

RECORD OF DECISION

for

Proposed Issuance of an Endangered Species Act

Section 10(a)(1)(B) Incidental Take Permit

to

Kawailoa Wind, LLC

for the

Kawailoa Wind Farm Project

U.S. Fish and Wildlife Service

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Introduction

This Record of Decision (ROD) was prepared by the U.S. Fish and Wildlife Service (Service) in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321 *et seq.*), as amended. The purpose of this ROD is to document the decision of the Service in response to an application submitted by Kawaihoa Wind, LLC (Applicant) to amend their Incidental Take Permit (ITP) addressing species listed under the Endangered Species Act of 1973 (ESA) (16 U.S.C. §1531 *et seq.*), as amended. The information contained in this ROD is based on the ITP application, the existing Habitat Conservation Plan (HCP) (SWCA 2011), the submission of a supporting HCP Amendment (Tetra Tech, Inc. 2019), the Final Programmatic Environmental Impact Statement (FPEIS) addressing this action (USFWS 2019a), and other information in the administrative record. The Service's decision to issue the ITP Amendment follows a determination that the ITP issuance criteria under section 10(a)(2)(B) of the ESA have been met. The amended ITP allows for the operation of the Kawaihoa Wind Farm (Project) on the island of O'ahu, Hawai'i to occur in compliance with the ESA. The amended ITP and its associated existing HCP and HCP Amendment provide protection for, and promote the conservation of, the Hawaiian hoary bat and Hawaiian petrel (Covered Species) while enabling the Applicant to conduct otherwise lawful activities associated with the operation of the Project and other activities covered by the existing HCP and HCP amendment.

This ROD presents the Service's permit decision and the rationale supporting the decision, identifies the reasonable range of alternatives considered in the FPEIS, and discusses whether all means to avoid or minimize environmental harm from implementation of the selected alternative have been adopted (40 C.F.R. § 1505.2).

Proposed Federal Action

The Service proposes to issue an ITP Amendment to Kawaihoa Wind, LLC, under the authority of section 10(a)(1)(B) of the ESA for a period of 20 years from the initial date of permit issuance (December 8, 2011; TE59861A-0) and expiring December 7, 2031. Should the Applicant discontinue the operation of KWP II during or after this 20-year period, the land lease terms require that the turbines and other structures be removed and the site remediated and stabilized. No coverage for these activities is included beyond the term of the permit. Documents used in the preparation of this ROD include the following:

- Kawaihoa Wind Power Habitat Conservation Plan (SWCA 2011)
- Kawaihoa Wind Power Final Habitat Conservation Plan (Amended) (Tetra Tech, Inc. 2019);
- Final Programmatic Environmental Impact Statement Addressing the Issuance of Incidental Take Permits for Four Wind Energy Projects in Hawai'i (USFWS 2019a)
- The Service's Biological Opinion on the HCP for Kawaihoa Wind Power (USFWS 2019b);
- Service Findings and Recommendations for the Proposed Issuance of an ESA Section 10(a)1(B) ITP for the Kawaihoa Wind Power HCP (Service 2019c)

Purpose and Need

The purpose of the Service's proposed ITP action is to fulfill our legal and conservation obligations under Section 10(a)(1)(B) of the ESA in response to the Applicant's Amended HCP and request for an amended ITP addressing the Project. Any amended permit issued by the Service must meet all applicable issuance criteria and implementation should be technically and economically feasible. *See* 16 U.S.C. 1539(a)(2)(B); 43 C.F.R. § 46.420(b). Issuance criteria include requirements that the applicant will minimize and mitigate the impacts of the taking to the maximum extent practicable and the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild.

