



University of Hawaii at Manoa

Environmental Center
Crawford 317 • 2550 Campus Road
Honolulu, Hawaii 96822
Telephone (808) 948-7361

Office of the Director

RL:0211R
Rev. 3 March 1977

SB 1202 and SB 1191

RELATING TO CONSERVATION OF ENDANGERED OR THREATENED
WILDLIFE AND PLANTS

Statement for
Senate Committee on Ecology, Environment and Recreation
Public Hearing, 2 March 1977

by

Ruth Gay, Botany
Charles H. Lamoureux, Botany
Doak C. Cox, Environmental Center

SB 1202 and SB 1191 would amend certain of the provisions in Chapter 195D of Hawaii Revised Statutes, the chapter dealing with conservation of wildlife and plants. This statement on these bills has been submitted for review to the legislative subcommittee of the Environmental Center of the University of Hawaii. It does not represent an institutional position of the University.

SB 1202

A number of the amendments proposed in SB 1202 (HB 1078) were previously proposed in SB 138-77 (HB 220-77). As the Environmental Center commented earlier (RL:0196, 16 February 1977), the amendments proposed in these other bills appeared favorable because they would allow Hawaii to qualify for Federal grants-in-aid without changing the purpose of Act 65 (1975) and without reducing State authority in matters pertaining to endangered and threatened species. However, the additional changes proposed in SB 1202 (HB 1078) seem less favorable in these respects.

With respect to species in need of special conservation measures, the additional amendments proposed in SB 1202 would differentiate between the controls prescribed for plants and those prescribed for animals. The differentiation would be made in HRS Sec. 195 D-3, relating to species in need of conservation generally, through deleting the words "or plants" in subsec. (c) (p. 2, l. 10) and making special provisions for plants in a new subsec. (d) (p. 2, ls. 13-17); and in HRS Sec. 195 D-4, relating to endangered or threatened species, through deleting the words "or plant" in the initial paragraph of subsec. (e) (p. 2, l. 21) and adding special provisions respecting plants later in the subsec. (p. 3, ls. 9-23).

These additional amendments would have considerable consequences:

1. The taking of any species of plant deemed by DLNR to be in need of conservation is currently unlawful and prohibited by HRS Sec. 195 D-3 except as permitted by departmental regulation or permit. As defined in HRS Sec 195 D (2) j, "take means to cut, collect, uproot, destroy, injure or possess endangered or threatened species of plants or to attempt to engage in any such conduct." The proposed changes would make such activities lawful on private lands, Federal lands, and possibly county lands. The resulting legal allowance for destruction of endangered and threatened plant species over major land areas of Hawaii would contradict the purpose of the original Act, which was to ensure the continued perpetuation of such plants and their habitats. Also, the effectiveness of other provisions of the Act would be severely limited if "take" were permitted on non-state lands. Sec. 3 calls for developing information to determine conservation measures necessary for successful sustenance of plant species, an activity that could become nearly impossible for many species under the newly proposed amendments. Likewise, attempts to carry out programs for the conservation, management and protection of species and their associated ecosystems as mandated in Sec. 5 would be very difficult if no protection is afforded against taking species from non-state lands.

It appears important to afford protection to endangered and threatened plant species on non-state lands as well, at least in terms of destruction. Allowance could be made by regulation to protect each species in its present range if feasible, or in hardship cases to have scientists transfer the species to an intact portion of its former range as close as possible to its extant location.

Thus, we suggest either: i) that the amendment of HRS Sec. 195 D-3 be provided as in SB 220; or ii) that in the new subsec. (d) the prohibition against destroying endangered or threatened species of plants be extended to non-state lands. By regulatory authority the department could then supervise, in hardship cases, the transplanting of endangered or threatened species to an intact portion of their former range.

