

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4934 HRES HB 108 (FILE 2) - HB 108 (FILE 3)

506

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: HB 108
Publish Date: _____

Revision Date: 2-4-87

Agency Affected: Natural Resources
BRU: Land and Water Management

Title: An Act Relating to Aquatic
Farming

Sponsor: Ellis, Rieger, Cotten, Brown,
Requestor: etc.

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	84.6	171.3	171.3	210.6	210.6
TRAVEL	0	20.0	25.0	25.0	22.0	22.0
CONTRACTUAL	0	2.0	4.0	4.0	4.0	4.0
SUPPLIES	0	1.0	2.0	2.0	2.0	2.0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	107.6	202.3	202.3	238.6	238.6

CAPITAL	0	0	0	0	0	0
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REVENUE	0	15.5	23.5	32.0	36.0	40.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	107.6	202.3	202.3	238.6	238.6
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	107.6	202.3	202.3	238.6	238.6

POSITIONS:

FULL-TIME	0	2	3	3	4	4
PART-TIME	0	0	2	2	2	2
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

See Attached

Prepared by: Paula Burgess
Division: Land and Water Management

Phone: 465-3400
Date: 2/13/87

Approved by Commissioner: [Signature]
Agency: Natural Resources

Date: _____

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

HB 108 Analysis

In order to assess the fiscal impact of HB 108, we estimate the number of new applications for tideland leases and permits that we expect. The actual number of applications will vary depending upon the fee structure for leasing and permitting, and the "prove up" requirements of the bill. At present our permit fees are extremely low and the cost of obtaining a lease is quite high. At this stage no "land law" accompanies the bill to alter the lease or permit structure. We recognize that certain changes are desirable to encourage growth of the industry, such as the acceptance of a paper plat rather than a full survey for a lease in remote areas. While such changes may be forthcoming in later committees, the fiscal note here reflects the existing permit structure.

We estimate the number of new applications the first year to be the following:

- 30 salmon
- 25 scallop
- 10 oyster
- 3 mussel
- 2 kelp

We require one adjudicator in the Southeast Region and one adjudicator in the Southcentral Region to handle the new applications. The second year we require one additional adjudicator (to be located where the need is the greatest) to handle additional new applications. By the fourth year we are assuming the need of two adjudicators in each of the two regions.

The second year we require a part time contract administrator to handle the accumulation of two years of lease contracts, and a part time surveyor to review survey plats. (The survey cost may be reduced somewhat if the bill is amended to allow paper plats rather than full surveys in remote areas.)

A goal of the state and of those seriously interested in aquatic farming is to avoid land speculation. In order to accomplish this, it will be necessary to inspect most lease and permit sites once a year. Some inspections can be combined with other field investigations, and some may be performed under cooperative agreements with other agencies. A lean inspection program will cost \$10,000 for each adjudicator the first year (travel and per diem). In subsequent years the cost will decline as we establish inspection efficiencies.

Under existing statutes and regulations, the number of leases and permits estimated above would generate

approximately \$15,500 in revenue the first year. As the number of operations increases each year, the revenue increases modestly. If the bill were amended to allow the Commissioner to charge a percentage of gross receipts, revenues could increase substantially once the industry began to flourish.

Position Summary

Fiscal Year '88

Two (2) - Natural Resource Officers II (Range 16)

Fiscal Years '89 and '90

Three (3) - Natural Resource Officers II (Range 16)
One (1) - Part-time Contract Administrator (Range 14)
One (1) - Part-time Surveyor (Range 20)

Fiscal Years '91 and '92

Four (4) - Natural Resource Officers II (Range 16)
One (1) - Part-time Contract Administrator (Range 14)
One (1) - Part-time Surveyor (Range 20)

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version : SB 106/HB 108
Publish Date : 2/4/87

REQUEST: _____

Revision Date: _____
Title : _____

Agency Affected : ADF&G
BRU : FRED

Sponsor : Zharoff et al. Ellis et al.
Requestor : _____

Components : FRED

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		157	157	183	236	330
TRAVEL		6	6	10	17	20
CONTRACTUAL		1	1	2	4	3
SUPPLIES		2	4	6	10	22
EQUIPMENT				1	2	5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANECUS						
TOTAL OPERATING		166	168	202	269	385

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		166	168	202	269	385
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		2	2	3	3.5	9
PART-TIME		1	2	1	2	0
TEMPORARY		1	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

This analysis estimates costs of pathology services and permitting based on 100 permit applications in FY 88, ultimately resulting in 20 operational fish farms by FY 92 of economically significant size.

(see attached for additional comments)

Prepared by : Dr. Mike Kaill Phone : 465-4160
Division : ADF&G/FRED Date : _____

Approved by Commissioner : *Norman* Date : 2-2-87
Agency : _____

Distribution (by preparer) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agencies
- Senate Secretary

Estimated cost of services to be provided by ADF&G are fish pathology services, permit processing and technical oversight.

For pathology services, estimated costs are based on current workload and budget for the section at this time, to arrive at a per-unit cost (e.g. \$600,000/37 hatcheries = \$16,000/hatchery). An additional \$12,000 is budgeted for investigations and diagnostic services in the first year. Types of services are: diagnostic, broodstock, water source analysis, shellfish certification, pre-release inspection, and human health concerns.

For permitting and technical oversight services, an assessment of work requirements was made by calling the Marine Resources Division of the B.C. provincial government. For the first three years, two full-time technicians would be required. Thereafter, manpower needs will diminish. The types of work to be undertaken will be communication with applicants, review of application materials, coordination with programs such as coastal zone consistency review, and technical biology and fish culture oversight.

It is very difficult to anticipate what will happen if a mariculture program is enabled in Alaska. We have prepared this note based on observations and consultations with managers of similar programs. We then applied this to Alaska, using the incomplete data at hand. These must be considered rough estimates of cost. As further information becomes available, the fiscal note could change. Also, as the bill becomes modified as it passes through the legislative process, there may be changes in the bill that will have corresponding changes in the fiscal note.

COMPARISON OF 2/17/87 AND 2/24/87 COMMITTEE SUBSTITUTES

The only difference between CS HB 108 (L&C) 2/17//87 which was adopted by the committee last Tuesday and CS HB 108 (L&C) 2/24/87 is that the the old CS had 18 sections and the new CS has 17 sections reflecting the elimination of Section 3.

Section 3 of the 2/17/87 CS was eliminated at the suggestion of the Department of Environmental Conservation to avoid potential duplication of existing services.

The section added language to AS 03.05.020(a) which read:

(6) monitor aquatic farms and hatcheries that hold permits under AS 08.06.101 for the possible presence of paralytic shellfish poisoning.

D.E.C. informs us that this function is covered under 18 AAC Chapter 34.

5-0495B

Hein
2/17/87

Original sponsors: Ellis, Rieger,
Cotten, et al.

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 108 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to aquatic farming; and providing
7 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 provide a consistent
11 source of quality food, provide new jobs, increase state exports, create
12 new commercial fishing and other business opportunities, and increase the
13 stability and diversity of the state's economy;

14 (2) many areas of the state are ecologically suited for aquatic
15 farming development;

16 (3) aquatic farming would complement and enhance the variety and
17 quality of Alaska seafood and aquatic products, and thereby benefit the
18 state's economy;

19 (4) development of mariculture in the state would strengthen the
20 competitiveness of Alaska seafood in the world marketplace by broadening
21 the diversity of products and providing year-round supplies of premium
22 quality seafood; and

23 (5) the principal responsibility for development of aquatic
24 farming in the state rests with the private sector.

25 (b) It is the policy of the state

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

28 (2) to assist in the planning and orderly development of the
29 industry;

1 (3) that the industry be developed in a manner consistent with
2 the protection and enhancement of traditional high value industries and
3 with protection of the state's natural resources; and

4 (4) that aquatic farming be developed in a manner that assures
5 full participation and full benefits to the people of the state.

6 * Sec. 2. AS 08 is amended by adding a new chapter to read:

7 CHAPTER 06. AQUATIC FARMING.

8 Sec. 08.06.010. AQUATIC FARM AND HATCHERY PERMITS. (a) A
9 person may not, without a permit from the commissioner, construct or
10 operate

11 (1) an aquatic farm; or

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

14 (b) A permit issued under this section authorizes the permittee,
15 subject to the conditions of this chapter, to acquire, purchase, offer
16 to purchase, transfer, possess, sell, and offer to sell stock and
17 aquatic farm products that are used or reared at the hatchery or
18 aquatic farm.

19 (c) The commissioner, after consulting with the commissioner of
20 fish and game and the commissioner of environmental conservation, may
21 attach conditions to a permit issued under this section that are
22 necessary to protect the public health or wild stock.

23 Sec. 08.06.020. PERMIT APPLICATION AND RENEWAL. (a) An appli-
24 cant for an aquatic farming or hatchery permit required under AS 08.-
25 06.010 shall apply on a form prescribed by the commissioner.

26 (b) A permit issued under this section expires one year after
27 the date of issue.

28 (c) An application for renewal must be accompanied by fees
29 required under AS 08.01.065 and a report of a health inspection of the

1 farm or hatchery to be permitted. The inspection shall be conducted
2 by the Department of Fish and Game or by a fish disease diagnostician
3 approved by the Department of Fish and Game. The inspection shall be
4 conducted not more than 30 days before the application is submitted to
5 the department.

6 Sec. 08.06.030. AQUATIC FARM STOCK ACQUISITION PERMITS. (a) A
7 person may not acquire aquatic plants or aquatic animals from wild
8 stock in the state for the purpose of supplying stock to an aquatic
9 farm or hatchery required to have a permit under AS 08.06.010 unless
10 the person holds an acquisition permit from the commissioner of fish
11 and game.

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

16 (c) The commissioner of fish and game, in consultation with the
17 commissioner of commerce and economic development, shall specify the
18 expiration date of an acquisition permit and may attach conditions to
19 an acquisition permit, including conditions relating to the time,
20 place, and manner of harvest. Size, gear, place, time, licensing, and
21 other limitations applicable to sport, commercial, or subsistence
22 harvest of aquatic plants and aquatic animals do not apply to a har-
23 vest with a permit issued under this section.

24 (d) The commissioner of fish and game shall forward a copy of
25 each permit application under this section to the commissioner of
26 commerce and economic development. The commissioner of fish and game
27 shall issue or deny a permit within 30 days after receiving an appli-
28 cation.

29 (e) The commissioner of fish and game may deny or restrict a

1 permit under this section if the commissioner finds that the proposed
2 harvest will substantially impair sustained yield of the species. The
3 decision of the commissioner of fish and game must contain the factual
4 basis for the findings. If the substantial impairment could not have
5 been reasonably foreseen and avoided through available management
6 options, the commissioner of fish and game shall explain why in the
7 decision.

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

10 (1) wild stock is needed for initial farms or hatchery
11 stock;

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

14 (3) wild stock is needed to maintain the gene pool of a
15 hatchery or aquatic farm; or

16 (4) commercial harvest of the species sought is not limited
17 under AS 16.43 and is not fully developed.

18 (g) Aquatic plants and aquatic animals acquired under a permit
19 issued under this section become the property of the permit holder and
20 are no longer a public or common resource.

21 (h) The commissioner of fish and game shall make stock available
22 for aquatic farming purposes.

