ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
1813 SCOMM 74: SEN.SPEC.COMM.ON DOMESTIC & INTL.FISH., 1991-92...

ORIGINAL
PACKET,
5-15-91
MEETING

MEETING AGENDA

&

ATTACHMENTS

SENATE SPECIAL COMMITTEE ON FISHERIES
MEETING: MAY 15, 1991

INITIAL DISCUSSION OF STATEWIDE HATCHERY ISSUES

AGENDA

1. Discuss problems and need for legislative review of hatchery issues.

Briefly review documents in folder:

List with heading, "Why is it time to Review..." (prepared by staff)

Paper titled,"FRED Division -- Alaskan Fisheries Enhancement in the 1990's"

Letter from Alaska Board of Fisheries to the Legislature dated May 6, 1991 **(pink cover)**

Collection of differing legal opinions regarding hatchery stock management (Attorney General's Office, Legislative Legal Services, and a private attorney) **(yellow cover)**

Also in folders for reference:

Misc. Letters **(blue cover)**

S.E. Alaska Seiners Association suggesting possible topics for study

Prince William Sound Aquaculture Corp.

Alec Brindle letter with attached paper by Ray Hilborn

Copy of Current laws and regulations for Private Nonprofit Hatcheries **(peach cover)**

2. Develop list of topics that the Legislature needs to have researched in order to begin evaluating the present status and future directions of fisheries rehabilitation, enhancement, and development programs in Alaska.

Review:

Document titled, "Hatchery Issues: Draft Questions and Topics for Legislative Review and Research" **(attached to meeting agenda)**

Make amendments, additions and subtractions to list to make it state the committee's desired scope of study.

3. <u>Develop work plan for legislative research and review.</u>

Review:

Page headed, "How to Approach the Topics of Concern" **(attached to meeting agenda)**

Page titled," Proposal for Interim Staff Work on Hatchery Issues" **(attached to meeting agenda)**

Rep. Ulmer's proposal for ISER study **(green cover)**

Packet of misc. studies (few examples of studies currently available **(hot pink cover)**

Discuss:

Committee's goals

Options for achieving goals

Decide course of action

Prepared by Senate Fisheries Committee staff

WHY IS IT TIME TO REVIEW ALASKA'S FISHERY REHABILITATION, ENHANCEMENT AND DEVELOPMENT PROGRAMS?

* **The program was established in the early 1970's and has** evolved from its beginnings to its current status as one of the largest and most successful hatchery systems in the world. Although it is a "whole different animal" now, has undergone enormous growth, and is now a major force in the overall fisheries picture in the state, it still operates essentially under the same statutory intent and direction that were passed more than 15 years ago.

* **There is no comprehensive statewide policy** for fisheries enhancement, rehabilitation, and development. To maximize the benefits and minimize negative impacts, clear policies should be adopted regarding overall goals and purposes, management priorities of wild and hatchery stocks, establishment of production level targets, marketing, levels and types of State involvement, assessment of regional and statewide economic impacts, etc.

* The Legislature is the entity which appropriates funding for the Department of Fish and Game, state hatchery programs, and for pass-through funds and state loans for private non-profits, and the entity which writes the laws regarding hatchery programs. So **the Legislature is the appropriate body to review laws, financing and policies regarding these programs, and make adjustments and give direction as necessary.**

* **The Alaska Board of Fisheries has requested statutory clarification** regarding hatchery policy and management in order to assist them in making regulatory decisions.

* State fiscal support for hatchery subsidies is declining, possibly jeopardizing existing investments and programs, and precluding expansion into new potentially beneficial projects. **A sensible plan for reducing spending while preserving program integrity should be developed.**

* **A number of concerns regarding the hatchery programs have been expressed to the Legislature.** Some of the concerns expressed stem from the following perceptions:

  -- Hatchery stocks may be biologically impacting wild stocks.

  -- High production of hatchery fish may be impacting market conditions for all fish. Markets are inadequately developed to handle the quantity being produced (of wild and hatchery fish).

-- Hatcheries are beginning to be perceived by commercial fishermen as a "competing gear group." There is growing discontent about paying aquaculture assessments.

-- Hatchery programs have become so large and successful that they are "taking on a life of their own," at the risk of losing sight of their originally intended purposes and beneficiaries.

HATCHERY ISSUES:
DRAFT QUESTIONS AND TOPICS FOR LEGISLATIVE REVIEW AND RESEARCH

I. What are the goals and purposes of hatcheries in Alaska?

What were they intended to be when the programs were established in early 1970's?

FRED hatcheries

Private nonprofit hatcheries (PNP's)

What should they be now and in the future?

If circumstances have changed enough to warrant adjustments in goals and purposes, does this require changes in statutes or policies?

Is adequate information collected and available regarding the biological affects of our high-production hatcheries on wild stocks? Do we know whether continued growth in hatchery production will ultimately harm or even replace wild stocks? Is this information being considered when planning for future direction of Alaska's hatchery programs?

Are current requirements for planning and oversight adequate to ensure that goals and purposes are met?

Are Regional Planning Teams enough?

Should there be a mandated "statewide" plan and/or planning team?

Current hatchery statutes are aimed primarily at production of salmon. But now some hatcheries are coming on line for non-salmon species, and planning and research regarding hatcheries for additional species of fish and shellfish is increasing. Should provisions be made to cover possible future hatcheries for non-salmon species?

Should such socio-economic factors as rural economic development be factored into fisheries enhancement and development goals, purposes, and planning?

II. What should the State's role be in hatcheries from now on?

State-owned and operated hatcheries

State role in PNP's

Permitting

Planning
Providing technical expertise
Financing
Grants, capital funding, loans, turning over of formerly state-run hatcheries to PNP's

How have other states been dealing with their hatchery programs as they have evolved in recent years?

III. Fisheries management questions

Should statutes provide clear policy and direction to Board and Department regarding management and allocation priorities when dealing with wild stocks and hatchery stocks? (Concern has been expressed by Board of Fish about lack of clear statutory direction -- See letter from Board of Fish to the Legislature dated May 6, 1991).

Recent legal opinions show lack of clarity in current law (See opinions of Asst. AG Steve White, Legislative Legal Services Attorney George Uttermohle, and private Attorney Michael Stanley).

What is obligation to provide for PNP broodstock? Cost recovery fish?

What if ensuring those recoveries for a PNP affects the biology or management of a wild stock or existing fishery?

Should tagging of PNP hatchery fish be required in order to track contribution to stocks and assist in management decisions? If so, who should pay for it?

IV. PNP Operations Questions

Should there be statutory provision for CLOSING a particular hatchery if it is no longer viable (biologically or financially), or no longer meets the goals of the hatchery program or the needs of those it is meant to serve?

How would loan obligations be dealt with?

Are PNP's held accountable to the state and fishermen (as they provide funding for PNPs through loans and assessments)?

Is there adequate monitoring to ensure that maximum benefit is being delivered for minimum cost? Is cost effectiveness REQUIRED?

Commerce Dept. now holds ex officio seat on RPT's. Should they have full membership or at least an oversight function to ensure that financial aspects of plan are adequately covered?; i.e. whether they meet nonprofit standards, does plan for raising of particular species and amounts make <u>financial</u> sense, etc.

V. Market / Economics Questions

Where do hatcheries fit into the market picture of Alaskan salmon?

Is there adequate information available regarding competition for market share by cost recovery fish, and regarding how success of hatchery production affects overall market conditions?

Effects on processing capabilities
    Recent request to allow foreign processors into Prince William Sound

Would more accurate fish run projections and development of better markets help to offset the concerns about hatchery "over-production?"

What role could FRED Division, Aquaculture Associations, and other PNP's play in market development?

HOW TO APPROACH THE TOPICS OF CONCERN?

I. Which questions are under the jurisdiction of the Legislature and should be addressed directly by the Legislature?

II. Who should be responsible for researching and acting on others?
- Options:
  - Board of Fish
  - ADF&G
    - FRED Division
    - What is the "Hatchery Forum" and what is it doing?
  - PNP's themselves
  - Regional Planning Teams

III. What research needs to be done to prepare the Legislature to address those topics for which it is responsible and how should we go about getting it done?
- Options:
  - Existing Fisheries Committee?
  - Need legislative interim or special committee specifically on hatchery issues?
  - Assign certain topics to:
    - Legislative Research Agency?
    - Legislative Legal Services?
    - Interested legislators' offices and staff?
      - *** SEE ATTACHED PROPOSAL FOR STAFF WORK***
- ISER Study - see Rep. Ulmer's letter and proposal
  - Review previously done economic studies to avoid overlap of subject matter:
    - "Alaska Seafood Industry Study," by McDowell Group, March 1989
    - "A Comparison of Demand Models for Alaska Salmon," by Dr. Boyce, August 1990
    - Others?
  - Is it time for an ISER study? If so, what exactly should it address?
    - If other interim research is assigned to legislative staff, should scope of any ISER or other hired research be defined after staff has developed a work plan?

DRAFT

PROPOSAL FOR INTERIM STAFF WORK ON HATCHERY ISSUES

Establish informal ad hoc group of House and Senate staff (under auspices of Senate Special Committee on Fisheries) to work with list of topics developed at May 15 meeting of Senate Special Committee on Fisheries.

Interested existing interim staff, with permission and direction from their respective legislators, will form this working group.

The goals of the staff working group will be :

* Meet to go over and refine list of concerns and questions.
* Divide work load among participating offices.
* Develop work plan and schedule for interim research they will conduct themselves.
* Develop request for work to be done by other entities such as Legislative Research Agency and Legislative Legal Services Division.
* Ensure that work includes input from Board of Fisheries, ADF&G, PNP's, Aquaculture Associations, fishing organizations, and other interested parties.
* Work with Legislators in developing list of specific questions if it is determined that the project requires professional research by an entity such as ISER.
* Coordinate efforts between participating offices throughout interim.
* Compile data and develop possible options for legislative action to be considered during 1992 session.
* Present work product to Legislature in January 1992.

Staffers interested in working on the project will be asked to contact Sen. Eliason's office.

Legislative staff members who have expressed interest so far in participating in such work:

NAME	OFFICE
Mary McDowell	Sen. Eliason
Molly McCammon	Sen. Hoffman
Paula Terrel	Sen. Jones
Jay Nelson	Rep. Davidson
Kate Tesar	Rep. Grussendorf
Barnaby Dow	Rep. Ulmer
Tom VanBrocklin	Rep. Kubina

Coordination of the overall project of legislative review of hatchery issues will be through the Senate Fisheries Committee (Sen. Eliason's office), although coordination of the proposed staff work project may be delegated to staff from another office or offices during at least part of the interim.

At least one meeting (probably by teleconference) of the Senate Fisheries Committee, other interested legislators, and staff involved in the research, would be held in the fall to assess progress and discuss ongoing work.

This work plan should provide the Fisheries Committee (and all legislators) with a good amount of information by the beginning of the next session upon which to base analysis of statewide hatchery issues, and to begin formulating some recommendations for legislative action.

FRED Division -

Alaskan Fisheries Enhancement in the 1990s

The Fisheries Rehabilitation, Enhancement and Development (FRED) Division of the Alaska Department of Fish and Game was created in 1971 by the Legislature and the Governor because the people of Alaska expressed grass roots support for an enhancement program to revitalize an ailing salmon fishing industry. Catches were at all-time lows (figure 1), and the development of an enhancement program, which would serve the state in both years of lean and bountiful salmon harvests was envisioned by Alaskans. Bond issues to build the public hatchery facilities were passed overwhelmingly in the 1970s. The FRED Division was given broad statutory authority by the Legislature to "through rehabilitation, enhancement and development programs do all things necessary to insure perpetual and increasing production and use of food resources of Alaska waters and continental shelf area (AS 16.05.092)." In less than twenty years FRED Division has guided the development of the second largest salmon enhancement program in the world. FRED has also developed technologies that revolutionized salmon production. The Division has sought and successfully implemented a partnership with the private sector that is unique.

To conclude that because the salmon harvest in 1990 was the second largest in Alaska's recorded history, and, therefore, salmon stocks are now uniformly robust statewide would be incorrect. Factors affecting the thousands of individual stocks of salmon are a complex mixture of physical, biological, environmental and genetic parameters. Some areas of the state are unique in that native salmon stocks are weak or not available for harvesting. Presently the FRED Division is assessing enhancement programs in northwestern Alaska that could be used for meeting subsistence, economic and social needs.

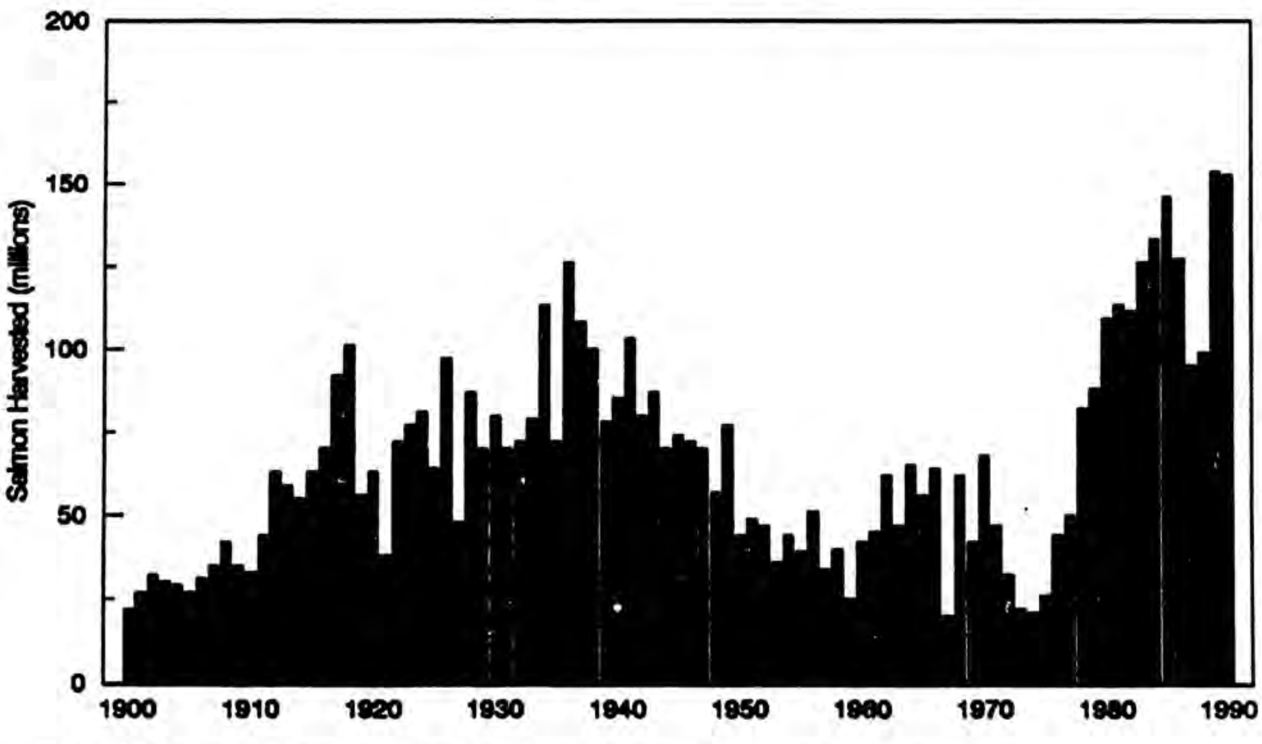

Figure 1. FRED Division was created in 1971 at a time of record low harvests

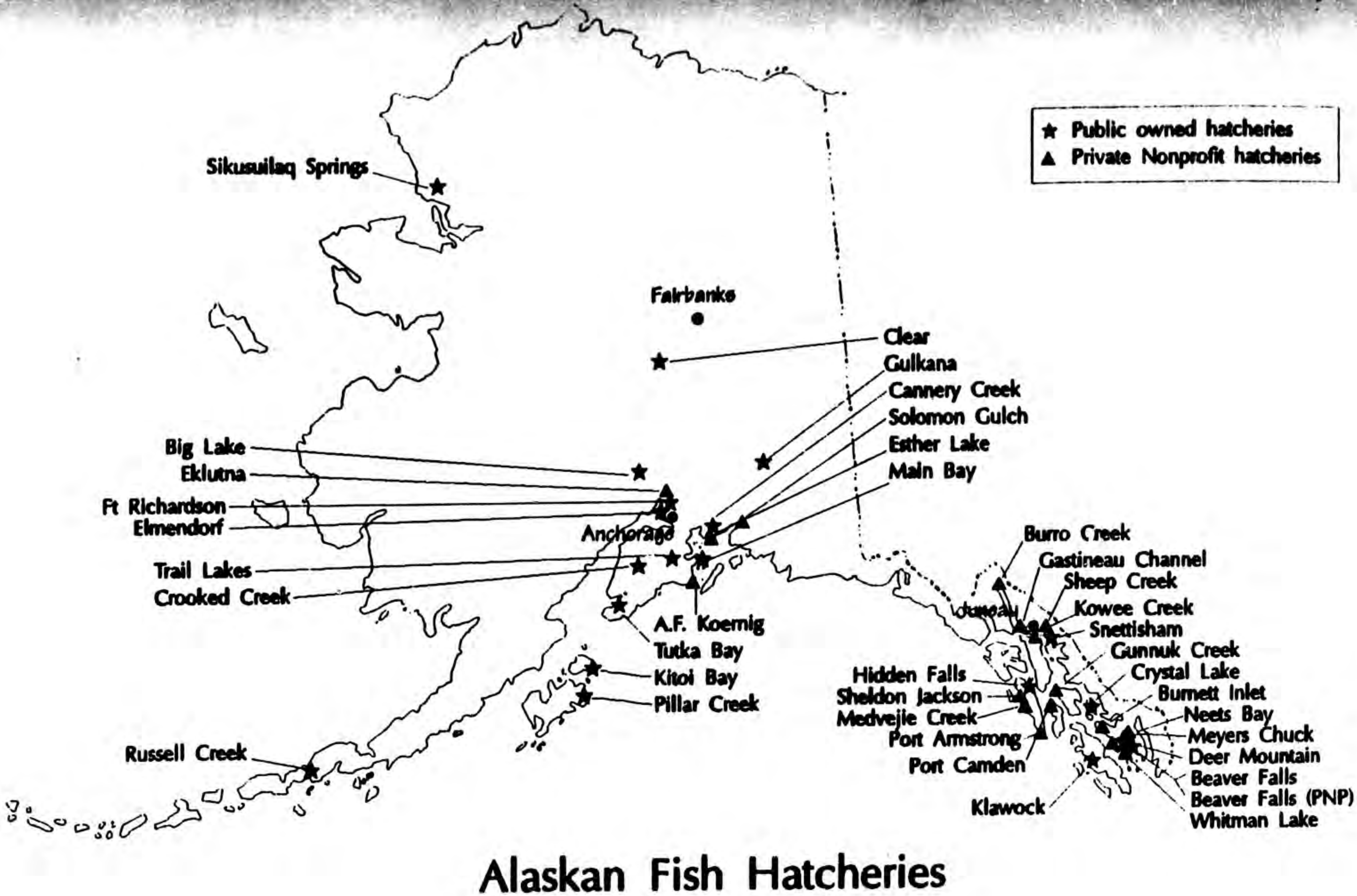

Figure 2. There are 20 publicly-owned hatcheries and 20 PNP hatcheries in Alaska.

The fisheries enhancement program in Alaska is a unique blend of government and private sector cooperation. FRED Division's role is to provide technical services to the industry, effectively develop many areas of salmon technology, and successfully transfer that technology to the private sector. In the 1970s and early 1980s, FRED Division developed the hatchery production of pink and chum salmon in Alaska and worked with the private nonprofit (PNP) salmon producers, helping them to acquire those skills. In the mid-1980s, FRED Division initiated and developed lake and hatchery technology for production of sockeye salmon, eventually becoming the world leader in that area. This technology, along with most of FRED Division's fully developed pink and chum salmon hatcheries, was transferred to the private sector in the late 1980s.

