

ENDANGERED SPECIES RECOVERY COMMITTEE

24 JULY 2013 MEETING MINUTES

Hawai'i Department of Land and Natural Resources
Kalanimoku Building; 1151 Punchbowl Street; Room 132; Honolulu, HI 96813

- MEMBERS:** Dr. J. Scott Fretz (DLNR); Dr. Loyal Mehrhoff (USFWS); Dr. Gordon Tribble (USGS); Dr. David Penn (UH Environmental Center); Dr. John Harrison (At-large); and Dr. Patrick J. Hart (At-large).
- STAFF:** DOFAW: Lasha Salbosa; John Vetter. USFWS: Kristi Young; Dan Clark; Jess Newton; Dawn Bruns.
- COUNSEL:** None.
- OTHERS:** Dr. Joseph McMullin (National Solar Observatory); Dr. Charlie Fein and Laurie Allen (KC Environmental); Huisheng Chen (Advanced Technology Solar Telescope); Kanekoa Kukea-Shultz (Kāko'o 'Ōiwi); Jaap Eijzenga and Tiffany Thair (SWCA); Jennifer Benck, Esq. (Carlsmith Ball LLP); Dave Pfeifer (CIRI Land Development Company); Charlie Jencks (Honua'ula Partners LLC); and Mitch Craig (First Wind Energy LLC).

ITEM 1. Call to order.

Chairperson Dr. J. Scott Fretz, called the meeting of the Endangered Species Recovery Committee (hereinafter referred to as the "ESRC" or "Committee") to order at 9:04 AM.

Committee Members introduced themselves followed by DOFAW staff. Committee Member Harrison informed Members that he will need to leave the meeting at 9:45 AM but will return at 11:00 AM.

ITEM 2. Approval of Minutes.

The Chairperson asked for any comments from the Committee on the minutes from the last ESRC Meeting on March 8, 2013 (Meeting Part I) site visit to proposed Honua'ula (Wailea 670) development and the March 12, 2013 (Meeting Part II) held at the DLNR. Penn commented that he would like to see the continued level of detail in the minutes for voting items. Mehrhoff provided DOFAW staff corrections to be made to the meeting minutes of March 8th and March 12th. The Chairperson asked if there were any comments from the public. There were none.

MOTION: (Harrison/ Tribble)
To approve the minutes as corrected.
UNANIMOUSLY APPROVED.

ITEM 3. Briefing Update from Licensee on Advanced Technology Solar Telescope Habitat Conservation Plan and Incidental Take License (ITL-13) Issued December 1, 2011.

Dr. Joseph McMullin, Advanced Technology Solar Telescope (ATST) Project Manager with the National Solar Observatory presented a powerpoint presentation on the scientific benefits of the project and current construction status. Construction of the ATST on the summit of Haleakalā, Island of Maui began December 1, 2012; with prior fabrication offsite. Project schedule has been delayed due to site access. Operational start date of the ATST is projected to be July 2019. The following online site provides further information of construction status: <http://atst.nso.edu/BuildingATST>

Huisheng Chen, ATST Resource Biologist presented a powerpoint presentation on the status of the ATST Habitat Conservation Plan required mitigation and monitoring activities. Chen mentioned that the use of burrow scopes were difficult due to the winding nature of the Hawaiian Petrel or 'Ua'u (*Pterodroma sandwichensis*) burrows within the substrate. Petrel burrows are monitored to determine fledgling success using a standard 'toothpick' method at the burrow entrance. Approximately 3.3 acres surrounding the ATST site is searched for downed wildlife once per week during the Hawaiian petrel breeding season and more frequently after weather events or peak fledgling periods. ATST has purchased 60 wildlife cameras for use near burrows to determine petrel activity and monitor for predators.

Surrounding the ATST site is a 328 acre Conservation Area serving as the mitigation site for the project. ATST conducted a contractor bidder site visit on 1/31/2013, with contractor selection to be completed within the next week. Harrison asked if this fence would be cat-proof. Chen responded that the fence is planned to exclude only ungulates. Rodent, cat, and ungulate monitoring is underway within the Conservation Area and lower elevation control site to the southwest.

