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SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

ENDANGERED SPECIES RECOVERY COMMITTEE (ESRC) PUBLIC MEETING

DRAFT MEETING MINUTES

DATE: March 12th, 2024

TIME: 9:00 AM HST

LOCATION: DLNR – DOFAW Main Conference, Kalanimoku Building 1151 Punchbowl St, Room #325., Honolulu, Hawai'i
Online via Zoom; and Livestream via YouTube recorded at
https://www.youtube.com/watch?v=D66Dqt_qdzE

MEMBERS

Afsheen Siddiqi
Michelle Bogardus
Lisa Spain

Kawika Winter
Karen Courtot
Melissa Price

STAFF

Kate Cullison—DOFAW
Danica Swenson—Deputy AG
Kinsley McEachern—DOFAW

Julius Metcalf—DOFAW
Linda Chow—Deputy AG
Amanda Macias—DOFAW

OTHERS

Lindsay Young—Pacific Rim Conservation
Dilek Sahin—Kaua'i Endangered Seabird Recovery Project
Jonathan Sheperd—Kaua'i Endangered Seabird Recovery Project
Adrian Gall—ABR Environmental Research & Services

David Henkin—Earth Justice
Lisa Bail—Goodsill

03.12.2024 09:01/[00:00:22](#)

ITEM 1. CALL TO ORDER AND ANNOUNCEMENTS

Afsheen Siddiqi called the meeting to order and asked for everyone present at the meeting to introduce themselves starting with committee members and other attendees. She also reminded everyone of the Sunshine Law and asked that all committee members have their cameras on. There were no announcements.

03.12.2024 09:03/[00:02:20](#)

ITEM 2. APPROVAL OF DRAFT MEETING MINUTES FOR THE FOLLOWING ESRC PUBLIC MEETING: OCTOBER 30, 2023

Karen: I have a couple minor comments. The first is correcting the spelling of my name throughout. Kristina Montoya should be changed to Kristina Montoya-Aiona. Institutional affiliations for Marcos Gorresen and Corrina Pinzari should be updated to Hawai'i Cooperative Studies Unit UH Hilo. Additionally, I want to clarify a comment on page four regarding seeing cats and the significant impact of rat predation. This should read, "We didn't see cats, but did see rats on a number of roof sites." Please remove the phrase "significant impact".

03.12.2024 09:05/00:04:43

Michelle Bogardus Enters Meeting

Afsheen asked if there were any public comments regarding the draft minutes.

03.12.2024 09:06/00:05:24

MOTION

Afsheen: I will go ahead and make a motion to approve the minutes with amendments from Karen.

- Lisa: Second
- Motion passes unanimously.

03.12.2024 09:07/00:06:00

ITEM 3. PRESENTATION BY PACIFIC RIM CONSERVATION ON THE STATUS OF SEABIRD MITIGATION ACTIVITIES AT KAHUAMA'A SEABIRD RECOVERY SITE, AND THE SUMMARY REPORT OF KAUA'I SEABIRD HABITAT CONSERVATION PLAN AND EIGHT ASSOCIATED PERMITS FOR INCIDENTAL TAKE OF COVERED SEABIRDS

Lindsay Young presented, on behalf of the KSHCP permit holders, an update on seabird mitigation activities associated with the Kaua'i Seabird Habitat Conservation Plan at Kahuama'a.

03.12.2024 09:33/00:32:33

Questions and Comments from the ESRC Members

Kawika: Lindsay, could you go back to the map of Kahuama'a, there's a purple area and a yellow area can you just remind folks what those two areas are.

- Lindsay: The proposed site as part of the HCP was about 500 meters over to the East, the right and when we went to do our final fence walkthrough there had been a significant landslide that prevented us from building on the original site. So, we started off this entire HCP by having to go into contingency and relocate the fence. This area already had an existing fence around it to protect endangered. So, what happened is it was less expensive to fence the whole area where the existing ungulate fence was and replace it. The seabird habitat is delineated in purple and the yellow denotes the area for endangered plants. The whole area was fenced because it was less expensive to follow the existing fence corridor. It is the same size, if not greater, than the proposed fence.
- Kawika: Where are the burrows located.
- Lindsay: They are in the lighter purple area.

Kawika asked about locations and counts for other seabirds observed in this area. Lindsay provided this information and shared that the vast majority of band-rumped petrels were observed on the same night.

Kawika: So how do you assess individuals with just auditory surveys on a single night and how do you know you're not double counting or triple counting?

