

JAN 26 2022

A BILL FOR AN ACT

RELATING TO HABITAT CONSERVATION PLANS.

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

1 SECTION 1. The legislature finds that certain activities
2 have a higher likelihood to incidentally cause injury or death
3 to threatened or endangered species, including seabirds, forest
4 birds, nene, and bats.

5 The purpose of this Act is to:

6 (1) Require all persons, before engaging in an activity
7 with a high likelihood of resulting in an incidental
8 take of a threatened or endangered species, to enter
9 into a planning process with the department of land
10 and natural resources for the purpose of preparing and
11 implementing a habitat conservation plan; and

12 (2) Require habitat conservation plans to include
13 additional components.

14 SECTION 2. Chapter 195D, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:



1 "§195D- Habitat conservation plans; circumstances when
2 mandatory. (a) Before any person engages in an activity with a
3 high likelihood of resulting in an incidental take of a
4 threatened or endangered species, the person shall enter into
5 the planning process with the department for the purpose of
6 preparing and implementing a habitat conservation plan.

7 (b) The department shall identify by rules adopted
8 pursuant to chapter 91 the types of activities that shall be
9 deemed to have a high likelihood of resulting in an incidental
10 take of a threatened or endangered species.

11 (c) Penalties for violations of subsection (a) shall be
12 determined by the department by rules adopted pursuant to
13 chapter 91.

14 (d) For the purposes of this section, "incidental take"
15 means a take otherwise prohibited by section 195D-4(e) if the
16 take is incidental to, and not the purpose of, the carrying out
17 of an otherwise lawful activity."

18 SECTION 3. Section 195D-21, Hawaii Revised Statutes, is
19 amended by amending subsections (a) and (b) to read as follows:

20 "(a) The department may enter into a planning process with
21 any landowner for the purpose of preparing and implementing a



1 habitat conservation plan[-]; provided that before any landowner
2 engages in any activity with a high likelihood of resulting in
3 an incidental take of a threatened or endangered species, the
4 landowner shall enter into a planning process with the
5 department for the purpose of preparing and implementing a
6 habitat conservation plan pursuant to section 195D- . An
7 agreement may include multiple landowners. Applications to
8 enter into a planning process shall identify:

- 9 (1) The geographic area encompassed by the plan;
- 10 (2) The ecosystems, natural communities, or habitat types
11 within the plan area that are the focus of the plan;
- 12 (3) The endangered, threatened, proposed, and candidate
13 species known or reasonably expected to occur in the
14 ecosystems, natural communities, or habitat types in
15 the plan area;
- 16 (4) The measures or actions to be undertaken to protect,
17 maintain, restore, or enhance those ecosystems,
18 natural communities, or habitat types within the plan
19 area;
- 20 (5) A schedule for implementation of the proposed measures
21 and actions; and



1 (6) An adequate funding source to ensure that the proposed
2 measures and actions are undertaken in accordance with
3 the schedule.

4 After a habitat conservation plan is prepared, the board shall
5 notify the public of the proposed habitat conservation plan
6 through the periodic bulletin of the office of planning and
7 sustainable development and make the proposed plan and the
8 application available for public review and comment not less
9 than sixty days prior to approval. The notice shall include but
10 not be limited to identification of the area encompassed by the
11 plan, the proposed activity, and the ecosystems, natural
12 communities, and habitat types within the plan area. The notice
13 shall solicit public input and relevant data.

14 (b) (1) Except as otherwise provided by law, the board,
15 upon recommendation from the department, in cooperation with
16 other state, federal, county, or private organizations and
17 landowners, after a public hearing on the island affected, and
18 upon an affirmative vote of not less than two-thirds of its
19 authorized membership, may enter into a habitat conservation
20 plan, if it determines that:



1 (A) The plan will further the purposes of this
2 chapter by protecting, maintaining, restoring, or
3 enhancing identified ecosystems, natural
4 communities, or habitat types upon which
5 endangered, threatened, proposed, or candidate
6 species depend within the area covered by the
7 plan;

8 (B) The plan will increase the likelihood of recovery
9 of the endangered or threatened species that are
10 the focus of the plan; and

11 (C) The plan satisfies all the requirements of this
12 chapter.

