, he said.

Around 1988-89, a new form of longlining surfaced aimed at a new target, the broadbill swordfish. It was a technique brought from the East Coast and involves the use of monofilament line and lightsticks. Whole squid is the preferred bait. A typical longline set consists of a 20-35 mile main line with as many as 700-1000 branch lines or gangions with an equal number of hooks.

sink into the ocean. NMFS biologists believe that in winter, on route to the main Hawaiian Islands, the swordfish migrate close to shore along the NWHI. This means that the longliners after them would also be close to shore which is the endangered Hawaiian monk seal's habitat.

The remote atolls and islands of the NWHI are the only present day terrestrial habitat of the Hawaiian monk seal, which gets its name from the cowlike fold on the back of its neck. These beaches and nearshore waters around the NWHI have been designated a critical habitat for them. An estimated 1200-1500 seals are believed to exist. A recent report from (WPRFMC) states that a continuing decline in the pup counts over the past two years is cause for concern, and any mortality resulting from alleged interactions from longliners would adversely affect the conservation and recovery of this species.

According to (WPRFMC), recent information confirms the occurrence of interactions between longliners and seals. As of February 1991, six Hawaiian monk

seals have been observed in the NWHI with jaw or head injuries inconsistent with natural causes. A seventh seal was observed with a longline hook imbedded in its chest with 30 feet of monofilament leader attached. Another seal was seen on Tern Island with a hook caught in its mouth. Yet another seal was



An endangered Hawaiian Monk Seal  
Photo by Bruce Elliotts

reported with a bleeding head injury and remaining motionless in the  
 from its mouth. Ken McDermond, a United States Fish and Wildlife  
 Service refuge manager, said, "We think we're only seeing the tip  
 of the iceberg."

Sources at WPRFMC said that it is possible that there are monk  
 seals who have died at sea or were injured and hauled out at  
 other islands and not observed. The council adds that even if  
 seals were snagged or tangled occasionally but released alive,  
 the risks of injury and mortality from drowning, perforation of the  
 gastrointestinal tract by hooks, or infection from hooking and  
 snagging would be great. Monk seals, however, are not the only  
 wildlife being affected by longlining. Migratory birds, particularly  
 albatrosses, are being affected.

The trouble with birds is that they take bait intended for fish, peck  
 at the catch thus decreasing its value, and sometimes get  
 hooked or caught in fishing lines. (continued next page)

lbs. of swordfish, a by-catch of the tuna longline fishery, according  
 to the Western Pacific Regional Fisheries Management Council  
 (WPRFMC). In 1989 landings rose to about 50,000 lbs.; in 1990 the  
 total landings were expected to exceed 3 million lbs. Much of the  
 swordfish caught is shipped to the East Coast where there is a big  
 market for it and where swordfish have been depleted partly due  
 to excessive longlining. The fishing grounds of the Northwest  
 Hawaiian Islands have opened up a new market for swordfish.

As designated by the geographer of the state of Hawai'i, the  
 NWHI include the approximate 27 islands from Nihoa to Kure Atoll.  
 The exact number changes when sand spits disappear, form, or  
 merge after winter storms. Much of the continued existence of the  
 NWHI depends upon coral reefs. The rate of coral growth and  
 other means of limestone production must keep up with changes  
 in sea level which cause islands to drown, or else the NWHI would

## ALIEN SPECIES MOST UNWANTED LIST

by Sheila Laffey

### PUBLIC ENEMY #2 - RUBUS: BLACKBERRY, RASPBERRY AND OTHERS

The Rubus family in Hawai'i consists of at least  
 7 alien species and 2 endemic ones. The  
 'akala or native raspberry does not have  
 sharp thorns and can produce fruit as large as  
 two inches long. This native plant is not as  
 plentiful as the gang of alien Rubus plants  
 which had ravaged 40,000 acres on all of the  
 islands in Hawai'i by 1983. The alien offenders  
 include blackberry (Rubus argutus or Rubus  
penetrans) and yellow Himalayan raspberry  
 (Rubus ellipticus).

### How does Rubus spread?

Rubus seeds are dispersed by animals and birds, as well as  
 humans. Nurseries were once freely impor-  
 ting Rubus species into the state for use by  
 homeowners and gardeners. Fortunately,  
 however, it is now listed as a noxious weed  
 by the Department of Agriculture and no  
 longer allowed into the state.

