

HB

513

22-LS1668V
Utermohle
4/12/02

CS FOR HOUSE BILL NO. 513()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE HOUSE SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE, AND TOURISM

A BILL

FOR AN ACT ENTITLED

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

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 16.40.110 is amended by adding new subsections to read:

4 (d) After receiving notice that an applicant, whose development and operation
5 plan for aquatic farming of shellfish at a site where no preexisting commercial fishery
6 occurs has been approved under (a) of this section, has received a determination that
7 the proposed aquatic farm is consistent with the Alaska coastal management program
8 and a finding from the commissioner of natural resources that the issuance of a lease
9 for the aquatic farm site is in the best interest of the state, the commissioner of fish and
10 game shall

11 (1) issue a permit under AS 16.40.100 to operate an aquatic farm for
12 shellfish at the site within 30 days if an indigenous population of a shellfish species to
13 be cultivated at the site is not present on the site; or

14 (2) complete a resource inventory and biomass survey of the site and
15 issue a permit under AS 16.40.100 to operate an aquatic farm for shellfish at the site

1 within 90 days if an indigenous population of a shellfish species to be cultivated on the
2 site is present; the permittee shall reimburse the department for the reasonable costs of
3 the resource inventory and biomass survey; the site for which the permit is issued is
4 closed to commercial fishing for shellfish by all persons other than the permit holder
5 while the permit is in effect; however, the site may be opened for sport, personal use,
6 or subsistence fishing for indigenous or farmed shellfish under regulations adopted by
7 the Board of Fisheries.

8 (e) A person who holds a permit subject to (d)(2) of this section may not
9 harvest more than 20 percent of the biomass of shellfish present on the site in a
10 calendar year. A permit holder may not harvest shellfish from the site during a
11 calendar year unless the commissioner has determined that the population restoration
12 requirements established by the commissioner for the prior calendar year have been
13 satisfied.

14 (f) Upon the expiration or termination of a permit to operate an aquatic farm at
15 a site where an indigenous population of a shellfish species to be cultivated on the site
16 was present when the permit was issued, the person who holds the permit shall, as a
17 condition of the permit, restore the population of shellfish, as consistent with sustained
18 yield management of the shellfish species, to the population level that existed on the
19 site at the time when the commissioner received notice of the consistency
20 determination and the best interest finding for the site under (d) of this section.

21 * **Sec. 2.** AS 16.40.120 is amended by adding a new subsection to read:

22 (h) Notwithstanding other provisions of this section, following the issuance of
23 an aquatic farm permit that is subject to AS 16.40.110(d)(2), the commissioner shall
24 issue an aquatic stock acquisition permit authorizing the holder of the aquatic farm
25 permit for the site to cultivate and harvest the indigenous populations of the shellfish
26 species present on the site.

27 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **APPLICABILITY.** AS 16.40.110(d) - (f), added by sec. 1 of this Act, and
30 AS 16.40.120(h), added by sec. 2 of this Act, apply to persons who, as of the effective date of
31 this Act, have applied for, but have not received, an aquatic farm permit for shellfish under

- 1 AS 16.40.100 and to persons who apply for an aquatic farm permit for shellfish under
- 2 AS 16.40.100 on or after the effective date of this Act.

Alaska State Legislature

Rep. Lesil McGulre, Chair
Rep. Joe Green, Vice Chair
Rep. Fred Dyson
Rep. Jeanette James
Rep. Beverly Masok
Rep. Carl Morgan
Rep. Norm Rokeberg
Rep. Harry Crawford
Rep. Gretchen Guess



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House Special Committee Economic Development, Trade & Tourism

SPONSOR STATEMENT FOR HB 513 SHELLFISH MARICULTURE

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

Shellfish mariculture represents a major economic development opportunity for Alaska and its communities, particularly in rural areas where it has been difficult to identify private sector development options.

There was clear intent to support the development of mariculture when the Legislature enacted the limited entry constitutional amendment, adopted by Alaskan voters, 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 on them for a livelihood and to promote the efficient development of aquaculture in the State.”

Section 8.15 The Alaska State Constitution

This legislation represents a compromise between competing users and attempts to balance the constitutional issues of common property resources, the limited entry and aquaculture constitutional amendment, and sustained yield principles in Alaska's constitution

Basically, this legislation states that when there are significant stocks on a proposed farm site where there is no current commercial fishery, public, sport or subsistence users would have access to indigenous or farmed stocks for the period of the permit, excluding other recognized commercial user groups. The farmer would have to restock harvested areas on an annual basis to the original population levels at the farmer's cost, after approval from the Department of Fish and Game.

22-LS1668\F
Utermohle
3/29/02

CS FOR HOUSE BILL NO. 513()
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TWENTY-SECOND LEGISLATURE - SECOND SESSION

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

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 16.40.110 is amended by adding new subsections to read:

4 (d) After receiving notice that an applicant whose development and operation
5 plan for aquatic farming of shellfish has been approved under (a) of this section has
6 received a determination that the proposed aquatic farm is consistent with the Alaska
7 coastal management program and a finding from the commissioner of natural
8 resources that the issuance of a lease for the aquatic farm site is in the best interest of
9 the state, the commissioner of fish and game shall issue a permit under AS 16.40.100
10 to operate an aquatic farm for shellfish at the site

11 (1) within 30 days if an indigenous population of a shellfish species to
12 be cultivated at the site is not present on the site;

13 (2) within 150 days if an indigenous population of a shellfish species
14 to be cultivated in an intertidal area on the site is present; after receiving notice of the
15 consistency determination and the best interest finding for the site, the commissioner

1 shall provide notice to the public for 30 days that the site will be opened for harvest of
2 shellfish; at the end of the public notice period, the site is opened for 90 days for
3 shellfish fishing by sport, personal use, and subsistence fisheries and, if the Alaska
4 Commercial Fisheries Entry Commission has issued limited entry permits authorizing
5 the taking of a shellfish species to be cultivated in an intertidal area on the site, by
6 commercial fisheries;

7 (3) within 90 days if an indigenous population of a shellfish species to
8 be cultivated in a subtidal area on the site is present; after receiving notice of the
9 consistency determination and the best interest finding for the site, the commissioner
10 shall provide notice to the public for 30 days that the site will be opened for harvest of
11 shellfish; at the end of the public notice period the site is opened for 30 days for
12 shellfish fishing by sport, personal use, and subsistence fisheries and, if the Alaska
13 Commercial Fisheries Entry Commission has issued limited entry permits authorizing
14 the taking of a shellfish species to be cultivated in a subtidal area on the site, by
15 commercial fisheries.

16 (e) After the close of the respective harvest period established under (d)(2) or
17 (3) of this section, the commissioner shall issue a permit under AS 16.40.100 to
18 operate an aquatic farm for shellfish at the site. The site for which the permit is issued
19 is closed to fishing for shellfish by all persons other than the permit holder while the
20 permit is in effect.

21 (f) Upon the expiration or termination of a permit to operate an aquatic farm at
22 a site where an indigenous population of a shellfish species to be cultivated on the site
23 was present when the permit was issued, the person who holds the permit shall, as a
24 condition of the permit, restore the population of shellfish, as consistent with sustained
25 yield management of the shellfish species, to the population level that existed on the
26 site at the time when the commissioner received notice of the consistency
27 determination and the best interest finding for the site under (d) of this section.

28 * Sec. 2. AS 16.40.120 is amended by adding a new subsection to read:

29 (h) Notwithstanding other provisions of this section, following the close of the
30 harvest period established under AS 16.40.110(d)(2) or (3) and the issuance of an
31 aquatic farm permit for shellfish under AS 16.40.100, the commissioner shall issue an

1 aquatic stock acquisition permit authorizing the holder of the aquatic farm permit for
2 the site to cultivate and harvest the indigenous populations of the shellfish species
3 remaining on the site.