13 In the event the board votes to enter into a habitat
14 conservation plan for which the majority of the
15 endangered species recovery committee recommended
16 disapproval, the board may not enter into the habitat
17 conservation plan unless the plan is approved by a
18 two-thirds majority vote of both houses of the
19 legislature. Habitat conservation plans may allow
20 conservation rental agreements, habitat banking, and
21 direct payments. Any habitat conservation plan



1 approved pursuant to this section shall be based on
2 the best available scientific and other reliable data
3 available at the time the plan is approved.

4 (2) Each habitat conservation plan shall:

5 (A) Identify the geographic area encompassed by the
6 plan; the ecosystems, natural communities, or
7 habitat types within the plan area that are the
8 focus of the plan; and the endangered,
9 threatened, proposed, and candidate species known
10 or reasonably expected to be present in those
11 ecosystems, natural communities, or habitat types
12 in the plan area;

13 (B) Describe the activities contemplated to be
14 undertaken within the plan area with sufficient
15 detail to allow the department to evaluate the
16 impact of the activities on the particular
17 ecosystems, natural communities, or habitat types
18 within the plan area that are the focus of the
19 plan;

20 (C) Identify the steps that will be taken to minimize
21 and mitigate all negative impacts, including



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1 without limitation the impact of any authorized
2 incidental take, with consideration of the full
3 range of the species on the island so that
4 cumulative impacts associated with the take can
5 be adequately assessed; and the funding that will
6 be available to implement those steps;

7 (D) Identify those measures or actions to be
8 undertaken to protect, maintain, restore, or
9 enhance the ecosystems, natural communities, or
10 habitat types within the plan area; a schedule
11 for implementation of the measures or actions;
12 and an adequate funding source to ensure that the
13 actions or measures, including monitoring, are
14 undertaken in accordance with the schedule;

15 (E) Be consistent with the goals and objectives of
16 any approved recovery plan for any endangered
17 species or threatened species known or reasonably
18 expected to occur in the ecosystems, natural
19 communities, or habitat types in the plan area;

20 (F) Provide reasonable certainty that the ecosystems,
21 natural communities, or habitat types will be



1 maintained in the plan area, throughout the life
2 of the plan, in sufficient quality, distribution,
3 and extent to support within the plan area those
4 species typically associated with the ecosystems,
5 natural communities, or habitat types, including
6 any endangered, threatened, proposed, and
7 candidate species known or reasonably expected to
8 be present in the ecosystems, natural
9 communities, or habitat types within the plan
10 area;

11 (G) Contain objective, measurable goals, the
12 achievement of which will contribute
13 significantly to the protection, maintenance,
14 restoration, or enhancement of the ecosystems,
15 natural communities, or habitat types; time
16 frames within which the goals are to be achieved;
17 provisions for monitoring (such as field sampling
18 techniques), including periodic monitoring by
19 representatives of the department or the
20 endangered species recovery committee, or both;
21 and provisions for evaluating progress in



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- 1 achieving the goals quantitatively and
2 qualitatively; ~~and~~
- 3 (H) Provide for an adaptive management strategy that
4 specifies the actions to be taken periodically if
5 the plan is not achieving its goals[-];
- 6 (I) Include effective measures to:
- 7 (i) Minimize incidental take;
8 (ii) Monitor for the presence of any threatened,
9 or endangered species that are injured;
10 (iii) Retrieve any injured threatened or
11 endangered species in a timely manner and
12 provide emergency medical treatment for and
13 long-term rehabilitation of the injured
14 species so that they can be released into
15 the wild;
16 (iv) Mitigate potential incidental take by
17 protecting additional habitat areas and
18 through the proper design and construction
19 of structures, lighting, wires, and other
20 obstructions; and
21 (v) Implement adaptive management; and



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1 (J) Include a service agreement with a facility that
2 can provide on-call emergency medical treatment
3 for and long-term rehabilitation of any injured
4 species pursuant to paragraph (I)(ii)."

5 SECTION 4. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect upon its approval.

11

INTRODUCED BY: *Francis J. Sponzo*



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Report Title:

Mandatory Habitat Conservation Plans; Additional Requirements

Description:

Requires any person, before engaging in an activity with a high likelihood of resulting in an incidental take of a threatened or endangered species, to enter into a planning process with DLNR for the purpose of preparing and implementing a habitat conservation plan. Requires habitat conservation plans to include additional components.

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