

aquaculture notes

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ALASKA STATUTES
COMMERCIAL FISHING LOAN ACT
SALMON HATCHERIES
and
FISHERIES ENHANCEMENT LOAN PROGRAM

Compiled by:

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UNIVERSITY OF ALASKA
SEA GRANT PROGRAM

Sea Grant Report 76-17
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PREFACE

This report provides a reference to those Alaska Statutes which treat loans to and ownership of salmon hatcheries operated by qualified nonprofit corporations. This compilation includes all legislation through the conclusion of the 1976 session (Ninth Legislature). The document has been compiled by the Alaska Sea Grant Program in order to answer numerous requests and inquiries with regard to these laws.

The reader should note that the 1976 legislature did make significant amendments to the statutes which provide for a regional plan for salmon enhancement and established a fisheries enhancement loan program that favors qualified regional associations. These new laws have significant impact on salmon hatchery development, see Article 7, Section 16.10.375 and 380 and Article 9.

COMMERCIAL FISHING LOAN ACT, SALMON HATCHERIES, FISHERIES
ENHANCEMENT LOAN PROGRAM
As amended through 1976
(A.S. 16.10.300 - 16.10.560)

Article 7. Commercial Fishing Loan Act.

Section

- 300. *Declaration of policy*
- 310. *Powers of the department*
- 320. *Limitations on loans*
- 330. *Sale or transfer of mortgages,
bonds and notes*
- 340. *Creation of fund*

Section

- 350. *Administration of fund*
- 360. *Definitions*
- 370. *Short title*
- 375. *Regional Plan for
Salmon Enhancement*
- 380. *Regional Associations*

Sec. 16.10.300. Declaration of policy.

It is the policy of the state, under §§ 300-370 of this chapter, to promote the rehabilitation of the state's fisheries, the development of a predominantly resident fishery, and the continued maintenance of commercial fishing gear and vessels throughout the state by means of long-term low interest loans. (§ 1 ch 134 SLA 1972; am § 1 ch 54 SLA 1973; am § 1 ch 128 SLA 1975)

Sec. 16.10.310. Powers of the department.

(a) The department may

1. make loans to individual commercial fishermen who have been state residents for a continuous period of five years and have had a commercial fishing license for three years for the repair, restoration or up-grading of existing vessels and gear and for the purchase of vessels; and
2. designate agents and delegate its powers to them as necessary;
3. adopt rules and regulations necessary to carry out its functions;
4. establish amortization plans for repayment of loans, which may include extensions for poor fishing seasons;
5. enter into agreements with private lending institutions, other state agencies or agencies of the federal government, to carry out the purposes of §§ 300-370 of this chapter.

- (b) The department shall consult with the Department of Fish and Game on regulations and procedures established under this chapter. (§ 1 ch 134 SLA 1972; am § 2 ch 54 SLA 1973; am § 2 ch 128 SLA 1975; am § 2 ch 190 SLA 1976)

Sec. 16.10.320. Limitations on loans.

A commercial fishing loan may not exceed \$100,000. A loan may not run longer than 15 years or bear interest exceeding seven per cent, and shall be secured by a first lien and appropriate security agreements except that a lien in favor of the state is not required for loans guaranteed fully by the federal government under the Federal Ship Financing Act of 1972 (46 U.S.C. §§ 1271-1279b; 86 Stat. 909), as amended.* In the case of a security agreement given to secure a loan made under §§ 300-370 of this chapter and covering a vessel documented under the laws of the United States and so long as the Ship Mortgage Act of 1920 (46 U.S.C. §§ 911-984; 41 Stat. 1000), as amended, and the Shipping Act of 1916 (46 U.S.C. §§ 801-842; 39 Stat. 728), as amended, remain ambiguous with respect to whether or not a state or state agency qualifies as a citizen of the United States for purposes of those Acts, the first lien requirement of this section may be satisfied by the recordation and endorsement of a first preferred ship mortgage under the Ship Mortgage Act of 1920, and by perfection of a security interest under the Uniform Commercial Code - Secured Transactions (AS 45.05.690-45.05.794), if the approval of the Secretary of Commerce is obtained under 46 U.S.C. § 839 for the transfer to the department of the interest in a vessel documented under the laws of the United States. In the case of a security agreement given to secure a loan made under §§ 300-370 of this chapter and covering a vessel documented under the laws of the United States, the first lien requirement of this section may also be satisfied by use of a trust deed and bond issue under it, if the trustee is a citizen of the United States and obtains a first preferred ship mortgage on the vessel under the Ship Mortgage Act of 1920, and the approval of the Secretary of Commerce is obtained under 46 U.S.C. §§ 839 and 961 for the transfer of the bond or bonds to the department if the trustee is not a trustee approved by the Secretary of Commerce under 46 U.S.C. §§ 808, 835 and 961.** Loans may not exceed

Section 2 Chapter 190 SLA 1976 repealed AS 16.10.310 (a) (1)(B), however, the following verbiage was not removed but will be removed in the next session:

- * "and loans granted under § 310(a)(1)(B) of this chapter may be secured by other acceptable collateral as determined appropriate by the department, including but not limited to a pledge-of assessments from fishermen to finance the establishment of hatcheries under §§400-700 of this chapter."

- ** "Except for loans granted under §310(a)(1)(B) of this chapter,"

75 per cent of the appraised value of the collateral used to secure the loan. (§ 1 ch 134 SLA 1972; am § 3 ch 54 SLA 1973; am § 3 ch 128 SLA 1975)

Sec. 16.10.330. Sale or transfer of mortgages, bonds and notes.

(a) The commissioner of commerce may sell or transfer at par value or at a premium or discount to any bank or other private purchaser for cash or other consideration the mortgages, bonds and notes held by the Department of Commerce as security for loans made under this chapter.

(b) The commissioner of commerce may sell or transfer at par value to the Department of Revenue the mortgages, bonds and notes held by the Department of Commerce as security for loans made under this chapter. However, the commissioner of commerce may not transfer an interest in a vessel documented under the laws of the United States to the Department of Revenue, except as permitted by the Ship Mortgage Act of 1920 (46 U.S.C. secs. 911-984; 41 Stat. 1000), as amended, and the Shipping Act of 1916 (46 U.S.C. secs. 801-842; 39 Stat. 728), as amended, so long as those two Acts remain ambiguous with respect to whether or not a state or state agency qualifies as a citizen of the United States for purposes of those two Acts. The Department of Revenue, for the fiscal year ending June 30, 1976, shall purchase all the mortgages, bonds and notes offered until the current principal amount of all the mortgages, bonds and notes purchased and held by the Department of Revenue equals \$9,000,000. After June 30, 1977, the Department of Revenue shall purchase all the mortgages, bonds and notes offered. (§ 1 ch 134 SLA 1972; am § 4 ch 54 SLA 1973; am § 1 ch 177 SLA 1976)

Sec. 16.10.340. Creation of Fund.

There is a commercial fishing revolving loan fund to carry out the purpose of secs. 300-370 of this chapter. (§ 1 ch 134 SLA 1972; am § 2 ch 177 SLA 1976)

Sec. 16.10.350. Administration of fund.

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

Sec. 16.10.360. Definitions.

In §§ 300-370 of this chapter

1. "commissioner" means the commissioner of commerce;
2. "department" means the Department of Commerce. (§ 1 ch 134 SLA 1972)

Sec. 16.10.370. Short title.

Sections 300-370 of this chapter may be cited as the Commercial Fishing Loan Act. (§ 1 ch 134 SLA 1972)

Sec. 16.10.375. Regional Plan for Salmon Enhancement.

The commissioner shall designate regions of the state for the purpose of enhancing salmon production and shall develop and amend as necessary a comprehensive salmon enhancement plan for each region for both public and private nonprofit hatchery systems. Comprehensive salmon enhancement plans shall be developed in cooperation with appropriate qualified regional associations formed under sec. 380 of this chapter. (§ 2 ch 161 SLA 1976)

Sec. 16.10.380. Regional Associations.

