

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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Written Remarks of the Department of Commerce and Consumer Affairs
Office of Consumer Protection

In response to:
NOTICE OF INFORMATIONAL BRIEFING

Before the
Senate Committee on Commerce and Consumer Protection
Senate Committee on Agriculture and Environment
Wednesday, November 22, 2023
Conference Room 229
1:30 PM

Chairs Keohokalole and Gabbard, and Members of the Committees:

My name is Mana Moriarty, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection. I am pleased to provide these remarks to the Committees. A copy of these remarks has been distributed to each of the Committee members.

The Office of Consumer Protection (OCP) is a division of the State of Hawaii Department of Commerce and Consumer Affairs, created in 1969 to protect the interests of consumers and legitimate businesses. OCP promotes fair and honest business practices by investigating alleged violations of consumer protection laws, by taking legal action to stop unlawful business practices in the marketplace, and by educating the consumer public and businesses regarding their respective rights and obligations. OCP's duties and functions include investigating reported or suspected

violations of consumer protection laws and enforcing consumer protection laws by bringing civil actions or proceedings.

OCP and the Attorney General have concurrent jurisdiction to enforce the general prohibition against unfair or deceptive acts or practices in trade or commerce, section 480-2, Hawaii Revised Statutes. This statute “was constructed in broad language in order to constitute a flexible tool to stop and prevent fraudulent, unfair or deceptive business practices for the protection of both consumers and honest businesspeople.”¹ This general law does not prescribe enforcement powers specific to invasive species or any particular invasive species.

The Legislature has enacted more than thirty consumer protection laws² prohibiting or requiring certain conduct in consumer transactions and authorized OCP and the Attorney General to enforce them. These consumer protection laws include the Mortgage Rescue Fraud Prevention Act, Uniform Deceptive Trade Practice Act, and other laws governing door-to-door sales, tow truck operators, and lease-purchase agreements for personal property. Typically, these sector-specific consumer protection laws operate by prohibiting or requiring certain conduct, and making violations of the prohibition or requirement into a per se violation of section 480-2, HRS.

OCP staff attorneys file and prosecute **civil** actions for violations of consumer laws when warranted by facts and laws. The remedies available to OCP under existing law are civil³ and their availability is dependent on OCP’s ability to carry its burden to establish a legal violation of relevant consumer protection laws. OCP does not have authority to initiate **criminal** actions or proceedings, or to obtain criminal penalties. Nor

¹ *Zanakis-Pico v. Cutter Dodge, Inc.*, 98 Hawai‘i 309, 317, 47 P.3d 1222, 1230 (2002).

² For a list of these laws, see DCCA’s Annual Compliance Resolution Fund Report (December 2022), at PDF55, available at https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=DC&billnumber=100&year=2023 (last accessed November 21, 2023).

³ Civil remedies available to OCP may include penalties (see HRS §§ 480-3.1 and 480-15.1), consumer restitution (see HRS §§ 487-14), avoidance of illegal contract provisions (HRS § 480-12), and injunctive relief (HRS §§ 480-15 and 487-15).

does OCP currently have authority to bring an administrative action or to obtain administrative remedies.

The Attorney General or the Department of Agriculture may be responsible for enforcing existing state laws that would enable them to better address the threat of invasive species. For example, OCP is informed that chapter 150A, HRS, authorizes, among other things, agriculture inspectors to enter private property to execute warrants for the seizure, capture, confiscation or removal of pests; and to issue citations and summons for the purpose of enforcing prohibitions on movement of pests. OCP investigators have no comparable authority. Issues concerning enforcement of laws enacted for the control of invasive species should be directed to the departments responsible for enforcing those laws.

As to the responsibility for investigating reports of invasive species in consumer products offered for sale to the public, it is important to consider the predicate: how are these incidents reported, if they are reported at all? If incidents are not reported to OCP and a request for investigation is not made, OCP's resources are more likely to be devoted to the significant volume of consumer complaints that are reported and that OCP does investigate. To date, no one has filed a complaint with OCP asking for OCP to investigate an invasive species infestation involving little fire ants or coconut rhinoceros beetles. Of more than 1,452 consumer complaints received by OCP in FY2023 and 1,950 consumer complaints received by OCP in FY2022, none of them concern the little fire ant or the coconut rhinoceros beetle.

OCP understands that the Coordinating Group on Alien Pest Species and the Department of Agriculture receives reports about invasive species and either or both of these entities works with businesses to mitigate the spread of invasive species through enforcement of rules and regulations and through business education. We would like to learn about their work with businesses to control or mitigate the spread of invasive species in consumer transactions. OCP can commit to using information we learn today from our sister agencies to provide insight that may lead to increased public awareness of the potential for transfer of invasive species through the sale of consumer products

such as ornamental plants. OCP will commit to working with the other testifiers to understand what is currently known about the scope of this problem.

