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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Shellene Hutter
Department of Fish and Game

FROM: April Simpson, Office of the Lieutenant Governor 465.4081 

DATE: March 26, 2021

RE: Filed Permanent Regulations: Department of Fish and Game

Department of Fish and Game regulations re: commercial fishing in joint common property and cost recovery fisheries in specified terminal harvest areas in southern southeast Alaska, administration of hatchery operations, aquatic farming and aquatic plants, and restrictions upon invasive species, including invasive amphibians (5 AAC 33; 5 AAC 40.350; 5 AAC 40.840; 5 AAC 40.850, 5 AAC 41.005; 5 AAC 41.070; 5 AAC 41.075; 5 AAC 41.250(a)(3); 5 AAC 93.330; 5 AAC 93.350(d))

Attorney General File:	2020200620
Regulation Filed:	3/26/2021
Effective Date:	4/25/2021
Print:	238, July 2021

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

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

The attached 12 pages of regulations, dealing with commercial fishing of hatchery-produced king salmon in specified terminal harvest areas in southern southeast Alaska, administrative regulations of hatcheries, aquatic plants, amphibians and classification and prohibitions of invasive species in Title 5 of the Alaska Administrative Code, 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 16.05.270, AS 16.05.050, AS 16.05.251 and AS 16.10.455 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.

3/18/2021

DATE:

Anchorage, Alaska

DocuSigned by:
Doug Vincent-Lang
32E3FEFE58284DB...

Douglas S. Vincent-Lang, Commissioner
Department of Fish and Game

April Simpson, for
↑

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on March 26, 2021, at 10:29 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Kevin Meyer

Kevin Meyer, Lieutenant Governor
State of Alaska

Effective: April 25, 2021

Register: 238, July 2021



Alaska Department of Fish and Game
Board of Fisheries
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Juneau, AK 99811-5526
(907) 465-4110
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ALASKA BOARD OF FISHERIES

DELEGATION OF AUTHORITY UNDER AS 16.05.270 TO THE COMMISSIONER TO ADOPT REGULATIONS FOR AMPHIBIANS 2015-275-FB

The Board of Fisheries ("board") makes the following findings:

1. Whereas proposals 261 and 262 for the 2014-2015 Board of Fisheries meeting cycle deal with amphibians; and
2. Whereas regulatory proposals for amphibians were not included in the call for proposals or the legal public notice for the 2014-2015 meeting cycle, and have not been included on the call for proposals for any recent meeting cycle; and
3. Whereas the board is precluded from adopting proposals 261 and 262 in regulation during the 2014-2015 meeting cycle because of the lack of the legal public notice required by the Alaska Administrative Procedure Act (AS 44.62); and
4. Whereas the board believes that under the circumstances proposals 261 and 262 deserve consideration; and
5. Whereas the Department of Fish & Game proposed the following regulation changes as a substitute for proposals 261 and 262:

5 AAC 41.005(a) is amended to read:

5 AAC 41.005. Permit required. (a) Except as otherwise provided, a person may not transport, possess, export from the state, or release into the waters or the lands of the state, any live fish unless the person holds a fish transport permit issued by the commissioner, and the person is in compliance with all conditions of the permit and the provisions of this chapter.

5 AAC 41.070(a) is amended to read:

5 AAC 41.070. Prohibitions on importation and release of live fish. (a) Except as provided in (b) – (d) of this section, no person may import any live fish into the state for the purpose of stocking or rearing in the waters or the lands of the state.



5 AAC 41.070(c) is amended to read:

(c) Ornamental fish not raised for human consumption or sport fishing purposes may be imported into the state, but may not be reared in or released into the waters or the lands of the state. Fish wastes and waste water from ornamental fish may not be released directly into waters of the state.

5 AAC 41.070 is amended by adding a new subsection to read:

(f) Except as otherwise provided in this chapter, a person may not possess, import, breed, transport, release, purchase, or sell within this state a banned invasive species classified under 5 AAC 41.075, unless that person holds a permit from the commissioner.

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

5 AAC 41.075. Classification of banned invasive species. (a) In consultation with the department, the board will classify certain nonnative species as banned invasive species under this section.

(b) When considering proposals to classify a certain nonnative species as a banned invasive species, or removing a species from the list of banned invasive species specified in (c) of this section, the board will consider and determine the potential of the species to

- (1) survive, grow, reproduce, and establish reproductive populations in this state;
- (2) cause a genetic alteration of a species indigenous to this state;
- (3) compete for food, habitat, and resources with a species indigenous to this state;
- (4) degrade or make uninhabitable habitats used by species indigenous to this state;
- (5) transmit a disease to a species indigenous to this state or to humans;
- (6) threaten the health or population of a species indigenous to this state or to

humans;

- (7) cause economic or environmental harm.

