

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 Senate Committee on
WATER AND LAND**

**Friday, February 8, 2019
1:20 PM
State Capitol, Conference Room 229**

**In consideration of
SENATE BILL 1371
RELATING TO LAY NETS**

Senate Bill 1371 proposes to prohibit the use of lay nets for fishing, except under a permit obtained by the Department of Land and Natural Resources (Department) and establishes the use of lay nets for fishing as a misdemeanor offense with a mandatory minimum period of imprisonment of one day. **The Department supports this bill, subject to 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.” 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 higher misdemeanor penalty in the proposed bill. However, the Department has concerns about the proposed mandatory minimum penalty of one day imprisonment. The Department worries that prosecutors and judges alike will be hesitant to pursue the proposed lay net charge because a *mandatory* deprivation of liberty through imprisonment may be seen as too harsh. This will lead lay net charges to be amended, likely to simple trespass, a non-criminal violation, or dismissed altogether. These amendments hurt our cause as a department and enforcing agency. The Department understands the desire to have a strong penalty to serve as a deterrent, however, it must fit the crime. The Department suggest keeping the misdemeanor designation and including a mandatory minimum fine for a first offense of \$1000. Most illegal netters are selling their catch, so a high fine, along with confiscation of their gear, is the best way to deter violations. This fine, by request of the defendant, could possibly be converted by a judge to 100 hours of community service or at least one day imprisonment.

The Department also supports the concept of a permit requirement for the use of lay nets. The current system of registering each lay net with a unique identification number is inefficient and problematic. Lay nets are often sold, transferred, discarded, and repaired, making it difficult for the Department to track which registered net belongs to which individual. A legislatively authorized permit system would allow the Department to issue lay net permits to individuals, with all of the individual's nets marked with the individual's permit number. This would make it easier to keep track of the legal owner of a lay net.

Thank you for the opportunity to comment on this measure.

SB-1371

Submitted on: 2/5/2019 1:05:09 PM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cathy Goeggel	Testifying for Animal Rights Hawai'i	Support	Yes

Comments:

SB-1371

Submitted on: 2/7/2019 12:49:10 PM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Maxx Phillips	Testifying for Center for Biological Diversity	Support	Yes

Comments:



Hawaii Marine Animal Response
Hawaii Marine Mammal Alliance Inc.
150 Hamakua Drive, #350, Kailua, HI 96734
(808) 687-7900 / info@hi-mma.org

February 7, 2018

SUBMITTED ELECTRONICALLY

Senator Kaiali'i Kahele, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Committee on Water and Land
Hawaii State Legislature

RE: IN FAVOR of SB1371 – Lay Nets

Dear Senators Kahele and Keith-Agaran,

Hawaii Marine Animal Response (Hawaii Marine Mammal Alliance Inc.) is a Hawaii-based non-profit organization focusing on the conservation of protected marine species, and in our primary roles of field response and outreach, we are the largest organization of our kind in Hawaii. We work in partnership with NOAA, Hawaii DLNR, the U.S. Fish & Wildlife Service, Hawaii Tourism Authority and an engaged public in the preservation and stewardship of Hawaiian monk seals, sea turtles and seabirds.

I am writing today IN SUPPORT of SB1371 which would prohibit the use of lay nets for fishing, except under a permit obtained by the DLNR.

Every day of the year Hawaii Marine Animal Response (HMAR) is in the field conducting field response actions regarding monk seals, sea turtles and seabirds and in 2018 we conducted over 2000 such actions. We were also engaged in over 260 escalations and interventions to directly help save these special animals from key threats such as fishery interactions and other impacts tied to human activity. A substantial number of these cases involved lay nets which were the underlying cause of protected species injuries, suffering and death.

There are several other types and styles of near-shore net fishing that does not cause the dangers to Hawaii's protected marine species posed by lay nets. The prohibition of lay net use, except under permit, is an appropriate action to be taken to better support protected marine species and sustainable near-shore fisheries in general. Therefore, we support the passing of SB1371 and urge the other members of the Committee on Water and Land to also support this proposed legislation.

Sincerely,

A handwritten signature in black ink that reads "Jon D. Gelman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jon D. Gelman
President

SB-1371

Submitted on: 2/7/2019 1:01:36 PM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Oppose	No

Comments:

SB-1371

Submitted on: 2/6/2019 3:32:23 PM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Fernley	Testifying for Coral Fish Hawaii	Oppose	No

Comments:

SB-1371

Submitted on: 2/5/2019 5:58:14 PM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Darrell Tanaka	Individual	Comments	No

Comments:

you need to make the punishments stricter, include that anyone caught using a lay net illegally should be banned from the ocean for one year on first offense.....two years on second offense...banned from every owning a commercial license to sell fish....ban them from receiving any financial support from the state like food stamps, welfare, unemployment wages, garnish their paychecks....because the current penalties suck and people lay net illegally all the time.

SB-1371

Submitted on: 2/5/2019 7:40:15 PM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laa Poepoe	Individual	Support	No

Comments:

la'a poepoe, molokai resident, submitting written testimony in support of sb1371.

it is well established that the deployment of 'gill net' or 'lay netting' is a negligent and indiscriminate method of gathering fish, one that results in a high probability of unwanted bycatch species inadvertently captured, due to netting having to be left unattended in order to be effective. the fish captured by this method usually dies if not immediately untangled and released.

there are more sustainable methods, such as cast net, hook and line, and traps that allow for increased survival and release of size and season restricted, or unwanted fish species.

i agree with the intent of this bill, to assign punishments to the illegal use of unsustainable fishing equipment.

my suggestion is in addition to prison sentences, provide minimum and maximum fines per offense, and allow for a sliding scale based on severity.

SB-1371

Submitted on: 2/5/2019 9:16:05 PM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeannine Johnson	Individual	Support	No

Comments:

My ancestors were lawai'a (fishermen and women) and kÅ• lai wa'a (canoe-builders) from KapÅ• lilua (Kona Hema) since 1777. My father was a lawai'a from Miloli'i and I spent many summers growing up there. Many in my 'ohana still live a life deeply connected to the land and sea and believe we should protect our ocean resources. I strongly support SB931, SB1136 and SB1371. In Hawai'i we have a saying, "Ke ike a ka lawai'a he na ka 'upena." (The knowledge of the fisherman is absorbed by the net.) Just like the 'upena (fish net) which the Hawaiian people meticulously maintained to flourish and prosper, prohibiting the use of lay nets for fishing, except under a permit, prohibiting all commercial capture of aquatic life for aquarium purposes, regardless of the method of collection, as well as prohibiting scuba spearfishing at night for the purpose of taking aquatic life, except through a permit, will help all marine life flourish. The exercise of traditional and customary practices, the lawful taking of fish for consumption or bait, or the lawful management or taking of aquatic life from fishponds shall not be affected.

Please kÅ• kua and help protect and preserve Hawai'i's marine resources for future generations and support SB931, SB 1136 and SB 1371. Mahalo, Jeannine Johnson

SB-1371

Submitted on: 2/5/2019 9:38:10 PM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Erica Scott	Individual	Support	No

Comments:

SB-1371

Submitted on: 2/5/2019 3:31:11 PM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jaunette Itsuno	Individual	Support	No

Comments:

SB-1371

Submitted on: 2/6/2019 8:22:35 AM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Bane	Individual	Support	No

Comments:

The penalties need to be far more strict. Especially for 2nd or more offenses. Since lay nets catch the lower tiers of the foodchain, it's important they are regulated well. Because the potential for harm is massive up the food chain and to the health of the reefs.

IMO, the penalty for 1st is fine, but that should preclude them from getting a permit for say 1 year and make them ineligible to get a commercial fishing license for 1 yr. 2nd no permit for 2 yrs. 3rd no permit for life.

While I applaud the measure, the punishment isn't much of a deterrent to people who lay net illegally.

SB-1371

Submitted on: 2/5/2019 10:58:58 PM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Bojanowski	Individual	Support	No

Comments:

Re. Hearing at 1:20 pm 2/8/19

Dear Sen. Kahele, Sen. Keith-Agaran, and other Members of the Committee on Water and Land,

I am writing in support of SB1371 relating to lay nets prohibition.

