
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 extends 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 extends over a wide area or region."

16 SECTION 2. Section 195D-4, Hawaii Revised Statutes, is
17 amended as follows:

18 1. By amending subsection (e) to read:



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

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

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

6 (3) Possess, process, sell, offer for sale, deliver,
7 carry, transport, or ship, by any means whatsoever,
8 any such species;

9 (4) Violate any rule pertaining to the conservation of the
10 species listed pursuant to this section and adopted by
11 the department pursuant to this chapter; or

12 (5) Violate the terms of, or fail to fulfill the
13 obligations imposed and agreed to under, any license
14 issued under subsection (f), (g), or (j) any habitat
15 conservation plan or programmatic habitat conservation
16 plan authorized under section 195D-21, or any safe
17 harbor agreement or programmatic safe harbor agreement
18 authorized under section 195D-22."

19 2. By amending subsections (g) through (i) to read:

20 "(g) After consultation with the endangered species
21 recovery committee, the board may issue a temporary license or a
22 certificate of inclusion as a part of a habitat conservation



1 plan, programmatic habitat conservation plan, safe harbor
2 agreement, or programmatic safe harbor agreement to allow a take
3 otherwise prohibited by subsection (e) if the take is incidental
4 to, and not the purpose of, the carrying out of an otherwise
5 lawful activity; provided that:

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



- 1 cumulative impacts associated with the take can be
2 adequately assessed;
- 3 (6) The measures, if any, required under section
4 195D-21(b) shall be met, and the department has
5 received any other assurances that may be required so
6 that the plan or agreement may be implemented;
- 7 (7) The activity, which is permitted and facilitated by
8 issuing the license to take a species, does not
9 involve the use of submerged lands, mining, or
10 blasting;
- 11 (8) The cumulative impact of the activity, which is
12 permitted and facilitated by the license[7] or
13 certificate of inclusion, provides net environmental
14 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 or



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

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

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



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

19 SECTION 3. 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 or programmatic agreements
16 or programmatic plans with federal agencies, counties, private
17 landowners, and organizations for the administration and
18 management of any programmatic plan or programmatic agreement
19 area or facility established under section 195D-21 or 195D-22,
20 or public lands [~~utilized~~] used for conserving, managing,
21 enhancing, or protecting indigenous aquatic life, wildlife, land
22 plants, threatened and endangered species, and their habitat."



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

18 (b) (1) Except as otherwise provided by law, the board, upon
19 recommendation from the department, in cooperation
20 with other state, federal, county, or private
21 organizations and landowners, after a public hearing
22 on the island affected, and upon an affirmative vote



1 of not less than two-thirds of its authorized
2 membership, may enter into a habitat conservation
3 plan, or programmatic habitat conservation plan, if it
4 determines that:

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

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

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

17 In the event the board votes to enter into a habitat
18 conservation plan or programmatic habitat conservation
19 plan for which the majority of the endangered species
20 recovery committee recommended disapproval, the board
21 may not enter into the habitat conservation plan or
22 programmatic habitat conservation plan unless the plan



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

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

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

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



1 impact of the activities on the particular
2 ecosystems, natural communities, or habitat types
3 within the plan area that are the focus of the
4 plan;

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

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

21 (E) Be consistent with the goals and objectives of
22 any approved recovery plan for any endangered



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



1 techniques), including periodic monitoring by
2 representatives of the department or the
3 endangered species recovery committee, or both;
4 and provisions for evaluating progress in
5 achieving the goals quantitatively and
6 qualitatively; and

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

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

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

20 (2) Is likely to cause any native species not endangered
21 or threatened at the time of plan submission to become
22 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 landowner's 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
15 programmatic habitat conservation plan shall submit an annual
16 report to the department within ninety days of each fiscal year
17 ending June 30, that includes a description of activities and
18 accomplishments, analysis of the problems and issues encountered
19 in meeting or failing to meet the objectives set forth in the
20 habitat conservation plan, areas needing technical advice,
21 status of funding, and plans and management objectives for the
22 next fiscal year, including any proposed modifications thereto."



1 SECTION 5. 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 landowner's
18 portion thereof approved under this section if the board
19 determines that:
- 20 (1) Any parties to the safe harbor agreement[-] 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 or programmatic safe harbor
4 agreement and have failed to cure the breach in a
5 timely manner, and the effect of the breach is to
6 diminish the likelihood that the agreement will
7 achieve its goals within the time frames or in the
8 manner set forth in the agreement;

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

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

19 (d) The rights and obligations under any safe harbor
20 agreement or programmatic safe harbor agreement shall run with
21 the land for the term agreed to in the agreement and shall be



1 recorded by the department in the bureau of conveyances or the
2 land court, as may be appropriate."

3 SECTION 6. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun, before its effective date.

6 SECTION 7. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 8. 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 HD2)

