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# 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 resources of the State. To effectively manage these  
4 resources, the department utilizes a variety of tools and  
5 methods to increase yields for Hawaii fishers and to conserve  
6 and protect aquatic resources to ensure abundant fisheries for  
7 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 provisions 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           Furthermore, the legislature finds it necessary to improve  
7 the adaptive management authority granted in section 187A-5(b),  
8 Hawaii Revised Statutes. The existing statute authorizes the  
9 adoption of temporary rules by formal board action only if the  
10 board finds the rule necessary "in response to rapidly changing  
11 resource conditions". However, it has come to the legislature's  
12 attention that this provision is extremely limiting and that  
13 there are other compelling reasons to authorize temporary  
14 rulemaking through the adaptive management process. Therefore,  
15 the legislature finds it necessary to expand the adaptive  
16 management authority granted to the department to include  
17 adaptive management rulemaking authority in light of newly  
18 available data and in light of newly available technology.

19           The purpose of this Act is to:

- 20           (1) Clarify that the department of land and natural  
21           resources' rulemaking authority includes adopting,



1           amending, or repealing any rule to impose restrictions  
 2           or requirements deemed necessary to implement the  
 3           purposes of section 187A-5, Hawaii Revised Statutes;  
 4           and

5           (2) Expand the board of land and natural resources'  
 6           authority to temporarily adopt, amend, or repeal  
 7           certain rules by formal action at a publicly noticed  
 8           meeting if the board finds that such adoption,  
 9           amendment, or repeal is necessary to implement  
 10          effective and adaptive management measures in light of  
 11          newly available technology or in light of newly  
 12          available data.

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

15          "**§187A-5 Rules.** (a) Subject to chapter 91, the  
 16          department shall adopt, amend, and repeal rules for and  
 17          concerning the protection and propagation of introduced and  
 18          transplanted aquatic life or the conservation and allocation of  
 19          the natural supply of aquatic life in any area. The rules may  
 20          include but are not limited to the following:

21          (1) Size limits;



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

16 The rules may vary from county to county or in any part of  
17 a county and may specify certain days of the week or certain  
18 hours of the day in designating open and closed fishing seasons.  
19 All rules shall have the force and effect of law. Except as  
20 provided by subsection (b), any person who violates any of the  
21 rules adopted pursuant to this section shall be guilty of a



1 petty misdemeanor and upon conviction thereof shall be punished  
2 as provided by section 188-70.

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

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

11 (A) In response to rapidly changing resource  
12 conditions;

13 (B) In light of newly available technology; or

14 (C) In light of newly available data;

15 (2) Notice of the rulemaking shall:

16 (A) Be given at least once statewide at least thirty  
17 days in advance of the public meeting;

18 (B) Include a statement of the topic of the proposed  
19 rule to be adopted, amended, or repealed or a  
20 general description of the subjects involved;



- 1 (C) Include a statement that a copy of the proposed
- 2 rule to be adopted, the proposed rule amendment,
- 3 or the rule proposed to be repealed will be
- 4 mailed to any interested person who requests a
- 5 copy and pays the required fees for the copy and
- 6 the postage, if any, together with a description
- 7 of where and how the requests may be made;
- 8 (D) Include a statement of when, where, and during
- 9 what times the proposed rule to be adopted, the
- 10 proposed rule amendment, or the rule proposed to
- 11 be repealed may be reviewed;
- 12 (E) Include the date, time, and place where the
- 13 public meeting will be held and where interested
- 14 persons may be heard on the proposed rule
- 15 adoption, amendment, or repeal; and
- 16 (F) Be mailed to all persons who have made a timely
- 17 written request of the board for advance notice
- 18 of its rule-making proceedings; and
- 19 (3) The adoption, amendment, or repeal of the rule shall
- 20 be effective for an initial period of no longer than
- 21 two years, subject to legislative approval and renewal



1           by the board; provided that renewal by the board shall  
2           extend for up to one year at a time.

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

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

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

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



**1** SECTION 5. This Act shall take effect on July 1, 3000.



**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 to impose restrictions or requirements 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 light of newly available technology, or in light of newly available data. Effective 7/1/3000. (HD1)

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

