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GOVERNOR OF
HAWAII



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

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SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

M. KALEO MANUEL
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
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
JUDICIARY
and
WAYS AND MEANS**

**Tuesday, April 6, 2021
9:55 AM**

State Capitol, Via Videoconference, Conference Room 211

**In consideration of
HOUSE BILL 46, HOUSE DRAFT 1
RELATING TO WILDLIFE**

House Bill 46, House Draft 1 proposes to require all habitat conservation plans to include an agreement for plan participants to enter into and maintain an annual service contract with a response facility available to provide emergency medical and rehabilitation services to native wildlife affected by activities undertaken within the plan area. **The Department of Land and Natural Resources supports this measure.**

Section 195D-21(2)(C), Hawaii Revised Statutes, requires that each habitat conservation plan shall identify the steps that will be taken to minimize the impact of any incidental take to the maximum extent practicable. A service agreement with a response facility capable of providing emergency medical and rehabilitation services could help to fulfill that requirement in the event of injured wildlife, but may also incur costs for renewable energy providers.

Thank you for the opportunity to comment on this measure.



Hawai'i Wildlife Center
P.O. Box 551752 • Kapa'au, HI 96755

**TESTIMONY OF LINDA ELLIOTT,
PRESIDENT AND CENTER DIRECTOR
HAWAII WILDLIFE CENTER**

**PRESENTED TO THE
COMMITTEES ON JUDICIARY & WAYS AND MEANS**

DATE: April 6, 2021

TIME: 9:55 A.M.

PLACE: Conference Room 211 & Videoconference

TESTIMONY IN SUPPORT OF H.B.46, Relating to Wildlife: Habitat Conservation Plans

To the honorable Senators Karl Rhoads and Donovan M. Dela Cruz, Chairs, Senators Jarrett Keohokalole and Gilbert S.C. Keith-Agaran, Vice Chairs and members of the Committees:

I am submitting testimony in **strong support** of HB 46. Thank you for the opportunity to provide comment.

HB 46 Requires all habitat conservation plans (HCPs) to include an agreement for plan participants to enter into and maintain an annual service contract with a stand-by and response facility available to provide emergency medical and rehabilitation services to native wildlife affected by activities undertaken within the scope of the plan. **Since the costs would be incorporated into the fees being paid by entities that are required to have a Habitat Conservation Plan, this does not raise taxes or require State funding.** The costs would be negotiated by each HCP participant and the response provider, similar to how an entity would enter into any other contract for services needed to fulfill operational needs and statutory obligations.

This amendment would require a thorough and proper response procedure for indigenous and endemic wildlife species covered by HCPs when individuals of these species are found injured, as well as a clear means of support for such response actions. At present HCPs do not require an adequate response plan that sets forth an agreement with and funding support for a permitted response organization to ensure response resources are available for injured wildlife treatment and rehabilitation expertise when needed. Funding support should be provided as a basic measure to prepare for injured wildlife response and to keep resources available year-round.

Of the agreements we reviewed, all have failed to cover this specific response need and instead focus mainly on habitat improvements (i.e. in planting, invasive weed control) and population protection methods (i.e. predator control, re-introduction of species, captive breeding

programs). Although those conservation programs are also important, the inclusion of the process for funding the response to injured wildlife covered by HCPs provides a missing piece necessary to fully respond to protected wildlife species and creates more robust protection of native wildlife throughout the year.

From previous discussions with wildlife agencies and from our first-hand experiences, we have gathered that:

— Indigenous and endemic wildlife is under the responsibility of the Department of Land and Natural Resources. DLNR administrative rules mandate that if indigenous wildlife is injured, it must be brought to a permitted entity for care. Additionally, Hawai'i's indigenous wildlife is protected by federal Migratory Bird Act and or the Endangered Species Act. State or Federal wildlife agencies are not able to provide wildlife rehabilitative care services and therefore rely on partnerships with other organizations to fulfill this role.

