
A BILL FOR AN ACT

RELATING TO CONSERVATION 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 to satisfy mitigation obligations 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 ("protected species").

10 The purpose of this Act is to authorize the board of land
11 and natural resources to approve the operation of public and
12 private conservation banks that are established for the purpose
13 of increasing numbers of protected species and protecting and
14 enhancing protected species habitat, which then creates
15 mitigation credits for purchase by incidental take licensees to
16 satisfy their mitigation obligations.

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

"PART . CONSERVATION BANKING

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

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

"Compensatory mitigation" means actions taken by an incidental take licensee to fulfill mitigation requirements pursuant to this chapter, or funding provided by an incidental take licensee for conservation, restoration, or preservation efforts carried out by others at a conservation bank.

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

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

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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 standards included in its conservation bank instrument.

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

12 "Credit bundling" means a single unit of a conservation
13 bank that provides two or more spatially overlapping ecosystem
14 functions or services that are grouped together into a single
15 credit type and used as a single commodity to compensate for a
16 single permitted action.

17 "Long-term management plan" means a bank sponsor's long-
18 term plan of how a conservation bank will be managed, including
19 after performance standards have been achieved, to ensure long-
20 term sustainability of the species identified in section 195D-
21 B(b)(3). Long-term management plans may include descriptions of

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

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

11 "Mitigation" means actions taken or funding provided by an
12 incidental take licensee to offset unavoidable negative impacts
13 to threatened, endangered, candidate, or proposed species that
14 meet the biological goals of a habitat conservation plan.

15 Mitigation may include, but is not limited to, restoration of
16 degraded habitat, land preservation, creation of new habitat,
17 reducing threats to affected species, translocation,
18 repatriation, and compensatory mitigation.

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

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1 "Performance standards" means ecologically based standards
2 that are used to determine whether the conservation bank is
3 achieving its objectives outlined in a resource management plan.
4 Each performance standard shall describe the attribute to be
5 measured, the level that constitutes success, and the time-
6 period to achieve success.

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

11 **§195D-B Conservation banks.** (a) The department or other
12 bank sponsor may seek board approval of a conservation bank
13 instrument to establish and operate a conservation bank to
14 provide for situations where a person or entity is required to
15 provide mitigation to offset adverse impacts to threatened,
16 endangered, candidate, or proposed species as part of an
17 approved incidental take license and habitat conservation plan.

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

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- 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 restore, create, enhance, or protect;
- 7 (3) A resource management plan that includes:
- 8 (A) Goals and objectives;
- 9 (B) Baseline information of the presence or absence
- 10 of any endangered or threatened species on the
- 11 property including the species identified in
- 12 paragraph (2);
- 13 (C) Performance standards;
- 14 (D) Monitoring requirements;
- 15 (E) A maintenance plan;
- 16 (F) A long-term management plan;
- 17 (G) An adaptive management strategy that specifies
- 18 the actions to be taken if the resource
- 19 management plan is not achieving its goals; and
- 20 (H) Any other information that the department
- 21 requires in a rule adopted pursuant to section
- 22 195D-C.

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1 (4) A system for assessing and releasing credits; and

2 (5) The measures for property protection.

3 (c) In addition to the requirements set forth in
4 subsection (b), for applications from bank sponsors other than
5 the department, the proposed conservation bank instrument shall
6 contain:

7 (1) Assurances that the bank sponsor has the scientific
8 and technical competence required to perform the
9 necessary conservation actions for the species
10 identified in subsection (b)(2);

11 (2) Financial assurances and proposed form of security,
12 necessary to ensure the successful completion of
13 habitat construction, management, monitoring, and
14 remedial actions;

15 (3) A site protection instrument that prohibits
16 incompatible uses; and

17 (4) A provision requiring the bank sponsor to submit to
18 the department within ninety days of each fiscal year
19 ending June 30 an annual report on the current status
20 of the conservation bank.