OCP becomes aware of suspected violations of consumer protection laws from a variety of sources, including individual complaints and referrals from other law enforcement agencies. For localized violations not involving interstate commerce, the predominant source of first-hand information regarding suspected violations is first-party individual complaints against businesses. Members of the public access, complete, and submit an OCP complaint against a business through OCP's public-facing website at cca.hawaii.gov/ocp or using the [url consumercomplaint.hawaii.gov](http://url_consumercomplaint.hawaii.gov), or by obtaining and completing a hard copy that can be submitted by mail or in-person. For consumers with auditory or visual disabilities, or whose primary language is other than English, OCP arranges assistance with completing an OCP complaint. A copy of the current OCP complaint form is appended to OCP's written statement.⁴

Complaints that allege violations of consumer protection laws are assigned to an OCP investigator to gather evidence of the alleged or suspected violation of law. OCP seeks information about the dispute and any attempts to address the dispute with the merchant. On the one hand, if a consumer reports that they purchased a defective product, and then sought a refund to satisfy the perceived wrongdoing, OCP would not rely on outside expertise to address the complaint. If the business refunds the consumer, the immediate transactional harm may be resolved, and the issue may go no further. On the other hand, if a report is made to OCP alleging a consumer transaction led to an invasive species infestation, and government action is requested to abate the infestation, that report may require OCP to consult experts that OCP lacks in house. As OCP has no scientists on staff, OCP would surely seek from scientists and experts their analysis and knowledge.

⁴ Consistent with best practices for state civil law enforcement agencies, the complaint form discloses that information collected by OCP through the complaint form may be used as evidence, requires consumers to certify the truth and accuracy of such information, and contains relevant disclosures about the use of the information.

In civil enforcement actions filed by OCP on behalf of the state, where scientific evidence is critical to establish unfairness or deception OCP may develop a case through expert witnesses. Examples of recent state cases in which expert testimony from scientists was critical include enforcement actions involving JUUL e-cigarettes, the cardiovascular platelet inhibitor Plavix™, energy drinks, and Takata airbags. Where expert witnesses are deemed necessary, those experts must be identified, retained, and paid for their work. As participants in today's briefing, OCP hopes to learn more about the scientific work underway at the Coordinating Group on Alien Pest Species and the Department of Agriculture.

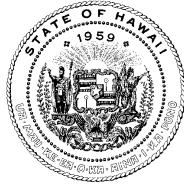
When investigations are undertaken and evidence has been gathered, OCP then decides whether to initiate a legal action to attempt to remedy the perceived wrongdoing. Currently, no specific laws are in place by which OCP can seek specific relief from the problems of little fire ants. More generally, section 480-3.1, HRS, allows OCP to seek civil penalties, and sections 480-15 and 487-15, HRS, allows OCP to seek injunctive relief, if OCP carries its burden to establish an unfair or deceptive act or practice in trade or commerce. Additional legislation would be needed, however, before OCP can avail itself of any remedies specific to little fire ants and invasive species more broadly, which may be comparable to remedies that already exist under other state laws.

On the topic of little fire ants, OCP is generally aware that the spread of fire ants on Oahu is a growing concern, particularly as the pests have more frequently been found throughout Windward Oahu communities. OCP is aware of allegations appearing in news reports that plant nurseries may be exacerbating the problem by transporting plants infested with little fire ants. As noted above, however, OCP has received zero complaints from members of the public about the spread of little fire ants. Accordingly, OCP does not have any active investigations that pertain to the presence or spread of fire ants in the community.

If OCP were to receive a complaint concerning little fire ants, issues would surely arise in the course of any investigation as to the cause and effect of the little fire ant

infestations. As the Department of Agriculture is charged with the control and eradication of the little fire ant and other pests, OCP would consult with the Department of Agriculture as part of any OCP investigation involving invasive species. OCP is grateful for the opportunity to learn more about this community problem from the other presenters today and looks forward to hearing the Department of Agriculture's presentation.

OCP appreciates the invitation to be here and is available for questions from committee members.



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SUPERVISING INVESTIGATORS

FILING A COMPLAINT AT THE OFFICE OF CONSUMER PROTECTION

The Office of Consumer Protection (OCP) investigates possible unfair or deceptive acts or practices in trade or commerce. There are many ways that we learn of these problems, but our most important source of information is consumer complaints. Therefore, let us begin by saying: "Thank you for helping us spot the problems." That is what you are doing when you fill out the enclosed "Complaint" form.

This memo explains what we will do when you return the enclosed form. Please read this information carefully, so that you will understand what we will and (just as important) will not be doing with your complaint.

1. **WE DO NOT REPRESENT YOU.** Please understand that by accepting your complaint we have not agreed to represent you in any capacity. Any action we take is on behalf of consumers in general. We don't have the resources to investigate every case and our enforcement is limited to cases that involve significant harm to a substantial number of consumers.

2. **HOW WE USE YOUR COMPLAINTS.** We collect and maintain consumer complaints in a data base. This allows us to look for patterns within an industry or in a particular business. While many complaints will be investigated, some will remain in the data base because they represent an isolated incident. That doesn't mean the business was right or wrong.

3. **OUR INVESTIGATION MAY HELP RESOLVE YOUR PROBLEM.** Our investigations are not designed to resolve individual disagreements. We investigate to determine whether or not we can prove that a business violated the law. However, an investigation often causes the business to reconsider its position in the individual case.

4. **HOW YOU CAN HELP US EVALUATE YOUR COMPLAINT.** In order to minimize delays in handling your complaint, and to help us accurately evaluate your claim, it is important that copies of all relevant documents are attached to your complaint form. PLEASE DON'T SEND US YOUR ORIGINAL DOCUMENTS.

