

SENATE BILL NO. 180

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY SENATOR MCGUIRE

Introduced: 5/14/07

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act transferring duties relating to aquatic farming and hatchery operations from**
2 **the Department of Fish and Game to the Department of Natural Resources, eliminating**
3 **certain permit requirements applicable to aquatic farming and hatchery operations, and**
4 **directing the Department of Natural Resources to administer and supervise promotional**
5 **and marketing work for aquatic farm products; and providing for an effective date."**

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

7 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 **SHORT TITLE.** This Act may be known as the Alaska Shellfish Mariculture
10 Development and Marketing Act.

11 *** Sec. 2.** AS 03.05.010(a) is amended to read:

12 (a) The commissioner of natural resources shall
13 (1) direct, administer, and supervise

1 (A) promotional and experimental work, extension services,
2 and agricultural projects for the purpose of promoting and developing the
3 agricultural industry within the state including such fields as horticulture,
4 dairying, cattle raising, fur farming, grain production, vegetable production,
5 and development of other agricultural products; **and**

6 **(B) promotion and marketing of aquatic farm and hatchery**
7 **products;**

8 (2) procure and preserve all information pertaining to the development
9 of the agricultural industry and disseminate that information to the public;

10 (3) assist prospective settlers and others desiring to engage in the
11 agricultural industry in the state with information concerning areas suitable for
12 agriculture and other activities and programs essential to the development of the
13 agricultural industry in the state;

14 (4) review the marketing, financing, and development of agricultural
15 products inside the state including transportation, with special emphasis upon local
16 production, and negotiate for the marketing of agricultural products of the state with
17 federal and state agencies operating in the state;

18 (5) regulate and control the entry into the state and the transportation,
19 sale, or use inside the state of plants, seeds, vegetables, shell eggs, fruits and berries,
20 nursery stock, animal feeds, remedies and mineral supplements, fertilizers, and
21 agricultural chemicals in order to prevent the spread of pests, diseases, or toxic
22 substances injurious to the public interest, and to protect the agricultural industry
23 against fraud, deception, and misrepresentation; in this connection the commissioner
24 may require registration, inspection, and testing, and establish procedures and fees;
25 [AND]

26 (6) regulate the farming of elk in a manner similar to the manner in
27 which the commissioner regulates domestic animals and livestock, to the extent that is
28 appropriate; **and**

29 **(7) administer and supervise aquatic farming and hatchery**
30 **operations for leases entered into under AS 38.05.083; unless the commissioner**
31 **determines that assignment to another subordinate unit of the department better**

1 further the objectives of successful development of aquatic farms and hatcheries
2 and better conforms to the management objectives of the department,
3 responsibility for oversight of aquatic farms and hatcheries is delegated to and
4 generally vests in the director of the division principally responsible for the
5 development and execution of state agricultural policy, except that responsibility
6 for the issuance of leases vests in the director of the division of lands; however the
7 management of the duties and responsibilities set out in this paragraph are
8 allocated, the Department of Natural Resources shall exercise supervisory
9 authority under this paragraph

10 (A) in a manner that

11 (i) ensures the protection of the state's fish and
12 shellfish resources; and

13 (ii) improves the economy, health, and well-being of
14 the citizens of the state; and

15 (B) cooperatively with the Department of Fish and Game so
16 as not to impair the exercise by that department of

17 (i) the duty under AS 16.05.868 to conduct fish
18 health inspections, including particularly its ability as set out in
19 regulations adopted under authority of that section for inspections
20 of fish broodstocks and seed stocks to detect fish disease and to
21 issue certifications that fish broodstocks and seed stocks are free of
22 disease;

23 (ii) the authority exercised under AS 16.05.251(a)
24 relating to the regulation of fish transportation, including
25 particularly its ability as set out in regulations adopted under
26 authority of that subsection with respect to prescribing conditions
27 to control the occurrence of fish disease, genetic change, and other
28 disturbances of biological origin affecting native, wild, or hatchery
29 stocks of fish; and

30 (iii) the authority exercised under AS 16.40.120 -
31 16.40.199 relating to protection of native fish and shellfish stocks

1 **and native aquatic plants.**

2 * **Sec. 3.** AS 03.05.030 is amended to read:

3 **Sec. 03.05.030. Rules for grading and classification of agricultural and**
 4 **fisheries products.** The commissioner may adopt rules, regulations, and procedures

5 (1) requiring the classification, grading, and inspection of agricultural
 6 products sold or offered for sale for general consumption before they are sold, and
 7 requiring the marking or labeling of any sack, box, carton, or other container of
 8 agricultural products to show the kind, grade, or other prescribed classification of the
 9 contents;

10 (2) **relating to fish or fisheries products for which the**
 11 **commissioner exercises responsibility under AS 03.05.010(a)(1)(B).**

12 * **Sec. 4.** AS 03.05.040 is amended by adding a new subsection to read:

13 (c) In furtherance of the purpose of fulfilling the duty imposed by
 14 AS 03.05.010(a)(1)(B), the commissioner of natural resources or an individual
 15 designated by the commissioner of natural resources as an inspector may, for the
 16 purpose of inspecting fish or fisheries products, or premises containing or having
 17 contained fish or fisheries products, enter a storehouse, warehouse, cold storage plant,
 18 packing house, slaughterhouse, retail store, or other building or place where fish or
 19 fisheries products are or have been raised, housed, kept, stored, processed, or sold.

20 * **Sec. 5.** AS 03.05.050 is amended by adding a new subsection to read:

21 (c) Fish or fisheries products found, by the commissioner of natural resources,
 22 or by an individual designated by the commissioner of natural resources as an
 23 inspector, to violate a regulation adopted under this chapter to implement
 24 AS 03.05.010(a)(1)(B) are declared to be a public nuisance injurious to the public
 25 interest and may not be moved by the person in whose possession they may be except
 26 at the specific direction of the commissioner of natural resources or by the inspector.

27 * **Sec. 6.** AS 03.05.100(4) is amended to read:

28 (4) "fish or fisheries products,"

29 (A) **for the authority exercisable by the commissioner of**
 30 **natural resources under this chapter to implement AS 03.05.010(a)(1)(B),**
 31 **means**

1 (i) an aquatic farm product as that term is defined in
 2 AS 16.40.199; and

3 (ii) a product raised at a hatchery, as that term is
 4 defined in AS 16.40.199, including stock acquired and used by the
 5 hatchery for the purpose of further growth or propagation;

6 (B) except as provided in (A) of this paragraph, means any
 7 aquatic animal, including amphibians, or aquatic plants or parts of those plants,
 8 animals, or amphibians that are usable as human food.

9 * **Sec. 7.** AS 03.09.040 is amended by adding a new subsection to read:

10 (c) The board may not adopt regulations or take action regarding the
 11 construction or operation of a farm or hatchery for which a lease is issued under
 12 AS 38.05.083.

13 * **Sec. 8.** AS 16.05.251(f) is amended to read:

14 (f) Except as expressly provided in AS 16.40.120(e) and 16.40.130, the Board
 15 of Fisheries may not adopt regulations or take action regarding the issuance, denial, or
 16 conditioning of a permit under AS 16.40.120 [AS 16.40.100 OR 16.40.120, THE
 17 CONSTRUCTION OR OPERATION OF A FARM OR HATCHERY REQUIRED
 18 TO HAVE A PERMIT UNDER AS 16.40.100,] or a harvest with a permit issued
 19 under AS 16.40.120.

20 * **Sec. 9.** AS 16.05.930(g) is amended to read:

21 (g) AS 16.05.330 - 16.05.723 do not apply to an activity authorized by a lease
 22 entered into under AS 38.05.083 or a permit issued under AS 16.40.120
 23 [AS 16.40.100 OR 16.40.120], or to a person or vessel employed in an activity
 24 authorized by a permit issued under AS 16.40.120, if appropriate [AS 16.40.100 OR
 25 16.40.120].

