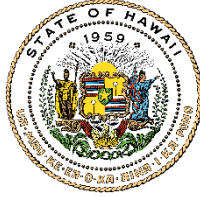


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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

ENDANGERED SPECIES RECOVERY COMMITTEE (ESRC) PUBLIC MEETING

DATE: December 6th, 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=T67WuLWlq30>

DRAFT MEETING MINUTES

MEMBERS

Afsheen Siddiqi
Michelle Bogardus
Lisa Spain

Kawika Winter
Karen Courtot

STAFF

Jason Omick—DOFAW
Danica Swenson—Deputy AG

Janis Matsunaga—DOFAW
Kinsley McEachern—DOFAW

Will Haines—DOFAW
Jesse Adams—DOFAW

OTHERS

Rachel Sprague—Pūlama Lāna'i
Diane Sether—USFWS
Lisa Bail—Goodsill/ Pūlama Lāna'i

John Sprague—Pūlama Lāna'i
Sarah Simmons—Pūlama Lāna'i

12.06.2024 09:00/00:00:32

ITEM 1. CALL TO ORDER AND ANNOUNCEMENTS

Afsheen Siddiqui called the meeting to order and then asked for everyone on the committee to introduce themselves. She also reminded everyone of the Sunshine Law and asked that all committee members have their cameras on, especially when there are any voting matters. Staff then made several announcements to include introducing the new DOFAW Admin Wildlife Manager, Jason Omick. **12.06.2024 09:09/00:03:51**

ITEM 2. REQUEST FOR COMMENTS AND REVIEW OF THE DRAFT SAFE HARBOR AGREEMENT FOR THE INTRODUCTION OF THE ENDANGERED ORANGEBLACK HAWAIIAN DAMSELFLY (*Megalagrion xanthomelas*) TO A CONSERVATION AREA ON THE ISLAND OF LĀNA‘I

Rachel Sprague presented, on behalf of Pūlama Lāna‘i, an overview of the draft Safe Harbor Agreement for the introduction of the Endangered Orangeblack Hawaiian Damselfly (*Megalagrion xanthomelas*) to a conservation area on the island of Lāna‘i.

12.06.2024 09:13/00:07:51

Diane Seether—USFWS entered meeting

12.06.2024 09:39/00:33:11

Questions and Comments from the Public

There were no questions or comments from the public at this time. Due to technical difficulties with YouTube the meeting chair stated the public would have another opportunity during this meeting to participate in this fashion via Zoom or e-mail.

12.06.2024 09:40/00:34:16

Questions and Comments from the ESRC Members

Kawika: So, I would like to go through the table in a little bit more detail. So, if you could do that on the slide. But before we go there, I'm a little bit unclear about why we're doing a Safe Harbor if they don't exist on Lāna‘i. Are you reintroducing them, or are you doing this just in case they spontaneously generate or fly over?

- Rachel: No apologies the agreement is to create a conservation area, and DLNR would then introduce the species to that area.

Kawika: Okay. Have there have been thoughts about genetic diversity, of which populations were going to be reintroduced, and if somebody could walk through genetic considerations quickly?

- Rachel: I can say from the landowner's perspective the agreement calls for the Megalagrion Working Group to take the lead on making that decision. We are interested in being involved and supporting, it's largely going to fall to the Agencies to determine that. I think the closest historic population is thought to be from Moloka‘i. From a biologist standpoint I'm always interested in supporting the resilience of the species so we would defer to the Agencies on if there were other genetic stocks that were in greater peril and needed that resilience.
- Kawika: Okay and so thanks that was that was more of a question for the Agencies than it was for the applicant. So just curious if anybody has thought that through?
- Afsheen: Yeah we do have our invertebrate folks on the meeting so maybe one of them...
- Will: So my name is Will Haines I'm with the Hawai'i Invertebrate Program. That is something we've taken into consideration. As Rachel said it will go before the Megalagrion Working Group, which is an interagency group. But the genetic work has

been done, the Lānaʻi populations share haplotypes with both Molokaʻi and Oʻahu so, those are the two islands that we'd be focusing on for source material.

Kawika: Okay thank you. Since you have the mic, I just want to ask another related question. Other predators or competitors of the damselflies, dragonflies; is there a plan for them in the Safe Harbor Agreement?

- Will: Other damselflies or dragonfly predators. Yeah, so we have discussed with Pūlama Lānaʻi about possibly covering the ponds with mesh, to prevent primarily dragon flies because they're larger. There're ways we could prevent them from ovipositing in the ponds to give the orangeblack damselflies a leg up. We talked about doing that in you know some of the ponds, but perhaps not the whole conservation area.
- Kawika: Are there dragonflies on Lānaʻi?
- Will: Yes, yeah, they're pretty widespread. We have both native and non-native dragonflies that can be predators. They're going to get eaten by other things no matter what. That's just part of ecology. But there are ways that we can try to push the balance in their favor. They do coexist with these non-native dragonflies at other natural sites so it's not thought that it will be a major limiting factor. In the initial stages of reintroducing them it's something that we could do to help them get established.

Kawika: Okay thanks Will. Then for the applicant, Rachel, is there a page you could point us to in the Safe Harbor where it talks about how you folks would deal with predation from other insects?