- Lindsay: A lot of these were visual confirmations. When we do auditory surveys, we also have night vision. I would say the majority of birds observed were done visually. It is a mix of both hearing and seeing them. The band-rumped petrels are significantly smaller than the other two species and have a distinct flight pattern. There is generally a gap between when a call is heard and when the next one is recorded to make sure it is not the same one. There is a chance that it is the same one if it is circling for a half an hour. So, this is not necessarily the number of unique birds that we are detecting it is the number of unique calls.
- Kawika: Melissa what are your thoughts.
- Melissa: At the end of the day, we are interested in successful fledglings. Lindsay, do you monitor something like that? The number of successful burrows.
- Lindsay: Ideally, but we have no nesting right now. Currently this is just a metric of species presence in the area.

Michelle noted that it was not expected that there would be nests in the first couple years of the project. Then there was discussion about the projected growth pattern for social attraction sites like this.

03.12.2024 09:39/[00:38:18](#)

Lindsay discussed the general, projected growth pattern for this site. There was then discussion focused on species usage of nest boxes and the possibility of band-rumped storm petrels using the site. It was noted that birds may not use the boxes once they have decided to nest at the site and instead make their own. This highlights the importance of habitat maintenance so the birds can do this. At this site rodents were burrowing under the fence skirting.

03.12.2024 09:41/[00:40:47](#)

Kawika had questions about the predator proof fence for this site. Lindsay explained issues that have occurred with other fences in the State, specifically Makamaka'ole on Maui. The fence present at this site benefits from the experiences of other fence projects across the State. Discussion then turned to rodent incursion and how that happens and what can be done to prevent it.

Kawika: What rats are present at this site?

- Black, Norwegian, and Polynesian rats are present at this site. Baiting is used almost exclusively for Polynesian rats since they are not very interested in A24 traps. The previously mentioned large incursion was the Polynesian rats, not the black rats. Norwegian rats have never been caught inside the fence, just outside.

Michelle reminded the committee that fences are an incredible conservation tool; however, they do require effective construction, maintenance, and monitoring. They are valued as an integrated approach for doing conservation actions.

03.12.2024 09:49/[00:48:14](#)

Lindsay presented on the value and challenges of fences in conservation. It was noted that predator proof fences, even with incursions, outperform predator control alone. Finally, she offered to present on this topic to the ESRC at a later date.

03.12.2024 09:53/00:52:51

Melissa asked for clarification from Lindsay regarding how long it will take to see production at this site. Specifically, when the population gains would surpass historic and current losses. Lindsay thought it was closer to the midpoint of the project but wanted to check what was contemplated in the HCP. Melissa then asked Lindsay if she felt the budget to maintain the fence was sufficient for the project period. Lindsay thought it was sufficient and commented that the focus now is to wait and see if the birds are attracted to the site. Lindsay brought up a current concern that the site might be too close to an existing colony, which is especially more attractive for the Newell's shearwater. It was noted at the Nihoku Predator Proof Fence with translocated Hawaiian petrels that there was an increase in calls for several years accompanied by a decrease. This change in calls was due to the birds actively breeding. It could mean that the birds at Kahuama'a have found mates and are prospecting a nest site somewhere.

Lindsay: It is just hard when you have a declining species with a really long-life history and this is still an experimental technique [fencing] for the species and there are a lot of unknowns, thank you.

Melissa: I appreciate the deep thinking you do on this. I think my reason for asking those questions, and I really appreciate your thorough answers, is that to me this really emphasizes how important it is that effective minimization is taking place, so the mitigation has gigantic question marks from what you're saying. Not so big that they're not worth pursuing this is really important and we have to pursue it and you're doing the best you can to optimize it as you go however the thing that's right in front of us right now are we doing effective predator control are we doing effective searches are we doing everything we can to minimize the number killed. I'm very concerned about the first half of your presentation from that perspective on the sites that aren't doing predator control the sites that aren't doing effective searches yet and so at some point. I'd like to pivot the conversation back toward those things which we I think have a lot more control over, frankly, versus this is a long wait for these pluses to come in. So, we've got to make sure that minimization is effective. I will hold those questions though until any other questions folks have about the fences and social attraction. I'd like to pivot back to effective minimization after that, okay.

Karen: I did have one question about the social attraction. You are only using Newell's calls. Did I hear that correctly?

