DAVID Y. IGE
GOVERNOR OF HAWAII

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committees on
AGRICULTURE AND ENVIRONMENT
and
WATER AND LAND

Friday, February 07, 2020
1:30 PM
State Capitol, Conference Room 224

In consideration of
SENATE BILL 2935
RELATING TO AQUATIC BIOSECURITY

Senate Bill 2935 proposes to authorize the Department of Land and Natural Resources ("Department") 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; and appropriates funds for staffing and operating expenditures for aquatic biosecurity. **The Department supports this measure provided that its passage does not replace or adversely impact priorities indicated in the Executive Supplemental Budget request.**

The Department recognizes the importance of recreational boating to the people of Hawaii and the importance of the commercial maritime industry's role in bringing consumable goods and other vital products to support Hawaii's economy and human survivability. However, the Department must ensure that such activities are conducted in such a way that protects the State's vulnerable aquatic resources which are susceptible to a plethora of impacts including climate change, land source pollutions, marine debris, vessel groundings, and aquatic alien invasions.

Through a scientific study conducted by the Smithsonian Environmental Research Center, the Department has determined that the top two vectors of aquatic alien species introductions into

the State are ballast water and vessel biofouling,[1] inadvertently bringing in nearly 80% of the 346 aquatic alien species currently established, putting Hawaii at the top of the list for having the most introduced aquatic alien species among the 50 US States. Additionally, a deadly coral disease affecting Florida and the Caribbean with suspected links to vessel traffic, is an alarming example of how vessel movement can rapidly spread marine alien species and pathogens through unmanaged ballast water discharge and vessel biofouling. Therefore, it is in the interest of the State to support preventive measures for managing the top two vectors of aquatic alien species arrivals and transfer among neighboring islands.

The Department uses the Hawaii Interagency Biosecurity Plan 2017 (HIBP) as a road map to guide aquatic alien species prevention efforts and is determined to fulfill the action items associated with vessel biosecurity risks in a timely manner, beginning with building Department capacity required to effectively develop and maintain a program to assess, monitor, and regulate or co-enforce the top pathways of aquatic alien species introduction from all vessel types.

The Vessel Incidental Discharge Act of 2018 (title IX of P.L. 115-282; 132 Stat. 4322) (VIDA) preempts the states from enacting or enforcing more stringent regulations related to incidental discharge from commercial vessels, including ballast water and biofouling, than the federal regulations developed under the Act. However, states retain the ability to enact and enforce regulations equivalent to or less stringent than the federal regulations.

Section 5(a)(iii) of VIDA allows for co-enforcement of the federal regulations for incidental discharge by declaring that:

> (iii) COORDINATION WITH STATES. —The Secretary, in coordination with the Governors of the States, shall develop, publish, and periodically update inspection, monitoring, data management, and enforcement procedures for the enforcement by States of Federal standards and requirements under this subsection.

The USCG's primary focus is on vessel safety and homeland security and VIDA does not provide any funding to build capacity for this enormous expansion of its mandate; therefore, it is imperative that the State provide capacity to ensure that the federal regulations are effectively monitored and enforced. In recent meetings, the USCG has stated that it will not be testing ballast water or providing biofouling inspections and will rely on the state to provide these key monitoring and enforcement functions. By allocating funding for ten positions within the Department, the Legislature will provide the program capacity to perform vessel inspections requiring highly specialized personnel and equipment used for ballast water sampling/testing, to prevent alien species introductions into the State and propagation onto reefs as well as neighboring islands. This work will be performed in close coordination with the U.S. Coast Guard, Department of Transportation, and shipping industry to minimize impacts to shipping operations. Further, by building capacity for this program the Legislature would give the

[1] Davidson I, Ruiz G, Gorgula S (2014) *Vessel biofouling in Hawaii: current patterns of a potent marine bioinvasion vector and potential management solutions*. Report to the Department of Land and Natural Resources (DLNR), Coordinating Group on Alien Pest Species (CGAPS), and the Hauoli Mau Loa Foundation. Honolulu, Hawaii. 48pp.

