
A BILL FOR AN ACT

RELATING TO RECOVERY OF INDIGENOUS WILDLIFE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 195D-21, Hawaii Revised Statutes, is
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) The department may enter into a planning process with
4 any landowner for the purpose of preparing and implementing a
5 habitat conservation plan. An agreement may include multiple
6 landowners. Applications to enter into a planning process shall
7 identify:

8 (1) The geographic area encompassed by the plan;
9 (2) The ecosystems, natural communities, or habitat types
10 within the plan area that are the focus of the plan;

11 (3) The endangered, threatened, proposed, and candidate
12 species known or reasonably expected to occur in the
13 ecosystems, natural communities, or habitat types in
14 the plan area;

15 (4) The measures or actions to be undertaken to respond to
16 individuals of the candidate species affected by take;



1 [~~4~~] (5) The measures or actions to be undertaken to
2 protect, maintain, restore, or enhance those
3 ecosystems, natural communities, or habitat types
4 within the plan area;

5 [~~5~~] (6) A schedule for implementation of the proposed
6 measures and actions; and

7 [~~6~~] (7) An adequate funding source to ensure that the
8 proposed measures and actions are undertaken in
9 accordance with the schedule.

10 After a habitat conservation plan is prepared, the board shall
11 notify the public of the proposed habitat conservation plan
12 through the periodic bulletin of the office of environmental
13 quality control and make the proposed plan and the application
14 available for public review and comment not less than sixty days
15 prior to approval. The notice shall include, but not be limited
16 to, identification of the area encompassed by the plan, the
17 proposed activity, and the ecosystems, natural communities, and
18 habitat types within the plan area. The notice shall solicit
19 public input and relevant data.

20 (b) (1) Except as otherwise provided by law, the board,
21 upon recommendation from the department, in



1 cooperation with other state, federal, county, or
2 private organizations and landowners, after a public
3 hearing on the island affected, and upon an
4 affirmative vote of not less than two-thirds of its
5 authorized membership, may enter into a habitat
6 conservation plan, if it determines that:

7 (A) The plan will further the purposes of this
8 chapter by protecting, maintaining, restoring, or
9 enhancing identified ecosystems, natural
10 communities, or habitat types upon which
11 endangered, threatened, proposed, or candidate
12 species depend within the area covered by the
13 plan;

14 (B) The plan will increase the likelihood of recovery
15 of the endangered or threatened species that are
16 the focus of the plan; and

17 (C) The plan satisfies all the requirements of this
18 chapter.

19 [~~In the event~~] If the board votes to enter into a
20 habitat conservation plan for which the majority of
21 the endangered species recovery committee recommended



1 disapproval, the board [~~may~~] shall not enter into the
2 habitat conservation plan unless the plan is approved
3 by a two-thirds majority vote of both houses of the
4 legislature. Habitat conservation plans may allow
5 conservation rental agreements, habitat banking, and
6 direct payments. Any habitat conservation plan
7 approved pursuant to this section shall be based on
8 the best available scientific and other reliable data
9 available at the time the plan is approved.

10 (2) Each habitat conservation plan shall:

11 (A) Identify the geographic area encompassed by the
12 plan; the ecosystems, natural communities, or
13 habitat types within the plan area that are the
14 focus of the plan; and the endangered,
15 threatened, proposed, and candidate species known
16 or reasonably expected to be present in those
17 ecosystems, natural communities, or habitat types
18 in the plan area;

19 (B) Describe the activities contemplated to be
20 undertaken within the plan area with sufficient
21 detail to allow the department to evaluate the



1 impact of the activities on the particular
2 ecosystems, natural communities, or habitat types
3 within the plan area that are the focus of the
4 plan;

5 (C) Identify [~~the~~]:

6 (i) The steps that will be taken to minimize and
7 mitigate all negative impacts, including
8 without limitation the impact of any
9 authorized incidental take, with
10 consideration of the full range of the
11 species on the island so that cumulative
12 impacts associated with the take can be
13 adequately assessed;

14 (ii) The steps to work with a permitted entity or
15 entities to respond to any of the candidate
16 species in the area affected by authorized
17 incidental take; and [~~the~~]

18 (iii) The funding that will be available to
19 implement those steps;

20 (D) Identify those measures or actions to be
21 undertaken to protect, maintain, restore, or



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1 enhance the ecosystems, natural communities, or
2 habitat types within the plan area; a schedule
3 for implementation of the measures or actions;
4 and an adequate funding source to ensure that the
5 actions or measures, including monitoring, are
6 undertaken in accordance with the schedule;