- Rachel: I'm trying to remember where...In the discussion in Appendix A about the construction of the ponds, to keep a fence locked so that people don't dump mosquito fish into the ponds. In our discussions with Will, I think there's not a lot of discussion of other insect predation because he thought that was relatively natural other than the potential for covering again one or two of the initial release ponds to keep dragonflies out.
- Kawika: Yeah, I mean you could argue that cat predation on 'u'au is also natural, but if dragonflies aren't native then they're an invasive predator of endangered species and they should be considered in my mind.
- Rachel: I'm pulling up the agreement while we're talking to find the page where the dragonflies are discussed. I think other than protecting a pond with mesh to prevent dragonflies from ovipositing I'm not aware of any other actions that are possible in any of their existing populations to prevent dragonflies from preying on them, but this is something I would defer to Will on.
- John: Sorry on page six in Appendix A it talks about minimization and avoidance measures during damselfly introduction which includes a bit about the netting across the introduction ponds. I think that if dragonflies were seen to be more of a threat beyond those initial reintroductions, we would include netting over those areas accordingly. So at least on my copy of Appendix A, page six of eight.
- Kawika: Thank you. I'm sorry I'm not sure if Will was going to make a comment. I am just curious, is there anything in the mitigation about if this happens and we're going to net. Is there any kind of predator control of dragonflies that could be employed if you have to net a pond, or have you folks thought that all through?

- Will: There's not a whole lot that you could do to control dragonflies without negatively affecting the native damselflies. Prior to the introduction, or even after introduction it is possible to manually remove dragonfly naiads. I don't think we included that as an action in the conservation benefit agreement because I don't think it's something that you could sustainably do over the course of the entire agreement. My thought is that you know these non-native damselflies and dragonflies, although they are competitors with our native species, they are not at other natural sites. They don't exclude establishment or prevent establishment of orangeblack damselflies, so they're not thought to be sort of a deal breaker in the same way that invasive fish are never seen to co-occur with the orangeblacks.
- Kawika: Yeah, thanks for clarifying. I was assuming that they were major because they are no longer on Kaua'i and other islands. So, what was the reason for their extirpation on those islands? I'm just trying to make learning from history right on this one.
- Will: So yeah, primarily non-native fish, so mosquito fish were widely introduced and when we did surveys on Lāna'i and revisited some of the historical locations, all of those locations had mosquito fish present, currently. So, the idea here is to create habitat that is sort of distant from any sources of mosquito fish and where it's unlikely that mosquito fish would get into the ponds, so that we could bring it back to Lāna'i. Right now, it's very difficult to remove mosquito fish from natural waterways once they're there.
- Kawika: Okay so there just some things that aren't lining up in my mind. I think some folks on this call know I was the director of Limahuli Garden and Preserve for 13 years and there are only mosquito fish in the lower reaches of the stream, there's no mosquito fish in the upper reaches, not in the lo'i. There are indeed no [native] damselflies and that wasn't the cause of their extirpation it would have to be another factor and I'm assuming that would be the other damselflies and dragon flies.
- Lisa: I read in the document, is it correct that apple snails are also predators?
- Kawika: Yeah, we don't have apple snails either in Limahuli. So, I'm just saying that it seems like there's something that we're not understanding. I mean that whole area, Nā Pali and everything, if there's no damselflies there and there's no mosquito fish then there's another factor in the species extirpation from Kaua'i. If the only other thing I can think of the nonnative damselflies and dragonflies and maybe they have a larger impact than our current scientific knowledge is aware of. Maybe we should think a little bit more about that.
- Will: Okay, so to clarify there are about 25 different species of endemic damselflies and this is just one of them. There is a very high diversity of endemic damselflies on Kaua'i. This species is more of a lowland species. Typically, it likes kind of slow-moving streams or ponds, a lot of its populations are in coastal anchialine pools. But it does also occur in marshland. Historically it would occur in low elevation wetlands. So yeah, there are plenty of endemic damselfly species on Kaua'i still, but this species has been extirpated. In fact, it was extirpated quite a long time ago, there are only a few specimens known from Kaua'i and we're not really sure why it was extirpated. There may have only been very small populations there to begin with.

Kawika: Okay, I guess question for the applicant. In the mitigation plans, when you would be covering a pond with shade cloth or something, how big are these ponds that would be covered?

- Rachel: So in our discussions with Will and Cynthia the suggestion was to potentially only cover one or two small, essentially like the release bins they might be just a couple feet across, to cover those with two inch by two inch 2 inch opening elk mesh so that the orangeblack Hawaiian damselflies can get through because they like to kind of fly in, perch, and then fly through. As opposed to dragonflies that sort of zoom a little bit more, but to not try to interfere with the larger pond that's likely going to be in the you know sort of 10 feet by 12 feet kind of range.
- Kawika: Okay thanks. I'm thinking about this.

Lisa: I was going to ask some questions. So, in looking at this project I commend some invertebrate conservation that is happening, which is great. First thing that came to mind is thinking about bats, and whether bats would be attracted to this area. What is the current distribution of bats? I recognize at the beginning of the presentation you talked about all the different agreements and permits that are with the Fish and Wildlife Service and the State, but this seems very right for a much larger Safe Harbor agreement much like the Kamehameha Schools one potentially. So, I know that would be another huge amount of work, but it was just interesting that these specific species, and I think there's a lot of potential for recognition and Safe Harbor for other species also on Lāna'i that are Endangered.

