



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R1–ES–2018–N108; FXES11140100000–189–FF01E00000]**

**Record of Decision for the Final Environmental Impact Statement for the Na Pua Makani Wind Energy Project, Oahu, HI**

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

**ACTION:** Notice of availability; record of decision.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a record of decision (ROD) for proposed issuance of an Endangered Species Act (ESA) permit for the Na Pua Makani Wind Energy Project (project) and habitat conservation plan (HCP). The ROD documents the Service’s decision to issue an incidental take permit (ITP) to Na Pua Makani Power Partners, LLC (applicant). As summarized in the ROD, the Service has selected Alternative 2a – the Modified Proposed Action, which includes implementation of the HCP and issuance of the ITP authorizing

incidental take of one threatened and six endangered species listed under the ESA that may occur as a result of construction and operation of the project over a 21-year period.

**ADDRESSES:** You may obtain copies of the ROD and other documents associated with the decision by the following methods.

- *Internet:* Documents may be viewed and downloaded on the Internet at <http://www.fws.gov/pacificislands/>.
- *U.S. Mail:* You may obtain a CD-ROM with electronic copies of these documents if you make a request within 30 days after the date of publication of this notice by writing to Mary Abrams, Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, Honolulu, HI 96850.
- *Telephone:* Call 808-792-9400 during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Mr. Aaron Nadig (Deputy Field Supervisor), by telephone at 808-792-9400, by Federal Relay Service at 800-877-8339, or by mail to the U.S. Fish and Wildlife Service (see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a record of decision (ROD) for proposed issuance of an Endangered Species Act (ESA) section 10(a)(1)(B) permit for the Na Pua Makani Wind Energy Project (project) and habitat conservation plan (HCP). The ROD documents the Service's decision to issue an incidental take permit (ITP) to Na Pua Makani Power Partners, LLC (applicant). As summarized in the ROD, the Service has

selected Alternative 2a – the Modified Proposed Action (described below), which includes implementation of the HCP and issuance of the ITP authorizing incidental take of one threatened and six endangered species listed under the ESA that may occur as a result of construction and operation of the project over a 21-year period.

We are advising the public of the availability of the ROD, developed in compliance with the agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (NEPA), as well as the final HCP as submitted by the applicant. All alternatives have been described in detail, evaluated, and analyzed in our final EIS (FEIS) and supplemental EIS (SEIS). Our notice of availability of the FEIS and HCP was published in the *Federal Register* on July 12, 2016 (81 FR 45174).

The Council of Environmental Quality regulations require agencies to prepare supplements to either draft or final EISs if there are substantial changes in the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns that bear on the proposed action or its impacts; SEISs may also be prepared if the lead agency determines that the purpose of NEPA will be furthered by doing so. After reviewing comments received after issuance of the Draft EIS (DEIS), the Service worked with the applicant to develop a modified action to address some of the comments received. Accordingly, the Service determined that publishing an SEIS and providing an additional opportunity for public review on Alternative 2a would further the purposes of NEPA and the ESA. The SEIS and HCP were noticed in the *Federal Register* on November 17, 2016 (81 FR 81151).

## **Background**

Na Pua Makani Power Partners proposes to construct and operate the project near the town of Kahuku in the Koolauloa District of the City and County of Honolulu on the Island of Oahu, Hawaii. The project would consist of up to 9 wind turbine generators (WTGs) with a net generating capacity of up to approximately 25 megawatts (MW), located within a project site of approximately 707 acres. The site includes portions of two parcels leased from the Hawaii Department of Land and Natural Resources (DLNR), State-owned access areas, and privately owned lands. The site is located almost entirely within the State agricultural land use district.

Na Pua Makani Power Partners applied to the Service for an ITP under ESA section 10(a)(1)(B). The ITP is for a 21-year permit term and authorizes take of the threatened Newell's shearwater (*Puffinus newelli*), and the endangered Hawaiian stilt (*Himantopus mexicanus knudseni*), Hawaiian coot (*Fulica americana alai*), Hawaiian moorhen (*Gallinula chloropus sandvicensis*), Hawaiian duck (*Anas wyvilliana*), Hawaiian goose (*Branta sandvicensis*), and the Hawaiian hoary bat (*Lasiurus cinereus semotus*) (collectively these species are hereafter referred to as the "covered species") that may occur as a result of the construction and operation of the project.

The applicant developed a final HCP that addresses the incidental take of the seven covered species that may occur as a result of the construction and operation of the project over a period of 21 years. The HCP details measures the applicant will implement to minimize, mitigate, and monitor incidental take of the covered species.

The Service prepared an FEIS and SEIS pursuant to the requirements of NEPA in response to the permit application because issuance of an ITP by the Service is a Federal action that may affect the quality of the human environment.

### **Purpose and Need**

The purpose and need of the Service's proposed action is to evaluate the authorization of incidental take of the covered species associated with construction and operation of the project and make a decision on the application pursuant to the requirements of ESA section 10(a)(1)(B) and its implementing regulations and policies. Any permit issued by the Service must meet all applicable issuance criteria, and implementation should be technically and economically feasible. Issuance criteria include requirements that the applicant will minimize and mitigate the impacts of the taking on the covered species to the maximum extent practicable and the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild.

### **Alternatives**

Our FEIS and SEIS analyzed the environmental impacts of three alternatives related to the issuance of the ITP and implementation of the HCP.

Alternative 1 – No Action: Under Alternative 1, the Service would not issue an ITP, and the project would not be constructed.

Alternative 2 – Proposed Action: The project, as originally described as Alternative 2 of the DEIS, would consist of between 8 and 10 WTG and includes

implementation of the HCP and issuance of an ITP for construction and operation of a wind energy project with a generation capacity of up to 25 MW.

