

## Reauthorization of the Endangered Species Act

The Endangered Species Act (ESA), passed in 1973, is, at least on paper, one of the most stringent environmental statutes in the world. As such, it has generated considerable controversy. While, on the other hand, opponents complain that the ESA is overambitious, unwise, and a futile attempt to save all species without regard to the human consequences, many environmentalists not only support the ESA but believe that it needs to be strengthened in order to be effective. Confronted with such divergent views, Congress is currently considering the reauthorization of the ESA.

Basically, the ESA is an attempt to conserve existing plant and animal species and prevent their extinction. The ESA attempts to do this by prohibiting any harm, without a special permit, to an individual of a species that has been placed on a list of species that are endangered or threatened with extinction. Such harm is referred to as a "taking," which courts have held to include the destruction or adverse modification of a species' habitat. The primary federal agency charged with the implementation and enforcement of the ESA is the U.S. Fish and Wildlife Service (FWS).

What follows are excerpts from testimony given on 11 May before the Senate Committee on Governmental Affairs Ad Hoc Subcommittee on Consumer and Governmental Affairs by Michael R. Sherwood of the Sierra Club Legal Defense Fund (SCLDF). The purpose of the testimony was to present an overview of how the ESA has been implemented in Hawaii.

While the ESA is basically a sound and strong law, the agencies responsible for its implementation...have failed again and again to do so in Hawaii.

More than 70% of our nation's historically documented plant and bird extinctions are from Hawaii, as are more than 25% of the currently listed threatened and endangered birds and plants. Some 40% of all North American bird species

that are currently endangered are endemic to Hawaii; about 20% of all U.S. threatened or endangered plant species are from Hawaii. This is so, even though Hawaii makes up less than 0.2% of the total land mass in the U.S.

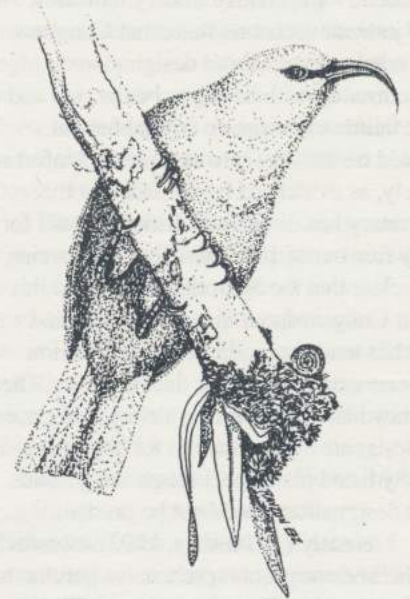
Of the 104 Hawaiian plants and animals officially listed as threatened or endangered, none have recovered to the point of being removed from the lists. At least 12 species of birds may have gone extinct in the last decade, only 5 have critical habitat designated (3 plants, 1 bird, 1 seal), and only about 32 have recovery plans. Virtually none of those plans has been implemented.

The threshold step for obtaining [ESA] protection for endangered species is to have the species officially placed on the endangered species list...[However,] hundreds of so-called "Category 1" species (those that FWS itself acknowledges are biologically threatened or endangered and ought to be officially listed) and thousands of Category 2 candidate species (those whose listing FWS believes may be warranted) have languished for years with no action by the agency to list them.

Hawaii had by far the largest number of such species of any state: prior to a 1989 taxonomic reclassification of the Hawaiian flora, Hawaii alone had over 500 Category 1 candidate plant species awaiting listing. The reclassification reduced this number to 186. And yet by 1988 FWS had listed a mere 19 species of Hawaiian plants. At that rate, it would have taken FWS nearly three centuries to clear up the backlog of Hawaiian Category 1 candidate plant species!

On behalf of the Conservation Council of Hawaii, Hawaii Botanical Society, and the Sierra Club...suit [was filed] against FWS in December 1989 to compel the agency to act, [resulting in] a settlement whereby FWS agreed to formally propose listing all 186 Category 1 plant species within three years, by 30 September, 1992.

