

# **Alaska Salmon Hatchery and Enhancement Regulations (Title 5 of the Alaska Administrative Code)**

## **Chapter 40. Private Nonprofit Salmon Hatcheries**

### **5 AAC 40.005. General**

(a) The harvest of salmon inhabiting the water of the state, regardless of whether the salmon are naturally or artificially propagated, may be conducted only pursuant to regulations adopted by the Board of Fisheries.

(b) The harvest of salmon returning to a private nonprofit salmon hatchery will be governed by regulations adopted by the Board of Fisheries. The board will, in its discretion, develop harvesting regulations after review of the harvest plans or other materials, information, and testimony, if any, presented by the regional associations, hatchery operators, the Department of Commerce, Community, and Economic Development, the Department of Fish and Game, fishermen, and other interested parties.

(c) Where hatchery returns enter a segregated location near the release site and can be harvested without significantly affecting wild stocks, a special harvest area may be designated by regulation adopted by the board, within the hatchery permit, or by emergency orders issued by the commissioner.

(d) A private nonprofit hatchery permit holder and his agents, contractees, and employees may harvest salmon for the hatchery only in the applicable special harvest area. This does not prevent a special harvest area from being open to commercial, sport, or subsistence fishing or any combination thereof to the extent provided in regulations adopted and orders issued under this chapter. Harvesting of salmon within the special harvest area, whether by the hatchery operator or the common property fisheries, will be opened and closed by regulation or emergency order.

(e) Special harvest area boundaries set out in 5 AAC [40](#), or in a private nonprofit hatchery permit issued by the commissioner, may be altered by emergency order if necessary for proper management of natural or hatchery stocks.

(f) Hatchery permit holders, their agents, contractees, and employees shall comply with all terms and conditions of the hatchery permit, applicable regulations and orders, and any additional requirements imposed by the commissioner to implement this chapter.

(g) Agents, contractees, and employees of a hatchery permit holder may harvest salmon for the hatchery in the special harvest area only if they have in their possession a written authorization from the hatchery permit holder and only in accordance with its terms. The activities in the special harvest area of a person who is not a hatchery permit holder or an agent, contractee, or

employee of the permit holder acting under the terms of a written authorization, are governed by regulations applicable to commercial, sport, personal use, and subsistence fishing.

(h) Private nonprofit salmon hatchery operators shall take all reasonable steps necessary to ensure that hatchery produced salmon harvested in their designated special harvest area are surplus fish produced at that facility.

### **5 AAC 40.007. Gear and fishing periods**

(a) The commissioner may authorize legal gear for cost recovery either through the hatchery permit or by regulation.

(b) Fishing periods for each gear type may be modified by emergency order as needed to protect the public interest or wild stocks.

(c) The hatchery operator shall obtain the appropriate special harvest area entry permits from the Commercial Fisheries Entry Commission. The hatchery operator may also contract with licensed commercial fishermen to conduct the harvest.

(d) The commissioner may define a unit of gear to be used and under a special harvest area entry permit for that gear type.

### **5 AAC 40.010. Modifications of applicable regulations**

(a) Hatchery permit holders shall, with respect to salmon harvested by them (or their agents, contractees, or employees), comply with applicable provisions of 5 AAC [39.130\(a\)](#) and (b) as though they were a purchaser of fish.

(b) Hatchery permit holders harvesting salmon within a special harvest area, to the extent those salmon are used as egg sources for broodstock, will be exempted by the commissioner from the provisions of [AS 16.05.831](#) if the permit holder so requests. The commissioner may condition the exemption on terms he considers necessary to carry out the intent of [AS 16.05.831](#).

(c) Hatchery permit holders conducting a hatchery harvest of salmon within a special harvest area are exempt from the provisions of 5 AAC [39.290](#).

(d) Fishermen taking salmon in a special harvest area under authorization from the hatchery permit holder and operating under a special harvest area entry permit are exempt from the provisions of 5 AAC [39.120](#).

### **5 AAC 40.015. Prohibitions**

It is unlawful for any person to violate the provisions of this chapter.

## **5 AAC 40.030. District 13: Sheldon Jackson Special Harvest Areas**

(a) There are established under the provisions of 5 AAC [40.005](#) the following Sheldon Jackson Special Harvest Areas:

(1) the waters of Crescent Bay and Eastern Anchorage enclosed by a line from the northernmost end of the John O'Connell Bridge to the southernmost end of the bridge to the northeasternmost tips of Aleutski Island, Turning Island, Kutkan Island, Morne Island, and Twin Islands to the westernmost tips of Ring and Dove Islands then west to the southeasternmost tip of Cannon Island; only pink, chum, and king salmon may be harvested in the special harvest area;

(2) all waters enclosed by a line from the southeast corner of the Crescent Harbor breakwater (57° 02.97' N. lat., 135° 19.27' W. long.) to a point on the beach approximately 150 yards southeast of the hatchery stream outlet (57° 02.97' N. lat., 135° 19.27' W. long.); coho salmon only may be harvested in this area.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC [33.310](#). Fishing periods for the hatchery permit holder will be opened and closed by emergency order by gear type.

(c) Notwithstanding 5 AAC [33.330](#), legal gear types for hatchery permit holders in the special harvest area are purse seine, beach seine, hand purse seine, drift gillnet with six inch or larger mesh, and troll gear.

## **5 AAC 40.032. District 11: Douglas Island Pink and Chum (DIPAC) Special Harvest Area**

(a) The following special harvest areas are established for Douglas Island Pink and Chum (DIPAC):

(1) Gastineau Channel Special Harvest Area: the waters east of 134° 29.25' W. long. (near Salmon Creek) and west of 134° 17.38' W. long. (approximately one mile north of Dupont Dock);

(2) Amalga Harbor Special Harvest Area: the waters enclosed by a line from the Shrine of St. Terese to the southernmost tip of Bird Island to the northernmost tip of Gull Island to a point on the eastern mainland shore at 58° 30.80' N. lat.;

(3) Boat Harbor Special Harvest Area: the waters within one mile of the western shoreline of Lynn Canal south of 58° 40' N. lat. to a point 2.4 miles north of Point Whidbey at 58° 37.05' N. lat., including the waters inside Boat Harbor;

(4) Speel Arm Special Harvest Area: the waters of Speel Arm north of 58° 03.42' N. lat.

(b) A hatchery permit holder harvesting salmon within the special harvest area under the terms of the hatchery permit is exempt from the provisions of 5 AAC [33.310](#). The commissioner shall

open and close, by emergency order, fishing periods during which the hatchery permit holder may harvest salmon within the special harvest area.

(c) Notwithstanding 5 AAC [33.330](#), legal gear types for the hatchery permit holder in a special harvest area are purse seine, hand purse seine, beach seine, fyke net, drift gillnet, set gillnet, and dip net, and troll gear.

