

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 12, 2002

1:25 p.m.

MEMBERS PRESENT

Representative Beverly Masek, Co-Chair
Representative Drew Scalzi, Co-Chair
Representative Mike Chenault
Representative Lesil McGuire
Representative Gary Stevens

MEMBERS ABSENT

Representative Hugh Fate, Vice Chair
Representative Joe Green
Representative Mary Kapsner
Representative Beth Kerttula

COMMITTEE CALENDAR

HOUSE BILL NO. 513

"An Act relating to issuance of permits for aquatic farming of shellfish."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 513

SHORT TITLE: SHELLFISH FARMING

SPONSOR(S): RLS BY REQUEST OF ECONOMIC DEVEL, TRADE, & TOURISM

Jrn-Date	Jrn-Page		Action
04/01/02	2740	(H)	READ THE FIRST TIME - REFERRALS
04/01/02	2740	(H)	RES
04/01/02	2740	(H)	REFERRED TO RESOURCES
04/12/02		(H)	RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

PAUL FUHS
1635 Sitka, Number 301
Anchorage, Alaska 99501

POSITION STATEMENT: Provided background information relating to CSHB 513, Version J, and answered technical questions.

GARY ZAUGG

(No address provided)

POSITION STATEMENT: Testified on HB 513 as a geoduck farmer and a permittee for subtidal, on-bottom geoduck mariculture; said that as a farmer, he can accept the provisions in Version J.

SCOTT THOMAS (ph)

(No address provided)

Ketchikan, Alaska

POSITION STATEMENT: Testified that HB 513 is a good thing and represents the coming together of all the parties.

PAUL SEATON

58395 Bruce Street

Homer, Alaska 99603

POSITION STATEMENT: Testified on HB 513, saying the change replacing "shellfish" with "geoduck clams" [Amendment 1 to Version J] addresses his concerns; suggested a change to subsection (e) on page 2.

NANCY HILLSTRAND

P.O. Box 170

Homer, Alaska 99603

POSITION STATEMENT: Testified in opposition to HB 513; suggested the need to spend more time on it, and said it gives a special privilege on public land without an open public process.

JULIE DECKER, Executive Director

Southeast Alaska Dive Fisheries Association (SARDFA)

P.O. Box 2138

Wrangell, Alaska 99929

POSITION STATEMENT: Testified on HB 513.

DAVID OTNESS

P.O. Box 633

Seward, Alaska 99664

POSITION STATEMENT: Testified that HB 513 is one of the most viable things he has ever seen come down the pike.

DOUG MECUM, Director

Division of Commercial Fisheries

Alaska Department of Fish and Game (ADF&G)

P.O. Box 25526

Juneau, Alaska 99802-5526

POSITION STATEMENT: Testified on HB 513; expressed support for the economic opportunity that mariculture presents, but said [Version J] doesn't address his concerns about sustained yield; suggested additional language is needed in Title 38 specific to the bonding issue.

ACTION NARRATIVE

TAPE 02-29, SIDE A
Number 0001

CO-CHAIR DREW SCALZI called the House Resources Standing Committee meeting to order at 1:25 p.m. [stated as 1:12 p.m.]. Representatives Scalzi, Masek, McGuire, Chenault, and Stevens were present at the call to order.

HB 513-SHELLFISH FARMING

[Contains discussion of HB 208]

CO-CHAIR SCALZI announced that the committee would hear HOUSE BILL NO. 513, "An Act relating to issuance of permits for aquatic farming of shellfish."

Number 0042

REPRESENTATIVE STEVENS moved to adopt the proposed committee substitute (CS), version 22-LS168\J, Utermohle, 4/12/02, as a work draft. There being no objection, Version J was before the committee.

Number 0075

REPRESENTATIVE MCGUIRE presented the bill, speaking as chair of the House Special Committee on Economic Development, Trade and Tourism, which had requested that the House Rules Standing Committee sponsor HB 513. She offered her belief that shellfish mariculture presents a major development opportunity for Alaska and its communities, especially Southeast communities that have suffered because of the decline of the timber industry and even the fishing industry. Saying there was a clear intent to support the development of mariculture when the legislature enacted the limited entry constitutional amendment adopted by a wide margin of Alaskan voters in 1972, she paraphrased Article VIII, Section 15, of Alaska's constitution, which states:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

REPRESENTATIVE MCGUIRE characterized the bill as a compromise between the "common property" issue and the current limited entry provision in the constitution. Indicating Co-Chair Scalzi had also taken part in a meeting with the department, she conveyed her belief that some of the problems that were initially brought up had been addressed.

REPRESENTATIVE MCGUIRE explained that for aquaculture farmers who want to develop a geoduck farm, there are two separate scenarios. First, there are sites with few or no geoducks; there was agreement that those sites present no problem whatsoever. The bill would allow permittees who had applied in the past but were rejected based on technicalities to receive permits and begin to actively farm and develop a geoduck industry in Alaska. She cited British Columbia and Washington State as two places that have been successful in this regard.

Number 0382

REPRESENTATIVE MCGUIRE reported that the area of controversy and the issues involving the constitution relate to the second scenario, sites with an existing biomass of geoducks. She explained:

The ... initial work draft that we proposed would have allowed for an open season, if you will, for any other commercial users to come into that site, commercial, sport, or otherwise - all the users that are recognized in the constitution - ... for a period of time and remove all of the geoducks ... they could during that period of time. We had some pretty lengthy discussion about whether or not that time period was ... broad enough, whether or not there could be some emergency situations that arise - for example, a PCP [paralytic shellfish poisoning] outbreak or things like that; we've tried to address that.

