



LATE

Senator David Y. Ige, Chairman WAM
State Capitol, Rm. 215
Honolulu HI 96813

February 28, 2011

Re: Oppose Senate Bill 1511

Dear Senator Ige and members of the Senate Ways and Means Committee,

We are opposed to Senate Bill 1511 which would extend the number of years that open ocean fish feedlots (aquaculture) could lease our pristine publicly-owned ocean waters.

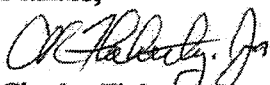
We have conducted Freedom of Information Act requests of several state and federal agencies and have found disturbing problems with the existing open ocean aquaculture farms, including:

1. Fish feed contaminated with melamine, a toxic carcinogen, which caused a shut-down of operations at Kona Blue Water.
2. Alteration of wild dolphin behavior that are approaching levels that constitute "take" as defined by the Marine Mammals Protection Act.
3. Alteration of shark behavior, including a Galapagos shark eating through a cage causing a large release of fish.
4. Treatment of disease outbreaks with drugs, including a drug on one occasion that is toxic to humans.
5. A continuing outbreak of skin flukes that requires massive amounts of hydrogen peroxide to be dumped into the ocean.
6. Alteration of wild fish behavior causing them to aggregate around the pens and have increased exposure to farm fish diseases and parasites.

Open ocean aquaculture has proven to be disastrous to eco-systems around the world, such as Canada, Chile, and Scotland. In Peru, China, Thailand, Vietnam, and elsewhere, shrimp farms have polluted vast coastal areas.

The Center for Biodiversity has named Hawai'i as the third most important threatened eco-system on the planet. Please vote against SB 1511.

Mahalo,


Charles Flaherty, President
'Āpono Hawai'i

NEIL ABERCROMBIE
Governor



RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

JAMES J. NAKATANI
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
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LATE

TESTIMONY OF RUSSELL S. KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

TUESDAY, MARCH 1, 2011
9:20 A.M.
CONFERENCE ROOM 211

SENATE BILL NO. 1511
RELATING TO AQUACULTURE

Chairperson Ige and Members of the Committee:

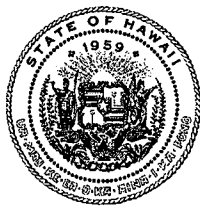
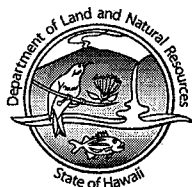
Thank you for the opportunity to testify on Senate Bill No. 1511 that increases aquaculture leases from 35 to 45 years and allows a maximum term of 65 years for ventures in good standing for 10 years or more. The Senate Bill also provides lessees in good standing the right of first refusal for the property and allows for supportive activities that are relating to aquaculture.

The Department supports the intent of the bill but defers discussion of specific lease terms to the Department of Land and Natural Resources (DLNR) which is authorized to oversee general leases of State land as provided in HRS 171.

Thank you for your consideration of Senate Bill No. 1511 as the Department recognizes that we must continue to support aquaculture so the State can achieve greater self-sufficiency.

Thank you for the opportunity to testify on this measure.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Tuesday, March 1, 2011
9:20 AM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 1511, SENATE DRAFT 1
RELATING TO AQUACULTURE**

Senate Bill 1511, Senate Draft 1 amends subsection (b) of Section 171-59, Hawaii Revised Statutes (HRS), to increase the maximum term for aquaculture leases from thirty-five (35) to a maximum term of sixty-five (65) years; and provides aquaculture lessees in good standing the right of first refusal. The purpose of this bill is to encourage commercial aquaculture production in the State by providing favorable terms for leasing of public lands. The Department of Land and Natural Resources (Department) respectfully opposes this bill.

The amendments proposed by the bill affect direct negotiation leases that, pursuant to Section 171-59(b), HRS, already benefit by being exempt from the public auction process and the public participation requirement that would ordinarily be required for such leases. While this bill would provide a benefit to aquaculture operations, it does so at the expense of ensuring fair competition for the leasing of public lands by excluding other potential bidders seeking to participate in the public disposition process.