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(d) After consultation with the endangered species recovery committee, the board may approve a conservation bank instrument if the board determines that:

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

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

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

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

(B) The bank sponsor's funding source is adequate to ensure the successful completion of habitat

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1 construction, management, monitoring, and
2 remedial actions;

3 (C) The nature and duration of the site protection
4 instrument is adequate to ensure the successful
5 completion of habitat construction, management,
6 monitoring, and remedial actions; and

7 (D) The conservation bank instrument shall run with
8 the land for the term specified in the site
9 protection instrument and shall not be assignable
10 or transferable separate from the land;

11 (4) For a conservation bank operated by the department,
12 the conservation bank shall be established on land
13 managed by the department; and

14 (5) The conservation bank instrument satisfies all the
15 requirements in subsection (b) and, for applications
16 from bank sponsors other than the department,
17 subsection (c).

18 Board approval shall require an affirmative vote of not less
19 than two-thirds of the authorized membership of the board. The
20 board shall not approve a conservation bank instrument that the
21 majority of the endangered species recovery committee
22 recommended for disapproval.

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1 (e) The board's approval of a conservation bank instrument
2 for a conservation bank operated by a bank sponsor other than
3 the department does not relieve the bank sponsor of its
4 obligation to secure any applicable temporary license pursuant
5 to section 195D-4, if applicable to its operation or other
6 activities.

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

13 (1) The use of the credit as compensatory mitigation for
14 incidental take of threatened or endangered species is
15 identified in an approved habitat conservation plan
16 and satisfies incidental take license requirements in
17 section 195D-4(g) and habitat conservation plan
18 requirements in section 195D-21(b);

19 (2) Credit stacking is prohibited;

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

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

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

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

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

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1 (3) Continued operation of the conservation bank would
2 appreciably reduce the likelihood of survival or
3 recovery of any threatened or endangered species in
4 the wild.

5 If approval of a conservation bank instrument is suspended, then
6 the bank sponsor shall not sell or transfer any credits from
7 that conservation bank, until such time as the conservation bank
8 instrument is reinstated. Any bank sponsor whose conservation
9 bank instrument has been revoked shall not be eligible to apply
10 to operate another conservation bank.

11 (h) An approved conservation bank instrument may be
12 amended through administrative amendment or major amendment.

13 (1) Administrative amendments are changes to the bank
14 sponsor's name, address, or contact information. The
15 department may process administrative amendments
16 without recommendation from the endangered species
17 recovery committee and without approval from the
18 board.

19 (2) Major amendments are changes that are not
20 administrative amendments. Major amendments include,
21 but are not limited to, changes to the bank sponsor,
22 the species that the conservation bank is established

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1 to protect, the resource management plan, the
2 financial assurances, the system for assessing and
3 releasing credits, or the site protection instrument.
4 Major amendments shall be reviewed and recommended for
5 approval by the endangered species recovery committee
6 and approved by the board pursuant to the procedure
7 set forth in subsection (d).

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

- 11 (1) Its rulemaking process;
- 12 (2) Application processing; and
- 13 (3) The establishment, monitoring, and oversight of the
14 bank sponsor's conservation bank.

15 (j) This part shall not apply to aquatic life or their
16 habitats.

17 **§195D-C Conservation banks; rules.** The department may
18 adopt rules pursuant to chapter 91 necessary to implement this
19 part."

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

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1 **"§195D-25 Endangered species recovery committee. (a)**

2 There is established within the department for administrative
3 purposes only, the endangered species recovery committee, which
4 shall serve as a consultant to the board and the department on
5 matters relating to endangered, threatened, proposed, and
6 candidate species. The committee shall consist of two field
7 biologists with expertise in conservation biology, the
8 chairperson of the board or the chairperson's designee, the
9 ecoregion director of the United States Fish and Wildlife
10 Service or the director's designee, [~~the director of the United~~
11 ~~States Geological Survey, Biological Resources Division or the~~
12 ~~director's designee]~~ the associate director of the United States
13 Geological Survey, Ecosystem Mission Area or associate
14 director's designee, the dean of the [~~University]~~ university of
15 Hawaii at Manoa college of natural sciences or the dean's
16 designee, and a person possessing a background in native
17 Hawaiian traditional and customary practices, as evidenced by:

- 18 (1) A college degree in a relevant field, such as Hawaiian
19 studies, native Hawaiian law, native Hawaiian
20 traditional and customary practices, or related
21 subject area;

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

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

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

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

(b) The endangered species recovery committee shall:

(1) Review all applications and proposals for habitat conservation plans, safe harbor agreements, ~~and~~ incidental take licenses, and conservation banks and make recommendations, based on a full review of the best available scientific and other reliable data and at least one site visit to each property that is the

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1 subject of the proposed action, and in consideration
2 of the cumulative impacts of the proposed action on
3 the recovery potential of the endangered, threatened,
4 proposed, or candidate species, to the department and
5 the board as to whether or not they should be
6 approved, amended, or rejected;

7 (2) Review all habitat conservation plans, safe harbor
8 agreements, ~~and~~ incidental take licenses, and
9 conservation banks on an annual basis to ensure
10 compliance with agreed to activities and, on the basis
11 of any available monitoring reports, and scientific
12 and other reliable data, make recommendations for any
13 necessary changes;

14 (3) Consider and recommend appropriate incentives to
15 encourage landowners to voluntarily engage in efforts
16 that restore and conserve endangered, threatened,
17 proposed, and candidate species;

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

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

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

5 SECTION 4. In codifying the new sections added by section
6 2 and referenced in section 2 of this Act, the revisor of
7 statutes shall substitute appropriate section numbers for the
8 letters used in designating new sections in this Act.

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect upon its approval.

12

13

INTRODUCED BY:



14

BY REQUEST

JAN 26 2026

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Report Title:

Department of Land and Natural Resources; Conservation Banks

Description:

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

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 CONSERVATION BANKS.

PURPOSE: To authorize the Board of Land and Natural Resources (Board) to approve the operation of public and private conservation banks.

MEANS: Add a new part to chapter 195D and amend section 195D-25, Hawaii Revised Statutes (HRS).

JUSTIFICATION: This bill authorizes entities to operate conservation banks: landscape-scale conservation projects designed to help recover at-risk species or improve their habitat. Conservation banks would bring additional funds for the department's conservation actions on state lands and encourage private landowners to conduct conservation actions on their property to help recover Hawaii's threatened and endangered species.

The Board issues incidental take licenses as part of approved habitat conservation plans for the take of threatened and endangered species incidental to the operation of many different types of projects. Habitat conservation plans require licensees mitigate all negative impacts to threatened, endangered, candidate, or proposed species in the project area. Currently, mitigation actions consist of on-the-ground conservation actions, funding for conservation actions and research, and the purchase of property.

The Department finds that incidental take licensees fall behind on their mitigation obligations for various reasons and that by adding conservation banks to the available compensatory mitigation options, licensees

will have additional tools to ensure adverse impacts to imperiled species will be offset.

This bill seeks to provide more tools for incidental take licensees to satisfy mitigation requirements in chapter 195D, HRS. Conservation banks would make project costs more predictable for incidental take licensees, expedite review of mitigation projects in habitat conservation plans, increase certainty that this mitigation obligation is complete, offer landscape scale benefits to multiple species, and reduce or eliminate the time delay between issuing the incidental take license and the mitigation obligation being met.

This bill requires that applications for conservation banks be reviewed and recommended for approval by the existing Endangered Species Recovery Committee and approved by the Board before operation. This bill also provides legal safeguards should an approved conservation bank instrument—an agreement between the Board and a bank sponsor that establishes the conservation bank—be breached.

Impact on the public: This bill will provide incidental take licensees with another option for mitigation through conservation banks and ensure the fidelity of such mitigation for the public benefit.

Impact on the department and other agencies: This bill will also provide flexibility to prescribe administrative rules that govern the operation of conservation banks.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LNR 402.

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OTHER AFFECTED
AGENCIES:

None.

EFFECTIVE DATE:

Upon its approval.