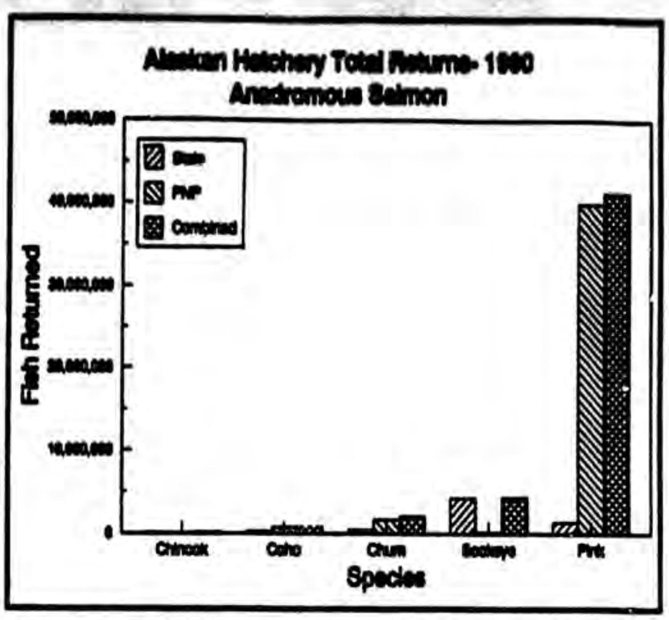

Figure 3. More than 48 million hatchery-produced fish returned in 1990.

Statewide enhancement program

Presently there are 20 publicly-owned hatcheries and 19 PNP hatcheries (figure 2). Declining general funds have created uncertainty in operating public hatcheries, subsequently several publicly-owned hatcheries have been contracted to the private sector. Fishpasses located throughout the state provide spawning and rearing habitat that would otherwise be unattainable to salmon stocks. The strategies of lake fertilization, habitat improvement, and fish stock introduction are used to provide improved freshwater survival and new production opportunities for salmon stocks.

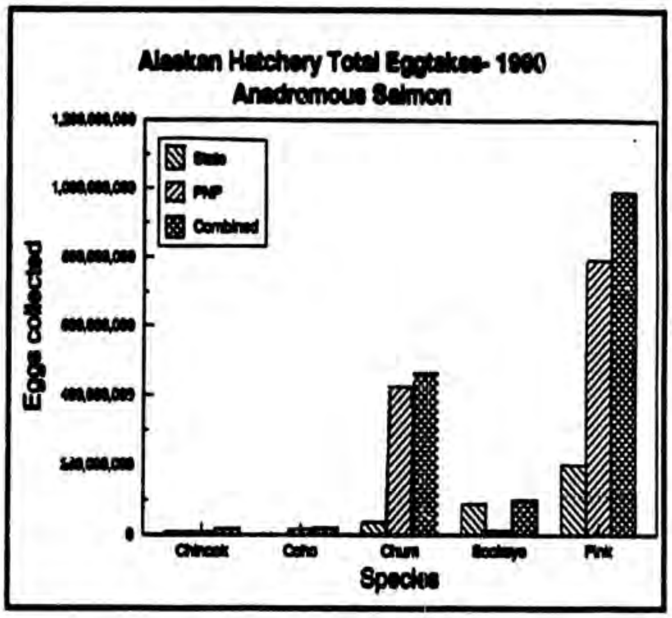

Figure 4. More than 1.6 billion eggs were collected in 1990 by Alaskan hatcheries.

The Alaskan enhancement program has been characterized by phenomenal biological success. It has grown from the first return of pink salmon in 1976 of 30,000 fish statewide, to a total return in 1990 of over 48 million (figure 3). More than 34 million enhanced fish were caught in the 1990 commercial fishery. Similarly the eggtake in 1974 was 22 million, while the eggtake in 1990 was over 1.6 billion statewide (figure 4). More than 1.1 billion fish were released into Alaskan waters in 1990 (figure 5). This unprecedented growth in just 14 years makes the Alaskan hatchery enhancement effort the largest of its kind in North America and second largest in the world, behind Japan. Alaska is the world leader in the production of sockeye salmon taking over 110 million eggs under hatchery culture in the last five years. As this research and development program has evolved it allowed us to achieve a major breakthrough in sockeye culture which resulted in the production of 2.6 million sockeye smolts at Main Bay Hatchery in 1990.

Significant milestones have also been reached in the non anadromous trout program, involving production of unique Arctic species such as Arctic char, grayling, lake trout, and sheefish, in addition to rainbow trout. Over 4.1 million non-anadromous fish were stocked into more than 300 different stocking locations for enhancement of the sport fishery.

Economic benefits

FRED Division's activities are a prime example of the economic principle that government should invest its money in activities that stimulate the economy. The overall economic impact of the Alaskan enhancement program has been phenomenal. In 1990 hatchery-produced fish represented more than 20% of the total statewide common property salmon catch. The employment impact on the state's economy has been projected, using a model created by the University of Alaska Institute of Social and Economic Research, to sustain over 3,500 resident jobs and $102 million in resident personal income at current levels of enhanced fish production.

The fisheries enhancement program in general can and does make a positive impact on the state's economy. A salmon price forecasting model created for FRED Division by the University of Alaska demonstrates that Alaskan salmon are under supplied in the market place. Fishermen could be receiving greater revenues if catches were increased. FRED Division can direct economic opportunities through implementation of enhancement strategies designed to benefit specific geographic areas. Directed economic development through effective fisheries enhancement is being initiated in many new areas, such as the Yukon River, Norton Sound, Nelson Island and other northwestern Alaskan communities.

Helping Alaskans help themselves...

The FRED program is a prime example of government helping Alaskans to help themselves. The people of the state saw a need and became participants in the enhancement program through fishermen's groups and other PNP organizations. The enhancement program impacts a broad cross-section of Alaskans through direct, indirect and induced benefits through all sectors of the economy.

The FRED Division has developed a valuable resource of technical expertise and acts as a focal point of the government's interaction with the burgeoning PNP salmon ocean ranching and shellfish mariculture industries in the state. It provides services including pathology, genetics, limnology, economics, biology, fish culture, engineering, and data management expertise to all salmon producers in the state

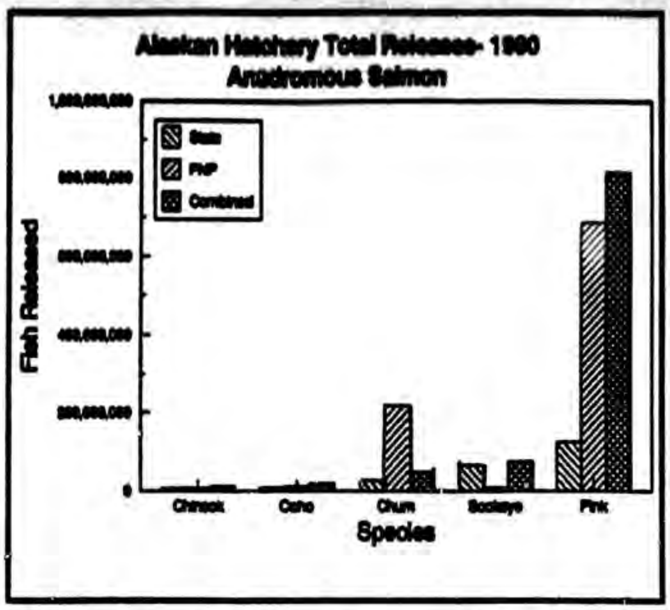

Figure 5. Over 1.1 billion fish were released into Alaskan waters in 1990 from Alaskan hatcheries.

FRED Division in the 1990s

In the 1990s, FRED Division will expand its programs to regions of the state not yet directly benefiting from enhancement projects. It will continue to lead the salmon enhancement program and its private sector partners through technological development and application of technical services. It will move into new and critical areas such as king crab, scallops, black cod, and halibut enhancement. It will expand its fisheries habitat rehabilitation efforts and become involved with restoration programs in oil-spill affected areas. In short, the FRED Division will continue to take the lead in fisheries enhancement.

Based on the overwhelming success of the program, there is a growing interest in using fisheries enhancement as a means for economic diversification for both rural and urban Alaska. From northwestern to southeast Alaska, the public is seeking fisheries enhancement as an important economic tool because there is a return on this public investment. With projected oil production on the decline, the need to diversify the economy in all of Alaska becomes essential, and renewable natural resources become much more critical to Alaska's economy. The biological and economic potential of all of Alaska's fisheries can be more fully realized through fisheries enhancement.

Brian J. Allee, Ph.D Director
Alaska Department of Fish and Game
FRED Division
PO Box 3-2000
Juneau, AK 99802-2000

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BOARD OF FISH LETTER

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LETTER FROM BD. OF FISHERIES

May 6, 1991

The Honorable Richard Eliason
President
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear President Eliason:

This letter is in response to a request by the Senate Resources Committee and the Special Senate Fisheries Committee when Board of Fisheries members appeared before the committee in March. We appreciated the opportunity to sit down with the committee and discuss items which will improve the board's ability to serve the people of Alaska.

In managing fisheries that involve hatchery raised salmon, the Board of Fisheries has encountered problems due to ambiguities in the current Alaska statutes. These problems commonly arise when the management of hatchery stocks conflicts with either the health of wild stocks or with the opportunity of fishermen to harvest wild stocks. Essentially, the statutes are not clear on the status of wild stock management.

State statutes also are not clear about the state's duty to provide fish for hatchery broodstock and cost recovery, and about the hatcheries' obligations to contribute to the common property fisheries. We perceive that the development of state policy toward hatcheries may have created a conflict of interest. On one hand, the state manages fisheries as a common property resource for the benefit of all user groups. On the other hand, the state loans money to hatcheries with the expectation that the hatcheries will receive enough fish to be able to repay these loans.

The board has the following comments on the existing statutes:

1. AS 16.10.375 Regional Salmon Plan. Should new language require a review or synthesis of the regional plans to give a statewide perspective on hatchery production?

2. AS 16.10.380 Regional Associations. One of the great strengths of the regional associations is the representation of all user groups on their boards of director. However, the PNP's have no such requirement. Should all hatcheries and enhancement activities in a region be under the control of the regional associations?

Should state laws apply to all hatcheries and enhancement activities in Alaska and not just private non-profit hatcheries? Other activities that might be covered include state-owned hatcheries, regional hatcheries, and the U.S. Fish and Wildlife Service, the U.S. Forest Service, and the National Marine Fisheries Service. Should all these activities be included in the Regional Comprehensive Plan?

Should the role of the regional associations be to coordinate region wide production and allocation subject to biological review by the Regional Planning Team and allocative review by the Board of Fisheries?

Given an expanded role for the regional associations, should their means and levels of funding be re-examined by the legislature?

3. AS 16.10.400 Permits for Salmon Hatcheries. The legislature should re-examine (g) of this section: "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."

The first ten words of this section, "During. . . region . . .", suggest that once the plan is completed, the prohibited actions could be allowed. Perhaps this wording should be deleted. Also, we believe that there should be more specific grounds and procedures for terminating hatchery permits after they have been issued.

President Richard Eliason
May 6, 1991
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Legislators should note that 5 AAC 40.860 provides generic standards for performance review of hatchery success in producing smolt from broodstock. There are no statutory standards, however, for performance review of hatchery contribution to common property fisheries. If a hatchery cannot demonstrate that it is providing "substantial public benefit", is the state required to continue to provide for returns to the hatchery for broodstock or cost recovery purposes?

In this subsection, "substantial public benefit" is not clearly defined. The board recommends that the legislature consider linking the number of eggs taken as broodstock or the number of smolt released by a hatchery to that hatchery's required contribution to the common property fisheries.

The board may contribute to clarifying "substantial public benefit" by requiring the marking of hatchery fish. While we believe that the board has the authority to require this, it would be helpful to have this authority specifically provided by statute. Should the cost of implementing a marking program be borne by the producers of hatchery fish or by the state?

The last five words of this subsection, ". . . would not jeopardize natural stocks", is one of only two places (the other is AS 16.10.420(10)) which declares that it is the legislature's intent that the conduct of the entire state hatchery system is conditional on the protection of natural stocks. Perhaps because our hatcheries have flourished over time, and given some of the intense debate occurring in Oregon, Washington and Canada on how hatchery stocks have impacted natural systems, it is especially timely for the legislature to review the treatment natural stocks receive.

4. The necessity of protecting Alaska's vigorous natural stock populations is recognized by Department of Fish and Game regulations and policies. The regulations are in 5 AAC 40. For example, some of the strongest language exists in 5 AAC 40.220(b)(1), "the proposed hatchery returns may not unreasonably or adversely affect management of natural stocks. . ." Additional language exists in 5 AAC 40.005(a), (c), and (e), 5 AAC 40.007(b), 5 AAC 40.170 (2), 5 AAC 40.220 (b)(1), (3) and (7), and 5 AAC 40.860 (b)(2) and (4). As this issue of natural stock protection is examined by the legislature, the board recommends that the legislature seek input from the Commissioner of the Department of Fish and Game.

President Richard Eliason
May 6, 1991
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5. The legislature may wish to further clarify their intent in additional and more concise definitions of terms used in Title 16. For example, the following terms should be clarified: "escapement", "brood stock", "cost recovery", "substantial public benefit", and "private non-profit."

Should escapement apply strictly to natural stocks returning to natural systems?

Should broodstock be defined as the number of eggs authorized by permit to meet the production levels of the hatchery and to contribute to the common property fisheries? Some wording to this effect would be valuable in light of AS 16.10.420 and AS 16.10.450 which allow for the sale of salmon and salmon eggs for cost recovery. Fish which return to the hatchery for broodstock should be differentiated from fish which return and may be taken for cost recovery.

Does the legislature wish to rank or prioritize escapement to natural systems compared to return of broodstock to hatcheries?

"Cost recovery" is another term which warrants some further clarification. How[illegible] clear definition of broodstock, coupled with a definition [illegible]tial public benefits in terms of what is contributed [illegible]operty fisheries from broodstock, would provide a [illegible]tification of fish availab[illegible] for cost recovery as long [illegible]ation of hatchery stocks [illegible] be achieved.

These concerns of the Board of Fisheries are presented for yo[illegible] consideration. Your interest, and past support, in these resource issues has been greatly appreciated.

Should you have further questions, please feel free to call me.

Sincerely,

Michael R. Martin
Chair
Alaska Board of Fisheries

cc: Board of Fisheries members
Carl Rosier, Commissioner, ADF&G

LEGAL OPINIONS

MEMORANDUM

State of Alaska
Department of Law

TO: Hon. Don W. Collinsworth
Commissioner
Department of Fish and Game

DATE: August 1, 1990

FILE NO 663-90-0327

TEL. NO. 465-3600

SUBJECT ADF&G authority to manage fisheries for hatchery broodstock and cost recovery

Stephen M. White

FROM: Stephen M. White
Assistant Attorney General
Natural Resources Section

You have asked whether the Department of Fish and Game has legal authority to manage fisheries so that salmon hatcheries receive broodstock and cost recovery fish for their operations. You also asked whether the department is required to manage fisheries for these results. Your staff has also asked us to compare the department's authority with that of the Board of Fisheries.

I. ANALYSIS

A. Factual and Legal Background

There are two types of salmon hatcheries in Alaska. These are private, nonprofit hatcheries and state-owned hatcheries.

The regulation of private, nonprofit hatcheries is provided for in AS 16.10.400 - 16.10.470. These hatcheries have received a significant amount of public funds, principally in the form of loans from the state's fisheries enhancement revolving loan fund established by AS 16.10.507. 1/ Until fish raised by private, nonprofit hatcheries return to a location where they can be harvested by the hatchery operators, these fish "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." AS 16.10.440(a).

The only law that deals with state-owned hatcheries is the one that gives the commissioner of the Department of Fish and Game authority to design and construct public hatcheries. AS 16.05.050(3).

1/ According to the Department of Commerce and Economic Development, the current amount owed to the state by private, nonprofit hatcheries is approximately $63.1 million.

B. Board of Fisheries' Authority to Manage for Hatchery Returns

1. Board's authority to manage for broodstock fish

The Board of Fisheries was created "for purposes of the conservation and development of the fishery resources of the state." AS 16.05.221(a) (emphasis added). The board has authority to "adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for . . . regulating commercial, sport, subsistence, and personal use fishing as needed for the conservation, development, and utilization of fisheries." AS 16.05.251(a)(12) (emphasis added).

The Alaska Supreme Court has defined "conservation" as "controlled utilization of a resource to prevent its exploitation, destruction, or neglect." Kenai Peninsula Fisherman's Coop. Ass'n v. State, 628 P.2d 897, 903 (Alaska 1981). We believe that the board's authority to conserve the fishery resource of the state, that is, to prevent its "exploitation, destruction, or neglect," is an expression of the constitutional requirement that fish be "utilized, developed, and maintained on the sustained yield principle." Alaska Const. art. VIII, § 4.

We understand that the term "broodstock" means the portion of returning fish that a hatchery uses to provide eggs for raising its next contribution to the common-property fishery. Because broodstock helps to perpetuate the fishery resource, we believe that managing for broodstock is analogous to managing for escapement of wild fish to achieve sustained yield. It follows, therefore, that the Board of Fisheries is empowered to adopt regulations that will provide brood stock to the hatcheries. Furthermore, because management for sustained yield is required by article VIII, section 4, of the Alaska Constitution, we believe that the law directs the board to manage for this result.

2. The Board's Authority to Manage for Cost Recovery Fish

We understand that "cost recovery fish" are the portion of returning fish that a private, nonprofit hatchery harvests and sells to help meet its financial obligations. We also understand that state-owned hatcheries do not presently harvest fish for cost recovery. Thus, the question of managing fish for cost recovery concerns only private, nonprofit hatcheries. 2/

As noted above, the Board of Fisheries has authority to adopt regulations for development as well as for conservation of the fisheries. AS 16.05.221(a); AS 16.05.251(a)(12). The Alaska Supreme Court has defined "development" as "management of a resource to make it available for use." Kenai Peninsula, 628 P.2d at 903.

We have previously advised that this authority empowers the board to allocate fish that are beyond those needed to assure sustained yield. This power is established by AS 16.05.251(d), which mandates that the board provide "a fair and reasonable opportunity for the taking of fishery resources" by fishery user groups and by AS 16.05.251(e), which requires that the board adopt criteria for making allocations among these groups. 1990 Inf. Op. Att'y Gen. (Jan. 12; 663-90-0227); 1989 Inf. Op. Att'y Gen. (Apr. 7; 663-89-0465).

The courts have endorsed various forms of allocation. These have included allocations between the various overall user groups identified in the fish and game code -- personal use, sport, and commercial fishers. For example, in the Kenai Peninsula case, the Alaska Supreme Court said that the board could establish priorities of use between recreational and commercial fishers. Kenai Peninsula, 628 P.2d at 903. In other cases, the courts have upheld regulations that allocate harvest between competing subgroups of a particular user group. For example, the court upheld the board's allocation of fish between drift gillnet fishers and set gillnet fishers, both of whom are commercial users. Meier v. State, 739 P.2d 172, 174 (Alaska 1987).

Private, nonprofit hatcheries are not identified in the law as an overall user group. Nevertheless, we know of no reason why they could not be considered a subgroup of commercial users and thus be targeted for allocations like any other distinct subgroup of commercial harvesters.

The law establishes seven criteria that the board may consider when making allocations. AS 16.05.251(e). See also 05 AAC 39.205, 05 AAC 75.017, and 05 AAC 77.007. We have

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2/ If state-owned hatcheries, operated by the state or by private contractors, harvest cost-recovery fish, this would raise issues that are beyond the scope of this memorandum. In that event, we would be pleased to provide you with further analyses of those issues.

previously noted that the board is not limited to just these factors. We cautioned, however, that if the board considers additional factors, it should insure that the resulting allocation satisfies constitutional requirements of substantive due process and of equal protection. 1990 Inf. Op. Att'y Gen. (Jan. 12; 663-90-0227). 1/

To satisfy substantive due process, an allocation cannot be arbitrary and it must further a legitimate governmental purpose. Mobile Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974). To satisfy equal protection, a distinction between competing users must be "based on a legitimate public purpose and . . . be reasonable, not arbitrary, and . . . rest upon some ground of difference having a fair and substantial relation to the object of the [allocation scheme]." State v. Ostrovsky, 667 P.2d 1184, 1193 (Alaska 1983) (citation omitted).

