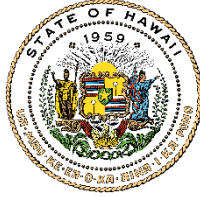


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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ENFORCEMENT
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

ENDANGERED SPECIES RECOVERY COMMITTEE (ESRC) PUBLIC MEETING

DATE: February 2nd, 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=T67WuLWlg30>

DRAFT MEETING MINUTES

MEMBERS

Afsheen Siddiqui
Melissa Price
Jiny Kim

Kawika Winter
Karen Courtot

STAFF

Kate Cullison—DOFAW
Kinsley McEachern—DOFAW
Matt Keir—DOFAW

Danica Swenson—Deputy AG
Amanda Macias—DOFAW
John Medeiros—DOFAW

OTHERS

Nāmaka Whitehead—Kamehameha Schools

02.2.2024 09:00/00:00:26

ITEM 1. CALL TO ORDER AND ANNOUNCEMENTS

Afsheen Siddiqui called the meeting to order and noted that this will be a continuation of the ESRC FY 2023 Review. She then asked for everyone to introduce themselves.

02.02.2024 09:02/00:02:44

ITEM 10. STATUS OF THE KENAI INDUSTRIAL PARK HCP

Afsheen: Due to public testimony and the guidance from our legal counsel that we received on this agenda item the HCP team would like to change this item to an informational briefing at this time and then bring it as a voting item to future ESRC meetings. In the future we want to give the license holder an opportunity to present to the committee. HCP staff will be presenting an overview of the project.

02.02.2024 09:03/00:03:47

Amanda Macias presented, on behalf of DOFAW, a staff update on the Kenai Industrial Park Habitat Conservation Plan.

02.02.2024 09:09/00:09:53

Questions and Comments from the ESRC Members

Kawika: I have concerns. Where to begin? I guess point of process question on changing this to an informational briefing from a voting item. I guess I'm not understanding why we did that. If we want to vote on something we should be able to do that, like if we want to vote on recommendations. We had previously stated in other ESRC meetings that the absence of the licensee will not stop us from acting on voting items. So, can somebody on staff explain the logic of why we're not keeping a voting option open on this today?

- Afsheen: Sure, I can take a stab at it, and then I will ask Danica our legal counsel if she wants to add anything. We did receive testimony from the license holder that they felt that they were not given an opportunity to respond or rectify the issue on their behalf. So, we want to provide enough opportunity for them to give their perspective and because we hadn't given that opportunity, we want to bring it back to the ESRC to allow them that opportunity, and I don't know if Danica wants to add anything to that.
- Kawika: I mean just before Danica responds it seems like they're being given ample opportunity, and they just keep saying the same thing over and over again. Am I misinterpreting that request?
- Afsheen: I think we have not had them, the actual license holder, come to the ESRC in the past and that's the opportunity that we're giving them.
- Kawika: Well, I remember an ESRC meeting we were actually sitting in the boardroom, and this was an agenda item, and they didn't show up.
- Afsheen: Were they invited? We are not certain if they were informed so that's the issue.
- Kawika: Okay, understood but I remember pretty clearly sitting in the boardroom at the Kalanimoku building having an ESRC meeting and this is an agenda item, and they

weren't there. So, this licensee seems to consistently not show up, seems like a stall tactic, which is very concerning, and it seems to be working which is also very concerning.

- Afsheen: I totally understand we do want to bring this back sooner rather than later to the ESRC. So, we're hoping that this is going to be a prioritized project to bring back.
- Amanda: Just want to kind of clarify timeline as well. On our records the last meeting that we have that the licensee was made aware of was the fiscal year 2021 annual review that happened in 2022. Unfortunately, we don't have records of an invite for any time during 2023. That's when we began to seek legal counsel for that issue.
- Kawika: Okay thank you.
- Karen: Have they submitted any reporting that's done or what they submitted in September to DOFAW is just like a letter indicating that it's completed?
- Amanda: They have sent multiple letters explaining their perspective of the mitigation criteria and how they believe they have met it. DOFAW responded countering that argument with reasoning as to why those mitigation obligations had not been met. The last annual report that we received was the fiscal year 2021 annual report.
- Karen: That's the last time the ESRC has been able to see [the report].
- Amanda: Correct.
- Kawika: Okay so is there's nothing that the ESRC can do to help push this along, so it just falls in DOFAW's court.
- Afsheen: We intend to bring it back to the ESRC at a future meeting as a voting item. At this moment in time we just want to inform the ESRC on the status of this project.
- Kawika: Okay thank you.
- Amanda: Additionally, all the letters that we've received from the licensee are posted on our meetings archives as well as the testimony that we received from the legal representative of the licensee.
- Karen: Okay thank you I see that.
- Amanda: Then our staff submittal is on the website as well. We have the mitigation criteria outlined and DOFAW's perspective on why it has not been met. Again, the final determination would be made by the ESRC members.

