

FINDING OF NO SIGNIFICANT IMPACT

regarding

The U.S. Fish and Wildlife Service's Proposed Issuance of an Incidental Take Permit for the Hawaiian Petrel, Newell's Shearwater, and the Band-rumped Storm-petrel to the Kauai Island Utility Cooperative on the Island of Kauai, Kauai County, Hawaii

The U.S. Fish and Wildlife Service (Service) has completed an Environmental Assessment (EA) of the anticipated effects on the human environment of issuing an Incidental Take Permit (ITP), pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA), to the Kauai Island Utility Cooperative (KIUC). The ITP would authorize the take of the endangered Hawaiian petrel (*Pterodroma sandwichensis*), threatened Newell's (Townsend's) shearwater (*Puffinus auricularis newelli*), and the band-rumped storm petrel (*Oceanodroma castro*), a candidate for listing under the ESA should it become listed, by covered activities carried out in conjunction with the implementation of the KIUC Short-term Seabird Habitat Conservation Plan (HCP) on the Island of Kauai in Kauai County, Hawaii. The EA was prepared in accordance with the requirements of the National Environmental Policy Act.

KIUC is requesting an ITP for take of the above species (Covered Species) that may occur as a result of the operation and maintenance of existing and anticipated KIUC facilities over the next 5 years on the island of Kauai. KIUC is a utility cooperative that generates and distributes electricity to the entire island of Kauai. The EA describes the probable effects of this action on the human environment under three alternatives: (1) No Action (no ITP is issued and the status quo is maintained in terms of KIUC's incidental take of the Covered Species); (2) Proposed Action (issuance of an ITP for up to 5 years to KIUC on the basis of its proposed HCP); and (3) Alternative Proposed Action (issuance of a 3-year ITP based on implementation of the proposed HCP). Four additional alternatives that were explored, but rejected, are also described in the EA.

Decision Rationale

Following a comprehensive review of the HCP and consideration of the findings presented in the EA, the Service has selected the Proposed Action as the preferred alternative because it provides the most conservation value to the Covered Species in the context of KIUC complying with the requirements of the ESA. Under the HCP, KIUC commits to:

- Implement operational measures, to the maximum extent practicable, to avoid and minimize the impacts of incidental take of the Covered Species;
- Reconfigure, to the maximum extent practicable, segments of power lines that create a high risk of bird collisions involving the Covered Species;
- Fund predator control/removal at petrel and shearwater nesting colonies within Limahuli Valley and the Hono O Na Pali Natural Area Reserve during all five years of the permit term, and within one additional site to be determined during the fourth and fifth years of the permit term;
- Fund the continued implementation of a seabird rescue and rehabilitation program known as the Save Our Shearwater (SOS) Program;
- Fund an update to at-sea population estimates for each of the Covered Species;
- Fund a two-year auditory survey to locate additional Covered Species breeding colonies;

- and
- Fund the development and implementation of a take monitoring program.

Implementation of the Proposed Action, while exempting incidental take of the Covered Species, will also provide benefits to the Covered Species that are directly related to their conservation needs.

Conservation of the Covered Species is dependent on: (1) reducing light attraction and collision risk; (2) increasing reproductive success and reducing predation at nesting colonies; (3) increasing the quantity and quality of nesting habitat; (4) increasing the likelihood that birds processed through the SOS Program will recruit into the adult breeding population; (5) a better understanding of each species' population trend; and (6) a better understanding of the magnitude of take-related impacts caused by light attraction and collisions with power lines and other man-made structures.

