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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. 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 a tremendous number of species  
9 extinctions, from animal species, forests, and the ecosystems  
10 that forests 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 green sea turtle, the nene goose, and the Hawaiian monk seal are  
14 all endangered species. Despite the protections provided by the  
15 federal Endangered Species Act, these animals continue to be at  
16 risk. Two recent incidents of intentionally killed Hawaiian  
17 monk seals on Kauai and one on Molokai have brought attention to

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

9 The purpose of this Act is to:

- 10 (1) Establish the crime of intentional or knowing taking  
11 of an endangered species as a class C felony; and  
12 (2) Provide a private right of action against persons who  
13 violate the laws or rules regarding the conservation  
14 of aquatic life, wildlife, and land plants, which  
15 includes the protection of endangered species.

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

18 "**§195D-9 Penalty.** (a) Any person who violates any of the  
19 provisions [~~for~~] of this chapter [~~of~~] or the provisions of any  
20 rule adopted [~~hereunder~~] under this chapter shall be guilty of a  
21 misdemeanor and 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.~~]  
6 under this chapter. The administrative fines shall be as  
7 follows:

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

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

11 (3) For a third or subsequent violation within five years  
12 of the last violation, a fine of not more than  
13 \$10,000.

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

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

1 recover administrative fines and costs for any violation of this  
2 chapter or any rule adopted ~~[thereunder]~~ under this chapter  
3 shall not be deemed to preclude the State from pursuing any  
4 criminal action against that person.

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

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

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

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

1           (2) Against the department or board, where there is  
2           alleged a failure of the department or board to  
3           perform any act or duty required under [~~a habitat~~  
4           ~~conservation plan or safe harbor agreement and~~  
5           ~~accompanying license issued for public lands.~~] this  
6           chapter or any rule adopted under this chapter.

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

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

21          (2) No action may be commenced under subsection (a) (2)  
22          less than sixty days after written notice of the

1           alleged violation has been given to the department,  
2           except that the action may be brought immediately  
3           after the notification in the case of an emergency  
4           posing a significant risk to the well-being of any  
5           species of fish or wildlife, or plant.

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

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

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

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

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

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**Report Title:**

Endangered Species; Felony; Private Right of Action

**Description:**

Establishes the crime of 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. Effective 7/1/50. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*