- Lindsay: Yes.
- Karen: Can you explain why you are not using a combination of calls?
- Lindsay: We would like to use a combination of calls, but we are using what is prescribed in the HCP. We are happy to put on a multispecies mixtape.
- Karen: You are limited by the prescription in the HCP, but that's not what you would biologically think would be the best.
- Lindsay: Yes.
- Melissa: Can we fix that?

- Lindsay: That would be up to the group. There is no detriment to playing multiple species, this is what is done at Nihoku. However, this was a question we had in year one and the consensus was we wanted to stick with what was prescribed in the HCP.

Michelle mentioned that she thought there were issues with the mixed tape that they were playing at Makamaka'ole. They recruited Newell's shearwaters and not Hawaiian petrels. The group was reminded that the take for this project is primarily Newell's shearwaters and therefore the goal is recruit more of this species.

Lindsay: In this case Hawaiian petrels are clearly interested. Michelle since you shared that the goal is to attract more Newell's I am fine with leaving the tape as is. Clearly the other species are attracted. A note on Makamaka'ole, this is of interest to a bunch of us, there's some evidence to suggest that a lot of the calls that are happening are of a single gender. We don't know if it's males or females, but Makamaka'ole has called in predominantly females. There are other groups that have done mist netting using broadcast to attach transmitters to related species and they are also finding gender biases. So it could be that we need to look closer at the gender composition or call differences by gender of these species. Additionally, the aggression that we are seeing at Makamaka'ole may occur when you have a bunch of females competing for a very small number of mates. There is a supernormal stimulus that happens and the louder it is and the rarer the other sex is, the more aggressive they might get with each other. So, I think there's a whole bunch of super interesting things going on there that would be great to explore further.

The question was raised if there are any currently any gender biases in the population. The Service commented they do not know if there is a gender bias.

Lindsay: I am on a thesis committee in New Zealand, and they have a very heavy male bias with the fallout of eight different species that they're monitoring in Auckland. So, they found most of the juveniles that were coming down were male and they do not know why.

Kawika: I have a question about trap nights. There is a broad range here, is it over the course of the year or the project?

- Lindsay: So, trap nights is really variable. That has to do generally with the number of traps on a property. So, if you have 386 traps and you're trapping the 90 days of the seabird season, or 386 trap nights, that probably means you've got three to four traps going every single day. Some of the properties do seven days a week, others trap on just the weekdays. So it is the combination of the number of traps, which is related to the property size, as well as the predator density.
- Kawika: Kealia Fire Station has 5.25 trap nights, that seems low.
- Lindsay: So Kaua'i County as an entity will be under corrective because 19 of the category three properties will be conducting any kind of predator control. So this is just split out by the individual property. So that property is going to have to make changes if they want to be in compliance. The way the trapping was done for Kaua'i County is there were 10 or 11 properties that the contractor rotated through.
- Kawika: That seems problematic.

Kawika reiterated that the committee has previously voted that there shall be no cat feeding at any of the licensee's properties.

03.12.2024 10:07/01:07:28

Melissa asked about the use of game cameras combined with traps and specific questions about trapping for the individual licensees. Michelle commented that properties that are potentially out of compliance: Kaua'i County and Kaua'i Coffee due their lack of trap nights. She urged these groups to work with the Agencies. Melissa noted that a mitigation gain [for seabird production] will not be seen until Year 14. Additionally, Melissa stated that is not acceptable to see a lack of implementation in Year 4.

03.12.2024 10:13/01:13:03

Afsheen reminded everyone to not use the chat feature in Zoom. Afsheen then asked clarifying questions regarding the reported take.

Afsheen: Are these numbers your observed take not including the unobserved take? Also, the same question for the maximum anticipated fledgling take, is it observed or a combination of observed and unobserved?

- Lindsay: It is a combination of observed and unobserved. So, this is the calculated take based on the number of birds on the ground and that's why it's a decimal and not a whole number. The rates here are based on the discovery rate from the searcher efficacy trials for each property. Each property has a rate ranging from 50% to a 90% right now.
- Melissa: This is not based off their actual searcher efficiency.
- Lindsay: These are based off the HCP unless they have been amended.

Afsheen then asked about the number of observed take at 1 Hotel Hanalei, and Lindsay explained the numbers reported in presentation and reminded everyone that they are based on a 90% discovery rate for this property. Therefore, the numbers presented represent 90% of the take at 1 Hotel Hanalei.

