



Sierra Club Hawai'i Chapter

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LATE TESTIMONY

HOUSE COMMITTEE ON JUDICIARY

March 25th, 2008, 4:05 P.M.

(Testimony is 1 page long)

TESTIMONY IN OPPOSITION TO SB 3103 SD1 HD1

Chair Waters and members of the Committee:

The Sierra Club, Hawai'i Chapter, with over 5500 dues paying members statewide, opposes SB 3103 SD1 HD1, 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. We believe that this measure is unnecessary and endangered species issues cannot be resolved in this "one size fits all" manner.

By introducing the open-ended concept of "certificates of inclusion," the bill would allow the issuance of licenses to kill endangered and threatened species without adequate assurances up-front that Hawaii'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.

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 current situation 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 respectfully ask that these committees hold SB 3103 SD1 HD1.

Thank you for the opportunity to testify.

**THE UNIVERSITY OF HAWAII ENVIRONMENTAL CENTER IS PLEASED
TO SUBMIT THIS TESTIMONY IN ACCORDANCE WITH ACT 132 OF
1970 WHICH CREATED THE CENTER. AUTHORS ARE MEMBERS OF
THE UNIVERSITY COMMUNITY.**

RL: 2201

SB 3103 SD1 HD1
RELATING TO ENDANGERED SPECIES

House Committee on Judiciary

Public Hearing – March 25, 2008
4:05 p.m., State Capitol, Conference Room 325

by
David Duffy, Botany
Peter Rappa, Environmental Center

TESTIMONY

SB 3103 SD1 HD1 authorizes the development and use of programmatic safe harbor agreements and programmatic habitat conservation plans that cover multiple landowners or a class of landowners and over a wide area or region. We emphasize that our testimony on this measure does not represent an official position of the University of Hawaii.

Safe Harbor Agreements enlist landowners' participation toward efforts to protect and restore endangered species, potentially saving the taxpayer a great deal of money. Partnerships with private landowners are critical to the State's ability to restore and protect our natural resources, and Safe Harbor Agreements provide landowners the assurance that they will not be penalized by additional endangered species restrictions at some point in the future as a result of their efforts. In 2006 the U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS), the Hawaii Department of Land and Natural Resources (DLNR) and the U.S. Fish and Wildlife Service (USFWS) announced the formation of what will be the first statewide "safe harbor agreement" for Hawaii. The agreement is to encourage land owners to make improvements to wetlands, riparian or uplands habitat that will benefit any of the five covered endangered birds: Hawaiian Goose (Nene), Hawaiian Duck (*Koloa maoli*), Hawaiian Moorhen (*Alae ula*), Hawaiian Coot (*Alae keokeo*), and Hawaiian Stilt (*Aeo*).

This act would provide a mechanism on the side of the state that would be in alignment with a similar federal program. While these agreements are not without problems, they do represent an important and efficient tool for conservation; therefore, the present bill should be supported.

Thank you for the opportunity to comment on this bill.

TESTIMONY OF KIMBERLY J. UYEHARA

On Senate Bill 3103, Senate Draft 1, House Draft 1 – Relating to Endangered Species

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

LATE TESTIMONY

March 25, 2008

I would like to share my thoughts with you on SB 3103, Senate Draft 1, House Draft 1, with regard to *Safe Harbor Agreements or SHAs*. I am one of few who have authored and been directly responsible for the processing and on-site implementation of both SHAs and Habitat Conservation Plans (HCPs) in Hawaii. For the past ten years I have worked as a biologist for Ducks Unlimited, Inc., for University of Hawaii's Pacific Cooperative Studies Unit, and contractor for USDA Natural Resources Conservation Service on endangered species conservation on private lands. Based on my experience, Programmatic SHAs have the potential to benefit endangered species on a large spatial and temporal scale not yet seen in Hawaii. However, House Draft 1, which amended the Senate version of the bill, would require each participant of a Programmatic SHA to undergo a review process similar to that of individual permits. These additional reviews would increase transactional costs (previously reduced through programmatic means) for all parties of programmatic agreements, and discourage landowner participation and thus, endangered species restoration by private landowners, making the programmatic approach ineffectual for SHAs.

SHA vs. HCP: As you are aware, there are distinct differences between SHAs and HCPs. HCPs are mitigation and conservation plans for landowners incidentally "taking" listed species. SHAs are not plans, they are *Agreements*; Agreements for landowners who, voluntarily, want to provide a net conservation benefit to listed species but desire regulatory assurances under endangered species laws. Cooperation and mutual trust and respect are common themes of SHAs.