Number 0491

REPRESENTATIVE McGUIRE addressed concern that somehow the rights to the state's common resource would be handed over to one individual for exclusive use. Under [Version J] the farmer of a site with biomass can harvest no more than 20 percent of the biomass at the site, but then is required to show the Alaska Department of Fish and Game (ADF&G) that the farmer has replanted the area with brood stock and that the animals are surviving there, before being allowed to harvest another percentage.

MS. McGUIRE called this new approach a way to experiment and "a conservative way of beginning a geoduck industry." Addressing why the bill doesn't allow geoduck farms only where there are no geoducks whatsoever, she remarked, "I think there are some people who are going to experiment about that." In response to a question, she explained that a geoduck is a type of clam; coveted in Asia, they are marketed in Japan for medicinal and health-related properties.

Number 0663

REPRESENTATIVE McGUIRE noted that the geoduck industry now is primarily a dive fishery, the exception being that a couple of people recently were granted permit rights, one of whom had provided a letter in support [of the bill]. She highlighted the fact that "we are currently allowing people to go into sites where there are geoducks, existing geoducks, that can be classified as a state common resource, and we're allowing people to harvest them." Therefore, the bill says that this is already allowed to occur, and asserts that farmers shouldn't be treated differently. It [would be] a clear mandate that the legislature wants to see the development of an aquaculture industry, and it is a conservative way of beginning it. She added her belief that it dovetails nicely with HB 208, sponsored by Representative Scalzi.

REPRESENTATIVE McGUIRE emphasized the need to talk more about economic development in the state, suggesting development of resources such as these can help solve the fiscal problems. Noting that Paul Fuhs [who is also a lobbyist for Alaska Trademark Shellfish and other organizations] could answer technical questions, she explained that although not a biologist, Mr. Fuhs has been working on this issue for at least ten years, including working with the farmers.

Number 0867

PAUL FUHS came forward to testify, noting that this issue is fairly complex and is the subject of a court case because of what he called "the indeterminate nature of this issue of wild stocks." He suggested the court suit would be dropped if the issue is resolved through this management method, because it was just a way to try to get a determination, since the legislature has never given a clear definition of the phrase, "and for the efficient development of aquaculture"; he pointed out that it is in the section of the constitution that says there must be public access to the resource except for limited entry fisheries and aquaculture. Mr. Fuhs said some rulings in the superior court were "pretty clear," including one that said, "You really can't have commercial fishing on an aquaculture site." He added:

The department had that as a requirement, that they could open it up to commercial fishing later; the court said, "No, that's really incompatible." They also said that you can't hold back access to an area because of a potential future fishery there. What they were really cloudy on is ... the common property issue, so that they said ... you couldn't grant a permit for anything over what's significant. Well, the department didn't really have any clear definition on what "significant" was; that was left wide open. So they basically said that "if there's any more than what you'd need for brood stock, which is a very minimal [number] of animals, we can't issue you a permit for that site," so you'd really be restricted to applying for sites that basically had no animals on them.

Number 1008

MR. FUHS continued:

Well, common sense tells you that if there's a lot of animals in an area, it's because it's good habitat. These clams are broadcast spawners: they broadcast their seed and they settle in areas where you can make a living. So that's why we need to have a determination ... on this. I think it is a good management system. [ADF&G] raised some really valid issues about the original idea, where we said, "Well, let's just have the commercial divers have at it, and

then later on ... we'll turn it into a site." And that would have become a pretty unregulated situation. So that's why you have before you this compromise.

MR. FUHS explained how reseeded will take place and how the department would be able to verify it:

You put a plastic pipe into the ground, and you ... plant four of them in there or however many you want, and then you put a screen over the top. That's to keep ... predators from eating them, but still the screen lets the plankton get in there. They eat plankton; they're filter feeders. And so the department would easily be able to go directly to those and see if it's actually working before they allowed another allocation.

MR. FUHS returned attention to the bill. He told members:

What the farmers are saying is that the public would continue to have access to these sites; ... people who want [it] for their personal use, subsistence, would have it, and ... they'd be able to take wild stock or farmed stock, because it's really impossible to differentiate between the two. So we did want to be able to ... maintain public access to it. So that is in the bill.

Number 1148

MR. FUHS also noted that the bill says one can only apply for a permit where there is no preexisting fishery; he said it is restricted to sites without a commercial fishery. He highlighted the policy issue for the committee: whether to recognize farming as a "recognized commercial use ... of the fish." Reiterating that the public will have continued access, he indicated passage of this would recognize two commercial users: the dive fishermen and those doing aquaculture.

MR. FUHS told members he would read something he believes sums it up, "from a proposal by the divers and Department of Fish and Game to go in an reseed areas that they have already depleted, and, as Representative McGuire said, they tend to clump up in dense pockets, so that's where the divers go." He said some of these areas have been depleted down to 20 percent of the original resource, "so they want to go back in and seed it,

which we kind of look at as like mariculture; that's what we're talking about." He then read:

This enhancement project could help rebuild the bridges burned [during] the 1999 aquatic farm opening between commercial divers and aquatic farmers proposing geoduck culture. The different industries are, in fact, complementary. Aquatic farms will have product for sale year-round and will be able to establish strong markets. Commercial divers only have product for sale a few days each year when [ADF&G] opens a commercial dive fishery.

If co-ops are ... formed, farmers and divers will benefit from shared markets, shared paralytic shellfish poisoning testing, shared processing and transportation, shared technology, and the probability of reducing the cost of seed through bulk purchases. Aquatic farms will be able to employ commercial divers between fisheries openings and, additionally, divers will be able to work with the department to dive when PSP levels are low, as indicated by ... PSP testing occurring on aquatic farms. When [geoducks] are shipped whole instead of gutted, there is an exponential increase in the product value.

MR. FUHS said divers don't get a very high price now because they must send the product to Palmer for testing, where it is ground up and fed to mice. He added, "If they keel over, they say, 'You've got to completely cook them; you can't sell them fresh.'" With the farms, however, there would be continuous testing. He said divers get 75 cents a pound, whereas [geoducks] would sell live for \$8 to \$10 a pound.

