



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122, Box 50088
Honolulu, Hawaii 96850

SEP 15 2008

In Reply Refer To:
2008-TA-0281

Mr. James D. Schlichting, Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Subject: Section 7 Consultation for Communications Towers in the Hawaiian Islands

Dear Mr. Schlichting:

For many years, the U.S. Fish and Wildlife Service (Service) has been working with communication companies to identify and address the potential impacts of communication towers (towers) to species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). In Hawaii, the species identified to be most vulnerable to impacts from such projects include the endangered Hawaiian petrel (*Pterodroma sandwichensis*), Hawaiian goose (*Branta sandvicensis*), Hawaiian hoary bat (*Lasiurus cinereus semotus*), the threatened Newell's shearwater (*Puffinus auricularis newelli*), and the band-rumped storm-petrel (*Oceanodroma castro*), a candidate species for listing. Other species may also be impacted, but those listed above are of particular concern because they are known to collide with structures in their flight path (Reed et al. 1985, Telfer et al. 1987, Cooper and Day 1998, Podolsky et al. 1998). Additionally, the Hawaiian petrel, Newell's shearwater, and band-rumped storm-petrel, collectively referred to as seabirds, fly at night and can become disoriented by artificial lights when they commute between inland nesting areas and offshore feeding grounds. The birds can collide with objects near the lights or circle the light source until they "fall out" due to exhaustion. These injured or downed seabirds are then vulnerable to other sources of mortality such as being hit by cars or predation by dogs, cats, and mongoose.

The Federal Communications Commission (FCC) initiated informal section 7 consultation with the Service in 2004, in response to a Notice of Intent to Sue by the American Bird Conservancy regarding 13 broadcast towers. We did not concur with the determination in nine of the 13

TAKE PRIDE[®]
IN AMERICA 

Biological Assessments that the towers were not likely to adversely affect listed species, and for nine of the projects we recommended formal consultation. In addition, we recommended conducting night time radar surveys at each of the subject towers to evaluate the scope of the impacts to listed species.

Our office receives multiple requests per month to review cellular communications projects. In our responses we often request additional information about the sites, and suggest conducting radar surveys to help determine effects to listed species. Since radar surveys can only be conducted during certain periods of the year, this can result in delays for the project applicant. In late April of this year, the Service convened a meeting with representatives from the telecommunications industry in Hawaii. To streamline project review and processing, we proposed a programmatic consultation for communications towers. The industry representatives agreed this process would benefit carriers in the form of cost-sharing, developing a database of tower locations that also identifies areas where impacts to listed species are not expected, and a streamlined consultation review process. Under such a consultation, existing and proposed towers would receive incidental take coverage pursuant to the ESA, provided specific conditions are met.

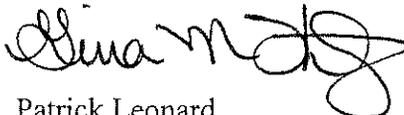
To convey this interest in a programmatic consultation, we initiated a conference call with the FCC in May of this year. Representatives from multiple branches of the FCC were present on the conference call and the FCC proposed that the programmatic consultation should address all towers in Hawaii, not only telecommunications towers. As such, the subject nine broadcast towers would be included in this consultation. In July, the FCC indicated its agreement that a project description be developed, but would not commit that it would result in a formal programmatic consultation.

Section 7(a)(1) of the ESA mandates all Federal agencies to conserve listed species and to utilize their authority for the furtherance of the purposes of the ESA. Section 7(a)(2) directs all Federal agencies to insure that any action they authorize, fund, or carry out does not jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. It is our opinion that as the Federal permitting agency for the telecommunications companies, the FCC, is responsible under the act to address take of listed species. As defined by the ESA, take means "...to harass, harm, pursue, hunt shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct."

In accordance with section 7 of the ESA, we recommend the FCC work in good faith with the Service and the communications industry in Hawaii to develop a project description for a programmatic consultation for existing and future towers in Hawaii. Specific guidelines would be developed to categorize the towers, minimize impacts, and an amount of incidental take would be determined. Through this programmatic approach we anticipate benefits to the carriers in the form of cost-sharing, a database of tower locations that includes "risk-free" areas, and a streamlined consultation process. In the unlikely event that we can not develop a project description that is satisfactory for all parties, we encourage you to simultaneously begin addressing the outstanding consultation that was initiated in 2004 by conducting night-time radar surveys at each of the nine broadcast towers.

We are committed to work with you and the project applicants. However, we need the FCC as lead federal agency to offer the same level of commitment to work with us and fulfill its responsibility under the ESA. If you have further questions, contact Megan Laut, Fish and Wildlife Biologist, Consultation and Technical Assistance Program (phone: 808-792-9400, fax: 808-792-9581).

Sincerely,


 Patrick Leonard
Field Supervisor

cc:

Darin Schroeder, American Bird Conservancy
Steve Sugarman, Forest Conservation Council
Eugene Hester, USFWS Law Enforcement

References

Cooper, B.A., and R.H. Day. 1998. Summer behavior and mortality of dark-dumped petrels and Newell's shearwaters at power lines on Kauai. Colonial Waterbirds, Vol. 21, No. 1, pp. 11-19.

Podolsky, R., D.G. Ainley, G. Spencer, L. DeForest, and N. Nur. 1998. Mortality of Newell's shearwaters caused by collisions with urban structures on Kauai. Colonial Waterbirds, Vol. 21, No. 1, pp. 20-34.

Reed, J.R., J.L. Sincock, and J.P. Hailman. 1985. Light attraction in endangered procellariiform birds: reduction by shielding upward radiation. The Auk, 102:377-383.

Telfer, T.C., J.L. Sincock, G.V. Byrd, and J.R. Reed. 1987. Attraction of Hawaiian seabirds to lights: conservation efforts and effects of moon phase. Wildlife Society Bulletin, 15:406-413.