- Rachel: Thank you. I don't know if anyone else wants to take the bats? Bats did come up; they were detected on Lāna'i I think during some surveys for the Maui Police Department Tower. There's not been any others scene as far as I know, that obviously doesn't mean they're not there. I think it was determined that this area would not hold any likelihood for incidental take that would be beyond any other ungulate fence that was anywhere else around a county wastewater plant, or the State you know, or any other habitat where bats have never been detected. There's no evidence of incidental take happening in those areas and so it was not thought that it would here either. The fence is also not right around the pond, it will be off the pond by a ways.
- John: Yeah, let me just chime in there right quick, so in Appendix A we deal with some of the avoidance and mitigation minimization measures for Hawaiian hoary bat, so they were considered pretty specifically. They do include not using barbed wire on the ungulate fence, that's a pretty standard protocol to avoid them getting hung up. As we all know they kind of tumble when they forage and they lose a little bit of situational awareness as they're going through the air. We also have as a standard company policy to not clear trees over 15 ft during the pupping season. So, clearing the fence line where there are trees that are over 15 feet we'll do that outside of the pupping season to avoid any take there as well. Then we had some pretty extensive conversations with, in particular Diane Seether who holds bats near and dear to her heart, in terms of avoidance and minimization. Construction of the fence and the vegetation line is such that it shouldn't be in the middle of a foraging corridor where those bats could be impacted. All of those things are already in place and are in the document. I do think also that for the size of the water features that we're talking about at this point we don't think it's going to increase the local insect population to the degree that it would unduly attract bats to that area. Even if the bats are attracted it should be a relatively safe habitat for them. So hopefully that addresses some of your

questions and concerns about bats at the site.

- Lisa: I guess it does. I was just curious why you have the stilts and the bees. I just was wondering, you know it it's great there's those documented minimizations there, but yeah so many of the projects we're working on with bats talk about water features of any size. So just was curious why it wasn't added as a species as well.
- John: I think it's because I don't think there's any anticipated...there aren't any likely mechanisms of take associated with the action that pointed towards including them.

Kawika: Right so question for Will, or the applicant. Given the diversity of native damselflies are there any others on Lānaʻi? I guess I'm trying to get a picture of the whole diversity of damselflies and dragonflies existing on Lānaʻi that you need to be thinking about.

- Will: So, there are several other native damselflies on Lānaʻi, there are no other listed species on Lānaʻi. As far as dragonflies there are a couple of native dragonflies that are going to be widespread on Lānaʻi. I think there are about four non-native dragonflies that are widespread in Hawaiʻi in general. So yeah, we will likely see dragonflies using the site, I mean they're very good dispersers and they're going to find the site. The other native damselflies are probably not likely to use this type of habitat, just because they're more stream adapted. So, they're going to be up you know in the higher in the gullies and in the higher elevations.
- Kawika: Okay thanks. So, for the non-native dragonflies are those known predators of damselflies at any life stage?
- Will: As naiads, so like as immatures, they will prey on the [damselfly] naiads. Just for context, one female damselfly in one sitting can lay well over 500 eggs, so they are very fecund and they're producing a lot of offspring. Most of those offspring will get eaten by something: either each other, or other predators. So, we can't completely avoid predation, but you know we're going to try to minimize predation by these non-native dragonflies. It's not something we can totally eliminate. I don't know, does that help?
- Kawika: No that's very helpful thank you because I my knowledge about damselflies is extremely limited. So, in you know with monitoring we're going to be seeing whether or not we're building a sustainable population. That's kind of why I want to look at the mitigation table. I'm just wondering if it's not working out if there's going to be things like at least opportunistic control of non-native dragonflies which are known predators. So maybe we could look at the table to see what kind of mitigation you folks are thinking?
- Karen: Is the expectation that the control of the non-native dragonflies would be pretty short term? Once the orangeblack damselfly population was established that it wouldn't be necessary that's the is that the premise?
- Kawika: If we try and establish a population and it's just not working out like expected and this is why we have mitigation plans in place. Non-native dragonflies are known predators then they should be included in their adaptation.
- Michelle: I was about to say the wording here, this isn't mitigation, but adaptive management should always apply.
- Kawika: I'm sorry that was a term I was aspiring for sorry about that...Is somebody going to walk us through this or we just reading?
- Rachel: I can walk through parts of it if you would like. I think in particular the second

row from the top is talking about orangeblack damselflies and if there are fewer than three adult damselflies observed on each of three consecutive surveys, which are initially happening weekly, then again in talking with Will and the Megalagrion Working Group they said there are so many reasons why that could be that it was hard to define specific responses at this point. But that there would be evaluation of the reasons for that decreased abundance given the current conditions at the time and the Megalagrion Working Group could be the source of suggestions for potential responses in adaptive management at that point.

Afsheen: A question or the invertebrate folks do the waterbirds contribute to predation as well for the damselflies. Is there any concern there as well?