Number 1326

REPRESENTATIVE STEVENS noted that the bill would apply statewide and isn't specific to geoducks.

MR. FUHS responded by pointing out an error in the bill. He said the original request to the drafters was that the bill say "only subtidal species". Indicating the department had been consulted, he proposed replacing the word "shellfish", wherever it occurs, with "geoduck clams". He explained:

That's really the problem we're trying to solve. For the intertidal species like littleneck clams, the

department seems to have developed a way to allow a commercial fishery and then transfer the site to the farmer. ... So wherever you see "shellfish" in here, if you put "geoduck clams", ... it's not going to spill over - because as it's written now, it's going to apply to shrimp, crab, any other kind of shellfish, and that's not the intention.

Number 1426

REPRESENTATIVE MCGUIRE offered conceptual Amendment 1, to substitute "geoduck clams" wherever the bill says "shellfish". [No objection was stated, and conceptual Amendment 1 was treated as adopted.]

REPRESENTATIVE MCGUIRE asked Mr. Fuhs to inform the committee of what has happened with littleneck clams and what the department has done to facilitate that industry.

MR. FUHS replied that on littleneck clam farms, "they allow a period of a commercial fishery on there; it's not a limited entry fishery, but anybody can go in and harvest them commercially." He added:

After they harvest those, then the site is turned over to the farmer for ... further cultivation, and as the small ones that are left grow up, those really are turned over to the farmers. So it's essentially what we're talking about here that's been worked out for littleneck clams, but it's just a little different because the full public gets access to that, not a limited number of divers.

Number 1488

REPRESENTATIVE STEVENS asked, "If someone has permission to harvest, they don't get permission again next year until they have reseeded. Is ... that the only basis for denying someone permission, and how can we be sure that, in fact, it will be reseeded? ... What if somebody doesn't come back the next year - they just take the product and disappear?"

MR. FUHS replied that the Department of Natural Resources (DNR) and ADF&G have always required that a bond be posted, so that if someone goes bankrupt or leaves, there is money to take care of it. "And we've always agreed to that," he added.

REPRESENTATIVE STEVENS asked whether there will be a bond or some such [protection], then.

MR. FUHS said yes.

Number 1557

CO-CHAIR SCALZI requested clarification. As for someone's ability to take [up to 20 percent of the geoduck clams on those sites that already have geoducks], he asked, "Is that with a common-property opening that you're talking about?"

MR. FUHS answered:

No, that's just really for the farmer. And the problem is ... that originally, when we looked at 100 percent, it's reasonable to go in and have ... a commercial dive fishery on it, because they go in and then they come out. If you're just taking pieces of it and then having a dive fishery trying to come in on top of it, people setting anchors, dragging anchors, ... digging up the areas next to it -- and that's why we thought it was practical in the first place. But if they're going to this more-managed type of a situation, it really doesn't lend itself to a commercial fishery.

CO-CHAIR SCALZI said he'd thought the first impetus was, similar to what occurs for littleneck clams, to "open up a certain area for 'common property' and commercial, and then have that area be allowed for farming."

MR. FUHS said that was the original concept, but for littlenecks, 100 percent of legal-sized clams are allowed to be taken. The objection of the department was that doing so [for geoducks] could destroy the resource or do major damage to it.

CO-CHAIR SCALZI offered his understanding, then, that now it is just the 20-percent harvest of those sites, but it is only to be taken by the farmer.

REPRESENTATIVE McGUIRE mentioned personal and subsistence use.

MR. FUHS responded, "Well, and/or in addition to personal use by people, but not other commercial use."

CO-CHAIR SCALZI said that except for subsistence or personal use, then, "which you have to access through diving anyway," that would be exclusive to the farmer.

MR. FUHS replied in the affirmative.

Number 1691

CO-CHAIR SCALZI suggested the checks and balances would be that DNR or somebody would have to assess the site later to ensure that just 20 percent was taken. He asked, "Is that in perpetuity on that site, or is there a time limit when the ... farmers would be able to take more than the 20 percent?"

MR. FUHS responded, "The way that this is set up, ... if you don't meet the department's requirement that you have reseeded the site and that you've restored that population, you don't get the next 20 percent."

CO-CHAIR SCALZI asked whether someone else could get the next 20 percent, then.

MR. FUHS replied, "The farmer would get the next 20 percent after showing that they had successfully reseeded that area."

CO-CHAIR SCALZI suggested it is 100 percent over a period of time, then, that the farmer could take those [if able to demonstrate successful replacement of the resource]. He also sought clarification about the meaning of "preexisting fishery" and the reason this uses sites on which there has been no commercial dive fishery.

MR. FUHS answered:

We didn't want to go into sites that the divers were working on. ... It's really incompatible to have a farm site and a dive site. So if ... the fishermen haven't been fishing on it and it's not being used, that's why we're just trying to take up what's not being used. We'd really create a conflict if we went in to say we want to ... take an existing diving site.

CO-CHAIR SCALZI offered his understanding, however, that when there is an existing site for a geoduck harvest, "they take pretty much everything there because it's very obtrusive" and that "after the divers go through, there isn't anything left there."

MR. FUHS said there still are some, an estimated 10 to 20 percent. "You just can't find them all," he said. "And there's smaller ones in there that come back. So ... you can't actually ever take 100 percent."

CO-CHAIR SCALZI asked about the age at which [geoducks] are harvested compared with littleneck clams.