23 Sec. 08.06.040. IMPORTATION OF AQUATIC PLANTS OR AQUATIC ANIMALS
24 FOR STOCK. A person may not import into the state an aquatic plant or
25 aquatic animal for the purpose of supplying stock to an aquatic farm
26 or hatchery unless authorized by the commissioner of fish and game or
27 by a regulation of the Board of Fisheries.

28 Sec. 08.06.050. LIMITATION ON SALE, TRANSFER OF STOCK, AND
29 PRODUCTS. (a) A private hatchery required to have a permit under

1 AS 08.06.010 may sell or transfer stock from the hatchery only to an
2 aquatic farm or other hatchery that has a permit issued under AS 08.-
3 06.010.

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

9 (c) A notice of transfer must be accompanied by a report of a
10 health inspection of the stock. The inspection shall be conducted by
11 the Department of Fish and Game or by a disease diagnostician approved
12 by the Department of Fish and Game.

13 (d) The Department of Fish and Game may restrict or disapprove a
14 transfer of stock if it finds that the transfer

15 (1) would present a substantial risk of spreading disease;
16 or

17 (2) in the case of a transfer from a hatchery for which a
18 permit has been issued under AS 16.10.400, would significantly impair
19 the production needs of the hatchery.

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

26 Sec. 08.06.060. RELEASE OF CERTAIN FISH PROHIBITED. Salmon and
27 trout may not intentionally be released into the public water of the
28 state from a hatchery or aquatic farm required to have a permit under
29 this chapter without prior authorization from the Department of Fish

1 and Game.

2 Sec. 08.06.070. DISEASE CONTROL AND INSPECTION. (a) The De-
3 partment of Fish and Game may order the quarantine or the destruction
4 and disposal of diseased hatchery stock or of aquatic farm products
5 when necessary to protect wild stock. A holder of a permit issued
6 under this chapter shall report to the Department of Fish and Game an
7 outbreak or incidence of disease among stock or aquatic farm products
8 of the permit holder.

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

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

15 (d) The Department of Fish and Game may enter into an agreement
16 with a state or federal agency or a private provider to provide ser-
17 vices under (b) and (c) of this section, or inspections under AS 08.-
18 06.020(b).

19 Sec. 08.06.080. REPORT. The commissioner shall submit to the
20 legislature, not later than the first day of each regular legislative
21 session, a report concerning the progress of the aquatic farming
22 industry, including the number of permits issued under AS 08.06.010,
23 the names and addresses of permit holders, the effect of the industry
24 on the commercial fishing industry in the state, and recommendations
25 for legislation relating to aquatic farming.

26 Sec. 08.06.090. REGULATIONS. The commissioner shall adopt regu-
27 lations necessary to implement this chapter and to effect state policy
28 concerning aquatic farming.

29 Sec. 08.06.100. PENALTY. A person who violates a provision of

1 this chapter, a regulation adopted under this chapter, or a term or
2 condition of a permit issued under this chapter, is guilty of a class
3 B misdemeanor.

4 Sec. 08.06.900. DEFINITIONS. In this chapter

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

8 (2) "aquatic farm product" includes an aquatic plant or
9 aquatic animal, or fish parts that are propagated, farmed, or cul-
10 tivated in an aquatic farm and sold or offered for consumption;

11 (3) "commissioner" means the commissioner of commerce and
12 economic development;

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

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

21 (6) "stock" means live aquatic plants and aquatic animals
22 acquired, 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 03.05.020(a) is amended to read:

25 (a) The commissioner shall

26 (1) require routine inspection of food animals, fish,
27 poultry and derivative food products, to protect the public against
28 fraud, disease and spoilage, and in this connection adopt uniform
29 regulations establishing standards of identity and composition of

1 these food products and minimum standards of sanitation and handling
2 methods as to all phases of slaughtering, processing, storing, trans-
3 porting, displaying and selling of these food products;

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

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

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

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

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

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

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

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

4 * Sec. 4. AS 08.01.065(a) is amended to read:

5 (a) The department shall adopt regulations that establish the
 6 amount and manner of payment of application fees, examination fees,
 7 license fees, registration fees, permit fees, investigation fees, and
 8 all other fees as appropriate for the occupations covered by this
 9 chapter, for aquatic farms and hatcheries under AS 08.06, and for real
 10 estate brokers and salesmen under AS 08.88.

11 * Sec. 5. AS 16.05.251 is amended by adding a new subsection to read:

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

20 * Sec. 6. AS 16.05.330(a) is amended to read:

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

26 * Sec. 7. AS 16.05.340(a)(14) is amended to read:

27 (14) [FISH OR] game farming biennial licenses.....200

28 * Sec. 8. AS 16.05.920(a) is amended to read:

29 (a) Unless permitted by AS 16.05 - AS 16.40 or AS 08.06, or by

1 regulation adopted under AS 16.05 - AS 16.40 or AS 08.06, a person may
2 not take, possess, transport, sell, offer to sell, purchase, or offer
3 to purchase fish, game, or marine aquatic plants, or any part of fish,
4 game, or aquatic plants, or a nest or egg of fish or game.

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

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

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

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

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

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

22 * Sec. 12. AS 16.10.380(b) is amended to read:

23 (b) In this section "user group" includes, but is not limited
24 to, sport fishermen, processors, commercial fishermen, aquatic farm-
25 ers, subsistence fishermen, and representatives of local communities.

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

27 (h) AS 16.10.400 - 16.10.475 do not apply to the construction or
28 operation of a private hatchery that has a permit issued under AS 08.-
29 06.010.

1 * Sec. 14. AS 16.10.420 is amended to read:

2 Sec. 16.10.420. CONDITIONS OF A PERMIT. The department
3 shall require, in a permit issued to a hatchery operator, that

4 (1) salmon eggs procured by the hatchery must be from the
5 department or a source approved by the department;

6 (2) no salmon eggs or resulting fry be placed in waters of
7 the state other than those specifically designated in the permit;

8 (3) no salmon eggs or resulting fry, sold to a permit
9 holder by the state or by another party approved by the department,
10 may be resold or otherwise transferred to another person, unless that
11 person holds a permit issued under AS 08.06.010;

12 (4) no salmon be released by the hatchery before department
13 approval, and, for purposes of pathological examination and approval,
14 the department shall be notified of the proposed release of salmon at
15 least 15 days before the date of their proposed release by the hatch-
16 ery;

17 (5) diseased salmon be destroyed in a specific manner and
18 place designated by the department;

19 (6) adult salmon be harvested by hatchery operators only at
20 specific locations as designated by the department;

21 (7) surplus eggs from salmon returning to the hatchery be
22 made available for sale first to the department and then, after in-
23 spection and approval by the department, to operators of other hatch-
24 eries authorized by permit to operate under AS 16.10.400 - 16.10.470,
25 or AS 08.06.010;

26 (8) if surplus salmon eggs are sold by a permit holder to
27 another permit holder, a copy of the sales transaction be provided to
28 the department;

29 (9) [REPEALED]

1 (10)] a hatchery be located in an area where a reasonable
2 segregation from natural stocks occurs, but, when feasible, in an area
3 where returning hatchery fish will pass through traditional salmon
4 fisheries.

5 * Sec. 15. AS 16.10.450 is amended to read:

6 Sec. 16.10.450. SALE OF SALMON AND SALMON EGGS BY HATCHERY. A
7 hatchery operator who sells salmon returning from the natural water
8 [WATERS] of the state, or sells salmon eggs to another hatchery op-
9 erating under AS 16.10.400 - 16.10.470 or with a permit issued under
10 AS 08.06.010, after utilizing the funds for reasonable operating
11 costs, including debt retirement, expanding its facilities, salmon
12 rehabilitation projects, fisheries research, or for costs of operating
13 the qualified regional association for the area in which the hatchery
14 is located, shall expend the remaining funds on other fisheries activ-
15 ities of the qualified regional association. Fish returning to hatch-
16 eries and sold for human consumption must [SHALL] be of comparable
17 quality to fish harvested by commercial fisheries in the area, and
18 shall be sold at prices commensurate with the current market.

19 * Sec. 16. AS 16.43.140 is amended by adding a new subsection to read:

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

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

23 (5) "seafood" means finfish, shellfish, and fish by-prod-
24 ucts, including but not limited to salmon, halibut, herring, flounder,
25 crab, clam, cod, shrimp, and pollock, but does not include aquatic
26 farm products as defined in AS 08.06.900;

27 * Sec. 18. This Act takes effect immediately under AS 01.10.070(c).
28
29

Original sponsors: Ellis, Rieger,
Cotten, et al.

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 108 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to aquatic farming; and providing
7 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 provide a consistent
11 source of quality food, provide new jobs, increase state exports, create
12 new commercial fishing and other business opportunities, and increase the
13 stability and diversity of the state's economy;

14 (2) many areas of the state are ecologically suited for aquatic
15 farming development;

16 (3) aquatic farming would complement and enhance the variety and
17 quality of Alaska seafood and aquatic products, and thereby benefit the
18 state's economy;

19 (4) development of mariculture in the state would strengthen the
20 competitiveness of Alaska seafood in the world marketplace by broadening
21 the diversity of products and providing year-round supplies of premium
22 quality seafood; and

23 (5) the principal responsibility for development of aquatic
24 farming in the state rests with the private sector.

25 (b) It is the policy of the state

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

28 (2) to assist in the planning and orderly development of the
29 industry;

1 (3) that the industry be developed in a manner consistent with
2 the protection and enhancement of traditional high value industries and
3 with protection of the state's natural resources; and

4 (4) that aquatic farming be developed in a manner that assures
5 full participation and full benefits to the people of the state.

6 * Sec. 2. AS 08 is amended by adding a new chapter to read:

7 CHAPTER 06. AQUATIC FARMING.

8 Sec. 08.06.010. AQUATIC FARM AND HATCHERY PERMITS. (a) A
9 person may not, without a permit from the commissioner, construct or
10 operate

11 (1) an aquatic farm; or

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

14 (b) A permit issued under this section authorizes the permittee,
15 subject to the conditions of this chapter, to acquire, purchase, offer
16 to purchase, transfer, possess, sell, and offer to sell stock and
17 aquatic farm products that are used or reared at the hatchery or
18 aquatic farm.

19 (c) The commissioner, after consulting with the commissioner of
20 fish and game and the commissioner of environmental conservation, may
21 attach conditions to a permit issued under this section that are
22 necessary to protect the public health or wild stock.

23 Sec. 08.06.020. PERMIT APPLICATION AND RENEWAL. (a) An appli-
24 cant for an aquatic farming or hatchery permit required under AS 08.-
25 06.010 shall apply on a form prescribed by the commissioner.

26 (b) A permit issued under this section expires one year after
27 the date of issue.

28 (c) An application for renewal must be accompanied by fees
29 required under AS 08.01.065 and a report of a health inspection of the

1 farm or hatchery to be permitted. The inspection shall be conducted
2 by the Department of Fish and Game or by a fish disease diagnostician
3 approved by the Department of Fish and Game. The inspection shall be
4 conducted not more than 30 days before the application is submitted to
5 the department.

6 Sec. 08.06.030. AQUATIC FARM STOCK ACQUISITION PERMITS. (a) A
7 person may not acquire aquatic plants or aquatic animals from wild
8 stock in the state for the purpose of supplying stock to an aquatic
9 farm or hatchery required to have a permit under AS 08.06.010 unless
10 the person holds an acquisition permit from the commissioner of fish
11 and game.

