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# 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           Accordingly, the purpose of this Act is to:

10           (1) Authorize the department of land and natural resources  
11           and certain public or private entities to operate  
12           conservation banks, subject to approval from the board  
13           of land and natural resources, for situations where a  
14           person or entity is required to provide compensatory  
15           mitigation to offset adverse impacts to threatened,  
16           endangered, candidate, or proposed species as part of



1 an approved incidental take license and habitat  
2 conservation plan;

3 (2) Add the associate director of the United States  
4 Geological Survey, Ecosystems Mission Area, to the  
5 membership of the endangered species recovery  
6 committee; and

7 (3) Require the endangered species recovery committee to  
8 review applications and proposals for conservation  
9 banks and conduct subsequent reviews and oversight.

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

13 **"PART . CONSERVATION BANKING**

14 **§195D-A Definitions.** As used in this part:

15 "Adaptive management strategy" means the actions to be  
16 taken if the resource management plan is not achieving its  
17 goals.

18 "Administrative amendments" means changes to the bank  
19 sponsor's name, address, or contact information.

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



1 "Compensatory mitigation" means actions taken to fulfill,  
2 in whole or in part, mitigation requirements pursuant to this  
3 chapter.

4 "Conservation bank" means a site or suite of sites  
5 established under a conservation bank instrument for the  
6 purposes of restoring, creating, enhancing, or protecting  
7 populations of threatened, endangered, candidate, or proposed  
8 species and their habitats expressed as credits.

9 "Conservation bank instrument" means an agreement between  
10 the board and a bank sponsor that establishes a conservation  
11 bank and describes the terms and conditions of its operation,  
12 including a system for assessing and releasing credits to be  
13 used for compensatory mitigation.

14 "Credit" means a value based on defined units representing  
15 the increase in numbers of a listed species or attainment of  
16 enhanced ecological functions or services essential to the  
17 survival of a listed species at a conservation bank and released  
18 as the conservation bank meets performance criteria included in  
19 its conservation bank instrument.

20 "Credit bundling" means a single unit of a conservation  
21 bank that provides two or more spatially overlapping ecosystem



1 functions or services that are grouped together into a single  
2 credit type and used as a single commodity to compensate for a  
3 single permitted action.

4 "Credit stacking" means a single unit of a conservation  
5 bank that provides two or more credit types representing  
6 spatially overlapping ecosystem functions or services that can  
7 be unstacked and used as separate commodities to compensate for  
8 different permitted actions.

9 "Maintenance plan" means a bank sponsor's plan to ensure  
10 the conservation bank remains viable after construction and  
11 throughout the life of the conservation bank, including a  
12 description of management requirements and a schedule for their  
13 implementation. "Maintenance plan" includes infrastructure and  
14 ecological management components within the project area and an  
15 identification of regular or recurring actions needed for upkeep  
16 of the conservation bank site.

17 "Major amendments" means changes that are not  
18 administrative amendments. "Major amendments" include changes  
19 to the bank sponsor, species that the conservation bank is  
20 established to protect, resource management plan, financial



1 assurances, system for assessing and releasing credits, or the  
2 site protection instrument.

3 "Monitoring requirements" means a description of parameters  
4 to be monitored and a methodology to monitor those requirements  
5 to determine if the conservation bank is on track to meet  
6 performance standards or if an adaptive management strategy is  
7 needed.

8 "Performance standards" means ecologically based standards  
9 that are used to determine whether the conservation bank is  
10 achieving objectives in the resource management plan and that  
11 describe the attribute to be measured, the level that  
12 constitutes success, and the time period to achieve success.

13 "Resource management plan" means the plan identified by a  
14 conservation bank instrument and described in section 195D-B.

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

19 **§195D-B Conservation banking.** (a) The department or bank  
20 sponsor may seek the approval of the board of a conservation  
21 bank instrument to operate a conservation bank for the purposes



1 of restoring, creating, enhancing, or protecting populations of  
2 threatened, endangered, candidate, or proposed species and their  
3 habitats for situations in which a person or entity is required  
4 to provide compensatory mitigation to offset adverse impacts to  
5 threatened, endangered, candidate, or proposed species as part  
6 of an approved incidental take license and habitat conservation  
7 plan.

8 (b) Applications to establish and operate a conservation  
9 bank shall include a proposed conservation bank instrument that  
10 identifies:

- 11 (1) The geographic area encompassed by the conservation  
12 bank and the ecosystems, natural communities, or  
13 habitat types within the conservation bank;
- 14 (2) The threatened, endangered, candidate, or proposed  
15 species that the conservation bank is established to  
16 protect;
- 17 (3) A resource management plan for long-term stewardship  
18 that includes:
- 19 (A) Goals and objectives;
- 20 (B) A review of the presence or absence of any  
21 threatened, endangered, candidate, or proposed



- 1 species on the property, including the species  
2 identified in paragraph (2);
- 3 (C) Performance standards;
  - 4 (D) Monitoring requirements;
  - 5 (E) A maintenance plan; and
  - 6 (F) An adaptive management strategy;
- 7 (4) Any other information that the department requires in  
8 rules adopted pursuant to section 195D-C;
- 9 (5) A system for assessing and releasing credits; and
  - 10 (6) The measures for property protection.
- 11 (c) In addition to the requirements set forth in  
12 subsection (b), for applications from bank sponsors other than  
13 the department, the proposed conservation bank instrument shall  
14 contain:
- 15 (1) Assurances that the bank sponsor has the scientific  
16 and technical competence required to perform the  
17 necessary conservation actions for the species  
18 identified in subsection (b) (2);
  - 19 (2) Financial assurances necessary to ensure the  
20 successful completion of habitat construction,  
21 management, monitoring, and remedial actions;



- 1 (3) A site protection instrument; and
- 2 (4) A provision requiring the bank sponsor to submit an
- 3 annual report on the current status of the
- 4 conservation bank to the department within ninety days
- 5 after the end of each fiscal year ending June 30.
- 6 (d) After consultation with the endangered species
- 7 recovery committee, the board may approve a conservation bank
- 8 instrument for the operation of a conservation bank by the
- 9 department or bank sponsor if the board determines that:
- 10 (1) The conservation bank will further the purposes of
- 11 this chapter by restoring, creating, enhancing, or
- 12 protecting populations of threatened, endangered,
- 13 candidate, or proposed species and their habitats;
- 14 (2) The system for assessing and releasing credits is
- 15 based on the best available scientific information,
- 16 and where there is uncertainty about what constitutes
- 17 the best available scientific information, the
- 18 rationale used for developing the system for assessing
- 19 and releasing credits gives the benefit of the doubt
- 20 to the species;



- 1           (3) For a conservation bank operated by a bank sponsor  
2           other than the department:
- 3           (A) The bank sponsor has the scientific and technical  
4           competencies required to perform the necessary  
5           conservation actions for the species identified  
6           in subsection (b) (2);
- 7           (B) The bank sponsor's funding source is adequate to  
8           ensure the successful completion of habitat  
9           construction, management, monitoring, and  
10          remedial actions;
- 11          (C) The nature and duration of the site protection  
12          instrument is adequate to ensure the successful  
13          completion of habitat construction, management,  
14          monitoring, or remedial actions; and
- 15          (D) The conservation bank instrument shall run with  
16          the land for the term specified in the site  
17          protection instrument and shall not be assignable  
18          or transferable separate from the land;
- 19          (4) For a conservation bank operated by the department,  
20          the conservation bank shall be established on land  
21          managed by the department; and



1           (5) The conservation bank instrument satisfies all  
2                   requirements in subsections (b) and (c).  
3 Board approval shall require an affirmative vote of no less than  
4 two-thirds of the authorized membership of the board. The board  
5 shall not approve a conservation bank instrument that the  
6 majority of the endangered species recovery committee  
7 recommended for disapproval.

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

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

20           (1) The use of the credit as compensatory mitigation for  
21                   incidental take of threatened or endangered species is



1 part of a habitat conservation plan and satisfies  
2 incidental take license requirements pursuant to  
3 section 195D-4(g) and habitat conservation plan  
4 requirements in section 195D-21(b);

5 (2) A majority of the endangered species recovery  
6 committee approves the use of the credit as  
7 compensatory mitigation;

8 (3) Credit stacking is prohibited;

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

12 (5) Once a credit is transferred or sold, that credit is  
13 retired and cannot be used again.

14 (g) Notwithstanding any other law to the contrary, the  
15 board shall suspend or revoke the approval of any conservation  
16 bank instrument approved under this section if the board  
17 determines that:

18 (1) The bank sponsor or its successor has breached its  
19 obligations under the conservation bank instrument and  
20 has failed to cure the breach in a timely manner, and  
21 the effect of the breach will diminish the likelihood



1           that the conservation bank will achieve its goals  
2           within the time frame or manner set forth in the  
3           conservation bank instrument;

4           (2) For a conservation bank operated by a bank sponsor  
5           other than the department, the conservation bank no  
6           longer has the funding source specified in subsection  
7           (d) (3) (B) or another sufficient funding source to  
8           ensure the successful completion of the habitat  
9           construction, management, monitoring, and remedial  
10          actions in accordance with the conservation bank  
11          instrument; or

12          (3) Continued operation of the conservation bank would  
13          appreciably reduce the likelihood of survival or  
14          recovery of any threatened or endangered species in  
15          the wild.

16 If approval of a conservation bank instrument is suspended, then  
17 the bank sponsor shall not sell or transfer any credits from  
18 that conservation bank. Any bank sponsor whose conservation  
19 bank instrument has been revoked shall not be eligible to apply  
20 to operate another conservation bank.



1 (h) An approved conservation bank instrument may be  
2 amended through administrative amendment or major amendment;  
3 provided that:

4 (1) The department may process administrative amendments  
5 without recommendation from the endangered species  
6 recovery committee and without approval from the  
7 board; and

8 (2) Major amendments shall be reviewed and recommended for  
9 approval by the endangered species recovery committee  
10 and approved by the board pursuant to an affirmative  
11 vote of no less than two-thirds of the authorized  
12 membership of the board; provided that the board shall  
13 not approve a major amendment that the majority of the  
14 endangered species recovery committee recommended for  
15 disapproval.

16 (i) The department may collect from bank sponsors fees or  
17 payment for costs incurred by the department during:

18 (1) Its rulemaking process;

19 (2) Application processing; and

20 (3) Establishment, monitoring, and oversight of the bank  
21 sponsor's conservation bank.



1 (j) This part shall not apply to aquatic life or their  
2 habitats.

3 **§195D-C Rulemaking.** The department may adopt rules  
4 pursuant to chapter 91 necessary to implement this part."

5 SECTION 3. Section 195D-25, Hawaii Revised Statutes, is  
6 amended by amending subsections (a) and (b) to read as follows:

7 "(a) There is established within the department for  
8 administrative purposes only, the endangered species recovery  
9 committee, which shall serve as a consultant to the board and  
10 the department on matters relating to endangered, threatened,  
11 proposed, and candidate species. The committee shall consist of  
12 two field biologists with expertise in conservation biology, the  
13 chairperson of the board or the chairperson's designee, the  
14 ecoregion director of the United States Fish and Wildlife  
15 Service or the director's designee, [~~the director of the United  
16 States Geological Survey, Biological Resources Division or the  
17 director's designee,~~] the associate director of the United  
18 States Geological Survey, Ecosystems Mission Area, or the  
19 associate director's designee, the dean of the University of  
20 Hawaii at Manoa college of natural sciences or the dean's



1 designee, and a person possessing a background in native  
2 Hawaiian traditional and customary practices, as evidenced by:

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

7 (2) Work history that demonstrates an appropriate level of  
8 knowledge in native Hawaiian traditional and customary  
9 practices; or

10 (3) Substantial experience in native Hawaiian traditional  
11 and customary practices.

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

17 Governmental members from the federal agencies are  
18 requested but not required to serve on the committee. The  
19 ability of the committee to carry out its functions and purposes  
20 shall not be affected by the vacancy of any position allotted to  
21 a federal governmental member.



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



- 1 (3) Consider and recommend appropriate incentives to  
2 encourage landowners to voluntarily engage in efforts  
3 that restore and conserve endangered, threatened,  
4 proposed, and candidate species;
- 5 (4) Perform such other duties as provided in this chapter;
- 6 (5) Consult with persons possessing expertise in such  
7 areas as the committee may deem appropriate and  
8 necessary in the course of exercising its duties; and
- 9 (6) Not conduct more than one site visit per year to each  
10 property that is the subject of a habitat conservation  
11 plan [~~or~~] safe harbor agreement[-], or conservation  
12 bank instrument."

13 SECTION 4. In codifying the new sections added by section  
14 2 of this Act, the revisor of statutes shall substitute  
15 appropriate section numbers for the letters used in designating  
16 the new sections in this Act.

17 SECTION 5. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 6. This Act shall take effect on July 1, 3000.



**Report Title:**

DLNR; BLNR; Conservation Banks

**Description:**

Authorizes the Department of Land and Natural Resources and certain public or private entities to operate conservation banks, subject to approval from the Board of Land and Natural Resources, for situations where a person or entity is required to provide compensatory mitigation to offset adverse impacts to threatened, endangered, candidate, or proposed species as part of an approved incidental take license and habitat conservation plan. Adds the Associate Director of the United States Geological Survey, Ecosystems Mission Area, to the membership of the Endangered Species Recovery Committee. Requires the Endangered Species Recovery Committee to review applications and proposals for conservation banks and conduct subsequent reviews and oversight. Effective 7/1/3000. (HD1)

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