MR. FUHS said he didn't know about littleneck clams, but geoducks [are harvestable] at between five and seven years. He added, "That's why we figured 20 percent. You've got a kind of rotation. The ones that you plant in the first year will be ready about five years out, ... and then you should be able to have continuous ... harvests coming online to maturity." In response to Co-Chair Scalzi, he said the average age of geoducks is about thirty years. He also said shellfish tend to grow a little faster in Alaska, as seen in other species, because of the higher plankton count. Adding that the cost of "the surveys and everything" will be borne entirely by the farmer, Mr. Fuhs remarked, "We're also agreeing to that. So we're not asking for general fund money or anything to fund this; we'll pay all the costs of it."

Number 1931

GARY ZAUGG testified via teleconference. First reading from his written testimony submitted to the committee, he informed members that he is a geoduck farmer residing in Ketchikan; as of yesterday, he is also the first person in Alaska to be permitted for subtidal, on-bottom geoduck mariculture. He thanked Representatives McGuire and Scalzi for attention to this issue, suggesting that introduction of this legislation validates "our rights as a user group" of this resource.

MR. ZAUGG said developing a framework for managing the "natural set stocks inside the boundaries of an approved mariculture site" is the issue at hand for the on-bottom mariculture industry. He noted that he'd been advised recently by ADF&G of management concerns with the original bill; he offered his understanding that ADF&G believes allowing "a depletion harvest - limited entry fisheries - followed by a mariculture lease allowing additional utilization of the remaining stocks, would not be an effective management tool for the protection of the resource, the concern being that, over time, people could use the mariculture leases to access natural set stocks and harvest them without any positive control by the ADF&G." Mr. Zaugg

highlighted the validity of the point that ADF&G needs the ability to maintain control of these sites in order to ensure protection of the resource.

Number 2054

MR. ZAUGG told members:

The question then becomes what type of management situation needs to be created that gives ADF&G the latitude it needs to promote the efficient development of aquaculture in this state while maintaining a sustainable utilization of the existing resource within the boundaries of a mariculture lease. That system should promote the development of the industry and protect the resource itself for the future generations. ...

The answer in my mind has always been the concept of "utilize and replace." It was the basis for my 1999 application, and today remains the obvious answer to the ADF&G's concerns. As an industry, we have the unique ability to propose creating a system of controlled utilization of the resource, coupled with a verifiable replacement program. The details of that system are being proposed here today, and, I think, should satisfy the ADF&G's concerns over managing the sustainability of the resource. That is, of course, only if you agree that shellfish mariculture leaseholders constitute a user group that has the right to propose a commercial use of the resource inside the boundaries of the leased area.

I support the development of this legislation. And as a farmer, I can accept provisions being proposed today in the committee substitute, and will continue to work hard to develop a sustainable and fair program for this industry as well as the other users.

Number 2204

MR. ZAUGG addressed the issue of [harvesting] 20 percent a year and then reseeding through having a "verifiable reseeding policy". He asked whether that means that after five years the ability to only harvest 20 percent at a time would be changed, and whether there would be more latitude to possibly harvest more if it turns that growth rates are faster, for example. In

response to Co-Chair Scalzi, he added that if 20 percent were taken of the stock from an area, and if it were a five-acre site divided into one-acre units, he believes that the reseeded would be at a substantially higher density than that for the initial 20 percent. He offered his understanding that the concern of [ADF&G] has "always been the access for the initial removal of the resource, and then making sure that you had 100 percent of the initial volume there at the termination of the lease, in order to ... protect the common-property resource. So, technically, within two years of harvesting two sets of 20 percent, you could have probably doubled the population on that particular area."

CO-CHAIR SCALZI asked about fairness and whether Mr. Zaugg believes the 20 percent would be in perpetuity. Or would he demand a higher percentage after being the one who reseeded and who had exclusive rights to a particular farm site?

MR. ZAUGG indicated it is up to the legislature, but again suggested that after the initial cycle, [the farmer] would be maintaining a biomass higher than the initial one.

Number 2383

REPRESENTATIVE MCGUIRE emphasized her desire to stick with 20 percent, which she believed to be a "conservative estimate." She added, "I feel comfortable with the 20 percent because it allows us to protect the resource and ensure that it's being replanted year after year after year." She suggested perhaps it could be revisited by a future legislature if the industry develops as she hopes it will.

Number 2419

MR. ZAUGG, in response to a request for details on how his operation works, explained:

I just received an operational permit yesterday from [ADF&G], so I haven't actually started yet. There's a group of us down here that have put together a program, all of us individuals with individual sites, with the expertise for our group coming out of a farm that's currently in Washington in terms of the techniques on how to plant, ... and they're going to be coming up and helping us with those techniques ... as we move forward here in the next couple of weeks. ... As far as marketing goes, I've been licensed since

the early '90s and have dealt with the commercial geoduck fisheries in terms of processing and marketing. And if I had more time, I could explain ... how the marketing works, but ... we're very involved in all of that.

REPRESENTATIVE STEVENS surmised, then, that there is no market shortage.

Number 2520

SCOTT THOMAS (ph) testified via teleconference. He explained that he was part of group of former fishermen - "friends of mine and a couple of investors" - who in 1993 formed a company called Alaska Trademark Shellfish specifically to develop shellfish aquaculture in Alaska, with the emphasis being on-bottom geoduck clams, "which represents probably about 80 percent of our proposed production, if and when we get into business."

MR. THOMAS offered his belief that this bill represents a coming together of all the parties and a laying down of swords, because it puts the focus where it needs to be, on sustainability and perpetuation of the species. Previously, he indicated, people were caught up in who profits from the existing standing stock and resource, taking focus from what he considers the real issue. He told members:

If a guy's going to use the aquatic farm Act to strip-mine resource, ... we have always said that we don't want to be involved in that. Our intentions ... are honorable. We've ... done a tremendous amount of work; we've done a tremendous amount of research. We've had Alaska Science and Technology Foundation [ASTF] grants. We've studied what they've ... done in Washington and in Canada. And the ASTF grant, ... we spent two years developing brood stock, ... bringing brood to the hatchery and they would spawn ... the brood. And now they have juvenile geoduck clams available.