### **5 AAC 40.033. Douglas Island pink and chum Special Harvest Area - Sheep Creek**

Repealed. (Repealed 4/23/94)

### **5 AAC 40.035. Prince William Sound Aquaculture Corporation Special Harvest Area - San Juan**

Repealed. (Repealed 5/22/94)

### **5 AAC 40.037. Nerka Corporation Special Harvest Area - Perry Island**

(a) There is established the Nerka Corporation Special Harvest Area, consisting of all waters of South Bay, Perry Island, enclosed by a line from Meares Point light on the west side of the bay easterly two nautical miles to an exposed reef and the north one-half mile to the east side of the bay.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC [24.310](#) - 5 AAC [24.320](#) except as may be specifically provided by emergency order. The hatchery permit holder may harvest salmon within the special harvest area during periods opened and closed by emergency order.

(c) Notwithstanding 5 AAC [24.330](#), legal gear for the hatchery permit holder in the special harvest area is a set gillnet. However, if the commissioner and the permit holder determine that set gillnet gear is unsatisfactory, the commissioner may open the special harvest area for hatchery harvest with beach seine or purse seine.

### **5 AAC 40.038. Solomon Gulch Special Harvest Area - Valdez**

Repealed. (Repealed 5/22/94)

### **5 AAC 40.039. Alaska Aquaculture Corporation Special Harvest Area - Burnett Inlet**

(a) There is established the Burnett Inlet Special Harvest Area, consisting of all waters of Burnett Inlet, Etolin Island, north of 56° 06' N. lat. and south of 56° 10.83' N. lat.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC [33.310](#). Fishing periods for the hatchery permit holder will be opened and closed by emergency order by gear type.

(c) Notwithstanding 5 AAC [33.330](#) legal gear for the hatchery permit holder in the special harvest area are beach seine, purse seine, hand purse seine, and drift gillnet.

### **5 AAC 40.041. Herring Bay Special Harvest Area - Ketchikan**

(a) There is established a Herring Bay Special Harvest Area for the Southern Southeast Regional Aquaculture Association Whitman Lake Hatchery, consisting of the waters of Herring Creek and Cove bound by the hatchery water outlet and a line from a point of land on George Inlet at the east side of Lot 39, USS 3397, bearing 18°, 12' to a point of land on the southern edge of Lot 91, USS 2403.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC [33.310](#). Fishing periods for the hatchery permit holder will be opened and closed by emergency order by gear type.

(c) Notwithstanding 5 AAC [33.330](#), legal gear for the hatchery permit holder in the special harvest area is beach seine, purse seine, and dip net. Gillnets may be used by the hatchery operator in the special harvest area for taking king and coho salmon broodstock.

(d) That portion of the special harvest area between the hatchery outlet and the terminus of Herring Creek may be closed to sport fishing. The remainder of the special harvest area may not be closed to sport fishing unless hatchery broodstock needs are jeopardized.

### **5 AAC 40.042. Northern Southeast Regional Aquaculture Association Special Harvest Areas**

(a) The following special harvest areas are established for the Northern Southeast Regional Aquaculture Association:

(1) repealed 4/23/94;

(2) Sea Lion Cove, all waters within a 50-yard radius of the terminus of ADF&G stream # 113-61-005 at mean low tide;

(3) Patterson Bay, all waters of Patterson Bay north of 56° 34' N. lat.;

(4) Bear Cove, for king salmon: the waters of Bear Cove and Silver Bay east of a line from 57° 00.63' N. lat., 135° 09.80' W. long., to 57° 00.75' N. lat., 135° 10.58' W. long. to 57° 01.07' N. lat., 135° 09.93' W. long.;

(5) Hidden Falls,

(A) for chum and king salmon: the waters of District 12 within two nautical miles of the Baranof Island shoreline south of the latitude of South Point and north of 57° 06.83' N. lat., excluding the waters of Kelp Bay;

(B) for coho salmon: Kasnyku Bay west of a line from 57° 13.33' N. lat., 134° 50.93' W. long. to the northernmost tip of an unnamed island of Kasnyku Bay located at 57° 12.93' N. lat., 134° 51.40' W. long. and then due south to the southern shore of Kasnyku Bay;

(6) Silver Bay, for chum salmon:

(A) before 12:01 a.m. July 24 and after the coho salmon fishery is closed in August, or August 20 if the coho salmon fishery is not closed in August closure, the Silver Bay Special Harvest Area for chum salmon is the waters of Eastern Channel and Silver Bay enclosed by a line from Entry Point Light, to the southernmost tip of Harris Island, to the southernmost tip of Galankin Island, to Simpson Rock Light, to the southernmost tip of Makhnati Island, to Sentinel Rock, to the westernmost tip of Cape Burunof, to a point west of Pirates Cove at 135° 59.35' N. lat., to the westernmost tip of Long Island, to the westernmost tip of Emgeten Island, to the westernmost tip of Error Island, to the northernmost tip of Luce Island, and to the westernmost tip of Silver Point;

(B) from 12:01 a.m. July 24 through the end of August coho salmon fishery closure specified in (A) of this paragraph, or August 20 if there is no coho closure, the Silver Bay Special Harvest Area for chum salmon is the waters of Eastern Channel and Silver Bay south of a line from Entry Point Light to the southernmost tip of Harris Island, to the southernmost tip of Galankin Island, and east of a line from Galankin Island to the northernmost point of Silver Point;

(7) Deep Inlet: the waters of Deep Inlet, Aleutkina Bay, and contiguous waters south of a line from a point west of Pirates Cove at 56° 59.35' N. lat., 135° 22.63' W. long., to the westernmost tip of Long Island, to the easternmost tip of Long Island, to the westernmost tip of Emgeten Island, to the westernmost tip of Error Island, to the westernmost tip of Berry Island, to the southernmost tip of Berry Island, to the westernmost tip of the southernmost island in the Kutchuma Island group, to the easternmost tip of the southernmost island in the Kutchuma Island group, to the westernmost tip of an unnamed island at 57° 00.30' N. lat., 135° 17.67' W. long., to a point on the southern side of the unnamed island at 57° 00.08' N. lat., 135° 16.78' W. long., and then to a point on the Baranof Island shore at 56° 59.93' N. lat., 135° 16.53' W. long.;

(8) Mist Cove: the waters of Mist Cove west of a line from 56° 31.70' N. lat., 134° 39.87' W. long. to 56° 31.27' N. lat., 134° 39.75' W. long.;

(9) Shamrock Bay: the waters of Shamrock Bay east of 135° 08' W. long.

(b) A hatchery permit holder harvesting salmon within a special harvest area is exempt from the provisions of 5 AAC [33.310](#). Fishing periods for the hatchery permit holder will be established by emergency order by gear type.

