



Agenda Item # 6: Submittal Related to the HISC Administrative Rules

Hawai'i Invasive Species Council meeting

Wednesday, May 29, 2024; 1:00 pm

Presented by: Chelsea Arnott

Program Manager, HISC Program Support

Stephanie Easley, CGAPS Legal Fellow

Submittal Outline

- Overview of Hawaii Revised Statute (HRS) 194
- Background
- Discussion and Analysis
 - Need
 - List of Species
- Summary of the Rules
- Council Recommendations



Overview of HRS 194



- 194-2 - Establishes the Council and duties:
 - Provides “policy level direction, coordination, and planning among state departments, federal agencies, and international and local initiatives for the control and eradication of harmful invasive species infestations throughout the State and for preventing the introduction of other invasive species that may be potentially harmful.”
- 194-3 – Lead agencies; accountability
- 194-4 – Relation to other laws
- 196-5 – Entry to Private Property*
- 194-6 – Entry to Public Property*
- 194-7 – Ability to adopt rules

* Draft Administrative rules address these sections and will be discussed in more detail

Background



- **2002** LRB study identifying the need to address a number of gaps in invasive species management statewide.
- **2003** HISC is established by Act 85 set out in HRS 194. At its first meeting, three existing lists of invasive species were adopted by HISC as its initial list of invasive species. There was an attempt to create a method to update those lists, but nothing was produced.
- **2011** HISC approved Resolution 11-1 which directed HISC staff to draft administrative rules.
- **2011-2015** HISC staff worked to draft administrative rules.
- **2015** HISC approved a motion for HISC staff to seek legislative amendments to HRS 194 that would allow the Council to update its list of invasive species without going through full rulemaking. No such legislation have been enacted.
- **2021** HISC staff began working with the CGAPS legal fellow on drafting administrative rules
- **2022** till present HISC staff worked with DLNR AGs on drafted rules
- **2024** submittal for initiating rulemaking for the HISC Admin rules presented to HISC



Disucssion and Analysis



- **Process.**

- HRS 194-7 provides **HISC authority to adopt administrative rules** pursuant to Chapter 91.
- Any **future amendments to the rules including updates to the list of invasive species** would need to be done using the **Ch. 91 process**.
- This submittal, and requested approvals from HISC, are **the first formal step in the rulemaking pursuant to Chapter 91**.



Discussion and Analysis



- **Need.**

- HISC does not have any rules to carry out Chapter 194 HRS. **Until rules are adopted, HISC cannot carry out their statutory authorities**
- Creates authorities intended for the HISC departments, the counties, and their agents to **carry out control or eradication actions on private property** if an invasive species identified by the HISC:
 - 1) Found on the private property; or
 - 2) Reasonably suspected to be on private property, based on results of systematic surveys or reports or proximity to known populations.
- HISC Departments and their agents to order the **control and eradication of invasive species on public property**.



The Need...



Miconia (*Miconia calvescens*)

- Considered highly invasive
 - Listed as a **State Noxious Weed** and DOFAW declared it as the one of [Hawaii's Most Invasive Horticultural Plants](#).
 - Native to South and Central America and was introduced to Hawai'i as a garden plant in 1961 and spread around by plant enthusiasts.
 - Prolific seeder (**up to 9 million seeds each year**) and its tiny **seeds can remain viable in the soil for 18 years**
 - Fast growing and large leaves can take over entire forests
 - Miconia poses a **great threat to the integrity of O'ahu's forested watershed.**

