

Byron Mallott
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
WWW.LTGOV.ALASKA.GOV




530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Frances Leach
Department of Fish & Game

FROM: Scott Meriwether, Office of the Lieutenant Governor
465.4081 

DATE: December 12, 2017

RE: Filed Permanent Regulations: Department of Fish & Game

Department of Fish and Game Regulations re: Fish Transport and Aquatic Resource
Permits; Collection, Transportation, Possession, Propagation or Release of Aquatic
Organisms; Aquatic Farming (5 AAC 41.001 - 5 AAC 41.899)

Attorney General File:	JU2015200931
Regulation Filed:	12/11/2017
Effective Date:	1/10/2018
Print:	225, April 2018

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

**ORDER ADOPTING CHANGES TO REGULATIONS
OF THE DEPARTMENT OF FISH AND GAME**

The attached 22 page of regulations, dealing with changing the requirements for Aquatic Resource Permits (Scientific and Educational) and Fish Transport Permits to provide uniform procedures, and making other related and necessary changes pertaining to Chapter 41 - Collection, Transportation, Possession, Propagation or Release of Aquatic Organisms; Aquatic Farming, are adopted and certified to be a correct copy of the regulation changes that the Department of Fish and Game adopts under the authority of AS 16.05.020, AS 16.05.050, AS 16.05.251, and AS 16.05.270, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

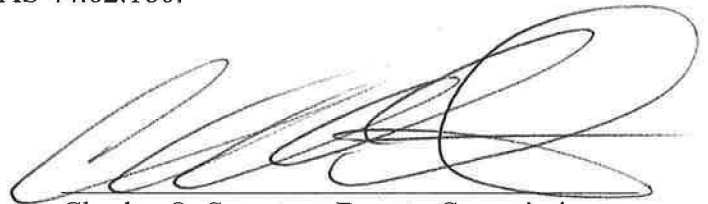
This action is not expected to require an increased appropriation.

In considering public comments, the Department of Fish and Game paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

DATE:

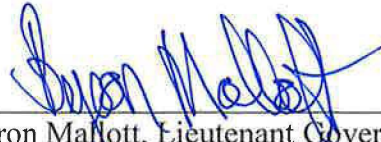
12/16/17
Juneau, Alaska



Charles O. Swanton, Deputy Commissioner
Department of Fish and Game

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on December 11, 2017, at 11:00 A.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Byron Mallott, Lieutenant Governor
State of Alaska

Effective: January 10, 2018

Register: 225, April 2018



Alaska Department of Fish and Game

Board of Fisheries

PO Box 115526

Juneau, AK 99811-5526

(907) 465-4110

www.adfg.alaska.gov


ALASKA BOARD OF FISHERIES

DELEGATION OF AUTHORITY TO CHANGE REGULATIONS BY INCORPORATING FISH RESOURCE PERMITS WITHIN 5 AAC 41.

2015-280-FB

Under the authority of AS 16.05.270, the Alaska Board of Fisheries delegates to the Commissioner of the Department of Fish and Game authority under AS 16.05.251 to adopt and amend regulations related to the issuance of permits for aquatic farming (Fish Transport Permit) and collection of fish for scientific, propagative, or educational purposes (Fish Resource Permit). Specifically this delegation authorizes the Commissioner of the Department of Fish and Game to adopt and amend regulations to incorporate and consolidate the permit processes for Fish Resource Permits and Fish Transport Permits into regulations for an Aquatic Resources Permit. In amending these regulations the Commissioner of the Department of Fish and Game shall consider the best available information related to past permitting processes and maintain sustained yield practices while promoting efficiencies within the permitting process. This delegation includes authority to amend other regulations to acknowledge or otherwise conform to these regulatory permitting requirements.

Vote: 7-0
December 8, 2015
Anchorage, Alaska



Tom Kluberton, Chair
Alaska Board of Fisheries

Title 5. Fish and Game.

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

Article 1. Scope of Regulations.

The chapter heading for 5 AAC 41 is changed to read:

Chapter 41. Collection, Transportation, Possession, Propagation, or Release of Aquatic
Organisms [AND RELEASE OF LIVE FISH]; Aquatic Farming.

