



**CHAPTER 41. TRANSPORT, POSSESSION
AND RELEASE OF LIVE FISH; AQUATIC
FARMING**

Article

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Article 1. Scope of Regulations

Section

1. Application of this chapter

5 AAC 41.001. APPLICATION OF THIS CHAPTER. The provisions of this chapter govern the transportation, possession, or release of live fish transplanted for or cultivated for human consumption or sport fishing purposes, or as part of an aquaculture program for scientific, educational, or propagative purposes, and the transportation and possession of shellfish or aquatic plants for commercial purposes in conjunction with an aquatic farming operation. Unless specifically provided, the provisions of this chapter do not apply to the cultivation of ornamental fish. Additionally, the provision of this chapter do not apply to the transportation, possession, or release of fish taken for commercial fishing, sport, or subsistence purposes. (In effect before 1988; am 4/10/88, Register 106; am 8/12/89, Register 111)

Authority: AS 16.05.050	AS 16.40.100
AS 16.05.251	AS 16.40.160

Article 2. Permit System Established

Section

5. Permit required
10. Uniform application procedures
20. Inspection for disease of brood stock
30. Permit issuance or denial

Section

40. Amendments to the permit
50. Permit conditions
60. Retention of permit for inspection

5 AAC 41.005. PERMIT REQUIRED. (a) No person may transport, possess, export from the state, or release into the water of the state, any live fish unless the person holds a fish transport permit issued by the commissioner or his authorized designee, and the person is in compliance with all conditions of the permit and the provisions of this chapter. A fish transport permit will be issued for a fixed term subject to the provisions of (c) of this section.

(b) A fish transport permit authorizes only that operation specified in the permit. Any change of species, brood stock, or location requires a new permit. Any other change requires an amendment to the permit.

(c) The commissioner shall suspend the permit, or particular provisions of the permit including amendments, if he finds

(1) on the basis of new information or changed circumstances, that the permitted activity will adversely affect the continued health and perpetuation of native, wild, or hatchery stocks of fish; or

(2) the permittee has failed to comply with permit terms or the provisions of this chapter.

(d) Notwithstanding the expiration, termination or suspension of a fish transport permit, each permittee is responsible for the obligations arising under the terms and conditions of the permit, and under the provisions of this chapter. (In effect before 1988)

Authority: AS 16.05.251(a)

5 AAC 41.010. UNIFORM APPLICATION PROCEDURES. (a) Each applicant for a fish transport permit shall submit the following information to the department:

(1) identification of each species and location of the stock to be transported, possessed or released;

(2) the destination of the transported fish and the release site;

(3) the number of fish and their life history stage or age;

(4) a descriptive history of previous transport, if any;

(5) a statement on the health or condition of the fish, including a disease history of the stock, a disease history of the hatchery or rearing facilities through which they may have passed, and any previous disease treatment or vaccinations, or, if the disease history is incomplete or unavailable a brood stock inspection and certification pursuant to 5 AAC 41.020;

(6) isolation measures planned to control disease during transport, including a description of containers, water source, depuration measures, and plans for disinfection;

(7) a description of proposed egg-take methods;

(8) the source of water for rearing and proposed effluent discharge location;

(9) identification and status of native stocks in the area of taking, retention and release site, including a statement of expected interactions with other stocks in these areas;

(10) the method of transport or release and the expected date of transport or release;

(11) the purpose and expected benefits of the transport or release; and

(12) evaluation plans.

(b) A completed application must be submitted to the department regional office in the region in which the proposed transport or release will occur.

(c) If the commissioner or his authorized designee determines that an application is incomplete and that further information is necessary, the department will return the application to the applicant with a description of the deficient information.

(d) The commissioner or his authorized representative will approve, condition, or deny a permit within 45 days after a completed application containing all of the applicable information listed in (a) of this section has been received in the appropriate regional office. (In effect before 1982; am 7/25/82, Register 83)

Authority: AS 16.05.251(a)

5 AAC 41.020. INSPECTION FOR DISEASE OF BROOD STOCK. If the disease history

of the brood stock is unavailable or incomplete as required by 5 AAC 41.010(a)(5), an inspection of the brood stock to detect fish disease must be scheduled by the applicant and conducted by the fish pathology section of the department, or by a person designated by the fish pathology section. The applicant must submit samples of the brood stock as directed by the fish pathology section for the purpose of inspection. The applicant will receive a certification form the fish pathology section upon successful completion of the inspection. (In effect before 1988)

Authority: AS 16.05.251(a)
AS 16.05.868

5 AAC 41.030. PERMIT ISSUANCE OR DENIAL. (a) The commissioner or his authorized designee will issue a fish transport permit if it is the department's determination that the proposed transport, possession or release of fish will not adversely affect the continued health and perpetuation of native, wild, or hatchery stocks of fish; or

(b) The commissioner or his authorized designee will issue a fish transport permit with terms and conditions attached if it is the department's determination that the terms and conditions are necessary to protect the continued health and perpetuation of native, wild, or hatchery stocks of fish.

(c) The commissioner or his authorized designee will deny an application for a permit, or a request for amendment of a permit, if the applicant's proposed plans, methods, or specifications are not adequate, on the basis of fish disease, genetics, competition, predation, or other biological considerations, to assure the continued health and perpetuation of native, wild, or hatchery stocks of fish. Written notice of denial shall be given to the applicant, including the reasons for denial. (In effect before 1988)

Authority: AS 16.05.251(a)

5 AAC 41.040. AMENDMENTS TO THE PERMIT. (a) A permittee may request amendment of a fish transport permit by submitting, in writing to the department regional office where the permit was issued, an amended plan and a statement explaining why the amendment is necessary.

(b) The commissioner or his authorized designee will issue an amendment to the permit upon a determination made pursuant to 5 AAC 41.030(a) or (b). The commissioner or his authorized designee will approve, condition or deny a request for amendment within 30 days after receipt of the request in the appropriate regional office.

