

A Bill for an Act Relating to the Conservation, Management and Protection of Endangered or Threatened Species of Wildlife or Plants.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Hawaii Revised Statutes, is amended by adding a new chapter to be appropriately designated and to read:

**“CHAPTER
CONSERVATION OF WILDLIFE AND PLANTS**

Sec. -1 Findings and declaration of necessity. Since the discovery and settlement of the Hawaiian islands by man many species of wildlife and plants that occurred naturally only in Hawaii have become extinct and many of the remaining species are threatened with extinction, primarily because of increased human use of the land and disturbance to native ecosystems.

All indigenous species of wildlife and plants are integral parts of Hawaii’s native ecosystems and comprise the living heritage of Hawaii for they represent a natural resource of scientific, cultural, educational, environmental and economic value to future generations of Hawaii’s people.

To insure the continued perpetuation of indigenous wildlife and plants and their habitats for human enjoyment, for scientific purposes, and as members of ecosystems, it is necessary that the State take positive actions to enhance their prospects for survival.

Sec. -2 Definitions. As used in this chapter:

(a) “Conserve,” “conserving,” and “conservation” mean to use and the use of all methods and procedures for the purpose of increasing and maintaining populations of wildlife and plants. Such methods and procedures include, but are not limited to activities such as research, census, habitat acquisition, protection, maintenance, propagation, live trapping, regulated taking, law enforcement and transplantation;

(b) “Department” means department of land and natural resources;

(c) “Ecosystem” means all natural elements, physical and biological, of the habitat or site in which any wildlife or plant species is found, and upon which it is dependent;

(d) “Endangered species” means any species whose continued existence as a viable component of Hawaii’s indigenous fauna or flora is determined to be in jeopardy and has been so designated pursuant to section

-4;

(e) “Endangered Species Act” means the Endangered Species Act of 1973, 87 Stat. 884, or as such Act may be subsequently amended;

(f) “Indigenous species” means any wildlife or plant species growing or living naturally in Hawaii without having been brought to Hawaii by man;

(g) “Person” means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the federal government, of any State or political subdivision thereof, or of any foreign government;

(h) "Plant" means any member of the plant kingdom, including seeds, roots and other parts thereof;

(i) "Species" means and shall include any subspecies or lower taxa of wildlife or plants;

(j) "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect endangered or threatened species of wildlife or to cut, collect, uproot, destroy, injure, or possess endangered or threatened species of plants, or to attempt to engage in any such conduct;

(k) "Threatened species" means any species of wildlife or plant which appears likely, within the foreseeable future, to become endangered and has been so designated pursuant to section -4;

(l) "Wildlife" means any member of any non-domesticated species of the animal kingdom, whether reared in captivity or not, including, without exception, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Sec. -3. Determination by the department relating to conservation of particular species. (a) The department is authorized to conduct investigations on any species of wildlife and plants in order to develop information relating to their biology, ecology, population, status, distribution, habitat needs, and other limiting factors to determine conservation measures necessary for their continued ability to sustain themselves successfully.

(b) The department is authorized to promulgate pursuant to chapter 91, regulations relating to the taking, possession, transportation, importation, exportation, processing, selling, or offering for sale, or shipment of any species of wildlife and plant for the purpose of conserving the same.

(c) Except as permitted by regulations promulgated by the department, it shall be unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship any species of wildlife or plants deemed by the department to be in need of conservation pursuant to this section.

Sec. -4. Endangered species and threatened species. (a) Any species of wildlife or wild plant that has been determined to be an endangered species pursuant to the Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of wildlife or plant that has been determined to be a threatened species pursuant to the Endangered Species Act shall be deemed to be a threatened species under the provision of this chapter. However, the department may determine, in accordance with this section, that any such threatened species is an endangered species throughout all or any portion of the range of such species within this State.

(b) In addition to the species that have been determined to be endangered or threatened pursuant to the Endangered Species Act, the department may, by regulation, promulgated pursuant to chapter 91, determine any indigenous species of wildlife or wild plant to be an endangered species or a threatened species because of any of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

- (2) Overutilization for commercial, sporting, scientific, educational or other purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms; or
- (5) Other natural or man made factors affecting its continued existence within Hawaii.

(c) Basis for determinations. The department shall make determinations required by subsection (b) of this section on the basis of all available scientific, commercial and other data after consultation, as appropriate, with Federal agencies, other interested state and county agencies, and interested persons and organizations.

