

Department's responses to public comment questions received for proposed changes to the statewide private nonprofit hatchery regulations of the Alaska Department of Fish and Game

The Department of Fish and Game (Department or "ADF&G") provides its responses below to questions received during the public comment period. The responses are not binding on the Department for any position of law. Any final regulations will be adopted after consideration of the comments received

1. Do the proposed regulation changes apply to existing shellfish hatcheries?

ADF&G Response: No. Existing shellfish hatcheries operate under AS 16.40.100, which are hatcheries for the purpose of supplying shellfish to an aquatic farm. The corresponding Title 5 regulations for aquatic farm hatcheries are found in Chapter 41. Collection, Transportation, Possession, Propagation, or Release of Aquatic Organisms; Aquatic Farming. The proposed regulations in Chapter 40 only affect shellfish hatcheries who choose to participate under AS 16.12.010.

2. Who is ultimately responsible for adopting regulations governing the harvest of salmon and shellfish from private nonprofits (PNPs) under 5 AAC 40.005(a) – the Board of Fisheries or the Commissioner?

ADF&G Response: Statutory authorities ultimately determine if a regulation change can be made by the Board of Fisheries (Board) or the Commissioner of Fish and Game. Any allocative decisions would be made by the Board, as specified in AS 16.05.251, while specific procedures concerning the permitting process, for example, may be adopted by the Commissioner under AS 16.12.010.

3. What action triggers the development of harvest regulations under 5 AAC 40.005(b)?

ADF&G Response: These regulations may be adopted by both the Board and the commissioner of Fish and Game based on statutory authority. To trigger the development of regulations for the harvest of any shellfish produced from a shellfish enhancement project, the Board would need to adopt regulatory language as the result of passing a proposal at a publicly noticed meeting. The Commissioner of Fish and Game has the authority to manage fisheries based on biological concerns, for example, closing a specific area to harvest by emergency order.

4. What management plans will the Board of Fisheries consider in its review under 5 AAC 40.005(b)?

ADF&G Response: Currently, no management plans yet exist for shellfish enhancement projects. As years go by and shellfish enhancement projects evolve, proposals will be submitted to the Board by the public or the department. The Board will review management plans as they are available. There will not necessarily be a management plan for every shellfish enhancement project.

5. Will shellfish harvest regulations developed under 5 AAC 40.005(b) be subject to the Board of Fisheries' three-year meeting cycle?

ADF&G Response: Yes, for the regulations that fall under the statutory authority of the Board to adopt, they would be subject to the three-year meeting cycle.

6. Do the proposed regulations apply to all shellfish enhancement projects? If so, can ADF&G provide an example of how a PNP would apply for a shellfish enhancement project permit – as opposed to a shellfish hatchery operations permit – under these proposed regulation changes?

ADF&G Response: Yes. The permitting procedure for a shellfish enhancement project is very similar to the existing permitting procedure for salmon hatcheries, except that Regional Planning Teams have not been established. Permitting procedure is described in the proposed change contained in Article 4, Chapter 40. A more detailed explanation is provided in the document '*Shellfish Enhancement FAQ's*' posted as an additional resource under the attachments area for the original and supplemental notices for this regulations project. Permitting of a shellfish hatchery for the purpose of supplying aquatic plants or shellfish to an aquatic farm are not proposed to be changed in this regulations project.

7. Do existing shellfish enhancement projects need permits under the proposed regulations? If so, what is the process for obtaining permits for existing shellfish enhancement projects?

ADF&G Response: Currently, there are no existing shellfish enhancement projects permitted in Alaska under AS 16.12. This project does not change permitting regulations and statutes for a shellfish hatchery for the purpose of supplying aquatic plants or shellfish to an aquatic farm, and no additional actions or permitting is necessary for existing shellfish hatchery operations under AS 16.40.100.

8. If the proposed regulations apply to shellfish enhancement projects, is there a distinction between projects for subsistence, scientific research, and commercial purposes? Are there exemptions for shellfish enhancement projects whose purpose is for scientific research and/or subsistence

ADF&G Response: The proposed regulations apply to shellfish enhancement projects that have not yet been permitted or established. The proposed regulations provide the framework to permit shellfish enhancement project as described in AS 16.12. Within existing statutes under AS 16.12, a nonprofit corporation, once permitted by the department, may ultimately release shellfish into the natural water of the state that are available to the people for common use and are subject to regulation under applicable law in the same way as shellfish occurring in their natural state except in a special location designated by the department for harvest by a permit holder. Exceptions do not exist for subsistence, commercial or scientific purposes within Chapter 40; however the Commissioner does have the authority to issue permits for scientific research under existing regulations. Any allocative distinctions among fisheries would be determined by regulations adopted by the Board.

9. How does a current commercial permit for aquatic farming overlap with the proposed enhancement permit required under regulations by ADF&G?

ADF&G Response: There is not an overlap between existing permits for hatcheries for the purpose of supplying aquatic plants or shellfish to an aquatic farm, and the proposed shellfish enhancement project permits under these regulations.

10. Is a shellfish enhancement project site considered a special harvest area (SHA)?

ADF&G Response: There will be variability based on the nature of the shellfish enhancement project. As with existing salmon hatcheries, the department may designate a special location for harvest by a permit holder.

11. How do the proposed regulation changes affect shellfish gardening?

ADF&G Response: Shellfish gardening is not an activity that is regulated by the department, except in isolated circumstances for research purposes. The proposed regulations have no effect on existing practices.

12. How do the proposed regulation changes impact aquatic farming?

ADF&G Response: The proposed regulations changes do not change existing regulations for aquatic farming operations.

13. How do the proposed regulation changes impact floating upweller systems (FLUPSYs)?

ADF&G Response: The proposed regulations changes do not change existing regulations for aquatic farming operations, including the operation of FLUPSYs.

14. How will ADF&G protect information about culturally-sensitive sites where shellfish enhancement projects take place?

ADF&G Response: Proposed regulations stipulate that a public hearing be conducted for all completed hatchery permit applications. The public is encouraged to bring this information to the department's attention at that time. Permit information will not be confidential -- consistent with information pertaining to existing salmon hatchery permits.

15. Do the proposed regulation changes transfer all existing oversight of shellfish to the Division of Commercial Fisheries?

ADF&G Response: No. The Commissioner of Fish and Game oversees all operations, and the proposed regulations do not transfer authority as currently structured.

16. What survival rates does ADF&G consider adequate under 5 AAC 40.860(b)(1)?

ADF&G Response: Adequate survival rates will be species dependent and will be established as scientific data becomes available.

17. How do the proposed regulations apply to genetically modified species?

ADF&G Response: AS 16.12.030(3) specifically prohibits the rearing or release of genetically modified shellfish. Under this statute, a permit holder may “not procure genetically modified shellfish or place genetically modified shellfish into the water of the state.”

18. What process will ADF&G use to update its Policies and Procedures for Fisheries Research to be consistent with any proposed changes to Title 5?

ADF&G Response: The proposed changes are not specific to fisheries research and will not have any regulatory effect on current policies and procedures.