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ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, VICE-CHAIRMAN
LEGISLATIVE COUNCIL
RESOURCES COMMITTEE
FISHERIES SUBCOMMITTEE, CHAIRMAN



P.O. BOX 143
SITKA, ALASKA 99835

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4916

May 25, 1988

The Honorable Steve Cowper, Governor
State of Alaska
P. O. Box A
Juneau, Alaska 99811

Dear Governor Cowper:

Due to what appears to have been an oversight, SB 514, relating to the farming of aquatic plants and shellfish, was not included among the items of new legislation funded as part of the operating budget. At its May 6 meeting, the Conference Committee on the operating budget approved for funding those bills with fiscal impact expected to pass before adjournment. SB 514 did not appear on this list, and consequently the fiscal note of \$150,000 is not funded.

The Legislature intended that the Office of the Governor receive the \$150,000 in order that you might have maximum flexibility in coordinating the expenditure of these funds; they were to have been used for the activities of the Alaska Finfish Farming Task Force and for expediting mariculture permitting activities within the three state agencies involved.

The lapse date on FY '88 operating budget funds for the Office of the Governor has been extended by language in the reappropriations bill. I hope that you will consider using a portion of this money to fund the activities of the Alaska Finfish Farming Task Force and the mariculture-related permitting activities of the departments of Fish and Game, Environmental Conservation, and Natural Resources.

Please let me know if I can provide more information. Thank you for your consideration of this suggested solution to an unanticipated problem.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dick Eliason".
Sen. Dick Eliason

BSN:1091

ALASKA SENATE
HCS CSSB 514 RULES CONC

2ND SESSION 15TH LEG

5/10/88 2:18 AM

	16 YEAS	3 NAYS	0 EXC	1 ABS
Y	ABOOD	Y	FANNING	
Y	BINKLEY	Y	FISCHER	
N	COGHILL	Y	HALFORD	
Y	DUNCAN	A	HENSLEY	
Y	ELIASON	Y	JONES	
N	FAHRENKAMP	Y	JOSEPHSON	
Y	FAIKS	Y	KELLY	

Y	KERTTULA
Y	RODEY
N	STURGULEWSKI
Y	SZYMANSKI
Y	UEHLING
Y	ZHAROFF

+ VOTED FOR

* CHANGED VOTE

1348

ALASKA HOUSE OF REPRESENTATIVES
HCS CSSB 514(RULES)

SESSION 15TH LEG

5/ 9/88 9:52 PM

33 YEAS 6 NAYS 0 EXC 1 ABS

ADAMS	Y	DONLEY	Y	HUDSON	Y	FOURCHOT
BARNES	Y	ELLIS	Y	KOPONEN	N	RIEGER
BOUCHER	N	FRANK	Y	LARSON	N	SHULTZ
BOYER	Y	FURNACE	Y	HARTIN	Y	SPRINGER
BROWN	Y	GOLI	Y	MENARD	Y	SUND
CATO	Y	GRUENBERG	N	MILLER	Y	SWACKHAMMER
COLLINS	Y	GRUSSENDORF	Y	NAVARRE	Y	TAYLOR
COTTEN	Y	HANLEY	N	PEARCE	Y	ULMER
DAVIDSON	Y	HERRMANN	N	PETTYJOHN	Y	HALLIS
DAVIS	Y	HOFFMAN	Y	PHILLIPS	Y	ZAWACKI

NOTED FOR
CHANGED VOTE

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

MEMORANDUM

May 7, 1988

SUBJECT: Freshwater finfish farming during
moratorium (CSSB 514 (Finance))

TO: Senator Dick Eliason, Chairman
Senate Rules Committee

FROM: Edward H. Hein *EHA*
Legislative Counsel

You have asked whether finfish farming in private freshwater is allowed during the current finfish moratorium, which would be extended for another two years under CSSB 514 (Finance).

The moratorium, which appears in Sec. 1, ch. 70, SLA 1987, provides an exception for certain freshwater finfish farming. Sec. 1(b) states "A fish farming license and a fish transport permit may be issued for commercial finfish farming in a privately owned freshwater body that has no outlet to state water." This provision does not require that such licenses and permits be issued. It merely says that they may be issued despite the moratorium on finfish farming. A transfer permit would be necessary in order to operate a finfish farm under both existing law and under CSSB 514 (Finance).

As you know, Board of Fisheries regulations that took effect in April prohibit the issuance of transfer permits for finfish. While this may appear to be in conflict with the provision in the moratorium law, in fact it is not. Under AS 16.05.251(a)(9), the Board of Fisheries has specific authority to regulate the transport of live fish. Although the legislature has said that transport permits may be issued during the moratorium, the board, in a legitimate exercise of its discretion, has chosen not to issue them. Therefore, despite the language of the moratorium law, freshwater finfish farming is not currently allowed.

Senator Dick Eliason
Page 2
May 7, 1988

If you have any further questions about this matter, feel free to contact me at your convenience.

EHH:gc
WKG3:069

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 7, 1988

SUBJECT: Board of Fisheries mariculture regulations

TO: Senator Dick Eliason
Chairman, Senate Rules Committee

FROM: Edward H. Hein *EH*
Legislative Counsel

This afternoon I received a copy of the regulations under 5 AAC 41 that I am told the Board of Fisheries has adopted and that took effect in April. I still do not have an official copy. Nothing in these regulations makes any change to the status quo with respect to commercial finfish farming, freshwater or otherwise. The regulations do not mention commercial finfish farming. Rather, they provide for commercial shellfish farming.

EHH:bb
b6/006

Alaska Mariculture Association

MEMORANDUM

TO: All Senators

FROM: Rodger Painter
AMA Executive Director

DATE: May 5, 1988

RE: CSSB 514 (finance)

The Alaska Mariculture Association (AMA) urges you to reject CSSB 514 (finance). This is a very bad bill and should not be viewed as a compromise.

The legislation is strongly opposed by shellfish farmers (Alaskan Shellfish Growers Association and Kodiak Mariculture Association) who believe it offers few positive changes from the status quo and is primarily a vehicle for imposing new regulations. Important to recognize is that SB 514 does not authorize shellfish and aquatic plant farming, but merely burdens farmers with new regulations.

The two-year extension of the current moratorium on finfish farming will not allow any other farming to occur during that period. The moratorium does provide for finfish farming in privately owned gravel pits, but does not allow a farmer to start a hatchery, appropriate water, discharge treated water into rivers, lakes or saltwater, obtain broodstock, or anything else a freshwater farm needs to function.

Indeed, the one farm this exception was designed to allow (a gravel pit salmon farm in Fairbanks) apparently has been declared to be operating under invalid permits. This farmer (Andrew Wescott) apparently will be forced to go before the Alaska Board of Fisheries to ask for permission to farm salmon. As you know, a majority of seats on the board are held by commercial salmon fishermen, and we doubt his request would be approved.

AMA's Board of Directors strongly opposes this legislation. It simply is not a compromise. We supported earlier compromise bills that would have allowed us to farm in fresh water, while prohibiting the farming of salmon in saltwater or providing for a three-year moratorium. We also offered to support legislation that would have prohibited the farming of any finfish subject to a commercial fishery.

AMA also agreed to support most of the heavy burden of regulation proposed by commercial fishing groups, environmentalists and state agencies. None of these efforts were successful because some

fishermen's groups flatly opposed legislation allowing the farming of any finfish under any circumstance. The environmental community not only wants to ban finfish farming but to impose a moratorium on all shellfish farms.

It is with great reluctance that we ask you to vote against CSSB 514 as we have worked very hard over the past two years to reach some kind of compromise on the mariculture issue. Unfortunately, this is not a compromise or even close to it.

We believe that passage of CSSB 514 will not only prohibit the development of non-controversial finfish operations, such as freshwater farming of arctic char, sheefish, rainbow trout and other species, but will result in a closure of Andy Wescott's farm in Fairbanks. This means that projects such as the proposed farm at Ship Creek in Anchorage will die, and two groups of Alaska developers proposing upland salmon farms on private land in Southeast Alaska will enter into bankruptcy.

Thorne Ferguson of Anchorage has invested about \$600,000 into an upland farm near Hydaburg, and has obtained support from local residents and officials with several other Southeast communities. Ferguson has been working on this project for many years and was caught by the imposition of last year's moratorium. Ferguson said he will have to declare bankruptcy if the moratorium is not lifted.

AMA has many other members who have invested a considerable amount of time, energy and money into planning finfish farming operations. These individuals are entrepreneurs who are willing to proceed very carefully with development of finfish farms, but they cannot afford to wait indefinitely for a straightforward yes or no answer.

Last year, AMA advocated a one-year moratorium on finfish farming to allow the legislature additional time to resolve the mariculture issue, but nothing was accomplished over the interim. In fact, neither legislative committee handling the issue held a hearing during the interim and no staff work was accomplished.

We simply believe that nothing will be resolved by an additional moratorium, particularly the one contained in CSSB 514. This issue also was debated in a task force created by former Gov. Bill Sheffield in 1985. The solution isn't creation of another task force.

We ask you to vote against CSSB 514 as it is a poor piece of public policy and will not resolve the mariculture issue.

effective April 9-10?

Register __, __ 1988 FISH AND GAME

5 AAC 41.001
5 AAC 41.100

TITLE 5.
FISH AND GAME
CHAPTER 41.

TRANSPORTATION, POSSESSION, AND RELEASE OF LIVE FISH

ARTICLE 1.
SCOPE OF REGULATIONS

This is how the
Bd amended reg to
allow shellfish growers -

5 AAC 41.001 is amended to read:

5 AAC 41.001. APPLICATION OF THIS CHAPTER. The provisions of this chapter govern the transportation, possession, or release of live fish transplanted for or cultivated for human consumption or sport fishing purposes, or as part of an aquaculture program for scientific, educational or propagative purposes, and the transportation and possession of shellfish for commercial purposes in conjunction with a shellfish farming operation. [Publisher: Please insert here the existing second and third sentences of 5 AAC 41.001. Thank you.]
(In effect before 1988; am __/__/88, Register __)

Authority: AS 16.05.251(a)

ARTICLE 3.
GENERAL PROVISIONS

5 AAC 41.100 is amended to read:

5 AAC 41.100. DEFINITIONS. In addition to the definitions set out in AS 01.10.060 and AS 16.05.940, in 5 AAC 41.001--5 AAC 41.100

(1) "completed application" means a form, series of forms, letters, or other documents which provide all of the information necessary for the commissioner or his authorized designee to issue, condition, or deny a permit; ^{the Commissioner's}

(2) "department regional office" means the Alaska Department of Fish and Game, Fisheries Rehabilitation, Enhancement and Development Division offices located as follows:

Region I - Southeastern Region
Island Center Building
P. O. Box 20
Douglas, Alaska 99824-0020

Region II - Central, Westward and
Arctic-Yukon-Kuskokwim Region
333 Raspberry Road
Anchorage, Alaska 99502

(3) "fish pathology section" means the Alaska Department of Fish and Game, Fisheries Rehabilitation, Enhancement and Development Division, Fish Pathology Section, located at 333 Raspberry Road, Anchorage, Alaska 99502, telephone (907) 344-0541;

(4) "ornamental fish" means a fish commonly known as "tropical fish," "aquarium fish," or "goldfish," which are imported, cultured, or sold in the state customarily for viewing in aquaria or for raising in artificial systems, and not customarily used for sport fishing or human consumption purposes;

(5) "permit" means a fish transport permit, including any amendment or condition issued or approved by the commissioner or ~~his authorized~~ designee, which has not been suspended, terminated, or expired;

(6) "permittee" means the holder of a permit and includes anyone employed, contracted, or assigned by the person to whom the permit was issued.

(In effect before 1988; am __/__/88, Register __)

Authority: AS 16.02.251(a)

5 AAC 41 is amended by adding ~~a new article:~~ ^{sections to read}

ARTICLE 4. SHELLFISH FARMING

Section

- 200. Applicability of Regulations
- 210. Permit Required
- 220. Shellfish Farm Permit Application
- 230. Additional Information
- 240. Review and Determination
- 250. Permit Conditions
- 260. Inspection of a Farm
- 270. Annual Report
- 400. Definitions

Publisher: Please add the new art 4 citation to the 5 AAC 41 article listing on p. 5-110.90r of the AAC. Thank you.

5 AAC 41.200. **APPLICABILITY OF REGULATIONS.** The provisions of 5 AAC 41.200 -- 5 AAC 41.400 govern the permit application process for shellfish farm permits, and establish guidelines and procedures regarding the operation of permitted shellfish farms. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.210. PERMIT REQUIRED. A shellfish farm permit, issued by the commissioner, is required for the operation of a shellfish farm. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.220. SHELLFISH FARM PERMIT APPLICATION. An applicant must submit a consolidated shellfish farm permit application and coastal project questionnaire to the nearest office of the Office of Management and Budget, Division of Governmental Coordination for purposes of complying with the project consistency review of the Alaska Coastal Management Program as identified in 6 AAC 50.010-6 AAC 50.190. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.230. ^{under 6 AAC 50} ADDITIONAL INFORMATION. If, after an application has been distributed to the department, and the department determines that information in the application is insufficient for an adequate evaluation of the proposed shellfish farm, the department will request additional information from the applicant. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.240. REVIEW AND DETERMINATION. (a) The commissioner will review the recommendations resulting from the department's review of ~~the~~ application before rendering a decision on an application.

(b) The commissioner will render a decision on the application within ^{five} days after a determination on project consistency with the Alaska Coastal Management Program has been issued by the Office of Management and Budget. ^{Under 6 AAC 50} The commissioner's decision will be based on the following considerations:

(1) the physical and biological characteristics of the proposed location must be suitable for a shellfish farming operation;

(2) the proposed farm may not unreasonably or adversely affect management of natural stocks, and must not

require significant alterations in traditional fisheries or other existing uses of fish and wildlife resources;

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

(4) the proposed shellfish farm plans and staffing plans must demonstrate technical and operational feasibility.

(c) An application for a shellfish farm permit which has been denied by the commissioner will, in the commissioner's discretion, be reconsidered if the applicant provides new or additional information that ~~may~~ ^{might} have altered the original decision. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.250. **PERMIT CONDITIONS.** The commissioner will include conditions to the permit that are appropriate to ensure ~~that~~ the shellfish farm does not significantly affect fisheries, wildlife, or their habitats in an adverse manner. Permits will be issued for a period of three years. Permits may be renewed by submitting a request in writing to the commissioner. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.260. **INSPECTION OF A FARM.** A permit holder shall allow inspection of the shellfish farm by department inspectors at any time the farm is operating. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.270. **ANNUAL REPORT.** A person who holds a permit for a shellfish farm shall submit an annual report, no later than December 15, to the department. The annual report form ~~shall~~ ^{must} be distributed to permit holders by the department. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.400. DEFINITIONS. In 5 AAC 41.200 -- 5 AAC 41.400

(1) "commissioner" means ^{the Commissioner's} the commissioner of the Department of Fish and Game or his designee;

(2) "department" means the Alaska Department of Fish and Game;

(3) "farm" means a specific location where shellfish are raised in captivity or under positive control, as in a pen, pond, raft, bottom culture, or an area of water completely enclosed by a generally escape-proof barrier ~~for the purposes listed in 5 AAC 41.200 -- 5 AAC 41.280;~~

(4) "shellfish" means any species of crustacean, mollusk, or other invertebrates, in any stage of their life cycle, found in or introduced into the state, ~~consistent with the definition of "fish" in AS 16.10.296,~~ (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☐ 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

☒ P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

April 27, 1988

The Honorable Dick Eliason
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SB 514 (shellfish and aquatic
plant farming)

Dear Senator Eliason:

You have inquired about problems the Department of Law might anticipate arising with respect to section 8 of SB 514, an Act relating to the farming of aquatic plants and shellfish. I have examined that section, and do have several comments. In brief, section 8 appears to negate some authority delegated to the Board of Fisheries earlier in the bill, and to render ineffective for purposes of affecting acquisition permits board regulations already in existence.