(d) Lists. (1) The department shall issue regulations containing a list of all species of wildlife and plants that have been determined, in accordance with subsections (a) through (c) of this section, as endangered species and a list of all such species so designated as threatened species. Each list shall include the scientific, common and Hawaiian name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened. (2) Except with respect to species of wildlife or plants determined to be endangered or threatened pursuant to the Endangered Species Act, the department shall upon its own recommendation or upon the petition of three interested persons, who have presented to the department substantial evidence which warrants review, conduct a review of any listed or unlisted indigenous species proposed to be removed from or added to the lists published pursuant to paragraph (1) of this subsection.

(e) Prohibited acts. With respect to any endangered species of wildlife or plant, it is unlawful, except as provided in subsection (f) of this section, for any person subject to the jurisdiction of this State to:

- (1) Export any such species from this State;
- (2) Take any such species within this State;
- (3) Possess, process, sell or offer for sale, deliver, carry, transport or ship, by any means whatsoever, any such species;
- (4) Violate any regulation pertaining to the conservation of such species or to any threatened species of wildlife listed pursuant to this section and promulgated by the department pursuant to authority provided by this chapter.

(f) Permits. The department may permit, under such terms and conditions as it may prescribe, any act otherwise prohibited by subsection (e) of this section, for scientific purposes or to enhance the propagation or survival of the affected species.

Sec. -5. Conservation programs. (a) The department shall conduct research on indigenous plants, birds and mammals and on endangered species and their associated ecosystems, and shall utilize the land acquisition and other authority vested in the department to carry out programs for the conservation, management, and protection of such species and their associated ecosystems. In addition, the department is hereby authorized to acquire by purchase, donation or otherwise, lands or interests therein needed to carry out the programs relating to the intent and purpose of this part.

(b) The office of the governor shall review other programs administered by the department and, to the extent practicable, utilize such programs in furtherance of the purposes of this section. The governor or his authorized representative shall also encourage other state and federal agencies to utilize their authorities in furtherance of the purposes of this section by carrying out programs for the protection of endangered species and by taking such action as may be necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of endangered species.

(c) In carrying out programs authorized by this section, the department may enter into agreements with federal agencies and with the counties for administration and management of any area established under this section or utilized for conserving, managing, enhancing, or protecting indigenous plants, birds and mammals and endangered species.

(d) In carrying out programs authorized by this section, priority shall be given to the conservation and protection of those endangered plant, bird and mammal species and their associated ecosystems whose extinction within the State would imperil or terminate, respectively, their existence in the world.

(e) The department shall coordinate with the natural area reserves commission and the animal species advisory commission all research, investigations, lists of indigenous and endangered plants, birds and mammals, and programs for the conservation, management, enhancement and protection of such species that are authorized by this part.

(f) The department may permit, under such terms and conditions as are adopted by regulation, the taking, possession, transportation or exportation of any indigenous plant, bird or mammal on the endangered list for educational, or scientific purposes and for propagation of such species in captivity for preservation purposes.

Sec. -6 Regulations. The department shall have the authority to promulgate pursuant to chapter 91 such regulations as are necessary to carry out the purposes of this chapter.

Sec. -7 Enforcement. Any employee or agent of the department upon whom the board of land and natural resources has conferred powers of police officers, including the power to serve and execute warrants and arrest offenders or issue citations throughout the State, and any police officer of the counties of this State shall have the authority to enforce any of the provisions of this chapter or any regulation or rule promulgated pursuant hereto.

Sec. -8 Search and seizure. Any officer or agent authorized pursuant to section -7 shall have the authority to conduct searches as provided by law and to seize any equipment, business records, merchandise, wildlife or wild plant taken, possessed, transported, sold, offered for sale, or used in violation of any section of this part or any rule or regulation promulgated hereunder, and any of the foregoing so seized shall be held by the department pending disposition of court proceedings, or the department prior to forfeiture may direct the transfer of wildlife or wild plants so seized to a qualified zoological, botanical, educational, or scientific institution for safekeeping, costs thereof to be paid by the defendant. Upon conviction of the person or persons

from whom the seizure was made, the court shall declare the items seized forfeited to the State. Such items shall be destroyed or disposed of in any manner as the department may deem appropriate.

Sec. -9 Penalty. Any person who violates any of the provisions of this chapter or the provisions of any regulation or rule promulgated hereunder shall be fined not more than \$1,000 or be imprisoned not more than one year, or both.

Sec. -10 Severability. Should any section, subsection, sentence, clause, or phrase of this chapter or any regulation or rule promulgated pursuant thereto be for any reason held by a court of competent jurisdiction to be held invalid, such decision shall not affect the validity of the remaining portions of this chapter or regulation or rule promulgated pursuant thereto."

SECTION 2. Part II of Chapter 191, Hawaii Revised Statutes, is repealed.

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

(Approved May 10, 1975.)