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*“Working to protect the
natural environment
of the Tongass,
and Sitka’s quality
of life – Since 1967”*

Guyla McGrady
State of Alaska-DNR
Division of Mining, Land and Water
South Central Region Land Office
550 West 7th Ave, suite 900c
Anchorage, AK 99501-3577

October 28, 2005

Re: Aquatic Farm Site Applications

Dear Mrs. McGrady,

The following comments are submitted on behalf of the Sitka Conservation Society (SCS). SCS has several hundred household memberships in Sitka and throughout southeast Alaska. Our membership includes commercial and sport fishermen and divers, subsistence users, recreational users and many others who use the waters, tidelands and uplands of southeast Alaska for a variety of commercial and sport activities. For this reason, SCS is extremely concerned about the current proposals to permit aquatic farm sites in southeast Alaska. While we are most familiar with the sites around the Sitka area, many of our concerns are related to the broader aquatic farm site program and its implementation. Our comments will address these broader issues first and then focus on specific concerns regarding the farm site locations in the Sitka area.

The planning process is extremely confusing

The planning process surrounding the aquatic farm site program in general, and the current pending proposals, is extremely confusing for the public. First, all the information regarding the permit applications, the preliminary decisions and request for public comments regarding the consistency with the Alaska Coastal Management Plan (ACMP) are not centrally available at one website or location. It is virtually impossible for the public to understand whether comments are only being sought specifically on compliance with the ACMP or on broader issues such as impacts to recreation, navigation, subsistence etc.

During the public hearing held in Sitka on October 13, despite numerous attempts to have this issue clarified, many of our members are still contacting us confused as to what comments are appropriate and where they should be sent. While it was stated By DNR staff that comments sent to Anchorage or Juneau would be shared with the other offices it remains unclear whether they will become a formal part of the administrative records of

both offices in making their independent decisions. For this reason we are forwarding our comments to the Division of Mining, Land and Water as well as the Office of Project Management and Permitting. To further complicate matters, the permitting process allows for applications to be processed only one at a time making a cumbersome and confusing process for the public. It appears from the limited information provided that the public needs to address concerns relating to each application separately as different applications have different contacts at the Office of Project Management and Permitting. This uncoordinated effort is extremely confusing and burdensome for the public.

Lack of long-term planning

In reviewing the aquatic farm site program and specifically the pending applications it is very clear that the program lacks long-term planning and that secondary and cumulative impacts associated with these farm sites have not been carefully thought through. No information has been provided to the public regarding the extent of existing farm sites and what the anticipated future farm site program will look like. This is critical information needed by the public to assess the cumulative impacts of the large geoduck farm program on the resources and people of southeast Alaska. This is especially important given that the leases will be valid for 10 years.

One of our greatest concerns regards the lack of foresight regarding future expansion and growth of new farm sites. Given the huge jump in number of farm sites from the last application process 2 years ago to the current one, it is likely that should the farms show signs of success that the number of permit application during future biannual openings will continue to grow. It appears that no real foresight has been given to insuring large portions of southeast Alaska's coastline does not become aquatic farm sites. In fact the only limitation we have found on future site development is a policy to prevent more than 1/3 of any cove to be permitted for farm sites. This standard is extremely inadequate as even if only 1/3 of a cove is permitted, if that farm site is located in the prime or only anchorages or upland access points of a cove, the cove for all intents and purposes has been closed to public access. Further, while the actual farm site acreage may seem relatively small, the impacts to the larger surrounding area may be quite extensive. This is extremely alarming to the public and becomes a safety concern as far as availability of sheltered anchorages and coves in poor weather.

A secondary concern regarding lack of future planning is the likelihood of associated tideland and perhaps uplands infrastructure associated with successful farm sites. For example, if the sites are successful they will become extremely valuable thereby requiring security (and associated infrastructure) to prevent poaching or other harm to the sites. Storage sheds and floats for gear and equipment will likely be needed. DNR has failed to address this issue.

Associated with this concern is the lack of foresight regarding the cleanup of farm sites. We could find no plans or enforcement methods presented in any of the applications for geoduck sites regarding gear removal and site mitigation at the time the site is closed out. DNR must require the applicant to submit such plans satisfactory to DNR for each site. DNR should also make it a provision of the lease agreement that the applicant follow

such closeout plans when the culture operation is terminated. DNR should also develop a binding definition of what constitutes termination of a culture site, since these leases are for 10 years and the applicant could lose interest and neglect the site over this period. An additional associated concern is the security bond proposed by DNR (as required under AS 38.05.083 and 11 AAC 63.080) appear to significantly underestimate the costs associated with site closeout, should the applicant fail to clean the site. For example, if the State needed to harvest the geoduck cultures to return the site to its original condition (in addition to removing all the gear deployed at the site), the cost of hiring divers and support vessels may significantly overrun the small bond DNR plans on requiring.