Project Description

No major changes have occurred to the Project description since the issuance of the ITP (TE59861A-0) December 8, 2011. The Kawaiiloa Wind Power Habitat Conservation Plan, finalized in 2011 for the project contains a detailed technical description of the infrastructure for the project (SWCA 2011). The Applicant operates and maintains the Kawaiiloa Wind Project, located on privately-owned Kamehameha Schools property near the town of Hale'iwa on O'ahu, Hawai'i. The project area is located on approximately 4,200 acres of privately owned land. Kawaiiloa consists of a 69-megawatt (MW) wind power generating facility and related facilities. Kawaiiloa received an ITP (Permit Number TE59861A-0) in December 2011 and began commercial operations in November 2012. The Project comprises the following components and site features: 30 Siemens 2.3-MW wind turbine generators (WTGs) and supporting equipment and infrastructure. Approximately 12.5 miles of internal paved and unpaved access roads connect the WTGs and other project components. A 9.9 acre area around each turbine is mowed to facilitate detection of downed wildlife. Each WTG has a height of 493 feet, measured from the ground to the tip of the blade. The poured concrete pad around each tower is approximately 46 square feet. Four miles of overhead and 7.2 miles of underground collector lines, an electrical substation, an operations and maintenance (O&M) building, two communication towers, two point of interconnection (POI) facilities, and two permanent unguaged meteorological (met) towers are also included. The total "developed" area of the site that contains structures, hardened surfaces or roads is 21.7 acres.

Covered Activities discussed in the Kawaiiloa Wind Power HCP (SWCA 2011) and Kawaiiloa Wind Power HCP Amendment (Tetra Tech, Inc. 2019) are those operational activities within the Permit Area that could result in an incidental take of one or more Covered Species and for which Kawaiiloa Wind, LLC seeks amended incidental take authorization.

The Kawaiiloa Wind HCP and HCP Amendment include measures to minimize effects and likelihood of take on the Covered Species. Bat deterrents were installed in May-June 2019 on all 30 WTG and are being evaluated for effectiveness to deter Hawaiian hoary bats. Additional minimization measures include the implementation of year-round low wind speed curtailment (LWSC) from sunset to sunrise. Under the HCP Amendment, Kawaiiloa Wind will commit to LWSC with a cut in speed of 5.0 meters/second (m/s) and a 0.2 m/s hysteresis that results in a WTG returning to service when winds are 5.2 m/s or greater, based on a 20-minute rolling average. Other measures to minimize the amount of take of Covered Species include but are not limited to: minimizing on-site lighting at buildings; implementing a Wildlife Education and Observation Program to reduce vehicle collision risk; and following Avian Power Line

Interaction Committee guidelines for overhead collection lines. To compensate for impacts to the Hawaiian petrel, Kawailoa Wind would fund predator control and monitoring work at the Hanakāpī'ai and Hanakoa seabird colonies within the State's Hono O Nā Pali NAR in Kaua'i in 2020. This work would include predator removal, seabird monitoring activities and predator monitoring activities.

The mitigation associated with the amended HCP includes three tiers of mitigation for the Hawaiian hoary bat (designated Tiers 4, 5, and 6). Tier 4 mitigation requires contribution of \$2,750,000 to The Trust for Public Land (TPL) toward the acquisition and long-term protection of a 2,882-acre area termed the Helelmano Wilderness Area (HWA). Following purchase of HWA by TPL, the land would be transferred to State of Hawaii Division of Forestry and Wildlife (DOFAW) and managed for multiple uses, including for the benefit of the Hawaiian hoary bat. Research would be incorporated into the overall management plan for the area that would focus on identifying optimal habitat or limiting factors for the Hawaiian hoary bat. The land deed would include the requirement that HWA to be managed in perpetuity for the protection of habitat and conservation of listed endangered species including the Hawaiian hoary bat, 20 species of listed plants, and other rare species as per the funding awards. For details see the Kawailoa HCP Amendment (Tetra Tech 2019).

