

Government Relations, Ethics, and
Transparency Committee (2025-2027) –
Resolution 25-46: Settlement
Authorization : *Conservation Council for
Hawai‘i v. HECO/MECO, et al.*, Case No.
1:24-00494-MWJS-WRP



PRIOR LITIGATION: CIVIL CASE No. 19-1-0053(1), SECOND CIRCUIT COURT, STATE OF HAWAII (2019)

- Maui County commenced island-wide replacement of 4,800 obsolete High-Pressure Sodium (“HPS”) streetlights with energy efficient and environmentally adaptable light-emitting diode fixtures (“LED”) fixtures.
- Former Public Works Director had omitted timely exempting the streetlight replacement project from Environmental Assessment.
- Complaint filed by Earthjustice on behalf of Hawai‘i Wildlife Fund and the Conservation Council for Hawai‘i for violations of Haw. Rev. Stat. Chapter 343 [*Environmental Impact Statements*].

Complaint for Declaratory and Injunctive Relief, February 12, 2019

- 1) A declaration that the Maui County violated the Hawai'i Environmental Policy Act (HEPA) by failing to timely exempt the streetlight conversion project from Environment Assessment, and
- 2) An order that an Environmental Assessment be conducted to determine whether the LED fixtures will have a significant impact posing harm alleged to Maui's wildlife, including endemic Hawai'ian seabirds.

Although not specifically pled in the Complaint, 3) the state litigants also moved for a permanent injunction to enjoin any future installation of the LED fixtures.

Maui County Initiates Environmental Assessment

- On August 20, 2019, Maui County's Department of Public Works voluntarily initiated the Environmental Assessment prayed for in the state court Complaint.
- Maui County asked the state circuit court to order mediation.
- Earthjustice pursued litigation and eventually sought an order for removal of approximately 1,021 LED fixtures.
 - *Argued the LED fixtures emit spectral blue light content harmful to endemic Hawai'ian seabirds and turtles.*

Mediation and Settlement of Civil Case No. 19-1-0053(1)

- Second Circuit Court, J. Cardoza ruled:
 - 1) The failure to exempt the streetlight replacement project violated Haw. Rev. Stat. Chapter 343;
 - 2) DENIED the request for an injunction based on the theory that “blue light content” caused harm endemic Hawai‘ian species, and
 - 3) ORDERED the parties to mediation at Maui County’s request.

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Draft of Environmental Assessment Published Finding of No Significant Impact, July 2022

5.2.9 EFFECTS ON RARE, THREATENED, OR ENDANGERED SPECIES

No rare, threatened, or endangered species will be affected by the proposed conversion of streetlights on Maui, Moloka‘i, and Lāna‘i. In addition, the Proposed Action will not utilize or otherwise affect a resource or habitat needed for the protection of rare, threatened, or endangered species. In fact, as detailed in Section 3.2.3, the Proposed Action will benefit protected species by avoiding and minimizing potential light attraction threats to seabirds and sea turtles.

PRESENT LITIGATION: CASE NO. 1:24-CV-00494-MWJS-WRP, HAWAI‘I DISTRICT COURT (2024)

November 19, 2024 – Earthjustice filed federal lawsuit alleging illegal “take” of Hawai‘ian seabirds by Maui County streetlights, in violation of 16 U.S.C. §§ 1531, et seq. [Endangered Species Act]. Section 3 [*Definitions*] of the Act provides:

(19) 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.

PRESENT LITIGATION: CASE NO. 1:24-CV-00494-MWJS-WRP, HAWAI‘I DISTRICT COURT (2024)

“**Fallout**” occurs when seabirds are “distracted by artificial lights on their way out to sea and when returning to land. Disoriented birds will circle artificial lights until they fall to the ground from exhaustion or strike other human-made structures (“fallout”). Once grounded, the seabirds have a hard time becoming airborne and are susceptible to predation, starvation, dehydration, or vehicle strikes.”

“Since as far back as 1998, researchers have documented scores of unauthorized takes of ESA-listed seabirds in Maui County from fallout that *likely* resulted from attraction to streetlights.” (emphasis added).

