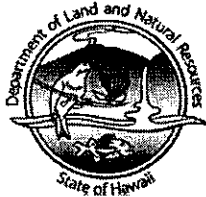


LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committees on
AGRICULTURE
and
WATER, LAND & OCEAN RESOURCES**

**Friday, February 5, 2010
11:00 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 2409
RELATING TO AQUACULTURE**

House Bill 2409 proposes to increase lease terms for aquaculture ventures from 35 to 45 years. It also allows for a maximum term of 65 years for ventures with favorable track records and provides aquaculture lessees in good standing the right of first refusal to renew a lease. The Department of Land and Natural Resources opposes this bill.

Leases of public lands are governed by Chapter 171, Hawaii Revised Statutes, which imposes a maximum lease term of 35 years for aquaculture, with a maximum extension of 20 years for total term of 55 years. These limits are intended to allow a lessee sufficient time to occupy the property and recoup its investment, while also precluding that lessee from using and occupying public lands in perpetuity.

The shorter 35 year limit on aquaculture leases is premised on the fact that members of that industry are being provided favorable treatment by allowing direct negotiation of leases rather than requiring them to go through the public auction process. The shorter term was also imposed to promote competition within the industry by ensuring that state lands would not be tied up for extremely long periods without allowing other competitive interests an opportunity to use such lands. House Bill 2409 ignores these public policies and grants aquaculture leases special status over all public land leases by allowing an aquaculture lessee to have exclusive use of public lands for up to 65 years without requiring such uses to be subject to the more transparent public auction process. Moreover, the inclusion of a right of first refusal to a lessee in good standing for lease renewals is especially objectionable because it would constitute a de facto extension of the lease for unspecified consecutive terms that could continue into perpetuity.

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



Hawaii Farm Bureau
F E D E R A T I O N

2343 Rose Street, Honolulu, HI 96819

Phone: (808) 848-2074; Neighbor Islands: 1-800-482-1272

Fax: (808) 848-1921; e-mail: info@hfbf.org

TESTIMONY

RE: HB2409 RELATING TO AQUACULTURE

Chair Tsuji, Chair Ito and Members of the Committees:

Hawaii Farm Bureau Federation on behalf of our member farm and ranch families and organizations **urges your support of HB2409**, addressing the lease terms of aquaculture leases in the State.

Aquaculture is a growing industry. The potential is significant with increased interests in more fish in people's diets. However, successful aquaculture operations require significant capital. The proposed lease terms make major investments possible.

We therefore, respectfully request your support of HB2409. Thank you.

Hawaii Oceanic Technology, Inc.

Clean, responsible, next-generation open ocean aquaculture technologies

February 4, 2010

TO: COMMITTEE ON AGRICULTURE, Rep. Cliff Tsuji, Chair, Rep. Jessica Wooley, Vice Chair, COMMITTEE ON WATER, LAND, & OCEAN RESOURCES, Rep. Ken Ito, Chair, Representative Sharon E. Har, Vice Chair

RE: Testimony In Strong Support of HB2409 - Relating to Aquaculture, Friday, February 5, 2010 11:00am

Hawaii Oceanic Technology, Inc. strongly supports HB2409 as written. Hawaii Oceanic Technology, Inc. is the first open ocean ahi tuna farm to receive a State Conservation District Use permit allowing the lease of 247 acres of ocean in Hawaiian territorial waters. We anticipate spending tens of millions of dollars to build and deploy our revolutionary and environmentally responsible Oceansphere tuna farming systems at this lease site. A longer term lease that is consistent with other types of land based leases will give our investors a higher degree of confidence in our project and reduce risk. For this project to be sustainable and create and maintain quality jobs, export revenues and tax revenues to the state, HB2409 is critical to our success. HB2409 also:


1. will increase lease terms for aquaculture leases thereby encouraging investment in aquaculture infrastructure and equipment requiring long-term financing, and encourage multi-generational commitment to aquaculture farming
2. will provide lessees in good standing the right of first refusal such that the years of financial investment in the aquaculture farming operation are not put on the auction block and potentially lost to a higher bidder who would not have the intimate knowledge of the site nor the experience gained in the aquaculture farming operation, and may not have the commitment or experience of the lessee who has already demonstrated such commitment and experience;
3. will allow additional supportive aquaculture activities such as aquaponics, which would reuse aquaculture effluent water to grow additional plant products thereby improving the overall financial viability of the operation, or the generation of renewable energy, which could improve the long-term sustainability of the operation; and
4. it would help stimulate and diversify our economy by encouraging increased investment in aquaculture ventures in Hawaii.