02.02.2024 09:16/00:16:15

Questions and Comments from the Public

There were no questions or comments from the public.

02.02.2024 09:16/00:16:49

ITEM 11. STATUS UPDATE ON HÖKŪALA

Amanda Macias presented, on behalf of DOFAW, a staff update on the Hōkūala Habitat Conservation Plan.

02.02.2024 09:19/00:19:51

Questions and Comments from the ESRC Members

Kawika: I have concerns. Danica is a Deputy AG available?

- Danica: Yes.
- Kawika: I'm wondering if it's possible, could I make a motion to go into executive session to discuss with the Deputy AG the ESRC's responsibilities in regard to potential licensee non-compliant licensees.
- Afsheen: Okay so the motion is to go into executive session to discuss ESRC's role on non-compliance of a permit holder?
- Kawika: Yes
- Jiny: I second.
- Afsheen: Now we vote, all in favor.
 - Afsheen: Yes
 - Kawika: Yes
 - Jiny: Yes
 - Karen: Yes

02.02.2024 09:47/00:47:03

RETURN FROM EXECUTIVE SESSION

Afsheen: I just wanted to say we went into executive session and discussed the ESRC obligations and authority to make recommendations to the Board of Land and Natural resources on non-compliance issues related to Habitat Conservation Plans. Now we will go ahead and reconvene the meeting and move to agenda item 12 and then come back to item 11.

02.02.2024 09:48/00:48:10

ITEM 12. STATUS UPDATE ON MAUI NUI SAFE HARBOR AGREEMENTS

Amanda Macias presented, on behalf of DOFAW, a staff update on the Maui Nui Safe Harbor Agreements.

02.02.2024 09:52/00:52:24

ESRC committee member Dr. Melissa Price enters the meeting.

02.02.2024 09:52/00:52:36

Questions and Comments from the ESRC Committee

Karen: It looks like they're getting a lot of eggs but not fledglings. Why is there low fledgling success?

- Amanda: I am going to turn this over to John Medeiros.
- John: I don't know if it's possibly from overcrowding of birds in the pen. They have a tendency to come back into the same area. With increased birds comes increased aggression and we find dead goslings in the pen. The other one is the weather plays a factor. When we have severe rains, we lose goslings that way too.

- Afsheen: Following up on that question do you find the gosling mortality to be any higher or lower than other areas that are being managed, or is this what is to be expected?
- John: I would say that's probably what is expected. All the pens are treated basically the same. There's trapping going on in and outside the pen and there's maintenance in the pens, habitat management in the pens, and some of the pens also have supplemental feeding. So, they're kind of basically all managed the same. It just depends on the birds and the conditions. Some years you'll have more success than others. For example, like Pi'iholo Ranch we had a good breeding success but then we had bad weather, so we lost a lot of lot of goslings. So, a lot depends on the weather as well.
- Karen: For the nests predated, does that include predation of young when they're out of the nest? Is the predator management effective?
- John: Inside the pen it's pretty effective, it's outside the pens but you know it's a little bit more difficult you know when you get into areas where it's outside the pen to manage but we at least manage around the skirt of the pen to make sure that you know nothing gets into the pen area. One of the problems that we do have in any of the pens is all it takes is a cat or something to jump over the fence and then you know that could take a toll on the whole population.
- Afsheen: Any other questions on this Haleakalā Safe Harbor agreement from committee members?
- Karen: So Kaheawa is getting mitigation credits for the maintenance and predator control? I guess after the predator fence, we saw yesterday I guess I'm just wanting to make sure that there's mechanisms in place for the regular checking of the maintenance of the structures. I don't know if that's a DOFAW question or who that question goes to.
- John: Maintenance is done weekly on the fences. Two of the places that we have these safe harbors agreements you also have cattle operations. There is weekly repair, maintenance, and checks.
- Afsheen: John so now that the wind farm has taken over management of the Haleakala Ranch pen, I know DOFAW staff is still going there to do surveys. How often is that happening? I think as we do that, we can definitely be monitoring that fence to ensure that there are no breaches.
- John: Right now, we have a person going up at least every two weeks. That position that the person was going up weekly I have lost that position. That individual went into another new position so we're in the process of recruiting and filling that that position. It most likely would be back again at weekly once that position is filled.
- Afsheen: Okay, so DOFAW staff is going there on an ideally weekly basis. Okay, does that help answer your question, Karen?
- Karen: Yeah, I think so. So, then it is on DOFAW to ensure that the pen is maintained.
- John: Kaheawa helps with monitoring and is going up there as well and notifies DOFAW staff of any happenings to include updates on nesting pairs. They are pretty good at notifying us of any changes or happenings.
- Afsheen: I think also the difference here is that because this is a Safe Harbor agreement that DOFAW has certain responsibilities under that we do have more eyes on the project. The fact that we're going there every week and surveying is because of

