

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



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

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**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the House Committees on  
ENERGY & ENVIRONMENTAL PROTECTION  
and  
WATER & LAND**

**Tuesday, February 9, 2016  
10:59 AM  
State Capitol, Conference Room 325**

**In consideration of  
HOUSE BILL 2148  
RELATING TO THE ENVIRONMENT**

House Bill 2148 proposes to remove 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 Department of Land and Natural Resources (Department) strongly supports this 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 the 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

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

**KEKOA KALUHIWA**  
FIRST DEPUTY

**JEFFREY T. PEARSON, P.E.**  
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

and assurances to create, restore, or improve habitats, or maintain currently unoccupied habitats, that species can be reasonably expected to use.

Since 1997, the Department has approved eleven HCPs throughout the State. The approved plans include development projects, such as highway expansion, wind farms, housing and infrastructure development projects, and a solar telescope. Pursuant to the statutory requirement that a HCP must increase the likelihood of recovery of the threatened or endangered species that are the focus of the plan, applicants are currently providing funding for a multitude of successful conservation projects throughout the State including seabird colony protection through fencing and predator control, waterbird protection through wetland habitat improvement and predator control, bat habitat enhancement through forest restoration, native owl research and rehabilitation, and the reestablishment of rare plant populations. The Department is currently processing applications for fourteen 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. The approved agreements have facilitated new establishments of nene populations through the reintroduction of nene to Molokai and parts of Maui. The Department is currently processing additional SHAs with landowners throughout the State.

Safe harbor agreements and HCPs are proving to be invaluable tools in the process of recovering the State's endangered species. 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.



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February 9, 2016

HEARING BEFORE THE HOUSE COMMITTEES ON  
ENERGY AND ENVIRONMENTAL PROTECTION  
and  
WATER AND LAND

TESTIMONY ON HB 2148  
RELATING TO THE ENVIRONMENT  
Room 325  
10:59 AM

Aloha Chairs Lee and Yamane, Vice Chairs Lowen and Cullen, and Members of the Committees:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 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.

**HFB strongly supports HB 2148**, as written, that removes the July 2017 sunset date to allow continued availability of safe harbor agreements (SHA), habitat conservation plans (HCP), and incidental take licenses under HRS Chapter 195D. Continuation of these programs is essential because they provide a benefit to the hundreds of endangered species in Hawaii, many of which are on private lands, through conservation agreements with landowners, while allowing important activities such as food production and renewable energy projects to take place within the state. Some of these projects are critical to provide alternative energy for Hawaii, and they also provide a means for some of our ranchers and farmers to stay viable.

Landowners, including farmers and ranchers, participate in these extremely expensive and time consuming programs to ensure that their activities don't harm the species. The programs provide proactive solutions that can protect our threatened and endangered species while allowing for acceptable resource use. As articulated in Hawaii Revised Statute 195D-23(f), **the execution of these plans is "deemed to be a public purpose and in the public interest, and for the general welfare of the State."** Landowners who enter into these agreements recognize that their normal activities may inadvertently disturb or harm the species. SHA and HCP programs provide the only mechanism that will allow for a *potential* "take" of an endangered species incidental to an otherwise lawful activity, such as crop farming, or ranching, or operating a wind power facility.

Under Hawaii's Endangered Species law, HRS 195D, incidental take licenses are *only* obtainable after a landowner agrees to an HCP that includes specified measures for avoidance, minimization, mitigation, monitoring, and net recovery benefit to the affected species. Development of each of these measures within the HCP involves working collaboratively with not only DLNR, but also with the U.S. Fish and Wildlife Service, the Endangered Species Recovery Committee, the Board of Land and Natural Resources, the Attorney General, and the public (from whom input is solicited through a public hearing and at least 60 days for review and comment). To approve, the Board must use the best scientific and other reliable data to determine that the activities covered by the plan will be environmentally beneficial.

A plan can only be approved if it will further the purposes of endangered species law by protecting, maintaining, restoring, or enhancing ecosystems, natural communities, or habitats. Furthermore, the plan must increase the likelihood of recovery of the species.

DLNR advises that the development process takes a minimum of one year; however, most, if not all, HCPs take far longer so that the best program can be implemented and progress can be tracked via on-going evaluations.

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 agricultural lands a suitable habitat. However, at a time when food and energy sustainability is a priority for Hawaii, we also need to protect the viability of our producers by allowing them access to programs beneficial both to them and the endangered species.

Thank you very much for the opportunity to support this measure that allows these important programs to continue to be available.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 07, 2016 8:36 PM  
**To:** EEPtestimony  
**Cc:** dale@hicattle.org  
**Subject:** \*Submitted testimony for HB2148 on Feb 9, 2016 10:59AM\*

**HB2148**

Submitted on: 2/7/2016

Testimony for EEP/WAL on Feb 9, 2016 10:59AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dale Sandlin	Hawaii Cattlemens Council	Support	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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# SIERRA CLUB OF HAWAII

## MĀLAMA I KA HONUA. *Cherish the Earth.*

HOUSE COMMITTEE ENERGY AND ENVIRONMENTAL PROTECTION

HOUSE COMMITTEE ON WATER AND LAND

Tuesday February 9, 2016 10:59AM Room 229

**In Opposition** **HB2148** Relating to the Environment

**LATE**

Aloha Chairs Lee and Yamane, and members of the House EEP and WAL Committees,

On behalf of our 12,000 members and supporters, the Sierra Club of Hawai'i **strongly opposes** HB2148 to remove 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 law was passed in 1997 to provide an incentive to private landowners to protect a number of species that may exist on their property. In return, the private landowner would be granted the ability to destroy other endangered species.

Protection of Hawai'i's imperiled native plants and animals is of critical importance. Our state is well-known as the endangered species capitol of the world. With hundreds of plants and animals listed as endangered or threatened, where are more endangered species per square mile on these islands than any other place on the planet.

With the importance of this law in mind, we suggest keeping the current sunset provision in place while requesting the Department of Land and Natural Resources work with stakeholders to measure the effectiveness of the current program. DLNR's current testimony is lacking. What number of species have been eliminated under incidental take licenses? How many endangered species have "come back" under a safe harbor agreement? What improvements could be made to the law to ensure a greater number of endangered species are protected?

The sunset provision lasts until next year, so there is time to allow DLNR to gauge the effectiveness of the current program and report back to the Legislature. As it is now, there does not appear to sufficient evidence to support continuing with safe harbor agreements.

Thank you for the opportunity to testify on this measure.

Mahalo,

Martha Townsend  
Director

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 08, 2016 9:18 PM  
**To:** EEPtestimony  
**Cc:** gottlieb@hawaii.rr.com  
**Subject:** \*Submitted testimony for HB2148 on Feb 9, 2016 10:59AM\*

**LATE**

**HB2148**

Submitted on: 2/8/2016

Testimony for EEP/WAL on Feb 9, 2016 10:59AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Gottlieb	Ponoholo Ranch Limited	Support	No

**Comments:**

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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February 9, 2016

**LATE**

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

Representative Ryan I. Yamane, Chair  
Representative Ty J.K. Cullen, Vice Chair  
House Committee on Water & Land

**Comments in Strong Support of HB 2148 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/WAL Hearing: Tuesday, February 9, 2016, 10:59 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 HB 2148**, 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

**HB 2148.** 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 HB 2148, 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 HB 2148**, and respectfully urges your favorable consideration.

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