Thank you for the opportunity to testify in strong support of this important bill.

Sincerely,

/s/

Bill Spencer, President/CEO



**Hawaii
Aquaculture
Association**

THE HOUSE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

COMMITTEE ON AGRICULTURE
Rep. Clift Tsuji, Chair
Rep. Jessica Wooley, Vice Chair

COMMITTEE ON WATER, LAND, & OCEAN RESOURCES
Rep. Ken Ito, Chair
Representative Sharon E. Har, Vice Chair

DATE: Friday, February 5, 2010
TIME: 11:00am
PLACE: Conference Room 325, State Capitol
415 South Beretania Street

RE: Testimony In Strong Support of HB2409 - Relating to Aquaculture

Aloha Chairs Tsuji and Ito, Vice Chairs Wooley and Har, and Committee Members,

The Hawaii Aquaculture Association strongly supports HB2409 as written because:

1. it would increase lease terms for aquaculture leases thereby encouraging investment in aquaculture infrastructure and equipment requiring long-term financing, and encourage multi-generational commitment to aquaculture farming
2. it would provide lessees in good standing the right of first refusal such that the years of financial investment in the aquaculture farming operation are not put on the auction block and potentially lost to a higher bidder who would not have the intimate knowledge of the site nor the experience gained in the aquaculture farming operation, and may not have the commitment or experience of the lessee who has already demonstrated such commitment and experience;
3. it would allow additional supportive aquaculture activities such as aquaponics, which would reuse aquaculture effluent water to grow additional plant products thereby improving the overall financial viability of the operation, or the

- generation of renewable energy, which could improve the long-term sustainability of the operation; and
4. it would help stimulate and diversify our economy by encouraging increased investment in aquaculture ventures in Hawaii.

Thank you for the opportunity to testify in strong support of this important bill.

Sincerely, Ron Weidenbach, HAA President

2 of 2
Aquaculture
HB 2409

THE HOUSE

THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

COMMITTEE ON AGRICULTURE
Rep. Clift Tsuji, Chair
Rep. Jessica Wooley, Vice Chair

COMMITTEE ON WATER, LAND, & OCEAN RESOURCES
Rep. Ken Ito, Chair
Representative Sharon E. Har, Vice Chair

DATE: Friday, February 5, 2010

TIME: 11:00am

PLACE: Conference Room 325, State Capitol
415 South Beretania Street

RE: Testimony in Opposition to HB2409 – Relating to Aquaculture

Aloha Chairs Tsuji and Ito, Vice Chairs Wooley and Har, and Committee Members,

Food & Water Watch (FWW) thanks you for the opportunity to provide testimony and voice strong opposition to HB 2409. FWW is a non-profit organization that works with grassroots organizations to create an economically and environmentally viable future. Our Fish Program promotes safer and more sustainable seafood for consumers, while helping to protect the environment and support the long term well being of coastal and fishing communities. We have worked in Hawai'i for several years, and in those years have witnessed widespread opposition to the expansion of open ocean aquaculture in the environmental and Native Hawai'ian communities. We have also become aware that aquaculture has not provided large economic gains or job opportunities, and has drained state resources.

I. Abundant Demonstration of Community Opposition to Ocean Aquaculture

Since Hawai'i chose to allow leasing of ocean land for the purpose of commercial aquaculture, a number of companies have applied for or received leases, and all have faced community opposition. To date, three farms – Ahi Nui Tuna Farms LLC, Ahi Farms, and Pacific Ocean Venture – have been unsuccessful in obtaining the needed community support, permits and/or financing for open ocean operations.¹ In 2002, a Native Hawai'ian Group filed a contested case against Ahi Nui Tuna Farms LLC. Now, another prospective Open Ocean Tuna Farm, Hawai'i Oceanic Technology, has two cases

¹ Report to the Twenty-Fourth Legislature of Hawai'i 2008 Regular Session. Implementation of Chapter 190D, Hawai'i Revised Statutes Ocean and Submerged Lands Leasing. Prepared by Department of Agriculture and Department of Land and Natural Resources. November 2007. Page 9-10.

filed against its permit by members of the Kanaka Council Moku 'O Keawe, which protects native Hawai'ian rights.^{2,3}

The two farms that have been able to operate in Hawai'i state waters – Kona Blue Water Farms (recently transferred to Keahole Point Fish LLC) and Hukilau Farms LLC (formerly Cates International, formerly the Hawai'i Offshore Aquaculture Research Project) have also faced enormous opposition. In 2009, when Hukilau submitted applications to expand its operation, the Bureau of Land and Natural Resources (BLNR) received at least 70 comments from Hawai'ians stating opposition (these are the comments we are specifically aware of – there may have been others).

