

**ALASKA STATE LEGISLATURE
JOINT COMMITTEE ON
ADMINISTRATIVE REGULATION REVIEW**

March 8, 2001

2:51 p.m.

HOUSE MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Jeannette James
Representative Joe Hayes

HOUSE MEMBERS ABSENT

All House members present

SENATE MEMBERS PRESENT

Senator Robin Taylor, Vice Chair
Senator Georgianna Lincoln

SENATE MEMBERS ABSENT

Senator Lyda Green

OTHER MEMBERS PRESENT

Representative Drew Scalzi

COMMITTEE CALENDAR

Kachemak Bay Closure to Bottom Mariculture

PREVIOUS ACTION

No previous action to record

WITNESS REGISTER

ELLEN FRITTS, Deputy Director
Division of Habitat and Restoration
Department of Fish & Game
PO Box 25526
Juneau, Alaska 99802-5526

POSITION STATEMENT: Provided the committee with information regarding the department's proposed regulation to close Kachemak

Bay and Fox River Flats critical habitat area (CHA) to on-bottom mariculture.

DR. WILLIAM HAUSER
Division of Habitat and Restoration
Alaska Department of Fish & Game
Anchorage, Alaska
POSITION STATEMENT: Answered questions.

LANCE TRASKY, Southcentral Regional Supervisor
Division of Habitat and Restoration
Alaska Department of Fish & Game
333 Raspberry Road
Anchorage, Alaska 99518-1599
POSITION STATEMENT: Answered questions.

CLAUDIA SLATER
Division of Habitat and Restoration
Alaska Division of Fish & Game
333 Raspberry Road
Anchorage, Alaska 99518-1599
POSITION STATEMENT: Answered questions.

RAYMOND RaLONDE
2221 E. Northern Lights Boulevard, Number 110
Anchorage, Alaska 99508
POSITION STATEMENT: Expressed concerns and said that a ban on [clam farming] isn't necessarily the best way to proceed.

ACTION NARRATIVE

TAPE 01-7, SIDE A
Number 001

CHAIR LESIL McGUIRE called the Joint Committee on Administrative Regulation Review to order at 2:51 p.m. Representatives McGuire and Hayes and Senator Taylor were present at the call to order. Representative James and Senator Lincoln arrived as the meeting was in progress.

Kachemak Bay Closure to Bottom Mariculture

Number 0097

ELLEN FRITTS, Deputy Director, Division of Habitat and Restoration, Alaska Department of Fish & Game (ADF&G), related her understanding of today's meeting to be to provide the

committee with information regarding the department's proposed regulation to close Kachemak Bay and Fox River Flats critical habitat areas (CHA) to on-bottom mariculture. She noted that the committee [packet] should include a memorandum from Lance Trasky, Division of Habitat and Restoration, Region II, dated February 6, 2001. Before beginning her presentation, Ms. Fritts clarified that today's meeting concerns a two-sentence regulation that only applies to Kachemak Bay and Fox River Flats. This regulation would amend 5 AAC 95 to add a new article, Article 3, Prohibited Activities, [which is included in the committee packet].

CHAIR MCGUIRE announced that this meeting would have to conclude by 3:30 p.m. She informed Ms. Fritts that the committee has been given numerous materials, including a copy of the regulations, the public notice, ADF&G's response to the extension request, and the memorandum for closure.

Number 0315

MS. FRITTS continued by specifying that she would review the following topics: Fish and wildlife values in Kachemak Bay, the applicable statutes and regulations, what generated the need for the proposed regulation, the public process that was followed, and the considerations in making the decision to propose the regulations.

