

Title 5. Fish and Game.

Chapter 41. Collection, Transportation, Possession, Propagation or Release of Aquatic Organisms;

Aquatic Farming.

Article 1. Scope of Regulations.

5 AAC 41.001 is amended to read:

5 AAC 41.001. Application of this chapter. The provisions of this chapter govern the **collection**, transportation, possession, **propagation**, or release of **aquatic organisms** [LIVE FISH] transplanted for or cultivated for human consumption or sport fishing purposes, or as part of [AN AQUACULTURE] **a** program for scientific, educational, or propagative purposes; [, AND] the **collection**, transportation, [AND] possession, **propagation, and release of aquatic organisms for conservation purposes; and the transportation and possession of aquatic organisms** [OF SHELLFISH OR AQUATIC PLANTS] 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. (In effect before 1988; am 4/10/88, Register 106; am 8/12/89, Register 111; am 3/14/2008, Register 186; am __/__/2017, Register __)

Authority: AS 16.05.050 AS 16.40.100 AS 16.05.251
AS 16.40.160

Article 2. Permit System Established.

5 AAC 41.005(a) is amended to read:

(a) Except as otherwise provided, a person may not **collect**, transport, possess, **propagate**, export from the state, or release into the waters **or onto the lands** of the state, any **aquatic organism**, [LIVE

FISH] 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 (C)] 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.

5 AAC 41.005(b) is amended to read:

(b) A [FISH TRANSPORT] 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** [BROODSTOCK], 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.

5 AAC 41.005(c) is amended to read:

(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.** [THE COMMISSIONER SHALL SUSPEND THE PERMIT, OR PARTICULAR PROVISIONS OF THE PERMIT INCLUDING AMENDMENTS, IF THE COMMISSIONER 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].

5 AAC 41.005(d) is amended to read:

(d) Notwithstanding the expiration, termination, or suspension of a [FISH TRANSPORT] permit **issued under this chapter**, each **permit** [PERMITEE] **holder** is responsible for the obligations arising under the terms and conditions of the permit, and under the provisions of this chapter.

5 AAC 41.005(e) is amended to read:

(e) Unless otherwise provided in regulation or by emergency order, a permit is not required for transportation of **aquatic organisms** [FISH] **harvested or** caught **under** [IN A] sport, personal use, subsistence, or commercial **regulations** [FISHERY] from the place of harvest **or capture** to a place within the state for processing, or commercially caught **or harvested aquatic organisms** [FISH] to a place within the state for sale. (In effect before 1988; am 3/14/2008, Register 186; am 7/1/2008, Register 186; am 2/24/2011, Register 197; am 1/13/2012, Register 201; am __/__/2017, Register __)

Authority: AS 16.05.060 AS 16.05.251

The section heading for 5 AAC 41.010 is amended to read:

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

5 AAC 41.010(a) is amended to read:

(a) Each applicant for a fish transport **or aquatic resource permit** shall submit, **on a form provided by** [THE FOLLOWING INFORMATION TO] 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** [FISH] and the release site;

(3) the number of **aquatic organisms** [FISH] and their life history stage or age;

(4) a descriptive history of previous transport **of the stock and related activities** [, IF ANY];

(5) a statement on the health or condition of the **aquatic organisms** [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 [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, [WATER SOURCE,] depuration measures, and plans for disinfection;

(7) Repealed __/__/__.

(8) the source of water for **holding and** rearing, and proposed effluent discharge location;

(9) identification and status of [NATIVE] stocks in the area of **collection, holding,** [TAKING, RETENTION] and release [SITE], including a statement of expected interactions with other stocks in these areas;

(10) **a description of the methods and the expected dates** [THE METHOD] of **collection,** transport, **holding,** or release [AND THE EXPECTED DATE OF TRANSPORT OR RELEASE];

(11) the purpose and expected benefits **of the activity** [OF THE TRANSPORT OR RELEASE]; and

(12) evaluation plans.

5 AAC 41.010(b) is amended to read:

(b) A completed application must be submitted to the department **as specified on the application form** [REGIONAL OFFICE IN THE REGION IN WHICH THE PROPOSED TRANSPORT OR RELEASE WILL OCCUR].

