CALENDAR OF EVENTS

Nov. 10 (Sun.) Field trip to BYU-Hawaii Museum and James Campbell NWR. See page 48, or call Leader Phil Bruner at 293-3820.

Nov. 12 (TUESDAY) Board meeting at the home of Dr. Conant at 3663 Alani Dr., Honolulu, at 7:00 pm.

Nov. 18 (Mon.) General meeting at McCully-Moiliili Library with Dr. Thane Pratt, on *Birds of the Marianas*. See page 48. Meeting starts at 7:30 pm.

TABLE OF CONTENTS

Vol. 46 No. 5, November 1985

By-laws available by request.

HAWAII AUDUBON SOCIETY
P.O. Box 22832
HONOLULU, HAWAII 96822

ADDRESS CORRECTION REQUESTED

'ELEPAIO

Journal of the Hawaii Audubon Society

For the Protection of Hawaii's Native Wildlife

VOLUME 46, NUMBER 6 DECEMBER 1985

Jarvis, Howland and Baker Islands—A Bird's-Eye View

by Peggy Ferris

INTRODUCTION

Three tiny equatorial islands in the Central Pacific which are today important seabirds refuges have particular interest for the people of Hawaii because they were settled by then-recent graduates of Kamehameha Schools in a series of cruises which began with great secrecy in 1935. Now that the 50th anniversary year of this highly unusual project has arrived, it seems appropriate to assess some of the consequences of American possession of these islands, especially in terms of wildlife conservation.

HISTORICAL BACKGROUND

The three islands: Jarvis, Howland, and Baker, did not receive "refuge" status from the United States Department of the Interior until 1974. In 1935, the idea of providing protected habitats where seabirds could nest and rear their young was far from the minds of the men who planned the settlement project, judging from the documentary account by E.H. Bryan, Jr., *Panala'au Memoirs* (1974). The primary goal was to cinch America's claim to the islands so that they could be used in support of the fast-growing aviation industry. The Bureau of Air Commerce was particularly anxious to pre-empt British claims and head off British competition for the development of air routes between California and Australia. This was the reason for the secrecy of the project.

Altogether, five islands were included in the settlement program. Canton and Enderbury were added in 1938, but no longer fly the American flag. They are now under a new flag, which features a frigatebird flying above a rising sun—the flag of the new Republic of Kiribati, which became independent from Great Britain in 1978. "Kiribati" is the native rendering of "Gilberts", the English name of the main archipelago in the far-flung island nation. The capital, Tarawa, is familiar to Americans as the scene of one of the most hard-fought battles of World War II.

Under a 1979 Treaty of Friendship with Kiribati, the United States recognized the new nation's sovereignty over Canton and Enderbury as well as over twelve other islands previously in dispute between the British and Americans. The Treaty entered into force on September 27, 1983.

Today all small islands glitter with a new importance, thanks to the 200-mile offshore territorial limits which many nations, including the United States, have declared for fishing and other exclusive economic uses, such as seabed mining.

The Department of the Interior has by no means overlooked the possible importance of Jarvis, Howland, and Baker in possible future seabed mining activities. The three tiny islands, which have a combined land area of less than three square miles, are prominently represented in a glossy booklet published by the Department of the Interior pursuant to Proclamation 5030 of March 10, 1983. By this proclamation, Pres. Reagan established a 200-mile Exclusive Economic Zone (EEZ) for the United States, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and United States Trusteeship Agreement) and overseas territories and possessions. With their EEZ limits illustrated in yellow on a blue sea, Jarvis, Howland, and Baker are not just tiny dots on the booklet's Pacific map, but highly visible areas.

Coral islands rest on old volcanoes. Cobalt-rich manganese crusts may be deposited on the underwater flanks of such islands. Despite the exciting nature of the "New Frontier," exploitation of these resources is not likely to begin soon. Nevertheless, any prospects for mining activities on the flanks of the Refuge islands might merit attention of wildlife conservationists.

Christmas, Malden, and Starbuck, which are all Kiribati islands, have overlapping 200-mile zones with Jarvis. Canton, Enderbury, and McKean have overlapping 200-mile zones with Baker and Howland.

These interlacing boundaries indicate that American and Kiribati governments will be sharing many joint concerns.

The American government's concern with the five "Panala'au" (Hawaiian word for "colonizer") islands dates back to the guano operations of the 19th century. In the feverish rush to strip many tiny, uninhabited Central Pacific islands of this valuable fertilizer so generously provided by the seabirds, American claims often conflicted with British, and American companies competed with each other. Congress in 1856 passed the Guano Islands Act to "protect citizens of the United States who may discover deposits of Guano."

Canton, Enderbury, Jarvis, Howland, and Baker were all worked for guano by either British or American interests or both. However, guano operations had ceased on all five islands by 1927, the year Lindbergh made his solo flights to Paris.

The start of commercial aviation brought a new era, and prompted Washington to give certain key islands a definite American identity by occupying them. The task of organizing the operation was assigned to William P. Miller, Superintendent of Airways, Department of Commerce. The Coast Guard, the Navy and the Army all assisted in setting up the camps.

The colonists were mainly recruited from the ranks of Kamehameha School recent graduates, Hawaiian youths deemed suitable by interests, temperament, and training for sojourns on remote islands (Bryan 1974).

In all, 26 trips were made by Coast Guard cutters to the five islands between 1935 and 1948, when the spread of World War II in the Pacific brought an end to the operation (Ibid 23). About 134

young men, mostly between 19 and 26 years old, took part in the mission as settlers, including a few Army men, radio men, and other specialists. In general, they occupied an island in groups of five or more for varying lengths of time, on a rotation basis, as shown by a roster and record of "colonists" in Bryan's *Panala'au Memoirs* (1974).

SETTLEMENT HIGHLIGHTS

The Kamehameha colonists included a number of men who became well-known names in Hawaii, and several may have been influenced in their career choice by their settlement experience. One was Eugene Burke, who can recall periods of habitation on each of the three islands which are now bird refuges. He retired in 1977 as Chief of Law Enforcement for the Division of Fish and Game, State Department of Land and Natural Resources. Abraham Pi'ianaia, now Director of the Hawaiian Studies Program of the University of Hawaii, was on the initial secret cruise, which left Honolulu March 20, 1935, with six boys who weren't even told where they were going. The late George Nuuanu West, Sr., was one of the early settlers on Jarvis. A shipwrecked vessel, the *Amaranth,* offshore of the island, not only furnished colonists with materials for a number of camp projects, but also inspired young George to undertake some independent historical research. By the time of his death in 1977 he had achieved prominence as one of the rare Honolulu newspapermen of Hawaiian blood to surface in modern times. A career in public service awaited Jarvis settler Daniel Toomey, now retired from the Honolulu Police Department.

Once the camps were set up and the Polynesian presence well established, efforts to keep the settlement project a secret apparently relaxed, for the little colonies began receiving some national publicity and a stream of visitors, mostly high-ranking military men, government officials, and educators.

Two outstanding visitors were Harold Gatty and Dr. Francis Dana Coman. Gatty, an Australian, had become famous as the navigator on Wiley Post's around-the-world flight in 1931. Dr. Coman had been the medical director of the 1929-30 expedition to the Antarctic headed by Rear Admiral Richard Byrd.

Gatty and Dr. Coman, cruising on the chartered yacht, *Kinkajou,* were gathering data about the islands as possible way stations or emergency fields for aviators. Gatty later negotiated landing rights in New Zealand for Pan American's first commercial flights between Honolulu and "The Land of the Long White Cloud" (Robson 1957).

On November 28, 1935, these two celebrities spent a memorable Thanksgiving with four Kamehameha alumni on tiny, remote Baker, and supped on curried boobies.