Mitigation under Tiers 5 and 6 would consist of one or both of the following: land protection/preservation of habitat (i.e., easement or acquisition) and/or habitat restoration/land management. Within six months after reaching the tier trigger, Kawailoa Wind would submit a detailed site-specific mitigation implementation plan for the next tier of mitigation to the Service for review and approval. Funding assurances for the developed mitigation plan are required to be in place prior to triggering the next tier.

Should habitat protection or preservation be identified for Tiers 5 and 6, Kawailoa Wind would continue to coordinate with TPL, Service, DOFAW, and others to identify key parcels that would benefit the Hawaiian hoary bat. Land would be protected and preserved through acquisition, easement, or other legal conservation instrument.

Should habitat restoration or management be identified for Tiers 5 and 6, Kawailoa Wind would fund management activities targeted at a 1,725-acre area to mitigate for 85 bats in Tier 5, and a 406-acre area to mitigate for 20 bats in Tier 6. Kawailoa Wind would conduct habitat restoration/management actions in one of three areas, listed in order of priority:

- Option 1: Kawailoa Wind would fund restoration in the central Ko'olau Watershed located in central O'ahu within the upper portions ahupua'a from Waiawa to Kahauiki. The area encompasses approximately 12,000 acres, from which specific restoration areas can be selected. The elevation range of the site is between 110 feet and 1,700 feet. The Hawaiian hoary bat has been documented to have low levels of acoustic activity within the management area (Starcevich et al. 2019, Bonaccorso et al. 2019). The existing closed canopy, monotypic non-native forest would be restored to a diverse native forest along riparian buffers, planting ground cover, native shrubs, or native trees to create open water ways and foraging access to riparian areas, maintain the riparian habitat, and monitor bats insects and vegetation to determine the effectiveness of the actions on

achieving the success criteria. This option was only described as an alternative option in the draft PEIS. Additional details are provided in the FPEIS Appendix B.

- Option 2: Kawaiiloa Wind would fund management activities to be conducted by DOFAW at HWA, specifically to benefit the Hawaiian hoary bat. These activities would include fencing portions of HWA; control of feral ungulates, rodents, and invasive plant species; control of erosion through plantings and other methods; and reforestation with native and non-invasive hardwood tree species.
- Option 3: Kawaiiloa Wind would contribute funds to DOFAW for management activities to occur within the Waimea Native Forest, including fencing; controlling invasive species such as feral ungulates, plants, and other species; and planting native trees and plants.
- Option 4: If Options 1-3 are not feasible at the time of planning, Kawaiiloa Wind would work with DOFAW and the Service to identify an alternative parcel on O‘ahu to conduct or fund bat habitat management/restoration as part of Tier 5 and/or 6 mitigation based on selection criteria listed in **Appendix B** and in the Kawaiiloa Final HCP Amendment (Tetra Tech 2019). Management actions implemented at an alternative parcel would likely include activities similar to those proposed at HWA and Waimea Native Forest, such as fencing to keep out ungulates, ungulate removal, removal of invasive plants, restoration of water features, and plantings of non-invasive vegetation for roosting or promoting insect prey for the Hawaiian hoary bat. Should this option be chosen, Kawaiiloa Wind would work with the Service to develop a site-specific mitigation implementation plan to restore habitat for the benefit of the Hawaiian hoary bat based on best science at the time.

The Kawaiiloa Wind HCP Amendment incorporates strong adaptive management and triggers to ensure the project provides the benefits and offset for take, based on the best science available.

Plan Area

The Plan area covers the Kawaiiloa Project site and the Project’s mitigation areas as described in the existing HCP (SWCA 2011) and HCP Amendment (Tetra Tech 2019). This is unchanged since the issuance of the existing ITP (TE59861A-0).

Covered Species

The Project has an existing ITP (TE59861A-0) authorizing incidental take of 6 species (Hawaiian hoary bat, Hawaiian duck, Hawaiian moorhen, Hawaiian coot, Hawaiian stilt, and Newell’s shearwater). The amended ITP would increase their authorize take of Hawaiian hoary bat and include the Hawaiian petrel as a Covered Species (Table 1). No changes are requested for the other five species covered under the original ITP. The Kawaiiloa HCP Amendment includes measures to minimize and mitigate the impacts of the taking on all Covered Species, to the maximum extent practicable, and otherwise comply with the permitting criteria of 16 U.S.C. § 1539(a).

