

**SD1310**

**Testimony**

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

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**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the Senate Committee on  
JUDICIARY AND LABOR**

**Thursday, March 3, 2011  
10:00 AM  
State Capitol, Conference Room 016**

**In consideration of  
SENATE BILL 1310  
RELATING TO SECTION 13 OF ACT 380, SESSION LAWS OF HAWAII 1997**

The Department of Land and Natural Resources (Department) strongly supports the passage of Senate Bill 1310, an Administration Bill, which removes the “sunset” date on the use of new safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the State’s endangered species.

Hawaii is the Endangered Species Capital of the Nation with 380 listed threatened and endangered species and many more that are candidates or species of concern. As such, Hawaii needs the flexibility within its state law to work cooperatively with its federal counterparts, private landowners and other government agencies to deal with the complexities of the endangered species situation in Hawaii and find the proactive, workable solutions that can protect and conserve our endangered species while allowing for acceptable resource use activities.

In 1997, the Legislature expanded recovery options in the State Endangered Species Act (ESA) by establishing a process for the preparation and implementation of habitat conservation plans and safe harbor agreements, while providing for additional incentives to private landowners to conserve endangered species. In addition, the Legislature inserted a 5-year sunset date (June 1, 2002) for the approval of habitat conservation plans and safe harbor agreements. Subsequently, Act 3 of the 2001 Legislative Session extended the sunset provision another 5 years (through July 1, 2007), and Act 90 of the 2006 Legislative Session extended the provision for another 5 years (through July 1, 2012).

To date, five habitat conservation plans and six safe harbor agreements have been issued under state law. The Department is currently finalizing an additional four habitat conservation plans

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and 16 more in the development and planning stages. These agreements remove disincentives and allow private landowners to implement significant habitat improvements for the benefit of endangered plants and animals. These agreements typically take 6-12 months, some longer, to complete, depending on size and complexity of the projects and readiness of the applicants. It is important to pass this bill now to provide the applicants with the assurances that there will be a permit process that can meet their needs at the end of the planning and environmental permitting phase of their projects.

Safe harbor agreements and habitat conservation plans are proving to be invaluable tools in the process of recovering the State's endangered species. The habitat conservation plans and safe harbor agreements that have been approved or are being finalized provide important contributions to the recovery of endangered species in Hawaii. Conservation projects underway or planned to benefit Hawaii's endangered species include establishment of new populations of nene on Maui and Molokai, predator control to protect waterbirds at Oahu's wetlands, surveys to document population trends for the Hawaiian hoary bat, predator control to protect montane-nesting seabirds, and landscape-scale forest restoration to benefit endangered bats and seabirds.

With the expanding development of broad partnerships to protect endangered species and their habitats, it is important that these provisions within the State ESA be made a permanent addition by removing the sunset date and to provide public and private landowners a clear message that the Legislature is committed to maintaining responsible solutions to conserve Hawaii's endangered species.

The Department strongly supports Senate Bill 1310, which reinforces the Department's commitment to protect and conserve the State's endangered species. If the habitat conservation plan and safe harbor agreement provisions sunset, there will remain no process to allow mitigation and permitting of the relocation and take, if appropriate, of endangered species that are affected by development activities. Having no state endangered species habitat conservation plan and incidental take license process would prevent initiation or delay many planned alternative energy projects that are in the early development phase.



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*Harry A. Saunders*  
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Testimony by Harry Saunders  
President, Castle & Cooke Hawai'i  
March 1, 2011

Before the Senate Committee on  
**JUDICIARY AND LABOR**

March 3, 2011  
10:00 a.m.  
Conference Room 016

**In Support of SB 1310**

RELATING TO SECTION 13 OF ACT 380, SESSION LAWS OF HAWAII 1997

Chair Hee, Vice Chair Shimabukuro and Members of the Judiciary and Labor Committee.

I am Harry Saunders, President of Castle & Cooke Hawai'i. We support SB 1310 as it will remove the sunset date on the use of new safe harbor agreements, habitat conservation plans and incidental take licenses as recovery options for conserving and protecting the State's threatened and endangered species. We feel it is important to protect and conserve the State's endangered species and to provide for mitigation methods to protect endangered species that may be affected by development activities.

On behalf of Castle & Cooke, I respectfully request your support for SB 1310. Mahalo for your consideration of our testimony. If you have questions, please feel free to contact us:

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**S.B. 1310, Relating to Section 13 of Act 380, Session Laws of Hawaii 1997**

Comments to the Senate Committee on Judiciary and Labor

March 3, 2011

Aloha Senator Hee, Senator Shimabukuro, and Members of the Committee on Judiciary and Labor. My name is Kekoa Kaluhiwa and I am the Director of External Affairs for First Wind.

I humbly request that you **support** S.B. 1310 which would remove the sunset date on the use of new safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the State's threatened and endangered species.

As background, First Wind is the majority owner and operator of Hawaii's largest wind energy project in the West Maui Mountains called Kaheawa Wind Power. Since 2006, Kaheawa has provided 30 megawatts (MW) of clean energy for Maui residents, roughly 9% of the island's energy needs. Later this year, we plan to expand Kaheawa by adding an additional 21 MW of wind energy capacity. Later this month, we look forward to bringing online a 30 MW project in Kahuku, O'ahu. In 2012, we plan to construct a 70 MW wind energy project in Kawailoa, O'ahu. And as a long term objective, we hope to develop a 200 MW project to support the Big Wind initiative.

