

HB

208

HOUSE COMMITTEE REPORT

(9)

Date Referred to Committee: March 6, 2002

FURTHER REFERRALS: Finance

Date of Committee Action: 3/6/02

The RESOURCES Committee considered:

HB 208

HOUSE BILL NO. 208

AQUATIC FARMS FOR SHELLFISH

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

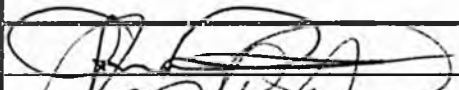
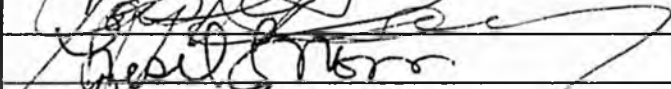
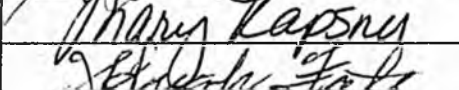
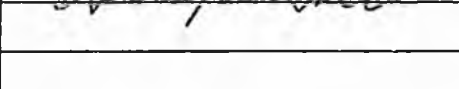
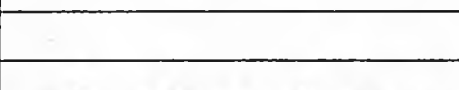
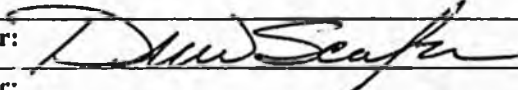

Recommends it be replaced with CS () [] Same Title [] New Title
 For Senate Bills with new title: [] Technical Title [] New Title: HCR _____

- [] attach amendments
- [] add new referral to _____ Committee
- [] Letter of Intent _____ Committee

- List of Abbrev. for Depts.:
- ADM
 - CED
 - COR
 - CRT
 - EED
 - DEC
 - DFG
 - GOV
 - HSS
 - LAA
 - LAW
 - LWF
 - MVA
 - DNR
 - DPS
 - REV
 - DOT
 - UA

<u>NEW FISCAL NOTES</u>				
*For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DFG	1	✓		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
DFG	1			✓
DNR	2	✓		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	J TRUESD	✓			
	Succa	✓			
	Melsine	✓			
	Kapsner	✓			
	Fate	✓			
Chair: 	SCARZI	✓			
Chair: 					



Alaska State Legislature

Official Business

REPRESENTATIVE DREW SCALZI

State Capitol
Juneau, Alaska 99801-1182

(907) 465-2689; (800) 665-2689

FAX: (907) 465-3472

Representative_Drew_Scalzi@legis.state.ak.us

HB 208

Aquatic Farms for Shellfish

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

The mariculture industry has the potential to increase the availability of fresh seafood to Alaskans, strengthen the competitiveness of Alaskan seafood products in the world marketplace and provide a premium product year-round.

Mariculture is new to Alaska. The permitting process is complex due to the number of agencies that oversee aquatic farming, i.e., Fish and Game, Environmental Conservation, Natural Resources and Governmental Coordination. With cooperation from these entities, this industry, which has proven extremely successful in other states, can certainly enhance economic development in our coastal communities with year-round employment for farmers and processors.

In a good faith effort to encourage good relationships between government agencies and the industry, HB 208 is being introduced as companion legislation to Senator John Torgerson's SB141.

HB 208 requires the Department of Natural Resources to offer public leases on 60 suspended shellfish sites, 20 clam sites and 10 geoduck sites. These lease sites are in addition to those already permitted. Security bonds must be posted according to the value of the product on-site and will be returned upon termination of the lease. Farmers must abide by the sustained yield principle of management when harvesting the wild stock. The Commissioner of DNR must solicit nominations from industry for sites that do not interfere with established commercial, subsistence or personal use.

HB208 is the means for encouraging the state to develop another resource that will add economic diversity to our coffers -- while protecting the right of Alaskans to harvest a common property resource.

