



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:

December 26, 2019

The Honorable Ronald D. Kouchi,
President and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki, Speaker
and Members of the House of
Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Report on:

Task Force to Evaluate and Identifying Potential Sources and Means of Funding Available to Provide Support and Help Maintain the Hawaii Wildlife Center Facility and Hawaii's Endangered Wildlife providing an Accounting of the Receipts and Expenditures from the Intellectual and Developmental Disabilities Medicaid Waiver Administrative Claiming Special Fund pursuant to House Concurrent Resolution 168 SD1.

In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at:

<https://health.hawaii.gov/opppd/departement-of-health-reports-to-2020-legislature/>

Sincerely,

A handwritten signature in black ink that reads "Bruce S. Anderson".

Bruce S. Anderson, Ph.D.
Director of Health

**REPORT TO THE THIRTIETH LEGISLATURE
STATE OF HAWAII
2020**

PURSUANT TO HOUSE CONCURRENT RESOLUTION 168 SD1

URGING THE CONVENING OF A TASK FORCE TO EVALUATE AND IDENTIFY POTENTIAL SOURCES AND MEANS OF FUNDING AVAILABLE TO PROVIDE SUPPORT FOR AND HELP MAINTAIN THE HAWAII WILDLIFE CENTER FACILITY AND HAWAII'S ENDANGERED WILDLIFE.

Prepared by the Department of Health
Office of Planning, Policy, and Program Development
December 2019

EXECUTIVE SUMMARY

This report presents findings and recommendations, as well as proposed legislation, regarding the role of the State of Hawaii in the rehabilitation of oiled wildlife. In addition to identifying funding sources that could support wildlife impacted directly by oil spills, a recommendation is made to fund other activities that address environmental impacts associated with the use of fossil fuels including the creation of bird sanctuaries to mitigate the loss of habitat and breeding areas in the Northwest Hawaiian Islands and other low-lying areas caused by rising sea levels associated with the burning of fossil fuels.

The Working Group convened two meetings in October and November 2019, and was composed of private sector, state, and federal stakeholders.

The major findings of the Working Group are that the State of Hawaii has a fundamental role in assuring rehabilitation of oiled wildlife, the need to increase the resiliency of native wildlife populations in areas affected by climate change, the preservation and creation of safe breeding areas for birds and other wildlife impacted by sea level rise associated with the burning of fossil fuels, and the importance of Hawaii's natural environment to the economy, quality of life, and sense of well-being for residents and visitors.

The overall recommendation from this task force is to increase by five cents the environmental response, energy, and food security tax, established by section 243-3.5, Hawaii Revised Statutes (HRS), deposit those moneys into the environmental response revolving fund established under section 128D-2, HRS, and subsequently disburse two cents of this five cent increase to the general fund and three cents to the Executive Branch for purposes of assuring stand-by response capability for oiled wildlife and to support efforts to increase native bird resiliency by maintaining sanctuaries for displaced shore birds and other wildlife, and protecting current populations from human-caused morbidity and mortality.

REPORT TO THE LEGISLATURE

Background

The Hawaii State Legislature adopted House Concurrent Resolution 168, Senate Draft 1, (HCR168) on May 2, 2019 with unanimous support. The Department of Health and the Department of Land and Natural Resources were identified as co-chairs. Other members were as follows:

1. One member to be appointed by the President of the Senate;
2. One member to be appointed by the Speaker of the House of Representatives;
3. One member representing the Hawaii Wildlife Center;
4. The State On-Scene Coordinator of the Department of Health's Hazard Evaluation and Emergency Response Office;
5. The Wildlife Program Manager of the Department of Land and Natural Resources' Division of Forestry and Wildlife;
6. The Commander of the United States Coast Guard Sector Honolulu; and
7. A contaminant biologist from the United States Fish and Wildlife Service; and

Meetings were convened on October 31 and November X, at which a quorum of at least half the members was achieved.