26 * **Sec. 10.** AS 16.10.269 is amended to read:

27 **Sec. 16.10.269. Limitations.** AS 16.10.265 and 16.10.267 do not apply to the
 28 purchase or sale of aquatic farm products from a lessee under AS 38.05.083
 29 [HOLDER OF A PERMIT ISSUED UNDER AS 16.40.100] or stock from a lessee
 30 under AS 38.05.083 [HOLDER OF A PERMIT ISSUED UNDER AS 16.40.120].

31 * **Sec. 11.** AS 16.40.120(a) is amended to read:

1 (a) A person may not acquire aquatic plants or shellfish from wild stock in the
 2 state for the purpose of supplying stock to an aquatic farm or hatchery [REQUIRED
 3 TO HAVE A PERMIT UNDER AS 16.40.100] unless the person holds an acquisition
 4 permit from the commissioner.

5 * **Sec. 12.** AS 16.40.120(b) is amended to read:

6 (b) An acquisition permit authorizes the permit holder to acquire the species
 7 and quantities of wild stock in the state specified in the permit for the purposes of
 8 supplying stock to

9 (1) an aquatic farm or hatchery [REQUIRED TO HAVE A PERMIT
 10 UNDER AS 16.40.100];

11 (2) the department.

12 * **Sec. 13.** AS 16.40.140(a) is amended to read:

13 (a) A private hatchery [REQUIRED TO HAVE A PERMIT UNDER
 14 AS 16.40.100] may sell or transfer stock from the hatchery only to an aquatic farm or
 15 other hatchery in this state [THAT HAS A PERMIT ISSUED UNDER
 16 AS 16.40.100], except that shellfish stock may also be sold or offered for sale to an
 17 aquatic farm or related hatchery outside of the state.

18 * **Sec. 14.** AS 16.40.140(b) is amended to read:

19 (b) Stock may not be transferred to or from an aquatic farm or hatchery
 20 [REQUIRED TO HAVE A PERMIT UNDER AS 16.40.100] without prior notice of
 21 the transfer to the commissioner. A notice of transfer shall be submitted at least 45
 22 days before the proposed date of transfer.

23 * **Sec. 15.** AS 16.40.140(e) is amended to read:

24 (e) A person may not sell, transfer, or offer to sell or transfer, or knowingly
 25 purchase or receive, an aquatic farm product grown or propagated in the state unless
 26 the product was grown or propagated on a farm in this state [WITH A PERMIT
 27 ISSUED UNDER AS 16.40.100. THE PERMIT MUST BE IN EFFECT AT THE
 28 TIME OF THE SALE, TRANSFER, PURCHASE, RECEIPT, OR OFFER].

29 * **Sec. 16.** AS 16.40.150(a) is amended to read:

30 (a) The department shall order the quarantine or the destruction and disposal
 31 of diseased hatchery stock or of aquatic farm products when necessary to protect wild

1 stock. A lessee under AS 38.05.083 [HOLDER OF A PERMIT ISSUED UNDER
 2 AS 16.40.100] shall report to the department an outbreak or incidence of disease
 3 among stock or aquatic farm products of the lessee [PERMIT HOLDER] within 48
 4 hours after discovering the outbreak or incidence.

5 * **Sec. 17.** AS 16.40.150(b) is amended to read:

6 (b) A lessee [HOLDER OF A PERMIT ISSUED UNDER AS 16.40.100] shall
 7 allow the department to inspect the lessee's [PERMIT HOLDER'S] farm or hatchery
 8 during operating hours and upon reasonable notice. The cost of inspection shall be
 9 borne by the department.

10 * **Sec. 18.** AS 16.40.150(d) is amended to read:

11 (d) The department may enter into an agreement with a state or federal agency
 12 or a private, state-certified provider to provide services under (b) and (c) of this
 13 section [,] or inspections under AS 38.05.083 [AS 16.40.110(b)].

14 * **Sec. 19.** AS 16.40.160 is amended to read:

15 **Sec. 16.40.160. Regulations.** The commissioner may adopt regulations
 16 necessary to implement AS 16.40.120 - 16.40.199 [AS 16.40.100 - 16.40.199].

17 * **Sec. 20.** AS 16.40.170 is amended to read:

18 **Sec. 16.40.170. Penalty.** A person who violates a provision of AS 16.40.120 -
 19 16.40.199 [AS 16.40.100 - 16.40.199], a regulation adopted under AS 16.40.120 -
 20 16.40.199 [AS 16.40.100 - 16.40.199], or a term or condition of a permit issued under
 21 AS 16.40.120 - 16.40.199 [AS 16.40.100 - 16.40.199,] is guilty of a class B
 22 misdemeanor.

23 * **Sec. 21.** AS 16.40.199 is amended to read:

24 **Sec. 16.40.199. Definitions.** In AS 16.40.120 - 16.40.199, [AS 16.40.100 -
 25 16.40.199]

26 (1) "aquatic farm" means a facility that grows, farms, or cultivates
 27 aquatic farm products in captivity or under positive control;

28 (2) "aquatic farm product" means an aquatic plant or shellfish, or part
 29 of an aquatic plant or shellfish, that is propagated, farmed, or cultivated in an aquatic
 30 farm and sold or offered for sale;

31 (3) "aquatic plant" means a plant indigenous to state water or that is

1 authorized to be imported into the state under a permit issued by the commissioner;

2 (4) "commissioner" means the commissioner of fish and game;

3 (5) "hatchery" means a facility for the artificial propagation of stock,
4 including rearing of juvenile aquatic plants or shellfish;

5 (6) ["INSIGNIFICANT POPULATION" MEANS A POPULATION
6 OF SHELLFISH THAT, IN THE DETERMINATION OF THE COMMISSIONER,
7 WOULD NOT ATTRACT AND SUPPORT A COMMERCIAL FISHERY FOR
8 THAT SPECIES OF SHELLFISH AND THE HARVEST AND SALE OF THE
9 SHELLFISH WOULD NOT RESULT IN SIGNIFICANT ALTERATION IN
10 TRADITIONAL FISHERIES OR OTHER EXISTING USES OF FISH AND
11 WILDLIFE RESOURCES IF THE POPULATION WERE INCLUDED WITHIN AN
12 AQUATIC FARM SITE;

13 (7)] "positive control" means, for mobile species, enclosed within a
14 natural or artificial escape-proof barrier; for species with limited or no mobility, such
15 as a bivalve or an aquatic plant, "positive control" also includes managed cultivation
16 in unenclosed water;

17 (7) [(8)] "shellfish" means a species of crustacean, mollusk, or other
18 invertebrate, in any stage of its life cycle, that is indigenous to state water or that is
19 authorized to be imported into the state under a permit issued by the commissioner;

20 (8) [(9)] "stock" means live aquatic plants or shellfish acquired,
21 collected, possessed, or intended for use by a hatchery or aquatic farm for the purpose
22 of further growth or propagation.

23 * **Sec. 22.** AS 16.43.940 is amended to read:

24 **Sec. 16.43.940. Exempted activities.** This chapter does not apply to activities
25 authorized under a lease entered into under AS 38.05.083 or by a permit issued
26 under AS 16.40.120 [AS 16.40.100 OR 16.40.120].

27 * **Sec. 23.** AS 38.05.083(a) is amended to read:

28 (a) The commissioner may offer to the public for lease at public auction under
29 AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic farming or
30 related hatchery operations, subject to the following:

31 (1) before a final decision

1 (A) to issue a lease is made under this section, the
 2 commissioner shall determine whether the best interests of the state would
 3 be served by offering a lease site under this section; in making the
 4 determination under this subparagraph, the commissioner shall
 5 specifically inquire of the commissioner of fish and game as to whether the
 6 proposed lease site includes more than an insignificant population of a
 7 wild stock, on the site, of a shellfish species that could be cultured; in
 8 making a determination under this subparagraph, the commissioner shall
 9 treat as conclusive the decision of the commissioner of fish and game as to
 10 whether there is more than an insignificant wild stock population on the
 11 proposed lease site of a shellfish species that could be cultured; for
 12 purposes of this subparagraph, "insignificant population" means a
 13 population of shellfish, that, in the determination of the commissioner of
 14 fish and game, would not attract and support a commercial fishery for
 15 that species of shellfish, and the harvest and sale of the shellfish would not
 16 result in significant alteration in traditional fisheries or other existing uses
 17 of fish and wildlife resources if the population were included within an
 18 aquatic farm site;

19 (B) [. BEFORE A FINAL DECISION] to issue or renew a
 20 lease is made under this section, the commissioner shall

21 (i) give notice and allow opportunity for comment in
 22 accordance with AS 38.05.945 and may hold a hearing to take
 23 testimony;

24 (ii) [. BEFORE A FINAL DECISION TO ISSUE OR
 25 RENEW A LEASE UNDER THIS SECTION, THE
 26 COMMISSIONER SHALL] consider all relevant comment or
 27 testimony submitted under this section, AS 38.05.945, or 38.05.946;

28 (2) the commissioner may offer and enter into a new lease under
 29 this section only if the commissioner

30 (A) obtains from an interested party a plan for the
 31 development and operation of the aquatic farm or hatchery; under this

1 subparagraph, if, after consulting with the Department of Fish and Game,
 2 the commissioner finds it reasonable to do so, the commissioner may
 3 require a report of the fish and shellfish disease history of the site;

4 (B) based on the information provided under (A) of this
 5 paragraph, determines that

6 (i) the physical and biological characteristics of the
 7 proposed aquatic farm or hatchery location is suitable for aquatic
 8 farming or for shellfish or aquatic plant activity;

9 (ii) the proposed aquatic farm or hatchery does not
 10 require significant alterations in traditional fisheries or other
 11 existing uses of fish and wildlife resources;

12 (iii) the proposed aquatic farm or hatchery does not
 13 significantly affect fisheries, wildlife, or their habitats in an adverse
 14 manner; and

15 (iv) the proposed aquatic farm or hatchery plans
 16 and staffing plans demonstrate technical and operational
 17 feasibility; and

18 (C) considers all matters relevant under (f) of this
 19 subsection to a final decision;

20 (3) the commissioner may renew a lease under this section only if
 21 the application for renewal of the lease is accompanied by

22 (A) evidence satisfactory to the commissioner that the
 23 applicant has complied with the plan described in (2)(A) of this subsection
 24 during the term of the expiring lease; and

25 (B) a report of the disease history of the aquatic farm or
 26 hatchery covered by the permit; as a condition of renewal, the
 27 commissioner may require a health inspection of the aquatic farm or
 28 hatchery and may direct the department to conduct the inspection or
 29 contract with a disease diagnostician to conduct the inspection.

30 * Sec. 24. AS 38.05.083(f) is amended to read:

31 (f) The commissioner shall adopt regulations

1 **(1) setting out procedures under which the commissioner shall**
 2 **determine whether the best interests of the state would be served by offering a**
 3 **lease site under this section; and**

4 **(2) establishing criteria for the approval or denial of leases under this**
 5 **section; under this paragraph, the commissioner may limit** [AND FOR
 6 LIMITING] the number of sites for which leases may be issued in an area in order to
 7 protect the environment and natural resources of the area; **in addition, the criteria** [.
 8 THE REGULATIONS] must provide for the consideration of upland management
 9 policies and whether the proposed use of a site is compatible with the traditional and
 10 existing uses of the area in which the site is located.

