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# A BILL FOR AN ACT

RELATING TO ENDANGERED SPECIES.

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

1           SECTION 1. Section 195D-2, Hawaii Revised Statutes, is  
2 amended by adding three new definitions to be appropriately  
3 inserted and to read as follows:

4           "Certificate of inclusion" means a type of license that is  
5 used to enroll interested landowners into a programmatic safe  
6 harbor agreement or programmatic habitat conservation plan and  
7 extends coverage of an incidental take license to those  
8 landowners identified in the agreement or plan and who  
9 subsequently enroll in the agreement or plan.

10           "Programmatic habitat conservation plan" means a habitat  
11 conservation plan that covers multiple landowners or a class of  
12 landowners and over a wide area or region.

13           "Programmatic safe harbor agreement" means a safe harbor  
14 agreement that covers multiple landowners or a class of  
15 landowners and over a wide area or region."

16           SECTION 2. Section 195D-2, Hawaii Revised Statutes, is  
17 amended by amending the definition of "landowner" to read as  
18 follows:



1            "Landowner" means an owner of land, an agent acting on  
2 behalf of the landowner, or any estate or interest in that land  
3 when acting with the consent of the fee owner. In the case of  
4 government-owned lands, the consent shall be required of any  
5 government department or agency to which management or control  
6 of that land has been assigned."

7            SECTION 3. Section 195D-4, Hawaii Revised Statutes, is  
8 amended by amending subsections (e) through (i) to read as  
9 follows:

10           (e) With respect to any threatened or endangered species  
11 of aquatic life, wildlife, or land plant, it is unlawful, except  
12 as provided in subsections (f), (g), and (j) for any person to:

13           (1) Export any such species from this [~~State;~~] state;

14           (2) Take any such species within this [~~State;~~] state;

15           (3) Possess, process, sell, offer for sale, deliver,  
16 carry, transport, or ship, by any means whatsoever,  
17 any such species;

18           (4) Violate any rule pertaining to the conservation of the  
19 species listed pursuant to this section and adopted by  
20 the department pursuant to this chapter; or

21           (5) Violate the terms of, or fail to fulfill the  
22 obligations imposed and agreed to under, any license



1 issued under subsection (f), (g), or (j) any habitat  
2 conservation plan or programmatic habitat conservation  
3 plan authorized under section 195D-21, or any safe  
4 harbor agreement or programmatic safe harbor agreement  
5 authorized under section 195D-22.

6 (f) The department may issue temporary licenses, under  
7 such terms and conditions as it may prescribe, to allow any act  
8 otherwise prohibited by subsection (e), for scientific purposes  
9 or to enhance the propagation or survival of the affected  
10 species. Licenses issued as part of a programmatic safe harbor  
11 or programmatic habitat conservation plan may also provide for  
12 the issuance of certificates of inclusion to extend the coverage  
13 of the incidental take license to landowners enrolling in the  
14 programmatic agreement or plan at a later date; provided that  
15 prior to enrollment:

16 (1) The landowner seeking enrollment shall provide data to  
17 support the findings in section 195D-22(b)(1) through  
18 (7); and

19 (2) The board shall review, and if necessary, update the  
20 programmatic agreement or plan under section 195D-  
21 21(b)(1)(A) through (C).



1 (g) After consultation with the endangered species  
2 recovery committee, the board may issue a temporary license as a  
3 part of a habitat conservation plan or programmatic habitat  
4 conservation plan to allow a take otherwise prohibited by  
5 subsection (e) if the take is incidental to, and not the purpose  
6 of, the carrying out of an otherwise lawful activity; provided  
7 that:

- 8 (1) The applicant, to the maximum extent practicable,  
9 shall minimize and mitigate the impacts of the take;
- 10 (2) The applicant shall guarantee that adequate funding  
11 for the plan will be provided;
- 12 (3) The applicant shall post a bond, provide an  
13 irrevocable letter of credit, insurance, or surety  
14 bond, or provide other similar financial tools,  
15 including depositing a sum of money in the endangered  
16 species trust fund created by section 195D-31, or  
17 provide other means approved by the board, adequate to  
18 ensure monitoring of the species by the State and to  
19 ensure that the applicant takes all actions necessary  
20 to minimize and mitigate the impacts of the take;
- 21 (4) The plan shall increase the likelihood that the  
22 species will survive and recover;



