

KIUC Settles Seabird Charges

Līhu`e, Kaua`i, HI - 12/2/10 – The Kaua`i Island Utility Cooperative (KIUC) today settled federal criminal charges concerning protected seabirds.

The settlement, which avoided the risk and expense of a criminal trial, required the utility to plead guilty to two misdemeanor violations, and ensures that maximum benefits go to the protection of the seabirds rather than to the federal government in the form of large fines and other criminal penalties, said KIUC Board Chairman Phil Tachian.

Bill Goodman, KIUC’s Special Counsel on this matter stated “despite having a good defense to many of the charges, KIUC wisely decided to spend its money addressing bird conservation rather than on litigation costs associated with a trial.”

As part of the settlement KIUC agreed to perform a range of activities that help protect seabirds like the Newell’s shearwaters. These birds nest in the Kaua`i mountains and can be disoriented on dark nights by artificial lights of civilization as they fly toward the sea. They sometimes collide with objects and during the fall fledging season the fledglings can fall to the ground from exhaustion while circling lights. These downed birds are found throughout the island, and sometimes near utility lines and poles.

Here are some key features of the settlement agreement:

- KIUC will accelerate its reconfiguration of power lines at Kealia and the Hanapepe Town Bridge, and will initiate realignment of lines at two locations in Kapa`a.
- With the agreement of landowners, the utility will plant fast-growing trees to shield utility lines along Highway 56 in portions of the Kealia flyway.
- The cooperative will install heat-sensing digital video cameras to monitor shearwater crossings at two locations.
- KIUC will pay \$225,000 to the National Fish and Wildlife Foundation, with the money specifically allocated to shearwater projects on Kaua`i.

(more)

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- The cooperative will pay fines totaling \$40,000 and plead guilty to two petty misdemeanors: one count of violating the Endangered Species Act and one count of violating the Migratory Bird Treaty Act.

- The utility will also agree to be placed on 18 months unsupervised probation, with the possibility of early termination of probation when the U.S. Fish and Wildlife Service issues an Incidental Take Permit as part of KIUC's Seabird Habitat Conservation Plan which is in the final stages of state and federal approval. KIUC has for several years been developing this HCP in cooperation with the U.S. Fish and Wildlife Service and the state Department of Land and Natural Resources.

KIUC, an electric cooperative that is owned by its more than 32,500 customer members, has been actively involved in seabird conservation since its creation in 2002. Its street light shielding program has minimized glare from the island's roughly 3,000 street lights.

When the Save Our Shearwater program lost state funding in 2003, KIUC stepped up and voluntarily enhanced and supported the program both financially and with other assistance. KIUC continues to be the primary funding source for the SOS program.

“The cooperative takes its responsibility for seabirds very seriously,” said acting CEO David Bissell. “KIUC has spent over \$4 million in minimization and mitigation projects, working with consultants, attorneys, community groups, wildlife agencies and government regulators on bird issues, and plans to continue its role as a leader in research, protection and conservation of the island's natural resources.”

The Justice Department in May 2010 indicted KIUC on 19 counts, nine of taking threatened species in violation of the Endangered Species Act and ten of taking migratory birds in violation of the Migratory Bird Treaty Act. Most of the charges involve the Newell's or Townsend's shearwater (*Puffinus auricularis newelli*).

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