- Will: I they are likely going to eat some of the damselflies, but they have never been identified as a threat to this species. As far as you know having significant impacts on their populations, I think that's pretty doubtful that they'd be eating enough of them or targeting them enough to have a significant impact.
- Afsheen: Would you be able to monitor that? Would you be able to know if that was a significant impact from your monitoring?
- Will: I wouldn't be able to from just monitoring damselfly populations weekly. We are not proposing to observe waterbird predation. I don't know if Rachel has any comments on that.
- Rachel: From talking with other folks who watch a lot of damselflies and waterbirds, such as R Leon on Moloka'i, she says yes that they will Hawaiian stilts eating damselflies. There will be thousands of damselflies all at the same time.

Kawika: Please correct me if I'm misunderstanding, all expectations are that the introduction will be successful, but if it looks like it's not successful then you folks will just defer to the working group. It just seems like it should be more fleshed out.

- Rachel: Well, I think at some point we want to do everything we can to facilitate the introduction and persistence of the damselflies there. I think at some point if the invertebrate experts can't come up with a reason why they're not doing well then there is a possibility that that the population might not take, or it might not persist for the term of the agreement. I think at some point we would no longer have assurances, but we would not need them because there would not be damselflies there. I think you're picking up that this is a little bit of a proof of concept that based on captive rearing. Based on observations of the existing populations made by Will and the team, that's really thinking about their recovery, they think this has a really good chance of working and they have successfully managed damselflies persisting in managed ponds and pools in sort of a captive setting. This is the next step out.
- Kawika: I don't I think, I guess what I'm trying to understand from my end as an ESRC member is I don't think this is a level of adaptive management that we would be okay with in an hcp, but being that this is a Safe Harbor are we okay with being more lenient or vaguer in our adaptive management? That's a completely open question to ESRC members and DLNR.
- Michelle: So, it is a complicated question, Kawika. On our end this isn't a Habitat Conservation Plan and the way in which we look at adaptive management is different. I think it's probably, in my mind, more kin to a DOFAW or Fish and Wildlife Service funded or conducted recovery action. When I think about it there are two different

components here, right? The Safe Harbor agreement is creating the human managed habitat that allows for conditions to reintroduce Megalagrion. There is a separate but concurrent action for DOFAW to reintroduce the species and the two have to work hand in hand. In this case the applicant is not proposing to reintroduce the species, they're proposing to create the habitat that will allow for the species to be introduced. I think the challenge that we're facing here is that you're right. This adaptive management strategy is not as robust as we would normally see in an hcp, nor is it necessarily as robust as we would like to see for a true reintroduction plan. But that's because DOFAW is leading the reintroduction effort in accordance with their permits rather than the applicant doing it so as part of their Safe Harbor Agreement permit request. I would turn to DOFAW though. Is that how you see it as well is that how you're looking at the components of these two concurrent actions?

- Afsheen: I'm thinking about other Safe Harbor Agreements that we have had where it is the same situation right. Where the state is introducing nēnē to a private land, and the landowner's basically allowing that to happen on their land and we're doing a lot of the conservation measures to introduce the species. I feel like in those we did have kind of targets that we thought about in terms of what we expect that net benefit to be for the species was laid out in terms of we expect the population to reach a certain level or something like that. I don't know if we have that in this, but you know it is I feel like this is like a recovery effort that DOFAW is trying to do on private lands, and we have an agreement to use those lands and we want to provide assurances to that land owner but they don't have liability for handling species on their property. If we want to tighten up some of these adaptive managements, I don't see any harm in that, as a group, and you know if Kawika if you're looking for examples like of what those adaptive management actions might be I think the invertebrate group already knows what those might be. If we want to include that I don't see any reason not to.
- Kawika: That would make me feel better.
- Michelle: At least what I heard though is that there is a good faith effort here from the landowner to say if this metric isn't met, this metric on the second line here of this table, then there is a good faith effort to work with the Megalagrion Working Group to identify what those actions are, to address them, and to continue the effort to reintroduce the species. So, you know maybe there's something in there that we can do to clarify that role and responsiveness between the landowner and the Megalagrion Working Group. But it sounds like a lot of the adaptive management for some of this is going to be driven by the recommendations of the Megalagrion Working Group based on real-time information.
- Kawika: I can appreciate that what I'm also hearing is that there might be some general recommendations which would be good. I'm just looking for a level of consistency and how we operate as ESRC. I'm not really comfortable with such vague adaptive management in really anything especially when there's already some plans in place that just weren't incorporated yet for whatever reason. So, let's just be consistent folks.
- Rachel: If it helps it really did start as literally a recovery option of just us talking with Will and Cynthia about, could we create ponds and under their permits and try establishing a population. It's turned into already what's a fairly large and like four-year process of a Safe Harbor Agreement and when we thought it was maybe going to be like six months of planning a site and just doing it in order to provide those additional

insurances. The probability again of damselflies getting to such a large population that they are making it all over the island is unlikely. I think if there are specific options, we can go back and talk with Will about what options there might be.

Kawika: Thank you just hoping for a little bit more consistency. In that vein, Afsheen, or somebody, you mentioned DOFAW leading something on private lands. Are there other example of Safe Harbor Agreements where DOFAW has been trying to push for something on private lands.

