
A BILL FOR AN ACT

RELATING TO CONSERVATION BANKING.

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

1 SECTION 1. The legislature finds that the use of
2 conservation banks as compensatory mitigation projects for
3 incidental take licensees with habitat conservation plans
4 increases certainty that the mitigation obligation is complete,
5 expedites project review, and makes project costs more
6 predictable for incidental take licensees. Conservation banks
7 provide long-term, landscape-scale protection to Hawaii's
8 threatened, endangered, candidate, and proposed species.

9 The purpose of this Act is to authorize the department of
10 land and natural resources to operate and approve conservation
11 banks to provide for situations where a person or entity is
12 required to provide compensatory mitigation to offset adverse
13 impacts to threatened, endangered, candidate, or proposed
14 species as part of an approved incidental take license and
15 habitat conservation plan.



1 SECTION 2. Chapter 195D, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART

5 CONSERVATION BANKING

6 §195D-A Definitions. As used in this part:

7 "Bank sponsor" means any public or private entity
8 responsible for establishing or operating a conservation bank.

9 "Compensatory mitigation" means actions taken to fulfill,
10 in whole or in part, mitigation requirements pursuant to this
11 chapter.

12 "Conservation bank" means a site or suite of sites
13 established under a conservation bank instrument for the
14 purposes of restoring, creating, enhancing, or protecting
15 populations of threatened, endangered, candidate, or proposed
16 species and their habitats expressed as credits.

17 "Conservation bank instrument" means an agreement between
18 the board and a bank sponsor that establishes a conservation
19 bank and describes the terms and conditions of its operation,
20 including a system for assessing and releasing credits to be
21 used for compensatory mitigation.



1 "Credit" means a value based on defined units representing
2 the increase in numbers of individuals of a listed species or
3 attainment of enhanced ecological functions or services
4 essential for the survival of a listed species at a conservation
5 bank and released as the conservation bank meets performance
6 criteria included in its conservation bank instrument.

7 "Credit bundling" means a single unit of a conservation
8 bank that provides two or more spatially overlapping ecosystem
9 functions or services that are grouped together into a single
10 credit type and used as a single commodity to compensate for a
11 single permitted action.

12 "Credit stacking" means a single unit of a conservation
13 bank that provides two or more credit types representing
14 spatially overlapping ecosystem functions or services that can
15 be unstacked and used as separate commodities to compensate for
16 different permitted actions.

17 "Long-term management plan" means a bank sponsor's
18 long-term plan of how a conservation bank will be managed after
19 performance standards have been achieved to ensure long-term
20 sustainability of the species identified in section
21 195D-B(b) (2). Long-term management plans may include



1 descriptions of actions and monitoring, annual cost estimates
2 for those needs, and funding mechanisms used to meet those
3 needs.

4 "Maintenance plan" means a bank sponsor's short-term plan
5 to ensure the conservation bank remains viable after
6 construction and throughout the monitoring period. A
7 maintenance plan may include infrastructure and ecological
8 management components within the conservation bank and identify
9 regular or recurring actions needed for the upkeep of the
10 conservation bank site until the conservation bank transitions
11 into long-term management according to the long-term management
12 plan.

13 "Monitoring requirements" means a description of parameters
14 to be monitored from actions described in the maintenance plan
15 to determine if the conservation bank is on track to meet
16 performance standards or if adaptive management is needed.

17 "Performance standards" means ecologically based standards
18 that are used to determine whether the conservation bank is
19 achieving objectives in the resource management plan. Each
20 performance standard shall describe the attribute to be



1 measured, the level that constitutes success, and the
2 time-period to achieve success.

3 "Site protection instrument" means an interest in real
4 property that protects a conservation bank for either long-term
5 stewardship or in perpetuity, such as a conservation easement,
6 deed restriction, condition, or covenant.

7 **§195D-B Conservation banking.** (a) The department or
8 other bank sponsor may seek board approval of a conservation
9 bank instrument to operate a conservation bank for the purposes
10 of restoring, creating, enhancing, or protecting populations of
11 threatened, endangered, candidate, or proposed species and their
12 habitats to provide for situations where a person or entity is
13 required to provide compensatory mitigation to offset adverse
14 impacts to threatened, endangered, candidate, or proposed
15 species as part of an approved incidental take license and
16 habitat conservation plan.

17 (b) Applications to establish and operate a conservation
18 bank shall include a proposed conservation bank instrument that
19 identifies:



- 1 (1) The geographic area encompassed by the conservation
2 bank and the ecosystems, natural communities, or
3 habitat types within the conservation bank;
- 4 (2) The endangered, threatened, proposed, or candidate
5 species that the conservation bank is established to
6 protect;
- 7 (3) A resource management plan for long-term stewardship
8 that includes:
 - 9 (A) Goals and objectives;
 - 10 (B) Baseline information that includes a review of
11 the presence or absence of any endangered or
12 threatened species on the property including the
13 species identified in section 195D-B(b) (2);
 - 14 (C) Performance standards;
 - 15 (D) Monitoring requirements;
 - 16 (E) A maintenance plan;
 - 17 (F) A long-term management plan;
 - 18 (G) An adaptive management strategy that specifies
19 the actions to be taken if the resource
20 management plan is not achieving its goals; and



