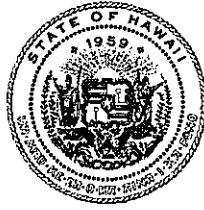
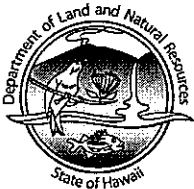


SB 2277

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
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 Senate Committees on
ENERGY AND ENVIRONMENT
and
WATER, LAND, AND HOUSING**

**Tuesday, February 7, 2012
10:20 AM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 2277
RELATING TO ENDANGERED AND THREATENED SPECIES.**

Senate Bill 2277 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 Senate Bill 2277 as amended.

The Department supports the passage of a version of Senate Bill 2277 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 Senate Bill 2277 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 Senate Draft 1 is attached for your reference.

Summary of Amendments to Chapter 195D, HRS, in proposed Senate 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.



UNIVERSITY
of HAWAII
MĀNOA

Water Resources Research Center
Environmental Center

February 06, 2012
RL: 2279

SB 2277
RELATING TO ENDANGERED AND THREATENED SPECIES

Senate Committee on Energy and Environment
Senate Committee on Water, Land, and Housing
Public Hearing – Tuesday, February 07, 2012
2:45 p.m., State Capitol, Conference Room 225

By
David Penn, Environmental Center
IN SUPPORT

Dear Chair Gabbard, Chair Dela Cruz, Vice Chair English, Vice Chair Solomon, and committee members,

The Environmental Center supports this proposal to (1) repeal the prohibition on approval of issuance of new safe harbor agreements, habitat conservation plans, and incidental take licenses after July 1, 2012, and (2) clarify and expand provisions that allow citizen suits to enforce certain conservation statutes, habitat conservation plans, and safe harbor agreements against any person.

The Endangered Species Recovery Committee (ESRC)—which makes recommendations to the Board of Land and Natural Resources about the approval of safe harbor agreements, habitat conservation plans, and incidental take licenses—includes a representative from the Environmental Center. Based on our experience with the ESRC process and information presented to ESRC about this proposed legislation, we believe that SB 2277 will help to advance conservation goals for threatened and endangered species while accommodating everyday human needs for energy, agriculture, and economic development.

Thank you for considering our testimony on this proposed legislation. Please note that our testimony is advisory only and should not be construed to represent an official institutional position of the University of Hawaii.



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 DONOVAN M. DELA CRUZ, CHAIR
SENATOR MALAMA SOLOMON, VICE-CHAIR
SENATE COMMITTEE ON WATER, LAND, AND HOUSING

TESTIMONY RE: SENATE BILL NO. 2277
RELATING TO ENDANGERED AND THREATENED SPECIES

February 7, 2012, 2:45 p.m.
Conference Room 225

Good afternoon Chairs Gabbard and Dela Cruz, Vice-Chairs English and Solomon, 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. 2277, 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 2277 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,

Earthjustice Testimony in Support of SB 2277
February 7, 2012
Page 2

without effective enforcement, they do nothing to preserve these unique public trust resources for future generations.

Enacting SB 2277 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 SB 2277 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 SB 2277 to implement the bill's intent more effectively (see attached proposed SD1). We respectfully urge you to adopt these revisions and pass SB 2277, 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.

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"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

76 North King Street, Suite 203
Honolulu, Hawai`i 96817
Phone: 533-3454; E: henry.lifeoftheland@gmail.com

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Mike Gabbard, Chair
Senator J. Kalani English, Vice Chair

COMMITTEE ON WATER, LAND, AND HOUSING

Senator Donovan M. Dela Cruz, Chair
Senator Malama Solomon, Vice Chair

DATE: Tuesday, February 07, 2012
TIME: 2:45 p.m.
PLACE: Conference Room 225
BILL: SB 2277 ENDANGERED AND THREATENED SPECIES **SUPPORT**

Aloha Chairs Gabbard and Dela Cruz, Vice Chairs English and Solomon 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



CONSERVATION COUNCIL FOR HAWAI'I

Testimony Submitted to the Senate Committee on Energy and Environment
and Senate Committee on Water, Land, and Housing

Hearing: Tuesday, February 6-7, 2012 2:45 pm
Conference Room 225

In Support of SB 2277 Relating to Endangered and Threatened Species

Aloha. The Conservation Council for Hawai'i supports SB 2277, which would ensure effective protection for Hawai'i's endangered and threatened species through citizen enforcement.

