

Note: On October 26, 2005, the Lieutenant Governor filed regulations from the Department of Fish and Game - Aquatic Farming and Hatchery Operations, 5 AAC 41.220-5 AAC 41.400. The effective date for the regulation revisions will be **November 25, 2005** and they will be published in Register 176, Jan. 2006.

Title 5. Fish and Game.

Chapter 41. Transportation, Possession and

Release of Live Fish; Aquatic Farming.

Article 4. Aquatic Farming.

5 AAC 41.220 is amended by adding new subsections to read:

(e) An application for a proposed on-bottom culture aquatic farm site must include a user fee for a survey of the initial abundance of the species intended for culture. A survey of the proposed aquatic farm site will be conducted by the department, a person approved by the department to conduct the survey with oversight from the department, or an alternative method in a cooperative effort between the department and the applicant. The department will, to the extent practicable, work with the applicant to reduce the cost of the user fee for a survey. The department will cap the user fee for the survey as follows:

- (1) for a subtidal survey: no more than \$5,000 per aquatic farm site, per day;
- (2) for an intertidal survey: no more than \$2,000 per aquatic farm site, per day.

(f) The commissioner will determine the order that applications are reviewed and surveys are conducted under this section. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am 12/16/98, Register 148; am 6/17/2001, Register 158; am 1/20/2002, Register 161; am 5/19/2005, Register 174; am ____/____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.110

AS 16.05.092 AS 16.40.105 AS 16.40.160

5 AAC 41 is amended by adding a new section to read:

5 AAC 41.235. Determination of Insignificant Population. For the purposes of 5 AAC 41.200 – 5 AAC 41.400, the commissioner determines that an insignificant population of

(1) geoducks is

(A) no more than 12,000 pounds of geoducks on a six-acre aquatic farm site; or

(B) an average of no more than 2,000 pounds per acre of an aquatic farm site;

(2) shellfish, other than geoducks, is the amount that, as determined by the commissioner on a case-by-case basis, will not attract and support a commercial fishery for that species of shellfish and the harvest and sale of the shellfish will not result in significant alteration in traditional fisheries or other uses of fish and wildlife resources if the population is included within the aquatic farm. (Eff. ____/____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.105 AS 16.40.160
AS 16.05.092 AS 16.40.110 AS 16.40.199
AS 16.40.100

5 AAC 41.240(a) is amended by adding a new paragraph to read:

(6) the proposed aquatic farm site contains an insignificant population of the species intended for culture, as determined under 5 AAC 41.235.

(Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am 6/17/2001, Register 158; am 1/20/2002, Register 161; am 5/19/2005, Register 174; am ____/____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.110
AS 16.05.092 AS 16.40.105 AS 16.40.160
AS 16.05.340

5 AAC 41 is amended by adding a new section to read:

5 AAC 41.246. Harvest of insignificant population on aquatic farm site. In the course of operating an on-bottom aquatic farm, an aquatic farm operation permit holder may harvest and sell an insignificant population of wild stock of the species, as determined under 5 AAC 41.235, that are approved for culture and occupying the aquatic farm site at the time the permit was issued. (Eff. ____/____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.105 AS 16.40.160
AS 16.40.100

5 AAC 41.250(a)(10) is amended to read:

(10) **except for wild stock removed by a common property fishery, as provided in AS 16.40.100(e)**, upon termination of a permit for on-bottom culture, leave an approximate number of the species that were approved for culture on the aquatic farm site sufficient to restore the population to the level that was present when the site was permitted for use as an aquatic farm or hatchery.

5 AAC 41.250(a) is amended by adding a new paragraph to read:

(11) if the commissioner authorizes the removal and sale of the excess amount of wild stock from an aquatic farm site under AS 16.40.100(f), pay reasonable compensation to the state as determined by the commissioner under this paragraph for the harvest and sale of the excess wild stock; the commissioner will specify a reasonable amount of time, not to exceed five years, in the operation permit for the permit holder to harvest and sell the excess amount of wild stock; for the purposes of this paragraph, the commissioner determines that reasonable compensation is a proportion of whichever is the greater of the average ex-vessel price paid in the most recent commercial fishery or the amount paid at the first point of sale; the proportion for

- (A) live geoducks is 50 percent;
- (B) processed geoducks is 20 percent;
- (C) shellfish, other than geoducks, will be determined by the commissioner on a case-by-case basis.

(Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am 12/16/98, Register 148; am 6/17/2001, Register 158; am 5/19/2005, Register 174; am ____/____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160
AS 16.05.092

5 AAC 41 is amended by adding a new section to read:

5 AAC 41.257. Security requirements for wild stock restoration. (a) Within 30 days after the harvest of wild stock begins, an aquatic farm permit holder must file with the commissioner a certificate of deposit in an amount determined by the commissioner to be

adequate to cover the cost of restoring the wild stock to the population level that existed on the aquatic farm site when the permit for the site was initially issued.

(b) After the permit holder has complied with the required reseeding of wild stock, the permit holder may submit a written request, along with a transport permit and bill of sale from the hatchery, to the commissioner to release the certificate of deposit. The commissioner will return the certificate of deposit to the permit holder no later than six months after the commissioner has determined that the permit holder has complied with the required reseeding of wild stock.

