



UNIVERSITY OF HAWAI'I SYSTEM

TESTIMONY

SB 2357
RELATING TO SECTION 13 OF ACT 380, SESSION LAWS OF Hawai'i 1997

Testimony Presented Before the
Senate Committee on Judiciary and Hawaiian Affairs

February 23, 2006

by

John T. Harrison, Environmental Center
Cliff Morden, Botany
Kirsten Silvius, Environmental Center
University of Hawai'i at Mānoa

SB 2357
RELATING TO SECTION 13 OF ACT 380, SESSION LAWS OF HAWAI'I 1997

Senate Committee on Judiciary and Hawaiian Affairs

Public Hearing – February 23, 2006
9:00 A.M., State Capitol, Room 229

By

John T. Harrison, Environmental Center
Cliff Morden, Botany
Kirsten Silvius, Environmental Center

SB 2357 removes the sunset provision of Section 13 of Act 380, Session Laws of 1997, as amended by Section 1, Act 3 SLH 2001. This effectively allows new Safe Harbor Agreements (SHA) and Habitat Conservation Plans (HCP) to continue being approved and issued after July 1, 2007.

As members of the Hawai'i Endangered Species Recovery Committee, we have participated in the preparation of all of the HCP and SHA agreements currently in place in Hawai'i, as well as those currently in preparation. We therefore can personally attest to the integrity of the theory and practice of endangered species management intended and achieved by these instruments. As long as there remain species needing the protection of the Endangered Species Act, the management tools afforded by the HCP and SHA processes will be necessary, as no other legal mechanism exists which will allow for incidental take as a result of intentional human interactions with endangered species.

To assist the committee's deliberations, Dr. Silvius has assembled the attached fact sheet for HCP's and SHA's, which sheds additional light on the processes, as well as offering both industry and scientific perspectives.

Thank you for the opportunity to testify, and we will be pleased to answer any questions the committee may have.

Fact Sheet: Habitat Conservation Plans and Safe Harbor Agreements

Prepared by Dr. Kirsten Silvius

UH Environmental Center

HCPs

1. Established in 1982 at federal level as amendment to ESA, modified in 1994 to give more certainty to permittee through no-surprises policy, codified in 1998 with changes to satisfy scientific demand for adaptive management—allowing changes in the plans should the status of the species change based on changed, ecologically predictable circumstances. This makes it a strong system that addresses the concerns of both scientists and developers. As a result, “habitat conservation plans show promise as an effective means for resolving conflicts between the US Endangered Species Act and the legitimate use of natural resources” (Wilhere 2002)

2. Many HCPs have been done on mainland, so lots of experience. Multiple scientific reviews and evaluations of those done, both based on case studies (Noss et al. 1997, Hood 1998) and on systematic statistical analysis of a large subset (Kareiva et al. 1998, Harding et al. 2001). This review process by independent scientists leads to continuous improvement in the system, and Hawaii has benefited from these experiences. Nationwide, 443 HCPs and 705 take permits have been approved as of January 2006 (http://ecos.fws.gov/conserv_plans/servlet/gov.doi.hcp.servlets.PlanReport)

3. In Hawaii three HCPs have been approved (HCP for red ilima *Abutilon menziesii* at Kapolei, HCP for Hawaiian Stilt at Cyanotech, and HCP for Hawaiian hoary bat, Nene, Hawaiian or dark-rumped petrel, and Newell’s shearwater). One programmatic HCP is under development (Programmatic HCP for endangered and threatened seabirds on Kauai). An informal review of the content and development process of these HCPs (K. Silvius pers. comm.) indicates that HCP system in Hawaii is strong. Published reviews of the HCP system identify scientific oversight during development as one of the keys to success of an HCP, and Hawaii satisfies this criterion due to the strong involvement of the ESRC in the development of these plans, the presence of scientists and species experts on this committee, and the strong emphasis placed on monitoring.

4. Because HCPs require a strong monitoring component, they are a potentially key source of ecological information for Hawaii’s resource managers. For example, the Cyanotech HCP has already provided solid information on reproductive rates, life history, mortality and population trends in Hawaiian stilts, information that would not otherwise have been available.

