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Chapter VI. PLANNING AND PERMITTING

A major element of the statewide salmon enhancement program is the planning and permitting process.

CURRENT PLANNING AND PERMITTING PROCESS

Legislation in 1976 authorized the commissioner of the Alaska Department of Fish and Game (ADF&G) to designate regions of the state for the purpose of enhancing salmon production. This statutory responsibility is implemented through Regional Planning Teams (RPTs), composed of department personnel from the fisheries divisions and representatives from the regional aquaculture associations. The RPTs also have ex-officio members from other agencies (e.g. U.S. Forest Service, U.S. Fish & Wildlife Service). See attached charts for an illustration of the planning and permitting process.

In regions where no regional aquaculture association has been formed, planning core groups representing ADF&G fisheries divisions, fishermen and other agencies and interest groups are established for the purpose of developing comprehensive salmon plans.

The mission of the RPTs is to plan for the long-term utilization of the salmon resource using an orderly process that examines the full potential of the region's salmon production capacity. Regional comprehensive salmon planning progresses in stages. Phase I sets the goals, objectives and strategies for the region by developing a 20 year, long-range plan. Phase II identifies potential projects and establishes criteria for evaluating the enhancement and rehabilitation potential of the salmon resource in that region through the development of 5-year action plans. Upon completion of these phases, the RPT annually reviews the status of the program and prepares updates to the Phase II plans. In Prince William Sound, the RPT has initiated development of a Phase III plan that incorporates Board of Fisheries-approved allocation and fisheries management plans with hatchery production plans. All plans are reviewed and approved by the ADF&G commissioner.

The RPTs not only develop the comprehensive salmon plans, but also review and comment to the ADF&G on:

- private nonprofit (PNP) hatchery permit applications;
- proposed alterations to PNP hatchery permits;
- PNP and ADF&G annual hatchery management plans; and
- annual reports by PNP hatchery operators.

Each hatchery enhancement project is reviewed, based on some relatively consistent criteria:

- Will the hatchery make a significant contribution to the common property fishery?
- Does the proposed project allow for continued protection of natural stocks?
- Is the proposed project compatible with the comprehensive plan?
- Does the proposed project make the most appropriate use of the site's potential?

Comprehensive salmon plans have been developed and approved for northern Southeast Alaska, southern Southeast Alaska, Yakutat, Prince William Sound/Copper River, Cook Inlet, Kodiak, and Bristol Bay. The comprehensive salmon planning process has recently

been initiated for the Alaska Peninsula/Aleutian Island/Area M region, the Chignik region, and for the Kotzebue Sound area in relation to the Sikusuilag Springs Hatchery.

Regional Aquaculture Associations

In addition to regional planning, ADF&G was also directed to assist and encourage the formation of qualified regional associations for the purpose of planning and implementing fisheries enhancement and rehabilitation projects. An association must be representative of commercial fishermen and other user groups in the region. Once formed, an association typically receives a planning and organizational grant from the Department of Commerce and Economic Development.

Private Nonprofit Permit Application Process

The commissioner of ADF&G may issue a nontransferable permit to a nonprofit corporation for the construction and operation of a salmon hatchery after the permit application has been reviewed by the regional planning team.

The permit application process is rigorous and includes: 1) pre-application assistance from ADF&G, 2) a management feasibility analysis, 3) the permit application and fees, 4) determination of acceptance by the department for formal review, 5) regional planning team review, 6) a provision for requesting additional information, 7) completeness determination by the department, 8) the public hearing process, 9) review and determination by the commissioner (this includes six major criteria), and 10) a provision for reconsideration. The departmental review of all PNP hatchery permit applications includes review and comment by all fisheries divisions, the Habitat Division, the principal geneticist, and the principal pathologist. A public hearing and full review by state and federal agencies through the coastal zone review process is also required.

Conditions may be placed on a PNP permit, including a provision that donor stock eggs must be from the department or a source approved by the department. Other permit conditions include restrictions on placement of salmon eggs or resulting fry into the waters of the state; restrictions on the sale of eggs or resulting fry; the timing and conditions of releasing salmon; destruction of diseased salmon; departmental control over where salmon are harvested by hatchery operators; and siting requirements so that reasonable segregation from natural stocks occurs while still allowing, to the extent feasible, returning hatchery fish to pass through traditional salmon fisheries.

The commissioner may alter, suspend, or revoke a PNP permit if the operator fails to comply with the terms and conditions of the permit within a reasonable period after notification of noncompliance. The commissioner may also alter the permit or terminate the operation, if it is found that the hatchery is not in the best interest of the public.

Fish released by hatchery operators are available for common use as natural stocks, until they return to the location established by the department for hatchery harvest. The Board of Fisheries may, after a permit has been issued, amend by regulation the terms of the permit relating to the source and number of eggs, the harvest by hatchery operators, and the locations of hatchery special harvest areas [AS 16.10.440(b)]. This is the basis for the Board-regulated Fish Transport Permit process (see Biological Issues chapter), establishment of hatchery special harvest areas, and board-

approved terminal harvest area plans. *The statutes also appear to give the Board the authority to limit or control production at individual hatcheries based on egg-take for broodstock.* This authority has never been used, and there is a strong difference in opinion as to whether or not the Legislature actually intended the Board of Fisheries to regulate hatchery production, or instead, to regulate the take of eggs from wild stocks for hatchery production.

A hatchery operator must file an annual report with ADF&G by December 15 of each year. The report contains information on hatchery returns, numbers of eggs taken, and numbers of fry or smolt released.

A *Basic Management Plan* (BMP) is developed as part of the actual permit. The BMP includes a complete description of the facility and special harvest area, broodstock development schedules, and descriptions of broodstock and hatchery stock management. Marking programs for hatchery-produced fish can be required in the hatchery permit and BMP. Tagging is usually considered optional, unless during the permit or permit alteration process, fisheries managers specify the need for special in-season management capability.

