United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawaii 96850

In Reply Refer To:
2022-0028254-S7

April 6, 2022

Meesa Otani
Environmental Engineer
Federal Highway Administration
300 Ala Moana Boulevard, Room 3-229
Honolulu, Hawaii 96850

Subject: Programmatic Informal Consultation with the Federal Highway Administration for Projects in the State of Hawaii

Dear Meesa Otani:

On December 20, 2011, the Federal Highway Administration (FHWA), U.S. Fish and Wildlife Service (Service), and Hawaii Department of Transportation (HDOT) completed a Programmatic Informal Consultation (PIC) for the FHWA's preventative maintenance and shoulder or guardrail improvement projects in the State of Hawaii; Service file 2012-I-0089. This consulted on potential impacts of preventive roadway maintenance projects to listed species pursuant to section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531, *et sequentibus*). This consultation serves to amend that consultation and supersedes any previous version of the PIC. Past and current amendments can be found within the consultation history below.

The FHWA requested a species list from the Service and determined that these actions may affect, but are not likely to adversely affect the endangered Hawaiian petrel (*Pterodroma sandwichensis*), the endangered Hawaii distinct population segment (DPS) of the band-rumped storm petrel (*Oceanodroma castro*), and the threatened Newell's Townsend's shearwater (*Puffinus auricularis newelli*) collectively referred to as Hawaiian seabirds, as well as the endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*), endangered Blackburn's sphinx moth (*Manduca blackburni*), and the endangered Hawaiian stilt (*Himantopus mexicanus knudseni*).

CONSULTATION HISTORY

20 December 2011: The Service, FHWA, and HDOT developed the original PIC (2012-I-0089).

8 August 2013: An amendment (2013-TA-0336) was made adding the replacement of traffic lights to the list of actions. Changes were also made to the protocol for incorporating future projects into the PIC.

7 November 2013: An amendment (2014-TA-0038) refining the processing of projects applicable to the PIC was made.

23 March 2017: An amendment (2016-I-0488) adding the Hawaiian hawk to the list of affected species was made.

31 December 2017: An amendment (2018-I-0074) provided updated standardized language for the affected species and their respective conservation measures as well as adding the replacement of underground utilities and installation of new traffic signals to the list of actions.

4 December 2018: An amendment (2019-I-0101) updated language for conservation measures for the Hawaiian hawk, added existing culvert and drainage structures cleaning with conservation measures for the Hawaiian stilt, and installation of new underground utilities and rumble strips to the list of actions.

5 April 2022: This amendment (2022-0028254-S7) removes the Hawaiian hawk from the list of species affected due to its de-listing and includes additional conservation measures for Hawaiian seabirds and Blackburn‘s sphinx moth. The amendment also adds the replacement of existing utilities within the right of way with no substantial change to the footprint or any changes to lighting that would increase effects to listed species, to the list of actions.

Project Description

The FHWA regularly conducts the following actions as part of either a preservation, construction or reconstruction, or maintenance program. All work will be conducted within the existing roadways, within the shoulder, or adjacent to the paved portion within the right of way. All work will occur within the State of Hawaii.

Pavement preservation actions

- Preventative maintenance
- Pavement resurfacing

Construction or reconstruction actions

- Replacing or installing:
    - New centerline or survey monuments
    - Pavement marking or striping
    - Traffic signs or signals
    - Rumble strips
    - Manholes
    - Underground utilities
    - Above ground utilities
    - Guardrail or shoulder improvements

Maintenance actions

- Cleaning existing culvert or drainage structures

Under the terms of this PIC, FHWA will submit an annual report to the Service by August 1, which will include a description of each project detailing the location, timing, and actions which had effects to ESA-listed species and the conservation measures enacted to avoid or minimize those effects. A meeting will occur between the FHWA and the Service no later than November 30 of each year to review this PIC. If either the Service or the FHWA are not satisfied, this PIC will be deemed inactive, and consultation will resume on an individual project basis.

