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ENDANGERED SPECIES RECOVERY COMMITTEE

September 14, 2017 MEETING MINUTES

- MEMBERS:** Scott Fretz (DLNR), Darren LeBlanc (USFWS), Kim Burnett (UH), Lisa Spain (at-large), Loyal Mehrhoff (at-large), Jim Jacobi (USGS)
- STAFF:** DOFAW: Kate Cullison, Glenn Metzler, Emma Gosliner, Dietra Meyers-Tremblay, Edith Adkins, Kanalu Sproat, Elliot Parsons, Susan Ching, Marigold Zoll, Cynthia King, Taylor Coory
- USFWS: Diane Sether, Jodi Charrier
- OTHERS:** Wayne Haight (Tetra Tech), Shahin Ansari (HT Harvey), David Henkin (EarthJustice)

ITEM 1. Call to order. Introductions

ITEM 2. Approval of Minutes from June 13, 2017 ESRC Meeting

Burnett reminded committee and staff to revisit action items and remember to follow up on them. Fretz asked if there are any public comments on the June 2017 minutes. There are no public comments.

Jacobi motioned to approve minutes from June 2017 ESRC meeting. Minutes are approved.

ITEM 3. Announcements

- Fretz welcomed Lisa Spain to her first meeting as an At-large member.
- Jacobi wanted to recognize Dave Tessler's contribution to the Committee and expressed great appreciation for what he did. Wanted that on the record. Fretz stated that Tessler was an outstanding and detailed contributor to the committee and appreciate his contributions.
- Cullison announced upcoming ESRC meetings for October 19 and November 7 and 8. Jacobi recommended a review and update on all approved RFP projects. Would like to include those items in our annual reviews. Fretz would like to devote a lot of time to bat issues. Asked staff to request agenda items related to bats and distribute and create a bat-specific agenda and arrange a meeting.
- Hawi is no longer seeking an HCP.
- Na Pua Makani still on hold with contested case. Next step is for the parties to file closing briefs and board will meet with both parties and make a decision based on that.
- DKIST HCP requested to terminate their HCP early as they have had less take than expected, and are spending more money on mitigation than anticipated. The Committee will receive a written request in an upcoming meeting to deliberate on.
- LeBlanc updated Committee on federal process. USFWS has come to the conclusion that EISs are needed for the forthcoming wind amendments. Will be combining projects into one programmatic/batched EIS because it needs to go through the Federal Register three different

times. LeBlanc did not believe this would delay the ESRC process and will continue to move ahead on the state side.

- Sether confirmed that Lalamilo HCP will need an EA for the NEPA process.
- Mehrhoff asked if there are any amendments coming up. Cullison said to expect Kaheawa Wind Power II in October.
- Fretz asked if every HCP will require an EIS to comply with NEPA. LeBlanc replied that amount of take requested is substantial and we need to analyze the cumulative effect for bats. Within that USFWS cannot justify the effects of funding research to fully offset the amount of take requested.
- Jacobi asked if EIS will have any bearing on the RFP projects that are funded through mitigation funds. LeBlanc said if they have been permitted than no.

Fretz asked if there were any public comments on the announcements. There were no public comments.

ITEM 4. Update on Abutilon Stabilization Plan by Susan Ching (DOFAW)

- This agenda item is an update on specific management plan for the HCP. There should be a future agenda item specifically on whether HCP is in compliance and if not, what are the options.
- Ching presented the abutilon stabilization plan, how to manage abutilon as part of other projects. The population size is not currently determined because not all of the populations targeted in the HCP are viable, and may not be successful. Ching is exploring how to change directions, the HCP does not say when during the project term to begin that. Current funding may only take us to 2019.
- Jacobi commented ESRC mandated to look at strategy and targets to meet HCP obligations and whether they are met or not. Funding is not ESRC issue, and is more focused on biology and ecology and meeting targets.
- Fretz said the purpose of the agenda item is to brief committee on DOFAW plan to carry out stabilization of abutilon independent of what happens with the HCP or upon expiration of the HCP.
- Jacobi said that the abutilon strategy so far has been to plant a lot in one place and that will make a population, and expressed interest to move the scope over to Maui where it is relatively more successful. He suggested looking at what's working there and why it's working and use it as a model for a strategy on Oahu. Ching said there is no good habitat on Oahu, been hard to find. Jacobi said part of the ESRC's role is figuring out how to solve these ecological problems.
- Jacobi said there is a potential to create a working group similar to bats that would be worthwhile to solve abutilon issues. He is not ready to walk away and sees the potential in making this work.
- Zoll said they are actively incorporating abutilon into the plan for watershed restoration and dry forest plant strategy.
- Mehrhoff asked if the Maui Nui site would be from the same gene pool. Ching clarified that it would expand Oahu plants into the Maui gene pool. Mehrhoff suggested putting targets into goal statements. He asked if looking at an ecosystem approach, *Achyranthes spendens* var. *rotundata* uses similar habitat and may provide opportunities for looking at abutilon. Suggested experimenting with abutilon at the *Achyranthes* site to see if it makes any difference. You can ask the committee from a biological perspective if the success criteria have been met. A gig question is going to be whether the HCP out of compliance and would the applicant get charged for more mitigation than they said they were going to do.

