

1 IN THE SENATE

BY THE RULES COMMITTEE

2

SENATE BILL NO. 514

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 shellfish; and providing for an effective date."

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

9 * Section 1. FINDINGS AND POLICY. (a) The legislature finds that

10 (1) aquatic farming in the state would

11 (A) provide a consistent source of quality food;

12 (B) provide new jobs;

13 (C) increase state exports;

14 (D) create new business opportunities; and

15 (E) increase the stability and diversity of the state's
16 economy; and

17 (2) development of aquatic farming in the state would increase
18 the availability of fresh seafood to Alaskans and would strengthen the
19 competitiveness of Alaska seafood in the world marketplace by broadening
20 the diversity of products and providing year-round supplies of premium
21 quality seafood.

22 (b) It is the policy of the state

23 (1) to encourage the establishment and responsible growth of an
24 aquatic farming industry in the state; and

25 (2) that allocation of aquatic farming sites be made with full
26 consideration of established and ongoing activities in an area.

27 * Sec. 2. AS 16.40 is amended by adding new sections to read:

28 ARTICLE 2. AQUATIC FARMING.

29 Sec. 16.40.100. AQUATIC FARM AND HATCHERY PERMITS. (a) A

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

3 (1) an aquatic farm; or

4 (2) a hatchery for the purpose of supplying aquatic plants
5 or shellfish to an aquatic farm.

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

14 (c) The commissioner may attach conditions to a permit issued
15 under this section that are necessary to protect natural fish and
16 wildlife resources.

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

20 (1) the physical and biological characteristics of the
21 proposed farm or hatchery location must be suitable for the farming of
22 the shellfish or aquatic plant proposed;

23 (2) the proposed farm or hatchery may not require signifi-
24 cant alterations in traditional fisheries or other existing uses of
25 fish and wildlife resources;

26 (3) the proposed farm or hatchery may not significantly
27 affect fisheries, wildlife, or their habitats in an adverse manner;
28 and

29 (4) the proposed farm or hatchery plans and staffing plans

1 must demonstrate technical and operational feasibility.

2 Sec. 16.40.110. PERMIT APPLICATION, RENEWAL, AND TRANSFER. (a)

3 An applicant for an aquatic farming or hatchery permit required under
4 AS 16.40.100 shall apply on a form prescribed by the commissioner. An
5 application for a permit must include a plan for the development and
6 operation of the aquatic farm or hatchery, which must be approved by
7 the commissioner before the permit is issued.

8 (b) An application for renewal or transfer of a permit must be
9 accompanied by fees required by the commissioner, a report of the
10 disease history of the farm or hatchery covered by the permit, and
11 evidence that satisfies the commissioner that the applicant has com-
12 plied with the development plan required under (a) of this section.
13 The commissioner may require a health inspection of the farm or
14 hatchery as a condition of renewal. The department may conduct the
15 inspection or contract with a disease diagnostician to conduct the
16 inspection.

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

20 Sec. 16.40.120. AQUATIC STOCK ACQUISITION PERMITS. (a) A
21 person may not acquire aquatic plants or shellfish from wild stock in
22 the state for the purpose of supplying stock to an aquatic farm or
23 hatchery required to have a permit under AS 16.40.100 unless the
24 person holds an acquisition permit from the commissioner.

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

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

1 (2) the department.

2 (c) The commissioner shall specify the expiration date of an
3 acquisition permit and may attach conditions to an acquisition permit,
4 including conditions relating to the time, place, and manner of har-
5 vest. Size, gear, place, time, licensing, and other limitations
6 applicable to sport, commercial, or subsistence harvest of aquatic
7 plants and shellfish do not apply to a harvest with a permit issued
8 under this section. The commissioner of fish and game shall issue or
9 deny a permit within 30 days after receiving an application.

10 (d) The commissioner shall deny or restrict a permit under this
11 section upon finding that the proposed harvest will impair sustained
12 yield of the species. The commissioner may deny or restrict a permit
13 under this section upon finding that the proposed harvest will un-
14 reasonably disrupt established uses of the resources by commercial,
15 sport, personal use, or subsistence users. The commissioner shall
16 forward to the Board of Fisheries for action permit applications for
17 species that support commercial fisheries subject to limited entry
18 under AS 16.43. A denial of the permit by the commissioner must
19 contain the factual basis for the findings.

