

This bill would also require a monitoring and reporting program for every rule passed by the Department affecting aquatic life, 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 without undue interference, 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. HCR 347, SLH 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.

Thank you for the opportunity to provide testimony.

Testimony of The Nature Conservancy of Hawai'i
Opposing H.B. 1712 Relating to Fishing
House Committee on Water, Land & Ocean Resources
February 9, 2009, 9:00AM, Room 325

The Nature Conservancy opposes H.B. 1712 for the following reasons.

There is already clear and abundant scientific data, analysis and evidence being utilized by the DLNR that points to serious declines in near-shore fish populations, especially among the large fishes that are so important for replenishing the reef. A recent analysis of DLNR Division of Aquatic Resources (DAR) and federal National Oceanic & Atmospheric Administration (NOAA) data shows that **75% of targeted reef fishes in the main Hawaiian Islands are in critical or depleted condition** as compared to the same species in the Northwestern Hawaiian Islands.¹ Another study recently published in the journal *Environmental Conservation* compared both healthy and degraded habitat and found that over-harvesting is the chief threat to popular reef fishes in the main Hawaiian Islands.²

There is particular concern for local populations of *uhu*, or parrotfish (family *Scaridae*), and other herbivorous fishes, many of which are depleted and appear to be targeted more heavily in recent years by commercial fishers. More scientific evidence points to the vital role herbivores play in maintaining reef health and to their positive impact on reducing the level of invasive algae. A 2007 study of Hawai'i Marine Life Conservation Districts and comparable fished areas published in *Marine Ecology Progress Series*, shows that reefs with abundant herbivorous fishes tend to have little or no problem with algal blooms, whereas reefs with few grazing fishes often have abundant seaweeds.³

We believe that the most important steps we can take to help restore fish populations are:

1. **Encourage responsible fishing** – Take what you need not what you can. Indiscriminate fishing methods, like lay gill nets and fishing on SCUBA, should be tightly controlled or banned.
2. **Support community-based marine management** – Help the communities across the state that are managing marine resources, working to ensure compliance with laws, and monitoring human use and biological change over time.
3. **Create replenishment areas for fish** – The process must be based on the best available science and credible local knowledge, involving fishers, local communities, scientists, and government. Examples include Maui's proposed herbivore replenishment area and the Fisheries Replenishment Areas on the Big Island.
4. **Strengthen enforcement capacity** – Everyone agrees that enforcement needs to be improved. Hawaii's enforcement capacity is underfunded and understaffed.
5. **Manage statewide threats** - Invasive species and land-based sources of pollution (*e.g.*, sewage injection wells, cesspools, illegal grading, stream channelization) are killing our reefs and must be reduced through statewide action and policy.

Hawaii's coral reefs generate more than \$350 million of income annually in recreation, fishing, aquarium capture, research and other uses. They provide for our unique way of life in Hawai'i, and are a source of sustenance as well as recreation. Taken together, the actions outlined above form a comprehensive program that will enable the State to turn the tide on reef degradation and begin to preserve the biological, cultural, and economic values of Hawaii's reefs.

¹ Friedlander, A.M., presentation at the International Coral Reef Symposium, July 2008.

² Williams, I.D., et al., *Assessing the importance of fishing impacts on Hawaiian coral reef fish assemblages along regional-scale human population gradients*. *Environmental Conservation*, 2008. **35**(3): p. 261-272.

³ Friedlander, A.M., E. Brown, and M.E. Monaco, *Defining reef fish habitat utilization patterns in Hawai'i: comparisons between marine protected areas and areas open to fishing*. *Marine Ecology-Progress Series*, 2007. **351**: p. 221-233.

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NOTICE OF HEARING

DATE: Monday, February 09, 2009
TIME: 9:00 a.m.
PLACE: Conference Room 325
State Capitol
415 South Beretania Street

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

Good morning Chair Ito, Vice-Chair Har, Honorable Members of the House Committee on Water, Land, and Ocean Resources. I am Roy Morioka, a retiree, fisherman and resident of Waialae-iki, Oahu. I strongly support this bill as it echoes and amplifies the cry from the fishing community whose voice remains drowned out and unheard amid the loud and persistent voices being focused on the legislature and HDAR/DLNR by a well funded lobbying effort by well-meaning NGO's and environmentalists.

This bill calls for the reporting of proposed regulatory changes being considered by the department to be reported to the legislature to ensure that the department has followed the process and direction provided in Section 187A-2(6) and related sections. Through the years I have consistently asked 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 change or rule and NOT simply rely on public opinion to develop management rules and regulations. 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 regulatory action. To date my request has fallen on deaf ears and I have been advised by leaders of the department at a public meeting that "we have no authority to regulate and challenge other state departments and our authority is limited to regulating fishermen only."

This is a travesty when one considers that the department entrusted with our state's natural resources has no authority to regulate the actions of another state department whose actions may have an adverse effect on the health and existence of our precious ocean resources. I have always looked upon the department to be the lead advocate for the resource first and to advise the community as to what's happening well or bad to our ocean and natural resources. Think about this, commercial, recreational and subsistence fishing may become extinct if fishermen are the only ones held accountable for the health and sustainability of our ocean resources.

The prevailing attitude and actions of the department is demonstrated by the current "scoping sessions" related to goatfishes, parrotfishes and jacks. Each session is reported to have separate agendas and presentations from which the department plans to develop rulemaking recommendations for public consideration at a future time. I ask you, how can one make a recommendation based on differing presentations and formulate a policy or regulation on feedback from the community from different presentations and discussions that is fair and consistent? This leads to a situation where only public opinion via the loudest voice, not statistics or studies related to health and sustainability of stocks, will govern the management of our state's ocean resources.

When will the department be held accountable and do its job as prescribed? This begs the question that if it is the desire of this state to develop rules and regulations by public opinion, we do not need this department and its administrative authority, and all future ocean resource management rules and regulations be developed at the legislature as it was before? There are many such bills being introduced to the legislature each session giving rise to question to whether the department is fulfilling its duties as prescribed by law and whether the legislature should again be the manager of our ocean resources.

As a tax paying citizen of this state facing discrimination and extinction because I am a member of the only group targeted to be managed by the department that is failing to perform its duties, I strongly support your effort in this bill to determine whether the department has fulfilled its duties and legal obligation to the state's people and its ocean resources as described in Section 187A-2(6) before developing or changing rules and regulations for the families of fish listed.

Thank you again for this opportunity to testify and humbly ask that you pass this bill and hold the department accountable for its actions as provided by law.

Sincerely yours,

Roy N. Morioka

A discriminated citizen and fisherman facing extinction