

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

Monday, April 6, 2009
4:00 PM
State Capitol, Conference Room 308

In consideration of
SENATE BILL 378, SENATE DRAFT, 1 HOUSE DRAFT 1
RELATING TO FISHING

Senate Bill 378 Senate Draft 1, 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, which proposes many unfunded mandates that are not possible to meet under current budgetary restrictions.**

The Department notes that this 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, such as utilization of "all available data". 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

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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 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, proposes unfunded mandates that are utterly unrealistic in light of current State budgets, and should not be advanced out of committee.

Testimony of The Nature Conservancy of Hawai'i
Opposing S.B. 378 HD1 Relating to Fishing
House Committee on Finance
April 6, 2009, 4:00PM, Room 308

The Nature Conservancy opposes S.B. 378 HD1 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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FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Friday, April 03, 2009 10:51 PM
To: FINTestimony
Cc: mjellings@hawaii.rr.com
Subject: Testimony for SB378 on 4/6/2009 4:00:00 PM

Testimony for FIN 4/6/2009 4:00:00 PM SB378

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Carl Pao Jellings SR
Organization: Individual
Address:
Phone:
E-mail: mjellings@hawaii.rr.com
Submitted on: 4/3/2009

Comments:

By all the testimony I have read thus far according to many individual's including recreational divers from Maui it seems Uhu and goat fish are looking pretty grim, fish are a funny creature's they adjust to threats quite like humans.

The spear gun fishery a sport that has caught on and has advanced in popularity in the last 10 years has taught fish their comfort zone has changed and through quick evolution and natural survival fish are making instinctive adjustments especially where more consistent pressures exist.

When I started diving in the late sixties, My dad drove the boat we'd hang on the side and I'd point the way tracking Uhu,, evolution at the time the only threats were sharks the uhu ran straight into a hole ,all we had to do was dive down and wait for a clean close shot .today this has changed.

fish have made adjustments Uhu's are adjusting to gear types to and including this fairly new sport, the threat has changed the range for harm has changed, to simply see a diver, fish will recognize this as a threat and adjust in this case out of sight out of range , always remember fish are wise and often underestimated by people who are not familiar or do not have the experience ,technique's have forced evolutionary change,

A good example would be Haunauma Bay where fish swim amongst people unconcerned because no threat exists.

I have fished for over 40 years it has been my main source of livelihood all these many years, my experience comes daily for years and years , I am still fishing today and have changed fishing strategies time and time again not just for Uhu or weke but on many many different species,

In many areas I must say the strategy over time has changed because of nearshore changes such as habitat degradation especially from alien species and to include development, fresh water ,silt, sand shifts nearshore erosion, light pollution, noise pollution .all this and more has had impacts on spawning, recruitment, food resources, and critical habitat, all basic necessities on a thriving reef.

So understanding environmental changes that impact the very resources that I have depended on throughout my life has made me critically aware and active in fisheries management primarily habitat preservation and that this awareness has taught me, before the akule is eight and one half inches, or before the papio has reached 16 inches and finally by the grace of God ' I ' have a chance to harvest a few of these resources, realize a million people live in this State who use water resources critical to many fisheries, contribute to sewage , that pollute nearshore estuaries lights that force fish to feed further offshore making them vulnerable to predator's, agriculture and development that contribute to runoff and sediment,

Therefore curtailing fishing has only proven one thing to me the promised miraculous result as in the gillnet ban ,size increases, gear restrictions, closed seasons,closed to fishing areas, and now proposed 2 fish per person were will it end.

Before people realize they are all cumulative contributor's to reef degradation and loss of critical nearshore habitat whether they like it or not ,"THE" basic fundamental building block for all species to thrive and exist.

Mahalo
Carl P Jellings SR.

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

COMMITTEE ON FINANCE

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DATE: Monday, April 06, 2009
TIME: 4:00 p.m.
PLACE: Conference Room 308
State Capitol
415 South Beretania Street

TESTIMONY IN SUPPORT OF SB378 SD1, HD1

Hawaii Nearshore Fishermen are in support of SB378 SD1, HD1

SB378 SD1 HD1 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 SB378 SD1 HD1 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 the reporting requirements and other perhaps burdensome fiscal implications that this bill might generate are no longer in the bill. 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

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

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NOTICE OF HEARING

DATE: Monday, April 06, 2009
TIME: 4:00 p.m.
PLACE: Conference Room 308
State Capitol
415 South Beretania Street

Strong Support of SB 378, SD1, HD1; Relating to Fishing

Good afternoon Chair Oshiro, Vice-Chair Lee, Honorable Members of the Committee on Finance. I am Roy Morioka, a retiree, fishing enthusiast and resident of Waialae-iki, adjoining Maunalua Bay, Oahu. I testify in strong support of this bill in its HD1 form as I have testified through its hearings in the House and Senate committees on HB 1712 HD2, since it seeks to insure that the DLNR/HDAR has followed the process and direction provided in Section 187A-2. Over these past four years, I have come before you and have consistently sought to have the department follow this section and provide the public with data it has collected and science it has conducted in developing proposed regulatory changes or rules and NOT simply rely on public opinion and hearsay. I have also asked that the science and statistical data consider and include obvious direct and indirect impacts that have caused the need for a specific action and to include 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.”