Number 2629

MR. THOMAS remarked that the bill holds "our feet to the fire" with regard to sustainability and perpetuation of the species. It gives farmers the chance to utilize 20 percent of the resource, but requires replanting it. He told members, "We don't want anybody else coming here ... and abusing or misusing

the program. So I think this really represents a coming together and addresses the real issue." Acknowledging controversy over finfish farming, he nevertheless pointed out that it provides a year-round product, maximizes value, and allows a consistent size.

MR. THOMAS told the committee there is a tremendous market for [geoducks] and that there is no comparison between the current utilization and value obtained from the "capture fishery" - which this year saw an average ex-vessel price of 80 cents a pound - and an aquatic-farming scenario under which he believes the value would rise tremendously because there will be "positive control," ongoing monitoring, and good historical data on PSP, for example. He surmised that the same people who have resisted efforts to develop [geoduck] farms will, in three or four years, be some of the biggest advocates. "We just need a chance to make this program work," he said.

MR. THOMAS noted that he fished commercially since he was 14 years old, and got out of the Southeast seine business three years ago to get into this business because he has seen what aquatic farming has done around the world. He said:

We need to participate in these industries. And if we can't work these issues out, then ... we're going to miss this train. I think we're way behind the curve right now, as it is, with on-bottom aquaculture. I've been to Washington. I've seen these farms. I see what they're doing. They're working, and they can work here. And there's some good people in this state with "Alaska ability to get it done." And one of the big things is, we have this hatchery. The state spent two and a half million dollars on this world-class shellfish hatchery in Seward, and we need to start utilizing this thing. I mean, these folks have seed up there that they can't sell to these farms.

MR. THOMAS concluded by saying he thinks the bill is a good thing, and that "we're coming together here."

Number 2780

PAUL SEATON testified via teleconference, informing members that he'd been concerned the bill would overturn the local public process to determine that shore leases were not appropriate for critical habitat in Kachemak Bay; however, the change [through

Amendment 1] replacing "shellfish" with "geoduck clams" takes care of his concern.

MR. SEATON called attention to page 2, subsection (e), where it says "20 percent of the biomass"; he said there is some question whether it might be better to say "20 percent of the area", because biomass would be a changing figure. "It's not harvestable biomass," he explained. "It's total biomass that, when you get reseeding, ... what's the calculation going to be [and] how it's going to be done?" He suggested it would be more of a problem to administer, for example, if it were 20 percent of the biomass instead of 20 percent of the area.

CO-CHAIR SCALZI said that would be considered and that it was a good point because 20 percent of the area is easier to discern. He added, "From what I understand, you pretty much take them all when you harvest."

Number 2895

NANCY HILLSTRAND testified via teleconference in opposition to the bill, noting that she'd also had a problem with using the word "shellfish". She remarked that with a right comes a responsibility, including a responsibility to the common property resource and to allow [ADF&G] to "uphold sustainability of interrelating fish and wildlife species, because it's very complex." She suggested the need to spend more time on the bill. Most important, she said, is the responsibility to not allow [legislation for] special interests; however, this gives a special privilege on public land but without an open public process.

MS. HILLSTRAND, a fish culturist for 22 years, said she has seen what happens behind the scenes in the business. She pointed out that with mariculture there are problems worldwide with disease, predator control, genetics, and so forth when there isn't oversight. She noted that commercial processors have to go through a multitude of permits and overlapping regulations. [Not on tape, but taken from the Gavel to Gavel recording on the Internet, is that she believes regulation and the whole process are healthy, and that there is a need to make sure this is open so that people have a chance to talk about it.]

TAPE 02-29, SIDE B

Number 2980

MS. HILLSTRAND conveyed concern about the speed with which this happening for people in Southeast Alaska. She concluded by saying she doesn't think it is a good idea.

Number 2962

JULIE DECKER, Executive Director, Southeast Alaska Dive Fisheries Association (SARDFA), testified via teleconference, noting that SARDFA has been involved in the aquatic-farming discussion since the 1999 application period when the first geoduck-farm applications were submitted. She said SARDFA has a large interest in aquatic farming; in fact, three out of eight of SARDFA's current board members are geoduck-farm applicants. Furthermore, aquatic farming also holds potential for underwater harvesters in Southeast communities who are looking for more economic opportunities like these.

MS. DECKER expressed appreciation for the efforts of Mr. Fuhs to come up with a compromise that will "pull the 1999 geoduck-farm applications out of court and get us all out working again." She said although the SARDFA board didn't support the original HB 513, the board hasn't seen the latest proposed CS [Version J].

Number 2908

MS. DECKER drew attention to Section 1, subsection (d), and suggested further definition is needed for the phrase, "site where no preexisting commercial fishery occurs". She offered an example that she said isn't well defined by that language: SARDFA has been working along with [ADF&G] on developing and expanding the geoduck fishery into new areas; the industry has been conducting reconnaissance surveys, and [ADF&G] has been conducting biomass surveys that follow the industry's surveying. This has been funded through a combination of voluntary industry surveying, voluntary and mandatory industry taxes, and federal and nearshore-fisheries research funds. Although these newly surveyed areas haven't yet been fished commercially, much effort has been put forward [by] the industry and [ADF&G] to eventually open these areas for commercial fishing.

MS. DECKER also called attention to Section 1. With regard to subsection (d)(2), she said SARDFA has expressed support in the past for this general concept of requiring [ADF&G] to conduct a biomass survey and having that paid for by the farm applicant; therefore, [SARDFA] is in support of that. With regard to Subsection 1, subsection (f), she asked what the consequences

will be if a farmer doesn't restore a bed of potentially 400,000 pounds of geoducks to its original population. Noting that testimony had indicated a bond would be posted through DNR, she asked whether that bond would "range" and "go higher for the higher amount of resource that might be there."

