



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R1-ES-2022-0068; FXES11140100000-256-FF01E00000]

Draft Environmental Impact Statement for the Kaua‘i Island Utility Cooperative Habitat Conservation Plan, Kaua‘i, Hawai‘i

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; notice of public meeting; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has received an incidental take permit (ITP) application from the Kaua‘i Island Utility Cooperative (KIUC; applicant), associated with KIUC’s proposed habitat conservation plan (proposed HCP) submitted pursuant to the Endangered Species Act. The applicant seeks an ITP from the Service to authorize the incidental take of nine species expected to result from KIUC’s operation and modification of existing and future powerlines and lighting activities on the island of Kaua‘i as well as implementation of a conservation strategy. In accordance with the National Environmental Policy Act, this notice announces the availability of a draft environmental impact statement. With this notice, we also make available the proposed HCP submitted by the applicant and invite public comments.

DATES: *Submitting Comments:* We will accept online or hardcopy comments.

Comments submitted online at <https://www.regulations.gov> must be received by 11:59

p.m. Eastern Time on **[INSERT DATE 60 DAYS AFTER THE DATE OF**

PUBLICATION IN THE *FEDERAL REGISTER*]. Hardcopy comments must be

received or postmarked on or before **[INSERT DATE 60 DAYS AFTER THE DATE**

OF PUBLICATION IN THE *FEDERAL REGISTER*] (see ADDRESSES).

Public Scoping Meeting: One public meeting will be held in-person on the island of Kaua‘i during the comment period. The date, location and time of any public meeting

will be posted to <https://www.fws.gov/project/kauai-island-utility-cooperative-habitat-conservation-plan> at least two weeks prior to the public meeting date. For more information, see Public Comments and Public Meeting under SUPPLEMENTARY INFORMATION.

ADDRESSES: You may submit comments by one of the following methods on the proposed habitat conservation plan and draft environmental impact statement by any of the following methods:

- *Internet:* <https://www.regulations.gov> (search for Docket No. FWS–R1–ES–2022–0068)
- *U.S. Mail:* Public Comments Processing; Attn: Docket No. FWS–R1–ES–2022–0068; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041-3803.
- *In-person:* Oral and hand-written comments will be accepted at the public meeting.

FOR FURTHER INFORMATION CONTACT: Koa Matsuoka, Pacific Islands Fish and Wildlife Office, by telephone at 808–210–6295 or by email at KIUCLongTermHCP@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service) announce the availability of a draft environmental impact statement (DEIS) to evaluate the proposed issuance of an incidental take permit (ITP) to the Kaua‘i Island Utility Cooperative (KIUC; applicant). In accordance with the requirements of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 et seq.), the applicant seeks

an ITP authorizing take of federally listed threatened and endangered species that may occur incidental to the operation and modification of existing and future powerlines and lighting, as well as implementation of a conservation strategy, on the island of Kaua‘i, Hawai‘i for a period of 50 years. In support of the ITP application, KIUC prepared a proposed habitat conservation plan (HCP) to specify the impacts that will likely result from the incidental take of covered species and the steps the applicant would take to avoid, minimize, and mitigate such impacts, among other components.

Background

Section 9 of the Endangered Species Act (ESA; 16 U.S.C. 1531 et seq.) prohibits the “take” of fish and wildlife species listed as endangered under section 4 of the statute (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 to attempt to engage in any such conduct” (16 U.S.C. 1532(19)).

Under section 10(a) of the ESA, the Services may issue permits to authorize incidental take of listed fish and wildlife species (16 U.S.C. 1539(a)). “Incidental take” is take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity (16 U.S.C. 1539(a)(1)(B)). Requirements for issuing ITPs to non-Federal entities for the take of endangered and threatened species are included in statute (section 10(a)(2)(B) of the ESA; 16 U.S.C. 1539(a)(2)) and regulations (50 CFR 17.22(b) and 17.32(b)), provided the following criteria are met (16 U.S.C. 1539(a)(2)(B) and 50 CFR 17.22(b)(2) and 17.32(b)(2)):

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impact of the taking;

3. The applicant will ensure that adequate funding for the conservation plan implementation will be provided;
4. The applicant has provided procedures to deal with unforeseen circumstances;
5. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;
6. The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP; and
7. The applicant will provide any other assurances the Service may require to ensure the conservation plan will be implemented.

