

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10161 ADMINISTRATIVE REGULATION REVIEW



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William J. Carter

Signature of Camera Operator

10/14/2003

Date

4-03-01

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ALASKA STATE LEGISLATURE

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



State Capitol, Room 116
Juneau, AK 99801-1182
(907) 465-5446 fax: 465-6592
Interim
716 W. 4th Ave. Suite 430
Anchorage, AK 99501
(907) 269-0250 fax: 269-0249

Administrative Regulation Review Committee

AGENDA

Tuesday, April 3, 2001 2:45pm- 4:00pm, House State Affairs, Room 102

I. Review of recent proposed and approved regulations

* This hearing will be teleconferenced

Online Public Notice

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Submitted by	Date Modified	Admin Journal	Attachments	Public (Web edit)
Public Notices01/RCA/DCED on 04/11/2001 at 04:04 PM		{not printed}	No files attached	

Notice of Inquiry by the Regulatory Commission of Alaska

Category: Regulations Filed by the Lieutenant Governor
Publish Date: 04/11/2001

Department: Corrections
Location: Statewide
Region: Statewide

Body of Notice:

NOTICE OF INQUIRY BY THE REGULATORY COMMISSION OF ALASKA

Notice is given that the Regulatory Commission of Alaska (RCA or the Commission) is seeking comments for the purpose of determining whether further re-form is needed to the Commission's rules governing intrastate interexchange access charges. That review is currently being considered in Docket R-01-1. Access charges are the rates interexchange carriers (IXCs) pay to local exchange carriers (LECs) to originate and terminate long distance calls and private line connections. Under the Telecommunications Act of 1996, the Federal Communications Commission (FCC) and the states are required to remove subsidies from rates; but, where additional support is needed, the FCC and the states are required to make the support explicit. The RCA has completed the first phase of that process by removing a switching equipment subsidy that was embedded in access charge rates and required that it be recovered instead through a newly adopted state universal service fund. In addition, the RCA created two different intrastate access charge regimes, one for competitive areas and one for noncompetitive areas. While those reforms have worked adequately and permitted competitive entry in parts of Alaska, market forces and changing federal rules compel us to consider the next phase of reform for access charges.

One of the most important issues to be addressed in the next phase is the growing disparity between intrastate and interstate rates caused by differences between state and federal access charge rate design. In Alaska intrastate access charges are recovered directly from IXCs who, in turn, recover those costs from long distance customers through their intrastate rates. However, on the interstate side, a significant portion of access charge costs are recovered, not from IXCs, but directly from end-users through a line item charge on telephone customers local bills (i.e., interstate subscriber line charge) and from the federal universal service fund. As a result, the average interstate access charge to IXCs is 1.9 cents per minute (counting both ends of a long distance call); the corresponding intrastate access charge is over 13 cents. This difference is generally reflected in the disparity between intrastate and interstate rates. Without state action it may well continue to grow since the FCC is contemplating further changes that will reduce the interstate portion of access charge costs paid by interstate IXCs. The purpose of the Commission's Inquiry is to provide further insight on the scope of this problem and to investigate possible solutions.

A detailed discussion regarding access charge reform is set out in Commission Order R-01-1(1), dated April 11, 2001. That Order may be reviewed on the Commission's web site at <http://www.state.ak.us/rca/> or obtained from the Commission's Records and Filings Section, 701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501; tele: (907)276-6222. In that Order, the Commission poses a series of questions

that it believes will aid in the determination of whether additional access-charge reform is needed. Chief among those questions is whether the RCA should establish an intra-state SLC similar to that required by the FCC for interstate service. The Order also sets out a comment filing and public hearing schedule on this matter.

Persons interested in filing comments on access charge reform are encouraged to review Order R-01-1(1) and answer the questions set out therein as well as provide other relevant information that may be of assistance to the Commission in its analysis of this issue. The schedule for filing comments and for public hearing is as follows.

By 4 p.m., June 13, 2001, any interested person may file with the Commission comments addressing the issues and questions more specifically addressed in Order R-01-1(1). All commentors are encouraged to submit proposed draft regulations with their comments and must include a summary of the comments as well as a diskette of the comments in either Microsoft Word 97 (.doc) format or Adobe Acrobat (.pdf) format and a diskette of the data in Excel spreadsheet format (.xls). Comments should be filed with reference to Docket R-01-1.

By 4 p.m., July 16, 2001, any interested person may file with the Commission comments in reply to the initial comments filed by June 13, 2001. Each commentor must include a summary of the comments as well as a diskette of the comments in either Microsoft Word 97 (.doc) format or Adobe Acrobat (.pdf) format and a diskette of the data in Excel spreadsheet format (.xls).

A public hearing is scheduled to convene at 8:30 a.m. on August 1, 2001, in the RCA's Third Floor, East Hearing Room at 701 West Eighth Avenue, Anchorage, Alaska, for the purpose of taking public comment on this inquiry into reform of intrastate interexchange access charges.

Those individuals wishing to present oral comment at the public hearing scheduled herein are requested to notify the Commission of their intent by July 16, 2001. However, such notice is not mandatory.

DATED at Anchorage, Alaska, this 11th day of April, 2001.

REGULATORY COMMISSION OF ALASKA

G. Nanette Thompson
Chair

Revision History:

04/11/2001 04:04:10 PM by Public Notices01/RCA/DCE:10/State/Alaska/US

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Submitted by	Date Modified	Alk Admin Journal Attachments	Public (Web edit)
Pat Park-fisher/DOL/DCED on 03/30/2001 at 03:42 PM	04/06/2001 03:45:50 PM	[not printed]	epa regulations.pdf

Certified Public Accountancy Proposed Regulations

Category: Notices of Proposed Regulations

Department: Community &
Economic Development

Publish Date: 03/30/2001

Location: Statewide
Region: Statewide

Body of Notice:

**NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE BOARD OF PUBLIC ACCOUNTANCY**

The Board of Public Accountancy proposes to amend and adopt regulation changes in Title 12 of the Alaska Administrative Code, dealing with continuing education, renewal, and reinstatement including the following:

1. 12 AAC 04.300, HOURS OF CONTINUING EDUCATION REQUIRED, will be amended to alter the continuing education requirements for renewal.
2. 12 AAC 04.400, REPORT OF CONTINUING EDUCATION, will be amended to alter what must be reported during renewal.
3. 12 AAC 04.430, INACTIVE PERMITS, will be amended to alter the continuing education requirements for reinstating an inactive permit.
4. 12 AAC 04.440, REINSTATEMENT OF A LAPSED PERMIT, will be amended to alter the requirements for reinstatement of a lapsed permit.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to

Kurt West, Regulations Specialist
Division of Occupational Licensing
Department of Community and Economic Development
P.O. Box 110806
Juneau, AK 99811-0806
Fax: (907) 465-2974
E-mail: kurt_west@dced.state.ak.us

The comments must be received no later than 5:00 p.m. on May 7, 2001.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Kurt West at (907) 465-2537 no later than May 1, 2001 to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Kurt West at the address or phone number above, or go to <http://notes.state.ak.us/pn/pubnotic.nsf>.

After the public comment period ends, the Board of Public Accountancy will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**

Statutory Authority: AS 08.04.070; AS 08.04.425; AS 08.04.440.

Statutes Being Implemented, Interpreted, or Made Specific: AS 08.04.425; AS 08.04.440.

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: 3/30/01 /s/ Jennifer Strickler, Administrative Manager Division of Occupational Licensing

For each occupation regulated under the Division of Occupational Licensing, the division keeps a list of individuals or organizations who are interested in the regulations of that occupation. The division automatically sends a Notice of Proposed Regulations to the parties on the appropriate list each time there is a proposed change in an occupation's regulations in Title 12 of the Alaska Administrative Code. If you would like your address added to or removed from such a list, please send your request to the Division of Occupational Licensing at the address above and include your name, address, and the occupational area in which you are interested.

ADDITIONAL REGULATIONS NOTICE INFORMATION

AS 44.62.190(d)

1. Adopting agency: Department of Community and Economic Development, Board of Public Accountancy.
2. General subject of regulation: Continuing education, renewal, reinstatement.
3. Citation of regulation: 12 AAC 04.300, 12 AAC 04.400, 12 AAC 04.430, 12 AAC 04.440.
4. Reason for the proposed action: Compliance with state statute
5. Program category and BRU affected: Operations #1844 - Occupational Licensing
6. Estimated cost of implementation to the state agency and available funding: (in thousands of dollars)
No costs are expected in FY 2001 or in subsequent years.
7. Contact person for the regulations:

Kurt West
Division of Occupational Licensing
P O Box 110806
Juneau, AK 99811-0806
(907) 465-2337

8. Origin of the proposed action: Board of Public Accountancy.

9. Date: 3/30/01 Prepared by: /s/ _____
Kurt West
Regulations Specialist
Division of Occupational
Licensing

Revision History:

03/30/2001 03:42:23 PM by Pat Park-Fisher/DOL/DCED/State/Alaska/US
04/06/2001 02:45:50 PM by Carol Collins/OLG/Gov/State/Alaska/US

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[cpa regulations.pdf](#)

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Submitted by	Date Modified	AK Admin Journal	Attachments
Sheila Box/OOC/EED on 04/10/2001 at 10:25 AM	04/10/2001 10:27:57 AM	[not printed]	supp 10 - 4 AAC 62 Child Care with selections.pdf

Proposed Changes to 4 AAC 62, Child Care Licensing Requirements

Category: Notices of Proposed Regulations

Department: Education &
Early Development

Publish Date: 04/10/2001

Location: Statewide
Region: Statewide

Body of Notice:

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE STATE BOARD OF EDUCATION & EARLY DEVELOPMENT

Notice is given that the State Board of Education & Early Development, under the authority of AS 14.07.020, AS 14.07.060, and AS 14.37.020, proposes to amend regulations in 4 AAC 62, Child Care Licensing Requirements, to implement and make specific AS 14.37 by:

- Making changes which correct or clarify items.
- Changes made as a result of legislation that has recently passed into law.
- Changes that represent an effort to increase the health and safety of children in childcare settings, as well as the qualifications of care providers.
- Lowering the provider to child ratio as part of an ongoing effort to improve quality of care in early development.

Notice is also given that interested persons may present written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, by writing to:

Commissioner's Office
Department of Education & Early Development
Attn: Regulations Review
801 West Tenth Street, Suite 200
Juneau, Alaska, 99801-1894

so that your comments are received no later than 4:30 p.m. on May 18, 2001. Additionally, any person may present oral comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, at an oral hearing during the next regularly scheduled meeting of the Alaska State Board of Education & Early Development, June 7, 2001, at the Alaska Vocational Technical Center (AVTEC), Student Service Center 519 Fourth Avenue, Seward, Alaska. The oral

hearing will begin at 9:00 a.m., and will continue until 10:00 a.m., or until those persons present and signed up in advance to testify have spoken, whichever is sooner. **Written comments will not be accepted at the oral hearing.**

If you are a person with a disability who may need a special accommodation in order to participate in the process on the proposed regulations, please contact Sheila Box at 907-465-2801, or e-mail sheila_box@eed.state.ak.us, no later than May 30, 2001, to ensure any necessary accommodations can be provided.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to the Commissioner's Office at the address above, e-mailing sheila_box@eed.state.ak.us, or calling 907-465-2801, and they can be found on the Department of Education & Early Development's web site <http://www.eed.state.ak.us/regs>.

The State Board of Education & Early Development, after the oral hearing mentioned above, will either adopt these or other proposals dealing with the same subject without further notice or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

April 9, 2001
/s/ Shirley J. Holloway, Ph.D., Commissioner
Department of Education & Early Development

**ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))**

Alaska Department of Education & Early Development

Subject: Child Care Licensing Requirements

Citation: 4 AAC 62

Reason for Proposed Action:

The responsibility for Child Care Licensing was transferred to the Department of Education & Early Development on July 1, 2000. The childcare licensing sections of the Department of Health and Social Services regulations were transferred to title four of the Administrative Code at that point, but no substantive changes occurred. The proposed regulations represent minor corrections or clarifications of these regulations, changes made as a result of legislation that has recently passed into law, and changes that represent the Department of Education & Early Development's effort to increase the health and safety of children in childcare settings, as well as the qualifications of care providers.

Program Category and BRU: State Board of Education & Early Development.

Cost of implementation to EED and available funding (in thousands of dollars)

Initial Year (FY01)

General Fund -0-
Federal Funds -0-
Other Funds (specify) -0-*

Subsequent Years

General Fund -0-
Federal Funds -0-
Other Funds (specify) -0-*

** Changes to the number of children to staff ratios in these regulations, along with FY2002 changes to the income eligibility scale and implementation of the market rate survey, which increases provider payments, will result in increased costs for the child care subsidy program. These costs are reflected in the FY2002 budget request for the subsidy program.*

Contact: Yvonne Chase, Deputy Commissioner of Early Development, Department of Education & Early Development, 333 West Fourth Avenue, Suite 320, Anchorage, Alaska, 99501.

Origin of Proposed Action: At the direction of the State Board of Education & Early Development at its meeting in Juneau, Alaska, March 30, 2001.

April 9, 2001

Prepared by: Sheila Box, Executive Secretary to the
State Board of Education & Early Development
(907) 465-2801

Revision History:

04/10/2001 10:25:17 AM by Sheila Box/OOC/EED/State/Alaska/US
04/10/2001 10:27:57 AM by Sheila Box/OOC/EED/State/Alaska/US

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Submitted by	Date Modified	Ak Admin Journal	Attachments	Public (Web edit)
Sheila Box/OOC/EED on 04/10/2001 at 10:13 AM	04/10/2001 10:14:37 AM	[not printed]	supp 09 - 4 AAC 12.010 background check.pdf	

Proposed Regulation Change to 4 AAC 12.010, Cost of Criminal Background Check

Category: Notices of Proposed Regulations

Department: Education &
Early Development

Publish Date: 04/10/2001

Location: Statewide
Region: Statewide

Body of Notice:

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE STATE BOARD OF EDUCATION & EARLY DEVELOPMENT

Notice is given that the State Board of Education & Early Development, under the authority of AS 14.07.020 and AS 14.07.060, proposes to amend regulations in 4 AAC 12.010, Cost of a Criminal Background Check to Teachers Seeking Certification, to implement and make specific AS 14.20.020 by

- Updating the reference to Public Safety Regulations.

Notice is also given that interested persons may present written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, by writing to:

Commissioner's Office
Department of Education & Early Development
Attn: Regulations Review
801 West Tenth Street, Suite 200
Juneau, Alaska, 99801-1894

so that your comments are **received no later than 4:30 p.m. on May 18, 2001**. Additionally, any person may present oral comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, at an oral hearing during the next regularly scheduled meeting of the Alaska State Board of Education & Early Development, **June 7, 2001, at the Alaska Vocational Technical Center (AVTEC), Student Service Center 519 Fourth Avenue, Seward, Alaska**. The oral hearing will begin at 9:00 a.m. and will continue until 10:00 a.m., or until those persons present and signed up in advance to testify have spoken, whichever is sooner. **Written comments will not be accepted at the oral hearing.**

If you are a person with a disability who may need a special accommodation in order to participate in the process on the proposed regulations, please contact Sheila Box at 907-465-2801, or e-mail

sheila_box@eed.state.ak.us, no later than May 30, 2001, to ensure any necessary accommodations can be provided.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to the Commissioner's Office at the address above, e-mailing sheila_box@eed.state.ak.us, or calling 907-465-2801, and they can be found on the Department of Education & Early Development's web site <http://www.eed.state.ak.us/regs>.

The State Board of Education & Early Development, after the oral hearing mentioned above, will either adopt these or other proposals dealing with the same subject without further notice or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.**

April 9, 2001

/s/ Shirley J. Holloway, Ph.D., Commissioner
Department of Education & Early Development

**ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))**

Alaska Department of Education & Early Development

Subject: Cost of a Criminal Background Check to Teachers Seeking Certification

Citation: 4 AAC 12.010

Reason for Proposed Action: This regulation simply updates a reference to Department of Public Safety regulation outlining background check costs.

Program Category and BRU: State Board of Education & Early Development.

Cost of implementation to EED and available funding (in thousands of uollars)

Initial Year (FY01)

General Fund -0-
Federal Funds -0-
Other Funds (specify) -0-

Subsequent Years

General Fund -0-
Federal Funds -0-
Other Funds (specify) -0-

Contact: Bruce Johnson, Deputy Commissioner, Department of Education & Early Development, 801

West Tenth Street, Suite 200, Juneau, AK 99801-1894, (907) 465-8678.

Origin of Proposed Action: At the direction of the State Board of Education & Early Development at its meeting in Juneau, Alaska, March 30, 2001.

April 9, 2001

Prepared by: Sheila Box, Executive Secretary to the
State Board of Education & Early Development
465-2801

Revision History:

04/10/2001 10:13:53 AM by Sheila Box/OOC/EED/State/Alaska/US

04/10/2001 10:14:37 AM by Sheila Box/OOC/EED/State/Alaska/US

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[supp 09 - 4 AAC 12.010 background check.pdf](#)

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Karen Cleck/OOC/DEC on 04/10/2001 at 12:36 PM	04/10/2001 12:39:55 PM	[not printed]	No files attached	

18 AAC 90, Pesticide Control

Category: Notices of Proposed Regulations

Department: Environmental Conservation

Publish Date: 04/10/2001

Location: Statewide
Region: Statewide

Body of Notice:

What is being changed: 18 AAC 90, Pesticide Control.

Who is affected: Public and private schools (but not home schools), government entities conducting or funding pesticide applications, oilfield operators, persons applying antimicrobial treatments to drinking water, all certified applicators, custom, commercial, or contract applicators, and persons applying pesticides to state waters or by aerial application.

What we are changing and why we are making these changes: The specifics of the changes are outlined below. The reasons the changes are being proposed are (1) to ensure parents are aware of pesticide use in their children's schools, (2) to ensure information can be obtained about certain pesticide use by requiring custom, commercial, or contract applicators to keep records of their use of general use pesticides, and (3) to make technical corrections so that the permitting and public hearing requirements for certain pesticide operations better reflect both statutory requirements and the practical need for oversight and public review.

Comment Period Ends: May 29, 2001, 5:00 p.m.

Submit Comments to: Janice Adair, Director, Division of Environmental Health, Alaska Department of Environmental Conservation, 555 Cordova Street, Anchorage, Alaska 99501, by facsimile at (907) 269-7654, or by e-mail at janice_adair@envircon.state.ak.us.

You can obtain copies of the proposed regulations: Copies of the proposed regulations are available at DEC's offices statewide, on DEC's Homepage at: http://www.state.ak.us/dec/dec_cal.htm or you may call Rosemarie Lombardi at (907) 745-3236.

DEC Homepage: <http://www.state.ak.us/dec/>

The Alaska Department of Environmental Conservation (DEC) proposes to amend regulations in Title 18 of the Alaska Administrative Code dealing with 18 AAC 90, pesticide control, including the following:

DEC proposes to revise the pesticide control regulations by requiring administrators of public or private schools to provide written notice to the parents or guardians before using a pesticide, other than antimicrobial pesticides or certain pesticides applied in a manner that makes them inaccessible to children. The proposed regulation changes spell out the requirements of the notice, which must also be posted at the

area where the pesticide will be used.

DEC also proposes to expand the certification requirements under 18 AAC 90.300 to include those who use or supervise the use of pesticides on school premises, other than antimicrobial products.

DEC is also proposing to make the requirements for certification renewal for all certified applicators more flexible by allowing credit for continuing education hours.

In addition, DEC proposes to revise the pesticide control regulations by requiring that custom, commercial, or contract applicators keep records of general use pesticides for at least two years after their use. Currently, custom, commercial, or contract applicators must only keep records of restricted-use pesticides. Many custom, commercial, or contract applicators already keep records of general use pesticides and the department has found that information has been invaluable in helping the public and the applicators themselves with questions regarding pesticide use.

Finally, DEC proposes to amend the regulations covering public pesticide programs or projects. The proposed change deletes cumbersome language and inappropriate distinctions between projects based solely on funding source. It requires permits and, in some cases, public hearings, for all government projects affecting multiple landowners or conducted on state lands or rights of way or in state greenhouses. Some federally- or tribally-funded or conducted pesticide applications that previously fell outside the literal scope of the permit and hearing requirements will now be covered. This change will eliminate a potential disparity between the regulations and AS 46.03.330(b). At the same time, the proposed changes add to the list of operations potentially exempt from permitting, so that routine antimicrobial treatments in oilfield operations or to safeguard drinking water can be excluded. When a public hearing is required, applicants will have to supply a transcript of the hearing.

This is a SUPPLEMENTAL NOTICE adding to the NOTICE OF PROPOSED CHANGES that was issued on September 12, 2001 concerning these proposed regulation revisions. This SUPPLEMENTAL NOTICE is being issued in part because DEC made changes based on the public comments received. Because those changes were significant, and because we need to know if the changes made adequately addressed the concerns expressed by those who commented, we are re-noticing the proposal. We have also added to the notice other regulatory adjustments that have become desirable since the original notice was issued.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Janice Adair, Director, Division of Environmental Health, Alaska Department of Environmental Conservation, 555 Cordova Street, Anchorage, Alaska 99501; by facsimile at: (907) 269-7654, or by E-mail at Janice_Adair@envircon.state.ak.us. Comments must be received by 5:00 p.m., on May 29, 2001.

Copies of the proposed regulations are available at DEC's offices statewide, on DEC's homepage at http://www.state.ak.us/dec/dec_cal.htm, or by contacting Rosemarie Lombardi at (907) 745-3236.

If you are a person with a disability who may need special assistance to participate in the process on the proposed regulations, please contact Joel Casto at (907) 465-5041 by May 16, 2001, to make necessary arrangements.

After the close of the public comment period on May 29, 2001 at 5:00 p.m., DEC will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**

Statutory Authority: AS 44.46.020; AS 46.03.010; AS 46.03.020; and AS 46.03.320

Statutes Being Implemented, Interpreted, or Made Specific: AS 46.03.330 and AS 46.03.730

The proposed regulation changes are not expected to require an increased appropriation.

Date: _____

Juneau, Alaska

Michele Brown, Commissioner
Department of Environmental Conservation

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

- 1. Adopting agency: Department of Environmental Conservation
- 2. General subject of regulation: Pesticide Control
- 3. Citation of regulation (may be grouped): 18 AAC 90
- 4. Reason for the proposed action:
 - compliance with federal law
 - compliance with new or changed state statute
 - compliance with court order
 - development of program standards
 - other: (please list) Public concern
- 5. Program category and BRU affected: Division of Environmental Health; Laboratory Services

6. Cost of implementation to the state agency and available funding (in thousands of dollars)
There is no cost to implement

7. The name of the contact person for the regulations:

Name Janice Adair
Title Director, Division of Environmental Health
Address 555 Cordova Street
Anchorage, AK 99501
Telephone 907-269-7644

8. The origin of the proposed action:

- staff of state agency
- federal government
- _____ general public
- _____ petition for regulation change
- _____ other (please list) _____

9. Date: September 11, 2000
Prepared by: /s/ Janice Adair
(signature)

Name (typed) Janice Adair
Title (typed) Director
Telephone: 269-7644

Revision History:

04/10/2001 12:36:59 PM by Karen Cleek/OOC/DEC/State/Alaska/US
04/10/2001 12:39:55 PM by Karen Cleek/OOC/DEC/State/Alaska/US

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Submitted by	Date Modified	AK Admin Journal	Attachments	Public (Web edit)
Sharon Fremming/OOC/DNR on 04/11/2001 at 02:40 PM	04/11/2001 04:13:40 PM	[not printed]	!_UCC Regs Final.pdf	

Proposed Changes In Department Regulations

Category: Notices of Proposed Regulations

Department: Natural Resources

Publish Date: 04/11/2001

Location: Statewide
Region: Statewide

Body of Notice:

Notice is given that the Department of Natural Resources, Support Services Division, under authority vested by AS 44.37.025, AS 44.37.027, and AS 45.29.525, proposes to adopt regulation changes in Title 11 of the Alaska Administrative Code, dealing with the Recorder's Office and the Uniform Commercial Code Central File Office, including the following:

(1) 11 AAC 05.010(a)(14) and (15) are proposed to be changed as follows:

Subparagraph (a)(14)(J) is proposed to be amended to include fees for different types of plat copies. Previously, plat copies were only available from microfilm in a reduced scale format. New equipment and technology has enabled the recording offices to provide plat copies in additional formats, including full scale copies on paper, full scale copies on mylar, and digital plat images on CD-ROM.

Subparagraph (a)(14)(L) is proposed to be repealed. Modern equipment with enhancement software has eliminated the need for manually-typed copies.

A new subparagraph is proposed to be added to include fees for various formats for obtaining digital images of recorded documents and plats.

Subparagraph (a)(15)(A) is proposed to be amended to clarify that it pertains only to initial filings.

Subparagraph (a)(15)(B) is proposed to be amended to change the fee for UCC amendments to a level charge per function regardless of the number of debtors (UCC amendments include amendments, continuations, partial releases, assignments and terminations).

Subparagraphs (a)(15)(C), (a)(15)(D), and (a)(15)(E) are proposed to be repealed. Continuances, partial releases and terminations are all considered amendments under AS 45.29, and will be covered under Subparagraph (a)(15)(B).

Subparagraphs (a)(15)(G) and (a)(15)(H) are proposed to be amended to clarify that the search request fees apply to each debtor whose name is requested to be searched.

Subparagraph (a)(15)(J) is proposed to be amended for clarification regarding certifying copies and charges for certification.

Subparagraph (a)(15)(K) is proposed to be repealed. The manual referenced is no longer available.

Subparagraph (a)(15)(L) is proposed to be repealed. Following a transition period of six months beginning July 1, 2001, only the approved national filing forms will be accepted for filings in Alaska. Filings submitted on non-uniform forms after the transition period will be rejected. A new provision is proposed to address the transition period.

(2) 11 AAC 06.030 is proposed to be changed as follows:

Subsection (a) is proposed to be amended to correct a statutory reference.

Paragraph (b)(1) is proposed to be amended by deleting the language "as prescribed by statute." Certified copies of any document or record from a court of the United States or Alaska are acceptable for recording.

Paragraph (b)(3) is proposed to be repealed. The intended effect of the repeal is to remove the requirement that an affidavit be submitted with certified copies.

Paragraph (b)(4) is a new provision to reflect that acceptable certified copies for recordation include documents or records from any state, federal or local governmental office.

(3) 11 AAC 06.040 is proposed to be changed as follows:

Paragraph (a)(1) is proposed to be amended to clarify minimum document requirements for legibility purposes.

Paragraph (a)(4) is proposed to be amended to clarify that only the information required for indexing a document must be provided in English.

Paragraph (a)(5) is proposed to be repealed. The requirement for "return to" information is already stated in AS 40.17.030.

Paragraph (a)(6) is proposed to be amended to clarify that if a

legal description of land is provided, it must be sufficient to identify the parcel.

Paragraph (a)(8) is proposed to be changed to provide that a document that amends a prior document must refer to that prior document by its book and page number or its serial number.

Paragraph (a)(9) is proposed to be amended to clarify that plats are only to be submitted on mylar or duplicate positive mylar.

Paragraph (a)(10) is proposed to be repealed. AS 40.17.030 does not require capacity to be stated as a recording requirement, and a statement of capacity is not necessary for indexing purposes.

Paragraph (a)(11) is proposed to be amended to clarify signature requirements.

Paragraphs (a)(13), (a)(14) and (a)(15) are proposed to be repealed. The intended effect of these repeals is to eliminate the suggestion that a recorder may have any responsibility to determine whether the legal requirements for an acknowledgement or verification have been met or to review or monitor documents for substantive content.

Subsection (b) is proposed to be amended to clarify the recording criteria for certified copies.

A new subsection is proposed to be added to clarify that plats and records of survey become the property of the state upon recordation.

(4) 11 AAC 06.050 is proposed to be repealed.

(5) 11 AAC 06.051 is a new section proposed to meet the requirements of AS 45.29 that takes effect July 1, 2001. The changes include, among others, a provision requiring use of standard forms, a provision that fixture filing submitted for recordation in a district recorder's office must meet minimum recording criteria, and a provision clarifying that it is the responsibility of the person submitting a record for filing to ensure that all requirements of the applicable statutes have been met. This section also identifies the delivery methods for filings in Alaska.

(6) 11 AAC 06.060 is proposed to be repealed.

(7) 11 AAC 06.061 is a new section proposed to address requirements contained in AS 45.29 including a clarification that the duties of the filing officer are ministerial.

(8) 11 AAC 06.062 is a new section proposed to identify the requirements for search requests and clarify that filings will be reported on searches as active filings until one year after their lapse dates.

- (9) 11 AAC 06.063 is a new section proposed to clarify transition rules following the effective date of AS 45.29 and to identify the types of filings that can be made. This section further identifies how the effectiveness of an existing filing can be continued.
- (10) 11 AAC 06.070 is proposed to be amended to clarify that plats and records of survey are permanently retained by the state and are not returned to the presenting party.
- (11) 11 AAC 06.080 is proposed to be amended to clarify the recording requirements for records of survey.
- (12) 11 AAC 06.090 is proposed to be amended to clarify that Record of Monument documents are recorded, not filed documents.
- (15) 11 AAC 06.100 is proposed to be amended to clarify a notice of disturbance or destruction of a survey monument document is to be recorded, not filed, and must meet the requirements for recording, not filing.
- (16) 11 AAC 06.110 is proposed to be amended to reflect the proper location of the UCC central filing office in the Support Services Division, Department of Natural Resources.
- (17) 11 AAC 06.120 is proposed to be repealed and readopted to comply with AS 45.29.
- (18) 11 AAC 06.900 is proposed to be amended to add a number of new definitions relative to the implementation of AS 45.29.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to:

State Recorder's Office
Support Services Division
Department of Natural Resources
550 West Seventh Avenue, Suite 1210
Anchorage, AK 99501-3564

The comments must be received no later than 4:30 p.m. on May 15, 2001. Written comments may also be submitted by e-mail within the same time frame by directing them to <mailto:sharony@dnr.state.ak.us>. If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Sharon Young at 907-269-8882 or the e-mail address noted above no later than May 7, 2001, to ensure that any necessary accommodations can be provided.

Copies of the proposed regulations may be obtained from the State Recorder's Office, Support Services Division, Department of Natural Resources, at 550 West Seventh Avenue, Suite 1210, Anchorage, Alaska

99501-3564, or from any district recording office or the Uniform Commercial Code Central File Office in Anchorage. You may also obtain a copy at <http://www.dnr.state.ak.us/ucc/regchanges.htm>.

The Department of Natural Resources will either adopt these or other provisions dealing with the same subject without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**

Statutory Authority: AS 44.37.025 AS 44.37.027 AS 45.29.525
Statutes Being Implemented, Interpreted, or Made Specific: AS 34.65.030
AS 34.65.040 AS 40.15.010 AS 45.29.102 AS 45.29.501-45.29.525 AS
45.29.702-45.29.709

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: April 11, 2001

/s/ _____

Sharon Young, State Recorder
State Recorder's Office
Support Services Division
Dept. of Natural Resources

The Department of Natural Resources keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the agency's Notices of Proposed Regulation Changes. To be added to or removed from the list, send a request to the Department of Natural Resources at 400 Willoughby Avenue, 5th Floor, Juneau AK 99801, giving your name and either your e-mail or mailing address, as you prefer for receiving notices.

ADDITIONAL REGULATIONS NOTICE INFORMATION (AS 44.62.190(d))

1. Adopting agency: DEPARTMENT OF NATURAL RESOURCES
2. General subject of regulation: recording/filing documents
3. Citation of regulation: 11 AAC 05 and 11 AAC 06 (multiple sections)
4. Reason for the proposed action:
 - () compliance with federal law
 - (X) compliance with new or changed state statute
 - () compliance with court order
 - () development of program standards
 - (X) other: regulatory cleanup to eliminate ambiguous and/or outdated information

5. Program category and BRU affected: program receipts, type II,

Information/Data Management BRU

6. Cost of implementation to the state agency and available funding (in thousands of dollars)

Initial Year Subsequent

FY 01 Years

Cost \$ -0- \$ -0-

General funds \$ _____ \$ _____

Federal funds \$ _____ \$ _____

Other funds

(specify) \$ _____ \$ _____

7. The name of the contact person for the regulations:

Name Sharon Young

Title State Recorder

Address 550 West 7th Ave., #1210

Anchorage, AK 99501

Telephone (907) 269-8882

8. The origin of the proposed action:

staff of state agency

federal government

general public

petition for regulation change

other (please list) IACA Model Rules per AS 44.37.027(d)

9. Date: 04/11/01 Prepared by: /s/ _____

(signature)

Name Sharon Young

Title State Recorder

Phone (907) 269-8882

Revision History:

04/11/2001 02:40:39 PM by Sharon Fremming/OOC/DNR/State/Alaska/US

04/11/2001 03:06:05 PM by Sharon Fremming/OOC/DNR/State/Alaska/US

04/11/2001 03:14:59 PM by Sharon Fremming/OOC/DNR/State/Alaska/US

04/11/2001 03:25:11 PM by Sharon Fremming/OOC/DNR/State/Alaska/US

04/11/2001 04:13:40 PM by Sharon Fremming/OOC/DNR/State/Alaska/US

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[1 UCC Regs Final.pdf](#)

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Submitted by	Date Modified	AK Admin Journal	Attachments	Public (Notes edit)
Carol Collins/OLG/Gov on 04/05/2001 at 02:36 PM	04/05/2001 03:37:34 PM	[not printed]	No files attached	

New Regulations Filed By Lt. Governor (Reg. 158)

Category: Regulations Filed by the Lieutenant Governor

Department: Office of the
Governor

Publish Date: 04/05/2001

Location: Statewide
Region: Statewide

Body of Notice:

REGULATIONS FILED BY THE LT. GOVERNOR

PERMANENT REGULATIONS

The following regulation projects have been adopted by the individual agencies, filed by the Lieutenant Governor and prepared for the July, 2001 Supplement, Register 158. To receive a copy of these regulations, please contact the adopting agency.

Online Public Notice

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Submitted by	Date Modified	Ak Admin Journal	Attachments	Public (Web edit)
Sharon Fremming/OOC/DNR on 08/31/2000 at 10:38 AM	09/05/2000 09:21:48 AM	[not printed]	No files attached	

Proposed Ban On The Use Of Personal Watercraft In Kachemak Bay

Category: Notices of Proposed Regulations

Department: Natural Resources

Publish Date: 09/01/2000

Location: Statewide
Region: Statewide

Body of Notice:

Dear Alaskan:

Notice is given that the Department of Fish and Game, Division of Habitat and Restoration (ADF&G) and the Department of Natural Resources, Division of Parks and Outdoor Recreation (Parks) propose to adopt regulation changes in Title 5 and Title 11 of the Alaska Administrative Code (AAC), respectively. ADF&G is acting under the authority of Alaska Statute 16.05.020 and 16.20.500 and Parks under Alaska Statute 41.21.020.

The amendment proposed by ADF&G would prohibit the use of personal watercraft (PWC) in the Kachemak Bay and Fox River Flats Critical Habitat Areas.

The amendments proposed by Parks would prohibit the use of personal watercraft in Kachemak Bay State Park, which lies within the Kachemak Bay Critical Habitat Area, and Kachemak Bay State Wilderness Park. Parks also proposes to amend or repeal regulations that contain the words "Jet Ski", and "power boats" in regulations pertaining to Kachemak Bay State Park, Kachemak Bay State Wilderness Park and the Kenai River Special Management Area (KRSMA). A summary of the proposed regulations follows.

ADF&G:

Personal Watercraft Use (5 AAC 95). The proposed regulation would amend an existing ADF&G regulation to prohibit the use of PWC in the Kachemak Bay and Fox River Flats Critical Habitat Areas. It would also define PWC by length, means of propulsion, and operational design. This amendment would protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife by restricting incompatible uses.

Parks:

Motorized Boats (11 AAC 20.115 and 20.215). The proposals would change existing regulations for Kachemak Bay State Park and Kachemak Bay State Wilderness Park by closing these state parks to the use of personal watercraft. They would also replace the term "power boats" with "motorized boats". These regulatory changes would avoid conflicts among visitor use activities and promote public enjoyment by eliminating an activity that the public has indicated is not appropriate in this area.

Non-motorized Areas (11 AAC 20.865). This proposal would amend an existing regulation affecting the KRSMA by changing the words "Jet Ski" to "personal watercraft". This amendment would provide clarity. "Jet Ski" is a PWC brand name "personal watercraft" is a type of motorized boat.

Jet Skis (11 AAC 20.867). This proposal would amend an existing regulation by substituting the words "personal watercraft" for "Jet Ski". This amendment would provide clarity. "Jet Ski" is a PWC brand name "personal watercraft" is a type of motorized boat.

Definitions (11 AAC 20.990). This proposal would repeal the current definition of "Jet Ski" and define "personal watercraft" by length, means of propulsion, and operational design.

Notice is also given that any person interested may present written comments relevant to the proposed actions, including the potential costs to private persons of complying with the proposed action, by writing to:

Claudia Slater, Claudia_Slater@fishgame.state.ak.us
ADF&G, Division of Habitat and Restoration
333 Raspberry Road
Anchorage, Alaska 99518-1599;
phone: 907-267-2336

so that they are received no later than 5 pm, October 4, 2000. For the public's convenience, written comments relevant to the proposed action regarding Kachemak Bay State Park, Kachemak Bay State Wilderness Park, and the Kenai River Special Management Area will be forwarded to Parks. Additionally, any interested person may present oral or written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, at joint hearings to be held by ADF&G and Parks on:

September 20, 2000
Homer High School, Mariner Theater
600 East Fairview Avenue
Homer, Alaska

September 27, 2000
Loussac Library, Wilda Marston Theater

3600 Denali Street
Anchorage, Alaska

The hearings will be held from 7 p.m. to 9 p.m. and might be extended to accommodate those present after 7 p.m. who do not have an opportunity to testify.

If you are a person with a disability who may need a special accommodation in order to participate in the process on the proposed regulations, please contact Pete Panarese at 907-269-8702 no later than September 14, 2000 to ensure that any necessary accommodations can be provided.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations are available at <http://www.dnr.state.ak.us/parks/misc/propregs.htm> or <http://www.state.ak.us/adfg/habitat/geninfo/kbpwc.pdf> or at the DNR Public Information Centers, or by contacting Claudia Slater at the number or address listed above.

After the close of the public comment period, the Departments of Fish and Game and Natural Resources will either adopt these or other proposals dealing with the same subjects, without further notice, or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. Interested persons should comment during the time allowed if their interests could be effected.

DATE: _____

Ken Taylor, Director
Division of Habitat and Restoration
Alaska Department of Fish and Game

DATE: _____

Jim Stratton, Director
Division of Parks and Outdoor Recreation
Department of Natural Resources

ADDITIONAL REGULATIONS NOTICE INFORMATION (AS 44.62.190(d))

1. Adopting Agency: Department of Natural Resources
2. The draft regulations propose to close Kachemak Bay State Park and Kachemak Bay State Wilderness Park to the use of personal watercraft and provide a definition of personal watercraft.

3. Citation of Regulation: Title 11 AAC 20

4. Reason for proposed action: The Division of Parks and Outdoor Recreation (DPOR) has received a number of requests to address growing concerns with Personal Watercraft (PWC) use within Kachemak Bay State Park (KBSP) over the past couple of years. The KBSP Citizen's Advisory Board has petitioned DPOR on several occasions to close the park waters to PWC use, citing complaints from recreational users, and concerns about impacts to park wildlife resources. The Homer City Council also passed Resolution 99-111 advocating for a prohibition of or other enforceable personal watercraft regulation to ensure the protection of fish and wildlife, public safety and recreation values within Kachemak Bay.

Additionally, DPOR cooperated in an extensive public involvement process during the fall and winter of 1999-2000, discussing the impacts of PWC use within the Kachemak Bay Critical Habitat Area and Kachemak Bay State Park. Public meetings, with extensive oral and written testimony were received during this process.

Most of the public comments (70%) received supported a total ban on PWC use within the entire Kachemak Bay Critical Habitat Area, which covers an area that encompassed the waters of KBSP. ADF&G received approximately 100 verbal comments and nearly 325 written comments during the process, as well as a petition with nearly 1700 signatures advocating a moratorium on PWC use.

5. Program: Park Operation and Maintenance, BRU: Park and Recreation Management.

6. Costs of implementation are minimal and easily included in existing budgets. They are primarily for new signs in the Homer boat harbor advising the public of the prohibition on the use of PWC in Kachemak Bay and Kachemak Bay State Wilderness Park. A portion of the cost will go towards the periodic reprinting of park brochures and interpretive kiosks that will inform the public about the closure.

1st year FY00 Subsequent
Cost \$1,000 \$500
GF \$1,000 \$500
Fed. \$0 \$0

7. The name of the contact person for the regulations is:

Pete Panarese, Chief, Field Operations
Division of Parks and Outdoor Recreation
550 West 7th Avenue, Suite 1380
Anchorage, Alaska 99501-3561
907-269-8702, petep@dnr.state.ak.us

8. The proposed action originated from requests made by the general public, the Kachemak Bay State Park Citizens Advisory Board, the Homer City Council, and to correspond with action being taken by ADF&G. ADF&G held an extensive public process during the winter of 1999-2000 to address in part the issue of personal watercraft use in the Kachemak Bay and Fox River Flats Critical Habitat Areas of which Kachemak Bay State Park is a part. Seventy percent of the public comment supported a total ban on the use of personal watercraft in the critical habitat areas.

9. Date: _____ Prepared by: _____

Peter Panarese
Chief, Field Operations
907-269-8702

Revision History:

08/31/2000 10:38:32 AM by Sharon Fremming/OOC/DNR/State/Alaska/US
09/01/2000 09:26:30 AM by Sharon Fremming/OOC/DNR/State/Alaska/US
09/01/2000 09:35:17 AM by Sharon Fremming/OOC/DNR/State/Alaska/US
09/01/2000 09:38:33 AM by Sharon Fremming/OOC/DNR/State/Alaska/US
09/05/2000 09:21:48 AM by Sharon Fremming/OOC/DNR/State/Alaska/US

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Submitted by	Date Modified	AK Admin Journal	Attachments	Public (Web edit)
Sharon Fremming/OOC/DNR on 01/28/2000 at 02:50 PM		Issue #6 dated 02/07/2000	No files attached	

Public Easement Regulations Proposed

Category: Notices of Proposed Regulations

Department: Natural Resources

Publish Date: 01/31/2000

Location: Statewide
Region: Statewide

Body of Notice:

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF NATURAL RESOURCES

Notice is given that the Department of Natural Resources, under the authority of AS 38.05.020, proposes to adopt, amend, and repeal regulations in Title 11 of the Alaska Administrative Code, dealing with public easements, to implement AS 19.10.010, AS 19.30.400-420, AS 38.04.058, AS 38.04.200, AS 38.05.127, and AS 40.15.305, including:

In 11 AAC 05.010, a fee for nominating RS 2477 rights-of-way for certification would be deleted.

An existing chapter of regulations, 11 AAC 51, dealing with RS 2477 rights-of-way, would be expanded to cover all public easements managed by the department, including RS 2477 rights-of-way. Other types of easements are currently covered in 11 AAC 53, but those regulations would be amended and renumbered into 11 AAC 51.

Within 11 AAC 51, the existing sec. 010 would be expanded to describe the content and purpose of the proposed public easement regulations. New secs. 015, 025, 035, and 045 would set out width and reservation standards for general-purpose access and utility easements, section-line easements, and easements to and along navigable and public rivers and lakes. A new sec. 055 would set out how the department will research, identify, and request information from the public on historic trails that appear to qualify under RS 2477 before reporting those trails to the legislature under AS 19.30.400 and who will manage such rights-of-way. A new sec. 065 would say how a person may request the department to vacate (erase) or relocate a public right-of-way, and define standards the department will apply to the decision. A new sec. 075 would cover markings or signs on public easements. A new sec. 085 would renumber 11 AAC 53.305, dealing with access to mental health trust land, but without amending it. New sec. 200

- would set out how the department will manage public easements, including restricting access in some circumstances, and would require the department to seek public comment before authorizing work that changes the way an easement has traditionally been used. A new sec. 210 sets out rules applicable to the public's use of an easement. New secs. 910-990 provide for appeals of decisions regarding public rights-of-way deal with liability for injury, accident, or damage that happens on a public easement and define terms used in the chapter.

The existing 11 AAC 51.020 - 100, dealing with RS 2477 right-of-way nomination, evaluation, certification, appeals, classification, and management, are proposed to be repealed. Many of these topics would be incorporated into new regulations as proposed above. However, the process of identifying RS 2477 rights-of-way would no longer have any formal nomination or certification steps (see proposed 11 AAC 51.055).

In 11 AAC 53, the entire article dealing with easements (11 AAC 53.300 - 370) would be repealed. As noted above, these rules would be incorporated into the new regulations proposed for 11 AAC 51.

Notice is also given that any interested person may present written comments on the proposed action, including the potential costs to private persons of complying with the proposed action. Written comments must be received no later than March 3, 2000 [extended], at the Division of Mining, Land and Water, 3700 Airport Way, Fairbanks, AK 99709-4699.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained via the Internet at <http://www.dnr.state.ak.us/land> or by writing to the Commissioner's Office, Department of Natural Resources, 550 W 7th Avenue, Suite 1400, Anchorage, Alaska 99501-3551 or in person from the department's Public Information Center in Anchorage, 550 W 7th Avenue, Suite 1260 from its Public Information Center in Fairbanks, 3700 Airport Way or from the Division of Mining, Land and Water office in Juneau, 400 Willoughby Avenue, Fourth Floor.

After the close of the comment period, the Department of Natural Resources will either adopt these or other proposals dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

Date: Nov. 22, 1999

Bob Loeffler, Director

DEPT	A.G. FILE NO	DATE FILED	EFFECTIVE DATE	SUBJECT / PART # / CHAPTER
DCED	993.00.0161	03/02/01	07/02/01	Consumer Credit Insurance (3 AAC 28)
		03/06/01	02/08/01	*NON-APA: AK Industrial Development and Export Authority (3 AAC 99)
	993.01.0014	03/07/01	04/06/01	Big Game Guides & Transporters (12 AAC 75)
EED	993.01.0043	03/02/01	04/01/01	Bd. Of EED: Endorsements & scores for French and German (4 AAC 12)
	993.01.0050	03/28/01	04/27/01	Student loan disbursements & authorizations for institutions (20 AAC 15;17)
FG	993.01.0032	03/06/01	04/05/01	Bd. Of Fisheries: Commercial Herring Fisheries Western Ak Areas, Pt. 2 (5 AAC 27)
	993.01.0056	03/13/01	04/12/01	Aquatic Farming Kachemak Bay & Fox River Flats Critical Habitat Areas (5 AAC 95)
	993.01.0030	04/03/01	05/03/01	Personal watercraft use in Kachemak Bay and Fox River Flats Critical Habitat Area (5 AAC 95)
DHSS	993.00.0034	03/20/01	04/19/01	Inpatient psychiatric Medicaid services and residential psychiatric treatment centers (7 AAC 43)
DNR	993.00.0165	04/03/01	05/03/01	Use of personal watercraft in Kachemak Bay State Park, Kachemak Bay State Wilderness Park, and the Kenai River Special Management Area (11 AAC 20)
	993.00.0076	04/03/01	05/03/01	Public easements, including R.S. 2477 rights-of-way (11 AAC 05; 51; 53)
DPS	993.98.0038	03/13/01	04/12/01	Ak. Police Standards Council: Minimum Standards for employment of municipal correctional officers (13 AAC 85; 87)

*The Department of Law does not review these regulations. AHFC and AIDEA are exempt from the Administrative Procedures Act as per AS 18.56.088(a) and AS 44.88.085(a).

EMERGENCY REGULATIONS

The following regulation projects have been filed by the Lieutenant Governor and prepared for the July, 2001 Supplement, Register 158. Emergency regulations do not remain in effect more than 120 days unless made permanent by the adopting agency. To receive a copy of these regulations, please contact the adopting agency.

DEPT.	EFFECTIVE DATE	EXPIRATION DATE	SUBJECT / PART # / CHAPTER
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EMERGENCY REGULATIONS MADE PERMANENT

The following regulation projects have been adopted by the individual agencies, filed by the Lieutenant Governor and prepared for the July, 2001 Supplement, Register 158. To receive a copy of these regulations, please contact the adopting agency.

DEPT.	A.G. FILE NO.	DATE FILED	EFFECTIVE DATE	SUBJECT / PART # / CHAPTER
EED	993.01.0078	04/03/01	12/18/2000	Reduction in the loan origination fee (20 AAC 15)

Revision History:

03/09/2000 02:44:17 PM by Carol Collins/OLG/Gov/State/Alaska/US
 03/16/2000 04:29:15 PM by Carol Collins/OLG/Gov/State/Alaska/US
 03/23/2000 03:03:30 PM by Carol Collins/OLG/Gov/State/Alaska/US
 03/23/2000 03:04:20 PM by Carol Collins/OLG/Gov/State/Alaska/US
 04/05/2001 02:37:34 PM by Carol Collins/OLG/Gov/State/Alaska/US

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Submitted by: Sheila Box/OOC/EED on 03/15/2001 at 03:58 PM	Date Modified:	AK Admin Journal: [not printed]	Attachments: 4aac12.060- Praxis II Germ & French.doc	Public (Web edit):

Notice of Filing: 4 AAC 12.060, Endorsements and Scores for French and German

Category: Adopted Regulations - Text or Summary of Text

Department: Education &
Early Development
Location: Statewide
Region: Statewide

Publish Date: 03/15/2001

Body of Notice:

Notice of Filing and Effective Date: 4 AAC 12.060, Endorsements and Scores for French and German.

On December 8, 2000, the State Board of Education approved changes to 4 AAC 12.060, Endorsement and Scores for German and French.

The regulations were then reviewed and approved by the Department of Law and submitted to the Lieutenant Governor for signing and filing. The Lieutenant Governor signed and filed the regulations on March 2, 2001, establishing an effective date of April 1, 2001. The regulations will be printed in Register 158, July 2001.

A copy of the changes is attached. For further information, contact Sheila Box, Executive Secretary to the Board: telephone (907) 465-2801, fax (907) 465-4156, E-mail <sheila_box@eed.state.ak.us>.

Revision History:

03/15/2001 03:58:10 PM by Sheila Box/OOC/EED/State/Alaska/US

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[4aac12.060- Praxis II Germ & French.doc](#)

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Submitted by	Date Modified	AK Admin Journal	Attachments	Public (Web edit)
Sheila Box/OOC/EED on 12/20/2000 at 10:44 AM PM	12/20/2000 01:56:15	[not printed]	OrigFee1100.pdf	

Notice of Adoption of Emergency Regulations

Category: Adopted Regulations - Text or Summary of Text

Department: Education &
Early Development

Publish Date: 12/20/2000

Location: Statewide
Region: Statewide

Body of Notice:

expire

NOTICE OF ADOPTION OF EMERGENCY REGULATIONS OF ALASKA COMMISSION ON POSTSECONDARY EDUCATION

On December 8, 2000, the Alaska Commission on Postsecondary Education adopted, as emergency regulations, changes in Title 20 of the Alaska Administrative Code dealing with the loan origination fee associated with the origination and disbursement of a new loan.

20 AAC 15.945(h) was changed to reduce the loan origination fee authorized by AS 14.43.120(u) to three percent for loans entered into for the 2001-2002 and subsequent school years.

The emergency regulations take effect **December 18, 2000**, and will expire **April 16, 2001**. The Alaska Commission on Postsecondary Education intends to make the emergency regulations permanent.

You may comment on the regulation changes, including potential costs to private persons of complying with the changes, by submitting written comments to Donna Mayfield, Alaska Commission on Postsecondary Education, 3030 Vintage Blvd., Juneau, Alaska 99801. **The comments must be received no later than closed of business on Friday, February 23, 2001.**

Oral or written comments also may be submitted at a hearing to be held at the next meeting of the Alaska Commission on Postsecondary Education, currently scheduled on **Friday, March 16, 2001, at the Goldbelt Hotel, 51 Egan Drive, Juneau, Alaska**. Scheduled times for oral testimony will be announced prior to the meeting, or you may contact Donna Mayfield at the above address or by calling (907) 465-6740.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Donna Mayfield at (907) 465-6740 no later than **Friday, February 23, 2001**, to ensure that any necessary accommodations can be provided.

For a copy of the emergency regulations, contact Donna Mayfield at ACPE, 3030 Vintage Blvd., Juneau, Alaska 99801-7100, or go to <http://www.state.ak.us/acpe>, Public Notice.

The language of the permanent regulations may be different from that of the original emergency regulations, and may include other provisions dealing with the same subject. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**

Statutory Authority: AS 14.42.030, 14.43.105, 14.43.120(u), 14.43.320, 14.43.630, and 14.43.730.
Statutes Being Implemented, Interpreted, or Made Specific: AS 14.43.120(u)

Fiscal Information: The regulations are not expected to require an increased appropriation.

DATE: December 19, 2000 Diane Parrans, Executive Director

**ADDITIONAL REGULATIONS NOTICE INFORMATION
AS 44.62.190(d)**

1. Adopting agency: Alaska Commission on Postsecondary Education

2. General subject of regulations: Regarding the Alaska Student Loan Programs, set the loan origination fee as authorized by AS14.43.120(u).

3. Citation of regulation: Title 20, Chapters 15

4. Reason for the proposed action:

- compliance with federal law
- compliance with new or changed state statute
- compliance with court order
- development of program standards
- other

5. Program category and BRU affected: Alaska Student Loan Programs;
Postsecondary Education Commission

6. Cost of implementation to the state agency and available funding
(in thousands of dollars):

Initial Year
FY01

Cost \$ -0-
General Funds \$ -0-
Federal Funds \$ -0-

Other funds (specify):
Corporation Receipts \$ -0-

Subsequent Years
Cost \$ -0-
General Funds \$ -0-
Federal Funds \$ -0-
Other funds (specify):
Corporation Receipts \$ -0-

7. The name of the contact person for the regulations:

Donna Mayfield, Regulations Coordinator
Alaska Commission on Postsecondary Education
3030 Vintage Blvd.
Juneau, Alaska 99801-7109
(907) 465-6740

8. The origin of the proposed action:

- (x) staff of state agency
- () federal government
- () general public
- () petition for regulation change
- () other

9. Date: December 19, 2000

Prepared by: Donna Mayfield, Regulations Coordinator
Alaska Commission on Postsecondary Education
(907) 465-6740

Revision History:

12/20/2000 10:44:02 AM by Sheila Box/OOC/EED/State/Alaska/US
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ALASKA STATE LEGISLATURE

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



State Capitol, Room 116
Juneau, AK 99801-1182
(907) 465-5446 fax: 465-6592
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716 W. 4th Ave. Suite 430
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(907) 269-0250 fax: 269-0249

Administrative Regulation Review Committee

AGENDA

Tuesday, April 24, 2001 2:45pm-4:00pm, State House Affairs, Room 102

- I. Review of new Mariculture Regulations
- II. Review of updated information from Department on Pioneer Homes
- III. Review of recent proposed and approved regulations

This hearing will be teleconferenced

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Scott Kelley

From: Mecum, Doug
Sent: Wednesday, June 02, 1999 4:14 PM
To: Doherty, Phil; Davidson, Bill; Kelley, Scott; Larson, Robert; Marshall, Scott
Cc: Imamura, Ken; Duffy, Kevin; McGee, Steve
Subject: RE: geoducks and DNR

I personally have heartburn with geoduck clam farms because I feel they would disrupt established uses. I also feel granting aquatic stock acquisition permits would not be possible because the stocks are fully utilized. Of course I've been wrong before.

Anyway, right now we are only accepting applications for geoduck farms. Staff needs to comment on this. Ken Imamura can provide some clarity on the process

-----Original Message-----

From: Doherty, Phil
Sent: Wednesday, June 02, 1999 3:46 PM
To: Mecum, Doug
Cc: Marshall, Scott; Imamura, Ken; Duffy, Kevin; Kelley, Scott; Larson, Robert
Subject: RE: geoducks and DNR

So while its not possible to say with 100% certainty that a mariculture permit for geoducks would be denied by the Commissioner and the BoF, its safe to say that there is a good possibility it would be denied, if the case was made that wild stock geoducks are being fully utilized and the mariculture of geoducks (on what scale?) would disrupt the existing uses.

-----Original Message-----

From: Mecum, Doug
Sent: Wednesday, June 02, 1999 3:11 PM
To: Doherty, Phil
Cc: Marshall, Scott; Imamura, Ken; Duffy, Kevin; Kelley, Scott; Larson, Robert
Subject: RE: geoducks and DNR

You're still a troublemaker, that's for sure.....

This is obviously a tough one. Whether or not a farm permit is ultimately granted for geoducks in SEAK, these sites would still have to get a permit to obtain broodstock or farmstock. The Commissioner would probably not grant a permit to acquire stock if the granting of the permit would unreasonably disrupt established uses. In addition, if the stock is already fully utilized, and a case can be made for that for geoducks, the commissioner would deny the permit and would inform the board that they may need to make an allocation call. In the case of red king crab and scallops, the board found that the stocks were fully utilized and the farms should not be allocated wild stocks. Does that help???

-----Original Message-----

From: Doherty, Phil
Sent: Wednesday, June 02, 1999 2:12 PM
To: Kelley, Scott; Pritchett, Marc; Larson, Robert; Marshall, Scott; Davidson, Bill
Cc: Mecum, Doug
Subject: geoducks and DNR

I've received two requests for information on DNR's plan to give permits out for mariculture sites, and in particular geoduck sites. Kyle Johansen (Rep. Bill Williams aid) and Clay Bezenek (Chair geoduck committee - SARDFA) are the two inquiring minds.

Their questions are 1) does ADFG know what DNR is doing? and 2) why are ADFG and SARDFA putting time and money into wild geoduck management/research/harvest if DNR will be allowing geoduck mariculture that may drive the wild harvest out of business?

Scott Kelley

From: Imamura, Ken
Sent: Thursday, August 05, 1999 4:46 PM
To: Kelley, Scott
Subject: RE: Mariculture Questions

I don't envy your getting hit with the proposal formulation task. I'm from the government, and I'd like to help. Kidding aside, I have had a few thoughts regarding acquisition permits and other aspects of the mariculture regulations and policies, so if you care to confer, I am more than willing.

To try to answer your questions. Hardening areas, generally requested in conjunction with suspended culture oyster and mussel operations, are racks or rocks in the intertidal area on which the shellfish intended for market are exposed to the tidal cycles. Some operators and some markets do not require their use. All hardening does is exercise the adductors so the oysters and mussels (which generally just leave their shells open and feed continuously in suspended culture) will have the necessary strength to keep their shells closed while they are waiting to be bought at your friendly neighborhood grocer.

FLUPSY is an acronym for Floating Upwelling System. It is a raft-like affair that uses the tidal current or a powered paddlewheel to move water upwards through screened tubs of post-settlement shellfish. It basically bridges the gap between the hatchery, where the wee bairns are hatched and first settle, and the growout beds, where they are placed to reach market size. The FLUPSY is an economical means of using naturally available plankton to feed small juvenile shellfish that would eat a hatchery out of feedstock in short order. As they grow, the small spat are also hardened to the ambient and prevalent natural conditions and prepared for planting into a growout facility, which represents the big, bad, world.

No available literature even remotely suggests that geoduck can be successfully and long-term cultured in lantern nets.

I am now receiving copies of the consolidated RFAIs. It is quite clear that I am the heavy in that process. I will try to remember to copy Carol, and you, when I finally get around to putting them together by region (they came dribbling in as DGC completed them).

I had intended to distribute a regional copy of responses to the RFAIs to each of the RRDBs (Carol, for R-1), for further copying and distribution to any interested staff. However, I know you are now the guy in charge, so will try to remember to make you your very own.

Once again, if you have an interest in meeting on proposal development, I'd be happy to do so. I have taken the liberty to put the RRDBs for the other regions on notice that a proposal process is in progress at R-1. Other regions have similar issues, though not necessarily for geoducks, and they are aware that any mariculture regulatory proposal has possible implications for them, also.

I hope I've answered your questions. We may have different perspectives on resource use, but I like to think that we both agree that whatever the use might be, it should be legal, fair, and responsible. On that happy note, I wish you a good day. Lisa and I are going fishing this afternoon, for big fish (a pink is a monster to an eleven-year old).

-----Original Message-----

From: Kelley, Scott
Sent: Thursday, August 05, 1999 3:31 PM
To: Imamura, Ken
Subject: Mariculture Questions

Hi Ken,

I have a couple of questions for you in regard to these geoduck farm apps.

- What is a hardening area for?
- What is a Flupsy?
- Can you raise geoducks in lantern nets (as proposed by Lee Falk application)
- Do you have copies of the consolidated RFAI's that went to DGC?
- When you get applicant responses to RFAI's (August 13) can I get copies?

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Scott Kelley

From: Carol Denton [carol_denton@adfg.state.ak.us]
Sent: Monday, August 30, 1999 2:49 PM
To: Scott Kelley
Subject: FW: Canoe Lagoon littlenecks

-----Original Message-----

From: Denton, Carol
Sent: Tuesday, July 06, 1999 8:43 AM
To: Imamura, Ken
Subject: RE: Canoe Lagoon littlenecks

The only response I got was a phone call from Brian Lynch in Petersburg (6-10). He has no problem with this operation; they are basically doing what we allow (albeit usually WITH a permit) and have been cooperative with Dept. staff. He did note that the Development Plan page has a column heading, "Maximum Production/Seed Acquisition" and assumes there will be no seed acquisition.

Silence from the other reviewers (application was faxed to Woodby, Kelley, Holmes, Bentz, Chadwick, Bergmann) can be construed as "no objection".

-----Original Message-----

From: Imamura, Ken
Sent: Sunday, July 04, 1999 2:20 PM
To: Denton, Carol
Subject: RE: Canoe Lagoon littlenecks

Hi Carol. I am assuming, in the absence of more recent mail from you regarding this amendment request, the rest of the staff does not have severe heartburn over this proposal. I am issuing the amendment on Tuesday, just before I go on leave for three weeks. Please get back to me, if you can, before noon on Tuesday. If you cannot, and have reservations or problems with this amendment, please let Steve McGee know so he can inform me. Hope you had a great Fourth. I got to watch the parade from the comfort of my office window. It was a good day, with a cooling breeze, overcast skies, and warm.

-----Original Message-----

From: Denton, Carol
Sent: Thursday, June 10, 1999 2:30 PM
To: Imamura, Ken
Subject: RE: Canoe Lagoon littlenecks

cool. thanks. What?? The Dept. dropped the ball??? I'm SHOCKED!!!! Will solicit comments on Canoe Lagoon from R-1 Comm and Sport Fish

-----Original Message-----

From: Imamura, Ken
Sent: Thursday, June 10, 1999 12:35 PM
To: Denton, Carol
Subject: RE: Canoe Lagoon littlenecks

As far as I am concerned (and I concede that I am only one of the reviewers), this is a permitting action after the fact. The cryptic notes I have in my files for this operation and your fax suggest to me that the department dropped the ball on this somewhere. Their sites are on their DNR leases, DEC has certified sites and product for years, there have been no public complaints, and their DFG annual reports clearly indicate sales of

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littlenecks. The only thing missing in the picture is an amendment to their aquatic farm operation permit. Personally, I don't think we have major concerns, and even if we did, the overwhelming evidence suggests that the lack of formal permit amendments is our fault. I have a feeling that something was lost during the transition from Jim Cochran to Bob Piorkewski and it was nobody's premeditated negligence that precipitated this situation.

I will ask Janetta to send us both faxes of those pages from Mr. Powers' application, since I don't have them either.

At this point, my highest priorities are to review the new applications so I don't make a complete fool of myself during the teleconference and to finalize major amendments to the Seward shellfish hatchery permits. Other than those two pressing items, everything seems to be same old same old. This weekend promises to be a very busy one.

Take care. Let me know if you don't get those pages by midafternoon, tomorrow.

-----Original Message-----

From: Denton, Carol
Sent: Thursday, June 10, 1999 11:11 AM
To: Imamura, Ken
Subject: Canoe Lagoon littlenecks

Where are we going with this one? Are you going ahead with the amendment, and therefore need comments? Or are they already legal?

Also (geez, I hate to be a pest), could you pls. fax pages 2, 4, and 6 from Richard Powers' app, #106565. Fax is 225-0599

If these requests are small salamanders compared to the large alligators you're wrestling today, tomorrow is fine.

Carol Denton
Southeast Regional Resource Development Biologist
Alaska Department of Fish and Game
2030 Sea Level Dr., Suite 205
Ketchikan, AK 99901
Voice: 225-9677 Fax: 225-0599
Carol_Denton@adfg.state.ak.us

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Subject: Re: FW: Sale of wild clams from a farm

Date: Mon, 06 Sep 1999 14:31:47 -0800

From: Ken Imamura <Ken_imamura@fishgame.state.ak.us>

To: Carol Denton <carol_denton@adfg.state.ak.us>

CC: Steven G Mcgee <steve_mcgee@fishgame.state.ak.us>

Acquisition permits allow harvest and direct sale of wild stock, if that wild stock is within the boundaries of a permitted aquatic farm site. We have discussed the legality of this at length with the AG's office and within the mariculture program at HQ. Having established a precedent with three aquatic farm operators in Southeast, it would be difficult for the department to significantly change its permitting practices at this point in the permit review process. Simply put, the standing stock (pre-existing wild stock) on a leased and permitted aquatic farm site becomes the property of the aquatic farm site operator, to be disposed of in any legal manner. This includes commercial harvest and sale.

Precedents and current policies aside, the issue of pre-existing standing stock is knotty. Personally, I believe that the portions of the mariculture regulations addressing acquisition permits intended that wildstock, from both on and off the farm site, could be used for broodstock or for seedstock, not necessarily for harvest for commercial sale. I think that acquisition permits should allow collections of wildstock, either from the farmsite or public waters, for broodstock or seedstock, where that use does not conflict with established uses. Further, I strongly support legislative clarification of the intent of the acquisition permit sections in the statute, development of policies or regulations that clearly define the state's position regarding disposition of pre-existing standing stock on newly permitted farms, and adoption of stipulations for farm permits that will result in long-term conservation of the resource, while allowing farmers to use pre-existing standing stock to support project costs of their operations.

I have proposed meetings to discuss these issues, but have not received much interest or support. I think it would be a good idea for management representatives from the various divisions to get together to develop a comprehensive management plan and a set of operational policies, based on the statutes, regulations, and collective knowledge of our staff.

Carol Denton wrote:

> Has this been discussed & researched? Is there any other basis for allowing
> sale of wild stock that has a farm boundary drawn around it?

>

> -----Original Message-----

> From: Lynch, Brian

> Sent: Monday, August 30, 1999 2:43 PM

> To: Denton, Carol

> Subject: Sale of wild clams from a farm

>

> Has anyone ever asked the Dept. of Law if 16.40.140(e) actually allows the
> sale of clams from a farm that have not actually been grown or propagated
> that farm? I wasn't aware that that was the law that was being "used" to
> allow the wild stock harvest of littleneck clams under provisions of the
> mariculture permit system (ignorance is no excuse). I guess that when we
> quit issuing wildstock harvest permits I then ignored the situation. While I
> am no legal beagle I have my doubts that that is what the legislature
> intended when the statute was written. I would think that that was intended
> was to prevent the wildstock harvest and avoid the situation that we were
> talking about.

>

> What's the verdict?

>

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Subject: Re: Aquatic farming regulations
Date: Wed, 15 Sep 1999 09:01:21 -0800
From: "Steve White" <Stephen_White@law.state.ak.us>
To: <Ken_imamura@fishgame.state.ak.us>

How soon do you need a response? I am up to my gills in preparations for the special

>>> Ken Imamura <Ken_imamura@fishgame.state.ak.us> 09/14 5:51 PM >>>
I am trying to convene a meeting, for some time later this month, to discuss what the department's authorities and options are regarding standing stock on sites being selected for new aquatic farm operations. The major issues are still standing stock and what the department can do to manage harvest of standing stock, acquire standing stock for research, cost-recovery, program support, and compelling successful applicants to not simply harvest and run. Although there are many issues connected with the whole process for turning over common property lands to private permit holders, the most contentious issue is the disposal of standing stock. Personally, I have struggled with this question and come up with some options that I would like to have legally reviewed before I broach them to staff.

Options run the gamut from outright refusal based on defects in the technical and economic feasibility of some of the applications, to unconditional issuance of permits. I don't believe the department would seriously consider outright refusal at this point, since I don't think it would withstand legal challenge. Unconditional issuance would allow unrestricted use of the site and standing stock for whatever purpose the applicant desires. If the department does this, it will invite legal challenge from the dive associations, which would see themselves as unfairly disenfranchised. While I don't know which way any legal decision would go, it would be preferable to avoid them, if possible.

I would like to discuss the legality of harvesting sites prior to turning them over to aquatic farming. There are a number of options regarding how to accomplish this and who gets the proceeds.

I would also like to determine if the department has the authority to condition harvest of wildstock to prevent unrestrained harvest under a stock acquisition permit, and what latitude we have in permit conditions in order to do this. For example, can be set an annual harvest limit, in numbers, pounds, or some kind of percentage keyed to standing stock on site, percentage of standing stock in the management area, etc.

Can be modify and constrain size, distribution, and number of permits we issue for any given area, such as bay, management district, registration area, etc. On a related issue, can be limit the number and total size of operations an individual or group can control, either directly or indirectly?

I guess I am looking for answers that state whether or not we currently have the authority to do certain things, and if not, what we need in order to be granted that authority. This comes at a late point in the day, and is somewhat rambling, so if it would help things out to just talk about some of these issues, please contact me. Many thanks.

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Subject: Some draft language for consideration


Date: Thu, 16 Sep 1999 14:21:27 -1000

From: "Scott Marshall" <scott_marshall@adfg.state.ak.us>

To: "Ken Imamura" <ken_imamura@fishgame.state.ak.us> ,
"Denton, Carol" <SOUTHEAST/KETCHIKAN/CarolD>

CC: "Robert D Mecum" <doug_mecum@fishgame.state.ak.us>

In sites where significant numbers of geoduck clams exist, we need to craft some language for denying the permits...here is a shot at such language

 Aquatic farm permits for Geoducks - draft denial languaange.doc	<p>Name: Aquatic farm permits for Geoducks - draft denial languaange.doc</p> <p>Type: WINWORD File (application/msword)</p> <p>Encoding: base64</p>
---	---

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Subject: Re: Aquatic farm permits

Date: Fri, 24 Sep 1999 14:46:38 -0800

From: Ken Imamura <Ken_imamura@fishgame.state.ak.us>

To: "Doug D. Mecum" <doug_mecum@fishgame.state.ak.us>,
Scott L Marshall <scott_marshall@fishgame.state.ak.us>,
Kevin C Duffy <kevin_duffy@fishgame.state.ak.us>

My understanding is that ACMP coordinates public and agency interactions at this point. The preliminary decisions from any and all agencies submitting findings will be available for public review and comment on October 4. Having submitted the department comments, I am reluctant to circumvent the process, regardless of whether the individual files are public or not at this point. I have requested that Jackie return my phone call to discuss this issue. She is on leave today, so I should have an answer to your questions on Monday.

"Doug D. Mecum" wrote:

> I'm not sure - Ken will have to tell us

>

> Scott Marshall wrote:

>

> > Doug, is the stuff Ken sent over to DGC public information...that is will
> > those documents go out to the public as is or will DGC collate and compile
> > them? If they are going out as is then maybe we could provide them to
> > people who inquired...If they are not final "draft" state comments, then
> > when will those final draft comments be available?

> >

> > -----Original Message-----

> > From: Doug D. Mecum [mailto:doug_mecum@fishgame.state.ak.us]

> > Sent: Friday, September 24, 1999 10:30 AM

> > To: Doug Woodby; Scott L Marshall

> > Subject: Re: Aquatic farm permits

> >

> > I think we need to be very careful about what we say until we come up with a
> > final department position on these issues. I did tell Dennis Watson that I
> > had

> > some real problems with the idea of selling standing stocks to finance
> > operations. We did allow it for Rodger Fainters littleneck clam operation
> > because we believed that you had to remove other clam species and get the
> > littleneck densities down to allow for good growing conditions. In
> > otherwords it

> > was done for the purposes of farming - not for cost recovery. We allowed
> > him to

> > sell the clams because it didn't make sense to waste them. That may have
> > been a

> > mistake but it's what we did.

> >

> > Doug Woodby wrote:

> >

> > > Gig Decker, on behalf of SARDF, would like to know where the department
> > > stands on the aquatic farm sites, and he would like to have any available
> > > printed information from us prior to his geoduck committee meeting next
> > > week.

> > > So far, I have seen three documents. One is the internal document
> > > referenced

> > > below, another is the summary of the site visits, and the third is the
> > > analysis by yourself. I don't think we are prepared to release any of
> > > these

> > > at this time.

> > >

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Subject: Re: Aquatic Farm meetings
 Date: Wed, 13 Oct 1999 12:25:46 -0800
 From: Jackie Timothy <Jackie_Timothy@gov.state.ak.us>
 Organization: Alaska Office of the Governor
 To: Ken Imamura <Ken_imamura@fishgame.state.ak.us>

Am I invited to this meeting? I promise I'll sit in a corner and be VERY quiet!

Just curious. . .Jackie

Ken Imamura wrote:

> I can poll them, but I think it would be beneficial if it is possible at all
 > to defer these discussions until the department has resolved some
 > professional and legal differences in a meeting currently scheduled for the
 > morning of October 14. In truth, it might be a good idea for me to suggest
 > that someone in DGC attend. Would you or someone as informed as you with
 > the consistency review process and regulatory basis be willing to represent
 > DGC? If so, I can make the request of the commissioner's secretary, who is
 > setting it up.

>
 > Reason I ask for deferment is that staff of both divisions are almost
 > unanimously against on-bottom leases and transfer of standing stock to
 > permit applicants. I do not share this perspective, but am willing, on Oct
 > 14, to discuss the statutory and regulatory basis for their consistency
 > findings and for the limits of the department's permitting authority.

>
 > I am now in the middle of the start of a huge crossfire between industry and
 > the department, and to a certain extent, I do not feel the department has
 > done the consistency review process justice. Part of it is my fault for
 > assuming that people would be professional and impartial in their reviews
 > and supportive of discussion of the issues.

> Jackie Timothy wrote:

>
 > > Would you and other decisionmakers from habitat and CFMD be available to
 > > meet to discuss individual aquatic farm proposals and the conditions
 > > necessary to bring them into consistency with the ACMP on Oct. 7, 8, &
 > > 11, 8-3:30?

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we
 tried to co-op with them on. No we've fenced off an existing "public"
 road
 that crossed our land. Great to be working with such a cooperative
 agency.
 Reminds me of my life on the other side. Also selling cows. Our steers
 were
 ready so we gathered them up Thursday. Had a real "rodeo", for some
 reason.
 They are as wild as deer. Have been running free all summer. Look good
 but
 unfortunately one of them jumped the divider in our stock trailer
 yesterday
 and got hung up. Didn't break a leg, but hate to hurt an animal and he
 was
 hanging by one leg - luckily cows are tough. He was barely limping when
 we
 unloaded so decided to sell him rather than bring him home to heal.
 Hopefully the buyers won't notice. Jaci got a bump on her head as a
 result.
 Not sure she likes this end of the ranching business. Oh well.

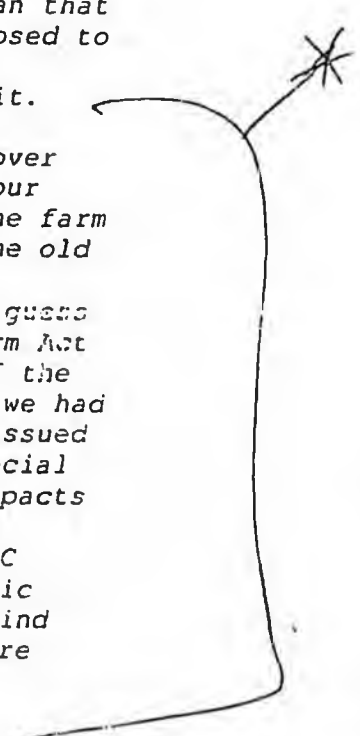
Hello to Bonnie. Got to run. One more load of steers to the sale today.

jim

 > From: Steve McGee <steve_mcgee@fishgame.state.ak.us>
 > To: Jim Cochran <cochran@montrose.net>
 > Subject: Old Business
 > Date: Thursday, October 21, 1999 11:03 AM
 >

> Hi Jim. Has winter set in on the ranch yet? I've seen Gunnison has had
 > the nation's high temperature a couple of times in the last week or so.
 > Maybe that means winter is still holding off for you, too. We've had
 > nothing but rain here for weeks on end. Fortunately, Bob Piorkowski and
 > I managed to sneak away for a moose hunt in mid-September up on the
 > upper Yukon, downstream from Eagle. We lined a canoe about 20 miles up
 > the 70 Mile River. We didn't have the place quite to ourselves, but it
 > was close. There was only one other guy and his dog who also lined a
 > canoe up above where we were. We had a great time and I even got to try
 > my 340 Weatherby out on a nice little spike-fork moose. Other than that
 > it's been nothing but rain, rain and more rain. Today, it's supposed to
 > be sideways rain with 60 knot winds. You and Jaci probably still
 > remember days like that! Oh well, not much anybody can do about it.
 >

> Here at work, Ken Imamura and I are in the middle of a big fight over
 > on-bottom clam farming. As you can imagine, Habitat and some of our
 > brethren in Com Fish are doing all they can to try and kill all the farm
 > applications we got for things like geducks and littlenecks. Same old
 > song and dance... they are still trying to say things like it's
 > unconstitutional because it privatizes the public's resources. I guess
 > they just don't accept that the legislature passed the Aquatic Farm Act
 > and the AG's Office says it's all legal and constitutional. One of the
 > things they were trying to tell the commissioner in a big meeting we had
 > last week was that the three permits that I think you originally issued
 > for littleneck farms were only experimental, and that they had special
 > requirements for reporting so that we could determine, based on impacts
 > on the wild resource, if the permits should be lifted. I know the
 > farmers started out as experimental commercial operations with CFEC
 > permits and fish tickets and all that, but I thought regular aquatic
 > farm permits were then issued for them. Ken and I can't seem to find
 > any special requirements or anything that says the farm permits were



> experimental. Piorkowski told me he thought there had been some
> discussion of special stipulations on the littleneck farm permits but
> that none were ever put on them. He said he thought Clasby had made the
> decision that because we didn't have the money to start up a commercial
> clam fishery in Southeast aquatic farming would be the vehicle to allow
> people access to harvesting and selling the clams. Do you remember
> anything about how this all went down? I guess I should have been
> paying better attention since it now seems to have fallen in my lap! Oh
> well.... hopefully I can survive for three more years!

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Subject: [Fwd: Re: Old Business]

Date: Mon, 25 Oct 1999 08:39:20 -0800

From: Steve McGee <steve_mcgee@fishgame.state.ak.us> Internal

To: Ken Imamura <ken_imamura@fishgame.state.ak.us>

----- Original Message -----

Subject: Re: Old Business

Date: Sat, 23 Oct 1999 06:07:36 -0600

From: "J. Cochran" <cochran@montrose.net>

To: "Steve McGee" <steve_mcgee@fishgame.state.ak.us>

Clam farming is fun, huh? Your new director was one of those most involved with Comm Fish so he should have all the skinny. It has been a while, but this is what I remember:

We only had one choice for a commercial aquatic farm -- an Aquatic Farm Operations Permit. The Sci-Ed wouldn't allow commercial use, so it was out.

Clasby did decide that we would use the aquatic farm permit to allow access

to the clam resource because they didn't have money to manage a full-blown

fishery and the farm permit review process would weed out most applicants

and keep it very limited. I wanted to make sure they were actually trying

to farm - long term, so I put in conditions on reporting and some activities that had to be accomplished. Tom Rutz did a density study and actually published the data. All this comes down to the fact that the permits were not "experimental". There was no such thing. Habitat and Comm

Fish may have viewed them as experimental in that some of the conditions required certain "farming" activities and reports on such, but they were still bonafide commercial farm permits. They've been using the

"privatizes public resource" argument for years. What does commercial fishing do? Steve

White wrote several memos - no official "opinion" that I remember - on the

subject. I always thought that they key was the act of "farming".

Unfortunately, when they want to farm clams, the best spots to go so are where clams already exist. Clasby agreed that the size of the farms/amount

of resource that would be lost to the "public" was miniscule, so let them

have the standing crop as part of the act of "farming", which could be as

little as "tilling" the beach and preparing it for better natural set.

Unfortunately, people like Rodger Painter saw this as an opportunity to harvest wild clams under the guise of farming. That was pretty transparent,

so as I said, I tried to make sure the permits were conditioned, within reason, to require them to do farming things.

Good luck. It won't be solved until your Commissioner leaves, I'm sure. He's one of those behind the drive to prevent on-bottom farming.

Clear and cold here at night, warm during the day. Dry and dusty. Have been road building as the result of BLM denying us winter access on one road

Subject: Re: PWS APPNS

Date: Mon, 10 Jan 2000 13:32:28 -0900

From: Ken Imamura <Ken_imamura@fishgame.state.ak.us>

To: don_mckay@fishgame.state.ak.us

That is the rationale that was used by DGC, but doesn't it also have the potential of denying the applicant due process? My understanding is that ACMP review should be independent of agency permitting intent, although agency input on the applicable standards is an integral part of DGC's review process. Conceivably, an application could be found consistent by ACMP standards but not meet aquatic farm permitting criteria. If suspension of ACMP review is due to permitting defects in the application, the applicant would not have an opportunity to resolve those defects through appeal to Commissioner Rue. It begs the question on whether the application could have been found to be consistent by DGC if the department's permitting intent was not a factor.

It may be unlikely, but as long as there is a possibility for DGC to find a proposal consistent while DFG would find it could not issue a permit., it seems the state should follow protocol to avoid a long-term headache.

Would you please e-mail me copies of the consistency findings you submitted to DGC? There is no great hurry, but I would like copies for the files. Thanks.

Don McKay wrote:

> If we already know that we are not going to issue the Aquatic Farm
> Operations Permit, it saves a number of agency staff a lot of time by
> notifying the appropriate parties that the permit will be denied and the
> ACMP review is suspended. It would reduce the number of administrative
> hearings of the same project.

> -----Original Message-----

> From: Ken Imamura [mailto:Ken_imamura@fishgame.state.ak.us]
> Sent: Monday, January 10, 2000 10:34 AM
> To: don_mckay@fishgame.state.ak.us
> Subject: Re: PWS APPNS

> Hi Don. Sorry I did not get back to you on Friday, at least not directly.
> I
> have not seen the department's findings yet. Perhaps later today in another
> mail message....

> It has been my working assumption that consistency is a determination that
> Habitat and Restoration makes for the department, based on the appropriate
> standards, independent of Commercial Fisheries (Mariculture) intention to
> approve or deny an aquatic farm operation permit.

> I feel that aquatic farm operation permits which would be denied can be
> generally separated into two classes. There are those that have defects of
> application, such as insufficient information provided by the applicant,
> proposed siting in areas which have been classified as unsuitable, or
> proposed

> use of species or stocks that the department could not approve. These are
> amenable to direct appeal to the commissioner for resolution of defects.

> Then

> there are those that DGC finds inconsistent with the applicable ACMP
> standards,

> which we would deny summarily because we would not issue a permit to a
> proposal

> found inconsistent with the ACMP standards.

>

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Denton, Carol

From: Ken Imamura [Ken_imamura@fishgame.state.ak.us]
 Sent: Monday, November 08, 1999 1:14 PM
 To: Scott L Marshall; Peter J Probasco; James A Brady; Thomas M Kron
 Cc: Carol Denton; Ellen Simpson; Jim Mccullough; Russell R Holder
 Subject: Regulatory modifications and changes

Doug Mecum directed me to draft proposed changes to the Aquatic Farm regulations that will facilitate further evaluation of the current round of permit applications and provide a better basis for decisions in the future. Included in these will be proposed permitting criteria based on definitions of commercial density, total standing stock, and maximum size of site. I am considering also including language on definitions of aquatic farming, perhaps to the species level, since there are some species-specific considerations, and a separate section on appropriate use of standing stock.

Most of you are very much aware that some of our persistent problems during the current application permit have been equivocality of our aquatic farm regulations as well as disagreements within staff on how other regulations do or should affect the review process. I am confident that many of you have asked why there was no more guidance in statute or reg on some of the difficult questions that have plagued reviewers in the last few months. To the extent that you can, please forward suggested changes to me, either specific to an issue or more broadly based, that I should consider including in my proposals. If I can find a citation in statute to support the proposed regulation and it will clarify issues and tasks in the future, I will do my best to produce drafts for the public and agency review.

Kevin Duffy has asked for a very preliminary draft by Friday, so please forward me any input you might have before that time. Meanwhile, I will copy the RRDBs with interim drafts of proposals as I complete them. Many thanks.

cc: Scott Marshall? Dist? Soliciting input?

with letters etc attached - ?

THL - JCN

Subject: Request for consideration

Date: Wed, 23 Feb 2000 13:42:32 -0900

From: Ken Imamura <Ken_imamura@fishgame.state.ak.us>

To: Robert D Mecum <doug_mecum@fishgame.state.ak.us>

I realize that this is a sensitive issue. This should be one of my last attempts at trying to change anyone's mind about our position on geoducks, specifically, and on-bottom culture, in general.

I concede special area problems for Kachemak Bay clam permit applications.

However, on most of the rest, excepting those denied for insufficient information or direct, significant conflicts with existing use, I continue to feel that our best long-term course of action would be to issue aquatic farm operation permits, with stipulations and conditions we feel necessary to protect the resource. Further, I support issuance of acquisition permits for harvest of the permitted species on a permitted site on a sustainable yield basis, until the applicant can demonstrate that planting or enhancing production consistent with higher harvest rates is occurring. This should apply to all operations using wild standing stock, whether they are for littleneck clams, geoducks, or other species. I believe that permittees should be required to post a bond equivalent to the best estimate of the value of the standing stock on a permitted site, to be relinquished at termination of the permit and/or lease.

I think that if permitted, aquatic farms create a high level of opposition, the department will be taken to court by its detractors. However, I also believe that the department would have more success defending itself against such suits than those likely to be filed by applicants who have been denied aquatic farm operation permits. Moreover, if the courts find in favor of the department, the public will then have the option of pursuing legislative solutions. That will place the burden on some of those who most actively support unfettered development of the industry, and not on the department. Conversely, if aquatic farms gain acceptance over time or through the courts or legislature, then perhaps that will be proof enough that the program is legitimate in the eyes of the people of the state.

Thanks for your patience and letting me, once again, preach to the choir..

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Subject: Speaking points re: R. Painter letter to Mecum on CIP

Date: Thu, 02 Mar 2000 14:30:24 -0900

From: Ken Imamura <Ken_imamura@fishgame.state.ak.us>

To: Geron Bruce <geron_bruce@fishgame.state.ak.us>

CC: Robert D Mecum <doug_mecum@fishgame.state.ak.us>, Kevin C Duffy <kevin_duffy@fishgame.state.ak.us>

Please convey that we can discuss the intent of the language in the CIP, rather than focusing on our interpretation or that of ASGA. This was done in a hurry, so please forgive the poor organization. I hope this is not too late.

Re: shortcoming with the language:

1. If we intend to establish standards as to what constitutes aquatic farming, including clauses that tie in renewals of permits to demonstration of farming, such as enhancement of productivity, we are going to need baselines of what is there before the farming starts. How we get the baselines, and check to see if productivity is being enhanced or other definitions and criteria for farming are being met is not really critical, as long as the data collected is valid. There is a wide range of options how this may be accomplished, but none of the acceptable options is likely to be free.

Site visits are also valuable, for both the department's understanding of the "gestalt" of individual sites, such as exposure, delineation of the production zones, noting of proximity to sensitive habitat types such as eelgrass, and a enough familiarity with individual sites to conduct a permit review and for the applicant. If Rodger is surprised by this, I can say, after visiting his proposed Jinhi Bay and El Cap sites that it is clear to me that starfish were not very abundant, eelgrass was control on the lower boundaries of his site and limited the extent of the productive clam beds, substrate was highly variable, there was little evidence of heavy otter predation or human use, and exposure to weather at the site was limited. The El Cap site was unique in that it was an isolated pocket beach with subangular gravel comprising the best clam habitat. It probably had excellent drainage and circulation characteristics to a depth deeper than is usually found on more typical littleneck clam beaches. What those site visits basically told me were that there were other beaches in Jinhi Bay that could be used by the public if that is an issue, that heavy public use is not evident on his proposed sites, and predator exclusion measures might not be necessary on some of his proposed sites to enhance recruitment, survival and growth. I would emphasize that site visits have multiple uses and some of them are very much in favor of an applicant's best interests. As such, in some cases, a statistically valid survey for abundance, size composition, and distribution might be secondary to gathering and integrating of other information.

3. I cannot speak to the future uses the department puts to stock assessments of sites proposed for farming geoduck and other species. However, I have long maintained that it is better to discuss possibly contentious issues on the basis of data, rather than conjecture. I like to think that we will be impartial and not conduct a survey of a proposed site for the express purpose of keeping it closed to aquatic farming. Perhaps I still harbor some level of naivete.

4. I agree with ASGA's position on regional plans. We discussed this at the ASTF meeting held late last year in Anchorage. I believe that a better alternative would be for the state to fund, and undertake, a comprehensive coastal inventory process of known surveys, data, land use patterns, ownership, jurisdictions, etc., in a GIS system so aquatic farm applicants can more easily or clearly determine what kinds of

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wd: [Fwd: RE: Questions raised by Painter's response]]

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Subject: [Fwd: [Fwd: RE: Questions raised by Painter's response]]

Date: Tue, 20 Jun 2000 09:13:13 -0800

From: "Kevin C. Duffy" <kevin_duffy@fishgame.state.ak.us> Internal

To: Robert D Mecum <doug_mecum@fishgame.state.ak.us>

CC: Ken Imamura <ken_imamura@fishgame.state.ak.us>

Sounds like you may have to weigh in here regarding littlenecks and geoducks (if any are permitted).

Subject: [Fwd: RE: Questions raised by Painter's response]

Date: Tue, 20 Jun 2000 09:06:56 -0800

From: Ken Imamura <Ken_imamura@fishgame.state.ak.us>

To: Kevin C Duffy <kevin_duffy@fishgame.state.ak.us>,

Steven G Mcgee <steve_mcgee@fishgame.state.ak.us>

It appears that the division will not be playing a major role in the littleneck clam surveys, harvest oversight, or monitoring. Also, that the division will not be conducting geoduck pre-project surveys, unless we want to defer issuing permits until next year. As Woodby indicates, any changes to these expected schedules will require directives from HQ to change the region's survey priorities. While I would be amenable to telling Mr. Painter to do basically what he feels like, I think the geoduck permit applicants deserve better than being forced to wait until some time next year before we conduct their site surveys and issue their permits. Unless I am sorely mistaken, I don't think we want to issue operation permits to the geoduck applicants before we know, quantitatively, what is on their sites.

----- Original Message -----

Subject: RE: Questions raised by Painter's response

Date: Mon, 19 Jun 2000 17:51:06 -0800

From: "Doug Woodby" <doug_woodby@fishgame.state.ak.us>

To: "'Ken Imamura'" <Ken_imamura@fishgame.state.ak.us>

CC: "Scott L Marshall" <scott_marshall@fishgame.state.ak.us>

Can't answer as yet about dates or our ability to do the clam sampling.

As for further geoduck sampling, probably not this season. We would have to redirect efforts from other work as our dive vessels and divers are fully scheduled through September. That will take a directive from on high. We have already delayed dive surveys from this year to next due to the full schedule.

-----Original Message-----

From: Ken Imamura (mailto:Ken_imamura@fishgame.state.ak.us)

Sent: Monday, June 19, 2000 12:50 PM

To: Doug Woodby

Subject: Re: Questions raised by Painter's response

If the sampling can be done in a few days and a workable sampling design can be developed, I might be able to participate in the field work. I do not wish

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> <steve_mcgee@fishgame.state.ak.us>,Geron Bruce
 > <geron_bruce@fishgame.state.ak.us>,Stephen M White
 > <stephen_white@law.state.ak.us>
 > References: <03a101c01921\$0bae95a0\$60fb3f92@mscottk.adfg.state.ak.us>

> All I know is that we have not issued Scott Thomas an aquatic farm
 > permit. He
 > may have some sort of DNR permit but I doubt it. Regardless, I don't
 > know of
 > any reason to close this area to commercial sea cucumber fishing. I'll
 > copy
 > Ken Imamura on this in case he knows who to contact in DNR to find out
 > if there
 > is a conflict with some sort of leasing provision.

> Scott Kelley wrote:

> > FYI
 > >

> > -----Original Message-----

> > From: Don House [mailto:don_house@adfg.state.ak.us]
 > > Sent: Thursday, September 07, 2000 3:12 PM
 > > To: Scott Kelley; Robert C Larson
 > > Cc: Philip S Doherty
 > > Subject: sea cucumber opening - 103-30

> > Robert - Scott Thomas indicated he contacted you concerning a possible
 > > conflict with a sea cucumber opening in 103-30 and his mariculture site
 > > on
 > > the west side of Long Island.

> > If we open 103-30 as planned, will the mariculture site be deleted from
 > > the
 > > NR?

> > I don't know what discussions you had with Scott Thomas. He happened to
 > > bring up the issue today when discussing another topic. I have no idea
 > > where he stands on his permits, but it sounds like he has a permit from
 > > DNR
 > > for the site. I don't know whether other species can be harvested from
 > > a
 > > mariculture site, if the species are not listed on the original permit.
 > >
 > > Don

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MEMORANDUM

STATE OF ALASKA DEPARTMENT OF FISH AND GAME

TO: Ken Imamura
Mariculture Coordinator
Commercial Fisheries Division
Juneau

DATE: October 6, 1999

TELEPHONE NO:
FAX NO:

*Auto date field -
shows day of printing
e. file shows Sept 21 99*

THRU:

FROM: Scott Marshall
S.E. Region Supervisor
Commercial Fisheries Division

SUBJECT:

farm Permits

General Comments:

In general, I see no conflicts with permits to culture oysters or rock scallops by suspension.

I believe that existing statutes and regulations preclude the department from issuing permits for most of the new aquatic farm permit applications received for bivalve culture. The conflict occurs because applicants are requesting to establish aquatic farms in places where significant numbers of naturally occurring bivalves already exist (see Little-neck and Geoduck Clam Mariculture Site Evaluation Project: Cruise Report R/V Sundance September 8 through 15, 1999, which is attached and incorporated by reference). My analysis of the relevant issues follows.

5 AAC 41.250 requires the commissioner to include conditions to a mariculture permit that are necessary to protect natural fish and wildlife resources and their habitat. Because most of the sites being requested contain significant numbers of clams which are surely at the sites' natural carrying capacity, it is clear that to be suitable for aquatic farming the existing bivalves would have to be removed to make room for the farmed clams. In fact on some applications, there is clear intent to commercially harvest the standing stock. Removal is problematic because our authority is limited to authorize any such activity. The mariculture statutes (AS 16.40.199) provides authority for the commissioner to issue an aquatic stock acquisition permit for the purposes of supplying stock to an aquatic farm. AS 16.40.199 defines "stock" as *"live aquatic plants or shellfish acquired, collected, possessed, or intended for use by a hatchery or aquatic farm for the purpose further growth or propagation."* This statute allows an operator to obtain naturally occurring shellfish or plants for only one of two purposes. The first permitted activity is to secure wild "brood stock". Brood stock means a source of gametes to be used by a hatchery for reproduction in the same way we have allowed salmon hatchery operators to obtain eggs and sperm from wild fish to start their operations. Hence we would also allow aquatic farms to capture and hold wild clams to obtain the spawn needed to start an aquatic farm so long as the conditions in 16.40.120 (d) and (f) are satisfied. The second permitted activity is to obtain juvenile (or other early life history morphs) of a species from the wild in lieu of obtaining adult animals as a source of gametes. This would most commonly be done when technological problems exist [(f) (4)] and when conflicts with other uses do not exist [(f) (3)]. For example, we have allowed operators to collect scallop spat via collection strings

suspended in the water column. As can be seen however, nothing in AS 16.40.199 permits acquisition of wild stock for the purpose of making room for farmed clams or to conduct a commercial harvest of wild stock.

The department's only authority for commercial wild stock harvest of clams is found in 5 AAC 38.100. A permit issued under this regulation would have to be consistent with our constitutional mandates to assure sustained yield, to provide for common use and other applicable law. The sustained yield principle requires any such permit to be issued only for the number of clams that can be removed on an ongoing basis; it does not, for instance provide the authority to remove most or all the wild clams in order to make room for farmed clams. The common use clause requires that once an area is identified for commercial fishing that we must issue permits to anyone who applies and who is otherwise qualified under the commercial fishing regulations. If farming and common property commercial fishing occurs in the same area, the common use clause raises the inherent conflict between private ownership of farmed products at a site and the common property naturally occurring stock at the site especially when there is no practical way to differentiate wild and farmed clams. Neither the applicants nor department staff identified a way to differentiate a farmed clam belonging to a permit holder under the mariculture statutes from a wild clam that is a public resource. Without a way to differentiate between a wild and farmed clam the technological and operational feasibility required under AS 16.40.100 (4) can not be demonstrated and a permit can not be issued.

Even if these problems could be resolved, our ability to issue permits under 5 AAC 38.100 is further complicated by the requirements of 5 AAC 39.210 and department policy that the requirements of 5 AAC 39.210 be addressed in a proactive rather than a reactive manner. Considering the interest that has been expressed to develop aquatic farms throughout the region and the existing uses of both geoducks by the developing commercial fishery and by subsistence and personal use fishers for intertidal clam resources this regulation and our policies require that we develop a management plan for these species. While this is being done for geoducks we have neither the funding nor a schedule to develop a management plan for intertidal clams. Consistent with recent practices, additional funding would be needed before we started such a plan for intertidal clams. For geoducks, a plan has been drafted and will be reviewed by the board next year, however since this fishery is subject to limited entry we are restricted in our ability to issue permits.

Pursuant to AS 16.40.105 (1) through (3) I have found:

For sites that applicants propose to culture geoduck clams, the placement of densely spaced culture tubes in the substrate is impossible without adversely affecting the existing wild geoducks on the site that are of significant value. Thus the criteria in (1) can not be satisfied.

On sites where wild geoducks occur, proposed farms would require significant alteration in the expansion of the developing commercial fishery (by removing a harvestable surplus from the common property fishery) in Southeast Alaska that is subject to limited entry, because commercial fishing and farming on the same site are incompatible activities. Thus the criteria in (2) can not be satisfied.

On sites where wild geoducks occur, the proposed farms would significantly affect the development of the existing geoduck fishery by removing a large volume of biomass from calculation of the annual quota. The preliminary estimate of geoduck biomass at the proposed farm sites is 891,000

lbs. The estimated biomass in all other known geoduck beds in the region is only 9,190,00 lbs. Thus the criteria in (3) can not be satisfied.

In those sites proposed for geoduck or little neck farming where few naturally occurring geoducks exist, or where there may be the opportunity to segregate farming activities from the wild stocks because of zonal gradation in the occurrence of natural stocks, it may be possible to develop conditions that would protect the natural stocks. For instance, areas where naturally occurring geoducks occur within the sites could be roped off underwater and farming activities could be prohibited. Permit conditions could specify that prior to undertaking farming, that the operator must identify all such areas, stake and rope them off. An inspection of the site would be necessary prior to farming.

Overall, I feel the primary issue we are facing is one of siting. If the applicants had proposed farm sites in areas where significant numbers of wild stocks did not exist, then most of the concerns I have would not exist. When considering the siting issue, we should remain cognizant of the fact that we have required salmon hatchery operators to site facilities in locations where impacts on wild stocks are minimized. We should also remain cognizant, by analogy, of our historic approach to the incidental harvest of wild salmon stocks during hatchery cost recovery. In Southeast we have negotiated with both SSRAA and NSRAA to transfer the funds collected from the sale of incidentally caught wild fish during coast recovery operations to the department. We also require that the value of incidentally caught groundfish in excess of the permitted amount be turned over to the department. The point being that some harvest of naturally occurring stocks may be inevitable in hatchery, farming or even fishing operations but the department has not allowed the hatchery operator or fishermen to benefit from such incidental harvests.

Summary:

In areas where significant natural stocks of geoducks exist, I do not believe that farming is consistent with the statues or regulations and the permits must be denied. In those areas where few natural geoducks exist, I believe that permits can be issued so long as conditions can be crafted and attached to the permit that will protect the natural stock.

Because little neck and other species of clams exist in significant quantities in all areas requested for little neck farming, there is an inherent conflict between commercial fishing activities and farming. Had applications been received for mariculture sites without significant numbers of wild clams, and baring other complications, permits could probably be issued. However, because there is no existing commercial fishery for little neck (or other intertidal clams present) in the region, there are clearly commercial quantities of clams present, and significant interest in harvesting wild stocks, a basis exists to develop a fishery. The outstanding questions are: 1) how can we proceed to develop a littleneck clam fishery in the region and 2) can the inierent conflict between mariculture activity and commercial fishing at the same location be resolved, or does it even need to be resolved?

Comments provided herein reflect my interpretation of existing statutes, regulations and policy. Until department policy and interpretations are clarified, I am withholding site specific comments and recommendations.

Cc Doug Mecum
Kevin Duffy
Lana Shea Flanders
Rocky Holmes
Scott Kelley
Doug Woodby

Note:

Date 1999

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Issues requiring legislative, regulatory, or policy resolution include:

1. Providing a fair return to the state from revenues generated from a) initial harvest of standing crop on leased parcels, b) use of wild stock for seed or broodstock, and c) use of public lands to raise crops for commercial sale.
 2. Access onto or across leased parcels for purposes other than harvest of permitted species.
 3. Siting criteria to concentrate maricultural activity in small areas within geographically or biologically distinct regions or to disperse sites as much as possible. Ceiling on total number, area occupied by aquatic farm sites. Guidelines on size of individual farmsites.
 4. Ownership provisions and limitations of number and kinds of farmsites. Related to these are development of measures to foster a) local control, b) operations that provide an appropriate economic benefit, c) do not conflict with established local uses or practices, and d) to the extent possible, complement these uses and practices.
 5. Overall general policies for siting as requests for culture of other species occur. In the foreseeable future, these include geoduck, sea urchins, and various scallop species.
-

ALASKA DEPARTMENT OF FISH AND GAME DRAFT MARICULTURE POLICY

Introduction

Aquatic Farming is a legislatively authorized activity in Alaska that satisfies Public Trust & Doctrine requirements. When properly conducted, aquatic farming results in ~~the~~ of renewable natural resources, increases shellfish production and increases both environmental heterogeneity and marine biodiversity. AS 16.40.100- AS 16.40.210 and 5AAC 41.200-5AAC 41.400 provides an adequate legal framework for managing the mariculture industry. These statutes and regulations allow for both staff and public involvement in aquatic farm permit issuance decisions.

Constitutionality of aquatic farm leases (and concurrent, though unstated, establishment of a new type of extractor of a marine resource) has passed legal review. The Attorney

General's office has issued a statement supporting the concept of ownership of resources within the leased parcel by the leasee (Public Trust Doctrine in the Zaugg case).

However, questions remain about other forms of public access and uses of leased aquatic farm sites.

With few exceptions, the Aquatic Farm Act deliberately separated the operations and functions of mariculture permitting from the Board of Fisheries system. The exceptions include unavailability of fully developed and allocated resources for maricultural use. The Board of Fisheries will be more accepting of aquatic farming, if the department demonstrates a sound biological basis for reviewing applications and retains an appropriate level of sensitivity to the Board's concerns for allocation, management, and enforcement problems.

Aquatic farming permitting is the responsibility of the Commissioner of ADF&G. It is outside the purview of the Board of Fisheries as AS 16.05.251 specifically prohibits the Board from adopting regulations or taking action regarding the issuance, denial, or conditioning of an aquatic farm or hatchery permit or an aquatic stock acquisition permit.

Background

Aquatic farming was directly authorized by legislative mandate in 1988 (Aquatic Farming, AS 16.40.100 - 199). It arose as a direct result of prohibition of finfish aquaculture in Alaska in the late 1980s.

A departmental policy is needed to address questions of siting, sizing, allowable species, reporting, oversight, enforcement, etc. of aquatic farms. The major issues are ones concerning siting, access, and accountability. Tidelands leasing for the purposes of farming epibenthic and in-fauna is the main source of contention and concern.

Permit reviews will require a detailed overview of allowed use areas, since leases are not permitted in some areas at all, limited in other sensitive areas, and constrained by proximity to salmon streams, eagle nests, marine mammal haulout/rookery areas, etc. It would be very useful if fairly large scale maps of the most attractive areas for farm sites were available during the permit application and review processes

The department currently lacks a comprehensive policy regarding review of operational permits for sites leased to applicants by DNR. Because DNR is the lead agency and all other reviews hinge on whether DNR will issue a lease, the lack of policies on some major siting considerations is a major constraint on departmental permit reviews.

Known or suspected reasons for opposition to mariculture as an acceptable use of publicly-owned and state-managed lands and marine aquatic resources include:

1. Concerns for constitutionality of lease of public lands/resources and exclusive use of lands/resources by leasees. Establishment of a new user group and setting of precedents for an alternate avenue for commercial harvest and sale of marine resources. Exclusive access versus common property fisheries.
2. Unfamiliarity and distrust of a multi-agency, state/federal/local management regime for valuable or potentially valuable marine sites and resources that operates largely independently of the Board of Fisheries system. Reluctance by staff to engage in management of resources without oversight by the Board on allocative issues.
3. Lack of comprehensive review specifications for permits, concerns for potential proliferation of farmsites of indeterminate distribution, size, type, and number.
4. Ownership issues. Lack of established guidelines for limitations of amount, number, and kind of operations individuals or organizations could acquire and control.
5. Biological questions as to sustainable yield, habitat and environmental effects, impacts of interactions between wild stock and cultured stock.

6. Concern for introduction and transport of pathogens, parasites, and other undesirable non-native species via transfers of seed, broodstock, or market product over large distances, either within state or between states.
7. Lack of established guidelines for use of wild stock from areas outside leased parcels for seed or broodstock. Wild stock acquisition is allowed, but without any guidelines on where, how much, when, and how often. There are no guidelines for what constitutes seed and what constitutes brood, and whether any animals collected as either can be directly and immediately sold as farm stock, or for what period they must be held, or purposes to which they must be put before being legal for sale. This is a problem for seed, since the term is not clearly defined.
8. Harvest reporting and tracking for aquatic farm operators via an annual report system, which is different in some fundamental ways from reporting through fish tickets and on an individual delivery basis. Difficulty in distinguishing commercial, sport, personal use, subsistence harvest from mariculture production when multiple fisheries occur in close approximation of time and area. Possible conflicts between guiding management principles, such as size and season, applied to mariculture operations and other user groups. Enforcement concerns.
9. Conflict of interest questions relating to participants in maricultural activities and commercial fisheries, for the same or different species.

Policy Statements

A. Aquatic Farm Siting Criteria

1. If an aquatic farm application does not meet the criteria specified in AS 16.40.105, it will be rejected by the Commissioner, who has the sole authority and responsibility to decide following internal review and comment on aquatic farm applications. These criteria are: 1) the proposed farm must not require significant alterations in traditional fisheries or other existing uses of existing fish and wildlife resources, 2) the proposed farm or hatchery may

not significantly affect fisheries, wildlife or their habitats in an adverse manner, 3) the physical and biological characteristics of the site make it suitable for farming and 4) the proposed hatchery or farm plans must make it technically and operationally feasible.

2. All applications for aquatic farming, be they for raft or longline or intertidal or subtidal operations, will be considered on a case-by-case basis to determine if criteria required by statute can be met.

3. Aquatic farm permits will be conditioned as deemed necessary to protect vital state interests, especially in Critical Habitat Areas or where native stocks are determined to be fully allocated. If vital state interests cannot be protected, the Commissioner of ADF&G will deny the aquatic farm application.

4. While proposed hatchery or farm plans must demonstrate technical and operational feasibility, permitted farmers will be allowed to make annual seeding decisions based upon individual farm needs as long as Department of Natural Resources minimum production requirements are met.

5. Aquatic Stock Acquisition Permits will be issued upon finding that proposed harvests will neither impair sustained yield of the species nor unreasonably disrupt established resource uses. As identified by statute, animals and plants acquired under this permit immediately become the property of the permit holder and are no longer a public or common resource.

6. Aquatic Farm harvests are not to be confused with commercial fisheries harvests. As is reasonable with any land-based farming operation, aquatic farmers will make their own decisions on how to market their products independent of commercial fisheries regulation. For example, existing minimum size limits on harvests of wild clams are not applicable to farmed product whether that product has been grown from seed by the farmer or was obtained through an Aquatic Stock Acquisition Permits.

7. Diligent effort must be made to identify environmental, resource management and technical problems in aquatic farm applications. Departmental staff will operate in good faith to find solutions to problems so noted to the extent practical.

8. Farms must operate within the conditions of their lease while providing sufficient alternate harvest opportunities for other user groups, under sustained fisheries principles. At some point, the state will have to determine what percentage of productive habitat in a given area will be leased and what percent of available resource will pass into ownership of private individuals or corporations.

9. Concerns for environmental/water quality effects center on examples of significant or measurable degradation in habitat of native species in close association or proximity to intensive or large-scale aquatic farming activities. Concerns for direct interactions, such as increased presence of predators, pathogens, or parasites, increased intraspecific competition for food or space, and changes in genetic diversity need to be considered for locating and sizing appropriate farmsites.

10. Operationally, managers and enforcement personnel need to be able to clearly and unambiguously differentiate sport, personal use, subsistence, commercial, and aquatic farm products at all points between acquisition and consumption by the end user.

11. The department will continue working, at all levels, to increase the efficiency of the permitting process, for farm sites, operational permits, transport and acquisition permits, and requests for various kinds of information, while maintaining the basic integrity of the program.

12. Because the department currently does not have the resources to adequately assess the productivity potential of sites, prospective applicants will have to conduct their own assessments of the productivity of the most promising sites in an area of interest and will have to make sure they review any restrictions on obtaining lease parcels. The department will assume that an applicant has chosen the site through accommodating the state's siting criteria and balanced logistic, economic, and personal needs.

The Mariculture Program Manager will draft an annual report for the program in a format useful to both the Alaska Board of Fisheries and the a briefing for the Board needs of the mariculture program. The department will request time, most likely at one of the statewide shellfish meetings, for the Mariculture Program Manager to brief the Board on the mariculture program, summarize participation, distribution of effort, production summaries, and new developments.

13. Maintain a consistent and mutually acceptable level of communication between managers of traditional, Board-directed fisheries and the aquatic farm program. The mariculture staff does not have the resources to conduct reviews, site visits, or inspections, nor the local knowledge, of the department's field staff in the regional and area offices. There is a need, and mutual benefit, to maintaining an open dialogue between staff.

14. The department will stress biological considerations during review of site applications, to the extent possible, using siting criteria based on sound maricultural principles and biological considerations. For example, siting should be as unobtrusive as possible, both physically and visually. Farm sites should be sufficiently separated to minimize potential for cross-contamination of species being reared. In addition to existing siting constraints, there should be a limit on the number of sites per bay, inlet, statarea, or some other kind of limiting criteria that can be clearly understood by both the public and the resource managers.

B. Aquatic Stock Acquisition permits

1. The Commissioner has sole authority to issue Aquatic Stock Acquisition Permits to aquatic farm or hatchery permit holders who meet criteria defined by statute (AS 16.40.120). When these criteria are met, the Commissioner will issue said permit.

The criteria are: 1) wild stock is needed to meet the initial needs of the hatchery or farm, 2) propagation of species sought is technologically limited, 3) wild stock sought is not fully utilized by existing fisheries, 4) wild stock is needed to maintain the gene pool of a hatchery or aquatic farm.

2. The Commissioner must inform the Board of Fisheries on any action taken regarding Aquatic Stock Acquisition Permits. The Board of Fisheries authority regarding Aquatic Stock Acquisition Permits is limited to passing regulations for conservation, maintenance and management of species for which an acquisition permit is required.

3. Increasing concern related to importation of unintended or unwanted non-native species in shipments of seed or broodstock needs to be addressed. This may be via establishment of local hatcheries for species that do not reproduce in the wild within genetic or larval drift range of the farmsite, stringent controls on import of seed or brood, or adoption of a policy to permit only culture of locally available species. There are probably combinations of all three that would be acceptable, but culture of locally available species would be inherently the safest option.

4. Currently, acquisitions of wild stock for purposes of seeding or establishing brood stocks is permitted under authority of acquisition permits if there are no problems of sustainability or established uses. Concerns revolve on what distinguishes wild harvest for commercial sale from wild stock acquisition for seed or broodstock. It may not be possible, realistically, to differentiate one from the other, although clarification of how they differ in principle may be sufficient to provide the basis for management and enforcement.

5. The department and aquatic farmsite operators should make every effort to insure that operations of farmsites are not the cause for unintended introduction of undesirable plant or animal species, pathogens, or parasites into the state.

Definitions

A fully allocated stock is defined as one that is presently being harvested at the maximum sustainable rate. Such a determination requires scientifically sound and complete surveys. Areas outside of surveyed tracts are open to application for aquatic farm permits.

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 25526
JUNEAU, ALASKA 99802-5526
PHONE (907) 465-4100
FACSIMILE (907) 465-2332

March 15, 1999

Rodger Painter, Vice President
Alaska Shellfish Growers Association
P.O. Box 20704
Juneau, AK 99802

Dear Mr. Painter:

Your February 17 letter to Governor Tony Knowles included a number of issues concerning the mariculture industry in this state. The Governor asked that I respond to the specific issues you raised.

With your letter was an attachment titled, "Littleneck Clam Enhancement and Aquaculture Development." This attachment includes proposals for: (1) cooperative enhancement of a public beach in Kachemak Bay; and (2) clam farming studies in Kachemak Bay, Prince William Sound, and Southeast Alaska. You asked us to develop a general state policy regarding on-bottom aquatic farming. More specifically, you also asked about options the department might consider for clam farming within the critical habitat area boundaries of Kachemak Bay. Finally, you asked about the department's response to comments on aquatic farming included in the August 1998 draft of the Kenai Area Plan.

The above issues were among those raised in a letter from Representative Gail Phillips to Commissioner Frank Rue on January 19, and discussed before the House Resources Committee on February 17. Kevin C. Duffy, acting deputy director for the Commercial Fisheries Division, represented the department at that meeting and briefed the members of the committee. The following information will be included in my formal reply to Representative Phillips.

State Policy Development

The department continues work on policies for on-bottom farming of clams and other species. The department believes that property rights to "standing stocks" pass to the permittee with the lease, operations permit, and stock acquisition permit, although the state retains authority to ensure that aquatic farming activities are biologically and environmentally acceptable, both on

and off the site. Specific to littleneck clams, minimum legal size restrictions applicable to commercial harvests do not apply to farmed product. In all areas outside of designated critical habitat areas, the department will evaluate proposals for aquatic farming, including on-bottom culture operations, on a case-by-case basis, consistent with applicable statutes and regulations.

Proposed Kachemak Bay Clam Farming

The department will not accept any applications for on-bottom clam farming in the Kachemak Bay and Fox River Flats Critical Habitat Area (KBCHA) during the current aquatic farm open application period that concludes on April 30, 1999. It is my current view that the existing KBCHA Management general policies prohibit intertidal leases and on-bottom aquatic farming in Kachemak Bay, and that the KBCHA Management Plan will need to be amended and readopted as regulation under the Administrative Procedure Act (APA) prior to leasing and permitting of any on-bottom aquatic farms within the KBCHA. The plan does not specifically address many of the issues and concerns relevant to these activities. The Department of Law (DOL) is reviewing this issue.

In response to interest by the Alaska Shellfish Growers Association and some individual farmers, the department will draft a proposed amendment to the KBCHA Management Plan. This proposed amendment, if adopted, would authorize a limited number of fixed duration, limited-acreage experimental littleneck clam farming projects to be associated with the existing farms in Kachemak Bay (i.e., only a subset of those that were operational as of 1998). The department's proposal would include information about the likely locations and maximum number and acreage of experimental sites. It would also detail for the public: (1) the types of scientific information that the department would require a proposed experimental clam farming project to collect over the course of its existence (e.g., growth rates, productivity, farm economics, and social and environmental impacts); and (2) how that information would be used to evaluate compatibility or incompatibility of littleneck clam farming in a state critical habitat area.

Another concept to be discussed at the public meeting is the potential for restoration or enhancement of littleneck clams on one or more public beaches, as originally suggested by the Shellfish Growers Association.

As described above, the department would need to conduct a public process pursuant to the APA to determine if the KBCHA Management Plan should be amended to authorize and issue permits to these experimental projects. The plan amendment process would require publication of meeting notices in Anchorage, Homer, Seldovia, Halibut Cove and Red Mountain and public meetings in Anchorage and Homer. If, after the public meetings, an amendment to the Plan to allow limited experimental littleneck clam farming is determined to be in the public interest, the department would draft proposed new regulation language and initiate the required 30-day public review required under the APA. If the public generally accepts the proposed amendment, we expect that the entire amendment and regulations adoption process would take 90-120 days.

Board of Fisheries

The department will be coordinating with the Board of Fisheries and the DOL to determine if the board needs to deal with clam allocation issues in Kachemak Bay prior to permitting or leasing of on-bottom clam farms.

Kenai Area Plan

Draft comments forwarded to the Department of Natural Resources for inclusion in the August 1998 draft of the Kenai Area Plan have been revised in response to requests from the public and reconsideration by departmental staff. Based on discussion with me, Habitat Division Director Ken Taylor notified the Department of Natural Resources that previous comments restricting mariculture operations outside of the Kachemak Bay Critical Habitat Area should be amended to reflect our position that aquatic farm applications outside the critical habitat areas will be evaluated on a case-by-case basis, consistent with the aquatic farming statutes and regulations.

I hope this letter addresses the questions you have raised about the State of Alaska's policies relative to Kachemak Bay and Fox River Flats Critical Habitat Area, and about statewide intertidal clam farming issues. If you have any questions, please contact Ken Imamura, ADF&G Mariculture Coordinator at (907) 465-6150.

Sincerely,



Frank Rue
Commissioner

- cc: Senator John Torgerson
- Representative Gail Phillips
- Board of Fisheries
- Commercial Fisheries
- Habitat and Restoration
- Sport Fish

35

Subject: Re: FW: Sale of wild clams from a farm
Date: Mon, 06 Sep 1999 14:31:47 -0800
From: Ken Imamura <Ken_imamura@fishgame.state.ak.us>
To: Carol Denton <carol_denton@adfg.state.ak.us>
CC: Steven G Mcgee <steve_mcgee@fishgame.state.ak.us>

Acquisition permits allow harvest and direct sale of wild stock, if that wild stock is within the boundaries of a permitted aquatic farm site. We have discussed the legality of this at length with the AG's office and within the mariculture program at HQ. Having established a precedent with three aquatic farm operators in Southeast, it would be difficult for the department to significantly change its permitting practices at this point in the permit review process. Simply put, the standing stock (pre-existing wild stock) on a leased and permitted aquatic farm site becomes the property of the aquatic farm site operator, to be disposed of in any legal manner. This includes commercial harvest and sale.

Precedents and current policies aside, the issue of pre-existing standing stock is knotty. Personally, I believe that the portions of the mariculture regulations addressing acquisition permits intended that wildstock, from both on and off the farm site, could be used for broodstock or for seedstock, not necessarily for harvest for commercial sale. I think that acquisition permits should allow collections of wildstock, either from the farmsite or public waters, for broodstock or seedstock, where that use does not conflict with established uses. Further, I strongly support legislative clarification of the intent of the acquisition permit sections in the statute, development of policies or regulations that clearly define the state's position regarding disposition of pre-existing standing stock on newly permitted farms, and adoption of stipulations for farm permits that will result in long-term conservation of the resource, while allowing farmers to use pre-existing standing stock to support project costs of their operations.

I have proposed meetings to discuss these issues, but have not received much interest or support. I think it would be a good idea for management representatives from the various divisions to get together to develop a comprehensive management plan and a set of operational policies, based on the statutes, regulations, and collective knowledge of our staff.

Carol Denton wrote:

> Has this been discussed & researched? Is there any other basis for allowing
 > sale of wild stock that has a farm boundary drawn around it?

> -----Original Message-----

> From: Lynch, Brian
 > Sent: Monday, August 30, 1999 2:43 PM
 > To: Denton, Carol
 > Subject: Sale of wild clams from a farm

> Has anyone ever asked the Dept. of Law if 16.40.140(e) actually allows the
 > sale of clams from a farm that have not actually been grown or propogated
 > that farm? I wasn't aware that that was the law that was being "used" to
 > allow the wild stock harvest of littleneck clams under provisions of the
 > mariculture permit system (ignorance is no excuse). I guess that when we
 > quit issuing wildstock harvest pemits I then ignored the situation. While I
 > am no legal beagle I have my doubts that that is what the legislature
 > intended when the statute was written. I would think that what was intended
 > was to prevent the wildstock harvest and avoid the situation that we were
 > talking about.

> What's the verdict?

P-3

Exhibit 2

Contrary to its Current Position,
DFG has made Statements that
Common Property Resource Transfer is
Provided Under AFA

AFA, at AS 16.40.120(g) does not clearly establish when common property resource ownership is transferred. In prior actions involving littleneck clam farmers, DFG allowed access to the common property resource under the provisions of AFA. Statements were similarly made by DFG officials that indicated ownership of the common property resource was transferred through AFA permits. Applications submitted in 1999 were made in good faith based on these actions and statements by DFG. These statements include:

- A presentation made by a former mariculture coordinator, who, at a 1996 shellfish conference told the audience of aquatic farmers that "... [the Aquatic Stock Acquisition Permit] is the document that takes the resource out of the public domain and becomes yours to culture and sell."
- Testimony regarding stock acquisition permits to the House Resources Standing Committee in February, 1999 by the then acting Deputy Director of Commercial Fisheries, that "... once [a stock acquisition permit is] acquired by a farmer [the common property resource clams] are private property."
- A March, 1999 letter from DFG commissioner Rue to the Alaska Shellfish Growers Association, which stated, "The department believes that property rights to 'standing stocks' pass to the permittee with the lease, operations permit, and stock acquisition permit ..."

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or shellfish acquired, collected, possessed, or intended for use by a
farm for the purpose of further growth or propagation." [Emphasis
is means that the common property resource wild stocks can only be
"planting" other geoducks rather than being harvested and sold to
operating capital.

f the applicants, taking out the existing stock of geoducks is necessary
operation viable. They assert that farming technology requires that the

- I. Department responsibilities under the 1988 Aquatic Farm Act
 - A. Permit to operate (hatcheries and farms)
 - B. Permit to acquire seedstock/broodstock from wildstocks
(note that copies of the 1988 Act and corresponding regulations are available)

- II. Criteria for issuing permits to operate (overhead 001)
 - A. Physical and biological suitability of the site for farming the species proposed
 - B. Significant alterations in traditional fisheries or other existing uses of fish and wildlife
 - 1. subsistence
 - 2. personal use
 - 3. commercial use
 - C. Significant adverse affects on fish, wildlife, or their habitats
 - D. Farm plan and staffing plan must demonstrate technical and operational feasibility

III. Aquatic stock acquisition permit (overhead 002)

- A. If anyone of the four criteria are true and
 - 1. the proposed harvest will not impair sustained yield of the species or will not unreasonably disrupt established uses of the species
 - 2. or the Board of Fisheries has not adopted a regulation for the conservation, maintenance and management of the species that would prevent issuance of an acquisition permit

the Commissioner shall issue this permit

B. This permit would allow a farmer to acquire the standing crop of the target species within permitted farm boundaries

Read this

Exc. 29

5 AAC 41.200 is amended to read:

5 AAC 41.200. **APPLICABILITY OF REGULATIONS.** The provisions of 5 AAC 41.200 - 5 AAC 41.400 govern the permit application, review, and issuance of [PROCESS FOR] aquatic farm operation and shellfish hatchery operation permits, stock acquisition permits, shellfish and aquatic plant stock transfer permits, and establish guidelines and procedures regarding the operation of permitted aquatic farms and shellfish hatcheries. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am ____/____/2001, Register ____)

Authority: AS 16.05.050 [AS 16.05.340 (b)] AS 16.40.160
AS 16.05.092 AS 16.40.100

5 AAC 41.210 is repealed:

5 AAC 41.210. **PERMIT REQUIRED.** Repealed ____/____/2001. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111; repealed ____/____/2001, Register ____)

Authority: AS 16.05.050 AS 16.05.092 AS 16.05.340(b)
AS 16.40.100 AS 16.40.160

5 AAC 41.220 is repealed and readopted to read:

5 AAC 41.220. **AQUATIC FARM AND SHELLFISH HATCHERY OPERATION PERMIT APPLICATIONS.** (a) An applicant for an aquatic farm or a shellfish hatchery operation permit that requires the use of state tideland, shore land, or upland managed by the Department of Natural Resources, shall submit a multiagency application and a coastal project questionnaire to the Department of Natural Resources, during an application filing period under

(I) the location and type of all known past or present human uses of marine resources and lands, on and around the proposed site, including commercial fishing, personal and subsistence use, and recreation;

(J) a description of how the proposed activities may affect existing uses of fish and wildlife resources, and a description of proposed methods to minimize or mitigate potential conflicts with existing uses;

(K) the location of all anadromous fish waters, specified in AS 16.05.870(a), within 300 feet of the boundaries of the proposed site, and the anadromous fish species using the stream for spawning, rearing, or seasonal refuge;

(L) the location of the nearest reliable source of suitable freshwater that will be used by the farm or hatchery for processing and domestic use;

(M) the general distribution of wild stocks of the species intended for culture, and an estimate of their total number within the proposed site;

(N) the areas on the proposed site (in acres or fractions of an acre) which appear to be suitable for culture of the intended species but on which wild stocks of the species currently are not found;

(O) the locations where fuel, lubricants, or other petroleum-based products will be stored on the site, and where oil containment and spill cleanup equipment will be maintained on the site; and

(P) the alignment of the side (cross-sectional) views of each parcel required in subsection (7) below;

(7) a side (cross-sectional) view of each parcel of the proposed site at a scale adequate to clearly depict

(A) support structures or facilities, such as suspended culture gear and anchoring systems necessary to conduct the proposed activities; and

(B) water depths, major physical and biological features on the seabed, and bottom contours;

(8) a list of the common and scientific names of all known or likely predators of the species intended for culture that occur in the vicinity of the proposed site;

(9) types of non-destructive control measures intended to prevent predation on the species intended for culture, including detailed specifications of methods to be used to discourage predation by marine mammals any species which are listed as of-concern, threatened, or endangered;

(10) photographs, or electronic images, of each parcel of the proposed site, with major physical and biological features clearly labeled;

(11) information regarding the water quality at the site, including

(A) any known incidences of paralytic shellfish poisoning or occurrence of human pathogens in the local shellfish or waters on the site;

(B) any known or potential water pollution sources at or around the site and proposed means of mitigation or treatment; and

(C) any seasonal problems that might be anticipated due to fresh water discharges from local rivers, sediment loads from glaciers, or transient human or animal use of the site;

(12) a separate development plan for each species proposed for culture, for the first five years of operation, including

(A) proposed cultural methods and equipment proposed for use in site preparation;

(B) seed source and number of seed to be planted;

(C) planting schedules, and methods and equipment proposed for use in planting seed and cultivating animals; and

(D) harvest schedule, and methods and equipment proposed for use in harvesting operations.

(13) a business plan that includes the costs associated with each activity or phase of development;

(14) documentation of the technical and operational feasibility of the proposed activities;

(15) if an applicant intends to cultivate and harvest wild stock in accordance with 5 AAC 41.245, the application must include

(A) a plan and schedule for collecting information on the abundance, biomass, and size composition of the wild stock on the site;

(B) a description of the culture practices to be used to increase productivity;

(C) a projection of the rate of increased productivity that will result from the use of culture practices; and

(D) if supplemental feeding of cultured animals is intended, a feeding plan that includes the type, origin or harvest location, annual amount, and the means of preventing adverse effects of unconsumed feed stock on the local environment;

(16) if an applicant does not intend to cultivate and harvest wild stock present at the proposed site, an explanation of how wild stock, which occupy or may naturally settle on the site, will be differentiated from planted stock and protected from harvest or harm by the proposed activities; and

(17) other information as may be required by the department. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am 12/16/98, Register 148; am ____ / ____ /2001, Register ____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160
AS 16.05.092

5 AAC 41 is repealed and readopted to read:

5 AAC 41.230. ADDITIONAL INFORMATION. (a) After an application has been received by the department, the department shall determine whether the information in the application is adequate. If the information provided is inadequate, the department shall, in writing, request additional information from the applicant. The applicant shall have 30 calendar days in which to provide a written response. Failure to respond to a request for additional information will result in termination of review of an application.

(b) Failure of an applicant to provide sufficient information for the evaluation of the application will result in termination of further consideration of the application. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am ____ / ____ /2001, Register ____)

Authority: AS 16.05.050 AS 16.05.092 AS 16.05.340(b)
AS 16.40.100 AS 16.40.160