

Title 5. Fish and Game.

The part heading for 5 AAC Part 1 is changed to read:

Part 1. Commercial and Subsistence Fishing and Private Nonprofit Salmon and Shellfish Hatcheries.

Chapter 40. Private Nonprofit Salmon Hatcheries.

The chapter heading for 5 AAC Chapter 40 is changed to read:

Chapter 40. Private Nonprofit Salmon and Shellfish Hatcheries.

Article 1. General.

5 AAC 40.005(a) is amended to read:

(a) The harvest of salmon and shellfish inhabiting the water of the state, regardless of whether the salmon or shellfish are naturally or artificially propagated, may only be conducted under [ONLY PURSUANT TO] regulations adopted by the Board of Fisheries or the commissioner.

5 AAC 40.005(b) is amended to read:

(b) The harvest of salmon and shellfish produced by [RETURNING TO] a private nonprofit [SALMON] hatchery is [WILL BE] governed by the regulations adopted by the Board of Fisheries or the commissioner. The board may [WILL, IN ITS DISCRETION,] develop [HARVESTING] regulations after review of the management [HARVEST] plans or other materials, information, or [AND] testimony [, IF ANY,] presented by a [THE] regional

association [ASSOCIATIONS], hatchery **operator** [OPERATORS], the Department of Commerce, Community, and Economic Development, the Department of Fish and Game, **commercial** fishermen, **or an** [AND OTHER] interested **party** [PARTIES].

5 AAC 40.005(c) is amended to read:

(c) **In an area where salmon** [WHERE] hatchery returns enter a segregated location near the release site and can be harvested without significantly affecting wild stocks [,] **or a hatchery permit has been issued for shellfish enhancement,** a special harvest area may be designated **within the hatchery permit,** by regulation adopted by the board, [WITHIN THE HATCHERY PERMIT,] or by emergency **order** [ORDERS] issued by the commissioner.

5 AAC 40.005(d) is amended to read:

(d) A private nonprofit hatchery permit holder **or a hatchery permit holder's agent, contractee, or employee** [AND HIS AGENTS, CONTRACTEES, AND EMPLOYEES] may **only** harvest salmon **or shellfish** for the hatchery [ONLY] in the applicable special harvest area. **Nothing in this subsection prohibits** [DOES NOT PREVENT] a special harvest area from being open to commercial, sport, or subsistence fishing or **a** [ANY] combination thereof **as** [TO THE EXTENT] provided in regulations adopted **or an emergency order** [AND ORDERS] issued under this **Title** [CHAPTER]. [HARVESTING OF SALMON WITHIN THE SPECIAL HARVEST AREA, WHETHER BY THE HATCHERY OPERATOR OR THE COMMON PROPERTY FISHERIES, WILL BE OPENED AND CLOSED BY REGULATION OR EMERGENCY ORDER.]

5 AAC 40.005(g) is amended to read:

(g) **An agent, contractee, or employee** [AGENTS, CONTRACTEES, AND EMPLOYEES] of a hatchery permit holder may **only** harvest salmon **or shellfish** for the hatchery in **a** [THE] special harvest area [ONLY] if **the agent, contractee, or employee possesses** [THEY HAVE IN THEIR POSSESSION] a written authorization from the hatchery permit holder and **harvests the salmon or shellfish** [ONLY] in accordance with **the** [ITS] terms **of the written authorization**. The activities in the special harvest area of a person who is not a hatchery permit holder or an agent, contractee, or employee of the permit holder acting under the terms of a written authorization [,] are governed by **the** regulations applicable to commercial, sport, personal use, and subsistence fishing.

(In effect before 1983; am 4/16/83, Register 86; am 5/31/85, Register 94; am ____/____/____, Register _____)

Authority:	<u>AS 16.05.050</u>	<u>AS 16.05.831</u>	<u>AS 16.12.010</u>
	AS 16.05.060	<u>AS 16.10.420</u>	<u>AS 16.12.050</u>
	AS 16.05.251	AS 16.10.440	

5 AAC 40.010 is amended to read:

5 AAC 40.010. Modifications of applicable regulations. (a) **A hatchery** [HATCHERY] permit **holder** [HOLDERS] shall, with respect to salmon **or shellfish** harvested by **the permit holder or the permit holder's agent, contractee, or employee** [THEM (OR THEIR AGENTS, CONTRACTEES, OR EMPLOYEES)], comply with **the** applicable provisions of 5 AAC 39.130 [(a) AND (b)] as though **that person is** [THEY WERE] a purchaser of fish.

(b) **If a hatchery** [HATCHERY] permit **holder harvests** [HOLDERS HARVESTING] salmon within a special harvest area [, TO THE EXTENT THOSE SALMON [ARE USED] as egg sources for broodstock **and requests an exemption**, [WILL BE EXEMPTED BY] the commissioner **may exempt the hatchery permit holder** from the provisions of AS 16.05.831 [IF THE PERMIT HOLDER SO REQUESTS]. The commissioner may condition the exemption on terms **the commissioner** [HE] considers necessary to carry out [THE INTENT OF] AS 16.05.831.

