

**ALASKA DEPARTMENT OF FISH AND GAME**  
**DIVISION OF**  
**FISHERIES, REHABILITATION, ENHANCEMENT AND DEVELOPMENT**



**FARMING SHELLFISH AND AQUATIC PLANTS**  
**-PROGRAM SUMMARY-**

**JUNEAU, ALASKA**  
**JULY, 1990**

**Prepared by:**

**James O. Cochran, Mariculture Coordinator**

**Don W. Collinsworth, Commissioner**  
**Brian J. Allee, Ph.D., Director**



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## **AQUATIC PLANT FARMING AND RESEARCH**

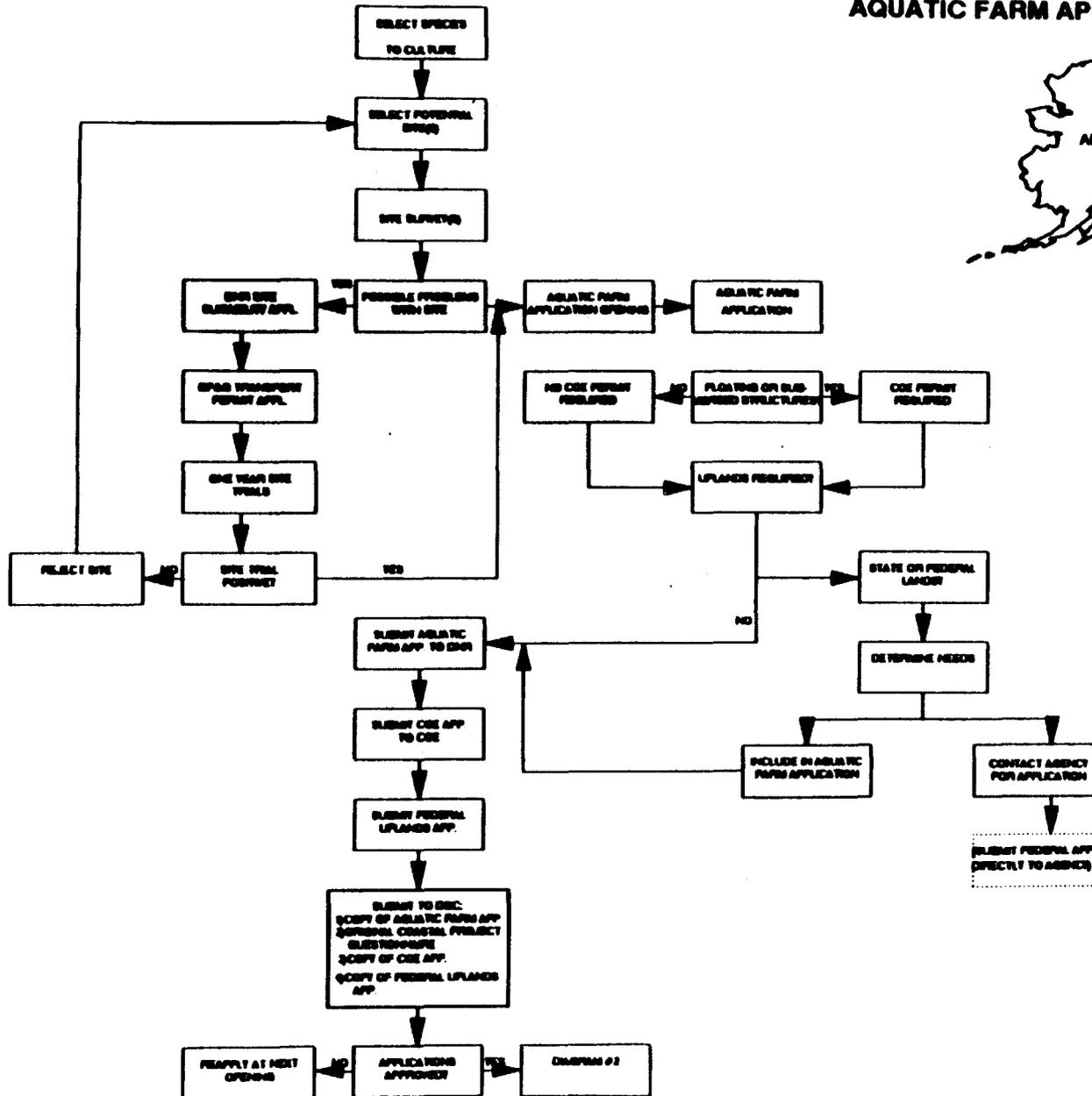
### **BACKGROUND:**

In 1988 an act, popularly referred to as SB 514, relating to the farming of aquatic plants and shellfish was signed into law (Chapter 145, SLA 1988). The law establishes a permit system under which aquatic farms, or hatcheries operating for the purposes of supplying aquatic plants or shellfish to aquatic farms, may be constructed and operated. A permittee under this act, subject to statutory limitations of AS 03.05 and AS 16.40.100-16.40.199, may acquire, purchase, offer to purchase, transfer, possess, sell and offer to sell stock and aquatic farm products that are used or reared at the hatchery or aquatic farm. This act defines aquatic farm products to mean aquatic plants or shellfish, or part of an aquatic plant or shellfish, that is propagated, farmed, or cultivated in an aquatic farm and sold or offered for sale.

# MARICULTURE HISTORY IN ALASKA

- **EARLY 1900'S: JAPANESE SEED OYSTERS PLANTED**
- **1910-1961: OYSTER SEED PLANTED WITH LITTLE SUCCESS**
- **1978: OYSTER RAFT CULTURE IMPLEMENTED NEAR KETCHIKAN**
- **1982: MUSSEL CULTURE STUDY IN HALIBUT COVE LAGOON**
- **1987: COMPROMISE SHELLFISH FARMING BILL PASSED**
  - MORATORIUM ON FINFISH MARICULTURE
  - LEGALIZED SHELLFISH MARICULTURE
- **1988: SB 514 PASSED**
  - EXTENDED MORATORIUM ON FINFISH MARICULTURE
  - LEGALIZED AQUATIC PLANT FARMING
  - ADDITIONAL SHELLFISH REGULATION
  - ESTABLISHED FINFISH FARMING TASKFORCE
- **1989: FIRST AQUATIC FARM DISTRICT OPENING (shellfish/aq.plants)**
- **1990: FINFISH FARMING LEGISLATION**
  - SOUTHCENTRAL DISTRICT OPENING (shellfish/aq. plants)
  - SECOND SE DISTRICT OPENING (shellfish/ aq. plants)
  - FINFISH FARMING PROHIBITED

STATE OF ALASKA  
**AQUATIC FARM APPLICATION PROCESS**



STATE OF ALASKA  
**AQUATIC FARM APPLICATION PROCESS**

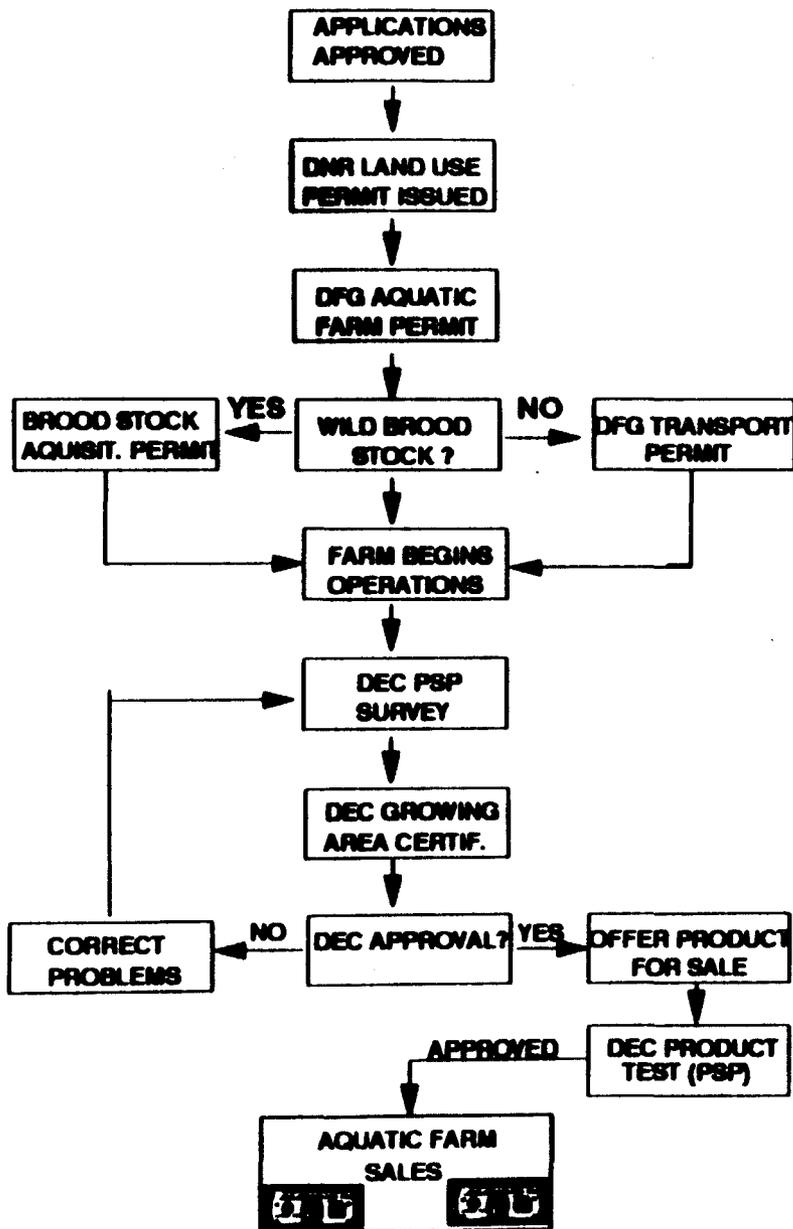
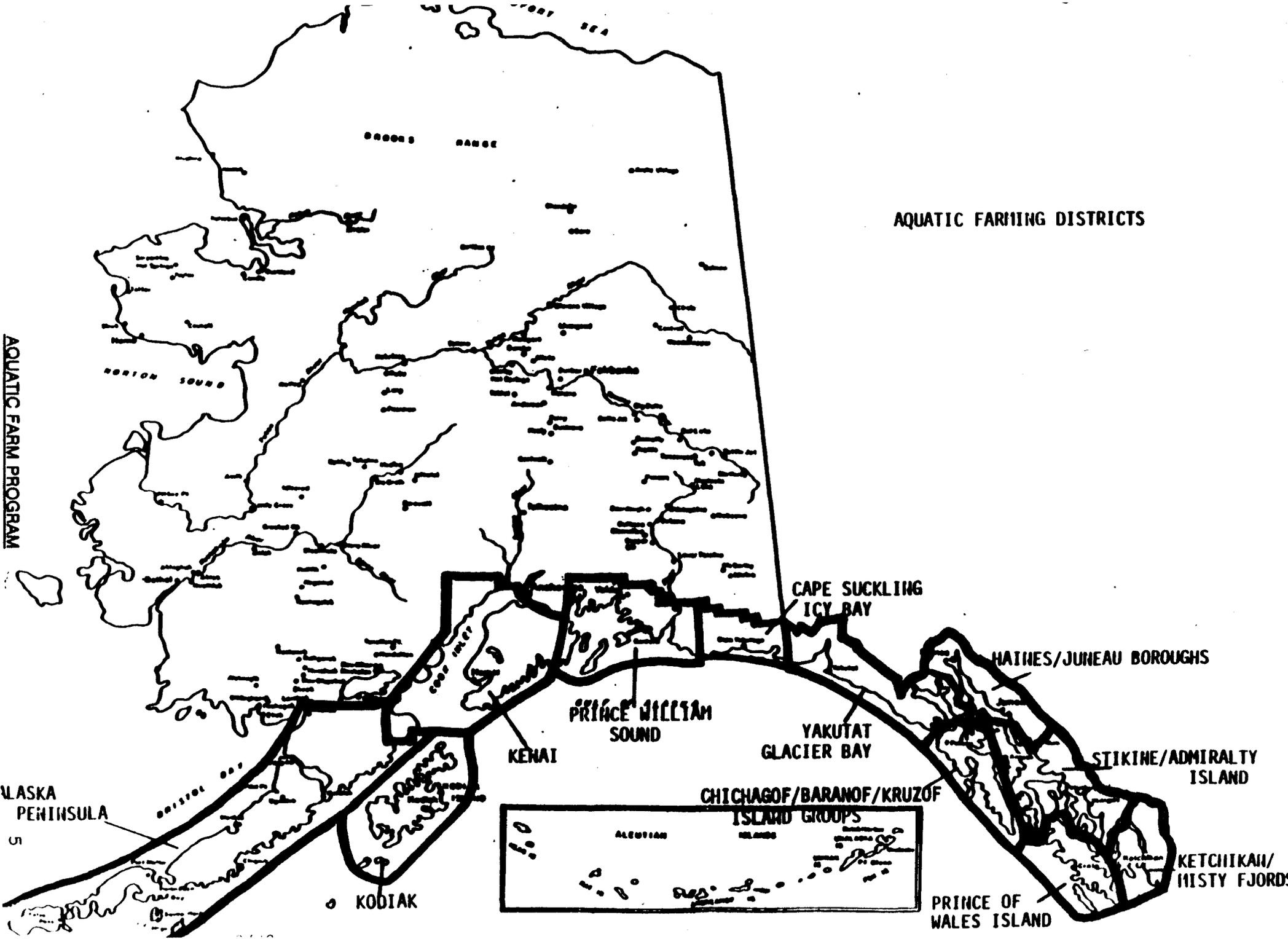