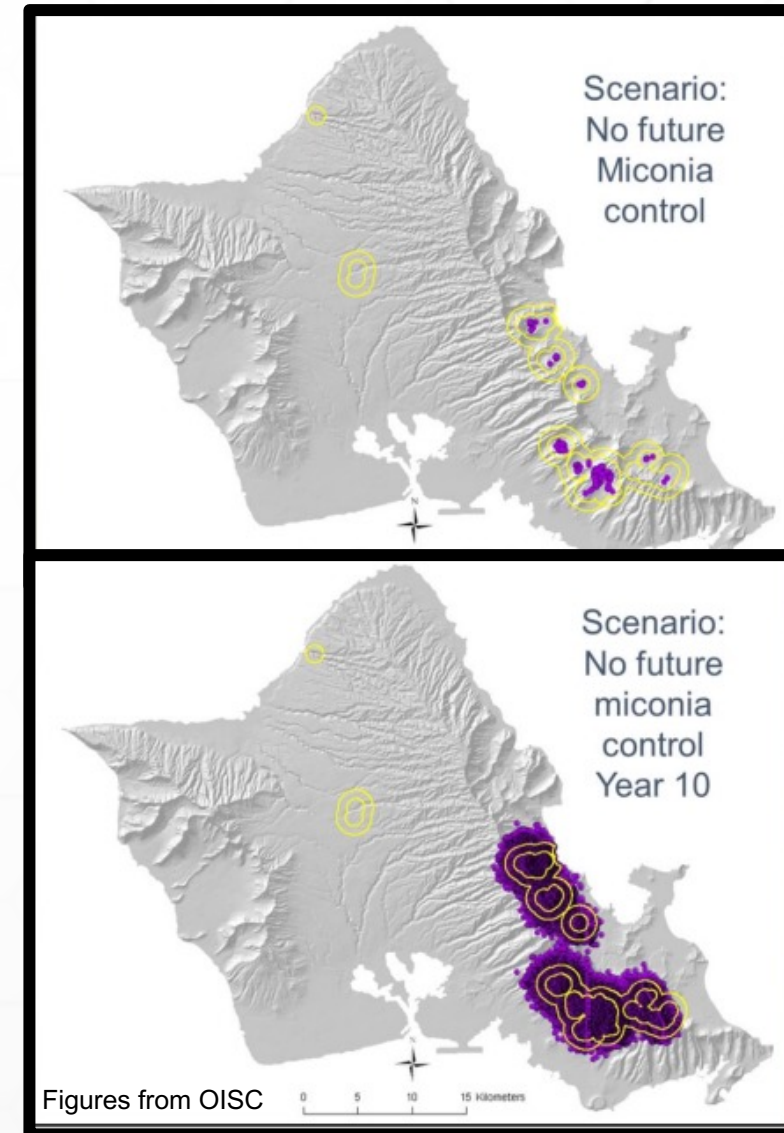


The Need...



O'ahu Invasive Species Committee; Project of the University of Hawai'i Pacific Cooperative Studies Unit

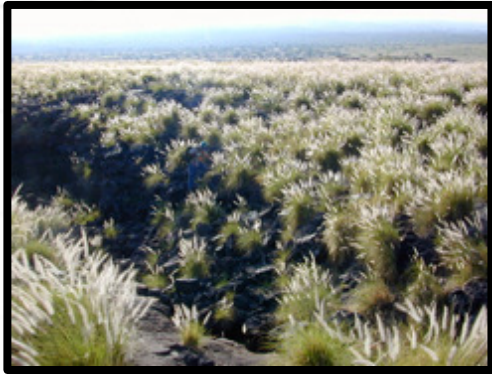
- Miconia is OISC's main target species.
- OISC surveys the island, both by ground and air, to locate and remove miconia plants before they mature.
 - This **includes survey and control on private properties** through voluntary permission
 - If a **property owner does not consent to access that could set back control efforts by 18+ years if a miconia tree matures**
- HDOA cannot control a listed noxious weed without contribution from the landowner/occupier unless the owner/occupier "will not benefit materially or financially by the control or eradication of the noxious weed." §152-6 HRS For this and other reasons, HDOA has not been able to control or eradicate this miconia population.