Hawai‘ian Seabirds Listed Under the Endangered Species Act

‘Ua‘u



Photo: Jim Denny

Hawai‘ian Petrel
(*Pterodroma sandwichensis*)

‘A‘o



Photo: Jim Denny

Newell’s Shearwater
(*Puffinus newelli*)

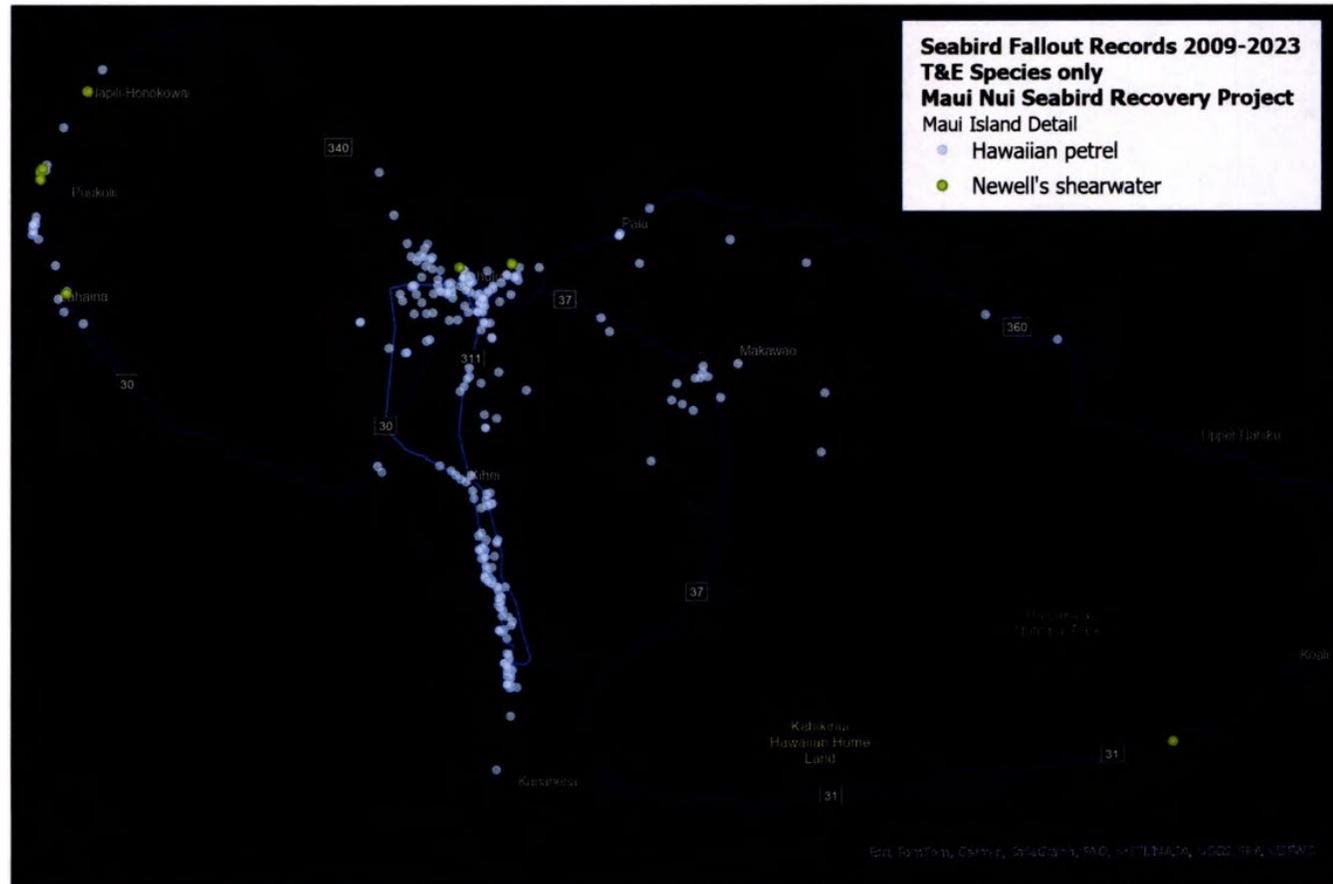
‘Akē‘akē



Photo: Mike Danzenbaker

Band-Rumped Storm-Petrel
(*Hydrobates castro*)

Documented Seabird “Fallout” 2009-2023



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Settlement Demand, Case No 1:24-00494: Incidental Take Permit and Mitigation

