

1 IN THE SENATE

BY JONES

2

SENATE BILL NO. 425

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the farming of aquatic plants and
7 aquatic animals; and providing for an effective
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section. 1. AS 08 is amended by adding a new chapter to read:

11

CHAPTER 06. AQUATIC FARMING.

12

Sec. 08.06.010. AQUATIC FARM AND HATCHERY PERMITS. (a) A

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person may not, without a permit from the commissioner, construct or
14 operate

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(1) an aquatic farm; or

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(2) a hatchery for the purpose of supplying aquatic plants

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or shellfish to an aquatic farm.

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(b) A permit issued under this section authorizes the permittee,

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subject to the conditions of this chapter, to acquire, purchase, offer

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to purchase, transfer, possess, sell, and offer to sell stock and

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aquatic farm products that are used or reared at the hatchery or

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aquatic farm.

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(c) The commissioner, after consulting with the commissioner of

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fish and game and the commissioner of environmental conservation, may

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attach conditions to a permit issued under this section that are

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necessary to protect the public health or natural stock.

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(d) A permit issued under this section is nontransferable.

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(e) Notwithstanding other provisions of law, the commissioner

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may not issue a permit under this section for the farming of fish

1 other then shellfish.

2 Sec. 08.06.020. PERMIT APPLICATION AND RENEWAL. (a) An appli-
3 cant for an aquatic farming or hatchery permit required under AS 08.-
4 06.010 shall apply on a form prescribed by the commissioner. An
5 application for a permit must include a plan for the development of
6 the aquatic farm or hatchery, which must be approved by the commis-
7 sioner before the permit is issued.

8 (b) An application for renewal must be accompanied by fees
9 required under AS 08.01.065, a report of a health inspection of the
10 farm or hatchery covered by the permit, and evidence that satisfies
11 the commissioner that the applicant has complied with the development
12 plan required under (a) of this section. The inspection shall be
13 conducted by the Department of Fish and Game or by a disease diagnos-
14 tician approved by the Department of Fish and Game. The inspection
15 shall be conducted not more than 30 days before the application is
16 submitted to the department.

17 Sec. 08.06.030. AQUATIC FARM STOCK ACQUISITION PERMITS. (a) A
18 person may not acquire aquatic plants or shellfish from wild stock in
19 the state for the purpose of supplying stock to an aquatic farm or
20 hatchery required to have a permit under AS 08.06.010 unless the
21 person holds an acquisition permit from the commissioner of fish and
22 game.

23 (b) An acquisition permit authorizes the permit holder to ac-
24 quire the species and quantities of wild stock in the state specified
25 in the permit for the purpose of supplying stock to an aquatic farm or
26 hatchery required to have a permit under AS 08.06.010.

27 (c) The commissioner of fish and game, in consultation with the
28 commissioner of commerce and economic development, shall specify the
29 expiration date of an acquisition permit and may attach conditions to

1 an acquisition permit, including conditions relating to the time,
2 place, and manner of harvest. Size, gear, place, time, licensing, and
3 other limitations applicable to sport, commercial, or subsistence
4 harvest of aquatic plants and shellfish do not apply to a harvest with
5 a permit issued under this section.

6 (d) The commissioner of fish and game shall forward a copy of
7 each permit application under this section to the commissioner of
8 commerce and economic development. The commissioner of fish and game
9 shall issue or deny a permit within 30 days after receiving an appli-
10 cation.

11 (e) The commissioner of fish and game shall deny or restrict a
12 permit under this section if the commissioner finds that the proposed
13 harvest will substantially impair sustained yield of the species. The
14 commissioner may deny or restrict a permit under this section if the
15 commissioner finds that the proposed harvest will significantly dis-
16 rupt established uses of the resources by commercial, sport, personal
17 use, or subsistence users. The commissioner of fish and game shall
18 forward to the Board of Fisheries for action permit applications for
19 species that support commercial fisheries subject to limited entry
20 under AS 16.43. A denial of the permit by the commissioner of fish
21 and game must contain the factual basis for the findings. The commis-
22 sioner shall forward denied permit applications to the Board of Fish-
23 eries for consideration at the next regularly scheduled meeting of the
24 board.

25 (f) Except as provided in (e) of this section, the commissioner
26 of fish and game shall issue a permit if

27 (1) wild stock is necessary to meet the initial needs of
28 farm or hatchery stock;

29 (2) there are technological limitations on the propagation

1 of cultured stock for the species sought;

2 (3) wild stock sought is not fully utilized by commercial,
3 sport, personal use, or subsistence fisheries; or

4 (4) wild stock is needed to maintain the gene pool of a
5 hatchery or aquatic farm.

6 (g) Aquatic plants and shellfish acquired under a permit issued
7 under this section become the property of the permit holder and are no
8 longer a public or common resource.

9 Sec. 08.06.040. IMPORTATION OF AQUATIC PLANTS OR SHELLFISH FOR
10 STOCK. A person may not import into the state an aquatic plant or
11 shellfish for the purpose of supplying stock to an aquatic farm or
12 hatchery unless authorized by the commissioner of fish and game or by
13 a regulation of the Board of Fisheries.

14 Sec. 08.06.050. LIMITATION ON SALE, TRANSFER OF STOCK, AND
15 PRODUCTS. (a) A private hatchery required to have a permit under
16 AS 08.06.010 may sell or transfer stock from the hatchery only to an
17 aquatic farm or other hatchery that has a permit issued under AS 08.-
18 06.010.

19 (b) Stock may not be transferred to or from an aquatic farm or
20 hatchery required to have a permit under AS 08.06.010 without prior
21 notice of the transfer to the commissioner. A notice of transfer
22 shall be submitted at least 30 days before the proposed date of trans-
23 fer.

24 (c) A notice of transfer must be accompanied by a report of a
25 health inspection of the stock. The inspection shall be conducted by
26 the Department of Fish and Game or by a disease diagnostician approved
27 by the Department of Fish and Game. The cost of inspection shall be
28 borne by the Department of Fish and Game.

29 (d) The Department of Fish and Game may restrict or disapprove a

1 transfer of stock if it finds that the transfer would present a sub-
2 stantial risk of spreading disease.

3 (e) A person may not sell, transfer, or offer to sell or trans-
4 fer, or knowingly purchase or receive, an aquatic farm product grown
5 or propagated in the state unless the product was grown or propagated
6 on a farm with a permit issued under AS 08.06.010. The permit must be
7 in effect at the time of the sale, transfer, purchase, receipt, or
8 offer.

9 Sec. 08.06.060. DISEASE CONTROL AND INSPECTION. (a) The De-
10 partment of Fish and Game may order the quarantine or the destruction
11 and disposal of diseased hatchery stock or of aquatic farm products
12 when necessary to protect wild stock. A holder of a permit issued
13 under AS 08.06.010 shall report to the Department of Fish and Game an
14 outbreak or incidence of disease among stock or aquatic farm products
15 of the permit holder.

16 (b) A holder of a permit issued under AS 08.06.010 shall allow
17 the Department of Fish and Game to inspect the permit holder's farm or
18 hatchery during operating hours and upon reasonable notice. The cost
19 of inspection shall be borne by the Department of Fish and Game.

20 (c) The Department of Fish and Game shall develop a disease
21 management and control program for aquatic farms and hatcheries.

22 (d) The Department of Fish and Game may enter into an agreement
23 with a state or federal agency or a private provider to provide ser-
24 vices under (b) and (c) of this section, or inspections under AS 08.-
25 06.020(b).

26 Sec. 08.06.070. REGULATIONS. The commissioner may adopt regu-
27 lations necessary to implement this chapter.

28 Sec. 08.06.080. PENALTY. A person who violates a provision of
29 this chapter, a regulation adopted under this chapter, or a term or

1 condition of a permit issued under this chapter, is guilty of a class
2 B misdemeanor.

3 Sec. 08.06.900. DEFINITIONS. In this chapter

4 (1) "aquatic farm" means a facility that grows, farms, or
5 cultivates aquatic farm products in captivity or under positive con-
6 trol;

7 (2) "aquatic farm product" means an aquatic plant or shell-
8 fish, or parts of shellfish, that are propagated, farmed, or cul-
9 tivated in an aquatic farm and sold or offered for consumption;

10 (3) "aquatic plant" means a plant indigenous to state
11 water;

12 (4) "commissioner" means the commissioner of commerce and
13 economic development;

14 (5) "hatchery" means a facility for the artificial incu-
15 bation of stock, including rearing of juvenile aquatic plants or
16 shellfish;

17 (6) "positive control" means, for mobile species, enclosed
18 within a natural or artificial escape-proof barrier; for species with
19 limited or no mobility, such as a bivalve or an aquatic plant, "posi-
20 tive control" also includes managed cultivation in unenclosed water;

21 (7) "shellfish" means shellfish that is indigenous to state
22 water or that is authorized to be imported into the state under a
23 permit issued by the commissioner of fish and game;

24 (8) "stock" means live aquatic plants and shellfish ac-
25 quired, collected, possessed, or intended for use by a hatchery or
26 aquatic farm for the purpose of further growth or propagation.

27 * Sec. 2. AS 03.05.020(a) is amended to read:

28 (a) The commissioner shall

29 (1) require routine inspection of food animals, fish,

1 poultry and derivative food products, to protect the public against
2 fraud, disease and spoilage, and in this connection adopt uniform
3 regulations establishing standards of identity and composition of
4 these food products and minimum standards of sanitation and handling
5 methods as to all phases of slaughtering, processing, storing, trans-
6 porting, displaying and selling of these food products;

7 (2) issue orders or cause the orders to be issued by an
8 authorized veterinarian prohibiting transportation and sale of food
9 products intended for human consumption which do not meet the minimum
10 requirements established under (1) of this subsection, and limiting
11 their use and disposal in conformity with protection of the public;

12 (3) adopt a schedule of fees or charges, and credit pro-
13 visions, for services rendered by state veterinarians to farmers and
14 others at their request in caring for livestock and poultry, and all
15 the fees shall be transmitted to the commissioner for deposit in the
16 state treasury;

17 (4) designate points of entry for admission of livestock or
18 poultry into the state, and arrange inspection at those points with or
19 without collaboration and assistance of the federal government, and
20 bar entry of stock or poultry not shipped under a valid permit or not
21 free from contagious or infectious disease;

22 (5) adopt, repeal, and amend regulations consistent with
23 existing law for

24 (A) the labeling and grading of milk and milk products
25 and standards of cleanliness and sanitation, to at least the
26 minimum of current recommendations of the United States Public
27 Health Service, for the operation of dairies selling, or offering
28 for sale, milk or milk products;

29 (B) the production and sale of ice cream and allied

1 frozen desserts;

2 (C) the production and sale of imitation milk and
3 imitation milk products;

4 (6) monitor aquatic farms and hatcheries that hold permits
5 under AS 08.06.010 for the possible presence of paralytic shellfish
6 poisoning.

7 * Sec. 3. AS 08.01.010 is amended by adding a new paragraph to read:

8 (28) regulation of aquatic farms and hatcheries under
9 AS 08.06.

10 * Sec. 4. AS 16.05.251 is amended by adding a new subsection to read:

11 (f) Except as expressly provided in AS 08.06.040, the Board of
12 Fisheries may not adopt regulations or take action regarding the
13 issuance, denial, or conditioning of a permit under AS 08.06, the
14 construction or operation of a farm or hatchery required to have a
15 permit under AS 08.06.010, or a harvest with a permit issued under
16 AS 08.06.030. Regulations or orders adopted by the Board of Fisheries
17 under this section do not apply to a harvest with a permit issued
18 under AS 08.06.030.

19 * Sec. 5. AS 16.05.330(a) is amended to read:

20 (a) Except as otherwise permitted in this chapter, a person may
21 not engage in sport fishing, including the taking of razor clams; in
22 hunting, trapping, or fur dealing; in the farming of [FISH,] fur [,]
23 or game; or in taxidermy, without having the appropriate license or
24 tag in actual possession.

25 * Sec. 6. AS 16.05.920(a) is amended to read:

26 (a) Unless permitted by AS 16.05 - AS 16.40 or AS 08.06, or by
27 regulation adopted under AS 16.05 - AS 16.40 or AS 08.06, a person may
28 not take, possess, transport, sell, offer to sell, purchase, or offer
29 to purchase fish, game, or marine aquatic plants, or any part of fish,

1 game, or aquatic plants, or a nest or egg of fish or game.

2 * Sec. 7. AS 16.05.930 is amended by adding a new subsection to read:

3 (g) AS 16.05.330 - 16.05.720 do not apply to an activity au-
4 thorized by a permit issued under AS 08.06.010 or 08.06.030, or to a
5 person or vessel employed in an activity authorized by a permit issued
6 under AS 08.06.010 or 08.06.030.

7 * Sec. 8. AS 16.05.940(14) is amended to read:

8 (14) "[FISH OR] game farming" means the business of prop-
9 agating, breeding, raising, or producing [FISH OR] game in captivity
10 for the purpose of marketing the [FISH OR] game or game [THEIR] prod-
11 ucts, and "captivity" means having the [FISH OR] game under positive
12 control, as in a pen [, POND,] or an area of land that [OR WATER
13 WHICH] is completely enclosed by a generally escape-proof barrier;

14 * Sec. 9. AS 16.10 is amended by adding a new section to read:

15 Sec. 16.10.269. LIMITATIONS. AS 16.10.265 - 16.10.267 do not
16 apply to the purchase or sale of aquatic farm products from a holder
17 of a permit issued under AS 08.06.010 or stock from a holder of a
18 permit issued under AS 08.06.030.

19 * Sec. 10. AS 16.10.400 is amended by adding a new subsection to read:

20 (h) AS 16.10.400 - 16.10.475 do not apply to the construction or
21 operation of a private hatchery that has a permit issued under AS 08.-
22 06.010.

23 * Sec. 11. AS 16.43.140 is amended by adding a new subsection to read:

24 (d) This chapter does not apply to activities authorized by a
25 permit issued under AS 08.06.010 or 08.06.030.

26 * Sec. 12. AS 16.51.180(5) is amended to read:

27 (5) "seafood" means finfish, shellfish, and fish by-prod-
28 ucts, including but not limited to salmon, halibut, herring, flounder,
29 crab, clam, cod, shrimp, and pollock, but does not include aquatic

1 farm products as defined in AS 08.06.900;

2 * Sec. 13. AS 38.05 is amended by adding a new section to read:

3 Sec. 38.05.088. AQUATIC FARM PERMITTEE'S LEASING PREFERENCE.
4 Before offering to the public for lease a site that has been developed
5 for aquatic farming or related hatchery activities under a permit
6 issued under AS 38.05.856, the commissioner shall offer the site for
7 leasing to the permittee at not less than its appraised fair market
8 value.

9 * Sec. 14. AS 38.05 is amended by adding new sections to read:

10 Sec. 38.05.855. IDENTIFICATION OF SITES FOR AQUATIC FARMS AND
11 HATCHERIES. (a) The commissioner, in consultation with the commis-
12 sioner of fish and game, shall identify districts in the state within
13 which sites may be selected for the establishment and operation of
14 aquatic farms and related hatcheries required to have a permit under
15 AS 08.06.010.

16 (b) The commissioner shall issue a call for nominations for each
17 district identified under (a) of this section. A call for nominations
18 shall invite interested persons and municipalities to identify sites
19 within the district that are suitable for aquatic farms and related
20 hatcheries.

21 (c) Based on comments received under (b) of this section, and
22 after consultation with the commissioner of fish and game, the commis-
23 sioner of environmental conservation, and the commissioner of commerce
24 and economic development, the commissioner shall make a preliminary
25 written finding under AS 38.05.035(e) that proposes sites in each
26 district for which permits may be issued under AS 38.05.856.

27 (d) After notice is given under AS 38.05.945 and a hearing is
28 held under AS 38.05.946(b), the commissioner shall issue a final
29 written finding under AS 38.05.035(e) that identifies sites in each

1 district for which permits shall be issued under AS 38.05.856 and that
2 specifies conditions and limitations for the development of each site.

3 Sec. 38.05.856. TIDELAND AND LAND USE PERMITS FOR AQUATIC FARM-
4 ING. (a) The commissioner shall issue a tideland or land use permit
5 for the establishment and operation of an aquatic farm and related
6 hatchery operations at a site identified under AS 38.05.855(d). A
7 permit under this section shall be issued by lottery for not less than
8 the appraised fair market value.

9 (b) A permit under this section is valid for three years after
10 the date of issuance. The permit may not be transferred.

11 (c) Before renewing a permit under this section, the commis-
12 sioner shall require the applicant to (1) provide a copy of the applica-
13 tion to newspapers, radio and television stations for public service
14 announcement or (2) to provide paid notice of the application once
15 each week for three successive weeks in a newspaper or by radio. The
16 notice required in this subsection must be in more than one language
17 if the commissioner decides it is necessary. The notice must state
18 that interested persons may submit written testimony concerning the
19 renewal to the commissioner within 30 days after the date of the
20 notice.

21 (d) Before renewing a permit under this section, the commis-
22 sioner shall consider all relevant testimony submitted. Based on the
23 the testimony or other good cause, the commissioner may deny the
24 application for renewal, but must provide the applicant with written
25 findings that explain the reason for the denial.

26 * Sec. 15. AS 38.05.945(a) is amended to read:

27 (a) This section establishes the requirements for notice given
28 by the department for the following actions:

29 (1) classification or reclassification of state land under

1 AS 38.05.300 and the closing of land to mineral leasing or entry under
2 AS 38.05.185;

3 (2) zoning of land under applicable law;

4 (3) a decision under AS 38.05.035(e) regarding the sale,
5 lease, or disposal of an interest in state land or resources; [AND]

6 (4) a competitive disposal of an interest in state land or
7 resources after final decision under AS 38.05.035(e);

8 (5) a preliminary finding under AS 38.05.035(e) and 38.05.-
9 855(c) concerning sites for aquatic farms and related hatcheries.

10 * Sec. 16. AS 38.05.946 is amended by adding a new subsection to read:

11 (b) The commissioner shall hold a public hearing in each dis-
12 trict identified under AS 38.05.855 within 30 days after giving notice
13 of a preliminary finding under AS 38.05.035(e) and 38.05.855(c) con-
14 cerning sites for aquatic farms and related hatcheries.

15 * Sec. 17. AS 16.05.340(a)(14) is repealed.

16 * Sec. 18. The commissioner of commerce and economic development may
17 not issue a permit under AS 08.06.010, enacted by sec. 1 of this Act, and
18 the commissioner of fish and game may not issue a permit under AS 08.06.-
19 030, enacted by sec. 1 of this Act, until regulations have been adopted
20 under AS 08.06.070, enacted by sec. 1 of this Act.

21 * Sec. 19. The commissioner of natural resources may not issue a permit
22 under AS 38.05.856, enacted by sec. 14 of this Act, until the commissioner
23 adopts regulations necessary for the implementation of AS 38.05.856.

24 * Sec. 20. This Act takes effect immediately under AS 01.10.070(c).