ATST has found three adult Hawaiian Petrel carcasses within the Conservation Area (2 in the search area, burrow SC21; and 1 outside the search area, burrow SC15). A final necropsy report from the USGS is pending for SC21. Body trauma to the right flank was determined to be the cause of death for the SC15 Hawaiian Petrel carcass.

Chen mentioned that of the 300 or so burrows monitored per seabird season only about half were found to be active, thus the use of artificial burrows for any planned social attraction in the area probably would not be needed.

The Chair asked if there were any comments from the public. There were none.

Mehrhoff asked for details regarding any ATST cat control activities. Chen responded that ATST uses Havahart live traps, equipped with transmitters to ensure that traps are checked every other day.

Hart asked about the difficulty in using burrow scopes. Chen responded that burrow scopes cannot turn around corners, making it difficult to insert into burrows. Fein added that KC Environmental is working to obtain other scope models that would allow for an improved and safe visual in burrows.

Fretz asked about the ATST fledgling success reported at 10-16% and noted that it was considerably lower than within the nearby national park. If this fledgling success rate is accurate and modeled into the future, this particular population of Hawaiian petrel burrows would not persist. Chen commented that once the ATST ungulate fence is complete and predator control begins, these actions should result in a higher fledgling success rate. Fretz asked of the 306 burrows that were monitored this year, how many were active. Chen responded that burrow monitoring for this season is still underway; however last season there were about 150 active burrows out of the approximately 300 that were checked. Fretz asked for clarification regarding Chen's statement that rats were more of a problem than cats. Fretz noted that according to Haleakalā National Park, feral cats were the biggest threat to Hawaiian Petrel populations in the summit area. Also according to the ATST predator control monitoring data, few rats were found in the area, but there was still nest failure and predation. Fein commented that KC Environmental has documented several instances of rat predation from camera traps; in video from the last 6 years, when a rat goes into a nest, it fails.

Fretz explained that DLNR DOFAW has been working with Land Division to designate the Conservation Area surrounding ATST as a possible wildlife sanctuary in the future.

Fein asked if and when the area becomes designated as a wildlife sanctuary, will that affect the ATST Hawaiian Petrel monitoring work. Fretz responded that ATST is required to continue mitigation activities pursuant to their Incidental Take License /Permit; designation of a wildlife sanctuary would not affect this. Typically for State unencumbered lands such as is the case for the current Conservation Area, a right-of-entry for access is granted from Land Division. When it becomes a wildlife sanctuary, then a wildlife sanctuary access permit is needed; and ATST should certainly be granted that permit because ATST has an Incidental Take License that requires work in the area.

Hart asked if the plans for the control site are continual annual monitoring or are there other objectives. Chen responded that activities at the control site are monitoring only with no management involved. Hart noted that the control site is considerably lower in elevation. Chen agreed but stated that there were no other options available with similar terrain and existing Hawaiian petrel burrows. Tribble noted that the control site is only a control site for the lower elevation Conservation Area. Bruns suggested that the first two years of monitoring the ATST mitigation site, prior to management, would be the most appropriate control data.

Fretz asked if the three petrel carcasses found near ATST were attributed to project actions and thus would be part of their authorized take. Chen responded that according to the necropsy report for carcass SC15, death was due to blunt trauma common with collisions; but during this time ATST did not have any above ground vertical structures on-site.

Fein added that for SC21, there was no collapse of a burrow or evidence of impact from construction vibrations. Fein continued that during all ground construction activities, instrumentation was specifically used on-site to monitor both vibrations and noise. Instrumentation near the burrows where the carcasses were found showed that during construction activities, vibrations or noise did not reach any levels to cause harassment or mortality. Fein added that at the SC21 burrow, monitors documented many older petrel bones, likely from previous predation events.

Fretz commented that it appears this particular site surrounding ATST is a population sink for Hawaiian Petrels, and it is good to have ATST put management on the ground and hopefully increase the productivity of this site.