Alternative 2a – Modified Proposed Action: Our selected alternative consists of implementation of the HCP and issuance of an ITP for construction and operation of a wind energy project with a maximum number of 9 WTG with a generation capacity of up to 25 MW. In response to public comments on the DEIS related to visual impacts and consideration of fewer turbines with larger generating capacities, a project design with a reduced maximum number of turbines of only 9 WTG with larger generating capacities and taller dimensions was added to the FEIS and SEIS. The applicant is considering a variety of WTG models, each ranging from 427 feet to 656 feet in height, and each having up to 3.3 MW of generating capacity. The applicant will select the most appropriate WTGs prior to construction. The selection of the WTG models would not change the impacts to the covered species analyzed in the EIS. This alternative includes the avoidance, minimization, and mitigation measures identified for the covered species (described below) to minimize and offset the impacts of the anticipated take of the covered species.

Alternative 3 – Consists of a 42-MW generation wind project with up to 12 WTG, each with a generating capacity of up to 3.3 MW. Alternative 3 includes the issuance of an ITP to authorize incidental take of the covered species in association with construction and operation of the up to approximately 25-MW project and implementation of the project HCP with avoidance, minimization, and mitigation measures identified for covered species that would occur at levels described above for the Proposed Action. Due to transmission line upgrades required for additional turbines and associated generating

capacity beyond those identified in Alternative 2, there would be a lag of at least 3 years before the construction of an additional two to four turbines. Due to the uncertainty related to the timing of construction of the additional turbines under this alternative, Na Pua Makani Power Partners would reinitiate coordination with the Service prior to their construction to address potential impacts of the larger generation facility to the covered species. The mitigation and monitoring associated with the additional turbines would be covered in an amendment to the HCP.

### **Decision and Rationale for Decision**

Based on our review of the alternatives and their environmental consequences as described in our FEIS and SEIS, we have selected the Modified Proposed Action option (Alternative 2a). The Modified Proposed Action is the implementation of the final HCP and issuance of an ITP authorizing incidental take of the covered species that may occur as a result of the construction and operation of the project.

In order to issue an ITP, we must determine that the HCP meets the issuance criteria set forth in 16 U.S.C. 1539(a)(2)(A) and (B). We have made that determination based on the findings summarized below:

1. *The taking will be incidental.* We find that take of listed species will be incidental to otherwise lawful activities, including the construction, operation, and maintenance of the wind energy facility.

2. *The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such takings.* The applicant has developed and is committed to

implementing a program that includes a variety of habitat and species protection measures that minimize and mitigate the impacts of the taking on the covered species.

To reduce take of the Hawaiian hoary bat, Na Pua Makani Partners will implement low wind-speed curtailment by raising the cut-in speed of the WTGs to 16 feet per second (ft/s) and feathering WTG blades below 16 ft/s from sunset to sunrise during the months of March to November.

To offset the impacts of anticipated take on the covered species, the applicant is proposing mitigation measures on Oahu that include: (1) Funding research to support management of the Newell's shearwater; (2) fencing and predator control to conserve the Hawaiian goose; (3) a combination of bat research and native forest restoration and management to increase Hawaiian hoary bat habitat; (4) acoustic surveys to document the presence of the Hawaiian hoary bat; and (5) fencing and public outreach to benefit the conservation of the Hawaiian stilt, Hawaiian coot, Hawaiian moorhen and the Hawaiian duck.

*3. The applicant will ensure that adequate funding for the HCP will be provided.*

The applicant has developed an HCP, which includes a detailed estimate of the costs of implementing the HCP. Na Pua Makani Power Partners is committed to providing the funds necessary to implement the HCP, and its associated mitigation, monitoring, reporting, and adaptive management measures. Na Pua Makani Power Partners shall provide assurance of funding in the form of a letter of credit to The State of Hawaii Division of Forestry and Wildlife (DOFAW) in the amount of \$3,736,050, which covers the cost for Tier 1 mitigation and post-construction monitoring. Upon triggering Tier 2 mitigation, a letter of credit for an additional \$894,000 will be provided to DOFAW.

4. *The taking will not appreciably reduce the likelihood of survival and recovery of any listed species in the wild.* As the Federal action agency considering whether to issue an ITP, we have reviewed the proposed action under section 7 of the ESA. Our biological opinion, dated April 29, 2016, concluded that issuance of the ITP will not jeopardize the continued existence of potentially affected listed species in the wild.

5. *The applicant agrees to implement other measures that the Service requires as being necessary or appropriate for the purposes of the HCP.* We provided technical assistance to the applicant in the development of the HCP. We commented on draft documents, participated in numerous meetings, and worked closely with the applicant throughout the development of the HCP to further the conservation of covered species. The HCP incorporates our technical advice for minimization and mitigation of take impacts likely to be caused by covered activities, as well as steps to monitor the effects of the HCP. Annual monitoring, as well as coordination and reporting mechanisms, have been designed to ensure that changes in the conservation measures via adaptive management can be implemented if proposed measures prove ineffective.

Considerations relied upon for the ITP decision include whether (1) the proposed mitigation will benefit the covered species, (2) adaptive management of the conservation measures will insure that the goals and objectives of the HCP are realized, (3) conservation measures will protect and enhance habitat, (4) mitigation measures will fully offset anticipated impacts to the covered species and facilitate recovery, and (5) the HCP is consistent with the covered species' recovery plans.

**Authority**

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1531, 1539(c)) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR Part 46). The Service has made its decision to issue an ITP to Na Pua Makani Power Partners, LLC for the take of seven species in accordance with their HCP.

**Theresa E. Rabot,**

*Deputy Regional Director,*

*Pacific Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2018-21457 Filed: 10/2/2018 8:45 am; Publication Date: 10/3/2018]