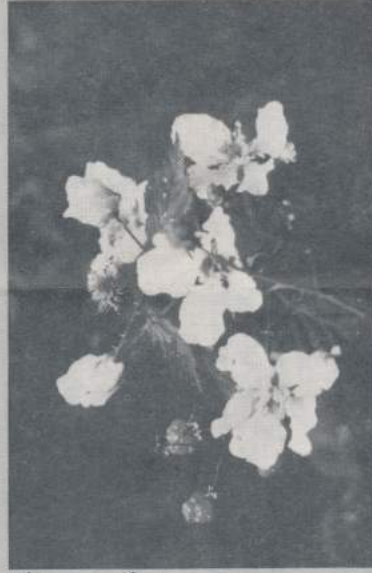
### What can be done?

- Observe the prohibition of importations  
 of this alien plant pest into Hawaii.
- Be careful not to spread its seeds while  
 hiking and do not plant alien blackberry  
 and raspberry on your land.
- According to George Markin of the US  
 Forest Service pathogens from the

southeast coast of the US and Chile are being closely monitored  
 for possible use here.

### CORRECTION:

Lorin Gill has not lost his "coconuts" and neither has Fiji. We regret an  
 error in the last issue attributing a reference to Lorin that Fiji had lost its  
 coconuts palms as a result of Candidia invasion.



Alien Rubus  
 Photo from DLNR

### Why is the Rubus gang so problematic?

Blackberry and raspberry thickets grow fast and form impene-  
 trable blankets as high as 3m over native vegetation. Its canes  
 shoot out long stems which sometimes root at the tips causing  
 even more of a tough barrier. These aggressive shrubs disrupt  
 native ecosystems by crowding out native understorey. They par-  
 ticularly victimize wet habitats at higher elevations but have also  
 naturalized in a variety of disturbed habitats, such as grasslands.

## Longlining continued...

"Jack", a longline fisherman wanting to keep his identity secret, claimed that some longliners were slaughtering albatrosses by the hundreds. Some methods may include inserting chlorine tablets or old plastic light sticks into bait before feeding it to the birds. There are also accusations of bird shootings.

Carroll Cox, an enforcement agent of the U.S. Fish and Wildlife Service, also heard these stories from fishermen as he gathered information about interactions. Another method of getting rid of the birds was to wrap tape around a bird's wings before throwing it into the ocean.

Cox, who has been interviewing members of the commercial fishing industry since March 1990, talked to about 70 people including deckhands, captains, and vessel owners. These interviews occurred at Kewalo Basin and other piers in addition to bars in the Honolulu Harbor area. Cox has obtained written statements from fishermen confirming killings. He also has photographs as evidence.

In addition Cox discovered that the general consensus within the commercial fishing industry is that "someone else is the cause of the problem." He also found a great number of fishermen who knew of killings, either accidental or intentional, who refuse to come forward for fear of being blacklisted or receiving bodily harm. Despite these consequences, Jack decided to step forth and blow the whistle on this issue because he said, "The whole fishing community aggravated me. They just wanted a free for all. We need more responsible people in the fishing industry, but it's hard to get that when so much of the hired help is transient and when vessel owners themselves aren't even on their boats to manage the crews."

Recently federal fisheries managers established an emergency rule banning longlining within 50 miles of the NWHI. This 50 mile longline free zone around the islands includes banks and swimming corridors, said Robert Harman, staff biologist for WPREMC. The ban began on April 15 this year and will remain valid for 90 days. It can then be renewed for another 90 days. At this time a permanent solution should be in the works. Harman is pleased with the rule. "The costs to the fishing industry are minor compared to the benefits of preserving an endangered species," he said. This regulation was issued solely to protect the monk seal. There are other ways to deal with the birds.

## ASAP Kick-off Big Success

by Nikki Lauren

The recent discovery of an alligator on O'ahu couldn't have proved better timing for the kickoff of a multi-media, educational campaign on alien species, launched by the National Audubon Society in conjunction with the State Department of Agriculture and the Hawai'i Agricultural Alliance.

Audubon members, as well as guests from other environmental organizations, the government, industry, the media, and some dedicated volunteers, assembled at Washington Place on Thursday, May 2 to celebrate the kickoff.