Number 2825

MS. DECKER conveyed concern about what happens to other species on the farm sites; she mentioned limited entry fisheries such as for sea cucumbers, and unlimited fisheries such as for "horse clams" that might also be on the farm site. She noted that the fishery for horse clams, although not currently "online," is one SARDFA is trying to develop through funding research to survey areas and so forth. Horse clams and geoducks often inhabit similar areas and overlap; in fact, in [British Columbia] the geoduck permit is actually a geoduck/horse clam permit.

Number 2767

MS. DECKER clarified that the commercial divers take 2 percent per year of the existing biomass, as required by a Board of Fisheries management plan on geoducks. She also pointed out that in Washington State, geoducks are being farmed in shallow intertidal areas where they don't naturally grow. She explained, "So it's not necessarily true that you have to have geoducks growing somewhere in order to successfully farm them. What is necessary is the substrate and nutrients in the water."

MS. DECKER told the committee SARDFA is interested in reaching a compromise to allow geoduck farming in order to then solve some larger problems, the largest of which right now is a "PSP protocol for live shipment" from the Department of Environmental Conservation (DEC). She said:

With this in mind, the SARDFA board has endorsed a compromise which it believes would satisfy most of the current geoduck-farm litigants. The compromise is to allow geoduck farming on sites where there is an insignificant amount of wild stock, as Judge Thompson ruled, and allow the farmers to harvest this insignificant amount of wild stock so it does not inhibit their farming activities. Several of the current litigants do not have ... a large portion of geoducks on their sites - wild geoducks - but they were saying that [ADF&G] is not allowing them to harvest those on their site, and so that poses

problems for them. We believe that this is a compromise that would solve most of those problems.

CO-CHAIR SCALZI requested Ms. Decker's comments in writing, if possible, saying there were some good points.

Number 2654

DAVID OTNESS testified via teleconference, noting that he actually had wanted to comment on "the other bill being introduced." He said:

In all my years of fishing, from the days of the fish traps to what we're seeing now in terms of limitations on our ability to get out and harvest commercially, for whatever the reasons, I am just a very, very strong proponent of the legislature's action in trying to develop this as an alternative, especially on our coasts, where we have very little in the way of alternate occupations other than tourism. We've basically developed a four-month economy that we're supposed to sustain ourselves on, and it's not working out. A lot of these towns are just dying on the vine.

MR. OTNESS offered thanks, especially to Representative McGuire. He concluded, "This is one of the most viable things I've ever seen come down the pike, and I suggest we get with it."

CO-CHAIR SCALZI invited Doug Mecum from ADF&G and Blaine Hollis from the Department of Law to the witness stand together.

Number 2550

DOUG MECUM, Director, Division of Commercial Fisheries, Alaska Department of Fish and Game (ADF&G), thanked Representative McGuire and Co-Chair Scalzi for their work. He stated:

We obviously support this economic development opportunity that mariculture represents as well. We were very much in support of HB 208, which we think is important legislation that would provide a jumpstart for the mariculture industry in the state of Alaska. But we also have been trying to support economic development through the commercial fishery, as well, over the course of the past ten years - that is, the commercial geoduck dive fishery. And, in large part,

these are sort of separate tracks, and they've been on a collision course.

Let me just talk a little bit about how we've tried to develop the commercial fishery. The commercial fishery is not opened in an area unless the department conducts a detailed and comprehensive biomass survey of the area. So the department goes out, finds the sites, and, as Julie Decker from SARDFFA talked about, we do that in cooperation with the industry. These surveys are funded, in large part, by federal funds we've been successful in obtaining over the past several years, but also through taxes that are levied upon the divers themselves through the Southeast Alaska Dive Fisheries Association legislation that the legislature passed some years ago. So the thing that really has started the development of the commercial fishery has been the infusion of this capital, this investment, none of which has occurred from the legislature, but still an investment and, in large part, an investment by the divers themselves.

People have asked us, over the years, to open up areas so that they could harvest these clams, providing this economic opportunity. And the department has told them "no," this is the commercial fishermen; "no" until we have ... adequate funds for monitoring and management; and "no" until we can ensure the sustained yield in the management of these resources. They bought into that, and the legislature bought into that when they adopted the SARDFFA legislation.

So once we got this money online, we started to move into other areas. I guess we could have just as easily said, "The whole districts 1 through 14 are open; go out there and harvest." And those areas would all be now open to commercial fishing. We did not do that. We wanted to make sure we were doing it in a sustainable fashion. ...

Four years ago, we were approached by people wanting to start farming geoducks. And the biggest problem that we ran into there was this sort of appropriation of the common property resource for private individuals, and we still struggle ... with that issue.

MR. MECUM returned attention to [Version J], saying he still personally had some concerns about the constitutionality. He explained, "It would, in effect, appropriate a public resource and transfer ownership of those resources to a private individual for the purposes of financing their farm operations, for economic opportunity. I don't have a personal problem with it; I just think there's a legal problem with it."

Number 2350

MR. MECUM expressed appreciation for the attempt to deal with sustained yield by only allowing a harvest of 20 percent until [successful] seeding is documented and demonstrated. He offered his belief, however, that it doesn't go far enough. He explained:

In essence, what you have here is that in 5 years all of the naturally occurring geoduck stocks would be gone. And, as was stated in some of the earlier testimony, these are animals that, on average in the commercial fishery, are 30 years old, and they range upwards of 150 years old. And I don't believe that, ..., just by the simple fact of getting spat from the hatchery and putting a plastic tube down and putting four spat in there, you've demonstrated that you're capable of restoring the stocks back to their original condition. I don't believe that it does address the sustained yield questions and concerns that I have.