Depending on the nature of your complaint, you may want to include copies of cash register receipts, store credits, cancelled checks (front and back), correspondence, invoices, contracts, advertisements, charge card slips, bank statements or any other document that helps explain your situation. **Please note:** *If you include an email contact, we will primarily communicate with you by email. You may wish to check your filter settings so that our emails to you make it through.*

5. **IF WE FIND A VIOLATION, OUR ENFORCEMENT OF THE LAW MAY RESULT IN RESTITUTION TO YOU.** When an investigation establishes a basis for legal action against a business, we generally prove our case by proving specific acts. Thus, we may need to prove you were a victim of an unfair or deceptive act. If so, we almost always make restitution a part of our demand. We like to recover money for injured consumers.

6. **WHAT WE MAY ASK YOU TO DO.** In order to take legal action against the business, we will need your full cooperation. Although the great majority of cases are settled without a trial, you may be asked to be a witness. If you are unable, or unwilling, to testify about your case, please let us know on the complaint form.

7. **HOW YOU CAN HELP YOURSELF RIGHT NOW.**
If your claim involves a dispute of charges placed on your credit card or billing statement or if a merchant has promised to reverse or credit your charge card but has failed to do so, you must act quickly to preserve your right to challenge a charge. Under the Federal Fair Credit Billing Act, your credit card company must receive a written dispute notice from you within 60 days after the first bill containing the disputed charge was mailed to you. We cannot dispute this charge for you. Look at the back of your credit card statement for specific information on the procedure for filing your disputes. You must file your dispute with your credit card company; a complaint to the merchant or company that made the charge is not sufficient. Even if you file a credit card dispute, you can still file a claim with our office.

If you have any questions, please call the Consumer Resource Center at 587-4272. Neighbor Islands please call toll-free:

KAUAI	274-3141, enter five digit extension code 74272.
MAUI	984-2400, enter five digit extension code 74272.
HAWAII	974-4000, enter five digit extension code 74272.
MOLOKAI & LANAI	1-800-468-4644, enter five digit extension code 74272.

This material can be made available for individuals with special needs in Braille, large print, audio tape. Please submit your request to the Office of Consumer Protection Division Secretary at 586-2636.

We at the Office of Consumer Protection hope we will be able to help you. Please know that we appreciate your bringing your situation to our attention.

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Hilo, Hawaii 96720
Phone: (808) 933-0910
Fax: (808) 933-8845

MAUI OFFICE
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P.O. Box 1049
Wailuku, Hawaii 96793-1049
Ph: (808) 243-4648
Fax: (808) 243-5807

KAUAI
274-3141
Ext. 7-4272

MOLOKAI & LANAI
1-800-468-4644
Ext. 7-4272

COMPLAINT

Case No. _____

<p>Ms. () Mrs. () Mr. ()</p> <hr/> <p>Your Name* (one complainant per form, unless married)</p> <hr/> <p>Address (Forwarding, if applicable)</p> <hr/> <p>City State Zip Code</p> <hr/> <p>() ()</p> <p>Residence Phone Business Phone</p> <hr/> <p>Email Address</p>		<hr/> <p>Name of Company or Individual you are complaining against (one per form)</p> <hr/> <p>Address</p> <hr/> <p>City State Zip Code</p> <hr/> <p>() ()</p> <p>Residence Phone Business Phone</p> <hr/> <p>Email Address</p>
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***If someone other than the complainant should be the contact person, please fill in the line below.**

Person to contact, if other than complainant	Address	Contact Phone
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FURTHER INFORMATION (if applicable)

1. Description of item or service purchased _____
2. Cost of the item or service purchased _____
3. Date of transaction _____
4. Name of salesperson _____
5. Is the item or service under warranty? _____
6. Signed contract? _____
7. Date complained to company _____
8. Persons talked to _____
9. If advertised, date/where _____
10. Are you or any of your immediate family a member of the U.S. Armed Forces? _____
11. Are you 62 years or older? _____

COMPLAINT. Please type or print clearly in black ink your specific complaints against the respondent. Attach copies of all pertinent documents (contracts, letters, receipts, photographs); and the names, addresses, and telephone numbers of any witnesses. If you attach a credit card or bank statement, be sure your account number is removed or obliterated. If you need additional space, continue on a separate sheet of paper and attach to this form.

Your signature (Complainant)

Date

Spouse's signature (if also a complainant)

Date

A copy of this complaint may be given to the Respondent. It will also become a public record. If there is information that you feel is confidential, such as an unlisted home telephone number, or Social Security number please do not include it on this form or any attachment.

What's the system for protecting Hawai'i?



Pre-entry
(laws & agreements,
offshore risk reduction)

Port-of-entry
(Fed/State inspection)

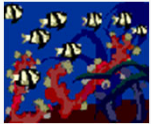
Contain on- and between-islands
(State inspection, response crews, island containment)

World's Biota

Foreign/Domestic Arrivals

In-State

Widespread



Options:

- Laws and agreements
- Reduce risk in exporting countries (offshore pest reduction)

Options:

- Laws and agreements
- Inspect conveyances
- Treat conveyances

Options:

- Laws and agreements
- Inspect conveyances
- Treat conveyances
- Reduce risk of establishment

Options:

- Accept costs/impacts
- Protect high-value areas
- Reduce impacts (e.g. biocontrol, IPM, etc)





The Senate Ka 'Aha Kenekoa

STATE CAPITOL
HONOLULU, HAWAII 96813

July 27, 2023

Sharon Hurd, Director
Hawaii State Department of Agriculture
1428 South King Street
Honolulu, HI 96814

Subject: Concerns Regarding Little Fire Ant, Coqui Frog, and Coconut Rhinoceros Beetle Infestations on O'ahu and Kaua'i

Dear Director Hurd,

I hope this letter finds you well. I am writing to express my grave concerns regarding the ongoing little fire ant (LFA) infestations on O'ahu, the alarming O'ahu coqui frog population estimate provided during a November 2022 Waimanalo neighborhood board meeting, and the recent reports of Coconut Rhinoceros Beetle (CRB) establishment on Kaua'i.

