

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committee on
FINANCE**

**Tuesday, March 3, 2009
5:00 PM
State Capitol, Conference Room 308**

**In consideration of
HOUSE BILL 1712, HOUSE DRAFT 1
RELATING TO FISHING**

House Bill 1712, House Draft 1 directs the Department of Land and Natural Resources (Department) in managing parrotfish (uhu), goatfish (weke/moana kali) and jacks (ulua/papio) to continue holding public informational meetings; to utilize, gather new and present all available data; and to develop monitoring and evaluation programs. Specifically, the bill directs the Department to: 1) Use and present all available data to support the basis for any proposed rule based on public input; 2) Develop a monitoring and evaluation program to determine the effects from runoff, sedimentation, pollution, lack or profusion of fresh water intrusion into the marine environment; and 3) Develop a monitoring and evaluation program to determine the outcomes to be achieved by implementing any rule and to estimate the timeframe for these outcomes to be achieved. The Department strongly opposes this bill.

The bill contains substantial elements of similar measures that failed to pass the Legislature in 2006 and 2007. The current measure would impose constraints on the management of marine fisheries resources, such as requiring scientific justifications so restrictive that they would be difficult if not impossible to meet. This will impair the Department's ability to properly manage aquatic resources for the public trust as established in Article 11, Section 1 of the Hawaii State Constitution, and essentially preclude pro-active or precautionary management.

In addition, this legislation requires supporting data, including stock assessments to be conducted for the identified species. Given that stock assessments are lengthy projects, and that these species in Hawaii range across both the main Hawaiian Islands and the Northwest Hawaiian Islands, meeting this requirement would take years worth of field research and hundreds of thousands of dollars for each species involved, and would effectively put a moratorium on any management actions related to marine fish stocks for the better part of a decade. This would be

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

prejudicial to meaningful marine management, since many stocks are undergoing rapid responses due to large scale global environmental changes, such as warming climate.

This bill would also require a monitoring and reporting program for every rule passed by the Department affecting species of uhu, weke, and papio, no matter how minor. In some cases such monitoring and reporting programs are completely applicable, but for others such requirements would result in trivial studies that would inappropriately divert limited staff resources. This is a particular concern in the current economic climate, where a near-term loss of resources at the Department level is all but inevitable.

The Department further notes that the mandated process of administrative rulemaking takes into consideration the impacts of each proposal on resources, businesses, and the public, and includes opportunities provided by law for interested parties to provide their comments. Therefore this measure would to some extent re-create existing protocols. Relative to any rule achieving its intended purpose, requiring reports in the manner proposed would do no more than what is already being done, and would therefore result in duplicative effort and thereby detract from the Department's overall efficiency and productivity.

Finally, the Department notes that the Legislature provided the Department with the authority to promulgate administrative rules regulating aquatic resources, and that the Department is adhering to the prescribed process. Certain clauses adopted by the Legislature in recent years clearly reflect an intent that the Department be allowed to operate in this arena, for example: "... WHEREAS, Chapter 91, Hawaii Revised Statutes, provides the Department of Land and Natural Resources (DLNR) with the statutory authority to adopt relevant rules, and it is not the Legislature's intent to supersede the rulemaking authority of DLNR..." (eg. House Concurrent Resolution 347 - 2008). This would appear to support the Department's position as adopted in this testimony, and the rulemaking process currently in use by the Department. The Department therefore requests that the Legislature allow the Department to proceed with its rule making without adding further unfunded mandates, particularly in light of current economic circumstances.

In summary, this is an unnecessary and duplicative measure that inhibits rather than enhances the process of marine resources management, and should not be advanced out of committee.

COMMITTEE ON FINANCE
Rep. Marcus Oshiro, Chair
Senator Marilyn Lee, Vice Chair

March 3, 2009

RE: HB1310 HD1 scheduled to be heard by FIN on Tuesday, 3/3/09 at 5:00 pm in conference room 308.

