

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

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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

DIVISION OF FORESTRY AND WILDLIFE  
1151 PUNCHBOWL STREET, ROOM 325  
HONOLULU, HAWAII 96813

DAWN N.S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

RYAN K.P. KANAKA'OLE  
FIRST DEPUTY

CIARA W.K. KAHAHANE  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

## ENDANGERED SPECIES RECOVERY COMMITTEE (ESRC) PUBLIC MEETING

### Draft Meeting Minutes

**DATE:** March 15<sup>th</sup>, 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=g9YMTSQmbhY&t=9s>

#### MEMBERS

Afsheen Siddiqi  
Michelle Bogardus  
Melissa Price

Kawika Winter  
Karen Courtot

#### STAFF

Kate Cullison—DOFAW  
Kinsley McEachern—DOFAW

Dilek Sahin—DOFAW  
Amanda Macias—DOFAW

#### OTHERS

Adrian Gall—ABR Environmental Research & Services  
Dan Sheldon—Sheraton Kaua'i Resort

Lisa Bail—Goodsill

**03.15.2024 09:00/00:00:22**

#### ITEM 1. CALL TO ORDER AND ANNOUNCEMENTS

Afsheen Siddiqi called the meeting to order and asked for everyone present at the meeting to introduce themselves starting with committee members and other attendees. She also reminded everyone of the Sunshine Law and asked that all committee members have their cameras on. It was noted that quorum will be lost at 11:45.

03.15.2024 09:03/00:03:31

**ITEM 2A. ESRC REVIEW OF 2023 ANNUAL REPORTS FOR LICENSEES REGARDING FACILITY IMPLEMENTATION OF THE KAUA'I SEABIRD HABITAT CONSERVATION PLAN—NORWEGIAN CRUISE LINE**

Adrian Gall presented, on behalf of Norwegian Cruise Lines, an update on compliance with the Kaua'i Seabird Habitat Conservation Plan.

03.15.2024 09:16/00:16:23

**Questions and Comments from the ESRC Members**

Melissa: Thanks so much Adrian. Can you clarify for me, if you found birds on the ship how is that not take?

- Adrian: It does not count under the permit because it was take that was authorized by the permit. It's not that it's not take, it's just that it doesn't fall under the permit. The permit allows for take only of juveniles. So by the terms of the permit it doesn't go against the permitted take. It is take, I mean obviously the birds are landing on the vessels, but it is not it doesn't count against what is allowed in the permit because the take is not allowed by a permit.
- Melissa: So similar to the one that we heard the other day. It wasn't accounted for when this was planned when this was originally considered and so would require an amendment to ensure that you're covered for the take that's occurring.
- Adrian: It is a little bit different from the one adult bird that was found at one hotel um because this issue was brought up in the PIP. So, when NCL applied for their take, they made specific reference in their participant inclusion plan (PIP) and in their requested take that all the birds that had been found to that point were adults.
- Melissa: So, it still sounds to me like take that needs to be addressed through an amendment.
- Afsheen: It's my understanding this is the only option available to ensure that that take is covered. As Adrian is mentioned the take that's occurred of the adults is unauthorized currently under their permit. So, we're talking with NCL about having an amendment to their permit for adults.
- Melissa: It is important to note that this is take, just not permitted take. So there needs to be an amendment to address the permitted take.
- Michelle: The Service concurs with Melissa's statement.

Michelle: I do want to talk about the 13 birds that maybe band-rumped storm petrels or Leach's storm petrels. We are awaiting information that would help us to determine whether or not they are a covered species.

- Adrian: I would not characterize it that way. The rehabilitators determined that they were Leach's storm petrels. Biologists on Kaua'i and DOFAW Biologists got together and worked through how to delineate each species and determined that they were Leach's storm petrels, with the exception of the individual identified as a band-rumped petrel in 2022. DOFAW did request the methodology and more photos and more proof.

- Michelle: I might be missing something, and I will refer to agency staff. My notes indicate that there is still some documentation missing. I will be working on getting this information.
- Adrian: We have made the request that the rehabilitators provide more documentation; however, this is outside of the purview of the permittees for the KSHCP to enforce.
- Afsheen: Adrian for the agencies we rely on the permit holder to provide enough information for us to make those determinations. We did request further documentation for us to make a determination. Otherwise, you know we'll go conservatively and assume that they're band-rumped storm petrels unless we have the appropriate documentation that says otherwise. So, we ask for this from the permit holder.

Karen: Does SOS have a standardized report format, and what photos do they include?