the obligations we have ourselves for that Safe Harbor agreement. So, there are more checks on that site.

- Karen: Thank you.

02.02.2024 10:05/01:05:59

Questions and Comments from the Public

There were no questions or comments from the public.

02.02.2024 10:06/01:06:54

ITEM 11. STATUS UPDATE ON HÖKŪALA

Amanda Macias presented, on behalf of DOFAW, a staff update on the Hōkūala Habitat Conservation Plan.

02.02.2024 10:09/01:09:10

Questions and Comments from the ESRC Members

Kawika: Well as I expressed earlier, I'm deeply concerned about this licensee that they've been unresponsive and non-compliant. I think it's about time that we make a recommendation to the Board of Land and Natural Resources that this license be found in non-compliance.

02.02.2024 10:09/01:09:40

MOTION

Kawika: I make a motion to that effect, [Recommend, to the Board of Land and Natural Resources, that the licensee be found in non-compliance].

- Karen: Can I ask a question? DOFAW submitted the letter to the ESRC that also indicates the reporting numbers, the older numbers do not line up. So, there are concerns about what has been reported for take as well?
- Amanda: Yes, there are some concerns regarding take reports that may not have been submitted on behalf of the licensee. We don't want to speak too much on this topic at this moment because we want to be able to confer with UFWs. We want to have an understanding of what reports were received or not received by the agencies. That is an issue we have pointed out to the licensee as well and we will point out in our joint letter.
- Kate: This is Kate. I just want to speak quickly to Kawika's concern. I think Kawika has some really good points about the frustration that we're all feeling but I do want to clarify that there is a definite difference between the licensee themselves and their consultant. So, the consultant has not responded to any communication from DOFAW in about a year. When we finally reached out to the licensee and said to them, we are not getting a response from your consultant and your report was never delivered, that person that we reached out to who's representing the association who actually holds the license was responsive and is trying to rectify the situation. So, I think taking action

against the licensee themselves at this point might be a bit premature because I do think that we can address this, it was the consultant who was non-responsive.

- Melissa: Kate, can you help me understand what the options are? I mean on our part at the end of the day we're looking at is the work getting done or not to the standards that need to happen. This issue has happened in multiple permit cases where there seems to be either miscommunication or lack of communication with either the contractor or with the license holder. You know at the end of the day we're just looking to get this stuff done. So, what are our options in this kind of a situation? Because at the end of the day it's the license holder's responsibility to make sure they have an effective contractor.
- Jiny: So, can I just step in there really quickly. It's my understanding from staff that they have been continuing to comply under their mitigation requirements and currently the only thing that they're out of compliance on is submittal of their latest annual report. As Kate had mentioned the State had reached out to the licensee and they had received a response saying that the licensee would follow up the next day. So, from our standpoint, from Fish and Wildlife our highest concern is that they are not submitting annual reports in a timely manner. I think that potentially can be remedied with what actions the agencies are proposing with certain timelines attached to it. I just wanted to um point that out.
- Melissa: Thank you for that clarification, I think as ESRC we're not able to evaluate the statement of whether they are or are not in compliance without an annual report. Is there information you have access to that we don't that tells you they're in compliance and can that be shared with the ESRC committee? Again, it's hard for us to make a decision when we have no information.
- Jiny: Understood Melissa. I don't have access to their obligation requirements under mitigation so I would have to ask staff members for that. Kate, do you have those to share?
- Kate: I can just say that there is every indication that the work on the ground is proceeding at the resort so there are people doing surveys and there are people reporting downed birds. The consultant responsible for communicating that effort to us is the non-responsive party. So, Melissa is correct we can't actually measure compliance without an annual report. It's not as though they've completely abandoned their responsibilities but at this point, we can't measure the efficacy of any of those actions. And we are working with them on that. I do think that we only recently got desperate enough to sort of try to contact everybody we could find who might represent the licensee. We have asked them to formally identify a new point of contact because the old point of contact was non-responsive. So, I think once we get that we will be able to move forward. They're just they're going to have to find somebody to write their annual report and then we are going to have to review it. So, all of the normal ESRC oversight will still continue, we are just going to have to delay it until we get a flushed-out report which hopefully we will get soon.
- Melissa: Okay yeah, I get that. I think this particular contractor is on a number of these. There was an annual report a year ago or a couple of years ago where there was a

