



United States Department of the Interior
FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawai'i 96850



State of Hawai'i
DEPARTMENT OF LAND AND
NATURAL RESOURCES
Division of Forestry and Wildlife
1151 Punchbowl Street, Room 325
Honolulu, Hawai'i 96813

In Reply Refer To:
2022-0040445

June 14, 2022

Mr. Paul Toner
General Manager
Royal Sonesta Kaua'i Resort
3610 Rice Street
Līhu'e, Hawai'i 96766

Subject: Comments on Royal Sonesta Kaua'i Resort's Implementation of the Kaua'i Seabird Habitat Conservation Plan (Incidental Take Permit TE74393D-0/Incidental Take License ITL-24)

Dear Mr. Toner:

This letter serves for the Hawai'i Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) and the U.S. Fish and Wildlife Service (Service), collectively referred to herein as the "Resource Agencies", to provide comments and recommendations on Essex House Condominium Corporation's (dba Royal Sonesta Kaua'i Resort, formerly Kaua'i Marriott Resort, Līhu'e) implementation of the Kaua'i Seabird Habitat Conservation Plan (KSHCP) (Incidental Take Permit TE74393D-0/Incidental Take License ITL-24).

We understand the management of the Association of Apartment Owners of the Kaua'i Marriott Resort transitioned in 2021, from Essex House Condominium Corporation (an affiliate of Marriott International, Inc.) to Sonesta International Hotels Corporation. Although the management has changed, the property continues to be owned by HPTMI Hawai'i, Inc. after this transition. On October 26 2021, you requested that the Service transfer the incidental take permit TE74393D-0 (ITP) from Essex House Condominium Corporation to Association of Apartment Owners of Marriott's Kaua'i Resort and Beach Club on behalf of itself and its members, including without limitation HPTMI Hawai'i, Inc., HPT TRS MRP, Inc., Marriot Kaua'i Ownership Resorts, Inc. and Marriott Ownership Resorts Inc. (collectively the "AOAO"). On October 27, 2021, a similar request was submitted to DOFAW to transfer the incidental take license no. ITL-24 (ITL). In those letters, the parties also notified the agencies that the AOAO of Marriott's Kaua'i Resort and Beach Club will undergo a name change sometime in 2022, to reflect rebranding of this resort by Sonesta International Hotels Corporation. You have since confirmed that the AOAO has not yet changed its name and will have their spring meeting soon, where you expect the name change to be taken up at that meeting. Until that name change has

been confirmed, you requested we hold off on processing an ITP/ITL transfer request. Until the permit is transferred it continues to be held by Essex House Condominium Corporation and implemented by your current management. We will hereafter refer to our comments as Sonesta.

Our feedback is compiled from agency review of your 2021 annual report, your March 4, 2022 annual participant meeting, and the March 14, 2022 review by the Hawai'i Endangered Species Recovery Committee. Our comments have been organized by category pursuant to the biological goals and objectives of the KSHCP and are stated below.

Facility Lighting: KSHCP Biological Objective 1.A.

Avoid and minimize the impacts of the taking of Covered Seabirds due to light attraction by removing or turning off lighting and altering light structure and function by the end of Year 1, as specified in PIPs.

You state that in addition to the seabird fledging season lighting minimization measures described in Table 1 of your PIP, the following changes were made in the 2021 season: (1) in the Dukes parking lot two 250w 22,000 lumen 4200K metal halide light fixtures were removed and replaced with one 110w 12,281 lumen 4000k LED light fixture; (2) the light above the Da Life shop facing the promenade was turned off; (3) the Hā'upu parking lot light was redirected to face straight down; and (4) the Hā'upu parking lot lights have one more layer of tint.