(c) The provisions of this section do not apply to a person who holds a permit for an aquatic farm site that does not contain wild stock. (Eff. ____/____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160

AS 16.05.092

5 AAC 41.270 is repealed and readopted to read:

5 AAC 41.270. Fish ticket; reporting requirement and annual report. (a) At least 24 hours before landing wild stock harvested from the permit holder's aquatic farm site, the permit holder must notify, during business hours, a representative of the department by telephone. The notification must include

(1) an estimate of the number of pounds of wild stock the aquatic farm permit holder intends to sell;

(2) where the first place of landing will be; and

(3) the anticipated time of the landing.

(b) An aquatic farm permit holder must allow an inspection of the permit holder's harvest of wild stock by an employee of the department or a peace officer of the state upon request.

(c) An aquatic farm permit holder who harvests wild stock from the permit holder's farm site must complete an ADF&G fish ticket at the time of harvest. At the time of harvest, the ADF&G fish ticket must include the

- (1) information provided on the CFEC interim use permit card;
- (2) aquatic farm site permit number; and
- (3) the number of pounds harvested.

(d) In addition to the information required in (c) of this section, at the time of initial point of sale, the ADF&G fish ticket must include

- (1) the price paid per pound; and
- (2) whether the product was sold live or processed.

(e) The department will distribute an annual report form to aquatic farm and hatchery operation permit holders during each calendar year for completion and return to the department no later than January 15 of the following year. The report must detail the activities of the aquatic farm or hatchery for the previous year, including any reports required as a condition of the aquatic farm or hatchery operation permit. The department will mail the annual report form to the most recent address of the permit holder on file. A permit holder is responsible for keeping the department informed of the permit holder's current address. Failure to receive an annual report form does not relieve a permit holder of the annual report requirement of this section.

(f) Records and reports required under AS 16.40 and this chapter are confidential and may only be released, as specified under AS 16.40.155.

(g) For the purposes of this section,

(1) "business hours" means Monday through Friday, except a state holiday, from 8:00 a.m. until 5:00 p.m.;

(2) "landing " means the act of offloading shellfish for sale or for transport to a buyer for later sale;

(3) "representative of the department" means the employee of the department that is assigned by the department to receive notification under this section. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am 12/16/98, Register 148; am 6/17/2001, Register 158; am ____/____/2005, Register _____)

Authority: AS 16.05.050 AS 16.40.100 AS 16.40.160
AS 16.05.092 AS 16.40.155

Editor's note: For the purposes of notifying the Department of Fish and Game under 5 AAC 41.270(a), the contact telephone number for the representative of the department is (907) 465-6150.

5 AAC 41.400 is repealed and readopted to read:

5 AAC 41.400. Definitions. Unless the context requires otherwise, in 5 AAC 41.200 – 5 AAC 41.400,

- (1) "aquatic farm" has the meaning given in AS 16.40.199;
- (2) "aquatic farm product" has the meaning given in AS 16.40.199;
- (3) "aquatic farm site" means a tract of land permitted and used for commercial production of aquatic farm products;
- (4) "broodstock" means specimens of a species collected to produce seed stock;
- (5) "commissioner" means the commissioner of fish and game;

(6) "culture" means to use or the use of methods to manipulate the biology and the physical habitat of a desired species to optimize survival, density, growth rates, uniformity of size, and use of the available habitat, and to efficiently produce a product suitable for a commercial market;

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

(8) "established use"

(A) means a

(i) commercial fishery that is subject to limited entry under AS 16.43, or to permit, registration, management, or other authorization requirements under this title;

(ii) sport fishery that occurs with historical regularity, as indicated by department field surveys, creel census sampling, sport use surveys, or other reliable sources of information or validated testimony;

(iii) personal use fishery that occurs with historical regularity, as indicated by personal use permit reports, department field surveys, personal use surveys, or other reliable sources of information or validated testimony;

(iv) subsistence fishery that occurs with historical regularity, as indicated by subsistence permit reports, department field surveys, community use surveys, or other reliable sources of information or validated testimony;

(B) does not include an experimental fishery;

(9) "hatchery" has the meaning given in AS 16.40.199;

(10) "improve the productivity" means to increase the abundance or harvestable biomass of a species over time;

(11) "insignificant population" has the meaning given in AS 16.40.199;

(12) "positive control" has the meaning given in AS 16.40.199;

(13) "predator exclusion" means to hinder or prevent a predator from reaching or consuming aquatic farm products;

(14) "seed stock" means life stages of invertebrates that require a period of culture under positive control before reaching marketable size or quality;

(15) "shellfish" has the meaning given in AS 16.40.199;

(16) "species intended for culture" means the species of aquatic plant or animal that an applicant proposes to culture under positive control;

(17) "stock" has the meaning given in AS 16.40.199;

(18) "wild stock" means animals or plants that seed and occupy a site through natural processes. (Eff. 4/10/88, Register 106; am 8/12/89, Register 111; am 6/17/2001, Register 158; am 5/19/2005, Register 174; am ____/____/2005, Register _____)

Authority: AS 16.05.020 [AS 16.05.251] AS 16.40.100
AS 16.05.092 AS 16.05.340 AS 16.40.160