Keynote speakers included Dana Kokubun, Hawai'i State Office director, who stated, "We seek to do no less than to change how Hawai'i thinks . . . and in two years!"



Dana Kokubun, Governor Waihee, and Sheila Laffey at the ASAP Kickoff  
Photo by Kendall McCreary

One way of trying to minimize the trouble with birds is by using weights on lines so that baited hooks sink faster. Another way is to use noise-makers and scare devices like rockets or specially made balloons. Some boats have dragged buoys that send up sprays of water that frighten birds. Most people interviewed believe that the majority of fishermen do not use these devices because they think it is too much hassle and too costly. But what about the costs to our environment?



*An injured albatross - casualty of a longline hook*

Jack believes, "We've got to make sacrifices to conserve" and supports the 50 mile closure and use of bird repelling devices.

Some longliners are not so enthusiastic, and feel that they, as a group, are being singled out and ostracized.

Cox explained, "In every aspect of the fishing industry whether it's longlining, lobsterfishing, etc., there's some negative impact. Longliners aren't the only ones doing damage."

Jack agrees, saying that these problems were here before the swordfish longlining and points out the tuna longlining and bottomfishing industries are also having problems with seal and bird interactions. He believes that longliners are being singled out because of their high visibility and that other fisheries got away without blame because they had smaller fleets, so things were "easier to cover up."

Most fishing experts and enforcement believe that the majority of longliners are sincerely concerned about the environment from a moral standpoint, so that only the smallest percent of these animals injure result from deliberate cruelty. Harman said that it is unfortunate that "a few rogues are spoiling it for everybody." Cox believes that many fishermen do not report their own interactions with animals for fear of being arrested. He stresses, however, that "the idea isn't to get somebody arrested, but it is to minimize any negative impact on the environment because fishing isn't a right. It's a privilege."

More education and more enforcement could help the situation. The public, as well as fishermen, is encouraged to attend public meetings and hearings to lend support, voice its concerns, and to report any interactions to WPRFMC at 523-1368.

Christine Rosania of the Hawaii Agricultural Alliance and emcee for the evening exclaimed, "The best thing is that we forged relationships. For the first time, government, industry, and community-based environmental groups are working together."

A highlight of the reception was a demonstration by the Beagle Dog Corps. The dogs are trained to sniff out various odors such as plants, snakes, and aquarium water. The dogs are part of a program sponsored by the Department of Agriculture, which is responsible for administering and enforcing Hawai'i's plant and nondomestic animal quarantine laws. This is to prevent the unwanted introduction of insects, plant diseases, harmful animals, and other pests into Hawai'i.

Larry Nakahara, the Department of Agriculture's Plant Quarantine Manager, believes that, "Most people are unaware of potential problems that innocent looking plants or animals could do to our isolated island community."

Concern was also expressed by Yukio Kitagawa of the Department of Agriculture. "Prevention," he said, "is the first line of defense against unwanted pests. It costs the state millions of dollars to control and eradicate pests."

Rosania agreed, citing the lesser cornstalk borer, a type of insect, as one example. "Since 1986 state and private industry have spent about nine million dollars on it. We are controlling it now, but the problem still isn't solved," she said. Rosania gave another example of a pest, the bulb, a bird that eats flower buds. "In two years it's cost the anthurium and orchid industries three million dollars," she explained.

The Alien Species Alert Program (ASAP), will consist of brochures and posters, slide presentations, Public Service Announcements, a high school quiz show, and a video to be shown on incoming flights to Hawai'i which is being produced through the State DOA.

The short video will give a consistent message to incoming passengers about quarantine laws and who needs to fill out declaration forms. There will also be visuals showing where to go for plant inspection. The projected date of completion for the video should be by July, said Ilima Pianaia, State Deputy Director of Agriculture.

**What can the public do to stop the introduction of alien species to Hawai'i?** One way is not to release non-native animals, including rabbits, fish and birds. You can report sightings of troublesome species to the Department of Land and Natural Resources (548-8850 on O'ahu) or call the Department of Agriculture (548-7175).

