

**SENATE BILL NO. 106**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 0/0/00

Referred:

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to finfish farms and finfish farm products; and providing for an**  
2 **effective date."**

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 **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 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(a) is amended to read:

21 (a) The commissioner has, but not by way of limitation, the following powers  
22 and duties:

23 (1) through the appropriate state agency and under the provisions of  
24 AS 36.30 (State Procurement Code), to acquire by gift, purchase, or lease, or other  
25 lawful means, land, buildings, water, rights-of-way, or other necessary or proper real  
26 or personal property when the acquisition is in the interest of furthering an objective or  
27 purpose of the department and the state;

28 (2) under the provisions of AS 36.30, to design and construct  
29 hatcheries, pipelines, rearing ponds, fishways, and other projects beneficial for the fish  
30 and game resources of the state;

31 (3) to accept money from any person under conditions requiring the

1 use of the money for specific purposes in the furtherance of the protection,  
2 rehabilitation, propagation, preservation, or investigation of the fish and game  
3 resources of the state or in settlement of claims for damages to fish or game resources;

4 (4) to collect, classify, and disseminate statistics, data and information  
5 that, in the commissioner's discretion, will tend to promote the purposes of this title  
6 except AS 16.51 and AS 16.52;

7 (5) to take, capture, propagate, transport, buy, sell, or exchange fish or  
8 game or eggs for propagating, scientific, public safety, or stocking purposes;

9 (6) under the provisions of AS 36.30, to provide public facilities where  
10 necessary or proper to facilitate the taking of fish or game, and to enter into  
11 cooperative agreements with any person to effect them;

12 (7) to exercise administrative, budgeting, and fiscal powers;

13 (8) under the provisions of AS 36.30, to construct, operate, supervise,  
14 and maintain vessels used by the department;

15 (9) to authorize the holder of an interim-use permit under AS 16.43 to  
16 engage on an experimental basis in commercial taking of a fishery resource with  
17 vessel, gear, and techniques not presently qualifying for licensing under this chapter in  
18 conformity with standards established by the Alaska Commercial Fisheries Entry  
19 Commission;

20 (10) not later than January 31 of each year, to provide to the  
21 commissioner of revenue the names of those fish and shellfish species that the  
22 commissioner of fish and game designates as developing commercial fish species for  
23 that calendar year; a fish or shellfish species is a developing commercial fish species  
24 if, within a specified geographical region,

25 (A) the optimum yield from the harvest of the species has not  
26 been reached;

27 (B) a substantial portion of the allowable harvest of the species  
28 has been allocated to fishing vessels of a foreign nation; or

29 (C) a commercial harvest of the fish species has recently  
30 developed;

31 (11) to initiate or conduct research necessary or advisable to carry out

1 the purposes of this title except AS 16.51 and AS 16.52;

2 (12) to enter into cooperative agreements with agencies of the federal  
3 government, educational institutions, or other agencies or organizations, when in the  
4 public interest, to carry out the purposes of this title except AS 16.51 and AS 16.52;

5 (13) to implement an on-board observer program authorized by the  
6 Board of Fisheries under AS 16.05.251(a)(13); implementation

7 (A) must be as unintrusive to vessel operations as practicable;

8 and

9 (B) must make scheduling and scope of observers' activities as  
10 predictable as practicable;

11 (14) to sell fish caught during commercial fisheries test fishing  
12 operations;

13 (15) to establish and charge fees equal to the cost of services provided  
14 by the department, including provision of public shooting ranges, broodstock and eggs  
15 for private nonprofit hatcheries, department publications, and other direct services, and  
16 reasonable fees for the use of state facilities managed by the department; fees  
17 established under this paragraph for tours of hatchery facilities, commercial use of  
18 sport fishing access sites, and for operation of state hatchery facilities by private  
19 aquaculture associations are not subject to the cost limit under AS 37.10.050(a);

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

23 (17) to operate state housing and facilities for employees, contractors,  
24 and others in support of the department's responsibilities and to charge rent that is  
25 consistent with applicable collective bargaining agreements, or, if no collective  
26 bargaining agreement is applicable, competitive with market conditions; rent received  
27 from tenants shall be deposited in the general fund;