Recently, a constituent shared a social media post by the O'ahu Invasive Species Committee¹ indicating at least 30 active LFA infestations on the island of O'ahu, with 11 of those located in Senate District 24. As you know, LFA are among the worst invasive pests present in the state, and prior infestations of LFA in Kāne'ohe and Kahalu'u highlight the critical need for broad public awareness and vigilant monitoring to detect and address these infestations effectively.

Since viewing the post, I've been informed of allegations that several businesses in Waimanalo may be knowingly transporting and offering for sale plant products that are infested with LFA. This raises profound concerns about consumer protection necessitating a clear understanding of the roles and responsibilities of Hawaii Department of Agriculture (HDOA) and the Office of Consumer Protection.

Secondly, I was shocked to learn that at a November 2022 Waimanalo neighborhood board meeting² an HDOA official gave a "very conservative" estimate of approximately 10,000 coqui frogs in Waimanalo. That number is alarming. It poses serious threats to our local biodiversity, tranquility, and the well-being of residents on O'ahu, especially in Ko'olaupoko.

1 https://www.instagram.com/p/Cu2rSPTsFFC/?utm_source=ig_web_copy_link&igshid=MzRIODBiNWFIZA==
2 https://www.facebook.com/watch/live/?ref=watch_permalink&v=8290051301067328 (Discussed at 26:30 mark)

In addition to the concerns mentioned above, the recent detection of CRB on the island of Kaua'i underscores the urgency of implementing comprehensive and science-based programs to protect uninfested areas of O'ahu and the neighbor islands. My understanding is that proposed amendments to chapter 72 of the Hawai'i Administrative Rules (HAR) provide an opportunity to strengthen the Hawaii Department of Agriculture's (HDOA) ability to swiftly address invasive species incursions, and it is vital to ensure their swift implementation to safeguard Hawaii's agriculture and natural ecosystems.

Given the severity of these infestations and the scale of the coqui frog population estimate, I kindly request your immediate attention and response to the following questions:

1) Little Fire Ant:

- a) As there are multiple entities involved in invasive species management, please briefly explain the HDOA roles and responsibilities in addressing LFA detection, monitoring, and eradication.
- b) Please provide an update of HDOA's work to address the active LFA infestation sites on O'ahu. As treatment at these sites take time, please indicate new LFA sites that were identified in the last six months.
- c) Is it this administration's objective to eradicate LFA on the island of O'ahu?
- d) My understanding is that under the prior administration, the HDOA proposed amendments to Chapter 72 of the Hawaii Administrative Rules (HAR) include, among other things, explicit authority for HDOA to prohibit the movement of plants or other material that is infested with a pest and offered for sale to the public.
 - i) What is the position of this administration on the proposed rules package?
 - ii) What is the status of this rules package? Will the package be submitted for public hearing?
 - (1) If so, when? And if not, why not?
 - iii) Is it HDOA's position that without the rules, the HDOA may not prohibit the sale of plants or other material that is infested with an invasive pest?

*If that is the case, I would like to understand how that position comports with the routine seizure of large pests like snakes or with the Dept. of Health authority to close food service establishments during the rat lungworm or Hepatitis C outbreaks that took place pre-pandemic.

iv) Is the HDOA aware of reports that businesses are knowingly spreading LFA in their plants or other material being offered for sale. If HDOA is aware, what are you doing about it?

2). Coqui Frogs:

- a) What is the HDOA's strategy for managing and reducing the coqui frog population in Waimanalo and other affected areas?
- b) Is the Coqui population in Waimanalo the only known infestation area on O'ahu? If not, where are the other known areas?
- c) What resources and measures will be deployed to control the coqui frog infestation, and what is the timeline for their implementation?

3). CRB

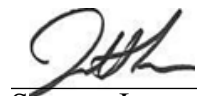
- a) Why was the CRB program allowed to lapse on June 30, 2023?
- a) What measures is the HDOA implementing to control and prevent the spread of Coconut Rhinoceros Beetle on O'ahu and neighboring islands, following the recent detection on Kauai?
- b) Please detail the actions and initiatives that will be funded by the \$2.5 million CRB appropriation passed in HB 300 this year, including your proposed timeline for implementation.

I understand the challenges posed by invasive species require strategic and coordinated efforts. The gravity of these situations necessitates immediate and transparent action to protect our environment and communities. I am committed to a dialogue with your department on how communities in the affected areas, including Ko'olaupoko, can mobilize to assist your efforts. In order to do so, clarity on the above questions is necessary.

Your response is respectfully requested by the **close of business on Wednesday, August 2, 2023.**

Thank you for your attention to these pressing matters. I eagerly await your reply. Should you require any further information or clarification, please do not hesitate to contact me.