The Department acknowledges the need for long term leases in order for certain business ventures to be economically viable, however, notes that potential aquaculture lessees are in fact eligible for sixty-five year leases through the public auction process and other public processes, in addition to direct negotiation through subsection (a) of Section 171-59, HRS, which is a form of public process akin to requests for proposals.

A right of first refusal is essentially an option to extend a lease that can be exercised unilaterally by a lessee. Such options have a chilling effect on other prospective bidders' willingness to bid on the property. Many prospective bidders would be reluctant to invest the substantial time, effort and resources to prepare and submit a bid with the knowledge that the existing lessee can exercise his or her right and nullify the bid at any time. Rights of first refusal provide an unfair

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
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
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benefit to the current lessee by depriving persons awaiting the published termination of the lease a fair opportunity to compete for the use of those lands at public auction. That inherent inequity ensures lower bids and consequently less revenue to the State.

A right of first refusal clearly goes against all the provisions for fairness in the leasing of state land in Chapter 171, HRS, and inappropriately impinges on the Board of Land and Natural Resources' (Board) discretionary authority to control the use of state lands. When seeking public lands for private use, potential lessees are well aware of the benefits and drawbacks of leasing state lands as opposed to conducting their activities on private lands. First and foremost is the knowledge that those lands are public assets that must serve primarily the interests of the general public and the public trust purposes, and secondarily the needs of a private user.

The safeguards and terms for leasing public lands are codified in Chapter 171, HRS, to ensure transparency and fairness in the disposition of state assets. Paramount in that process is the need to ensure and maintain the State's ability to use its land resources when and as needed to meet all of the State's obligations and priorities as well as the greater public needs of all of Hawaii's residents. Fundamental to that responsibility is the preservation and protection of the discretionary authority of the Board of Land and Natural Resources (Board) to consider and determine the most appropriate use of state land at any given time, including when and if an ongoing use should continue. The Board's ability to fulfill its fiduciary obligations to promote all five public trust purposes equally should never be compromised by any erosion of this authority.



Hawaii Farm Bureau
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LATE

SENATE COMMITTEE ON WAYS AND MEANS

March 1, 2011

9:20 am

Room 211

RELATING TO AQUACULTURE
SB 1511 SD1

Chairs Ige, Vice Chair Kidani, and Members of the Committee,

The Hawaii Farm Bureau Federation, on behalf of its farmer and rancher members throughout the islands, offers **strong support** for this bill.

It is only fair that aquaculture lessees in good standing be given the right of first refusal so that they can renew their leases, recoup on their substantial investments, and continue aquafarming. Passage of this bill will allow lessees the opportunity to pursue federally guaranteed loans to enable them to make the investments necessary for a successful enterprise.

This bill provides a means to accomplish what we have all agreed is needed in Hawaii; economic diversification and growth, food security, and green jobs.

Although some have criticized the wisdom of allowing a right of first refusal for these leases, calling it an unfair advantage, this opportunity is only awarded to a lessee in good standing.

Why would an aquaculture farmer take the risk and make substantial long-term investments knowing that he could be outbid and lose his lease just at the point where those investments and commitment of time, energy, and hard work begin to pay off?

The Farm Bureau believes that the State would be remiss in fulfilling its fiduciary duty to Hawaii's people if they were to allow a dedicated and successful aquaculture farmer to be outbid by an unproven newcomer who may lack the requisite expertise and dedication.

We agree with the suggested single word amendment offered by the HAA clarifying the intent that the forage used by animals described in the definition of the term "aquaculture" is grown with aquaculture effluents.



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THE SENATE

THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

LATE

COMMITTEE ON WAYS AND MEANS
Senator David Y. Ige, Chair
Senator Michelle Kidani, Vice Chair

DATE: Tuesday, March 1, 2011

TIME: 2:00 pm

PLACE: Conference Room 308, State Capitol
415 South Beretania Street, Honolulu

RE: Testimony in Opposition to SB 1511 – Relating to Aquaculture

Aloha Chair Ige, Vice-Chair Kidani and Members of the Ways and Means Committee,

Food & Water Watch (FWW) thanks you for the opportunity to provide testimony and to voice our **strong opposition to SB 1511** as it is written. SB 1511 would extend the maximum lease terms for all aquaculture operations from thirty-five to sixty-five years. This includes commercial finfish open ocean cage aquaculture operations. These large-scale operations are highly experimental. Long-term lease extensions could cost the state more in oversight and enforcement costs than it receives in lease payments, which for one existing operation is a mere \$2,100 per annum or 1% gross revenue, whichever greater.¹

FWW is a national consumer advocacy group with over 1,800 supporters in Hawai'i. We are also a founding member of the Pono Aquaculture Alliance, which is comprised of over thirty Hawai'i-focused organizations supporting responsible aquaculture practices. FWW advocates for safe, wholesome food produced in a humane and sustainable manner, and public rather than private control of water resources, including oceans, rivers and groundwater. We work with various community outreach groups around the world to create an economically and environmentally viable future. The FWW Fish Program works specifically to promote safe and 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 the past three years to promote public control of ocean waters and prevent the reckless expansion of the open ocean aquaculture industry.

¹ Board of Land and Natural Resources. "Request for approval of special installment agreement for payment of percentage rent under General Lease No. S-5721 to Kona Blue Water Farms, LLC, Kalaoa 1st through 4th, North Kona, Hawaii, Tax Map Key: 3rd/7-3-43; seaward of Kalaoa." August 28, 2009.



We support responsible and culturally appropriate forms of fish farming, such as small scale land-based recirculating aquaculture systems, *loko i`a* (traditional fish ponds) aquaponics and some shellfish culture. We have serious concerns, however, about expansion of the open ocean aquaculture industry (OOA), which already has resulted in negative environmental and social impacts at just its present scale, which are discussed below. The cumulative impacts of these operations and the ability of the marine environment to handle them are largely unknown. **Currently, state agencies have insufficient funding and are not well coordinated to be capable of carrying out oversight of ocean aquaculture.** Also, there are not strong regulations in place to address cumulative impacts and prevent damage to the ocean, its wildlife and Hawai'i's traditional and cultural ocean users from this highly experimental industry. Rather than further entrench this industry through lease extensions, we urge the State to take a precautionary approach and maintain or decrease current lease lengths until these issues are adequately addressed.

To address the issue of lease term extensions without impeding development of sustainable forms of aquaculture, SB 1511 could be amended to specifically exclude commercial finfish open ocean cage aquaculture operations from the general definition of "aquaculture" on page 2, line 21 through page 3, line 6.

The following provides more information on community opposition to OOA, its environmental and social impacts, challenges in agency oversight, the need for more rigorous environmental review, and other legislative efforts in the 2011 regular session pertaining to OOA.

I. Community Opposition to Open 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. All have faced community opposition. To date, five farms – Ahi Nui Tuna Farms LLC, Ahi Farms, and Pacific Ocean Venture, Maui Fresh Fish, and Indigo Seafood – have been unsuccessful in obtaining the needed community support, permits and/or financing, though some are making a repeated attempt.^{2,3} In 2002, a Native Hawaiian group filed a contested case against Ahi Nui Tuna Farms LLC. Two cases were also filed, though ultimately dismissed based on standing, against Hawaii Oceanic Technology, Inc.'s (HOTI) prospective *ahi* operation. Again, the cases were filed by Native Hawaiians, one on

² 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.

³ Report to the Twenty-Sixth Legislature of Hawai'i 2011 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. December 2010. Page 6.



behalf of the Kanaka Council and another by Michael Lee, a cultural practitioner.^{4,5} Additionally, due to lack of opportunity for involvement earlier in the permitting process, hundreds of people petitioned the Army Corps of Engineers to hold a public hearing regarding HOTI's Department of Army permit application. These requests, however, were denied.

After facing strong opposition from communities in Lanai, another company, Maui Fresh Fish, is shifting to an alternate location for its operation. It is at the beginning stages of the permitting process.

Kona Blue Water Farms (KBWF), an existing operation off of the Kona coast of Hawai'i Island, has met with numerous expressions of opposition over the years. The Kanaka Council, a Native Hawaiian organization, expressed frustration that Native Hawaiians were not adequately involved or consulted in the decision-making process for siting the KBWF facility which they saw is now located in a traditional fishing area directly off the coast of Kailua-Kona. This frustration led to a backlash in 2007 when KBWF applied to expand its cages that year, resulting in the filing of two contested cases. In response, the company decided to withdraw the application.^{6,7}

These experiences are all relevant to highlight the public opposition to expansion of this industry.

II. Ecological Concerns with Open Ocean Aquaculture

There are many serious issues related to OOA. Some of the primary concerns are: potential for pollution; effects on wild fish populations; effects on other marine animals, including mammals; and conflicts with the fishing and tourism industries.

Some proponents have argued that discharge from aquaculture facilities will have minimal ecological impacts because it will be diluted throughout the ocean, but in reality there is still little knowledge about the long-term effects. The Marine Aquaculture Task Force, assembled by the Woods Hole Oceanographic Institution found that: "Little is known about the assimilative capacity of marine ecosystems for the wastes produced by

⁴ 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.

⁵ 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.

⁶ "Kona fish farm facing expansion opposition." Associated Press, January 21, 2008. Available at: savekauai.org/oceans/kona-fish-farm-facing-expansion-opposition

⁷ 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.



aquaculture operations.”⁸ A 2006 study of a the University of Hawaii/Cates open ocean facility found that waste from fish cages in deep ocean waters had “grossly polluted” the seafloor and “severely depressed” marine life at some sampling sites close to fish cages. It also found that these effects spread to sites 80 meters away over the course of 23 months.⁹

Additionally, operations may impact insular Hawaiian false killer whales (*pseudorca crassidens*), which are a candidate for the endangered species list.^{10 11} Impacts on whales, dolphins, sharks, seals and sea turtles are also a concern. One facility, KBWF is actually located within the Hawai`i Islands Humpback Whale National Marine Sanctuary, and other proposed projects are located just outside its boundaries.

A recent study showed that the incidence of some species of sharks increased at Hawaiian OOA sites.¹² Sharks can be attracted to the fish in the cages, which can also be a threat to other wild fish or marine animals that congregate around the cages. They also serve as a threat to fishermen in the area. In 2005, KBWF killed a 16-foot tiger shark that was stalking one of its divers.¹³ In September 2009, 500-1000 fish were reported to have escaped from KBWF’s operation after a Galapagos shark bit through a cage.¹⁴ The shark then entered the cage and had to be removed using a seine net.¹⁵ Interactions with sharks at OOA sites is also culturally problematic due to the significant role they play for cultural practitioners as `aumakua.¹⁶

Ocean fish farms operations in other parts of the world provide an example of how aquaculture facilities can damage wild fish stocks if not carefully regulated. It has been well documented that when farmed fish escape, they can compete with wild fish for resources and habitat.¹⁷ Escapes continue to be a major issue for the industry.

Some recent examples of escapes include:

⁸ “Sustainable Marine Aquaculture: Fulfilling the Promise; Managing the Risks.” Report of the Marine Aquaculture Task Force, Takoma Park, MD, p. 3, Jan 2007. Available at:

http://darc.cms.udel.edu/Sustainable_Marine_Aquaculture_final_1_07.pdf

⁹ Lee, Han W., et al. “Temporal changes in the polychaete infaunal community surrounding a Hawaiian mariculture operation.” *Marine Ecology Progress Series*, 307:175-185, January 2006.

¹⁰ Baird, Robin et al. “False Killer Whales (*Pseudorca crassidens*) around the main Hawaiian Islands: Long-term site fidelity, inter-island movements, and association patterns.” *Marine Mammal Science*, vol. 24, iss. 3. January 2008. Pages 598-599.

¹¹ 50 Fed Register 70169-70187, (Nov. 17, 2010)

¹² Papastamatlou, Yannis P. et al. “Site fidelity and movements of sharks associated with ocean-farming cages in Hawaii.” *Marine and Freshwater Research*, vol. 61, iss. 12. December 13, 2010 at 1.

¹³ Lucas, Carolyn. “Fish farm seeks second location.” *West Hawaii Today*, May 6, 2006.

¹⁴ Note from Office of Conservation and Coastal Land. Titled September 2009.

¹⁵ E-mail communication. Neil Simms, President, Kona Blue Water Farms to Justin P. Viezbicke; William J. Walsh; Stephen M. Cain; and Nick Whitey. Subject: Galapagos freed. 15 September 2009.