QUTEKCAK SHELLFISH HATCHERY

PO Box 369
101 Railway Avenue
Seward, AK 99664
907-224-5181 fax 224-5282
qshatch@arctic.net

February 28, 2002

Dear Representative Scalzi,

On behalf of the Qutekcak Native Tribe and the hatchery, I would like to express our support for HB-208, and our appreciation for your sponsoring this important legislation.

The economics of coastal communities have been negatively impacted in the recent past for a variety of reasons too numerous to recount here. What's important is to look for possible solutions, and we feel the shellfish farming industry has demonstrated the potential to bring needed economic diversity to these communities. That potential is enhanced due to the fact that many of the individuals who have been hardest hit are commercial fishermen who already possess many of the necessary skills and equipment.

Over the past few years we have witnessed an increased awareness of this industry's potential in Alaska, and have managed to dispel some perceptions that draw inaccurate parallels between finfish farming and shellfish farming. We have not been as successful in streamlining the permitting process in a way that will allow the industry to reach the "critical mass" necessary to support the hatchery as our research nears completion and the funding for that research needs to be replaced by marketing the developed product.

We recognize that there is no magic wand, and that the proper course for our industry is incremental and steady improvements in regulation and understanding, and in further demonstrating the economic benefits of the industry. This legislation represents an important step along that course of improvement by making available sites that will increase our customer base. We are cognizant that some investment in the form of agency budgets will be necessary on the State's part to make this legislation work, but are confident that we can provide returns over time on that investment many times over.

Thank you for your support and best regards,

Ron Long,
Director

Letters of Support



Rodger Painter, vice president
P.O. Box 20704 Juneau, AK 99802
Phone/Fax: (907) 463-3600
rodgerpainter@hotmail.com

February 11, 2002

Senator John Torgerson
State Capitol, Room 427
Juneau, AK 99801-1182

Dear Senator Torgerson:

After carefully considering your comments on our proposed "aquaculture development zone" concept, we have decided that your approach on Senate Bill 141 is superior. We'd like to work closely with you and Rep. Scalzi in getting the legislation approved this session.

There is one amendment to SB 141 that we believe is vital to accomplishing the intent of the legislation: removal of the section on lease valuation. Here's the language we'd like to have deleted:

In determining the fair market value of a lease for an aquatic farming site where shellfish indigenous to the site are cultured, the department shall consider the value of the harvestable shellfish resource on the site and the potential productivity of the site for cultured shellfish.

Here's our rationale for removal of the language:

- Adoption of regulations by ADF&G subsequent to development of SB 141 has effectively rendered this section moot. Under current ADF&G procedures, the harvestable "standing stock" of native shellfish on an aquatic farm site must be harvested under commercial fishing permits prior to transfer of the site to the applicant. In addition, ADF&G policies prohibit applicants from obtaining sites with significant numbers of wild geoducks. Insertion of this language could confuse the validity of these practices.
- SB 141 also contains language codifying current ADF&G regulations and permit conditions requiring growers to replace standing stocks prior to relinquishing the site. The practical effect of putting both sections into law would be to require growers to pay for standing stocks twice, in addition to paying the state the same fisheries business tax rates of commercial fishermen AND lease fees for use of state land and waters.
- The existing language could create concerns for growers attempting to farm mussels and other species not subject to commercial fisheries. If the shellfish is not subject to commercial fisheries and we have a great abundance of the species, the state shouldn't create disincentives for utilizing surplus natural resources.
- The final clause of the section includes "potential productivity of the site" as a reason for increasing lease valuations. ASGA has objected strongly to this

language in ADF&G regulations and we will seek to have it removed when a more friendly administration takes office. The "potential productivity" of a site is an extremely elusive concept that is extremely troublesome for the industry.

- Alaska already has some of the highest tidelands lease fees for aquatic farm sites of any jurisdiction in North America, and we have been attempting to convince DNR to bring them more in line with our competitors. The existing language in SB 141 has the potential for increasing existing lease fees and moving us away from our goal.

