

Introduced: 2/24/88
Referred: Resources and Finance

5-1806B

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 SENATE BILL NO. 482
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; prohibiting the aquatic farming of
8 finfish in saltwater; and providing for an effective
9 date."
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
11 * Section. 1. AS 16.40 is amended by adding new sections to read:
12 ARTICLE 2. AQUATIC FARMING.
13 Sec. 16.40.100. AQUATIC FARM AND HATCHERY PERMITS. (a) A
14 person may not, without a permit from the commissioner, construct or
15 operate
16 (1) an aquatic farm; or
17 (2) a hatchery for the purpose of supplying aquatic plants
18 or aquatic animals to an aquatic farm.
19 (b) A permit issued under this section authorizes the permittee,
20 subject to the conditions of AS 16.40.100 - 16.40.199, to acquire,
21 purchase, offer to purchase, transfer, possess, sell, and offer to
22 sell stock and aquatic farm products that are used or reared at the
23 hatchery or aquatic farm.
24 (c) The commissioner, after consulting with the commissioner of
25 environmental conservation, may attach conditions to a permit issued
26 under this section that are necessary to protect the public health or
27 natural stock.
28 (d) A permit issued under this section is nontransferable.
29 (e) Notwithstanding other provisions of law, the commissioner

1 may not issue a permit under this section for the farming of, or
2 hatchery operations involving, finfish in saltwater.

3 Sec. 16.40.105. CRITERIA FOR ISSUANCE OF PERMITS. The commis-
4 sioner shall issue permits under AS 16.40.100 on the basis of the
5 following criteria:

6 (1) the biological and environmental suitability of the
7 site for the proposed aquatic farm or hatchery;

8 (2) the ability of the permit applicant to establish and
9 operate the aquatic farm or hatchery without

10 (A) adversely affecting the department's management of
11 wild stocks;

12 (B) requiring substantial alterations in traditional
13 fisheries and other existing uses of fish and wildlife resources;

14 or

15 (C) adversely affecting wild stocks of fish or wild-
16 life, or their habitats.

17 Sec. 16.40.110. PERMIT APPLICATION AND RENEWAL. (a) An appli-
18 cant for an aquatic farming or hatchery permit required under AS 16.-
19 40.100 shall apply on a form prescribed by the commissioner. An
20 application for a permit must include a plan for the development of
21 the aquatic farm or hatchery, which must be approved by the commis-
22 sioner before the permit is issued.

23 (b) An application for renewal must be accompanied by fees re-
24 quired by the commissioner, a report of a health inspection of the
25 farm or hatchery covered by the permit, and evidence that satisfies
26 the commissioner that the applicant has complied with the development
27 plan required under (a) of this section. The department shall conduct
28 the inspection or contract with a disease diagnostician to conduct the
29 inspection. The inspection shall be conducted not more than 30 days

1 before the application is submitted to the department.

2 Sec. 16.40.120. AQUATIC FARM STOCK ACQUISITION PERMITS. (a) A
3 person may not acquire aquatic plants or aquatic animals from wild
4 stock in the state for the purpose of supplying stock to an aquatic
5 farm or hatchery required to have a permit under AS 16.40.100 unless
6 the person holds an acquisition permit from the commissioner.

7 (b) An acquisition permit authorizes the permit holder to ac-
8 quire the species and quantities of wild stock in the state specified
9 in the permit for the purpose of supplying stock to an aquatic farm or
10 hatchery required to have a permit under AS 16.40.100.

11 (c) The commissioner shall specify the expiration date of an
12 acquisition permit and may attach conditions to an acquisition permit,
13 including conditions relating to the time, place, and manner of har-
14 vest. Size, gear, place, time, licensing, and other limitations
15 applicable to sport, commercial, or subsistence harvest of aquatic
16 plants and aquatic animals do not apply to a harvest with a permit
17 issued under this section. The commissioner of fish and game shall
18 issue or deny a permit within 30 days after receiving an application.

19 (d) The commissioner shall deny or restrict a permit under this
20 section upon finding that the proposed harvest will substantially
21 impair sustained yield of the species. The commissioner may deny or
22 restrict a permit under this section upon finding that the proposed
23 harvest will significantly disrupt established uses of the resources
24 by commercial, sport, personal use, or subsistence users. The commis-
25 sioner shall forward to the Board of Fisheries for action permit
26 applications for species that support commercial fisheries subject to
27 limited entry under AS 16.43. A denial of the permit by the commis-
28 sioner must contain the factual basis for the findings. The commis-
29 sioner shall forward denied permit applications to the Board of

1 Fisheries for consideration at the next regularly scheduled meeting of
2 the board.

3 (e) Except as provided in (d) of this section, the commissioner
4 shall issue a permit if

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

7 (2) there are technological limitations on the propagation
8 of cultured stock for the species sought;

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

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

13 (f) Aquatic plants and aquatic animals acquired under a permit
14 issued under this section become the property of the permit holder and
15 are no longer a public or common resource.

16 Sec. 16.40.130. IMPORTATION OF AQUATIC PLANTS OR SHELLFISH FOR
17 STOCK. A person may not import into the state an aquatic plant or
18 aquatic animal for the purpose of supplying stock to an aquatic farm
19 or hatchery unless authorized by the commissioner or by a regulation
20 of the Board of Fisheries.

21 Sec. 16.40.140. LIMITATION ON SALE, TRANSFER OF STOCK, AND
22 PRODUCTS. (a) A private hatchery required to have a permit under
23 AS 16.40.100 may sell or transfer stock from the hatchery only to an
24 aquatic farm or other hatchery that has a permit issued under AS 16.-
25 40.100.

26 (b) Stock may not be transferred to or from an aquatic farm or
27 hatchery required to have a permit under AS 16.40.100 without prior
28 notice of the transfer to the commissioner. A notice of transfer
29 shall be submitted at least 30 days before the proposed date of

1 transfer.

2 (c) A notice of transfer must be accompanied by a report of a
3 health inspection of the stock. The department shall conduct the
4 inspection or contract with a disease diagnostician to conduct the
5 inspection. The cost of inspection shall be borne by the department.

6 (d) The department may restrict or disapprove a transfer of
7 stock if it finds that the transfer would present a substantial risk
8 of spreading disease.

9 (e) A person may not sell, transfer, or offer to sell or trans-
10 fer, or knowingly purchase or receive, an aquatic farm product grown
11 or propagated in the state unless the product was grown or propagated
12 on a farm with a permit issued under AS 16.40.100. The permit must be
13 in effect at the time of the sale, transfer, purchase, receipt, or
14 offer.

15 Sec. 16.40.150. DISEASE CONTROL AND INSPECTION. (a) The de-
16 partment shall order the quarantine or the destruction and disposal of
17 diseased hatchery stock or of aquatic farm products when necessary to
18 protect wild stock. A holder of a permit issued under AS 16.40.100
19 shall report to the department an outbreak or incidence of disease
20 among stock or aquatic farm products of the permit holder.

21 (b) A holder of a permit issued under AS 16.40.100 shall allow
22 the department to inspect the permit holder's farm or hatchery during
23 operating hours and upon reasonable notice. The cost of inspection
24 shall be borne by the department.

25 (c) The department shall develop a disease management and con-
26 trol program for aquatic farms and hatcheries.

27 (d) The department may enter into an agreement with a state or
28 federal agency or a private provider to provide services under (b) and

29 (c) of this section, or inspections under AS 16.40.110(b).

1 Sec. 16.40.160. REGULATIONS. The commissioner may adopt regu-
2 lations necessary to implement AS 16.40.100 - 16.40.199.

3 Sec. 16.40.170. PENALTY. A person who violates a provision of
4 AS 16.40.100 - 16.40.199, a regulation adopted under AS 16.40.100 -
5 16.40.199, or a term or condition of a permit issued under AS 16.40.-
6 100 - 16.40.199, is guilty of a class B misdemeanor.

7 Sec. 16.40.199. DEFINITIONS. In AS 16.40.100 - 16.40.199

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

11 (2) "aquatic farm product" means an aquatic plant, finfish,
12 shellfish, or other aquatic animal, or part of an aquatic plant or
13 aquatic animal, that is propagated, farmed, or cultivated in an
14 aquatic farm and sold or offered for sale for the purpose of consump-
15 tion;

16 (3) "aquatic plant" means a plant indigenous to state water
17 or that is authorized to be imported into the state under a permit
18 issued by the commissioner;

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

20 (5) "hatchery" means a facility for the artificial incu-
21 bation of stock, including rearing of juvenile aquatic plants or
22 aquatic animals;

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

27 (7) "shellfish" means a species of crustacean, mollusk, or
28 other invertebrate, in any stage of its life cycle, that is indigenous
29 to state water or that is authorized to be imported into the state

1 under a permit issued by the commissioner;

2 (8) "stock" means live aquatic plants or aquatic animals
3 acquired, collected, possessed, or intended for use by a hatchery or
4 aquatic farm for the purpose of further growth or propagation.

5 * Sec. 2. AS 03.05.011(a) is amended to read:

6 (a) To carry out the requirements of this title, the commis-
7 sioner of environmental conservation may issue orders, regulations,
8 permits, quarantines, and embargoes relating to

9 (1) examination and inspection of premises containing
10 products, articles, and commodities carrying pests;

11 (2) establishment of quarantines for eradication of pests;

12 (3) establishment of standards and labeling requirements
13 pertaining to the sale of meat, fish, and poultry;

14 (4) tests and analyses which may be made and hearings which
15 may be held to determine whether the commissioner will issue a stop
16 order or quarantine;

17 (5) cooperation with federal and other state agencies;

18 (6) regulation of fur farming; for purposes of this para-
19 graph, "fur farming" means the raising of and caring for animals for
20 the purpose of marketing their fur, or animals themselves for breeding
21 stock;

22 (7) examination and inspection of meat, fish, and poultry
23 advertised for sale or sold to the public;

24 (8) enforcement of quality assurance plans developed in
25 cooperation with appropriate industry representatives;

26 (9) establishment of standards and conditions of operation
27 for aquatic farms and related hatcheries, including

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

29 (B) requirements to protect the public from

1 contaminants that pose a risk to health.

2 * Sec. 3. AS 03.05.020(a) is amended to read:

3 (a) The commissioner shall

4 (1) require routine inspection of food animals, fish,
5 poultry and derivative food products, to protect the public against
6 fraud, disease and spoilage, and in this connection adopt uniform
7 regulations establishing standards of identity and composition of
8 these food products and minimum standards of sanitation and handling
9 methods as to all phases of slaughtering, processing, storing, trans-
10 porting, displaying and selling of these food products;

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

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

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

26 (5) adopt, repeal, and amend regulations consistent with
27 existing law for

28 (A) the labeling and grading of milk and milk products
29 and standards of cleanliness and sanitation, to at least the

1 minimum of current recommendations of the United States Public
2 Health Service, for the operation of dairies selling, or offering
3 for sale, milk or milk products;

4 (B) the production and sale of ice cream and allied
5 frozen desserts;

6 (C) the production and sale of imitation milk and
7 imitation milk products;

8 (D) the labeling of aquatic farm products as aquatic
9 farm products;

10 (6) monitor aquatic farms that hold permits under AS 16.-
11 40.100 to ensure compliance with the requirements of the national
12 shellfish sanitation program manual of operations published by the
13 Food and Drug Administration.

14 * Sec. 4. AS 03.05.040(a) is amended to read:

15 (a) On any business day during the usual hours of business the
16 commissioner or an authorized inspector may, for the purpose of in-
17 specting agricultural, [OR] fisheries, or aquatic farm products or
18 aquatic farm sites subject to regulation, enter a storehouse, ware-
19 house, cold storage plant, packing house, slaughterhouse, retail store
20 or other building or place where those products are kept, stored,
21 processed or sold.

22 * Sec. 5. AS 03.05.100 is amended to read:

23 Sec. 03.05.100. DEFINITIONS. In this chapter,

24 (1) "agricultural products" does not include fish or fish-
25 eries products;

26 (2) "aquatic farm" and "aquatic farm product" have the
27 meanings given in AS 16.40.199;

28 (3) "fish or fisheries products" means any aquatic animal,
29 including amphibians, or aquatic plants or parts of those plants,

1 animals or amphibians that are usable as human food.

2 * Sec. 6. AS 16.05.050 is amended by adding a new paragraph to read:

3 (17) to permit and regulate aquatic farming in the state in
4 a manner that ensures the protection of the state's fish and game
5 resources and improves the economy, health, and well-being of the
6 citizens of the state;

7 * Sec. 7. AS 16.05.251 is amended by adding a new subsection to read:

8 (f) Except as expressly provided in AS 16.40.120(d) and 16.40.-
9 130, the Board of Fisheries may not adopt regulations or take action
10 regarding the issuance, denial, or conditioning of a permit under
11 AS 16.40.100 or 16.40.120, the construction or operation of a farm or
12 hatchery required to have a permit under AS 16.40.100, or a harvest
13 with a permit issued under AS 16.40.120. Regulations or orders adopt-
14 ed by the Board of Fisheries under this section do not apply to a
15 harvest with a permit issued under AS 16.40.120.

16 * Sec. 8. AS 16.05.330(a) is amended to read:

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

22 * Sec. 9. AS 16.05.930 is amended by adding a new subsection to read:

23 (g) AS 16.05.330 - 16.05.720 do not apply to an activity au-
24 thorized by a permit issued under AS 16.40.100 or 16.40.120, or to a
25 person or vessel employed in an activity authorized by a permit issued
26 under AS 16.40.100 or 16.40.120.

27 * Sec. 10. AS 16.05.940(14) is amended to read:

28 (14) "[FISH OR] game farming" means the business of prop-
29 agating, breeding, raising, or producing [FISH OR] game in captivity

1 for the purpose of marketing the [FISH OR] game or game [THEIR] prod-
2 ucts, and "captivity" means having the [FISH OR] game under positive
3 control, as in a pen [, POND,] or an area of land that [OR WATER
4 WHICH] is completely enclosed by a generally escape-proof barrier;

5 * Sec. 11. AS 16.10 is amended by adding a new section to read:

6 Sec. 16.10.269. LIMITATIONS. AS 16.10.265 - 16.10.267 do not
7 apply to the purchase or sale of aquatic farm products from a holder
8 of a permit issued under AS 16.40.100 or stock from a holder of a
9 permit issued under AS 16.40.120.

10 * Sec. 12. AS 16.10.400 is amended by adding a new subsection to read:

11 (h) AS 16.10.400 - 16.10.475 do not apply to the construction or
12 operation of a private hatchery that has a permit issued under AS 16.-
13 40.100.

14 * Sec. 13. AS 16.43.140 is amended by adding a new subsection to read:

15 (d) This chapter does not apply to activities authorized by a
16 permit issued under AS 16.40.100 or 16.40.120.

17 * Sec. 14. AS 16.51.180(5) is amended to read:

18 (5) "seafood" means finfish, shellfish, and fish by-prod-
19 ucts, including but not limited to salmon, halibut, herring, flounder,
20 crab, clam, cod, shrimp, and pollock, but does not include aquatic
21 farm products as defined in AS 16.40.199;

22 * Sec. 15. AS 38.05 is amended by adding a new section to read:

23 Sec. 38.05.083. AQUATIC FARMING AND HATCHERY SITE LEASES. (a)
24 The commissioner may offer to the public for lease a site that has
25 been developed for aquatic farming or related hatchery operations
26 under a permit issued under AS 38.05.856. Before offering the site to
27 the public, the commissioner shall offer the site to the permittee.

28 (b) A site shall be leased under this section for not less than
29 the appraised fair market value of the lease. The value of the lease

1 shall be reappraised every five years.

2 (c) A lease under this section may be assigned, but if the
3 assignee changes the use of the site the lease reverts to the state.

4 (d) Before entering into a lease under this section, the commis-
5 sioner shall require the lessee to post a performance bond or provide
6 other security to cover the costs to the department of restoring the
7 leased site in the event the lessee abandons the site.

8 * Sec. 16. AS 38.05 is amended by adding a new section to read:

9 Sec. 38.05.856. TIDELAND AND LAND USE PERMITS FOR AQUATIC FARM-
10 ING. (a) The commissioner may issue a tideland or land use permit
11 for the establishment and operation of an aquatic farm and related
12 hatchery operations for not less than the appraised fair market value
13 of the permit. The value of the permit shall be reappraised every
14 five years.

15 (b) A permit under this section is valid for five years after
16 the date of issuance. The permit may not be transferred.

17 (c) Before issuing or renewing a permit under this section, the
18 commissioner shall require the applicant to (1) provide a copy of the
19 application to newspapers, radio and television stations for public
20 service announcement or (2) to provide paid notice of the application
21 once each week for three successive weeks in a newspaper or by radio.
22 The notice required in this subsection must be in more than one lan-
23 guage if the commissioner decides it is necessary. The notice must
24 state that interested persons may submit written and oral testimony
25 concerning the issuance or renewal to the commissioner within 30 days
26 after the date of the notice. The commissioner may hold a hearing if
27 necessary to take testimony.

28 (d) Before issuing or renewing a permit under this section, the
29 commissioner shall consider all relevant testimony submitted. Based

1 on the the testimony or other good cause, the commissioner may deny
2 the application for issuance or renewal, but must provide the appli-
3 cant with written findings that explain the reason for the denial.

4 (e) Before issuing or renewing a permit under this section, the
5 commission shall require the permittee to post a performance bond or
6 provide other security to cover the costs to the department of restor-
7 ing the permitted site in the event the permittee abandons the site.

8 (f) The commissioner shall adopt regulations establishing crite-
9 ria for the approval or denial of permits under this section and for
10 limiting the number of sites for which permits may be issued in an
11 area in order to protect the economy, environment, and natural
12 resources of the area.

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

14 * Sec. 18. Except as provided in sec. 20 of this Act, the commissioner
15 of fish and game may not issue a permit under AS 16.40.100 or 16.40.120,
16 enacted by sec. 1 of this Act, until regulations have been adopted under
17 AS 16.40.160, enacted by sec. 1 of this Act.

18 * Sec. 19. Except as provided in sec. 20 of this Act, the commissioner
19 of natural resources may not enter into a lease under AS 38.05.083 or issue
20 a permit under AS 38.05.856, enacted by secs. 15 and 16 of this Act, until
21 the commissioner adopts regulations necessary for the implementation of
22 AS 38.05.083 and 38.05.856.

23 * Sec. 20. Notwithstanding any other provisions of law, a person who is
24 lawfully operating an aquatic farm or related hatchery in the state on the
25 effective date of this Act is entitled to continue lawful operations at the
26 existing site. The person may obtain an initial lease or permit for the
27 person's existing operations under AS 38.05.083 or 38.05.856, enacted by
28 secs. 15 and 16 of this Act, but as a condition of obtaining the lease or
29 permit the person must agree that during the term of the lease or permit

- 1 the person will not expand operations beyond the scope allowed under the
- 2 existing permit.
- 3 * Sec. 21. This Act takes effect immediately under AS 01.10.070(c).