Agency Comments or Recommendations:

The resource agencies acknowledge your efforts to continue to reduce lighting impacts in compliance with the KSHCP lighting guidelines. Please amend your report to include the dates of lighting assessment(s) and the subsequent modifications noted above. While we acknowledge that you made efforts to reduce lighting impacts to seabirds, it appears that your lights do not sufficiently avoid impacts to all Covered Species, as evident from the unauthorized take of turtles in 2021. While we understand the beach is owned by DLNR, and not Sonesta, you have a legal responsibility to minimize to the extent that you will avoid all lighting impacts to turtles, as no authorized take is covered by your ITP/ITL. Therefore, we recommend you conduct a lighting assessment as soon as possible and minimize all lighting that is visible from the beach to prevent future light attraction of sea turtles (honu). If you anticipate your lights will not avoid take of honu we recommend you work with us to request an amendment to seek authorized take of listed honu under section 10 of the Endangered Species Act and HRS chapter 195D.

Predator Control: KSHCP Biological Objective 1.B.

Minimize mortality of Covered Seabirds downed due to light attraction by implementing actions to reduce presence of free-roaming seabird predators such as cats and dogs at Participant facilities, as specified in PIPs.

We understand that predator searches were conducted daily by a commercial contractor who moves five traps around the property to the best locations to catch predators. You have stated that you conduct a pre-season, mid-season, and end-of-season predator specific survey. You also

mention that all your staff, first responders, and bird searchers are required to report any predators on the property. You then send the predator control company that information and usually you can send them a photograph of the observed animal. In September 2021, the resort biologist visited the property and resulted in the predator control contract increase the number of traps to five and place the traps in more logical places to catch predators. During the seabird season, Sonesta staff helped the predator control company improve trapping implementation by informing them of when and where predators were identified.

You have stated that there were no cats on the property prior to the seabird season as well as at the beginning of the season. You also stated that you were able to remove both of those animals in 2021 "...about halfway through..." (October) in the seabird season. You also state that predator surveys were conducted year-round in 2021, and no significant predator presence was observed.

The resort posts signs within the resort prohibiting outdoor feeding of cats.

Sonesta has submitted a predator control and downed seabird search interim implementation plan in effect during construction for predator monitoring and removal for the covered facility, including effort and efficacy monitoring in fulfillment of ITP Special Terms and Conditions §L and ITL Special Conditions §G of the ITP/ITL to the agencies on May 26, 2021.

Agency Comments or Recommendations:

We discussed that we would review your Implementation Plan that was provided on May 26, 2021 and will provide our comments for your plan revision in order to be implemented for the 2022 season. We understand that your resort has reopened and look forward to the updated interim implementation plan that will be used during regular operations.

We understand you have concerns with reporting the results of your predator control implementation in the annual report; therefore, you have agreed to provide a separate document for the agencies, but not the ESRC (and public), that provides this information so the agencies can evaluate your predator control efficacy. You have since provided a summary for 2021 and have indicated that you will continue to provide this to the agencies. You also request to keep it confidential so the public does not have opportunity to review but will provide enough information for the agencies to verify that we have enough information to support an evaluation of the efficacy of your predator control implementation for the ESRC.

While you state that predator surveys were conducted year-round, the summary you provided does not include any survey results. Please amend your report to include predator observations by date, which can be evaluated along with capture data to determine efficacy of your predator control program. We request and recommend in 2022, you conduct daily seabird predator monitoring for inclusion in your annual reporting. The daily predator monitoring data should be collected prior to the start and through the end of the predator trapping implementation. As we discussed, this information is needed for us to evaluate the efficacy of the predator control

program as well as provide any other recommendations for future predator control implementation.

As you know, it is imperative that predator control begins in advance of the start of the seabird season; you confirmed 5 traps and 460 trap nights, indicating that trapping only occurred during the 3-month season, not before. We also find it concerning that the two cats you captured persisted at the resort until about halfway through the season in October. We request that your predator control summaries include dates and results of predator surveys, and dates of captures.