In developing these clean, renewable energy projects, First Wind is pleased to support the goals set forth by the Hawaii Clean Energy Initiative (HCEI). We also take serious consideration of the potential impacts our projects have on Hawaii's threatened and endangered species. As far as First Wind is aware, Kaheawa was the first wind energy facility in the United States to include a Habitat Conservation Plan (HCP). As mindful and respectful stewards of Hawaii's natural resources, an HCP is requisite for all our Hawai'i projects.

First Wind believes that removing the sunset clause would be a clear message from the Legislature that the State of Hawaii is serious about caring for Hawaii's endangered species. It would also support the Department of Land and Natural Resources' ability to more effectively serve its mission in protecting Hawaii's natural resources.

Mahalo for this opportunity to express First Wind's **support** of S.B. 1310.



SENATOR CLAYTON HEE, CHAIR  
SENATOR MAILE S.L. SHIMABUKURO, VICE-CHAIR  
SENATE COMMITTEE ON JUDICIARY AND LABOR

TESTIMONY RE: SENATE BILL NO. 1310  
RELATING TO SECTION 13 OF ACT 380, SESSION LAWS OF HAWAII 1997

March 3, 2011, 10:00 a.m.  
Conference Room 016

Good morning Chair Hee, Vice-Chair Shimabukuro, 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 opposition to Senate Bill No. 1310, which seeks to remove the sunset date for the issuance of new safe harbor agreements (SHAs), habitat conservation plans (HCPs), and incidental take licenses.

In 1997, when the Legislature amended Chapter 195D to allow for the incidental "take" (killing, harming, wounding, and harassing) of endangered and threatened species through SHAs and HCPs, it recognized the importance of keeping close tabs on activities that, if improperly managed, could drive Hawai'i's critically imperiled native plants and animals to extinction. Accordingly, the initial legislation established a five-year sunset on the Department of Land and Natural Resources' (DLNR's) authority to issue incidental take licenses, SHAs and HCPs. While the Legislature has twice extended the sunset date, it has affirmed the need for periodic review of DLNR's performance and consistently rejected requests to remove the sunset date altogether.

Earthjustice respectfully submits that the Legislature's oversight is critical to ensure that DLNR acts responsibly in issuing licenses to kill and injure endangered species. The Legislature should keep the sunset date in place, so that future generations can continue to enjoy our unique native flora and fauna.

For the foregoing reasons, we respectfully urge you to hold SB 1310. There will be ample time next session, before the current sunset date, to look holistically at Chapter 195D and evaluate whether alternate measures should be adopted to improve the protection for Hawai'i's endangered and threatened species. Thank you again for the opportunity to offer this testimony.

**From:** [Dr. Charlie Fein](#)  
**To:** [JDLTestimony](#)  
**Subject:** Testimony For SB 1310 March 3, 10 AM  
**Date:** Tuesday, March 01, 2011 5:48:33 PM

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The following testimony is in consideration of SENATE BILL 1310 RELATING TO SECTION 13 OF ACT 380, SESSION LAWS OF HAWAII 1997.

As Vice President of KC Environmental Inc. a Maui-based environmental consulting company, I strongly support the passage of Senate Bill 1310, an Administration Bill, which removes the "sunset" date on the use of new safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the State's endangered species. On behalf of our clients, we have conducted extensive consultations with the Division of Forestry and Wildlife (DOFAW) of the Department of Land and Natural Resources. We are also the preparer of a Habitat Conservation Plan that has been approved by the Endangered Species Recovery Committee of the Division and is in the final approval process before being implemented.

The Habitat Conservation Plan (HCP) that we prepared in partnership with the resource biologists at DOFAW, independent biologists, and the National Science Foundation applicant is intended to have a positive effect on the population of the Hawaiian petrels that inhabit the summit area of Haleakala. This endangered sea bird, its incubating eggs, and its fledglings are threatened by predators such as rats and feral cats, and its nesting burrows are trampled by goats and pigs that have gained access to some parts of the summit area that have not yet been fenced. The HCP we prepared provides for rigorous predator control measures and nearly three miles of ungulate exclusion fencing, paid for by the developer applicant. In addition, the HCP provides for full-time avian resource monitoring, adaptive management to maintain the objectives of the HCP over the multi-year life of the Plan, and extensive reporting on the results of the conservation efforts, again paid for the HCP applicant. The population dynamic modeling conducted for the HCP anticipates a Net Recovery Benefit to the species, meaning that any incidental take from the development project for which the HCP was prepared, will be offset by population growth due to these mitigation measures.

We strongly believe that development of broad partnerships, such as the one in which we are currently participating, to protect endangered species and their habitats, is extremely important to protect and conserve the State's endangered species. We strongly recommend that these provisions within the State ESA be made a permanent addition by removing the sunset date. That will provide development interests such as those using my services, a clear message that the Legislature is committed to maintaining responsible solutions to conserve Hawaii's endangered species. As both professional environmental consultants and as residents of Hawaii, we are committed to responsible, sustainable stewardship of our lands. Therefore we are deeply concerned that if the habitat conservation plan and safe harbor agreement provisions sunset, there will remain no process to allow for mitigation and permitting of the relocation and take, if appropriate, of endangered species that are affected by the development activities we assess for environmental impacts. Those impacts can, and must be permitted and mitigated to protect our endangered biological resources.



Thank you for the opportunity to provide the foregoing testimony.

Dr. Charlie Fein