SB 2277 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 SB 2277

Sincerely,
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 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



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, AND HOUSING

February 7, 2012, 2:45 P.M.
(Testimony is 2 pages long)

TESTIMONY IN SUPPORT OF SB 2277

Aloha Chairs Gabbard, Dela Cruz, and Members of the Committee:

The Sierra Club, Hawaii Chapter, with 9,000 dues paying members and supporters statewide, ***strongly supports*** SB 2277. 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.

The current law allowing for safe harbor agreements, habitat conservation plans, and incidental take licenses sunsets this year. Failing to extend the current law jeopardizes a number of ongoing programs, such as several wind facilities, as they will no longer have the 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 the law is followed.

Mahalo for the opportunity to testify.

The Pacific Resource
PARTNERSHIP



Testimony of C. Mike Kido
External Affairs
The Pacific Resource Partnership

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Mike Gabbard, Chair
Senator J. Kalani English, Vice Chair

COMMITTEE ON WATER, LAND, AND HOUSING

Senator Donovan M. Dela Cruz, Chair
Senator Malama Solomon, Vice Chair

Tuesday, February 7, 2012
2:45 p.m.
Conference Room 225

SB 2277 - Relating to Endangered and Threatened Species

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

My name is C. Mike Kido, External Affairs of the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters (formerly the Hawaii Carpenters Union).

PRP would like to comment on SB 2277 Relating to Endangered and Threatened Species which allows citizen suits to enforce certain conservation statutes, habitat conservation plans, and safe harbor agreement against any person. The measure also repeals the prohibition on approval of issuance of new safe harbor agreements, habitat conservation plans, and incidental take licenses after July 1, 2012.

PRP supports **Section 2 of SB 2277**, which would continue to induce compliance with conservation measures, by repealing the law which currently restricts the Department of Land and Natural Resources (DLNR) from approving SHA, HCP and ITL after July 1, 2012. PRP also **strongly opposes Section 1**, of this bill, which relates to citizen suits, because it is unnecessary, in that current Hawaii law provides that DLNR is responsible for enforcing the SHAs, HCPs and ITLs, including pursuing citizen complaints, petitions and lawsuits; and there are more than sufficient opportunities for citizens to bring petitions to enforce conservation statutes, HCPs and SHAs. Thus, PRP respectfully requests that **Section 1 be deleted from this SB 2277**.

Thank you for allowing us to comment and share our concerns on SB 2277.



**Statement of
KEKOA KALUHIWA
FIRST WIND**

**Before the Senate Committees on
ENERGY AND ENVIRONMENT
AND
WATER, LAND AND HOUSING**

**Tuesday, February 7, 2012
2:45 p.m.
State Capitol, Conference Room 225**

**In consideration of
S.B. 2277
RELATING TO ENDANGERED AND THREATENED SPECIES**

Aloha Chair Gabbard, Chair Dela Cruz and members of the Committees on Energy and Environment, and Water, Land and Housing. My name is Kekoa Kaluhiwa and I am the Director of External Affairs for First Wind.

I humbly request that you **support** S.B. 2277 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 Hawai’i’s endangered and threatened species.

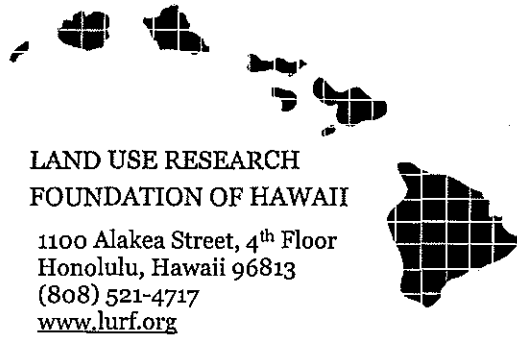
As background, First Wind owns and operates Hawai’i’s two largest utility scale wind energy projects, the 30 MW Kaheawa Wind Power on Maui, and the 30 MW Kahuku Wind Power on O’ahu. In addition, we are currently constructing a 21 MW project on Maui and will soon begin construction of a 69 MW project on O’ahu.