My name is Brian F. Funai and I am testifying in support of HB1712 HD1.

While I am concerned that new fishing regulations are needed to make sure that we have a healthy resource for our and future generations, I am very concerned that the Hawaii Division of Aquatic Resources of the DLNR is skirting their responsibility of actively managing the resource through monitoring, data gathering, and unbiased scientific analysis as this bill would require. Instead of doing their job, the Department has continually handed off their responsibility or neglected it by basing their management decisions on polls, politics and public opinion.

In addition, the Department has failed to take into consideration other land and ocean based activities in addition to fishing that are clearly of some impact. As others will mention, fishermen are very disappointed in the division's response that they only manage fish and can do nothing else about what other divisions are responsible for. I find this to be rather baffling when the Department's title is the Department of Land and Natural Resources; one that is charged with protecting and managing our resources for ALL of the people of Hawaii.

Thank you for your time and allowing me to testify.

Brian F. Funai
Kaneohe, HI 96744

HB1712 HD1
FIN
3/3/09
House Conference Room 308

Dear legislators,

I am wholeheartedly in support of HB 1712 HD1.

To make appropriate regulations such as those being contemplated by HDAR much information is needed. Without scientific information the effort is doomed to public opinion which is not a wise avenue to take with our precious resource. Although consensus for these new measures at the meetings are being sought I must remind you that consensus is not science, it is only like-minds agreeing and not science or facts. Long ago it was consensus that the world was flat and science proved otherwise. Do not take our resources cheap for many generations after us will suffer for it.

Baseline stock assessments and continued monitoring although difficult is what will tell us if the management is working or not. It is your duty as stewards of our resources to ensure that DLNR makes efficient use of our public resources to make the fisheries sustainable. The difficulties are great and resources are limited such that maybe only a few critical species can be assessed. It is essential that DLNR settles down and does a good job on these and not try to do everything at one time. This shotgun approach with no data or information that they are doing now does not bode well for our public resource.

If regulations are to be enacted enacted this is all the more reason to do the science and have HDAR/DLNR do periodic assessment of the effectiveness of the regulations. I am also in favor of a sunset clause of any regulation which would force DLNR/HDAR to assess the regulation's effectiveness before continuing them or making changes. The environment is dynamic and any fixes now may not work in the future.

Thank you for allowing me to testify in support HB1712 HD1.

Sincerely,

Kurt Kawamoto
Fisherman/voter/environmentalist/ocean user/lifetime Hawaii resident now living in Kaneohe

FINTestimony

From: mailinglist@capitol.hawaii.gov
ent: Monday, March 02, 2009 12:27 AM
fo: FINTestimony
Cc: mjellings@hawaii.rr.com
Subject: Testimony for HB1712 on 3/3/2009 5:00:00 PM

Testimony for FIN 3/3/2009 5:00:00 PM HB1712

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Carl P Jellings Sr.
Organization: Individual
Address:
Phone:
E-mail: mjellings@hawaii.rr.com
Submitted on: 3/2/2009

Comments:

Honorable committee on Finance
Aloha Rep Chair Marcus Oshiro

In recent years rules regarding fishing has been more and more based on questionnaires , opinion poles and at times poles sponsored by agenda driven papers ,or interest groups We are experts in this trade but time and time again we find ourselves against overwhelming odds, We would think basic science data and trends could accomplish the question what is a sustained fishery regarding whatever specie, however science and data have been so neglected because of DAR"s constant administrative changes in Gov. ,priority shifts roject changes poor staffing etc.and to no fault of the fisherman he is terminated." y opinion mostly" and the contributing lack of science, a good example would be the abundance of menpachi, logic would say you should be allowed to fish this fishery this is the sustained numbers go to work, but the technique used to harvest from this fishery was banned,In this case 0 science basis and purely by opinion.