(c) The commissioner or his authorized designee may alter or amend permit conditions if additional information or unforeseen changes allow relaxation, or changed circumstances affect the adequacy of permit terms and conditions

(d) Amendments approved by the commissioner or his authorized designee become effective when received by the permittee, or at a later date specified in the amendment. Unless otherwise specified, amendments remain valid for the duration of the permit. (In effect before 1988)

Authority: AS 16.05.251(a)

5 AAC 41.050. PERMIT CONDITIONS. The commissioner or his authorized designee

may prescribe conditions on a permit to control the occurrence of fish disease, genetic change, or control other disturbances of biological origin affecting native, wild, or hatchery stocks of fish. These conditions may include designation of brood stock and release locations, methods of transport or release, quarantine and depuration requirements and procedures, disease inspections, disposal of wastes and effluent, timing of transportation and release, reporting requirements, and other measures necessary to achieve the purposes of 5 AAC 41. (In effect before 1988)

Authority: AS 16.05.251(a)

5 AAC 41.060. RETENTION OF PERMIT FOR INSPECTION. (a) After issuance a copy of the permit including any amendments must be retained by the permittee, and be made available upon request for inspection by a representative of the department, or a law enforcement officer of the Department of Public Safety.

(b) For the purposes of inspecting and monitoring compliance with the terms of the permit or the requirements of this chapter for the continued health and perpetuation of native, wild, or hatchery stocks of fish, each permittee shall give authorized representatives of the department, and law enforcement officers of the Department of Public Safety, free and unobstructed access at all times to permit sites. Each permittee shall give such assistance and furnish information the representative or law enforcement office may reasonably require for monitoring and inspection. (In effect before 1988)

Authority: AS 16.05.251(a)

Article 3. General Provisions

Section

- 70. Prohibitions on imports and release of live fish
- 80. Reporting and control of fish diseases at egg-take sites, hatcheries, and rearing facilities

Section

- 90. Delegation of authority
- 100. Definitions

5 AAC 41.070. PROHIBITIONS ON IMPORTATION AND RELEASE OF LIVE FISH.

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

(b) Live oysters native to and originating from the Pacific Coast of North America may be imported for aquaculture purposes, under a permit required by this chapter, and may be released into the waters of the state only if

- (1) the brood stock is derived from oysters commercially cultured on the Pacific Coast of North America through three or more generations; and
- (2) the disease history or an inspection indicates no incidence of disease that is not indigenous to Alaska.

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

(d) Weathervane scallops originating from wild stocks or cultured stocks in the Southeastern Alaska and Yakutat Areas may be imported for aquaculture purposes and may be released only into the waters of the Southeastern Alaska and Yakutat Areas under a permit required by this chapter only if

(1) the brood stock was taken under the provisions of a permit issued by the department;

(2) the brood stock was certified by the department's fish pathology section before transport out of the state;

(3) the brood stock was held continuously in a department-approved isolation facility;

(4) the weathervane scallops proposed for import have been held continuously in a department-approved isolation facility before import into the state;

(5) the disease history, or an inspection, of the weathervane scallops proposed for import indicates no incidence of a disease of transport significance. (In effect before 1988; am 9/19/90, Register 115; am 4/30/91, Register 118)

Authority: AS 16.05.251(a)

5 AAC 41.080. REPORTING AND CONTROL OF FISH DISEASES AT EGG-TAKE SITES, HATCHERIES, AND REARING FACILITIES. (a) The requirements of this section apply to all public and private egg-take programs, fish hatcheries, and fish rearing facilities in the state.

(b) Within 24 hours of transporting live fish eggs between water sheds, all eggs must be treated, for at least 10 minutes, with an iodine solution of at least 100 parts per million of active iodine ingredient, with pH at least 6.0 or greater, or in a manner approved by the fish pathology section of the department. This requirement does not apply to shellfish eggs.

(c) Each fish hatchery or fish rearing facility must be inspected by the department's fish pathology section at least once each year at least two weeks prior to the transport or release of fish. The commissioner or his authorized designee may require and conduct additional inspections if the disease history of the stock or facility is incomplete, or if the disease history of current condition of the stock evidences incidence of disease.

(d) The occurrence of any of the following pathogens or disease of fish must immediately be reported to the department's fish pathology section:

(1) Class I — Diseases of Critical Concern.

Infectious Pancreatic Necrosis Virus (IPNV) — trout pancreatic virus;

Viral Hemorrhagic Septicemia Virus (VHSV) — Egtved virus;

Pike Fry Rhabdovirus;

Spring Viremia of Carp (SVC) — a carp virus of potential danger to native cyprinids;

Ceratomyxa shasta — myxosporidian disease of salmonids;

Myxosoma cerebralis — whirling disease; and

Mytilicola intestinalis — an endoparasitic copepod of shellfish.

(2) Class II — High-risk Diseases.

Infectious Hematopoietic Necrosis Virus (IHNV) — sockeye or chinook salmon kidney virus;

Herpesvirus salmonis — low-temperature virus;

Viral Erythrocytic Necrosis (VEN) — intranuclear virus of marine fish;
Vibrio parahemolyticus — vibriosis in fish and shellfish;
Aeromonas salmonicida — furunculosis;
Yersinia ruckeri — enteric redmouth disease;
Renibacterium salmoninarum — bacterial kidney disease (BKD);
Flexibacter columnaris — columnaris disease;
Henneguya — ssp. — myxosporidian disease of fish and shellfish;
Labyrinthomyxa marina — fungal or haplosporidian disease of shellfish;
Minchinia nelsoni — a haplosporidian disease of shellfish; and
Ocenebra japonica — an oyster drill;

(3) Class III — Diseases of Concern.