The Service was able to visit the resort on May 26–27, 2022, and meet with your director of security, Mr. Donald “Moki” Okami and his staff. We had documented a cat on the evening of the 26th and notified Moki the next day. He had mentioned that the cat is owned by a tenant on the property. Please be advised that cats can depredate honu hatchlings and as documented in previous years the beach fronting your resort has and will continue to be a nesting site for honu. Also, the tenant should be notified that free-roaming seabird predators are not permitted on the covered property and as such should be removed prior to the beginning of the seabird fallout season (see KSHCP Section 5.3.2).

As discussed in your meeting with the agencies and by the ESRC, the discovery rate for any permit is dependent on both effective seabird searching and effective predator control. An effective predator control program ensures that any seabirds that are downed can persist on the landscape for searchers to find and retrieve birds for rehabilitation. In the absence of a highly effective predator control program, it is more likely that birds will be depredated rather than recovered. Therefore, a highly effective predator control program will result in better implementation of the Biological Objectives of the KSHCP.

Staff Training: Biological Objective 1.C.

Minimize mortality of Covered Seabirds downed due to light attraction by conducting annual Worker Seabird Awareness and Response Training (WSART), as specified in PIPs.

You state that thirteen PowerPoint presentations were made to 235 staff members that included a review of the fact sheet, KSHCP Downed Wildlife Protocol, and Incident Documentation and Reporting Form. You state that Sonesta conducted Seabird Awareness and Response training in accordance with your PIP Item 11. You have indicated that the training was completed prior to September 15 and within the first day of employment for new employees hired within the fallout season. You also state that your PowerPoint training was updated with additional pictures and is included as Attachment C to your annual report. Sonesta implemented the following training activities during the 2021 seabird fledging season in accordance with your PIP Item 12:

1. Displayed Save Our Shearwaters (SOS) informational posters in break rooms and common staff areas.
2. Put it in the daily hotel newsletter for all employees.
3. Staff attended the annual Worker Seabird Awareness Training.

4. Reminded staff about seabirds during department stand up meeting (pre-shift meetings) to bring additional awareness.
5. Discussed seabird requirements and protocols in other daily manager stand up meetings.
6. Invited a qualified biologist to speak at staff meeting(s).

Agency Comments or Recommendations:

We recommend your PowerPoint materials show photos of downed birds instead of birds that are flying over the ocean. Having actual photos representative of what trained searchers might encounter is more effective than providing birds flying or rafting in their oceanic habitat. We recommend these photos use examples of birds that are under cover (e.g. vegetation, crevices, supplies, valet carts, etc.) that will help to quickly replicate a search image for seabird searchers to identify).

Your summary of training efforts state that the date of training was September 1 – December 15, 2021. Please provide the actual date of training. We recommend you provide your honu training immediately prior to the honu nesting season (prior to May 1) and your downed seabird training prior to the seabird fallout season (prior to September 15) to keep personnel reminded of when each season begins. We recommend that it is targeted so personnel do not become complacent in their efforts.

Your method of training delivery (e.g., video, in-person, educational materials) states you provided PowerPoint presentations; however, we are unable to determine if these were in person and on the ground demonstrations or only presentations via a computer screen. Please describe this better for future annual reporting. We also recommend having in person training with on the ground training for all personnel responsible for conducting monitoring for honu and for downed seabirds to implement the monitoring and reporting procedures as required more effectively by the terms and conditions of the ITP/ITL. The results of the searcher efficiency trials indicate that your current training program is insufficient. As discussed, we expect you to coordinate with the agencies for onsite training to show the searchers where birds are likely to hide and how to best detect them. We also recommend that you periodically test your personnel who are conducting the monitoring to ensure they are effectively implementing the protocols as outlined in your training program.

We have reviewed the examples provided in your KSHCP Participant Annual Report - Base Form, Attachment B. We notified you in our meeting that the “Agency and Endangered Species Program Contacts, Who to Call” should be updated annually to reflect the current contact information.

Outreach: Biological Objective 1.D.

Minimize mortality of Covered Seabirds downed due to light attraction by implementing seabird awareness outreach to the public, guests, and customers at Participant facilities as specified in PIPs.

