

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
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

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

**Before the House Committee on
WATER, LAND, AND OCEAN RESOURCES**

**Monday, February 6, 2012
10:20 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 2371
RELATING TO ENDANGERED AND THREATENED SPECIES.**

House Bill 2371 proposes to: 1) Allow citizen suits to enforce certain conservation statutes, habitat conservation plans, and safe harbor agreements against any person; and 2) Repeal the prohibition on approval of issuance of new safe harbor agreements, habitat conservation plans, and incidental take licenses after July 1, 2012. The Department of Land and Natural Resources (Department) supports House Bill 2371 as amended.

The Department supports the passage of a version of House Bill 2371 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 and threatened species. The Department has worked with the environmental community to come up with a proposed House Draft 1 which removes the sunset but also allows for expanded checks and balances under the State Endangered Species Act (ESA) in the form of citizen suits and administrative procedures to add another layer of protection for endangered and threatened species.

Hawaii is the endangered species capital of the Nation with 385 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 find proactive and 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 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, eight habitat conservation plans and six safe harbor agreements have been issued under state law. The Department is currently finalizing an additional ten habitat conservation plans and three safe harbor agreements. These agreements typically take 12 months, some longer, to complete, depending on size and complexity of the projects and readiness of the applicants.

Safe harbor agreements and habitat conservation plans are proving to be invaluable tools in the process of recovering the State's threatened and endangered species such as 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. Habitat conservation plans and safe harbor agreements have committed millions of dollars toward the recovery of endangered species in Hawaii, and habitat conservation plans provide a net recovery benefit for the species that would not otherwise be realized if the those sections of the State ESA are allowed to sunset.

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.

Expanding the citizen suits and administrative procedures under the State ESA would provide additional checks and balances to ensure enforcement and implementation of license requirements for take of threatened and endangered species. Such provisions would implement in to state law a similar citizen suit provision that already occurs in federal environmental laws.

The Department supports House Bill 2371 with amendments, which reinforces the Department's commitment to protect and conserve the State's endangered species and also provides for checks and balances related to such species. Should the habitat conservation plan and safe harbor agreement provisions sunset, the State ESA would lose the flexibility to protect threatened and endangered species while allowing for acceptable resource use activities.

A summary of the amendments to Chapter 195D, Hawaii Revised Statutes (HRS), and a copy of the proposed House Draft 1 is attached for your reference.

Summary of Amendments to Chapter 195D, HRS, in proposed House Draft 1:

1. §195D-32(a), HRS - The citizen suit provision is being expanded to allow a suit against any person for violation of §195D-4(e), hrs, or any rules adopted pursuant to §195D-4(e), (f), (g) or (j), HRS.
2. §195D-32(b), HRS - Actions may only be filed after 60 days written notice is given to the department and the alleged violator. A new section was added to prohibit the filing of an action if the Department has already commenced and is diligently prosecuting a civil or criminal action in court.

§195D-32(b)(3), HRS, limits the filing of actions against government officers or employees who are acting within the scope of their official duties to actions brought against the officers or employees in their official capacity.

3. §195D-32(d), HRS - Explicitly allows for award of attorneys fees and costs.
4. §195D-__, HRS - Will add a new section that clarifies that a challenge to the approval of a Habitat Conservation Plan (HCP) or Safe Harbor Agreement (SHA) or the issuance of an Incidental Take License (ITL) by the Board of Land and Natural Resources (Board) would be through a contested case procedure rather than an original court action. This includes provisions that allow for a request for a stay order from the Board, through the Chairperson, if there is an emergency posing a significant risk to the well being of any species of fish, wildlife, or plant. The procedure would be for the person to file a petition that would be heard and decided within 48 hours by either the Chairperson or hearings officer, if one has been appointed. If the stay is denied, that decision would be immediately appealable to a circuit court which, in turn, could issue a stay order upon a finding that the situation meets the criteria set forth in §91-14(c), HRS.
5. §195D-2, HRS – A new definition is being added for "Chairperson."
6. Remove the sunset date for SHAs, HCPs, and ITLs.

