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HAWAII



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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
ENERGY & ENVIRONMENTAL PROTECTION

Tuesday, March 15, 2016
8:30 AM
State Capitol, Conference Room 325

In consideration of
SENATE BILL 2906
RELATING TO SECTION 13 OF ACT 380, SESSION LAWS OF HAWAII 1997

Senate Bill 2906 proposes to remove the sunset date on the use of new safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the State's threatened and endangered species. **The Department of Land and Natural Resources (Department) strongly supports this Administration bill.**

In 1997, the Legislature expanded recovery options provided under the State's endangered species law, by authorizing the Department to issue a license for incidental take (ITL) of threatened or endangered species if the take is incidental to an otherwise lawful activity and provided that the applicant prepares a habitat conservation plan (HCP) or provided that a landowner enrolls in a safe harbor agreement (SHA).

As part of establishing HCPs, SHAs, and ITLs, the Legislature also provided a sunset clause that no new HCPs, SHAs, or ITLs would be approved or issued subsequent to July 1, 2001. The Legislature has extended the date of the sunset clause, in 2001, 2006, and again in 2012. Currently, the sunset clause will become effective July 1, 2017.

With Hawaii being the endangered species capitol of the nation and take of endangered and threatened species being illegal under State and Federal law, HCPs, SHAs, and ITLs have provided flexibility in the law while concurrently addressing recovery needs of listed species. Without the option of HCPs, SHAs, and ITLs many development projects would be subject to illegal take of threatened or endangered species, and private landowners would lose incentives and assurances to create, restore, or manage wildlife habitat that species can use to increase their populations.

Pursuant to Chapter 194D, Hawaii Revised Statutes, the Department may only issue a temporary ITL as a part of a HCP after consultation with the Endangered Species Recovery Committee (ESRC), comprised of dedicated scientists/biologists and technical experts from the State, Federal and private sectors, provided, among other details, that:

- (1) The applicant shall minimize and mitigate the impacts of the take;
- (2) The HCP shall increase the likelihood that the species will survive and recover;
- (3) The HCP takes into consideration the full range of the species on the island so that cumulative impacts associated with the take can be adequately assessed;
- (4) The cumulative impact of the activity, which is permitted and facilitated by the license, provides net environmental benefits; and
- (5) The take is not likely to cause the loss of genetic representation of an affected population of any endangered, threatened, proposed, or candidate plant species.

The approval process to receive a temporary ITL from the Department is a very rigorous process, requiring a thorough review by the ESRC to ensure that the biological requirements and that the net recovery benefit criteria are met, in concurrence with a public review and comment period in order to assure the science behind the analysis and assessments are valid, based on the most current scientific methods available, and the plan is in full compliance with state and federal law. The process normally takes over two years as often the ESRC recommends amendments to the plan before it is recommended to the Department for approval.

Since 1997, the Department has approved eleven HCPs throughout the State. The approved plans include development projects, such as a highway expansion, wind farms, housing and infrastructure development projects, and a solar telescope. The approved projects have provided over seven million dollars on conservation projects to the endangered species trust fund as well as millions more through private funding channels for the implementation of the mitigation plans. For example, as part of requirements under an approved HCP, two state-of-the-art predator-proof exclusion fences have been built with private funds to protect 10 acres of breeding habitat for endangered Hawaiian Petrels (*Pterodroma phaeopygia sandwichensis*) and Newell's Shearwaters (*Puffinus auricularis newelli*) in the mountainous interior of West Maui, adjacent to Makamaka`ole Stream. The Department is currently processing applications for 14 additional HCPs for development projects throughout the State related to projects, such as utility infrastructure, additional wind farms, and a housing subdivision.

Since 1997, the Department has also approved six SHAs with private landowners. A SHA provides private landowners the opportunity to contribute some of their private holdings to endangered species recovery efforts without putting them at risk of future infractions of the endangered species laws, as the recovering species thrive in the new habitats provided on these private lands. These approved agreements have facilitated endangered species recovery with new establishments of Nēnē (*Branta sandvicensis*) populations through the reintroduction of Nēnē to Molokai and parts of Maui. The Department is currently processing additional SHAs with landowners throughout the State.

SHAs and HCPs are proving to be invaluable tools in the process of recovering the State's endangered species while supporting economic development opportunities. With the increase in development throughout the State and broad partnerships to protect endangered species and their habitats, it is vital that these provisions be made a permanent addition within the State's endangered species law by removing the sunset date on the approval of new HCPs, SHAs, and ITLs.

The Department appreciates the opportunity to provide these comments.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of
LUIS P. SALAVERIA
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Tuesday, March 15, 2016
8:30 a.m.
State Capitol, Conference Room 325
in consideration of
SB 2906
RELATING TO SECTION 13 OF ACT 380, SESSION LAWS OF HAWAII 1997.

Chair Lee, Vice Chair Lowen, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports with amendments SB 2906, 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 threatened and endangered species.

Five existing wind energy facilities in Hawaii currently utilize habitat conservation plans and incidental take licenses to allow for the legal taking of protected wildlife species during normal facility operations, while providing a mechanism to help conserve the impacted species. Additional wind farms currently being developed in Hawaii may also be pursuing these tools.¹ Providing for the continued use of these tools could support the development of new renewable energy facilities.

