

Supplement 1

Endangered Species Act Section 7 Informal Consultation Aug 10, 2016



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawaii 96850



AUG 10 2016

In Reply Refer To:
01EPIF00-2016-I-0332

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RECEIVED
AUG 15 2016
HAWAII DIVISION

Ms. Meesa Otani
U.S. Department of Transportation
Federal Highway Administration
300 Ala Moana Boulevard, Room 3-306
Honolulu, Hawaii 96850

Subject: Informal Consultation for Kuhio Highway Short-term Improvements Project,
Kauai

Dear Ms. Otani:

The U.S. Fish and Wildlife Service (Service) received your letter, dated May 17, 2016, requesting our concurrence that the proposed project may affect, but is not likely to adversely affect (NLAA) the following species: the endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*); the endangered Hawaiian petrel (*Pterodroma sandwichensis*), the threatened Newell's shearwater (*Puffinus auricularis newelli*), and a species proposed for listing the band-rumped storm-petrel (*Oceanodroma castro*) (hereafter collectively referred to as seabirds); and the threatened green sea turtle (*Chelonia mydas*). In your letter, you requested our concurrence with your determination that the proposed action will have not affect designated Critical Habitat. On June 3, 2016, the Service requested via email additional information pertaining to proposed measures to avoid and minimize potential impacts to the Hawaiian hoary bat. The Federal Highway Administration (FHWA) provided the requested information on July 21, 2016, and requested NLAA concurrence for the endangered Hawksbill sea turtle (*Eretmochelys imbricata*).

The findings and recommendations in this consultation are based on the following: (1) your consultation request; (2) email correspondences from July 21, 2016; (3) FHWA's Biological Assessment (BA); (4) site visit conducted by Service staff, Adam Griesemer, on September 2, 2015 during pre-consultation, and (5) other information available to us. Copies of pertinent materials and documentation are maintained in an administrative record in the Service's Pacific Islands Fish and Wildlife Office in Honolulu, Hawaii. This response is in accordance with section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C 1531 *et seq.*).

Project Description

The Hawaii Department of Transportation (HDOT), in cooperation with FHWA, proposes to improve Kuhio Highway from its intersection at Kuamoo Road to Kapaa Temporary Bypass Road in the town of Kapaa on the island of Kauai. The proposed project involves the following: (1) widening of a 0.65 mile section of Kuhio Highway, adding a new southbound lane; (2)

modifications to intersections at Lanikai Street, Haleilio Road, Papaloa Road, and Kuamoo Road; (3) extending the existing southbound right-turn storage lane at Kuamoo Road 650 feet from the highway; (4) synchronization of traffic signals at intersections; (5) extending culverts and sidewalks; (6) modifying signage; (7) relocating existing guardrails; (8) re-striping; and (9) adjusting existing utilities. No new streetlights will be installed and seventeen out of the 21 existing utility poles will be relocated approximately 2 to 15 feet away from the highway. Cut-off streetlights will be located 30 feet above the ground along the highway. Utility poles and lines will be lowered by approximately five feet along Kuhio Highway from one utility pole north of Kuamoo Road to two poles north of Haleilio Road. North of this section to the Kapaa Temporary Bypass Road, the poles and lines will be lowered approximately 10 feet.

Conservation Measures

To avoid and minimize impacts to federally listed species and their habitats, the below conservation measures are considered part of the project description and will be implemented at the project site. Any changes to, modifications of, or failure to implement these conservation measures may result in the need to reinitiate this consultation.

- To minimize impacts to the endangered Hawaiian hoary bat, woody plants greater than 15 feet tall will not be disturbed, removed, or trimmed during the bat birthing and pup rearing season (June 1 through September 15). Any site clearing will also be timed to avoid disturbance to Hawaiian hoary bats in the project area.
- If nighttime construction activity or equipment is proposed during the construction phase of the project, all associated lights will be shielded, and when large flood work lights are used, they should be placed on poles that are high enough to allow the lights to be pointed directly at the ground. During the construction phase of the project, any lighting necessary to conduct night time activities will be shielded and directed at the ground.
- No nighttime construction will occur during the peak fallout period, between September 15 and December 15 annually.
- All construction personnel will be required to attend a protected wildlife awareness program prior to the initiation of construction activity.
- Although adverse effects are not anticipated, a pet carrier will be maintained on site at all times, and will be used to temporarily hold any downed seabird recovered in the general project area. If a downed seabird is found within the general project area, it will be retrieved and placed in the pet carrier and maintained in a shady location until the Department of Forestry and Wildlife (DOFAW) or Save our Shearwaters program personnel retrieve the bird. DOFAW and/or SOS program will be contacted immediately upon recovery of any downed bird. The USFWS shall be notified of any downed bird within 24-hours of the occurrence.

