

Small Business Regulatory Review Board

MEETING MINUTES

May 30, 2023

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:03 a.m., with a quorum present.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Jonathan Shick, 2nd Vice Chair
- Garth Yamanaka
- James (Kimo) Lee
- William Lydgate
- Sanford Morioka
- Tessa Gomes
- Mark Ritchie

ABSENT MEMBERS:

- Mary Albitz, Vice Chair
- Dr. Nancy Atmospera-Walsh
- Taryn Rodighiero

STAFF: DBEDT

James Tokioka
Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Elise Amemiya

II. **APPROVAL OF April 20, 2023 MINUTES**

Mr. Lee motioned to accept the April 20, 2023 meeting minutes, as presented. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on the Proposed Amendments to HAR Title 4 Chapter 71, Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules, as follows, promulgated by Department of Agriculture (DoAG)
- a. Placement of the Beetle *Syphraea uberabensis* onto the List of Restricted Animals (Part A)
 - b. Placement of the Southern House Mosquito *Culex quinquefasciatus* onto the List of Restricted Animals (Part A)
 - c. Placement of the Butterfly *Euselasia chrysippe* onto the List of Restricted Animals (Part A)

Chair Cundiff stated that there was some hesitancy to bring these amendments to this Board due to an apparent lack of substantive small business impact; however, he requested that Mr. Christopher Kishimoto, Acting Manager at DoAg's Plant Quarantine Branch, to provide the Board with the background on the rules.

Mr. Kishimoto explained that the beetles and the mosquitos will be used for biocontrol of invasive weeds, which will allow them to be placed on the restricted animals list, Part A, for their import and release. The male mosquitos will be infected with a bacteria that forms a symbiotic relationship with its host insect preventing the males to transfer this bacteria; there is no genetic modification involved. The ultimate goal is to reduce the mosquito population in the area and prevent the spread of any type of malaria.

Mr. Lydgate was pleased with the rule proposals and questioned what other hosts there are. In response, Mr. Kishimoto stated that host range testing was performed on 60 different Hawaii-based plant species but that this beetle is very specific to only a few species invasive to Hawaii. This is the same with the butterfly as it is very specific to only a few species. He noted that the Board of Agriculture is responsible for placing species on the restricted list due to its responsibility in importing non-domestic animals, of which, insects are a part of; it is a long process to place species on the list. In terms of creating any possible ultimate consequences, it was noted that DoAG has come a long way in performing host range testing to assure near-accurate results.

Dr. Helmet Rogg, Administrator at the Plant Industry Division at DoAG, explained that there is a plant and animal advisory committee that scientifically reviews the submissions that are sent out to various subcommittees for review. After the review, commentary is sent back to DoAG, which is used to either approve or deny the recommendations of the subcommittees' submissions to the advisory committee.

Testifier Ms. Christy Martin, Program Manager & Information Officer at UH PCSU / Coordinating Group on Alien Species, is in favor of these biocontrol additions, which are tested for numerous years before they are included on the Restricted Animal List. Testifier Ms. Christy Gusman is also in support of the changes to the rules as she is concerned with the transportation of these species.

Second Vice Chair Shick motioned to move the proposed rules to public hearing. Mr. Lee seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Proposed Amendments to HAR Title 4 Chapter 72, Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules, promulgated by DoAG

Mr. Jonathan Ho, Acting Manager at the Plant Quarantine Branch, explained that the rule amendments represent a substantial overhaul and involve the movement of plants and plant-parts within the state. The small business impact largely entails the changes to codify the costs for inspection performed off-sight; the inclusion of permitting fees; and the specific restrictions relating to the movement of the host material coconut rhinoceros beetle.

Mr. Ho added that these changes are both new and not new because although the inspection fees were mandated in 2010 and not added to the actual rules, the increase has been incurred since that time; and because the permitting fees are currently free, these are now added to the rule proposal. Specifically, the permitting fee structure includes a single movement fee of \$20 for one shipment within the course of one year or \$100 for unlimited

shipments within the course of one year. They are in-line with permitting fees for non-domestic animals and restricted plants. Currently, the biggest movers in regard to permits are coffee, green beans, and for host material for plants in soil and certain logs.

The coconut rhinoceros beetle quarantine is presently only found on Oahu. There is an interim rule right now restricting its movement with the intent to codify the spread of this beetle to other islands as it is a very devastating pest to coconut and other large palm species. Not only do these beetles attack these species but their movement would be very detrimental to tourism. The biggest impact is for those movers moving green waste and mulch because these are where the beetles reproduce. The remaining changes to the rules are non-substantive in nature and do not have major impacts on small business.