As this measure concerns the conservation of threatened and endangered species, we defer to the Department of Land and Natural Resources on these matters.

Thank you for the opportunity to offer these comments on SB 2906.

¹ According to filings with the state Office of Environmental Quality Control, the Na Pua Makani Wind Project in Kahuku, Oahu, and the Lalamilo Wind Farm Repowering Project in South Kohala, Hawaii, have potential to impact protected species and may be pursuing habitat conservation plans and incidental take licenses.



March 11, 2016

Representative Chris Lee, Chair
Representative Nicole E. Lowen, Vice Chair
Committee on Energy & Environmental Protection

Strong Support of SB 2906 Relating to Section 13 of Act 380, Session Laws of Hawaii 1997 – Endangered Species. (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 threatened and endangered species.)

EEP Hearing: Tuesday, March 15, 2016, 8:30 a.m., Conf. Rm. 325

The Land Use Research Foundation of Hawaii (LURF) is 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 express its **strong support for SB 2906**, as LURF members have been long-time stewards of Hawaii's lands and native endangered and threatened species, and have, together with the State Department of Land and Natural Resources (DLNR), entered into safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the State's threatened and endangered species.

SB 2906. This measure would remove the sunset date on the use of new safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the State's threatened and endangered species.

LURF's Position. LURF **strongly supports SB 2906**, which removes the sunset date on new approvals and issuances of safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the State's threatened and endangered species.

The current State law provides the flexibility for DLNR to work cooperatively with its federal counterparts, private landowners, and other government agencies to deal with the complexities of the endangered species situation in Hawaii, and find proactive, workable solutions that will protect and conserve our endangered species while allowing for responsible development activities and economic growth to continue.

According to DLNR, in 1997, the Legislature expanded recovery options in the State Endangered Species Act (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 five-year, sunset date (July 1, 2002) for the approval of habitat conservation plans and safe harbor agreements and issuance of incidental take licenses. Subsequently, Act 145 of the 2012 Regular Session extended the sunset provision through June 30, 2017.

DLNR has confirmed that to date, eleven habitat conservation plan and six safe harbor agreements have been approved under state law. The DLNR is currently processing fifteen habitat conservation plans and safe harbor agreement applications and several others are in the early planning stages.

In order to achieve the State's goal of 100 percent renewable energy generation by the year 2045, a major part of the State's diverse renewable energy portfolio, will include wind energy generation. According to DLNR, virtually every large wind energy project will require state-approved habitat conservation plans to authorize incidental take associated with their operations, it is essential that the provisions under the law for that authorization be assured beyond a five-year period.

Safe harbor agreements and habitat conservation plans are proving to be invaluable tools in the process of recovering the State's endangered species. It is important that these provisions within the State ESA be made permanent by removing the sunset date and providing public and private landowners with the message that the Legislature is committed to maintaining responsible solutions to conserve Hawaii's endangered species.

For the above reasons, LURF **supports SB 2906**, and respectfully urges your favorable consideration.

Thank you for the opportunity to present testimony regarding this matter.



Conservation Council
for Hawai'i

Hawai'i's voice for wildlife

Kō Hawai'i leo no nā holoholona lōhiu

LATE

Testimony Submitted to the House Committee on Energy and Environmental Protection

Hearing: Tuesday, March 15, 2016 8:30 am
Conference Room 325

Comments on SB 2906 Relating to Section 13 of Act 380, Session Laws of Hawai'i 1997

Chair Lee, Vice Chair Lowen, and Members of the Committee.

Aloha. Conservation Council for Hawai'i has concerns about SB 2906, 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. This type of bill comes up every time the current sunset date is about to expire. It is better to have a sunset date.

With all due respect, the legislature is not providing enough funding for Department of Land and Natural Resources to recover endangered and threatened species, or to prevent species from being listed as endangered or threatened to begin with. Furthermore, the legislature is nickel and diming important DLNR and other state programs to control invasives species and protect watersheds, which also provide habitat for many of imperiled species mauka.

Allowing for the take of endangered and threatened species while not providing enough funding to the state agencies charged with recovery endangered and threatened species is not in the best interest of the targeted species. At best, required habitat conservation plans mitigate the harmful impacts of ungulates, weeds, diseases, and other factor harming the targeted species. This situation is not in the public interest, and more needs to be done by the State to conserve imperiled species.

Please do a better job of protecting our unique and endangered Hawaiian plants, animals, and ecosystems. These public-trust resources are held in trust by the State for the people. We are concerned about the legacy we leave for our kids and generations to come. What will be left of our unique plant and animal life? At times, it seems as if introduced continental grazing and browsing mammals (such as pigs, goats, and sheep) receive more consideration by our leaders than our precious Hawaiian species.

Please provide more funding for watershed protection and invasive species control. Ask your colleagues to stop nickel and diming important species conservation and invasive species programs of the Department of Land and Natural Resources and Department of Agriculture.

Mahalo nui loa for the opportunity to testify.

Marjorie Ziegler

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