Conservation Measures

Hawaiian seabirds
To avoid or minimize effects to Hawaiian seabirds, the following conservation measures will be incorporated into each project where applicable:

- Fully shield all outdoor lights so the bulb can only be seen from below bulb height and only use when necessary.
- Install automatic motion sensor switches and timer controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area.
- Avoid nighttime construction during the seabird fledging period, September 15 to December 15 on all islands. If nighttime work cannot be avoided during that time, this PIC cannot be used, and a separate consultation is needed.
- Where fences extend above vegetation, integrate durable scare tape or bird deterrent into the fence to increase visibility and minimize fence strikes.
- For powerlines and other cables, minimize exposure above vegetation height and vertical profile.

If your project includes a tower or antennae, then the following conservation measures will be incorporated into each project:

- The profile of the tower shall be as small as possible, minimizing the extent of the tower that protrudes above the surrounding vegetation layer, use of guywires will be avoided.
- If the top of the tower must be lit to comply with Federal Aviation Administration regulations, use a flashing red light versus a steady-beam red or white light.
- If possible, co-locate with existing towers or facilities.

Hawaiian hoary bat
To avoid or minimize effects to the Hawaiian hoary bat, the following conservation measures will be incorporated into each project where applicable:

- No barbed wire will be used for fencing.
- No woody plants taller than 15 feet will be trimmed, removed, or disturbed during the Hawaiian hoary bat birthing and pup rearing season (June 1 to September 15).

Blackburn's sphinx moth
To avoid or minimize effects to the Blackburn's sphinx moth, the following conservation measures will be incorporated into each project where applicable:

- A biologist familiar with the species will survey areas of proposed activities for Blackburn's sphinx moth and its larval host plants prior to project initiation.

- Surveys will be conducted during the wettest portion of the year (November 1 to April 30, or several weeks after a significant rain) and within 4 to 6 weeks prior to construction.
- Surveys will include searches for eggs, larvae, and signs of larval feeding (chewed stems, frass, or leaf damage).
- If the Blackburn's sphinx moth or the native aiea or tree tobacco over 3 feet tall are found during the survey, a separate consultation is needed, and this PIC will not be used.

If no Blackburn's sphinx moth, aiea, or tree tobacco are found during pre-construction surveys, it is imperative that measures be taken to avoid attraction of Blackburn's sphinx moth to the project location and prohibit tree tobacco from entering the site. Tree tobacco can grow greater than 3 feet tall in approximately 6 weeks. If it grows over 3 feet, the plants may become a host plant for Blackburn's sphinx moth. We therefore recommend that you:

- Remove any tree tobacco less than 3 feet tall.
- Monitor the site every 4-6 weeks for new tree tobacco growth before, during and after the proposed ground-disturbing activity.
- Monitoring for tree tobacco can be completed by any staff, information on different life stages of tree tobacco will be provided to monitor.

Hawaiian stilt

To avoid or minimize potential effects to the Hawaiian stilt, the following conservation measures will be incorporated into each project where applicable (within or adjacent to aquatic environments):

- In areas where waterbirds are known to be present, post and implement reduced speed limits, and inform project personnel and contractors about the presence of endangered species on-site or nearby.
- If water resources are located within or adjacent to the project site, incorporate the applicable best management practices (BMPs) regarding work in aquatic environments into the project design (see below).
- Have a biological monitor that is familiar with the species' biology conduct Hawaiian stilt nest surveys where appropriate habitat occurs within the vicinity of the proposed project site prior to project initiation. Repeat surveys again within 3 days of project initiation and after any subsequent delay of work of 3 or more days (during which the birds may attempt to nest).

If a nest or active brood is found:

- Contact the Service within 24 hours for further guidance.
- Establish and maintain a 100-foot buffer around all active nests or broods until the chicks have fledged. Do not conduct potentially disruptive activities or habitat alteration within this buffer.
- Have a biological monitor that is familiar with the species' biology present on the project site during all construction or earth moving activities until the chicks fledge to ensure that Hawaiian stilts and nests are not adversely affected.