Table 1. Covered Species under the Kawaiiloa Wind Power Habitat Conservation Plan Amendment.

Common Name	Scientific Name	Status¹
Hawaiian hoary bat	<i>Lasiurus cinereus semotus</i>	FE, SE
Hawaiian petrel	<i>Pterodroma sandwichensis</i>	FE, SE

¹Federal Endangered = FE, State Endangered = SE

Covered Activities

The Applicant seeks take authorization for increased take of Hawaiian hoary bat and Hawaiian petrel associated with WTG operation and maintenance activities occurring within the Project site, and those activities necessary to carry out all mitigation and other conservation measures identified in the HCP, HCP Amendment, and/or the ITP. The Covered Activities are described in greater detail in the HCP and HCP Amendment and include activities associated with operation and maintenance of the WTGs, access roads, search plots, collector lines, implementation of mitigation, and other conservation measures. All covered activities will be implemented in accordance with the terms of the HCP and ITP.

Protection Measures and Conservation Strategies

The amended ITP is conditioned on implementation of the HCP and Amended HCP. The Applicant developed its amended HCP with technical assistance from the Service, the Hawaii Department of Land and Natural Resources/Division of Forestry and Wildlife (DOFAW), and the Hawaii State Board of Land and Natural Resources' advisory Endangered Species Recovery Committee. Impact avoidance and minimization measures associated with the operation and maintenance of the Kawaiiloa Wind Farm Project are described in Chapter 2 of the FPEIS and in Chapter 6B of the Kawaiiloa Wind HCP Amendment. The termination date of the amended ITP will remain the same as the existing Permit, December 7, 2031. The conservation strategy of the HCP Amendment is intended to provide a net conservation benefit to the Covered Species through a combination of on-site and off-site measures including, without limitation, funding of predator control and monitoring work at the Hanakāpī'ai and Hanakoa seabird colonies within the State's Hono O Nā Pali NAR in 2020 to compensate for impacts to the Hawaiian petrel; funding land acquisition of suitable Hawaiian hoary bat habitat with conservation protection for perpetuity for Tier 4, and habitat restoration, land acquisition, and/or land protection with conservation easement for perpetuity, approved by the Service, for Tier 5 and Tier 6 Hawaiian hoary bat mitigation.

Monitoring and Adaptive Management

Section 7.3.2.5 of the Kawaiiloa HCP Amendment describes specific adaptive management triggers to ensure the requested take of Hawaiian petrel is not exceeded. Section 7.6.4.1 of the Kawaiiloa HCP Amendment describes specific adaptive management triggers to ensure the requested take of the Hawaiian hoary bat is not exceeded. Section 8.3 addresses the overall adaptive management for the HCP Amendment. Adaptive management will be used to evaluate and respond to potential new information and changed circumstances within the plan area, and thereby ensure that the conservation measures identified in the HCP and HCP Amendment are

being implemented adequately and meeting the goals and objectives outlined in the HCP. Section 8.2 of the Kawaiiloa HCP Amendment describes the monitoring and reporting requirements to be implemented as part of the proposed action.

Alternatives

The Service evaluated a range of alternatives to the proposed action. Three alternatives were analyzed in the PEIS, including a no-action alternative (Alternative 1), the Applicant's proposed Alternative (Alternative 2 or Preferred Alternative), and an Increased Curtailment Alternative (Alternative 3). Additional alternatives were also evaluated by the Service in the preparation of the FPEIS and consideration of the HCP, but were eliminated from detailed study. The alternatives eliminated from detailed study included: (1) a reduced permit term; (2) a delayed permit issuance; (3) additional covered species; (4) alternative low wind speed curtailment regimes; (5) a variation of the no action alternative; and (6) nighttime shutdown from June 1 through September 15 (a variation of Alternative 3). Descriptions of these alternatives and why they were not considered for detailed study are provided in the FPEIS. The following provides brief summaries of the no-action alternative as well as the two action alternatives.

