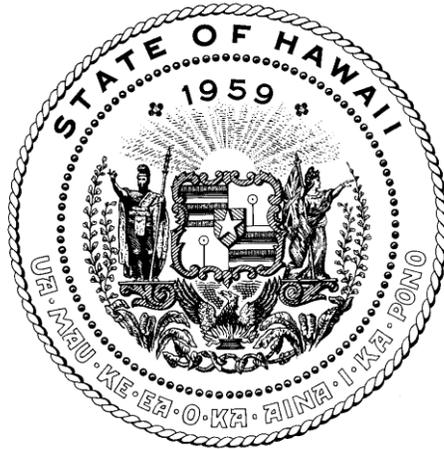


REPORT TO THE TWENTY-SIXTH LEGISLATURE
STATE OF HAWAII
2011 REGULAR SESSION

IMPLEMENTATION OF CHAPTER 190D, HAWAII REVISED STATUTES
OCEAN AND SUBMERGED LANDS LEASING



PREPARED BY:
DEPARTMENT OF AGRICULTURE
AND
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IN RESPONSE TO
SECTION 12 OF ACT 176, SESSION LAWS OF HAWAII 1999

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IMPLEMENTATION OF CHAPTER 190D, HAWAII REVISED STATUTES OCEAN AND SUBMERGED LANDS LEASING

1.0 Introduction

Act 176, Session Laws of Hawaii 1999, went into effect on July 1, 1999, allowing greater use of Hawaii's ocean resources for research and commercial development of open ocean aquaculture. In addition the law requires the Department of Land and Natural Resources (DLNR) in cooperation with the Department of Agriculture (DOA), to submit a report to the Legislature prior to each regular legislative session. This report, the twelfth in the series, highlights related national activities and addresses the progress in implementing ocean leasing for open ocean aquaculture during 2010.

2.0 The National Scene

Activity at the federal level has reflected the national interest and the lack of clear governance regarding open ocean aquaculture; primarily reacting to the Gulf of Mexico Fishery Management Council approval of offshore aquaculture in the Northern Gulf of Mexico in 2009. Following local approval, final approval was still needed from the Secretary of Commerce before the Gulf Council could issue permits for marine aquaculture facilities in the Gulf of Mexico federal waters. However, the Department of Commerce's National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) did not take action on it. The explanation was that the scope of the operation was unprecedentedly wide and the plan raised "Important issues of national policy regarding the manner in which offshore aquaculture is regulated." According to NMFS, "It was not prudent to take action on the [plan] in the absence of a comprehensive national policy." The plan was automatically approved because NMFS neglected to take action within 30 days but the plan will not go into effect until the agency approves implementing regulations and holds additional meetings.

To further federal emphasis on marine development, President Obama established a new "National Policy for the Stewardship of the Oceans, Coasts, and Great Lakes" via

Executive Order on July 19, 2010. This new policy strengthens ocean governance and coordination, establishes guiding principles for ocean management, and adopts a flexible framework for effective coastal and marine spatial planning to address conservation, economic activity, user conflict, and sustainable use of the ocean, our coasts, and the Great Lakes. On August 13, 2010, NOAA coordinated an online briefing about the new policy.

NOAA was also tasked with developing a National Aquaculture Policy to provide a policy that will address all forms of marine aquaculture. Between April 14 and May 21, 2010, NOAA held seven public listening sessions to gather input in order to develop a policy. The sessions were an open forum for the public and were held in Rhode Island, Louisiana, Washington State, Hawaii, California, and Alaska. NOAA also hosted a national call-in for those who could not make the regional sessions. A total of 352 people participated in the seven sessions, while others contributed their comments online.

Most recently, on August 18, 2010, a federal judge in Washington, DC ruled against three environmental groups that filed suit against the Secretary of Commerce, NOAA, and NMFS, to stop the fish farming plan because it violated existing federal laws. The lawsuit could not progress because separate federal regulations have not yet been issued for the plan.

3.0 Hawaii Activities

3.1 Commercial Development Progress

3.1.1 Hukilau Food, LLC

Hukilau Foods received DLNR approval to double the size of their lease site for moi production. However, in June 2010, Randy Cates, Hukilau CEO/President, filed suit against Grove Farms, et al. The suit forced temporary suspension of hatchery activities at the Oceanic Institute, Oahu and the naming of Ryan

Murashige as interim CEO/President. Mr. Murashige has taken over operational oversight and has focused on obtaining a permit to complete construction of Hukilau's hatchery at Campbell Industrial Park, Barbers Point.

3.1.2 Kona Blue Water Farm / Keahole Fish

In February 2010, Keahole Point Fish LLC acquired Kona Blue Water Farm's offshore lease and mariculture operation on the Island of Hawaii. Keahole Point Fish is currently upgrading equipment and implementing new business practices on the site to improve operational efficiency. The Company plans to continue production of kahala on the farm site.

Kona Blue Water Farm continues to run the hatchery, the research and development programs, and the marketing for Kona Kompachi.

3.1.3 Hawaii Oceanic Technology, Inc.

In October 2009, Hawaii Oceanic Technology, Inc. (HOT) was granted its Conservation District Use Permit by the Board of Land and Natural Resources (Board). One individual and one community group filed a contested case. In May 2010, the Board denied the two requests for a contested case hearing. Continuing the permit process, HOT has submitted all other permit applications for the Army Corps of Engineers Section 10 permit, the National Pollution Discharge Elimination System permit (administered by the State Department of Health) and a Coastal Zone Management permit, administered by the Department of Business, Economic Development, and Tourism.

HOT has continued its preparations for spawning tuna in captivity and presently maintains a brood stock facility with several viable yellow fin tuna. The company expects the tuna to be ready to spawn by December 2010. The company is also

undergoing several engineering and development steps toward deploying its first Oceansphere in 2012.

3.1.4 Maui Fresh Fish

The Maui Fresh Fish Project remains challenged with securing the funding required to proceed.

3.1.5 Indigo Seafood

The Indigo Seafood Project remains challenged with securing the funding required to proceed.

3.2 Other Activities and Major Developments

Local opposition to open ocean fish farming became more organized in 2010. A local group, the Kahea Council, collaborated with Food and Water Watch to published a document in April 2010, “The Empty Promise of Ocean Aquaculture in Hawaii”, which was highly critical of the industry. The opposition groups also lobbied the Hawaii Legislature during the 2010 Legislative Session for support and were able to have introduced House Bill 2958, House Concurrent Resolution 245, and House Concurrent Resolution 326 (all of which proposed a moratorium on any new permits for open water commercial mariculture operations). The bill and both concurrent resolutions were not heard.

4.0 Conclusions

The lack of a clear federal policy combined with local opposition has created a challenging environment for open ocean mariculture in Hawaii. Future industry growth depends on creating an investor friendly environment where it is financially feasible to obtain a permit and operate a profitable operation.

5.0 Recommendations

As stated in previous reports to the Legislature, the proper infrastructure must be established to balance environmental concerns with opportunities for development. Areas for focus are governance, environmental impact, and health management. Governance is crucial because there is a current lack of clear federal responsibility and jurisdiction in governing the open ocean space and a lack of standards to protect the marine environment. Funding needs to be secured to support research and the implementation of protocols to identify and mitigate environmental and health risks for aquaculture products. Additionally, a system to disseminate authoritative information needs to be implemented to offset the misinformation about the industry that is too easily found today.