

DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
SUZANNE D. CASE  
Chairperson

Before the House Committee on  
WATER, LAND, & HAWAIIAN AFFAIRS

Wednesday, March 13, 2019  
10:00 AM  
State Capitol, Conference Room 325

In consideration of  
SENATE BILL 1371, SENATE DRAFT 2  
RELATING TO LAY NETS

Senate Bill 1371, Senate Draft 2 proposes to prohibit the use of lay nets to take aquatic life, except under a permit obtained by the Department of Land and Natural Resources (Department) and establishes the use of lay nets to take aquatic life as a misdemeanor offense. **The Department supports this bill and offers the following comments.**

The Department regulates lay net fishing through detailed restrictions on net dimensions, mesh size, soak time, time of day, frequency between sets, location, water depth, and inspection requirements. In addition, all lay nets are required to be registered with the Department and marked with identification tags and surface buoys. Despite these detailed regulations, which are intended to ensure responsible use of lay nets, the irresponsible use of lay nets continues with adverse impacts to both fishery resources and protected species.

In April 2018, the Assistant Regional Administrator of the National Marine Fisheries Service (NMFS) wrote a letter to the Department expressing concern regarding the “significant threat to Hawai‘i’s sea turtles and monk seals posed by unattended lay gill nets” (see attached). In the Main Hawaiian Islands, 96 turtles were found dead in lay gill nets from 1990 through 2016. During that same period, lay gill nets were indicated as a probable or contributing cause of death in dozens more turtle stranding cases. From 1994 through 2017, five Hawaiian monk seals were found dead in lay gill nets, and entanglement in lay gill net was the suspected cause of death in an additional five monk seal cases during that same period. Additionally, many more seals and turtles would have likely died entangled in unattended lay gill nets were it not for the rescue efforts of state and federal agencies and partners.

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

M. KALEO MANUEL  
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

Just last month, a young green sea turtle was found dead in an abandoned lay gill net in Punaluu, Oahu. That same net contained a number of rotting fish, which went to waste. The fact that lay net violations (and their associated impacts on aquatic resources) continue with such frequency suggests that harsher penalties and tighter management are warranted.

The Department supports the concept of a permit requirement for the use of lay nets. The current lay net registration system is problematic for two reasons. First, nets are only required to be registered once, and there is no annual renewal requirement. As a result, the Department has no way to track how many registered nets are still in use. A legislatively authorized permit system would allow the Department to issue annual lay net permits to individuals, and to track which individuals use lay nets. Second, unlike a permit, a registration is not revocable. The Department has no way of prohibiting a person from registering new lay nets if they have been convicted of lay net violations. Under a permit system, lay net users have a greater incentive to comply with the law because they could lose their permit if convicted of a violation.

Thank you for the opportunity to comment on this measure.



**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL MARINE FISHERIES SERVICE**  
Pacific Islands Regional Office  
1845 Wasp Blvd., Bldg. 176  
Honolulu, Hawaii 96818  
(808) 725-5000 • Fax: (808) 725-5215

Ms. Suzanne Case  
Chairperson  
Department of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, HI 96813

**APR 24 2018**

Dear Suzanne:

I am writing on behalf of the National Marine Fisheries Service to share our concerns regarding the significant threat to Hawai'i's sea turtles and monk seals posed by unattended lay gill nets. Our respective staff and partners respond to numerous stranded sea turtles and monk seals every year in the main Hawaiian Islands (MHI), and many of these strandings involve entanglement in the type of monofilament netting associated with lay gill nets.

A review of our MHI sea turtle stranding data indicates 96 turtles were found dead in lay gill nets from 1990 through 2016. During that same period, lay gill nets were indicated as a probable or contributing cause of death in dozens more turtle stranding cases. Our MHI monk seal data indicate five seals were found dead in lay gill nets from 1994 through 2017, and entanglement in lay gill net was the suspected cause of death in an additional five monk seal cases during that same period. Of the 10 total seal deaths associated with lay gill nets since 1994, four occurred in just the past two years.