fishing contributes largely to a diverse economy. a few pounds of fish can generate money"s and movement from fisher to wholesale to market to consumer 4 and 5 fold, I cant imagine not having the basic resources that says your OK or not and hears the adjustment now go to work, this State needs to take fishing more serious it supports thousands of jobs both directly and indirectly fisheries such as menpachi.a 100 pounds of menpachi wholesale sold at 4.50 sold retail 7.50+ moneys generated 1200.00 now times that by a mere 40,000 pound,s 480,000,00 economics 101 that"s just 1 fishery, weke red 100 pounds -wholesale 3.00 retail 4.95 moneys generated 795.00 times 50,000 pound"s 397,500.00 these are accurate example"s of just 2 fisheries and are conservative estimates prices fluctuate with consumer demand and whether, there are dozens of fisheries akule fisheries, opelu fisheries, bottom fisheries, uhu, mullet, taape,goat fishes, etc. etc.etc.

Aloha to Rep Karen Awana

Mahalo for the opportunity to testify

Carl P Jellings Sr,

HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

COMMITTEE ON FINANCE

Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

Rep. Henry J.C. Aquino	Rep. Scott Y. Nishimoto
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Rep. Sharon E. Har	Rep. Kymberly Marcos Pine
Rep. Gilbert S.C. Keith-Agaran	Rep. Gene Ward
Rep. Chris Lee	

NOTICE OF HEARING

DATE: Tuesday, March 03, 2009
TIME: 5:00 p.m.
PLACE: Conference Room 308
State Capitol
415 South Beretania Street

Strong Support of H.B. 1712 HD1; Relating to Fishing

Good evening Chair Oshiro, Vice-Chair Lee, Honorable Members of the House Committee on Finance. I am Roy Morioka, a retiree, fisherman and resident of Waialae-iki, Oahu. I strongly support this bill as it seeks to ensure that the department has followed the process and direction provided in Section 187A-2. Through the years you have heard me consistently ask the department to follow this section and provide the public with data it has collected and science it has conducted in formulating the proposed regulatory changes or rules and NOT simply rely on public opinion. I have asked that the science and statistical data consider and include all direct and indirect impacts that have caused the need for a specific action and a mechanism to monitor the effectiveness of the action. To date my requests have fallen on deaf ears and I have been advised by leaders of the HDAR with the DLNR chairperson present, during a meeting with fishermen that "we have no authority to regulate and challenge other state departments and our authority is limited to regulating fishermen only."

It is extremely bad when the department entrusted with our state's natural resources has no authority to challenge the actions of another state department whose actions will have an adverse effect on the health and existence of our precious ocean resources. I look to the department to be the lead advocate for the resource first and to advise the community as to what's happening, good or bad to our ocean resources. Commercial, recreational and subsistence fishing may not exist in the future if fishing is the only activity regulated to maintain the health and sustainability of our ocean resources.

When will the department be held accountable and do its job as mandated? This begs the question, what has this department been doing with the monies it has spent on monitoring coral reefs and fishery resources? As a tax payer of this state and facing discrimination because I am a fisherman, I seek legislative support to have the department fulfill its mandated duties to the state's people and its ocean resources as described in Section 187A-2 before developing or changing fishing rules and regulations.

Thank you again for this opportunity to testify.

Respectfully,
Roy N. Morioka

HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
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TESTIMONY IN SUPPORT OF HB1712

TESTIMONY

Hawaii Nearshore Fishermen are in support of HB1712

HB1712 will require the Department of Land and Natural Resources to provide supporting data as a basis for any new rules that would regulate the taking of uhu, weke, & Papio.

HNF feel the providing of sound data for the basis during the implementation of new marine resource management measures should go without saying. Actually, this format should apply to all species, not only Uhu, weke, and Papio. After all, most fisheries management regimes such as on a federal level use a very extensive science based process as well as fishermen advisory and public input processes.

