

11 AAC 63.010. Applicability

(a) This chapter applies to aquatic farmsite leases issued under [AS 38.05.083](#) for the development and operation of an aquatic farm or related hatchery, as the terms "aquatic farm" and "hatchery" are defined in [AS 16.40.199](#) . An aquatic farmsite 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managed by the department under [AS 38](#), but will not include land within a state park or other land that has been withdrawn from the state public domain.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 lease will, in the commissioner's discretion, authorize (1) associated storage and housing facilities, including facilities on adjacent upland managed by the department under [AS 38](#), in accordance with 11 AAC [63.040](#), and (2) incidental use of the lease site for temporary holding of commercially harvested wild stock acquired under AS 16.

(b) Repealed 6/14/98.

(c) A person who wants to acquire a property right to develop a site into an aquatic farm may apply for an aquatic farmsite lease in accordance with 11 AAC [63.030](#). A lease applicant might be eligible for a preference right if the applicant has an aquatic farmsite permit under former [AS 38.05.856](#) (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 lease, but it protects the applicant against some or all competition for it.

History: Eff. 7/1/89, Register 110; am 6/14/98, Register 146

Authority: [AS 38.05.020](#) [AS 38.05.083](#)

11 AAC 63.020. Application periods

(a) The commissioner will schedule a period in which aquatic farmsite lease applications may be filed at least every other year from January 1 through April 30. The commissioner will schedule a public review and comment period on the preliminary best interest finding in the subsequent fall. If a filing period is not scheduled for the general public to file aquatic farmsite lease applications, a lessee entering the last year of a lease that is in good standing has the right to apply for a new lease before the expiration of the current lease.

(b) The commissioner will give notice of the opening of a lease application period publication, beginning before the application period opens, in at least one newspaper of statewide circulation or general circulation in southcentral Alaska and one newspaper of general circulation in southeast Alaska, and by sending the notice to persons on the aquatic farming mailing list maintained under 11 AAC [63.060\(c\)](#).

(c) The commissioner will, in the commissioner's discretion, set application filing guidelines, such as minimum distances from anchorages or the mouths of anadromous fish streams at which an aquatic farmsite may be located. If the commissioner sets application filing guidelines, the commissioner will include the filing guidelines in the application packets available at the places listed in the public notice announcing the application period.

(d) Repealed 6/14/98.

History: Eff. 7/1/89, Register 110; am 6/14/98, Register 146

Authority: [AS 38.05.020](#) [AS 38.05.083](#)

11 AAC 63.030. Aquatic farmsite lease applications

(a) An aquatic farmsite lease application is subject to 11 AAC [67.007](#). The application must

(1) be submitted on a multi-agency application for that includes an Alaskan Coastal Management Program certification statement;

(2) include the non-refundable application fee required by 11 AAC [05.010](#);

(3) include a clear identification of the site on a U.S.G.S. map at a scale of 1:63,360 or a navigation chart, and a clear scaled drawing of the proposed site plan and lease boundaries, as required by the application form;

(4) repealed 6/14/98;

(5) comply with all application filing guidelines set under 11 AAC [63.020\(c\)](#) ; and

(6) state whether the applicant proposes incidental use of the lease site for temporary holding of commercially harvested wild stock acquired under AS 16.

(b) Each application must include a site plan with sufficient detail on the applicant's proposed site improvements, and the schedule for their proposed installation, to allow the commissioner to determine the amount of the security required under 11 AAC [63.080](#). The site plan and installation schedule constitute a development plan for the department's purposes. In addition, the applicant shall include in or with the application details such as the amount of rearing structures (gear density), the species to be raised, and expected minimum and maximum production levels for the purposes of review by the Department of Fish and Game under AS 16.40.105. The development plan must result in commercial use of the site beginning no later than the fifth year of the lease operations and continuing for the rest of the lease term. Commercial use of the site means annual sales of aquatic farm products, as that term defined in AS 16.40.199, of at least \$3,000 per acre or fraction of an acre, or \$15,000 per farm, whichever is less.

(c) Repealed 6/14/98.

(d) Except as provided in 11 AAC [63.040\(f\)](#) , all complete applications received during an application period are considered to have been simultaneously filed. To reduce cumulative impact on the environment and natural resources of an area, the commissioner will, in the commissioner's discretion, limit the number of leases to be issued in that area. If the number of applications filed for a particular area exceeds the number of sites that the commissioner decides to lease, the commissioner will offer the limited number of lease sites by competitive bid, at either a sealed-bid or oral outcry auction.

