HB 2108
RELATING TO FISHING REGULATIONS

Statement for
House Committees on
Water, Land Use, Development and Hawaiian Affairs
Ocean and Marine Resources
Public Hearing - 17 February 1984

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HB 2108 would amend the present law regarding the use of nets and traps in fishing, HRS 128-29(a). This statement on the bill does not reflect an institutional position of the University of Hawaii.

The present law prohibits, in general, the use of nets with a stretched mesh less than 2 inches or the use of traps that do not meet certain criteria. This general prohibition is, however, modified by six provisions for exceptions to the mesh-size criterion for nets and a provision defining the applicability of the criteria for traps. The proposed amendment is in the form of a seventh provision applicable to net mesh size as if it constituted a further exception to the general minimum 2-inch stretched mesh criterion.

The proposed provision does contain what seems to be intended as an exception to the general minimum mesh-size criterion, but one so drafted as to be unclear exactly what minimum mesh size is permitted under the exception. It also contains a stipulation that seems intended to limit a type of net fishing. But it is introduced by what is essentially a repetition of the general minimum stretched-mesh criterion but identifies it with the particular type of net fishing, and in this respect is not a seventh exception to the applicability of the general criterion.

The proposed new language begins: "All persons may use nets with a stretched mesh of not less than two inches to encircle and capture fish...." It should be pointed out that the methods of fishing to which this refers may be considered to include not only fishing operations using a long net set by a boat or boats for encirclement, whether from the shore as in a hukilau or offshore, but also operations using a throw net in which the encirclement is accomplished by the throw. It must also be pointed out that this beginning part of the proposed new language for the particular purpose of encirclement and capture relates to nets of a mesh size that has not been prohibited.
The beginning part of the proposed new language is followed by the provision that the nets be tended continuously. What seems intended is that the nets used for encirclement and capture must be tended continuously. However, considering the way the amendment is drafted, it might perhaps be construed as applying to all operations with nets of 2-inch stretched mesh or greater, or even possibly to all net fishing. It might be held that, because the use of nets meeting the general mesh-size criterion is nowhere prohibited, the special provision intending to require tending of such nets if used for encircling operations is rendered unenforceable.

The third and final provision in the new language is that "persons engaged in this type of net fishing" may use nets of mesh size less than 1\(\frac{1}{2}\) inches "to transport the captured fish to the shore or the boat." This seems clearly intended to be an exception to the general mesh-size criteria, and one applicable only in the case of encircling operations. However, in contrast to the general criterion, the 1\(\frac{1}{2}\) inches is not specifically identified as a stretched mesh criterion. We are uncertain why any mesh restriction is necessary for a net used merely to transport fish already captured, or why if one were necessary, it would be restricted to the nets used to transport fish captured only by encircling nets.

We recommend that the bill be revised to make clear both the intended restrictions and exception to restrictions and the circumstances under which those restrictions and exceptions apply.
SB 2039-84
FISHING REGULATIONS

Statement for
Senate Committee on
Economic Development
6 March 1984

The attached statement on HB 2108-84 is equally applicable to the companion bill, SB 2039-84.

Attachment