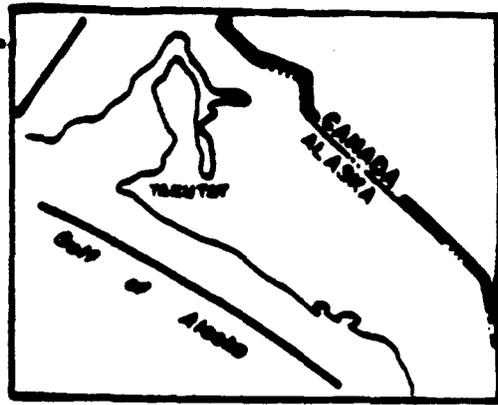
DIAGRAM #2

**AQUATIC FARMING DISTRICTS**

**AQUATIC FARM PROGRAM**



**DISTRICT A  
Yakutat-Glacier Bay**



**DISTRICT B  
Juneau-Haines Boroughs**

**DISTRICT C  
Stikine-Admiralty  
Island**

**DISTRICT D  
Ketchikan-Misty  
Fjords**

**DISTRICT E  
Chichagof-Baranof-Kruzof  
Island Group**

**DISTRICT F  
Prince of Wales Island**



Alaska Department of  
**NATURAL  
RESOURCES**

**AQUATIC FARM  
DISTRICTS  
SOUTHEAST**

**LEGEND**



Wilderness / Monument Areas



District Boundaries



International Boundary



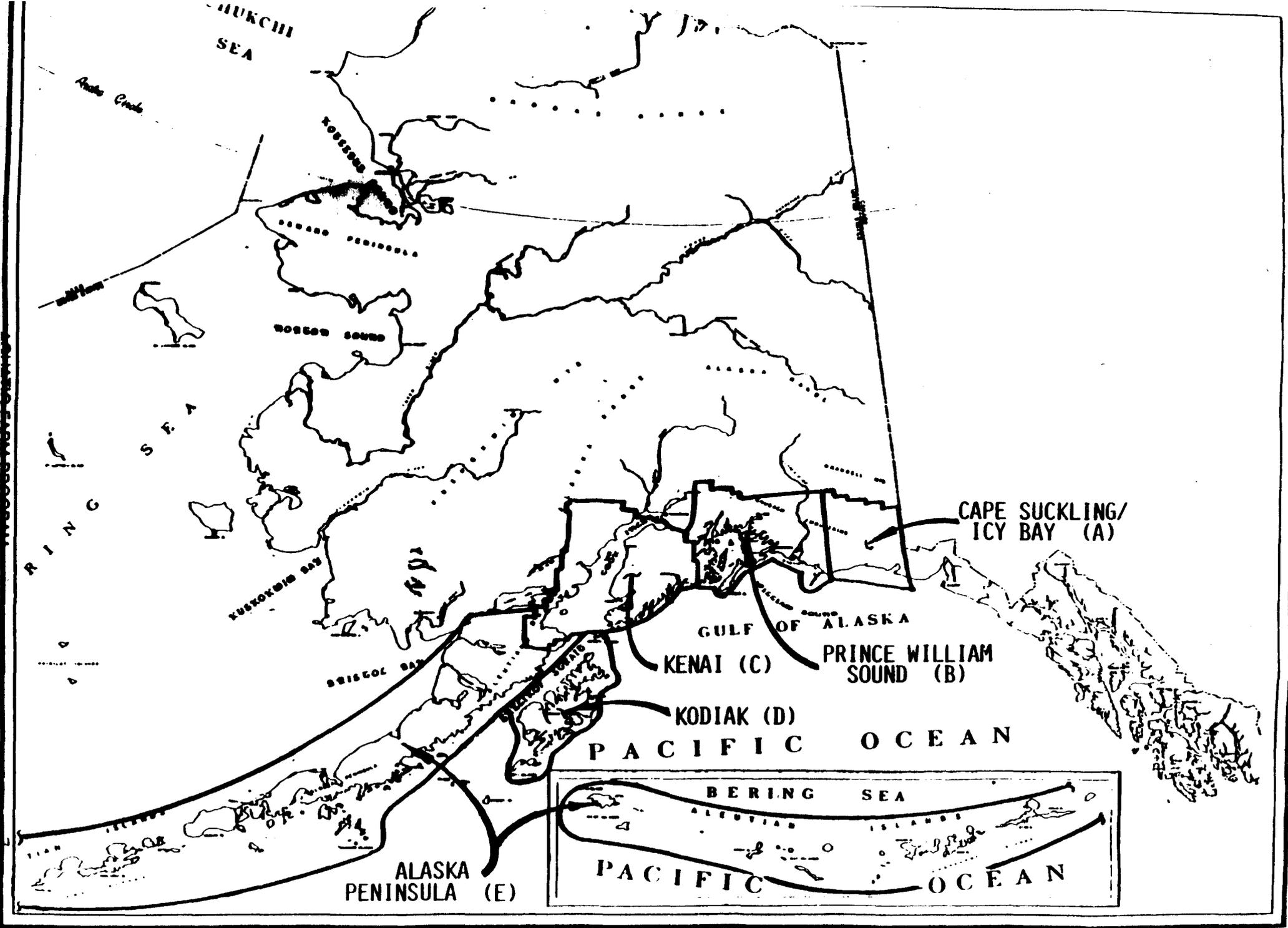
Borough Boundaries



Marine Ports



Areas Where Aquatic Farming Will Not Be Allowed As Per The R.G.W. Area Plan



CHUKCHI  
SEA

Yukon River

YUKON RIVER

COAST GUARDS

ROSEBUD SOUND

SEA

R I N G

KUSKOWIM BAY

BRISTOL BAY

GULF OF ALASKA

CAPE SUCKLING/  
ICY BAY (A)

KENAI (C)

PRINCE WILLIAM  
SOUND (B)

KODIAK (D)

PACIFIC OCEAN

ALASKA  
PENINSULA (E)

BERING SEA

PACIFIC OCEAN

MEMORANDUM

State of Alaska

RECEIVED  
JUN 16 1990  
GENERAL

TO: Brian Allee  
Director  
FRED Division

Frank Rue  
Director  
Habitat Division

FROM: Jim Cochran  
Mariculture Coordinator  
FRED Division

Rick Reed *RU*  
Regional Supervisor  
Habitat Division

DATE: June 14, 1990

FILE NO.:

TELEPHONE NO.: 465-4290

SUBJECT: Aquatic farming  
Project Review  
Flow Chart

Attached is the flow chart which outlines how our divisions will conduct reviews of aquatic farming projects.

This process was developed in coordination with Region II Habitat staff.

We recommend the process be implemented.

Attachment

cc: Lance Trasky, Habitat, Anch  
Deborah Greenberg

MEMORANDUM

STATE OF ALASKA  
Department of Fish and Game

TO: Jim Cochran  
Mariculture Coordinator  
FRED Division

Rick Reed  
Regional Supervisor  
Habitat Division

FROM: Frank Rue *FR*  
Director  
Habitat Division

Brian J. Allee *BA*  
Director  
FRED Division

DATE: July 5, 1990

FILE NO.:

TELEPHONE NO.: 465-4105

SUBJECT: Aquatic Farming  
Project Review  
Flowchart

We agree that the attached flowchart outlining how our divisions will conduct reviews of aquatic farming projects should be implemented.

Attachment

cc: Lance Trasky, Habitat, Anchorage  
Deborah Greenberg

## AQUATIC FARMING PROJECT REVIEW FLOWCHART

1. DGC sends application packets to Regional Habitat Office and FRED Division headquarters (Mariculture Coordinator).
2. (A) Habitat conducts inter-divisional ACMP and statutory review (including FRED Division regional and area offices). This review is to determine the effects of the proposed aquatic farming activity on resources, habitat and user-groups, both for ACMP consistency under 6 AAC 50 and statutory requirements under 16.40.105 (2) and (3).  
  
(B) FRED H.Q. conducts feasibility and site suitability evaluation of application under 16.40.105 (1) and (4). (Note this "site suitability" is effects other activities may have, on the proposed aquatic farm.)
3. Habitat develops resource information for use by DNR in their site plan.
4. Habitat develops ACMP, AS 16.40.105 (2) and (3), and DNR review responses which includes FRED H.Q. technical analysis (most of which are not ACMP related). Any interdivisional disagreements or conflicting recommended steps are worked out or elevated as necessary.
5. Habitat transmits departmental comments to DGC, DNR and DEC, with copies to appropriate divisions within this department.
6. Habitat and FRED H.Q. participate in public meetings and negotiations with other agencies as needed. Habitat has lead with technical support from FRED H.Q.
7. Within five days of receiving final consistency determination, FRED H.Q. may issue Aquatic Farm Operation Permit (AFOP) and Habitat may issue any Title 16 permits necessary. The AFOP is a departmental permit that will have stipulations (as appropriate) addressing resource and habitat concerns as well as FRED division operating stipulations. This permit will also have a subsection for ACMP stipulations. Habitat and FRED H.Q. will copy each other on their permits.