MR. MECUM noted that he'd only seen [Version J] about 30 minutes before this hearing began and said:

Off the top of my head, I would say something that would actually be more conservative with respect to sustained yield would be perhaps some period of growth would occur and then you would say, "Yes, in fact they are growing and have become established in this area," not just the fact that you've seeded them. So, as was stated in earlier testimony, we think it's probably around seven years. We've never farmed geoducks in Alaska, so we don't know. But from what we know about what's happened elsewhere, perhaps seven years, maybe as soon as five, but ... probably seven years before you'd actually have a geoduck raised up to what would be a marketable size.

So all I'm saying is, I don't believe one calendar year provides me with the kind of comfort that I would need to have to ensure that, in fact, sustained yield would be possible through this approach, because, as [Co-Chair] Scalzi said, I think this is essentially adopting a 20-percent-harvest-rate approach, whereas in a commercial fishery we believe a 2-percent harvest rate is sustainable. And the 20-percent-harvest-rate sustainability is all premised on seeding, which may or may not work. I certainly hope it does, because we are permitting geoduck-farming sites in some areas, ... but it's not been proven. So that's a concern of mine.

MR. MECUM offered that changing the language [through Amendment 1] to address just geoducks rather than all shellfish is a good idea. Acknowledging that DNR would be better suited to address the issue, he also related his belief that the restoration bonds that exist in statute deal "just with sort of the cleanup of the site" if someone has a lease, making sure that structures are removed and that net pens and so forth are taken care of. However, they wouldn't deal with issues of either the value of the standing stocks being removed or the sustainability.

MR. MECUM therefore suggested the need for additional statutory language in Title 38 to deal specifically with that, and that the legislature would need to decide whether that bonding requirement "went to the value of the resource or went with seeding and restoration costs of the resource, or both, and whether that bonding value that's in that bond deals with just the current value of the resource - what that value's based on - and whether there's any ... value in perpetuity that you [might] consider." He emphasized the need to flesh that out.

Number 2170

REPRESENTATIVE STEVENS asked about the size of the resource currently, and how the size of a site is established.

MR. MECUM replied:

As far as the total population or biomass of geoducks in Southeast Alaska, I don't think we know. We haven't surveyed all areas yet; we're still doing that. It's probably over ... 10 million pounds, at least. And I think one of ... the sites that was in

... not this last application period but the period before sought to gain title to somewhere around half a million pounds in one area. ...

Geoducks are ... not widely distributed in Southeast Alaska. Southeast Alaska ... is pushing on the northern extremes of the range of the species. Geoducks are much more abundant as you go further south; the epicenter of production is ... somewhere in British Columbia. So we don't have very large populations up here. Recruitment is very sporadic and infrequent, and they exist in isolated pockets [and] beds in various areas around Southeast Alaska, in areas of particular types of substrate, that is, primarily sandy bottoms.

And as far as the site question, you're talking about ... how the mariculture sites would be determined. The way that ... HB 208 envisions these areas' being determined is that the department, the agencies, would go out and find areas that are, quote, unquote, "suitable for mariculture." The way that the current process works is that individuals apply for specific sites, and HB 513, as far as I can tell, ... would fall under the existing process. So, in that case, the applicants would be determining where these harvests are occurring; it's not the department.

Number 2036

REPRESENTATIVE STEVENS referred to Ms. Decker's concerns about impacts on other species on the sites. He asked whether that is a concern of Mr. Mecum as well.

MR. MECUM answered:

Well, there could be some impacts on other species, but one could argue that there could be impacts on other species in the commercial fishery as well. I guess it would depend upon a case-by-case evaluation of each site. I really couldn't answer that in a general sense.

Number 2003

REPRESENTATIVE McGUIRE expressed appreciation for Mr. Mecum's hard work on this issue. She referred to testimony suggesting

perhaps it would be better to allocate 20 percent of an area rather than 20 percent of the biomass. She expressed concern that if someone picks [the area] that has 80 percent of the biomass on the site, that wouldn't be good management of the resource. She asked for Mr. Mecum's thinking on this.

MR. MECUM concurred that it is a big problem with the area concept, noting that 20 percent of the area could be 100 percent of the [biomass].

REPRESENTATIVE MCGUIRE addressed the constitutionality, offering her own understanding with regard to sustained yield that these farmers will be [remunerating] the state by replanting the seed stock. She said:

Now, your idea about adding in a provision, perhaps a delayed number of years to see that that growth occurs, I'm ... not necessarily saying is a bad idea; that might be something that we could incorporate in. ... We do it with other resources in the state, and we are a resource-based state, and we admit that right away. We have common property. And that's why that amendment to the constitution that was passed by ... a wide range of voters on limited entry was such an issue. There were people at that time that said, "Wait a second. ... Why should certain individuals be given an exclusive right to go into any fishery and access that for their money, for their wealth?" And ... you touched upon that briefly.

Certainly, the farmers would be using some of the profits to offset the cost of their brood stock. But it seems to me we've already addressed that ... through the constitution. And I agree with you that the original draft of the bill had constitutional problems, but I really, firmly believe ... that by controlling it at 20 percent and saying you're going to put back -- in fact, if anything, I think it's requiring a higher threshold than we do in other limited entry situations. Certainly, we give leases to limited entry, and we don't ask them to replenish the resource, ever. In this case, we're going above and beyond and saying, ... "We're really going to satisfy sustained yield; we're going to put it right back ... into the ground, so to speak."

REPRESENTATIVE McGUIRE asked to hear more on Mr. Mecum's train of logic on that.

