



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

S.B. NO. 2284, RELATING TO AQUACULTURE.

BEFORE THE:

SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENT AND ON
ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

DATE: Monday, February 14, 2022 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 224, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Alison S. Kato or Bryan C. Yee, Deputy Attorneys General

Chairs Gabbard and Wakai and Members of the Committees:

The Department of the Attorney General (Department) provides the following comments on this bill:

This bill proposes to establish a new part within chapter 141, Hawaii Revised Statutes (HRS), related to the Hawaii Department of Agriculture's governing of the business of aquaculture.

On page 4, lines 17 through 19, this bill adds a new section within chapter 141, HRS, that states that any person who takes aquaculture products without lawful entitlement shall be subject to prosecution for theft. The crime of theft is already addressed by part IV of chapter 708, HRS, which includes the action described in the bill (i.e., the unauthorized taking of the property of another). For this reason, the Department believes that this new section is unnecessary, may create confusion in enforcement, and recommends that it be deleted from this bill.

Section 3 of this bill amends chapter 141 by designating sections 141-2.5 through 141-2.7, HRS, as part IV and inserting a title before section 141-2.5, HRS, to read "PART IV. AQUACULTURE." Sections 141-2.5 through 141-2.7, HRS, are currently located within part I of chapter 141. Inserting a new part IV located before section 141-2.5, HRS, would have the effect of creating this new part IV within part I, between sections 141-2 and 141-3, HRS. To conform to the existing structure of chapter 14, the Department recommends the following amendments to the bill.

1. Revise section 2 of the bill by replacing the prefatory wording on page 2, lines 17 through 19, adding the title to the new part, continuing on with the remainder of the proposed additional statutory sections, and adding new statutory provisions identical to the current sections 141-2.5 through 141-2.7, HRS, as follows:

SECTION 2. Chapter 141, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . AQUACULTURE

[insert existing proposed additional statutory sections from page 2, line 20, through page 7, line 18, except as noted above]

§141- Aquaculture program. (a) There is established within the department an aquaculture program that shall:

- (1) Maintain cognizance of actions taken by industry and by federal, state, county, and private agencies in activities relating to aquaculture, and promote and support worthwhile aquaculture activities;
 - (2) Serve as an information clearinghouse for aquaculture activities;
 - (3) Coordinate development projects to investigate and solve biological and technical problems involved in raising selected species with commercial potential;
 - (4) Actively seek federal funding for aquaculture activities;
 - (5) Undertake activities required to develop and expand the aquaculture industry; and
 - (6) Perform such other functions and activities as may be assigned by law.
- (b) The chairperson may employ temporary staff exempt from chapter 76.

§141- Fees for aquaculture services. The department may establish and assess fees pursuant to chapter 91 for:

- (1) Aquatic animal and plant health diagnostic services; and
- (2) Any items or expert services purchased from the department related to aquaculture planning, disease management, and the marketing of seafood products;

provided that the assessment of these fees does not violate any other provision of this chapter.

§141- Aquaculture development special fund. (a) There is established in the state treasury the aquaculture development special fund into which shall be deposited:

- (1) Appropriations from the legislature;
- (2) Moneys collected as fees for special microbiological and histological procedures and expert aquaculture-related services;
- (3) Moneys collected from the sale of any item related to aquaculture development that is purchased from the department;
- (4) Moneys directed to the aquaculture development program from any other sources, including but not limited to grants, gifts, and awards; and
- (5) Moneys derived from interest, dividend, or other income from the above sources.

(b) Moneys in the aquaculture development special fund shall be used to:

- (1) Implement the aquatic disease management programs and activities of the department, including provision of state funds to match federal grants; and
- (2) Support research and development programs and activities relating to the expansion of the state aquaculture industry. Research and

development programs and activities funded under this paragraph may be conducted by department personnel or through contracts with the University of Hawaii or other qualified persons."

2. Delete section 3 of the bill on page 7, line 19, through page 8, line 1, and repeal sections 141-2.5 through 141-2.7, HRS, by inserting the following new section 3 in the bill:

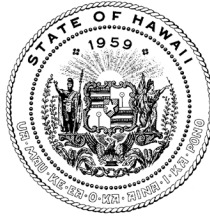
SECTION 3. Sections 141-2.5, 141-2.6, and 141-2.7, Hawaii Revised Statutes, are repealed.

[Set forth the three sections to be repealed.]

3. Delete section 4 of the bill.

Thank you for the opportunity to offer comments.

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 Committees on
AGRICULTURE AND ENVIRONMENT
and
ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM**

**Monday, February 14, 2022
3:00 PM
State Capitol, Conference Room 224 & Videoconference**

**In consideration of
SENATE BILL 2284
RELATING TO AQUACULTURE**

Senate Bill 2284 proposes to establish provisions relating to the Department of Agriculture's (HDOA) governing of the business of aquaculture; grants exclusive property rights to persons who lawfully obtain the cultured progeny of wild plants and animals by brood stock acquisition; clarifies that any person who takes aquaculture products without lawful entitlement shall be subject to prosecution for theft; authorizes HDOA to regulate the transportation, purchase, possession, and sale of specific aquaculture products as may be necessary to protect indigenous species; establishes prohibitions relating to the spawning, incubating, or cultivation of transgenic fish species or any exotic species of finfish; makes exemptions for certain research activities; and requires HDOA to prepare programmatic environmental impact reports. **The Department of Land and Natural Resources (DLNR) appreciates the intent of this bill and provides the following comments and suggested amendments.**

DLNR regulates the take, possession, and sale of certain species of aquatic life through size limits, bag limits, seasonal closures, and gear restrictions. Pursuant to Section 187A-3.5, Hawaii Revised Statutes (HRS),¹ DLNR issues Aquaculture Facility Licenses to aquaculture facilities

¹ Section 187A-3.5, HRS, provides in relevant part:

(a) Notwithstanding the provisions in subtitle 5 of title 12, or administrative rules adopted thereunder, the department may issue to any qualified aquaculturist a license to fish, possess, rear, and sell any aquatic life whose fishing, possession or sale is prohibited by closed season, minimum

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
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HISTORIC PRESERVATION
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LAND
STATE PARKS

that culture regulated aquatic species. Similarly, DLNR issues Aquaculture Dealer Licenses to dealers that sell cultured aquatic species that are regulated by state law. These licenses allow aquaculturists and dealers to legally possess and sell cultured species that would otherwise be prohibited under state law.

The bill proposes to “exempt [the business of aquaculture] from any other provisions relating to commercial fishing, harvesting, processing, and marketing.” (*see* p.4, lines 1-2). Commercial fishing involves the harvest of wild aquatic life for commercial purposes, not the harvesting of captive, cultured aquatic life. As written, the bill could be interpreted to allow aquaculturists to take any wild aquatic life for aquaculture purposes, even if it would be in violation of commercial fishing regulations. DLNR recommends amending this part of the bill to remove the reference to “commercial fishing.” This would clarify that DLNR fishing regulations would still apply to the harvest of wild aquatic life for aquaculture stocking or brood stock purposes.

Also, it is unclear whether the bill is intended to remove DLNR’s aquaculture licensing authority under Section 187A-3.5, HRS. If so, it could adversely affect DLNR’s ability to enforce laws prohibiting the take, possession, or sale of wild aquatic life. DLNR recommends amending the bill to clarify that HDOA’s new regulatory authority only applies to cultured aquatic life. This would clarify DLNR’s continued jurisdiction to monitor and enforce the possession and sale of regulated aquatic life by aquaculture facilities and dealers through proper licenses.

The Department recommends amending the bill (at p.3, line 20, through p.4, line 2) to read:

§141- Powers, duties, and activities of the department. (a) The business of aquaculture shall be governed by this part and shall be exempt from any other provisions relating to ~~[commercial fishing,]~~ the harvesting, processing, and marketing ~~[-]~~ of cultured aquatic life.

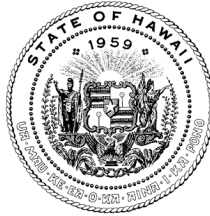
Thank you for the opportunity to comment on this measure.

size, or bag limit; provided that the qualified aquaculturist rears or reared the aquatic life in an aquaculture facility.

(b) The department may further issue to any person a license to possess or sell or offer for sale any aquatic life whose possession or sale is prohibited by a closed season, minimum size, or bag limit; provided that the aquatic life was reared by a licensed qualified aquaculturist in an aquaculture facility pursuant to subsection (a).

(c) The department may adopt rules pursuant to chapter 91, to implement this section by establishing the licenses, fees, and terms or conditions necessary for the fishing, possession, or sale of aquatic life whose fishing, possession, or sale is prohibited by closed season, minimum size, or bag limit.

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GOVERNOR OF HAWAII



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

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Also, it is unclear whether the bill is intended to remove DLNR’s aquaculture licensing authority under Section 187A-3.5, HRS. If so, it could adversely affect DLNR’s ability to enforce laws prohibiting the take, possession, or sale of wild aquatic life. DLNR recommends amending the bill to clarify that HDOA’s new regulatory authority only applies to cultured aquatic life. This would clarify DLNR’s continued jurisdiction to monitor and enforce the possession and sale of regulated aquatic life by aquaculture facilities and dealers through proper licenses.

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DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
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TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER

CHAIRPERSON, BOARD OF AGRICULTURE

**BEFORE THE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
AND AGRICULTURE AND ENVIRONMENT**

**FEBRUARY 14, 2022
3:00 P.M.**

CONFERENCE ROOM 224 & VIA VIDEOCONFERENCE

**SENATE BILL NO. 2284
RELATING TO AQUACULTURE**

Chairpersons Wakai and Gabbard and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill 2284. The bill establishes provisions relating to the Department of Agriculture's ("Department") governing of the business of aquaculture. Grants exclusive property rights to persons who lawfully obtain the cultured progeny of wild plants and animals by broodstock acquisition. Clarifies that any person who takes aquaculture products without lawful entitlement shall be subject to prosecution for theft. Authorizes the Department of Agriculture to regulate the transportation, purchase, possession, and sale of specific aquaculture products as may be necessary to protect indigenous species. Establishes prohibitions relating to the spawning, incubating, or cultivation of transgenic fish species or any exotic species of finfish. Makes exemptions for certain research activities. Requires the Department of Agriculture to prepare programmatic environmental impact reports. The Department supports this bill.

The bill would promote the State's economic development by allowing the Department to have governance of aquaculture operations. Using a science-based approach, the Department



would create a pro-development framework that minimizes negative effects on the environment through monitoring and reporting.

As such, the Department supports this measure and offers the following comments for clarity and to improve the effectiveness of this bill.

- The proposed program will require additional programmatic resources (funds/staff) to ensure operational effectiveness.
- The bill is unclear regarding which agencies would be responsible for some of the work contemplated by the regulatory framework and regulatory oversight seems minimal. This bill eliminates or preempts regulations for other agencies. The HDOA Chairperson will oversee processing, distribution, and marketing, but the bill is silent regarding managing actual sites, production, sale, and live transfer. More clarity is required.
- Policy guidance regarding balancing invasive species concerns vis-à-vis food production priorities would greatly improve operational decision-making.
- “Plants” is referred to throughout the bill. It is unclear whether the term includes algae.
- The new definitions and references may impact the existing provisions of the chapter and should be reviewed for consistency.
- The treatment of “exotic species” may inadvertently incentivize illegal release of such species once established, since it appears to be exempt from this regulation.
- Some of the powers of the HDOA Chair to administer the program may conflict with HRS §187A-3.5 and could also preclude DLNR from issuing permits. Additionally, other agency regulations for commercial fishing, harvesting, processing, or marketing, appear to be exempt.
- The bill is silent regarding recovery of costs, logistics, fees (for permits, inspections, etc.) to fund operations, and authority to place such revenues into a special fund to ensure operational matters can be performed and sustained.
- Apart from prohibiting the use of exotic/transgenic fish in the open ocean, it is unclear how this bill will be applied with respect to the existing invasive species regulatory framework. The Department is concerned that the lack of required inspections, licenses, or certifications, and penalties for non-compliance would make program management very challenging. There is a lack of clarity as to whether this prohibition includes imported products, as well as those produced locally. The use of “may” might also

introduce ambiguity in the existing requirement for possession permits of animals/microorganisms, particularly those on the restricted lists such as tilapia.

- Research activity appears to be limited to accredited academic institutions or private entities. The Department recommends that the Department, DLNR, or any other governmental agency be allowed to conduct research on its own. The oversight of research activities would benefit from greater clarity regarding which agency or agencies will have regulatory and oversight authority and how the activities will be allowed.

Thank you for the opportunity to testify on this measure.



HATCH

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Website: www.hatch.blue

TESTIMONY OF SENATE BILL 2284

RELATING TO AQUACULTURE.

Monday February 14, 2022, 3pm

Dear Chairpersons Wakai and Gabbard and Members of the Committees;

I am Wayne Murphy, Managing Partner of Hatch Aquaculture Fund Management LLC, Hawaii. Hatch is a global innovation and venture capital company focused exclusively on the global aquaculture and alternative seafood industry, where we work with governments, NGOs, research organizations and new ventures with offices at NELHA, Europe (Norway) and Asia (Singapore). We have a long track record of supporting sustainable aquaculture projects in Hawaii and have received a second grant period from The U.S. Economic Development Administration (EDA) to support the development of new aquaculture businesses in Hawaii in the years to come.

Hatch **supports SB2284**. Allowing the Department of Agriculture to govern the business of Aquaculture would promote productive and responsible handling of wild stocks and indigenous species, supported by scientific research.

Thank you for the opportunity to testify on this bill.

Sincerely,

Wayne Murphy

Co-Founder & Partner Hatch Accelerator Fund Management LLC

SB-2284

Submitted on: 2/13/2022 10:37:00 PM

Testimony for AEN on 2/14/2022 3:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---|---------------------------|-----------------------------------|
| Robert Endreson | Testifying for Kohala Mountain Fish Company | Support | No |

Comments:

As the largest Fish Farm in the State and also a Certified Processing facility, we can testify that the crisis in sustainable AG is only beginning. More Aquaculture would be a benefit to the State and it's goals of Food Security.