

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

regarding

The U.S. Fish and Wildlife Service's Proposed Issuance of an Endangered Species Act Section 10(a)(1)(B) Incidental Take Permit for the Hawaiian Goose, Hawaiian Moorhen, Hawaiian Coot, Hawaiian Duck, Hawaiian Stilt, Hawaiian Petrel, Newell's Shearwater, and the Band-Rumped Storm-Petrel to Kauai Lagoons, LLC in Association with Implementation of the Kauai Lagoons Habitat Conservation Plan on the Island of Kauai, Kauai County, Hawaii

The U.S. Fish and Wildlife Service (Service) has completed an Environmental Assessment (EA) of the anticipated effects on the human environment of issuing an Incidental Take Permit (ITP), pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA), to Kauai Lagoons, LLC (KL). The ITP would authorize the take of the federally endangered Hawaiian goose (*Branta sandvicensis*), Hawaiian moorhen (*Gallinula chloropus sandvicensis*), Hawaiian coot (*Fulica alai*), Hawaiian duck (*Anas wyvilliana*), Hawaiian stilt (*Himantopus mexicanus knudseni*), Hawaiian petrel (*Pterodroma sandwichensis*), the threatened Newell's shearwater (*Puffinus auricularis newelli*), and a candidate for listing, the band-rumped storm-petrel (*Oceanodroma castro*) by covered activities carried out in conjunction with implementation of the Kauai Lagoons Habitat Conservation Plan (HCP) on the island of Kauai, Kauai County, Hawaii. The above species are hereafter referred to as "Covered Species." The EA was prepared in accordance with the requirements of the National Environmental Policy Act.

KL is requesting an ITP for take of the Covered Species that may occur as a result of ongoing operations and new construction at the Kauai Lagoons Resort over the next 30 years. The EA describes the probable effects of the proposed permit action on the human environment under two alternatives: (1) the Proposed Action (issuance of a 30-year ITP to KL on the basis of their implementation of the proposed HCP); and (2) the No Action Alternative (no ITP is issued and KL would not construct new buildings or have coverage for ongoing take associated with their resort operations). Two additional alternatives were considered, but not fully analyzed as they did not meet the purposes of the proposed permit action.

Under the Proposed Action, the Service would issue an ITP and approve the HCP. The ITP would authorize incidental take of the Covered Species caused by continuing operation of Kauai Lagoons Resort and new construction at the facility. The HCP will ensure that KL adequately avoids, minimizes and mitigates the anticipated incidental take. The covered activities are associated with the continued operation of the facility, which encompasses approximately 600 acres, and contains two 18-hole golf courses, a golf and racquet club facility, a network of man-made navigable lagoons, a restaurant, commercial development and associated parking areas. The covered activities also include limited new construction activities, including the building of an additional 772 resort residential units and a new golf clubhouse.

Decision Rationale

Following a comprehensive review and analysis of the effects of implementing the HCP on the human environment, and consideration of the findings presented in the EA and summarized below, the Service has selected the Proposed Action as the preferred alternative because it provides the most conservation value to the Covered Species in the context of KL complying

with the requirements of the ESA, and is most consistent with the Governor's Proclamation to reduce the Hawaiian goose population at Kauai Lagoons Resort due to concerns that the geese pose a threat to the safe operation of aircraft at the adjacent Lihue Airport.

Under the HCP, KL commits to avoid and minimize take of the Covered Species through the implementation of numerous measures which include, but are not limited to:

Avoidance Measures

- Eliminating exterior lights that may attract listed and candidate seabirds where possible;
- Conducting pre-construction surveys prior to mass-grading and other activities to facilitate avoidance of adverse effects to Covered Species and their nests;
- Hiring biological and construction monitors to observe Covered Species and ensure construction activity does not occur in areas where Covered Species may be affected; and
- Installing fencing around construction areas, where possible, to deter Covered Species from entering areas where they may be harmed.