MS. FRITTS informed the committee that Kachemak Bay is one of the most productive marine ecosystems in Cook Inlet. The far side of the bay is lined with rocky shores and kelp beds where a number of species of bivalves: littleneck, butter, soft shell clams, and blue mussels are found. The north side is composed primarily of gravel and sand where razor, cockle, and redneck and littleneck clams are found. She reviewed the abundant birds in and around the bay as well as the species of marine mammals and fish. All of these resources combined with Kachemak Bay's accessibility to the bulk of the state's human population has made this area extremely important to residents as well as visitors. Therefore, the legislature created the Fox River Flats and Kachemak Bay CHAs in 1972 and 1974, respectively. The primary purpose of these CHAs "is to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose." In December 1993 a special area management plan was adopted for the two areas after a nearly two-year public planning process. That plan contains goals and policies on a wide variety of development and other human

activities that occur in that area. Two goals of that plan are to maintain and enhance fish and wildlife populations in their habitat and to maintain and enhance public use of fish and wildlife in CHA land and water. Among the 22 policies in the plan, there is a policy that states: "Aquatic farming may be allowed if it's not in conflict with the goals and policies." However, when this plan was developed, aquatic farming was only suspended culture; there was no on-bottom concept at the time. April 1994 the goals and policies of the plan were adopted into regulation by reference and thus became the primary regulations used by the department to implement the CHA statute.

MS. FRITTS pointed out that there are a number of special area regulations that were adopted in the early 1980s. She explained that division staff are required to review each special area application received for consistency with the goals and policies of the plan and the special area permit regulations; only approve activities that comply with both of the aforementioned governing documents. Using these documents as guidance, the department has permitted and approved numerous aquatic farming applications in Kachemak Bay over the years. Currently, there are 24 aquatic farm site permits that have been approved for longline suspended culture in [Kachemak Bay]. Of that type farm, at least three new farms were approved during the 1999 application period. Ms. Fritts highlighted the fact that [Kachemak Bay] has the highest concentration of aquatic farms anywhere in the state.

MS. FRITTS explained that the need for aquatic regulation came about in 1999 with site-specific review and denial of four special area permit applications for on-bottom farming. The denials led to questions regarding how ADF&G was interpreting the statute and the plan in its review of mariculture activities. She explained, "Industry felt that because the plan said aquatic farming 'may be permitted on a case-by-case basis,' it meant that on-bottom farming may and should be permitted there or allowed." However, the plan contained no policy specifically addressing, that is allowing or disallowing, on-bottom aquatic farming. Therefore, it was suggested that it may be time for ADF&G to consider amending the plan or the special area regulations. There was a decision to move forward on that and gather public comments to be used to help the department determine what to do.

MS. FRITTS informed the committee that the 18-month planning process began in September 1999. First an interagency planning team was established and agencies were sought that could

participate and help guide the department. Nine agencies were invited and of those, five actively participated. The five agencies that participated were the Department of Natural Resources (DNR), the Department of Environmental Conservation (DEC), the U.S. Fish & Wildlife Service, the National Marine Fisheries Service, and the City of Seldovia. Two separate rounds of public comment were held.

SENATOR LINCOLN inquired as to the four agencies that didn't participate.

MS. FRITTS deferred to Lance Trasky who deferred to Claudia Slater. [Ms. Slater provided the names of the four agencies later in the hearing.]

MS. FRITTS continued by explaining that the two separate rounds of public comment were held about a year apart. The first public comment solicitation occurred from November 1, 1999, to January 7, 2000. There were advertisements in local newspapers and letters were sent directly to interested parties. Written comments were accepted throughout the aforementioned period. Furthermore, three public meetings were held in December 1999 in Anchorage, Homer, and due to weather the Seldovia meeting was teleconferenced. During this public review period, 188 individuals or organizations were heard from and of those, 124, 66 percent, advised the department to prohibit on-bottom mariculture in the specified areas. Thirty-seven, 20 percent, wanted on-bottom mariculture to be allowed in Kachemak Bay and Fox River Flats CHAs. Eleven, 6 percent, expressed the need for restrictions in some way. Sixteen, 8 percent, recommended something else such as more study. She noted that during this phase of public review, comments were taken on two issues: on-bottom clam farming and jet skis. Ms. Fritts pointed out that this process is different than how public planning processes are done for CHAs because usually any and all issues are on the table. She remarked that the department's staff is skilled at sorting through complex issues, working to facilitate progress of the planning teams, and developing policies on what the team feels necessary to do. She explained that because of that ability, and as a cost-efficiency to the department and convenience to the public, comments were gathered on both topics at these meetings. Although some in the mariculture industry have been critical of this decision, the department leaders are confident that there has been no bias by comments on the other issue. She explained that at the time [of the public comment process] the department agreed with the division's

recommendation to keep regulation development separate for the issues [of on-bottom clam farming and jet skis].

