

Alaska Salmon Hatchery and Fishery Enhancement Permitting and Planning Regulations

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CHAPTER 40. PRIVATE NONPROFIT SALMON AND SHELLFISH HATCHERIES

ARTICLE 1. GENERAL

5 AAC 40.005. General

- (a) The harvest of salmon and shellfish inhabiting the water of the state, regardless of whether the salmon or shellfish are naturally or artificially propagated, may only be conducted under regulations adopted by the Board of Fisheries or the commissioner.
- (b) The harvest of salmon and shellfish produced by a private nonprofit hatchery is governed by the regulations adopted by the Board of Fisheries or the commissioner. The board may develop regulations after review of the harvest plans or other materials, information, or testimony presented by a regional association, hatchery operator, the Department of Commerce, Community, and Economic Development, the Department of Fish and Game, commercial fishermen, or an interested party.
- (c) In an area where salmon hatchery returns enter a segregated location near the release site and can be harvested without significantly affecting wild stocks or a hatchery permit has been issued for shellfish enhancement, a special harvest area may be designated within the hatchery permit, by regulation adopted by the board, or by emergency order issued by the commissioner.
- (d) A private nonprofit hatchery permit holder or a hatchery permit holder's agent, contractee, or employee may only harvest salmon or shellfish for the hatchery in the applicable special harvest area. Nothing in this subsection prohibits a special harvest area from being open to commercial, sport, or subsistence fishing or a combination thereof as provided in regulations adopted or an emergency order issued under this Title.
- (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) An agent, contractee, or employee of a hatchery permit holder may only harvest salmon or shellfish for the hatchery in a special harvest area if the agent, contractee, or employee possesses a written authorization from the hatchery permit holder and harvests the salmon or shellfish in accordance with the terms of the written authorization. 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 the 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) A hatchery permit holder shall, with respect to salmon or shellfish harvested by the permit holder or the permit holder's agent, contractee, or employee, comply with the applicable provisions of 5 AAC 39.130 as though that person is 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) A hatchery permit holder that harvests within a special harvest area is exempt from the provisions of 5 AAC 39.290.
- (d) A person who owns a commercial fishing vessel or that person's agent, when taking salmon or shellfish in a special harvest area under authorization from the hatchery permit holder and operating under a special harvest area entry permit, is 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.

ARTICLE 3. APPLICABILITY OF REGULATIONS.

5 AAC 40.100. Applicability of regulations

The provisions of 5 AAC 40.110 - 5 AAC 40.990 govern the hatchery permit application process for private nonprofit hatcheries and establish guidelines and procedures regarding the operation of permitted hatcheries.

ARTICLE 4. PERMITTING PROCEDURES

5 AAC 40.110. Authority

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

5 AAC 40.120. Pre-application assistance

When preparing an application for a hatchery permit or conducting a related activity, an applicant may request the department's assistance. The PNP coordinator will provide assistance to the extent practicable.

5 AAC 40.130. Management feasibility analysis

- (a) An applicant may submit a request to the PNP coordinator for the department to prepare a management feasibility analysis for a proposed hatchery site. The department must complete and provide the analysis to the applicant before the applicant may submit an application for a hatchery permit under 5 AAC 40.140. The department will base the analysis on the following information that must be provided by the applicant to the PNP coordinator:
- (1) the location of the facility;
 - (2) the desired species and broodstock for hatchery production;
 - (3) if applicable, the run timing, by species of salmon;
 - (4) the incubation and rearing levels desired during the first reproductive cycle, by species;
 - (5) the incubation and rearing levels desired at full capacity, by species;
 - (6) if requested by the PNP coordinator, other information necessary for the department to complete the analysis.
- (b) Not later than 90 days after the PNP coordinator receives from the applicant the information described in (a) of this section, the department will complete a management feasibility analysis of the proposed hatchery.
- (c) The department will include the following information in a management feasibility analysis:
- (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 a proposed hatchery operation.

5 AAC 40.140. Hatchery permit application

An application for a hatchery permit must be submitted to the PNP coordinator. The PNP coordinator will provide an application upon request. The applicant shall provide, in the hatchery permit application, detailed statements of operational goals, objectives, and plans. The application must include a management feasibility analysis completed in accordance with 5 AAC 40.130.