(e) If two applications overlap in an area where the commissioner does not propose to limit the number of lease sites, the commissioner will, in the commissioner's discretion, amend the applications to eliminate the overlap, or offer the lease site by competitive bid.

(f) If an application overlaps an existing aquatic farmsite permit or lease that is in good standing, or any other surface lease, or a site currently under appeal, the commissioner will deny the application. However, the provisions of this subsection do not apply if the application is filed by the lessee of an existing aquatic farmsite.

(g) The commissioner will, in the commissioner's discretion, amend an application to eliminate an overlap or to eliminate or reduce other site or resource use conflicts.

History: Eff. 7/1/89, Register 110; am 6/14/98, Register 146

Authority: [AS 38.05.020](#) [AS 38.05.070](#) [AS 38.05.075](#) [AS 38.05.083](#)

11 AAC 63.040. Associated facilities; upland owner preference right; upland owner access right

(a) The commissioner will, in the commissioner's 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 must request it as part of the lease application so that it can be considered during agency and public review. If a lessee intends to anchor or stay at the aquatic farmsite for a period of more than 14 consecutive days, the lessee shall disclose this intent in writing as part of the lessee's lease application. The lessee's intent to stay or anchor at the aquatic farmsite for more than 14 days is a factor to be considered in appraising the fair market value of the lease.

(b) The conditions in this subsection apply to an authorization for personnel housing at an aquatic farmsite. The commissioner will authorize personnel 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) nearby land suitable for housing is not available for rent or sale. The housing facility may not be used as the personnel's permanent place of abode. It must be designed and constructed so that it can be removed and the site completely restored within 30 days if the lease terminates or if housing personnel at the aquatic farmsite ceases to be necessary. The housing facility may not be placed on a permanent foundation.

(c) The conditions in this subsection apply to an authorization for floating housing at an aquatic farmsite. 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, , and if the Department of Environmental Conservation determines that floating housing would not result in degraded water quality that would be incompatible with raising shellfish or aquatic plants for human consumption.

(d) The nature and extent of associated facilities are a factor in setting the security amount under 11 AAC [63.080](#) and appraising the fair market value of a lease.

(e) After a lease terminates, the former lessee has no entitlement or preference right to continue using or occupying any portion of the former aquatic farmsite, including anchoring a floathouse at the site or on other state land, unless the person has obtained a new authorization from the department.

(f) Under this subsection, the commissioner grants an aquatic farmsite lease 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 lease by agreeing to place the owner's or lessee's associated facilities for storing equipment or housing personnel on the owner's or lessee's 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 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 term of an aquatic farmsite 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 department provides under 11 AAC [63.090\(a\)](#).

(4) If the number of applications eligible for a preference right for an upland owner or lessee exceeds the number of leases that the commissioner decides to grant, the commissioner will hold an auction 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 shall 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 an entitlement or preference right to an aquatic farmsite lease.

(g) The commissioner may not issue an aquatic farmsite lease if issuing the lease would deny an upland owner's right of reasonable access to tidewater or deny access by boat to privately owned upland.

History: Eff. 7/1/89, Register 110; am 6/14/98, Register 146

Authority: [AS 38.05.020](#) [AS 38.05.083](#)

11 AAC 63.050. Application review; best interest finding

(a) After an aquatic farmsite lease application period closes, the affected agencies will check the applications for completeness. 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 on proposed aquatic farmsite leases for which applications have been timely filed, and on applications the

commissioner intends to deny. The preliminary best interest finding will be made available for public and agency review during the fall that follows the application period. During the period of time that the preliminary finding is available for public and agency review, agencies, , and the public may, consistent with 6 AAC [50.070](#), comment on the consistency of the proposed aquatic farmsites. If the sites are unclassified, a proposed land use plan and classification order will be prepared, and will accompany or be included as part of the preliminary best interest finding for public review and comment. If the commissioner decides to amend or deny an application, to limit the number of sites to be authorized, or to offer a lease at auction rather than noncompetitively, the preliminary best interest finding must explain the reason. The finding must consider both advantages and disadvantages of the proposal. The following criteria are within the scope of the department's review:

(1) repealed 6/14/98;

(2) repealed 6/14/98;

(3) repealed 6/14/98;

(4) whether aquatic farming is compatible with 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; under this paragraph, the finding must consider

(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 an 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; and

(D) commercial or industrial facilities, such as log transfer facilities, salmon hatcheries, seafood processing plants, or harbor development, that might 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 lease 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; and

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

(c) In general, the commissioner will not grant aquatic farmsite leases 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 leases 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. The commissioner will include a finding under this subsection in the best interest finding, as well as in the land use plan if one is being prepared.