RELATING TO ENDANGERED AND THREATENED SPECIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 195D-32, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§195D-32[+]~~ **Citizen suits.** (a) Except as provided in subsection (b), any person, acting as a private attorney general, may commence a civil suit on the person's behalf:

- (1) Against any person, including any state or county agency or instrumentality, who ~~[that]~~ is alleged to be in violation of section 195D-4(e) or any rule adopted pursuant to sections 195D-4(e), (f), (g) or (j) ~~[the terms of, or [fails] to fulfill the obligations imposed and agreed to under any habitat conservation plan or safe harbor agreement and accompanying license for public lands as authorized under sections 195D-21 and 195D-22];~~ or
- (2) Against the department or board, where there is alleged a failure of the department or board to perform any act or duty required under a habitat conservation plan or safe harbor agreement and accompanying license ~~[issued for public lands]~~.

(b) The circuit courts shall have jurisdiction to enforce ~~[this section]~~ section 195D-4(e) and any rule adopted pursuant to sections 195D-4(e), (f), (g) or (j), or to order the department or board to perform any act or duty required under ~~[this section,]~~ a habitat conservation plan or safe harbor agreement and accompanying license, provided that:

- (1) No action may be commenced under subsection (a) (1) —
 - (A) less than sixty days after written notice of the alleged violation has been given to the department, and to the person [state or county agency or instrumentality] alleged to be in violation[—of this section], except that the action may be brought immediately after the notification in the case of an emergency posing a significant risk to the well-being of any species of fish, wildlife, or plant; or [and]
 - (B) if the department has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or the State to redress the violation.
- (2) No action may be commenced under subsection (a) (2) less than sixty days after written notice of the alleged violation has been given to the department, except that the action may be brought immediately after the notification in the case of an emergency

posing a significant risk to the well-being of any species of fish or wildlife, or plant.

(3) No action may be brought against an officer or employee of any state or county agency or instrumentality in his or her individual capacity if the officer or employee is acting within the scope of his or her official duties; in such a case, an action may be brought against the officer or employee only in his or her official capacity.

(c) Any suit brought pursuant to this section may be brought in the judicial circuit [~~where~~] in which the alleged violation occurred or is occurring. In any suit brought pursuant to this section, where the State is not a party, the attorney general, at the request of the department, may intervene on behalf of the State as a matter of right.

(d) The court, in issuing any final order in any suit brought pursuant to this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any prevailing party, whenever the court determines such award is appropriate.

~~(d)~~ (e) The injunctive relief provided by this section shall not restrict any right that any person or class of persons may have under any other law, including common law, to seek enforcement of any standard or limitation or to seek any other

relief, including relief against any instrumentality or agency of the State.

SECTION 2. Chapter 195D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§195D- Contested cases challenging issuance of a habitat conservation plan or safe harbor agreement and accompanying license. (a) No person may challenge the approval of a habitat conservation plan or safe harbor agreement or the issuance of an accompanying license except through a contested case hearing before the board in accordance with chapter 91.

(b) In any contested case challenging the approval of a habitat conservation plan or safe harbor agreement and the issuance of an accompanying license, any party alleging an emergency posing a significant risk to the well-being of any species of fish, wildlife, or plant may petition for an emergency stay of the habitat conservation plan or safe harbor agreement and accompanying license. If the board has not yet made a determination of entitlement to a contested case hearing, any person alleging an emergency posing a significant risk to the well-being of any species of fish, wildlife, or plant who has requested a contested case to challenge the approval of a habitat conservation plan or safe harbor agreement and accompanying license may petition for an emergency stay. The

chairperson or hearings officer, if one has been selected, shall conduct a hearing and render a decision on the petition for emergency stay forthwith, and in any event within forty-eight hours after the filing of the petition.

(c) Any person aggrieved by a decision by the chairperson or hearings officer to grant or deny a stay of a habitat conservation plan or safe harbor agreement and accompanying license or by a failure of the chairperson or hearings officer to render a timely decision on a petition for a stay may immediately seek review in the circuit court of the decision or failure to render a decision pursuant to section 91-14.

(d) Where the chairperson or hearings officer has denied or failed to render a decision on a petition for a stay of a habitat conservation plan or safe harbor agreement and accompanying license, the reviewing court may order a stay if the criteria set forth in section 91-14(c) have been met."