The problem of delayed species listing



Nukupu'u Illustration by Mark Rauzon ©

persists in Hawaii. An example is the endemic Hawaiian freshwater fish, *Lentipes concolor* (known by its Hawaiian name 'o'opu hi'u kole). This fish used to occur in fresh water streams throughout the Hawaiian islands but is now much reduced due to stream habitat alteration (channelization, water diversions for agriculture, water pollution, etc.)... The 'o'opu has been a Category 1 candidate species since 1985, but the FWS has failed to act. Therefore, on behalf of the Conservation Council of Hawaii, Life of the Land, and Hawaii Audubon Society, [SCLDF] submitted a petition to the Secretary of the Interior in September, 1989 to list the 'o'opu and to designate critical habitat for the species...[While] the Secretary was supposed to make an initial determination within 90 days on whether the petition presented sufficient scientific information to warrant further review, [he failed to do so and] it took a 60-day notice of violation and intent to sue letter (a legal prerequisite before citizens may bring suit under the ESA)...before the Secretary finally made a positive 90-day finding on

17 May, 1990. Now, however, the Secretary has failed to meet, by some 18 months, the ESA one-year deadline for making his determination whether to propose listing the 'o'opu.

Concurrently with listing a species, the Secretary is supposed to designate critical habitat for that species...The Secretary is relieved of this obligation only if designation is not "determinable" or would not be "prudent." Legislative history indicates, and judicial decisions state, that Congress intended critical habitat designation concurrently with listing to be the rule and that failure to designate critical habitat should be the very rare exception. Unfortunately, as evidenced by the fact that the Secretary has designated critical habitat for only five out of 104 listed Hawai'i species, it is clear that the Secretary has turned this clear Congressional mandate on its head and has made critical habitat designation the rare exception rather than the rule. The agency has been routinely determining not to designate critical habitat for any of the newly listed plant species...on the grounds that designation would not be prudent.

I recently (17 January, 1992) submitted to the Secretary a comprehensive petition to designate critical habitat under the ESA for 17 species of critically endangered Hawaiian forest birds. The petition was filed on behalf of National Audubon Society, Hawaii Audubon Society, and Conservation Council For Hawai'i. These 17 forest bird species are all endemic to the Hawaiian islands—that is, they exist nowhere else in the world. In many cases, they evolved and are found only on one particular island. Most are on the brink of extinction in large part because of the loss of native habitat on which they depend due to grazing by introduced mammals such as cattle, pigs, goats, and sheep, the clearing of land for urban development and agriculture, logging, and the introduction of alien vegetation.

The areas we are asking the Secretary to designate as critical habitat are those that the FWS itself has already identified and mapped as "essential habitat" in these species' recovery plans. In March of this year, the Secretary notified us that the FWS was evaluating the petition and would "promptly" advise us of its decision. I've heard nothing since. The ESA contains no deadline for acting on petitions to designate critical habitat.

The other federal agency charged with

implementation of the ESA, the National Marine Fisheries Service (NMFS), has also been lax in designating critical habitat for endangered marine species in Hawai'i...A prime example of this is the case of the endangered Hawaiian monk seal. The Hawaiian monk seal is found only in the remote Northwestern Hawaiian Islands and surrounding waters. It is one of only two native Hawaiian mammals; the other is the Hawaiian bat, also endangered. As of 1986, the Hawaiian monk seal population, then estimated at about 1,300 individuals, had plummeted by more than 50% since the first census taken in 1958 and was continuing to decline. Among the causes for the decline was human intrusion into and disturbance of the seal's habitat. The Hawaiian Monk Seal Recovery Plan urgently recommended that critical habitat be designated by NMFS to help insure that the seal would have an opportunity to recover without further negative impact from human activities within the habitat, especially proposed development of a commercial fisheries industry being pushed at the time by the State of Hawai'i. Despite this recommendation, and similar recommendations from the Marine Mammal Commission and the Interior Department, NMFS refused to act until [the SCLDF] filed suit in 1986...On the eve of trial [NMFS] agreed to designate critical habitat for the Hawaiian monk seal to include ocean waters surrounding all Northwestern Hawaiian Islands utilized by the seals as recommended by the Recovery Plan.