20 (e) The Board of Fisheries may adopt regulations for the conser-
21 vation, maintenance, and management of species for which an acquisi-
22 tion permit is required.

23 (f) Except as provided in (d) of this section, the commissioner
24 shall issue a permit if

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

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

29 (3) wild stock sought is not fully utilized by commercial,

1 sport, personal use, or subsistence fisheries; or

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

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

7 Sec. 16.40.130. IMPORTATION OF AQUATIC PLANTS OR AQUATIC ANIMALS
8 FOR STOCK. A person may not import into the state an aquatic plant or
9 shellfish for the purpose of supplying stock to an aquatic farm or
10 hatchery unless authorized by a regulation of the Board of Fisheries.

11 Sec. 16.40.140. LIMITATION ON SALE, TRANSFER OF STOCK, AND
12 PRODUCTS. (a) A private hatchery required to have a permit under
13 AS 16.40.100 may sell or transfer stock from the hatchery only to an
14 aquatic farm or other hatchery that has a permit issued under AS 16.-
15 40.100, except that bivalve shellfish stock may also be sold or
16 offered for sale to an aquatic farm or related hatchery outside of the
17 state.

18 (b) Stock may not be transferred to or from an aquatic farm or
19 hatchery required to have a permit under AS 16.40.100 without prior
20 notice of the transfer to the commissioner. A notice of transfer
21 shall be submitted at least 45 days before the proposed date of trans-
22 fer.

23 (c) A notice of transfer must be accompanied by a report of a
24 health inspection of the stock. The department shall conduct the
25 inspection or contract with a disease diagnostician to conduct the
26 inspection. The cost of inspection shall be borne by the department.

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

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

7 Sec. 16.40.150. DISEASE CONTROL AND INSPECTION. (a) The de-
8 partment shall order the quarantine or the destruction and disposal of
9 diseased hatchery stock or of aquatic farm products when necessary to
10 protect wild stock. A holder of a permit issued under AS 16.40.100
11 shall report to the department an outbreak or incidence of disease
12 among stock or aquatic farm products of the permit holder within 48
13 hours after discovering the outbreak or incidence.

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

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

20 (d) The department may enter into an agreement with a state or
21 federal agency or a private, state-certified provider to provide ser-
22 vices under (b) and (c) of this section, or inspections under AS 16.-
23 40.110(b).

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

26 Sec. 16.40.170. PENALTY. A person who violates a provision of
27 AS 16.40.100 - 16.40.199, a regulation adopted under AS 16.40.100 -
28 16.40.199, or a term or condition of a permit issued under AS 16.40.-
29 100 - 16.40.199, is guilty of a class B misdemeanor.

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

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

5 (2) "aquatic farm product" means an aquatic plant or shell-
6 fish, or part of an aquatic plant or shellfish, that is propagated,
7 farmed, or cultivated in an aquatic farm and sold or offered for sale;

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

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

12 (5) "hatchery" means a facility for the artificial propa-
13 gation of stock, including rearing of juvenile aquatic plants or
14 shellfish;

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

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

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

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

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

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

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

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

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

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

10 (6) regulation of fur farming; for purposes of this para-
11 graph, "fur farming" means the raising of and caring for animals for
12 the purpose of marketing their fur, or animals themselves for breeding
13 stock;

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

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

18 (9) establishment of standards and conditions for the
19 operation and siting of aquatic farms and related hatcheries, includ-
20 ing

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

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

24 (10) monitoring aquatic farms and aquatic farm products to
25 ensure compliance with this chapter and with the requirements of the
26 national shellfish sanitation program manual of operations published
27 by the Food and Drug Administration.

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

29 (a) The commissioner shall

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

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

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

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

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

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

1 (B) the production and sale of ice cream and allied
2 frozen desserts;
3 (C) the production and sale of imitation milk and
4 imitation milk products;
5 (D) the labeling of aquatic farm products as aquatic
6 farm products.