5 AAC 40.150. Application fee

An application for a hatchery permit must include a

- (1) \$0 application fee for a salmon hatchery permit, as required under AS 16.10.400; or
- (2) \$0 application fee for a shellfish hatchery permit, as required under AS 16.12.010.

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. If the PNP coordinator determines that the application 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 begins when the application is accepted under this section.

5 AAC 40.170. Regional planning team review of salmon hatchery operations

- (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 for a hatchery permit 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 the necessary information from the applicant in writing. If the PNP coordinator submits a written request for additional information to the applicant, the 60-

day time period of the application review and approval process described in 5 AAC 40.190 is suspended until the PNP coordinator receives the additional 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 40.185. Basic management plan.

- (a) The hatchery permit application process includes the development, finalization, and approval of a basic management plan. A basic management plan describes how the proposed hatchery and facility will be developed for the first five years and is drafted by the applicant, department area staff, and the PNP coordinator. The basic management plan exists only as a draft basic management plan until approved by the commissioner.
- (b) A basic management plan must include the following for a proposed hatchery:
 - (1) hatchery development schedule;
 - (2) location of the facility;
 - (3) capacity of the facility;
 - (4) potential donor stock source;
 - (5) incubation plans;
 - (6) culture plans;
 - (7) release locations; and
 - (8) adult harvest plans.
- (c) An approved basic management plan is an addendum to the hatchery permit and sets out the terms of the hatchery permit.

5 AAC 40.190. Hatchery permit application review process

- (a) Except as provided in 5 AAC 40.180, the application review process for a hatchery permit is set out in (b) of this section.
- (b) An applicant shall submit an application for a salmon hatchery or shellfish hatchery permit to the PNP coordinator. Once an application has been received by the PNP coordinator, if the PNP coordinator determines that no additional action is necessary to process the application, the PNP coordinator will review and process the application within 60 days in accordance with the following review process:
 - (1) the PNP coordinator will verify that the application is complete; if the application is
 - (A) incomplete or does not include a complete management feasibility analysis, the PNP coordinator shall request the required information from the applicant in writing; or
 - (B) complete, the PNP coordinator shall accept the application and proceed with department review; the accepted application shall be provided to department technical and regional management staff;
 - (2) the department will review the accepted application and may submit comments to the PNP coordinator or request, through the PNP coordinator, additional information from the applicant; a request by the PNP coordinator for additional information from the applicant suspends the 60-day application review timeline until the requested information is received by the PNP coordinator;

- (3) the department shall work with the applicant to develop a draft basic management plan for the proposed hatchery; the draft basic management plan must be determined by the PNP coordinator to be complete before a public hearing is held under 5 AAC 40.210;
- (4) if the application is for a salmon hatchery, the appropriate regional planning team shall review the application to determine if the proposed hatchery is compatible with the regional comprehensive salmon plan developed under AS 16.10.375 and submit the team's recommendation to the commissioner;
- (5) if the application is for a shellfish hatchery, the commissioner shall consult with and solicit recommendations from federal and state agencies and technical experts in the relevant area regarding permit stipulations and issuance for the proposed hatchery;
- (6) once the PNP coordinator determines that the application, draft basic management plan, and review are complete, the department will notice and conduct a public hearing, subject to the provisions of 5 AAC 40.210, for an application for a
 - (A) salmon hatchery in accordance with AS 16.10.410;
 - (B) shellfish enhancement project in accordance with 16.12.020;
- (7) after the conclusion of the public notice and hearing, the PNP coordinator will work with the applicant to finalize the draft basic management plan;
- (8) the PNP coordinator will compile the hatchery permit application information, including the finalized draft basic management plan, for the commissioner's review and issuance of a decision in accordance with
 - (A) 5 AAC 40.220, for a salmon hatchery permit;
 - (B) 5 AAC 40.225, for a shellfish hatchery permit.

