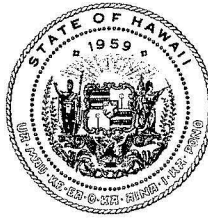
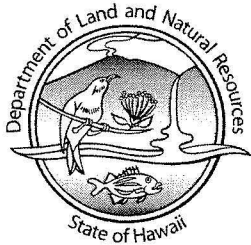


LINDA LINGLE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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FIRST DEPUTY

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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON OF THE  
BOARD OF LAND AND NATURAL RESOURCES**

**On House Bill 2687, House Draft 1 – RELATING TO AQUATIC RESOURCES**

**BEFORE THE HOUSE COMMITTEE ON  
FINANCE**

February 22, 2008

House Bill 2687, House Draft 1 would require the Department of Land and Natural Resources (Department) to review each rule pertaining to aquatic resource or fishing rights and regulations (pursuant to Chapters 187A and 188, Hawaii Revised Statutes, respectively) adopted after January 1, 2008, and to include a determination on the effects of previously promulgated bottomfish management and lay gill net rules, to determine whether each rule achieved its intended purpose, estimate the timeframe for the rule to achieve that purpose, determine the rule's effect on the resource's health, and determine the rule's effect on the public and user groups. It also asks the Department to prepare an analysis report to the Legislature for the 2009 Regular Session and every five years thereafter. The Department opposes the overly burdensome and scientifically unrealistic provisions of this bill, and voices strong concern regarding the possible impacts to the Executive Supplemental Budget request and departmental productivity as a whole.

As written, this bill would mandate by statute, monitoring programs that the Department has already put into place. As such, this measure is in the Department's view unnecessary. For example, following the establishment of new bottomfish restricted fishing areas in December, 2006, the Department initiated a comprehensive monitoring program utilizing remote, deep water camera systems that analyze both numbers and sizes of bottomfish inside and outside the restricted areas. This program has been designed to run for the next five years to provide a statistically valid test of this management action. It is currently one of the most technologically advanced monitoring programs for any deep water fishery in the United States.

Similarly, following the passage of new rules regulating lay gillnets in early 2007, the Department instituted a monitoring program using in-water fish surveys, beach seine surveys, and creel surveys to assess the effect of these new rules. As with the bottomfish monitoring program, this laynet monitoring study is funded for the next five years in order to ensure statistical validity.

In addition to the two recently initiated studies cited above, the Department has also undertaken a comprehensive monitoring program in West Hawaii for the past eight years in order to assess the

effectiveness of the Fisheries Replenishment Areas for the commercial aquarium fishery instituted by the Legislature via Act 306 in 1998. This monitoring program, which has gained national and international attention, has proven to be a key test of the effectiveness of area-based management regimes, and to date has demonstrated that such regimes are extremely effective fishery management tools.

At the same time, this bill would require a monitoring and reporting protocol for every rule passed by the Department affecting aquatic life, no matter how minor. In some cases, such as those noted above, such monitoring and reporting programs are completely applicable, but for others, such as the setting of freshwater fishing seasons, such requirements would result in trivial studies that would inappropriately divert limited staff resources. In addition, for certain rules such as bag and size limits that involve multiple species across multiple islands, determining cause-effect relationships between a rule and a subsequent response in the fishery stocks is not a clear cut or straightforward undertaking, due to the number of independent variables involved. Under the requirements proposed by this bill, such studies would still have to be undertaken, even if the information resulting from them would be essentially meaningless. This would once again be an inefficient use of State resources.

The Department 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 proposal would also to some extent duplicate 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 detract from the Department's overall efficiency and productivity.