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

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

15 * Sec. 6. AS 03.05.100 is amended to read:

16 Sec. 03.05.100. DEFINITIONS. In this chapter,

17 (1) "agricultural products" does not include fish or fish-
18 eries products;

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

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

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

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

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

1 (f) Except as expressly provided in AS 16.40.120(d) and 16.40.-
2 130, the Board of Fisheries may not adopt regulations or take action
3 regarding the issuance, denial, or conditioning of a permit under
4 AS 16.40.100 or 16.40.120, the construction or operation of a farm or
5 hatchery required to have a permit under AS 16.40.100, or a harvest
6 with a permit issued under AS 16.40.120. Regulations or orders adopt-
7 ed by the Board of Fisheries under this section do not apply to a
8 harvest with a permit issued under AS 16.40.120.

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

10 (a) Except as otherwise permitted in this chapter, a person may
11 not engage in sport fishing, including the taking of razor clams; in
12 hunting, trapping, or fur dealing; in the farming of finfish [FISH],
13 fur, or game; or in taxidermy, without having the appropriate license
14 or tag in actual possession.

15 * Sec. 10. AS 16.05.340(a)(14) is amended to read:

16 (14) Finfish [FISH] farming biennial license200

17 * Sec. 11. AS 16.05.930 is amended by adding a new subsection to read:

18 (g) AS 16.05.330 - 16.05.720 do not apply to an activity au-
19 thorized by a permit issued under AS 16.40.100 or 16.40.120, or to a
20 person or vessel employed in an activity authorized by a permit issued
21 under AS 16.40.100 or 16.40.120.

22 * Sec. 12. AS 16.05.940(14) is amended to read:

23 (14) "finfish [FISH] or game farming" means the business of
24 propagating, breeding, raising, or producing finfish [FISH] or game in
25 captivity for the purpose of marketing the finfish [FISH] or game or
26 their products, and "captivity" means having the finfish [FISH] or
27 game under positive control, as in a pen, pond, or an area of land or
28 water that [WHICH] is completely enclosed by a generally escape-proof
29 barrier;

- 1 * Sec. 13. AS 16.10 is amended by adding a new section to read:
2 Sec. 16.10.269. LIMITATIONS. AS 16.10.265 - 16.10.267 do not
3 apply to the purchase or sale of aquatic farm products from a holder
4 of a permit issued under AS 16.40.100 or stock from a holder of a
5 permit issued under AS 16.40.120.
- 6 * Sec. 14. AS 16.10.400 is amended by adding a new subsection to read:
7 (h) AS 16.10.400 - 16.10.475 do not apply to the construction or
8 operation of a private hatchery that has a permit issued under AS 16.-
9 40.100.
- 10 * Sec. 15. AS 16.43.140 is amended by adding a new subsection to read:
11 (d) This chapter does not apply to activities authorized by a
12 permit issued under AS 16.40.100 or 16.40.120.
- 13 * Sec. 16. AS 16.51.180(5) is amended to read:
14 (5) "seafood" means finfish, shellfish, and fish by-prod-
15 ucts, including but not limited to salmon, halibut, herring, flounder,
16 crab, clam, cod, shrimp, and pollock, but does not include aquatic
17 farm products as defined in AS 16.40.199;
- 18 * Sec. 17. AS 38.05 is amended by adding a new section to read:
19 Sec. 38.05.083. AQUATIC FARMING AND HATCHERY SITE LEASES. (a)
20 The commissioner may offer to the public for lease a site that has
21 been developed for aquatic farming or related hatchery operations
22 under a permit issued under AS 38.05.856. Before offering the site to
23 the public, the commissioner shall offer the site to the permittee.
- 24 (b) A site shall be leased under this section for not less than
25 the appraised fair market value of the lease. The value of the lease
26 shall be reappraised every five years.
- 27 (c) A lease under this section may be assigned, but if the
28 assignee changes the use of the site the lease reverts to the state.
- 29 (d) Before entering into a lease under this section, the

1 commissioner shall require the lessee to post a performance bond or
2 provide other security to cover the costs to the department of
3 restoring the leased site in the event the lessee abandons the site.

4 * Sec. 18. AS 38.05 is amended by adding new sections to read:

5 Sec. 38.05.855. IDENTIFICATION OF SITES FOR AQUATIC FARMS AND
6 HATCHERIES. (a) The commissioner shall identify districts in the
7 state within which sites may be selected for the establishment and
8 operation of aquatic farms and related hatcheries required to have a
9 permit under AS 16.40.100.

10 (b) The commissioner shall schedule a 60-day period during which
11 a person may submit an application that identifies a site in a dis-
12 trict for which the person wishes to be issued a permit under AS 38.-
13 05.856.

