H.B. NO. 3174

# A BILL FOR AN ACT

RELATING TO FEDERAL FISHERIES REGULATIONS.

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

SECTION 1. Chapter 187A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§187A- Consistency of state and federal fisheries regulations.** (a) The department may adopt, amend, and repeal administrative rules that are equivalent to and consistent with federal fisheries regulations, for the beneficial joint management of fisheries that occur in both state and federal marine waters to create uniform, complementary, and comprehensive management measures to improve efficiencies in management and effectiveness of enforcement, under the following conditions:

(1) A federal agency with the responsibility for the management of fisheries in federal marine waters around the Hawaiian Islands has:

(A) Declared a fishery to be in a state of overfishing, is overfished, or in some other

1 state of unsustainability; and
2 (B) Promulgated or amended federal regulations to
3 correct the decline in the fishery; and
4 (2) The fishery occurs in both state and federal marine
5 waters.
6 (b) The board may annually declare a fishing season, a
7 total fishing quota, or individual fishing quotas, or enact
8 the requirements for other mechanisms to prevent overfishing,
9 that are consistent with federal fisheries regulations and
10 similar state rules adopted under the conditions of paragraph
11 (1) and (2) of subsection (a).
12 (c) When such federal fisheries agency again declares the
13 fishery to be sustainable and amends or repeals its regulations,
14 the department shall amend or repeal its rules accordingly.
15 (d) As used in this section, unless the context clearly
16 indicates otherwise:
17 "Declared" or "declares" means when a federal agency with
18 the responsibility for the management of fisheries in federal
19 marine waters around the Hawaiian Islands has made a public
20 announcement of a determination that the same fishery in state
21 marine waters is in a state of overfishing, is overfished, or in
22 some other state of unsustainability, pursuant to the provisions

of the Magnuson-Stevens Fishery Conservation and Management Act (P.L. 94-265), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (P.L. 109-479).

"Federal fisheries regulations" means those formal federal laws relating to the management of marine fisheries by federal agencies, such as the National Marine Fisheries Service, United States Department of Commerce.

"Federal marine waters" means the exclusive economic zone established by Presidential Proclamation 5030, 3 C.F.R. part 22, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from a baseline starting at the seaward boundary of state territorial seas extending seaward 200 nautical miles.

"Fishery" or "fisheries" means one or more stocks of marine resources other than marine mammals and birds that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and any fishing for such stocks.

"Overfishing" and "overfished" mean a rate or level of

fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3174

**Report Title:**
Federal Fisheries Regulations

**Description:**
Clarify that the Department of Land and Natural Resources may adopt, amend, or repeal administrative rules to be consistent with federal fishery regulations to improve management and enforcement in a state and federal marine water fishery that has been determined to be in decline.

HB 3174

# JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO FEDERAL FISHERIES REGULATIONS.

PURPOSE: To clarify that the Department may adopt, amend, or repeal administrative rules to be equivalent to and consistent with federal fisheries regulations to improve efficiencies in management and enforcement in a state and federal marine water fishery that has been determined to be in decline.

MEANS: Add a new section to chapter 187A, Hawaii Revised Statutes.

JUSTIFICATION: The National Marine Fisheries Service, Pacific Islands Regional Office, recently declared bottomfish in the main Hawaiian Islands to be in a state of overfishing, and has taken steps to end overfishing, pursuant to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (P.L. 94-265), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (P.L. 109-479). The Department currently does not have explicit authority to adopt rules that would complement anticipated federal management measures, such as total allowable catch (annual maximum harvested amounts), individual quotas (annual maximum harvested amounts issued to an individual fisher), and non-commercial registration and reporting. Further, the Department finds that it needs to have this authority to adopt rules for waters under its jurisdiction so that in effect, the fishing public has the same set of rules to follow (whether in state or federal marine waters), and for ease of enforcement.

The Department also finds that it would need the ability to adjust state management

HB 3174

measures such as fishing seasons, total fishing quotas, or individual fishing quotas in accordance with annual determinations made by the federal fisheries agencies. With the passage of this bill, state fishing rules promulgated in accordance with this authority would give the Board of Land and Natural Resources the flexibility to make such annual or periodic adjustments.

Without this authority, state and federal laws managing some fisheries will be inconsistent, confusing, and difficult to enforce. The Department foresees the need for this authority in other fisheries, besides bottomfish, in the future.

Impact on the public: The fishing public may see, as a result, more regulations to address fishery declines or overfishing. However, the public will not be faced with two differing sets of regulations. Similarly, enforcement would not be hampered by differing and conflicting rules for the same fish species depending on jurisdictions.

Impact on the department and other agencies: The Department will have the authority to promulgate rules the same as or similar to federal fishery regulations. This would enhance the Department's efforts to regulate fisheries by creating a seamless network of rules that would apply to state and federal marine waters. This enhancement will avoid confusion in the fishing public and ease of enforcement by state and federal agencies.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LNR 153 and 805.

HB 3174

OTHER AFFECTED AGENCIES: National Marine Fisheries Service, Western Pacific Fisheries Management Council.

EFFECTIVE DATE: Upon approval.