Department the resources needed to address all 19 action items in the HIBP directly associated with ballast water and vessel biofouling biosecurity risks including items found in the pre-border, border, post-border, and education and awareness categories.

Regarding vessels not covered under VIDA such as recreational, research, and mobile marine structures, the state retains its ability to continue to regulate ballast water and biofouling pathways of aquatic invasive species transfer. According to studies published by the Bishop Museum in 2003 and 2004, these types of vessels are more likely to transfer aquatic invasive species interisland than introduce new species into the State, though the risks are still present. The positions provided under Senate Bill 2935 will help the state prevent the introduction and inter-island transfer of aquatic invasive species from these categories of vessels which are not comprehensively subject to federal regulation for ballast water and, most importantly, hull biofouling.

The Department has included proposed amendments to Senate Bill 2935 for the Committee's consideration (see attached). The amended language was developed as a compromise with the current position of the Department of Transportation, Harbors Division and to address concerns raised by the shipping industry. The amendments remove a provision which would have allowed the Department to adopt federal regulations for ballast water, biofouling, and in-water cleaning developed under VIDA as regulations of the State of Hawaii without going through the notice and public comment process of Hawaii Revised Statutes Chapter 91. The Department will continue to work with Harbors Division and stakeholders to achieve an agreement between the interested parties on how the VIDA regulations will be adopted and executed by the state of Hawaii.

Fortunately, Hawaii is still in a position where aquatic and cultural resources, local businesses, and human health preservation are still possible, but time is short. Senate Bill 2935 provides the Department with the capacity and resources it needs to control ballast water, biofouling, and in-water cleaning biosecurity risks and protect Hawaii's aquatic resources for future generations.

Thank you for the opportunity to comment on this measure.

Attachments

SB2935 Proposed S.D.1 (tracked changes)
SB2935 Proposed S.D.1 (clean)

THE SENATE
THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

S.B. NO. 2935

Proposed S.D.1

A BILL FOR AN ACT

RELATING TO AQUATIC BIOSECURITY.

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

SECTION 1. The legislature finds that the introduction and spread of alien aquatic organisms poses an unprecedented threat to Hawaii's marine, estuarine, and freshwater ecosystems, maritime and recreational activities, and economy. Alien aquatic organisms can outcompete native species, leading to the collapse of native ecosystems and negatively impact the resilience of coral reefs to climate change. In order to combat the introduction and spread of alien aquatic organisms it is imperative that the State assess and manage the pathways of introduction and spread.

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

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

The legislature further finds that the Hawaii interagency biosecurity plan 2017-2027 recognizes the independent research finding that up to seventy-eight per cent of the non-native marine algae and invertebrate species in Hawaii's waters likely arrived through biofouling or a combination of biofouling and ballast water, and that the presence of alien species in unmanaged or undermanaged ballast water and on vessel hulls remains a high risk factor for the arrival and spread of invasive marine species. The Hawaii interagency biosecurity plan 2017-2027 also recognizes that regulating these vectors is exponentially more cost effective than post-introduction control and eradication programs.

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

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

concept, that may be followed by regulation and oversight of their use.

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

The legislature further finds that the Vessel Incidental Discharge Act of 2018 does not provide for additional funding to expand United States Coast Guard resources to cover its increased mandate under the Act; consequently, the United States Coast Guard [~~does not have the capacity, equipment, or technical expertise~~] has indicated that it will rely on state agency technical expertise, personnel, and equipment to test vessel ballast water to [~~assess~~] verify treatment efficacy [~~or~~] and assess residual risk. In addition, the United States Coast Guard does not currently conduct routine biofouling risk inspections for vessels intending to clean in state waters. [~~Further, the Vessel Incidental Discharge Act of 2018 does not provide for additional funding to expand United States Coast Guard capacity and resources to cover its increased mandate under the Act.~~] Instead, the legislature finds that the Vessel Incidental Discharge Act of 2018 [~~allows~~] calls for states to co-enforce the federal standards and regulations with the United States Coast Guard once they come into force.