Working Group members were:

1. Bruce S. Anderson, PhD
Director of Health
Department of Health
2. James Cogswell
Designee of the Chairperson of the Board of Land and Natural Resources
Administrator, Division of Forestry and Wildlife
Department of Land and Natural Resources
3. Ms. Linda Elliott
CEO, Hawaii Wildlife Center
4. Rachel Sprague, PhD
Director of Conservation, Pūlama Lānaʻi
Appointed by the Legislature
5. Rae Okawa
Development Coordinator
Hawaii Wildlife Center
6. LCDR Jason Nguyen
United States Coast Guard Sector Honolulu
7. Michael Fry, PhD
United States Fish and Wildlife Service
8. Elizabeth Galvez
State On-Scene Coordinator
Hazard Evaluation and Emergency Response Office
Department of Health
9. Harold Lao
Program Specialist
Hazard Evaluation and Emergency Response Office
Department of Health

10. Lorrin Kim
Chief, Office of Planning, Policy, and Program Development

Primary Objectives

1. To evaluate the appropriate level of funding and the potential use of the environmental response revolving fund established under section 128D-2, Hawaii Revised Statutes, to help maintain the Hawaii Wildlife Center facility; and
2. To consider grant-in-aid funding pursuant to chapter 42F, Hawaii Revised Statutes, as an additional funding source for the Hawaii Wildlife Center and other rehabilitation facilities.

Added Objective

3. To identify funds that could be used to mitigate the impacts to seabirds, shorebirds, water birds, and other marine life in the Northwest Hawaiian Islands and other low-lying areas by sea level rise associated with climate change attributed to the use of oil and other petroleum products.

Discussion

General Approach

The Department of Health noted in its testimony to the Legislature and at Working Group meetings that it is inappropriate to use State resources, e.g. personnel, salary, and equipment, for the benefit of a private entity. HCR168 specifically identified the Hawaii Wildlife Center, which is a local not-for-profit entity, as the subject of discussion about financial sustainability. However, the Working Group was able to conduct business by discussing oiled wildlife response in general, with the understanding that any potential funding from the State would be subject to competitive procurement.

Existing Resources

The Hawaii Wildlife Center (HWC) reports to be the only state- and region-wide wildlife response and conservation organization, whose programs include disaster response and responder training, contingency planning, research and hands-on wildlife rehabilitation at a wildlife hospital on Hawaii Island. Birds are routinely transported by air and ground, after handling by a network of partners and volunteers who provide point-to-point animal care.

HWC has previously received grants-in-aid (GIA) from the Legislature but the Working Group concurred that GIA are not a sustainable or reliable source of funds. In addition to private donations and other contributions, the Director of HWC explained to the Task Force that an annual appropriation of approximately of \$500,000 is needed to maintain operations at HWC to support oiled bird recovery.

On July 9, 2013, Governor Neil Abercrombie vetoed HB988 CD1, which would have permitted the Environmental Response Revolving Fund (ERRF) to support the operations of an environmental disaster standby and response facility in the State for the recovery and rehabilitation of native wildlife due to oil- or fuel-related disaster. Governor's Message 1374, transmitted to the Legislature on July 8, 2013, stated the Governor's objections were based on 1) inappropriate public policy that benefits a specific private entity, and 2) declining revenues and increasing administrative burdens on the ERRF.

Emergency Response Revolving Fund

The Working Group concurred that both amending the purposes of the ERRF and increasing the tax per barrel of imported oil and allocating a portion of the new moneys to assure a general stand-by response capability for oiled wildlife, is of public benefit.

Currently, pursuant to section 243-3.5, HRS, there is a \$1.05 tax on each barrel or fractional part of a barrel of petroleum product (not including aviation fuel). Sixty cents are deposited in the State's general fund, with the balance of:

- 5 cents of the tax on each barrel shall be deposited into the environmental response revolving fund established under section 128D-2;
- 15 cents of the tax on each barrel shall be deposited into the energy security special fund established under section 201-12.8;
- 10 cents of the tax on each barrel shall be deposited into the energy systems development special fund established under section 304A-2169.1; and
- 15 cents of the tax on each barrel shall be deposited into the agricultural development and food security special fund established under section 141-10.