- Afsheen: So, we have a few nēnē Safe Harbor Agreements where we've introduced to grant on Moloka'i, that was a Safe Harbor Agreement. Pi'iholo was a Safe Harbor Agreement, and Haleakala Ranch. Those three were where really the act action of the recovery of the species was conducted by the State so the Safe Harbor Agreement just provides that assurance to the landowner that they don't have you know future restrictions because it's confined to whatever those covered activities are for incidental take and all of that. But it's to provide that incentive for private lands to provide land for the recovery of endangered species.
- Kawika: So, I guess I'm just wondering if in these instances the adaptive management is more a burden of DOFAW than the landowner? Or it seems like maybe that should be articulated, of is that not useful?
- Afsheen: Yeah, I think that would. So, I defer to the invertebrate group, but I believe all those adaptive management actions would be implemented by DOFAW, but I don't want to say that wrong if that isn't correct.

Michelle: Can I ask it this way? Maybe this goes to Will, my assumption is that as there is greater plans for what that reintroduction attempt is actually going to look like, there will be some sort of document produced that addresses the questions of like which genetic stock are being used and what the game plan is and presumably what the adaptive management components would look like. Is that a correct assumption on my part?

- Will: In the past we haven't necessarily produced a document that outlines you know our reintroduction plans. It's usually a proposal to the Megalagrion Working Group. So, our recovery permit allows us to reintroduce this species to natural sites, or it can be artificial sites as well, but it allows us to reintroduce the species to those two sites as long as there those sites are approved by the Megalagrion Working Group. So, we have to present it to the group and get their sign off on new sites.
- Michelle: Forgive me for my ignorance, under that recovery permit is there already sort of those general adaptive management provisions, or specific things as part of that, that are already inherent in that recovery permit. I'm sorry for not knowing.
- Will: No not really. So yeah, they allow us to attempt reintroduction, but you know if it does not take there's no requirement for us to you know try to make it take. They give us the flexibility for trying. It's primarily these natural sites where we identify sites that we think are suitable to reintroduce a species. I guess we're not required to try to make a round peg fit a square hole, you know if it's just not gonna take.
- Michelle: I guess my bigger point here is just that it seems like at the moment the applicant is proposing to create the site, but it seems like DOFAW is the one that is implementing the reintroduction. So, to me that changes the way in which we would address like some of this. Some of this detail and nuance around adaptive management needs to be figured out, as to where that occurs. It does need to occur. It

is our expectation that adaptive management is an inherent part of a well-developed and implemented recovery action like this. The question is where does that live?

- Will: When we were putting this together, I think it was just really difficult to predict, you know, all the reasons why every introduction effort might not take or might you know be struggling. We worked with Fish and Wildlife on develop these adaptive management indicators, and this was kind of what we as a group came up with. I'm more I just raised the bugs; this is kind of out of my wheelhouse. I guess this is something that we need to reconvene about.

Karen: I guess in looking at these like adaptive management actions you know it looks like there's a wall water quality one where it's like implementing sediment removal or things like that. Who does that fall in this type of arrangement? Who does the responsibility fall to for implementing these types of adaptive management, and the where does the funding come from to do those in terms of maintenance of the area?

- Rachel: In terms of maintenance, it would fall to us.
- Karen: So, maintaining the ponds will fall to Pūlama?
- Rachel: Yes.

Michelle: Rachel is it correct for us to assume that anything that is proposed in this Safe Harbor Agreement is being undertaken by the landowner?

- Rachel: Yes, unless it says specifically DLNR.

Rachel: I think we were approaching it also as thinking about that adaptive management, like if we didn't want damselflies, we wouldn't be proposing this to start with. So, we have a vested interest in having it be successful. This is not a mitigation activity in an HCP that we have to do to offset something. We're not going to invest a ton of money in a restoration site and if it doesn't work the first time be like well sorry guys that was fun, we don't have to try it again so we're not going to try it again.

- Lisa: I want to thank you for that Rachel because I think these kinds of tools Safe Harbor Agreements are really important for Fish and Wildlife Service and the State to incentivize private landowners to do actions on their lands. Also, just over the course of my conservation career seeing that you know an effort like this is going towards an invertebrate is a big deal. So, I think knowing that you know it would be really wonderful if this works and then can be kind of used as a template for other sites as well. I commend this project moving forward in a collaborative way.

Kawika: Just another clarifying question, so there's four things in this table. So, the only one that's DOFAW driven is the damselfly. Whereas the 'alae 'ula, the ae'o, and the nalo meli are already existing on the island and are presumed would take advantage of this habitat. Am I understanding that correctly?

- Rachel: Yes.
- Kawika: Seems like the DOFAW driven action should be kind of called out a little bit more as something that we're going to, not be more lenient on, but me more flexible with the landowner whereas the other actions I think from my opinion would be, as a ESRC member, is those would be a little more stringent. I am happy to hear others' opinions.

Michelle: The application that's before us right now is the applicant's request, the applicant's action. That's different than DOFAW's action, we're not evaluating DOFAW's action, DOFAW's action is defined by their recovery plan and their recovery permit with the Fish and Wildlife Service.

- Kawika: So now I'm confused, so we're not evaluating the Safe Harbor Agreement for ae'o, 'alae 'ula, and nalo mele at the same time?
- Michelle: So, we are considering everything with this application not DOFAW's actions.
- Kawika: I understand that. Within this table if you look at the response column seems like because damselfly is a DOFAW driven initiative that there should be some calling out that the responses are a larger burden on DOFAW than it is the landowner. Whereas these other ones are the sole responsibility of the applicant. Am I misunderstanding?
- Michelle: No.