Section 187A-32, Hawaii Revised Statutes, designates the department of land and natural resources as the lead agency for preventing the introduction of alien aquatic organisms. To

successfully carry out this co-enforcement and to address the aquatic invasive species risk of those vessel types that will remain under state regulatory authority, the legislature finds that the department requires additional capacity to develop and maintain a program to assess, monitor, and co-regulate, or regulate, these top pathways of alien aquatic organisms.

The [~~purposes~~] purpose of this Act [~~are~~] is to[~~:~~

~~(1) Authorize 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, adopted by the United States Coast Guard and the Environmental Protection Agency pursuant to the Vessel Incidental Discharge Act of 2018 and the amendments made by that Act, and to set and enforce state standards and regulations for incidental discharges for vessel types where not preempted by the Vessel Incidental Discharge Act of 2018; and~~

~~(2) Appropriate~~] appropriate funds to support staff and operational costs associated with aquatic biosecurity inspection, investigation, monitoring, management, compliance, and enforcement.

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

"~~[[]§187A-32[]] Alien aquatic organisms; lead agency; rules.~~ (a) The department is designated as the lead state agency for preventing the introduction and carrying out the destruction of alien aquatic organisms through the regulation of ballast water discharges and hull fouling organisms. The department may establish an interagency team to address the concerns relating to alien aquatic organisms[~~.~~], including the development of preventative measures and best management practices that will reduce risks of alien species being introduced.

~~(b) The department may adopt rules in accordance with chapter 91, including penalties, to carry out the purposes of this part. The rules may include standards for the department and the United States Coast Guard to use as part of their respective inspection protocols. The rules may also include~~

~~implementation of a course of action in relation to the arrival or pending arrival of a high risk vessel.~~

~~(c) The governor may enter into an agreement with the [United States Secretary of Transportation to carry out the purposes of this part, including but not limited to the enforcement of state law.]~~ secretary of the department in which the United States Coast Guard is operating to enforce section 312(k) of the Federal Water Pollution Act (33 U.S.C. 1322), or to otherwise carry out this section.

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

~~(1) The department may adopt a rule, including a rule authorizing a penalty, that complies with section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322 or that otherwise complies with applicable federal law to modify, replace, or restate a rule, standard, or requirement deemed adopted under this section;~~

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

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

SECTION [~~3.~~] 2. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 2020-2021 for the funding of the following positions to support the prevention, detection, and management of aquatic alien and invasive species associated with ballast water and vessel biofouling pathways[~~:~~] from all vessel types:

(1) Full year funding ($ for fiscal year 2020-2021) for one biologist V position to oversee the aquatic biosecurity team and operations;

(2) Full year funding ($ for fiscal year 2020-2021) for one program specialist IV position to analyze and develop regulations and policy related to aquatic biosecurity;

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

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

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

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

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

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

SECTION [~~4.~~] 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 2020-2021 for operating expenditures in the ecosystem protection and restoration program for aquatic biosecurity including contracts for specialized laboratory work, purchase and maintenance of field and laboratory equipment and supplies, and travel costs.

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

[~~SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or~~

~~applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.~~

~~SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.~~]

SECTION [~~7.~~] 4. This Act shall take effect on July 1, 2020.

INTRODUCED BY: _____

S.B. NO. 2935

Proposed S.D.1

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.~~] to support staff and operational costs associated with aquatic biosecurity inspection, investigation, monitoring, management, compliance, and enforcement.

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THE SENATE
THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

S.B. NO. 2935

Proposed S.D.1

A BILL FOR AN ACT

RELATING TO AQUATIC BIOSECURITY.

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

SECTION 1. The legislature finds that the introduction and spread of alien aquatic organisms poses an unprecedented threat to Hawaii's marine, estuarine, and freshwater ecosystems, maritime and recreational activities, and economy. Alien aquatic organisms can outcompete native species, leading to the collapse of native ecosystems and negatively impact the resilience of coral reefs to climate change. In order to combat the introduction and spread of alien aquatic organisms it is imperative that the State assess and manage the pathways of introduction and spread.