(c) The following species are classified as banned invasive species:

Common Name

Scientific Name

Amphibians

American bull frog

Pacific Chorus Frog

Red-legged Frog

Lithobates catesbeianus

Pseudacris regilla or *Hyla regilla*

Rana aurora

Crustaceans

Signal crayfish

Red swamp crayfish

Rusty crayfish

European green crab

Conrad's or Dark false mussel

Pacifastacus leniusculus

Procambarus clarkii

Orconectes rusticus

Carcinus maenas

Mytilopsis leucophaeta



Fish

Asian carp
Yellow Perch

Hypophthalmichthys Genus
Perca flavescens

Mollusks

New Zealand mudsnail
Dreissenid mussels
Quagga mussel
Zebra mussel

Potamopyrgus antipodarum
Dreissenidae Family
Dreissenia bugensis
Dreissenia polymorpha

(d) In this section, "banned invasive species" includes any part of an organism, including reproductive material, at any stage of its life cycle.

5 AAC 41.100(4) is amended to read:

5 AAC 41.100. Definitions.


(4) "ornamental fish" **has the meaning given in AS 16.35.210** [MEANS A FISH COMMONLY KNOWN AS "TROPICAL FISH," "AQUARIUM FISH," OR "GOLDFISH," WHICH ARE IMPORTED, CULTURED, OR SOLD IN THE STATE CUSTOMARILY FOR VIEWING IN AQUARIA OR FOR RAISING IN ARTIFICIAL SYSTEMS, AND NOT CUSTOMARILY USED FOR SPORT FISHING OR HUMAN CONSUMPTION PURPOSES];

NOW THEREFORE:

A. Pursuant to AS 16.05.270, the board delegates its authority under AS 16.05.251 to the commissioner to consider and, at the commissioner's discretion, adopt regulatory changes on the subjects in proposals 261 and 262 for the 2014–2015 board meeting cycle, including the proposed regulatory changes outlined above, in accordance with the Administrative Procedure Act (AS 44.62).

B. This delegation of authority shall remain in effect unless revoked by the board.

VOTE: 6-0
Date Adopted: March 20, 2015
Anchorage, AK



Tom Kluberton, Chairman
Alaska Board of Fisheries

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,
designate the following state employees to perform the Administrative Procedures Act
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**




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**KEVIN MEYER
LIEUTENANT GOVERNOR**

Title 5. Fish and Game.

Chapter 33. Southeastern Alaska Area.

Article 3. Salmon Fishery.

5 AAC 33.370 is amended by adding a new subsection to read:

(g) Instead of allowing the harvest of hatchery-produced king salmon for cost recovery by the hatchery permit holder, the commissioner may, after consultation with the hatchery operator, by emergency order, open a joint common property and cost recovery assessment fishery for king salmon as specified in AS 16.10.455 to occur only in the waters as described in (b) of this section. (Eff. 5/31/85, Register 94; am 4/18/86, Register 98; am 6/25/89, Register 110; am 6/28/97, Register 142; am 7/26/2003, Register 167; am 5/26/2006, Register 178; am 5/31/2009, Register 190; am 7/13/2012, Register 203; am 4/25/2021, Register 238)

Authority: AS 16.05.060 AS 16.05.251 **AS 16.10.455**

5 AAC 33.379 is amended by adding a new subsection to read:

(d) Instead of allowing the harvest of hatchery-produced king salmon for cost recovery by the hatchery permit holder, the commissioner may, after consultation with the hatchery operator, by emergency order, open a joint common property and cost recovery assessment fishery for king salmon as specified in AS 16.10.455 to occur only in the waters as described in (b) of this section. (Eff. 6/17/2018, Register 226; am 4/25/2021, Register 238)

Authority: AS 16.05.060 AS 16.05.251 **AS 16.10.455**

5 AAC 33.383(d)(3) is amended to read:

(3) except as specified in (4) [AND (5)] of this subsection, in establishing emergency order season openings for the purse seine and drift gillnet fisheries, the department shall rotate openings between these gear groups and shall provide for a time ratio for gillnet openings to seine openings of two to one;

5 AAC 33.383 is amended by adding a new subsection to read:

(g) Instead of allowing the harvest of hatchery-produced king salmon for cost recovery by the hatchery permit holder, the commissioner may, after consultation with the hatchery operator, by emergency order, open a joint common property and cost recovery assessment fishery for king salmon as specified in AS 16.10.455 to occur only in the waters as described in (a) of this section. (Eff. 6/28/97, Register 142; am 7/26/2003, Register 167; am 5/26/2006, Register 178; am 5/31/2009, Register 190; am 7/13/2012, Register 203; am 5/9/2015, Register 214; am 6/17/2018, Register 226; am 9/19/2019, Register 231; am 4/25/2021, Register 238)

Authority: AS 16.05.060 AS 16.05.251 AS 16.10.455

Chapter 40. Private Nonprofit Salmon Hatcheries.

Article 5. Regional Comprehensive Planning.