8. FRED H.Q. administers AFOP by:
  - a. Issuing Aquatic Organism (Fish and Aquatic Plant) Transport Permit.
  - b. Receiving annual operating reports from the farmers.
  - c. Preparing annual reports to the Legislature, Board of Fisheries, and Regional Planning Teams as needed.
  - d. Coordinating with Habitat Division during permit period as necessary.
  - e. Initiating operation permit renewal process (every three years).
9. Habitat handles any appeals of permits issued under AS 16.20, 16.05.840 or 16.05.870.
10. FRED will handle appeals for AFOP, with deference to Habitat on items covered under AS 16.04.105 (2) and (3).
11. Amendments to permits will be handled as outlined in 1-10 above.

flowchart/RICK4

**ALASKA DEPARTMENT OF FISH AND GAME  
AQUATIC FARM PROGRAM  
STATUTE SUMMARY**

June 21, 1990

**AS 16.40.100      Aquatic farm and hatchery permits**

permit required from the Commissioner for

- an aquatic farm
- a hatchery for the purpose of supplying aquatic plants or shellfish to an aquatic farm

**AS 16.40.105      Criteria for issuance of permits**

permits issued on the basis of the following criteria

- physical and biological characteristics of the proposed location must be suitable for the farming of the shellfish or aquatic plants proposed (FRED Division review)
- proposed farm or hatchery may not require significant alterations in traditional fisheries or other existing uses of fish and wildlife resources (review coordinated by Habitat Division)
- proposed farm or hatchery may not significantly effect fisheries, wildlife or their habitats in an adverse manner (review coordinated by Habitat Division)
- proposed farm or hatchery plans and staffing plans must demonstrate technical and operational feasibility (FRED Division review)

**AS 16.40.110      Permit application, renewal and transfer**

must include development and operational plans which must be approved by Commissioner

renewal/transfer applications must include

- disease history report
- evidence that applicant has complied with development plan

person to whom permit is transferred to may use the permit only for the purposes for which the permit was authorized, subject to same conditions and limitations

**AS 16.40.120**

**Aquatic stock acquisition permits**

**may not acquire aquatic plants or shellfish from wild stock for purposes of supplying stock to an aquatic farm or hatchery without an acquisition permit**

**acquisition permit authorizes permittee to acquire species and quantities of wild stock specified for purposes of supplying stock to**

**-an aquatic farm or hatchery permitted under these statutes**

**-the department**

**permit may be conditioned, including time, place, and manner of harvest**

**limitations applicable to sport, commercial, or subsistence harvest of aquatic plants or shellfish do not apply**

**must issue/deny within 30 days of receipt of application**

**may deny/restrict if**

**-proposed harvest will impair sustained yield of species**

**-proposed harvest will unreasonably disrupt established uses of resource**

**report to Board of Fisheries of any actions taken on applications for species that support limited entry fisheries or permits denied because of an unreasonable disruption of an established use**

**Board of Fisheries may adopt regulations for the conservation, maintenance, and management of species for which a permit is required**

**a permit must be issued if (these are "or" clauses, not "and")**

**-wild stock is necessary to meet initial needs of farm or hatchery**

**-there are technological limitations on the propagation of cultured stock for the species sought**

**-wild stock sought is not fully utilized by other users**

**-wild stock is needed to maintain the gene pool of a hatchery or aquatic farm**

aquatic plants or shellfish acquired under this permit become the property of the permit holder

**AS 16.40.130**      Importation of aquatic plants or shellfish for stock

importation must be authorized by regulation of Board of Fisheries

**AS 16.40.140**      Limitation on sale, transfer of stock and products

hatchery permitted under these statutes may sell/transfer stock only to an aquatic farm/hatchery that is also permitted except that shellfish stock may be sold to an aquatic farm/hatchery outside of the state

transfers require prior notice (transport permit process)

department may restrict or disapprove transfer if the transfer presents a risk of spreading disease

may not sell, transfer or offer to sell or transfer, or purchase or receive an aquatic farm product grown/propagated in the state unless the product was propagated on a farm with a permit issued under these statutes

permit must be in effect at the time of the offer or transaction

**AS 16.40.150**      Disease control and inspection

quarantine/disposal

reporting of disease outbreaks

inspection of farm/hatchery

department shall develop a disease management and control program

**AS 16.40.160**      Regulations

commissioner may adopt regulations necessary to implement statutes

**AS 16.40.170**      Penalty

class B misdemeanor

**AS 16.40.199**      Definitions

aquatic farm

aquatic farm product

**aquatic plant**

**commissioner**

**hatchery**

**positive control**

**shellfish**

**stock**

**ALASKA DEPARTMENT OF FISH AND GAME  
AQUATIC FARM PROGRAM  
STATUTE AMENDMENT SUMMARY**

June 21, 1990

**Sec. 6. AS 16.05.050 Powers and duties of the commissioner**

new paragraph

**-regulate aquatic farming to protect fish and game resources and improve the economy, health and well being of the citizens of the state**

**Sec. 7. AS 16.05.251 Regulations of the Board of Fisheries**

new subsection

**-Board of Fisheries may not adopt regulations or take action on permits issued under AS 16.40.100 or AS 16.40.120 or a harvest with a permit issued under AS 16.40.120 except as provided in AS 16.40.120(d)**

**Sec. 8. AS 16.05.930 Exempted activities**

new subsection

**-AS 16.05.330 - 16.05.720( licenses, tags and subsistence permits) do not apply to an activity authorized by a permit issued under AS 16.40.100 or AS 16.40.120**

**Sec. 9. AS 16.05.940(14) Fish or game farming**

amendment

**-In this paragraph, "fish" does not included shellfish , as defined in AS 16.40.199**

**Sec. 16.10.265 Limitations**

new

**AS 16.10.265 - 16.10.267 (purchase of fish from permit holders, possession of permit, etc.) do not apply to the purchase or sale of aquatic farm products or stock from a holder of an aquatic stock acquisition permit**

**Sec. 11. AS 16.43.140 Entry permit system - permit required**

**amendment**

**chapter does not apply to aquatic farm activities**

**Sec. 12. AS 16.51.180(5) ASMI - definitions**

**amendment**

**"seafood" does not include aquatic farm products**

**ALASKA DEPARTMENT OF FISH AND GAME  
AQUATIC FARM PROGRAM  
REGULATION SUMMARY**

June 21, 1990

**5AAC 41.210**      Aquatic farm operation permit, issued by commissioner

**5AAC 41.250**      Permit conditions

include conditions to protect natural fish and wildlife resources and their habitat

will be revoked if adverse effects cannot be mitigated

issued for a period of three years

**5AAC 41.260**      Inspection of farm

permit holder will allow inspection of farm

**5AAC 41.270**      Annual report

annual report, on form distributed by department, by December 15 each year

**5AAC 41.280**      Permit application, renewal and transfer

renewals must comply with AS 16.40.110

transfers with DNR lease (not permit) only

decision on transfers will be based on the criteria for issuance of permits in AS 16.40.105

**5AAC 41.290**      Aquatic stock acquisition permit

required before aquatic farmer or aquatic farm supplier can obtain shellfish or aquatic plants from wild stock

form shall be shellfish or aquatic plant transport permit

disease testing may be required

permit issued/denied in accordance with AS 16.40.120

**5AAC 41.300**      Limitations on sale, transfer of stock and products

**no transfers without prior notification**

**health inspection**

**5AAC 41.310      Disease control and inspection**

**department will continue to develop and implement a state fish health program**

**disease incident reporting and tracking**

**diseased stock management**

**5AAC41.400      Definitions**

**commissioner**

**department**



# LAWS OF ALASKA

1988

Source  
HCS CSSB 514(R1a)

Chapter No.  
145

## AN ACT

Relating to the farming of aquatic plants and shellfish; prohibiting the farming of Atlantic salmon; extending the moratorium on finfish farming until July 1, 1990; establishing the Alaska Finfish Farming Task Force; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 13.

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 8, 1988  
Actual Effective Date: June 9, 1988

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AN ACT

Relating to the farming of aquatic plants and shellfish;  
prohibiting the farming of Atlantic salmon; extending  
the moratorium on finfish farming until July 1, 1990;  
establishing the Alaska Finfish Farming Task Force;  
and providing for an effective date.

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

(1) aquatic farming in the state would

- (A) provide a consistent source of quality food;
- (B) provide new jobs;
- (C) increase state exports;
- (D) create new business opportunities; and
- (E) increase the stability and diversity of the state's

economy; and

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

(b) It is the policy of the state

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

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

consideration of established and ongoing activities in an area.

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

ARTICLE 2. AQUATIC FARMING.

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

(1) an aquatic farm; or

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

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

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

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

Sec. 16.40.105. CRITERIA FOR ISSUANCE OF PERMITS. The commissioner shall issue permits under AS 16.40.100 on the basis of the following criteria:

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

(2) the proposed farm or hatchery may not require

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

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

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

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

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

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

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

AQUATIC FARM PROGRAM

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person holds an acquisition permit from the commissioner.

(b) An acquisition permit authorizes the permit holder to acquire the species and quantities of wild stock in the state specified in the permit for the purposes of supplying stock to

- (1) an aquatic farm or hatchery required to have a permit under AS 16.40.100;
- (2) the department.

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

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

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

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

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

- (1) wild stock is necessary to meet the initial needs of farm or hatchery stock;
- (2) there are technological limitations on the propagation of cultured stock for the species sought;
- (3) wild stock sought is not fully utilized by commercial, sport, personal use, or subsistence fisheries; or
- (4) wild stock is needed to maintain the gene pool of a hatchery or aquatic farm.

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

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

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

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

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

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

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

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

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

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

(c) The department shall develop a disease management and control program for aquatic farms and hatcheries.

(d) The department may enter into an agreement with a state or federal agency or a private, state-certified provider to provide services under (b) and (c) of this section, or inspections under AS 16.40.110(b).

Sec. 16.40.160. REGULATIONS. The commissioner may adopt regulations necessary to implement AS 16.40.100 - 16.40.199.

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

Sec. 16.40.199. DEFINITIONS. In AS 16.40.100 - 16.40.199

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

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

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

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

(5) "hatchery" means a facility for the artificial propagation of stock, including rearing of juvenile aquatic plants or shellfish;

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

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

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

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

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

(a) To carry out the requirements of this title, the commissioner of environmental conservation may issue orders, regulations, permits, quarantines, and embargoes relating to

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

(2) establishment of quarantines for eradication of pests;

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

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

(5) cooperation with federal and other state agencies;

(6) regulation of fur farming; for purposes of this paragraph, "fur farming" means the raising of and caring for animals for the purpose of marketing their fur, or animals themselves for breeding stock;

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

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

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

(A) restrictions on the use of chemicals; and

(B) requirements to protect the public from contami-

nated aquatic farm products that pose a risk to health;

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

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

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

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

Sec. 03.05.100. DEFINITIONS. In this chapter,

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

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

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

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

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

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

(f) Except as expressly provided in AS 16.40.120(d) and (e) and 16.40.130, the Board of Fisheries may not adopt regulations or take

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1 action regarding the issuance, denial, or conditioning of a permit  
2 under AS 16.40.100 or 16.40.120, the construction or operation of a  
3 farm or hatchery required to have a permit under AS 16.40.100, or a  
4 harvest with a permit issued under AS 16.40.120.

5 \* Sec. 8. 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 16.40.100 or 16.40.120, or to a  
8 person or vessel employed in an activity authorized by a permit issued  
9 under AS 16.40.100 or 16.40.120.