After discussing your intent behind SB 141, we have become convinced it is a very good approach to moving the industry forward. DNR confirms the sites will remain "in the bank" following the initial offering and that it is possible to obtain annual offerings or even an over-the-counter approach. DNR also says it will be possible to divide a large site between two or more applicants.

We were unaware of these attributes of the state's land disposal process. We appreciate your vision in putting together this package and apologize for taking so long to get solidly behind the legislation. We look forward to working with you and Rep. Scalzi in getting SB 141 approved during this legislative session.

Sincerely,

Rodger Painter

c.c. Rep. Drew Scalzi
Sen. Robin Taylor
Rep. Lesil McGuire



Rodger Painter, vice president
P.O. Box 20704 Juneau, AK 99802
Phone/Fax: (907) 463-3600
rodgerpainter@hotmail.com

February 20, 2002

Honorable John Torgerson
State Capitol, Suite 427
Juneau, AK 99801-1182

Dear Senator Torgerson:

Your efforts to create a "bank" of aquatic farm sites are greatly appreciated by aquatic farmers throughout the state. The committee substitute for SB 141 you have developed has made good bill even better, and we are enthusiastic about working with you to move it through the process this year.

We are particularly grateful for the changes in the committee substitute. We believe SB 141 represents a wise investment in creating new economic development opportunities in coastal Alaska with the use of one of the state's most abundant natural resources. What a better way to bolster the sagging economies of coastal regions than promote an environmentally friendly industry supporting year-round jobs.

We believe this approach to aquaculture development may become a model for the rest of the country. We again thank you.

Sincerely,

A handwritten signature in black ink that reads "Rodger Painter".

Rodger Painter
Vice President

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL HEALTH
DIRECTOR'S OFFICE
555 CORDOVA STREET
ANCHORAGE, ALASKA 99501
<http://www.state.ak.us/dec/deh>

Telephone: (907) 269-7644
Fax: (907) 269-7654
e-mail: Janice_Adair@envircon.state.ak.us

March 1, 2002

The Honorable Drew Scalzi
Alaska House of Representatives
Room 13, Capitol Building
Juneau, AK 99801

Re: HB 208, an Act relating to aquatic farming of shellfish

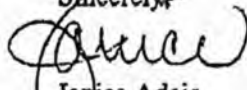
Dear Representative Scalzi:

Enclosed please find a copy of a letter I recently sent to Senator Torgerson regarding SB 141 which, as you know, is the companion bill to yours referenced above.

Although the Department of Environmental Conservation (DEC) has now submitted zero fiscal notes on both pieces of legislation, it is important that everyone understand that any shellfish sites must be certified by DEC under the National Shellfish Sanitation Program (NSSP) before the product can be sold in commerce. We are required by both state law (AS 17.20.005(6)) and federal law to comply with the NSSP. There are significant costs associated with certification, some of which are currently borne by the farmers themselves. The rest is covered in DEC's operating budget. Should either of these bills pass, down the road there will be increased costs to DEC for this certification. In the interest of full disclosure, I wanted you and the rest of the committee members to know that.

I do not plan to be on line for the hearing on HB 208 unless you'd like me to be available to answer questions, which I would be happy to do. You or your staff can reach me at 269-7644 or via email at Janice_Adair@envircon.state.ak.us to let me know.

Sincerely,



Janice Adair
Director

Enclosure:

- Letter to Senator Torgerson dated February 28, 2002

Safe Food, Safe Water, Healthy Communities

DEC Comments

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL HEALTH
DIRECTOR'S OFFICE
555 CORDOVA STREET
ANCHORAGE, ALASKA 99501
<http://www.state.ak.us/dec/deh>

Telephone: (907) 269-7644
Fax: (907) 269-7654
e-mail: Janice_Adair@envircou.state.ak.us

February 28, 2002

The Honorable John Torgerson
Chairperson, Senate Resources Committee
Room 427, Capitol Building
Juneau, AK 99801

Re: SB 141, Shellfish Growing Areas

Dear Senator Torgerson:

I have had a chance to discuss the above-referenced legislation with Rodger Painter with the Alaska Shellfish Grower's Association. As you know, we did include a fiscal note on this bill because we interpreted "suitable" to mean certified under the National Shellfish Sanitation Program (NSSP).

