
A BILL FOR AN ACT

RELATING TO ENDANGERED AND THREATENED SPECIES.

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

1 SECTION 1. Section 195D-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§195D-4 Endangered species and threatened species.** (a)
4 Any species of aquatic life, wildlife, or land plant that has
5 been determined to be an endangered species pursuant to the
6 Endangered Species Act shall be deemed to be an endangered
7 species under this chapter and any indigenous species of aquatic
8 life, wildlife, or land plant that has been determined to be a
9 threatened species pursuant to the Endangered Species Act shall
10 be deemed to be a threatened species under this chapter. The
11 department may determine, in accordance with this section,
12 however, that any such threatened species is an endangered
13 species throughout all or any portion of the range of such
14 species within this State.

15 (b) In addition to the species that have been determined
16 to be endangered or threatened pursuant to the Endangered
17 Species Act, the department, by rules adopted pursuant to



chapter 91, may determine any indigenous species of aquatic life, wildlife, or land plant to be an endangered species or a threatened species because of any of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, sporting, scientific, educational, or other purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or artificial factors affecting its continued existence within Hawaii.

(c) The department shall make determinations required by subsection (b) on the basis of all available scientific, commercial, and other data after consultation, as appropriate, with federal agencies, other interested state and county agencies, and interested persons and organizations.

(d) The department shall issue rules containing a list of all species of aquatic life, wildlife, and land plants that have been determined, in accordance with subsections (a) to (c), as endangered species and a list of all such species so designated as threatened species. Each list shall include the scientific,



1 common, and Hawaiian names, if any, and shall specify with
2 respect to each such species over what portion of its range it
3 is endangered or threatened.

4 Except with respect to species of aquatic life, wildlife,
5 or land plants determined to be endangered or threatened
6 pursuant to the Endangered Species Act, the department, upon its
7 own recommendation or upon the petition of three interested
8 persons who have presented to the department substantial
9 evidence that warrants review, shall conduct a review of any
10 listed or unlisted indigenous species proposed to be removed
11 from or added to the lists published pursuant to this
12 subsection.

13 (e) With respect to any threatened or endangered species
14 of aquatic life, wildlife, or land plant, it is unlawful, except
15 as provided in subsections (f), (g), (h), and [~~(j)~~] (k), for any
16 person to:

- 17 (1) Export any such species from this State;
18 (2) Take any such species within this State;
19 (3) Possess, process, sell, offer for sale, deliver,
20 carry, transport, or ship, by any means whatsoever,
21 any such species;



(4) Violate any rule pertaining to the conservation of the species listed pursuant to this section and adopted by the department pursuant to this chapter; or

(5) Violate the terms of, or fail to fulfill the obligations imposed and agreed to under, any license issued under subsection (f), (g), or ~~[(j)]~~ (k), any habitat conservation plan authorized under section 195D-21, or any safe harbor agreement authorized under section 195D-22.

(f) The department may issue temporary licenses, under such terms and conditions as it may prescribe, to allow any act otherwise prohibited by subsection (e), for scientific purposes or to enhance the propagation or survival of the affected species.

(g) After consultation with the endangered species recovery committee, the board may issue a temporary license as a part of a habitat conservation plan to allow a take otherwise prohibited by subsection (e) if the take is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity; provided that:



- 1 (1) The applicant, to the maximum extent practicable,
2 shall minimize and mitigate the impacts of the take;
- 3 (2) The applicant shall guarantee that adequate funding
4 for the plan will be provided;
- 5 (3) The applicant shall post a bond, provide an
6 irrevocable letter of credit, insurance, or surety
7 bond, or provide other similar financial tools,
8 including depositing a sum of money in the endangered
9 species trust fund created by section 195D-31, or
10 provide other means approved by the board, adequate to
11 ensure monitoring of the species by the State and to
12 ensure that the applicant takes all actions necessary
13 to minimize and mitigate the impacts of the take;
- 14 (4) The plan shall increase the likelihood that the
15 species will survive and recover;
- 16 (5) The plan takes into consideration the full range of
17 the species on the island so that cumulative impacts
18 associated with the take can be adequately assessed;
- 19 (6) The measures, if any, required under
20 section 195D-21(b) shall be met, and the department



