

ALASKA DEPARTMENT OF FISH AND GAME
MEETING REGARDING GEODUCK FARMING

AUGUST 29, 2006

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APPEARANCE:

Cynthia Pring-Ham	ADF&G
Craig Farrington	ADF&G
David Bedford	ADF&G
Kerri Tonkin	ADF&G
Lance Nelson	Attorney General's Office
John Lentz	Seaproducts, Inc.
Phil Doherty	ADF&G
Marc Pritchett	ADF&G
Justin Breese	ADF&G
Scott Walker	ADF&G
Cornelis Bakker	Aquatic Farmer
Gary Zaugg	Farmer
Stephen LaCroix	Aquatic farmer
Kurt Morin	Alaska Shellfish
McKie Campbell	ADF&G

TELEPHONIC:

Rodger Painter	ASA
Tom	DOL
Vanessa	DOL
David Petree	ADF&G

**GEODUCK FARMING
ALASKA DEPARTMENT OF FISH AND GAME
PROCEEDINGS**

MR. CAMPBELL: We spend more time - staff time and effort on geoduck farming per dollar than any other fishery in Alaska, by a huge amount. I mean, you know, by a very large amount. You know, I mean - and it's because we know when things are gettin' born they start small and then you go through the birth spans where you need to work this out.

So, anyway - anyway, things - what we're hopeful of doing is, again, like, having a conversation. The things that I would emphasize in this conversation is, we feel, as a state - you know, as a government, that on certain issues we've gone as far as we legally can under the constitution and state statute. And while there have been ongoing debates about some of that - and I'm not trying to preclude, you know, discussion of that. I'm just telling you we have voluntarily gone as far as we feel we can go within the bounds of the law and the bounds of the constitution, and, so, we can spend a lot of time on some of those aspects. What I'm hopeful we can do is spend more time on other aspects that we have more control on in terms of how we do business together. Is that - you know, and do you want to add anything to that before we...

MR. BEDFORD: Yeah. One of the products that I'm really hoping to come away with today is some assistance from you guys about how we go about some of the things we're trying to accomplish. And we have, on a number of occasions sat down with farmers and various other people who have interest in geoduck farming, and tried to work through some of the issues that we had in regulating this operation.

We've got a new set of regulations that came out dealing with security deposits and reasonable compensation, things like that. And I'd be happy to hear any comments you guys have that would help us to be able to implement those things in a fashion that is more effective from your perspective.

So, again, one of the things I'd like to see is, if you guys can help us out on that, I'd appreciate it.

MR. CAMPBELL: Anyway, so let me - and, I guess, sort of throw it out, but we have some specific things we want to bring up. But are there specific topics you guys want to highlight and make sure we, you know, hit it right off the bat?

Lentz?

MR. LENTZ: I was just going to ask, can we do introductions.

MR. CAMPBELL: I'm sorry. I apologize. Yeah. Yeah. Why don't we do that.

MR. CAMPBELL: I'm McKei Campbell, and I'm the Commissioner of Fish and Game.

And?

MR. MORIN: Kurt Morin. I own Alaska Shell Fish.

MR. LACROIX: Steven Lacroix.

MR. ZAUGG: Gary Zaugg.

MR. BARKER: Casey Barker.

MR. LENTZ: John Lentz.

MR. NELSON: I'm Lance Nelson with the Department of Law.

MR. BEDFORD: Dave Bedford, Deputy Commission of ADF&G.

MR. TONKIN: Carey Tonkin, Reg Specialist, Fisheries.

MR. FARRINGTON: Craig Farrington, Development Program Manager with Fish & Game.

MS. PRING-HAM: Cynthia Pring-Ham, Mariculture coordinator.

MR. PRITCHETT: I'm Marc Pritchett, the project leader for dive fisheries research.

MR. DOHERTY: Phil Doherty, manager, biology _____.

MR. BREESE: Justin Breese, assistant manager _____.

MR. WALKER: And Scott Walker, ADF&G, fisheries researcher.

MR. CAMPBELL: How about out on the phone? Roger?

MR. PAINTER: Yeah. Roger Painter, Alaska Shellfish Growers Association.

MS. LAMENTIA: Also, Venessa Lamentia and Tom Lenhart of the Department of Law.

MR. PETREE: David Petree, Fish and Game Mariculture section.

MR. CAMPBELL: Okay. Anybody else on the phone?

(No audible response.)

Okay. And we should say we have three attorneys with us. Not because we think this is such a highly legal contingency issue, but Venessa and Tom have recently come and joined

the department in the Natural Resources Section, and so they're getting involved and just getting up to speed on a wide variety of things. These guys have been...

MR. NELSON: Venessa and Tom work in Juneau, and, usually - normally, our Juneau attorneys handle southeast issues like this.

MR. CAMPBELL: So, anyway, so they're getting up to speed.

MS. PRING-HAM: Can we go over the ground rules?

MR. CAMPBELL: Yeah.

MS. PRING-HAM: _____. I've got three ground rules written on the wall. And if we kinda start going over and getting into these territories - if we don't get into these territories, then I will kinda point and go, "We're going over." But when you have recommendations, if you have any, make sure that they meet the current statutory divisions. If you, you know, talk about something that requires that - a change in the statutory language, then we're going to have to just say we can't really handle that. We'll write it down for future reference, but right now we're only looking at kind of your ideas, as they relate to regulations and other concerns, but, that's where we kinda stop.

And, also, there are some litigation issues that are out there relating to some of the farmers. We can't discuss anything related to that.

MR. NELSON: I don't know if Mr. Weyhrauch talked to you, but I e-mailed him and let him know this meeting was going to take place today. He said as far as he was concerned, anything Mr. Zaugg and Mr. Lacroix want to talk about is fine by him. I guess he - I don't think he talked to you at all?

MR. LACROIX: Yeah, he notified me.

MS. PRING-HAM: Okay. So....

MR. LACROIX: But just us...

MR. NELSON: Right.

MR. LACROIX: And, he...

MR. NELSON: Right. Yeah.

MS. PRING-HAM: So, anyway, if you talk to the farmers, and if they want to relay us...

MR. NELSON: Yeah. But - but I am - I am involved, and Venessa's involved in litigation with some of the parties, and so...

MS. PRING-HAM: You prefer not to get into the subject?

MR. NELSON: Well, yeah. From - I mean, just - we're, obviously, on the other side of things. On those particular things.

MR. CAMPBELL: Well, I guess - I'd boil all that down into one as _____ - to the extent possible, and you guys yank us back if we seem like we're getting on track. Let's focus on what is productive as possible for everybody, and focus on those things that we, again, have room to do something about. Is that fair?

MS. PRING-HAM: Okay.

MR. CAMPBELL: Having said that, you know, I feel fairly sure we're going to want to talk about survey issues. I think I'm fairly sure we're going to want to talk about receiving bonds and - you know, a whole list of other things. But what issues do you want to flag and say, you know, let's be sure to talk about these right off the bat. What are your biggest issues, you know, that involve us.

MR. LACROIX: Reviewing determination on our pending sites.

MR. CAMPBELL: Okay. How about...

MR. BAKKER: I have a question. You started out by saying that there's some issues that you could not discuss at this point, or issues that you've felt you've gone as far as you can go. When...

UNIDENTIFIED SPEAKER: Well....

MR. CAMPBELL: Let me be specific. On the - what is - what determines it is a significant or insignificant amount. I guess that's - that's probably the biggest single thing there. The fact that we have to have some type of receiving bond now. The amount and how we figure that out, and stuff, I think we will talk about a lot. But the fact that there has to be something - what other statutory issues the - a significant amount has been probably the biggest one that's we've been around, and around, and around, and around on, and, you know, we just don't really have any room under the statute and constitution to go beyond where we are there. And we can go through again and explain that for you, but, _____. But, again, in terms of trying to make progress.

MR. BAKKER: Just on the same page, what is significant? Do you want to run through it?

MR. BEDFORD: Yeah. Significant is 12,000 pounds on a six acre farm site, or around 2,000 pounds an acre.

MR. ZAUGG: Why isn't it just 2,000 pounds an acre, period, then? What's the point of saying 12,000 per six?

MR. BEDFORD: Because when we talked about it in the legislature, we talked about 12,000 pounds. 12,000 pounds on a small farm site is not the same as 12,000 pounds on a large farm site. So, dealing with the court's order on that, which is allowing farm sites in those areas that do not have the population that will attract and support a commercial fishery, then the density of the population is relevant.

MR. ZAUGG: To what?

MR. LACROIX: Yeah. Well, I don't...

MR. BEDFORD: To whether or not it attracts as sports commercial fishery.

MR. ZAUGG: I don't want to get into an argument about that again, we've already done that a million times.

MR. MORIN: Why six acres? Because _____ represent a median.

MR. BEDFORD: Average farm site.

MR. MORIN: Doesn't represent an average farm site.

MR. BEDFORD: Well, that was not our...

MR. MORIN: How did you come out with the six acres?

MS. PRING-HAM: It was determined by our program and it was just an average of all acreage - of all the farm sites.

MR. MORIN: I disagree.

MS. PRING-HAM: I...

MR. CAMPBELL: Well, you - here's what I would suggest, and...

MR. MORIN: I did go to school and know math.

MR. BEDFORD: How big is your site?

MR. MORIN: I have a - three sites that are five acres.

MR. CAMPBELL: Okay. And...

MR. MORIN: One that's still waiting. I have a House Bill 208, site that's still waiting. Pre-approved House Bill 208 that is still waiting. We won't go there.

MR. CAMPBELL: Okay. How big is that site?

UNIDENTIFIED SPEAKER: _____

UNIDENTIFIED SPEAKER: 208 since...

MR. CAMPBELL: _____ - how big is that one?

MR. MORIN: That's another issue. Right now it's five acres. They were originally auctioned to us at 10 acres. We were verbally told we could take anywhere from one to 10 and then expand it as we needed it. But apparently that has been taken away, and now we're stuck with whatever we took in the first place.

MS. PRING-HAM: Is that a DNR issue?

MR. MORIN: No, that's you guys. DNR's been great with everything.

MR. CAMPBELL: But 208 is one of the things you want to talk about here before we got this, so.

UNIDENTIFIED SPEAKER: _____.

UNIDENTIFIED SPEAKER: This is too _____.

MR. CAMPBELL: And in the issue of - just so I can understand - in the issue of 2,000 pounds...

MR. MORIN: Personally, I don't have any problem with that.

MR. CAMPBELL: Is that - okay. I was tryin' to figure out who caused the problem.

MR. MORIN: But I disagree that six acres is an average farm site.

MS. PRING-HAM: Why don't we just write this down...

MR. MORIN: Not that that really is an issue. I'm just disagreeing on that fact.

UNIDENTIFIED SPEAKER: Yeah.

MR. BEDFORD: That's fine. Noted.

MR. MORIN: I don't think it's an issue.

MR. ZAUGG: Okay. Why don't we start with House Bill 208 stuff.

MS. PRING-HAM: Okay.

MR. ZAUGG: And we can get to a lot of this stuff just starting with House Bill 208.

So the first thing that needs to be explained to us is - is under the House Bill 208, with these determinations - that should have been water under the bridge, and should have already been determined. There were certain parameters that were in place that are being retroactively applied. And one of the things that I think is an issue with the 208 sites is the fact that these sites have all been determined to be insignificant. Now that's something the department was mandated to do, and should do before anything goes up for lease, and before any of these guys, including me, goes up and applies for a lease. You can't go back and keep changing the rules every time you have a whim. If you make a decision at that point in time, especially under the House Bill 208 stuff, and say that those sites are insignificant, write it down, everybody acts on that, and then we come down the bite now, later on, and there are still House Bill 208 sites that are sitting out there that have a completely different set of parameters that are applied to them now, and now they are no longer insignificant. Now we have to go out and do another survey, when all those surveys were done at that time.

We provide you with the information that were cruise reports that stated that they were, when the department came along and removed a substantial portion of what was reviewed at that time, and then took a whole another set of it and said, "This stuff's insignificant."

Now you come along and now it's got a further classification and set of rules set to it and everything keeps changing. So the question is: Is the department going to stand by its original determinations under House Bill 208, in terms of insignificant - is the department going to stand by any of its original determinations of insignificant on any of these sites? Because it basically changes its mind every couple of months. And everybody here that applied for sites and put money down, still is in limbo, because now we've got to give you \$5,000 to go out and re-review what was already done, that the legislature gave you a couple hundred thousand dollars to do.

So I guess we could start there. What exactly is a review and determination in your guys' mind? Is it like a morphous little thing that can be changed at a whim? Or, is it based on something?

MR. BEDFORD: Well, Gary, I guess that what we had that changed circumstances there wasn't something that the department did sort of capriciously. What we had was, the statute was...

MR. ZAUGG: You got to stand by it, Dave.

MR. BEDFORD: What we had was a statute - what we had was a statute - well, we do stand by the laws of the State of Alaska.

MR. ZAUGG: You stand by what you are interpreting...

MR. CAMPBELL: Let me...

MR. BEDFORD: And we had a statute.

MR. CAMPBELL: Let me just suggest - and, just a second - is - for instance, we'll let you go on and finish everything that you said, because I want to hear everything you said. But I think he can answer most effectively if you let him continue and get his answer out, too, okay?

MR. ZAUGG: Well, one more thing. Is that we fundamentally don't agree on this basis of how to develop aquatic farming. I mean, that really is the issue.

MR. BEDFORD: Uh-huh (affirmative).

MR. ZAUGG: And, so, however the department interprets something is always at odds with us.

MR. BEDFORD: Uh-huh (affirmative).

MR. ZAUGG: So when I hear, "We've gone as far as we can go, and we're - you know, we're pushed back..."

MR. BEDFORD: Uh-huh (affirmative).

MR. ZAUGG: ...I think, BS, because you're not. What you're not doing is, you're not listening or broadening your ideas or your ways to think about these things to make it work. And, instead, you're coming at us with a very restrictive set of rules that continue to narrow things down to the point, now, where it's way worse than it was when we started. I mean, everybody at this table is just fed up with the fact that now we're sitting down here for the fourth time redoing potential regulations that, every time we agree to something, it restricts us further, and further, and further.

And the words that we hear out of everybody's mouth are, "Well, we're bound by this. We're bound by that."

Well, I read one thing - I see something totally different than what you guys are seeing. And I've dealt with it on a federal level with other people, too. And when you're trying to explain something with this department, it is virtually impossible to get you people to look at two sides of it. When I give you a way to solve something, all I hear is reasons why you can't do it, every time.

MR. CAMPBELL: Well, let me suggest. Maybe what we can do today is, we can identify where we may have agreements. We had identify where we have disagreements. And of those disagreements, we're going to identify which ones we feel are productive for us to try to work and say, you know, is there some alternative way of approaching this? Is there something else?

But it's probably also useful for us to say - to identify clearly - I mean, just - I spend way more time on geoducks than I want to. And I'm sure you guys spend why more time hassling with us than you want to. And so what I'm just suggesting is, there are some issues, and I would say this significant amount is one of those issues that - I'm just saying, we can talk about it all afternoon. I'll talk about it all afternoon if you want. But what we'll have done is, I don't think we will have made an advance there and we will not have gotten to a whole bunch of other things where I think we can make some significant advances on things.

MR. MORIN: I'd like to comment on that. I don't think we - the problem here is we got two different precepts. I mean, we feel like you people are doing everything you can to stop us. Everything you can to put roadblocks in the way, and hinder and interfere. And, you know, we get the feeling, looking up at you guys, that you're there trying to do everything you can to eliminate us. Okay? And if you just - if an outside come in and read everything and looked at it, they would get the same impression. Because the fact is, you have made zero positive steps for the benefit of developing the industry. You've done - all your steps have been for the benefit of controlling, stopping - you know - okay? And I realize that you don't see it that way. Okay? I'm just trying to give you our - the way we see it, coming from you, because when have you ever said, "Hey, here's an idea. If we did something this way, this would help these guys do this." Okay?

MR. BEDFORD: Uh-huh (affirmative).

MR. MORIN: No. What you do is say, "Well, if we write this rule, it will put - it will set this limit, and then they'll have a limit they know they have to live with. And that's - and, you know, it might be a positive approach from your viewpoint, but from our point, it's not.

Now, personally, I don't really have the same issues as some of the other guys have, like the 12,000 pounds. Okay? I don't have that issue, because of the style of farming - the method of farming that I wanted to try. I chose sites that fit the type of farming I wanted to try. Okay? None of us really know the ideal way, except for maybe John over here, to do this. He's the only one in this room that...

UNIDENTIFIED SPEAKER: Then we need to spend a lot of this meeting listening to you.

MR. ZAUGG: Really, he's the only guy in this room that's growing geoducks. Anybody else here grow geoducks? We planted them. Do you have a farm down there?

MR. BAKKER: I had.

MR. MORIN: Oh, you did. I'm sorry then. I'm corrected.