4 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 APPLICABILITY. AS 16.40.110(d) - (e), added by sec. 1 of this Act, and
7 AS 16.40.120(h), added by sec. 2 of this Act, apply to persons who, as of the effective date of
8 this Act, have applied for, but have not received, an aquatic farm permit for shellfish under
9 AS 16.40.100 and to persons who apply for an aquatic farm permit for shellfish under
10 AS 16.40.100 on or after the effective date of this Act.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 513
 () Publish Date: _____
 Dept. Affected: Natural Resources
 BRU: Minerals, Land & Water Dev.
 Component: Claims, Permits & Leases
 Component Number: 2460

Revision Date/Time (Note if correction): _____
 Title: Shellfish Farming
 Sponsor: (H) RULES
 Requester: (H) RESOURCES

Expenditures/Revenues (Thousands of Dollars)
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: none
 Check this box (X) if funding for this bill is included in the Governor's FY2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill does not have any fiscal impact to this department, based on the following revenue assumption. DNR assumes that the normal schedule of aquatic farmsite application periods and processing would continue despite HB 513, with DNR's final decisions issued in January and (after the appeal period) leases granted in February-March. Although HB 513 could delay issuance of DF&G's operations permit up to five months if indigenous shellfish are present intertidally, DNR would proceed with lease issuance in the meantime and would receive the first year's prepaid lease rentals as usual.

Prepared by: Bob Loeffler Phone 269-8600
 Division: Mining, Land and Water Date/Time 11-Apr-02
 Approved by: Pat Pourchot Date 11-Apr-02
 Agency: Natural Resources

COPY

Paul Fuhs

PROFESSIONAL SERVICES

E-Mail: paulfuhs@earthlink.net

1635 Sitka #301 Anchorage, Alaska 99501 Phone: (907) 351-0407 Fax: (907) 272-2754

April 2, 2002

Dear Legislators,

Attached to this letter is a copy of the grant request made by SARDFA and the Department of Fish and Game. This is clearly mariculture. The grant request also admits that the harvest method is similar to the method we are proposing in the compromise contained in HB513, i.e. the most efficient way is to harvest most of the animals in an area and then reseed it. (pages 4 and 9)

Page 5 shows how the dive and mariculture industries are complimentary and that diving is only a few days while mariculture is year round.

The bottom of page 9 shows how reseeding methods will allow the department to reduce the costs of surveying for both dive fisheries and mariculture. This should keep the fiscal note down, if any on HB 513.

It is ironic that SARDFA is using the seedstock that was developed at the expense of the farmers and through an ASTF grant but still want to block any farming operation that would utilize standing stock after the divers have had an opportunity to harvest the area.

This shows the double standard SARDFA and ADF&G are attempting to apply to shellfish mariculture. It is not legally correct nor is it good economic development policy for the state to allow a small group of divers, 80% of whom are non-resident to stand in the way of a sustainable year round industry.

HB 513 represents a reasonable compromise which will allow both divers and farmers to prosper.


Paul Fuhs
(907) 351-0407

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

ATTN: DAVID B., PAT H, JEAN E



STATE OF ALASKA
 COASTAL IMPACT ASSISTANCE PROGRAM
 COMPETITIVE GRANT PROGRAM
GRANT APPLICATION FORM

COPY

Mail to: Division of Governmental Coordination
 Attn: CIAP Coordinator
 P.O. Box 110030
 Juneau, AK 99811-0030

Or hand-deliver to: Court Plaza Building, Suite 500
 240 Main Street, Juneau
 or Atwood Building, Suite 1660
 550 W. 7th Street, Anchorage

Be sure to complete all twelve (12) pages.
 Incomplete or faxed applications will be
 considered ineligible for further consideration.
 Deadline: February 8, 2002 -- 5:00 p.m.

If you transfer this application to a computer, your
 application must follow this format and include
 all requested information.

**PROJECT TITLE: Enhancement and Restoration of Geoduck Clam and
 Red Sea Cucumber Beds in Southeast Alaska**

GRANT CATEGORY (CHECK ONE):

CATEGORY 1 Conservation, restoration, enhancement or protection of Alaska coastal and
 marine areas, including wetlands and watersheds.

CATEGORY 2 Education, particularly of young people, to develop an understanding and
 appreciation for Alaska coastal environments and watersheds.

NAME OF APPLICANT/ORGANIZATION: Alaska Department of Fish and Game

Name of Grantee (if different than the applicant): **Southeast Regional Dive Fishery Association**

Any person or organization may apply for and receive a grant for a qualifying project under Category 1,
 Category 2, or both. Two or more people or organizations may participate in a project with one designated as
 the contract lead. If the grantee will be an individual or organization other than the applicant, the grantee must
 be identified.

**APPLICANT ADDRESS: Alaska Department of Fish and Game Division of Commercial Fisheries
 Mariculture Section
 P.O. Box 25526
 Juneau, AK 99802-5526**

CONTACT NAME, TITLE: Jackie Timothy, Mariculture Coordinator
 Phone number: (907) 465-6150
 Fax number: (907) 465-4168
 e-mail address: Jackie_Timothy@fishgame.state.ak.us

The person listed as the contact person
 should be the one most knowledgeable
 about the project and able to provide
 any needed information.

Applicants must submit an original signed application and five (5) copies, including any attachments.

In order to notify you that the application has been received by DGC, please include a self-addressed, stamped
 postcard or envelope, which will be date-stamped and mailed to the address indicated.

GENERAL PROJECT INFORMATION

PROJECT LOCATION: West Gravina Island west of Ketchikan (geoduck clams), Cordova Bay south of Craig (geoduck clams), North of St. Phillips Island north of Craig (geoduck clams), Snow Passage west of Wrangell and areas surrounding Sitka (red sea cucumbers).

ANTICIPATED START DATE: July 1, 2002

ANTICIPATED COMPLETION DATE: June 30, 2004

Grant projects must be scheduled to be completed within a two-year period from the date of the grant award. Extensions may be requested in advance and will be considered in the event of circumstances beyond the control of the applicant. Without an approved grant extension, grants may not be used for on-going efforts beyond the grant award period. Any required on-going effort will be the responsibility of the grantee. Applicants may define projects that consist of multiple phases provided that CIAP grant funding for any one phase shall result in a complete, stand-alone and usable product.

AMOUNT OF GRANT REQUEST: \$100,000

Category 1 grants will generally be limited to \$10,000 to 100,000.
Category 2 grants will generally be limited to \$5,000 to \$50,000.

TOTAL PROJECT COSTS: \$500,000

If the project costs exceed the grant request, explain and document how the additional funds will be secured. Written documentation must be provided in the form of signed budget sheets, awards letters, etc.

ADF&G has applied for a NOAA *Nearshore Fishery Research in Southeast Alaska* award, \$250,000 per year for two years requested (proposal summary, attachment #1). The NOAA grants proposal also includes abalone and red sea urchin work. I have attached an email from Steve Wright, ADF&G's federal aid coordinator, to Jackie Timothy, ADF&G's statewide mariculture coordinator, stating that Doug Woodby has mentioned the possibility of funding this proposal (attachment #2). Since then, Doug Woodby has verbally communicated to Jackie Timothy that due to the number of proposals submitted, the project will not be funded at the amount requested.

CIAP AUTHORIZED USES. Briefly describe how the proposed project is consistent with at least one of the authorized uses under the Coastal Impact Assistance Program (see Procedures and Criteria Section VIII D):

This project is consistent with VIII D (2) as it is a restoration and enhancement of coastal fishery resources that have been depleted through over-harvest of dense beds and sea otter predation.