"Everybody enjoyed it and was surprised to find it tasted so good," young Pi'ianaia noted in his journal. "That was something to be grateful for" (Bryan 1974).

Pi'ianaia recalls (pers. com.) escorting Gatty around Baker, and pointing out how the boobies, when disturbed, would sometimes regurgitate fresh-caught fish. Gatty later included this bit of useful information in a book he wrote for downed flyers and shipwrecked sailors (Gatty 1943). Titled *The Raft Book,* it was published as a survival aid for members of the American Armed forces; it emphasized direction-finding through the use of natural signs, such as birds, cloud formations and colors, seaweed, scents and other indicators. An astronomical chart, map and other navigational aids were included with the book.

In both *The Raft Book* and his later book, *Nature Is Your Guide,* Gatty suggests that birds might have provided the early Polynesians with clues to the existence of undiscovered lands (Gatty 1943: 7; 1958: 31-6). He cites the migration in September of the Long-tailed Cuckoo from tropical Polynesia to New Zealand, and that of the Golden Plover from Tahiti northward in the spring. This theory of Gatty's had its detractors, notably Andrew Sharp (1963); but there is far less scepticism today. The 1984 postage stamp commemorating the 25th anniversary of Hawaii's Statehood shows a Pacific Golden Plover flying ahead of a Polynesian voyaging canoe.

The colonists' journals, as excerpted here and there in *Panala'au Memoirs,* reveal a wide range of activities—shell collecting, weather data recording, bird life observation, fishing, vegetable gardening, and attempts to capture and burn as many rats as possible. It is believed that domestic cats brought in for rat abatement became the basis of a feral cat population on Jarvis (Rauzon 1983).

Lists of the birds, plants, mammals, reptiles, fishes and shells which the colonists encountered may be found in *Panala'au Memoirs.*

Howland's birds suffered a major setback in 1937. Amelia Earhart first announced that she was planning to leave Honolulu to fly around the world on an east-to-west route. To prepare for an expected early daytime landing on Howland, many large colonies of boobies and frigatebirds had to be removed for her expected path of approach and landing strip (Bryan 1974). Then came word that she had changed her departure time and would probably be landing in darkness, so several additional groups of birds had to be removed for her safety's sake. Cloth and fiber torches were prepared to light the scene. Next the Army officer in charge of field preparations received notification that a take-off accident had occurred in Honolulu and that the aviatrix was returning to the Mainland.

Her subsequent plans called for a west-to-east itinerary, starting from Miami. She flew as far as Lae, in New Guines, where she made her last take-off on July 1, 1937, bound for Howland. She never arrived. Her fate is still a matter of controversy and conjecture.

Sometime in the near future, an American aviatrix, Grace McGuire, may be flying the final Earhart flight plan in a duplicate of Miss Earhart's lockheed Electra. McGuire plans, as outlined in an interview by Lois Taylor for the *Honolulu Star-Bulletin* (11 January 1985: B-1), to fly the entire Earhart route, including the Lae-to-Miami portion that was not completed. However, the question of whether Grace McGuire will receive permission to land on Howland is still "up in the air", as the island today is for a different kind of flyer.

Canton and neighboring Enderbury islands were not included in the original settlement program, but were added in 1938. Canton came into the limelight of public attention in 1937, when both American and New Zealand expeditions chose it to view a total eclipse of the sun July 8. The huge central lagoon, which was ideal for seaplanes, and the flat rim suitable for land planes did not escape attention (Bryan 1974). British and American parties each posted signs asserting sovereignty of its respective nation.

Thus it was that when an American party of seven, including four Hawaiian colonists, landed on Canton on March 7, 1938, two British radio and weather men were on hand to greet them with, as the story goes, offers of beer (Ibid 33). Colonists placed on Enderbury found neither British nor beer, so soon set about banding birds. Both islands came under joint American-British administration under a treaty signed on April 6, 1939.

During 1938 and 1939, Pan American laid out and developed an extensive airport, deepened and cleared the lagoon, and initiated flights to New Zealand using Canton as one of the ports of call (Ibid 198). It was in August, 1939, that Pan American Airways' *California Clipper* landed in Auckland, New Zealand, completing the first flight of a regular two-week service from San Francisco (Horvat 1966: 149).

As the threat of World War II approached, air strips were built on Canton, the entrance channel was enlarged, a roadway built and much of the surface covered by barracks, storehouses, camp sites and fortifications. These developments greatly interfered with the nesting sites of wild birds (Bryan 1974).

Canton was withdrawn from the settlement project on March 22, 1940. The Airport Manager became the Acting Field Representative of the Department of the Interior. Occupancy of Enderbury, Howland, Baker, and Jarvis continued until early in 1942, when all remaining colonists were removed under wartime conditions.

Two colonists on Howland, Joseph Keliihananui and Richard Whaley, were killed by Japanese fire on December 18, 1941. The mission that had begun so quietly ended in an explosion of violence.

THE BIRD REFUGES

Baker, Howland, and Jarvis have remained under the United States Department of the Interior since 1936, when jurisdiction was transferred to the Interior Department from the Department of Commerce.

It was with the urging of Eugene Kridler, then Wildlife Administrator for the Pacific Islands, that the U.S. Fish and Wildlife Service sought and obtained jurisdiction over the three islands and gave them Refuge status in 1974.

The birds of Baker were all but "backed off the map" during World War II, when their tiny island became the staging area for the Tarawa-Makin operation (Bryan 1974). Baker is, oval-shaped, only about a mile from east to west, and about 1,260 yards wide. Yet this small area once held 120 officers and 2,000 men. The original airstrip was enlarged to a bomber strip 5,750 feet long. The island was evacuated after the operation was completed.

Kridler (pers. comm. received 9 July 1985) visited all three islands in 1973 and prepared separate biological ascertainment reports. The report on Baker noted that recolonization had been taking place from Howland's bird population. A total of about 7,000 birds of six species was recorded at that time on Baker. Birds currently associated with each of the three Panala'au islands are listed in the U.S. Fish and Wildlife Service brochure titled "Pacific Islands National Wildlife Refuges."

Cat elimination on Jarvis has been one of the major accomplishments of the Fish and Wildlife Service since it received jurisdiction over the three islands. Colonists had found the Polynesian rat *(Rattus exulans)* very abundant on Jarvis. As previously noted, it is believed they brought in cats to fight this intrusive pest. In 1982 and 1983, Mark Rauzon was temporarily employed by the Honolulu Remote Wildlife Refuge office while engaged in the study and work which led to the production of his M.A. Thesis in Geography for the University of Hawaii, "Feral Cat Ecology and Eradication on Jarvis." After intensive planning and research, a many-pronged attack was launched which included trapping, shooting, introduction of disease (feline panleucopeia) and poison. Finally, the *Honolulu Star-Bulletin's* environmental writer, Harry Whitten, was able to report on 21 November, 1983, that Dr. Cameron Kepler, Wildlife Biologist, had spent five days on the island and couldn't find a single cat or evidence of cat predation.

Cats apparently did eliminate the rats on Jarvis, but a population of field mice *(Mus musculus)* persists (Rauzon 1983:3). Although the mice are herbivorous and hence not as directly threatening to the birds as the rats and cats were, the effects of the mice on vegetation makes them undesirable tenants in a bird habitation.

Feral cats were eliminated from Baker in 1964 by Pacific Ocean Biological Survey personnel, and no cats are believed there now. Any cats remaining on Howland since the recent drouth are targeted for early elimination.

Fish and Wildlife Service personnel see the remoteness of the three islands and the difficulties of arranging visits of sufficient length and frequency as probably the greatest problem encountered in their administration. Jarvis is 1300 miles south of Honolulu and Baker and Howland lie about 1600 miles southwest. Annual Coast Guard "sovereignty visits" offer the only chance for visitation that Wildlife Personnel can regularly count on.

Efforts are made to supplement these voyages by coordinating transportation with parties who have permits to visit the islands. For example, it was on a trip to Jarvis in 1983 with a party of "ham" radio operators that Dr. Kepler ascertained that there were no more cats on Jarvis (Whitten 1983).

Dick Wass (pers. comm. 16 November 1984), manager for the Remote Islands, has been seeking funds to inventory and estimate the cost of removing debris from the islands, such as shacks, rusty 50-gallon drums of unknown contents, and metal grating. These items are believed to have been left by the colonists, the military, or an International Geophysical Year team of scientists.

Despite handicaps of distance and limited budgets, the islands have been receiving a measure of conscientious attention. Although some problems remain with rodents and debris, there is reason to believe conditions on the islands will be gradually improved, and that they will continue to offer protection to important groups of migratory land birds and nesting seabirds.

SUMMARY AND CONCLUSIONS

Fifty years have now gone by since the Coast Guard Cutter *Itasca* set out with the first contingent of young men on a highly secret mission to settle certain islands selected as potentially useful for aviation. The islands never fully realized the role envisioned for them, as aviation quickly outgrew the need for the frequent stops. Canton and Enderbury are now part of a new nation, Hawaii's nearest foreign neighbor, Kiribati. Jarvis, Howland and Baker are now National Wildlife Refuges. A reunion of the dwindling number of veterans of the settlement experience has been under discussion, according to Eugene Burke (pers. comm. 15 August 1985), a past president of the now'dormant organization, "Hui Panala'au." Its membership roster consisted of the men who shared the dangers, discomforts—and occasional delights—of island-claiming for Uncle Sam.

Unfortunately, the settlement project's chief chronicler and custodian of memorabilia, Edwin H. Bryan, Jr., founder of the Pacific Scientific Information Center, will not be able to attend any anniversary get-together. He died July 24, 1985, at the age of 87. Donald Mitchell, retired Kamehameha School science teacher and author of Hawaiiana books, was one of several speakers at the August 3 memorial service for Bryan in the Bishop Museum courtyard. Mitchell recalled with pride the school's participation in Project Panala'au and praised Bryan's role, including his preparation of the documentary account, *Panala'au Memoirs.*

Prof. Pi'ianaia (pers. comm. 17 August 1985) hopes that the

ex-colonists' reunion will be an occasion to learn more about present conditions on Jarvis, Howland, and Baker and to consider ways they might assist the Fish and Wildlife Service, such as by arranging transportation or building support for bigger budgets.

"No group has been closer to those birds than the men who lived with them for weeks or months as colonists on the islands," he told me, adding that Hawaiians, as navigators and fishermen, feel a traditional affinity with birds.

In this Golden Anniversary Year of Project Panala'au, it is the seabirds who should be honored—for their beauty, scientific interest, and vital role in greening the habitats of man.

ACKNOWLEDGEMENTS

I would like to thank Dr. Sheila Conant, Chairman, General Science Department, University of Hawaii, and Abraham Pi'anaia, Director, Hawaiian Studies Program, University of Hawaii, for their help and encouragement with this paper. The original version was prepared for Dr. Conant's class in Terrestrial Ecosystems (SCI 360), Fall Semester, 1984.

My special thanks are also due to U.S. Fish and Wildlife personnel in the Honolulu office who generously assisted me: Jerry Leinecke, Refuge Manager, Hawaiian and Pacific National Wildlife Complex; Dick Wass, Refuge Manager for the Remote Islands; Stewart Fefer, Wildlife Biologist; Darcy Hu, Wildlife Biologist; and Valina Mann, Office Assistant.

LITERATURE CITED

Bryan, E.H., Jr., 1974. Panala'au Memoirs. Pacific Scientific Information Center, Bernice P. Bishop Museum, Honolulu.

Gatty, Harold, 1943. The Raft Book. George Grady Press, New York.

_____ 1958. Nature Is Your Guide. Collins, London and Sydney.

Horvat, William J., 1966. Above the Pacific. Aero Publishers, Inc., Fallbrook, California.

Kridler, Eugene, 1973. Wildlife Administrator, Kailua, Hawaii. "Baker Island Biological Ascertainment Report." Submitted to Regional Director, BSFW, Portland, Oregon, 25 June.

McGregor, Bonnie A. and Terry W. Offield, undated. The Exclusive Economic Zone: An Exciting New Frontier. The United States Department of the Interior Geological Survey, Washington.

Rauzon, Mark J., 1983. "Feral Cat Ecology and Eradication on Jarvis." M.A. Thesis in Geography, University of Hawaii, Honolulu.

Robson, R.W., 1957. "Late Harold Gatty's Remarkable Life." Pacific Islands Monthly, Sydney, March, pp. 151, 153.

Sharp, Andrew, 1963. Ancient Voyagers in the Pacific. Penguin Books, Harmondsworth, Middlesex, England.

Taylor, Lois. 1985. "No, She's NOT Amelia Earhart." Honolulu Star-Bulletin, 11 January, p. B-1.

United States Congress, 1856. "An Act to authorize Protection to be given citizens of the United States who might discover Deposits of Guano." (approved 18 August). Washington.

United States Department of the Interior Fish and Wildlife Service, undated. "Pacific Islands National Wildlife Refuges." Brochure.

Whitten, Harry, 1983. "Exploring China by Bicycle." Honolulu Star-Bulletin. 21 November, p. A-15.

1547 Ala Wai Blvd.
Apt. 318
Honolulu, Hawaii 96815

H-3 UPDATE

The construction industry is flooding Congress with telegrams of support for H-3. The purpose is to create the impression that H-3 has tremendous grass root support.

We must counter with a drive of our own. Write or send a telegram, but it must be there by December 2, 1985. It costs $4.45 to send a twenty word Western Union Opinion Gram. Call this toll-free number: 1-800-325-6000.

In the Senate contact: Senator Robert Stafford, 415 Hart Building, Washington, D.C. 20510. For the House, contact: Rep. James J. Howard, 131 CHOB, Washington, D.C. 20515. Also, call your Congressmen locally: 546-8997 (Cec Heftel), 546-8952 (Daniel Akaka), 546-7550 (Daniel Inouye), and 546-7555 (Spark Matsunaga).

If you send a telegramm just say "DON'T EXEMPT H-3". If you write a letter, also let them know you favor the transfer of funds to more cost effective transportation projects.

The following 2 Nov. 1985 letter from Hawaii Audubon Society President Dr. Conant was presented to the Subcommittee on Transportation of the Senate Committee on Environment and Public Works. Following the letter is a Statement from the National Audubon Society which was presented by Whitney Tilt on 6 Nov. 1985 to the same Subcommittee.

Dear Members,

It was with great surprise and dismay that the Hawaii Audubon Society learned our Sen. Inouye has acceded to Gov. Ariyoshi's request to promote the H-3 Freeway by extreme means.

Hawaii's Audubon Members, over 1000 strong, have been closely involved at each step of this vital public issue for over 15 years, and we will be extremely dismayed if the Congress removes the entire matter from the realm of federal law.

Cannot we depend on you to set and uphold national standards to measure highway projects? Hawaii's parks deserve the identical protections given to every other State!

If Congress suspends or even bends the rules for the H-3 "interstate" it will guarantee that our Governor's transportation engineers will never seriously and fairly evaluate the many more efficient, less damaging alternatives that the thoughtful opposition has proposed.

Because there are viable alternatives, it is unnecessary to lose the Halawa Valley habitat for the Island's rarest native bird, the O'ahu Creeper (*Paroreomyza maculata*).