- Kate: Biologists have worked on developing a protocol for documenting species and it requires a minimum of three standardized photos and morphometric measurements of each bird. So that would happen at the rehabilitation facilities. We need to keep those on file to verify that these individuals have been identified as one species or another having diagnostic photos to justify that determination.

**03.15.2024 09:30/00:30:32**

Melissa asked Adrian to explain the identification process and how the birds are handled. Melissa then continued to explain the importance of burden of proof with the identifications in question. Afsheen then explained the importance of documentation for these IDs to DOFAW.

Lisa: I do think we need to be very careful about setting agency precedent for assuming species identification and this is a dialogue that began last October. Adrian was right on top of it initiating the discussion with SOS and Hawaii Wildlife Center I understand they've been responsive. We have asked for this documentation from them and if we had it, we would share it with you. We do not have it. So, I think that conversation needs to continue. I think we're all in agreement that we can do our best to get this information to you I also understand that both of these organizations have their own rehabilitation permit that requires them to make these species identification and that would have gone to the agencies at the end of January. We don't have that information ourselves. I think one positive thing we could do today is agree to work together the coming year so that the agencies are satisfied with the process, and we have a deadline if it's not already in the rehabilitation permits for that information to go to the agencies. I think it needs to be a continuing dialogue and I also think we need to be very careful about uh assuming species information for a regulatory purpose.

- Melissa: I would assume we're not setting precedent here. You need to show what species it is. If there are two really difficult to distinguish species: one really uncommon and vagrant, and one that endemic to the islands and critically endangered, the onus should be on the permittee to demonstrate that it is not the species that we would all assume it is based on geography. So, I don't think we're setting precedent here in saying that you need to demonstrate which species it is.
- Lisa: The law does squarely impose the obligation on the agencies to prove the species identification. So, I think like I was saying before, I think what we can all

agree to if there's a better information need, and that information need is can only be satisfied by third parties. NCL will work with the agencies to request that information and make sure it's provided. We've already done that here. We've requested the information; I think we need to add this to our list of things to keep working on for the coming year. The only other thing I can think of is that NCL gets its own wildlife rehabilitation permit to handle the birds. But that's a very complicated staffing and facilities issue when you would try to do that work on board a ship. I don't think anybody wants that to happen. I think we have the right groups in place to make that determination. It's just a question of getting people the information we need.

- Afsheen: Thank you, Lisa. I think we need to follow up on that and kind of make the determination based on the documentation we do receive. The permit reports you referenced from the rehabbers do not have the level of detail that we are asking for in this context. Diagnostic pictures are not usually included in their reports. Any other questions from the ESRC?

**03.15.2024 09:41/00:41:31**

### **Questions and Comments from the Public**

There were no questions or comments from the public via Zoom, YouTube, or email at this time.

**03.15.2024 09:43/00:43:16**

### **Recommendations from the ESRC**

ESRC members and DOFAW staff crafted recommendations for Norwegian Cruise Lines. Conversation focused on why adults were originally excluded from this permit. A suggestion was made to analyze more data and literature regarding adult seabird fallout.

**03.15.2024 10:06/01:06:20**

### **MOTION TO APPROVE RECOMMENDATIONS**

Melissa: I make a motion to approve these recommendations.

- Kawika: Second.
- Motion passes unanimously.

**03.15.2024 10:07/01:07:22**

### **ITEM 2B. ESRC REVIEW OF 2023 ANNUAL REPORTS FOR LICENSEES REGARDING FACILITY IMPLEMENTATION OF THE KAUAI SEABIRD HABITAT CONSERVATION PLAN—ROYAL SONESTA KAUA'I RESORT**

Adrian Gall presented, on behalf of Royal Sonesta Kaua'i Resort, an update on compliance with the Kaua'i Seabird Habitat Conservation Plan.

03.15.2024 10:18/01:18:36

### Questions and Comments from the ESRC Members

Melissa asked about the evidence of absence and its application to seabirds and Royal Sonesta Kaua'i Resort. She asked Afsheen and others to comment on this.

Afsheen: Under the permit the discovery rate was assumed to be 50%. This specific site was tested using decoys for two years. The first year Adrian mentioned it was 17% in 2021. They worked to get this to 40% in 2022. So much better but still not at that 50% threshold. So that is generally what is being used right to calculate what is being missed.