Vibrio alginolyticus — vibriosis in fish and shellfish;
Vibrio anguillarum — vibriosis in fish and shellfish;
Aeromonas hydrophila — aeromonad septicemia;
Ichthyobodo — spp. — costiasis in fish and shellfish;
Hexamita — protozoan disease of salmonids and shellfish;
Trichodina — spp. — external fish parasite;
Diplostomum — spp. — eye fluke disease of fishes; and
Mytilicola orientalis — an endoparasitic copepod of shellfish.

(e) Diseases reported under (d) of this section, or found by inspection under (c) of this section, must be treated by taking steps acknowledged by the fish pathology section to be effective in eliminating the disease. Containers or facilities must be disinfected by the permittee in a manner directed or approved by the commissioner or his authorized designee. Presence of any of these diseases, or any other disease not previously observed in Alaska, may be cause for the commissioner or his authorized designee to prohibit stocking of the fish in new areas, and to quarantine the permittee's facility until disinfected.

(f) Stocks of fish in hatcheries or rearing facilities in which a Class I disease has been detected must be immediately destroyed by the permittee if the commissioner or his authorized designee determines that the disease is new to the area, the disease is different strain of a disease than occurs locally, or if the disease poses a threat to the health and perpetuation of native, wild, or hatchery stocks of fish in the hatchery effluent watershed or the intended release location. In limited circumstances, the commissioner or his authorized designee may allow retention or transportation of these diseased fish under controlled conditions that pose no threat to native, wild, or hatchery stocks of fish (e.g. movement to a disease laboratory).

(g) Stocks of fish in hatcheries or rearing facilities in which a Class II disease has been detected must be immediately destroyed by the permittee if the commissioner or his authorized designee determines that the disease poses a threat to the health and perpetuation of native, wild, or hatchery stocks of fish in the hatchery effluent watershed or the intended release location. (In effect before 1988)

Authority: AS 16.05.251(a)

5 AAC 41.090. DELEGATION OF AUTHORITY. For the purposes of administering this chapter, the commissioner may delegate his authority to designated employees of the department. (In effect before 1988)

Authority: AS 16.05.020
AS 16.05.270

5 AAC 41.100. DEFINITIONS. In addition to the definitions set out in AS 01.10.060 and AS 16.05.940, in 5 AAC 41.001 — 5 AAC 41.100

(1) "completed application: means a form, series of forms, letters, or other documents that provide all of the information necessary for the commissioner or the commissioner's designee to issue, condition, or deny a permit:

(2) "department regional office" means the Alaska Department of Fish and Game, fisheries rehabilitation, enhancement and development division offices located as follows:

Region I — Southeastern Region
230 South Franklin Street
Juneau, Alaska 99801

Region II — Central, Westward and
Arctic-Yukon-Kuskokwim Region
333 Raspberry Road
Anchorage, Alaska 99502

(3) "fish pathology section" means the Alaska Department of Fish and Game, fisheries rehabilitation, enhancement and development division, fish pathology section, located at 333 Raspberry Road, Anchorage, Alaska 99502, telephone (907) 344-0541;

(4) "ornamental fish" means a fish commonly known as "tropical fish," "aquarium fish," or "goldfish," which are imported, cultured, or sold in the state customarily for viewing in aquaria or for raising in artificial systems, and not customarily used for sport fishing or human consumption purposes;

(5) "permit" means a fish transport permit, including any amendment or condition issued or approved by the commissioner or the commissioner's designee, which has not been suspended, terminated, or expired;

(6) "permittee" means the holder of a permit and includes anyone employed, contracted, or assigned by the person to whom the permit was issued. (In effect before 1988)

Authority: AS 16.05.251(a)

TITLE 11. NATURAL RESOURCES.

Part 1. Office of the Commissioner (11 AAC 03--11 AAC 06)

Part 6. Lands (11 AAC 52--11 AAC 98)

PART 1. OFFICE OF THE COMMISSIONER.

Chapter

05. Fees for Department Services (11 AAC 05.010--11 AAC 05.900)

CHAPTER 05. FEES FOR DEPARTMENT SERVICES.

Section

010. Fees

11 AAC 05.010. FEES. (a) Non-refundable fees to apply for authorizations and fees to obtain publications or services from the department are as follows:

(6) surface leasing

(K) application for aquatic farmsite permit or lease; for amendment or renewal of aquatic farmsite permit; or for amendment, extension, or assignment of aquatic farmsite lease, \$50;

(Eff. 1/1/86, Register 96; am 8/10/86, Register 99; am 9/28/86, Register 99; am 8/23/87, Register 103; am 1/28/88, Register 105; am 7/1/89, Register 110)

Authority: AS 03.10.020
AS 27.21.030
AS 38.05.020
AS 38.05.035
AS 38.05.295
AS 38.05.856
AS 38.09.110
AS 38.35.020
AS 38.35.050
AS 38.50.160

AS 38.95.240
 AS 41.06.020
 AS 41.21.020
 AS 41.21.026
 AS 44.17.030
 AS 44.37.020
 AS 44.37.025
 AS 45.50.315
 AS 46.15.020

PART 6. LANDS.

Chapter

63. Aquatic Farmsite Permits and Leases (11 AAC 63.010--11 AAC 63.900)

11 AAC is amended by adding a new chapter to read:

CHAPTER 63. AQUATIC FARMSITE PERMITS AND LEASES.