— Current HCP requirements only focus on quantifying and mitigating for dead wildlife, while wildlife that are injured and still alive - wildlife that have the possibility of recovering and returning to their wild populations - are neglected because there is no statutory mandate requiring action and follow through.

— The State provides permit regulations as to what is required to care for native species, but in our experience have not been responsible for funding the care of patients impacted by HCP participants. Nor does the State's limited funding allow them to keep these services available in the case members of industry need it.

— Though DLNR may have a cost recovery process for their time, organizations that are not State-run yet provide services for the State are neglected and do not receive support to be ready to provide treatment to wildlife impacted by HCP participants. Providing concrete language to build the necessary avenues for wildlife response will help wildlife agencies follow through on their mandate to protect indigenous wildlife without creating additional work for the agencies.

— HCP participants follow a Downed Wildlife Protocol. The Downed Wildlife Protocol provides significant detail on injured wildlife response in the areas of capture, handling, and points of contact. What is NOT included in the protocol however, is any clear articulation on how participants will support the response work required or ensure its availability. All that is mentioned in the protocol in this area is one line: "non-governmental parties should make prior arrangements, including procedures and payments with the rehabilitation or veterinary care facilities that will be used to treat injured animals". The lack of details and absence of concrete requirements for follow-through in this area opens the door for this weakness to be taken advantage of at the expense of the rehabilitation and veterinary care facilities that are doing the work and who need to find other ways to stay open in order to be available for these purposes.

— By supporting wildlife response organizations via these agreements the benefits may also include:

- Net population benefits as the year-around operations of wildlife rehabilitation programs will treat other indigenous and endemic wildlife patients of the same species of concern adding to the number returned to the wild populations
- Preparedness for emergency response services (i.e. contaminants spill response, disease out breaks) with the trained experienced staff and a fully operational facility from the response organizations supported in part by these agreements.

Requiring entities needing an HCP agreement to also procure a support agreement with a qualified and permitted response and rehabilitation organization would also provide for first response training for the entity's staff, a supplies and equipment list to perform a response, and create procedures to consult on injured wildlife and assist in the transport of injured wildlife to the response organization(s). This support agreement would cover the costs for readiness to respond year-round and for the treatment and medical care of wildlife species covered by the agreement.

The Hawai'i Wildlife Center provides professional, state-of-the-art treatment for native Hawaiian wildlife affected by contamination, disease and injury. HWC staff members have the experience and capability to manage wildlife-related response, including assessment, training, mobilization, supervision, facilities management, wildlife capture, handling, stabilization and transportation. At the Center, staff will perform triage, assessment, stabilization, rehabilitation, husbandry, quarantine, hydration, feeding, cleaning, monitoring, recovery and release into the wild. The Center also provides emergency response training for agency staff, interns, students and volunteers.

HWC has a Memorandum of Agreement between the Center, the Fish and Wildlife Service and the State Department of Land and Natural Resources. However, while this MOA provides a framework for effective collaboration, it does not ensure that resources are available to keep the Center open and ready to respond to injured wildlife.

We have been open for native wildlife care since September 2012, and have already received nearly 2,000 patients (majority are birds, with some bats) representing over 40 different native species. In order to keep our critical services available, we need a predictable and consistent source of operational funding. **HB 46 will help ensure that permitted, professionally staffed, wildlife response resources are prepared to help native wildlife adversely affected by human activities as well as help satisfy the statutory responsibility of the State.**

We are a small nonprofit that provides hospital care and rehabilitation to native birds and bats statewide. The way we operate is very similar to a fire station, where the continuity of our services depends on reliable support to keep everything open and operational. HCP participants that have impacts on native wildlife should contribute keeping response and care available should it be needed. If a fire happens, you don't wait until you see flames to build a fire station.

Thank you for the opportunity to testify on this important matter.



Statement of the Democratic Party of Hawai'i In Support of HB46 HD1, Relating to Wildlife

The [Democratic Party of Hawai'i](#) supports HB46 HD1, Relating to Wildlife, to the extent that it aligns with our Party's [platform](#). The bill would require all habitat conservation plans to include an agreement for plan participants to enter into and maintain an annual service contract with a stand-by and response facility available to provide emergency medical and rehabilitation services to native wildlife affected by activities undertaken within the plan area. The bill would be effective July 1, 2050.

The Democratic Party of Hawai'i believes that the preservation and restoration of our natural environment is essential. We support a sustainable society that utilizes the earth in such a way that future generations will benefit from the practices of our generation. We support the restoration, preservation, and protection of our native ecosystems on each island. We believe in integrated approaches, practices, and support public policies that create and maintain a sustainable way of life in Hawai'i.

We find that by requiring annual service contracts to provide medical and rehabilitation services to native wildlife, the restoration, preservation, and protection of our native ecosystems will be furthered.

Mahalo nui for the opportunity to provide these comments in support of this important bill.

*Tyler Dos Santos-Tam
Chairperson*



Testimony of MOLLY BACHE
Program Coordinator; Save Our Shearwaters

Before the Senate Committee on JUDICIARY; Senate Committee on WAYS AND MEANS
Tuesday, April 6th, 2021 9:55 AM State Capitol, Via Videoconference
In consideration of HOUSE BILL 46, HOUSE DRAFT 1; RELATING TO WILDLIFE

Dear Senators:

Thank you for the opportunity to submit comment on HB 46. I am in **strong support** of this bill.

The passing of HB 46 would help ensure that native species involved with a Habitat Conservation Plan (HCP) have permitted, professionally staffed, wildlife response resources available when needed. This amendment would help ensure the viability of permitted wildlife rehabilitation services without having to utilize the State's limited budget.

It's important that HCPs incorporate the resources necessary to support these endemic and endangered species through the stages of rehabilitative care. HCP requirements have remained grey in regard to funding the care of applicable wildlife from the point of admission. The introduction of annual service contracts would provide reassurance to both the HCP participant and wildlife response service. Funding support would help ensure that wildlife response remains operational and available year-round, benefitting both parties. This could also open the door for more collaboration on participant staff training, which has been requested in the past but was not often feasible due to limited resources.

The resources that wildlife response and rehabilitation require need to be acknowledged and allocated within Hawai'i's HCPs. This is the only way to ensure that response services are prepared to fulfill the needs of participants. Supportive funds will be necessary as development (light attraction, collisions, loss of habitat), climate change (Avian Botulism, foraging success, nesting habitats), and other factors continue to threaten native species populations statewide.

The Save Our Shearwaters (SOS) Program was initiated by the Hawai'i Department of Land and Natural Resources/Division of Forestry and Wildlife in 1979 to respond to the annual grounding of

hundreds of light-attracted fledgling shearwaters and petrels. Since initiation, volunteers and residents have collected more than 35,000 downed birds— 90% of which recovered and were released back to the wild. SOS is a federal and state permitted entity that has evolved into a year-round rehabilitation effort for all native species.

It's important to note that the SOS Program would not exist today without the type of funding proposed in this amendment. Kaua'i Island Utility Cooperative (KIUC) has provided the large majority of Program funding since 2005, which allows us to remain operational and responding to native wildlife in need 365 days a year. Developing annual service contracts with additional HCP participants would allow us to diversify our funding sources. This would be more equitable, as the Program has grown to support listed and non-listed species and KIUC's current level of funding provides overhead for both. We have a Memorandum of Agreement with the State Department of Land and Natural Resources and Federal grant funds to support birds admitted from Kaua'i's National Wildlife Refuges but diversifying our funding sources further would lower the financial impact of a service that benefits the island as a whole.

The SOS Program maintains high-quality care for the rehabilitation of Kaua'i's native species in need, from capture to release. HB 46 would help ensure that our indigenous, endemic, and other susceptible wildlife have timely medical support should the need arise, without raising taxes or requiring State funding.

Thank you for the opportunity to provide comment.