Section 8 of the bill would add subsection (f) to the statute containing the basic regulatory authorities of the Board of Fisheries, AS 16.05.251. The first sentence of (f) states:

Except as expressly provided in AS 16.40.120(d) and 16.40.130, the Board of Fisheries may not adopt regulations or take action regarding the issuance, denial, or conditioning of a permit under AS 16.40.100 or 16.40.120, the construction or operation of a farm or hatchery required to have a permit under AS 16.40.100, or a harvest with a permit issued under AS 16.40.120.

If you read that sentence without the exception at the beginning, it appears to mean that the Board of Fisheries is not to be involved in regulating any aspect of farms or hatcheries for shellfish or aquatic plants, which under the bill would be provided for in section 2. The statement of lack of authority may raise policy issues which are beyond the scope of this memorandum. However, when taken in combination with the clause introducing that statement of lack of authority, the bill appears to be internally inconsistent.

The statement of lack of authority is preceded by the words "except as expressly provided in AS 16.40.120(d) and AS 16.40.130." Those provisions are found in section 2 of the bill. AS 16.40.120(d) gives the Commissioner of Fish and Game the authority to issue an acquisition permit for shellfish or aquatic plants for a farm or hatchery, except in cases where the stock sought is the subject of a commercial fishery which is under limited entry under AS 16.43, in which case the Board of Fisheries has the authority. AS 16.40.130 states that no one may import into the state aquatic plants or shellfish unless authorized by the Board of Fisheries.

Thus, under the analysis so far, it appears that under the bill the board is to have nothing to do with shellfish and aquatic plant farm and hatcheries other than regulating the import from out of state, and issuing acquisition permits for fish that are subject to limited entry commercial fisheries. The internal inconsistency arises when AS 16.40.120(e) is examined. It provides that:

The Board of Fisheries may adopt regulations for the conservation, maintenance, and management of species for which an acquisition permit is required.

Taken on its own, that subsection appears to give the Board of Fisheries some authority over species which are the subject of acquisition permits, even if the stock is not the subject of a limited entry commercial fishery. That authority presumably could include the kinds of things which the board is authorized to regulate with respect to salmon hatcheries under current AS 16.10.440(b):

the terms of the permit relating to the source and number of salmon eggs, the harvest of fish by hatchery operators, and the specific locations designated by the department for harvest.

However, if that is what is intended by AS 16.40.120(e), that authority is negated by section 8, which, as discussed above, would amend AS 16.05.251 to say that except as provided in AS 16.40.120(d) and 16.40.130 (without mention of AS 16.40.120(e)) the board may not adopt any regulations in this general area.

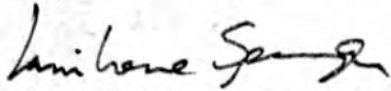
A final problem with respect to section 8 relates to the last sentence, which provides that regulations adopted by the board under AS 16.05.251, which currently contains its general

regulatory authority, do not apply to harvest with an acquisition permit issued under AS 16.40.120. That statute, as described above, gives the commissioner the authority to issue permits for all species except those subject to commercial limited entry fisheries, and gives the board some further say on the "conservation, maintenance, and management" of the species in question (although, as discussed above, the first sentence of section 8 seems to negate that further authority). What the last sentence of section 8 would mean is that existing regulations adopted under the board's general regulatory authority in AS 16.05.251(a) could not be applied to harvests with acquisition permits, thus basically negating for that purpose all the regulations the board has already adopted under AS 16.05.251(a)(9), under which it is allowed to prohibit and regulate the "live capture, possession, transport, or release of native or exotic fish or their eggs." Thus, the board would either have to readopt all the regulations in 5 AAC 41, governing the transportation, possession, and release of live fish, under this new authority, or those regulations arguably would be inapplicable to the acquisition permits issued either by the commissioner or the board under AS 16.40.-120.

In summary, it appears that section 8 negates some of the authority given to the Board of Fisheries earlier in this bill in AS 16.40.120(e). It also appears to render ineffective the regulations the board has already adopted under its current AS 16.05.251(a)(9) authority over the capture, possession, transport, or release of fish for purposes of governing acquisition permits. If you have any further questions about this, please let me know.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Larri Irene Spengler
Assistant Attorney General

Hon. Jack Eliason

April 27, 1988
Page 4

LIS:dlm

cc: Hon. Don Collinsworth
Commissioner, ADF&G

Arthur H. Peterson
Assistant Attorney General
JNU AGO

Liza McCracken
Assistant Attorney General
ANC AGO

SB 514 - ADVANTAGES TO SHELLFISH GROWERS

1. A strong policy statement by the legislature which encourages the establishment and responsible growth of an aquatic farming industry by the state is listed.
2. A hatchery could be established which would provide a stable and reliable source of shellfish spat.
3. An aquatic farm permit issued by the Department of Fish and Game may be transferred. This fact should facilitate the shellfish grower in obtaining financing.
4. A shellfish permittee shall be given a preference to a long term lease. This lease may be assigned. A long term lease will provide the much needed stability to the industry. The permittee will not have to compete competitively with other interested parties, but will be given a preference.
5. A permit will be issued for three years. Currently a one year permit is issued in Southeast.
6. Existing permit holders are grandfathered in for a lease preference. Under the current system, these farmers would have to compete competitively with all other residents to obtain a long term lease.

