

ALASKA

DEPARTMENT OF

FISH AND GAME



5 AAC 41

Article 4

Aquatic Farming

As amended through February 16, 2013

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Governor

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ADF&G Commissioner

IMPORTANT NOTE TO READER

The regulations in this booklet have been prepared by the Alaska Department of Fish and Game. They do not constitute an official version of these regulations, nor do they necessarily reflect current law. Any amendments made after the date of this booklet would appear in the published version of the Alaska Administrative Code. If any discrepancy is found between this booklet and the Alaska Administrative Code, the Code should be considered the final authority, unless the discrepancy is the result of a manifest error in the Code.

**Chapter 41. Transportation, Possession, and
Release of Live Fish; Aquatic Farming.**

Article 4. Aquatic Farming.

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 and issuance of,

(A) aquatic farm and hatchery operation permits;

(B) stock acquisition and transport permits; and

(C) shellfish and aquatic plant transfer permits; and

(2) 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 5/19/2005, Register 174; am 1/29/2010, Register 193)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160

AS 16.05.092

5 AAC 41.210. Permit required. Repealed. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111; repealed 6/17/2001, Register 158)

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.

(e) Except as specified for geoducks in (f) of this section, an application for a proposed on-bottom culture aquatic farm site must include a user fee for a survey of the initial abundance of the species intended for culture. A survey of the proposed aquatic farm site will be conducted by the department, a person approved by the department to conduct the survey with oversight from the department, or an alternative method in a cooperative effort between the department and the applicant. The department will, to the extent practicable, work with the applicant to reduce the cost of the user fee for a survey. The department will cap the user fee for the survey as follows:

(1) for a subtidal survey: no more than \$5,000 per aquatic farm site, per day;

(2) for an intertidal survey: no more than \$2,000 per aquatic farm site, per day.

(f) The user fee for a survey of initial abundance of geoducks for a proposed on-bottom culture aquatic farm is required with the application under (e) of this section, and a survey of the proposed aquatic farm site will be conducted, only if the commissioner determines that the site is subtidal and located in a larval drift zone described in 5 AAC 41.295(f)(1).

(g) The commissioner will determine the order that applications are reviewed and surveys are conducted under this section. (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 5/19/2005, Register 174; am 11/25/2005, Register 176; am 2/16/2013, Register 205)

Authority:	AS 16.05.050	AS 16.40.105	AS 16.40.145
	AS 16.05.092	AS 16.40.110	AS 16.40.160
	AS 16.40.100		

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 5/19/2005, Register 174)

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 41.235. Determination of insignificant population. For the purposes of 5 AAC 41.200 - 5 AAC 41.400, the commissioner determines that an insignificant population of

(1) geoducks is

(A) no more than 12,000 pounds of geoducks on a six-acre aquatic farm site; or

(B) an average of no more than 2,000 pounds per acre of an aquatic farm site;

(2) shellfish, other than geoducks, is the amount that, as determined by the commissioner on a case-by-case basis, will not attract and support a commercial fishery for that species of shellfish and the harvest and sale of the shellfish will not result in significant alteration in traditional fisheries or other uses of fish and wildlife resources if the population is included within the aquatic farm. (Eff. 11/25/2005, Register 176)

Authority: AS 16.05.050 AS 16.40.140 AS 16.40.160
 AS 16.05.092 AS 16.40.110 AS 16.40.199
 AS 16.05.100

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) repealed 1/26/2012;

(C) repealed 1/26/2012;

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

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

(6) the proposed aquatic farm site contains an insignificant population of the species intended for culture, as determined under 5 AAC 41.235.

(b) Under AS 16.40.100(g), the commissioner will issue an aquatic farm operation permit under this section for an on-bottom culture aquatic farm site for geoducks located in a larval drift zone described in 5 AAC 41.295(f)(2)–(6) only if the site is in a subtidal habitat or environment and the requirements of (a) of this section are met.

(c) The commissioner will approve or deny, in writing, an operation permit for an aquatic farm or hatchery no later than 30 days after 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 5/19/2005, Register 174; am 11/25/2005, Register 176; am 1/29/2010, Register 193; am 11/25/2011, Register 200; am 1/26/2012, Register 201; am 2/16/2013, Register 205)

Authority:	AS 16.05.050	AS 16.40.100	AS 16.40.145
	AS 16.05.092	AS 16.40.105	AS 16.40.160
	AS 16.05.340	AS 16.40.110	

5 AAC 41.245. Acquisition of wild resources. Repealed. (Eff. 6/17/2001, Register 158; am 2/13/2004, Register 169; repealed 5/19/2005, Register 174)

5 AAC 41.246. Harvest of insignificant population on aquatic farm site. In the course of operating an on-bottom aquatic farm, an aquatic farm operation permit holder may harvest and sell an insignificant population of wild stock of the species, as determined under 5 AAC 41.235, that are approved for culture and occupying the aquatic farm site at the time the permit was issued. (Eff. 11/25/2005, Register 176)

Authority:	AS 16.05.050	AS 16.40.105	AS 16.40.160
	AS 16.40.100		

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) repealed 1/26/2012;

(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) except for wild stock removed by a common property fishery, as provided in AS 16.40.100(e), 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;

(11) if the commissioner authorizes the removal and sale of the excess amount of wild stock from an aquatic farm site under AS 16.40.100(f), pay reasonable compensation to the state as determined by the commissioner under this paragraph for the harvest and sale of the excess wild stock; the commissioner will specify a reasonable amount of time, not to exceed five years, in the operation permit for the permit holder to harvest and sell the excess amount of wild stock; for the purposes of this paragraph, the commissioner determines that reasonable compensation is a proportion of whichever is the greater of the average ex-vessel price paid in the most recent commercial fishery or the amount paid at the first point of sale; the proportion for

(A) live geoducks is 21 percent;

(B) processed geoducks is 8 percent;

(C) shellfish, other than geoducks, will be determined by the commissioner on a case-by-case basis.

(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 noncompliance. 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 5/19/2005, Register 174; am 11/25/2005, Register 176; am 1/29/2010, Register 193; am 1/26/2012, Register 201)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160

AS 16.05.092

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 5/19/2005, Register 174)

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 41.257. Security requirements for wild stock restoration. (a) Within one year after the harvest of wild stock geoducks on an aquatic farm site begins, the aquatic farm operation permit holder shall provide to the department proof under (b) of this section that the permit holder has reseeded the aquatic farm site where the wild stock geoducks were harvested. The reseeded must be based on a ratio of five hatchery-produced spat to one geoduck harvested. The number of geoducks to be reseeded is based on the fish ticket data from the sale of wild stock.

(b) The aquatic farm operation permit holder shall submit proof of reseeded information for an aquatic farm site to the department, including the following:

(1) a completed proof of reseeded form provided to the permit holder by the department;

(2) a bill of sale from a state approved hatchery showing purchase of geoduck spat that provides the

(A) number of spat shipped;

(B) name of the permit holder the spat was shipped to; and

(C) size of geoduck spat shipped;

(3) a transport permit from a hatchery or nursery showing the transport of spat to the specific aquatic farm site;

(4) repealed 1/26/2012;

(5) repealed 1/26/2012.

(c) An aquatic farm operation permit holder that fails to provide proof of fully reseeded the aquatic farm site within one year after harvest begins as required under this section, shall immediately file with the commissioner a certificate of deposit or security bond in the amount that the commissioner determines is necessary to cover the cost of the purchase of hatchery geoduck spat sufficient to fully reseed the aquatic farm site based on the removal of wild stock geoducks as specified in (a) of this section. An aquatic farm permit holder that fails to provide a

certificate of deposit or security bond due to the permit holder's failure to reseed the farm site may result in a forfeiture of the permit holder's aquatic farm operation permit.

(d) The certificate of deposit or security bond will be returned to the aquatic farm operation permit holder if the permit holder provides proof to the commissioner that the reseeded stock has occurred at the aquatic farm site as specified in (b) of this section. The commissioner will return the certificate of deposit or security bond to the permit holder no later than three months after the commissioner has determined that the permit holder has complied with the reseeded stock requirements.

(e) If the aquatic farm operation permit holder fails to meet the restoration of wild stock requirements upon termination of the aquatic farm site lease and operation permit, the permit holder is in violation of the required provisions specified in AS 16.40.100(e), and of this section, and responsible for reimbursing the state for all costs associated with restoring the wild stock geoduck to the populations levels that existed at the aquatic farm site when the farm site was initially permitted.

(f) The provisions of this section do not apply to a person who holds a permit for an aquatic farm site that does not contain wild stock geoducks.

(g) Repealed 1/26/2012. (Eff. 11/25/2005, Register 176; am 1/29/2010, Register 193; am 1/26/2012, Register 201)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160
AS 16.05.092

5 AAC 41.258. Determination of geoduck status. After at least five years from the date of first planting of spat on an aquatic farm site, an aquatic farm operation permit holder may submit a request to the department for an amendment to the operation permit under 5 AAC 41.255 regarding the status of geoducks on the aquatic farm site. The remaining geoducks on an aquatic farm site will be deemed aquatic farm product if the commissioner determines that

(1) an adequate number of spat have been planted based on the permit holder's previous annual reports;

(2) the permit holder has made a reasonable effort to harvest wild stock geoducks contained on the aquatic farm site based on the permit holder's fish tickets; the provisions of this paragraph do not apply to an aquatic farm site that was subjected to a common property fishery or where the department has survey or other data indicating that an insignificant population of wild stock geoducks, as determined under 5 AAC 41.235, exists on the site;

(3) the permit holder has engaged in activities to improve the productivity of the geoducks according to the operation and development plan;

(4) identifying wild stock from aquatic farm product is no longer practicable.

(b) The provisions of this section do not apply to a person who holds a permit for an aquatic farm site that does not contain wild stock geoducks.

(c) A determination under this section does not relieve the aquatic farm operation permit holder from complying with the restoration requirements under AS 16.40.100(e) and 5 AAC 41.257 for wild stock geoducks harvested before the date of a determination under (a) of this section. (Eff. 1/26/2012, Register 201)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160

AS 16.05.092

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 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 will issue a notice of non-compliance under 5 AAC 41.250.

(d) Nothing in this section precludes the enforcement of other fish and game laws and regulations. (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 5/19/2005, Register 174)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160

AS 16.05.092 AS 16.40.150

5 AAC 41.270. Fish ticket; reporting requirement and annual report. (a) At least 24 hours before the landing of each harvest of wild stock harvested from the permit holder's aquatic farm site, the permit holder must notify, during business hours, a representative of the department by telephone. The notification must include

(1) an estimate of the number of pounds of wild stock the aquatic farm permit holder intends to land;

(2) where the first place of landing will be; and

(3) the anticipated time of the landing.

(b) An aquatic farm permit holder must allow an inspection of the permit holder's harvest of wild stock by an employee of the department or a peace officer of the state upon request.

(c) An aquatic farm permit holder who harvests wild stock from the permit holder's aquatic farm site must complete an ADF&G fish ticket at the time of landing. At the time of landing, the ADF&G fish ticket must include the

(1) information provided on the CFEC interim use permit card;

(2) aquatic farm site permit number; and

(3) the number of pounds harvested.

(d) In addition to the information required in (c) of this section, at the time of initial point of sale, the ADF&G fish ticket must include

(1) the price paid per pound; and

(2) whether the product was sold live or processed.

(e) The department will distribute an annual report form to aquatic farm and hatchery operation permit holders during each calendar year for completion and return to the department no later than January 31 of the following year. The report must detail the activities of the aquatic farm or hatchery for the previous year, including any reports required as a condition of the aquatic farm or hatchery operation permit. The department will mail the annual report form to the most recent address of the permit holder on file. A permit holder is responsible for keeping the department informed of the permit holder's current address. Failure to receive an annual report form does not relieve a permit holder of the annual report requirement of this section.

(f) Records and reports required under AS 16.40 and this chapter are confidential and may only be released, as specified under AS 16.40.155.

(g) For the purposes of this section,

(1) "business hours" means Monday through Friday, except a state holiday, from 8:00 a.m. until 5:00 p.m.;

(2) "landing" means the act of offloading shellfish for sale or for transport to a buyer for later sale;

(3) "representative of the department" means the employee of the department that is assigned by the department to receive notification under this section. (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 11/25/2005, Register 176; am 1/29/2010, Register 193; am 1/26/2012, Register 201)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160
AS 16.05.092 AS 16.40.155

Editor's note: For the purposes of notifying the Department of Fish and Game under 5 AAC 41.270(a), the contact telephone number for the representative of the department is (907) 465-6150.

5 AAC 41.275. Annual Hatchery Management Plan. Repealed. (Eff. 6/17/2001, Register 158; repealed 5/19/2005, Register 174)

5 AAC 41.276. Hatchery management plans and reports. (a) The annual report form specified in 5 AAC 41.270(e) will include the brood stock acquisitions and production by species conducted by a permitted hatchery the previous year and other information requested by the commissioner.

(b) No later than January 15 of each year, a hatchery operation permit holder shall provide an updated annual management plan to the department. The annual hatchery management plan must include the following:

- (1) anticipated brood stock acquisition needs;
- (2) number of species to be collected;
- (3) location of species to be collected;

- (4) schedule of species collection;
- (5) anticipated transports;
- (6) projected availability of seed stocks for the upcoming year.

(c) A hatchery operation permit holder shall manage the hatchery in accordance with a basic management plan approved by the commissioner. The basic management plan shall be drafted in conjunction with departmental staff and the hatchery permit holder and filed as an addendum to the current permit approved by the commissioner and is to be revised whenever changes are necessary or at least every five years. (Eff. 1/29/2010, Register 193)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160
AS 16.05.092

5 AAC 41.277. Marking requirement for aquatic farm or hatchery site. An aquatic farm or hatchery site must be marked as follows:

(1) for a suspended culture operation, an identification surface buoy or sign with the name, physical address, and telephone number of the principal operator with legible numbers and letters that are at least one and one-half inches high and one-quarter inch wide in a color that contrasts with the background must be placed on one corner of the suspended culture operation;

(2) for an intertidal culture operation, on-bottom delineation must be visibly marked with a weighted marker or stake that is

(A) adequately secured and placed on all corners of the site parcel; or

(B) if the site is not fully operational, placed on all corners of the operational area within the coordinates of the site parcel defined in the operation permit;

(3) for a subtidal culture operation,

(A) on-bottom delineation must be visibly marked with a weighted marker or stake that is

(i) anchored securely and placed on all corners of the site parcel; or

(ii) if the site is not fully operational, placed on all corners of the operational area within the coordinates of the site parcel defined in the operation permit;

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. 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 5/19/2005, Register 174)

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. 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 either

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

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

(3) the sites are within the larval drift zone for wild stock of the species.

(d) Transport of stock, other than geoducks, between aquatic farm, hatchery, or stock acquisition sites will be limited to waters within an approved larval drift zone of the state.

(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.

(f) 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. (Eff. 6/17/2001, Register 158; am 5/19/2005, Register 174; am 2/16/2013, Register 205)

Authority: AS 16.05.050 AS 16.40.120 AS 16.40.145
AS 16.05.092 AS 16.40.140 AS 16.40.160
AS 16.40.100

5 AAC 41.300. Limitations on sale, transfer of stock, and products. Repealed. (Eff. 8/12/89, Register 111; am 12/16/98, Register 148; repealed 6/17/2001, Register 158)

5 AAC 41.310. Disease control and inspection. (a) 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 to the department within 15 days after discovery of the incident. A written report must 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) Repealed 12/16/98.

(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; am 12/16/98, Register 148)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160
AS 16.05.092 AS 16.40.150

Editor's note: The address for submitting written incident reports is Alaska Department of Fish and Game, Attn: Mariculture Coordinator, P.O. Box 115526, Juneau, AK 99811-5526.

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. 5/19/2005, Register 174)

Authority: AS 16.05.050 AS 16.40.160

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) "aquatic farm site" means a tract of land permitted and used for commercial production of aquatic farm products;

(4) "broodstock" means specimens of a species collected to produce seed stock;

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

(6) "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;

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

(8) "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;

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

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

(11) "insignificant population" has the meaning given in AS 16.40.199;

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

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

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

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

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

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

(18) "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 5/19/2005, Register 174; am 11/25/2005, Register 176)

Authority: AS 16.05.050 AS 16.05.340 AS 16.40.160
AS 16.05.092 AS 16.40.100