

STATE OF HAWAII
DEPARTMENT OF HEALTH
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**WRITTEN
TESTIMONY
ONLY**

**Testimony in SUPPORT of HB2193 HD1
RELATING TO WILDLIFE.**

SENATOR MIKE GABBARD, CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Hearing Date: March 11, 2020

Room Number: 224

1 **Fiscal Implications:** N/A.

2 **Department Testimony:** The Department of Health supports the intent of HB2193 HD1, but
3 defers to the Department of Land and Natural Resources on details of implementation.

4 Hawaii's ecosystem is under constant threat by natural and manmade causes ranging from
5 infrastructure strikes and chemical spills to severe weather and sea level rise. In addition to
6 preserving and restoring native species populations that contribute to Hawaii's uniqueness,
7 maintaining the balance of wildlife and their habitat fosters a healthy environment and may
8 promote resilience in the face of climate change-related human health adaptation, e.g. control of
9 vectors.

10 Thank you for the opportunity to testify.

11

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA
FIRST DEPUTY

KALEO L. 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 Committee on
AGRICULTURE and ENVIRONMENT**

**Wednesday, March 11, 2020
1:15 PM
State Capitol, Conference Room 224**

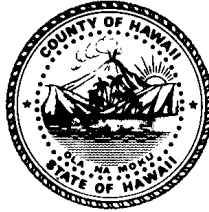
**In consideration of
HOUSE BILL 2193, HOUSE DRAFT 1
RELATING TO WILDLIFE**

House Bill 2193, 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 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 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 stand-by and response facility capable of providing emergency medical and rehabilitation services could help to fulfill that requirement in the event of injured wildlife.

Thank you for the opportunity to comment on this measure.

County of Hawai'i
Council District 9 -
North and South Kohala



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Chair: Committee on Agriculture,
Water, Energy, & Environmental
Management

Vice Chair: Committee on Finance

HERBERT M. "TIM" RICHARDS, III
HAWAI'I COUNTY COUNCIL
District 9

25 Aupuni Street, Ste. 1402, Hilo, Hawai'i 96720

March 9, 2020

Committee on Agriculture and Environment
Senator Mike Gabbard, Chair
Senator Russell E. Ruderman, Vice Chair
Submission via online testimony

RE: Support of HB 2193, HD1 (HSCR695-20)
Hearing Date/Time: March 11, 2020 at 1:15 p.m.

Dear Representatives:

As the Chair of the Committee on Agriculture, Water, Energy, and Environmental Management and Vice Chair for the Committee on Finance for the Hawai'i County Council, I thank you for the opportunity to submit **testimony in SUPPORT of HB 2193, HD1 (HSCR695-20)**. Providing emergency medical and rehabilitation services to native wildlife, affected by activities within the conservation plan areas, are critical in protecting our native wildlife and its future existence. Therefore, requiring all habitat conservation plans to include an agreement to secure an annual service contract with a stand-by and response wildlife facility is critical.

Please feel free to contact me should you need to discuss my position and knowledge of this matter further. Thank you for your attention and consideration.

Sincerely,

HERBERT M. "TIM" RICHARDS, III
Hawai'i County Council, District 9

xc: Aaron S. Y. Chung, Chair – Hawai'i County Council



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

**TESTIMONY OF LINDA ELLIOTT,
PRESIDENT AND CENTER DIRECTOR
HAWAI'I WILDLIFE CENTER**

**PRESENTED TO THE
COMMITTEE ON AGRICULTURE AND ENVIRONMENT**

DATE: Wednesday, March 11, 2020

TIME: 1:15 p.m.

**PLACE: Conference Room 224
State Capitol, 415 South Beretania Street**

TESTIMONY IN SUPPORT OF HB 2193, HD1 Relating to Wildlife

To the honorable Senator Mike Gabbard, Chair, Senator Russell E. Ruderman, Vice Chair, and members of the Committee:

I am submitting testimony in **strong support** of HB 2193. Thank you for the opportunity to provide comment.

HB 2193 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 already being paid by entities that are required to have a Habitat Conservation Plan, this does not raise taxes or require State funding.

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 1) outlines the procedures and protocols that need to be followed should injured wildlife be found and 2) 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 measure to prepare for injured wildlife response and to keep resources available, instead of being made available only when a response event is needed/occurs.

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, 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 mitigation 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 are no statutory mandate requiring action and follow through.

— 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 much additional work for the agencies.

— 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 animal care since September 2012, and have already received nearly 1,000 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 2193 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.

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



Testimony to the Committee on Agriculture and Environment
Wednesday, March 11, 2020
1:15 PM
Conference Room 224, Hawaii State Capitol
HB 2193 HD1

Chair Gabbard, Vice Chair Ruderman, and members of the committee,

Hawaii Clean Power Alliance (HCPA) offers **comments** on HB 2193 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.

The Hawaii Clean Power Alliance is a nonprofit association 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. Our members are utility-scale independent power producers (IPP), which are critical to meeting the state's clean energy goals. Our comments relate to HCP applicants in the renewable energy industry.

Our members already adhere to requirements imposed by state and federal agencies that mandate a habitat conservation plan (HCP), setting aside funding and provisions for emergency medical and rehabilitation services for species injured onsite. The "Downed Wildlife Protocol," prepared by the Hawaii Division of Fish and Wildlife (DOFAW), sets forth detailed and specific procedures for an injured species and requires that DOFAW be called immediately to retrieve the injured animal. Once DOFAW retrieves the animal they alone decide upon the course of action. It remains DOFAW's responsibility and that of the rehab center or veterinarian to which the animal is taken. The funding is already in place, and service providers are compensated for services rendered by the HCP holder if it is determined that it is their obligation.

