

TESTIMONY
HB 2687 HD1

fax 586-4459



Conservation Council for Hawai'i

Testimony Submitted to the Senate Committee on Water and Land
Hearing: Wednesday, March 12, 2008 2:45 pm
Conference Room 414

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 for the opportunity to testify.

Sincerely,

Marjorie Ziegler



Working Today for the Nature of Tomorrow!

Telephone/Fax 808.593.0265 • email: info@conservehi.org • web: 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

testimony

From: carl [mjellings@hawaii.rr.com]
Sent: Sunday, March 09, 2008 8:15 PM
To: testimony
Subject: HB 2687, HD1

HB 2687, HD1

COMMITTEE ON WATER AND

LAND

Committee on Ways and Means

Honorable Senator Clayton Hee, Chair
Honorable Senator Roslyn Baker Chair

Honorable Committee Members

Aloha Senator Clayton Hee Mahalo Nui for Hearing HB 2687,HD1

My Name Is Carl P Jellings full time comm fishermen In Support of HB 2687, HD1
its been two years since the ban on Comm gillnetting for U"u or menpache has been in effect,
hopefully by now should be choke with those bagga"s to bad We still can"t catch'em, Our technique is
swift unlike lay and wait ,We hope to have Our Legislator"s as well as DLNR consider the reopening
of this unique Fishery should this Bill make it thru this years Tough
Legislature....

Aloha and Mahalo for allowing

me the opportunity to testify ...

3/10/2008

Senator Clayton Hee, Chair
Senator Russell S. Kokubun, Vice Chair
Committee on Water and Land

Wednesday, March 13, 2008
2:45PM
Conference Room 414

In Support of HB2687 HD1, Fishing Rights and Regulations

Honorable Committee on Water and Land Chair Hee, Vice Chair Kokubun and committee members. I am Roy Morioka, a fisherman and I thank you for this opportunity to testify in support of requiring the department of land and natural resources to determine whether or not rules adopted beginning this year concerning the protection and propagation of certain aquatic life of the conservation and allocation of the natural supply of aquatic life, and the recently adopted bottomfish management and lay gillnet rules have achieved their intended purpose.

As a fisherman, I have witnessed the implementation of rules that had no baseline reference, nor adequate monitoring and analysis to determine whether or not the adopted rule is achieving the desired management outcome. Failure to include such standards, and create a condition where we adopt rules that are not achieving the intended purpose at the expense of a resource not receiving the desired protection or desired conservation effect is unacceptable. Effective stewardship requires baseline references, scheduled monitoring and analyses and periodic reports to the community on whether or not the adopted rule is achieving its intended purpose or not. More importantly, good stewardship would also cause actions to implement new rules if those implemented have not achieved the desired results, or relax or eliminate the rule should the conservation effort be successful.

Thank you again for this opportunity to testify in support of this important measure.

Sincerely Yours,
Roy Morioka

THE SENATE
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON WATER AND LAND

Senator Clayton Hee, Chair
Senator Russell S. Kokubun, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, March 12, 2008
TIME: 2:45 p.m.
PLACE: Conference Room 414
State Capitol
415 South Beretania Street

From: Tony Costa
Hawaii Nearshore Fishermen
Honolulu, Hawaii
808-540-1308 Tel

Copies needed: 5

TESTIMONY IN SUPPORT

My name is Tony Costa and I am testifying on behalf of Hawaii Near Shore Fishermen, a loosely organized, tight-knit group of nearshore fishermen.

HB2687 would require the department of land and natural resources to review rules adopted through chapter 91 for effectiveness.

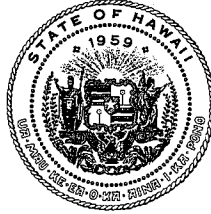
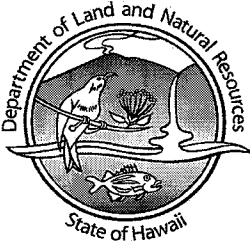
Hawaii Nearshore Fishermen are in SUPPORT OF HB2687HD1

In order to have an honest understanding of the effectiveness of rule change and so that we can determine if we have achieved the intended purpose of fishing rules and regulations adopted by chapter 91, we support the passage of HB2687

Respectfully submitted,

Tony Costa

LINDA LINGLE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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
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 SENATE COMMITTEE ON
WATER AND LAND**

March 12, 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 this measure in its present form.

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, thereby mandating the production of many potentially meaningless studies and reports.

The Department therefore suggests revising this bill's House Draft 1, SECTION 2, to read as follows:

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, provided that such review shall be restricted to those rules which regulate a discrete fish stock or fish stock complex, or that regulate specific fishing gear or gear type;
- (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 fishery impact on the aquatic life or the type of fishing gear involved; and
- (5) Determine the effects of each rule on the fishing public.

(b) The department of land and natural resources shall submit a report, including all criteria as noted in (a) of this section, to the legislature no later than twenty days prior to the convening of the 2009 regular session, and every five years thereafter. The department may include the report as part of its annual report to the legislature.

In summary, the Department feels that unless amended as per above, this bill will mandate 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, thereby diverting 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
Senate Committee on Water and Land
Wednesday, March 12, 2008, 2:45 PM, Room 414

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawai'i'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.

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 only 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

BOARD OF TRUSTEES

S. Haunani Apoliona Peter D. Baldwin Christopher J. Benjamin Zadoc W. Brown, Jr. Carl A. Carlson, Jr. David C. Cole Samuel A. Cooke
Peter H. Ehrman Kenton T. Eldridge Guy Fujimura J. Stephen Goodfellow Thomas Gottlieb James J.C. Haynes Ron Higgins Peter Ho
Stanley Hong J. Douglas Ing Mark L. Johnson Dr. Kenneth Kaneshiro Bert A. Kobayashi, Jr. Faye Watanabe Kurren Duncan MacNaughton
Bill D. Mills Wayne Minami Michael T. Pfeffer H. Monty Richards Jean E. Rolles Scott Rolles James Romig Eric Yeaman

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

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 ~~ing~~ 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 ~~s~~Some instances, members of the public ~~have~~s 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.

TESTIMONY
HB 2687 HD1
(END)