(c) **A hatchery** [HATCHERY] permit **holder** [HOLDERS] **harvesting** [CONDUCTING A HATCHERY HARVEST OF SALMON] within a special harvest area **is** [ARE] exempt from the provisions of 5 AAC 39.290.

(d) **A person who owns a commercial fishing vessel or that person's agent, when** [FISHERMEN] taking salmon **or shellfish** in a special harvest area under authorization from the hatchery permit holder and operating under a special harvest area entry permit, **is** [ARE] exempt from the provisions of 5 AAC 39.120. (In effect before 1988; am ____/____/_____, Register _____)

Authority:	AS 16.05.050	AS 16.05.920	[AS 16.10.420 - AS 16.10.440]
	AS 16.05.060	<u>AS 16.10.420</u>	<u>AS 16.12.030</u>
	AS 16.05.251	<u>AS 16.10.430</u>	<u>AS 16.12.040</u>
	AS 16.05.831	<u>AS 16.10.440</u>	<u>AS 16.12.050</u>

Article 3. Applicability of Regulations.

5 AAC 40.100 is amended to read:

5 AAC 40.100. Applicability of regulations. The provisions of 5 AAC 40.110 - 5 AAC 40.990 govern the **hatchery** permit application process for private nonprofit [SALMON] hatcheries [,] and establish guidelines and procedures regarding the operation of permitted hatcheries. (Eff. 3/31/85, Register 93; am ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.375 **AS 16.12.010**
AS 16.05.092 AS 16.10.470 **AS 16.12.100**

Article 4. Permit Application.

The Article heading title of 5 AAC Chapter 40 is changed to read:

Article 4. Permitting [PERMIT APPLICATION].

5 AAC 40.110 is amended to read:

5 AAC 40.110. Authority. The commissioner will review and take action on each application for a private nonprofit [SALMON] hatchery. (Eff. 3/31/85, Register 93; am ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.400 **AS 16.12.100**
AS 16.05.092 **AS 16.12.010**

5 AAC 40.120 is amended to read:

5 AAC 40.120. Pre-application assistance. When preparing an application for a hatchery permit or conducting a related activity, a nonprofit corporation organized under AS 10.20 [AN APPLICANT] may request the department's assistance [IN PREPARING AN APPLICATION OR CONDUCTING RELATED ACTIVITIES]. The PNP coordinator [, OR

THE DEPARTMENT AREA MANAGEMENT BIOLOGIST,] will provide assistance to the extent practicable. (Eff. 3/31/85, Register 93; am ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.400 AS 16.12.010
AS 16.05.092

5 AAC 40.130 is amended to read:

5 AAC 40.130. Management feasibility analysis. (a) A nonprofit corporation organized under AS 10.20 may submit a request to the PNP coordinator for the [THE] department to prepare [WILL ASSIST AN APPLICANT BY PREPARING] a management feasibility analysis for a [EACH] proposed hatchery site. The department must complete and provide the analysis to the nonprofit corporation [WILL BE COMPLETED] before the nonprofit corporation may submit [SUBMITTAL OF] an application for a [PRIVATE NONPROFIT SALMON] hatchery permit under 5 AAC 40.140. The department will base the [AN] analysis [IS BASED] on the following information that must be provided by the nonprofit corporation [APPLICANT] to the PNP coordinator; [, INCLUDING]

- (1) the location of the facility;
- (2) the [SPECIES] desired species and broodstock for hatchery production;
- (3) if applicable, the run timing, by species of salmon;
- (4) the incubation and rearing levels desired during the first reproductive cycle, by species; [AND]
- (5) the incubation and rearing levels desired at full capacity, by species;
- (6) if requested by the PNP coordinator, other information necessary for the department to complete the analysis.

(b) Not later than 90 days after the PNP coordinator receives from the **nonprofit corporation organized under AS 10.20** [APPLICANT] the information described in (a) of this section, the department will complete a management feasibility analysis of the proposed hatchery. [A MANAGEMENT FEASIBILITY ANALYSIS INCLUDES, AT A MINIMUM, THE FOLLOWING INFORMATION:

(1) AN ESTIMATE OF POTENTIAL CONTRIBUTIONS TO THE COMMON PROPERTY FISHERY;

(2) POTENTIAL SIZE AND LOCATION OF A SPECIAL HARVEST AREA;

(3) SPECIAL MANAGEMENT CONSIDERATIONS OR THE NEED FOR ADDITIONAL STUDIES;

(4) POTENTIAL BROODSTOCK SOURCES;

(5) AN ASSESSMENT OF PRODUCTION POTENTIALS FOR EACH SPECIES; AND

(6) ADDITIONAL FACTORS CONSIDERED BY THE DEPARTMENT TO BE RELEVANT TO THE PROPOSED HATCHERY OPERATION.]

