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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committee on
WAYS AND MEANS

Tuesday, February 25, 2020
12:40 PM
State Capitol, Conference Room 211

In consideration of
SENATE BILL 2935, SENATE DRAFT 1
RELATING TO AQUATIC BIOSECURITY

Senate Bill 2935, Senate Draft 1 proposes to appropriate funds for staffing and operating expenditures for aquatic biosecurity. **The Department of Land and Natural Resources (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

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.

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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 United States Coast Guard'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 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, Senate Draft 1 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 will continue to work with the Department of Transportation, 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. This measure 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.



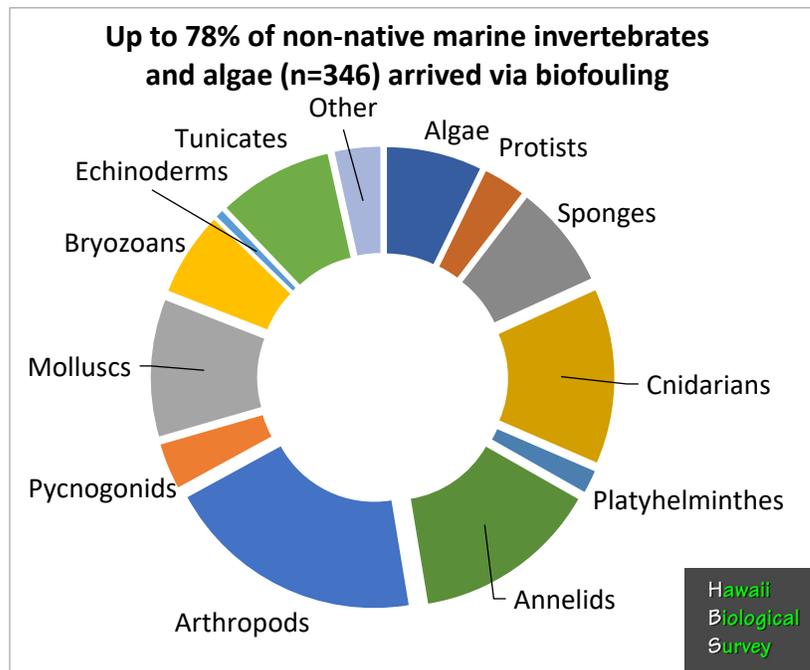
The Senate
 Committee on Ways and Means
 February 25, 2020
 12:40 p.m., Conference Room 211
 State Capitol

Testimony in Support of SB 2935 SD1

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee,

The Coordinating Group on Alien Pest Species (CGAPS) is in strong support of SB 2935 SD1, *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 1332(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 believe that this core natural resource protection function should be supported through state general funds, as all vessels are capable of carrying marine invasive species, and all state waters and resources can be impacted. 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-SD-1

Submitted on: 2/20/2020 6:01:45 PM

Testimony for WAM on 2/25/2020 12:40:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments: