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into the waters of the state. Fish wastes and waste water from ornamental fish may not be released directly into the waters of the state.

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

**5 AAC 41.080. REPORTING AND CONTROL OF FISH DISEASES AT EGG-TAKE SITES, HATCHERIES, AND REARING FACILITIES.** (a) The requirements of this section apply to all public and private egg-take programs, fish hatcheries, and fish rearing facilities in the state.

(b) Within 24 hours of transporting live fish eggs between watersheds, all eggs must be treated, for at least 10 minutes, with an iodine solution of at least 100 parts per million of active iodine ingredient, with pH at least 6.0 or greater, or in a manner approved by the fish pathology section of the department. This requirement does not apply to shellfish eggs.

(c) Each fish hatchery or fish rearing facility must be inspected by the department's fish pathology section at least once each year at least two weeks prior to the transport or release of fish. The commissioner or his authorized designee may require and conduct additional inspections if the disease history of the stock or facility is incomplete, or if the disease history or current condition of the stock evidences incidence of disease.

(d) The occurrence of any of the following pathogens or disease of fish must immediately be reported to the department's fish pathology section:

(1) Class I—Diseases of Critical Concern.

Infectious Pancreatic Necrosis Virus (IPNV)—trout pancreatic virus;
Viral Hemorrhagic Septicemia Virus (VHSV)—Egtved virus;
Pike Fry Rhabdovirus;
Spring Viremia of Carp (SVC)—a carp virus of potential danger to native cyprinids;
*Ceratomyxa shasta*—myxosporidian disease of salmonids;
*Myxosoma cerebralis*—whirling disease; and
*Mytilicola intestinalis*—an endoparasitic copepod of shellfish.

(2) Class II—High-risk Diseases.

Infectious Hematopoietic Necrosis Virus (IHNV)—sockeye or chinook salmon kidney virus;
*Herpesvirus salmonis*—low-temperature virus;
Viral Erythrocytic Necrosis (VEN)—intranuclear virus of marine fish;
*Vibrio parahemolyticus*—vibriosis in fish and shellfish;
*Aeromonas salmonicidia*—furunculosis;
*Yersinia ruckeri*—enteric redmouth disease;



**CONSISTENCY FINDING AND ISSUANCE OF PRIVATE NONPROFIT HATCHERY PERMIT**

(AS 16.10.400)

| | | | | |
|---|---|---|---|---|
| Complete application (Permit application and basic management plan) | Public hearing held (AS 16.10.410 and 5 AAC 40.280) | Basic management plan finalized after completion of hearing | Proposed consistency finding | A. Consistency finding |
| Notice of public hearing | Public hearing process concludes 15 days after oral hearing | | | B. Issuance or denial of private nonprofit hatchery permit by commissioner of ADF&G |
| TIME ➤ DAY 1 | DAY 25-40 | DAY 40-69 | DAY 69 | ➤ DAY 75 |

(Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.375
AS 16.10.400

**5 AAC 40.200. COMPLETENESS DETERMINATION.** For the purpose of complying with the project consistency review of the Alaska Coastal Management Program, as outlined in 6 AAC 50.010-6 AAC 50.190, a completed application for a private nonprofit hatchery permit must include both an application which has been accepted by the PNP coordinator and a draft basic management plan, prepared under 5 AAC 40.820, for the operation of the facility. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.400

**5 AAC 40.210. PUBLIC HEARING.** (a) The department will conduct a public hearing on each completed permit application. The commissioner will give notice of public hearing at any time after acceptance of an application. The notice will be given at least 25 days before a public hearing, and the notice will, in the commissioner's discretion, be given before the completion of the draft basic management plan. The hearing will be held under the following sequential procedures:

(1) the commissioner will make an introductory statement;

(2) the applicant shall make a presentation of the proposed hatchery plans, describing its location, incubation plans, the capacity of the facility, the donor stock source, and other relevant facts that may be of interest to the department or the public;

(3) the department will present the draft of the basic management plan for the proposed facility, including a presentation of fish culture aspects, production considerations, and a presentation of the management section of the basic management plan by the local commercial fisheries and sport fisheries area management biologist; and

(4) the commissioner will open the floor for public testimony and questions on all aspects of the proposed facility.

(b) The department will respond in writing within 10 working days to any specific objections offered by a member of the public at the hearing.

(c) The department will accept written comments for 15 days after the hearing, and will respond in writing, within 10 working days after receipt, to any specific objections received within that time. The public hearing process concludes 15 days after the oral hearing is held. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.410



**5 AAC 41.060. RETENTION OF PERMIT FOR INSPECTION.** (a) After issuance a copy of the permit including any amendments must be retained by the permittee, and be made available upon request for inspection by a representative of the department, or a law enforcement officer of the Department of Public Safety.

(b) For the purpose of inspecting and monitoring compliance with the terms of the permit or the requirements of this chapter for the continued health and perpetuation of native, wild, or hatchery stocks of fish, each permittee shall give authorized representatives of the department, and law enforcement officers of the Department of Public Safety, free and unobstructed access at all times to permit sites. Each permittee shall give such assistance and furnish information the representative or law enforcement officer may reasonably require for monitoring and inspection.

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

## Article 3. General Provisions



**5 AAC 41.070. PROHIBITIONS ON IMPORTS AND RELEASE OF LIVE FISH.** (a) Except as provided in (b) and (c) of this section, no person may import any live fish into the state for purposes of stocking or rearing in the waters of the state.

(b) Live oysters originating from locations other than Korea, the Gulf of Mexico, and the Atlantic Coast of North America, may be imported for aquaculture purposes and may be released into the waters of the state only pursuant to a permit required by this chapter. Live oysters native to and originating from Korea, the Gulf of Mexico, or the Atlantic Coast of North may be imported for aquaculture purposes pursuant to a permit required by this chapter and released into the waters of the state only if

(1) the brood stock is derived from oysters commercially cultured on the Pacific Coast of North America through three or more generations; and

(2) the disease history or an inspection indicates no incidence of disease that is not indigenous to Alaska.

(c) Ornamental fish not raised for human consumption or sport fishing purposes may be imported into the state, but may not be reared in or released

(c) The commissioner or his authorized designee will deny an application for a permit, or a request for amendment of a permit, if the applicant's proposed plans, methods, or specifications are not adequate, on the basis of fish disease, genetics, competition, predation, or other biological considerations, to assure the continued health and perpetuation of native, wild, or hatchery stocks of fish. Written notice of denial shall be given to the applicant, including the reasons for denial.

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

**5 AAC 41.040. AMENDMENTS TO THE PERMIT.** (a) A permittee may request amendment of a fish transport permit by submitting, in writing to the department regional office where the permit was issued, an amended plan and a statement explaining why the amendment is necessary.

(b) The commissioner or his authorized designee will issue an amendment to the permit upon a determination made pursuant to 5 AAC 41.030(a) or (b). The commissioner or his authorized designee will approve, condition or deny a request for amendment within 30 days after receipt of the request in the appropriate regional office.

(c) The commissioner or his authorized designee may alter or amend permit conditions if additional information or unforeseen changes allow relaxation, or changed circumstances affect the adequacy of permit terms and conditions.

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

(d) Amendments approved by the commissioner or his authorized designee become effective when received by the permittee, or at a later date specified in the amendment. Unless otherwise specified, amendments remain valid for the duration of the permit.

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

**5 AAC 41.050. PERMIT CONDITIONS.** The commissioner or his authorized designee may prescribe conditions on a permit to control the occurrence of fish disease, genetic change, or control other disturbances of biological origin affecting native, wild, or hatchery stocks of fish. These conditions may include designation of brood stock and release locations, methods of transport or release, quarantine and depuration requirements and procedures, disease inspections, disposal of wastes and effluents, timing of transportation and release, reporting requirements, and other measures necessary to achieve the purposes of 5 AAC 41.

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



**5 AAC 40.220. REVIEW AND DETERMINATION.** (a) The commissioner will review the following information, compiled by the PNP coordinator, before rendering a decision on an application:

(1) recommendations from the regional planning team;

(2) recommendations resulting from the department's review of the application; and

(3) the results of the public hearing regarding the proposed facility.

(b) The commissioner will render a decision on the completed application, and notify the applicant in writing, within 75 calendar days after an application is complete. The commissioner's decision will be based on the following considerations:

(1) The physical and environmental nature of the proposed location must be suitable for enhancing runs or for establishing new runs, and must have the potential to make a reasonable contribution to the common property fishery. The proposed hatchery returns may not unreasonably or adversely affect management of natural stocks. The returns for the proposed hatchery may not require significant alterations in traditional fishery time, area, gear type, or user group allocations.

(2) The operation of the proposed hatchery must make the best use of the site's potential, to benefit the common property fishery. In order to achieve optimum public benefit from the state's private nonprofit hatchery program and ensure that the proposed hatchery is in the best interests of the public, enhancement sites must be developed to their fullest potential, with consideration to appropriate species and technological use of the site.

(3) The proximity of the proposed hatchery to an area that will allow for a segregated harvest of hatchery stocks without adversely affecting natural stocks is an important factor. The harvest area of the proposed hatchery must be of sufficient size to allow harvest of hatchery returns, and may not otherwise limit harvests to a location where fish would not be expected to be of sufficient quality to satisfy the requirements of AS 16.10.450 regarding fish for human consumption.

(4) The proposed hatchery must have available donor sources that are approvable under 5 AAC 41. Proposed donor sources for hatchery brood stock must be able to meet necessary first-cycle egg take levels under department removal schedules.

(5) The proposed hatchery must have a secured water source and delivery system that is adequate for the proposed levels of incubation and rearing. The security of the water source must be demonstrated through the appropriate water

use permits, and hydrographs, chemical analysis of water source, and any provisions necessary for recycling and depuration.

(6) The proposed hatchery facility and water intake structures may not be located in streams or reaches of streams that have dynamic flooding characteristics or that have significant and rapid bedload transport that may endanger water intake galleries, weirs, the facility, or the reliability of the water source for the proposed hatchery.

(7) The proposed hatchery must allow for the maintenance of adequate instream flows below the hatchery or any hatchery-related facilities, such as water intake structures, to support natural stocks.

(8) The proposed hatchery plans and staffing plans must demonstrate a reasonable level of operational feasibility and an acceptable degree of potential success.

(c) If the application is approved, the commissioner will, as a condition of the permit, require the permit holder to provide for suitable fish-passage facilities in order to accommodate acceptable upstream and downstream passage of fish, if passage facilities are determined by the department to be necessary. (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 40.230. RECONSIDERATION.** An application for a private nonprofit salmon hatchery permit which has been denied by the commissioner will, in the commissioner's discretion, be reconsidered if the applicant provides new or additional information that may have altered the original decision. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.400

## Article 5. Regional Comprehensive Planning

Section





(10) the method of transport or release and the expected date of transport or release;

(11) the purpose and expected benefits of the transport of release; and

(12) evaluation plans.

(b) A completed application must be submitted to the department regional office in the region in which the proposed transport or release will occur.

(c) If the commissioner or his authorized designee determines that an application is incomplete and that further information is necessary, the department will return the application to the applicant with a description of the deficient information.

(d) The commissioner or his authorized representative will approve, condition, or deny a permit within 45 days after a completed application containing all of the applicable information listed in (a) of this section has been received in the appropriate regional office. (In effect before 1982; am 7/25/82, Reg. 83)

Authority: AS 16.05.251(a)

**5 AAC 41.020. INSPECTION FOR DISEASE OF BROOD STOCK.** If the disease history of the brood stock is unavailable or incomplete as required by 5 AAC 41.010(a)(5), an inspection of the brood stock to detect fish disease must be scheduled by the applicant and conducted by the fish pathology section of the department, or by a person designated by the fish pathology section. The applicant must submit samples of the brood stock as directed by the fish pathology section for the purpose of inspection. The applicant will receive a certification from the fish pathology section upon successful completion of the inspection.

Authority: AS 16.05.251(a)(4),(8) and (10)
AS 16.05.868

**5 AAC 41.030. PERMIT ISSUANCE OR DENIAL.** (a) The commissioner or his authorized designee will issue a fish transport permit if it is the department's determination that the proposed transport, possession or release of fish will not adversely affect the continued health and perpetuation of native, wild, or hatchery stocks of fish; or

(b) The commissioner or his authorized designee will issue a fish transport permit with terms and conditions attached if it is the department's determination that the terms and conditions are necessary to protect the continued health and perpetuation of native, wild, or hatchery stocks of fish.

(c) The commissioner shall suspend the permit, or particular provisions of the permit including amendments, if he finds

(1) on the basis of new information or changed circumstances, that the permitted activity will adversely affect the continued health and perpetuation of native, wild, or hatchery stocks of fish; or

(2) the permittee has failed to comply with permit terms or the provisions of this chapter.

(d) Notwithstanding the expiration, termination or suspension of a fish transport permit, each permittee is responsible for the obligations arising under the terms and conditions of the permit, and under the provisions of this chapter.

Authority: AS 16.05.251 (a)(4),(8),(10) and (12)

**5 AAC 41.010. UNIFORM APPLICATION PROCEDURES.** (a) Each applicant for a fish transport permit shall submit the following information to the department:

(1) identification of each species and location of the stock to be transported, possessed or released;

(2) the destination of the transported fish and the release site;

(3) the number of fish and their life history stage or age;

(4) a descriptive history of previous transport, if any;

(5) a statement on the health or condition of the fish, including a disease history of the stock, a disease history of the hatchery or rearing facilities through which they may have passed, and any previous disease treatments or vaccinations, or, if the disease history is incomplete or unavailable a brood stock inspection and certification pursuant to 5 AAC 41.020;

(6) isolation measures planned to control disease during transport, including a description of containers, water source, depuration measures, and plans for disinfection;

(7) a description of proposed egg-take methods;

(8) the source of water for rearing and proposed effluent discharge location;

(9) identification and status of native stocks in the area of taking, retention and release site, including a statement of expected interactions with other stocks in these areas;





**5 AAC 40.300. REGIONAL PLANNING TEAMS IN GENERAL.** The commissioner will establish regions and regional planning teams for the primary purpose of developing comprehensive salmon plans for various regions of the state. The provisions of 5 AAC 40.300—5 AAC 40.370 govern the structure and functions of each regional planning team and the development of a comprehensive salmon plan for each region. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.375

**5 AAC 40.310. REGIONAL PLANNING TEAM COMPOSITION.** (a) Each regional planning teams consists of six members. Three are department personnel appointed by the commissioner, and three are appointed by the board of directors of the appropriate regional aquaculture association, qualified under AS 16.10.380.

(b) The commissioner will, in his or her discretion, request the involvement of representatives of federal and state agencies to assist a regional planning team if their contribution will aid in the development of the regional comprehensive plan. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.375
AS 16.10.380

**5 AAC 40.320. CHAIRMAN OF REGIONAL PLANNING TEAM.** (a) Each regional planning team shall elect a chairman to serve at the pleasure of the team.

(b) The chairman or his delegate shall

(1) conduct regional planning team meetings, including recording of proceedings, and employing agreed-upon rules of order;

(2) set the agenda and meeting time and place for regional planning team meetings; and

(3) coordinate regional planning team staff in the accomplishment of tasks assigned to the chairman by the team, including

(A) providing the commissioner with team communication requiring commissioner review or approval;

(B) contacting members to determine who will be attending the next scheduled meeting; and

(C) preparing minutes of the previous meeting.

(Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.375

**5 AAC 40.330. QUORUM AND VOTING.** A regional planning team may not transact business without a simple majority of four members. Voting procedures may be established at the discretion of the membership. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.375

**5 AAC 40.340. REGIONAL PLANNING TEAM RESPONSIBILITY.** Each regional planning team shall prepare a regional comprehensive salmon plan, for the appropriate region, to rehabilitate natural stocks and supplement natural production, with provisions for both public and private nonprofit hatcheries. Each regional planning team shall consider the needs of all user groups and ensure that the public has opportunity to participate in the development of the comprehensive salmon plan. Each regional comprehensive plan must define regional production goals by species, area, and time. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.375

**5 AAC 40.350. PUBLIC NOTICE.** The chairman of the regional planning team, or his designee, shall give two weeks' notice, in a newspaper of general circulation in the appropriate region, of a planning team meeting. The chairman shall also give notice to radio and television stations in the appropriate region, for broadcast as no-cost public service messages. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.375



# Chapter 41.
# Transportation, Possession, and Release of Live Fish

Article
1. Scope of Regulations (5 AAC 41.001)
2. Permit System Established (5 AAC 41.005 — 5 AAC 41.060)
3. General Provisions (5 AAC 41.070 — 5 AAC 41.100)

## Article 1. Scope of Regulations

Section
1. Application of this chapter

**5 AAC 41.001. APPLICATION OF THIS CHAPTER.** The provisions of this chapter govern the transportation, possession, or release of live fish transplanted for or cultivated for human consumption or sport fishing purposes, or as part of an aquaculture program for scientific, educational or propagative purposes. Unless specifically provided, the provisions of this chapter do not apply to the cultivation of ornamental fish. Additionally, the provisions of this chapter do not apply to the transportation, possession, or release of fish taken for commercial, sport, or subsistence purposes.

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

## Article 2. Permit System Established

Section
5. Permit required
10. Uniform application procedures
20. Inspection for disease of brood stock
30. Permit issuance or denial
40. Amendments to the permit
50. Permit conditions
60. Retention of permit for inspection

**5 AAC 41.005. PERMIT REQUIRED.** (a) No person may transport, possess, export from the state, or release into the waters of the state, any live fish unless the person holds a fish transport permit issued by the commissioner or his authorized designee, and the person is in compliance with all conditions of the permit and the provisions of this chapter. A fish transport permit will be issued for a fixed term subject to the provisions of (c) of this section.

(b) A fish transport permit authorizes only that operation specified in the permit. Any change of species, brood stock, or location requires a new permit. Any other change requires an amendment to the permit

(B) the number of hatchery-produced fish taken for the hatchery harvest requirement, to be used to pay for the hatchery's reasonable operating and capital costs, at current market prices for the species involved;

(7) "permit" means a private nonprofit salmon hatchery permit, issued by the commissioner, which has not been suspended or revoked;

(8) "PNP coordinator" means the salmon rehabilitation and enhancement coordinator of the private nonprofit hatchery program within the Department of Fish and Game;

(9) "regional comprehensive salmon plan" is a document that integrates and assembles all relevant information regarding the development and protection of the salmon resource, for a specific long-range period of time, into a strategic plan for an established region of the state;

(10) "rehabilitation" means a strategy directed toward restoring debilitated natural stocks to optimum production levels; rehabilitation strategies consist of regulatory and nonregulatory activities; nonregulatory activities are directed at increasing the survival of debilitated brood stock and include removal of migration inhibitors, stream restoration, incubation and subsequent planting of eyed eggs, fry and fingerlings, lake fertilization and predator-competitor control;

(11) "salmon stock" means a population of salmon of a single species identified with a specific water system or portion of a water system, which share a common spawning period;

(12) "special harvest area" means an area designated by the commissioner or the Board of Fisheries where hatchery returns are to be harvested by the hatchery operators, and, in some situations by the common property fishery; and

(13) "terminal harvest area" means an area designated by the commissioner, Board of Fisheries regulation, or department emergency order where hatchery returns have achieved a reasonable degree of segregation from naturally occurring stocks and may be harvested by the common property fishery without adverse effects. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.375
AS 16.10.475



5 AAC 40.360. PUBLIC INVOLVEMENT. Each regional planning team shall encourage public participation during all stages of the development and review of regional comprehensive salmon plans. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.375

5 AAC 40.370. PLAN APPROVAL. (a) A draft regional comprehensive salmon plan must be submitted to the PNP coordinator for department review and comment.

(b) The draft regional comprehensive salmon plan must be distributed for public review.

(c) The regional planning team shall respond to comments received as a result of these reviews, and may incorporate them in the final draft of the regional comprehensive salmon plan.

(d) The regional planning team shall submit a final draft of the regional comprehensive salmon plan to the commissioner for review and approval. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.375

## Article 8. General Provisions

Section
800. Nontransferability of permits
810. Preference right
820. Basic management plans
830. Hatchery inspection
840. Annual management plans
850. Notice of permit alteration
860. Peformance review
870. Reporting of mortality
880. Surplus salmon eggs
890. Information
990. Definitions

**5 AAC 40.800. NONTRANSFERABILITY OF PERMITS.** A hatchery permit is not transferable. Another person wishing to obtain a permit to operate a hatchery at a location which is already a currently permitted site, shall submit an application, which is subject to the same application review schedule as outlined in 5 AAC 40.110-5 AAC 40.230. If the assets, or control, of a private nonprofit corporation that holds a hatchery are transferred to a degree considered substantial by the department, the corporation shall submit a new application for a hatchery permit. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.400

**5 AAC 40.810. PREFERENCE RIGHT.** (a) A preference right under AS 16.10.400 applies to a potential hatchery site, and does not constitute an approval of a permit.

(b) As part of the pre-application assistance described in 5 AAC 40.120, the PNP coordinator will inform the applicant whether a qualified regional association or an approved local nonprofit hatchery corporation has an established preference right to the identified site.

(c) The PNP coordinator will notify the appropriate qualified regional association, by certified letter, of an applicant's intent to apply for a hatchery site if that site has been identified as a potential hatchery site in the comprehensive plan for the region.

(d) Within three weeks after receiving the notification, the qualified regional association may respond, by certified letter, to the PNP coordinator to establish a preference right at that location.

(e) If the qualified regional association exercises a preference right for that site, the association may, within one year, submit an application for acceptance. If an application is not submitted and accepted within one year, the qualified regional association relinquishes its preference right to that location.

(f) A local nonprofit hatchery corporation is eligible to establish a preference right to a proposed site if the corporation receives approval from the qualified regional association. That preference right is identical to the one which can be established by a qualified regional association.

(g) A local nonprofit hatchery corporation seeking regional association approval shall send a notice, by certified letter, to the PNP coordinator at the same time that a certified letter requesting approval is sent to the qualified regional association.



(d) The appropriate fish transport permit must be approved by the commissioner before any surplus salmon eggs are transferred from the facility to the recipient facility. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.450

**5 AAC 40.890. INFORMATION.** The department will exchange information with the Department of Commerce and Economic Development, including copies of annual reports required to be submitted under AS 16.10.470, in order to ensure consistency between reports submitted by the permit holder to both agencies. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.470

**5 AAC 40.990. DEFINITIONS.** In this chapter,

(1) "commissioner" means the commissioner of the Department of Fish and Game or his designee;

(2) "common property fishery" means any fishery in which the general public is allowed to harvest fish subject to state and federal law;

(3) "completed application" means a final application which has been accepted by the commissioner and which contains a draft basic management plan for the operation of the facility;

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

(5) "enhancement" means a strategy designed to supplement allowable harvest of natural freshwater and anadromous species; enhancement activities are primarily designed to implement artificial or semi-artificial production systems or to increase the amount of productive natural habitat;

(6) "escapement" means all fish that escape the common property fishery and includes two categories of escapement;

(A) the number of brood stock or spawners required to perpetuate and achieve natural, semi-artificial, and artificial production objectives; and

**5 AAC 40.870. REPORTING OF MORTALITY.** (a) If, in any of the hatchery operations during the year, an event occurs which results in fish or egg mortalities above the minimum hatchery survival standards defined in 5 AAC 40.860, the operator shall inform the PNP coordinator immediately and shall submit an incident report, which must include

(1) a description of the nature of the incident;

(2) the cause of the incident;

(3) the time of the incident;

(4) the effect on the stocks;

(5) corrective action taken and proposed measures to eradicate future problems; and

(6) an assessment of the general impact on the program.

(b) The operator shall complete and submit the mortality incident report to the PNP coordinator within 15 days after the incident occurs. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.400

**5 AAC 40.880. SURPLUS SALMON EGGS.** (a) Salmon eggs are surplus if the following conditions are met:

(1) the hatchery operator no longer needs to return to the indigenous stocks in order to develop the broodstock for the hatchery; and

(2) broodstock needs for the hatchery, as identified in the annual management plan, must have been achieved through salmon returning to the facility.

(b) A proposed sale of surplus salmon eggs by a permit holder must be identified in the annual management plan for the facility.

(c) A permit holder shall obtain a permit alteration from the commissioner if the eggs taken for sale purposes are to be incubated at the facility before transferral to the recipient facility.



(h) All applicants for a permit, including local nonprofit corporations, local nonprofit hatchery corporations approved by the qualified regional association, and qualified regional associations, shall follow the application procedures outlined in 5 AAC 40.110–5 AAC 40.230 (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.400

**5 AAC 40.820. BASIC MANAGEMENT PLANS.** (a) Each hatchery operator shall manage the hatchery and its salmon returns in accordance with a basic management plan approved by the commissioner. Before the public hearing, held under 5 AAC 40.210, on the proposed hatchery, the department, in conjunction with the applicant, will develop a draft basic management plan. Department staff will present the draft at the public hearing and will make copies available for public review and comment at the hearing.

(b) If, following the public hearing, the commissioner decides to issue a permit for the proposed hatchery, the department will finalize the basic management plan after all comments have been considered. The final basic management plan describes the conditions under which the permit will be implemented, and is an addendum to the permit. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.400
AS 16.10.410
AS 16.10.443

**5 AAC 40.830. HATCHERY INSPECTION.** The permit holder shall notify the PNP coordinator when construction of the hatchery has been completed and the facility is ready for operation. The facility must be inspected and approved by the department before the permit holder may start operations. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.400
AS 16.10.460

**5 AAC 40.840. ANNUAL MANAGEMENT PLANS.** (a) Beginning with the first year of operation of the hatchery, and on an annual basis after that, the department will prepare, in conjunction with the permit holder, an annual management plan to guide and condition hatchery operations for the succeeding calendar year.

(b) The PNP coordinator will organize the appropriate department staff and the permit holder in preparing a draft annual management plan. The appropriate regional planning team and the Department of Commerce and Economic Development may also review the plan. This plan must organize and guide the hatchery's operations, for each calendar year, regarding production goals, broodstock development, and harvest management of hatchery returns. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.375
AS 16.10.400
AS 16.10.443

**5 AAC 40.850. NOTICE OF PERMIT ALTERATION.** (a) A hatchery permit holder may propose alteration of the permit and basic management plan, based on accumulated experience and changing conditions. The permit holder shall request, on a form provided by the PNP coordinator, a permit alteration for a proposed modification to the permit or change in the basic management plan for the hatchery.

(b) Requests for permit alterations must be received by the PNP coordinator, on the prescribed form, no later than February 15 of the calendar year that the proposed alteration is to occur. The commissioner will, in his or her discretion, extend the deadline for submittal of a permit alteration request, on a case-by-case basis, if the request is justified by extraordinary circumstances or emergency.

(c) The regional planning team may, if the commissioner so requests, review and make a recommendation to the commissioner on the permit alteration request.

(d) In reviewing the request, the commissioner will, in his or her discretion, consider past management practices and fish culture procedures associated with the request, the past performance of the hatchery, the recommendation of the regional planning team, and any additional information deemed necessary. (Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.400

**5 AAC 40.860. PERFORMANCE REVIEW.** (a) Based upon a department internal review, the PNP coordinator will notify the commissioner if a hatchery operator's performance is inadequate, according to the conditions under which the permit was granted.

(b) The commissioner will, in his or her discretion, consider a permit alteration, suspension, or revocation in accordance with AS 16.10.430. If the commissioner decides to consider a permit alteration, suspension, or revocation, the coordinator will notify the appropriate regional planning team. The regional planning team may make a written recommendation to the commissioner on the proposed alteration, suspension, or revocation. The regional planning team shall use the following performance standards in their review, evaluation, and recommendation to the commissioner, including whether:

(1) survivals in the hatchery are more than the minimum standards described in (c) of this section for a period of greater than four years;

(2) the transport of broodstock from wild sources does not continue for longer than one cycle of the particular species without reevaluation of hatchery operations;

(3) the hatchery contributes to the common property fishery;

(4) the hatchery does not significantly impact wild stocks in a negative manner;

(5) the hatchery fulfills the production objectives described in the terms of the hatchery permit; and

(6) there are any mitigating circumstances which were beyond the control of the hatchery operator.

(c) Minimum hatchery survival standards are as follows:

| | Survival for this stage | Cumulative Survival |
|---|---|---|
| For captured broodstock to egg take | 70% | |
| Green egg to eyed egg | 80% | 80% |
| Eyed egg to emergent fry | 85% | 68% |
| Emergent to fed fry[1] | 90% | 61% |
| Fed fry to fingerling[2] | 90% | 55% |
| Fingerling to smolt | 75% | 41% |

[1] Fry achieving up to 25% weight gain from swim-up.
[2] Fry achieving substantially more than 25% weight gain from swim-up.

(Eff. 3/31/85, Reg. 93)

Authority: AS 16.05.020
AS 16.05.092
AS 16.10.375
AS 16.10.430

is not subject to the Administrative Procedure Act (AS 44.62). (§ 12 art I ch 94 SLA 1959; am § 1 ch 4 SLA 1963)

NOTES TO DECISIONS

**Effect of orders.** — Authorized by this section, emergency closure orders have the force and effect of law. F V Am. Eagle, ADF&G No. 39 v. State, Sup. Ct. Op. No. 2227 (File Nos. 3973, 3974, 4023), 620 P.2d 657 (1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

**Vagueness of order.** — An emergency order closing a shellfish district was not in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, in violation of the due process rights of a fishing vessel's owners. F/V Am. Eagle, ADF&G No.39 v. State, Sup. Ct. Op. No. 2227 (File Nos. 3973, 3974, 4023), 620 P.2d 657 (1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

**Area closures.** — This section does not prohibit the closure of an entire statistical area of king crab stocks or district thereof. F/V Am. Eagle, ADF&G No. 39 v. State, Sup. Ct. Op. No. 2227 (File Nos. 3973, 3974, 4023), 620 P.2d 657 (1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

**Use to enforce resource management plan.** — If the Board of Fisheries properly adopted a plan for the management of state fishery resources, the Commissioner of the Department of Fish and Game could enforce that policy through the emergency order process. Kenai Peninsula Fisherman's Coop. Ass'n v. State, Sup. Ct. Op. No. 2358 (File No. 5072), 628 P.2d 897 (1981).

**Selective closures.** — The Commissioner of the Department of Fish and Game may use the emergency order process to close down one type of fishery and not another in order to implement a policy establishing priorities of use. Kenai Peninsula Fisherman's Coop. Kenai Peninsula Fisherman's Coop. Ass'n v. State, Sup. Ct. Op. No. 2358 (File No. 5072), 628 P.2d 897 (1981).

**Sec. 16.05.065. Application extension.** (a) The commissioner shall extend the time and dates during which application may be made for fish or game registration if the commissioner finds that

(1) the conservation and management of the fish or game resource will not be affected adversely; and

(2) the failure to timely apply is the result of excusable neglect.

(b) The fee for an extension granted under this section is $45.

(c) As used in this section, "excusable neglect" does not include unfamiliarity with or ignorance of applicable laws and regulations. In order to show excusable neglect, a person must have demonstrated, before the registration deadline, an intent to harvest fish or game. (§ 2 ch 196 SLA 1970; am § 1 ch 105 SLA 1977)

**Sec. 16.05.070. Regulations as evidence.** Regulations of the boards of fisheries and game and of the commissioner, including emergency openings and closures, are admissible as evidence in the courts of the state in accordance with the Administrative Procedure Act (AS 44.62). (§ 13 art I ch 94 SLA 1959; am § 1 ch 206 SLA 1975)





**Sec. 16.05.080. Limitation of power.** Nothing in this chapter authorizes the department or the boards of fisheries and game to change the amount of fees or licenses. (§ 14 art I ch 94 SLA 1959; am § 2 ch 206 SLA 1975)

**Sec. 16.05.090. Organization of the department.** (a) The commissioner may, with the approval of the governor, establish a departmental division of commercial fisheries, a departmental division of sport fisheries, a departmental division of game, and other departmental divisions as are necessary.

(b) The commissioner shall establish a departmental division of fisheries rehabilitation, enhancement and development.

(c) There is established in the department a section of subsistence hunting and fishing. (§ 15 art I ch 94 SLA 1959; am § 1 ch 113 SLA 1971; am § 2 ch 151 SLA 1978)

Editor's notes. — In a memorandum signed April 14, 1981, the governor approved the commissioner's conferral of full division status on the section of subsistence hunting and fishing.

NOTES TO DECISIONS

Cited in State v. Eluska, Ct. App. Op. No. 456 (File No. A-210), 698 P.2d 174 (1985).

**Sec. 16.05.092. Duties of division of fisheries rehabilitation, enhancement and development.** The division of fisheries rehabilitation, enhancement and development shall

(1) develop and continually maintain a comprehensive, coordinated state plan for the orderly present and long-range rehabilitation, enhancement and development of all aspects of the state's fisheries for the perpetual use, benefit and enjoyment of all citizens and revise and update this plan annually;

(2) encourage the investment by private enterprise in the technological development and economic utilization of the fisheries resources;

(3) through rehabilitation, enhancement and development programs do all things necessary to insure perpetual and increasing production and use of the food resources of Alaska waters and continental shelf areas;

(4) make a comprehensive annual report to the legislature, containing detailed information regarding its accomplishments under this section and proposals of plans and activities for the next fiscal year, not later than 20 days after the convening of each regular session. (§ 2 ch 113 SLA 1971)

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

(1) the construction and operation of a salmon hatchery;

(2) the operation of a hatchery under AS 16.10.480.

(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. The commissioner may waive the submission of an application for a permit to operate a hatchery under AS 16.10.480.

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

(d) *[Repealed, § 19 ch 154 SLA 1977.]*

(e) A qualified regional association formed under AS 16.10.380, if it has become a nonprofit corporation under AS 10.20, has a preference right to a permit under (a)(1) of this section if its proposed hatchery is provided for in the comprehensive plan for that region developed under AS 16.10.375 and the fresh water source exceeds one cubic foot per second minimum flow. Another local nonprofit hatchery corporation approved by a qualified regional association has an identical preference right.

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

(g) During the development of a comprehensive plan for a region no permit may be issued for a hatchery unless the commissioner determines that such an action would result in substantial public benefits and would not jeopardize natural stocks. (§ 2 ch 111 SLA 1974; am § 3 ch 161 SLA 1976; am §§ 3, 19 ch 154 SLA 1977; am §§ 2 — 4 ch 14 SLA 1988)

**Effect of amendments.** — The 1988 amendment, effective March 31, 1988, in subsection (a), divided the formerly undivided language into an introductory paragraph and paragraph (1), and added paragraph (2); added the second sentence in subsection (b); and, in subsection (e), inserted "under (a)(1) of this section" in the first sentence and substituted "Another" for "Any other" in the second sentence.

**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. At a hearing for a permit under AS 16.10.400(a)(1), the applicant, shall present a plan for the proposed hatchery, describing the capacity of the hatchery and other relevant facts that 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; am § 5 ch 14 SLA 1988)

**Effect of amendments.** — The 1988 amendment, effective March 31, 1988, repealed and reenacted subsection (c), which formerly related to the transferability of the hatchery permit.

**Sec. 16.10.450. Sale of salmon and salmon eggs by hatchery.** (a) Except as otherwise provided in a contract for the operation of a hatchery under AS 16.10.480, 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 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.

(b) Fish returning to hatcheries and sold for human consumption shall be of comparable quality to fish harvested by commercial fisheries in the area and shall be sold at prices commensurate with the current market. (§ 2 ch 111 SLA 1974; am § 5 ch 154 SLA 1977; am § 6 ch 14 SLA 1988)

**Effect of amendments.** — The 1988 amendment, effective March 31, 1988, designated the formerly undesignated two sentences as subsections (a) and (b), added "Except as otherwise provided in a contract for the operation of a hatchery under AS 16.10.480" at the beginning of subsection (a), and made a series of minor stylistic changes throughout the section.

**Sec. 16.10.480. Contracts for the operation of state hatcheries.** (a) If the department determines that it is unable to continue operating a state-owned hatchery or that it is in the best interest of the state to provide for the operation of the hatchery by another person or by another person in cooperation with the state, the department may

(c) The hearing shall be conducted by the department. At a hearing for a permit under AS 16.10.400(a)(1), the applicant, shall present plan for the proposed hatchery, describing the capacity of the hatchery and other relevant facts that may be of interest to the department or the public. Interested members of the public shall be afforded an opportunity to be heard.

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(b) Notwithstanding AS 36.30, when selecting a contractor under (a) of this section, the department shall give a preference to the re-

# CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

(c) The hearing shall be conducted by the department. At a hearing for a permit under AS 16.10.400(a)(1), the applicant, shall present plan for the proposed hatchery, describing the capacity of the hatchery and other relevant facts that 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; am § 5 ch 14 SLA 1988)

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(b) Notwithstanding AS 36.30, when selecting a contractor under (a) of this section, the department shall give a preference to the regional association organized under AS 16.10.380 that is located in the region in which the hatchery is located. If the department determines that the preferred regional association does not meet the criteria established by the department for the contract, the department may not award the contract to the preferred regional association and shall procure the contract under AS 36.30 after considering the recommendations of the preferred regional association.

(c) A contract entered into under this section must provide that the hatchery will be operated under AS 16.10.400 — 16.10.445 and 16.10.460 — 16.10.470 and the regulations adopted under those sections.

(d) The department may issue to a contractor who operates a hatchery under this section a permit to harvest adult salmon during the term of the contract in a quantity sufficient to allow the contractor to recover all or part of the contractor's costs of operating the hatchery.

(e) A contract under this section for the operation of a hatchery may not affect the state's ownership of the hatchery and does not affect the state's responsibility to manage the resource.

(f) The operation of a hatchery under a contract authorized by this section shall be conducted in accordance with the fisheries management and production goals of the department, and must be consistent with the Comprehensive Regional Salmon Plan approved under AS 16.10.375. During the term of the contract, the department may order changes in the operation of the hatchery that are necessary to ensure consistency with the production goals of the Comprehensive Regional Salmon Plan. The contract must specify the species to be raised and the production goals for each species, and these specifications must comply with the Comprehensive Regional Salmon Plan. The department may terminate a contract if the contractor fails to operate the hatchery in accordance with the requirements established by and under this subsection. (§ 1 ch 14 SLA 1988)

**Legislative history reports.** — For legislative letter of intent on ch. 14, SLA 1988 (CCS SB 410), see 1988 Senate Journal 2422.

## Article 9. Fisheries Enhancement Loan Program.



**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 — 16.10.560. Disposal shall be made in a manner that serves the best interests of the state, and may

# REP. ULMER'S PROPOSAL

# Alaska State Legislature

**REPRESENTATIVE FRAN ULMER**

MEMORANDUM

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TO: Senator Dick Eliason, President DATE: April 26, 1991
Representative Ben Grussendorf, Speaker

FROM: Representative Fran Ulmer

SUBJ: Interim Work

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I would appreciate the opportunity to meet with you to discuss possible interim work on Alaska's hatchery programs and policies. As has been mentioned by many persons, Alaska hatcheries are at a crossroad.

The administration has proposed transferring FRED facilities to regional aquaculture associations. Some hatchery managers say that these hatcheries must be expanded to be able to produce more fish in order for them to be economical. Some fishermen have asked if we need more pink salmon or where we need them. Others have expressed concerns about the biological consequences of our hatcheries and questioned the status of efforts to assure genetic purity of natural stocks. Most would agree that Alaska's grand experiment in enhancement has been very successful, but I think it's time for an unbiased, thorough analysis of both the economics and the biology of Alaska's hatcheries.

I believe the University should be considered as one available, credible, resident entity which could do this analysis with access to much of the background research necessary to do the study.

I have had brief conversations with persons from the University of Alaska about such an analysis: Dr. Ole Mathisen about biological analysis and Lee Gorsuch about economic analysis.

Attached for your information is a rough draft of what ISER could do. I have asked for something in writing from Dr. Mathisen, the UAF/UAS Division of Fisheries.

District 4B — Juneau
P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

It might also be appropriate to create a joint interim committee on hatcheries to evaluate the analysis, take public comment, and develop a comprehensive policy statement on hatcheries.

The legislature needs this kind of analysis to put policy and budget decisions in a balanced and well informed context. Efforts by the Senate Special Fisheries Committee, the standing Resources Committees, and/or any new special or joint committees on this subject would all benefit from this effort.

FU/bvh
cc: Senator Lloyd Jones, Senate Resources Chair
Representative Cliff Davidson, House Resources Chair
Senator Lyman Hoffman, Senate Finance Subcommittee on ADFG Chair

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SCHOOL OF PUBLIC AFFAIRS

INSTITUTE OF SOCIAL AND
ECONOMIC RESEARCH
(907) 786-7710 FAX (907) 786-7739

MEMORANDUM

April 25, 1991

TO: Representative Fran Ulmer
FR: Lee Gorsuch

RE: A Study of Hatchery Production and the Market for Salmon

Attached is a one page description of the study we briefly discussed. If I misconstrued the type of study you envisioned, feel free to call me and I can quickly adjust the study design and description. The cost of the study is $75,000 assuming it comes directly to ISER as an appropriation. However, if the study is a pass through from another agency, please add an additional 40 percent to cover our institutional overhead which we are required to charge. The study described would be useful to both managers and legislators in designing a salmon management policy which better accounts for the link between wild and hatchery production and the market.

I expect to be in Juneau next Monday if you would like to discuss the study further.

## *HATCHERY PRODUCTION AND THE MARKET FOR ALASKA SALMON*

The salmon hatchery program in Alaska is the largest enhancement effort of its kind in North America. In 1989 hatcheries accounted for 33% of pink salmon harvests and 23% of total statewide salmon harvests (Knapp and Smith, 1991). Over the last several years hatchery production has increased. At the same time, many of the formerly state-run hatcheries have been turned over to local private non-profit (PNP) aquaculture associations. Some PNPs recover part of the costs of construction and operation through the sale of returning stock captured in the vicinity of the hatchery. Other production facilities release sockeye, chinook and coho salmon which result in enhanced total run strength.

Implicit in this "success story" is the notion that increased production benefits not only the hatchery and its owner (the state or the aquaculture association) but also the commercial fishermen who harvest the hatchery fish and the fishermen who harvest wild (non-hatchery) fish. However, a simple examination of the market for salmon, especially the price paid by processors in a particular region's fishery, would indicate some price response to harvest expectations and run strength. The strength of this price response will determine whether harvesters experience an increase or decrease in total revenue when prices decline due to increased supply.

Likewise, the fact that hatchery production must affect wild returns of the same species, at least at some level of production, has been ignored.

Last, the cost effects of hatchery production have not been completely explored. For example, how does hatchery production affect the costs of harvesting (both wild and hatchery fish) or what other opportunities are foregone due to the introduction of a hatchery?

Currently, wild salmon are managed using biological criteria. That is, harvest limits are set pre-season according to forecasts of run strength with actual catch determined by escapement goals. Also, the focus of hatchery producers has been to increase production both within the individual hatchery and through expansion in the number of hatcheries.

The proposed research would examine a more holistic management approach for salmon by linking wild and hatchery production to the market for salmon. Specifically, we will use available information on the quantitative relationship between the quantity harvested and price, and the impact of increased international salmon aquaculture production on the market for wild Alaskan salmon, to describe the market interaction of hatchery and wild fish, and the price effects of inventory and carry-over resulting from excess production.

At the same time the research would explore the total costs of hatchery production as described above. Together the two pieces of research will provide a better accounting of the costs and benefits of hatchery operations.

The results of this study will be useful to managers and legislators in designing a salmon management policy which better accounts for the link between wild and hatchery production and the market. Such a strategy should improve the economic returns to the fishery.

**Budget:** $75,000 to the Institute of Social and Economic Research, University of Alaska Anchorage

# MISCELLANEOUS STUDIES

# A Comparison of Demand Models for Alaska Salmon

prepared by

Dr. John R. Boyce
Department of Economics
University of Alaska Fairbanks
(907) 474-5199

August, 1990

Under contract with

Mr. Jeff Hartman
Fisheries Reseach and Enhancement Division
Alaska Department of Fish and Game
(907) 465-4160

With funding assistance from:

Bruce Suzumoto: President
Prince William Sound Acquaculture Association
RSA No. 101142

NOTE: ATTACHED ARE FIRST FEW PAGES OF THIS STUDY. FULL REPORT IS AVAILABLE IN SEN. ELIASON'S OFFICE

Acknowledgements: This work was funded by the Prince William Sound Aquaculture Association. I would like to thank the PWSAA for this funding. Thanks also to Jeff Hartman for his tact and patience, and to Ben Muse for having provided data and helpful comments. Also, special thanks to Bob Logan, with whom I have discussed this project on many occasions and who always was able to see the forest for the trees. Thanks also to Quinn Wenninger for help in collection of the data, and to Hongru Zhang who did much of the original estimation of the 2SLS model.

# Table of Contents

List of tables and figures

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FIGURES

# A Comparison of Demand Models for Alaskan Salmon

## 1. Introduction

Upon the implementation of the limited entry program in Alaska's commercial salmon fisheries in the 1970's the State of Alaska became heavily involved in aquacultural fisheries enhancement programs. From a purely biological perspective, the programs have enjoyed tremendous success as measured by increased landings for each of the five species of salmon. However, economic theory suggests that the market clearing price will decrease when larger quantities are supplied. Thus whether or not fishermen have benefited from the increased landings depends upon whether or not the reduction in prices has been larger than the increase in quantity.[1]

A market clearing price is determined by conditions on the demand side and on the supply side of a market. On the demand side, higher prices generally imply that less will be demanded. On the supply side, higher prices generally imply that more will be supplied. However, for salmon at the ex-vessel level, the supply in the market is determined by Alaska Department of Fish and Game (ADF&G) biologists who control the escapement levels. Due to this regulation of the market, the price responsiveness of supply at the ex-vessel level is negligible. This means that an important parameter is the price responsiveness at the ex-vessel demand level.

The relationship between price and the quantity demanded can be summarized by the "elasticity of demand" which is defined as the percentage change in quantity demanded due to a one percent change in the price. The inverse of the elasticity of demand is called the "price flexibility"; it measures the

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[1]Another measure (ignored in this study) which also determines whether the fishermen benefit from enhancement programs is the additional costs incurred to catch the larger quantity of fish. Additionally, the price and cost measures only examine the benefits to the fishermen. Whether or not the State (fishermen, processors, taxpayers, etc.) benefits also depends upon the cost of the enhancement programs.

percentage change in price due to a one percent change in the quantity. Which measure is used depends upon whether the causal relationship is that quantity depends upon price, in which case the elasticity is the directly observable measure, or whether price depends upon quantity, in which case the price flexibility is the directly observable measure. For salmon, the quantity is determined by ADF&G escapement goals, so the appropriate measure is the price flexibility. If the price flexibility is less than one (or elasticity is greater than one) in absolute value, then an increase in the quantity will increase total revenues. Conversely, if the price flexibility is greater than one (or elasticity of demand is less than one), then an increase in the quantity landed will cause total revenues to decrease.

Due to the importance of the price flexibility parameter, several models have been proposed to measure the price flexibility of demand for Alaskan salmon. This study compares three sets of ex-vessel demand models for Alaskan salmon. The first two models are single equation models, focusing on the demand equation using the notion that the supply is determined by conditions not affected by the market. One of these models was developed in 1984 by Ben Muse of the Commercial Fisheries Entry Commission (CFEC).[2] The other single equation model was developed in 1989 by Nick Ronan of the Institute of Economic and Social Research (ISER) at the University of Alaska, Anchorage under a contract with the ADF&G's Fisheries Research and Enhancement Division (FRED). An alternative model has been proposed in a Master's Thesis by Hongru Zhang (1990) at the University of Alaska Fairbanks (UAF). This model follows DeVortz (1982) in assuming that even though the landings are exogenously determined, the allocation of raw salmon between fresh/frozen and canned salmon is controlled by processors who make this decision based on relative prices and technological factors. Thus instead of simply modelling the ex-vessel demand in isolation from higher levels of the market, Zhang's model estimates ex-vessel demand simultaneously with fresh/frozen and canned supply and demand equations. These equations

[2] Muse actually uses a two equation model for pink and chum salmon. The first equation regresses the January 1 inventory holdings of pink salmon as a function of lagged US landings and the prime rate of interest. The price of the species is then regressed against the estimated pink inventory holdings, exchange rates with Japan, and the quantity of pink and chum salmon. However, his implicit assumption is that the errors of the two equations are unrelated. This, plus the recursive structure of the equations, implies that an equivalent estimation procedure would be to estimate price as a function of all of the exogenous variables. It is for this reason that we refer to the CFEC model as a single equation model.

are estimated using Two-Stage-Least-Squares (2SLS). For convenience of reference, the three models are referred to as the CFEC model, the ISER model, and the 2SLS model, respectively, in the text.

The purpose of this paper is to compare these three models for their ability to predict ex-vessel prices for Alaskan salmon. In addition, we also perform out of sample predictions based on the linear trends of the explanatory variables.

We find that the 2SLS model appears to have superior predictive capability within the sample. This conclusion is based primarily on statistical and graphical analysis of the estimated (or predicted) ex-vessel prices for each model. The 2SLS estimates indicate that the price flexibilities are statistically zero for all species except for pink salmon (for which the prices responsiveness is extremely small), indicating that at the ex-vessel level, the enhancement program serves to increase fishermen's revenues. The processing sector also benefits from enhancement of each species (all processing flexibilities are less than one in absolute value). However, the processing sector price flexibilities are not as low as the harvesting sector price flexibilities except for king salmon. Red salmon have the highest price flexibility (-0.7462 for fresh/frozen red salmon using average price and quantity data from 1978-1988), indicating that the processing sector benefits are the least for red salmon.

The conclusions just stated are based on *partial equilibrium* price response estimates. This means that the ex-vessel price flexibility estimates are based on changes in quantities estimated by assuming that the wholesale prices do not change. In a *general equilibrium* model, changes in the wholesale prices are taken into account. We estimate the general equilibrium price flexibilities using comparative statics techniques for systems of equations. In general, one would expect that these estimates would show a larger price flexibility at the ex-vessel level because increases in landings tend to depress wholesale prices, which, in turn, depress ex-vessel prices. We find that this conclusion is generally supported by the data, but that the conclusion that enhancement programs increase revenues at the ex-vessel level remains unchanged.

All models are estimated using annual state-wide ex-vessel price data. This price includes post season adjustments. We do not differentiate the data by region or by gear type. However, a separate demand function is estimated for each species: king (*Oncorhynchus tshawytscha*), red (*O. kisutch*), silver (*O. nerka*), pink (*O. gorbusha*), and chum (*O. keta*). The data used in the analysis is for the period 1964-1988. This sample is chosen because it covers the entire period for which canned inventory data is available (data for 1989 was not available for the analysis). A detailed description of the data used in the analysis is contained in Appendix A.

There are several sources for the price and quantity data for Alaskan caught salmon. The CFEC data begins in 1975 for ex-vessel data, and in 1984 for wholesale data on canned and fresh/frozen prices and quantities. The ADF&G data covers the period 1964-1985. Thus the two data sets must be combined to obtain a complete data set. The CFEC data differs slightly from the ADF&G data in that the CFEC data excludes data from test fisheries, fishing derbies, and illegally caught fish. The ADF&G data includes these categories. The difference is generally quite small (less than 1% of the quantity from all sources). Each model is estimated using CFEC data from 1975-1988 for ex-vessel level data and using CFEC data from 1984-1988 for wholesale data.

The 2SLS model does not exactly replicate Zhang's (1990) model.[3] His data set differed slightly in the years covered. He had data from 1962-1985 plus data for 1987. We have data from 1964-1988, inclusive. Zhang estimated his model using data transformed by taking the natural logarithm of all variables. We estimate the model using data in natural units. The reason for this difference is that the double-logged functional form implies a constant elasticity (flexibility). The untransformed model allows the elasticity (flexibility) to change as quantities increase. This enables us to ask whether or not there exists a quantity such that further enhancement will depress revenues to the harvesting or processing sector.

[3] This is also true for the CFEC and ISER models. The differences are outlined in more detail in the text.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY
## STATE OF ALASKA

*P.O. Box Y, Juneau, Alaska 99811*
*(907) 465-3867 or 465-2450*
*FAX (907) 465-2029*

*Deliveries to: 240 Main Street*
*Court Plaza, Room 500*
*Mail Stop 3101*


**MEMORANDUM** September 19, 1991

**SUBJECT:** Summaries and reviews of laws relating to fisheries, hatcheries, and marketing (7LS1510)

**TO:** Senator Lyman Hoffman
ATTN: Molly McCammon

**FROM:** George Utermohle GU
Legislative Counsel

Enclosed are the summaries and reviews of laws relating to salmon fisheries, hatcheries, and marketing that you requested.

If I may be of further assistance, please advise.

GU:gc
91-328.glc

Enclosure

## CONSTITUTION OF THE STATE OF ALASKA
## ARTICLE VIII: NATURAL RESOURCES

Article VIII of the Alaska Constitution sets out the policies that govern the utilization of natural resources of the state. It is the policy of the state to develop its natural resources and to make them available for maximum use consistent with the public interest. The legislature is responsible for the utilization, development, and conservation of state-owned natural resources. Fish, wildlife, and water in their natural state shall be available to the people of the state for common use. The renewable natural resources belonging to the state, including fish, wildlife, forests, and grasslands, shall be managed according to the principles of sustained yield. The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands and to assure fuller utilization and development of fisheries, wildlife, and water.

Water of the state, both surface and subsurface water, are reserved for common use of the people subject to the right to appropriate water for a beneficial purpose. Except for an appropriation of water for public water supply, an appropriation of water is subject to a general reservation of water for fish and wildlife.

Exclusive rights of fishery are prohibited, except as may be necessary to regulate entry into the fisheries to promote resource conservation and to alleviate economic distress among fishermen and to promote development of aquaculture.

All laws and regulations governing the use or disposal of natural resources shall apply equally to all persons who are similarly situated. The state has a substantial obligation to treat people fairly and equally when regulating the use of its natural resources.

## ALASKA FISH AND GAME CODE (AS 16.05)

The Department of Fish and Game is responsible for managing the fish and game resources belonging to the state. AS 44.39.020. The department is under the direction of the commissioner of fish and game. AS 16.05.020. Among the powers of the commissioner are the powers to design and construct fish hatcheries and similar facilities, an to acquire, sell, or exchange fish for stocking and propagation, and to provide brood stock to private nonprofit hatcheries. AS 16.05.050.

Within the department is the Division of Fisheries Rehabilitation, Enhancement and Development. AS 16.05.090. This division is responsible for planning for the orderly present and long-range rehabilitation, enhancement, and development of the fisheries in the state, encouraging private investment in the technological development and economic utilization of fisheries resources, and insuring perpetual and increasing production and use of the food resources of Alaska waters and the continental shelf. AS 16.05.092.

The Board of Fisheries is the regulatory body responsible for the conservation and development of fishery resources of the state. AS 16.05.221(a). The board may establish by regulation open and closed seasons and areas for taking fish; quotas, harvest levels, and size and sex restrictions on the taking of fish; the allowable means and methods for catching fish; the rules for capture, transportation, and release of native and exotic fish or their eggs; and the rules for propagation and stocking of fish in the state. The board may also allocate the harvest of fish among subsistence, sport, personal use, and commercial fisheries. AS 16.05.251(a). The board does not have authority to adopt regulations regarding the issuance of permits for aquatic farms or regarding the operation or construction of aquatic farms. AS 16.05.251(f).

## PRIVATE NONPROFIT SALMON HATCHERIES

In order to promote the sound development of state and private salmon hatcheries in the state, the commissioner of fish and game may approve comprehensive regional salmon hatchery plans. The plans are to be developed by teams consisting of staff of the Department of Fish and Game and representatives of regional hatchery associations. AS 16.10.375. The commissioner of fish and game shall encourage the formation of regional hatchery associations for the purpose of enhancing the hatchery production of salmon in the state. AS 16.10.380. The commissioner of fish and game may issue salmon hatchery permits to private nonprofit corporations. AS 16.10.400. A permit may not be issued for a hatchery on an anadromous fish stream unless the commissioner determines that the stream is suitable for enhancement. Before a permit is issued for a salmon hatchery, the department must hold a public hearing on the permit and must consider objections and recommendations made during the hearing. AS 16.10.410. Hatchery permits contain several provisions regulating the operation of the hatchery, including restrictions on where returning fish may be recaptured by the hatchery and restrictions on the siting of hatcheries in regard to natural salmon stocks and traditional salmon fisheries. AS 16.10.420. The department is obligated to assist and advise, consistent with available time and resources, hatchery operators and applicants for hatchery permits in the planning, construction, and operation of salmon hatcheries. AS 16.10.443. In obtaining brood stock for hatcheries, priority should be given to stocks native to the area in which the hatchery is located. AS 16.10.445.

A hatchery permit may be suspended or revoked for noncompliance with terms of the permit. A hatchery permit may also altered or revoked if the operation of the hatchery is not in the public interest and cannot be mitigated. AS 16.05.430. The Board of Fisheries may adopt regulations regarding the harvest of fish by hatcheries and the locations where the harvest is to occur, but the board may not adopt regulations regarding the issuance or denial of hatchery permits. AS 16.10.440.

Fish released into the natural water of the state by a private nonprofit hatchery 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. AS 16.10.440(a). Fish sold by hatcheries for human consumption must be of a quality comparable to fish sold by commercial fisheries in the area and must also be sold at a price commensurate with the current market price. AS 16.10.450.

The department may enter into agreements with nonprofit salmon hatchery operators and other persons to operate state hatcheries if the state is no longer able to operate a hatcheries. The regional salmon hatchery association in which the state hatchery is located shall have a preference to operate the state hatchery, if it is qualified to do so. AS 16.05.480.

Regulations adopted by the Board of Fisheries relating specifically to private nonprofit salmon hatcheries are found at 5 AAC 40.

The board has adopted general policies regarding the harvest of salmon returning to the hatchery. 5 AAC 40.005. All salmon present in the water of the state, whether wild or hatchery stocks, may only be harvested in accordance with regulations of the board. Special harvest areas may be designated in areas where hatchery stocks are segregated from wild stocks and can be harvested without significantly affecting wild stocks. Hatchery permit holders may harvest returning salmon only within the designated special harvest area. Special harvest areas may be open to subsistence, sport, personal use, and commercial fisheries. Hatchery operators shall take all reasonable steps to ensure that salmon harvested in the special harvest area are surplus salmon produced at that facility.

The board has adopted several hatchery harvest management plans in Prince William Sound that require the department to manage salmon fisheries in areas near hatcheries in order achieve hatchery escapement goals. 5 AAC 24.365 - 368. For Southeastern Alaska, the board has adopted several management plans providing for the allocation of hatchery stocks in special harvest areas among different gear groups. 5 AAC 33.370 - 374.

## FISHERIES ENHANCEMENT LOAN PROGRAM

In order to support the operation of private nonprofit salmon hatcheries established under AS 16.10.400 - 16.10.470, the Department of Commerce and Economic Development is authorized to make grants and loans for the planning, construction, and operation of hatcheries and other salmon enhancement projects. AS 16.10.500. The fisheries enhancement revolving loan fund has been established to support the operation of private nonprofit salmon hatcheries. AS 16.10.505 - 507.

The Department of Commerce and Economic Development may make loans to regional salmon enhancement associations and local salmon hatcheries for preconstruction activities and for planning and implementation of fisheries enhancement and rehabilitation activities. AS 16.10.510. A single loan to a regional association and an approved local association for a hatchery or other enhancement or rehabilitation project may not exceed $10 million. A loan for other hatchery projects may not exceed $1 million. AS 16.10.520. The department may also make grants to nonprofit regional salmon enhancement associations for organizational and planning purposes.

Regulations of the Department of Commerce and Economic Development relating to fisheries enhancement loans and grants are found at 3 AAC 81.

## AQUATIC FARMING

The commercial farming of shellfish and aquatic plants is permitted in the state. A person may obtain a permit from the commissioner of fish and game to operate an aquatic farm or a hatchery to supply stock to an aquatic farm. AS 16.40.100 - 110. Stock for an aquatic farm cannot be obtained from wild stocks in the state without first obtaining a permit from the commissioner. A permit to acquire stock for an aquatic farm must be either denied or restricted if the taking of stock from the wild will interfere with established uses of the resource by commercial, sport, personal use, or subsistence users or will impair sustained yield of the resource. Aquatic plants and shellfish acquired under a stock acquisition permit become the property of the permit holder and are no longer a public or common resource. AS 16.40.120. A person may not import an aquatic plant or shellfish into the state for use at an aquatic farm unless the importation is authorized by the Board of Fisheries. AS 16.40.130.

Aquatic farming of finfish is prohibited. AS 16.40.210.

Regulations of the commissioner of fish and game governing aquatic farming are found in 5 AAC 41.200 - 400.

## SPECIAL HARVEST AREA ENTRY PERMITS

A person may not engage in commercial fishing without first obtaining an entry permit or an interim-use permit from the Alaska Commercial Fisheries Entry Commission. AS 16.43.140. Likewise, a private, nonprofit hatchery may not take salmon for sale unless the hatchery has obtained a special harvest area entry permit from the commission. AS 16.43.400 - 440. Special harvest area entry permits are issued for only one year and are valid only for the special harvest area established by the Department of Fish and Game. Fish caught under the authority of a special harvest area entry permit are property of the permit holder. Salmon caught under a special harvest area entry permit may be sold, provided that the proceeds of the sale are used for enhancement and rehabilitation projects and to support the operations of the qualified regional salmon enhancement association.

Regulations of the Alaska Commercial Fisheries Entry Commission relating to special harvest area entry permits are found at 20 AAC 05.571 - 572.

## ALASKA SEAFOOD MARKETING INSTITUTE

The Alaska Seafood Marketing Institute was created to promote the development of markets for all species of fish harvested in the state. The institute is a public corporation of the state and is part of the Department of Commerce and Economic Development. AS 16.51.010. The institute is governed by a board of directors consisting of seafood processors, commercial fishermen, and a lay person. AS 16.51.020.

The institute shall prepare market research and product development plans for the promotion of any species of seafood and its by-products that is harvested in the state and processed for sale. The institute shall also conduct education, research, advertising, and sales promotions for all Alaska seafood products. The institute must stress the quality of Alaska seafood products and develop market-oriented quality specifications to promote the high quality image of Alaska seafoods. AS 16.51.100. The institute may also cooperate with other public and private entities involved in consumer education, sales promotion, quality control, advertising, and research in the production, processing, and distribution of seafood. AS 16.51.090. The institute may not promote seafood products by geographic origin in a region of the state or by brand name. AS 16.51.110.

The activities of the institute are indirectly supported by an assessment of 0.1 - 0.4 per cent on the value of fish purchased by processors in the state. The assessment and the amount of the assessment is approved by the vote of the processors who are subject to the assessment. The funds collected through the assessment are available for appropriation by the legislature to support the activities of the institute. AS 16.51.120 - 170.

## FISHERY INDUSTRIAL TECHNOLOGY CENTER

The Fishery Industrial Technology Center is located in Kodiak as part of the University of Alaska. The goal of the center is to create employment opportunities in the state's fishing industry by training fishermen in the most efficient and appropriate technologies for harvesting, processing, and conserving fishery resources and by providing information and technical assistance on adapting new technologies to the fisheries of the state. The center also provides research and development activities to adapt existing technology and create new technology to enhance the economic viability and effectiveness of the fishing industry in the state. AS 16.52.020. Program and policy guidance is provided to the center by the Fishery Industrial Technology Policy Council which consists of seven members appointed by the president of the University of Alaska. AS 16.52.030. The center shall cooperate with other agencies involved in the management, development, and promotion of the fishing industry in the state. AS 16.52.060.

## SALMON ENHANCEMENT TAX

A salmon enhancement tax may be assessed on the sale of raw salmon by commercial fishermen in certain regions of the state if the commissioner of fish and game has designated the region as a salmon enhancement planning region and designated a qualified regional salmon enhancement association for the region and the amount of the assessment is approved by a majority of the salmon entry permit and interim-use permit holders in the region. The amount of the assessment may be set at one, two, or three per cent of the value of salmon sold by commercial fishermen. AS 43.76.010 - 012. The elections to approve or terminate a salmon enhancement tax are conducted under the supervision of the Department of Commerce and Economic Development. AS 43.76.015 - 020.

The proceeds of the salmon enhancement tax may be used by the legislature to provide financing to qualified regional salmon enhancement associations. AS 43.76.025. Those qualified salmon enhancement associations that apply for financial assistance must account for the amount of financial assistance received and must provide reports to the Department of Commerce and Economic Development. AS 43.76.030.

Salmon harvested under a special harvest area entry permit are not subject to the salmon enhancement tax. AS 43.76.035. Regulations of the Department of Revenue relating to the imposition and collection of the salmon enhancement tax are found at 15 AAC 76.

## FISH AND SEAFOOD PROMOTION ACT OF 1986
## (16 U.S.C. 4001 - 4017)

In order to strengthen the competitive position of the United States commercial fishing industry, encourage utilization of all species of fish available for harvest in the United States by enhancement of markets, promotion, and public relations, and educate and inform consumers on the use and nutritional value of fish, the Congress enacted the Fish and Seafood Promotion Act of 1986. The Act established the National Fish and Seafood Promotional Council.

The national council consists of 15 voting members appointed by the Secretary of Commerce. Three members of the national council shall be appointed from each of the following regions of the nation: the State of Alaska, Northeast region, Southeast region, and Pacific region. The members from of each region must include a fisherman or fish farmer, a fish processor, and a person who sells processed fish through wholesale, retail, or restaurant markets. The remaining members of the national council are at-large members with expertise in fresh-water and inland fisheries, experience in disseminating information on the nutritional value of seafoods, or familiarity with fisheries as a member of a labor union. Members of the national council serve four year terms. 16 U.S.C. 4004.

The national council shall prepare for the approval of the Secretary of Commerce an annual marketing and promotion plan to encourage the consumption of, and the expansion of markets for, fish and seafood products. The national council shall also prepare a budget for the work of the council. 16 U.S.C. 4005. Marketing and promotion activities of the national council may not refer to private brand names or trade names, use deceptive practices in regard to fish or fish products with respect to competing food products, or promote the consumption of a group of similar fish species (such as members of the same genus).

The Fisheries Promotional Fund is established in the United States Treasury as a source of money to support the national council and its marketing and promotion plan. Money in the fund is derived from contributions to the fund under the Saltonstall-Kennedy Act, private voluntary contributions to the fund, and interest on investments of the fund. 16 U.S.C. 4008.

Seafood marketing councils may be established to promote the consumption of specific fish species and fish products. In order to establish a seafood marketing council, the charter for the council must be approved by the Secretary of Commerce and by a majority of the qualified participants in each sector of the fishing industry that is involved with the fish species or seafood product. If the council is approved, the Secretary of Commerce shall appoint the members of the council from among the participants in each sector of the fishing industry that is involved with the fish species or seafood product. 16 U.S.C. 4009. A seafood marketing council or the Secretary of Commerce, at the request of a seafood marketing council, may establish quality standards for the fish or seafood product promoted by the council. The quality standards may be adopted by the industry, if the standards are approved by the seafood marketing council and a majority of the participants in the sector affected by the standards. Seafood products that satisfy the quality standards may bear a seal or label indicating that fact. 16 U.S.C. 4010.

To support the activities of a seafood marketing council, the council must impose and collect an assessment necessary to pay the expenses of the council. The assessment shall be paid by persons who purchase the fish or seafood product from fishermen or who own a fish processing vessel. The assessment may also be levied on persons who import the fish or seafood product. The seafood marketing council may also accept voluntary payments or in-kind contributions to support the activities of the council. 16 U.S.C. 4012. Persons affected by an assessment may petition the Secretary of Commerce to review the assessment and the plan under which the assessment is made to determine whether the assessment is lawful. 16 U.S.C. 4013. Persons who pay the assessment may obtain refunds of the assessment in accordance with provisions adopted by the seafood marketing council.

A seafood marketing council may be terminated upon the petition of three participants in any one sector involved in the seafood marketing council and the majority vote of the participants in the sector. 16 U.S.C. 4015.

The authority to enforce provisions of this Act is given to the federal district courts and the Secretary of Commerce. 16 U.S.C. 4016.

## ANTI-TRUST LAWS

The purpose of federal and state anti-trust laws is to preserve free competitive economic enterprise and to protect the public from the adverse effects of monopolies and unreasonable restraints of trade or commerce. Under federal law, combinations in restraint of interstate trade and commerce and combinations and conspiracies to monopolize or to attempt to monopolize interstate trade and commerce are illegal. 15 U.S.C. 1 - 2. Restraint of trade is the interruption of or interference with the free movement of goods in commerce or the restriction of competition, as by monopoly or price-fixing. Monopolize means to control and dominate trade and commerce to such an extent as to exclude present or future competitors. Monopolies are restraints of trade but not all restraints of trade are monopolies. An unlawful restraint of trade or monopoly does not have to affect a vast area or occur over a long period of time to violate the federal law. It is not the amount of trade or commerce or the size of the area affected by the restraint or monopoly that invokes the anti-trust laws; it is nature and extent of the restraint or monopoly that is critical. Trade and commerce are the exchange of goods, commodities, or services by barter, buying, or selling. A combination is the agreement of two or more persons to achieve a specific goal. A conspiracy is a partnership to achieve a criminal purpose.

Monopolies created and controlled by states are exempt from federal anti-trust laws.

Violations of the federal anti-trust laws are felonies. A natural person is subject to a fine of not more than $350,000 or imprisonment for not more than three years, or both for a violation of the law. A corporation is subject to a fine of not more than $10 million for violating the law. In addition to criminal penalties, a person or corporation who violates the law must pay treble damages to persons injured by the restraint of trade or monopoly.

Federal law specifically authorizes fishermen to form associations to collectively catch, produce, process, and market fishery products. 15 U.S.C. 521. This provision provides a limited exemption from federal anti-trust laws. However the operation of fishermen's associations cannot restrain trade in fisheries products or monopolize trade in fisheries products to such an extent that the price of a fishery product is unduly enhanced. It is the responsibility of the Secretary of Commerce to enforce this provision. 15 U.S.C. 522.

The anti-trust provisions of state law are derived from federal law and are substantially similar to federal law. AS 45.50.562 - 596. The state law specifically authorizes the formation of fishermen's associations for the purpose of catching, collecting, and preparing fishery products for market; however, state law does not otherwise permit fishermen or fishermen's associations to engage in unlawful restraints of trade or monopolies. AS 45.50.572(c).

Violation of the state anti-trust law is a misdemeanor, A natural person who violates the state law is punishable by a fine of not more than $20,000 or imprisonment for not more than one year or both. A corporate violator is subject to a fine of not more than $50,000. AS 45.50.578.

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n the end of each twenty-four-month period
a e Administrator shall, report to the Congress
and provide an evaluation of the effectiveness of the

304, 104 Stat. 4783.)

ARY LAWS AND DIRECTIVES

is Title III of Act Nov. 29, 1990, P. L. 101-646,
S §§ 3951 et seq. and amends 16 USCS § 777c.

vation grants
with the funds made available in accordance with
e matching grants to any coastal State to carry out
n funds made available for that purpose.
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ys to any coastal State which submits a proposal
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Resources Act (16 U.S.C. 3921); and
shed dedicated funding for programs to acquire
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moneys required of a coastal State to carry out a
ll be derived from a non-Federal source.
cash outlays and payments, in-kind contributions
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from time to time make matching payments to
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of funds for the purpose of this section.
l, with the funds made available in accordance
e, direct the U.S. Fish and Wildlife Service's
ligitize wetlands maps in the State of Texas and
ion, and trends of wetlands in that State.
5, 104 Stat. 4785.)

LAWS AND DIRECTIVES

Title III of Act Nov. 29, 1990, P. L. 101-646,
§ 39 seq. and amends 16 USCS § 777c.



**§ 3955. Distribution of appropriations**

**(a) Priority project and conservation planning expenditures.** Of the total amount appropriated during a given fiscal year to carry out this title, 70 percent, not to exceed $70,000,000 shall be available, and shall remain available until expended, for the purposes of making expenditures—

(1) not to exceed the aggregate amount of $5,000,000 annually to assist the Task Force in the preparation of the list required under this title and the plan required under this title, including preparation of—

(A) preliminary assessments;

(B) general or site-specific inventories;

(C) reconnaissance, engineering or other studies;

(D) preliminary design work; and

(E) such other studies as may be necessary to identify and evaluate the feasibility of coastal wetland restoration projects;

(2) to carry out coastal wetlands restoration projects in accordance with the priorities set forth on the list prepared under this title;

(3) to carry out wetlands restoration projects in accordance with the priorities set forth in the restoration plan prepared under this title;

(4) to make grants not to exceed $2,500,000 annually or $10,000,000 in total, to assist the agency designated by the State in development of the Coastal Wetlands Conservation Plan pursuant to this title.

**(b) Coastal wetlands conservation grants.** Of the total amount appropriated during a given fiscal year to carry out this title, 15 percent, not to exceed $15,000,000 shall be available, and shall remain available to the Director, for purposes of making grants—

(1) to any coastal State, except States eligible to receive funding under section 306(a) [16 USCS § 3955(a)], to carry out coastal wetlands conservation projects in accordance with section 305 of this title [16 USCS § 3954]; and

(2) in the amount of $2,500,000 in total for an assessment of the status, condition, and trends of wetlands in the State of Texas.

**(c) North American wetlands conservation.** Of the total amount appropriated during a given fiscal year to carry out this title, 15 percent, not to exceed $15,000,000, shall be available to, and shall remain available until expended by, the Secretary of the Interior for allocation to carry out wetlands conservation projects in any coastal State under section 8 of the North American Wetlands Conservation Act (Public Law 101-233, 103 Stat. 1968, December 13, 1989).

(Nov. 29, 1990, P. L. 101-646, Title III, § 306, 104 Stat. 4786.)

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is Title III of Act Nov. 29, 1990, P. L. 101-646, 104 Stat. 4778, which appears as 16 USCS §§ 3951 et seq. and amends 16 USCS § 777c.

**§ 3956. General provisions**

**(a) Additional authority for the corps of engineers.** The Secretary is authorized to carry out projects for the protection, restoration, or enhancement of aquatic and associated ecosystems, including projects for the protection, restoration, or creation of wetlands and coastal ecosystems. In carrying out such projects, the Secretary shall give such projects equal consideration with projects relating to irrigation, navigation, or flood control.

**(b) Study.** The Secretary is hereby authorized and directed to study the feasibility of modifying the operation of existing navigation and flood control projects to allow for an increase in the share of the Mississippi River flows and sediment sent down the Atchafalaya River for purposes of land building and wetlands nourishment.

(Nov. 29, 1990, P. L. 101-646, Title III, § 307, 104 Stat. 4787.)

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is Title III of Act Nov. 29, 1990, P. L. 101-646, 104 Stat. 4778, which appears as 16 USCS §§ 3951 et seq. and amends 16 USCS § 777c.

## CHAPTER 60. FISH AND SEAFOOD PROMOTION

CODE OF FEDERAL REGULATIONS

Add:
50 CFR Part 720.

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§ 4001. Findings

The Congress finds that—

(1) the commercial fishing industry of the United States significantly contributes to the national economy, and could make a greater contribution if fish resources within the United States Exclusive Economic Zone were more fully utilized;

(2) the commercial fisheries of the United States provide significant employment in coastal areas and in processing and distribution centers;

(3) fish contribute an important nutritional component to the American diet;

(4) increased consumption of seafood in the United States could significantly lower the risk of many cardiovascular diseases;

(5) Federally supported development programs for commercial fisheries are unable to meet present and future marketing needs;

(6) many fish species are underutilized by the United States fishing industry because of underdeveloped markets; and

(7) the United States fishing industry has the potential to expand greatly its contribution to interstate and foreign commerce, favorably affecting the balance of trade.

(Nov. 14, 1986, P. L. 99-659, Title II, § 202, 100 Stat. 3717.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

**Short titles:**

Act Nov. 14, 1986, P. L. 99-659, Title II, § 201, 100 Stat. 3717, provides: "This title may be cited as the 'Fish and Seafood Promotion Act of 1986'.". For full classification of such title, consult USCS Tables volumes.

**Other provisions:**

Report to Congress. Act Nov. 14, 1986, P. L. 99-659, Title II, § 219, 100 Stat. 3733, provides: "The Secretary shall, not later than March 1, 1989, submit to the Congress a report on the effectiveness of the implementation of this title in achieving the purposes of this title.".

CODE OF FEDERAL REGULATIONS

Add:
50 CFR Part 720

§ 4002. Purpose

The purpose of this title is to—

(1) strengthen the competitive position of the United States commercial fishing industry in the domestic and international marketplace;

(2) encourage the development and utilization of all species of fish available for harvest by the United States fishing industry;

(3) encourage the utilization of domestically-produced fish through enhancement of markets, promotion, and public relations;

(4) help the United States fishing industry develop methods to improve quality and efficiency in the marketplace;

(5) educate and inform consumers on the use of fish;

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(6) develop better coordination of fisheries marketing and promotion activities with commercial fisheries research and development programs; and

(7) educate and inform the public about the nutritional value of fish in the diet.

(Nov. 14, 1986, P. L. 99-659, Title II, § 203, 100 Stat. 3718.)

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is title II of Act Nov. 14, 1986, P. L. 99-659, 100 Stat. 3717, which generally appears as 16 USCS §§ 4001 et seq. For full classification of such title, consult USCS Tables volumes.

## § 4003. Definitions

As used in this title, the term—

(1) "consumer education" means actions undertaken to inform consumers on matters related to the consumption of fish and fish products;

(2) "council" means a seafood promotional council established under section 210 of this title [16 USCS § 4009];

(3) "fish" means finfish, mollusks, crustaceans, and all other forms of aquatic animal life used for human consumption; the term does not include marine mammals and seabirds;

(4) "Fund" means the Fisheries Promotional Fund established in section 209 of this title;

(5) "harvester" means any individual who is in the business of catching or growing fish for purposes of sale;

(6) "importer" means any person in the business of importing fish or fish products into the United States from another country for commercial purposes or who acts as an agent, broker, or consignee for any person or nation that produces, processes or markets fish or fish products outside of the United States for sale or other commercial purpose in the United States;

(7) "marketer" means any person who is in the business of selling fish or fish products in the wholesale, retail, or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products in preparation for sale;

(8) "marketing and promotion" means an activity aimed at encouraging the consumption of fish or fish products or expanding or maintaining commercial markets for fish or fish products;

(9) "member" means any person serving on the National Council or on any council;

(10) "National Council" means the National Fish and Seafood Promotional Council established in section 205 of this title [16 USCS § 4004];

(11) "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any private entity organized or existing under the laws of the United States or any State, commonwealth, territory or possession of the United States;

(12) "processor" means any person who is in the business of preparing or packaging fish or fish products (including fish of the processor's own harvesting) for sale;

(13) "receiver" means any person who owns fish processing vessels and any person in the business of acquiring fish directly from harvesters;

(14) "research" means any type of research designed to advance the image, desirability, usage, marketability, production or quality of fish and fish products;

(15) "sector" means—

(A) the sector consisting of harvesters;

(B) the sector consisting of importers;

(C) the sector consisting of marketers;

(D) the sector consisting of processors;

(E) the sector consisting of receivers; or

(F) the consumer sector consisting of persons professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products;

(16) "Secretary" means the Secretary of Commerce, or the Secretary's designee; and

(17) "United States" means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and any other territory, possession, or commonwealth of the United States.

(Nov. 14, 1986, P. L. 99-659, Title II, § 204, 100 Stat. 3718.)

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is title II of Act Nov. 14, 1986, P. L. 99-659, 100

Stat. 3717, which generally appears as 16 USCS §§ 4001 et seq. For full classification of such title, consult USCS Tables volumes.

"Section 209 of this title", referred to in this section, is § 209 of title II of Act Nov. 14, 1986, P. L. 99-659, 100 Stat. 3722, which added 16 USCS § 4008 and amended 15 USCS § 713c-3.

**§ 4004. Establishment of the National Council**

**(a) Establishment.** There is established the National Fish and Seafood Promotional Council.

**(b) Composition of the National Council.** (1) The National Council shall be composed of the Secretary, who shall be a nonvoting member, and fifteen voting members appointed by the Secretary.

(2) Nominations for appointees shall be submitted in a manner prescribed by the Secretary.

**(c) Regional representation.** The National Council shall be comprised of regional representation from the Northeast, Southeast, Pacific, and Alaska regions. The Northeast region shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Maryland and Virginia. The Southeast region shall consist of the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana and Texas, the Commonwealth of Puerto Rico, and the territory of the Virgin Islands. The Pacific region shall consist of the States of Idaho, Washington, Oregon, California, and Hawaii, the territories of Guam and American Samoa, and the Commonwealth of the Northern Mariana Islands. The Alaska region shall consist of the State of Alaska.

**(d) Voting members.** (1) The voting members of the National Council shall be—

(A) three members who reside in or do substantial fishing industry business in the Northeast region;

(B) three members who reside in or do substantial fishing industry business in the Southeast region;

(C) three members who reside in or do substantial fishing industry business in the Pacific region;

(D) three members who reside in or do substantial fishing industry business in the Alaska region;

(E) two members-at-large with demonstrated expertise in fresh-water and inland commercial fisheries, at least one of whom is not a resident of the States of the Alaska, Pacific, Southeast, and Northeast regions; and

(F) one member-at-large who is either a person professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products or a person who is a member of an organized labor union and has expertise in the United States fisheries.

(2) Of the members appointed pursuant to each of paragraphs (1)(A) through (D) of this subsection, one shall be a harvester, one shall be a processor or a receiver, and one shall be a marketer.

**(e) Term of office.** Members of the National Council shall be appointed for a term of 4 years. A vacancy in the National Council shall not affect its ability to function. The Secretary shall appoint a new member within sixty days to fill a vacancy in an unexpired term. Any member may remain on the National Council beyond that member's term until a successor is appointed.

**(f) Chairman.** The National Council shall annually elect a Chairman by a majority of those voting, if a quorum is present. Ten members of the National Council shall constitute a quorum, but a lesser number may hold hearings.

**(g) First meeting.** The National Council shall first meet within one hundred and eighty days after the date of enactment of this Act [enacted Nov. 14, 1986].

**(h) Compensation of members.** Members of the National Council shall serve without compensation, but shall be reimbursed in accordance with section 5703 of title 5, United States Code, for reasonable travel costs and expenses incurred in performing their duties as members of the National Council.

(Nov. 14, 1986, P. L. 99-659, Title II, § 205, 100 Stat. 3719; June 27, 1988, P. L. 100-350, § 3, 102 Stat. 660.)

## HISTORY; ANCILLARY LAWS AND DIRECTIVES

**Amendments:**

**1988.** Act June 27, 1988, in subsec. (d)(1)(E), substituted ", at least one of whom is not a resident of the States of the Alaska, Pacific, Southeast, and Northeast regions" for "and who are not residents of the States of Alaska, Pacific, Southeast, or Northeast regions". States of the Alaska, Pacific, Southeast, or Northeast regions".

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**Other provisions:**

**Uninterrupted service.** Act Nov. 28, 1990, P. L. 101-627, Title VII, § 704(a), 104 Stat. 4464, provides: "Individuals serving on September 30, 1990, as members of the National Fish and Seafood Promotional Council shall be deemed to continue as members in uninterrupted service since the date of their initial appointment.".

**Filling of vacancies.** Act Nov. 28, 1990, P. L. 101-627, Title VII, § 704(b), 104 Stat. 4464, provides: "Notwithstanding section 206(e) [205(e)] [subsec. (e) of this section] of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(e)), any vacancy on the National Fish and Seafood Promotion Act [Council] not filled as of September 30, 1990, shall be filled within 60 days after the date of enactment of this Act [enacted Nov. 28, 1990].".

## § 4005. Functions and duties of the National Council

**(a) Functions and duties.** The National Council shall—

(1) prepare and submit to the Secretary, for the Secretary's review and approval, an annual marketing and promotion plan which contains descriptions of consumer education, research, and other marketing and promotion activities of the National Council for the following year, including plans to coordinate the activities of councils established under section 210 of this title [16 USCS § 4009];

(2) prepare and submit to the Secretary, for the Secretary's review and approval, an annual budget of the anticipated expenses and disbursements of the National Council, including probable costs of consumer education, research, and other marketing and promotion plans or projects, and referenda under section 210 of this title [16 USCS § 4009];

(3) maintain accounting records of the receipt and disbursement of all funds entrusted to the National Council, subject to the Secretary's right to review or inspect such records;

(4) maintain such books and records as the Secretary determines appropriate; and

(5) prepare and submit to the Secretary from time to time such reports or proposals as the Secretary or the National Council determines appropriate for furthering the purposes and policies of this title.

**(b) Annual plan.** Each annual marketing and promotion plan shall be directed to—

(1) increasing the general demand for fish and fish products;

(2) encouraging, expanding, or improving the marketing and promotion and utilization of fish and fish products; and

(3) improving the dissemination of data collected by consumer education, research, and other marketing promotion activities.

**(c) Prohibition on certain references.** Consumer education and other marketing and promotion activities of the National Council shall contain no reference to a private brand or trade name and shall avoid use of deceptive acts or practices in behalf of fish or fish products or with respect to the quality, value, or use of any competing product or group of products. In addition, the National Council may not promote the consumption or purchase of a single or group of similar fish species (such as members of the same genera); except that the Council may use illustrations of a single or group of similar fish species in the course of promoting the generic consumption of fish and fish products.

**(d) Executive director.** The National Council may employ and determine the salary of an executive director, but such salary shall not exceed Senior Executive Service Level 6. The executive director shall have demonstrated expertise in the marketing and promotion of food products and may, without regard to the provisions of title 5, United States Code, with the approval of the National Council, select and employ additional staff as necessary.

**(e) Funding of referendum.** The National Council may enter into agreements with applicants proposing to establish a council under section 210 of this title [16 USCS § 4009] for the purposes of funding a referendum establishing the council. The National Council may enter into agreements with the councils established under section 210 of this title [16 USCS § 4009] for the purpose of funding a referendum to establish quality standards, or a referendum to terminate any such council.

**(f) Agreements.** The National Council may enter into agreements to develop and carry out activities authorized under this title.

**(g) Termination of National Council.** The National Council shall cease to exist on December 31, 1991.

(Nov. 14, 1986, P. L. 99-659, Title II, § 206, 100 Stat. 3720; Nov. 28, 1990, P. L. 101-627, Title VII, § 701, 104 Stat. 4463.)

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is title II of Act Nov. 14, 1986, P. L. 99-659, 100

Stat. 3717, which generally appears as 16 USCS §§ 4001 et seq. For full classification of such title, consult USCS Tables volumes.

**Amendments:**

**1990.** Act Nov. 28, 1990, in subsec. (g), substituted "December 31, 1991" for "October 1, 1990".

**Other provisions:**

**Continuity of Council functions, contracts, and personnel.** Act Nov. 28, 1990, P. L. 101-627, Title VII, § 705, 104 Stat. 4464, provides: "All current functions, contracts in force, and existing personnel of the National Fish and Seafood Promotional Council as of September 30, 1990, are reauthorized and extended, and shall continue as if uninterrupted, notwithstanding section 206(g) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(g)) as in effect on September 30, 1990.".

## § 4006. Duties of the Secretary with regard to the National Council

**(a) Duties of the secretary.** The Secretary shall—

(1) within sixty days after its submission by the National Council, review the annual marketing and promotion plan and budget and, if the Secretary determines that such plan and budget are in accordance with the purposes and policies of this title, approve such plan and budget;

(2) administer the Fund and, in accordance with subsection (b) of this section, withdraw from the Fund such sums as are necessary to carry out the National Council's approved marketing and promotion plan and budget;

(3) promulgate regulations necessary to carry out the purposes and policies of this title;

(4) provide such administrative assistance as the National Council may require for purposes of its initial organization and operation; and

(5) make all initial appointments to the National Council within ninety days after the date of enactment of this Act [enacted Nov. 14, 1986].

**(b) Withdrawal of funds.** The Secretary shall make withdrawals of sums from the Fund under this section at the request of the National Council, unless the Secretary determines that the purposes for which such sums are requested are not reasonably likely to further the purposes and policies of this title.

(Nov. 14, 1986, P. L. 99-659, Title II, § 207, 100 Stat. 3721; Nov. 28, 1990, P. L. 101-627, Title VII, § 704(c), 104 Stat. 4464.)

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is title II of Act Nov. 14, 1986, P. L. 99-659, 100 Stat. 3717, which generally appears as 16 USCS §§ 4001 et seq. For full classification of such title, consult USCS Tables volumes.

**Amendments:**

**1990.** Act Nov. 28, 1990, in subsec. (a)(5), inserted "initial".

## § 4007. Voluntary payments

Any person may make voluntary payments to assist the National Council to carry out its annual marketing and promotion plan and annual budget. The Secretary shall deposit such payments into the Fund.

(Nov. 14, 1986, P. L. 99-659, Title II, § 208, 100 Stat. 3722.)

## § 4008. Establishment of Fisheries Promotional Fund

**(a) Establishment of the Fund.** There is established in the Treasury of the United States a Fisheries Promotional Fund. The Fund shall be available, to the extent provided for in appropriation Acts, for the purpose of making payments to carry out the annual marketing and promotion plan and annual budget of the National Council under this title.

**(b) Deposits.** There shall be deposited in the Fund—

(1) the moneys transferred to the Fund under section 2(b)(2) of the Act of August 11, 1939 (commonly known as the Saltonstall-Kennedy Act; 15 U.S.C. 713c-3(b));

(2) payments made voluntarily pursuant to section 208 of this title [16 USCS § 4007]; and

(3) receipts from investments made under subsection (c) of this section.

**(c) Deposits and investments.** Sums in the Fund that are not currently needed for the purposes of the Fund shall be kept on deposit in appropriate interest-bearing accounts that shall be established by the Secretary of the Treasury, or invested in obligations of, or guaranteed by, the United States. Any revenue accruing from such deposits and investments shall be deposited in the Fund.

