
A BILL FOR AN ACT

RELATING TO THE CONSERVATION OF THREATENED SPECIES.

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

1 SECTION 1. The legislature finds that threatened species
2 licenses are necessary to ensure state law operates in parallel
3 and is consistent with federal law with respect to regulating
4 take of threatened species. Threatened species licenses
5 authorize temporary limited take of threatened species to
6 license holders where acts resulting in take are approved by the
7 department of land and natural resources. Such acts do not
8 interfere with the survival and recovery of a threatened
9 species; are non-lethal and are part of a conservation action,
10 project, or program that confers a net recovery benefit; or do
11 not reduce survival and reproductive success of the species.

12 The purpose of this Act is to authorize the department of
13 land and natural resources to issue temporary licenses for acts
14 otherwise prohibited by section 195D-4(e), Hawaii Revised
15 Statutes, for threatened species following administrative rules.

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

1 "§195D-4 **Endangered species and threatened**
2 **species.** (a) Any species of aquatic life, wildlife, or land
3 plant that has been determined to be an endangered species
4 pursuant to the Endangered Species Act shall be deemed to be an
5 endangered species under this chapter and any indigenous species
6 of aquatic life, wildlife, or land plant that has been
7 determined to be a threatened species pursuant to the Endangered
8 Species Act shall be deemed to be a threatened species under
9 this chapter. The department may determine, in accordance with
10 this section, however, that any such threatened species is an
11 endangered species throughout all or any portion of the range of
12 such species within this State.

13 (b) In addition to the species that have been determined
14 to be endangered or threatened pursuant to the Endangered
15 Species Act, the department, by rules adopted pursuant to
16 chapter 91, may determine any indigenous species of aquatic
17 life, wildlife, or land plant to be an endangered species or a
18 threatened species because of any of the following factors:

- 19 (1) The present or threatened destruction, modification,
20 or curtailment of its habitat or range;
- 21 (2) Overutilization for commercial, sporting, scientific,
22 educational, or other purposes;

- 1 (3) Disease or predation;
2 (4) The inadequacy of existing regulatory mechanisms; or
3 (5) Other natural or artificial factors affecting its
4 continued existence within Hawaii.

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

10 (d) The department shall issue rules containing a list of
11 all species of aquatic life, wildlife, and land plants that have
12 been determined, in accordance with subsections (a) to (c), as
13 endangered species and a list of all such species so designated
14 as threatened species. Each list shall include the scientific,
15 common, and Hawaiian names, if any, and shall specify with
16 respect to each such species over what portion of its range it
17 is endangered or threatened.

18 Except with respect to species of aquatic life, wildlife,
19 or land plants determined to be endangered or threatened
20 pursuant to the Endangered Species Act, the department, upon its
21 own recommendation or upon the petition of three interested
22 persons who have presented to the department substantial

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1 evidence that warrants review, shall conduct a review of any
2 listed or unlisted indigenous species proposed to be removed
3 from or added to the lists published pursuant to this
4 subsection.

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

- 9 (1) Export any such species from this State;
- 10 (2) Take any such species within this State;
- 11 (3) Possess, process, sell, offer for sale, deliver,
12 carry, transport, or ship, by any means whatsoever,
13 any such species;
- 14 (4) Violate any rule pertaining to the conservation of the
15 species listed pursuant to this section and adopted by
16 the department pursuant to this chapter; or
- 17 (5) Violate the terms of, or fail to fulfill the
18 obligations imposed and agreed to under, any license
19 issued under subsection (f), (g), or [~~(j)~~] (k) any
20 habitat conservation plan authorized under section
21 195D-21, or any safe harbor agreement authorized under
22 section 195D-22.

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

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

12 (1) The applicant, to the maximum extent practicable,
13 shall minimize and mitigate the impacts of the take;

14 (2) The applicant shall guarantee that adequate funding
15 for the plan will be provided;

16 (3) The applicant shall post a bond, provide an
17 irrevocable letter of credit, insurance, or surety
18 bond, or provide other similar financial tools,
19 including depositing a sum of money in the endangered
20 species trust fund created by section 195D-31, or
21 provide other means approved by the board, adequate to
22 ensure monitoring of the species by the State and to

- 1 ensure that the applicant takes all actions necessary
2 to minimize and mitigate the impacts of the take;
- 3 (4) The plan shall increase the likelihood that the
4 species will survive and recover;
- 5 (5) The plan takes into consideration the full range of
6 the species on the island so that cumulative impacts
7 associated with the take can be adequately assessed;
- 8 (6) The measures, if any, required under section 195D-
9 21(b) shall be met, and the department has received
10 any other assurances that may be required so that the
11 plan may be implemented;
- 12 (7) The activity, which is permitted and facilitated by
13 issuing the license to take a species, does not
14 involve the use of submerged lands, mining, or
15 blasting;
- 16 (8) The cumulative impact of the activity, which is
17 permitted and facilitated by the license, provides net
18 environmental benefits; and
- 19 (9) The take is not likely to cause the loss of genetic
20 representation of an affected population of any
21 endangered, threatened, proposed, or candidate plant
22 species.

1 Board approval shall require an affirmative vote of not less
2 than two-thirds of the authorized membership of the board after
3 holding a public hearing on the matter on the affected
4 island. The department shall notify the public of a proposed
5 license under this section through publication in the periodic
6 bulletin of the office of planning and sustainable development
7 and make the application and proposed license available for
8 public review and comment for not less than sixty days prior to
9 approval.