Melissa asked that the following be reflected in the recommendations for this project: "As we are in year four if their actual searcher efficiency trials are not showing these numbers, these numbers need to be adjusted for their actual searcher efficiency and we will not accept a 90% and a 50% when they're getting nowhere close to that, in the service of adequate minimization given that our plus signs are not going to start growing for 14 years

03.12.2024 10:18/01:18:08

Lindsay shared the Excel spreadsheet she uses to calculate total annual take. She demonstrated how changing the discovery rate can drastically alter the calculated total annual take. The calculator she demonstrated was developed by the Agencies.

Karen: How are the initial site-specific discovery rates assigned?

- Kate: Some of them are from searcher efficiency trials like HDOT. Others that are higher than 50% are based on their own proposal. That is why the ESRC prior to approving the permit required that any discovery rate higher than 50% needed to be validated with third party testing.

- Lisa: If the actual searcher rates are much lower than what is assigned to the entity then these tables should be ideally showing what the actual observed and unobserved take is based on that percentage versus the assigned percentage.
- Afsheen: That would be my understanding as well. What is in the HCP is what is used to formulate the take request for the applicant. Now that we have that data, we should be using the data we have, not the assumed discovery rate.
- Lindsay: It was my understanding that changes permits because that changed the total amount of take. If a discovery rate is not approved, then I cannot use that in the report yet.

Michelle: There are a couple of different things going on here. I defer to DOFAW and Service staff for the exact wording of the HCP. At the time the applicants specified what they wanted their discovery rate to be. For most of them it was 50%, but some of them had a rate higher than that. There was a trial to determine whether or not their number was meeting what their approved discovery rate was. For those that were not meeting it the goal is adaptive management to get them up to that number. If they can't meet that number and it's looking like they will exceed their take in their permit which has a five-year rolling average limit, then we the Agencies would recommend that they would amend their permit to change their discovery rate to the corrected amount. Otherwise, they need to get their discovery rate to the level that they were permitted to have it at, one of the two. That is what I will be looking for and I anticipate that's what the committee will be looking for, a discovery rate at the level that it was permitted to be. If not, then they need to be doing adaptive management to get their discovery rate to the right numbers. If they cannot get it to the proper level and their take is likely to exceed their permitted level of take in their individual permit, not the total permit for all eight members, then they have to amend their permit in order to stay in compliance.

- Melissa: Michelle I very clearly remember when we were first discussing approving this HCP, and these high discovery rates were proposed that we were very skeptical as a committee whether they could meet those. I'd like to make the recommendation as the committee that in future reports they need to be reporting the projected take based off of their actual searcher efficiency rates. If it's a 5-year rolling average they're going to exceed their take limit much earlier than expected based off of those adjusted numbers and so that amendment would come much faster. Next year is year five.
- Lisa: It would be great to reconstruct the table where there are 30 or 32 fledglings taken and the average is supposed to be around 30. That would be helpful if we were able to reconstruct that table using the actual numbers, because those numbers are going to change dramatically.
- Lindsay: We can do that.
- Melissa: I would like to see those numbers for each applicant today.
- Lisa: That is a great idea.
- Michelle: The Service has already requested those tables.

Afsheen: So, the recommendation for future reports is to show that data from their searcher efficiency trials and their updated take numbers based on that.

- Michelle: I want to note that there is no continuation of searcher efficiency trials. These trials were only conducted once or twice and are subject to DOFAW funding and availability. Also, once a permittee gets to a certain level, they have to stay at that level.
- Afsheen: Even though DOFAW is not funding a searcher efficiency trial, if a permit holder had low searcher efficiency, they would go into adaptive management to improve this. I

would hope they would want to show that they improved it by doing searcher efficiency trails otherwise I don't think we have any data to change it.

- Melissa: I think Michelle is also noting once they do bring it up, they need to keep it there and that there is not funding for that. It sounds like this is going to need to be built into future HCPs.

03.15.2025 10:33/01:32:09

Afsheen commented that DOFAW staff have some recommendations on the timing of the reports. Kate Cullison made suggestions on the schedule for the KSHCP annual meeting to allow for Agency staff to review, meet with licensees, and prepare for this meeting. Kawika suggested a standardized presentation template. This is being accomplished through a list of information that the permittees need to report on. Michelle felt that the revised meeting timeline was feasible. She reminded the permittees that feedback from the Agencies and the ESRC needs to be prioritized for the following seabird/turtle season. Lindsay stated that the proposed timeline is okay; however, she cannot receive any late reports from the permittees.

Lisa: I guess I have a question in terms of timeline. If we have folks that are out of compliance with their permit, what is the DOFAW course of action for bringing them into compliance?

