

Offered: 4/28/88  
Referred: Finance

5-1806N

Original sponsor: Resources Committee

1 IN THE SENATE BY THE RESOURCES COMMITTEE  
2 CS FOR SENATE BILL NO. 482 (Resources)  
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 Pacific salmon in saltwater; and providing for an  
9 effective date."  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
11 \* Section 1. FINDINGS AND POLICY. (a) The legislature finds that  
12 (1) aquatic farming in the state would  
13 (A) provide a consistent source of quality food;  
14 (B) provide new jobs;  
15 (C) increase state exports;  
16 (D) create new business opportunities; and  
17 (E) increase the stability and diversity of the state's  
18 economy; and  
19 (2) development of aquatic farming in the state would increase  
20 the availability of fresh seafood to Alaskans and would strengthen the  
21 competitiveness of Alaska seafood in the world marketplace by broadening  
22 the diversity of products and providing year-round supplies of premium  
23 quality seafood.  
24 (b) It is the policy of the state  
25 (1) to encourage the establishment and responsible growth of an  
26 aquatic farming industry in the state; and  
27 (2) that allocation of aquatic farming sites be made with full  
28 consideration of established and ongoing activities in an area.  
29 \* Sec. 2. AS 16.40 is amended by adding new sections to read:

1 ARTICLE 2. AQUATIC FARMING.

2 Sec. 16.40.100. AQUATIC FARM AND HATCHERY PERMITS. (a) A  
3 person may not, without a permit from the commissioner, construct or  
4 operate

5 (1) an aquatic farm; or

6 (2) a hatchery for the purpose of supplying aquatic plants  
7 or aquatic animals to an aquatic farm.

8 (b) A permit issued under this section authorizes the permittee,  
9 subject to the conditions of AS 03.05 and AS 16.40.100 - 16.40.199, to  
10 acquire, purchase, offer to purchase, transfer, possess, sell, and  
11 offer to sell stock and aquatic farm products that are used or reared  
12 at the hatchery or aquatic farm. A hatchery that holds a permit under  
13 this section may sell or offer to sell bivalve shellfish spat to an  
14 aquatic farm or related hatchery outside of the state.

15 (c) The commissioner may attach conditions to a permit issued  
16 under this section that are necessary to protect the natural stock.

17 (d) Notwithstanding other provisions of law, the commissioner  
18 may not issue a permit under this section for the farming of, or  
19 hatchery operations involving, Pacific salmon in saltwater or Atlantic  
20 salmon.

21 (e) The commissioner may issue a permit under this section for  
22 the freshwater farming of, or freshwater hatchery operations involv-  
23 ing, finfish other than Atlantic salmon only in a privately owned  
24 freshwater body that has no outlet to state water.

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

28 (1) the physical and biological characteristics of the  
29 proposed farm or hatchery location must be suitable for the farming of

1 the aquatic animal or aquatic plant proposed;

2 (2) the proposed farm may not unreasonably affect  
3 management of natural stocks, and must not require significant  
4 alterations in traditional fisheries or other existing uses of fish  
5 and wildlife resources;

6 (3) the proposed farm may not significantly affect fisher-  
7 ies, wildlife, or their habitats in an adverse manner; and

8 (4) the proposed farm plans and staffing plans must demon-  
9 strate technical and operational feasibility.

10 Sec. 16.40.110. PERMIT APPLICATION, RENEWAL, AND TRANSFER. (a)  
11 An applicant for an aquatic farming or hatchery permit required under  
12 AS 16.40.100 shall apply on a form prescribed by the commissioner. An  
13 application for a permit must include a plan for the development and  
14 operation of the aquatic farm or hatchery, which must be approved by  
15 the commissioner before the permit is issued.

16 (b) An application for renewal or transfer of a permit must be  
17 accompanied by fees required by the commissioner, a report of the  
18 disease history of the farm or hatchery covered by the permit, and  
19 evidence that satisfies the commissioner that the applicant has com-  
20 plied with the development plan required under (a) of this section.  
21 The commissioner may require a health inspection of the farm or  
22 hatchery as a condition of renewal. The department may conduct the  
23 inspection or contract with a disease diagnostician to conduct the  
24 inspection.

25 (c) A person to whom a permit is transferred may use the permit  
26 only for the purposes for which the permit was authorized to be used  
27 by the transferor, and subject to the same conditions and limitations.

28 Sec. 16.40.120. AQUATIC STOCK ACQUISITION PERMITS. (a) A  
29 person may not acquire aquatic plants or aquatic animals from wild

1 stock in the state for the purpose of supplying stock to an aquatic  
2 farm or hatchery required to have a permit under AS 16.40.100 unless  
3 the person holds an acquisition permit from the commissioner.

4 (b) An acquisition permit authorizes the permit holder to ac-  
5 quire the species and quantities of wild stock in the state specified  
6 in the permit for the purposes of supplying stock to

7 (1) an aquatic farm or hatchery required to have a permit  
8 under AS 16.40.100;

9 (2) the department; or

10 (3) sources outside of the state.

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

29 (e) The Board of Fisheries may adopt regulations for the

1 conservation, maintenance, and management of species for which an  
2 acquisition permit is required.

3 (f) 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 (g) 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 AQUATIC ANIMALS  
17 FOR 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 a regulation of the Board of Fisher-  
20 ies.

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, except that bivalve shellfish spat may also be sold or offered  
26 for sale to an aquatic farm or related hatchery outside of the state.

27 (b) Stock may not be transferred to or from an aquatic farm or  
28 hatchery required to have a permit under AS 16.40.100 without prior  
29 notice of the transfer to the commissioner. A notice of transfer

1 shall be submitted at least 45 days before the proposed date of trans-  
2 fer.

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

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

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

16 Sec. 16.40.150. DISEASE CONTROL AND INSPECTION. (a) The de-  
17 partment shall order the quarantine or the destruction and disposal of  
18 diseased hatchery stock or of aquatic farm products when necessary to  
19 protect wild stock. A holder of a permit issued under AS 16.40.100  
20 shall report to the department an outbreak or incidence of disease  
21 among stock or aquatic farm products of the permit holder within 48  
22 hours after discovering the outbreak or incidence.

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

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

29 (d) The department may enter into an agreement with a state or

1 federal agency or a private, state-certified provider to provide ser-  
2 vices under (b) and (c) of this section, or inspections under AS 16.-  
3 40.110(b).

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

6 Sec. 16.40.170. PENALTY. A person who violates a provision of  
7 AS 16.40.100 - 16.40.199, a regulation adopted under AS 16.40.100 -  
8 16.40.199, or a term or condition of a permit issued under AS 16.40.-  
9 100 - 16.40.199, is guilty of a class B misdemeanor.

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

11 (1) "aquatic animal" means shellfish or finfish;

12 (2) "aquatic farm" means a facility that grows, farms, or  
13 cultivates aquatic farm products in captivity or under positive con-  
14 trol;

15 (3) "aquatic farm product" means an aquatic plant or  
16 aquatic animal, or part of an aquatic plant or aquatic animal, that is  
17 propagated, farmed, or cultivated in an aquatic farm and sold or  
18 offered for sale;

19 (4) "aquatic plant" means a plant indigenous to state water  
20 or that is authorized to be imported into the state under a permit  
21 issued by the commissioner;

22 (5) "commissioner" means the commissioner of fish and game;

23 (6) "hatchery" means a facility for the artificial propa-  
24 gation of stock, including rearing of juvenile aquatic plants or  
25 aquatic animals;

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

1 (8) "shellfish" means a species of crustacean, mollusk, or  
2 other invertebrate, in any stage of its life cycle, that is indigenous  
3 to state water or that is authorized to be imported into the state  
4 under a permit issued by the commissioner;

5 (9) "stock" means live aquatic plants or aquatic animals  
6 acquired, collected, possessed, or intended for use by a hatchery or  
7 aquatic farm for the purpose of further growth or propagation.

