

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, HI, 96813

March 23, 2018

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST APPROVAL OF AMENDMENT TO THE HABITAT CONSERVATION PLAN FOR THE DANIEL K. INOUE SOLAR TELESCOPE (DKIST; FORMERLY KNOWN AS THE ADVANCED TECHNOLOGY SOLAR TELESCOPE (ATST) AND ASSOCIATED INCIDENTAL TAKE LICENSE (ITL-13).

BACKGROUND:

The Habitat Conservation Plan (HCP) for Construction of the Advanced Technology Solar Telescope at the Haleakalā High Altitude Observatory Site (DKIST) Maui, Hawai'i, TMK 2-22-007-008, was approved October 29, 2010. The corresponding ITL-13 was issued December 1, 2011 to cover the incidental take of 30 fledglings and 5 adult Hawaiian Petrels or 'Ua'u (*Pterodroma sandwichensis*) over the duration of a 10-year permit term covering the construction of the telescope.

The potential project effects anticipated related to construction included collision of birds with equipment and buildings, reduced breeding success due to disturbance, and collapse of nest burrows due to ground vibration and trampling. To mitigate the potential effects and habitat disturbance, DKIST implemented the following actions, including but not limited to:

- Haleakalā Silversword seed propagation and outplanting, resulting in 243 plants
- In accordance with the HCP, DKIST constructed an ungulate-proof fence enclosing a 313-acre Conservation Area adjacent to Haleakalā National Park, completed November 18, 2013.
- Non-native predators were controlled using bait stations and traps.
- DKIST monitored nesting and breeding at petrel burrows in the conservation area and the control site.
- DKIST monitored ground disturbance and vibration at several burrows near construction activities.

Bird-strike monitoring around the two Federal Aviation Administration (FAA) towers, the telescope construction site, and the conservation fence has occurred annually during seabird nesting season, February 1 to November 30, since 2011. No petrel collision events associated with the towers, construction site, or conservation fence have been recorded since bird-strike

monitoring began in 2011. Noise and vibration monitoring has also been conducted at the burrows nearest the external construction activities to determine if there is an impact due to construction activities. **To date, no take of covered species has been attributed to the project covered under this HCP.**

Most external construction was completed as of early March of 2016. Since that time, construction noise measurements and vibration monitoring is conducted only during large, noisy, or earth-moving operations.

The HCP provides for mitigation to terminate six years from complete fencing of the conservation area and removal of all ungulates, or six years from the start of construction, whichever is longer, following submittal of a satisfactory annual report and review that demonstrates mitigation goals and net recovery benefit have been met, and assuming all construction activities are completed at that time. Construction began in late 2012 and is expected to be complete by year end 2018. Mitigation fencing and ungulate removal was completed in November of 2013, thus mitigation would continue until November 2019.

ANALYSIS:

DOFAW notes that there has been no take noted as a result of the DKIST facility, mitigation measures required in the HCP have been fully implemented, and significant net benefits have been achieved by the implementation of those measures.

On September 28, 2016, DKIST requested that the Endangered Species Recovery Committee (ESRC) give preliminary consideration to the possibility of termination of the HCP based on completion of exterior construction activities, provided that the net benefit requirement of the HCP has been achieved and there is no longer a risk of construction-related take. The Committee was supportive of the amendment concept but noted that there were questions concerning the determination of net benefit, and suggested a written request for amendment be submitted for consideration, including an explanation of how net benefit has been achieved. The Committee also noted that approval of the amendment would not result in a predetermined termination date, rather it would amend the conditions that DKIST must satisfy prior to requesting termination. The HCP would remain valid until the terms, as amended, have been met as recommended by the ESRC. There were no public comments. In a letter transmitted to DOFAW December 15, 2017, DKIST formally submitted its request for an amendment to the HCP to allow for termination of the HCP after five years of mitigation following construction of the conservation fence, provided certain conditions have been met (i.e., demonstrated net benefit, satisfactory mitigation, and submission of a final report.

At the January 24, 2018, ESRC Meeting, DOFAW staff and DKIST presented the proposed amendment to the HCP, which would allow termination at the end of exterior construction after five years of mitigation from completion of the fence instead of six years, with the possibility of ending, at the earliest, November 18, 2018.

