

Summary of Actions
Alaska Board of Fisheries
Work Session to Review Committees
July 28, 1999

DESIGNATED REPORTER: Art Hughes

This summary of actions is for information purposes only and is not intended to detail, reflect, or fully interpret the reasons for the board's actions.

Status of Board Committees

On July 28, 1999, the board reviewed the status and progress of the various ongoing Board of Fisheries committees. After the status of the committees was determined, the committees met and gave reports to the full board.

The board heard reports from the various committee chairs and based on information and recommendations from the chairs the board made determinations on each committee to be standing committees, ad hoc committees, or task forces. Standing committees are defined as committees whose work is ongoing and incomplete to date. Ad hoc committees are defined as committees whose work has been completed and will reactivate on an issue basis. The third designation was task force status. A task force is defined as a panel made up of various user groups but differs from a committee in that the funding sources are private, and not out of state budgets. Eleven committees have been created by the board: AYK/Area M (task force), Federal/State Subsistence (standing), Habitat (standing), Hatchery (ad hoc), Joint BOF/BOG (standing), Joint BOF/NPFMC (standing), Legislation (standing), Rod and Reel Subsistence (ad hoc), Shellfish (ad hoc), Southeast Herring (ad hoc), and Sustainable Salmon Fisheries (standing).

Sustainable Salmon Fisheries Committee

The committee will make changes to the July 20, 1999 draft report. The revised report will be made available on August 12 to the board for final review and the report will be made available to the public (including advisory committees) on August 15. The board will also take up sustainable fisheries at its October work session where there will be a review of public comments, and further distribution of the report. The board also decided that oral comments would be heard at the work session and at each meeting this cycle. During the March 2000 statewide meeting final action will be taken. Furthermore, it was decided that at this time there was no longer a need for public and technical panels to meet.

Joint BOF/NPFMC

Active committee that identifies issues whose regulatory oversight is under both federal and state management. Committee format discussed which resulted in the nomination of a chairperson. New board committee member will be needed in October. Committee membership will coordinate themselves so that member terms are staggered. Ideas for better coordination between the board and council were discussed especially with regards to the pending crab decisions. January 2000 picked as joint BOF/NPFMC meeting date. Report to be given in October for September 13, 1999 meeting.

Habitat Committee

Committee which looks at land issues and their effect of fish habitat. Contact needs to be made with the new ADF&G, Director of Division of Habitat. Developing issues need to be

identified. No additional funding will be needed to fund the activities of the committee as the work is done by phone.

Shellfish Committee

Ad hoc committee that has been inactive for the past year. In the past this committee has developed goals and objectives for staff and identified stakeholders. This committee is a costly one as many of the issues are statewide and are costly for the staff and public to participate. Recent work by the shellfish committee resulted in rebuilding plans being developed for king crab stocks and a developing fisheries policy. It is recommended that this committee remain inactive, subject to activation by the chair as needed.

Hatchery Committee

Standing committee which is reviewing current policies regarding hatchery production. Information was provided to the board from the department in response to questions the board had regarding current and historical management of enhanced fisheries. The Hatchery Committee has completed gathering information and will provide a report to the full board in October 1999. The report will be authorized by the vice chair of the board. A meeting is requested prior to October to develop recommendations for the report and review the 1999/2000 proposals. Following completion of work in October the Hatchery Committee is expected to assume an inactive status until further needed.

AYK/Area M Committee/Task Force

Committee formed to address the problem of mixed stock fisheries in Area M catching AYK- bound salmon, specifically chum salmon. Report given on April 1999 meeting. The committee wishes to meet again as first meeting produced no tangible results. Major topic of discussion is whether or not more science is needed to find a solution. The board decided that committee should become a task force and be self-supporting and guided by the board to provide a product for 2001 when topic is on the agenda.

Rod and Reel Subsistence Committee

Committee formed to deal solely with rod and reel subsistence in the AVCP area due to the issuance of several citations to residents of rural Alaska who were fishing for subsistence with rod and reel. The discussion centered around a tabled agenda change request which sought to have rod and reel considered to be a legitimate method for subsistence fishing. A person was issued a citation for subsistence fishing in the AVCP region this past summer. The board requested a sport fish survey to be completed by October work session. Also, the committee discussed budget issues for a rod and reel workgroup, and discussed developing proposals for the March 2000 meeting out of the workgroup to take the place of the of the ACR which was tabled.