You have provided copies of your outreach materials with your annual report. Sonesta implemented the following outreach activities during the 2021 seabird fledging season in accordance with its PIP Item 12:

1. Displayed SOS informational posters in the lobby to promote guest awareness.
2. Put an informational flyer put into each room as awareness to guests and asking them to keep curtains closed during the season.

Your summary of training efforts state that the date of outreach effort was September 15 – December 15, 2021.

Agency Comments or Recommendations:

We have reviewed the examples provided in your KSHCP Participant Annual Report - Base Form, Attachment B. Photo 2 shows signs stating, “Do Not Release Predators!” It would be beneficial to state what “predators” are (e.g. cats, dogs, etc.). It may not be apparent to resort guests or store tenants what predators the resort is referring to.

While we recognize that Sonesta cannot expect its guests to comply with the search conditions of the ITP/ITL under the KSHCP, it was documented during the Searcher Efficiency Trials that very few decoys in the open were discovered. We would have anticipated that having a good outreach and education program may have informed guests that birds are important to find; and we also anticipated successful programs may have encouraged guests to approach the decoy to see the tags which then may have prompted guests to report the decoys. However, no decoys were reported by the public. We can assume that having a good outreach and education program would only help to further minimize impacts of the Covered Species; therefore, we recommend these outreach efforts be better implemented to assist with your efforts to educate the public and potentially have them assist in reporting of downed seabirds.

Minimization and Avoidance of Light Attraction for Turtles:

Biological Objective 1.E.

Avoid and minimize honu hatchling disorientation due to lighting at beachfront facilities by implementing best lighting practices as specified in PIPs and protecting any nests at facilities via shielding as needed.

As stated in the Section 9.2 of the KSHCP, “It is anticipated that Participants with beach front properties can completely avoid future incidental take of honu. Currently there is no provision for requested incidental take of honu in proposed Participant PIPs, and the minimization and mitigation measures outlined in Section 9.4 will be implemented as described to ensure that there is zero take of the species.” Unlike the Covered Seabirds, which are attracted to lighting that is visible from above, honu are attracted to lighting that is visible from below. Because of this, lighting that is visible from the ground can unintentionally attract honu from their nesting beaches. You have confirmed that promenade lights would be immediately shut down if a nest is found. As documented in your PIP prior to the finalization of the KSHCP, a turtle nest was

identified at Kalapaki Beach on August 21, 2019. In that instance, police responded when unauthorized people were handling hatchlings that were drawn to the lights at Duke's restaurant.

You reported the beach fronting your resort was searched in accordance with Sonesta's PIP Item 10: "Kalapaki Beach is approximately a quarter mile long and is located directly in front of the pool..." and "...groundskeepers rake the beach twice a week." You have stated that your personnel that are responsible for raking and searching the beach undergo annual endangered species training. Your staff did not detect any nests in 2021. However, Sonesta's annual report states that on August 18, 2021, security patrols found twenty-six honu hatchlings were found within the grounds of the resort "...spread across a wide swath of the property... in the hallways and in the pool."

Agency Comments or Recommendations:

You have also indicated that the honu training that the agencies provided on May 26, 2022, was very helpful. We appreciate Moki and his efforts to coordinate this training and continue to encourage you to reach out to the agencies should you request future training efforts.

We note that the honu nesting is typically May 15 through December 15 each year. This is not the same as the seabird fledgling season, which is September 15 through December 15. This year the first detected honu nesting occurred in early May 2022. Therefore, your honu nest monitoring must begin no later than May 15, with notification and protection of any discovered nests, and preparation for minimizing lighting at your resort in advance of when the hatchlings are anticipated to emerge.

As mentioned in the March 4 meeting with Agencies, the security patrols found the twenty-six hatchlings "...spread across a wide swath of the property... in the hallways and in the pool." As required by the KSHCP (Section 9.5), "there is not anticipated to be any incidental take of honu requested..., as monitoring and nest protection measures described in Section 9.5 will be implemented by all Participants with visible lights on beachfront property. However, if honu hatchling disorientation does occur, the following protocols should be followed:

- The Department of Aquatic Resources (DAR) should be contacted immediately so the hatchling turtles are only handled by staff or volunteers that have been permitted to handle endangered species.
- Disoriented hatchlings should be protected from foot or vehicle traffic, predation, and handling.