5 AAC 40.210. Public Hearing.

- (a) The department shall conduct a public hearing for a completed hatchery permit application. The commissioner shall notice the public hearing after acceptance of the hatchery permit application, not less than 25 days before the date of the public hearing. At the commissioner's discretion, the hearing may be noticed before the PNP coordinator issues a determination that the draft basic management plan is complete under 5 AAC 40.190. The hearing will be held under the following sequential procedures:
 - (1) the commissioner will make an introductory statement;
 - (2) the applicant will make a presentation of the draft basic management plan, which must include the proposed hatchery plans describing the information required to be included in a basic management plan under 5 AAC 40.185 and other relevant facts or information that may be of interest to the department or the public;
 - (3) The department will present the draft basic management plan for the proposed facility, including expected production and management, and will make copies of the draft basic management plan available for public review and comment at the hearing; and
 - (4) the commissioner will open the floor for public testimony and questions on all aspects of the proposed facility.
- (b) The department may respond to a comment, and shall respond to a specific objection, offered by a member of the public at the hearing conducted under this section not later than
 - (A) 10 days after a public hearing for a salmon hatchery permit application;
 - (B) 30 days after a public hearing for a shellfish hatchery permit application.

- (c) The department may accept written comments for 15 days after the hearing and may respond in writing, within 10 working days after receipt, to a specific objection received within that time.

5 AAC 40.220. Application review and decision for a salmon hatchery permit.

- (a) The commissioner shall review the following information, compiled by the PNP coordinator, before issuing a decision on whether to approve or deny an application for a salmon hatchery permit:
 - (1) recommendations from the regional planning team;
 - (2) recommendations resulting from the department's review of the application; and
 - (3) objections and recommendations received from the public during the public hearing regarding the proposed hatchery facility.
- (b) The commissioner will issue a decision on whether to approve or deny a salmon hatchery permit application, including the draft basic management plan, and notify the applicant of the decision in writing not later than 75 calendar days after the conclusion of the public hearing held under 5 AAC 40.210. The commissioner shall base the decision on the following:
 - (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
 - (A) unreasonably or adversely affect management of natural stocks; or
 - (B) require significant alteration of a traditional fishery time, area, gear type, or user group allocation;
 - (2) the operation of the proposed hatchery must make the best use of the site's potential to benefit the common property fishery; 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, an enhancement site must be developed to the site's fullest potential with consideration to appropriate species, technological use of the site, and available resources;
 - (3) the proximity of the proposed hatchery releases to an area that will allow for a reasonable segregation of hatchery stocks; the harvest area of the proposed hatchery must be
 - (A) of sufficient size to allow harvest of the hatchery returns; and
 - (B) may not otherwise limit a harvest to a location where fish would not be expected to satisfy the requirements of AS 16.10.450;
 - (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;
 - (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
 - (A) appropriate water use permits;
 - (B) annual hydrographs;
 - (C) a chemical analysis of the water source; and
 - (D) necessary provisions for recycling and depuration;

- (6) the proposed hatchery facility and water intake structures may not be located in a stream or in the reach of a stream that has dynamic flooding characteristics or 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 facility, including a water intake structure, to support natural stocks;
 - (8) the proposed hatchery plan and staffing plan must demonstrate operational feasibility.
- (c) If an application is approved under this section, the commissioner shall, as a condition of the hatchery 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 hatchery permit which has been denied by the commissioner may be reconsidered if the applicant provides new or additional information that the commissioner determines may have altered the original decision. Reconsideration by the commissioner under this section does not require additional notice or public hearing on the hatchery permit application under 5 AAC 40.210.

5 AAC 40.235. Non-transferability of hatchery permit.

A hatchery permit is not transferable. A person who wishes to obtain a permit to operate a hatchery at a location that is already permitted shall submit an application subject to the application review process set out in 5 AAC 40.110 - 5 AAC 40.230. If the assets or control of a hatchery are transferred to a degree that the department considers to be substantial, the department will notify the new operator that they are required to submit a new application for a hatchery permit in accordance with this chapter. If a new hatchery permit is issued, the existing hatchery permit is terminated.

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 40.185.
- (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 40.185.