- Kate: If we have our meetings with individual permittees in March, at that point the Agencies will have reviewed the reports it will be obvious if we have non-compliance issues, and we will be able to meet with the individual permit to go over what our recommendations are to get them back into compliance. Then in April we would meet with the ESRC to see if we had any additional recommendations to get them back into compliance. If they are pretty out of compliance, we can do a 30-day warning that they have to remedy the non-compliance issues within 30 days that's still well in advance of the next fallout season. so that does give time to address bigger issues.

03.12.2025 10:47/01:46:16

Jiny Kim enters Michelle Bogardus's office. Kinsley shares the ESRC Comments and Recommendations.

Melissa: If we are concerned about what the new rolling averages would be for the projected five-year rolling average based off the updated searcher efficiency rates, at what point would they need to start talking with the Agencies regarding adjusting their permit.

- Michelle: If it appears that there is no way that they can stay within their permitted level rolling average, then Fish and Wildlife Service at least would send them a note letting them know that we recommend that they amend their permit. We would then meet with the permittee and discuss what an amendment would look like.
- Afsheen: It would be very similar for DLNR, once we look at the actual numbers and the projected take through the permit term and we feel they are exceeding permit allowance that is when we would have to have those conversations with the specific permit holder.

Melissa: I am going to ask again that models be updated on an annual basis, specifically population models.

Afsheen: It would be good to get information on the gender of birds that are falling out as well as birds that are being attracted to the mitigation sites. This way we can understand what the population dynamics are.

- Lindsay: I will get permission to share the data from New Zealand regarding male fallout rates. Sexing for live birds using feather is between \$15-\$20 at Bishop Museum.

Lisa: I advocate for a yearly searcher efficiency test for the permittees.

Discussion continued regarding sexing individuals, possible sources of money to pay for this work and potential vendors. Michelle then brought up the value of continuing searcher efficiency trials. Kate confirmed this was a recommendation made on almost all individual permit reviews. She noted that the searcher efficiency improved with the quality of training.

Melissa: It might be worth thinking about structures in each HCP that include a percentage that goes into a fund that could fund a person position who's responsible for training each year across all HCPs. This way a standardized training can be provided.

03.12.2024 11:02/[02:01:30](#)

Kawika shared his concerns about Kaua'i Coffee and their number of trap nights. He asked staff what actions ESRC could take. The agencies provided updates. I am wondering if we need to find them in non-compliance and recommend stronger action. Kawika advocated for stronger action against permittees that are not in compliance. Kate shared a joint formal letter had been issued by both USFWS and DOFAW letting the permittee know that they have 30 days to remedy the situation, or steps could be taken to revoke their permit. Lisa clarified that the permittees would need to amend their permits and that they are working in good faith. However, they still exceeding their take based on the 5-year rolling average. They are not an entity that is failing to do the work required. Michelle reminded that each permittee is different since they all have their own permits.

Linda: You can talk about the overview that's being presented but when you're looking at making suggestions regarding specific permittees you can't address those specific permits or permittees.

03.12.2024 11:20/[02:19:38](#)

Michelle shared her concerns with voting on the list of ESRC comments and recommendations because they are essentially notes to the committee. Afsheen stated that bullet points that are notes for the committee should be separated from those that are for the permittee.

03.12.2024 11:24/[02:23:15](#)

BREAK

03.12.2024 11:47/[02:46:23](#)

RETURN FROM BREAK

03.12.2024 11:48/[02:47:43](#)

Discussion continued regarding ESRC comments and recommendations.

03.12.2024 11:57/02:56:13

Questions and Comments from the Public

Lisa: I represent a group of several of the KSHCP permittees and wanted to mention that as I see these recommendations evolving, they do raise a lot of legal issues under both State and Federal law. So, I have reached out to the deputy AGs covering this meeting asking for a meeting after today to discuss. I would hope that Fish and Wildlife Service would give us the courtesy to do the same so that we can work through some of the legal issues.

- Afsheen: Lisa, did you want to say what those legal issues are here in this meeting?
- Lisa: I'm happy to. I see that they are changing the terms of the permit under federal law we have a federal no surprises rule that applies to HCPs. So, we need to figure out first of all are all the folks at Fish and Wildlife Service, not just in this meeting today, but in you know their regional and nationwide offices who approve this permit in agreement that these changes should be made. The agencies have been really good so far when sending letters, to send them jointly and we really appreciate that. But to the extent we're now changing things that we are doing under the permit I think we need to figure out if the permit will be amended and that's why I had reached out to have those discussions after this meeting. I'm not saying no to any of the recommendations, but I'm just acknowledging they do raise legal issues that need some further discussion to figure out how these affect the permit and the HCP itself.