In developing these clean, renewable energy projects, First Wind is pleased to support the goals set forth by the Hawai’i Clean Energy Initiative. We also take serious consideration of the potential impacts our projects have on Hawai’i’s threatened and endangered species. As far as First Wind is aware, Kaheawa Wind Power was the first wind energy facility in the United States to include a Habitat Conservation Plan (HCP). As mindful and respectful stewards of Hawai’i’s natural resources, we are proud of the “net benefit” provided to native wildlife which may be affected by our wind projects. Without a doubt, an HCP is requisite for all our Hawai’i projects.

Kekoa Kaluhiwa
First Wind
February 7, 2012
Page 2 of 2

First Wind believes that removing the sunset clause would be a clear message from the Legislature that the State of Hawai'i is serious about caring for its endangered species and about companies that want to do business in Hawai'i needing to take responsibility for the affects their projects may have on those species. It would also support the Department of Land and Natural Resources' ability to more effectively serve its mission in protecting Hawai'i's natural resources.

Mahalo for this opportunity to express First Wind's support of S.B. 2277.



LAND USE RESEARCH
FOUNDATION OF HAWAII

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February 6, 2012

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

Senator Donovan M. Dela Cruz, Chair
Senator Malama Solomon, Vice-Chair
Senator Committee on Water, Land and Housing

Comments and Concerns Relating to SB 2277 – Conservation of Wildlife; Citizen Suits. (Allows citizen suits to enforce certain conservation statutes, habitat conservation plans, and safe harbor agreements against any person.)

Tuesday, February 7, 2012, 2:45 p.m., in Senate Conference Room 225

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide comments and concerns relating to this bill.

SB 2277. This bill proposes to allow suits to be brought against any person to enforce certain conservation statutes, habitat conservation plans ("HCPs"), and safe harbor agreements ("SHAs"). This bill also proposes to repeal the section of the law which prohibits the issuance of SHAs, HCPs, or incidental take licenses ("ITLs") after July 1, 2012.

LURF's Position. While LURF **strongly supports Section 2** of SB 2277 which would continue to induce compliance with conservation measures by repealing the law which currently restricts the Department of Land and Natural Resources ("DLNR") from approving SHAs, HCPs and ITLs after July 1, 2012, LURF **strongly opposes Section 1** of this bill, which relates to citizen suits. It is LURF's belief that Section 2 of the bill is unnecessary as current Hawaii law already states that DLNR is responsible for the enforcement of SHAs, HCPs and ITLs, including pursuing citizen complaints, petitions, injunctions and lawsuits; and there already are more than sufficient opportunities for citizens to bring petitions to enforce conservation statutes, HCPs and SHAs. LURF therefore respectfully requests that **Section 1 be deleted from SB 2277.**

➤ **Strong Support for Section 2 of the Bill; SHAs, HCPs and ITLs Should be Retained.**

HRS §195D-30 provides that all SHAs, HCPs, ITLs and subsequent actions authorized under those plans, agreements and licenses shall be designed to result in an overall net gain in the recovery of Hawaii's threatened and endangered species. HRS Chapter 195D currently provides for criteria and the process for approval of SHAs, HCPs and ITLs, however, the law does not allow any new SHAs, HCPs or ITLs after July 1, 2012.

Provisions allowing SHAs were included in the Endangered Species Act ("ESA") and in HRS Chapter 195D as a means of encouraging landowners to voluntarily engage in efforts that benefit endangered, threatened, proposed, and candidate species and to undertake conservation efforts on their land in support of the recovery of endangered species. Pursuant to HRS §195D-22, SHAs allow landowners to agree with the State to create, restore, or improve habitats or to maintain currently unoccupied habitats that threatened or endangered species can be reasonably expected to use. Without these provisions, some landowners may have a strong *disincentive* to undertake endangered species recovery efforts or other activities that could attract endangered species to their land due to the threat of increased liability under these laws for any harm to endangered species that may occur.

Provisions allowing HCPs and ITLs were included in both the Endangered Species Act and HRS Chapter 195D as a means of allowing proposed activities with the potential to impact endangered species to proceed, provided that measures be taken to ensure an overall benefit to the species (for example, by setting aside habitat for the species outside of the project area). Absent these provisions, important economic activities, including renewable energy projects, would be impossible, and existing land uses which attract endangered species would also be severely impacted.

SHAs, HCPs and ITLs provide a net benefit to endangered species and to the State by encouraging conservation efforts while allowing for important economic development in Hawaii. They are an essential component of our State endangered species law; a crucial and successful tool in achieving an overall net gain in the recovery of Hawaii's threatened and endangered species; and should be retained.