} bold
all

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 a [AN AQUACULTURE] program for scientific, educational, or propagative purposes; [, AND] the collection, transportation, [AND] possession, propagation, or 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 1/10/2017, Register 225)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160
AS 16.05.251

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 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 holder [PERMITEE] 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}~~changed~~ 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 1/10/2017, Register 225 ²⁰¹⁸)

Authority: AS 16.05.060 AS 16.05.251

The section heading for 5 AAC 41.010 is ^{changed} ~~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 [PURSUANT TO] 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 1/10/2018;

(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 [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 1/10/2018. (In effect before 1982; am 7/25/82, Register 83; am 2/24/2011, Register 197; am 1/10/2017, Register 225)

Authority: AS 16.05.251

[**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]


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 1/10/2017²⁰¹⁸, Register 225)

Authority: AS 16.05.251 AS 16.05.733

5 AAC 41.030 is amended to read:


5 AAC 41.030. Permit issuance, suspension, [OR] denial, or revocation. ^{bold} **For fish transport or aquatic resource permits issued under this chapter,**

(1) [(a)] the [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] 

(2) [(b)] the [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] 

(3) [(c)] the [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 paragraphs to read:

(4) 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.

(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. (In effect before 1988; am 2/24/2011, Register 197; am 1/10/2017,²⁰¹⁸ Register 225)

Authority: AS 16.05.251

5 AAC 41.040(a) is amended to read:

(a) A **permit holder** [PERMITEE] 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~~(1)~~(1)[(a)] or (2) [(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 holder [PERMITEE], 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 ²⁰¹⁸1/10/2017, Register ²²⁵)

Authority: AS 16.05.251

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 1/10²⁰¹⁸/2017, Register 225)

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 holder [PERMITEE] [,] 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 holder [PERMITEE] 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** [PERMITEE] 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 1/10/2017, Register 225)

Authority: [AS 16.05.251(a)]

AS 16.05.251

Authority: AS 16.05.020 [AS 16.05.251] AS 16.05.270
AS 16.05.251

Article 3. General Provisions.

The introductory language of 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

...

Publisher: The remainder of 5 AAC 41.070(b) is unchanged.

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;

...

Publisher: The remainder of 5 AAC 41.070(d) is unchanged.

(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 1/10/²⁰¹⁸~~2017~~; Register 225)

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 holder** [PERMITEE] 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 holder** [PERMITEE] 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 holder** [PERMITEE] 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 1/10/2017²⁰¹⁸, Register 225)

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 1/10/2017, Register ²⁰¹⁸ ^{v. 225})

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 1/10/2017, Register ²⁰¹⁸ ²²⁵)

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

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

5 AAC 41.505. Reporting. ^{permit holder must submit an} ~~Annual report is required~~ for each aquarium stocking

^{held by the permit holder.} permit. Reports are public information. The commissioner will not issue another permit to a permit holder ^{unless the permit holder has complied with} while the reporting requirements ^{are not met.}

^{to the Commissioner} (a) The report shall include: number of each species collected, date and place taken, ^{aquarium stocking}

^{of this section and met other applicable requirements.} 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. ²⁰¹⁸ 1/10/2017, Register ²²⁵)

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, ²⁰¹⁸ repealed 1/10/2017 Register ²²⁵)

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, or 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. 1/10/2017²⁰¹⁸, Register 225)

Authority: AS 16.05.020 AS 16.05.251 AS 16.05.340

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

- (1) for ~~permits~~^{to} authorizing^e collection, transport, or possession of aquatic organisms; ~~applicants~~^{to qualify, an} must be involved in scientific or educational activities;
- (2) for ~~permits~~^{to} authorizing^e propagation of aquatic organisms; ~~applicants~~^{to qualify, an} must be involved in scientific or educational research activities. ~~Permits~~^{a permit issued under this paragraph} may include specifications as follows:

(A) for classroom incubation projects, ~~the permit may~~^{to} 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~~^{to} 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~~^{to} authorize accredited institutions of higher learning, or federal, state, local, tribal ~~agencies~~^{entities}, and persons or entities cooperating therewith 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.