1 has received any other assurances that may be required
2 so that the plan may be implemented;

3 (7) The activity, which is permitted and facilitated by
4 issuing the license to take a species, does not
5 involve the use of submerged lands, mining, or
6 blasting;

7 (8) The cumulative impact of the activity, which is
8 permitted and facilitated by the license, provides net
9 environmental benefits; ~~and~~

10 (9) The take is not likely to cause the loss of genetic
11 representation of an affected population of any
12 endangered, threatened, proposed, or candidate plant
13 species[-]; and

14 (10) The applicant does not have a permit issued under
15 subsection (h).

16 Board approval shall require an affirmative vote of not less
17 than two-thirds of the authorized membership of the board after
18 holding a public hearing on the matter on the affected island.

19 The department shall notify the public of a proposed license
20 under this section through publication in the periodic bulletin
21 of the office of planning and sustainable development and make



1 the application and proposed license available for public review
2 and comment for not less than sixty days prior to approval.

3 (h) For species designated as threatened, the department
4 may issue a temporary permit, under such terms and conditions as
5 it may prescribe, to allow any act otherwise prohibited by
6 subsection (e).

7 ~~[(h)]~~ (i) Licenses and permits issued pursuant to this
8 section may be suspended or revoked for due cause, and ~~[if~~
9 ~~issued pursuant to a habitat conservation plan or safe harbor~~
10 ~~agreement, shall run with the land for the term agreed to in the~~
11 ~~plan or agreement and shall not be assignable or transferable~~
12 ~~separate from the land. Any]~~ any person whose license or permit
13 has been revoked shall not be eligible to apply for another
14 license or permit until the expiration of two years from the
15 date of revocation. A license issued pursuant to a habitat
16 conservation plan or safe harbor agreement shall run with the
17 land for the term agreed to in the plan or agreement and shall
18 not be assignable or transferable separate from the land.

19 ~~[(i)]~~ (j) The department shall work cooperatively with
20 federal agencies in concurrently processing habitat conservation
21 plans, safe harbor agreements, and incidental take licenses



1 pursuant to the Endangered Species Act. After notice in the
2 periodic bulletin of the office of planning and sustainable
3 development and a public hearing on the islands affected, which
4 shall be held jointly with the federal agency, if feasible,
5 whenever a landowner seeks both a federal and a state safe
6 harbor agreement, habitat conservation plan, or incidental take
7 license, the board, by a two-thirds majority vote, may approve
8 the federal agreement, plan, or license without requiring a
9 separate state agreement, plan, or license if the federal
10 agreement, plan, or license satisfies, or is amended to satisfy,
11 all the criteria of this chapter. All state agencies, to the
12 extent feasible, shall work cooperatively to process
13 applications for habitat conservation plans and safe harbor
14 agreements on a consolidated basis including concurrent
15 processing of any state land use permit application that may be
16 required pursuant to chapter 183C or 205, so as to minimize
17 procedural burdens upon the applicant.

18 ~~[(j)]~~ (k) Subsection (e) and any other provision of law to
19 the contrary notwithstanding, the department shall adopt rules
20 in accordance with chapter 91 authorizing the propagation,
21 possession, ownership, and sale of selected endangered and



1 threatened land plant species grown from cultivated nursery
2 stock and not collected or removed from the wild."

3 SECTION 2. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 3. This Act shall take ~~effect~~ upon its approval.

6

INTRODUCED BY:

take effect upon its approval.

Y: J. H. Brown

JAN 14 2022



H.B. NO. 1422

Report Title:

Endangered Species; Threatened Species; Conservation Plans;
Department of Land and Natural Resources; Permits

Description:

Authorizes the department of land and natural resources to issue temporary permits to allow otherwise prohibited acts when the species affected is designated as threatened and authorizes the department to also suspend or revoke those temporary permits for due cause for two years.

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