11 * **Sec. 25.** AS 38.05.083 is amended by adding new subsections to read:

12 (g) If, under this section, the lessee cultures wild stocks of shellfish indigenous
 13 to the site,

14 (1) the commissioner shall require the lessee to document the number
 15 or volume of the wild stocks of shellfish taken from the site for the lessee's use in the
 16 operation; and

17 (2) when the lease is terminated or expires, the lessee shall restore the
 18 wild stocks of shellfish, but the obligation to restore the wild stocks may not exceed
 19 restoration of the number actually used in the operation on the site or location for
 20 which the lease was entered into, as documented under (1) of this subsection.

21 (h) The provisions of AS 03.05.010(a)(7) apply to leases issued under this
 22 section.

23 * **Sec. 26.** AS 44.37.020(a) is amended to read:

24 (a) The Department of Natural Resources shall administer the state program
 25 for the conservation and development of natural resources, including forests, parks,
 26 and recreational areas, land, water, agriculture, soil conservation; [, AND] minerals,
 27 including petroleum and natural gas; **and aquatic farms and hatcheries. The**
 28 **department's authority under this subsection does not include administration of**
 29 [, BUT EXCLUDING] commercial fisheries, sport fish, game, and fur-bearing
 30 animals in their natural state.

31 * **Sec. 27.** AS 16.05.050(a)(16), 16.05.340(a)(14); AS 16.40.100, 16.40.105, and 16.40.110

1 are repealed.

2 * **Sec. 28.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 TRANSITIONAL PROVISIONS REGARDING WRITTEN BEST INTEREST
5 FINDING PROCESS. Until amended by the commissioner of natural resources, regulations
6 applicable to making determinations as to whether the best interest of the state would be
7 served by offering a lease site under AS 38.05.083 that have been developed and adopted by
8 the Department of Natural Resources and codified as 11 AAC 63 comply with the
9 requirements of AS 38.05.083(a)(1)(A) and (f)(1), as enacted by this Act.

10 * **Sec. 29.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 TRANSITIONAL PROVISIONS. (a) Litigation, hearings, investigations, and other
13 proceedings pending under a law repealed or amended by this Act, or in connection with a
14 function transferred by this Act, continue in effect and may be completed notwithstanding a
15 transfer or repeal provided for in this Act.

16 (b) Certificates, orders, and regulations in effect immediately before the effective date
17 of a law affected by this Act that were issued or adopted under authority of a law amended or
18 repealed by this Act remain in effect for the term issued and shall be enforced by the
19 Department of Natural Resources under this Act until revoked, vacated, or amended by that
20 department.

21 (c) Wherever in Alaska Statutes affected by this Act there is a reference to regulations
22 adopted under a section of law and there are no regulations adopted under that section because
23 previous regulations adopted under another section are being enforced under (b) of this
24 section, the reference shall be construed to refer to the previously adopted regulations until
25 they are amended by the Department of Natural Resources.

26 (d) Contracts, rights, liabilities, and obligations created by or under a law repealed or
27 amended by this Act, and in effect on the day before the effective date of the repeal or
28 amendment, remain in effect notwithstanding this Act's taking effect.

29 (e) Records, equipment, appropriations, and other property of the Department of Fish
30 and Game whose functions are transferred under this Act shall be transferred to implement the
31 provisions of this Act.

1 * **Sec. 30.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 **ALASKA GROWN LOGO APPLICABLE TO AQUATIC FARM PRODUCTS.**
4 Under AS 03.05.010 - 03.05.100, to implement AS 03.05.010(a)(1)(B), enacted by sec. 2 of
5 this Act, the Department of Natural Resources shall extend its proposed program regulations
6 (11 AAC 32.200 - 11 AAC 32.270 or as may be renumbered) establishing and authorizing the
7 use of the "Alaska Grown" logo to the production of aquatic farms and hatcheries.

8 * **Sec. 31.** This Act takes effect October 1, 2007.