**(d) Authorization.** There are authorized to be appropriated from the Fund, for the purposes

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of carrying out the annual marketing and promotion plan and annual budget of the National Council under this title, such sums as are deposited in the Fund under subsection (b) of this section in each fiscal year beginning in fiscal year 1987 through fiscal year 1991.

(Nov. 14, 1986, P. L. 99-659, Title II, § 209(a)-(d), 100 Stat. 3722; Nov. 28, 1990, P. L. 101-627, Title VII, § 702, 104 Stat. 4463.)

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is title II of Act Nov. 14, 1986, P. L. 99-659, 100 Stat. 3717, which generally appears as 16 USCS §§ 4001 et seq. For full classification of such title, consult USCS Tables volumes.

**Amendments:**

**1990.** Act Nov. 28, 1990, in subsec. (d), substituted "1991" for "1990".

**§ 4009. Establishment of a council**

**(a) Application.** An application for a charter for a seafood marketing council for one or more species of fish and fish products of that species may be filed by persons who meet the requirements specified in accordance with subsection (b)(6) of this section.

**(b) Form of application.** An application for a charter for a council shall be made by filing with the Secretary the text of a proposed charter in such form as shall be prescribed by regulation by the Secretary. The text of a proposed charter must contain such information as the Secretary considers necessary or appropriate for carrying out the provisions of this title, including—

(1) the name of the council and a provision proclaiming its establishment;

(2) a declaration of the purposes and objectives of the council;

(3) a description of the species of fish and fish products for which the council will implement marketing and promotion plans under section 211 of this title [16 USCS § 4010];

(4) the identification of each sector and the number and terms of representatives of each sector that will be represented as voting members of the council;

(5) the identification of those sectors (including the sector consisting of harvesters, the sector consisting of receivers, and, if subject to assessment, the sector consisting of importers) subject to a referendum to establish a council under subsection (e) of this section;

(6) a specification for each sector described under paragraph (5) of this subsection of the minimum requirements, as measured by income, volume, or other relevant factors, that a person engaging in business in the sector must meet in order to participate in a referendum;

(7)(A) a description of the procedures for determining assessment rates under section 213 of this title [16 USCS § 4012];

(B) the proposed rate or rates that will be imposed by the council on receivers and, if subject to assessment, importers during its first year of operation;

(C) the maximum amount an assessment rate for any period may be raised above the rate applicable for the immediately preceding period; and

(D) the maximum rate or rates that can be imposed by a council on receivers or importers during the operation of the council;

(8) a provision setting forth the definition of a quorum for making decisions on council business and the procedures for selecting a chairman of the council;

(9) a provision setting forth the voting procedures by which votes may be cast by proxy; and

(10) such other provisions relating to administration of the council as the Secretary considers necessary.

The text of a proposed charter shall be accompanied by a document identifying, to the extent practicable by address of place of business, the persons (hereinafter referred to as "sector participants") that are considered by the applicants to meet the requirements specified in paragraph (6) of this subsection. The text of a proposed charter shall include provisions setting forth procedures for providing refunds to those sector participants subject to assessment under section 213 of this title [16 USCS § 4012], and may also include provisions which establish a maximum limit on the amount that any one sector participant may be required to pay under an assessment for any period.

**(c) Contents of charter.** The Secretary may not approve a proposed charter filed under subsection (a) of this section unless such charter provides that—

(1) the council will have voting members representing the harvesting, receiving and, if subject to assessment, importing sectors; and

(2) the members of the council shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the council.

**(d) Review of charter.** (1) Within 180 days of the receipt of an application to establish a council, the Secretary shall—

(A) identify, to the extent practicable, those sector participants that meet the requirements for eligibility to participate in the referendum under subsection (e) of this section;

(B) determine, to the extent practicable, if the charter is accompanied by a petition comprised of the signatures or corporate certifications, as the case may be, of no less than three sector participants in each sector identified in accordance with subsection (b)(5) of this section who collectively accounted for, in the twelve-month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products described in accordance with subsection (b)(3) of this section that were handled by each such sector during that period; and

(C) determine if the proposed charter is consistent with the provisions of this title and any other applicable law.

(2) If any negative determination is made under paragraph (1) of this subsection regarding a proposed charter, the Secretary shall advise in writing the sector participants who made the application of the reasons for such determination. A corrected application may be submitted thereafter to the Secretary for approval.

**(e) Conduct of referendum.** (1) Upon making affirmative determinations under subsection (d)(1) of this section regarding a proposed charter, the Secretary, within 90 days after the date of the last of such determinations, shall conduct a referendum on the adoption of the proposed charter among all sector participants identified in accordance with subsection (d)(1)(A) of this section. The Secretary shall by order establish the council and approve the proposed charter, if the referendum votes which are cast in favor of the proposed charter constitute a majority of the sector participants voting in each sector and the majority collectively accounts for, in the twelve-month period immediately preceding the month in which the proposed charter was filed under subsection (a) of this section, at least sixty-six percent of the value of the fish and fish products described in accordance with subsection (b)(3) of this section that were handled by that sector during such period.

(2) Not less than thirty days prior to holding a referendum under this subsection, the Secretary shall—

(A) publish (by such means as will result in wide publicity in regions affected by the proposed charter) the text of the proposed charter and a list of those sector participants eligible to vote in the referendum; and

(B) provide for public comment, including the opportunity for a public meeting.

(3)(A) The Secretary shall pay all costs of a referendum which establishes a council under this subsection. Within two years after a council is established the council shall reimburse the Secretary for any expenses incurred for the conduct of the referendum from assessments collected by the council. Prior to the holding of a referendum under this subsection, the Secretary shall require the applicants to post a bond or other security acceptable to the Secretary, in an amount which the Secretary determines to be sufficient to pay any expenses incurred for the conduct of the referendum, and shall immediately recover such amount if a referendum fails to result in the establishment of a council.

(B) As used in this paragraph, the term "expenses incurred for the conduct of the referendum" does not include salaries of Government employees or other administrative overhead, but is limited to those additional direct costs incurred in connection with conduct of the referendum.

**(f) Nominations.** (1) Within thirty days after a council is established under subsection (e) of this section, the Secretary shall solicit from the sectors represented on the council nominations for members of the council. If the harvesters and receivers represented on the council are engaged in business in two or more regions of the United States, the nominations made under this paragraph, and the appointments to the council made under paragraph (3) of this subsection, must, to the extent practicable, result in equitable representation for the constituent regions.

(2) No person is eligible for nomination or appointment as a member of a council unless such person is knowledgeable and experienced with regard to the activities of, and is or has been actively engaged in the business of, the sector which such person will represent on the council.

(3) The Secretary shall, within sixty days after the end of the thirty-day period referred to

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in paragraph (1) of this subsection, appoint the members of the council from among the nominees.

(4) A vacancy on a council shall be filled, within sixty days after the vacancy occurs, in the same manner in which the original appointment was made. A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term.

(5) The Secretary shall remove any member of a council if the council concerned first recommends, by not less than two-thirds of its members, removal for cause. Such a recommendation of a council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

**(g) Nature of a council.** A council is not an instrumentality of the United States Government.

(Nov. 14, 1986, P. L. 99-659, Title II, § 210, 100 Stat. 3723.)

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is title II of Act Nov. 14, 1986, P. L. 99-659, 100 Stat. 3717, which generally appears as 16 USCS §§ 4001 et seq. For full classification of such title, consult USCS Tables volumes.

## § 4010. Functions and powers of councils

**(a) Activities of a council.** (1) Each council shall—

(A) Adopt a seal which shall be judicially noticed;

(B) implement all terms of its charter;

(C) prepare and submit to the Secretary, for review and approval under section 212(a)(1) of this title [16 USCS § 4011(a)(1)], a marketing and promotion plan and amendments to such plan which contain descriptions of the projected consumer education, research, and other marketing and promotion activities of the council;

(D) implement and administer an approved marketing and promotion plan and amendments to such plan;

(E) determine the assessments to be made under section 213 of this title [16 USCS § 4012] and administer the collection of such assessments to finance council expenses described in paragraph (2) of this subsection;

(F) receive, investigate and report to the Secretary accounts of violations of rules or orders relating to assessments collected under section 213 of this title [16 USCS § 4012], or quality standard requirements established under subsection (c) of this section;

(G) prepare and submit to the Secretary, for review and approval under section 212(a)(1) of this title [16 USCS § 4011(a)(1)], a budget (on a fiscal year basis) of the anticipated expenses and disbursements of the council, including—

(i) all administrative and contractual expenses;

(ii) the probable costs of consumer education, research, and other marketing and promotion plans or projects;

(iii) the costs of the collection of assessments; and

(iv) the expense of repayment of the costs of each referendum conducted in regard to the council;

(H) maintain books and records, prepare and submit to the Secretary such reports from time to time as may be necessary for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and cause a complete audit report to be submitted to the Secretary at the end of each fiscal year;

(I) reimburse the Secretary for the expenses incurred for the conduct of the referendum to establish the council or any subsequent referendum to terminate the council that fails; and

(J) prepare and submit to the Secretary from time to time such reports or proposals as the council determines appropriate to further the purposes of this title.

(2) Funds collected by a council under section 213 of this title [16 USCS § 4012] shall be used by the council for—

(A) research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products;

(B) other expenses, as described in subsection (a)(1)(G) of this section;

(C) such other expenses for the administration, maintenance, and functioning of the council as may be authorized by the Secretary;

(D) any reserve fund established under subsection (b)(5) of this section and any administrative expenses incurred by the Secretary specified as reimbursable under this title.

(3) Marketing and promotion plans and amendments to such plans prepared by a council under subsection (a)(1)(C) of this section shall be designed to increase the general demand for fish and fish products described in accordance with section 210(b)(3) of this title [16 USCS § 4009(b)(3)] by encouraging, expanding, and improving the marketing, promotion and utilization of such fish and fish products, in domestic or foreign markets, or both, through consumer education, research, and other marketing and promotion activities.

(4) Consumer education and other marketing and promotion activities carried out by a council under a marketing and promotion plan and amendments to such plan may not contain references to any private brand or trade name and shall avoid the use of deceptive acts or practices in promoting fish or fish products or with respect to the quality, value, or use of any competing product or group of products.

**(b) Authority of a council.** A council may—

(1) sue and be sued;

(2) enter into contracts;

(3) employ and determine the salary of an executive director who may, with the approval of the council, employ and determine the salary of such additional staff as may be necessary;

(4) collaborate with other councils and with the National Council in establishing and implementing a national marketing and promotion plan for one or more species of fish or fish products; and

(5) establish a reserve fund from monies collected and received under section 213 of this title [16 USCS § 4012] to permit an effective and sustained program of research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products in years when production and assessment income may be reduced, but the total reserve fund may not exceed the amount budgeted for the current fiscal year of operation.

**(c) Quality standards.** (1) A council may develop and submit to the Secretary for approval, or upon the request of a council the Secretary shall develop, quality standards for a fish or fish product described in accordance with section 210(b)(3) of this title [16 USCS § 4009(b)(3)]. Any quality standard developed under this paragraph shall be consistent with the purposes of this title.

(2) A quality standard developed under paragraph (1) of this subsection may be adopted by a council by a majority of the members of the council if first approved, in a referendum conducted by the council, by a majority of the sector participants of the sector concerned voting and the majority collectively accounted for, in the twelve-month period immediately preceding the month in which the referendum is held, not less than sixty-six percent of the value of the fish or fish products described in accordance with section 210(b)(3) of this title [16 USCS § 4009(b)(3)] that were handled by that sector during such period.

(3) With respect to a quality standard adopted under paragraph (2) of this subsection, the council shall develop and file with the Secretary an official identification in the form of a symbol, stamp, label, or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identification is affixed to the fish or fish product, or is affixed to or printed on the packaging material of the fish or fish product.

(4) The Secretary shall establish by regulation procedures for the use of an official identification filed with the Secretary under paragraph (3) of this subsection. Misuse of an official identification established under this section shall constitute a violation of this title.

(5) Prior to issuing final regulations under paragraph (4) of this subsection, the Secretary shall—

(A) publish the proposed regulations by such means as will result in wide publicity in affected regions; and

(B) provide for public comment and the opportunity for a public hearing.

(6) A council may receive, investigate and report to the Secretary accounts of violations of regulations issued under paragraph (4) of this subsection.

(7) Any regulation issued under paragraph (4) of this subsection shall be repealed immediately by the Secretary upon the termination under section 216 of this title [16 USCS § 4015] of the council that developed the official identification to which the regulations apply.

(8) The procedures applicable to the adoption and the taking effect of a quality standard developed under this subsection also apply to a subsequent amendment or the termination of such standard.

**(d) Amendment of a charter.** A council may submit to the Secretary amendments to the text of the council's charter. Any proposed amendments to a charter shall be approved or disapproved in the same manner as the original charter was approved under section 210(d) and (e) of this title [16 USCS § 4009(d), (e)], with the exception of section 210(d)(1)(B). [16 USCS § 4009(d)(1)(B)].

(Nov. 14, 1986, P. L. 99-659, Title II, § 211 100 Stat. 3726.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is title II of Act Nov. 14, 1986, P. L. 99-659, 100 Stat. 3717, which generally appears as 16 USCS §§ 4001 et seq. For full classification of such title, consult USCS Tables volumes.

### § 4011. Functions and powers of the Secretary

**(a) Duties of the Secretary.** In addition to the duties prescribed under section 210 of this title [16 USCS § 4009], the Secretary shall—

(1) review, for consistency with the provisions of this title and other applicable law, and approve or disapprove, marketing and promotion plans and budgets within sixty days after their submission by a council;

(2) immediately notify a council in writing of the disapproval of a marketing and promotion plan or budget, together with reasons for such disapproval;

(3) issue orders and amendments to such orders that are necessary to implement quality standards under section 211(c) of this title [16 USCS § 4010(c)];

(4) promulgate regulations necessary to carry out the purposes of this title;

(5) enforce the provisions of this title, as provided under section 217 of this title [16 USCS § 4016]; and

(6) make all appointments to councils in accordance with section 210(f) of this title [16 USCS § 4009(f)].

**(b) Assistance.** The Secretary may provide, on a reimbursable or other basis, such administrative or technical assistance as a council may request for purposes of the initial organization and subsequent operation of the council.

(Nov. 14, 1986, P. L. 99-659, Title II, § 212, 100 Stat. 3728.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is title II of Act Nov. 14, 1986, P. L. 99-659, 100 Stat. 3717, which generally appears as 16 USCS §§ 4001 et seq. For full classification of such title, consult USCS Tables volumes.

### § 4012. Assessments

**(a) Authority.** A council shall impose and administer the collection of the assessments that are necessary to pay for all expenses incurred by the council in carrying out its functions under this title.

**(b) Method of imposition.** (1) Assessments shall be imposed on sector participants in the receiving sector or the importing sector, or both, as specified in an approved council charter.

(2) An assessment on sector participants in the receiving sector shall be—

(A) except for an owner of a fish processing vessel, in the form of a percentage of the value of the fish described in accordance with section 210(b)(3) of this title [16 USCS § 4009(b)(3)] when purchased by such participants from fish harvesters; and

(B) for an owner of a fish processing vessel, in the form of a percentage of the value of the fish described in accordance with section 210(b)(3) of this title [16 USCS § 4009(b)(3)] and harvested by such a vessel that is no less than the value of such fish, if such fish had been purchased by a receiver other than an owner of such a vessel.

(3) An assessment on sector participants in the importing sector shall be in the form of a percentage of the value, as determined for the purposes of the customs laws, of the fish or fish products described in accordance with section 210(b)(3) of this title [16 USCS § 4009(b)(3)] when entered, or withdrawn from warehouse for consumption, in the customs territory of the United States by such sector participants.

**(c) Prohibition on Assessment.** A council may not impose an assessment on any person that was not eligible to vote in the referendum establishing the council under section 210(e) of this title [16 USCS § 4009(e)] by reason of failure to meet the requirements specified under section 210(b)(6) of this title [16 USCS § 4009(b)(6)], unless such person, after the date on which such referendum is held, meets the requirements of section 210(b)(6) of this title [16 USCS § 4009(b)(6)].

**(d) Voluntary payments.** Any person may make voluntary payments or in-kind contributions to a council for purposes of assisting the council in carrying out its functions.

**(e) Deposit of funds.** All funds collected or received by a council under this section shall be deposited by the council in an appropriate account in the name of the council specified in its charter. Funds eligible to be collected or received by a council shall be limited to those authorized under this section.

**(f) Information.** (1) Sector participants shall make available to the Secretary such information and data as is necessary for the effectuation, administration or enforcement of this title or any order or regulation issued pursuant to this title. Except as provided in paragraphs (2) and (3) of this subsection, any information obtained in carrying out this subsection shall be kept confidential by all officers and employees of the Department of Commerce, independent accountants and other persons who have access to such information.

(2) If the Secretary or an employee of the United States Government is a party to a suit or administrative action involving an assessment, order, or regulation issued under this title, the Secretary may disclose information obtained under paragraph (1) of this subsection to the extent allowed by the judicial or administrative officer presiding over such suit or action.

(3) This subsection shall not prohibit—

(A) the issuance of general or statistical statements based upon reports of a number of persons subject to the provisions of this title which do not identify the information furnished by any person; or

(B) the publication by direction of the Secretary of the name of any person violating a requirement relating to an assessment imposed under subsection (a) of this section or to quality standards implemented by the Secretary under section 211(c) of this title [16 USCS § 4010(c)], and a statement of the particular provisions of the requirement violated by such person.

(4) Any individual who is required to keep information confidential under this subsection and who knowingly violates this subsection shall, upon conviction, be—

(A) subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both; and

(B) removed from office if an officer or employee of a council or the Department of Commerce.

(Nov. 14, 1986, P. L. 99-659, Title II, § 213, 100 Stat. 3729.)

## HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is title II of Act Nov. 14, 1986, P. L. 99-659, 100 Stat. 3717, which generally appears as 16 USCS §§ 4001 et seq. For full classification of such title, consult USCS Tables volumes.

## § 4013. Petitions

**(a) Filing of petition.** Any person subject to assessment under section 213 of this title [16 USCS § 4012] may file a written petition with the Secretary alleging that—

(1) the assessment,

(2) the plan approved under section 212(a)(1) of this title [16 USCS § 4011(a)(1)] on which the assessment is based, or

(3) any obligation imposed under the plan,

is not in accordance with law and requesting the Secretary to modify or take other appropriate action regarding the assessment or plan.