Distributed by Senator Eliason

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, VICE-CHAIRMAN
LEGISLATIVE COUNCIL
RESOURCES COMMITTEE
FISHERIES SUBCOMMITTEE, CHAIRMAN



P.O. BOX 143
SITKA, ALASKA 99835
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4916

MEMORANDUM

TO: Senator Dick Eliason

FROM: Sheila Peterson, staff
Senator Eliason's Office *Sheila*

DATE: March 7, 1988

RE: Opposition to the pen rearing of salmon

The following communities and organizations have submitted resolutions in opposition to the pen rearing of salmon:

Communities:

Kenai Peninsula Borough
Edna Bay Community, Inc.
City of Port Alexander
City and Borough of Sitka
City of Craig
City of Wrangell
Ketchikan Gateway Borough
Sitka Chamber of Commerce

Organizations:

Craig Fish and Game Advisory
SW Regional Fish and Game
Council
United Fisherman of Alaska
Northern Southeast Regional
Aquaculture Association
Alaska Trollers' Association
Southeast Alaska Conservation
Council
Alaska Environmental Lobby
Seafood Producers Cooperative
Southeast Regional Fish and
Game Council
North Pacific Fisheries Assn.
Cook Inlet Fisheries Coalition
Cordova District Fishermen
United

We have also received many, many letters and public opinion messages statewide in opposition to the pen rearing of salmon.

5-2170L

Hein
5/6/88

Original sponsor: Rules Committee

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 514 (Finance)

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; prohibiting the farming of Atlantic sal-
8 mon; extending the moratorium on finfish farming
9 until July 1, 1990; establishing the Alaska Finfish
10 Farming Task Force; and providing for an effective
11 date."

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

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

14 (1) aquatic farming in the state would

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

16 (B) provide new jobs;

17 (C) increase state exports;

18 (D) create new business opportunities; and

19 (E) increase the stability and diversity of the state's
20 economy; and

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

26 (b) It is the policy of the state

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

29 (2) that allocation of aquatic farming sites be made with full

1 consideration of established and ongoing activities in an area.

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

3 ARTICLE 2. AQUATIC FARMING.

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

7 (1) an aquatic farm; or

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

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

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

20 (d) Notwithstanding other provisions of law, the commissioner
21 may not issue a permit under this section for the farming of, or
22 hatchery operations involving, Atlantic salmon.

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

26 (1) the physical and biological characteristics of the
27 proposed farm or hatchery location must be suitable for the farming of
28 the shellfish or aquatic plant proposed;

29 (2) the proposed farm or hatchery may not require

1 significant alterations in traditional fisheries or other existing
2 uses of fish and wildlife resources;

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

6 (4) the proposed farm or hatchery plans and staffing plans
7 must demonstrate technical and operational feasibility.

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

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

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

26 Sec. 16.40.120. AQUATIC STOCK ACQUISITION PERMITS. (a) A
27 person may not acquire aquatic plants or shellfish from wild stock in
28 the state for the purpose of supplying stock to an aquatic farm or
29 hatchery required to have a permit under AS 16.40.100 unless the

1 person holds an acquisition permit from the commissioner.

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

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

7 (2) the department.

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

16 (d) The commissioner shall deny or restrict a permit under this
17 section upon finding that the proposed harvest will impair sustained
18 yield of the species or will unreasonably disrupt established uses of
19 the resources by commercial, sport, personal use, or subsistence
20 users. The commissioner shall inform the Board of Fisheries of any
21 action taken on permit applications for species that support commer-
22 cial fisheries subject to limited entry under AS 16.43 and of any
23 permits denied because of unreasonable disruption of an established
24 use. A denial of the permit by the commissioner must contain the
25 factual basis for the findings.

26 (e) The Board of Fisheries may adopt regulations for the conser-
27 vation, maintenance, and management of species for which an acqui-
28 sition permit is required.

29 (f) Except as provided in (d) of this section or in a regulation

1 adopted under (e) of this section, the commissioner shall issue a
2 permit if

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

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

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

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

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

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

18 Sec. 16.40.140. LIMITATION ON SALE, TRANSFER OF STOCK, AND
19 PRODUCTS. (a) A private hatchery required to have a permit under
20 AS 16.40.100 may sell or transfer stock from the hatchery only to an
21 aquatic farm or other hatchery that has a permit issued under AS 16.-
22 40.100, except that shellfish stock may also be sold or offered for
23 sale to an aquatic farm or related hatchery outside of the state.

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

29 (c) A notice of transfer must be accompanied by a report of a

1 health inspection of the stock. The department shall conduct the
2 inspection or contract with a disease diagnostician to conduct the
3 inspection. The cost of inspection shall be borne by the department.

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

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

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

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

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

26 (d) The department may enter into an agreement with a state or
27 federal agency or a private, state-certified provider to provide ser-
28 vices under (b) and (c) of this section, or inspections under AS 16.-
29 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 or shell-
12 fish, or part of an aquatic plant or shellfish, that is propagated,
13 farmed, or cultivated in an aquatic farm and sold or offered for sale;

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

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

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

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

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

29 (8) "stock" means live aquatic plants or shellfish

1 acquired, collected, possessed, or intended for use by a hatchery or
2 aquatic farm for the purpose of further growth or propagation.