List of Invasive Species



Plants



Cenchrus setaceus
(formerly *Pennisetum setaceum*)
Fountain Grass



Chromolaena odorata
devil weed, Siam weed



Cortaderia jubata*, *Cortaderia selloana
pampas grass



Pennisetum villosum
Feather top fountain Grass;
Longstyle feather grass



Senecio madagascariensis
fireweed



Tibouchina
– all species in the genus
Tibouchina, glory bush



Miconia
– all species in the genus
miconia

List of Invasive Species



Invertebrates



Aedes aegypti, *Aedes scutellaris*
Mosquito



Apis mellifera
Africanized honeybee –
correction to submittal



Anopheles – all species in genus
Western malaria mosquito



Oryctes rhinoceros
Coconut Rhinoceros Beetle



Propyllia japonica
Japanese Beetle



Prosapia bicincta
Two-lined spittlebug



Solenopsis invicta
Red Imported Fire Ant



Wasmannia auropunctata
Little Fire Ant

List of Invasive Species



Vertebrates



Eleutherodactylus coqui
Coqui frog

Pathogens / Diseases



Ceratocystis huliohia, Ceratocystis lukuohia
Rapid 'Ōhi'a Death

Summary of Proposed Rules



- **Section 326-1 “Invasive species identified by the council for control and eradication”**
 - List of 20 invasive species taxa
 - Justification of listing of these species is included in the “Discussion and Analysis” section
 - Carries out statutory requirement that control or eradication actions on private property may only be carried out for “invasive species identified by the [HISC] for control or eradication”.



Summary of Proposed Rules



- **Section 326-2 “Requirements for control or eradication on private property”**
 - HISC department, county, or agent to control or eradicate an identified invasive species on private property
 - Must submit a detailed control or eradication program to the HISC
 - Provide updates on control or eradication to the HISC
 - Ability to enter into MOU with qualified agents



Summary of Proposed Rules



- **Section 326-3 “Notice”**

- HISC department, county, or agent must provide notice to a land owner, or tenant or occupant if applicable, before conducting any action to control or eradicate an identified invasive species on private property.
- If the land owner/tenant/occupant does not consent within 30 days after notice is given, the control or eradication action may be carried out pursuant to a warrant.
- There is a procedure to waive the 30 day notice if an urgent response is needed on the private property and owner/tenant/occupant consent cannot be immediately obtained. In that case, a warrant will have to be obtained for the control or eradication action.



Summary of Proposed Rules



- **Section 326-4 “Requirement for control or eradication by private property owner”** – authorizes a HISC department or county, or their agent to order a private property owner to control or eradicate an identified invasive species if the department or county or their agent determines the identified species was “intentionally and knowingly” established on private property by the property owner.



Summary of Proposed Rules



- **Section 326-5 “Requirements for control or eradication on public property”** – HISC department or its agent to order an entity in charge of the State or county property to control or eradicate an identified species on the public property, after notice, if the public property is within a geographic area in which the department or its agent is carrying out monitoring or control or eradication actions for that identified species.
- There is a procedure to waive the notice if an urgent response is needed on public property and consent cannot be immediately obtained. In that case, a warrant will have to be obtained for the control or eradication action.



Summary of Proposed Rules



- **Section 326-6 “Warrants”** – sets requirements for a HISC department or county to seek a warrant to carry out a control or eradication action on private and public property without the consent of the property owner/tenant/occupier, or entity in charge, as appropriate.





Submittal Recommendations

That the Hawaii Invasive Species Council (HISC):

1. Approve the proposed adoption of HAR Chapters 13-325, “General Provisions” and 13-326, “Control and Eradication of Invasive Species,” for statewide public hearing(s), attached hereto as Exhibit 1;

and

2. Delegate authority to the Chairperson of the Department of Land and Natural Resources to set dates and times for the aforementioned public hearing(s) and appoint a hearing officer for the public hearing(s).



Questions

Chelsea Arnott

HISC Program Supervisor Chelsea.l.arnott@Hawaii.gov

Stephanie Easley

CGAPS legal fellow pseasley@hawaii.edu