(d) The final best interest finding will include a summary of agency and public comments on the preliminary finding, and the department's responses to those comments. It may also report whether the coordinating state agency has issued a final determination of consistency with the Alaska Coastal Management Program. However, the Alaska Coastal Management Program consistency determination is not within the scope of the department's administrative review, and cannot be appealed to the department; instead, it is subject to the process set out in AS 46.40.096 (d) - (e).

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 (1) the time, place, and location of a hearing, if one has been scheduled; (2) the opportunity to comment on the proposed project's consistency with the Alaska Coastal Management Program; (3) the opportunity to comment on a proposed land use plan and classification, if the land is not yet classified; and (4) the approximate date when the final best interest finding, as well as the final land use plan, if required, is expected to be issued. A person who comments on the preliminary best interest finding or proposed land use plan will be sent a copy of the final document.

(b) The commissioner will, in the commissioner's discretion, decide whether to hold a public hearing and will conduct the public hearing either in person or by teleconference. The commissioner will hold a public hearing at the written request of five or more persons who wish to testify.

(c) The department will maintain an aquatic farming mailing list of persons who ask to receive notice of application filing periods and notice of comment opportunities. The department will use the mailing list to notify recipients of opportunities for public comment and involvement such as the opening of an application filing period or the availability of a preliminary best interest finding.

(d) If the upland adjacent to an aquatic farmsite lease 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 lease 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 lease.

(e) Decisions made as a result of public and interagency comment will be incorporated into the final best interest finding under 11 AAC 63.050(d) and, if required, into the final land use plan.

History: Eff. 7/1/89, Register 110; am 6/14/98, Register 146

Authority: AS 38.05.020 AS 38.05.083 AS 38.05.945

11 AAC 63.070. Aquatic farmsite permit

Repealed.

History: Eff. 7/1/89, Register 110; repealed 6/14/98, Register 146

11 AAC 63.080. Required security

(a) For any aquatic farmsite 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 after termination of the lease, including any unpaid rentals or other obligations accruing until site restoration is complete.

(b) The minimum security amount for a lease is \$2500. However, if three or more lessees post an association bond to cover all of their leases, the minimum security amount is 50 percent of the amount individually calculated for each lease. The association must designate an agent for notification purposes. The association has the right to be notified of the termination of a lease covered by its association bond. If neither the former lessee nor the association completes the site restoration as required by AS 38.05.090 , the department will use the association bond for this purpose, up to 100 percent of the amount individually calculated for that lease. The association may remove a lease in good standing from the coverage of its association bond after 60 days' notice to the department, during which time the affected lessee must make other arrangements to comply with this section. A lease that is in default or that has been terminated with site restoration still pending may not be removed from the coverage of an association bond.

(c) Factors that the commissioner will use in the commissioner's discretion in determining to require a higher amount of 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. The commissioner will, in the commissioner's discretion, subsequently

change the amount of the required security, based on changes in the level of site development, new information, or other appropriate factors.

(d) When the former lessee restores the site to a condition acceptable to the commissioner, the security posted for the former lease will be released.

History: Eff. 7/1/89, Register 110; am 6/14/98, Register 146

Authority: AS 38.05.020 AS 38.05.035 AS 38.05.083

11 AAC 63.090. Transition; existing operator preference right; 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 lease, a person who has an aquatic farmsite permit in good standing that was issued under former AS 38.05.856 for that site has a preference right to the aquatic farmsite lease if

(1) by October 1, 1998, the person has developed an aquatic farmsite under former AS 38.05.855 as defined in 11 AAC 63.900(b) ; and

(2) the person applied for the site by October 20, 1997.

(b) Repealed 6/14/98.

(c) A person who has a permit issued under AS 38.05.850 and (e) of this section for research does not have a preference right to an aquatic farmsite lease that might be issued for the site.

(d) Repealed 6/14/98.