Southeast Herring Committee

Ad hoc committee addresses herring issues. Originally formed in Sitka in 1997 to address spawn-on-kelp issue. Committee went dormant and issue was unresolved. Issue will be back before the board in January of 2000. There is nothing for committee to pursue until the January Southeast herring meeting. Committee chair should be receiving information to relay back to board prior to January meeting.

Joint BOF/BOG Committee

Committee which maintains an ongoing relationship between the Board of Fisheries and the Board of Game that looks at issues which jointly affect the two boards as well as issues

concerning advisory committees. Nothing is in front of committee at the moment although the status of committee is a standing committee. Parking lot committee has not met yet and needs to ferret out issues that have not been resolved as of yet. In the future there is a need for one teleconference and one meeting to deal with remaining issues. Report to be given in October addressing budget estimates and need for Joint Board meeting.

Legislation Committee

New standing committee that works on issues concerning the Board of Fisheries and the legislature and relevant legislation. Two pieces of legislation of concern to the committee: 1) Subsistence Special Session; 2) Senator Pearce legislation regarding creation of a professional Board of Fisheries. Senator Pearce has asked the board to respond to the piece of legislation. Senator's staff will be present at October work session. Committee meeting desired once staffed. Joint Board previously wrote a resolution in response to similar legislation regarding a professional guide board. This committee is very important, particularly this year, considering subsistence dilemma and federal takeover. Board should continue to monitor as professional board issue is very important. Last year legislature dissolved Public Utilities Commission and created entirely new entity and could possibly do the same with Board of Fisheries. One meeting requested prior to October work session. Board chairman will serve ex-officio.

Federal/State Subsistence Committee

Committee formed to address possible federal takeover of fish and wildlife subsistence management on federal lands and waters in Alaska. The committee chairman briefed the board on the June 1999 summit meeting. Currently the committee is in a holding pattern until there is some movement by the legislature on the issue. A position statement is being written for both boards, and will be cosigned by the Board of Fisheries chairman. The deputy commissioner provided the board with a summary discussion of the lawsuit.

List of Board Committees

Sustainable Salmon Fisheries

Joint BOF/NNPFMC

Habitat

Shellfish

Hatchery

AYK/Area M (task force)

Rod and Reel Subsistence

Joint BOF/BOG

Legislation

Current issues: Spec Session – Subsistence; Professional Board
Federal/State Subsistence

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HATCHERY COMMITTEE REPORT

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DAN COFFEY, CHAIRMAN
BOARD OF FISHERIES
GRANT MILLER

OCTOBER 27, 1999

INTRODUCTION

The Hatchery Committee was formed in response to a proposal which was first considered in Ketchikan in 1997 (Proposal 421). This proposal suggested that the Board limit hatchery production to conform to the original intent of the hatchery program which was to rehabilitation of the state's depleted and depressed salmon fishery." In February, 1997 this proposal was tabled and the committee formed. There are currently several similar proposals pending before the Board in the 1999-2000 cycle.

BOARD'S LEGAL AUTHORITY

Initially, the committee requested an opinion from the attorney general's office as to the authority of the Board to deal with this and other similar proposals. After a preliminary report at the Board work session in October, 1997, a formal response to this request was delivered to the Board in November, 1997.

In general, the Board's authority to regulate hatcheries is limited. The authority of the Board was restricted in 1979 by the Legislature. According to the Attorney General's opinion, the greater authority to regulate hatcheries lies with the Department, specifically the Commissioner's office (AS 16.10.400-430).

There are, however, specific powers given to the Board.

Under AS 16.10.440 (a), [f]ish released to the natural waters of the state by a hatchery...are available to the people for the 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". Thus, all harvest of hatchery fish is subject to regulation by the Board of Fisheries subject only to the last proviso of this statute.

