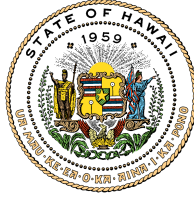


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA**

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
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RYAN K.P. KANAKA'OLE
FIRST DEPUTY

CIARA W.K. KAHANE
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARK

**Testimony of
RYAN K.P. KANAKA'OLE
Acting Chairperson**

**Before the House Committee on
ENERGY & ENVIRONMENTAL PROTECTION**

**Thursday, January 29, 2026
9:30 AM**

State Capitol, Conference Room 325

**In consideration of
HOUSE BILL 1802
RELATING TO CONSERVATION MITIGATION BANKS**

House Bill 1802 authorizes the Department to establish and operate conservation mitigation banks to restore, create, enhance, or preserve species, their habitats, or resources as compensatory mitigation, or for past damages. This bill authorizes the Department to contract with a third-party administrator to operate the conservation mitigation banks and clarifies the sale of credits used in conservation mitigation banking. The Department provides the following comments on this bill.

Regarding page 2, lines 11 to 19, the purpose of the Act, the Department recommends revising the purpose to "authorize the department of land and natural resources to operate and approve conservation banks to offset adverse impacts to threatened, endangered, candidate, or proposed species as part of an approved incidental take license and habitat conservation plan."

Regarding page 3, lines 8 to 12, the Department suggests revising the term "conservation mitigation bank" to "conservation bank," and updating the definition to read: "a site or set of sites established under a conservation bank instrument for the purpose of restoring, creating, enhancing, or protecting populations of threatened, endangered, candidate, or proposed species and their habitats expressed as credits." We also recommend replacing the term "conservation mitigation bank" with "conservation bank" throughout the bill to prevent confusion between conservation banks and mitigation banks used in wetland and aquatic systems.

Regarding page 3, lines 13 to 16, the definition of "conservation mitigation bank instrument," the Department recommends the term be revised to "conservation bank instrument," and the definition be revised to "an agreement between the board and 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 mitigation."

Regarding page 3, lines 17 to 20, the Department suggests revising the definition of “credit” to read: “a value based on defined units representing the increase in the number of individuals of a listed species or the achievement of enhanced ecological functions or services essential for 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.”

Regarding page 4, lines 14 to 20, and page 5, lines 1 to 2, the Department recommends granting authority to the Board of Land and Natural Resources as follows: “the department or other bank sponsor may seek board approval of a conservation bank instrument to operate a conservation bank for the purpose of restoring, creating, enhancing, or protecting populations of threatened, endangered, candidate, or proposed species and their habitats, to address situations where a person or entity is required to provide mitigation to offset adverse impacts to such species as part of an approved incidental take license and habitat conservation plan.”

Mahalo for the opportunity to comment on this measure.



REPRESENTATIVE NICOLE E. LOWEN, CHAIR
REPRESENTATIVE AMY A. PERRUSO, VICE-CHAIR
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

TESTIMONY REGARDING HOUSE BILL NO. 1802
RELATING TO CONSERVATION MITIGATION BANKS

January 29, 2026, 9:30 a.m.
Conference Room 325 & Videoconference
State Capitol
415 South Beretania Street

Good morning, Chair Lowen, Vice-Chair Perruso, and members of the committee:

My name is David Lane Henkin, and I am an attorney with Earthjustice. We appreciate the opportunity to testify regarding House Bill 1802, which would authorize the Department of Land and Natural Resources (DLNR) to operate and approve conservation mitigation banks for, among other things, “compensatory mitigation where the issuance of an incidental take license requires the licensee to provide mitigation as part of a habitat conservation plan.” HB 1802 at 2.

We have no objection in concept to conservation mitigation banks. Whenever the Legislature adopts policies related to endangered and threatened species, however, the devil is in the details. HB 1802 lacks critical details, which could undermine vital protections in existing law for Hawai‘i’s unique and irreplaceable native species in situations where entities seek an incidental take license under HRS § 195D-4(g) to kill, injure, or otherwise “take” endangered and threatened species. *See* HRS § 195D-2 (defining “take”).