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- Fretz said the Committee can weigh in on what the next steps to the HCP should be, we can put that on an agenda we can ask staff to review specifically can make a recommendation with the staff's assistance based on technical information at a later time.
- Jacobi said he would like to see a consideration in the level of management needed for population. Every site visited was very managed. The intent in developing populations is to make it sustainable for the long term.
- Fretz clarified that DOFAW is asking the committee for comments to further develop an implementation plan specific enough that managers have a guide to work off of. Suggested making a working group, offered to any committee members to work on it (up to two members unless appointed).
- Future meeting will decide if we will have an informal working group or more formal task force, appointed by the ESRC. Spain asked if the working group was just for abutilon it would be putting a lot onto the ESRC to have a task force for each species, would prefer small working group because it will be relevant to other projects across the state.
- Fretz asked committee to decide what form they would like the advising to take, otherwise should put together a group of experts.
- Discussion on adaptive management and whether it failed.
- Staff to look into issues in detail on what to do with the HCP and its obligations and make a specific recommendation, it's a regulatory and management issue. The committee would like to know what the staff thinks and recommends in consultation with the Attorney General on the compliance issue. Would like to discuss it at the annual review in November meeting. Fretz encouraged the committee to do research into the issue on their own.
- Spain advocated for an adaptive management approach in looking for new sites that will be successful.
- Regulatory side of DOFAW will contact district branch for technical management advice and development issues and planning, and the regulatory staff will bring that to the committee with request for comments.

Fretz asked if there are any public comments. There were no public comments.

ITEM 5. Request for Comments on the August 2017 Draft Habitat Conservation Plan and Incidental Take License: Game Management at Pu'u Wa'awa'a and Pu'u Anahulu, Nāpu'u Conservation Plan; presentation by Edith Adkins (DOFAW)

- Mehrhoff asked for clarification on the proposed project action. He clarified that this HCP is state-only, and BSM is covered under a federal BO. He struggled to understand how the current hunting program is not part of the action, asked if there are unlimited bag limits. He said the current hunting program is part of the action, and doesn't think it would be appropriate to assume that any take occurring now without enhancement is true because bag limits are a form of game management. It doesn't come across as the action being allowed will be mitigated for.
- Jacobi asked when the project started. Commented that it is confusing and important to nail down. Adkins clarified that the baseline set in 2002.
- LeBlanc stated that anything within an enclosure is not being considered as take, but based on the fact that previous surveys are 2002 there are now 15 years that those plants have been affected. If the fences aren't completed for another 15 years, then there has been 30 years of take that has

occurred in those protected areas that's not being accounted for. What happens if one has a few individuals and they get wiped out? Most of the time the mitigation goes in before you start the project so you can count on the preserved area, but can't really say that in this case.

