

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

October 25, 2018 Meeting

Endangered Species Recovery Committee
State of Hawai'i
Honolulu, Hawai'i

Committee Members:

**SUBJECT: REQUEST FOR COMMENTS ON THE KAWAILOA WIND POWER
SEPTEMBER 28, 2018 DRAFT HABITAT CONSERVATION PLAN
AMENDMENT**

BACKGROUND:

Kawailoa Wind, LLC (Kawailoa Wind) operates a 30-turbine, 69-megawatt wind energy generation facility on agricultural lands in Kawailoa on the northern portion of O'ahu. Kawailoa Wind was issued a 20-year Incidental Take License (ITL) designated ITL-14 in January 2012 for the take of seven species. The Hawaiian Hoary Bat (HHB; *Lasiurus cinereus semotus*) take authorized over three tier levels is 60 HHB (after conversion of juvenile bat permitted take to adult take) over the course of the 20-year permit term. In 2017 model estimates showed that the calculated HHB take limit of 60 had been reached. Low wind speed curtailment has been implemented for increasing periods of time as an impact minimization measure, but HHB take has continued to occur at levels higher than anticipated in the approved HCP. As of September 1, 2018, the take of HHB by the project is estimated with 80% confidence to be at or below 84.

Additionally, in July 2017 and August 2018 take occurred of a protected bird species, the Hawaiian Petrel (*Pterodroma sandwichensis*), not included in the approved HCP and ITL. As a result, the applicant has requested in their draft HCP amendment and ITL that the Hawaiian Petrel be added as a covered species for the remainder of the 20-year ITL term.

INCIDENTAL TAKE AND MITIGATION PROPOSED:

Kawailoa Wind has requested additional incidental take in three new tiers (4, 5, and 6) for the Hawaiian Hoary Bat and incidental take for the Hawaiian petrel. Table 1 summarizes the take requested for these species. Mitigation for HHB take for tier 4 would consist of the acquisition and resulting preservation of bat habitat. Mitigation for tiers 5 and 6 would consist of restoration of habitat for HHB or additional land acquisition and preservation. Mitigation for the Hawaiian Petrel take would include

mitigation funding, predator control, and burrow monitoring at two colony sites in Hanakapiai and Hanakoa, Kaua'i.

Table 1. Take Levels Requested by Tier

(Revisions to the take in the February 2012 approved HCP Amendment are shown with underlined text.)

Common Name	Scientific Name	Tier Level	Requested Incidental Take Authorization
Hawaiian Hoary Bat 'Ōpe'ape'a	<i>Lasiurus cinereus semotus</i>	Tier 1	20 bats
		Tier 2	40 bats
		Tier 3	60 bats
		<u>Tier 4</u>	<u>55 bats</u>
		<u>Tier 5</u>	<u>85 bats</u>
		<u>Tier 6</u>	<u>65 bats</u>
<u>Hawaiian Petrel</u> 'Ua'u	<u><i>Pterodroma sandwichensis</i></u>	<u>NA</u>	<u>19 adults/fledglings</u> <u>5 chicks/eggs</u>
Newell's Shearwater 'a'o	<i>Puffinus auricularis newelli</i>	Tier 1	3 adults/immatures 2 chicks/eggs
		Tier 2	6 adults/immatures 3 chicks/eggs
Hawaiian Duck koloa maoli	<i>Anas wyvilliana</i>	Tier 1	4 adults/immatures 4 ducklings
		Tier 2	6 adults/immatures 6 ducklings
Hawaiian Stilt ae'o	<i>Himantopus mexicanus knudseni</i>	Tier 1	8 adults/immatures 4 fledglings
		Tier 2	12 adults/immatures 6 fledglings
Hawaiian Coot 'alae ke'oke'o	<i>Fulica alai</i>	Tier 1	8 adults/immatures 4 fledglings
		Tier 2	12 adults/immatures 6 fledglings
Hawaiian Moorhen alae 'ula	<i>Gallinula chloropus sandvicensis</i>	Tier 1	8 adults/immatures 4 fledglings
		Take by capture by trapping	50 individuals
		Tier 2	12 adults/immatures 6 fledglings
Hawaiian Short-Eared Owl pueo	<i>Asio flammeus sandwichensis</i>	Take by capture by trapping	50 individuals
		Tier 1	4 adults/immatures 4 owlets
		Tier 2	6 adults/immatures 6 owlets

ANALYSIS & RECOMMENDATIONS:

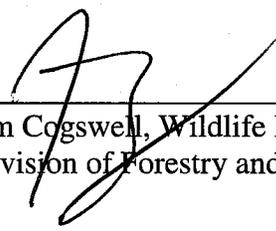
DOFAW Staff has worked with Kawailoa Wind and its contractor through several rounds of revisions of the draft HCP amendment. DOFAW staff provided additional comments to Kawailoa Wind on the September 28 draft HCP amendment after it was provided to the ESRC to review for the October 25 ESRC meeting. Subsequently, Kawailoa Wind agreed via email response to address most of the DOFAW staff comments, therefore those comments are provided separately in an addendum to this submittal. The remaining comments and concerns that DOFAW has on the September 28, 2018 version of the document are listed below.

1. *Section 6.3.7.4 Calculating Total Adjusted Take for Tier 4, Tier 5, and Tier 6: Potential Population-level Impacts.* Limited indirect information is provided in this section and in section 6.4.4 about the HHB population on O‘ahu and there is considerable uncertainty associated with mitigation for the species and specifically within this HCP. Therefore, considering the impacts specific to the island of O‘ahu, as required under HRS 195D, the conclusion that potential impacts would be off-set by the mitigation described in Section 7 with no resulting population-level impacts for the Hawaiian Hoary Bat is not adequately supported.
2. *Section 6B.1 Operational Minimization Measures Adaptive Management Recently Implemented for the Hawaiian Hoary Bat.* Using LWSC success/failure as a factor that would decide whether deterrents would be implemented is not meaningful without specifying the decision criteria and there seems to be no way to establish criteria for that situation (as is essentially acknowledged in the next paragraph). The approach that is necessary is adaptive management using a take rate trigger as described in section 8.3.1 (but see comments for that section).
3. *Section 7.6.3.3 Take Offset and Net Benefit.* DOFAW does not agree with the general statement in this subsection that 7 to 20.3 acres of mitigation will offset take of one bat. Specific analysis is required to determine adequacy of mitigation.
4. *Section 7.6.3.3 Take Offset and Net Benefit.* The following statement is made: “Therefore, the range of mitigation offset provided by HWA [Helemano Wilderness Area] could range between 65 to 150 bats over the remaining life of the permit.” DOFAW does not agree with this statement because it is broad and makes implicit assumptions that are not supported; DOFAW recommends that it be deleted, especially given that the actual number of HHB present in HWA is unknown.
5. *Section 7.6.4.1 Mitigation Options and Prioritization [Tiers 5 and 6]: Protection and Preservation of Habitat (Land Acquisition).* The stated adaptive management step that allows a change when “New information suggests that the mitigation project does not achieve the intended biological goals and objectives.” needs to be approved by the agencies. This adaptive management step indicates why it is so important that the initial selection be approved by the agencies.
6. *Section 7.6.4.1 Mitigation Options and Prioritization [Tiers 5 and 6]: Habitat Restoration/Land Management, Mitigation Approach and Selection Criteria.* The following description is provided: “Management activities expected to occur at

HWA that would benefit bats include: fencing portions of the parcel; control of feral ungulates, rodents, and invasive plant species; control of erosion throughout plantings and other methods; and reforestation with native and non-invasive hardwood tree species.” More detail is necessary for these potential actions. A specific and reasoned management plan outline and rough cost estimates and schedule are needed.

7. *Section 8.3.1 Future Operational Adaptive Management Minimization Measure Triggers and Actions.* The approach described for evaluation of take rate does not seem to take into account time sufficiently, especially given that 75% of the proposed Tier 4 take level of 115 (86) is not much higher than the current estimated take. Take rate should be determined and evaluated against a trigger on an ongoing basis to correct a situation early that indicates a potential for exceedance of the total permitted take, and not just when estimated take reaches 150 or 199. If there is high take in a few early years, not triggering adaptive management until an estimated 150 bats are taken will be too late.
8. *Section 8.4 Funding Assurances.* Some of the funding described in this section is for ongoing compliance monitoring costs, if the facility is operating, and not required in funding assurance costs. It should be made clear in this section, and in Appendix 18, what funding is required for funding assurance in accordance with HRS 195D. This should include funding for DOFAW to manage fulfillment of any outstanding mitigation obligations if at some point the ITL-holder is unable (e.g. bankruptcy) or unwilling to pay those costs. DOFAW suggests this value as 5% of mitigation costs.

Respectfully Submitted,



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Division of Forestry and Wildlife