I sat incredulous and disheartened when the department entrusted with our state’s natural resources advised the public that it has no authority to challenge the actions of another state department whose actions may adversely affect the health and existence of our precious natural resources. I have trusted the department to be the lead advocate for the resource and the source to advise the community as to what’s happening, whether it is good or bad for our natural resources. This strategy of using only fishing regulations to maintain the health and sustainability of our ocean resources is extremely short-sighted. On the other hand, perhaps it is designed to eliminate commercial, recreational and subsistence fishing and make our nearshore waters an aquarium? Something smells. And, guess what? If the real causes of the injuries to and death of our reefs is ignored, stopping fishing will have done nothing to replenish fish stocks or the coral reef and its inhabitants.

When will the department be held accountable and do its job as mandated? Each year there are several bills calling for the regulation of one ocean resource or another that is introduced to the legislature. Isn’t this the RED FLAG that the department is failing to do its job? To further exacerbate the problem, the department when hearing of a concern conducts listening sessions to gather public sentiment and not science or data to determine the perceived condition of the resource and actions that should be taken. The recent sessions held

Roy Morioka Senate Testimony HB1712, HD1
To be heard: 3:00 PM, March 20, 2009

throughout the state that were conducted for parrot fishes, goat fishes and jacks, did not present consistent information from the department, nor were the contents nor formats of these meetings consistent, and then we are told that the information gathered at these meetings will be used to develop regulations for these families of fish, I was dumbfounded. How does one develop relevant and meaningful regulations after conducting a series of "apples and oranges" meetings to produce a cherry pie? Perhaps it is going through the motions to say that it did go through the procedures mandated. This does not say much for "transparency" in fisheries management, or honesty in government.

To hear the head of the department testify before a house committee that it does not have the resources to properly conduct the science necessary to effectively manage the resources it is entrusted is another indicator that the system is broken. Then to hear that such science and data collection would require extending the studies to the Northwestern Hawaiian Islands (NWHI). Such statements are bogus! For one, the coral reef ecosystem in the NWHI is totally different from those of the main Hawaiian Islands as it is predator dominated, meaning little fish are at the pointed end of the pyramid of the hierarchy of fishes there and vice-versa here in the main Hawaiian Islands. Additionally, you should be aware that the federal government has assumed the role of resource manager of the NWHI for decades and conducts the science and data collection to better understand the nature of the conditions that exist. Further, the U.S. Fish and Wildlife Service has been the manager of Midway Island and have conducted numerous studies and data collection of the flora and fauna of that island ecosystem.

This then begs the question, what has this department been doing with the monies it has spent on monitoring coral reefs and their associated inhabitants? Aren't fish a part of the coral reef ecosystem and an indicator of its health? Where do the reef fishes such as parrot fish, goatfish and jacks go when a reef is devastated by siltation, urban runoff, pollution, etc.? What happens to our native species when alien species invade their habitat? What happens when rivers and streams are diverted, hardened, or reduced eliminating estuarial habitat? What happens when injection wells are constructed and its toxic discharge percolated through the ocean sea floor? What happens when fertilizers and pesticides wash into the ocean after heavy rains or because of unchecked or broken irrigation problems? What happens when harbors are created and channels built? What happens when an artificial reef is constructed offshore from an existing reef? Is fishing really THE problem? I for one think not! I have watched the devastation of Maunalua Bay, Oahu since the early 50's and know that fishing was not the cause of the bay's demise.....

As a citizen of this state and one facing discrimination because I fish, I am seeking your support and action to cause the department to fulfill its mandated duties to its people and its ocean resources as described in Section 187A-2 before developing or changing fishing rules and regulations. If you find that the department is unable to fulfill these duties, then it is time to realign this function to one that can effectively do the job.

Thank you again for this opportunity to testify.

Respectfully,
Roy N. Morioka

COMMITTEE ON FINANCE
Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair

RE: SB 378, SD1, HD1 scheduled to be heard by FIN on Monday, 4/6/09 at 4:00 pm in conference room 308.

My name is Brian F. Funai and I am testifying in support of SB 378, SD1, 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 its responsibility of actively managing the resource through monitoring, data gathering, and unbiased scientific analysis. All of the successful fisheries and sensitive ecosystems around the country are actively managed by 1. Understanding what it is that they are managing - how much, where, when and under what conditions and 2. Continuously monitoring, creating regulations, and modifying them based on what # 1 tells you, just as this bill would require. Instead of doing its job, the Department has continually neglected its responsibility by basing management decisions not on data but on polls, politics and public opinion.

If the ocean resource is that important to the State and all of the income generated from it that we depend on, then it should be treated equally. No doubt that opponents of this bill will say it is too expensive and time consuming but I liken it to saying that highways and hospitals are too expensive and take too long to build. For many of us, the health of our ocean resource IS as important as driving comfortably and it IS a life or death situation.

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 significant 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