

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES**

March 18, 2005

8:34 a.m.

MEMBERS PRESENT

Representative Bill Thomas, Co-Chair
Representative Jim Elkins
Representative Peggy Wilson
Representative Mary Kapsner
Representative John Harris

MEMBERS ABSENT

Representative Gabrielle LeDoux, Co-Chair
Representative Woodie Salmon

COMMITTEE CALENDAR

HOUSE BILL NO. 198

"An Act relating to aquatic farming; and providing for an effective date."

- MOVED CSHB 198(FSH) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 198

SHORT TITLE: AQUATIC FARMING

SPONSOR(S): REPRESENTATIVE(S) ELKINS

03/04/05	(H)	READ THE FIRST TIME - REFERRALS
03/04/05	(H)	FSH, RES
03/18/05	(H)	FSH AT 8:30 AM CAPITOL 124

WITNESS REGISTER

JOS GOVARS, Staff
to Representative Jim Elkins
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 198 on behalf of Representative Elkins, sponsor.

PAUL FUHS, Lobbyist
for PAC Alaska, LLC.
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 198.

STEVE LACROIX
PAC Alaska, LLC.
Juneau, Alaska

POSITION STATEMENT: Commented on HB 198.

JULIE DECKER, Executive Director
Southeast Alaska Regional Dive Fisheries Association (SARDFA)
Wrangell, Alaska

POSITION STATEMENT: Testified in support of HB 198.

JOHN MALOUF, President
Southeast Alaska Regional Dive Fisheries Association (SARDFA)
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 198.

DAVID BEDFORD, Deputy Commissioner
Office of the Commissioner
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 198 and answered questions regarding the bill.

BOB HARTLEY, President
Alaskan Shellfish Growers Association (ASGA)
(No address provided)

POSITION STATEMENT: Testified in support of HB 198.

ROGER PAINTER, Vice President
Alaskan Shellfish Growers Association (ASGA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 198.

ACTION NARRATIVE

CO-CHAIR BILL THOMAS called the House Special Committee on Fisheries meeting to order at [8:34:37 AM](#). Representatives Elkins, Kapsner, Thomas, and Wilson were present at the call to order. Representative Harris arrived as the meeting was in progress.

HB 198-AQUATIC FARMING

[8:35:08 AM](#)

CO-CHAIR THOMAS announced that the only order of business would be HOUSE BILL NO. 198, "An Act relating to aquatic farming; and providing for an effective date."

8:35:14 AM

JOS GOVARS, Staff to Representative Elkins, Alaska State Legislature, presented HB 198 on behalf of Representative Elkins, sponsor. He explained that the bill would amend the state's Aquatic Farming Act to allow aquatic farms to continue to operate in compliance with a recent supreme court decision. He stated:

In mid-April, the state supreme court ruled that the act requires the [Alaska Department of Fish & Game (ADF&G)] to deny shellfish farmers exclusive rights to significant populations of wild geoducks on their proposed farm sites. Since then, the Southeast Alaska Regional Dive Fisheries Association (SARDFA) and the Alaskan Shellfish Growers Association (ASGA) and [ADF&G] have negotiated an agreement that would allow these farmers to harvest "insignificant" populations of standing stocks of geoducks. In order to be implemented, this agreement would require a change in statute. Section 1 of HB 198 amends the Aquatic Farming Act to allow shellfish owners to own, harvest and sell "insignificant populations" of wild shellfish stocks on their aquatic farm sites.

MR. GOVARS continued:

On February 11, 2005, the [ADF&G] announced that it will conduct a commercial dive fishery on the designated mariculture sites to remove the commercially significant populations of wild geoducks from these areas. This fishery will be open to all commercial divers in Southeast Alaska. Section 2 of HB 198 makes it clear that the aquatic farmers do not have to replace the shellfish that are harvested in this common property fishery. Section 3 gives the [ADF&G] the authority, when it determines it would be beneficial to do so, to let the shellfish farmers remove all but an "insignificant population" of wild stock from their sites themselves and give the proceeds of their sale to the [ADF&G]. Section 4 codifies the requirement that proposed farm sites can only get permits if there is an "insignificant

population" of shellfish species to be cultured there, and Section 7 says that this section applies only to permits issued after July 1, 2005.

[8:37:14 AM](#)

REPRESENTATIVE KAPSNER asked Mr. Govars to define "insignificant."

MR. GOVARS responded that SARFPA and ASGA reached an agreement defining "insignificant" as less than 12,000 pounds [of geoduck clams per farm site].

[8:37:54 AM](#)

PAUL FUHS, Lobbyist for PAC Alaska, LLC., commented that PAC Alaska supported HB 198. He asked the committee to clarify with ADF&G that a "significant amount" should be defined as 12,000 pounds or more. He also expressed concern that line 14 on page 2 could be interpreted to mean that the bill would authorize ADF&G to hold a commercial fishery on top of a planted farm site. He said, "If [ADF&G] would put that on the record, that this language does not mean that they could hold a commercial fishery on the site after it's been planted, then we'd be satisfied with this language."

