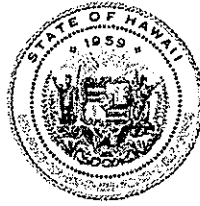
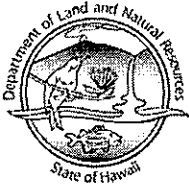


SB 2441

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
LAURA H. THIELEN
Chairperson

Before the Senate Committees on
ENERGY AND ENVIRONMENT
and
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

Tuesday, February 2, 2010
2:45 PM
State Capitol, Conference Room 225

In consideration of
SENATE BILL 2441
RELATING TO ENDANGERED SPECIES

Senate Bill 2441 would establish the knowing or intentional taking of any endangered species as a class C felony with a fine of up to \$50,000, would allow civil suits to be filed for any alleged violation of the state's endangered species law, Chapter 195D, Hawaii Revised Statutes, or rules adopted under that law, and would allow awards for the costs of the litigation. While the Department of Land and Natural Resources (Department) recognizes the need for better deterrence and stricter penalties for harassment or taking of monk seals and certain other species, the Department **opposes this bill** because it would also create these same strict penalties for the take or harm of hundreds of other endangered species, 274 of which are plants species that few people would even recognize as endangered and for which education and outreach is a much more needed and appropriate approach at this time. Further, the provision for citizen suits could lead to a significant increase in litigation of cases in which alleged take is unintentional, ambiguous, or undeterminable, or in cases when the agencies do not have sufficient funds to address endangered species issues according to the standard and agenda of the litigant.

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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



Conservation Council for Hawai'i

Testimony Submitted to the Senate Committee on Energy and Environmental and
Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs

SB 2441 Relating to Endangered Species
Hearing: Tuesday, February 2, 2010 2:45 pm Room 225

In support of SB 2441

Aloha. Conservation Council for Hawai'i supports SB 2441, which establishes the intentional or knowing taking of an endangered species as a class C felony, and provides a private right of action to enforce conservation of aquatic life, wildlife, and land plants laws.

We are deeply saddened by the recent intentional killings of endangered Hawaiian monk seals on Kaua'i and Moloka'i. These actions clearly indicate that the existing penalty for taking an endangered species under state law is insufficient to deter similar actions in the future.

We support the increased penalty and other provisions in SB 2441 that make the state law more consistent with the federal Endangered Species Act. We also support SB 2441's proposed measures to make it easier for concerned citizens and community groups to protect endangered species and help enforce the law. Such public-private efforts are necessary because endangered species and other natural resources belong to all the people, future generations included, and we all have a stake in making sure these resources are protected. Private action is also necessary at times because government cannot, or will not, do it all, especially in these tough economic times.

Please pass SB 2441. Mahalo nui loa for the opportunity to testify.

Marjorie Ziegler



Hawai'i's Voice for Wildlife – *Ko Leo Hawai'i no na holoholona lohiu*

Telephone/Fax 808.593.0255 • email: info@conservehi.org • web: www.conservehi.org
P.O. Box 2923 • Honolulu, HI 96802 • Office: 250 Ward Ave., Suite 212 • Honolulu, HI 96814
President: Maura O'Connor * Treasurer: Kim Ramos * Secretary: Douglas Lamerson
Directors: Madelyn D'Enbeau * Maka'ala Ka'aumoana * Hannah Springer
Executive Director: Marjorie Ziegler



EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, DC INTERNATIONAL

SENATOR MIKE GABBARD, CHAIR
SENATOR J. KALANI ENGLISH, VICE-CHAIR
SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

SENATOR CLAYTON HEE, CHAIR
SENATOR JILL N. TOKUDA, VICE-CHAIR
SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

TESTIMONY RE: SENATE BILL NO. 2441
RELATING TO ENDANGERED SPECIES

February 2, 2010, 2:45 p.m.
Conference Room 225

Good afternoon Chairs Gabbard and Hee, Vice-Chairs English and Tokuda, and members of the committees:

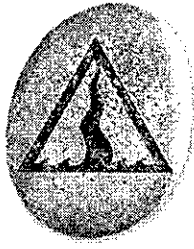
My name is David Lane Henkin, and I am an attorney with Earthjustice. We appreciate the opportunity to offer this testimony in support of Senate Bill No. 2441, which would help ensure the protection of Hawai'i's critically imperiled native plants and animals, preserving these irreplaceable public trust resources for future generations.