Earlier we noted that private, nonprofit hatcheries have received substantial loans from the state. We assume that cost recovery fish are a significant, if not essential, source of income for meeting these hatcheries' debt service. If the borrowers do not receive sufficient cost recovery fish, it may not only threaten their ability to contribute to the common-property fishery, but also their ability to repay state loans. Accordingly, we believe that preventing the economic failure of borrower hatcheries would certainly be a "legitimate government purpose."

We also believe that distinguishing between private, nonprofit hatcheries, who make a direct contribution to sustained yield, and other users who do not make such a contribution bears a "fair and substantial relationship" to the goals of sustaining common-property fisheries and replenishing the loan fund. Thus, we believe that an allocation to provide cost recovery fish would satisfy the requirements of substantive due process and equal protection.

We note, however, that none of the present criteria in AS 16.05.251(e) precisely describe the positive attributes of hatcheries. Factors (5) (economic importance) and (6) (regional importance) could, under narrow circumstances, justify an

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1/ We also opined that allocations must satisfy the provisions of article VIII of the Alaska Constitution. Specifically, these are section 1 (maximum use), section 2 (maximum benefit), section 3 (common use), section 15 (no exclusive right of fishing), and section 17 (equal application). 1990 Inf. Op. Att'y Gen. (Jan. 12; 663-90-0227). We do not believe that an allocation for cost-recovery would violate any of these sections.

allocation that provides for cost recovery. 1/ Although the board is not limited to using these criteria, they still affect the public and implement a legislative mandate. Thus, any unlisted criteria that the board wishes to use should be adopted by regulation. See Kenai Peninsula, 628 P.2d at 905, 906. In other words, if the board intends to allocate for cost recovery, it should adopt by regulation criteria that more closely describe the special attributes of private, nonprofit hatcheries.

The board's authority to allocate for cost recovery, then, is based upon characterizing private, nonprofit hatcheries as another type of commercial subgroup. But, there is nothing in the law that requires the board to allocate to a particular group or subgroup. Accordingly, we do not believe that the board is required by law to allocate cost recovery fish to this subgroup.

C. Department's Authority to Manage for Hatchery Returns

1. Department's authority to manage for broodstock

The commissioner of the Department of Fish and Game has limited tools for managing commercial fisheries independently of the board. This authority is contained in AS 16.05.060(a). It allows the commissioner to use emergency orders "when the circumstances require" to summarily open and close seasons or areas or to summarily change weekly closed periods.

The law does not define what circumstances will enable the commissioner to use his or her emergency order power. However, we have previously advised that in light of the commissioner's statutory charge to "manage, protect, maintain, improve, and extend the fish . . . resources of the state," emergency orders can be issued to protect sustained yield, based on conservation concerns. AS 16.05.020(2); 1989 Inf. Op. Att'y Gen. (Apr. 7; 663-89-0465).

Earlier we recognized an analogy between managing escapement of wild stocks for conservation/sustained yield and managing for hatchery broodstock in order to serve the same purposes. Thus, we believe that the department, acting through the commissioner's power to issue emergency orders, can independently

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1/ For example, if (1) a certain fishery were an important segment of an economy, (2) a hatchery made a critical contribution to the perpetuation of this fishery, and (3) the hatchery could not survive to make this contribution without an allocation of cost-recovery fish, the board could conclude that the allocation would be very important to that economy.

manage fisheries to provide broodstock to hatcheries. In the same way that the Alaska Constitution directs the Board of Fisheries to manage for the return of broodstock, we believe that the law also directs the department to manage for the same result.

2. Department's authority to manage for cost recovery fish

The law is not clear on the question of whether the department, through the commissioner's emergency order power, is authorized to independently manage fisheries for cost recovery fish. It is also not clear whether it is required to do so.

On one hand, it can be argued that the commissioner's statutory charge in AS 16.05.020(2) to "maintain and improve" the resource authorizes actions that will enable private, nonprofit hatcheries to survive. Unless they are able to meet financial obligations, hatcheries will not be able to raise broodstock, and thereby not be able to contribute to the "maintenance and improvement" of the resource. It can also be argued that it is unlikely that the legislature would have created a program for financing the hatcheries and yet not intended for fisheries to be managed so that these hatcheries could pay back their loans and contribute to the fishery resource.

On the other hand, cost recovery fish, unlike broodstock fish, do not directly contribute to the perpetuation of the resource. They are sold to meet economic needs of a user subgroup. Thus, they can be likened to fish that exceed the amount needed for sustained yield and are thus available for allocation among various users.

In the past, we have opined that the commissioner probably cannot allocate fish through his or her emergency order power. Only the board can allocate fish among competing fisheries or user groups. 1990 Inf. Op. Att'y Gen. (Jan. 12; 663-90-0227); 1989 Inf. Op. Att'y Gen. (Apr. 7; 663-89-0465). According to this argument, the department could not independently manage fish for cost recovery because it is not authorized to allocate fish among users. 5/

5/ Although it is not clear whether the department, independent of the board, is authorized or required to allocate fish for cost recovery, we note that there are several ways that the department, in conjunction with the board, could manage for this purpose. First, under AS 16.05.270 the board could delegate to the department its own authority to allocate for certain fisheries. Next,
(continued...)

The arguments on both sides of this question depend upon implication and analogy. The law does not clearly point to one answer or the other. Although we believe we could defend an emergency order that was issued to provide cost recovery fish, we hesitate to predict the outcome of any challenge. Accordingly, if the department wishes to independently manage for cost recovery fish, we recommend that it seek clear authority from the legislature to do so.

II. CONCLUSION

The Board of Fisheries and the Department of Fish and Game are authorized, and in fact are directed, to manage fisheries so that broodstock returns to hatcheries. The board can manage through its power to adopt regulations and the commissioner, when he or she acts independently of the board, can manage through the power to issue emergency orders. The authority of both is based upon statutory provisions for managing for conservation and on constitutional mandates for managing for sustained yield.

The board has the statutory authority to manage fisheries so that cost recovery fish return to a private, nonprofit hatchery. However, it is not clear that the present allocation criteria recognize the special attributes of hatcheries. If the board adopts such criteria, the board's regulatory authority to manage for cost recovery would be clear as well. On the other hand, there is no basis to conclude that the board is required to allocate fish for this purpose.

Absent the board's delegation of allocation authority to the department, it is not clear that the latter is authorized or required to independently manage for cost recovery, even by emergency order. Although we believe we could defend such an action, we could not predict the outcome of such suit. Therefore, we recommend that the department seek legislation that more clearly establishes this power.

We hope this answers your questions. Please do not hesitate to contact us if we can be of further help.

SMW:tg

5/ (...continued)
the board could by regulation direct the department to manage a particular fishery for this purpose. Examples of this are in 5 AAC 24.365 and 5 AAC 24.366. Finally, the board could by regulation establish an allocation framework that the department could implement through emergency orders.

cc: Bonnie Harris, Assistant Attorney General
Anchorage

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M E M O R A N D U M April 8, 1991

SUBJECT: Sustained Yield Management of Salmon Produced by Private Nonprofit Hatcheries (Work Order 7LS0990)

TO: Senator Dick Eliason

FROM: George Utermohle GU
Legislative Counsel

You have asked whether the state must manage salmon produced by private nonprofit hatcheries according to principles of sustained yield.

The Department of Law in its consideration of this issue has concluded that the sustained yield section of the Alaska Constitution (art. VIII, sec. 4) is applicable to private hatchery stocks of salmon and that the Board of Fisheries is required to manage private hatchery stocks of salmon according to sustained yield principles in order to provide broodstock to the hatcheries. Memorandum to Don W. Collinsworth file no. 663-90-0327, August 1, 1990. The Department of Law reached this conclusion by finding that the return of hatchery-bred salmon to the hatchery for use as broodstock, like the escapement of wild salmon to the spawning grounds, is necessary to achieve sustained yield of the salmon resource.

The sustained yield section can be reasonably construed as supporting the conclusion reached by the Department of Law, however the section is also open to other interpretations which would support different conclusions. Article VIII, sec. 4 states:

> SUSTAINED YIELD. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

Of particular significance is the fact that this section applies to fish "belonging to the State" and that utilization, development, and maintenance of fish on the sustained yield principle is "subject to preferences among beneficial uses."

Fish belonging to the state are clearly to be managed according to sustained yield principles. The general rule is that salmon while in state water are property of the state and are held in trust for the benefit of all people of the state. Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901, 914-915 (Alaska 1961). Part of the state's trust responsibility includes the management of salmon according to sustained yield principles. However it is unclear whether the sustained yield requirement applies to salmon raised by a private nonprofit hatchery, because the ownership of hatchery salmon is uncertain.

Private nonprofit salmon hatcheries are authorized under AS 16.10.375 - 16.10.470. AS 16.10.375 - 16.10.470 that does not answer the question of who owns hatchery stocks of salmon, though a number of provisions do suggest that some property interest in hatchery salmon stocks may pass to the hatchery under the terms of the hatchery permit. There are at least four references to salmon eggs or fry being sold to or by a hatchery. AS 16.10.420(3), (7), and (8); 16.10.450. The ability to sell salmon eggs and fry implies an ability to transfer property rights in the eggs and fry.

AS 16.10.440, which provides for the common use of hatchery fish while the fish are in the natural water of the state, is silent as to whether hatchery fish belong to the state. AS 16.10.440(a) provides

> 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.

The phrase "occurring in their natural state" used in AS 16.10.440(a) mirrors the language of the common use section of the state constitution (art. VIII, sec. 3) in order to assure that while in the water of the state hatchery fish are to be subject to common use. However providing that hatchery fish are available for common use neither implies state ownership of the hatchery fish nor entails a concomitant responsibility to manage hatchery fish for sustained yield, because the requirements for common use and sustained yield are separate provisions of the constitution.

AS 16.10.440(a) does not use the important phrase "belonging to the state" which would invoke the sustained yield section. According to AS 16.10.440(a), hatchery fish are to be treated "in the same way as fish occurring in their natural state until they return to the specific location. . . "; this language does not say that hatchery fish are a common property resource belonging to the state, but only that they are to be treated as though they were a common property resource until they return to the designated location, at which time the fish become subject to private use by the hatchery. This language suggests some form of lingering private property interest in hatchery fish by the hatchery even after the hatchery releases the fish into the wild. If there is a latent private property interest in hatchery fish while they are in the wild, then those fish may not necessarily be fish belonging to the state. If the fish do not belong to the state then they are not subject to the requirements for sustained yield management under the state constitution. This could permit the state through the Board of Fisheries and the Department of Fish and Game to manage fisheries through which hatchery fish pass without regard to assuring a sustained yield escapement to the hatchery.

Even if the hatchery fish do belong to the state for the purposes of the sustained yield section, the requirement of the sustained yield section of the state constitution is not absolute, because the management of fish and other replenishable resources belonging to the state shall be utilized, developed, and maintained on the sustained yield principle, <u>subject to preferences among beneficial uses</u>. The delegates to the Alaska Constitutional Convention considered this qualifying language to be necessary because they found that the sustained yield principle becomes meaningless and ineffective, if it is not qualified by the concept of beneficial use. Alaska Constitutional Convention Proceedings, Delegate Riley, p. 3054-55. The delegates to the convention did not discuss in detail how they felt the concept of preferences among beneficial uses would be applied in the context of sustained yield management of replenishable resources, except to say that certain kinds of resources (e.g. predators and parasites) should not be maintained on a sustained yield basis. Alaska Constitutional Convention Proceedings, Delegate Riley, p. 2451; Commentary on Article on State Lands and Natural Resources, 6 Proceedings of the Alaska Constitutional Convention at 98. However the delegates did discuss the concept of beneficial uses in regard to water rights. Section 13 of article VIII, relating to water rights, contains the same "subject to preferences among beneficial uses" language that is contained in the sustained yield section. The delegates understood preference among beneficial uses to allow the state to choose among competing beneficial uses of water in order to achieve the greatest public good, even if it meant eliminating other existing, vested beneficial uses of water, provided that the owner of those rights are compensated for the loss of the rights. Commentary on Article on State Lands and Natural Resources, 6 Proceedings of the Alaska Constitutional Convention at 102. Thus the delegates understood that the concept of preferences among beneficial uses would also allow the state to make reasoned decisions to prefer certain renewable resources over other renewable resources to achieve a more beneficial public purpose. The authority to establish preference among beneficial uses may permit the state to harvest hatchery fish without providing for a sustained yield from the hatchery, provided that those who have vested rights in hatchery fish are compensated for those rights that are taken by the state.

The ability of the state to establish preferences among beneficial uses is reflected in AS 16.10.430(b) which allows the commissioner of fish and game to terminate the operation of a hatchery in the best interests of the public, if the adverse effects of the operation of the hatchery are irreversible and cannot be mitigated.

If I can provide further assistance, please advise.

GU:pl
91-235.plm

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DATE: February 28, 1991

TO: Kate Troll, Executive Director
Southeast Alaska Seiners

FROM: Michael A. D. Stanley

SUBJ: Department of Law Opinion Re Management Of Fisheries For Hatchery Broodstock And Cost Recovery

You have asked me to review an opinion authored by Assistant Attorney General Stephen White, dated August 1, 1990, concerning the legal authority of the Board of Fisheries ("Board") and the Alaska Department of Fish and Game ("ADF&G") to manage fisheries for return of hatchery broodstock and cost recovery.

This memo is not intended as a lengthy analysis of Mr. White's conclusions or the issues presented, but is instead meant to identify questions raised by his opinion.

Briefly stated, White's conclusions are as follows:

1. The Board has the authority and, under article VIII, section 4 of the Alaska Constitution (the sustained yield clause), the obligation to manage fisheries to provide broodstock to hatcheries.

2. The Board has the authority to allocate fish to nonprofit hatcheries for cost recovery, as a subgroup of commercial users.

3. Like the Board, ADF&G has the authority and the obligation to use its management powers -- i.e., its emergency order authority -- to assure return of broodstock to hatcheries.

4. ADF&G does not have clear authority to use its emergency order authority to manage for cost recovery, which is a form of allocation among competing users, but could achieve such result

a. by working in conjunction with the Board (e.g., receiving a delegation of the Board's authority or implementing a Board regulation requiring such allocation), or

b. by seeking legislation that clearly establishes such power.

DISCUSSION

The difficulty I have with Mr. White's opinion is not so much what he says, but what he doesn't say; that is, assumptions or legal inferences that are implicitly made but not discussed. Once these are understood, it can be seen that his conclusions regarding the Board's and ADF&G's authority to manage for broodstock and cost recovery are subject to some question.

1. Are Hatchery Stocks Subject To Article VIII?

White's memo is premised on the assumption that hatchery fish are necessarily subject to the provisions of article VIII of the Alaska Constitution. This leads him, among other things, to conclude that the Board and ADF&G are required to manage fisheries for return of hatchery broodstock, just the same as they are required to manage for escapement of wild stocks. I believe there is reason to question this assumption.

Article VIII does not use a single term for what it covers, but all seem to have a similar meaning: "natural" resources, resources in their "natural state," and "replenishable resources belonging to the state." The question is, do these terms encompass man-made hatchery fish? Put another way, does the state "own" hatchery fish in the same way as it "owns" wild fish and game. If the answer to that question is no, then it may well be that hatchery fish are not subject to the requirements of article VIII at all.

I have not studied this "ownership" question for hatchery stocks at length, but I have run across items that suggest they might be different from wild stocks. For instance, in the commentary on what became section 3 of article VIII (the common use clause), the framers indicate that it "does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture, to fish in private ponds, or to registered trap lines if authorized by law." Commentary on Article on State Lands and Natural Resources, January 16, 1956, Alaska Constitutional Convention Proceedings, Part 6, Appendix V, p. 98 (emphasis mine). Although the examples mentioned do not include hatchery fish, a common thread is creatures which man plays a substantial role in propogating.

Further, it could be argued that the legislature itself, when it passed the statutes authorizing private nonprofit hatcheries, did not view hatchery fish as subject to article VIII. As White points out, AS 16.10.440(a) provides that hatchery fish are "available for common use and are subject to regulation under applicable law in the same way as fish occuring in their natural state." However, this legislation would not have been necessary if hatchery fish were already believed to be subject to article VIII. The very fact that

AS 16.10.440 was enacted suggests that, in a constitutional sense, hatchery fish may be different from wild stocks.

Similarly, the sustained yield clause surely prohibits the Board or ADF&G from extinguishing a wild run. Yet, under certain circumstances hatchery permits may be revoked and production stopped. AS 16.10.430. Assuming hatchery fish were subject to section 4's command to sustain production, wouldn't terminating operation of a hatchery likewise be a constitutional violation? The answer may be that section 4 does not apply to hatchery fish.

The point simply is, White's conclusion that the Board and ADF&G are constitutionally <u>mandated</u> to manage for broodstock, just as they are required to manage for escapement of wild stocks, is subject to some question or, at the least, further analysis.

2. <u>Are Nonprofit Hatcheries Engaged In Commercial Fishing</u>?

In concluding that the Board can allocate fish to private nonprofit hatcheries for cost recovery, White states that "we know of no reason why they could not be considered a <u>subgroup</u> of commercial users and thus be targeted for allocations like any other distinct subgroup of commercial users." He conspicuously fails to refer to the definition of "commercial fishing" in articulating this premise. "Commercial fishing" is defined in AS 16.05.940(5) as

> the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels...

Nonprofit hatcheries do not take cost recovery fish "for profit." Are such fish nonetheless taken "with the intent" of disposing of them "by sale...or in commercial channels?" Although it could argued that they are, that leads to a fairly expansive definition of commercial fishing. Salmon derbies possess fish with the intent of selling them; are they engaged in commercial fishing, too? Could the Board make an allocation to a fishing derby as subgroup of commercial users? At some point such an interpretation of "commercial fishing" becomes rather strained.

The definition of "commercial fisherman" in AS 16.10.940(4) may also provide guidance. That term is defined in terms of an "individual" -- i.e., a natural person -- and would not appear to include a nonprofit corporation.

Thus, there is a question whether nonprofit hatcheries are indeed engaged in "commercial fishing." If not, then White's conclusion that they may be the recipients of an allocation is undermined.

3. May Nonprofit Hatcheries Receive An Allocation?

The conclusion that the Board can allocate hatchery fish to a hatchery for cost recovery is, as White's memo states, "based upon characterizing private, nonprofit hatcheries as another type of commercial subgroup." I discussed above my doubts that hatcheries can really be said to be engaged in "commercial fishing."

There is another basis for questioning whether hatchery fish can be the subject of a specific allocation to a hatchery. AS 16.10.440(a) provides that hatchery fish are subject to regulation in the same manner as wild stocks "until they return to the specific location designated by the department for harvest by the hatchery operator." This suggests two things: (1) it is the department, not the Board, which is responsible for "allocating" hatchery fish to a hatchery through designation of special harvest areas, and (2) such allocation occurs only after those fish have traversed the common property fisheries and returned to the specific location designated for hatchery harvest. This statutory scheme is circumvented if the Board takes it upon itself to make an allocation to a hatchery prior to those fish returning to the designated area, while they are still in the common property fisheries.

Similarly, the statute which governs allocation of fisheries resources -- AS 16.05.251(e) -- does not really square with the idea of an allocation to a hatchery. The various factors which may be considered as allocation criteria are all tied to the term "fishery." But the definition of "fishery" in AS 16.05.940(12) does not include a hatchery. This suggests that a hatchery was never intended as the recipient of an allocation by the Board under AS 16.05.251(e).