The role of Government should be to expend proper due diligence and when necessary apply rules and regulations in an equitable manner to its citizens. We feel HB1712 is a first step in this direction.

Our experience with the Department of Land and Natural Resources chapter 91 rule making process with respect to fishing rules and regulations is this:

1. Department identifies an issue or need or responds to various "requests" to do so.
2. Department holds internal dialog where the end game result is identified and developed.
3. Public informal meetings are staged and conducted followed by the formal public hearing process that are also staged and conducted.
4. Rules get generated.

During this process, science or sound stocks data is rarely used as justification for management measures and the troubling new trend we see in the whole process is the use of privately sponsored public opinion polls and various other public relations initiatives to sway opinions during the public hearing process.

An example of this would be where the department ignored the recommendations of their own community based and expert gill net task forces' recommendations for regulating gill net use and instead deferred for 7 years only to end up banning gill nets out right after a well campaigned and lengthy public meeting and hearing process where public opinion polls and media PR campaigns brought forth their final justification to out right ban gill nets – a painful, emotional, and controversial exercise for sure. One that brought tears too many and divided the community everlasting.

HNF believe this “social marketing” and politics should stay out of fisheries management and that management measures should be science based - at least at the foundation.

We notice that section (5) of original HB1665 has been completely removed in the HD1 amended version. This takes out the reporting requirements and other perhaps burdensome fiscal implications that this bill might generate. Because of this, there should be no reason why this bill would impart any extra financial burden on the Department. It merely reiterates what section 187 A-2 (6) already calls for but seems to be left out in common practice.

Is there proper use of funding? The Department of Aquatic Resources has biologists and managers and is funded to carry out the management duties within the department. Yet, when we ask for basis for new measures, we get reasons like “we are responding to user conflicts and someone called from Kauai”.. or the opinion poll says community members indicate such and such...

This committee should ask the question, How is the department determining management measures? More specifically how are they spending the funding to conduct the science of management?

We feel if management measures are developed by opinion, polls, and “scoping sessions” then what use is it to even have a Department of Aquatic resources complete with biologists and fisheries managers and reef specialists and reef conservation task force proponents anyway?

The department is funded to fulfill statutes. Part of those statutes says they should among other things provide pertinent information and statistic - Section 187A-2 HRS (3):

Gather and compile information and statistics concerning the habitat and character of, and increase and decrease in, aquatic resources in the State, including the care, and propagation of aquatic resources for protective, productive, and aesthetic purposes, and other useful information...

This pertinent information and statistics should be science based and not arbitrary or politically driven.

Although we feel the statute should go much farther in the requirement to provide a valid and documented scientific need prior to implementing drastic prohibitive management measures, HB1712 gently reminds the department of the necessity to be accurate, genuine and equitable in measures affecting resource use and management.

HNF provide Honolulu markets with fresh nearshore caught species each month. Many of these species have been caught sustainably since time began. Contrary to fashionable reports of reef fish decline, fishermen and markets are reporting extreme bountiful catches of certain species. An example of this would be Akule, Oio, Papio, Ulua, and Weke.

HNF feel their ability to continue to provide Islanders with fresh fish will be severely hampered – irrespective of actual stock biomass and health of the resource if a sound basis for management measures are not used. Furthermore, it is the fishermen themselves that are poised to offer the most data, experience, and insight to this resource.

Therefore, the fishermen support HB1712.

Respectfully submitted,
Tony Costa

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 02, 2009 4:59 PM
To: FINTestimony
Cc: tony@pop-hawaii.com
Subject: Testimony for HB1712 on 3/3/2009 5:00:00 PM

Testimony for FIN 3/3/2009 5:00:00 PM HB1712

Conference room: 308
Testifier position: support
Testifier will be present: Yes
Submitted by: Tony Costa
Organization: Hawaii Nearshore Fishermen
Address:
Phone:
E-mail: tony@pop-hawaii.com
Submitted on: 3/2/2009

Comments: