
A BILL FOR AN ACT

RELATING TO AQUATIC BIOSECURITY.

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

1 SECTION 1. The legislature finds that the introduction and
2 spread of alien aquatic organisms pose an unprecedented threat
3 to Hawaii's marine, estuarine, and freshwater ecosystems;
4 maritime and recreational activities; and economy. Alien
5 aquatic organisms can outcompete native species, leading to the
6 collapse of native ecosystems and adversely affecting the
7 resilience of coral reefs to climate change. In order to combat
8 the introduction and spread of alien aquatic organisms, it is
9 imperative that the State assess and manage the pathways of
10 introduction and spread.

11 The introduction of alien aquatic organisms may occur
12 through different pathways, such as the release of unmanaged or
13 improperly managed ballast water; the spawning or budding of
14 species carried to state waters as vessel biofouling, or the
15 cleaning of fouling organisms from vessel hulls where they may
16 then become established; the arrival of species carried on
17 marine debris that washes ashore; and the escape or release of



1 species from aquaculture, scientific research, and the aquarium
2 trade or hobbyists. Ballast water is the seawater pumped into
3 and out of ballast tanks to stabilize vessels, and biofouling is
4 the growth of marine species on the hulls and in the difficult-
5 to-access niche areas of vessels. The legislature further finds
6 that there are ongoing efforts to address the primary pathways
7 of vessel ballast water, hull biofouling, and in-water cleaning
8 of biofouling without the capture and mitigation of effluent.

9 The legislature further finds that the *Hawaii Interagency*
10 *Biosecurity Plan 2017-2027* recognizes the independent research
11 finding that up to seventy-eight per cent of the non-native
12 marine algae and invertebrate species in Hawaii waters likely
13 arrived through biofouling or a combination of biofouling and
14 ballast water and that the presence of alien species in
15 unmanaged or undermanaged ballast water and on vessel hulls
16 remains a high risk factor for the arrival and spread of
17 invasive marine species. The *Hawaii Interagency Biosecurity*
18 *Plan 2017-2027* also recognizes that regulating these vectors is
19 exponentially more cost-effective than post-introduction
20 control-and-eradication programs.



1 The legislature further finds that preliminary reports from
2 scientists regarding the rapid spread of stony coral tissue loss
3 disease through Florida and the Caribbean have found a strong
4 correlation with shipping patterns and may be related to
5 unmanaged or undermanaged ballast water or biofouling. This
6 destructive spread has led to a loss of between sixty-six and
7 one hundred per cent of stony corals coming into contact with
8 the disease in nearshore waters, with most corals dying within
9 one week to two months after contact. Preventing the arrival
10 and spread of stony coral tissue loss disease to Hawaii waters
11 through unmanaged ballast water and biofouling is critical to
12 protect the State's coral reefs and the economic benefits and
13 ecosystem services they provide.

14 The legislature further finds that recent developments in
15 technology used in other states and countries provide
16 opportunities to assess and mitigate the risk of introduction of
17 alien aquatic organisms. In order for emerging technologies and
18 systems to properly provide protections for the waters of
19 Hawaii, it is critical that the State embark on a program aimed
20 at testing these technologies and demonstrating proof of



1 concept, which may be followed by regulation and oversight of
2 their use.

3 The legislature further finds the Vessel Incidental
4 Discharge Act of 2018 (title IX of P.L. 115-282; 132 Stat. 4322)
5 was enacted on December 4, 2018. The Vessel Incidental
6 Discharge Act of 2018 has far-reaching implications for how
7 states may regulate certain discharges that are considered
8 incidental to the normal operations of a vessel. Once the
9 federal law comes into full force and effect in December 2022,
10 states will be preempted from setting or enforcing rules and
11 regulations that are more stringent than federal regulations
12 related to discharges considered incidental to the normal
13 operation of a vessel, including the management and release of
14 ballast water, the effluent resulting from the cleaning of
15 vessel hulls in state waters, and other incidental discharge
16 streams. The Vessel Incidental Discharge Act of 2018 is
17 intended to set national regulations for certain types of
18 commercial vessels and for fishing-vessel ballast water, while
19 leaving states the authority to set and enforce regulations for
20 a variety of other vessel types that also pose a risk for vessel
21 biofouling and other incidental discharges.



1 The legislature further finds that the United States Coast
2 Guard lacks the capacity, equipment, or technical expertise to
3 test vessel ballast water to assess treatment efficacy or
4 residual risk. In addition, the United States Coast Guard does
5 not currently conduct routine biofouling risk inspections for
6 vessels intending to clean in state waters. Furthermore, the
7 Vessel Incidental Discharge Act of 2018 does not provide for
8 additional funding to expand United States Coast Guard capacity
9 and resources to cover its increased mandate under the Act. The
10 legislature finds instead that the Vessel Incidental Discharge
11 Act of 2018 allows for states to co-enforce the federal
12 standards and regulations with the United States Coast Guard
13 once they come into force.

14 Section 187A-32, Hawaii Revised Statutes, designates the
15 department of land and natural resources as the lead agency for
16 preventing the introduction of alien aquatic organisms. To
17 successfully carry out this co-enforcement and to address the
18 alien aquatic organisms risk of those vessel types that will
19 remain under state regulatory authority, the legislature finds
20 that the department requires additional capacity to develop and



1 maintain a program to assess, monitor, and regulate or co-
2 regulate these top pathways of alien aquatic organisms.