Minimization Measures

- Implementing a 15 mile-per-hour speed limit on all roadways at Kauai Lagoons Resort;
- Reducing, shielding, and re-directing existing infrastructure lights to reduce attraction to listed and candidate seabird species;
- Designing new buildings and infrastructure with minimal lighting, and including the use of shields and cut-off luminaries to reduce lighting;
- Developing and implementing educational materials for employees, residents, owners, golfers and others who may come into contact with Covered Species onsite;
- Instituting monitoring activities at golf courses to detect Covered Species and close areas where Covered Species may be harmed by golf activity;
- Officially adopting a "local rule" for golf play that shall prohibit golfers who hit a ball in the immediate vicinity of a nesting Covered Species during the breeding season from retrieving the ball;
- Install interpretive signs in areas where Covered Species are known to occur to minimize human disturbance of Covered Species;
- Develop and implement an emergency response protocol to respond to, document, and transport injured Covered Species;
- Enforcing existing leash laws for resident's pets; and
- Employing year-round biological monitors and construction monitors.

In addition to the above avoidance and minimization measures, KL also commits to mitigate the impacts of the project through measures that include, but are not limited to, actions summarized in Table 1.

Table 1. Summary of impacts to and mitigation for Covered Species under the Kauai Lagoons HCP.

Species	Impact	Mitigation/Conservation Measures
Hawaiian goose	<p>Years 1-4: 1.0 mortality or non-lethal injury and 0.36 indirect mortality</p> <p>Years 5-30: 0.33 mortality or non-lethal injury and 0.12 indirect mortality</p> <p>Total Impact Over 30-Year Permit Term: 17 mortalities or non-lethal injuries</p>	<p>Kauai Lagoons, LLC (KL) shall continue ongoing management and maintenance of habitat for breeding Hawaiian geese. They shall continue to conduct predator control for cats and rats in areas where Hawaiian geese are present. Although the number of breeding pairs at KL during this time is unknown, it is expected that mitigation will result in 75 percent hatch success and 75 percent fledge success (average of 2 to 3 goslings fledged per nest).</p> <p>Additionally, KL shall provide \$85,000 to the Hawaii Department of Land and Natural Resources' (DLNR) Endangered Species Trust Fund to provide predator control and management for Hawaiian geese that are translocated from Kauai Lagoons Resort to other islands. Mitigation is expected to result in the hatching success of up to 20 nests per year that would be unsuccessful outside of a managed pen, resulting in an average of 50 to 75 goslings fledged per year of pen management.</p>
Hawaiian moorhen	<p>Per Year: 1 mortality and 1 non-lethal injury; 0.325 indirect mortality</p> <p>Total Impact Over 30-Year Permit Term: 40 mortalities and 30 non-lethal injuries</p>	<p>Mitigation for all Covered Waterbird Species: KL shall conduct habitat management and predator control for cats and rats in areas where waterbirds are present. These activities have been found to be effective in promoting successful foraging and breeding on-site.</p> <p>Hawaiian moorhen: Mitigation is expected to result in the hatching success of up to 10 nests per year that would otherwise be unsuccessful, resulting in an average of 20 to 30 chicks fledged annually.</p>
Hawaiian coot	<p>Per Year: 3 mortalities and 6 non-lethal injuries; 0.675 indirect mortality</p> <p>Total Impact Over 30-Year Permit Term: 110 mortalities and 180 non-lethal injuries</p>	<p>Hawaiian coot: Mitigation is expected to result in the hatching success of up to 4 nests per year that would otherwise be unsuccessful, resulting in an average of 8 chicks fledged annually. Additionally, mitigation will protect Hawaiian coot habitat for loafing and foraging.</p>
Hawaiian duck	<p>Per Year: 1 mortality or non-lethal injury; 0.2 indirect mortality or non-lethal injury</p> <p>Total Impact Over 30-Year Permit Term: 36 mortalities or non-lethal injuries</p>	<p>Hawaiian duck: Mitigation is expected to result in the hatching success of up to 10 nests that would otherwise be unsuccessful, resulting in an average of 1 to 2 ducklings fledged annually.</p>