## Mahalo Donors!

The Hawaii Audubon Society thanks the following members and friends whose donations were received from 10 April through 15 June:

Paul C. Banko, Elaine M. Bowes, Zedoc Brown, Jr., Brenda Clawson, Satoru Doi, Paulette Filz, Christine Gehrett, Freddie Harby, Paul Higashino, Susan J. Hower, James D. Jacobi, Ursel Jeutter, Michael Klimenko, J. Macomb, Jr., Maui Malama Pono, Marie Morin, Richard Nakagawa, Thane Pratt, Sandra J. Roberts, Eileen Root, Gary Ryan, Joel Simasko, Meyer Ueoka, Brad Wales, Mark White, and Michael and Kili Yasak.

## And Mahalo Volunteers!

We also give special thanks to our tireless behind-the-scenes workers:

George Campbell, Dorothy Cornell, Beth Edwards, Tommy Gambill, Brooke Heyward, Howard Johnston, Christi Moore, Susan Schenck, and Alan Ziegler.

## HAS Dues for 1992

All amounts are in U.S. dollars. Includes delivery of 'Elepaio.

**Life Membership** \$ 150.00  
Payable in full or three equal installments.

**Delivery to U.S. zip code addresses**  
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All other countries (airmail) 24.00

Introductory dues for  
National and Hawaii Societies: 20.00  
(Includes delivery of 'Elepaio and *Audubon Magazine* as bulk or 2nd class mail to U.S. zip codes. Renewal, \$30 annually.)

## Hawaiian Wildlife Information

Do you need information regarding recent rare or unusual wildlife observations within the main Hawaiian Islands? Call Bruce Eilerts at 487-1806. He will advise you on rare bird sightings and offer tips on where to best observe native flora and fauna. Please leave your questions and messages on his answering machine. Bruce will return your phone call or pick up the line if he is at home.

## Grants and Scholarships

The Hawaii Audubon Society makes grants annually for research in Hawaiian or Pacific natural history. Awards generally do not exceed \$500 and are oriented toward small-scale projects within this state. HAS also awards a \$1,000 tuition scholarship to an undergraduate in an accredited university majoring in a field related to Hawaiian or Pacific Basin natural history.

The deadlines for receipt of grant applications are 1 April and 1 October; for scholarships, 1 May. For information and application forms, contact John Engbring, HAS Grants and Scholarships Chairman, P.O. Box 4443, Honolulu, HI 96812, Tel: 541-2749 (days).



## Office Help Needed

Volunteers are needed to be at the Hawaii Audubon Society office one day a month to answer the telephone, process mail, and do other office-related tasks. Please call George Campbell, 941-1356 (H) for more information.

## Moving?


Please allow four weeks for processing address changes. Because our records are kept in order by zip code, we need both old and new addresses.

## May Field Trip to Kahana Valley

Thirty-five Audubon Society members and their guests enjoyed a beautiful day of hiking in Kahana Valley on Sunday, 19 May. The group assembled at the park headquarters at nine in the morning and began a leisurely stroll into the valley. At the trailhead, Pua, a resident, met us and gave an interesting history of the valley. When the State condemned the land in Kahana Valley to create the park, the residents of the valley asked to be allowed to continue to live there. The 16 or so families still inhabiting Kahana Valley act as guides and interpreters for park visitors. They also keep domestic animals and raise vegetables. As we were assembling to listen to Pua, one of the valley's bovine residents took the opportunity to get acquainted with group member John de Haan, to the point where John finally had to walk behind a tree to discourage further advances! A young man from the valley, Joshua, accompanied us on our hike.

Most of the group entered the valley on an access road which leads to a new water tank of mammoth proportions. From the water tank, we followed a new trail which winds through a hala forest. Koa and ohia lehua trees were spotted in the lower part of the valley. The trail intersects the Kahana Stream by a wonderful swimming hole where several hikers enjoyed a refreshing dip. Large freshwater prawns were seen in the stream.

After lunch, the group continued on the trail to the other side of the valley, coming out by a small dam and another swimming hole. A smaller party started out at the dam, returning by the water tank. As we left the valley, we were serenaded by a White-rumped Shama, as if to ensure that our lovely hike ended on a perfect note.

 Martha Hoverson

## We Goofed!


The article on plovers on page 41 of the June issue listed the wrong months for their migration. Mature birds reach Hawai'i after a 50 hour nonstop flight early in August. The juveniles, hatched in Alaska, come a month or so later. Their northward migration takes place in late April.