(c) The department will include the following information in a management feasibility analysis:

(1) an estimate of potential contributions to the common property fishery;

(2) potential size and location of a special harvest area;

(3) special management considerations or the need for additional studies;

(4) potential broodstock sources;

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

(6) additional factors considered by the department to be relevant to a proposed hatchery operation. (Eff. 3/31/85, Register 93; am 6/1/2013, Register 206; am ____/____/____, Register _____)

Authority: AS 16.05.020 AS 16.10.400 **AS 16.12.010**
AS 16.05.092

5 AAC 40.140 is amended to read:

5 AAC 40.140. Hatchery permit [PERMIT] application. An application for a hatchery permit must be submitted to the PNP coordinator. The PNP coordinator will provide an application [FORM] upon request. [THE APPLICATION MUST INCLUDE A COMPLETED MANAGEMENT FEASIBILITY ANALYSIS.] The applicant shall provide, in the **hatchery** permit application, detailed statements of operational goals, objectives, and plans. **The application must include a management feasibility analysis completed in accordance with**

5 AAC 40.130. (Eff. 3/31/85, Register 93; am ____/____/____, Register _____)

Authority: AS 16.05.020 AS 16.10.400 **AS 16.12.010**
AS 16.05.092

5 AAC 40.150 is amended to read:

5 AAC 40.150. Application fee. An application **for a hatchery permit must include a**
(1) \$0 application fee for a salmon hatchery permit, as [MUST BE
ACCOMPANIED BY THE FEE] required **under** [BY] AS 16.10.400; **or**
(2) \$0 application fee for a shellfish hatchery permit, as required under

AS 16.12.010. (Eff. 3/31/85, Register 93; am ____/____/____, Register _____)

Authority: AS 16.05.020 AS 16.10.400 **AS 16.12.010**

AS 16.05.092

5 AAC 40.160 is amended to read:

5 AAC 40.160. Acceptance determination. (a) The PNP coordinator shall review a submitted application for completeness and determine whether it includes the completed management feasibility analysis described in **5 AAC 40.130** [5 AAC 40.130(b)]. If the PNP coordinator determines that the application [FORM] is not complete or does not contain a completed management feasibility analysis, the PNP coordinator shall request, in writing, the necessary information from the applicant to complete the application. An application will not be accepted until the PNP coordinator determines that the application is complete and that it contains a completed management feasibility analysis.

(b) The 60-day time period for processing an application under 5 AAC 40.190 **begins** [, SCHEDULE A, WILL BEGIN] when the application is accepted under this section. (Eff. 3/31/85, Register 93; am 4/28/95, Register 134; am ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.400 **AS 16.12.010**
AS 16.05.092

The section heading of 5 AAC 40.170 is changed to read:

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

5 AAC 40.180(a) is amended to read:

(a) If, after an application **for a hatchery permit** has been accepted by the PNP coordinator, the PNP coordinator determines that more information is necessary in order for the

department to evaluate the biological, management, and economic feasibility of the proposed hatchery, the PNP coordinator shall request [, IN WRITING,] the necessary information from the applicant **in writing. If the PNP coordinator submits a written request for additional information to the applicant, the 60-day time period of the application review and approval process described in 5 AAC 40.190 is suspended until the PNP coordinator receives the additional information from the applicant.**

(Eff. 3/31/85, Register 93; am 4/28/95, Register 134; am ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.400 **AS 16.12.010**
AS 16.05.092

5 AAC 40 is amended by adding a new section to read:

5 AAC 40.185. Basic Management Plan. (a) The hatchery permit application process includes the development, finalization, and approval of a basic management plan. A basic management plan describes how the proposed hatchery and facility will be developed for the first five years and is drafted by the applicant, department area staff, and the PNP coordinator. The basic management plan exists only as a draft basic management plan until approved by the commissioner.

(b) A basic management plan must include the following for a proposed hatchery:

- (1) hatchery development schedule;
- (2) location of the facility;
- (3) capacity of the facility;
- (4) potential donor stock source;
- (5) incubation plans;

- (6) culture plans;
- (7) release locations; and
- (8) adult harvest plans.

(c) An approved basic management plan is an addendum to the hatchery permit and sets out the terms of the hatchery permit. (Eff. ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.400 AS 16.12.010
AS 16.05.092 AS 16.10.410 AS 16.12.020

5 AAC 40.190 is repealed and readopted to read:

5 AAC 40.190. Hatchery permit application review process. (a) Except as provided in 5 AAC 40.180, the application review process for a hatchery permit is set out in (b) of this section.

(b) An applicant shall submit an application for a salmon hatchery or shellfish hatchery permit to the PNP coordinator. Once an application has been received by the PNP coordinator, if the PNP coordinator determines that no additional action is necessary to process the application, the PNP coordinator will review and process the application within 60 days in accordance with the following review process:

- (1) the PNP coordinator will verify that the application is complete; if the application is
 - (A) incomplete or does not include a complete management feasibility analysis, the PNP coordinator shall request the required information from the applicant in writing; or

(B) complete, the PNP coordinator shall accept the application and proceed with department review; the accepted application shall be provided to department technical and regional management staff;

(2) the department will review the accepted application and may submit comments to the PNP coordinator or request, through the PNP coordinator, additional information from the applicant; a request by the PNP coordinator for additional information from the applicant suspends the 60-day application review timeline until the requested information is received by the PNP coordinator;

(3) the department shall work with the applicant to develop a draft basic management plan for the proposed hatchery; the draft basic management plan must be determined by the PNP coordinator to be complete before a public hearing is held under 5 AAC 40.210;

(4) if the application is for a salmon hatchery, the appropriate regional planning team shall review the application to determine if the proposed hatchery is compatible with the regional comprehensive salmon plan developed under AS 16.10.375 and submit the team's recommendation to the commissioner;

(5) if the application is for a shellfish hatchery, the commissioner shall consult with and solicit recommendations from federal and state agencies and technical experts in the relevant area regarding permit stipulations and issuance for the proposed hatchery;

(6) once the PNP coordinator determines that the application, draft basic management plan, and review are complete, the department will notice and conduct a public hearing, subject to the provisions of 5 AAC 40.210, for an application for a

(A) salmon hatchery in accordance with AS 16.10.410;

(B) shellfish enhancement project in accordance with 16.12.020;

(7) after the conclusion of the public notice and hearing, the PNP coordinator will work with the applicant to finalize the draft basic management plan;

(8) the PNP coordinator will compile the hatchery permit application information, including the finalized draft basic management plan, for the commissioner’s review and issuance of a decision in accordance with

(A) 5 AAC 40.220, for a salmon hatchery permit;

(B) 5 AAC 40.225, for a shellfish hatchery permit. (Eff. 3/31/85, Register 93; am 4/28/95, Register 134; am 11/25/2011, Register 200; am ____/____/_____, Register _____)

Authority:	AS 16.05.020	AS 16.10.400	<u>AS 16.12.010</u>
	AS 16.05.092	<u>AS 16.10.410</u>	<u>AS 16.12.020</u>
	AS 16.10.375	<u>AS 16.12.010</u>	<u>AS 16.12.060</u>

5 AAC 40.210 is amended to read:

5 AAC 40.210. Public Hearing. (a) The department **shall** [WILL] conduct a public hearing **for a** [ON EACH] completed **hatchery** permit application. The commissioner **shall** [WILL GIVE] notice **the** [OF] public hearing [AT ANY TIME] after acceptance of **the hatchery permit** [AN] application, **not less than 25 days before the date of the public hearing.** **At** [THE NOTICE WILL BE GIVEN AT LEAST 25 DAYS BEFORE A PUBLIC HEARING, AND THE NOTICE WILL, IN] the commissioner's discretion, **the hearing may be noticed** [BE GIVEN] before the **PNP coordinator issues a determination that**

[COMPLETION OF] the draft basic management plan **is complete under 5 AAC 40.190**. The hearing will be held under the following sequential procedures:

(1) the commissioner will make an introductory statement;

(2) the applicant **will** [SHALL] make a presentation of the **draft basic management plan, which must include the** proposed hatchery plans describing **the information required to be included in a basic management plan under 5 AAC 40.185** [ITS LOCATION, INCUBATION PLANS, THE CAPACITY OF THE FACILITY, THE DONOR STOCK SOURCE,] and other relevant facts **or information** that may be of interest to the department or the public;

(3) The department will present the draft [OF THE] basic management plan for the proposed facility, including **expected** [A PRESENTATION ON FISH CULTURE ASPECTS,] production [CONSIDERATIONS,] and [PRESENTATION OF THE] management, **and will make copies of the draft basic management plan available for public review and comment at the hearing** [SECTION OF THE BASIC MANAGEMENT PLAN BY THE LOCAL COMMERCIAL FISHERIES AND SPORT FISHERIES AREA MANAGEMENT BIOLOGIST]; and

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

(b) The department **may respond to a comment, and shall respond to a specific objection,** [WILL RESPOND IN WRITING WITHIN 10 WORKING DAYS TO ANY SPECIFIC OBJECTIONS] offered by a member of the public at the hearing **conducted under this section not later than**

(A) 10 days after a public hearing for a salmon hatchery permit application;

(B) 30 days after a public hearing for a shellfish hatchery permit application.

(c) The department **may** [WILL] accept written comments for 15 days after the hearing, [,] and **may** [WILL] respond in writing, within 10 working days after receipt, to **a** [ANY] specific **objection** [OBJECTIONS] received within that time. [THE PUBLIC HEARING PROCESS CONCLUDES 15 DAYS AFTER THE ORAL HEARING IS HELD.] (Eff. 3/31/85, Register 93; am ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.410 **AS 16.12.020**
AS 16.05.092

5 AAC 40.220 is amended to read:

5 AAC 40.220. Application review and decision for a salmon hatchery permit [REVIEW AND DETERMINATION]. (a) The commissioner **shall** [WILL] review the following information, compiled by the PNP coordinator, before **issuing** [RENDERING] a decision on **whether to approve or deny** an application **for a salmon hatchery permit**:

- (1) recommendations from the regional planning team;
- (2) recommendations resulting from the department's review of the application;

and

(3) **objections and recommendations received from the public during** [THE RESULTS OF] the public hearing regarding the proposed **hatchery** facility.

(b) The commissioner will **issue** [RENDER] a decision on **whether to approve or deny a salmon hatchery permit** [THE COMPLETED] application, **including the draft basic management plan**, and notify the applicant **of the decision** in writing **not later than** [, WITHIN] 75 calendar days after **the conclusion of the public hearing held under 5 AAC**

40.210 [AN APPLICATION IS COMPLETE]. The **commissioner shall base the**

[COMMISSIONER'S] decision [WILL BE BASED] on the following [CONSIDERATIONS]:

(1) **the** [THE] physical and environmental nature of the proposed location must be suitable for enhancing runs or for establishing new runs [,] and must have the potential to make a reasonable contribution to the common property fishery; **the** [. THE] proposed hatchery returns may not

(A) unreasonably or adversely affect management of natural stocks; **or** [.

THE RETURNS FOR THE PROPOSED HATCHERY MAY NOT]

(B) require significant **alteration of a** [ALTERATIONS IN] traditional fishery time, area, gear type, or user group **allocation;** [ALLOCATION.]

(2) **the** [THE] operation of the proposed hatchery must make the best use of the site's potential [,] to benefit the common property fishery; **[. IN ORDER]** to achieve optimum public benefit from the state's private nonprofit hatchery program and ensure that the proposed hatchery is in the best interests of the public, **an** enhancement **site** [SITES] must be developed to **the site's** [THEIR] fullest potential [,] with consideration to appropriate species; **[AND]** technological use of the site, **and available resources;** [.]

(3) **the** [THE] proximity of the proposed hatchery **releases** to an area that will allow for a **reasonable segregation** [SEGREGATED HARVEST] of hatchery stocks [WITHOUT ADVERSELY AFFECTING NATURAL STOCKS IS AN IMPORTANT FACTOR]; **the** [. THE] harvest area of the proposed hatchery must be

(A) of sufficient size to allow harvest of **the** hatchery returns; **[.]** and

(B) may not otherwise limit **a harvest** [HARVESTS] to a location where fish would not be expected to [BE OF SUFFICIENT QUALITY TO] satisfy the

requirements of AS 16.10.450 [REGARDING FISH FOR HUMAN CONSUMPTION];
[.]

(4) **the** [THE] proposed hatchery must have available donor sources that are approvable under 5 AAC 41; **proposed** [. PROPOSED] donor sources for hatchery broodstock must be able to meet necessary first-cycle egg take levels; [.]

(5) **the** [THE] proposed hatchery must have a secured water source and delivery system that is adequate for the proposed levels of incubation and rearing; **the** [. THE] security of the water source must be demonstrated through [THE]

(A) appropriate water use permits; [.]

(B) annual hydrographs; [.]

(C) a chemical analysis of the water source; [.] and [ANY PROVISIONS]

(D) necessary **provisions** for recycling and depuration; [.]

(6) **the** [THE] proposed hatchery facility and water intake structures may not be located in **a stream** [STREAMS] or **in the reach of a stream that has** [REACHES OF STREAMS THAT HAVE] dynamic flooding characteristics or [THAT HAVE] significant and rapid bedload transport that may endanger water intake galleries, weirs, the facility, or the reliability of the water source for the proposed hatchery; [.]

(7) **the** [THE] proposed hatchery must allow for the maintenance of adequate instream flows below the hatchery or any hatchery-related **facility** [FACILITIES], **including a** [SUCH AS] water intake **structure** [STRUCTURES], to support natural stocks; [.]

(8) **the** [THE] proposed hatchery **plan** [PLANS] and staffing **plan** [PLANS] must demonstrate [A REASONABLE LEVEL OF] operational feasibility [AND AN ACCEPTABLE DEGREE OF POTENTIAL SUCCESS].

(c) If **an** [THE] application is approved **under this section**, the commissioner **shall** [WILL], as a condition of the **hatchery** permit, require the permit holder to provide for suitable fish-passage facilities in order to accommodate acceptable upstream and downstream passage of fish, if passage facilities are determined by the department to be necessary. (Eff. 3/31/85, Register 93; am ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.375 AS 16.10.400
AS 16.05.092

5 AAC 40 is amended by adding a new section to read:

5 AAC 40.225. Application review and decision for a shellfish hatchery permit. (a)

The commissioner shall review the following information compiled by the PNP coordinator before issuing a decision on whether to approve or deny an application for a shellfish hatchery permit:

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

and

(2) the information presented, recommendations, and specific support or objections from the public hearing regarding the proposed shellfish facility, hatchery permit application, or basic management plan.

(b) The commissioner will issue a decision on whether to approve or deny a shellfish hatchery application, including the basic management plan, and notify the applicant in writing of the decision not later than 75 calendar days after the conclusion of the public hearing held under 5 AAC 40.210. The commissioner shall base the decision on the following:

(1) the physical and environmental nature of the proposed location must be suitable for enhancing shellfish fisheries, rehabilitating natural stocks, or increasing the area of productive natural shellfish habitat and must have the potential to make a reasonable contribution to the common property fishery; the proposed hatchery production may not unreasonably or adversely affect management of natural stocks; a shellfish fishery enhancement project may not significantly alter traditional fishery time, area, gear type, or user group allocations;

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

(3) the proximity of the proposed hatchery releases to an area that will allow for a harvest of hatchery stocks without adversely affecting natural stocks;

(4) the proposed hatchery must have available donor sources that are approvable under 5 AAC 41; proposed donor sources for hatchery broodstock must be able to meet necessary first-cycle broodstock levels;

(5) the proposed hatchery must have a secured water source and delivery system that is adequate for the proposed levels of incubation and rearing;

(6) the proposed hatchery plan and staffing plan must demonstrate a reasonable level of operational feasibility and an acceptable degree of potential success. (Eff.

_____/_____/_____, Register _____)

Authority: AS 16.05.020 AS 16.05.092 AS 16.12.010

5 AAC 40.230 is amended to read:

5 AAC 40.230. Reconsideration. An application for a [PRIVATE NONPROFIT SALMON] hatchery permit which has been denied by the commissioner may [WILL, IN THE COMMISSIONER'S DISCRETION,] be reconsidered if the applicant provides new or additional information that the commissioner determines may have altered the original decision.

Reconsideration by the commissioner under this section does not require additional notice or public hearing on the hatchery permit application under 5 AAC 40.210. (Eff. 3/31/85,

Register 93; am ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.400 AS 16.12.010
AS 16.05.092

5 AAC 40 is amended by adding a new section to read:

5 AAC 40.235. Non-transferability of hatchery permit. A hatchery permit is not transferable. A person who wishes to obtain a permit to operate a hatchery at a location that is already permitted shall submit an application subject to the application review process set out in 5 AAC 40.110 - 5 AAC 40.230. If the assets or control of a hatchery are transferred to a degree that the department considers to be substantial, the department will notify the new operator that they are required to submit a new application for a hatchery permit in accordance with this chapter. If a new hatchery permit is issued, the existing hatchery permit is terminated. (Eff.

____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.400 AS 16.12.010
AS 16.05.092

5 AAC 40.240 is amended to read:

5 AAC 40.240. Permit revocation. (a) The commissioner will revoke a hatchery permit if the commissioner determines that at the end of five years from the date the permit was issued, the permit holder has not undertaken substantial ongoing work to construct and operate a hatchery facility in compliance with the terms and conditions specified in the permit and the facility development schedule specified in the basic management plan required by 5 AAC 40.185 [5 AAC 40.820].

(b) To initiate revocation of a permit under this section, the PNP coordinator shall notify the permit holder, in writing, of the proposed revocation. The permit holder may have 30 days from the date of the notice of the proposed revocation to submit information to the commissioner to show that the permit holder has undertaken substantial ongoing work to construct and operate a hatchery facility in compliance with the terms and conditions specified in the permit and the facility development schedule specified in the basic management plan required by 5 AAC 40.185 [5 AAC 40.820].

(c) The PNP coordinator shall provide written notice of a [THE] proposed revocation of a salmon [THE] hatchery permit to the regional planning team for the area in which the proposed salmon hatchery is permitted. The regional planning team shall review and submit comments on the proposed revocation to the commissioner not later than [MAY HAVE] 90 days after [FROM] the date of the notice [TO REVIEW THE PROPOSED REVOCATION AND SUBMIT COMMENTS ON IT TO THE COMMISSIONER]. (Eff. 4/28/95, Register 134; am

_____/_____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.430 AS 16.12.040
AS 16.05.092

5 AAC 40 is amended by adding a new section to read:

5 AAC 40.245. Hatchery permit alteration. (a) A hatchery permit holder may request alteration of an existing hatchery permit. The permit holder shall submit the permit alteration request to the PNP coordinator on a form provided by the department.

(b) A hatchery permit holder's submission of a request for permit alteration under this section must be received by the PNP coordinator not later than February 15 of the calendar year that the proposed alteration is requested to occur. The commissioner may extend the submission deadline for a permit alteration request if the commissioner determines that the extension is justified by extraordinary circumstances or an emergency.

(c) If a hatchery permit alteration is requested for a salmon hatchery, the appropriate regional planning team will review and make a recommendation to the commissioner on the hatchery permit alteration request.

(d) Approval of a hatchery permit alteration by the commissioner modifies the existing hatchery permit. (Eff. ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.400 AS 16.12.010
AS 16.05.092

The article heading of Article 5 in 5 AAC Chapter 40 is changed to read:

Article 5. Regional Comprehensive Salmon Plans [PLANNING].

Article 8. General Provisions.

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5 AAC 40.800 is repealed:

5 AAC 40.800. Nontransferability of permits. Repealed. (Eff. 3/31/85, Register 93; repealed ____/____/_____, Register _____)

5 AAC 40.810(a) is amended to read:

(a) A preference right under AS 16.10.400 applies to a potential **salmon** hatchery site [,] and does not constitute an approval of a permit.

5 AAC 40.810(c) is amended to read:

(c) The PNP coordinator will notify the appropriate qualified regional association [, BY CERTIFIED LETTER,] of an **application** [APPLICANT'S INTENT TO APPLY] for a **permit for a** hatchery site [IF] that [SITE] has been identified [AS A POTENTIAL HATCHERY SITE] in the comprehensive **salmon** plan for the region.

5 AAC 40.810(d) is amended to read:

(d) **A qualified regional association shall respond to the PNP coordinator not more than** [WITHIN] three weeks after receiving **a** [THE] notification **described in (b) of this section** [, THE QUALIFIED REGIONAL ASSOCIATION MAY RESPOND, BY CERTIFIED LETTER, TO THE PNP COORDINATOR] to establish a preference right at that location.

5 AAC 40.810(g) is amended to read:

(g) A local nonprofit hatchery corporation **that seeks qualified** [SEEKING] regional association approval **of a proposed preference right for a hatchery site** shall **notify** [SEND A

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NOTICE, BY CERTIFIED LETTER, TO] the PNP coordinator **and** [AT THE SAME TIME THAT A CERTIFIED LETTER REQUESTING APPROVAL IS SENT TO] the qualified regional association.

(Eff. 3/31/85, Register 93; am ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.400 **AS 16.12.010**
AS 16.05.092

5 AAC 40.820 is repealed:

5 AAC 40.820. Basic management plans. Repealed. (Eff. 3/31/85, Register 93; am 4/28/95, Register 134; repealed ____/____/_____, Register _____)

5 AAC 40.830 is amended to read:

5 AAC 40.830. Facility inspection. A hatchery [THE] permit holder shall notify the PNP coordinator when construction of **a** [THE] hatchery has been completed and **each** [THE] facility **of the hatchery** is ready for operation. **A** [THE] facility must be [INSPECTED AND] approved by the department before the permit holder may start operations. **The department may conduct an inspection of a facility at any time the facility is in operation.** (Eff. 3/31/85,

Register 93; am ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.400 **AS 16.12.010**
AS 16.05.092 AS 16.10.460 **AS 16.12.100**

5 AAC 40.840 is repealed and readopted to read:

5 AAC 40.840. Annual management plan. (a) Beginning on the first year of operation of a hatchery, and on an annual basis after that, the department shall work with a permit holder to prepare an annual management plan to guide hatchery operations in accordance with the hatchery permit. The PNP coordinator shall coordinate with the appropriate department staff and hatchery permit holder to prepare a draft annual management plan. The hatchery operator shall submit the draft annual management plan to the department not later than April 1 of each year for review by the commissioner. The annual management plan exists only as a draft annual management plan until approved by the commissioner.

(b) An annual management plan must be developed with consideration of a hatchery's production cycle and must organize and guide the hatchery's operations regarding

- (1) production goals;
- (2) broodstock management; and
- (3) harvest management of hatchery-produced salmon or adult shellfish.

(c) For a salmon hatchery annual management plan, a production cycle is considered to begin with adult returns that lead to egg takes and end with fish releases.

(d) For a shellfish hatchery annual management plan, a production cycle is considered to begin with broodstock collection and end with juvenile releases.

(e) The Department of Commerce, Community, and Economic Development may review a draft annual management plan. For a salmon hatchery, the appropriate qualified regional planning team may review a draft annual management plan.

(f) An approved annual management plan does not limit or prohibit a permit holder from acting in accordance with the hatchery permit or an emergency order. (Eff. 3/31/85, Register 93; am 4/25/2021, Register 238; am ____/____/_____, Register _____)

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Authority: AS 16.05.020 AS 16.10.400 AS 16.12.010
AS 16.05.092 AS 16.10.443 AS 16.12.060
AS 16.10.375

5 AAC 40.850 is repealed:

5 AAC 40.850. Notice of permit alteration. Repealed. (Eff. 3/31/85, Register 93; am 4/25/2021, Register 238; repealed ____/____/_____, Register _____)

5 AAC 40.860 is amended to read:

5 AAC 40.860. Performance review. (a) Based on [UPON] a department [INTERNAL] review, the PNP coordinator will notify the commissioner if a hatchery operator's performance is inadequate, according to the conditions under which the hatchery permit was granted.