Implementation of the HCP is expected to decrease the amount of take of the Covered Species caused by KIUC facilities and operations by reducing light attraction and collision risk. KIUC plans to avoid and minimize the impacts of take of the Covered Species due to its facilities and operations through the continued exclusive use of lights that are shielded to prevent upward-directed light, reconfiguring electrical line segments that have been identified as posing a high risk for collisions by the Covered Species, and implementing operational procedures that reduce the use of lights during all operations and maintenance activities (detailed in Section 5.4 of the HCP). KIUC will regularly evaluate new SOS data and any anecdotal information it may receive, to identify any specific individual KIUC streetlights that appear to have caused the downing of more than one seabird within one fallout season. KIUC will evaluate the feasibility of implementing different streetlight technologies or practices at that location, and implement any such feasible technologies or practices that appear likely to reduce adverse effects to the Covered Species.

Because lights attract the Covered Species, KIUC will only conduct work during nighttime hours in emergency situations or under limited situations when non-emergency nighttime work is required during the autumn "fallout" season. If system conditions require non-emergency nighttime work during the autumn fallout season (September 15 through December 15), use of lighting will be restricted to between 10:00 PM and 4:00 AM, when very few of the Covered Species are flying between the ocean and inland nesting colonies (Cooper and Day 2003). In all cases when lights are necessary, all lights will be shielded and directed downward to the maximum extent practicable. KIUC workers will be trained how to handle any downed birds and will have appropriate equipment onsite to hold and transport any retrieved downed birds to an appropriate SOS Program facility.

KIUC plans to offset the anticipated impacts to covered species by mitigation (detailed in Section 5.6 of the HCP) and adaptive management. As part of the mitigation actions to be implemented, KIUC is: (1) fully funding implementation of the SOS Program as described in the latest Operations Manual (Appendix C of the HCP); (2) funding Covered Species colony management and predator control at two seabird nesting colonies in the Limahuli Valley and Hono O Na Pali Natural Area Reserve, respectively, according to protocols developed by State

of Hawaii seabird biologists; (3) updating estimates of at-sea Covered Species populations that have not been updated since the 1990's; (4) funding a 2-year auditory survey to locate additional Covered Species breeding colonies that could be managed for future mitigation; (5) funding development and implementation of an under-line monitoring program aimed at better understanding the amount of take of Covered Species caused by overhead utility structures; and (6) should the ITP still be in effect during the fourth and fifth years, funding Covered Species colony management and predator control in the Wainiha Valley or at another similar suitable location.

The minimization and mitigation measures proposed under the HCP clearly consider the above conservation needs of the Covered Species.

Given the indefinite term of KIUC's operations and facilities, a long-term ITP and HCP are necessary to address the long-term impacts of take of the listed Covered Species caused by those operations and facilities. The purpose of the short-term ITP and HCP is to initiate efforts that will ensure KIUC's operations and facilities are in compliance with the requirements of the ESA. That context is important to consider for purposes of these findings. Equally important context to acknowledge in this situation is the fact that it is not a practical option to avoid the impacts of take by deconstructing KIUC facilities and ceasing their operations. The distribution of electricity to Kauai residents and the infrastructure associated with that distribution are ongoing actions that, in large part, pre-date the listing of the Newell's shearwater and the Hawaiian petrel. However, implementation of this short-term HCP will make progress in minimizing adverse impacts to the Covered Species, and mitigating those impacts in a manner that clearly considers the conservation needs of the Covered Species.

The Service finds that the actions KIUC will implement under the HCP to minimize and mitigate the impacts of take of the Covered Species caused by their facilities and operations are the most that can be done within the 5-year permit term based on both KIUC's financial situation where all funds come from a small rate payer base (approximately 30,000 customers) and the practical issues related to the design, planning and construction work involved with the line reconfiguration projects to reduce Covered Species collision risk. Because the mitigation proposed under the HCP implements actions that address each of the recovery actions needed for the Covered Species, except for creating new colonies, which will take longer-term planning, the Service finds that KIUC will be implementing as much mitigation for their take impacts as possible within the term of the ITP.