The Department feels that if this bill is moved forward, a move that we oppose for the reasons noted above, then its provisions should be limited to analysis of rules which regulate discrete fishery stocks or regulate specific gear types, where such monitoring programs can provide properly circumscribed and meaningful scientific data. The Department appreciates the incorporation of its previous recommendation that the review period be lengthened to five years, so as to accommodate the time period which fishery science recognizes as the appropriate minimum in which to observe a statistically significant outcome. Nevertheless, even with this longer reporting period included, the bill continues to insist on an overly broad set of reporting requirements that are not properly applicable to the full range of rules governing aquatic resources as promulgated by the Department, thereby requiring the production of many potentially meaningless studies and reports, which would in turn divert state resources from more pressing resource management needs.

In summary, the Department feels that this bill proposes an overly broad set of requirements that are not properly applicable to the full range of rules governing aquatic resources that are promulgated by the Department, would require the production of certain potentially meaningless studies and reports, and would as a result divert State resources from more pressing resource management needs.

Testimony of The Nature Conservancy of Hawai'i  
Supporting With Amendments H.B. 2687 HD 1 Relating to Aquatic Resources  
House Committee on Finance  
Friday, February 22, 2008, 3:30 PM, Room 308

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*The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.*

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The Nature Conservancy of Hawai'i supports H.B. 2687 HD 1 with the amendments suggested below and attached.

Healthy reefs and fisheries have many economic, environmental and cultural benefits. We all have a stake in their future. Furthermore, fishing is integral to our cultural heritage and our island way of life. However, as anyone who has spent time in Hawaiian waters knows, many of our reefs and fisheries are at serious risk from a variety of threats and a precipitous decline in near shore populations of fishes. In fact, scientists estimate that our near shore fisheries are merely one-quarter of what they were a century ago—that is a decline of 75% over 100 years.

Given this situation, this bill points out the importance of reviewing and assessing whether aquatic resource management and fishing rules are, in fact, working to protect and enhance our natural resources for the present and the future. However, we are concerned that the Department of Land & Natural Resources may not have the resources and capacity to meet the review and reporting requirements in the bill. We suggest a more defined set of requirements that will still provide the Legislature and the public an instructive analysis of whether and how aquatic resource management rules are working.

**The Nature Conservancy recommends that the bill be amended to:**

- **Specifically identify the DLNR's recent lay gill net and bottom fish rules for monitoring, analysis, and reporting to the Legislature and the public; and**
- **Provide the DLNR with additional resources to properly conduct this review and reporting.**

**Detailed proposed amendments are attached.**

We are united by our mutual interest in ensuring that Hawaii's reefs and near shore waters are healthy and continue to provide us with fish—to catch, to eat, to watch, and to thrive now and into the future. This can be achieved through reasonable scientific assessment, adequate enforcement, collaboration in marine management, and—most of all—stewardship and responsible use on the part of all of us.

Attachment

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Proposed HD 2

**Report Title:**

*Fishing Rights and Regulations*

**Description:**

*Requires the department of land and natural resources to: review its each rules adopted after 01/1/08, concerning lay gill nets and bottomfish ~~the protection and propagation of certain aquatic life or the conservation and allocation of the natural supply of aquatic life~~; determine whether the rules ~~has~~ are achieving ~~its their intended purpose~~, the timeframe for achieving their purpose, and the effect on the resource and the public; and submit a report. Sunsets on 12/31/20. (HB2687 HD1)*

HOUSE OF REPRESENTATIVES  
TWENTY-FOURTH LEGISLATURE,  
2008  
STATE OF HAWAII

H.B. NO.

2687  
H.D. 1  
H.D. 2

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A BILL FOR AN ACT

RELATING TO AQUATIC RESOURCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that ~~over the past ten years~~, the department of land and natural resources is responsible for ~~has adopted~~ intended rules concerning the protection, and propagation, ~~of introduced and transplanted aquatic life, and the conservation,~~ and allocation of the natural supply of aquatic life ~~that have greatly diminished the public's ability to utilize Hawaii's aquatic resources. In some instances,~~ members of the public have criticized the department of land and natural resources for setting bottom fish area closures, shoreline access boundaries, and other fishing restrictions in an arbitrary manner without scientific evidence to support the department of land and natural resource's position. Other members of the public have requested the department provide greater protections for and limitations on the take of aquatic resources.