(b) ~~(3) the permit~~^{department} may require inspection and approval of activities ^{in subsection (a)} 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. 1/10/2017, Register 225)

Authority: AS 16.05.020

AS 16.05.251

AS 16.05.340 that

The department may require[^] the holder of

5 AAC 41.620. Reporting.

An aquatic resource permit ^{submit} may require a collection report and a completion report. Reports are public information. The commissioner will not issue

another permit to ^{an aquatic resource} a permit holder while the reporting requirements ^{of this section and other applicable requirements.} are not met.

^{↑ unless the permit holder has complied with}

(1) 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.

(2) 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.

(3) 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. 1/10/2017, Register 225)

Authority: AS 16.05.020

AS 16.05.251

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. 1/10/2017, ²⁰¹⁸
Register 225)

Authority: AS 16.05.020 AS 16.05.251 AS 16.05.340

Article 7. Definitions.

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 (1) "aquaculture" means the cultivation of aquatic animals, including aquatic fish and invertebrates, under positive control;

(2) "aquarium stocking"

(A) 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;

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

(3) "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;

(4) "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;

(5) "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;

(6) "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:

(A) are not used for sport fishing, human consumption, or bait purposes;

(B) are maintained in closed systems for personal, pet industry, or hobby purposes;

(C) are imported, cultured, or sold in the state for viewing in aquaria or for raising in closed artificial systems;

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

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

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

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

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

(7) "vocational" is education and training in a skill or trade related to the biology or culturing of aquatic organisms. (Eff. 1/10/2017²⁰¹⁸, Register 225)

Authority: AS 16.05.020 AS 16.05.270 AS 16.05.340
AS 16.05.251

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Byron Mallott
Lieutenant Governor
(hand delivery)

Date: December 4, 2017

File No.: JU2015200931

Tel. No.: 465-3600

From: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Re: Department of Fish and Game
Regulations re: Fish Transport
and Aquatic Resource Permits;
Collection, Transportation,
Possession, Propagation or Release of
Aquatic Organisms; Aquatic Farming
(5 AAC 41.001 – 5 AAC 41.899)

We have reviewed the attached regulations from the Department of Fish and Game under a delegation issued by the Board of Fisheries under AS 16.05.270 against the statutory standards of the Administrative Procedure Act. The regulations concern aquatic organisms; aquatic farming; and changing requirements for fish transport permits and aquatic resource permits.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

The August 23, 2017 public notice and the November 16, 2017 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SRP:ljm
cc w/enc: (via email)

Honorable Sam Cotten, Commissioner, Dept. of Fish and Game
Glenn Haight, Executive Director, Board of Fisheries, Dept. of Fish and Game
Scott Kelley, Director, Div. of Commercial Fisheries, Dept. of Fish and Game
Forrest Bowers, Deputy Director, Div. of Commercial Fisheries, Dept. of Fish and Game
Tom Brookover, Director, Div. of Sport Fisheries, Dept. of Fish and Game
Tom Taube, Deputy Director, Div. of Sport Fisheries, Dept. of Fish and Game
Lisa Olson, Deputy Director, Div. of Subsistence, Dept. of Fish and Game
Frances Leach, Fishery Regulations Program Coordinator, AAC Contact, Dept. of Fish and Game
Sam Rabung, Fish and Game Coordinator, Div. of Commercial Fisheries, Dept. of Fish and Game
Enforcement Commander, Div. of Wildlife Troopers, Dept. of Public Safety
Seth Beausang, Assistant Attorney General, Natural Resources Section

**NOTICE OF PROPOSED CHANGES IN COLLECTION, TRANSPORTATION,
POSSESSION, PROPAGATION OR RELEASE OF AQUATIC ORGANISMS;
AQUATIC FARMING REGULATIONS OF THE DEPARTMENT OF FISH AND GAME**

BRIEF DESCRIPTION

The Department of Fish and Game proposes changes to regulations relating to Chapter 41. Collection, Transportation, Possession, Propagation or Release of Aquatic Organisms; Aquatic Farming to provide uniform procedures and requirement for certain permits, add permit requirements, and make other related and necessary changes as part of a streamlining and cost saving effort.