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

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

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

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

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

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

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

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

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

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

24 (9) establishment of standards and conditions for the
25 operation and siting of aquatic farms and related hatcheries, includ-
26 ing

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

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

1 (10) monitoring aquatic farms and aquatic farm products to
2 ensure compliance with this chapter and with the requirements of the
3 national shellfish sanitation program manual of operations published
4 by the Food and Drug Administration.

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

6 (a) The commissioner shall

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

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

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

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

29 (5) adopt, repeal, and amend regulations consistent with

existing law for

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

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

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

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

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

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

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

Sec. 03.05.100. DEFINITIONS. In this chapter,

(1) "agricultural products" does not include fish or fisheries products;

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

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

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

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

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

7 (f) Except as expressly provided in AS 16.40.120(d) and (e) and
8 16.40.130, the Board of Fisheries may not adopt regulations or take
9 action regarding the issuance, denial, or conditioning of a permit
10 under AS 16.40.100 or 16.40.120, the construction or operation of a
11 farm or hatchery required to have a permit under AS 16.40.100, or a
12 harvest with a permit issued under AS 16.40.120.

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

14 (g) AS 16.05.330 - 16.05.720 do not apply to an activity au-
15 thorized by a permit issued under AS 16.40.100 or 16.40.120, or to a
16 person or vessel employed in an activity authorized by a permit issued
17 under AS 16.40.100 or 16.40.120.

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

19 (14) "fish or game farming" means the business of propagat-
20 ing, breeding, raising, or producing fish or game in captivity for the
21 purpose of marketing the fish or game or their products, and "captivi-
22 ty" means having the fish or game under positive control, as in a pen,
23 pond, or an area of land or water that [WHICH] is completely enclosed
24 by a generally escape-proof barrier; in this paragraph, "fish" does
25 not include shellfish, as defined in AS 16.40.199;

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

27 Sec. 16.10.269. LIMITATIONS. AS 16.10.265 - 16.10.267 do not
28 apply to the purchase or sale of aquatic farm products from a holder
29 of a permit issued under AS 16.40.100 or stock from a holder of a

1 permit issued under AS 16.40.120.

2 * Sec. 12. AS 16.43.140 is amended by adding a new subsection to read:

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

5 * Sec. 13. AS 16.51.180(5) is amended to read:

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

10 * Sec. 14. AS 38.05 is amended by adding a new section to read:

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

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

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

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

25 * Sec. 15. AS 38.05 is amended by adding new sections to read:

26 Sec. 38.05.855. IDENTIFICATION OF SITES FOR AQUATIC FARMS AND
27 HATCHERIES. (a) The commissioner shall identify districts in the
28 state within which sites may be selected for the establishment and
29 operation of aquatic farms and related hatcheries required to have a

1 permit under AS 16.40.100.

2 (b) The commissioner shall schedule a 60-day period during which
3 a person may submit an application that identifies a site in a dis-
4 trict for which the person wishes to be issued a permit under AS 38.-
5 05.856.

6 (c) Based on applications received under (b) of this section,
7 and after consultation with the commissioner of fish and game and the
8 commissioner of environmental conservation, the commissioner shall
9 make a preliminary written finding under AS 38.05.035(e) that proposes
10 sites in each district for which permits may be issued under AS 38.-
11 05.856.

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

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

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

27 (c) Before issuing or renewing a permit under this section, the
28 commissioner shall consider all relevant testimony submitted under
29 this section or AS 38.05.946(b). The commissioner may deny the

1 application for issuance or renewal for good cause, but shall provide
2 the applicant with written findings that explain the reason for the
3 denial.

4 (d) Before issuing or renewing a permit under this section, the
5 commissioner 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 (e) 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 environment and natural resources of the
12 area. The regulations must provide for the consideration of upland
13 management policies and whether the proposed use of a site is compati-
14 ble with the traditional and existing uses of the area in which the
15 site is located.

16 * Sec. 16. AS 38.05.945(a) is amended to read:

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

19 (1) classification or reclassification of state land under
20 AS 38.05.300 and the closing of land to mineral leasing or entry under
21 AS 38.05.185;

22 (2) zoning of land under applicable law;

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

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

27 (5) a public hearing under AS 38.05.456(b);

28 (6) a preliminary finding under AS 38.05.035(e) and 38.05.-
29 855(c) concerning sites for aquatic farms and related hatcheries.

1 * Sec. 17. AS 38.05.945 is amended by adding a new subsection to read:

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

4 (1) regional fish and game councils established under
5 AS 16.05.260; and

6 (2) coastal resource service areas organized under AS 46.-
7 40.110 - 46.40.210.

8 * Sec. 18. AS 38.05.946 is amended by adding a new subsection to read:

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

13 * Sec. 19. Notwithstanding any other provisions of law, a person who is
14 lawfully operating an aquatic farm or related hatchery in the state on the
15 effective date of this Act is entitled to continue lawful operations at the
16 existing site. The person may obtain an initial lease or permit for the
17 person's existing operations under AS 38.05.083 or 38.05.856, enacted by
18 secs. 14 and 15 of this Act, but as a condition of obtaining the lease or
19 permit the person must agree that during the term of the lease or permit
20 the person will not change the use of the site.

21 * Sec. 20. LAND MANAGEMENT REPORT REQUIRED. The commissioner of natu-
22 ral resources shall submit to the legislature not later than January 30,
23 1989, a report detailing the department's implementation of AS 38.05.083
24 and 38.05.856, enacted by secs. 14 and 15 of this Act. The report must
25 include

26 (1) the number of applications received under AS 38.05.083 and
27 38.05.856, and the number of leases and permits issued according to type
28 of aquatic farm product;

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

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

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

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

6 * Sec. 21. ALASKA FINFISH FARMING TASK FORCE. (a) The legislature
7 finds that the farming of finfish raises a series of socio-economic, bio-
8 logical, and environmental issues requiring an in-depth examination.