Kona Blue Water Farms (KBWF) has met with numerous expressions of opposition over the years. The Kanaka Council, a coalition of Native Hawai'ian rights groups, has expressed frustration that Native Hawai'ians were not adequately involved or consulted in the decision-making process when KBWF was determining the site location of its facility, located in a traditional fishing area directly off the coast of Kailua-Kona. When KBWF applied to expand its cages in 2007, it received so much opposition, including two filed contested cases, that the company ultimately decided to withdraw the application.^{4,5}

These experiences are all extremely relevant in that they highlight the massive public opposition in Hawai'i to the expansion of this industry.

II. Consequences of Ocean Aquaculture and the State's Inability to Regulate or Mitigate Them

Recent information released by the State after the submission of a FOIA request has highlighted additional flaws with Kona Blue Water Farm's operation. Between 2005 and 2008, the company did little benthic testing. In their application for a modified permit in 2008, they provided only five samples from three sample dates, over three years. These included one sample for each site, with no replicates for any site sampled. The small sample size and lack of repetition call into question the accuracy of any analysis provided by the company regarding their impact on the benthos. In March 2007, the Office of Conservation and Coastal Lands (OCCL) notified KBWF that their current benthic

² Petition for contested case hearing, filed by Mike Lee, cultural practitioner with Board of Land and Natural Resources for its decision to award a Conservation District Use Permit to Hawai'i Oceanic Technology for 90 acres off of the North Kohala Coast, Hawai'i Island for the purpose of an open ocean fish farm. Filed on 23 October 2009.

³ Petition for contested case hearing, filed by Kale Gumapac on behalf of Kanaka Council Moku 'O Keawe with Board of Land and Natural Resources for its decision to award a Conservation District Use Permit to Hawai'i Oceanic Technology for 90 acres off of the North Kohala Coast, Hawai'i Island for the purpose of an open ocean fish farm. Filed on 23 October 2009.

⁴ "Kona fish farm facing expansion opposition." Associated Press, January 21, 2008. Available at: savekauai.org/oceans/kona-fish-farm-facing-expansion-opposition

⁵ Kona Blue Water Farms, LLC. "Final Supplemental Environmental Assessment for a Modification to Net Pen Designs within the Existing Production Capacity and Farm Lease Area for Kona Blue's Offshore Open Ocean Fish Farm off Unualoha Point, Kona, Hawaii." April 2009 at 3.

monitoring system was unsatisfactory. They proposed a minimum of quarterly monitoring by drop camera, but as of March 2008, KBWF had not complied.⁶

KBWF has introduced antibiotics in Hawai`ian waters at their site, without approval by Hawai`ian officials. The permission to use an antibiotic was given to KBWF by officials at the United States Fish and Wildlife Service in Montana and approved by a federal agency, the Center for Veterinary Medicine at the Food and Drug Administration.⁷ After the drug was applied, OCCL questioned whether these outside agencies knew they were approving extra-label use of the drug to be deposited directly into Hawai`ian waters, not a land-based tank.⁸

The State has also documented cases of deliberate interference with bottle-nosed dolphins at KBWF's operation, and according to the Hawai`i Department of Aquatic Resources, the animals have begun to exhibit "unnatural behaviors."⁹

These examples all serve to illustrate the complexity of regulating open ocean aquaculture. Clearly the state agencies have not had the resources to stop the aforementioned problems from occurring, and extending lease durations to sixty-five years will make it even more difficult for the state to avoid undesirable environmental consequences. To envision such a facility not being required to update its technology until the year 2075, regardless of what harm occurs in the interim period, flies in the face of common sense and ignores scientific progress. It is hard to understand why the state of Hawai`i would choose, on its own accord, to simply give away such control to a private entity, and eviscerate its own power to properly regulate activities in state waters.

III. Lack of Demonstrated Economic Benefits

H.B. 2409 states that "direct leasing of public lands had been a cornerstone for building a successful commercial aquaculture industry in the State," but it does not discuss whether a successful aquaculture industry will **benefit** the state.