5 AAC 40.350 is amended to read:

5 AAC 40.350. Public notice. The chair [CHAIRMAN] of the regional planning team, the chair's or their [HIS] designee, shall give two weeks' notice, on the State of Alaska Online Public

Notice System (AS 44.62.175)

Notices website [IN A NEWSPAPER OF GENERAL CIRCULATION IN THE

APPROPRIATE REGION], of a planning team meeting. Additionally, the chair [THE

CHAIRMAN SHALL] may use alternative methods to provide notice to the public that are

to the alternative methods department
specific to regional circumstances, which may include ADF&G advisory announcements,

publications in a newspaper of general circulation, website postings, electronic mail

distribution lists, and radio or television advertisements [ALSO GIVE NOTICE TO RADIO

AND TELEVISION STATIONS IN THE APPROPRIATE REGION, FOR BROADCAST AS

NO-COST PUBLIC SERVICE MESSAGES]. (Eff. 3/31/85, Register 93; am 4/25/2021,

Register 238)

Authority: AS 16.05.020

AS 16.05.092

AS 16.10.375

Article 8. General Provisions.

repealed and re-adopted

5 AAC 40.840 is amended to read:

5 AAC 40.840. Annual management plans. (a) Beginning with the first year of operation of the hatchery, and on an annual basis after that, the department will prepare, in conjunction with the permit holder, an annual management plan to guide and condition hatchery operations ~~[FOR THE SUCCEEDING CALENDAR YEAR]~~

An of "lower case"
(b) Annual management plans must organize and guide the hatchery's operations regarding production goals, broodstock management and harvest management of hatchery returns. This plan shall be developed with consideration of the hatchery's production cycle. The production cycle begins with adult returns, which lead to egg takes and end

"boldface and underlining unnecessary"

with fish releases. Action may be taken outside of the management plan if allowed under the hatchery permit or modified by emergency order.

(c) ~~(b)~~ ^{shall} The PNP coordinator ~~will~~ organize the appropriate department staff and the permit holder in preparing a draft annual management plan. The appropriate regional planning team and the Department of Commerce, Community, and Economic Development may also review the plan. The operator shall submit a draft plan to the department ^{not later than} April 1 of

each year ~~[THIS PLAN MUST ORGANIZE AND GUIDE THE HATCHERY'S~~

~~OPERATIONS, FOR EACH CALENDAR YEAR, REGARDING PRODUCTION GOALS,~~

~~BROODSTOCK DEVELOPMENT, AND HARVEST MANAGEMENT OF HATCHERY~~

~~RETURNS]~~ (Eff. 3/31/85, Register 93; am 4/25/2021, Register 238)

Authority: AS 16.05.020 AS 16.10.375 AS 16.10.443

AS 16.05.092 AS 16.10.400

5 AAC 40.850(a) is amended to read:

(a) A hatchery permit holder may propose alteration of the permit [AND BASIC MANAGEMENT PLAN, ^{1,}] based on accumulated experience and changing conditions. The permit holder shall request, on a form provided by the PNP coordinator, a permit alteration for a proposed modification to the permit or change in the basic management plan for the hatchery.

5 AAC 40.850 is amended by adding a new subsection to read:

(e) Issuance of a ^{lowercase} Notice of Permit Alteration by the department ^{modifies} will modify the hatchery permit. (Eff. 3/31/85, Register 93; am 4/25/2021, Register 238)

Authority: AS 16.05.020 AS 16.05.092 AS 16.10.400

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

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 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.

(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 1/10/2018, Register 225; am 4/25/2021, Register 238)

Authority: AS 16.05.060 AS 16.05.251

Article 3. General Provisions.

5 AAC 41.070(a) is amended to read:

(a) Except as provided in (b) — (d) of this section, no person may import any live fish into the state for purposes of stocking or rearing in the waters or the lands of the state.

5 AAC 41.070(c) is amended to read:

(c) Ornamental fish not raised for human consumption or sport fishing purposes may be imported into the state, but may not be reared in or released into the waters or the lands of the state. Fish wastes and waste water from ornamental fish may not be released directly into the waters of the state.

5 AAC 41.070(e) is amended to read:

(e) A person may not import, own, possess, propagate [BREED], transport, distribute, release, purchase or sell within this state any species listed under 50 C.F.R. 16.13, as revised as of September 30, 2016 [OCTOBER 1, 2002], as an injurious live, or dead fish, mollusk, crustacean, or their eggs; and any species listed under 50 C.F. R. 16.14, as revised as of January 28, 2016, as injurious live or dead amphibians or their eggs.

5 AAC 41.070 is amended by adding a new subsection to read:

(f) Except as otherwise provided in this chapter, a person may not possess, import, propagate, transport, release, purchase, or sell within this state a banned invasive species classified under 5 AAC 41.075. (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, Register 225; am 4 /25 / 2021, Register 238)

Authority: AS 16.05.251

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

5 AAC 41.075. Classification of banned invasive species. (a) In consultation with the department, the board will classify certain nonnative species as banned invasive species under this section.