8 \* Sec. 3. AS 03.05.011(a) is amended to read:

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

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

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

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

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

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

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

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

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

29 (9) establishment of standards and conditions for the

1 operation and siting of aquatic farms and related hatcheries, includ-  
2 ing

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

4 (B) requirements to protect the public from contami-  
5 nated aquatic farm products that pose a risk to health;

6 (10) monitoring aquatic farms and aquatic farm products to  
7 ensure compliance with this chapter and with the requirements of the  
8 national shellfish sanitation program manual of operations published  
9 by the Food and Drug Administration.

10 \* Sec. 4. AS 03.05.020(a) is amended to read:

11 (a) The commissioner shall

12 (1) require routine inspection of food animals, fish,  
13 poultry and derivative food products, to protect the public against  
14 fraud, disease and spoilage, and in this connection adopt uniform  
15 regulations establishing standards of identity and composition of  
16 these food products and minimum standards of sanitation and handling  
17 methods as to all phases of slaughtering, processing, storing, trans-  
18 porting, displaying and selling of these food products;

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

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

29 (4) designate points of entry for admission of livestock or

1 poultry into the state, and arrange inspection at those points with or  
2 without collaboration and assistance of the federal government, and  
3 bar entry of stock or poultry not shipped under a valid permit or not  
4 free from contagious or infectious disease;

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

7 (A) the labeling and grading of milk and milk products  
8 and standards of cleanliness and sanitation, to at least the  
9 minimum of current recommendations of the United States Public  
10 Health Service, for the operation of dairies selling, or offering  
11 for sale, milk or milk products;

12 (B) the production and sale of ice cream and allied  
13 frozen desserts;

14 (C) the production and sale of imitation milk and  
15 imitation milk products;

16 (D) the labeling of aquatic farm products as aquatic  
17 farm products.

18 \* Sec. 5. AS 03.05.040(a) is amended to read:

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

26 \* Sec. 6. AS 03.05.100 is amended to read:

27 Sec. 03.05.100. DEFINITIONS. In this chapter,

28 (1) "agricultural products" does not include fish or fish-  
29 eries products;

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

3                   (3) "fish or fisheries products" means any aquatic animal,  
4 including amphibians, or aquatic plants or parts of those plants,  
5 animals or amphibians that are usable as human food.

6 \* Sec. 7. AS 16.05.050 is amended by adding a new paragraph to read:

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

11 \* Sec. 8. AS 16.05.251 is amended by adding a new subsection to read:

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

20 \* Sec. 9. AS 16.05.330(a) is amended to read:

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

26 \* Sec. 10. AS 16.05.930 is amended by adding a new subsection to read:

27                   (g) AS 16.05.330 - 16.05.720 do not apply to an activity au-  
28 thorized by a permit issued under AS 16.40.100 or 16.40.120, or to a  
29 person or vessel employed in an activity authorized by a permit issued

1 under AS 16.40.100 or 16.40.120.

2 \* Sec. 11. AS 16.05.940(14) is amended to read:

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

9 \* Sec. 12. AS 16.10 is amended by adding a new section to read:

10 Sec. 16.10.269. LIMITATIONS. AS 16.10.265 - 16.10.267 do not  
11 apply to the purchase or sale of aquatic farm products from a holder  
12 of a permit issued under AS 16.40.100 or stock from a holder of a  
13 permit issued under AS 16.40.120.

14 \* Sec. 13. AS 16.10.400 is amended by adding a new subsection to read:

15 (h) AS 16.10.400 - 16.10.475 do not apply to the construction or  
16 operation of a private hatchery that has a permit issued under AS 16.-  
17 40.100.

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

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

21 \* Sec. 15. AS 16.51.180(5) is amended to read:

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

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

27 Sec. 38.05.083. AQUATIC FARMING AND HATCHERY SITE LEASES. (a)  
28 The commissioner may offer to the public for lease a site that has  
29 been developed for aquatic farming or related hatchery operations

1 under a permit issued under AS 38.05.856. Before offering the site to  
2 the public, the commissioner shall offer the site to the permittee.