- 1 (5) The plan takes into consideration the full range of  
2 the species on the island so that cumulative impacts  
3 associated with the take can be adequately assessed;
- 4 (6) The measures, if any, required under section 195D-  
5 21(b) shall be met, and the department has received  
6 any other assurances that may be required so that the  
7 plan may be implemented;
- 8 (7) The activity, which is permitted and facilitated by  
9 issuing the license to take a species, does not  
10 involve the use of submerged lands, mining, or  
11 blasting;
- 12 (8) The cumulative impact of the activity, which is  
13 permitted and facilitated by the license, provides net  
14 environmental benefits; and
- 15 (9) The take is not likely to cause the loss of genetic  
16 representation of an affected population of any  
17 endangered, threatened, proposed, or candidate plant  
18 species.
- 19 Board approval shall require an affirmative vote of not less  
20 than two-thirds of the authorized membership of the board after  
21 holding a public hearing on the matter on the affected island.  
22 The department shall notify the public of a proposed license



1 under this section through publication in the periodic bulletin  
2 of the office of environmental quality control and make the  
3 application and proposed license available for public review and  
4 comment for not less than sixty days prior to approval.

5 (h) Licenses or certificates of inclusion issued pursuant  
6 to this section may be suspended or revoked for due cause, and  
7 if issued pursuant to a habitat conservation plan, programmatic  
8 habitat conservation plan, safe harbor agreement, or  
9 programmatic safe harbor agreement, shall run with the land for  
10 the term agreed to in the plan or agreement and shall not be  
11 assignable or transferable separate from the land. Any person  
12 whose license or certificate of inclusion has been revoked shall  
13 not be eligible to apply for another license or certificate of  
14 inclusion until the expiration of two years from the date of  
15 revocation.

16 (i) The department shall work cooperatively with federal  
17 agencies in concurrently processing habitat conservation plans,  
18 programmatic habitat conservation plans, safe harbor agreements,  
19 ~~and~~ programmatic safe harbor agreements, incidental take  
20 licenses, and certificates of inclusion pursuant to the  
21 Endangered Species Act. After notice in the periodic bulletin  
22 of the office of environmental quality control and a public



1 hearing on the islands affected, which shall be held jointly  
2 with the federal agency, if feasible, whenever a landowner or an  
3 agent acting on behalf of a landowner or landowners seeks both a  
4 federal and a state safe harbor agreement, programmatic safe  
5 harbor agreement, habitat conservation plan, programmatic  
6 habitat conservation plan, or incidental take license, the  
7 board, by a two-thirds majority vote, may approve the federal  
8 agreement, plan, or license without requiring a separate state  
9 agreement, plan, or license if the federal agreement, plan, or  
10 license satisfies, or is amended to satisfy, all the criteria of  
11 this chapter. All state agencies, to the extent feasible, shall  
12 work cooperatively to process applications for habitat  
13 conservation plans [~~and~~], programmatic habitat conservation  
14 plans, safe harbor agreements, and programmatic safe harbor  
15 agreements on a consolidated basis, including concurrent  
16 processing of any state land use permit application that may be  
17 required pursuant to chapter 183C or 205, so as to minimize  
18 procedural burdens upon the applicant."

19 SECTION 4. Section 195D-5, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:

21 "(b) The office of the governor shall review other  
22 programs administered by the department and, to the extent



1 practicable, [~~utilize~~] use such programs in furtherance of the  
2 purposes of this chapter. The governor or the governor's  
3 authorized representative shall also encourage all federal  
4 agencies to [~~utilize~~] use their authority in furtherance of the  
5 purposes of this chapter. All other state agencies shall use  
6 their authority in furtherance of the purposes of this chapter  
7 by:

- 8 (1) Carrying out programs for the protection of threatened  
9 and endangered species; and
- 10 (2) Taking such action as may be necessary to ensure that  
11 actions authorized, funded, or carried out by them do  
12 not jeopardize the continued existence of threatened  
13 or endangered species.

14 In carrying out programs authorized by this chapter, the  
15 department may enter into agreements with federal agencies,  
16 counties, private landowners, and organizations for the  
17 administration and management of any programmatic agreement,  
18 area or facility established under section 195D-21 or 195D-22,  
19 or public lands [~~utilized~~] used for conserving, managing,  
20 enhancing, or protecting indigenous aquatic life, wildlife, land  
21 plants, threatened and endangered species, and their habitat."