Once a species is listed, the ESA requires that FWS or NMFS "prepare and implement" a recovery plan for it...Recovery plans for only about 32 of Hawai'i's 104 listed species have been prepared. Tragically, virtually none of these plans has actually been implemented.

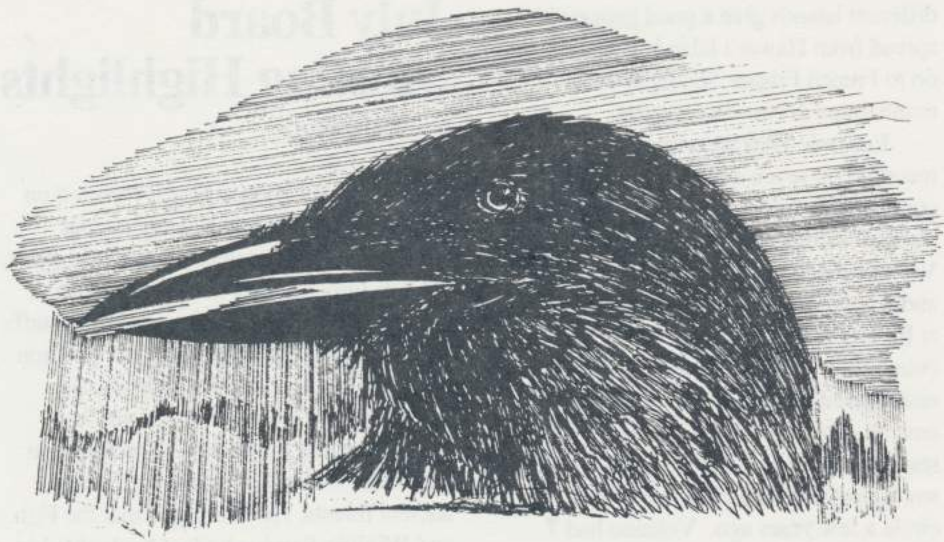
Although the humpback whale has been on the list of endangered species since 1973 when the ESA was first enacted (together with the seven other species of great whales), by 1987 NMFS had not prepared a recovery plan for the humpbacks or for any of the great whales...[After the threat of a lawsuit against it], in April 1987, NMFS agreed to do so, but it took another four years and more threats of lawsuits before NMFS finally published the Recovery Plan For The Humpback Whale in November 1991, the first such plan for any of the great whales.

It is not enough that FWS and NMFS

develop nice-looking recovery plans for listed species; the ESA requires that they "implement" the plans. Recovery of threatened and endangered species to non-threatened and non-endangered status so that they may be removed from the list is, after all, the ultimate goal of the law...One of the most serious deficiencies in implementation of the ESA nationwide is failure to implement recovery plans. Nowhere is this failure more evident than in Hawai'i. At least three of our cases there demonstrate this: the Hawaiian monk seal, Palila, and the 'Alala or Hawaiian Crow.

The Palila is an endangered Hawaiian bird presently found only on the slopes of Mauna Kea on the Big Island of Hawai'i between the 7,000 and 10,000 foot elevations. In 1978, when the first Palila suit was filed, its population was estimated at between 1,400 and 1,600 birds. It is completely dependant upon a unique native Hawaiian forest type consisting of mamane and naio trees for its food, nesting sites, and shelter. In January 1978, FWS published the Palila Recovery Plan. The plan documented the fact that the mamane-naio forests on Mauna Kea were being relentlessly destroyed by the browsing and grazing of non-native feral sheep and goats, which were purposefully introduced and maintained there by the Hawai'i Department of Land & Natural Resources as game animals for sport hunters. As one of its highest priority recommendations, the Recovery Plan called for the removal of those animals from the bird's habitat. FWS failed to act, however, and so in late 1978...on behalf of the National and Hawaii Audubon Societies, [suit was filed] not against FWS, but against the State of Hawai'i...Over a decade [later], the State finally took the actions necessary to remove the offending mammals from the Palila's critical habitat.