Thus, the structure of applicable legislation suggests that hatchery operators may receive an allocation only through the procedures set forth in AS 16.10.440 (after leaving the common property fishery and in an area designated by ADF&G) and not from the Board pursuant to AS 16.05.251(e).

I must emphasize that the foregoing -- especially the discussion of the constitutional issue -- are not intended as definitive legal advice on whether the Board or ADF&G have the authority and/or the obligation to manage fisheries in order to assure the return of broodstock to nonprofit hatcheries or to provide for cost recovery. More analysis remains to be done. But I do think that this points up some significant problems with the Department of Law's opinion.

MISCELLANEOUS LETTERS

A. W. BRINDLE
H. A. BRINDLE

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April 24, 1991

NOTE: SEE ATTACHED STUDY BY RAY HILBORN

The Honorable Dick Eliason
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Eliason:

When we last met in Juneau, you asked me to elaborate on the concerns I expressed to you over the direction of the salmon hatchery programs in Alaska.

It is my understanding scientists are in general agreement that the long-term status of Columbia River salmon has not been enhanced by the use of hatcheries. There now appears to be a much stronger emphasis being placed on utilizing wild stocks in association with environmental corrective measures to improve the status of the various runs. Considerable apprehension is evident concerning the impact past hatchery practices have had on the genetic integrity of wild stocks.

As you know, hatcheries had been viewed many years ago as the solution to offset the adverse impact of dams, irrigation, pollution and other habitat degradation. Alaska fortunately is not plagued with these environmental problems. It is therefore with serious concern that I ask you to investigate current enhancement practices taking place throughout Alaska. The wild or natural stocks of salmon of most regions in Alaska have been at record or near record levels in recent years. The maintenance of these wild stocks is imperative for the long-term stability of the salmon industry.

There is growing concern that the continued growth in the release of hatchery pinks in Prince William Sound, while enhancing the numbers of fish available to the common property fishery, may be related to the recent decline of wild pinks in that area. This is a concern that I believe needs to be addressed as I do not feel that it was, nor should it have been, the intention that the hatchery program should be detrimental to the maintenance and enhancement of Alaska's wild stocks.

The continued growth in release of hatchery pinks may also have a serious negative impact on the economics of commercial fisheries.

Alaskan salmon production is now at record or near record levels even in areas where there is little or no hatchery enhancement. The addition of substantial numbers of hatchery fish to a market where there is already potential surplus wild production can only further reduce the value of the fish to the detriment of both the harvesting and processing sectors. It does little good to produce fish for the sake of production. Market conditions must be taken into account lest the value of fish fall below that which is affordable to harvest.

Another area of concern that needs to be addressed is the experimental plan to produce female only pink salmon runs. The rationale behind this program is apparently based on the theory that the primary value in the female pink salmon is the roe. While roe is an important component in the value of female salmon, there is a very limited market for processed salmon roe, particularly that from pink salmon. Any program which leads to a significant increase in roe production will lead to further weakening of that market, again to the financial detriment of the harvesting and processing sectors.

Finally, there is the growing issue of genetic drift and genetic selectivity. Are the hatchery programs endangering the genetic diversity of Alaska's wild stocks? I will not expand on this issue as it is highly technical and of growing concern within the scientific community. However, it needs to be addressed.

I am enclosing a copy of a paper by Ray Hilborn which also addresses the issue of hatchery fish and the effect on wild stocks. I hope that after review of that paper and considering the matters raised in this letter you will agree with me that the Alaska hatchery program needs to be reviewed. It would be my suggestion that a forum be convened, perhaps under the sponsorship of the University of Alaska, where members of the fishing community could gather to discuss in depth the future direction of Alaska's salmon hatchery program.

Thank you for your consideration of my views. If you have any questions I will be happy to answer them.

Sincerely,

Alec W. Brindle

Alec W. Brindle

AWB:kmh
Enclosure

Hatcheries and the future of salmon in the Northwest

Ray Hilborn

Below my office window at the School of Fisheries, University of Washington, is our small salmon hatchery. Every fall thousands of school children come to see the chinook and coho salmon return to their natal waters. Our graduate students show them the fish and demonstrate how eggs are taken, mixed with sperm, and magically the life cycle of salmon is renewed. These tours are the most significant public relations activity of our school, and through these tours most Seattle school children are brought into their most direct touch with a major part of the environmental heritage of the northwest.

It was only after three years of seeing the annual cycle of school visits that I began to wonder if we were really doing the right thing. Hatchery tours are common throughout the Northwest and I fear that the message they convey is that 1) salmon come from hatcheries, 2) habitat loss and pollution are so widespread that natural spawning fish are dying out or are extinct, and 3) the long term survival of salmon depends upon hatchery technology. My daughter's fourth grade teacher was planning a field trip to a state run hatchery for a tour. He was unaware that only 20 minutes away between 100,000 and 200,000 natural spawning sockeye salmon can be seen in a few miles of the Cedar river -- that indeed most of our rivers still support runs of wild spawning salmon.

I believe that fisheries scientists share a collective responsibility for the public belief that the maintenance of salmon runs depends upon hatchery operation. This belief is particularly pernicious because it inexorably leads to the acceptance of hatcheries as a mitigative measure for habitat loss and dam construction. This view can be expressed as "If the wild stocks are doomed anyway, lets just build the hatcheries and get it over with." This belief is not just found among the general public, many professional fisheries scientists also believe that the future of salmonids is in hatcheries. They believe that resources that could go into habitat protection or fisheries management would be better spent on artificial propagation.

The fisheries community in general is not aware that artificial propagation in the Northwest has failed to live up to expectations, nor are they aware that artificial propagation poses a substantial, and perhaps the major, threat to the long term viability of our salmon heritage.

It is not only for Pacific salmon that many believe that the future of fisheries lies with aquaculture. Indeed throughout the world most management agencies seem to be relying on some form of artificial propagation to "rebuild" fish stocks that are depleted due to poor fisheries management or poor habitat management. Artificial propagation has been proposed for such diverse species as herring, tuna, abalone and giant clams -- the list is nearly endless. Thus the lessons we have learned with salmonids in the our part of North America are of direct and important relevance around the world.

Are Hatcheries Sustainable?

Fisheries management is a long term proposition, our responsibility is to assure that the fisheries resource will be maintained by our generation for the next generation. We need to assure that 20, and even 100 years from now there will still be salmon in our rivers. This means that the time horizon for fisheries scientists and managers must be much longer than the engineering horizon for dams on our rivers. Once the dams have rotted away or been taken down, we must be sure we will still have fish to use the rivers. While this may seem far-fetched, removal of the Elwah dam on the Olympic Peninsula, and the Hetch Hetchy dam in California are now being considered.

If hatcheries are to be used as mitigative measures, we must ask not only do they work now, but will they continue to work, and will they permit the maintenance of natural runs? Unfortunately, most evidence suggests that while hatcheries may work initially, their success decreases after a few years. The figure below shows the trends in survival for two major hatchery programs, coho in Oregon, and chinook in British Columbia. In each case, as the hatcheries programs have developed, the success of the hatcheries has decreased. The B.C. chinook example is an extreme point. Although more hatcheries were built throughout the 1980's so that by the mid 1980s there were ten times more chinook smolts released than in the mid 1970's, there were no more hatchery chinook being caught or escaping. This pattern of declining survival of hatchery reared fish is found in nearly every hatchery program in North America.

There is no well accepted explanation for the declining survivals from hatcheries, it may be genetic changes, predator build up, disease accumulation, or a host of other potential problems. The cause doesn't matter as much as the conclusion -- hatchery production is probably not sustainable over decades. To assume it will work for a century is a bold assumption indeed and one that puts our the salmon resources of our children at great risk.

Impacts of hatchery fish on wild stocks

I believe we must rely on wild fish for the long term maintenance of our salmon populations. Wild fish are our heritage, and we must, in turn, pass it on to our descendants. Artificial production poses a great threat to the maintenance of wild fish. This threat comes in at least four forms, direct competition for food and other resources between wild and artificial fish, predation of artificial fish on wild fish, genetic dilution of wild fish by artificial fish allowed to spawn in rivers and streams, and increased fishing pressure on wild stocks due to artificial production.

There is ample evidence that salmonids compete for resources at most stages of their life history. The figure below shows the survival rate of sockeye salmon from Babine Lake, a tributary of the Skeena River in British Columbia. The number of juvenile sockeye leaving Babine Lake was increased by artificial spawning channels. The more fish that left Babine Lake and swam down the Skeena River, the smaller proportion of them survived their ocean life. A major impact of this change, is that the wild runs from the Skeena River have declined approximately 50%. Presumably the other sockeye on the Skeena were affected by the competition that is so obvious in the Babine Lake data. Salmon compete for food and space in freshwater and in the ocean. We should expect that as we increase artificial production they will compete with wild fish, and the survival of wild fish will decrease -- it is folly to assume this will not happen.

Proponents of artificial propagation like to think of their hatcheries "giving a boost" to the wild stocks, particularly by allowing surplus hatchery fish to spawn in the wild. These extra spawners, turned away from the hatchery are hoped to add to the natural spawning population. Accumulating evidence suggests that the hatchery fish often do poorly in the wild, and that by reproducing with wild fish, the hatchery fish cause poorer survival of offspring of wild parents. Two mechanisms explain this, first hatchery mangers select for fish that do well in hatcheries; that is fish that can hatch in plastic trays and learn to feed on a man-made diet. In the wild, fish must find mates, lay eggs in gravel, avoid predators, and find natural food. The requirements of a successful hatchery fish are very different from a successful wild fish and it should be no surprise that fish selected for a hatchery may do poorly when facing the rigors of a real river. Secondly, hatchery practice in the past often involved taking fish from one watershed and using them in a hatchery elsewhere. The thousands of years of natural selection for particular rivers have been swamped.

When hatcheries allow surplus fish to spawn in the wild, they are allowing all of these genes that have been brought in from elsewhere and have been selected for hatchery life, to dilute the naturally adapted genes of the wild fish. The net result may be that after a few generations there are no more wild fish -- we will, and indeed in many places now do have, mongrel fish not well adapted to any particular river. The great genetic diversity of the Northwest of 100 years ago is being lost at an horrifying rate, and hatcheries are accelerating this loss.

When hatcheries have a poor return of adults, they often capture wild fish to use as brood stock. This "creek robbing" would be a criminal offense if conducted by ordinary citizens and they would be called poachers. However, when conducted by hatchery staff it is somehow considered beneficial for the resource. I know of one case where a hatchery had an unusually poor return, and the hatchery staff diverted half of the wild spawning stock into the hatchery for an egg take. It then turned out they had a surplus of eggs, and they sold the surplus to private salmon farms.

When hatcheries are successful at producing adult fish, the potential harvest rate is very high, often 95% of the returning fish can be harvested because so few adults are needed for eggs. There is wide concern throughout the Northwest that we have allowed our fisheries harvest rates to match the potential productivity of hatchery stocks, causing wild stocks to be overfished. In some places this is obvious, parts of Puget Sound such as the Nooksack River, have been declared off limits for wild fish, and the harvest rates are so high that no wild fish make it back to spawn. Just north of Puget Sound, in Canadian waters between Vancouver Island and the mainland, harvest rates on coho salmon are as high as 95%, sustainable only by the most successful hatchery stocks. The net result of these high harvest rates is that as hatchery production has increased, wild stocks have declined, and the Canadians have no more coho now than they did 15 years ago, but now many of their coho come from hatcheries instead of natural streams.

The Real threat: the technological fix syndrome

The real danger of hatcheries and other forms of artificial production is that they provide an excuse for habitat loss and poor fisheries management. If we believe in hatcheries, then we can allow the rivers to be dammed, silted and destroyed. Just mitigate with a hatchery. While it seems we should know better by now, the lessons haven't really sunk in. New hatcheries are still being built in Washington and Oregon. B.C. and Alaska have both embarked on large scale hatchery programs despite the fact that their catches from wild fish are now at or above historic highs.

Even more dangerous, is the spread of the technological fix syndrome. If hatcheries don't work now, we will try some other form of hatchery technology. The current new idea is "supplementation" where eggs are incubated in a hatchery and then spread throughout a watershed to rear naturally. The technological fix has spread beyond salmon hatcheries -- now developers throughout the west coast want to build "artificial" habitat for lost wetlands. This is where the fisheries community must accept its responsibility, we have been extremely eager to help in the design and testing of new technology. Indeed fisheries schools have been, in effect, salesmen of the technology.

Great Hatchery Successes

Whenever I speak out against the hatchery fetish, people ask about the great successes -- trout in freshwater lakes, salmon in the Great Lakes, and the Japanese chum salmon hatcheries. These programs are undoubtedly successful. Introduction of exotic species or monoculture often works reasonably well. Rabbits did very well in Australia, starlings do well in North America. The widespread introduction of trout around the world has produced some valuable recreational fisheries. However, in most cases this has amounted to the replacement of indigenous species by new species, not boosting the production of an existing wild population. Indeed my first response to each of these examples is that in every case the wild species that were there before have been almost totally replaced by the introduced or artificially produced fish.

Even with these great successes, we see echoes of our own concern here. Trout management is going away from hatcheries to nurturing of habitat for wild fish. This is documented in Ray Whites recent article in Trout, "We're going wild: a 30-year transition from hatcheries to habitat." In the Great Lakes, where introduced Pacific salmon generated a major ecreational fishery, concern is mounting about declining hatchery survivals -- they just don't know if their salmon fishery is sustainable. The highly successful chum fishery in northern Japan has produced large catches of chum salmon for Japanese fishermen, but the total yield of salmon from northwest Pacific waters has not increased, it is quite possible that Japanese chum have simply replaced the naturally occurring mix of 6 species of salmon with a single species.

What should be done.

Is there a place for hatcheries? I really don't know. Certainly if all hatcheries were now closed, the catch of chinook and coho salmon in the Northwest would drop greatly. We could certainly expect some wild stock production to rebound, particularly if we devoted some of the resources that have gone for hatcheries to habitat protection and improvement. Closing all hatcheries now would certainly cause a lot of pain to recreational, Indian and commercial fishermen -- but it might ensure the long-term survival of the fish and the fishermen who depend upon them.

On the Columbia River, where much of the habitat has been lost, and the series of dams poses a severe barrier to downstream migration of juvenile salmon, most people believe that we must have hatcheries. I am not convinced. The most successful salmon stock on the Columbia is the wild spawning chinook of the Hanford Reach, the one free flowing section of the main river. If we devoted all of the resources that now go into hatcheries on the Columbia to improving the downstream passage of fish, and to habitat protection, we might be quite surprised what the natural spawning fish would do if given a chance.

I do believe we should declare a moratorium on building of new hatcheries. We have taken an enormous gamble with our children's heritage. Now we must find out what we are doing to the wild fish, how to preserve them, and rebuild them. Michael Goodman has proposed that hatcheries must have a federal license that is reviewed periodically. Hatcheries that don't produce adult fish, and those that cause serious adverse impacts on wild fish would be shut down. I believe this is an excellent proposal.

As I look out my window at another group of school children touring our hatchery I wonder what kind of salmon their children will see. Will their world be one of high technology, with genetically engineered fish returning to computer controlled hatcheries, or will we maintain and improve our wild streams? Will their classes visit streams instead of hatcheries? Instead of imitating hatcheries by rearing fish in classrooms will the school children of the future adopt sections of streams for protection, know what wild spawning salmon need and make sure they have it?

Further Readings

Those interested in knowing more about wild and hatchery fish should read "Mountains in the Clouds" by Bruce Brown, "We're going wild" a 30-year transition from hatcheries to habitat" by Ray J. White Trout Magazine, Summer 1989, and "Preserving the genetic diversity of salmonid stocks: a call for federal regulation of hatchery programs" by Michael L. Goodman, in Environmental Law Vol 20.

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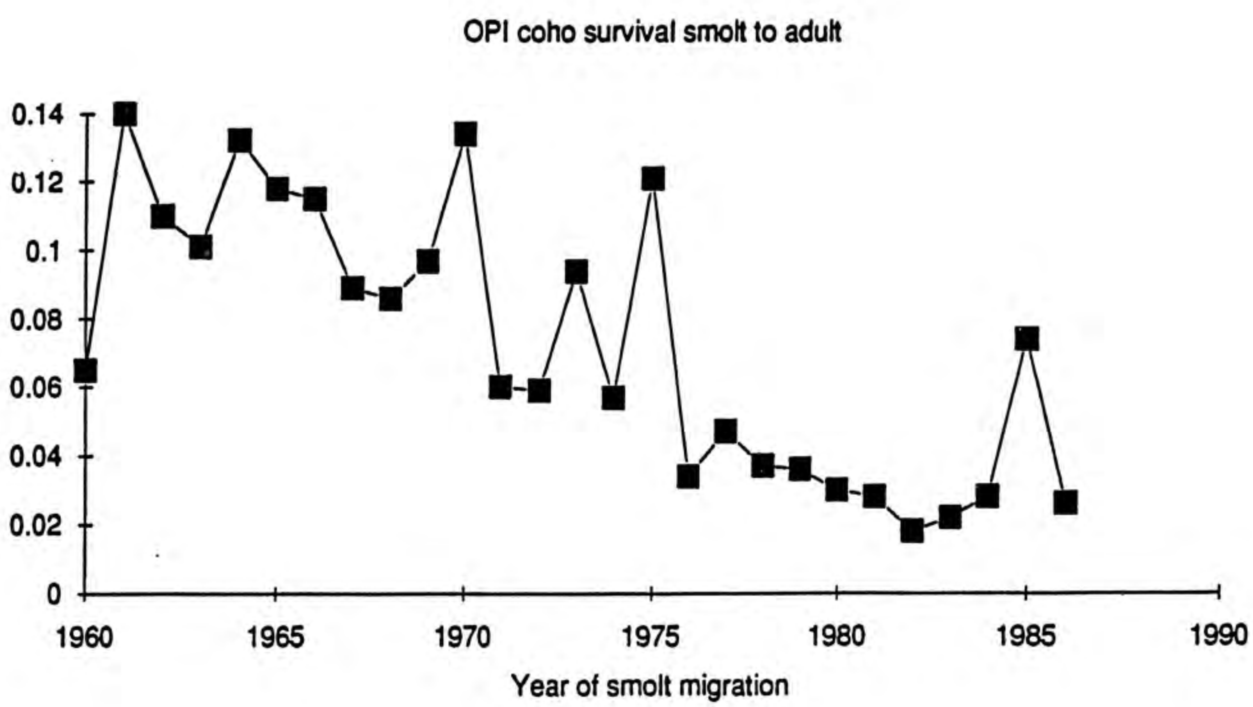
OPI coho survival smolt to adult
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0.12
0.1
0.08
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0.04
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1960
1965
1970
1975
1980
1985
1990
Year of smolt migration