- Fretz questioned whether regulations that impose some limit for game mammals result in responsibility for take.
- Mehrhoff mentioned a proactive requirement for stewardship. Take of known plants now is pretty high for example 200/235 known plants being taken. Napuu has world populations of some species that would be a huge and questionable impact. Suggested to explain it a bit cleaner in the document, people want to see more specifics on how and why you're making that call and explain so readers can understand that this is not seen as a long term sustainable area and these are the criteria used. We all know we can't keep every individual, but needs to be laid out crystal clear.
- Spain mentioned taking into account life history and seeding/flowering, since that has been an issue with a lot of the species.
- Mehrhoff mentioned forest and ungulate management and that no scientific studies conclude that any number other than zero is the appropriate amount of ungulates in an area restoring native Hawaiian forest. Jacobi asked how and why are you defining and coming up with thresholds? Spain said there is a need to have a baseline and asked what the forest looks like before developing thresholds.
- Mehrhoff said to consider hunting access as an increased fire risk. Should be part of the action. How you're going to be looking at treatment of fire on the landscape and how you are going to protect the area. Refers to a previous fire- on the Makai side which was a potential mitigation area. Consider impact actual firefighter to make sure you're not losing your areas. Adkins mentioned loss of federal PR funds by not allowing them [hunters] in. Mehrhoff suggested talking about how you want firefighting to progress in respect to proposed reserve. Don't want someone not paying attention to that while doing on the ground fire management. Jacobi recommended getting into avoidance and minimization for fire strategy.
- Fretz mentioned the risk of fire, from access, asked Mehrhoff if his comment is that the document should clarify that there are other fire breaks in the area. Loyal repeated that increasing hunting increases fire. He suggested putting in fire breaks, also creating a protocol with respect to how to do fire management in the area to make sure to protect mitigation site. Not have something in place to protect reserve makes an incomplete HCP. Make complete by addressing fire and this is how we're prioritizing to protect this area while fighting fires. Mehrhoff suggested letter of agreement, some sort of liaison when there's a fire in the area firefighters know which areas to protect. Jacobi recommended Park Service's plan. Spain said some actions inherent within DOFAW firefighting that take that into account, a few organizations in the area go out and do plant field trips with county firefighters. Taking into account existing protocol.
- LeBlanc said that the management plan needs to have goals of the project and timelines for goals to be success. It's not something you figure out later on. Currently, the document states that an avoidance and minimization plan will be developed within three weeks of plan approval- that kind of information is needed before the plan is approved-tied into adaptive management.
- Spain said there are two areas of monitoring: judging success of what's going on in terms of the endangered species and monitoring in appendix G in game. Two very separate things, document needs to make clear that they're connected. How those are going to be integrated, maybe Carnegie Institute will be helpful, how the transects are set, what are the acceptable limits.
- Jacobi asked how the plan is taking into account plant species that might become listed, and suggested enhancing that statement. Would like more detail on planting food plants for animals for game management, and was not comfortable with that as a blanket statement. (Sproat said it

was not something he was planning on doing, but wanted to have it as an option, and would research before moving forward). Jacobi did not like that general statement and suggested removing it if not committed to doing that, or revising it to say here is something we might want to do in the future, if we did we would only consider these plants etc.

- Fretz said it was not clear in the plan where it is described that using vegetation monitoring to gauge targets for game mammal. Why wouldn't you do population modelling instead? You know how many animals there are now, do you plan for there to be more or less?
- Spain asked how the outplanting outside of the protected unit works, and does not become a food plot? One of the notable things is increase of cover of silk oak, the area has invasive species increasing cover and that providing suitable cover for game. Looking at priority of management on landscape, and how it feeds into game management. Is silver oak serving a purpose to the game? And is prioritizing killing that weed over full blown exposed fountain grass on the landscape? Game and cover are our priorities. Blatant impact over the past 10 years, huge flux could be impacting habitat and is mostly going into the highly impacted areas.
- Fretz said that the covered activity is game management and any introduced species that can impact take. This limits what needs to be in the plan, like population limits since take is everything outside fences. Still have to describe the activity that could impact the area and your mitigation and your plan.
- Mehrhoff recommended putting in game birds, just so it's covered by the plan. Also lets you know what the bounds are, talking about augmenting populations, know you're not adding in new species. Putting in food for species that are already there is less scary than bringing in species.
- Jacobi said the idea of management in fenced areas comes off as build and fence an area and count individuals. Reproduction is what really counts, shows that something is actually happening. Suggested having better defined steps and targets along the way to help in terms of monitoring. Worthwhile to have long term targets.
- Mehrhoff commented that the document said it can produce an ecosystem by giving each plant 1-3 meters. He suggested as part of your monitoring plan to include something that decides whether that approach 5-10 years down the road is giving you success. You need to know what you're doing upfront so you can drive your information to get you to the adaptive management cycle.
- HCPs have assurances in funding, and Jacobi asked how it is working out with this project, as he realizes there are different funding sources and are a state agency. Fretz said it's legally required to have a section on assurance of funding since it's required under the law. Instructed to use staff and AG to write the section.
- Mehrhoff asked about enhancement Jacobi asked the difference in this version of the HCP regarding enhanced action.
- Mehrhoff wanted to make sure the legislature understand what the ramifications are if the lack of funding to implement mitigation for an action. Strongly suggested that it needs to be in there. Jacobi wanted to clarify that the ESRC is not trying to promote an enhanced hunting program, we're trying to protect natural biodiversity. Trying to figure out how to offset take in a way that makes ecological sense.
- Fretz said hunting management that may result in take is an important comment that DOFAW needs to be aware of.
- Mehrhoff asked how the plan is going to minimize or avoid take. Fretz asked Adkins to create on outline of those contingencies and minimize and avoid take wherever practical is among the adaptive management approach, using her expertise as a biologist with experience in what kinds of things can go wrong in these kinds of projects.