Care should be taken to transplant to the most intact former range. Transplanting should be made to an area where associated insects and other organisms and soil and climatic conditions are identical to the original remnant habitat because any of these factors may be essential to the perpetuation of life cycles of the species. The transplanted habitat should be selected so that gene pools of an endangered or threatened species can develop with protection under the same evolutionary forces as would be present in the remnant habitats. Although many problems will occur in attempting to transplant and re-establish some of these species, the above regulatory provision would hopefully allow the conservation of the species and some of its associated ecosystem, as well as protect the rights of private land owners.

2. HRS Sec. 195 D-4 currently prohibits the processing, selling, offering for sale, delivering, carrying, transporting or shipping by any means whatsoever of any endangered or threatened species, except under permit for scientific purposes or to enhance the propagation or survival of the affected species. Although the new proposed amendment of this section conforms with the Federal Endangered Species Act of 1973, it is not appropriate in State law or appropriate to conditions in Hawaii where such a large proportion of native species are endangered.

Under the new proposals, species could be imported non-commercially from other nations, a provision which would severely compromise HRS Sec. 195 D-5 which gives priority to those species and their associated ecosystems whose extinction within the state would imperil or terminate their existence in the world. Also, under the new proposals, processing and intrastate commerce of species would become legal. This, when combined with the proposals regarding "take", would make legal the harvesting of endangered or threatened species on private lands, their processing and commercial use in Hawaii. We, therefore, suggest that prohibitions be continued under state law against receiving endangered or threatened species from foreign lands for any purpose, against processing, and against intrastate commerce.

With our suggestions, but not with the proposals of SB 1202, protection to endangered and threatened species would be afforded through prohibition of:

- a) the destruction of plants growing anywhere in Hawaii rather than just on state-owned lands,
- b) all commercial exploitation rather than only intrastate and foreign commerce,
- c) all foreign importation rather than just commercial foreign imports.

Our suggestions should be more favorable in terms of qualifying for Federal grants-in-aid and in some aspects of enforcement.

We should call to the attention of the committee an error in drafting SB 1202. Section 3 of the bill is introduced as amending HRS Sec. 195 D-3(2), but deals not only with subsection (a) but also with subsec. (c) and a new subsec. (d), but not subsec. (b).

One of us (Cox) is concerned with an amendment of HRS Sec. 195 D-2 which is proposed in both SB 1202 and SB 220. It is proposed to delete the qualifying phrase "any non-domesticated species of" from the definition of "wildlife". The proposal may be intended to allow the inclusion of feral animals as wildlife. However, with the deletion of the phrase, "wildlife" would include domestic cats, dogs, cattle, horses, and pigs. The "wild" part of "wildlife" has no meaning under the proposed redefinition.

SB 1911

We offer the following comments on SB 1191.

1. The present wording of HRS Subsec. 195 D-4 (a), in allowing for State management of species in need of conservation independently from Federal listing, seems desirable in that it provides faster response to perturbations that might place the existence of a species in jeopardy over part or all of its range. It seems desirable to retain this provision, not delete it as is proposed in HB 1191 (p. 1, ls. 12-15).

2. As long as the prohibitions in HRS Subsec. 195 D-4 (e) extend to export, taking, possession, or sale, it appears that the deletion of "process", as proposed in SB 1191 (p. 2, l. 7), would have little effect on the effectiveness of the law.

3. The new language in HRS Subsec. 195 D-4 (f) proposed in SB 1191 (p. 2, ls. 12-23 and p. 3, ls. 1-12), calling for permit exemption from prohibitions regarding endangered and threatened species during the first year after the species are listed, appears to be a good provision for smooth transition period after the first listings are made public by hearing, then legal by regulation.

4. The amendment proposed to HRS Sec. 195 D-5 would mandate approval by act of the legislature whenever state funds are used for land acquisition of endangered or threatened species habitats. Such a provision would seemingly be overly restrictive when applied to small land parcels, and may cause critical delays in providing needed management for such species. In one sense, all land acquisition even by donation would involve the use of state funds. It does not seem desirable to require the legislature to act on every land acquisition provided for in this section.