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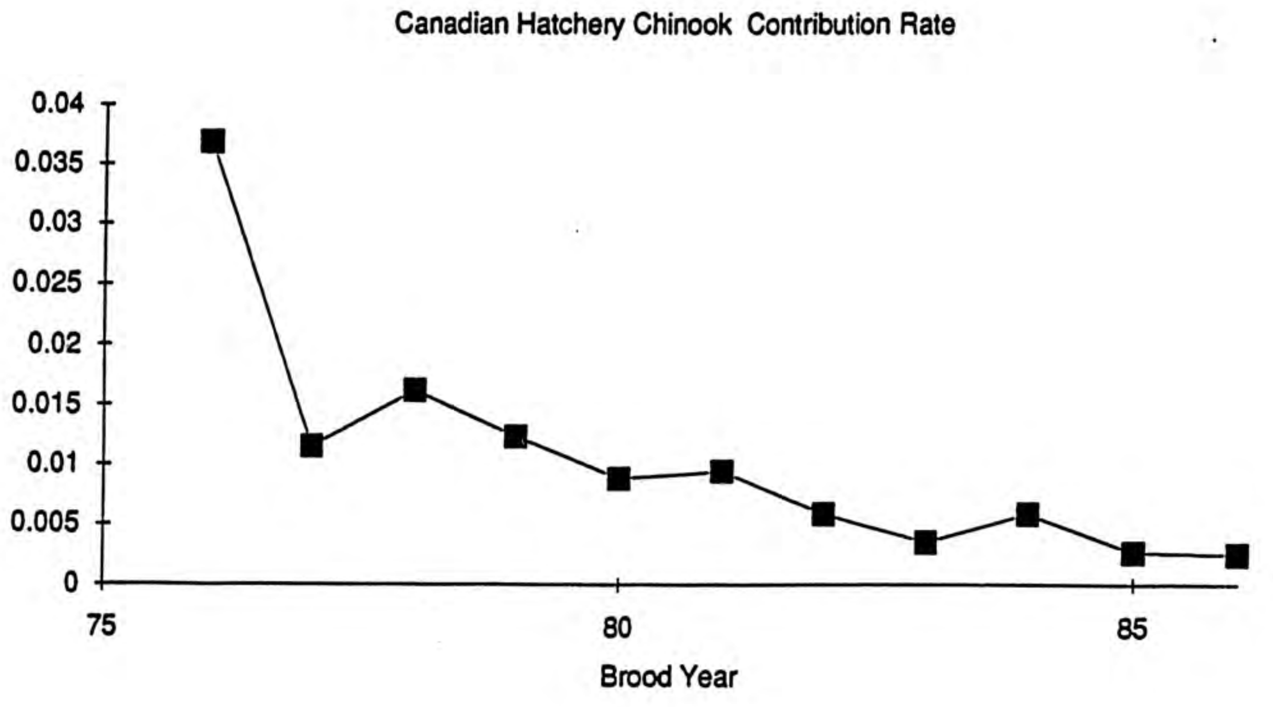

Canadian Hatchery Chinook Contribution Rate
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0.025
0.02
0.015
0.01
0.005
0
75
80
85
Brood Year

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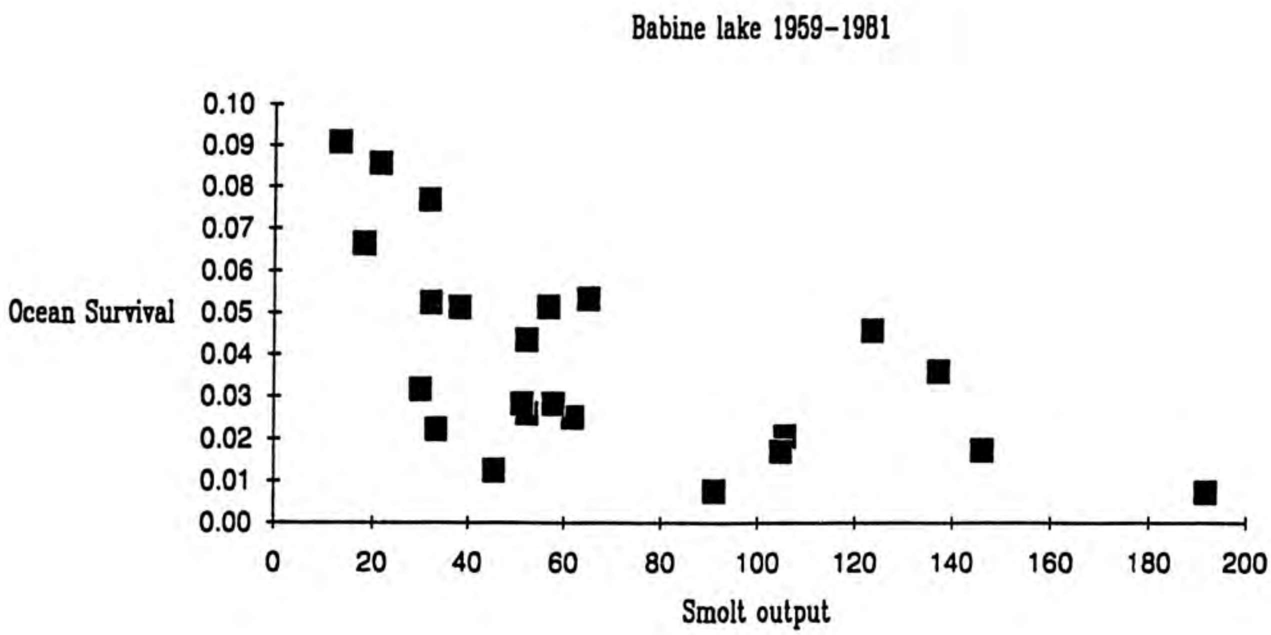

Babine lake 1959-1981
Ocean Survival
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0.09
0.08
0.07
0.06
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120
140
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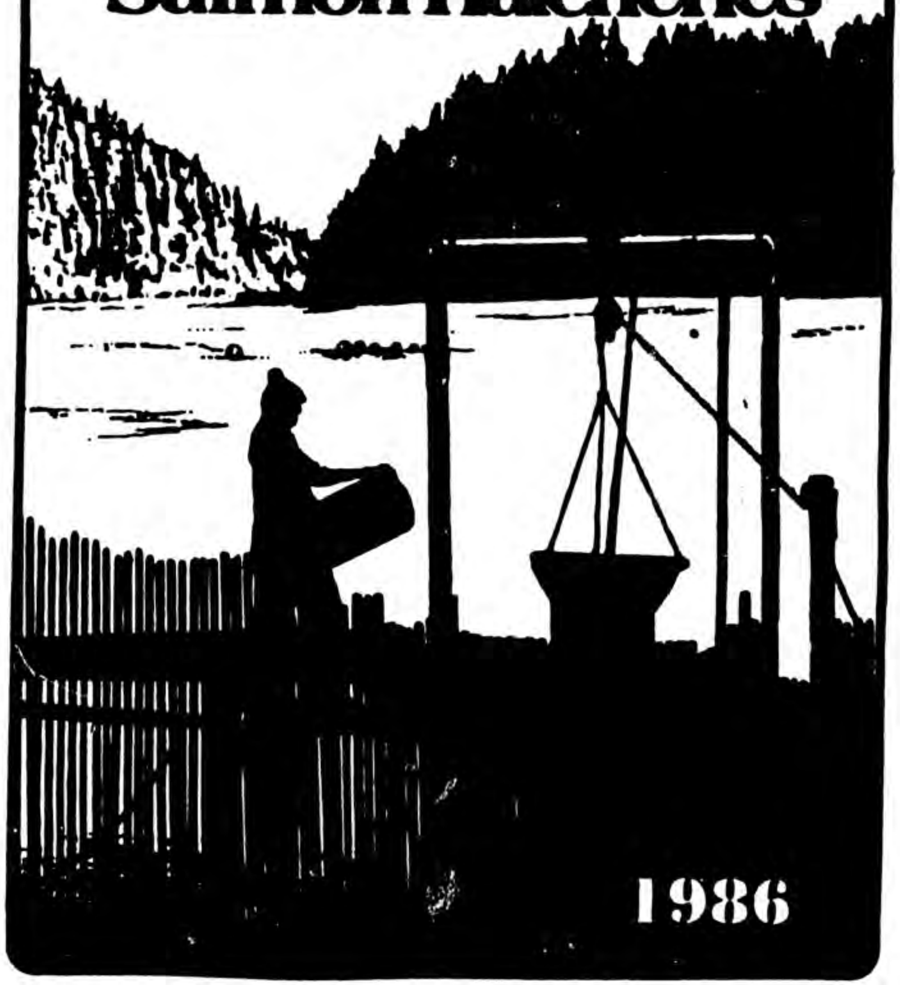
Smolt output

PNP LAWS & REGULATIONS

Alaska Statutes and Regulations for Private Nonprofit Salmon Hatcheries



ALASKA DEPARTMENT OF FISH AND GAME

Sec. 43.76.028. LIABILITY FOR TAX ON SALMON SHIPPED FROM STATE. (a) The owner of salmon removed from the state is liable for payment of the salmon enhancement tax imposed by AS 43.76.010 or AS 43.76.011 if, at the time the salmon are removed from the state, the tax payable on the salmon has not been collected by a buyer.

(b) If the owner of the salmon is liable for payment of the salmon enhancement tax under (a) of this section, the owner shall comply with the requirement of AS 43.76.025(b) to report the owner's liability for payment of the tax. (§ 18 ch 117 SLA 1981)

Sec. 43.76.030. ACCOUNTING OF FINANCING RECEIVED AS A RESULT OF THE SALMON ENHANCEMENT TAX. A qualified regional association requesting state financial assistance in accordance with AS 43.76.025(c) shall submit an annual financial report to the Department of Commerce and Economic Development on a form provided by the Department of Commerce and Economic Development. The Department of Commerce and Economic Development may, by regulation, require that a qualified regional association use a uniform system of accounting. A qualified regional association requesting state assistance shall submit an annual budget to the Department of Commerce and Economic Development on or before a date specified by the Department of Commerce and Economic Development. (§ 3 ch 154 SLA 1980)

Sec. 43.76.040. DEFINITION. In this chapter, unless the context otherwise requires, "buyer" means a person who acquires possession of salmon from the person who caught the salmon regardless of whether there is an actual sale of the salmon but excluding a transfer to a person engaged solely in interstate transportation of goods for hire. (§ 19 ch 117 SLA 1981)

ALASKA DEPARTMENT OF FISH AND GAME

SELECTED ALASKA STATUTES
and REGULATIONS
for
PRIVATE NONPROFIT SALMON HATCHERIES

BILL SHEFFIELD, Governor

DON W. COLLINSWORTH, Commissioner

1986 Edition

ALASKA DEPARTMENT OF FISH AND GAME
FRED Division
Private Nonprofit Hatchery Program
P.O. Box 3-2000
Juneau, Alaska 99802

This publication is for informational use. The regulations herein are selected from official regulations contained in the Alaska Administrative Code, on file with the Office of the Lieutenant Governor. Some of the regulations in this booklet may be changed by emergency regulation or order at any time. Supplementary changes to these regulations will be available at the offices of the Alaska Department of Fish and Game and the Alaska Department of Commerce and Economic Development.

(3) a majority of the eligible interim-use permit and entry permit holders who vote in the election cast a ballot for the termination of the salmon enhancement tax;

(4) the qualified regional association provides notice of the election in accordance with AS 43.76.015 within two months after receiving notice from the commissioner of commerce and economic development that a valid petition under (1) of this subsection has been received. (§ 2 ch 154 SLA 1980; am § 15 ch 117 SLA 1981)

Effect of Amendments. The 1981 amendment added "or 43.76.011" following "AS 43.76.010" in subsection (a).

Sec. 43.76.025. COLLECTION OF TAX AND DISPOSITION OF PROCEEDS. (a) A buyer who acquires fisheries resources which are subject to the salmon enhancement tax imposed by AS 43.76.010 or AS 43.76.011 shall collect the salmon enhancement tax at the time of purchase, and shall remit the total salmon enhancement tax collected during each month to the Department of Revenue by the last day of the next month.

(b) A buyer who collects the salmon enhancement tax shall

(1) maintain records reflecting the region designated under AS 16.10.375 in which the fishery resource was caught; and

(2) report to the Department of Revenue by March 1 of each year the total value, as defined in AS 43.75.140(8), of the salmon caught in each region designated under AS 16.10.375 which the buyer has acquired during the preceding year.

(c) The salmon enhancement tax collected under AS 43.76.010—43.76.030 shall be deposited in the general fund. The legislature may make appropriations based on this revenue to the Department of Commerce and Economic Development for the purpose of providing financing for qualified regional associations. The legislature may base an appropriation for a qualified regional association operating within a region designated under AS 16.10.375 on the value of the fisheries resources caught in that region rather than the value of the fisheries resources sold in that region if those values differ. (§ 2 ch 154 SLA 1980; am §§ 16, 17 ch 117 SLA 1981)

Effect of Amendments. The 1981 amendment substituted "buyer" for "processor" and substituted "acquires" for "buys" in subsection (a). In subsection (b), the amendment substituted "buyer" for "processor" in the introductory language and paragraph (2) and substituted "acquired" for "purchased" preceding "during the preceding year" in paragraph (2).

(D) provide an effective date for the levy of the salmon enhancement tax; and

(E) indicate the date on which returned ballots must be postmarked in order to be counted.

(4) The ballots shall be returned by mail and shall be counted by the commissioner of commerce and economic development or by a person approved by the commissioner of commerce and economic development.

(d) The commissioner of commerce and economic development shall certify the results of an election under this section if the commissioner determines that the requirements of (a) and (c) of this section have been satisfied.

(e) Except as provided in AS 43.76.020(b)(2), an election to terminate a salmon enhancement tax shall be conducted under the same procedures established under (a), (c) and (d) of this section for an election to approve a salmon enhancement tax.

(f) In this section, "eligible interim-use permit and entry permit holder" means an individual who, 90 days before the date ballots must be postmarked to be counted in an election under this section, is listed in the records of the Alaska Commercial Fisheries Entry Commission as the legal owner of an interim-use permit or an entry permit which authorizes him to fish commercially in an administrative area established by the Alaska Commercial Fisheries Entry Commission under AS 16.43.200, which is included, in whole or in part, in the region in which the election is held. (§ 2 ch 154 SLA 1980)

Sec. 43.76.020. TERMINATION OF SALMON ENHANCEMENT TAX. (a) The salmon enhancement tax levied under AS 43.76.010 or AS 43.76.011 may be terminated by the commissioner of revenue upon majority vote at an election held under AS 43.76.015 in the region in which the salmon enhancement tax is levied.

(b) A salmon enhancement tax shall be terminated by the commissioner of revenue under (a) of this section following an election in a region if

(1) a petition is presented to the commissioner of commerce and economic development requesting termination of the salmon enhancement tax which is signed by at least 25 percent of the number of persons who voted under AS 43.76.015 in the election approving the salmon enhancement tax in the region;

(2) an election is held in accordance with AS 43.76.015. The ballot shall ask the question whether the salmon enhancement tax for the region shall be terminated; the ballot shall be worded so that a "yes" vote is for continuation of the salmon enhancement tax and a "no" vote is for termination of the salmon enhancement tax;

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(b) The salmon enhancement tax is levied under AS 43.76.010 or 43.76.011 in a region on the effective date stated on the ballot if:

(1) it is approved by a majority vote of the eligible interim-use permit and entry permit holders voting in an election held under this section in the region; and

(2) the election results are certified by the commissioner of commerce and economic development.

(c) In conducting an election under this section, a qualified regional association shall adopt the following procedures:

(1) The qualified regional association for the region shall hold at least one public meeting not less than 30 days before the date on which ballots must be postmarked to be counted in the election to explain the reason for the proposed salmon enhancement tax and to explain the registration and voting procedures to be used in the election. The qualified regional association shall provide notice of the meeting by

(A) mailing the notice to each eligible interim-use permit and entry permit holder;

(B) posting the notice in at least three public places in the region; and

(C) publishing the notice in at least one newspaper of general circulation in the region at least once a week for two consecutive weeks before the meeting.

(2) The qualified regional association shall mail two ballots to each eligible interim-use permit and entry permit holder. The first ballot shall be mailed no more than 45 days before the date ballots must be postmarked to be counted in the election. The second ballot shall be mailed no less than 15 days before the date ballots must be postmarked to be counted in the election. The qualified regional association shall adopt procedures to insure that only one ballot from each eligible interim-use permit and entry permit holder is counted in the election.

(3) The ballot shall

(A) indicate whether the election relates to a salmon enhancement tax under AS 43.76.010 or to a salmon enhancement tax under AS 43.76.011;

(B) ask the question whether the salmon enhancement tax shall be levied;

(C) indicate the boundaries of the region in which the salmon enhancement tax will be levied;

Effect of Amendments. The 1981 amendment, in subsection (a), substituted "removes from the state or transfers to a buyer in the state" for "sells to a processor licensed under AS 43.75.011" at the end of the first sentence, and in the second sentence, substituted "the buyer" for "the processor" preceding "shall collect," deleted "of" following "at the time," and substituted "salmon is acquired by the buyer" for "sale."

Sec. 43.76.011. TWO PERCENT SALMON ENHANCEMENT TAX. (a) A person holding a limited entry permit under AS 16.43 shall pay a salmon enhancement tax at the rate of two percent of the value of salmon, as defined in AS 43.75.140(8), that the person removes from the state or transfers to a buyer in the state. The buyer shall collect the salmon enhancement tax at the time the salmon is acquired by the buyer.

(b) A two percent salmon enhancement tax may only be levied or collected under (a) of this section:

(1) in a region designated by the commissioner of fish and game for the purpose of salmon production under AS 16.10.375;

(2) if there exists in that region an association determined by the commissioner of fish and game to be a qualified regional association under AS 16.10.380; and

(3) if the qualified regional association approves the two percent salmon enhancement tax under AS 43.76.015. (§ 2 ch 154 SLA 1980; am § 14 ch 117 SLA 1981)

Effect of Amendments. The 1981 amendment, in subsection (a), substituted "removes from the state or transfers to a buyer in the state" for "sells to a processor licensed under AS 43.75.011" in the first sentence and in the second sentence, substituted "the buyer" for "the processor" preceding "shall collect," deleted "of" following "at the time," and substituted "salmon is acquired by the buyer" for "sale" following "time the."

Sec. 43.76.015. ELECTION TO APPROVE OR TERMINATE SALMON ENHANCEMENT TAX. (a) A qualified regional association may conduct an election under this section after the commissioner of commerce and economic development approves:

(1) the notice to be published by the qualified regional association;

(2) the ballot to be used in the election; and

(3) the registration and voting procedure for the approval or termination of the salmon enhancement tax.

ALASKA STATUTES

TITLE 16. FISH AND GAME

Chapter 10. Fisheries and Fishing Regulations

Article 8. Salmon Hatcheries

Section

Editor's Note. Section 1 ch 111 SLA 1974 provides: "It is the intent of this act to authorize the private ownership of salmon hatcheries by qualified nonprofit corporations for the purpose of contributing, by artificial means, to the rehabilitation of the state's depleted and depressed salmon fishery. The program shall be operated without adversely affecting natural stocks of fish in the state and under a policy of management which allows reasonable segregation of returning hatchery-reared salmon from naturally occurring stocks."

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 §380 of this chapter. (§ 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 10.20.005—10.20.725, 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)

Sec. 16.10.400. PERMITS FOR SALMON HATCHERIES. (a) The commissioner or his 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 by § 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 the 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

TITLE 43. REVENUE AND TAXATION

Chapter 76. Salmon Enhancement Tax

Editor's Notes. For findings and purpose of enacting legislation, see § 1 ch 154 SLA 1980 in the Temporary and Special Acts.

Sec. 43.76.010. THREE PERCENT SALMON ENHANCEMENT TAX. (a) A person holding a limited entry permit under AS 16.43 shall pay a salmon enhancement tax at the rate of three percent of the value of salmon, as defined in AS 43.75.140(8), that the person removes from the state or transfers to a buyer in the state. The buyer shall collect the salmon enhancement tax at the time the salmon is acquired by the buyer.

(b) A three percent salmon enhancement tax may only be levied or collected under (a) of this section:

(1) in a region designated by the commissioner of fish and game for the purpose of salmon production under AS 16.10.375;

(2) if there exists in that region an association determined by the commissioner of fish and game to be a qualified regional association under AS 16.10.380; and

(3) if the qualified regional association approves the three percent salmon enhancement tax under AS 43.76.015. (§ 2 ch 154 SLA 1980; am § 13 ch 117 SLA 1981)

Editor's Notes. Section 4 ch 154 SLA 1980 provides: "The commmissioner of commerce and economic development shall direct that no further royalty assessments be collected under AS 16.10.530 on or after the effective date of an election in the region of a qualified regional association that approves a salmon enhancement tax in accordance with AS 43.76.010—43.76.015."

profit hatchery permits issued by the Department of Fish and Game under AS 16.10.400—16.10.475.