When a permit is approved and operational, an *Annual Management Plan* (AMP) is developed for each year of operation. Specific plans for egg-takes, cost-recovery harvest, fry and smolt releases, and marking and recovery are included. AMPs are developed by the department in conjunction with the operator and are reviewed by all the fisheries divisions and the RPT before being approved by the commissioner.

Alaska Statutes 16.10.400-16.10.475 address this process, as well as regulations in 5 AAC 40.100-40.990.

Fish Transport Permits

The possession, transportation or release of live fish and their reproductive products (eggs) into the waters of the state requires a *Fish Transport Permit* (FTP) from ADF&G. The FTP permit application covers only one specific operation and is quite detailed, including:

- effective period,
- transport dates,
- maximum number of fish or eggs to be taken,
- incubation and rearing location,
- release location,
- purpose and benefits,
- evaluation methods,
- native stocks present,
- history of known transport of this stock,
- disease history,
- description of proposed egg-take methods,
- planned disease control measures, and
- water source for rearing and effluent discharge location.

The FTP application is intensively reviewed by the regional supervisors of the FRED, Commercial Fish and Sport Fish Divisions, the FRED pathologist and principal geneticist, as well as the FRED chief of technology and development and the FRED director. A signature page is attached to the actual permit which includes recommendations and comments. The permit is then approved or disapproved by the commissioner of ADF&G.

The potential for disease and genetic impacts are the primary considerations in the FTP review process.

Fish Resource Permits

ADF&G is currently developing a policy on ***Fish Resource Permits*** (FRP). The FRP was previously called a scientific/educational (sci/ed) permit. This policy is being developed as a result of a previous lack of standards for the scientific and educational projects. Alaska statutes have only brief references to these activities, but it is clear that the Legislature intended them to be allowed.

Under the proposed policy, Fish Resource Permits will be issued with the stipulations of no commercial activities, no human consumption, and no sale of the species. These permits are classified into collecting permits for scientific or educational purposes, holding permits for either exhibition or scientific research, and limited propagation permits for various scientific or educational purposes.

ADF&G's proposed policy clearly indicates what reviews and permits are required for each kind of project and should alleviate the prior problems caused by a lack of such standards.

PROBLEMS AND ISSUES

1. Lack of statewide goals and objectives for enhancement program.

The 1974 authorizing legislation provides the legislature's intent that private nonprofit corporations (PNPs) contribute to the rehabilitation of the state's depleted and depressed salmon fisheries. Except for some specific regions of the state and gear groups in those regions, this goal has been met. The numbers of Alaska's wild and hatchery fish are at an all time high. Other than the problems of marketing and price, most of the state's salmon fisheries are no longer depressed. Few people dreamed the state's enhancement program would be so successful in terms of quantity of fish. Large enhanced production, in combination with improved management of wild runs and favorable environmental conditions, have resulted in Alaska once again producing record amounts of salmon.

The state does not have a clearly defined policy for future management and development goals for hatcheries and other enhancement efforts that goes beyond increased production. It has been proved it is possible to grow large numbers of fish. Where should we go from here? For example, should our goal be to cap salmon production at a certain level, or cap production of specific species at a set level? Should the focus be on enhancement efforts in other areas of the state that have very small or depressed fisheries with a goal of economic development? Should the focus be shifted to other species such as crab enhancement or sheefish or arctic char? These are the kinds of policies and goals that are yet to be made on a statewide basis.

ADF&G's FRED Division is currently developing a strategic plan for the next decade. However, this plan needs to be developed in conjunction with a statewide planning effort so that FRED's goals and objectives are coordinated with the other elements of the state's enhancement program, including the PNPs. Additionally, adequate financial support is essential to meeting those goals and objectives.

2. Regional v. Statewide Planning.

State law directs salmon production planning to be done on a regional basis. Although the commissioner of ADF&G has overall authority for both PNP and department enhancement efforts, little comprehensive statewide planning is done, with only minimal interaction between regions of the state. Most planning focuses on *production* in a region and not whether the production is *desirable* relative to other regions. Additionally, within each region, state hatcheries have varying interaction with the private enhancement efforts.

Today, however, hatchery produced fish comprise a growing proportion of the statewide harvest. There are concerns that Alaska's production-oriented enhancement program may result in one region's program affecting markets, prices and management in other regions.

Fisheries managers argue that the state needs a statewide planning policy that will take into account the potential impacts of one region on another, as well as closely scrutinizing potential management problems and marketing feasibility.

Others agree with the idea in principle, but maintain that such an effort is impossible in a state where competing interests would find it difficult to agree on a system that diminishes local control over hatchery development and production goals. Shifting to a statewide review could create enormous tensions between the user groups of different regions.

The Board of Directors of the United Fishermen of Alaska (UFA) in January 1992, requested the FRED Division to involve all RPTs in a statewide review process of hatchery production. The request was based on the premise that "[s]ince hatchery production is now at a level that the impacts are no longer confined to one region, UFA believes that such a review is warranted now more than ever."

3. Funding and support for planning.

Fishermen, hatchery operators, and state fisheries managers agree that the RPT planning process provides an important forum for discussing and resolving difficult issues on an ongoing basis.

However, *state support for planning has declined since the early 1980s* when FRED had a budget of over \$500,000 for grants to aquaculture associations. Grants were gradually reduced and eliminated in 1987. Meanwhile, the number of regions requiring plans increased from six in 1987, to ten by the end of 1991. Initial, one-time-only planning grants of up to \$100,000 are still available for regional aquaculture associations from the Department of Commerce and Economic Development.

Despite the need for more rigorous planning because of increased enhanced production, FRED planning staff has declined from two to one and a half positions. These positions coordinate all enhancement efforts statewide, including state facilities, provide technical assistance to the PNPs, and plan new ventures.

Budget reductions have forced state planners to shift priorities from plan development and implementation to plan maintenance. As a result of decreased state support, Prince William Sound and Cook Inlet Aquaculture Associations have hired full time planners. Although hired by the regional associations, these planners consider

themselves staff to the local RPT. However, they are also involved in internal corporate planning, and arguably, this could be considered a conflict.