10 (h) Whenever any species is listed as a threatened species
11 pursuant to subsection (a), (b), or (c), the department may
12 adopt administrative rules, pursuant to chapter 91, as it deems
13 necessary and advisable to provide for the conservation of such
14 species. The department may issue a temporary license under
15 such terms and conditions as determined by administrative rule,
16 to allow any act otherwise prohibited by subsection (e), for
17 threatened species as long as such act does not interfere with
18 the survival and recovery of such species; any take authorized
19 under this section is non-lethal and is part of a conservation
20 action, project, or program that confers a net recovery benefit;
21 or does not reduce survival and reproductive success of the
22 species. The rules may vary from county to county.

1 ~~[(h)]~~ (i) Licenses issued pursuant to this section may be
2 suspended or revoked for due cause, and if issued pursuant to a
3 habitat conservation plan or safe harbor agreement, shall run
4 with the land for the term agreed to in the plan or agreement
5 and shall not be assignable or transferable separate from the
6 land. Any person whose license has been revoked shall not be
7 eligible to apply for another license until the expiration of
8 two years from the date of revocation.

9 ~~[(i)]~~ (j) The department shall work cooperatively with
10 federal agencies in concurrently processing habitat conservation
11 plans, safe harbor agreements, and incidental take licenses
12 pursuant to the Endangered Species Act. After notice in the
13 periodic bulletin of the office of planning and sustainable
14 development and a public hearing on the islands affected, which
15 shall be held jointly with the federal agency, if feasible,
16 whenever a landowner seeks both a federal and a state safe
17 harbor agreement, habitat conservation plan, or incidental take
18 license, the board, by a two-thirds majority vote, may approve
19 the federal agreement, plan, or license without requiring a
20 separate state agreement, plan, or license if the federal
21 agreement, plan, or license satisfies, or is amended to satisfy,
22 all the criteria of this chapter. All state agencies, to the

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1 extent feasible, shall work cooperatively to process
2 applications for habitat conservation plans and safe harbor
3 agreements on a consolidated basis including concurrent
4 processing of any state land use permit application that may be
5 required pursuant to chapter 183C or 205, so as to minimize
6 procedural burdens upon the applicant.

7 ~~[(j)]~~ (k) Subsection (e) and any other provision of law to
8 the contrary notwithstanding, the department shall adopt rules
9 in accordance with chapter 91 authorizing the propagation,
10 possession, ownership, and sale of selected endangered and
11 threatened land plant species grown from cultivated nursery
12 stock and not collected or removed from the wild."

13 SECTION 3. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval.

16

17

INTRODUCED BY: _____



18

BY REQUEST

JAN 2 '2 2024

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Report Title:

Threatened Species License; Administrative Rules

Description:

Authorizes the Department of Land and Natural Resources to issue temporary threatened species licenses and draft administrative rules for the conservation of threatened species.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO THE CONSERVATION OF THREATENED SPECIES.

PURPOSE: To authorize the Department to issue temporary threatened species licenses and draft administrative rules for the conservation of threatened species.

MEANS: Amend section 195D-4, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The Department's Division of Forestry and Wildlife (Division) recognizes the need to issue temporary take licenses for threatened species (threatened species licenses) to ensure state law operates in parallel and is consistent with federal law with respect to regulating take of threatened species. This bill would authorize the Department to allow certain actions for threatened species, by permit and outlined in administrative rules, otherwise prohibited for species listed as endangered under section 195D-4(e), HRS.

Under federal law, the Endangered Species Act (ESA) does not automatically confer protections to species listed as threatened, so when a species is listed as threatened, the United States Fish and Wildlife Service (USFWS) must promulgate species-specific protective regulations. Therefore, by regulation, species listed as threatened receive some of the protections conferred to endangered species under the ESA, but the USFWS authorizes certain actions as exemptions to those protections.

State law works a bit differently. Under chapter 195D, HRS, species listed as threatened receive identical protections to species listed as endangered. The Department promulgated a list of threatened or endangered species in chapter 13-124,

Hawaii Administrative Rules, pursuant to section 195D-4(d), HRS. Currently, the Department may issue temporary licenses that allow any act otherwise prohibited by section 195D-4(e), HRS, for scientific purposes or to enhance the propagation or survival of a threatened or endangered species. In addition, the Board of Land and Natural Resources may (1) issue temporary licenses that allow take otherwise prohibited by section 195D-4(e), HRS, that is incidental and not the purpose of an otherwise lawful activity, as part of a habitat conservation plan, pursuant to section 195D-4(g), HRS; or (2) approve safe harbor agreements that authorize take that is incidental and not the purpose of an otherwise lawful activity of an endangered, threatened, proposed, or candidate species, pursuant to section 195D-22, HRS. With respect to threatened or endangered species, acts prohibited in section 195D-4(e), HRS, are export, take, possess, process, sell, offer for sale, deliver, carry, transport, ship, violate any rule pertaining to the conservation of such species adopted under chapter 195D, HRS, or violate the terms or obligations under a temporary license and habitat conservation plan or temporary license and safe harbor agreement.

The amendment to section 195D-4, HRS, authorizes the Department to issue threatened species licenses for acts approved by administrative rules. These administrative rules would only apply to species listed as threatened pursuant to chapter 195D, HRS, and not those species listed as endangered. Terms and conditions outlined in the administrative rules would allow licensees to conduct certain acts with respect to species listed as threatened as long as such acts do not interfere with the survival and recovery of such a species; any take authorized is non-lethal and is part of a conservation action, project, or program that confers a net recovery benefit; or does

not reduce survival and reproductive success of such a species. These rules may vary from county to county.

Impact on the public: This bill would allow licensees to conduct certain acts evaluated by the Division when it is determined that threatened species could be impacted by those acts.

Impact on the department and other agencies: The bill would provide the Department flexibility to prescribe administrative rules that allow certain acts for threatened species that would not be allowed for endangered species.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 402.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.