

Title 5. Fish and Game.

Chapter 41. Transportation, Possession and

Release of Live Fish; Aquatic Farming.

Article 4. Aquatic Farming.

5 AAC 41.220(b) is amended, and new subsections are added to read:

5 AAC 41.220. Aquatic farm and hatchery operation permit applications.

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(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. **A proposed aquatic farm site may not include more than an insignificant population of wild stock on the site of a shellfish species intended to be cultured. For the purposes of this section an insignificant amount of geoducks is no more than 12,000 pounds per average six acre a farm site .**

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(e) Applications for on-bottom culture farm sites must include user fees for a survey of initial abundance of the species intended for culture. Surveys may be conducted by the department or by a department approved surveyor with departmental oversight. User fees for the survey will be capped at the following,

- (1) a subtidal survey no more than \$5000 per aquatic farm site, per day;

(2) an intertidal survey no more than \$2000 per farm site, per day.

(f) The commissioner may determine the order that applications are reviewed and surveys are conducted. (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 _____/_____/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(a)(1) is amended by adding a new subparagraph 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

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(G) the site contains a insignificant number of the species intended for culture; for purposes of this subparagraph a site will be considered to contain a insignificant number of the species intended for culture if the site does not contain an abundance that would support a limited entry commercial fishery;

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(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 _____/_____/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 is amended by adding a new section to read:

5 AAC 41.246. Acquisition of an insignificant amount of wild resources on an aquatic farm site. An aquatic farm operation permit holder may take, harvest, and sell, in the course of operating an on bottom aquatic shellfish farm, an insignificant number of wild stock of the species approved for culture and occupying the aquatic farm site. For the purposes of this section an insignificant number of wild stock is an abundance that the commissioner determines would not support a commercial fishery. For geoducks an insignificant amount is less than 12,000 pounds. (Eff. _____/_____/2005, Register _____)

Authority:	AS 16.05.050	AS 16.40.105
	AS 16.40.100	AS 16.40.160

5 AAC 41.250(a) is amended by adding a new paragraph, (a)(10) is amended, 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
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(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; **except a permit holder is not required to restore that portion of the wild**

stock of shellfish that was removed from an aquatic farming site by a common property fishery conducted after the issuance of the permit for the aquatic farm site.

(11) if the wild stock of a shellfish species to be cultured at an aquatic farm site exceeds the amount determined by the department to be an insignificant population and if the commissioner determines in writing that removal from the site of that portion of the stock that exceeds an insignificant population would benefit the public and that removal of the stock by person other than a permittee would unreasonably interfere with the operation of the aquatic farm, the commissioner may authorize the permittee to remove and sell the excess amount of the wild stock from the site within a reasonable amount of time after the permit is issued.

(12) if the commissioner authorizes the removal and sale of the excess amount of wild stock from a farm site the permittee will pay a reasonable compensation to the state as defined by the commissioner, for the harvest and sale of the excess wild stock; for the purposes of this section reasonable compensation for the harvest and sale of more than an insignificant amount of geoducks from a farm site by the permittee shall be a proportion of which ever is the greater, the average ex-vessel price paid in the most recent commercial fishery or the amount paid for geoducks at the first point of sale;

(A) for geoducks sold live, the proportion is 50 percent; and

(B) for processed geoducks, the proportion is 20 percent;

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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 5/19/2005, Register 174; am _____/_____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160

AS 16.05.092

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

5 AAC 41.257. Security requirements. (a) Within 30 days of wild stock harvest and sale the commissioner will require a certificate of deposit in an amount determined to be adequate to cover the cost of restoring the wild stock population to the level prior to removal. The amount of the certificate of deposit will be based on the hatchery cost of adequate stock replacement.

(b) The commissioner will return the certificate of deposit on or before six months after the commissioner has determined that the permit holder has complied with the required reseedling of wild stock. A transport permit and bill of sale from the hatchery must accompany the request for reimbursement.

(c) If there is no wild stock on the farm site a certificate of deposit will not be required.

(Eff. _____ / _____ /2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160
AS 16.05.092

5 AAC 41.270 is repealed and readopted to read:

5 AAC 41.270. Fish Ticket; Reporting Requirement and Annual report. (a) Before an aquatic farm permit holder can sell wild stock harvested from the permit holder's farm site, the permit holder must notify a representative of the department between the business hours of 8:00 a.m. and 5:00 p.m. Monday through Friday at least 24-hours prior to the time the delivery of harvested wild stock will take place. Wild stock harvest will be subject to

inspection by an employee of the department or a law enforcement officer. At the time of notification of delivery the aquatic farmer will include

(1) how much wild stock the aquatic farmer intends to sell;

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

(3) the time of the delivery.

(b) An aquatic farm permit holder who harvests wild stock from the permit holder's farm site must complete an ADF&G fish ticket at the time of harvest. The ADF&G fish ticket must include the information provided on the CFEC mariculture card and the aquatic farm site permit number.

(c) 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 15 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.

(d) Records required by the department concerning aquatic farm stocks or production, prices, and harvests of aquatic farm products and wild stocks, and annual statistical reports of individual aquatic farms or hatcheries required by statute or regulation adopted by the department are confidential and may not be released by the department, except that the department may release the records and reports

(1) to the Department of Revenue and the Department of Natural Resources to assist the department in carrying out their respective statutory responsibilities;

(2) as necessary to comply with a court order;

(3) to the permit holder whose activity is the subject of the records or reports; and

(4) regarding cumulative annual harvests of wild stocks at individual aquatic farm sites. (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 16.40.155**

Editor's note: For the purposes of (a) of this section the contact phone number for a representative of the department is (907) 465-6150.

5 AAC 41.400(3) – (16) are repealed and readopted and new paragraphs are added to read:

5 AAC 41.400. Definitions.

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(3) "aquatic farm site" means any facility or tract of land used for private, commercial production of aquatic products; each separate geographical facility or tract of land permitted for commercial operations shall constitute a separate farm site;

(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" means a population of shellfish wildstock that, in the determination of the commissioner, would not attract and support a commercial fishery for that species, and the harvest and sale of the shellfish would not result in significant alteration in traditional fisheries or other existing uses of fish and wildlife resources if the population were included within an aquatic farm site; for the purposes of this paragraph, an insignificant population of geoducks within an average farm site of six acres is a population that is less than 12,000 pounds;**

(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 _____/_____/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