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

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

The legislature further finds that the Hawaii interagency biosecurity plan 2017-2027 recognizes the independent research finding that up to seventy-eight per cent of the non-native marine algae and invertebrate species in Hawaii's waters likely arrived through biofouling or a combination of biofouling and ballast water, and that the presence of alien species in unmanaged or undermanaged ballast water and on vessel hulls remains a high risk factor for the arrival and spread of invasive marine species. The Hawaii interagency biosecurity plan 2017-2027 also recognizes that regulating these vectors is exponentially more cost effective than post-introduction control and eradication programs.

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

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

concept, that may be followed by regulation and oversight of their use.

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

The legislature further finds that the Vessel Incidental Discharge Act of 2018 does not provide for additional funding to expand United States Coast Guard resources to cover its increased mandate under the Act; consequently, the United States Coast Guard has indicated that it will rely on state agency technical expertise, personnel, and equipment to test vessel ballast water to verify treatment efficacy and assess residual risk. In addition, the United States Coast Guard does not currently conduct routine biofouling risk inspections for vessels intending to clean in state waters. Instead, the legislature finds that the Vessel Incidental Discharge Act of 2018 calls for states to co-enforce the federal standards and regulations with the United States Coast Guard once they come into force.

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

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

The purpose of this Act is to appropriate funds to support staff and operational costs associated with aquatic biosecurity inspection, investigation, monitoring, management, compliance, and enforcement.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 2020-2021 for the funding of the following positions to support the prevention, detection, and management of aquatic alien and invasive species associated with ballast water and vessel biofouling pathways from all vessel types:

(1) Full year funding ($ for fiscal year 2020-2021) for one biologist V position to oversee the aquatic biosecurity team and operations;

(2) Full year funding ($ for fiscal year 2020-2021) for one program specialist IV position to analyze and develop regulations and policy related to aquatic biosecurity;

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

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

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

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

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

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

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 2020-2021 for operating expenditures in the ecosystem protection and restoration program for aquatic biosecurity including contracts for specialized laboratory work, purchase and maintenance of field and laboratory equipment and supplies, and travel costs.

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

SECTION 4. This Act shall take effect on July 1, 2020.

INTRODUCED BY: _____

Report Title:
Aquatic Biosecurity; Appropriations

Description:
Appropriates funds to support staff and operational costs associated with aquatic biosecurity inspection, investigation, monitoring, management, compliance, and enforcement.

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DAVID Y. IGE
GOVERNOR

TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 7, 2020
1:30PM
State Capitol, Room 224

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S.B. 2935
RELATING TO AQUATIC BIOSECURITY

Senate Committee on Agriculture and Environment and Committee on Water and Land

The Department of Transportation offers **comments** to Senate Bill 2935 which proposes to authorize the Department of Land and Natural Resources (DLNR) to co-enforce, with the U.S. Coast Guard, rules, standards, and requirements related to ballast-water, vessel biofouling, vessel hull in-water cleaning, and any other incidental discharges, as well as to appropriate funds for staffing and operating expenditures.

The DOT is strongly concerned this bill would allow the DLNR to assess penalties onto violators in addition to those penalties assessed by the U.S. Coast Guard in accordance with the Vessel Incidental Discharge Act of 2018. These additional penalties seem to be punitive and duplicative and would further burden the already narrow profit margin of the shipping and maritime industry.

Thank you for the opportunity to provide testimony.

SB-2935
Submitted on: 2/4/2020 11:40:47 AM
Testimony for AEN on 2/7/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Springer Kaye	Testifying for Big Island Invasive Species Committee	Support	No

Comments:

Testimony of Ku'uhaku Park
On Behalf of Matson
Testimony on SB2935
Before the Committees on Agriculture and Environment and
Water and Land
February 7, 2020

Dear Chair Gabbard, Chair Kahele, Vice Chair Ruderman, Vice Chair Keith-Agaran, and Members of the Committees,

Matson opposes section 2 and supports the intent of section 3 of SB2935, Relating to Aquatic Biosecurity. Section 2 of this measure authorizes the Department of Land and Natural Resources to adopt rules without following the rulemaking procedures set forth in Chapter 91, Hawaii Revised Statutes, to implement and impose a civil or criminal penalty for violation of the Vessel Incidental Discharge Act of 2018 ("VIDA"). Section 3 of this measure appropriates general fund revenues for positions in the Department of Land and Natural Resources to support staff and operational costs involved with aquatic biosecurity efforts.

