

## **Appendix D. Alaska Statutes and Regulations Pertinent to Authorities for Invasive Species in Ballast Water**

### **DEPARTMENT OF FISH AND GAME**

Title 16. Fish and Game

Chapter 5. Fish and Game Code

#### **AS 16.05.010. Commissioner of fish and game.**

The commissioner is the principal executive officer of the Department of Fish and Game. The commissioner shall be a qualified executive with knowledge of the requirements for the protection, management, conservation, and restoration of the fish and game resources of the state.

#### **AS 16.05.020. Functions of commissioner.**

The commissioner shall

- (2) manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state;

#### **AS 16.05.251. Regulations of the Board of Fisheries.**

(a) The Board of Fisheries may adopt regulations it considers advisable in accordance with AS 44.62 (Administrative Procedure Act) for

- (9) **prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;**

#### **AS 16.05.940 Definitions.**

In AS 16.05-AS 16.40, unless the context otherwise requires, "fish" means any species of aquatic finfish, invertebrate, or amphibian, in any stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic finfish, invertebrate, or amphibian.

Chapter 20. Conservation and Protection of Alaskan Wildlife.

#### **AS 16.20 Conservation and Protection of Alaskan Wildlife.**

Under this statute, the ADF&G manages state legislatively designated refuges, sanctuaries, and critical habitat areas with authority over terrestrial and aquatic plant species. Many of the Special Area Permits issued by the Habitat and Restoration Division for activities in these special areas **explicitly prohibit introduction of exotic plant species.**

## **Alaska Administrative Code.**

### **Title 5. Fish and Game**

#### **Chapter 1. Subsistence Fin Fishing**

##### **05 AAC 37.900. Restrictions**

###### **The transplanting of aquatic plants is prohibited, except as follows:**

- (1) as provided for in 5 AAC 27 for the issuance of permits by the commissioner for the purpose of producing herring spawn-on-kelp in pounds; or
- (2) as provided for in 5 AAC 41.001 - 5 AAC 41.400 for the issuance of permits by the commissioner for the purpose of aquatic farming; or
- (3) for the issuance of permits by the commissioner for the purposes of scientific research or educational purposes.

Authority:

AS 16.05.251

##### **05 AAC 41.070. Prohibitions on Importation and Release of Live Fish.**

- (a) **Except as provided in (b) - (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 the
  - (1) brood stock is derived from oysters commercially cultured on the Pacific Coast of North America through three or more generations; and
  - (2) 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 wastewater 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 the
  - (1) brood stock was taken under the provisions of a permit issued by the department;

- (2) brood stock was certified by the department's fish pathology section before transport out of the state;
- (3) brood stock was held continuously in a department-approved isolation facility;
- (4) weathervane scallops proposed for import have been held continuously in a department-approved isolation facility before import into the state;
- (5) disease history, or an inspection, of the weathervane scallops proposed for import indicates no incidence of a disease of transport significance.

Authority:

AS 16.05.251 (a)

## **DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Title 46. Water, Air, Energy, and Environmental Conservation

Regulates toxic substances only, Not aquatic animals and plants

### **AS 46.03.750. Ballast Water Discharge.**

(a) Except as provided in (b) of this section, a person may not cause or permit the discharge of ballast water from a cargo tank of a tank vessel into the waters of the state. A tank vessel may not take on petroleum or a petroleum product or by-product as cargo unless it arrives in ports in the state without having discharged ballast from cargo tanks into the waters of the state and the master of the vessel certifies that fact on forms provided by the department.

(b) The master of a tank vessel may discharge ballast water from a cargo tank of a tank vessel if it is necessary for the safety of the tank vessel and no alternative action is feasible to ensure the safety of the tank vessel.

### **Water Quality Standards**

The authority for the water quality standards comes from

#### **AS 46.03.070 Pollution standards:**

"After public hearing, the department may adopt standards and make them public and determine what qualities and properties of water indicate a polluted condition actually or potentially deleterious, harmful, detrimental, or injurious to the public health, safety, or welfare, to terrestrial and aquatic life or their growth and propagation, or to the use of waters for domestic, commercial, industrial, agricultural, recreational, or other reasonable purposes."

The Water Quality Standards regulations in 18 AAC 70 contain the following references to aquatic nuisance species.

18 AAC 70.020(b) temperature criteria for freshwater aquaculture use:

"...the weekly average temperature may not exceed site-specific requirements needed to preserve normal species diversity or to prevent appearance of nuisance organisms."

18 AAC 70.250(b) "The department will reduce in size or deny a mixing zone if the department finds that available evidence reasonably demonstrates that the pollutants discharged could (1) result in undesirable or nuisance aquatic life"

The following revision to the Water Quality Standards has also been included in the 2002 proposed revisions currently out to public notice.

18 AAC 70.020(b) Toxic and Other Deleterious Substances for Growth and Propagation of Fish, Shellfish, Other Aquatic Life, and Wildlife.

"There may be no concentrations of toxic substances in water or in shoreline or bottom sediments, that, singly or in combination, cause, or reasonably can be expected to cause, adverse effects on aquatic life or produce undesirable or nuisance aquatic life."

#### **Wastewater Discharge Program**

The authority for permitting ballast water treatment comes from

#### **AS 46.03.100 Waste disposal permit; and**

#### **AS 46.03.750 Ballast water discharge.**

"(a) Except as provided in (b) of this section, a person may not cause or permit the discharge of ballast water from a cargo tank of a tank vessel into the waters of the state. A tank vessel may not take on petroleum or a petroleum product or by-product as cargo unless it arrives in ports in the state without having discharged ballast from cargo tanks into the waters of the state and the master of the vessel certifies that fact on forms provided by the department.

(b) The master of a tank vessel may discharge ballast water from a cargo tank of a tank vessel if it is necessary for the safety of the tank vessel and no alternative action is feasible to ensure the safety of the tank vessel."

#### **Commercial Passenger Vessel Environmental Compliance**

The authority to regulate sewage, gray water and other wastewater discharged from commercial passenger vessels (cruise ships) comes from AS 46.03.463:

#### **Sec. 46.03.463. Prohibited discharges; limitations on discharges.**

(a) Except as provided in (h) of this section, a person may not discharge untreated sewage from a commercial passenger vessel into the marine waters of the state.