Cumulatively, the impacts of take caused by the additional KIUC facilities covered under the ITP and HCP are not expected to result in an increase in incidental take of the Covered Species beyond the level anticipated due to existing facilities after the avoidance and minimization measures in the HCP are implemented by KIUC. Overall, the adverse effects of KIUC's operations, maintenance and facilities on the Covered Species are expected to decrease during the term of the ITP because the HCP minimization measures are likely to reduce light attraction and collision risk, and the colony management mitigation measures are likely to reduce adult mortality and increase reproductive success.

Implementation of the Proposed Action is not expected to have any significant adverse effects to the human environment based on the following findings.

The Service determined that the maximum level of incidental take authorized under the Proposed Action is not likely to result in jeopardy to the Covered Species or destruction or adverse modification of critical habitat (Service Ref. No. 2011-F-0113).

Even though some additional facilities that may cause additional impacts to the Covered Species will be installed during the 5-year term of the ITP, because such facilities are limited in number and location by the terms of the ITP, particularly in the darker, northern portion of the island, the impacts of these facilities on the Covered Species are expected to be minimal.

The reductions in existing take levels due to proposed line reconfigurations (some of which would be implemented under both the Proposed Action and the No Action Alternatives) that KIUC has committed to modify under the HCP (and its plea agreement with the Department of Justice; discussed below) include most of those identified as having the highest collision risk for the Covered Species. It is estimated that as many as 19 of the 70 subadult and adult Newell's shearwater thought to collide with KIUC's power lines annually are found in the segments that will be reconfigured. Although the reduction of collision risk for the Hawaiian petrel and the band-rumped storm-petrel cannot be quantified because the number of individuals of those species found across the island each year is so low (averaging less than ten Hawaiian petrels and one band-rumped storm-petrel per year), the proposed line reconfigurations are expected to lower the collision risk for these species as well because their flight behavior to and from the island is similar to that of the Newell's shearwater. In addition, the reconfigured line segments would be included as part of the underline monitoring program developed and implemented during the term of the proposed HCP, and the results will be used to inform the anticipated level of impacts to be covered under the long-term Kauai island-wide seabird HCP (KSHCP) being developed by the Hawaii Division of Forestry and Wildlife, or a long-term KIUC HCP.

The increases in adult survival rates and reproductive success of the Covered Species that are expected due the HCP colony management efforts will require long-term monitoring before they can be quantified. The number of nesting pairs of the Covered Species within the colonies being managed under the HCP is unknown at this time, but the acreage of native habitat within the two areas that will receive management within the first 3 years of the ITP (approximately 2,635 acres) is estimated to be 7 percent of the intact native habitat in the northern portion of the island, where over 80 percent of the Newell's shearwater are believed to be breeding. The third colony, where management actions would be implemented during the fourth and fifth years, is expected to be up to 6,000 acres and represents 15 percent of the native habitat in the northern portion of the island. The benefits of colony management for Newell's shearwater are expected to apply to the Hawaiian petrel and the band-rumped storm-petrel as well since both species are known to occur within those areas, just in lower numbers. Moreover, all known locations where specific management actions that could benefit the Covered Species can be implemented during the 5-year term of the ITP under the Proposed Action are included in the Short-term Seabird HCP. The monitoring that would be conducted in the nesting colonies where management would be implemented will provide information regarding the benefits that can be achieved and reduce the uncertainty involved in long-term HCP planning.

Table 1 provides a comparison of minimization and mitigation measures for the three alternatives analyzed in the EA. We are including that information here because it is this comparison that is central to our finding of no significant impacts. We find that the Proposed Alternative is not likely to have significant adverse effects to the environment compared to the No Action Alternative.

Minimization Measures

Under the No Action Alternative, impacts to the Covered Species due to existing KIUC operations and facilities would continue to occur because of the public's need for electricity and lights, especially for purposes of human health and safety. Actions will be taken to minimize incidental take under all of the alternatives. All but two of the power line reconfiguration projects designed to minimize collision risk included in the Proposed Action are also required under the terms of the plea agreement KIUC entered into with the U.S. Department of Justice (DOJ) over past violations of the ESA and Migratory Bird Treaty Act (MBTA) (CR. No. 10-00296-JMS) and, thus, would be expected to occur under the No Action Alternative. (Although the plea agreement does not explicitly require completion of two of those projects, we assume under the No Action Alternative that KIUC will complete them as part of their continuing obligation to come into compliance with the ESA.) The two power line segments that are only included in the Proposed Action both involve lowering the existing lines in the vicinity of the Hanapepe River, which is one of the areas identified as having high collision risk due its use as a flight path between the ocean and nesting colonies. Therefore, by minimizing collision risks in these two important areas, the Proposed Action would result in fewer impacts to the covered species.

Monitoring Measures

Although KIUC did commit to install heat-sensing digital video cameras on two stretches of power lines under their plea agreement with DOJ and, thus, would implement it under the No Action Alternative, the monitoring program to be developed and implemented under the Proposed Action would not be initiated under the No Action Alternative. While the video camera monitoring may provide some additional information regarding line collisions in those two areas, it will not provide sufficient information to allow extrapolation of the findings to the rest of KIUC's facilities. Therefore, the information available on the impacts due to utility lines will continue to be largely unknown and based on data collected over 15 years ago. The underline monitoring program that would be developed and implemented under the Proposed Action, however, would be carried out in conjunction with concurrent radar surveys conducted in the vicinity of a subset of KIUC's power lines and analytical methods would be used to assess the statistical power of different monitoring approaches (and respective costs). This information is crucial to developing a long-term monitoring plan needed for recovery of the covered species as well as the island-wide seabird HCP or a long-term KIUC HCP.

Mitigation Measures

As part of its plea agreement, KIUC agreed to donate \$225,000 to the National Fish and Wildlife Foundation (NFWF) to be placed into an account for use to benefit and increase the population

of Newell's shearwater on Kauai. However, while this account will be available for use under both the Action and No Action Alternatives, the plea agreement stipulated that these funds may not be used for any of the mitigation measures included in the HCP. The NFWF account also contains \$180,000 that was donated by the County of Kauai under its own plea agreement with DOJ. The interagency seabird working group is developing project proposals in anticipation of applying for those funds. In addition, as part of KIUC's settlement agreement, KIUC agreed to establish an escrow account of \$50,000 to be used during its 18-month probationary period to mitigate for the take of any protected seabirds by KIUC's power lines or lights. A process was established whereby for each bird proven to be taken by a KIUC power line or light and not successfully rehabilitated by the SOS Program, KIUC must transfer \$10,000 to NFWF for use in mitigating the takings of seabirds on Kauai. Covered Species proven to be taken by some other entity and rehabilitated by the SOS Program using KIUC funding will result in a \$1,000 offset to the account. KIUC has also agreed to replenish the escrow account as it is used, up to a total of \$200,000. Any funds remaining in the escrow account at the end of the probationary period will be returned to KIUC.

Table 1. KIUC Short-term Seabird HCP Environmental Assessment - Comparison of Alternatives.

Conservation Measure	Proposed Action	No-Action	Alternate Permit Term
SOS Program	Yes, for up to 5 years.	KIUC's discretion; Service expects KIUC to provide funding based on previous commitments; DOFAW would likely fund program at reduced level if KIUC does not fund it.	Yes, for up to 3 years.
Predator control in Upper Limahuli Valley	Yes, for up to 5 years.	KIUC discretion; Service expects KIUC would not provide funding; some reduced level of predator control might be conducted by agencies or NGOs if funds were available.	Yes, for up to 3 years; further work would depend on other funds.
Predator control in Hono O Na Pali NAR	Yes, for up to 5 years.	KIUC discretion; Service expects KIUC would not provide funding; some reduced level of predator control might be conducted by agencies or NGOs if funds were available.	Yes, for up to 3 years; further work would depend on other funds.
Predator control in additional colony	Yes, for up to 5 years.	KIUC discretion; Service expects KIUC would not provide funding; some reduced level of predator control might be conducted by agencies or NGOs if funds were available.	No; further work would depend on other funds.

Conservation Measure	Proposed Action	No-Action	Alternate Permit Term
At-sea population estimate	Yes	KIUC discretion; Service expects KIUC would not provide funding; agencies would either have to fund or do without information.	Yes
Auditory surveys	Yes	KIUC discretion; Service expects KIUC would not provide funding; agencies would either have to pay or do without information, but some level is expected to occur.	Yes
Underline monitoring	Yes, for up to 5 years.	KIUC discretion; agencies would either have to pay or do without information; under plea agreement, KIUC is required to spend up to \$75,000 to operate video cameras on two line segments between 4/1/11 and 12/15/11.	Yes, for up to 3 years.
Reconfigure Kealia power lines along Hwy 56 from Kawaihau Rd. to Mailihuna Rd. (D1)	Yes	Plea agreement requires initiation within 2 months of 12/2/10, completion by 12/31/11.	Yes
Remove overhead power lines and attach to bridge on Hwy 56 over Kealia Stream (D2)	Yes	Plea agreement requires initiation within 2 months of 12/2/10, completion within 18 months of 12/2/10.	Yes
Plant trees along Hwy 56 from Kaa Rd to Mile marker 11 (D3)	Yes	Plea agreement requires completion within 6 months of 12/2/10.	Yes
Remove overhead power lines and attach to bridge on Hwy 50 over Hanapepe River (H7)	Yes	Plea agreement requires initiation within 5 months of 12/2/10, completion by 12/31/11.	Yes

Conservation Measure	Proposed Action	No-Action	Alternate Permit Term
Reconfigure and lower Kapaa power lines along Hwy 56 from mile marker 7.5 to 8.0 (C1)	Yes	Plea agreement requires initiation within 18 months of 12/2/10; Service expects KIUC to complete project, but is not required.	Yes
Remove overhead power lines and attach to bridge on Hwy 56 over Konohiki Stream (C2)	Yes	Plea agreement requires initiation within 18 months of 12/2/10; Service expects KIUC to complete project, but is not required.	Yes
Reconfigure and lower power lines along Port Allen side of Hanapepe River (H3)	Yes	No	Yes
Reconfigure and lower power lines from Hanapepe River to Lele Rd. (H4)	Yes	No	Yes
Contribute \$225,000 to NFWF for NESH work on Kauai	Required by plea agreement.	Required by plea agreement.	Required by plea agreement.
Establish \$50,000 escrow account and transfer \$10,000 to NFWF for each bird taken by KIUC and not released via SOS	Required by plea agreement, for 18 months after 12/2/10.	Required by plea agreement, for 18 months after 12/2/10.	Required by plea agreement, for 18 months after 12/2/10.

Some on-going recovery efforts (such as predator control in nesting colonies) for the Covered Species would likely occur under the No Action Alternative, but at a reduced level. Only minimal efforts would be implemented to control the predation threat within nesting colonies without the funding that would be provided by the proposed HCP given the high cost of such operations. Without the HCP, the only other sources for such funding are the wildlife agencies and non-governmental organizations. Likewise, State of Hawaii staff would likely conduct some additional auditory surveys to locate additional nesting colonies as funding allows, but without additional funding that would be provided by the proposed HCP, the ability to address this recovery priority will be greatly reduced. As previously mentioned, these activities have been identified as most important for recovery because predation is the primary threat and it is critical

to control predators in as many nesting colonies as possible. Due to the lack of funding from other sources, the analysis of the data collected during at-sea surveys in order to develop updated population estimates of the Covered Species would not likely occur under the No Action Alternative, yet this information is critical to all future decisions related to species recovery.

Based on the above findings and comparison between the Proposed and No Action Alternatives, the condition of the Covered Species is likely to be better at the end of the 5-year term of the ITP under the Proposed Action than under the No Action Alternative because: fewer individuals of the Covered Species are likely to be killed or injured due to the additional minimization measures under the Proposed Action; lower rates of predation on adults and their nests in 2-3 of their breeding areas are likely to occur which is likely to increase reproductive success and productivity of the Covered Species; and efforts, such as development of a scientifically-sound monitoring program and at-sea surveys, will be initiated under the Proposed Action to better understand population trends and take levels of the Covered Species, information that is key to the species' conservation. For these reasons, implementation of the Proposed Action is not likely to have significant adverse impacts on the human environment over the 5-year term of the ITP compared to the No Action alternative.

Public Involvement and Review

Public involvement in development of the HCP and the EA consisted of one State-mandated public meeting on the HCP with local, State, and Federal governmental agencies, environmental groups, and other interested parties. A State-mandated 60-day comment period on the HCP was conducted prior to the Federal review (October 23 - December 23, 2009). In response to comments received under the State's review, KIUC modified the draft HCP prior to the Federal comment period on the HCP and EA. Drafts of the HCP and EA were made available for public review during a 45-day public Federal comment period between October 13 and November 29, 2010. We received seven comment letters and the comments related to the HCP are addressed in the Service's HCP Findings and Recommendations document referenced below. Two comments related to the EA were submitted:

Comment 1: The Service decision to comply with the National Environmental Policy Act (NEPA) with an Environmental Assessment (EA) rather than an Environmental Impact Statement (EIS) is not appropriate.

Response: Based on review and evaluation of the information contained in the supporting references, we determined that the Proposed Action is not a major 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. Accordingly, the Service is not required to prepare an environmental impact statement for this action.

Comment 2: The No Action Alternative is improperly defined and does not include legal consequences of KIUC not having an ITP permit for ongoing take of the two ESA-listed Covered Species.

Response: The legal consequences of KIUC's non-compliance have been resolved via a plea agreement between KIUC and the U.S. Department of Justice. The measures KIUC committed to implement have been added to the No Action Alternative in the final EA.

Conclusions

Based on review and evaluation of the information contained in the supporting references, I have determined that the preferred alternative is not a major 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. Accordingly, the Service is not required to prepare an environmental impact statement for this action. Furthermore, I have found that implementing the preferred alternative will have no significant impact on any of the environmental resources identified in the EA.

This Finding of No Significant Impact and supporting references are on file and are available for public inspection, by appointment, at the following U.S. Fish and Wildlife Service offices:

Pacific Islands Fish and Wildlife Office
300 Ala Moana Blvd., Room 3-122
Honolulu, Hawaii 96850
Contact: Bill Standley

Pacific Regional Office
911 NE 11th Avenue
Portland, Oregon 97232
Contact: John Nuss

Interested and affected parties are being notified of our decision.

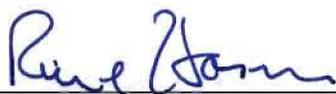
Documents Incorporated by Reference

Kauai Island Utility Cooperative Short-term Seabird Habitat Conservation Plan, Kauai, Hawaii.

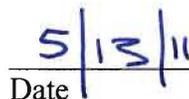
Final Environmental Assessment for Issuance of an Endangered Species Act Section 10(a)(1)(B) Incidental Take Permit based on the Short-term Seabird Habitat Conservation Plan prepared by the Kauai Island Utility Cooperative.

Intra-Service Biological and Conference Opinions on the Kauai Island Utility Cooperative Short-term Seabird Habitat Conservation Plan and Incidental Take Permit Application (File No. 2011-F-0113).

Findings and Recommendations regarding the Proposed Issuance of an Endangered Species Act Section 10(a)(1)(B) Incidental Take Permit in conjunction with the Kauai Island Utility Cooperative Short-term Seabird Habitat Conservation Plan for Operations, Maintenance, and Limited New Facilities in Kauai County, Hawaii.



Deputy Regional Director, Region 1
U.S. Fish and Wildlife Service



Date