Matson complies with strict federal and state laws with respect to our vessel operations and accordingly follows changes in the law to ensure continued compliance. VIDA requires the Environmental Protection Agency and United States Coast Guard to develop standards and implementation procedures, which should be in place in two years. Because the federal agencies have not yet adopted these standards and procedures, Matson believes section 2 of this measure is premature. There is no need to provide rulemaking authority to adopt state-level rules that comply with federal rules that do not exist.

Additionally, Matson is strongly opposed to authorizing a department to adopt rules authorizing a civil or criminal penalty without following the public notice and public hearing requirements of Chapter 91, HRS. While a department may wish to exempt itself from following Chapter 91 because it can be a lengthy process, its desire to speed up enforcement of non-existent federal regulations through criminal and civil punishment should not constitute a sufficient reason to allow such an exemption.

Matson supports the intent of section 3 of this measure; provided that these positions are and continue to be funded through appropriations from general fund revenues. This will ensure that the positions are able to prevent, detect, and manage alien aquatic invasive species that come through all vessels, including recreational vessels, which enter State waters. Matson opposes funding these positions through appropriations from the Harbor Special Fund. We take no position on the amount of funds to be appropriated from the general fund.

Thank you for considering this testimony.

cgaps
STOP THE SILENT INVASION

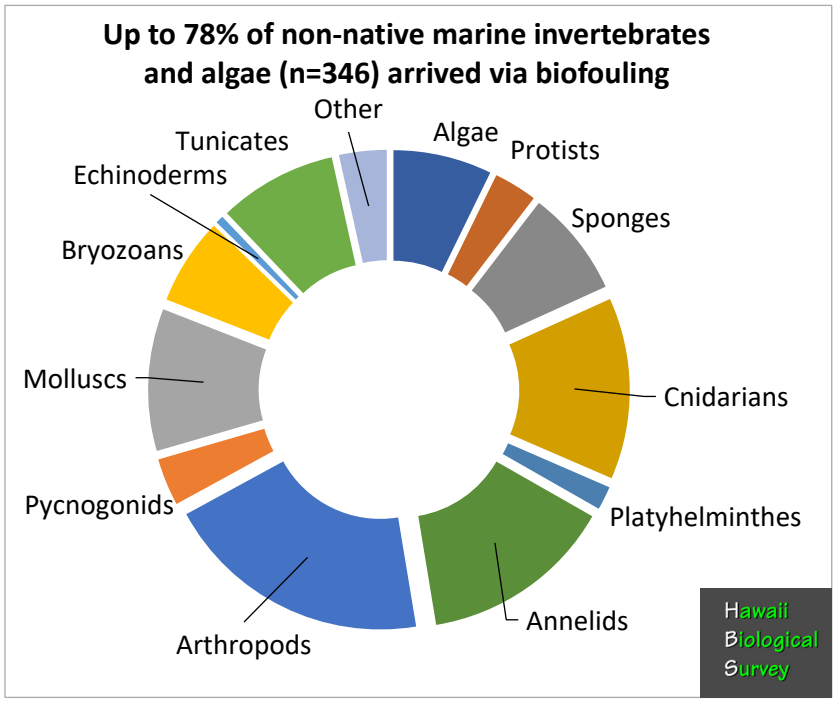
COORDINATING GROUP ON
ALIEN PEST SPECIES

The Senate
Committee on Agriculture and Environment
Committee on Water and Land
February 7, 2020
1:30 p.m., Conference Room 224
State Capitol

Testimony in Support of SB 2935

Aloha Chairs Gabbard and Kahele, Vice Chairs Ruderman and Keith-Agaran, and Members of the Committees,

The Coordinating Group on Alien Pest Species (CGAPS) **is in strong support of SB 2935,** *Relating to Aquatic Biosecurity* which aims to build state capacity to address the introduction and spread of non-native aquatic species.