5 AAC 41.010(d) is repealed:

(d) Repealed __/__/__. (In effect before 1982; am 7/25/82, Register 83; am 2/24/2011, Register 197; am __/__/2017, Register __)

Authority: AS 16.05.251

The Editor's Note for 5 AAC 41.010 is deleted:

[EDITOR'S NOTE: THE DEPARTMENT'S DIVISION OF COMMERCIAL FISHERIES REGIONAL OFFICES ARE DESIGNATED AS AND LOCATED AT THE FOLLOWING LOCATIONS:

REGION I — SOUTHEASTERN REGION

802 3RD STREET

DOUGLAS, ALASKA

TELEPHONE: (907) 465-4250

REGION II — III — CENTRAL, AND ARCTIC-YUKON- KUSKOKWIM REGION

333 RASPBERRY ROAD

ANCHORAGE, ALASKA

TELEPHONE: (907) 267-2105

REGION IV — WESTWARD

531 RESEARCH COURT

KODIAK, ALASKA

TELEPHONE: (907) 486-1825]

The introductory language of 5 AAC 41.020 is amended to read:

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** [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 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. (In effect before 1988; am 2/24/2011, Register 197; am __/__/2017, Register __)

Authority: AS 16.05.251 AS 16.05.733

The section heading and introduction for 5 AAC 41.030 is amended to read:

5 AAC 41.030. Permit issuance, suspension, [OR] denial, or revocation. For fish transport or aquatic resource permits used under this chapter.

5 AAC 41.030(a) is amended to read:

(a) The commissioner will issue a [FISH TRANSPORT] permit if the commissioner determines that the proposed **activity** [TRANSPORT, POSSESSION, OR RELEASE OF FISH] will not adversely affect the continued health and perpetuation of native, wild, or **enhanced** [HATCHERY] stocks of **aquatic organisms, fisheries, and research, management, monitoring, or enforcement activities** [FISH].

5 AAC 41.030(b) is amended to read:

(b) The commissioner will issue a [FISH TRANSPORT] 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** [HATCHERY STOCKS OF FISH].

5 AAC 41.030(c) is amended to read:

(c) The commissioner will deny [AN APPLICATION FOR] a permit, or **an** [A REQUEST FOR] amendment **to** [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 **protect** [ASSURE] the continued health and perpetuation of native, wild, or **enhanced** [HATCHERY] stocks of **aquatic organisms, fisheries, and research, management, monitoring, or enforcement activities** [FISH]. Written notice of denial shall be given to the applicant, including the reasons for denial.

5 AAC 41.030 is amended by adding new subsections to read:

(d) The commissioner will approve, condition, or deny a permit no 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.

(e) The commissioner shall revoke or suspend the permit, or particular provisions of the permit including amendments, if the commissioner 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 enhanced stocks of aquatic organisms, fisheries, or research, management, monitoring, or enforcement activities; or

(2) the permit holder has failed to comply with permit terms or the provisions of this chapter.

(f) 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. (In effect before 1988; am 2/24/2011, Register 197; am __/__/2017, Register __)

Authority: AS 16.05.251

5 AAC 41.040(a) is amended to read:

(a) A **permit** [PERMITEE] **holder** may request amendment of a fish transport **or aquatic resource** 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.

5 AAC 41.040(b) is amended to read:

(b) The commissioner will issue an amendment to the permit upon a determination made under 5 AAC 41.030(a) or (b). The commissioner will approve, condition, or deny a request for amendment no later than 30 days after receipt of the request [IN THE APPROPRIATE REGIONAL OFFICE].

5 AAC 41.040(c) is amended to read:

(c) The commissioner may alter or amend permit conditions **at any time** if additional information, [OR] unforeseen changes [ALLOW RELAXATION], or changed circumstances affect the adequacy of permit terms and conditions.

5 AAC 41.040(d) is amended to read:

(d) Amendments approved by the commissioner become effective when received by the **permit** [PERMITEE] **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**. (In effect before 1988; am 2/24/2011, Register 197; am __/__/2017, Register __)

Authority: AS 16.05.251

The introductory language of 5 AAC 41.050 is amended to read:

5 AAC 41.050. Permit conditions. The commissioner may prescribe conditions on a **fish transport or aquatic resource** permit to control the occurrence of [FISH] disease, genetic change, or [CONTROL] other disturbances of biological origin affecting native, wild, or **enhanced** [HATCHERY] stocks, **or to minimize effects on fisheries or other uses of aquatic resources, including research, management, monitoring, or enforcement activities** [OF FISH]. 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. (In effect before 1988; am 2/24/2011, Register 197; am __/__/2017, Register __)

Authority: AS 16.05.251

5 AAC 41.060(a) is amended to read:

(a) After issuance, a copy of the **fish transport or aquatic resource** permit including any amendments must be retained by the **permit** [PERMITEE] **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.**

5 AAC 41.060(b) is amended to read:

(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 **permit** [PERMITEE] **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** [PERMITEE] **holder** shall give such assistance and furnish information the representative or law enforcement officer may reasonably require for monitoring and inspection. (In effect before 1988; am __/__/2017, Register __)

Authority: AS 16.05.251(a)

Authority: AS 16.05.020 AS 16.05.251 AS 16.05.270

Article 3. General Provisions.

