

**CURRENT LANGUAGE OF 5 AAC CHAPTER 40 EXCLUDING ARTICLE 2
INCLUDES REGULATIONS HISTORY AND STATUTORY AUTHORITY CITATIONS**

Chapter 40. Private Nonprofit Salmon Hatcheries.

Article

1. General (5 AAC 40.005 — 5 AAC 40.015)
2. Special Harvest Areas (5 AAC 40.030 — 5 AAC 40.085)
3. Applicability of Regulations (5 AAC 40.100)
4. Permit Application Procedures (5 AAC 40.110 — 5 AAC 40.240)
5. Regional Comprehensive Planning (5 AAC 40.300 — 5 AAC 40.370)
8. General Provisions (5 AAC 40.800 — 5 AAC 40.990)

Article 1. General.

5 AAC 40.005 . General.

5 AAC 40.007 . Gear and fishing periods.

5 AAC 40.010 . Modifications of applicable regulations.

5 AAC 40.015 . Prohibitions.

Proposed to be changed:

5 AAC 40.005. General. (a) The harvest of salmon inhabiting the water of the state, regardless of whether the salmon are naturally or artificially propagated, may be conducted only pursuant to regulations adopted by the Board of Fisheries.

(b) The harvest of salmon returning to a private nonprofit salmon hatchery will be governed by regulations adopted by the Board of Fisheries. The board will, in its discretion, develop harvesting regulations after review of the harvest plans or other materials, information, and testimony, if any, presented by the regional associations, hatchery operators, the Department of Commerce, Community, and Economic Development, the Department of Fish and Game, fishermen, and other interested parties.

(c) Where hatchery returns enter a segregated location near the release site and can be harvested without significantly affecting wild stocks, a special harvest area may be designated by regulation adopted by the board, within the hatchery permit, or by emergency orders issued by the commissioner.

(d) A private nonprofit hatchery permit holder and his agents, contractees, and employees may harvest salmon for the hatchery only in the applicable special harvest area. This does not prevent a special harvest area from being open to commercial, sport, or subsistence fishing or any combination thereof to the extent provided in regulations adopted and orders issued under this 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.

(e) Special harvest area boundaries set out in 5 AAC 40, or in a private nonprofit hatchery permit issued by the commissioner, may be altered by emergency order if necessary for proper management of natural or hatchery stocks.

(f) Hatchery permit holders, their agents, contractees, and employees shall comply with all terms and conditions of the hatchery permit, applicable regulations and orders, and any additional requirements imposed by the commissioner to implement this chapter.

(g) Agents, contractees, and employees of a hatchery permit holder may harvest salmon for the hatchery in the special harvest area only if they have in their possession a written authorization from the hatchery permit holder and only in accordance with its terms. 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 regulations applicable to commercial, sport, personal use, and subsistence fishing.

(h) Private nonprofit salmon hatchery operators shall take all reasonable steps necessary to ensure that hatchery-produced salmon harvested in their designated special harvest area are surplus fish produced at that facility. (In effect before 1983; am 4/16/83, Register 86; am 5/31/85, Register 94)

Authority: AS 16.05.060; AS 16.05.251; AS 16.10.440

Unchanged

5 AAC 40.007. Gear and fishing periods. (a) The commissioner may authorize legal gear for cost recovery either through the hatchery permit or by regulation.

(b) Fishing periods for each gear type may be modified by emergency order as needed to protect the public interest or wild stocks.

(c) The hatchery operator shall obtain the appropriate special harvest area entry permits from the Commercial Fisheries Entry Commission. The hatchery operator may also contract with licensed commercial fishermen to conduct the harvest.

(d) The commissioner may define a unit of gear to be used and under a special harvest area entry permit for that gear type. (In effect before 1985; am 5/31/85, Register 94)

Authority: AS 16.05.060; AS 16.05.251; AS 16.05.270

Proposed to be changed:

5 AAC 40.010. Modifications of applicable regulations. (a) Hatchery permit holders shall, with respect to salmon harvested by them (or their agents, contractees, or employees), comply with applicable provisions of 5 AAC 39.130(a) and (b) as though they were a purchaser of fish.

(b) Hatchery permit holders harvesting salmon within a special harvest area, to the extent those salmon are used as egg sources for broodstock, will be exempted by the commissioner from the

provisions of AS 16.05.831 if the permit holder so requests. The commissioner may condition the exemption on terms he considers necessary to carry out the intent of AS 16.05.831.

(c) Hatchery permit holders conducting a hatchery harvest of salmon within a special harvest area are exempt from the provisions of 5 AAC 39.290.

(d) Fishermen taking salmon in a special harvest area under authorization from the hatchery permit holder and operating under a special harvest area entry permit are exempt from the provisions of 5 AAC 39.120. (In effect before 1988)

Authority: AS 16.05.050; AS 16.05.060; AS 16.05.251; AS 16.05.831; AS 16.05.920; AS 16.10.420; AS 16.10.440

Unchanged

5 AAC 40.015. Prohibitions. It is unlawful for any person to violate the provisions of this chapter. (In effect before 1988)

Authority: AS 16.05.050; AS 16.05.060; AS 16.05.251; AS 16.05.831; AS 16.05.920; AS 16.10.420; AS 16.10.440

Unchanged Article 2. Special Harvest Areas (5 AAC 40.030 — 5 AAC 40.085)

Regulatory text of Article 2 being omitted as no changes are being proposed to Article 2. For current regulations please see <https://www.akleg.gov/basis/aac.asp#5.40>

Article 3. Applicability of Regulations.

5 AAC 40.100 . Applicability of regulations.

Proposed to be changed:

5 AAC 40.100. Applicability of regulations. The provisions of 5 AAC 40.110 — 5 AAC 40.990 govern the 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)

Authority: AS 16.05.020; AS 16.10.375; AS 16.05.092; AS 16.10.470

Article 4. Permit Application Procedures.

5 AAC 40.110 . Authority.

5 AAC 40.120 . Pre-application assistance.

5 AAC 40.130 . Management feasibility analysis.

5 AAC 40.140 . Permit application.

5 AAC 40.150 . Application fee.

5 AAC 40.160 . Acceptance determination.

5 AAC 40.170 . Regional planning team review.

5 AAC 40.180 . Additional information.

- 5 AAC 40.190 . Review and approval schedules.
- 5 AAC 40.200. (Repealed).
- 5 AAC 40.210 . Public hearing.
- 5 AAC 40.220 . Review and determination.
- 5 AAC 40.230 . Reconsideration.
- 5 AAC 40.240 . Permit revocation.

Proposed to be changed:

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)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.400

Proposed to be changed:

5 AAC 40.120. Pre-application assistance. An applicant may request 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)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.400

Proposed to be changed:

5 AAC 40.130. Management feasibility analysis. (a) The department will assist an applicant by preparing a management feasibility analysis for each proposed hatchery site. The analysis will be completed before submittal of an application for a private nonprofit salmon hatchery permit. An analysis is based on information provided by the applicant to the PNP coordinator, including

- (1) the location of the facility;
- (2) the species desired for hatchery production;
- (3) the run timing, by species;
- (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.

(b) Not later than 90 days after the PNP coordinator receives from the applicant the information described in (a) of this section, the department will complete a management feasibility analysis of the proposed hatchery. 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. (Eff. 3/31/85, Register 93; am 6/1/2013, Register 206)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.400

Proposed to be changed:

5 AAC 40.140. 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 permit application, detailed statements of operational goals, objectives, and plans. (Eff. 3/31/85, Register 93)

Authority: AS 16.05.020AS 16.05.092AS 16.10.400

Proposed to be changed:

5 AAC 40.150. Application fee. An application must be accompanied by the fee required by AS 16.10.400. (Eff. 3/31/85, Register 93)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.400

Proposed to be changed:

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 (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 , Schedule A, will begin when the application is accepted under this section. (Eff. 3/31/85, Register 93; am 4/28/95, Register 134)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.400

Proposed to be changed: Section Title Only

5 AAC 40.170. Regional planning team review. (a) The appropriate regional planning team, as established under 5 AAC 40.300, shall review each application to determine if the proposed

hatchery is compatible with the appropriate regional comprehensive salmon plan. The regional planning team shall use the following application review criteria:

- (1) the contribution the proposed hatchery would make to the common property fishery;
- (2) the provisions for protection of the naturally occurring stocks from any adverse effects which may originate from the proposed hatchery;
- (3) the compatibility of the proposed hatchery with the goals and objectives of the comprehensive salmon plan for the region; and
- (4) whether the proposed hatchery would make the best use of the site's potential to benefit the common property fishery.

(b) An applicant may review the regional planning team determination and comment on it by letter to the commissioner. (Eff. 3/31/85, Register 93)

Authority: AS 16.05.020; AS 16.10.375; AS 16.05.092; AS 16.10.400

Proposed to be changed:

5 AAC 40.180. Additional information. (a) If, after an application 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.