Hawaiian stilt	Per Year: 1 mortality or non-lethal injury; 0.27 indirect mortality or non-lethal injury Total Impact Over 30-Year Permit Term: 38 mortalities <i>or</i> non-lethal injuries	Hawaiian stilt: Mitigation is expected to result in the hatchling success of up to 1 nest per year that would otherwise be unsuccessful, resulting in an average of 2 to 3 chicks fledged annually.
Newell's shearwater	Per Year: 1 mortality or non-lethal injury Total Impact Over 30-Year Permit Term: 27 mortalities <i>or</i> non-lethal injuries	Mitigation for all Covered Seabird Species: KL shall participate in the Kauai Seabird Habitat Conservation Plan (KSHCP) currently being developed by the DLNR and the Service. The exact amount of the financial contribution by KL shall be determined at the time that KL formally enrolls in the final KSHCP, and commits to fully offsetting its Covered Seabird take impacts by helping to fund habitat management and predator control at existing seabird nesting colonies on Kauai, as well as supporting the Save Our Shearwaters Program on Kauai. The benefit of the mitigation measures proposed to be implemented in KSHCP cannot be estimated accurately due to the uncertainty in the effectiveness of proposed measures to date. Therefore, the KSHCP will rely on adaptive management to ensure that all authorized take is adequately offset through increasing survival and reproductive success of the three covered seabird species.
Hawaiian petrel	Per Year: Less than 1 mortality or non-lethal injury Total Impact Over 30-Year Permit Term: 1 mortality <i>or</i> non-lethal injury	In the event that the KSHCP is not finalized, KL shall instead contribute \$10,000 or whatever amount is necessary to provide adequate mitigation, to a dedicated escrow account. These funds shall then be applied toward a project, approved by the Service, to enhance Covered Seabird nesting success.
Band-rumped storm-petrel	Per Year: Less than 1 mortality or non-lethal injury Total Impact Over 30-Year Permit Term: 1 mortality <i>or</i> non-lethal injury	

As discussed in the EA, implementation of the Proposed Action, while exempting incidental take of the Covered Species, is also likely to provide long-term benefits to the Covered Species that are directly related to their recovery needs by controlling predators at nesting colonies and enhancing seabird nesting success. Under the HCP, as proposed, the conservation benefit to the Covered Species is dependent on: (1) reducing new construction and ongoing operation impacts to Covered Species; (2) providing habitat integral to the survival and reproduction of Covered Waterbirds onsite; (3) increasing the protection and management of breeding habitat for Hawaiian geese at translocation sites; and (4) increasing the protection and management of seabird colonies to increase reproductive productivity and fledging success.

The No Action alternative would be implemented if the Service does not issue an ITP and does not approve the HCP for KL. Under this alternative, any take of Covered Species resulting from KL's existing facilities and activities would not be authorized under the ESA or HRS Chapter 195D. The "No Action" alternative would involve no new efforts on the part of KL to minimize

or mitigate take of Covered Species. Should any take of Covered Species occur in the absence of ESA and HRS Chapter 195D authorization, KL could be exposed to civil or criminal liability. Under the No Action Alternative, KL would not likely further pursue any of the new construction activities, but it would continue to operate the resort and its existing facilities. This alternative is not practicable because (1) unavoidable take of Covered Species may occur as a result of ongoing and necessary resort operations (e.g., grounds management and maintenance, golf course operations, etc.), but would not be minimized, mitigated, or authorized; and (2) the new construction activities are needed to maintain the financial viability of the resort. Therefore, the No Action alternative was not selected because it does not meet the purpose and need of the proposed permit action and the KL HCP.