In addition to the above conservation measures, the Service acknowledges that the BA states that most of the utility poles and lines from Kuamoo Road to Kinipopo Shopping Center (located at intersection of Kuhio Highway and Haleilio Road) are shielded on both sides of the highway by dense vegetation. The BA also states that the lines between Kinipopo Shopping Center and the

Kapaa Temporary Bypass Road are shielded on the makai (ocean) side of the highway by vegetation and resort development buildings, considerably higher than the proposed line and pole heights. Based on our site visit, we understand that the vegetation and buildings will provide shielding for lines and poles at proposed heights for respective sections of the highway. Additionally, the vegetation along Kuhio Highway in the section adjacent to Wailua Bay and the relocation of the street lights will minimize light reaching the beach, where sea turtle nesting has occurred.

Summary

Based on the above information and that avoidance and minimization measures will be implemented, we concur with your determination that the proposed project may affect, but is not likely to adversely affect the Hawaiian hoary bat, Hawaiian petrel, Newell's shearwater, band-rumped storm-petrel, green sea turtle, and Hawksbill sea turtle. You requested our concurrence with your determination that the proposed action will have not affect designated critical habitat areas. There is no designated critical habitat in the vicinity of the proposed project area. Unless the project description changes or new information reveals that the action may affect listed species in a manner or to an extent not considered, no further action pursuant to section 7 of the ESA is necessary.

We appreciate your efforts to conserve endangered species. Please contact Adam Griesemer, Endangered Species Biologist (phone: 808-285-8261, email: adam_griesemer@fws.gov) should you have any questions pertaining to this response.

Sincerely,



Aaron Nadig
Island Team Manager
Oahu, Kauai, Northwestern Hawaiian
Islands, and American Samoa



U.S. Department
of Transportation
**Federal Highway
Administration**

Hawaii Federal-Aid Division

May 17, 2016

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In Reply Refer To:
HDA-HI

Ms. Mary Abrams
Field Supervisor, Pacific Islands Fish and Wildlife Office
U.S. Fish and Wildlife Service
300 Ala Moana Boulevard, Room 3-122
Honolulu, HI 96850

Subject: Endangered Species Act Section 7 Consultation
Kuhio Highway Short-Term Improvements,
Kuamoo Road to Kapaa Temporary Bypass Road
Federal-aid Project No. NH-056-1(050)
USFWS Log # 2008-1-0018

Dear Ms. Abrams:

The Hawaii Department of Transportation (HDOT), in cooperation with the Federal Highway Administration (FHWA), is planning to undertake the Kuhio Highway Short Term Improvements, Kuamoo Road to Kapaa Temporary Bypass Road project (Project). The Project involves the widening of a 0.65 mile section of Kuhio Highway between the Kapaa Temporary Bypass Road and Kuamoo Road. A new southbound travel lane would be added, which would provide a fourth lane on Kuhio Highway, yielding two northbound and two southbound lanes. Existing intersections along this section of Kuhio Highway would be modified to improve operating conditions and traffic flow. These intersections with Kuhio Highway includes: 1) Temporary Kapaa Bypass Road, 2) Lanikai Street, 3) Haleilio Road, 4) Papaloa Road, and 5) Kuamoo Road. At Kuamoo Road, the existing right-turn storage lane that turns traffic southbound onto the highway would be extended inland, for a total of 650 feet from the highway. Traffic signals at the intersections of Kuamoo Road, Haleilio Road, and Lanikai Street would be synchronized to optimize traffic flow through this section of the highway. Other improvements would include culvert extensions, a sidewalk extension, modified signage, relocation of existing guardrails, adjustment to existing utilities (e.g, utility poles and manholes), and re-striping.

