
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:

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1 **"PART CONSERVATION BANKING**

2 **§195D- 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 chapter
7 195D, Hawaii Revised Statutes.

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

13 "Conservation bank instrument" means an agreement
14 establishing a conservation bank and describing the terms and
15 conditions of its operation, including a system for assessing
16 and releasing credits to be used for compensatory mitigation.

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

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

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

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

15 **§195D- Conservation banking.** (a) The department or
16 other bank sponsor may seek board approval of a conservation
17 bank instrument to operate a conservation bank for the purposes
18 of restoring, creating, enhancing, or protecting populations of
19 threatened, endangered, candidate, or proposed species and their
20 habitats to provide for situations where a person or entity is
21 required to provide compensatory mitigation to offset adverse
22 impacts to threatened, endangered, candidate, or proposed

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1 species as part of an approved incidental take license and
2 habitat conservation plan.

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

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

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

12 (3) A resource management plan for long-term stewardship;

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

14 (5) The measures for property protection.

15 (c) In addition to the requirements set forth in section
16 195D- (b), for applications from bank sponsors other than the
17 department, the proposed conservation bank instrument shall
18 contain:

19 (1) Assurances that the bank sponsor has the scientific
20 and technical competence required to perform the
21 necessary conservation actions for the species
22 identified in section 195D- (b) (2);

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- 1 (2) Financial assurances necessary to ensure the
2 successful completion of habitat construction,
3 management, monitoring, and remedial actions;
- 4 (3) A site protection instrument; and
- 5 (4) A provision requiring the bank sponsor to submit to
6 the department within ninety days of each fiscal year
7 ending June 30 an annual report on the current status
8 of the conservation bank.
- 9 (d) After consultation with the endangered species
10 recovery committee, the board may approve a conservation bank
11 instrument for the operation of a conservation bank by the
12 department or other bank sponsor if the Board determines that:
- 13 (1) The conservation bank will further the purposes of
14 this chapter by restoring, creating, enhancing, or
15 protecting populations of threatened, endangered,
16 candidate, or proposed species and their habitats;
- 17 (2) The system for assessing and releasing credits is
18 based on the best available scientific information
19 and, where there is any uncertainty about what
20 constitutes the best available science, the rationale
21 used for developing the system for assessing and

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1 releasing credits gives the benefit of the doubt to
2 the species;

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

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

9 (B) The bank sponsor's funding source is adequate to
10 ensure the successful completion of habitat
11 construction, management, monitoring, and
12 remedial actions;

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

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

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

4 (5) The conservation bank instrument satisfies all the
5 requirements of this chapter.

6 Board approval shall require an affirmative vote of not
7 less than two-thirds of the authorized membership of the board.
8 The board may not approve a conservation bank instrument for
9 which the majority of the endangered species recovery committee
10 recommended disapproval.

11 (e) The board's approval of a conservation bank instrument
12 for a conservation bank operated by a bank sponsor other than
13 the department does not relieve the bank sponsor of its
14 obligation to secure a temporary license pursuant to section
15 195D-4(f) or (g) prior to causing take of any endangered,
16 threatened, proposed, or candidate species.

17 (f) After a conservation bank has created a credit, the
18 bank sponsor may transfer or sell the credit to an incidental
19 take licensee for use of an approved conservation bank as
20 compensatory mitigation, provided that:

21 (1) Where a credit from a conservation bank is used to
22 satisfy the transferee's mitigation obligations under

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1 a habitat conservation plan, a credit may be
2 transferred or sold only if a majority of the
3 endangered species recovery committee approves the use
4 of the credit to satisfy:

5 (A) the incidental take license requirements in
6 section 195D-4(g); and

7 (B) the habitat conservation plan requirements in
8 section 195D-21(b);

9 (2) Credit stacking is prohibited;

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

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

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

19 (1) The bank sponsor or its successor has breached its
20 obligations under the conservation bank instrument and
21 has failed to cure the breach in a timely manner, and
22 the effect of the breach is to diminish the likelihood

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1 that the conservation bank will achieve its goals
2 within the time frames or in the manner set forth in
3 the conservation bank instrument;

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

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

16 Any bank sponsor whose conservation bank instrument has been
17 revoked shall not be eligible to apply to operate another
18 conservation bank.

19 (h) The department may collect from bank sponsors fees or
20 payment for costs incurred, including but not limited to costs
21 included by the department during:

22 (1) Its rulemaking process; and

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1 (2) The establishment, monitoring, and oversight of the
2 bank sponsor's conservation bank.

3 (i) This section shall not apply to aquatic life or their
4 habitats.

5 **§195D- Conservation banking; rules.** The department may
6 adopt rules pursuant to chapter 91 necessary to implement this
7 part."

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

10 **"Endangered species recovery committee.** (a) There is
11 established within the department for administrative purposes
12 only, the endangered species recovery committee, which shall
13 serve as a consultant to the board and the department on matters
14 relating to endangered, threatened, proposed, and candidate
15 species. The committee shall consist of two field biologists
16 with expertise in conservation biology, the chairperson of the
17 board or the chairperson's designee, the ecoregion director of
18 the United States Fish and Wildlife Service or the director's
19 designee, the director of the United States Geological Survey,
20 Biological Resources Division or the director's designee, the
21 dean of the University of Hawaii at Manoa college of natural
22 sciences or the dean's designee, and a person possessing a

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1 background in native Hawaiian traditional and customary
2 practices, as evidenced by:

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

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

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

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

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

22 (b) The endangered species recovery committee shall:

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- 1 (1) Review all applications and proposals for habitat
2 conservation plans, safe harbor agreements, [and]
3 incidental take licenses, and conservation banks and
4 make recommendations, based on a full review of the
5 best available scientific and other reliable data and
6 at least one site visit to each property that is the
7 subject of the proposed action, and in consideration
8 of the cumulative impacts of the proposed action on
9 the recovery potential of the endangered, threatened,
10 proposed, or candidate species, to the department and
11 the board as to whether or not they should be
12 approved, amended, or rejected;
- 13 (2) Review all habitat conservation plans, safe harbor
14 agreements, [and] incidental take licenses, and
15 conservation banks on an annual basis to ensure
16 compliance with agreed to activities and, on the basis
17 of any available monitoring reports, and scientific
18 and other reliable data, make recommendations for any
19 necessary changes;
- 20 (3) Consider and recommend appropriate incentives to
21 encourage landowners to voluntarily engage in efforts

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