(b) When considering proposals to classify a certain nonnative species as a banned invasive species, or removing a species from the list of banned invasive species specified in (c) of this section, the board will consider and determine the potential of the species to

(1) survive, grow, reproduce, and establish reproductive populations in this state;

(2) cause a genetic alteration of a species indigenous to this state;

(3) compete for food, habitat, and resources with a species indigenous to this state;

(4) degrade or make uninhabitable habitats used by species indigenous to this state;

(5) transmit a disease to a species indigenous to this state or to humans;

(6) threaten the health or population of a species indigenous to this state or to humans;

(7) cause economic or environmental harm.

(c) The following species are classified as banned invasive species:

Common Name	Scientific Name
<u>Amphibians</u>	
American bull frog	<i>Lithobates catesbeianus</i>
Pacific chorus frog	<i>Pseudacris regilla</i> or <i>Hyla regilla</i>
Red-legged frog	<i>Rana aurora</i>

Crustaceans

Signal crayfish	<i>Pacifastacus leniusculus</i>
Red swamp crayfish	<i>Procambarus clarkii</i>
Rusty crayfish	<i>Orconectes rusticus</i>
European green crab	<i>Carcinus maenas</i>

Conrad's or dark false mussel	<i>Mytilopsis leucophaeta</i>
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Fish

Asian Carp	<i>Hypophthalmichthys</i> Genus
Yellow perch	<i>Perca flavescens</i>

Mollusks

New Zealand mudsnail	<i>Potamopyrgus antipodarum</i> <i>«italics, I think»</i>
Dreissenid mussels	Dreissenidae Family
Quagga mussel <i>«normal font; no italics»</i>	<i>Dreissena bugensis</i> <i>«italicize the "r"»</i>
Zebra mussel	<i>Dreissena polymorpha</i>

(d) In this section, “banned invasive species” includes any part of an organism, including reproductive or genetic material, at any stage of its life cycle. (Eff. 4/25/2021, Register 238)

Authority: AS 16.05.050 AS 16.05.251

Article 4. Aquatic Farming.

5 AAC 41.250(a)(3) is amended to read:

(3) not store or otherwise possess animals **or aquatic plants** of the same species being cultured that have been commercially or recreationally harvested, unless the commercially or recreationally harvested animals **or aquatic plants** are clearly separated from cultured species, labeled, and if applicable, accompanied with a receipt of purchase;

(Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am 12/16/98, Register 148; am 6/17/2001, Register 158; am 5/19/2005, Register 174; am 11/25/2005, Register 176; am 1/29/2010, Register 193; am 1/26/2012, Register 201; am 4/25/2021, Register 238)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160

AS 16.05.092

Part 4. Department Programs.

Chapter 93. Department Programs.

Article 3. Salmon Use.

5 AAC 93.330(c) is amended to read:

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

[(1)] submit a written notice of intent to operate to the department and

[IDENTIFY ANY PROCESSOR OR CATCHER PROCESSOR THAT WILL BE INVOLVED IN OPERATIONS; AND]

[(2)] receive a written acknowledgment from the department that the department has received a completed notice of intent to operate [AND THAT THE HATCHERY OPERATOR AND ANY PROCESSOR OR CATCHER PROCESSOR IT PROPOSES TO UTILIZE IS NOT PRECLUDED FROM OPERATING UNDER THIS SECTION].

5 AAC 93.330(d) is amended to read:

(d) After receiving the written acknowledgment described in (c) [(c)(2)] of this section, during a season opened by emergency order under this section, a hatchery operator, or an individual or company ^{PROCESSOR OR CATCHER PROCESSOR} [A] working for the hatchery operator, may remove the roe from pink and chum salmon [CARCASSES] without further use of the carcasses if the [HATCHERY OPERATOR, PROCESSOR, OR CATCHER PROCESSOR, FOR EACH LOT OF SALMON CARCASSES TO BE DISPOSED

(1) BEFORE DISPOSAL, MAKES A WRITTEN DETERMINATION THAT THE] requirements of (b) of this section are met[;

(2) KEEPS WRITTEN RECORDS OF ALL DIRECT COSTS OF HARVESTING THE SALMON, REMOVING AND PROCESSING THE ROE, DISPOSING OF THE CARCASSES, MARKETING OF THE ROE, AND OF ALL REVENUE GENERATED FROM SALES OF THE ROE; AND

(3) SURRENDERS TO THE STATE ALL PROCEEDS FROM SALE OF THE ROE MINUS THE DIRECT COSTS OF HARVESTING THE SALMON, REMOVING AND PROCESSING THE ROE, DISPOSING OF THE CARCASSES, AND MARKETING OF THE ROE].

5 AAC 93.330(e) is repealed:

(e) Repealed.

4 / 25 / 2021

5 AAC 93.330(f) is repealed:

(f) Repealed.

4 / 25 / 2021

5 AAC 93.330(h) is repealed:

(h) Repealed.

4 / 25 / 2021

5 AAC 93.330(i) is repealed:

(i) Repealed.