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

16 (c) The commissioner of fish and game, in consultation with the
17 commissioner of commerce and economic development, shall specify the
18 expiration date of an acquisition permit and may attach conditions to
19 an acquisition permit, including conditions relating to the time,
20 place, and manner of harvest. Size, gear, place, time, licensing, and
21 other limitations applicable to sport, commercial, or subsistence
22 harvest of aquatic plants and aquatic animals do not apply to a har-
23 vest with a permit issued under this section.

24 (d) The commissioner of fish and game shall forward a copy of
25 each permit application under this section to the commissioner of
26 commerce and economic development. The commissioner of fish and game
27 shall issue or deny a permit within 30 days after receiving an appli-
28 cation.

29 (e) The commissioner of fish and game may deny or restrict a

1 permit under this section if the commissioner finds that the proposed
2 harvest will substantially impair sustained yield of the species. The
3 decision of the commissioner of fish and game must contain the factual
4 basis for the findings. If the substantial impairment could not have
5 been reasonably foreseen and avoided through available management
6 options, the commissioner of fish and game shall explain why in the
7 decision.

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

10 (1) wild stock is needed for initial farms or hatchery
11 stock;

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

14 (3) wild stock is needed to maintain the gene pool of a
15 hatchery or aquatic farm; or

16 (4) commercial harvest of the species sought is not limited
17 under AS 16.43 and is not fully developed.

18 (g) Aquatic plants and aquatic animals acquired under a permit
19 issued under this section become the property of the permit holder and
20 are no longer a public or common resource.

21 (h) The commissioner of fish and game shall make stock available
22 for aquatic farming purposes.

23 Sec. 08.06.040. IMPORTATION OF AQUATIC PLANTS OR AQUATIC ANIMALS
24 FOR STOCK. A person may not import into the state an aquatic plant or
25 aquatic animal for the purpose of supplying stock to an aquatic farm
26 or hatchery unless authorized by the commissioner of fish and game or
27 by a regulation of the Board of Fisheries.

28 Sec. 08.06.050. LIMITATION ON SALE, TRANSFER OF STOCK, AND
29 PRODUCTS. (a) A private hatchery required to have a permit under

1 AS 08.06.010 may sell or transfer stock from the hatchery only to an
2 aquatic farm or other hatchery that has a permit issued under AS 08.-
3 06.010.

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

9 (c) A notice of transfer must be accompanied by a report of a
10 health inspection of the stock. The inspection shall be conducted by
11 the Department of Fish and Game or by a disease diagnostician approved
12 by the Department of Fish and Game.

13 (d) The Department of Fish and Game may restrict or disapprove a
14 transfer of stock if it finds that the transfer

15 (1) would present a substantial risk of spreading disease;
16 or

17 (2) in the case of a transfer from a hatchery for which a
18 permit has been issued under AS 16.10.400, would significantly impair
19 the production needs of the hatchery.

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

26 Sec. 08.06.060. RELEASE OF CERTAIN FISH PROHIBITED. Salmon and
27 trout may not intentionally be released into the public water of the
28 state from a hatchery or aquatic farm required to have a permit under
29 this chapter without prior authorization from the Department of Fish

1 and Game.

2 Sec. 08.06.070. DISEASE CONTROL AND INSPECTION. (a) The De-
3 partment of Fish and Game may order the quarantine or the destruction
4 and disposal of diseased hatchery stock or of aquatic farm products
5 when necessary to protect wild stock. A holder of a permit issued
6 under this chapter shall report to the Department of Fish and Game an
7 outbreak or incidence of disease among stock or aquatic farm products
8 of the permit holder.

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

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

15 (d) The Department of Fish and Game may enter into an agreement
16 with a state or federal agency or a private provider to provide ser-
17 vices under (b) and (c) of this section, or inspections under AS 08.-
18 06.020(b).

19 Sec. 08.06.080. REPORT. The commissioner shall submit to the
20 legislature, not later than the first day of each regular legislative
21 session, a report concerning the progress of the aquatic farming
22 industry, including the number of permits issued under AS 08.06.010,
23 the names and addresses of permit holders, the effect of the industry
24 on the commercial fishing industry in the state, and recommendations
25 for legislation relating to aquatic farming.

26 Sec. 08.06.090. REGULATIONS. The commissioner shall adopt regu-
27 lations necessary to implement this chapter and to effect state policy
28 concerning aquatic farming.

29 Sec. 08.06.100. PENALTY. A person who violates a provision of

1 this chapter, a regulation adopted under this chapter, or a term or
2 condition of a permit issued under this chapter, is guilty of a class
3 B misdemeanor.

4 Sec. 08.06.900. DEFINITIONS. In this chapter

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

8 (2) "aquatic farm product" includes an aquatic plant or
9 aquatic animal, or fish parts that are propagated, farmed, or cul-
10 tivated in an aquatic farm and sold or offered for consumption;

11 (3) "commissioner" means the commissioner of commerce and
12 economic development;

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

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

21 (6) "stock" means live aquatic plants and aquatic animals
22 acquired, 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 08.01.065(a) is amended to read:

25 (a) The department shall adopt regulations that establish the
26 amount and manner of payment of application fees, examination fees,
27 license fees, registration fees, permit fees, investigation fees, and
28 all other fees as appropriate for the occupations covered by this
29 chapter, for aquatic farms and hatcheries under AS 08.06, and for real

1 estate brokers and salesmen under AS 08.88.

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

3 (f) Except as expressly provided in AS 08.06.040, the Board of
4 Fisheries may not adopt regulations or take action regarding the
5 issuance, denial, or conditioning of a permit under AS 08.06, the
6 construction or operation of a farm or hatchery required to have a
7 permit under AS 08.06.010, or a harvest with a permit issued under
8 AS 08.06.030. Regulations or orders adopted by the Board of Fisheries
9 under this section do not apply to a harvest with a permit issued
10 under AS 08.06.030.

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

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

17 * Sec. 6. AS 16.05.340(a)(14) is amended to read:

18 (14) [FISH OR] game farming biennial licenses.....200

19 * Sec. 7. AS 16.05.920(a) is amended to read:

20 (a) Unless permitted by AS 16.05 - AS 16.40 or AS 08.06, or by
21 regulation adopted under AS 16.05 - AS 16.40 or AS 08.06, a person may
22 not take, possess, transport, sell, offer to sell, purchase, or offer
23 to purchase fish, game, or marine aquatic plants, or any part of fish,
24 game, or aquatic plants, or a nest or egg of fish or game.

25 * Sec. 8. AS 16.05.930 is amended by adding a new subsection to read:

26 (g) AS 16.05.330 - 16.05.720 do not apply to an activity au-
27 thorized by a permit issued under AS 08.06.010 or 08.06.030, or to a
28 person or vessel employed in an activity authorized by a permit issued
29 under AS 08.06.010 or 08.06.030.

1 * Sec. 9. AS 16.05.940(14) is amended to read:

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

8 * Sec. 10. AS 16.10 is amended by adding a new section to read:

9 Sec. 16.10.269. LIMITATIONS. AS 16.10.265 - 16.10.267 do not
10 apply to the purchase or sale of aquatic farm products from a holder
11 of a permit issued under AS 08.06.010 or stock from a holder of a
12 permit issued under AS 08.06.030.

13 * Sec. 11. AS 16.10.380(b) is amended to read:

14 (b) In this section "user group" includes, but is not limited
15 to, sport fishermen, processors, commercial fishermen, aquatic farm-
16 ers, subsistence fishermen, and representatives of local communities.

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

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

21 * Sec. 13. AS 16.10.420 is amended to read:

22 Sec. 16.10.420. CONDITIONS OF A PERMIT. The department shall
23 require, in a permit issued to a hatchery operator, that

24 (1) salmon eggs procured by the hatchery must be from the
25 department or a source approved by the department;

26 (2) no salmon eggs or resulting fry be placed in waters of
27 the state other than those specifically designated in the permit;

28 (3) no salmon eggs or resulting fry, sold to a permit
29 holder by the state or by another party approved by the department,

1 may be resold or otherwise transferred to another person, unless that
2 person holds a permit issued under AS 08.06.010;

3 (4) no salmon be released by the hatchery before department
4 approval, and, for purposes of pathological examination and approval,
5 the department shall be notified of the proposed release of salmon at
6 least 15 days before the date of their proposed release by the hatch-
7 ery;

8 (5) diseased salmon be destroyed in a specific manner and
9 place designated by the department;

10 (6) adult salmon be harvested by hatchery operators only at
11 specific locations as designated by the department;

12 (7) surplus eggs from salmon returning to the hatchery be
13 made available for sale first to the department and then, after in-
14 spection and approval by the department, to operators of other hatch-
15 eries authorized by permit to operate under AS 16.10.400 - 16.10.470,
16 or AS 08.06.010;

17 (8) if surplus salmon eggs are sold by a permit holder to
18 another permit holder, a copy of the sales transaction be provided to
19 the department;

20 (9) [REPEALED

21 (10)] a hatchery be located in an area where a reasonable
22 segregation from natural stocks occurs, but, when feasible, in an area
23 where returning hatchery fish will pass through traditional salmon
24 fisheries.

25 * Sec. 14. AS 16.10.450 is amended to read:

26 Sec. 16.10.450. SALE OF SALMON AND SALMON EGGS BY HATCHERY. A
27 hatchery operator who sells salmon returning from the natural water
28 [WATERS] of the state, or sells salmon eggs to another hatchery op-
29 erating under AS 16.10.400 - 16.10.470 or with a permit issued under

1 AS 08.06.010, after utilizing the funds for reasonable operating
2 costs, including debt retirement, expanding its facilities, salmon
3 rehabilitation projects, fisheries research, or for costs of operating
4 the qualified regional association for the area in which the hatchery
5 is located, shall expend the remaining funds on other fisheries activ-
6 ities of the qualified regional association. Fish returning to hatch-
7 eries and sold for human consumption must [SHALL] be of comparable
8 quality to fish harvested by commercial fisheries in the area, and
9 shall be sold at prices commensurate with the current market.

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

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

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

14 (5) "seafood" means finfish, shellfish, and fish by-prod-
15 ucts, including but not limited to salmon, halibut, herring, flounder,
16 crab, clam, cod, shrimp, and pollock, but does not include aquatic
17 farm products as defined in AS 08.06.900;

18 * Sec. 17. AS 38.05.035 is amended by adding a new subsection to read:

19 (g) A land use or tidelands permit issued under this section for
20 aquatic farming or related hatchery operations under AS 08.06 may be
21 issued only to a resident or to a corporation licensed to do business
22 in the state.

23 * Sec. 18. This Act takes effect immediately under AS 01.10.070(c).
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29

A M E N D M E N T

Offered in the HOUSE

TO: CSHB 108(L&C)(2/24/87 draft)

Page 11, after line 17:

Insert a new bill section to read:

"* Sec. 17. AS 38.05.035 is amended by adding a new subsection to read:

(g) A land use or tidelands permit issued under this section for aquatic farming or related hatchery operations under AS 08.06 may be issued only to a resident or to a corporation licensed to do business in the state."

Renumber following bill section accordingly.

Introduced: 2/12/88
Referred: Labor and Commerce, Resources
and Finance

5-1754A

file HB 108

1 IN THE SENATE

BY JONES

2

SENATE BILL NO. 425

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

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

11

CHAPTER 06. AQUATIC FARMING.

12

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

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

15

(1) an aquatic farm; or

16

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

17

or shellfish to an aquatic farm.

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

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

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

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

22

aquatic farm.

23

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

24

fish and game and the commissioner of environmental conservation, may

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attach conditions to a permit issued under this section that are

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necessary to protect the public health or natural stock.

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

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(e) Notwithstanding other provisions of law, the commissioner

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

1 other than shellfish.

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

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

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

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

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

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

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

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

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

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

29 (2) there are technological limitations on the propagation

1 of cultured stock for the species sought;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 Sec. 08.06.900. DEFINITIONS. In this chapter

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

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

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

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

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

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

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

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

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

28 (a) The commissioner shall

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

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

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

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

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

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

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

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

1 frozen desserts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 farm products as defined in AS 08.06.900;

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

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

9 * Sec. 14. AS 38 05 is amended by adding new sections to read:

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

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

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

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

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

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

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

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

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

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

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

29 (1) classification or reclassification of state land under

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

3 (2) zoning of land under applicable law;

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

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

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

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

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

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

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

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

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

Definitions?

HB 108.326

1

DRAFT fish farm/tidelands leasing language

March 28, 1987

For distribution to:

- Rep. Ellis
- Rep. Herrmann
- Rep. Rieger
- DNR

TOSHIBA

PRELIMINARY REVIEW COPY ONLY

* Section 1. AS 38.05.070(a) is amended to read:

(a) Land, including tide, submerged or shoreland, to which the state holds title or to which it may become entitled, may be leased, except for the extraction of natural resources, in the manner provided in AS 38.05.070-38.05.105. Leasing of land for fish farming sites may occur under AS 38.05.400-38.05.412.

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

Article __. Leasing of State Lands for Fish Farming.

Section

- 400. Generally
- 402. Application for a lease
- 404. Application processing
- 406. Review of applications
- 408. Leasing procedures and decisions
- 410. Lease terms
- 412. Regulations

negotiated lease

AS 38.05.400. Generally. Under AS 38.05.400-AS 38.05.412, the commissioner may lease land, including

tide, submerged, and shoreland and adjacent uplands, for fish farm sites.

clarity that it's a reg'd lease

AS 38.05.402. Application for a lease. (a) An Alaska resident holding an Alaska business license who is interested in obtaining a lease for fish farming operations must, by ^{*intent?*} October 1 of the year, submit an application for a lease on forms issued by the commissioner. The commissioner shall require submittal of relevant information (including at a minimum:

(1) a map at the most detailed scale generally available showing the proposed site;

(2) a farm operation plan, providing detailed information and drawings of the proposed operation, including

regs?

- (A) the farm development schedule;
- (B) biological and physical capabilities of the site
- (C) needs and sources for power, fresh water, fuel, and feed;
- (D) waste disposal, including farm product wastes;
- (E) production strategies and target levels;
- (F) fish processing and markets;
- (G) cost estimates and financing; and
- (H) special measures to mitigate environmental impact;

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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(G) cost estimates and financing; and

(H) special measures to mitigate environmental impact;

- (3) an application fee of \$100;
- (4) evidence that the applicant is fit, willing, and able to conduct the operation;
- (5) photographs of the site.

(b) On receipt of an application for a fish farming lease, the commissioner shall evaluate the application for completeness and request more information, if necessary, within 15 days. If the commissioner does not request more information within 15 days, the application shall be considered complete, although the commissioner may request more information as the application is processed under AS 38.05.404-38.05.406.

input?

Public notice?

AS 38.05.404. Application processing. (a) The commissioner shall begin to process a fish farm lease application after the application is complete.

(b) Between November 1 and December 31 of the year, the commissioner shall publish notice, in accordance with AS 38.05.945, of all fish farm site lease applications submitted by October 1 and completed before November 1 of the year. If warranted by public response to a fish farm application, the commissioner shall hold public hearings at a place and time to be announced at least fourteen days in advance.

(c) The commissioner shall issue final decisions on all fish farm lease applications submitted during the previous year by March 1.

} interest?

C2M 46.40.100?

Bozoy's plans zoning

AS 38.05.406. Review of applications. (a) Before issuing a fish farming lease under AS 38.05.400-38.05.412, the commissioner shall

(1) assure that the proposed use will conform with applicable land use plans adopted by the commissioner under AS 38.04.065 and land classifications under AS 38.05.300;

(2) consider other land uses that exist or can reasonably be expected on the same site;

(3) assess and consider the cumulative impacts of fish farms already leased or proposed in the area;

(4) assure that adequate navigation and access can be maintained, including access to public and private uplands and to public waters; and

(5) identify special operating conditions and mitigating measures that may be required of the applicant.

(b) In considering the fish farm application, the commissioner shall consult with local governments, local fish and game advisory committees, and other agencies, including the Department of Fish and Game.

Regional Review Team?

5

January 15

(c) By ~~February~~ of the year, the commissioner shall prepare and issue preliminary decisions, including draft lease terms and operating conditions, on all complete fish farm leasing applications received during the previous year. Notice of the preliminary decisions shall be provided in accordance with AS 38.05.945. The preliminary decision must include a draft finding of state's interests in accordance with AS 38.05.4⁰⁸~~08~~(b).

intent?

1988

explanation or definition of prequalification may is vague?

AS 38.05.408. Leasing procedures and decisions.

(a) The commissioner may issue ^{negotiate} a fish farm lease to a prequalified ^{applicant} ~~person~~ under regulations adopted in accordance with AS 38.05.400-38.05.412.

(b) After determining that a fish farm lease application accords with AS 38.05.406(a), the commissioner shall consider the state's interests in the proposed lease of state lands, and may not issue any lease unless the commissioner determines that issuance of the lease serves the best interests of the state.

AS 38.05.410. Lease terms. (a) A fish farm

lease for tide, submerged, and shoreland and adjacent uplands may be issued for up to ^{thirty?} fifty-five years, at

30 years? renewals -

the discretion of the commissioner in consideration of the useful life of the improvements to be constructed.

(b) As a rental fee for the lease the commissioner shall provide for return of a portion of the gross receipts from the lease to be deposited in the general fund of the state. For an operation grossing less than \$500,000 per year, the commissioner shall require the return of two per cent of gross receipts. For an operation grossing between \$500,000 and \$1,000,000 per year, the commissioner shall require the return of three per cent of gross receipts. For an operation grossing over \$1,000,000 per year, the commissioner shall require the return of between three per cent and five per cent of gross receipts.

*too arbitrary?
minimum per acre
if not gross -
\$500 acre?*

regs.?

(c) A lease shall contain terms that

- (1) prevent nonconforming uses of the leased property;
- (2) provide for restoration of the site after termination of the lease;
- (3) require investment and development on a specified schedule;
- (4) allow transfer to another owner only with the commissioner's approval;
- (5) permit regular inspection of the facilities and operations; and

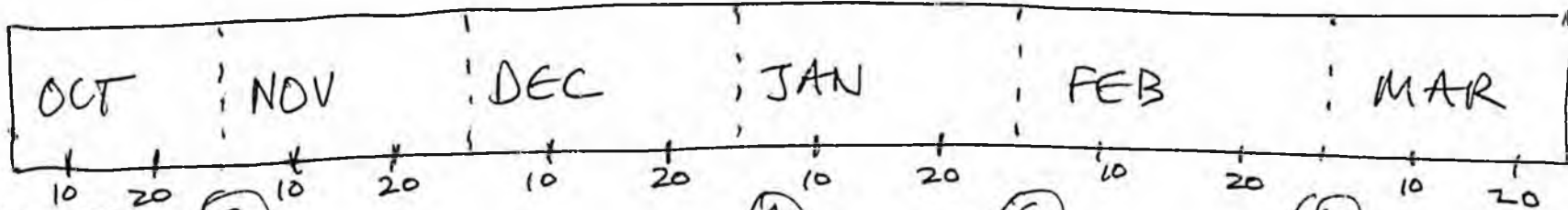
(6) identify ~~special~~ ^{necessary} measures to mitigate environmental impact.

(d) The commissioner may require survey of the lease site at the applicant's expense prior to issuance of a lease. *or during term of a lease.*

(e) The commissioner may include other reasonable terms and conditions in the lease.

(f) The commissioner may not approve the transfer of any lease unless the commissioner determines that there has been substantial development and compliance with the terms of the lease.

AS 38.05.412. Regulations. The commissioner shall adopt regulations to implement AS 38.05.400-38.05.410.



①
OCT 1
 All applications are due (38.05.402(a))

②
OCTOBER
 DNR reviews all applications, can request more info (38.05.402(b))

③
NOVEMBER - DECEMBER
 All applications for the preceding year are noticed for at least 30 days (38.05.945); meanwhile commissioner reviews the applications for compliance w/ 38.05.406(a)-(b).

④
JANUARY
 Commissioner issues ~~draft~~ decisions, w/ best interest findings, for public review by 1/15 (38.05.406(c))

⑤
FEBRUARY
 Public ~~review~~ ^{review} of preliminary decisions/ best interest findings ends during February; commissioner considers comment + makes any changes.

⑥
MARCH
 March 1 - final decision, takes effect 30 days later. (38.05.404(c))

TO: PAULA BURGESS
DNR

FROM: BRENT PAINE
REP. RIEGER

TIME: 4:15

Preliminary Review Copy Only

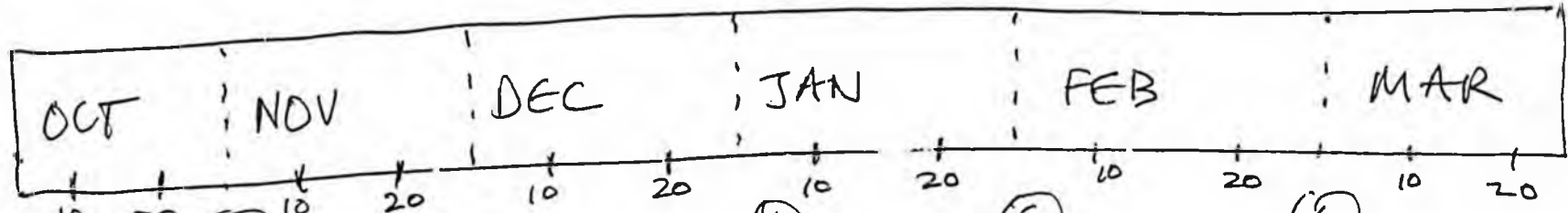
Nine Pages including this cover page.

statute
 negr, ~~policy's~~ ~~procedures~~
 interim guidelines
 3-5 year program to see
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 To deal w/ lots of zps.
 Best not to exist if not
 necessary.

DNR has total authority
 What about Regional Review Team
 concept? DIED doing fit/willing/bill
 screening up front?

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Paula

DCED - fit, willing, + able std.
prior to DGC mtg.

regional review team -

all rvw appln / mtg together.

and 38, 16, 08, 16 to say that
everyone rvws at the same time?
- Corps, USFS? (in SE at least)

remove timeframes? - keep for a few years?
need flex for comm - wd prefer to
mg as any other use -

TO: PAULA BURGESS
DNR

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REP. RIEGER

TIME: 4:15

Preliminary Review Copy Only

Nine Pages including this cover page.