SB 2441 accomplishes this important purpose by bringing H.R.S. chapter 195D in line with the federal Endangered Species Act, which has long provided stiff criminal penalties for knowingly killing or harming endangered species and authorized citizens to take action to protect imperiled species. See 16 U.S.C. § 1540(b)(1), (g).

SB 2441's provisions regarding citizen suits are particularly important. In enacting the federal Endangered Species Act, Congress recognized that, whether due to budgetary limitations or lack of political will, government wildlife agencies alone could not be relied on to ensure adequate protection of imperiled species. Accordingly, Congress authorized citizens to supplement government enforcement through actions seeking prospective injunctive relief that would prevent future harm to endangered and threatened species.

Particularly in these difficult economic times, with government services being cut back across the board, it is vital for the Legislature to authorize Hawai'i's citizenry to assist in preventing harm to our imperiled plants and animals.

For the foregoing reasons, we respectfully urge you to pass SB 2441. Thank you again for the opportunity to offer this testimony.



Hanalei Watershed Hui

February 2, 2010

SB 2441
Testimony in Strong Support

Aloha Chair Gabbard, Vice Chair English, Chair Hee and Vice Chair Tokuda,

Mahalo for hearing this critical bill today. For those of us who work every day in our streams and oceans and who care for the fragile things in our mauka lands, this bill offers us vital support and will make a difference in our success.

Please know that many who care, many who watch, many who save and protect in their own way will be strengthened by this legislation. Their efforts will be acknowledged, their work will matter.

From Hanalei, a place where many of our most rare find refuge, we thank you for this opportunity to support this bill. These are the teeth we need to protect the remaining few of so many of Hawaii's treasures.

Mahalo nui loa,

Makaala Kaaumoana
Executive Director

E malama kumu wai ~ Protect the source

5299C Kuhio Hwy, P. O. Box 1285, Hanalei, Kauai, HI 96714

Telephone/Facsimile (808) 826-1985 Email: hanaleiriver@hawaiian.net

www.hanaleiwatershedhui.org

The Hanalei Watershed Hui is an equal opportunity employer and provider.



MAUI TOMORROW

Protecting Maui's Future

Feb. 1st, 2010

Senate Joint Committee, Energy & Environment, Water, Land, Agriculture & Hawaiian Affairs

Regarding: SB 2441 Title: RELATING TO ENDANGERED SPECIES
Report Title: Endangered Species; Felony; Private Right of Action

Dear Senators:

Maui Tomorrow Foundation, Inc. supports SB 2441 which establishes the intentional or knowing taking of an endangered species as a class C felony and provides a private right of action to enforce conservation of aquatic life, wildlife, and land plants laws. In light of the recent killings of three seals on Kauai and Molokai, it is increasingly clear that stricter penalties and enforcement of laws protecting the monk seal and other endangered species are critical to their survival.

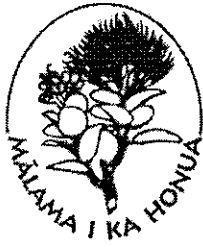
With the numbers of monk seals increasing in the Main Hawaiian Islands, occurrences of human-seal interactions are on the rise. As the population continues to grow, we expect human interactions will occur with greater frequency. It is critical for the survival of the seal that we develop a culture of cohabitation that does not tolerate any kind of inappropriate or violent interactions with this species. Hawaii's people must understand the severe nature of the rules of enforcement for a species so fragile and on the verge of extinction.

Unfortunately, the circulation of false information and fear mongering by a few people has us all concerned that there may be a connection between this spreading of misinformation and the recent seal killings. Changing the existing penalty from a misdemeanor to a Class C Felony is necessary and time is of the essence. We also hope for a vigorous education and outreach campaign which would aid in countering misconceptions in our communities and reinforce that the monk seal is not a threat to any ocean user's livelihood.

Thank you for your continued efforts to recover and protect the Hawaiian Monk Seal and other endangered species.

Sincerely,

Irene Bowie, Executive Director



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.538.6616 hawaii.chapter@sierraclub.org

**SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN
AFFAIRS**

February 2, 2010, 2:45 P.M.

(Testimony is 1 page long)

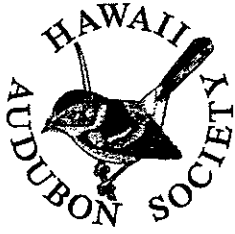
TESTIMONY IN SUPPORT OF SB 2441

Aloha Chair Gabbard, Chair Hee, and Members of the Committee:

The Hawai'i Chapter of the Sierra Club supports SB 2441, which helps ensure the protection of Hawai'i's endangered native plants and animals by raising the penalties for criminal acts and ensuring enforcement of this act.