The 'Alala is one of the most endangered birds in the world. There are only 11 birds left in the wild, all on private property on the Big Island of Hawai'i, and another 10 in a captive breeding program. It is FWS's highest priority species in Hawai'i for recovery. In 1982, FWS published an 'Alala Recovery Plan when the wild population was still estimated to be as many as 78 birds. The recovery plan set forth a number of actions that needed to be taken immediately to save the crow from extinction, including, most importantly, removing some eggs and/or nestlings from



'Alala Illustration by Mark Rauzon

the wild population to augment the genetically inbred captive population. For nearly 10 years, however, FWS took no action to implement even the highest priority actions in the recovery plan (those that FWS itself stated were "absolutely essential to prevent extinction of the species") for this highest priority Hawaiian endangered species, while the wild 'Alala population continued to plunge to its present precariously low number...On 4 April, 1991, on behalf of National Audubon Society and Hawaii Audubon Society, [we] filed suit against FWS in federal court in Honolulu to compel FWS to implement its recovery plan.

### Conclusion and Recommendations

Both the FWS and NMFS, the agencies entrusted and mandated by Congress to implement the ESA, have failed fully to carry out Congress' intent in Hawai'i, and as a result, endangered species in that fragile island ecosystem have suffered.

ESA implementation has improved in recent years but is still nowhere near what it should and needs to be if we are to halt and reverse Hawai'i's extinction crisis. Moreover, the improvements have seemingly been achieved grudgingly and often only after lawsuits or threats of lawsuits brought by private citizens under the citizen suit provision of the ESA.

...My criticisms of FWS and NMFS are not aimed at the individual men and women who work for those agencies at the field level in Hawai'i. The problem is *not* with FWS's and NMFS's field biologists,

administrators, and other staffers. To the contrary, in my experience, those people are uniformly dedicated, competent, and eager to do the right thing for Hawai'i's endangered species if only they had the resources and the official support, encouragement, and permission to do so.

[In addition to] a number of specific proposals for amendments to the ESA [to] address some of the problems I have discussed...we have the following general recommendations:

1. Increase funding and man-power for Hawai'i and the Pacific; establish adequate base funding (permanent) for recovery and habitat protection efforts;
2. Designate critical habitat, especially for those Hawaiian species affected by federal actions;
3. Implement existing recovery plans, focusing on ecosystems and clusters of species whenever possible; and
4. Develop and implement recovery plans for recently listed plants, focusing on ecosystems/communities whenever possible.

Such an ecosystem approach—to recovery and habitat protection—is needed in Hawai'i, not only to conserve dozens of listed species, but to ensure that hundreds of additional plants and animals do not reach the point of endangerment.

## Christmas Bird Count Summaries

by Robert L. Pyle

*These summaries briefly describe highlights of the Christmas Bird Counts (CBC) taken in Hawai'i, Guam, and Saipan during the two most recent Christmas Count seasons. They were written originally for the summaries of North American Christmas Counts prepared annually by American Birds magazine and are printed here for their interest to readers of 'Elepaio.*

### 1991-1992

Only seven counts were taken in Hawai'i this year, down three from last year's 10. Lihue, Kaula'i, Kualapu'u, Moloka'i, and French Frigate Shoals were missed after continuities of 20, 2, and 6 years respectively. The three counts on Guam and Saipan were each taken for the seventh consecutive year.