Section

010. Applicability; aquatic farmsite permit defined
 020. District application periods
 030. Aquatic farmsite permit applications
 040. Associated facilities; upland owner preference right; upland owner access right
 050. Application review; best interest finding
 060. Notice and opportunity to comment
 070. Aquatic farmsite permit
 080. Required security
 090. Transition; permits under AS 38.05.850
 100. Aquatic farmsite lease
 110. General permit and lease provisions
 900. Definitions

11 AAC 63.010. APPLICABILITY; AQUATIC FARMSITE PERMIT DEFINED. (a) This chapter covers aquatic farmsite permits issued under AS 38.05.856 and leases issued under AS 38.05.083 for the development and operation of an aquatic farm or related hatchery, as those terms are defined in AS 16.40.199. An aquatic farmsite permit or lease will, in the commissioner's discretion, be issued for tideland, submerged land, and shoreland managed by the department under AS 38, but will not include land within a state park or other land that has been withdrawn from the state public domain. The aquatic farmsite authorization will, in the commissioner's discretion, include authorization for associated storage and housing facilities, including facilities on adjacent

upland managed by the department under AS 38, in accordance with 11 AAC 63.040.

(b) Issuance of an aquatic farmsite permit is a disposal of an interest in state land. An aquatic farmsite permit is revocable only for breach of its provisions. It conveys the exclusive, non-transferable right, during a three-year term, to improve and develop the site as an aquatic farm or related hatchery in accordance with the permit's provisions, and includes a preference right to an aquatic farmsite lease if the permittee develops the site for aquatic farming or related hatchery operations in accordance with the permit's provisions.

(c) A person who only wants to test a site's suitability for aquatic farming, without developing it or acquiring any property right, may be authorized to do so in accordance with 11 AAC 63.090(e)(1). A person who wants to acquire property rights so that he or she can develop the site into an aquatic farm may do so by applying for an aquatic farmsite permit, in accordance with 11 AAC 63.030, during the application period for that district. The applicant might be eligible for a preference right if the applicant is already lawfully operating an aquatic farm (11 AAC 63.090(a)) or is an upland owner or lessee (11 AAC 63.040(f)). A preference right is not an entitlement to receive the authorization, but it protects the applicant against some or all competition for it. If the applicant receives an aquatic farmsite permit and successfully develops the site as mentioned in (b) of this section, the permittee has a preference right to lease the site. No one else may apply for the aquatic farmsite lease, nor may anyone apply directly for a lease without first obtaining an aquatic farmsite permit. (Eff. 7/1/89, Register 110)

Authority: AS 38.05.020
AS 38.05.083
AS 38.05.855
AS 38.05.856

11 AAC 63.020. DISTRICT APPLICATION PERIODS. (a) The commissioner will prepare a fixed schedule of the dates on which aquatic farmsite permit applications may be filed in a district. The schedule will be available to the public.

(b) The commissioner will give notice that a district is open to aquatic farmsite permit applications by publication, beginning before the application period opens, in at least one newspaper of statewide circulation and one newspaper of general circulation in the district. If a preapplication conference is scheduled under 6 AAC 50.040 so that potential applicants and other interested persons can discuss their plans and exchange information about the district, notice of the conference will be included.

(c) The commissioner will, in his or her discretion, set application filing guidelines for a district, such as minimum or maximum size limits for aquatic farmsites, minimum distances from anchorages or the mouths of anadromous fish streams, or a limit on the total number of applications that a person may file, or permits that a person may hold, in that district. Filing guidelines will be available at the places listed in the public notice announcing the application period.

(d) Maps of a district that is open to aquatic farmsite permit applications will be available at the places listed in the public notice announcing the application period. To the extent practical, the map will indicate areas known to be unavailable or unsuitable for aquatic farmsite permits. For example, an area might be unavailable because it is already subject to aquatic farmsite authorizations or because aquatic farming is prohibited by an applicable zoning ordinance, district coastal management program, or state land use plan. An area might be unsuitable if the Department of Environmental Conservation determines that known water pollution is incompatible with raising shellfish and aquatic vegetables for human consumption. The map will also indicate areas where aquatic farming is discouraged, but not prohibited outright, by a state land use plan. (Eff. 7/1/89, Register 110)

Authority: AS 38.05.020
AS 38.05.855
AS 38.05.856

11 AAC 63.030. AQUATIC FARMSITE PERMIT APPLICATIONS. (a) An aquatic farmsite permit application is subject to 11 AAC 67.007, except that it may be filed only at the regional office responsible for the relevant district. The application must

- (1) be submitted on a form approved by the commissioner;
- (2) include the non-refundable application fee required by 11 AAC 05.010;
- (3) include a clear scaled drawing of the site boundaries on a U.S.G.S. map at a scale of 1:63,360 or a navigation chart, as required by the application form;
- (4) be accompanied by a completed coastal project questionnaire as required by 6 AAC 50, unless the application is solely for shoreland outside the coastal zone; and
- (5) comply with all application filing guidelines set under 11 AAC 63.020(c), except that the applicant may request a waiver of a filing guideline that sets a maximum size limit; the

commissioner will, in his or her discretion, waive the size limit if (A) the applicant shows that a waiver is justified by the applicant's experience, capitalization, and need for a larger site in order to form an economic unit and (B) the commissioner, after considering the reason for which the size limit was imposed and public comment on the proposed waiver, determines that the waiver is in the state's best interest; the commissioner's proposal to waive the size limit will be included in the preliminary finding under 11 AAC 63.050.

(b) Each application must include sufficient detail on the applicant's proposed site improvements to allow the commissioner to determine the amount of the security required under 11 AAC 63.080. It must also include a proposed development plan and schedule. The development plan and schedule must result in reasonable use of the site and must ensure that the site is developed for aquatic farming or related hatchery operations before the permit expires. The commissioner will, in his or her discretion, approve the development plan and schedule, or amend it as the commissioner considers necessary to make reasonable use of the site. The application may include both a minimum and maximum development plan and schedule; if both are approved, fulfilling the minimum development plan and schedule will fulfill the development requirement, and the permittee may operate at any higher level up to the maximum development plan and schedule without the need for an amendment.

(c) An applicant may file as many non-overlapping applications as desired, unless the commissioner has limited the number by setting a filing guideline under 11 AAC 63.020(c).

