
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 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, 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 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 part.

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



1 for assessing and releasing credits, or the site protection
2 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" mean 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 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 endangered, threatened, proposed, or candidate
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 endangered or threatened species on the property



1 including the species identified in paragraph
2 (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 endangered, threatened, proposed,
13 or candidate 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, Ecosystem 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
21 designee, and a person possessing a background in [~~native~~]



1 Native Hawaiian traditional and customary practices, as
2 evidenced by:

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

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

10 (3) Substantial experience in [~~native~~] Native Hawaiian
11 traditional 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[7] 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
6 chapter;
- 7 (5) Consult with persons possessing expertise in [~~such~~]
8 areas [~~as~~] the committee may deem appropriate and
9 necessary in the course of exercising its duties; and
- 10 (6) Not conduct more than one site visit per year to each
11 property that is the subject of a habitat conservation
12 plan [~~or~~] safe harbor agreement[-], or conservation
13 bank instrument."

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

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

20 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, 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 conduct subsequent reviews and oversight. Effective 7/1/3000. (SD1)

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