## Science Fair Winners

Hawaii Audubon Society sponsored two conservation awards at the thirty-fourth Hawaii State Science and Engineering Fair in April.

"Are Our Streams Affected by Their Environment?" by Jenelle Guinther, an eighth grade student at St. Andrews Priory, won the Junior Division Award. Jenelle did a field study on three O'ahu streams: Nu'uuanu Stream, Ka'alaeu Stream, and Ahuimanuwiola Stream. She sampled each stream at three distinct locations and tested oxygen content, turbidity, and coliform count to determine the effect of human activities on stream water quality.

The Senior Division Award went to Naomi Arincorayan, a twelfth grade student at Waianae High School, for her project, "Preserving Hawai'i's Flora: Micropropagation and Isozyme Analysis of Endemic Hawaiian Plants." Naomi's far-sighted project explored the propagation of native plants using tissue culture methods that could possibly be part of a revegetation effort. She also looked at enzyme composition between two populations of beach sandalwood.

Each winner received a plaque, copy of *Hawaii's Birds*, and a joint membership in the Hawaii and National Audubon Societies. 

## Help Us Revise *Hawaii's Birds*

The publications committee is revising *Hawaii's Birds*. This will be a minor revision, mainly correcting typos and any factual errors that appeared in the fourth edition. If you have any comments, please address them to the committee at the HAS office. We would also like to hear from anyone with better photographs than used in the present edition, especially of native forest birds.



## Citizen Suit Provisions


(Continued from page one)

corporate officials knew about or sanctioned their acts.

Citizen suits may request injunctive relief against persons currently in violation at the time the suit was filed. Suits generally are not permitted to punish past bad acts, but they may be reviewed if the violation is likely to be repeated. Injunctions may be mandatory, prohibitory, or granted under common law only after the court has balanced the hardship on the plaintiff against the hardship on the defendant. Injunctions ordering the restorations of wetlands are possible under the Clean Water Act, but are rarely granted in citizen suits.

Only under the Clean Water Act and Superfund may citizens sue for the assessment of penalties, which are then paid to the United States Treasury, not to the citizens doing the enforcing. Citizen

plaintiffs may or may not be able to recover the costs of their suit, including reasonable attorney's fees and expert witness fees. In some cases, citizens may be permitted to sue for damages resulting from violations, providing they meet certain criteria: a citizen must be among the class of plaintiffs whose interests are protected by the statute violated; the legislature must have intended to create a private cause of action and that action must be consistent with the purposes of the statute; and the action must not interfere with matters normally left to state law. (*Cort v. Ash*, 422 U.S. 66 [1975])

Citizen suit provisions alone do not restrict a citizen's right to seek enforcement or other relief under other statutes or common law. However, courts have ruled that the comprehensive provisions of certain statutes, including the Clean Water Act and Superfund, so completely occupy the enforcement field that they preempt any other remedies. 

## Hawaii Audubon Society Publications

*Hawaii's Birds* by the Hawaii Audubon Society, 4th edition, 1989. Over 150 color photographs and illustrations. \$10.50 per copy (\$8.95 plus \$1.55 postage).

*Checklist of the Birds of the Mariana Islands* by James D. Reichel and Philip O. Glass, 1991. Lists all taxa naturally occurring in the Marianas and introduced species that have established viable populations. \$2.00 postpaid.

*Checklist of the Birds of Hawaii* by R.L. Pyle, 1988. Lists all taxa naturally occurring in Hawai'i and introduced species that have established viable populations. Also includes all changes from the 1983 checklist. \$2.00 postpaid.

*Checklist of the Birds of Micronesia* by P. Pyle and J. Engbring, 1985. Lists all taxa naturally occurring in Micronesia and introduced species that have established viable populations. \$2.00 postpaid.

*Field Card of the Birds of Hawaii* by R.L. Pyle and A. Engilis, Jr., 1987. A pocket-sized field card listing bird taxa found in Hawai'i, with space for field trip notes. \$.25 postpaid, ten or more, \$.10/copy.

*Endangered Waterbirds of the Hawaiian Islands* by R.J. Shallenberger, 1978. Hawaiian Stilt, Coot, Gallinule (Moorhen), and Duck, each described in two pages of photographs and text. \$1.00 postpaid.