Date Received by DGC	I certify to the best of my knowledge that the information in this application is true and correct and that I am legally authorized to sign and submit this application on behalf of the applicant.	
	Signature of Authorized Representative	Date
	Printed Name	
	Title	

PROPOSAL

(attach up to five additional pages as necessary)

I. PROJECT DESCRIPTION. Describe the scope of the project and what will be accomplished upon project completion.

Our proposal is a partnership between the Alaska Department of Fish and Game, the Southeast Alaska Regional Dive Association (SARDFA)(attachment #3), and the coastal communities of Ketchikan, Craig, Wrangell, Sitka, Petersburg and Seward. We will enhance and restore stocks of geoduck clam and red sea cucumber that have been depleted during commercial dive fisheries and periods of heavy sea otter predation in southeast Alaska with CIAP grant award funds.

Per ADF&G statute, the enhancement will be conducted to ensure perpetual and increasing production of the food resources of State waters for the beneficial use of all citizens (§16.05.092).

Site suitability is dependent on the previous commercial over-harvest of an area, predators surrounding the area (which will be assessed during pre-enhancement surveys), and the accessibility of the area. Exact enhancement sites will be determined after SARDFA and ADF&G conduct an initial assessment of potential restoration areas through on-site surveys and sampling, and existing data collection. Areas proposed for enhancement include: 1) geoduck clam beds in Cordova Bay south of Craig, and north of St. Phillips Island north of Craig, both hit hard by sea otter predation, or West Gravina Island west of Ketchikan, which has been commercially fished three times with the beds now carrying less than 20 percent of the original biomass, and; 2) sea cucumber beds in shallow, concentrated, calm bays such as Snow Passage west of Wrangell and beds around Sitka that were once considered hot spots but are not rebounding.

Additionally, the sites will be surveyed for animal populations, density and distribution, and habitat suitability before activities commence and again at their conclusion. Broodstock and seedstock will be acquired from the area in which the seed will be replanted. Seed will be secured per the least expensive but most successful source, which will include geoduck clams now available from the Qutekcah hatchery, and red sea cucumbers from under the oyster nets of aquatic farms on Prince of Wales Island. The animals will not be planted or released until after an ACMP consistency review is completed.

Monitoring will be conducted throughout the term of the proposed project and a determination of the actual economics of the activity will be made at the conclusion of the project. If the project is economically successful, the lessons learned from these enhancement activities would be applied to future enhancement activities that would be funded through cost recovery methods.

II. ENVIRONMENTAL IMPACTS. Briefly describe any environmental impacts from the proposed project. A project that creates environmental or health problems is not eligible for a grant award.

There will only be positive environmental impacts from the proposed project. The declines in these once populous species pose problems not only for the commercial dive fisheries and the coastal communities that they support, but also for the coastal ecosystem. The species cited are important prey resources for many species of fish, invertebrates, and marine mammals. Fortunately, this existing environmental problem will be overcome through enhancement and restoration. The activities will be limited to habitats that previously supported the animals intended for enhancement and the animals will not be planted above the densities that occurred in the wild. This limitation should reduce carrying capacity issues and altered ecosystem concerns.

III. EVALUATION CRITERIA. All complete applications submitted under either Category 1 or Category 2 will be evaluated using the following criteria and assigned values based on a point system within the ranges indicated. A maximum of 100 points may be assigned to any one project. Provide a brief narrative for each of the following criterion.

A. Demonstrated Need and Potential Benefit (0-15 points)

1. Describe what creates the need for the proposed project; how the proposed project provides lasting benefits for the community, region or state; whether the product may be used by other similarly-situated communities or agencies elsewhere in Alaska:

Seemingly, timber and fish, unlike oil, gas, and minerals, are renewable resources that can provide a productive resource base if they are carefully managed and utilized to maintain their quantity and quality. Nevertheless, communities in southeast Alaska with economies based on these renewable resources have been economically devastated by the decline of the timber and fin fishing industries. Dive fisheries were recently created in southeast Alaska (1998) to utilize non-traditional fishery resources in response to this economic depression. Divers, aquatic farmers, processors, transporters and communities supported by product taxes are a sampling of those that benefit from the dive fisheries.

Fisheries in Alaska are managed on the sustained yield principle consistent with the development philosophy of the State's Constitution. A commercial dive fishery is opened over a large area with an estimated biomass of animals. However, the animals are not distributed in an organized fashion, but randomly, with dense pockets here and there. Due to the difficulty of the dive fishery, divers conserve energy by concentrating fishing efforts over dense beds of animals. Therefore, stocks in very dense areas can be depleted though the population is still sustainable throughout the larger area.

This would be the first enhancement project of this type by ADF&G and SARDFSA or in the State of Alaska. However, these enhancement activities occur worldwide and regularly in British Columbia and Washington with great success reported. Since each species intended for culture will be repopulated at the densities and in the habitats they previously occurred, ADF&G believes these trials will be successful.

Shellfish and other fishery resources are depleted near many coastal communities for one reason or another. A lasting benefit of this project would be that lessons learned could be applied to future enhancement activities planned across the State. According to statute, shellfish enhancements must be for the beneficial use of all citizens of the State. Therefore, at the conclusion of the project, anyone with a sportfishing license will be able to harvest an amount identified in regulation.

Additionally, the Qutekcak Hatchery, the State-owned shellfish hatchery in Seward, has geoduck seed ready to be planted. However, as of yet, no public lands have been leased for geoduck clam farming because of public interest controversy within the Aquatic Farming program. An enhancement program, such as this, could help keep the hatchery solvent until Aquatic Farming issues are resolved (personal communication between Qutekcak Hatchery Director and Jackie Timothy). The City of Seward is also requesting the State transfer ownership of the hatchery in an effort to better insure the hatchery's long-term commercial success. This transfer is likely to happen. This project then, will benefit the coastal city of Seward (attachment #4).

THIS SAYS IT ALL

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, complimentary. Aquatic Farms will have product available for sale year around 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 (PSP) testing, shared processing and transportation, shared technology, and the probability of reducing the cost of seed through bulk buying. Aquatic farms will be able to employ commercial divers between fishery openings. Additionally, divers will be able to work with the department to dive when PSP levels are low, as indicated by the PSP testing occurring on aquatic farms. When geoduck clams are shipped whole instead of gutted, there is an exponential increase in product value. *

2. Describe how the project avoids duplication of existing projects or programs and whether the project fills a need that otherwise would go unfulfilled:

There are no existing, nor have there ever been, projects or programs of this type in the State. This project fills a need that otherwise would go unfulfilled.

B. Grant Administration (0-15 Points)

1. Provide evidence that you can maintain an accounting system that accurately reflects fiscal transactions associated with the grant project (attach documentation as necessary):

SARDFA will be administering the CIAP grant. SARDFA uses Microsoft Office 2000 software in its office. Accounting and budgeting is done with Microsoft Excel. Separate spreadsheets will be kept for each funding source with monthly accounting notations (example accounting of FY01 SARDFA Budget, attachment #5).

2. Describe your ability to implement both fiscal and project management so monies are expended only for the project and in a manner that results in the completion of the scope of work on time:

SARDFA will submit all accounting documents to ADF&G on a monthly basis. ADF&G will ensure that all monies are expended only for geoduck seed and planting activities and spat collection trials for red sea cucumbers. ADF&G will also ensure that the project is completed according to the project schedule. However, please note that the department has had the opportunity to work extensively with SARDFA in the development of the State's dive fisheries. Based on previous experience, the department has confidence in SARDFA's ability to work within the allotted budget and timeframe.

3. If available, attach information that shows previous experience in project management and grant administration, including any recent audit or financial statements. Identify key individuals involved in the project and describe the experience, qualifications and the technical ability of the staff to complete the project:

SARDFA's executive director, Julie Decker, will administer the CIAP grant with ADF&G oversight. Julie Decker has been the assistant executive director and executive director, respectively, since SARDFA's inception in 1998. The executive director also administers SARDFA's portion of the dive assessments (over \$100,000 annually). This executive director has also administered grants for other projects on behalf of the Ketchikan Gateway Borough (\$15,000), USDA Rural Development (\$60,000 & \$52,000) and the Alaska Department of Community & Economic Development (\$77,000).

Jackie Timothy, fisheries biologist III, manages the statewide mariculture program for the Alaska Department of Fish and Game. Jackie Timothy will provide technical oversight of the project, coordinating with the southeast regional resource development biologist, the geoduck biologists and biologists from seven divisions within the department including commercial fisheries, habitat and restoration, pathology, genetics, subsistence, sportfish and wildlife. The expertise among ADF&G's biological staff is extensive. Administrative support and accounting expertise are available from within the department as well.

- C. **Project Readiness (0-15 Points):** Projects that can most readily be started and completed will be given the highest rating under this criteria. For example, describe the status of your project and how soon it can be initiated, the status of any permit or environmental reviews that are required for the project, or whether necessary additional funds are immediately available. If lands are to be acquired, describe whether there are willing sellers and whether other possible sources of funding have been thoroughly explored.

ADF&G is required by statute to encourage the investment by private enterprise in the technological development and economic utilization of the fisheries resources, and through rehabilitation, enhancement, and development programs do all things necessary to ensure perpetual and increasing production of the food resources of State waters (§16.05.092).

Therefore, in a process approved by the Commissioner of ADF&G on February 4, 2002 (attachment #6), SARDFA will submit an application to ADF&G for a Fish Resource Permit for scientific sampling activities after issuance of CIAP grant monies. The application will be reviewed, refined (if necessary), and issued within three weeks. ADF&G will work with SARDFA to complete the scientific sampling activities, compile the resultant data and determine which area are suitable for enhancement activities. For each individual site determined suitable for enhancement activities, SARDFA will:

- complete a detailed and thorough description of the proposed enhancement activities, including a topographical and vicinity map with map titles and scale;
- complete a Coastal Project Questionnaire (CPQ);
- complete a letter for submittal to the US Army Corps of Engineers (USACE) stating intent to work under a Nationwide Permit number 4 (NWP 4), with a USACE application for a Section 404 and Section 10 permit attached, and;
- complete a DNR tideland permit application.

When the ADF&G mariculture section within the Commercial Fisheries Division determines that the information SARDA submits is complete, ADF&G will submit the application packet(s) to the Division of Governmental Coordination (DGC) requesting an Alaska Coastal Management Program consistency review. After DGC determines the information is complete, and decides whether to coordinate the consistency review or have DNR complete a single-agency consistency review (this will be based on the information contained in the CPQ and on the USACE's response to the NWP 4 intent letter), the project will be public noticed, and an approximate 50-day coastal consistency and DNR statutory review will commence. DNR, DEC, ADF&G, and appropriate coastal districts will review the proposals and will submit comments to the coordinating agency. The Habitat and Restoration Division will coordinate the ADF&G comments. The public may also comment on the proposed projects.

As previously mentioned, the state-owned hatchery in Seward already has geoduck clam seed available for purchase. Therefore, geoduck clam planting will commence at the completion of the State's review. Spat collection devices for red sea cucumbers will be placed under the nets of participating Pacific oyster farmers.

Though the life history of geoduck clams and red sea cucumbers are different, neither animal will be ready for harvest within the two-year timeframe of this grant. However, all preliminary studies, sampling and data collection, plan construction, seed acquisition and seed planting will be completed within the grant timeframe.

D. Project Results (0-15 Points)

1. Demonstrate that a complete product that meets the identified needs and fulfills the identified benefits will result from the project within the time allowed for completion:

Surveys, sampling and data collection for the geoduck clam portion of this project will start upon receipt of the grant award and will be completed by the end of December of 2002. The site selection surveys and data collection will be completed under a scientific/educational fish resource permit concurrent with the State's ACMP consistency review. After the consistency review is completed, divers from British Columbia will plant geoduck seed into sandy substrate with a newly developed mechanical planter which in 1997 was used to plant around 400,000 seed, in 1998 about 250,000 seed and in 1999 about 450,000 seed. To date the survival has been varied at each of the planting sites. However, the results are most encouraging as survival has been better than expected.

Experiments conducted for red sea cucumber spat collection will also be conducted under a scientific/educational fish resource permit issued by the department. These collections can begin shortly after the grant is awarded. Based on the results of these trials, a final enhancement and restoration plan will be available in the spring of 2003.

The ultimate success of the restored mollusks and echinoderms will be assessed through longer term monitoring, which will be conducted using other funds associated with this project and through other proposed and existing ADF&G sponsored projects in the area.

2. Describe what community outreach you plan to do to share the results of the project:

If invited, SARDFa and ADF&G will present the results of this trendsetting project at the Statewide Coastal Conference in 2005.

The progress of the project will be reported annually in the statewide mariculture report published by ADF&G (also available on the department's website). Additionally, ADF&G will make extensive use of the infrastructure currently in place to communicate the results of the project to the management and fishing community of the State.

We will ask DGC to include a link from its Alaska Coastal Program websites to the ADF&G mariculture enhancements and SARDFa websites.

We will submit an annual update for consideration of publication in DGC's Coastal Currents, The Juneau Empire, The Ketchikan Daily News, The Island News, and the Sitka Sentinel, the Wrangell Sentinel, The Petersburg Pilot and the Seward newspaper.

Updates on the project will be posted quarterly on SARDFa's web site.

The progress and results of the project will be presented to the Southeast Conference, Alaska Fisheries Development Foundation, and the United Fishermen of Alaska during annual meetings. SARDFa is an active member of each organization.

3. If this is an ongoing project, describe your plans for continuing financial and administrative support including operational costs, monitoring, equipment replacement, etc.:

SARDFa is administering the CIAP award portion of this project, as ADF&G has not requested the authority to receive these funds. However, after the initial CIAP award funds administered by SARDFa and subject to ADF&G oversight are expended, *Nearshore Fishery Research* award funds will be administered by the Commercial Fisheries Division of ADF&G with an assigned ADF&G Accounting Clerk and monthly tracking.

Continuing administrative support will be provided by SARDFa. SARDFa's administration is funded annually through the dive assessments (a resource tax) collected under AS 43.76.150.

- E. Category Specific Project Product (0-15 Points):** Describe the final product your project will produce and how it will provide for lasting conservation, restoration, enhancement or protection of Alaska coastal, marine and watershed areas or how it will provide for education, particularly of young people, to develop an understanding and appreciation for Alaska coastal environments and watersheds. Projects that produce tangible, lasting products will be given the highest rating under this criteria.

The final products of this project will be 1) sites with increased population densities for these species and 2) an analysis of the enhancement process.

A goal of our project is to develop the scientific understanding necessary to develop a comprehensive shellfish restoration project. Our studies will test the efficacy of the most cost-effective enhancement and restoration options, the consideration of processes to eliminate the commercial overharvesting of dense beds of animals either through the restriction of fisheries to beds that have the capacity to support future enhancement efforts by the industry, or through a code of practice to maintain the

sustainability of existing beds (i.e. spawning sanctuaries or re-seeding directly after each harvest rotation). ←

The ultimate benefit of this project will be to demonstrate the value of restoration, whereby a commercial and personal use resource is restored through careful scientific study. This project will serve as a template for further enhancement work through SARDFa and other private enterprises in coastal communities statewide. The project will also serve to educate the general public and the fishing community on the importance of conservation, the potential for the enhancement and restoration of marine populations, and an example of positive accomplishments through government/industry partnerships.

- F. Agency and Public Involvement (0-10 Points):** Demonstrate community, agency, or public support for the project. For example, attach a local governing board resolution, letters of support, minutes from public meetings, local partnership agreements, evidence of funding or in-kind support, etc.

ADF&G recognizes the desire of local communities for economically viable shellfisheries (letters of support from Wrangell, Craig and Ketchikan, attachments #7, #8, and #9).

The Qutekcak Hatchery and the University of Alaska Marine Advisory Program have agreed to share their expertise to ensure the success of this project.

Due to ADF&G staff and funding limitations, the continued involvement of SARDFa is critical to the ultimate success of this project. In fact, the cooperation between ADF&G and SARDFa enables the department to conform to statute by encouraging the investment by private enterprise in the technological development and economic utilization of the fisheries resources, and through rehabilitation, enhancement, and development programs do all things necessary to ensure perpetual and increasing production of the food resources of State waters.

The department will include this project in its development and maintenance of a comprehensive, coordinated state plan for the orderly present and long-range rehabilitation, enhancement, and development of all aspects of the state's fisheries for the perpetual use, benefit, and enjoyment of all citizens and will revise and update this plan annually (§16.05.092).

- G. Cost Effectiveness (0-10 Points):** Describe the cost effectiveness of your project. Projects providing the greatest benefit at the lowest cost will be rated the highest on this criteria.

→ We hypothesize that enhanced beds of animals will be less harmful to the ecosystem and more cost effective for future commercial dive fisheries than the current cost of conducting the commercial dive fishery with associated sampling and surveys for new beds to harvest, the accompanying age and growth studies, departmental management and monitoring of expanded area fisheries, etc. A cost cannot be placed on the value of the proposed restorations of these once populous species to the coastal ecosystem. As previously noted, the species cited are important prey resources for many species of fish, invertebrates, and marine mammals in addition to being valuable commercial species for communities. The actual cost effectiveness of this project will be determined after we have developed the scientific understanding necessary to make cost comparisons against the money that is expended managing the developing dive fishery.

H. Benefit to a Listed Waterbody (0-5 Points): Projects that take action to benefit waters listed as polluted under the Clean Water Act, Section 303(d) (attachment 1) may receive points under this criterion. An action may include assessment actions such as data collection that can be used to track the source of pollution; development or implementation of a Watershed Restoration Strategy; monitoring the effectiveness of corrective actions; or on-the-ground restoration work. Describe how an action to improve or restore a polluted water will either mitigate the effects of the pollution or repair the damage after a polluting activity has ceased.

N/A

PROPOSED LINE ITEM BUDGET

CATEGORIES	Grant Amount**
Personnel/Benefits	
Travel	5,000
Equipment	5,000
Supplies	50,000 (seed)
Contractual	40,000
Construction	
Other	
Total	100,000

**** Please do not include any funds except the CIAP grant funds. If a project will receive funding from other sources, this amount should not be included in the above table.**

BUDGET INFORMATION

PERSONAL SERVICES (describe each position, salary/benefits, and major assignment):

None

TRAVEL (describe who will travel and for what purpose):

Travel for site surveyors to sites: 4 sites @ \$750 per site = \$3,000

Travel for two experienced planters from British Columbia to geoduck site: 2 @ \$1,000 per person

CONTRACTUAL (identify tasks and products to be completed by a contractor and the cost for each):

Seed planting at each of 4 sites @ \$10,000 per site = \$40,000.

Contractual costs will include seed planting at each site.

EQUIPMENT AND SUPPLIES (describe):

Rental of geoduck planting machine in British Columbia: \$5,000

Purchase of seed: \$50,000 (average seed cost \$0.25 per seed x 200,000 seed)

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WORK PLAN

Project Activities: List the major activities and products associated with your project. Activities are the actual things you will do to achieve a final product. Also list the approximate time for completion of each activity or product. Include the start date and completion date if known. The workplan should contain enough detail to convince readers that sufficient planning has been done to design a realistic project that can achieve the intended results in the time available.

MAJOR ACTIVITIES/PRODUCTS	APPROXIMATE COMPLETION DATES
Hire project director	Upon receipt of funds
Narrow site choices & other planning specifics (ie. seed source, procurement, & planting schedule, collection of site data). Deploy red sea cucumber seed collection devices.	Summer/Fall 2002
Survey sites for recording initial population levels	Fall/Winter 2002
Enhancement plan produced based on data gathered from data collection, site surveys and sampling activities. Procure first set of seed from available sources (different species seed will be on different schedules)	Spring 2003-July 2003
Plant first set of seed	May 2003-July 2003
Monitor seed, quarterly	September 2003-July 2005
Procure second set of seed	March 2004-July 2004
Plant second set of seed	May 2004-July 2004
Continue monitoring seed under other funds	September 2004-July 2005
Conduct final site surveys for recording end population levels under other funds	May 2005-July 2005
Analyze effectiveness of project under other funds	Summer 2005

Status of Shellfish Mariculture Development

Presented by Paul Fuhs (907) 351-0407

Shellfish mariculture represents a major economic development opportunity for Alaska and its communities, particularly in rural areas where it has been difficult to identify private sector development options.

However, this industry has been restricted to mainly oyster farming, a non-indigenous specie due to a lack of clear policy direction on how the Department of Fish and Game should deal with standing wild stocks on farm sites.

This has led to unworkable regulations and there is currently a court case in the Alaska Supreme Court over these issues since no clear direction has been given in legislation by the Alaska Legislature.

The convoluted regulations adopted by the Department of Fish and Game and the impediments they represent to the development of shellfish mariculture are the reason the legislature is currently considering SB 141 and HB 208 which would mandate the department to issue permits for a set number of farms by a date certain.

However, the passage of these bills would not in themselves set a clear policy on how wild stocks should be handled. The legislature needs to give clear direction to the Department on how to regulate this situation.

The legislature clearly intended to support the development of mariculture including the passing of wild stocks to farmers when they adopted the limited entry constitutional amendment, adopted by Alaskan voters, 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 on them for a livelihood and to promote the efficient development of aquaculture in the State."

It is clear that limited entry and aquaculture were treated on an equal basis in the constitutional amendment. Subsequent legislatures passed additional legislation detailing how limited entry fisheries were to be managed but the legislature has never passed legislation to give clear meaning to promoting "the efficient development of aquaculture in the State." This has left Fish and Game in a quandary over how to regulate these farming permits.

Subsequently, it is the department's position that the wild stocks will continue to be managed as a common property resource wherever there are "substantial amounts" of wild stocks on a proposed site. However they have never adopted regulations defining what are "significant amounts".

This creates a catch 22 for the farmer. If they propose a farm where the habitat for growing shellfish is obviously good due to the presence of substantial wild stocks, you can't get a permit to farm there, even though the department has always required and the farmers have always been willing to reseed the farm sites to their original populations upon the termination of their mariculture leases.

A complicating issue is the presence of a limited entry commercial dive fishery on some of the shellfish species for which farming permits are being sought. For instance in geoducks there are 104 divers permitted to dive on geoducks of which only about 25 of them are Alaskan residents, the rest being from Washington and Oregon.

The dive fishery typically lasts between 5 and 20 days per year to harvest the entire quota and then the divers go work in other fisheries or construction or whatever else to make a living. This year only 5-7 divers are working because prices are low so it is taking longer to harvest the resource.

The divers have an association called SARDFa which has taken the position that their limited entry permits give them title to all the geoducks in Southeast Alaska and have pressed the Department not to grant the farming permits applied for even though the farmers intentionally applied for sites where there is no commercial fishery. The farmers were denied their permits by Fish and Game after passing coastal zone management review and a positive best interest finding by DNR which cost a substantial sum of money and 18 months time.

The shellfish farmers who applied for the permits and who brought the lawsuit against the Department for their failure to issue the permits, are seeking a legislative compromise which would give the Department clear directions on how to handle the standing stock issue and would also respect the rights of the divers and protect the resource. That legislative language is attached to this document.

Basically, it says that when there are substantial stocks on a proposed farm site where there is no current commercial fishery, the divers would have first shot at harvesting the resource for 30 days, after which the remaining stocks would be available to the farmer for cultivation and eventual harvest. The farmer would have to reseed the area to the original populatio. levels at the farmer's cost.

This was presented to SARDFa's board of directors and on March 8, they voted 3 to 4 not to support the amendment, stating that they didn't like the idea of harvesting the resource all at once and wanted to do it over time in a "sustainable manner". Again taking the position that their permits give them property rights to all the resources in question.

This puts Fish and Game in a tough spot trying to figure out how to navigate these conflicting claims. For instance on Gravina Island, the Department is currently considering a farm permit application on a site which the divers have fished the geoducks down to only 30% of the original biomass, which is definitely not in a "sustainable

manner", so they can't fish there anymore. Nevertheless, the department is telling the farmer that they have to mark all the wild stocks on the site if they want to use it for mariculture. Despite the obvious problems in trying to do this, the department is saying it can be done by putting colored rocks next to the wild geoducks, ostensibly so the limited entry commercial divers can come back later and try to pick the wild stocks out of the farmed stocks.

This example illustrates how ridiculous this situation has become and begs for clear legislative direction to the department. This is particularly so considering the method of harvesting geoducks which involves using a water jet tube stuck into the ground underwater to loosen the geoducks from the soil. Geoducks are up to 3 feet long and can weigh 20 lbs so there is no way to harvest them without affecting the other animals next to them. In addition, the silt generated by the digging operation would quickly cover any colored rocks meant to identify wild stocks. This is totally unworkable.

It is curious that the department holds a completely double standard for other species that are not limited entry species. For instance, with little neck clams, they have granted permits in which the public can harvest the potential site and sell the product. After the harvest, all remaining stocks become the property of the farmer for the period of the lease. Again, it is the responsibility of the farmer to restore the populations of clams on the site by the end of the lease. This is the same method we are proposing in this legislative compromise.

The Department may claim that giving effective control over geoducks on a site after it has been harvested as we are proposing, would be a violation of the common property clause of Alaska's constitution, even though they have done exactly the same thing with little neck clams. It is a perverse outcome that a small group of fishermen, 80% of whom are non-residents, would have more rights than the general Alaskan public in species that are not limited entry.

The final straw is that the divers have now proposed a program which is supported in funding requests by the Department of Fish and Game to purchase seed stock from Alaska's shellfish hatchery and to plant them in areas that they have harvested far beyond sustainable levels, so they can go back later and harvest them. This is shellfish mariculture farming and no different that what the farmers are proposing, except that it has not been authorized by the legislature.

The legislature needs to give clear direction in legislation to the Department to stop the application of this obvious double standard which is keeping Alaska's shellfish mariculture industry from moving forward. If this compromise proposal is adopted by the Legislature, and the Department agrees to issue the permits the plaintiffs in the legal case against the Department of Fish and Game will drop their lawsuit and we can all get down to spending our energy growing shellfish mariculture products rather than wasting our time in unworkable regulations and lawsuits.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Sen. Robin Taylor, Vice-Chair
Sen. Lyda Green
Sen. Georgianna Lincoln
Rep. Jeanette James
Rep. Joe Hayes



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Interim
716 W. 4th Ave. Suite 430
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Administrative Regulation Review Committee

COPY

February 15, 2002

Commissioner Frank Rue
Department of Fish and Game
P.O. Box 25526
Juneau, Alaska 99802-5526
Mail Stop 1100

Dear Commissioner Rue:

As we struggle to come to grips with Alaska's deepening fiscal crisis, it is vital that we look for broad-based solutions that encompass strengthening our economy while balancing the books of the state treasury. I am convinced that shellfish aquaculture can be a tremendous tool for coastal communities reeling from problems in the salmon fisheries, collapse of timber harvesting and the specter of declining tourism.

Rural Alaska has the potential of reaping tremendous economic benefits from aquatic farming, but there are some significant barriers to overcome, the biggest of which appears to be regulatory blockages. The experience of the Administrative Regulation Review Committee last session in examining new aquatic farming regulations by the Alaska Department of Fish and Game was extremely frustrating.

After reviewing the issue thoroughly, I have come to the conclusion the regulations you adopted in 2001 are some of the most hostile to individual entrepreneurs ever adopted by the State of Alaska. I strongly believe these regulations need to be rewritten completely, but ADF&G and the Department of Law have made it abundantly clear this is not an option at this point in time.

Revisions to the 2001 regulations you now have in the final stages of development also are problematic and demand clarification. I am particularly concerned about your failure to revise sections of the regulations that Ketchikan Superior Court Judge Michael Thompson characterized as "thwarting" the state constitution and "unworkable:"

"The stock acquisition permit issue is however still unworkable, thwarting Section 15 [of the Alaska Constitution]. 5 AAC 41.290(b) limits acquisition in a manner that would prohibit the former [applicants] from making any profitable use of existing geoducks on the site no matter how few might live there; (e) meanwhile seems to protect only 'established' (i.e. ongoing) uses by other fishers; (f) comes right to the point disallowing existing wild stock to be used to financially bootstrap the 'farm.' The Court, although

anxious to avoid trespass into the executive prerogative of policymaking, reads the potentially conflicting requirements of common use and promotion of aquaculture to protect only significant populations of wild geoducks. To hold otherwise would essentially prohibit the goal of aquaculture. Any site with no geoducks is likely so for a reason, even if not readily discernable by current science. On the other hand, a site with some geoduck population may promise with good husbandry, the increase envisioned by Section 15. A site with many geoducks, such as what might attract the existing divers industry, must be protected for that potential 'common' use. The regulations must permit farming on sites suitable for but not presently supporting significant populations. The meaning of 'significant' and methods by which that status might be ascertained are best left to the expertise of the Department.

The current absence of this leeway in the regulations is unreasonable. The process of regulation is to take a 'hard look' at the problems confronting the regulator and the regulated, and to reason a method by which both can conform themselves to fulfill the underlying laws, requirements and goals. During this process the Department failed to find the seemingly obvious answer to the site selection controversy, and arbitrarily crafted a policy and regulations sure to thwart the Plaintiffs and Section 15."

While you responded to the "significant populations" issue, the recent revisions fail to even address the stock acquisition permit issues, and, contrary to the criticism in the judgment, preventing farmers from obtaining stock acquisition permits for small amounts of standing stocks of shellfish on their leased plots. According to my reading of your regulations, a permittee may obtain stock acquisition permits only for the number of animals needed to maintain broodstock at the hatchery, which generally is no more than 150 per year and in many cases may be none.

Please explain why you neglected to fix such obvious defects in the regulations? Your proposed regulations appear to conflict with both the court decision and existing statutes. How could you ignore criticism as clear as saying, your approach to the stock acquisition permit issue is "unworkable, thwarting Section 15..." of the state constitution?

I also would appreciate a clarification of your decision to stop accepting applications for suspended culture operations in Kachemak Bay during the 2001 permit opening. The aquatic farm act says the state shall have an aquatic farm opening at least once every other year, yet the department appears to believe it can ignore that mandate whenever it pleases. It is my understanding that ADF&G closed Kachemak Bay to applications for three years in the past to allow for a study of the carrying capacity of the ecosystem that was never conducted.

Will applications be accepted in 2003? An early decision is important because of the difficulty of finding sites that don't conflict with other uses and the need to comply with the volume of site-specific data you now require of applicants.

The committee looks forward to your responses. Please provide these important clarifications for our review by the first week of March so we can decide whether to schedule the subjects for review. Thank you for your cooperation.

Sincerely,

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Rep. Lesil McGuire
Chair, ARRC

Mr. Chairman,

My name is Gary Zaugg. I am a geoduck shellfish farmer residing in Ketchikan. And as of yesterday I am the first person in this state to be permitted for sub tidal on bottom geoduck mariculture.

First, I would like to thank Representative McGuire and Representative Scazi for their attention to the details of the on bottom shellfish mariculture issue. I say that not just as a formal courtesy to you as legislators, but also as a lead in to what has been our Achilles heal with this issue. Your consideration proves something. And that is it validates our rights as a user group. On the surface that may seem like something that is abstract, and not entirely relevant, but I would remind everyone who has been involved with this issue from the beginning that our right, as a user group, that has an approved use of the resource, has always been in question. I think that by the introduction of this legislation we have finally reached a level playing field in terms of consideration of this use with other users. It can no longer be said that the legislature has never considered this style of use of the resource with other user groups. We are finally addressing these issues with the recognition that we have just as much of a right to utilize the resource as any other user group in this state. I respectfully thank you for that recognition.

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.

Within the last few days I have been advised that the ADF&G director has expressed management concerns with the original bill. It is my understanding that the ADF&G feels that allowing a depletion harvest, limited entry fisheries, followed by a mariculture lease allowing additional utilization of remaining stocks would not be an effective management tool for the protection of the resource. The concern being that over time people could use mariculture leases to access natural set stocks and harvest them without any positive control by the ADF&G. The director has brought up a valid point. The ADF&G needs to have the ability to maintain positive control to assure the resource is protected.

Given that and realizing we are attempting to develop a legislative solution to this issue we continue down this road.

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 boundary of a mariculture lease. That system should promote the development of the industry and protect the resource itself for future generations.

I have always maintained that the answer was simple. The answer in my mind has always been the concepts of utilize and replace. It was the bases for my 1999 application and today remains the obvious answer to the ADF&Gs 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 a shellfish mariculture lease holder constitutes a user group that has the right to propose a commercial use of the resource inside the boundaries of a leased area.

I support the development of this legislation. As a farmer I can accept the 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 other users. Thank you for your time and thank you for the opportunity to comment.



Mission Statement: To develop, expand, and enhance new and existing dive fisheries in Southeast Alaska.

Julie Decker, Executive Director
 Box 2138, Wrangell, AK 99929
 Ph: 907-874-3110; Fax: 907-874-4270
 gigjulle@aptalaska.net
 www.sardfa.org

Fax Coversheet

Total Pages: 8

Date: 4/18/02

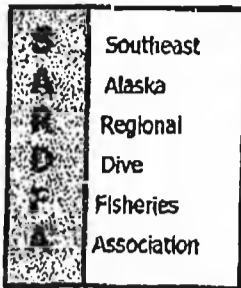
To: Huse Resources Committee, Rep. Wilson, Rep. Williams, Sen. Taylor, Sen. Tongerson, Dag Mecum, Jackie Timothy + Tom Grennel

Fax #: 465-4822, 465-3472, 465-6592, 465-4748, 465-2833, 465-3175, 465-2604, 465-4168, 463-2545, 465-3922, 465-3883, 465-4316, 465-4589, 465-3577, 465-4779, 465-3793

RE: Letter regarding HB 513 + supporting documents.

Julie Decker

Members of:
 Southeast Conference,
 United Fishermen of Alaska, &
 Alaska Fisheries Development Foundation



Mission Statement: To develop, expand, and enhance new and existing dive fisheries in Southeast Alaska.

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Representative Masek, Co-Chair House Resources
 State Capitol
 Juneau, AK 99801-1182
 Ph: 907-465-2679
 Fax: 907-465-4822

April 18, 2002

RE: HB 513, Geoduck Farming Bill

Dear Representative Masek,

I am writing on behalf of the Southeast Alaska Regional Dive Fisheries Association (SARDFA) regarding the geoduck farming bill, HB 513, work draft J. I testified during the April 12th House Resources Committee hearing on behalf of SARDFA (see attached testimony).

SARDFA has repeatedly expressed support for the aquatic farming industry, particularly geoduck farming, but not to the detriment of the dive fisheries. SARDFA does not support farmers receiving ownership of large amounts of wild stocks in order to finance farming operations. In fact, farmers do not need wild geoducks on a site in order to farm geoducks. SARDFA has recently supported a compromise solution which would allow both industries to thrive: allow farmers to operate farms on sites with "insignificant" amounts of wild stock AND allow the farmer to harvest those insignificant stocks.

The main complicating factor in this issue is the fact that the dive fisheries, including the geoduck fishery, are developing fisheries. These fisheries are still developing by surveying and opening new harvest areas, solving problems within the industries to maximize the value of the resources, and participating in research which may lead to enhancements of these fisheries.

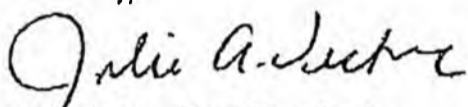
The harvesters, processors, communities, ADF&G and Legislature came together in 1997 and passed HB 198 which created SARDFA - a non-profit organization with the means to develop the fisheries, during a time of declining state funding to ADF&G, through an industry tax and a cooperative relationship with ADF&G. All of these groups agreed to invest in this direction to develop these resources. HB 513 will essentially halt this direction of development of the geoduck resource and begin a different development of the resource - based on the previous investment already made by ADF&G and SARDFA.

If you pass this bill, you will be allowing people to stake claims to large geoduck beds which were identified in surveys funded by the communities, harvesters, state and federal governments who believed the resource would be harvested by the commercial fishery.

I am also attaching a letter you wrote in response to a potential geoduck farmer, Kurtis Morin, dated June 7, 2000. In your letter, you stated, "the legislature clearly did not intend for the aquatic farm statutes to become a means of transferring valuable public resources to private ownership". This is exactly the opposite of the intent of HB 513.

I hope you seriously consider SARDFA's stake in HB 513. I would like to further discuss this with you and other members of the House Resources Committee.

Sincerely,



Julie Decker, Executive Director

Members of:
Southeast Conference,
United Fishermen of Alaska, &
Alaska Fisheries Development Foundation

Cc: Rep. Scalzi, Co-Chair, House Resources ✓
Rep. McGuire, Sponsor of HB 513, House Resources ✓
Rep. Fate, Vice-Chair, House Resources ✓
Rep. Chenault, House Resources ✓
Rep. Green, House Resources ✓
Rep. Stevens, House Resources ✓
Rep. Kapsner, House Resources ✓
Rep. Kertulla, House Resources ✓
Rep. Wilson, House Fisheries ✓
Rep. Williams, House Finance ✓
Sen. Taylor, Sen. Resources ✓
Sen. Torgerson, Sen. Resources ✓
Doug Mecum, Director of Division of Comm. Fisheries, ADF&G ✓
Jackie Timothy, Mariculture Coordinator, ADF&G ✓
Tom Gemmel, Executive Director, United Fishermen of Alaska ✓



Mission Statement: To develop, expand, and enhance new and existing dive fisheries in Southeast Alaska.

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Representative Scalzi, Co-Chair
 & House Resources Committee
 State Capitol
 Juneau, AK 99801-1182
 Phone: 907-465-2689; fax: 907-465-3472

April 12, 2002

Dear Representative Scalzi & House Resources Committee,

Below is my testimony given during the House Resources Committee today on HB 513, the geoduck farming legislation:

"My name is Julie Decker. I am the executive director for SARDFA, the Southeast Alaska Regional Dive Fisheries Association. [SARDFA represents the commercial geoduck, sea cucumber, and sea urchin dive fisheries, along with the processors of those fisheries and the communities in this region.]

SARDFA has been involved in the aquatic farming discussions since the 1999 application period when the first geoduck farms applications were submitted. SARDFA actually has a large interest in aquatic farming. In fact, three out of eight of SARDFA's current Board members are geoduck farm applicants. Aquatic farming also holds potential for underwater harvesters and SE communities looking for more economic opportunities.

I'd first like to say that I appreciate Mr. Fuhs's efforts to come up with a compromise which will pull the 1999 geoduck farm applications out of court and get us all out working. Although the SARDFA Board did not support the original HB 513, the Board has not seen this latest committee substitute, so I cannot say whether they would support it or not.

I have several questions and comments about the committee substitute and then I will go on to say what the SARDFA Board endorsed as a compromise.

In section 1-d, the phrase "site where no pre-existing commercial fishery occurs" needs to be defined. In the commercial geoduck fishery, there are gray areas in this statement. For example, SARDFA has been working on developing and expanding the geoduck fishery with the Alaska Department of Fish & Game (ADF&G) into new areas. The industry has been conducting reconnaissance surveying and ADF&G has been conducting biomass surveying. The industry surveying is completed first, then followed by ADF&G surveying. This has been funded with a combination of voluntary industry surveying, voluntary and mandatory industry taxes, and federal Near Shore Fishery research funds. These newly surveyed areas have not yet been commercially

fished, however, there has been much investment on behalf of the industry and ADF&G to eventually open these areas for commercial fishing. This example is not well defined in this bill.

In section 1-d-2, SARDFA has expressed support in the past of the concept of requiring ADF&G to conduct a biomass survey, which is paid for by the farm applicant. So I believe SARDFA would be in support of this section.

In section 1-f, what will be the consequences of a farmer not restoring a bed of 400,000 pounds of geoducks to its original population? I know another person asked this question and the answer was that there is a bond posted with DNR. However, is that bond pro-rated on the basis of the amount of resource present on a site?

What about other limited entry fisheries, for example sea cucumbers, or non-limited entry fisheries, for example horse clams, which may also be on the farm site? SARDFA has been working to open a new fishery for horse clams. Horse clams are a species which are very similar to geoducks and live in similar habitat. Many times, they are found in the same areas. Because of this, in British Columbia, their limited entry permit is actually for geoducks and horse clams. My question is what about these other species on the farm site? Will they also be restricted from commercial harvesting?

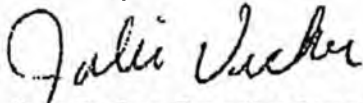
A point of clarification, the commercial geoduck fishery is allowed to take 2% per year of the total existing biomass in an area as required by the Board of Fisheries adopted management plan.

Another point of clarification, in Washington, where geoduck farming is just now being shown to be successful, the farming is being done on inter-tidal areas. That is in areas which are shallower than where geoducks naturally occur (sub-tidal areas). So, it is not necessarily true that you have to have geoducks occurring naturally in order to farm geoducks. The things that are necessary are the correct substrate, nutrients and geoduck seed.

In conclusion, SARDFA is interested in reaching a compromise to allow geoduck farming so we can come together to solve our larger problems. The largest of which is a PSP protocol for live shipment from the Alaska Department of Environmental Conservation, (ADEC). With this in mind, the SARDFA Board 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. Most of the litigants have applied for sites that do not contain a large amount of wild stock. However, the restriction of not being able to harvest any insignificant stock on their sites has made it infeasible to farm. This compromise would eliminate those problems.

Thank you for allowing me to testify."

Sincerely,



Julie Decker, Executive Director

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United Fishermen of Alaska, &
Alaska Fisheries Development Foundation

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June 7, 2000

Mr. Kurtis Morin
Alaska Shellfish Aquaculture Project
P.O. Box 619
Ward Cove, AK 99928

Dear Mr. Morin,

I am writing in response to your May 17, 2000, e-mail message regarding the future of aquatic farming in Alaska.

The Alaska State Constitution clearly states in Article VIII, Section 3 that "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use." As I read your letter, it appears aquatic farmers want the state to transfer ownership of all of the geoduck clam resource existing on their proposed lease sites to private ownership, thereby preventing the use of those resources by the remaining members of the public. In some cases the value of these resources can be extremely high. Article VIII, Section 15 allows, but certainly does not require, the state to create an exclusive right of fishery to "promote the efficient development of aquaculture in the state". It is not clear that clam farmers must be given ownership of a valuable public resource in order to promote the efficient development of aquaculture. In fact, the legislature clearly did not intend for the aquatic farm statutes to become a means of transferring valuable public resources to private ownership. Several sections of the Aquatic Farming statutes make this point very clear.

AS 16.40.105 (2) states: "the proposed farm or hatchery may not require significant alterations in traditional fisheries or other existing uses of fish and wildlife resources." The aquatic farm statutes also clearly separate the aquatic farm permit described in AS 16.40.100 from the aquatic stock acquisition permit, described in 16.40.120. An aquatic stock acquisition permit is required in order for an aquatic farmer to take wild fishery resources for the purpose of stocking a farm or hatchery. Under AS 16.40.120

((f)(1) "...the Commissioner shall issue a permit if (1) wild stock is necessary to meet the *initial needs* (emphasis added) of farm or hatchery stock...". But even then the permit will be issued only if "... (3) wild stock sought is not fully utilized by commercial, sport, personal use, or subsistence fisheries." The fact that two separate permits are required clearly indicates that the issuance of an aquatic farm permit was not meant to automatically transfer ownership of the resources existing at the farm site.

Under AS 16.40.120(d) the Commissioner has a clear responsibility to restrict the taking of wild fishery resources for the purpose of stocking hatcheries and farms in order to protect both the sustained yield of the resource and to prevent the disruption of established uses of the resources.

The fact that geoduck seed stock are currently available to farmers from a hatchery indicates that wild stock "necessary to meet the *initial needs* of farm or hatchery stock" has already been taken as called for in AS 16.40.120(f)(1). The fact that there is a long standing and very active commercial fishery which fully utilizes the geoduck resource would specifically prohibit the Commissioner from issuing an aquatic stock acquisition permit for the geoducks found on the proposed lease sites. This prohibition is clearly laid out in AS 16.40.105(2), AS 16.40.120(d), and AS 16.40.120(f)(3).

While I am sympathetic with the desire to expand the economic activities available in coastal Alaska, I strongly support the common use clause of the Constitution and believe that aquatic farming must not impair sustained yield of the resource or infringe on the rights of the general public to harvest wild fish and wildlife resources. I strongly encourage you to work closely with the Department of Fish and Game and other interested user groups to develop an aquatic farming policy that allows for development of your industry while still protecting the rights of the public and the sustained yield of the resource.

Sincerely,

Beverly Masek
Beverly Masek
Co-Chair
House Resources Committee

cc: Frank Rue, Commissioner of ADF&G
John Shively, Commissioner of DNR
Michele Brown, Commissioner of DEC
Patrick Galvin, Director of DGC
Doug Mecum, Director of Com Fish Division ✓
Kelly Hepler, Director of Sport Fish Division
Ken Taylor, Director of Habitat Division
Sen. Drue Pearce, President of the Senate
Rep. Brian Porter, Speaker of the House

Sen. Rick Halford
Sen. Robin Taylor
Sen. John Torgerson
Sen. Jerry Ward
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