Please disapprove Senate Bill 1796.

Thank you,
Dr. Sheila Conant,
President
Hawaii Audubon Society
(Affiliate of National Audubon Society)

(Editors' Note: the following is testimony presented by Mr. Whitney Tilt of the National Audubon Society.)

Mr. Chairman, distinguished members of the Senate Environment and Public Works Committee, Subcommittee on Transportation, I am Whitney Tilt of the National Audubon Society. I appear today on behalf of Audubon to urge the Transportation Subcommittee to review carefully the provisions of S. 1796, to consider the following comments in evaluating this legislation's impact on the Ho'omaluhia Park specifically, and the windward portion of the Island of Oahu in general. Audubon is a nationwide conservation organization of over one-half million members including the Hawaii Audubon Society which has over 1,400 members. High among Audubon's priorities are protection of open space for recreation and other human uses vital to our quality of living.

Audubon's comments on S. 1796 will be brief. There are numerous other witnesses who will tell the Committee about the long history and potentially environmentally devastating impacts of the proposed construction of Highway H-3 which will abut Oahu's only major interior park, and will traverse the spectacular North Halawa Valley with unknown impacts to the adjacent environment. We ask this Subcommittee to recognize also that the potential precedent of this bill goes far beyond the confines of constructing a single road adjacent to Ho'omaluhia Park on the Island of of Oahu in that it would exempt the project from all present and future (!) environmental laws. For this reason alone Audubon opposes S. 1796, the legislation that would authorize this project.

Before we give our substantive comments we would like to bring to the Committee's attention that the actual language of S. 1796 was not available to Audubon as of the writing of this testimony, and we only learned of this hearing last weekend. Even more important, insufficient notice was given to the affected residents of Oahu. As a result, they must rely upon representation of their interests by a congressional delegation that seems intent upon completing H-3 regardless of its socioeconomic and environmental impacts.

The matter of the routing of Interstate route H-3 has been determined by court of law. That decision on the merits should not be overturned by this Committee. The U.S. Court of Appeals, Ninth Circuit recently held that the routing of H-3 was a "constructive use" of a public park and, therefore, Section 4(f) of the Department of Transportation Act (DOTA) (49 U.S.C. § 1653) applies. As this Committee is well aware, Section 4(f) prevents the Secretary of Transportation from approving any project that requires the use of public park land unless there is "no feasible and prudent alternative". Its duty clearly defined by legal interpretation (*Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1972)) and congressional mandate, the Ninth Circuit found federal and state highway agencies had failed to consider alternatives adequately. The Court remanded the case to the District Court and construction of the highway was enjoined until such time as the Secretary of Transportation can demonstrate compliance with § 4(f). Rather than comply with the court's ruling, federal and state transportation agencies have elected to seek a "legislative fix" that, in the words of one Honolulu editorial, is an admission from the state that they had lost the legal battle and can not "come up with the better justification for H-3 required by the courts" (*Sun Advertiser*, November 3, 1985).

S. 1796 states "notwithstanding any other provision of Federal law enacted heretofore or subsequently..." 10.7 miles of H-3 is to be completed. Audubon opposes any unwarranted exemption form existing federal laws -- our dismay grows when the exemption extends to laws that have not yet even been enacted. Not only does such an exemption create dangerous legislative precedent, but the particular application of the exemption to this situation assumes perfect knowledge of existing and future ecological and socioeconomic conditions, and further assumes that federal and state transportation officials are qualified to make these decision on behalf of the Hawaiian people, endangered species, and other resources at stake.

A review of H-3's record does not bear out such confidence. For example, how do proponents of H-3 reconcile the project's huge cost (a minimum of $386 million in 1979 dollars) against its limited benefits of alleviating its rush hour congestion on feeder routes and exit ramps? In addition, why is H-3 addressing increased vehicular capacity