**(b) Form of petition.** Any such petition shall be in writing and filed within the period prescribed by the Secretary. A person who files a petition under this section shall be given an opportunity for a hearing regarding the petition in accordance with regulations issued by the Secretary. After such a hearing, or if no hearing is requested, after consideration of all documentation and other evidence, the Secretary shall make a ruling upon such petition.

(Nov. 14, 1986, P. L. 99-659, Title II, § 214, 100 Stat. 3730.)

## § 4014. Refunds

Notwithstanding any other provision of this title, any person who pays an assessment under this title may demand and shall promptly receive from the council a refund of such assessment. A demand for refund must be made in accordance with the procedures, and within such time, as shall be prescribed by the council and approved by the Secretary. Procedures to provide such a refund shall be established before any such assessment may be collected. Such procedures shall allow any person to request a refund for not less than ninety

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days from such collection, and provide that any such refund shall be made within sixty days after demand for such refund is made.

(Nov. 14, 1986, P. L. 99-659, Title II, § 215, 100 Stat. 2730.)

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is title II of Act Nov. 14, 1986, P. L. 99-659, 100 Stat. 3717, which generally appears as 16 USCS §§ 4001 et seq. For full classification of such title, consult USCS Tables volumes.

## § 4015. Termination of a council

**(a) Petition for termination.** (1) A petition to terminate a council may be filed with the Secretary by no less than three sector participants in any one sector. Any petition filed under this subsection shall be accompanied by a written document explaining the reasons for such petition.

(2) If the Secretary determines that a petition filed under paragraph (1) of this subsection is accompanied by the signatures, or corporate certifications, as the case may be, of no less than three sector participants in a sector referred to in paragraph (1) of this subsection who collectively accounted for, in the twelve-month period immediately preceding the month in which such petition was filed, not less than 20 percent of the value of the fish or fish products described in accordance with section 210(b)(3) of this title [16 USCS § 4009(b)(3)] that were handled by that sector during such period, the Secretary, within 90 days after such determination, shall conduct a referendum for termination of the council among all sector participants in that sector.

(3) Not less than 30 days prior to holding a referendum under this subsection, the Secretary shall publish a notice of such referendum, including the document explaining the reasons for the petition filed under paragraph (1) of this subsection and any other relevant information the Secretary considers appropriate.

(4) If the referendum votes which are cast in favor of terminating the council constitute a majority of the sector participants voting and the majority, in the period referred to in paragraph (2) of this subsection, collectively accounted for not less than sixty-six percent of the value of such fish and fish products that were handled during such period by a sector referred to in paragraph (1) of this subsection, the Secretary shall by order terminate the council effective as of a date by which the affairs of the council may be concluded on an orderly basis.

(5) The Secretary initially shall pay all costs of a referendum conducted under this subsection. Prior to conducting such a referendum, the Secretary shall require petitioners to post a bond or other security acceptable to the Secretary in an amount which the Secretary determines to be sufficient to pay any expenses incurred for the conduct of such referendum.

(6)(A) If a referendum conducted under this subsection fails to result in the termination of the council, the Secretary shall immediately recover the amount of the bond posted by petitioners under paragraph (5) of this subsection.

(B) If a referendum conducted under this subsection results in the termination of the council, the Secretary shall recover the expenses incurred for the conduct of the referendum from the account established by the council under section 213(e) of this title [16 USCS § 4012(e)]. If the amount remaining in such account is insufficient for the Secretary to recover all expenses incurred for the conduct of the referendum, the Secretary shall recover the balance of such expenses from the petitioners that posted a bond under paragraph (5) of this subsection.

**(b) Payment of remaining funds.** If a council is terminated under subsection (a) of this section, the Secretary, after recovering all expenses incurred for the conduct of the referendum under subsection (a) of this section, shall take such action as is necessary and practicable to ensure that moneys remaining in the account established by the council under section 213(e) of this title [16 USCS § 4012(e)] are paid on a prorated basis to the sector participants from whom those moneys were collected under section 213 of this title [16 USCS § 4012].

(Nov. 14, 1986, P. L. 99-659, Title II, § 216, 100 Stat. 3730.)

## § 4016. Enforcement

**(a) Authority.** (1) The district courts of the United States shall have jurisdiction specifically to enforce and to prevent and restrain any person from violating any assessment, order or regulation made or issued under this title.

(2)(A) If a council has reason to believe that a person subject to an assessment, order or regulation made or issued under this title is violating such assessment, order or regulation, it may refer the matter to the Secretary.

(B) Except as provided in subparagraphs (C) or (D) of this paragraph, any civil action authorized to be brought under this subsection, when referred by a council under subparagraph (A) of this paragraph, shall be referred to the Attorney General for appropriate action.

(C) If the Secretary believes that the administration and enforcement of the provisions of this title would be adequately served by taking administrative action under subsection (b) of this section or by providing written notice or warning to any person committing a violation of this title, the Secretary is not required to refer such violation to the Attorney General.

(D) Whenever a matter has been referred by a council under subparagraph (A) of this paragraph and the Secretary or the Attorney General fails within 60 days of such referral to take appropriate action, the council may, upon filing notice with the Secretary or Attorney General, as appropriate, and other interested parties, bring an action in its own name.

(b) **Recovery of costs.** (1)(A) When a council brings an action under subsection (a)(2) of this section, the council may recover costs of litigation and, where the action is brought to collect an unpaid assessment, interest from the date the amount became due and payable.

(B) Any person who violates any provision of an order (including a cease and desist order previously issued under this paragraph) or regulation issued by the Secretary under this title, or who fails or refuses to pay, collect, or remit any assessment required under this title, may be assessed a civil penalty by the Secretary of not less than $500 nor more than $5,000 for each such violation. Each violation shall be a separate offense. In addition to, or in lieu of, a civil penalty under this subparagraph, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(C) No penalty shall be assessed, or cease and desist order issued, under this paragraph unless the affected person is given notice and opportunity for a hearing before the Secretary with respect to such violation.

(D) Any order of the Secretary under this paragraph assessing a penalty or imposing a cease and desist order shall be final and conclusive, unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2)(A) Any person against whom a violation is found under paragraph (1) of this subsection may obtain review of such action in the United States court of appeals for the circuit in which such person resides or has his place of business, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary.

(B) The Secretary shall promptly file in the court a certified copy of the record upon which such violation was found.

(C) The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence or not in accordance with law.

(3)(A) If any person fails to pay a civil penalty under this subsection after it has become final, the Secretary shall refer the matter to the Attorney General.

(B) The Attorney General shall institute appropriate action to recover the amount assessed under this subsection in a district court of the United States.

(C) If, within sixty days after such referral, the Attorney General fails to institute such appropriate action, the council to whose programs the assessment, order or regulation relates may institute an action in its own name.

(Nov. 14, 1986, P. L. 99-659, Title II, § 217, 100 Stat. 3732.)

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is title II of Act Nov. 14, 1986, P. L. 99-659, 100 Stat. 3717, which generally appears as 16 USCS §§ 4001 et seq. For full classification of such title, consult USCS Tables volumes.

## § 4017. Investigations

(a) **Authority to make investigations.** The Secretary may make such investigations as the Secretary determines necessary to—

(1) carry out the Secretary's responsibilities under this title; and

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(2) determine whether any person has engaged in any act or practice which constitutes a violation of the provisions of this title.

**(b) Oaths and affirmations.** For the purpose of investigations under subsection (a) of this section, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. The attendance of such witnesses and the production of any such records may be required from any place in the United States.

**(c) Court orders.** In case of contumacy or refusal to obey a subpoena issued under this section by any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or has his business, to require the attendance and testimony of witnesses and the production of books, papers, and documents. Such court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony relating to the matter under investigation.

(Nov. 14, 1986, P. L. 99-659, Title II, § 218 100 Stat. 3733.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is title II of Act Nov. 14, 1986, P. L. 99-659, 100 Stat. 3717, which generally appears as 16 USCS §§ 4001 et seq. For full classification of such title, consult USCS Tables volumes.

## CHAPTER 61. INTERJURISDICTIONAL FISHERIES

Section



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### § 4101. Purposes

The purposes of this title are—

(1) to promote and encourage State activities in support of the management of interjurisdictional fishery resources; and

(2) to promote and encourage management of interjurisdictional fishery resources throughout their range.

(Nov. 14, 1986, P. L. 99-659, Title III, § 302 100 Stat. 3734.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

**References in text:**

"This title", referred to in this section, is title III of Act Nov. 14, 1986, P. L. 99-659, 100 Stat. 3733, which generally appears as 16 USCS §§ 4101 et seq. For full classification of such title, consult USCS Tables volumes.

**Effective date of section:**

Act Nov. 14, 1986, P. L. 99-659, Title III, § 310, 100 Stat. 3738, provides: "This title takes effect October 1, 1987.".

**Short titles:**

Act Nov. 14, 1986, P. L. 99-659, Title III, § 301, 100 Stat. 3733, provides: "This title may be cited as the 'Interjurisdictional Fisheries Act of 1986'.". For full classification of such title, consult USCS Tables volumes.

#### CODE OF FEDERAL REGULATIONS

Add:
50 CFR Part 253.

### § 4102. Definitions

For the purposes of this title:

(1) The term "Federal fishery management plan" means a plan developed under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

# PRINCE WILLIAM SOUND

# SALMON MANAGEMENT PLAN

# PROPOSAL REPORT

**FEBRUARY 9, 1991**

Alaska Department of Fish and Game
Post Office Box 669
Cordova, AK 99574
Phone: 907/424-3214
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## PREFACE

This document culminates a task which originated with the Alaska Board of Fisheries in December of 1988. The task was issued following many hours of public testimony concerning fishery proposals addressing the allocation of hatchery fish and gear group conflict in Western Prince William Sound. Rather than take a shot in the dark the Board of Fish opted to take no action on any of the proposals. However, the Board did direct the fishing community in Prince William Sound to solve the problem by the next Board of Fisheries meeting or they (the Board) would solve the problem for us. Most directives of this nature generally mean "you will be better off solving your own problems because if we have to do it you probably won't like what we do".

The fishing community rose to the occasion and we now have components of an integrated fisheries plan that includes allocation, production and management. No one group, agency, entity or individual is solely responsible for any one component. Hatchery operators (Prince William Sound Aquaculture Corporation), the Alaska Department of Fish and Game, fishing gear group organizations, and individual fishermen have all contributed to the formulation of this public policy.

We (Prince William Sound/Copper River Regional Planning Team) went to great extremes to gather input from all commercial fisheries permit holders for development of the "PLAN" as the fisheries management plan came to be known. We are sure that many of the people who provided input felt that we totally ignored what they had to say. Everyone who testified or provided written testimony was heard. In the search for middle ground of a highly polarized issue it is impossible to address all concerns and heed all suggestions. We, the Regional Planning Team, did the best job we could to achieve a fair and equitable compromise to the issues at hand. Other issues arose during this process which we chose not to address because we felt they did not fall into the scope of our task. We encouraged people concerned with those issues to pursue their resolution.

This report is intended to document our path for development of this proposal. It is important that everyone interested in the Prince William Sound Management and Salmon Enhancement Allocation Plan acquaint themselves with the development process we followed as well as the proposal itself. It is our belief that this proposal is the best compromise plan we could develop which is acceptable to the majority of all users.

Prince William Sound/Copper River Regional Planning Team.

Members:

| | |
|---|---|
| ADF&G | Larry Peltz, Chair; F.R.E.D. Division |
| | Ken Florey, Commercial Fisheries Division |
| | Tim McDaniel, F.R.E.D. Division |
| | Kevin Delaney, Sport Fish Division |
| PWSAC | John McMullen, PWSAC Board appointee to RPT |
| | Armin Koernig, PWSAC Board appointee to RPT |
| | Tom Namtvedt, PWSAC Board appointee to RPT |
| Staff: | Howard Ferren, PWSAC Planner |
| | Shelley Tennant, Assistant |

# CONTENTS

**PRINCE WILLIAM SOUND/COPPER RIVER**
**REGIONAL PLANNING TEAM REPORT**

**MANAGEMENT PLAN**

## 1.00 INTRODUCTION

Regional planning teams (RPT) are established under Alaska State Regulation **5 AAC 40.300** "...for the primary purpose of developing comprehensive salmon plans for various regions of the state." Specific responsibilities outlined under **5 AAC 40.340** call for regional planning teams to:

> "...prepare a regional comprehensive salmon plan, for the appropriate region, to rehabilitate natural stocks and supplement natural production, with provisions for both public and private nonprofit hatcheries. Each regional planning team shall consider the needs of all user groups and ensure that the public has had opportunity to participate in the development of the comprehensive salmon plan. Each regional comprehensive plan must define regional production goals by species, area, and time."

The Prince William Sound / Copper River Regional Planning Team (PWS/CR RPT) has prepared this report and attached management plan proposal as a specific assignment under direction of the Commissioner of the Alaska Department of Fish and Game (**APPENDIX 1**). The management plan will become a specific chapter within the Phase 3 PWS/CR Comprehensive Salmon Plan.

Historically, RPT regional comprehensive plans focused on production opportunities. Both the 20 Year Plan and the 5 Year Plan (phase 1 and 2 planning) produced by the PWS/CR RPT presented salmon production opportunities in Prince William Sound and the Copper River drainage basin. Fishery and enhancement objectives established in the 20 and 5 Year Plans have either been achieved or modified.

Reactions at the 1989 Board of Fisheries meeting held in Cordova indicated the salmon fishery had reached a new dimension of development. It was obvious that for the fishery to fully develop, user conflicts over enhanced fish allocations would have to be addressed.

The Board of Fisheries Chair requested that Prince William Sound Aquaculture Corporation (PWSAC), as regional association, develop an "enhanced salmon allocation and harvest management plan" as a foundation for enhanced salmon allocations and a basis for regulatory decisions. Responding to this request, PWSAC developed a corporate allocation policy. This policy was also formally adopted by the PWS/CR RPT and was recommended by PWSAC to the Board of Fisheries to be utilized in their decisions concerning salmon fishery regulations. PWSAC also produced a corporate production plan as directed by the policy which calls for long term planning and production as a means to achieve the allocation balance supported by users of the salmon resource.

## 3.00 GOAL

The integrated planning concept was brought to the floor at the September 20/21 PWS/CR RPT meeting in conjunction with allocation policy, management recommendations and public process discussions. The goal that was formulated and adopted by the PWS/CR RPT states:

> **"The Prince William Sound / Copper River Regional Planning Team will have developed with assistance from the users of the PWS/CR salmon fisheries, a management plan proposal for PWS for presentation to the Board of Fisheries in February, 1991, so that the BOF will be guided to adopt regulations that will reduce user conflict and allow for the orderly development of salmon enhancement planning and production within the guidelines of the allocation policy."**

It is this goal that lead the RPT to completion of the proposed management plan.

## 4.00 MANAGEMENT PLAN CONCEPTS

Enhanced salmon production in PWS has been remarkably successful. Yet, allocation policy and production plans require expansion of the enhancement effort.

**To assure a management environment of stable, long term regulation while providing opportunities for hatchery operations to meet allocation policy objectives, specific PWS *management concepts* are required.**

The first formal draft issued by the PWS/CR RPT and publicly distributed outlined these concepts. Specific regulatory language focused on:

1. Management priority for wild stocks.

2. Creation of a Perry Island Subdistrict.

3. Establishment of a migration corridor through the Southwest District prior to mid July for salmon stocks allocated to the gillnet fisheries in the Eshamy and Coghill Districts.

4. Closure of the Coghill District to seining prior to mid July to provide for the allocation of wild and enhanced Coghill sockeyes and enhanced early chums to the drift and set gillnet fisheries.

5. Management for wild or enhanced pink and chum salmon from mid July to the end of the season in the general seine districts and the Coghill District, except that the Esther Subdistrict of the Coghill District will close to seining at the end of August to provide for the allocation of enhanced cohos to the drift gillnet fishery.

# CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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In conjunction with the allocation policy and production plan, PWSAC requested the Commissioner consider permitting the PWS/CR RPT undertake this special assignment focused on management planning. This step was necessary for without a long term stable and planned management strategy, the PWSAC production plan could not be implemented to its fullest degree. Hence the goals and objectives mandated by the allocation policy and production plan could not be achieved.

The integration of production, allocation and management was viewed as essential to achieve allocation and production goals and to fulfill fishery development objectives. Specific objectives targeted by the policy and RPT comprehensive plan include:

* wild stock management;
* reduced congestion;
* minimized impacts to historical and traditional fisheries;
* high quality production, and
* enhancement of salmon fisheries in underdeveloped or underutilized area and time.

It was with this vision for an integrated plan and comprehensive fishery that the PWS/CR RPT accepted this challenge. This report outlines the steps taken to assure development of the management plan proposed to integrate with production and allocation plans. Adoption of this plan will thereby provide management the regulatory guidelines for managing the fishery in support of the production and allocation objectives.

## 2.00 WORKPLAN

A seven (7) phase workplan was prepared to carry the project through planning concept to formal proposal and presentation to the Board of Fisheries (February 1991, Cordova, AK.). The project phases included:

1. Orientation to planning process;
2. Develop purpose and goals;
3. Develop data base;
4. Revise draft management plan;
5. Revise second draft;
6. Prepare final draft;
7. Present plan to PWSAC Board of Directors;
8. Present plan to Board of Fisheries.

Throughout the project public opinion was the guiding force for plan development and revision. When concepts of the plan were introduced to the public at the September 1990 PWS/CR RPT meeting in Cordova, public comment helped formulate the project goal.

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## 5.00 MEETINGS AND PUBLIC PROCESS

During the September 20/21, 1990 PWS/CR RPT meeting held in Cordova, RPT members outlined and discussed with the public the management planning goal and draft concepts. Subsequent RPT meetings were scheduled and a public participation process outlined to secure user input and direct the course of plan development.

Following this first meeting, all Area E commercial salmon permit holders were mailed the draft plan. The Commercial Fisheries Entry Commission (CFEC) mail list was used for distributing the draft. Each mailing also identified subsequent RPT meetings scheduled to discuss the plan. Following each draft revision, a complete mailing was once again conducted.

