

**FINDING OF NO SIGNIFICANT IMPACT**  
**Regarding**  
**Proposed Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for Incidental**  
**Take of the: Newell's shearwater (*Puffinus auricularis newelli*), Hawaiian petrel**  
**(*Pterodroma sandwichensis*), and band-rumped storm petrel (*Oceanodroma castro*) in**  
**conjunction with the**  
**Kaua'i Seabird Habitat Conservation Plan,**  
**Kaua'i County, Hawai'i**

The U.S. Fish and Wildlife Service (Service) is proposing to issue a Section 10(a)(1)(B) Incidental Take Permit (ITP) under the Endangered Species Act of 1973 (16 USC 1531-1544), as amended (ESA), to qualifying applicants (Applicants) for the placement and operation of a range of artificial, nighttime lighting on Kaua'i. Eight applications for an ITP have been received. Each ITP would authorize incidental taking of threatened and endangered seabirds, including the threatened Newell's shearwater (*Puffinus auricularis newelli*, Hawaiian name: 'a'o), the endangered Hawaiian petrel (*Pterodroma sandwichensis*, Hawaiian name: 'ua'u), and the endangered Hawai'i distinct population segment (DPS) of the band-rumped storm-petrel (*Oceanodroma castro*, Hawaiian name: 'akē'akē) (collectively referred to as the Covered Species).

The area addressed under the Kaua'i Seabird Habitat Conservation Plan (KSHCP) includes any location on the island of Kaua'i where light structures may attract seabirds, and State Lands where the proposed mitigation preserve will be implemented. The ITP may cover all types of artificial lighting, including land-based lights at parks, retail stores, resorts, condominium complexes, agribusiness and industrial facilities, as well as lighting on ocean-going vessels such as cruise ships. Artificial lighting includes the placement and operation of current light structures, as well as the placement and operation of new or future lights that have similar effects. Mitigation areas include a 2-hectare (ha) seabird preserve to be established in Kōke'e State Park along the Kalalau rim, and disbursed areas where downed seabirds are recovered, evaluated, rehabilitated and released to sea. The KSHCP was developed by the State of Hawai'i, Department of Land and Natural Resources (DLNR), with technical assistance from the Service, and in consultation with various scientific experts in the field of seabird and turtle biology to describe minimization and mitigation measures that will be implemented to reduce and offset the effects of the proposed taking on the Covered Species. The duration of each ITP would be 30 years.

The proposed ITP issuance by the Service is a Federal action that may affect the human environment and is therefore subject to review under the National Environmental Policy Act of 1969, as amended (NEPA; 40 CFR 1505.2). An environmental assessment (EA), hereby incorporated by reference, analyzed the effect to the human environment from three alternatives: the No Action alternative, the Proposed Action alternative, and an alternative describing translocation of chicks of the Covered Species from remote breeding sites in the mountains into the Preserve.

Documents reviewed in the preparation of this Finding of No Significant Impact (FONSI) include: (1) the Kaua‘i Seabird Habitat Conservation Plan; (2) the Kaua‘i Seabird Draft Environmental Assessment; public comments on the Draft Environmental Assessment; the Kaua‘i Seabird Final Environmental Assessment; and (3) the Service’s Biological Opinion on the Kaua‘i Seabird Habitat Conservation Plan and Incidental Take Permit Applications. These documents are incorporated by reference, as described in 40 CFR § 1508.13.

**Decision Rationale**

The Service has selected the Proposed Action alternative because it provides the greatest net conservation benefit for the Covered Species. The Service notes that the Final Environmental Assessment incorporates an update to the amount of take requested by the eight Applicants, based on corrections to their take calculations in their Participant Inclusion Plans (PIPs). The corrected level of take for these eight applicants is lower than that described in the Draft Environmental Assessment, and less than the maximum described for the KSHCP. Table 1 presents corrected take figures compared to the maximum level of take allowed over the 30-year KSHCP for each of the Covered Species.

Table 1. Applicant Total Requested Fledgling Take Over the 30-Year KSHCP for the Covered Species and Total Maximum Take For KSHCP Program.

	Newell’s Shearwater		Hawaiian Petrel		Band-Rumped Storm Petrel	
	Lethal	Non-Lethal	Lethal	Non-Lethal	Lethal	Non-Lethal
Total Requested Take over 30-Year KSHCP	786	1060	39	33	17	14
Total Maximum Take Allowed over 30-Year KSHCP	900	1350	60	60	30	30
Difference in Total Take Requested and Maximum Take Allowed	114	290	21	27	13	16

The Service has updated the tables in the Final Environmental Assessment to reflect the corrected figures where appropriate. The findings that follow are based on the corrected take requests from the eight Applicants.

Implementation of the Proposed Action alternative is not expected to cause significant adverse or beneficial effects to the human environment for the following reasons:

Minimization and Mitigation of Take of Covered Species:

- In our Biological Opinion for the Proposed Action, the Service determined that implementation of the HCP is not likely to jeopardize the continued existence of the Covered Species or result in destruction or adverse modification of critical habitat (Service Ref. No. 01EPIF00-2020-F-0180).

- Over the duration of the ITPs, activities covered by the KSHCP will result in take of the Covered Species anywhere on the island of Kaua‘i where light structures may occur, and State Lands where mitigation will occur.
- The establishment and management of the Kahuama‘a Seabird Preserve, and barn owl (*Tyto alba*) and feral cat (*Felis catus*) control on Kaua‘i throughout the duration of the 30-year permit term will compensate for unavoidable take and contribute to the long-term conservation of species.
- The Service anticipates that implementation of the KSHCP will result in net conservation benefits that will contribute toward the recovery of the Covered Species. The KSHCP will offset the impacts of the taking of Newell’s shearwater anticipated to occur on Kaua‘i through establishment and management of the Kahuama‘a Seabird Preserve (Preserve), also on Kaua‘i. The 2-ha Preserve will be enclosed by a predator proof fence, protected from terrestrial predators, and restored to create native plant dominated nesting habitat. It is located at a similar elevation to occupied Newell’s shearwater nesting colonies already established in that region of the island, and would benefit multiple generations of Newell’s shearwater.
- Barn owl control conducted in Kalalau Valley and feral cat control along the rim of the Kalalau Valley will reduce depredation at existing seabird breeding colonies, and deter cat presence in the vicinity of the Preserve. Establishing the Preserve, and conducting barn owl control and feral cat control would allow for an increase in the Covered Species’ populations sufficient to offset the incidental take of the Covered Activities, and is expected to enhance adult survivorship and reproductive success of Newell’s shearwater, Hawaiian petrel, and band-rumped storm-petrel.

Other Effects to the Human Environment:

- No significant impacts to any other species of fish and wildlife were identified.
- No significant impacts to the human environment, including to other federally listed species and critical habitat, fauna, flora, hydrology and water resources, air quality, soils, archaeological, historic and cultural resources, or recreational activities were identified.
- There is no known controversy over environmental effects (e.g., major scientific or technical disputes or inconsistencies over one or more environmental effects).
- There are no changes in Service policy having a major positive or negative environmental effect.
- There are no precedent-setting actions with wide-reaching or long-term implications (e.g., special use permits for off-road vehicles, mineral extraction, new road construction).

- There are no major alterations of natural environmental quality that may exceed either local, State, or Federal environmental standards.
- Implementation of the KSHCP is not anticipated to substantially affect public health in any adverse way. It will not expose existing or future generations to increased safety or health hazards.
- There are no conflicts with substantially proposed or adopted local, regional, State, interstate, or Federal land use plans or policies, that may result in adverse environmental effects.
- There are no adverse effects on designated or proposed natural or recreation areas, such as wilderness areas, parks, research natural areas, wild and scenic rivers, estuarine sanctuaries, national recreation areas, habitat conservation plan areas, threatened and endangered species, fish hatcheries, wildlife refuges, lands acquired or managed with Dingell-Johnson/Pittman-Robertson funds, unique or major wetland areas, and lands within a 100-year floodplain.
- There will be no removal from production of prime and unique agricultural lands, as designated by local, regional, State, or Federal authorities; in accordance with the Department's Environmental Statement Memorandum No. ESM 94-7.
- There are no adverse effects on municipal, industrial, or agricultural water supply or quality; or major consumptive use or other long-term commitment of water.
- There is no condemnation of property rights or fee title to land; or large-scale relocation of people, homes, commercial, industrial, or major public facilities.

