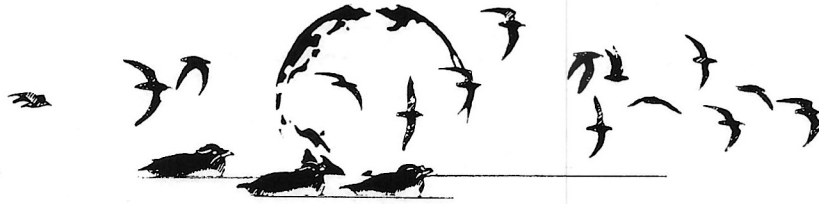

Pacific Seabird Group



DEDICATED TO THE STUDY AND CONSERVATION OF PACIFIC SEABIRDS AND THEIR ENVIRONMENT

Alan E. Burger
Chair
Biology Department
University of Victoria
Victoria, BC V8W 3N5
Canada
(250) 721-7127

Craig S. Harrison
Vice Chair for Conservation
4001 North Ninth Street #1801
Arlington, Virginia 22203
(202) 778-2240

Edward C. Murphy
Chair-Elect
Institute of Arctic Biology
Irving Building
University of Alaska, Fairbanks
Fairbanks, AK 99775-0180
(907) 474-7154

April 28, 1998

Michael J. Spear, Regional Director
U.S. Fish & Wildlife Service
911 N.E. 11th Avenue
Portland, Oregon 97232-4181

**Re: Advance Notice of Petition Concerning Newell's Shearwater
(*Puffinus auricularis newelli*) Under Endangered Species Act**

Dear Mr. Spear:

The Pacific Seabird Group (PSG) is concerned about the management and conservation of Newell's shearwaters (a threatened species) in Hawaii. The purpose of this letter is to provide advance notice of our intention to file a petition within the next 60 days that will ask FWS to designate critical habitat for this species and to list certain populations as endangered. Before taking those steps, however, we wish to provide the U.S. Fish & Wildlife Service (FWS) with an opportunity to correct what PSG views as deficiencies in the management of this species. Prompt action by FWS could eliminate the necessity of filing a petition.

I. The Pacific Seabird Group

As you may know, PSG is an international organization that was founded in 1972 to promote knowledge, study and conservation of Pacific seabirds. PSG draws its members from the rim of the entire Pacific Basin, including the United States, Canada, Mexico, Japan, China, Australia, New Zealand, and Russia. Among PSG's members are biologists who have research interests in Pacific seabirds, state and federal officials who manage seabird populations and refuges, and individuals with interests in marine conservation. PSG is especially active with regard to protecting

endangered or threatened seabirds. PSG wrote to FWS and the Hawaii Department of Land and Natural Resources regarding Newell's shearwaters in early 1996 (copy enclosed), but received no response.

II. Background on Newell's Shearwaters

The U.S. Department of the Interior has listed Newell's shearwaters as threatened under the Endangered Species Act. 15 C.F.R. § 17.11. The bulk of the population of Newell's shearwaters nests on Kauai, and limited breeding takes place on the Big Island, and probably Molokai, Maui and Lanai. See C.S. Harrison, *Seabirds of Hawaii: Natural History and Conservation*, Cornell University Press (1990); Ainley et al., Townsend's and Newell's Shearwater, *Birds of North America* No. 297 (1997); (copy enclosed).

As we explained in our unanswered 1996 letter, surveys have confirmed breeding in the Puna District of the Big Island at Pu'ulena and Heiheiahulu craters and breeding is suspected at Pu'u Kaliu Crater. These cones are essential for successful nesting of this species on the Big Island, and allow this species to retain an important part of its native range. Moreover, as we explained in 1996, cinder is mined at the Pu'ulena and Heiheiahulu cinder cones. Unfortunately, during the past two years while FWS has neglected to protect and manage this species, these populations have been forced closer to extirpation, if not now gone. Roads had been developed that allow access of introduced mammalian predators and gravel has been removed from the cones, essentially leveling them. This species lives in burrows in the ground, and needs the elevation afforded to them by the cones in order to become airborne. Simultaneously, the situation on Kauai has worsened: the numbers of chicks processed by the state-federal Save Our Shearwaters Program (an index to population size and success) has declined steadily since reaching a peak in 1987. The numbers in 1997 were only 25% of what they were in 1987.

III. Actions That PSG Believes Are Necessary to Recover Newell's Shearwaters

As explained below, we believe that FWS should: (A) conduct additional surveys to refine our knowledge concerning nesting locations and population trends; (B) update and implement the 15 year old recovery plan for this species; (C) designate critical habitat; and (D) list some populations as endangered rather than threatened.

A. Obtain Additional Information

We believe that FWS should conduct or sponsor surveys to locate Newell's shearwater colonies on the main Hawaiian Islands

so that managers can determine the relative importance of the parts of each island that still harbor Newell's shearwaters. For example, a radar survey from a boat would allow a survey of all sections of island coasts, many of which are not accessible by vehicle. The information from such preliminary surveys would direct more intensive, land-based surveys. This task is a component of the recovery plan (pp. 37-38) that has not been implemented.

In addition, studies of the importance of predation from feral cats, rats and pigs on Kauai are needed so we can assess whether predation is the major cause of decline as opposed to collisions and attraction to light. The recovery plan (p. 22) includes development of "efficient predator control methods and techniques for use in and around isolated nesting areas," but this has never been accomplished. Good predator control methods are now known, many of which were developed by biologists in New Zealand. They have been used to benefit other threatened species, but the Newell's shearwater has not been similarly protected. The importance of understanding the factors that are causing the decline of this species is underscored by the fact that since the 1980s Newell's shearwaters apparently have been reduced severely from the Poipu area, Kauai, despite the establishment by The Nature Conservancy of a reserve there to protect Newell's shearwaters from encroachment.

B. Update and Implement the Newell's Shearwater Recovery Plan

We believe that the 1983 recovery plan for this species is of limited use, and does not reflect the current knowledge of the status of this species or our understanding of the threats to its various populations. Significantly, FWS has never implemented many of its provisions that are still relevant.

The recovery plan focuses on problems encountered on Kauai (e.g., light attraction) and lacks any information on the location or characteristics of colonies on the Big Island, Molokai, Maui or Lanai. For example, it does not identify the location of any colonies other than on Kauai, and states (p. 10) this species "nearly always nests associated with dense stands of uluhe." While probably true for Kauai, this may not be true on other islands.

The recovery plan (p. 4) recognizes that the "single greatest limiting factor" for Newell's shearwaters is predation, and states the primary objective of the plan is to secure colonies "from unacceptable levels of predation and other losses (p. 25). We believe that FWS should immediately implement predator control plans at all known colonies, because we believe that predators pose a threat at each of them.

C. Designation of Critical Habitat

Other than a few pairs at Kilauea Point, Kauai, we know of no Newell's shearwaters or their breeding habitat that are actively managed. The recovery plan's goals include the location of "sensitive habitats" (p.30); protection of "habitat from destructive human activities" (p. 26); and the "long-term protection" of known colonies (p. 22). Once again, none of these goals have been accomplished or pursued during the 15 years since FWS announced them.

Unless FWS can persuade PSG that it can and will manage Newell's shearwaters effectively without designating critical habitat, PSG intends to petition FWS to do so within the next 60 days. Section 4(a)(3) of the ESA, 16 U.S.C. § 1531(a)(3), requires that FWS designate critical habitat "to the maximum extent prudent and determinable." If FWS believes that designating critical habitat would not be prudent, we request that FWS explain how the Service's passive management strategy for this species is "prudent." Does the Service intend to sit passively at the sidelines while each colony on the Big Island is extirpated, one by one?

PSG believes that under Natural Resources Defense Council v. U.S. Department of Interior, 113 F.3d 1121 (9th Cir. 1997), FWS is thwarting congressional intent by not designating critical habitat for the Newell's shearwater. We understand that U.S. District Judge Alan Kay in Honolulu has recently indicated that FWS has not offered any "rational basis" for not designating critical habitat on private property for dozens of endangered plant species in Hawaii. PSG is especially interested in designating critical habitat for any Newell's shearwater colony other than on Kauai where they still breed, including cinder cones on Hawaii.

D. Listing Certain Populations as Endangered

Recent demographic models of the Newell's shearwater population in Hawaii point towards continued decline of this species at its stronghold on Kauai (Ainley et al., unpublished MS). This population, then, may be losing any capacity it once had to be a source of recruits for outlying populations in the Hawaiian Islands.

The evidence exists to designate the Newell's shearwater populations on the Big Island (Hawaii) as endangered under the ESA. On the basis of surveys conducted by the former National Biological Service in the early 1990s, this species still breeds in very low numbers at only a few widespread places on the Big Island. Just a few pairs may remain at three sites in the Puna District, which increasingly is being opened to development.

These sites are cinder cones, which are being mined to provide gravel for buildings and roadways. When these populations are extirpated, we know of only one major breeding area remaining on the Big Island — the Waipio Valley 50 miles north of Puna. Even now, the small populations and their remoteness to one another likely precludes much chance for inter-colony movement and re-colonization.

Similarly, on the basis of recent estimates of the world population of Newell's shearwaters determined from at-sea censuses (Spear et al. 1992, copy enclosed) and estimates of the population breeding on Kauai (see Ainley et al. 1997), only a few thousand individuals can possibly nest elsewhere. Therefore, known nesting populations on Molokai and Lanai should be designated as endangered as well.

IV. Conclusion

As we suggest above, our concern is the responsible management of Newell's shearwaters. Our recent experience is that merely writing letters may not be sufficient incentive to persuade FWS to protect and manage this species. We are prepared to take whatever additional steps may be necessary, but hope that we can persuade FWS to enforce the ESA without causing a "train wreck." Please give me a call (202-778-2240) if you have any questions concerning these issues.

Sincerely,

Craig S. Harrison

Craig S. Harrison
Vice Chair for Conservation

Enclosures

cc: Laverene Smith, FWS Endangered Species Office,
Washington DC (w/o enclosures)