Number 1097

MS. FRITTS moved on to the second public comment solicitation regarding on-bottom farming. A formal public notice was advertised in local newspapers for 30 days. Written comment was accepted between November 10, 2000, through December 13, 2001. As before, letters were sent to any interested party that was known, which consisted of 181 parties. Ms. Fritts said, "Based on the information at our disposal, besides what was coming in via the public comment process ... we did choose not to hold a formal public hearing in that second round." In that second round, 27 individuals or organizations were heard from and it was about an even split in regard to whether to support on-bottom mariculture. "It's noteworthy that the reasons given in both the 1999/2000 and 2000/2001 public comment periods didn't differ significantly," she pointed out. Ms. Fritts noted that the committee packet should include much detail regarding the types of comments that were received and the responses to those comments. Some of the responses from ADF&G refer to information that was gleaned in a review of the scientific literature. That review was made available to the industry in September 2000, two months before the formal public comment period.

MS. FRITTS, in response to Chair McGuire, clarified that she was referring to a review of scientific literature that was concluded in June 2000.

CHAIR MCGUIRE asked, "And the scientific literature upon which the review is based was conducted in which year?"

MR. FRITTS deferred to others and requested the ability to continue with her section first. She continued by noting that some in industry complain that a scientific peer review of the document wasn't done. However, she pointed out that [the department] did reach out to the industry [requesting that it] provide what it considered to be the most relevant literature. In all, over 130 pieces of literature were reviewed. Ninety-six of those 130 were referenced in the [department's] paper. There is a huge volume of literature that is related to mariculture and shellfish. A highly qualified individual was assigned to get the information and review it in order to put it into a review packet. This individual's work was reviewed by three senior biologists in-house. Through that review there was no

evidence that any important publication about littleneck clams was overlooked.

Number 1410

MS. FRITTS then turned to the process. As laid out earlier, the [department] looked at the statutory mandate. Furthermore, the goals and policies of the plan were reviewed and much of that information is before the committee. She noted that there are sub goals to the plan such as to protect important wildlife habitat, to minimize harmful disturbance to wildlife, to protect natural substrates, to maintain aquatic habitat, to maintain or improve public access to and within the CHAs, and to maintain or improve opportunities for hunting and fishing.

MS. FRITTS pointed out that a total of eight important pieces were reviewed. Many items were considered, such as the public comments from the two processes and the available scientific literature as well as the recommendations of the planning team, which was almost unanimous in recommending the prohibition of on-bottom clam farming in Kachemak Bay and Fox River Flats CHAs. Consideration was also given to the findings of the Board of Fish, which said that Kachemak Bay's resources are already fully allocated and thus giving resources to the clam farmers would result in taking away [the resource] from others. The Department of Law was consulted and it confirmed that the statutes and regulations are being interpreted correctly by proposing the closure. The results of a legislative audit dated October 23 were also considered. Ms. Fritts explained that the legislative audit reviewed ADF&G's, DNR's, and DGC's activities related to mariculture development in the Aquatic Farm Act. The audit found, on page 15, "that denial of Kachemak Bay aquatic farming permits was consistent with the area use plan."

MS. FRITTS remarked:

Which brings me to the conclusion [that the Alaska Department of] Fish & Game has been meeting the legislature's intent about mariculture [by] promoting the mariculture industry in Kachemak Bay, as I mentioned, it's the site of the most intensive ... suspended culture anywhere in the state. After an 18-month process though, Fish & Game views closing these two critical habitat areas to future applications for on-bottom farming as, first of all, consistent with statute. Second, consistent with other regulations It's also ... a better use of limited state

agency resources because the agencies don't spend time reviewing something that we're not going to approve anyway. And lastly, it was supported by the legislature through that audit.

The regulation is designed to make clear to the public that permitting of on-bottom culture does not meet the statutory intent for those areas as laid out by the legislature in the '70s, by the permitting regs in the '80s, and in the plan itself in the early '90s. We believe that our review has been thorough, comprehensive within the limits of our budgets, and user-friendly to the public. We far exceeded ... the normal requirements for regulation development in terms of deliberation and inclusion of the public prior to proposing regs.