Under AS 16.10.440 (b), the Board may, after the issuance of a permit by the commissioner, "amend...the terms of the permit relating to the source and number of salmon eggs, the harvest of fish by hatchery operators and the specific location designated by the department for harvest". The Board may not take any action

regarding "the issuance or denial of any permits required in AS 16.10.400-470". Thus, the Board can amend a permit in three ways after it has been issued by the Commissioner.

Also, there is additional authority provided to the Board relative to the management of wild and enhanced stocks in AS 16.05.730.

EGG TAKE BY HATCHERIES

There is a question as to the Board's authority to regulate the number of salmon eggs taken from hatchery stock as well as from wild stock. The Committee is split on this issue. One committee member believes that the Board can regulate the number of eggs taken regardless of the source (wild or hatchery). Another committee member believes that the Board's authority applies only in the initial take from wild stock to begin a hatchery operation. After the initial "egg take" necessary to the establishment of the hatchery brood stock, the taking of eggs from hatchery stock is not, in the mind of this committee member, within the purview of the Board. This question is unresolved by the Committee.

OTHER LEGAL OPINIONS

The Committee also received and reviewed other legal opinions from the Attorney General's office. August 1, 1990 "ADF&G authority to manage fisheries for hatchery brood stock and cost recovery." July 16, 1993 "Special harvest areas and funding of hatchery evaluation projects."

The Committee, along with the full Board, also received correspondence from counsel representing hatcheries which is part of the Board record.

COMMITTEE CHARGE

Because of the uncertainties concerning the Board's authority and the specific limitations on the Board's authority, the Board, working with the Commissioner's Office, developed a charge for the Committee which was intended to allow the Committee to explore the various issues surrounding hatchery production and the problems which such project may cause. Under AS 16.10.400 (g) the issuance of a permit is not allowed "unless the commissioner determines that the action would result in **substantial public benefits** and **would not jeopardize natural stocks**".

Based on these considerations, the Committee was charged with determining how the statutory requirement of substantial public interest should be incorporated into the decision making process relative to hatchery operations and production, cost recovery, harvest practices and marketing. The Committee was instructed to focus on whether there needs to be statutory and/or regulatory change to insure that the substantial public interest is properly defined and that a process is developed so that the substantial public interest is incorporated into the decision making process relative to the operational issues related to the state's hatcheries.

COMMITTEE'S WORK

The Committee received a large volume of written materials from various sources over the course of its work which was read by the Committee members. In addition, the Committee held a public hearing in Juneau on February 10, 1999. A copy of the sign up sheet of those in attendance at the public hearing is attached.

At that meeting, the Committee heard from the Department of Fish and Game, the Department of Commerce of Economic Development, the managers/directors of various aquaculture associations and hatchery operators and from members of the public.

The Department also submitted three reports entitled:

Information for the Alaska Board of Fisheries Hatchery Committee on the Regional Comprehensive Salmon Planning Process, Regional Planning Teams, and "Substantial Public Benefits" from the Private Nonprofit Hatchery Program in Alaska. February 10, 1999

Information for the Alaska Board of Fisheries on Pink and Chum Salmon Production from Private Nonprofit Hatcheries in Southeast Alaska and Prince William Sound. January 6, 1998

Alaska Salmon Enhancement Program, 1998 Annual Report. March, 1999.

The Department of Commerce and Economic Development provided information on its hatchery loans. "Fisheries Enhancement Revolving Loan Fund, Historical Summary" (see attached). Also provided was an Audit Report from the Department in which is reviewed funding and operation of private nonprofit hatcheries (August 22, 1997).

Further, a Legislative Review of the Alaska Salmon Enhancement Program dated December, 1992 was provided to the Committee.

United Fishermen of Alaska submitted a Resolution (Resolution No. 2.97-1: Regarding the Alaska Salmon Hatchery System).

The Committee also reviewed a report, dated February, 1966 entitled Private Nonprofit Hatchery Program Status Sheet.

After the public hearing, the Committee submitted questions to the department concerning various matters (see attached). After the questions were answered (see attached), the Committee met and prepared this report.