4 / 25 / 2021

5 AAC 93.330(j) is repealed:

(j) Repealed.

4 / 25 / 2021

5 AAC 93.330(l) is repealed:

(l) Repealed.

(Eff. 9/30/2007, Register 183; am 4 / 25 / 2021, Register 238)

Authority: AS 16.05.020 AS 16.05.831

The introductory language of 5 AAC 93.350(d) is amended to read:

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

MILT OR ROE EXTRACTION AND CARCASS DISPOSAL INFORMATION, ON A FORM PROVIDED BY THE DEPARTMENT, AND]

...

5 AAC 93.350(d)(2) is amended to read:

(2) immediately notifies the department, in writing, of any extraction of eggs that will not be used for fertilization that exceed the limits established in (1) of this subsection[, AND IMMEDIATELY SURRENDERS TO THE STATE ALL PROCEEDS FROM THE SALE OF EGGS EXCEEDING THE LIMITS ESTABLISHED IN (1) OF THIS SUBSECTION].

(Eff. 7/21/96, Register 139; am 8/18/2002, Register 163; am 7/16/2006, Register 179; am 9/30/2007, Register 183; am 8/15/2008, Register 187; am 4 / 25 / 2021, Register 238)

Authority: AS 16.05.020 AS 16.05.831

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: March 25, 2021

File No.: 2020200620

Thru:

Tel. No.: 465-3600

From: Steven C. Weaver *SCW*
Senior Assistant Attorney General
Legislation and Regulations Section

Re: Department of Fish and Game
regulations re: commercial fishing in
joint common property and cost
recovery fisheries in specified
terminal harvest areas in southern
southeast Alaska, administration of
hatchery operations, aquatic farming
and aquatic plants, and restrictions
upon invasive species, including
invasive amphibians (5 AAC 33;
5 AAC 40.350; 5 AAC 40.840;
5 AAC 40.850; 5 AAC 41.005;
5 AAC 41.070; 5 AAC 41.075;
5 AAC 41.250(a)(3); 5 AAC 93.330;
5 AAC 93.350(d))

The Department of Law has reviewed the attached regulations of the Department of Fish and Game against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. I have reviewed these regulations under a delegation dated March 23, 2020 from the regulations attorney. 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 regulations were adopted by the Department of Fish and Game after the close of the public comment period. The regulations address commercial fishing in joint common property and cost recovery fisheries in specified terminal harvest areas for hatchery king salmon in southern southeast Alaska, update provisions for administration of hatchery operations, update provisions related to aquatic farming and aquatic plants, and update classifications of and restrictions upon invasive species, including invasive amphibians.

The agency has requested that these regulations take effect on or before May 1, 2021. *Accordingly, we ask that the regulations be filed on or before April 1, 2021.*

The February 10, 2021 public notice and the March 18, 2021 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.

SCW

cc w/enc.: Hon. Douglas S. Vincent-Lang, Commissioner
Department of Fish and Game

Shellene L. Hutter, Regulations Contact
Department of Fish and Game

Samuel Rabung, Director
Division of Commercial Fisheries
Department of Fish and Game

Forrest Bowers, Division Operations Manager
Division of Commercial Fisheries
Department of Fish and Game

Thomas Taube, Deputy Director
Division of Sport Fisheries
Department of Fish and Game

Garold Pryor
Division of Commercial Fisheries
Department of Fish and Game

Lorraine Vercessi
Division of Commercial Fisheries
Department of Fish and Game

Tammy Davis
Division of Sport Fisheries
Department of Fish and Game

Aaron Peterson, Assistant Attorney General
Natural Resources Section

**NOTICE OF PROPOSED CHANGES IN THE COMMERCIAL FISHING
REGULATIONS IN TERMINAL HARVEST AREAS IN SOUTHERN SOUTHEAST
ALASKA, ADMINISTRATIVE REGULATIONS OF HATCHERY OPERATIONS AND
REGULATION OF AQUATIC PLANTS, AMPHIBIANS AND INVASIVE SPECIES OF
THE ALASKA DEPARTMENT OF FISH & GAME AND THE ALASKA BOARD OF
FISHERIES**

The Alaska Department of Fish and Game is proposing to add regulations to open a joint common property and cost recovery assessment fishery for hatchery-produced king salmon for cost recovery by the hatchery permit holder in the Neets Bay, Carroll Inlet and Anita Bay terminal harvest areas. Additionally, changes proposed include amending regulations administrative in nature concerning hatchery operations, including permitting and reporting requirements. The commissioner of the Department of Fish and Game, under a delegation of authority issued by the Alaska Board of Fisheries is also proposing to adopt regulations of amphibians and classification and prohibitions of invasive species.