(d) Except as provided in 11 AAC 63.040(f) and 11 AAC 63.090(b), all complete applications received during a district application period are considered to have been simultaneously filed. If the number of applications filed for a particular area exceeds the number of sites that the commissioner decides to grant, the commissioner will hold a lottery to draw the proper number of applications.

(e) If two applications overlap in an area where the commissioner does not propose to limit the number of authorized sites, the applicants will be granted 30 days to agree on amendments that eliminate the overlap. If an application overlaps an existing aquatic farmsite permit or lease, or a mariculture testing or development site subject to a preference right under 11 AAC 63.090(a), the applicant will be granted 30 days to amend the application so as to eliminate the overlap. The commissioner will, in his or her discretion, amend an application

(1) to eliminate an overlap if the applicant has failed to do so, or

(2) to eliminate or reduce other site or resource use conflicts. (Eff. 7/1/89, Register 110)

Authority: AS 38.05.020
AS 38.05.855
AS 38.05.856

11 AAC 63.040. ASSOCIATED FACILITIES; UPLAND OWNER PREFERENCE RIGHT; UPLAND OWNER ACCESS RIGHT. (a) The commissioner will, in his or her discretion, authorize associated facilities for storing equipment or housing personnel at an aquatic farmsite, including upland managed by the department under AS 38, if the commissioner is satisfied that the associated facilities are necessary for aquatic farming. An applicant who wants authorization for associated facilities at either the permit or lease stage must request it as part of the permit application so that it can be considered during agency and public review.

(b) The conditions in this subsection apply to an authorization for personnel housing at an aquatic farmsite during the permit stage, but not at the lease stage. The commissioner will authorize such housing only if the applicant shows that (1) the level of site development at the time the housing is expected to begin will require that personnel be present on a daily basis, (2) the personnel cannot reasonably commute to the site by road, boat, or aircraft on a daily basis, and (3) no nearby land suitable for housing is available for rent or sale. The housing facility may not be used as the personnel's primary or full-time residence. It must be designed and constructed so that it can be removed and the site completely restored within 30 days if the permit terminates or if housing personnel at the aquatic farmsite ceases to be necessary. The housing facility may not be placed on a permanent foundation, except that a foundation of wooden pilings may be used if the applicant agrees either to remove the pilings or to cut them off at ground level if site restoration is required.

(c) The conditions in this subsection apply to an authorization for floating housing at an aquatic farmsite during either the permit or lease stage. The commissioner will authorize floating housing only if that use is consistent with the floathouse provisions and management intent of an applicable land use plan, zoning ordinance, or coastal management program, and if the Department of Environmental Conservation determines that such housing would not result in degraded water quality that would be incompatible with raising shellfish or aquatic vegetables for human consumption.

(d) The nature and extent of associated facilities are a factor in setting the security amount under 11 AAC 63.080, setting the fee for an aquatic farmsite permit under 11 AAC 63.070, and appraising the fair market value of a lease under 11 AAC 63.100.

(e) After a permit or lease terminates, the former permittee or lessee has no entitlement or preference right to continue using or occupying any portion of the aquatic farmsite, including anchoring a floathouse at the site.

(b) Under this subsection, the commissioner grants an aquatic farmsite permit preference right to eligible upland owners and lessees in order to increase the compatibility of aquatic farming with upland management policies. The owner or lessee of adjacent or nearby upland may request a preference right to an aquatic farmsite permit by agreeing to place his or her associated facilities for storing equipment or housing personnel on his or her own land or leasehold rather than on state-owned land or other public land. The following apply to a preference right under this subsection:

(1) For an upland owner or lessee to be eligible, the applicant's development plan and schedule must demonstrate that the associated facilities are necessary for aquatic farming.

(2) For an upland lessee to be eligible, the term of the upland lease must equal or exceed the combined terms of an aquatic farmsite permit and lease. A U.S. Forest Service special use permit does not constitute a leasehold interest that would make the holder eligible for a preference right under this subsection.

(3) A preference right granted under this subsection is secondary to a preference right that the commissioner grants under 11 AAC 63.090(a).

(4) If the number of applications eligible for an upland owner/lessee preference right exceeds the number of permits that the commissioner decides to grant, the commissioner will hold a lottery as set out in 11 AAC 63.030(d) among the preference-eligible applications only.

(5) An upland owner or lessee who wants a preference right for aquatic farming must apply under this subsection, rather than under AS 38.05.075(c). AS 38.05.075(c) does not give an upland owner or lessee any entitlement or preference right to an aquatic farmsite permit or aquatic farmsite lease.

(c) No aquatic farmsite permit or lease will be issued that would deny an upland owner's right of reasonable access to tidewater or deny access by boat to privately owned upland. (Eff. 7/1/89, Register 110)

Authority: AS 38.05.020
AS 38.05.083
AS 38.05.855
AS 38.05.856

11 AAC 63.050. APPLICATION REVIEW; BEST INTEREST FINDING.

(a) After an aquatic farmsite permit application period closes, complete applications will undergo review by agencies and affected coastal districts in accordance with 6 AAC 50.070 for consistency with the Alaska Coastal Management Program. Compliance with this requirement fulfills the agency consultation requirement of AS 38.05.855(c). Comments received will be considered both for the coordinating agency's proposed consistency determination and for the commissioner's preliminary best interest finding. If applications are filed for sites within a state game refuge or critical habitat area, the commissioner will request the approval of the commissioner of the Department of Fish and Game as required by AS 16.20.060 or 16.20.530.