Alternative 1 (No Action)

Inclusion of the No Action Alternative in the EIS is prescribed by the Federal Council on Environmental Quality regulations (40 C.F.R. 1502.14(d)). Under the No Action Alternative, the Service would not issue an amendment to Kawaiiloa's 2011 ITP to authorize additional incidental take of the Covered Species and the Applicant would not implement the HCP Amendment for these species. The Applicant would continue to conduct wind energy facility operations in accordance with existing State and Federal regulations. The Service expects the Applicant would act in a reasonable manner to avoid unauthorized take of the Covered Species. To achieve this, the Service assumes that the Applicant would shut-off wind turbine operations at night to avoid unauthorized take of Hawaiian hoary bat and minimize risks to the Hawaiian petrel. Because petrels have been known to fly into large obstacles, including stationary WTG's and meteorological towers, there would be negligible difference in the anticipated effects to the petrel from any of the three alternatives evaluated. Full nighttime shutdown would be expected to result in a 50% reduction in energy production relative to operating 24 hours per day. Take of federally listed species occurring incidental to operation of the project would not be authorized and the Applicant would assume the risk of enforcement under the ESA should take occur. Under Alternative 1, no take would be authorized and nor would the HCP be implemented. Conservation and beneficial activities resulting from the HCP would not occur, including habitat restoration, protection, and monitoring of Covered Species.

Alternative 2 (Proposed Action/Habitat Conservation Plan)

Under Alternative 2, the Service would issue a Permit authorizing incidental take of the Covered Species at levels described in Section 2.2.2 of the FPEIS as requested by the Applicant. Terms and conditions of the ITP would require the Applicant to implement the operational avoidance and minimization and the conservation measures described in the Project HCP and HCP Amendment. These measures were summarized in the FPEIS.

Under Alternative 2, the Applicant would implement year-round low wind speed curtailment from sunset to sunrise. Turbines shut down and the blades are feathered if a 20-minute rolling

average wind speed is 5.0 meters per second or less and will start back up if a 20-minute rolling average wind speed is greater than or equal to 5.2 meters per second. Bat deterrents were installed in May-June 2019, after the publication of the draft PEIS and proof of concept testing, in collaboration with the NRG Systems is being conducted to evaluate effectiveness of these deterrents on Hawaiian hoary bats. Other measures to minimize the amount of take of Covered Species include but are not limited to: minimizing on-site lighting at buildings; implementing a Wildlife Education and Observation Program to reduce vehicle collision risk; and following Avian Power Line Interaction Committee guidelines for overhead collection lines. Alternative 2 requires off-sight mitigation measures as described in Section 2.2.2 of the FPEIS. These measures include:

- Mitigation for Hawaiian petrel will include funding predator control and monitoring work at the Hanakāpī'ai and Hanakoa seabird colonies within the State's Hono O Nā Pali NAR on Kaua'i in 2020 for Hawaiian petrels. This work would include predator removal, seabird monitoring activities and predator monitoring activities.
- Tier 4 Hawaiian hoary bat mitigation will include funding \$2,750,000 to the Trust for Public Lands toward the acquisition and long-term protection of the Helemano Wilderness Area on O'ahu to be managed in perpetuity for the protection of habitat and conservation of listed endangered species including the Hawaiian hoary bat.
- Tier 5 Hawaiian hoary bat mitigation will consist of land protection/preservation of habitat (e.g. easement or acquisition) and/or habitat restoration/land management of a minimum of 1,725 acres at a location approved by the Service.
- Tier 6 Hawaiian hoary bat mitigation will consist of land protection/preservation of habitat (e.g. easement or acquisition) and/or habitat restoration/land management of a minimum of 406 acres at a location approved by the Service.