All Participant staff should be trained on Standard Operating Procedures (SOPs) with regard to hatchling disorientation, to minimize take impacts."

The KSHCP states "...all sea turtle (honu) activity should be reported immediately to USFWS and DLNR and all potential nest sites shall be protected immediately using measures specified ..." It is also stated in the KSHCP that "...evidence of hatching shall be reported to USFWS and DLNR within 24 hours." Your reports states "Sonesta staff assisted by notifying DLNR DOFAW of the hatchlings on August 18, 2021," however, there is no record of any notification to

DOFAW, DAR, USFWS, or the stranding hotline. In addition, no written downed-wildlife report was submitted to the agencies; the agencies were unaware of the honu take until the annual report was received in 2022. This is unacceptable; your contract biologist works with several similar properties and is very familiar with downed-wildlife reporting requirements. You mentioned you did not observe a nest, but that a "...honu nest was found on the adjacent beach owned by DLNR." Please provide any communication logs or notification, as well as the details, including any photos, regarding this event. Also be advised that resort staff are not permitted to handle listed turtles unless under the direction or supervision of resource agency staff, or DAR staff or permitted volunteers.

To report all honu activity, please immediately call to the Kaua'i Hotline, staffed by DLNR and NOAA 24/7: 808-651-7668. Also send an email with the pertinent information to:

Jamie Thomson, NOAA: jamie.thomton@noaa.gov

Mimi Olry, DLNR: mimi.olry@hawaii.gov

Heather Ylitalo-Ward, DLNR: heather.a.ylitalo-ward@hawaii.gov

Once the response staff have been notified via hotline and email, send a detailed report to the following:

DOFAW downed wildlife email: dofaw.hcp@hawaii.gov

Kate Cullison, DOFAW: Katherine.cullison@hawaii.gov

Jiny Kim, Service: Jiny_kim@fws.gov

Lindsay Young, Prime Contractor: lindsay@pacificrimconservation.org

Honu are attracted to and disoriented by lighting that is visible from their nesting beach. Therefore, we recommend you immediately conduct a lighting assessment specific to honu to identify lighting that can be further minimized to avoid unauthorized take of turtles should you find a nest. Also, sea turtles remain faithful to their natal beaches; therefore, it is reasonable to expect nesting and hatching events at the beach fronting your resort to continue in the future.

As you are aware, your current permit does not authorize take of honu. If you are unable to avoid violation of Section 9 of the ESA and HRS chapter 195D we request, you contact our office immediately to amend the ITP/ITL to include incidental take of honu.

Recovery of Downed Seabirds / Searcher Efficiency Trials:

Biological Objective 1.F.

Minimize mortality by implementing recovery and release of Covered Seabirds downed due to light attraction through the Save Our Shearwaters (SOS) program or other certified rehabilitation facility.

Your report states that seabird searches were conducted at least twice a day for all built-upon areas, more frequently for other areas; and inspections were conducted throughout the day. During the seabird season, patrols made two rounds of the property in each 8-hour period (shift).

Search times varied but included within 1 hour before sunrise (6–7am) and 3–4 hours after sunset (9–11pm) per KSHCP requirements. Search personnel conduct pedestrian surveys (on foot) with flashlights and in golf carts. Searchers look under and around objects and within vegetation for downed birds and evidence of predators. In addition to the dedicated patrol team, the Director and Assistant Director of Security spent approximately 6 hours daily searching the Sonesta property. One wedge-tailed shearwater was found on September 30 and handled in accordance with the KSHCP Downed Wildlife Protocol. No Covered Species were found on the property.