(c) Notwithstanding 5 AAC [33.330](#), legal gear for the hatchery permit holder in a special harvest area are as follows:

(1) repealed 6/28/97;

(2) Sea Lion Cove: beach seine, and dip net;

(3) Patterson Bay: purse seine, beach seine, drift gillnet, set gillnet, hook and line, and dip net;

(4) Bear Cove: purse seine, hand purse seine, beach seine, and dip net, drift gillnet with six inch or larger mesh, and troll gear;

(5) Hidden Falls: beach seine, purse seine, hand purse seine, drift gillnet, and troll gear;

(6) Silver Bay: purse seine, hand purse seine, beach seine, dip net, drift gillnet with six inch or larger mesh, and troll gear;

(7) Deep Inlet: purse seine, hand purse seine, beach seine, dip net, drift gillnet, and troll gear;

(8) Mist Cove: beach seine, purse seine, hand purse seine, drift gillnet, and troll gear;

(9) Shamrock Bay: beach seine, purse seine, hand purse seine, drift gillnet, and troll gear.

### **5 AAC 40.043. Neets Bay Special Harvest Area - Behm Canal**

(a) There is established a Neets Bay Special Harvest Area for the Southern Southeast Regional Aquaculture Association harvest of coho and chum returns to the Neets Bay release site, consisting of all waters of Neets Bay east of the longitude of the easternmost tip of Bug Island.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC [33.310](#). Fishing periods for the hatchery permit holder will be opened and closed by emergency order by gear type.

(c) Notwithstanding 5 AAC [33.330](#), legal gear for the hatchery permit holder in the special harvest area is purse seine, beach seine, gillnet, and troll gear. The hatchery permit holder may use floating weirs in waters of the special harvest area east of 131° 33' W. long.

### **5 AAC 40.044. Burro Creek Farms Special Harvest Area - Taiya Inlet**

(a) There is established the Burro Creek Farms Special Harvest Area consisting of all waters of Taiya Inlet within a 500-yard radius of the terminus of Burro Creek.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC [33.310](#). Fishing periods for the hatchery permit holder will be established by emergency order by gear type.

(c) Notwithstanding 5 AAC [33.330](#), legal gear for the hatchery permit holder in the special harvest area is beach seine, purse seine and gillnet.

### **5 AAC 40.045. Nakat Inlet Special Harvest Area**

(a) There is established a Nakat Inlet Special Harvest Area for the Southern Southeast Regional Aquaculture Association harvest of chum returns to the Nakat Inlet release site, consisting of all waters of Nakat Inlet north of 54° 50' N. lat.

(b) The hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC [33.310](#). Fishing periods for the hatchery permit holder will be established by emergency order by gear type.

(c) Notwithstanding 5 AAC [33.330](#), legal gear for the hatchery permit holder in the special harvest area are purse seine, gillnet, troll and beach seine.

### **5 AAC 40.046. Tutka Bay Lagoon Special Harvest Area - Tutka Bay**

Expired.

### **5 AAC 40.051. District 3: Klawock Inlet and River Special Harvest Area**

(a) The Klawock Inlet and River Special Harvest Area consists of the waters of Klawock Inlet and Harbor south of the latitude of Cemetery Point and north of 55° 32' N. lat., and any of the hatchery raceways and holding ponds contiguous with the hatchery access ladder from Klawock River for broodstock and cost recovery of sockeye and coho salmon and steelhead.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC [33.310](#). The commissioner shall open and close, by emergency order, fishing periods for cost recovery for the hatchery permit holder.

(c) Notwithstanding 5 AAC [33.330](#), legal gear types for the hatchery permit holder in the special harvest area are purse seine, beach seine, dip net, gillnet, and troll gear.

### **5 AAC 40.061. District 7: Anita Bay Special Harvest Area**

(a) There is established the Anita Bay Special Harvest Area, consisting of the waters of Anita Bay west of 132° 24.40' W. long.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC [33.310](#). The commissioner shall open and close, by emergency order, fishing periods for the hatchery permit holder by gear type.

(c) Notwithstanding 5 AAC [33.330](#), legal gear types for the hatchery permit holder in the special harvest area are beach seine, purse seine, and hand purse seine, drift gillnet, and troll gear.



### **5 AAC 40.071. District 9: Gunnuk Creek Special Harvest Area**

(a) The Gunnuk Creek Special Harvest Area consists of the waters of Keku Strait enclosed by a line from a point about one-third mile northwest of Kake at 56° 58.95' N. lat., 133° 57.42' W. long. to the southernmost tip of the southern Mosquito Island to the northwest tip of Hamilton Island to Wooten's Dock at 56° 57.55' N. lat., 133° 54.70' W. long.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC [33.310](#). The commissioner shall open and close, by emergency order, fishing periods for the hatchery permit holder to harvest salmon returning to the Gunnuk Creek salmon hatchery.

(c) The commissioner shall open and close, by emergency order, fishing periods for common property fisheries to harvest excess salmon returning to the Gunnuk Creek salmon hatchery.

(d) Notwithstanding 5 AAC [33.330](#), legal gear types for the hatchery permit holder in the special harvest area are beach seine, purse seine, gillnet, and troll gear.

### **5 AAC 40.073. District 9: Southeast Cove Special Harvest Area**

(a) The Southeast Cove Special Harvest Area consists of the waters of Keku Strait enclosed by a line from a rocky point on the northern end of Kuiu Island located on the east side of Southeast Cove at 56° 52.95' N. lat., 134° 01.33' W. long. to the northwest corner of Hound Island at 56° 53.12' N. lat., 133° 56.77' W. long. then northwest, connecting points along the northern shore of Keku Islands at 56° 53.98' N. lat., 133° 57.58' W. long. to 56° 54.90' N. lat., 133° 59.53' W. long. to 56° 55.93' N. lat., 134° 00.97' W. long. to 56° 55.95' N. lat., 134° 02.15' W. long. to 56° 55.22' N. lat., 134° 02.53' W. long. to 56° 56.37' N. lat., 134° 06.62' W. long. then to the northwest corner of Payne Island to 56° 57.45' N. lat., 134° 08.75' W. long. then south to a point on Kuiu Island at 56° 55.08' N. lat., 134° 09.25' W. long.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC [33.310](#). The commissioner shall open and close, by emergency order, fishing periods for the hatchery permit holder to harvest salmon returning to the Southeast Cove remote release site.

(c) The commissioner shall open and close, by emergency order, fishing periods for common property fisheries to harvest excess salmon returning to the Southeast Cove remote release site.

(d) Notwithstanding 5 AAC [33.330](#), legal gear types for the hatchery permit holder in the special harvest area are beach seine, purse seine, gillnet, and troll gear.

### **5 AAC 40.081. District 12: Port Armstrong Special Harvest Area**

(a) The Port Armstrong Special Harvest Area for chinook salmon consists of the waters of Port Armstrong west of 134° 39.47' W. long.

(b) The Port Armstrong Special Harvest Area for pink and coho salmon consists of the waters of Port Armstrong west of a line from Point Eliza at 56° 17.73' N. lat., 134° 38.75' W. long. to a point on the Baranof Island shoreline at 57° 17.98' N. lat., 134° 38.35' W. long.

(c) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC [33.310](#). The commissioner shall open and close, by emergency order, fishing periods for the hatchery permit holder to harvest salmon returning to the Port Armstrong salmon hatchery.