David: First of all, I want to express appreciation to the ESRC for really staying on top of this year after year. It's super important, it's tedious work, but it's important work particularly if we're going to protect these imperiled seabirds, particularly on the issues about what you want to see in the annual reports. It is critical now that we've had verification studies on searcher efficacy and it shows that at various properties the efficacy is well below even the 50% assumed discovery rate, that was kind of the default. Then for some of the participants who got greater than 50%, I think the next agenda item we're going to be talking about that and how the discovery rate is much lower and as a result the assumed amount of take goes way up um. Just really appreciate you are staying on top of that. I will be curious to hear what Miss Bale thinks would be a change in the permit terms. The final HCP makes clear there did need to be verification about discovery rates and if the discovery rates are actually lower than included in the permit then you know that needs to be addressed. Obviously, the amount of estimated take goes way up. With respect to the non-compliance by permittees it's going to be really important to follow up with the folks who think that they're covered under this permit if their take is in excess of what was authorized. They're not covered under the permit, so they have ESA liability. If they're not doing the minimum things they said they would do in terms of predator control or monitoring or making sure that there aren't cat colonies being fed on their on their properties that certainly needs to be addressed by the Agencies. Again, we appreciate the ESRC's vigilance.

Lisa: I take strong exception to the idea that permits need to be amended without the period of adaptive management that's specifically contemplated in the HCP itself. For our clients we have already met with the Agencies to present our proposals on adaptive management for searcher efficiency we will be addressing those this afternoon when we get to that agenda item. The permit already explains how we do this, and we cannot be disregarding what's written in the permit that's already approved. That's when I start to get concerned. That's why I've reached out to the Agencies already asking if we can have a meeting to discuss some of the issues that flow from these recommendations.

There were no further questions or comments from the public.

03.12.2024 12:03/[03:02:30](#)

MOTION

Afsheen: I make a motion for the ESRC to vote on the recommendations for the annual summary report.

- Kawika: Second
- Motion passes unanimously

03.12.2024 12:06/[03:05:04](#)

**ITEM 4. PRESENTATION BY KAUA'I ENDANGERED SEABIRD RECOVERY PROJECT
ON THE 2023 SEARCHER EFFICIENCY VALIDATION DECOY TRAILS AT 1 HOTEL
HANAIEI**

Jonathan Shepherd presented, on behalf of the KSHCP, an update on searcher efficiency validation decoy trails at 1 Hotel Hanalei.

03.12.2024 12:32/[03:31:07](#)

Questions and Comments from the ESRC Members

Melissa: When we credit them with a 90% discovery rate is that directly tied to the searchable area, or is it tied to some sort of assumptions about the searcher efficiency predation, etc. In other words, is it just by chance that you're saying we shouldn't assume they can search 90% of the area and they've been credited with a 90% discovery rate, or are those two things not directly equivalent.

- Jonathan: My understanding when I was reading their down bird search implementation plan was that it said that 90% of the property was searchable. Thus 90% of birds will be found and so the way that I read that is that 100% of birds will be found in the searchable areas which equates to 90% of the property.
- Melissa: DLNR and U.S. Fish and Wildlife Service do you mind just clarifying how those are originated and when the HCPs are set up what goes into determining that rate.
- Kate: It's similar to with wind farms when they have some areas of the search area, and the search area is defined as every place where you could find an animal. Then there's the searchable area which is the portion of that search area that you can actually physically search. Jonathan's interpretation is correct.
- Karen: The discovery rate was 35% which is actually low right because it's not even accounting for the 10% that's not being searched at all.
- Jonathan: All decoys were placed within the 90% of the searchable area of the property.
- Melissa: Karen is your argument then that essentially if we're calculating a discovery rate then it should be 35% of 90%, not 35% of 100% which makes sense.

03.12.2024 12:36/[03:35:26](#)

Karen asked clarifying questions about searcher efficiency trial. Jonathan and Dilek answered these questions.

Lisa: Can I ask a general question of Johnny and team. Do you feel that ideally at every location you would test searcher efficiency yearly each season.

- Dilek: I think it would require a team and probably additional team members. The Kaua'i Endangered Seabird Recovery Project does not have a large enough team to cover all of the participants.
- Lisa: Is the ideal situation where you would assess searcher efficiency annually?
- Dilek: I think it should be because it's changing based on many things: based on trainings, based on the learning from last year like we did this with the 1 Hotel this year. I'm sure this feedback will be considered and maybe we'll see improvements. Each year they are coming up with their own incentives or other methods to improve. I think that should be monitored if not yearly, certainly regularly.