BMPs regarding work in aquatic environments

To avoid or minimize impacts to fish and wildlife resources, the following conservation measures will be incorporated into each project where work may affect aquatic environments:

- Authorized dredging or filling-related activities that may result in the temporary or permanent loss of aquatic habitats will be designed to avoid indirect, negative impacts to aquatic habitats beyond the planned project area.
- Dredging or filling in the marine environment should be scheduled to avoid coral spawning and recruitment periods, and sea turtle nesting and hatching periods. Because these periods are variable throughout the Pacific islands, the relevant local, state, or federal fish and wildlife resource agency will be contacted for site specific guidance.
- Turbidity and siltation from project-related work will be minimized and contained within the project area by silt containment devices and curtailing work during flooding or adverse tidal and weather conditions. BMPs will be maintained for the life of the construction period until turbidity and siltation within the project area is stabilized. All project construction-related debris and sediment containment devices will be removed and disposed of at an approved site.
- All project construction-related materials and equipment (dredges, vessels, backhoes, silt curtains, etc.) to be placed in an aquatic environment will be inspected for pollutants including, but not limited to; marine fouling organisms, grease, oil, etc., and cleaned to remove pollutants prior to use. Project related activities will not result in any debris disposal, non-native species introductions, or attraction of non-native pests to the affected or adjacent aquatic or terrestrial habitats. Implementing both a litter-control plan and a Hazard Analysis and Critical Control Point plan (HACCP – see https://www.fws.gov/policy/A1750fw1.html) can help to prevent attraction and introduction of non-native species.
- Project construction-related materials (fill, revetment rock, pipe, etc.) should not be stockpiled in, or in close proximity to aquatic habitats and should be protected from erosion (e.g., with filter fabric, etc.), to prevent materials from being carried into waters by wind, rain, or high surf.
- Fueling of project-related vehicles and equipment will take place away from the aquatic environment and a contingency plan to control petroleum products accidentally spilled during the project will be developed. The plan will be retained on site with the person responsible for compliance with the plan. Absorbent pads and containment booms will be stored on-site to facilitate the clean-up of accidental petroleum releases.
- All deliberately exposed soil or under-layer materials used in the project near water will be protected from erosion and stabilized as soon as possible with geotextile, filter fabric or native or non-invasive vegetation matting, hydro-seeding, etc.

General conservation measures
To avoid or minimize potential effects to listed species, the following conservation measures will be incorporated into each project where applicable:

- Above ground utility replacements will utilize existing footprint
- Installation of new above ground utilities must not increase effects to any ESA-listed species

Effects of the Action

Hawaiian seabirds
Newell's Townsend's shearwaters are found in the highest densities on Kauai with lower densities on all the other main Hawaiian Islands, except Lanai. Hawaiian petrel populations are

greatest on Maui, Lanai, and Kauai with lower densities on Hawaii and Molokai. Band-rumped storm-petrels are found in low densities throughout the islands. All main Hawaiian Islands may experience overflight by all Hawaiian seabirds at night. Hawaiian seabirds may transit over the project areas when flying between the ocean and nesting sites in the mountains during their breeding, nesting, and fledging season (March 1 to December 15). Hawaiian seabirds fly at night and are attracted to artificially lighted areas resulting in disorientation and subsequent fallout due to exhaustion. Hawaiian seabirds are susceptible to collision with objects that protrude above the vegetation layer, such as utility lines, guywires, and communication towers. Additionally, once grounded, they are vulnerable to predators and are often struck by vehicles along roadways. Any increase in the use of nighttime lighting, particularly during each year's peak Hawaiian seabird fallout period (September 15 to December 15), could result in injury or mortality (take). Hawaiian seabirds have also been documented colliding with communication towers, particularly in areas of high passage rate. In general, self-supporting monopoles are the least likely to result in collisions, whereas lattice towers, particularly those that rely on guy-wires, have a much higher collision risk. By employing the conservation measures listed above, adverse effects to Hawaiian seabirds are extremely unlikely to occur. Therefore, effects to Hawaiian seabirds are discountable.