(d) The commissioner shall open and close, by emergency order, fishing periods for common property fisheries to harvest excess salmon returning to the Port Armstrong salmon hatchery.

(e) Notwithstanding 5 AAC [33.330](#), legal gear types for the hatchery permit holder in the special harvest area are purse seine, hand purse seine, beach seine, dip net, drift gillnet with six inch or larger mesh, and troll gear.

### **5 AAC 40.085. Kodiak Regional Aquaculture Association Special Harvest Areas**

(a) The following special harvest areas are established for the Kodiak Regional Aquaculture Association (KRAA):

(1) Kitoi Bay Special Harvest Area: all waters of Kitoi Bay west of a line from 58° 10.58' N. lat., 152° 17.36' W. long. to 58° 09.50' N. lat., 152° 18.70' W. long.;

(2) Spiridon Bay Special Harvest Area: all waters of Telrod Cove north of a line extending from Stream Point at 57° 39.00' N. lat., 153° 38.50' W. long., to a point at 57° 38.80' N. lat., 153° 37.70' W. long.;

(3) Foul Bay Special Harvest Area: all waters of Foul Bay east of 152° 47.20' W. long.;

(4) Waterfall Bay Special Harvest Area: all waters of the stream terminus of streams No. 251-821 and 251-822 to a straight line extending northwesterly from 58° 24.15' N. lat., 152° 28.23' W. long. to 58° 25.60' N. lat., 152° 30.80' W. long.; the numbered streams in this paragraph are identified on the ADF&G *Kodiak Area Salmon Statistical Chart* adopted by reference in 5 AAC [18.350](#);

(5) Settler Cove Special Harvest Area: all waters of Settler Cove west of 152° 50.80' W. long.

(b) A hatchery permit holder harvesting salmon within a special harvest area under the terms of a hatchery permit is exempt from the provisions of 5 AAC [18.310](#) and 5 AAC [18.320](#). The commissioner shall open and close, by emergency order, fishing periods during which the hatchery permit holder may harvest salmon within the designated special harvest area.

(c) Notwithstanding 5 AAC [18.330](#), legal gear for the hatchery permit holder in a special harvest area is purse seine and beach seine.

## **5 AAC 40.100. Applicability of regulations**

The provisions of 5 AAC [40.110](#) - 5 AAC [40.990](#) govern the permit application process for private nonprofit salmon hatcheries, and establish guidelines and procedures regarding the operation of permitted hatcheries.

## **5 AAC 40.110. Authority**

The commissioner will review and take action on each application for a private nonprofit salmon hatchery.

## **5 AAC 40.120. Pre-application assistance**

An applicant may request assistance in preparing an application or conducting related activities. The PNP coordinator, or the department area management biologist, will provide assistance to the extent practicable.

## **5 AAC 40.130. Management feasibility analysis**

(a) The department will assist an applicant by preparing a management feasibility analysis for each proposed hatchery site. The analysis will be completed before submittal of an application for a private nonprofit salmon hatchery permit. An analysis is based on information provided by the applicant to the PNP coordinator, including

- (1) the location of the facility;
- (2) the species desired for hatchery production;
- (3) the run timing, by species;
- (4) the incubation and rearing levels desired during the first reproductive cycle, by species; and
- (5) the incubation and rearing levels desired at full capacity, by species.

(b) Within 30 days after receipt by the PNP coordinator of the information described in (a) of this section, the department will complete a management feasibility analysis of the proposed hatchery. A management feasibility analysis includes, at a minimum, the following information:

- (1) an estimate of potential contributions to the common property fishery;
- (2) potential size and location of a special harvest area;
- (3) special management considerations or the need for additional studies;
- (4) potential broodstock sources;

(5) an assessment of production potentials for each species; and

(6) additional factors considered by the department to be relevant to the proposed hatchery operation.

### **5 AAC 40.140. Permit application**

An application for a hatchery permit must be submitted to the PNP coordinator. The PNP coordinator will provide an application form upon request. The application must include a completed management feasibility analysis. The applicant shall provide, in the permit application, detailed statements of operational goals, objectives, and plans.

### **5 AAC 40.150. Application fee**

An application must be accompanied by the fee required by [AS 16.10.400](#).

### **5 AAC 40.160. Acceptance determination**

(a) The PNP coordinator shall review a submitted application for completeness and determine whether it includes the completed management feasibility analysis described in 5 AAC [40.130\(b\)](#). If the PNP coordinator determines that the application form is not complete or does not contain a completed management feasibility analysis, the PNP coordinator shall request, in writing, the necessary information from the applicant to complete the application. An application will not be accepted until the PNP coordinator determines that the application is complete and that it contains a completed management feasibility analysis.

(b) The 60-day time period for processing an application under 5 AAC [40.190](#), Schedule A, will begin when the application is accepted under this section.

### **5 AAC 40.170. Regional planning team review**

(a) The appropriate regional planning team, as established under 5 AAC [40.300](#), shall review each application to determine if the proposed hatchery is compatible with the appropriate regional comprehensive salmon plan. The regional planning team shall use the following application review criteria:

(1) the contribution the proposed hatchery would make to the common property fishery;

(2) the provisions for protection of the naturally occurring stocks from any adverse effects which may originate from the proposed hatchery;

(3) the compatibility of the proposed hatchery with the goals and objectives of the comprehensive salmon plan for the region; and

(4) whether the proposed hatchery would make the best use of the site's potential to benefit the common property fishery.

(b) An applicant may review the regional planning team determination and comment on it by letter to the commissioner.

### 5 AAC 40.180. Additional information

(a) If, after an application has been accepted by the PNP coordinator, the PNP coordinator determines that more information is necessary in order for the department to evaluate the biological, management, and economic feasibility of the proposed hatchery, the PNP coordinator shall request, in writing, the necessary information from the applicant.

(b) If the requested information is not received by the PNP coordinator within 90 days of the date of the written request, the application will be rejected. Nothing in this subsection is intended to preclude an applicant from submitting another application at a later date if that application complies with 5 AAC [40.140](#) and includes the application fee required under 5 AAC [40.150](#).

### 5 AAC 40.190. Review and approval schedules

(a) Except as provided in 5 AAC [40.180](#), the application review and approval process is set out in Schedules A and B in (b) and (c) of this section.

(b) **Hatchery Permit Application Review - Schedule A.** The time frame for processing an application under Schedule A is 60 days, which is the fastest period that an application can be processed if no problems are encountered.

Applicant submits application to PNP coordinator



PNP coordinator reviews the application for completeness. If the application is incomplete, or does not contain a completed management feasibility analysis, PNP coordinator requests the necessary information from applicant.



After application is accepted, the commercial fisheries management and development (CFMD) division technical staff reviews application, submits comments to the PNP coordinator, or requests additional information from the PNP coordinator.



Department management and regional staff reviews application, submits comments to the PNP coordinator, or requests additional information from the PNP coordinator.



