

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
JUDICIARY

Monday, March 25, 2019
2:00 PM
State Capitol, Conference Room 325

In consideration of
SENATE BILL 1371, SENATE DRAFT 2, HOUSE DRAFT 1
RELATING TO LAY NETS

Senate Bill 1371, Senate Draft 2, House Draft 1 proposes to prohibit the abandonment of lay nets used for fishing; authorizes the Department of Land and Natural Resources (Department) to issue permits for the use and possession of lay nets; and requires the Department to establish a comprehensive, statewide lay net education and enforcement program. **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 earlier this year, 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 stronger management tools are needed.

The Department supports the concept of a permit requirement for the use and possession 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. A lay net permit would help the Department to crack down on the illegal use of lay nets, including unattended and abandoned lay nets. The Department will make efforts to increase monitoring and enforcement as resources allow.

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
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Honolulu, Hawaii 96818
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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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DEPT OF LAND
& NATURAL RESOURCES
STATE OF HAWAII



SB1371 SD2
RELATING TO LAY NETS
House Committee on Judiciary

March 25, 2019

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB1371 SD2 HD1, which would prohibit the abandonment 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, but notes that the current draft may present significant technical as well as practical enforcement issues.** Accordingly, OHA 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 can address the most harmful netting activities.

While OHA appreciates the intent of this measure in protecting our natural and cultural marine resources, particularly from the egregious and irresponsible act of abandoning certain gill nets in the water, OHA notes that the proposed definition of a "lay net" may preclude any finding that such a net would be "abandoned." As this measure is drafted, in order to establish a violation of the proposed lay net abandonment 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, and further 7) abandons that same net. **It may be difficult to prove that a person who "retrieves" a lay net also "abandoned" that net;** accordingly, either the definition of "abandon" or the definition of a "lay net" may need to be abandoned in order for this measure to have any operational effect.

In addition, "abandonment" itself may be an inherently difficult act to prosecute, insofar as the offending party would need to be identified upon their failure to return to the object they have abandoned. **In other words, once a net is "abandoned," the person who abandoned the net would have to be somehow located and identified as the person who placed the net in the water** – a difficult if not nearly impossible burden of proof to carry.

Moreover, the definition of "lay net" itself may present enforcement challenges. As previously described, the simple presence of a net in the water would not be sufficient

to prove that the net is in fact a “lay net” under the proposed measure; evidence would be needed to demonstrate that a person set and actually retrieved the net 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, and thereby establish the net as a “lay net” subject to the provisions of this measure as drafted.

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.¹

OHA nonetheless 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.

Accordingly, OHA again expresses its appreciation for the apparent intent behind this measure, to facilitate the restoration and ensure the sustainability of ecologically and

¹ 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.

culturally important marine species, and better protect our nearshore environment from the ecological impacts of irresponsible gill net practices.

As a final note, OHA also expresses its appreciation for language directly recognizing and accommodating Native Hawaiian traditional and customary practices, particularly those practices that may fall within activities prohibited by previous or future drafts of this measure.

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

LATE

SB-1371-HD-1

Submitted on: 3/25/2019 11:20:31 AM

Testimony for JUD on 3/25/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan P. Armstrong	Oahu County Democrats	Support	No

Comments:

SB-1371-HD-1

Submitted on: 3/22/2019 3:18:26 PM

Testimony for JUD on 3/25/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ted Bohlen	Individual	Support	No

Comments:

To protect marine life, please pass a bill with comprehensive regulation, education, and enforcement against lay gill net possession and use, not just abandonment.

March 22, 2019

Representative Chris Lee, Chair
Representative Joy San Buenaventura, Vice Chair
HOUSE COMMITTEE ON JUDICIARY

Hearing Date: Monday March 24, 2019
Hearing Time: 2:00 pm
Place: Conference Room 325
Regarding: SB1123 SD2 HD1 RELATING TO LAY NETS

COMMENT

Aloha Honorable Chair Lee, Vice Chair San Buenaventura and Members of the House Committee on Judiciary

While I support some of the current language within the current measure with regard to requiring DLNR to establish comprehensive, statewide lay net education I call your attention to HAR 13-75 that currently requires the "Registration and Identification" of lay nets and find it unnecessary to additionally having to issue a permit for the use of a lay net. HAR 13-75 comprehensively addresses the registration, identification and use of lay nets for fishing.

What is absent is public outreach and education of fishermen by the DLNR to the various rules regarding the management of our fisheries to specific user groups. As I understand, this measure was introduced to address the flagrant violation of HAR 13-75 by a specific community of lay net users. The registration and identification rule is more than adequate. The current situation of violations will continue even if a permit is required because this community will most likely not obtain a permit as they most likely have not registered their nets as required.

I agree that is of great importance to address flagrant violation of State fishery rules and strongly urge the DLNR to address the violating community by specifically meeting with them and provide information and educational materials versus seeking statutory language that will fail its intent as the department can direct resources to effectively address the "problem."

Thank you Chair Lee, Vice Chair San Buenaventura and members of the House Committee on Judiciary for this opportunity to comment on this measure.

Respectfully,

Roy N. Morioka