



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
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FINDING OF NO SIGNIFICANT IMPACT FOR THE PROPOSED MEMORANDUM OF UNDERSTANDING WITH THE COUNTY OF KAUAI FOR THE NIGHTTIME OPERATION OF FOOTBALL FACILITIES

PROPOSED ACTION

The U.S. Fish and Wildlife Service (Service) proposes to enter into the Memorandum of Understanding with the County of Kauai (MOU) for the nighttime operation of football facilities, as described in the Environmental Assessment (EA). By entering into this MOU with the County of Kauai (County), the County would agree to minimize and mitigate impacts to the Newell's shearwater, a species protected by the Endangered Species Act (ESA), in holding two nighttime football games at two football facilities on the island. The Service has completed ESA section 7 consultation on the MOU. This MOU has the overarching purpose of conserving these listed species.

To preserve and restore native seabirds on Kauai it is essential to have the support of the local community. Nighttime football games are an important cultural activity for the Kauai community. To foster partnership and collaboration in support of seabird conservation on Kauai, the Service is working with the Kauai community to authorize limited nighttime football games, while simultaneously minimizing the impacts from the lighting associated with the games, in the interim period while waiting for the completion of the Kauai Seabird Habitat Conservation Plan (KSHCP).

The EA meets Federal legal requirements for environmental project review. Documents reviewed in the preparation of this Finding of No Significant Impact (FONSI) are the *Environmental Assessment for the Memorandum of Understanding with the County of Kauai for the Nighttime Operation of Football Facilities in 2018*, issued September 2018, the *Memorandum of Understanding between County of Kauai and U.S. Fish and Wildlife Service*, issued September 2018, and the *2018-F-0566 Biological Opinion (BO)*. These documents are incorporated by reference, as described in 40 CFR § 1508.13.

Description of the Proposed Action

Pursuant to the MOU, the County agrees to minimize and mitigate impacts to seabirds in playing up to two football games at nighttime that would require the use of stadium lights. The games would be played at County-operated football facility(ies), limited to Vidinha and Hanapepe. The

two football games would be scheduled during the 2018 season for September 21 and September 28.

Mitigation Measures

The light associated with nighttime football games presents potential environmental hazards to seabirds. No stadium lighting will be on at any County-operated football facility, including but not limited to Vidinha and Hanapepe in the evenings between September 15, 2018 and December 15, 2018, except as described in the EA. Precautions must be taken to minimize the incidental take of seabirds due to fallout. The mitigation measures for the proposed action are listed below:

1. Football facility lighting operations at Hanapepe and Vidinha Stadiums will adhere to exterior shielding as described in the BO (Appendix 2).
2. All lighting will be turned off within one hour after the game (11:00 pm.) to reduce the amount of time lighting will be required after sunset and further minimize impacts to the Newell's shearwater.
3. The County will establish, at its sole cost and expense, an escrow account, no later than November 15, 2018, in the amount of \$30,000 to be used in the event that a seabird(s) are found downed for the purpose of mitigating impacts to the seabird(s). If, in the sole judgment of the Service, such an event occurs on either of the September 21 or September 28 dates, for each such event, the County will direct the escrow agent to transfer \$15,000 from the escrow account to a qualified entity selected by the County in consultation with, and with approval from, the DLNR-DOFAW for use in mitigating the takings of seabirds on Kauai. The amounts to be spent on mitigation have been set to reflect levels of effort sufficient for the Service to exercise its discretion to agree to the terms of this MOU. Any funds remaining in the escrow account as of January 30, 2019, may be returned to the County. Notwithstanding the above, should the number of such takings equal or exceed two seabirds during the September 21 game, the September 28 game may not occur at night.
4. Whenever lights are on at night at any County-operated football facility between September 15, 2018 and December 15, 2018, the County will monitor the facility grounds. The County will coordinate monitoring with at least four biologists from the DLNR-DOFAW, the KESRP, or the Service's Pacific Island Fish & Wildlife Office (PIFWO) whom will assist the County in monitoring seabirds at each of the games. Such monitoring shall include: (1) documentation of number, species, timing, height and flight patterns of observed seabirds; (2) the number of apparently downed seabirds that were searched for and in fact found to be downed; (3) the number of apparently downed seabirds that were searched for and not found; (4) the number of apparently downed seabirds that were not searched for with an explanation of why a search was not conducted; (5) the number of seabirds found downed that did not correspond to an observed apparent downing; and (6) information on the condition of any recovered downed seabirds. Such monitoring will further include, immediately

upon conclusion of any game and before the lights are turned off, a search of the facility grounds for any downed seabirds. For all such monitoring, the County will maintain records of the location, times, dates, and biologists involved, as well as the location, condition, identification, in situ photographs, and fate of each recovered bird. Any seabird encountered during such monitoring will be reported by the County via telephone or email to the Service, PIFWO, and the Service, Office of Law Enforcement (OLE), within 48 hours. Unless otherwise directed by the OLE, all retrieved seabirds will be transferred to the Save Our Shearwaters program in conformance with recommendations of that program, along with all associated location and photographic data for each bird.

5. Whenever lights are on at night at any County-operated football facility for a publicly attended event, held between September 15, 2018 and December 15, 2018, the County shall ensure that public service announcements regarding seabirds, mutually agreeable and reviewed by PIFWO and OLE, are delivered over the loudspeakers during any such event.
6. The County will complete and provide to PIFWO and OLE, no later than June 1, 2019, a report documenting the results of its monitoring and other observations from the 2018 football season.

EFFECTS AND FINDINGS

In evaluating the proposed action we considered the context and intensity of effects and conclude that the proposed action will not result in significant impacts to physical and biological resources or the human environment.

Implementation of the MOU may impact only up to two fledgling Newell's shearwaters. For the reasons described in the EA and BO, the loss of two fledglings would not have a population level impact on the Kauai population in either the short- or long-term. No adult Newell's shearwaters are expected to be impacted. The proposed action is not likely to have indirect effects on Newell's shearwaters. The Service also concluded that no other species of seabirds, sea turtles, or elements of the environment will be directly or indirectly impacted by the proposed action.

The minimization measures contained in the MOU are made mandatory by the terms and conditions of the incidental take statement and are an important factor in reducing the number of seabirds impacted by the proposed action and in our finding of no significant impact.

CONCLUSION

The proposed action will not have a significant effect on the environment and, therefore, does not constitute an action that requires preparation of an environmental impact statement (EIS). Environmental impacts have been substantially minimized and would be limited to the incidental take of no more than two Newell's shearwater fledglings. For the reasons described in the EA/BO, the potential loss of two fledglings does not constitute significant adverse effects to this listed species. There are no significant impacts on public health and safety, wetlands/waters of the U.S., other fish and wildlife, species or concern, wilderness, socioeconomic resources, or visitor use. No highly uncertain or controversial impacts, unique or unknown risks, significant

cumulative effects, or elements of precedence were identified. The Service has coordinated with DLNR-DOFAW and they do not object to the MOU.

Based on the foregoing, it has been determined that an EIS is not required for this project.

Field Supervisor
Pacific Islands Fish and Wildlife Office

Date