The actual number of MHI seal and turtle deaths caused by unattended lay gill nets is likely higher than indicated by our data because most deaths are unreported or cannot be attributed to a specific cause. Additionally, many more seals and turtles would have likely died entangled in unattended lay gill nets were it not for the rescue efforts of our staff and partners.

We note that about a decade has passed since the Department of Land and Natural Resources (DLNR) revised its administrative rules regulating the use of lay gill nets, in part to address concerns regarding interactions with protected species. However, considering the ongoing impacts to sea turtles and monk seals, we believe additional conservation measures regarding unattended lay gill nets are still needed.

We want to be clear that the concerns referred to in this letter are focused on a specific type of net and method, i.e., monofilament lay gill nets that are set and left unattended. We recognize there are other net fishing methods used in the MHI that do not appear to currently cause significant impacts to seals and turtles when used legally and responsibly.

We highly value our collaboration to date with the DLNR regarding the conservation of several protected marine species in Hawai'i, including sea turtles and monk seals. We also want to acknowledge our growing partnerships with fishermen and fishing organizations across the state, and we want to express how important it is that we do our part to maintain and improve these partnerships. We look forward to working together with the DLNR, Hawai'i's fishermen, and other stakeholders to address the serious conservation issue caused by unattended lay gill nets.

While the focus of this letter is on unattended lay gill nets, I want to mention that we are also concerned about seal and turtle interactions with shore-based hook and line fishing methods, such as slide-bait fishing, that entail setting out baited hooks for extended periods of time. In addition, we are seeing



concerning evidence of nearshore fishery interactions with the listed Hawai'i insular stock of false killer whales. In the near-term, it may be most appropriate to address the specific concerns regarding unattended lay gill nets as a singular issue, but I believe we should have a longer-term goal of working together to develop a comprehensive.

APR 27 2018

Sincerely,



Ann M. Garrett  
Assistant Regional Administrator  
Protected Resources Division

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2018 APR 27 AM 10: 26

DEPT OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

**SB-1371-SD-2**

Submitted on: 3/11/2019 6:34:12 PM

Testimony for WLH on 3/13/2019 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b>             | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------------------|---------------------------|---------------------------|
| Lisa Bishop         | Hawaii Reef and Ocean Coalition | Support                   | No                        |

Comments:

HOUSE COMMITTEE ON WATER, LAND AND HAWAIIAN AFFAIRS (WLH)

Wednesday March 13, 2019 at 10 a.m. in Conference Room 325

IN SUPPORT OF SB1371 SD2: RELATING TO LAY NETS

Aloha Chair Yamane, Vice Chair Todd, and Committee Members:

The HAWAI'I REEF AND OCEAN COALITION – HIROC– was formed in 2017 by coral reef scientists, educators, local Hawai'i environmental organizations, elected officials, and others to address a crisis facing Hawaii's coral reefs and ocean, including the use of lay nets that endanger marine life.

Abandoned lay gill nets can smother corals and kill marine life through “ghost fishing,” where animals become entangled and die. The Federal National Marine Fisheries Service testified that lay nets were responsible for killing at least 96 sea turtles between 1990 and 2016 and are suspected of killing at least 10 endangered monk seals from 1994-2017. Please pass this bill to protect coral reefs and other marine life!

HIROC thanks you for the opportunity to support SB1371 SD2.

Lisa Bishop on behalf of the Hawaii Reef and Ocean Coalition

**SB-1371-SD-2**

Submitted on: 3/11/2019 8:25:29 PM

Testimony for WLH on 3/13/2019 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b>        | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|----------------------------|---------------------------|---------------------------|
| Bob Kern            | The Friends of Hanauma Bay | Support                   | No                        |

Comments:

The Friends of Hanauma Bay is dedicated to the protection and preservation of marine coastal environments with an emphasis on the the protection, preservation and restoration of Hanauma Bay Marine Life Conservation District.

