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IN REPLY REFER TO:

February 12, 2008

**TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION**

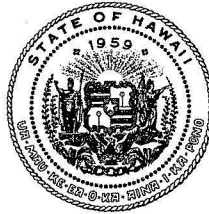
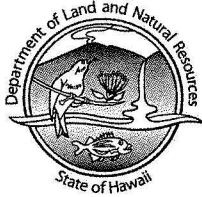
**HOUSE BILL NO. 3181**

**COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS**  
**COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION**

The State Department of Transportation (DOT) supports this bill, which was introduced at the request of the Administration.

DOT is partnering with the State Department of Land & Natural Resources (DLNR) and the U.S. Fish & Wildlife Service (FWS) on a Statewide Habitat Conservation Plan and Incidental Take Permit for Seabird Fallout. H.B. 3181 permits this joint effort and will enable other interested state agencies to participate.

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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STATE PARKS

**TESTIMONY OF THE CHAIRPERSON  
OF THE BOARD OF LAND AND NATURAL RESOURCES**

**On House Bill 3181 - Relating To Endangered Species**

**BEFORE THE HOUSE COMMITTEES ON  
WATER, LAND, OCEAN RESOURCES, AND HAWAIIAN AFFAIRS  
and  
ENERGY AND ENVIRONMENTAL PROTECTION**

February 12, 2008

House Bill 3181 proposes to amend Chapter 195D, Hawaii Revised Statutes (HRS), to encourage greater participation in endangered species restoration by private landowners by authorizing the development and use of programmatic safe harbor agreements (SHAs) and programmatic habitat conservation plans (HCPs) and the tools needed to implement them. The Department of Land and Natural Resources strongly supports this Administration bill and welcomes it as a means to encourage greater endangered species restoration on private lands.

Federal resource conservation agencies and non-governmental conservation organizations have begun to implement programmatic agreements to encourage regional landscape-scale and multi-party initiatives for endangered species. Examples of programmatic agreements are a statewide programmatic SHA with landowners enrolling in Farm Bill conservation programs to improve habitat for endangered waterbirds, or a regional programmatic HCP on Kauai that would mitigate the impacts on endangered seabirds from utility lines or attraction to lights. To provide private landowners the assurances that these tools will be available in the future, the Hawaii Endangered Species Law should be amended to specifically recognize these tools, similarly as has been done in federal regulations.

Programmatic approaches are beneficial because they enable interested landowners to sign-on to regional agreements and not need to develop and process their own individual agreements and plans at considerable time, cost and administrative burdens for both landowner and regulatory agencies. Programmatic agreements and plans encourage many landowners to get involved because it gives them a finished product to evaluate and agree to and removes the uncertainty about final product and outcomes. Programmatic agreements enable the development of regional management actions that encompass scale and offer benefits that are not possible with single agreements and result in greater recovery gains for endangered species.

Having State programmatic SHAs and HCPs similar to federal tools will streamline the processing of endangered species permits and meets the directive in §195D-4(i), HRS, to and work cooperatively and concurrently with federal agencies.



# Sierra Club

## Hawai'i Chapter

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**HOUSE COMMITTEE ON WATER, LAND,  
OCEAN RESOURCES & HAWAIIAN AFFAIRS  
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION**  
February 12<sup>th</sup>, 2008, 8:50 A.M.

**(Testimony is 1 page long)**

### **TESTIMONY IN OPPOSITION TO HB 3181**

Chairs Ito and Morita and members of the committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, opposes HB 3181, setting up a procedure for the state and county to establish a programmatic Habitat Conservation Plan (HCP) or Safe Harbor Agreement (SHA) that landowners can join without having to go through the scrutiny of their particular project. Endangered species issues cannot be resolved in this "one size fits all" manner.

The existing law already allows multiple landowners to enter into a single HCP or SHA (HRS 195D-21(a), 195D-22(a)). Thus, if all the folks on Kaua'i currently "taking" (killing, harming, etc.) listed seabirds want to enter into an island-wide HCP, they are free to do so. The process would require the assessment of each landowner's specific situation to quantify the level of take for each and determine what types of minimization and mitigation are necessary to confer a net benefit on the species. One option for mitigation would be contribution to efforts to protect seabird colonies from predators (cats, rats, etc.), with all landowners pooling their monetary contributions into one pot.