(e) Except as follows, a new permit will not be issued under AS 38.05.850 for aquatic farming purposes:

(1) A person may obtain a revocable permit under AS 38.05.850 solely for research or, to the extent allowed by 11 AAC 96, may undertake research without a permit from the department. Research includes placing data collecting equipment and organisms in the water. A permit may not be issued under AS 38.05.850 for testing the site's suitability for aquatic farming. The department will not issue a permit under this paragraph unless the Department of Fish and Game determines that the permit is for scientific rather than commercial purposes.

(2) In an emergency, the director will use the director's discretion under AS 38.05.850 to authorize the relocation of rafts or other rearing structures to another location until the emergency ends.

History: Eff. 7/1/89, Register 110; am 6/14/98, Register 146

Authority: AS 38.05.020 AS 38.05.083 AS 38.05.850

Sec. 40, ch. 91, SLA 1997

11 AAC 63.100. Issuance of aquatic farmsite lease

(a) The commissioner will issue an aquatic farmsite lease if the commissioner finds in accordance with AS 38.05.035 (e) and 11 AAC 63.050 - 11 AAC 63.060 that it is in the state's best interest. The commissioner will issue a lease at its appraised fair market rental value without competitive bid, or for the amount of the high bid at auction.

(b) Repealed 6/14/98.

(c) The term of an aquatic farmsite lease that was not awarded at auction is 10 years. The commissioner will, in the commissioner's discretion, require a boundary survey if needed to resolve an apparent boundary conflict or a dispute over acreage leased. The commissioner will require a survey meeting the requirements of AS 38.04.045 before issuing a lease for a term longer than 10 years.

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

(e) Before a lease is issued, a lease development plan must be approved by the commissioner, and will be incorporated as a provision of the lease. For a lease offered at auction, the commissioner will require the high bidder to propose a lease development plan for the commissioner's approval. The development plan must result in commercial use of the site, as defined in 11 AAC 63.030(b) , beginning no later than the fifth year of the lease and continuing for the rest of the lease term.

(f) Repealed 6/14/98.

(g) Before a lease is issued, the future lessee shall pay the rent that is due under the first year of the lease. Lease rent for each subsequent year must be paid annually on or before the anniversary date of the lease.

History: Eff. 7/1/89, Register 110; am 6/14/98, Register 146

Authority: AS 38.04.045 AS 38.05.020 AS 38.05.035 AS 38.05.083

11 AAC 63.110. General lease provisions

An aquatic farmsite lease must contain at least the following provisions:

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

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

(4) A proposed amendment to the lease development plan for the lease must be submitted to the department for approval before a change in development occurs, and must be accompanied by the application fee required by 11 AAC 05.010. However, under this paragraph

(A) the following changes do not require an amendment of the lease development plan nor do they constitute a significant modification requiring a new determination of consistency with the Alaska Coastal Management Program:

(i) any change in the species or number of shellfish or aquatic plants being raised if the change is permitted by the Department of Fish and Game;

(ii) a change in the number or type of rearing structures authorized within the lease boundaries, if the change does not increase obstructions to navigation or to other public use;

(B) the department will not authorize a proposed amendment to the lease development plan for a "change of use"; for the purpose of this subparagraph and AS 38.05.083 (d), "change of use" means a change from the raising of shellfish and aquatic plants to any other use; and

(C) the approval of an amendment of an aquatic farmsite lease does not relieve the lessee of the obligation to obtain other necessary authorizations.

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

(6) A lessee may use an aquatic farmsite only for the purposes authorized by the lease, and the state reserves all other interests in the site. The rights granted by the 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 lessee shall pay for any damages that are payable by reason of the lessee's failure to comply with the requirements of this paragraph.

(7) A lessee shall comply with the approved development plan. Failure to comply with the commercial-use requirement set out in 11 AAC 63.030(b) is a default and cause for revocation, unless the lessee shows to the commissioner's satisfaction that the failure is due to circumstances beyond the lessee's reasonable ability to foresee or control. The lessee shall report annually to the department, no later than January 31, on sales during the previous year of shellfish and aquatic plants raised on the lease site, not including sales of commercially harvested wild stock that had

been stored at the lease site. If the lessee provides this sales information to the Department of Fish and Game in an annual report, by copies of fish tickets, or by other means, the lessee may fulfill this paragraph's requirement for a sales report by asking the Department of Fish and Game to give a copy of the information to the department.

(8) A lessee's failure to timely comply with all express or implied provisions of the lease constitutes a default. If a lessee fails to cure the default or to begin and diligently continue to remedy the default within 60 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 lease or attachment of the site restoration security.