Number 1643

REPRESENTATIVE JAMES expressed concern with the plan, which doesn't have the force of the law if it allows something that isn't statutorily allowed. She asked if that is correct. She clarified her belief that plans should be amended if something comes up that determines the intent wasn't [correct].

MS. FRITTS agreed and pointed out that such was being done in this case. She explained that it was heard that the plan may need amending and thus a process was undertaken in order to determine how the public felt and now the regulations have resulted.

REPRESENTATIVE JAMES related her understanding that the legislative audit found the denial to be consistent with the plan. Therefore, if there is a flaw in the plan, the audit isn't necessarily supportive of the outcome.

MS. FRITTS acknowledged Representative James' point, but highlighted that the other items she mentioned in combination with the audit would lend support for the proposal moving forward.

CHAIR MCGUIRE remarked that there is always a tenuous balance between the statutes and the regulations.

REPRESENTATIVE JAMES pointed out that the statutory things [intent] was designed in 1970 and perhaps times have changed.

Number 1803

SENATOR TAYLOR remarked that the audit he read pointed out that ADF&G had not passed any regulations on mariculture farming for six years. Furthermore, the audit was highly critical of the department for the manner in which it had not done anything on that. He asked, "Is that the same audit you are using to justify the closure of Kachemak Bay?"

MS. FRITTS clarified that the audit to which Senator Taylor is referring covered two issues: the body of statewide mariculture regulations and the permitting the department has done in Kachemak Bay. The audit said that the department did follow the plan that is in regulation and thus followed the law as it currently stands.

SENATOR TAYLOR noted that he had reviewed the literature review done by Mr. Hauser, Division of Habitat and Restoration, ADF&G; the response by Mr. RaLonde, Aquaculture Specialist, University of Alaska - Fairbanks; and [a letter] from Dr. Cheney, Executive Director, Pacific Shellfish Institute. Senator Taylor said that he found both comments to contain [identify] serious flaws in the approach taken by the department and Mr. Hauser. Upon review of [ADF&G's] 28 comments, Senator Taylor summarized that [the department felt] that [the department's] people have 70 years of experience and peer review was done so there was no need to respond. Senator Taylor remarked that he didn't believe he had seen anything as generalized [as the department's responses to Mr. RaLonde's and Dr. Cheney's statements].

MS. FRITTS deferred to someone in Anchorage.

Number 2054

DR. WILLIAM HAUSER, Division of Habitat and Restoration, Alaska Department of Fish & Game, testified via teleconference. Dr. Hauser said, "Although both responders provided some new literature citation, many were not directly relevant to the question at hand and they offered very, very little new information that would affect changing (indisc.) most of the items we discussed."

DR. HAUSER, in response to Senator Taylor, informed the committee that he is a biologist. He explained that he has an undergraduate degree in zoology at the University of Wisconsin, a Master's degree in fish and wildlife management at Montana State University, and a PhD in zoology studying marine fishes at

the University of Maine. Dr. Hauser noted that he has, among other things, been with ADF&G for 20 years.

SENATOR TAYLOR inquired as to Dr. Hauser's experience or expertise in bivalves.

DR. HAUSER answered that through class work and associated studies he has had experience with bivalves. However, he pointed out that part of the review was to evaluate available literature regarding ecological relationships for this organism and the principles of ecology are basically the same.

SENATOR TAYLOR answered that he understood that an individual with Dr. Hauser's experience could perform a literature review. However, the comments made in response by Mr. RaLonde and Dr. Cheney spoke to the specifics of Kachemak Bay. "We frequently run into situations down here where somebody sits in a office and comes up with a 'computer model' after doing literature research and all of a sudden starts changing the world we live in based on their computer studies or their model that they've created," he said. Senator Taylor related his understanding that there seems to be a complete disregard of the actual on-ground staff work for surveying and determination of beds, and so on.

Number 2238

LANCE TRASKY, Southcentral Regional Supervisor, Division of Habitat and Restoration, Alaska Department of Fish & Game, testified via teleconference. Mr. Trasky clarified that [Senator Taylor] is referring to the work done by the department's shellfish biologist in Kachemak Bay. The department has had shellfish biologists in Kachemak Bay for 40 years working on all types of shellfish, in particular littleneck clams. Therefore, the research cited in relationship to those clams is based on many years of work of the department's shellfish biologists in that area. In regard to Mr. RaLonde, Mr. Trasky said, "As far as we know, Mr. RaLonde has not done any work in Kachemak Bay so he's simply critiquing the stuff done by other scientists." All the research and reports are peer-reviewed by biometricians and shellfish biologists in the department.

