

STATE OF ALASKA

FRANK MURKOWSKI, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF PROJECT MANAGEMENT & PERMITTING ALASKA COASTAL MANAGEMENT PROGRAM

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October 16, 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: Prince William Sound
Aquatic Farm Disposal Program
State I.D. No. AK 0307-02AA
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, 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 and the U.S. Forest Service 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 Magee
Project Review Supervisor

Enclosures

cc: Mike Ostasz, DEC/EH, Anchorage
Jackie Timothy, DFG/CFMD, Juneau
Bob Berceci and/or Dan Ashe and/or Dan Gray, Commfish, Cordova
Sean Palmer, DFG/RRDB, Anchorage
Charlie Trowbridge, DFG/Comfish, Homer
Tom Vania, DFG/Sportfish, Anchorage
Matt Miller, Sportfish AMB, Anchorage
Doug Vincent-Lang, DFG/Sportfish, Anchorage
Jim Fall, DFG/Subsistence, Anchorage
Dan Moore, DFG/Genetics, Anchorage
Stewart Seaberg, DNR/OHMP, Anchorage
Suzanne Fisler, DNR/POR, Kenai River Center
Steve Hanis, Cordova
Rick Hohnbaum, Whittier
Carol Smith, Valdez
Commander (O.A.N.), United States Coast Guard, 17th District, Juneau
Julie Raymond-Yakoubian, DNR/SHPO, Anchorage
USFS Seward Ranger District, Seward
John Klutz, COE-Regulatory, Anchorage
Chugach Alaska Corporation, 560 E. 34th Ave., #300, Anchorage 99503
Pat Lavin, National Wildlife Federation 750 W. 2nd Ave., Ste 200, Anchorage 99501
Thomas Justice, PO Box 991, Cordova, AK 99574

ALASKA COASTAL MANAGEMENT PROGRAM
FINAL CONSISTENCY RESPONSE
CONCURRENCE

DATE ISSUED: OCTOBER 16, 2003

PROJECT TITLE: Prince William Sound Aquatic Farm Disposal Program

STATE ID. No.: AK 0307-02AA

AFFECTED COASTAL RESOURCE DISTRICT(S): NONE

PROJECT DESCRIPTION AND SCOPE OF THE PROJECT SUBJECT TO CONSISTENCY REVIEW:
The project subject to this consistency review is the use of tideland and submerged land for aquatic farming utilizing suspended gear and inter-tidal culture. Proposed acreage, operation and location for nominated sites are as follows:

Note: The Hawkins Island (N001 and N001A) sites and the Bear Trap (N009) site were modified as noted in bold below in an amended Preliminary Finding and Decision issued by DNR/MLW. The Preliminary Finding and Decision incorrectly identified N001A as being within Boswell State Marine Park. The recommendation to not lease these sites was reversed in the amended decision.

The Hinchbrook Island (N002) site was correctly identified as being located within the Boswell State Marine Park and the Preliminary Finding and Decision recommended denial. The Preliminary Finding and Decision for the Olsen Bay (N008) site also recommended denial. The original recommendations to not lease these sites have not changed; therefore these sites have been deleted from the scope of this review.

PWS – N001	Hawkins Island	1 farm site.	Max. 5 acres	Inter-tidal
	CRM T 15 S R 04 W Sec. 25, 26, 27, 34			
PWS – N001A	Hawkins Island	1 farm site.	Max. 5 acres	Inter-tidal
	CRM T 15 S R 03 W Sec. 9			
PWS – N003, N004	Port Fidalgo	2 farm sites	Max. 10 acres each	Suspended
	CRM T 11 S R 6 W Sec. 25, 25, 35, 36			
	CRM T 12 S R 6 W Sec. 3			
	Port Fidalgo	2 farm sites	Max. 5 acres each	Inter-tidal
	CRM T 11 S R 6 W Sec. 36; CRM T 11 S R 5 W Sec. 31			
	CRM T 12 S R 5 W Sec. 5, 6, 8, 9, 10			

PWS – N005, N006	Sheep Bay	2 farm sites	Max. 10 acres each	Suspended
	CRM T 14 S R 5 W	Sec. 12; CRM T 14 S R 4 W	Sec. 5, 6, 7,	
	CRM T 13 S R 4 W	Sec. 32, 33, 34		
	Sheep Bay	2 farm sites	Max. 5 acres each	Inter-tidal
	CRM T 14 S R 5 W	Sec 24, 25; CRM T 14 S R 4 W	Sec. 8, 17, 18,	
		19, 24, 25, 30		
PWS – N007	St. Matthews Bay	2 farm sites	Max. 10 acres each	Suspended
	St. Matthews Bay	2 farm sites	Max. 5 acres each	Inter-tidal
	CRM T 13 S R 6 W	Sec. 4, 5, 8, 9, 13		
PWS – N009	Bear Trap Bay	2 farm sites	Max. 5 acres each	Suspended
	Bear Trap Bay	2 farm sites	max. 5 acres each	Inter-tidal
	CRM T 13 S R 5 W	Sec. 11, 12, 13, 14, 15, 22, 23		
PWS – C001	Perry Island/West Twin Bay	Min. 1 acre	Max. 10 acres	Suspended
	CRM T 07 N R 08 E	Sec. 2, 11	per site	
PWS – C025	East Squaw's Bay	Min. 1 acre	Max. 10 acres	Suspended
	SM T 09 N R 09 E	Sec. 27, 34	per site	
PWS – C027	Eaglek Bay	Min. 1 acre	Max. 10 acres	Suspended
	SM T 08 N R 10 E	Sec. 5; SM T 09 N R 10 E	Sec. 31	
PWS – C029	West Squaw's Bay	Min. 1 acre	Max. 10 acres	Suspended
	SM T 09 N R 09 E	Sec. 34	per site	

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 and inter-tidal clam 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.
- Generally, inter-tidal clam farming generally requires tideland beds to be prepared by raking debris and removing large rock and/or cleaning algae beds. Predator netting is often secured over the seeded area and would require at least one clearly marked buoy.
- On-bottom, inter-tidal aquatic farm sites in Alaska vary in size from less than one acre to just over 4 acres. The minimum acreage to bid on will be one acre. The farm sites can be expanded up to a maximum five acres for each nominated area. The maximum number of allowed inter-tidal, on-bottom farms will not exceed two farm sites per nominated area.

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 (USFS)
Authorization 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 PWS –N001-N001A, N003-N007, N009, C001, C025,
C027, and C029.

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) and may require authorization from the U.S. Forest Service (USFS) for any associated upland use within national forests. 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 and USFS permit applications are not included at this time. Individual applicants will be required to apply for all necessary authorizations. If an individual permit is required by the COE or the USFS, and more than minor changes are made as a result of that review, additional review for consistency with the ACMP may be required.

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.

A public meeting was held in Cordova on July 21, 2003. None of the public comments addressed concerns regarding consistency with the ACMP.

One public comment addressed to the OPMP raised concerns regarding the Hawkins Island (N001A) site in part because the preliminary decision incorrectly identified this as being located within Boswell Bay State Park. However, the other concern was in reference to the clam beaches between Pt. Steele and Pt. Bentinck, which are located in the Hinchinbrook Island (N002) site. This site is within the Boswell Bay State Park and is being denied by DNR/MLW, and has been removed from the scope of this review. All other public comments concerning this proposed project were addressed to DNR/MLW and also did not cite any ACMP State standards or district enforceable policies. Since these comments were not submitted in accordance with 6AAC50.510 (a) and (b), they were not given consideration in this review by the OPMP.

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. This stipulation is being carried solely under their own authority and is 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 within the vicinity of lease sites PWS - N001A, N005, N006, N007, N009, and C026. They recommend that N005, N006 and C026 not be leased. They recommend that N001A, N007, and N009 be surveyed. Chugach Alaska Corporation has advised DNR/MLW in their comments that the proposed PWS N001 site is adjacent to an eligible and pending ANCSA 14(h)(1) cultural and historic site. 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 and comment from Chugach Alaska Corporation.

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.

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:

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(907)269-7472



Susan E. Magee

10-16-03

Date