Bruns commented that ATST has committed to a minimum of six years of predator control that would start next year.

Fein responded that following construction in December, ATST staff have been conducting predator control monitoring and would hate to have all of that work not be counted. Fein concluded that the start of year one is up to the Committee to decide.

Mehrhoff stated that year-one should start when the actual predator control starts, as stated in the habitat conservation plan for ATST. According to ATST, the predator control should be in place next year, and Mehrhoff added, that would start year-one.

There were no further questions from the Licensee or Committee.

ITEM 4. Administrative Needs/Updates.

Salbosa updated the Committee of the new ESRC website at: <http://hawaii.gov/dlnr/dofaw/esrc>. The website will contain downloadable links to ESRC meeting agendas, materials, and approved meeting minutes. The ESRC site will also have a link to the existing DOFAW site that contains draft and approved habitat conservation plans and safe harbor agreements. This site is also in the process of being updated as well.

The Chair asked for any comments from the public. There were none.

ITEM 5. Kāko‘o ‘Ōiwi community-based non-profit organization (landowner Hawai‘i Community Development Authority) in He‘eia, O‘ahu: Efforts to restore and conserve endangered, threatened, proposed, and candidate species.

Salbosa provided a brief summary of the agenda item, as described in the DOFAW staff submittal to the ESRC. There have been several meetings and site visits with Kāko‘o ‘Ōiwi (KO). One of the objectives of KO is to restore and create functioning lo‘i in He‘eia. Such work has been known to attract endangered waterbirds. The ESRC is being asked to consider KO efforts to conserve endangered waterbirds, that would allow lo‘i cultivation to occur in this area. No application for a safe harbor agreement or habitat conservation plan has been submitted; and thus the discussion was for informational purposes only.

Kukea-Shultz provided an informational powerpoint presentation to the Committee. Kukea-Shultz expressed Hawai'i Community Development Authority's desire to pursue a safe harbor agreement for this area. Kukea-Shultz provided the Committee an overview of the community's needs, the desires of the kūpuna, purpose and mission of KO, and all partners involved in the project.

Kukea-Shultz noted that since creating a few lo'i, KO has had two successful Hawaiian Stilt nests. Kūpuna in this area believe the birds are important and want to see these endangered birds come back to this area, but in doing so maintain traditional cultural practices of lo'i cultivation and not have these two objectives pitted against each other. KO does not want to be a sink for waterbirds, but rather a source to help restore waterbird populations.

The Chair asked if there were any members of the public wanting to testify. There were none.

Clark asked if Kūpuna in the area had thoughts on how much land should be left for bird habitat versus agriculture. Kukea-Shultz responded that it depends on who you talk to but also the land area available. KO has 180 acres for potential lo'i fields; some folks would say it should be 50% fallow and 50% cultivated but that may not support revenue generation enough for KO to be sustainable and meet the needs of the community.

Hart asked what the current strategy is for KO when birds are found. Kukea-Shultz responded that when birds are foraging or more importantly a nest is found, then the birds are left alone and a distance is maintain wherein the bird's behavior is not affected by human activities. Kukea-Shultz noted that with 34,000 people living in the He'eia ahupua'a and pets that sometime wander in the area, it's difficult to prevent some kind of disturbance to the birds.

Fretz noted that there are two things planned for this area: lo'i cultivation and wetland restoration. Mehrhoff stated that it appears mitigation in the form of wetland restoration can be used to offset any take that might occur in the other half of the parcel. Kukea-Shultz added that KO uses the traditional method of pu'epu'e, which doesn't require taro to be harvested in a certain time due to rising water levels. If needed KO may be able to work around bird activity.

Mehrhoft stated that according to records, KO would be starting at a biological baseline of zero. Tribble asked what kind of management would occur in the restored 22 acre wetland. Kukea-Shultz responded that KO is willing to have a management strategy that is recommended by DOFAW and USFWS, including predator control and fencing of the entire restored wetland area. Kukea-Shultz continued that Kūpuna want to see KO revenue spent on environmental restoration, education, and Hawaiian culture. Tribble responded that it appears KO is viewing lo'i cultivation and wetland restoration as one interconnected project, which intuitively makes sense, but may be novel or difficult from a regulatory perspective.

