



September 15, 2021

**VIA CERTIFIED U.S. MAIL
RETURN RECEIPT REQUESTED**

Debra Haaland
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

BRE Iconic GWR Owner LLC
233 S. Wacker Drive, Suite 4700
Chicago, IL 60606

Waldorf=Astoria Management LLC
7930 Jones Branch Drive
McLean, VA, 22102

VIA HAND DELIVERY

BRE Iconic GWR Owner LLC
c/o Corporation Service Company
1003 Bishop Street, Suite 1600
Pauahi Tower
Honolulu, HI 96813

Waldorf=Astoria Management LLC
c/o Corporation Service Company
1003 Bishop Street, Suite 1600
Pauahi Tower
Honolulu, HI 96813

Re: 60-Day Notice of Intent to Sue Over Violations of the Endangered Species Act

To Whom It May Concern:

This letter serves as a sixty-day notice, on behalf of the Center for Biological Diversity and Conservation Council for Hawai'i, of their intent to sue BRE Iconic GWR Owner LLC and Waldorf=Astoria Management LLC over violations of Section 9 of the Endangered Species Act ("ESA"), 16 U.S.C. § 1538, for unpermitted "take" of the endangered Hawaiian petrel (*Pterodroma sandwichensis*) associated with the Grand Wailea's operations on the island of Maui. This letter is provided pursuant to the 60-day notice requirement of the ESA's citizen suit provision. See 16 U.S.C. § 1540(g).

Background

Attraction to bright lights is a major threat to the continued survival and recovery of the Hawaiian petrel (listed as endangered in 1967). Hawaiian petrels, known as 'ua'u in Hawaiian, use the moon and stars to navigate and are often distracted by artificial lights on their way out

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to sea. Disoriented birds will circle artificial lights until they fall to the ground from exhaustion or strike other human-made structures ("fallout"). Once grounded, petrels have a hard time becoming airborne, and are susceptible to dying from predation, starvation, dehydration, or vehicle strikes. The risk of fallout from artificial lights is most acute during the fledging season, which lasts from early October to early December, but fallout of adult birds can occur whenever Hawaiian petrels are on-island (from February through December).

The Maui Nui Seabird Recovery Project ("MNSRP") has documented unauthorized take of Hawaiian petrels at the Grand Wailea nearly every year since 2008. This documented harm represents only the tip of the iceberg. Disoriented birds often crash into the nearby ocean or surrounding vegetation and are not accounted for or die before being recovered and are excluded from the available data. Moreover, when light attraction injures or kills an adult petrel, any egg or chick that is still in the burrow also likely perishes as it takes two adults to incubate and provision the one offspring they are able to produce each year. Consequently, the take of listed seabirds is not fully represented in MNSRP data.

Population estimates for the species currently range from 20,000 to 50,000, but, due to the cryptic nature of the species, population trends are unclear. The largest Hawaiian petrel breeding colony is located on Maui in Haleakalā crater, and the second largest breeding colony is located across the 'Au'au Channel from the Grand Wailea on the island of Lāna'i. Protection of these known breeding colonies, and island-specific metapopulations, is critical to the survival of the species.¹

While there are multiple sources of bright light on Maui, the Grand Wailea's property stands out among all hotels on the island of Maui as a high-take zone. The Grand Wailea is aware that its facility injures imperiled seabirds; ten years ago, MNSRP brought enforcement agents from the U.S. Fish and Wildlife Service to the Grand Wailea to discuss the issue of unpermitted take, but, to date, the hotel has failed to take any action to comply with the law. The Grand Wailea's failure to remedy its unpermitted take of listed seabirds exposes it to liability under the ESA as discussed further below.

¹ See Pacific Region, U.S. Fish and Wildlife Service, *Amendment to the Hawaiian Dark-rumped Petrel and Newell's Manx Shearwater Recovery Plan* (Aug. 7, 2019) (describing island-specific Hawaiian petrel metapopulations and recovery criteria for metapopulations), available at https://ecos.fws.gov/docs/recovery_plan/Hawaiian_Petrel_Final_Recovery_Plan_Amendment_20190807.pdf.



Bright lights shine from the roofs of structures and reflect off water in the evening. (Source: [The Grand Wailea](#))

The Grand Wailea's ESA Violations

In the absence of a valid incidental take permit, “with respect to any endangered species of fish or wildlife[,] ... it is unlawful for any person subject to the jurisdiction of the United States to—take any such species within the United States or the territorial sea of the United States.” 16 U.S.C. § 1538(a)(1)(B); *see also* 50 C.F.R. § 17.21. The term “take” is defined broadly, including to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect” a listed species. 16 U.S.C. § 1532(19). Thus, each Hawaiian petrel that is harmed, killed, injured or otherwise “taken” by the Grand Wailea without a permit constitutes an independent violation of the ESA. As the MNSRP data makes clear, the Grand Wailea's property on the island of Maui is responsible for illegally killing and injuring endangered seabirds on an ongoing basis.

To come into compliance with the ESA, the Grand Wailea must immediately secure an incidental take permit, which includes a habitat conservation plan (“HCP”) that minimizes take of imperiled seabirds “to the maximum extent practicable.” *Id.* § 1539(a)(2)(B)(ii). Pursuant to a lawful HCP, the Grand Wailea would also be obliged to mitigate “to the maximum extent practicable” any incidental take that could not be avoided through the implementation of minimization measures. *Id.* Due to the location of the Grand Wailea's property, the hotel will remain a source of seabird take even after implementation of all feasible lighting minimization measures. Thus, mitigation measures, such as nesting colony protection, will be integral parts of any legally compliant HCP prepared or adopted by the Grand Wailea.

Conclusion

As the foregoing makes clear, the Grand Wailea is currently operating its property in violation of the ESA by taking imperiled seabirds without an incidental take permit. If the hotel does not, within 60 days, bring the Grand Wailea's operations into compliance with the ESA, we intend to pursue litigation in federal court to seek appropriate relief to protect Hawaiian petrels from continued death and injury.

We would welcome the opportunity to sit down with you in the hope of securing your agreement to bring the Grand Wailea's property promptly into compliance with the ESA and thus help ensure the continued survival of Hawai'i's imperiled seabirds. To that end, please contact the undersigned counsel to discuss this matter.²

Mahalo for your prompt attention to this matter.

Sincerely,



Leinā'ala L. Ley
Senior Associate Attorney

² The address of the Center for Biological Diversity is 1188 Bishop Street, Suite 2412 Honolulu, Hawai'i 96813, and its telephone number is (808) 284-0007. The address of the Conservation Council for Hawai'i is 250 Ward Avenue #220, Honolulu, Hawai'i, 96814, and its telephone number is (808) 593-0255. Please note that these organizations are represented by Earthjustice. You are hereby requested to contact Leinā'ala Ley at lley@earthjustice.org or (808) 599-2438 to discuss the contents of this letter.