The construction activities that are addressed by the HCP are defined as those external to the completed DKIST structures that could potentially induce noise or vibration above the permissible threshold limits defined in the HCP (such as certain ground-disturbing activities). When these activities are completed, which is expected by the end of calendar year 2018, then for purposes of the HCP, construction activities and any resulting risk of take, will be finished, and the HCP can be terminated provided that other criteria, including demonstration of net benefit, have been met.

The Endangered Species Recovery Committee voted to recommend approval.

PROPOSED AMENDMENT:

The edits to the HCP requested to become the amendment are shown below in Ramseyer format:

1. **Section 4.3, subheading, “Ungulate Proof Fence Location and Ungulate Removal,” paragraph 2, page 60:**

“NSF will ensure the fence is maintained, the conservation area is managed for zero tolerance of ungulates, and predator control measures are implemented within the conservation area, as detailed below, for a period of no less than ~~six~~five years following completion of the fence and removal of all ungulates, or the duration of construction activities, whichever is longer.”

2. **Section 4.3, subheading, “Estimated Mitigation Duration,” paragraph 1, page 64:**

“The duration of the mitigation shown in this table is based on a ~~six~~five- year period, beginning upon completion of the fence and indication of no ungulates within the enclosure and overlapping with the period of construction. Termination of the mitigation project after the ~~six~~five-year period may be approved by the Administrator of the Division of Forestry and Wildlife, upon the recommendation of the ESRC and its determination that a state following—satisfactory annual report has been submitted and review of that report demonstrates mitigation goals and net recovery benefit have been met, assuming all exterior construction activities are completed at that time.”

3. **Section 6.2, “HCP Scope and Duration,” page 79:**

“The term of the HCP is for a period of ~~6 years, through September 1, 2016~~ no less than five years following completion of the conservation fence (November 18, 2013) or until construction activities are completed, whichever is longer.”

4. **Section 6.3, subheading, “HCP Performance and Success Criteria,” paragraph 2, page 80:**

“An EA for the proposed conservation fencing and other conservation measures not already analyzed in the FEIS has been funded by NSF, through its awardee, AURA/NSO, and will be completed in 2010,~~so the mitigation efforts can begin in~~ 2010.”

Section 4.3, subheading, “Long-Term Rodent Control in the Immediate Vicinity of the ATST,” page 62:

Proposed amendment: Delete this entire subheading (note that this requirement is an artifact of the initial attempt to combine both the HCP and the USFWS Biological Opinion into a single document and should be deleted here due to its redundancy with the same, existing, requirement in the Biological Opinion). The long-term rodent control will continue as written in the HCP, but

in absence of the HCP these actions will be an ongoing requirement of the USFWS Biological Opinion under USFWS oversight.

TERMINATION PROCESS

If this HCP amendment is approved by the BLNR, DKIST may, at any time after November 2018, and if exterior construction is completed, request termination in accordance with the amended terms. DKIST will submit a final report to the ESRC that includes the project's avoidance and minimization measures, take (if any), mitigation and monitoring actions, observations and conclusions, and determination of net benefit. In accordance with the amended terms, the ESRC may recommend termination and the Administrator of DOFAW may approve that recommendation. If termination is so approved, a letter to that effect will be delivered to DKIST and posted along with the final report on the DOFAW website.

Endangered Species Recovery Committee:

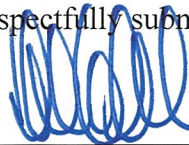
On January 24, 2018, the ESRC voted to recommend approval of the amended *DKIST Habitat Conservation Plan* and associated Incidental Take License to the Board of Land and Natural Resources, pursuant to HRS 195D-25(b)(1).

RECOMMENDATION:

The Department recommends that the Board:

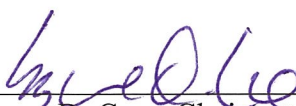
1. Approve the amendments outlined above to the DKIST Habitat Conservation Plan (HCP) and Incidental Take License subject to review and approval by the Attorney General.

Respectfully submitted,



David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources