

ACT 222

H.B. NO. 1554

A Bill for an Act Relating to Aquatic Resources.

Be It Enacted by the Legislature of the State of Hawaii:

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

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

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

Furthermore, the legislature finds it necessary to improve the adaptive management authority granted in section 187A-5(b), Hawaii Revised Statutes. The existing statute authorizes the adoption of temporary rules by formal board action only if the board finds the rule necessary “in response to rapidly changing resource conditions”. However, it has come to the legislature’s attention that this provision is extremely limiting and that there are other compelling reasons to authorize temporary rulemaking through the adaptive management process. Therefore, the legislature finds it necessary to expand the adaptive management authority granted to the department of land and natural resources to include adaptive management rulemaking authority in light of newly available data and in light of newly available technology.

The purpose of this Act is to:

- (1) Clarify that the department of land and natural resources’ rulemaking authority includes adopting, amending, or repealing any rule to impose restrictions or requirements deemed necessary to implement the purposes of section 187A-5, Hawaii Revised Statutes; and
- (2) Expand the board of land and natural resources’ authority to temporarily adopt, amend, or repeal certain rules by formal action at a publicly noticed meeting if the board finds that an adoption, amendment, or repeal is necessary to implement effective and adaptive management measures in light of newly available technology or in light of newly available data.

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

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

- (1) Size limits;
- (2) Bag limits;
- (3) Open and closed fishing seasons;
- (4) Permits for the use and possession of lay nets, including reasonable permit fees and provisions for revocation, suspension, and withholding of permits for noncompliance with lay net rules;
- (5) Specifications and numbers of fishing or taking gear that may be used or possessed; ~~and~~
- (6) Prescriptions and limits on the kind and amount of bait that may be used in taking aquatic life and the conditions for entry into areas for taking aquatic life~~[-];~~ and
- (7) Any other restriction or requirement as deemed necessary by the department to implement the purposes of this section.

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

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

- (1) The board finds that the timely adoption, amendment, or repeal of the rule is necessary to implement effective and adaptive management measures ~~in~~:
 - (A) In response to rapidly changing resource conditions;
 - (B) In light of newly available technology; or
 - (C) In light of newly available data;
- (2) Notice of the rulemaking shall:
 - (A) Be given at least once statewide at least thirty days in advance of the public meeting;
 - (B) Include a statement of the topic of the proposed rule to be adopted, amended, or repealed or a general description of the subjects involved;
 - (C) Include a statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be mailed to any interested person who requests a copy and pays the required fees for the copy and the postage, if any, together with a description of where and how the requests may be made;
 - (D) Include a statement of when, where, and during what times the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed may be reviewed;
 - (E) Include the date, time, and place where the public meeting will be held and where interested persons may be heard on the proposed rule adoption, amendment, or repeal;
 - (F) Be mailed to all persons who have made a timely written request of the board for advance notice of its rule-making proceedings; and
- (3) The adoption, amendment, or repeal of the rule shall be effective for an initial period of no longer than two years, subject to legislative approval and renewal by the board; provided that renewal by the board shall extend for up to one year at a time.

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

Any such rule established by such action of the board pursuant to this subsection shall have the force and effect of law. Any person who violates any rule established by such action of the board shall be subject to administrative penalties as provided by section 187A-12.5.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 8, 2024.)