

ACT 111

S.B. NO. 133

A Bill for an Act Relating to Conservation of Aquatic Life, Wildlife and Plants.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 195D, Hawaii Revised Statutes, is amended by amending the title to read as follows:

“CHAPTER 195D CONSERVATION OF AQUATIC LIFE, WILDLIFE, AND LAND PLANTS”

SECTION 2. Section 195D-1, Hawaii Revised Statutes, is amended to read as follows:

“**[§195D-1] Findings and declaration of necessity.** Since the discovery and settlement of the Hawaiian islands by man, many species of aquatic life, wildlife, and land plants that occurred naturally only in Hawaii have become extinct and many [of the remaining species] are threatened with extinction, primarily because of increased human use of the land and disturbance to native ecosystems.

All indigenous species of aquatic life, wildlife, and land plants are integral parts of Hawaii’s native ecosystems and comprise the living heritage of Hawaii, for they represent a natural resource of scientific, cultural, educational, environmental, and economic value to future generations of Hawaii’s people.

To insure the continued perpetuation of indigenous aquatic life, wildlife, [and] land plants, and their habitats for human enjoyment, for scientific purposes, and as members of ecosystems, it is necessary that the State take positive actions to enhance their prospects for survival.”

SECTION 3. Section 195D-2, Hawaii Revised Statutes, is amended to read as follows:

“**[§195D-2] Definitions.** As used in this chapter:

“Aquatic life” means any type of species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animals that inhabit the freshwater or marine environment, and includes any part, product, egg, or offspring thereof, or freshwater or marine plants, including seeds, roots, and other parts thereof;

[(a)] “Conserve,” “conserving,” and “conservation” mean to use and the use of all methods and procedures for the purpose of increasing and maintaining populations of aquatic life, wildlife, and land plants. Such methods and procedures include, but are not limited to, activities such as research, census, habitat acquisition, protection, maintenance, propagation, live trapping, regulated taking, law enforcement, and transplantation;

[(b)] “Department” means the¹ department of land and natural resources;

[(c)] “Ecosystem” means all natural elements, physical and biological, of the habitat or site in which any aquatic life, wildlife, or land plant species is found, and upon which it is dependent;

[(d)] “Endangered species” means any species whose continued existence as a viable component of Hawaii’s indigenous fauna or flora is determined to be in jeopardy and has been so designated pursuant to section 195D-4;

[(e)] “Endangered Species Act” means the Endangered Species Act of 1973, 87 Stat. 884, or as such Act may be subsequently amended;

[(f)] “Indigenous species” means any aquatic life, wildlife, or land plant species growing or living naturally in Hawaii without having been brought to Hawaii by man;

“License” means written permission by the department of land and natural resources to do a particular act or series of acts which without such permission would be unauthorized or prohibited.

[(g)] “Person” means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the federal government, of any state or political subdivision thereof, or of any foreign government;

[(h)] “Land plant” means any member of the plant kingdom, including seeds, roots and other parts thereof[;], except freshwater or marine plants;

[(i)] “Species” means and shall include any subspecies or lower taxa of aquatic life, wildlife, or land plants;

[(j)] “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered or threatened species of aquatic life or wildlife, or to cut, collect, uproot, destroy, injure, or possess endangered or threatened species of aquatic life or land plants, or to attempt to engage in any such conduct;

[(k)] “Threatened species” means any species of aquatic life, wildlife, or land plant which appears likely, within the foreseeable future, to become endangered and has been so designated pursuant to section 195D-4; and

[(1)] “Wildlife” means any [member of any] non-domesticated [species] member of the animal kingdom, whether reared in captivity or not, including [, without exception, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes] any part, product, egg, or offspring thereof, [or the dead body or parts thereof.] except aquatic life as defined in this section.”

SECTION 4. Section 195D-3, Hawaii Revised Statutes, is amended to read as follows:

“[§195D-3] Determination by the department relating to conservation of particular species. (a) The department is authorized to conduct investigations on any species of aquatic life, wildlife, and land plants in order to develop information relating to their biology, ecology, population, status, distribution, habitat needs, and other limiting factors to determine conservation measures necessary for their continued ability to sustain themselves successfully.