- (a) The commissioner shall assist in and encourage the formation of qualified regional associations for the purpose of enhancing salmon production. A regional association is qualified if the commissioner determines that
1. it is comprised of associations representative of commercial fishermen in the region;
 2. it includes representatives of other user groups interested in fisheries within the region who wish to belong; and
 3. it possesses a board of directors which includes no less than one representative of each user group that belongs to the association.
- (b) In this section "user group" includes, but is not limited to, sport fishermen, processors, commercial fishermen, subsistence fishermen, and representatives of local communities. (§ 2 ch 161 SLA 1976)

NOTE: Section 1, ch 161, SLA 1976, provides: "It is the intent of this Act to produce salmon for the common property fisheries of the state."

ARTICLE 8. SALMON HATCHERIES

Section	Section
400. <i>Permits for salmon hatcheries</i>	445. <i>Egg sources</i>
410. <i>Hearings before permit issuance</i>	450. <i>Sale of salmon and salmon eggs by hatchery</i>
420. <i>Conditions of a permit</i>	460. <i>Inspection of Hatchery</i>
430. <i>Alteration, suspension or revocation of permit</i>	470. <i>Annual report</i>
440. <i>Regulation</i>	475. <i>Definitions</i>
443. <i>Department assistance and cooperation</i>	

Note:

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

Sec. 16.10.400. Permits for salmon hatcheries.

- (a) The commissioner or his designee may issue a permit, subject to the restrictions he considers desirable or that are imposed by statute or regulation under §§ 400-470 of this chapter, to a nonprofit corporation organized under AS 10.20, for the construction and operation of a salmon hatchery.
- (b) The application for a permit under this section shall be on a form prescribed by the department and be accompanied by an application fee of \$100.
- (c) A hatchery permit is nontransferable. If a permit holder sells or leases a hatchery for which a permit is issued under this section, the new operator shall apply for a new permit under this section.
- (d) Permits are renewable on terms prescribed by the commissioner.
- (e) A qualified regional association formed under sec. 380 of this chapter, if it has become a nonprofit corporation under AS 10.20, has a preference right

to a permit if its proposed hatchery is provided for in the comprehensive plan for that region developed under sec. 375 of this chapter. A local nonprofit corporation established or approved by a qualified regional association has an identical preference right.

- (f) Except for permits issued before the effective date of this Act, no permit may 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 sec. 375 of this chapter.
- (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)

Sec. 16.10.410. Hearings before permit issuance.

- (a) At least 30 days before the issuance of a permit under § 400 of this chapter, a public hearing shall be held in a central location in the vicinity of the proposed hatchery facility.
- (b) Notice of the hearing shall be published in a newspaper of general circulation once a week for three consecutive weeks, with completion of the notice at least 10 days before the hearing.
- (c) The hearing shall be conducted by the department, with a presentation by the permit applicant of a plan for the proposed hatchery, describing its capacity and any other relevant facts which may be of interest to the department or the public. Interested members of the public shall be afforded an opportunity to be heard.
- (d) The department shall record and consider objections and recommendations offered by the public at the hearing conducted under this section. It shall respond in writing, within 10 days after the hearing is held, to any specific objections offered by a member of the public at the hearing. (§ 2 ch 111 SLA 1974)

Sec. 16.10.420. Conditions of a permit.

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

- (1) salmon eggs procured by the hatchery must be from the department or a source approved by the department;
- (2) no salmon eggs or resulting fry be placed in waters of the state other than those specifically designated in the permit;
- (3) no salmon eggs or resulting fry, sold to a permit holder by the state or by another party approved by the department, may be resold or otherwise transferred to another person;
- (4) no salmon be released by the hatchery before department approval, and, for purposes of pathological examination and approval, the department shall be notified of the proposed release of salmon at least 15 days before the date of their proposed release by the hatchery;
- (5) diseased salmon be destroyed in a specific manner and place designated by the department;
- (6) adult salmon be harvested by hatchery operators only at specific locations as designated by the department;
- (7) surplus eggs from salmon returning to the hatchery be made available for sale first to the department and then, after inspection and approval by the department, to operators of other hatcheries authorized by permit to operate under §§ 400-470 of this chapter;
- (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) the cost of inspections or examinations conducted by the department under this section before the release of salmon, or when eggs are procured from sources other than the department, or to determine the existence of disease, be borne by the hatchery owner for which the inspection or examination is conducted;
- (10) a hatchery be located in an area where a reasonable segregation from natural stocks occur, but, when feasible, in an area where returning hatchery fish will pass through traditional salmon fisheries. (§ 2 ch 111 SLA 1974)