Barrel tax receipts from the past few years are as follows:

- 2016 \$1,236,065
- 2017 \$1,287,966
- 2018 \$1,266,898

The Working Group recommends a five cents increase from \$1.05 per barrel to \$1.10 per barrel, with the additional five cents disbursed as follows:

- 2 cents to the general funds; and
- 3 cents to the Executive Branch for purposes of oiled wildlife stand-by response capacity.

Preliminary calculations project an additional \$1.2 million in revenue.

The Working Group noted that Federal law requires that polluters provide environmental clean-up funds but not wildlife treatment, and that some states require oil companies to have service agreements in place to support a wildlife response program.

Considerable discussion ensued on other risks and known impacts of importing and using oil other than oiled sea birds. As Hawaii continues to be face climate change, the resiliency of wildlife is under threat. It was pointed out that rising sea levels associated with climate change and the burning of fossil fuels is threatening the habitat and breeding areas of seabirds, shorebirds, water birds, and other marine animals (e.g., monk seals, turtles, and others) throughout the Northwest Hawaiian Islands and other low-lying places even in the Main Hawaiian Islands and the importance of breeding areas are threatened by sea level rise was of most concern. It is also important to sustain and increase current breeding populations as birds may take years to mature to breeding age.

Bird sanctuaries have been established in several coast areas with high cliffs on in the Main Hawaiian Islands including Kaena Point and Kahuku on Oahu, Moomomi on Molokai, and Kilauea on Kauai and other places where the impacts of sea level rise are not anticipated to be as severe. Unfortunately, most of these areas are very vulnerable to predators, such as mongooses, cats, rats and other carnivorous animals that bird eggs and/or young chicks. Predator proof fencing around these refuges is

essential but expensive to install and maintain. Sustainable funding to offset the impacts of using fossil fuels is also needed to preserve these existing facilities and establish new refuges (e.g., Kalaupapa).

Currently, most funding for such refuges is being provided by not-for-profit organizations, such as the Nature Conservancy, the State from Pittman Robertson funds and for listed seabirds, and from mitigation funds for take under the endangered species act. But there is not a sustained source of funding for creating new protected sites or maintaining the fences that are built. Most of the work done on these refuges comes from funding by private foundations, such as the National Fish and Wildlife Foundation and the David and Lucile Packard Foundation. The US Fish and Wildlife Service also occasionally funds some of this conservation work, but the future of these birds is currently most reliant on the foundations. The state, while an important partner, rarely funds seabird restoration activities simply because the State lacks funds dedicated for this purpose and there are always competing interest. It is noteworthy that conservation organizations often must raise funds from private foundations to conduct work on State lands.

Although having sustainable resources available to restore oiled birds is important, an imminent and even more certain threat to seabirds and other marine life is sea level rise. A sustained source of funding to help implement measures to increase marine wildlife resiliency such as creating new seabird and marine life refuges, maintaining existing refuges, and sustaining current breeding populations would be highly desirable. It would help to assure that oil and petroleum products do not irreversibly impact marine life and would at least help to mitigate impacts.

Habitat Conservation Plans

The Working Group discussed Habitat Conservation Plans (HCP), specifically a new requirement for entities that benefit from the natural environment, for example windfarms and resorts, to include a service agreement with a facility ready to provide emergency medical care and rehabilitation services for injured native birds and bats caused by the activities of those entities. The service agreement would cover the treatment and rehabilitation costs of a set number of individuals. Any additional individuals beyond that set number would require the HCP holder to pay per individual injured bird or bat for the emergency medical and rehabilitation services.

Similarly, requiring all golf courses, airports, harbors, parks and roads to have HCPs, since nene geese are commonly injured in golf courses throughout the State. Seabirds are commonly injured by collisions occurring when they are attracted by the lights in airports, harbors, parks and roads. The HCP for these entities would include paying for a service agreement with the emergency medical and rehabilitation facility for injured native birds and bats.