Clark added that it would be important to determine if the restored wetland would be managed to control storm water run-off or primarily managed for waterbird habitat.

Young asked about the clean water act permit Kukea-Shultz mentioned earlier, and when that permit would come into play. Kukea-Shultz responded that to his knowledge, the landowner HCDA is working to pursue a programmatic EIS, after which time he believes that's when KO would apply for a clean water permit or when there are plans to remove the mangrove, as that would be the trigger for the clean water permit.

Mehrhoff stated that if an Army Corps permit is sought, that would federalize the project and require a section 7 biological opinion from the Service, and subsequent incidental take statement. Fretz responded that the State would then pursue likely a safe harbor agreement with KO/HCDA. Fretz concluded that DOFAW and USWFS staff should be able to work through the details and can report back to the Committee when there is a draft document in place.

ITEM 6. Draft Round-Leaved Chaff Flower Habitat Conservation Plan (HCP), Kenai Industrial Park Project; landowner CIRI Land Development Company in Ewa, O'ahu.

Salbosa provided an overview of the DOFAW staff submittal posted on the ESRC website and all hardcopy documents provided to Members in regards to agenda Item 6. Fretz commented that perhaps the Committee can acknowledge State Deputy Attorney General's determination that the project's actions including mitigation activities, do not trigger HRS Chapter 343, and focus discussions on the draft HCP. Penn responded that the information contained in a 343 document should be factored into the decisions made by the Committee, and thus such documents should be reviewed and discussed by the Committee.

Penn stated that the Committee needs to determine if the actions proposed including mitigation and project activities, provides for a net environmental benefit. Fretz responded that this is something he would like to see discussed with the Attorney General; previous guidance from the Attorney General's office provided that net environmental benefit in 195D is specifically for species and not habitat.

Penn continued that if this was a federal HCP then a NEPA document would automatically be required and environmental effects from the project would be adequately evaluated. Penn added that without an environmental NEPA/HEPA document, environmental effects from the project are not analyzed; particularly project activities of paving over anchaline pool habitat and karst landscape.

Benck commented that with all due respect the triggers for HRS 343 are specifically stated; and from a legal perspective and following legal analysis, we absolutely do not have one of those triggers here, with regard to the project and associated activities. Benck continued that according to past discussions there were some thoughts that the project's mitigation activities may trigger 343 if the mitigation strategy involved the use of State or County lands; however as the revised and current HCP shows, the planned mitigation site is neither State nor County land.

Benck added that according to legislative history and the HRS Chapter itself, the purpose for 343 is to provide for public disclosure and ensure people are aware of what may happen. Benck continued that under HRS Chapter 195D, full public disclosure is required

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before any issuance of an incidental take license and habitat conservation plan; so it appears the intent of 343 public disclosures is mirrored in 195D.

Penn responded that while that may be true, how the net gain of the action is defined, is unclear.

Penn stated that the status of the parcel appears to be unclear in regards to the City Council setting aside the parcel or a portion of the parcel as a plant preservation area in 1987 for the endangered plant *Achyranthes*. Penn asked if there had been any discussions between the City Council and DLNR.

The Chair suggested it would be best to have the applicant present their powerpoint briefing and then continue with deliberations.

Eijzenga began with a short briefing on the background of the HCP and introduced the new environmental consultants, SWCA. Pfeifer, as President of CLDC provided a short briefing on the applicant and project history. Eijzenga continued with a powerpoint presentation on project activities and revisions to the draft HCP as requested, to address previous ESRC and wildlife agency concerns.

