
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 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 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; and

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.

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

17 "**§187A-5 Rules.** (a) Subject to chapter 91, the
18 department shall adopt, amend, and repeal rules for and
19 concerning the protection and propagation of introduced and
20 transplanted aquatic life or the conservation and allocation of



1 the natural supply of aquatic life in any area. The rules may
2 include but are not limited to the following:

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

19 The rules may vary from county to county or in any part of a
20 county and may specify certain days of the week or certain hours
21 of the day in designating open and closed fishing seasons. All



1 rules shall have the force and effect of law. Except as
2 provided by subsection (b), any person who violates any of the
3 rules adopted pursuant to this section shall be guilty of a
4 petty misdemeanor and upon conviction thereof shall be punished
5 as provided by section 188-70.

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

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

14 (A) In response to rapidly changing resource
15 conditions;

16 (B) To prevent or respond to new or previously benign
17 aquatic nuisance species;

18 (C) In light of newly available technology; or

19 (D) In light of newly available data;

20 (2) Notice of the rulemaking shall:



- 1 (A) Be given at least once statewide at least thirty
2 days in advance of the public meeting;
- 3 (B) Include a statement of the topic of the proposed
4 rule to be adopted, amended, or repealed or a
5 general description of the subjects involved;
- 6 (C) Include a statement that a copy of the proposed
7 rule to be adopted, the proposed rule amendment,
8 or the rule proposed to be repealed will be
9 mailed to any interested person who requests a
10 copy and pays the required fees for the copy and
11 the postage, if any, together with a description
12 of where and how the requests may be made;
- 13 (D) Include a statement of when, where, and during
14 what times the proposed rule to be adopted, the
15 proposed rule amendment, or the rule proposed to
16 be repealed may be reviewed;
- 17 (E) Include the date, time, and place where the
18 public meeting will be held and where interested
19 persons may be heard on the proposed rule
20 adoption, amendment, or repeal; and



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

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

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

16 Any such rule established by such action of the board
17 pursuant to this subsection shall have the force and effect of
18 law. Any person who violates any rule established by such
19 action of the board shall be subject to administrative penalties
20 as provided by section 187A-12.5[-]; provided that for rules
21 adopted pursuant to section 187A-5(b)(1)(B), a person who



1 violates the rule shall be subject to a fine of no more than
2 \$50,000 per day of violation for a first violation and a fine of
3 no more than \$100,000 per day of violation for each subsequent
4 violation."

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

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

10 SECTION 5. This Act shall take effect on June 30, 3000.

11



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. Effective 6/30/3000. (HD1)

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