choice not to put things into PowerPoint. Without the information in front of us, even knowing that there are activities taking place we can't know whether they are to standard. If you have information, we don't know about, I'd love to say we just trust you but again, our job is to review the annual report. I was asked to come on because of the need for a vote so I wasn't there for the presentation that took place earlier. Is there information? How are we supposed to take a vote on this or how are we supposed to come to a decision on this? I'm a little confused.

- Kawika: There's a motion on the floor it hasn't been accepted yet.
- Melissa: There was a bit of discussion that followed your motion essentially cautioning us against following through with that. Again, I think we've tried to have the motion. Can that motion please be brought up on screen so we can be reminded what that motion is?
- Amanda: Yes, I'm about to pull that PowerPoint up for you Melissa apologies just a few more seconds on that. Can we have a repeat of that recommendation so we can have it written correctly?
- Kawika: My recommendation is that the Board of Land and Natural Resources find this licensee and non-compliance due to their failure to submit annual reports for the past two years which prevents the ESRC from determining whether or not they're meeting their success criteria.
- Kinsley: Kawika does this include failure to report and what was your next part?
- Kawika: I'm just further clarifying that the reports are the mechanism by which the ESRC can make determinations and without those reports we can't, we don't know what's going on. You know we're hearing things from certain members that there are things happening, but we haven't seen anything to suggest that in the form of a report. So, we can't do our job because they're not doing their job.
- Kinsley: Does this look good the way it's written?
- Jiny: Would we you want to change your vote, your motion? Would it be failure to report on an annual basis under the requirements of the ITP and the ITL?
- Melissa: Can someone help me understand what a finding of non-compliance here would mean in terms of the action moving forward? What I saw is that Division of Forestry and Wildlife plans on following up and has been in conversation with the licensee. What does this vote allow folks to do that they couldn't do without this vote?
- Kawika: I think this vote conveys a sense of urgency for a need for a reply. You know staff has said there have been communications but nobody's here today to even be present, which is concerning. So, I don't share staff's confidence that this is easily rectified. I think we do need a bit of some incentive to actually comply. I don't think, I not sure about staff's optimism that they're just going to do it now that they've found somebody to talk to.
- Melissa: I see so the licensee did not come today either. So, neither the contractor nor the licensee came today so there's no representative.
- Kawika: Yeah, that's concerning.
- Melissa: Yeah, I would share that concern that this is the annual meeting for their annual report. There was notice sent out far in advance, there was every effort made

to put it at a time that folks could attend. You know it's over three days so even if they weren't able to make one day, I would think they would be able to make arrangements to make sure they could be present on one of the days. So, I would share that concern. They do need to take this report process to the ESRC seriously.

- Kate: This is Kate again. I think they will and honestly both agencies are already drafting a non-compliance letter. Just to let you know there is a non-compliance determination that already has been made. We just haven't had time to finish the letter this week.
- Kawika: Non-compliance has been determined by who exactly?
- Kate: The Regulatory Agencies who have not received the annual report that we were expecting.
- Kawika: So, the Board has found them in non-compliance?
- Kate: No, so DOFAW and Fish and Wildlife are both reaching out to the newly delegated representative of the licensee to get that annual report. We are also drafting a joint letter to them stating that the lack of annual report makes them non-compliant with the terms of their ITL. We can write those letters without the Board. I mean DOFAW can do that.
- Kawika: Why hasn't that happened yet?
- Kate: It's happening, I mean we're drafting it now, it's been a busy week. So yes, it's just been on the to-do list all week.
- Kawika: I mean they're not here. You have had communication with them, they are not communicating with us as the body that determines whether these things are working or not. So, I still feel that board action will be compelling in manners beyond what staff determination would do.
- Melissa: So I think for the sake of record, like annual record, since we're hearing that both Fish and Wildlife Service and Division of Forestry and Wildlife are currently writing letters of non-compliance for record keeping, for ESRC I think it would be most consistent for us to have a vote that is consistent with you folks writing your letters that we also find non-compliance because for the responsibilities of our committee they did not show up, they did not submit an annual report. So, we were not able to fulfill our duty. So, I think that that's all I will go ahead and second the motion, the proposed motion.
- Kawika: This is a bit of what we discussed in executive session is that we do not determine on compliance the Board does. So, the proper course of action is for the ESRC, based on what the AG Deputy is advising us, the proper course of action is for us to vote that the Board find the licensee in noncompliance.
- Melissa: Okay and maybe an AG question. It sounds like the licensee is working with Fish and Wildlife Service and Division of Forestry and Wildlife, the letters are being written so that we have a record of that. Is the BLNR board finding non-compliance a different regulatory mechanism than Fish and Wildlife Service and Division of Forestry and Wildlife writing a letter of non-compliance? In other words, does it trigger subsequent actions that would not be consistent with our intent of getting them you

