

Alaska Fisheries Enhancement Statutes

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CHAPTER 5. FISH AND GAME CODE AND DEFINITIONS

ARTICLE 1. THE DEPARTMENT OF FISH AND GAME.

Sec. 16.05.092. Fisheries rehabilitation, enhancement, and development.

The department 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 ensure perpetual and increasing production and use of the food resources of state waters and continental shelf areas;
- (4) prepare a comprehensive annual report, containing detailed information regarding its accomplishments under this section and proposals of plans and activities for the next fiscal year, and notify the legislature not later than 20 days after the convening of each regular session that the report is available.

ARTICLE 5. MANAGEMENT OF FISH AND FISHERIES.

Sec. 16.05.730. Management of wild and enhanced stocks of fish.

- (a) Fish stocks in the state shall be managed consistent with sustained yield of wild fish stocks and may be managed consistent with sustained yield of enhanced fish stocks.

(b) In allocating enhanced fish stocks, the board shall consider the need of fish enhancement projects to obtain brood stock. The board may direct the department to manage fisheries in the state to achieve an adequate return of fish from enhanced stocks to enhancement projects for brood stock; however, management to achieve an adequate return of fish to enhancement projects for brood stock shall be consistent with sustained yield of wild fish stocks.

c) The board may

(1) consider the need of enhancement projects authorized under AS 16.10.400 and contractors who operate state-owned enhancement projects under AS 16.10.480 to harvest and sell fish produced by the enhancement project that are not needed for brood stock to obtain funds for the purposes allowed under AS 16.10.450 or 16.10.480(d);

(2) consider the need of projects authorized under AS 16.12.010 to harvest and sell shellfish that are not needed for brood stock to obtain funds for the purposes allowed under AS 16.12.080;

(3) exercise its authority under this title as it considers necessary to direct the department to provide a reasonable harvest of fish, in addition to the fish needed for brood stock, to an enhancement project to obtain funds for the enhancement project if the harvest is consistent with sustained yield of wild fish stocks; and

(4) adopt a fishery management plan to provide fish to an enhancement project to obtain funds for the purposes allowed under AS 16.10.450, 16.10.480(d), or AS 16.12.080.

(d) In this section, “enhancement project” means a project, facility, or hatchery for the enhancement of fishery resources of the state for which the department has issued a permit.

CHAPTER 10. FISHERIES AND FISHING REGULATIONS

ARTICLE 9. SALMON HATCHERIES.

Sec. 16.10.375. Regional salmon plans.

The commissioner shall designate regions of the state for the purpose of salmon production and have developed and amend as necessary a comprehensive salmon plan for each region, including provisions for both public and private nonprofit hatchery systems. Subject to plan approval by the commissioner, comprehensive salmon plans shall be developed by regional planning teams consisting of department personnel and representatives of the appropriate qualified regional associations formed under AS 16.10.380.

Sec. 16.10.380. Regional associations.

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

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

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

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

(b) A qualified regional association, when it becomes a nonprofit corporation under AS 10.20, is established as a service area in the unorganized borough under AS 29.03.020 for the purpose of providing salmon enhancement services.

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

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 in the amount determined under (h) of this section. 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 a permit may not be issued for a hatchery unless the commissioner determines that the action would result in substantial public benefits and would not jeopardize natural stocks.

(h) The department shall establish by regulation an application fee under this section in an amount that provides for the total amount of fees collected under (b) of this section to approximately equal the department's actual costs of processing permit applications under this chapter. The department

shall annually review the fee level to determine whether the department's costs of processing permit applications under this chapter are approximately equal to the fees collected. If the review indicates that fees collected and these costs are not approximately equal, the department shall adjust the application fee by regulation. In January of each year, the department shall report the fee level and any revision made for the previous year under this subsection to the office of management and budget.

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.

Sec. 16.10.420. Conditions of a permit.

The department shall require, in a permit issued to a hatchery operator, that

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

(2) salmon eggs or resulting fry may not be placed in waters of the state other than those specifically designated in the permit;

(3) salmon eggs or resulting fry, sold to a permit holder by the state or by another party approved by the department, may not be resold or otherwise transferred to another person;

(4) salmon may not be released by the hatchery before department approval, and, for purposes of pathological examination and approval, the department shall be notified of the proposed release of salmon at least 15 days before the date of their proposed release by the hatchery;

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

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

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

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

(9) a hatchery be located in an area where a reasonable segregation from natural stocks occurs, but, when feasible, in an area where returning hatchery fish will pass through traditional salmon fisheries.