Sincerely,



Molly Bache
Program Coordinator
Save Our Shearwaters



Testimony to the Committee Judiciary and Ways and Means
Tuesday April 6, 2021
9:55 AM
VIA Video Conference
Conference Room 211, Hawaii State Capitol
HB 46 HD1

Chair Rhoads, Chair Dela Cruz, Vice Chair Keohokalole, Vice Chair Keith-Agaran, and members of the Committees,

Hawaii Clean Power Alliance (HCPA) **opposes** HB46 HD1, which requires all habitat conservation plans to include an agreement for plan participants to enter into and maintain an annual service contract with a stand-by and response facility available to provide emergency medical and rehabilitation services to native wildlife affected by activities undertaken within the plan area.

Hawaii Clean Power Alliance is a nonprofit alliance organized to advance the development and sustainability of clean energy in Hawaii. Our goal is to support the state's policy goal of 100 percent renewable energy by 2045. We advocate for utility-scale renewable energy, which is critical to meeting the state's clean energy and carbon reduction goals.

We strongly support a low-impact development of renewable resources that protects species but we don't find that this addition adds any direct and specific protections to species, only increase costs (to the ratepayers) while the current regulations are sufficient and adequately address impacts.

Creates Conflict With Current State And Federal Policies And Practices

This measure creates conflicts with current policies and practices at the state and federal level, as well as adds unnecessary cost burdens to ratepayers, without specifically satisfying the statutory requirements of HRS§ 195D-21(b)(2)(C).

- Current statute is not prescriptive to the approach of each HCP; however, this amendment creates mandatory action.

Renewable wind developers must submit applications for a Habitat Conservation Plan (HCP) with "sufficient detail to allow the department to evaluate the impact of the activities on the particular ecosystems, natural communities, or habitat types within the plan area that are the focus of the plan;" to the Board of Land and Natural Resources (BLNR), who must approve that the plan will (b) (1) (A) *The plan will further the purposes of this chapter by protecting, maintaining, restoring, or enhancing identified ecosystems, natural communities, or habitat types upon*



- which endangered, threatened, proposed, or candidate species depend within the area covered by the plan;*
- (B) *The plan will increase the likelihood of recovery of the endangered or threatened species that are the focus of the plan; and*
- (C) *The plan satisfies all the requirements of this chapter.*

Failure Of This Amendment To Increase The Likelihood Of Recovery Of The Endangered Or Threatened Species That Are The Focus Of The Plan

Adding the mandatory and prescribed amendment as proposed, does not provide the BLNR the ability to evaluate each proposed HCP to the purpose and fulfillment of the chapter. Each action and moneys spent must DIRECTLY offset every covered species including injured species and result in a net gain of the species.

- The proposed bill mandates action and funding without considering the unique circumstances as to the recovery of endangered species.
- Injured species are a rare occurrence by wind farms.
- Species are more often injured by non-wind, non-HCP participants such as motor vehicles, buildings, stadium lights, barbed wire, etc.
- Each HCP is subject to intense review by the state's Endangered Species Recover Committee (ESRC), who provides guidance and feedback on the proposed mitigation application and *shall be based on the best available scientific and other reliable data available at the time the plan is approved.*

Conflict With The US Fish And Wildlife Requirements And Approval

An application must also concurrently be submitted and approved by the federal agency US Fish and Wildlife, which also provides for unique HCP requirements for the applicant, without imposing mandatory actions by statute.

- Imposing the prescribed amendment at the state level, may cause conflict at the federal level, and at a minimum, add burden and costs to create, monitor, and report the excessive requirement over the life of the 20-year development, because the HCP will be out of synch with the federal requirements

Conflict With DLNR-DOFAW Protocol

There is already a state prescribed procedure for responding to injured covered species and birds protected by the Migratory Bird Treaty Act (MBTA). The "Downed Wildlife Protocol," prepared by the DLNR Hawaii Division of Forestry and Wildlife (DOFAW), has detailed instructions for responding to an injured covered or MBTA species that is in imminent danger. Per the Downed Wildlife Protocol, a plan participant must immediately contact the DOFAW office who send staff to the site to retrieve the injured animal.