know back in compliance essentially? I don't know if the AG is on and can help us understand if there are any ramifications of this that we need to be aware of.

- Danica: Hi, I'm here and I don't typically like to give advice in Open Session, but what I can say is there's nothing inherently contrary to the law if DOFAW and US Fish and Wildlife write their non-compliance letter and this committee also make a finding that the licensee is in non-compliance. It won't go to the board imminently due to their process and procedures. You know it's possible that by the time it gets to the board they've complied. So, then the board will just say okay you were in non-compliance but now we see you've submitted your reports. Does that answer your question.
- Melissa: Super helpful and I think I stand by my second then.
- Kinsley: Melissa, can I clarify because you mentioned agencies so is it recommend that the agencies find the licensee and non-compliance, or the board? I just want to clarify.
- Kawika: I believe our purview is to make recommendations to the board.
- Kinsley: Because what Melissa said I just want to clarify that I am writing this correctly, so this is correctly written as you've stated.
- Kawika: I'm reading...Maybe the last word can make recommendations maybe can determine. What is the language of 195D that our role is can determine? I need to pull that up...or can fulfill its duties as articulated in 195D.
- Afsheen: I would take out reference to the incidental take permit because I don't think the board has any Authority on that.
- Karen: In doing this, it would be on the docket for the Board if DOFAW and Fish and Wildlife Service do not get the response that they're expecting.
- Kate: Yeah, we are in a stage where we are trying to remedy. We would take it to the Board if we weren't able to remedy, which is also required by the statute. So, we have to offer the licensee, who we really only have just identified an appropriate contact for, an opportunity to remedy the non-compliant issues. That's what we're in the process of doing. If we don't achieve any sort of remedy, then yes, the next thing would be a board action. DOFAW would bring that to the board with the recommendation.
- Afsheen: So, I am asking the staff what is needed from the committee. So, I just asking for the staff what is helpful like in the term what is what.
- Kate: Normally we would have the committee review the efficacy of the actions in the annual report. I'm assuming we will get an annual report and then we will bring it to the committee for its typical review. At this point we are in a non-compliance determination, so we have to work with the licensee to get back into compliance. At that time, we will ask the ESRC for recommendations for improvements because I'll assume there will be some things in the report that the ESRC will want to make recommendations on. From a regulatory sense we are already in the process of obtaining what we need from the licensee.
- Melissa: I think from a time perspective...We have this annual review time set aside. They were not ready in time for us to review their report during the annual review meetings. So, I think us going ahead and putting this on record as at the time we held the annual reviews, they were not in compliance. If they come into compliance

fantastic, but we go on record saying this was not submitted on time, we expect folks to show up, and have their annual report submitted on time. Also, this has been a chronic issue for a number of folks, and you know kicking things down the road a couple of months, a couple of months and then the next year is not a great way to you know of recover endangered species that are being impacted by these activities. So, I think it is important to go ahead with a vote on this and let the license holder know that from the committee's perspective the annual report was not submitted on time, and nobody showed up to talk about it. If they come into compliance great, no further action would take place, but next year they need to be on time.

- Kawika: So, my motion stands but to be as amended for the recommendations are on the screen right now. Do you still have a second Melissa?
- Melissa: Yeah, I provided a second.
- Afsheen: Okay so I think we have to make sure we don't have any other comments from ESRC and public before we go into voting. So, any other comments from ESRC Members?
- Melissa: Just to double check so we are not allowed to find them in non-compliance because it's not under our purview we can only make a recommendation to BLNR, correct?
- Kawika: That is my understanding. Do you want to call Executive session so we can get clarification from the AG?
- Melissa: I think that would be helpful yeah because I feel like we're going in circles just a little bit. Motion to go to Executive session.
- Afsheen: I'll go ahead and second it.
- Karen: In favor.
- Afsheen: Okay so we'll go into executive session thanks everyone.

02.02.2024 10:33/01:33:21
EXECUTIVE SESSION

02.02.2024 11:09/02:09:34
MOTION

Kinsley: Aloha everyone we are transitioning back from executive session. We just need about a minute to prepare.

Afsheen: Okay looks like everyone is back. So, we just went into executive session with our counsel to discuss the ESRC responsibilities, of their role to recommend to the board on non-compliance of HCPs. So now we're going to continue on um with our discussion of Hōkūala HCP.

- Kawika: So, I have sent uh some texts to staff about an amended recommendation, which has yet to be cut and pasted, but once it is I amend my motion to reflect the recommendation that will be on screen momentarily.
- Kinsley Thank you Kawika I will check our email right now.

- Melissa: Just for the record while they're copying and pasting it do you want to go ahead and read it out just for the sake of time?
- Kawika: Okay so our recommendation is that given the failure of the licensee to submit the annual report and the fact that the department and the licensee are currently in the dispute resolution process we recommend that the BLNR formally find the license in non-compliance if the annual report is not submitted by the end of the dispute resolution period as contemplated in the HCP.
- Melissa: I would like to second that amended motion.
- Afsheen: All right so we have a motion. So now uh let's go ahead and vote on this motion. Can I have the members vote, all in favor say aye.
 - Motion passes unanimously.
- Afsheen: Okay it looks like we have a unanimous vote and so this recommendation passes. Okay thank you everyone. Now we will move on to the next agenda item which is Item 13, and this is the status of the Safe Harbor agreement for Kamehameha Schools Keauhou and Kīlauea Forest lands on Hawai'i Island. I believe Nāmaka is online to provide an update on that Safe Harbor agreement.
- Melissa: My apologies as I very much enjoy hearing the updates from what they're doing on that Safe Harbor agreement but I'm traveling. I came on just to assist with the vote but do need to step back out so thank you to all of you.

02.02.2024 11:14/02:14:49

ITEM 4 (13). THE STATUS OF SAFE HARBOR AGREEMENTS FOR KAMEHAMEHA SCHOOLS KEAUHOU AND KĪLAUEA FOREST LANDS, HAWAI'I ISLAND

Nāmaka Whitehead presented on behalf of Kamehameha Schools an update for the Safe Harbor Agreements at Keauhou and Kīlauea forest lands, Hawai'i Island.

02.02.2024 11:17/02:17:11

Nāmaka: In the first five years of the agreement, we've established 417 acres of koa. We are actually running out of good plantable area. To plant in the way that we have up to this point we need areas of deep soil. All are either entirely planted or have been recovering on their own due to the fencing and removal of ungulates. So, this is a goal that we'll need to revisit and possibly look at you know some alternative ways to meet this target. We just don't have any areas that are remaining, or few areas remaining that are suitable to continue planting in the way that we have been.

Kawika: May I interrupt briefly? I think if you guys are fencing areas and because of that action there's regeneration that's possible, I would imagine that you could claim that as establishing. It was established through an action that you folks took. Have you guys considered that at all?

- Nāmaka: I just realized as I was putting together this presentation that we were kind of off on this target. So, I was hoping that we could either consider something like that, restoration through passive methods. There are some other methods that we can use in some of the more stubborn grass areas. Such as direct seeding and spraying

herbicides and things like that to encourage the restoration to happen a bit more quickly. They will be different than the silviculture methods laid out in the Safe Harbor Agreement.

- Kawika: If you folks take a course of action and because of that action there is an establishment of new koa stands, I think it counts.
- Nāmaka: Okay awesome, mahalo Kawika.

02.02.2024 11:23/02:23:52

Nāmaka: Something that's really concerning that I reported a bit on last year was there's something else at Keauhou that's killing 'ōhi'a trees. Of the 35 symptomatic trees that were tested in FY 23 only one, the pink star on the map tested positive for ROD. The other 34 did not. So, the three Mountain Alliance Foundation has been working with Forest Service Pathologists who sampled, I think five dead trees last April and are going to see if they can find the cause of the dieback. I don't have a report back on that yet, but I should by our year-end report.