You have stated that in response to the first missed decoy of the resource agencies' discovery rate validation testing, additional staff training was provided, and additional searches were conducted. Sonesta's General Manager and Director of Safety & Security was responsible for overseeing the seabird protocols, bird searches and recovery, record keeping, and reporting. The entire staff was responsible for searching their respective work areas during work hours. There were approximately 350 daily employees during the 2021 fledging season. The Safety & Security officers, one Supervisor, and one Duty Engineer were also responsible for patrolling the property for downed seabirds, honu nest sites, and predators during the seabird season.

Table 1. Summary of Sonesta's Total and Annual Permitted Take of Covered Species.

	NESH		HAPE		BANP	
	Lethal	Non-lethal	Lethal	Non-lethal	Lethal	Non-lethal
30-Year Permit Term	33	22	1	1	1	1
2020	0	0	0	0	0	0
2021	0	0	0	0	0	0
Total	0	0	0	0	0	0

Searcher Efficiency Trials:

Pursuant to KSHCP 6.2.2.1(3), a discovery rate validation program was developed and implemented October 27–December 15, within the 2021 seabird fallout season. The Searcher Efficiency Trials were meant to demonstrate the appropriateness of each Participant's stated Discovery Rate. Discovery Rates are based on two participant-controlled variables; searcher efficiency at finding downed birds, and effective predator control to ensure that birds remain alive to be found.

Table 2. Results of the Searcher Efficiency Trial at Sonesta.

Sonesta	Total Decoys Deployed	Total Decoys Reported	Discovery Rate (percent)
Open	10	3	30
Partial Cover	4	0	0
Full Cover	4	0	0
Total	18	3	17

Agency Comments or Recommendations:

The searcher efficiency results at Sonesta are less than the expected rate. Despite your assertion that the resort is fully searched by all staff, including a dedicated patrol team, plus the Director and Assistant Director of Security spending approximately 6 hours daily searching, the resort failed to find the majority of decoys placed out in the open and all of the decoys placed in or near cover. Based on the Searcher Efficiency Trial, the training and methods of searching requires a more dedicated approach. As discussed in our meeting with you, we recommend having dedicated searcher efforts rather than efforts conducted at all times of the day by staff that are performing other resort duties. We also recommend you continue to evaluate the effectiveness of your searcher efforts.

As identified in the Searcher Efficiency Trial Results, most decoys were missed in the open and all decoys were missed undercover; therefore, we recommend improved efforts to search for downed seabirds throughout the resort as well as under cover at locations of the resort. Searchers should be reminded to check under edges and into and under vegetation. We advise keeping potentially concealing vegetation and groundcover trimmed as much as possible through the seabird season to reduce the amount of available cover and help searchers detect more birds.

We recommend improvements in seabird searching and response at your facility. The agencies request that Sonesta provide details (dates, staff, and training information) about the additional 2021 trainings provided in response to the first missed decoy. Please keep us informed well in advance of the seabird fledgling season of any adaptive management actions that you plan to implement in order to meet the expected 50 percent discovery rate. The resource agencies request coordination with Sonesta to improve searcher training prior to the 2022 season, and that Sonesta work with a 3rd party entity to repeat the searcher efficiency trial.

As noted by the ESRC, the use of detector dogs would greatly improve the resort's searcher efficiency and provide a higher level of confidence that downed seabirds are being recovered for rehabilitation. While dogs are significantly more likely to find hidden birds than humans, there is nevertheless variation in skill, therefore, if a dog program is utilized, we request you ask for a validation result for each dog and handler team.

We appreciate your continued efforts to ensure the success of the KSHCP. If you have concerns being unable to fully implement the terms and conditions of your ITP/ITL please reach out to us to schedule a meeting to discuss the next steps. Please feel free to contact us should you have any questions regarding our letter.

Sincerely,

AARON
NADIG

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by AARON NADIG
Date: 2022.06.14
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Island Team Manager
O‘ahu, Kaua‘i, Northwestern Hawaiian
Islands, and American Samoa



Wildlife Program Manager