⁶ Public comment. Dan Polhemus, Administrator, Division of Aquatic Resources, Department of Land and Natural Resources, to Sam Lemmo, Administrator Office of Conservation and Coastal Lands, Department of Land and Natural Resources. Review of Draft EA/CDUA HA-3443 for the Expansion of Kona Blue Water Farms Offshore Aquaculture Facility. 3 March 2008. Page 7.

⁷ E-mail correspondence. November 2, 2007. Susan Storey, Aquaculture Drugs Team, FDA-CVM, Office of New Animal Drug Evaluation, Division of Therapeutic Drugs for Food Animals to Neil Anthony Simms, President, Kona Blue Water Farms. Subject: Florfenicol for your fish. On file with Office of Conservation and Coastal Lands, DLNR

⁸ Letter dated November 15, 2007. Dan A. Polhemus, Administrator to Samuel J Lemmo, Administer of Office of Conservation and Coastal Lands, DLNR. RE: Bacterial Outbreak at Kona Blue Offshore Fish Farm On file with Office of Conservation and Coastal Lands, DLNR.

⁹ Memorandum. Dan Polhemus, Administrator, Division of Aquatic Resources and Jeff Walters, Co-manager of Hawai`i Humpback Whale National Marine Sanctuary to Sam Lemmo, Office of Coastal and Conservation Lands, Department of Land and Natural Resources. Subject: Kona Blue Water Farms open ocean fish farm, concerns regarding dolphin interactions. 20 February 2008.

As ocean aquaculture is scheduled to increase in Hawai`i, the amount of direct employment it will provide has decreased. Prior to modifications or expansions, Hukilau LLC and Kona Blue Water Farms employed a total of 44 people, including jobs at both of their land-based hatcheries. After recently approved modifications are made to both the Hukilau and Kona Blue Water Farms site, the industry will only be providing 39 jobs. This is despite a projected increase in production of about 2.5 million pounds to 6 million pounds annually.¹⁰

Furthermore, it is questionable whether the employment that is provided or to be provided by the aquaculture industry is safe or stable. A diver employed by KBWF has filed suit against KBWF, alleging that it failed to provide a safe environment, ultimately leading to personal injury. According to the suit: "Kona Blue, acting through its managerial agents, was guilty of outrageous conduct owing to gross negligence, willful, wanton, and reckless indifference to the rights of others, and/or conduct even more deplorable..."¹¹ While the Court has yet to rule on this case, the claims indicate lack of oversight of safety conditions at this aquaculture site.

In addition, the aquaculture industry has not sufficiently proven that it can achieve profitability. Despite \$1.8 million in funding from NOAA, millions in tax technology credits given away to aquaculture operations in Hawai`i, nearly \$10 million from investors, and a product that has retailed for \$17 a pound for fillets, KBWF was not able to reach profitability.¹² It remains to be seen whether the new leaseholder, Keahole Point Fish LLC, will be able to bring the operation to self-sufficient economic viability.

IV. Other Legislative Efforts

The controversy surrounding ocean aquaculture in Hawai`i is further evidenced by the introduction of two other bills this legislative session: one in the Hawai`i Senate and one in the House of Representatives). H.B. 2958 Relating to Mariculture lends support to the

¹⁰ Information derived from the following sources: Consent to Assign General Lease No. S-5654, Cates International, Inc., Assignor, to Grove Farm Fish and Poi, LLC, Assignee, Oahu, Tax Map Key:(1)9-1-005:Seaward. Land Submittal to State of Hawai`i Department of Land and Natural Resources Land Division Board of Land and Natural Resources on 9 February 2007; Aquaculture Planning & Advocacy LLC. Final Environmental Assessment Proposed Expansion of Hukilau Foods Offshore Fish Farm, Mamala Bay, Oahu, Hawai`i. Prepared for Office of Conservation and Coastal Lands, Department of Land and Natural Resources. 24 July 2009. Page 8; Kona Blue Water Farms, LLC Final Supplemental Environmental Assessment for a Modification to Net Pen Designs within the Existing Capacity and Farm Lease Area for Kona Blue's Offshore Open Ocean Fish Farm off Unualoha Point, Kona, Hawai`i prepared for Land Division, Department of Land and Natural Resources. Dated April 21, 2009. Page 17; Aquaculture Planning & Advocacy LLC. Final Environmental Assessment Proposed Expansion of Hukilau Foods Offshore Fish Farm, Mamala Bay, Oahu, Hawai`i. Prepared for Office of Conservation and Coastal Lands, Department of Land and Natural Resources. 24 July 2009. Page 8.