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 §§ 400-470 of this chapter within a reasonable period after notification of his noncompliance by the department, his permit may be suspended or revoked, in the discretion of the commissioner.
- (b) If the commissioner finds that the operation of the hatchery is not in the best interests of the public, he may alter the conditions of the permit to mitigate the adverse effects of the operation, or, if the adverse effects are irreversible and cannot be mitigated sufficiently, initiate a termination of the operation under the permit over a reasonable period of time under the circumstances, not to exceed four years. During the period of time that the operation is being terminated, the permit holder may harvest salmon under the terms of the permit but may not release additional fish. (§ 2 ch 111 SLA 1974)

Sec. 16.10.440. Regulation.

- (a) Fish released into the natural waters of the state by a hatchery operated under §§ 400-470 of this chapter 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 promulgate regulations necessary to implement §§ 400-470 of this chapter.
(\$ 2 ch 111 SLA 1974; am § 24 ch 206 SLA 1975)

Sect. 16.10.443. Department assistance and cooperation.

- (a) Before and after permit issuance under §§ 400-470 of this chapter, 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 §§ 400-470 of this chapter or from compliance with the regulations or restrictions adopted under §§ 400-470 of this chapter. (§ 1 ch 97 SLA 1975)

Sec. 16.10.445. Egg sources.

- (a) The department shall approve the source and number of salmon eggs taken under §§ 400-470 of this chapter.
- (b) Where feasible, salmon eggs utilized by a hatchery operator shall first be taken from stocks native to the area in which the hatchery is located, and then, upon department approval, from other areas, as necessary. (§ 2 ch 111 SLA 1974)

Sec. 16.10.450. Sale of salmon and salmon eggs by hatchery.

A hatchery operator who sells salmon returning from the natural waters of the state, or sells salmon eggs to another hatchery operating under §§ 400-470 of this chapter, after utilizing the funds for reasonable operating costs, including debt retirement, or expanding its facilities, shall expend the remaining funds on fisheries research, salmon rehabilitation projects, or other fisheries activities. Fish sold by hatcheries 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)

Sec. 16.10.460. Inspection of hatchery.

As a condition of and in consideration for a permit to operate a hatchery under §§ 400-470 of this chapter, 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. (§ 2 ch 111 SLA 1974)

Sec. 16.10.470. Annual report.

A person who holds a permit for the operation of a salmon hatchery under §§ 400-470 of this chapter shall submit an annual report to the department to include but not be limited to

1. a complete description of all significant hatchery operations;
2. statistics on the numbers of eggs and fish handled by the hatchery, whether for production or sale;
3. future recommendations for modification of the hatchery program;
4. Any other relevant data required by the department. (§ 2 ch 111 SLA 1974)

Sec. 16.10.475. Definitions.

In secs. 375-470 of this chapter

1. "commissioner" means the commissioner of fish and game;
2. "department" means the Department of Fish and Game. (§ 2 ch 161 SLA 1976)

Article 9. Fisheries Enhancement Loan Program

Section

- 500. *Declaration of Policy*
- 510. *Powers and Duties of the Commissioner*
- 520. *Limitation on Loans*
- 530. *Assessment on Sale of Salmon*

Section

- 540. *Voluntary Assessment on Sale of Salmon*
- 550. *Sale or Transfer of Mortgages and Notes*
- 560. *Definitions*

Sec. 16.10.500. Declaration of Policy.