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DRAFT fish farm/tidelands leasing language

March 28, 1987

For distribution to:

Rep. Ellis

~~Rep. Harrmann~~

~~Sen. Rieder~~

DNR

PRELIMINARY REVIEW COPY ONLY

* Section 1. AS 38.05.070(a) is amended to read:

(a) Land, including tide, submerged or shoreland, to which the state holds title or to which it may become entitled, may be leased, except for the extraction of natural resources, in the manner provided in AS 38.05.070-38.05.105. Leasing of land for ^{aquatic} fish farming sites may occur under AS 38.05.400-38.05.412.

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

Article . Leasing of State Lands for ^{aquatic} Fish Farming.

Section

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AS 38.05.400. Generally. Under AS 38.05.400-AS 38.05.412, the commissioner may lease land, including

2

tide, submerged, and shoreland and adjacent uplands,
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Revised lease

AS 38.05.402. Application for a lease. (a) An Alaska resident holding an Alaska business license who is interested in obtaining a lease for ~~fish~~ farming operations must, by October 1 of the year, submit an application for a lease on forms issued by the commissioner. The commissioner shall require submittal of relevant information including at a minimum:

(1) a map at the most detailed scale generally available showing the proposed site;

(2) a farm operation plan, providing detailed information and drawings of the proposed operation, including

(A) the farm development schedule;

(B) biological and physical capabilities of the site

(C) needs and sources for power, fresh water, fuel, and feed;

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(E) production strategies and target levels;

(F) fish processing and markets;

(G) cost estimates and financing; and

(H) special measures to mitigate environmental impact;

- (3) an application fee of \$100;
- (4) evidence that the applicant is fit, willing, and able to conduct the operation;
- (5) photographs of the site.

(b) On receipt of an application for a ~~fish~~-farming lease, the commissioner shall evaluate the application for completeness and request more information, if necessary, within 15 days. If the commissioner does not request more information within 15 days, the application shall be considered complete, although the commissioner may request more information as the application is processed under AS 38.05.404-38.05.406.

Public Notice

AS 38.05.404. Application processing. (a) The commissioner shall begin to process a ~~fish~~ farm lease application after the application is complete.

(b) Between November 1 and December 31 of the year, the commissioner shall publish notice, in accordance with AS 38.05.945, of all ~~fish~~ farm site lease applications submitted by October 1 and completed before November 1 of the year. If warranted by public response to a ~~fish~~ farm application, the commissioner shall hold public hearings at a place and time to be announced at least fourteen days in advance.

4

(c) The commissioner shall issue final decisions on all fish farm lease applications submitted during the previous year by March 1.

AS 38.05.406. Review of applications. (a) Before issuing a fish farming lease under AS 38.05.400-38.05.412, the commissioner shall

(1) assure that the proposed use will conform with applicable land use plans adopted by the commissioner under AS 38.04.065 and land classifications under AS 38.03.300;

(2) consider *local district CDM plans* t exist or can reasonably be expected;

(3) assess a *borough comp plans zoning* relative impacts of fish farms already in the area;

(4) assure that adequate navigation and access can be maintained, including access to public and private uplands and to public waters; and

(5) identify special operating conditions and mitigating measures that may be required of the applicant.

Regional Review Teams(?) →

(b) In considering the fish farm application, the commissioner shall consult with local governments, local fish and game advisory committees, and other agencies, including the Department of Fish and Game.

5

January 15

(c) By ~~February~~ of the year, the commissioner shall prepare and issue preliminary decisions, including draft lease terms and operating conditions, on all complete fish farm leasing applications received during the previous year. Notice of the preliminary decisions shall be provided in accordance with AS 38.05.945. The preliminary decision must include a draft finding of state's interests in accordance with AS 38.05.4⁰⁸~~00~~(b).

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(b) After determining that a fish farm lease application accords with AS 38.05.406(a), the commissioner shall consider the state's interests in the proposed lease of state lands, and may not issue any lease unless the commissioner determines that issuance of the lease serves the best interests of the state.

AS 38.05.410. Lease terms.

(a) A fish farm lease for tide, submerged, and shoreland and adjacent uplands may be issued for up to fifty-five years, at

how does prequalification work? is it for the owner/lessee (e.g.) who has total title?

the discretion of the commissioner in consideration of the useful life of the improvements to be constructed.

(b) As a rental fee for the lease the commissioner shall provide for return of a portion of the gross receipts from the lease to be deposited in the general fund of the state. For an operation grossing less than \$500,000 per year, the commissioner shall require the return of two per cent of gross receipts. For an operation grossing between \$500,000 and \$1,000,000 per year, the commissioner shall require the return of three per cent of gross receipts. For an operation grossing over \$1,000,000 per year, the commissioner shall require the return of between three per cent and five per cent of gross receipts.

Also need minimum fee per acre (in effect prior to sale of product)

(c) A lease shall contain terms that

- (1) prevent nonconforming uses of the leased property;
- (2) provide for restoration of the site after termination of the lease;
- (3) require investment and development on a specified schedule;
- (4) allow transfer to another owner only with the commissioner's approval;
- (5) permit regular inspection of the facilities and operations; and

7

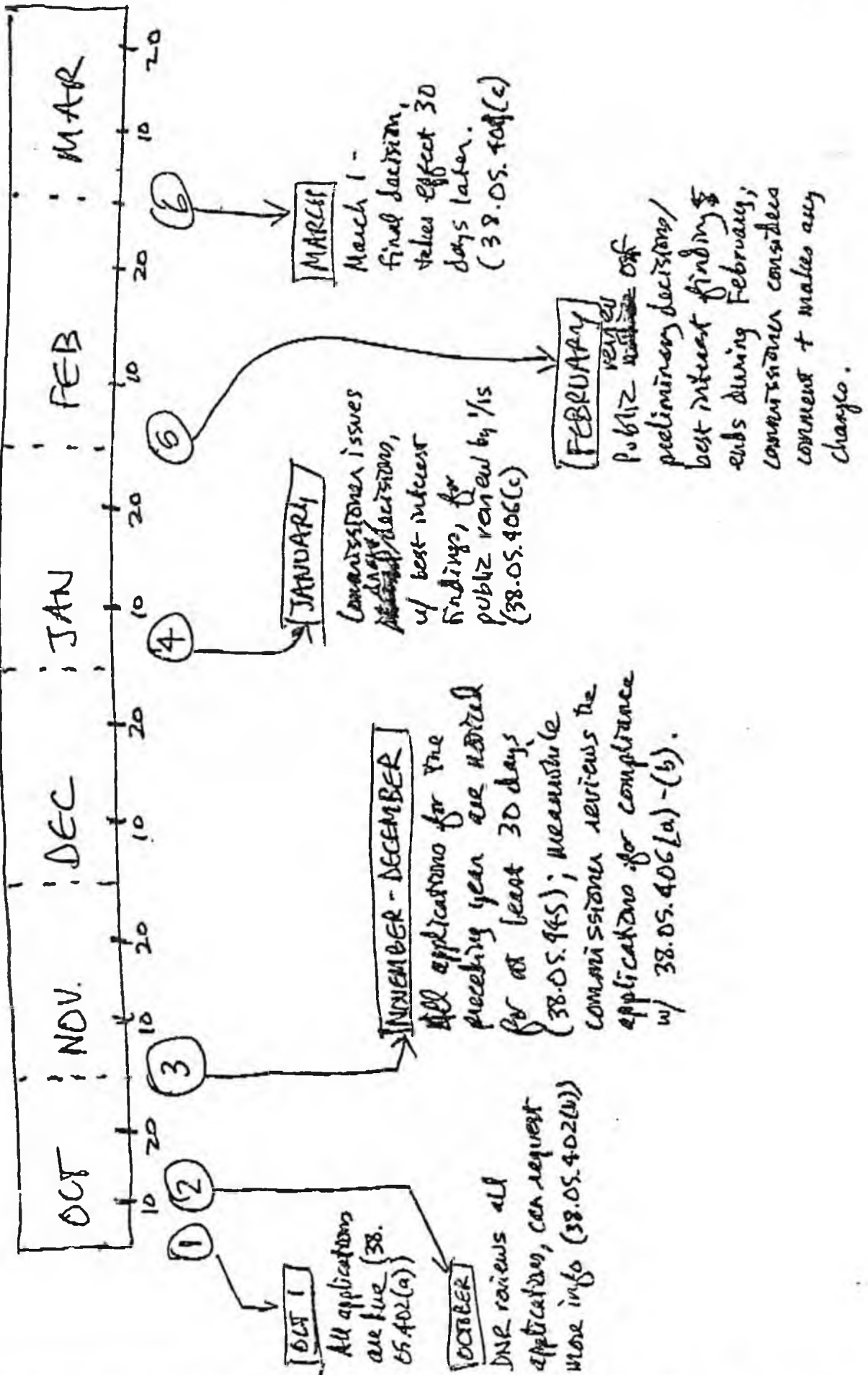
(6) identify ^{or necessary} special measures ^{necessary} to mitigate environmental impact.

(d) The commissioner may require survey of the lease site at the applicant's expense prior to issuance ~~of a lease.~~ ^{or at any time during the lease.}

(e) The ^{shall} include other reasonable terms and conditions.

(f) The commissioner may not approve the transfer of any lease unless the commissioner determines that there has been substantial development and compliance with the terms of the lease.

AS 38.05.412. Regulations. The commissioner shall adopt regulations to implement AS 38.05.400-38.05.410.



1 IN THE HOUSE

BY

2 HOUSE CONCURRENT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 Establishing a Joint Committee on
6 Aquatic Farming.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS aquatic farming has taken place in the state on a small scale
9 since the early 1920s and is a clean industry for which the state's south-
10 ern coast is suited; and

11 WHEREAS aquatic farmers have shown an interest in expanding their
12 operations and range of products in response to worldwide consumer trends;
13 and

14 WHEREAS the possibility of the expansion of aquatic farming in the
15 state has generated many questions with regard to potential coastal and
16 resource-user conflicts, the socioeconomic effects on the coastal communi-
17 ties of the state and existing sea harvesting industry, and the effects on
18 the environment and on the biological integrity of Alaska's wild aquatic
19 species; and

20 WHEREAS public testimony overwhelmingly indicates a desire for the
21 development of environmental and biological safeguards before an expansion
22 of the existing industry is allowed in the state; and

23 WHEREAS pending litigation involving the state may result in the
24 state's inability to legally halt the expansion of aquatic farming; and

25 WHEREAS Norway, Japan, British Columbia, and Chile have experience
26 with regulating aquatic farming from which we can learn;

27 BE IT RESOLVED by the Alaska State Legislature that a Joint Committee
28 on Aquatic Farming is established consisting of two members of the Senate
29 and two members of the House of Representatives; and be it

1 FURTHER RESOLVED that the Joint Committee on Aquatic Farming, after
2 holding public hearings, shall develop proposals for the state's policy on
3 aquatic farming, taking into account the experiences of other countries and
4 the socioeconomic effects of worldwide aquatic farming on existing Alaska
5 sea harvesting industries; the committee shall report its recommendations
6 and findings to the Legislature on the first day of the Second Session of
7 the Fifteenth Alaska State Legislature; and be it

8 FURTHER RESOLVED that the committee may hire staff to assist in the
9 duties of the committee and may appoint advisory committees; and be it

10 FURTHER RESOLVED that the committee may meet during and between
11 sessions of the Fifteenth Alaska State Legislature and shall terminate at
12 the end of the 10th day of the Second Session of the Fifteenth Alaska State
13 Legislature.