Our main concerns with HB 1802 are:

1. The bill does not provide for the experts on the Endangered Species Recovery Committee (ESRC) to review and approve any use of conservation credits to mitigate take for purposes of an incidental take license (ITL) and habitat conservation plan (HCP). When the Legislature amended HRS chapter 195D to authorize the incidental taking of imperiled species, it insisted that the ESRC must sign off on all ITLs and HCPs to ensure that they are based on sound science and will confer the promised conservation benefits. HRS § 195D-25(b). The Legislature further provided that, even if the DLNR recommends approval of an ITL or HCP, the experts on the ESRC have the final say; the ESRC’s disapproval can be overridden by only a supermajority of the Legislature. HRS § 195D-21(b)(1). HB 1802’s vague language authorizing DLNR to “establish and operate conservation mitigation banks,” including banks operated by a third-party, **would improperly allow DLNR unilaterally to make the call that**

proposed mitigation using credits is adequate, even if the experts on the ESRC conclude that the proposal would be disastrous.

2. HB 1802 fails to specify what happens if someone buys credits from a conservation bank to mitigate for the harm they inflict on imperiled species, and it then turns out that the anticipated benefits from the conservation project are not realized (*e.g.*, because of climate change or a natural disaster, or because the assumptions on which the anticipated benefits were based turn out to be wrong). Under current law, an HCP must “[p]rovide for an adaptive management strategy that specifies the actions to be taken periodically if the plan is not achieving its goals.” HRS § 195D-21(b)(2)(I). Moreover, the Board of Land and Natural Resources must suspend or revoke an HCP if “[c]ontinuation of the permitted activity would appreciably reduce the likelihood of survival or recovery of any threatened or endangered species in the wild.” HRS § 195D-21(c)(3). In other words, the Legislature insisted that the applicant for an incidental take license—not the imperiled species—is on the hook if things do not go according to plan. Under HB 1802, **if things are not working out, would the DLNR (i.e., Hawai‘i’s taxpayers)—rather than the person harming imperiled species—now be responsible to make and pay for the changes needed to confer the promised benefit to the imperiled species?** The bill is silent, creating the unacceptable prospect that either nothing will be done, and the imperiled species will suffer, or Hawai‘i’s taxpayers will have to cover the costs, rather than the entity inflicting harm.

As the foregoing makes clear, establishing an entirely new conservation mitigation program involves complex policy issues and, unless those issues are thought through carefully, risks undermining important protections for Hawai‘i’s irreplaceable imperiled species.

The Legislature refused to enact a similarly vague bill to establish conservation mitigation banks that was introduced in 2024 (HB 2473). Following that legislative session, Earthjustice worked for months with DLNR to craft legislation that would address the serious policy concerns that creation of such a new program for imperiled species presents. Attached to this testimony is a draft bill based on those conversations with DLNR that would ensure adequate protection for imperiled species. **If the committee wants to advance legislation to create a mechanism for the creation of conservation banks, we urge the committee to replace the language in HB 1808 with the attached.**

Mahalo for the opportunity to offer this testimony.

____.B. NO. _____

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 The purpose of this Act is to authorize the department of
10 land and natural resources to operate and approve conservation
11 banks to provide for situations where a person or entity is
12 required to provide compensatory mitigation to offset adverse
13 impacts to threatened, endangered, candidate, or proposed
14 species as part of an approved incidental take license and
15 habitat conservation plan.

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

____.B. NO.____

1 **"PART . CONSERVATION BANKING**

2 **§195D-A Definitions.** As used in this part:

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

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

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

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

18 "Credit" means a value based on defined units representing
19 the increase in numbers of individuals of a listed species or
20 attainment of enhanced ecological functions or services
21 essential for the survival of a listed species at a conservation

_____.B. NO._____

1 bank and released as the conservation bank meets performance
2 criteria included in its conservation bank instrument.

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

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

13 "Maintenance plan" means a bank sponsor's plan to ensure
14 the conservation bank remains viable after construction and
15 throughout life of conservation bank, including a description of
16 management requirements and a schedule for their implementation.
17 A maintenance plan may include infrastructure (e.g., fencing)
18 and/or ecological management components (e.g., invasive species
19 control) within the project area, and identifies regular or
20 recurring actions needed for the upkeep of the conservation bank
21 site.

