

TITLE 2: NATURAL RESOURCES
DIVISION 3: THE ENVIRONMENT

§ 3601. Definitions.

For the purposes of this chapter, unless the context clearly indicates otherwise:

- (a) “Agreement” shall mean any agreement pertaining to the Commonwealth Mitigation Bank entered into by the CNMI and the United States Fish and Wildlife Service;
- (b) “Bank” shall mean the Commonwealth Mitigation Bank;
- (c) “Commonwealth” or “CNMI” shall mean the Commonwealth of the Northern Mariana Islands;
- (d) “Department” shall mean the Department of Lands and Natural Resources;
- (e) “Permits” shall mean Incidental Take Permits issued by the United States Fish and Wildlife Service under § 10 of the Endangered Species Act, 16 U.S.C. § 1539;
- (f) “Secretary” shall mean the Secretary of the Department of Lands and Natural Resources;
- (g) “Service” or “USFWS” shall mean the United States Fish and Wildlife Service.

Source: PL 10-84, § 3 (601), modified.

Commission Comment: PL 10-84 took effect January 9, 1998. According to PL 10-84, § 1:

Section 1. Findings and Purpose. The legislature finds that the continued economic development of the Northern Mariana Islands has the unavoidable consequence of impacting the habitats of various threatened and endangered wildlife species.

The U.S. Endangered Species Act of 1973 (“ESA”) prohibits any person, public official or private citizen from “taking a federally listed threatened or endangered species. “Take” is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting, or attempting to engage in such activity. “Harm” is defined by United States Fish and Wildlife Service (“USFWS”) regulations to include significant habitat modification or degradation which actually kills or injures listed species. Thus, private landowners may risk violating the ESA in undertaking activities such as land clearing and harvesting of trees if the activity actually kills or injures listed species by significantly impairing essential behavioral patterns such as breeding, feeding or sheltering.

In order to relieve the burden on landowners in complying with this prohibition, the ESA was amended in 1982 to allow the incidental taking of listed species, if the taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. 16 USC § 1539 (a) (1) (B). In order to obtain an incidental take permit, the applicant must submit a habitat conservation plan. The Secretary of the Interior, acting through the U. S. Fish and Wildlife Service, must find that the taking is incidental; that the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking; that the applicant will ensure that adequate funding for the plan will be provided; that the taking will not appreciably reduce the likelihood of the survival and recovery of

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the species in the wild; and that any additional measures required will be implemented. 16 USC § 1539 (a) (2).

The applicant's habitat conservation plan can propose on-site mitigation measures, such as avoiding or minimizing harm to the habitat of sensitive species on the project site. If the applicant cannot adequately mitigate the incidental taking of some listed species, the applicant may propose off-site mitigation, such as through the purchase of credits at an established mitigation bank.

A mitigation bank can set aside protected areas to safeguard habitats of sensitive species. The bank can create credits on the basis of existing habitat value and future habitat value as improved by the bank. The bank can generate income by selling or debiting credits to developers as a method of off-site mitigation as required by the ESA. The income then would be used exclusively to fund conservation and enhancement efforts in the protected areas.

The benefits of a mitigation bank are many, and include:

- (a) consolidation of off-site mitigation which can maximize the benefits of individual mitigation projects;
- (b) facilitation of island wide ecosystem management;
- (c) consolidation of financial resources, planning and scientific expertise which may not be practicable for project specific mitigation efforts;
- (d) enabling of incidental take permittees to obtain required approvals and complete projects more quickly;
- (e) creation of a predictable measure of mitigation costs to developers;
- (f) providing an alternative to on-site mitigation. Purchasing bank credits can be cheaper than developing and implementing an individual off-site mitigation project due to economies of scale; mitigation costs of a large bank can be lower on a per area basis than costs for smaller, individual mitigation projects.

The legislature therefore finds that establishment of a mitigation bank is in the best interest of the people of the Commonwealth. Such a bank will protect wildlife resources, mitigate the negative impact of continued commercial development on native wildlife, and facilitate sustainable and rational commercial development.

It is therefore the purpose of this legislation to authorize the establishment of the Commonwealth Mitigation Bank ("Bank") under the management and control of the Department of Lands and Natural Resources. In order to ensure funding for the operation of the bank and to carry out its purposes, this legislation also creates a revolving fund consisting of revenues generated by the Bank.

The definitions in this subsection have been arranged in alphabetical order to comply with standard code format.