Number 2342

SENATOR LINCOLN restated her question regarding the four entities that didn't participate in the interagency planning team.

CLAUDIA SLATER, Division of Habitat and Restoration, Alaska Division of Fish & Game, testified via teleconference that the Environmental Protection Agency and the U.S. Coast Guard didn't participate very much while the City of Homer, which was primarily interested in the personal watercraft topic, and the Kenai Peninsula Borough participated at varying degrees.

Number 2388

RAYMOND RaLONDE, testifying via teleconference, informed the committee that his testimony brings about 20 years of field experience in aquaculture to this hearing process. He noted that although he is currently an Aquaculture Specialist in the Marine Advisory Program with the University of Alaska - Fairbanks, his comments shouldn't be construed to be the opinion of the University of Alaska. Mr. RaLonde also noted that at one time he was a habitat biologist for the Oregon Department of Fish & Wildlife and thus habitat protection is a major part of what he considers important. Furthermore, Mr. RaLonde pointed out that he has been involved in Kachemak Bay issues since 1991 when he was an organizer and participant of the Kachemak Bay Task Force from 1991-1993. During that time he conducted oyster culture research in the area of nursery culture from 1994-1997. Currently, he is involved with this review of this scientific approach to on-bottom aquaculture in Kachemak Bay.

MR. RaLONDE emphasized that his concerns over the last few years have been in regard to the distortion of what he considered the environmental impacts of aquatic farming in Kachemak Bay. "It's a point of view that's of great departure from what the rest of the nation is considering concerning on-bottom bivalve enhancement," he charged. Mr. RaLonde pointed out that there are a number of nationally recognized scientists as well as the Pacific Shellfish Institute who support his assessment of the biased standards adopted by ADF&G. Most recently, Mr. RaLonde has reviewed the department's literature review entitled, "Ecological Considerations for On-Bottom Aquaculture of Littleneck Clams in Kachemak Bay, Alaska". Mr. RaLonde said:

In short, I believe the ADF&G report is highly flawed and is not a valid document to be used to issue a ban on aquatic clam farming in Kachemak Bay. Having been a peer reviewer of major scientific journals and also

[for] a granting agencies for a decade, I'd go so far as to say that this document by the department goes far beyond just a difference of opinion or an ignorance of the issue. But there appears to be a deliberate selection of documents and misstatements of (indisc.) material that were purposeful. As an example, there were examples that were in this document that were almost beyond belief. How we can compare the risk of disease transmission, for example, with clams in Kachemak Bay that are regionally transported within the same region, no exotic species allowed in the state at all, to whirling disease in rainbow trout in the Lower 48. They're not even close to being represented as the same degree of risk, but you don't see that in this literature review. As a result, I'm very concerned about how this document was used ... particularly how it was used with its interdisciplinary force. Was this a document that presented what was considered to be a factual basis for on-bottom aquaculture?

MR. RaLONDE provided the committee with various faulty statements from the department. He quoted the following from a recent document from Mr. Trasky: "If commercial on-bottom mariculture is allowed in the critical habitat area, habitat that is presently available to a diversity of organisms would be managed exclusively for littleneck clam production." Mr. RaLonde pointed out that clams perform an important function in the marine environment. Besides providing food for predators, clams are linked to the nutrients in the water and delivery of those nutrients to the sediment. Mr. RaLonde explained, "This linkage mechanism and the influence that clams have on the composition of the substrate and the food supply for the array of organism in the bottom can actually add diversity to a marine system rather than take it away." Furthermore, predator exclusion netting, which is referred to by the department on a number of occasions, doesn't eliminate or deny predators access to bottom feed but rather reduces predation. He explained that if netting wasn't used in a farming situation, virtually a hundred percent of the (indisc.) seed would be consumed by predators. However, even with netting farmers can expect 40 percent or more loss of the clams under the netting due to predation because many smaller predators can move through the large predator netting. In fact, on the beaches applied for by the farmers, the populations of clams are so reduced that if 40 percent of the clams were lost to predation, it would mean that more clams would be available for the predators if the clams