SECTION 3. Section 195D-2 is amended by adding a new definition to be appropriately inserted and to read as follows:

"Chairperson" means the chairperson of the board of land and natural resources."

SECTION 4. Act 380, Session Laws of Hawaii 1997, as amended by Act 3, Session Laws of Hawaii 2001, and by Act 90, Session Laws of Hawaii 2006, is amended by amending section 13 to read as follows:

"SECTION 13. This Act shall take effect upon its approval[; ~~provided that no new safe harbor agreements, habitat conservation plans, or incidental take licenses issued pursuant to section 195D-4, 195D-21, or 195D-22, Hawaii Revised Statutes, shall be approved or issued subsequent to July 1, 2012~~]."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval; provided that section 4 of this Act shall take effect on June 30, 2012.



LIFE OF THE LAND

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Phone: 533-3454; E: henry.lifeoftheland@gmail.com

COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

Rep. Jerry L. Chang, Chair

Rep. Sharon E. Har, Vice Chair

DATE: Monday, February 06, 2012

TIME: 10:20 a.m.

PLACE: Conference Room 325

BILL: HB 2371 ENDANGERED AND THREATENED SPECIES

SUPPORT

Aloha Chair Chang, Vice Chair Har and Members of the Committee:

My name is Henry Curtis and I am the Executive Director of Life of the Land, Hawai`i's own energy, environmental and community action group advocating for the people and `aina for four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

The federal Endangered Species Act (ESA; 1973) includes a citizen suit provision to protect fish and wildlife (but not plants) from death and injury. Hawai`i's endangered species law (HRS 195D) appears to have strong but little enforced provisions to allow the government to protect endangered plants. This bill would strengthen that protection by also allowing citizen suits to protect endangered plants. The bill would further give BLNR the permanent, rather than the temporary, right to grant licenses for incidental take.

Mahalo

Henry Curtis



Sierra Club

Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803

808.538.6616 hawaii.chapter@sierraclub.org

HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

February 6, 2012, 10:20 A.M.
(Testimony is 2 pages long)

TESTIMONY IN STRONG SUPPORT OF HB 2371

Aloha Chair Chang and Members of the Committee:

The Sierra Club, Hawaii Chapter, with 9,000 dues paying members and supporters statewide, ***strongly supports*** HB 2371. Among other things, this bill allows for the continuation of the endangered species incidental take license program while addressing significant deficiencies in the current statutory language by adding a necessary check and balance.

The current law allowing for safe harbor agreements, habitat conservation plans, and incidental take licenses sunsets this year. Failing to extend the current law puts a number of ongoing programs, such as several wind facilities, in jeopardy as they will no longer have authority to “take” an endangered species.

The incidental take license program should be continued. At the same time, we should address significant deficiencies in the law that was the basis for “sunsetting” the law. The program was originally tailored on the federal law. Under the federal Endangered Species Act, citizens already have the right to sue to protect listed fish and wildlife. Citizen suits are an effective tool to ensure that public agencies abide by their agreements and comply with their duty to protect Hawaii’s critically imperiled species.

Checks and balances are vital to ensure that conservation programs serve their intended purpose: to promote the conservation of listed species. Amending Chapter 195D to allow citizen suits against public agencies would ensure that Hawaii’s nearly 300 endangered and threatened plants receive protection against destructive projects, like animals do under the federal Endangered Species Act.

Nearly 30 years of experience with the federal Endangered Species Act's citizen suit provision has demonstrated that citizens use the right to sue responsibly. Suits are relatively rare and are only brought when critically necessary. And, like the lawsuit that sought to protect the *palilia* on the Island of Hawai'i, citizen suits are proven to work when agencies or developers are intransigent.

It should also be noted that the citizen suit language being discussed is relatively limited. It does not authorize the collection of penalties. It does not allow for criminal sanctions. It is intended to narrowly ensure enforcement of the law -- to protect the proverbial bulldozer from destroying the last of a species.

Checks and balances are particularly important to prevent government abuses that would threaten Hawaii's cultural heritage with extinction. Chapter 195D already commands that all "state agencies shall use their authority in furtherance of the purposes of this chapter by ... [c]arrying out programs for the protection of threatened and endangered species." H.R.S. § 195D-5(b)(1) (emphasis added). The right for a citizen suit would merely ensure this law is followed.