- 1 (H) Any other information that the department
2 requires in a rule adopted pursuant to
3 section 195D-C;
- 4 (4) A system for assessing and releasing credits; and
5 (5) The measures for property protection.
- 6 (c) In addition to the requirements set forth in
7 subsection (b), for applications from bank sponsors other than
8 the department, the proposed conservation bank instrument shall
9 contain:
- 10 (1) Assurances that the bank sponsor has the scientific
11 and technical competence required to perform the
12 necessary conservation actions for the species
13 identified in section 195D-B(b) (2);
- 14 (2) Financial assurances necessary to ensure the
15 successful completion of habitat construction,
16 management, monitoring, and remedial actions;
- 17 (3) A site protection instrument that prohibits
18 incompatible uses; and
- 19 (4) A provision requiring the bank sponsor to submit to
20 the department within ninety days of each fiscal year



1 ending June 30 an annual report on the current status
2 of the conservation bank.

3 (d) After consultation with the endangered species
4 recovery committee, the board may approve a conservation bank
5 instrument for the operation of a conservation bank by the
6 department or other bank sponsor if the board determines that:

7 (1) The conservation bank will further the purposes of
8 this chapter by restoring, creating, enhancing, or
9 protecting populations of threatened, endangered,
10 candidate, or proposed species and their habitats;

11 (2) The system for assessing and releasing credits is
12 based on the best available scientific information
13 and, where there is any uncertainty about what
14 constitutes the best available science, the rationale
15 used for developing the system for assessing and
16 releasing credits gives the benefit of the doubt to
17 the species;

18 (3) For a conservation bank operated by a bank sponsor
19 other than the department:

20 (A) The bank sponsor has the scientific and technical
21 competence required to perform the necessary



1 conservation actions for the species identified
2 in subsection (b) (2);

3 (B) The bank sponsor's funding source is adequate to
4 ensure the successful completion of habitat
5 construction, management, monitoring, and
6 remedial actions;

7 (C) The nature and duration of the site protection
8 instrument is adequate to ensure the successful
9 completion of habitat construction, management,
10 monitoring, and remedial actions; and

11 (D) The conservation bank instrument shall run with
12 the land for the term specified in the site
13 protection instrument and shall not be assignable
14 or transferable separate from the land;

15 (4) For a conservation bank operated by the department,
16 the conservation bank shall be established on land
17 managed by the department; and

18 (5) The conservation bank instrument satisfies all the
19 requirements in subsection (b) and, for applications
20 from bank sponsors other than the department,
21 subsection (c).



1 Board approval shall require an affirmative vote of not
2 less than two-thirds of the authorized membership of the board.
3 The board shall not approve a conservation bank instrument that
4 the majority of the endangered species recovery committee
5 recommended for disapproval.

6 (e) The board's approval of a conservation bank instrument
7 for a conservation bank operated by a bank sponsor other than
8 the department does not relieve the bank sponsor of its
9 obligation to secure a temporary license pursuant to
10 section 195D-4(f) or (g) prior to causing take of any endangered
11 or threatened species.

12 (f) After a conservation bank has created a credit
13 following the system for assessing and releasing credits
14 identified in the conservation bank instrument, the bank sponsor
15 may transfer or sell the credit to an incidental take licensee
16 for use of an approved conservation bank as compensatory
17 mitigation, provided that:

18 (1) The use of the credit as compensatory mitigation for
19 incidental take of threatened or endangered species is
20 identified in an approved habitat conservation plan
21 and satisfies incidental take license requirements in



1 section 195D-4(g) and habitat conservation plan
2 requirements in section 195D-21(b);

3 (2) Credit stacking shall be prohibited;

4 (3) Credit bundling may be used to compensate for all or a
5 subset of the functions or services included in the
6 credit type but shall be used only once; and

7 (4) Once a credit is transferred or sold, that credit
8 shall be retired and cannot be used again.

9 (g) Notwithstanding any other law to the contrary, the
10 board shall suspend or revoke the approval of any conservation
11 bank instrument approved under this section if the board
12 determines that:

13 (1) The bank sponsor or its successor has breached its
14 obligations under the conservation bank instrument and
15 has failed to cure the breach in a timely manner, and
16 the effect of the breach is to diminish the likelihood
17 that the conservation bank will achieve its goals
18 within the time frames or in the manner set forth in
19 the conservation bank instrument;

20 (2) For a conservation bank operated by a bank sponsor
21 other than the department, the conservation bank no



1 longer has the funding source specified in
2 subsection (d) (3) (B) or another sufficient funding
3 source to ensure the successful completion of the
4 habitat construction, management, monitoring, and
5 remedial actions in accordance with the conservation
6 bank instrument; or

7 (3) Continued operation of the conservation bank would
8 appreciably reduce the likelihood of survival or
9 recovery of any threatened or endangered species in
10 the wild.