**Posters, 43 x 56 cm.,  
\$1.00 each, postpaid.**

*Our Homes are Hawaii's Wetlands*, 1984. Native wildlife of a Hawaiian marshland.

*Hawaiian Forests Are More Than Trees*, 1988. Hawaiian forest plants, invertebrates, birds, and the Hawaiian hoary bat. Booklet included.

**Back Issues of 'Elepaio and  
Indices to 'Elepaio:**

Vol. 1-40: \$1.00 per issue,

\$10.00 per volume

Vol. 41 to present: \$0.50 per issue,

\$5.00 per volume

Complete set (Vols. 1-43) — \$350

Index Vols. 36-40 — \$2.50

Index Vols. 41-45 — \$2.50

\*All back issues of 'Elepaio are at above cost plus applicable postage.

Send orders, with check payable to the Hawaii Audubon Society, to Hawaii Audubon Society, 212 Merchant St., Suite 320, Honolulu, HI 96813.



# What Is Happening With The 'Elepaio

This year, we are concentrating the scientific articles in the June and December issues. In the future, we hope to have two journals, one devoted to scientific articles and the other to chapter news. This will enable us to get conservation and other news of chapter activities to our members on a timely basis.

Effective 30 June, both Sheila Conant and Stuart Lillico ended their tenure. Sheila Conant was our scientific editor and editor for more than five years. She is moving on to other things, and we wish her well. Her tireless search for articles and commitment to thoroughness and accuracy greatly added to the 'Elepaio's stature in the scientific community. Stuart Lillico was managing editor for a year and a half. A big mahalo nui loa to them both.

## Help Wanted:


With this issue, Lynne Matusow takes over as managing editor. She is seeking story ideas, reporters, writers, editors, and others to join the 'Elepaio committee. If you can help, call her at 531-4260 (H). We are also seeking a scientific editor. Call Reggie David on Hawai'i, 1-329-9141 (W), for information on that position.

## Notice to Authors:

'Elepaio invites submission of scientific articles on the natural history of Hawaii and the Pacific. Such articles are subject to peer review.

Scientific articles should be typewritten and double-spaced. Four copies must be submitted. In addition, authors are asked to submit the article on a computer diskette, with clear indication of the word processing program used.

Photographs may be either color or black-and-white prints, 3.5 by 5 inches or larger. Cropping lines (if needed) should be indicated. The originals of figures, maps, graphs, etc. should be clean and clear, with lettering large enough to remain legible after reduction to fit journal format. Submit two good-quality xerographic copies along with each original illustration.

Manuscripts should be sent to 'Elepaio, Hawaii Audubon Society, 212 Merchant St., Suite 320, Honolulu, HI 96813. 

# My Happy Encounter With Japanese 'White Eye' Chicks

By Francis H. Tom

The report in 'Elepaio for April 1991 that 1,061 specimens of the Japanese White-eye (*Zosterops japonicus*) had been observed during the previous year's Christmas bird count at Ho'omaluhia Park, at the foot of the Nu'uaniu Pali, Honolulu, prompts me to tell of a happy involvement at my Hawaii Kai (Honolulu) home.

One Saturday afternoon (the date was September 13) my wife Charlotte heard much bird chatter outside our window. She called me. Together, we discovered a big beautiful cat crouched on the stone wall. Then we noticed a White-eye chick clinging to the wall. Obviously, it was learning to fly and had lost its courage.

I quickly captured the chick, then noticed a second one flying from rock to rock in the rear of our house. I followed it and managed to hand-catch it. The parents were flying about us, issuing constant high "tweet" sounds. We recognized them as Japanese White-eyes.

I put the two chicks in a covered glass terrarium, with some scrap paper and grass. When I read that the species eats both insects and fruit, I mixed some rice and gravy for them, followed by a bit of crushed pear. Soon I was watering and feeding the two chicks.

When I set the terrarium outside with the cover ajar, the mother bird flew up bravely with insects in her beak. Later, when I brought the jar into our closed verandah, she tried to follow and clearly was frustrated at not being able to reach her chicks. We opened the front door so she could enter and get out.

That afternoon we set the terrarium with the two chicks outside again. One would not eat and drank only a little water. I left the cover ajar about one inch.