- The decision is made by DOFAW as to where to take the injured animal with consideration of the type of species, the island it is on, (for instance, it might go to a

local veterinarian and not a rehab center). Therefore, the bill mandating an annual service contract with a stand-by and response facility that may not even be utilized or who may not have the expertise is not practical. Funding a facility for "potential use" may prevent the funding of a different facility that is actually used.

- The wind HCP participant relinquishes the animal and subsequent treatment responsibility to the state.
- The deciding and responsible entity (DOFAW) should enter into these annual service contracts if the bill mandates this.
- It is imbalanced to require a wind farm to fund a rehab facility that may never be used.
- Wind developers fund the rehab of the injured animal if it is determined that the facility is at fault with a "fee-for-service" model, approved by this Protocol.

For the reasons above, we request that you defer this measure.

Thank you for the opportunity to testify.

Sincerely,



Frederick Redell, PE

Executive Director

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Testimony to the Committee Judiciary and Ways and Means
Tuesday April 6, 2021
9:55 AM
VIA Video Conference
Conference Room 211, Hawaii State Capitol
HB 46 HD1

Chair Rhoads, Chair Dela Cruz, Vice Chair Keohokalole, Vice Chair Keith-Agaran, and members of the committees:

Tetra Tech **opposes HB46 HD1**, which proposes to require that all habitat conservation plans (HCPs) include an agreement for plan participants to enter into and maintain an annual service contract with a stand-by and response facility available to provide emergency medical and rehabilitation services to native wildlife affected by activities undertaken within the plan area.

Tetra Tech is an international environmental science, planning, and engineering firm with more than thirty years' experience working across the Hawaiian Islands. Tetra Tech assists plan participants with implementing their HCPs in Hawaii and coordinates closely with state and federal regulatory agencies, including the Department of Land and Natural Resources Division of Forestry and Wildlife (DOFAW) in their oversight and administration of rules and procedures associated with the legal operation of the participants' HCPs.

Reasons:

1. DOFAW has a state prescribed procedure for responding to injured native wildlife, the "Downed Wildlife Protocol," which has detailed instructions for responding to an injured covered or Migratory Bird Treaty Act species that is in imminent danger. Per the Downed Wildlife Protocol, all HCP plan participants must immediately contact the DOFAW office, who send staff to the site to retrieve the injured animal. As such, the HCP participant relinquishes the animal and subsequent treatment responsibility to the state. Therefore, it would be more appropriate for the state to enter into these annual service contracts if the state mandates this action.
2. The injuries HB46 HD1 attempts to address are extremely rare occurrences. All wind energy HCPs contain requirements that ensure a participant's appropriate response to these rare events, specifically "fee-for-service" for emergency medical and rehabilitation services.
3. The protocols set forth in DOFAW guidance (Standard Protocol for Holder of a State of Hawai'i Incidental Take License) are more reasonable, equitable, flexible, and

responsive mechanisms to ensure that HCP participants fulfill these obligations and cover the cost of these unlikely events than entering into an annual service contract with a stand-by and response facility, which may be less suited to address the specific nature of the incident than other available facilities.

4. In the review and approval process of HCPs, the Endangered Species Recovery Committee, the Board of Land and Natural Resources, and federal and state regulatory agencies have taken into account the existing DOFAW guidance and include requirements to adhere to the Downed Wildlife Protocol in the participants' incidental take licenses and federal incidental take permits.

In summary, HB46 HD1 specifies a fixed requirement for a rare event that has an existing and appropriately flexible and responsive protocol in place. DOFAW has the regulatory oversight of these HCPs and can adjust recommendations for dealing with injured wildlife in response to the current best available information and what is best for the species outcome. Tetra Tech recommends against approval of this bill because it duplicates an existing and superior oversight and guidance process that is mandated and enforced by the state and federal regulatory wildlife agencies.

Thank you for the opportunity to testify.



April 5, 2021

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

April 6, 2021, 9:55 a.m.

VIA VIDEOCONFERENCE

Conference Room 211

State Capitol

415 South Beretania Street

Re: TESTIMONY IN SUPPORT OF HOUSE BILL 46 House Draft 1 - RELATING TO WILDLIFE.

Aloha Chair Dela Cruz, Chair Rhoads and Members of the Committees,

Please accept these comments submitted by the Center for Biological Diversity (Center) in **support of House Bill 46, House Draft 1**, which would require all habitat conservation plan (HCP) to include an agreement for plan participants to enter into and maintain an annual service contract with a response facility available to provide emergency medical and rehabilitation services to native wildlife affected by activities undertaken within the plan area.

The Center is a non-profit 501(c)(3) membership corporation dedicated to the protection of native, threatened, and endangered species and the habitats they depend on to survive. Through science, policy, and environmental law, the Center is actively involved in endangered, threatened, and native species and habitat protection issues throughout Hawai'i. The Center has more than 88,000 members throughout the United States, including Hawai'i, with a direct interest in ensuring the conservation of our Hawaiian species.

Currently no HCP in the state provides funding for emergency medical and rehabilitation services to indigenous and endemic wildlife species impacted by activities covered by the

permit. Funding support should be provided as a basic measure to prepare for injured wildlife response and to keep resources available year-round.

By including an agreement for plan participants to enter into and maintain an annual service contract with a stand-by and response wildlife facility in all HCPs, our impacted native wildlife and endangered species will have the best chance at survival.

Mahalo for this opportunity to provide testimony in **support of House Bill 46, House Draft 1.**

/s/ Maxx Phillips

Maxx Phillips, Esq.

Hawai'i Director and Staff Attorney

Center for Biological Diversity

1188 Bishop Street, Suite 2412

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(808) 284-0007

MPhillips@biologicaldiversity.org

HB-46-HD-1

Submitted on: 4/1/2021 3:48:44 PM

Testimony for JDC on 4/6/2021 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benjamin S Vizzachero	Individual	Support	No

Comments:

I strongly support this bill. Virtually all endemic Hawaiian species have suffered major declines due to human activities. This bill is essential to prevent further declines because it would guarantee support for the agencies which serve impacted wildlife.

HB-46-HD-1

Submitted on: 4/4/2021 7:14:03 PM

Testimony for JDC on 4/6/2021 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Rustad	Individual	Support	No

Comments:

I strongly support HB46.

I am a concerned citizen who feels strongly about the importance of preserving what remains of the native Hawaiian bird population.

Such preservation is key not only to maintaining our native species themselves, but also to maintaining the quality of life for those of us living on these islands and enjoying the natural world.

I hope the State Legislature agrees as to the criticality and the importance of this effort and will support this bill,

HB-46-HD-1

Submitted on: 4/1/2021 4:35:30 PM

Testimony for JDC on 4/6/2021 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rae Okawa	Individual	Support	No

Comments:

I strongly support this effort as it helps ensure native wildlife care services are available when needed, without putting burden on the Dept. of Land and Natural Resources Division of Forestry and Wildlife's limited budget. Native wildlife care services should be supported by entities that may have a take of those species during the course of their operations.

Mahalo for the opportunity to testify.

HB-46-HD-1

Submitted on: 4/1/2021 5:27:24 PM

Testimony for JDC on 4/6/2021 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Brittingham V	Individual	Support	No

Comments:

I strongly support HB46 as it would strongly benefit a lot of species that are in dire need of attention in order to conserve their species for future generations. This measure would strongly support not only the proactive measures of conserving habitat and research on what the needs of the endangered species are, but also provide a solid reactive measure through wildlife care facilities to give threatened/endangered species a chance to be released and further provide their populations with new individuals if a catastrophe occurs. I think simply put, HB46 would cover all the bases within human control as far as providing as much as possible to species of need in Hawai'i. These species are significant in many ways to Hawai'i and should be prioritized to allow future generations to enjoy the natural beauty of these species for years to come

HB-46-HD-1

Submitted on: 4/2/2021 3:46:37 PM

Testimony for JDC on 4/6/2021 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jacqueline Nelson	Individual	Support	No

Comments:

I am writing in **strong support** of HB46, HD1. It is important that response facilities are provided the proper funding and support in order to care for the associated impacted wildlife. This amendment will help ensure there is consistent, reliable funding for the facilities tasked with wildlife response and that these integral services are available when needed for HCP participants.

LATE



An **AEP** Company

655 W. Broadway, Suite
950 San Diego,
CA 92101

**Testimony to the Committee Judiciary and Ways and Means
Tuesday April 6, 2021
9:55 AM
VIA Video Conference
Conference Room 211, Hawaii State Capitol
HB 46 HD1**

Chair Rhoads, Chair Dela Cruz, Vice Chair Keohokalole, Vice Chair Keith-Agaran, and members of the committees,

AEP Renewables provides the following comments in opposition of HB46 HD1, which requires habitat conservation plans to include an agreement for plan participants to enter into and maintain an annual service contract with a stand-by and response facility available to provide emergency medical and rehabilitation services to native wildlife affected by activities undertaken within the plan area.

AEP Renewables is in support of wind farm habitat conservation plan (HCP) participants paying for emergency medical and rehabilitation services rendered to covered species¹ injured at their facilities. This is a rare occurrence; only one incidence of an injured covered species has been recorded in seven years of operation at the Auwahi Wind farm on Maui. Hence, there are more reasonable and equitable mechanisms to ensure that wind farm HCP participants cover the cost of this very unlikely event than entering into an annual service contract with a stand-by and response facility.

- Wind farm HCP participants are already required to “minimize and mitigate all negative impacts, including without limitation the impact of any authorized incidental take²” related to the wind farm (HRS 195D-21(b)(2)(C)). Wind farm HCP participants spend millions of dollars in minimization and mitigation costs over the life of the project. Mitigation actions must offset every covered species directly and indirectly taken by the facility, including injured species. Requiring wind farm HCP participants to enter into and fund an annual service contract with an emergency medical and rehabilitation facility is unlikely to benefit

¹ Covered species represent those species subject to incidental take authorization in an approved incidental take permit or license

² “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered or threatened species (HRS 195D-2)

an animal injured by wind farm operations due to the rare nature of this type of event.

- Each wind farm HCP must “be designed to result in an overall net gain in the recovery of Hawaii’s threatened and endangered species” (HRS 195D-30). This obligation to covered species represent those species subject to incidental take authorization in an approved incidental take permit or license demonstrate a net gain in recovery of listed species is in addition to the actions taken to minimize and mitigate for the authorized take and provides flexibility to HCP applicants to identify which actions will provide the most benefit. The proposed bill directs funding without considering where it will do the most good for the recovery of endangered and threatened species.

- Current wind farm HCPs require participants to follow a prescribed procedure for responding to injured covered species and birds protected by the Migratory Bird Treaty Act (MBTA). This procedure, the “Downed Wildlife Protocol,” prepared by the Hawaii Division of Forestry and Wildlife (DOFAW), has detailed instructions for responding to an injured covered or MBTA species that is in imminent danger. Per the Downed Wildlife Protocol, a plan participant must immediately contact the DOFAW office to send staff to the site to retrieve the injured animal. In some cases, the DOFAW representative will instruct the HCP participant to deliver the animal to the DOFAW office or a wildlife rehabilitation center. The decision to send the animal to a rehabilitation center and which facility will be used is made by DOFAW. The Downed Wildlife Protocol states that the HCP participant “should only handle injured wildlife if DOFAW staff cannot be contacted or if the animal is in imminent danger.”

- Once the injured animal is collected by DOFAW staff or delivered to a facility under the direction of DOFAW staff, the participant relinquishes the animal and subsequent responsibility for its treatment to the State. While our concern for the harmed species remains, responsibility for its care and treatment stands with the State, who has sole decision-making authority. Any obligation to maintain an annual service contract with a stand-by and response facility should fall to the State of Hawaii Department of Land and Natural Resources to ensure that DOFAW can carry out their responsibilities.

- If the Legislature chooses to fund a certified and permitted response organization, this funding must come under the State’s budget, since the State determines what facilities should be used for injured species. The decision is the responsibility of the State, and the facility selected will depend on the type of animal harmed. Additionally, certification and permitting of these facilities come under the State’s purview.

- The State of Hawaii Department of Land and Natural Resources already has a cost recovery mechanism in place for billing wind farm HCP participants for staff time to track HCP compliance. Costs associated with the care and rehabilitation of a covered or MBTA species injured by wind farm activities should be passed to the HCP participant using the existing, or similar, cost recovery process. The care and rehabilitation services should be charged to the participant on a fee-for-services basis. Wind farm HCP participants already are billed annually for DOFAW staff time administering the HCP program.

- Under existing conditions, a fee-for-service method would compensate the rehabilitation provider in direct correlation to the services provided. An annual contract and funding of a

private standby and response facility to provide emergency medical and rehabilitation services, as proposed in HB46 HD1, may not fund the rehabilitation facility that would actually be providing the emergency medical and rehabilitation service, depending on which facility DOFAW staff decide to use.

- The notion of an annual contract and funding of a private rehabilitation facility by numerous HCP participants could result in overfunding one facility while underfunding other facilities. Participants of HCPs would be required to fund a “potential use” while potentially funding actual incidents that might be caused by actions well outside the purview of the wind farm.
- It is imbalanced to require a wind farm HCP participant to fully mitigate for their authorized incidental take AND contribute to a rehabilitation facility that will potentially use the annual funds primarily to benefit wildlife injured by activities not associated with the wind farm, including wildlife injured by cars, buildings, stadium lights, barbed wire and other activities or infrastructure.

Contrary to testimony provided in previous hearings on this bill, wind farm HCPs require an adequate response plan for any and all “take”, including injured wildlife. As described above, the “Downed Wildlife Protocol” incorporated into current wind farm HCPs, and expected to be included in future HCPs, clearly articulates how participants must respond to injured wildlife.

AEP Renewables recommends that the committee defer this bill because of its duplicity with current protocol as mandated by the state and federal agencies.

However, should the committee decide to pass this HB46 HD1, we offer this amendment:

(b) (2) (G) ~~Include an agreement to~~ **Recognize that the State** shall enter into and maintain an annual service contract agreement with a **certified and permitted** stand-by and response facilities available to provide emergency medical and rehabilitation services to Federal and State listed threatened or endangered and Migratory Bird Treaty Act (MBTA) ~~wildlife affected by activities undertaken within the plan area;~~

AEP Renewables appreciates this opportunity to provide comment on HB46 HD1.

AEP

Renewables is a subsidiary of American Electric Power Company, a major electric utility that serves customers in 11 states and owns the nation’s largest electric transmission system. The parent company provides unparalleled support and energy industry expertise. The AEP Renewables team has proven capabilities in the development, design, construction, and operation of renewable energy infrastructure. This also includes a qualified compliance team for Habitat Conservation Plans to comply with Federal Incidental Take Permits (ITP) and State Incidental Take Licenses (ITL). AEP, along with its partners, operates some of the largest wind farms in the United States with more than 1,300 megawatts of renewable energy generation. AEP Renewables provides energy for more than 340,000 homes while reducing carbon dioxide emissions by more than 3,000,000 tons, equal to removing 600,000 cars off the road. AEP Renewables works with development partners to provide quality and sustainable clean energy projects.

Auwahi Wind, located on the wind-rich Ulupalakua Ranch on the southeast coast of Maui, Hawaii, is a joint venture of AEP Renewables and BP Wind Energy. The 24 megawatt (MW) wind farm was completed in December 2012, bringing Hawaii closer to its goal of increasing its use of renewable energy. Auwahi Wind’s eight turbines generate enough electricity to power approximately 14,500 typical Hawaii homes. The wind power from Auwahi Wind has been sold to Maui Electric Company under a 20-year contract.

LATE

HB-46-HD-1

Submitted on: 4/5/2021 2:44:04 PM

Testimony for JDC on 4/6/2021 9:55:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Madelyn Jacobs	Individual	Support	No

Comments:

I am in strong support of this bill.