02.02.2024 11:25/02:25:09

Nāmaka: This year we had our highest ever detections of 'akiapōlā'au, 'akepa, and 'alawī. Some considerably higher than we've seen in the past. I have a closeup here um showing the Forest Bird Stratum One area where the endangered forest bird species are primarily found. Just so we can get a better idea of what the distribution looked like this year and then since it was our fifth year, I thought it would be neat to look across all five years. So, this slide is showing from FY 19 to FY 23 with what the distribution of the detections has been. I guess what we can take away from this is that you know all four species of endangered forest birds are present throughout the Forest Bird Stratum One area. Another thing looking at these maps is it appears is that they're also present now outside of this area. So, I'm going to see if we can expand our surveys in the future maybe a bit further mauka to see how large of an area the birds are really present in.

02.02.2024 11:26/02:26:56

Kawika: Thanks, I got a question, so the lowest elevation transect. What's the elevation there?

- Nāmaka : The lowest elevation transect off the top of my head: I don't remember but it's really close to the bottom of the property.
- Kawika: The real question is, is that above the mosquito line or below the mosquito line?
- Nāmaka : The lowest is below the mosquito line. For the five year transects there's a number that are below the mosquito line. Forest Bird Stratum One is all above the mosquito line but we have been occasionally observing mosquitoes in like really warm times all the way up to the highest transect, I think.
- Kawika: Okay thank you.

02.02.2024 11:33/02:33:10

Nāmaka: Okay so moving on to endangered plant species. Baseline monitoring for these species is supposed to be a survey of the PEP species annually, survey of other Founders every two years, and a survey of outplants every five years. DOFAW doesn't have capacity to conduct the PEP surveys annually. The Agencies haven't had the capacity to conduct the survey of other founders every two years. We're coming up very quickly on, I guess we're at five years. So, KS will be conducting we hoping to conduct a comprehensive survey next year. This is the same information that I reported last year we did not conduct any additional comprehensive type surveys that that we can report. In FY 23 or FY 24. I'm going to move on from this slide to give you guys some highlights. So again, this is the same information report last year in FY 19 and FY 20. We funded PEP to conduct a comprehensive survey of all the rare plant species. At that time two species were no longer present on the property, *Phyllostegia racemosa* and *Plantago hawaiiensis*. The *Plantago hawaiiensis* consisted of a single wild founder that couldn't be located. *Phyllostegia racemosa*, I think there were four outplants in the Baseline and they've been ephemeral at Keauhou in the past. Those two will be targets for outplanting in the future. There are also declining population numbers for four species primarily due to outplant mortality. There were a number of very young outplants that were included in the baseline. We observed natural regeneration of two species, new populations of two species, and new individuals of another. As you guys have heard from me the past couple years, we're requesting a baseline adjustment due to the outplant mortality of five species and that that was contemplated in the Safe Harbor. In FY 21 and 22 we conducted some additional supplemental survey and located new populations of three species: 1) *Vicia menziesii*, 2) *Clermontia lindseyana*, and 3) *Asplenium peruvianum* var. *insulare*. We also detected three new species, one individual each, of 1) *Exocarpus menziesii*, 2) *Sanicula sandwicensis*, and 3) *Phyllostegia macrophylla*. *Exocarpus* and *Sanicula* are currently included as a listed species under the Safe Harbor agreement. *Phyllostegia macrophylla* is unlisted but is extremely rare, I think this might be the only known wild individual.

02.02.2024 11:40/02:40:00

Nāmaka: We also have an amendment request that I do need to follow up on with staff. There are two things that that we're requesting in this amendment: the first is to decrease the baseline of five species due to outplant mortality in the first two years of the agreement. As I've shared before, the Safe Harbor Agreement actually included language that allowed for us to do this if we conducted a comprehensive survey of all outplants during the first two years of the agreement. We did conduct that survey but didn't submit the physical survey to the agencies before the two years ran out. So, we're not able to follow the minor amendment process that was contemplated in the in the Safe Harbor. Instead, I think this will need to be a major amendment. In past years the ESRC was supportive of this. Mortality you know was of very young outplants and we believe that many of them were already dead prior to the start of the Safe Harbor Agreement in 2018, because the baseline surveys were conducted a number of years prior to the start of the agreement. The other thing that we've requested is to add two new covered plant species, the two that were detected in our last surveys. I have a lot more slides about the amendment. So, unless you guys want to see them, I'll leave it at that. We started working with your staff after last year's annual meeting, but there was a hiccup

because there's a potential change to the way that Fish and Wildlife Service would process Safe Harbors in the future. Therefore, it sounded like it was advised to wait until that process was complete. Then we would utilize the new Fish and Wildlife Service process. That's the end of the report unless you guys want more on the Amendments.

Kawika: I have some questions and comments. Great presentation as always thank you.