Based on the above, LURF strongly supports Section 2 of SB 2277, which repeals the prohibition on approval of issuance of new SHAs, HCPs and ITLs after July 1, 2012.

➤ **Strong Opposition to Section 1 of the Bill; Citizen Suits are Unnecessary.**

Notwithstanding its strong support of Section 2 of the bill, LURF **strongly urges that proposed provisions of Section 1 relating to citizen suits be deleted from the proposed measure.** LURF believes there is no basis for the inclusion of such an option, and points out that SB 2277 fails to include any purpose section justifying inclusion of a new citizen suit provision against private parties.

Current Hawaii law provides that DLNR is responsible for enforcing the SHAs, HCPs and ITLs, including pursuing citizen complaints, injunctions and lawsuits. Laws currently in existence provide more than sufficient opportunities for citizens to bring petitions to enforce conservation statutes, HCPs and SHAs, including the following:

- **Immediate Hearing on Citizen Petition and for Injunctive Relief.** Any person who believes that a violation of an HCP, SHA or ITL has occurred, is occurring, or is likely to occur may petition the DLNR Chairperson (“Chairperson”) for an immediate hearing, which shall be heard within 48 hours after the filing of the petition. If the hearings officer determines that there is a substantial likelihood that the continued existence of an endangered or threatened species will be jeopardized unless the violation is immediately enjoined, then the hearings officer shall order temporary injunctive relief. HRS §195D-27(d).
- **Citizen Petition for Injunctive Relief to DLNR Chairperson.** Any person may petition the Chairperson to appoint a hearings officer to hear a request to enjoin any person, including the State and any other government agency, alleged to be in violation of Chapter 195-D (this Chapter), including any rule adopted pursuant to this Chapter, HCP, SHA, or ITL, or to require the State to take action to enforce this Chapter, or any term of the HCP, SHA, or ITL. HRS §195D-27(a).
- **Chairperson Action to Resolve Citizen Petition.** Upon receipt of a petition, the Chairperson shall make a diligent effort to resolve the subject matter of the petition, and if appropriate, to cause the non-complying or other responsible party to comply with the HCP, SHA, or ITL. HRS §195D-27(b).
- **Chapter 91 Contested Case Hearing on Citizen Petition.** If the Chairperson is unable to resolve the Citizen petition within ninety (90) days or if the citizen petitioner is not satisfied with the Chairperson’s resolution of the subject matter, then the Chairperson shall appoint a hearings officer to hear the Petition. The hearings officer shall commence a contested case hearing in accordance with HRS Chapter 91 and, within thirty (30) days of the completion of the hearing, grant in whole or in part, or deny the petition. HRS §195D-27(b).
- **Citizen Suits Against any State or County Agency, DLNR or the Board of Land and Natural Resources (“BLNR”).** Any person, acting as a private attorney general, may commence a civil suit on the person’s behalf against any state or county agency or instrumentality that is alleged to be in violation of the terms of, or fails to fulfill the obligations imposed and agreed to under any HCP, SHA and accompanying license for public lands, pursuant to HRS §195D-32(a)(1); and against the DLNR or BLNR, where there is an alleged a failure of DLNR or BLNR to perform any act or duty required under an HCP, SHA, and accompanying license for public lands, pursuant to HRS §195D-32(a)(2).

LURF understands that the Natural Resources Committee of the U.S. House of Representatives has recently undertaken a review of the ESA and has concluded that excessive litigation under the Act threatens species recovery, job creation, and economic growth. In the view of many, one of the greatest obstacles to the success of the ESA is the way that it has become a tool for excessive litigation. As of December 2011, Interior Department agencies were dealing with a combined total of 180 pending ESA-related lawsuits, and the U.S. Fish and Wildlife Service was spending so much of its listing budget on litigation and responding to petitions that it had almost no money left to devote to placing new species under federal protection.

Litigation is re-directing scarce resources intended to be used for species protection into plaintiff’s coffers, where it can be used to perpetuate the cycle of litigation. The citizen suit provisions of the ESA are so lenient as to encourage and foster ESA lawsuits, regardless of their merit. The “cost recovery” provision often results in enormous costs to public and private parties, sometimes with no benefit to any species and no proof of any violation of the Act.

