SB 1643
RELATING TO CONSERVATION OF THREATENED AND ENDANGERED SPECIES

Senate Committee on Ecology and Environmental Protection

Public Hearing - February 10, 1995
1:00 P.M., Room 305 SOT

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SB 1643 would convey to the department of land and natural resources (DLNR) authority to permit incidental taking of threatened or endangered species.

Our statement on this measure does not constitute an institutional position of the University of Hawaii.

As in the past, we remain strongly opposed to the intent of this measure. Listing of a species as threatened or endangered constitutes a measure of extremity, of last resort. Historically, the listing process has been applied with extraordinary deliberation and conservatism, to the point that it has taken lawsuits to force agencies to list species. Thus, the chances that an incidental taking will not "appreciably reduce the likelihood of survival and recovery of the species in the wild" are remote.

Apart from ecological misgivings, we also question the timing of this initiative. Clearly, an incidental take provision has been striven for by the DLNR for several years, but with a budget deficit and staff cutbacks, how can the department expect to devote the serious attention to scrutiny that such a complex and crucial issue requires? When dealing with extinction, the stakes are too high to sanction slips through administrative cracks.

There is no question but that the political stakes are high also, given the unprecedented concessions included in this proposed measure, such as citizens suits and an additional trigger under Chapter 343. However, we suggest that additional protections need to be included as well. For instance, the measure calls for the
applicant to submit a conservation plan, including mitigation and funding provisions. If a circumstance is sufficiently important to justify a taking of an endangered species, the organism must have a concomitantly high value. Adequate mitigation and recovery programs are both extremely long-term and highly expensive propositions, as demonstrated by the Alala experience. Few private developments and no government administrations operate on time scales of generations, yet these are the temporal frameworks of ecological recovery. We suggest that any mitigation plan be subject to scientific peer review, and that a bond be posted to ensure adequate and continuous funding of any proposed mitigation as a condition of permitting. We also suggest that the measure include a provision that the permit will be non-discretionarily revoked if any or all terms are not fully carried out. In addition, the measure should embody a presumption against approval, specifying that the burden of proof of ultimate freedom from harm lies with the applicant.

We also raise the question of discretionary objectivity. We envision not infrequent instances when the applicant for an IT permit would be the DLNR, in which case there exists legitimate question as to the objectivity of the approval process. How will this potential conflict of interest be resolved?

Ultimately, the richness and diversity of the Hawaiian ecosystem is a state and national heritage. We cannot envision with certainty any way to protect the proposed permit process from political influence, nor do we know how reliably to put a price on the figurative head of an organism. Particularly in Hawaii, we are dealing with species in desperate straits, species with total remaining populations in the tens and hundreds. As we have argued previously, the critical nature of Hawaii’s situation amply justifies the greater stringency of Hawaii’s endangered species protections. Passage of this measure would constitute a major step towards the emasculation of these protections.