Sec. 16.10.430. Alteration, suspension, or revocation of permit.

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

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

Sec. 16.10.440. Regulations relating to released fish.

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

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

Sec. 16.10.443. Department assistance and cooperation.

(a) Before and after permit issuance under AS 16.10.400 — 16.10.470, the department shall make every effort, within the limits of time and resources, to advise and assist applicants or permit holders, as appropriate, in the planning, construction, or operation of salmon hatcheries.

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

Sec. 16.10.445. Egg sources.

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

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

Sec. 16.10.450. Sale of salmon and salmon eggs: use of proceeds; quality and price.

(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.

Sec. 16.10.455. Cost recovery fisheries.

(a) A hatchery permit holder may harvest salmon for a facility in

(1) a special harvest area through agents, or employees of or persons under contract with the permit holder as provided under a permit from the department or regulations of the Board of Fisheries; or

(2) a terminal harvest area through the common property fishery under this section.

(b) A hatchery permit holder may, by a majority vote of the membership of the hatchery permit holder's board, elect to harvest surplus salmon produced at a facility in a terminal harvest area established for that facility through the common property fishery. At the request of the hatchery permit holder and if the commissioner of fish and game determines that there are no allocative issues involved, and after reasonable consultation with affected commercial fishermen and the organizations of affected commercial fishermen, the commissioner may adopt regulations governing the harvest of surplus salmon in a terminal harvest area when the hatchery permit holder elects to harvest surplus salmon produced at a facility through a common property fishery. The regulations must specify the terms, conditions, and rules under which the common property fishery in the terminal harvest area shall be conducted, including requirements for hold inspections and reporting of harvests and sales of salmon taken in the terminal harvest area. Following adoption of regulations by the department, each year before March 10, the hatchery permit holder's board, by a majority vote of the board's membership, may determine whether the hatchery will operate under the regulations adopted under this subsection during the current calendar year, and shall notify the department if the hatchery intends to operate under the regulations adopted under this subsection. The Board of Fisheries may adopt regulations under AS 16.05.251 regarding a fisheries

management plan governing operations under this subsection in a terminal harvest area, including allocation plans. Participation in the fishery must be open to all interim-use permit and entry permit holders who hold permits to operate a type of gear that may be used in the fishing district in which the terminal harvest area is located if that type of gear is authorized by regulation to be used in the terminal harvest area. An interim-use permit holder or an entry permit holder who takes salmon in a common property fishery in a terminal harvest area may sell the salmon to any fish buyer or processor who is licensed to do business in the state.

(c) As a condition of participation in a common property salmon fishery in a terminal harvest area under this section, a fisherman who participates in the fishery is subject to the payment of the assessment levied under (d) of this section on the projected value of the salmon or on the pounds of salmon harvested. The assessment is levied on the salmon that the fisherman takes in the terminal harvest area and sells to a licensed buyer. The buyer of the salmon must be licensed under AS 43.75, and the buyer shall collect the assessment on salmon taken in a terminal harvest area at the time of purchase and remit the assessment to the Department of Revenue in accordance with regulations adopted by the Department of Revenue.

(d) The Department of Revenue may, by regulation, annually, by March 1 of each year, set the assessment levied on salmon taken in a terminal harvest area in consultation with the Department of Commerce, Community, and Economic Development, the hatchery permit holder, and representatives of affected commercial fishermen. The assessment shall provide sufficient revenue to cover debt service to the state, reasonable operating expenses, reasonable maintenance expenses, and development or maintenance of a reserve fund up to 100 percent of annual operating costs of the hatchery permit holder. In setting the assessment, the department shall consider the estimated return and harvest of salmon in the terminal harvest area, the projected price to be paid for salmon in the region, the amount of the existing reserve held by the hatchery permit holder, and the amount by which the assessment collected in previous years exceeded or fell short of the amount anticipated to be collected. The assessment may not exceed 50 percent of the value of the salmon. The department may levy the assessment as a percentage of the projected value of the salmon returning to the terminal harvest area or as a flat rate on each pound of salmon harvested in the area, to the nearest whole cent.

(e) The Department of Revenue shall deposit the assessments collected under this section in the general fund. The legislature may appropriate the funds collected under this section to the hatchery permit holder who operates a facility in the terminal harvest area in which the assessment was levied. A hatchery permit holder shall use funds appropriated under this subsection for the purposes set out under AS 16.10.450(a). The legislature may also appropriate funds collected under this section to the Department of Revenue for costs incurred by the department under this section.

(f) A person who violates a regulation adopted under (b) of this section is guilty of a violation under AS 16.05.722 or a misdemeanor under AS 16.05.723. A person who violates a regulation adopted by the Department of Revenue under (c) of this section is guilty of a class A misdemeanor.

(g) In this section

(1) “facility” means a hatchery or salmon rehabilitation project for which a permit is issued under AS 16.10.400 — 16.10.470;

(2) “special harvest area” means an area designated by the commissioner or the Board of Fisheries where salmon returning to a hatchery may be harvested by the hatchery operators, and, in some situations, by the common property fishery;

(3) “terminal harvest area” means a harvest area, which may include a hatchery release site, established by the commissioner or the Board of Fisheries where salmon returning to a hatchery may be harvested by the common property fishery;

(4) “value” has the meaning given in AS 43.75.290.

Sec. 16.10.460. Inspection of hatchery.

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

(b) The cost of an inspection performed by the department under AS 16.10.400 — 16.10.470 shall be borne by the department.

Sec. 16.10.470. Annual report.

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

(b) A person who holds a permit for the operation of a salmon hatchery under AS 16.10.400 — 16.10.470 and each regional association levying a voluntary assessment under AS 16.10.540 shall submit an annual financial report to the Department of Commerce, Community, and Economic Development on a form to be provided by the Department of Commerce, Community, and Economic Development.

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

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 enter into a contract for the operation or cooperative operation of the hatchery.

(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) Except as otherwise provided in this section, a contract entered into under this section must provide that the hatchery will be operated under AS 16.10.400 — 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 at locations designated by the department. The contractor shall use funds received from the sale of adult salmon harvested under the permit to recover all or part of the costs of operating the hatchery and may use the remaining funds for improvements to the hatchery or other salmon enhancement or rehabilitation projects, fisheries research, or the contractor's reasonable operating or administrative costs in the region in which the hatchery is located including debt retirement or for other fisheries activities of the contractor.

(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.

ARTICLE 10. FISHERIES ENHANCEMENT LOAN PROGRAM.

Sec. 16.10.500. Declaration of policy.

It is the policy of the state, under AS 16.10.500 — 16.10.560, to promote the enhancement of the state's fisheries by means of grants for organizational and planning purposes to regional associations described in AS 16.10.510 that have qualified under AS 16.10.380, and by means of long-term, low interest loans for hatchery planning, construction, and operation and for planning and implementation of enhancement and rehabilitation activities including, but not limited to, lake fertilization and habitat improvement.

Sec. 16.10.505. Fisheries enhancement revolving loan fund.

(a) There is created within the Department of Commerce, Community, and Economic Development a revolving fund to be known as the fisheries enhancement revolving loan fund. Except as provided in (b) and (c) of this section, the fund shall be used to carry out the purposes of AS 16.10.500 — 16.10.560 and for no other purpose. All principal and interest payments, and money chargeable to principal or interest that is collected through liquidation by foreclosure or other process on loans made under AS 16.10.500 — 16.10.560, shall be paid into the fisheries enhancement revolving loan fund.

(b) Money in the fund may be used by the legislature to make appropriations for costs of administering AS 16.10.500 — 16.10.560.

(c) Money in the fund that the commissioner determines to be excess to that needed to carry out the purpose of AS 16.10.500 — 16.10.560 may be used to carry out the purpose of AS 16.10.300 — 16.10.370.

Sec. 16.10.507. Foreclosure expense account.

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

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

Sec. 16.10.510. Powers and duties of the commissioner.

The commissioner may

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

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

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

(4) adopt regulations necessary to carry out the provisions of AS 16.10.500 — 16.10.560, including regulations to establish reasonable fees for services provided;

(5) establish amortization plans for repayment of loans, not to exceed 30 years unless the commissioner has extended the term of the loan beyond 30 years under (11) of this section;

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

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

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

(9) make loans to qualified regional associations that have formed a nonprofit corporation or to local nonprofit corporations approved by qualified regional associations for planning and implementation of fisheries enhancement and rehabilitation activities including, but not limited to, lake fertilization and habitat improvement;

(10) refinance a debt obligation incurred by a borrower under this section if the borrower otherwise qualifies for a loan under AS 16.10.500 — 16.10.560; the interest rate for a loan to refinance a debt obligation incurred under this section may not exceed the interest rate that is in effect for new loans under this section at the time that the loan commitment for the refinancing loan is made; a loan made under this paragraph is not subject to AS 16.10.525;

(11) extend the term of a loan made under this section if the commissioner finds that extension of the term of the loan would alleviate an undue financial hardship on the borrower; the commissioner shall submit annually a report to the legislature summarizing the commissioner's decisions during the prior calendar year to approve or deny requests to extend loans under this paragraph and the reasons for the decisions;

(12) charge and collect the fees established under this section.

Sec. 16.10.520. Limitation on loans.

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

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

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

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

(e) The total amount of loans made or purchased in any fiscal year may not exceed the amount specifically authorized by statute.

(f) The commissioner may not make a loan under AS 16.10.500 — 16.10.550 from funds available under AS 16.10.340(c), unless the commissioner determines, in consultation with the appropriate regional planning team established under AS 16.10.375, that the hatchery or other enhancement or rehabilitation activity for which the loan is requested will provide a significant contribution to common property fisheries, be operated in a manner beneficial to the public interest, and be managed in a financially viable manner that is reasonably expected to result in repayment of the loan.

Sec. 16.10.525. Repayment of principal and interest on loans.

The commissioner may not require the repayment of principal on a loan made under AS 16.10.510 for the initial period of the loan. Interest on the principal of a loan made under AS 16.10.510 does not accrue during the initial period of the loan. In this subsection, the “initial period of the loan” means a period of time determined by the commissioner that is not less than six years or more than 10 years from the date the loan is made.

Sec. 16.10.530. Royalty assessment on sale of salmon. [Repealed, § 67 ch 6 SLA 1984.]

Sec. 16.10.540. Voluntary assessment on sale of salmon.

(a) An association of persons who hold entry permits under AS 16.43, that consists of at least 51 percent of the persons holding entry permits and actively participating in a fishery to be benefited by a hatchery program, may levy and collect an assessment from among its members for the purpose of securing and repaying a loan made under AS 16.10.510.

(b) Upon satisfactory demonstration to the commissioner that an assessment levied under this section may reasonably be relied upon to secure and repay a loan to be made under AS 16.10.510, the commissioner may make the loan.

(c) [Repealed, § 33 ch 14 SLA 1987.]

Sec. 16.10.550. Sale or transfer of mortgages and notes. [Repealed, § 14 ch 122 SLA 1980.]

Sec. 16.10.555. Disposal of property acquired by default or foreclosure.

The Department of Commerce, Community, 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 include the amortization of payments over a period of years.

Sec. 16.10.560. Definitions.

In AS 16.10.500 — 16.10.560,

(1) “commissioner” means the commissioner of commerce, community, and economic development;

(2) “hatchery” means a facility for the artificial incubation of salmon eggs, which may include means for the rearing of juvenile salmon.

CHAPTER 12. SHELLFISH ENHANCEMENT PROJECTS.

Sec. 16.12.010. Permits for shellfish enhancement projects.

(a) Subject to the restrictions imposed by statute or regulation under this chapter, the commissioner may issue a permit to a nonprofit corporation organized under AS 10.20 for a project to

- (1) augment the yield and harvest of shellfish indigenous to state water above naturally occurring levels by natural, artificial, or semiartificial production systems;
- (2) rehabilitate a shellfish stock that is indigenous to state water by restoring it to its natural levels of productivity; or
- (3) increase the area of productive natural shellfish habitat.