As a result of budget cuts, new planning efforts are minimal. New ventures are at a distinct disadvantage when compared to those started ten years ago. In the past, there was money for new hatchery projects, either through state general bond initiatives, grants or loans. More recently however, new hatchery initiatives have received little financial support.

FRED managers, gear group representatives and several aquaculture association managers strongly believe that present funding levels for planning are inadequate for FRED to properly oversee the functions of the 37 hatcheries in operation in Alaska. As a result, they believe that many more conflicts and issues will develop that should have been resolved early in the process. Perhaps just as importantly, FRED managers indicate that they are unable to consider the "big picture" issues such as long-term analyses and guidance for future developments.

RPT members also complain that the cutback in funds for planning has limited their contribution to a cursory discussion and approval of permit changes. If a hatchery requests a change in permit, they often have to wait six months or longer to be considered because funds are not available for some RPTs to meet more than twice a year.

4. Composition of Regional Planning Teams

*Although many people believe the regional planning team (RPT) process is a good one if adequately staffed and funded, there are others who believe that the entire structure of the RPT should be changed. A frequent complaint is that the composition of the RPT is heavily weighted towards the commercial sector of the fishing industry, without sufficient representation of subsistence and sport fishing users, community and regional governments, environmentalists, and the general public. There critics argue that in order to have a truly *balanced* decision, all the varied interests of the region need to be adequately represented. Some RPTs have tried to address this complaint by broadening the composition of the team to include all interested groups.*

Another, more fundamental concern is that ADF&G managers are usually out-numbered on the RPTs. As a result, the group can pressure department managers into approving projects that should probably be denied. Department personnel who raise future management concerns are under considerable pressure to be a *positive* presence in the RPT process, which in some cases, translates into withdrawing or modifying their objections without these concerns being adequately addressed. On the other hand, concern has also been expressed that department managers sometimes have a strong, anti-hatchery bias that can influence their management recommendations.

There is also the concern that the non-Fish and Game members of the RPT may not be sufficiently capable of evaluating and making decisions on issues that are increasingly technical in nature.

5. Allocation issues.

While issues such as location, harvest timing and cost recovery projections are scrutinized, the question of allocation is not considered by any of the parties involved with the RPT review process; AS 16.05.251 delegates that responsibility to the Board of Fisheries.

Without the ability to consider allocation issues as part of the permit review process, ADF&G may approve a hatchery permit that could create future allocation problems. By the time the Board of Fisheries begins to consider allocation problems resulting from hatchery production, millions of dollars may have been invested through state loans. The state may well feel a financial obligation to ensure the success of the facility.

In addition, allocation conflicts over hatchery-produced fish may eventually require tagging programs as part of their resolution. The question of tagging -- and who should pay for it -- is one that is more easily addressed early in the planning and permitting process.

Recent developments seem to indicate a change for the future. *In 1988, the Board of Fisheries charged the Prince William Sound Aquaculture Corporation (PWSAC) with development of an allocation plan for enhanced stocks in Prince William Sound.* After an intense planning effort and several drafts, PWSAC was able to come up with an allocation scheme that all user groups and the department could support. The allocation plan was approved by the Board of Fisheries in 1991 and was in effect this past fishing season. The regional planning team incorporated the allocation plan with its production and management plans into a comprehensive Phase III maintenance plan.

Using the success of PWSAC as a model, the Board of Fisheries has also directed the two Southeast regional aquaculture associations (NSRAA and SSRAA) to develop an allocation plan for hatchery stocks by March 1993. There is considerable debate among participants and observers as to whether this can be done. Unlike the Prince William Sound plan, which deals primarily with one species and a single user group, Southeast must address deep-seated conflicts between two aquaculture associations, three commercial user groups and several species of salmon, as well as factoring in the complexities of the U.S./Canada salmon treaty.

6. Management issues.

Another complaint is that regional comprehensive salmon plans often focus exclusively on production goals for a hatchery, but provide little specific information on fishery management. Statements such as "management agencies and fishermen should work together to find the best solutions currently available to reverse declines" are common.

Initially, hatchery permitting was a two-stage process. The preliminary application included identification of such things as site, species, and run-timing. It contained little detail, and was given a relatively cursory review by ADF&G to notify the permittee if there were any significant potential problems before the applicant went to the expense of a full permit application. In 1985, however, hatchery permits were placed under the Coastal Zone Management process. As part of permit reform, FRED planners were told that only a single application could be required.

To replace the preliminary application, FRED now requires an initial *Management Feasibility Analysis* (MFA) be completed before a final application is submitted. The MFA covers the basics of siting, species, timing, and magnitude of production, and is developed by the Commercial Fisheries and Sport Fisheries Divisions to avoid potential

management problems. Quite often, if red flags are raised during this review process, the original proposal ends up being modified.

Additionally, once an application is deemed acceptable by the department, the department's divisions are again given further opportunity to comment.

FRED planners believe that they have never permitted a hatchery or enhancement project that fisheries managers did not initially approve.

7. Uniform review.

State hatcheries and projects are not subject to the same permitting requirements as PNPs. Some fishermen believe that state projects cause the most allocation, management, and potential biological problems because of the lack of this additional layer of scrutiny. They would like to see permits required for state hatcheries and projects, as well as for PNP projects.

FRED Division believes adding this requirement is unnecessary. Although PNP-type permits are not required, state projects are reviewed through the Coastal Zone Management review process. In addition, the annual management plans for state facilities are submitted to the Regional Planning Teams for review. Some people believe these projects often receive more critical review than the PNP projects. Both state and PNP operations also require Fish Transport Permits (FTPs).

8. Criteria to show public benefit.

Four criteria must be considered by the RPT to determine if a permit application is in compliance with the regional comprehensive salmon plan:

- the contribution the proposed hatchery would make to the common property fishery;
- the provisions for protecting wild stocks from any adverse effects which may originate from the proposed hatchery;
- the compatibility of the proposed hatchery with the goals and objectives of the comprehensive salmon plan for the region; and
- whether the proposed hatchery would make the best use of the site's potential to benefit the common property fishery.