When I moved the terrarium inside for the night and removed the lid to feed the chicks, however, an amazing thing happened. I saw three White-eye chicks!


Apparently the third chick (the strongest of the brood) was also on his first solo flight and had heard the first two calling. The parents were about constantly, darting to the top of the terrarium to provide them. (I had put a metal mesh on top to assist them.) What a wonderful and amazing

experience!

Early the following morning, Sunday, I put the three chicks in an empty shoe box in the enclosed verandah. My thought was to let them fly, if they wanted to—which they did.

Sadly, the weaker chick—the one that would not eat the previous day—died Sunday morning. Charlotte and I were much saddened, as we had been about to release all to their parents. The bright and lively survivors were a beautiful green-beige.

In the afternoon, I let the chicks out of the terrarium, and placed them in the branches of a small tree near our front door. The parent birds flew up with insects and tried to coax them away. The stronger "guest" responded first and flew next door with its mother. The second, somewhat weaker, finally was coaxed into a low ornamental bush. A little later I saw it alone on a higher branch.

I told Charlotte and showed her the last of the chicks. Then she looked up into the small tree and called, "Look, Francis. They're both up there now." Sure enough, they were close together on a higher branch and looking cozy, with the breeze blowing them gently. 



## Environmental Directory Available

In celebration of Earth Day 1990, the Hawaii Audubon Society published the *Hawai'i Green Pages*. The directory lists over 150 environmental efforts in Hawai'i. For a free copy, send a self-addressed stamped #10 envelope to Directory, Hawaii Audubon Society, 212 Merchant Street, Suite 320, Honolulu, HI 96813.

# Calendar of Events

## First Wednesday of Every Month

Education Committee Meeting, Hale Manoa, East-West Center, 7:30 p.m. to 9:00 p.m. Call Kersten Johnson, 735-3669, for details and directions.

## July 8, Monday

Conservation Committee Meeting, Croissanterie Restaurant, 222 Merchant Street, 6:00 p.m. to 7:00 p.m. Call Carl Christensen, 373-3457 (H), for details.

## July 8, Monday

Board meeting at the HAS office at 7:00p.m. Call Reggie David, 1-329-9141, for details

## July 28, Sunday

Forest bird lovers, unite and traipse Manana Trail with hike leader Bruce Eilerts. Wear long pants and bring rain gear, lunch, water, and binoculars. Meet at the State Library at Punchbowl and King at 7:30 a.m. or at 8:15 a.m. at the McDonald's Restaurant across from Pearl City Tavern. For more information, call Bruce Eilerts at 487-1806 (H). Suggested donation: \$2.00.

## August 17, Saturday

Come join us for a family day at Ho'omaluhia, a botanical garden at the foot of the beautiful Ko'olau Mountains in Kaneohe. For early morning risers, Auduboners are invited to join a guided bird walk that starts at 7:00 a.m. from the visitor center. Those who prefer to ease into their day more slowly can join the guided nature walk at 10:00 a.m. At noon, we will gather for a picnic lunch in the day area. For the 7:00 a.m. walk, please call the Ho'omaluhia office, 235-6636, and make a reservation. If you are interested in taking the 10:00 a.m. tour, call Casey Jarman at 956-7489 (W) during the week of August 5 or Donna de Haan at 956-7930 (W) prior to August 5. To assist the Ho'omaluhia staff in planning the nature walk, we need to inform them of the number of persons planning to attend prior to the event. Each tour will last two hours. This is a perfect outing for families with children. You are invited to enjoy the day with us even if you don't attend either of the nature walks. Suggested donation: \$2.00.

## August 19, Monday

General meeting, 7:30 p.m., Atherton Halau, B.P. Bishop Museum. See August 'Elepaio for more information.

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## September 15, Sunday

Our day will take us to three sites on Maui: Kahana Pond, Hosmer's Grove, and Waikamoi Falls. Watch for more information in the August 'Elepaio. Suggested donation: \$2.00.

## October 5, Saturday

This trip is for beach lovers who are tired of sunbathing among man-made beach debris. We will take part in the national marine debris clean-up drive, organized in Hawai'i by the state Litter Control Office. More details will follow in future issues of the 'Elepaio.

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# 'ELEPAIO

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