Section 7 Consultation History

HDOT initiated consultation with the U.S. Fish and Wildlife Service (USFWS) in October 2007. In a letter dated October 11, 2007, consultant Wilson Okamoto Corporation, on behalf of HDOT, requested initiation of informal consultation with the USFWS pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The USFWS

responded to that letter on November 5, 2007 requesting preparation of a Biological Assessment (BA) for three seabird species and outlined the circumstances for a formal consultation pursuant to Section 7 (see enclosed Attachment B - Exhibit 2). On December 18, 2007, a meeting attended by HDOT, USFWS, FHWA, and various project consultants was held at USFWS offices. Following that meeting and subsequent discussion with the USFWS, it was agreed that the Section 7 consultation would address potential project impacts to the following three pelagic seabird species: Hawaiian petrel (*Pterodroma phaeopygia sandwichensis*), Newell's shearwater (*Puffinus auricularis newelli*), and Band-rumped storm-petrel (*Oceanodroma castro*). The petrel is listed as an endangered species, the shearwater as a threatened species, and the storm-petrel is a candidate species under ESA.

Toward addressing the prospect of formal consultation, HDOT contracted preparation of a Biological Assessment (BA) for the three seabird species. The draft BA was submitted to the USFWS in April 2008. Concurrently, HDOT pursued discussions with Kauai Island Utility Corporative (KIUC) regarding the alternative of undergrounding utility lines as a means of pursuing informal consultation and a determination of not likely to adversely affect (NLAA). HDOT discussed this approach with the USFWS at a meeting on May 14, 2008. Subsequently, plans for relocating overhead utility lines into underground duct lines along a 1.7 mile project corridor were developed through a coordinated effort involving HDOT, FHWA, KIUC, Hawaiian Telcom, and Oceanic Time Warner Cable. The utility line undergrounding work would extend from the KIUC's Lydgate Substation at South Leho Drive to near Aleka Loop, just north of the Kapaa Temporary Bypass Road (see enclosed Attachment B - Exhibit 3).

In a letter dated June 30, 2009, the FHWA presented the proposed project, which included undergrounding of utility lines with additional minimization measures, and requested the USFWS' concurrence with the determination that the proposed action is not likely to adversely affect the three seabird species (see enclosed Attachment B - Exhibit 4). The USFWS concurred with the determination in a letter dated July 16, 2009 (see enclosed Attachment B - Exhibit 5).

Since the utility undergrounding included construction of an under-riverbed crossing of Wailua River, the FHWA also initiated informal consultation with the National Marine Fisheries Service (NMFS) in a letter dated July 22, 2009 (see enclosed Attachment B - Exhibit 6). Documentation describing the project and rationale for why it would not impact marine species was provided and concurrence with a no effect determination under Section 7 of the ESA was requested. In an e-mail response dated August 6, 2009, NMFS stated that it was their standard policy to refrain from offering written concurrence with a no effect determination and that it would not be initiating informal consultation on the project. Nevertheless, NMFS requested that in addition to planned best management practices, measures be implemented to prevent toxins that may be mobilized as a result of the project from entering Wailua River or marine waters (See enclosed Attachment B - Exhibit 7).

Subsequent consultation with the USFWS led to the most recent proposal, which, in lieu of undergrounding the utility lines, would modify the height and configuration of the utility poles and lines in conjunction with their relocation for the highway widening (See Attachment B - Exhibit 8). The current proposal would lower the utility poles and lines along the entire length of the project between five and ten feet.

As the project has changed again and since it has been more than five years since the last iteration of consultation was finalized, the USFWS requested that an updated BA (refer to enclosed Attachment A) be prepared and Section 7 consultation be re-initiated based on the current proposal. It was agreed that the project would consult over potential impacts to the following five species: Hawaiian Petrel, Newell's Shearwater, Band-rumped Storm-Petrel, Pacific green sea turtle (*Chelonia mydas agassizi*), and the Hawaiian hoary bat (*Lasiurus cinereus semotus*). Since this proposal does not include changes to existing utility lines over the Wailua River, additional Section 7 consultation with the NMFS will not be pursued.