## **Description of the Alternatives**

### No Action Alternative

Under the No Action alternative, the Service would not issue ITPs to qualifying Applicants and the KSHCP would not be implemented. Due to previous legal actions, the County of Kaua'i and the Kaua'i Island Utility Cooperative (KIUC) entered into plea agreements with the U.S. Department of Justice, which stipulated minimization and mitigation actions to reduce take of listed seabirds from light attraction. The St. Regis Princeville Resort (now Princeville Resort Kaua'i) also came to a settlement on the legal action with an agreement to reduce the impacts of lighting at its resort. During the planning process for developing the KSHCP, many entities began implementing measures to avoid or minimize the adverse effects of nighttime lighting at their facilities on the Covered Species. The Service assumes these measures would remain in place under the No Action alternative and that prospective Applicants would implement all reasonable avoidance or minimization measures to reduce the risk of take of the Covered Species, but there would be no mitigation offset for any continued unavoidable, unauthorized take.

## Proposed Action Alternative

The Proposed (preferred) Action alternative is the issuance of the 30-year ITP to qualifying Applicants based on the Applicants' commitment to implement the KSHCP under individual Section 10(a)(1)(B) permit applications. Implementation of the KSHCP will fully offset the impacts of the taking of up to 1,738 Newell's shearwater, 73 Hawaiian petrel, and 26 band-rumped storm-petrel over 30 years due to light attraction. The KSHCP includes minimization measures that emphasize a reduction in the amount of artificial, night-time light that shines upward and a reduction in the amount of light output or intensity. Both reduce the effects of light attraction on the Covered Species. The KSHCP includes mitigation activities to create and manage the Kahuama'a Seabird Preserve, conduct barn owl control in Kalalau Valley, and conduct feral cat control along Kalalau Valley rim to reduce depredation on existing seabirds and colonies near the Preserve. The final KSHCP includes revisions based on the response to public comments. All updates are noted in Appendix D of the Final Environmental Assessment.

## Translocation Alternative

The Translocation alternative consists of the issuance of ITPs by the Service in association with a modified KSHCP that incorporates mitigation measures to include translocation of chicks of the Covered Species. Chicks would be collected from remote breeding sites in the mountains into the Preserve to augment recruitment and productivity of breeding seabirds at the Preserve. All other aspects of the Proposed Action alternative would remain the same under the Translocation alternative. Chick translocation would be anticipated to contribute to a sustainable breeding population at Kahuama'a Seabird Preserve earlier than with social attraction alone by increasing the number of potential breeders at the mitigation site as translocated chicks mature and return. At minimum however, it would take three to six years from fledging for the chicks to survive at sea, mature, and return to the site to prospect; it would take as long as ten years for the first translocated chick to return and successfully breed. The net conservation benefit associated with this alternative would take longer to achieve than the benefit associated with the Proposed Action alternative.

## Public Involvement and Review

On November 9, 2010, the Service announced in the Federal Register our intent to prepare an environmental impact statement (EIS) for the then-proposed KSHCP (75 FR 68819) inclusive of the Kauai Island Utility Cooperative (KIUC) HCP. At that time, the proposed KSHCP and the expected applications from public and private entities on Kauai for ITPs were intended to cover the incidental take of the Newell's shearwater, Hawaiian petrel, and band-rumped storm-petrel due to adverse effects of light attraction, as well as collision with utility lines and associated structures. However, monitoring conducted in 2014 reflected a much higher rate of seabird collisions with utility lines than previously estimated. As a result, in September 2015, the State decided to restrict the scope of the KSHCP to take from light attraction and reserve consideration of line collision to the Kauai Island Utility Cooperative Long-Term HCP. As a result, the mitigation program under the KSHCP was scaled to address the level of seabird take impacts

caused by the applications for incidental take proposed here. After a subsequent analysis based on the reduction in scope of the proposed KSHCP, the Service determined that it was appropriate to first prepare an environmental assessment to determine whether an environmental impact statement was warranted.

A Notice of Availability (NOA) for the KSHCP for light attraction and Draft Environmental Assessment was published in the Federal Register (85 FR 14497-14499) on March 12, 2020. The Service accepted public review and comment through April 13, 2020 on the KSHCP, each Applicant's permit application and draft KSHCP PIP, and the Draft Environmental Assessment. The Federal Register notice referenced the Service's Pacific Island Fish and Wildlife Office's web site for availability of the draft documents. Options to respond included electronically, by telephone, or in writing.