To assure a broad awareness of the process and developing plan, revisions were also issued to advisory committees, representatives of major PWS/CR communities involved in the PWS salmon industry, fishing organizations, legislators and native organizations (**APPENDIX 2**).

Four (4) additional PWS/CR RPT meetings were scheduled to discuss and revise the proposed management plan. Attendance, user group representation and numbers of users testifying are provided in **APPENDIX 3**.

<u>User groups and advisory committees</u> throughout the region were notified of the process and project. These groups were encouraged to establish meetings to discuss the proposed plan. If meetings were to be scheduled, the PWS/CR RPT requested invitation to allow timely assignment of one or more RPT member(s) to attend the meeting, discuss the plan and bring back group comments concerning the plan.

## 5.10 SCHEDULED PWS/CR RPT MEETINGS

Five (5) PWS/CR RPT meetings were scheduled between September, 1990, and January, 1991. Meetings were scheduled to coincide with the close of the salmon fishing season, provide ample time between meetings for users to receive mailed drafts and organize travel to subsequent RPT meetings, coordinate around holidays and target the Pacific Marine Expo dates for scheduled RPT meetings in Seattle. The January RPT meeting was scheduled to prepare the final proposal language and distribute it to users well in advance of the Board of Fisheries meeting expected to begin in Cordova on February 9, 1991.

In total, the PWS/CR RPT listen to 81 individuals testifying either on their own behalf or as representatives of fishermens organizations. The RPT also reviewed 73 written statements received during the course of the project.

Culminating the January 15/16 meeting was a joint presentation by four (4) representatives from fishermens organizations **(TABLE 1)**. This joint testimony provided negotiated positions and language presented in the final plan proposal **(APPENDIX 4)**.

**TABLE 1**

| Fishermen Organization | Permit Holders Represented |
|---|---|
| CDFU SEINERS | 81 |
| CDFU GILLNETTERS | 194 |
| PW ALLIANCE | 170 |
| PWS SEINERS | 130 |

## 5.20 USER GROUP MEETINGS

In addition to regularly scheduled RPT meetings, RPT members emphasized to user groups that individual RPT members would commit to attending user group meetings if possible, to discuss the draft plan and carry back to the RPT any comments pertaining to plan concepts and/or language. As a result of this commitment, RPT members were able to attend the following meetings:

1. PWS Seiners Association, Cascade Chapter (Sept)
2. CDFU Seine Division (October)
3. CDFU Gillnet Division (October)
4. PWS Setnetters Association (November)

## 5.30 ADVISORY COMMITTEE MEETINGS

Throughout the planning project advisory committees were informed of the public process and draft plan content. Each draft revision was forwarded to advisory committee representatives. Advisory committees contacted include the Copper Basin, Copper River/PWS, Paxon, Seward, Tok Cutoff/Nebesna Road, Valdez and Whittier Advisory Committees.

During the course of the project RPT representatives were able to meet with the Cordova Advisory Committee (October, January) to discuss the draft plan.

## 6.00 REVISIONS

Four drafts of the proposed plan were produced as a result of public testimony and written comments. Revisions to the plan adopted at the January RPT meeting were issued as the "Final Proposal" **(APPENDIX 4)**.

## 7.00 FINAL PROPOSAL

The final plan proposal represents a long term commitment to the PWS salmon fishery by users, producers, planners and managers. The essence of the original plan concepts are embodied in the western corridor, continued management for wild stocks and negotiated gear groups positions on area and time management.

In context with the regional allocation policy and production plan, the management plan proposal represents the management framework necessary to implement allocation and production strategies.

The public process through which this plan was developed is highlighted for it exemplifies the willingness with which various interest groups are prepared to come to the negotiation table for the long term benefit of the Area E salmon fishery.

For those who have participated there has been a growing understanding and commitment to work towards an integrated fishery. Goals and strategies put in place for allocation, production and management must be designed to achieve the comprehensive effect of fisheries development. Conflict will continue in the presence of indecisiveness and lack of comprehensive and integrated planning.

Users of the resource have worked for 1-1/2 years to tackle an agreement for allocating salmon resources and producing the additional resources necessary to meet the economic and allocation needs of the fishery. This last element, the MANAGEMENT PLAN, is required to provide the remaining tool necessary to achieve the regional production and allocation goals.

## APPENDIX 1

## COMMISSIONER'S LETTER AUTHORIZING ACTION

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE (907) 465-4100

September 13, 1990

Larry Peltz, Chairman
PWS/CR RPT
Box 669
Cordova, AK 99574

Dear Mr. ~~Peltz~~: Larry

E.J. Cheshier, Chairman of the Board of the Prince William Sound Aquaculture Corporation (PWSAC), has requested my support and approval to have the Prince William Sound/Copper River Regional Planning Team (PWS/CR RPT) engage in a special project to draft an integrated fisheries management plan covering salmon production, management, and allocation.

Early in 1989, the Alaska Board of Fisheries requested that PWSAC develop an "allocation and harvest management plan" to guide the corporation's program. PWSAC responded by formulating a corporate allocation policy. PWSAC now has initiated a production planning effort that is guided by the allocation policy, both of which must be integrated with a fisheries management plan for Prince William Sound.

The charter for the RPT's includes the authority both for the preparation of a comprehensive salmon enhancement plan for Prince William Sound and the Copper River and the subsequent review of enhancement programs consistent with the plan in the region. In this particular case where planning needs are particularly significant and as requested by PWSAC, I do find that it is appropriate for the PWS/CR RPT to undertake this special purpose planning effort. Guided by public participation, the PWSAC and ADF&G membership on the RPT can contribute to the fulfillment of the Alaska Board of Fisheries' request for an allocation and management plan. The integrated plan which results from the efforts of the RPT will form the basis for a proposal to the Board of Fisheries during the upcoming regulatory meetings. This integrated plan, if adopted by the board, can also provide the basis for an update to the PWS Comprehensive Salmon Plan. Once this update is completed and approved by me, the RPT will be able to use it in reviewing pending enhancement applications.



11-K2LH

The PWS/CR RPT may move forward with the assurance that this office supports the integrated planning process in Prince William Sound. This effort satisfies the intent of the Board of Fisheries that PWSAC, the ADF&G, and user groups share in establishment of a production, allocation, and harvest management plan for that region.

Sincerely,

Don W. Collinsworth
Commissioner

**APPENDIX 2**

**PWS/CR RPT MAILING LISTS 1, 2 & 3**
**(10 OCT 90)**

## MAILING LIST 1: RECEIVES AGENDAS, MINUTES AND HANDOUTS. (PLEASE BRING PERTINENT DOCUMENTS TO MEETINGS. TO LIMIT EXPENDITURES, DUPLICATES WILL NOT BE PROVIDED.)

ADF&G/PWSAC members, staff, alternates and hatchery managers

Carter, Tony
Clarke, Dave
Delaney, Kevin
Ferren, Howard
Florey, Ken
Henderson, Tom
Jensen, Herb
Koernig, Armin
McDaniel, Tim
McMullen, John
Namtvedt, Tom
Pellissier, Rene
Peltz, Larry
Roberson, Ken
Somerville, Mark
Tennant, Shelley
VanBrocklin, Bob
Whitmore, Craig

## MAILING LIST 2: RECEIVES AGENDAS AND MINUTES

Ex Officio Members

Brady, James
Madden, Jerry
McCollum, Paul - VFDA
Schmid, David - USFS
Stratton, Lee - ADF&G
Suzumoto, Bruce - PWSAC
Wedemeyer, Kate - USFS

## MAILING LIST 3: RECEIVES AGENDAS

Organizations and Individuals

**ADF&G ADVISORY COMMITTEES:**

- Copper Basin AC – Don Horrell
- Copper River/PWS AC – Mike Glasen
- Paxson AC – Will Luebke
- Seward AC – Willard Dunham
- Tok Cutoff/Nabesna Road AC – Bill Ellis
- Valdez AC – Roy Alley
- Whittier AC – Bo Kendall

**MAILING LIST 3 CON'T.**

**CITIES: (MAYORS AND CITY MANAGERS)**

Cordova: Bob VanBrocklin, Nancy Gross
Glennallen: (Chamber of Commerce President) Donna Toliman
Seward: William Noll, Darryl Schaefermeyer
Valdez: Lynn Chrystal, Doug Griffin
Whittier: Georgia Buck, Roger Jenkins

**FISHING ORGANIZATIONS:**

CAMA -- Bob Blake
CDFU -- Jack Lamb
Chitna Dipnetters -- Byron Haley
Chugach Alaska Fisheries -- Steve Meuter
Cordova Sporting Club -- Ed Zeine
CRFC -- Bill Lindow and James Schomer
North Pacific Processors -- Ken Roemhildt
Peter Pan Seafoods -- Jim Poor
PW Alliance -- Mike Heimbuch (KENAI)
  Dan Lowell (ANCH)
  Kathy Halgren (SEA)
  Steve Little (OR)
  Kent Herschleb (BLLNGHM)
  John Bocci (CDV)
PWS Seiners Assn. -- Dave Clarke
PWS Setnetters Assn. -- Mike Owecke
Sea Hawk Seafoods -- Raymond Cesarini
Seward Fisheries -- Jeff Poole
St. Elias -- Bill Terhar

**INDIVIDUALS:**

Vining, Len
Woodruff, John

**LEGISLATORS:**

Rep. Curt Menard
Rep. Gene Kubina
Senator Jay Kerttula
Senator Mike Szymanski

**ORGANIZATIONS**

AHTNA -- Ken Johns
Blue Star, Inc. - Bill Gleason
Chenega Village Council -- Charles Selanoff
Chugach Alaska Corp. -- Michael Chittick
Cook Inlet RPT -- Tom Walker
Copper River Native Assn. -- Les Southerland
Eyak -- Steve Renberg
Tatitlek Village Council -- Gary Kompkoff

## APPENDIX 3

### PWS/CR RPT MEETING ATTENDANCE

| Meeting Date | User Group: Seine | User Group: Drift Gillnet | User Group: Dual Permit | User Group: Set Gillnet | User Group: Other | # Testified | Total Signed-in | Written Testimony |
|---|---|---|---|---|---|---|---|---|
| Sept. 20/21 | * no sign-in sheets were provided at this regular meeting. | | | | | | | |
| Oct. 24/25/26 | 6 | 5 | 3 | 2 | 4 | 16 | 20 | 30 |
| Nov. 15/16 | 4 | 6 | 4 | 0 | 3 | 14 | 17 | 17 |
| Nov. 30, Dec. 1 | 33 | 44 | 7 | 0 | 6 | 43 | 98 | -- |
| Jan. 15/16 | * See 1/ below. | | | | | 8 | * 1/ | 26 |
| TOTAL | 43 | 55 | 14 | 2 | 13 | 81 | 135 | 73 |

1/ Sign-up sheets for this meeting were incomplete. A visual count of the audience indicated 24 attendees.

**APPENDIX 4**

**PROPOSAL**

**5 AAC 24.3xx. PRINCE WILLIAM SOUND MANAGEMENT AND SALMON ENHANCEMENT ALLOCATION PLAN.**

Preamble

Enhanced production of pink salmon contributes as much as 90% of the commercial catch in Prince William Sound. Hatchery production for other salmon species may dramatically increase in the near future with the result being these species may be dominated by enhanced returns as well.

The success of the salmon enhancement program has not been without costs. Historic fisheries have been altered to avoid the overharvest of wild stocks of salmon while attempting to catch large hatchery returns. Conflicts have developed between gear groups by having to fish together in small, crowded terminal harvest areas. Enhancement planning has also suffered due to lack of a management plan that will define a framework for future allocations of enhanced salmon.

The Board recognizes the need to adopt an allocation plan giving clear direction to fishery managers and enhancement planners that will:

- MINIMIZE IMPACTS ON WILD STOCKS
- MINIMIZE IMPACTS TO HISTORIC AND TRADITIONAL FISHERIES WHILE MAINTAINING HISTORIC HARVEST VALUE PERCENTAGES
- PROMOTE THE HIGHEST POSSIBLE QUALITY FISH
- REDUCE CONGESTION IN THE FISHERIES
- MAINTAIN THE DIVERSITY OF USES OF THE SALMON RESOURCES IN PWS INCLUDING SUBSISTENCE, SPORT AND PERSONAL USE

Intent

With these objectives in mind, it is the intent of the Board of Fisheries to allocate the natural and enhanced salmon stocks in Prince William Sound in such a manner as to maintain the long term historic balance between competing commercial users that existed since statehood and prior to any significant production from enhancement programs. It is also the Board's intent to maintain to the maximum extent possible the historic fishing areas and gear types and not allow development of new gear types in non-traditional areas.

To guide future production planning in P.W.S., the Board endorses the ALLOCATION POLICY adopted by PWSAC in May of 1990 and directs both the Department and PNP operators to plan their enhancement production using the policy as a guideline.

By implementation of this plan, the Board recognizes and preserves pink salmon as the primary species of importance to the purse seine gear type in Prince William Sound. It is the intent of this plan to provide an opportunity for development of enhanced returns of early timing chum, sockeye and chinook salmon to the gill net districts of Prince William Sound for the explicit benefit of the gill net gear users. It is also the intent of this plan to provide an opportunity for development of coho salmon returns after August 25th for the gill net fleet. The Board recognizes that enhanced species returning to the gill net districts during the primary seine fishery in western Prince William Sound, (July 18 to September 1st), will be subjected to considerable seine interception and can not be explicitly targeted to the gill net fleet.

The Board recognizes that wild stock management has the highest priority in determination of fishery openings in the general waters of Prince William Sound.

## District Management

It is the intent of the Board of Fisheries that the commercial fisheries in Prince William Sound be managed in the following manner:

1) EASTERN, NORTHERN (except Perry Island Subdistrict), SOUTHEASTERN, NORTHWESTERN, and MONTAGUE DISTRICTS:

a. Shall be managed by emergency order for the purse seine fishery with season openings and closures based on traditional management of wild and enhanced stocks. The Board recognizes the importance of flexible management in these areas to protect wild stocks, maximize utilization of hatchery stocks and promote fish quality.

2) SOUTHWESTERN DISTRICT:

a. Prior to July 18: The Southwest District will be closed. During this time period this area will be used as a migratory corridor to permit stocks moving through these waters to reach the gill net fisheries in the Eshamy and Coghill Districts.

b. Seines may be operated in the Southwest District on or after July 18 during emergency order fishing periods based upon the strength of the wild pink salmon stocks. The Southwestern District is recognized as containing a mixture of wild and enhanced stocks, many of which are destined for other areas in the Sound. The Department will manage the general waters of this district based upon its assessment of the prevailing wild stock management concerns.

3) PERRY ISLAND SUBDISTRICT of the Northern District:

a. Prior to July 21: The Perry Island Subdistrict will be closed. During this time period this area will be used as a migratory corridor to permit stocks moving through these waters to reach the gill net fisheries in the Eshamy and Coghill Districts.

b. Seines may be operated in the Perry Island Subdistrict on or after July 21 during emergency order fishing periods based upon the strength of the wild pink salmon stocks. The Perry Island Subdistrict is recognized as containing a mixture of wild and enhanced stocks, many of which are destined for other areas in the Sound. The Department will manage the general waters of this subdistrict based upon its assessment of the prevailing wild stock management concerns.

c. The Perry Island Subdistrict of the Northern District shall be closed concurrently with the Esther Subdistrict when attempting to achieve corporate escapement goals and/or brood stock needs at the Wally Noerenberg Hatchery.

4) ESHAMY DISTRICT:

a. Shall be managed by emergency order for the gill net fisheries based on the surplus of wild and/or enhanced stocks returning to this district.

5) COGHILL DISTRICT:

a. During the salmon season drift gill nets may be operated during all fishing periods established by emergency order in all or any portion of the district.

b. Commencing on July 21: purse seines may be operated during fishing periods established by emergency order in all or any portion of the district.

c. Commencing on August 25: purse seines may only be operated in the waters of Lake and Quillian Bays during emergency order openings.

d. Commencing on September 5: purse seines may only be operated in the waters of Lake and Quillian Bays if the harvestable surplus in this area is predominately pink salmon.

**5 AAC 24.200. FISHING DISTRICTS, SUBDISTRICTS AND SECTIONS.**

(d) Northern District: waters of the northern mainland shore from Point Freemantle to a point at the southern entrance of Esther Passage at 60°49'22" N. lat., 147°51' W. long., and waters outside of the Coghill district and along the eastern shore of Culross Island and east of a line from a point on the southern shore of Culross Island at 148°8.5' W. Long., N. lat. to a point approximately 1.5 miles west of Nellie Juan Light at 148°8.5' W. Long., N. lat. to the Eshamy District Boundary at Nellie Juan Light, including Glacier Island, Fairmount Island, Perry Island and adjacent islands and the Naked Island group, excluding waters of Unakwik Inlet north of 61°01' N. lat.

(1) Perry Island Subdistrict: all waters of the district west of a line from the western entrance to Eaglek Bay at N. lat. W. Long., to the northern most tip of Axel Lind Island and from the southern most tip of Axil Lind Island to the northern tip of Lone Island, and from the southern tip of Lone Island to the northern tip of the Eshamy District.

(g) Northwestern Districts: all waters south and west of a line from Point Pigot (60°48'15" N. lat., 148°20'47" W. long.) to Point Culross (60°45'37" N. lat., 148°08'37" W. long.) to a point west of Culross Light at 60°45'12" N. lat., 148°07'45" W. long. and from a point on the southern end of Culross Island at N. lat., W. long. to a point approximately 1.5 miles west of Nellie Juan Light at 148°8.5' W. Long., N. lat. to the Eshamy District Boundary at the light on the south shore of the entrance to Port Nellie Juan, including [~~all waters within one nautical mile of~~] Culross Passage [~~Island~~] and all waters of Culross Bay;

**5 AAC 24.368. WALLY NOERENBERG (ESTHER ISLAND) HATCHERY MANAGEMENT PLAN.** (a) The department, in consultation with the hatchery operator, shall manage the Esther Subdistrict and the Perry Island Subdistrict to achieve the corporation's escapement goal for the Wally Noerenberg salmon hatchery.