Hawai'i counts showed species composition and numbers within expectable patterns, but participation has continued on a downward trend. For the seven counts this year, total party-hours over the past three years have dropped from 281 to 247 to 136, led by Honolulu's drastic reduction from 135 to 93 to 53. Total individual birds counted has dropped proportionately for Honolulu, and to a lesser extent for the other counts, indicating some further erosion in the adequacy of coverage of Hawai'i's count circles.

Highest species totals for the state were, as usual, Honolulu (46), Waipi'o and North Kona (43), and Kapa'a (33). These count circles include good wetland habitats for visiting waterbirds that are lacking in the others.

Among the species highlights, Waimea's 45 White-tailed Tropicbirds were nearly double the previous all-time CBC high and may seem mouth watering to mainland birders. Kapa'a had a Snow Goose (among nine Cackling Canada Geese) and a Common Merganser, both monitored through the winter and both species with fewer than five previous records for the state. North Kona's seven 'Io (Hawaiian Hawks) on this year's count, and six last year, were outstanding numbers for this species that is endangered although widespread on Hawai'i Island. A Peregrine

Falcon at Honolulu was the third one in 48 years of Honolulu Christmas counts and reflected the higher number of Peregrine reports in the state this winter.

The eight O'ahu 'Elepaio (seven at Honolulu and one at Waipi'o) were encouraging for this endemic forestbird which has crashed badly in the past dozen years and has become exceedingly hard to find. Not so welcome for the Pu'u O Kaka'e count on Maui were the seven Japanese Bush Warblers, an alien species long established on O'ahu and now appearing on Maui after aggressively colonizing Moloka'i, Lana'i, and Kaua'i in recent years. Much more welcome was the tallying of a Maui Parrotbill, a critically endangered endemic Hawaiian honeycreeper found on the first two years of this count but missed in the past two years. It was found in the western part of the count circle, one of several sightings in recent years in this locale which is more easily accessible for study than Hanawi, the traditional range for the species in the eastern part of the circle.

And finally, Volcano scored another year (its twenty-first) of perhaps the most stable count in the country. This upland count circle contains no wetland habitat for waterbird migrants. Among the count's 22 to 26 unvarying species each year, only the Lesser Golden Plover is not a year-round permanent resident. This year, 15 Hawai'i 'Akepa, highest count in 10 years, were among the four endangered species recorded.

Dededo and Southern Guam together reported only 13 individuals of three native landbird species, down from 26 last year and 20 in 1989. Saipan's count of only 112 native landbirds compares to 418 last year and 376 the year before for the same 10 species. These decreases seem significant and are worrisome. Among the visiting species, Green-backed and Gray Herons and a dowitcher (probably Long-billed) were first records of new species for Guam or Saipan. Excellent details were submitted for these and other unusual species at Guam and Saipan, a practice that I wish all Hawai'i compilers would also follow.

#### 1990-1991

The 13 counts conducted in 1989-1990 in Hawai'i, Guam, and Saipan were all taken again this year, including the new Kualapu'u count inaugurated last year on Moloka'i. Hawai'i's 10 counts on six

different islands give a good geographic spread from Hawai'i Island to Kaua'i and on to French Frigate Shoals in the uninhabited northwestern islets.

Endemic Hawaiian forestbirds, recorded on seven counts, totalled 3,516 compared to 3,337 on the same counts last year, an increase of 5%. A large gain at Volcano and moderate gains at North Kona and Kualapu'u outweighed moderate losses at Pu'u O Kala'e and Waimea. Lihue's count of 20 Nene (Hawaiian Goose, endangered), up from last year's 13, was a new all-time high count for the species, resulting from successful breeding in the small flock introduced in the Lihue count circle a few years ago. Volcano had 7 Nene and 16 individuals of 4 other endangered species, compared to 2 Nene and 9 others of 3 endangered species in 1989.

