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STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

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Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
WATER & LAND

Thursday, February 9, 2023
9:30 AM

State Capitol, VIA VIDEOCONFERENCE, Conference Room 430

In consideration of
HOUSE BILL 760
RELATING TO AQUATIC RESOURCES

House Bill 760 proposes to: 1) expand the Department Land and Natural Resources' (Department's) rulemaking authority to include any rule deemed necessary to protect certain aquatic life; 2) expand the Board of Land and Natural Resources' (BLNR's) authority to temporarily adopt, amend, or repeal certain natural resource rules by formal action at a publicly noticed meeting if the BLNR 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; 3) create new fines for violations of rules pertaining to the Department's prevention of or response to previously benign aquatic nuisance species; and 4) authorize 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 Department supports this bill, and offers one amendment.**

Pursuant to §187A-2, Hawaii Revised Statutes (HRS), the Department is mandated to manage and administer the aquatic life and aquatic resources of the State. The Department currently uses management tools such as size limits, bag limits, closed seasons, gear restrictions, and permitting of specific gear to regulate the State's fisheries through the adoption of administrative rules. Despite the variety of management tools available, the Department finds that broadening the suite of management tools would allow more effective management of the State's aquatic resources. For example, in 2021 the Legislature amended §187A-5, HRS, to authorize the Department to require permits for the use and possession of lay nets. During the rulemaking process to implement the lay net permit, it was suggested that the Department should also require permits for the use of surround nets, a similar but distinct fishing method. However, the

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Department lacks the express statutory authority to regulate surround nets. House Bill 760 would authorize the Department to regulate other fishing methods, such as surround nets, through permits.

In 2021, the Legislature authorized the BLNR to temporarily adopt, amend, or repeal certain natural resource rules by formal action at a publicly noticed meeting if it finds that such adoption, amendment, or repeal is necessary to implement effective and adaptive management measures in response to rapidly changing resource conditions.¹ Through discussions with fishers, the Department has identified other factors that should inform the BLNR's implementation of adaptive management measures. These include the availability of new data on the status of aquatic resources, the development of new technologies that fall outside the scope of existing regulations, and the emergence of new or previously benign aquatic nuisance species. By expanding the BLNR's adaptive management authority to encompass new information, technology, and ecological threats, the Department will be better equipped to effectively manage the aquatic resources of the State.

The Department supports the expansion of rulemaking authority under §187A-32, HRS, to encompass all discharges incidental to the operation of a vessel but has concerns that the proposed amendments contained in Section 3 of the bill are inconsistent with similar proposed amendments in House Bill 755. The Department suggests deleting SECTION 3 of the House Bill 760, so that the issue of regulating aquatic nuisance species can be addressed separately through House Bill 755.

Mahalo for the opportunity to testify in support with one amendment on this measure.

¹ See Act 49 (SLH 2021)



**Testimony of
THE COORDINATING GROUP ON ALIEN PEST SPECIES (CGAPS)
By Christy Martin and Andrew Porter**

**Before the House Committees on
ENERGY AND ENVIRONMENTAL PROTECTION
and
WATER AND LAND**

**Thursday, February 9, 2023
9:30 AM
State Capitol, Conference Room 430**

**In consideration of
HOUSE BILL 760
RELATING TO AQUATIC RESOURCES**

House Bill 760 proposes to grant the Department of Land and Natural Resources (DLNR) rulemaking authority to include any rule deemed necessary to implement the purposes of section 187A-5, Hawaii Revised Statutes (HRS); 2) expand the Board of Land and Natural Resources' (BLNR) authority to temporarily adopt, amend, or repeal certain rules by formal action at a publicly noticed meeting if the BLNR 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; 3) create new fines for violations of rules pertaining to DLNR's prevention of or response to previously benign aquatic nuisance species; and 4) authorize DLNR 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 Coordinating Group on Alien Pest Species (CGAPS) supports this bill and offers the following comments.**

In 2021, Hawai'i enacted Act 49 which amended section 187A-5, HRS, to authorize the BLNR to utilize an alternative process to adopt, amend, or repeal rules pertaining to bag limits, size limits, open or closed fishing seasons, or gear restrictions by formal action at a publicly noticed meeting if BLNR finds that such adoption, amendment, or repeal is necessary to implement effective and adaptive management measures in response to rapidly changing resource conditions. House Bill 760 proposes to expand BLNR's authority to utilize adaptive management rulemaking authority in response to new or previously benign aquatic nuisance species, in light of newly available data, or in light of newly available technology. By expanding the adaptive management authority to include new information or technology and response to threats from aquatic nuisance species, DLNR will be better able to effectively manage and protect Hawai'i's aquatic resources.

A new aquatic nuisance species can emerge at any time and may require an immediate response to prevent its introduction or spread. The actions required to respond to a new aquatic nuisance species may change as new research on the species and its methods of spread are discovered. The rule-making process prescribed by chapter 91, HRS, does not allow DLNR to implement measures to protect State aquatic resources from such a new species. As noted in House Bill 760, DLNR could use the expanded adaptive management authority now to address the threat of stony coral tissue loss disease, an unprecedented coral disease that is a substantial threat to the continued existence and health of stony coral reef ecosystems. This coral disease has not yet been found in the Pacific and the expanded adaptive management authority in House Bill 760 will permit DLNR to act immediately to prevent it from spreading into Hawai'i state waters.

However, House Bill 760, on page 6, lines 13-14, limits adaptive rulemaking authority to “any rule pertaining to bag limits, size limits, open or closed fishing seasons, or gear restrictions.” A DLNR rule to prevent or respond to new or previously benign aquatic nuisance species would require actions other than modifying bag limits, size limits, fishing seasons, or gear restrictions. Instead, the rule would likely be related to discharges incidental to the normal operation of a vessel that could move an aquatic nuisance species, such as stony coral tissue loss disease, into Hawai'i state waters. We respectfully ask that the Committees insert language on page 6, line 14, after “gear restrictions” to include “discharges incidental to the normal operation of a vessel, as defined in section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322) or other activities that could introduce or spread aquatic nuisance species in state waters.”

We understand concerns that Section 3 of House Bill 760 and House Bill 755 contain similar amendments to expand DLNR's rulemaking authority under part III of chapter 187A, HRS to encompass all discharges incidental to the operation of a vessel, not just ballast water and hull fouling. This expansion reflects the scientific understanding that other vessel discharges, such as anchor chain locker effluent discharge, can carry harmful bacteria, larvae, and macroorganisms that could introduce an aquatic nuisance species into Hawai'i state waters. We urge the Committees to make this important expansion of DLNR's regulatory authority using any legislative vehicle the Committees find appropriate.

Thank you for the opportunity to comment on this measure.

Testimony of the Hawaii Harbor Users Group
Comments on HB760
Before the Committee on Water and Land
February 9, 2023

Dear Chair Ichiyama, Vice Chair Poepoe, and Members of the Committee:

The Hawaii Harbor Users Group (HHUG) is a non-profit maritime transportation industry group comprised of key commercial harbor users statewide. HHUG provides the following comments on HB 760, specifically on Section 3 of the bill relating DLNR's role as the lead agency for preventing the introduction and carrying out the destruction of aquatic nuisance species.

As an island state, Hawaii is very dependent upon our commercial harbors to ensure the continued and unimpeded flow of cargo in and out of our State. It is estimated that over 90 percent of Hawaii's imported goods pass through our commercial harbors, including consumer goods, motor vehicles, construction materials, and fuel. Given the critical role of our commercial harbors, it is imperative that the State support safe, dependable, and efficient cargo transportation and handling to service our residents and businesses.

The maritime industry is heavily regulated, including with respect to cargo vessels' discharges incidental to their normal operation, and should not be further burdened with unnecessary additional requirements on cargo operations. The federal government strictly regulates ocean cargo vessels, including through the Vessel Incidental Discharge Act signed into law in 2018. HHUG members comply with environmental regulations.

In light of the foregoing, HHUG respectfully suggests that the bill make clear, possibly in its findings, that the bill's proposed amendments to HRS Chapter 187A do not authorize the BLNR to add a new layer of regulatory oversight to that already provided by federal agencies or regulations that largely duplicate those already provided by the Vessel Incidental Discharge Act and the related federal regulations.

Thank you for considering our testimony.