The Department of Fish and Game proposes to adopt regulation changes in Title 5 of the Alaska Administrative Code, dealing with the collection, transportation possession, propagation or release of aquatic organisms; aquatic farming, including the following:

Chapter 41. Collection, Transportation, Possession, Propagation or Release of Aquatic Organisms; Aquatic Farming., is proposed to be changed to provide uniform procedures and requirements for Aquatic Resource Permits (Scientific and Educational) and Fish Transport Permits, to change the requirements for Aquatic Resource Permits, and make other related and necessary changes. This is part of a streamlining and cost saving effort.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Frances H. Leach, Regulations Program Coordinator, Department of Fish and Game, P.O. Box 115526, Juneau, AK 99811-5526. Additionally, the Department of Fish and Game will accept comments by facsimile at (907) 465-2604 and by electronic mail at frances.leach@alaska.gov. The comments must be received no later than 5:00 p.m. on September 23, 2017.

You may submit written questions relevant to the proposed action to Frances H. Leach, Regulations Program Coordinator, Department of Fish and Game, P.O. Box 115526, Juneau, AK 99811-5526, or by electronic mail to frances.leach@alaska.gov. The questions must be received at least 10 days before the end of the public comment period. The Department of Fish and Game may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Frances H. Leach at (907) 465-6124 no later than September 18, 2017 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Frances H. Leach, Regulations Program Coordinator Program Project Manager, at the mailing address, telephone number or email address above.

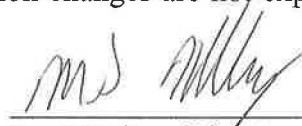
After the public comment period ends, the Department of Fish and Game will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.**

Statutory Authority: AS 16.05.020; AS 16.05.050; AS 16.05.270

Statutes Being Implemented, Interpreted, or Made Specific: AS 16.05.020; AS 16.05.050; AS 16.05.060; AS 16.05.251; AS 16.05.270; AS 16.05.340; AS 16.05.733; AS 16.40.100; AS 16.40.160

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: 8/23/17



Scott Kelley, Director
Division of Commercial Fisheries
Department of Fish and Game

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Department of Fish and Game
2. General subject of regulation: Chapter 41. Collection, Transportation, Possession, Propagation or Release of Aquatic Organisms; Aquatic Farming.
3. Citation of regulation (may be grouped): 5 AAC 41.001, 5 AAC 41.005–5 AAC 41.060, 5 AAC 41.070 –5 AAC 41.100, 5 AAC 41.200 –5 AAC 41.400, 5 AAC 41.500–5 AAC 41.599, 5 AAC 41.600 –5 AAC 41.630, 5 AAC 41.700–5 AAC 41.799
4. Department of Law file number, if any: JU2015200931
5. Reason for the proposed action:

☐ Compliance with federal law or action (identify): _____
☐ Compliance with new or changed state statute
☐ Compliance with federal or state court decision (identify): _____
☐ Development of program standards
☒ Other (identify): Statutory and board delegated authority.
6. Appropriation/Allocation: Aquatic Organisms/Permitting.
7. Estimated annual cost to comply with the proposed action to:

A private person: \$0
Another state agency: \$0
A municipality: \$0
8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY 2018	Subsequent Years
Operating Cost	\$ 0 _____	\$ 0 _____
Capital Cost	\$ 0 _____	\$ 0 _____
1002 Federal receipts	\$ 0 _____	\$ 0 _____
1003 General fund match	\$ 0 _____	\$ 0 _____

1004 General fund	\$ 0	\$ 0
1005 General fund/ program	\$ 0	\$ 0
Other (identify)	\$ 0	\$ 0

9. The name of the contact person for the regulation:

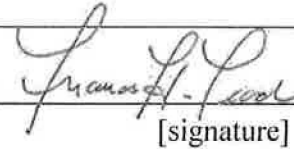
Name: Frances H. Leach
Title: Fisheries Regulations Program Coordinator
Address: P.O. Box 115526
Telephone: 907-465-6124
E-mail address: frances.leach@alaska.gov

10. The origin of the proposed action:

☒ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change
☐ Other (identify): _____

11. Date: August 23, 2017

Prepared by: _____


[signature]

Name: Frances H. Leach
Title: Fisheries Regulations Program Coordinator
Department of Fish and Game
Telephone: (907) 465-6124

**AFFIDAVIT OF NOTICE OF PROPOSED REGULATIONS
AND FURNISHING OF ADDITIONAL INFORMATION**


I, Frances H. Leach, Regulations Specialist Commercial Fisheries Division, of the Department of Fish and Game, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 5 AAC 41 dealing with changing the requirements for Aquatic Resource Permits (Scientific and Educational) and Fish Transport Permits to provide uniform procedures, and making other related and necessary changes pertaining to Chapter 41 - Collection, Transportation, Possession, Propagation or Release of Aquatic Organisms; Aquatic Farming, has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulations;
- (5) electronically transmitted to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Legislative Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulations, to the Legislative Affairs Agency, the chair of the Resources Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

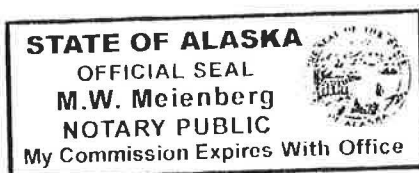
As required by AS 44.62.190(d), additional regulations notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulations notice information also has been posted on the Alaska Online Public Notice System.

Date: 10/4/17
Juneau, Alaska



Frances H. Leach
Regulations Specialist - Commercial Fisheries
Alaska Department of Fish and Game

SUBSCRIBED AND SWORN TO before me this 4th day of October, 2017.





Notary Public in and for the
State of Alaska

My commission expires: With Office

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Frances Leach, Regulations Specialist for the Division Commercial Fisheries, of the Department of Fish and Game, being duly sworn, state the following:

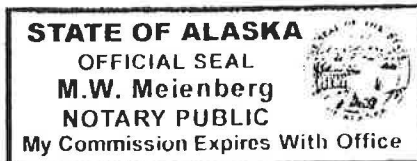
In compliance with AS 44.62.215, the Department of Fish and Game has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Alaska Department of Fish and Game regulations amending 5 AAC 41 and dealing with changing the requirements for Aquatic Resource Permits (Scientific and Educational) and Fish Transport Permits to provide uniform procedures, and making other related and necessary changes pertaining to Chapter 41 - Collection, Transportation, Possession, Propagation or Release of Aquatic Organisms; Aquatic Farming.

Date: 10/4/17
Juneau, Alaska

Frances H. Leach

Frances Leach
Regulations Specialist - Commercial Fisheries
Alaska Department of Fish and Game

SUBSCRIBED AND SWORN TO before me this 4th day of October, 2017.



M.W. Meienberg

Notary Public in and for the
State of Alaska

My commission expires: with office

270233
0001409433
\$323.72

AFFIDAVIT OF PUBLICATION

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Joleesa Stepetin
being first duly sworn on oath deposes and
says that he/she is a representative of the
Alaska Dispatch News, a daily newspaper.
That said newspaper has been approved
by the Third Judicial Court, Anchorage,
Alaska, and it now and has been published
in the English language continually as a
daily newspaper in Anchorage, Alaska, and
it is now and during all said time was
printed in an office maintained at the
aforesaid place of publication of said
newspaper. That the annexed is a copy of
an advertisement as it was published in
regular issues (and not in supplemental
form) of said newspaper on

August 23, 2017

and that such newspaper was regularly
distributed to its subscribers during all of
said period. That the full amount of the fee
charged for the foregoing publication is not
in excess of the rate charged private
individuals.

Signed Joleesa Stepetin

Subscribed and sworn to before me
this 23rd day of August, 2017.

Britney Thompson

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

2/23/2019

NOTICE OF PROPOSED CHANGES IN COLLECTION, TRANSPORTATION, POSSESSION, PROPAGATION OR RELEASE OF AQUATIC ORGANISMS; AQUATIC FARMING REGULATIONS OF THE DEPARTMENT OF FISH AND GAME

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Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: 8/23/17

Scott Kelley, Director
Division of Commercial Fisheries
Department of Fish and Game

Published: August 23, 2017

Notary Public
BRITNEY L. THOMPSON
State of Alaska
Commission Expires Feb 23, 2019