(b) The commissioner will prepare a preliminary best interest finding that proposes sites for which permits may be issued. If the sites are unclassified, a proposed land use plan and classification order will be prepared, and might accompany or be included as part of the preliminary best interest finding. If the commissioner decides to deny an application, to require its amendment, or to limit the number of sites to be authorized, the finding will explain the reason. The finding will consider both advantages and disadvantages of the proposal. Criteria that will be considered in the finding include:

(1) whether the Department of Fish and Game considers the proposed aquatic farm or hatchery to meet the criteria of AS 16.40.105;

(2) whether the Department of Environmental Conservation determines that the proposed aquatic farmsite is protected from pollution from adjacent floating and upland support activities, to ensure product wholesomeness, and that effective pollution control measures can be implemented to protect land and water at the site from pollution caused by the proposed aquatic farm or hatchery;

(3) whether the coordinating state agency proposes to find the proposed aquatic farm or hatchery consistent with the Alaska Coastal Management Program;

(4) whether aquatic farming is compatible with official land management policies applicable to the proposed aquatic farmsite and nearby upland, including legislative or congressional designations such as parks or wilderness areas and adopted federal, state, and local land use plans, land classifications, and zoning;

(5) whether aquatic farming conflicts with existing uses, or with pending uses, as that term is defined in 11 AAC 63.900, of the site and of nearby land, whether or not the nearby land is in state ownership, including consideration of

(A) impacts on nearby communities or residential land;

(B) traditional and existing uses of the site, including commercial fishing, sport fishing, subsistence activities, use as a primary anchorage, navigation, seaplane landing area, recreation, sightseeing, and tourism; consideration of this criterion will, in the commissioner's discretion, be combined with a traditional use finding if such a finding is required by AS 38.05.830;

(C) historic and cultural resources;

(D) commercial or industrial facilities, such as log transfer facilities, salmon hatcheries, seafood processing plants, or harbor development, that would be incompatible with aquatic farming;

(6) how public access to and along public waters, and the upland owner's right of reasonable access to tidewater, will be ensured by reserving easements under 11 AAC 53 or by other means; if upland access to the water is limited to a specific point by topography, existing improvements, or other factors, the commissioner will ensure that aquatic farming facilities do not obstruct water access to that point;

(7) how the interests served by the public trust doctrine, specifically the public's right to use navigable waters and the land beneath them for navigation, commerce, fishing, and other purposes, will be protected;

(8) whether special permit provisions or other measures are needed to mitigate identified conflicts; for this purpose the commissioner will consult guidelines set out in an applicable land use plan, zoning ordinance, or coastal management program, or, if no such document or guidelines exist or if it would otherwise be appropriate, will consult the guidelines set out on pp. 80-85 of the final 1988 Etolin Island Area Mariculture Pilot Project;

(9) other significant social, economic, and environmental effects of the proposed aquatic farming.

(c) In general, the commissioner will not grant aquatic farmsite permits that would encumber more than a third of the surface area estimated to exist at mean lower low water of a bay, bight, or cove, unless the commissioner finds that (1) it is in the state's best interest to concentrate permits in one such bay, bight, or cove so as to keep other specified water bodies completely unencumbered, (2) the cumulative impacts will not be excessive, and (3) the upland owner will retain a right of reasonable access to tidewater. Such a finding will be included in the best interest finding, as well as in the land use plan if one is being prepared. (Eff. 7/1/89, Register 110)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.127
AS 38.05.128
AS 38.05.855
AS 38.05.856

Editor's note: Pages 80-85 of the 1988 Etolin Island Area Mariculture Pilot Project, referred to in 11 AAC 63.050(b), may be obtained from DNR, Division of Land and Water Management, at either the Southcentral Regional Office (P.O. Box 107005, Anchorage, Alaska 99510-7005) or the Southeastern Regional Office (400 Willoughby Ave., Juneau, AK 99801).

11 AAC 63.060. NOTICE AND OPPORTUNITY TO COMMENT. (a) Notice under AS 38.05.945 that the preliminary best interest finding is available for written comment will, in the commissioner's discretion, be combined with notice of the time, place, and location of a hearing to be conducted under AS 38.05.946(b); notice of a proposed determination of consistency with the Alaska Coastal Management Program; notice of a proposed land use plan and classification, if the land is not yet classified; and notice of the approximate date when the final best interest finding, as well as the final land use plan, if required, is expected to be available.

(b) The commissioner will conduct the public hearing that AS 38.05.946 requires in each district either in person or by teleconference.

(c) The department will maintain a mailing list of persons who ask in writing to receive notice of district openings and

notice of comment opportunities. Any interested person may ask inwriting to be put on an aquatic farming mailing list. The department will use the mailing list to notify recipients of opportunities for public comment and involvement such as the opening of a district application period or the availability of a preliminary best interest finding.

(d) If the upland adjacent to an aquatic farmsite permit application is not managed by the department, the commissioner will notify the upland owner of the opportunity to comment under (a) of this section. If an aquatic farmsite permit applicant states that using upland for associated facilities is necessary for aquatic farming, and the upland owner notifies the commissioner in writing that the owner cannot or will not authorize the upland use, the commissioner will not grant the aquatic farmsite permit.

(e) Decisions made as a result of public and interagency comment will be incorporated into the final best interest finding and, if required, into the final land use plan. (Eff. 7/1/89, Register 110)

Authority: AS 38.05.020
AS 38.05.855
AS 38.05.856
AS 38.05.945
AS 38.05.946

11 AAC 63.070. AQUATIC FARMSITE PERMIT. (a) The commissioner will grant an aquatic farmsite permit to a successful applicant after the commissioner issues the final finding required by AS 38.05.035(e) and AS 38.05.855(d) and the coordinating state agency issues a conclusive determination of consistency with the Alaska Coastal Management Program.

(b) Within 30 days after receiving the permit, the applicant shall sign it and return it to the commissioner along with

(1) the security required by 11 AAC 63.080; and

(2) a use fee, set in a fee schedule approved by the commissioner, to provide the state a reasonable return for the permittee's use of the site, but less than the fair market value rent.