Afsheen is Matt Keir still around on DOFAW side? I just wonder if he had any comments.

- Afsheen: He's not in the room anymore, and I don't believe he's on the Zoom either.
- Kawika: Okay, I just wanted to check with him see if there was anything from his perspective that was needed to be discussed. Nāmaka , for the *Phyllostegia* in our experience at Limahuli when I was there, was it's a primary succession species and after hurricane Iniki hit Kaua'i in 92' in Upper Limahuli it was all over the place and as the forest started to recover that population went down. It was really concerning during my tenure there, but then there was a tree fall or something and then all of a sudden it was all over the place again in that zone. So, I'm not sure if you folks are looking at or planning for succession as you're doing outplantings or looking for new populations. You might consider if there's a big tree fall searching in those areas or if you're outplanting, outplant in areas where there are light gaps not in areas where there is full canopy cover.
- Namaka : Yeah, we've surveyed around the areas where the plants were in the past. Those *Phyllostegia* were all outplants and so they may not have been planted in the you know the ideal locations as well. You know we're committed to continuing to try to outplant in other locations. We'll continue to survey the areas where they were observed in the past. We have not ever had a founder of *Phyllostegia racemosa* at Keauhou and it's within the historic range. I'm not sure if there are historic detections off the top of my head; I think there's only like a couple wild individuals remaining on the island.

Afsheen: Thank you, Nāmaka , for that great presentation and all the good work you folks are doing. Any other questions from ESRC members for Namaka?

Kawika: Well just a question for staff if they have anything?

Jiny: I had a comment and from staff and just wanted to say mahalo for all of your efforts.

We're really happy with the stewardship and the partnership with you folks and I think that this is a good example of how Safe Harbor agreements can work to benefit everybody. And we really just appreciate the partnership with you folks.

Kawika: I have one more thing, so for those outplanting numbers of 20,000 a year for five years. So, it seems like you folks are not quite hitting that mark. Is that going to be part of the proposed amendment as well?

- Nāmaka: For that one it was 20,000 every five years. So, we've surpassed that.
- Kawika: Awesome that's what I can remember you guys were surpassing it from a previous presentation. I was uh confused glad to hear, good job!
- Nāmaka: Mahalo. I just wanted to say we really you know we really appreciate the partnership as well, you know all this work at Keauhou is not something that that KS does alone. It's such a great example of partnership you know with the wildlife

agencies, with the Watershed Partnership, with so many folks. The success of this project is due to all of those folks as well.

Afsheen: So DOFAW staff you have anything else to add?

- Amanda: Thank you again for that presentation. An update from the State side regarding the amendment. I have reached out to Chelsea from Fish and Wildlife Service, and we'll be meeting in the coming months to discuss a little bit more about the impact the new rule has on Safe Harbors and then we will be reaching out to you for more information to get this really going. That's the primary update from us.
- Nāmaka: Awesome, Mahalo look forward to it. We're also hoping to get some of the staff on site, you know some of the newer staff who haven't visited Keauhou. If any of the ESRC members are interested I know you guys got to follow Sunshine Laws, but if folks are interested ever in visiting Keauhou let us know.

Kawika: I guess I have a recommendation. So, there's a requested amendment so I think for the record I want to applaud the licensee for their good work and recognizing that we need to be adaptable and flexible. I think we should entertain their amendments. Not sure if that's a recommendation, but I want to state that for the record.

- Amanda: Thank you for that Kawika. Yes, we're looking forward to working more with US Fish and with the licensee for this amendment.
- Kawika: So, what do you folks need from ESRC in regard to these amendments.
- Amanda: At this point I don't think we need anything at the moment from the ESRC. Once we get the process rolling, we'll probably bring it back for review.
- Afsheen: So, Kawika this will be a major amendment because we're adding species I think to the Safe Harbor agreement. So, it goes through this same process essentially that a new Safe Harbor agreement would go through so it would come before the ESRC for review and recommendation for approval to the Board.
- Kawika: Got it thank you.

Afsheen: Okay any other questions or comments from ESRC Members?

- Karen: No, not from me. Thank you, Nāmaka.

Afsheen: Do we have anyone from the public that has any questions?

02.02.2024 11:50/02:50:48

ITEM 5 (14). UPDATE ON UPCOMING NON-WIND HABITAT CONSERVATION PLANS AND SAFE HARBOR AGREEMENTS

Kinsley McEachern presented on behalf of DOFAW HCP, an update on upcoming Non-Wind Habitat Conservation Plans and Safe Harbor Agreements.