Hawaiian hoary bat

The Hawaiian hoary bat roosts in both exotic and native woody vegetation across all main Hawaiian Islands. The adult females will leave their offspring (pups) unattended in trees and shrubs when they forage. If exotic or native woody vegetation 15 feet or taller is cut during the birthing and pup rearing season, there is a risk that pups may be injured or killed (take), since the pups are incapable of flying away from the roost. Additionally, Hawaiian hoary bats forage for insects from as low as 3 feet to higher than 500 feet above the ground and can become entangled in barbed wire used for fencing. By employing the conservation measures listed above, adverse effects to the Hawaiian hoary bat are extremely unlikely to occur. Therefore, effects to the Hawaiian hoary bat are discountable.

Blackburn's sphinx moth

The Blackburn's sphinx moth has been observed on the islands of Hawaii, Maui, Lanai, and Kahoolawe, and may be in the vicinity of any project on these islands if host plants are present. Adult moths feed on nectar from native plants, including beach morning glory (*Ipomoea pes-caprae*), iliee (*Plumbago zeylanica*), and maiapilo (*Capparis sandwichiana*); while larvae feed upon non-native tree tobacco (*Nicotiana glauca*) and native aiea (*Nothocestrum* spp.). Moth eggs and larvae are mostly found feeding on the leaves of native aiea and non-native tree tobacco. To pupate, the larvae burrow into the soil and can remain in a state of torpor for a year or more before emerging from the soil. Cutting of host plants over 3 feet tall could result in injury or mortality (take) of the eggs or larvae. Soil disturbance can result in mortality (take) of the pupae. By employing the conservation measures listed above, adverse effects to the Blackburn's sphinx moth are extremely unlikely to occur. Therefore, effects to the Blackburn's sphinx moth are discountable.

Hawaiian stilt

Hawaiian stilts may be found wherever ephemeral or persistent standing water may occur. Threats to these species include non-native predators, habitat loss, and habitat degradation. The Hawaiian stilt may be found on all of the main Hawaiian Islands. If your project will create,

either purposefully or inadvertently, any kind of temporary or permanent standing water, including excavation or grading for construction or roadwork, then it may attract Hawaiian stilts to the site. The Hawaiian stilt is known to nest in sub-optimal locations (e.g. any ponding water), if water is present. Hawaiian waterbirds attracted to sub-optimal habitat may suffer adverse impacts, such as predation and reduced reproductive success, and thus the project may create an attractive nuisance. By employing the conservation measures listed above, adverse effects to the Hawaiian stilt are extremely unlikely to occur. Therefore, effects to the Hawaiian stilt are discountable.

Summary

We have reviewed our data and conducted an effects analysis of your project. By incorporating the conservation measures listed above, adverse effects to listed species are extremely unlikely to occur, and are therefore discountable. Because impacts from the proposed project are discountable, we concur with your determination that the proposed action may affect, but is not likely to adversely affect the Hawaiian petrel, the Hawaii DPS of band-rumped storm petrel, Newell's Townsend's shearwater, Hawaiian hoary bat, Blackburn's sphinx moth, and Hawaiian stilt.

Reinitiation of consultation is required and shall be requested by the Federal agency, where discretionary federal involvement or control over the action has been retained or is authorized by law and: (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (2) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this letter; or (3) if a new species is listed or critical habitat designated that may be affected by the identified action.

We appreciate your efforts to conserve endangered species. If you have any questions, please contact me at emma_gosliner@fws.gov or by telephone at 808-792-9450.

Sincerely,

Gregory A. Koob

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Gregory A. Koob
Assistant Field Supervisor - Programmatic