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

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

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

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

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 16.40.100 or 16.40.120.

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 16.40.199;

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

3 Sec. 38.05.083. AQUATIC FARMING AND HATCHERY SITE LEASES. (a)

4 The commissioner may offer to the public for lease a site that has  
5 been developed for aquatic farming or related hatchery operations  
6 under a permit issued under AS 38.05.856. Before offering the site to  
7 the public, the commissioner shall offer the site to the permittee.

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

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

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

17 \* Sec. 14. AS 38.05 is amended by adding new sections to read:

18 Sec. 38.05.855. IDENTIFICATION OF SITES FOR AQUATIC FARMS AND

19 HATCHERIES. (a) The commissioner shall identify districts in the  
20 state within which sites may be selected for the establishment and  
21 operation of aquatic farms and related hatcheries required to have a  
22 permit under AS 16.40.100.

23 (b) The commissioner shall schedule at least one 60-day period  
24 each year during which a person may submit an application that identi-  
25 fies a site in a district for which the person wishes to be issued a  
26 permit under AS 38.05.856.

27 (c) Based on applications received under (b) of this section,  
28 and after consultation with the commissioner of fish and game and the  
29 commissioner of environmental conservation, the commissioner shall

1 make a preliminary written finding under AS 38.05.035(e) that proposes  
2 sites in each district for which permits may be issued under AS 38.-  
3 05.856.

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

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

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

19 (c) Before issuing or renewing a permit under this section, the  
20 commissioner shall consider all relevant testimony submitted under  
21 this section or AS 38.05.946(b). The commissioner may deny the appli-  
22 cation for issuance or renewal for good cause, but shall provide the  
23 applicant with written findings that explain the reason for the  
24 denial.

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

29 (e) The commissioner shall adopt regulations establishing

1 criteria for the approval or denial of permits under this section and  
2 for limiting the number of sites for which permits may be issued in an  
3 area in order to protect the environment and natural resources of the  
4 area. The regulations must provide for the consideration of upland  
5 management policies and whether the proposed use of a site is compati-  
6 ble with the traditional and existing uses of the area in which the  
7 site is located.

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

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

11 (1) classification or reclassification of state land under  
12 AS 38.05.300 and the closing of land to mineral leasing or entry under  
13 AS 38.05.185;

14 (2) zoning of land under applicable law;

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

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

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

20 (6) a preliminary finding under AS 38.05.035(e) and 38.05.-  
21 855(c) concerning sites for aquatic farms and related hatcheries.

22 \* Sec. 16. AS 38.05.945 is amended by adding a new subsection to read:

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

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

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

29 \* Sec. 17. AS 38.05.946 is amended by adding a new subsection to read:

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(b) The commissioner shall hold a public hearing in each district identified under AS 38.05.055 within 30 days after giving notice of a preliminary finding under AS 38.05.055(e) and 38.05.055(c) concerning sites for aquatic farms and related hatcheries.

\* Sec. 18. Notwithstanding any other provisions of law, a person who is lawfully operating an aquatic farm or related hatchery in the state on the effective date of this Act is entitled to continue lawful operations at the existing site. The person may obtain an initial lease or permit for the person's existing operations under AS 38.05.003 or 38.05.056, enacted by secs. 13 and 14 of this Act, but as a condition of obtaining the lease or permit the person must agree that during the term of the lease or permit the person will not change the use of the site.

\* Sec. 19. LAND MANAGEMENT REPORT REQUIRED. The commissioner of natural resources shall submit to the legislature not later than January 30, 1989, a report detailing the department's implementation of AS 38.05.003 and 38.05.056, enacted by secs. 13 and 14 of this Act. The report must include

- (1) the number of applications received under AS 38.05.003 and 38.05.056, and the number of leases and permits issued, according to type of aquatic farm product;
- (2) the restrictions attached to permits and leases;
- (3) a discussion of the system the department implements for issuing leases and tideland and land use permits;
- (4) the level of public involvement in the issuance process; and
- (5) a discussion of how the program is working, and the department's plans for modifications of the program.

\* Sec. 20. ALASKA FINFISH FARMING TASK FORCE. (a) The legislature finds that the farming of finfish raises a series of socio-economic, biological, and environmental issues requiring an in-depth examination.

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

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

- (1) whether the farming of finfish can be conducted in a manner that protects the health of the state's fishery resources;
- (2) criteria for the siting of finfish farms to minimize land use conflicts and to protect the environment;
- (3) net economic costs and benefits of finfish farming in the state to state residents, including jobs created or lost for state residents, tax revenue (assuming an appropriate tax rate), cost of state regulation and monitoring, and effects on markets for salmon caught by the state's commercial fishing fleets;
- (4) the cost of providing adequate regulation of finfish farming to protect wild stocks, the environment, public health, and existing beneficial uses of the state's coastal water and land, and the role of the private sector in providing pathological and other services;

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

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

8 \* Sec. 21. Section 4, ch. 70, SLA 1987, is amended to read:

9 Sec. 4. Section 1 of this Act is repealed July 1, 1990 (1988).

10 \* Sec. 22. This Act takes effect immediately under AS 01.10.070(c).

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## Article 4. Aquatic Farming

Section	Section
200. Applicability of regulations	270. Annual report
210. Permit required	280. Permit application, renewal, and transfer
220. Aquatic farm operation permit application	290. Aquatic stock acquisition permit
230. Additional information	300. Limitations on sale, transfers of stock, and products
240. Review and determination	310. Disease control and inspection
250. Permit conditions	400. Definitions
260. Inspection of a farm	

**5 AAC 41.200. APPLICABILITY OF REGULATIONS.** The provisions of 5 AAC 41.200 — 5 AAC 41.400 govern the permit application process for aquatic farm operation permits, and establish guidelines and procedures regarding the operation of permitted aquatic farms. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111)

Authority: AS 16.05.060                      AS 16.40.100  
                  AS 16.05.092                    AS 16.40.160  
                  AS 16.05.340(b)

**5 AAC 41.210. PERMIT REQUIRED.** An aquatic farm operation permit, issued by the commissioner, is required for the operation of an aquatic farm. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111)

Authority: AS 16.05.050           AS 16.40.100  
 AS 16.05.092           AS 16.40.160  
 AS 16.05.340(b)

**5 AAC 41.220. AQUATIC FARM OPERATION PERMIT APPLICATION.** An applicant must submit an aquatic farm operation permit application and coastal project questionnaire to the nearest office of the office of management and budget, division of governmental coordination for purposes of complying with the project consistency review of the Alaska Coastal Management Program as identified in 6 AAC 50.010 — 6 AAC 50.190. An application for an aquatic farm operation that requires the use of state tideland, shoreland, or upland managed by the Department of Natural Resources must be submitted during a 60-day opening under AS 38.05.855 and 11 AAC 63.020 for that district. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111)

Authority: AS 16.05.050           AS 16.40.100  
 AS 16.05.092           AS 16.40.160  
 AS 16.05.340(b)

**5 AAC 41.230. ADDITIONAL INFORMATION.** If, after an application has been distributed to the department under 6 AAC 50, the department determines that information in the application is insufficient for an adequate evaluation of the proposed aquatic farm, the department will request additional information from the applicant. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111)

Authority: AS 16.05.050           AS 16.40.100  
 AS 16.05.092           AS 16.40.160  
 AS 16.05.340(b)

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

(b) The commissioner will render a decision on the application within five days after a determination on project consistency with the Alaska Coastal Management Program has been issued by the office of management and budget under 6 AAC 50. The commissioner's decision will be based on the criteria for issuance of permits in AS 16.40.105.

(c) An application for an aquatic farm operation that has been denied by the commissioner will, in the commissioner's discretion, be

reconsidered if the applicant provides new or additional information that might have altered the original decision. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111)

Authority: AS 16.05.050 AS 16.40.106  
AS 16.05.092 AS 16.40.160  
AS 16.05.340(b)

**5 AAC 41.250. PERMIT CONDITIONS.** (a) The commissioner will include conditions to the permit that are necessary to protect natural fish and wildlife resources and their habitat. A permit will be issued for a period of three years.

(b) If the commissioner finds that the operation of an aquatic farm is adversely affecting fisheries, wildlife, or habitat, and cannot be mitigated, the permit will be revoked. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111)

Authority: AS 16.05.050 AS 16.40.100  
AS 16.05.092 AS 16.40.160  
AS 16.05.340(b)

**5 AAC 260. INSPECTION OF A FARM.** A permit holder shall allow inspection of the aquatic farm by department inspectors at any time the farm is operating. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111)

Authority: AS 16.05.050 AS 16.40.100  
AS 16.05.092 AS 16.40.160  
AS 16.05.340(b)

**5 AAC 41.270. ANNUAL REPORT.** A person who holds a permit for an aquatic farm shall submit an annual report, no later than December 15, to the department. The annual report form will be distributed to permit holders by the department. (Eff. 4/10/88, Register 106; 8/12/89, Register 111)

Authority: AS 16.05.050 AS 16.40.100  
AS 16.05.092 AS 16.40.160  
AS 16.05.340(b)

**5 AAC 41.280. PERMIT APPLICATION, RENEWAL, AND TRANSFER.** (a) An applicant for an aquatic farm operation permit shall apply on an aquatic farm application form in the manner provided for in 5 AAC 41.220.

(b) Renewal of an aquatic farm operation permit issued by the commissioner shall be accomplished in accordance with AS 16.40.110.

(c) Transfer of an aquatic farm operation permit cannot occur unless the proposed permittee has an aquatic farm lease under De-

partment of Natural Resources regulation 11 AAC 63.100, AS 38.05.053, and AS 38.05.856.

(d) In order to transfer an aquatic farm operation permit, the permittee must submit a letter of transfer to the commissioner. An aquatic farm permit application, prepared by the proposed permittee, must be submitted with the letter of transfer.

(e) The commissioner's decision on transfer of a permit will be based on the criteria for issuance of permits in AS 16.40.105. (Eff. 8/12/89, Register 111)

Authority: AS 16.05.060	AS 16.40.106
AS 16.05.092	AS 16.40.110
AS 16.05.340(b)	AS 16.40.160
AS 16.40.100	

#### 5 AAC 41.290. AQUATIC STOCK ACQUISITION PERMIT.

(a) A permittee operating under the terms of an aquatic farm operation permit authorized by AS 16.40.100, or a person intending to collect and supply wild stock to such an aquatic farm, must obtain an aquatic stock acquisition permit from the commissioner before obtaining aquatic plants and shellfish from wild stock.

(b) When approved by the commissioner, a shellfish transport permit application form or an aquatic plant transport permit application form constitutes an aquatic stock acquisition permit.

(c) The department will, in its discretion, require the collection of samples for disease testing purposes at the time of aquatic stock acquisition. Sampling requirements will be identified on the permit at the time of issuance.

(d) The commissioner will issue a permit with appropriate conditions, or will deny the permit, in accordance with AS 16.40.120. (Eff. 8/12/89, Register 111)

Authority: AS 16.05.060	AS 16.40.100
AS 16.05.092	AS 16.40.120
AS 16.05.340(b)	AS 16.40.160

**5 AAC 41.300. LIMITATIONS ON SALE, TRANSFER OF STOCK, AND PRODUCTS.** (a) No transfer of stock to or from an aquatic farm may occur without prior notice to the commissioner. Notice of transfer must be submitted, on a form prescribed by the commissioner, at least 45 days before the proposed date of transfer.

