

JAN 22 2010

S.B. NO. 2441

A BILL FOR AN ACT

RELATING TO ENDANGERED SPECIES.

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

1 SECTION 1. The number of species of plants, animals, and
2 microorganisms; the enormous diversity of genes in these
3 species; and the different ecosystems on the planet, such as
4 deserts, rainforests, and coral reefs are all part of a
5 biologically diverse Earth. Biodiversity ensures natural
6 sustainability for all life forms, and healthy ecosystems that
7 can better withstand and recover from a variety of disasters.
8 Human activity is causing massive species extinctions, from
9 animal species, forests, and the ecosystems that forests
10 support, to marine life.

11 The federal Endangered Species Act establishes a process of
12 identifying species that are in danger of becoming extinct. The
13 Hawaiian green sea turtle, the nene goose, and the Hawaiian monk
14 seal are all endangered species. Despite the protections
15 provided by the federal Endangered Species Act, these animals
16 continue to be at risk. Two recent incidents of intentionally
17 killed Hawaiian monk seals on Kauai and one on Molokai have



1 brought attention to the human threat to Hawaii's endangered
2 species. In September, a Kauai man plead guilty to shooting an
3 Hawaiian monk seal in violation of the federal Endangered
4 Species Act. The man received a ninety-day jail term, one year
5 supervised release, and a \$25 fine. The legislature finds that
6 this sentence is not sufficient to deter future harassment of
7 Hawaii's endangered species. In order to protect endangered
8 species from future harassment and death, greater penalties need
9 to be imposed.

10 The purpose of this Act is to:

11 (1) Establish the intentional or knowing taking of an
12 endangered species as a class C felony; and

13 (2) Provide a private right of action against persons who
14 violate the laws or rules regarding the conservation
15 of aquatic life, wildlife, and land plants, which
16 includes the protection of endangered species.

17 SECTION 2. Section 195D-9, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§195D-9 Penalty.** (a) Any person who violates any of the
20 provisions ~~[to be]~~ of this chapter ~~[to be]~~ or the provisions of any
21 rule adopted hereunder shall be guilty of a misdemeanor and
22 shall be punished as follows:



1 (1) For a first offense by a fine of not less than \$250 or
2 by imprisonment of not more than one year, or both;
3 and

4 (2) For a second or subsequent offense within five years
5 of a previous conviction by a fine of not less than
6 \$500 or by imprisonment of not more than one year, or
7 both.

8 (b) In addition to the above penalties, except for
9 violations under approved habitat conservation plans under
10 section 195D-21 or approved safe harbor agreements under section
11 195D-22 as determined by the board, a fine of \$5,000 for each
12 specimen of a threatened species and \$10,000 for each specimen
13 of an endangered species intentionally, knowingly, or recklessly
14 killed or removed from its original growing location, shall be
15 levied against the convicted person.

16 (c) The disposition of fines collected for violations of
17 the provisions concerning wildlife conservation shall be subject
18 to section 183D-10.5.

19 (d) Except as otherwise provided by law, the board or its
20 authorized representative by proper delegation is authorized to
21 set, charge, and collect administrative fines or bring legal
22 action to recover administrative fees and costs as documented by



1 receipts or affidavit, including attorneys' fees and costs, or
2 bring legal action to recover administrative fines, fees, and
3 costs, including attorneys' fees and costs, or payment for
4 damages or for the cost to correct damages resulting from a
5 violation of this chapter or any rule adopted thereunder. The
6 administrative fines shall be as follows:

7 (1) For a first violation, a fine of not more than \$2,500;

8 (2) For a second violation within five years of a previous
9 violation, a fine of not more than \$5,000; and

10 (3) For a third or subsequent violation within five years
11 of the last violation, a fine of not more than
12 \$10,000.

13 (e) In addition, an administrative fine of up to \$5,000
14 may be levied for each specimen of wildlife or plant taken,
15 killed, injured, or damaged in violation of this chapter or any
16 rule adopted thereunder.

17 (f) Any criminal action against a person for any violation
18 of this chapter or any rule adopted thereunder shall not be
19 deemed to preclude the State from pursuing civil legal action to
20 recover administrative fines and costs against that person. Any
21 civil legal action against a person to recover administrative
22 fines and costs for any violation of this chapter or any rule



1 adopted thereunder shall not be deemed to preclude the State
2 from pursuing any criminal action against that person.

3 (g) Notwithstanding any law to the contrary, any person
4 who intentionally or knowingly takes an endangered species in
5 violation of this chapter shall be guilty of a class C felony;
6 provided that the maximum fine shall be not more than \$50,000."

7 SECTION 3. Section 195D-32, Hawaii Revised Statutes, is
8 amended to read as follows:

9 " ~~[§]195D-32 [§]~~ **Citizen suits.** (a) Except as provided in
10 subsection (b), any person, acting as a private attorney
11 general, may commence a civil suit on the person's behalf:

12 (1) Against any other person, or any state or county
13 agency or instrumentality, that is alleged to be in
14 violation of ~~[the terms of, or [fails] to fulfill the~~
15 ~~obligations imposed and agreed to under any habitat~~
16 ~~conservation plan or safe harbor agreement and~~
17 ~~accompanying license for public lands as authorized~~
18 ~~under sections 195D-21 and 195D-22,]~~ this chapter or
19 any rule adopted pursuant to this chapter; or

20 (2) Against the department or board, where there is
21 alleged a failure of the department or board to
22 perform any act or duty required under ~~[a habitat~~



1 ~~conservation plan or safe harbor agreement and~~
2 ~~accompanying license issued for public lands.] this~~
3 ~~chapter or any rule adopted pursuant to this chapter.~~

4 (b) The circuit courts shall have jurisdiction to enforce
5 this section or to order the department or board to perform any
6 act or duty required under this [~~section,~~] chapter or any rule
7 adopted pursuant to this chapter, provided that:

8 (1) No action may be commenced under subsection (a) (1)
9 less than sixty days after written notice of the
10 alleged violation has been given to the department,
11 and to the person, or state or county agency or
12 instrumentality, alleged to be in violation of this
13 [~~section,~~] chapter or any rule adopted pursuant to
14 this chapter, except that the action may be brought
15 immediately after the notification in the case of an
16 emergency posing a significant risk to the well-being
17 of any species of fish, wildlife, or plant; and

18 (2) No action may be commenced under subsection (a) (2)
19 less than sixty days after written notice of the
20 alleged violation has been given to the department,
21 except that the action may be brought immediately
22 after the notification in the case of an emergency



1 posing a significant risk to the well-being of any
2 species of fish or wildlife, or plant.

3 (c) Any suit brought pursuant to this section may be
4 brought in the judicial circuit where the alleged violation
5 occurred or is occurring. In any suit brought pursuant to this
6 section, where the State is not a party, the attorney general,
7 at the request of the department, may intervene on behalf of the
8 State as a matter of right.

9 (d) The court, in issuing any final order in any suit
10 brought pursuant to this section, may award costs of litigation,
11 including reasonable attorney and expert witness fees, to any
12 party, when deemed appropriate.

13 [~~(d)~~] (e) The injunctive relief provided by this section
14 shall not restrict any right that any person or class of persons
15 may have under any other law, including common law, to seek
16 enforcement of any standard or limitation or to seek any other
17 relief, including relief against any instrumentality or agency
18 of the State."

19 SECTION 4. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.

4

INTRODUCED BY: Gay L. Howe
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Report Title:

Endangered Species; Felony; Private Right of Action

Description:

Establishes the intentional or knowing taking of an endangered species as a class C felony; provides a private right of action to enforce conservation of aquatic life, wildlife, and land plants laws.

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