(b) The department is authorized to [promulgate] adopt pursuant to chapter 91, [regulations] rules relating to the taking, possession, transportation, importation, exportation, processing, selling, or offering for sale, or shipment of any species of aquatic life, wildlife, and land plant for the purpose of conserving the same.

(c) Except as permitted by [regulations] rules [promulgated] adopted by the department, it shall be unlawful for any person to take, possess, transport, export, process, sell, [or] offer for sale, or ship any species of aquatic life, wildlife, or land plants deemed by the department to be in need of conservation pursuant to this section.”

SECTION 5. Section 195D-4, Hawaii Revised Statutes, is amended to read as follows:

"[§195D-4] **Endangered species and threatened species.** (a) Any species of aquatic life, wildlife, or [wild] land plant that has been determined to be an endangered species pursuant to the Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the Endangered Species Act shall be deemed to be a threatened species under the provision of this chapter. However, the department may determine, in accordance with this section, that any such threatened species is an endangered species throughout all or any portion of the range of such species within this State.

(b) In addition to the species that have been determined to be endangered or threatened pursuant to the Endangered Species Act, the department may, by [regulation, promulgated] rules adopted pursuant to chapter 91, determine any indigenous species of aquatic life, wildlife, or [wild] land plant to be an endangered species or a threatened species because of any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, sporting, scientific, educational, or other purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms; or
- (5) Other natural or man made factors affecting its continued existence within Hawaii.

(c) **Basis for determinations.** The department shall make determinations required by subsection (b) of this section on the basis of all available scientific, commercial and other data after consultation, as appropriate, with Federal agencies, other interested state and county agencies, and interested persons and organizations.

(d) **Lists.**

- (1) The department shall issue [regulations] rules containing a list of all species of aquatic life, wildlife, and land plants that have been determined, in accordance with subsections (a) through (c) of this section, as endangered species and a list of all such species so designated as threatened species. Each list shall include the scientific, common, and Hawaiian name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.
- (2) Except with respect to species of aquatic life, wildlife, or land plants determined to be endangered or threatened pursuant to the Endangered Species Act, the department shall, upon its own recommendation or upon the petition of three interested persons, who have presented to the department substantial evidence which warrants review, conduct a review of any listed or unlisted indigenous species proposed to be removed from or added to the lists published pursuant to paragraph (1) of this subsection.

(e) Prohibited acts. With respect to any endangered species of aquatic life, wildlife, or land plant, it is unlawful, except as provided in subsection (f) of this section, for any person subject to the jurisdiction of this State to:

- (1) Export any such species from this State;
- (2) Take any such species within this State;
- (3) Possess, process, sell, [or] offer for sale, deliver, carry, transport, or ship, by any means whatsoever, any such species;
- (4) Violate any [regulation] rule pertaining to the conservation of such species or to any threatened species of aquatic life, wildlife, and land plant listed pursuant to this section and [promulgated] adopted by the department pursuant to authority provided by this chapter.

(f) [Permits] License. The department [may permit,] may issue temporary licenses, under such terms and conditions as it may prescribe, to allow any act otherwise prohibited by subsection (e) of this section, for scientific purposes or to enhance the propagation or survival of the affected species. Licenses issued pursuant to this subsection shall be revocable for due cause and shall be nonassignable. Any person whose license has been revoked shall not be eligible to apply for another license until the expiration of two years from the date of revocation."

SECTION 6. Section 195D-5, Hawaii Revised Statutes, is amended to read as follows:

"§195D-5 Conservation programs. (a) The department shall conduct research on indigenous aquatic life, wildlife, and land plants, and on endangered species and their associated ecosystems, and shall utilize the land acquisition and other authority vested in the department to carry out programs for the conservation, management, and protection of such species and their associated ecosystems. In addition, the department is hereby authorized to acquire by purchase, donation or otherwise, lands or interests therein needed to carry out the programs relating to the intent and purpose of this [part.] chapter.

(b) The office of the governor shall review other programs administered by the department and, to the extent practicable, utilize such programs in furtherance of the purposes of this section. The governor or his authorized representative shall also encourage other state and federal agencies to utilize their authorities in furtherance of the purposes of this section by carrying out programs for the protection of endangered species and by taking such action as may be necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of endangered species.