5. After doing their own analysis, the National Association of Home Builders highly endorses the HCP system. On the mainland, many HCPs have been implemented by real estate developers or commercial forest management, two economic sectors that may become important users of HCPs in Hawaii in the future.

“Habitat Conservation Plans are among the few options available for proactive species conservation efforts that also give builders the ability and incentive to plan for our future housing needs. The HCP program is smart policy that treats property owners as cooperative partners, not enemies, in this environmental effort” (Bobby Rayburn, president NAHB)

Published scientific assessments of the HCP process

Harding, E. K. et al. 2001. The scientific foundation of Habitat Conservation Plans: a quantitative assessment. *Conservation Biology* 15(2): 488-500

Wilhere, G. F. 2001. Adaptive management in Habitat Conservation Plans. *Conservation Biology* 16(1): 20-29.

Bingham, B. B. and B. R. Noon. 1997. Mitigation of habitat “take”: application to habitat conservation planning. *Conservation Biology* 11(1): 127-139

Hood, L. C. 1998. Frayed safety nets: conservation planning under the Endangered Species Act. *Defenders of Wildlife*, Washington D.C.

Kareiva, P. S. et al. 1998. Using science in habitat conservation plans. National Center for Ecological Analysis and Synthesis, Santa Barbara, California, and American Institute of Biological Sciences, Washington, D.C.

Noss, R. F., M. A. O’Connell, and D. D. Murphy. 1997. The science of conservation planning: habitat conservation under the Endangered Species Act. Island Press, Washington D.C.

Kaiser, J. 1997. When a habitat is not a home. *Science* 276: 1636-1638

Safe Harbor Agreements

I’ve only found one scientific review of SHAs:

Wilcove, D. S. and J. Lee. 2004. Using economic and regulatory incentives to restore endangered species: lessons learned from three new programs. *Conservation Biology* 18(3): 639-643.

The authors say the following: Based on “the number of participating landowners, the number of species targeted for assistance, and the cumulative acreage of enrolled land,” safe harbor programs “have been remarkably successful.” In terms of the reasons landowners like the program, the authors say “technical guidance appears to be more important than either regulatory relief or financial assistance in securing the cooperation of some landowners”, although all three factors are important.

I have found no assessments of the quality of the science used in SHAs, maybe because HCPs are mandatory, while SHAs are voluntary, so the burden of proof for authorities is much higher.

Interestingly, Hawaii has really made use of this system, and a disproportionate number of the national SHAs come from Hawaii. Thirty-nine have been approved nationwide as of Jan 25 2006; of these five are in Hawaii. Many are programmatic SHAs, so that each agreement covers many landowners, species and acres—e.g., in 2002 there were 189 landowners, 2 million acres, and 21 endangered species covered by SHAs. The acreage under SHAs in Hawaii is much higher than under HCPs.

1. Reintroduction of Nene to Puu O'Hoku Ranch, Molokai. Issued: September 4, 2001. Covers 735 acres.
2. SHA and Habitat Management Plan for Koloa (Hawaiian Duck) and Nene (Hawaiian Goose) on Umikoa Ranch, Island of Hawaii. Issued: December 5, 2001. Covers 2000 acres.
3. Programmatic SHA for the Nene on the Island of Molokai, Hawaii. Issued: April 7, 2003. This is the first "programmatic" SHA in the State, such that DLNR Division of Forestry and Wildlife (DOFAW) is the permittee and individual landowners ("Cooperators") enroll through Cooperative Agreements with DOFAW, and are covered under DOFAW's Agreement and License. Landowners can voluntarily enroll by signing a Cooperative Agreement with the State. There are no landowners enrolled under this agreement. Potentially covers 128,830 acres.
4. SHA for the Introduction of the Nene to Piiholo Ranch, Maui. Approved by the Board of Land and Natural Resources (BLNR) May 24, 2004, approval by the United States Fish and Wildlife Service (FWS) pending. Covers 773 acres.
5. Chevron SHA. Approved September 23 2004. Chevron Hawai'i Refinery at James Campbell Industrial Park. Kapolei. Covers 248 acres; management is for Hawaiian Coot and Hawaiian Stilt.