5 AAC 41.070(b) is amended to read:

(b) Live oysters native to and originating from the Pacific Coast of North America may be imported for aquaculture purposes, under a **stock transport** permit required by this chapter, and may be released into the waters of the state only if the

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5 AAC 41.070(d) is amended to read:

(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 **stock transport** permit required by this chapter only if the

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

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(In effect before 1988; am 9/19/90, Register 115; am 4/30/91, Register 118; am 8/8/2007, Register 183; am 2/24/2011, Register 197, am __/__/2017, Register __)

Authority: AS 16.05.251

5 AAC 41.080(e) is amended to read:

(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** [PERMITEE] **holder** in a manner directed or approved by the commissioner.

5 AAC 41.080(f) is amended to read:

(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** [PERMITEE] **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.

5 AAC 41.080(g) is amended to read:

(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** [PERMITEE] **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.

(In effect before 1988; am 2/24/2011, Register 197, am __/__/2017, Register __)

Authority: AS 16.05.251

5 AAC 41.100 is repealed:

5 AAC 41.100. Definitions. Repealed. (In effect before 1988; am 2/24/2011, Register 197; repealed __/__/2017, Register)

Authority: AS 16.05.251

Article 5. Aquarium Stocking.

5 AAC 41.500(a) is amended to read:

(a) Aquarium stocking for commercial display, as defined in **5 AAC 41.899** [5 AAC 41.599], may occur, subject to the requirements of this chapter, only if authorized under **an** [A] **aquarium stocking** permit from the commissioner, and unless the specimens are commercially harvested, only if the commissioner determines that there is an educational component to the commercial display.

5 AAC 41.500(c) is amended to read:

(c) Aquarium stocking permits may not be issued to any permit applicant for collection of more than four specimens of any single species that the Alaska Commercial Fisheries Entry Commission has established a maximum number of permits or that is subject to a regulatory or statutory moratorium on entry unless the commissioner determines the purchase of live specimens from a commercial fisherman is not practicable. Additional specimens may **be** obtained if purchased from a commercial fisherman.

(Eff. 3/14/2008, Register 186; am 7/1/2008, Register 186, am __/__/2017, Register__)

Authority: AS 16.05.020 AS 16.05.270 AS 16.05.060
AS 16.05.340 AS 16.05.251

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

5 AAC 41.505. Reporting. An annual report is required for each aquarium stocking permit.

Reports are public information. The commissioner will not issue another permit to a permit holder while the reporting requirements are not met.

(a) The report shall include: number of each species collected, date and place taken, disposition of the specimens, and, if applicable, sex, life stage, age, lengths and weights of organisms, and any other information specified in the permit.

(b) If a project involving the holding of specimens will continue past the permit expiration date, a report and new application must be submitted before expiration to ensure a new permit authorizes the continued holding of the specimens. (Eff. __/__/2017, Register __)

Authority: AS 16.05.020 AS 16.05.251 AS 16.05.270

5 AAC 41.599 is repealed:

5 AAC 41.599. Definitions. Repealed. (Eff. 3/14/2008, Register 186; am 7/1/2008, Register 186, repealed __/__/2017 Register __)

Authority: AS 16.05.020 AS 16.05.270 AS 16.05.251

5 AAC 41 is amended by adding new sections to read:

Article 6. Scientific and Educational Projects.

Section

600. General

610. Permit Classifications

620. Reporting

630. Restrictions

5 AAC 41.600. General. The provisions of this section govern aquatic resource permits required for collection, transport, possession, propagation, and release of aquatic organisms for scientific or educational purposes. Aquatic resource permits for scientific or educational purposes will be issued only to those organizations and individuals who meet the departmental requirements specified in this chapter. (Eff. __/__/2017, Register__)

Authority: AS 16.05.020 AS 16.05.251 AS 16.05.340

5 AAC 41.610. Permit Classifications. The commissioner may issue an aquatic resource permit for scientific and educational activities as follows.

(1) For permits authorizing collection, transport, or possession of aquatic organisms, applicants must be involved in scientific or educational activities.

(2) For permits authorizing propagation of aquatic organisms, applicants must be involved in scientific or educational research activities. Permits may include specifications as follows:

(A) For classroom incubation projects, the permit may authorize the permit holder to collect up to 500 eggs, or one spawning pair, transport, hold alive, and release aquatic organisms.

(B) For vocational, technical, and post-secondary school programs, the permit may authorize the permit holder to collect eggs, transport, hold alive, and release aquatic organisms as follows:

(i) salmonids: may collect up to 50,000 eggs or equivalent in spawning pairs;

(ii) invertebrates and aquatic plants: may collect the number necessary to achieve educational objectives;

(C) For propagative research, the permit may authorize accredited institutions of higher learning, or federal, state, local, tribal agencies and cooperators, to collect, propagate, transport, and release aquatic organisms for purposes of propagative research as follows:

(i) finfish: may collect the number necessary to achieve the objectives of the research, not to exceed the number of eggs expected to result in 5,000 or fewer adults;

(ii) invertebrates and aquatic plants: may collect the number necessary to achieve the objectives of the research.