Mahalo Nui Loa,



Senator Jarrett Keohokalole

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson, Board of Agriculture

CAROL LEI OKADA
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August 2, 2023

Senator Jarrett Keohokalole
Senate District 24
Hawaii State Capitol, Room 205
415 South Beretania Street
Honolulu, Hawai'i 96813

Subject: Response to letter RE Concerns Regarding Little Fire Ant, Coqui Frog, and Coconut Rhinoceros Beetle Infestations on O`ahu and Kaua`i

Dear Senator Keohokalole,

Thank you for your letter addressing your concern regarding pests in District 24 and other locations statewide. The letter captured the attention of local residents and the media, which has helped the department's outreach efforts to bring attention to the need for funding to control the spread of Little Fire Ant (LFA), Coqui Frog, and Coconut Rhinoceros Beetle (CRB).

Your questions were well-received and was an opportunity for staff to put our best effort towards the following response:

1) Little Fire Ant:

- a. As there are multiple entities involved in invasive species management, please briefly explain the HDOA roles and responsibilities in addressing LFA detection, monitoring, and eradication.

HDOA's duties as described in HRS 141-1 states that the department shall gather info on invasive pests, ways of exterminating them and preventing the introduction of pests and diseases. It goes on to state the department shall provide the solutions to eradicating things that harm vegetation of value.

Further in HRS 141-3, the department shall, so far as reasonably practicable, assist, free of cost to individuals, in the control or eradication of insects, mites, diseases, noxious weeds, or other pests injurious to the environment or vegetation of value; and in the investigation, suppression, and eradication



of contagious, infectious, and communicable diseases among domestic animals; and shall in like manner distribute to points where needed, beneficial insects, or pathogens and other antidotes for the control of insects, mites, diseases, or other pests injurious to the environment or vegetation of value, and for the control or eradication of vegetation of a noxious character.

The above two paragraphs detail the role and responsibility of the Department in addressing pests, but what must be noted, there is no budget assigned to these responsibilities.

The Department is currently working on a reorganization process to bring positions up to date and organize divisions to manage the work more efficiently. Along with reorganization, program funds will be needed to effectively and efficiently act upon current and newly introduced pests which needs quick reaction time to effectively eradicate threats.

A pest must first be identified for control or eradication. A pest must meet one or more of the following:

1. There is record of economic damage or potential economic damage to the agricultural industry or vegetation of value in the State.
2. Causing or will cause economic loss by damage to the crop or agricultural commodity.
3. Transmits plant diseases which cause economic loss.
4. Is injurious or deleterious to livestock by virtue of being venomous, parasitic, or a carrier or reservoir of diseases.

The Little Fire ant was added to the Pests for Control or Eradication list, HAR 4-69A-4(f). This makes it an actionable invasive species.

Currently the Department partners with the following Key Partners:

Hawaii Ant Lab (HAL) has a stated mission of protecting Hawaii from new introductions of invasive ants, preventing the inter-island and intra-island spread of existing invasive ant species, providing sound, practical treatment methods for homeowners, natural resource managers and industry, and eradication of new infestations whenever possible.

Oahu Invasive Species Committee (OISC) mission is to protect O'ahu's native ecosystems, agriculture production and the public's quality of life. Eradicate incipient invasive species and contain high impact invaders. Educate and involve the public to help stop the spread of invasive species.

Coordinating Group on Alien Pest Species (CGAPS) mission is to coordinate and catalyze action among government and non-government

partners to prevent and manage invasive species in Hawai'i, as well as communicate key issues to the public.

Department of Land and Natural Resources Forestry and Wildlife

partners in additional capacity, especially when there is an overlap with forest and DLNR managed areas.

While mission, role and responsibility overlap, the Department is relied upon for definitive initial identification of pests and confirmation of appropriate response. For the purposes of LFA, Hawaii Ant Lab is the primary entity to gather data, identify and provide response, with HDOA and other partners supporting. HDOA intends with additional appropriate resources to take the lead role as mandated in HRS 141-3.

- b. Please provide an update of HDOA's work to address the active LFA infestation sites on Oahu. As treatment at these sites take time, please indicate new LFA sites that were identified in the last six months.

HAL with OISC and the Department supporting, has worked with a specific nursery in Waimanalo on proper elimination procedures. There continues to be monitoring of this site for continued pest presence, which will be met with an appropriate response.

As for other LFA sites, HAL has taken lead on outreach and education to eliminate outbreaks of LFA. Community education is needed to ensure proper care and procedures are followed to control future spread and eliminate current active sites.

You can find a full list of active, monitoring and eliminated sites at:
<https://stoptheant.org/lfa-on-oahu/>

The following areas were newly identified active sites:

Kaneohe – June 2023 – Active Phase

'Āhuimanu – May 2023 – Active Phase

Kaneohe – February 2023 – Active Phase

- c. Is it this administration's objective to eradicate the LFA on the island of Oahu?

As proven by the data from HAL, specific locations can have colonies eliminated. In all areas of the world with LFA, none have been able to fully eradicate. The Department knows the impact LFA is having on our businesses and families and with continued good nursery and plant sharing practices, along with community education events, Hawaii will be able to control LFA in our communities.

There is a need for additional funding to further research management and prevention methods both for businesses and families.

- d. i. What is the position of this administration on the proposed rules package?