The regional planning team reviews application to determine if proposal is compatible with the regional comprehensive salmon plan; send recommendations to the commissioner.



Basic management plan (BMP) is drafted by department area staff, applicant, and the PNP coordinator.



The application and BMP are completed. The department schedules a public hearing (AS 16.10.410, 5 AAC 40.210, and 5 AAC 40.820).

Note: All requests from department technical, management, and regional staff for additional information must be directed to the PNP coordinator.

**(c) Consistency Finding and Issuance of Private Nonprofit Hatchery Permit - Schedule B.**  
The time for processing an application under Schedule B is 75 days.

Completed application with Basic Management Plan (BMP): 30 –day notice published for public hearing on the completed application and BMP.



Public hearing held (AS 16.10.410, 5 AAC 40.210, and 5 AAC 40.820). Public hearing process concludes 10 days after oral hearing to allow the department to respond to specific objections.



BMP finalized by applicant and PNP coordinator after completion of public hearing.



Proposed consistency finding by the division of governmental coordination (DGC).



Consistency finding by DGC. Issuance or denial of private nonprofit hatchery permit by commissioner.

(d) If additional information is requested from the applicant by the PNP coordinator at any time during the review and approval process set out in 5 AAC [40.190](#), Schedule A, the remainder of the 60-day time period will be suspended until the requested information is received by the PNP coordinator and determined to be sufficient.

### **5 AAC 40.200. Completeness determination**

For the purpose of complying with the project consistency review of the Alaska Coastal Management Program, as outlined in 6 AAC [50.010](#) - 6 AAC [50.190](#), a completed application for a private nonprofit hatchery permit must include both an application which has been accepted by the PNP coordinator and a draft basic management plan, prepared under 5 AAC [40.820](#), for the operation of the facility.

## **5 AAC 40.210. Public hearing**

(a) The department will conduct a public hearing on each completed permit application. The commissioner will give notice of public hearing at any time after acceptance of an application. The notice will be given at least 25 days before a public hearing, and the notice will, in the commissioner's discretion, be given before the completion of the draft basic management plan. The hearing will be held under the following sequential procedures:

(1) the commissioner will make an introductory statement;

(2) the applicant shall make a presentation of the proposed hatchery plans, describing its location, incubation plans, the capacity of the facility, the donor stock source, and other relevant facts that may be of interest to the department or the public;

(3) the department will present the draft of the basic management plan for the proposed facility, including a presentation on fish culture aspects, production considerations, and a presentation of the management section of the basic management plan by the local commercial fisheries and sport fisheries area management biologist; and

(4) the commissioner will open the floor for public testimony and questions on all aspects of the proposed facility.

(b) The department will respond in writing within 10 working days to any specific objections offered by a member of the public at the hearing.

(c) The department will accept written comments for 15 days after the hearing, and will respond in writing, within 10 working days after receipt, to any specific objections received within that time. The public hearing process concludes 15 days after the oral hearing is held.

## **5 AAC 40.220. Review and determination**

(a) The commissioner will review the following information, compiled by the PNP coordinator, before rendering a decision on an application:

(1) recommendations from the regional planning team;

(2) recommendations resulting from the department's review of the application; and

(3) the results of the public hearing regarding the proposed facility.

(b) The commissioner will render a decision on the completed application, and notify the applicant in writing, within 75 calendar days after an application is complete. The commissioner's decision will be based on the following considerations:

(1) The physical and environmental nature of the proposed location must be suitable for enhancing runs or for establishing new runs, and must have the potential to make a reasonable

contribution to the common property fishery. The proposed hatchery returns may not unreasonably or adversely affect management of natural stocks. The returns for the proposed hatchery may not require significant alterations in traditional fishery time, area, gear type, or user group allocations.

(2) The operation of the proposed hatchery must make the best use of the site's potential, to benefit the common property fishery. In order to achieve optimum public benefit from the state's private nonprofit hatchery program and ensure that the proposed hatchery is in the best interests of the public, enhancement sites must be developed to their fullest potential, with consideration to appropriate species and technological use of the site.

(3) The proximity of the proposed hatchery to an area that will allow for a segregated harvest of hatchery stocks without adversely affecting natural stocks is an important factor. The harvest area of the proposed hatchery must be of sufficient size to allow harvest of hatchery returns, and may not otherwise limit harvests to a location where fish would not be expected to be of sufficient quality to satisfy the requirements of [AS 16.10.450](#) regarding fish for human consumption.

(4) The proposed hatchery must have available donor sources that are approvable under 5 AAC [41](#). Proposed donor sources for hatchery broodstock must be able to meet necessary first-cycle egg take levels under department removal schedules.

(5) The proposed hatchery must have a secured water source and delivery system that is adequate for the proposed levels of incubation and rearing. The security of the water source must be demonstrated through the appropriate water use permits, annual hydrographs, chemical analysis of the water source, and any provisions necessary for recycling and depuration.

(6) The proposed hatchery facility and water intake structures may not be located in streams or reaches of streams that have dynamic flooding characteristics or that have significant and rapid bedload transport that may endanger water intake galleries, weirs, the facility, or the reliability of the water source for the proposed hatchery.

(7) The proposed hatchery must allow for the maintenance of adequate instream flows below the hatchery or any hatchery-related facilities, such as water intake structures, to support natural stocks.

(8) The proposed hatchery plans and staffing plans must demonstrate a reasonable level of operational feasibility and an acceptable degree of potential success.

(c) If the application is approved, the commissioner will, as a condition of the permit, require the permit holder to provide for suitable fish-passage facilities in order to accommodate acceptable upstream and downstream passage of fish, if passage facilities are determined by the department to be necessary.



### **5 AAC 40.230. Reconsideration**

An application for a private nonprofit salmon hatchery permit which has been denied by the commissioner will, in the commissioner's discretion, be reconsidered if the applicant provides new or additional information that may have altered the original decision.

### **5 AAC 40.240. Permit revocation**

(a) The commissioner will revoke a hatchery permit if the commissioner determines that at the end of five years from the date the permit was issued, the permit holder has not undertaken substantial ongoing work to construct and operate a hatchery facility in compliance with the terms and conditions specified in the permit and the facility development schedule specified in the basic management plan required by 5 AAC [40.820](#).

(b) To initiate revocation of a permit under this section, the PNP coordinator shall notify the permit holder, in writing, of the proposed revocation. The permit holder may have 30 days from the date of the notice of the proposed revocation to submit information to the commissioner to show that the permit holder has undertaken substantial ongoing work to construct and operate a hatchery facility in compliance with the terms and conditions specified in the permit and the facility development schedule specified in the basic management plan required by 5 AAC [40.820](#).

(c) The PNP coordinator shall provide written notice of the proposed revocation of the hatchery permit to the regional planning team for the area in which the proposed hatchery is permitted. The regional planning team may have 90 days from the date of the notice to review the proposed revocation and submit comments on it to the commissioner.