- Melissa: So, in cases where nothing was found but the discovery rate was 17% with margins or error. So, there were probably birds that were not found. How is this handled in a case where zero were found but the effort was determined to be subpar.
- Afsheen That's a good question, as far as I know we have assumed it was zero, but you're right. There is probably we are missing something, and I do not really know. This just brings to light again the real need to increase and better search these areas. I always advocate for dogs; they are much better than humans. I would say the permittee is doing much better. For those years where it is zero, we have not done any kind of calculation that would say this is the number of birds you have missed.
- Melissa: I want to guard against the idea that we are comparing standard as what they started out as. The permittee stated they have a 50% discovery rate. Anything less than that is less than what they committed to. It should not be a moving bar. I want it to be reflected in our comments to the permittee that the calculations need to be updated based off the actual discovery rate. If they were 17% and then 40% there needs to be a serious discussion about whether those get averaged. Do they get retested? For future HCPs it creates a perverse incentive if for the first couple of years zero are found but there's really little effort, which is essentially saving money in those first couple years. This is not good for the species.

Afsheen: Adrian when you calculated the numbers for lethal and non-lethal take, what was the discovery rate you used?

- Adrian: The one that is specified in the PIP, which is the one that applies to the permit, 0.5. It is the default discovery rate for all participants in the KSHCP unless it is specifically changed. To calculate these numbers, you take the total number found, live plus dead, divide by the discovery rate, in this case 0.5. This is your total take. You take your total take and subtract the lethal take. There is the assumption that all birds that are not found are dead. In this case the take was six birds, and the total take was 12 birds. All the birds not found, which is six, count as lethal take. Roughly 0.88 birds found would count as non-lethal take and 0.12 of the birds that were found are assumed to be lethal take even though all six of these guys survived. You still apply that correction factor. So, you end up with something like 5 point something non-lethal take and six point something lethal take.
- Melissa: I read the permit the other day and the way it is written. Since the searcher efficiency was done subpar and the predator control was done subpar it's not just on good faith that everything is happening and so the numbers that we saw were

inadequate over the last few years. I'm really glad that things are being done better, but I still think we need to have a conversation amongst the committee members about how things are calculated for years in which the work just was not being done or was not being done to par.

Afsheen: There was a compliance check, and we do have the data for those two years from the searcher efficiency trials.

- Karen: You said there was a compliance check, but what does that translate to for the permittee?
- Afsheen: That is what we would use for the discovery rate. The issue is we only have two years where we have done searcher efficiency trials. We can at least use 17% as a conversion factor for one year and 40% for the other year.

Lisa: Afsheen, may I speak to a few things here? This is a property that I think has done an exceptional job of predator control. So today is the first suggestion I've heard from ESRC or the Agencies that there are any deficiencies in predator control. So, my request would be if somebody identifies a deficiency, please let's meet with the agencies and discuss. I've understood that so far people have been pleased with the predator control effort. We continue to try to improve our predator control with Adrian's help. This year we now have very detailed predator monitoring information. I'm a little surprised now that there's a discussion that our predator control was not good in the early years of the permit. I also wanted to remind everybody in 2020 we were in a pandemic. This property like One Hotel Hanalei was largely dark. So, it was not intended that nobody was searching or that nobody was testing. It's just we were all in pandemic times. The lighting was very different during that year as well, just like it was for One Hotel Hanalei. They had an extended dark period because they were under renovation until last year and had the lights on last year for the first time. Then for the efficacy testing of searchers I think we all need to be mindful that the stated purpose in the permit for doing that testing is to give the results to permittees in a week so that permittees can adaptively manage and search better even within that seabird season. So we're now using these searcher efficacy tests for different reasons but where that information is withheld from the permittees until this time of year when we do our annual reporting there's nothing we can do to go back and change things for last season. So again I think my request would be if we can work with the Agencies if we're going to continue doing this testing if we can do it in a way that we all contemplated, the way the permit was written so that the results are shared with us within a week so we can do things immediately that season to make improvements and work in cooperation with the Agencies. We would very much appreciate those opportunities. It makes it very difficult for us to do or change anything about past years when we don't get the data after the fact. And the intent was that it would be shared with us within a week of the studies being done.

**03.15.2024 10:31/01:31:28**

Melissa addressed some of Lisa's comments. Melissa stated that Lisa had instructed permittees to not prepare presentations so actually two years ago the predator information was not presented. This information was verbally mentioned to the committee. Lisa stated that predator control data was shared with the Agencies and apologized for it not coming to the ESRC. Additionally, Lisa reminded everyone that it was a purposeful decision by all

participants in the KSHCP group that they would uniform in reporting. Kate commented that sometimes requested data is not produced by some permittees.