- Mehrhoff commented on the tables, they don't always remain consistent such as how many individuals there are, 1 meter versus 3 meters. Applauded the clear demonstration of the amount of individuals you are producing if they are in an ecosystem setting, mature reproducing individuals that is clearly demonstrating net benefit.
- Mehrhoff had a question on the 5:1 offset for BSM. Asked about the location of aiea created habitat, and noted that it was not going to be planted soon, in comparison to the 1400 annual take of larvae and eggs. Asked how long it takes for an aiea to grow to be a host plant for BSM, and what sort of larvae load to expect. King stated that BSM laying females usually lay eggs on the host plant they grew up eating. Mehrhoff replied that that is good to keep in mind from an adaptive management perspective down the road if we're not getting much recruitment on your aiea. Whole premise in adding aiea is to offset larvae. There are two classes: mitigation plants that you're going to be taking care of, and then there's your avoidance. Every species in the table has the exact threats and what you're going to control. Adkins replied that when something comes in and how do we become liable, and mitigate for all of that? Jacobi responded to Adkins concern that unless you had something to do with the action, it would be a changed circumstance.
- Mehrhoff asked about page 81 relocating BSM out of hatching area, thought that was still take but the response was that it was covered under cooperative agreement, so not take.
- Mehrhoff said it would be good to know more about native forest in area, and percentage of how much habitat you are protecting is missing from the document, or where those areas are. You have a table that talks about factors to increase mitigation population sizes, unclear how you came to that—they are all perennials.
- Mehrhoff mentioned reducing grass to 50% cover. Asked if that is what the fire models are recommending. He thought the Army spent a lot of time coming up with fire models for PCA. He asked about any protocol on what the minimum reserve size was? Are you comfortable that the other ones are biologically sound?
- Jacobi pointed out a line in budget for nursery technician/data manager. He suggested they needed more than budgeted and also to have someone to manage data.
- LeBlanc commented that the plan mentioned collecting seeds and outplanting, asked if planning on also collecting plants and relocating them to fenced area? If you are, are you doing any microclimate maintenance where the plants are growing now and where you're proposing to transplant them? He also asked about hunting in the forest bird sanctuary, and that it didn't sound like ungulates were getting removed from the area quickly. For the areas where proposed to fence and remove ungulates are you going to be doing the same type of trapping with snares or going to be doing active removal?
- Spain commented that the action is what we're doing to manage the species. Not the typical project that is taking away from endangered species, may be supporting them. What are you responsible as the permittee, as far as mitigation, what's that number, what's the difference between with or without game management? That's what you would want to write in the plan. Fretz stated that the State has taken an approach that bypasses NEPA. If there were no actions, all species would disappear.
- Jacobi suggested it might not hurt to go out and check on the baseline surveys from 2002. Part of the issue is the taller and woody species. Once they get to certain size, generally more protected but the larger issue is lack of regeneration.
- Fretz commented on procedure, this draft HCP went out for public review, Adkins need to show those public comments to the committee and explain what they were and what you did, and if

they were substantive did they trigger any questions that would require it to go out for public comment again?