1 SECTION 5. Section 195D-21, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§195D-21 Habitat conservation plans[-] and programmatic  
4 habitat conservation plans. (a) The department may enter into  
5 a planning process with any landowner, or agent acting on behalf  
6 of multiple landowners, for the purpose of preparing and  
7 implementing a habitat conservation plan[-] or programmatic  
8 habitat conservation plan. An agreement may include multiple  
9 landowners. Applications to enter into a planning process shall  
10 identify:

- 11 (1) The geographic area encompassed by the plan;
- 12 (2) The ecosystems, natural communities, or habitat types  
13 within the plan area that are the focus of the plan;
- 14 (3) The endangered, threatened, proposed, and candidate  
15 species known or reasonably expected to occur in the  
16 ecosystems, natural communities, or habitat types in  
17 the plan area;
- 18 (4) The measures or actions to be undertaken to protect,  
19 maintain, restore, or enhance those ecosystems,  
20 natural communities, or habitat types within the plan  
21 area;



1 (5) A schedule for implementation of the proposed measures  
2 and actions; and

3 (6) An adequate funding source to ensure that the proposed  
4 measures and actions are undertaken in accordance with  
5 the schedule.

6 After a habitat conservation plan is prepared, the board shall  
7 notify the public of the proposed habitat conservation plan or  
8 programmatic habitat conservation plan through the periodic  
9 bulletin of the office of environmental quality control and make  
10 the proposed plan and the application available for public  
11 review and comment not less than sixty days prior to approval.

12 The notice shall include[~~7~~] but not be limited to[~~7~~]  
13 identification of the area encompassed by the plan, the proposed  
14 activity, and the ecosystems, natural communities, and habitat  
15 types within the plan area. The notice shall solicit public  
16 input and relevant data.

17 (b) (1) Except as otherwise provided by law, the board,  
18 upon recommendation from the department, in  
19 cooperation with other state, federal, county, or  
20 private organizations and landowners, after a public  
21 hearing on the island affected, and upon an  
22 affirmative vote of not less than two-thirds of its



1 authorized membership, may enter into a habitat  
2 conservation plan, or programmatic habitat  
3 conservation plan, if it determines that:

4 (A) The plan will further the purposes of this  
5 chapter by protecting, maintaining, restoring, or  
6 enhancing identified ecosystems, natural  
7 communities, or habitat types upon which  
8 endangered, threatened, proposed, or candidate  
9 species depend within the area covered by the  
10 plan;

11 (B) The plan will increase the likelihood of recovery  
12 of the endangered or threatened species that are  
13 the focus of the plan; and

14 (C) The plan satisfies all the requirements of this  
15 chapter.

16 In the event the board votes to enter into a habitat  
17 conservation plan or programmatic habitat conservation  
18 plan for which the majority of the endangered species  
19 recovery committee recommended disapproval, the board  
20 may not enter into the habitat conservation plan or  
21 programmatic habitat conservation plan unless the plan  
22 is approved by a two-thirds majority vote of both



1 houses of the legislature. Habitat conservation plans  
2 or programmatic habitat conservation plans may allow  
3 conservation rental agreements, habitat banking, and  
4 direct payments. Any habitat conservation plan or  
5 programmatic habitat conservation plan approved  
6 pursuant to this section shall be based on the best  
7 available scientific and other reliable data available  
8 at the time the plan is approved.

9 (2) Each habitat conservation plan or programmatic habitat  
10 conservation plan shall:

11 (A) Identify the geographic area encompassed by the  
12 plan; the ecosystems, natural communities, or  
13 habitat types within the plan area that are the  
14 focus of the plan; and the endangered,  
15 threatened, proposed, and candidate species known  
16 or reasonably expected to be present in those  
17 ecosystems, natural communities, or habitat types  
18 in the plan area;

19 (B) Describe the activities contemplated to be  
20 undertaken within the plan area with sufficient  
21 detail to allow the department to evaluate the  
22 impact of the activities on the particular



1 ecosystems, natural communities, or habitat types  
2 within the plan area that are the focus of the  
3 plan;

4 (C) Identify the steps that will be taken to minimize  
5 and mitigate all negative impacts, including  
6 without limitation the impact of any authorized  
7 incidental take, with consideration of the full  
8 range of the species on the island so that  
9 cumulative impacts associated with the take can  
10 be adequately assessed; and the funding that will  
11 be available to implement those steps;

12 (D) Identify those measures or actions to be  
13 undertaken to protect, maintain, restore, or  
14 enhance the ecosystems, natural communities, or  
15 habitat types within the plan area; a schedule  
16 for implementation of the measures or actions;  
17 and an adequate funding source to ensure that the  
18 actions or measures, including monitoring, are  
19 undertaken in accordance with the schedule;

20 (E) Be consistent with the goals and objectives of  
21 any approved recovery plan for any endangered  
22 species or threatened species known or reasonably



1 expected to occur in the ecosystems, natural  
2 communities, or habitat types in the plan area;  
3 (F) Provide reasonable certainty that the ecosystems,  
4 natural communities, or habitat types will be  
5 maintained in the plan area, throughout the life  
6 of the plan, in sufficient quality, distribution,  
7 and extent to support within the plan area those  
8 species typically associated with the ecosystems,  
9 natural communities, or habitat types, including  
10 any endangered, threatened, proposed, and  
11 candidate species known or reasonably expected to  
12 be present in the ecosystems, natural  
13 communities, or habitat types within the plan  
14 area;  
15 (G) Contain objective, measurable goals, the  
16 achievement of which will contribute  
17 significantly to the protection, maintenance,  
18 restoration, or enhancement of the ecosystems,  
19 natural communities, or habitat types; time  
20 frames within which the goals are to be achieved;  
21 provisions for monitoring (such as field sampling  
22 techniques), including periodic monitoring by



1           representatives of the department or the  
2           endangered species recovery committee, or both;  
3           and provisions for evaluating progress in  
4           achieving the goals quantitatively and  
5           qualitatively; and

6           (H) Provide for an adaptive management strategy that  
7           specifies the actions to be taken periodically if  
8           the plan is not achieving its goals.

9           (c) The board shall disapprove a habitat conservation plan  
10          or programmatic habitat conservation plan if the board  
11          determines, based upon the best scientific and other reliable  
12          data available at the time its determination is made, that the  
13          cumulative activities, if any, contemplated to be undertaken  
14          within the areas covered by the plan are not environmentally  
15          beneficial, or that implementation of the plan:

16           (1) Is likely to jeopardize the continued existence of any  
17           endangered, threatened, proposed, or candidate species  
18           identified in the plan area;

19           (2) Is likely to cause any native species not endangered  
20           or threatened at the time of plan submission to become  
21           threatened or endangered;



1 (3) Fails to meet the criteria of subsections (a) and (b);

2 or

3 (4) Fails to meet the criteria of section 195D-4(g).

4 The habitat conservation plan or programmatic habitat  
5 conservation plan shall contain sufficient information for the  
6 board to ascertain with reasonable certainty the likely effect  
7 of the plan upon any endangered, threatened, proposed, or  
8 candidate species in the plan area and throughout its habitat  
9 range.

10 (d) Notwithstanding any other law to the contrary, the  
11 board shall suspend or revoke the approval of any habitat  
12 conservation plan or programmatic habitat conservation plan or  
13 individual landowners' portion thereof approved under this  
14 section if the board determines that:

15 (1) Any parties to the plan, or their successors, have  
16 breached their obligations under the plan or under any  
17 agreement implementing the plan and have failed to  
18 cure the breach in a timely manner, and the effect of  
19 the breach is to diminish the likelihood that the plan  
20 will achieve its goals within the time frames or in  
21 the manner set forth in the plan;





1           (2) The plan no longer has the funding source specified in  
2           subsection (a) or another sufficient funding source to  
3           ensure the measures or actions specified in subsection  
4           (b) are undertaken in accordance with this section; or

5           (3) Continuation of the permitted activity would  
6           appreciably reduce the likelihood of survival or  
7           recovery of any threatened or endangered species in  
8           the wild.

9           (e) The rights and obligations under any habitat  
10          conservation plan or programmatic habitat conservation plan  
11          shall run with the land and shall be recorded by the department  
12          in the bureau of conveyances or the land court, as may be  
13          appropriate.

14          (f) Participants in a habitat conservation plan, or agent  
15          thereof, shall submit an annual report to the department within  
16          ninety days of each fiscal year ending June 30, that includes a  
17          description of activities and accomplishments, analysis of the  
18          problems and issues encountered in meeting or failing to meet  
19          the objectives set forth in the habitat conservation plan, areas  
20          needing technical advice, status of funding, and plans and  
21          management objectives for the next fiscal year, including any  
22          proposed modifications thereto."