Respectfully,

Jennifer Bojanowski
Haleiwa, Hawaii 96712

SB-1371

Submitted on: 2/6/2019 2:08:05 PM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Winslow	Individual	Support	No

Comments:

SB-1371

Submitted on: 2/6/2019 12:37:41 PM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrew Ban	Individual	Support	No

Comments:

SB-1371

Submitted on: 2/7/2019 7:00:46 AM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support SB1371.

Thank you for your time.

Andrea Quinn

Kihei, HI

SB-1371

Submitted on: 2/6/2019 5:35:41 PM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary James	Individual	Support	No

Comments:

COMMITTEE ON WATER AND LAND,
Sen Kahele, chair
HEARING Friday, February 8, 2019 re. **SB1371**
Testimony of Rick Warshauer, Volcano

Chairman Kahele and Members,

I urge you to pass SB1371, prohibiting the use of lay nets for fishing. The subject matter of this bill has come up in previous sessions for decades, and it is long overdue to pass it now. Our reefs and marine life have suffered enough and are today much depleted of fish, honu, ula and hihimanu as a result.

As a possible amendment, I urge you to consider adding language to the statute that the presence of lay nets of any sort together on the beach, in the water, or on watercraft be adequate evidence of a violation. I think this would make things less ambiguous for both DOCARE and the concerned public. Should there be a delay in approval of rules, having this provision take effect upon passage would be an improvement.

Our marine resources today have suffered cumulative damage and ecological imbalance from overfishing, runoff and seepage of contaminants, ever-growing use by residents, the adverse aspects of hordes of tourists, and the cumulative impacts of invasive species. All these are happening alongside a backdrop of warming sea temperatures which are additionally damaging reef health more each year. Please take this important step to protect our marine resources by passing this bill.

Mahalo

SB-1371

Submitted on: 2/7/2019 12:32:15 AM

Testimony for WTL on 2/8/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Matthew Ross	Individual	Oppose	Yes

Comments:

While lay gill nets can be destructive, they can be a valid method of fishing if used properly. DLNR already has comprehensive rules in place governing the use of nets - updating these regulations and improving enforcement should be done before imposing an outright ban.

Testimony on SB1371 Relating to Lay Nets

Senate committee on
Water and Land
Chair Kahele, Vice Chair Keith-Agaran, members of the Committee

I am Alton Miyasaka and I am OPPOSED to this measure

General comments

The measure does not provide reasons why this prohibition is necessary, why the current regulations on the use of lay nets is not sufficient, nor why a total ban is needed in lieu of these regulations.

The Department has been working on the matter of lay nets for many years. There already exists in rules extensive requirements for users of lay nets that include net registration, tagging, where lay nets may be used, where they may not be used (exclusion zones), checking the nets to remove catch, soak time limits, depth limits, etc. In addition, the Department produced a report of the use of lay nets after comprehensive discussions in the community. Many of the report recommendations were adopted into the rules.

The typical lay net user is over 50 years old, is carrying on a tradition of net use learned from their kupuna, and is already a dying art. The gear is difficult to use and maintain, resulting in fewer and fewer people using the gear. It is envisioned that the recreational use of lay nets will likely die out in the near future. The commercial use of lay nets is a specialty that has been refined over many years to the point where the nets are no longer the “indiscriminate” gear of popular myth. The professional user will use the lay nets to catch only specific species, at a specific location, during a specific time. By catch is kept to a minimum and everything caught is saleable.

The proper term for the use of lay nets would be through a license rather than through a permit. A license authorizes its bearer to participate in a fishery while a permit exempts the bearer from a prohibition. For example, a commercial fishing license authorized the licensee to commercially fish, usually over a year period. Permits are issued to qualified persons for a specific activity for a limited time. Licenses are renewable whereas permits are subject to the discretion of the Department and do not carry any vested rights.

In view of the on-going regulations to regulate the use of lay nets, this measure is not necessary and would be counter-productive to the management of lay nets.