Chair Cundiff noted that several written testimonies in support of these proposed changes were received and reviewed. Back-up discussion leader Mr. Lee spoke with some of the Big Island farmers who conveyed support of the proposals, and although they were not opposed to paying more fees they are wondering how the extra funds will be used.

Mr. Lee motioned to move the proposed rule amendments to public hearing. Mr. Morioka seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Proposed Amendments to HAR Title 4 Chapter 71A, Plant and Non-Domestic Animal Quarantine, Microorganism Import Rules, promulgated by DoAG

Mr. Jonathan Ho, Acting Manager for DoAG's Plant Quarantine Branch, explained that this rule is very similar in structure to Chapter 4-71 (above) in that the plant quarantine regulates the importation of known cultures of microorganisms into the state. There are various lists that determine who is eligible to import and for what uses. This request is to move a particular strain of a specific fungus from the restricted A list and to have it replaced on the non-restricted microorganisms list. This would allow for the general importation for use within a biopesticide. It was noted that these changes also go through a thorough review process similar to Chapter 4-71.

With regard to the effect on small business, because these microorganisms are on the Restricted A List to be used as a microbial product, such as a biopesticide, it is currently not allowed. However, placing it onto the list of non-restricted microorganisms allow for products that contain this particular strain of Bavaria to be imported and sold, and gives those who import and sell another tool for pest control. Mr. Lydgate added that the more tools that are given the farmers, the better.

Testifier Silvia Todorova, President, Anatis Bioprotection is in support of this rule and stated that this Bavaria strain is highly selective and was largely tested in the fields and in the laboratory.

Second Vice Chair Shick motioned to move the proposed rules to public hearing. Mr. Morioka seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on the Proposed Amendments to HAR Title 13 Chapter 95, Rules Regulating the Taking and Selling of Certain Marine Resources, promulgated by Department of Land and Natural Resources (DLNR)

Mr. David Sakoda, Fisheries Program Manager with DLNR's Division of Aquatic Resources (DAR), explained that the purpose of the rule changes is to ensure there is enough fish to eat and to keep coral reefs healthy for this generation and the next. Extensive statewide scoping began in November 2020 where 10 scoping sessions were held.

In March 2021, 6 secondary scoping sessions revised the proposal based on feedback from the initial scoping, and in December 2021 follow-up scoping sessions and feedback collected via online were held. In May 2022, scoping meetings with commercial marine license holders and commercial marine dealers were held. In December 2022, the request for rule amendments was taken to the Board of Land and Natural Resources (BLNR). At that meeting, BLNR requested that DAR discuss with the commercial fishers an increase in the bag limit, which was held in February 2023. In early May 2023, BLNR approved the rules to proceed to public hearing with the revised changes.

Specific changes are as follows: the current regulation allows for a minimum Carapace length of 4 inches, no taking of females with or without eggs, and closes the season from May to August. The proposal allows for the same minimum Carapace length of 4 inches but allows taking of females without eggs, and extends the season from May to September. Other changes include increasing the minimum length of Manini by 1 inch to 6 inches, and limiting the minimum length of Kole to 5 inches.

Changes will also establish non-commercial bag limits for Kala from no daily bag limit to 2 per person per day, which is where much concern from the small business commercial fishers came in. The backbone of this proposal is a permit because in order to catch Kala for commercial purposes the fisher is required to possess a valid commercial marine license, must pay \$100 permit fee, and must have caught and sold at least 100 lbs. of Kala within the past year if a commercial Kala permit was held. The reason for this requirement is to make it more enforceable and to prevent non-commercial fishers from getting a commercial marine license to be exempt from the non-commercial bag limits.

Additional changes entail a commercial daily bag limit of 50 Kala per person, no commercial harvest or sale from April to July, no commercial harvest or sale after the annual catch limit (ACL) of 10,000 lbs., and dealers must register as commercial Kala dealers. Similar minimum length limits, bag limits, permit fees and closed periods of time for spawning season apply to Uhu including small-bodied Uhu, and all other Uhu species, and spear harvesting.

Overall, while there is some small business impact, DAR has tried to mitigate the impact by setting the ACL's and bag limits, specifically for Uhu and Kala in an effort to reduce the overall take.

Chair Cundiff recognized that quite a bit of outreach was made to stakeholders. A level of success through this process is when an agency makes the effort to reach out to the small business stakeholders. Mr. Sakoda noted that there had been some opposition to the rule proposals until DAR subsequently carved out more acceptable bag limits.