(b) The commissioner may [WILL, IN HIS OR HER DISCRETION,] consider a hatchery permit alteration, suspension, or revocation in accordance with AS 16.10.430 for a salmon hatchery or AS 16.12.040 for a shellfish hatchery. If the commissioner considers [DECIDES TO CONSIDER] a hatchery permit alteration, suspension, or revocation for a salmon hatchery, the PNP coordinator will notify the appropriate regional planning team. For a salmon hatchery permit, the [THE] regional planning team may make a written recommendation to the commissioner on the [PROPOSED] alteration, suspension, or revocation that is being considered. The regional planning team and department shall use the following performance standards in a [THEIR] review [, EVALUATION,] and recommendation made to the commissioner by identifying [INCLUDING] whether:

(1) **survival rates have been inadequate** [SURVIVALS IN THE HATCHERY ARE MORE THAN THE MINIMUM STANDARDS DESCRIBED IN (c) OF THIS SECTION]

for a period of greater than four years;

(2) the transport of broodstock from wild sources does not continue for longer than one cycle of the particular species without reevaluation of hatchery operations;

(3) the hatchery contributes to the common property fishery;

(4) the hatchery does not significantly impact wild stocks in a negative manner;

(5) the hatchery fulfills the production objectives described in the terms of the hatchery permit; and

(6) there are any mitigating circumstances **to the hatchery operator's performance that** [WHICH] were beyond the control of the hatchery operator.

(c) Repealed ____/____/_____. (Eff. 3/31/85, Register 93; am ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.375 **AS 16.12.010**

AS 16.05.092 AS 16.10.430 **AS 16.12.040**

The introductory language of 5 AAC 40.870(a) is amended to read:

(a) If, in any of **a hatchery's** [THE HATCHERY] operations [DURING THE YEAR,] an event occurs **that** [WHICH] results in **significant** [FISH OR EGG] mortalities [ABOVE THE MINIMUM HATCHERY SURVIVAL STANDARDS DEFINED IN 5 AAC 40.860], the **hatchery permit holder** [OPERATOR] shall inform the PNP coordinator immediately and [SHALL] submit an incident report, which must include

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(Eff. 3/31/85, Register 93; am ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.400 **AS 16.12.010**

AS 16.05.092

5 AAC 40.880(b) is amended to read:

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

5 AAC 40.880(c) is amended to read:

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

(Eff. 3/31/85, Register 93; am ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.05.092 AS 16.10.450

5 AAC 40 is amended by adding a new section to read:

5 AAC 40.885. Surplus shellfish enhancement species. (a) Shellfish enhancement species are surplus if the broodstock needs for a hatchery identified in the annual management plan have been met.

(b) A proposed sale of surplus broodstock by a hatchery permit holder must be identified in the annual management plan.

(c) A hatchery permit holder may not incubate or rear surplus broodstock or progeny at the hatchery before transfer to another facility permitted under this chapter without obtaining approval for a hatchery permit alteration from the commissioner.

(d) A hatchery permit holder may not transfer any surplus species to another facility unless the hatchery permit holder has been issued the appropriate fish-transport permit by the commissioner. (Eff. ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.05.092 AS 16.12.080

5 AAC 40.890 is amended to read:

5 AAC 40.890. Information. The department will exchange information with the Department of Commerce, Community, and Economic Development, including copies of annual reports required to be submitted **by a hatchery permit holder** under AS 16.10.470 **or AS 16.12.110**, [IN ORDER] to ensure consistency between reports submitted by the **hatchery** permit holder to **each agency** [BOTH AGENCIES]. (Eff. 3/31/85, Register 93; am ____/____/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.470 **AS 16.12.110**
AS 16.05.092

5 AAC 40.990(1) is amended to read:

(1) "commissioner" means the commissioner of the Department of Fish and Game or **the commissioner's** [HIS] designee;

5 AAC 40.990(5) is amended to read:

(5) "enhancement" means a strategy designed to supplement allowable harvest of natural [FRESHWATER AND ANADROMOUS] species; enhancement activities are primarily designed to implement artificial or semi-artificial production systems or to increase the amount of productive natural habitat;

The introductory language of 5 AAC 40.990(6) is amended to read:

(6) "escapement" means all **salmon species** [FISH] that escape the common property fishery and includes two categories of escapement:

5 AAC 40.990(7) is amended to read:

(7) "**hatchery** permit" means a private nonprofit [SALMON] hatchery permit, issued by the commissioner **for the construction or operation of a salmon or shellfish hatchery or facility**, which has not been suspended, or revoked;

5 AAC 40.990(14) is amended to read:

(14) "broodstock" means sexually mature fish **or shellfish** from which **gametes or progeny** [EGGS OR MILT] have been or will be extracted for use [OF THE GAMETES] in artificial propagation. (Eff. 3/31/85, Register 93; am 4/28/95, Register 134; am 8/15/2008, Register 187; am ___/___/_____, Register _____)

Authority: AS 16.05.020 AS 16.10.375 **AS 16.12.199**

AS 16.05.092

(((Publisher, please remove the "and" connector from the end of 5 AAC 40.990(6)(A).)))