Mahalo for the opportunity to testify.





EARTHJUSTICE

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

REPRESENTATIVE JERRY L. CHANG, CHAIR
REPRESENTATIVE SHARON E. HAR, VICE-CHAIR
HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

TESTIMONY RE: HOUSE BILL NO. 2371
RELATING TO ENDANGERED AND THREATENED SPECIES

February 6, 2012, 10:20 a.m.
Conference Room 325

Good morning Chair Chang, Vice-Chair Har, and members of the committee:

My name is David Lane Henkin, and I am an attorney with Earthjustice. We appreciate the opportunity to offer this testimony in support of House Bill No. 2371, 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.

HB 2371 accomplishes this important purpose by bringing H.R.S. chapter 195D in line with the federal Endangered Species Act, which has – since its inception in 1973 – authorized and encouraged citizens to take action to protect imperiled species. See 16 U.S.C. § 1540(g).

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 encouraged 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, it is vital for the Legislature to encourage Hawai'i's citizenry to assist in preventing harm to our imperiled plants and animals.

This is particularly important to the more than 300 federally listed endangered and threatened plants in Hawai'i, which are the building blocks of our native ecosystems and constitute over 80% of Hawai'i's endangered and threatened species and nearly 25% of all listed species in the entire United States. While the federal ESA prohibits "take" (i.e., killing and injuring) of listed fish and wildlife, it largely entrusts to state law the protection of endangered and threatened plants. Chapter 195D's protections for plants may look good on paper, but, without effective enforcement, they do nothing to preserve these unique public trust resources for future generations.

Enacting HB 2371 would complete the work the Legislature began in 1997, when it first enacted provisions authorizing the issuance of incidental take licenses. At that time, the

conservation community objected to the lack of effective checks and balances to ensure adequate protection for Hawai'i's endangered and threatened species. In response, the Legislature imposed a sunset date on the incidental take license authority. Since HB 2371 would finally provide for adequate oversight, the sunset would no longer be needed.

Earthjustice has worked with the Department of Land and Natural Resources and Attorney General's office to revise the language of HB 2371 to implement the bill's intent more effectively (see attached proposed HD1). We respectfully urge you to adopt these revisions and pass HB 2371, as amended.

Thank you again for the opportunity to offer this testimony.

RELATING TO ENDANGERED AND THREATENED SPECIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 195D-32, Hawaii Revised Statutes, is amended to read as follows:

"~~[†]~~§195D-32~~[†]~~ **Citizen suits.** (a) Except as provided in subsection (b), any person, acting as a private attorney general, may commence a civil suit on the person's behalf:

- (1) Against any person, including any state or county agency or instrumentality, who ~~[that]~~ is alleged to be in violation of section 195D-4(e) or any rule adopted pursuant to sections 195D-4(e), (f), (g) or (j) ~~[the terms of, or [fails] to fulfill the obligations imposed and agreed to under any habitat conservation plan or safe harbor agreement and accompanying license for public lands as authorized under sections 195D-21 and 195D-22]; or~~
- (2) Against the department or board, where there is alleged a failure of the department or board to perform any act or duty required under a habitat conservation plan or safe harbor agreement and accompanying license ~~[issued for public lands]~~.

(b) The circuit courts shall have jurisdiction to enforce ~~[this section]~~ section 195D-4(e) and any rule adopted pursuant

to sections 195D-4(e), (f), (g) or (j), or to order the department or board to perform any act or duty required under [this section,] a habitat conservation plan or safe harbor agreement and accompanying license, provided that:

- (1) No action may be commenced under subsection (a) (1) —
(A) less than sixty days after written notice of the alleged violation has been given to the department, and to the person [state or county agency or instrumentality] alleged to be in violation[—of this section], except that the action may be brought immediately after the notification in the case of an emergency posing a significant risk to the well-being of any species of fish, wildlife, or plant; or [and]
(B) if the department has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or the State to redress the violation.
- (2) No action may be commenced under subsection (a) (2) less than sixty days after written notice of the alleged violation has been given to the department, except that the action may be brought immediately after the notification in the case of an emergency posing a significant risk to the well-being of any species of fish or wildlife, or plant.