(c) An aquatic farmsite permit is subject to the provisions set out in this section in addition to the general provisions of 11 AAC 63.110.

(d) A permit might be also subject to special provisions that the commissioner imposes to make it consistent with the Alaska Coastal Management Program or that the commissioner otherwise considers necessary to serve the state's best interests.

(e) The aquatic farm development plan and schedule proposed in the application, as approved or amended by the commissioner, is incorporated as a provision of the permit.

(f) A permit will, in the commissioner's discretion, be cancelled, in whole or in part, if the permittee obtained it improperly through misrepresentation or error with respect to material facts.

(g) A permittee may apply for no more than two renewals of a permit, for an additional three years for each renewal. A new written finding is not required before the commissioner renews a permit. The commissioner will renew a permit if the commissioner is satisfied, based on information submitted by the permittee and testimony provided by interested persons after notice under AS 38.05.856 and notice to the upland owner, that

(1) the permittee is in substantial compliance with the permit's provisions and is in operation, or

(2) the permittee is in substantial compliance with the permit's provisions except that the permittee is not in operation, and that the failure to comply with the aquatic farm development plan and schedule and to begin operating is due to circumstances beyond the permittee's control. (Eff. 7/1/89, Register 110)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.850
AS 38.05.855
AS 38.05.856

11 AAC 63.080. REQUIRED SECURITY. For any aquatic farmsite permit or lease, a bond, cash deposit, certificate of deposit, or other form of security acceptable to the commissioner must be posted and maintained in an amount determined by the commissioner to be sufficient to cover the cost of site cleanup and restoration and any associated cleanup costs. Factors that the commissioner will use in determining the amount of the security include travel costs to reach the site for cleanup or inspection; the planned size and extent of improvements; whether the improvements (including associated facilities on state land) could be towed away for use by other operators, burned onsite, or disposed of at an authorized landfill; and whether heavy equipment would be needed for upland site restoration and filling a foundation excavation. The commissioner will, in his or her discretion,

subsequently change the amount of the required security, based on changes in the level of site development, new information, or other appropriate factors. The commissioner will, in his or her discretion, reduce the amount of the security if the property is subject to a collateral assignment as security for financing and the collateral assignee agrees to assume the permittee's or lessee's obligations and restore the site if the permittee or lessee defaults. (Eff. 7/1/89, Register 110)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.083
AS 38.05.856

11 AAC 63.090. TRANSITION; PERMITS UNDER AS 38.05.850. (a) If the commissioner finds that it is in the state's best interest to issue an aquatic farmsite permit, a person who has a permit in good standing that was issued under AS 38.05.850 for mariculture testing or development purposes has a preference right to the aquatic farmsite permit if

(1) as of June 9, 1988, the person was either lawfully operating an aquatic farm at that site, or had obtained and was complying with all permits necessary to operate an aquatic farm at that site and, in reliance on those permits, had undertaken the initial steps that would lead to full-scale operations; photographs, purchase orders, receipts, or other evidence acceptable to the commissioner must be provided to establish eligibility; and

(2) the person files a complete application for the site during the appropriate district application period.

(b) An application filed by a person who has a preference right to the site under (a) of this section is exempt from the amendment procedures of 11 AAC 63.030(e) and the lottery procedures of 11 AAC 63.030(d).

(c) A person who has a permit issued under AS 38.05.850 but who does not otherwise meet the requirements of (a) of this section does not have a preference right to an aquatic farmsite permit that might be issued for the site. However, the person may apply for an aquatic farmsite permit on a non-preference-right basis. If another person is chosen as the successful applicant, or if the commissioner decides that it is not in the state's best interest to grant an aquatic farmsite permit for the site, the commissioner will revoke the permit issued under AS 38.05.850 after reasonable notice to the permittee.

(d) A permit in good standing that was issued under AS 38.05.850 to a person who might have a preference right under (a) of this section will be renewed until the site is included in a district application period. In the interim, the permittee may continue operating so long as all required permits remain in good standing and no change of use occurs.

(e) Except as follows, no new permit will be issued under AS 38.05.850 for aquatic farming purposes unless the applicant filed a complete application before June 9, 1988:

(1) A person may obtain a permit under AS 38.05.850 solely to test a site's suitability for aquatic farming or, to the extent allowed by 11 AAC 96, may undertake such testing without a permit from the department. A permit for testing site suitability under AS 38.05.850 is limited to a period of no more than one year and the total area within which testing occurs may not exceed one acre. Testing includes placing data collecting equipment and up to 10,000 organisms in the water. The organisms may not be used for commercial purposes. A permit under AS 38.05.850 for testing site suitability may not be renewed.

(2) In an emergency, such as a dinoflagellate plankton bloom that could result in an unacceptable concentration of toxins in shellfish, the director will use his or her discretion under AS 38.05.850 to authorize the relocation of rafts or other rearing structures to another location until the emergency ends. (Eff. 7/1/89, Register 110)

Authority: AS 38.05.020
AS 38.05.083
AS 38.05.850
AS 38.05.855
AS 38.05.856
Sec. 18, ch.
145, SLA 1988

11 AAC 63.100. AQUATIC FARMSITE LEASE. (a) If the commissioner finds in accordance with AS 38.05.035(e) that it is in the state's best interest to issue an aquatic farmsite lease, an aquatic farmsite permittee who has developed the site for aquatic farming or related hatchery operations in accordance with the permit's provisions has a preference right to lease the site at its appraised fair market value without competitive bid. A person who does not have an existing aquatic farmsite permit may not apply for an aquatic farmsite lease.