A third concern we have is the lack of information regarding impacts of the aquatic farm sites on other sea life including geoduck predators such as crabs, seabirds, and marine and land mammals. We could find no baseline data in the permits or preliminary decisions regarding current existing marine or terrestrial upland resources around the farm sites, including what the existence of wild geoduck stock currently on-site is. No analysis seems to have been performed to determine how removal of all existing biomass from potential farm sites may impact ecology on a micro or larger scale. Further, there are no mitigation measures in place to insure that displaced species such as predators or other invertebrates are replaced or at a minimum not irreparably harmed. These are important ecological questions that need to be addressed prior to making decisions whether aquatic farm sites are in the best interest of Alaska.

A related specific ecological concern is the risk that predator control netting poses for marine and intertidal life including crab, many terrestrial species such as marten, ermine, mink, river otters, and many species of birds that forage or otherwise use inter-tidal areas in southeast Alaska. We are concerned that these animals could become ensnared in or trapped under the netting and die of starvation. Specific analysis regarding the potential hazard of predator control netting to crab, and any other applicable species, should be done and made public prior to any final determinations being made. Lastly, there seems to be no assurance that nettings will be maintained in good condition and that edges will be monitored on a routine basis to insure wildlife does not become trapped under the nets. Prior experience has shown that DNR does not have the resources to monitor and enforce such standards or to respond when known problems arise.

Lastly, many of the farm sites have a history of paralytic shellfish poisoning (PSP). It appears no analysis has been done to determine if the farm sites may increase the risk or presence of PSP.

Concerns about impacts to wild stock

While we understand that DNR will require surveys to determine if a “significant” amount (greater than 12,000 pounds) of natural stock occur on the site, we are concerned that the farmers will be doing these surveys themselves allowing the fox to guard the henhouse. We request DNR or independent divers do these surveys and the applicants be required to pay the costs of such surveys.

An additional concern is some of the older farm sites appear to have been grandfathered in. Many of these sites have significant wild stock not required to be surveyed by DNR. This is a financial giveaway of public resources. We request DNR consider allowing the natural stock to be harvested down by the commercial fleet to a point where there is no more natural stock present rather than giving this stock away free to a farm site applicant.

Lastly, we are concerned about the lack of monitoring to preventing poaching of wild stocks from farm sites that have less than a “significant stock” currently on site. It is our understanding that a similar problem has arisen in other places where geoduck farming has begun.

Hazards to navigation and anchoring:

We are very concerned about infrastructure that may obstruct navigation such as boundary cables or ropes strung along the bottom of the sites and float bags. Because many of the farm sites will be located on soft, usually sandy, bottoms in bites along the shoreline it is likely that people will attempt to drop anchor and get entangled in the predator netting, boundary cables or other gear. This is a significant concern and safety issue for many commercial and recreational boaters. Further, boundary markers (float bags) are inadequate to warn the public of anchoring dangers and have already resulted in many boats becoming ensnared in bottom gear associated with mariculture farms.

Impacts to federally designated wilderness units

While SCS recognizes that the proposed geoduck farms are not directly proposed for federally designated Wilderness units, many of the sites are adjacent to uplands which are federally designated Wilderness including 8 sites proposed for Coronation Island Wilderness Area; 5 sites proposed for Warren Island Wilderness Area; 14 sites proposed for South Prince of Wales Wilderness Area; and 53 sites proposed for South Etolin Island Wilderness Area. This is more than 80 proposed farm sites in Wilderness areas. Mariculture activities located on the tidelands or floating in the bay would have a direct effect on upland uses, including Wilderness values.

Wilderness areas are extremely important to Alaskans for recreation and subsistence use as well as a major economic driver for the southeast Alaska tourism and recreation industry. We strongly believe the aesthetics of farm sites at these locations significantly deters from the wilderness characteristics of these areas and in many cases may limit access to the upland Wilderness areas. We are extremely disappointed that DNR’s preliminary decisions seem to approve these sites despite their proximity to Wilderness and ask that the agency seriously reconsider these decisions.

In a letter from former US Forest Service Forest Supervisor, Thomas Puchlerz, to DNR regarding aquatic farm sites in August 2003, the Forest Service stated the following:

“Aquatic farm sites with or without upland facilities, would not be compatible if located adjacent to areas designated Wilderness, Wilderness National Monument, Research Natural Area, or Special

Interest Area. These LUDs are intended to preserve areas in their natural condition with unchanged characteristics. Commercial aquatic farm operations may not meet the goals and objectives of these LUDs”.

At that time the Forest Service specifically recommended “that the State not issue any leases for aquatic farms in areas adjacent to Wilderness or Wilderness National Monument LUDs” because of visual impacts to adjacent wilderness.

Further, DNR has recognized specific management intent for the uplands adjacent to federal conservation units, specifically the Tongass National Forest. For example, the Prince of Wales Island Area Management Plan prepared by DNR specifically states:

“In managing State tidelands and submerged land DNR will take into consideration the management intent for the uplands identified in the Tongass Land Management Plan. Activities, including aquatic farming operations, that are incompatible with the management intent will generally not be authorized unless the conditions of the other local, state, and federal permits or authorities are met and unless there is an overriding state interest and there is no feasible and prudent alternative. DNR will consult with the U.S. Forest Service when determining compatibility of activities.”

Similar guidelines exist for other area management plans throughout southeast Alaska. We strongly discouraged DNR from permitting any facilities adjacent to federal conservation units including Wilderness.

Lack of information regarding cultural, historic and subsistence sites.

Many of the preliminary findings decisions recognize that DNR lacks adequate information relating to cultural, heritage and historical sites. We are dismayed to see that DNR has preliminarily approved these sites despite this clear information gap. For example, the Tlingit people have been using Krestof Island and Sound, Middle and Kasiana Islands and Mielkoi Cove around Sitka for customary and traditional uses including clamming, hunting and gathering for many thousands of years. We are sure similar situations exist with other native communities and proposed farm site locations throughout southeast Alaska. Despite this we have seen no evidence that DNR has consulted with these tribal governments and in fact has admitted they know little to nothing about such traditional uses.

Leasing of the farm sites to private business violates the State’s public trust doctrine and prevents access to navigable waters in violation of Alaska Law

The State of Alaska public trust responsibility requires lands, waters and living resources of the State of Alaska be held in trust for the benefit of all the people, and establishes the

right of the public to fully utilize the public trust lands, waters, and resources for a wide variety of public uses. Numerous provisions regarding this public trust responsibility have been adopted under the Alaska Constitution including the right of the public to use navigable waters for navigation, commerce, recreation, and related purposes.

The state holds and controls all navigable or public water in trust for the use of the people of the state. AS 38.05.126.(b) Further, “The people of the state have a constitutional right to free access to and use of the navigable or public water of the state.” AS 38.05.126. (a) Navigable and public waters have been broadly defined in Alaska. Most if not all of the proposed farm sites would constitute navigable or public waters under this broad definition. The leasing of these farm sites to a private interest violates the State’s constitutional guarantee of access to navigable waters as the sites will cut off navigation and anchorages in many locations and restrict the public from use of the sites.

Despite the clear obligations the State has to protect public trust related to Alaska’s navigable and public waters all the preliminary determinations completely brush over this issue by making blanket, unsupported statements that “all lease agreements are subject to principles of the Public Trust Doctrine.”

SCS has heard first hand from some of our members that access to current farm sites has been limited despite the existence of the Public Trust obligation and permit requirements. While the Agency can give lip service to the fact that public access will not be cut off, we are hearing from boaters that they have already run into problems with current farm sites. For example, one member relayed a story of being anchored outside of a farm site and having someone come from the site and circle his boat while at anchor for hours until he pulled anchor and relocated. The State has no way to enforce or follow up on such incidents especially when the farm sites are distributed throughout thousands of miles of coastlines .Lastly, DNR must also recognize that while some of the actual lease sites are small in acreage, the area impacted by such sites (beach frontage, access to small islands) can be significantly larger than the sites themselves thereby further exclude the public from the right to use and enjoy these areas in violation of the State’s public trust responsibilities.

Inconsistency with the Alaska Coastal Management Program

We strongly believe that the proposed farm site applications around Sitka are inconsistent with the Alaska Coastal Management Program. Specifically, all four Sitka sites directly conflict with ACMP Enforceable Policy 3.2 which provides: “Recreational access to public uplands, shorelines, tidelines, and wetlands shall be maintained and enforced to the maximum extent feasible and prudent.” Therefore, it would be unlawful for DNR to issue permits for these projects.

General concerns regarding the Sitka farm sites

The Krestof Sound, Middle Island, Sitka Sound (Hayward Straits) and Mielkoi Cove sites are inconsistent with the Northern Southeast Area Plan (the Plan). Under the Plan waters from Salsbury Sound south to Biorka Island constitute the Sitka Sound Resource Management Area. Priority management for this area is to protect sensitive fisheries,

marine mammals concentrations, shorebird and waterfowl concentrations, anadromous streams, estuarine wetlands as well as brown bear and deer winter concentrations within intertidal areas. Further, this area is to be managed to protect customary, traditional, recreational and personal use resources and public access to these resources. Each of the farm sites in the immediate vicinity of Sitka would violate these management principles.

Of particular concern to SCS is that all four Sitka farm sites contain essential herring spawning habitat. This species is integral to the marine ecosystem of southeast Alaska and its value as a subsistence food for Sitkans can not be overemphasized. In fact herring eggs have a customary and traditional designation under AS 16.05.258(b). Infrastructure associated with the farm sites may prevent placement of hemlock branches to collect herring eggs at certain farm sites and prevent access during spawning season (March 1-May 1). DNR has made preliminary findings that aquatic farm sites are not suitable in important herring spawning areas in other situations (*See Preliminary Finding and Decision on ADL 107338*). We request similar findings be made for the Sitka sites. Similarly, DNR has recognized that important marine mammal haul-out sites and existing safe anchorages are not appropriate locations for aquatic sites (*See Etolin Enterprise Central Southern SE #1; Etolin Enterprises Cent Southern SE #2*). Again we believe this same reasoning is an appropriate reason for denial of several of the Sitka sites.

Meilkoi Cove Lease (AK 0506-12JJ)

The proposed farm site at Meilkoi Cove is located in a navigational channel used by hundreds of recreational, tourism and commercial boaters. The area is extremely close to Sitka and has a heavy historical and existing use by Sitkans for anchoring, recreation, tourism, commercial and subsistence use. While the site can be exposed in a westerly wind, during calm weather the area is often used by Sitkans for hunting (numerous bear and deer trails exist in the uplands), camping, and walking along the estuary. A farm site at this location would undoubtedly disrupt these uses. This farm site in this location is not compatible with the Northern Southeast Area Plan as the lease sites would violate requirements that the tide and submerged lands in the area be managed to ensure the continuation of commercial, community and subsistence harvest. Further, the Plan states farm sites are less desirable where high public use for tourism and recreation, anchorages and important habitat exists such as this site.

This farm site is also important habitat and a heavily used subsistence area for seal, sea otter, bear, deer, salmon, halibut and crab. Due to the rich kelp beds in the area, many other marine mammals (including potential geoduck predators) are found along this shoreline in large concentrations including harbor seals and Steller sea lions. Some marine mammal species also haul out on rocks located in extremely close proximity to this site. Similarly the abundant eelgrass beds in the area are important habitat for crab and other marine life. Lastly, this is an important migratory bird resting area and provides habitat to numerous waterfowl and eagles.

Lastly, this site poses specific navigation risk as there are many islets as well as visible and submerged rocks located in these areas. The Navigation channel is already heavily used by Sitkans traveling south of town and already requires careful navigation. This

facility will make navigation in the area even more difficult and push boaters into potentially dangerous waters. Lastly, while portions of this site receive some protection, much of the area is slammed by significant ocean swells especially during a strong west wind. It is very likely any structures built in this area would not last in this exposed location.

We strongly feel this is an extremely bad location for an aquatic farm site as it poses a serious navigational hazard. Further we do not believe it would be practicable to operate a farm site at this location that could be consistent with the other goals of the Plan and therefore request a negative best interest finding for this site. Lastly, a farm at this site would violate the ACMP Enforceable Policy 3.2 which provides: “Recreational access to public uplands, shorelines, tidelines, and wetlands shall be maintained and enforced to the maximum extent feasible and prudent.”

Krestof Sound Expansion (Amendment AK 0506-33J)

This farm site is located in a heavily used recreation (picnicking, camping and hiking area) as well as a popular subsistence use area. Because of the gentle sloping soft bottom this site is an especially popular anchorage and access point to the entire shoreline in this area. The layout of this particular site-with farms located on both the north and south sides of the island will effectively prevent public access to this area. This area also has highly valuable habitat including kelp forests that are home to harbor seals, Steller sea lions and large populations of marine birds. This area also seems a poor site choice as high concentrations of natural geoduck predators exist.

The permit application for this site references upland structures, including a cabin and storage area and states that a generator may be required for the nursery technique. We strongly feel the noise and aesthetic impacts of this expansion in the heavily used local area are inconsistent with both the ACMP and the Northern Southeast Area Plan. We urge a negative best interest finding be made for this site.

Middle/Kasiana Island Site (AK 0506-10JJ)

This site is an extremely important area for Sitkans, especially the Tlingit peoples as it is at the center of the “core herring spawning area’ of Sitka Sound. This area is one of the most important for collection of herring roe on hemlock branches an essential part of the diet and tradition of the Tlingit peoples. Further, this area is extremely popular for clamming especially during spring and fall tides when subsistence clamming is at its prime. Placement of a farm site at this location threatens both the collection of herring and clams from this location and could pose significant user conflicts.

Lastly, given that this area is zoned as General Island District a conditional use permit for a mariculture operation is required at this site. We have seen no evidence of such a permit to date. Given that the uplands are currently being considered for sale by the Trust Lands Office, an aquatic farm site at this location seems inconsistent with the current upland ownership. We believe a farm site at this location is inconsistent with the Plan and would violate ACMP Enforceable Policy 3.2. We urge a negative best interest finding be made for this site.

Hayward Straits (AK 0506-13JJ)

There are two farm sites proposed for this area around the heavily traveled and used Rob Point area. Hayward Strait is a major water route from Sitka to Krestof Sound receiving heavy day boat use from the Sitka commercial, charter, tourism and recreational boating community. We are concerned as these sites are in close proximity to the very popular recreational area of Magoun State Marine Park. Further, Krestof Island has well-documented cultural and archeological sites that may be impacted by commercial use of the tidelands.

This “core herring spawn area” is heavily used for subsistence herring activities. An aquatic farm site in this location will impact subsistence activities for herring and result in the loss of important high value kelp forest habitat that supports high concentrations of seal, sea otter and other important marine species. Marine mammal haulouts (particularly for seal) occur on the rocks and reef next to East Channel Passage and inside Guide Island. Lastly, this site is likely to interfere with a popular commercial fishing drag in this area, limiting navigation and the types of fishing gear able to operate around the farm sites.

Lastly, we are concerned that the application for this site proposes to culture *Panopea abrupta*- a non-native species. All shellfish spat cultured in Alaska is required to come from certified shellfish nurseries culturing the native species *Panopea generosa*.

We urge a negative best interest finding be made for this site due to its inconsistency with the Plan and its violation of ACMP Enforceable Policy 3.2.

Other sites of concern:

While SCS is concerned about many of the other sites outside of the immediate Sitka area, we are most familiar with the Corner Bay and Bridget Cove sites and offer the following:

Corner Bay (AK 0506-25J)

The application for three sites, totaling 15 acres, near the mouth of Corner Bay seems a major conflict for recreational, commercial and subsistence users of the area including residents of Tenakee Springs. This is an extremely popular charter, sport and subsistence fishing area as well as an important herring roe on kelp area. In addition numerous commercial and industrial operations, such as a fish processing barge, already exist in the area creating a great deal of boat traffic. Geoduck farm sites at this location may impede with navigation and violate the ACMP Enforceable Policy 3.2: “Recreational access to public uplands, shorelines, tidelines, and wetlands shall be maintained and enforced to the maximum extent feasible and prudent.”

Bridget Cove (ADL 106835)

The Bridget Cove facility is located in a designated Recreation Area of the City and Borough of Juneau. The waters and surrounding uplands receives heavy recreational use from Juneau residents as well as many visitors. Further, because the structures planned for the Bridget Cove site appears to be located away from the shore they present a potential anchoring and navigation hazard. Therefore, we believe a farm site located in this area violates the State's public trust responsibilities as well as ACMP Enforceable Policy 3.2: "Recreational access to public uplands, shorelines, tidelines, and wetlands shall be maintained and enforced to the maximum extent feasible and prudent."

Please keep us updated regarding the status of this permitting process.

Sincerely,

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cc: Joe Donohue
Bruce Hoffman
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