The commissioner of the Department of Fish and Game proposes to adopt regulation changes in Title 5 of the Alaska Administrative Code (AAC) including the following:

- (1) **5 AAC 33.370. District 1: Neets Bay Hatchery Salmon Management Plan** is proposed to be changed to open a joint common property and cost recovery assessment fishery for hatchery-produced king salmon in the Neets Bay terminal harvest area open to all commercial fishing gear groups with dates of openings and closures to be established by emergency order.
- (2) **5 AAC 33.379. Carroll Inlet Terminal Harvest Area Salmon Management Plan** is proposed to be changed to open a joint common property and cost recovery assessment fishery for hatchery-produced king salmon in the Carroll Inlet terminal harvest area open to all commercial fishing gear groups with dates of openings and closures to be established by emergency order.
- (3) **5 AAC 33.383. District 7: Anita Bay Terminal Harvest Area Salmon Management Plan** is proposed to be changed to open a joint common property and cost recovery assessment fishery for hatchery-produced king salmon in the Anita Bay terminal harvest area open to all commercial fishing gear groups with dates of openings and closures to be established by emergency order and to correct an outdated cross reference.
- (4) **5 AAC 40.350. Public notice** is proposed to be changed to revise language to more effectively provide notice of a planning team meeting.
- (5) **5 AAC 40.840. Annual management plans** is proposed to be changed to define parameters required for the Annual management plans, state considerations for the development of the plans and add a provision to allow for actions to be taken outside of the management plan under emergency order authority. Also language is proposed to be added requiring submission of a draft plan by April 1.

- (6) **5 AAC 40.850. Notice of permit alteration** is proposed to be changed to remove unnecessary language and adding language defining consequence of the issuance of a Notice of Permit Alteration.
- (7) **5 AAC 41.250. Permit conditions** is proposed to be changed to add language to require that aquatic plants commercially or recreationally harvested be separated by harvest method.
- (8) **5 AAC 93.330. Hatchery salmon use authorization** is proposed to be changed to remove language requiring buyers and processors utilized by the hatchery operator be identified prior to operating, correct cross references, remove unnecessary or obsolete language and repeal language administrative regulations, including certain reporting and record keeping requirements.
- (9) **5 AAC 93.350. General authorizations for use of salmon** is proposed to be changed regarding reporting requirements for disposal of salmon carcasses from which milt or eggs are extracted under a permit issued by the department and accounting procedures.

The commissioner of the Department of Fish and Game, under a delegation of authority issued by the Alaska Board of Fisheries (board) under AS 16.05.270, proposes to adopt regulation changes in Title 5 of the Alaska Administrative Code (AAC) including the following:

- (1) **5 AAC 41.005. Permit required** is proposed to be changed to add language to include all lands of the state for fish transport or aquatic resource permit requirements.
- (2) **5 AAC 41.070. Prohibitions on importation and release of live fish** is proposed to be changed to add language to include all lands of the state for the stocking or rearing prohibitions of live animals, including ornamental fish, update cross reference of prohibited species listing and to add language to cross reference prohibited amphibian species listing with department and federal regulations.
- (3) **5 AAC 41.075. Classification of banned invasive species** is proposed to be added to provide a comprehensive list of all banned invasive species by species group and to specify criteria for which the Board of Fisheries will use when making their determination of a banned invasive species listing.

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 Shellene L. Hutter, 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 shellene.hutter@alaska.gov Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link

<https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=201377>

The comments must be received no later than 5:00 p.m. on March 14, 2021.

You may submit written questions relevant to the proposed action to Shellene L. Hutter, 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 questions by facsimile at (907) 465-2604 and by electronic mail at shellene.hutter@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 will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Shellene L. Hutter at (907) 465-6124 no later than March 8, 2021 to ensure that any necessary accommodations can be provided.

A copy of this notice of proposed regulation changes and the regulations proposed to be changed are available on the Alaska Online Public Notice System. For a copy of the proposed regulation changes contact Shellene L. Hutter, Regulations Program Coordinator at the mailing address, telephone number, or email address above or online on the department's website at:

<https://adfg.alaska.gov/index.cfm?adfg=regulations.main>

After the public comment period ends, the commissioner of 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.** Written comments received are public records and are subject to public inspection.

Statutory Authority: AS 16.05.020; AS 16.05.050; AS 16.05.092; AS 16.05.251; AS 16.05.270; AS 16.10.400; 16.10.455; AS 16.40.100; AS 16.40.160

Statutes Being Implemented, Interpreted, or Made Specific: AS 16.05.020; AS 16.05.050; AS 16.05.060; AS 16.05.092; AS 16.05.251; AS 16.05.831; AS 16.10.240; AS 16.10.375; AS 16.10.400; AS 16.10.443; AS 16.10.455; AS 16.40.100; AS 16.40.160

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

The Department of Fish and Game keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the department's notices of proposed regulation changes. To be added to or removed from the list, send a request to the Department of Fish and Game Boards Support Section at P O Box 115526 Juneau, AK 99811, by phone at (907) 465-4110, or via our website at:

<http://www.adfg.alaska.gov/index.cfm?adfg=fisheriesboard.main>

giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

DATE: 2/10/2021



Shellene L. Hutter
Regulations Program Coordinator
Department of Fish and Game

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Alaska Department of Fish & Game
2. General subject of regulation: commercial fishing of hatchery-produced king salmon in specified terminal harvest areas in southern southeast Alaska, modify administrative regulations of hatcheries and adopt regulations of aquatic plants, amphibians and classification and prohibitions of invasive species.
3. Citation of regulation: 5 AAC 33.370; 5 AAC 33.379; 5 AAC 33.383; 5 AAC 40.350; 5 AAC 40.840; 5 AAC 40.850; 5 AAC 41.005; 5 AAC 41.070; 5 AAC 41.075; 5 AAC 41.250; 5 AAC 93.330; 5 AAC 93.350
4. Department of Law file number, if any: 2020200620
5. Reason for the proposed action: Development of program standards
6. Appropriation/Allocation: Fish and Game Funds
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 2021	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 regulations:

Name: Shellene L. Hutter

Title: Regulations Program Coordinator

Address: P.O. Box 115526

Juneau, AK 99811-5526

Telephone: (907) 465-6124

E-mail address: shellene.hutter@alaska.gov

10. The origin of the proposed action: Staff of state agency

11. Date: 2/10/2021

Prepared by:

Shellene L. Hutter

Name: Shellene L. Hutter

Title: Regulations Program Coordinator

Telephone: (907) 465-6124

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 100875 ST OF AK/DEPT OF FISH AND GAME
P O Box 115526, JUNEAU, AK 99811-5526

Order #: W0020548

Cost: \$936.28

STATE OF ALASKA THIRD JUDICIAL DISTRICT

Lisi Misa being first duly sworn on oath deposes and says that she is a representative of the Anchorage Daily 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 afore-said 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

02/11/2021

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

Subscribed and sworn to before me
this 16th day of March 2021.

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

MY COMMISSION EXPIRES

7/14/2024

NOTARY PUBLIC
JADA L. NOWLING
STATE OF ALASKA
MY COMMISSION EXPIRES July 14, 2024

NOTICE OF PROPOSED CHANGES IN THE COMMERCIAL FISHING REGULATIONS IN TERMINAL HARVEST AREAS IN SOUTHERN AND EAST ALASKA, ADMINISTRATIVE REGULATIONS OF HATCHERY OPERATIONS AND REGULATION OF AQUATIC PLANTS, AMPHIBIANS AND INVASIVE SPECIES OF THE ALASKA DEPARTMENT OF FISH AND GAME AND THE ALASKA BOARD OF FISHERIES

The Alaska Department of Fish and Game is proposing to add regulations to open a joint common property and cost recovery assessment fishery for hatchery-produced king salmon for cost recovery by the hatchery permit holder in the Neets Bay, Carroll Inlet and Anita Bay terminal harvest areas. Additionally, changes will include amending regulations administrative in nature concerning hatchery operations, including permitting and reporting requirements. The commissioner of the Department of Fish and Game, under a delegation of authority issued by the Alaska Board of Fisheries is also proposing to adopt regulations of amphibians and classification and prohibitions of invasive species.

The commissioner of the Department of Fish and Game proposes to adopt regulation changes in Title 5 of the Alaska Administrative Code (AAC) including the following:

(1) 5 AAC 33.370. District 1: Neets Bay Hatchery Salmon Management Plan is proposed to be changed to open a joint common property and cost recovery assessment fishery for hatchery-produced king salmon in the Neets Bay terminal harvest area open to all commercial fishing gear groups with dates of openings and closures to be established by emergency order.

(2) 5 AAC 33.375. Carroll Inlet Terminal Harvest Area Salmon Management Plan is proposed to be changed to open a joint common property and cost recovery assessment fishery for hatchery-produced king salmon in the Carroll Inlet terminal harvest area open to all commercial fishing gear groups with dates of openings and closures to be established by emergency order.

(3) 5 AAC 33.383. District 7: Anita Bay Terminal Harvest Area Salmon Management Plan is proposed to be changed to open a joint common property and cost recovery assessment fishery for hatchery-produced king salmon in the Anita Bay terminal harvest area open to all commercial fishing gear groups with dates of openings and closures to be established by emergency order and to correct an outdated cross reference.

(4) 5 AAC 40.350. Public notice is proposed to be changed to revise language to more effectively provide notice of a planning team meeting.

(5) 5 AAC 40.840. Annual management plans is proposed to be changed to define parameters required for the annual management plans, state considerations for the development of the plans and add a provision to allow for actions to be taken outside of the management plan under emergency order authority. Also language is proposed to be added requiring submission of a draft plan by April 1.

(6) 5 AAC 40.850. Notice of permit alteration is proposed to be changed to remove unnecessary language and adding language defining consequence of the issuance of a Notice of Permit Alteration.

(7) 5 AAC 41.250. Permit conditions is proposed to be changed to add language to require that aquatic plants commercially or recreationally harvested be separated by harvest method.