Recent events, namely the brutal killings of the imperiled Hawaiian monk seal, has raised the awareness for the necessity of this measure. Passage of this measure would send a strong message that Hawai'i will not tolerate this criminal behavior and bring state law into comport with the federal Endangered Species Act. The federal act has long provided stiff criminal penalties for knowingly killing or harming endangered species and authorized citizens to take action to protect imperiled species. *See* 16 U.S.C. § 1540(b)(1), (g).

For the foregoing reasons, we respectfully urge you to pass SB 2441. Thank you for this opportunity to provide testimony.



For the Protection of Hawaii's Native Wildlife

HAWAII AUDUBON SOCIETY

850 Richards Street, Suite 505, Honolulu, HI 96813-4709

Phone/Fax: (808) 528-1432; hiaudsoc@pixi.com

www.hawaii-audubon.com

Committee on Energy and Environment
Senator Mike Gabbard, Chair
Senator J. Kalani English, Vice Chair

Committee on Water, Land, Agriculture, and Hawaiian Affairs
Senator Clayton Hee, Chair
Senator Jill Tokuda, Vice Chair

Hearing: Tuesday, February 2, 2010; 2:45 P.M., Conference Rm. 225

Re: SB2441, Relating to Endangered Species

Testimony in Support

Chairs Gabbard and Hee, and members of the Committee's on Energy and Environment, and Water, Land, Agriculture, and Hawaiian Affairs. On behalf Hawaii Audubon Society we offer this testimony in support of SB2442, which would if enacted establish enhanced penalties for the intentional or knowingly taking an endangered species to include a class C felony.

The Hawaii Audubon Society was founded in 1939, and has over 1,500 members statewide. The Society's primary mission is the protection of Hawaii's native birds, wildlife, habitats as well as our aquatic and coastal resources. This includes advocating for policies and legislation that protects our endangered wildlife species.

With respect to the Hawaiian monk seal it is critically endangered and headed toward extinction. Hawaiian monk seals are the most endangered endemic marine mammal in the United States and one of the most endangered marine mammals in the world. Over the last 50 years, the Hawaiian monk seal population has declined by more than 60% and is now at its lowest level in recorded history. It is now estimated that fewer than 1,100 Hawaiian monk seals remain in the wild. Reasons for the decline of the monk seal include; overfishing, limited food availability, entanglement in marine debris, habitat loss, shark predation, competition for food, aggressive male behavior, deaths of pups, an aging population, harmful algal blooms, and global climate change, and unfortunately man.

We hope that passage of SB2441, will serve as a strong warning to those very few individuals who would intend harm this animal. It also sends a message to our residents and the rest of the nation that the State of Hawaii is committed to ensuring the survival of the Hawaiian monk seal.

Thank you for the opportunity to provide testimony on this important measure.

Sincerely,

George Massengale, JD
Legislative Analyst

gabbard1 - Carlton

From: Marlene Alvey [marlenealvey@yahoo.com]
Sent: Monday, February 01, 2010 2:03 PM
To: ENETestimony
Subject: SB 2441 Support (Hrg: 2/2/10, 2:45 pm, rm 225 before Senate Committees on Energy & the Environment, Water, Land, Ag and Hawaiian Affairs)

February 1, 2010

To: Chair Mike Gabbard, Vice Chair J. Kalani English, and Members of the Senate Committee on Energy and the Environment; Chair Clayton Hee, Vice Chair Jill N. Tokuda, and Members of the Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs

From: Marlene Alvey, 2219 McKinley Street, Honolulu, Hawaii 96822, 216-8381

Re: Support for SB 2441, A Bill for an Act Relating to Endangered Species

I am writing to express my strong support of SB 2441. I understand that this bill results from the recent intentional and tragic shootings of four of our State Mammals, the Hawaiian monk seal. Under the current law, when a person intentionally harms or kills a protected endangered species, the crime is simply a misdemeanor. This bill would make an intentional killing or intentional harm to our State Mammal, a felony. I urge the passage of this bill. Thank you for considering this bill for adoption.

Aloha kākou,

I full support Senate Bill 2441, which provides greater protection of our state's threatened natural heritage by increasing the penalties for illegal takings and harm to threatened plants, animals, and other protected species.