Critics say these criteria should be expanded to consider other public benefits and costs. Possible additions include marketability, a detailed cost-benefit analysis, and ongoing genetic and biological monitoring.

9. Operation performance reviews and permit revocation.

State managers and RPT gear group representatives are also concerned about ADF&G's authority over hatcheries that are out of compliance with state laws, regulations, and permit requirements.

Present regulations allow RPTs, at the direction of the ADF&G commissioner, to review a hatchery's compliance with statutes and regulations, and to recommend the suspension, alteration or revocation of a permit if certain performance standards are not met such as survival rates and contribution to the common property fishery. However, a recent attorney general's opinion required that one hatchery facing revocation of a permit must be given a hearing before an administrative officer under the Administrative Procedures Act. This can be a relatively lengthy process.

With the potential risk of impacts on the state's common property fisheries, managers and some RPT members believe a mechanism to allow for the timely revocation of a permit is necessary. They advocate for a change in the statute to allow the ADF&G commissioner to revoke, suspend or alter a permit for any violation of Title 16 without going through APA requirements.

10. Hatchery Siting Privileges

If a region has an organized aquaculture association, that association, under state statutes, has the preference rights to all potential hatchery sites in that region. Non-association PNPs (Mom and Pops) have expressed concern that giving priority use of potential sites to an association is not good public policy. The Mom and Pop operations believe that any unused hatchery sites should be available to both associations and non-association PNPs.

11. Canadian evaluation model

The Canadian government is considered to have a model evaluation program of its national salmon enhancement program. Under the auspices of the Internal Audit and Program Evaluation Branch of the Department of Fisheries and Oceans, this program is intended to provide a thorough and comprehensive review of the program, by facility.

The first evaluation project began in 1985 and concluded that there was not enough production and biological data available to carry out a proper program evaluation. The program audit branch then designed the optimum evaluation framework and determined what kind of data would be needed. These data included biological and production information, as well as an analysis of economic costs and benefits. With that data in hand, program auditors are now preparing to spend a year reviewing the entire program, with a final report due in March 1993. Federal funds are being used for this project, although university staff and consulting firms are conducting the actual evaluation.

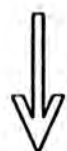
OPTIONS FOR POSSIBLE CONSIDERATION:

- Working with the public and user groups to develop statewide goals and objectives for the state's entire fisheries enhancement program.
- Directing FRED Division to develop a program to implement these goals and objectives.
- Declaring a moratorium on further hatchery development or increased production until the Legislature's economic cost-benefit studies are complete and a full assessment of the state's program can be made.

- Development of a statewide planning process.
- Development of a statewide production plan.
- Requiring FRED to develop a comprehensive annual report that not only compiles production figures from state and PNP facilities, projects, and current management regimes, but also includes future production and management plans.
- Evaluation of the composition and procedures of the RPT to determine if changes in the RPT structure are necessary.
- Expansion of state statutes to require all hatcheries, including state facilities, to comply with a single planning and permitting process, with the same requirements for monitoring and review.
- Widening the scope of RPT review, including recommendations for allocation of enhancement production.
- Providing adequate funding for planning.
- Reviewing the required Management Feasibility Analysis to determine if it needs to be a more comprehensive review.
- As part of permit review and solicitation of state loans, consideration of adding new criteria to show public benefit, including marketability, a detailed cost/benefit analysis instead of a financial feasibility analysis, a more specific indication of the "significant contribution" to be made to the common property fishery, and some kind of environmental assessment.
- Providing concrete direction for the timely performance review of PNP hatcheries and a more workable mechanism for closing or converting hatcheries not making a "significant" contribution to the common property fishery.
- Exempting the alteration, suspension or revocation of an enhancement permit for violations from the Administrative Procedures Act.
- Instituting a regular review process similar to the Canadian model.
- Clarifying Board of Fisheries authority to regulate hatchery production levels.
- Re-evaluation of the policy of giving regional aquaculture associations the preference rights to develop future hatchery sites in the region.

Planning Process

Regional Planning Team



Historic harvests,
production/harvest
goals by area, species



Regional Comprehensive Plans

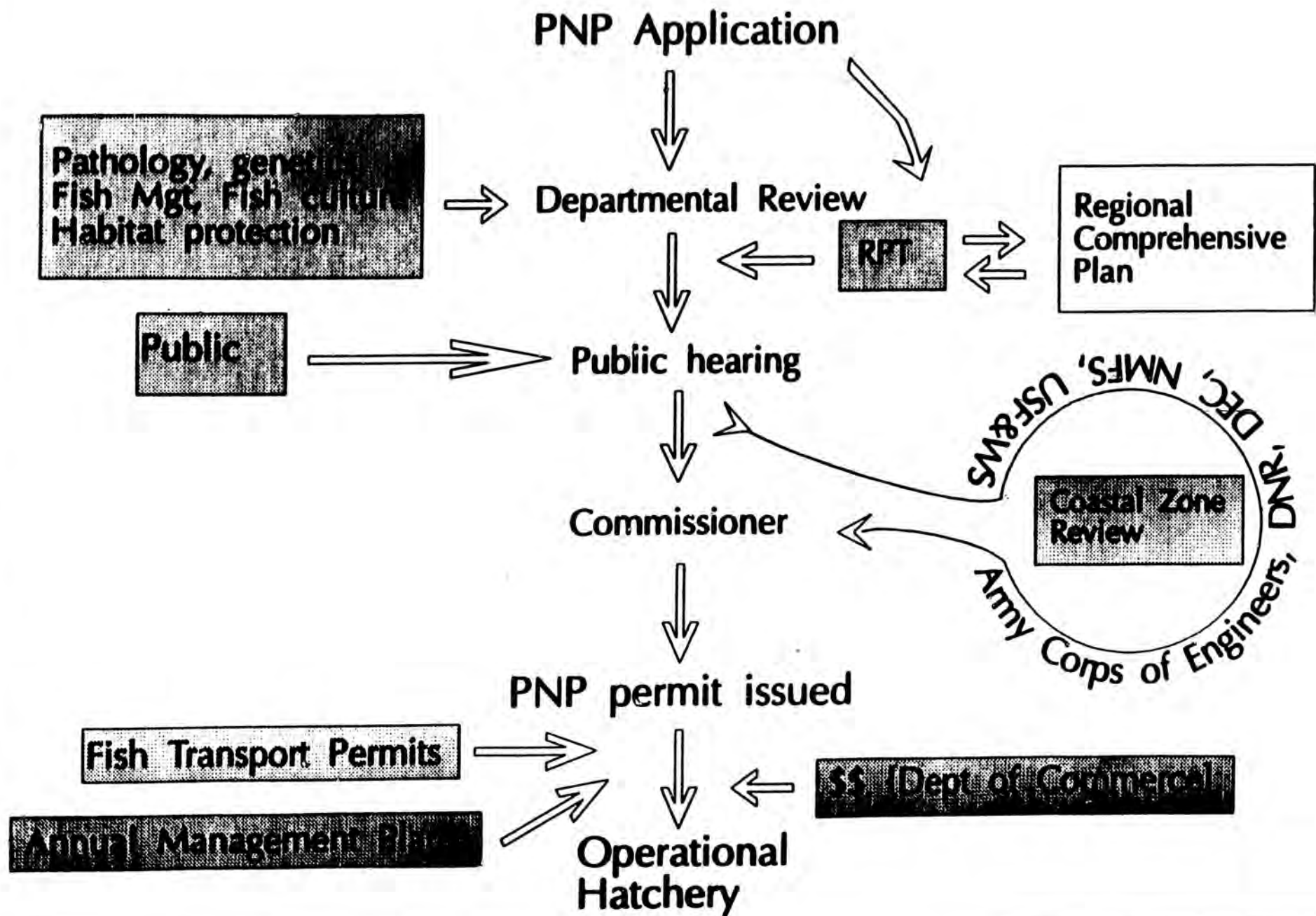


Project
opportunities
to fill gaps

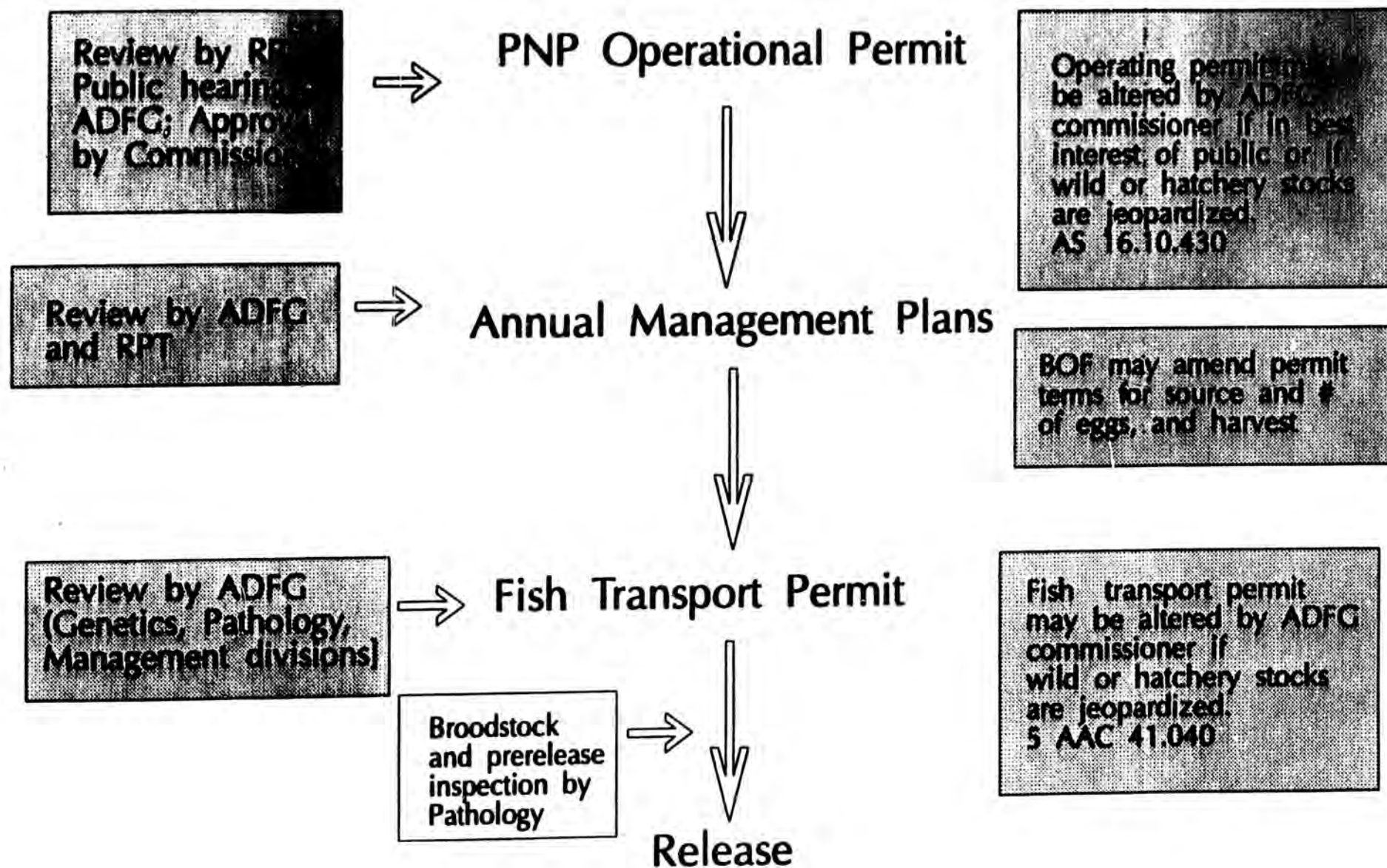


Attachment to
Chapter VI.

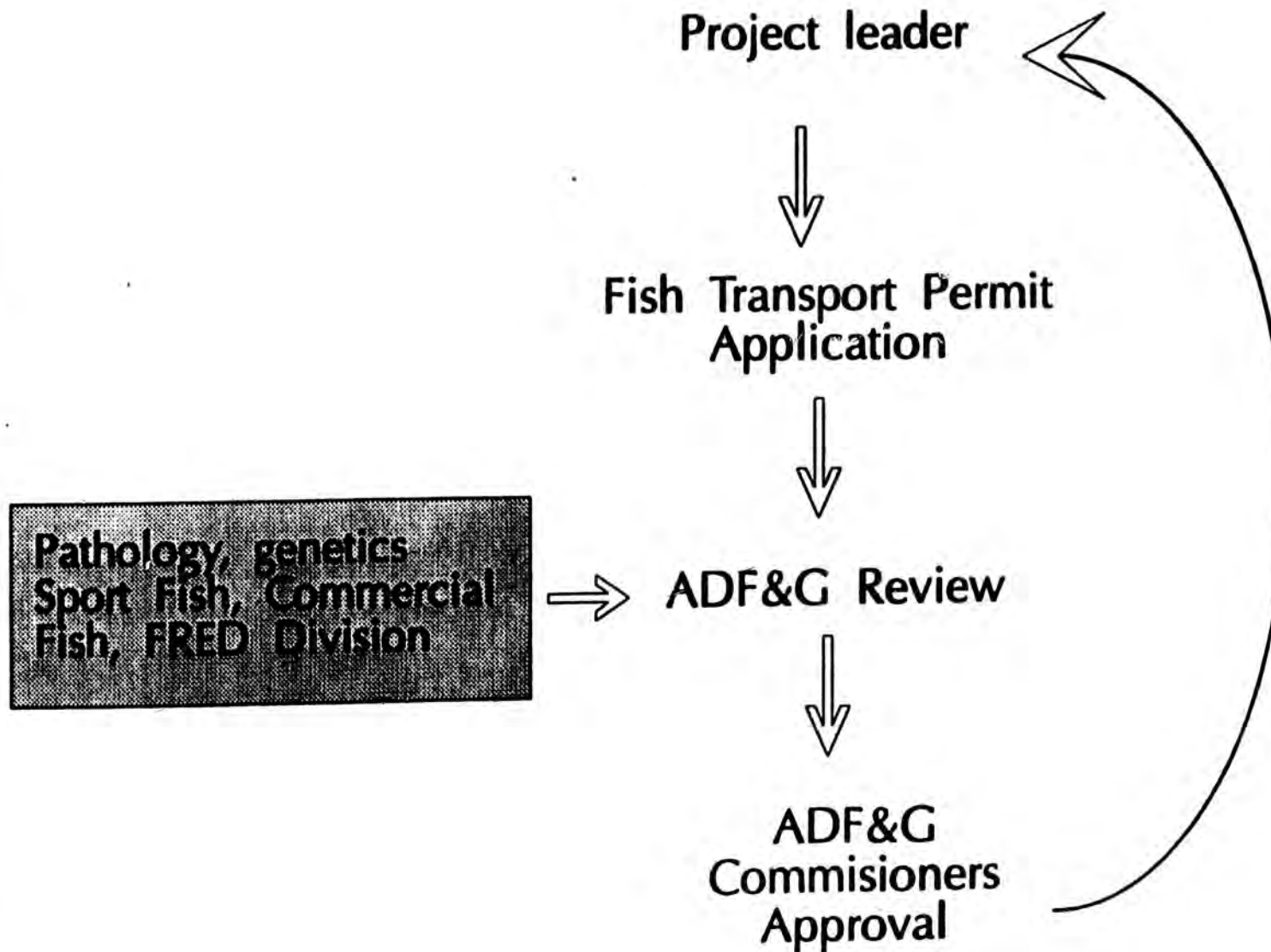
PNP Application Process



Regulation of PNP Hatcheries



Fish Transport Permit Process



Sec. 16.10.342. Special account established. (a) There is established as a special account within the commercial fishing revolving loan fund the foreclosure expense account.

(b) *[Repealed, § 72 ch 113 SLA 1982.]*

(c) The commissioner may expend money credited to the foreclosure expense account when necessary to protect the state's security interest in collateral on loans granted under AS 16.10.300 — 16.10.370 or to defray expenses incurred during foreclosure proceedings after a default by an obligor. (§ 4 ch 83 SLA 1978; am § 72 ch 113 SLA 1982)

Sec. 16.10.350. Administration of fund. The commissioner shall administer the loan fund. (§ 1 ch 134 SLA 1972)

Sec. 16.10.355. Disposal of property acquired by default or foreclosure. The department shall dispose of property acquired through default or foreclosure of a loan made under AS 16.10.300 — 16.10.370 or former AS 16.10.650 — 16.10.720. Disposal shall be made in a manner that serves the best interests of the state, and may include the amortization of payments over a period of years, but may not be by lease. (§ 11 ch 79 SLA 1985)

Sec. 16.10.360. Definitions. In AS 16.10.300 — 16.10.370

(1) "commission" means the Alaska Commercial Fisheries Entry Commission;

(2) "commissioner" means the commissioner of commerce and economic development;

(3) "debtor" means an individual commercial fisherman who either initially contracts for a loan under AS 16.10.333 — 16.10.337 or assumes a loan as provided in those sections;

(4) "department" means the Department of Commerce and Economic Development. (§ 1 ch 134 SLA 1972; am § 5 ch 83 SLA 1978)

Revisor's notes. — Reorganized in 1983 to alphabetize the defined terms.

Cross references. — For further definitions, see AS 16.05.940.

Sec. 16.10.370. Short title. AS 16.10.300 — 16.10.370 may be cited as the Commercial Fishing Loan Act. (§ 1 ch 134 SLA 1972)

Article 8. Salmon Hatcheries.

Section

- 375. Regional salmon plan
- 380. Regional associations
- 400. Permits for salmon hatcheries
- 410. Hearings before permit issuance
- 420. Conditions of a permit
- 430. Alteration, suspension or revocation of permit
- 440. Regulation

Section

- 443. Department assistance and cooperation
- 445. Egg sources
- 450. Sale of salmon and salmon eggs by hatchery
- 460. Inspection of hatchery
- 470. Annual report

Cross references. — For legislative findings and purpose of AS 16.10.375 — 16.10.620, see 1, ch. 59 SLA 1979, in the 1979 Temporary and Special Acts and Resolves.

Sec. 16.10.375. Regional salmon plan. The commissioner shall designate regions of the state for the purpose of salmon production and have developed and amend as necessary a comprehensive salmon plan for each region, including provisions for both public and private nonprofit hatchery systems. Subject to plan approval by the commissioner, comprehensive salmon plans shall be developed by regional planning teams consisting of department personnel and representatives of the appropriate qualified regional associations formed under AS 16.10.380. (§ 2 ch 161 SLA 1976; am § 2 ch 154 SLA 1977)

Sec. 16.10.380. Regional associations. (a) The commissioner shall assist in and encourage the formation of qualified regional associations for the purpose of enhancing salmon production. A regional association is qualified if the commissioner determines that

(1) it is comprised of associations representative of commercial fishermen in the region;

(2) it includes representatives of other user groups interested in fisheries within the region who wish to belong; and

(3) it possesses a board of directors which includes no less than one representative of each user group that belongs to the association.

(b) In this section "user group" includes, but is not limited to, sport fishermen, processors, commercial fishermen, subsistence fishermen, and representatives of local communities.

(c) A qualified regional association, when it becomes a nonprofit corporation under AS 10.20, is established as a service area in the unorganized borough under AS 29.03.020 for the purpose of providing salmon enhancement services. (§ 2 ch 161 SLA 1976; am § 2 ch 59 SLA 1979)

NOTES TO DECISIONS

Cited in State, N.S.E. Regional Aquaculture Ass'n v. Alex, Sup. Ct. Op. No. 2488 (File Nos. 5065, 5086, 5142), 646 P.2d 203 (1982).

Sec. 16.10.400. Permits for salmon hatcheries. (a) The commissioner or a designee may issue a permit, subject to the restrictions imposed by statute or regulation under AS 16.10.400 — 16.10.470, to a nonprofit corporation organized under AS 10.20, after the permit application has been reviewed by the regional planning team, for the construction and operation of a salmon hatchery.

(b) The application for a permit under this section shall be on a form prescribed by the department and be accompanied by an application fee of \$100.

(c) A hatchery permit is nontransferable. If a permit holder sells or leases a hatchery for which a permit is issued under this section, the new operator shall apply for a new permit under this section.

(d) [Repealed, § 19 ch 154 SLA 1977.]

(e) A qualified regional association formed under AS 16.10.380, if it has become a nonprofit corporation under AS 10.20, has a preference right to a permit if its proposed hatchery is provided for in the comprehensive plan for that region developed under AS 16.10.375 and the fresh water source exceeds one cubic foot per second minimum flow. Any other local nonprofit hatchery corporation approved by a qualified regional association has an identical preference right.

(f) Except for permits issued before June 16, 1976, a permit may not be issued for construction or operation of a hatchery on an anadromous fish stream unless the stream has been classified as suitable for enhancement purposes by the commissioner. The commissioner shall undertake to make such classifications in conjunction with the development of the comprehensive plan under AS 16.10.375.

(g) During the development of a comprehensive plan for a region no permit may be issued for a hatchery unless the commissioner determines that such an action would result in substantial public benefits and would not jeopardize natural stocks. (§ 2 ch 111 SLA 1974; am § 3 ch 161 SLA 1976; am §§ 3, 19 ch 154 SLA 1977)

Cross references. — For legislative intent in connection with the enactment of AS 16.10.400 — 16.10.470, see § 1, ch. 111, SLA 1974, in the Temporary and Special Acts.

Sec. 16.10.410. Hearings before permit issuance. (a) At least 30 days before the issuance of a permit under AS 16.10.400, a public hearing shall be held in a central location in the vicinity of the proposed hatchery facility.

(b) Notice of the hearing shall be published in a newspaper of general circulation once a week for three consecutive weeks, with completion of the notice at least 10 days before the hearing.

(c) The hearing shall be conducted by the department, with a presentation by the permit applicant of a plan for the proposed hatchery, describing its capacity and any other relevant facts which may be of interest to the department or the public. Interested members of the public shall be afforded an opportunity to be heard.

(d) The department shall record and consider objections and recommendations offered by the public at the hearing conducted under this section. It shall respond in writing, within 10 days after the hearing is held, to any specific objections offered by a member of the public at the hearing. (§ 2 ch 111 SLA 1974)

Sec. 16.10.420. Conditions of a permit. The department shall require, in a permit issued to a hatchery operator, that

(1) salmon eggs procured by the hatchery must be from the department or a source approved by the department;

(2) no salmon eggs or resulting fry be placed in waters of the state other than those specifically designated in the permit;

(3) no salmon eggs or resulting fry, sold to a permit holder by the state or by another party approved by the department, may be resold or otherwise transferred to another person;

(4) no salmon be released by the hatchery before department approval, and, for purposes of pathological examination and approval, the department shall be notified of the proposed release of salmon at least 15 days before the date of their proposed release by the hatchery;

(5) diseased salmon be destroyed in a specific manner and place designated by the department;

(6) adult salmon be harvested by hatchery operators only at specific locations as designated by the department;

(7) surplus eggs from salmon returning to the hatchery be made available for sale first to the department and then, after inspection and approval by the department, to operators of other hatcheries authorized by permit to operate under AS 16.10.400 — 16.10.470;

(8) if surplus salmon eggs are sold by a permit holder to another permit holder, a copy of the sales transaction be provided to the department;

(9) [Repealed, § 5 ch 110 SLA 1980.]