The Service received 11 comment letters in response to the Federal Register notice for the proposed action. All substantive comments related to the KSHCP or Environmental Assessment have been summarized by commenter and presented in Appendix D of the Final Environmental Assessment.

There were a number of similar public comments received. These comments, and the Service's responses are summarized below.

- One similar theme discussed in the public comments was the issue of how Applicants were implementing effective minimization measures at lighting facilities. As discussed in the response to comments, the Service has reviewed each of the eight Applicants' PIP in accordance with the KSHCP and determined that each current Applicant is minimizing to the maximum extent practicable to fully offset the incidental take of their nighttime lighting. Any potential future Applicants not currently minimizing to the maximum extent practicable are required to implement minimization of facility lights before the first fledgling season after permit issuance. New technologies, different lighting designs, and other relevant scientific information will be added to the HCP as it becomes available in order to improve minimization, mitigation and adaptive management methods.
- Another common issue discussed in the public comments involved predator control, and specifically cat control at the facilities. The control of predators generally in Hawai'i is a complex and challenging issue, which cannot be fully addressed by this proposed action. As discussed in the response to comments, however, the Service has evaluated the issue of predator control as it relates to the incidental take of Covered Species being proposed by Applicants here, and has determined that the Applicants have made sufficient commitments to address predation of downed seabirds on their properties to meet the ESA standards.
- An additional concern was regarding information provided by three Applicants demonstrating a higher than the assumed 50% average discovery rate at their facility when searching for downed birds. As discussed in the public comments, based on the

best available information, the Service, in consultation with Hawai'i DLNR, finds that these applicants have adequately demonstrated a better discovery rate, per KSCHP Section 6.2.2.1.b.3. This finding is based on their site specific parameters, proposed predator control activities, and proposed searching protocols. To validate this discovery rate, the Applicants will conduct an independent validation of this discovery rate prior to the beginning of the second season of the permit term. If the discovery rate as determined by the validation is different than the approved discovery rate, Applicants will modify the discovery rate in their approved PIP under adaptive management or will amend their PIP to reflect the updated discovery rate.

- Comments addressed concerns that searching during the day for downed birds was inadequate, especially during the seabird fledgling period from September 15-December 15. Concerns were that downed birds would hide during the day and be difficult to find. In response to these comments, the State DLNR is clarifying Section 5.3.4.1. and Table 6-4 of the KSHCP to include updated search recommendations to improve searching for downed Covered Species. Evening searches should occur 3-4 hours after sunset. Morning searches should occur within 1 hour before sunrise, and if up to 3 hours before sunrise if deemed sufficient (e.g. open areas, no prevalence of loose predatory animals). Any variance of the KSHCP recommended site-specific search guidance will be detailed in an Applicant's PIP and will be reviewed and approved by the agencies.
- Concerns were stated over the effects of light attraction on Covered Species from property owners who are not participating in the KSHCP. Neighboring properties and businesses that chose not to participate in the KSHCP are responsible for addressing their impacts and are outside the scope of this HCP.
- Several commenters questioned how Participants will be held accountable for implementing the required downed wildlife searches and predator control at their facilities. The Service acknowledges that regular monitoring is an important component to the KSHCP. As described in Section 6.8 of the KSHCP, Participants will be subject to compliance monitoring, effectiveness monitoring, and take monitoring. Evaluations will be based on Participant monitoring plans and reporting, which will include summaries, photos, maps, and other evidence to demonstrate that minimization measures are being implemented and their effectiveness. Additionally, monitoring visits may take place as needed to validate compliance and effectiveness.

## **Conclusion**

Based on review and evaluation of the information contained in the supporting documents, the Service has determined that the Proposed Action alternative is not a Federal action that would significantly affect the quality of the human environment, within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969, as amended. The action considered is not of a nature that would normally require preparation of an environmental impact statement

(EIS), and is not of a type, context, or intensity that is without precedent. Accordingly, the Service is not required to prepare an EIS for this action. Therefore, the Service has made a Finding of No Significant Impact as allowed by NEPA regulation and supported by Council on Environmental Quality guidance.

This Finding of No Significant Impact and supporting documents are on file at the Service's Pacific Islands Fish and Wildlife Office in Honolulu, Hawai'i.

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May 26, 2020  
Date