(b) An aquatic farmsite permittee who has not succeeded in developing the site for aquatic farming or related hatchery operations does not have a preference right to any lease that may be offered for that site. However, if the commissioner offers the

lease at public auction, the unsuccessful permittee may bid for the lease. The commissioner will offer a former permit site for lease at public auction only if the former aquatic farmsite permittee does not qualify for a preference right or chooses not to exercise the preference right. (c) The term of an aquatic farmsite lease is 10 years. If the lessee applies for an extension before the lease's last day, the commissioner will, in his or her discretion, extend the term for an additional 10 years. The commissioner will, in his or her discretion, require a lease diagram before issuing the lease. Before the commissioner extends a lease, the commissioner will determine whether AS 38.04.045 or a successor statute requires a cadastral survey. If AS 38.05.102 or a successor statute is still in effect when the lease expires, the lessee may apply for a new lease in accordance with that statute.

(d) Before a lease is issued, security must be posted as required by 11 AAC 63.080.

(e) Unless the commissioner grants a variance for good cause, the lessee shall continue to operate the aquatic farm or related hatchery at or above the operating level reached when the permittee applied for the lease. For a lease offered at auction, the commissioner will either impose a minimum lease operating level or require the bidder or lessee to propose a lease operating plan for the commissioner's approval.

(f) A lease that is in good standing may, with the approval of the director, be assigned. The assignee shall promptly and diligently seek to obtain all permits necessary for lawful operations.

(g) Lease rental must be paid annually on or before the anniversary date of the lease. (Eff. 7/1/89, Register 110)

Authority: AS 38.04.045
AS 38.05.020
AS 38.05.035
AS 38.05.083
AS 38.05.856
AS 38.05.920

11 AAC 63.110. GENERAL PERMIT AND LEASE PROVISIONS. An aquatic farmsite permit or lease will contain at least the following provisions:

(1) A permittee or lessee shall operate so as to cause no significant damage to land, public trust resources, and public uses of public trust resources.

(2) A permit or lease is subject to all applicable federal, state, and local law, including statutes and regulations in effect on its effective date; statutes and regulations placed in effect after its effective date, to the extent constitutionally permissible; and the public trust doctrine regarding the public's right to use navigable waters and the land beneath them for navigation, commerce, fishing, and other purposes.

(3) A permittee or lessee shall obtain and remain in compliance with all other federal, state, and local authorizations necessary for lawful operations.

(4) The commissioner will, in his or her discretion, after the application fee required by 11 AAC 05.010 has been paid, amend a permit or lease to change the species of shellfish or aquatic plant being raised or to change the boundary or acreage of the aquatic farmsite, or the number of rafts or other rearing structures authorized, if the change is minor and does not increase obstructions to navigation or to other public use. However, no change of use, as that term is defined in 11 AAC 63.900, will be authorized. Amendment of an aquatic farmsite permit or lease does not relieve the permittee or lessee of the obligation to obtain other necessary authorizations.

(5) A permittee or lessee and its invitees may not use an aquatic farmsite for any unlawful purpose.

(6) A permittee or lessee may use an aquatic farmsite only for the purposes authorized by the permit or lease, and the state reserves all other interests in the site. The rights granted by the permit or lease must be exercised in a manner that does not unreasonably interfere with the rights of the state or of its permittees, lessees, or grantees, consistent with the principle of reasonable concurrent uses as set out in art. VIII, sec. 8, of the Alaska Constitution. A permittee or lessee shall pay for any damages that are payable by reason of the permittee's or lessee's failure to comply with the requirements of this paragraph.

(7) A permittee or lessee shall comply with the approved development plan and schedule or the approved lease operating level.

(8) A permittee's or lessee's failure to timely perform its obligations under the permit, or otherwise to comply with all express or implied provisions of the permit, constitutes a default. If a permittee or lessee fails to cure the default or to begin and diligently continue to remedy the default within 30 days after written notice of the default and an opportunity to be heard, the commissioner will order suspension of site development

or operations until compliance is achieved, or will take other action that the commissioner finds appropriate, including revocation of the permit or lease or attachment of the site restoration security.

(9) With the commissioner's written consent, a permit or lease that is in good standing may be relinquished. (Eff. 7/1/89, Register 110)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.083
AS 38.05.085
AS 38.05.855
AS 38.05.856

11 AAC 63.900. DEFINITIONS. (a) In this chapter,

(1) "aquatic farm" has the meaning given in AS 16.40.199;

(2) "aquatic farmsite permit" means a property right to improve and develop state-owned public domain land as an aquatic farm or related hatchery;

(3) "aquatic farmsite lease" means a lease to operate an aquatic farm or related hatchery on state-owned public domain land;

(4) "change of use" means (A) a change from one species of shellfish to a species other than shellfish, or from one species of aquatic plant to a species other than aquatic plants, (B) a change in the location of the aquatic farmsite, (C) a significant increase in the aquatic farmsite's acreage, or (D) a significant increase in the surface area of the farmsite that is encumbered by rafts or other rearing structures;

(5) "commissioner" means the commissioner of the Department of Natural Resources or the commissioner's delegate;

(6) "department" means the Department of Natural Resources;

(7) "director" means the director of the division of lands or the director's delegate;

(8) "good standing" means being in compliance with all provisions of all required authorizations;

(9) "pending use" means a project documented by government agency plans or authorizations, the acquisition of property rights, or other evidence of investment-backed expectations that the use will occur;

(10) "primary anchorage" means a large or heavily used anchorage, or an anchorage for which there is no reasonable alternative with comparable protection from locally prevailing weather conditions.

(b) In this chapter and in AS 38.05.083, "developed for aquatic farming or related hatchery operations" means that all planned capital improvements are in place and functioning at their planned capacity to produce aquatic plants or shellfish; however, the aquatic plants or shellfish need not be marketed or have reached marketable size in order to fulfill the development requirement. (Eff. 7/1/89, Register 110)

Authority: AS 38.05.020
AS 38.05.083
AS 38.05.085
AS 38.05.855
AS 38.05.856
AS 38.05.920
AS 38.05.945
AS 38.05.946
Sec. 18, ch.
145, SLA 1988