¹⁶ Minerbi, Luciano. “Sanctuaries, Places of Refuge and Indigenous Knowledge in Hawaii.” In Morrison, R.J. and Linda Crowl (Eds.). (1994) *Science of Pacific Island Peoples Land Use and Agriculture Vol. 2*. Institute of Pacific Studies, University of the South Pacific. Page 108.

¹⁷ Naylor, R., et al. “Fugitive Salmon: Assessing Risks of Escaped Fish from Aquaculture.” *BioScience*, 55: 427-437, 2005.



- From late December of 2008 through early January of 2009, a series of massive escapes in Chile – totaling more than 700,000 salmon and trout from various farms – prompted the leader of the Chilean Senate’s Environmental Committee to proclaim the incidents an “environmental disaster.”¹⁸
- In October of 2009, 40,000 fully-grown Atlantic salmon escaped from a net pen facility in British Columbia when a machine removing dead fish from the bottom of the pen broke a hole in the net; the company reportedly recovered less than 3% of the escaped fish at the time the article was written, though efforts to recover the fish were ongoing.¹⁹
- In October of 2010, 70,000 harvest-ready salmon escaped from a farm in Norway, resulting in a loss to the company of at least \$600,000; the same location had suffered from an outbreak of pancreatic disease resulting in high levels of mortality only months earlier.²⁰

Disease transfer from farmed to wild fish is another risk. Wild pink salmon populations in British Columbia were depressed due to outbreaks of sea lice – marine parasites that cause viral or bacterial infection and ultimately death – increased incidences of which are associated with salmon farms.²¹

Although aquaculturists have argued that the industry can bring jobs and a local food source to Hawai‘i, the actual job numbers are limited, as the industry is highly mechanized (for example, KBWF modified its net pens so that cleaning the cages would be easier and diver jobs could be eliminated). Moreover, the bulk of the product from OOA operations has been, and in the case of the proposed farms, is planned to be, exported to the U.S. mainland and/or to countries where it will fetch higher prices.

If local food and economy were a true priority for open ocean aquaculturists, they could focus on developing land based facilities, or traditional fish ponds, which many environmentalists and Native Hawaiians consider a more sustainable option.

III. Consequences from Hawaiian Ocean Aquaculture and Inability to Regulate or Mitigate Them

Recent information released by the State after the submission of a FOIA request highlighted additional flaws with KBWF’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

¹⁸ Witte, Benjamin. “Thousands of salmon and trout escape in southern Chile.” *The Patagonia Times*, January 19, 2009.

¹⁹ Lavoie, Judith. “40,000 fish escape farm.” *The Times Colonist*, October 24, 2009.

²⁰ Grindheim, Joar. “Costly salmon escape.” *IntraFish*, October 15, 2010.

²¹ Krkosek, M., et al. “Declining wild salmon populations in relation to parasites from farmed salmon.” *Science*, 2007. Peeler, E.J., et al.



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 monitoring system was unsatisfactory. They proposed a minimum of quarterly monitoring by drop camera, but it took over a year for the company to comply.²²

KBWF has introduced antibiotics in Hawaiian waters at their site, without approval by Hawaiian 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.²³ 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 Hawaiian waters and not a land-based tank.²⁴

The State 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."²⁵

These examples all serve to illustrate the complexity of regulating OOA. Clearly, in these instances, the state agencies have not had the resources to stop 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 2076, regardless of what harm occurs in the interim period, wholly fails to protect Hawaii's ecological, cultural and traditional ocean interests and ignores scientific progress.

IV. Insufficient Environmental Review Process

Issues regarding the environmental review process for OOA operations must be addressed before lengthening their lease terms. Currently, companies are not always required to submit an Environmental Impact Statement (EIS). When applying for

²² 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.

²³ 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

²⁴ Letter dated November 15, 2007. Dan A. Polhemus, Administrator to Samuel J Lemmo, Administrator 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.

²⁵ 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 Conservation and Coastal Lands, Department of Land and Natural Resources. Subject: Kona Blue Water Farms open ocean fish farm, concerns regarding dolphin interactions. 20 February 2008.



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conservation district use, an aquaculture company must provide: “an environmental assessment or, if required, an environmental impact statement which shall be prepared and accepted in compliance with the rules adopted under Chapter 343.”

According to HRS §343-2 an Environmental Assessment (EA) is a “written evaluation to determine whether an action may have a significant effect.” An EIS is “an informational document prepared in compliance with the rules adopted under section HRS §343-6 and which discloses economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.”

Based on an EA, the agency, in this case the Department of Land and Natural Resources (DLNR) OCCL, determines whether there is a “finding of no significant impact,” meaning, “a determination... that the subject action will not have a significant effect.” If significant impacts are expected, the applicant must go on to prepare an EIS. This determination and the final approval or disapproval of an EA or EIS must take public comment into consideration.

Unlike an EA, an EIS: must explore alternatives to the proposed action; must evaluate the environmental setting in greater detail; must give an in depth discussion of the probable impacts, including cumulative impacts, direct and indirect impacts, and impacts on cultural practices and resources; must discuss the relationship between short-term use of the environment and long-term productivity; must detail unavoidable environmental effects; must discuss mitigation measures; and in the final EIS, must discuss how each comment was evaluated or give reasons why a specific comment was not accepted. Given the waste discharge, potential impacts on marine animals and fish stocks, and potential cultural ramifications, it is not reasonable to expect that any OOA facility would not result in “significant effects.” Despite this, DLNR has not required all OOA applicants to conduct an EIS.

OCCL also needs to be held more accountable in the cases where it does require an EIS. In HOTI’s case, OCCL approved the EIS despite finding that “there are still unresolved issues regarding the level of environmental and project disclosure, analysis regarding the engineering design of the proposed engine, fish feed components, lack of benthic studies in the project area, and lack of shark, marine mammal and endangered species plan.”

An EIS should be required of every OOA project and each project should be more rigorously reviewed.

V. Lack of Demonstrated Economic Benefits

HB 568 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.



As ocean aquaculture is scheduled to increase in Hawai'i, projections for the amount of direct employment it will provide have decreased. Prior to modifications or expansions, Hukilau LLC and KBWF 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 KBWF site, the industry estimates it will only be providing 39 jobs. This is despite anticipated increases in production of about 2.5 million pounds to 6 million pounds annually.²⁶ In 2010, Hukilau declared bankruptcy, putting their promise of jobs in question.²⁷

Furthermore, it is questionable whether employment by the aquaculture industry is safe or stable. For example, a diver employed by KBWF 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..."²⁸

In addition, the aquaculture industry in Hawai'i has not sufficiently proven that it can achieve profitability with existing operations filing for bankruptcy or transferring leases.

VI. Other Legislative Efforts

The controversy surrounding ocean aquaculture in Hawai'i is further evidenced by the introduction of two other bills this legislative session. HB 221 Relating to Mariculture lends support to the 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. SB 626 calls for more oversight of open ocean aquaculture, requiring that applicants submit a full EIS during the permitting process.

Conclusion

²⁶ 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.

²⁷ Gomes, Andrew. "Hukilau Foods files for bankruptcy." Star Advertiser. November 3, 2010.;

²⁸ Wagner v Kona Blue Water Farms LLC United States District Court for the District of Hawai'i No CV09 00600 Filed 16 December 2009.



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Experiences with Hawaiian OOA operations indicate that the state of Hawai'i should proceed with extreme caution in regulating the industry's expansion. Opposition voiced by the local community, especially by Native Hawaiian groups, indicates that many constituents support this approach. We urge the legislature not to extend the maximum lease term, or include an option for renewal, as stated HB 568, as that would allow the industry to completely circumvent meaningful oversight over the long term, and increase the State's difficulty in sufficiently regulating the industry and protecting natural and cultural resources.

Thank you for the opportunity to testify in opposition to the SB 1511, and in favor of a precautionary approach in protecting Hawai'i's ecological and cultural resources.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christina Lizzi".

Christina Lizzi
Policy Analyst, Fish Program
202.683.2495

SB 1511 PROPOSED AMENDMENT

To address the issue of lease term extensions without impeding development of sustainable forms of aquaculture, SB 1511 could be amended to specifically exclude commercial finfish open ocean cage aquaculture operations from the general definition of “aquaculture” on page 2, line 21 through page 3, line 6.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 01, 2011 9:25 AM
To: WAM Testimony
Cc: lindainhawaii65@gmail.com
Subject: Testimony for SB1511 on 3/1/2011 9:20:00 AM

LATE

Testimony for WAM 3/1/2011 9:20:00 AM SB1511

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Linda Morgan
Organization: Ka `Ohana O Honaunau
Address:
Phone:
E-mail: lindainhawaii65@gmail.com
Submitted on: 3/1/2011

Comments:

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 9:37 PM
To: WAM Testimony
Cc: raychaikin@aol.com
Subject: Testimony for SB1511 on 3/1/2011 9:20:00 AM

LATE

Testimony for WAM 3/1/2011 9:20:00 AM SB1511

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Ray Chaikin
Organization: Individual
Address:
Phone:
E-mail: raychaikin@aol.com
Submitted on: 2/28/2011

Comments:

I oppose open ocean fish farms as they have been environmentally damaging and could have a negative impact on tourism and fishing.

It would be premature to increase lease terms without any studies on the potential long-term impacts of the industry and what it would cost the state to continue to support it.

Please oppose SB1511.

Mahalo,
Ray Chaikin
Kamuela, HI 96743

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 4:23 PM
To: WAM Testimony
Cc: mkbak07@hotmail.com
Subject: Testimony for SB1511 on 3/1/2011 9:20:00 AM

LATE

Testimony for WAM 3/1/2011 9:20:00 AM SB1511

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Marilyn Bernhardt
Organization: Individual
Address:
Phone:
E-mail: mkbak07@hotmail.com
Submitted on: 2/28/2011

Comments:

I'm opposed to SB 1511 because it would extend lease terms for open ocean fish farms from 35 to 65 years, even though such operations have been environmentally damaging and could have a negative impact on tourism and fishing. It's a highly experimental industry that has generated little revenue for the state but has stretched the resources of permitting and oversight agencies. It would be premature to increase lease terms without any studies on the potential long term impacts of the industry or what it could cost the state to continue to support it.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 5:10 PM
To: WAM Testimony
Cc: carlbernhardt@msn.com
Subject: Testimony for SB1511 on 3/1/2011 9:20:00 AM

LATE

Testimony for WAM 3/1/2011 9:20:00 AM SB1511

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Carl Bernhardt
Organization: Individual
Address:
Phone:
E-mail: carlbernhardt@msn.com
Submitted on: 2/28/2011

Comments:

I am opposed to this Bill because it would extend ocean leases for aquaculture purposes. The current leases of 35 years are already too long and do not sufficiently provide for a revocation of a lease in the event of the failure of the lessee to meet all the conditions of said lease. As an example, the Kona Blue aquaculture project was shut down after a few years in operation due to net fouling, disease, and other issues. Rather than revoke the lease of this taxpayer subsidized operation, Kona Blue was allowed to transfer its lease to another entity. The problems experienced by Kona Blue were not unique. Globally, open ocean aquaculture has caused degradation to water quality and wild fish populations, increase in predators, and proliferation of nuisance species such as jellyfish.

Our economy and lifestyle here in Hawaii is heavily dependent on our pristine ocean to supply fresh, local protein, provide recreational opportunities, and to attract visitors. Imagine the repercussions to news reports of polluted water here in Hawaii. Much more research needs to be done before leasing our most precious resource for such a long time. Please defer this Bill.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 4:59 PM
To: WAM Testimony
Cc: gfilaban@aol.com
Subject: Testimony for SB1511 on 3/1/2011 9:20:00 AM

LATE

Testimony for WAM 3/1/2011 9:20:00 AM SB1511

Conference room: 211
Testifier position: oppose
Testifier will be present: No
Submitted by: Gwen Ilaban
Organization: Individual
Address:
Phone:
E-mail: gfilaban@aol.com
Submitted on: 2/28/2011

Comments:

Extending lease terms for open ocean fish farms from 35 to 65 years is unacceptable.

These type of industrialized operations have been environmentally damaging and could have a negative impact on tourism and fishing. It's a highly experimental industry that has generated very little revenue for the state.

It would be premature to increase lease terms without any studies on the potential long-term impacts of the industry.

Please OPPOSE SB 1511 bill!

Mahalo for your kokua,
Gwen Ilaban
Kailua-Kona, HI