**03.15.2024 10:35/01:35:02**

### **Michelle Bogardus Enters Meeting**

Michelle: Sorry that I had to step away for a few minutes. I am back and I came back kind at the end of the presentation and in the beginning at some point during the discussion. I just want to point out here that the agencies are still reviewing all of these things and talking. I will say for the Fish and Wildlife Service we are talking to our solicitors and touching base internally about how we want to handle some of the things where it is clear that there is take that was not permitted under the permits, or where adaptive management has not yet met the expectations as defined in the permit and associated documents. In the meantime, I will just say that there is an expectation that permittees are addressing any adapted management challenges. So, Lisa and Adrian I, really appreciate that this is one where it has gotten better over time. That is lovely to see, thank you for the work that was done this year to help us get there. I will also say that more work is needed and that is part of the adaptive management of these of these documents. And when we do provide recommendations on what is needed, I appreciate the quick and responsive nature that is needed to get that done. We've got some time now before the next seabird fallout season there is time there to try and address some of the pieces where we are not meeting the bar for this project and for the others.

Adrian: To Kate's point about the predator control information. Again, we're coordinating with another entity to get the most accurate information.

Afsheen: Are there any other comments from committee members?

**03.15.2024 10:39/01:39:50**

### **Questions and Comments from the Public**

There were no questions or comments from the public via Zoom, YouTube, or email at this time.

**03.15.2024 10:40/01:40:45**

### **Recommendations from the ESRC**

ESRC members and DOFAW staff crafted recommendations for Royal Sonesta Kaua'i Resort. Conversation focused on exchange predator survey information and increasing predator control actions, increasing searcher efficiency potentially using canines.

**03.15.2024 10:46/01:46:21**

### **MOTION**

Melissa: Motion to approve recommendations as written.

- Afsheen: Second.
- Motion passes unanimously. Kawika was absent for this vote.

03.15.2024 10:49/[01:49:05](#)

**BREAK**

03.15.2024 10:53/[01:53:44](#)

**RETURN FROM BREAK**

03.15.2024 10:54/01:54:24

**ITEM 2C. ESRC REVIEW OF 2023 ANNUAL REPORTS FOR LICENSEES REGARDING FACILITY IMPLEMENTATION OF THE KAUAI SEABIRD HABITAT CONSERVATION PLAN—SHERATON KAUA'I RESORT**

Adrian Gall presented, on behalf of Sheraton Kaua'i Resort, an update on compliance with the Kaua'i Seabird Habitat Conservation Plan.

03.15.2024 11:08/[02:08:04](#)

**Questions and Comments from the ESRC Members and Recommendations to Permittee**

Afsheen and Michelle recognized the improvements that have occurred at this property and with reporting to the agencies.

Melissa: Can you pull up the recommendations for previous permittees and can we just consider whether any of those should be copied over or whether there's no need for that.

- Michelle: I will say one, and Adrian alluded to it. They are currently higher than their five-year rolling average. There's a couple of different ways to address that but I think the very least we should start looking at whether or not there's any further minimization that can be done. And maybe that work is already happening.
- Afsheen: The other thing, and I think Adrian had presented it too as an adaptive management was the predator control. If there were a lot of observations that did not seem like there was enough success in that effort of predator control. So, if there's a way, we can increase said effort that would be great.
- Melissa: I want to commend the incentives program.

Karen: I do not think I saw the numbers of birds that were recovered by participants of the incentive program.

- Dan: Two were found during daylight. The rest were nighttime.
- Karen: At other properties birds were being found by landscapers, are you seeing something similar?
- Dan: Nothing this year by landscaping.

Melissa: One quick comment, can you remind me for this site what the discovery rates were early on, the searcher efficiency when that was tested and how that compares to the discovery rate.

- Kate: In 2021 they were at 5%, in 2022 they hit 65%, and we did not test them last year. I would say they pulled out all the stops. While you folks were talking, I did check

the downed wildlife reports, and all the birds were found in the dark except for one that was found by a guest on their lanai in the morning.

**03.15.2024 11:17/02:17:18**

**Questions and Comments from the Public**

Dilek: Hello I just recently joined. I just want to repeat again thank you Dan and all the team I know in close observation that they are doing an amazing job with the seabird searches. But I also again want to touch on, maybe it was discussed, sorry if it is a repeat but I want to touch on the lights. I know the team is finding seabirds and their searcher efficiency is probably still high, but the Sheraton is still one of the brightest spots on the South Shore of Kaua'i. I do believe there is still serious amount of work to be done with the lights. So, I highly recommend as a public and also representing KSERP changing the light.

**03.15.2024 11:19/02:19:29**

**MOTION**

Melissa: Motion to approve recommendations as written.

- Kawika: Second.
- Motion passes unanimously.

**03.15.2024 11:20/02:**

**ITEM 3. ADJOURNMENT**

Afsheen: I make a motion to adjourn.

- Kawika: Second
- Motion passes unanimously