

FAQ

X. Why are these regulations being proposed?

The adoption of AS 16.12 by the Alaska Legislature in 2022 authorized ADF&G to issue permits for shellfish enhancement projects. The department is proposing these regulation changes to initiate the shellfish enhancement program and begin accepting shellfish hatchery applications from qualified nonprofit corporation organized under AS 10.20. A copy of the current language of AS 16.12 is included in the supporting documentation for this public notice on the Alaska Online Public Notice System (AOPNS).

X. What areas would the proposed regulations affect?

The proposed regulations would be effective statewide.

X. How are the changes shown in the proposed regulations document?

*The Department of Law's drafting standards show new language as **bolded and underlined** while deletions are [BRACKETED AND CAPITALIZED].*

X. Is there a summary of the regulation changes available?

Yes. A pdf file named 'Regulations Changes Summary' is available on the Alaska Online Public Notice System (AOPNS) <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=217594> and the department's website <https://www.adfg.alaska.gov/index.cfm?adfg=fishregulations.main>

The summary details the regulation changes by the specific 5 AAC citation:

| Applicable regulations | Brief Summary of Proposed Changes |
|---|--|
| 5 AAC Part 1 title | The Part 1 Title heading for 5 AAC is changed to include shellfish. |
| 5 AAC Chapter 40 title | The chapter heading for 5 AAC Chapter 40 is changed to include shellfish. |
| Article 1. General. | |
| 5 AAC 40.005(a) - (b) | Adds language to include shellfish under regulations governing the harvest of species adopted by the Board of Fisheries and adds the department as a governing entity of shellfish enhancement |
| 5 AAC 40.005(c) - (d); (g) | Adds salmon or shellfish specific language concerning harvest of species in a Special Harvest Area (SHA) reared by a hatchery operator. |
| 5 AAC 40.010 | Adds reporting requirement for hatchery operators harvesting shellfish and modifies language to include shellfish hatcheries in exemptions from commercial harvest reporting regulations. |
| Article 3. Applicability of Regulations. | |
| 5 AAC 40.100 | Removes salmon from existing language to be inclusive of shellfish hatcheries applicability of regulations by becoming unspecified and adds the word 'hatchery' as part of terminology conforming edits. |
| Article 4. Permit | |
| 5 AAC Chapter 40 Article 4 | Article heading title of 5 AAC Chapter 40 is changed to be more inclusive of hatchery permitting procedures. |
| 5 AAC 40.110 | Removes salmon from existing language to be inclusive of shellfish hatcheries under the requirements of the commissioner regarding permit applications by becoming unspecified. |
| 5 AAC 40.120 | Changes the language to clarify that only a nonprofit corporation organized under AS 10.20 may request the department's assistance. |
| 5 AAC 40.130 | Reorganizes the management feasibility analysis Section language, specifies that only a nonprofit corporation organized under AS 10.20 may request the department's assistance and adds language stating that the PNP Coordinator can request other information necessary for the department to complete the analysis. |

X. Who qualifies for this new type of shellfish hatchery permit? What are the exclusions for who qualifies?

Only private nonprofit corporations organized under AS 10.20 are able to be issued a shellfish hatchery permit.

X. What species qualify for the newly proposed hatchery permit type?

Shellfish as defined in AS 16.40.199(8) which reads:

“shellfish” means a species of crustacean, mollusk, or other invertebrate, in any stage of its life cycle, that is indigenous to state water or that is authorized to be imported into the state under a permit issued by the commissioner;

X. Will there be application or permit renewal fees?

No. Proposed language specifies a \$0 application fee for both a salmon and a shellfish hatchery application while the department assesses the most appropriate fee. Annual Management Plan revisions do not require a fee and are not considered to be part of the hatchery permit.

X. Will permits be transferrable? *No*

X. What is the proposed application process for shellfish enhancement projects?

The application process will be very similar as it currently exists for salmon hatchery operations. A qualified nonprofit corporation organized under AS 10.20 may submit an application, provided by the PNP Coordinator directly to the PNP coordinator in the Juneau headquarters ADF&G office. A management feasibility analysis is completed by the department for each proposed hatchery site. The permitting process includes the drafting of a Basic Management Plan (BMP). This plan is drafted by the applicant, department area staff, and the PNP coordinator. The draft BMP includes the proposed hatchery development schedule, location, capacity of the facility, the potential donor stock source, incubation plans, culture plans, release locations and adult harvest plans of the shellfish hatchery permit. A BMP that has completed the entirety of the hatchery application approval process ultimately will become an addendum to the hatchery permit and must be approved by the commissioner. Regional planning teams for shellfish enhancement projects do not exist and in their place, the commissioner shall consult with and solicit recommendations from federal and state agencies and technical experts in the relevant area. Once the application, management feasibility analysis and BMP are completed, the department will schedule a public hearing that follows the current procedures for salmon hatchery public hearings. The commissioner will make the final determination on the issuance of the hatchery permit application within 75 calendar days after the conclusion of the public hearing.

X. What are the regulations regarding using genetically modified shellfish?

AS 16.12.30 states that the permit holder may

“(3) not procure genetically modified shellfish or place genetically modified shellfish into the water of the state;”

X. How will the proposed shellfish enhancement operations be regulated?

Both the Board of Fisheries and the commissioner of ADF&G may adopt regulations within their statutory authority. The regulations that apply to the harvest of shellfish produced by a private nonprofit hatchery are very similar to the regulations that apply to the harvest of salmon produced by a private nonprofit hatchery. The newly proposed regulations specific to shellfish are modeled from the existing regulations applicable to salmon hatchery operations in many aspects, including permitting and harvest of enhanced shellfish.

The harvestable surplus of shellfish will be made available for common use. Special locations will be designated by the department for harvest by the permit holder only ((Special Harvest Areas (SHA's)) and the Board of Fisheries may adopt regulations within their statutory authority including; the source of wild brood stock, the harvest of shellfish by permit holders, fishery management plans, the specific locations designated by the department for harvest and harvest within Special Harvest Areas. The Board of Fisheries does not have the authority regarding the issuance or denial of a permit.

X. What happens once shellfish enhancement operations are established and begin to see adult returns?

A shellfish hatchery permit remains in place as long as the hatchery is in operation and the permit has not been suspended or revoked by the commissioner. The Annual Management Plan, which is authored by the department, the hatchery permit holder and ultimately approved by the commissioner, describes an operation plan that must comply with the conditions of the hatchery permit. Hatchery permit holders are subject to performance reviews. Existing hatchery permit holders may propose a permit alteration request directly to the PNP Coordinator and the approval of a hatchery permit alteration by the commissioner modifies the existing hatchery permit. Both the department and the Board of Fisheries may adopt regulations in accordance with the Administrative Procedures Act under AS 44.62 concerning the operation of shellfish enhancement projects.

X. Will there be shellfish enhancement taxes?

Yes. Taxes will be assessed in accordance with regulations adopted by the Department of Revenue. Tax assessments collected by the Department of Revenue will be deposited into the General Fund.

X. Why are the salmon hatchery regulations also changing?

Many of the salmon hatchery regulations have not seen any updates since the 1980's and as a result are being drafted into the 21st century, literally. Phrases saying 'his designee' when referring to the commissioner's designee, for example, are all being corrected in the proposed regulations. Included with the documents available on the Alaska Online Public Notice System (AOPNS) for this notice are the current regulations of Chapter 40, as well as what is called the History Note. The history note contains the effective date of the original Section language, all subsequent changes to that regulation, as well as the applicable statutory authority citations.

The language is also being made more efficient by removing superfluous language from the regulation as it was originally written and adds clarifying language for longstanding procedures and practices by the department and industry.

Chapter 40 previously was only specific to salmon hatchery language. With the inclusion of shellfish enhancement, language specific to salmon enhancement had to be changed to either be unspecified, so that both salmon and shellfish are applicable, or the salmon and shellfish had to be specified for their applicable content.

X. Many of the regulations are proposed to make technical corrections to conform to current legal drafting standards. What are “conforming edits”?

There are a lot of examples of conforming edits within the proposed regulation changes, which may make it seem at first that much more is changing than actually is. The substance of the language remains the same, but these edits are necessary standards for the proper legal drafting of regulatory language.

Within this document are many examples of nouns or adjectives changing from a plural form to a singular form, references to gender being eliminated, corrections to article descriptions, for example changing ‘the’ to ‘a’. Adding articles where they were missing entirely or removing them when unnecessary are contained in the proposed changes. Corrections to sentence structure, specifically adverb placement, appear throughout this regulations project as well. Conforming edits clarify and standardize regulatory language, but do not change the meaning of the original regulation.