[8:40:28 AM](#)

MR. FUHS asked that the committee also clarify with ADF&G lines 5-7 on page 3 regarding the amount of wild stock on a proposed farm site. He said, "We want to make sure that they clarify that that means on the site, not in the general area. Because if it's in the general area, there's no way that you could actually determine it. ... It shouldn't be the general area; it should be on the farm site."

REPRESENTATIVE KAPSNER asked Mr. Fuhs if he would like the language in the bill cleared up.

MR. FUHS replied that he would like to see the bill move, and if the ADF&G would state their intent clearly, then that would be fine.

STEVE LACROIX, PAC Alaska, LLC., pointed out that the language in the bill says, "on the farm site," but the proposed regulation reads differently. He said, "As long as it's clear

that we're going by the guidance of the statute, then we shouldn't have a problem."

REPRESENTATIVE WILSON noted that the sentence already includes the word "site" twice.

MR. LACROIX said that he just wanted to be sure.

[8:43:14 AM](#)

REPRESENTATIVE WILSON moved to adopt Amendment 1, which would change lines 5-7 on page 3 to read:

the proposed farm site may not include more than an insignificant population of a wild stock, on the site, of a shellfish species intended to be cultured on the site

REPRESENTATIVE KAPSNER made a friendly objection and commented that the language was not grammatically correct.

[8:45:39 AM](#)

REPRESENTATIVE WILSON amended Amendment 1 to read:

the proposed farm site may not include more than an insignificant population of a wild stock, on the site, of a shellfish species intended to be cultured

REPRESENTATIVE KAPSNER withdrew her objection.

REPRESENTATIVE HARRIS objected for discussion purposes.

REPRESENTATIVE WILSON explained that the amendment is to clarify the language.

REPRESENTATIVE HARRIS withdrew his objection.

There being no objection, Amendment 1 was adopted.

[8:47:20 AM](#)

JULIE DECKER, Executive Director, Southeast Alaska Regional Dive Fisheries Association (SARDFA), testified in favor of HB 198.

[8:48:14 AM](#)

JOHN MALOUF, President, Southeast Alaska Regional Dive Fisheries Association (SARDFA), testified in favor of HB 198. He commented, "I think this bill [has] good intentions to spread the wild stocks between the fisheries and leave some 'insignificant' stocks ... for the farmers.... As the bill is now, it makes sure that there [are] no net proceeds for the farmers."

8:50:00 AM

DAVID BEDFORD, Deputy Commissioner, Office of the Commissioner, Alaska Department of Fish & Game (ADF&G), testified in support of HB 198. He stated:

The mariculture industry has great promise, however it's been stymied over the past several years, both by inattention under the prior administration and by an ongoing string of litigation over what sorts of rights or opportunities farmers ought to have to harvest common property resource. The legislation that you have in front of you is designed to remove some of these barriers. In particular, the superior court in the State of Alaska ruled that we are obligated to provide access for farmers to insignificant stocks of property geoducks. The supreme court however said that the statute prevents us from so doing. So this legislation would then give us that authority.

MR. BEDFORD continued:

Farm sites fall into two basic general classes at this point. First off, we have farm sites in which there's been no substantial farming activity. ... Section 1 of [HB 198] ... would put us in a position where we could authorize farmers to take possession of insignificant stocks of geoducks for purposes of sale. However, at this particular point on farm sites that have no substantial activity on those sites, we are conducting fisheries in order to make sure that the remaining stock of geoducks on those sites is an insignificant amount so that we can then transfer those to the farmers and allow them to move on to the business of cultivating. The second class of farm sites are those in which there's been a significant amount of activity. ... In Section 3, we create a new authority for the commissioner that he does not currently have, which would give the commissioner the authority to

authorize a farmer to harvest significant amounts of public resource that's on the farm site in order to facilitate the aquatic farming, provided that the farmer pays reasonable compensation to the public for the harvest of the public resource. ... We believe the plain language of the section is that it would allow the commissioner to [authorize] exclusive harvest by the farmer; it doesn't have anything to do with allowing a commercial fishery on site.

[8:52:56 AM](#)

MR. BEDFORD continued:

The legislation also includes a couple of other elements that we think are quite important. In Section 2, it would modify the existing aquatic farming statutes to prevent what could be a manifest injustice, in our opinion. The statute as currently written would require a farmer, at the end of his tenure, to replace the level of wild stock that existed on the farm site at the time he received the lease. In the instances we have now, where we're conducting a commercial fishery on some sites, it would require the farmer to replace the stock that was removed by the commercial fishery. We are strongly in support of Section 2 because it would prevent that outcome.... Section 5 is also quite important from our perspective because it extends to aquatic farmers the kind of confidentiality that commercial fishermen currently have for access to their personal business records. ... It does maintain one exception that would allow the public access to information on annual harvest of common property resource from a farm.