Eijzenga noted that the parcel was originally set-aside as a plant preserve and a fence was built around the parcel to protect the plants. Eijzenga stated that from recent biological surveys, only one species of endangered wildlife was found on the subject property – *Achyranthes splendens* var. *rotundata*. SCWA also investigated the limestone sink holes on the subject property; only one was found to have standing water. Eijzenga summarized the findings of the biological survey reports, provided as Appendix D in the draft HCP. Eijzenga stated that no anchaline pool wildlife was found on the subject property, as the standing water in the sink holes surveyed was tested and found to be anoxic and not able to support such wildlife.

Eijzenga stated that the applicant is requesting take of three individuals of *A. splendens* var. *rotundata* and their associated seed bank. Seed collections, according to Eijzenga have already occurred from seed stock at the subject property and nearby *Achyranthes* population on City and County land, with both stocks stored at Lyon Abroetum; plans are to contract Hui Ku Maoli Ola to propagate 120 individual *Achyranthes* plants and subsequent outplanting at the Pearl Harbor National Wildlife Refuge, Kalaeloa Unit.

Eijzenga continued to address other aspects of ESRC concerns and provided the following updates: Pearl Harbor National Wildlife Refuge, Refuge Manager has provided a detailed letter of support and long-term commitment for the recovery of *Achyranthes* on the refuge, through project mitigation activities; the requested term of the license has been extended to 10 years, with additional detailed measures of monitoring success targets and adaptive management measures to ensure full mitigation and sustainable long-term recruitment is achieved.

The Chair asked for questions from the Committee. Hart asked what would be done to the existing three *Achyranthes* individuals and if attempts would be made to remove these plants. Eijzenga responded that because the plants are growing out of the limestone and have a deep root system; it would not be possible to safely move the three mature plants.

Fretz commented that at the last site visit to Pearl Harbor National Wildlife Refuge, it was found that the existing *Achyranthes* plants were seeding but nothing was germinating. Eijzenga noted that there are still some questions surrounding germination success on the Refuge, but according to the Refuge Manager, he was very confident that this can be resolved; and if not there can be further work to microsite site-selection, as there are other areas on the Refuge where germination has been successful. Fretz asked from discussions with the Refuge, what may be some of the reasons for the varied germination success. Eijzenga responded that it may be drought, habitat or some combination. Eijzenga continued that the applicant expects to reach success targets of 120 mature *Achyranthes* plants and full recruitment in five years; if this is not reached and annual benchmarks not met during this time then adaptive management measures will occur, including seeking other sites or increasing on-site care of the plants. Eijzenga stated that propagation from seeds have been highly successful at a rate of 90-95%; however achieving sustainable recruitment may be the challenge.

Tribble asked if the Committee during the last site visit, found any plants on the Refuge with documented re-germination and recruitment. Mehrhoff responded that along the coast there is a natural population of *Achyranthes* that has produced seed, and those seeds have successfully germinated into adult mature plants. Mehrhoff continued that several meters inland at the location of an *Achyranthes* test plot, planted around three to five years ago, there was successful germination but very limited recruitment. Mehrhoff recalled seeing perhaps one seedling from natural germination.

Mehrhoff questioned whether the success target of having seedlings from outplanted plants make it through one dry season is sufficient. Instead Mehrhoff suggested perhaps at least 25% natural seedling germination from seedlings of outplanted plants, would be a clearer indication of a successful population. Eijzenga stated that current success targets are set to offset any adult mortality of outplanted individuals; but this can be modified to provide a clear target number reflective of a successful population.

Mehrhoff stated that the exact area for the mitigation site on the Refuge would be needed, to ensure that the area or site is not re-mitigated in the future. Eijzenga agreed that information will be in the final HCP and the current spacing requirements in the draft HCP will also ensure separation from any future mitigation or non-recovery actions.

Mehrhoff asked what the actual acreage would be on the mitigation site versus the acreage of *Achyranthes* individuals and seed bank lost on the subject property. Eijzenga responded that the subject parcel is 0.72 acres, and asked for some time to calculate the area of the planned mitigation site.

The Chair asked DOFAW staff about the 1990 mitigation site. Salbosa provided a summary of DOFAW's analysis as provided in the staff submittal to the ESRC, and then proceeded to turn it over to Benck for further details from her legal research.

