

impacts. Therefore, this action is a categorical exclusion as provided by 516 DM 2 Appendix 1 and 516 DM 6 Appendix 1 and no further NEPA documentation is required. A determination of jeopardy or non-jeopardy to the species will not be made until at least 30 days after the date of publication of this notice. We provide this notice under Section 10(c) of the ESA and National Environmental Policy Act regulations (40 CFR 1506.6).

#### Public Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Data or comments concerning the application and HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Office, Austin, Texas at the above address. Please refer to permit number TE-183172-0 when submitting comments.

**Christopher T. Jones,**

*Acting Regional Director, Region 2,  
Albuquerque, New Mexico.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R1-ES-2008-N0121; 10120-1112-0000-F2]

#### Incidental Take Permit Application for Construction and Operation of Seven Meteorological Towers on Lanai, Hawaii

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; draft environmental assessment and habitat conservation plan; and receipt of application for an incidental take permit.

**SUMMARY:** Castle and Cooke Resorts, LLC (Applicant), has submitted an application to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). The Applicant is requesting a permit because incidental take of four species listed under the ESA may occur as a

result of construction and operation of seven meteorological towers on the island of Lanai, Hawaii: The endangered Hawaiian petrel (*Pterodroma sandwichensis*), endangered Hawaiian stilt (*Himantopus mexicanus knudseni*), endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*), and the threatened Newell's (Townsend's) shearwater (*Puffinus auricularis newelli*). Six of the seven towers have already been constructed. If approved, the permit would authorize take, incidental to otherwise lawful activities. The permit application includes a draft Habitat Conservation Plan (HCP) that describes the Applicant's actions and the measures the Applicant will implement to minimize, mitigate, and monitor take of listed species. The Service also announces the availability of a draft Environmental Assessment (EA) that has been prepared in response to the permit application in accordance with requirements of the National Environmental Policy Act (NEPA). We are making the permit application package available for public review and comment.

**DATES:** All comments from interested parties must be received on or before August 7, 2008.

**ADDRESSES:** Please address written comments to Patrick Leonard, Project Leader, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room #3-122, Honolulu, HI 96850. You may also send comments by facsimile at (808) 792-9580.

**FOR FURTHER INFORMATION CONTACT:** Bill Standley, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (see **ADDRESSES** above), telephone (808) 792-9400.

#### SUPPLEMENTARY INFORMATION:

##### Availability of Documents

The permit application, which includes a draft HCP and a draft EA, are available for public inspection, by appointment between the hours of 8 a.m. and 5 p.m. at the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** above). You may also request copies of the documents by contacting the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** above).

We specifically request information, views, and opinions from the public on the proposed Federal action of issuing a permit, including the identification of any aspects of the human environment not already analyzed in our draft EA. Further, we specifically solicit information regarding the adequacy of the HCP relative to minimizing,

mitigating, and monitoring the impacts of taking each of the covered listed species and relative adaptive management, as evaluated against our permit issuance criteria found in 50 CFR 13.21, 17.22, and 17.32. Pursuant to section 10(c) of the ESA, the Service is making the permit application package available for public review and comment for 30 days for the purposes of the Federal action (see **DATES** section above).

All comments received will become part of the public record for this proposed action. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their identity from the administrative record. We will honor such requests to the extent allowed by law. If you wish us to withhold your identity (e.g., individual name, home address, and home phone number), you must state this prominently at the beginning of your comments.

#### Background

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the "take" of fish and wildlife species listed as endangered or threatened. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize "incidental take" of listed fish and wildlife species. Incidental take is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22. If issued, the permittee would receive assurances under the Service's "No Surprises" regulation.

The Applicant has applied to the Service for an incidental take permit for the endangered Hawaiian petrel, endangered Hawaiian stilt, endangered Hawaiian hoary bat, and the threatened Newell's (Townsend's) shearwater (covered species), pursuant to section 10(a)(1)(B) of the ESA. The Applicant has constructed six meteorological (met) towers and they are proposing construction of a seventh met tower, on private land that they own. The activities proposed to be covered by the permit are the construction of the seventh met tower and the operation and maintenance of all seven towers. The met towers would be used for up to 2 years to collect data on wind patterns;

these data would be used to assess the suitability of the wind regime to sustain a wind-turbine facility for electrical energy production. Each met tower is 165-foot-tall (50-meters-tall) and each rest on a steel base plate approximately 9 square feet (0.8 square meter) in size. Each met tower is supported with aircraft cable guy wires in four directions at each of six guy levels. The guy wire radius is 100 feet to 110 feet (30.5 to 33.5 meters). The guy wires are anchored with standard dead-man type anchors to a depth of 5 to 8 feet (1.5 to 2.4 meters). The met towers are located within a combined footprint area of approximately 13 acres (5.3 hectares).

