

Title 5. Fish and Game.

Chapter 41. Transportation, Possession and

Release of Live Fish; Aquatic Farming.

Article 4. Aquatic Farming.

5 AAC 41.200(1), (1)(B), and (2) are amended to read:

5 AAC 41.200. Applicability of regulations. The provisions of 5 AAC 41.200 – 5 AAC 41.400

(1) apply to applications for, **and** review [OF,] and issuance of,

.....

(B) stock acquisition **and transport permits**; and

(2) **notwithstanding 5 AAC 95.600 – 5 AAC 95.620**, establish procedures regarding the operation of permitted aquatic farms and hatcheries. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am 6/17/2001, Register 158; am _____/_____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160
AS 16.05.092

5 AAC 41.220 is repealed and readopted to read:

5 AAC 41.220. Aquatic farm and hatchery operation permit applications. (a) An applicant for an aquatic farm or hatchery operation permit that requires the use of state tideland or submerged land managed by the Department of Natural Resources (DNR) must submit, during an application filing period under 11 AAC 63.020, the multi-agency application identified in

11 AAC 63.030 to DNR for subsequent distribution to the department under 11 AAC 63.

(b) An applicant for an aquatic farm or hatchery operation permit that does not require the use of state tideland or submerged land managed by DNR may obtain the multi-agency application identified in 11 AAC 63.030 from the department and submit it to the department at any time. Acceptance and review of an application by the department does not relieve the applicant from compliance with any other requirements of federal, other state, or local agencies for the operation of an aquatic farm or hatchery.

(c) An application for an aquatic farm submitted by the current operation permit holder will only be accepted by the department if all conditions of the existing aquatic farm or hatchery operation permit are met.

(d) An application for an aquatic farm or hatchery operation permit submitted under (a) or (b) of this section must include information that the commissioner requires to verify that the applicant meets the requirements of AS 16.40.100 – 16.40.199 and 5 AAC 41.200 – 5 AAC 41.400. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am 12/16/98, Register 148; am 6/17/2001, Register 158; am 1/20/2002, Register 161; am _____/_____/2005, Register _____)

Authority:	AS 16.05.050	AS 16.40.100	<u>AS 16.40.110</u>
	AS 16.05.092	<u>AS 16.40.105</u>	AS 16.40.160

5 AAC 41.230 is amended to read:

5 AAC 41.230. Additional information. If, after an application has been submitted to the department, the department determines that information in the application is insufficient for an adequate evaluation of the proposed aquatic farm or hatchery, the department will request additional information from the applicant **to be submitted within 30 days of the date of the**

request for additional information. If the additional information is not received by the department within 30 days of the date of the request, the department will deny the

application. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am 6/17/2001, Register 158; am _____/_____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 **AS 16.40.110**
AS 16.05.092 **AS 16.40.105** AS 16.40.160

5 AAC 41.240 is repealed and readopted to read:

5 AAC 41.240. Review and determination. (a) The commissioner will review aquatic farm and hatchery operation permit applications, department surveys, and other site specific information and will issue an aquatic farm or hatchery operation permit if the commissioner determines that, to the extent practicable,

(1) the physical and biological characteristics of the location are suitable for culture because

(A) the operation is protected from oceanographic and atmospheric extremes or is designed to withstand such extremes;

(B) the water exchange rates, water temperatures, currents, salinity, and primary productivity are sufficient to support an aquatic farm and maintain a healthy environment for other marine organisms;

(C) for on-bottom culture, the substrate composition is suitable for the target species or can be enhanced and still maintain a healthy environment for other marine organisms;

(D) for suspended culture, the water depth is sufficient to prevent gear from grounding and impacting the benthos under floating structures;

(E) the health and abundance of eelgrass and kelp beds can be maintained;

(F) the operation is not located within 300 feet of the mouth of an anadromous fish stream;

(2) the proposed aquatic farm or hatchery does not significantly alter an established use;

(3) the proposed aquatic farm or hatchery is compatible with fish and wildlife resources in the area, and

(A) any predator and pest control methods have been designed to minimize impacts to non-targeted fish and wildlife resources in the area;

(B) does not adversely impact seabird colonies, sea lion haulouts and rookeries, seal haulouts and pupping areas, and walrus haulouts;

(C) does not adversely impact endangered and threatened species recovery and habitat protection efforts;

(4) for on-bottom culture proposals for all other indigenous species where wild stock exists, the commissioner has offered an opportunity to harvest the species;

(5) the proposed aquatic farm or hatchery operation and development plan demonstrates feasibility by describing how

(A) the operation will improve the productivity of the species intended for culture above what would occur in natural conditions using methods that may include

(i) predator exclusion;

- (ii) the reduction of competing species;
- (iii) density manipulation by culling and redistribution;
- (iv) import of naturally-produced seed from either onsite or offsite;
- (v) import of hatchery-produced seed;
- (vi) programming harvest to optimize growth and shellfish condition; and
- (vii) habitat improvement;

(B) any support facilities, culture gear, and anchoring systems will be installed and maintained;

(C) the projected harvest rotation schedule is consistent with the life history of the species intended for culture.

(b) The commissioner will approve or deny, in writing, an operation permit for an aquatic farm or hatchery within 30 days after the Alaska Coastal Management Program final consistency finding under 11 AAC 150 or the lease is issued by the Department of Natural Resources under 11 AAC 63, unless the commissioner determines that additional review is necessary to determine compliance with the applicable provisions of AS 16.40.100 - 16.40.199 and 5 AAC 41.200 - 5 AAC 41.400. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am 6/17/2001, Register 158; am 1/20/2002, Register 161; am _____/_____/2005, Register _____)

Authority: AS 16.05.050 **AS 16.40.100** **AS 16.40.110**
AS 16.05.092 AS 16.40.105 AS 16.40.160
AS 16.05.340

5 AAC 41.245 is repealed:

5 AAC 41.245. Acquisition of wild resources. Repealed. (Eff. 6/17/2001, Register 158; repealed _____/_____/2005, Register _____)

5 AAC 41.250 is repealed and readopted to read:

5 AAC 41.250. Permit conditions. (a) The commissioner will attach conditions to an aquatic farm or hatchery operation permit, including requirements that a permit holder

(1) improve the productivity of the species intended for culture according to the operation and development plan;

(2) limit an aquatic farm or hatchery to the culture of species approved by the department;

(3) not store or otherwise possess animals of the same species being cultured that have been commercially or recreationally harvested, unless the commercially or recreationally harvested animals are clearly separated from cultured species, labeled, and if applicable, accompanied with a receipt of purchase;

(4) identify the aquatic farm or hatchery site with the name, physical address, and telephone number of the principal operator with legible numbers and letters that are at least 1 ½ inches high and ¼ inch wide in a color that contrasts with the background on a

(A) buoy at least 15 ½ inches in diameter by 19 ½ inches from top to bottom on subtidal and suspended operations; or

(B) sign at least 12 inches high by 24 inches wide for intertidal operations;

(5) prevent aquatic farm and hatchery operations from significantly altering an established use of fish and wildlife resources;

(6) conduct aquatic farm and hatchery operations in a manner that avoids significantly affecting fish, wildlife, and their habitats in an adverse manner;

(7) avoid adverse effects of predator exclusion methods on the environment and incidental species;

(8) report all acquisitions of wild stock of the species intended for culture;

(9) report observations of non-native or exotic species occurring on the aquatic farm site;

(10) upon termination of a permit for on-bottom culture, leave an approximate number of the species that were approved for culture on the aquatic farm site sufficient to restore the population to the level that was present when the site was permitted for use as an aquatic farm or hatchery.

(b) An aquatic farm or hatchery operation permit will be issued for a period of 10 years.

