

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 3174 - Relating To Federal Fisheries Regulations

**BEFORE THE HOUSE COMMITTEE ON
JUDICIARY**

February 14, 2008

House Bill 3174 is an Administration bill that would authorize the Department of Land and Natural Resources (Department) to adopt, amend, or repeal administrative rules equivalent to and consistent with federal fisheries regulations for stocks in declared states of overfishing where the fisheries span State and federal marine waters. If granted, such authority will facilitate management and enforcement of shared jurisdiction for stocks that occur in both State and federal waters, and prevent possible inconsistencies with federal law, thereby facilitating compliance. The Department strongly supports this Administration bill.

Three Hawaiian stocks are in federally declared states of overfishing: yellowfin tuna, bigeye tuna, and the Main Hawaiian Islands bottomfish complex. All three of the stocks occur in both State and federal waters, and are therefore jointly managed by the State and the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA).

There is a potential for differing management regimes to be implemented in State versus federal waters. The Department is constrained on rules it can promulgate based on existing statutory authority. Differences between federal and state laws for their respective jurisdictions are considered undesirable, because this leads to difficulties in enforcement, confusion for fishers as to the differing regulations, and potential dual catch reporting requirements, which can create a burdensome paperwork load.

The potential opportunity exists for the State and the federal fisheries agencies to create consistent regulations (so that a similar situation to adjacent State and county lands with incompatible zoning does not occur); to lessen confusion so that well-intentioned fishers are not forced to understand/know the differences, much less the boundaries for different regulations; and to lessen the challenges for enforcement when non-compliant fishers run back/forth between the boundaries. However, such an opportunity is not likely to be realized when the Department lacks the statutory authority to manage fisheries via mechanisms similar to those used by NOAA.

For federal waters in Hawaii, the federal Magnuson-Stevens Act (MSA) mandates for Hawaii are implemented by the NOAA. Under the revised MSA, fisheries in the Exclusive Economic Zone must now be managed via an annual catch limit (ACL), which is established individually for

000022

each stock or stock complex. An ACL must be set annually for each species or species complex being harvested in federal waters. Once this ACL is reached in a given year, the corresponding fishery will close for the remainder of the year. To determine whether an ACL has been reached or exceeded for a given species, detailed catch reporting is required; this information is currently collected by the State of Hawaii, but only for commercial landings.

One example of the potential for cooperative management can be seen in the main Hawaiian Islands bottomfish complex. NOAA recently declared the bottomfish complex in the main Hawaiian Islands to be in a state of overfishing, and has taken steps to end overfishing, pursuant to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (P.L. 94-265) and the amended Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (P.L. 109-479). The Department currently does not have explicit authority to adopt rules that would complement the proposed federal management measures for this fishery, which include annual catch limits (ACLs) or possibly individual quotas (annual maximum harvested amounts issued to an individual fisher).

Furthermore, without this authority, affected fish populations will continue to see declines, thus impacting fishermen, their families, and our communities in terms of lifestyles, livelihoods, the quality and quantity of fresh seafood. Some people may view this proposal as a violation of home rule and as overly restrictive, but the Department by contrast considers it to provide an important tool for collaborating with the federal government to manage fishery resources of mutual concern. Hawaii's growing population is producing an increasing the demand for high quality seafood, and more efficient levels of management are therefore required so that the State's fisheries are not overharvested.

If granted this authority, the Department would continue to promulgate new administrative rules to be consistent to federal laws, and by complying with the administrative rules procedures act, will afford the fishing public an opportunity to comment on such proposals as well as time to adjust to any new changes. The resulting rules are likely to be phased in over time.

In summary, this bill would enhance the Department's efforts to regulate shared jurisdiction fisheries by permitting the creation of a seamless network of rules applying equally to both state and federal marine waters. This enhancement will in turn avoid confusion for the fishing public and promote ease of enforcement by state and federal agencies. Because the authority we seek is limited to overfishing stocks, and can be utilized at the Department's discretion, we believe that it is sufficiently constrained, while at the same time preserving the State's full range of options in terms of management for shared jurisdiction stocks. If this bill is not enacted, there is a possibility that the federal fisheries agency may view the State's actions as incompatible, and is authorized to preempt the State's jurisdiction in order to sustain depleted fish stocks.

000023



HB 3174, RELATING TO FEDERAL FISHERIES REGULATIONS
House Committee on Judiciary

February 14, 2008
Room: 325

2:40 p.m.

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB 3174, which would allow the Department of Land and Natural Resources to adopt, amend, or repeal administrative rules to be consistent with federal fishery regulations.

While OHA understands the intent of this bill, and appreciates the need for consistency and efficiency, we do not agree that the equivalent of federal fishery regulations should be adopted by the State without benefit of Chapter 91 administrative hearings, which would allow for public review and input.

The Hawaii Revised Statutes mandate OHA to ensure the betterment of the condition of Native Hawaiians, in part by examining other agencies' actions. Public review of important natural resource use decisions such as these allows OHA to fulfill its mandate by providing it with adequate opportunity to ensure the protection of traditional and cultural access rights and uses, Native Hawaiian archaeological and burial sites, and natural and cultural resources. This bill would not only eliminate an adequate response by the public and public agencies like OHA, but it would also bypass the following sections of the Hawai'i Constitution:

Article XII, Section 4:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Article XII, Section 7:

000024

Every agency that has jurisdiction over the ocean must consider Hawaiian rights to access the ocean for traditional, cultural and subsistence activities.

OHA urges the Committee to HOLD, or appropriately amend, HB 3301. Thank you for the opportunity to testify.

000025



The Nature Conservancy
Hawai'i Program
923 Nu'uuanu Avenue
Honolulu, HI 96817

tel (808) 537-4508
fax (808) 545-2019
www.nature.org/hawaii

Testimony of The Nature Conservancy of Hawaii
Supporting H.B. 3174 Relating to Federal Fisheries Regulations
House Committee on Judiciary
Thursday, February 14, 2008, 2:40PM, Rm. 325

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 Hawaii supports H.B. 3174 Relating to Federal Fisheries Regulations to promote consistency between state and federal rules in shared fisheries in Hawaii.

This bill allows the Department of Land and Natural Resources to adopt rules and management measures that are consistent with federal regulations in shared fisheries, like the state-federal bottomfish fishery in Hawaii. This will allow for clear and consistent fisheries management. With this legislation, the State will also be required to amend or repeal its rules should federal regulatory agencies declare that their rules are no longer necessary—again to achieve consistency and fairness as between state and federal regulatory regimes.

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

000029