



STATE OF HAWAI'I
KA MOKU 'ĀINA O HAWAI'I

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**APPEALS COURT CONFIRMS FINAL ENVIRONMENTAL
ASSESSMENT SUFFICIENT IN HAWAI'I'S FIGHT TO SAVE
ENDANGERED BIRDS**

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HONOLULU – The Intermediate Court of Appeals (ICA) has ruled in favor of the Department of Land and Natural Resources (DLNR) and the American Bird Conservancy, represented by the Center for Biological Diversity, by affirming the Environmental Court's ruling that the Final Environmental Assessment (FEA) prepared for a project to use the Incompatible Insect Technique (IIT) to control mosquito born avian malaria on east Maui was sufficient. Avian malaria had already led to the extinction of many native birds and is responsible for the near total decimation of several remaining species of Hawaiian honeycreepers.

“This is an emotional issue for people,” said BLNR Chair Dawn Chang. “These birds are part of our cultural and ecological heritage, and I think everyone wants to see them protected in the right way. Whether in support or opposition, we appreciate everyone who provided their mana'o on this topic so informed decisions could be made on the adequacy of the FEA. What we do know is that taking no action, will put these valuable manu or birds at further risk of extinction.”

“This decision reinforces what we’ve known all along — that Hawai‘i is on solid legal and scientific ground in its effort to save native forest birds from extinction,” said Maxx Phillips, Center for Biological Diversity Hawai‘i director and staff attorney. “The courts have once again made clear that we won’t stand by while avian malaria pushes these irreplaceable species to the brink. Our manu deserve a fighting chance.”

In March 2023, the state Board of Land and Natural Resources (BLNR) approved the FEA for implementation of the IIT project in east Maui and found it had no significant impact (FONSI). Hawai‘i Unites, the plaintiff, filed a claim in Environmental Court challenging the BLNR’s acceptance of the FEA and issuance of a FONSI.

On February 6, 2024, the Environmental Court of the First Circuit issued a final judgment declaring the DLNR’s FEA and FONSI satisfied statutory requirements. Hawai‘i Unites appealed the judgment to the ICA arguing, in part, that the Environmental Court applied the wrong standard to its claim and erred in finding summary judgment in favor of the state.

The ICA ruled that the Environmental Court applied the proper standard for judicial review of an FEA and the BLNR’s acceptance of the FEA and issuance of the FONSI was supported by substantial evidence in the record. It went on to provide that the Environmental Court was correct in granting the state’s motion for summary judgment on that basis.

Deputy Attorney’s General Miranda Steed and Danica Swenson represent the DLNR.

“We are thankful for the ICA’s decision affirming the thorough environmental review process for this crucial project,” said Deputy Attorney General Miranda Steed with the AG’s Land Division. “We remain hopeful that future generations will see native honeycreepers in the forest and not only in museums.”

“Our defense was evidence-based and supported by the scientific analysis in the FEA. We appreciate the ICA reinforcing the importance of the Hawai‘i Rules of Evidence in this decision.” said Deputy Attorney General Danica Swenson.

The ICA affirmed the Environmental Court’s decision but sent the matter back to the Environmental Court for the DLNR to amend the FEA to include an appendix that complies with Hawai‘i Administrative Rule § 11-200.1-20(d). This technical correction does not affect the ongoing IIT project.

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