(b) If the requested information is not received by the PNP coordinator within 90 days of the date of the written request, the application will be rejected. Nothing in this subsection is intended to preclude an applicant from submitting another application at a later date if that application complies with 5 AAC 40.140 and includes the application fee required under 5 AAC 40.150. (Eff. 3/31/85, Register 93; am 4/28/95, Register 134)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.400

Proposed to be changed:

5 AAC 40.190. Review and approval schedules. (a) Except as provided in 5 AAC 40.180 , the application review and approval process is set out in Schedules A and B in (b) and (c) of this section.

(b) Hatchery Permit Application Review — Schedule A. The time frame for processing an application under Schedule A is 60 days, which is the fastest period that an application can be processed if no problems are encountered.

Applicant submits application to	PNP coordinator reviews the application for	After application is accepted, the commercial	Department management and regional staff reviews	The regional planning team reviews application to determine	Basic Management Plan (BMP) is drafted	The application and BMP are completed.
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PNP coordinator.	completeness. If the application is incomplete, or does not contain a completed management feasibility analysis, PNP coordinator requests the necessary information from applicant.	fisheries management and development (CFMD) division staff reviews application, submits comments to the PNP coordinator, or requests additional information from the PNP coordinator.	application, submits comments to the PNP coordinator, or requests additional information from the PNP coordinator.	if proposal is compatible with the regional comprehensive salmon plan; sends recommendation to the commissioner.	by department area staff, applicant, and the PNP coordinator.	The department schedules a public hearing. (AS 16.10.410, 5 AAC 40.210, and 5 AAC 40.820).
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Note: All requests from department technical, management, and regional staff for additional information must be directed to the PNP coordinator.

(c) Issuance of Private Nonprofit Hatchery Permit — Schedule B. The time period for processing an application under Schedule B is 75 days.

Completed application with Basic Management Plan (BMP): 30 day notice published for Public hearing on the completed application and BMP.	Public hearing held (AS 16.10.410, 5 AAC 40.210, and 5 AAC 40.820). Public hearing process concludes 10 days after oral hearing to allow the department to respond to specific objections.	BMP finalized by applicant and PNP coordinator after completion of public hearing.
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(d) If additional information is requested from the applicant by the PNP coordinator at any time during the review and approval process set out in 5 AAC 40.190 , Schedule A, the remainder of the 60-day time period will be suspended until the requested information is received by the PNP coordinator and determined to be sufficient. (Eff. 3/31/85, Register 93; am 4/28/95, Register 134; am 11/25/2011, Register 200)

Authority: AS 16.05.020; AS 16.10.375; AS 16.05.092; AS 16.10.400

5 AAC 40.200. Completeness determination. Repealed. (Eff. 3/31/85 Register 93; repealed 11/25/2011, Register 200)

Proposed to be changed:

5 AAC 40.210. Public hearing. (a) The department will conduct a public hearing on each completed permit application. The commissioner will give notice of public hearing at any time after acceptance of an application. The notice will be given at least 25 days before a public hearing, and the notice will, in the commissioner's discretion, be given before the completion of

the draft basic management plan. The hearing will be held under the following sequential procedures:

(1) the commissioner will make an introductory statement;

(2) the applicant shall make a presentation of the proposed hatchery plans, describing its location, incubation plans, the capacity of the facility, the donor stock source, and other relevant facts 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 a presentation on fish culture aspects, production considerations, and a presentation of the management 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 will respond in writing within 10 working days to any specific objections offered by a member of the public at the hearing.

(c) The department will accept written comments for 15 days after the hearing, and will respond in writing, within 10 working days after receipt, to any specific objections received within that time. The public hearing process concludes 15 days after the oral hearing is held. (Eff. 3/31/85, Register 93)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.410

Proposed to be changed:

5 AAC 40.220. Review and determination. (a) The commissioner will review the following information, compiled by the PNP coordinator, before rendering a decision on an application:

(1) recommendations from the regional planning team;

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

(3) the results of the public hearing regarding the proposed facility.

(b) The commissioner will render a decision on the completed application, and notify the applicant in writing, within 75 calendar days after an application is complete. The commissioner's decision will be based on the following considerations:

(1) The physical and environmental nature of the proposed location must be suitable for enhancing runs or for establishing new runs, and must have the potential to make a reasonable contribution to the common property fishery. The proposed hatchery returns may not unreasonably or adversely affect management of natural stocks. The returns for the proposed

hatchery may not require significant alterations in 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. 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, enhancement sites must be developed to their fullest potential, with consideration to appropriate species and technological use of the site.