It is the policy of the state, under secs. 500-550 of this chapter, to promote the enhancement of the state's fisheries by means of long-term, low interest loans for hatchery planning and construction. (§ 1 ch 190 SLA 1976)

Sec. 16.10.510. Powers and Duties of the Commissioner

The commissioner may

1. make loans to permit holders, under secs. 400-470 of this chapter, including those holders issued permits before the effective date of this Act, for the planning and construction of hatchery facilities;
2. make loans to qualified regional associations which have formed a nonprofit corporation or a local nonprofit corporation established or approved by a qualified regional association, for pre-construction activities necessary to obtain a permit, provided the hatchery has received preliminary project approval from the commissioner of fish and game;
3. designate agents and delegate powers to them as necessary;
4. adopt regulations necessary to carry out his functions;
5. Establish amortization plans for repayment of loans, not to exceed 25 years;
6. establish the rate of interest for loans not to exceed eight per cent a year;
7. establish regional and local offices and advisory groups to carry out, or assist in carrying out, his duties and authority;
8. upon written approval, defer interest and principal payments up to six years. (§ 1 ch 190 SLA 1976)

Sec. 16.10.520. Limitation on Loans

- (a) A single fisheries enchancement loan may not exceed \$3,000,000 for a hatchery constructed under a permit granted to a qualified regional association which has formed a nonprofit corporation, or to a local nonprofit corporation established or approved by a qualified regional association. A loan for any other hatchery project may not exceed \$300,000.
- (b) No loan may exceed 75 per cent of the total project cost as determined by the commissioner.
- (c) All loans must be secured by collateral satisfactory to the commissioner, including but not limited to a first deed of trust, assignment of lease and leasehold improvements, sale of surplus fish from the hatchery, or assessments from fishermen levied under sec. 530-540 of this chapter.
- (d) The commissioner may require what he considers adequate evidence of performance in utilizing loan funds approved for an initial or preliminary project before approving a subsequent loan application.
- (e) The total amount of loans made or purchased in any fiscal year shall not exceed the amount specifically authorized by statute. The amount to be purchased shall not exceed \$3,000,000 for fiscal year 1977 and \$10,000,000 for fiscal year 1978. (\$ 1 ch 190 SLA 1976)

Sec. 16.10.530. Assessment on Sale of Salmon.

- (a) The commissioner of commerce and economic development, with the advice and approval of the commissioner of fish and game, may establish areas in which an assessment shall be levied on the sale of one or more species of salmon by persons licensed under AS 16.05.540-16.05.600. An assessment levied under this section shall be for the purpose of securing repayment of a loan or loans made to a qualified regional association which has formed a nonprofit corporation, or to a local nonprofit corporation established or approved by a qualified regional association, which has obtained a permit under secs. 400-470 of this chapter. The rate and conditions of assessments shall be negotiated between the commissioner and the appropriate qualified regional association in conjunction with the issuance of the loan, and the agreement on the rate and conditions of assessment reached between them shall be incorporated into the provisions of the loan contract.

- (b) If conditions warrant alteration of the rate or conditions of assessment, and the alteration would be inconsistent with the agreement negotiated under (a) of this section, the commissioner shall obtain the consent of the appropriate qualified regional association before altering the rate of assessment.
- (c) The commissioner and the appropriate qualified regional association must agree on a means of collection of the assessment before a loan is made, and the commissioner may, by regulation, require its collection by buyers of the salmon upon the sale of which an assessment is levied.
- (d) The assessment shall terminate when the principal and interest on the loan is paid. (§ 1 ch 190 SLA 1976)

Sec. 16.10.540. Voluntary Assessment on Sale of Salmon.

- (a) In place of or in addition to an assessment levied under sec. 530 of this chapter, an association of persons licensed under AS 16.05.540-16.05.600, which consists of at least 51 per cent of the persons so licensed 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 sec. 510 of this chapter.
- (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 sec. 510 of this chapter, the commissioner may make the loan without requiring an assessment under sec. 530 of this chapter.
- (c) If an assessment made under this section fails to satisfy the payments required on the principal and interest due on the loan the commissioner may negotiate with the regional association to levy an assessment under sec. 530 of this chapter. (§ 1 ch 190 SLA 1976)

Sec. 16.10.550. Sale or Transfer of Mortgages and Notes.

- (a) The commissioner may sell or transfer at par value to the Department of Revenue the mortgages and notes held by the department as security for loans made under this chapter. The Department of Revenue shall purchase all the mortgages and notes offered until the current principal amount of all mortgages and notes purchased and held by that department equals \$200,000,000. (§ 1 ch 190 SLA 1976)

Sec. 16.10.560. Definitions.

In secs. 500-560 of this chapter

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