Proposed Amendments to HB 303:

Amend title as follows:

"An Act providing for [PLACING A MORATORIUM ON] the issuance or granting of licenses, permits, or authorization for fish farming or aquatic farming; and providing for an effective date."

lines 11-14, page 1, amend as follows:

* Section 1. FISH FARMING AND AQUATIC FARMING. [MORATORIUM. (A) EXCEPT AS PROVIDED IN (B) OF THIS SECTION, T] Section 1. The following licenses, permits, or authorizations may [NOT] be issued or granted for the construction or operation of a fish farm or aquatic farm:

Line 24, page 1, through line 10, page two, delete existing material and replace with the following:

* Sec. 2. DEFINITIONS. In this chapter

(1) "fish farming or aquatic farming" means a facility that grows, farms or cultivates aquatic farm products in captivity or under positive control;

(2) "aquatic farm product" includes an aquatic plant or aquatic animal, or fish parts that are propogated, farmed, or cultivated in an aquatic farm and sold or offered for consumption;

(3) "positive control" means, for fish and other mobile species, enclosed with a natural or artificial escape-proof barrier; for species with limited or no mobility, "positive control" also includes managed cultivation in unenclosed water.

renumber accordingly.

During March the office activity held to February's steady pace. Teleconference activity nearly doubled with the Anchorage LIO logging over 1,000 participants.

*Arch LIO
March Reprt*

During this month several legislative committee traveled to Anchorage. The new Assembly Chambers was the site for most of these meetings, Senate Resources ANWR meetings, Senate and House Finance Budget hearings. Attendance topped the 100 mark at the Senate Finance Budget hearings. "Aquaculture" and "Mariculture" have hit the number one spot on our most frequently requested items lists, we have given away almost 100 copies of the recently released house research report on this subject. I expect demand will continue with April's planned hearing schedule.

We have been keeping busy trying to keep up with the demand for copies of bills, status requests ect. At long last the pocket directories arrived! This session has been fairly slow for POMs. I feel this is in large part due to outreach efforts encouraging citizen lobbying groups to submit written testimony on issues. POMs that are received are directed to specific committees when a piece of legislation is the issue, and to district legislators for constituent concerns. We have taken a fairly active role in discouraging blanket POMs to "all" legislators.

Spring appears to be here- now that we have passed the half way mark we are counting the days until adjournment.

*Janice -
po. stand
Shirley & Ron
d. G. or
Tut.
Ad*

MAR 03 1987

Adelheid Herrmann, Representative
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska
99811

February 23, 1987

Dear Representative Herrmann:

As a partner in a private, non-profit salmon hatchery and "hopeful-to-be" participant in a mariculture operation, I have a personal interest in HB-108. As a professional economist in Alaska since 1971 and a resident since 1963 I am convinced that your support of mariculture in Alaska is in the public interest.

Many people who have an interest in mariculture do not expect state loans, gifts or other forms of "help". What we do expect and hope for is a simple approach that will remove the bureaucratic pitfalls and redundant state "processes" that required over four years of persistence and dedication to obtain just the permits for one of the private non-profit hatcheries.

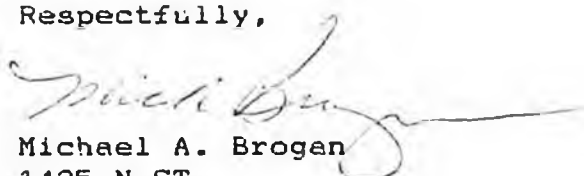
What we ask for is a cleared path that we can walk on in pursuit of our entrepreneurial interests. I cannot afford another four or five years of expense, labor and opportunity cost.

It is predictable, I suppose, but disturbing that the regional aquaculture associations have solicited proposals from lobbyists to mount a campaign designed to prevent passage of legislation that will allow for private mariculture operations.

Your expertise and leadership will prove invaluable in allowing the mariculture industry in Alaska to prosper and grow. Alaska is a small part of the international fishery economy, but the potential exists to become very significant. If you will assist by making sure that we are allowed to pursue our goals the potential may be realized.

I will look forward to your response and contribution to enabling legislation.

Respectfully,


Michael A. Brogan
1435 N ST.
Anchorage, Alaska
99501

Alaska State Legislature

MAR 26 1987
9:02 am

Session Address:
STATE CAPITOL BUILDING
BOX V
JUNEAU, ALASKA 99811
(907) 465-3727



Interim Address:
BOX 53
PALMER, ALASKA 99545
(907) 745-3820 - Palmer
(907) 376-8628 - Wasilla

Representative Ronald L. Larson
District 16B

TO: Representative A. Herrmann

FROM: Representative R. Larson *R. L.*

DATE: March 25, 1987

RE: Information on Mariculture

For your information I am passing along an article on Mariculture. This article was provided to our office by a concerned constituent.

I would appreciate its being included in the Resources Committee packet. Thank you.

UFA NOTEBOOK

'Salmon Can Wait'

Alaska Mariculture

The feverish surge of interest in salmon farming in British Columbia, which has been likened to the Klondike Gold Rush, seems to be spreading to Alaska. Identical bills have been introduced this session in both houses of the Alaska legislature which would permit pen rearing of salmon.

UFA has been interested in mariculture problems since at least 1985. At their annual meeting that year, the Board of Directors noted that pen rearing of salmon was a rapidly growing industry that was already having impact on traditional domestic and export markets for Alaska salmon, with potential for even greater market penetration in the future. (They requested the State of Alaska perform a thorough study of the biological, economic and sociological problems and potentials of salmon pen rearing in Alaska. To date no such impartial studies have been done.)

The increasing interest in beginning this industry in Alaska was

determined that there are many potential problems with pen rearing salmon which must be addressed by state government before the industry is allowed to begin.

UFA's concerns about mariculture were expressed in a resolution issued by the Board at the close of this meeting. They conclude with a request that the State of Alaska take no action on legislation and development of salmon mariculture until such time as specific issues are addressed. The issues of concern cover a wide range.

*State funds and services for DEC, DNR, and FRED division at DF&G, already cut back due to shrinking revenues, will have to be further reallocated to address salmon farming. For example, the farms must be inspected periodically by state officials for maintenance of health and resource protection standards. Many of the salmon farms will be in remote locations, increasing travel costs to the State. It will require staff time to issue and monitor permits for operation.

tained. Since the industry depends on freshness of its product, transportation needs must be met: the remoteness of the farming sites will require additional transportation routes which must at least be addressed by state government, even if subsidies are not requested. Money and staff time for these activities must be taken from existing programs. As yet no realistic fiscal note has been developed to identify the cost to the state incurred by management of the proposed activities.

*Competition for market with wild salmon will increase. Troll-caught fish are already in direct competition with pen reared salmon. Optimists believe the demand for fish will continue to rise and there will be substantial markets for both farmed and wild salmon. Increasing international participation in salmon farming, however, indicates there may soon be a flood of farmed product on the market. The commer-

cial fishing industry now needs marketing efforts which the state is unable to fund. UFA foresees additional problems if forced to compete with farmed Alaska salmon. UFA, however, is not opposed to mariculture of shellfish or aquatic plants and, indeed, sees these operations as offering great potential for the state's economy.

*Water and land use of traditional fishing, hatchery, rehabilitation, and smolt rearing and release sites may be locked out as permits are granted for establishment of salmon farms. Many of the land use permits that have been granted for oyster farming (shellfish is the only form of mariculture now allowed in Alaska) are not being used, and there is concern that speculators are establishing claim to desirable sites, intending to use them when salmon farming is allowed. The State has done no planning to determine the best locations for these farms, and

Alaska Fisherman's JOURNAL, March 1987

no controls have been proposed. Alaska has thousands of miles of coastline but there could easily be conflict between homeowners and salmon farmers, as has occurred in Washington. There may also be conflicts with the tourism industry and with sport fishermen, both of which are important activities for Alaska's economy.

*The potential for disease contamination of the wild stock has not been explored at all. In 1985 Norwegian fish farms were forced to destroy 2,900 metric tons of farmed salmon due to contaminated stock, but since Norway doesn't have its own salmon runs, no one knows what the effects might have been on wild fish. This is an area of serious concern to the commercial fishing industry.

*Many proponents of pen rearing salmon are touting the industry as one which can be done by small as well as large operations. They present it as a boost to the economy of Alaska's coastal villages and suggest that "mom and pop" operations can be as successful as those of a large corporation. In fact, current

evidence indicates this is far from the case. Because of the high costs of fish food, brood stock, and establishment of adequate transportation facilities, in addition to the length of time it takes to produce the first saleable product, it will be almost impossible for any small operation to succeed. Weyerhaeuser, Sealaska and some multi-national corporations which have expressed interest in beginning the industry in Alaska may be among the few operations which can actually be viable.

A recent report by the House Research Agency of the Alaska Legislature titled "Aquaculture in Alaska" mentions these and other concerns, but does not discuss them in any detail and presents few or no solutions to these potential problems. There is a feeling around the state that salmon farming is the wave of the future: it can't be stopped so the only choice is to jump on the bandwagon. UFA disagrees with this sentiment and offers a suggestion: if Alaska must become involved in pen rearing salmon then it should take this chance to do it right the first time. We have excellent international examples of successes and problems before us and we would be wise to emulate the

good and avoid the bad. This can be accomplished only through careful study and planning.

The House Research Agency report states that there is only a narrow window of time for Alaska to join the pen reared salmon industry, after which it will not be economically feasible to begin. UFA disagrees with this position: it feels there will always be room in the marketplace for a competitive product. In the meantime it is essential that studies be done and safeguards be developed to ensure that Alaska's already healthy commercial fishing industry is protected. □



FARMED FISH: Do They Really Compete?

by John van Amerongen

Competition for salmon markets is a lot like musical chairs— nobody loses as long as there are enough seats to go around. The big question come 1990 is whether there will be enough salmon markets for all the salmon produced, given the astronomical production figures currently being tossed about by salmon farmers and those who keep an eye on them.

The growth potential of the Norwegian salmon industry is now beyond debate. In 1971 Norway produced a mere 100 metric tons. By 1985 Norwegian farmers produced 34,000 mt. There's no reason to doubt they'll produce at least 80,000 mt. of Atlantics by 1990. That same year Canadian farmers are expected to market 30,000 mt. of coho and chinook. And that has wild harvesters legitimately nervous. The Canadian projection alone is 3,000 metric tons more than the total wild catch of coho and chinook salmon in Alaska in 1986.

Whether or not the frenzy of activity in B.C. will bear full fruit in 1990 is still speculation, but the potential is certainly there (see related article p. 32). And now that salmon mariculture is seeing a resurgence of activity in Washington State and proposals are making their way to the Alaska Legislature as well, analysts are focusing on a key question.

"The key question," according to Steven White, former director of Prince William Sound Aquaculture Corp., "is will they compete with or complement wild salmon?"