- (c) The PNP coordinator shall provide written notice of the proposed revocation of a salmon hatchery permit to the regional planning team for the area in which the proposed salmon hatchery is permitted. The regional planning team shall review and submit comments on the proposed revocation to the commissioner not later than 90 days after the date of the notice.

5 AAC 40.245. Hatchery permit alteration.

- (a) A hatchery permit holder may request alteration of an existing hatchery permit. The permit holder shall submit the permit alteration request to the PNP coordinator on a form provided by the department.
- (b) A hatchery permit holder's submission of a request for permit alteration under this section must be received by the PNP coordinator not later than February 15 of the calendar year that the proposed alteration is requested to occur. The commissioner may extend the submission deadline for a permit alteration request if the commissioner determines that the extension is justified by extraordinary circumstances or an emergency.
- (c) If a hatchery permit alteration is requested for a salmon hatchery, the appropriate regional planning team will review and make a recommendation to the commissioner on the hatchery permit alteration request.
- (d) Approval of a hatchery permit alteration by the commissioner modifies the existing hatchery permit.

ARTICLE 5. REGIONAL COMPREHENSIVE SALMON PLANS

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 chair of the regional planning team, or the chair's designee, shall give two weeks' notice, on the Alaska Online Public Notice System (AS 44.62.175), of a planning team meeting. Additionally the chair may use alternative methods to provide notice to the public that are specific to regional circumstances. The alternative methods may include department advisory announcements, publications in a newspaper of general circulation, website postings, electronic mail distribution lists, and radio or television advertisements.

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.

ARTICLE 8. GENERAL PROVISIONS

5 AAC 40.810. Preference right

- (a) A preference right under AS 16.10.400 applies to a potential salmon 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 of an application for a hatchery site that site has been identified in the comprehensive salmon plan for the region.
- (d) A qualified regional association shall respond to the PNP coordinator not more than three weeks after receiving a notification described in (b) of this section 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 that seeks qualified regional association approval of a proposed preference right for a hatchery site shall notify the PNP coordinator and 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 40.830. Facility inspection

A hatchery permit holder shall notify the PNP coordinator when construction of a hatchery has been completed and each facility of the hatchery is ready for operation. A facility must be approved by the department before the permit holder may start operations. The department may conduct an inspection of a facility at any time the facility is in operation.

5 AAC 40.840. Annual management plan.

- (a) Beginning on the first year of operation of a hatchery, and on an annual basis after that, the department shall work with a permit holder to prepare an annual management plan to guide hatchery operations in accordance with the hatchery permit. The PNP coordinator shall coordinate with the appropriate department staff and hatchery permit holder to prepare a draft annual management plan. The hatchery operator shall submit the draft annual management plan to the department not later than April 1 of each year for review by the commissioner. The

annual management plan exists only as a draft annual management plan until approved by the commissioner.

- (b) An annual management plan must be developed with consideration of a hatchery's production cycle and must organize and guide the hatchery's operations regarding
 - (1) production goals;
 - (2) broodstock management; and
 - (3) harvest management of hatchery-produced salmon or adult shellfish.
- (c) For a salmon hatchery annual management plan, a production cycle is considered to begin with adult returns that lead to egg takes and end with fish releases.
- (d) For a shellfish hatchery annual management plan, a production cycle is considered to begin with broodstock collection and end with juvenile releases.
- (e) The Department of Commerce, Community, and Economic Development may review a draft annual management plan. For a salmon hatchery, the appropriate qualified regional planning team may review a draft annual management plan.
- (f) An approved annual management plan does not limit or prohibit a permit holder from acting in accordance with the hatchery permit or an emergency order.

5 AAC 40.860. Performance review

- (a) Based on a department review, the PNP coordinator will notify the commissioner if a hatchery operator's performance is inadequate, according to the conditions under which the hatchery permit was granted.
- (b) The commissioner may, in his or her discretion, consider a hatchery permit alteration, suspension, or revocation in accordance with AS 16.10.430 for a salmon hatchery or AS 16.12.040 for a shellfish hatchery. If the commissioner considers a hatchery permit alteration, suspension, or revocation for a salmon hatchery, the PNP coordinator will notify the appropriate regional planning team. For a salmon hatchery permit, the regional planning team may make a written recommendation to the commissioner on the alteration, suspension, or revocation that is being considered. The regional planning team and department shall use the following performance standards in a review and recommendation to the commissioner by identifying whether:
 - (1) survival rates have been inadequate 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 to the hatchery operator's performance that were beyond the control of the hatchery operator.