3 The purpose of this Act is to strengthen the aquatic
4 biosecurity of Hawaii by:

- 5 (1) Requiring the department of land and natural resources
6 to co-enforce, with the United States Coast Guard,
7 rules, standards, and requirements related to ballast
8 water, vessel biofouling, vessel hull in-water
9 cleaning, and any other incidental discharges that may
10 pose a risk for the introduction and spread of alien
11 aquatic organisms, adopted by the United States Coast
12 Guard and the Environmental Protection Agency pursuant
13 to the Vessel Incidental Discharge Act of 2018 and the
14 amendments made by that Act; and to set and enforce
15 state standards and regulations for incidental
16 discharges for vessel types where not preempted by the
17 Vessel Incidental Discharge Act of 2018; and
18 (2) Appropriating funds to support staff and operational
19 costs associated with aquatic biosecurity inspection,
20 investigation, monitoring, management, compliance, and
21 enforcement.



1 SECTION 2. Section 187A-32, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§187A-32[+] **Alien aquatic organisms; lead agency;**
4 **rules.** (a) The department is designated as the lead state
5 agency for preventing the introduction and carrying out the
6 destruction of alien aquatic organisms through the regulation of
7/ ballast water discharges and hull fouling organisms. The
8 department [~~may~~] shall establish an interagency team to address
9 the concerns relating to alien aquatic organisms[~~-~~], including
10 the development of preventive measures and best management
11 practices to reduce the risk of the introduction of alien
12 aquatic organisms.

13 (b) The department [~~may~~] shall adopt rules in accordance
14 with chapter 91, including penalties, to carry out the purposes
15 of this part. The rules may include standards for the
16 department and the United States Coast Guard to use as part of
17 their respective inspection protocols. The rules may also
18 include implementation of a course of action in relation to the
19 arrival or pending arrival of a [~~high-risk~~] high-risk vessel.

20 (c) The governor [~~may~~] shall enter into an agreement with
21 the United States Secretary of [~~Transportation to carry out the~~



1 ~~purposes of this part, including but not limited to the~~
2 ~~enforcement of state law.]~~ the department in which the Coast
3 Guard is operating to enforce section 312 of the Federal Water
4 Pollution Control Act (33 U.S.C. 1322), as provided in that
5 section, or to otherwise carry out this part.

6 (d) Notwithstanding any requirement of chapter 91 and
7 subject to subsection (e), during any period when any
8 regulation, including a regulation authorizing a penalty,
9 standard, or requirement for ballast water, vessel biofouling,
10 or vessel hull in-water cleaning established by the United
11 States Coast Guard or the Environmental Protection Agency
12 pursuant to the Vessel Incidental Discharge Act of 2018 (title
13 IX of P.L. 115-282; 132 Stat. 4322) or the amendments made by
14 that Act are in effect, such regulation, standard, or
15 requirement shall be deemed to be a rule, standard, or
16 requirement adopted by the department.

17 (e) The department shall adopt a rule, including a rule
18 authorizing a penalty, that complies with section
19 312(p) (9) (A) (ii) of the Federal Water Pollution Control Act (33
20 U.S.C. 1322(p) (9) (A) (ii)) or that otherwise complies with



1 applicable federal law to modify, replace, or restate a rule,
2 standard, or requirement deemed adopted under subsection (d).

3 (f) The department shall adopt a rule to impose a civil or
4 criminal penalty for a violation of a rule deemed adopted under
5 subsection (d) or (e).

6 (g) Rules adopted pursuant to subsection (d), (e), or (f)
7 shall be exempt from the public notice and public hearing
8 requirements of chapter 91."

9 SECTION 3. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$156,078 or so much
11 thereof as may be necessary for fiscal year 2020-2021 for the
12 establishment of the following positions to support the
13 prevention, detection, and management of aquatic alien and
14 invasive species associated with ballast water and vessel
15 biofouling pathways:

16 (1) \$29,808 (half-year funding) for one biologist V
17 position to oversee the aquatic biosecurity team and
18 operations;

19 (2) \$26,478 (half-year funding) for one program specialist
20 IV position to analyze and develop regulations and
21 policy related to aquatic biosecurity;



- 1 (3) \$26,478 (half-year funding) for one general
2 professional IV position to develop, manage, and
3 maintain reporting for any database and technology
4 used during aquatic biosecurity risk inspections;
5 (4) \$52,956 (half-year funding) for two biologist IV
6 positions to oversee biosecurity risk inspections and
7 compliance testing; and
8 (5) \$20,358 (half-year funding) for benefits for the
9 positions funded in paragraphs (1) through (4).

10 The sum appropriated shall be expended by the department of
11 land and natural resources for the purposes of this Act.

12 SECTION 4. There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$200,100 or so much
14 thereof as may be necessary for fiscal year 2020-2021 for
15 operating expenditures in the ecosystem protection and
16 restoration program for aquatic biosecurity, including contracts
17 for specialized laboratory work; purchase and maintenance of
18 field and laboratory equipment and supplies; and travel costs.

19 The sum appropriated shall be expended by the department of
20 land and natural resources for the purposes of this Act.



H.B. NO. 1876


1 SECTION 5. If any provision of this Act, or the
2 application thereof to any person or circumstance, is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act that can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this Act are severable.

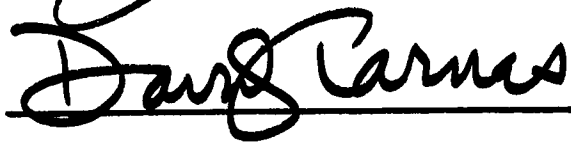
7 SECTION 6. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect on July 1, 2020.

10

INTRODUCED BY:





JAN 17 2020



H.B. NO.1876

Report Title:

Aquatic Biosecurity; DLNR; Appropriation

Description:

Requires DLNR to take specified actions to combat invasive and alien aquatic organisms. Appropriates funds for staffing and operating expenditures for aquatic biosecurity.

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