### **5 AAC 40.300. Regional planning teams in general**

The commissioner will establish regions and regional planning teams for the primary purpose of developing comprehensive salmon plans for various regions of the state. The provisions of 5 AAC [40.300](#) - 5 AAC [40.370](#) govern the structure and functions of each regional planning team and the development of a comprehensive salmon plan for each region.

### **5 AAC 40.310. Regional planning team composition**

(a) Each regional planning team consists of six members. Three are department personnel appointed by the commissioner, and three are appointed by the board of directors of the appropriate regional aquaculture association, qualified under [AS 16.10.380](#).

(b) The commissioner will, in his or her discretion, request the involvement of representatives of federal and state agencies to assist a regional planning team if their contribution will aid in the development of the regional comprehensive plan.

### **5 AAC 40.320. Chairman of regional planning team**

- (a) Each regional planning team shall elect a chairman to serve at the pleasure of the team.
- (b) The chairman or his delegate shall
  - (1) conduct regional planning team meetings, including recording of proceedings, and employing agreed-upon rules of order;
  - (2) set the agenda and meeting time and place for regional planning team meetings; and
  - (3) coordinate regional planning team staff in the accomplishment of tasks assigned to the chairman by the team, including
    - (A) providing the commissioner with team communications requiring commissioner review or approval;
    - (B) contacting members to determine who will be attending the next scheduled meeting; and
    - (C) preparing minutes of the previous meeting.

### **5 AAC 40.330. Quorum and voting**

A regional planning team may not transact business without a simple majority of four members. Voting procedures may be established at the discretion of the membership.

### **5 AAC 40.340. Regional planning team responsibility**

Each regional planning team shall prepare a regional comprehensive salmon plan, for the appropriate region, to rehabilitate natural stocks and supplement natural production, with provisions for both public and private nonprofit hatcheries. Each region planning team shall consider the needs of all user groups and ensure that the public has opportunity to participate in the development of the comprehensive salmon plan. Each regional comprehensive plan must define regional production goals by species, area, and time.

### **5 AAC 40.345. Southeast Alaska**

In accordance with the Southeastern Alaska Area Enhanced Salmon Allocation Management Plan in 5 AAC [33.364](#), the joint Northern and Southern Southeast Regional Planning Team shall make annual recommendations to the commissioner on production changes to salmon enhancement projects to comply with allocation plans.

### **5 AAC 40.350. Public notice**

The chairman of the regional planning team, or his designee, shall give two weeks' notice, in a newspaper of general circulation in the appropriate region, of a planning team meeting. The chairman shall also give notice to radio and television stations in the appropriate region, for broadcast as no-cost public service messages.

### **5 AAC 40.360. Public involvement**

Each regional planning team shall encourage public participation during all stages of the development and review of regional comprehensive salmon plans.

### **5 AAC 40.370. Plan approval**

- (a) A draft regional comprehensive salmon plan must be submitted to the PNP coordinator for department review and comment.
- (b) The draft regional comprehensive salmon plan must be distributed for public review.
- (c) The regional planning team shall respond to comments received as a result of these reviews, and may incorporate them in the final draft of the regional comprehensive salmon plan.
- (d) The regional planning team shall submit a final draft of the regional comprehensive salmon plan to the commissioner for review and approval.

### **5 AAC 40.800. Nontransferability of permits**

A hatchery permit is not transferable. Another person wishing to obtain a permit to operate a hatchery at a location which is already a currently permitted site, shall submit an application, which is subject to the same application review schedule as outlined in 5 AAC [40.110](#) - 5 AAC [40.230](#). If the assets, or control, of a private nonprofit corporation that holds a hatchery are transferred to a degree considered substantial by the department, the corporation shall submit a new application for a hatchery permit.

### **5 AAC 40.810. Preference right**

- (a) A preference right under [AS 16.10.400](#) applies to a potential hatchery site, and does not constitute an approval of a permit.
- (b) As part of the pre-application assistance described in 5 AAC [40.120](#), the PNP coordinator will inform the applicant whether a qualified regional association or an approved local nonprofit hatchery corporation has an established preference right to the identified site.

(c) The PNP coordinator will notify the appropriate qualified regional association, by certified letter, of an applicant's intent to apply for a hatchery site if that site has been identified as a potential hatchery site in the comprehensive plan for the region.

(d) Within three weeks after receiving the notification, the qualified regional association may respond, by certified letter, to the PNP coordinator to establish a preference right at that location.

(e) If the qualified regional association exercises a preference right for that site, the association may, within one year, submit an application for acceptance. If an application is not submitted and accepted within one year, the qualified regional association relinquishes its preference right to that location.

(f) A local nonprofit hatchery corporation is eligible to establish a preference right to a proposed site if the corporation receives approval from the qualified regional association. That preference right is identical to the one which can be established by a qualified regional association.

(g) A local nonprofit hatchery corporation seeking regional association approval shall send a notice, by certified letter, to the PNP coordinator at the same time that a certified letter requesting approval is sent to the qualified regional association.

(h) all applicants for a permit, including local nonprofit corporations, local nonprofit hatchery corporations approved by the qualified regional associations, shall follow the application procedures outlined in 5 AAC [40.110](#) - 5 AAC [40.230](#).

### **5 AAC 40.820. Basic management plans**

(a) A hatchery operator shall manage the hatchery and its salmon returns in accordance with a basic management plan approved by the commissioner. Before the public hearing held under 5 AAC [40.210](#) on the proposed hatchery, department staff, in conjunction with the applicant, shall develop a draft basic management plan that includes a facility development schedule of no more than five years. Department staff and the applicant shall present the draft basic management plan and facility development schedule at the public hearing and shall make copies available for public review and comment at the hearing.

(b) If, following the public hearing, the commissioner decides to issue a permit for the proposed hatchery, department staff shall finalize the basic management plan and facility development schedule after all comments have been considered. The final basic management plan, which includes a facility development schedule, describes the conditions under which the permit will be implemented, and is an addendum to the permit.

### **5 AAC 40.830. Hatchery inspection**

The permit holder shall notify the PNP coordinator when construction of the hatchery has been completed and the facility is ready for operation. The facility must be inspected and approved by the department before the permit holder may start operations.

## **5 AAC 40.840. Annual management plans**

(a) Beginning with the first year of operation of the hatchery, and on an annual basis after that, the department will prepare, in conjunction with the permit holder, an annual management plan to guide and condition hatchery operations for the succeeding calendar year.

(b) The PNP coordinator will organize the appropriate department staff and the permit holder in preparing a draft annual management plan. The appropriate regional planning team and the Department of Commerce, Community, and Economic Development may also review the plan. This plan must organize and guide the hatchery's operations, for each calendar year, regarding production goals, broodstock development, and harvest management of hatchery returns.

## **5 AAC 40.850. Notice of permit alteration**

(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.

## **5 AAC 40.860. Performance review**

(a) Based upon a department internal review, the PNP coordinator will notify the commissioner if a hatchery operator's performance is inadequate, according to the conditions under which the permit was granted.