.B. NO.

1 "Monitoring requirements" mean a description of parameters
2 to be monitored and a methodology to monitor those requirements
3 (e.g., monitoring frequency and locations) to determine if the
4 conservation bank is on track to meet performance standards or
5 if adaptive management is needed.

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

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

16 **§195D-B Conservation banking.** (a) The department or
17 other bank sponsor may seek board approval of a conservation
18 bank instrument to operate a conservation bank for the purposes
19 of restoring, creating, enhancing, or protecting populations of
20 threatened, endangered, candidate, or proposed species and their
21 habitats to provide for situations where a person or entity is
22 required to provide compensatory mitigation to offset adverse

_____.B. NO._____

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:

(i) Goals and objectives;

(ii) Baseline information that includes a review of the presence or absence of any endangered or threatened species on the property including the species identified in section 195D-B(b)(2);

(iii) Performance standards;

(iv) Monitoring requirements;

(v) A maintenance plan;

.B. NO.

- 1 (vi) An adaptive management strategy that specifies
2 the actions to be taken if the resource
3 management plan is not achieving its goals; and
4 (4) Any other information that the Department requires in
5 a rule adopted pursuant to §195D-C.
6 (5) A system for assessing and releasing credits; and
7 (6) The measures for property protection.
8 (c) In addition to the requirements set forth in section
9 195D-B (b), for applications from bank sponsors other than the
10 department, the proposed conservation bank instrument shall
11 contain:
12 (1) Assurances that the bank sponsor has the scientific
13 and technical competence required to perform the
14 necessary conservation actions for the species
15 identified in section 195D-B (b) (2);
16 (2) Financial assurances necessary to ensure the
17 successful completion of habitat construction,
18 management, monitoring, and remedial actions;
19 (3) A site protection instrument; and
20 (4) A provision requiring the bank sponsor to submit to
21 the department within ninety days of each fiscal year

_____.B. NO._____

1 ending June 30 an annual report on the current status
2 of the conservation bank.

3 (d) After consultation with the endangered species
4 recovery committee, the board may approve a conservation bank
5 instrument for the operation of a conservation bank by the
6 department or other bank sponsor if the board determines that:

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

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

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

20 (A) The bank sponsor has the scientific and technical
21 competence required to perform the necessary

_____.B. NO._____

1 conservation actions for the species identified
2 in subsection (b) (2);

3 (B) The bank sponsor's funding source is adequate to
4 ensure the successful completion of habitat
5 construction, management, monitoring, and
6 remedial actions;

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

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

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

18 (5) The conservation bank instrument satisfies all the
19 requirements in section 195D-B (b) and, for
20 applications from bank sponsors other than the
21 department, section 195D-B (c).

.B. NO.

1 Board approval shall require an affirmative vote of not
2 less than two-thirds of the authorized membership of the board.
3 The board shall not approve a conservation bank instrument that
4 the majority of the endangered species recovery committee
5 recommended for disapproval.

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

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

18 (1) The use of the credit as compensatory mitigation for
19 incidental take of threatened or endangered species is
20 part of a habitat conservation plan and satisfies
21 incidental take license requirements in section 195D-

.B. NO.

1 4(g) and habitat conservation plan requirements in
2 section 195D-21(b);

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

6 (3) Credit stacking is prohibited;

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

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

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

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

____.B. NO.____

(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.

(1) Administrative amendments are changes to the bank sponsor's name, address, or contact information. The department may process administrative amendments without recommendation

_____.B. NO._____

1 from the endangered species recovery committee and without
2 approval from the board.

3 (2) Major amendments are changes that are not
4 administrative amendments. Major amendments include, but are
5 not limited to, changes to the bank sponsor, the species that
6 the conservation bank is established to protect, the resource
7 management plan, the financial assurances, the system for
8 assessing and releasing credits, or the site protection
9 instrument. Major amendments shall be reviewed and recommended
10 for approval by the endangered species recovery committee and
11 approved by the board pursuant to the procedure set forth in
12 section 195D-B (d).

