

JAN 23 2020

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 poses 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 negatively impact 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. The legislature further finds that of these
3 pathways, there is worldwide concern and ongoing efforts to
4 address the primary pathways of vessel ballast water, hull
5 biofouling, and the in-water cleaning of biofouling without the
6 capture and mitigation of effluent. Ballast water is the
7 seawater pumped into and out of ballast tanks to stabilize
8 vessels and biofouling is the growth of marine species on the
9 hulls and in the difficult to access niche areas of vessels.

10 The legislature further finds that the Hawaii interagency
11 biosecurity plan 2017-2027 recognizes the independent research
12 finding that up to seventy-eight per cent of the non-native
13 marine algae and invertebrate species in Hawaii's waters likely
14 arrived through biofouling or a combination of biofouling and
15 ballast water, and that the presence of alien species in
16 unmanaged or undermanaged ballast water and on vessel hulls
17 remains a high risk factor for the arrival and spread of
18 invasive marine species. The Hawaii interagency biosecurity
19 plan 2017-2027 also recognizes that regulating these vectors is
20 exponentially more cost effective than post-introduction control
21 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 our coral reefs and the economic benefits and ecosystem
13 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, that 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 into law 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 does not have the capacity, equipment, or technical
3 expertise to test vessel ballast water to assess treatment
4 efficacy or residual risk. In addition, the United States Coast
5 Guard does not currently conduct routine biofouling risk
6 inspections for vessels intending to clean in state waters.
7 Further, the Vessel Incidental Discharge Act of 2018 does not
8 provide for additional funding to expand United States Coast
9 Guard capacity and resources to cover its increased mandate
10 under the Act. Instead, the legislature finds that the Vessel
11 Incidental Discharge Act of 2018 allows for states to co-enforce
12 the federal standards and regulations with the United States
13 Coast Guard 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 aquatic invasive species 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 co-regulate, or
2 regulate, these top pathways of alien aquatic organisms.

3 The purposes of this Act are to:

- 4 (1) Authorize the department of land and natural resources
5 management to co-enforce, with the United States Coast
6 Guard, rules, standards, and requirements related to
7 ballast-water, vessel biofouling, vessel hull in-water
8 cleaning, and any other incidental discharges that may
9 pose a risk for the introduction and spread of non-
10 native aquatic organisms, adopted by the United States
11 Coast Guard and the Environmental Protection Agency
12 pursuant to the Vessel Incidental Discharge Act of
13 2018 and the amendments made by that Act, and to set
14 and enforce state standards and regulations for
15 incidental discharges for vessel types where not
16 preempted by the Vessel Incidental Discharge Act of
17 2018; and
- 18 (2) Appropriate 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 establish an interagency team to address the
9 concerns relating to alien aquatic organisms~~[-]~~, including the
10 development of preventative measures and best management
11 practices that will reduce risks of alien species being
12 introduced.

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

20 (c) The governor may enter into an agreement with the
21 ~~[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.]~~ secretary of the department in which
3 the United States Coast Guard is operating to enforce section
4 312(k) of the Federal Water Pollution Act (33 U.S.C. 1322), or
5 to otherwise carry out this section.

6 (d) Notwithstanding any requirement of chapter 91 and
7 subject to paragraph (1), during any period when any regulation,
8 including a regulation authorizing a penalty, standard, or
9 requirements for ballast-water, vessel biofouling, or vessel
10 hull in-water cleaning established by the United States Coast
11 Guard or the Environmental Protection Agency pursuant to the
12 Vessel Incidental Discharge Act of 2018 (title IX of P.L. 115-
13 282; 132 Stat. 4322) or the amendments made by that Act is in
14 effect, that regulation, standard, or requirement shall be
15 deemed to be a rule, standard, or requirement adopted by the
16 departments; provided that:

17 (1) The department may adopt a rule, including a rule
18 authorizing a penalty, that complies with section 312
19 of the Federal Water Pollution Control Act (33 U.S.C.
20 1322 or that otherwise complies with applicable
21 federal law to modify, replace, or restate a rule,



1 standard, or requirement deemed adopted under this
2 section;

3 (2) The department may adopt a rule to impose a civil or
4 criminal penalty for a violation of a rule deemed
5 adopted under this section; and

6 (3) Rules adopted pursuant to this section shall be exempt
7 from the public notice and public hearing requirements
8 of chapter 91."

9 SECTION 3. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$ or so
11 much thereof as may be necessary for fiscal year 2020-2021 for
12 the funding 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) Full year funding (\$ for fiscal year
17 2020-2021) for one biologist V position to oversee the
18 aquatic biosecurity team and operations;

19 (2) Full year funding (\$ for fiscal year
20 2020-2021) for one program specialist IV position to



1 analyze and develop regulations and policy related to
2 aquatic biosecurity;

3 (3) Full year funding (\$ for fiscal year
4 2020-2021) for one general professional IV position to
5 develop, manage, and maintain reporting for any
6 database and technology used during aquatic
7 biosecurity risk inspections;

8 (4) Full year funding (\$ for fiscal year
9 2020-2021) for two biologist IV positions to oversee
10 biosecurity risk inspections and compliance testing;

11 (5) Full year funding (\$ for fiscal year
12 2020-2021) for the funding of 1.0 FTE conservation and
13 resources enforcement officer IV to support safety,
14 compliance, and enforcement of aquatic biosecurity
15 laws in conservation and resources enforcement;

16 (6) Full year funding (\$ for fiscal year
17 2020-2021) for four biologist III positions to conduct
18 biosecurity risk inspections, monitoring, and related
19 outreach and education; and



1 (7) Full year funding (\$ for fiscal year
2 2020-2021) for benefits for the positions funded in
3 paragraphs (1) through (6).

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

6 SECTION 4. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$ or so
8 much thereof as may be necessary for fiscal year 2020-2021 for
9 operating expenditures in the ecosystem protection and
10 restoration program for aquatic biosecurity including contracts
11 for specialized laboratory work, purchase and maintenance of
12 field and laboratory equipment and supplies, and travel costs.

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

15 SECTION 5. If any provision of this Act, or the
16 application thereof to any person or circumstance, is held
17 invalid, the invalidity does not affect other provisions or
18 applications of the Act that can be given effect without the
19 invalid provision or application, and to this end the provisions
20 of this Act are severable.



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

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

4

INTRODUCED BY:

Mike Gubel

Jason E Rode

Karl Rhoad

DKL



S.B. NO. 2935

Report Title:

Aquatic Biosecurity; Appropriations

Description:

Authorizes the department of land and natural resources management to co-enforce, with the United States Coast Guard, rules, standards, and requirements related to ballast-water, vessel biofouling, vessel hull in-water cleaning, and any other incidental discharges that may pose a risk for the introduction and spread of non-native aquatic organisms. Appropriates funds for staffing and operating expenditures for aquatic biosecurity.

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

