

STATE OF ALASKA

FRANK MURKOWSKI, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF PROJECT MANAGEMENT & PERMITTING ALASKA COASTAL MANAGEMENT PROGRAM

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October 21, 2003

Ms. Guyla McGrady
Department of Natural Resources
Division of Mining, Land and Water
Southcentral Region Land Office
550 W. 7th Ave., Suite 900C
Anchorage, AK 99501-3577

Dear Ms. McGrady:

**Subject: Kachemak Bay/Seldovia/ Port Chatham (Suspended Culture)
Aquatic Farm Disposal Program
State I.D. No. AK 0307-01AA
Final Consistency Response**

The Office of Project Management & Permitting (OPMP) has completed coordinating the State's review of your proposed project for consistency with the Alaska Coastal Management Program (ACMP). OPMP has developed the attached final consistency response based on reviewers' comments.

Based on an evaluation of your project by the Alaska Departments of Environmental Conservation, Fish and Game and Natural Resources and Kenai Peninsula Borough Coastal District, the OPMP *concur*s with your certification that the project is consistent with the ACMP and affected coastal district's enforceable policies.

This is the *final decision* for your project.

This consistency response is only for the project as described. If you propose any changes to the approved project, including its intended use, prior to or during its siting, construction, or operation, you must contact this office immediately to determine if further review and approval of the revised project is necessary.

By copy of this letter, I am informing the U.S. Army Corps of Engineers of OPMP's final finding.

If you have any questions regarding this process, please contact me at 907-269-7472 or email Susan_Magee@dnr.state.ak.us.

Sincerely,



Susan E. Magee
Project Review Supervisor

Enclosures

cc: Mike Ostasz, DEC/EH, Anchorage
Jackie Timothy, DFG/CFMD, Juneau
Sean Palmer, DFG/RRDB
Charlie Trowbridge/Lee Hammarstrom/Bill Bechtol, DFG/Comfish
Tom Vania, DFG/Sportfish
Nicky Szarzi/Scott Meyer, DFG/Sportfish
Doug Vincent-Land, DFG/Sportfish
Jim Fall, DFG/Subsistence
Jeff Hughes, DFG/Wildlife
Ellen Simpson, DFG/Special Areas
Dan Moore, DFG/Genetics
Stewart Seaberg, DNR/OHMP, Anchorage
Julie Raymond-Yakoubian, DNR/SHPO
Dan Bevington, KPBCMP Coordinator, KPB, Soldotna
Suzanne Fisler, Kenai River Center, DNR/SP, Soldotna
John Klutz, COE-Regulatory, Anchorage
Fred Elvsaa, PO Box 131, Seldovia, AK 99663
Chugach Alaska Corporation, 560 E. 34th Ave., Anchorage, AK 99503

**ALASKA COASTAL MANAGEMENT PROGRAM
FINAL CONSISTENCY RESPONSE
CONCURRENCE**

DATE ISSUED: OCTOBER 21, 2003

PROJECT TITLE: KACHEMAK BAY/SELDOVIA/PORT CHATHAM AQUATIC FARM DISPOSAL PROGRAM

STATE ID. No.: AK 0307-01AA

AFFECTED COASTAL RESOURCE DISTRICT(S): KENAI PENINSULA BOROUGH

PROJECT DESCRIPTION AND SCOPE OF THE PROJECT SUBJECT TO CONSISTENCY REVIEW:
NOTE: THE SELDOVIA BAY SITE (KBYN002) AND THE BEAR COVE SITE (KBYN003) HAVE BEEN DELETED FROM THE SCOPE OF THIS REVIEW AS THE AQUATIC FARMSITE LEASES FOR THESE NOMINATED SITES ARE BEING DENIED BY DNR/MLW UNDER THEIR OWN STATUTORY AUTHORITY.

The project subject to this consistency review is the use of tideland and submerged land for aquatic farming utilizing suspended gear. Proposed acreage for nominated sites are as follows: Port Chatham KBY N001 site – 5 acres, and Port Chatham KBY C002 site – 10 acres. The maximum number of lease sites shall not exceed two. The locations are: Port Chatham KBY N001 – T11S, R15W, Sec. 23, Seward Meridian (SM); Port Chatham KBY C002 – T11S, R 14W, Sec.18, SM and T11S, R15W, Sec. 13, SM.

Potential farm sites covered by this review are defined by, and must meet, operational standards considered by the agencies to be “typical”. The scope of the activities covered by this ACMP review includes the sites themselves and the following “typical” standards for suspended culture operations as identified in the DNR Preliminary Finding and Decision.

- Suspended culture generally uses lantern nets, bags, trays or cages suspended from surface longlines or log rafts which are anchored at each end; contain all gear within the acreage requested; farm area delineated with clearly marked buoys.
- Typically, aquatic farm sites in Alaska utilizing suspended gear are on the average 3 acres in size with a 50' X 50' hardening area on the beach. Additionally, aquatic farmers typically build a work raft, which is anchored within the growing area.
- Alaska farmers generally use suspended culture techniques where single oysters are grown in nets or trays hung from floating loglines in waters 30-120 feet deep. This does not preclude the lessee to use a new or innovative culture technique as long as it is a suspended culture technique for the purpose of farming oysters, clams or scallops. In addition to the farm site area aquatic farmers generally utilize an area of approximately

50' x 50' in the inter-tidal area to hold animals out of the water where they are exposed to air for at least part of the day, a few weeks to a few months. This process will remove most of the fouling and harden the shell to extend the shelf life of the oyster. It can be expected that at a minimum shellfish will require a period of holding out of the water while awaiting results of PSP tests. Any holding area in the inter-tidal zone outside of the farm site boundary will be allowed only upon approval by the Department's of Natural Resources, Fish and Game and Environmental Conservation.

Activities not in the scope of review:

The activity of acquiring or transferring shellfish or aquatic plants is not subject to this ACMP review. The activity requires authorization from the Department of Fish and game (Shellfish and Aquatic Plant Transport and/or an Aquatic Stock Acquisition permit).

CONSISTENCY STATEMENT: The OPMP concurs with the consistency determination submitted by the Alaska Department of Natural Resources, Division of Mining, Land and Water.

AUTHORIZATIONS: State agencies shall issue the following authorizations within five days after OPMP issues the final consistency determination that concurs with the applicant's consistency certification, unless the resource agency considers additional time to be necessary to fulfill its statutory or regulatory authority.

U.S. Army Corps of Engineers (COE)
Section 10

U.S. Forest Service (COE) - **Not Applicable to these sites**
Any necessary authorizations for associated upland use within National Forests

Alaska Department of Fish and Game (DFG)
Aquatic Farm and Hatchery Operation Permit
Special Area Permit

Alaska Department of Natural Resources (DNR)
Aquatic Farmsite Lease ADL #'s KBY-N001, KBY N002, KBY N003, KBY C002

Department of Environmental Conservation authorizations will be necessary at later stages of the authorized activities. These permits are not subject to ACMP review. See page 6 of the DNR Preliminary Finding and Decision.

For the land disposal program sites being proposed by DNR, the scope of this review covers the state authorizations for the sites and the typical operations discussed above. The activities also require authorization by the U.S. Corps of Engineers (COE). However, because individual applicants do not exist for the actual projects within the sites proposed by the State and applicants will subsequently propose development plans for the sites after this review is completed; COE permit applications are not included. Individual applicants will be required to

apply for all necessary authorizations. If an individual permit is required by the COE, and more than minor changes are made as a result of that review, additional review for consistency with the ACMP may be required.

The DNR Aquatic Farmsite Leases will be issued with an effective date of 2/2/04. State agencies shall issue other permits within five days after ACMP/OPMP issues the final consistency determination that concurs with the proposed project, unless the resource agencies considers additional time to be necessary to fulfill its statutory or regulatory authority.

Please note that, in addition to their consistency review, State agencies with permitting responsibilities will evaluate this proposed project according to their specific permitting authorities. Agencies will issue permits and authorizations only if they find the proposed project complies with their statutes and regulations in addition to being consistent with the coastal program. An agency permit or authorization may be denied even though the State concurs with the ACMP. Authorities outside the ACMP may result in additional permit/lease conditions. If a requirement set out in the project description (per 6AAC 50.265) is more or less restrictive than a similar requirement in a resource agency authorization, the applicant shall comply with the more restrictive requirement. Applicants may not use any State land or water without DNR authorization.

APPEAL: This final consistency response is a final administrative order and decision under the ACMP and for purposes of Alaska Appellate Rules 601-612. Any appeal from this decision to the superior court of Alaska must be made within thirty (30) days of the date this determination is issued.

ENFORCEMENT: Pursuant to 6 AAC 50.485(e), if after receiving this final consistency response, the applicant fails to implement an adopted alternative measure, or if the applicant undertakes a project modification not incorporated into the final determination and not reviewed under 6 AAC 50.800-6 AAC 50.820, State resource agency may take enforcement action according to the resource agency's statutory and regulatory authorities, priorities, available resources, and preferred methods.

ADVISORIES:

ADF&G has advised OPMP that the following stipulation will be incorporated into the Operating Permit. These stipulations are being carried solely under their own authority and are not needed for consistency.

- The applicant shall discuss predator exclusion plans with the Mariculture coordinator before the Operation Permit will be issued. The farmer shall monitor any exclusion devices for entanglement of fish and wildlife and shall report all incidences to the Mariculture Coordinator. If, upon inspection, ADF&G finds the exclusion devices have been unattended and are in disrepair, the farmer will be issued a warning and the Mariculture Coordinator will discuss with the farmer a strategy for successful maintenance of the exclusion devices. If, upon a second inspection, ADF&G finds the

exclusion devices unattended or in disrepair, the farmer will be cited and fined (AS 16.40.170 class B misdemeanor) and will no longer be allowed the use of exclusion devices at the farmsite.

DNR/SHPO has advised OPMP that there are historical, cultural or prehistoric resources located adjacent to lease site KBY-N001 and within close proximity to KBY-C002. DNR/SHPO recommends that KBY-N001 not be leased and that at KBY-C002 site, the abandoned cannery be avoided and visited periodically by an archaeologist to monitor for impact. The ACMP Historic, Prehistoric, and Archaeological Resources Standard (6AAC 80.150) allows for the identification of areas of the coast which are important to the study, understanding, or illustration of national, state or local history or prehistory, however relies on other governmental programs to protect the identified resources.

By copy of this letter, the OPMP is advising the U.S. Army Corp of Engineers (COE) of DNR/SHPO's recommendations.

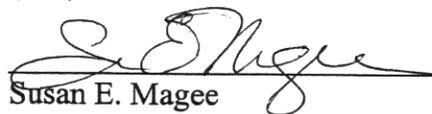
DNR/MLW has advised the OPMP that after a successful bidder submits the required development plan, including a detailed site map, the Office of History and Archaeology will be consulted to ensure the farm site will not conflict with any known historic or archeological materials. In addition, all aquatic farm leases will carry a stipulation stating "if cultural or paleontological resources are discovered as a result of this activity, work that would disturb such resources must be stopped and the Alaska Office of History and Archaeology shall be contacted immediately at (907) 269-8721.

The OPMP recommends that the above DNR/MLW Aquatic Farm Lease stipulation require that the U.S. Army Corps of Engineers also be contacted so that consultation per section 106 of the National Historic Preservation Act may proceed.

The OPMP is also advising DNR/MLW that the Kenai Peninsula Borough Coastal District Enforceable Policy 2.2(b) (2) Floating Facilities prohibits floating facilities, which includes work rafts as defined in 2.2, in Sites listed by the Alaska department of Natural Resources Historic Preservation Officer as eligible for inclusion in the National Register of Historic Places or sites identified by other management agencies as historic or archaeological sites. DNR/SHPO has determined that these sites are potentially eligible at this time. DNR/MLW should make applicants aware that if the sites contain resources that become "eligible" as described above, work rafts will not be allowed.

Please be advised that although the OPMP concurs with your certification that the project is consistent with the ACMP, the applicant is still required to meet all applicable State and federal laws and regulations. Your consistency finding may include reference to specific laws and regulations, but this in no way precludes the applicant's responsibility to comply with other applicable laws and regulations.

Final Consistency Response Prepared By:
Susan E. Magee, Project Review Supervisor
550 W. 7th Ave., Suite 1660
Anchorage, AK 99501
(907)269-7472



Susan E. Magee

10-21-03

Date

Subject: Kachemak Bay/Seldovia/Port Chatham, AK 0307-01AA, Final Response

From: Susan Magee <susan_magee@dnr.state.ak.us>

Date: Tue, 21 Oct 2003 10:49:14 -0800

To: Guyla L Mcgrady <guyla_mcgrady@dnr.state.ak.us>, John S Thiede <john_thiede@dnr.state.ak.us>, Michael J Ostasz <mike_ostasz@dec.state.ak.us>, Jackie L Timothy <jackie_timothy@fishgame.state.ak.us>, Sean P Palmer <sean_palmer@fishgame.state.ak.us>, Charles E Trowbridge <charlie_trowbridge@fishgame.state.ak.us>, Lee F Hammarstrom <lee_hammarstrom@fishgame.state.ak.us>, William R Bechtol <bill_bechtoll@fishgame.state.ak.us>, Tom D Vania <tom_vania@fishgame.state.ak.us>, Nicole J Szarzi <nicky_szarzi@fishgame.state.ak.us>, Scott C Meyer <scott_meyer@fishgame.state.ak.us>, Douglas S Vincent-Lang <douglas_vincent-lang@fishgame.state.ak.us>, James A Fall <jim_fall@fishgame.state.ak.us>, Jeffrey H Hughes <jeff_hughes@fishgame.state.ak.us>, Ellen M Simpson <ellen_simpson@fishgame.state.ak.us>, Dan T Moore <dan_moore@fishgame.state.ak.us>, Stewart J Seaberg <stewart_seaberg@dnr.state.ak.us>, Julie M Raymond-Yakoubian <julie_raymond-yakoubian@dnr.state.ak.us>, Dbevington@borough.kenai.ak.us, Suzanne E Fisler <suzanne_fisler@dnr.state.ak.us>

CC: "John.R.Klutz" <John.R.Klutz@poa02.usace.army.mil>

Attached is the final response for the above project. A signed copy will also be mailed to you. Please let me know if you have any questions. Thank you,
Sue Magee
OPMP/ACMP
269-7472