The Hawaiian Islands are blessed with some of the most rare and unique species in the world. Ninety percent of the plant life here occurs nowhere else on Earth. And almost one-quarter of them are threatened or endangered. The same dire situation characterizes the threat to our animal life.

As someone whose "day job" is director of the Lyon Arboretum, I know only too well that existing conservation measures and protections are inadequate. Although my views might not reflect those of the University of Hawaii, I feel we must do all we can to save our rich and unique biological diversity and to punish severely those who would harm it or steal it from future generations.

If (or more likely, when) we lose any of our native species, a piece of Hawaiian culture and history will disappear with them. Speaking as a private citizen, I fully support the Legislature in doing everything within its power to protect our fragile natural and cultural heritage.

Aloha no
Christopher P. Dunn

I am writing in support of Bill S.B 2441 "Relating to Endangered Species".

The preservation of Hawaii's native species is vital to the economic well-being of any state, and no where else is it more evident than in Hawai'i where the number one industry is tourism. With over 7.6 million visitors and \$12.8 billion of tourism generated income annually (2007 DEBET report), it is imperative that the Hawaiian landscape remain aesthetic, appealing, and as natural as possible. The flora and fauna are the most visible elements of Hawai'i's ecosystems and provide the back drop for the multi-million dollar eco-tourism industry. Preservation of native plants and animals, especially of wild populations, has far reaching direct effects on mitigating the effects of soil erosion, flooding, and loss of wildlife habitat. Increased endangered species protection by providing stiffer penalties and the private right of action against persons who violate the laws will hopefully deter illegal activities and help protect the balance and integrity of our precious native resources. Currently, the Hawaiian Islands are being subjected to a number of environmental pressures (e.g. alien pest species, pathogens, climatic changes, urban encroachment, and pollution) that are leading to rapid ecosystem degradation. Our native plants do not need another level of harassment caused by human activities, and with the passing of this bill, further support in enforcing the federal Endangered Species Act will be provided.

Sincerely,

Nellie Sugii

gabbard1 - Carlton

From: Doug Perrine [perrine@hawaii.rr.com]
Sent: Saturday, January 30, 2010 10:06 AM
To: ENETestimony
Subject: SB2441 - in support

RE: SB2441
Hearing Feb. 2, 2:45 pm
Conference Room 225

Please pass SB 2441.

The slap on the wrist given to the seal killer on Kauai was just encouragement for others to do the same. For a well-fed member of a species that numbers over 6 billion to murder a hungry member of a species whose numbers are less than 1000 and teetering on the brink of extinction because that animal is trying to feed itself and survive in the wild is a crime that is absolutely abhorrent, and should be punished accordingly. Our endangered species are the original Hawaiians and should be protected at all costs.

Thank you.

Doug Perrine

Doug Perrine
76-223 Haa St.
Kailua-Kona HI 96740 U.S.A.
+1 (808) 329-4523

Georgette Yaindl, Esq.
2649 Peter St.
P.O. Box. 1555
Honolulu, HI 96806
808.224.0219
yaindl@hawaii.edu

February 1, 2010 □ □ □

TO: Chair Mike Gabbard, Vice Chair J. Kalani English, and members of the Senate Committee on Energy and the Environment □
Chair Clayton Hee, Vice Chair Jill N. Tokuda, and members of the Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs □ □

RE: **SUPPORT for SB 2441, A Bill for An Act Relating to Endangered Species** □

Hearing, Tuesday, 2/2/10, 2:45 Pm Room 225, before Senate Committees on Energy & the Environment; and Water, Land, Agriculture, and Hawaiian Affairs □ □ □

Thank you, Senators, for considering this bill for adoption by Hawaii's twenty-fifth legislature. I am writing to express my strong support for this bill. I am writing in my individual capacity as a legally and spiritually interested person, having experienced an open ocean encounter with HMS RM34 off the Kona Coast on October 10, 2003, an experience so profound that it prompted me to seek admittance to the William S. Richardson School of Law so that I could obtain knowledge and credentials to help perpetuate this ancient and charismatic species. In 2007, at age 48, I received my J.D. , with a certificate in Environmental Law.