The Friends support SB 1371 SD2 that prohibits the use of lay nets. These nets have known or are suspected by National Marine Fisheries Service to have killed marine mammals and sea turtles.

Please pass this measure that will help preserve our marine life.

Respectfully Submitted,

Bob Kern

Vice President

Friends of Hanauma Bay

**SB-1371-SD-2**

Submitted on: 3/11/2019 3:39:48 PM

Testimony for WLH on 3/13/2019 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Carl M Jellings Sr  | Individual          | Oppose                    | Yes                       |

Comments:

Honorable Chair

We are setting ourselves up for a disaster with well over a million people here in these Islands even a short period without the importation of foods could bring starvation. depending on the length and circumstances of the crisis. Ive seen shelves emptied in 3 days durring this last hurricane season, wether it be Storms War, Sunami or a simple dock strike these things can be devastating to our food security. As of this moment the law already states all lay nets must be registered with the State the Law also states any person engaging in lay net fishing can only use 125 feet of laynet the standard length made, This type of fishing has always been to feed a single family unit or a few people. This art of fishing needs to be protected . The single laynet could save the lives of people durring a disaster and should be made a part of a disaster relief kit. Mahalo and Aloha

Carl Pao Jellings Sr

**SB-1371-SD-2**

Submitted on: 3/11/2019 5:53:06 PM

Testimony for WLH on 3/13/2019 10:00:00 AM

| <b>Submitted By</b>          | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|------------------------------|---------------------|---------------------------|---------------------------|
| Benton Kealii Pang,<br>Ph.D. | Individual          | Support                   | No                        |

Comments:



**SB-1371-SD-2**

Submitted on: 3/12/2019 11:00:06 AM

Testimony for WLH on 3/13/2019 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Ted Bohlen          | Individual          | Support                   | No                        |

Comments:

Please pass this bill in order to protect coral reefs and other marine life, including endangered monk seals and turtles.



**LATE**

**SB1371 SD2  
RELATING TO LAY NETS**

House Committee on Water, Land, & Hawaiian Affairs

March 13, 2019

10:00 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB1371 SD2, which would the possession or use of a gill net that is deployed and retrieved from the same location, for the purpose of taking aquatic life. **OHA appreciates the intent of this measure in protecting and perpetuating our nearshore marine resources, and further appreciates the express recognition and accommodation of Native Hawaiian traditional and customary practices, which may encompass certain activities that may otherwise be prohibited under this measure. OHA does note potential practical enforceability issues and recommends consultation with the Department of Land and Natural Resources' (DLNR's) Division of Conservation and Resources Enforcement, Division of Aquatic Resources, county prosecutor offices, the state attorney general, environmental court judges, and other relevant legal and resource management experts, to ensure that its provisions are both enforceable and narrowly tailored to the most harmful netting activities.**

OHA understands and appreciates this measure's intent to address longstanding environmental and cultural concerns over the irresponsible and inappropriate use of gill nets in our nearshore marine waters. **The advent of plastic monofilament fishing line, or "suji," in the mid-twentieth century gave rise to the broad availability and use of relatively inexpensive gill mesh nets, which could be deployed indiscriminately across hundreds of yards or more of shallow reef, left alone for hours or even overnight, and readily abandoned due to unexpected weather or surf conditions or, for resource violators, potential encounters with resources enforcement officers – without significant costs or risks.** The resulting irresponsible and inappropriate use of such nets, which results in the indiscriminate take of both desired and undesired species, uncontrolled levels of harvest, and even long-term ecological damage due to the breakage of or, in the case of abandonment, smothering of coral and "ghost-fishing" of other marine life, has had and continues to have the potential for significant impacts to nearshore resources, as well as associated Native Hawaiian traditional and customary gathering and subsistence practices. The inappropriate nature of such irresponsible, modern netting practices is particularly highlighted when compared to traditional gill net uses: carefully crafted and maintained nets would be intentionally set and often actively used, practices informed in part by the significant setback that a damaged or lost net would represent to pre-twentieth century fishers. Notably, certain Native Hawaiian communities have specifically identified irresponsible "cross-netting" or lay net fishing as a primary cause of the depletion of their local fisheries.

