

requires each agency “ \* \* \* to provide notice \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \* ”

Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on April 12, 2010, we published a **Federal Register** notice (75 FR 18545) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 9, 2010.

**Public Availability of Comments:** Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**BOEMRE Information Collection Clearance Officer:** Arlene Bajusz (703) 787-1025.

Dated: October 21, 2010.

**Sharon Buffington,**

*Acting Chief, Office of Offshore Regulatory Programs.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS-R1-ES-2010-N210; 10120-1112-0000-F2]**

#### **Preparation of an Environmental Impact Statement for Issuance of an Incidental Take Permit for the Proposed Kauai Seabird Habitat Conservation Plan on Kauai, HI**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent and notice of meeting.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), advise the public that we intend to prepare a joint Federal/State Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA), in coordination with the Hawaii Department of Land and Natural Resources (DLNR), for the proposed Kauai Seabird Habitat Conservation Plan (KSHCP) and the expected applications from public and private entities on Kaua’i for incidental take permits (ITPs, or permits). The proposed KSHCP is being prepared under the Endangered Species Act of 1973, as amended (ESA). The ITPs would authorize incidental take of the Federally endangered Hawaiian petrel (*Pterodroma sandwichensis*), the Federally threatened Newell’s (Townsend’s) shearwater (*Puffinus auricularis newelli*), and the band-rumped storm-petrel (*Oceanodroma castro*), a Federal candidate species that could become listed during the term of the permit (collectively, these three species are hereafter referred to as the “Covered Species”). The DLNR is preparing the KSHCP under which numerous applicants are anticipated to apply for incidental take of the Covered Species due to adverse effects of light attraction and these birds colliding with utility lines and associated structures.

We provide this notice to announce the initiation of a public scoping period during which we invite other agencies and the public to attend a public meeting and submit oral and written comments that provide suggestions and information on the scope of issues and alternatives to be addressed in the joint EIS.

**DATES:** Comments: To ensure consideration, please submit your comments by December 9, 2010.

**Public Meeting Dates and Locations:** One Monday, November 10, 2010, 6–8 p.m. at the Chiefess Kamakahelei Middle School Cafeteria, 4431 Nuhou Street, Lihue, HI 96766.

**ADDRESSES:** Oral and written comments will be accepted during the meeting. You may also submit comments by one of the following methods:

U.S. mail or hand-delivery to: Bill Standley, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., Room 3-122, Honolulu, HI 96850.

**Facsimile:** (808) 792-9580 (Attention: Bill Standley).

**Electronic mail (e-mail):**

*bill\_standley@fws.gov.*

Comments received will be available for public inspection by appointment during normal business hours (Monday through Friday, 8 a.m. to 4:30 p.m.) at the above address.

**FOR FURTHER INFORMATION CONTACT:** Bill Standley, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (*see ADDRESSES* above), telephone (808) 792-9400.

#### **SUPPLEMENTARY INFORMATION:**

##### **Reasonable Accommodation**

Persons needing reasonable accommodation in order to attend and participate in the public meeting should contact Bill Standley, Fish and Wildlife Biologist, as soon as possible (*see ADDRESSES*), or at (808) 792-9400. In order to allow sufficient time to process requests, please call no later than one (1) week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

##### **Background**

Section 9 of the ESA (16 U.S.C. 1538) and Federal regulations prohibit the take of fish and wildlife species listed as endangered or threatened. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, under section 10(a) of the ESA (16 U.S.C. 1539 (a)), we may issue permits to authorize incidental take of listed fish and wildlife species. Incidental take is defined as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing ITPs for threatened and endangered species are found at 50 CFR 17.32 and 17.22. If the permits are issued, each permittee approved under the KSHCP would receive assurances

under the Service's "No Surprises" regulations at 50 CFR 17.32(b)(5) and 50 CFR 17.22(b)(5).

Section 10 of the ESA specifies the requirements for the issuance of ITPs to non-Federal entities. Any proposed take must be incidental to otherwise lawful activities and cannot appreciably reduce the likelihood of the survival and recovery of the species in the wild. Among other requirements the impacts of such take must also be minimized and mitigated to the maximum extent practicable. To obtain an ITP, an applicant must submit a plan describing the impact that will likely result from the proposed taking, the measures for minimizing and mitigating the take, the funding available to implement such measures, alternatives to the taking, and the reason why such alternatives are not being implemented.

### Covered Species

The Newell's shearwater (ua u), Hawaiian petrel (a o) and band-rumped storm petrel (ake ake) breed on the island of Kauai and feed on the open ocean. Over 80 percent of the world's population of Newell's shearwater nests on Kauai and its population have declined severely since the early 1990s. The affected seabirds spend a large part of the year at sea. Adults return to nesting grounds in the interior mountains of Kauai beginning in March and April, and depart beginning in September. The Hawaiian petrel and Newell's shearwater are philopatric (return to the nest area near where they were hatched). Fledglings (*i.e.*, young birds learning how to fly) of these species make their first journey from the nesting colony to the sea from late September through early December, with a peak occurring in mid-October and again in mid-November.