A substantive change is being made to the proposed rules to add a new section on Quarantine Restrictions on CRB and host material. This addition of a section to a chapter, instead of requesting changes to the current chapter, will expedite the review and approval process. HDOA will seek board approval at the September 26, 2023, board meeting, which will then allow to move to a public hearing.

- ii. What is the status of this rules package? Will the package be submitted for public hearing? If so, when?

To expound on the above, there is an immediacy to this rule change, but we also want to put forth changes that are both enforceable and effective to keep our islands safe. The soonest we can present revisions to the Board of Agriculture is at the September 26, 2023, meeting. Once approved, we will quickly schedule and notify the public of upcoming public hearings, providing room for the greater community to comment. The expiration of the interim rule has not stopped HDOA from regulating the movement of CRB.

- iii. Is it DOA's position that without the rules, the HDOA may not prohibit the sale of plants or other material that is infested with an invasive pest?

With the current Revised Statutes and Administrative Rules, HDOA works with nurseries and retailers to prevent the sale of plants or other materials infested with a pest. HDOA's intent is to bring back personnel and resources to the Department as this important function was minimized with the reduction of the Plant Pest Control Branch program.

- iv. Is the HDOA aware of reports that businesses are knowingly spreading LFA in their plants or other material being offered for sale. If HDOA is aware, what are you doing about it?

The department is unaware of reports that businesses are knowingly spreading the LFA in their plants or other materials offered for sale. In our experience, businesses have been very amenable and seek assistance from the department. We do not want to jeopardize this relationship with farmers and landowners risking non-reporting of future flare ups by publicizing the

work we do with individual businesses. It is in the businesses best interest to not sell infested plants or material and risk the social media firestorm that could effectively shut down their business in the long term.

2) Coqui Frogs:

- a. What is the HDOA's strategy for managing and reducing the coqui frog population in Waimanalo and other affected areas?

The Department is currently involved in spraying of a Citric Acid solution to bring down the Coqui populations in Palolo, and Waimanalo. In the last six months, approximately 45 survey/treatment visits were made to various areas on Oahu mostly in Waimanalo and Palolo.

Earlier this year, DLNR, HDOA and partner organizations were involved in a large helicopter drop of the Citric Acid Solution to keep Coqui from progressing up the mountain.

Community engagement, continued response of survey and treatment in highly affected areas will continue. A more robust response is needed, which will require additional funding for additional equipment for DLNR to pump citric acid solution higher on the mountain slope for Citric Acid treatment.

- b. Is the Coqui population in Waimanalo the only known infestation area on Oahu? If not, where are the other known areas?

Waimanalo is not the only infestation area. Palolo has a site with significant Coqui activity. Both sites are receiving regular treatments. There are other sites HDOA team is monitoring, along with responding to any notifications of potential Coqui sightings.

- c. What resources and measures will be deployed to control the coqui frog infestation, and what is the timeline for their implementation?

HDOA engineers are reviewing DLNR's plans to pump citric acid further up the mountain to enable easier response and treatment. Once approved and funding secured, pipe and treatment can begin. Right of Entry agreement has been executed to allow staff to do this work. In the meantime, HDOA continues regular treatment in highly affected areas in Waimanalo and Palolo, with continued monitoring across the island.

3) CRB:

- a. Why was the CRB program allowed to lapse on June 30, 2023?

The CRB program did not lapse. The interim rule on the movement of host material lapsed on June 30, 2023, due to the one-year maximum length of the interim rule which began on July 1, 2022. The Department has continued to regulate the pest and host materials and is working on permanent rule change language to include the Kaua'i infestation.

- b. What measures is the HDOA implementing to control and prevent the spread of CRB on Oahu and neighboring islands, following the recent detection on Kauai?

The Department prohibits the intra- and inter-island movement of CRB host material. We are requesting release of funds provided by the Legislature to provide more immediate response.

- c. Please detail the actions and initiatives that will be funded by the \$2.5 million CRB appropriation passed in HB300 this year, including your proposed timeline for implementation.

Per Act 164/SLH 2023, the breakdown of the \$2.5 million:

\$500,000 for a compost reimbursement program
\$1,000,000 for green waste surveillance
\$1,000,000 for CRB advisory committee and response

The Department is submitting the request to release funds this week.

In the meantime, we are gathering a CRB advisory committee which will assist with the allocation of the \$1,000,000 to projects that will assist with elimination or prevention of CRB infestation.

An ideal timeframe for implementation of funds:


August 2023	Release of funds
	Advisory Group meeting #1
September 2023	Advisory Group meeting #2
	Request for Proposals drafted
October 2023	Advisory Group meeting #3
	Request for Proposals released

November 2023 Advisory Group Meeting #4
Request for Proposals reviewed

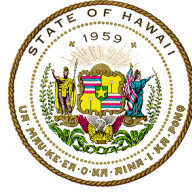
January 2024 Request for Proposals awarded.

For follow up, please contact sharon.k.hurd@hawaii.gov (808) 973-9550. Thank you.