Penn asked if the County has weighed in on this and if there are some steps that can be taken to prevent this type of County and department inconsistency in the future. Salbosa responded that the Deputy Attorney General did not direct nor recommend that DOFAW apply any other State statute or administrative ruling other than what is identified in HRS Chapter 195D.

APPROVED

Benck commented that the reason the County Council passed the preservation resolution was because the entire area, not just the subject parcel, was in the Special Management Area covered under HRS 205A. Benck continued that under this SMA designation, any development valued at \$500K or more and/or has significant environmental effects may require approval from the Council; thus the applicant or a subsequent landowner may need County Council approval and may be required to proceed under HRS Chapter 343 if an SMA Use permit is required. Benck concluded that the applicant will be proceeding with an SMA assessment from the planning director.

Fretz commented that if the Committee recommends the draft HCP for approval based on the biology and recovery benefit for the species, then the item will be brought to the Board for action, and at that time the AG present will be required to deal with it at that time and in the context of other State statutes. Fretz concluded that it doesn't appear necessary for the Committee to discuss the validity of the County Council resolution.

Penn agreed and added that he would like to see this council resolution issue and all other issues regarding this item, flagged and brought forward to the BLNR.

Fretz responded that DOFAW staff will ensure that all necessary ESRC concerns and questions are brought to the Board for consideration and action.

Penn asked if the applicant holds the SMA permit over the subject parcel. Benck responded that there is a single SMA permit over the entire industrial park area, issued by the planning department back in 1987. Benck continued that the CLDC subject parcel is exempt from the SMA permit due to the area being set aside as a plant preservation area; thus the applicant will need to approach the City to resolve this and determine if a new SMA permit is needed or what course of action should be taken, and this would be true even if no endangered plants were on the property.

Benck stated that although the applicant requested that the department withdraw the DEA, the applicant recognizes that the subject parcel is within the SMA area and thus actions on the subject parcel may trigger an environmental assessment under city ordinance; however under that circumstance, the department of planning and permitting would be the authorizing agency and not the DLNR.

Eijzenga stated he was able to calculate the area planned for mitigation, answering Mehrhoff's earlier question. Eijzenga continued that the subject parcel is 0.72 acres and the planned mitigation site area would be 2,500 square feet. Mehrhoff noted that a loss of 0.72 acres in plants and potential seed bank would be mitigated with only 0.05 acres.

Penn stated that the main difference between the Federal and State statute is that the Federal statute incorporates an ecosystem approach but the State statute doesn't go that far.

Fretz commented that the subject parcel only contains three plants. Eijzenga added that over the last decade, according to biological surveys, the highest number of plants thought to exist on the subject parcel was seven; and the applicant is proposing to augment this population with an additional 120 mature plants and ensure a stable sustainable population on the nearby Refuge.

APPROVED

The Chair asked if there were additional comments or questions from the Committee. Mehrhoff commented that as previously discussed we are not looking at an ecosystem, we're looking at replacing plants; furthermore the project is over a small area, is 10 years, and includes an even smaller area planned for mitigation; thus this is not a huge mitigation offset by any stretch. Fretz responded that one additional point is that the Refuge will assume responsibility for the mitigation site into perpetuity.

Tribble added that with a smaller footprint for a mitigation site, that leaves the applicant potentially vulnerable to some event, affecting whether or not the project meets benchmarks or success targets.

Young asked if after five years it's found that the project is not meeting mitigation targets, will the applicant seek other mitigation sites, outside the Refuge. Eijzenga responded that if after the first year the project is not meeting targets, then the project will identify alternative sites on the Refuge. Eijzenga continued that if after the first five years Refuge sites are not proving successful, then the project will follow through with securing possible sites at the Kalaeloa Heritage Park.

Mehrhoft asked what happens after 10 years if the success criteria are not met. Salbosa responded that the applicant would be required to submit annual reports and meet annual adaptive management measures; if it appears that annual benchmarks are not met as year 10 approaches then the applicant's ITL will be amended and extended and the applicant will be required to continue obligations under the HCP, until such time that all success criteria are met.

The Chair asked for a motion from the Committee to recommend for approval to the Board, the HCP and issuance of the Incidental Take License.

MOTION: (Harrison/ Hart)

To recommend for approval to the Board of Land and Natural Resources, the Draft Round-Leaved Chaff Flower Habitat Conservation Plan (HCP), Kenai Industrial Park Project and issuance of associated Incidental Take License.

APPROVED WITH RESERVATIONS

Reservations include the following:

- Net environmental benefit; and status of the County Council Resolution to set aside the subject property as a plant preservation area; noting that the approved HCP would provide for the permanent removal of endangered plants from the subject property.

The Chair encouraged any specific language detailing a Committee Member's reservations on this agenda item 6, to be forwarded to DOFAW staff to be included in the DOFAW submittal to the Board.

Tribble added that, while recognizing that the three plants cannot be translocated, there is valuable genetic and botanical information contained within the plants, thus the plants should not be simply paved over. Eijzenga agreed and stated that the Bishop Museum or Lyon Arboretum will be contacted as a potential repository for vouchers or other biological material.

The Chair recessed the ESRC meeting, and asked to reconvene at 1:30 PM.

ITEM 7. Update On Scope of Work for Proctoring of Searcher Efficiency (SEEF) and Carcass Retention (CARE) Trials at Kaheawa Pastures Wind Energy Generating Facility and Kaheawa Wind Power II Wind Energy Generation Facility; Mā‘alaea, Maui.

The Chair reconvened the meeting at 1:35 PM. Salbosa provided a brief summary of the draft Scope of Work (SOW) developed by the wildlife agencies, in consultation with First Wind, and that the document was explicitly requested by the ESRC at the last meeting. Hard copies were provided to Members in their Committee packets and available to interested members of the public. Salbosa stated that there was no other staff submittal provided on this agenda item 7.

Salbosa commented that during the last week in June, USGS statistician Manuela Huso met with the wildlife agencies to discuss new scientific approaches to determining wind facility wildlife impacts and during this time Huso discussed and provided recommendations on the SOW; all such recommendations have been incorporated into the current draft.

Salbosa continued that the SOW has been modified since March, to focus on the tasks and objectives, first requested from the ESRC in 2010. Recent comments received from the USFWS have yet to be incorporated, Salbosa stated. DOFAW is working to determine procurement rules and options necessary to move the SOW forward, as the final step before implementation. Salbosa reiterated that the objective of the SOW is to produce an independent assessment of the searcher efficiency and carcass retention at these sites in the most cost effective manner without jeopardizing statistical rigor and project objectives; and ultimately evaluating total adjusted take of the facilities.

Fretz asked what recourse is there if after the final SOW goes out and the bids are received, what if First Wind decides that they do not want to pay that amount, what would happen then; Fretz noted that this has happened previously.

Craig responded that while he does not have the authority to speak for First Wind, First Wind has requested this process and Craig imagines that First Wind will agree to the best qualified and cost-effective contractor.

Fretz wondered what kind of power or recourse does the Committee have if Committee recommendations to Licensees are repeatedly not carried out.

Harrison commented that according to his recollection what the Committee was looking for was a Committee workshop focused on wind facility take estimations and how that is calculated here and elsewhere.

Fretz responded and agreed but noted that those two items, the SOW and a take workshop are two different items; both of which the Committee is expecting to have happen.

Fretz suggested that perhaps DOFAW staff can report to the Committee at a later date on the workshop with USGS statistician.

APPROVED

Salbosa asked for clarification on what specifically the Committee is requesting, if it is the statistical methodology or searching protocol tradeoffs, involved in determining with some level of certainty, whether or not the authorized total adjusted take of the facility is exceeded.

Tribble asked if this workshop was part of the Bat Conservation International (BCI) Wind Energy Conference. Mehrhoff replied that in addition to the BCI workshop, subsequent meetings were held at the Service with DOFAW and several wind producers, in regards to take estimations; and this is where many of the discussions that DOFAW staff is referring to, took place. Mehrhoff commented that it might have been a missed opportunity not to have engaged with the Committee during this time, but unfortunately, it appears this intent from the ESRC was not clear.

Bruns added that the Service has applied for funding to have Huso return next year and perhaps this would be a better time to have the Committee present; as this recent workshop was highly technical and the first time that Huso presented her new take estimation model.

Fretz agreed that would be exactly what the ESRC requested – overviews of state of the art take estimation methods to apply to wind producers and if the Service can arrange for that, it would be highly valuable to the Committee. Fretz asked if the agencies can work on the details of putting together such a meeting.

Mehrhoff agreed that can be done, or at the very least a collection of technical experts where we can discuss state of the art methods for assessing wind energy wildlife impacts specific to Hawai‘i, and reasonable expectations involved. Mehrhoff concluded that he intends to work with his staff, DOFAW, and USGS to move this forward.

Hart asked if techniques in the current SOW would need to be modified based on the subsequent workshop, meaning should the SOW be delayed to incorporate the outcome of this workshop. Mehrhoff responded that this SOW is specific to the site in order to obtain an assessment of searcher efficiency and carcass retention and is not necessarily going to inform wind energy wildlife impacts archipelago-wide. Mehrhoff continued that the purpose of this future workshop would be to inform the Committee on big-picture decision points to assess wind energy wildlife impacts using state of the art information.

The Chair concluded that the SOW should proceed as planned and that the Service and DOFAW staff will work to put together a future wind energy wildlife impact workshop for the Committee in the future.

Harrison asked if the SOW can be clear to ensure that the First Wind searchers will not be expecting to find carcasses, meaning that the carcass placement is completely random so there are days when the searchers do not find trial carcasses.

Salbosa replied that the SOW will be edited to make this absolutely clear.

Harrison asked if First Wind can also brief the Committee on the status of bat searchers at Kawailoa. Craig agreed.

Fretz asked what will happen if the agencies and First Wind do not come to an agreement on the price and the contractor. Craig responded that he believes that this is the last straw;

APPROVED

First Wind is committed to having this go forward and are awaiting the bidding process so that an independent firm can review the SOW and submit a budget proposal.

Fretz suggested that if the agencies can work it out with First Wind and come to an agreement, that's great; if no agreement can be reached or if there are still concerns from the agencies, Fretz recommends that all bids and project proposals received be brought to the Committee for a review and final decision.

Tribble asked if DOFAW or First Wind will be issuing the contract. Craig replied that First Wind will issue the contract, once a firm is selected.

Harrison asked if the agencies can review all bids and information received from the bidding process. Craig replied that according to his understanding that will certainly be carried out, since the agencies have a say in what contractor is selected.

The Chair asked if there are any other comments. There were none.

ITEM 8. Staff Update on the Draft Honua'ula Habitat Conservation Plan

Salbosa provided a verbal update on the status of the Draft Honua'ula Habitat Conservation Plan and reminded the Committee that this verbal update was requested at the previous ESRC Meeting. The update to the Committee was that the applicant is working on the revised habitat conservation plan, in light of the recent listing of *Canavalia pubescens* or 'āwikiwiki plant; and that the applicant is working to comply with the State Historic Preservation Division. Salbosa concluded that if there are further questions from the Committee, the applicant is present to answer any such questions.

Jencks added that there are significant issues with SHPD, as his archaeologist has left the project and SHPD is requesting new surveys. Jencks is working to engage a new archaeologist and is approaching the investors for more money to do so. Jencks continued that there are plans to update the biological survey data to ensure that the most up-to-date information on *Canavalia* is provided to the Committee. Jencks expects the archaeological inventory survey to take at least three months to complete and receive SHPD approval. Jencks concluded that he plans to engage the community and come back to the Committee with a revised document.

The Chair asked for any other comments. There were none.

ITEM 9. Set next meeting date.

The next ESRC Meeting was set for October 24, 2013.

The Meeting adjourned at 2:23 PM.