3 (b) A site shall be leased under this section for not less than  
4 the appraised fair market value of the lease. The value of the lease  
5 shall be reappraised every five years.

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

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

12 \* Sec. 17. AS 38.05 is amended by adding a new section to read:

13 Sec. 38.05.856. TIDELAND AND LAND USE PERMITS FOR AQUATIC FARM-  
14 ING. (a) The commissioner may issue a tideland or land use permit  
15 for the establishment and operation of an aquatic farm and related  
16 hatchery operations. A permit under this section is valid for three  
17 years after the date of issuance. The permit may not be transferred.

18 (b) Before issuing or renewing a permit under this section, the  
19 commissioner shall allow interested persons to submit written or oral  
20 testimony concerning the issuance or renewal to the commissioner  
21 within 30 days after the date of the notice. The commissioner may  
22 hold a hearing to take testimony.

23 (c) Before issuing or renewing a permit under this section, the  
24 commissioner shall consider all relevant testimony submitted under  
25 this section. The commissioner may deny the application for issuance  
26 or renewal for good cause, but shall provide the applicant with writ-  
27 ten findings that explain the reason for the denial.

28 (d) Before issuing or renewing a permit under this section, the  
29 commissioner shall require the permittee to post a performance bond or

1 provide other security to cover the costs to the department of restoring  
2 the permitted site in the event the permittee abandons the site.

3 (e) The commissioner shall adopt regulations establishing criteria  
4 for the approval or denial of permits under this section and for  
5 limiting the number of sites for which permits may be issued in an  
6 area in order to protect the environment and natural resources of the  
7 area. The regulations must provide for the consideration of upland  
8 management policies and whether the proposed use of a site is compatible  
9 with the traditional and existing uses of the area in which the  
10 site is located.

11 \* Sec. 18. AS 38.05.945(a) is amended to read:

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

14 (1) classification or reclassification of state land under  
15 AS 38.05.300 and the closing of land to mineral leasing or entry under  
16 AS 38.05.185;

17 (2) zoning of land under applicable law;

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

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

22 (5) a public hearing under AS 38.05.856(b).

23 \* Sec. 19. AS 38.05.945 is amended by adding a new subsection to read:

24 (g) Notice at least 30 days before action under (a)(5) or (6)  
25 shall be given to appropriate

26 (1) regional fish and game councils established under  
27 AS 16.05.260; and

28 (2) coastal resource service areas organized under AS 46.-  
29 40.110 - 46.40.210.

1 \* Sec. 20. AS 16.05.340(a)(14) is repealed.

2 \* Sec. 21. Notwithstanding any other provisions of law, a person who is  
3 lawfully operating an aquatic farm or related hatchery in the state on the  
4 effective date of this Act is entitled to continue lawful operations at the  
5 existing site. The person may obtain an initial lease or permit for the  
6 person's existing operations under AS 38.05.083 or 38.05.856, enacted by  
7 secs. 16 and 17 of this Act, but as a condition of obtaining the lease or  
8 permit the person must agree that during the term of the lease or permit  
9 the person will not change the use of the site.

10 \* Sec. 22. LAND MANAGEMENT REPORT REQUIRED. The commissioner of natu-  
11 ral resources shall submit to the legislature not later than January 30,  
12 1989, a report detailing the department's implementation of AS 38.05.083  
13 and 38.05.856, enacted by secs. 16 and 17 of this Act. The report must  
14 include

15 (1) the number of applications received under AS 38.05.083 and  
16 38.05.856, and the number of leases and permits issued, according to type  
17 of aquatic farm product;

18 (2) the restrictions attached to permits and leases;

19 (3) a discussion of the system the department implements for  
20 issuing leases and tideland and land use permits;

21 (4) the level of public involvement in the issuance process; and

22 (5) a discussion of how the program is working, and the depart-  
23 ment's plans for modifications of the program.

24 \* Sec. 23. This Act takes effect immediately under AS 01.10.070(c).