(8) 5 AAC 93.330. Hatchery salmon use authorization is proposed to be changed to remove language requiring buyers and processors utilized by the hatchery operator be identified prior to opening, correct cross references, remove unnecessary or obsolete language and repeal language administrative regulations, including certain reporting and record keeping requirements.

(9) 5 AAC 93.350. General authorizations for use of salmon is proposed to be changed regarding reporting requirements for disposal of salmon carcasses from which roe or eggs are extracted under a permit issued by the department and accounting procedures.

The commissioner of the Department of Fish and Game, under a delegation of authority issued by the Alaska Board of Fisheries (board) under AS 16.05.270, proposes to adopt regulation changes in Title 5 of the Alaska Administrative Code (AAC) including the following:

(1) 5 AAC 41.005. Permit required is proposed to be changed to add language to include all lands of the state for fish transport or aquatic resource permit requirements.

(2) 5 AAC 41.070. Prohibitions on importation and release of live fish is proposed to be changed to add language to include all lands of the state for the stocking or rearing prohibitions of live animals, including ornamental fish, update cross reference of prohibited species listing and to add language to cross reference prohibited amphibian species listing with department and federal regulations.

(3) 5 AAC 41.075. Classification of banned invasive species is proposed to be added to provide a comprehensive list of all banned invasive species by species group and to specify criteria for which the Board of Fisheries will use when making their determination of a banned invasive species listing.

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 Shellen L. Hutter, 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 shellen.hutter@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link <https://www.state.ak.us/OnlinePublicNotices/NoticeView.aspx?id=201377>.

The comments must be received no later than 5:00 p.m. on March 14, 2021.

You may submit written questions relevant to the proposed action to Shellen L. Hutter, 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 questions by facsimile at (907) 465-2604 and by electronic mail at shellen.hutter@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 will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Shellen L. Hutter at (907) 465-6124 no later than March 8, 2021 to ensure that any necessary accommodations can be provided.

A copy of this notice of proposed regulation changes and the regulations proposed to be changed are available on the Alaska Online Public Notice System. For a copy of the proposed regulation changes contact Shellen L. Hutter, Regulations Program Coordinator at the mailing address, telephone number, or email address above or online on the department's website at: <https://adfg.alaska.gov/index.cfm?adfg=regulations-main>

After the public comment period ends, the commissioner of 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 decline to take any 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. Written comments received are public records and are subject to public inspection.

Statutory Authority: AS 16.05.020; AS 16.05.050; AS 16.05.092; AS 16.05.251; AS 16.05.270; AS 16.10.400; 16.10.455; AS 16.10.455; AS 16.10.400; AS 16.10.160
Statutes Being Implemented, Interpreted, or Made Specific: AS 16.05.020; AS 16.05.050; AS 16.05.092; AS 16.05.251; AS 16.05.270; AS 16.10.400; AS 16.10.455; AS 16.10.455; AS 16.10.400; AS 16.10.160
Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

The Department of Fish and Game keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the department's notices of proposed regulation changes. To be added to or removed from the list, send a request to the Department of Fish and Game, Regulatory Section at P.O. Box 115526 Juneau, AK 99811, by phone at (907) 465-4110, or via our website at: <http://www.adfg.alaska.gov/index.cfm?adfg=fisheriesboard-main> giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

DATE: 2/10/2021
By: /s/ Shellen L. Hutter
Regulations Program Coordinator
Department of Fish and Game

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Shellene Louise Hutter, Regulations Program Coordinator for the Alaska Department of Fish & Game, under penalty of perjury, certify the following:

As required by AS 44.62.190, notice of the proposed adoption of regulations to add assessment fisheries in specified terminal harvest areas in southern southeast Alaska, administrative regulations of hatchery operations, regulations of aquatic plants, amphibians and invasive species has been given by being

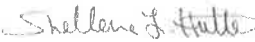
- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (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).

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

There is no notary public or other official empowered to administer oaths available to notarize this document as a result of social distancing requirements implemented statewide.

I certify under penalty of perjury that the foregoing is true.

Date: 3/22/2021

DocuSigned by:

5C0684476839446...

Shellene L. Hutter, Regulations Program Coordinator
State of Alaska
Juneau

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Shellene Louise Hutter, Regulations Program Coordinator for the Alaska Department of Fish & Game, under penalty of perjury, state the following:

In compliance with AS 44.62.215, the Alaska Department of Fish & 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 & Game regulations to add assessment fisheries in specified terminal harvest areas in southern southeast Alaska, administrative regulations of hatchery operations, regulations of aquatic plants, amphibians and invasive species.

There is no notary public or other official empowered to administer oaths available to notarize this document as a result of social distancing requirements implemented statewide.

I certify under penalty of perjury that the foregoing is true.

3/22/2021

Date: _____

DocuSigned by:

5C0884476839446...

Shellene L. Hutter, Regulations Program Coordinator
State of Alaska
Juneau