(b) The commission may issue special harvest area entry permits, notwithstanding the establishment of maximum or optimum numbers under AS 16.43.240 and 16.43.290. (§ 1 ch 64 SLA 1979)

Editor's Notes. Formerly AS 16.43.335. Renumbered in 1983.

Sec. 16.43.410. TERMS AND CONDITIONS OF SPECIAL HARVEST AREA ENTRY PERMITS. (a) Special harvest area entry permits may be applied for on an annual basis and shall be issued for a term of one year. A permit is nontransferable.

(b) A special harvest area entry permit may only be issued for the applicable area designated by the Department of Fish and Game as a special harvest area.

(c) The annual fee for a special harvest area entry permit shall be specified by commission regulation under the authority of AS 16.43.160. (§ 2 ch 64 SLA 1979)

Editor's Notes. Formerly AS 16.43.337. Renumbered in 1983.

Sec. 16.43.420. DISPOSITION OF FISH. Fish caught under the authority of a special harvest area entry permit are the property of the permit holder. The permit holder may sell the fish if the proceeds are used in the manner described in AS 16.10.450. (§ 2 ch 64 SLA 1979)

Editor's Notes. Formerly AS 16.43.339. Renumbered in 1983.

Sec. 16.43.430. AUTHORIZED GEAR. For the purpose of harvesting salmon, a special harvest area entry permit holder may employ any fishing gear designated as legal gear in the applicable special harvest area by the Board of Fisheries. (§ 2 ch 64 SLA 1979)

Editor's Notes. Formerly AS 16.43.341. Renumbered in 1983.

Sec. 16.43.440. ADOPTION OF REGULATIONS. (a) Use privileges granted under AS 16.43.400—16.43.440 are subject to the regulations of the Board of Fisheries.

(b) The commission, after consultation with the Department of Fish and Game, shall adopt regulations which are reasonably necessary to implement AS 16.43.400—16.43.440. (§2 ch 64 SLA 1979)

Editor's Notes. Formerly AS 16.43.343. Renumbered in 1983.

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)

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 by § 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

ALASKA STATUTES

TITLE 16. FISH AND GAME

Chapter 43. Regulation of Entry into Alaska Commercial Fisheries

Article 3. Initial Issuance of Entry Permits

Section
250. Standards for initial issue of entry permits.

Editor's Notes. The following statutes were selected because of their direct effect upon special harvest areas set up by the Board of Fisheries for private nonprofit hatchery operations.

Sec. 16.43.250. STANDARDS FOR INITIAL ISSUE OF ENTRY PERMITS. (d) If an individual has applied for two or more entry permits under AS 16.43.260(d) for the same specific fishery resource and the same specific type of gear, but has failed to qualify for an entry permit for that type of fishery resource and gear, the individual may credit his cumulative qualifications to the fishery for which he is most qualified. The commission shall issue an entry permit to the individual for the fishery if the individual's cumulative qualifications result in placing the individual in a category designated in (b) of this section. The qualifications credited to a fishery under this subsection may not be considered for the purpose of ranking the applicant under (a)-(c) of this section for any other fishery. The commissioner may not revoke any permit previously issued notwithstanding the issuance of permits in excess of the maximum number established under AS 16.43.230—16.43.240 as a result of this subsection.

Article 6. Special Harvest Area Entry Permits

Section
400. Special harvest area entry permits
410. Terms and conditions of special harvest area entry permits
420. Disposition of fish
430. Authorized gear
440. Adoption of regulations

Sec. 16.43.400. SPECIAL HARVEST AREA ENTRY PERMITS. (a) In addition to entry permits, interim-use permits, and educational permits, the commission may issue special harvest area entry permits to holders of private non-

(3) insurance ma[illegible], including title insurance policies and correspondence with insurance com[illegible]es or borrowers regarding losses, accident reports, and nonpayment of premiums; and

(4) foreclosure and default proceedings.

(b) The following information is confidential and is not subject to public disclosure:

(1) personal and financial information, including income tax returns, financial statements, business income statements, pro forma profit and loss statements, credit information obtained directly from banks and other creditors, and reports obtained from consumer reporting agencies;

(2) loan committee memoranda and minutes containing information relating to credit-worthiness of the applicant; and

(3) the payment history on a loan unless the loan is in default.

(c) Information not described in (a) or (b) of this section may be subject to public disclosure. Requests for disclosure must be made, and will be determined, in accordance with 6 AAC 95. Upon receipt of a request for disclosure, the department will notify the loan applicant and other persons with a privacy interest in the request, to permit them to present reasons why the requested information should not be disclosed. (Eff. 9/11/85, Reg. 95)

Authority: AS 09.25.110
AS 09.25.120
AS 16.10.510
Art. 1, Sec. 22 Alaska Const.

3 AAC 81.900. DEFINITIONS. Unless the context requires otherwise, in this chapter

(1) "commissioner" means the commissioner of the Department of Commerce and Economic Development;

(2) "default" includes a violation of any provision of AS 16.10.500—16.10.620 and this chapter, or the loan documents, failure to make the necessary payment within 15 days after it is due, or failure to maintain the insurance required by the department;

(3) "department" means the Department of Commerce and Economic Development; and

(4) "wraparound financing" means a contract that includes the balance due on an existing debt and an additional amount to cover the difference between the selling price and the existing debt. (Eff. 9/11/85, Reg. 95)

Authority: AS 16.10.510

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 IN COOPERATION. (a) Before and after permit issuance under AS 16.10.400—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 fisheries activities of the qualified regional association. Fish returning to hatcheries and sold for human consumption shall be of a 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 to be limited to information pertaining to species; brood stock source; number, age, weight, and length of spawners; number of eggs taken and fry or fingerlings produced; and the number, age, weight, and length of adult returns attributable to hatchery releases, on a form to be provided by the Department of Fish and Game.

(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 royalty assessment under AS 43.70.010 or AS 43.70.011 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 49 SLA 1979)

Sec. 16.10.475. DEFINITIONS. In AS 16.10.375—16.10.470

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

(2) "department" means the Department of Fish and Game. (§ 2 ch 161 SLA 1976)

(b) The department will, in its discretion, exchange information with the Department of Fish and Game, including copies of reports filed under AS 16.10.470, to assure compliance with loan terms. (Eff. 9/11/85, Reg. 95)

Authority: AS 16.10.510

3 AAC 81.075. COSTS. (a) All expenses incurred by the department in closing a loan, including processing the application, must be paid by the applicant. These expenses include the cost of credit reports, title reports and insurance, recording fees, appraisals, surveys, travel, and other direct costs.

(b) An origination fee of one-half percent of the total loan amount is due from the borrower when all provisions of 3 AAC 81.065 have been met. (Eff. 9/11/85, Reg. 95)

Authority: AS 16.10.510

3 AAC 81.080. ASSUMPTIONS. (a) Assumption of a loan made under AS 16.10.500—16.10.620 and this chapter is not permitted.

(b) Wraparound financing that includes a loan made under AS 16.10.500—16.10.620 and this chapter is prohibited, and constitutes a default on the loan. (Eff. 9/11/85, Reg. 95)

Authority: AS 16.10.510

3 AAC 78.085. RECONSIDERATION OF LOAN OR GRANT REQUEST.
(a) If a loan or grant request is denied, inactivated, or significantly modified by the department, an applicant may file a written request for reconsideration within 30 days after receipt of notice of the department's decision.

(b) The department will, in its discretion, reconsider a request upon a showing by the applicant that

(1) there has been a substantial change in the circumstances leading to the department's decision;

(2) additional relevant information can be provided to the department that was not initially available; or

(3) administrative errors were made by the department. (Eff. 9/11/85, Reg. 95)

Authority: AS 16.10.510

3 AAC 81.090. CONFIDENTIALITY OF LOAN INFORMATION. (a) The following information is not confidential and is available for public inspection upon request:

(1) a document that is already a public record, including deeds of trust, financing statements, warranty deeds, bills of sale, mortgages, liens, and vehicle titles;

(2) general information regarding loans, including the original loan amount, loan terms, personal guarantees, and disbursement and repayment schedules;

3 AAC 81.050. COLLATERAL. (a) A loan must be secured by collateral acceptable to the department, such as an assignment of future revenue and the proceeds of sale of surplus fish and eggs, and may include a mortgage or other security instrument in real property, buildings, machinery and equipment, and fixtures. (Eff. 9/11/85, Reg. 95)

Authority: AS 16.10.510
AS 16.10.520

3 AAC 81.055. LENDING PRACTICES. (a) Loans may be made for planning and construction of fish hatchery facilities, including preconstruction activities necessary to obtain a permit.

(b) The costs to operate a facility may be loaned annually for not more than the first ten years.

(c) Loan money may not be used to reimburse an applicant for expenses paid more than six months before receipt of the application by the department.

(d) A loan will not be approved for refinancing long-term debt. Interim or construction financing is not considered long-term debt if the term is 12 months or less and the promissory note or the original agreement was executed less than six months before receipt of the application by the department. (Eff. 9/11/85, Reg. 95)

Authority: AS 16.10.510

3 AAC 81.065. DISBURSEMENT OF LOAN MONEY. Loan money will be disbursed when

(1) a security interest in the collateral on behalf of the state has been perfected;

(2) the borrower has complied with the insurance requirements contained in an instrument signed by the borrower;

(3) requirements of the loan committee have been met; and

(4) the borrower is in compliance with all other provisions of the loan documents and this chapter. (Eff. 9/11/85, Reg. 95)

Authority: AS 16.10.510
AS 16.10.520

3 AAC 81.070. SUPERVISION OF LOANS AND GRANTS. (a) As a condition of a loan and while there is an outstanding loan balance, or if the loan is in default, the department will, in its discretion, require the borrower to furnish annual financial statements consisting of a balance sheet, profit and loss statement, sources and application of all money received and a schedule of change of owner's equity. The department will, in its discretion, also require an audit or audits to determine whether the borrower has complied with the provisions of the loan, and conduct periodic inspection of collateral securing repayment of the loan.

REGULATIONS OF THE ALASKA BOARD OF FISHERIES

Chapter 24. Prince William Sound Area

Article 3. Salmon Fishery

Section

5 AAC 24.365. PORT SAN JUAN SALMON HATCHERY MANAGEMENT PLAN. The department, in consultation with the hatchery operator, shall manage the Point Elrington and Port San Juan Subdistricts to achieve the corporation escapement goal for the Port San Juan salmon hatchery. (Eff. 5/31/85, Reg. 94)

Authority: AS 16.05.060
AS 16.05.251

Chapter 33. Southeast Alaska Area

Article 3. Salmon Fishery

Section

5 AAC 33.370. NEETS BAY FALL CHUM AND COHO SALMON MANAGEMENT PLAN. (a) The intent of the Board of Fisheries in adopting this management plan is to distribute the harvest of hatchery-produced fall chum and coho salmon in Neets Bay between the purse seine, troll, and drift gill net fleets. In addtion to that goal, the board and public would like to have a fishery in Neets Bay that produces a quality product that will allow the Southern Southeast Regional Aquaculture Association (SSRAA) to meet its corporation escapement goal with the least number of fish and provide the highest possible price to the fishermen.

(b) The department, in consultation with SSRAA, shall manage Neets Bay east of the longitude of the easternmost tip of Bug Island to the closed waters area at the head of the bay to distribute the harvest of Neets Bay hatchery produced salmon between the purse seine, troll, and drift gill net fleets by setting the fishing times for those fleets as

(1) June [illegible] through June 30, troll gear only;

(2) July 1 through July 31, seine, drift gill net, and troll gear to fish in a ratio of one to two to four, with the drift gill net fleet to fish first, followed by the troll fleet, and then the purse seine fleet;

(3) August 1 through September 20, seine and drift gill net gear only will be allowed with a ratio of one to two with breaks in fishing time to occur between openings to allow for an accumulation of fish to harvest;

(4) September 21 through October 20, all gear types in accordance with (2) of this subsection.

The board realizes that the above allocative fishing pattern may not be achievable because of conflicts with the goals stated in (a) of this section that could be caused by effort levels, and run timing and strength. Therefore, the priority goal is to achieve a quality harvest, followed by the harvest distribution goal.

(c) The department may, by emergency order, allow the use of drift gill nets in the harvest areas and set the fishing periods for that gear consistent with (a) and (b) of this section. Drift gill nets in the area may not exceed 200 fathoms in length.

(d) Personal use and sport fishing will be allowed in the harvest area whenever SSRAA is not harvesting salmon for its corporation escapement goal and so long as the personal use and sport fishery do not jeopardize the attainment of that goal.

(e) Gear for the personal use fishery is drift gill nets with a maximum length of 10 fathoms. The annual bag and possession limit is 25 salmon.

(f) Waters of Neets Bay east of a line between ADF&G regulatory markers located approximately one mile from the head of the bay are closed to commercial, sport, and personal use salmon fishing from June 15 through November 15.

Authority: AS 16.05.060
AS 16.05.251

5 AAC 33.375. SILVER BAY SALMON MANAGEMENT PLAN. The department shall manage all waters of Silver Bay between 57° and 57°01'20" N. lat. to ensure chum salmon broodstock escapement to the Medvejie salmon hatchery. The department may not close the troll fishery in this location for protection of hatchery chum salmon stocks.

Authority: AS 16.05.060
AS 16.05.251

3 AAC 81.040. FINANCIAL AND CREDIT RECORD. (a) The department will, in its discretion, consider the following factors in evaluating an applicant's financial and credit record:

(1) existing and prior debts;

(2) credit reports obtained from creditors and private credit reporting services;

(3) prior loan history with the department;

(4) timeliness in making payments on loans and other debts;

(5) prior bankruptcies;

(6) existence of tax liens;

(7) unpaid judgments and prior foreclosures; and

(8) financial and credit reputation.

(b) Information establishing unacceptable credit will be more heavily weighed by the department if it has occurred in recent years. (Eff. 9/11/85, Reg. 95)

Authority: AS 16.10.510
AS 16.10.520

3 AAC 81.045. ABILITY TO REPAY. (a) The department will, in its discretion, consider the following factors in evaluating an applicant's ability to repay a proposed loan

(1) income history, including present income;

(2) prospects for future income;

(3) assets and their liquidity;

(4) liabilities;

(5) reasonableness of projected profit and loss statement; and

(6) other relevant experience.

(b) The department will, in its discretion, compare revenue projections contained in an applicant's profit and loss statement with information it acquires through its own efforts or from the Department of Fish and Game. (Eff. 9/11/85, Reg. 95)

Authority: AS 16.10.510

(1) additional collateral to secure the loan;

(2) additional guarantors; and

(3) subordination of prior lienholders' rights to the interests of the state.

(d) A loan committee shall consider an applicant's eligibility for a loan, corporate management, financial and credit record, ability to repay, operating plan, and the adequacy of collateral offered to secure the loan. A loan committee may also consider the recommendations of the loan examiner assigned to process the loan application and any other relevant information.

(e) A loan committee may fix, within the requirements set by AS 16.10.510 and AS 16.10.520, the term of a loan and repayment schedule.

(f) If a loan or grant request is denied or significantly modified by a loan committee, the loan committee will provide the applicant with a statement of the reasons for the action and the information relied on.

(g) A material misstatement or omission of fact made by an applicant constitutes grounds for denial of a loan or grant request. (Eff. 9/11/85, Reg. 95)

Authority: AS 16.10.510

3 AAC 81.025. CORPORATE MANAGEMENT. The department will, in its discretion, consider the previous fisheries and nonfisheries business experience of the corporate officers and principal employees in evaluating and assessing an applicant's corporate management. (Eff. 9/11/85, Reg. 95)

Authority: AS 16.10.510
AS 16.10.520(d)

3 AAC 81.035. ELIGIBILITY. To be eligible for a loan or grant under AS 16.10.510, an applicant shall provide proof of

(1) issuance of a Department of Fish and Game permit under AS 16.10.400 if applying for a loan for the planning, construction, and operation of hatchery facilities;

(2) certification of the applicant as a regional association under AS 16.10.380 or approval by the qualified regional association, if applying for a loan for fisheries enhancement and rehabilitation activities or preconstruction activities necessary to obtain a hatchery permit from the Department of Fish and Game; or

(3) certification of the applicant as a regional association under AS 16.10.380 if applying for a grant for organizational and planning purposes. (Eff. 9/11/85, Reg. 95).

Authority: AS 16.10.510

Chapter 40. Private Nonprofit Salmon Hatcheries

Article

Article 1. General

Section

5 AAC 40.005. GENERAL. (a) The harvest of salmon inhabiting the water of the state, regardless of whether the salmon are naturally or artificially propagated, may be conducted only pursuant to regulations adopted by the Board of Fisheries.

(b) The harvest of salmon returning to a private nonprofit salmon hatchery will be governed by regulations adopted by the Board of Fisheries. The board will, in its discretion, develop harvesting regulations after review of the harvest plans or other materials, information, and testimony, if any, presented by the regional associations, hatchery operators, the Department of Commerce and Economic Development, the Department of Fish and Game, fishermen, and other interested parties.

(c) Where hatchery returns enter a segregated location near the release site and can be harvested without significantly affecting wild stocks, a special harvest area may be designated by regulation adopted by the board, within the hatchery permit, or by emergency orders issued by the commissioner.

(d) A private nonprofit hatchery permit holder and his agents, contractees, and employees may harvest salmon for the hatchery only in the applicable special harvest area. This does not prevent a special harvest area from being open to commercial, sport, or subsistence fishing or any combination thereof to the extent provided in regulations adopted and orders issued under this chapter. Harvesting of salmon within the special harvest area, whether by the hatchery operator or the common property fisheries, will be opened and closed by regulation or emergency order.

(e) Special harvest area boundaries set out in 5 AAC 40, or in a private nonprofit hatchery permit issued by the commissioner, may be altered by emergency order if necessary for proper management of natural or hatchery stocks.

(f) Hatchery permit holders, their agents, contractees, and employees shall comply with [illegible]ms and conditions of the hatchery permit, applicable regulations and orders, and any additional requirements imposed by the commissioner to implement this chapter.

(g) Agents, contractees, and employees of a hatchery permit holder may harvest salmon for the hatchery in the special harvest area only if they have in their possession a written authorization from the hatchery permit holder and only in accordance with its terms. The activities in the special harvest area of a person who is not a hatchery permit holder or an agent, contractee, or employee of the permit holder acting under the terms of a written authorization, are governed by regulations applicable to commercial, sport, personal use, and subsistence fishing.,

(h) Private nonprofit salmon hatchery operators shall take all reasonable steps necessary to ensure that hatchery produced salmon harvested in their designated special harvest area are surplus fish produced at that facility. (In effect before 1983; am 4/16/83, Reg. 86; am 5/31/85, Reg. 94)

Authority: AS 16.05.060
AS 16.05.251
AS 16.10.440

5 AAC 40.007. GEAR AND FISHING PERIODS. (a) The commissioner may authorize legal gear for cost recovery either through the hatchery permit or by regulation.

(b) Fishing periods for each gear type may be modified by emergency order as needed to protect the public interest or wild stocks.

(c) The hatchery operator shall obtain the appropriate special harvest area entry permits from the Commercial Fisheries Entry Commission. The hatchery operator may also contract with licensed commercial fishermen to conduct the harvest.

(d) The commissioner may define a unit of gear to be used and under a special harvest area entry permit for that gear type. (In effect before 1985; am 5/31/85, Reg. 94)

Authority: AS 16.05.060
AS 16.05.251
AS 16.05.270

5 AAC 40.010. MODIFICATIONS OF APPLICABLE REGULATIONS. (a) Hatchery permit holders shall, with respect to salmon harvested by them (or their agents, contractees, or employees), comply with applicable provisions of 5 AAC 39.130(a) and (b) as though they were a purchaser of fish.

3 AAC 81.012. GRANT APPLICATION PROCESS. (a) To apply for a grant under AS 16.10.510(9) an applicant shall file with the department

(1) a letter stating the proposed use of the grant, including a list of goals and objectives to be accomplished through the use of the grant;

(2) a proposed budget;

(3) a copy of a letter from the Department of Fish and Game certifying the applicant as a regional association under AS 16.10.380;

(4) the names of officers and principal employees of the association and a brief resume of their professional background and experience;

(5) a proposed disbursement schedule for the grant; and

(6) other information that may be relevant to the grant application.

(b) A grant application may be approved by a loan committee if the loan committee determines that the grant would contribute to the future development of the state's fisheries.

(c) A loan committee may rely on technical assistance provided by the Department of Fish and Game in acting on a grant application. (Eff. 9/11/85, Reg. 95).

Authority: AS 16.10.510

3 AAC 81.015. EXAMINATION. (a) The materials described in 3 AAC 81.010 will be processed and evaluated by a loan examiner. The loan examiner will evaluate the applicant's eligibility, financial and credit history, operating plan, ability to repay, and proposed collateral.

(b) On the basis of the evaluation, the loan examiner will either inactivate the application, due to lack of information required under 3 AAC 81.010 or ineligibility of the applicant, or recommend proposed action on the loan request to the appropriate loan committee; however, the recommendations of a loan examiner is not binding on a loan committee. (Eff. 9/11/85, Reg. 95)

Authority: AS 16.10.510

3 AAC 81.020. LOAN COMMITTEE. (a) A loan committee consists of one or more persons appointed by the commissioner to act on loan and grant requests.

(b) A loan committee may approve, deny, or modify and approve a loan or grant request, or may table a loan or grant request subject to obtaining additional information.

(c) A loan committee may impose reasonable conditions on the approval of a loan or grant request, including

(6) a letter from the qualified regional association in that area approving the local nonprofit association, if the loan request is from a local nonprofit corporation and is for preconstruction activities or exceeds $1,000,000;

(7) a financial statement including the most recent annual statement, the current month end statement, and the terms of all outstanding state loans, on a form provided by the department;

(8) a projected statement of profit and loss, including actual figures currently available, and forecasted future state loan requirements, using the sample format provided by the department or a similar format acceptable to the department;

(9) the names of officers and principal employees of the corporation, and a brief resume of their professional background and experience, on a form provided by the department;

(10) a corporate resume, on a form provided by the department or other form acceptable to the department;

(11) credit authorizations for at least three of the applicant's creditors, on forms provided by the department;

(12) a corporate resolution signed by the corporate president and secretary, authorizing the corporation to apply for a loan and authorizing an officer or agent to provide information and documentation necessary for loan approval, on a form provided by the department;

(13) a consent to release information, on a form provided by the department;

(14) a $10 nonrefundable application fee; and

(15) any other information that may be helpful to an applicant in demonstrating eligibility for a loan as requested by the department.

(b) A loan for preconstruction activities may be initiated by filing the materials listed in (a) of this section, except for the materials listed in paragraphs (a)(3), (4) and (8) of this section.

(c) A loan for planning and implementation of nonhatchery fisheries enhancement and rehabilitation activities may be initiated by filing the materials listed in (a) of this section, except for the material listed in (a)(4) of this section. An applicant for a loan under this subsection shall also submit a statement, as detailed as possible, indicating the benefits to the fisheries of the area likely to result from the enhancement and rehabilitation activities. (Eff. 9/11/85, Reg. 95)

Authority: AS 16.10.510

(b) Hatchery permit holders harvesting salmon within a special harvest area, to the extent those salmon are used as egg sources for brood stock, will be exempted by the commissioner from the provisions of AS 16.05.831 if the permit holder so requests. The commissioner may condition the exemption on terms he considers necessary to carry out the intent of AS 16.05.831.

(c) Hatchery permit holders conducting a hatchery harvest of salmon within a special harvest area are exempt from the provisions of 5 AAC 39.290.

(d) Fishermen taking salmon in a special harvest area under authorization from the hatchery permit holder and operating under a special harvest area entry permit are exempt from the provisions of 5 AAC 39.120.

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(a)(2)-(7) and (12)
AS 16.05.831
AS 16.05.920
AS 16.20.420-440

5 AAC 40.015. PROHIBITIONS. It is unlawful for any person to violate the provisions of this chapter.

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(2)-(7) and (12)
AS 16.05.831
AS 16.05.920
AS 16.10.420-440

Article 2. Special Harvest Areas

Section
30. Sheldon Jackson Special Harvest Area
32. Douglas Island Pink and Chum Special Harvest Area—Kowee Creek
33. Douglas Island Pink and Chum Special Harvest Area—Sheep Creek
35. Prince William Sound Aquaculture Corporation Special Harvest Area—San Juan
37. Nerka Corporation Special Harvest Area—Perry Island
38. Solomon Gulch Special Harvest Area—Valdez
39. Alaska Aquaculture Corporation Special Harvest Area—Burnett Inlet
41. Herring Bay Special Harvest Area—Ketchikan
42. Northern Southeast Regional Aquaculture Association Special Harvest Areas
43. Neets Bay Special Harvest Area—Behm Canal
44. Burro Creek Farms Special Harvest Area—Taiya Inlet
45. Nakat Inlet Special Harvest Area

5 AAC 40.0[illegible]. SHELDON JACKSON COLLEGE SPECIAL HARVEST AREAS. (a) There are established under the provisions of 5 AAC 40.005 the following Sheldon Jackson College Special Harvest Areas:

(1) all waters of Crescent Bay and Eastern Anchorage enclosed by a line from the northernmost end of the John O'Connel Bridge to the southernmost end of the bridge to the northeasternmost tips of Aleutski Island, Turning Island, Kutkan Island, Morne Island, and Twin Islands to the westernmost tips of Ring and Dove Islands then west to the southeasternmost tip of Cannon Island; pink and chum salmon only may be harvested in this area;

(2) all waters enclosed by a line from the southeast corner of the Crescent Harbor breakwater (57° 02'58" N. lat., 135°19'16" W. long.) to a point on the beach approximately 150 yards southeast of the hatchery stream outlet (57°02'58" N. lat., 135°19'16" W. long.); coho salmon only may be harvested in this area.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 33.310. Fishing periods for the hatchery permit holder will be opened and closed by emergency order by gear type.

(c) Notwithstanding 5 AAC 33.330, legal gear for hatchery permit holders in the special harvest area are purse seine, beach seine, and hand purse seine. (In effect before 1981; am 6/28/81, Reg. 78)

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(a)(2)-(7) and (12)
AS 16.05.920
AS 16.10.420-440

5 AAC 40.032. DOUGLAS ISLAND PINK AND CHUM SPECIAL HARVEST AREA—KOWEE CREEK. (a) There is established a Kowee Creek Special Harvest Area, consisting of all waters within a 500-yard radius, at low tide, from the mouth of Kowee Creek on Douglas Island.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 33.310, except as may be specifically provided by emergency order. The hatchery permit holder may harvest salmon within the special harvest area by purse seine seven days per week during the period 6:00 a.m. July 15 through 6:00 p.m. October 25 unless closed or modified by emergency order.

(c) Notwithstanding 5 AAC 33.330, legal gear for that hatchery permit holder

REGULATIONS OF THE ALASKA DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

Chapter 81. Fisheries Enhancement Loans and Grants

Section

3 AAC 81.010. LOAN APPLICATION PROCESS. (a) To apply for a loan for planning, construction, or operation of a hatchery, preconstruction activities necessary to obtain a permit, or for planning and implementation of nonhatchery fisheries enhancement activities and rehabilitation, including lake fertilization and habitat improvement, an applicant shall file with the department

(1) a completed application for a fisheries enhancement loan, on a form provided by the department;

(2) a letter of intent stating the amount requested, a schedule of acceptable collateral and the intended use of the proposed loan money, on a form provided by the department;

(3) copies of all permits, including copies of permits necessary to construct the hatchery facility;

(4) a copy of the general contractor's bid or an estimate of construction costs for the hatchery and an estimate of operating costs; costs in excess of $100,000 may be required to be supported by a minimum of two competitive bids;

(5) a copy of the statement of nonprofit status issued by the U.S. Internal Revenue Service or the Alaska Department of Revenue;

(b) All obligations or liabilities of a regional salmon enhancement authority remain its own and are not obligations or liabilities of the state. (§ 17 ch 154 SLA 1977)

Sec. 16.10.620. POWERS OF THE AUTHORITY. A salmon enhancement authority has the general power to

(1) adopt, alter and use a corporate seal;

(2) prescribe, adopt, amend, and repeal bylaws;

(3) sue and be sued in its own name;

(4) appoint officers, agents and employees and vest them with the powers and duties and to fix, change and pay compensation for their services as the authority may determine;

(5) borrow money, make and issue notes and other evidences of indebtedness of the authority for any of its corporate purposes and to secure payment of its obligations by pledge of or lien on all or any of its assets, contracts, revenue and income;

(6) make and execute agreements, contracts and other instruments necessary or convenient in the exercise of its powers and functions, including contracts with any person, firm, corporation, government agency or other entity;

(7) receive, administer and comply with the conditions and requirements of an appropriation, gift, grant or donation of property or money;

(8) invest or reinvest money or funds held by the authority in obligations or other securities or investments in which banks or trust companies in the state may legally invest funds held in reserves or sinking funds or funds not required for immediate disbursement, and in certificates of deposit or time deposits;

(9) acquire, hold, use, lease, sell or otherwise dispose of property of any kind, real, personal or mixed or any interest in it;

(10) do all acts and things necessary, convenient or desirable to carry out the powers granted or implied in AS 16.10.600—16.10.620;

(11) adopt, amend and repeal rules and regulations necessary. (§ 17 ch 154 SLA 1977)

in the special harvest area are purse seine, hand purse seine, beach seine, fyke net, drift gill net, set gill net, and dip net. (In effect 1984; am 9/22/84, Reg. 91)

Authority: AS 16.05.060
AS 16.05.251
AS 16.10.440

5 AAC 40.033. DOUGLAS ISLAND PINK AND CHUM SPECIAL HARVEST AREA—SHEEP CREEK. (a) There is established the Sheep Creek Hatchery Special Harvest Area consisting of all waters of Gastineau Channel within one and one-half miles south of and one-half mile north of the terminus of Sheep Creek that extend seaward 300 yards from mean low tide.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 33.310 except as may be specifically provided by emergency order. The hatchery permit holder may take salmon within the special harvest area only during periods established by emergency order by gear type.

(c) Notwithstanding 5 AAC 33.330, legal gear for the hatchery permit holder in the special harvest area are purse seine, hand purse seine, beach seine, drift gill net, set gill net, fyke net, and dip net. (Eff. 4/14/82, Reg. 82; am 9/22/84, Reg. 91)

Authority: AS 16.05.060
AS 16.05.251
AS 16.10.440

5 AAC 40.035. PRINCE WILLIAM SOUND AQUACULTURE CORPORATION SPECIAL HARVEST AREA—SAN JUAN. (a) There is established the Prince William Sound Aquaculture Corporation Special Harvest Area—San Juan, consisting of all waters of Sawmill Bay, Evans Island, west of 148°01'50" W. longitude.

(b) The hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 24.310—5 AAC 24.320 and that portion of 5 AAC 24.350(41) west of 148°01'50" W. long. in Sawmill Bay except as may be specifically provided by emergency order. The hatchery permit holder may harvest salmon within the special harvest area by gear types specified in 5 AAC 40.035(c) seven days per week from 6:00 a.m. July 7 through 6:00 p.m. September 15 unless closed or modified by emergency order.

(c) Notwithstanding 5 AAC 34.330, legal gear for the hatchery permit holder in the special harvest area are purse seine, hand purse seine, and beach seine.

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(a)(2)-(7) and (12)
AS 16.05.920
AS 16.10.420-440

5 AAC 40.037. NERKA CORPORATION SPECIAL HARVEST AREA — PERRY ISLAND. **(a)** There is established the Nerka Corporation Special Harvest Area, consisting of all waters of South Bay, Perry Island, enclosed by a line from Meares Point light on the west side of the bay easterly two nautical miles to an exposed reef and the north one-half mile to the east side of the bay.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 24.310—5 AAC 24.320 except as may be specifically provided by emergency order. The hatchery permit holder may harvest salmon within the special harvest area during periods opened and closed by emergency order.

(c) Notwithstanding 5 AAC 24.330, legal gear for the hatchery permit holder in the special harvest area is a set gill net. However, if the commissioner and the permit holder determine that set gill net gear is unsatisfactory, the commissioner may open the special harvest area for hatchery harvest with beach seine or purse seine.

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(a)(2)-(7) and (12)
AS 16.05.920
AS 16.10.420-440

5 AAC 40.038. SOLOMON GULCH SPECIAL HARVEST AREA— VALDEZ. **(a)** There is established the Solomon Gulch Special Harvest Area, consisting of all waters within a 500-yard radius of the terminus of Solomon Gulch Creek.

(b) The hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 24.310 and 5 AAC 24.320, except as may be specifically provided by emergency order. The hatchery permit holder may harvest salmon in the special harvest area during periods establish ed by emergency order.

(c) Notwithstanding 5 AAC 24.330, legal gear for the hatchery permit holder in the special harvest area is any gear listed in 5 AAC 39.105(d) except gill nets. (Eff. 4/16/83, Reg. 86)

Sec. 16.10.550. SALE OR TRANSFER OF MORTAGES AND NOTES. [Repealed by § 14 ch 122 SLA 1980.]

Sec. 16.10.555. DISPOSAL OF PROPERTY ACQUIRED BY DEFAULT OR FORECLOSURE. The Department of Commerce and Economic Development shall dispose of property acquired through default or foreclosure of a loan made under AS 16.10.500—16.10.620. 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.

Effect of Amendment. The 1985 amendment added this section effective July 1, 1985.

Sec. 16.10.560. DEFINITIONS. In AS 16.10.500—16.10.550

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

(2) "hatchery" means a facility for the artificial incubation of salmon eggs which may include means for the rearing of juvenile salmon. (§ 1 ch 190 SLA 1976)

Sec. 16.10.600. CREATION OF AUTHORITIES. **(a)** An association qualified under AS 16.10.380 as a regional association is given the authority to form a regional salmon enhancement authority. There is created with respect to each of the associations qualified under AS 16.10.380 a public body corporate and politic as a political subdivision of the state to function in the operating areas of the individual associations. Each authority may exercise all powers conferred by AS 16.10.600—13.10.620.

(b) A regional salmon enhancement authority may not transact business or exercise powers granted to it until the governing body of the association has, by resolution, declared there is a need for the authority to function, given it the authority to function and appointed persons to serve as the board of commissioners of the authority. The number of members of the board of commissioners, their terms of office and the filling of vacancies in office shall be determined by resolution of the governing body of the association.

(c) The regional salmon enhancement authority has jurisdiction to operate in all or part of the operating area of the individual association as determined by resolution of the governing body of the association. (§ 17 ch 154 SLA 1977)

Sec. 16.10.610. TAX EXEMPTION. **(a)** A salmon enhancement authority is exempt from payment of taxes or assessments for a period of 20 years from June 24, 1977 on property owned by the authority which is used for salmon enhancement purposes.

ty assessment, the commissioner shall notify the qualified regional association for the area of his determination. The qualified regional association shall, within two months after receiving notice of the commissioner's determination, hold public meetings and mail ballots in accordance with (e) of this section. The ballots shall ask the question whether the royalty assessment for the area shall be continued. Only a person who is qualified to vote in accordance with (e) of this section may receive and cast a ballot under this subsection. (§ *1 ch 190 SLA 1976; am §§ 14—16, 19 ch 154 SLA 1977; am § 8 ch 59 SLA 1979)*

Editor's Notes. For termination of royalty assessments upon the levy of a salmon enhancement tax (AS 43.76.010—43.76.030), see § 4 ch 154 SLA 1980 in the 1980 Temporary and Special Acts and Resolves.

Notes to Decisions. This section impermissibly delegates taxing power to regional associations, violating § 2 art. x of the state constitution. State, N.S.E. Regional Aquaculture Assn'n v. Alex, Sup. Ct. Op. No. 2488 (File Nos. 5065, 5086, 5142), 646 P.2d 203 (1982).

Assessments are "proceeds of a state tax or license." Since the constitution prohibits the dedication of any source of revenue, including both "taxes" and "special assessments," the assessments authorized by the section are "proceeds of a state tax or license," within the meaning of § 7 art. IX of the state constitution, whether or not the salmon assessments fit the definition of "special assessments." State, N.S.E. Regional Aquaculture Assn'n v. Alex, Sup. Ct. Op. No. 2488 (File Nos. 5065, 5086, 5142), 646 P.2d 203 (1982).

Sec. 16.10.540. VOLUNTARY ASSESSMENT ON SALE OF SALMON. (a) In place of or in addition to an assessment levied under AS 16.10.530, an association of persons who hold entry permits under AS 16.43.010—16.43.380, which consists of at least 51 percent of the persons holding entry permits and actively participating in a fishery to be benefited by a hatchery program, may levy and collect an assessment from among its members for the purpose of securing and repaying a loan made under AS 16.10.510.

(b) Upon satisfactory demonstration to the commissioner that an assessment levied under this section may reasonably be relied upon to secure and repay a loan to be made under AS 16.10.510, the commissioner may make the loan without requiring an assessment under AS 16.10.530.

(c) If an assessment made under this section fails to satisfy the payments required on the principal and interest due on the loan the commissioner may negotiate with the regional association to levy an assessment under AS 16.10.530. (§ 1 ch 190 SLA 1976; am § 9 ch 59 SLA 1979)

Effect of Amendment. The 1979 amendment, in subsection (a), substituted "who hold entry permits under AS 16.43.010—16.43.380" for "licensed under AS 16.05.540—16.05.600" and "holding entry permits" for "so licensed."

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251
AS 16.10.420-440

5 AAC 40.039. ALASKA AQUACULTURE CORPORATION SPECIAL HARVEST AREA—BURNETT INLET. (a) There is established the Burnett Inlet Special Harvest Area, consisting of all waters of Burnett Inlet, Etolin Island, north of 56° 06' N. lat. and south of 56° 10' 50" N. lat.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 33.310. Fishing periods for the hatchery permit holder will be opened and closed by emergency order by gear type.

(c) Notwithstanding 5 AAC 33.330, legal gear for the hatchery permit holder in the special harvest area are beach seine, purse seine, and hand purse seine. (In effect before 1983; am 4/16/83, Reg. 86)

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251
AS 16.05.920
AS 16.10.420-440

5 AAC 40.041. HERRING BAY SPECIAL HARVEST AREA—KETCHIKAN. (a) There is established a Herring Bay Special Harvest Area for the Southern Southeast Regional Aquaculture Association Whitman Lake Hatchery, consisting of the waters of Herring Creek and Cove bound by the hatchery water outlet and a line from a point of land on George Inlet at the east side of Lot 39, USS 3397, bearing 18° 1½' to a point of land on the southern edge of Lot 91, USS 2403.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 33.310. Fishing periods for the hatchery permit holder will be opened and closed by emergency order by gear type.

(c) Notwithstanding 5 AAC 33.330, legal gear for the hatchery permit holder in the special harvest area is beach seine, purse seine, and dip net. Gill nets may be used by the hatchery operator in the special harvest area for taking chinook and coho salmon brood stock.

(d) That portion of the special harvest area between the hatchery outlet and the terminus of Herring Creek may be closed to sport fishing. The remainder of the special harvest area may not be closed to sport fishing unless hatchery brood stock needs are jeopardized. (Eff. 6/28/81, Reg. 78; am 5/31/85, Reg. 94)

Authority: AS 16.05.060
AS 16.05.251

5 AAC 40.042. NORTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION SPECIAL HARVEST AREAS. (a) The following special harvest areas are established for the Northern Southeast Regional Aquaculture Association:

(1) Salmon Creek, all waters of Gastineau Channel north of a line from Norway Point to Gold Point and south of a line from End Point to Doug Point, including all waters within mean high tide; only species produced at the Salmon Creek Hatchery may be harvested in this area;

(2) Sea Lion Cove, all waters within a 50-yard radius of the terminus of ADF&G stream #113-61-005 at mean low tide;

(3) Patterson Bay, all waters of Patterson Bay north of 56°34' N. Lat.;

(4) Bear Cove, all waters of Bear Cove east of 135°09'42" W. Long.

(b) A hatchery permit holder harvesting salmon within a special harvest area is exempt from the provisions of 5 AAC 33.310. Fishing periods for the hatchery permit holder will be established by emergency order by gear type.

(c) Notwithstanding 5 AAC 33.330, legal gear for the hatchery permit holder in a special harvest area are as follows:

(1) Salmon Creek: purse seine, beach seine, drift gill net, hook and line, and dip net;

(2) Sea Lion Cove: beach seine, and dip net;

(3) Patterson Bay: purse seine, beach seine, drift gill net, set gill net, hook and line, and dip net;

(4) Bear Cove: purse seine, beach seine, and dip net. (Eff. 4/14/82, Reg. 82; am 9/22/84, Reg. 91)

Authority: AS 16.05.060
AS 16.05.251
AS 16.10.440

5 AAC 40.043. NEETS BAY SPECIAL HARVEST AREA—BEHM CANAL. (a) There is established a Neets Bay Special Harvest Area for the Southern Southeast Regional Aquaculture Association harvest of coho and chum returns to the Neets Bay release site, consisting of all waters of Neets Bay east of the longitude of the easternmost tip of Bug Island.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 33.310. Fishing periods for the hatchery permit holder will be opened and closed by emergency order by gear type.

(d) The assessment shall terminate upon request of the qualified regional corporation when all financial obligations relating to the assessments have been met.

(e) Before an assessment is made under this section, the qualified regional association for the area in which the assessment is to be levied shall hold an initial public meeting to explain and discuss the necessity for the assessment and to explain the registration procedure established under (f) of this section. Reasonable public notice of the meeting shall be sent to all limited entry permit holders actively participating in a fishery in the area, posted in at least three centrally located public places in the area, and published in at least one newspaper of general circulation at least one time a week for three consecutive weeks in the area, if one exists. The notice shall briefly state the amount of the assessment and a short general description of the purposes for which the assessment money will be used. A ballot shall be mailed to all limited entry permit holders actively participating in a fishery in the area at least 20 days before the initial public meeting and contain a copy of the notice and ask the question whether an assessment shall be imposed. At the public meeting the returned ballots shall be counted by a special committee appointed by the regional association for that purpose, and a vote by written ballot shall be taken on the question from among the limited entry permit holders present at the initial public meeting. After the vote is taken at the initial meeting a second public meeting shall be held, upon the limited notice of publication in a newspaper of general circulation, each day for five consecutive days and the mailing of personal notice to all limited entry permit holders who actively participate in a fishery in the area at least 14 days before the second public meeting, to give those who did not vote by written ballot at the initial public meeting an opportunity to vote. These votes shall be counted with the votes counted at the initial meeting. A majority vote for the assessment is required from the combined total of the returned ballots and the votes by ballot cast at both public meetings, before an assessment may be imposed. No person may vote twice.

(f) The qualified regional association shall establish standard registration procedures for voting on assessments under this section.

(g) A limited entry permit holder who would be qualified to vote on a royalty assessment levied by a regional association may request the commissioner to reduce or terminate a royalty assessment in the region. The commissioner may terminate or reduce the royalty assessment if he finds the royalty assessment to be unreasonable or to be no longer needed by the regional association to meet the purposes of AS 16.10.375—16.10.620.

(h) Upon receipt of a petition requesting termination of the royalty assessment and signed by not less than 10 percent of the number of persons qualified to vote under (e) of this section in the election levying the royalty assessment in the area, the commissioner shall determine if there are any outstanding financial obligations relating to the royalty assessment. If the commissioner determines that there are no outstanding financial obligations relating to the royal-

The 1980 amendment substituted "$6,000,000 for a hatchery or other enhancement or rehabilitation activity conducted" for "$3,000,000 for a hatchery constructed" near the beginning of subsection (a), substituted "$1,000,000" for "$300,000" at the end of subsection (a), and substituted "10" for "six" preceding "years" where it appears near the middle and near the end of subsection (b).

The 1982 amendment substituted "$10,000,000" for "$6,000,000" in the first sentence of subsection (a).

Sec. 16.10.525. REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS. The commissioner may not require the repayment of principal on a loan made under AS 16.10.510 for the initial period of the loan. Interest on the principal of a loan made under AS 16.10.510 does not accrue during the initial period of the loan. In this subsection, the "initial period of the loan" means a period of time determined by the commissioner which is not less than six years or more than 10 years from the date the loan is made. (§ 7 ch 106 SLA 1980)

Editor's Notes. Section 79 ch 106 SLA 1980 provides: "Section 7 of this Act is retroactive to June 19, 1976, and applied to loans made under AS 16.10.510 after June 18, 1976."

Sec. 16.10.530. ROYALTY ASSESSMENT ON SALE OF SALMON. (a) The commissioner, on request of the qualified regional association for the area in which the royalty assessment is to be levied, after consultation with the commissioner of fish and game and after reaching any necessary agreements with local governments, shall establish areas in which a royalty assessment shall be levied on the sale of one or more species of salmon caught by persons holding entry permits under AS 16.10.010—16.10.380 in the area in which the royalty assessment is to be levied. A request by the qualified regional association shall include a description of compliance with (e) of this section. The commissioner shall determine whether the procedural requirements under (e) of this section were followed and whether the proposed assessment is reasonable. A royalty assessment levied under this section shall be for the purpose of providing revenue for the qualified regional association for the area in which the royalty assessment is made. The rate and conditions of royalty assessments, including species to be involved, shall be stated by the appropriate regional association in conjunction with the request to the commissioner under this subsection. The royalty assessment may be equal to either two or three percent of the fair market value of the fish but may not exceed three percent of the fair market value of the fish.

(b) [Repealed by § 19 ch 154 SLA 1977.]

(c) The commissioner and the appropriate qualified regional association must agree on a means of collection of the assessment and the commissioner may, by regulation, require its collection by buyers of the salmon upon the sale of which an assessment is levied.

(c) Notwithstanding 5 AAC 33.330, legal gear for the hatchery permit holder in the special harvest area is purse seine, beach seine, gill net, and troll gear. The hatchery permit holder may use floating weirs in waters of the special harvest area east of 131° 33' W. long. (Eff. 6/28/81, Reg. 78; am 5/31/85, Reg. 94)

Authority: AS 16.05.060
AS 16.05.251

5 AAC 40.044. BURRO CREEK FARMS SPECIAL HARVEST AREA—TAIYA INLET. (a) There is established the Burro Creek Farms Special Harvest Area consisting of all waters of Taiya Inlet within a 500-yard radius of the terminus of Burro Creek.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 33.310. Fishing periods for the hatchery permit holder will be established by emergency order by gear type.

(c) Notwithstanding 5 AAC 33.330, legal gear for the hatchery permit holder in the special harvest area is beach seine, purse seine, and gill net. (Eff. 4/14/82, Reg. 82)

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(a)(2)-(7) and (12)
AS 16.05.920
AS 16.10.420-440

5 AAC 40.045. NAKAT INLET SPECIAL HARVEST AREA. (a) There is established a Nakat Inlet Special Harvest Area for the Southern Southeast Regional Aquaculture Association harvest of chum returns to the Nakat Inlet release site, consisting of all waters of Nakat Inlet north of 54° 50' N. lat.

(b) The hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 33.310. Fishing periods for the hatchery permit holder will be established by emergency order by gear type.

(c) Notwithstanding 5 AAC 33.330, legal gear for the hatchery permit holder in the special harvest area are purse seine, gill net, troll and beach seine. (Eff. 4/16/83, Reg. 86)

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251
AS 16.05.920
AS 16.10.420-440

REGULATIONS OF THE
ALASKA DEPARTMENT OF FISH AND GAME

Chapter 40. Private Nonprofit Salmon Hatcheries

Article
1. Applicability of Regulations
4. Permit Application Procedures
5. Regional Comprehensive Planning
8. General Provisions

Article 3. Applicability of Regulations

Editor's Note. Regulations 5 AAC 40.100—40.990 were adopted by the Alaska Department of Fish and Game through the Administrative Procedures Act.

Section
100. Applicability of regulations

5 AAC 40.100. APPLICABILITY OF REGULATIONS. The provisions of 5 AAC 40.110 - 5 AAC 40.990 govern the permit application process for private nonprofit salmon hatcheries, and establish guidelines and procedures regarding the operation of permitted hatcheries. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.375
AS 16.10.470

Article 4. Permit Application Procedures

Section
110. Authority.
120. Pre-application assistance
130. Management feasibility analysis
140. Permit application
150. Application fee
160. Acceptance determination
170. Regional planning team review
180. Additional information

regional associations for planning and implementation of fisheries enhancement and rehabilitation activities including, but not limited to, lake fertilization and habitat improvement. (§ 1 ch 190 SLA 1976; am §§ 9-11 ch 154 SLA 1977; am § 5 ch 59 SLA 1979; am § 11 ch 72 SLA 1979; am §§ 3, 4, 77 ch 106 SLA 1980)

Effect of Amendments. The first 1979 amendment inserted "royalty" in the first sentence of paragraph (9).

The second 1979 amendment substituted "nine and one-half percent" for "eight percent" in paragraph (6).

The 1980 amendment substituted "30" for "25" preceding "years" near the end of paragraph (5), repealed paragraph (8), and added paragraph (10).

Sec. 16.10.520. LIMITATION ON LOANS. (a) A single fisheries enhancement loan may not exceed $10,000,000 for a hatchery or other enhancement or rehabilitation activity conducted under a permit granted to a qualified regional association which has formed a nonprofit corporation, or to a local nonprofit corporation approved by a qualified regional association. A loan for any other nonprofit hatchery corporation project may not exceed $1,000,000.

(b) Loans for the total project costs may be made if the commissioner determines that the applicant has sufficient financial resources to insure the establishment of an equity position in the project equal to 10 percent of the loan within 10 years or less, either through a royalty assessment levied under AS 16.10.530 or AS 16.10.540 or other means approved by the commissioner. For purposes of this subsection, "total project costs" includes planning and construction costs for the facility and the cost of operations for not more than the first 10 years. The costs for operations shall be loaned on an annual basis.

(c) All loans must be secured by collateral satisfactory to the commissioner, including but not limited to a first deed of trust, assignment of lease and leasehold improvements, sale of surplus fish from the hatchery, or royalty assessments from fishermen levied under AS 16.10.530—16.10.540.

(d) The commissioner may require what he considers adequate evidence of performance in utilizing loan funds approved for an initial or preliminary project before approving a subsequent loan application.

(e) The total amount of loans made or purchased in any fiscal year shall not exceed the amount specifically authorized by statute. The amount to be purchased shall not exceed $3,000,000 for fiscal year 1977 and $10,000,000 for fiscal year 1978. (§ 1 ch 190 SLA 1976; am §§ 12, 13 ch 154 SLA 1977; am §§ 6, 7 ch 59 SLA 1979; am §§ 5, 6 ch 106 SLA 1980; am § 1 ch 32 SLA 1982)

Effect of Amendments. The 1979 amendment substituted "a royalty assessment" for "an assessment" in the first sentence of subsection (b) and inserted "royalty" preceding "assessments" in subsection (c).

Sec. 16.10.507. SPECIAL ACCOUNT ESTABLISHED. (a) There is established as a special account within the fisheries enhancement revolving loan fund the foreclosure expense account. This account is established as a reserve from fund equity.

(b) The commissioner may expend money credited to the foreclosure expense account when necessary to protect the state's security interest in collateral on loans made under AS 16.10.520 or to defray expenses incurred during foreclosure proceedings after a default by an obligor.

Sec. 16.10.510. POWERS AND DUTIES OF THE COMMISSIONER. The commissioner may:

(1) make loans to permit holders, under AS 16.10.400—16.10.470, including those holders issued permits before June 24, 1977, for the planning, construction, and operation of hatchery facilities;

(2) make loans to qualified regional associations which have formed a nonprofit corporation or a local nonprofit corporation approved by a qualified regional association, for preconstruction activities necessary to obtain a permit;

(3) designate agents and delegate powers to them as necessary;

(4) adopt regulations necessary to carry out his functions;

(5) establish amortization plans for repayment of loans, not to exceed 30 years;

(6) establish the rate of interest for loans not to exceed nine and one-half percent a year;

(7) establish regional and local offices and advisory groups to carry out, or assist in carrying out, his duties and authority;

(8) [Repealed by § 77 ch 106 SLA 1980.]

(9) make grants for organizational and planning purposes to qualified regional associations which have formed a nonprofit corporation, in amounts not exceeding $100,000 per region and up to an additional $100,000 on a 50/50 cash matching basis with the regional associations which have an authorized royalty assessment under AS 16.10.530 or AS 16.10.540. The state portion of the matching share shall be available when a final vote for assessments is made under AS 16.10.530 or AS 16.10.540. This provision also applies to qualified regional associations which have formed a nonprofit corporation before June 24, 1977;

(10) make loans to qualified regional associations which have formed a nonprofit corporation or to local nonprofit corporations approved by qualified

5 AAC 40.110. AUTHORITY. The commissioner will review and take action on each application for a private nonprofit salmon hatchery. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.400

5 AAC 40.120. PRE-APPLICATION ASSISTANCE. An applicant may request assistance in preparing an application or conducting related activities. The PNP coordinator, or the department area management biologist, will provide assistance to the extent practicable. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.400

5 AAC 40.130. MANAGEMENT FEASIBILITY ANALYSIS. (a) The department will assist an applicant by preparing a management feasibility analysis for each proposed hatchery site. The analysis will be completed before submittal of an application for a private nonprofit salmon hatchery permit. An analysis is based on information provided by the applicant to the PNP coordinator, including

(1) the location of the facility;

(2) the species desired for hatchery production;

(3) the run timing, by species;

(4) the incubation and rearing levels desired during the first reproductive cycle, by species; and

(5) the incubation and rearing levels desired at full capacity, by species.

(b) Within 30 days after receipt by the PNP coordinator of the information described in (a) of this section, the department will complete a management feasibility analysis of the proposed hatchery. A management feasibility analysis includes, at a minimum, the following information:

(1) an estimate of potential contributions to the common property fishery;

(2) potential size and location of a special harvest area;

(3) special management considerations or the need for additional studies;

(4) potential brood stock sources;

(5) an assessment of production potentials for each species; and

(6) additional factors considered by the department to be relevant to the proposed hatchery operation. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.400

5 AAC 40.140. PERMIT APPLICATION. An application for a hatchery permit must be submitted to the PNP coordinator. The PNP coordinator will provide an application form upon request. The application must include a completed management feasibility analysis. The applicant shall provide, in the permit application, detailed statements of operational goals, objectives, and plans. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.400

5 AAC 40.150. APPLICATION FEE. An application must be accompanied by the fee required by AS 16.10.400. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.400

5 AAC 40.160. ACCEPTANCE DETERMINATION. The PNP coordinator will review an application submitted for acceptance. If the PNP coordinator determines that the application is not acceptable, the PNP coordinator will request additional information in writing from the applicant. The review period described in 5 AAC 40.190, Schedule A, begins when the management feasibility analysis is completed and the application is accepted. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.400

ALASKA STATUTES

TITLE 16. FISH AND GAME

Chapter 10. Fisheries and Fishing Regulations

Article 9. Fisheries Enhancement Loan Program

Section

Sec. 16.10.500. DECLARATION OF POLICY. It is the policy of the state, under AS 16.10.500 – 16.10.550, to promote the enhancement of the state's fisheries by means of grants for organization and planning purposes to regional associations described in AS 16.10.510 which have qualified under AS 16.10.380, and by means of long-term, low interest loans for hatchery planning, construction, and operation and for planning and implementation of enhancement and rehabilitation activities including, but not limited to, lake fertilization and habitat improvement. (§ 1 ch 190 SLA 1976; am § 7 ch 154 SLA 1977; am § 2 ch 106 SLA 1980)

Editor's Notes. AS 16.10.550, referred to in this section, was repealed by § 14, ch 122, SLA 1980.

Sec. 16.10.505. FISHERIES ENHANCEMENT REVOLVING LOAN FUND. There is created within the Department of Commerce and Economic Development a revolving fund to be known as the fisheries enhancement revolving loan fund. The fund shall be used to carry out the purposes of AS 16.10.500 – 16.10.550 and for no other purpose. (§ 8 ch 154 SLA 1977)

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

Authority: AS 16.05.020(2) and (3)
AS 16.05.270

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

(1) "completed application" means a form, series of forms, letters or other documents which provide all of the information necessary for the commissioner or his authorized designee to issue, condition or deny a permit;

(2) "department regional office" means the Alaska Department of Fish and Game, Fisheries Rehabilitation, Enhancement and Development Division offices located as follows:

Region I—Southeastern Region
Island Center Building
P.O. Box 20
Douglas, Alaska 99824-0020

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

(3) "fish pathology section" means the Alaska Department of Fish and Game, Fisheries Rehabilitation, Enhancement and Development Division, Fish Pathology Section, located at 333 Raspberry Road, Anchorage, Alaska 99502, telephone (907)344-0541;

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

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

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

Authority: AS 16.05.251(a)(4),(8)and(10)

5 AAC 40.170. REGIONAL PLANNING TEAM REVIEW. (a) The appropriate regional planning team, as established under 5 AAC 40.300, shall review each application to determine if the proposed hatchery is compatible with the appropriate regional comprehensive salmon plan. The regional planning team shall use the following application review criteria:

(1) the contribution the proposed hatchery would make to the common property fishery;

(2) the provisions for protection of the naturally occurring stocks from any adverse effects which may originate from the proposed hatchery;

(3) the compatibility of the proposed hatchery with the goals and objectives of the comprehensive salmon plan for the region; and

(4) whether the proposed hatchery would make the best use of the site's potential to benefit the common property fishery.

(b) An applicant may review the regional planning team determination and comment on it by letter to the commissioner. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.375
AS 16.10.400

5 AAC 40.180. ADDITIONAL INFORMATION. If, after an application has been accepted by the PNP coordinator, the department determines that information in the application is insufficient for the adequate evaluation of the proposed hatchery, the PNP coordinator will request additional information from the applicant. Time frames applicable to the department review in 5 AAC 40.190, Schedule A are suspended until additional information is received and accepted by the PNP coordinator. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.400

5 AAC 40.190 REVIEW PROCEDURE SCHEDULE. The timing of the application review and approval process is described in Schedule A, set out below.

HATCHERY PERMIT APPLICATION—REVIEW PROCEDURE SCHEDULE A

	Salmon Rehabilitation Enhancement Coordinator	Regional Planning Team Review	FRED Technical Staff	Management and Regional Staff Review	Basic Management Plan (BMP)	Comm[illegible]
Applicant submits application	Review for acceptance If incomplete returns to applicant for additional information and resubmittal 1	Reviews application to determine if proposal is consistent with the regional plan. Sends recommendation to the Commissioner.	Reviews application, submits comments, or requests additional information 2, 3	Reviews application and submits comments to the coordinator or requests additional information 2, 3	BMP is drafted by area staff, applicant, and PNP office	Schedules public [illegible] (AS 16.[illegible] and 5 A[illegible]C 40.280)

TIME ➤ .... Day 1 .... ➤ Day 60

1 Processing of application will not proceed until all requested information has been received.
2 All requests for additional information during the review period will be directed to the coordinator.
3 Review time frames are suspended until additional information is received and accepted.

Renibacterium salmoninarum—bacterial kidney disease (BKD);
Flexibacter columnaris—columnaris disease;
Henneguya—spp. —myxosporidian disease of fish and shellfish;
[illegible]rinthomyxa marina—fungal or haplosporidian disease of [illegible]llfish;
Minchinia nelsoni—a haplosporidian disease of shellfish; and
Ocenebra japonica—an oyster drill;

(3) Class III—Diseases of Concern.

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

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

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

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

Authority: AS 16.05.251(a)(4),(8)and(10)