(b) The commissioner will, in his or her discretion, consider a permit alteration, suspension, or revocation in accordance with [AS 16.10.430](#). If the commissioner decides to consider a permit alteration, suspension, or revocation, the coordinator will notify the appropriate regional planning team. The regional planning team may make a written recommendation to the commissioner on the proposed alteration, suspension, or revocation. The regional planning team shall use the following performance standards in their review, evaluation, and recommendation to the commissioner, including whether:

- (1) survivals in the hatchery are more than the minimum standards described in (c) of this section for a period of greater than four years;
- (2) the transport of broodstock from wild sources does not continue for longer than one cycle of the particular species without reevaluation of hatchery operations;
- (3) the hatchery contributes to the common property fishery;
- (4) the hatchery does not significantly impact wild stocks in a negative manner;
- (5) the hatchery fulfills the production objectives described in the terms of the hatchery permit; and
- (6) there are any mitigating circumstances which were beyond the control of the hatchery operator.

(c) Minimum hatchery survival standards are as follows:

	Survival for this stage	Cumulative Survival
For captured broodstock to egg take	70%	
Green egg to eyed egg	80%	80%
Eyed egg to emergent fry	85%	68%
Emergent to fed fry 1	90%	61%
Fed fry to fingerling 2	90%	55%
Fingerling to smolt	75%	41%

1 Fry achieving up to 25% weight gain from swim-up.

2 Fry achieving substantially more than 25% weight gain from swim-up.

### **5 AAC 40.870. Reporting of mortality**

(a) If, in any of the hatchery operations during the year, an event occurs which results in fish or egg mortalities above the minimum hatchery survival standards defined in 5 AAC [40.860](#), the operator shall inform the PNP coordinator immediately and shall submit an incident report, which must include

- (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;

(5) corrective action taken and proposed measures to eradicate future problems; and

(6) an assessment of the general impact on the program.

(b) The operator shall complete and submit the mortality incident report to the PNP coordinator within 15 days after the incident occurs.

### **5 AAC 40.880. Surplus salmon eggs**

(a) Salmon eggs are surplus if the following conditions are met:

(1) the hatchery operator no longer needs to return to the indigenous stocks in order to develop the broodstock for the hatchery; and

(2) broodstock needs for the hatchery, as identified in the annual management plan, must have been achieved through salmon returning to the facility.

(b) A proposed sale of surplus salmon eggs by a permit holder must be identified in the annual management plan for the facility.

(c) A permit holder shall obtain a permit alteration from the commissioner if the eggs taken for sale purposes are to be incubated at the facility before transferral to the recipient facility.

(d) The appropriate fish-transport permit must be approved by the commissioner before any surplus salmon eggs are transferred from the facility to the recipient facility.

### **5 AAC 40.890. Information**

The department will exchange information with the Department of Commerce, Community, and Economic Development, including copies of annual reports required to be submitted under [AS 16.10.470](#), in order to ensure consistency between reports submitted by the permit holder to both agencies.

### **5 AAC 40.990. Definitions**

In this chapter,

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

(2) "common property fishery" means any fishery in which the general public is allowed to harvest fish subject to state and federal law;

(3) "completed application" means a final application that has been accepted by the commissioner and that contains a draft basic management plan for the operation of the facility and a completed management feasibility analysis;

- (4) "department" means the Alaska Department of Fish and Game;
- (5) "enhancement" means a strategy designed to supplement allowable harvest of natural freshwater and anadromous species; enhancement activities are primarily designed to implement artificial or semi-artificial production systems or to increase the amount of productive natural habitat;
- (6) "escapement" means all fish that escape the common property fishery and includes two categories of escapement:
- (A) the number of broodstock or spawners required to perpetuate and achieve natural, semi-artificial, and artificial production objectives; and
- (B) the number of hatchery-produced fish taken for the hatchery harvest requirement, to be used to pay for the hatchery's reasonable operating and capital costs, at current market prices for the species involved;
- (7) "permit" means a private nonprofit salmon hatchery permit, issued by the commissioner, which has not been suspended or revoked;
- (8) "PNP coordinator" means the manager of the private nonprofit hatchery program within the department;
- (9) "regional comprehensive salmon plan" is a document that integrates and assembles all relevant information regarding the development and protection of the salmon resource, for a specific long-range period of time, into a strategic plan for an established region of the state;
- (10) "rehabilitation" means a strategy directed toward restoring debilitated natural stocks to optimum production levels; rehabilitation strategies consist of regulatory and nonregulatory activities; nonregulatory activities are directed at increasing the survival of debilitated broodstock and include removal of migration inhibitors, stream restoration, incubation and subsequent planting of eyed eggs, fry and fingerlings, lake fertilization and predator-competitor control;
- (11) "salmon stock" means a population of salmon of a single species identified with a specific water system or portion of a water system, which share a common spawning period;
- (12) "special harvest area" means an area designated by the commissioner or the Board of Fisheries where hatchery returns are to be harvested by the hatchery operators, and, in some situations by the common property fishery;
- (13) "terminal harvest area" means an area designated by the commissioner, Board of Fisheries regulation, or department emergency order where hatchery returns have achieved a reasonable degree of segregation from naturally occurring stocks and may be harvested by the common property fishery without adverse effects.



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

### **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.

### **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, broodstock, 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.

### **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 broodstock 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.

### **5 AAC 41.020. Inspection for disease of broodstock**

If the disease history of the broodstock is unavailable or incomplete as required by 5 AAC [41.010\(a\)](#) (5), an inspection of the broodstock 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 broodstock 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.

## **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.

## **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.
- (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.

## **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 broodstock 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](#).

## **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 purposes 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.

## **5 AAC 41.070. Prohibitions on importation and release of live fish**

(a) Except as provided in (b) - (d) 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 native to and originating from the Pacific Coast of North America may be imported for aquaculture purposes, under a permit required by this chapter, and may be released into the waters of the state only if the

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

(2) 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.

(d) Weathervane scallops originating from wild stocks or cultured stocks in the Southeastern Alaska and Yakutat Areas may be imported for aquaculture purposes and may be released only into the waters of the Southeastern Alaska and Yakutat Areas under a permit required by this chapter only if the

(1) broodstock was taken under the provisions of a permit issued by the department;

(2) broodstock was certified by the department's fish pathology section before transport out of the state;

(3) broodstock was held continuously in a department-approved isolation facility;

(4) weathervane scallops proposed for import have been held continuously in a department-approved isolation facility before import into the state;

(5) disease history, or an inspection, of the weathervane scallops proposed for import indicates no incidence of a disease of transport significance.

### **5 AAC 41.080. 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;

Herpesvirus 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* - enteric 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, or 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.

### **5 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.

### **5 AAC 41.100. Definitions**

In addition to the definitions set out in [AS 01.10.060](#) and [AS 16.05.940](#), in 5 AAC [41.001](#) - 5 AAC [41.100](#)

(1) "completed application" means a form, series of forms, letters, or other documents that provide all of the information necessary for the commissioner or the commissioner's 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

230 South Franklin Street

Juneau, Alaska 99801

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 the commissioner's 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.