(c) In carrying out programs authorized by this section, the department may enter into agreements with federal agencies and with the counties for administration and management of any area established under this section, or utilized for conserving, managing, enhancing, or protecting indigenous aquatic life, wildlife, land plants, and endangered species.

(d) In carrying out programs authorized by this section, priority shall be given to the conservation and protection of those endangered aquatic life, wildlife, and land plant species and their associated ecosystems, whose extinction within the State would imperil or terminate, respectively, their existence in the world.

(e) The department shall coordinate with the natural area reserves commission and the animal species advisory commission all research, investigations, lists of indigenous and endangered aquatic life, wildlife, and land plants, and programs for the conservation, management, enhancement, and protection of species that are authorized by this [part.] chapter.

(f) The department may permit, under terms and conditions adopted by rule, the taking, possession, transportation, or exportation of any indigenous aquatic life, wildlife, or land plant on the endangered species list for scientific purposes and for propagation of such species in captivity for preservation purposes."

SECTION 7. Section 195D-6, Hawaii Revised Statutes, is amended to read as follows:

"[**§195D-6**] **[Regulations.] Rules.** The department shall [have the authority to promulgate] adopt rules pursuant to chapter 91 [such regulations as are] necessary to carry out the purposes of this chapter."

SECTION 8. Section 195D-7, Hawaii Revised Statutes, is amended to read as follows:

"[**§195D-7**] **§195D-7 Enforcement.** Any employee or agent of the department upon whom the board of land and natural resources has conferred powers of police officers, including the power to serve and execute warrants and arrest offenders, or issue citations throughout the State, and any police officer of the counties of this State shall have the authority to enforce any of the provisions of this chapter or any [regulation or] rule [promulgated] adopted pursuant hereto."

SECTION 9. Section 195D-8, Hawaii Revised Statutes, is amended to read as follows:

"[**§195D-8**] **Search and seizure.** Any officer or agent authorized pursuant to section 195D-7 shall have the authority to conduct searches as provided by law and to seize any equipment, business records, merchandise, aquatic life, wildlife, or [wild] land plant taken, possessed, transported, sold, offered for sale, or used in violation of any section of this part or any rule [or regulation promulgated] adopted hereunder, and any of the foregoing so seized shall be held by the department pending disposition of court proceedings, or the department prior to forfeiture, may direct the transfer of aquatic life, wildlife, or [wild] land plants so seized to a qualified ichthyological, zoological, botanical, educational, or scientific institution for safekeeping, costs thereof to be paid by the defendant. Upon conviction of the person or persons from whom the seizure was made, the court shall declare the items seized forfeited to the State. Such items shall be destroyed or disposed of in any manner as the department may deem appropriate."

SECTION 10. Section 195D-9, Hawaii Revised Statutes, is amended to read as follows:

"[**§195D-9**] **Penalty.** Any person who violates any of the provisions of this chapter or the provisions of any [regulation or] rule [promulgated] adopted hereunder shall be [fined not more than \$1,000 or be imprisoned not more than one year, or both.] guilty of a misdemeanor and shall be punished as follows:

- (1) For a first conviction by a fine of not less than \$250 nor more than \$1,000 or by imprisonment of not more than one year, or both;
- (2) For a second or subsequent conviction within five years of a previous conviction by a fine of not less than \$500 nor more than \$1,000 or by imprisonment of not more than one year, or both.

In addition to the above penalties, a fine of \$500 for each specimen of a threatened species and \$1,000 for each specimen of an endangered species intentionally, knowingly, or recklessly killed or removed from its original growing location, shall be levied against the convicted person."

SECTION 11. Section 195D-10, Hawaii Revised Statutes, is amended to read as follows:

"**[§195D-10]** **Severability.** Should any section, subsection, sentence, clause, or phrase of this chapter, or any [regulation or] rule [promulgated] adopted pursuant thereto be for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this chapter [or regulation] or rule [promulgated] adopted pursuant thereto."

SECTION 12. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved May 25, 1983.)

Note

1. Underscoring missing.