[8:54:34 AM](#)

MR. BEDFORD stated that ADF&G agrees that "insignificant" be defined as 12,000 pounds. However, he noted:

The second element of what is significant is the density of the stock on a particular location, and how close it is to an existing commercial fishery. So part of ... the regulatory process that we would go through would be 12,000 pounds, but ... also, if it was right next door, right on top of a commercial fishery, then the question would be, "Is there a dense

stock as well? Are the geoducks on the site ... available for harvest to a commercial fishery?"

MR. BEDFORD continued, "On the question of whether 12,000 pounds would apply to a site as opposed to a general area: we're fine with that if SARDFa and ASGA are good with that."

[8:55:37 AM](#)

REPRESENTATIVE WILSON remarked that, although the rate of levy is not in the bill, she wanted ADF&G to state its intentions for the record so that there is no misunderstanding later. She turned attention to the letter of support from SARDFa and referred to the following statement on page 3:

The most important concept to remember when discussing the rate of levy is that a higher rate will give less incentive to farmers to poach geoducks.

REPRESENTATIVE WILSON commented, "I just want to make sure that everybody understands what the [ADF&G] is going to do to make sure that [there is no poaching], because we have to also protect the rights of the common good for everybody else."

[8:57:27 AM](#)

MR. BEDFORD replied:

Part of that is a problem with enforcement if somebody is harvesting outside of an area in which they're entitled to do so. We will go through a regulatory process as soon as this legislation is enacted so that we can put in place the kinds of regulations that are necessary to permit harvest by farmers of shellfish on their sites and then also to monitor those harvests.

MR. BEDFORD explained that ADF&G will have a reporting requirement for farmers to report their harvest on an ongoing basis.

[8:58:33 AM](#)

CO-CHAIR THOMAS commented that there are no enforcement penalties in the bill, and he asked if the ADF&G would add penalties to the regulations.

MR. BEDFORD replied that ADF&G could place penalties in regulations if it was the will of the legislature, but he noted that there are already criminal penalties in place for taking a resource without the authority to do so.

[8:59:18 AM](#)

REPRESENTATIVE WILSON asked if the levy would be based on the ex-vessel value, and if so, would the rate be "high enough to make sure that they reflect the differences between the values?"

MR. BEDFORD responded that ADF&G hasn't settled on anything yet, but is considering a rate of levy of 50 percent for stocks that are sold live, and 30 percent for stocks that are sold processed. He commented that ADF&G would take additional input during the regulatory process before it settled on a number. He noted, "We're in a situation here in which we have to assure that the public receives adequate compensation for exclusive harvest of a public resource."

[9:00:24 AM](#)

REPRESENTATIVE WILSON reiterated the importance of assuring that the public gets its fair share.

REPRESENTATIVE ELKINS turned to page 2, line 14, and asked if this language would allow the ADF&G to hold a commercial fishery over a planned farm site.

MR. BEDFORD replied that it would not and he said:

The authority to hold a commercial fishery is found elsewhere in the Alaska statutes. This ... only allows us to do something which currently we cannot do, which is to allow one particular individual to have exclusive access to a common property resource. In this case, the farmer could be given exclusive access to a significant amount of geoducks that were on his farm site.

[9:01:43 AM](#)

BOB HARTLEY, President, Alaskan Shellfish Growers Association (ASGA) testified in support of HB 198. He stated:

The only thing that I ask is that we do have a clarification of the 12,000 pounds, making sure that

it is on the farm site, and that the harvest of significant animals after the public harvest and the levy of a tax ... [does not exceed] the 30 percent. The 50 percent seems to be quite a bit, and whether that tax is levied on the gross or the net of the harvest is another question that we need to have clarified. ... But in general it's a good agreement; I think it will help the diver fishery and the farming industry, and allow for the conduct of a good business in the area.

9:03:30 AM

ROGER PAINTER, Vice President, Alaskan Shellfish Growers Association (ASGA) commented:

I'm glad to hear the [ADF&G] clarified the [12,000] pounds being on the farm site, because under the draft regulations that had been developed, the survey would have encompassed an area that's probably 10-12 times the farmed side. And that's where the 12,000 pounds would have been determined. ... One of the primary concerns that the farmers have about these commercial fisheries is getting assurances from [ADF&G] that once they're completed, they can go ahead with the farming activities without worry of subsequent commercial fisheries coming on the site. The hatchery currently is holding up to a million geoduck seed; this is the first seed that's been available for farmers, and it needs to be moved out of the hatchery right away. And if there's any uncertainty, the farmers are going to be very hesitant to proceed with plantings.

MR. PAINTER noted that the enforcement concerns on aquatic farms are no different than those of the commercial fisheries. He commented that there is a limited amount of enforcement capabilities.

9:06:05 AM

REPRESENTATIVE HARRIS moved to report HB 198 as amended out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 198(FSH) was reported from the House Special Committee on Fisheries.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at [9:06:20 AM](#).