(3) No action may be brought against an officer or employee of any state or county agency or instrumentality in his or her individual capacity if the officer or employee is acting within the scope of his or her official duties; in such a case, an action may be brought against the officer or employee only in his or her official capacity.

(c) Any suit brought pursuant to this section may be brought in the judicial circuit ~~[where]~~ in which the alleged violation occurred or is occurring. In any suit brought pursuant to this section, where the State is not a party, the attorney general, at the request of the department, may intervene on behalf of the State as a matter of right.

(d) The court, in issuing any final order in any suit brought pursuant to this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any prevailing party, whenever the court determines such award is appropriate.

~~[(d)]~~ (e) The injunctive relief provided by this section shall not restrict any right that any person or class of persons may have under any other law, including common law, to seek enforcement of any standard or limitation or to seek any other relief, including relief against any instrumentality or agency of the State.

SECTION 2. Chapter 195D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§195D- Contested cases challenging issuance of a habitat conservation plan or safe harbor agreement and accompanying license. (a) No person may challenge the approval of a habitat conservation plan or safe harbor agreement or the issuance of an accompanying license except through a contested case hearing before the board in accordance with chapter 91.

(b) In any contested case challenging the approval of a habitat conservation plan or safe harbor agreement and the issuance of an accompanying license, any party alleging an emergency posing a significant risk to the well-being of any species of fish, wildlife, or plant may petition for an emergency stay of the habitat conservation plan or safe harbor agreement and accompanying license. If the board has not yet made a determination of entitlement to a contested case hearing, any person alleging an emergency posing a significant risk to the well-being of any species of fish, wildlife, or plant who has requested a contested case to challenge the approval of a habitat conservation plan or safe harbor agreement and accompanying license may petition for an emergency stay. The chairperson or hearings officer, if one has been selected, shall conduct a hearing and render a decision on the petition for

emergency stay forthwith, and in any event within forty-eight hours after the filing of the petition.

(c) Any person aggrieved by a decision by the chairperson or hearings officer to grant or deny a stay of a habitat conservation plan or safe harbor agreement and accompanying license or by a failure of the chairperson or hearings officer to render a timely decision on a petition for a stay may immediately seek review in the circuit court of the decision or failure to render a decision pursuant to section 91-14.

(d) Where the chairperson or hearings officer has denied or failed to render a decision on a petition for a stay of a habitat conservation plan or safe harbor agreement and accompanying license, the reviewing court may order a stay if the criteria set forth in section 91-14(c) have been met."

SECTION 3. Section 195D-2 is amended by adding a new definition to be appropriately inserted and to read as follows:

"Chairperson" means the chairperson of the board of land and natural resources."

SECTION 4. Act 380, Session Laws of Hawaii 1997, as amended by Act 3, Session Laws of Hawaii 2001, and by Act 90, Session Laws of Hawaii 2006, is amended by amending section 13 to read as follows:

"SECTION 13. This Act shall take effect upon its approval[; ~~provided that no new safe harbor agreements, habitat~~

~~conservation plans, or incidental take licenses issued pursuant to section 195D-4, 195D-21, or 195D-22, Hawaii Revised Statutes, shall be approved or issued subsequent to July 1, 2012]."~~

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval; provided that section 4 of this Act shall take effect on June 30, 2012.

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 02, 2012 5:38 PM
To: WLOtestimony
Cc: tinaowens@hawaii.rr.com
Subject: Testimony for HB2371 on 2/6/2012 10:20:00 AM

Testimony for WLO 2/6/2012 10:20:00 AM HB2371

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Tina Owens
Organization: LOST FISH Coalition
E-mail: tinaowens@hawaii.rr.com
Submitted on: 2/2/2012

Comments:

Dear Chair Chang and Vice Chair Har and WLO committee members, Hawaii's unique natural resources are endangered because they are unique. We all know we have far too little in the way of enforcement resources. It is important that all citizens who care about protecting any endangered species should have the ability to stop someone from harming these living things without having to worry about repercussions and legal entanglements. Please pass this bill.



