



The Best Place on Earth

MAR 27 2008

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**BY FACSIMILE: 250 753-8183
AND
BY COURIER**

Keith Ware
Discovery Diving Ltd
207-360 Selby St
Nanaimo BC V9R 2R5

Dear Mr. Ware:

I am writing to advise you of my decision on the application made by Discovery Diving Ltd (Discovery) to operate an aquaculture facility in the Strait of Georgia near Wilson Creek on the Sunshine Coast. Discovery submitted its application to operate a facility at this site on February 10, 2006.

Based on the information and considerations outlined below, I have decided to deny the issuance of a licence to operate an aquaculture facility at this site.

1) Legislative Authority

Section 14 of the British Columbia *Fisheries Act* authorizes the Minister responsible for the *Fisheries Act* to issue licenses. As the Minister of Agriculture and Lands, I was given responsibility by the Lieutenant-Governor on June 16, 2005 for the *Fisheries Act* and as such, I have authority to decide upon your licence application.

2) Policy Guidelines and Other Considerations

In processing and assessing your licence application, I have been guided by the following considerations:

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- The Ministry of Agriculture and Lands' (MAL) policy document entitled "New Subtidal Geoduck Aquaculture Interim Policy Document", a copy of which is available at http://www.al.gov.bc.ca/fisheries/Shellfish/geoduck/new_subtidal.htm.
- The MAL policy document entitled "Land Use Operational Policy - Aquaculture", a copy of which is available at http://www.agf.gov.bc.ca/clad/leg_policies/policies/aquaculture.pdf.
- The Ministry publication entitled Geoduck Aquaculture: Estimated Costs and Returns for sub-tidal culture in British Columbia.
- Principles of fairness; transparency; efficiency; and accountability.
- Consideration of the public interest, having regard to:
 - protection of public health and safety,
 - protection of the environment, and
 - sustainable economic development.
- Legal duty to consult with First Nations.
- Mutual Provincial-First Nations interest in developing a new relationship.

3) Information Considered

In reviewing this application I have considered:

- The application made by Discovery with all appendices and attachments.
- Discussions with MAL professional staff that took place on Tuesday, March 11, 2008 regarding their review of the merits of the application.
- The record of comments from members of the public and "upland owners".

I am satisfied that the officials who conducted the review of the application have done a thorough and complete technical assessment. They have made their findings based on this assessment and their expertise. I accept these findings and have taken their recommendations into account in making my decision.

4) Site Characteristics

The site is located in the Strait of Georgia near Wilson Creek on the Sunshine Coast. Staff advise that there is a poor degree of protection from the Strait of Georgia and in particular the high south-east winds that are experienced during winter months. Exposure is high.

5) Feasibility of Proposed Operation

Staff advise that a comprehensive biological review of the file was undertaken. This review involved an assessment of the technical feasibility of the proposal as well as an assessment of the capability of the environment to support the activity. A number of criteria were considered by MAL staff in making a recommendation on the biophysical capability of the site. These included:

- analysis of the site location, fetch, and wind exposure,
- a review of proposed production, including seeding, mortality and survival rates,
- historical presence of geoduck clams at the site, and
- a review of the suitability of the proposed farm practices.

Staff concluded that the geoduck aquaculture plans are technically feasible. However, the site is located near shore, and so would be subject to a considerable amount of recreation traffic given high recreational values and the residential community on the upland. As well, wind and wave exposure is high. Given these factors, staff consider this site to have only marginal capability for geoduck aquaculture.

6) Land Use and Zoning

I note the Girl Guides of Canada, Camp Olave, occupies the upland adjacent to the site. Numerous letters from the organization and from individual Girl Guides have referenced the high potential for conflicts between existing educational and recreational activities at the camp and the proposed use on the foreshore. I also note that the shíshálh First Nations IR#1 (Tsawcome) is 650 meters to the north-west of the application site and that the area upland and the foreshore enjoy intense recreational usage.

The proposed location is within the geographic jurisdiction of the District of Sechelt (Sechelt). The proposed site and use do not conform to Sechelt's current zoning bylaw or official community plan (OCP). The site is located in an area designated as "W-1" (Water 1) zone." Aquaculture is not a permitted use of land in the W-1 Zone. The site is also adjacent to an area identified by the OCP as "Development Permit Area Environmental Hazard #3 – Shoreline and Foreshore Areas." The OCP provides that developments in adjacent areas require development permits, on the basis that "Impacts from developments adjacent or within these areas may damage fragile ecosystems and impair the visual quality of the coastline." In a letter to me (Minister of Agriculture and Lands) dated May 12, 2006, Sechelt identified these designations and advised it did not support the siting of an aquaculture operation in the proposed location. Given Sechelt's current zoning bylaw and OCP and its stated objections, it appears unlikely that Discovery would succeed in obtaining approval from Sechelt to have the proposed site rezoned to allow aquaculture as a use.

7) First Nation Consultation

The proposed site lies within the asserted traditional territory of the shíshálh First Nations (shíshálh). As indicated above, the shíshálh First Nations IR#1 (Tsawcome) is 650 meters to the north-west of the application. Considerable consultation with the shíshálh was undertaken on this matter including;

- Initial referral of the application to the shíshálh on April 10, 2006.
- June 19, 2006 - letter from the shíshálh identifying the Wilson Creek site as an area where the shíshálh assert aboriginal title and request further information regarding the application.
- September 18, 2006 - response letter from Integrated Land Management Bureau (ILMB) to the shíshálh.
- November 6, 2006 - letter from the shíshálh requesting further clarification on the application information.
- February 26, 2007 - response letter from ILMB to the shíshálh.
- April 1, 2007 - letter from the shíshálh requesting further clarification on the application information.
- May 10, 2007 - meeting between ILMB and shíshálh.
- May 24, 2007 - letter from shíshálh to Fisheries Aquaculture Licensing and Compliance Branch on consultation.
- May 28, 2007 - letter from shíshálh to ILMB on geoduck applications.
- June 19, 2007 - public meeting in Sechelt attended by shíshálh members.
- November 2, 2007 – response letter from ILMB to shíshálh.

The shíshálh have clearly articulated their opposition to this application. Reasons sited include:

- An absence of scientific information and assessment of potential impacts on the marine environment and the Wilson Creek freshwater ecosystem.
- Loss of opportunity for crab, prawn, rockfish, and salmon fishing.
- Impacts to critical habitat (i.e., eel grass).
- Potential for protective netting to wash up on beach.

It is not apparent at this time how the shíshálh concerns might be mitigated or accommodated should the development proceed. In light of the technical and other resource use conflicts associated with this application, I see no need to pursue that question further.

8) Public Review By Other Government Agencies and Third Parties

The application was referred to, or otherwise considered by, a number of organizations. These organizations and a summary of their comments are noted below.

Other Government and Agents of Government

- Transport Canada – plans will not substantially interfere with navigation. *Navigable Waters Protection Act* approval granted with several suggestions.
- Fisheries and Oceans Canada – Geoduck Aquaculture Referral Information Response Completed – supported application with several recommendations.
- Environment Canada – Letter received May 1, 2006 stating no objections.
- Sunshine Coast Regional District – Fax memo received April 21, 2006 stating that the area lies within the jurisdiction of the District of Sechelt.
- District of Sechelt – Letter received on May 12, 2006 outlining several concerns including that the proposal is not an approved use under the current zoning, and that the subject area has high environmental and social values.

Non-Government Organizations and the Public

- Underwater Harvesters Association – No objections.
- Public Input – The proposed site is located in an area that has high volumes of recreational use. Numerous letters from the general public, and from the Girl Guides of Canada, shíshálh First Nations and District of Sechelt, expressed concern over impacts on recreational use.

9) Past or Demonstrated Performance of the Applicant

Staff advise that a review of Discovery Diving's past and demonstrable performance has been completed as part of this application process. Based on input and recommendations from Ministry personnel, I am satisfied that Discovery Diving does meet past or demonstrable performance requirements.

10) Economic and Employment Benefits

Ministry publication "Geoduck Aquaculture: Estimated Costs and Returns for Sub-Tidal Culture in BC", indicates that properly conducted geoduck aquaculture can be lucrative. My sense based on the overall evaluation of this site by staff biologists is that the potential benefits in this instance would be reduced by the somewhat marginal nature and other challenges associated with this site.

11) Decision

Based on the information and considerations described above, I am denying the issuance of a licence under the *Fisheries Act* to operate an aquaculture facility at the Wilson Creek site.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pat Bell', written in a cursive style.

Pat Bell
Minister

pc: Jim Russell
Fisheries and Aquaculture Licensing and Compliance Branch