## From: Patrice Ashfield@fws.gov To: Blanco, Caroline M Cc: Sarah Creachbaum@nps.gov ; Cari Kreshak@nps.gov ; Marilet Zablan@fws.gov ; Dawn Greenlee@fws.gov Sent: Fri Nov 20 20:59:06 2009 Subject: Re: Request for Concurrence of No Effect Determination

## Aloha Caroline,

In our March 28, 2007, informal consultation we addressed potential impacts of the National Science Foundation's proposed construction and use of the Advanced Technology Solar Telescope (ATST) to listed species and critical habitat pursuant to section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 et. seq.) as amended. In your November 3, 2009, email, below, you request our concurrence with your determination that three modifications to the proposed ATST project will have no effect to listed species or do not change the project as it was addressed in the 2007 consultation such that reinitiation of that informal consultation is necessary. The three measures entail: (1) new proposed clearing of vegetation in the vicinity of the Haleakala National Park (Park) entrance station; (2) discussions with the National Park Service (NPS) regarding vehicle use of the Park road at night; and (3) an additional restriction to the timing of the daily construction period.

To accommodate wide loads during the construction phase of the project, an approximately 200-foot (60-m) long portion of the Park road, on the uphill side of the Park entrance station will be temporarily widened by a maximum of 12 ft (3.8 m). A total of approximately 0.06 ac (0.02 ha) of vegetation will be disturbed. Because the area of road widening is occupied by nene (Hawaiian goose, Branta sandvicensis), road widening would be completed outside the nene nesting season. Native plants within the road widening area will be protected when possible and in consultation with the Park staff. Road widening would occur in April through October, outside nene nesting season and periodic maintenance would occur as necessary. The widened road may be in place for a period not to exceed 7 years. The widened area would be restored to native vegetation. Restoration would be completed in consultation with the Park staff and subject to an approved final restoration/rehabilitation plan. Although nene have been observed feeding and loafing in the immediate vicinity of the Park entrance station, the nene breeding season. We therefore anticipate no change in nene reproductive success or survival as a result of the proposed temporary habitat modification. Because the temporary impact is so small and the site will be restored we do not anticipate any long term impacts to nene will occur as a result of this proposed modification to the ATST project. We therefore concur with your determination that the proposed temporary road widening will have no effect to listed species or critical habitat.

Subsequent to our 2007 completion of the informal consultation, the National Park Service and NSF discussed the possible transport of wide loads through the Park at night to minimize project impacts to Park visitors. The Park and NSF have coordinated further regarding this issue and the agencies have agreed that no vehicles related to the ATST project will traverse the Park road at night. Because the interim discussions regarding the use of the Park road at night were not adopted, our 2007 assessment of potential impacts of vehicle use of the Park road remain applicable.

The NSF has agreed to restrict all ATST-related construction activities to the period from 30 minutes after sunrise to 30 minutes prior to sunset. Because this measure will serve to further reduce potential construction impacts to listed species at Haleakala, our completed 2007 informal consultation remains applicable.

As required in 50 CFR § 402.16, NSF would be required to reinitiate the March 28, 2007, informal consultation if the ATST project is modified in a manner that may cause an effect to listed species or critical habitat not considered in that consultation.

I hope this email concurrence addresses your concerns. Please let me know if I can be of any further assistance. Sincerely,

Patrice

Patrice M. Ashfield Pacific Islands Fish and Wildlife Office Consultation and Technical Assistance Program Coordinator 300 Ala Moana Blvd. Room 3-122, Box 50088 Honolulu, Hawaii 96850 808-792-9400 808-792-9581 fax

## "Blanco, Caroline M" <<u>cblanco@nsf.gov></u>

11/03/2009 03:18 PM

To <<u>Patrice\_Ashfield@fws.gov></u>, <<u>Sarah\_Creachbaum@nps.gov></u>, <<u>Cari\_Kreshak@nps.gov></u>

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Subject Request for Concurrence of No Effect Determination

Dear Patrice,

I am writing regarding three issues that have arisen since the conclusion of the informal consultation between the U.S. Fish and Wildlife Service (USFWS) and the National Science Foundation (NSF), which was documented in a letter from the USFWS to Dr. Craig B. Foltz of NSF dated March 28, 2007 (hereinafter, "Informal Consultation"). As you may recall, the outcome of that informal consultation was that the USFWS concurred with NSFs determination that the proposed ATST Project is not likely to adversely affect the Hawaiian petrel and the Hawaiian goose, and that there would be no effect for the Hawaiian hoary bat, the Haleakala• silversword, and critical habitat for the Haleakala• silversword and the *Geranium multiflorum*. The three new issues and NSFs determination regarding their impacts on threatened and endangered species and their habitats are detailed below:

