**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R1–ES–2018–N017]; [FXES11140100000–189–FF01E00000]**

# Request for Renewal of the Incidental Take Permit and Short-Term Habitat Conservation Plan for Operation and Maintenance of Existing and Limited Future Facilities associated with the Kauai Island Utility Cooperative on Kauai, Hawaii

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Kauai Island Utility Cooperative (KIUC, or applicant) has submitted an application to the U.S. Fish and Wildlife Service (Service) for renewal of their incidental take permit (permit) under the Endangered Species Act of 1973, as amended. The permit is associated with KIUC's Short-Term Habitat Conservation Plan (Short-Term HCP) that addresses incidental take of three listed bird species caused by the operation and maintenance of KIUC's existing and anticipated electrical utility facilities on Kauai, Hawaii. The applicant is requesting renewal of the permit for an indefinite period until the Service renders a decision on a Long-Term HCP and permit application currently under development by KIUC. We are making the permit renewal application available for public review and comment.

**DATES:** All comments from interested parties must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods:

- *U.S. Mail*: Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawaii 96850. Include "KIUC Short-Term HCP" in the subject line of your request or comment.
- *Email*: KIUCShort-Termhcp@fws.gov. Include "KIUC Short-Term HCP" in the subject line of the message.
- *Fax*: 808–792–9580, Attn: Field Supervisor. Include "KIUC Short-Term HCP" in the subject line of the message.
- *Internet:* You may obtain copies of this notice on the Internet at https://www.fws.gov/pacificislands/, or from the Service's Pacific Islands Fish and Wildlife Office in Honolulu, Hawaii (see **FOR FURTHER INFORMATION CONTACT** section).

We request that you send comments by only one of the methods described above. See the **Public Availability of Comments** section below for more information.

**FOR FURTHER INFORMATION CONTACT:** Leila Nagatani, U.S. Fish and Wildlife Service (see **ADDRESSES** above), telephone (808) 792-9400. Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:** The Kauai Island Utility Cooperative (KIUC, or applicant) has submitted an application to the U.S. Fish and Wildlife Service (Service) for renewal of their incidental take permit (permit) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.). The permit is associated with KIUC's

Short-Term Habitat Conservation Plan (Short-Term HCP) that addresses incidental take of three listed species caused by the operation and maintenance of KIUC's existing and anticipated electrical utility facilities on Kauai, Hawaii. The applicant is requesting renewal of the permit to authorize incidental take of the federally endangered Hawaiian petrel, the federally endangered band-rumped storm-petrel, and the federally threatened Newell's (Townsends) shearwater (collectively referred to as "Covered Species") for an indefinite period until the Service renders a decision on a Long-Term HCP and permit application currently under development by KIUC. We are making the permit renewal application available for public review and comment.

**Background**

Section 9 of the ESA prohibits "take" of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538 and 16 U.S.C. 1533). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term "take" means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct" (16 U.S.C. 1532(19)). The term "harm" is defined by regulation as "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering" (50 CFR 17.3). The term "harass" is defined in the regulations as "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering" (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- The applicant will develop a proposed HCP and ensure that adequate funding for the plan will be provided;
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32.

A permittee may submit an application for renewal of their permit if they certify that all information in the original application remains current and correct, unless previously changed or corrected. If such information is no longer current or correct, they must provide corrected information; see 50 CFR 13.22(a). The Service shall issue a renewal of a permit if the issuance criteria set forth in 50 CFR 13.21(b) are met and the applicant for renewal is not disqualified. The Service may deny renewal of a permit to an

applicant who fails to meet the issuance criteria set forth in §13.21 or the parts or sections specifically governing the activity for which renewal is requested (discussed above); see 50 CFR 13.22(d). Under certain conditions, an entity holding a valid, renewable permit may continue the activities authorized by the expired permit until the Service acts on the application for renewal; see 50 CFR 13.22(c).

**Covered Species**

The federally endangered Hawaiian petrel (*Pterodroma sandwichensis*), the federally endangered Hawaii population (distinct population segment (DPS)) of the band-rumped storm petrel (*Oceanodroma castro*), and the federally threatened Newell's Townsend's shearwater (*Puffinus auricularis newelli*) or Newell's shearwater (as a subspecies of the Townsend's shearwater), are seabirds that breed on Kauai and feed in the open ocean. Each of these species spends a large part of the year at sea. Adults generally return to their colonial nesting grounds in the interior mountains of Kauai beginning in March and April, and depart beginning in September. Juvenile seabirds travel from the nesting colony to the sea in the fall. Both adults and juveniles are known to collide with tall buildings, towers, power lines, and other structures while flying at night between their nesting colonies and at-sea foraging areas. These birds, and particularly juveniles, are also attracted to bright lights. Disoriented birds are commonly observed circling repeatedly around exterior light sources until they fall to the ground or collide with structures.

**KIUC Short-Term HCP**

KIUC is a not-for-profit, tax-exempt cooperative association owned by its ratepayer/customers and governed by a publicly-elected Board of Directors. It generates

and distributes electricity to the entire island of Kauai, Hawaii. KIUC's existing facilities include over 1,400 miles of electrical transmission and distribution lines, two fossil fuel-fired generating stations, two hydroelectric stations, two 12-megawatt solar energy parks, 14 substations, and approximately 3,500 streetlights. KIUC developed a Short-Term HCP that addresses incidental take of the three Covered Species caused by the operation and maintenance of KIUC's existing and anticipated facilities over a period of up to 5 years from 2011 to 2016.

In 2011, the KIUC Short-Term HCP was approved by the Service, and KIUC received a permit for incidental take of the Covered Species. The Short-Term HCP covers activities within all areas on Kauai where KIUC's facilities (e.g., generating stations, power lines, utility poles, lights) are located. These activities include the continuing operation, maintenance, and repair of all existing facilities, and the construction, operation, maintenance, and repair of certain new facilities, during the term of the permit. The Short-Term HCP describes the impacts of take incidental to those activities on the Covered Species, and provides certain measures to minimize and mitigate the impacts of such take on each of the Covered Species.

The Covered Species are subject to injury or mortality as a result of colliding with KIUC-owned power lines and utility infrastructure, and injury or mortality as a result of attraction to nighttime lighting from KIUC-owned and operated streetlights and facilities. The Short-Term HCP permit authorized an annual take amount of 162 Newell's shearwaters, 2 Hawaiian petrels, and 2 band-rumped storm petrels over a 5-year period, as a result of attraction to, or collision with, KIUC facilities. In total, the permit authorized a combined take amount of 830 sub-adults or adults of the Covered Species.

Current estimates of the Newell's shearwater population on Kauai, where 90 percent of the total population nests, range from 16,400 to 33,400, based on at-sea population estimates from 1998 through 2011 (Joyce 2013). Analyses of radar data (a proxy for the breeding population) suggest that the Newell's shearwater population on Kauai declined 94 percent between 1993 and 2013 (an average annual rate of 13 percent) (Raine et al. 2017a).

The Hawaiian petrel population nests on several of the southeastern Hawaiian Islands, including Hawaii, Kauai, Lanai, and Maui, and the total population is estimated at 19,000 individuals (Spear et al. 1995). While the majority of the breeding population nests on Maui within Haleakalā National Park (over 2,500 nests; HAVO 2015), all extant populations of Hawaiian petrels across the Hawaiian Islands are biologically valuable toward ensuring the survival and recovery of the species. The Kauai population of Hawaiian petrels decreased by 78 percent (an average of 6 percent per year) between 1993 and 2013, according to trends in radar data over the 20 year period (Raine et al. 2017a).

The band-rumped storm-petrel occurs in Japan, Hawaii, Galapagos Islands, and subtropical areas of the Atlantic. The Hawaii DPS of the band-rumped storm-petrel is found on the islands of Hawaii, Maui, Kauai, and Lehua. The band-rumped storm-petrel is known to nest in remote areas on vegetated to sparsely vegetated cliff faces or steeply sloping areas on Kauai and Lehua Islet (VanderWerf et al. 2007; Raine et al. 2017b). It has also been known to occur in sparsely vegetated areas, high-elevation lava fields on Hawaii Island (Banko et al. 1991; Banko 2015 in litt.), and possibly Haleakalā Crater on Maui, where several birds were heard calling (Wood et al. 2002). An estimate of the

number of band-rumped storm-petrels within the Hawaiian Islands is not available at this time.

Seabird colony monitoring data reflect significant threats from feral pig, cat, barn owl, and rat predation, as well as habitat degradation from invasive plants. Combined with the take caused by power line collisions and light attraction, the above threats have resulted in the dramatic decline of several breeding colonies on Kauai, including Kalaheo and Kaluahonu, to the point of near extirpation (Raine et al. 2017a).

