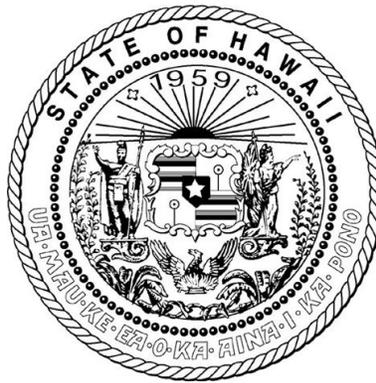


Report to the Thirty-Second Legislature
2023 Regular Session

**Report on Actions & Findings on the Temporary Adoption, Amendment, & Repeal
of Certain Natural Resource Rules Through Formal Action at Public Meetings
Over the Past Two Years**



Prepared by the

State of Hawaii
Department of Land and Natural Resources
Division of Aquatic Resources

In response to Act 49, Session Laws of Hawaii 2021 (Section 4)

December 2022

I. Introduction

The Department of Land and Natural Resources (“Department”) is responsible for managing and administering the aquatic and terrestrial wildlife resources of the State. These natural resources are impacted by a variety of environmental and anthropogenic factors, some of which may change rapidly and frequently. The administrative rulemaking process prescribed by chapter 91, Hawaii Revised Statutes, serves the important function of providing opportunity for public review and input. However, it is not designed for implementation of adaptive management measures in response to rapidly changing resource conditions.

Act 49, Session Laws of Hawai‘i 2021, authorized the Board of Land and Natural Resources (“Board) to temporarily adopt, amend, and repeal certain natural resource rules by formal Board action at a publicly noticed meeting if the Board finds that the timely adoption, amendment, or repeal of the rule is necessary to implement effective and adaptive management measures in response to rapidly changing resource conditions.¹ Pursuant to Section 4, the Department is required to submit a report to the Legislature no later than twenty days prior to the convening of the Regular Session of 2023, regarding its actions and findings on the temporary adoption, amendment, and repeal of certain natural resource rules through formal action at public meetings over the past two years. Accordingly, the Department submits this report to the Legislature.

II. Report

West Hawaii Pāku‘iku‘i Replenishment

At its meeting on December 9, 2022, the Board considered and adopted rules, effective for an initial period of two years, to establish a new chapter under Hawaii Administrative rules (HAR) Title 13, Chapter 60.41, “West Hawai‘i Pāku‘iku‘i Replenishment” through adaptive management rulemaking pursuant to Section 187A-5(b), Hawaii Revised Statutes (HRS). The rules prohibit the take of any pāku‘iku‘i (Achilles Tang) within the West Hawai‘i Regional Fishery Management Area (WHRFMA), Hawai‘i to allow for replenishment of dangerously depleted pāku‘iku‘i fish populations in the area.

Notice of the Board’s rulemaking meeting was published in the Legals/Public Notices section of both the Honolulu Star-Advertiser and the West Hawai‘i Today on Wednesday, November 9, 2022. The notice was subsequently published on the State of Hawai‘i Legals/Public Notices webpage.² Additionally, an announcement was posted on the Draft Rules and Public Notices page of the DAR website that included a link to the draft rules for viewing by interested parties. The public notice included a description of the proposed rule to be adopted and information on how the proposed rule could be viewed by interested parties. The public notice also provided the date, time, and location of the Board meeting where this proposal would be heard, as well as instructions on the various opportunities for interested parties to provide testimony.

¹ See § 187A-5, HRS

² <https://statelegals.staradvertiser.com/2022/11/09/0001393145-02/>

The Board considered the submittal prepared by the Division of Aquatic Resources (DAR), which provided evidence of a recent alarming decline in the West Hawai'i populations of pāku'iku'i.³ DAR staff noted that a two-year moratorium of taking any pāku'iku'i across West Hawai'i will allow for a short reprieve for the species while DAR collaborates with the broader West Hawai'i community to develop long-term rules promoting the long-term sustainability of pāku'iku'i. DAR is currently working with coastal communities, the University of Hawai'i at Hilo, the United States Geological Survey, and the National Oceanic and Atmospheric Administration to better understand pāku'iku'i life history traits that will support a more robust understanding of their stocks. Additionally, the DAR – Kona office has recently begun a new broad coverage monitoring program that should shed additional light on future population trends of pāku'iku'i in West Hawai'i.

The Board found that the timely adoption of Chapter 13-60.41, "West Hawai'i Pāku'iku'i Replenishment" was necessary to implement effective and adaptive management measures in response to the ongoing rapid decline in pāku'iku'i population size within the West Hawai'i Regional Fishery Management Area. The rules take effect on December 19, 2022 and will be posted on DAR's Administrative Rules website⁴ for the duration of time they are in effect.

³ The full submittal, Item F-1 on the 12/9/22 BLNR Meeting agenda, along with exhibits can be viewed online at: <https://dlnr.hawaii.gov/wp-content/uploads/2022/12/F-1-1.pdf>

⁴ <https://dlnr.hawaii.gov/dar/administrative-rules/>