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**July 26<sup>th</sup>, 2005**

***Federal Communications Commission Sued  
Over Failure to Protect Endangered Birds in Hawai'i from Fatal Tower Collisions***

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**Honolulu** – Forest Conservation Council, American Bird Conservancy, and the Conservation Council for Hawai'i today filed a lawsuit in federal district court in Honolulu against the Federal Communications Commission (FCC) citing the agency's failure to protect two imperiled birds – the Newell's Shearwater, or 'A'o, and Hawaiian Petrel, or 'Ua'u – from fatal collisions at seven large communication towers on Kaua'i and the Big Island. Letty Belin, an environmental attorney in Santa Fe New Mexico and Paul Achitoff of Earthjustice's Honolulu office are representing the Plaintiffs.

“Large communication towers can be a death trap for wild birds,” said John Talberth, Director of Conservation for Forest Conservation Council, a national organization with birdwatching members in Hawai'i. “Despite repeated warnings to do so, the FCC has ignored the scientific community, the U.S. Fish and Wildlife Service, and the clear requirements of the Endangered Species Act by failing to study the problem and work with the experts to reduce these towers' deadly impacts. The FCC's inaction means more dead birds at a time when both the Shearwater and Petrel are struggling for survival,” Talberth continued.

Both Newell's Shearwater and Hawaiian Petrel appear on the federal list of threatened and endangered species protected by the Endangered Species Act (ESA). According to the U.S. Fish and Wildlife Service (USFWS) and a report issued by American Bird Conservancy, large

communication towers disrupt nocturnal migration patterns of these species and cause birds to collide with the towers and the nearly invisible guy wires that support them. The ESA requires the FCC to consult with the USFWS to develop modifications to lessen such impacts. Today's lawsuit was prompted by FCC's failure to engage in such consultation despite the groups' warning in April of 2004 that failure to comply with the law would result in litigation.

"The FCC's failure to protect Hawai'i's imperiled birds is emblematic of the agency's failure to protect migratory birds throughout the United States," said David Fischer, Director of Governmental Relations at the American Bird Conservancy. Ornithologists estimate that as many as 50 million birds die each year in fatal collisions with communication towers that the FCC has licensed without any environmental review. In most cases, the harm can be reduced or eliminated by changes in lighting, lowering the towers, and eliminating guy wires. In Hawai'i and elsewhere, the FCC should not be turning its back on these simple solutions to an environmental threat so deadly to wild birds."

"The FCC is failing to protect wild birds in Hawai'i by illegally delegating threat assessments to the tower companies," said Letty Belin, lead attorney for the plaintiffs. "The tower companies almost never evaluate the towers' environmental impacts."

The FCC allows tower companies to do tower threat assessments on their own towers. The FCC does no independent review of the tower company findings and usually no findings are made. The FCC has been authorizing new towers without environmental review throughout the U.S. at a breakneck pace, with thousands being constructed each year.

In their complaint, Forest Conservation Council, American Bird Conservancy, and the Conservation Council for Hawai'i have asked the court to require FCC to commence formal consultation with the USFWS over the impacts of the seven towers described in the complaint and develop measures to lessen the towers' impacts. In addition, the Plaintiffs have asked the court to declare illegal FCC's policy of relying exclusively on tower owners to assess the impacts of towers on threatened and endangered species.

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*For a copy of the complaint, please visit [www.abcbirds.org](http://www.abcbirds.org). A .pdf version of the complaint has been posted under the "Media" tab.*