



Board of Agriculture
February 28, 2023
Department of Agriculture
9 a.m. Plant Quarantine Branch
1849 Auiki Street
Honolulu, Hawaii 96819

Testimony in Support of the Proposed Changes to Hawaii Administrative Rules, Ch 4-72

Aloha Chairperson Hurd and Members of the Board of Agriculture,

The Coordinating Group on Alien Pest Species (CGAPS) **supports the proposed changes made to chapter 72, Hawaii Administrative Rules, and provides comments for Board of Agriculture consideration.** The changes proposed by the Hawaii Department of Agriculture (HDOA) to chapter 72, Hawaii Administrative Rules (HAR), provide important clarifications of HDOA’s authorities to prevent the spread of invasive pests within Hawaii. We also particularly highlight our support for making the current interim coconut rhinoceros beetle (CRB) administrative rule (§4-22.1-1 HAR) permanent as proposed in §4-72-23 HAR.

Chapter 72 HAR is the only chapter available to Plant Industry and its Plant Quarantine Branch (PQB) to regulate the movement of pests within the State of Hawaii. There is no corresponding chapter for animal or microorganism pests (although in the limited cases where importation or possession of a restricted animal or microorganism requires a permit, the permit could restrict its movement). HDOA’s statutory authorities to make rules to prevent the movement of any kind of pest are set out in §§150A-8, 150A-53, and 141-2 Hawaii Revised Statutes (HRS). Each of these sections provides HDOA distinct legal authorities, as discussed below, that should be implemented in chapter 72 HAR to regulate the movement of pests within Hawaii. Therefore, CGAPS respectfully requests that HDOA adopt and amend specific rules in chapter 72 HAR to allow for the sensible regulation of those invasive pests that are, or are likely to be, harmful to the environment, public health, agricultural interests, or natural and cultural resources and that the Advisory Committee on Plants and Animals consider these modifications to the proposed changes to chapter 72 HAR to do so.

Authorities

1. **Section 150A-8 HRS** provides HDOA the authority to require a permit to move flora and fauna specified in rules and regulations within the State.¹

¹ “Flora and fauna specified by rules and regulations of the department shall not be moved from one island to another island within the State or from one locality to another on the same island except by a permit issued by the department.” §150A-8 HRS

2. **Section 150A-53 HRS** was adopted in 2008 and is part of HDOA’s biosecurity program. The objectives of the biosecurity program are to:

- “(1) Establish a multi-dimensional system to prevent the entry into the State and interisland movement of pests and prohibited or restricted organisms without a permit; and
- (2) Respond effectively to eradicate, control, reduce, and suppress incipient pest populations and established pests and seize and dispose of prohibited or restricted organisms without a permit.” (§ 150A-52)

To implement these objectives, §150A-53(a)(3) HRS authorizes HDOA to "Develop, implement, and coordinate post-entry measures to eradicate, control, reduce, and suppress pests and, as appropriate, eradicate or seize and dispose of prohibited or restricted organisms without a permit that have entered the State." This authority is utilized throughout chapter 72 HAR but §150A-53 HRS is currently only cited as a section implemented in proposed §4-72-6 HAR. **CGAPS requests that §150A-53 be added as a section implemented for proposed §§4-72-1, 4-72-2, 4-72-3, 4-72-4, 4-72-5, 4-72-9, 4-72-10, 4-72-15, 4-72-22, and 4-72-23 HAR.**

3. **Section 141-2 HRS**, unlike §§150A-8 and 150A-53, is not tied to the §150A-2 definition of “pest” (discussed below) and provides broad authority for HDOA to adopt rules “for and concerning” the “quarantine, inspection, fumigation, disinfection, destruction, or exclusion, either upon introduction into the State, or at any time or place within the State” and for the inter- and intra-island movement of: any live bird, reptile, insect, or other animal; plant materials; sand, soil, or earth; and the items that contain those articles “that is or may be diseased or infested with insects or likely to assist in the transmission or dissemination of any insect or plant disease injurious, harmful, or detrimental, or likely to become injurious, harmful, or detrimental to the agricultural or horticultural industries or the forests of the State, or that is or may be in itself injurious, harmful, or detrimental to the same[.]” (emphasis added)

Proposed Modifications

I. Clarify that any invasive species that is harmful or detrimental to Hawaii is regulated under chapter 72 HAR.

Currently, the draft uses the definition of “pest” set out in §150A-2 HRS, which is:

“Pest' means any animal, insect, disease agent or other organism in any stage of development that is detrimental or potentially harmful to agriculture, or horticulture, or animal or public health, or natural resources including native biota or has an adverse effect on the environment **as determined by the [Board of Agriculture].**”

The issue is the phrase “as determined by the [Board of Agriculture].” HDOA needs the authority to stop the intrastate movement of any organism that is, or is reasonably suspected to be, detrimental or potentially harmful to agriculture, or horticulture, or animal or public health, or forests and other natural resources, not just for specific taxa as determined by the Board of

Agriculture (Board). New pests may be discovered within the State at any time. Unfortunately, adding a new species to a list can take months or even years.