14 (c) Based on applications received under (b) of this section,
15 and after consultation with the commissioner of fish and game and the
16 commissioner of environmental conservation, the commissioner shall
17 make a preliminary written finding under AS 38.05.035(e) that proposes
18 sites in each district for which permits may be issued under AS 38.-
19 05.856.

20 (d) After notice is given under AS 38.05.945 and a hearing is
21 held under AS 38.05.946(b), the commissioner shall issue a final
22 written finding under AS 38.05.035(e) that identifies sites in each
23 district for which permits shall be issued under AS 38.05.856 and that
24 specifies conditions and limitations for the development of each site.

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

1 (b) Before renewing a permit under this section, the commission-
2 er shall allow interested persons to submit written or oral testimony
3 concerning the renewal to the commissioner within 30 days after the
4 date of the notice. The commissioner may hold a hearing to take
5 testimony.

6 (c) Before issuing or renewing a permit under this section, the
7 commissioner shall consider all relevant testimony submitted under
8 this section or AS 38.05.946(b). The commissioner may deny the appli-
9 cation for issuance or renewal for good cause, but shall provide the
10 applicant with written findings that explain the reason for the
11 denial.

12 (d) Before issuing or renewing a permit under this section, the
13 commissioner shall require the permittee to post a performance bond or
14 provide other security to cover the costs to the department of restor-
15 ing the permitted site in the event the permittee abandons the site.

16 (e) The commissioner shall adopt regulations establishing crite-
17 ria for the approval or denial of permits under this section and for
18 limiting the number of sites for which permits may be issued in an
19 area in order to protect the environment and natural resources of the
20 area. The regulations must provide for the consideration of upland
21 management policies and whether the proposed use of a site is compati-
22 ble with the traditional and existing uses of the area in which the
23 site is located.

24 * Sec. 19. AS 38.05.945(a) is amended to read:

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

27 (1) classification or reclassification of state land under
28 AS 38.05.300 and the closing of land to mineral leasing or entry under
29 AS 38.05.185;

- 1 (2) zoning of land under applicable law;
- 2 (3) a decision under AS 38.05.035(e) regarding the sale,
- 3 lease, or disposal of an interest in state land or resources; [AND]
- 4 (4) a competitive disposal of an interest in state land or
- 5 resources after final decision under AS 38.05.035(e);
- 6 (5) a public hearing under AS 38.05.856(b);
- 7 (6) a preliminary finding under AS 38.05.035(e) and 38.05.-
- 8 855(c) concerning sites for aquatic farms and related hatcheries.

9 * Sec. 20. AS 38.05.945 is amended by adding a new subsection to read:

10 (g) Notice at least 30 days before action under (a)(5) or (6)

11 shall be given to appropriate

12 (1) regional fish and game councils established under

13 AS 16.05.260; and

14 (2) coastal resource service areas organized under AS 46.-

15 40.110 - 46.40.210.

16 * Sec. 21. AS 38.05.946 is amended by adding a new subsection to read:

17 (b) The commissioner shall hold a public hearing in each dis-

18 trict identified under AS 38.05.855 within 30 days after giving notice

19 of a preliminary finding under AS 38.05.035(e) and 38.05.855(c) con-

20 cerning sites for aquatic farms and related hatcheries.

21 * Sec. 22. Notwithstanding any other provisions of law, a person who is

22 lawfully operating an aquatic farm or related hatchery in the state on the

23 effective date of this Act is entitled to continue lawful operations at the

24 existing site. The person may obtain an initial lease or permit for the

25 person's existing operations under AS 38.05.083 or 38.05.856, enacted by

26 secs. 17 and 18 of this Act, but as a condition of obtaining the lease or

27 permit the person must agree that during the term of the lease or permit

28 the person will not change the use of the site.

29 * Sec. 23. LAND MANAGEMENT REPORT REQUIRED. The commissioner of natu-

1 ral resources shall submit to the legislature not later than January 30,
2 1989, a report detailing the department's implementation of AS 38.05.083
3 and 38.05.856, enacted by secs. 17 and 18 of this Act. The report must
4 include

5 (1) the number of applications received under AS 38.05.083 and
6 38.05.856, and the number of leases and permits issued, according to type
7 of aquatic farm product;

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

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

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

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

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