(b) Each applicant for a permit under this section shall apply in a format prescribed by the department and pay an application fee in the amount determined under (f) of this section.

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

(d) The commissioner shall consult with and solicit recommendations from federal and state agencies and technical experts in the relevant area regarding permit stipulations and issuance.

(e) The commissioner may not issue a permit under this section unless the commissioner determines that the action would result in substantial public benefits and would not jeopardize natural stocks.

(f) The department shall establish by regulation an application fee under this section in an amount that provides for the total amount of fees collected under (b) of this section to approximately equal the department's actual costs of processing permit applications under this chapter. The department shall annually review the fee level to determine whether the department's costs of processing permit applications under this chapter are approximately equal to the fees collected. If the review indicates that fees collected and these costs are not approximately equal, the department shall adjust the application fee by regulation. In January of each year, the department shall report the fee level and any revision made for the previous year under this subsection to the office of management and budget.

Sed. 16.12.020. Hearings before permit issuance.

(a) At least 30 days before the issuance of a permit under AS 16.12.010, the department shall hold a public hearing in a central location in the vicinity of the proposed release of shellfish.

(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 five days before the hearing.

(c) The department shall conduct the hearing. The applicant shall present a plan for the proposed project describing the capacity of the facility and other relevant facts that may be of interest to the department or to the public. The department shall give interested members of the public 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. The department shall respond in writing, not later than 30 days after the hearing is held, to a specific objection offered by a member of the public at the hearing.

Sec. 16.12.030. Conditions of a permit.

The department shall require, in a permit issued under this chapter, that the permit holder

- (1) procure shellfish from the department or a source approved by the department;
- (2) place shellfish only in water of the state specifically designated in the permit;
- (3) not procure genetically modified shellfish or place genetically modified shellfish into the water of the state;
- (4) not resell or transfer shellfish sold to a permit holder by the state or by another party approved by the department;
- (5) not release shellfish before approval by the department, and, for purposes of pathological examination and approval, that the permit holder notify the department at least 15 days before the date of the proposed release of shellfish;
- (6) destroy diseased shellfish in a specific manner and location designated by the department;
- (7) harvest shellfish only at specific locations and under specific conditions as designated by the department;
- (8) make surplus shellfish available for sale first to the department and then, after inspection and approval by the department, to other permit holders operating under this chapter;
- (9) provide a copy of the sales transaction to the department if surplus shellfish are sold by a permit holder to another permit holder;
- (10) release shellfish in an area where the shellfish will be available to traditional fisheries, subject to the provisions of this chapter and regulations adopted under this chapter.

Sec. 16.12.040. Alteration, suspension, or revocation of permit.

(a) If a permit holder fails to comply with the conditions and terms of the permit issued under AS 16.12.010 within a reasonable period after notification by the department of noncompliance, the permit may be suspended or revoked, in the discretion of the commissioner.

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

Sec. 16.12.050. Regulations relating to released shellfish.

(a) Shellfish released into the natural water of the state by a permit holder under this chapter are available to the people for common use and are subject to regulation under applicable law in the same way as shellfish occurring in their natural state except when they are in a special location designated by the department for harvest by a permit holder.

(b) The Board of Fisheries may, after the issuance of a permit by the commissioner, amend by regulation adopted in accordance with AS 44.62 (Administrative Procedure Act) the terms of the permit relating to the source of wild brood stock, the harvest of shellfish by permit holders, and the specific locations designated by the department for harvest. The Board of Fisheries may not adopt a regulation or take an action regarding the issuance or denial of a permit required in this chapter.

Sec. 16.12.060. Department assistance and cooperation.

(a) Before and after permit issuance under AS 16.12.010, the department shall make reasonable efforts, within the limits of time and resources, to advise and assist applicants or permit holders, as appropriate, as to projects under AS 16.12.010, including the planning, construction, and operation of facilities.

(b) Nothing in this section exempts an applicant or permit holder from compliance with this chapter or from compliance with the regulations or restrictions adopted under this chapter.

Sec. 16.12.070. Broodstock sources.

(a) The department shall approve the source and number of shellfish taken for use as brood stock under this chapter.

(b) Where feasible, a permit holder shall first take shellfish from stocks native to the area in which the shellfish will be released.