Researchers at the Bishop Museum, University of Hawai‘i, Smithsonian Environmental Research Center, and Department of Land and Natural Resources-Division of Aquatic Resources (DLNR DAR) have built a solid body of work documenting non-native marine and estuarine species in Hawai'i, and the significant role that vessels play in the arrival and spread of new species. Vessel ballast water and biofouling (the species that attach to the hull and niche areas of vessels) are the primary sources of non-native marine and estuarine species in Hawai'i waters, and studies also show that arrivals are increasing.

DLNR DAR is the lead agency in addressing these two pathways and has been working to build a regulatory framework and capacity capable of reducing the risk of new species arriving and becoming established. The need for regulations and a ten-person team at DLNR DAR is reflected in the 2017-2027 Hawai‘i Interagency Biosecurity Plan.

Further, on December 4, 2018 the federal Vessel Incidental Discharge Act, or VIDA, was signed into law with the Coast Guard Authorization Act and codified under 33 U.S. Code § 1322

(see https://www.govinfo.gov/app/details/USCODE-2018-title33/USCODE-2018-title33-chap26-subchapIII-sec1322/summary), and it compels a 4-year timeline for the U.S. Environmental Protection Agency (EPA) and U.S. Coast Guard (USCG) to set national standards and regulations for ballast water and underwater hull husbandry effluent which comes from in-water cleaning of vessel hulls.

These are some key changes:

- Once the EPA and USCG develop national standards and regulations for ballast water, biofouling, and in-water cleaning effluent, state regulations that are more stringent will be preempted.
- VIDA does allow states to co-enforce federal regulations, and enact and enforce state regulations that are equal to or less stringent than federal standards (under subsection (k)(3) of section 312 of the Clean Water Act (33 USC 13322(k)) as added by section 903(c)(1) of VIDA). However, all indications are that the USCG will be required to regulate these new incidental discharges without additional funding or personnel.
- VIDA exempts commercial vessels under 79 feet and all fishing vessels from federal regulation of incidental discharges other than ballast water, and preempts states from regulating (thus they cannot be regulated for hull husbandry/in-water cleaning).
- The USCG has been the lead agency regulating ballast water for decades. However, the USCG does not take ballast water samples to conduct risk assessments or assess compliance or treatment efficacy as part of their vessel inspections. Locally, DLNR DAR and USCG work collaboratively, with DLNR DAR able to take and assess biological risk of ballast water samples.
- Under VIDA, it appears that states authority over the in-water cleaning of biofouling from vessel hulls in state waters is preempted. Vessels need more opportunities to be able to maintain clean hulls, but this is a new discharge stream that the USCG has not had to regulate. Further, it is unclear how vessels might be pre-screened for risk. DLNR DAR has the equipment and expertise to conduct inspections of vessel hulls, but do not have the staff and capacity to conduct the work.

Since December 2018, DLNR DAR and CGAPS staff have been working hard to understand what the state can and should do to protect Hawaii's marine and estuarine ecosystems and resources. We have been meeting with staff from federal and state agencies and representatives from the maritime industry, and we have agreed to work together to identify acceptable and achievable solutions. **We respectfully request that these Committees accept our SD1, and we want to assure all parties that we are committed to working together.** We are grateful for this opportunity. Mahalo!

Aloha,

Christy Martin, Program Manager/PIO
Andrew Porter, CGAPS Legal Fellow
Stephanie Easley, CGAPS Legal Fellow
CGAPS—Coordinating Group on Alien Pest Species

SB-2935
Submitted on: 2/7/2020 9:14:51 AM
Testimony for AEN on 2/7/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
James E. Coon	Testifying for Ocean Tourism Coalition	Comments	No

Comments:

The Ocean Tourism Coalition supports the intent of this measure but is strongly opposed to Section 2 (d) (3) **Rules adopted pursuant to this section shall be exempt from the public notice and public hearing requirements of chapter 91."**

It would be a mistake to exempt this important legislaiton from Chapter 91 protocol.

SB-2935
Submitted on: 2/4/2020 12:41:28 PM
Testimony for AEN on 2/7/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

Aloha Chair and committee members.

As a native Hawaiian conservationist working in Hawai‘i, I am in support of SB2935. During my time as a biologist for the past 30 years, I have seen the effects of aquatic invasive species on our marine life and local economy.

SB2935 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. It also ensures all State departments adopt the Vessel Incidental Discharge Act national standards and regulations. Please pass SB2935. Mahalo.

Benton Kealii Pang, Ph.D.

SB-2935
Submitted on: 2/5/2020 2:35:55 PM
Testimony for AEN on 2/7/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sage-Lee Medeiros-Garcia	Individual	Support	No

Comments:

Resident of Hilo, strongly support.

1. Experience. Member of the Coast Guard. Completed 2 dry dock availabilities in Superior, Wisconsin and Bellingham, Washington on cutters: Alder WLB-216 and Steadfast WMEC-623.

2. Port of entry Honolulu needs this service. As I can say, from my experience, that there are many sea critters that cling onto ship bottoms under the waterline. In our fragile aquatic marine system, there are experiences to be drawn from tending the Great Lakes and transiting down the Pacific Coast.

3. The Great Lakes had been infested by zebra muscles that made a detrimental impact on many underwater resources. How did they get to Great Lakes: Marine traffic. Now, zebra muscles can be found on the bottoms of buoys. We must avoid this sort of situation.

4. In Bellingham and in Superior, our ships had sea critters lining everything below the waterline. We had to pressure wash the hull in order to remove these various creatures to get to the paint.

5. When underway, water continuously spews out to the side because of our chill water. In order to cool working machinery, raw water is cooled by coolant and circulates, then expells overboard awthwartships. This process includes many filters to remove debris. There is a low likelihood that overboard discharge contains anything more than abiotic particles.

5. This can be a great opportunity and outreach for Hawaiians and Hawaii residents who are looking into this type of marine service. With manning entry level workers, supervisors from DLNR/DOCARE trained by USCG Command, this initiative can be easily achieved.

6. Propose freeing up a pier to be mobilized into a screening dock that can act as a dry dock, raising and lowering vessels.

Sage-Lee M. Medeiros-Garcia

SB-2935
Submitted on: 2/6/2020 9:35:55 AM
Testimony for AEN on 2/7/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Stephanie Easley	Individual	Support	No

Comments:

I am writing in my personal capacity in strong support of SB2935.

DLNR DAR is responsible for the conservation of the State's aquatic resources for all the people of Hawaii. Unmanage ballast water, biofouling, and in-water cleaning are known pathways for the introduction of invasive aquatic species which impact the health of the oceans, impact businesses and people who use and enjoy the ocean, and cost the State resources to contain and manage invasive species that become established here in Hawaii.

Currently, DAR has only 2 people to inspect and monitor all the vessel traffic in Hawaiian harbors for compliance with ballast water standards. The Vessel Incidental Discharge Act of 2018 (VIDA) changes the rules for all States and vessel operators for ballast water and vessel pathways for the introduction of invasive aquatic species. No matter how competent and hardworking, 2 people cannot carry out a fully-functioning and effecting compliance program under current State law or under the State enforcement provisions of the new rules imposed under VIDA. DAR needs additional capacity – additional staff – to carry out a ballast water and biofouling management program. This bill provides 10 positions for this purpose; a much more realistic assessment of the resources needed to prevent invasive aquatic species from being introduced into Hawaiian waters through these pathways.

The cost to prevent an invasive aquatic species introduciton, such as the cost of the new positions in this bill, is very small compared to the massive expense required to contain and manage a species once it is established Invasive species programs can be a tough sell at times because there are no news stories about species that are not introduced, and the millions of dollars saved, because an effective regulation and management program prevented an introduction. However, no one, not the shipping industry or the State, wants to be responsible for the introduction of a new species, such as stony coral tissue loss disease, that decimates coral or other marine species or costs the State millions to address. Having a functioning and effective compliance program in-place can prevent that outcome. I support the passage of this bill so Hawaii will have success stories and healthy marine ecosystems to report as a result.

Thank you for your consideration of my testimony.

Stephanie Easley