The ongoing financial support from these HCP holders keeps the State's standby capacity ready to provide the additional public service of emergency medical and rehabilitation treatment to all the injured native birds and bats found in places not covered by an HCP, including those injured by colliding with trucks, cars, and buildings and those injured by oil spills not linked to a specific attributable source.

The Working Group decided not to forward HCP-related solutions as recommendations for HCR168 but suggests they be studied further in a broader context. The group was concerned these proposals would duplicate existing "incidental take" payments negotiated as part of an entity's HCP, and if the take number is exceeded the entity is required to renegotiate their HCP and likely their upfront take payment. HCP incidental take clauses are based on complex formulae, e.g. home range of a species,

estimate of cost to protect/restore the habitat looking for net benefit for an area, etc., and as a result would be subject to lengthy rules development and yield little immediate benefit.

Other Options

The Working Group briefly discussed more alternatives, but none were deliberated sufficiently or considered viable. Included were:

- A tax form or driver's license application check box to donate funds for oiled wildlife rehabilitation
- Petroleum industry-specific wildlife fund
- Increase the Transit Accommodation Tax and deposit moneys into the ERRF
- Establish a dedicated wildlife rehabilitation unit as part of the Executive Branch to address man-made and natural stressors on wildlife, such as climate change
- Establish a new conservation special fund

Conclusion

The Working Group identified a gap in public administration relating to general wildlife conservation, and specifically wildlife rehabilitation and the creation of wildlife refuges. A reasonable and sustainable source of funding for addressing this gap through the Executive Branch is an increase of five cents for the environmental response, energy, and food security tax, established by section 243-3.5, Hawaii Revised Statutes (HRS), of which two cents of the new revenue would be deposited into the general fund and three cents to the Executive Branch for purposes of assuring stand-by response capability for oiled wildlife.

____.B. NO. _____

A BILL FOR AN ACT

RELATING TO WILDLIFE CONSERVATION SPECIAL FUND.

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

1 SECTION 1. Hawaii Revised Statutes, is amended by adding a
2 new section to read as follows:

3 "§____-____ **Creation of wildlife conservation special fund;**
4 **disposition of wildlife conservation special fund.** (a) There
5 is created in the treasury of the State the wildlife
6 conservation special fund, which shall consist of moneys
7 appropriated to the fund by the legislature, all interest
8 attributable to investment of money deposited in the fun, moneys
9 deposited in the fund from the environmental response, energy,
10 and food security tax pursuant to section 243-3.5, and money
11 allotted to the fund from other sources.

12 (b) Moneys from the fund shall be expended by the
13 department of _____ to maintain capacity for response for
14 oiled wildlife remediation, response, and rehabilitation; and
15 may be used for habitat preservation and enhancement associated
16 with sea level rise.

17 (c) The unexpended and unencumbered moneys in the fund in
18 excess of \$ _____ on June 30 of each fiscal year shall be

.B. NO.

1 transferred by the director of finance into and become a
2 realization of the general fund on that date.

3 SECTION 2. Section 243-3.5, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) In addition to any other taxes provided by law,
6 subject to the exemptions set forth in section 243-7, there is
7 hereby imposed a state environmental response, energy, and food
8 security tax on each barrel or fractional part of a barrel of
9 petroleum product sold by a distributor to any retail dealer or
10 end user of petroleum product, other than a refiner. The tax
11 shall be [~~\$1.05~~] \$1.10 on each barrel or fractional part of a
12 barrel of petroleum product that is not aviation fuel; provided
13 that of the tax collected pursuant to this subsection:

14 (1) 5 cents of the tax on each barrel shall be deposited
15 into the environmental response revolving fund
16 established under section 128D-2;

17 (2) 15 cents of the tax on each barrel shall be deposited
18 into the energy security special fund established
19 under section 201-12.8;

20 (3) 10 cents of the tax on each barrel shall be deposited
21 into the energy systems development special fund
22 established under section 304A-2169.1; [~~and~~]

_____.B. NO._____

Report Title:

Wildlife conservation special fund

Description:

Establishes the wildlife conservation special fund to maintain a response to oiled wildlife and preserve and enhance wildlife habitation under threat from sea level rise associated with climate change.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.