(b) Before the submittal of a notice of transfer, a permittee must notify the department in writing to arrange for a health inspection of the stock. The department will either (1) conduct the inspection and provide a written health inspection report, which is called a disease history report, to the permittee within 60 days after receipt of the notification, or (2) notify the permittee that the current disease his-

tory report of the stock is acceptable, and that no further inspection is required at the time.

(c) A request for a health inspection must be submitted to:

Alaska Department of Fish and Game  
FRED Division  
Attn: Pathology Laboratory  
Box 3-2000  
Juneau, Alaska 99802

(d) A shellfish transport permit application form or an aquatic plant transport permit application form constitutes a notice of transfer when it is submitted to the commissioner. When the form is approved by the commissioner, a transfer is authorized.

(e) A transfer of stock will be restricted or disapproved by the department if necessary in order to eliminate the risk of disease transmission.

(f) This section does not apply to the acquisition of wild stock authorized under 5 AAC 41.290 and AS 16.40.120. (Eff. 8/12/89, Register 111)

Authority: AS 16.05.050	AS 16.40.100
AS 16.05.092	AS 16.40.140
AS 16.05.340(b)	AS 16.40.180

**5 AAC 41.310. DISEASE CONTROL AND INSPECTION.** The department will continue to develop and implement a statewide fish health program in accordance with AS 16.40.150 and 5 AAC 41.001 — 5 AAC 41.400.

(b) An aquatic farm operation permit holder shall submit a verbal incident report within 48 hours when a significant loss occurs that is attributable to disease. An incident report shall be initiated by phoning the department pathology laboratory in Anchorage or Juneau.

(c) A written report related to each incident shall be submitted within 15 days after discovery of the incident. A written report shall include, at a minimum,

- (1) a description of the nature of the incident;
- (2) the cause of the incident;
- (3) the time of the incident;
- (4) the effect on the stocks and aquatic farm products;
- (5) corrective action taken and proposed measures to eradicate future problems; and
- (6) an assessment of the general impact on the program.

(d) The written report required by (c) of this section shall be submitted to:

Alaska Department of Fish and Game  
 FRED Division  
 Attn: Pathology Laboratory  
 Box 3-2000  
 Juneau, Alaska 99802

(e) Diseased stocks and aquatic farm products shall be managed in the manner prescribed by the department in accordance with AS 16.40.150 and 5 AAC 41.001 — 5 AAC 41.400.

(f) In this section "significant" means equal to or greater than 0.5 percent a day. (Eff. 8/12/89, Register 111)

Authority: AS 16.06.060                      AS 16.40.150  
 AS 16.06.092                      AS 16.40.160  
 AS 16.40.100

**5 AAC 41.400. DEFINITIONS.** In addition to the definitions set out in AS 16.40.199, in 5 AAC 41.200—5 AAC 41.400

(1) "commissioner" means the commissioner of the Department of Fish and Game or the commissioner's designee;

(2) "department" means the Alaska Department of Fish and Game. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111)

Authority: AS 16.06.020                      AS 16.06.340(b)  
 AS 16.06.092                      AS 16.40.199  
 AS 16.06.251

**AND RELEASE OF LIVE FISH; AQUATIC  
FARMING**

**Article**

- \*1. Scope of Regulations (5 AAC 41.001)
- \*4. Aquatic Farming (5 AAC 41.200 — 5 AAC 41.400)

**Article 1. Scope of Regulations**

**Section**

- 1. Application of this chapter

**5 AAC 41.001. APPLICATION OF THIS CHAPTER.** The provisions of this chapter govern the transportation, possession, or release of live fish transplanted for or cultivated for human consumption or sport fishing purposes, or as part of an aquaculture program for scientific, educational, or propagative purposes, and the transportation and possession of shellfish or aquatic plants for commercial purposes in conjunction with an aquatic farming operation. Unless specifically provided, the provisions of this chapter do not apply to the cultivation of ornamental fish. Additionally, the provisions of this chapter do not apply to the transportation, possession, or release of fish taken for commercial fishing, sport, or subsistence purposes. In effect before 1988; am 4/10/88, Register 106; am 8/12/89, Register 111

Authority: AS 16.05.060                      AS 16.40.100  
                  AS 16.05.251                      AS 16.40.160

## Chapter 41. Transportation, Possession, and Release of Live Fish

### Article

1. Scope of Regulations (5 AAC 41.001)
2. Permit System Established (5 AAC 41.005 — 5 AAC 41.060)
3. General Provisions (5 AAC 41.070 — 5 AAC 41.100)

### Article 1. Scope of Regulations

#### Section

1. Application of this chapter

**5 AAC 41.001. APPLICATION OF THIS CHAPTER.** The provisions of this chapter govern the transportation, possession, or release of live fish transplanted for or cultivated for human consumption or sport fishing purposes, or as part of an aquaculture program for scientific, educational or propagative purposes. Unless specifically provided, the provisions of this chapter do not apply to the cultivation of ornamental fish. Additionally, the provisions of this chapter do not apply to the transportation, possession, or release of fish taken for commercial, sport, or subsistence purposes.

Authority: AS 16.05.251 (a) (4), (8) and (10)

### Article 2. Permit System Established

#### Section

5. Permit required
10. Uniform application procedures
20. Inspection for disease of brood stock
30. Permit issuance or denial
40. Amendments to the permit
50. Permit conditions
60. Retention of permit for inspection

**5 AAC 41.005. PERMIT REQUIRED.** (a) No person may transport, possess, export from the state, or release into the waters of the state, any live fish unless the person holds a fish transport permit issued by the commissioner or his authorized designee, and the person is in compliance with all conditions of the permit and the provisions of this chapter. A fish transport permit will be issued for a fixed term subject to the provisions of (c) of this section.

(b) A fish transport permit authorizes only that operation specified in the permit. Any change of species, brood stock, or location requires a new permit. Any other change requires an amendment to the permit.

(c) The commissioner shall suspend the permit, or particular provisions of the permit including amendments, if he finds

(1) on the basis of new information or changed circumstances, that the permitted activity will adversely affect the continued health and perpetuation of native, wild, or hatchery stocks of fish; or

(2) the permittee has failed to comply with permit terms or the provisions of this chapter.

(d) Notwithstanding the expiration, termination or suspension of a fish transport permit, each permittee is responsible for the obligations arising under the terms and conditions of the permit, and under the provisions of this chapter.

Authority: AS 16.05.251 (a)(4),(8),(10) and (12)

**5 AAC 41.010. UNIFORM APPLICATION PROCEDURES.** (a) Each applicant for a fish transport permit shall submit the following information to the department:

(1) identification of each species and location of the stock to be transported, possessed or released;

(2) the destination of the transported fish and the release site;

(3) the number of fish and their life history stage or age;

(4) a descriptive history of previous transport, if any;

(5) a statement on the health or condition of the fish, including a disease history of the stock, a disease history of the hatchery or rearing facilities through which they may have passed, and any previous disease treatments or vaccinations, or, if the disease history is incomplete or unavailable a brood stock inspection and certification pursuant to 5 AAC 41.020;

(6) isolation measures planned to control disease during transport, including a description of containers, water source, depuration measures, and plans for disinfection;

(7) a description of proposed egg-take methods;

(8) the source of water for rearing and proposed effluent discharge location;

(9) identification and status of native stocks in the area of taking, retention and release site, including a statement of expected interactions with other stocks in these areas;

(10) the method of transport or release and the expected date of transport or release;

(11) the purpose and expected benefits of the transport or release; and

(12) evaluation plans.

(b) A completed application must be submitted to the department regional office in the region in which the proposed transport or release will occur.

(c) If the commissioner or his authorized designee determines that an application is incomplete and that further information is necessary, the department will return the application to the applicant with a description of the deficient information.

(d) The commissioner or his authorized representative will approve, condition, or deny a permit within 45 days after a completed application containing all of the applicable information listed in (a) of this section has been received in the appropriate regional office. (In effect before 1982; am 7/25/82, Reg. 83)

Authority: AS 16.05.251(a)

**5 AAC 41.020. INSPECTION FOR DISEASE OF BROOD STOCK.** If the disease history of the brood stock is unavailable or incomplete as required by 5 AAC 41.010(a)(5), an inspection of the brood stock to detect fish disease must be scheduled by the applicant and conducted by the fish pathology section of the department, or by a person designated by the fish pathology section. The applicant must submit samples of the brood stock as directed by the fish pathology section for the purpose of inspection. The applicant will receive a certification from the fish pathology section upon successful completion of the inspection.

Authority: AS 16.05.251(a)(4),(8) and (10)  
AS 16.05.868

**5 AAC 41.030. PERMIT ISSUANCE OR DENIAL.** (a) The commissioner or his authorized designee will issue a fish transport permit if it is the department's determination that the proposed transport, possession or release of fish will not adversely affect the continued health and perpetuation of native, wild, or hatchery stocks of fish; or

(b) The commissioner or his authorized designee will issue a fish transport permit with terms and conditions attached if it is the department's determination that the terms and conditions are necessary to protect the continued health and perpetuation of native, wild, or hatchery stocks of fish.

(c) The commissioner or his authorized designee will deny an application for a permit, or a request for amendment of a permit, if the applicant's proposed plans, methods, or specifications are not adequate, on the basis of fish disease, genetics, competition, predation, or other biological considerations, to assure the continued health and perpetuation of native, wild, or hatchery stocks of fish. Written notice of denial shall be given to the applicant, including the reasons for denial.

Authority: AS 16.05.251(a)(4),(8)and(10)

**5 AAC 41.040. AMENDMENTS TO THE PERMIT.** (a) A permittee may request amendment of a fish transport permit by submitting, in writing to the department regional office where the permit was issued, an amended plan and a statement explaining why the amendment is necessary.

(b) The commissioner or his authorized designee will issue an amendment to the permit upon a determination made pursuant to 5 AAC 41.030(a) or (b). The commissioner or his authorized designee will approve, condition or deny a request for amendment within 30 days after receipt of the request in the appropriate regional office.

(c) The commissioner or his authorized designee may alter or amend permit conditions if additional information or unforeseen changes allow relaxation, or changed circumstances affect the adequacy of permit terms and conditions.

Authority: AS 16.05.251(4),(8)and(10)

(d) Amendments approved by the commissioner or his authorized designee become effective when received by the permittee, or at a later date specified in the amendment. Unless otherwise specified, amendments remain valid for the duration of the permit.

Authority: AS 16.05.251(4),(8)and(10)

**5 AAC 41.050. PERMIT CONDITIONS.** The commissioner or his authorized designee may prescribe conditions on a permit to control the occurrence of fish disease, genetic change, or control other disturbances of biological origin affecting native, wild, or hatchery stocks of fish. These conditions may include designation of brood stock and release locations, methods of transport or release, quarantine and depuration requirements and procedures, disease inspections, disposal of wastes and effluents, timing of transportation and release, reporting requirements, and other measures necessary to achieve the purposes of 5 AAC 41.

Authority: AS 16.05.251(a)(4),(8)and(10)

**5 AAC 41.060. RETENTION OF PERMIT FOR INSPECTION.** (a) After issuance a copy of the permit including any amendments must be retained by the permittee, and be made available upon request for inspection by a representative of the department, or a law enforcement officer of the Department of Public Safety.