5 AAC 40.870. Reporting of mortality

- (a) If, in any of a hatchery's operations an event occurs that results in significant mortalities, the hatchery permit holder shall inform the PNP coordinator immediately and 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 hatchery permit holder must be identified in the annual management plan for the facility.
- (c) A hatchery 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 transfer 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 by a hatchery permit holder under AS 16.10.470 or AS 16.12.110, to ensure consistency between reports submitted by the hatchery permit holder to each agency.

5 AAC 40.990. Definitions

In this chapter,

- (1) "commissioner" means the commissioner of the Department of Fish and Game or the commissioner's 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 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 salmon species 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) "hatchery permit" means a private nonprofit hatchery permit, issued by the commissioner for the construction or operation of a salmon or shellfish hatchery or facility, 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;
- (14) "broodstock" means sexually mature fish or shellfish from which gametes or progeny have been or will be extracted for use in artificial propagation.

CHAPTER 41. COLLECTION, TRANSPORTATION, POSSESSION, PROPAGATION, OR RELEASE OF AQUATIC ORGANISMS; AQUATIC FARMING

ARTICLE 1. SCOPE OF REGULATIONS.

5 AAC 41.001. Application of this chapter

The provisions of this chapter govern the collection, transportation, possession, propagation, or release of aquatic organisms transplanted for or cultivated for human consumption or sport fishing purposes, or as part of a program for scientific, educational, or propagative purposes; the collection, transportation, possession, propagation, or release of aquatic organisms for conservation purposes; and the transportation and possession of aquatic organisms for commercial purposes including aquatic farming, aquarium stocking, and guided sport ecotourism fishing. Unless specifically provided, the provisions of this chapter do not apply to the cultivation of ornamental fish.

ARTICLE 2. PERMIT SYSTEM ESTABLISHED.

5 AAC 41.005. Permit required

- (a) Except as otherwise provided, a person may not collect, transport, possess, propagate, export from the state, or release into the waters or the lands of the state, any aquatic organism, unless the person holds a fish transport or aquatic resource permit issued by the commissioner, and the person is in compliance with all conditions of the permit and the provisions of this chapter. A fish transport or aquatic resource permit will be issued for a fixed term subject to the provisions of this section. Notwithstanding the provisions of this subsection, and except as restricted under AS 16.10.240, a licensed processor may export live shellfish out of the waters of the state for human consumption without a fish transport permit only after complying with all applicable reporting requirements.
- (b) A permit issued under this chapter authorizes only that operation specified in the permit and is not transferrable. Additional personnel may engage in activities authorized by the permit only after written approval by the department. Any change of species, stock, or location of permitted activities requires a new permit. Any other change requires an amendment to the permit. Possession of a permit does not relieve the permit holder of the responsibility for securing any other local, state, or federal permits that may be required.
- (c) If the commissioner determines that an applicant made a false statement on an application, affidavit, permit, or report required by this chapter, or omitted material information, the commissioner may suspend or revoke the permit, and deny future permit applications submitted by the applicant.
- (d) Notwithstanding the expiration, termination, or suspension of a permit issued under this chapter, each permit holder is responsible for the obligations arising under the terms and conditions of the permit, and under the provisions of this chapter.
- (e) Unless otherwise provided in regulation or by emergency order, a permit is not required for transportation of aquatic organisms harvested or caught under sport, personal use, subsistence, or commercial regulations from the place of harvest or capture to a place within the state for processing, or commercially caught or harvested aquatic organisms to a place within the state for sale.

