



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

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
LUIS P. SALAVERIA
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON WAYS AND MEANS

Tuesday, March 1, 2016
1:30 p.m.
State Capitol, Conference Room 211

in consideration of
SB 2906

RELATING TO SECTION 13 OF ACT 380, SESSION LAWS OF HAWAII 1997.

Chair Tokuda, Vice Chair Dela Cruz, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports with amendments SB 2906, which removes the sunset date on the use of new safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the State's threatened and endangered species.

Five existing wind energy facilities in Hawaii currently utilize habitat conservation plans and incidental take licenses to allow for the legal taking of protected wildlife species during normal facility operations, while providing a mechanism to help conserve the impacted species. Additional wind farms currently being developed in Hawaii may also be pursuing these tools.¹ Providing for the continued use of these tools could support the development of new renewable energy facilities. However, in order to provide for continued balance of technical, economic, environmental and cultural considerations² in the development of new renewable energy facilities, we recommend amending this measure to provide for an extension of the sunset date instead of its deletion.

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

² This is one of the State of Hawaii's energy policy directives; reference: <http://energy.hawaii.gov/energypolicy>.

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

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

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Tuesday, March 01, 2016
1:30 PM
State Capitol, Conference Room 211**

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

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

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

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

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

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

Pursuant to Chapter 194D, Hawaii Revised Statutes, the Department may only issue a temporary ITL as a part of a HCP after consultation with the Endangered Species Recovery Committee (ESRC), provided, among other details, that:

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

The approval process to receive a temporary ITL from the Department is a very rigorous process, requiring a thorough review of the take estimates and the HCP by the ESRC – comprised of dedicated scientists/biologists from the State, federal, and private sectors – in concurrence with a public review and comment period in order to assure the science behind the analysis and assessments are valid, based on the most current scientific methods available, and the plan is in full compliance with state and federal law. The process normally takes over two years to pass through the ESRC to be recommended to the Department for approval.

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

Since 1997, the Department has also approved six SHAs with private landowners. A SHA provides private landowners the opportunity to contribute some of their private holdings to endangered species recovery efforts without putting them at risk of future infractions of the endangered species laws, as the recovering species thrive in the new habitats provided on these private lands. These approved agreements have facilitated 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.

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

endangered species law by removing the sunset date on the approval of new HCPs, SHAs, and ITLs.

The Department appreciates the opportunity to provide these comments.



February 26, 2016

Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair
Committee on Ways and Means

Strong Support of SB 2906 Relating to Section 13 of Act 380, Session Laws of Hawaii 1997 – Endangered Species. (Removes the sunset date on the use of new safe harbor agreements, habitat conservation plans, and incidental take licenses as recovery options for conserving and protecting the State's threatened and endangered species.)

WAM Hearing: Tuesday, March 1, 2016, 1:30 p.m., Conf. Rm. 211

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

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

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

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

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

According to DLNR, in 1997, the Legislature expanded recovery options in the State Endangered Species Act (State ESA) by establishing a process for the preparation and implementation of habitat conservation plans and safe harbor agreements, while providing for additional incentives to private landowners to conserve endangered species. In addition, the Legislature inserted a five-year, sunset date (July 1, 2002) for the approval of habitat conservation plans and safe harbor agreements and issuance of incidental take licenses. Subsequently, Act 145 of the 2012 Regular Session extended the sunset provision through June 30, 2017.

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

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

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

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

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