7 (E) Be consistent with the goals and objectives of
8 any approved recovery plan for any endangered
9 species or threatened species known or reasonably
10 expected to occur in the ecosystems, natural
11 communities, or habitat types in the plan area;

12 (F) Provide reasonable certainty that the ecosystems,
13 natural communities, or habitat types will be
14 maintained in the plan area, throughout the life
15 of the plan, in sufficient quality, distribution,
16 and extent to support within the plan area those
17 species typically associated with the ecosystems,
18 natural communities, or habitat types, including
19 any endangered, threatened, proposed, and
20 candidate species known or reasonably expected to
21 be present in the ecosystems, natural



1 communities, or habitat types within the plan
2 area;

3 (G) Contain objective, measurable goals, the
4 achievement of which will contribute
5 significantly to the protection, maintenance,
6 restoration, or enhancement of the ecosystems,
7 natural communities, or habitat types; time
8 frames within which the goals are to be achieved;
9 provisions for monitoring (such as field sampling
10 techniques), including periodic monitoring by
11 representatives of the department or the
12 endangered species recovery committee, or both;
13 and provisions for evaluating progress in
14 achieving the goals quantitatively and
15 qualitatively; and

16 (H) Provide for an adaptive management strategy that
17 specifies the actions to be taken periodically if
18 the plan is not achieving its goals."

19 SECTION 2. Section 195D-22, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:



1 "(b) A safe harbor agreement may authorize the take of an
2 endangered, threatened, proposed, or candidate species
3 incidental to an otherwise lawful activity in or affecting the
4 created, restored, maintained, or improved habitat; provided
5 that based on the best scientific and other reliable data
6 available at the time the safe harbor agreement is approved, if
7 these data are applicable:

8 (1) The take would not jeopardize the continued existence
9 of any endangered, threatened, proposed, or candidate
10 species;

11 (2) The take would not reduce the population of
12 endangered, threatened, proposed, or candidate species
13 below the number found on the property prior to
14 entering into the agreement;

15 (3) The agreement proposes to create, restore, maintain,
16 or improve significant amounts of habitat for a
17 minimum of five years for private lands and for a
18 minimum of fifteen years for public lands;

19 (4) The agreement contains the measures or actions to be
20 undertaken to respond to individuals of the candidate
21 species affected by the take;



- 1 [~~(4)~~] (5) There is adequate funding for the agreement and
- 2 the source of that funding is identified;
- 3 [~~(5)~~] (6) The safe harbor agreement increases the
- 4 likelihood that the endangered or threatened species
- 5 for which a take is authorized will recover;
- 6 [~~(6)~~] (7) Any take authorized pursuant to this subsection
- 7 shall occur only in the habitat created, restored,
- 8 maintained, or improved; and
- 9 [~~(7)~~] (8) The cumulative impact of the activity, which is
- 10 permitted and facilitated by the take, provides net
- 11 environmental benefits."

12 SECTION 3. Section 195D-31, Hawaii Revised Statutes, is

13 amended by amending subsection (a) to read as follows:

14 "(a) There is established within the state treasury a

15 trust fund to be known as the endangered species trust fund to

16 be administered by the department to implement the purposes of

17 this chapter.

18 The fund shall consist of moneys from the following

19 sources:

- 20 (1) Moneys accrued from the sale of retail items
- 21 officially sponsored by the department for the fund;



- 1 (2) Private contributions for the management and recovery
- 2 of Hawaii's unique plants and animals;
- 3 (3) Fees and assessments charged for the commercial use of
- 4 public land and waters and designated for the fund;
- 5 (4) Penalties, fines, or auctions resulting from
- 6 enforcement violations;
- 7 (5) Legislative appropriations; [~~and~~]
- 8 (6) Moneys deposited to implement the obligations of a
- 9 habitat conservation plan~~[7]~~ and safe harbor
- 10 agreement, as security for habitat conservation plan
- 11 funding, or technical assistance program fees and
- 12 payment for costs incurred for use of the technical
- 13 assistance program as set forth in section 195D-
- 14 23(d) ~~[7]~~; and
- 15 (7) Other funding sources."

16 SECTION 4. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

Cindy Evans

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JAN 20 2017



H.B. NO. 368

Report Title:

Habitat Conservation Plans; State Harbor Agreements; Endangered Species; Indigenous Wildlife

Description:

Requires habitat conservation plans and safe harbor agreements to include the measures or actions to be undertaken to respond to individuals of the candidate species affected by take. Authorizes other funds to be deposited into the Endangered Species Trust Fund.

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