Individual vs. Programmatic SHA: There are distinctions to be made between being an applicant for an individual permit and being a participant under a Programmatic SHA. I have referred many landowners to the Department of Land and Natural Resources (DLNR) to apply for their own SHA, but few have the resources to get involved in the daunting review and approval process required (DLNR has limited staff, 0.5 FTE dedicated to SHA, the position is currently vacant). Many of these landowners have agreed to participate in a Programmatic SHA if: (1) the terms are straight forward and uncomplicated, (2) it does not require a substantial investment of their time, and (3) it will be implemented in the true spirit of *Cooperative Conservation*.

Review and approval process: A Programmatic SHA already undergoes a rigorous review and approval process involving the U.S. Fish and Wildlife Service (USFWS), DLNR, Endangered Species Recovery Committee, Board of Land and Natural Resources, and informal and formal public comment periods and can take one to four years to gain approvals. These entities must approve the terms and conditions of Programmatic SHAs, and individual Conservation Agreements and Certificates of Inclusion are required to be consistent with the approved terms

and conditions. In addition, when Federal funds are provided for conservation activities (as is the case in most Programmatic SHAs), the funding agency conducts a NEPA environmental effects review of activities, as well as National Historic Preservation Act section 106, Clean Water Act section 404, and Endangered Species Act section 7 consultations. Thus, the additional government reviews and approvals in the SB 3103 amendments, in my opinion, would duplicate the existing government review processes, delay the process by at least two to six months, and result in a net cost to both agencies and landowners. A better way for the government to evaluate conservation value would be to request site visits to some of the enrolled properties to interact with landowners and gain first-hand knowledge.

The USFWS SHA policy "...provides incentives for private and other non-Federal property owners to restore, enhance, or maintain habitat for listed species" (64 FR 32717). Under the State, SHAs were developed to "...encourage landowners to voluntarily engage in efforts that benefit endangered, threatened, proposed and candidate species..." (HRS §195D-22(a)). I fail to see the logic in arguments presented by those who want to over-regulate landowners enrolled in a voluntary incentives program.

The Programmatic SHA is one of many conservation tools in the toolbox of the conservation professional. It is not a cure-all. It is not suited for all landowners. It has numerous success stories throughout the nation (M. Bean, Environmental Defense Fund, Testimony on SB 3103, March 17, 2008). There is no reason why it should not be made more accessible to private landowners who wish to use this conservation tool and help endangered species.

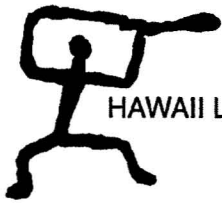
I respectfully request your passage of SB 3103 in its original form. Although I do not support the House Draft 1 amendments to the Senate version of the bill (for Programmatic SHAs) that would require more government review and oversight for participating landowners, I would support an amendment that allows for approval by DLNR staff with expertise in SHAs. I very much support the programmatic approach which promotes more effective conservation strategies and efficient use of public dollars.

Thank you for keeping the SB 3103 discussion alive and the opportunity to provide testimony on this important legislation.

Sincerely,



Kimberly J. Uyehara
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HAWAII LEEWARD PLANNING CONFERENCE

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22 March 2008

In Consideration of
Senate Bill No. 3103 SD1 HD1
Relating to Endangered Species

Tuesday, 25 March 2008
4:05 p.m. - Conference Room 325
House Committee on Judiciary

LATE TESTIMONY

The Honorable Representative Tommy Waters, Chair
The Honorable Representative Blake K. Oshiro, Vice-Chair
and Honorable Members of the Committee on Judiciary
State House of Representatives, Hawaii State Capitol, Room 325
Honolulu, Hawaii 96813

Dear Chair Waters, Vice-Chair Oshiro, and Members:

I am Jacqui Hoover, President of the Hawaii Leeward Planning Conference (HLPC), a member-based organization incorporated in 1974 whose seventy-five plus members are committed to sound planning, wise use of our resources, and effective government process.

HLPC supports the intent of Senate Bill 3103, Senate Draft 1, House Draft 1 proposing to amend Chapter 195D of the Hawaii Revised Statutes to encourage greater participation in the restoration of endangered species by private landowners.