The adverse effects to seabirds from light attraction and collisions with utility lines have been documented on Kauai for over three decades. Since 1979, the Save our Shearwaters Program (SOS) has recovered over 32,000 downed seabirds that are voluntarily brought to the program by the community. These ongoing impacts in combination with other land-based threats such as predation and habitat alteration (including that caused by hurricanes) are thought to have contributed to severe population declines in the Covered Species. Both adults and fledglings can collide with tall buildings, towers, power lines, and other structures while flying at night between their nesting colonies and at-sea foraging areas. Nocturnally active seabirds, particularly fledglings, are attracted to bright lights. The "fallout" of

Covered Species and other seabirds due to light attraction occurs primarily from September through December.

Disoriented seabirds are commonly observed circling repeatedly around exterior light sources until they fall exhausted to the ground or collide with structures. Species such as shearwaters and petrels typically need open spaces with strong updrafts and vertical drop offs to take off from land. Without human intervention, downed seabirds are assumed to die in most instances due to starvation, predation, or mortality resulting from vehicular traffic. The annual release rate for rescued seabirds through the SOS Program is over 90 percent.

There is a need to address the long-standing and previously unmitigated, unauthorized incidental take of the Covered Species caused by light attraction. Since 2005, dozens of businesses and agencies on Kauai voluntarily began efforts to avoid and minimize light attraction of seabirds and train staff in the active search, rescue, and reporting of downed birds. However, to the extent incidental take cannot be eliminated, Federal and State incidental permits are needed.

### The Proposed Plan

In accordance with section 10(a)(2)(A) of the ESA, the DLNR is preparing the island-wide, multi-party KSHCP. As presently conceived the KSHCP proposes a 30-year permit period to address incidental take of the Covered Species. The purpose of the KSHCP is to address the incidental take of the Covered Species due to existing and planned outdoor lights and overhead utilities. The KSHCP is designed as a multi-party plan with each participant holding a State and Federal permit and being legally responsible for meeting the conditions of both permits. In accordance with the ESA the availability of the KSHCP for public review and comment will be noticed in the **Federal Register** when a complete application package is submitted to the Service.

The maximum terrestrial covered area for the KSHCP includes 549 square miles and over 350,000 acres on Kauai. The size of the covered area for participating entity will be a specified subset of this total using Tax Map Key (TMK) or other legally acceptable definitions, and will be included for with each voluntary ITP application. Each participating entity would hold a State and Federal permit and sign an Implementing Agreement (IA) all of which would define their legal responsibilities for the implementation of avoidance, minimization, and

monitoring measures, and for submitting HCP fees to fund compensatory mitigation, HCP administration, compliance monitoring, effects monitoring and mitigation efficacy monitoring. Adaptive management and annual monitoring would also be essential components of the HCP.

Entities seeking take authorization under the KSHCP would be required to fill out an application template that requires specific and detailed information about the covered facility in terms of its location, size, ownership, lights and utility lines, regulations pertaining to the use of lights and utility lines, avoidance and minimization plans and evaluation of alternatives. The ITP application would also contain a section used to calculate recommended incidental take coverage levels for all species. Incidental take calculations would be based on the best available data sets including SOS recovery data and nocturnal ornithological radar data.

KSHCP participants would be required to: (1) Avoid impacts to the Covered Species to the maximum extent practicable by, for example, removing or turning off problematic lights and undergrounding high risk utility lines; and (2) minimize impacts to the Covered Species to the maximum extent practicable, for example, through a variety of KSHCP-recommended methods such as shielding, redirecting lights, installing motion sensors, altering light/utility structures, and training staff to respond to downed seabirds appropriately. Selected avoidance and minimization measures must be described in thorough detail by each applicant, including a schedule and funding and the reasons for selecting among avoidance and minimization alternatives would need to be clearly defined and supported in each ITP application submitted to the Service under the KSHCP. Support for the SOS program would likely be part of the KSHCP impact minimization policy because SOS recoveries support the rescue, rehabilitation, and release of affected (downed) seabirds. All participants in the KSHCP would be legally bound to implement avoidance and minimization requirements tailored to their unique facility(ies) as detailed in their ITP and IA.