Afsheen: I just want to clarify what DOFAW staff or invertebrate folks because my understanding when I look at the agreement is that yes, we're taking the lead on the reintroduction of the damselflies. I'm assuming we're also taking the lead for some of these adaptive management actions, but I want to make sure that's yes or no.

- Will: I think that the actual adaptive management actions would also be on Pūlama. Correct me if I'm wrong Rachel. On page 31 of the conservation benefit agreement that outlines the responsibilities of the DLNR is just the actions involved with actually translocating the damselfly to Lāna'i and providing technical assistance. As far as carrying out the actions, I think as far as the agreement is concerned that would fall on Pūlama.
- Rachel: Yes that is my understanding. We'd be relying on you to help interpret and you know for instance in particular to help interpret issues with the population of orangeblack damselflies that are in those pools and for that abundance response we might still be the one making a change to water quality or you know putting up a screen or something with that assistance from the Megalagrion Working Group which is the Fish Wildlife Service and DLNR and some other species experts. To Kawika's point I think we take would take all of the responses seriously and I think the minimization and avoidance for the ae'o, 'alae 'ula, and nalo meli are pretty extensive. We do not expect there to be hundreds of them. A take request of one over 50 years was initially proposed. It was discussed that 50 years is a long time and three for each species was recommended. Again the actions are targeted at damselflies, and again they may provide some benefits to these other species.

Kawika: I just was started to think about cats, you couldn't really cease an activity relating to a cat getting in the area and taking a bird. So how is that treated so if a bird were taken by a cat?

- John: That wouldn't be considered take because that's not an action of the landowner. If a bird were caught in a cat trap because we were doing predator control that would be considered take. So the take is really designed to accommodate for the positive management action of predator control in the site. So, for instance those three birds include the possibility that a bird could encounter a trap get trapped and there's monitoring in place to release that animal as quickly as possible to avoid any sort of lethal take, but obviously it would still be considered take under the terms of the

license.

- Kawika: So if there's a predation take by a cat in an artificial pond, you're saying that's not the landowner's responsibility?
- John: I don't believe it is. I'll look to the Agencies to see their opinion on that.
- Michelle: It's not take, but it is the landowner's responsibility in the sense of ideally that they are taking active steps to try and remove cats and keep cats out of a site where we are actively trying to promote the conservation and recovery of listed species.
- John: We are proposing to do cat trapping and predator management inside of the conservation area to protect water birds that could arrive to the site. We are asking for take assurances if in the course of doing that predator management we have take of one of the species.

Kawika: Okay thanks that's helpful and part of what I'm thinking is one of the HCPs we have on Kauai at like a resort kind of place where the people were feeding cats, and the cats were taking the birds. To me that is the landowner's responsibility. It looks like one of the ponds might be near a resort. If workers are maintaining cat colonies in proximity to these ponds, I would think that is the landowner's responsibility.

- Michelle: I think this is where the site visit is going to be really helpful, Kawika. Pūlama Lāna'i has been on kind of the cutting edge of trying to find effective means of getting cats off the landscape in and doing it with community buy in. While it's not perfect, right, there is still predation happening on Lāna'i they have been incredibly successful at doing large scale landscape level cat control that supports the conservation recovery of a multitude of listed species.
- Kawika: Okay. Yes, I look forward to that. I was kind of asking a philosophical question. Cat take is not the landowner's responsibility, but in the instance where the owner's staff are maintaining cat colonies. It's a philosophical question, legal question, and maybe the AG should weigh in. If a private landowner's, paid staff is maintaining a cat colony next to a conservation project and those cats are taking protected birds is that not the landowner's responsibility?
- Michelle: That is a legal question, it's an ongoing discussion with our solicitor's office and the State AG about how much we can hold landowners responsible for that. Certainly, within our HCPs, that is why we have language that says you cannot be promoting cats on lands that are also there for conservation recovery of species.
- Kawika: Is that same language in this Safe Harbor Agreement?
- Michelle: Not promoting cats in these areas?
- Kawika: Is there a reason why you cannot cut and paste that into this Safe Harbor Agreement?
- Michelle: Rachel, John correct me if I'm wrong, but the language here is that you're actively doing cat control, right?
- Rachel: Correct it would be immediately around the site. As well as there's two lines from the larger landscape cat grid that go close. I guess there is not specific language prohibiting cat feeding, but I think it was based on the baseline that there is not cat colony feeding and there's active cat removal.
- Kawika: Okay, can you point us to a page number please?

Afsheen: One thing also just want to clarify, the waterbird coverage and the yellow face bee is only in that conservation area it's not in all of the land right so whatever measures are in place for those species would be specific to that smaller area?

- John: Yes, so the page was just put into the document. Just to read it right quick, Section 11, Subsection One, Predator Control: Pūlama Lāna'i will trap and remove predators including feral cats. So in this case there is not a prohibition on feeding, we are actually taking a claim to actively removing.
- Kawika: Is there any reason why we just wouldn't insert that? So it's not okay to maintain them plus we're going to be controlling them just for consistency with across our other documents from the applicant.
- Rachel: So in this case the only take of stilts and coots in association with actions that are being taken at the conservation area. So it doesn't address just anything related to stilts or coots on the entire island.
- John: I think from the landowner side we can look at including a bullet point under predator control that says that we will not actively attract, we can talk with about what that language would look like if there's some boiler plate that would make the ESRC more comfortable. I don't see it being too much of a problem to add to that section.
- Kawika: This is not against the applicant, this is just me trying to get all of our things to be consistent because they've historically been all over the place and it's been really hard for us to track.