## **Chapter 93. Department Programs**

### **5 AAC 93.310. Waste of salmon**

(a) Unless authorized under 5 AAC [93.310](#) - 5 AAC [93.390](#), a person may not waste salmon intentionally, knowingly, or with reckless disregard for the consequences.

(b) Salmon is intended for a use listed in [AS 16.05.831](#) (a)(1) - (a)(3) if the salmon was taken by or is possessed by a person who has an authorization under state or federal law to take, process for sale, or sell the salmon.

(c) In [AS 16.05.831](#) and this section, the commissioner considers waste to not include (1) normal inadvertent loss of flesh associated with uses of salmon described in [AS 16.05.831](#) (a)(1) - (a)(3) or authorized under 5 AAC [93.310](#) - 5 AAC [93.390](#) where the loss cannot be prevented by practical means; or (2) failure to use or sell spoiled, diseased, or contaminated salmon flesh if the spoilage or contamination is not the result of intentional, knowing, or reckless actions; and, if the salmon could legally have been sold, the person disposing of the salmon complies with the requirements of (d) of this section.

(d) Before disposing of spoiled, diseased, or contaminated salmon that could legally have been sold, a person shall record the number of salmon in a logbook, available from the department, by date, species, and reason for disposal. By December 31 of the year of disposal, the person shall submit a completed logbook to the department.

(e) A logbook maintained, but not yet submitted under (d) of this section, shall be provided, upon request, to the department, the department's agent, or the Department of Public Safety for inspection.

(f) Logbooks submitted under this section are public documents.



(g) In this section,

(1) "flesh" means all muscular body tissue surrounding the skeleton;

(2) "person" has the meaning given in [AS 01.10.060](#), including joint ventures and other business entities; for purposes of this section "person" does not include the state or the federal government.

## **5 AAC 93.330 Hatchery salmon use authorization**

(a) Notwithstanding [AS 16.05.831](#) (a) and 5 AAC [93.310](#), the commissioner may, by emergency order, open a fishing season in any area during which a hatchery operator, or a processor or catcher processor working under contract for the hatchery operator, may remove and sell pink and chum salmon roe without further utilization of the carcasses of the salmon under this section.

(b) The provisions of this section apply only to pink and chum salmon that

(1) originated from a hatchery;

(2) are harvested in a hatchery terminal harvest area or hatchery special harvest area;

(3) if left unharvested may create a public nuisance or stray and intermix with or interfere with natural salmon stocks;

(4) have matured to the point that the hatchery operator reasonably determines that the flesh of the salmon cannot be marketed or put to other lawful use without an unreasonable risk of incurring a financial loss;

(5) are required to be harvested under the terms of a hatchery permit;

(6) are retained until after completion of a fish ticket; and

(7) are disposed of at the same time as other salmon reported on the same fish ticket.

(c) Before operating under this section in any calendar year, a hatchery operator must

(1) submit a written notice of intent to operate to the department and identify any processor or catcher processor that will be involved in operations; and

(2) receive a written acknowledgment from the department that the department has received a completed notice of intent to operate and that the hatchery operator and any processor or catcher processor it proposes to utilize is not precluded from operating under this section.

(d) After receiving the written acknowledgment described in (c)(2) of this section, during a season opened by emergency order under this section, a hatchery operator, or a processor or

catcher processor working for the hatchery operator, may remove the roe from pink and chum salmon carcasses without further use of the carcasses if the hatchery operator, processor, or catcher processor, for each lot of salmon carcasses to be disposed

(1) before disposal, makes a written determination that the requirements of (b) of this section are met;

(2) keeps written records of all direct costs of harvesting the salmon, removing and processing the roe, disposing of the carcasses, marketing of the roe, and of all revenue generated from sales of the roe; and

(3) surrenders to the state all proceeds from sale of the roe minus the direct costs of harvesting the salmon, removing and processing the roe, disposing of the carcasses, and marketing of the roe.

(e) A hatchery operator, processor, or catcher processor shall retain all records required under this section for seven years.

(f) Before December 15 of a year in which a hatchery permit holder submits a written notice of intent to operate under this section, the hatchery permit holder shall submit to the department a written report documenting

(1) the number of pink and chum salmon carcasses disposed of under this section, by species;

(2) copies of the written records required under this section from the hatchery operator and from any processor or catcher processor working for the hatchery operator;

(3) copies of records documenting the surrender of proceeds required by (d)(2) of this section.

(g) Reports and other information provided to the department under this section are public records.

(h) Records maintained under this section shall be provided, upon request, to the department, the department's agent, the Department of Revenue, or the Department of Public Safety for inspection.

(i) A hatchery permit holder, processor, or catcher processor disposing of pink or chum salmon carcasses under this section shall comply with all applicable state, federal, and local laws.

(j) A hatchery operator, processor, or catcher processor may not operate under this section if notified by the commissioner that its operations are not covered by this section. The commissioner will notify a hatchery permit holder, processor, or catcher processor, in writing, that its operations are not covered by this section, if the commissioner determines that the permit holder, processor, or catcher processor has

(1) substantially failed to comply with the requirements of this section;

(2) failed to submit a report required by this section or to maintain records required by this section;

(3) falsified information contained in reports or records required by this section;

(4) disposed of salmon in a manner inconsistent with state, federal, or local laws.

(k) If the commissioner determines that operations under this section are not consistent with the maximum and wise use of the resource, the commissioner may, by emergency order, close the season and reopen a new season during which the terms of an authorization are modified or revoked for salmon processed or caught in any fishing district, subdistrict, or section.

(l) In this section, "direct costs"

(1) includes shipping and storage costs;

(2) does not include overhead and general marketing costs.

### **5 AAC 93.350. General authorizations for use of salmon**

(a) Notwithstanding [AS 16.05.831](#) (a) and 5 AAC [93.310](#), and unless otherwise prohibited by law, under the authorization of this subsection a person may use salmon taken in a hatchery cost recovery fishery, or in commercial, personal use, or subsistence fishery for bait.

(b) Notwithstanding [AS 16.05.831](#) (a) and 5 AAC [93.310](#), and unless otherwise prohibited by law, under the authorization of this subsection a person may use salmon taken in a commercial fishery or hatchery cost recovery fishery for the production of fertilizer or fish meal.

(c) Notwithstanding [AS 16.05.831](#) (a) and 5 AAC [93.310](#), and unless otherwise prohibited by law, under the authorization of this subsection a person may use salmon taken in a hatchery cost recovery fishery, conducted in a special harvest area, for the production of fish oil.

(d) Notwithstanding [AS 16.05.831](#) (a) and 5 AAC [93.310](#), a person may dispose of the carcass of a salmon from which milt or eggs are extracted under a permit issued under [AS 16.10.400](#) - 16.10.480 for lawful use as broodstock.