Alternative 3 – Increased curtailment

Under Alternative 3, the increased low wind speed curtailment alternative, the Service would issue an amended ITP authorizing a lower level of take of the Hawaiian hoary bat than what is requested by the Applicant. Requested take of Hawaiian petrel would be the same as Alternative 2. Under Alternative 3, WTGs would be completely shut down and the blades feathered from one hour before sunset to one hour after sunrise (complete nighttime curtailment) from April 15 through September 15, when Hawaiian hoary bat females are pregnant or rearing dependent young and bats are most active. The cessation of operations during this timeframe would result in a minimization of the take of adult Hawaiian hoary bats and eliminate indirect take of juvenile bats. Low wind speed curtailment activities, described in Alternative 2 would be implemented during the remainder of the year (September 16 – April 14). The estimated relative energy production for Alternatives 1, 2, and 3 are approximately 50%, 80%, and 68% of the maximum energy production, respectively. Although energy production in Alternative 3 would be lower than Alternative 2, the estimated take of Hawaiian hoary bats would be approximately 44% less for the Project. Although energy production levels would generally be lower for this alternative, it is expected that maintenance operations would be the same as for all three alternatives.

Because of the lower level of estimated take of Hawaiian hoary bat, mitigation actions would be as described in Section 2.3.2 of the FPEIS. Mitigation for Hawaiian petrel would not change. Off-site mitigation measures on O‘ahu for Tier 4 include contribution of funding toward the acquisition and long-term protection of Helemano Wilderness Area which would be managed in perpetuity for multiple use including the protection of habitat and conservation of listed endangered species including the Hawaiian hoary bat. Mitigation for Tier 5 would be land protection/preservation of habitat (e.g. easement or acquisition) and/or habitat restoration/land management of a minimum of 163 at a location approved by the Service.

Decision and Rationale

The Service’s decision is to select the Proposed Action (Alternative 2, described above), issue an ITP Amendment that is consistent with the take minimization, mitigation, and monitoring measures described above and in more detail in the HCP and HCP Amendment, and to include terms and conditions in the ITP that the Service deems necessary to ensure that the HCP and HCP Amendment monitoring, mitigation, financial assurance, and other Applicant’ commitments are met. Issuance of the amended ITP authorizes the additional incidental take of the Hawaiian hoary bat and Hawaiian petrel, subject to incidental take limits and other requirements of the HCP and HCP Amendment during the remaining term of the amended ITP ending December 2031. The Service’s No Surprises Rule (50 C.F.R. § 17.22 and 17.32) would apply to the amended ITP.

Based on the findings in the FPEIS (USFWS 2019a), our Biological Opinion (USFWS 2019b), our ESA section 10 Findings and Recommendations (USFWS 2019c), this ROD, and other information in the administrative record, the Proposed Action is not likely to appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild, and the HCP complies with the permitting standards of 16 U.S.C. § 1539(a)(1)(B). Full implementation of the Applicant’s proposed HCP Amendment would meet the statutory criteria for issuance of an amended ITP under section 10 of the ESA. Implementation of the existing HCP, HCP Amendment and issuance of the amended ITP best fulfills the Service’s statutory mission and responsibilities while meeting the agency purpose and need to conserve listed species.

Conditions

As required by section 10(a)(1)(B) of the ESA, the amended ITP requires implementation of the 2011 Kawaihoa HCP and HCP Amendment to insure that the impacts of take of the Covered Species caused by Covered Activities will be minimized and mitigated to the maximum extent practicable. These conditions for implementation of the HCP Amendment are also considered in the findings of the Service’s Biological Opinion and ESA section 10 Findings and Recommendations for the Proposed Action. Any changes to the HCP or HCP Amendment shall be subject to the provisions described in Section 8 of the HCP and HCP Amendment. The Service will include terms and conditions necessary to ensure that 1) funding assurances are in place before the take in a tier is authorized; 2) compliance monitoring and modeling of take estimations and projections are conducted using Service approved methods; 3) downed wildlife is handled based on the interagency guidance, and 4) reports meet the Service’s requirements for content and due dates.