While the definition of "suitable" was not discussed in any of the testimony on the bill that I heard, Rodger did point out some very legitimate problems with certifying an area so early in the process. Therefore, I will be submitting a zero fiscal note on the committee substitute when it arrives in the Senate Finance Committee. Certification under the NSSP normally takes place shortly before commercial harvesting begins. Although the industry currently pays for a part of the cost to certify growing areas and we would expect that to remain the case, there will be an increased cost to the department when certification of growing areas is required. However, from talking with Rodger, I believe those costs will be incurred after the time frame covered by the fiscal note form.

I hope our misunderstanding of the bill and the resultant fiscal note did not cause you any undue problems in moving this legislation, and please accept my sincere apologies if it did.

Sincerely,



Janice Adair
Director

cc: Michele Brown, Commissioner

Safe Food, Safe Water, Healthy Communities

Why Clam Farming?

Alaska has enormous potential as a supplier of littleneck clams, often called steamer clams, to the seafood market. Past and current efforts to develop a commercial fishery on the abundant clam resources of Alaska have resulted in limited harvest caused by logistics and economic problems associated with managing the fishery. At present, only Kachemak Bay has a commercial harvest of littleneck clams, and because of depleted stocks, the fishery is limited to only 25,000 pounds annually.

The topic of clam farming in Alaska first appeared as an agenda item at the 1987 4th Alaska Sea Grant Aquaculture Conference. With high worldwide consumer demand for steamer clams and short supply of littleneck clams for the Alaska seafood market, new and existing farms are eager to pursue clam farming.

In 1991, Alaska's original clam farmers were allowed to harvest clams only under commercial fisheries regulations of the Alaska Department of Fish and Game (ADF&G). The first official clam farms were permitted in 1993. Expecting broader interest in clam farming a conference, titled Broadening Shellfish Farming Opportunities in Alaska, was sponsored in 1996 by the ADF&G, the Alaskan Shellfish Growers Association, and the University of Alaska Marine Advisory Program. The purpose of the conference was to begin development of a regulatory program for on-bottom aquaculture in Alaska. At the conference, ADF&G representatives issued a clear statement that the department did not have the resources to manage a commercial clam fishery beyond that existing in Kachemak Bay and favored development of clam farming.

By the end of 1997, three aquatic farmers have obtained tidelands leases to farm littleneck clams in southeastern Alaska. Their combined 1998 harvest was 35,014 pounds of clams worth nearly \$87,535.

What is Clam Farming?

Farming clams requires application of well established farming practices to an existing clam population that will increase the beach productivity and allow for a sustained harvest of the enhanced clam population. In Alaska, farming activities include:

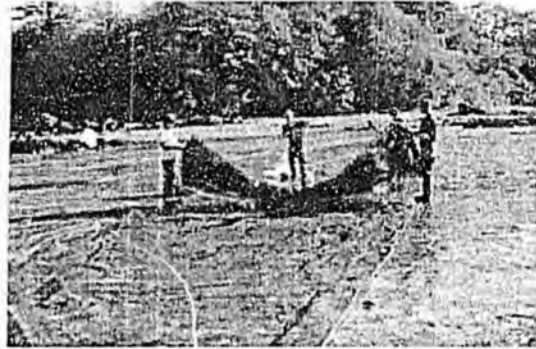
1. Regular inventories of standing stock and determination of the size composition of the clams.
2. Optimizing growth and production of clams by controlling their density by harvest planning, redistribution of seed from overstocked parts of the bed, and/or planting hatchery produced clam seed.
3. Reducing clam mortality by appropriate use of predator exclusion netting.
4. Maintaining the beach free of major deposits of large debris and improving the substrate quality.
5. Harvesting clams to maximize their value and marketability.
6. Complying with the required Alaska Department of Environmental Conservation water quality testing program, and marine toxin certification of farmed product.

Performance of these farming activities, is far beyond what is required of a commercial clam harvester.

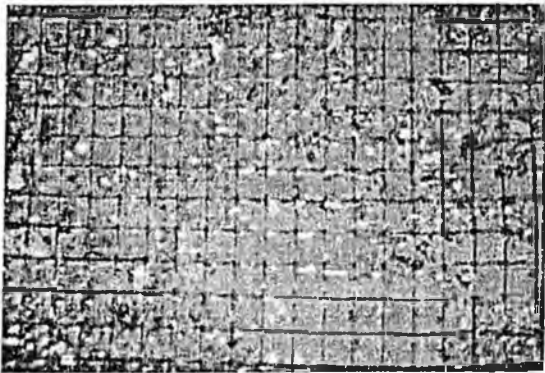
What is a clam farm? A pictorial tour



Clam farming may require application of predator exclusion netting. In this picture, a trench has been dug to anchor the margins of the net.



Predator exclusion netting is rolled out over the prepared plot.



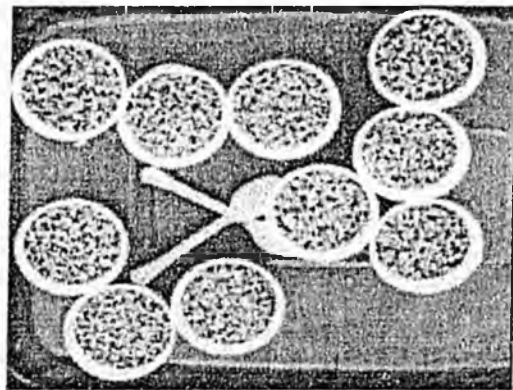
Predator netting is about 1" square mesh. It is not intended to exclude all predators. Crabs and starfish are the farmers primary concern. Birds can feed through the netting



Predator nets anchored and ready for seeding clams.



The farm plot after a few months. Predator netting is partially covered by sediment and algae growth.



Measured quantities of clam seed ready for planting the farm.



Planting clam seed over the netting. Clams are smaller than the net mesh and will dig themselves in as the tide covers them.



In Alaska, clam harvesting is done by hand.

Impacts of clam farming

Environmental (Statements in parenthesis are editorial comments needed for clarification).

Mojica, R. and W.G. Nelson. 1993. Environmental effects of a hard clam (*Mercenaria mercenaria*) aquaculture site in the Indian River Lagoon, Florida. *Aquaculture*. Volume 113, page 326.

- "Measurements of water column nutrients and chlorophyll concentrations gave no indication of changes..."
- "sediment differences were not associated with significant changes in benthic dwelling organisms."
- "Differences in mobile macrofauna were minimal ..." (between aquaculture and natural sites)

Spencer, B.E., M.J. Kaiser, and D.B. Edwards. 1997. Ecological effects of intertidal Manila clam cultivation: observations at the end of the cultivation phase. *Journal of Applied Ecology*. Number 34. Page 451.

"Our results suggest that the biotic and abiotic changes caused as a result of clam cultivation are relatively benign compared to other forms of marine cultivation..."

Kaiser, M.J., I. Laing, S.D. Utting, G.M. Burnell. 1998. Environmental impacts of bivalve mariculture. *Journal of Shellfish Research*. Volume 17. Number 1. Page 63.

"...the benthic community within dredged plots was indistinguishable only 3 months after harvesting regardless of the scale of disturbance,..."

Brooks, K. 1996. Intensive clam culture and the environment. Proceedings of the conference: Broadening Alaska's shellfish farming opportunities: A conference and workshops focusing on public issues involved with the development of on-bottom culture of indigenous shellfish. University of Alaska Marine Advisory Program. Anchorage, Alaska. Page 41.

"Of all the forms of aquaculture, intertidal shellfish culture is undoubtedly the most benign. If you minimize encroachment on eel grass beds and find effective methods of predator control, the several hundred pages of literature reviewed in preparing this talk suggest only positive environmental affects associated with either intensive clam or oyster culture."

Economic impacts

The current commercial harvest limit for littleneck clams in Kachemak Bay is 40,000 lbs. Local management has set the commercial harvest at 25,000 lbs having a market value at \$2.50/lb or \$62,500. Actual 1998 harvest was less than 20,000 lbs.

An aquatic farm can produce, with predator protection and seeding, about 10 times the biomass of clams as a natural population. By any definition, this level of production increase would be considered enhancing the clam population of the beach.

Aquatic farming in can produce an estimated conservative production of 12 harvestable clams per square foot per year. From a 10 acre plot, the annual harvest would be 435,000 lbs. worth approximately \$1.1 million.

What is the market?

Homer

- Lands End during the summer buys 6,000 lbs and had indicated that they could sell more than 20,000 lbs if more clams were available.
- His Catch Seafood, Homer, Alaska indicated a sales potential of over 40,000 lbs. annually.

Anchorage

- Favco, Anchorage's largest seafood wholesaler, estimates the Anchorage market demand for littleneck clams at over 1,000,000 lbs. annually.

Western Region of U.S. (Aquaculture situation outlook, Western Regional Aquaculture Center)

- "In 1997, it is estimated that over 5.4 million pounds of clams were produced at an estimate of over \$13.7 million." Farmers are converting oyster production into clam farms, and by 2002 production will increase to 7.7 million pounds

United States

- The long term trend (1988-1998) for clam landings showed an overall decrease, however, imports have increased.

Export market

- The long term trend of clam exports (1988-1998) have shown an increase of 196.16% from 661 metric tons to 1,958 metric tons.
- Recently, exports of clams have been somewhat variable depending on the economic circumstances in Asia. In 1998 exports rose 8% while in first half of 1999, exports declined by 15%. We do know, however, that water quality in Asia is a great concern, and shellfish grown in clean water will have an economic advantage.

Effect clam farming on other clam fisheries in Alaska

- There is no littleneck clam fishery outside of Kachemak Bay
- The Kachemak Bay clam commercial fishery is very limited
- In a hearing before the Alaska Legislature: House Resources Standing Committee Mr. Kevin Duffy, acting deputy director of the ADF&G Division of Commercial Fisheries Management and Development was asked by Representative Harris.

Rep Harris: "Is there anything about this industry that has a negative effect on any other seafood industries that it works around or that it's processed around?"

Kevin Duffy: "The clear answer to that is no."

POSTAGE PAID

To: Respective Legislators:
Regarding SB 104 & HB 208
"An act relating to the aquatic farming of shellfish"

3/13/02

From: Gary R. Zaugg
519 Pittenger St.
Ktn, Ak. 99901.
(907) 225-2089

MAR 13 2002

Dear Senators & Representatives,

During recent weeks I have watched the respective bills move through committees'. I have listened to the public comments of support from legislators, administrators, sections of industry and the likes. With all due respect to the individuals supporting this bill, you are attempting to fix a part of the aquatic farm program that is not broken. There is no problem with the current review process under the Alaska Coastal Management Plan, Best Interest Finding and subsequent lease program. There is no need to identify areas that are 'suitable' for aquaculture because that is already being done, by industry, within the current review process under the concepts of "conflicting use". The current process may not be perfect but I can guarantee you, all the pieces are in place and this part of the process is working.

