THE SENATE
THIRTY-THIRD LEGISLATURE, 2026
STATE OF HAWAII

S.B. NO. 2005 S.D. 1

A BILL FOR AN ACT

RELATING TO CONSERVATION BANKING.

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

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

Accordingly, the purpose of this Act is to:

(1) Authorize 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;

(2) Add the associate director of the United States Geological Survey, Ecosystem Mission Area, to the membership of the endangered species recovery committee; and

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

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:

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

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

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

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

"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.

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

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

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

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

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

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

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

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

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

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

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

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

of restoring, creating, enhancing, or protecting populations of threatened, endangered, candidate, or proposed species and their habitats for situations in which 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.

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

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

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

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

(A) Goals and objectives;

(B) A review of the presence or absence of any endangered or threatened species on the property

including the species identified in paragraph (2);

(C) Performance standards;

(D) Monitoring requirements;

(E) A maintenance plan; and

(F) An adaptive management strategy;

(4) Any other information that the department requires in rules adopted pursuant to section 195D-C;

(5) A system for assessing and releasing credits; and

(6) The measures for property protection.

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

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

(2) Financial assurances necessary to ensure the successful completion of habitat construction, management, monitoring, and remedial actions;

(3) A site protection instrument; and

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

(d) After consultation with the endangered species recovery committee, the board may approve a conservation bank instrument for the operation of a conservation bank by the department or bank sponsor 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 uncertainty about what constitutes the best available scientific information, 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 competencies 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 construction, management, monitoring, and remedial actions;

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

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

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

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

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

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

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

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

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

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

(3) Credit stacking is prohibited;

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

(5) 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 will diminish the likelihood

that the conservation bank will achieve its goals within the time frame or 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

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

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

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

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

(2) Major amendments shall be reviewed and recommended for approval by the endangered species recovery committee and approved by the board pursuant to an affirmative vote of not less than two-thirds of the authorized membership of the board; provided that the board shall not approve a major amendment that the majority of the endangered species recovery committee recommended for disapproval.

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

(1) Its rulemaking process;

(2) Application processing; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 6. This Act shall take effect on July 1, 2050.

S.B. NO. 2005 S.D. 1

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 7/1/2050. (SD1)

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