- Adkins replied that FWS commented and were generally supportive. She has a master's report, but don't know when the appropriate time to send that out is. Fretz told Adkins to get with Cullison to figure it out. Get them to the committee with explanation of how you addressed them, have to have that before you can move forward with that.

Public comments:

- David Henkin (Earthjustice) Reiterated the bag limits and hunting rules as referenced in table 14.1 of Appendix G. Noted the use of watering stations. The State actively manages and tells the public that you can't fire anything but bows and arrows in some places and only a few days a year and muzzle loading a few other days a year. Nothing else ever. Need to keep the game numbers up, give them water. Management for the benefit of endangered plants is inaccurate. If you want to manage for endangered plants you let people kill lots of animals with no limits until they're all gone.
- He expressed concern about how the State is estimating the take numbers, and wondered why they are starting with the 2002 baseline. Management of game mammals in this area began before 2002 and these [plant] species were federally listed before 2002. For a couple of decades before 2002 there was game mammal management that was wiping out this area. The areas with endangered plants is not going to be fenced for a while, and hopefully [according to the plan] DOFAW can wipe out 90% of game mammals in 2 years after the fencing. He hoped that is achievable. Henkin believed during this long period of time between baselines, which should be back to 1994 when they were federally listed for some species that the agency had an obligation to manage their game mammal management. There is more estimated take than is listed here by using earlier baselines.
- Because the plan indicates losing progeny for periods of time, for some of the plant species the net benefit goal is at a healthy margin for what the estimated take is based on their census, but for some of them it's not very much at all. From a scientific standpoint this committee said there would be no progeny because they would have been destroyed by game mammals or managed by the agencies, you need to account for those. The plan has a 25 year life and Henkin assumed the State wanted to lay out from a pragmatic stand point enough time to roll out the effort to maintain and assess the benefits with the assumption that we're going to learn more about how to effectively manage threatened and endangered species between now and 25 years from now. The reality is this is there has been and will be game hunting in this area for many decades from now, and presumably past the 25 years of this plan. Henkin is concerned about how the plan addresses how the action goes on for much longer than the plan. Unless the State is committed to moving all of the managed animals 25 years from now (which would be great), there has to be some attention to the fact that the activity is going to be ongoing. What I saw in the plan was suggesting that the plan would think about what to do about it for six months given the fact that I've been aware of this plan's development for many years. There should be something built into the plan that before it expires you start looking at the next stage, otherwise there is going to be a big gap, lack of active management.
- Henkin commented that it needs to be clearer in the plan that the HCP relies on the protection of plants within existing exclosures. Protection of those plants to achieve the net benefit, you're not relying on that, you're relying on the complete removal of ungulates and active management in

the enclosure. It is also unclear on the extent to believe the plants will remain in existence because certainly the ones in the forest bird sanctuary are far from secure now, and it's going to be hard to get everything out of there. Unclear from reading the plan the extent of which species are covered, we need to keep the plants in forest bird sanctuary around, that should be clarified. Adkins clarified that all existing enclosures with the exception of the forest bird sanctuary are ungulate free.