The Advisory Committee on Plants and Animals recommends adding “insect” and “disease” before the term “pest” in §§4-72-2, 4-72-4, and 4-72-5. This addition is very welcome and will provide a regulatory basis for HDOA to prevent the intrastate movement of all insects and diseases.

We hope that HDOA finds a mechanism to regulate other harmful invasive pests, such as mites, spiders, nematodes, and other invertebrate and vertebrate pests that have not been designated by the Board.

One option would be for the Board to designate any species that is or may be in itself injurious, harmful, or detrimental to the agricultural or horticultural industries or the forests of the State as a “pest”. This action would provide HDOA the authority to protect the agricultural or horticultural industries or the forests and other natural resources of the State at the time a harmful invasive species is discovered.

We also urge HDOA to consider seeking a statutory change to the definition of “pest” in §150A-2 HRS so that it includes any animal, insect, disease agent, or other organism in any stage of development that is detrimental or potentially harmful to agriculture, or horticulture, or animal or public health, or natural resources including native biota or has an adverse effect on the environment, regardless of whether the organism is on a list approved by the Board. We suggest that the definition of “pest” in §4-72-2 HAR be a cross-reference to the definition of “pest” in §150A-2 HRS (instead of restating that definition). In the event a statutory change is made to the definition of “pest”, a cross-reference would avoid HDOA having to go through rulemaking to conform the definition in the regulations to the statutory change. So, the definition of pest would be:

“‘Pest’ has the meaning giving that term in section 150A-2, Hawaii Revised Statutes;”

II. Propose modifying §4-72-5:

- i. To authorize HDOA to prohibit the movement of pest host material if the SPRO reasonably suspects the material is infested;
- ii. By modifying the heading to read “**Restrictions related to material for sale and available to the public**”;
- iii. In subsection (a), by inserting “quarantine or ” after “The SPRO may”; and
- iv. In subsection (a), by striking “to be given away to the public” and inserting “provided to the public, an educational institution, or a department, agency, or other entity of a government.”

The proposed new heading and subsection (a) would read as follows:

"§4-72-5 Restrictions related to material for sale and available to the public. (a) The SPRO may quarantine or prohibit the movement of any pest host material that is offered for sale, for barter, or by donation or otherwise provided to the public, an educational institution, or any department, agency, or other entity of a government if the SPRO determines or reasonably suspects that the pest host material is infested or infected with a pest. The SPRO may compel treatment or destruction of the material per subsection (b). If such material was or is stored in an area that is infested or infected with a pest, then the SPRO may require appropriate treatment of the area prior to authorizing the movement of the material."

This important new section provides HDOA the clear authority to immediately address a situation where a vendor is selling merchandise that is infested or infected with a pest. There are examples in Hawaii where a nursery or big box store is known to be infested with a high priority pest such as little fire ant or coqui frog and HDOA is limited to asking the retailer to voluntarily not sell the infested merchandise. In some cases, the vendor has declined HDOA's request. This new section sets out together the relevant rules related to merchandise. We propose changing the current heading from "Prohibitions on movement of infested material." This does not clearly let a reader know that the provisions relate to material for sale and is confusing, especially as the immediately preceding section, §4-72-4, has the heading "Prohibited transportations." We suggest adding the word "quarantine" to indicate that the intent of the section is to stop the sale and movement of infested or infected merchandise. We further propose adding educational institutions and government entities to address the limited circumstance in which infested or infected material is going to be made available to a school or government agency but not to the public. Finally, the current language requires the SPRO to "determine" the material is infested. Adding the standard of "reasonably suspects" will allow the SPRO to act immediately before the pest is spread and while the extent of an infestation is determined..

IV. Other proposed changes:

i. §4-72-1 Objectives: Strike "plant pests" and inset "pests and other harmful invasive species." This chapter does not just address plant pests and is the only regulatory authority related to the intrastate movement of any pest.

ii. §4-72-2 Definitions:

a. In the definition of "pest host material", strike "It does not include fruit or vegetative scraps;" at the end. This language is misplaced here. As at least one subcommittee member noted, fruit and vegetable scraps can be pest host material in some instances.

b. The definition of "restricted areas" should be modified to include an eradication or control project conducted by an Invasive Species Committee or other entity identified by the SPRO. Amend to read as follows:

“Restricted area” means an island or locality within the State where a specific pest is not known to be established or where an eradication or control project for a specified pest is being conducted, ~~[by the plant pest control branch.]~~ as identified by the SPRO;

iii. §4-72-7 User permit and site inspection fees and §4-72-8 Inspection fees. HDOA may want to consider adding the authority for the SPRO to waive a proposed fee if the waiver is in the interest of the State of Hawaii.

iv. §4-72-8 Inspection fees. In subsection (a)(1), change “including” to “in addition to”. It is confusing as written.

v. §4-72-12 Scientific and common names. We agree with and second the suggestion of a subcommittee member to add the LPSN - List of Prokaryotic names with Standing in Nomenclature, to this section to provide a source to check the status of valid (and invalid) taxonomic names of certain microorganisms.

Thank you for the opportunity to comment on this measure.

Aloha,



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