Sec. 16.12.080. Sale of shellfish; use of proceeds; quality and price.

(a) A permit holder that sells shellfish harvested from the natural water of the state, or sells shellfish to another permit holder under this chapter, shall use the funds only for reasonable operating costs, including debt retirement, expanding its facilities, a project permitted under AS 16.12.010, shellfish research, or to assist in meeting the department's costs of managing the affected fisheries for the area in which the shellfish release is located.

(b) A permit holder shall ensure that shellfish harvested and sold for human consumption are of comparable quality to shellfish harvested by commercial fisheries in the area and are sold at prices commensurate with the current market.

Sec. 16.12.090. Cost recovery fisheries.

(a) A permit holder may harvest shellfish for a project under AS 16.12.010 in a special harvest area through

(1) agents or employees of or persons under contract with the permit holder as provided under a permit from the department or regulations of the Board of Fisheries; or

(2) the common property fishery under this section.

(b) A permit holder may, by a majority vote of the membership of the permit holder's board of directors, elect to harvest shellfish in a special harvest area established for a project under AS 16.12.010 through the common property fishery. A permit holder seeking to harvest shellfish in a special harvest area through a common property fishery shall notify the Department of Revenue by July 1 of the year preceding the year for which the harvest is sought. At the request of the permit holder and if the commissioner determines that there are no allocative issues involved, and after reasonable consultation with affected commercial fishermen, the commissioner may adopt regulations governing the harvest of shellfish in a special harvest area through a common property fishery. The regulations must specify the terms, conditions, and rules under which the common property fishery in the special harvest area shall be conducted, including requirements for holding inspections and reporting of harvests and sales of shellfish taken in the special harvest area. Following adoption of regulations by the department, before January 15 of each year, the permit holder's board, by a majority vote of the board's membership, may determine whether the permit holder will operate under the regulations adopted under this subsection during the current calendar year and shall notify the department if the permit holder intends to operate under the regulations adopted under this subsection. The Board of Fisheries may adopt regulations under AS 16.05.251 regarding a fisheries management plan governing operations under this subsection in a special harvest area, including allocation plans. Participation in the fishery must be open to all interim-use permit and entry permit holders who hold permits to operate a type of gear that may be used in the fishing district in which the special harvest area is located if that type of gear is authorized by regulation to be used in the special harvest area. An interim-use permit holder or an entry permit holder who takes shellfish in a common property fishery in a special harvest area may sell the shellfish to a fish buyer or processor who is licensed to do business in the state.

(c) As a condition of participation in a common property shellfish fishery in a special harvest area under this section, a commercial fisherman who participates in the fishery is subject to the payment of the assessment levied under (d) of this section on the projected value of the shellfish or on the pounds of shellfish harvested. The assessment is levied on the shellfish that the commercial fisherman takes in the special harvest area and sells to a licensed buyer. The buyer of the shellfish must be licensed under AS 43.75, and the buyer shall collect the assessment on shellfish taken in a special harvest area at the time of purchase and remit the assessment to the Department of Revenue in accordance with regulations adopted by the Department of Revenue.

(d) The Department of Revenue may, by regulation, set the assessment levied on shellfish taken in a special harvest area on an annual basis in consultation with the Department of Commerce, Community, and Economic Development, the permit holder, and representatives of affected commercial fishermen. The Department of Revenue shall set an annual assessment under this section not later than January 1 of that year. The assessment must provide sufficient revenue to cover debt service, reasonable operating expenses, reasonable maintenance expenses, and development or maintenance of a reserve fund up to 100 percent of annual operating costs of the permit holder's project under AS 16.12.010. In setting the assessment, the Department of Revenue shall consider the estimated harvest of shellfish in the special harvest area, the projected price to be paid for shellfish in the region, the amount of the existing reserve held by the permit holder, and the amount by which the assessment collected in previous years exceeded or fell short of the

amount anticipated to be collected. The assessment may not exceed 50 percent of the value of the shellfish. The Department of Revenue may levy the assessment as a percentage of the projected value of the shellfish harvested in the special harvest area or as a flat rate on each pound of shellfish harvested in the area, to the nearest whole cent.