The BA findings and recommendations are summarized below:

Potential Impacts to Protected Species

The principal potential threats that currently exist within the general project area to listed seabirds are those posed by street lights, business lighting, and separate utility wires and associated poles that run the length of the proposed project corridor in various configurations and numbers. The threats posed by these structures and outdoors lighting are associated with birds being downed after becoming disoriented by outdoors lighting and possibly colliding with above ground utility structures and other man-made structures.

As previously mentioned, all of the utility lines between Kuamoo Road and the Temporary Kapaa Bypass Road along the length of the project would be lowered. This action would significantly reduce the existing threats to the listed seabird species, and represents a significant minimization of existing threats to these species from those currently found within the project right-of-way.

Over the past forty years, there have been no reports or published papers detailing that any species of sea turtle was lured onto Kuhio Highway by lighting in the area, or was harmed by vehicular traffic. It is not expected that the proposed action would result in deleterious impacts to either Pacific green sea turtles, or Pacific hawksbill sea turtles, especially since a four foot wall was recently erected on the makai side of Kuhio Highway, separating the roadway from the multi-purpose path, the beach, and the dense vegetation barrier which separates the beach from the pathway.

The principal potential impact that the Project poses to bats is during the clearing phase of the construction. Potential adverse effects from such disturbance can be avoided or minimized by not clearing woody vegetation taller than 4.6 meters (15-feet), between June 1 and September 15, the period in which bats are potentially at risk from vegetation clearing. With that said, the vegetation that is slated for clearing is not typical of the type and location of vegetation that likely is used by day roosting bats.

Critical Habitat

There is no federally delineated Critical Habitat present on or adjacent to the property. Thus, the modification of the site would not result in impacts to federally designated Critical Habitat.

Minimization Measures

The BA proposes the following minimization measures during the course of construction activities to ensure that such activities have minimal impact on the species discussed above:

- During the construction phase of the project, any lighting necessary to conduct night time activities will be shielded and or directed at the ground.
- No nighttime construction will occur during the peak fallout period, between September 15 and December 15 annually.
- All construction personnel will be required to attend a protected wildlife awareness program prior to the initiation of construction activity.
- A pet carrier will be maintained on site at all times, and will be used to temporarily hold any downed seabird recovered in the general project area.
- If a downed seabird is found within the general project area, it will be retrieved and placed in the pet carrier and maintained in a shady location until Department of Forestry and Wildlife (DOFAW) or Save our Shearwaters program personnel retrieve the bird.
- DOFAW and/or SOS program will be contacted immediately upon recovery of any downed bird.
- The USFWS shall be notified of any downed bird within 24-hours of the occurrence.
- If nighttime construction activity or equipment maintenance is proposed during the construction phases of the project, all associated lights will be shielded, and when large flood work lights are used, they should be placed on poles that are high enough to allow the lights to be pointed directly at the ground.

Section 7 Determination

Based on the information provided in the BA, the implementation of the minimization measures, as well as the information provided by the USFWS, and the nature of the proposed work, the FHWA and HDOT have determined that the Project may affect, but is not likely to adversely affect the Hawaiian Petrel (*Pterodroma sandwichensis*), Newell's Shearwater (*Puffinus newelli*)¹, Band-rumped Storm-Petrel (*Oceanodroma castro*), Pacific green sea turtle (*Chelonia mydas agassizi*) or Hawaiian hoary bat (*Lasiurus cinereus semotus*); nor will it affect any currently designated Critical Habitat.

¹ In July 2015 the American Ornithological Union Check-List Committee elevated the Newell's subspecies of the Townsend's Shearwater (*Puffinus auricularis newelli*) to a full species, Newell's Shearwater (*Puffinus newelli*) (Cheeser et al. 2015.)

We respectfully request your concurrence with our determination that the subject project is not likely to adversely affect any of the species listed above or Critical Habitat within the Project limit. We respectfully request your response within 30 days of receipt of this letter.

If you have any questions, please feel free to contact me at (808) 541-2316 or by email at meesa.otani@dot.gov. Thank you for your assistance.

Sincerely yours,



Meesa Otani
Environmental Engineer

Enclosures

cc: Darell Young, HDOT, HWY-P
Brian Lock, Wilson Okamoto Corporation
Reginald David, Rana Biological