11 If approval of a conservation bank instrument is suspended, then
12 the bank sponsor shall not sell or transfer any credits from
13 that conservation bank, until such time as the conservation bank
14 instrument is reinstated. Any bank sponsor whose conservation
15 bank instrument has been revoked shall not be eligible to apply
16 to operate another conservation bank.

17 (h) An approved conservation bank instrument may be
18 amended through administrative amendment or major amendment as
19 follows:

20 (1) Administrative amendments shall be for changes to the
21 bank sponsor's name, address, or contact information.



1 The department may process administrative amendments
2 without recommendation from the endangered species
3 recovery committee and without approval from the
4 board; and

5 (2) Major amendments shall be for changes that are not
6 administrative amendments. Major amendments include,
7 but are not limited to, changes to the bank sponsor,
8 the species that the conservation bank is established
9 to protect, the resource management plan, the
10 financial assurances, the system for assessing and
11 releasing credits, or the site protection instrument.
12 Major amendments shall be reviewed and recommended for
13 approval by the endangered species recovery committee
14 and approved by the board pursuant to the procedure
15 set forth in subsection (d).

16 (i) The department may collect from bank sponsors fees or
17 payment for costs incurred, including but not limited to costs
18 included by the department during:

- 19 (1) Its rulemaking process;
- 20 (2) Application processing; and



1 (3) The establishment, monitoring, and oversight of the
2 bank sponsor's conservation bank.

3 (j) This part shall not apply to aquatic life or their
4 habitats.

5 **§195D-C Conservation banking; rules.** The department may
6 adopt rules pursuant to chapter 91 necessary to implement this
7 part."

8 SECTION 3. Section 195D-25, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§195D-25 Endangered species recovery committee.** (a)
11 There is established within the department for administrative
12 purposes only, the endangered species recovery committee, which
13 shall serve as a consultant to the board and the department on
14 matters relating to endangered, threatened, proposed, and
15 candidate species. The committee shall consist of two field
16 biologists with expertise in conservation biology, the
17 chairperson of the board or the chairperson's designee, the
18 ecoregion director of the United States Fish and Wildlife
19 Service or the director's designee, [~~the director of the United~~
20 ~~States Geological Survey, Biological Resources Division or the~~
21 ~~director's designee,~~] the associate director of the United



1 States Geological Survey, Ecosystem Mission Area or associate
2 director's designee, the dean of the [University] university of
3 Hawaii at Manoa college of natural sciences or the dean's
4 designee, and a person possessing a background in native
5 Hawaiian traditional and customary practices, as evidenced by:

6 (1) A college degree in a relevant field, such as Hawaiian
7 studies, native Hawaiian law, native Hawaiian
8 traditional and customary practices, or related
9 subject area;

10 (2) Work history that demonstrates an appropriate level of
11 knowledge in native Hawaiian traditional and customary
12 practices; or

13 (3) Substantial experience in native Hawaiian traditional
14 and customary practices.

15 Nongovernmental members shall be appointed by the governor
16 pursuant to section 26-34. Nongovernmental members shall not
17 serve for more than two consecutive terms. Nongovernmental
18 members shall serve for four-year staggered terms, except that
19 one of the members first appointed shall serve for two years.

20 Governmental members from the federal agencies are
21 requested but not required to serve on the committee. The



1 ability of the committee to carry out its functions and purposes
2 shall not be affected by the vacancy of any position allotted to
3 a federal governmental member.

4 (b) The endangered species recovery committee shall:

- 5 (1) Review all applications and proposals for habitat
6 conservation plans, safe harbor agreements, [~~and~~]
7 incidental take licenses, and conservation banks and
8 make recommendations, based on a full review of the
9 best available scientific and other reliable data and
10 at least one site visit to each property that is the
11 subject of the proposed action, and in consideration
12 of the cumulative impacts of the proposed action on
13 the recovery potential of the endangered, threatened,
14 proposed, or candidate species, to the department and
15 the board as to whether or not they should be
16 approved, amended, or rejected;
- 17 (2) Review all habitat conservation plans, safe harbor
18 agreements, [~~and~~] incidental take licenses, and
19 conservation banks on an annual basis to ensure
20 compliance with agreed to activities and, on the basis
21 of any available monitoring reports, and scientific



1 and other reliable data, make recommendations for any
2 necessary changes;

3 (3) Consider and recommend appropriate incentives to
4 encourage landowners to voluntarily engage in efforts
5 that restore and conserve endangered, threatened,
6 proposed, and candidate species;

7 (4) Perform such other duties as provided in this chapter;

8 (5) Consult with persons possessing expertise in such
9 areas as the committee may deem appropriate and
10 necessary in the course of exercising its duties; and

11 (6) Not conduct more than one site visit per year to each
12 property that is the subject of a habitat conservation
13 plan or safe harbor agreement[-], or conservation bank
14 instrument."

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

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

18
INTRODUCED BY: M. J. Hill

JAN 17 2025



Report Title:

DLNR; Conservation Banks

Description:

Authorizes the Department of Land and Natural Resources to operate and approve conservation banks and amends the Endangered Species Recovery Committee's membership and scope of authority. Effective upon approval.

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