The difference between the foregoing and the programmatic HCP/SHA this bill proposes is that, under existing law, you would need to know which landowners would participate in the multiple landowner agreement. Then, based on detailed information about actual levels of take and offsetting minimization or mitigation, the proposed HCP/SHA could be assessed using real data to determine if it met the statutory standards. In contrast, the bill would allow incidental take to be authorized when you have no idea which/how many landowners would ultimately participate and what the total contribution to a joint effort ultimately would be. Thus, if you needed \$100,000 from each of 10 landowners to reach the \$1 million necessary for effective colony protection, under the existing law, you would grant the incidental take only after you knew 10 landowners were on board. Under this bill, you might grant incidental take authority to the first 5 landowners who sign up, and never get all the funds needed to carry out mitigation. The species could die with no offsetting benefit.

In the case of endangered species, one size does not fit all. We ask that this committee hold this measure.

Thank you for the opportunity to testify.



**EARTHJUSTICE**

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COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

TESTIMONY RE: HOUSE BILL NO. 3181  
RELATING TO ENDANGERED SPECIES

February 12, 2008, 8:50 a.m.  
Conference Room 312

Good afternoon Chairs Morita and Ito, Vice-Chairs Carroll and Karamatsu, and members of the Committees:

My name is David Henkin, and I am an attorney with Earthjustice. I appreciate the opportunity to offer this testimony regarding House Bill No. 3181. Earthjustice opposes this bill because it would allow the issuance of licenses to kill endangered and threatened species, without any reliable guarantee that Hawai'i's imperiled animals and plants will not be pushed closer to extinction, much less that adequate measures will be in place to increase the likelihood the species will survive and recover, as Chapter 195D requires. See HRS §§ 195D-4(g)(4).

The Administration's primary justification for this bill is to allow for programmatic approaches that provide a framework for many landowners over large landscapes to enroll in habitat conservation plans (HCPs) and safe harbor agreements (SHAs). If that is the case, there is no need to pass this law, as Chapter 195D as currently written already provides for this. See HRS §§ 195D-21(a), 195D-22(a).<sup>1</sup>

Thus, if all the entities on Kaua'i that are currently harming or killing endangered and threatened seabirds want to enter into an island-wide HCP, the current version of Chapter 195D allows them to do so. The process would require the assessment of each entity's specific activities to quantify the level of its take and to determine what types of minimization and mitigation are necessary to ensure the likelihood of the species' recovery will increase. One option for mitigation would be contribution to efforts to protect seabird colonies from predators (i.e., cats, rats, etc.), with all participants pooling their monetary contributions into one pot.

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<sup>1</sup> Likewise, while the Administration claims the changes are needed to allow for "concurrent processing of federal and Hawaii SHAs and HCPs," we are unaware of any inconsistency between Chapter 195D as currently written and the applicable federal regulations. Justification Sheet at 2; see also 50 C.F.R. §§ 17.22, 17.33.

The difference between what the law currently allows and what HB 3181 proposes is that, under existing law, before granting a license to kill or harm listed species, the Board of Land and Natural Resources must first know which entities are participating in the multiple-landowner agreement and, based on detailed information about their actual levels of take and offsetting minimization and mitigation measures, assess the proposed HCP or SHA using real data to determine if it meets statutory standards. In contrast, HB 3181, by introducing the notion of “certificate of inclusion,” arguably allows the Board to authorize the killing of endangered species when it has no idea which landowners would ultimately participate in the HCP or SHA, what the total level of “take” would be, and what the total contribution to a joint mitigation effort ultimately would be.

For example, if the Board determined it would need \$20,000 from each of fifty landowners to reach the \$1 million necessary for effective seabird colony protection, under the existing law, it could grant incidental take authorization only after it knew that all fifty landowners were on board. In contrast, HB 3181 arguably would allow the Board to grant incidental take authority to the first twenty landowners who sign up, allowing those landowners to start killing imperiled seabirds immediately, in the hope that others would later join in, but with no guarantee it would actually get all the funds needed to carry out essential mitigation.

HB 3181’s approach to endangered species protection is akin to issuing a sub-prime mortgage in the hope that adequate funds to make the monthly payments will later materialize. To protect Hawai‘i’s natural heritage, the Board should not be allowed to issue licenses to kill endangered species unless there are adequate assurances up-front that necessary mitigation measures will be carried out.

For the foregoing reasons, we respectfully urge you to kill HB 3181. Thank you again for the opportunity to offer this testimony.