Habitat protection and management programs implemented to compensate for unavoidable take of the Covered Species would be detailed in the KSHCP. For example, the mitigation program would include colony protection (including surveys, fencing, and predator control), monitoring, and

management actions necessary to compensate for the impacts of incidental take of the Covered Species and to provide a net environmental benefit. The goals and objectives of the compensatory mitigation program would be based on specific recovery goals for each listed species. The KSHCP compensatory program would likely include weed, ungulate, and predator removal designed to benefit the Covered Species and other listed flora and fauna. Part of the analysis in the KSHCP will be to evaluate the potential effects of covered activities to rare plants, including but not limited to *Acaena exigua*, *Adenophorus periens*, *Alsinidendron lychnoides*, *Cyanea recta*, *Cyrtandra cyaneoides*, *Delissea rivularis*, *Exocarpus luteolus*, *Myrsine linearifolia*, *Nothocestrum peltatum*, *Plantago princeps* var. *anomala*, *Plantago princeps* var. *longibracteata*, *Platanthera holochila*, *Poa sandwicensis*, *Poa siphonoglossa*, *Remya montgomeryi*, *Schiedea membranacea*, *Solanum sandwicense*, and *Xylosma crenatum*. A "Plant Protection Plan" should be included in the KSHCP to ensure protection of all listed plants during seabird mitigation actions. The KSHCP compensatory mitigation program is also expected to support long-term conservation partnerships with land owners and existing efforts by non-profit organizations that provide long-term benefits to listed seabirds, plants, watersheds, and other non-listed plants and animals of Kauai.

Fees for each applicant/participant would be proportionate to the level of incidental take authorized as well as the type of impact: lights or utility lines. Fees submitted under the KSHCP would be used to fund HCP administration, monitoring, compensatory mitigation, and the SOS Program.

As currently envisioned, administration and management related to implementation of the KSHCP would be the responsibility of the DLNR or their designee, with appropriate oversight by the Service. An annual review of actions implemented under the KSHCP would be conducted by the Endangered Species Recovery Committee (ESRC). Based on that review the ESRC may forward recommendations for modifying KSHCP-related actions to the Board of Land and Natural Resources.

#### Environmental Impact Statement

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Under NEPA, our

action would be the proposed issuance of ITPs based on the KSHCP. The Service and the DLNR are proposing to prepare a joint Federal/State EIS to evaluate the effects of the proposed KSHCP and proposed issuance of Federal and State ITPs on the human environment. The DLNR's preparation of the draft KSHCP and related EIS is based on conditions of an ESA Section 6 HCP Planning and Coordination grant awarded to the DLNR in 2009. The joint Federal/State EIS will be prepared in compliance with NEPA and Hawaii Revised Statutes (HRS) Chapter 343. Although DLNR will have the lead for preparing the EIS the Service will be responsible for the scope and content of the document for NEPA purposes, and the DLNR will be responsible for the scope and content of the document for the purposes of satisfying requirements of HRS Chapter 343.

The EIS will consider the proposed action, (the issuance of Section 10(a)(1)(B) permits under the ESA), no action (*i.e.*, no permit issuance), a reasonable range of other alternatives, and the associated impacts of each alternative. A detailed description of the proposed action and other alternatives (including no action) will be included in the EIS. The range of alternatives developed may vary by the level of impacts caused by the proposed activities, their specific locations, and the conservation measures involved. Potential alternatives may include various methods of minimizing take through modifications of existing power lines, structures, and lights; placing power line segments underground; implementing design standards for new facilities; variations in the scope of covered activities; variations in the location, amount and type of conservation including developing and implementing various approaches for improving seabird survival and breeding success; variations in permit duration; or a combination of these elements. We will consider other reasonable alternatives recommended during this scoping process in order to develop a full range of alternatives.

The EIS will analyze direct, indirect, and cumulative impacts on the ecosystem and other aspects of the human environment including, but not limited to, biological resources, land use, air quality, water quality, mineral resources, water resources, recreation, cultural and archeological resources, visual resources, socioeconomics, and other issues that could occur with implementation of the proposed action and alternatives. For all potentially significant impacts, the EIS will identify avoidance, minimization, and

mitigation measures to reduce those impacts, where feasible, to a level below significance.

Review of the EIS will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321), the Council on Environmental Quality regulations (40 CFR 1500–1508), the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), other applicable regulations, and the Service's procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS. The primary purpose of the scoping process is to identify important issues and alternatives related to the proposed action.

We request comments, suggestions, and data from all interested parties to ensure that a reasonable range of alternatives is presented and that all potentially significant issues are identified in the EIS. We will fully consider all comments received during the comment period. Comments and materials we receive will become part of the public record and will be available for public inspection, by appointment, during regular business hours. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 15, 2010.

**Richard Hannan,**

*Deputy Regional Director.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS–R1–ES–2010–N219; 10120–1112–0000–F2]

#### Endangered and Threatened Wildlife and Plants; Permit; Construction and Operation of Kaheawa II Wind Energy Generation Facility, Maui, HI; Draft Habitat Conservation Plan and Draft Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Interior.