



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2020–N003; FXES1114010000–201–FF01E00000]

**Kauai Seabird Habitat Conservation Plan and Draft Environmental Assessment,
Kauai, Hawaii**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), received incidental take permit applications pursuant to section 10 of the Endangered Species Act of 1973, as amended (ESA), from eight parties seeking authorization to take listed seabirds on Kauai due to impacts associated with nighttime light attraction. Each of the applications relies on the Kauai Seabird Habitat Conservation Plan (KSHCP), which describes the actions the applicants will take to minimize and mitigate the impacts of taking the threatened Newell’s shearwater, endangered Hawaiian petrel, and the endangered Hawaii distinct population segment of the band-rumped storm-petrel incidental to the otherwise lawful

use of nighttime lighting on the island of Kauai, Hawaii. We also announce the availability of each applicant's draft KSHCP participant inclusion plan specific to the applicant's facilities, as well as a draft environmental assessment (EA) developed by the Service that addresses the effects of the KSHCP and the proposed permits on the human environment in accordance with the National Environmental Policy Act. We invite the public to review and comment on these documents.

DATES: To ensure consideration, written comments must be received from interested parties no later than [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:

- *Internet:* You may view or download copies of the KSHCP, draft EA, each applicant's draft KSHCP participant inclusion plan, and obtain additional information on the Internet at <http://www.fws.gov/pacificislands/>.
- *Email:* KauaiSeabirdHCP@fws.gov. Include "Kauai Seabird HCP/EA" in the subject line of the message.
- *U.S. Mail:* You may obtain a CD-ROM with electronic copies of these documents by writing to Ms. Katherine Mullett, 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: Ms. Jiny Kim or Mr. Aaron Nadig, U.S. Fish and Wildlife Service (see **ADDRESSES**), by telephone at 808–792–9400 or by email at KauaiSeabirdHCP@fws.gov. If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

The Service received incidental take permit (ITP) applications from eight entities (applicants), pursuant to section 10(a)(1)(B) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Each applicant has requested a 30-year permit term that would authorize “take” of the threatened Newell’s shearwater (*Puffinus auricularis newelli*; Hawaiian name ao), the endangered Hawaiian petrel (*Pterodroma sandwichensis*; Hawaiian name uau), and the endangered Hawaii distinct population segment of the band-rumped storm-petrel (*Oceanodroma castro*; Hawaiian name akeake), hereafter collectively referred to as the covered species. Take of the covered species would be incidental to the use of nighttime lighting on the island of Kauai, Hawaii. The applications are accompanied by a single habitat conservation plan, referred to as the Kauai Seabird Habitat Conservation Plan (KSHCP), which describes the actions each applicant will take to minimize and mitigate the impacts of the taking on the covered species under each individual applicant’s draft KSHCP participant inclusion plan (PIP), which is specific to each applicant’s facilities.

Background

Nighttime lighting is an essential activity in most homes, businesses, and industry centers. Each of the eight applicants developed a PIP under the KSHCP to collectively provide an island-wide conservation program to avoid and minimize the impacts of the taking of the covered species through implementation of measures such as the use of wildlife-friendly nighttime lights, and to mitigate for unavoidable incidental take impacts caused by nighttime lighting in support of their request to obtain ESA authorization, as appropriate, to incidentally take listed seabirds. Although the KSHCP identifies measures to avoid and minimize take of the Central North Pacific distinct population segment (DPS) of the endangered green sea turtle (*Chelonia mydas*; Hawaiian name honu), no ITP for the green sea turtle is being requested by the applicants. The eight applicants are: (1) Norwegian Cruise Line-NCL America; (2) Princeville Resort Kauai; (3) Hawaii Department of Transportation; (4) Kauai Marriott Resort; (5) Alexander & Baldwin, Inc.; (6) Kauai Blue, Inc. doing business as Sheraton Kauai; (7) Kauai Coffee Company; and (8) Kauai County.