Yours truly,



Sharon Hurd
Chairperson, Board of Agriculture



The Senate
Ka 'Aha Kenekoa

STATE CAPITOL
HONOLULU, HAWAII 96813

October 9, 2023

Sharon Hurd, Director
Hawaii State Department of Agriculture
1428 South King Street
Honolulu, HI 96814

Subject: Little Fire Ant (“LFA”) Request for Update

Dear Director Heard,

We appreciate your cooperation and efforts as we work to stem the rapidly growing spread of Little Fire on Ant on the windward side and throughout the state. In a follow up to our Kaneohe Little Fire Ant Town Hall on September 20th, along with multiple meetings and correspondence since July of this year, we respectfully request your response to the ensuing questions:

1. Reorganization:
 - a. In response to questions about the Department’s plan to address these infestations, in your letter dated August 3, 2023 you stated: “the Department is currently working on a reorganization process to bring positions up to date and organize divisions to manage the work more efficiently. Along with reorganization, program funds will be needed to effectively and efficiently act upon current and newly introduced pests which need quick reaction time to effectively eradicate threats.” Please detail the status of your reorganization and include a copy of the proposed reorganization plan and timeline for implementation.
 - b. Please provide the proposed budget additions that the department hopes to submit to the legislature in next year’s supplemental budget request.
 - c. Please provide the proposed budget additions and additional funding needs, for further LFA research, including eradication, control, and prevention methods for LFA for both businesses and consumers.
2. Amendments to Hawaii Administrative Rules Ch. 72:
 - a. In a zoom meeting on September 7th, 2023, you told us that the rule amendments proposal for HAR Ch. 72 was on hold due to an internal legal review. You reported

- that to be the case despite the Board of Agriculture approval of the rules package at its February 2023 public meeting. Subsequently, in a September 14th meeting, Deputy Dexter Kishida informed us that the DOA would reconsider that previous decision and schedule the rules for public hearing so they can be enacted.
- b. When does the DOA intend to schedule the rules package for public hearing? Please detail the specific changes to the rules package that you intend to submit after conducting the legal review.
3. Current LFA response.
 - a. Does the DOA have the authority to inspect commercially available LFA infested material? If so, what is the process?
 - b. How often are inspections taking place? Who is subject to those inspections? Are DOA Burrowing Nematode certified nurseries subject to those inspections? Please explain.
 4. Plant Nurseries:
 - a. What is the process to become certified under the DOA Burrowing Nematode Certification Program? How often are certified nurseries inspected?
 - b. Can the certification be expanded to include inspection and implementation of best management practices (“BMPs”) for listed invasive pests moving interisland?
 - c. Is the DOA allowing certified nurseries to ship products interisland without being subject to inspection and treatment for listed invasive pests that non-certified nurseries would be subject to?
 - i. Does this allow them to move products that are not being propagated according to Nematode BMPs?

Thank you again for your prompt attention to these pressing matters. Should you require any further information or clarification, please do not hesitate to contact us. We thank you in advance for including a response by the **close of business on Wednesday, October 18, 2023.**

Mahalo Nui Loa,

Senator Jarrett Keohokalole

Representative Scott Matayoshi

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson, Board of Agriculture

DEXTER KISHIDA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'OIHANA MAHI'AI
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

October 18, 2023

Rec. #27666

Senator Jarrett Keohokalole – Senate District 24
Representative Scot Matayoshi – House District 49
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Subject: Response to Little Fire Ant (“LFA”) Request for Update

1. Reorganization:

a. In response to questions about the Department’s plan to address these infestations, in your letter dated August 3, 2023, you stated: “the Department is currently working on a reorganization process to bring positions up to date and organize divisions to manage the work more efficiently. Along with reorganization, program funds will be needed to effectively and efficiently act upon current and newly introduced pests which need quick reaction time to effectively eradicate threats.” Please detail the status of your reorganization and include a copy of the proposed reorganization plan and timeline for implementation.

The first step in our reorganization is to move the employees who are currently paid through the Pest Inspection, Quarantine and Eradication Fund (forty-six [46] positions to general funds) Pesticide Use Revolving Fund (move seven [7] to general funds and add three[(3] to Pesticide education.) This will allow the funds to be used for incipient pest response, training, and outreach to communities. This will require budgetary approval. Expected implementation July 2024.

b. Please provide the proposed budget additions that the department hopes to submit to the legislature in next year’s supplemental budget request.

These budget additions total \$56.6 million and are in response to the recommendation/need to ask to be considered for funding.

Add personnel costs from Pest Inspection, Quarantine and Eradication fund to general fund	2,967,852
Delete personnel costs from Pest Inspection, Quarantine and Eradication fund	(2,784,991)



Add personnel costs from revolving funds to general funds	434,328
Transfer personnel cost to general funds reallocate ceiling to other current expenses	-
Add personnel costs from Certification Services revolving fund to general funds	275,160
Delete personnel costs from Certification Services revolving fund	(420,151)
Program Specialist V position	41,532
Two program Specialist V positions	83,064
Add positions from Pesticides Use revolving fund and add additional positions	682,180
Delete personnel from Pesticides Use revolving fund	(749,576)
Funding for ACMS and Office Asst	54,444
Funds for HR Assistant, Account Clerk and Planners	132,816
Funds for marketing Hawaii Agricultural products	400,000
Funds for software and motor vehicle	95,418
Seeds, tissue culture and germplasm program	7,000,000
Increase biocontrol program capacity	737,239
Funds for Da Bux program	2,000,000
Funds for research statistician and surveys	189,148
Food hub expansion project	14,000,000
Farm to foodbank program	15,000,000
Accountant I position to manage grants, Planner IV to manage projects	60,696
Additional funds for irrigation operations- other current expenses, equipment, and motor vehicles	1,909,535
Testing and inspection reimbursement program	10,000,000
Enhance pest detection and control	873,434
Compost reimbursement program	531,548
Funds for motor vehicles (3)	120,849
Funds for motor vehicle	42,918
Establish ceiling for emergency loan program	1,500,000
Increase ceiling for Animal Information System, motor vehicle	733,076
Increase ceiling for pesticides disposal program and motor vehicles	686,818

c. Please provide the proposed budget additions and additional funding needs, for further LFA research, including eradication, control, and prevention methods for LFA for both businesses and consumers.