(3) The proximity of the proposed hatchery to an area that will allow for a segregated harvest of hatchery stocks without adversely affecting natural stocks is an important factor. The harvest area of the proposed hatchery must be of sufficient size to allow harvest of hatchery returns, and may not otherwise limit 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 proposed hatchery must have available donor sources that are approvable under 5 AAC 41. Proposed donor sources for hatchery broodstock must be able to meet necessary first-cycle egg take levels under department removal schedules.

(5) The proposed hatchery must have a secured water source and delivery system that is adequate for the proposed levels of incubation and rearing. The security of the water source must be demonstrated through the appropriate water use permits, annual hydrographs, chemical analysis of the water source, and any provisions necessary for recycling and depuration.

(6) The proposed hatchery facility and water intake structures may not be located in streams or 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 proposed hatchery must allow for the maintenance of adequate instream flows below the hatchery or any hatchery-related facilities, such as water intake structures, to support natural stocks.

(8) The proposed hatchery plans and staffing plans must demonstrate a reasonable level of operational feasibility and an acceptable degree of potential success.

(c) If the application is approved, the commissioner will, as a condition of the 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)

Authority: AS 16.05.020; AS 16.10.375; AS 16.05.092; AS 16.10.400

Proposed to be changed:

5 AAC 40.230. Reconsideration. An application for a private nonprofit salmon hatchery permit which has been denied by the commissioner will, in the commissioner's discretion, be reconsidered if the applicant provides new or additional information that may have altered the original decision.

(Eff. 3/31/85, Register 93)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.400

Proposed to be changed:

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 40.820 .

(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 40.820.

(c) The PNP coordinator shall provide written notice of the proposed revocation of the hatchery permit to the regional planning team for the area in which the proposed hatchery is permitted. The regional planning team may have 90 days 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)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.430

Article 5. Regional Comprehensive Planning.

- 5 AAC 40.300 . Regional planning teams in general
- 5 AAC 40.310 . Regional planning team composition
- 5 AAC 40.320 . Chairman of regional planning team
- 5 AAC 40.330 . Quorum and voting
- 5 AAC 40.340 . Regional planning team responsibility
- 5 AAC 40.345 . Southeast Alaska
- 5 AAC 40.350 . Public notice
- 5 AAC 40.360 . Public involvement
- 5 AAC 40.370 . Plan approval

Only the Article heading title in 5 AAC Chapter 40 Article 5 is proposed to be changed to be specific to salmon. Regulatory text of Article 5 being omitted as no changes are being proposed

within the language of Article 5. For current regulations please see <https://www.akleg.gov/basis/aac.asp#5.40>

Article 8. General Provisions.

- 5 AAC 40.800 . Nontransferability of permits.
- 5 AAC 40.810 . Preference right.
- 5 AAC 40.820 . Basic management plans.
- 5 AAC 40.830 . Hatchery inspection.
- 5 AAC 40.840 . Annual management plans.
- 5 AAC 40.850 . Notice of permit alteration.
- 5 AAC 40.860 . Performance review.
- 5 AAC 40.870 . Reporting of mortality.
- 5 AAC 40.880 . Surplus salmon eggs.
- 5 AAC 40.890 . Information.
- 5 AAC 40.990 . Definitions.

Proposed to be changed:

5 AAC 40.800. Nontransferability of permits. A hatchery permit is not transferable. Another person wishing to obtain a permit to operate a hatchery at a location which is already a currently permitted site, shall submit an application, which is subject to the same application review schedule as outlined in 5 AAC 40.110 - 5 AAC 40.230. If the assets, or control, of a private nonprofit corporation that holds a hatchery are transferred to a degree considered substantial by the department, the corporation shall submit a new application for a hatchery permit. (Eff. 3/31/85, Register 93)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.400

Proposed to be changed:

5 AAC 40.810. Preference right. (a) A preference right under AS 16.10.400 applies to a potential hatchery site, and does not constitute an approval of a permit.

(b) As part of the pre-application assistance described in 5 AAC 40.120, the PNP coordinator will inform the applicant whether a qualified regional association or an approved local nonprofit hatchery corporation has an established preference right to the identified site.