03.12.2024 12:45/03:44:42

Questions and Comments from the Public

There were no questions or comments from the public at this time.

03.12.2024 12:46/03:45:35

ITEM 5. PARTICIPANT PRESENTATION OF KAUA'I SEABIRD HABITAT CONSERVATION PLAN ANNUAL REPORT: 1 HOTEL HANAIEI

Adrian Gall presented, on behalf of the 1 Hotel Hanalei, an update on activities associated with the Kaua'i Seabird Habitat Conservation Plan at 1 Hotel Hanalei.

03.12.2024 13:07/04:06:57

Questions and Comments from the ESRC Members

Lisa wanted to see the appropriate searcher efficiency value used in the calculator that Lindsay mentioned in her presentation at the beginning of the meeting. Adrian did not have the spreadsheet, but did the calculations in R.

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Adrian shares the new take values using the actual discovery rate. For Newell's shearwaters take goes up to 57.1 for total take, with 15.84 non-lethal and 41.3 lethal. Adrian stated this is a significant increase and reminded the committee that any bird that is not found is considered dead. Melissa commented on her concern with this property having a low discovery rate. Michelle shared her concern that this permittee is likely to exceed their 5-year rolling average. She also shared that the Service has a legal requirement to update their biological opinion based on the information presented here and in the permittee's report. Afsheen commented that DOFAW wants to work with the permit holder on any additional minimization actions and that if the permit is exceeded, they will require an amendment.

Karen: Are we accepting there is going to be a fair amount of fallout at this site no matter what, and so the only chance for improving these number is by having more birds get to SOS?

- Michelle: I do not know if it is that clean cut. There are multiple layers one is trying to reduce lighting and sources of take wherever possible, and the second is for whatever birds do come down increasing the likelihood that searchers are going to find them and get them to SOS

appropriately. I think our approach for adaptive management at the hotel sites kind of follows the same formula: 1) reduce sources of take wherever possible increase the likelihood of finding birds; 2) increase education for both staff and visitors, and 3) then also ensure that your searching plans and your predator control are fostering the likelihood that you're actually going to be able to find birds and get them to SOS.

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Melissa asked if there is possibility of using dog searches at this site. Adrian explained the process of how this would work and potential issues that would arise. Michelle advocated for the use of dogs at this property. Kate explained the cost savings of using dogs instead of people. Adrian asked a clarifying question about the use of dogs and how it might augment human searchers. Michelle and Adrian continued discussing adaptive management and the benefits of collaboration

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Kawika asked about how recommendations from the ESRC are communicated to a new own when a property changes hands. Afsheen commented that a title check should show that an HCP is associated with it. Kawika feels this will be an issue when this property goes up for sale in the near future. Afsheen wanted to confirm that the unsearchable area on the map was in fact 10% of the total property area. Adrian commented that it is probably more than 10%, she will work on determining what actually is the unsearchable area on the property. Melissa asked that future HCPs generate shapefiles to corroborate their putative search area. Additionally she commented that for future HCPs claiming more than a proposed 50% searcher efficiency should not be allowed and that the applicant needs to prove that they can get higher than 50%. This was added to staff comments.

03.12.2024 13:39/[04:38:40](#)

Afsheen asked clarifying questions about predators that were trapped on the property. Afsheen asked about how long it takes to search the property. Adrian commented it takes about three hours to search the property, there are two rounds of searches that happen each night. Melissa asked that permittees show their take numbers using the actual discovery rate in addition to the one based off their current HCP and ITL.

03.12.2024 13:42/[04:41:56](#)

Questions and Comments from the Public

David: Thanks so much and again thanks to everyone, the ESRC in particular for raising all these issues. I noticed the same thing with respect to the maps about searchable area and I just want to flag the implications of that for the estimated lethal and non-lethal take. So, recall that the 35% efficacy at a 90% searchable area you get to 31.5%. Obviously as the unsearchable area goes up the efficacy goes down and therefore the estimates of actual take converted into estimated take go way, way up. So, the less area you can search and the less efficient you are searching the more birds you are missing. I hope that the ESRC and the Agencies will ask the hotel to recalculate, based on real shape files, what areas are not being searched and then recalculate the actual amount of birds that are being missed. I appreciate Adrian doing the on-the-fly calculations, I assume that they're accurate being put into the formulas. I would just note that the lethal take for Newell's shearwater of 41.3 birds in the one year when the hotel