Environmentally Preferable Alternative

The NEPA implementing regulations at 40 C.F.R. § 1505.2(b) require that the ROD identify the alternative or alternatives that is/are considered to be “environmentally preferable,” i.e., the alternative that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources, as expressed in Section 101(b) of NEPA (43 C.F.R. § 46.30). This is not necessarily the agency-preferred alternative, which the FPEIS identifies as Alternative 2 due to that action meeting the statutory requirements for permit issuance under 16 U.S.C. § 1539(a)(1)(B). The Service identifies Alternative 3 (Increased Curtailment) as the environmentally preferable alternative.

The Project is built and producing renewable energy. Under Alternative 3, compliance monitoring for downed wildlife would occur and take, including take that has occurred during the permitting process and that may occur over the remainder of the permit term, would be mitigated. Alternative 3 would provide for renewable energy production during the day year-round and during the night from September 16 through April 14.

Alternative 1 (No Action) would not authorize take and assumes the project would cease operation. Under this alternative, the Project would produce no renewable energy, and therefore would not contribute to reductions in greenhouse gas emissions or to meeting the State’s Renewable Portfolio Standards (HRS 269-92) goals. The Applicant would be legally responsible for project-associated fatalities of federally protected species if the project continued to operate and exceeded the authorized take provided by their existing ITP. The No Action alternative would not provide compliance monitoring or mitigation for the take of federally protected species beyond that authorized in the existing ITP should the Applicant continue to operate the existing Project after permitted take is exceeded. The No Action Alternative would not result in the implementation of conservation measures that would benefit the Covered Species addressed in the HCP in Alternative 2.

The Service did not select Alternative 3 as the agency-preferred alternative because under section 10(a)(1)(B) of the ESA and associated FWS regulations, the Service must approve the Applicant’s proposed alternative, Alternative 2, if it meets our criteria for issuance of an ITP. The Service determined the Proposed Action, Alternative 2 is not likely to appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild, and the HCP Amendment complies with the permitting standards of 16 U.S.C. § 1539(a)(1)(B).

Public Involvement

Scoping

The Service published a Notice of Intent on June 1, 2018 to announce preparation of the PEIS and to solicit public comments on the scope of the PEIS. The official public comment period began June 1, 2018 and ended on July 2, 2018. Three public scoping meetings on the islands of Hawai‘i, Maui, and O‘ahu (i.e., one meeting per island) were held on June 18, June 20 and June 21, 2018, respectively. Twelve comment letters were received from stakeholders and non-profit or community organizations. A scoping report was prepared and is included as Appendix A of the FPEIS.

Based on the scoping process and internal coordination, the Service identified three major concerns, largely focused on the potential impacts to Covered Species. Concerns were raised about increased risk of local extirpation of Hawaiian hoary bat populations due to collisions with WTGs. Concerns were raised about cumulative impacts, that when added to the proposed action, would negatively affect the statewide populations for three endangered species (the Hawaiian hoary bat, Hawaiian petrel, and the Hawaiian goose). Concerns were also raised about potential harm to the threatened Newell's shearwater ('a'o; *Puffinus auricularis newelli*) and the endangered band-rumped storm-petrel ('akē'akē; *Oceanodroma castro*) may not be fully addressed by the proposed action. The scoping process also identified issues or concerns, described in Section 1.7 of the FPEIS that were beyond the Service's decision-making authority for this project.