(10) a hatchery be located in an area where a reasonable segregation from natural stocks occurs, but, when feasible, in an area where returning hatchery fish will pass through traditional salmon fisheries. (§ 2 ch 111 SLA 1974; am § 5 ch 110 SLA 1980)

Sec. 16.10.430. Alteration, suspension or revocation of permit. (a) If a permit holder fails to comply with the conditions and terms of the permit issued under AS 16.10.400 — 16.10.470 within a reasonable period after notification of noncompliance by the department, the permit may be suspended or revoked, in the discretion of the commissioner after the regional planning team for the area in which the hatchery is located is notified and granted an opportunity to comment upon the proposed suspension or revocation.

(b) If the commissioner finds that the operation of the hatchery is not in the best interests of the public, the commissioner may alter the conditions of the permit to mitigate the adverse effects of the operation, or, if the adverse effects are irreversible and cannot be mitigated sufficiently, initiate a termination of the operation under the permit over a reasonable period of time under the circumstances, not to exceed four years. During the period of time that the operation is being terminated, the permit holder may harvest salmon under the terms of

the permit but may not release additional fish. (§ 2 ch 111 SLA 1974; am § 4 ch 154 SLA 1977)

Sec. 16.10.440. Regulation. (a) Fish released into the natural waters of the state by a hatchery operated under AS 16.10.400 — 16.10.470 are available to the people for common use and are subject to regulation under applicable law in the same way as fish occurring in their natural state until they return to the specific location designated by the department for harvest by the hatchery operator.

(b) The Board of Fisheries may, after the issuance of a permit by the commissioner, amend by regulation adopted in accordance with the Administrative Procedure Act (AS 44.62), the terms of the permit relating to the source and number of salmon eggs, the harvest of fish by hatchery operators, and the specific locations designated by the department for harvest. The Board of Fisheries may not adopt any regulations or take any action regarding the issuance or denial of any permits required in AS 16.10.400 — 16.10.470. (§ 2 ch 111 SLA 1974; am § 24 ch 206 SLA 1975; am § 3 ch 59 SLA 1979)

Sec. 16.10.443. Department assistance and cooperation.

(a) Before and after permit issuance under AS 16.10.440 — 16.10.470, the department shall make every effort, within the limits of time and resources, to advise and assist applicants or permit holders, as appropriate, in the planning, construction, or operation of salmon hatcheries.

(b) Nothing in this section exempts an applicant or permit holder from compliance with AS 16.10.400 — 16.10.470 or from compliance with the regulations or restrictions adopted under AS 16.10.400 — 16.10.470. (§ 1 ch 97 SLA 1975)

Sec. 16.10.445. Egg sources. (a) The department shall approve the source and number of salmon eggs taken under AS 16.10.400 — 16.10.470.

(b) Where feasible, salmon eggs utilized by a hatchery operator shall first be taken from stocks native to the area in which the hatchery is located, and then, upon department approval, from other areas, as necessary. (§ 2 ch 111 SLA 1974)

Sec. 16.10.450. Sale of salmon and salmon eggs by hatchery. A hatchery operator who sells salmon returning from the natural waters of the state, or sells salmon eggs to another hatchery operating under AS 16.10.400 — 16.10.470, after utilizing the funds for reasonable operating costs, including debt retirement, expanding its facilities, salmon rehabilitation projects, fisheries research, or for costs of operating the qualified regional association for the area in which the hatchery is located, shall expend the remaining funds on other fisher-

ies activities of the qualified regional association. Fish returning to hatcheries and sold for human consumption shall be of comparable quality to fish harvested by commercial fisheries in the area, and shall be sold at prices commensurate with the current market. (§ 2 ch 111 SLA 1974; am § 5 ch 154 SLA 1977)

Sec. 16.10.460. Inspection of hatchery. (a) As a condition of and in consideration for a permit to operate a hatchery under AS 16.10.400 — 16.10.470, an inspection of the hatchery facility by department inspectors shall be permitted by the permit holder at any time the hatchery is operating. The inspection shall be conducted in a reasonable manner.

(b) The cost of an inspection performed by the department under AS 16.10.400 — 16.10.470 shall be borne by the department. (§ 2 ch 111 SLA 1974; am § 4 ch 110 SLA 1980)

Sec. 16.10.470. Annual report. (a) A person who holds a permit for the operation of a salmon hatchery under AS 16.10.400 — 16.10.470 shall submit an annual report no later than December 15 to the department and to the qualified regional association for the area in which the hatchery is located, to include but not be limited to information pertaining to species; brood stock source; number, age, weight, and length of spawners; number of eggs taken and fry fingerling produced; and the number, age, weight, and length of adult returns attributable to hatchery releases, on a form to be provided by the department.

(b) A person who holds a permit for the operation of a salmon hatchery under AS 16.10.400 — 16.10.470 and each regional association levying a voluntary assessment under AS 16.10.540 shall submit an annual financial report to the Department of Commerce and Economic Development on a form to be provided by the Department of Commerce and Economic Development. (§ 2 ch 111 SLA 1974; am § 6 ch 154 SLA 1977; am § 4 ch 59 SLA 1979; am § 31 ch 14 SLA 1987)

Effect of amendments. — The 1987 amendment substituted "voluntary assessment under AS 16.10.540" for "royalty assessment under AS 16.10.530" in subsection (b).

Sec. 16.10.475. Definitions. [Repealed, § 32 ch 14 SLA 1987.]

Article 9. Fisheries Enhancement Loan Program.

Section	Section
500. Declaration of policy	510. Powers and duties of the commissioner
505. Fisheries enhancement revolving loan fund	520. Limitation on loans
507. Special account established	525. Repayment of principal and interest on loans