(b) For the purpose of inspecting and monitoring compliance with the terms of the permit or the requirements of this chapter for the continued health and perpetuation of native, wild, or hatchery stocks of fish, each permittee shall give authorized representatives of the department, and law enforcement officers of the Department of Public Safety, free and unobstructed access at all times to permit sites. Each permittee shall give such assistance and furnish information the representative or law enforcement officer may reasonably require for monitoring and inspection.

Authority: AS 16.05.251(a)(4),(8)and(10)

### **Article 3. General Provisions**

#### **Section**

70. Prohibitions on imports and release of live fish

80. Reporting and control of fish diseases at egg-take sites, hatcheries, and rear-facilities

90. Delegation of authority

100. Definitions

**5 AAC 41.070. PROHIBITIONS ON IMPORTS AND RELEASE OF LIVE FISH.** (a) Except as provided in (b) and (c) of this section, no person may import any live fish into the state for purposes of stocking or rearing in the waters of the state.

(b) Live oysters originating from locations other than Korea, the Gulf of Mexico, and the Atlantic Coast of North America, may be imported for aquaculture purposes and may be released into the waters of the state only pursuant to a permit required by this chapter. Live oysters native to and originating from Korea, the Gulf of Mexico, or the Atlantic Coast of North may be imported for aquaculture purposes pursuant to a permit required by this chapter and released into the waters of the state only if

(1) the brood stock is derived from oysters commercially cultured on the Pacific Coast of North America through three or more generations; and

(2) the disease history or an inspection indicates no incidence of disease that is not indigenous to Alaska.

(c) Ornamental fish not raised for human consumption or sport fishing purposes may be imported into the state, but may not be reared in or released

into the waters of the state. Fish wastes and waste water from ornamental fish may not be released directly into the waters of the state.

Authority: AS 16.05.251 (a)(4),(8)and(10)

**5 AAC 41.000. REPORTING AND CONTROL OF FISH DISEASES AT EGG-TAKE SITES, HATCHERIES, AND REARING FACILITIES.** (a) The requirements of this section apply to all public and private egg-take programs, fish hatcheries, and fish rearing facilities in the state.

(b) Within 24 hours of transporting live fish eggs between watersheds, all eggs must be treated, for at least 10 minutes, with an iodine solution of at least 100 parts per million of active iodine ingredient, with pH at least 6.0 or greater, or in a manner approved by the fish pathology section of the department. This requirement does not apply to shellfish eggs.

(c) Each fish hatchery or fish rearing facility must be inspected by the department's fish pathology section at least once each year at least two weeks prior to the transport or release of fish. The commissioner or his authorized designee may require and conduct additional inspections if the disease history of the stock or facility is incomplete, or if the disease history or current condition of the stock evidences incidence of disease.

(d) The occurrence of any of the following pathogens or disease of fish must immediately be reported to the department's fish pathology section:

(1) Class I—Diseases of Critical Concern.

Infectious Pancreatic Necrosis Virus (IPNV)—trout pancreatic virus;  
Viral Hemorrhagic Septicemia Virus (VHSV)—Egtved virus;  
Pike Fry Rhabdovirus;  
Spring Viremia of Carp (SVC)—a carp virus of potential danger to native cyprinids;  
*Ceratomyxa shasta*—myxosporidian disease of salmonids;  
*Myxosoma cerebralis*—whirling disease; and  
*Mytilicola intestinalis*—an endoparasitic copepod of shellfish.

(2) Class II—High-risk Diseases.

Infectious Hematopoietic Necrosis Virus (IHNV)—sockeye or chinook salmon kidney virus;  
*Harpavirus salmonis*—low-temperature virus;  
Viral Erythrocytic Necrosis (VEN)—intranuclear virus of marine fish;  
*Vibrio parahaemolyticus*—vibriosis in fish and shellfish;  
*Aeromonas salmonicida*—furunculosis;  
*Yersinia ruckeri*—enzootic redmouth disease;

*Renibacterium salmoninarum*—bacterial kidney disease (BKD);  
*Flexibacter columnaris*—columnaris disease;  
*Henneguya*—spp.—myxosporidian disease of fish and shellfish;  
*Labyrinthomyxa marina*—fungal or haplosporidian disease of shellfish;  
*Minchinia nelsoni*—a haplosporidian disease of shellfish; and  
*Ocenebra japonica*—an oyster drill;

(3) Class III—Diseases of Concern.

*Vibrio alginolyticus*—vibriosis in fish and shellfish;  
*Vibrio anguillarum*—vibriosis in fish and shellfish;  
*Aeromonas hydrophila*—aeromonad septicemia;  
*Ichthyobodo*—spp.—costiasis in fish and shellfish;  
*Hexamita*—protozoan disease of salmonids and shellfish;  
*Trichodina*—spp.—external fish parasite;  
*Diplostomum*—spp.—eye fluke disease of fishes; and  
*Mytilicola orientalis*—an endoparasitic copepod of shellfish.

(e) Diseases reported under (d) of this section, if found by inspection under (c) of this section, must be treated by taking steps acknowledged by the fish pathology section to be effective in eliminating the disease. Containers or facilities must be disinfected by the permittee in a manner directed or approved by the commissioner or his authorized designee. Presence of any of these diseases, or any other disease not previously observed in Alaska, may be cause for the commissioner or his authorized designee to prohibit stocking of the fish in new areas, and to quarantine the permittee's facility until disinfected.

(f) Stocks of fish in hatcheries or rearing facilities in which a Class I disease has been detected must be immediately destroyed by the permittee if the commissioner or his authorized designee determines that the disease is new to the area, the disease is a different strain of a disease than occurs locally, or if the disease poses a threat to the health and perpetuation of native, wild, or hatchery stocks of fish in the hatchery effluent watershed or the intended release location. In limited circumstances, the commissioner or his authorized designee may allow retention or transportation of these diseased fish under controlled conditions that pose no threat to native, wild, or hatchery stocks of fish (e.g., movement to a disease laboratory).

(g) Stocks of fish in hatcheries or rearing facilities in which a Class II disease has been detected must be immediately destroyed by the permittee if the commissioner or his authorized designee determines that the disease poses a threat to the health and perpetuation of native, wild, or hatchery stocks of fish in the hatchery effluent watershed or the intended release location.

Authority: AS 16.05.251(a)(4),(8)and(10)

**§ AAC 41.090. DELEGATION OF AUTHORITY.** For the purposes of administering this chapter, the commissioner may delegate his authority to designated employees of the department.

Authority: AS 16.05.020(2) and (3)  
AS 16.05.270

**§ AAC 41.100. DEFINITIONS.** In addition to the definitions set out in AS 01.10.060 and AS 16.05.940, in this chapter

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

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

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

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

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

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

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

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

Authority: AS 16.05.251(a)(4),(8)and(10)

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

June 7, 1988

STEVE COWPER, GOVERNOR

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

COMMISSIONER'S OFFICE

**RECEIVED**  
JUN 9 1988

**DEPARTMENT OF FISH AND GAME**

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

Re: HCS CSSB 514(R1s) -- aquatic  
plant and fish farming  
Our file: 883-88-0143

Dear Governor Cowper:

At Judy Fleming's request on your behalf, we have reviewed HCS CSSB 514(R1s), relating to fish farming. The bill establishes a statutory framework for shellfish and aquatic plant farms and hatcheries which involves a redistribution of some authority from the Board of Fisheries to the Department of Fish and Game. It also assigns some responsibilities with respect to those farms and hatcheries to the Department of Environmental Conservation and the Department of Natural Resources, extends the existing finfish farming moratorium until July 1, 1990, and provides for a finfish farming task force. The bill presents policy issues, but no major legal problems.

Section 2 of the bill adds new statutes to AS 16.40<sup>1</sup> which would govern aquatic farms and hatcheries. When read in combination with the definitions in proposed AS 16.40.199 (in the bill's sec. 2), these statutes are restricted in coverage to shellfish and aquatic plants, and would not apply to finfish farming.

Proposed AS 16.40.100 prohibits shellfish or aquatic plant farms or hatcheries absent a permit issued by the commissioner of fish and game. 1/ The commissioner has already

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1/ Proposed AS 16.40.100(d) would prohibit the issuance of a  
(Footnote cont.)

adopted regulations governing shellfish farming (5 AAC 41.200 -- 5 AAC 41.400), but they do not apply to shellfish hatcheries, nor to aquatic plant farms or hatcheries. One of the regulations, 5 AAC 41.240(b), contains criteria that the commissioner has said he will use in determining whether to issue a shellfish farming permit. Those criteria are mirrored in proposed AS 16.40.105, which sets out the criteria the commissioner is to use in acting on requests for aquatic farm and hatchery permits. The proposed statutory standards and the existing regulatory standards appear to be virtually identical. The application procedures set out in proposed AS 16.40.110 are similar to those contained in the current regulations on shellfish farming (5 AAC 41.220 and 5 AAC 41.230) although one obvious difference is that proposed AS 16.40.110(b) requires a report on the disease history of a farm or hatchery for which renewal or transfer is sought, while that requirement is not specified in the current regulations. (It is possible that it is required on the current application form, however.) It would be advisable for the Department of Fish and Game to review the requirements of the current shellfish farming regulations against the mandates of proposed AS 16.40.100 -- 16.40.110, if the bill becomes law, to enable it to modify the content and scope of the regulations if necessary or desirable.

Proposed AS 16.40.120 governs aquatic stock acquisition permits, and places responsibility for the issuance of those permits with the commissioner of fish and game. Proposed AS 16.40.120(d) mandates that such permits not be issued if sustained yield would be impaired or if established commercial, sport, personal use, or subsistence uses would be unreasonably disrupted. That subsection also requires the commissioner to inform the Board of Fisheries of any denials because of unreasonable disruption, and of any action taken on permit applications for species subject to commercial limited entry. Additionally, proposed AS 16.40.120(e) authorizes the Board of Fisheries to adopt regulations for the "conservation, maintenance, and management of species for which an acquisition permit is required." That is apparently in addition to the commissioner's authority under (d) of that section, because proposed subsec. (f) states that "Except as provided in (d) of this section or in a regulation adopted under (e) of this section," the commissioner shall issue an

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(Footnote cont.)

permit for the farming of, or hatchery operations involving, Atlantic salmon, under that statute. That subsection is a bit of an anomaly, since, by its own terms, AS 16.40.100 would only apply to shellfish or aquatic plant farms or hatcheries.

acquisition permit in four specified situations. Thus, unless sustained yield would be impaired, established uses would be unreasonably disrupted, or a Board of Fisheries' regulation adopted under AS 16.40.120(e) would be contravened, a permit must be issued if the wild stock is necessary to meet the initial needs of the farm or hatchery, if there are technological limitations on propagating cultured stock, if wild stock is not being fully used, or if wild stock is needed to maintain the gene pool of the hatchery or farm.