**LATE**

Accordingly, OHA again expresses its appreciation for the apparent intent behind this measure, to facilitate the restoration and ensure the sustainability of ecologically and culturally important marine species, and better protect our nearshore environment from the ecological impacts of irresponsible gill net practices.

OHA does note that the definition of “lay net” in this measure may encompass Native Hawaiian traditional and customary practices that involve the deployment and subsequent retrieval of a stationary gill net, such as pa’i pa’i netting or the setting of a net across a sandy channel at night, with fishers actively monitoring the net and removing fish and bycatch once entangled. While such practices do not pose the aforementioned harms associated with irresponsible and inappropriate gill netting, they may nonetheless be interpreted as “deploy[ing] in the water in a specific location and retriev[ing] from the same location after a certain time period has passed to allow for the capture of aquatic life.” Cultural practitioners engaged in such active netting practices would also be more likely to be present, cited, and potentially subject to the proposed misdemeanor liability than non-practitioners and particularly irresponsible netters, who depart from their nets after setting them, and who may even choose to abandon their nets once they suspect or ascertain the presence of resources enforcement officers. **Accordingly, OHA greatly appreciates the amendments made to this measure, which would protect Native Hawaiian traditional and customary practitioners from liability for practices that may constitute “lay net” fishing as defined under this measure.**

OHA further notes that this measure may encounter similar enforcement challenges as existing Department of Land and Natural Resources (DLNR) rules regulating the “use” of the “lay net fishing method.” As this measure is drafted, in order to establish a violation of the proposed lay net prohibition, admissible evidence must be established demonstrating that 1) a person 2) for the purpose of taking aquatic life 3) deploys a gill net in a set location and 3) the same person 4) retrieves the gill net 5) from the same location 6) after a certain time period has passed. The simple presence of a net in the water would not be sufficient to convict an individual under the proposed bill language; evidence would be needed to demonstrate an individual both set a net and actually retrieved it from the same location, for the specific purpose of taking aquatic life. As lay nets may be set for hours, overnight, or even longer, it would potentially take considerable law enforcement resources to monitor a set net in order to interdict the person retrieving it, who may in fact abandon the net if they sense any law enforcement presence. Accordingly, should the Committee choose to move this measure forward, OHA respectfully recommends consultation with DLNR’s Division of Conservation and Resources Enforcement, Division of Aquatic Resources, county prosecutor offices, the attorney general’s office, and environmental court judges, as well as any other relevant legal and resource management experts, to determine provisions which can most directly address the harms posed by irresponsible and inappropriate gill netting practices, and

avoid the significant challenges the DLNR has faced in enforcing its current lay net rules and requirements.<sup>1</sup>

Mahalo nui loa for the opportunity to testify on this measure.

**LATE**

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<sup>1</sup> For example, in recognition of the difficulty of proving “use” violations, the most recent Hā’ena community based subsistence fishing area rules prohibit panel gill nets generally (i.e. the net type used in lay netting, as well as other netting methods), while explicitly allowing the use of gill mesh nets via the pa’i pa’i method or surround net method, where “at least two people must be within five feet of the net at all times when it is deployed.” See HAR § 13-60.8.

**LATE**

**SB-1371-SD-2**

Submitted on: 3/12/2019 7:49:11 PM

Testimony for WLH on 3/13/2019 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Andrea Quinn        | Individual          | Support                   | No                        |

Comments:

Dear Honorable Committee Members:

Please support SB1371, but amend the bill to make it a felony offense. Our marine life is our most valuable economic resource, and the reefs are already turning into virtual deserts, and lay nets, which are used to indiscriminately catch fish, is just one more assault upon marine life.

Thank you for your time.

Andrea Quinn

Kihei, HI