The 2011 Short-Term HCP established a comprehensive monitoring and research program designed to further evaluate the impact of the power line system on seabird populations and to provide key biological data to more adequately inform a longer term HCP and take authorization. To this end, KIUC provides funding to the Kauai Endangered Seabird Recovery Project (KESRP), a project of the University of Hawaii's Pacific Cooperative Studies Unit, to monitor seabird colonies and develop approaches to assess seabird-power line collisions. Due to the remote location of many power lines on Kauai and the nocturnal behavior of seabirds, in 2012, KESRP developed an acoustic song-meter monitoring system to detect seabird collisions. This acoustic system became the foundation for KIUC's Underline Monitoring Program (UMP) and has been accepted and is funded by KIUC.

During the course of implementation of the KIUC Short-Term HCP, KESRP observed a total of 43 seabird power line collisions using night vision equipment. Of the 43 seabird power line collisions observed, four of these collision events definitively resulted in an immediate grounded bird within the observer's field of view. Additionally, about 25 deceased Newell's shearwaters have been opportunistically found from 2011

through 2015, associated with KIUC power lines or lights. The acoustic system, which is able to monitor the power lines for seabird collisions more extensively than human observers can, has detected a minimum in excess of 1,000 seabird collision events annually in 2014, 2015, and 2016 (KIUC Short-Term HCP 2014, 2015, and 2016 UMP Reports). Despite the above strike monitoring data, the applicant has only requested take authorization at the original permit level of 166 listed seabirds per year in its permit renewal application. KIUC's request for extension without an amendment means its actual take would likely continue to exceed the authorized level should the permit be renewed.

Since 2012, KESRP, in collaboration with KIUC, has identified all high and medium risk power line spans that pose a threat to the Covered Species. These high and medium risk lines are continually monitored every year, and those data are used to plan and test for effective minimization measures, including reconfiguring lines or installing bird diverters. While the acoustic system has been successful in detecting seabird power line collisions, only a subset of the power line system can be monitored and therefore collisions outside of the monitored areas must be estimated. Moreover, while a minimum of over 1,000 seabird collision events have been detected in 2016, the fate of the birds that collided with these lines is unknown. Based on KESRP field observations, it is certain that some portion of these collisions results in immediate grounding or mortality, and that some additional proportion results in harm or injury, or potential mortality sometime after the collision event. Previous scientific studies based on waterfowl and their interactions with power lines have estimated that this subsequent mortality after the

collision event could range from 20 percent to 74 percent of total detected collisions (Bevanger 1995; Bevanger 1999; Beaulaurier 1981; and Shaw et al. 2010).

The Short-Term HCP has been successful in guiding measures that KIUC has implemented to partially mitigate the impacts of the taking of the Covered Species caused by its existing facilities, increasing knowledge related to the impact of KIUC's power line system on seabird populations, providing key biological data concerning the Covered Species, and improving our understanding of the effectiveness of conservation measures to more adequately inform a longer term habitat conservation plan and take authorization.

Since 2011, under the Short-Term HCP, KIUC spent approximately $7.7 million to implement seabird colony management (i.e., predator control and seabird monitoring) and the retrieval and rehabilitation of seabirds on Kauai. KIUC has undergrounded or reconfigured 25 percent of their identified high collision-risk power lines since 2011 and installed bird deterrent devices to minimize impacts from high collision-risk power lines. Although KIUC's current mitigation and minimization programs are meaningful, these efforts are likely not commensurate with the actual level of take occurring.

The Short-Term HCP permit expiration date was in May 2016. On April 12, 2016, one month before permit expiration, we received an application for renewal of that permit pending preparation of a Long-Term HCP.

**Request for Information**

We specifically request information from the public on whether the application meets the statutory and regulatory requirements and criteria for renewal of a permit. We are also soliciting information regarding the adequacy of a potentially renewed Short-Term HCP and permit to minimize, mitigate, and monitor the impacts of the taking of the

Covered Species caused by KIUC's covered activities, and to provide for adaptive management for an indefinite period until the Service renders a decision on a Long-Term HCP and permit application currently under development by KIUC, as evaluated against our permit issuance criteria found in section 10(a) of the ESA, 16 U.S.C. 1539(a), and 50 CFR 13.21, 17.22, and 17.32.

**Public Availability of Comments**

You may submit your comments and materials by one of the methods listed above in the **ADDRESSES** section. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might 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. Comments and materials we receive will be available for public inspection by appointment, during normal business hours, at the Service's Pacific Islands Fish and

Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

**Authority**

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*).

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**Theresa E. Rabot,**

***Deputy Regional Director, Pacific Region,***

***U.S. Fish and Wildlife Service.***

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