5 AAC 41.010. Uniform application procedures for fish transport and aquatic resource permits

- (a) Each applicant for a fish transport or aquatic resource permit shall submit, on a form provided by the department, the following information:
 - (1) identification of each species and location of the stock to be collected, transported, possessed, propagated, or released;
 - (2) the destination of the transported aquatic organisms and the release site;
 - (3) the number of aquatic organisms and their life history stage or age;
 - (4) a descriptive history of previous transport of the stock and related activities;
 - (5) a statement on the health or condition of the aquatic organisms, 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. If the disease history is incomplete or unavailable, a broodstock inspection and certification under 5 AAC 41.020 may be required;

- (6) isolation measures planned to control disease during transport and holding, including a description of containers, depuration measures, and plans for disinfection;
 - (7) repealed 1/10/2018;
 - (8) the source of water for holding and rearing, and proposed effluent discharge location;
 - (9) identification and status of stocks in the area of collection, holding, and release, including a statement of expected interactions with other stocks in these areas;
 - (10) a description of the methods and the expected dates of collection, transport, holding, or release;
 - (11) the purpose and expected benefits of the activity; and
 - (12) evaluation plans.
- (b) A completed application must be submitted to the department as specified on the application form.
- (c) If the commissioner 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.

5 AAC 41.020. Inspection for disease of broodstock

If the disease history of the broodstock is unavailable or incomplete and the department requires under 5 AAC 41.010(a)(5), an inspection of the broodstock to detect disease must be scheduled by the applicant and conducted by the appropriate fish pathology section of the department's division of commercial fisheries, 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, suspension, denial, or revocation

For fish transport or aquatic resource permits issued under this chapter,

- (1) the commissioner will issue a permit if the commissioner determines that the proposed activity will not adversely affect the continued health and perpetuation of native, wild, or enhanced stocks of aquatic organisms, fisheries, and research, management, monitoring, or enforcement activities;
- (2) the commissioner will issue a permit with terms and conditions attached if the commissioner determines that the terms and conditions are necessary to protect the continued health and perpetuation of native, wild, or enhanced stocks of aquatic organisms, fisheries, and research, management, monitoring, or enforcement activities;
- (3) the commissioner will deny a permit, or an amendment to a permit, if the applicant's proposed plans, methods, or specifications are not adequate to protect the continued health and perpetuation of native, wild, or enhanced stocks of aquatic organisms, fisheries, and research, management, monitoring, or enforcement activities. Written notice of denial shall be given to the applicant, including the reasons for denial.
- (4) the commissioner will approve, condition, or deny a permit not later than 45 days after a completed application as specified in 5 AAC 41.010 has been received in the appropriate office. The commissioner may extend the review period for complex or large projects.

- (5) the commissioner shall revoke or suspend the permit, or particular provisions of the permit including amendments, if the commissioner finds
 - (A) 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 enhanced stocks of aquatic organisms, fisheries, and research, management, monitoring, or enforcement activities; or
 - (B) the permit holder has failed to comply with permit terms or the provisions of this chapter;
- (6) the commissioner may reconsider a denial, suspension, or revocation of a permit if the applicant submits in writing new or additional information that may have altered the original decision.

5 AAC 41.040. Amendments to the permit

- (a) A permit holder may request amendment of a fish transport or aquatic resource permit by submitting, in writing to the department office where the permit was issued, an amended plan and a statement explaining why the amendment is necessary.
- (b) The commissioner will issue an amendment to the permit upon a determination made under 5 AAC 41.030(1) or (2). The commissioner will approve, condition, or deny a request for amendment no later than 30 days after receipt of the request.
- (c) The commissioner may alter or amend permit conditions at any time if additional information, unforeseen changes, or changed circumstances affect the adequacy of permit terms and conditions.
- (d) Amendments approved by the commissioner become effective when received by the permit holder, or at a later date specified in the amendment. Unless otherwise specified, amendments remain valid for the duration of the permit and must be attached to the original permit.

5 AAC 41.050. Permit conditions

The commissioner may prescribe conditions on a fish transport or aquatic resource permit to control the occurrence of disease, genetic change, or other disturbances of biological origin affecting native, wild, or enhanced stocks, or to minimize effects on fisheries or other uses of aquatic resources, including research, management, monitoring, or enforcement activities. These conditions may include: designation of broodstock and release locations; methods of collection, transport, holding, 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 this chapter.

5 AAC 41.060. Retention of permit for inspection

- (a) After issuance, a copy of the fish transport or aquatic resource permit including any amendments must be retained by the permit holder 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. A copy of the permit must also be available at all field collection and project sites, and accompany the authorized transport of aquatic organisms.
- (b) For the purposes of inspecting and monitoring compliance with the terms of the permit or the requirements of this chapter, each permit holder 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 permit holder shall give such assistance and furnish information the representative or law enforcement officer may reasonably require for monitoring and inspection.

ARTICLE 3. GENERAL PROVISIONS

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 taking and fertilizing live fish eggs or 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, and the commissioner may also exempt eggs taken at large-scale pink and chum salmon facilities where the operational history for the preceding five years shows that disease has not been a problem in returning stocks of fish.
- (c) As determined by the commissioner, each fish hatchery or fish rearing facility may be inspected by the department's fish pathology section once every other year or less depending on the suitability of the fish stock disease histories. The commissioner 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 diseases of fish must immediately be reported to the department's fish pathology section:
 - (1) Finfish Pathogen Categories:
 - (A) Class I - Pathogens of Critical Concern.
 - (i) Piscirickettsia;
 - (ii) VHSV - Viral hemorrhagic septicemia virus (genotypes I - III and IVb);
 - (iii) IPNV - infectious pancreatic necrosis virus;
 - (iv) OMV - Oncorhynchus masou virus;
 - (v) Herpesvirus salmonis;
 - (vi) Whirling disease (*Myxobolus cerebralis*);
 - (vii) ISAV - Infectious salmon anemia virus;
 - (B) Class II - Endemic Pathogens of Concern:
 - (i) IHNV - Infectious hematopoietic necrosis virus;
 - (ii) VHSV - Viral hemorrhagic septicemia virus (type IVa);
 - (iii) BKD - Bacterial kidney disease (*Renibacterium salmoninarum*);
 - (iv) Furunculosis (*Aeromonas salmonicida*);
 - (v) ERM - Enteric redmouth (*Yersinia ruckeri*);
 - (vi) ICH - Ichthyophthiriasis (*Ichthyophthirius multifiliis*);
 - (C) Class III - Nuisance Pathogens:
 - (i) Vibriosis (marine *Vibrio* (*Listonella*) *anguillarum*, *V. ordalii*, *V. alginolyticus*);
 - (ii) Cold water disease (*Flavobacterium psychrophilum*);
 - (iii) Columnaris (*Flavobacterium columnare*);

- (iv) Trichodiniasis (Trichodina, etc.);
 - (v) Ichthyobodiasis (Ichthyobodo = Costia);
 - (vi) Hexamitiasis (Hexamita);
 - (vii) Lymphocystis Virus;
 - (viii) Helminth diseases;
 - (ix) Fungal diseases (Saprolegnia sp.; Phoma herbarum);
 - (x) Motile bacterial septicemias (Aeromonas hydrophila, Pseudomonas sp.);
- (D) Class IV - Uncategorized Pathogens:
- (i) VENV - Viral erythrocytic necrosis virus;
 - (ii) PKD - Proliferative kidney disease (Tetracapsula bryosalmonae);
 - (iii) Vibrio salmonicida (cold water marine Hitra);
 - (iv) Loma sp. (Microsporidian); (v) Reovirus;
 - (vi) Paramyxovirus;
 - (vii) Aquabirnavirus;
 - (viii) Erythrocytic Inclusion Body Syndrome (EIBS) virus;
 - (ix) Ceratomyxa shasta (Myxosporidian);
- (2) Emerging Finfish Pathogens not defined in Classes I, II, III, or IV, including non-salmonid agents;
- (3) Shellfish Pathogen Categories:
- (A) Class I - Oyster Pathogens - Critical Concern:
- (i) European Hemocyte and Gill Iridoviruses (HIVD, GNVD);
 - (ii) Oyster Herpesvirus;
 - (iii) Ostracoblabe implexa (shell disease fungus);
 - (iv) Haplosporidium sp. (nelsoni; costalis);
 - (v) Perkinsus marinus, P. atlanticus and other similar protozoa;
 - (vi) Marteilioides chungmuensis;
 - (vii) Marteilia sp. (refringens, sydneyi, branchialis, Aber disease, QX);
 - (viii) Bonamia ostreare, Bonamia sp. (microcells);
 - (ix) Velar disease virus (OVVD Iridovirus);
 - (x) Mytilicola sp. (intestinalis, orientalis, parasitic copepods);
 - (xi) Malpeque Bay disease (unknown etiology); (xii) Denman Island and Australian winter diseases (Mikrocytos mackini, M. roughleyi);
- (B) Class II - Nuisance Oyster Pathogens or Pests:
- (i) Pacific oyster nocardiosis (Nocardin crassostreae);
 - (ii) Prokaryote inclusions (chlamydia; mycoplasma, rickettsia);
 - (iii) Bacillary necrosis (Vibrio, Pseudomonas, Aeromonas, others);
 - (iv) Sirolpidium zoophthorum (fungus);
 - (v) Mycelial disease (Actinomycete-like);
 - (vi) Hexamita sp. (flagellate protozoan);
 - (vii) Ciliates (Sphenophrya, thigmotrichs, trichodinids, Ancistrocoma);
 - (viii) Nematopsis sp. (sporozoan);
 - (ix) Microsporidea (HEP and others);
 - (x) Helminth parasites;
 - (xi) Pseudomyicola sp. (parasitic copepod);
 - (xii) Gregarines (protozoa);

- (xiii) Neoplasia (germinomas);
 - (xiv) Ovacystis virus (gametogenic papilloma/polyoma-like virus);
 - (xv) Symbionts: Polydora sp. (polychaete mudworm); Diplothyra sp. (boring clam); Cliona sp. (boring sponge); Bryozoa;
 - (xvi) Predators: Stylochus sp. (polyclad worm); Drills: Urosalpinx cinerea; Ocenebra japonica; Rapana sp.;
- (C) Class III - Endemic Pathogens of Concern in Bivalves Other than Oysters:
- (i) Herpesviruses - littleneck clams, rock scallops;
 - (ii) Histozoic coccidian - littleneck clams;
 - (iii) Disseminated neoplasia - littleneck clams, blue mussels;
 - (iv) Pseudoklossia coccidia - littleneck clams, basket cockles, blue mussels.
- (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 permit holder in a manner directed or approved by the commissioner.
- (f) If the commissioner determines that a Class I disease pathogen in finfish stocks or Class I disease pathogen exotic to North America in shellfish stocks is detected within a hatchery or rearing facility, the commissioner will require immediate action, including quarantine, stoppage of water flows to eliminate effluent release, complete destruction and proper disposal, such as caustic lime burial or incineration, of affected stocks within the facility, and a thorough disinfection of holding areas and equipment. An affected facility may be required to remain dry or out of production for one year and be certified free of the disease pathogen before continued production of fish or shellfish. If Class I disease pathogens exotic to this state, but not to North America are detected in oysters in this state, destruction of those oysters by the permit holder may be required if the commissioner determines that the disease pathogen poses a threat to the health and perpetuation of native, wild, or hatchery stocks of shellfish in the immediate area or the intended release location. In limited circumstances, the commissioner may allow retention or transportation of these diseased fish or shellfish under controlled conditions that pose no threat to native, wild, or hatchery stocks of fish and shellfish, such as movement to a disease laboratory having effluent depuration.
- (g) Stocks of finfish in hatcheries or rearing facilities in which a Class II disease pathogen has been detected may require destruction and complete disinfection of the facility by the permit holder depending on the pathogen involved as determined by the commissioner, and if the disease poses a threat to the health and perpetuation of native, wild, or hatchery stocks of finfish in the hatchery effluent watershed or the intended release location. (h) The presence of pests recognized in Class II nuisance pathogens which may be exotic to this state will result in refusal of shellfish import certification by the commissioner until resubmitted representative samples of the shipment are free of nontarget invertebrate species. The commissioner will also refuse certification or restrict movement of oysters if there is oyster mortality or disease associated with the prevalence of any infectious pathogens.

5 AAC 41.090. Delegation of authority

The commissioner may delegate to designated employees of the department the authority to administer the provisions of this chapter.