¹¹ Wagner v Kona Blue Water Farms LLC United States District Court for the District of Hawai`i No CVO9 00600 Filed 16 December 2009.

¹² Food & Water Watch. "Fish Farms," October 2007, p 11; and Kona Blue Water Farms, LLC. "Final Supplemental Environmental Assessment for a Modification to Net Pen Designs within the Existing Production Capacity and Farm Lease Area for Kona Blue's Offshore Open Ocean Fish Farm off Unualoha Point, Kona, Hawaii." April 2009.

development of land-based, closed-loop re-circulating aquaculture systems, and would suspend the development, expansion or transfer of any existing permits of open water commercial finfish operations. S.B. 2486 calls for tougher requirements for open ocean aquaculture, requiring that applicants also submit a full Environmental Impact Statement.

Conclusion

Experiences with Hawai`ian open ocean aquaculture indicate that the State of Hawai`i should proceed with extreme caution in regulating the industry's development. Opposition voiced by the local community, especially by Native Hawai`ian groups, indicates that many constituents support this approach. The legislature should not extend the maximum lease term, or include an option for renewal, as stated in this Bill, because that would allow the industry to completely circumvent reasonable oversight, and increase this state's difficulty in sufficiently regulating the industry and protecting our natural and cultural resources.

Thank you for the opportunity to testify in opposition to the Bill, and in favor of a precautionary approach in protecting Hawai`i's environmental and cultural resources.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marianne Cufone".

Marianne Cufone, Esq.
Director, Fish Program
202.683.2511

A handwritten signature in cursive script, appearing to read "Justine Williams".

Justine Williams
Research/Policy Analyst, Fish Program
202.683.2485



EAST OAHU COUNTY FARM BUREAU

45-260 WAIKALUA ROAD S 101 KANEHOE, HI 96744

February 3, 2010

Representative Clift Tsuji, Chair
Committee on Agriculture
Representative Ken Ito, Chair
Committee on Water, Land, and Ocean Resources
State Capitol Building, 415 S. Beretania St.
Honolulu, Hawaii 96813

Dear Representatives Tsuji and Ito and Members of the Committees:

I am sending this testimony to express the strong support of the East Oahu County Farm Bureau for HB 2409, "Relating to Aquaculture." Aquaculture is one of the largest and fastest-growing sectors of Hawaii's diversified agriculture industry. Aquaculture and aquaponics farms tend to have substantial infrastructure requirements such as wells, tanks, raceways, pipes, and support structures which in turn require a substantial investment. In order to make this investment, aquafarmers need to have access to long-term loan capital, and need to know that they will be allowed to remain in place long enough to justify not only the financial investment, but the investment of personal time, labor, and ingenuity that is necessary to succeed in a challenging endeavor.

HB 2409 would increase the maximum lease terms for aquaculture and aquaponics farms, which would encourage investment in farm facilities and allow farmers greater access to Federal loan guarantees. It would allow established farms in good standing the right of first refusal, reducing the risk that farmers who have invested much of their lives in building successful businesses will see their life's labors taken away when their original leases expire. It also encourages more efficient use of resources by specifically permitting supportive activities such as the use of aquaculture effluents to produce secondary crops. We therefore support HB 2409, and encourage its passage.

Thank you for the opportunity to testify.

Sincerely,

Frederick M. Mencher
for Grant Hamachi, President

Arlina Agbayani

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 03, 2010 2:41 PM
To: AGRtestimony
Cc: mauibrad@hotmail.com
Subject: Testimony for HB2409 on 2/5/2010 11:00:00 AM

Testimony for AGR/WLO 2/5/2010 11:00:00 AM HB2409

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Brad Parsons
Organization: Individual
Address:
Phone:
E-mail: mauibrad@hotmail.com
Submitted on: 2/3/2010

Comments:

Aloha Representatives:

Regarding HB 2409 to "Increase lease terms for aquaculture ventures from 35 to 45 years and also allows for a maximum term of 65 years for ventures with favorable track records";:

Favorable track record or not, the effects of this relatively new industry are not yet know. Based upon initial scientific indications, we may well find that this measure was premature and inadvisable. There is no pressing reason why the State should voluntarily give away longer lease terms to these leasees at this point in time. Lets wait and see how this industry and the environment it effects really do in the years ahead.

Mahalo,
Brad Parsons