It is important to note that sec. 7 of the bill would amend the general regulatory authority of the Board of Fisheries in AS 16.05.251. The amendment would specify that except as "expressly provided in AS 16.40.120(d) and (e), 2/ the board may not adopt regulations or take action regarding aquatic farming or hatchery permits or stock acquisition permits, the construction or operation of aquatic farms or hatcheries, or harvest with a stock acquisition permit. This means that board regulations currently in effect, adopted under its authority to regulate the "live capture, possession, transport, or release of ... fish or their eggs," AS 16.05.251(a)(9), 3/ and the regulations adopted under its authority to regulate a harvest of aquatic plants, AS 16.05.251(a)(10), 4/ would not apply to the issuance of stock acquisition permits under proposed AS 16.40.120 unless readopted by the board under its authority in proposed AS 16.40.120(e). (Of course, the board could also adopt other regulations under proposed AS 16.40.120(e), if the existing regulations were not deemed appropriate to apply to stock acquisition permit

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2/ The amendment in sec. 7 to AS 16.05.251 also notes that except as expressly provided in AS 16.40.130, the board may not adopt regulations with respect to aquatic farms or hatcheries, or acquisition permits. Proposed AS 16.40.130 prohibits the importation into the state of aquatic plants or shellfish for aquatic farming or hatchery purposes, unless authorized by a regulation of the board. Section 7's proposed amendment would thus **require** positive regulatory action by the board to allow importation for those purposes. (Under the board's existing authority in AS 16.05.251(a) it has prohibited importation of fish into the state for virtually all purposes. 5 AAC 41.070.)

3/ Those activities are governed by regulations in 5 AAC 41.001 -- 5 AAC 41.100.

4/ Those regulations are in 5 AAC 37.100 -- 5 AAC 37.900.

situations.)

We note that sec. 7's reference to proposed AS 16.40.-120(d) is unnecessary and inaccurate. The reference is in relation to Board of Fisheries "action regarding the issuance, denial, or conditioning" of a permit under proposed AS 16.40.120(d). Although that proposed subsection did contain provisions regarding such board action in the original version, this final version of the bill does not. Section 7's reference to proposed AS 16.40.120(d) should have been deleted in this final version. Failure to do so does not create a legal problem, but is confusing.

Proposed AS 16.40.140 would govern sale and transfer of stock and products from aquatic farms or hatcheries. The proposed section would allow an aquatic plant or shellfish hatchery to sell or transfer stock to another permitted hatchery or farm, or to aquatic farms or hatcheries outside the state. This contrasts with existing AS 16.10.420(7), governing private nonprofit salmon hatcheries, which states that surplus eggs from salmon returning to the hatchery must be made available for sale first to the department, and then only to operators of other authorized private nonprofit salmon hatcheries.

Proposed AS 16.40.150 gives the Department of Fish and Game the authority to quarantine or destroy diseased hatchery stock, and provides for inspections.

Under secs. 8 -- 12 of the bill, various segments of AS 16 are rendered inapplicable to the activities associated with aquatic plant and shellfish farms and hatcheries. The proposed amendment to AS 16.05.930 in sec. 8 would make the sportfishing, commercial fishing, and even fish farming license <sup>5/</sup> requirements inapplicable. Proposed AS 16.10.269 in sec. 10 would exempt activities relating to shellfish or aquatic plant farms or hatcheries from the provisions governing the sale of commercially harvested fish. The proposed amendment to AS 16.43.140 in sec.

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5/ Currently, AS 16.05.340(a)(14) establishes a \$200 fee for a fish farming biennial license, and AS 16.05.330(a) prohibits fish farming without such a license. If finfish farming is authorized in the future, those requirements would still apply to that activity; this conclusion is bolstered by the proposed amendment to AS 16.05.940(14) contained in sec. 9, which would modify the definition of "fish farming" to exclude shellfish farming.

11 would exempt those activities from the limited entry statutes, and the proposed amendment to AS 16.51.180 in sec. 12 would exempt those activities from the statutes governing the Alaska Seafood Marketing Institute.

Sections 13 -- 17 of the bill specify some statutory responsibilities of the Department of Natural Resources with regard to aquatic plant and shellfish farms and hatcheries. Proposed AS 38.05.083 authorizes leasing of sites for such operations, proposed AS 38.05.855 establishes a procedure for the identification of sites available for such operations, and proposed AS 38.05.856 authorizes tideland and land use permits for such operations. Proposed amendments to AS 38.05.945 and AS 38.05.946 establish notice and hearing requirements associated with those leases, identifications, and permits.

Although secs. 18 and 19 of the bill do not add or change statutory language, they do relate to the responsibilities of the Department of Natural Resources. Section 18 provides that a person who is lawfully operating an aquatic farm or related hatchery in the state on the effective date of the bill is entitled to continue lawful operations at that site. Section 19 requires the Department of Natural Resources to submit a report to the legislature by January 30, 1989, detailing the department's implementation of the statutory responsibilities relating to aquatic farms and hatcheries.

Department of Natural Resources' staff raised a question regarding sec. 18, which provides in part: "Notwithstanding any other provision of law, a person who is lawfully operating an aquatic farm or related hatchery in the state on the effective date of this Act is entitled to continue lawful operations at the existing site." (Emphasis added.) The question is whether this language merely authorizes continued operations for a reasonable time while the operator applies for the permits that will be required if the bill becomes law or, alternatively, authorizes, in perpetuity, all current lawful operations regardless of whether the permits and leases that the bill would require for new operations are obtained.

We believe that the first interpretation more accurately reflects the legislature's intent. We cannot state with certainty, however, that the second interpretation could not be found by a court to be the correct one. We reach this conclusion for the following reasons.

An existing lawfully operated aquatic farm or related hatchery must have a Department of Natural Resources multiple

land use permit ("MLUP") under 11 AAC 96. A Department of Natural Resources MLUP is for a term not to exceed one year, although it may be extended for additional one-year periods, (11 AAC 96.040); is revocable at will and does not convey any property interest to the permittee (see generally 1980 Inf. Op. Att'y Gen. (December 22; 661-81-0232)); and does not require public notice (AS 38.05.945(d)). We are informed that some of the required permits for existing aquatic farms and related hatcheries were issued under 11 AAC 62.710, which provided specifically for tideland permits. 11 AAC 62.710, however, was repealed in 1977. Permits issued under its authority after its repeal probably have no legal effect, although it is likely that persons acting under them in good faith would not be found by a court to be trespassers. We also are informed that some of these tideland permits are for terms of three or even five years. We do not believe that these longer terms change our analysis.

This bill, on the other hand, would grant substantially greater property rights, and for a longer term, than an MLUP and, simultaneously, provide much more substantial safeguards of the public interest in recognition of the greater property rights being conveyed. For example, the bill would establish detailed procedures for (1) identification of appropriate sites for aquatic farms (proposed AS 38.05.855); (2) public notice and hearings before permits or leases are issued (proposed AS 38.05.855(d), 38.05.856(b), 38.05.945(a)(5) and (6), 38.05.-945(g), and 38.05.946(b)); (3) a three-year time limit on permits (proposed AS 38.05.856(a)); (4) leasing of an aquatic farm and related hatchery site (proposed AS 38.05.083); and (5) requiring a performance bond as a condition for the issuance of a permit (proposed AS 38.05.856(d)) or lease (proposed AS 38.05.-083(d)).

In addition, an existing lawfully operated shellfish farm must have a Department of Fish and Game permit under 5 AAC 41.210. As noted above, however, that regulation does not apply to **shellfish hatcheries** or aquatic plant farms and hatcheries. This bill would require a Department of Fish and Game permit for all those operations (proposed AS 16.40.100(a)); require permittees to report any outbreak or incidence of disease (proposed AS 16.40.150(a)); authorize the department to quarantine or destroy a permittee's diseased stock or products to protect wild stocks (id.); and provide for inspection of the operations by the department to accomplish these tasks (proposed AS 16.40.150(b)).

We cannot imagine that the legislature would establish these detailed procedures and safeguards for proposed new aquatic farms and related hatcheries while, at the same time, providing

that none of those procedures and safeguards would ever apply to existing lawfully operated aquatic farms and related hatcheries. Such an interpretation is simply unreasonable, and would fly in the face of the "golden rule of statutory construction that unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result." 2A N. Singer, Sutherland Statutory Construction, sec. 45.12 at 54 (1984) (footnote omitted). We accordingly reject an interpretation of sec. 18 under which a person lawfully operating an aquatic farm or related hatchery on the effective date of the bill would be entitled to continue operating it in perpetuity without, at some point, becoming subject to the remaining provisions of the bill.

A more reasonable construction is that the legislature intended sec. 18 to permit those aquatic farms and related hatcheries that were being lawfully operated on the effective date of the bill to continue operation for a reasonable period of time while the operators sought to obtain the permits and leases that would be necessary under the bill for continued long-term operation. In other words, we believe that the legislature included sec. 18 to ensure that the requirements for permits and leases that the bill would establish would not, immediately upon taking effect, give the Department of Natural Resources or the Department of Fish and Game new grounds (beyond any authority they previously might have had under permits already issued) to terminate operations that have already started under current law. Instead, those departments should afford those persons lawfully operating aquatic farms and hatcheries on the effective date of the bill a reasonable time to obtain the permits and leases contemplated in the bill for continued long-term operations.

If the bill becomes law, we would urge the two departments to establish the length of that reasonable time period by regulation. Proposed AS 16.40.160 would give the commissioner of fish and game the authority to adopt regulations necessary to implement the bill; proposed AS 38.05.856(e) would require the commissioner of natural resources to adopt regulations establishing criteria for the approval or denial of land use permits and for limiting the number of sites for which permits may be issued in an area, and current AS 38.05.020(b)(1) gives that commissioner authority to adopt regulations necessary to implement AS 38.05, the Alaska Land Act, of which the land use provisions of this bill would become a part. If a current operator did not apply for and receive the necessary permits or lease within that time period, the departments could then move to terminate the operation.

Sections 3, 4, and 5 of the bill give the Department of Environmental Conservation certain responsibilities with respect to shellfish and aquatic plant farms and hatcheries. The proposed amendment to AS 03.05.011(a) gives the commissioner of environmental conservation the authority to establish standards and conditions for the operation and siting of aquatic farms and hatcheries and to monitor those operations to ensure compliance with the state's environmental laws and the Food and Drug Administration's national shellfish sanitation program manual of operations. The proposed amendments to AS 03.05.040(a) authorize inspections by the Department of Environmental Conservation of aquatic farms or hatcheries, or their products.

With respect to the state's environmental protection laws, the House and Senate both adopted a letter of intent that specified that the requirements in proposed AS 38.05.083(d) and AS 38.05.856(d) with respect to the posting of a performance bond with the Department of Natural Resources

be limited to coverage of site clean-up and restoration of physical improvements such as buildings, equipment or other facilities. It is not the intent that the performance bond or other security requirements expand or reduce the scope of existing statutes or regulations relating to environmental protection.

1988 H. Jour., pp. 3716, 3733; 1988 S. Jour., p. 3762.

In addition to the statutory changes described above, in sec. 20 the bill establishes a finfish farming task force, which is to be appointed by the governor. The group is to make an interim report to the legislature by January 30, 1989, and a final report by January 30, 1990. The report is to address various policy questions relating to finfish farming in the state and freshwater, in marine environments, and in tanks or other enclosed structures, as well as related hatchery operations.

Finally, in sec. 21 the bill would extend the finfish moratorium established in ch. 70, SLA 1987, from July 1, 1988, to July 1, 1990. That moratorium was established by providing in sec. 1(a), ch. 70, SLA 1987, that eight specified licenses, permits, leases, or authorizations could not be issued for the construction or operation of a commercial finfish farm. In contrast, sec. 1(b) of that Act provided that

a fish farming license and a fish transport permit

may be issued for commercial finfish farming in a privately owned fresh water body that has no outlet to state water.