Draft PEIS

A Notice of Availability of the Draft PEIS (NOA 84 FR 17875-17897) was published in the Federal Register for public review on April 26, 2019 in accordance with requirements set forth in the NEPA (42 USC §4321 et seq.) and its implementing regulations (40 C.F.R. §§ 1500–1508). Public comments on the PEIS and the Draft HCP were accepted during the 45-day Federal public comment period which ended June 10, 2019. Three public open-house meetings were held during the comment period on the islands of O'ahu, Maui, and Hawai'i (one on each island) on May 21, 2019, May 22, 2019, and May 23, 2019, respectively. Each public meeting included a 40 minute presentation summarizing the Draft PEIS, including an overview of issues identified during the scoping period, alternatives carried forward for further analysis, and a summary of affected resources. During the comment period, comments were accepted on the Draft PEIS and the Draft HCP. The Service received 45 comment letters, emails, or faxes including two from federal agencies (Department of the Army, U.S. Army Garrison Hawaii; and U.S. Environmental Protection Agency, Region 9), two from State of Hawai'i Senators (Senator Gil Riviere, District 23; Senator Glenn Wakai, District 15), three from environmental organizations (Sierra Club of Maui, Center for Biological Diversity, and American Bird Conservancy), one from a business (Ka'u Realty), and 37 from the general public. Comments received during the public comment period include the following concerns relating to:

- Hawaiian hoary bat take levels
- Hawaiian hoary bat population
- Hawaiian hoary home range/core use area
- Hawaiian cultural resources
- Hawaiian hoary bat deterrent systems
- Low wind speed curtailment
- Nighttime shutdown
- Minimizing and mitigating to the maximum extent practicable
- The Project's proposed minimization and mitigation measures
- The Project's post construction monitoring protocols for downed wildlife
- Adaptive management
- Renewable energy projects, in general
- Utility power agreements
- The Applicants proposed mitigation site for Hawaiian hoary bat
- The Applicant should fund research rather than land restoration

- Uncertainty
- Military training flexibility

The Services responses to comments received were incorporated into the FPEIS and resulted in some minor modifications and clarifications in the FPEIS. Minor changes were made to the draft HCP Amendment for clarity. A summary of substantive comments received, Service responses, and changes made to the Draft PEIS is included in Appendix K of the FPEIS and is attached to this document (Responses to Public Comments).

Final Programmatic EIS

The FPEIS was noticed in the Federal Register on August 2, 2019 (84 FR 37909-37912). During the 30-day wait period on the FPEIS, the following comment letters were received:

- An email received on August 7, 2019, advised us that the comment emails and letters received during the Draft PEIS public comment period were not attached to Appendix K. The Service corrected this oversight on August 7, 2019, by uploading the comments to the Service’s FPEIS public access website.
- An email and letter were received from the U.S. Environmental Protection Agency on August 28, 2019 following up on their comments on the draft PEIS. The EPA continued to recommend that the Service consider permitting Alternative 3 (Increased Curtailment) to further minimize take of the Hawaiian hoary bat. In the ROD, the Service noted that Alternative 3 was the environmentally preferable alternative, but also noted that because Alternative 2 (Proposed Action) met Section 10(a)(1)(B) permit issuance criteria, we are required to issue the permit based on the proposed HCP action. The EPA also requested clarification between the use of “authorized take” in the draft PEIS and “anticipated take” in the final PEIS. This inconsistency was due to a lack of clarity in the draft PEIS where both existing permitted take and requested/anticipated take was referred to as “authorized take.” In the final PEIS we more clearly used “authorized take” to refer to the take that was previously authorized in an existing ITP. We used “anticipated take” to refer to take that was likely to occur as a result of the implementation of an alternative being evaluated for future permit issuance.

Recommendation on Permit Issuance

Based on the foregoing findings with respect to the proposed action, I recommend approval of the issuance of Permit Number TE59861A-1 in accordance with the HCP and HCP Amendment.


 Mary Abrams
 Deputy Regional Director,
 Interior Region 12, U.S. Fish and Wildlife Service


 Date

References

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