

**SENATE BILL NO. 18**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATOR AUSTERMAN

Introduced: 1/21/03

Referred: Labor and Commerce, Resources

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to finfish farming; prohibiting finfish farming of salmon; and**  
2 **prohibiting finfish farming in the water of the state."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 09.45.235(d)(1) is amended to read:

5 (1) "agricultural facility" means any land, building, structure, pond,  
6 impoundment, appurtenance, machinery, or equipment that is used or is intended for  
7 use in the commercial production or processing of crops, livestock, or livestock  
8 products, or that is used in aquatic farming **or finfish farming**;

9 \* **Sec. 2.** AS 09.45.235(d)(2) is amended to read:

10 (2) "agricultural operation" means  
11 (A) any agricultural and farming activity such as  
12 (i) the preparation, plowing, cultivation, conserving,  
13 and tillage of the soil;  
14 (ii) dairying;

1 (iii) the operation of greenhouses;

2 (iv) the production, cultivation, rotation, fertilization,  
3 growing, and harvesting of an agricultural, floricultural, apicultural, or  
4 horticultural crop or commodity;

5 (v) the breeding, hatching, raising, producing, feeding,  
6 keeping, slaughtering, or processing of livestock;

7 (vi) forestry or timber harvesting, manufacturing, or  
8 processing operations;

9 (vii) the application and storage of pesticides,  
10 herbicides, animal manure, treated sewage sludge or chemicals,  
11 compounds, or substances to crops, or in connection with the  
12 production of crops or livestock;

13 (viii) the manufacturing of feed for poultry or livestock;

14 (ix) aquatic farming **or finfish farming**;

15 (x) the operation of roadside markets; and

16 (B) any practice conducted on the agricultural facility as an  
17 incident to or in conjunction with activities described in (A) of this paragraph,  
18 including the application of existing, changed, or new technology, practices,  
19 processes, or procedures;

20 \* **Sec. 3.** AS 16.05.050(17) is amended to read:

21 (17) to permit and regulate aquatic farming **and finfish farming** in the  
22 state in a manner that ensures the protection of the state's fish and game resources and  
23 improves the economy, health, and well-being of the citizens of the state;

24 \* **Sec. 4.** AS 16.05.251(f) is amended to read:

25 (f) Except as expressly provided in AS 16.40.120(e), [AND] 16.40.130, **and**  
26 **16.40.215(h)**, the Board of Fisheries may not adopt regulations or take action  
27 regarding the issuance, denial, or conditioning of a permit under AS 16.40.100, [OR]  
28 16.40.120, **or 16.40.215**, the construction or operation of **an aquatic** [A] farm or  
29 hatchery required to have a permit under AS 16.40.100, **the construction or**  
30 **operation of a finfish farm required to have a permit under AS 16.40.215**, or a  
31 harvest with a permit issued under AS 16.40.120 **or 16.40.215**.

1 \* **Sec. 5.** AS 16.05.930(g) is amended to read:

2 (g) AS 16.05.330 - 16.05.723 do not apply to an activity authorized by a  
3 permit issued under AS 16.40.100, [OR] 16.40.120, or 16.40.215, or to a person or  
4 vessel employed in an activity authorized by a permit issued under AS 16.40.100,  
5 [OR] 16.40.120, or 16.40.215.

6 \* **Sec. 6.** AS 16.05.940(15) is amended to read:

7 (15) "[FISH OR] game farming" means the business of propagating,  
8 breeding, raising, or producing [FISH OR] game in captivity for the purpose of  
9 marketing the [FISH OR] game or their products; in this paragraph, [AND]  
10 "captivity" means having the [FISH OR] game under positive control, as in a pen,  
11 pond, or an area of land or water that is completely enclosed by a generally escape-  
12 proof barrier [; IN THIS PARAGRAPH, "FISH" DOES NOT INCLUDE  
13 SHELLFISH, AS DEFINED IN AS 16.40.199];

14 \* **Sec. 7.** AS 16.10.269 is amended to read:

15 **Sec. 16.10.269. Limitations.** AS 16.10.265 and 16.10.267 do not apply to the  
16 purchase or sale of

17 (1) aquatic farm products from a holder of a permit issued under  
18 AS 16.40.100;

19 (2) [OR] stock from a holder of a permit issued under AS 16.40.120;  
20 or

21 (3) finfish farm products from a holder of a permit issued under  
22 AS 16.40.215.

23 \* **Sec. 8.** AS 16.40.210(a) is repealed and reenacted to read:

24 (a) A person may grow or cultivate finfish under positive control for  
25 commercial purposes under a permit issued by the commissioner under AS 16.40.215.

26 \* **Sec. 9.** AS 16.40.210(b) is amended to read:

27 (b) The provisions of AS 16.40.210 - 16.40.229 do [THIS SECTION DOES]  
28 not apply to [RESTRICT]

29 (1) the fishery rehabilitation, enhancement, or development activities  
30 of the department;

31 (2) the ability of a nonprofit corporation that holds a salmon hatchery

1 permit under AS 16.10.400 to sell salmon returning from the natural water of the state,  
 2 as authorized under AS 16.10.450, or surplus salmon eggs, as authorized under  
 3 AS 16.10.420 and 16.10.450;

4 (3) rearing and sale of ornamental finfish for aquariums or ornamental  
 5 ponds provided that the fish are not reared in or released into water of the state.

6 \* **Sec. 10.** AS 16.40 is amended by adding new sections to read:

7 **Sec. 16.40.215. Finfish farming permit.** (a) The commissioner of fish and  
 8 game shall issue finfish farming permits to qualified applicants.

9 (b) A finfish farming permit authorizes the permittee, subject to the conditions  
 10 of AS 16.40.210 - 16.40.229 and regulations adopted under AS 16.40.210 - 16.40.229  
 11 to operate a finfish farm and to acquire, purchase, offer to purchase, transfer, possess,  
 12 sell, and offer to sell finfish stock and finfish farm products that are used or reared at  
 13 the finfish farm.

14 (c) A person may not operate a finfish farm or acquire, purchase, offer to  
 15 purchase, transfer, possess, sell, or offer to sell finfish stock and finfish farm products  
 16 that are used or reared at a finfish farm, unless the person holds a finfish farming  
 17 permit issued under this section.

18 (d) A person may not engage in finfish farming of, or utilize as finfish farm  
 19 stock, pink salmon, chum salmon, sockeye salmon, coho salmon, chinook salmon,  
 20 Atlantic salmon, another species of salmon, or a hybrid of salmon species.

21 (e) A person may not operate a finfish farm in, or negligently release finfish  
 22 farm stock into, the water of the state or water that is a tributary to the water of the  
 23 state.

24 (f) The commissioner shall adopt regulations governing

25 (1) eligibility for a finfish farming permit and terms and conditions of  
 26 a finfish farming permit;

27 (2) siting of finfish farming facilities;

28 (3) sources of finfish stock or eggs for use in finfish farms; positive  
 29 control and captivity of finfish stocks; acquisition, importation, transportation, and  
 30 export of finfish stocks used in finfish farms; disposition of surplus finfish stocks at a  
 31 finfish farm;

1 (4) control, prevention, and eradication of disease at finfish farms and  
2 destruction of diseased finfish;

3 (5) operation of finfish farms, including operation plans and record  
4 keeping;

5 (6) standards for treatment of discharge water from finfish farms;

6 (7) ownership of finfish stocks;

7 (8) other matters necessary to implement AS 16.40.210 - 16.40.229  
8 and to protect wild stocks of fish and game in the state.

9 (g) Notwithstanding AS 16.05.080, the commissioner shall set the amount of  
10 the fee for the finfish farming permit. The amount of the fee shall reflect the cost of  
11 issuing the permit and operating the finfish farming program of the department.

12 (h) The Board of Fisheries may adopt regulations for the conservation,  
13 maintenance, and management of finfish species that are acquired for use as finfish  
14 farm stock.

15 **Sec. 16.40.220. Penalty.** (a) A person who violates a provision of  
16 AS 16.40.210 - 16.40.229, a regulation adopted under AS 16.40.210 - 16.40.229, or a  
17 term or condition of a permit issued under AS 16.40.210 - 16.40.229, is guilty of a  
18 class B misdemeanor.

19 (b) Each fish released from a finfish farm into the water of the state or water  
20 that is a tributary to the water of the state constitutes a separate offense.

21 **Sec. 16.40.229. Definitions.** In AS 16.40.210 - 16.40.229,

22 (1) "finfish" means a fish, other than an invertebrate or amphibian, in  
23 any stage of its life cycle;

24 (2) "finfish farm" means a facility that grows, farms, or cultivates  
25 finfish in captivity or under positive control;

26 (3) "finfish farm product" means a finfish, or part of a finfish, that is  
27 propagated, farmed, or cultivated in a finfish farm and sold or offered for sale;

28 (4) "positive control" means enclosed within an escape-proof barrier;

29 (5) "stock" means live finfish acquired, collected, possessed, or  
30 intended for use by a finfish farm for the purpose of further growth or propagation;

31 (6) "water of the state" has the meaning given in the term "navigable

1 water" in AS 38.05.965; "water of the state" also includes the marginal sea adjacent to  
 2 the state and the high seas within the territorial limits of the state, irrespective of the  
 3 ownership of the land underlying those waters.

4 \* **Sec. 11.** AS 16.43.940 is amended to read:

5 **Sec. 16.43.940. Exempted activities.** This chapter does not apply to activities  
 6 authorized by a permit issued under AS 16.40.100, [OR] 16.40.120, or 16.40.215.

7 \* **Sec. 12.** AS 16.51.180(7) is amended to read:

8 (7) "seafood" means finfish, shellfish, and fish by-products, including  
 9 but not limited to salmon, halibut, herring, flounder, crab, clam, cod, shrimp, and  
 10 pollock, but does not include aquatic farm products as defined in AS 16.40.199 or  
 11 finfish farm products as defined in AS 16.40.229;

12 \* **Sec. 13.** AS 17.20.005 is amended to read:

13 **Sec. 17.20.005. Powers and duties of commissioner.** To carry out the  
 14 requirements of this chapter, the commissioner may issue orders, regulations, permits,  
 15 quarantines, and embargoes relating to

16 (1) food offered to the public or sold, including

17 (A) inspection of meat, fish, poultry, and other food products;

18 (B) standards of sanitation and handling methods for all phases  
 19 of slaughtering, processing, storing, transporting, displaying, and selling; and

20 (C) labeling;

21 (2) control and eradication of pests;

22 (3) enforcement of hazard analysis critical control point programs for  
 23 seafood processing that are developed in cooperation with appropriate industry  
 24 representatives or, to the extent not inconsistent with this chapter or regulations  
 25 adopted under the authority of this chapter, that are established by regulations of the  
 26 United States Food and Drug Administration as they may periodically be revised;

27 (4) labeling, subject to AS 17.20.013, and grading of milk and milk  
 28 products and standards of sanitation for dairies offering to the public or selling milk or  
 29 milk products to at least the minimum of current recommendations of the United  
 30 States Public Health Service pasteurized milk ordinance as it may periodically be  
 31 revised;

1 (5) standards and conditions for the operation and siting of aquatic  
2 farms and related hatcheries **and of finfish farms**, including

3 (A) restrictions on the use of chemicals; and

4 (B) requirements to protect the public from contaminated  
5 aquatic farm products **and finfish farm products** that pose a risk to health;

6 (6) monitoring aquatic farms and aquatic farm products to ensure  
7 compliance with this chapter and, to the extent not inconsistent with this chapter or  
8 regulations adopted under the authority of this chapter, with the requirements of the  
9 national shellfish sanitation program manual of operations published by the United  
10 States Food and Drug Administration as it may periodically be revised;

11 (7) tests and analyses that may be made and hearings that may be held  
12 to determine whether the commissioner will issue a stop order or quarantine;

13 (8) transportation of, use of, disposal of, recalls of, or warnings  
14 concerning quarantined or embargoed items;

15 (9) cooperation with federal and other state agencies.

16 \* **Sec. 14.** AS 17.20.040(a) is amended to read:

17 (a) Food is misbranded if

18 (1) its labeling is false or misleading in any particular;

19 (2) it is offered for sale under the name of another food;

20 (3) it is an imitation of another food, unless its label bears, in type of  
21 uniform size and prominence, the word "imitation" and, immediately thereafter, the  
22 name of the food imitated;

23 (4) its container is made, formed, or filled so as to be misleading;

24 (5) it is in package form unless it bears a label containing (A) the name  
25 and place of business of the manufacturer, packer, or distributor; and (B) an accurate  
26 statement of the quantity of the contents in terms of weight, measure, or numerical  
27 count; however, under (B) of this paragraph, reasonable variations are permitted, and  
28 exemptions for small packages shall be established by regulations prescribed by the  
29 department;

30 (6) a word, statement, or other information required by or under  
31 authority of this chapter to appear on the label or labeling is not prominently placed

1 with the conspicuousness (as compared with other words, statements, designs, or  
2 devices, in the labeling) and in terms that make it likely to be read and understood by  
3 the ordinary individual under customary conditions of purchase and use;

4 (7) it purports to be or is represented as a food for which a definition  
5 and standard of identity has been prescribed by regulations as provided by  
6 AS 17.20.010, unless (A) it conforms to the definition and standard, and (B) its label  
7 bears the name of the food specified in the definition and standard and the common  
8 names of optional ingredients other than spices, flavoring, and coloring present in the  
9 food as required by regulation;

10 (8) it purports to be or is represented as (A) a food for which a  
11 standard of quality has been prescribed by regulations, and its quality falls below that  
12 standard, unless its label bears, in the manner and form the regulations specify, a  
13 statement that it falls below that standard; or (B) a food for which a standard of fill of  
14 container has been prescribed by regulation as provided by AS 17.20.010 and it falls  
15 below the applicable standard of fill of container, unless its label bears, in the manner  
16 and form as the regulations specify, a statement that it falls below that standard;

17 (9) it is not subject to the provisions of (7) of this subsection, unless it  
18 bears labeling clearly giving (A) the common or usual name of the food, if any, and  
19 (B) in case it is fabricated from two or more ingredients, the common or usual name of  
20 each ingredient; except that, however, spices, flavorings, and colorings, other than  
21 those sold as such, may be designated as spices, flavorings, and colorings, without  
22 naming each; however, to the extent that compliance with the requirements of (B) of  
23 this paragraph is impracticable, or results in deception or unfair competition,  
24 exemptions shall be established by regulations adopted by the department, but the  
25 requirements of (B) of this paragraph do not apply to food products that are packaged  
26 at the direction of purchasers at retail at the time of sale, the ingredients of which are  
27 disclosed to the purchasers by other means in accordance with regulations adopted by  
28 the department;

29 (10) it purports to be or is represented for special dietary uses, unless  
30 its label bears information concerning its vitamin, mineral, and other dietary properties  
31 the commissioner determines to be, and by regulations prescribes as, necessary in

1 order fully to inform purchasers as to its value for those uses;

2 (11) it bears or contains artificial flavoring, artificial coloring, or  
3 chemical preservative, unless it bears labeling stating that fact; however, to the extent  
4 that compliance with the requirements of this paragraph is impracticable, exemption  
5 shall be established by regulations adopted by the department;

6 (12) the food is a farmed halibut, salmon, or sablefish product, unless

7 (A) the product is labeled to identify the product as farmed fish  
8 [RAISED OUTSIDE THE STATE], if the product is sold in a packaged form;

9 or

10 (B) the product is conspicuously identified as farmed fish  
11 [RAISED OUTSIDE THE STATE], if the product is sold in an unpackaged  
12 form;

13 (13) the labeling or advertisement of the food is inconsistent with the  
14 labeling or advertisement provisions of AS 17.20.048.

15 \* **Sec. 15.** AS 17.20.070 is amended to read:

16 **Sec. 17.20.070. Inspection by department.** An officer or employee  
17 designated by the commissioner shall have access to a factory, aquatic farm, **finfish**  
18 **farm** or establishment, the operator of which holds a permit from the commissioner,  
19 for the purpose of ascertaining whether the conditions of the permit are being  
20 complied with. Denial of access for inspection is ground for suspension of the permit  
21 until access is freely given.

22 \* **Sec. 16.** AS 17.20.200(a) is amended to read:

23 (a) The commissioner of environmental conservation or an agent shall have  
24 free access at reasonable hours to a factory, warehouse, or establishment in which  
25 foods or cosmetics are manufactured, processed, packed, or held for introduction into  
26 commerce, to enter a vehicle being used to transport or hold these foods or cosmetics  
27 in commerce, or to an aquatic farm **or finfish farm** in order to

28 (1) inspect a factory, warehouse, establishment, vehicle, [OR] aquatic  
29 farm, **or finfish farm** to determine if the provisions of the commissioner's respective  
30 portions of this chapter are being violated; and

31 (2) secure samples or specimens of a food, aquatic farm product,

1            **finfish farm product**, or cosmetic.

2            \* **Sec. 17.** AS 17.20.370 is amended by adding new paragraphs to read:

3                                    (18) "finfish farm" has the meaning given in AS 16.40.229;

4                                    (19) "finfish farm product" has the meaning given in AS 16.40.229.

5            \* **Sec. 18.** AS 16.05.340(a)(14) is repealed.