9 (b) The Alaska Finfish Farming Task Force is established to study the
10 issue and make a report of findings for administrative and legislative
11 consideration. The governor shall appoint a five-member task force com-
12 posed of state residents who are not state employees and who represent a
13 broad spectrum of expertise, including one representative of commercial
14 salmon fishermen, one aquatic farming advocate, one private economist, one
15 fisheries biologist, and one public member with no involvement in the
16 seafood or aquatic farming industry.

17 (c) The task force shall submit an interim report to the legislature
18 not later than January 30, 1989, and a final report to the legislature not
19 later than January 30, 1990. The reports must address finfish farming in
20 the state in freshwater, in marine environments, and in tanks or other
21 enclosed structures that contain marine water and that are located on land,
22 and shall address related hatchery operations. The reports may address
23 other issues the task force considers appropriate. The reports must
24 examine

25 (1) whether the farming of finfish can be conducted in a manner
26 that protects the health of the state's fishery resources;

27 (2) criteria for the siting of finfish farms to minimize land
28 use conflicts and to protect the environment;

29 (3) net economic costs and benefits of finfish farming in the

1 state to state residents, including jobs created or lost for state resi-
2 dents, tax revenue (assuming an appropriate tax rate), cost of state regu-
3 lation and monitoring, and effects on markets for salmon caught by the
4 state's commercial fishing fleets;

5 (4) the cost of providing adequate regulation of finfish farming
6 to protect wild stocks, the environment, public health, and existing bene-
7 ficial uses of the state's coastal water and land, and the role of the
8 private sector in providing pathological and other services;

9 (5) identification and analysis of appropriate sources of supply
10 of stock for finfish farms, including but not limited to private nonprofit
11 hatcheries, private for-profit hatcheries, and wild stock, and their likely
12 effect on existing state policy; and

13 (6) strategies for improving the marketability of Alaska salmon,
14 particularly those high-value species competing with farmed salmon for
15 domestic and export sales.

16 * Sec. 22. Section 4, ch. 70, SLA 1987, is amended to read:

17 Sec. 4. Section 1 of this Act is repealed July 1, 1990 [1988].

18 * Sec. 23. This Act takes effect immediately under AS 01.10.070(c).
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1 IN THE SENATE

BY THE RULES COMMITTEE

2 SENATE BILL NO. SB 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 acqui-
22 sition 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 03.05.070(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;

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

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

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

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

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

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

Sec. 03.05.100. DEFINITIONS. In this chapter,

(1) "agricultural products" does not include fish or fisheries products;

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

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

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

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

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

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

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

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

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

(14) Finfish [FISH] farming biennial license 200

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

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

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

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

* Sec. 13. AS 16.10 is amended by adding a new section to read:

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

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

(h) AS 16.10.400 - 16.10.475 do not apply to the construction or operation of a private hatchery that has a permit issued under AS 16.40.100.

* Sec. 15. AS 16.43.140 is amended by adding a new subsection to read:

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

* Sec. 16. AS 16.51.180(5) is amended to read:

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

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

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

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

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

(d) Before entering into a lease under this section, the

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

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

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

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

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

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

Sec. 38.05.856. TIDE LAND AND LAND USE PERMITS FOR AQUATIC FARMING. (a) The commissioner may issue a tideland or land use permit for the establishment and operation of an aquatic farm and related hatchery operations. A permit under this section is valid for three 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;

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

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

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

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

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

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

(b) The commissioner shall hold a public hearing in each district identified under AS 38.05.855 within 30 days after giving notice of a preliminary finding under AS 38.05.035(e) and 38.05.855(c) concerning sites for aquatic farms and related hatcheries.

* Sec. 22. Notwithstanding any other provisions of law, a person who is lawfully operating an aquatic farm or related hatchery in the state on the effective date of this Act is entitled to continue lawful operations at the existing site. The person may obtain an initial lease or permit for the person's existing operations under AS 38.05.083 or 38.05.856, enacted by secs. 17 and 18 of this Act, but as a condition of obtaining the lease or permit the person must agree that during the term of the lease or permit the person will not change the use of the site.

* 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).
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IN THE SENATE

BY THE RULES COMMITTEE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

(1) aquatic farming in the state would

(A) provide a consistent source of quality food;

(B) provide new jobs;

(C) increase state exports;

(D) create new business opportunities; and

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

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

(b) It is the policy of the state

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

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

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

ARTICLE 2. AQUATIC FARMING.

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 the natural ^{fish and wildlife resources} stock.

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

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

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

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

28 (4) the proposed farm or hatchery plans and staffing plans
29 must demonstrate technical and operational feasibility.

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

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

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

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

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

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

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

29 (2) the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (e) A person may not sell, transfer, or offer to sell or trans-
29 fer, or knowingly purchase or receive, an aquatic farm product grown

1 or propagated in the state unless the product was grown or propagated
2 on a farm with a permit issued under AS 16.40.100. The permit must be
3 in effect at the time of the sale, transfer, purchase, receipt, or
4 offer.