Implementation of the Proposed Action is not expected to cause significant adverse or beneficial effects to the human environment for the following reasons:

1. In our Biological Opinion for the proposed action, the Service determined that implementation of the HCP is not likely to jeopardize the continued existence of the Covered Species or result in destruction or adverse modification of critical habitat (Service Ref. No. 2011-F-0410).
2. The HCP is likely to offset the adverse impacts caused by Covered Activities on the Covered Species to the extent that it is likely to provide a net conservation benefit to these species island-wide. However, that benefit is relatively small when considered in the context of the range-wide condition and conservation needs of each Covered Species. Under the provisions of the HCP, KL is likely to sufficiently reduce the risk of take of the Covered Species due to: (1) appropriate changes in facility design; (2) restrictions on construction activities; (3) reduced amounts of lighting; (4) pre-construction surveys for Covered Species that trigger avoidance activities; (5) appropriate restrictions on golf operations; (6) enforcement of onsite vehicular speed limits; and (7) a year-round impact monitoring plan.
3. The proposed permit action is not expected to contribute to the presence of hazardous substances or increase the risks associated with natural hazards.
4. No impacts to historical, archeological, and cultural resources are anticipated as none are known to occur at Kauai Lagoons Resort; any unexpected historical, archeological, and cultural resources that are encountered will be avoided and/or the impacts to these resources will be mitigated in accordance with guidance by the State Historic Preservation Division.
5. Impacts to land use, air quality, geology, and topography are likely to be negligible. Impacts to hydrology, soils, and ambient sound levels are likely to be minor and minimized through best management practices and preventive measures.

Public Involvement and Review

The public was involved in the development of the KL HCP and the EA for the proposed permit action. The draft Hawaii State HCP was published by the Hawaii Office of Environmental

Quality Control on December 8, 2011. The public comment period closed on February 8, 2012; five comments were received during the public comment period. A public meeting was held on February 2, 2012. The draft HCP was reviewed by the State Endangered Species Recovery Committee (ESRC) in February, 2010, and again in January, 2012. The final State HCP was approved and issuance of the State Incidental Take License was completed on April 11, 2012. The ESRC is composed of representatives from the Service, DOFAW, the U.S. Geological Survey Biological Resources Discipline, the University of Hawaii Environmental Center, and other professionals with expertise in the area of conservation biology.

The draft EA and the draft HCP were made available for public review through publication of a Notice of Availability that was published in the Federal Register on July 12, 2011 (76 FR 40927). The notice and supporting documents were also mailed to agencies and private organizations with interest in the proposed action. Publication of the notice initiated a 45-day comment period. The Service received three comments from: (1) the National Park Service; (2) Hawaii Department of Transportation - Airports Division; and (3) the Federal Aviation Administration. Responses to these public comments can be found in the "Findings and Recommendations on the Issuance of an Incidental Take Permit" to KL (Service, May 2012).

Conclusions

Based on our review and evaluation of the information contained in the supporting references, the Service has determined that the preferred alternative is not a major Federal action that would significantly affect the quality of the human environment, within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-70. Accordingly, the Service is not required to prepare an Environmental Impact Statement for this action. Furthermore, the Service has found that implementing the preferred alternative will have no significant impact on any of the environmental resources identified in the EA.

This Finding of No Significant Impact and supporting references are on file and are available for public inspection, by appointment, at the following Service offices:

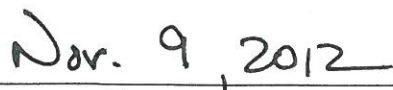
Pacific Islands Fish and Wildlife Office
300 Ala Moana Blvd., Room 3-122
Honolulu, Hawaii 96850
Contact: Michelle Bogardus

Pacific Regional Office
911 NE 11th Avenue
Portland, Oregon 97232
Contact: John Nuss

Interested and affected parties are being notified of our decision.



Deputy Regional Director
U.S. Fish and Wildlife Service
Region 1, Portland, Oregon



Date

Documents Incorporated by Reference

Habitat Conservation Plan for Kauai Lagoons, Lihue, Kauai, Hawaii. (Ebbin Moser & Skaggs LLP, February 2012)

Final Environmental Assessment for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for Incidental Take of Listed Species for Kauai Lagoons Resort and Golf Course. (Service, February 2012).

Intra-Service Biological Opinion on the Kauai Lagoons Habitat Conservation Plan and Incidental Take Permit Application. (Service, File No. 1-2-2011-F-0410, May 2012).

Findings and Recommendations on the Issuance of an Incidental Take Permit to Kauai Lagoons, LLC, Kauai, Hawaii. (Service, May 2012).