I understand that the driving force behind SB 2441 is the tragic intentional killings of four (4) Hawaiian monk seals by gunshot on Kauai and Molokai during the past two (2) years; and that when a person acts intentionally to harm or kill an endangered species, this crime should be classified under state law as a felony, not a misdemeanor, as Hawaii's law currently provides. While I understand this bill will make acts of intentional harm to any endangered species a felony, I especially urge you to pass this bill to provide increased protection to our State Mammal, the fifteen million year old Hawaiian monk seal. □ □ □ □

SB 2441 also attempts to provide for a private right of action to enforce Hawaii Revised Statutes, Chapter 195D. While I agree with the intent, spirit, and need for such provision, I respectfully suggest that the current proposed language may require some revision and suggest alternative language below. I urge the committee members and all your legislative colleagues to amend Chapter 195D and allow for a private right of action for many reasons, and suggest that the following two (2) reasons are particularly compelling:

1) Federal law allows citizens to file suit under the Endangered Species Act via the “citizen’s suit provision” located at 16 U.S.C. S. § 1540 (g)(1). *It is only right and appropriate that the rights of Hawaii’s citizens and the welfare of Hawaii’s endangered species, and particularly that of the Hawaiian monk seal that lives nowhere else besides the Hawaiian Archipelago, should be vindicated and represented in our state courts.*

2) In 1997, the legislature passed Act 380, amending Chapter 195D□□□□ to provide for the creation of “Habitat Conservation Plans.” Act 380 also amended Chapter 195D at section 28 to provide that “the rights and remedies under Chapter 195D shall be cumulative and in addition to any and all rights and remedies that may exist under applicable state and federal laws.” Then, in 2003, the legislature again amended Chapter 195D via Act 35 to provide for “citizen’s suit” enforcement of the provisions and regulations concerning Habitat Conservation plans. *SB 2441 builds on the successes of previous legislatures to strengthen chapter 195D, as well as reinforces their recognition of the concurrency of federal and state jurisdiction over endangered species, and the utility of providing for protection and recovery of endangered species under state law through a “citizen’s suit” mechanism.*

However, I respectfully suggest that if a problem is perceived as existing in SB2441’s proposed amendments to § 195D-32’s “citizen suit” provision, it is a problem in the existing language that states “any person, *acting as a private attorney general*, may commence a civil suit *on the person’s behalf*.” Here is a, if not, the rub: a citizen’s suit is not a “private attorney general’s suit”, at least inasmuch if the 2003 legislature intended to model Hawaii’s citizen suit provision on the federal ESA citizen’s suit provision. This is because under the federal ESA, a legally interested person can bring a citizen’s suit when that person satisfies the constitutional Article III standing requirements of having suffered or being in imminent threat of suffering a legal injury. In other words, the claim is personal to the petitioner.

Under a private attorney general action, the petitioner purports to represent the injured or imminently endangered *public*. The Hawaii Supreme Court at length addressed the issue of suits brought under the private attorney general doctrine in the 2009 Superferry decision in *Sierra Club v. DOT*, 120 Haw. 181 (March 16, 2009). Here, the court explained that the doctrine is “an equitable rule that allows courts in their discretion to allow *attorney’s fees* to plaintiff’s who have vindicated important *public rights*.”

I propose amending SB 2441 as follows:

at page 4, Section 3, amending § 195D-32. Citizen suits. (A) Except as provided in subsection (b), any person may commence a civil suit on the person’s behalf. (i.e., delete “acting as a private attorney general”); and

at page 7, Subsection (d), line 12, after “party” insert, whether private or governmental” (so that the state consents to be sued and be subject to payment of attorneys fees as a losing party).

Thank you very much for your attention, concern, and favorable action on this bill, including consideration of the amendments proposed herein. □□

Aloha,

Georgette

February 2, 2010

Testimony in favor of SB2411 Related to Endangered Species

Committee on Energy and Environment - Senator Gabbard –Chair; Senator English – Vice Chair

Hearing scheduled for February 2, 2010 @ 2:45 Conference Rm. 225

Having personally been involved in managing Monk seal populations on the Northwestern Hawaiian Islands, I am in full favor of this SB2411. Current legal standards applied to violators who harm or kill; intentionally or otherwise; a protected endangered species are insufficient. I was appalled at the sentencing of the Kauai man who shot and killed a Monk seal and basically given a slap on the wrist for his actions. However, given that this heinous act fell in a “misdemeanor” category within our State law, he was punished accordingly...in the eyes of the law. To those of us who have dedicated our lives to protecting this species, the punishment was simply insufficient to deter actions of others who may be as stupid as this man. This type of behavior is no longer tolerable, as are current legal standards. Therefore I urge all members of the State legislator to support the Bill to send a clear message that the State is in the business of protecting its most vulnerable, and most endeared of endangered species.

Sincerely,

Julie Leialoha

P.O. Box 1792

Keaau, Hi 96749