Number 1830

MR. MECUM replied:

Obviously, there's some interpretation that has to occur here relative to the tension between the constitution and what is ... too exclusive and what isn't. I think you'd agree that one is pretty exclusive. The limited entry program has come under challenge before. It's been shown to be constitutional, but it's been pretty clear from the decisions that have been reached that anytime you start getting too exclusive and too small of a class, the court has thrown that out. And I guess that's about as far as I can go with it, because the reality is that this specific issue - Mr. Fuhs is correct and you're correct - ... has not been litigated; it has not been decided by a court what that provision means specifically. And this specific issue of transferring ownership to one individual for private ownership ... has not been tested, as far as I know.

REPRESENTATIVE McGUIRE responded:

You're representing it as transferring it to one individual for private ownership, and I want to take issue with that, to make sure that the committee isn't confused by that, because that's not what's happening here. What you're doing is, you're giving a lease, much like we do for oil leases or limited entry permits. You're giving an opportunity for an individual Alaskan to access the resource for personal gain. And we do it all the time. What you're not doing is transferring permanent title of a common resource of the state to an individual. ...

The second thing is, we are saying, in perpetuity, that so long as this lease is in existence, you can access it for personal use, for subsistence use, for all those things. And it's the same thing that we do in the commercial ... fishing industry. We say, "You, ... Representative Stevens, have a commercial ... limited entry permit," but we don't say, "You, village of wherever, do not have access to, then, go in and

fish," or, "You, personal sport fisher that wants to put fish in your freezer, do not have access." We have a history in this state already, through the limited entry provision in the constitution, of balancing user groups. And I want to make that clear on the record, that that's something that I considered very thoroughly ... in doing this bill.

So what we are saying, though, is that we have user groups out there, and if you want to have all the commercial users come in, that's probably going to be too much pressure.

REPRESENTATIVE McGUIRE, on another issue, said:

Don't you think that it matters that in the constitutional provision it was specifically stated "and to promote the efficient development of aquaculture in the State"? And even though it hasn't been interpreted, there's a statement made. And that's one of the things when you go down in a court case: if the legislature says it and touches on it, there was clearly an intent for that to be a part of it. ... How do you respond to that part of it?

Number 1654

MR. MECUM responded:

I guess, from my perspective, if this specific sort of a practice had been envisioned by the legislature, by that statement, then, I think they would have developed the statutory framework, and the legal and regulatory framework would have been built around that to allow it to occur.

REPRESENTATIVE McGUIRE replied by citing the aquatic farm Act, but noted that she and Mr. Mecum disagree what the intent of that Act is. She added, "After the constitutional amendment passed, another legislature came in and said, 'Not only is it in the constitution, but now we have the aquatic farming Act, which allows for permits and allows for ... the development of this industry. That's kind of where we started on this problem.'"

MR. MECUM said that is a good point. He said the aquatic farm Act that sprang from this set of laws talks about this specific issue. He continued:

It talks about people obtaining ownership of standing stocks, but only for the purposes of brood-stock culture and propagation. So when the legislature did, in fact, develop the legal and regulatory framework of the statutory framework to implement this, they spoke to this issue and they provided for a limited purpose. And don't get me wrong: I don't have a problem with somebody doing these things. ... But ... as an agency employee, I have a responsibility to interpret ... the existing laws and statutes, which is what we've ... tried to do to the best of our ability.

And just one philosophical comment, and that is that ... I understand very well, and I appreciate your comment about trying to strike a balance. I know that's your interest, and it's my interest as well. And we've tried, to the best of our ability, to strike that balance, and one of the ways that we've determined we might be able to do that - and has been reaffirmed by the court and through a lot of public testimony and a lot of public hearings, and even suggested by some of the farmers themselves - is to go to areas where there are not significant populations of geoducks, and areas that appear to have the suitable substrate type, [to] go to the hatchery, purchase the seed, ... take the brood stock back, raise the juveniles, bring them back and plant them and farm, and reap what you sow.

And that's the balance that we've tried to strike. It hasn't worked for everybody, has worked for some; some people are being permitted to do this. In fact, I believe three or four of the six applications during this ... last application period will be approved or are approved to do this, in this way and in this balance that we've tried to strike. And ... the ones that were not permitted were either in areas where there were these abundant populations or they simply did not respond to requests for information (indisc.) on their permit. So those that wanted to go into these areas to do this ... will be allowed to do it.

Number 1455

REPRESENTATIVE McGUIRE highlighted the difficulty of DNR's ability to survey all the possible sites in the state. For

example, where would the state be if it had relied on DNR to survey all the possible sites for oil without any effort by the oil companies? She said although she agrees there may be the ability to develop farms on suitable substrates with the right amount of nutrients, she believes there is a role to play for some sites that have existing stock, and "that farmers can go out and use their resources and their dollars, as ... was stated, to pay for and ... kind of help in the process." Representative McGuire said that is the balance she is trying to strike, and suggested that if somebody finds a site where there happens to be existing stock, [the legislature] should try to be visionary and see what can be done.

Number 1355

MR. MECUM responded, "I certainly agree with that provision of the bill; I think that's a good concept, yes."

CO-CHAIR SCALZI acknowledged that gold cannot be reseeded, for example, but asked what approach would be used for timber for "the same type of lease of standing stocks."

MR. MECUM said he wasn't prepared to answer that, but that the constitutional provisions governing forestry are different from those for fisheries. For example, there is a "no exclusive right of fishery" clause in the constitution, but no corresponding clause for forestry. Therefore, there could be a different determination about constitutionality.

CO-CHAIR SCALZI asked whether anyone else wished to testify; there was no response.

Number 1252

CO-CHAIR SCALZI offered his intention of holding the bill over, noting that some good questions had been raised. He noted that this would set a big precedent on how mariculture is promoted, which he certainly advocates, but suggested the need to answer the constitutional issues. He asked Mr. Hollis of the Department of Law to address the issue of how this relates to timber [in the future], suggesting the need to be consistent with the renewable-resource policies in the state. [HB 513 was held over.]

ADJOURNMENT

Number 1133

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:35 p.m.