(3) The permit may require inspection and approval of activities by the appropriate fish pathology section of the department's division of commercial fisheries, or by a person designated by the fish pathology section, genetic sampling, and additional conditions for fisheries management and conservation needs, including review by a regional planning team.

(4) Any resultant aquatic organisms from a project are considered common property and may not be claimed for cost recovery or any other reason. (Eff. __/__/2017, Register__)

Authority: AS 16.05.060 AS 16.05.251 AS 16.05.340

5 AAC 41.620. Reporting. An aquatic resource permit may require a collection report and a completion report. Reports are public information. The commissioner will not issue another permit to a permit holder while the reporting requirements are not met.

(a) A collection report must be submitted to the department within 30 days after the expiration date of the permit, unless otherwise specified. The report shall include: number of each species collected, date and place taken, disposition of the specimens, and, if applicable, sex, life stage, age, lengths and weights of organisms, and any other information specified in the permit.

(b) If a project involving the holding of specimens will continue past the permit expiration date, a collection report and new application must be submitted before expiration to ensure a new permit authorizes the continued holding of the specimens.

(c) A completion report detailing the results and findings of any data analysis for the project must be submitted to the department within six months of the expiration of the permit, as specified in the permit. (Eff. __/__/2017, Register__)

Authority: AS 16.05.020 AS 16.05.251 AS 16.05.270

5 AAC 41.630. Restrictions. (a) Aquatic organisms collected for scientific or educational purposes may only be used for the purposes specified in the aquatic resource permit.

(b) Collected aquatic organisms may be transferred to other entities for scientific or educational purposes only as specified in the permit.

(c) For any species to be collected or held that require a federal permit, the applicant must obtain the federal permit and submit a copy of it with the application for an aquatic resource permit.

(d) Sampling or collecting activities must stop when the maximum number of specimens allowed under the permit is obtained. All aquatic organisms collected must be documented, and any aquatic organisms collected in excess of the number allowed under the permit must be released immediately and

unharmed at the capture location, unless otherwise specified in the permit. All unintended mortalities must be recorded and returned to the capture site unless otherwise specified in the permit.

(e) All unattended capture devices must be labeled with the permit holder's name and permit number.

(f) Specific approval is required for any marking or tagging. (Eff. __/__/2017, Register__)

Authority: AS 16.05.251 AS 16.05.340

Article 8. Definitions; Miscellaneous.

5 AAC 41.899. Definitions. In addition to the definitions set out in AS 16.05.940 and AS 16.40.199, in 5 AAC 41.001 – 5 AAC 41.799 (a) “aquaculture” means the cultivation of aquatic animals, including aquatic fish and invertebrates, under positive control;

(b) “aquarium stocking”

(1) means the taking of fish from the natural waters of the state or placement of fish originating from the natural waters of the state for purposes of live display;

(2) does not include placement of fish taken in a commercial fishery in a live tank for sale or resale;

(c) “aquatic organism” means amphibians, fish, aquatic invertebrates, and aquatic plants in any stage of its life cycle, found in or introduced into the state, and includes any part of such amphibian, fish, aquatic invertebrate, or aquatic plant;

(d) “commercial display” means the display of live fish where a fee is charged for admission to the viewing area or where viewing is limited to guests of an establishment which sells merchandise, transportation, services, or accommodations.

(e) "marking and tagging" means all forms of skin alterations, fin clipping or other mutilation, or insertion of foreign materials in live fish or other procedures that permit later identification;

(f) "ornamental fish" means live marine or freshwater organisms commonly known as a "tropical fish," "aquarium fish," or "goldfish," including aquarium plants, invertebrates, and amphibians, which:

(1) are not used for sport fishing, human consumption, or bait purposes,
(2) are maintained in closed systems for personal, pet industry, or hobby purposes,
(3) are imported, cultured, or sold in the state for viewing in aquaria or for raising in closed artificial systems,

(4) will not be placed in waters of the state;

(5) are not capable of surviving in the wild in Alaska;

(6) are not capable of causing a genetic alteration of a species that is indigenous to Alaska;

(7) are not capable of causing a significant reduction in the population of a species that is indigenous to Alaska; and

(8) are not capable of transmitting a disease to a species that is indigenous to Alaska;

(g) "vocational" is education and training in a skill or trade related to the biology or culturing of aquatic organisms. (Eff. __/__/2017, Register__)

Authority: AS 16.05.020 AS 16.05.251 AS 16.05.270
AS 16.05.340