I feel I am in a unique position to comment on this issue. First, I am a principle litigant in the administrative appeal surrounding the 1999 aquatic shellfish application period. The 1999 application period, which resulted in the appeal, was a fiasco for everyone. But it was only because of a "conflicting use" concern by ADF&G regarding utilization of "natural set" stock by aquatic farmers within the boundaries of a farm. This issue will be resolved by the Supreme Court within one year and the results will be superimposed on top of the current mariculture program. I would like to ask you this. What is going to happen if the Supreme Court rules that aquatic farmers are a legitimate "commercial user group"? No less or no more a "commercial user group" than the limited entry fishers? In other words there will be no "preferential use" given to limited entry fishers resulting in a "conflicting use", over aquatic farmer on "natural set" stocks that have never been utilized in the history of modern man. Will this current legislation hold any water in this situation. The answer is no and there is no deference given to this highly probable situation in this bill.

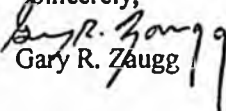
Second, I am one of six individuals in the state who will be issued permits for on bottom geoduck mariculture within the next few weeks. These permits are being issued after going through the 2001 aquatic shellfish application period. The 2001 application period went well, and at this time I believe no appeals are pending. My current site is inside the boundaries of a "limited entry fisheries". How is that? You might ask. The answer is simple and is also why the current system works. The answer is; there is no current "conflicting use" because the limited entry fisheries, under sustainable yield, has harvested the natural set stocks to 30% of the original volume and has been shut down by regulations of the Board of Fish. Does the system work? You bet it does. I would further suggest the system will always work, because under the Alaska Coastal Management Plan Review process if there is a legitimate "conflicting use" it is dealt with under the rule of law. This bill would change the way these established processes work. How can ADF&G guarantee an applicant prior to undergoing the ACMP review process that the application will be approved? Is the ADF&G going to take into consideration public, municipal and federal concerns prior to telling DNR what sites it can offer for competitive bidding for lease? Is the ADF&G going to become the overseer of the Alaska Coastal Management Plan? Is the DNR willing to be put in the position of being sued because it offered sites that have no guarantee of being approved under the ACMP? Would the applicant have to go through the ACMP process? I would caution you here as "conflicting use" is not up to just the ADF&G.

Instead of fixing something that's not broken the legislature needs to address the "conflicting use" issue of "natural set" within the boundaries of an approved farm. How is the ADF&G to deal with "natural set" within the boundaries of a farm? The legislature needs to instruct the ADF&G, within the current statutes, to review applications that contain "natural set" stock under a utilize and replace concept. It's just that simple. Aquaculture leases have this unique ability. So far the legislature has not exerted its **constitutional right** and in this case **constitutional obligation** to define what is acceptable to the administrative reviewers at the ADF&G. In my opinion unless the legislature recognizes aquatic farmers as a legitimate "user group" that has a right to utilize and replace "natural set" stock within the boundaries of an approved site for, among other things, the development of this industry, you are not doing your job. It is a mistake to leave this to the courts when this is well within your realm of authority.

As an aquatic farmer I am trying to **develop an industry**. I'm not asking for \$867,000 dollars of general fund money over two years to create another layer of questionable policy like the current bill. But I am purposing a business that in essence is asking you for a short-term loan of the resource. As legislators you have to be looking at ways to further the coastal community economies. Utilizing and replacing the resource to aid in the start up of these farms is an excellent concept that the industry can guarantee. It costs you nothing. Everyone knows that utilizing the resource is exactly what happens in the development of industry. But in this case we are proposing to replace the resource to 100% of its original volume at the termination of a lease. What other industry offers to replace what it uses? This language is already stipulated in the coastal consistency and the best interest finding that I have had sitting idle on my desk since 2000. Seven additional sites from 1999 are in the same position. The problem is we have no working operational permit from the ADF&G because ADF&G has no guidance from the legislator that the concept of utilize and replace the resource is a legitimate "use" approved by the legislature. The legislature needs to be clear to the agency that has raised a "conflicting use" concern by defining and incorporating a utilize and replace system within the boundaries of an aquatic farm lease. That is the only issue that should concern you at this time.

Thank you for your time.

Sincerely,


Gary R. Zaugg