



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
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Honolulu, Hawaii 96850



SEP 22 2017

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 four 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*, issued September 2017, the *Memorandum of Understanding between County of Kauai and U.S. Fish and Wildlife Service*, issued September 2017, and the *2017-F-0477 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 four football games at nighttime that would require the use of stadium lights. The games would be played at any County-operated football facility, including but not limited to Vidinha,

Hanapepe, and Kapaa. The four football games would be scheduled during the 2017 season for September 22, September 30, October, 7, and November 4.

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, 2017 and December 15, 2017, except as described in the EA. Precautions must be taken 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, 2017, in the amount of \$60,000 to be used in the event that seabirds are found grounded or downed for the purpose of mitigating impacts to the seabirds. If, in the sole judgment of the Service, such an event occurs on any of the September 22, September 30, October 7, or November 4 dates, for each such event, \$15,000 will be transferred from the escrow account to a qualified entity selected by the County in consultation with, and with approval from, the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife (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. Should the number of such takings equal or exceed four seabirds inclusive of takings at all night football games, subsequent football games in the 2017 season may not occur at night. At any such night game described in this subparagraph, all lighting will be turned off within one hour after the end of the game. Any funds remaining in the escrow account as of January 30, 2018, may be returned to the County.
4. Whenever lights are on at night at any County-operated football facility between September 15, 2017 and December 15, 2017, the County will monitor the facility grounds. The monitoring shall be conducted by a group of at least four persons trained by Service approved personnel to identify and handle seabirds. Such monitoring shall include: (1) documentation of number, species, timing, height and flight patterns of observed seabirds; (2) the number of apparently grounded seabirds that were searched for

and in fact found to be grounded or downed; (3) the number of apparently grounded seabirds that were searched for and not found; (4) the number of apparently grounded or downed seabirds that were not searched for with an explanation of why a search was not conducted; (5) the number of seabirds found grounded or downed that did not correspond to an observed apparent grounding or downing; and (6) information on the condition of any recovered grounded or 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 grounded or downed seabirds. For all such monitoring, the County will maintain records of the location, times, dates, and personnel (including volunteers utilized) 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, Pacific Islands Fish and Wildlife Office (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, including but not limited to football games, held between September 15, 2017 and December 15, 2017, 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, 2018, a report documenting the results of its monitoring and other observations from the 2017 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 four fledgling Newell's shearwaters. For the reasons described in the EA and BO, the loss of four 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 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 four Newell’s shearwater fledglings. For the reasons described in the EA/BO, the potential loss of four 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 of 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

22 Sept 2017

Date