(c) The PNP coordinator will notify the appropriate qualified regional association, by certified letter, of an applicant's intent to apply for a hatchery site if that site has been identified as a potential hatchery site in the comprehensive plan for the region.

(d) Within three weeks after receiving the notification, the qualified regional association may respond, by certified letter, to the PNP coordinator to establish a preference right at that location.

(e) If the qualified regional association exercises a preference right for that site, the association may, within one year, submit an application for acceptance. If an application is not submitted and

accepted within one year, the qualified regional association relinquishes its preference right to that location.

(f) A local nonprofit hatchery corporation is eligible to establish a preference right to a proposed site if the corporation receives approval from the qualified regional association. That preference right is identical to the one which can be established by a qualified regional association.

(g) A local nonprofit hatchery corporation seeking regional association approval shall send a notice, by certified letter, to the PNP coordinator at the same time that a certified letter requesting approval is sent to the qualified regional association.

(h) all applicants for a permit, including local nonprofit corporations, local nonprofit hatchery corporations approved by the qualified regional associations, shall follow the application procedures outlined in 5 AAC 40.110 - 5 AAC 40.230. (Eff. 3/31/85, Register 93)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.400

Proposed to be changed:

5 AAC 40.820. Basic management plans. (a) A hatchery operator shall manage the hatchery and its salmon returns in accordance with a basic management plan approved by the commissioner. Before the public hearing held under 5 AAC 40.210 on the proposed hatchery, department staff, in conjunction with the applicant, shall develop a draft basic management plan that includes a facility development schedule of no more than five years. Department staff and the applicant shall present the draft basic management plan and facility development schedule at the public hearing and shall make copies available for public review and comment at the hearing.

(b) If, following the public hearing, the commissioner decides to issue a permit for the proposed hatchery, department staff shall finalize the basic management plan and facility development schedule after all comments have been considered. The final basic management plan, which includes a facility development schedule, describes the conditions under which the permit will be implemented, and is an addendum to the permit. (Eff. 3/31/85, Register 93; am 4/28/95, Register 134)

Authority: AS 16.05.020; AS 16.10.400; AS 16.10.443; AS 16.05.092; AS 16.10.410

Proposed to be changed:

5 AAC 40.830. Hatchery inspection. The permit holder shall notify the PNP coordinator when construction of the hatchery has been completed and the facility is ready for operation. The facility must be inspected and approved by the department before the permit holder may start operations. (Eff. 3/31/85, Register 93)

Authority: AS 16.05.020AS 16.10.400 AS 16.05.092AS 16.10.460

Proposed to be changed:

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.

(b) An annual management plan must organize and guide the hatchery's operations regarding production goals, broodstock management, and harvest management of hatchery returns. The plan must be developed with consideration of the hatchery's production cycle. The production cycle begins with adult returns, that lead to egg takes and end with fish releases. Action may be taken outside of the management plan if allowed under the hatchery permit or modified by emergency order.

(c) The PNP coordinator shall 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. (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

Proposed to be changed:

5 AAC 40.850. Notice of permit alteration. (a) A hatchery permit holder may propose alteration of the permit, 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.

(b) Requests for permit alterations must be received by the PNP coordinator, on the prescribed form, no later than February 15 of the calendar year that the proposed alteration is to occur. The commissioner will, in his or her discretion, extend the deadline for submittal of a permit alteration request, on a case-by-case basis, if the request is justified by extraordinary circumstances or emergency.

(c) The regional planning team may, if the commissioner so requests, review and make a recommendation to the commissioner on the permit alteration request.

(d) In reviewing the request, the commissioner will, in his or her discretion, consider past management practices and fish culture procedures associated with the request, the past performance of the hatchery, the recommendation of the regional planning team, and any additional information deemed necessary.

(e) Issuance of a notice of permit alteration by the department modifies 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

Proposed to be changed:

5 AAC 40.860. Performance review. (a) Based 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 permit was granted.

(b) The commissioner will, in his or her discretion, consider a permit alteration, suspension, or revocation in accordance with AS 16.10.430. If the commissioner decides to consider a permit alteration, suspension, or revocation, the coordinator will notify the appropriate regional planning team. The regional planning team may make a written recommendation to the commissioner on the proposed alteration, suspension, or revocation. The regional planning team shall use the following performance standards in their review, evaluation, and recommendation to the commissioner, including whether:

(1) 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 which were beyond the control of the hatchery operator.