The activities proposed to be covered are the construction of one met tower and the maintenance and operation of seven met towers. No listed species are known to inhabit the area in the immediate vicinity of the towers, however, incidental take may occur via collision of individual animals flying through the air space occupied by the towers and guy wires. Removal of invasive plants in the mitigation area may also result in take in the form of disturbance of the covered species.

Incidental take of covered species may occur as a result of these proposed covered activities. The Applicant proposes to minimize, mitigate, and monitor the impacts of taking listed species by implementing the following measures: (1) Siting the towers as far from the island's Hawaiian petrel colony and Newell's shearwater nesting habitat as possible; (2) marking towers and guy wires with bird diverters and flagging to increase visibility; (3) monitoring towers for dead or injured birds and bats throughout the period they are operated; (4) conducting predator control within the island's Hawaiian petrel colony, Newell's shearwater nesting habitat and hoary bat habitat; (5) conducting predator control at the island's wastewater treatment plant where Hawaiian stilts nest; and (6) removing invasive plants, primarily strawberry guava (*Psidium cattleianum*), to facilitate the re-establishment of native vegetation within forest habitat adjacent to the Hawaiian petrel colony and within Newell's shearwater and hoary bat habitat.

Our EA considers the direct, indirect, and cumulative effects of the proposed action of permit issuance, including the measures that would be implemented to minimize and mitigate such impacts. The EA contains an analysis of three alternatives: (1) No Action (no permit issuance and the met towers would be removed); (2) the Proposed Action (with issuance of the permit and implementation of the HCP); and (3) the

use of monopole met towers. Under the third alternative, met towers that do not require the use of guy wires but require a much larger foundation would be constructed.

This notice is provided pursuant to section 10(c) of the ESA and NEPA regulations (40 CFR 1506.6). The public process for the proposed Federal action will be completed after the public comment period, at which time we will evaluate the permit application, the HCP and associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA and NEPA regulations. If we determine that those requirements are met, we will issue an incidental take permit to the Applicant.

Dated: May 28, 2008.

**David J. Wesley,**

*Deputy Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.*  
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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS-R8-ES-2008-N0098; 11120-0008-0221-F2]**

#### **Safe Harbor Agreement for the Northern Spotted Owl for Fred M. van Eck Forest Foundation, Humboldt County, CA**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and receipt of application.

**SUMMARY:** This notice advises the public that the Fred M. van Eck Forest Foundation (Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (Agreement) between the Applicant and the Service for the threatened northern spotted owl (*Strix occidentalis caruina*). The proposed Agreement and permit would remain in effect for 90 years. We request comments from the public on the permit application and an Environmental Action Statement that has been prepared to comply with the National Environmental Policy Act.

**DATES:** Written comments should be received on or before August 7, 2008.

**ADDRESSES:** Send written comments to Mr. Michael Long, Field Supervisor,

Fish and Wildlife Service, 1655 Heindon Road, Arcata, California 95521. You also may send comments by facsimile to (707) 822-8411.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Hunter (ADDRESSES) (707) 822-7201.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act. Safe Harbor Agreements, and the subsequent enhancement of survival permits that are issued pursuant to Section 10(a)(1)(A) of the Act (15 U.S.C. 1531 *et seq.*), encourage private and other non-Federal property owners to implement conservation efforts for listed species, by assuring property owners that they will not be subject to increased land use restriction as a result of efforts to attract or increase the numbers or distribution of a listed species on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c) and 17.32(c).

We have worked with the Fred M. van Eck Forest Foundation to develop a Safe Harbor Agreement for the creation and enhancement of habitat for the northern spotted owl on four Fred M. van Eck Forest Foundation properties totaling 2,163 acres in Humboldt County, California. The term of the proposed Agreement is 90 years. Currently the properties support 1,730 acres of northern spotted owl nesting and roosting habitat and one northern spotted owl activity center. We anticipate that under the northern spotted owl habitat creation and enhancement timber management regime proposed in the Agreement, approximately 1,947 acres of nesting and roosting habitat and potentially up to five northern spotted owl activity centers could exist on the property at the end of 90 years. The proposed Safe Harbor Agreement does not provide for a return to baseline conditions at the end of the Agreement term. Instead, the Agreement provides that if more than five northern spotted owl activity centers should become established on the property during the 90 year term, the Applicant would be allowed to remove such additional activity centers during the Agreement period. Under the Agreement, Fred M. van Eck Forest Foundation will: (1) Conduct surveys annually to determine the locations and