Applicant's Proposal

KIUC is requesting authorization of incidental take of the federally listed threatened 'a'o (Newell's shearwater, *Puffinus newelli*), endangered 'ua'u (Hawaiian petrel, *Pterodroma sandwichensis*), endangered Hawai'i distinct population segment of the 'akē'akē (band-rumped storm-petrel, *Hydrobates castro*), endangered ae'o (Hawaiian stilt, *Himantopus mexicanus knudseni*), endangered koloa maoli (Hawaiian duck, *Anas wyvilliana*), endangered 'alae ke'oke'o (Hawaiian coot, *Fulica alai*), endangered 'alae 'ula (Hawaiian common gallinule, *Gallinula galeata sandvicensis*), threatened nēnē (Hawaiian goose, *Branta sandvicensis*), and threatened honu (green sea turtle, *Chelonia mydas*) (together, the covered species) likely to occur incidental to proposed covered activities on the island of Kaua'i. KIUC is seeking authorization of incidental take for (1) powerline operations including modifications, (2) lighting operations (facility lights and streetlights) and use of night lighting for repairs, and (3) implementation of a conservation strategy that may result in effects on covered species. These activities and the effects on covered species and the environment are described further in the proposed HCP and DEIS. The proposed permit term is 50 years.

Measures to minimize and mitigate impacts to covered species are described in

the HCP for each covered species guided by the biological goals and objectives of the HCP's conservation strategy. KIUC would monitor implementation of these measures for compliance and effectiveness. Minimization and mitigation measures are subject to adaptive management to ensure achievement of the HCP's biological goals and objectives. These measures are discussed in more detail within the proposed HCP and DEIS.

The HCP includes funding information and assurances, monitoring requirements, adaptive management, and provisions for changed and unforeseen circumstances to ensure conservation outcomes for the covered species over the permit term. Annual reports to the Service would confirm the amount, type, and location of impacts and mitigation as well as the status of monitoring, adaptive management, changed circumstances, and funding.

National Environmental Policy Act

Draft Environmental Impact Statement

The proposed issuance of an ITP supported by an HCP is a Federal action under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.). The Service, with input from the State of Hawai'i's Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) as a cooperating agency, prepared the DEIS pursuant to the statutory requirements of NEPA and the Department of the Interior's NEPA regulations at 43 CFR part 46, consistent with the purpose and goals of NEPA. In addition, the conservation measures proposed in the HCP would occur on State land triggering environmental review under the Hawai'i Environmental Policy Act (HRS Chapter 343; HAR Chapter 11-200). Therefore, this DEIS has also been prepared in accordance with Hawai'i Revised Statutes (HRS) Chapter 343, Environmental Impact Statements, and Hawai'i Administrative Rules (HAR), Title 11, Chapter 200.1, Environmental Impact Statement Rules. The DEIS analyzes the proposed action

(Alternative B; identified as the preferred alternative) and a reasonable range of alternatives to the proposed action (Alternatives A, C, and D), as well as their environmental consequences including the direct, indirect, and reasonably foreseeable effects. The four alternatives are analyzed in detail in the DEIS.

Alternative A – No Action: Under Alternative A, the Service would not issue take authorizations through an ITP to KIUC for the nine covered species for powerline operation, modification, and lighting operations. KIUC would not implement a comprehensive program for mitigating take of ESA-listed species or implement the proposed HCP, and the impact of KIUC's taking of ESA-listed species would not be mitigated in accordance with the proposed HCP's conservation strategy. Under Alternative A, there would be no obligation to maintain the already established conservation sites in the absence of the ITP.

KIUC would continue to operate its existing and new infrastructure to provide services to its customers in the Plan Area, which consists of the entire island of Kaua'i. These activities, including powerline operation, modification, and lighting operations, would continue to be subject to the ESA.

Alternative B – Proposed Action (Preferred Alternative): Under Alternative B, the proposed action and the preferred alternative identified in the DEIS, the Service would issue a permit authorizing incidental take of covered species from covered activities in the Permit Area (specific locations of the covered activities and conservation measures). This would include implementation of the conservation strategy over a 50-year permit term as described in the proposed HCP as well as monitoring and reporting requirements, and an adaptive management program. KIUC would provide funding for HCP implementation.

Alternative C – Additional Minimization: Under Alternative C, the Service would issue a permit authorizing incidental take of covered species with the same Permit and

Plan Areas, covered species, permit term, and monitoring and adaptive management program as in Alternative B. However, the HCP's conservation strategy would be modified to implement additional minimization measures on existing powerline spans that have higher collision risk for seabirds to further reduce the collision risk for seabirds.

Alternative D – Additional Mitigation: Under Alternative D, the Service would issue an ITP as in Alternative B, but the HCP's conservation strategy would be modified to increase the total acreage and intensity of mitigation effort beyond what is included in the proposed action.

Environmental Protection Agency's Role in the EIS Process

The Environmental Protection Agency (EPA) is charged under section 309 of the Clean Air Act (42 U.S.C. 7401 et seq.) with reviewing all Federal agencies' EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions. The EPA is also responsible for administering the EIS filing process. The EPA is publishing a notice in the *Federal Register* announcing this DEIS. EPA serves as the repository (EIS database) for EISs prepared by Federal agencies. You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

Public Comments and Public Meeting

Submitting Comments

You may submit your comments and materials on the proposed HCP and the DEIS by one of the methods in **ADDRESSES**. We specifically request information on the following:

1. Biological information, analysis, and relevant data concerning the covered species, other wildlife, and ecosystems.
2. Potential effects that the proposed permit actions could have on the

covered species, other endangered or threatened species, and their habitats, including the interaction of the effects of the project with climate change and other stressors.

3. Adequacy of the proposed actions to minimize and mitigate the impact of the taking on covered species, including but not limited to conservation measures and adaptive management procedures.
4. Potential effects that the proposed permit action could have on other aspects of the human environment, including effects on plants and animals, water resources, and aesthetic, historic, cultural, economic, social, climate change, or health effects.
5. The alternatives analysis conducted by the Service, including the alternatives analyzed, the range of alternatives analyzed, and the alternatives considered but not analyzed in detail.
6. The presence of historic properties that are eligible for inclusion in the National Register of Historic Places—including archaeological sites, buildings, and structures—and other historic preservation concerns in the proposed Permit Area, which are required to be considered in project planning by the National Historic Preservation Act (54 U.S.C. 306101 et seq.).
7. Effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions as well as any connected actions that are closely related and should be discussed in the same DEIS.
8. The alternatives, information, and analyses submitted during the public scoping period and summary thereof.
9. Other information relevant to the proposed HCP and its impacts on the

human environment.

Public Meeting

The Service and DOFAW will jointly host an in-person public meeting to share information and gather comments from interested parties. See **DATES** and **ADDRESSES** for details about the public meeting to be announced two weeks beforehand. During the public meeting, the Service will give participants the opportunity to ask questions about the proposed HCP and DEIS. Oral comments will be accepted; written comments may also be submitted at the public meeting or by the methods listed in **ADDRESSES**.

Reasonable Accommodations

Persons needing reasonable accommodations in order to participate in the public meeting should contact the Service's Pacific Islands Fish and Wildlife Office as soon as possible, using one of the methods listed in **ADDRESSES**. In order to allow sufficient time to process requests, please make contact at least 15 days before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Public Availability of Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. 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. 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 online in Docket No. FWS–R1–ES–2022–0068 at <https://www.regulations.gov> (see **FOR FURTHER INFORMATION CONTACT**).

Next Steps and Decision to Be Made

After public review and comment, the Service will evaluate the 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. The decision will also be informed by the data, analyses, and findings in the DEIS. The Service will document the determination in an ESA section 10 findings document, ESA section 7 consultation documents, and a NEPA record of decision developed at the conclusion of the ESA and NEPA compliance processes. The Service expects to publish a Final EIS (FEIS) in the Federal Register by mid-2026. At least 30 days after the FEIS is published, we expect that the Service will complete a record of decision and issue a decision on the requested ITP. The current estimate for the issuance of a record of decision is by the fall of 2026.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and pursuant to the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and Department of the Interior guidance (318 DM 3).

Bridget Fahey,
Acting Regional Director,
Pacific Region,
U.S. Fish and Wildlife Service.

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