were farmed. Although ADF&G's current position that clam farming will alter the abundance or diversity of animals is correct, the preponderance of evidence illustrates that the impact of clam farming is rather benign. Furthermore, the impacted area can quickly restore to its original condition once the site is left fallow. Mr. RaLonde said, "ADF&G documents are replete with statements that birds and many marine invertebrates depend on bivalves, and that is exactly true, and any loss of habitat would adversely effect the survival of these species. But the department provides no supporting information concerning the dependence of these species on on-bottom food supplies in relation to the amount that is available. Is the food supply limiting to the point that on-bottom aquaculture jeopardizes these populations?" He pointed out that under the Kachemak Bay CHA plan and the current Kenai Area Plan no special protection is afforded any of these species. For example, juvenile crabs will still be able to feed on juvenile clams, and shore birds feed through the large netting and thus account for a substantial part of the 40 percent mortality of clams. Moreover, the disease issue is highly overstated. He emphasized that Alaska has an exotic species import ban and a regional transport policy requiring only Southcentral brood stock be used for seed for Southcentral beaches. Disease certification is performed for brood stock destined for the hatchery and for the seed between the hatchery and the grow out beaches.

MR. RaLONDE expressed his puzzlement that there was no reference to the expertise and pathology within ADF&G's department. Within ADF&G, Dr. Ted Meyers (ph), a noted pathologist who is internationally recognized, has performed hundreds of shellfish examinations screening for potential shellfish diseases in Alaska over the last 20 years. Dr. Meyers (ph) has found no diseases of significance in Alaskan shellfish. Furthermore, genetic concerns are overstated due to the aforementioned regional transport policy that requires that the animals within the region stay within the region and not be allowed outside. Mr. RaLonde returned to the issue of predator netting and noted that it had not be implicated with entanglement. Any problems with predator nettings can be dealt with in the site selection process.

MR. RaLONDE turned to the economic opportunities of clam aquaculture. Alaska imports more than a million clams from outside of the state. He informed the committee that the Lands End restaurant in Homer has removed clams from its menu, but indicates that the restaurant would sell more than 20,000 pounds of clams annually if they had access to them. Mr. RaLonde said,

"In summary, based on ... the environmental impact, I do not see a support for banning on-bottom aquaculture in Kachemak Bay. And the result ... will be an economic loss to the ... region. I would personally like to see a major effort done to actually look at environmental consequences of Kachemak Bay." He noted that he has proposed to the department and sought the first \$10,000 in funding to put together a conference this Fall on the environmental impacts of shellfish aquaculture.

Number 2883

VICE CHAIR TAYLOR, after being handed the gavel from Chair McGuire, expressed his hope that Mr. RaLonde will be able to have the conference he mentioned. However, Vice Chair Taylor was concerned that no one present at the conference may be willing to listen to the experts. Vice Chair Taylor asked, "How much of the decision to close Kachemak Bay to clam mariculture, in your opinion, is based on ecology and how much of that decision is based on eco-politics coming out of the Homer area?"

MR. RaLONDE remarked that he wasn't [familiar] with the eco-politics in the Homer area. This is a situation in which some of the farmers have applied for beaches that have highly depleted populations.

TAPE 01-7, SIDE B

MR. RaLONDE said that he could see aquaculture as providing an opportunity to utilize beaches like that. The environmental issues haven't focused on clams. He noted that recently much information has been generated through EVOS [Exxon Valdez oil spill] studies on clams, but it hasn't been incorporated into this discussion. In Mr. RaLonde's opinion, the environmental impact issues haven't been presented in a forum that allows an unbiased and totally independent view. However, he acknowledged that the department would probably charge that some of his documents have been biased, and to some degree he agreed. Mr. RaLonde related his belief that there is a way to deal with [clam farming] under the current permitting process. A ban isn't necessarily the best way to proceed.

Number 2883

SENATOR LINCOLN related her understanding that Mr. RaLonde is not speaking as a University of Alaska employee, but his comments represent his own opinions.

MR. RaLONDE agreed and clarified that he represents 20 years of experience as an aquaculture specialist, part of which has been with the university. In further response to Senator Lincoln, Mr. RaLonde recalled that his paper was written in January 2001.

SENATOR LINCOLN quoted the following passage from Mr. RaLonde's paper: "I again call to question, and have not received an adequate response, why ADF&G believes that the populations of littleneck clams in Kachemak Bay are doing fine when all the evidence I see shows a constant decline in the population and the commercial and recreational harvest." If that is the case, it is a major concern.

MS. FRITTS said that clam densities do vary over time and the department has been doing studies on them. The department doesn't have any scientific evidence that wild stocks in Kachemak Bay are depleted or are in need of restoration. She offered a more in depth response from those in Anchorage.

SENATOR LINCOLN suggested that the answer could be in writing for the next meeting.

Number 2720

MR. TRASKY, in response to Mr. RaLonde's quote read by Senator Lincoln, pointed out that the only data that exists on Kachemak Bay is that which has been collected by ADF&G. The department's biologists believe that the [littleneck clam] populations are well within the natural fluctuation because shellfish populations vary according on environmental conditions. He noted that these populations are harvested at a very high rate. Furthermore, they are a very important food source for many of the animals in the bay such as the otters, scoters, and the eiders. Moreover, there is a very high human consumption of clams in Kachemak Bay. Mr. Trasky highlighted the fact that there is a clam management plan for the bay from the Board of Fish & Game.

VICE CHAIR TAYLOR related his understanding that at one time there were a number of commercial harvesters who harvested well over 100,000 pounds per year. However, this last year there were only two commercial harvesters that harvested only 17,000 pounds. He indicated that information may be some of the data to which Mr. RaLonde is referring in his statement that the clam populations are declining.

MR. TRASKY noted that the board cut back the amount of commercial harvesting.

VICE CHAIR TAYLOR asked then if the 17,000 pounds per year was due to the board's decision.

ELLEN SIMPSON, Alaska Department of Fish & Game, testified via teleconference. Ms. Simpson explained that the board established an annual guideline harvest level for littleneck clams at 40,000 pounds for Kachemak Bay.

Number 2578

VICE CHAIR TAYLOR inquired then as to why only 17,000 pounds were harvested last year if the clams are doing fine.

MR. TRASKY pointed out that the shellfish biologists are in Homer and could be available for the next meeting.

MR. FRITTS said that "we" haven't seen this document and aren't able to respond. Therefore, she suggested that the committee could identify what questions it would like answered so that [the department] could do so.

SENATOR LINCOLN clarified that she wanted [the department to respond] in writing to the entire document [from Mr. RaLonde].

Number 2515

VICE CHAIR TAYLOR related his belief that such has already been done and embodied in the 28 comment responses attached to the [February 6, 2001, memorandum from Mr. Trasky, which is included in the committee packet]. Vice Chair Taylor remarked that those responses seemed "cursory and self-serving."

MR. FRITTS related her understanding that the purpose of this meeting was to provide the committee with an description of the public process that was used to prepare these regulations, to discuss the eight items that the department used to propose the regulations. "Obviously, we're not prepared today to talk about, in detail, ... the scientific literature review, ...," she said. The questions being asked clearly need to be answered by some of the biologists in the commercial fisheries division.

VICE CHAIR TAYLOR remarked that the process is not just a report to the committee that a hearing was held and the public attended. He asked, "My first question to the department is:

Who came up with the idea to shut them down totally, in the first place, and why?" Those making the applications certainly didn't initiate the process.

MS. FRITTS emphasized that she laid out the process that was used and why the department believed it was being asked to do a review and possibly propose a change. She reiterated that a key "driver" is the statutory mandate, "to protect and preserve habitat areas, especially crucial to the perpetuation of fish and wildlife and to restrict all other uses not compatible with that primary purpose." In response to Mr. RaLonde's remarks regarding predator netting, Ms. Fritts said that excluding predators from the substrate doesn't help "preserve habitat areas, especially crucial [to the perpetuation of fish and wildlife and to restrict all other uses not compatible with that primary purpose]." Nor does it help follow the law [as laid out] in the plan. Mr. Fritts reiterated that the combination of the statute, the plan, and the denial of the permits in Kachemak Bay, generated the need to review this. Furthermore, public comment was taken and the public was largely opposed to on-bottom mariculture in Kachemak Bay. Although a scientific literature review [was done], she acknowledged that it wasn't comprehensive, and moreover science can be contradictory. "There were enough holes ... in the literature to make us cautious about Kachemak Bay, that has very clear mandates about what we're to do there in issuing permits or not issuing permits," she said. A broad planning [team] was established and it was almost unanimous in recommending the closure of Kachemak Bay to on-bottom mariculture.

VICE CHAIR TAYLOR clarified that the committee is concerned because the [legislature] has funded a hatchery for the purpose that something goes on in the [Kachemak Bay] area. Furthermore, the commercial activities continue to be diminished in that area and now the department is ending it all together. With the closure, Vice Chair Taylor agreed with [Ms. Fritts' conclusions] that government will be streamlined due to the lack of applications for permits. Vice Chair Taylor charged:

Maybe what we no longer need is a couple clam biologists sitting around out there, who no longer have any reason to be there, especially since after 30/40 some years with both commercial activity and a significant recreational activity we see no decrease or harm to the clam population, ... these are normal ... natural cycles that we're watching We're not

improving the habitat, we're not hurting the habitat,
we're just watching the habitat.

MS. FRITTS stated, "We're maintaining and protecting it as the law requires us to do."

VICE CHAIR TAYLOR remarked that he considered that questionable. He then called in to question the department's management of the trees in the Kachemak Bay State Park, which [have been eaten by bugs].

MS. FRITTS informed the committee that there will continue to be commercial mariculture for suspended culture in Kachemak Bay.

VICE CHAIR TAYLOR echoed the fact that there are only two commercial operations harvesting 17,000 pounds.

MS. FRITTS clarified, "You're talking about 24 suspended culture operations."

Number 2145

REPRESENTATIVE JAMES noted that the constitutional mandate is to manage the state's resources for common use under a sustained yield basis, which is always in conflict. She expressed the need to strike a balance. She said:

I'm for saving everything, I'm for not destroying the habitat, ... I'm for doing everything the right way, but I think we have to do it. I don't think not doing it is the option for commercializing and utilizing our resources for our living and for our enjoyment. So, we have to figure out how to make the two compatible. And I think that should be our goal.

Number 2068

REPRESENTATIVE SCALZI turned to the [department's] belief that maintaining and enhancing wildlife and public use is inconsistent with on-bottom mariculture. However, commercial harvests are still allowed in an area that is supposed to enhance wildlife. As a clam digger himself, Representative Scalzi new firsthand that there are lower yields of clams in the area, which he attributed to commercial harvests. Although Representative Scalzi noted that he was very sensitive to disallowing commercial clamming, he found the department's use of the area's critical habitat status to be inconsistent.

REPRESENTATIVE SCALZI directed attention to Mr. RaLonde's evidence of larval drift. He remarked that he had not heard a good response from the department on that issue. Therefore, he requested that the department speak to that specifically.

REPRESENTATIVE SCALZI noted that he attended one of the meetings that dealt with both the jet ski and aquaculture issues. He noted that 80 percent of those present were present to oppose the jet skis, the eco-politics mentioned by Senator Taylor. Therefore, the people that were present were not going to be supportive of an added use in Kachemak Bay. He recalled that it was said that 60 percent of those at that meeting were opposed, which he felt [was] low [opposition]. He felt that the numbers were skewed. At the other meeting in which the jet ski issue [was not heard], the split between supporters and those in opposition was close to 50/50, which he felt was more realistic. Representative Scalzi commented:

The jet ski issue along with the mariculture issue, I think that the [Alaska] Department of Fish & Game ... need to be consistent with biological management and not get into reviews that certainly suggest politics is involved as to what people want to see in a critical habitat area. I would have more respect for the department if they stuck to the biological issues. There is no biological reason why we shouldn't have jet skis in Kachemak Bay State Park

VICE CHAIR TAYLOR announced that another meeting would be scheduled on this topic.

ADJOURNMENT

There being no further business before the committee, the Joint Committee on Administrative Regulation Review meeting was adjourned at an unspecified time.