So there are two guys here that have grown geoducks. Okay? The rest of us are all trying to figure out how to do it. And we all have different thoughts on how we're going to do it here in Alaska. Okay? And my particular method didn't really have an issue with this 12,000, because I thought I could do it this way. Well, to tell you the truth, I'm starting to learn that I was probably wrong. These guys were probably right. You can't really afford to do this on a piece of ground where you haven't got a little bit to get you going. This is really expensive. And without a crop to start out with, how do you start? Okay.

There isn't a bunch of government programs out there to help us. I've done the research. There isn't. Investors aren't willing to invest for five years. Banks aren't going to do it. I've doing - chasing this for a while.

They say, well, you can buy a few and plant a few and start out that way. Yeah, if you've got 30, 40 years before you make back a profit.

See, the State has control of the resource, and the State should want to develop those resources, obviously, responsibly. But they should want to develop those resources in a manner to create jobs for the communities.

And so the State should be saying, "Hey, we got a fisheries out here and its utilizing this much of the resource, and it can be expanded out this much. But we have a whole lot of this

resource, so let's send some of this resource to develop another industry. Farming. The farming is a good industry because you don't just take it, you put it back. And what we learn in the farming will be beneficial to help over here on this other, where we're just taking it. Because eventually we're going to have to put that back, otherwise we're going to eliminate that industry. So my idea was, what you guys should be doing is going out there and say, "Hey, let's take this area..." - okay - "...and this is farming." And we set this aside. This is farming. We remove the wild stock issue, because we're going to designate the wild stock here for developing farming. All right? And the farmer is going to put it back. Okay? We're not just going to take it and use it up. We're going to put it back, so we all understand that.

We've got an area now that encompasses quite a bit of farms. Let's take that area all...

MR. LACROIX: We'll draw that on the map for you.

MR. MORIN: Yeah.

MR. ZAUGG: Let's take that area already and say, "Okay, we're going to designate that as a farming zone, and we're not going to worry about whether there's 12,000 or 20,000 clams on there."

Let me tell you, 12,000 or 20,000 clams is really insignificant. A hundred thousand clams is really insignificant. When you think about the big picture. You think about the industry that we're creating. The number of jobs we're creating. The tremendous amount of capital that this industry can bring into mostly lower southeast, but, you know, other species that we can learn to do as well further up.

So that's the approach that I'd like to figure out how to get you guys thinking on. Instead of saying, "How do we limit these guys?" Say, "Okay. How do we help develop this?" Not how to limit it, how to put them in a box?

You know, we always feel like, in the fishing industry - and this is another thing that you guys have to realize, we're all on the other side of this industry. We're all divers. We're all out there with permits doing the dive fishery and the farming. All right. So we're not two industries against each other, like you - like, has been tried to create here, and try to drive a wedge - force the two industries against each other. Early days, that's what was going on.

MR. BEDFORD: That's fine. That may have been at some point...

MR. MORIN: Early days, what was going, the issues would be talked about here, and then they'd go over and tell the other guys, "Better watch out, they're gonna do this," you know, and force the two together and try to make the wedge between the two industries. The truth is, these industries can work together beneficially.

So I came to this meeting hoping to convince you guys to maybe step back and look at this differently than you're looking now. Don't look at it, "How can we regulate? How can we compartmentalize and box this in, you know, under strict control?" Look at this, "How do we make this industry move forward? What positive steps can be made?" And I think the biggest one is to say, "This is a farming zone, and we're going to utilize the resources that are here to help kick start and build that farming up. We're going to ask that the farmers replace that, so that we don't eliminate that resources." Because that's what farming is about. It's about not eliminating a resource. It's about returning the resource, harvesting, returning the resource, and cycling the resource.

MR. LACROIX: Let me make one comment.

The question that he's proposing here - or the way I see it from the department's perspective, is that in this situation, geoducks and farming, the department's in the unique position of having to make an allocation through the use of the word "significance." We're actually making an allocation. and normally that's the Board of Fish job. So, you know, it's an awkward situation for the department. You know, they're not in the habit of making allocations, and they're certainly not in the habit of restricting the commercial fishery in any manner. So it's a tough decision. it's against the nature grain of the department. And we're - you know, we're - we don't think we're getting a fair shake on - on this allocation here. So that's the topic of discussion. And, you know, it's a difficult thing for them to do.

MR. CAMPBELL: I appreciate that. A couple thoughts and then Lance and Dave may want to expand on these.

First off, it's very true. Everybody comes to something with their own view of the reality. And I understand and accept it from your view. What you said is, it seems like the apartment is just trying to - "How can we box you out? Shut you down?" Whatever. And I will admit that there is a fair amount of frustration on some folks within the department, because, over and over again, we feel - and we spent a lot of time - I won't even count the hours Dave and I

spent saying, "Okay. Well, can we do it this way, or do it that way?" In every case, trying to figure out ways that literally would make it easier, or better, or less restrictive. But doing that within the constitutional and the statutory restraints we believe that we are under.

And, you know, I mean, the constitution says that, you know, these all belong to the people commonly. He didn't give me the exact language.

MR. MORIN: It does, but then it makes two exceptions.

MR. CAMPBELL: Subject to beneficial uses.

MR. MORIN: There's two exceptions. It makes an exception for limited entry fishing...

MR. CAMPBELL: Right.

MR. MORIN: ...and aquatic farming. So it does make two exceptions. The problem is, it doesn't define those exceptions. And so we don't know what parameters we have to live in.

MR. BEDFORD: So do you want to expand on what we think the parameters are?

MR. NELSON: Well, the parameters that we have been given, interpreting that is the legislature. The legislature tells us what we can do with limited entry. It tells us what we can do with aquatic farming. And we can't - none of these guys can go beyond what the legislature has authorized them to do. The legislature is the sole person and ultimate decider on fish and game issues, so everything - under the constitution. So they have to work within the constraints of their statutory authority.

And some of your ideas, like farming zones, might be good, but it's really questionable whether or not you have this problem, because the commissioner is managing aquatic farming. The Board of Fisheries, independently, is managing commercial fishing. And the commissioner can't - doesn't have the authority to close an area of commercial fishing, only the Board of Fisheries can do that.

So it's pretty complicated, and you probably have to go back to the legislature and say, "We want to create these farming zones. You know, give us clear authority and decide how we can do that. You know, get us there so we can do it.

MR. CAMPBELL: And I want to add, again, on the department's intent. If it was our intent to try to put geoduck farming out of business, that would be real easy. I've got to tell you, that would be child's play. I wouldn't be here today if that was our intent. What's hard is to try to make it work and make it work within these constraints that we have. And that's why we also feel some frustration - we feel - I'm not asking you to accept this - but we feel that we've been working real hard to say, "How can we go up to the limits that are in the statute, that are in the constitution, and make this work." There isn't any reason for me to be down here if we didn't - or any of us to be down here, if we didn't - there isn't any political reason for me to be here. It's not justified by the amount or the size of your fishery. I'm down here because we also believe in the idea that this could be a good thing for Alaska. We've got a long way to go, but we believe this could be a good thing for Alaska. That's the only reason I'm here. I mean, there isn't any political pressure to be here, or anything else.

Again, your idea - you know, it's child's play to kill something. It's a lot harder to make it work. So that is what we're trying to do. Some of the things you're talking about. You know, if the legislature changes the law, then we will look at and follow that law. And what - you know, in terms of what the department would take as a policy position on a different proposal and stuff like that, I don't know. We'd have to look and see what specific ideas were, and things like that.

But what we can't do right now, as Lance stated, I can't - it is not within my power to say, "This is a farming district, and you get it." You know, that - you know, we're going to give private individuals ownership of this resource.

MR. PAINTER: This is Roger Painter.

MR. CAMPBELL: Hey, Roger.

MR. PAINTER: If I might be able to say something.

MR. CAMPBELL: Sure.

MR. PAINTER: I think it's important to recognize that the constitution of the state also addresses the issue of aquatic farming. And they're into another arbitrator in this situation, other than the legislature, and that's the court system. And when the court system looked at the issue, I'd just like to read a couple of sentences from Thompson's decision, which ultimately was upheld by the supreme court.

Here's what Judge Thompson said: "The court, although anxious to avoid a trespass into the executive prerogative of policy making breads potentially conflicting requirements of common use and promotion of aquaculture to protect only significant populations of wild

geoducks. The current absent of leeway in the regulations is unreasonable. The process of regulation is to take a hard look at the problems. Problems confronting the regulator and the regulated, and to reason a method by which both can conform themselves to fulfill the underlined laws, requirements and goals." That's the end of the quote.

I think it's important to recognize that the court - and if he reads the statutes, as well, has put restrictions in on significant populations. Yet, if you go through your requirements for receiving bonds, other issues, those are all aimed at sites with insignificant populations, as well as those with significant population.

I think it's real clear that the department, the State has a little more leeway than they're letting on. And I would bring your attention to the letter I wrote on May 30th to you, Commissioner, where I laid out a number of suggestions of things that could be changed in the existing program, without changing regulations, without changing statutes, without going over those guidelines that the courts laid down, and to provide a lot more flexibility for the farmers, and, I think, make the department's job a whole lot easier. Thank you.

MR. BEDFORD: I'd like to touch back on a couple of things here before you address that particular issue.

My first thing is, you raised the issue of funding. I mean, this is one that we thought about, and believe me, we've had a time, and I spent all that time talking about these kinds of problems. We looked at it like the revolving loan fund that's there for the commercial fisheries. We haven't gotten much since out of the commercial fisherman, that they're really willing to share that. We're in a position now in which our budget is a heck of a lot better off than it was when we first started looking at these kinds of issues a couple three years ago. Maybe there's some kind of room to try to do something there. I mean, I know I start treading into, like, sort of, legislative issues here. But I think we ought to talk about that and see what we might be able to do.

The notion of zoning. This is one that we've talked about as well. The problem that we have right now is trying to figure out how it is we could zone an area and not stumble over this notion. As Roger was just saying, what accounts for a significant population or an insignificant population. We're very willing to explore that.

But let me make one thing just real clear for folks. We do not do legal analysis in the Department of Fish and Game. Whenever the question comes up on how it is you apply a statute? How it is that you interpret the constitution? We go to the Department of Law to get the read from them. We don't do it ourselves. So when we're talking about what it is - the constraints that we have under existing law, that's the advice that we're given from the Department of Law and any advice that we pursue.

MR. PAINTER: I guess, David, I would respond to that by saying you do have the ability to go to the department with a variety of ideas. And let's take a specific.

On the receiving bonds, we're currently having to replace on a 10 to 1 ratio. We bond for 10 seed for every clam that's taken. I would be willing to bet my bottom dollar that you can take that down to a 2 to 1 ratio, or a 5 to 1 ratio and still not have a legal problem.

Those are the kinds of things that I think the department hasn't done a good job in really carrying out the constitutional mandate to promote the development of responsible aquaculture. And that's where our problems with the State really come in.

I do know there are legal parameters on you, but, like, on that specific issue that I just brought up, the department is using the worst case scenario. The 10 to 1 ratio. I know how that was developed. that was developed on a model of the worst case scenario. And if you are mandated by the constitution to promote the development or responsible aquaculture, I think you could be a little more flexible on that. You don't have any statutory constraints on you in that regard. You don't have any other restraints on you. That was simply a judgment call on the department's part, and believe me, it really hurts the farmers.

MR. BEDFORD: Well, Roger, I appreciate that. But I do want you to know that when we were looking at that, we did everything we could to try to ratchet back on the cost. So, for example - I mean, I think if you were to calculate what it costs you to go out and to purchase seed, travel to your farm site, plant the seed, lay down the predator netting, tend to seed, and so on, that it would come out to be a great deal more than the bond that we're asking for. All that we're talking about is the cost of the seed, and none of the cost of actually going and planting it and restoring the site. So we really tried to keep that down.

MR. MORIN: I know. And, we are doing that. And my problem with not - is the 10 to 1 and the price of the seed. The problem I have with that is, you guys didn't even ask us what

those costs were, so where did you get them? Okay? If you claimed to have got them, say, Taylor United. Taylor United plants three geoducks with one surviving. 3 to 1, not 10 to 1. Okay? So - and they're the biggest guy out there doing it. No disrespect.

MR. BEDFORD: No, you're right.

MR. MORIN: No disrespect, because, number two is sitting here.

MR. LENTZ: There are a lot in Washington state.

MR. ZAUGG: But you didn't - I don't know - did they talk to you? Did they ask you what those costs were?

MR. LENTZ: No. I thought they got them from the hatchery itself.

MR. MORIN: I mean, how does the hatchery know. The hatchery isn't planting them. I don't - you know. The reason I object to this 10 to 1 and the price per clam is because you didn't - you didn't build that on good sound information...

MR. CAMPBELL: Actually...

MR. ZAUGG: ...because you didn't talk to the guys doing it.

MR. CAMPBELL: Actually, I think this is a case where you may want to be a little careful of what you ask for. Because, again, we made a conscious decision to just do it at the price of the seed, not all the other costs that were involved in that.

I have a question, though. I don't know this, so maybe you - this is - one, do we have examples in Alaska from any of you guys, or anywhere else, of success ratios for a seed that has been planted, and, you know, three or four years later, survi...

MR. LACROIX: In Alaska?

MR. CAMPBELL: ... - survival rate? In Alaska.

MR. MORIN: We don't have them old enough to dig.

MR. LACROIX: We're getting a little bit of a look at it this year, but...

MR. MORIN: Yeah.

MR. LACROIX: ...it's really difficult to - we can get information on how fast they're growing, but we're getting a really tough read on what the survival rates are.

MR. MORIN: Yeah.

MR. LACROIX: You have to understand, we don't have any ground that was totally clear to the inlet.

MR. CAMPBELL: Yeah. Well, you can tell, rough edge difference, I mean.

MR. MORIN: If you can recover them. But you have to think about this, okay? The method of extracting a clam - okay. We're down there harvesting an adult clam. We're harvesting because we see him. There he is.

MR. CAMPBELL: Right.

MR. MORIN: Okay? It's a lot harder to find a one year old or a two year, or a three year clam.

MR. CAMPBELL: And that's something we want to talk with you guys about in some length, as well.

MR. MORIN: So without being able to go there and specifically recover the given area, okay? Without a tremendous endeavor to dig up an entire, you know, cube of area and see what's in it, it's difficult to have this information this early on.

MR. CAMPBELL: I guess what I'm wondering about is - you know, Roger, you mentioned 10 to 1 is worst case scenario. I'm sorry. 10 to 1 is not worst case scenario. No survival is worst case scenario. And I'm just making the factual and logical point there.

I hope - I dearly hope it turns out that 10 to 1 is vastly over conservative. I'd love it if you're coming in at 3 to 1 or 2 to 1, or something. But what I am saying is, we know that we have different water temperatures, different water conditions. We do not yet have a single case that I was aware of, but - of where we've been able to say, "Here's what our survival ratios are." And, so, you know.

MR. LACROIX: I got two comments to make on it.

Number one, my biggest problem with this bonding is not 10 to 1 or whatever. It's the fact that we are putting up money - in my mind, I've just blown it off. We have no idea of what we have to do to get it back.

MR. CAMPBELL: That's precisely the one kind of thing we want to talk about here today with you. With you all - we are coming to you to ask and have those discussions. That's exactly the kind of thing.

MR. LACROIX: We have no - we have no standard, no funding to implement a standard, and nobody that knows - you know, it's not - you know, it's not there. And so here we're just

kind of throwing this money out there, and, you know, the attitude I have to take is, say good-bye to it. You know, it's really - and the bond is almost crazy.

MR. BAKKER: Yeah. We can't get at it anymore.

MR. LACROIX: It's gone.

MR. BEDFORD: I mean, please understand, this is a useful conversation to have, because our intent, when we did this, was to make the bonding requirement as least strenuous as we could. So we were looking at...

MR. ZAUGG: It's a pain in...

MR. BEDFORD: Well, I understand. We were trying to come up with some way to do it.

MR. ZAUGG: Well, the...

MR. BEDFORD: And the notion is, again, Gary, that we have an obligation in statute in terms of...

MR. ZAUGG: Okay. Okay. Okay.

MR. BEDFORD: ...what we have to do with replacing...

MR. ZAUGG: Okay. Okay.

MR. BEDFORD: Let me just finish what I'm saying, please.

That we had that obligation in statute. We were looking at that. We were trying to figure out how can we go about doing this in a fashion that, a) gets some reasonable level of bond to the State, and that then we can return to the farmer at the point that we can look at it and say we have a bona fide farm here.

MR. CAMPBELL: And a clearly predictable - that you understand and we understand the conditions under which - where you get it back.

MR. LACROIX: I was very, very tempted, before we sent any money in, to ask that question specifically. What do I got to do to get this money back? You know, I have no idea. The statute is not clear.

MR. BAKKER: Commissioner, I would like to ask some questions of Lance.