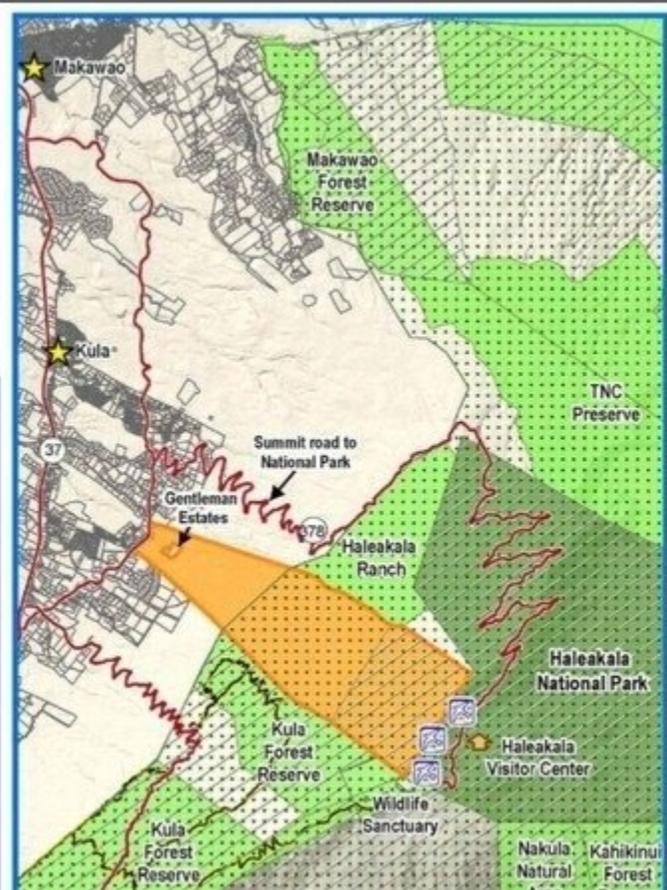
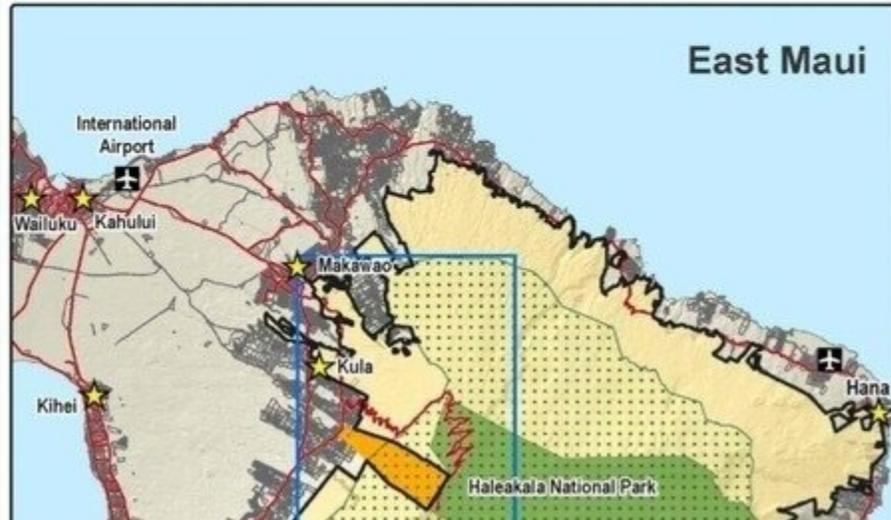
- Maui County 's Commitment to Secure an Incidental “Take” Permit for Maui County Streetlights from both Federal and State Agencies;
- Implementation of Streetlight “Take” Minimization Measures
 - Advance compliance deadline with amended Outdoor Lighting Code [MCC § 20.35.070.B] *from July 1, 2026 to August 1, 2025*;
 - Minimize use of streetlights in remote locations – install motion detectors; and
 - Conduct systematic searches for downed seabirds in the vicinity of Maui County streetlights from September 15 to December 15th every year.

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KAMEHAMENUI FOREST PROJECT

ISLAND OF MAUI, HAWAII

- Legend**
- | | | |
|--|---|---|
|  Kamehameui Forest FLP Project |  Natural Protected Areas (State and Private) |  Development/Housing Lots or Subdivision |
|  Hawaiian Petrel Observation Points |  Haleakala National Park |  Major Cities |
|  Federal Critical Habitat |  Watershed Partnerships |  Major Road or Highway |
|  Mauna Lei Priority Forest Area |  Agriculture Conservation Easement |  Trails |



End