Mr. Yamanaka stated that this is a situation where many others rely on fish for sustainability; not just the fishers. He inquired as to what outreach was performed with these other businesses and how the daily catch is being monitored. In response, Mr. Sakoda stated that in terms of monitoring, DAR does both – mandatory monthly reporting for commercial catch from fishers and mandatory weekly reporting on dealers as to what is purchased from the fishers. It is recognized that there are sales that are unreported such as cash sales “under the table” but the larger catches and sales to the dealers are generally reconciled each month.

There is “in-water monitoring” where diver/biologists go into the ocean and survey near-shore areas to count fish. DAR also has partners that do similar monitoring in order to capture data to have a better idea of the health of the stock. Mr. Sakoda added that there has been a stock assessment for a number of species including Uhu and Kala, however, DAR is looking to partner with the federal government because it has limited resources.

In terms of outreach to other types of businesses, the first three rounds of scoping were broadly publicized where a variety of businesses and individuals provided comments and feedback including the Hawaiian community, recreational fishers, and environmental organizations. While DAR has a good handle on the commercial catch each day, it is unknown what the non-commercial catch is each day as the data is somewhat insufficient. However, he noted that without the permit, it will be illegal for fishers to catch Ulu and Kala.

Second Vice Chair Shick inquired as to whether there are any restrictive areas where commercial fishers would be able to fish if they were fishing with a commercial permit and if there is a limitation on the number of commercial permits to be issued. Mr. Sakoda responded that while this rule proposes no restrictions as to where commercial fishers can fish, DAR will likely try again next year to limit permits. However, there are other marine management areas to establish a prohibition on commercial harvest for stricter bag limits.

Aquatic Biologist Mr. Bryan Ishida stated that now that DAR will be allowing for the female crab to be removed from the ocean, surveys have shown that throughout the year there can be differences in the catch of the crab which varies between locations. While it is about a 50/50 ratio between male and female crabs, allowing the take of the female crab has been determined to be appropriate and will not adversely affect the population. Stock assessments are done in five-year intervals with updates done in-between the five years. Mr. Ishida added that “adaptive management” rule-making was approved for DAR to approach BLNR for providing potential changes to the rules such as managing fisheries through bag limits.

In response to Mr. Lydgate’s inquiry about the take of these species related to a population size of a particular island, Mr. Sakoda explained that for the commercial take, it is centered on Oahu. Although the rules do not restrict where the fish can be taken, DAR is currently looking to include island-based management.

Mr. Shick motioned to move the proposed rules to public hearing. Mr. Lee seconded the motion, and the Board members unanimously agreed.

IV. LEGISLATIVE MATTERS

- A. Update on Governor's Message Submitted for Consideration for the Gubernatorial Nomination of Jennifer Salisbury to the Small Business Regulatory Review Board for a term to expire June 30, 2027

Senator Kouchi's office was contacted multiple times, post-legislation, to get an update on the status of Ms. Salisbury's appointment to this Board. Her appointment will likely not occur until the next legislative session.

During the meeting, DBEDT Director James Tokioka stopped by to say hello and to thank the Board members for all their hard work, and recognized how difficult it is to juggle attending board meetings while running a small business.

V. ADMINISTRATIVE MATTERS

- A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes

1. Board's Budget Request

Ms. Palcovich explained that the funds appropriated for this Board during the legislative session did not make the final approval in the budget. However, DBEDT is in the process of working on a \$150,000 contract with a public relations firm, of which, this Board is a part of and will be able to utilize some of the funds for outreach.

Ms. Palcovich added that there are funds available for this current fiscal year which will be used for updating the Board's brochure and other purposes.

2. Presentations to Industry Associations

The next presentation is scheduled for June at the Japanese Chamber of Commerce in Hilo, of which, Board member Mr. Yamanaka is the incoming president.

3. Staff's Small Business Outreach

Ms. Ariola continues to perform monthly outreach.

4. Director Letters and Meetings with State Agencies and Counties

Chair Cundiff had a very good meeting with General Attorney Anne Lopez recently. Vice Chair Albitz and Ms. Palcovich met with Director Jade Butay from Department of Labor and Industrial Relations and Assistant to the Director William Kunstman where they discussed the updating rules to be presented to this Board.

- VI. NEXT MEETING** - Thursday, June 15, 2023 at 10:00 a.m. in conference room 405 at Leiopapa A Kamehameha Building – State Office Tower – 235 S. Beretania Street, Honolulu, HI 96813.
- VII. ADJOURNMENT** - Second Vice Chair Shick motioned to adjourn the meeting and Mr. Morioka seconded the motion; the meeting adjourned at 11:43 a.m.