1 SECTION 6. Section 195D-22, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§195D-22 **Safe harbor agreements** [-] and programmatic safe  
4 harbor agreements. (a) To encourage landowners to voluntarily  
5 engage in efforts that benefit endangered, threatened, proposed,  
6 and candidate species, except as otherwise provided by law, the  
7 board, upon approval by not less than two-thirds of the board's  
8 authorized membership, after a public hearing on the island  
9 affected, may enter into a safe harbor agreement or programmatic  
10 safe harbor agreement with one or more landowners to create,  
11 restore, or improve habitats or to maintain currently unoccupied  
12 habitats that threatened or endangered species can be reasonably  
13 expected to use, if the board determines that the cumulative  
14 activities, if any, contemplated to be undertaken within the  
15 areas covered by the agreement are environmentally beneficial.  
16 In the event the board votes to enter into a safe harbor  
17 agreement or programmatic safe harbor agreement for which the  
18 majority of the endangered species recovery committee  
19 recommended disapproval, the board may not enter into the safe  
20 harbor agreement or programmatic safe harbor agreement unless  
21 the agreement is approved by a two-thirds majority vote of both  
22 houses of the legislature. The board shall notify the public of



1 the proposed safe harbor agreement or programmatic safe harbor  
2 agreement through the periodic bulletin of the office of  
3 environmental quality control and make the proposed agreement  
4 available for public review and comment not less than sixty days  
5 prior to approval.

6 (b) A safe harbor agreement or programmatic safe harbor  
7 agreement may authorize the take of an endangered, threatened,  
8 proposed, or candidate species incidental to an otherwise lawful  
9 activity in or affecting the created, restored, maintained, or  
10 improved habitat; provided that based on the best scientific and  
11 other reliable data available at the time the safe harbor  
12 agreement or programmatic safe harbor agreement is approved, if  
13 these data are applicable:

14 (1) The take would not jeopardize the continued existence  
15 of any endangered, threatened, proposed, or candidate  
16 species;

17 (2) The take would not reduce the population of  
18 endangered, threatened, proposed, or candidate species  
19 below the number found on the property prior to  
20 entering into the agreement;

21 (3) The agreement proposes to create, restore, maintain,  
22 or improve significant amounts of habitat for a



1 minimum of five years for private lands and for a  
2 minimum of fifteen years for public lands;

3 (4) There is adequate funding for the agreement and the  
4 source of that funding is identified;

5 (5) The safe harbor agreement or programmatic safe harbor  
6 agreement increases the likelihood that the endangered  
7 or threatened species for which a take is authorized  
8 will recover;

9 (6) Any take authorized pursuant to this subsection shall  
10 occur only in the habitat created, restored,  
11 maintained, or improved; and

12 (7) The cumulative impact of the activity, which is  
13 permitted and facilitated by the take, provides net  
14 environmental benefits.

15 (c) Notwithstanding any other law to the contrary, the  
16 board shall suspend or rescind any safe harbor agreement or  
17 programmatic safe harbor agreement or individual landowners'  
18 portion thereof approved under this section if the board  
19 determines that:

20 (1) Any parties to the safe harbor agreement [7] or  
21 programmatic safe harbor agreement, or their  
22 successors, have breached their obligations under the



1 safe harbor agreement or programmatic safe harbor  
2 agreement or under any other agreement implementing  
3 the safe harbor agreement and have failed to cure the  
4 breach in a timely manner, and the effect of the  
5 breach is to diminish the likelihood that the  
6 agreement will achieve its goals within the time  
7 frames or in the manner set forth in the agreement;

8 (2) To the extent that funding is or will be required, the  
9 funding source specified in subsection (b) no longer  
10 exists and is not replaced by another sufficient  
11 funding source to ensure that the measures or actions  
12 specified in subsection (b) are undertaken in  
13 accordance with this section; or

14 (3) Continuation of the permitted activity would  
15 appreciably reduce the likelihood of survival or  
16 recovery of any threatened or endangered species in  
17 the wild.

18 (d) The rights and obligations under any safe harbor  
19 agreement or programmatic safe harbor agreement shall run with  
20 the land for the term agreed to in the agreement and shall be  
21 recorded by the department in the bureau of conveyances or the  
22 land court, as may be appropriate."



1           SECTION 7. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun, before its effective date.

4           SECTION 8. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6           SECTION 9. This Act shall take effect on July 1, 2050.



**Report Title:**

Endangered Species

**Description:**

Authorizes the development and use of programmatic safe harbor agreements and programmatic habitat conservation plans that cover multiple landowners or a class of landowners and over a wide area or region. (HB3181 HD1)