LURF believes that the current Hawaii law and processes thereunder already provide more than sufficient public review, reports, and administrative enforcement of rules, plans agreements or licenses, as well as opportunity for citizen lawsuits, including injunctive relief against DLNR and any state or county agency. Thus, LURF believes it is not necessary to incorporate new citizen suit provisions into HRS Chapter 195D, since the result of such legislation may be adverse effects in Hawaii similar to those being experienced on the federal level. We therefore strongly urge that these provisions be deleted from Section 1 of the bill.

Thank you for the opportunity to provide comments and concerns relating to this measure.



Hawaii Farm Bureau
F E D E R A T I O N

2343 Rose Street • Honolulu, Hawaii 96819
Phone: (808) 848-2074 • Neighbor-Islands: (800) 482-1272
Fax: (808) 848-1921 • Email: info@hfbf.org
www.hfbf.org

Tuesday, February 7, 2012
2:45 pm
Conference Room 225

Senate
Committee on Energy and Environment
And
Committee on Water, Land, and Housing

Testimony on SB 2277
RELATING TO ENDANGERED AND THREATENED SPECIES

Aloha Chairs Gabbard and Dela Cruz, Vice Chairs English and Solomon, and Members of the Committees,

I am Janet Ashman, testifying on behalf of the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,800 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

We strongly support one part of this measure; the continued availability of safe harbor agreements, habitat conservation plans, and incidental take licenses under HRS Chapter 195D. The bill accomplishes this by deletion of the July 2012 sunset date for approvals of these programs that provide a net benefit to endangered species through conservation agreements, while allowing important activities to take place within the state.

We strongly oppose the addition of citizen suit provisions. Instead of providing incentives for conservation and stewardship, citizen suit provisions punish those whose lands may be used as habitat for endangered species. Hawaii's farms and ranches are an attraction for many endangered species and we encourage our members to be protective of those species that find our lands a suitable habitat. However, we are concerned about increased liability under additional citizen suit provisions for any harm to endangered species that may *accidentally* occur. At a time when food sustainability is a priority for Hawaii, we cannot afford to jeopardize the viability of our food producers.

It is common knowledge that endangered species litigation is expensive, diverts resources from conservation actions that promote species recovery, and threatens jobs and economic growth. In

fact, the federal Endangered Species Act citizen suit provisions, already available for use, are considered by many to be counter-productive to meaningful species recovery and environmental progress.

The U.S. Fish and Wildlife Service currently spends so much of its budget on litigation and responding to petitions that it is unable to effectively place new species under federal protection. Instead, environmental plaintiffs who are often awarded the costs of litigation use those funds to go on to file the next suit, and the cycle continues.

Citizen suits are already available under state statute for alleged violations of safe harbor agreements, habitat conservation plans, and incidental take licenses. Immediate injunctive relief is also available under our current statutes under certain circumstances.

HFBF respectfully requests that this committee delete the proposed amendments relating to citizen suits and instead begin to consider appropriate incentives to encourage landowners, especially farmers and ranchers, to engage in efforts that restore and conserve endangered and threatened species.



Protecting nature. Preserving life.™

The Nature Conservancy of Hawai'i
923 Nu'uuanu Avenue
Honolulu, Hawai'i 96817

Tel (808) 537-4508
Fax (808) 545-2019

nature.org/hawaii

Testimony of The Nature Conservancy of Hawai'i
Commenting on S.B. 2277 Relating to Endangered and Threatened Species
Senate Committee on Energy and Environment
Senate Committee on Water, Land and Housing
Tuesday, February 7, 2012, 2:45PM, Room 225

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 10 nature preserves on Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy does not take a position on the proposed provisions in S.B. 2277 that would expand the allowance of citizen suits to enforce provisions of HRS Chapter 195D, habitat conservation plans, safe harbor agreements, or incidental take licenses.

We do support the provision of this bill that would repeal the July 1, 2012 cut-off for issuance of new habitat conservation plans, safe harbor agreements, or incidental take licenses. Safe harbor agreements, habitat conservation plans, and incidental take licenses are valuable and welcome tools for the State's ongoing conservation efforts. These tools provide a safe and flexible framework for landowners to move ahead with land-use projects, while providing protection for endangered or threatened species through plans that result in an overall net gain in the recovery of the species. We support the elimination of the sunset provision in the law to allow the continuing use of these effective and practical means of conservation and species preservation.

Thank you for the opportunity to testify.

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Testimony for ENE/WLH 2/7/2012 2:45:00 PM SB2277

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Nancy Davlantes
Organization: Individual
E-mail: ndavlantes@aol.com
Submitted on: 2/4/2012

Comments:

Hawai'i's critically imperiled species must receive adequate protection from illegal, unpermitted harm. The federal Endangered Species Act 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 deals with fish and wildlife, leaving the protection of endangered and threatened plants to the state. Hawaiian plants make up more than 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.

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, but it is rarely enforced. Recognizing government wildlife agencies alone might not be able to ensure adequate protection of imperiled species, Congress authorized citizens to supplement government enforcement through actions seeking prospective injunctive relief that would prevent future harm to endangered and threatened species. Now, 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.

Testimony for ENE/WLH 2/7/2012 2:45:00 PM SB2277

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Marjorie Erway
Organization: Individual
E-mail: merway@hawaii.rr.com
Submitted on: 2/4/2012

Comments:

This bill ensures effective protection of Hawai'i's threatened and endangered species. It would empower concerned citizens to ensure that our critically imperiled species receive adequate protection for illegal and unpermitted harm. The addition of a meaningful citizen suit provision will provide the necessary independent oversight, allowing the sunset clause to be removed. I urge you to fully support this bill. Mahalo!

Testimony for ENE/WLH 2/7/2012 2:45:00 PM SB2277

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Carolyn L Knoll
Organization: Individual
E-mail: clk@quixnet.net
Submitted on: 2/4/2012

Comments:

The bill would empower concerned citizens to ensure that Hawaii'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 Hawaii's list of endangered and threatened species and nearly 25% of all listed species in the entire United States.

While Hawaii'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 Hawaii'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.

Testimony for SB 2277

We have lost or in danger of losing so many species of plants. Please help us protect our native treasures from further decline. Many have proven to be valuable resources environmentally, socially, and medicinally.

Please vote for SB 2277 on February 7, 2012 at 2:45 PM. Thank you.

Mary Louise O'Brein

Testimony for ENE/WLH 2/7/2012 2:45:00 PM SB2277

Conference room: 225

Testifier position: Support

Testifier will be present: No

Submitted by: Robin Kaye

Organization: Individual

E-mail: rkaye@mdi.net

Submitted on: 2/3/2012

Comments:

I strongly support SB 2277

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.

Testimony for ENE/WLH 2/7/2012 2:45:00 PM SB2277

Conference room: 225

Testifier position: Support

Testifier will be present: No

Submitted by: Michele Nihipali

Organization: Individual

E-mail: nihipalim001@hawaii.rr.com

Submitted on: 2/2/2012

Comments:

Improvements for Publicly Funded Elections. A pilot program for publicly-funded "clean elections" was successfully launched in Hawaii County Council in 2010. Since that time, court decisions elsewhere have affected some aspects of similar programs, so we need an upgrade. HB2700 will replace the equalizing funds with a 4-to-1 public funding match for small donations, and make other improvements to the program.

Testimony for ENE/WLH 2/7/2012 2:45:00 PM SB2277

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: janice palma-glennie
Organization: Individual
E-mail: palmtree7@earthlink.net
Submitted on: 2/2/2012

Comments:

Aloha,

As a strident community activist working hard to protect Hawai'i's natural systems as well as a three-decades-long plant nursery owner, my understanding of the importance of Hawai'i's native flora runs deep.

This bill will help ensure that Hawai'i's critically imperiled species would receive adequate protection from illegal harm. The federal Endangered Species Act (ESA) proves from nearly four decades that a significant amount of endangered species have benefited from citizen law suits.

The viability of the ESA and the protection of endangered and threatened plants is left to the state. Hawaiian plants and the ecosystems upon which we all depend, 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. Being the "Endangered species capital of the world" is totally unacceptable, especially in a state that advertises itself as quite the opposite.

This bill would help ensure that, especially during the tough economic times, the protection of species would be boosted by citizen oversight that is vital to ensure adequate protection for Hawai'i's imperiled species.

Last, this bill would 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 for supporting this and other bills that help protect the fragile native environment of this magical, and important, island chain.

Testimony for ENE/WLH 2/7/2012 2:45:00 PM SB2277

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Ikaika Pestana
Organization: Individual
E-mail: i.pestana@yahoo.com
Submitted on: 2/2/2012

Comments:

1. The bill 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).
2. 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.
3. 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.
4. 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.