- Henkin asked for clarification on net benefit hurdles and what benchmarks will be used for adaptive management and the extent that the enclosures will remain safe from fires/other incident by building some buffers so benefits will still be reached. He suggested that some transects in the area are already so altered that it would be a good place for ungulates because they won't destroy native plants to the extent that there are some salvageable native forest areas that are not endangered, could be preserved and maybe outplantings. Fretz asked Henkin to clarify his last comment, if he was suggesting additional offsite areas for mitigation. Henkin replied that he wasn't talking about offsite, but the within the overall Puu management area reserve. Some areas of native forest/habitat that may not have individuals of identified species but none the less won't do well with existing amount of ungulates. Part of the HCP could be used as areas for outplanting. It seems as though there is an assumption that all fenced areas are going to be preserved moving forward, and we know there are a variety of threats, might lose some and instead of waiting for adaptive management, coming up with buffers so plan has prospect of success. Fretz asked Henkin if he was using a different baseline for take, do you know what that would be. Henkin responded that he is trying to raise consciousness of the fact that the plant species have been subject to illegal take since 2002. Protection under state and federal law from the moment they listed and state had an obligation to avoid unauthorized take. The amount of take needs a qualitative buffer in terms of the amount of take since the Department has managed game in a way that made to sustain bag limits and season limits. Fretz asked Henkin if he knew since when the Department started bag and season limits. Management of area went to DOFAW in 2002. Area was not a hunting unit before DOFAW took over as land manager. Spain said it might have been a cooperative game unit before.
- Henkin said that the committee is not dealing with a typical private applicant, and instead with a state actor who has control of the land has obligations and public trusts. He asked if it is appropriate to put in some accommodation or acknowledgment of ongoing actions that have resulted in loss of species. Fretz replied that it is about addressing the issue that take was occurring back then incorporate different levels of take based on that set of circumstances.
- Mehrhoff said the State would automatically set plan in perpetuity but reality is that they are eliminating areas almost like a development project. If all of those were to go away and your plants are just in a protected areas at that point going forward is there any need for an HCP and how do you maintain the reserve that directly intended to be in perpetuity mitigation for these species. Alters the mindset for the HCP for me and that mitigation should be more in perpetuity for the stuff that's being lost outside, not necessarily avoidance steps. The avoidance part wouldn't fall under that category, but the mitigation of actual take would because you're not relegating those to some area. Need to approach this HCP like a development project because you're not getting that area back.
- Fretz mentioned a climate change model, around from USGS that will model how critical habitat can change for a species. Jacobi cautioned Adkins on using the model as an on the ground management tool, but more of a view of what's happening in the general sense. Use it only as general guidelines. Threats to the species are the immediate ones much more than climate change,

which will make dealing with the drier areas more difficult. Problem right now is ungulates. More challenging in lower elevations.

- Fretz said it is up to the applicant to decide what constitutes as mitigation for the loss. If we're creating self-sustaining population that are self-sustaining when do you achieve that? Mehrhoff asked if it is possible to create a self-sustaining population without management, and said management of those areas should be in perpetuity.
- Jacobi wanted to make sure at the end of 25 years the State is not going to walk away from those units, and hoped that the management burden is greatly reduced and populations have achieved stability. Outside of the managed areas will be gone. If plan is successful, you will have achieved stabilization before that magic 25 years. That's why it's so critical to follow through on the adaptive management and monitor to what the targets are.
- Fretz asked if Jacobi was suggesting the Board approve an HCP with no term. Jacobi said no, I think the expectation is the management laid out is done and achieved in full within those areas, should be maintained with low burden of management. Fretz said the point he was making is that the applicant is going to request a license for some amount of time and it's up to the committee to advise on that and for the board to decide whether to approve that or not. At the end of it, we have to make a decision about continuing management at the end of the term, we take that into consideration. For example, we set one aside as a wildlife sanctuary and there's a certain commitment that goes along with that. I don't think the board is going to approve an HCP with no term and \$30 million that goes on forever, there's going to be a term proposed by the applicant.
- Mehrhoff said that some HCPs in California have no term for when no management of the reserve, and are set up where funded by entity in perpetuity. Reality is for development, the State taking over management in perpetuity is fine, there will not be a link between game management program and take, will end up doing management on your own. 25 years does not offset the mitigation of game management program. If mitigation is still needed after the 25 years, the question is are you picking that up as part of DOFAW.
- LeBlanc said most HCPs have a term which is when the take will occur and then mitigation is done concurrently and then there's a long term management plan or mitigation fund maintained in place for perpetuity to make sure that funding as intended for the benefit of the species for the future. Fretz replied that it is going into a permanent conservation status with a legal designation, but the question is what more does the committee suggest for the HCP to address this concern.
- Spain commented that historically, looking at what this area was prior to coming over to DOFAW, it needs to be forest reserve designated. It's a step up in terms of long term protection, agreed that some sort of promise that the conservation unit has a commitment in the long term beyond the 25 years is really important.
- Jacobi commented that building on previous discussions about other HCPs would be good to have a good strategy for monitoring, regular reviews (annual basis) so we can help solving problems that may come up, and asked for a time table. Adkins said she needs more turnaround time, not going to make it final draft for approval at the October meeting.

ITEM 6. Adjournment

ACTION ITEMS:

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- Review and update on all approved RFP projects in our annual reviews.
- Create a working group on abutilon including interested ESRC members.
- Abutilon as an agenda item for future meeting on compliance and adaptive management issues.