

JAN 20 2023

A BILL FOR AN ACT

RELATING TO AQUATIC RESOURCES.

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

1 SECTION 1. The legislature finds that the department of
2 land and natural resources is responsible for managing the
3 aquatic life resources of the State. To effectively manage
4 these resources, the department utilizes a variety of tools and
5 methods to both increase yields for Hawaii fishers and to
6 conserve and protect aquatic resources to ensure abundant
7 fisheries for future generations.

8 To achieve the twin goals of ensuring healthy, well-managed
9 fisheries in Hawaii and protecting aquatic resources from over-
10 exploitation, the department utilizes management tools, such as
11 size limits, daily bag limits, seasonal restrictions, gear
12 restrictions, bait restrictions, and marine managed areas, all
13 of which are expressly authorized by the language of section
14 187A-5, Hawaii Revised Statutes, and other authorizing statutes.
15 Other management tools are implied in statute but not expressly
16 authorized.



1 The legislature further finds that clarifying the
2 rulemaking authority provided in section 187A-5, Hawaii Revised
3 Statutes, would enable the department to more effectively carry
4 out its responsibility to manage the aquatic resources of the
5 State.

6 The department of land and natural resources is designated
7 as the lead state agency for preventing the introduction and
8 carrying out the destruction of aquatic nuisance species through
9 regulation of ballast water discharges and hull fouling
10 organisms. New aquatic nuisance species can emerge at any time.
11 One devastating recent example is stony coral tissue loss
12 disease, which was first discovered off the coast of Florida in
13 2014. This unprecedented coral disease is a substantial threat
14 to the continued existence and health of stony coral reef
15 ecosystems. The disease has spread along the Florida coast and
16 throughout the Caribbean basin. New information about the
17 disease and methods to prevent its spread into the Pacific and
18 into state marine waters is developing and changing rapidly.

19 The legislature finds that to effectively prevent the
20 introduction of aquatic nuisance species, the department needs
21 flexibility to quickly and efficiently implement rules to



1 respond to threats from new species or employ new technology
2 based on the best available scientific information.

3 Furthermore, the legislature finds it necessary to improve
4 the adaptive management authority granted in section 187A-5(b),
5 Hawaii Revised Statutes. The existing statute authorizes the
6 adoption of temporary rules by formal board action only if the
7 board finds the rule necessary "in response to rapidly changing
8 resource conditions". However, it has come to the legislature's
9 attention that this provision is extremely limiting and that
10 there are other compelling reasons to authorize temporary
11 rulemaking through the adaptive management process. Therefore,
12 the legislature finds it necessary to expand the adaptive
13 management authority granted to the department to include
14 adaptive management rulemaking authority in response to new or
15 previously benign aquatic nuisance species, in light of newly
16 available data and in light of newly available technology.

17 The purpose of this Act is to:

18 (1) Clarify that the department of land and natural
19 resources' rulemaking authority includes adopting,
20 amending, or repealing any rule deemed necessary to



1 implement the purposes of section 187A-5, Hawaii
2 Revised Statutes;
3 (2) Expand the board of land and natural resources'
4 authority to temporarily adopt, amend, or repeal
5 certain rules by formal action at a publicly noticed
6 meeting if the board finds that such adoption,
7 amendment, or repeal is necessary to implement
8 effective and adaptive management measures in response
9 to new or previously benign aquatic nuisance species,
10 in light of newly available technology, or in light of
11 newly available data;
12 (3) Create new fines for violations of rules pertaining to
13 the department's prevention of or response to
14 previously benign aquatic nuisance species; and
15 (4) Authorize the department to prevent or respond to
16 threats from aquatic nuisance species from all
17 discharges incidental to the normal operation of
18 certain vessels, not just ballast water and hull
19 fouling, pursuant to section 187A-32, Hawaii Revised
20 Statutes.



1 SECTION 2. Section 187A-5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§187A-5 Rules.** (a) Subject to chapter 91, the
4 department shall adopt, amend, and repeal rules for and
5 concerning the protection and propagation of introduced and
6 transplanted aquatic life or the conservation and allocation of
7 the natural supply of aquatic life in any area. The rules may
8 include but are not limited to the following:

- 9 (1) Size limits;
- 10 (2) Bag limits;
- 11 (3) Open and closed fishing seasons;
- 12 (4) Permits for the use and possession of lay nets,
13 including reasonable permit fees and provisions for
14 revocation, suspension, and withholding of permits for
15 noncompliance with lay net rules;
- 16 (5) Specifications and numbers of fishing or taking gear
17 that may be used or possessed; ~~and~~
- 18 (6) Prescriptions and limits on the kind and amount of
19 bait that may be used in taking aquatic life and the
20 conditions for entry into areas for taking aquatic
21 life[-]; and



1 (7) Any other restriction or requirement as deemed
2 necessary by the department to implement the purposes
3 of this section.

4 The rules may vary from county to county or in any part of a
5 county and may specify certain days of the week or certain hours
6 of the day in designating open and closed fishing seasons. All
7 rules shall have the force and effect of law. Except as
8 provided by subsection (b), any person who violates any of the
9 rules adopted pursuant to this section shall be guilty of a
10 petty misdemeanor and upon conviction thereof shall be punished
11 as provided by section 188-70.

12 (b) Notwithstanding any law to the contrary, the board may
13 adopt, amend, or repeal any rule pertaining to bag limits, size
14 limits, open or closed fishing seasons, or gear restrictions by
15 formal board action at a publicly noticed meeting; provided
16 that:

17 (1) The board finds that the timely adoption, amendment,
18 or repeal of the rule is necessary to implement
19 effective and adaptive management measures: ~~[in]~~

20 (A) In response to rapidly changing resource
21 conditions;



- 1 (B) To prevent or respond to new or previously benign
- 2 aquatic nuisance species;
- 3 (C) In light of newly available technology; or
- 4 (D) In light of newly available data;
- 5 (2) Notice of the rulemaking shall:
 - 6 (A) Be given at least once statewide at least thirty
 - 7 days in advance of the public meeting;
 - 8 (B) Include a statement of the topic of the proposed
 - 9 rule to be adopted, amended, or repealed or a
 - 10 general description of the subjects involved;
 - 11 (C) Include a statement that a copy of the proposed
 - 12 rule to be adopted, the proposed rule amendment,
 - 13 or the rule proposed to be repealed will be
 - 14 mailed to any interested person who requests a
 - 15 copy and pays the required fees for the copy and
 - 16 the postage, if any, together with a description
 - 17 of where and how the requests may be made;
 - 18 (D) Include a statement of when, where, and during
 - 19 what times the proposed rule to be adopted, the
 - 20 proposed rule amendment, or the rule proposed to
 - 21 be repealed may be reviewed;



1 (E) Include the date, time, and place where the
2 public meeting will be held and where interested
3 persons may be heard on the proposed rule
4 adoption, amendment, or repeal; and

5 (F) Be mailed to all persons who have made a timely
6 written request of the board for advance notice
7 of its rule-making proceedings; and

8 (3) The adoption, amendment, or repeal of the rule shall
9 be effective for an initial period of no longer than
10 two years, subject to legislative approval and renewal
11 by the board; provided that renewal by the board shall
12 extend for up to one year at a time.

13 Each rule hereafter adopted, amended, or repealed under
14 this subsection shall become effective ten days after formal
15 action by the board; provided that if a later effective date is
16 specified in the rule, the later date shall be the effective
17 date. The department shall post the final adopted, amended, or
18 repealed rule on its website for the duration of time the rule
19 is in effect.

20 Any such rule established by such action of the board
21 pursuant to this subsection shall have the force and effect of



1 law. Any person who violates any rule established by such
2 action of the board shall be subject to administrative penalties
3 as provided by section 187A-12.5~~[-]~~; provided that for rules
4 adopted pursuant to section 187A-5(b)(1)(B), a person who
5 violates the rule shall be subject to a fine of no more than
6 \$50,000 per day of violation for a first violation and a fine of
7 no more than \$100,000 per day of violation for each subsequent
8 violation."

9 SECTION 3. Section 187A-32, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~[+]§187A-32[+]~~ ~~[Alien aquatic organisms;]~~ **Aquatic**
12 **nuisance species; lead agency; rules.** (a) The department is
13 designated as the lead state agency for preventing the
14 introduction or spread and carrying out the destruction of
15 ~~[alien]~~ aquatic ~~[organisms]~~ nuisance species through the
16 regulation of ~~[ballast water discharges and hull fouling~~
17 ~~organisms.]~~ discharges incidental to the normal operation of a
18 new, existing, public, or commercial vessel or vessel of the
19 Armed Forces, as those terms are defined in section 312 of the
20 Federal Water Pollution Control Act (33 U.S.C. 1322). The
21 department may establish an interagency team to address the



1 concerns relating to [~~alien~~] aquatic [~~organisms.~~] nuisance
2 species.

3 (b) [~~The~~] In addition to the authority to make rules
4 concerning aquatic nuisance species under section 187A-5, the
5 department may adopt rules in accordance with chapter 91,
6 including penalties, to carry out the purposes of this part.
7 The rules may include standards for the department and the
8 United States Coast Guard to use as part of their respective
9 inspection protocols. The rules may also include implementation
10 of a course of action in relation to the arrival or pending
11 arrival of a high risk vessel.

12 (c) The governor may enter into an agreement with the
13 United States [~~Secretary of Transportation~~] Coast Guard to carry
14 out the purposes of this part, including but not limited to the
15 enforcement of state law."

16 SECTION 4. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 6. This Act shall take effect upon its approval.



S.B. NO. 1033

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INTRODUCED BY: *Suzanne R. Swamy*



S.B. NO. 1033

Report Title:

Aquatic Resources; DLNR; Rulemaking Authority; Flexibility; Adaptive Management

Description:

Expands the department of land and natural resources' rulemaking authority to include any rule deemed necessary to protect certain aquatic life. Expands the board of land and natural resources' authority to temporarily adopt, amend, or repeal certain natural resource rules by formal action at a publicly noticed meeting if the board finds that such adoption, amendment, or repeal is necessary to implement effective and adaptive management measures in response to new or previously benign aquatic nuisance species, in light of newly available technology, or in light of newly available data. Creates new fines for violations of rules pertaining to the department's prevention of or response to previously benign aquatic nuisance species. Authorizes the department to prevent or respond to threats from aquatic nuisance species from all discharges incidental to the normal operation of a vessel, not just ballast water and hull fouling.

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