CONSERVATION COUNCIL FOR HAWAII

Testimony Submitted to the House Committee on Water, Land, and Ocean Resources

Hearing: Monday, February 6, 2012 10:20 a.m.
Conference Room 325

In Support of HB 2371 Relating to Endangered and Threatened Species

Aloha. The Conservation Council for Hawai'i supports HB 2371, which would ensure effective protection for Hawai'i's endangered and threatened species through citizen enforcement.

HB 2371 would empower concerned citizens to ensure that Hawai'i's critically imperiled species receive adequate protection from illegal, unpermitted harm. The federal Endangered Species Act (ESA) has included such a citizen suit provision from its inception in 1973. In the intervening nearly four decades, countless endangered species have benefited from citizen suits, including such iconic Hawaiian species as the green sea turtle, monk seal, and 'alala (Hawaiian crow).

Unfortunately, the federal ESA prohibits take (i.e., killing, injury, and other harm) only with respect to fish and wildlife. The ESA largely entrusts protection of endangered and threatened plants to the state. Hawaiian plants, which are the building blocks of native ecosystems, constitute over 80% of the species on Hawai'i's list of endangered and threatened species and nearly 25% of all listed species in the entire United States.

While Hawai'i's endangered species law (H.R.S. Chapter 195D) has strong protections for imperiled species on paper, including prohibiting unpermitted harm to listed plants, it is rarely enforced. In enacting the federal ESA, 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. Especially during the current tough economic times, when budgets are tight, citizen oversight is vital to ensure adequate protection for Hawai'i's imperiled species.

The bill would also lift the sunset date on the provisions giving the Board of Land and Natural Resources the authority to grant licenses for incidental take. When these provisions were first added to Chapter 195D in 1997, the conservation community was concerned about the lack of adequate checks-and-balances, resulting in imposition of the sunset date. The addition of a meaningful citizen suit provision will provide the necessary independent oversight, allowing the sunset clause to be removed.

Mahalo nui loa for the opportunity to testify. Please support HB 2371.

Sincerely,
Marjorie Ziegler



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

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P.O. Box 2923 • Honolulu, HI 96802 • Office: 250 Ward Ave., Suite 220 • Honolulu, HI 96814

President: Hannah Springer * Vice-President: Julie Leialoha * Treasurer: Rick Barboza * Secretary: Maka'ala Ka'aumoana
Directors: Lida Pigott Burney * Koalani Kaulukukui * Robin Kaye
Executive Director: Marjorie Ziegler

I strongly support HB2371

Citizen suits are democracy in action -- on the ground and in the air. This bill would empower concerned citizens to ensure that Hawai'i's critically imperiled species receive adequate protection from illegal, unpermitted harm. Under our federal government's citizen suit provision, countless endangered species have benefited, including such iconic Hawaiian species as the green sea turtle, monk seal, and 'alala (Hawaiian crow).

Unfortunately, the federal Endangered Species Act (ESA) prohibits take (i.e., killing, injury, and other harm) only with respect to fish and wildlife. The ESA largely entrusts protection of endangered and threatened plants to the state. Over 80% of the species on Hawai'i's list of endangered and threatened species and nearly 25% of all listed species in the entire United States are Hawaiian plants.

Hawaii's endangered species law (H.R.S. Chapter 195D) has strong protections for imperiled species on paper, but it is rarely enforced. Congress, in its legislation, authorized citizens to supplement government enforcement through actions seeking prospective injunctive relief that would prevent future harm to endangered and threatened species.

This bill would also lift the sunset date on the provisions giving the Board of Land and Natural Resources the authority to grant licenses for incidental take. When these provisions were first added to Chapter 195D in 1997, the conservation community was concerned about the lack of adequate checks-and-balances, resulting in imposition of the sunset date. The addition of a meaningful citizen suit provision will provide the necessary independent oversight, allowing the sunset clause to be removed.

Respectfully,

Robin Kaye
rkaye@mdi.net

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 04, 2012 8:01 PM
To: WLOtestimony
Cc: Brenda.Kosky@gmail.com
Subject: Testimony for HB2371 on 2/6/2012 10:20:00 AM

Testimony for WLO 2/6/2012 10:20:00 AM HB2371

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Brenda Kosky
Organization: Individual
E-mail: Brenda.Kosky@gmail.com
Submitted on: 2/4/2012

Comments: