

Alaska Mariculture Task Force

Regulatory Issues Advisory Committee Recommendations

4/25/2017

The Alaska Mariculture Task Force (MTF) Regulatory Issues Advisory Committee (AC) met five times between September 2016 and April 2017 to identify perceived regulatory challenges to the growth of the mariculture industry in Alaska and to develop recommendations for actions to address these challenges. Members and contributors to the AC included: Sam Rabung (Chair, ADFG); Jim Aguiar (Aquatic Farmer); Adam Smith (DNR); John Kiser (Aquatic Farmer); Kim Stryker (DEC); Eric Wyatt (Aquatic Farmer); Christy Colles (DNR); Chris Whitehead (Sitka Tribe); Julie Decker (AFDF); Clark Cox (DNR); Paul Fuhs (Aquatic Farmer); Eric O'Brien (Aquatic Farmer).

What is Mariculture?

Mariculture, simply put, is marine aquaculture or the culture of marine organisms. Mariculture includes both rehabilitation and enhancement of wild fisheries and aquatic farming. Rehabilitation and enhancement is the culturing of marine organisms for release into the wild to benefit common property wild capture fisheries. Aquatic Farming is the culturing of marine organisms in captivity or under positive control to benefit private business.

Shellfish rehabilitation and enhancement permits are currently not authorized in Alaska, therefore the only legal form of mariculture in Alaska as of this writing is aquatic farming. Most of the aquatic farm product currently grown in Alaska is Pacific oysters and blue mussels. However, as the industry continues to expand and culture techniques are refined, it is anticipated other products such as the geoduck clam, littleneck clams, and marine plants will gain prominence within the industry.

Brief Legal Background for Mariculture in Alaska

Constitution

Alaska is a common property resource state and the Alaska Constitution includes provisions relating to common use. Most tide and submerged lands within Alaska's 40,000 miles of coastline are a common property resource managed upon multiple use principals and sustained yield requirements. The State of Alaska Constitution requires resource decisions to be vetted thru a public process and noticed for public input to balance resource management decisions with the best interests of the State of Alaska. Management of replenishable resources for sustained yield is enshrined in Article 8, Section 4, of the constitution. Article 8, Section 15, specifically prohibits exclusive right of fishery; however, this section was amended in 1972 to provide exemptions for the state to both limit entry into fisheries for conservation and economic reasons, and to provide for the efficient development of aquaculture in Alaska. Article 8 also provides for the use of state lands and waters, with certain assurances, in Sections 8 and 14. Article 7 requires that the legislature provide for the promotion and protection of the public's health.

Statute

Several statutes have been approved by the Alaska Legislature that provide for mariculture activities in the State. The fisheries rehabilitation, enhancement and development statute (AS 16.05.092) went into effect in 1971, directing the Alaska Department of Fish and Game (ADFG), in part, to encourage private investment in the development and economic utilization of fisheries resources, and through rehabilitation,

enhancement and development programs, do all things necessary to ensure perpetual and increasing production and use of the aquatic resources of the state.

The Aquatic Farm Act (Section 19, Chapter 145, SLA 1988) was signed into law on June 8, 1988, authorizing the Commissioner of ADFG to issue permits for the construction or operation of aquatic farms, and hatcheries to supply aquatic plants or shellfish to aquatic farms (AS 16.40.100 - 199). The intent was to create an industry that would contribute to the state's economy and strengthen the competitiveness of Alaska seafood in the world marketplace, broadening the diversity of products and providing year-round supplies of premium quality seafood. The law limited aquatic farming to shellfish and aquatic plants and in 1990 CSHB 432 became law, prohibiting farming of finfish in the state (AS 16.40.210).

Statute also authorizes Alaska Department of Natural Resources (DNR) to make land and water available through lease for aquatic farming subject to bonding or other security (AS 38.05.083). All lease applications and proposed decisions are required to be noticed for public comment per AS 38.05.945 before a final decision is rendered by DNR.

Statutes that direct the Alaska Department of Environmental Conservation (DEC) to provide for food safety are found in the Alaska Food, Drug, and Cosmetic Act in AS 17.20.

There is currently no statutory authorization to issue permits for shellfish rehabilitation and enhancement projects, however, bills were introduced in 2016 and again in 2017 to achieve this.

Statewide Aquatic Farm Program and Agency Roles

The statewide program is jointly administered by three state agencies: the Department of Natural Resources (DNR), the Alaska Department of Fish and Game (ADFG), and the Department of Environmental Conservation (DEC). Each of these state agencies has a specific role in authorizing and managing aquatic farm activities within Alaska.

The DNR authorizes the use of tide and submerged land and seeks to balance use of the land for the development of aquatic farming with traditional uses of the area, upland owner access, public access, and navigation of public waters as required under Article VIII of the Alaska State Constitution. The department is required to balance disposal of interest (lease) decisions with traditional and existing uses within a given area to ensure proposed farm sites are compatible. If approved, leases authorize a specific footprint and infrastructure to remain on state land to support aquatic farming activities. DNR is required to charge no less than appraised fair market value for lease fees which require annual land use fees. Lease holders are also required to post a bond to cover the costs to the department of restoring leased sites in the event the site is abandoned. Other requirements include providing proof of commercial liability insurance and meeting the commercial use requirements outlined within 11 AAC 63.030(b) within five years of lease issuance. DNR aquatic farm regulatory guidance is contained in 11 AAC 63.010 – 050.

The ADFG issues permits for the operation of aquatic farms and aquatic farm hatcheries, acquisition of stock, and transport of seed and aquatic farm products; certifies and permits seed coming into the state and transported within state for aquatic farming, ensures aquatic farming does not significantly alter established fishery or other existing uses of resources, does not significantly affect fisheries, wildlife or their habitats in an adverse manner, and determines wild stock populations prior to permitting aquatic farm species. ADFG employs the “precautionary principle” when authorizing use of resources in order to ensure sustained natural productivity of common property resources. Specific ADFG aquatic farm regulatory guidance is contained in 5 AAC 41.001 – 400.

To protect human health, the DEC classifies growing areas, issues permits, conducts inspections, investigates complaints, conducts outreach and training, and monitors bacteria and toxins in shellfish harvest areas (growing waters) and shellfish products. Primarily, two programs within DEC are involved: the Food Safety and Sanitation program (FSS), the state's Shellfish Sanitation Authority, and the Environmental Health Laboratory (EHL), which provides the FSS program analytical support to carry out its responsibilities. DEC regulates the shellfish industry through adoption by reference at 18 AAC 34 of a document called the National Shellfish Sanitation Program Model Ordinance (NSSP MO). The NSSP MO specifies sanitation requirements for harvesters, dealers, and shucker/packers and outlines State regulatory program requirements so that shellfish grown and harvested in Alaska may be sold interstate.

Regulatory Issues Advisory Committee Recommendations

The table below presents the Regulatory Issues Advisory Committee's recommendations to address regulatory challenges to mariculture in Alaska. These recommendations were identified through broad participation with farmers, industry representatives and state agencies, and are organized by priority groupings of 1) Near Term needs; 2) Intermediate Term needs; and 3) Long Term needs. *Many of these suggestions require legislation, funding, or both. These nonbinding recommendations are offered to the Mariculture Task Force for consideration and do not commit any industry representative or agency to additional action beyond these recommendations.*