
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 issuance of certificates of inclusion to extend the coverage of
13 the incidental take license to landowners enrolling in the
14 programmatic agreement or plan at a later date; provided that
15 prior to issuance, the certificates of inclusion shall require
16 review by the endangered species committee and approval of the
17 board to ensure that the certificates are consistent with the
18 terms and conditions of the programmatic agreement or plan.

19 (g) After consultation with the endangered species
20 recovery committee, the board may issue a temporary license as a
21 part of a habitat conservation plan or programmatic habitat
22 conservation plan to allow a take otherwise prohibited by



1 subsection (e) if the take is incidental to, and not the purpose
2 of, the carrying out of an otherwise lawful activity; provided
3 that:

4 (1) The applicant, to the maximum extent practicable,
5 shall minimize and mitigate the impacts of the take;

6 (2) The applicant shall guarantee that adequate funding
7 for the plan will be provided;

8 (3) The applicant shall post a bond, provide an
9 irrevocable letter of credit, insurance, or surety
10 bond, or provide other similar financial tools,
11 including depositing a sum of money in the endangered
12 species trust fund created by section 195D-31, or
13 provide other means approved by the board, adequate to
14 ensure monitoring of the species by the State and to
15 ensure that the applicant takes all actions necessary
16 to minimize and mitigate the impacts of the take;

17 (4) The plan shall increase the likelihood that the
18 species will survive and recover;

19 (5) The plan takes into consideration the full range of
20 the species on the island so that cumulative impacts
21 associated with the take can be adequately assessed;



1 (6) The measures, if any, required under section
2 195D-21(b) shall be met, and the department has
3 received any other assurances that may be required so
4 that the plan may be implemented;

5 (7) The activity, which is permitted and facilitated by
6 issuing the license to take a species, does not
7 involve the use of submerged lands, mining, or
8 blasting;

9 (8) The cumulative impact of the activity, which is
10 permitted and facilitated by the license, provides net
11 environmental benefits; and

12 (9) The take is not likely to cause the loss of genetic
13 representation of an affected population of any
14 endangered, threatened, proposed, or candidate plant
15 species.

16 Board approval shall require an affirmative vote of not less
17 than two-thirds of the authorized membership of the board after
18 holding a public hearing on the matter on the affected island.

19 The department shall notify the public of a proposed license
20 under this section through publication in the periodic bulletin
21 of the office of environmental quality control and make the



1 application and proposed license available for public review and
2 comment for not less than sixty days prior to approval.

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

14 (i) The department shall work cooperatively with federal
15 agencies in concurrently processing habitat conservation plans,
16 programmatic habitat conservation plans, safe harbor agreements,
17 ~~[and]~~ programmatic safe harbor agreements, incidental take
18 licenses, and certificates of inclusion pursuant to the
19 Endangered Species Act. After notice in the periodic bulletin
20 of the office of environmental quality control and a public
21 hearing on the islands affected, which shall be held jointly
22 with the federal agency, if feasible, whenever a landowner or an



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

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

19 "(b) The office of the governor shall review other
20 programs administered by the department and, to the extent
21 practicable, utilize such programs in furtherance of the
22 purposes of this chapter. The governor or the governor's



1 authorized representative shall also encourage all federal
2 agencies to utilize their authority in furtherance of the
3 purposes of this chapter. All other state agencies shall use
4 their authority in furtherance of the purposes of this chapter
5 by:

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

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

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



1 "§195D-21 Habitat conservation plans[-] and programmatic
2 habitat conservation plans. (a) The department may enter into
3 a planning process with any landowner, or agent acting on behalf
4 of multiple landowners, for the purpose of preparing and
5 implementing a habitat conservation plan[-] or programmatic
6 habitat conservation plan. An agreement may include multiple
7 landowners. Applications to enter into a planning process shall
8 identify:

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



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

4 After a habitat conservation plan is prepared, the board shall
5 notify the public of the proposed habitat conservation plan or
6 programmatic habitat conservation plan through the periodic
7 bulletin of the office of environmental quality control and make
8 the proposed plan and the application available for public
9 review and comment not less than sixty days prior to approval.
10 The notice shall include, but not be limited to, identification
11 of the area encompassed by the plan, the proposed activity, and
12 the ecosystems, natural communities, and habitat types within
13 the plan area. The notice shall solicit public input and
14 relevant data.

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



1 plan, or programmatic habitat conservation plan, if it
2 determines that:

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

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

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

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



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

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

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

18 (B) Describe the activities contemplated to be
19 undertaken within the plan area with sufficient
20 detail to allow the department to evaluate the
21 impact of the activities on the particular
22 ecosystems, natural communities, or habitat types



1 within the plan area that are the focus of the
2 plan;

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

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

19 (E) Be consistent with the goals and objectives of
20 any approved recovery plan for any endangered
21 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 the
15 agent thereof, shall submit an annual report to the department
16 within ninety days of each fiscal year ending June 30, that
17 includes a description of activities and accomplishments,
18 analysis of the problems and issues encountered in meeting or
19 failing to meet the objectives set forth in the habitat
20 conservation plan, areas needing technical advice, status of
21 funding, and plans and management objectives for the next fiscal
22 year, including any 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. (SB3103 HD1)