(9) With the commissioner's written consent, a lease that is in good standing may be relinquished.

(10) A lease that is in good standing may, with the prior written approval of the director, be assigned. The assignee shall promptly and diligently seek to obtain all authorizations necessary for lawful operations. The assignee is subject to all provisions of the lease in the same manner as the original lessee.

(11) The department reserves the right

(A) of reasonable access to the leasehold for purposes of inspection, including inspection of the lessee's improvements and rearing structures; when the department inspects the lessee's rearing structures, the department will not lift or handle underwater rearing structures without prior notice to the lessee; the notice to the lessee may include notice by the Department of Fish and Game in accordance with AS 16.40.150 (b);

(B) upon 10 days' prior notice, to inspect records of the lessee that are necessary to verify the lessee's compliance with the lease provisions.

History: Eff. 7/1/89, Register 110; am 6/15/98, Register 146; am 2/8/2001, Register 157

Authority: AS 38.05.020 AS 38.05.035 AS 38.05.083 AS 38.05.085 AS 38.05.095 AS 38.05.103 AS 38.05.920

11 AAC 63.900. Definitions

(a) In this chapter,

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

(2) repealed 6/14/98;

(3) "aquatic farmsite lease" means a lease to operate an aquatic farm or related hatchery on state-owned public domain land in accordance with the approved development plan;

(4) repealed 6/14/98;

(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 land 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) repealed 6/14/98.

(b) In this chapter and in sec. 40, ch. 91, SLA 1997, "developed an aquatic farm site under former AS 38.05.855 " 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.

History: Eff. 7/1/89, Register 110; am 6/14/98, Register 146

Sec. 38.05.083. Aquatic farming and hatchery site leases.

(a) The commissioner may offer to the public for lease at public auction under [AS 38.05.075](#) or by negotiation under [AS 38.05.070](#) a site for aquatic farming or related hatchery operations. Before a final decision to issue or renew a lease under this section, the commissioner shall give notice and allow opportunity for comment in accordance with [AS 38.05.945](#) and may hold a hearing to take testimony. Before a final decision to issue or renew a lease under this section, the commissioner shall consider all relevant comment or testimony submitted under this section, [AS 38.05.945](#), or 38.05.946.

(b) The commissioner, for good cause, may deny an application for issuance or renewal of a lease under this section but shall provide the applicant with written findings that explain the reasons for the denial.

(c) A site may be leased under this section for not less than the appraised fair market value of the lease. The value of the lease shall be reappraised every five years.

(d) A lease under this section may be assigned, but, if the assignee changes the use of the site, the lease reverts to the state.

(e) Before entering into a lease under this section, the commissioner shall require the lessee to post a performance bond or provide other security to cover the costs to the department of restoring the leased site in the event the lessee abandons the site.

(f) The commissioner shall adopt regulations establishing criteria for the approval or denial of leases under this section and for limiting the number of sites for which leases may be issued in an area in order to protect the environment and natural resources of the area. The regulations must provide for the consideration of upland management policies and whether the proposed use of a site is compatible with the traditional and existing uses of the area in which the site is located.

Sec. 16.40.199. Definitions.

In AS 16.40.100 - 16.40.199

(1) "aquatic farm" means a facility that grows, farms, or cultivates aquatic farm products in captivity or under positive control;

(2) "aquatic farm product" means an aquatic plant or shellfish, or part of an aquatic plant or shellfish, that is propagated, farmed, or cultivated in an aquatic farm and sold or offered for sale;

(3) "aquatic plant" means a plant indigenous to state water or that is authorized to be imported into the state under a permit issued by the commissioner;

(4) "commissioner" means the commissioner of fish and game;

(5) "hatchery" means a facility for the artificial propagation of stock, including rearing of juvenile aquatic plants or shellfish;

(6) "insignificant population" means a population of shellfish that, in the determination of the commissioner, would not attract and support a commercial fishery for that species of shellfish and the harvest and sale of the shellfish would not result in significant alteration in traditional fisheries or other existing uses of fish and wildlife resources if the population were included within an aquatic farm site;

(7) "positive control" means, for mobile species, enclosed within a natural or artificial escape-proof barrier; for species with limited or no mobility, such as a bivalve or an aquatic plant, "positive control" also includes managed cultivation in unenclosed water;

(8) "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;

(9) "stock" means live aquatic plants or shellfish acquired, collected, possessed, or intended for use by a hatchery or aquatic farm for the purpose of further growth or propagation.