White addressed the question January 13 as part of the University of Washington's Fisheries Research Institute seminar series on floating marine aquaculture.

Unfortunately, White admitted from the onset, "I can't answer it." It's one of those questions, he said, that creates "a lot of heat and very little light."

"Terror," he noted, "creates a lot of heat."

The audience of fisheries students remained relatively calm as White alternately turned the heat on and off the wild salmon industry. After citing the terrifying farm production figures, White eased back a bit, noting optimistically that seafood consumption has been rising steadily.

U.S. consumers are currently eating about 15 pounds of seafood a year, White said. By 1990 we'll be consuming about 20 pounds a year per capita, and that, he said "is a great opportunity for all of us."

"If production would stay stable," he said, "we would assume higher prices for our fishermen."

But the light at the end of the tunnel faded as White reminded everyone that production was not stable, and that as European and Canadian farmed production increased, so too would their exports to the U.S. Not only will their production increase, said White, but the production of farmed catfish and shellfish will increase as well. So too, he said, will hatchery releases from state and non-profit facilities. By 1990, said White, "2.6 billion fish will be released into the wild...a 245 percent increase since 1982."

There are two ways to look at it.

White explained. "Pessimists believe competition is going to be the result...increased demand will be met by increased production and drive down the price."

The optimists, said White, believe that farmed and wild salmon will complement each other in the marketplace. "High priced and high quality imports will create a taste in consumers' mouths that will create an explosion in the market," he said, assuming the role of one whose glass was half-full instead of half-empty.

But White had a problem with the up-beat view that wild and pen-reared salmon will walk hand-in-hand to economic glory. There's "no evidence," he said: "I can't find anything concrete that makes me believe that is going to be the result."

Still, White had almost as much

difficulty finding evidence to confirm that the sky was falling. What he did find was a recent study

co-authored by Ron Rogness of the North Pacific Fishery Management Council and the School of Management at the University of Fairbanks, and Dr. Biing-Hwan Lin of the Department of Agricultural Economics at the University of Idaho. The title of the Rogness-Lin study is "The Marketing Relationship Between Pacific and Pen-Raised Salmon: A Survey of U.S. Seafood Wholesalers."

According to White, the survey was taken as preliminary research for a master's thesis on the subject in conjunction with Alaska Sea Grant. Now that the authors are busy elsewhere [away from the University of Alaska at Fairbanks], White doubts that the research will be completed. Nevertheless, the survey does reveal some interesting information.

In July of 1985, Sea Grant sent out surveys to 925 seafood wholesalers and distributors in Boston, New York, Chicago, Los Angeles, San Francisco, and Seattle. About 24 percent (127) of those surveyed responded to a series of questions dealing with their salmon purchasing decisions.

Of central concern to White were the survey questions aimed at the "substitutability" of wild and farmed salmon. If there's no substitutability, the argument goes, there's no competition.

The responses concerning pan-sized coho, the variety raised by Dorsea Farms in Puget Sound, offered no particular cause for alarm among wild salmon harvesters. The "overwhelming majority" of respondents said they did not consider the small silvers a legitimate substitute for wild Pacific salmon. If anybody has to worry about pan-sized coho, it's the farmers of rainbow trout.

And if you can believe the survey, the bulk of frozen Pacific salmon appears to be on its own in the marketplace as well. Only 15 of the 57 respondents viewed fresh pen-reared Atlantics and frozen wild Pacifics as substitutes. Since only about three percent of the Alaska harvest is sold fresh, the authors concluded that "97 percent of the harvest...would be more or less unaffected by the pen-raised Atlantics."

That's good news unless you happen to be a troller. "...It should be noted," the authors caution, "that a significant portion of the troll-caught chinooks and cohos in Southeast Alaska is frozen and marketed to white tablecloth restaurants which is one of the primary markets of fresh pen-raised Atlantic salmon; the 15 (out of 57) votes for the substitutability between fresh Atlantic and frozen Pacific salmon should therefore not be discounted."

Still, the authors weren't particularly worried about the overall impact of fresh Atlantics on the domestic market for Alaska-caught fish. According to Rogness and Dr. Lin, "...the results seem to suggest that much of the concern shown by many commercial salmon fishermen in Alaska may be somewhat unwarranted."

Like it or not, the survey suggests two separate market niches for fresh farmed and frozen wild-caught Pacific salmon. In automotive terms, one is viewed as a BMW, the other is a lot like riding the bus.

The situation for fresh wild-caught fish seems to be different. The overwhelming majority of respondents (49 of 62) said that pen-raised Atlantics were a legitimate substitute for fresh wild Pacifics.

But legitimate substitutes are not always the same, as the Rogness and Dr. Lin discovered.

Two questions in the survey asked respondents to list the advantages of each variety over the other.

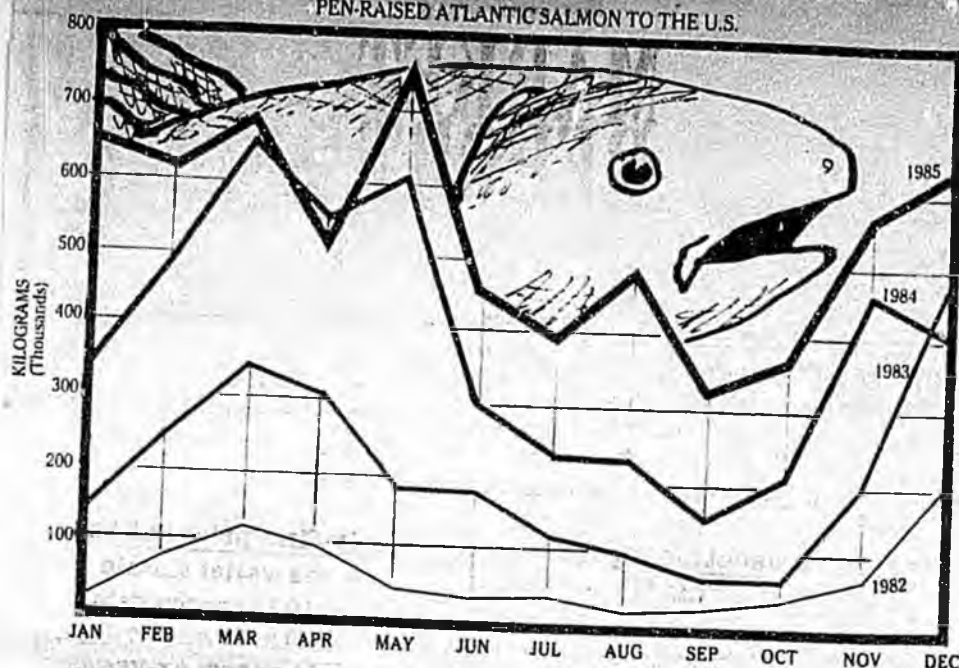
Asked what advantages pen-raised Atlantics had over wild Pacifics, the characteristic most often cited was availability year round (28), followed by freshness or quality (26), consistency (19), size (12), price (11), and shelf life (5).

Asked what advantages wild-caught had over farmed, the most common response was price (27), followed by flesh characteristics — color, firmness, fat content (19), availability of large fish (5), volume of supply (2), and ease of ordering (1).

Price appeared to be the most motivating factor in choosing wild over farmed, while year-round availability and high quality were the best reasons to buy farmed fish, according to the survey. Four respondents could find no advantages of pen-reared over wild, while eight could see no advantages of wild over pen-reared. In automotive terms,

MONTHLY EXPORTS OF FRESH NORWEGIAN

PEN-RAISED ATLANTIC SALMON TO THE U.S.



they are both good cars — one a BMW, the other a Ford Thunderbird. Ford has a better idea as long as the sticker price is right.

How long wild salmon can maintain a price advantage over pen-reared fish is another key question addressed by Mr. White at the FRI seminar. Trollers would understandably like to see the price of wild salmon rise, and salmon farmers aren't anxious to see the price of pen-raised fish fall. As the world supply of salmon increases, however, it's going to be more and more difficult to keep the prices apart and avoid a head to head battle in the marketplace.

Right now transportation costs and the relative inefficiency of the small farms have kept the cost of Norwegian salmon up. The falling value of the dollar in world currency markets is helping, too. When British Columbia comes on line in 1990, however, the situation could be very different. As one industry wag put it, "The Canadians have never met a market they couldn't dump."

White put it another way: "There's a great potential for oversupply." British Columbia is planning to produce 'a lot of product,' White said, "...and there's no indication that product has any market set up for it."

This may have been music to the ears of fishermen who are looking for a gigantic shake-out to put the salmon farming industry on its gills. But White saw it differently.

"Which industry is going to survive the Crash of '89?" White asked. "If the farms crash," he said, answering his own question, "we'll go down with it."

One might think White's best advice to the fisheries students in the audience would have been to pack up their pee-chees and head it on over to the School of Dentistry. But he didn't suggest that. Perhaps all the doom and gloom was just a test to see who was really serious about a career in the salmon industry.

His conclusion offered a ray of hope, even if the light at the end of the tunnel turns out to be Madison Avenue.

The salmon industry, said White, is in a state of transition. "The biological hurdles," he said, "are pretty much over."

"The next problem," said White, "is how [the salmon] can be marketed to keep the [aquaculture] industry alive and maintain the commercial fishing industry."

To accomplish this White suggested 'a conciliation' between wild harvesters and farm producers. "Our real target is not each other," he said, noting that salmon sales are completely eclipsed by beef and chicken. "They're the targets, not each other."

—John van Amerongen

Salmon Farming Goes Crazy in B.C.

by Clark Miller

Salmon farming in British Columbia — they're calling it a Gold Rush, an out-of-control frenzy of production that will glut the world market and plunge prices in two years. Is it really that hazardous?

Vance Lipovsky thinks so. He is director of aquaculture development for British Columbia Packers, Ltd., in Vancouver, B.C. He says production of farmed salmon in British Columbia will hit 30,000 tons by 1990 — in 1984 it was only 107 tons. Meanwhile, prices to producers will dive below \$3 a pound — right now, they're between \$3.50 and \$3.75.

Kicking off a series of lectures on aquaculture at the University of Washington's School of Fisheries last month, Lipovsky said, "It's impossible to keep up with the industry up there... and the pace will not change." In 1985, there were 45 farms. Last year, there were 106 farms. This year there are perhaps 150, with more than 500 applications pending.

"In the three or four years British Columbia will be the largest exporter of salmon to the U.S.," he predicts.

Orders for salmon cages are backed up for six months. B.C.'s 20 hatcheries are charging 65 to 79 cents each for smolts (there ten to twenty more hatcheries on line, Lipovsky says).

The provincial government slowed things down with a 30-day freeze on licenses in October, in order to ask a few questions, but basically decided there are no com-

elling reasons to interfere with something that is boosting the economy of a traditionally depressed area with 69,000 miles of wilderness coastline. "A month later, it was business as usual," Lipovsky said.

One question asked during the moratorium involved the impact of aquaculture on wild salmon prices. The answer in Canada was, None.