(c) Minimum hatchery survival standards are as follows:

	Survival for this state	Cumulative Survival
For captured broodstock to egg take	70%	
Green egg to eyed egg	80%	80%
Eyed egg to emergent fry	85%	68%
Emergent to fed fry ¹	90%	61%
Fed fry to fingerling ²	90%	55%
Fingerling to smolt	75%	41%

¹ Fry achieving up to 25% weight gain from swim-up.

² Fry achieving substantially more than 25% weight gain from swim-up.

(Eff. 3/31/85, Register 93)

Authority: AS 16.05.020; AS 16.10.375; AS 16.05.092; AS 16.10.430

Proposed to be changed:

5 AAC 40.870. Reporting of mortality. (a) If, in any of the hatchery operations during the year, an event occurs which results in fish or egg mortalities above the minimum hatchery survival standards defined in 5 AAC 40.860, the operator shall inform the PNP coordinator immediately and shall submit an incident report, which must include

- (1) a description of the nature of the incident;
- (2) the cause of the incident;
- (3) the time of the incident;
- (4) the effect on the stocks;
- (5) corrective action taken and proposed measures to eradicate future problems; and
- (6) an assessment of the general impact on the program.

(b) The operator shall complete and submit the mortality incident report to the PNP coordinator within 15 days after the incident occurs. (Eff. 3/31/85, Register 93)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.400

Proposed to be changed:

5 AAC 40.880. Surplus salmon eggs. (a) Salmon eggs are surplus if the following conditions are met:

(1) the hatchery operator no longer needs to return to the indigenous stocks in order to develop the broodstock for the hatchery; and

(2) broodstock needs for the hatchery, as identified in the annual management plan, must have been achieved through salmon returning to the facility.

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

(c) A 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 transferral to the recipient facility.

(d) The appropriate fish-transport permit must be approved by the commissioner before any surplus salmon eggs are transferred from the facility to the recipient facility. (Eff. 3/31/85, Register 93)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.450

Proposed to be changed:

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 under AS 16.10.470, in order to ensure consistency between reports submitted by the permit holder to both agencies. (Eff. 3/31/85, Register 93)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.470

Proposed to be changed:

5 AAC 40.990. Definitions.

In this chapter,

(1) "commissioner" means the commissioner of the Department of Fish and Game or his designee;

(2) "common property fishery" means any fishery in which the general public is allowed to harvest fish subject to state and federal law;

(3) "completed application" means a final application that has been accepted by the commissioner and that contains a draft basic management plan for the operation of the facility and a completed management feasibility analysis;

(4) "department" means the Alaska Department of Fish and Game;

(5) "enhancement" means a strategy designed to supplement allowable harvest of natural 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;

(6) "escapement" means all fish that escape the common property fishery and includes two categories of escapement:

(A) the number of broodstock or spawners required to perpetuate and achieve natural, semi-artificial, and artificial production objectives; and

(B) the number of hatchery-produced fish taken for the hatchery harvest requirement, to be used to pay for the hatchery's reasonable operating and capital costs, at current market prices for the species involved;

(7) "permit" means a private nonprofit salmon hatchery permit, issued by the commissioner, which has not been suspended or revoked;

(8) "PNP coordinator" means the manager of the private nonprofit hatchery program within the department;

(9) "regional comprehensive salmon plan" is a document that integrates and assembles all relevant information regarding the development and protection of the salmon resource, for a specific long-range period of time, into a strategic plan for an established region of the state;

(10) "rehabilitation" means a strategy directed toward restoring debilitated natural stocks to optimum production levels; rehabilitation strategies consist of regulatory and nonregulatory activities; nonregulatory activities are directed at increasing the survival of debilitated broodstock and include removal of migration inhibitors, stream restoration, incubation and subsequent planting of eyed eggs, fry and fingerlings, lake fertilization and predator-competitor control;

(11) "salmon stock" means a population of salmon of a single species identified with a specific water system or portion of a water system, which share a common spawning period;

(12) "special harvest area" means an area designated by the commissioner or the Board of Fisheries where hatchery returns are to be harvested by the hatchery operators, and, in some situations by the common property fishery;

(13) "terminal harvest area" means an area designated by the commissioner, Board of Fisheries regulation, or department emergency order where hatchery returns have achieved a reasonable degree of segregation from naturally occurring stocks and may be harvested by the common property fishery without adverse effects;

(14) "broodstock" means sexually mature fish from which 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)

Authority: AS 16.05.020; AS 16.05.092; AS 16.10.375