Kapa'a's 127 Laysan Albatross, up from 75 the previous year, shows an encouraging increase in the breeding colony at Kilauea Point, and is by far the largest number of this species ever reported on a CBC in the main Hawaiian Islands.

In the main Hawaiian Islands, some compilers commented on an apparent systematic diminishing of bird numbers within the count circles, but no clear statewide trend is evident. The North Kona count showed a 44% drop from last year in individuals per party-hour, and Lihue dropped 27%. But gains were registered at Waimea (+86%), Kualapu'u (+50%), and Volcano (+26%). The other main island counts were all within 10% of last year in individuals per party-hour. It is interesting to note, however, that the three counts showing large gains are those (along with Pu'u O Kaka'e) that include the choicest native mountain forests and have the largest counts of endemic forestbirds. On the other hand, Lihue is a lowland circle which has no native forest and no endemic forestbirds counted. North Kona, showing the largest drop in individuals per party-hour, has some native forest, but most of its party-hours are in lower non-native habitats.

Dededo and Southern Guam together reported 26 native landbirds of 3 species, up from the previous year's 20, due mostly to more Micronesian Starlings. Saipan's count of 418 native landbirds compares to 376 last year for the same 10 species. These increases are encouraging but probably not significant.

## July Board Meeting Highlights

by Linda Paul

HAS president Reggie David reported on the National Audubon Society annual convention that he attended in Washington, D.C. in June. He met with Hawai'i's senators and representatives and their staffs and discussed Hawaii Audubon's position on upcoming environmental legislation, including the Endangered Species Act reauthorization, protection of wetlands in the Clean Water Act, and protection of ancient forests. He also urged that the Fish and Wildlife Service budget be doubled in 1993 and include funds for captive propagation of endangered species.

The Conservation Committee reported that the HAS phone tree was activated on the ancient forest issue in June, urging our senators and representatives to co-sponsor or support H.R. 4899. Locally, the governor vetoed almost all the environmental bills coming out of this session of the Hawai'i State Legislature. He did sign the solar energy bill.

The Education Committee reported that the jointly sponsored HAS/NAS high school environmental quiz show "Paradise Pursuits" was a success and that the committee is presently working on expanding it to a statewide event. The committee is also working on getting an Audubon column on wildlife in the newspapers.

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## Research Grants

The Hawaii Audubon Society makes grants for research in Hawaiian or Pacific natural history. Awards generally do not exceed \$500 and are oriented toward small-scale projects within Hawai'i. Special consideration will be given to those applicants studying the Northwest Hawaiian Islands, dryland forests, and aeolian systems on Hawai'i.

The deadlines for receipt of grant applications are 1 April and 1 October. For an application form send a self-addressed stamped envelope to Grants, Hawaii Audubon Society, 212 Merchant Street, Suite 320, Honolulu, HI 96813. For more information, call Phil Bruner, (808) 293-3820 (W).

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## T-shirts for Sale

The Hawaii Audubon Society has a stock of T-shirts designed to spread the Audubon message. Not only are they attractive personal apparel, but they make excellent presents as well.

T-shirts bearing the Society's 'Elepaio logo are available in ash (gray) with a black design. We also have a few in aqua, navy, white, and beige. In addition, the "hot" Kolea (Pacific Golden Plover) T-shirts are also available. This T-shirt is white with a three-color design of the Kolea and native hibiscus. Proceeds from the Kolea T-shirt go to help HAS fund research on shorebirds in Hawai'i and elsewhere in the Pacific region.

T-shirts are \$12 each, plus \$2.00 per shirt for postage. They are available in medium, large, and extra large adult sizes only. When ordering T-shirts, be sure to list size and first, second, and third choice of color. To order T-shirts send your check, payable to the Hawaii Audubon Society, to Yvonne Izu, 2069 California Avenue, #20B, Wahiawa, HI 96786. Don't forget to add \$2.00 per shirt for postage. Insufficient postage will delay your order until the proper amount is remitted. T-shirts are not available at the HAS office.