The Service proposes to issue the requested 30-year ITPs based on the applicants' commitment to implement the KSHCP, in accordance with eight applicant-specific PIPs, if permit issuance criteria are met. Potentially covered activities include the full range of artificial nighttime lighting types present on Kauai. A variety of lighting types are used on Kauai depending upon the purposes for the lighting. Under the KSHCP, all types of artificial lighting, including land-based lights found at parks, retail stores, resorts, condominium complexes, agribusiness, and industrial facilities, can be covered, as well as lighting on ocean-going vessels such as cruise ships. Artificial lighting includes current light structures, as well as the placement and operation of new or future lights that

have similar effects. Outdoor lighting fixtures may include, but are not limited to, parking lot lights, security lights, spotlights, floodlights, building and structural or architectural lights, landscape lighting, recreational lights, and signage lights. Instead of each applicant implementing small scale, PIP-specific mitigation projects with limited conservation benefits for listed seabirds, the eight applicants will contribute funds that will be pooled to create and manage the Kahuamaa Seabird Preserve (Preserve); conduct barn owl (*Tyto alba*) control in Kalalau Valley; and to conduct feral cat (*Felis catus*) control along Kalalau Valley rim to reduce predation at existing seabird colonies and deter cat presence in the vicinity of the Preserve.

Endangered Species Act

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) prohibits “take” of fish and wildlife species listed as endangered or threatened. Under the ESA, 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 [16 U.S.C. 1532(19)]. The term “harm” is defined in our regulations to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

Section 10(a)(1)(B) of the ESA contains provisions that authorize the Service to issue permits to non-Federal entities for the take of endangered and threatened species caused by otherwise lawful activities, provided the following criteria are met: (1) the taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) the applicant will ensure that

adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) 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 found at 50 CFR 17.22 and 17.32, respectively.

National Environmental Policy Act

The proposed issuance of an ITP is a Federal action that triggers the need for compliance with the requirements of NEPA. On November 9, 2010, the Service announced in the *Federal Register* our intent to prepare an environmental impact statement for the proposed KSHCP (75 FR 68819) inclusive of the Kauai Island Utility Cooperative (KIUC) HCP. At that time, the proposed KSHCP and the expected applications from public and private entities on Kauai for incidental take permits were intended to cover the incidental take of the ao, uau, and akeake due to adverse effects of light attraction, as well as collision with utility lines and associated structures. However, monitoring conducted in 2014 reflected a much higher rate of seabird collisions with utility lines than previously estimated. As a result, in September 2015, the State decided to restrict the scope of the KSHCP to light attraction take and reserve consideration of line collision take to the Kauai Island Utility Cooperative Long-Term HCP. As a result, the mitigation program under the KSHCP was scaled to address the level of seabird take impacts caused by the eight applicants identified above. After a subsequent analysis based on the reduction in scope of the proposed KSHCP, the Service determined that it was appropriate to first prepare an environmental assessment (EA) to determine whether

an EIS was warranted. We prepared a draft EA to analyze the environmental impacts of a range of alternatives related to the proposed issuance of the eight requested ITPs and implementation of the conservation program under the revised KSHCP. The alternatives analyzed in the draft EA include a no-action alternative (alternative A) and two action alternatives: (1) the proposed action (alternative B) and (2) a translocation alternative with additional mitigation measures (alternative C).

Public Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We specifically request written data, views, and suggestions from interested parties with respect to the eight applications regarding our proposed Federal action, including the adequacy of the KSHCP pursuant to the requirements for permits at 50 CFR parts 13 and 17, and the adequacy of the draft EA pursuant to the requirements of NEPA.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals

identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive will be available for public inspection by appointment, during normal business hours, at our Pacific Islands Fish and Wildlife Office (see **ADDRESSES**).

Next Steps

After public review we will assess the comments received and finalize the EA; we will determine whether the proposed action warrants a finding of no significant impact or whether an environmental impact statement should be prepared. We will evaluate each permit application, associated documents, and any comments received, to determine whether the permit application meets the requirements of section 10(a)(1)(B) of the ESA. We will also evaluate whether issuance of the requested section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation under section 7(a)(2) of the ESA on anticipated ITP actions. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all comments received during the comment period. If we determine that all requirements are met, we will issue an ITP under section 10(a)(1)(B) of the ESA to each individual applicant for the take of the covered species, incidental to otherwise lawful covered activities.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA (42 U.S.C. 4321 *et seq.*), and their implementing regulations (at 50 CFR 17.22 and 17.32 and 40 CFR 1506.6, respectively).

Robyn Thorson,
Regional Director,
U.S. Fish and Wildlife Service.

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