Afsheen: The adapted management triggers are not just regarding take right? So the adaptive management triggers for damselflies is also about ensuring that this plan to reintroduce damselflies to the area is going to work, right? So that's why you have if for some reason there's a decrease in the abundance and you're going to talk to the working group. I just want to make sure Kawika, his comments are addressed because it wasn't just for the take it was also for the recovery potential of the species. Kawika I am asking if you okay with just leaving it as with assistance with the Megalagrion Working Group, or do you want to see something more?

- Kawika: Are we voting on this today, or are we just making recommendations? I think I would appreciate; I don't know if we should go into executive session to do this, but just some discussion amongst ESRC members. I'm trying to do this in public, but I would like to hear from other ESRC members about how they're feeling about my point.
- Karen: I can certainly appreciate trying to have consistency among various documents that we're reviewing and the need to maintain sort of these like minimum standards for what agreements look like. Even though it seems like in this case it's certainly not the intention of Pūlama Lāna'i to maintain a cat colony. It seems like having that as part of the agreement for a matter of consistency makes sense. This way we do not need to clarify it later.

Kawika: Okay, I guess the open question to ESRC is the vague language in the adaptive management for the damselfly are we okay with that because it's a DOFAW driven initiative and not something else? Again consistency across how we're treating our expectations for adaptive management in HCPs and Safe Harbor Agreements and those kinds of things.

- Michelle: I do think this is different, this is a applicant driven collaborative recovery project that they have no obligation to do, they are coming to us saying we want to do

something to support Megalagrion and to create the conditions that allow for it to be reintroduced to Lāna'i. DOFAW is responsible for doing the reintroduction the applicant here is just trying to create a site that allows for that to happen. It is different to me than it is for a lot of the ways in which we look at the other projects that comes before this committee. While I do think that adaptive management is an incredibly important component of any recovery action I want to make sure that that's we're thinking about this from the perspective of the applicant is proposing something it is on us to evaluate what it is that they're proposing. They are not proposing to do the actual reintroduction that's a DOFAW action.

- Afsheen: Right but the adaptive management in the future, now that I understand this correctly is not a DOFAW action it would be a Pūlama Lāna'i action. So if the goal is to provide that net benefit to these damselflies that we're reintroducing and then we're going to have adapted management in place to make sure that those goals you know of recovery for these species are hopefully going to be met through these actions. Then it is Pūlama Lāna'i that is implementing those adaptive management actions in the future, right?
- Michelle: Correct me if I'm wrong but John and Rachel my understanding is that you're basically handing some of that decision-making power about specific things that could be done to the Megalagrion Working Group. Site adaptive management falls within the proposed action here, but some of those things about other reasons as to why a population wouldn't get established is heading to Megalagrion Working Group.
- John: I think what's fair to say is Pūlama is taking on responsibility for implementation, right? So to be specific about the language we are going to implement adaptive management actions as is deemed appropriate in conversation with the Megalagrion Working Group, but we are absolutely deferring to that group to guide that process so you know this document enumerates implementation criterion as best as we can to have the highest chance for success, but yes we are deferring a lot of the decision making because we do not have the on island experience, nor are we really qualified to unilaterally make these decisions from an adaptive management perspective going forward.
- Afsheen: So for Pūlama Lāna'i, then my question would be do you want sidebars on that? It's kind of open-ended right? Like what the Working Group would suggest for you to do, you are you comfortable with that?
- Kawika: Yeah part of my concern too is you know I think we want to make a friendly environment for private land owners to be engaging in conservation, but if they're driving the bus and they say oh well you know these ponds need to actually be 20 acres you know then that doesn't bode well for your the land owner.
- John: So this has been a big topic of conversations we've you know brought this document together. There are provisions within the document that if we have as a landowner feel that the adaptive management or the conditions that the Megalagrion Group is requiring for the project to be successful are either too onerous or too expensive or outside of the reasonable capacity of the landowner to accommodate that we can as a land owner withdraw from the agreement. So from our standpoint we are we are perfectly comfortable in taking on any reasonable, fundable, tractable, adaptive management that we as a land owner can accommodate. Most of the language came from USFWS and some from DLNR, and we modified it as needed.
- Kawika: Ok thank you.

Afshen: One more comment that I wanted to bring up, and this might be a question for Fish and Wildlife Service, but in this agreement there's a reference to quote unquote "purposeful take" authorized. I don't really and I know there's nothing in or at least that I've seen that has purposeful take occurring with the conservation actions and everything that's happening. I'm just wondering because I am thinking from the State side I don't see how we can allow under a Safe Harbor Agreement purposeful take it would be always incidental take that we're authorizing and not purposeful take. So, is there a reason we have purposeful take written in the document? Is there any way we can remove that since I don't think there's any intent for purposeful take within this agreement?