## HAS Dues for 1992

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

### Life Membership \$300.00

Payable in full or three equal installments. (The Board of Directors recently increased the amount of life dues. Those life members who are currently on the installment plan will be billed for their remaining payments at the old rate.)

### Delivery to U.S. zip code addresses

Via bulk mail 6.00

(Not forwardable to new address)

Via first class mail 12.00

(Hawai'i residents: there is no significant time difference between bulk and first class mail to addresses within the state of Hawai'i.)

### Junior Membership (18 and under) 3.00

### Delivery to non-U.S. addresses:

Mexico (airmail only) 12.00

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All other countries (surface mail) 14.00

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### 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.)

## Help Wanted

Hawaii Audubon Society desperately needs help in the following areas:

**Phone Tree Coordinator.** You will be responsible for maintaining the list of persons participating in the telephone tree and giving information to phone tree participants when calls need to be made. We need a self starter who is a good communicator and who can devote four to eight hours a month for a minimum of a year. This work can be done from home. Some knowledge of environmental issues and legislators is a plus. To volunteer call David Hill, 943-2784 (H).

**Phone Tree Callers.** We are growing a phone tree—a chain of people who can make calls to decision-makers on environmental issues. This allows the environmental community to respond very quickly with public pressure on important issues. To join our phone tree, call David Hill at 943-2784.

**Recordkeeper.** This position, which requires you to spend one morning or afternoon a week at the office, entails integrating our membership records with our fundraising records and locating telephone numbers for all new members. The work is done manually. To volunteer call Lynne Matusow, 531-4260 (H).

**Volunteer Coordinator.** This hardworking, gregarious individual will match volunteers with available jobs, see that volunteers are trained, and maintain contact with volunteers to see if they are happy or have suggestions for improving things, and plan volunteer recognition events. This job will take two hours or more weekly. To volunteer call Lynne Matusow, 531-4260 (H).

**Office Staff.** We would like to have our office open five days a week. People are needed for morning or afternoon shifts Monday, Tuesday, Thursday, and Friday. Among the duties are answering the telephone, distributing the mail, referring problems to the appropriate officer or committee chair, filing, and responding to routine correspondence. To volunteer call Lynne Matusow, 531-4260 (H).

The above is only a partial list. If you have a particular skill or interest, call Lynne Matusow, 531-4260 (H). Who knows, maybe we have the right opening but haven't publicized it yet.

## Calendar of Events

### First Monday of Every Month

Monthly meeting of the Conservation Committee, 6:00 p.m., HAS office. To join or for more information call David Hill, 943-2784 (H).

### September 14, Monday

Board meeting, 7:00 p.m., HAS office. Call Casey Jarman, 956-7489 (W), for details.

### September 12, Saturday

Hakalau Wildlife Refuge, Big Island. For information and reservations call Casey Jarman, 956-7489 (W). This trip is limited to 25 persons. Be sure to clean your boots and daypacks thoroughly to prevent introduction of unwanted plants (e.g. clydemia). Bring lunch, water, binoculars, rain gear, clothing for 50° temperatures. Suggested donation: \$2.00.

### October 10, Saturday

Once again Hawaii Audubon will participate in the statewide beach cleanup. For more information call Casey Jarman,

956-7489 (W).

### October 19, Monday

General meeting, 7:30 p.m., Paki Conference Room, Bishop Museum. Ken Redman, assistant director of the Honolulu Zoo, will give a slide presentation and talk on the Wildlife of East Africa. Refreshments will be served.

## 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.

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## 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.

## Publications Available

The Hawaii Audubon Society publishes books, checklists, and field cards relating to birds of Hawai'i and the Pacific. For a complete price list send a self-addressed stamped envelope to Publications List, Hawaii Audubon Society, 212 Merchant Street, Suite 320, Honolulu, HI 96813.

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