Under the then-existing wording of 5 AAC 41.001 and 5 AAC 41.005, the Board of Fisheries' regulations governing the possession and transportation of live fish, the possession of fish for commercial farming purposes -- finfish or shellfish -- was not permitted. 1985 Inf. Op. Att'y Gen. (Jan. 31; 663-84-0187); 1987 Inf. Op. Att'y Gen. (July 8; 663-87-0454). The language of the moratorium just quoted left the board free to amend its regulations to allow finfish farming in privately owned freshwater bodies with no outlets to state water, just as the language allowed the boards to amend the regulations with respect to shellfish.

In the interim, the board has amended the language to allow the transportation and possession of live shellfish for "commercial purposes in conjunction with a shellfish farming operation." No similar amendment has yet been proposed to the board with respect to finfish farming in private ponds. In the same House and Senate letter of intent cited earlier in this letter, it states that "for the period of the moratorium on finfish farming, the farming of finfish in a privately owned freshwater body with no outlet to state water should proceed." 1988 H. Jour., pp. 3716, 3733; 1988 S. Jour., p. 3614. The letter of intent directs the commissioner of fish and game to "work with prospective farmers and the Board of Fisheries to develop appropriate proposals to meet the goals of this legislation." Id.

The extension of the moratorium in sec. 21 of this bill, when combined with the indication of legislative intent, is consistent with the permissive language with respect to the authorization of finfish farming in privately owned ponds in sec. 1(b), ch. 70, SLA 1987. Although not phrased as a mandate, it is fairly clear that the legislature is encouraging the Department of Fish and Game to work with the Board of Fisheries to ensure that regulations be considered which would authorize private finfish farming in private freshwater ponds, notwithstanding the moratorium.

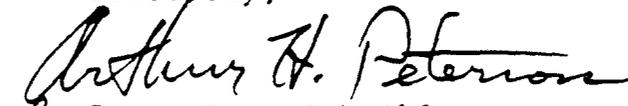
In sum, the bill would establish a statutory framework for shellfish and aquatic plant farming and hatchery operations, and in the process redistribute some of the authority over the capture, transport, and possession of live fish from the Board of Fisheries to the commissioner of fish and game. The bill also would establish statutory responsibilities with respect to shellfish and aquatic plant farms and hatcheries for the Department of

Hon. Steve Cowper, Governor  
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Natural Resources and the Department of Environmental Conservation. Further, the bill would establish a five-member finfish task force, which would report on various policy questions to the legislature in an interim fashion by January 30, 1989, and in a final form by January 30, 1990. Finally, the bill would extend the moratorium on finfish farming in the state from its current July 1, 1988 expiration date (one year after it was initially enacted), to July 1, 1990. The bill raises policy questions, but no major legal issues.

Sincerely,

  
for Grace Berg Schaible  
Attorney General

GBS:LIS:GTK:cb:dln

cc: ~~Hon. Don G. Finaworth, Commissioner~~  
Department of Fish and Game

Hon. Judith Brady, Commissioner  
Department of Natural Resources

Hon. Dennis Kelso, Commissioner  
Department of Environmental Conservation

**ALASKA DEPARTMENT OF FISH AND GAME**  
**SHELLFISH AND AQUATIC PLANT FARM SITE**  
**CRITERIA FOR UNSUITABLE AND GUIDELINE AREAS**  
**USED BY AGENCIES FOR 1990**  
**SOUTHCENTRAL ALASKA AQUATIC FARM SITE PERMITTING**

## AQUATIC FARM PERMIT GUIDELINES

The following guidelines are offered by permitting agencies to assist in selecting an aquatic farm site that has the best chance for approval. These guidelines are not meant to be all inclusive and are in addition to any prohibitions or mitigating requirements that may be included in a district coastal management plan, a State land use plan, municipal or borough land use plans and/or local ordinances or zoning requirements.

### DEC, Environmental Health Certification Guidelines

You must obtain a Growing-Area Certification from DEC, in order to sell an aquatic farm product. Water quality in the growing area must meet the standards of the National Shellfish Sanitation Program and State water quality standards before an aquatic farm product may be sold. This certification process is not covered by the attached Aquatic Farm Application form. You should contact DEC regarding certification requirements so that you can be reasonably sure that your site will qualify. Even though the health certification comes later, the following items need to be taken into consideration prior to completing the application for an aquatic farm permit since they will be a factor for certification of your growing area.

1. Commercial fishing, or personal use fishing/hunting in the immediate area or close proximity to the growing area may cause conditions that will prevent certification of the growing area. Avoid siting facilities near hatcheries.
2. Areas used by boats for recreation, moorage and anchorage, or in close proximity to a proposed growing area may cause conditions that will prevent certification of the growing area.
3. No airplane or boat moorage should occur within the boundary of a growing area.
4. Petroleum and fuel storage and handling must be protected from accidental discharge into a growing area. Storage and handling of these materials is not to be conducted at the growing area site.
5. Facilities should not be sited in areas with waste discharge. Houseboats, floathomes and other boats must be a minimum of 300 feet from the boundary of a growing area if sewage is discharged. A sewage disposal system adequate to protect shellfish from contamination will be required for any caretaker facilities associated with a mariculture operation.

6. All pets and other animals must be excluded from the growing area structures. Waste from these animals must be prevented from discharging into the growing area.
7. Large wildlife populations in the area and/or the presence of anadromous streams may cause conditions that will affect certification of the growing area.

For additional information and assistance regarding these environmental health certification guidelines, please contact the Shellfish Program Coordinator, DEC, Division of Environmental Health at (907) 563-0318.

#### UNSUITABLE AND GUIDELINE AREAS

The following Unsuitable and Guideline areas are provided by DFG, DEC, and DNR and concern siting issues separate from the health certification guidelines. Please contact the local representatives of these departments if you have questions regarding the following guidelines.

Siting farms in Unsuitable Areas will mean a heavy burden of proof is on the applicant to prove the suitability of the site. Farms will not be approved in areas designated as Guideline areas.

Coastal Habitat maps identifying the location of habitat types which fall in these two categories are available at DNR (Anchorage), and DFG offices in Dillingham, King Salmon, Kodiak, Dutch Harbor, Homer, Soldotna, Anchorage and Cordova. The Catalog of Waters Important to the Spawning, Rearing or Migration of Anadromous Fishes (Anadromous Waters Catalog) and the map atlas to that catalog show documented anadromous fish streams and is available for viewing at all DFG offices.

In reference to the Coastal Habitat maps it should be noted that, although every effort has been made to make the maps as complete as possible, some important habitats which appear in the Unsuitable, and Guideline Areas, are not included on the maps. In addition, because of a lack of complete data, some critical habitats exist that are not shown on the maps. During the project review, as additional information becomes available these critical areas will be treated as Unsuitable or Guideline Areas as appropriate.

#### UNSUITABLE AREAS

Applications will be accepted in Unsuitable Areas; however, these are sensitive areas where potential conflicts with existing habitats

and uses may occur. If an applicant chooses to apply in an unsuitable area, the application will be processed, but there will be a heavy burden of proof on the applicant to demonstrate that the farm can be sited in this area in accordance with the conditions of the aquatic farm program.

1. Herring Spawning: Avoid siting aquatic farms or facilities within 300 feet of herring spawning areas.
2. Shorebird Concentration Areas: Avoid siting aquatic farms or facilities in shorebird concentration areas.
3. Waterfowl Concentration Areas: Avoid siting aquatic farms or facilities in waterfowl concentration areas.
4. Clam Concentration Areas: Avoid siting aquatic farms or facilities within 300 feet of clam concentration areas.
5. Sea Otter Concentration Areas: Avoid siting aquatic farms or facilities in sea otter concentration areas.
6. Undocumented Anadromous Fish Streams: Avoid siting aquatic farms or facilities within 300 feet of undocumented anadromous fish streams.
7. Kelp and Eelgrass Beds: Avoid siting aquatic farms or facilities within 300 feet of kelp beds.
8. Areas Subject to Significant Predation: Avoid siting aquatic farms or facilities in areas subject to predation or in such a manner as to attract predators.
10. Shallow Areas (less than 40 feet deep): Avoid siting aquatic farms or facilities in shallow areas that serve as nursery areas for fish, crab, and other shellfish.
11. Intensive non-commercial hunting and fishing areas: Avoid siting aquatic farms or facilities in intensive sport and subsistence harvest areas.
12. Intensive Float Plane Access Areas: Avoid siting aquatic farms or facilities in intensive float plane access areas.
13. Black and Brown Bear Concentration Areas and Travel Corridors: Avoid siting aquatic farms or facilities in black or brown bear concentration areas and travel corridors.
14. Poor Current Circulation Areas: Avoid siting aquatic farms or facilities in areas where currents are too weak to disperse biological wastes.

15. Purse Seine Hook Offs: Avoid siting aquatic farms or facilities in purse seine hook off areas.
16. Heavily Used Anchorages: Avoid siting aquatic farms in heavily used anchorages.
17. Subsistence Harvest Areas: Avoid siting facilities within or adjacent to subsistence harvest areas.
18. Recreational or Commercial Harvest Areas: Avoid siting in or adjacent to:
  - Intensive recreational or commercial harvest areas for fish and shellfish
  - Intensive non-commercial hunting and fishing areas
  - Heavily used anchorages within day use areas of communities or other anchorages of local or regional importance
  - Intensive float plane access areas
19. Oiled Areas: Avoid siting facilities in areas depicted on maps as lightly, moderately or heavily oiled in Southcentral coastal waters.
 

Applicants are also cautioned to avoid siting in areas adjacent to unsuitable areas due to the oil spill. Applicants that choose to apply for a site within 1/4 mile from oiled areas may be asked to provide additional information in order for the State to evaluate the suitability of the site.

#### GUIDELINE AREAS

Applications for sites located in a Guideline Area will be rejected or denied. Applications received in areas subsequently determined to be Guideline Areas will not be approved. Please consult the Coastal Habitat maps and contact State agency personnel if you have questions related to this category.

1. Seabird Colonies: No aquatic farms or facilities will be sited within 1-mile of seabird colonies.

2. Bald Eagle Nests: Aquatic farms or facilities must be sited at least 330 feet from bald eagle nest trees.
3. Sea Lion Haulouts and Rookeries: No aquatic farms or facilities will be sited within 1-mile of sea lion haulouts.
4. Harbor Seal Haulouts and Pupping Areas: No aquatic farms or facilities will be sited within 1-mile of harbor seal haulouts or pupping areas.
5. Walrus Haulouts: No aquatic farms or facilities will be sited within 1-mile of walrus haulouts.
6. Anadromous Fish Streams: No aquatic farms or facilities (including upland support facilities) will be sited within 300 feet of anadromous fish streams.
7. Intensive Commercial Fish Harvest and Hatchery Areas: No aquatic farms or facilities will be sited in intensive commercial harvest or hatchery areas.

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If you believe you have been discriminated against in any program, activity, or facility, or if you desire further information please write to ADF&G, P.O. Box 25526, Juneau, AK 99802-5526; U.S. Fish and Wildlife Service, 4040 N. Fairfax Drive, Suite 300 Webb, Arlington, VA 22203 or O.E.O., U.S. Department of the Interior, Washington DC 20240.

For information on alternative formats for this and other department publications, please contact the department ADA Coordinator at (voice) 907-465-6077, (TDD) 907-465-3646, or (FAX) 907-465-6078.