Our Legislative Package includes a request for \$5,000,000 for our Plant Pest Control branch to respond to Designated Pests for control and eradication. This yearly occurring fund will be used to both respond and research systemic solutions like biocontrol and other control or eradication techniques. This is not specific to LFA but includes LFA in the scope of the funding. We would like the fund **to not be** pest specific to allow the department the ability to move as the need arises.

2. Amendments to Hawaii Administrative Rules Ch. 72:

a. In a zoom meeting on September 7th, 2023, you told us that the rule amendments proposal for HAR Ch. 72 was on hold due to an internal legal review. You reported that to be the case despite the Board of Agriculture approval of the rules package at its February 2023 public meeting. Subsequently, in a September 14th meeting, Deputy Dexter Kishida informed us that the DOA would reconsider that previous decision and schedule the rules for public hearing so they can be enacted.

It was also stated that the Department would need to engage the agriculture industry by meeting with the Agriculture Associations. This happened on October 17, 2023; a summary of the discussion will be distributed to all participants later this week.

Feedback from the industry was disappointment that the meeting was not comprehensive with a complete review of the changes to the rules that they would be subjected to follow – an informational briefing should have included all the changes to the rules, to allow the leaders that attended a chance to take the changes back to their members for discussion. They expected a more robust discussion with the HDOA to work on the rulemaking and have input. There is disagreement that industry had the chance to be involved from the beginning. Industry expects a comprehensive review of the changes and appreciates the process is beginning – they are not ready to move to a public hearing.

The Department's main take away was the need for transparency to the industry as to the process from detection to quarantine to stop movement and the process to be released from quarantine. This will be shared with the industry once drafted, prior to a public hearing. There were other issues the participants shared, but stop movement was the only section which multiple participants said would be the 'deal breaker.' When seeking additional information on what exactly was the deal breaker, the unknown of how a business would be allowed to sell once again was brought up as the main reason. The example of the Department of Health shutting a food business down, but is clear what actions need to take place to ensure clearance and reopening can occur was shared. The knowledge of the resiliency of an invasive species is alarming to the industry – if the DOH comparison is considered, the establishment can reopen when the violation has been corrected, with an invasive species, eradication may never occur.

b. When does the DOA intend to schedule the rules package for public hearing? Please detail the specific changes to the rules package that you intend to submit after conducting the legal review.

To be determined through further meetings with industry.

3. Current LFA response.

a. Does the DOA have the authority to inspect commercially available LFA infested material? If so, what is the process?

Per 4-72-3, HAR, all plant and propagative plant parts shall be inspected prior to being transported between islands of the State. A certificate of inspection indicates satisfying this requirement. Cut flowers, foliage, fruits and vegetables, and other non-propagative plant parts shall be subject to periodic random inspection at either the port of departure or port of entry.

The Department also has authorization per HRS 150A-11.5 to seek a warrant to enter property for the protection of animals or public health, agriculture, or the environment.

b. How often are inspections taking place? Who is subject to those inspections? Are DOA Burrowing Nematode certified nurseries subject to those inspections? Please explain.

The mandatory and random inspections occur Monday through Friday 7:45am through 4:30pm. DOA Burrowing Nematode certified nurseries program is an agreement with California, though most other states also accept it. The program is based on self-certification of products being shipped to California, our Inspectors provide 2x a year inspection to include LFA testing, and BN testing 1x per year.

4. Plant Nurseries:

a. What is the process to become certified under the DOA Burrowing Nematode Certification Program? How often are certified nurseries inspected?

Per HAR 4-73-7 The nursery must comply with the MOA section 9. General requirements are lumped into three general categories: sanitation, separation, and surveying. It also requires an initial inspection which not only includes the Nematode test, but also includes inspection for LFA, Coqui and other pests. If a pest is found, mitigation measures (treatment) must be conducted. Going forward, inspection occurs every six months.

Senator Jarrett Keohokalole – Senate District 24
Representative Scot Matayoshi – House District 49
October 18, 2023
Page Five of Five

b. Can the certification be expanded to include inspection and implementation of best management practices (“BMPs”) for listed invasive pests moving interisland?

Since the inspection already includes surveying for other invasive pests this may not be needed as BMP's are implied in the lack of findings during the survey.

c. Is the DOA allowing certified nurseries to ship products interisland without being subject to inspection and treatment for listed invasive pests that non-certified nurseries would be subject to?

The self-certification is currently not used as preapproval to ship inter island.

- i. Does this allow them to move products that are not being propagated according to Nematode BMPs?

Nurseries and products from the nursery who are not following the CDFA MOA Permit Number QC 650, and/or have findings of movement of pests may have their certificate revoked.

If you have any questions, please contact me at (808) 973-9550.

Sincerely,



Sharon Hurd, Chairperson
Board of Agriculture

Windward Oahu LFA Sites

8 November 2023