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

16 (1) Its rulemaking process;
17 (2) Application processing; and
18 (3) The establishment, monitoring, and oversight of the
19 bank sponsor's conservation bank.

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

.B. NO.

1 **§195D-C Conservation banking; rules.** The department may
2 adopt rules pursuant to chapter 91 necessary to implement this
3 part."

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

6 "**§195D-25 Endangered species recovery committee.**__ (a)

7 There is established within the department for administrative
8 purposes only, the endangered species recovery committee, which
9 shall serve as a consultant to the board and the department on
10 matters relating to endangered, threatened, proposed, and
11 candidate species. The committee shall consist of two field
12 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 States
18 Geological Survey, Ecosystem Mission Area or associate
19 director's designee, the dean of the University of Hawaii at
20 Manoa college of natural sciences or the dean's designee, and a
21 person possessing a background in native Hawaiian traditional
22 and customary practices, as evidenced by:

.B. NO.

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

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

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

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

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

20 (b) The endangered species recovery committee shall:

21 (1) Review all applications and proposals for habitat
22 conservation plans, safe harbor agreements, [and]

_____.B. NO._____

1 incidental take licenses, and conservation banks and
2 make recommendations, based on a full review of the
3 best available scientific and other reliable data and
4 at least one site visit to each property that is the
5 subject of the proposed action, and in consideration
6 of the cumulative impacts of the proposed action on
7 the recovery potential of the endangered, threatened,
8 proposed, or candidate species, to the department and
9 the board as to whether or not they should be
10 approved, amended, or rejected;

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

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

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

_____.B. NO._____

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

10 SECTION 5. This Act shall take effect upon its approval.

11 INTRODUCED BY:

12 BY REQUEST

HB-1802

Submitted on: 1/27/2026 10:39:35 AM

Testimony for EEP on 1/29/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mahesh Cleveland	Earthjustice, Mid-Pacific Office	Oppose	In Person

Comments:

On behalf of Earthjustice, I oppose HB1802 and suggest the amendments included in the written testimony of David Lane Henkin submitted on January 27, 2026.



January 27, 2026

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Chair Lowen

Vice Chair Perruso

Thursday, January 29, 2026 at 9:30am

Conference Room 325

State Capitol

415 South Beretania Street

**Re: TESTIMONY IN OPPOSITION OF HOUSE BILL 1802 - RELATING TO CONSERVATION
MITIGATION BANKS.**

Aloha Chair Lowen, Vice Chair Perruso, and Members of the Committees,

My name is Maxx Phillips, Hawai'i and Pacific Islands Director and Senior Attorney for the Center for Biological Diversity. The Center is a national nonprofit conservation organization with thousands of members in Hawai'i dedicated to the protection of native species and ecosystems through science, law, and advocacy. We appreciate the opportunity to provide testimony on House Bill 1802.

House Bill 1802 would authorize the Department of Land and Natural Resources to establish, operate, and approve conservation mitigation banks, including banks intended to provide compensatory mitigation for incidental take authorized under Hawai'i Revised Statutes chapter 195D. **While conservation banking can be an appropriate tool in limited circumstances, the Center has serious concerns that HB 1802, as drafted, lacks essential safeguards and would weaken existing statutory protections for Hawai'i's already struggling endangered and threatened species.**

When the Legislature authorized incidental take under state law, it did so with strict conditions. Those conditions were designed to ensure that take is minimized, that mitigation is scientifically sound, and that conservation benefits are real, durable, and enforceable. **HB 1802 does not meet those standards.**

First, HB 1802 improperly sidelines the Endangered Species Recovery Committee.

Under current law, the Endangered Species Recovery Committee plays a central and nondelegable role in reviewing and approving habitat conservation plans and incidental take licenses. The Legislature intentionally vested this authority in an expert body to ensure that decisions affecting imperiled species are grounded in the best available science and informed by conservation expertise. Even when DLNR recommends approval, the ESRC retains final authority unless overridden by a supermajority of the Legislature.

