
A BILL FOR AN ACT

RELATING TO CONSERVATION MITIGATION BANKS.

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 the State'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 seek the
12 approval of the board of land and natural resources to
13 operate conservation banks 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, Ecosystem 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 conservation bank instruments and conduct
10 subsequent reviews and oversight.

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

14 **"PART . CONSERVATION BANKING**

15 **§195D-A Definitions.** As used in this part:

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

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



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

3 "Compensatory mitigation" means actions taken to fulfill,
4 in whole or in part, mitigation requirements pursuant to this
5 part.

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

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

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



1 "Credit bundling" means a single unit of a conservation
2 bank that provides two or more spatially overlapping ecosystem
3 functions or services that are grouped together into a single
4 credit type and used as a single commodity to compensate for a
5 single permitted action.

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

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

19 "Major amendments" means changes that are not
20 administrative amendments. "Major amendments" includes changes
21 to the bank sponsor, species that the conservation bank is



1 established to protect, resource management plan, financial
2 assurances, system for assessing and releasing credits, or site
3 protection instrument.

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

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

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

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

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



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

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

12 (1) The geographic area encompassed by the conservation
13 bank and the ecosystems, natural communities, or
14 habitat types within the conservation bank;

15 (2) The threatened, endangered, candidate, or proposed
16 species that the conservation bank is established to
17 protect;

18 (3) A resource management plan for long-term stewardship
19 that includes:

20 (A) Goals and objectives;



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



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



1 and releasing credits gives the benefit of the doubt
2 to the species;

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

5 (A) The bank sponsor has the scientific and technical
6 competencies required to perform the necessary
7 conservation actions for the species identified
8 in subsection (b) (2);

9 (B) The bank sponsor's funding source is adequate to
10 ensure the successful completion of habitat
11 construction, management, monitoring, and
12 remedial actions;

13 (C) The nature and duration of the site protection
14 instrument are adequate to ensure the successful
15 completion of habitat construction, management,
16 monitoring, or remedial actions; and

17 (D) The conservation bank instrument shall run with
18 the land for the term specified in the site
19 protection instrument and shall not be assignable
20 or transferable separate from the land;



1 (4) For a conservation bank operated by the department,
2 the conservation bank shall be established on land
3 managed by the department; and

4 (5) The conservation bank instrument satisfies all
5 requirements in subsections (b) and (c).

6 Board approval shall require an affirmative vote of no less than
7 two-thirds of the authorized membership of the board. The board
8 shall not approve a conservation bank instrument that the
9 majority of the endangered species recovery committee
10 recommended for disapproval.

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

17 (f) After a conservation bank has created a credit
18 following the system for assessing and releasing credits
19 identified in the conservation bank instrument, the bank sponsor
20 may transfer or sell the credit to an incidental take licensee



1 for use of an approved conservation bank as compensatory
2 mitigation; provided that:

3 (1) The use of the credit as compensatory mitigation for
4 incidental take of threatened or endangered species is
5 part of a habitat conservation plan and satisfies
6 incidental take license requirements pursuant to
7 section 195D-4(g) and habitat conservation plan
8 requirements in section 195D-21(b);

9 (2) A majority of the endangered species recovery
10 committee approves the use of the credit as
11 compensatory mitigation;

12 (3) Credit stacking is prohibited;

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

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

18 (g) Notwithstanding any other law to the contrary, the
19 board shall suspend or revoke the approval of any conservation
20 bank instrument approved under this section if the board
21 determines that:



1 (1) The bank sponsor or its successor has breached its
2 obligations under the conservation bank instrument and
3 has failed to cure the breach in a timely manner, and
4 the effect of the breach will diminish the likelihood
5 that the conservation bank will achieve its goals
6 within the time frame or manner set forth in the
7 conservation bank instrument;

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

16 (3) Continued operation of the conservation bank would
17 appreciably reduce the likelihood of survival or
18 recovery of any threatened or endangered species in
19 the wild.

20 If approval of a conservation bank instrument is suspended, then
21 the bank sponsor shall not sell or transfer any credits from



1 that conservation bank. Any bank sponsor whose conservation
2 bank instrument has been revoked shall not be eligible to apply
3 to operate another conservation bank.

4 (h) An approved conservation bank instrument may be
5 amended through administrative amendment or major amendment;
6 provided that:

7 (1) The department may process administrative amendments
8 without recommendation from the endangered species
9 recovery committee and without approval from the
10 board; and

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

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

21 (1) Its rulemaking process;



- 1 (2) Application processing; and
- 2 (3) Establishment, monitoring, and oversight of the bank
- 3 sponsor's conservation bank.

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

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

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

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



1 associate director's designee, the dean of the University of
2 Hawaii at Manoa college of natural sciences or the dean's
3 designee, and a person possessing a background in native
4 Hawaiian traditional and customary practices, as evidenced by:

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

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

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

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

19 Governmental members from the federal agencies are
20 requested but not required to serve on the committee. The
21 ability of the committee to carry out its functions and purposes



1 shall not be affected by the vacancy of any position allotted to
2 a federal governmental member.

3 (b) The endangered species recovery committee shall:

- 4 (1) Review all applications and proposals for habitat
5 conservation plans, safe harbor agreements, [~~and~~]
6 incidental take licenses, and conservation banks and
7 conservation bank instruments and make
8 recommendations, based on a full review of the best
9 available scientific and other reliable data and at
10 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 and conservation bank instruments
20 on an annual basis to ensure compliance with agreed to
21 activities and, on the basis of any available



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

17 SECTION 4. In codifying the new sections added by section
18 2 of this Act, the revisor of statutes shall substitute
19 appropriate section numbers for the letters used in designating
20 the new sections in this Act.



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.
3 SECTION 6. This Act shall take effect upon its approval.



Report Title:

DLNR; BLNR; Conservation Banks

Description:

Authorizes the Department of Land and Natural Resources and certain public or private entities to seek the approval of the Board of Land and Natural Resources to operate conservation banks 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, Ecosystem 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 conservation bank instruments conduct subsequent reviews and oversight. (CD1)

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