1. The first issue that has arisen since the Informal Consultation is that NSF has determined that it will be necessary to temporarily widen the existing shoulder at the Haleakala. National Park entrance station. As explained on page 2-32 of the Final Environmental Impact Statement for the Advanced Technology Solar Telescope, Haleakala□, Maui, Hawaii, July 2009 (FEIS), "[t]he conveyance of large unitary pieces of the ATST telescope, the primary mirror in its protective crate, and other constituent elements of the proposed ATST Project would require truck loads of up to 32 feet 10 inches in width. The [Haleakala• National Park] entrance station currently provides one paved driving lane approximately 12 feet wide on both the entrance and exiting sides . . ."• Accordingly, NSF has worked with the Park to address this situation. Specifically, the preferred option identified by the Park staff consists of "installing compacted fill and a gravel driving surface out to a maximum distance of approximately 12 feet beyond the existing paved roadway at the widest point, and tapering back to the roadway on each end, so as to provide a widened, drivable lane capable of supporting the widest and heaviest of the anticipated ATST loads. Other requirements of this proposed ATST Project would include protecting underground utilities, relocating an existing light pole, upgrading utility pull boxes to withstand the anticipated loads, and other related work."• FEIS at pages 2-32 to 2-33. The specifics of the preferred option are detailed in Figure 2-15 of the FEIS and discussed further on pages 2-33 and 2-34 of the FEIS. Importantly, because the area of the temporarily improved shoulder contains native plants and is nene habitat, widening of the shoulder would be completed outside the nene nesting season (November through March), and native plants would be protected when possible and in consultation with the Park staff. Also of importance is that the widened shoulder would be fully restored and rehabilitated after it is no longer needed for the proposed ATST Project. The restoration and rehabilitation would be completed in consultation with the Park staff and subject to an approved final restoration/rehabilitation plan. In light of the small size of the temporarily improved shoulder, the precautions that NSF has committed to in widening and improving the shoulder, and NSFs commitment to fully restore and rehabilitate it after it is no longer needed, NSF has determined that the temporarily improved shoulder will result in no effect to endangered or threatened species or their habitat.

2. The second issue involves the timing of when vehicles carrying wide and heavy loads can traverse the Park road. An estimated 25 vehicles carrying wide and heavy loads will need to traverse the Park road during the course of the approximately 7-year construction phase of the proposed ATST Project. Originally, NSF and the Park agreed that, in an effort to avoid impacts to the visitor experience, those vehicles carrying wide and heavy loads would traverse the Park road during the night between the hours of 8:00 p.m. and 4:00 a.m. Out of concern for the petrels, which could be attracted to vehicle lights driving at night, the Park and NSF revisited their original agreement. The Park and NSF have now determined that all vehicles carrying wide and heavy loads must traverse the Park road between 12:00 noon and sunset from mid-February to mid-November of each year, and during night-time hours between mid-November and mid-February of each year. (Please note that these time limitations do not alter the restrictions required by the USFWS on truck traffic travelling between April 20<sup>th</sup> and July 15<sup>th</sup> of each year as a result of the Informal Consultation; specifically, trucks with a maximum sound production of 83 dBA (measured at 50 feet, pursuant to EPA standards) will be limited to no more than two truck round-trips per day between April 20<sup>th</sup> and July 15<sup>th</sup>. See Informal Consultation at pages 5 and 23.) Because no night-time driving of vehicles carrying wide and heavy loads will traverse the Park road from mid-February to mid-November, NSF has determined that there will be no effect to endangered or threatened species or their habitat.

3. The third and final issue that has arisen since the conclusion of the Informal Consultation is that the Park and NSF have agreed to a limitation placed on on-site and outdoor construction activities. Specifically, the Park and NSF have agreed that, to reduce noise, on-site and outdoor ATST-related construction activities would be conducted only during the time-frame from 30 minutes after sunrise to 30 minutes prior to sunset. This agreement will result in reduced noise resulting from on-site and outdoor construction activities related to the proposed ATST Project; therefore, NSF has determined that there will be no effect to endangered or threatened species or their habitat.

As set forth above, NSF has determined that the three issues described above will result in no effect to endangered or threatened species or their habitat. The concurrence of the USFWS with NSFs determination is respectfully requested. Please let me know if you have any questions regarding the information provided herein or whether you require additional information. I have also copied, Sarah Creachbaum, Superintendent of the Haleakala• National Park, and Cari Kreshak, Pacific Islands Cultural Resources Program Manager, National Park Service, on this message, and also request that you copy them on any reply to this message.

Thank you very much in advance for your assistance with this matter. Your help is greatly appreciated.

Best regards,

Caroline

## CAROLINE M. BLANCO

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