HB 1802 fails to require ESRC review or approval of the use of conservation bank credits to satisfy mitigation obligations under an incidental take license. By broadly authorizing DLNR to approve and operate conservation mitigation banks, including those run by third parties, the bill would allow DLNR to determine the adequacy of mitigation without expert oversight. This creates a pathway for mitigation to be deemed sufficient even where the ESRC determines that it is biologically unsound or inadequate to offset harm to imperiled species.

Removing or diluting the ESRC's role directly contradicts the structure and intent of chapter 195D and risks transforming incidental take from a carefully regulated exception into a rubber stamp.

Second, the bill fails to address what happens when mitigation does not work.

Existing law is explicit that the burden of uncertainty falls on the applicant, not on the species. Habitat conservation plans must include adaptive management strategies, and permits must be suspended or revoked when authorized activities jeopardize species survival or recovery. These provisions reflect a deliberate legislative choice to ensure accountability and to prevent speculative mitigation from becoming a license to harm.

HB 1802 is silent on responsibility when conservation bank credits fail to deliver the promised conservation outcomes. Conservation projects may underperform for many reasons, including climate impacts, ecological uncertainty, or flawed assumptions. The bill does not clarify who must act, who must pay, or how corrective measures would be enforced if credits do not actually offset authorized take.

Without clear accountability, the likely outcomes are unacceptable. Either no corrective action will occur and species will suffer irreparable harm, or the financial burden will shift to the State and its taxpayers rather than the entity responsible for the take. Both outcomes undermine the core principles of Hawai'i's endangered species law.

Finally, the bill creates a new mitigation framework without resolving complex policy issues.

Establishing a conservation banking program for endangered species is not a minor administrative change. It raises difficult questions about credit valuation, additionality,

permanence, enforceability, and cumulative impacts. HB 1802 does not meaningfully address these issues, leaving them to future interpretation or rulemaking after the statutory framework is already in place.

If the Legislature wishes to move forward with conservation banking, it should do so using a framework that strengthens, rather than weakens, protections for Hawai'i's native species. Statutory language is needed that preserves ESRC oversight, ensures financial and scientific accountability, and aligns conservation banking with the requirements and purposes of chapter 195D. **We urge the Committee to reject HB 1802 as drafted and to instead consider alternative language that fully addresses these concerns.**

Mahalo for the opportunity to provide this testimony,

/s/ Maxx Phillips

Maxx Phillips, Esq.

Hawai'i and Pacific Islands Director, Senior Attorney

Center for Biological Diversity

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Honolulu, Hawai'i 96813

MPhillips@biologicaldiversity.org

LATE



SIERRA CLUB
OF HAWAII

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

January 29, 2026

9:30 AM

Conference Room 325

Offering COMMENTS on HB1802: RELATING TO CONSERVATION MITIGATION BANKS

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i offers the following **COMMENTS and CONCERNS** on **HB1802**, which risks facilitating unintended and undue harm to our native and endemic species, including species threatened with extirpation or extinction.

The Sierra Club appreciates the intent behind this measure, to establish conservation mitigation banks that could allow for the more efficient investment of resources intended to mitigate the harms of certain activities on our native species and their habitat.

However, the Sierra Club is very concerned regarding possible omissions in this measure that could in fact facilitate harmful activities without adequate mitigation, and thereby even contribute to the permanent loss of our endangered and threatened plants and wildlife. For example, we are particularly concerned regarding the potential for conservation mitigation banks to be used to mitigate impacts to endangered or threatened species or the native habitat they rely upon, without any oversight or input from the Endangered Species Recovery Committee. This could lead to less-than-fully informed or even politically influenced decisions that facilitate harmful activities without considering or adequately accounting for harms to our most imperiled flora and fauna.

In addition, we are also concerned regarding the lack of statutory guardrails that can account for myriad considerations ranging from unforeseen climate and other events, to unanticipated impacts arising from a credit purchaser's covered activities, to new information or feedback as mitigation activities are developed and implemented.

The Sierra Club notes that mitigation bank bills HB2327 and SB3147, companion measures in the Governor's legislative package, contain provisions that would address many of the above concerns with this bill; we urge the Committee to consider these vehicles as an alternative to the current bill.

Mahalo nui for the opportunity to testify.