(e) The Department of Revenue shall deposit the assessments collected under this section in the general fund. The legislature may appropriate the funds collected under this section to the permit holder who is carrying out a project under AS 16.12.010, including the operation of a facility, in the special harvest area in which the assessment was levied. A permit holder shall use funds appropriated under this subsection for the purposes set out under AS 16.12.080(a). The legislature may also appropriate funds collected under this section to the Department of Revenue for costs incurred by the Department of Revenue under this section.

(f) A person who violates a regulation adopted under (b) of this section is guilty of a violation under AS 16.05.722 or a misdemeanor under AS 16.05.723. A person who violates a regulation adopted by the Department of Revenue under (c) of this section is guilty of a class A misdemeanor.

(g) In this section,

(1) “special harvest area” means an area designated by the commissioner or the Board of Fisheries where shellfish may be harvested by permit holders under this chapter and by the common property fishery;

(2) “value” has the meaning given in AS 43.75.290.

Sec. 16.12.100. Inspection by the department.

(a) A permit holder shall allow the department to inspect the permit holder's facility for a project under AS 16.12.010 at any time the facility is in operation. The department shall conduct the inspection in a reasonable manner.

(b) The department shall bear the cost of an inspection performed under this section.

Sec. 16.12.110. Annual report.

A person who holds a permit under this chapter shall submit an annual report not later than December 15 to the department. The report must be made on a form prescribed by the department and contain information pertaining to

(1) species;

(2) the brood stock source;

(3) the number, age, gender, and size of spawners;

(4) the number of eggs collected and juveniles produced; and

(5) the number, age, gender, and size of harvested shellfish attributable to releases by the permit holder.

Sec. 16.12.199. Definitions.

In this chapter,

- (1) “facility” means a hatchery as defined in AS 16.40.199, a facility for the release of shellfish into natural water of the state, or a facility for a project under AS 16.12.010;
- (2) “genetically modified shellfish” means shellfish whose genetic structure has been altered at the molecular level by recombinant DNA and RNA techniques, cell fusion, gene deletion or doubling, introduction of exogenous genetic material, alteration of the position of a gene, or other similar procedure using artificial processes;
- (3) “shellfish” has the meaning given in AS 16.40.199. [(8) “shellfish” means a species of crustacean, mollusk, or other invertebrate, in any stage of its life cycle, that is indigenous to state water or that is authorized to be imported into the state under a permit issued by the commissioner;]

CHAPTER 40. COMMERCIAL USE OF FISH AND GAME

ARTICLE 3. FINFISH FARMING.

Sec. 16.40.210. Finfish farming prohibited.

- (a) A person may not grow or cultivate finfish in captivity or under positive control for commercial purposes.
- (b) This section does not restrict
 - (1) the fishery rehabilitation, enhancement, or development activities of the department;
 - (2) the ability of a nonprofit corporation that holds a salmon hatchery permit under AS 16.10.400 to sell salmon returning from the natural water of the state, as authorized under AS 16.10.450, or surplus salmon eggs, as authorized under AS 16.10.420 and 16.10.450;
 - (3) rearing and sale of ornamental finfish for aquariums or ornamental ponds provided that the fish are not reared in or released into water of the state.
- (c) In this section “ornamental finfish” means fish commonly known as “tropical fish,” “aquarium fish,” or “goldfish,” that are imported, cultured, or sold in the state customarily for viewing in aquaria or for raising in artificial systems, and not customarily used for sport fishing or human consumption purposes.

ARTICLE 4. FISHERY ASSOCIATIONS.

Sec. 16.40.240. Regional dive fishery development associations.

- (a) The commissioner shall assist in and encourage the formation of qualified regional dive fishery development associations for the purpose of developing dive fisheries in administrative areas of the state in which dive fisheries exist. A regional dive fishery development association is qualified if the commissioner determines that the regional association

- (1) is incorporated as a nonprofit corporation under AS 10.20;
- (2) represents commercial fishermen who participate in each dive fishery in the region; and
- (3) possesses a board of directors that
 - (A) is representative of commercial dive fishermen who fish in each of the significant commercial dive fishing areas in the administrative area;
 - (B) has a member who is representative of fish processors who process dive fishery resources in the administrative area; and
 - (C) has a member who is representative of municipalities in the administrative area.

(b) In this section, “administrative area” has the meaning given in AS 43.76.210.

Sec. 16.40.250. Salmon fishery associations.

The commissioner may assist in and encourage the formation of qualified salmon fishery associations for the purpose of promoting the consolidation of the fishing fleet in a salmon fishery for which the Alaska Commercial Fisheries Entry Commission has issued commercial fishing entry permits under AS 16.43. A salmon fishery association is qualified if the commissioner determines that the regional association

- (1) is incorporated as a nonprofit corporation under AS 10.20;
- (2) is comprised of interim-use permit and entry permit holders in the salmon fishery for which the association is established; and
- (3) has a board of directors that is comprised of interim-use permit and entry permit holders in the salmon fishery.

ARTICLE 6. SPECIAL HARVEST AREA ENTRY PERMITS.

Sec. 16.43.400. Special harvest area entry permits.

(a) In addition to entry permits, interim-use permits, and educational permits, the commission may issue special harvest area entry permits to

- (1) holders of private, nonprofit hatchery permits issued by the Department of Fish and Game under AS 16.10.400 — 16.10.475 for salmon; and
- (2) nonprofit organizations holding a permit under AS 16.12 for a shellfish enhancement project.

(b) The commission may issue special harvest area entry permits notwithstanding the establishment of maximum or optimum numbers under AS 16.43.240 and 16.43.290.

Sec. 16.43.410. Term and conditions of special harvest area entry permits.

(a) Special harvest area entry permits may be applied for on an annual basis and shall be issued for a term of one year. A permit is nontransferable.

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

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

Sec. 16.43.420. Disposition of fish.

Fish caught under the authority of a special harvest area entry permit are the property of the permit holder. The permit holder may sell the fish if the proceeds are used in the manner described in AS 16.10.450.

Sec. 16.43.430. Authorized gear.

For the purposes of harvesting salmon or shellfish, a special harvest area entry permit holder may employ any fishing gear designated as legal gear in the applicable special harvest area by the Board of Fisheries.

Sec. 16.43.440. Adoption of regulations.

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

(b) The commission, after consultation with the Department of Fish and Game, shall adopt regulations that are reasonably necessary to implement AS 16.43.400 — 16.43.440.

Sec. 16.43.990. Definitions.

In this chapter,

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

(2) “economically healthy fishery” means a fishery that yields a sufficient rate of economic return to the fishermen participating in it to provide for, among other things, the following:

(A) maintenance of vessels and gear in satisfactory and safe operating condition; and

(B) ability and opportunity to improve vessels, gear and fishing techniques, including, when permissible, experimentation with new vessels, new gear, and new techniques;

(3) “entity” means a corporation, company, partnership, firm, association, organization, joint venture, trust, society, or other legal entity other than a natural person;

(4) “fishery” means the commercial taking of a specific fishery resource in a specific administrative area with a specific type of gear; however, the commission may designate a fishery to include more than one specific administrative area, gear type, or fishery resource;

(5) “gear” means the specific apparatus used in the commercial harvest of a species, including but not limited to purse seines, drift gill nets, set gill nets, and troll gear;

(6) “optimum number” includes an optimum range of numbers;

(7) “person” means a natural person; “person” does not include a corporation, company, partnership, firm, association, organization, joint venture, trust, society, or other legal entity other than a natural person;

(8) “present ability to actively participate” means the person applying for a permit is physically able to harvest fish in the fishery and has reasonable access to commercial fishing gear of the type utilized in that fishery;

(9) “priority classification” means the allocation of potential permit applicants into reasonable groupings of similarly situated applicants and the priority ranking of those groupings according to the extent to which they satisfy the standards of preference;

(10) “type of gear” means a customary and identifiable classification of gear and shall include:

(A) those classifications for which separate regulations were adopted by the Board of Fisheries and for which separate gear licenses were required by former AS 16.05.550 — 16.05.630; and

(B) distinct subclassifications of gear such as “power” troll gear and “hand” troll gear;

(11) “unit of gear” means the maximum amount of a specific type of gear that can be fished by a person under regulations established by the Board of Fisheries defining the legal requirements for that type of gear.