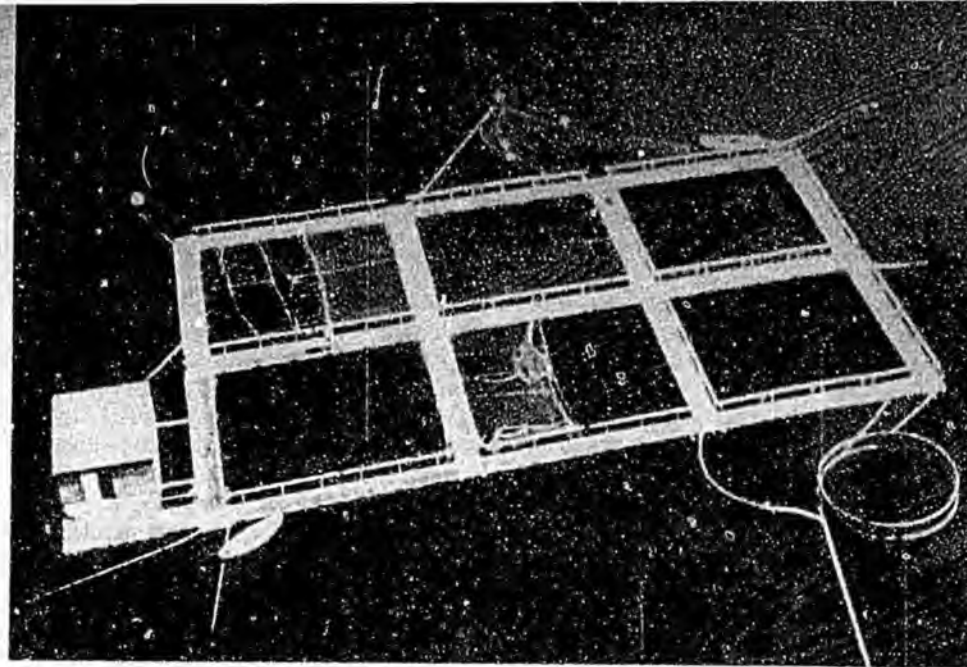
One way of measuring the growth is the number of smolts that are reared each year. In 1984, the number was 1.5 million. In 1985, it was 5 million. In 1986, it was 14 million. This year it will be 30 million. Figuring 50 percent mortality (35 percent is typical, even lower in the north), a million smolts yields about 1,000 tons of salmon. Therefore, 1990's harvest should easily reach 30,000 tons; the B.C. government predicts 40,000, with a potential value to farmers of \$352 million.

Will the market be able to absorb that amount? "Markets are the big unknown," says Lipovsky. "Only the markets will limit us."

Lipovsky thinks the future will be a mixture of successes and failures. In addition to softening prices, he's worried about the high price of feed and a predicted shortage of skilled labor. He told the mostly student audience that employment prospects in aquaculture look very good in B.C. for the next five years at least.

"1991 will be the first crash of the industry," he predicts. Then the "merger phase" will begin; Lipovsky expects to see bargains on farms in two years.

Forty percent of the investment



This photograph from a Norwegian equipment supplier shows a typical small Norwegian fish farm. B.C. farmers have no such size restrictions.

so far is Norwegian, Lipovsky speculates. Norwegian applications for sites began mounting in 1984.

Have the commercial fishermen of B.C. become involved? No, Lipovsky said, the lifestyle is too harsh (he wasn't joking — he said the stresses of living in these isolated wilderness areas is taking its toll on participants, especially women).

The B.C. government makes it easy to get into this business: \$100,000, interest-free loans; grants; no environmental impact statement required for sites. You can claim virtually any wilderness site for \$150, as long as it's a mile and a half from the nearest salmon farm (that's one of the new rules, non-retroactive; formerly, it was only a half mile). Annual rent on government land is only \$200 per acre.

This massive buildup of salmon farming includes some problems. The fish — chemically neutered coho and feminized chinook — aren't growing as fast as they should, and no one is sure why. Inventories are

mysteriously low — farmers accuse the hatcheries of shortchanging them. Much of the feed has been low in quality, but now farmers are being offered high-fat, extruded feeds (at 40 cents a pound, expected to climb to 60 cents by 1990).

Some stress-related diseases have cropped up, as well as some minor hassles with algal blooms. However, Lipovsky gave the impression that the government finds very little to worry about with aquaculture so far.

One of the paradoxes of the business, according to Lipovsky is that farmers are mostly growing 4-6 pounders, even though the greatest market-size need is for 6-9 pounders (restaurants prefer the big fish for "steaking"). The reason — the price of feed. Physical growth is rapid and economical during the first 24 months, especially for coho; continued growth, however, cuts profits.

"Coho will be the fish of the future because of its fast growth rate," Lipovsky said. □

HB

108

(FILE 3)

SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

WILDERNESS ACQUISITIONS, INC.,)
an Alaska corporation,)
)
Appellant,)
)
vs.) No. 1 JU 86-2429 Civ.
)
ALASKA DEPARTMENT OF NATURAL)
RESOURCES,)
)
Appellee.)
_____)

BRIEF OF APPELLANT

Appeal from the Decision of the Department of Natural Resources Denying the Application of Wilderness Acquisitions, Inc. for a Water Use Permit

Jan Van Dort
603 East 4th Street
Juneau, Alaska 99801
(907) 586-6659

Attorney For Appellant

RECEIVED
Department of Law

FEB 23 1987

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Text (Summary) of Statutes, Regulations, Etc.

AS 46.15.133(e). A person aggrieved by the action of the commissioner or by the failure of the commissioner to grant, deny, or condition an application in accordance with (c) of this section may appeal to the superior court.

AS 44.62.560. Judicial review.

This statute is the portion of the Administrative Procedure Act which sets forth the procedure for obtaining judicial review of final agency action. Subsection (e) is most significant in this appeal. It provides:

(e) The superior court may enjoin agency action in excess of constitutional or statutory authority at any stage of an agency proceeding. If agency action is unlawfully withheld or unreasonably withheld, the superior court may compel the agency to initiate action.

AS 16.05.940(12). "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means having the fish or game under positive control as in a pen, pond, or an area of land or water which is completely enclosed by a generally escape-proof barrier;

AS 46.15.145. Reservation of water.

This statute sets forth the procedure for obtaining an instream flow reservation, who may apply for such a reservation, under what circumstances it may be granted, its duration and the effect which it has on prior appropriation.

AS 46.15.050. Priority. (a) Priority of appropriation gives prior right. Priority of appropriation does not include the right to prevent changes in the condition of water occurrence, such as the increase or decrease of stream flow, or the lowering of a water table, artesian pressure, or water level, by later appropriators, if the prior appropriator can reasonably acquire his water under the changed conditions.

(b) Priority of appropriation made under this chapter dates from the filing of an application with the commissioner.

(c) Priority of appropriation perfected before July 1, 1966, shall be determined as provided in AS 46.15.065.

5 AAC 41.005 - 100. Transportation, Possession, and Release of Live Fish.

These are the regulations which establish the fish transport permit system. They set forth uniform application procedures, provide for inspection of brood stock, describe the circumstances under which a permit can be denied, prohibit importation or release of fish without a permit, require reporting of enumerated diseases and define certain terms used therein.

5 AAC 41.030(a). Permit Issuance or Denial.

See above.

5AAC 40.220(b)(2). Review and Determination.

This regulation provides for review of an application for a private non-profit hatchery permit. The relevant portion of it is set forth in the text of the brief.

5 AAC 41.010. Uniform Application Procedures.

See above.

Appellate Rules 601 - 607.

These rules set forth the procedure for appealing final agency action to the Superior Court. They supercede contrary or inconsistent provisions contained in the Administrative Procedure Act.

STATEMENT OF JURISDICTION

This jurisdiction of this court to hear and decide all matters presented by this appeal from the decision of the Commissioner dated October 14, 1986 is based upon AS 46.15.133(e), AS 44.62.560 et. seq. and Appellate Rules 601 through 607.

STATEMENT OF ISSUES

The only issue presented for review by this appeal is whether the Commissioner of the Department of Natural Resources acted in an unreasonable, arbitrary or capricious manner, contrary to law or beyond the scope of administrative authority when she denied the application of Wilderness Acquisitions, Inc. for a water use permit.

STATEMENT OF THE CASE

Early in the spring of 1985 Wilderness Acquisitions, Inc. (WAI) became interested in property offered for sale in Warm Springs Bay on Baranof Island. The property, in the estimation of WAI, was well suited for the development of an aquaculture business primarily because it was located close to the Baranof River and contained patented tidelands. Prior to submitting an offer to purchase the property, WAI contacted the Division of Land and Water Management (DLWM) to determine the amount of water in the river which was subject to prior appropriation. It learned that with the exception of several small prior claims, the water

was available for appropriation under AS 46.15. It also learned that a permit to appropriate water which had been issued to the Alaska Department of Fish and Game (ADF&G) to use water for hatchery purposes on May 24, 1978 had lapsed on November 18, 1983 because ADF&G had failed to build the required improvements and begin beneficially using water within the required time period. On September 23, 1985, WAI purchased the property for \$350,000 and began planning the development of an aquaculture facility that would produce salmon smolt for ocean ranching and ocean farming¹ and other sea farm products (R, 028-044;098-100).

On October 26, 1985, as part of this planning process, WAI requested ADF&G to undertake a management feasibility analysis under the private non-profit (PNP) hatchery regulations to determine the benefits and detriments of developing a PNP hatchery at Warm Springs Bay (R, 005).

On November 14, 1985, ADF&G advised Northern Southeast

¹The difference between ocean ranching and ocean farming is explained by William R. Heard and Thomas Kron in the article Salmon Farming which appeared in the May-June 1986 issue of the Alaska Fish & Game magazine:

...The spawning, incubation and rearing (freshwater-fry to seawater-smolt stage) of salmon is well understood and successfully practiced throughout Alaska in state and private non-profit hatcheries. Alaska's hatcheries are currently involved in "salmon ranching", aquaculture which is designed for producing anadromous returns of adult salmon (similar to wild stocks) from hatchery releases of fry and smolt. In salmon farming, smolts that are ready for life in the ocean are held captive in cages and netpens which are anchored in protected inlets and coves where there is good circulation of pristine water. Farmed salmon are fed nutritious prepared diets over a one to four-year period in netpens while growing to either marketable size or maturity.

Regional Aquaculture Association (NSRAA) that such an analysis had been requested and advised the association that it could exercise a preference right to the site for hatchery purposes (R, 008-009).

On November 18, 1985, WAI filed an application for water rights with DNR requesting a permit to appropriate 50 cfs of water from the Baranof River for the purpose of rearing Chinook salmon and generation of electrical power. This application was file stamped by the Southeast Regional Office of DNR but was never serialized, assigned a case number or acted upon by it, apparently being treated as superseded by the subsequent application (R, 009-015).

On December 12, 1986, ADF&G received notice that NSRAA had elected to exercise the preference right (R, 022).

On December 19, 1985, Dale Young, acting for WAI, received a license from the Department of Revenue to operate a fish farm at Warm Springs Bay (R-025).

On December 20, 1985, WAI filed an additional application requesting a permit to appropriate 200 cfs of water from the same river for the purpose of building an aquaculture facility designed to produce 7 to 10 million smolts annually for ocean ranching and ocean farming and other sea farm products including mature pen-raised chinook salmon (R, 023-044).

On January 17, 1986, Commissioner Collingsworth requested an opinion from the Department of Law on the ability of the State to develop a hatchery at a location which was the subject