- Michelle: Can you point me to a reference?
- John: Page one and page two. So in introductions section 1.1 and 1.3, the second paragraph of 1.1 includes the language purposeful and then 1.3 at the bottom of that paragraph.
- Lisa: So first of all everybody I'm Lisa Bail I'm representing Pūlama Lāna'i. This language about purposeful take came from your Deputy AG. So I'd suggest maybe you want to have an executive session and talk with her.
- Rachel: I think it was related to the parts of it that that if damselflies were found we would potentially be capturing and relocating them like from other areas to the conservation area, or from one pond to another if we were needing to like remove vegetation. That would be purposeful like we would be moving niads to a container while we did maintenance around one of the ponds but think I will completely defer to Danica.
- Michelle: It sounds like this was also done in coordination with the Service solicitor and that purposeful take associated with implementation of the recovery action is allowable under the revised CFRS for the Fish and Wildlife Service regs. So, this is intended to be as part of the value of the Safe Harbor Agreement. These are conservation actions that would be done.
- Afsheen: I get that and that's why I don't I guess the word "purposeful" is what I'm concerned about. I would refer to Danic, but I don't think again that under 195D there is an allowance for purposeful take.
- Kawika: I might request an executive session.

Lisa: I do have a question, is the definition of purposeful take the same between the Federal and the State Endangered Species Law?

- Michelle: I'm going to speak from the service under our previous CFRS, under our previous regulations, we were not allowed to allow for purposeful take but there was all these actions that are inherently part of the conservation action that you know depending on what definition you use gets really complicated is it purposeful or is it not purposeful. Things like monitoring the listed species that you're actively doing work to conserve and recover sometimes can result in take right? Like take at the level of harassment, not mortality right but you still have to capture that somewhere. The new Fish and Wildlife regs fixed that by creating better language around it and allow for all of that to be included. Previously one of the things that we would say is that you know this that those types of actions are they are part and parcel with the recovery action. So they're not purposeful take but they are incidental to the proposed action which is to conserve and recover the species.

- Danica: Hi, I am here, what is the question?

12.06.2024 11:01/01:55:42

MOTION

Kawika: As expressed earlier I'd like to go into executive session to discuss how we're assessing adaptive management across all our HCPs and Safe Harbor Agreements, as well as to talk about the language about purposeful take that's in this Safe Harbor Agreement.

- Afsheen: I'll second.
- Afsheen: Please vote.
- Motion passes unanimously.

12.06.2024 11:37/02:31:38

RETURN FROM EXECUTIVE SESSION

Lisa: Mahalo, so I'm just gonna kind of make some comments from our executive session that we are very appreciative that the Deputy AG from the State, Danica Swinson, was there to help us clarify. So, we looked at 195D and we want to be sure that we continue to incentivize private landowners to do collaborative conservation work and given that review of the statute we are comfortable with the adaptive management as the way it's outlined. We want to encourage DOFAW to continue to work with the AG's office on developing the administrative rules for Safe Harbors and HCPs because that'll really help provide guidance for both applicants and the ESRC moving forward to clarify what is expected with adaptive management. So, for this project in particular as outlined we're comfortable with the adaptive management as is. Then moving on to the definition of purposeful take again as related to this project specifically purposeful take and incidental take are essentially viewed as the same thing we encouraged DOFAW and the permittee as language goes into the incidental take permit specifically for this project and encourage further conversation between the Agencies to clarify purposeful take as it's defined on the Federal side and on the State side.

- Danica: I worked with Miss Bail on this and particularly about the purposeful take and had discussions about what that means in the context of this agreement.

Afsheen: Are there any other discussion items that the ESRC wants to bring up at this point?

There are no additional comments from the ESRC Committee.

12.06.2024 11:41/02:35:19

Questions or Comments from the Public

There were no comments from the public.

Michelle: There was one public comment email that the Service received via e-mail; it was anonymous. Summarizing we appreciate efforts to do good things for Megalagrion and the waterbirds, and the bees they are all wonderful species.

Kinsley: The public comment on the DOFAW side has a deadline of January 21st. There will be an additional meeting for the public to attend on Lāna'i at the Filipino Clubhouse. The

public can come in and testify or offer comments regarding the SHA. That will be publicized in Lānaʻi Today. Regarding the Board meeting next week, we're going to be having an agenda item on the BLNR meeting next Friday, December 13th. It is agenda item C2 which focuses on a request for the board to authorize a public hearing and to delegate to the chair to set the time and place for the public hearing as well. So technically we have it reserved but we will cancel it if we do not get that from the Board and the chair as well.

12.06.2024 11:46/02:40:05

Review of Comments from the ESRC

Kawika: I might have a comment about the genetic diversity of the founder species being used for this. I'm certainly on the philosophical side that we should be maximizing genetic diversity instead of trying to create maintain a gene pool that's no longer evolutionarily competitive and so I would strongly encourage the Working Group to consider trying to maximize the genetic diversity in the founding population on Lānaʻi to increase the highest likelihood of recovery of the species.

Michelle: The ESRC deeply appreciates the landowner being willing to engage in this collaborative conservation effort and seek a Safe Harbor Agreement that supports the conservation and recovery of Megalagrion on Lānaʻi.

Afsheen: The Committee will see this back sometime next year for a recommendation for approval or not after all the public comment period is over. So, we'll be hearing more about this in your future.

12.06.2024 11:49/02:44:13

MOTION

Kawika: Motion to adjourn.

- Lisa: Second
- Motion passes unanimously.