

5 AAC 40.850. Notice of permit alteration (original 1985)

(Gives notice. It allows Regional Planning Teams to make recommendations on industry requests to alter original hatchery permits issued by the commissioner. The commissioner reviews and considers this request prior to submission to the Board of Fish Administrative Procedures Act regulatory authority to amend.)

(a) A hatchery permit holder may propose alteration of the permit and basic management plan, based on accumulated experience and changing conditions. The permit holder shall request, on a form provided by the PNP coordinator, a permit alteration for a proposed modification to the permit or change in the basic management plan for the hatchery.

(b) Requests for permit alterations must be received by the PNP coordinator, on the prescribed form, no later than February 15 of the calendar year that the proposed alteration is to occur. The commissioner will, in his or her discretion, extend the deadline for submittal of a permit alteration request, on a case-by-case basis, if the request is justified by extraordinary circumstances or emergency.

(c) The regional planning team may, if the commissioner so requests, review and make a recommendation to the commissioner on the permit alteration request.

(d) In reviewing the request, the commissioner will, in his or her discretion, consider past management practices and fish culture procedures associated with the request, the past performance of the hatchery, the recommendation of the regional planning team, and any additional information deemed necessary.

Department added section (e) in 2021 to amend 5 AAC 40.850.

(e) Issuance of a notice of permit alteration by the department modifies the hatchery permit.

This is a notice not an authority to modify.

Section (e) has no statutory authority to alter the original permit initially issued by the commissioner.

AS 16.10.440(b). Gives explicit authority to BOF to alter permits by regulation.

AS 16.10.430(b). Gives explicit authority to commissioner to alter a permit only:

(b) If the commissioner finds that the operation of the hatchery is not in the best interests of the public, the commissioner may alter the conditions of the permit to mitigate the adverse effects of the operation.

Sec. 16.10.400. Permits for salmon hatcheries.

(This authority is specifically for issuing an initial hatchery permit only after using an elaborate public process.)

(a) The commissioner or a designee may issue a permit, subject to the restrictions imposed by statute or regulation under AS 16.10.400 – 16.10.470, to a nonprofit corporation organized under AS 10.20, after the permit application has been reviewed by the regional planning team, for

- (1) the construction and operation of a salmon hatchery;
- (2) the operation of a hatchery under AS 16.10.480.

(b) The application for a permit under this section shall be on a form prescribed by the department and be accompanied by an application fee in the amount determined under (h) of this section. The commissioner may waive the submission of an application for a permit to operate a hatchery under AS 16.10.480.

(c) A hatchery permit is nontransferable. If a permit holder sells or leases a hatchery for which a permit is issued under this section, the new operator shall apply for a new permit under this section.

(d) [Repealed, § 19 ch 154 SLA 1977.]

(e) A qualified regional association formed under AS 16.10.380, if it has become a nonprofit corporation under AS 10.20, has a preference right to a permit under (a)(1) of this section if its proposed hatchery is provided for in the comprehensive plan for that region developed under AS 16.10.375 and the fresh water source exceeds one cubic foot per second minimum flow. Another local nonprofit hatchery corporation approved by a qualified regional association has an identical preference right.

(f) Except for permits issued before June 16, 1976, a permit may not be issued for construction or operation of a hatchery on an anadromous fish stream unless the stream has been classified as suitable for enhancement purposes by the commissioner. The commissioner shall undertake to make such classifications in conjunction with the development of the comprehensive plan under AS 16.10.375.

(g) During the development of a comprehensive plan for a region a permit may not be issued for a hatchery unless the commissioner determines that the action would result in substantial public benefits and would not jeopardize natural stocks.

(h) The department shall establish by regulation an application fee under this section in an amount that provides for the total amount of fees collected under (b) of this section to approximately equal the department's actual costs of processing permit applications under this chapter. The department shall annually review the fee level to determine whether the department's costs of processing permit applications under this chapter are approximately equal to the fees collected. If the review indicates that fees collected and these costs