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

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

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

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

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

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

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

29 (1) "aquatic farm" means a facility that grows, farms, or

1 cultivates aquatic farm products in captivity or under positive con-
2 trol;

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

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

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

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

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

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

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

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

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

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

- (2) establishment of quarantines for eradication of pests;
- (3) establishment of standards and labeling requirements pertaining to the sale of meat, fish, and poultry;
- (4) tests and analyses which may be made and hearings which may be held to determine whether the commissioner will issue a stop order or quarantine;
- (5) cooperation with federal and other state agencies;
- (6) regulation of fur farming; for purposes of this paragraph, "fur farming" means the raising of and caring for animals for the purpose of marketing their fur, or animals themselves for breeding stock;
- (7) examination and inspection of meat, fish, and poultry advertised for sale or sold to the public;
- (8) enforcement of quality assurance plans developed in cooperation with appropriate industry representatives;
- (9) establishment of standards and conditions for the operation and siting of aquatic farms and related hatcheries, including
 - (A) restrictions on the use of chemicals; and
 - (B) requirements to protect the public from contaminated aquatic farm products that pose a risk to health;
- (10) monitoring aquatic farms and aquatic farm products to ensure compliance with this chapter and with the requirements of the national shellfish sanitation program manual of operations published by the Food and Drug Administration.

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

(a) The commissioner shall

- (1) require routine inspection of food animals, fish, poultry and derivative food products, to protect the public against

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

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

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

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

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

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

28 (B) the production and sale of ice cream and allied
29 frozen desserts;

WORK DRAFT 1 WORK DRAFT 1 WORK DRAFT 1

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

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

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

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

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

Sec. 03.05.100. DEFINITIONS. In this chapter,

(1) "agricultural products" does not include fish or fisheries products;

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

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

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

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

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

(f) Except as expressly provided in AS 16.40.120(d) and 16.40.-130, the Board of Fisheries may not adopt regulations or take action

1 regarding the issuance, denial, or conditioning of a permit under
2 AS 16.40.100 or 16.40.120, the construction or operation of a farm or
3 hatchery required to have a permit under AS 16.40.100, or a harvest
4 with a permit issued under AS 16.40.120. Regulations or orders adopt-
5 ed by the Board of Fisheries under this section do not apply to a
6 harvest with a permit issued under AS 16.40.120.

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

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

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

14 (14) Finfish [FISH] farming biennial license 200

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

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

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

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

28 * Sec. 13. AS 16.10 is amended by adding a new section to read:

29 Sec. 16.10.269. LIMITATIONS. AS 16.10.265 - 16.10.267 do not

1 apply to the purchase or sale of aquatic farm products from a holder
2 of a permit issued under AS 16.40.100 or stock from a holder of a
3 permit issued under AS 16.40.120.

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

5 (h) AS 16.10.400 - 16.10.475 do not apply to the construction or
6 operation of a private hatchery that has a permit issued under AS 16.-
7 40.100.

8 * Sec. 15. AS 16.43.140 is amended by adding a new subsection to read:

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

11 * Sec. 16. AS 16.51.180(5) is amended to read:

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

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

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

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

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

27 (d) Before entering into a lease under this section, the commis-
28 sioner shall require the lessee to post a performance bond or provide
29 other security to cover the costs to the department of restoring the

leased site in the event the lessee abandons the site.

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

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

(b) The commissioner shall schedule a 60-day period during which a person may submit an application that identifies a site in a district for which the person wishes to be issued a permit under AS 38.05.856.

(c) Based on applications received under (b) of this section, and after consultation with the commissioner of fish and game and the commissioner of environmental conservation, the commissioner shall make a preliminary written finding under AS 38.05.035(e) that proposes sites in each district for which permits may be issued under AS 38.05.856.

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

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

(b) Before renewing a permit under this section, the commissioner shall allow interested persons to submit written or oral testimony

WORK DRAFT 1 WORK DRAFT 1 WORK DRAFT 1

1 concerning the renewal to the commissioner within 30 days after the
2 date of the notice. The commissioner may hold a hearing to take
3 testimony.

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

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

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

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

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

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

28 (2) zoning of land under applicable law;

29 (3) a decision under AS 38.05.035(e) regarding the sale,

WORK DRAFT
lease, or disposal of an interest in state land or resources; [AND]

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

(5) a public hearing under AS 38.05.856(b);

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

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

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

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

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

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

(b) The commissioner shall hold a public hearing in each district identified under AS 38.05.855 within 30 days after giving notice of a preliminary finding under AS 38.05.035(e) and 38.05.855(c) concerning sites for aquatic farms and related hatcheries.

* Sec. 22. AS 16.05.340(a)(14) is repealed.

* Sec. 23. Notwithstanding any other provisions of law, a person who is lawfully operating an aquatic farm or related hatchery in the state on the effective date of this Act is entitled to continue lawful operations at the existing site. The person may obtain an initial lease or permit for the person's existing operations under AS 38.05.083 or 38.05.856, enacted by secs. 17 and 18 of this Act, but as a condition of obtaining the lease or permit the person must agree that during the term of the lease or permit the person will not change the use of the site.

* Sec. 24. LAND MANAGEMENT REPORT REQUIRED. The commissioner of natural resources shall submit to the legislature not later than January 30,

1 1989, a report detailing the department's implementation of AS 38.05.083
2 and 38.05.856, enacted by secs. 17 and 18 of this Act. The report must
3 include

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

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

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

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

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

13 * Sec. 25. This Act takes effect immediately under AS 01.10.070(c).
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