We do have a bonding requirement here. You know, to the best of your knowledge, is it, you know, possibly a conservative - I'm assuming that, you know, you're coming from a conservative point of view. Is it sufficient - would it be considered sufficient if a farm site were to close down, success or failure, regardless. Is that bonding sufficient in your minds to make up for whatever wild stock is taken?

MR. NELSON: That's going - and, I'm, of course, going to judge that by, was there a reasonable basis...

MR. BAKKER: I'm not talk to courts. I'm saying...

MR. NELSON: That's...

MR. BAKKER: ..._____ department.

MR. CAMPBELL: That's probably more of our...

MR. NELSON: That's the only answer you're going to get from the Department of Law or any attorney.

MR. CAMPBELL: That's probably more of our question than his question.

MR. BAKKER: All right.

MR. CAMPBELL: I mean, that is my guess.

MR. BAKKER: Okay.

MR. CAMPBELL: And I will tell you, we think we're sort of out on the edge of what is involved. I don't think - you know, if there were a lot of different sites that have closed down all at once and didn't reseed, or reseeding hadn't taken, or whatever. You know, we would do the best we could, but we'd also, to some extent, have to say we're gonna probably have to depend on nature to some extent, and hope some, and do some other things. Because, really, we...

MR. MORIN: Well, we know that you'll reseed it.

MR. CAMPBELL: Well...

MR. MORIN: The bed doesn't reseed itself.

MR. CAMPBELL: Okay. If we're gonna get into that conversation...

MR. MORIN: The bed's reseeded by the one upstream.

MR. BAKKER: Excuse me. Could I get an answer before you all jump in.

MR. CAMPBELL: Yeah.

MR. BAKKER: Thanks.

MR. CAMPBELL: So I think we're as low - and, again, maybe this conversation can help us see something differently. But right now we think our bonding requirements, as low as we

can go, and legitimately pass a red face test that we have the money sufficiently to go in and reseed - you know, if we have to use that bond to do that.

MR. BAKKER: Okay.

MR. CAMPBELL: The other question...

MR. PAINTER: Commissioner, if I might be able to insert...

MR. CAMPBELL: Roger, you insert anything you want, if you quit calling me "Commissioner." We've know each other too long.

MR. PAINTER: Okay, McKie. I think it's real fair to point out in this conversation what the statutes say. And the statutes say that geoducks need to be replaced. What you've taken needs to be replaced when you give up the site.

I think that's an important thing to keep in mind when you're talking about keeping these bonds in place kind of indefinitely, and with the statutory provision that you really don't need to have them there until you give up your site.

I think, if you look at the department's regulations, it suggests that if a farmer reseeds the plot, he ought to get his money back. However, that's not the way the program is really being carried out now. But that's what you wrote in your regulations. And, again, the legislature said it didn't need to be replaced until you left.

And, again, I would bring you back to what the court said, that the restriction should only be on significant population.

MR. CAMPBELL: Uh-huh (affirmative).

MR. PAINTER: And I think those - if you keep all those things in mind, I would say the department can go a lot farther and making this program easier for the farmers.

MR. BAKKER: Commissioner?

MR. CAMPBELL: McKie works fine.

MR. BAKKER: So - I mean, we're having a discussion right now as to the bonding requirements.

MR. CAMPBELL: Uh-huh (affirmative).

MR. BAKKER: From what I hear you saying is, is right now you're not willing to go any lower.

MR. CAMPBELL: I - wait a minute. Be careful.

MR. BAKKER: Okay.

MR. CAMPBELL: I am not saying we are not willing to go any lower, but what I am saying is, after some pretty exhaustive kicking around, trying to figure out how we could get as low as possible, we have gone as low as we can figure out. I'm open to - we're open to discussions, but...

MR. MORIN: May I say something? Well, after what Roger said, I'm wondering, why are we bonding on the insignificant, then, if the court's decision was that those restrictions were applied to the significant stocks, if they were taken, then why are we bonding on the insignificant?

MR. NELSON: If I could address that. It's a little more - it's more complicated than just judging from the superior court, Judge Thompson's decision here.

Judge Thompson issued a decision - he based his decision on the constitutionality. What he could do. And he decided that under the constitution, we could grant some authority - we had the constitutional right to grant some authority for the harvest and sale of wild geoduck stocks on farm sites.

The supreme court didn't rule on that. They decided that they would not look at the constitutional issue at all. They didn't uphold that part of the decision. They decided, "We're not going to look at the constitution because we can resolve this on statutory authority basis."

The supreme court said, "You don't have statutory authority to even allow the harvest and sale of one geoduck, period. You have no - your statute doesn't allow you to allow the harvest and sale of even - even insignificant amounts under the statute."

So here we are, we've got - we have some indication of, you know, what the constitutional limits are, but we have another standard that says no statutory authority could do anything at all. Even if the constitution allows you, the legislature hasn't done it yet under the constitution.

That's what we were faced with when we back to the legislature again. The legislature then adopted a law that didn't say - as far as the bonding requirement - reseeding requirement - it didn't say on - you know, on more than significant amounts, you have to

reseed. It said - it was a blanket requirement. You had to leave - no matter what the presence of stock on there, you had to reseed it. In fact, the statute assumes that there won't be any significant amount of stocks on there, because it says we can't allow a farm site with significant stocks on it.

MR. CAMPBELL: Actually, yeah. And just to emphasize that point. The actual language of the legislations says - it talks about the permit, and you're going to restore it to the population level that existed on the site when the permit for the site was initially issued by the Commissioner.

MR. NELSON: Right. Yes. So, what we - could the legislature have done more constitutionally than that? Could they have allowed more? That's a good question. And maybe they could have, but that's not what the department is stuck with. The depar...

MR. CAMPBELL: No, no. When you - Just a second. Gary wants to say something.

MR. LACROIX: I don't care if it's 20 to 1. I don't care what the price of seed is. The issue was, how do we get our money back, you know? The understanding that we had, and that we thought, going into this was, we buy some seed from the hatchery, we plant it on our farm site, and then we get our money back. But that's not what's happening. It's evolved into something else, you know.

At the time, when - you know, when we - what we thought was going to happen, these other issues didn't matter, because we were going to get our money back as soon as we proved that we put seed in the ground. And not it's evolved into something else that makes these issues of price and replacement ration important. Before it was just a question of, you know, how many months your money was tied up. Now we're talking about, you know, a growing capital that's going to be in place forever.

MR. BEDFORD: Uh-huh (affirmative).

MR. LACROIX: You know, and now it's a big issue, you know. It says right here, "After the permit holder has complied with the required reseeded stock, the permit holder may submit a written request, along with a transport permit and a bill of sale from the hatchery to the commissioner to release the certificate of deposit." Okay? That's what we thought we were working with. Okay?

MR. BEDFORD: Uh-huh (affirmative).

MR. LACROIX: Now it's evolved into...

MR. BEDFORD: Well, there's a...

MR. LACROIX: ...we're gonna have to keep it forever.

MR. BEDFORD: There's a second sentence there, though.

MR. LACROIX: Okay. "Commissioner will return the certificate of deposit to the permit holder no later than six months after he has determined that the permit holder has complied with the required reseeded of wild stock."

MR. CAMPBELL: Okay. So if I can - just a couple things. One is, we have a legislative - clear legislative mandate that we have to, you know, provide for the reseeded. And so we're doing that through regs, through the bond. Okay? Then the question is - and right now we are working on this 10 to 1. And no one would be more tickled than us if we could start growing, and proving up and finding that our ratio is much better than that in Alaska. And I think we'd be very, very open to reducing it to whatever, you know, we're proving we can do here in Alaskan waters, and stuff.

But the question that I have, and that we want to have the conversation about is, is how it is most effectively that - it says the "commissioner," but it's really Fish and Game.

They don't want me to do much diving these days. How, basically, to determine that you complied with the required reseeded of wild stock. And that's what I'm hopeful of. You know, it's part of the reason we're here, is to have that conversation. So we have - okay. Here we have the bill of sale for the seed. And then, two, how do we determine that that seed's actually been put down there. And this isn't casting, you know, aspersions on any of you guys. But I'm just saying, you know, we deal with - especially with industry representatives. We deal with a wide variety of folks. How do we determine that that seed has been used and planted and is down there. And, we say, "Yeah, it is." How - what's the - how can we determine that to give you all of your money back in the fairest possible way?

MR. BAKKER: Could I - before we get into kind of nuts and bolts...

MR. CAMPBELL: Sure.

MR. BAKKER: ...because that's kind of the direction - it's when we have our policy, you know, and then it's kind of implementation of it.

MR. CAMPBELL: Sure.

MR. BAKKER: You know, you started the conversation with, there's certain things that you have all gone as far as you're gonna go with voluntarily.

MR. CAMPBELL: Whether it's - the 2,000, 6,000. We got that. Yeah.

MR. BAKKER: The bonding amount seems to be another one right now.

MR. CAMPBELL: Then we have - and we have to bond. Right. That - yeah. Again, as I said earlier, on the amount, we think we've worked as low as we can figure out how to go. I'm open - we're open to discussion, but we really have worked real hard on trying to figure out how well we can get down pass the red face test on that. But, we open to discussions on that.

MR. BAKKER: What other things that are kind of...

MR. CAMPBELL: I guess it's the significant amount that's probably the biggest thing...

MR. BAKKER: That's the key. Right.

MR. CAMPBELL: ...that I just wanted to do. I don't know. I...

MR. BEDFORD: Probably reasonable compensation.

MR. CAMPBELL: Yeah.

MR. BEDFORD: That's another one that we worked over quite a lot.

MR. CAMPBELL: Right.

MR. BAKKER: And that's past the insignificant stage.

MR. CAMPBELL: Right.

MR. BAKKER: Or, the significant.

MR. CAMPBELL: Right.

MR. BAKKER: Is that right?

MR. CAMPBELL: Yeah.

MR. BAKKER: Is there any other ones, too? I mean, what I'm trying to do is find out where...

MR. CAMPBELL: Right.

MR. BAKKER: ...I need to bother going.

MR. CAMPBELL: The only other thing this, in general, that I would say is, and I don't have that specific issue, but is there something where the legislation says something specifically, it just then do us good - it doesn't do any of us any good to say - ask us to do something different - we don't have the authority to do.

MR. NELSON: Can I - I was just going to say there may be - we're doing the bonding requirement in a certain way now. There may be other ways to do the...

MR. CAMPBELL: Right. Sure.

MR. NELSON: ...bonding requirement that are more flexible or less onerous than what you're doing right now through joint savings accounts, or something else, that wouldn't have the same - wouldn't have the same, you know, administrative burden.

MR. LACROIX: Well, for example, I mean, we - first of all, you know, the legislature is not operating out there in the ozone all by itself, you know. We got together and we went and we made proposals and we've had - we - these people here, all of us were involved in it. And the legislature pretty much just kinda says, "Well, if you guys can live with this, and you made a deal, and you all can live by it, then we'll let you take a shot at it." I mean, you know, that's the way it worked in this case anyway. I'm not sure it doesn't work that way in all cases. But we thought we had understandings about how this stuff was going to be implemented. And, you know, once we got the authority in here we were a little disappointed in those results, you know, and we want you guys to know that, you know. This isn't exactly what we had thought we'd agreed to. And there's several other issues where it didn't come down to the way we thought we had an understanding on. You know, and hopefully we'll get that flushed out by the time the day is over. But, you know, it's a question of trust and understanding and agreements that we thought we had made with people. So, you know, we are disappointed. You know, it isn't just like, you know, we went in and made these rules.

MR. CAMPBELL: Yeah.

MR. LACROIX: We all did, you know. I mean, the legislature had very little input in it. That's the mechanism. I just, want to remind people.

MR. BEDFORD: Well, it was, from my perspective, I thought, kind of a watershed event. Because it had not only the folks in this room, but it also had the divers involved in it. And the department basically stood back and watched. We did very little in terms of how that developed. So the language that you ultimately wound up with was pretty much the language

you guys wanted. We were involved in the original drafting on that thing with - sort of a hands off approach to it in providing language to SARDFA and to ASGA and saying, "What do you think, guys?"

So, what you have, Steve, is pretty much what you guys asked for.

MR. LACROIX: Yeah. Except for the regulatory interpretations. It's not exactly what we asked for.

MR. BEDFORD: Yeah.

MR. LACROIX: You know, just like this issue that we're talking about with the bonding. We thought that we'd show a receipt that we purchased the seed and we'd get our money back. That's what we thought going in here, and that's not what's being applied to us, you know.

MR. CAMPBELL: Let me ask you guys: If you were in my position, okay? And you have a legislative mandate that says - that requires, when you get off, that the - basically you're going to restore it to whatever level it was before. Okay? And then - okay, so that's my mandate. I got to somehow make sure that that happens.

On the one hand I want to have the least onerous requirements I can on the industry. On the other hand, I don't want to do something that - Gary's first in response - but let me just finish. But I also don't want to be negligent in my duties, nor does anyone in the department, where we create a situation that - not by you guys, but, quite frankly, easily invites fraud because it's a lot cheaper and easier to come up with a bill of sale for seed, than to go through everything that it takes to plant it - whatever it has to do to cultivate - you know, to do all that stuff.

And, frankly, I don't think I can pass the red face test if all I did is, show me a bill of sale and, you know, okay, that's great. Draw - you know, here's your check back.

And so what would you all suggest that I can do? And, you know, I guess I sort of believe in that sort of trust, but verify that it works well for everybody. I mean, I really do. And - I don't know.

MR. LACROIX: Why wouldn't somebody...

MR. PAINTER: McKie, I would...

MR. LACROIX: ...buy seed and not plant it.

MR. PAINTER: I would really come back to that and say, well, why did the department write a reg that says just that. That you give a bill of sale then you get your money back.

MR. LACROIX: Right.

MR. PAINTER: That's what I - that's the department - that's what this department's _____ says.

MR. CAMPBELL: Roger, the reg says you give a transport permit and a bill of sale. And then it says, after the commissioner has determined that the permit holder has complied with the required reseeded. And I guess what I'm saying is, there is a - it is - how do I determine that? How do I pass that red face test to determine that? And the answer is, why would you buy it and not reseed it is, if you are, for whatever...

MR. LACROIX: Cheaper.

MR. CAMPBELL: ...reason, moving on - if you have multiple sites. If you have - I mean, I could think of lots and lots of financial reasons that it would be in a person's financial interest not to reseed, at that point, that they're going to finish with it.

MR. CAMPBELL: Let me - Gary's been - keeps waving his hand at me.

MR. ZAUGG: Okay. First thing, I guess - and you're reading, like, a half a sentence out of a statute and saying that that's your mandate.

MR. CAMPBELL: Wait a minute. Here, let me read you the whole subsection.

MR. ZAUGG: Okay.

MR. CAMPBELL: And we're talking just about - I mean, we're talking about bonding. But, I'm talking about...

MR. ZAUGG: And one thing I want to clarify too, McKie, is that we had four different sets of modified permits, up until this last one...

MR. CAMPBELL: Uh-huh (affirmative).

MR. ZAUGG: ...that included the language in 16.40.100(e). Which, it wasn't in this last statutory go around that 16.40.100(e) was created. It had been around for several years, and we had permit terms that have had that clause in it. And this group right here in this room - you guys - were the ones that had now interpreted 100(e) to be this bonding thing that we're talking about now. Prior to this, this never existed.

MR. CAMPBELL: Okay.

MR. ZAUGG: And you're kind of - and now you're just taking a half a sentence of the entire...

MR. CAMPBELL: Let me give you the whole thing. It says, subsection (e), in its entirety.

MR. ZAUGG: Okay.

MR. CAMPBELL: It says, "Upon the expiration or termination of a permit issued under this section, a person who holds a permit for an aquatic farming site where wild stocks of shellfish indigenous to the site or culture shall, as a condition of the permit, restore the wild stock of shellfish as consistent with sustained yield management of the wild stock to the population level that existed on the site when the permit for the site was initially issued by the commissioner."

Okay. So...

MR. ZAUGG: I understand.

MR. CAMPBELL: First - so let me just finish. The way I read this - okay? The way I read this is there is a requirement that when you finish you got to leave it basically the way you came in and you got it. And that there is a duty upon me to make sure that's the case. And, so, then the question is: How do I make sure that's the case? And what our current reg says, in its entirety - well, subsection (b) in its entirety - I'll read you the whole thing if you want.

"After the permit holder had complied with the required reseeding of wild stock, the permit holder may submit a written request, along with a transport permit and a bill of sale from the hatchery, to the commissioner to release their certificate of deposit. The commissioner will return the certificate of deposit to the permit holder no later than six months after the commissioner has determined that the permit holder has complied with the required reseeding of wild stock.

So, I guess - again, my question to you guys - I'm asking you, how do we make this work?

MR. ZAUGG: Okay.

MR. CAMPBELL: How do we - how can we, as a department, know that you've done what the statutory thing is? And don't - again, don't take it personally. Think of it as industry-wide. How do we determine that?

MR. ZAUGG: Okay. First of all, your interpretation of what that is saying is not based off of what the statute is actually saying. Because it states specifically in there that you will replace those clams according to sustained yield management of that species. Does it not specifically state that?

MR. CAMPBELL: Yeah.

MR. ZAUGG: And you guys are completely ignoring the fact that sustained yield precedent in this case is not, one user group goes out and pays to replace it, and another user group utilizes the exact same animals and doesn't have to replace it at all. So there's issues here that are, in terms of uniform application that comes to mind, that we shouldn't even be having to do this in the first place at all, because you can't take two different approaches.

MR. CAMPBELL: Gary, I...

MR. ZAUGG: You're saying, on the one hand, mother nature can replace it, and on the other hand, they can't. So you're - the whole concept I brought up earlier of your guys' interpretation of what these things say, as compared to us, is always different. And I don't understand how you guys think you can get there and defend having us have to do this, basing it on, that this is how you guys are interpreting it, completely ignoring the fact that you've taken certain steps in order for Lance to conduct - you know, going from the Board of Fish - you guys took a position on sustained yield. Plain and simple.

And how do you square it with us that that concept - the scope of the Department of Fish Game is sustained yield? How do you take that position and then apply it to us and have it be - we have to pay and bond down. I mean, that's like saying that one group, sport fishermen, have to do it a hundred percent different than the commercial fishermen. And in this case I'm willing to say that the way this is being applied to us, and the way that you said that sentence, is not taking into account that the statute states, according to sustained yield management.

If you just - if you just take a step back and say, according to sustained yield management, which has to be uniformly applied in all the groups, then why are we even talking about this? Because we shouldn't be having to do it in the first place. If you can conduct a commercial fisheries on top of an aquatic farm site...

MR. CAMPBELL: It _____...

MR. ZAUGG: ...and remove all clams, and they don't have to pay a fricken penny, and they we go out and harvest the insignificant clams, and we have to replace them to \$1.25 per animal, how is that even fair to start with? I mean, it's just beyond me.

MR. CAMPBELL: Let me - I have to admit I'm impressed and I admire the creativity of your interpretation. But I think - you know, and I'll let Lance speak to the legal aspects. But I think your interpretation of this would render the statute meaningless. I think there's a general rule that you don't construe statutes in ways that render them meaningless.

The basic thing that I think - you know, and I understand where you're hung up on this is, "Why can't you just treat us like fishermen? You know, they get it for free, and we have to pay, and why can't you?"

And the basic difference is, they go out and they compete in a common property fishery - and, again, Lance, please give me the better words...

MR. NELSON: You're doing fine so far.

MR. CAMPBELL: But, in this case, what you all are asking for is an exclusive right, basically, for us - for the State to give you ownership of a specific portion of a common property resource.

MR. ZAUGG: I think you're splitting hairs then.

MR. CAMPBELL: No, I'm not. I - you know, Lance...

MR. MORIN: You're splitting hairs.

MR. CAMPBELL: ...do you want to speak to this? I...

MR. ZAUGG: You haven't - what's the point of making an insignificant determination then? That's the whole thing we got in the beginning. You're making a determination that it's insignificant and we're supposed to be able to utilize it. So if we can utilize it, then why is our program to utilize it so much more restrictive than everyone else.

MR. CAMPBELL: Let me just ask you - I mean, when you say this means that we shouldn't have to do anything. How, then - what do you think is the point of the stuff about, restore the wild stock to the population of the level that existed? I mean, why do you think the legislature wrote that?

MR. MORIN: Well, okay - but here's the problem in that. Is, you went to those sites and you had a depletion harvest on those sites.

MR. CAMPBELL: Uh-huh (affirmative).

MR. MORIN: So the population - the level it was prior - okay? And then you go in there and take everything off of it, and now you come back and say, "Well, if there's anything left - whatever is left, you guys got to replace." I mean, that doesn't make any sense whatsoever.

MR. BEDFORD: Well, you know...

MR. MORIN: What about the stock that was originally there?

MR. BEDFORD: I've got...

MR. MORIN: The statute says it has to be replaced. Are you guys going to replace it?

MR. BEDFORD: You know, the depletion fishery that we conducted was not something we wanted to do. That was specifically and strictly for the benefit of the industry. We didn't want to have anything to do with that. We had a bunch of farm sites out there. We had a hatchery that was going belly-up that needed to sell some breed stock. We had a bunch of farm sites. We had no statute that allowed us to give any common property to the fishery - or resource. We needed to figure out some way to create an opportunity for people to go...

MR. MORIN: Go forward.

MR. BEDFORD: Yeah. To move ahead and start farming. And so we said, well, what the heck can we do. We're tearing our hair out in how to deal with this.

We said, "Okay. Look, we'll fish it down. And at the point that the fishermen stop fishing, that's insignificant."

So we were trying our hardest to try to accommodate the needs of interest of the industry. Now, if that's something that is unsatisfactory to the industry, I'm pleased to hear it.

MR. MORIN: But you made it - you made it in this exclusive fishery on an exclusive zone - it wasn't a normal...

MR. BEDFORD: _____.

MR. MORIN: ...open access fishery.

MR. BEDFORD: Yeah, it was. Yeah...

MR. MORIN: It might have been if it included - the farmers...

MR. BEDFORD: Yes, it was.

MR. MORIN: ...could'a fished, too, right alongside the other guys.

MR. BEDFORD: If you had a permit, you could fish.

MR. MORIN: Okay.

MR. BEDFORD: I'm afraid it was an open fishery.

MR. MORIN: But limited entry creates an exclusive right to a resource.

UNIDENTIFIED SPEAKER: To a group.

MR. MORIN: Okay. To a group.

UNIDENTIFIED SPEAKER: _____...

UNIDENTIFIED SPEAKER: _____...

MR. MORIN: But guess what? Everyone of those people can apply for a farm site.

Everyone of them. So it's not exclusive for a farmer either, because everybody can go apply for a farm site.

MR. CAMPBELL: Gary, let me share one of my most basic tenants that I found...

MR. MORIN: So what's the difference?

MR. CAMPBELL: ...in a long career, both in and out of public service, but, always dealing with natural resources. Is, I find - I run into situations all the time that I find the constitution just damned inconvenient. But, frankly, I've never made any headway by trying to pretend it doesn't - you know, that it doesn't apply and doesn't exist. And to the extent that legislation exists and is specific about stuff. There are times I've been involved in going and changing the legislation. If you don't like legislation - nobody here is saying don't try to go back and change it. I mean, you know, we'll look at each proposal - you know, the department will take policy positions on whatever those may or may not be. But we're not saying, don't go try changing it.

The thing that I am saying to you guys is, we believe that there can be a future for the geoduck industry in Alaska. We'd like to work with you. We generally would like to work with you.

I guess what I'm saying, that - you know, we've talked about it the entire time. We're going back on the plane. But we can talk about it right up until the plane takes off. Is, unhappiness with what we believe the constitution says, or unhappiness with what we believe the legislation says. And ultimately that is, to some extent, why they have courts and judges say things, and stuff. People - if two different sides genuinely believe - have two such conflicting views of what the statute or constitution says. You know, a judge gets to tell us.

But when you're asking, what can't we do? What I'm telling you is: we can't, and aren't going to go beyond what we believe the legislation and the constitution tell us we can do. And I'm not going to do it. Ever. And I never have. And I'm never gonna.

And, so, I guess what I'm saying is, if we want to identify things that you want to go try to change in the legislation - if we want to try to identify where we just have basic disagreements about where the constitution is, and maybe we collectively need to take it to court and get a judge to sign. Or, if we - or, maybe - if we want to figure out - okay. We may have these certain fundamental disagreements, but where are all the other things that we can work out in the meantime and be making progress on? I guess that's why we're sorta here.

MR. BAKKER: You know, you proposed a question right to begin with.

MR. CAMPBELL: Yeah.

MR. BAKKER: Which is, what would we do in your shoes? Or, how can we help craft a program that helps you with that...

MR. CAMPBELL: Yeah.

MR. BAKKER: ...one portion of the statute. Right? Which is determination. The short answer is, I haven't got a clue. What kind of program you can put in place that wouldn't, a) kill the business entirely, or, b) be so financially onerous on the Fish and Game to attempt it, that it would bankrupt you all. So...

MR. MORIN: At some point you got to trust us.

MR. BAKKER: You know, we're kind of in a quandary there ourself. I mean, that's a question - I don't know if there's a - there's a little bit of answer, especially at the beginning of a farming operation, right?

MR. CAMPBELL: Yeah.

MR. BAKKER: You know, it is new to Alaska. So, I guess I put the question back to you. What do you all want to do?

MR. CAMPBELL: Well - and I know it hadn't met you alls' approval, but we've been trying real hard. I mean, on this bonding requirement, we really spent a lot of time trying to figure out how far could we go. And, you know, we tried to consider the fact that - you know, certain people are liable for misdemeanors if they don't do certain things, and build that in, you know, and sort of is part of the theory. And, you know a lot of things.

And what I'm saying is, we made our best current effort, given the knowledge that we have. If there's knowledge we don't have, and in our discussions about - you know, and I really do want to get to, how can we tell? I mean, just literally, how can a diver tell? How can Mark tell, if he goes down and looks at a site - can he tell - is there a way you all can help him to tell one year? Six months? Or one year? Or two years? Or four years? You know, what is it. What's the best way to tell? Is it a - do we agree...

MR. MORIN: You can come down when I'm planting, you can see.

MR. CAMPBELL: Maybe. Maybe. No, seriously. Maybe.

MR. MORIN: Other than that, you can...

MR. CAMPBELL: On-site observing.

MR. MORIN: ...come down - up to about six months we may leave the mesh down. It really depends on the environment. If the mesh is picking up a lot of seaweed and stuff, we're gonna want to pull it out of there. Right.

If it's not - if it's in an area with a lot of flow, lot of flushing, and it's not getting - creating kind of a suffocating mat, you know, we might leave it down longer. The longer the better. Okay? Because it keeps the starfish away, and they're our biggest predator.

So, I mean, you can come down and see the mesh there, but once we pull the mesh out, other than the little flaggings that we - some of us used to mark off where we planted, so we plant the next one next to it. You know, we're not willing to disturb those clams until they're at least four years old. You know...

MR. CAMPBELL: And...

MR. MORIN: ...because you can - your nozzles can destroy a large area of babies, but it won't hurt adults any.

MR. NELSON: At four years old are you gonna - are you gonna start seeing shell or some proof?

MR. MORIN: I think - I think - John, when do you think you can see shell about?

MR. LENTZ: Well, you can - if you know exactly where they are, you can see them at one year. But they're tiny little things and they hibernate, too. And they do up here more than they do down south.

MR. NELSON: Right.

MR. LENTZ: And, so, I see - you know, where you're going with this, you know, is, you want to go out and take a survey to make sure that the amount that was taken off there as wild product - other than what was planted and harvested - is there when the farm shuts down, or passes to the next hands.

MR. BEDFORD: Yeah.

MR. LENTZ: And I see a real problem with that. And, you know, that seems to be where it's going is that they're ending up gonna be a survey out there. I had a 208 site. It was surveyed before I ever got there, and found to be insignificant. And then there - someone went back out there and decided it was significant, so there was a change. I assume it's the same survey group. I don't think it was the same survey methods.

MR. CAMPBELL: John, I think we're mixing two different things right now. I mean - well...

MR. LENTZ: Well, it's not really, because...

MR. CAMPBELL: ...I'll just - we're just trying to get to that.

MR. LENTZ: ...you're saying, just because you buy the seed doesn't mean that you put them out there.

MR. CAMPBELL: Yeah.

MR. LENTZ: So the only other way you can tell is to go out there and look for them. Right?

MR. CAMPBELL: Well, here's what I'm asking you guys. I'm asking...

UNIDENTIFIED SPEAKER: Well, that's...

MR. CAMPBELL: ...you - I'm saying, okay - how can I - if you're in my shoes, how could you feel comfortable saying, "Yep, I know it's there." And, I mean, the ways that I thought of - I thought of three potential ways. I'm not sure I like any of them.

UNIDENTIFIED SPEAKER: I'll...

MR. CAMPBELL: But one is - you know, you said, have somebody on site when you plant. That's one that I hadn't thought of before. But, you know, maybe that's one way.

One way is - and that would probably - maybe the surest way. One way is, you wait whatever requisite amount of time it takes to be able to spot them in a survey. And you do that. I guess I wondered - I'm not proposing any of these as being answered. But, you know, I wondered about, if you do a couple of grab samples, you know. And you do - you - it seems to me you can do a statistically thing. "I'm gonna do three or four grab samples in a site, and each site ought to show roughly, you know, this amount..."

MR. MORIN: It would depend on the density of your plant, survival...

MR. CAMPBELL: Yeah. Yeah.

MR. MORIN: ...per density.

MR. BAKKER: I'm sorry. Could you complete what you were saying? It was a grab sample to determine what?

MR. CAMPBELL: Well, I'm just saying...

MR. NELSON: To be an index...

MR. CAMPBELL: That if you have a site. Here's where we planted. And you come down, and I may be - Mark, get me - give me the head shake if I'm going astray here, and stuff. But, for instance, I - when I was in my private business, which, when I left Fish and Game and came back to Fish and Game, and stuff. We did a lot of diving on the A.J. Mine project, and stuff. And we did a whole lot of grab sampling, and statistical evaluation of stuff of what was there.

You know, you ought to be able to say, "Okay. I have a one-acre site. I'm gonna do a limited number of grab samples and pull them up and run them through a sieve, and I should be showing one-year old geoducks," or whatever. And if I am, I'm going to assume that that's the same all the way through. You know, I don't need to go down - you know, here - here's your check back. And, yeah, you would sacrifice, you know, two or three places where you did a grab sample. Is that worth it to you to get your check back sooner? I don't know. You know - I mean, I don't know if that even works at all. I'm just throwing up ideas. I'm hoping you all will come up with a better idea.

UNIDENTIFIED SPEAKER: The truth is that...

MR. MORIN: Do you want us to _____ so you can regulate us more? 10 years from now, none of this is gonna matter.

UNIDENTIFIED SPEAKER: They want _____ give you their money back.

MR. CAMPBELL: I want you to find a way to get your check back. I'm not making any money off this.

UNIDENTIFIED SPEAKER: _____...

MR. CAMPBELL: If I were getting interest - we're not getting any.

MR. MORIN: I'll send you a letter when somebody takes the seed out of the hatchery and you'll know - or, the nursery, excuse me.

MR. CAMPBELL: Nah, I'm not worried about that, because you're gonna have the

_____...
UNIDENTIFIED SPEAKER: _____...

MR. CAMPBELL: ...and you're going to have the transport - is the question of - is the question of planting.

MR. MORIN: Yeah, it's gonna have - you know, initially...

MR. LENTZ: Was it a question of planting, or a question of viability.

MR. MORIN: ...the first few years.

MR. LENTZ: There's a difference there.

MR. CAMPBELL: Well, yeah, I...

MR. LENTZ: So you can plant and they're not viable,...

MR. CAMPBELL: Yeah.

MR. LENTZ: ...and now you have a program that criminalizes it.

MR. LACROIX: And I'm being real careful about where I put seed, because, you know - well, they might not grow here and I'm gonna go to jail.

MR. CAMPBELL: Well...

MR. LACROIX: You know, that's what my permit says. You know, my new permit. You know, it's not - it's not - you know, it's not only can you - like John says, you take all your money and fail, but then you've got to go to jail, too. You know, I...

MR. CAMPBELL: I don't think anybody's gonna - you plant this viable seed and it doesn't grow, and I don't think anybody is going to be sending you to jail.

MR. MORIN: But...

MR. LACROIX: I know somebody _____

_____...

MR. MORIN: We pay you, we buy the seed, we plant the seeds. We paid twice. And then you go to jail.

MR. BAKKER: Well, and that's - and there's - there's the _____, which is, you're - what you've thrown out is essentially how to check to see that it's viable, besides the planting, is it viable? And, you know, the failure - if you fail, then the statutes say you go to jail. You're criminalized.

MR. LACROIX: As a result.

MS. PRING-HAM: Now, wait a minute...

MR. CAMPBELL: Let's ask Lance to weigh in, because I don't think the statute says that actually.

MR. NELSON: Well, the statute doesn't say that. There are statutory penalties that attach to our statutes, but I don't think that's what's envisioned under the permit program. I...

MR. CAMPBELL: Intent is a...

MR. NELSON: What happens?

MR. CAMPBELL: Intent is one of the necessary parts of almost all criminal violations.

MR. NELSON: You may - I mean, the worst that could happen is you're probably going to pay some kind of fine.

MR. CAMPBELL: And let me say this: I think - maybe...

MR. MORIN: I think you lost your bond.

MR. CAMPBELL: Maybe we - what's that?

MR. MORIN: I thought that was the fine.

MR. NELSON: Well, that might be part of it, yeah.

MR. CAMPBELL: You know, I mean, one of the things maybe we're facing - and just - you know, this is the worst case scenario that Roger was talking - it's not one _____. It turns out, for whatever reasons...

MR. LENTZ: It could be zero.

MR. CAMPBELL: Yeah. That stuff just doesn't grow up here.

MR. LENTZ: Well, how about negative?

MR. NELSON: Or any specific site.

MR. CAMPBELL: A specific site. You know, yeah, we have a specific site where you just can't grow. And if you have a farmer who has come in and done everything right, and tried to restore things. You know, I don't think we're interested in trying to penalize you for having done everything right. But, also, in good faith, we've got to be able to say, "Yeah, we did everything right." Not just...

MR. MORIN: I've got a question.

MR. CAMPBELL: Uh-huh (affirmative).

MR. MORIN: Okay. So - this is not as big an issue, like I said, on my sites, because I got one site that they took one geoduck off of when they went in there on that big old harvest thing, because there's none on there.

I got another site where they took 540 pound, which is, what, 180 ducks, or something. So - and then the other one's nothing. And, so, it's not as big an issue with me on this 12,000 and all the other stuff. But, I go in and I restore that 10 to 1. Five years from now I'm gonna want to harvest those. Am I - do I have to leave those alone? Nobody says anything about that.

MS. PRING-HAM: Well, you're going to leave what there was - what the wild stock was.

MR. MORIN: When I leave.

MS. PRING-HAM: When you leave. Oh, yeah.

MR. MORIN: When you leave.

MS. PRING-HAM: When you leave. So that's not...

MR. CAMPBELL: Right.

MR. MORIN: But, are you guys gonna let me take that and replace it five years from now?

MR. CAMPBELL: We went through that whole sequence. Do you want to talk about that?

MR. BEDFORD: Oh, I'm not sure that I remember it all that clearly. I think that what we were trying to look at is whether or not there would be a - any significant pop - nah, that's the wrong word - any residual population when you got done. So if you were in a situation which you were planting on an ongoing basis and harvesting on an ongoing basis, then you are always going to have immature geoducks on your site. And that's the kind of thing that gives us a lot of reassurance that we're not going to have to worry about whether it's there when you're done.

MR. MORIN: Well, not only that, is - is, you can't find everything you plant.

MR. BEDFORD: Right. Well, I understand.

MR. MORIN: You can't find the geoducks...

MR. BEDFORD: And you're not going to harvest everything...

MR. MORIN: ...at the next...

MR. BEDFORD: ...that - you know - you're not going to harvest immature geoducks, so.

UNIDENTIFIED SPEAKER: _____.

MR. MORIN: Well, with a hundred thousand clams out there, you will not get all hundred thousand back, even if they all survive. You just can't find them all.

MR. BEDFORD: Right. And I could imagine circumstances in the future when we have a little bit more understanding of this, and which we could say, under these sorts of circumstances, there is no need to have any kind of a bond, because we know that there will be a residual population greater than what you took.

CAMPBELL: If...

MR. BEDFORD: And we're not there yet, because we don't understand

_____.

MR. CAMPBELL: We talked about that very specifically. If you have a site - let's say one of your five-acre sites, because it makes it easy for me to do the math.

MR. MORIN: Do the math.

MR. CAMPBELL: Okay. And each year you're basically harvesting 20 percent on a one-acre, and planting.

MR. MORIN: Uh-huh (affirmative).

MR. CAMPBELL: Very quickly we would say you wouldn't need to be in a situation - or, at least, we envision, where you have to have a bond at all, because you're always - you know, if you were going to some day say, you know, "I met someone," you were running away to the South Pacific together. "Whoop! I'm out'a here." You're going to leave immature geoducks on that site that - and, so, we don't - you know, that is the reassurance.

If for someone, though - if you came in as an alternative, you harvest the entire site. You plant the entire site. You know, you harvest - you know, sort of clear cut approach, then that's, you know, right at the point where you've done the complete harvest. The State is vulnerable and we need to figure out how we can handle that. But we did...

MR. MORIN: And then you still can't take them all back off.

MR. CAMPBELL: ...a lot of talk - we did a lot of talking about how...

MR. MORIN: It's just not possible.

MR. CAMPBELL: Yeah. Well, I know you can't get them all, but this question is, getting it back to the...

MR. MORIN: Original.

MR. CAMPBELL: Restore it to the original thing. About how we can most constructively work with you all and figure out scenarios where we can keep your money for the least amount of time. Like I said, I'm - I don't get any interest on this money, you know.

MR. BEDFORD: Frankly, it's an administrative headache.

MR. CAMPBELL: Yeah.

MR. MORIN: And it's a headache for us because you have to - every - you go out and you fish. You got to go get a bond. You go out and fish. You got to go get another bond. And if it could be an account where you're just putting the money in...

MR. CAMPBELL: Right. Right. Sure.

MR. MORIN: ...that would be so much easier. But this...

MR. CAMPBELL: That's the kind of thing...

MR. MORIN: ...setting up a new one every single time is - ask Gary.

MS. PRING-HAM: We can't do the savings.

MR. NELSON: Why is that, Cynthia?

MS. PRING-HAM: I - I asked administrative...

MR. MORIN: Well, the bank said that they would work with coming up with new ideas.

MS. PRING-HAM: Well, DNR doesn't do it because we can't do it. The State can't get into the - a joint account.

MR. MORIN: No, no, no, no, no. I'm not saying a savings account. I'm saying the bank said that they would work with coming up with new ideas. They currently don't have a method of adding to a bond account.

MS. PRING-HAM: But the _____...

MR. MORIN: But they were willing to look at creating a method of doing that.

MR. CAMPBELL: We're very happy to work - that's exactly the kind of thing...

MR. MORIN: But you guys have to tell them what you want...

MR. CAMPBELL: Yeah.

MR. MORIN: ...so they could go see if they could make a program.

UNIDENTIFIED SPEAKER: _____.

MS. PRING-HAM: But realize that's only for that particular bank that most of you go to that doesn't...

MR. MORIN: Well, but...

MS. PRING-HAM: J.C.'s and John's don't, so.

MR. CAMPBELL: But what I'm saying, though, is, we're happy to work with any of the banks or anything else where, if it's an issue of, can we do something that administratively makes it easier for you guys, and that can work for us. That's - again, that's the kind of thing...

MS. PRING-HAM: They needed more information from the State before they were ready to institute that, and I...

MR. MORIN: Yes.

MS. PRING-HAM: ...haven't provided that to them because we're still kind of thinking about it. How it - I mean, I can't favor you guys as opposed to other people that are out of the state that are going to be geoduck farmers here in Alaska.

MR. MORIN: Yeah. But once one bank creates a process, the other banks could see how it's done and then they can create one.

MR. NELSON: What about - people have a choice of where they banks, too. What about SEAFAB? Could they come up with some kind of program?

MR. CAMPBELL: Yeah.

UNIDENTIFIED SPEAKER: Somebody.

MR. CAMPBELL: Yeah.

MR. NELSON: It seems like that's their response - that's their charge or responsibility.

MR. CAMPBELL: Yeah. We can have _____ work out something with SEAFAB, or - you know, or any bank. You know, if we could figure out - here's the description of how it works, and then any banks that wanted to could participate or not.

MR. BEDFORD: That's something we thought about, because it's a heck of a lot easier to keep a ledger than it is to keep a series of accounts that you keep account of.

UNIDENTIFIED SPEAKER: _____.

MR. BEDFORD: Yeah. Right. Yeah.

MR. MORIN: What was _____ \$500, and I only had, like - I only owed, like, 300, but, you got to get a 500 minimum.

MR. LACROIX: Well, that's because we hadn't envisioned it going this far to begin with, that's why we didn't anticipate the problem.

MR. BEDFORD: Well...

MR. LACROIX: We had no idea bondings were coming at us. It wasn't on the payroll. We were putting this thing together. You know, it just kinda came up after the fact.

MR. CAMPBELL: Well, I'd go back to the - you know, my original question, the degree of regulations - given what the statutes says, how do we, the department, do that and how do we implement that? And if you have better ways, we're open to those.

MR. PAINTER: McKie, I would suggest one thing to do would be to, first of all, take the policy paper that you have developed. I know it's eight or 10 pages, as I recall, and crumple it up and throw it in the garbage can. I think some of the comments that the farmers were making earlier were really playing off of that policy paper.

I'd like to read you just a sentence from page seven where it's talking about refunding the cash and the process. It says: "One year after planting all suitable habitat on the site must have a density of .5 hatchery produced geoducks per square foot.

Now, I think...

MR. CAMPBELL: Where were we?

MS. PRING-HAM: Hold on a second, Roger, please. We're still trying to get...

MR. CAMPBELL: Page seven. Page seven, under cul - sub (1) under "culture performance standards."

MR. PAINTER: I think if you go through that whole section of performance standards there, or the department's best culture practices, I think there are numerous problems with it. And it says you have to essentially develop your whole site, which doesn't have anything to do with the bonding. And you have to wait a year until you ensure that the ducks are there at the proper densities. And the department's regs, on the other hand, say six months. That's a problem. I think there was probably an error in the clams per square foot versus clams per square meter.

But putting that mistake aside, I think - you know, requiring the farmers to develop the whole site to get your bond back, the thing shouldn't be connected at all. They don't have any place - and no matter how far I could stretch my imagination, I can't see how those issues can be tied together.

I think you need to look - and what the farmers are saying that I hear is that the issue really is getting the money back in a quick and efficient manner, instead of tying it up indefinitely.

One of the concerns I've always had about reseeding bonds is that the department seems to want some kind of surety that it's down there. The only way they're going to get that is to go down and to get on the site - do some dive surveys. All that cost a lot of money. The department's budget, I don't think can support that. I'm not sure how - what the answer is to it. But if you want to verify by going down and doing a dive survey, it's going to be very expensive. The farmers are gonna have problems with you coming up and - coming down, rolling back the predator netting, disturbing the seed crops. If you don't take something on some basis of trust, I don't think there's really any way for the farmers to get their money back every.

MR. BAKKER: Roger has said exactly what I was going towards, to your questions.

MR. LACROIX: In addition, you know, I resent the intrusion into telling us how we're going to run our farms. You know, I don't think there's anybody in this department that has the ability to do that and the experience or the understanding of how it works, you know.

And in addition to that, farming is an on-going evolving thing, you know. These guys are developing new techniques constantly. We have to go to meetings to see what other people are doing. This particular species is a hot item, you know, in the northwest. And, you know, a lot of people are getting involved in it. New ideas are emerging constantly, you know. And, you know, for somebody who knows nothing about this operation, to sit down and tell us how we're going to do it is just something that I don't think is practical.

MR. CAMPBELL: Okay.

MR. BAKKER: I think it's inappropriate.

MR. CAMPBELL: Well...

MR. BAKKER: You know, I started with trying to listen to what the concerns were, and we're - we can't really have a discussion _____. And Roger brought up exactly - I think, one of the biggest problems that we can talk about that we have right now, and that's this idea that it can be managed from inside of an office by a mariculture coordinator telling us what we're supposed to do out on site. And that whole idea has got to get thrown out.

MS. PRING-HAM: Let me...

MR. BEDFORD: And that's why we're here. I mean, that's why we're here.

MR. BAKKER: I just tell you, that whole thing has to be thrown out.

MR. BEDFORD: Tell us how it is we can go about determining that we've got a bona fide farming operation and it would have sufficient survival of geoducks on site to give us some assurances that the stock would be replenished at the point that the leasehold is terminated. And that's what we're after. And I grant you that you had some folks with the department sitting down and trying to figure out, "Well, how the heck do we do this."

I mean, we're perfectly happy to say, let's set that aside and come up with something else. We would love to talk to you about it. Have you fill us in on how we can go about that.

MS. PRING-HAM: And this wasn't done in isolation. I did contact our - Ray Ralonde to get some feedback from him. And, so - and he had some information about intertidal Annette, and so it's not like it was done in isolation.

MR. LACROIX: We can't sacrifice our whole farming operation to meet the bond requirement. You know, there's...

MS. PRING-HAM: The bonding is assurance that...

MR. LACROIX: I understand that, but, you know - what - you know, the 5 or the 10 to 1 might be denser than you want to plant that ground.

MR. BEDFORD: Yeah.

MR. LACROIX: You know, if we're getting - you know, we might get clams so densely surviving that they won't grow fast enough. I mean, you know, that kind of control is not something that - the bonding money - the ability to make money on farm is greater than the bonding money. You know, we're not gonna sacrifice efficient farming just to get the bonding money back. Or meet some, you know, standard of replacement that's ridiculously high.

MS. PRING-HAM: So do you think the density is too high?

MR. LACROIX: We're plan - yes. It's too high.

MR. BAKKER: Why is there a density standard at all that you're creating? Why is that? Why do you have to do that?

MR. LACROIX: And where'd it come from?

MS. PRING-HAM: Well, what if you plant...

MR. LACROIX: And what's the basis for it.

MS. PRING-HAM: ...one. Is that sufficient? Is that enough to tell me that you're planting?

MR. BAKKER: It has to do with how many wild stock we took off.

MR. LACROIX: It's your job to determine before we even issued that bond, if we...

MR. CAMPBELL: Let me - let me interject...

MR. LACROIX: ...versus if it's viable.

MR. CAMPBELL: Let me interject for just a second. I'm sorry. Let me just interject for a second. First, I'm sorry not to know this for sure, but am I correct in reading this that actually the density of 0.5 per square foot is actually under a good faith option, and that there's actually - _____ - there's another option based, on actually...

Well, I...

MS. PRING-HAM: I'm sorry, I'm trying to see...

MR. CAMPBELL: ...can only say - are there two different options? The first here is labelled the "good faith option," of 0.5. If you make these certain presumptions. But...

MR. MORIN: That would be saying one for two - every - one for ev - a geoduck for every two feet is a lot less than 10 to 1 replacement.

MR. CAMPBELL: Okay. So - so, I mean, the way I'm reading this is right here. If you proceed, that there's another way - it says...

MS. PRING-HAM: The good thing is to handle the performance standards.

MR. CAMPBELL: Yeah.

MS. PRING-HAM: We're giving it to them earlier, rather than giving it to them at the end.

MR. CAMPBELL: But the 0.5 was not a require that you replant at that. That was one way - an attempt - I don't know whether you agree or not - it was an attempt at one method in which you could get your bonding back earlier.

You can still say, "No, we don't want to do that. You know, when we came in we didn't have nearly that many on the site. You know, we're gonna restore it to the original amount."

Correct me if I'm wrong here. _____ reading this. "And so we're going to plant at a much lesser density," and you can still get your money back. It didn't require you to plant that. That was an attempt and one way the folks could get their money back earlier. Whether it's right or not, I - I'm not saying it's right. But, it's...

MS. PRING-HAM: To get it earlier. If you wanted to wait until termination.

MR. CAMPBELL: It's not mandating that's the only way that you have to do it.

MR. BAKKER: Well, if you've got viable hatchery produced geoducks at one per every two square feet, why would I want my money back?

UNIDENTIFIED SPEAKER: Yeah.

MR. BAKKER: I mean, at this point - I mean, that's a moot issue. I mean, one per every two square feet, you can tell me, in the commercial fishery, how many places that you have

where you've got one per every two square feet. And the answer is, you don't. There is no - very few transits will ever come up with those kind of figures. That's incredible _____. So, that's an incredibly successful operation.

(Side conversation)

MR. CAMPBELL: I mean, Carey is just telling me that that's the planting, and then there's - you figure you have mortality and you're not going to wind up - what you're talking about...

MR. LENTZ: This says - it says one year after planting all the suitable habitat must have a density of...

MR. CAMPBELL: Must have...

MR. LENTZ: ...a half of - or .5 hatchery produced geoducks per square foot.

MR. MORIN: Not dead geoducks.

MR. LENTZ: That's live geoducks, the way I read it. See, standards are being set here in these documents that are basically - we don't know if they're achievable. And...

MR. MORIN: Well, this whole thing is supposed to be our perform - performance of what we're supposed to do.

MS. PRING-HAM: Well, we basically - yes.

MR. BAKKER: Let me - let me...

MR. MORIN: Well, this getting not - bigger than 9 millimeter. Nobody is getting 9 millimeter geoducks out of that hatchery. I know for a fact because I bought all the seed that came out of it this year. Steve bought all of it last year.

MR. BAKKER: Let me - let me continue to illustrate the kinds of problems that we have here. We have some very specific information here that says, "This is what you need to do to comply."

Let me read a sentence at the very end of this, which was signed by everybody and his brother here. It says, "The department intends to adopt regulations applicable in instances where a permit holder has not met the obligation to store wild stocks to a farm." That's page nine. It's the last sentence. "That will insure reimbursement of any expenditures necessary to restore the wild stock on the farm site."

That is an open ended black hole. That says we are obligated to restore wild stocks that might or might not have been there. And further than that, to the expense of doing that.

MR. CAMPBELL: Make a suggestion. Let me give you guys a chance to whack me upside the head as I make this suggestion. If you all collectively want to go through - go through this document, and, you know, put notations, sticky notes, whatever - things that you feel that you disagree with, you feel aren't reality based, or whatever, or something like that. I, by no means, promise you that we will make all those changes. I specifically promise you we probably won't make all those changes. But we will be real happy to take a look at every single one of them, consider them, discuss them with you on issues of - you know, again, just on - if you feel we're not dealing with the reality of the way a geoduck farm is run, the one thing that I would urge you to do is - you know, you can put anything you want, but, again, to the extent that we feel it's something where we have a constitutional or a statutory mandate, we're not going to go there.

MR. MORIN: So, you're talking, it definitely needs to be rewritten or thrown away.

MR. CAMPBELL: So - well, we need a document.

MR. MORIN: It says here you will use predator netting, right. But then it says the multiplier was determined if you didn't use predator netting.

MS. PRING-HAM: No, no. We have two things. One is to determine the cost if we were to go back and do it. Okay? And not using predator nets. What will we have to do?

MR. MORIN: Okay. So...

MS. PRING-HAM: And it's not real cost, because we don't have to travel, we don't have all the things that would actually make a...

MR. MORIN: Okay. So let me - it would be impossible, is what you're really saying, right?

MS. PRING-HAM: Well, I...

MR. MORIN: It's not real practical to put a number on it.

MS. PRING-HAM: Actually, we started down trying to come up with a number. But, because it was getting too onerous for you guys to pay that, we started going down the road to find you something that was cheaper, and we came up to \$1.25 per geoduck, that it would at least have some, you know, assurance as a CD set aside.

MR. BAKKER: Being satisfactory. Now...

MS. PRING-HAM: That's where we...

MR. BAKKER: Now, one of the - let me just...

UNIDENTIFIED SPEAKER: Okay.

MR. CAMPBELL: When you do - I mean, if you want to take the time to go through this and do things. The one thing that I would urge you to do, and I think this is true of any policy document, regulation, whatever it is. Read the entire thing through once before you start going back and making your notations. Because, I think, just like this good faith alternative, it's easy to get caught up. You know, that doesn't make any sense. Until you get down, you know, three paragraphs later and say, "Oh, well it turns out that was one alternative," or something like - still may not make any sense. But, you know, just get all the way through to make sure you have - see how it all works and interrelates. And then if you have comments, or you feel we're not based in reality, we're happy to discuss those with you. But, again, given the caveat of, we can't go, and we're not going to go beyond where we feel our constitutional and legislative requirements are.

MR. LACROIX: And budget. I mean, it costs money to do that stuff. It probably costs more than the bonds are worth.

MR. CAMPBELL: Yeah.

MR. LACROIX: Just to go survey and check it and not say nothing of actually replacing it.

MR. CAMPBELL: Yeah. I would ask you - we are aware of our budget when we write this, so we'd ask you all to be aware of our budget when we write this, in terms of practicality of us being able to do something. Time out. Please.

MR. BAKKER: I've got to hit the head.

MS. PRING-HAM: Let's take a break and come back in how many minutes?

MR. BEDFORD: We'll take a short - let's make it about five minutes.

(Recess)

(Side conversations)

MR. CAMPBELL: Let's go back to one conversation. Why don't we go back - Lance, you had some things to say about 208.

MR. NELSON: Well, it depends on how much time you want to spend on it. It's not an issue we're going to resolve. We're going to have differing views on the application of 208 and where it fits within the chronology of statutes.

MR. CAMPBELL: Well, let's try to define exactly where we disagree with this, if nothing else.

MS. PRING-HAM: We're trying to get this comment that they had.

MR. CAMPBELL: Right. Yeah.

MR. NELSON: I think Steve is correct in that the court decision and the ATS deci - the court was looking in the ATS decision that statutes existed before HB-208. But HB-208 came along and provided for some things. It didn't provide for - expressly for conveyance of wild geoduck stocks to farmer, it provided for sites.

MR. ZAUGG: It sure provided for the replacement of them, according to your interpretation today.

MR. NELSON: Right. Yeah.

UNIDENTIFIED SPEAKER: _____.

MR. ZAUGG: There you go. You're kinda...

MR. NELSON: Well, but it didn't - but in the meantime - and what we're dealing with now is the statute since then that puts restrictions on them. And it grandfathers all permits that were issued before - in a lot of ways - they issued before the statute went into effect. But it doesn't grandfather any application for statutes. Permits were already issued, not, permits that have not yet been issued, no matter what kind of site they are.

MR. LACROIX: Well, we could very well end up in court on it.

MR. NELSON: We could. Yeah. I understand that.

MR. LACROIX: We totally disagree with it.

MR. NELSON: And I respect that. And, I know, I've read your attorney's argument about it, and I recognize it may be a reasonable one, but with the way we read it and look at the statute itself, we don't - we don't see it that way, so.

MR. LACROIX: I'd like to take a couple of minutes and just kind of review it, just for your benefit, because you weren't here the whole time.

MR. NELSON: Sure.

MR. LACROIX: You know, not that any of us were, but. We made applications - I think the first one is in '99. And it was - you know, caused a lot of problems. Everybody was a little bit shook up about it. And, you know, we went through, you know, like, a delay in the process and some regulation changes that were supervised - you know, a task force, and, you know, everybody was involved. I can't remember the exact date. Anyway - and we finally got, you know, some permit issues.

The kickback to that was, is that the legislature made a mandate that we - I think it was 60 inter-tidal farm sites and 10 geoduck farms. And, you know, they basically said, you know, go out and do it, and we're gonna give you some money. We're gonna go do it. Okay? Well, some of that has been done yet, you know. Then we make another set of regulations a couple weeks - or a couple years later. Now we're in here talking about doing it again.

You know, I'd like to get a little bit of time to start focusing on my farming instead of regulation issues and see if something that we've put in place will actually work. You know, it's demanding to do this. It's just as much on us as it is on you. Like you say, it's - this issue is not worth all the time everybody's putting into it, you know.

And, you know, that 208 was a response to the department's, you know, lack of an ability or a desire to get the job done, and we're going full circle on it again, and they're basically - this department's saying that the 208 stuff is not going to be respected, you know.

I would say maybe a third of the anticipated acreage that the legislature mandated under 208 hasn't been put into use yet, you know. They're not up to the 10 acres that they were allowed to be brought up to. And now they're saying that we have to pay to have them surveyed, when the legislature already did it once. And, you know, your staff is coming in here trying to apply a totally different standard for review and survey techniques that were not in place when we originally did the survey work. You know, a whole new standard.

MR. CAMPBELL: Let me ask a couple questions. And I apologize. These are things I should know, and I don't.

What year was 208 passed? Was that '99?

UNIDENTIFIED SPEAKER: No.

MR. NELSON: 2002.

MR. ZAUGG: Roger?

UNIDENTIFIED SPEAKER: 2003, I think.

MR. NELSON: I don't have it with me.

MS. PRING-HAM: I've got it here, but it doesn't say.

MR. MORIN: I believe it was 2003.

MS. PRING-HAM: Yeah, I think it was '03.

UNIDENTIFIED SPEAKER: It might be 2003.

UNIDENTIFIED SPEAKER: I'm sure it was 2002.

MR. CAMPBELL: So when...

UNIDENTIFIED SPEAKER: Well, it would have to be. I've been two years on it, so it had to be 2003.

UNIDENTIFIED SPEAKER: I believe it's now 2003.

UNIDENTIFIED SPEAKER: _____.

(Side conversations)

UNIDENTIFIED SPEAKER: Okay.

MR. CAMPBELL: So when did the first - when did this start?

MR. NELSON: When did what start?

MS. PRING-HAM: The HB-208 bill?

MR. MORIN: No. No. Actually, the whole...

MS. PRING-HAM: Geoduck.

MR. MORIN: ...geoduck - '99.

MS. PRING-HAM: '99.

MR. NELSON: No. Before that.

MR. MORIN: Actually, it started - it started in '97. I applied for the first one in '97, and Roger - Roger, what year did you apply? '97 or '98?

MR. PAINTER: Well, for clams?

MR. MORIN: For geoducks. You and I applied the first year. Wasn't it in '97? And then they threw them all out.

MR. PAINTER: No.

MR. MORIN: I think it was. And then they decided to throw it out and change the process or the procedure of applying for a farm site.

MR. LACROIX: They suspended applications for a few years. DNR rewrote all their laws, and then in '99 we could apply. So the first applications that you're talking about were '99.

MR. ZAUGG: One quick paragraph comment is that both you and Lance have both said that you have not identified any areas. You have no legal boundaries. No basis to do that.

I was going to point this out earlier. House Bill 208 gave the department the ability to identify areas to use for farming.

MS. PRING-HAM: So, sites...

MR. ZAUGG: Those sites were 10 or 20 acre sites, though, Cynthia. Now they're down to two or whatever. If they're still 20 acres...

MS. PRING-HAM: Well, that's true. It was like 10 acre chunks, which...

MR. ZAUGG: If they were 10 or 20 acres chunks, then those areas were identified for farming.

MR. CAMPBELL: 10 - I heard up to 10. Now I'm hearing 10 to 20.

MS. PRING-HAM: Well, 10 for geoducks. 10 sites suitable for aquatic farming of geoducks.

MR. ZAUGG: Right.

MS. PRING-HAM: The others relate to other species.

MR. ZAUGG: But how big were they per site, anyway?

MS. PRING-HAM: It depended on the...

MR. ZAUGG: The point is, I'm trying to say, is that that...

MS. PRING-HAM: Some were five and some were 10.

MR. ZAUGG: ...has already been done, and you do have areas that you could have used for that.

MR. CAMPBELL: Okay. Here's my - I'm sorry. I'm just trying to follow you. So the first applications in '97, and those got put on hold. And applications were taken again in '99. And HB-208 passed in 2003.

MR. MORIN: Uh-huh (affirmative).

MR. CAMPBELL: How about in between '99 and 2003? What happened in that...

MR. ZAUGG: Another set of applications.

MR. MORIN: We put in a normal set of applications. Those went through the long process. They all got _____...

UNIDENTIFIED SPEAKER: _____ sites.

MR. MORIN: And then Fish and Game said, "We're putting it all on hold for six months to a year.

MR. CAMPBELL: Okay.

MR. LACROIX: The original sites that we applied for in '99 were in the supreme court case that he's talking about.

UNIDENTIFIED SPEAKER: Yeah.

MR. LACROIX: So they were basically waiting the supreme court decision. In 2002 we made - or, 2001 we made applications again. And we actually got those permits before the supreme court decision.

UNIDENTIFIED SPEAKER: Right.

MR. CAMPBELL: When was the decision?

MR. NELSON: I'm sorry, I don't have it with me.

UNIDENTIFIED SPEAKER: _____ The supreme court decision?

UNIDENTIFIED SPEAKER: 2002, wasn't it?

MR. ZAUGG: No. The supreme court decision was, I believe, 2004.

MR. NELSON: Yeah, I think you're right.

MR. CAMPBELL: Yeah. It was a little later.

MS. PRING-HAM: In superior...

MR. LACROIX: The superior court decision was prior to House Bill 208, because House Bill 208 was more or less generated - and that - and, by the way, that's when 16.40.100(e) also came into being, was under the House Bill 208 legislation, and that was after the Judge Thompson ruling, so everything was based off of that.

And, at the time it was made, just for your information, also, sustained yield management, reference to 16.40.100(e) was 2% per year based on a bio-mass survey.

Since then, after this fishery, that sustained yield management principle had changed. So you asked me how those square. Just keep that in mind. That was a control mechanism originally under the 2% sustained yield thing. Think about that.

But anyway...

MR. NELSON: 2004 was the decision.

MR. CAMPBELL: Okay. And the most recent one is '05?

MR. NELSON: 2005.

MR. CAMPBELL: And then...

MR. NELSON: Regulations were...

MR. CAMPBELL: And I understand that we - that there's difference of opinion that - Lance, you're saying that sites - am I correct - this is the interpretation that sites that were granted prior to the 2005 law, were grandfathered. But sites that were simply under application were not grandfathered.

MR. NELSON: That's right.

MR. CAMPBELL: That's correct?

MR. NELSON: That's what it says in the statute.

MR. ZAUGG: What does "grandfathered" mean, Lance?

MR. NELSON: It doesn't say "grandfathered," it just say - it doesn't - these specific provision of the law don't apply to permits issued before a certain day.

MR. LACROIX: Okay. Well, then, that brings up the subject of whether the application deadline is the time frame that you're working with, or whether the permit's been issued.

MS. PRING-HAM: The permit...

MR. LACROIX: And the depart - oh - I know what the department's position is.

MR. NELSON: No. For the purpose of statute, it doesn't say "allocation." It says "issued." It specifically says "issued." The statutory provision says...

MS. PRING-HAM: _____...

MR. LACROIX: So how - what is an applicant to do when this department consistently has a regulation program going, and you're trying to make applications under what you interpret to be the rules, and the rules are constantly changing?

MR. NELSON: Same thing commercial fishermen do when their rules are constantly changing.

MR. BAKKER: Cry.

UNIDENTIFIED SPEAKER: Yeah. _____. Yeah. Basically.

(Background conversations)

MR. LACROIX: Right. You've got an application period. You know, my position is, is that whatever the rules were when you made your application, are the rules. Okay. And I'll take that to court, too.

MR. CAMPBELL: Well, let me say - let me suggest here that what we have done, which is probably useful, is to clearly identify where the disagreement is.

MR. LACROIX: Well, that's what...

MR. CAMPBELL: What we're probably not going to do is somehow resolve that disagreement in the room. Then maybe that ultimately does have to go to court - I don't mean anything hostile. You know, when you have two sides that just very genuinely, legitimately disagree on interpretation, that's what courts are for. So we have identified that as a disagreement.

Until the court tells us differently, though, you know, I think the department is always going to have to work under the interpretation _____...

MR. LACROIX: Could I ask one question on this subject - just one question?

MR. CAMPBELL: Sure.

MR. LACROIX: So, the reason that we're here - or, is one of the reasons that we're here trying to design new regulations, is so that we can get them in place before you issue the permits that are pending right now?

MR. NELSON: No.

MS. PRING-HAM: No, that's not the intent at all.

MR. LACROIX: Okay. So that - because, it's when it's issued, right? Not when you make your application? So you just keep changing the laws.

MR. NELSON: No. That's what the statute says. Not - that's not what the regulations say. The statute says that - the statutory requirements that these guys are under when they

issue permits - before they issue a permit - they all apply to permits that are going to be issued after a certain day. We don't have any way of getting around that.

MR. CAMPBELL: The issue of why we're here is not...

MR. MORIN: So is that why we didn't _____...

(Background conversations)

MR. MORIN: Well, we did it once before, that's why - because we want to keep changing the rules?

MR. CAMPBELL: Let me - let me try to answer your question of why we're here. And, what I would say is, the reason we're here is not to try to come up with a new set of regulations. You know, if there's something - that we look at one of our regulations, and you guys say, you know, - clearly, you know, you all made a mistake. You convince us that, you know, either on an issue of law, or something, we're wrong. Or, if just on a factual issue of how we deal something - something doesn't make sense, and stuff. Absolutely. We'll do that - you know, that's a standing offer for any regulation at all of the Department of Fish and Game. We got something that doesn't work, we want to know it and we want to fix it.

But why we're here today mainly, I guess, is to - my - I guess why I'm here, I'll just speak to that. Okay? Is, one, I want to try to figure out where we do agree. Two, to the extent we figure out areas where we simply disagree and we know we can't resolve it. We just got to put that aside and that works out either in the legislature, in a court, or something like that. But, you know, we're not going to be able to resolve it. But, three, and perhaps the most important, is, there's just a lot of day-to-day implementation of how we work together. You know, issues of - you know, our reg which says - which says, you know, "Commissioner has determined that..." da-da-da-da-da. How do we do that? What's the best most effective quickest way that we can do that. And I'm just using that as one example.

You know, is there a way, short of waiting four years until we can see show? Is there a - you know, I mean, what are the possibilities? I mean, I think there's a tremendous number of things - like, things as simple as how sites are marked or not marked. You know, in compliance with that. How we can work with surveys. How we can work - we spent a lot of time talking about - I'm pretty convinced that actually you all are going to find that our survey and dive costs are cheaper than any you can go out and get on your own. But, I'm also very determined that you have the ability to go out and get them on your own. And, I want - you know, I mean, I want to talk about that, and stuff. For instance, we're not building any transportation costs into ours, as a part of trying to help you guys out.

I mean, there are just a lot of step-by-step, how do we work out - mechanics of how we deal with each other on a day-to-day issue. And I guess what I want to say is, you know, we can keep being at this thing where you think we're hostile and out to screw you. You know, I mean, that's our big purpose in life. Or you could say - or we can say, "Look, we've got some basic things we don't agree on." We all understand that. We can figure out exactly what those are, and, again, you go to the legislature and fix them, or you go to the court and fix them, or whatever.

But...

MR. MORIN: Some things there aren't any clear answer to.

MR. CAMPBELL: But there are a whole bunch of other things that, in the meantime, we can be working together on to help you guys progress, and that's where I'm trying to make some progress.

MR. MORIN: Well, you can give me my House Bill 208 farm site that I paid two years now on and don't have an operational permit on.

MR. CAMPBELL: Uh-huh (affirmative).

MR. MORIN: Which, if it was - my big problem with that is that it was put out to auction. I bought it on - I went and bought that, because you people were representing it to me to be pre-approved and ready to go. And all I had to have was an acceptable operational plan, and the rest of this criteria, and I'm in business. Okay?

MR. CAMPBELL: Uh-huh (affirmative).

MR. LACROIX: And the reason the legislature...

MR. MORIN: But, after I bought it...

MR. LACROIX: ...did that was to give you good to go permits without all these other encumbrances.

UNIDENTIFIED SPEAKER: Yeah.

MR. MORIN: After I was buying that thing...

MR. LACROIX: Because we were sick and - they were sick and tired of the department not getting the job done.

MR. MORIN: Right.

MR. LACROIX: Now they're going right back and, you know, reapplying these restrictions to something that was supposed to be free of it to begin with.

MR. MORIN: So after I buy that - I mean, either you're telling - after I buy that - okay? I pay for that. I get my lease. I pay my leases two years in a row. I still don't have an operational permit. And what I'm being told is, I don't have it because I have to pay for divers to go survey it.

So what you're telling me is, you misrepresented this thing you sold me. It's like I got a car for sale, and I'll tell you I'll sell you that car as-is - the way it is now, for a hundred dollars. You come back tomorrow to pick it up. I took the tires off. I said, "Well, for another hundred bucks I'll sell you the tires."

MR. CAMPBELL: But, let me ask a question.

MR. MORIN: That's what you did to me.

MR. CAMPBELL: Kurt, let me ask a question. Yes, I understand your history. This is a site you applied for after 208.

MR. MORIN: No, no, no. This is a 208 farm site.

MR. CAMPBELL: Okay. It's a 208 farm site.

MR. MORIN: That I bought on the sale.

MR. CAMPBELL: But did you - when you bought it - okay - then did you...

MR. MORIN: We receive a packet.

MR. CAMPBELL: And you have not received the permit...

MR. MORIN: We received a packet...

MR. CAMPBELL: ...that you've applied for?

MR. LENTZ: He has a lease.

MR. MORIN: ...that says.

MR. LENTZ: He has a lease.

MR. MORIN: I have a lease.

MR. CAMPBELL: Okay. But it's not a permit?

UNIDENTIFIED SPEAKER: But no operational permit, because I've been told I have to pay for you guys to go survey it. Which is silly, because, guess what? It's intertidal. There are no geoducks on it.

MR. BEDFORD: Wait a minute. Wait a minute. Wait a minute. We don't have any surveys requirement for intertidal geoducks sites.

MR. CAMPBELL: No, we don't require intertidal geoducks surveys.

MR. MORIN: I know. But I've been told I don't get it until I pay to go survey.

MR. CAMPBELL: No, no, no. We don't have any - who told you that?

MR. MORIN: We don't have a...

MS. PRING-HAM: I actually needed a little bit more information.

MR. MORIN: Right there.

MS. PRING-HAM: I asked for a cross sectional diagram. There was no depths.

MR. MORIN: They - they were...

MS. PRING-HAM: I don't know.

MR. MORIN: ...all provided.

MS. PRING-HAM: He verbally told me, but I said, "Please provide me with a cross sectional diagram and I'll be able to review it."

MR. MORIN: I provided all of that stuff to DNR, and you're telling...

MR. CAMPBELL: Wait, wait, wait, wait.

MR. MORIN: ... - see, what she told me is, I got to go to DNR and get the paperwork from DNR and then bring it to her.

MR. CAMPBELL: Guys...

MR. MORIN: Why don't you go to DNR to get it?

MR. CAMPBELL: Guys, lis - look, look. Well, here's the question: It seems to me there's a real simple and easy way for you to get your site, or there's a way you can spend an awful lot of time pissing around about who is supposed to get what paperwork, and this and that.

There is no survey requirement for intertidal sites. There is a requirement to prove that an intertidal site is an intertidal site, but that's not onerous. So if you want your site - I mean,

were I you, and I genuinely wanted a site - and sometimes I prefer to just have my bitch than have my solution, but...

MR. MORIN: Yeah.

MR. CAMPBELL: But if I wanted a site...

MR. MORIN: That's the way I've been feeling.

MR. CAMPBELL: Yeah. Okay. I kinda got that sense.

MR. MORIN: Well, but, also, because I was - because I leased - I was told you can lease 1 to 10 acres. Okay?

MR. CAMPBELL: Okay.

UNIDENTIFIED SPEAKER: It's a big - they gave me a map. They said, you can lease 1 to 10 acres in here. If you only want to do an acre now, you can expand it out to the full 10 later.

MR. CAMPBELL: Okay.

MR. MORIN: Okay? So I did. And now I'm being told by Fish and Game that in order to go bigger than the five acres, I got to have a new survey and a whole new process. A new application.

MR. CAMPBELL: Is it all intertidal?

MR. MORIN: So I've been kind just fightin' them over it.

MR. CAMPBELL: Is it all intertidal?

MR. MORIN: The whole thing. Yeah. Well, no. It's right on the edge - there might be six feet of water at a minus tide.

MR. CAMPBELL: Okay.

MR. MORIN: So is it really all intertidal? Pretty much is. It's all within the map zone. But the reason it's situated as low as it is, because where the sand bed is.

MR. CAMPBELL: Yeah.

MR. MORIN: And to be as much in the water as much of the day as possible.

MR. CAMPBELL: You know, I got to tell you...

MR. MORIN: It's really a ridiculous issue.

MR. CAMPBELL: I got to tell you, on the one hand, I do understand real clearly, that working with government is often frustrating. I really do. In fact, I made a real good living for 10 years in between when I left the government and when I came back, sort of, working for people in the air base between the government. However, it seems to me what you're describing is a clear question of - seriously, do you want your grievance or do you want a solution. And it sounds to me like, if you want your solution, it's going to be real easy to get. I mean, it really is. If it's an intertidal site, or it's a very minimal thing, I think we can work something out. And...

(Side conversation)

MR. MORIN: Well, the last thing I told - I told them was, you place it where you want it and I'll be happy.

MR. CAMPBELL: Yeah. I don't know anything about Kurt's particular site, but as I recall, when I got a 208 site, it was designated a subtidal site. Wasn't his designated an intertidal site when he got it by the department.

UNIDENTIFIED SPEAKER: Yeah.

MS. PRING-HAM: I don't know the particulars about how it was designated in HB-208. I'll have to research that. But all I know is...

MR. CAMPBELL: No. By the department...

MS. PRING-HAM: ...I don't have what I need to review the site.

MR. LENTZ: You put up the areas. It's either a subtidal geoduck plot, or it's an intertidal shellfish plot.

MR. CAMPBELL: We will look at the site. But here - here is a suggestion I will make to the industry as a whole. Okay? And you guys think you deal with complications. I did a lot of work with - well, a lot of different things, but I did work with mining, and I did work with a number of truly heavenly regulated industries. And you guys, the hoops you have to jump through begin to pale in comparison to hoops those guys jump through. But, you know...

MR. MORIN: The problem is, I don't want to get on my boat. Go for a four hour boat ride to go down there and remeasure all the depths and everything again...

MR. CAMPBELL: But, wait, wait, wait. No, no, no.

MR. MORIN: ...to send it...

MR. CAMPBELL: If you - if you gave this - if you gave this to DNR - you didn't keep a copy?

MR. MORIN: It's been so long, I don't have - I don't have all the copies anymore.

MR. CAMPBELL: Okay. Have you called them to see if they have a copy?

MR. MORIN: The person that was there then isn't there anymore, so.

MR. CAMPBELL: Can we call them and see if they have a copy?

MS. PRING-HAM: They have what I have, and there's no depths. There's no depths. I have no depths. So...

MR. CAMPBELL: Okay.

MS. PRING-HAM: ...I just asked...

MR. MORIN: Well, I know there was depths provided.

MS. PRING-HAM: ...please give me a new - you know, give me a cross diagram...

MR. MORIN: I did all these - all these exactly the same. Well, John's got - was ahead of me, so.

MR. LENTZ: Well, you know, I don't know - I don't know anything about your spot out there, you know. And you may have an issue...

MS. PRING-HAM: I don't either. That's...

MR. LENTZ: ...or not. I just - you know, when I did the 208 site it was a done deal. You guys picked out the area. I picked out the spot within it. It was subtidal, and it was geoduck. If you do an inter - a shellfish one, and intertidal - and it's intertidal. I mean, if that's what you put it up for, then it's intertidal. Why does he have to prove it's intertidal?

MR. CAMPBELL: Okay.

MR. MORIN: So we...

MR. LENTZ: Could - could I make a real general point.

MR. CAMPBELL: We'll take a look at it. Yeah.

MR. LENTZ: You know - you know, you make a good point that other industries have a lot more regulation and hoops to jump through. You know, and I'm just a farmer. You know, I used to be a fisherman, but I don't do it anymore. And we're just farmers here. And a businessman, I guess. You know, a farmer is his own business man.

What I've seen since - the 208 sites seemed real advantageous to me, because I didn't have to go through the same type of public process that I would if I put in an individual application. It was done. I have to go out there and do it.

The regulatory framework in the State is really the important thing that I see for the successful business. And since I got into it, it really has been chaotic, and it's constantly changing. And for a businessman, that makes a really hard thing to deal with.

The penalties that have been put on with - around this wild stock idea, which, you know, the fact is, I don't want the wild stock on there, you know. I have to take it off there because that's what you need to do before you go out there and you plant your crop. You got to go out there and you got to rototill and get all that stuff out of there. You know, the stuff that's surrounding it, you know, is really a pain in the ass. You know, there's not that much on it to make it worthwhile.

But the onerous position the department has to make sure that it gets reseeded at the end - and what I mean by that is, not only do you take my money up front, but you're going to send out, I assume, eventually, if I don't prove it some other way, you're going to send out a survey crew out there to figure out if I left the amount that I took out, as far as wild stock goes. You can charge me to replant those, no matter what the cost is, on top of that, besides the bond. You can go after me civilly, and you can go after me criminally.

Well, how do I work that into a business plan? How do I do that? How do I go to an investor and say, "Look, I've got a farm up here, and it really takes quite a bit of investment. You know, it's going to cost us a half million dollars to develop this one farm site."

Oh, but, you know, if we're going to take this, you know, few thousand pounds of wild stock off there, because we got to get it off there so we can do this efficiently, and we only have a five-year window to do it. There's no definition of what those things turn into after five years. I don't know if I go to jail for taking them after five years or not, but I've got a five year window to take them off. And then, you know, when we get done with this, you know, they could take all our money away, even if we are successful, because of these provisions that are put in place. I don't see all those provisions written into the statutes. I see a lot of them as interpretations by the department.

You know, what incentives are you creating for business to come in here and thrive? How are you creating a stable business - or a stable regulatory environment to nurture this industry? I mean, this could be a really good industry. It's growing leaps and bounds in Canada. It's doing it in Washington. They're doing it at other parts of the world. You have an incredible resource here for it. And this stuff that's going on by rewriting, you know, these permits every year. Changing the way you have to do business. The reporting. You know, the specific buoy requirements. You know, this - we're just farmers. Why can't we just go out there and farm. You get your lease payments. We pay you the money. You know, just let us go do it.

MR. CAMPBELL: I mean...

MR. LENTZ: I'm really frustrated by it.

MR. CAMPBELL: Let me offer some good news and bad news. Maybe the bad news up front is, I totally agree with you on - that the more consistent regulatory environment can be, the better it is for industry and for the State's economy, and just in general. I really do agree with that.

Having said that, it is very possible, in three months from now, all this may change again. You know, it may change more restrictive, may change less restrictive. I don't think it is going - it's not going to change beyond what the Department of Law's interpretations of the statute and constitution are, but maybe there's some - you know, a new set of folks that come up with a more creative way than we've been able to think about. Or, maybe you got somebody else who doesn't like us. You know, doesn't share our beliefs that, yes, this could be a good industry. And, unfortunately, that's just a reality that we are dealing with.

MR. LENTZ: Well, McKie, I understand that. I understand, you know, you have - you know, the legislators or the courts, or whatever, they put restrictions on you that you have to implement, but I see the department going beyond that.

MR. CAMPBELL: Well, let me just continue just a little bit.

MR. LENTZ: Sorry.

MR. CAMPBELL: No, no, no. No, no. No problem. Is, we are adopting regulations to implement the statutes. I mean, just the way our government's set up, that's the way it works. The legislature hardly ever adopts a statute so specific that a department doesn't need to go and flush it out with regulation. And I say that as a person who - a guy in government who is gon - is not pretty fond of government, and think we probably have too much regulation. But there needs to be somewhat _____.

The question of, you know, "Why can't you just let me go farm?" Is the question of, how do we live by, a) the constitutional mandates, and, b) the legislative mandates, you know? For instance, this - how do I insure that it's restored to the level that's - you know, that's a statutory direction to us.

MR. LENTZ: Did they say you had to put criminal sta - you had to put criminal penalties on that?

MR. BEDFORD: And we don't put criminal penalties on it. Those are elsewhere in a statute. We don't...

MR. LENTZ: That's how I read it.

MR. BEDFORD: We don't put criminal penalties on that. We can't do that. That's elsewhere in the statute.

MR. LENTZ: Was that done somewhere else?

MR. CAMPBELL: Yeah.

MR. LENTZ: Did I...

MR. CAMPBELL: Yeah. That's not...

MR. LENTZ: ...dream that?

MR. CAMPBELL: Yeah. We don't have that ability. But, what I would say, also, is, most industries - every resource industry that I'm familiar with, and I think I'm familiar with all of them, from commercial fisheries to timber harvest, to mining, to oil, or whatever, deal with a wide body of regulation. That those regulations include civil penalties. They include criminal penalties. You know, they include a wide range of things.

And, again, I'm not saying this in the light of, you guys need more regulation. I think, you know, the less regulation we can do. But I will say, the level you're regulated, you know, is pretty small compared to some other - one thing - I'm looking at the time here and I don't want - when I talked to people in Washington and B.C., they didn't seem to feel we did not lot of extra regulations.

So if there are things - ways that - realizing their statutes and constitutions are different than Washington or B.C. handled specific things, and stuff like that. That you think they're models that we could look at, or other places that we can look at, that fit under our legislation and our constitution, we're more than happy to take a look at those.

MR. BEDFORD: I have to say, I really understand how frustrating it is to have the kind of shifting landscape that we've seen. I mean, the first issue that I dealt with when I came through the door of the Department of Fish and Game was, Kevin Duffy said to me, "We need to work on - we got a bill that Cheryl Heinz is trying to move through the legislature. We got to deal with some geoduck farms on an issue they've got. We've got some legal issues and some litigations going on. And this is..."

Well, we were trying, then, to develop a settlement around that. We were talking about doing purge fisheries in certain limited areas to allow geoduck farming in areas where they had been really substantial stocks of geoducks.

We didn't get very far on that because the farmers appealed the case. Okay? So we took it to the supreme court and so it reactivated the case.

That winter I wrote up a regulation that would have - that did, for a couple of guys, make, as a condition of their permit, that they could harvest any geoducks that were on their farm site.

We got a decision then from the supreme court that said I couldn't do that. We had to void the regulation because the regulation was now contrary to a decision of the supreme court. So that, again, was something that kinda tripped us up.

At the same time we heard from farmers about how lousy our regulations were. So we started a reg review process that I put a tremendous amount of effort into, and I had my staff put a tremendous amount of effort into talking about things like, the size of buoys, amongst a whole - everything else that was in there. It was all of the nuts and bolts in there.

Now, I don't imagine that that came out perfect from the perspective of the industry, but the word that I got back when I was at the ASGA meeting was, it's pretty good.

MR. MORIN: Buoys is still a problem.

MR. BEDFORD: Well, again, I'm sure that there are individual problems in there, but...

MR. MORIN: Because people keep stealing them.

MR. BEDFORD:

...generally speaking - but they - generally speaking, that the regulations were better when we got done than they were when we started. Can - they didn't deal with standing stock issue. So then we had to do the standing stock issue, after the supreme court made its decision and said, "We don't accept what the superior court said as far as the constitution goes. Here's the story with the statutes."

Okay. The regulation that I put through no longer worked, so immediately we got together with ASGA and with SARDFA, and said, "Okay. We got to come up with a statute."

We took it in. We had Bill Williams pick it up and carry it. We couldn't get it through that year. We turned around the next year. We got the thing through.

Okay. At the same time, then, before we got the statute through - before we could - before I could develop regulations to implement the statute, we had a problem with the - with the hatchery. We needed to do purge fisheries so we could give people an opportunity to go to the hatchery to buy their shellfish stock, to try to keep the hatchery's head above water.

So we have been scrambling all along the way, along with you guys. This has been a shifting landscape. Not necessarily of our choosing. Often by virtue of something that others have done.

So, again, we...

MR. CAMPBELL: And...

MR. BEDFORD: ...we've tried to work hard with you folks and we're willing to keep it up.

MR. CAMPBELL: And a lot of that is, frankly, inherent in the fact that this...

MR. BEDFORD: Sure.

MR. CAMPBELL: ...very started out, as I said in the meeting. We're trying to establish something that's never been done in Alaska here. We don't have any precedent. It's not like a new commercial fishery where we've got a thousand other fisheries, and, you know, we can look and see how they're done. It's not like, you know, growing oysters, or, you know - or things like that. This is different. I mean, it just - and it contains a lot of strange mixtures of private - you know, like, with public resource, and private resource, and all of that. And the legislature has been involved, and the court's been involved.

We don't like the fact that it's been - you don't like it. We don't like it. And the only thing we're saying to you is: We want to work with you. We realize it's going to have more changes before it's finished, but we want to try to make - you know, I think we are making progress. You know, I mean - they told me - well, I mean, just this requirement with, I think, eloquence and some feeling that's evident, of everything that he's done to try to make this work.

MR. LENTZ: Well, I stand corrected. Lance showed me that it was the department that put that through, but it was statute, is that right?

MR. NELSON: Yeah, there is a class misdemeanor...

MR. LENTZ: I got a little mixed up _____ regulations, but.

MR. NELSON: Sure.

MR. LACROIX: And it didn't have to be in our operation permit. Just a...

MR. NELSON: Well, but it's putting you on notice that...

MR. CAMPBELL: But if we don't warn you, and you - I mean, I'd be mad at us if we had not warned you and you were bitten by that?

MR. NELSON: You know, I'd frankly be very surprised to ever see the D.A. prosecute somebody for violating a condition of their permit, unless it was, like, you know,...

MR. CAMPBELL: Intentional.

MR. NELSON: ...farming without a permit, or something like that.

MR. CAMPBELL: Yeah.

MR. LENTZ: Well, this is - let me just say that. Look at that. That was not in my original permit. That came out later. So I'm already - I'm already in - I'm already in. I've got money spent. Seed placed in the ground. Trying to meet permit requirements, and, bam! Guess what? You're gonna be criminalized.

MR. NELSON: No.

MS. PRING-HAM: No. I think it was just a notation - it was to clarify, to help you...

MR. NELSON: It's been there since 1988.

MR. LENTZ: Right.

MS. PRING-HAM: Yeah.

MR. LENTZ: But it was not...

MS. PRING-HAM: It was in the...

MR. NELSON: Well, what we're doing is - in the permit...

UNIDENTIFIED SPEAKER: There's a way it was added in _____.

MR. CAMPBELL: ...we're just telling you about it. It doesn't make any difference.

MR. NELSON: All of a sudden we're done. All of a sudden.

MR. CAMPBELL: We're just saying - frankly, I think we should be putting you on notice. I'd be real unhappy were I out doing something. The department's aware that in my - in whatever I'm doing, depending on how I do it, I could be at criminal risk, and doesn't warn me of it, and all of a sudden I get bitten by it. And I say - the fact that we put it in your permit, again, does not make it one wit less - more or less...

MR. NELSON: Yeah.

MR. CAMPBELL: ...appropriate to you.

UNIDENTIFIED SPEAKER: : _____.

MR. CAMPBELL: It's just...

MR. BAKKER: You're saying that the problem that we have is - as Steve was - we've gone through a whole bunch of changes over a long period of time. It's a moving target I keep aiming at. It's like, what are my requirements? Try to comply with the requirements. Try to comply with the hatchery difficulties. Try to - you know, now here comes a new permit down the road. What do I have to do to comply with this. Cost. Cost. Cost. On top of, you know - so you have to understand, there is a huge frustration level right now...

UNIDENTIFIED SPEAKER: Sure.

MR. BAKKER: ...when it comes to this.

Then we have Cynthia busy writing more and more requirements into the permit. As I go on - requiring, requesting, demanding, and telling me things that I have to do. One of them being - this is just the latest in a series, but, now I am, you know, bellyaching, which I haven't done before, because I wanted to find out where we could go with this. But, you know, we have the latest round of applications. Now there's a requirement after the fact the applications went in there, to do a site survey.

I was called. "You need to pay this amount. If you don't pay this amount, we're going to kill this application," period.

I got an e-mail that says that. It's in writing that it says that. I've got it verbally it says that. I paid the money to do the site survey.

After the fact - now, it's low, we'll just put the other permits on hold for a little while. The credibility of your mariculture coordinator is shot.

MR. MORIN: Well, we got the feeling that she's regulating...

MR. BAKKER: So now I have a real problem...

MR. MORIN: ...and not coordinating.

MR. BAKKER: Now I have permits coming in, with changes, that I tried to comply with. Operational permits I try to comply with. Money that I've put out. And now you have a position which is not credible any longer. That's to you, as a manager, now.

MR. CAMPBELL: Let me - Cynthia has probably been in - within the department, the most difficult position on this, but she's sort of on the point of the spear. And she deals with...

UNIDENTIFIED SPEAKER: Who?

MR. CAMPBELL: The point of the spear. And she deals...

MS. PRING-HAM: I thought it was "despair."

MR. CAMPBELL: No. No. Well, maybe that, too. _____ point of despair. But, where, a) she's dealing with all you all; b) she's also dealing with all of us, and winds up being the inter - often the interface. And one of the reasons we wanted to have this meeting is to be able to...

MR. ZAUGG: You guys are leaving at 5:00?

MR. NELSON: Yeah. That's my...

MR. ZAUGG: Well, you can catch a 4:15 ferry and a 4:45 ferry, unless they're running double.

MS. PRING-HAM: We may just have to take the next flight. That's what...

MR. NELSON: I can't do that.

UNIDENTIFIED SPEAKER: Yeah. Lance can't.

MR. CAMPBELL: You better go. You're not going to catch your ferry.

MR. ZAUGG: You better haul ass, because you got five minutes to get the ferry if you're gonna get out of here at 5:00.

UNIDENTIFIED SPEAKER: This says five...

UNIDENTIFIED SPEAKER: That's a 5:20...

UNIDENTIFIED SPEAKER: 5:22.

MR. NELSON: 5:22, right.

UNIDENTIFIED SPEAKER: Okay.

UNIDENTIFIED SPEAKER: It boards at...

(Side conversations)

MR. ZAUGG: You have to catch minimum at 4:45.

UNIDENTIFIED SPEAKER: The 4:45 ferry.

MR. ZAUGG: You got to catch - so you got about 10 minutes.

UNIDENTIFIED SPEAKER: That's the only way you'll make it.

MR. ZAUGG: So you got about 10 minutes to sit here and then you got to go.

UNIDENTIFIED SPEAKER: Okay. So...

MR. CAMPBELL: They have a 4:45 ferry that will get us on the 5:22 plane?

MR. MORIN: Yes. That's the last chance you got.

UNIDENTIFIED SPEAKER: That's fine, then.

UNIDENTIFIED SPEAKER: That's really tight.

(Side conversations)

MR. MORIN: Well, you're not gonna make it in time.

MR. ZAUGG: Let me just say something before you guys go. I mean, this is just the tip of the iceberg if you guys really wanna deal with this. I mean, I understand it takes a lot of everybody's time, and it doesn't amount to a hill of beans for anybody right now. But the only way we're ever going to get to the bottom of this is to continue to do this, or have a court make a decision.

So it's up to you guys, I guess, to tell us to what level you even want to deal with us anymore. And another thing I want to know is, I've got a volume of litigation, basically, in my mind. And Lance is here now. And we have the ability to be able to deal with that.

Now, it's my understanding that - is Lance calling the shots for what the department's position is on the interpretation of statutes?

MR. CAMPBELL: Let me...

MR. ZAUGG: And if that's the case, then, do - do we agree that we could at least work, for once, through the Department of Law, to figure out why we can't interpret these things a certain way? And if there is an impasse, then we can go to the court and get a decision. But if there isn't one, then we can possibly work that out, as opposed to have it cost us \$20,000 to run litigation every time.

So, I guess my question is, is - if you guys are genuinely interested in trying to solve this stuff, I'd say all this has proved today is that there is a lot of issues that we're at impasse on. And if the only answer is to go to court - I don't necessarily want to have to do that, but a lot of times that's what I feel like our only option is. And, when I go to you guys first, you tell me, "We got to ask the Department of Law." I want more of a direct communication between what our interpretation is, and why the Department of Law's interpretation is what it is, and I want to root it out completely. I don't just want to get something that says, "This is the way it is. Screw it, Gary."

MR. CAMPBELL: Yeah.

MR. ZAUGG: You know, if you're not willing to move on any of these things, then it's just gonna continue to be a contentious issue.

MR. CAMPBELL: A couple quick thoughts, and then Lance...

MR. NELSON: I'm not going to _____.

MR. CAMPBELL: One is, that there isn't any one court decision that's going to - you know, we've got a whole bunch of issues we need to work out. You know, and I guess what I've been saying from the beginning, and I'm continuing to say is, let's figure out where we can agree on everything we can agree on. Let's work those out. And to the extent we have disagreements - and I think we do legitimately have a disagreement, for instance, on the issue of significant amount and our responsibility there on the issue of our necessity, for instance, to require restoration, you know, versus your interpretation of sustained yield, and we may have a legitimate different there. Then we have those disagreements.

That - it would be a real shame if that stopped either of us from making progress on all the other stuff. And then on the issue of the Department of Fish and Game, or any other department in the state, always looks to the Department of Law - it's not just Lance, because Lance consults with other people as well - for our legal interpretations to the constitution and the statute.

In terms of you all negotiating directly - Lance, if you want to respond to that?

MR. NELSON: I mean, there's nothing that says we can't have meetings like this. Maybe not necessarily with the commissioner, but with other staff...

MR. CAMPBELL: Yeah.

MR. NELSON: ...and attorneys from the user groups, and with the Board of Fish, basically, to work out...

MR. ZAUGG: Well, I mean, we are, basically, the Board of Fish, in essence,

MR. MORIN: We're the board of geoducks.

MR. ZAUGG: ...because you guys - I mean, it's all handed up that way.

UNIDENTIFIED SPEAKER: No.

MS. PRING-HAM: It's more like...

(Side conversations)

MR. ZAUGG: I mean, we're the decision-makers for making this industry have any viability.

MR. NELSON: Well, you're just like a commercial fishing interest group who comes to the Board of Fish and says, "Here's what we need to have done, and..."

MR. ZAUGG: And you guys are, in essence, handed the Board of Fish's authorities for the development of our industry. Because the Board of Fish isn't necessarily here.

MR. NELSON: No. But what I'm trying to say is there is no reason - there isn't any reason we couldn't have meetings like this, with your attorney present, or you present, and, I, as the Department of Law present, and talk about legal issues.

UNIDENTIFIED SPEAKER: _____.

(Side conversations)

MR. MORIN: I'd say one last thing real quick here. You know, I appreciate the fact that you come down - you guys come down and talked to us. I think that, if we could have done this a lot - a few years ago, we'd be a lot better off now.

The first lawsuits that went in, went in because we were semi-denied, and then told, "If you don't like it, sue us." And we skipped an entire step in the process. The step where we get an appeal to the commissioner. In the very first lawsuit, we never got an appeal. If we would have had an appeal process, we may never have went to court on the first time around. But we weren't given an appeal opportunity. We were told, "If you don't like it, sue us. Okay?"

And the reason that I make an issue with that is because the farm site that I had didn't have any issues like these guys did. I had a farm site with no wild stock on it. I should have been given an appeal opportunity. The commissioner would have looked at it and said, "Oh, you don't have an issue. There's no wild stock on here."

I would have been in business that year or the following year. But, no, it was nearly four years later that I finally got my site after all those lawsuits were over. Okay?

MR. CAMPBELL: Uh-huh (affirmative).

MR. MORIN: So the reason I bring this up is, let's don't jump over the process. Okay? Let's use those appeal processes to communicate and solve these issues. Let's don't go to court just because we can't agree.

MR. CAMPBELL: Yeah. Well, we're not gonna take anything to court, so.

MR. MORIN: I mean, it cost a lot of money for four years that - and losses for four years that weren't developed, because I was bunched up into issues that weren't even mine.

MR. NELSON: All right.

MR. MORIN: Because we didn't get an appeal. If I'd'a got an appeal, I would have brought it before you and said, "What - I don't have an issue."

The reason you're denying these guys is because they got wild stocks and we want them to identify method of leaving them there, whatever. No wild stocks. No issue.

MR. BEDFORD: Well, we did when...

MR. MORIN: But you didn't do...

MR. BEDFORD: When we did the reg review we were careful to write in appeal processes for both the original application and for any improved modification.

MR. MORIN: But there was an appeal process in the beginning.

MR. BEDFORD: I know, but, I mean...

MR. MORIN: And it was skipped.

MR. BEDFORD: ...I - I can't - I can't do anything about the...

UNIDENTIFIED SPEAKER: So, well...

MR. LACROIX: He's talking about elevatin' the decision.

MR. MORIN: I'm just laying out that ground work, and _____...

UNIDENTIFIED SPEAKER: It stays in the past.

(Background conversations)

MR. MORIN: So we could see where we ought to avoid mistakes in the future.

MR. BAKKER: So we get done with this meeting - that's always - next - yeah, what are we going to do next?

MR. MORIN: Yeah. What are we gonna do next?

UNIDENTIFIED SPEAKER: Where is the next meeting? How are we gonna go forward?

MR. CAMPBELL: Well, one of the things that I want to do is - there have been a number of issues that were raised here. I want to spend - for us to spend a little bit of time looking into it and stuff.

MR. MORIN: Are you on this plane?

MR. NELSON: Yeah. We're on the plane.

MR. CAMPBELL: And, I wanna, you know, still look into that. And then I imagine we would probably - _____ some additional questions, and be with some things. I would like - you all were gonna take, if you want to...

MR. MORIN: We're gonna take a look at the map.

MR. CAMPBELL: ...take a look at that, and...

MR. MORIN: Yeah. We're definitely - we'll look through that.

MR. CAMPBELL: _____ go there, and - you know, and, again, when you do it - this is - I try to avoid just an exercise in frustration. Don't do it just from the standpoint of, "This is what would be great for me for farming." Do it from, "This would be good for me, a

farmer, that I think Fish and Game can legitimately give me and be consistent with their responsibilities, you know, under statute and constitution."

MR. BEDFORD: If you guys have a better mousetrap, we'd love to see that.

MR. MORIN: Yeah. We understand you have to stay within a certain framework.

MR. BEDFORD: Yeah.

MR. MORIN: But, at some point, you...

MR. BEDFORD: We keep thinkin' - we keep thinkin' that...

MR. MORIN: And the truth is, we're not really asking for a lot of...

MR. BEDFORD: ...we were applying that mousetrap.

MR. MORIN: ...- finding a mechanism to let us get back to work.

MR. CAMPBELL: And I'm sure you guys _____ the same way. It's...

UNIDENTIFIED SPEAKER: Well, yeah.

UNIDENTIFIED SPEAKER: _____...

MR. BAKKER: Because it is a mess.

UNIDENTIFIED SPEAKER: Well, I've reached a point where there was - it was...

MR. CAMPBELL: Well, let's work on the solution...

UNIDENTIFIED SPEAKER: ...better than arguing...

UNIDENTIFIED SPEAKER: _____. That's what I'm saying. But...

UNIDENTIFIED SPEAKER: _____...

MR. CAMPBELL: Anybody on the phone? Good-bye.

MS. PRING-HAM: I think we've...

MR. CAMPBELL: Anybody have questions?

END

CERTIFICATE

SUPERIOR COURT)
) SS.
STATE OF ALASKA)

I, Georgi Ann Haynes, Certified Professional Court Reporter for the Third Judicial District, State of Alaska and verbatim reporter for H & M Court Reporting, Inc., hereby certify:

That the foregoing transcript is a transcription of testimony of said proceedings to the best of my ability, prepared from tapes recorded by someone other than H & M Court Reporting, therefore "indiscernible" portions may appear in the transcript. Speaker identification and corrections were made by State of Alaska personnel.

I am not a relative, or employee, or attorney, or counsel of any of the parties, nor am I financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 27th day of January, 2007.

Georgi Ann Haynes

Notary Public in and for Alaska
My commission expires: 10/05/2007