Under existing laws, Programmatic Safe Harbor Agreements (SHAs) and Programmatic Habitat Conservation Plans (HCPs) undergo rigorous review and approval processes involving several agencies at both the state and federal levels including and not limited to, the Department of Land and Natural Resources (DLNR), U.S. Fish and Wildlife Service, and the Endangered Species Recovery Committee. Additionally, both formal and informal public comment periods can add years to the process before one gains approval(s). The aforementioned (and several additional) entities review and approve the terms and conditions of programmatic agreements and plans, and respective Conservation Agreements and Certificates of Inclusion must be consistent with the approved terms and conditions.

Requiring additional government review for participating landowners would be redundant. Such requirement would also diminish the successful and useful programmatic approach, discourage rather than encourage participation (particularly in Programmatic SHAs) by private landowners, thereby negatively impacting endangered species restoration efforts.

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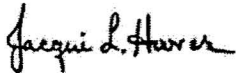
It is important to recognize the distinct differences between HCPs and SHAs. HCPs are mitigation and conservation *plans* for landowners incidentally “taking” listed species. SHAs are not plans, but rather, are *agreements* for landowners to *voluntarily* provide a net conservation benefit to listed species while simultaneously receiving regulatory assurances under endangered species laws.

Programmatic SHAs serve as *incentive* tools based on cooperation, mutual trust and respect that simplify regulatory requirements to encourage more landowners to participate in helping endangered species. SHAs have been successfully implemented nationwide without requiring multiple and redundant layers of government and public forum reviews, and it is difficult to understand why landowners participating in a voluntary *incentive* program should be over-regulated. Such over-regulation can only serve to defeat the purpose of a Programmatic SHA.

In closing, we do not support the amendments made in House Draft 1 and respectfully request passage of SB 3103 in its original form.

Thank you for this opportunity to express our views on this matter.

Respectfully submitted,



Jacquie L. Hoover, President
Hawaii Leeward Planning Conference

**TESTIMONY OF: Larry Komata, Vice President
OF THE: Big Island Resource Conservation and Development Council**

On Senate Bill 3103, Senate Draft 1, House Draft 1 – Relating to Endangered Species

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

March 25, 2008

Senate Bill 3103, Senate Draft 1, House Draft 1 proposes to amend Chapter 195D, Hawaii Revised Statutes to encourage greater participation in endangered species restoration by private landowners through Programmatic Safe Harbor Agreements (SHAs) and Programmatic Habitat Conservation Plans (HCPs). The House Draft 1 amended the Senate version of the bill and would require each participant of a Programmatic SHA to undergo a review process similar to that required for individual permits. Under existing laws, SHAs and HCPs already undergo a rigorous review and approval process involving the Department of Land and Natural Resources (DLNR), U.S. Fish and Wildlife Service, the Endangered Species Recovery Committee, Board of Land and Natural Resources, and informal and formal public comment periods and can take years to gain approvals. These entities approve the terms and conditions of programmatic agreements and plans, and individual Conservation Agreements and Certificates of Inclusion are required to be consistent with the approved terms and conditions. Thus, the additional government review for participating landowners would overlay programmatic reviews and replicate the existing government oversight process. It would also diminish the usefulness of the programmatic approach and discourage participation, particularly in Programmatic SHAs, and endangered species restoration by private landowners.

There are distinct differences between SHAs and HCPs. HCPs are mitigation and conservation plans for landowners incidentally “taking” listed species. SHAs are not plans, they are agreements; agreements for landowners who, voluntarily, want to provide a net conservation benefit to listed species but desire regulatory assurances under endangered species laws. Cooperation and mutual trust and respect are common themes of SHAs. Programmatic SHAs are incentive tools intended to simplify regulatory requirements so that more landowners will help endangered species. It doesn’t make sense to over-regulate landowners in a voluntary incentive program. SHAs have been implemented successfully throughout the Nation. Yet, we do not know of any other Programmatic SHAs that require multiple layers of government and public forum reviews, for the simple reason - it defeats the purpose of a Programmatic SHA.

We respectfully request your passage of SB 3103 in its original form. We do not support the House Draft 1 amendment to the Senate version which would require more government reviews and approvals for landowners participating in Programmatic SHAs; however, we would support an amendment that allows for approval by DLNR.

We thank you for the opportunity to provide testimony on this important legislation.

Respectfully Submitted – Larry Komata, Vice President BIRC&D Council
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TESTIMONY