was operational and had its lights on is one third of the 125 lethal takes that were authorized for 30 years. So, we got a serious problem here and particularly as that searchable area gets smaller that's going to be a higher percentage of the overall 30-year take that happened in one year of operation. I have a concern for the agencies. When they say that there are cons you know they're going to have to evaluate and consider whether the permit has been exceeded. As Adrian mentioned there is no authorized take for adult Hawaiian petrels and so there should be no question that there is unauthorized take happening that was not anticipated in the HCP. So, for Fish and Wildlife Service that's new information for a revised biological opinion. For both Agencies this permit is in violation of its permit. There are very clear provisions under both Federal and State law about what you need to do when a permit is in violation.

- Kawika: David, can I ask you from your legal perspective what that means for the ESRC.
- David: Not sure it means anything necessarily for the ESRC other than to raise concerns to the agencies about the fact that the permit limits have clearly been violated. I wasn't a math major but if you're already at one-third of your 30-year lethal take in one year I think your five-year average is way beyond what needs to be addressed with the permit. If you're taking adult birds when no adult take is authorized, then you're not in compliance with your permit. So, the guarded sort of bureaucratic response that we're looking into and get back to is concerning because it's not debatable that this permit is out of compliance. Earth Justice has a long history with this hotel property, we brought suit against them in 2010 which is what brought them into the fold with this island wide HCP. At that time, we brought the litigation because of the known take due to light attraction. This single property was responsible for 25% of the take island wide because of its location. It is a very difficult property, and it may not be a good place to be operating a hotel. Kawika I really appreciate your flagging that they may get a new owner. I'm sure that the hotel and its attorneys understand their duty to disclose to the new buyer that there is an ESA issue here. Hopefully they will do that. Anyhow we just wanted to raise concerns for the steps forward here and make sure that the calculated take is accurately done based on the actual searcher efficacy and how much area you can search. Also, I wanted to just flag the obvious which is already out of compliance and so the agencies need to act accordingly. Again, the ESRC plays such a valuable role in staying on top of these things and we appreciate all the comments that have been made about how we can do better in the future and appreciate you know all the hard work you put in mahalo.

Dilek: This is not to represent KESRP, Kaua'i Endangered Seabird Recovery Project, I am commenting as a public. I just heard in the discussion that there is a certain degree of changes that we can make to the lighting in any property, not just 1 Hotel. As someone who walked at least along the beach in front of the 1 Hotel I know that there are definitely way more things to be done for the especially for the lighting. I know the lights were recently changed on the property and for example parking lots are parking lot lights are quite good actually and dimmable. I do believe if the participants would work with maybe scientists or maybe agencies more. I know agency recommendations are not extremely detailed in terms of lighting, but I just want to emphasize that there is always more to do in the reduction of lighting. I think that 1 Hotel specifically has still has some way to go. I am fully aware that Princeville in general is very lit and it's also nearby probably major seabird colonies, but again this is not an excuse or stopping us from changing these lights with better alternatives. I don't think anyone is looking at the specs of these lights, so we don't know what the blue light content even they look like they are more dim or uh warmer color. I just wanted to emphasize there are still a lot of things to do.

03.12.2024 13:50/[04:50:13](#)

ESRC members reviewed and discussed recommendations to the permittee. ESRC supports the anticipated joint letter from the agencies indicating that the permittee might exceed their 5-year rolling average. Karen noted that USGS will abstain from voting on how the management agency should address being out of compliance. Melissa asked that the ESRC be notified of the actions/steps that the agencies are taking to follow up actions no later than August 2024. Kawika stated that the ESRC recommends DLNR to initiate a consultation regarding take of a species not covered in the permit and the ESRC request to consider amending their permit.

03.12.2024 14:10/[05:09:26](#)

MOTION

Melissa: I call for a vote to approve.

- Kawika: Second.

03.12.2024 14:13/[05:12:40](#)

Discussion continued regarding ESRC recommendations.

03.12.2024 14:16/[05:15:46](#)

Jiny Kim enters meeting.

03.12.2024 14:21/[05:20:08](#)

MOTION

Melissa: Motion to approve modified recommendations.

- Lisa: Second
- Motion passes unanimously.

03.12.2024 14:25/[05:24:35](#)

ITEM 6. ADJOURNMENT

Afsheen: I motion to adjourn.

- Kawika: Second
- Motion passes unanimously.