

HB

1988

ALASKA STATE LEGISLATURE

INTERIM

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SESSION

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REPRESENTATIVE JIM ELKINS

Sponsor Statement for HB 198 Dive Fishery Management Assessment

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

House Bill 198 amends the state's Aquatic Farming Act (AS 16.40.100 - 199) to allow aquatic farms to continue to operate in compliance with a recent Supreme Court decision.

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

On February 11, 2005, the Department of Fish and Game announced that it will conduct a commercial dive fishery on designated mariculture sites, to remove the commercially significant population of wild geoducks from these small areas. This fishery will be open to all commercial divers in Southeast Alaska. Section 2 of HB 198 makes it clear that the aquatic farmers will not have to replace the shellfish that are harvested in this common property fishery.

Section 3 gives the Department the authority, when it determines it would be beneficial to do so, to let shellfish farmers remove all but an “insignificant population” of wild stock from their sites themselves and give the proceeds from their sale to ADF&G. Section 4 codifies the requirement that proposed farm sites can only get permits if there is an “insignificant population” of the shellfish species to be cultured there, and Section 7 says that this section applies only to permits issued after July 1, 2005.

This legislation, the product of industry members and the administration working to find a compromise, will help ensure the future of this new fishery in Southern Southeast Alaska for years to come and I urge the members support.

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Sectional Analysis

Section 1 - Amends AS 16.40.100(b) to provide that an aquatic farm permit authorizes the permit holder to acquire ownership of, harvest, and sell wild shellfish from an aquatic farm site if the wild shellfish is present in an "insignificant population" and the wild shellfish is of the same species of shellfish that is intended to be cultured at the site.

Section 2 - Amends AS 16.40.100(e) to provide a limited exception from the requirement that an aquatic farm permit holder restore wild shellfish populations to the levels that existed on the site at the time that the permit was initially issued, so that the permit holder is not required to restore that portion of a wild shellfish population that was removed from the site by a common property fishery.

Section 3 - Amends AS 16.40.100 by adding a new subsection (f) to authorize the commissioner of fish and game to allow an aquatic farm permit holder, under certain circumstances, to remove and sell excess wild shellfish from an aquatic farm site if the population of the wild shellfish species is more than an insignificant population. The permit holder will pay a reasonable amount to the Department of Fish and Game for the harvest and sale of the excess wild shellfish. The money received will be deposited in the General Fund and may be appropriated to the department for shellfish management and enhancement.

Section 4 - Amends AS 16.40.105 by adding a new paragraph to provide that, in addition to the existing criteria for issuance of an aquatic farm permit, the commissioner of fish and game may not issue a permit for a proposed farm site if the site contains more than an insignificant population of wild stock of a shellfish species intended to be cultured on the site.

Section 5 - Adds a new Section AS 16.40.155 to provide, in certain circumstances, confidentiality for aquatic farm and hatchery permit holders.

Section 6 - Adds the definition of "insignificant population" in regards to shellfish populations.

Section 7 - Provides that AS 16.40.105, as amended by section 4 of the bill, does not apply to aquatic farm permits before the effective dates of the bill.

Section 8 - Provides for an effective date of July 1, 2005.

Sectional

FISCAL NOTE

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1
 Bill Version: CSHB 198(FSH)
 (H) Publish Date: 3/21/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title An act relating to aquatic RDU Commercial Fisheries
and providing for an effective date Component Fisheries Development
 Sponsor Representative Elkins
 Requester House Fisheries Committee Component No. 1942

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Sarah Gilbertson Phone: 465-6137
 Division: Legislative Liaison Date/Time: 3/17/05 1:26 PM
 Approved by: Acting Commissioner Wayne Regelin Date: 3/17/2005
 Agency: Alaska Department of Fish & Game

STATE OF ALASKA

FRANK H. MURKOWSKI
GOVERNOR

DEPARTMENT OF FISH AND GAME
OFFICE OF THE COMMISSIONER

P.O. BOX 25526
JUNEAU AK 99802-5526
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March 3, 2005

The Honorable Bert Stedman
Alaska State Legislature
Room 30; State Capitol
Juneau, AK 99801

Dear Senator Stedman:

Thank you for introducing S.B. 126 on behalf of the Southeast Alaska Regional Dive Fisheries Association and the Alaska Shellfish Growers Association. As you know, passage of this legislation carries significant implications for the success of Alaska's mariculture industry.

Under the previous administration, Alaska's mariculture industry was largely ignored. The industry, which was constantly at odds with the Alaska Department of Fish and Game (ADF&G) over regulatory matters, was unable to get the support that it needed from the Governor's office to move forward. As the introduction of S.B. 126 demonstrates, this is no longer the case. The Murkowski Administration strongly supports Alaska's mariculture industry, in part, because it provides promising economic development opportunities for Alaska's fishermen and coastal communities. Over the last two years, ADF&G has been working cooperatively with the industry on a regulatory scheme that will foster the growth of the industry.

However, ADF&G's regulatory work and the industry's ability to develop have recently been slowed by a series of court rulings. The first of these, in the Superior Court, found that the state is required to provide access to insignificant amounts of naturally occurring shellfish to aquatic farmers. The most recent ruling by the Alaska Supreme Court found that existing statutes prevent ADF&G from allocating any naturally occurring stocks to aquatic farmers who are developing new sites, except for use as brood stock.

As you have recognized through the introduction of S.B. 126, in order for this industry to be successful, aquatic farmers should have the opportunity to plant crops where some level of natural stocks already occur. Therefore, ADF&G strongly supports the expeditious passage of S.B. 126 in order to clarify that ADF&G may indeed allocate "insignificant" numbers of wild stocks of shellfish to aquatic farmers. Thank you once again for your support on this matter.

Sincerely,


Wayne Regelin
Acting Commissioner

Acting Commission letter



March 15, 2005

**Representative Jim Elkins
Room 416
State Capitol
Juneau, AK 99801**

Dear Representative Elkins:

This letter is to provide a strong endorsement of House Bill 198 and your efforts to seek resolution of the long-standing controversy over the citing of geoduck clam farms in Alaska.

The Alaskan Shellfish Growers Association (ASGA) has been trying to resolve this bitter controversy for the past eight years as it spilled over into the court system, halls of the Capitol and front pages of local newspapers. The industry, state regulators, policymakers, commercial fishermen and the court system have invested innumerable hours wrestling with the difficult issues involved, and we're delighted at the opportunity to put the issue to bed.

Since a decision by the Alaska Supreme Court last spring, ASGA has been working closely with commercial fishermen and the Murkowski Administration to fashion a compromise acceptable to all parties. The result of this cooperative work is HB 198 which has support from farmers, commercial fishermen, Departments of Fish and Game and Law, and Governor Frank Murkowski. While there are many issues upon which we'll continue to disagree, we all support the concepts contained in HB 198.

The Department of Law has determined that the legislation does adequately address the issues raised by the Alaska Supreme Court in its 2004 decision. Some of the details wisely are left to be fleshed out in regulation, but ASGA thinks there is one more issue that is best decided by the legislature: the amount of compensation a farmer should pay for harvest of "standing stocks" of wild geoduck clams on the farmsite.

The new section HB 198 adds to AS 16.40.100 is designed to allow farmers to remove "standing stocks" from the farmsite, and provides that the farmer must pay "reasonable compensation" for any "excess wild stock." While we think it is appropriate that harvest of these "excess wild stocks" would result in a tax on the farmer, ASGA believes the amount of "fair compensation" is a legislative prerogative and not a decision to be made by fisheries managers.

We are preparing a proposed amendment to set an extraction tax rate on harvests of "excess wild stocks" of geoduck clams at 30 percent of the price paid fishermen during the most recent commercial fishery. This tax would be added to the Fisheries Business Tax rate of three percent paid by other harvesters. This combined tax rate would exceed the amount the state collects on Prudhoe Bay oil, including severance taxes, royalties and corporate income tax, and is several times higher than the amount paid by other

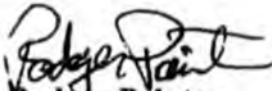
Rodger Painter • P.O. Box 20704 Juneau, AK 99802-0704
Fax: (907) 586-1077 • Cell: (907) 957-0704 • email:

Support Letters

harvesters.

Important to keep in mind is that the tax would affect only those situations where fisheries managers misjudged the amount of standing stocks on new farmsites and that new survey techniques supported by fishermen and farmers would help improve significantly the accuracy of these estimates.

Thank you for this opportunity to resolve this long-standing controversy. The major parties in this dispute are fully committed to setting aside past differences and working together on economic development strategies for Southeast Alaska.



Rodger Painter

Vice President

c.c. Julie Decker, SARDFA
Alan Austerman
David Bedford
ASGA Board of Directors



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

Julie Decker, Executive Director
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Ph: 907-874-3110; Fax: 907-874-4270
info@sardfa.org
www.sardfa.org

Co-Chairs of the House Fisheries Committee
Representative Gabrielle LeDoux
Representative Bill Thomas

March 16, 2005

RE: Support for HB 198 / SB 126 – Aquatic Farming

Dear Representatives LeDoux and Thomas,

I am writing on behalf of the Southeast Alaska Regional Dive Fisheries Association (SARDFA) to support HB 198 / SB 126, companion bills related to aquatic farming. SARDFA is a non-profit, economic development corporation whose mission is to develop, expand and enhance new and existing dive fisheries in Southeast Alaska. SARDFA's Board of Directors represents the commercial harvest divers, processors, and communities of Southeast. Currently, three dive fisheries exist in Southeast: sea urchins (80 permit holders), sea cucumbers (330 permit holders), and geoducks (80 permit holders).

Over the past six years, there has been a deep controversy over which group has the right to harvest the wild stocks of geoducks on farm sites: farmers or fishermen. Judge Thompson ruled that insignificant wild geoducks could be taken by farmers, and significant stocks, or those that would "attract and support a dive fishery", could be taken by the common property dive fishery.

Last April, the Alaska Supreme Court upheld the Thompson ruling, but further stated "the department lacked statutory authority to give aquatic farmers exclusive rights to the existing wild stocks". Since then, ***SARDFA has worked with the State and the farmers to compromise on an acceptable implementation of the Courts' rulings. HB 198 / SB 126 are the result of that work.***

HB 198 / SB 126 are necessary for three reasons. First, this legislation will give the department the statutory authority to allow aquatic farmers to harvest insignificant wild stocks on sites. Second, this legislation will end confusion for farmers, the department, and the courts regarding approval or denial of future farm applications. Third, this legislation will deal with the mess leftover by inconsistent decisions regarding the siting

of the current 20-30 geoduck farm permits by allowing farmers who have already planted on sites, which may contain more than an insignificant amount of wild stocks, to harvest those stocks and pay "reasonable compensation" to the state as a levy.

SARDFA understands the farmers also support this legislation, but would like to see the bill amended to specify the amount of "reasonable compensation" (Section 3, line 19). SARDFA does not believe it is necessary to set this "reasonable compensation", or levy, in statute. As the Department of Law has explained it, the State is approaching the development of this particular resource in a completely new way with this levy and SARDFA believes it would be more practical to allow flexibility to the Department of Fish and Game (ADF&G) to set the levy in regulations.

However, if the Legislature believes it is necessary to fix the levy in statute, **SARDFA strongly encourages the Legislature to set the levy as high as possible.** SARDFA believes the higher the levy is, the smaller the net profit to the farmer will be, and consequently the less incentive there will be to the farmer to poach wild geoducks from off of farm sites. Poaching of geoducks by licensed farms in remote areas of Alaska is a serious concern for SARDFA. Geoduck poaching has been a big problem for the State of WA, as a quick search on the Google web site will show you. Proper enforcement of farm site boundaries relative to the harvest of wild stock is highly unlikely for farmers operating 365 days per year. In other words, what's to stop a farmer from sliding down the beach a half mile from his farm site to harvest wild geoducks, making a substantial profit?

The Alaska Shellfish Growers' Association (ASGA) agreed to a compromise with SARDFA last spring. Part of that compromise states: "In the event a site contains more than 12,000 pounds (of geoducks), the farmers would be allowed to harvest everything, but the net proceeds from anything over the cap (12,000) would go to the state's general fund. In other words, the farmer would be allowed to harvest and sell the 'overages', but would be required to give any sales proceeds over direct harvesting, transporting and processing expenses to the general fund" (see attached compromise). Although this agreement does not state the exact rate of levy, the essence of the agreement is that there should be **no net profit** by farmers on wild stocks that are considered significant, or common property resource.

Farmers have suggested setting the levy at 30% of the average ex-vessel value (or price paid to fishermen) during the most recent commercial fishery. However, farmers are not fishermen. Farmers are a combination of fishermen and processors, and will receive a price similar to the first wholesale value that processors in the geoduck fishery receive. Therefore, if the levy is based on the ex-vessel value, the rate should be higher to reflect the difference between the values.

In comparison, the last geoduck auction held by the State of Washington (WA) on January 6, 2005, saw high bidders pay the State of WA an average of \$6.61 per pound for the right to harvest wild geoducks. If an average first wholesale value for live geoducks was approximately \$8 per pound, the "compensation" paid to the State of WA for wild geoducks would be 82.6% of the first wholesale value. SARDFA recommends setting the levy at 80% of the average ex-vessel value of the most recent commercial

fishery, which is one step below the wholesale value and would properly allow for fluctuations in the market.

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

Thank you for your time and consideration. SARDFA supports passage of this bill in its current form.

Sincerely,

Julie Decker, Executive Director

Members of:
Southeast Conference
United Fishermen of Alaska
Pacific Coast Shellfish Growers Assoc.
Interstate Shellfish Sanitation Conference

Cc: Senator Bert Stedman
Representative Jim Elkins
Alan Austerman, Governor's Fisheries Policy Advisor
Tim Barry, Aid to Senator Stedman
Jim Van Horn, Chief of Staff, Rep. Elkins
David Bedford, Deputy Commissioner, ADF&G
Sarah Gilbertson, Legislative Liaison, ADF&G
Rodger Painter, Vice-President, ASGA
Mark Vinsel, Executive Director, UFA
Bobby Thorstenson, President, UFA
Board of Directors, SARDFA

**A Joint Letter of Agreement between
the Alaskan Shellfish Growers Association and
the Southeast Alaska Regional Dive Fisheries Association**

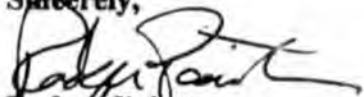
Dear Alaska Policymakers:

The Alaskan Shellfish Growers Association (ASGA) and Southeast Alaska Regional Dive Fisheries Association (SARDFA) agree to the following package of statutory and regulatory changes to resolve long-standing controversies over how the state should deal with "standing stocks" of geoduck clams on aquatic farm sites.

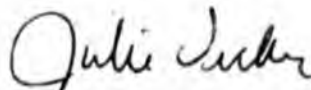
Both organizations are committed to supporting the implementation of the provisions of the agreement, including the passage of legislation and adoption of regulations.

We urge quick action in approving the legislation and adopting the regulations necessary to carry out the agreement.

Sincerely,



Rodger Painter
ASGA vice president



Julie Decker
SARDFA executive director

Description of ASGA-SARDFFA Compromise

The Alaskan Shellfish Growers Association (ASGA) and Southeast Alaska Regional Dive Fisheries Association (SARDFFA) have reached agreement on a package of statutory, regulatory and administrative actions to resolve the long-standing controversy of how to handle natural stocks of geoduck clams on new aquatic farm sites.

The agreement was reached in the wake of an Alaska Supreme Court decision that already has resulted in the closure of geoduck farming operations near Ketchikan and cast a legal cloud over most other existing littleneck and geoduck farming operations. Complicating the issue is that seed purchases by the closed geoduck operations are considered vital to the viability of the shellfish hatchery in Seward.

While this agreement was negotiated directly by divers and farmers, it also has been endorsed by the parties involved in the original lawsuit and the Murkowski Administration. Here are elements of the agreement.

How the "Standing Stock" Issue is Resolved

The Supreme Court said current statutes do not provide the Alaska Department of Fish and Game clear authority to allocate any standing stocks of geoduck clams to aquatic farmers. While the decision was directed at geoducks, it has clear implications for other species, such as littleneck clams.

Statutes would be amended to allow aquatic farmers to select sites with "insignificant" amounts of wild stocks, essentially codifying an earlier superior court decision. This would be defined in statute as an amount less than what it would take to support a commercial fishery. ADF&G would further define what "insignificant" means in regulation.

How Existing Farms will be Affected

Existing geoduck farms would be allowed to continue operations, but would have to meet the provisions of the new statute and accompanying regulations.

How the State Will Determine How Many Clams are on a Farm Site

Population surveys will be conducted by the state or by the applicant with state oversight. The surveys will require a high confidence level to increase accuracy. The farmer will be required to pay for the surveys.

How Harvests of Standing Stocks will be Managed

The agreement would define "insignificant" as less than 12,000 pounds of geoduck clams per farm site. Harvests by farmers would be "capped" at 12,000 pounds. If the amount of standing stocks exceeds the 12,000-pound cap, the farmer would be able to continue harvesting to clear the sites for future crops, but the "net proceeds" of such sales would go into the state general fund.

SARDFA-ASGA Compromise

- 1. Insignificant populations of geoducks would be defined as 12,000 pounds or less.**

Legislation must provide ADF&G with the authority to allow farmers ability to harvest insignificant populations of wild stocks on farm sites. The language should be added to 16.40.100 Aquatic Farm and Hatchery Permits.

- 2. Harvest of standing stocks of geoducks would be limited to no more than 12,000 per farm site.**

This cap could be imposed by regulation as long as the language added to AS 16.40.100 gives ADF&G the ability to limit harvests by farmers.

- 3. In the event a site contains more than 12,000 pounds, the farmers would be allowed to harvest everything, but the net proceeds from anything over the cap would go to the state's general fund. In other words, the farmer would be allowed to harvest and sell the "overages," but would be required to give any sales proceeds over direct harvesting, transporting and processing expenses to the general fund.**

If net sales proceeds of overages are to flow into the state treasury, it will require some authorizing language in statute. While the funds could not be dedicated to support activities such as geoduck development programs, ASGA will work with SARDFA annually to ensure the legislature allocates the funds accordingly.

- 4. Surveys used to determine whether a proposed geoduck farm site contains 12,000 pounds of standing stocks would use a mid-point rather than lower bound estimate. This standard also should be applied to the commercial fishery.**

This is designed to increase the accuracy of the surveys and prevent the approval of sites with more than the 12,000-pound cap. This can be accomplished in regulation with no statutory changes necessary. However, it is uncertain whether ADF&G managers will agree to shift survey confidence levels for the fishery management of geoducks. ADF&G deputy commissioner David Bedford did agree the department would work with SARDFA to study ways to improve survey accuracy.

- 5. Existing geoduck aquatic farm permit holders should be "grandfathered in, but should be held to the cap.**

The goal is to ensure existing permits would be valid, but permittees would be held to the 12,000-pound cap. Harvests that occurred prior to the legislation would not be counted toward the 12,000-pound limit.

Amendment to HB198
Offered in the House Resources Committee
By Representative Elkins

Page 1, line 9, delete: "acquire ownership of"

Am 1, passed

Lance Nelson from the Department of Law said, "that after the last hearing, we had basically told the committee that upon issuance of a permit, the permittee would immediately acquire ownership of any wild geoducks that were less than a significant amount."

That opinion is consistent with the language of section 1 of the bill, but it is problematic in the sense that the farmer does not own the wild geoduck until actual harvest occurs. Otherwise, the permittee could claim ownership of unharvested wild stocks - to the exclusion of anyone else - even after the lease expired.

What we really want to convey is harvest rights, not opportunity.

Deletion of the phrase "acquire ownership of" from page 1, line 9. Will still allow Fish and Game to do what they intend to do without creating an unlimited ownership issue.