28 (18) to petition the Alaska Commercial Fisheries Entry Commission,  
29 unless the Board of Fisheries disapproves the petition under AS 16.05.251(g), to  
30 establish a moratorium on new entrants into commercial fisheries

31 (A) that have experienced recent increases in fishing effort that

1 are beyond a low, sporadic level of effort;

2 (B) that have achieved a level of harvest that may be  
3 approaching or exceeding the maximum sustainable level for the fishery; and

4 (C) for which there is insufficient biological and resource  
5 management information necessary to promote the conservation and sustained  
6 yield management of the fishery;

7 (19) to promote fishing, hunting, and trapping and preserve the  
8 heritage of fishing, hunting, and trapping in the state.

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

10 (f) Except as expressly provided in AS 16.40.120(e) and 16.40.130, the Board  
11 of Fisheries may not adopt regulations or take action regarding the issuance, denial, or  
12 conditioning of a permit under AS 16.40.100, [OR] 16.40.120, or 16.40.220, the  
13 construction or operation of a farm or hatchery required to have a permit under  
14 AS 16.40.100, the construction or operation of a finfish farm required to have a  
15 permit under AS 16.40.220, or a harvest with a permit issued under AS 16.40.120 or  
16 16.40.220.

17 \* **Sec. 5.** AS 16.05.930(c) is amended to read:

18 (c) AS 16.05.920 and 16.05.921 do not prohibit [REARING AND SALE OF  
19 FISH FROM PRIVATE PONDS,] the raising of wild animals in captivity for food [,]  
20 or the raising of game birds for the purpose of recreational hunting on game hunting  
21 preserves, under regulations adopted by the appropriate board. In this subsection,  
22 "animals" includes all animal life, including insects and bugs.

23 \* **Sec. 6.** AS 16.05.930(g) is amended to read:

24 (g) AS 16.05.330 - 16.05.723 do not apply to an activity authorized by a  
25 permit issued under AS 16.40.100, [OR] 16.40.120, or 16.40.220, or to a person or  
26 vessel employed in an activity authorized by a permit issued under AS 16.40.100,  
27 [OR] 16.40.120, or 16.40.220.

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

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

31 (1) aquatic farm products from a holder of a permit issued under

1 AS 16.40.100;

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

3 or

4 (3) finfish stock or finfish farm products from a holder of a permit  
 5 issued under AS 16.40.220.

6 \* **Sec. 8.** AS 16.40.210(a) is amended to read:

7 (a) A person may not grow or cultivate finfish in captivity or under positive  
 8 control for commercial purposes unless the person holds a current valid finfish  
 9 farm permit under AS 16.40.220.

10 \* **Sec. 9.** AS 16.40 is amended by adding new sections to article 3 to read:

11 **Sec. 16.40.220. Finfish farm permits.** (a) The commissioner or a designee  
 12 may issue a triennial finfish farm permit, subject to the restrictions imposed by this  
 13 section, to a qualified applicant.

14 (b) A finfish farm permit authorizes the permittee, subject to the conditions of  
 15 AS 17.20, this section, and regulations adopted under this section, to operate a finfish  
 16 farm and to acquire, purchase, offer to purchase, transfer, possess, sell, and offer to  
 17 sell finfish stock and finfish farm products that are used or reared at the finfish farm.

18 (c) All finfish acquired, purchased, offered to purchase, transferred, possessed,  
 19 sold, offered for sale, or otherwise kept at a finfish farm must be triploid. A finfish  
 20 farm permit may not authorize the artificial propagation of finfish at a finfish farm.

21 (d) Notwithstanding AS 16.05.080, the commissioner may adopt regulations  
 22 that establish the amount and manner of payment of fees for a permit issued under this  
 23 section so that the total amount of fees collected equals the actual regulatory cost to  
 24 the department of permitting finfish farms in the state. The commissioner shall review  
 25 the fee level to determine whether the regulatory costs are approximately equal to the  
 26 fee collections on a triennial basis.

27 (e) The commissioner may attach terms and conditions to a permit issued  
 28 under this section that are necessary in the judgment of the commissioner to protect  
 29 natural fish and wildlife resources.

30 (f) The commissioner shall adopt regulations under AS 44.62 (Administrative  
 31 Procedure Act) after consultation with the commissioner of environmental

1 conservation to implement this section, including regulations that govern

2 (1) eligibility for a finfish farm permit;

3 (2) siting of a finfish farm;

4 (3) operation of a finfish farm;

5 (4) sources, acquisition, importation, transportation, and export of  
6 finfish stock and finfish farm products at a finfish farm;

7 (5) control, prevention, and eradication of disease and destruction of  
8 diseased finfish at a finfish farm; and

9 (6) other matters necessary to implement this section and to protect  
10 wild stocks of fish and game in the state.

11 (g) A person may stock a lake located on private property with finfish for  
12 personal consumption without a permit under this section if the lake is under positive  
13 control.

14 **Sec. 16.40.230. Definitions.** In AS 16.40.210 - 16.40.230,

15 (1) "finfish" means any bony fish belonging to the osteichthyes class,  
16 but does not include pink salmon, chum salmon, sockeye salmon, coho salmon,  
17 chinook salmon, or Atlantic salmon;

18 (2) "finfish farm" means a natural or artificial inland, closed-system  
19 body of water under positive control for the cultivation of finfish and the production of  
20 finfish farm products for commercial sale;

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

23 (4) "finfish stock" means live finfish acquired, collected, possessed, or  
24 intended for use by a finfish farm;

25 (5) "positive control" means enclosed within a natural or artificial  
26 escape-proof barrier;

27 (6) "triploid" means a naturally occurring or artificially induced  
28 presence of three sets of chromosomes in a finfish that results in sterility.

29 \* **Sec. 10.** AS 16.43.940 is amended to read:

30 **Sec. 16.43.940. Exempted activities.** This chapter does not apply to activities  
31 authorized by a permit issued under AS 16.40.100, [OR] 16.40.120, or 16.40.220.

1 \* **Sec. 11.** AS 16.51.180(7) is amended to read:

2 (7) "seafood" means finfish, shellfish, and fish by-products, including  
3 but not limited to salmon, halibut, herring, flounder, crab, clam, cod, shrimp, and  
4 pollock, but does not include aquatic farm products as defined in AS 16.40.199 **or**  
5 **finfish farm products as defined in AS 16.40.230.**

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

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

10 (1) food offered to the public or sold, subject to AS 17.20.017,  
11 including

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

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

15 (C) labeling; and

16 (D) the training, testing, and certification requirements for  
17 individuals who handle or prepare food, their supervisors, and their employers  
18 to ensure their knowledge of food safety and sanitation principles and  
19 requirements;

20 (2) control and eradication of pests;

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

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

31 (5) standards and conditions for the operation and siting of aquatic

1 farms and related hatcheries and finfish farms, including

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

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

5 (6) monitoring of finfish farms and aquatic farms and of finfish farm  
6 products and aquatic farm products to ensure compliance with this chapter and, to the  
7 extent not inconsistent with this chapter or regulations adopted under the authority of  
8 this chapter, with the requirements of the national shellfish sanitation program manual  
9 of operations published by the United States Food and Drug Administration as it may  
10 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. 13.** AS 17.20.070 is amended to read:

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

23 \* **Sec. 14.** AS 17.20.200(a) is amended to read:

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

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

1                   (2) secure samples or specimens of a food, **finfish farm product**,  
2           aquatic farm product, or cosmetic.

3    \* **Sec. 15.** AS 17.20.370 is amended by adding new paragraphs to read:

4                   (16) "finfish farm" has the meaning given in AS 16.40.230;

5                   (17) "finfish farm product" has the meaning given in AS 16.40.230.

6    \* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to  
7 read:

8           REVISOR INSTRUCTION. The revisor of statutes is requested to change the catch  
9 line of AS 16.40.210 from "Finish farming prohibited" to "Finfish farming prohibited without  
10 a permit."

11    \* **Sec. 17.** This Act takes effect immediately under AS 01.10.070(c).