(c) If the commissioner determines that the holder of an aquatic farm or hatchery operation permit is not complying with the permit conditions, or is not in compliance with the provisions of AS 16.40.100 - 16.40.199 or 5 AAC 41.200 - 5 AAC 41.400, the commissioner will notify the permit holder in writing of the non-compliance. Within 30 days after the date of the notification, the permit holder shall provide the commissioner with a plan to correct the non-compliance. If the commissioner approves the plan to correct the non-compliance, the department will notify the permit holder of the approval, and will provide the permit holder 90 days after the date of that notification to implement the plan to comply with the permit conditions. If the permit holder does not comply with the permit conditions within 90 days after

the date of the notification, the commissioner may revoke the permit. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am 12/16/98, Register 148; am 6/17/2001, Register 158; am _____/_____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160
AS 16.05.092

5 AAC 41.255 is repealed and readopted to read:

5 AAC 41.255. Amendments to aquatic farm or hatchery operation permits. (a) An aquatic farm or hatchery operation permit holder may submit a request to the department for an amendment to the operation permit on the amendment form provided by the department.

(b) The commissioner will issue a decision on the request for an amendment to the operation permit within 30 days after the request is submitted and considered complete by the commissioner.

(c) If the commissioner approves a request for an amendment to the operation permit under this section, the department will amend the operation permit with the approved modifications and permit conditions.

(d) The commissioner or the commissioner's designee may, in the commissioner's or commissioner's designee's own discretion, alter or amend permit terms and conditions if

(1) additional information or unforeseen changes require the relaxation of permit terms or conditions; or

(2) changed circumstances affect the adequacy of permit terms and conditions.

(Eff. 6/17/2001, Register 158; am _____/_____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.110

AS 16.05.340

AS 16.40.105

AS 16.40.160

5 AAC 41.260(a), (b), and (c) are amended to read:

5 AAC 41.260. Inspection of an aquatic farm or hatchery. (a) An aquatic farm or hatchery operation permit holder shall retain a copy of the operation permit, including any amendments, and make it available for inspection upon the request of **a representative of** the department or the Department of Public Safety.

(b) For the purpose of inspecting and monitoring compliance with the terms of the aquatic farm or hatchery operation permit or the requirements of this chapter, an aquatic farm or hatchery operation permit holder shall allow inspection of the aquatic farm or hatchery site by **a representative of** the department if the department notifies the permit holder at least 48 hours before the inspection.

(c) If an aquatic farm or hatchery operator is not in compliance with the terms and conditions of the operation permit for the facility, the **commissioner** [DEPARTMENT] will issue a notice of non-compliance under 5 AAC 41.250.

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(Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am 12/16/98, Register 148; am 6/17/2001,

Register 158; am _____/_____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160

AS 16.05.092 AS 16.40.150

5 AAC 41.275 is repealed:

5 AAC 41.275. Annual Hatchery Management Plan. Repealed. (Eff. 6/17/2001, Register 158; repealed ____/____/2005, Register _____)

5 AAC 41.280 is repealed and readopted to read:

5 AAC 41.280. Permit renewal and transfer. (a) At least 30 days before the expiration date of the operation permit or the date of transfer, an aquatic farm or hatchery operation permit holder must apply for the renewal or transfer of an operation permit by submitting the

- (1) renewal or transfer form provided by the department; and
- (2) \$100 renewal or transfer fee.

(b) The commissioner will issue a renewal or transfer of an aquatic farm or hatchery operation permit if the commissioner determines that the

- (1) applicant meets the requirements of (a) of this section;
- (2) applicant has complied with terms and conditions of the operating permit;

and

(3) aquatic farm or hatchery operation continues to demonstrate technical and operational feasibility.

(c) A permit holder may continue operations under the existing operation permit, unless the commissioner denies the application for renewal or transfer. (Eff. 8/12/89, Register 111; am 6/17/2001, Register 158; am ____/____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.110
AS 16.05.092 AS 16.40.105 AS 16.40.160

5 AAC 41 is amended by adding a new section to read:

5 AAC 41.285. Aquatic stock acquisition on an aquatic farm site. Wild stock of the species identified for culture in the operation permit that settle on an aquatic farm, hatchery site, or culture gear, become the property of the aquatic farm or hatchery operation permit holder as a condition of the operation permit. (Eff. ____/____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160
AS 16.05.092 AS 16.40.120

5 AAC 41.290 is repealed and readopted to read:

5 AAC 41.290. Aquatic stock acquisition from outside an aquatic farm site. (a) A person, including an aquatic farm or hatchery operation permit holder, intending to collect wild stock from outside an aquatic farm site, for the purpose of providing broodstock or seed stock to an aquatic farm or hatchery, or an aquatic farm or hatchery operator intending to acquire wild stock for culture, must obtain an aquatic stock acquisition and transport permit from the commissioner. An applicant shall apply on an aquatic stock acquisition and transport permit form provided by the department at least 30 days before the proposed acquisition.

(b) To determine whether wild stock is necessary to meet the initial needs of an aquatic farm or hatchery, the commissioner will consider if the

- (1) applicant has access to seed stock or broodstock from a previously permitted source, including an aquatic farm or hatchery that is operating within the state;
- (2) wild stock is fully utilized;
- (3) acquisition will impair sustained yield of the species; or
- (4) acquisition will unreasonably disrupt an established use of the resource.

(c) For the purposes of determining if wild stock is fully utilized, the commissioner will consider whether

(1) a shellfish management plan for the species is set out in this title;

(2) guideline harvest levels or harvest quotas have been established in a shellfish management plan set out in this title, and have been met in recent years;

(3) the fishery for the species is subject to limited entry by the Commercial Fisheries Entry Commission under AS 16.43; and

(4) commercial, sport, personal use, or subsistence fisheries for the species are closed or restricted for conservation reasons.

(d) Acquiring wild stock for immediate harvest and sale to finance aquatic farm or hatchery operations will not be considered to meet the initial needs of the aquatic farm or hatchery.

(e) In addition to the conditions in AS 16.40.120, and as the commissioner determines necessary to protect natural fish and wildlife resources and their habitat, the commissioner may attach conditions to an aquatic stock acquisition and transport permit.

(f) An aquatic stock acquisition and transport permit must be in the possession of the permit holder or the permit holder's authorized agent in physical possession of the organisms being collected and transported, and available for inspection upon request by a representative of the department or the Department of Public Safety. (Eff. 8/12/89, Register 111; am 6/17/2001, Register 158; am ____/____/2005, Register ____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160
AS 16.05.092 AS 16.40.120

5 AAC 41.295 is repealed and readopted to read:

5 AAC 41.295. Stock transport permits. (a) A transfer of stock to, from, or between an aquatic farm, hatchery, or stock acquisition site may not occur without a stock transport permit issued by the commissioner. An applicant shall apply on a stock transport permit application form provided by the department and submit the application form to the department at least 45 days before date of transport.

(b) Before an applicant submits a stock transport permit application to the department under this section, the supplier of the stock must contact the department to arrange to send samples of the stock intended for transport. The department will conduct a health inspection of the samples. Within 120 days after receipt of the supplier's samples of stock, the department will provide a written disease history report to the supplier of the stock to notify the supplier that the

(1) current disease history report is acceptable and that no further inspection is required;

(2) health inspection detected the presence of pathogens or parasites of a type that make transport

(A) acceptable under specified conditions; or

(B) unacceptable.

(c) Transport of stock between aquatic farm, hatchery, or stock acquisition sites will be approved, without an inspection and report required in (b) of this section, if the commissioner determines that both sites are in close proximity to each other and are within the larval drift zone for wild stock of the species, and

(1) the disease history for the stock on site is acceptable based on previous laboratory examination of samples; or

(2) the risk of disease transmission between sites is minimal.

(d) Transport of stock between aquatic farm, hatchery, or stock acquisition sites will be limited to waters within an approved larval drift zone of the state. For the purposes of this section, "larval drift zone" includes all coastal and island areas in

(1) Southeastern Alaska, from the Canadian border north to Cape St. Elias;

(2) Prince William Sound and Cook Inlet, from Cape St. Elias west and south to Cape Igvak, including Kodiak Island;

(3) Chignik and the Alaska Peninsula-Aleutian Islands, from Cape Igvak west to the tip of Unimak Island;

(4) the Aleutian Islands, including all islands west of Unimak Pass;

(5) the southeast Bering Sea and north Alaska Peninsula, from the westernmost tip of Unimak Island north to the Kuskokwim River, including the Pribilof Islands; and

(6) the northeast Bering Sea, including all coastal islands north of the Kuskokwim River.

(e) This section does not apply to aquatic farm products that are

(1) sold or transferred to commercial markets or consumers; and

(2) not intended for additional exposure to waters of the state. (Eff. 6/17/2001,

Register 158; am ____/____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160

AS 16.05.092 AS 16.40.120

5 AAC 41 is amended by adding a new section to read:

5 AAC 41.390. Appeal process. (a) A person adversely affected by the commissioner's decision under 5 AAC 41.240, 5 AAC 41.250, 5 AAC 41.255, or 5 AAC 41.280 may request that the commissioner reconsider that decision under this section only if the person has new or additional information relevant to the decision.

(b) A request for reconsideration must be in writing and received by the commissioner within 30 days after the date of the decision.

(c) Within 30 days after receiving the request for reconsideration, the commissioner will issue a written decision granting or denying the request for reconsideration. If the commissioner does not act on the request for reconsideration within 30 days after receiving the request, the request is denied. If the commissioner grants the request for reconsideration, the commissioner will either affirm the original decision or issue a new or modified decision based on the new or additional information.

(d) The commissioner's decision on reconsideration or denial of reconsideration under this section is the final administrative decision for purposes of appeal to the superior court under AS 22.10.020. (Eff. ____/____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.160

5 AAC 41.400 is repealed and readopted to read:

5 AAC 41.400. Definitions. Unless the context requires otherwise, in 5 AAC 41.200 – 5 AAC 41.400,

- (1) "aquatic farm" has the meaning given in AS 16.40.199;
- (2) "aquatic farm product" has the meaning given in AS 16.40.199;
- (3) "broodstock" means specimens of a species collected to produce seed stock;

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

(5) "culture" means to use or the use of methods to manipulate the biology and the physical habitat of a desired species to optimize survival, density, growth rates, uniformity of size, and use of the available habitat, and to efficiently produce a product suitable for a commercial market;

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

(7) "established use"

(A) means a

(i) commercial fishery that is subject to limited entry under AS 16.43, or to permit, registration, management, or other authorization requirements under this title;

(ii) sport fishery that occurs with historical regularity, as indicated by department field surveys, creel census sampling, sport use surveys, or other reliable sources of information or validated testimony;

(iii) personal use fishery that occurs with historical regularity, as indicated by personal use permit reports, department field surveys, personal use surveys, or other reliable sources of information or validated testimony;

(iv) subsistence fishery that occurs with historical regularity, as indicated by subsistence permit reports, department field surveys, community use surveys, or other reliable sources of information or validated testimony;

(B) does not include an experimental fishery;

(8) "hatchery" has the meaning given in AS 16.40.199;

(9) "improve the productivity" means to increase the abundance or harvestable biomass of a species over time;

(10) "positive control" has the meaning given in AS 16.40.199;

(11) "predator exclusion" means to hinder or prevent a predator from reaching or consuming aquatic farm products;

(12) "seed stock" means life stages of invertebrates that require a period of culture under positive control before reaching marketable size or quality;

(13) "shellfish" has the meaning given in AS 16.40.199;

(14) "species intended for culture" means the species of aquatic plant or animal that an applicant proposes to culture under positive control;

(15) "stock" has the meaning given in AS 16.40.199;

(16) "wild stock" means animals or plants that seed and occupy a site through natural processes. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am 6/17/2001, Register 158; am _____/_____/2005, Register _____)

Authority: AS 16.05.020 AS 16.05.251 AS 16.40.100
AS 16.05.092 AS 16.05.340 AS 16.40.160