The legislature further finds that it is the primary responsibility of the department of land and natural resources

Proposed HD 2

to protecting our limited natural resources. Carrying out this responsibility must should be balanced with the equally important responsibility of ensuring the public's reasonable use of these resources if such use or activity can be carried out without undue harm to the resources.

The purpose of this Act is to better understand the impacts of aquatic resource and fishing rules in Hawaii by requiring the department of land and natural resources to review the effects of ~~its rules, including its lay gill net and bottomfish management rules,~~ and to determine whether the rules are achieving their intended purposes, the anticipated timeframe for achieving the intended purposes, the effect on the resource, general public, and resource users.

SECTION 2. (a) The department of land and natural resources shall:

(1) ~~Review each rule adopted after January 1, 2008, pursuant to chapters 187A and 188, Hawaii Revised Statutes, concerning the protection and propagation of introduced and transplanted aquatic life or the conservation and allocation of the natural supply of aquatic life in any area, including rules that establish size limits, bag limits, open and closed fishing seasons, specifications and numbers of fishing or taking gear that may be possessed, or that restrict public access to the natural supply of aquatic life, including the effects of its bottomfish management rules (Hawaii Administrative Rules §13-89) and its lay gill net rules (Hawaii Administrative Rules §13-75);~~

(2) Determine whether each rule is achieving its intended purpose;

(3) Estimate the timeframe necessary for each rule to achieve its intended purpose;

(4) Determine the effects of each rule on the health of the resource; and

(5) Determine the effects of each rule on the general public and user groups.

(b) The department of land and natural resources shall submit a report, including an analysis of whether the bottomfish and lay gill net rules are achieving their intended purposes, when they might achieve their intended purposes, and the impact of the rules on the resource, public, and user groups, to the

## Proposed HD 2

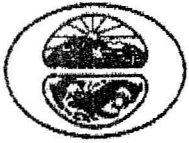
legislature no later than twenty days prior to the convening of the 2009 regular session, and every five years thereafter. The department of land and natural resources may include the report as part of its annual report to the legislature.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$            or so much thereof as may be necessary for fiscal year 2008-2009 for the purposes of this Act.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval and shall be repealed on December 31, 2020; provided that section 3 shall take effect on July 1, 2008.

586-6001



# Conservation Council for Hawai'i

Testimony Submitted to the House Committee on Finance

Hearing: Friday, February 22, 2008  
3:30 pm  
Room 308

Opposition to HB 2687 HD 1 Relating to Aquatic Resources

Aloha. The Conservation Council for Hawai'i opposes HB 2687 HD 1, which requires the Department of Land and Natural Resources to review rules adopted after January 1, 2008, concerning aquatic life and determine whether the rule has achieved its intended purpose.

We oppose this bill because it may be unnecessary. We would hope that all agencies – federal, state, and county – review their rules periodically for effectiveness.

We also oppose this bill because it appears to single out the Division of Aquatic Resources and punish it for attempting to regulate fishing in this state. Fishing is a legitimate and worthy activity in Hawai'i. But it is not a free-for-all. Fishers must understand that fishing – like all activities in public areas using public resources – must be regulated. Fishers understand that our aquatic resources and ecosystems are in trouble, but they fail to acknowledge that regulation is necessary to protect the ocean for all of our citizens to use and enjoy. Regulating fishing does not mean that the fishers are at fault or that fishing is the only stress on our ocean resources.

Mahalo nui loa for the opportunity to testify.

Sincerely,

Marjorie Ziegler



**Working Today for the Nature of Tomorrow!**

Telephone/Fax 808.593.0255 • email: [info@conservehi.org](mailto:info@conservehi.org) • web: [www.conservehi.org](http://www.conservehi.org)

P.O. Box 2923 • Honolulu, HI 96802 • Office: 250 Ward Ave., Suite 212 • Honolulu, HI 96814

**Hawai'i Affiliate of the National Wildlife Federation**

President: *Julie Leialoha* • Vice-President: *Nelson Ho* • Secretary/Treasurer: *Kim Ramos* • Directors: *Fred Kraus, Ph.D.* • *Douglas Lamerson*, *George Robertson* • *Claire Shimabukuro* • *Helene Takemoto* • *Mashuri Waite* • Executive Director: *Marjorie Ziegler*

To: **Representative Marcus Oshiro, Chair**  
**Representative Marilynn Lee, Vice-Chair & Members of the**  
**Committee on Finance**

From: **Darrell Tanaka,**  
Haiku, Maui, Hi, 96708

Re. **Hearing on HB 2687 Relating to Aquatic Resources**

**Bill scheduled to be heard by FIN on Friday, 02-22-08 at 3:30 pm in House  
conference room 308.**

**Testimony in Support, with recommendation for amendment.**

Dear Chair Oshiro, Vice-Chair Lee and members:

Thank you for hearing my testimony in support of HB 2687 relating to aquatic resources. It is my hopes you will consider a suggestion for **amendment to HRS section 91-3 in regards to public meetings. To require the Dept. of Land and Natural Resources to hold public informational meetings atleast 14 days prior to a public hearing, to require legal notification in local newspapers as well as posting said notice on the DLNR website home page under "News Releases"**. Natural resource rule changes are known to be emotionally hot topics, therefore, proper engagement of the public is crucial, and if not done, can lead to additional, unnecessary animosity, I offer the following as an example.

Recently the Div. of Boating and Ocean Recreation of the Dept. of Land and Natural Resources pretty much crapped on harbor users with their new rule regarding parking in harbors...in particular Ala Wai and Lahaina Harbors. They are proposing to hike slip fees and decrease the time harbors users can park at harbors statewide. But that's not the real problem.

The real problem was the lack of **informational meetings** on neighbor islands, there were none, thus, when the public hearing came about for this administrative rule change, boaters and fishers on Maui did not know what to say as evidenced by a Maui News Article at the end of this letter. Public Hearings are required by Law, however, informational meetings, where the public gets to ask questions and get answers is not required by law. I am proposing we change this.

The following is the Maui News Article aforementioned.

**Proposed parking fee rules change flounder at hearing**  
By CLAUDINE SAN NICOLAS, Staff Writer



LAHAINA – Local fishermen and small-boat harbor users expressed anger and frustration Friday night during a hearing on proposed harbor parking fee increases and rule changes.

A group of about 30 people criticized the proposed changes and testified against them during a hearing held in Lahaina by the Department of Land and Natural Resources' Division of Boating and Ocean Recreation. Many of the people testifying also complained about the timing of the hearing held from 5 to 7 p.m. three days after Christmas. They said many boaters were still out working on the ocean and/or spending time with family during the holidays.

"They're going to try to say there was limited opposition," said Greg Howeth, president of Lahaina Divers. Howeth said people might not be so opposed to the rule changes and fee increases if they knew the reason behind the changes and what the money was going to be used for. "All we see is fees being raised and no explanation why," said Brendan Au, a nine-year boat operator whose testimony mirrored Howeth's.

The hearing looked as if it might shut down after the first 20 minutes when fishermen and small-boat operators hesitated to testify because they were unsure about the proposed rule and fee changes.

Acting Small-Boat Harbors Maui District Manager Nicholas Giaconi said there was no specific boating program activity targeted for money generated by the fee increases, but all boating fees went into a special fund to cover costs at small-boat harbors throughout the state. As an example, Giaconi pointed out that a new bathroom installed at Lahaina Harbor cost at least \$500,000. He later told The Maui News that small-boat harbor projects often need to be subsidized by the state because the boating fund doesn't receive enough funding for all needed improvements.

State law also requires that boating fees and parking regulations be changed every 10 years to comply with new statutes.

Division of Boating and Ocean Recreation officials also expressed hope that rule amendments would help them more effectively manage parking within the small-boat harbors and facilities, plus provide additional security required from a new parking management permit. Fishermen were frustrated by Giaconi's inability to say specifically what the increase in fees would pay for or when the proposal would be presented to the Board of Natural Land and Resources for final approval.

"Nobody knows. Nobody can answer," said 62-year-old boat operator Matt Kahapea of Honolulu. Kahapea was visiting Maui for the holidays and pointed out that many boaters would have attended Friday's hearing if it had not been scheduled at an inconvenient time. Audience members also pointed out they would have preferred that state officials first hold an informational meeting to explain all the proposed parking rule changes and fee increases. Atlantis Submarines General Manager Jim Walsh, who also is a recreational boat owner, said he believes each harbor should have its own set of rules. He argued that

Lahaina Harbor has a different set of issues than those at Ala Wai Harbor on Oahu. "The one-size-fits-all theory really doesn't work in reality," Walsh said. Both Howeth and Jim Coon, president of the Ocean Tourism Coalition, were actively involved in meetings in 1999 and 2000 with state officials to hash out small-boat harbor rule changes and permit fees. Both men objected to the proposed rule changes and recommended that state officials search their records for a comprehensive rule-and-fee package discussed nearly 10 years ago.

Highlights of the current proposed fee and rule changes are:

Repealing the parking permit rules specific to Lahaina Harbor. Officers there currently set priorities and issue the permits.

Increasing parking permit fees at small-boat harbors. Those who own or co-own a vessel moored at the small-boat harbor will see an increase from the current \$5 a quarter to \$25 a month. Others working on a permitted boat will see their permit fees rise from \$15 per quarter to as much as \$25 a month. Workers with businesses operating at a small-boat harbor will have fees increase from \$10 a month to \$90 a month. Cutting the time a vehicle without a permit can be parked at a small-boat harbor or ramp from 72 hours to 24 hours. "Why are they coming after the lowest people on the totem pole?" asked Kim Miyaki, the owner of a charter sport fishing boat. "The people who could least afford it are being targeted for increase in fees." Deytyn Asami, an owner of a commercial fishing operation, said small businessmen and fishermen cannot afford to pay such high increases in fees. "That's definitely unreasonable," Asami said. "We're fishermen. We're not millionaires."

Asami also took issue with permit parking times, saying it's difficult for boat operators to estimate the time they need in the ocean to fish and conduct business. Sometimes it might take 24 hours, but other times it might take longer and they should not have to worry about parking tickets on shore. "The problem comes in we don't know how long we're going to be out there in the ocean," Asami said. Friday's hearing in Lahaina was the last scheduled in a series of meetings held statewide earlier this month. Written testimony will be accepted through Friday by the Division of Boating and Ocean Recreation; or call the division's Maui office at 243-5824. Written testimony can be sent to: Department of Land and Natural Resources Chairwoman Laura Thielen, Kalanimoku Building, 1151 Punchbowl St., Honolulu 96813; send it via fax to (808) 587-0390; or by e-mail to [dlnr@hawaii.gov](mailto:dlnr@hawaii.gov).

Claudine San Nicolas can be reached at [claudine@mauinews.com](mailto:claudine@mauinews.com).

Sincerely, Darrell Tanaka

HOUSE FINANCE COMMITTEE

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

February 21, 2008

RE: HB2687 HD-1 scheduled to be heard by WLH on Wednesday,  
2/22/08 at 8:30 am in conference room 308.

**My name is Brian F. Funai and I am testifying in support of HB2687  
HD-1.**

HB2687 HD-1 would require the department of land and natural resources to review rules adopted through chapter 91 for effectiveness. I feel that effective management of our resources involves the analysis and assessment of what has been implemented. I believe that this is lacking but it is essential to making sound management decisions in the future.

**I support this bill for these reasons and ask that you please pass HB2687  
HD-1.**

Thank you for your time and allowing me to testify.

Brian F. Funai  
Kaneohe, HI 96744