This bill creates a redundant and unnecessary layer to a system that is already in place and working well. Given that there are multiple wildlife treatment centers which specialize in different species and geographic locations and they are permitted by and chosen by the state, it is not clear how each HCP applicant would be responsible for multiple contracts which they may not even utilize, and especially since instances of downed species are extremely rare. It also contradicts the Downed Wildlife Protocol roles and responsibilities, muddies the path to treatment, adding additional layers and confusion that could delay treatment rather than expedite it.

We ask the committee to defer this bill.

Thank you for the opportunity to testify.





Testimony to the Committee on Agriculture and Environment

**Wednesday, March 11, 2020
1:15 PM
Conference Room 224, Hawaii State Capitol
HB 2193 HD1**

Chair Gabbard, Vice Chair Ruderman, and members of the committee,

AEP Renewables provides the following comments on HB2193 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 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

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)

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 HB2193 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.

Should the committee decide to pass this HB2193 HD1, we offer this amendment:

SECTION 1

(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 ~~native~~ Federal and State listed threatened or endangered and Migratory Bird Treaty Act (MBTA) species ~~wildlife affected by activities undertaken within the plan area;~~

AEP Renewables appreciates this opportunity to provide comment on HB2193 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.

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

HB-2193-HD-1

Submitted on: 3/8/2020 12:05:50 PM

Testimony for AEN on 3/11/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan P. Armstrong	Individual	Support	No

Comments:

Aloha Chair Gabbard, Vice Chair Ruderman, and Esteemed Members of the Committee,

I write in support of House Bill 2193, House Draft 1.

When we look to strengthen conservation law, we make our most sustainable changes when we seek win-win solutions. This measure will help both the parties to habitat conservation plans, and those wildlife that are meant to be protected from take as the purpose and intent of existing habitat conservation plan law.

In summary, please support HB2193 HD1.

Thank you for your consideration.

Best,
Dylan P. Armstrong

HB-2193-HD-1

Submitted on: 3/8/2020 7:49:21 PM

Testimony for AEN on 3/11/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cheri Johnston	Individual	Support	No

Comments:

I would like to submit my strong support for the funding of the Hawai'i Wildlife Center. The emergency medical services and rehabilitation services they provide for our native species is exemplary.

Since moving to the Big Island 4 years ago, I have been involved with the center as a volunteer. I initially enjoyed being a part of the center due to my love for wildlife. I became more vested when I realized how committed they are to their patients and how they are the only entity that provides their service for hundreds of miles. Their medical services and rehabilitation programs are vitally important to the survival of our native species.

I have also been a part of fund-raising efforts for the center and realize how very challenging it is to acquire the funds necessary for them to continue to operate a quality facility and to continue their outreach and educational programs. In the 4 years I have known them, their excellence has never waived, even with their non-profit financial challenges. As an Hawai'i taxpayer, the Wildlife Center is the type of program I appreciate, and would expect, my taxes to support.

HB-2193-HD-1

Submitted on: 3/9/2020 8:23:49 AM

Testimony for AEN on 3/11/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
peter L Hendricks	Individual	Support	No

Comments:

HB2193 helps to support the necessary process of injured native wildlife response in Hawaii.

HB-2193-HD-1

Submitted on: 3/9/2020 9:39:06 AM

Testimony for AEN on 3/11/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dwamato	Individual	Support	No

Comments:

HB-2193-HD-1

Submitted on: 3/10/2020 9:55:57 AM

Testimony for AEN on 3/11/2020 1:15:00 PM

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

Comments:

I STRONGLY SUPPORT HB 2193.

Habitat conservation plans are critical to preserving the way of life we value in Hawaii. Many species are already endangered and coexistence with humans has increased the magnitude of risk. Establishing and supporting a proper response mechanism for emergency treatment as well as rehabilitation not only benefits our native wildlife, but also benefits our communities and state in the present and the future.

The work the Hawaii Wildlife Center has done over its nearly 8 years of existence clearly demonstrates the need for this type of service, namely, treatment and rehabilitation, and that they possess the required professional expertise, protocols and facility to get the job done. While HWC has accomplished much in a short time, the need for its services has continued to grow over that time. The services HWC can provide are critically important and it is time for the stable funding that a service contract would provide. Additionally, since such funding would be included in fees already paid by those currently required to have Habitat Conservation Plans, this action will not require additional state funding.

HB-2193-HD-1

Submitted on: 3/10/2020 12:08:29 PM

Testimony for AEN on 3/11/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline A Garrett	Testifying for UH (retired)	Support	No

Comments:

In 2019, various scientific studies reported that the world's bird population had declined by an approximately 30%. In North America alone this amounts to an estimated 3 billion birds. Hawai'i is too often cited as the extinction capitol of the world, referring to the loss of dozens of bird species unique to these islands. Worldwide and locally these losses are attributed to human impacts.

One inspiring and unique human enterprise striving to mitigate these losses is the work of the HAWAII WILDLIFE CENTER in Kapaau on the island of Hawai'i. This professionally designed and managed hospital, rehabilitation, and education center provides both a resource and model for the protection of Hawaii's native birds.

I strongly support and urge your favorable consideration of the Hawaii Wildlife Center's essential efforts.

Thank you, Caroline Garrett, Volcano Hawai'i

HB-2193-HD-1

Submitted on: 3/11/2020 7:51:59 AM

Testimony for AEN on 3/11/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
David Smith	Individual	Oppose	No

Comments:

Unnecessarily imposes regulations on the renewable energy industry. This is not a problem right now, and does not need legislation to "fix" it.