REGIONAL PLANNING TEAMS

The statutory criteria for the issuance of a permit is found in AS 16.10.420. The Regional Planning Teams are an integral part of the process of hatchery permitting and subsequent operations. Initially, the hatchery operating plans, after completion by the RPTs, went through a substantial public process. This process is now substantially complete, but issues of some increased production still exist given the capacity of some hatcheries.

Currently, the RPTs have three (3) primary duties:

- 1) to develop hatchery management plans; and
- 2) to review and update hatchery management plans; and
- 3) to review hatchery operations.

The Regional Planning Teams consist of three members of the local aquaculture association and three members of the Department of Fish and Game.

The criteria which some RPT's have adopted for determining the substantial public benefit are:

- 1) whether or not the hatchery makes a significant contribution to common property; and
- 2) whether or not the hatchery production protects the wild stocks; and
- 3) whether or not the hatchery operation is compatible with the 1981 Southeast Alaska Comprehensive Salmon Plan.
- 4) whether or not the use of the site for the hatchery is appropriate.

SUBSTANTIAL PUBLIC BENEFIT

The Committee concurs with the following statement concerning the substantial public benefit concept.

The Regional Plan Team process, while it has undoubtedly conferred a substantial benefit to local areas, has not taken into consideration the potential detrimental effect of its actions beyond the local area.

SYNOPSIS OF ISSUES

The Committee agrees that the following issues need to be considered in developing any strategy to provide for greater statewide consideration of the concept of substantial public benefit.

The amount of hatchery production being taken for cost recovery by some hatcheries is, in some instances, inappropriately high. High cost recovery diminishes the public benefit.

-commercial fishing vessels are put on limits by processors because they cannot handle both the common property harvest and the cost recovery process.

-the quality of the fish declines because the harvest is not aggressively prosecuted when commercial fishermen are placed on limits.

-the price declines with the decline in quality and the by the processors paying less for the common property harvest in order to recover what has been paid for cost recovery harvest.

In many areas of the state regulations allocating fish between gear types is based on hatchery production. A decrease in hatchery production can upset these allocation plans.

If there is a decline in hatchery production, the market demand will be filled by other sources. It is possible that the market demand could be satisfied by other regions of the state. It is also possible that other out of state producers may meet this demand. Thus, a reduction in state hatchery production, may not necessarily re-open markets for other areas in Alaska.

There is substantial debate as to the carrying capacity of the north Pacific and the Bering Sea. A study is currently being conducted by the National Marine Fisheries Service. The results of this study will be available in seven (7) more years. The study will be completed far in advance of loan repayments to the state¹.

COMMITTEE RECOMMENDATIONS

There is no unanimity among the committee members as to any particular recommendations to the full Board. Therefore, the committee submits the following options for consideration by the full Board. The Board may also consider other options as well. It is the Committee's hope that, by presenting these options, a discussion will take place as to the efficacy and appropriateness of these various options with the Board adopting such options as the Board deems appropriate under the circumstances.

- 1) The Regional Planning Teams could report to the Board of Fisheries at a public meeting annually or "in cycle" as to how it is incorporating the concept of substantial public benefit into its planning and oversight processes.
- 2) The Board of Fisheries could set levels of hatchery production, including reductions in production levels in order to insure that hatchery production confers a substantial public benefit and do not jeopardize natural stocks.
- 3) The Board of Fisheries could provide oversight to the Regional Planning Teams to insure that they supervise and manage hatchery operations in such a manner as to confer a substantial public benefit and do not jeopardize natural stocks.
- 4) The Board could require that there be no further increases in hatchery production beyond current levels without further review and approval by the Board of Fisheries to insure that future increases have substantial public benefit and do not jeopardize natural stocks.
- 5) The Board of Fisheries could exercise more controls over hatcheries through its authority on brood stock, egg take and special harvest areas.

¹ Kodiak Aquaculture and Northern Southeast Regional Aquaculture Associations have no debt to the State of Alaska.

Some of these options may require legislative action. Also, as noted, other options may be considered by the Board.

CONCLUSION

There are numerous hatchery operations and regional aquaculture association enhancement projects throughout Alaska. Some undoubtedly confer a substantial public benefit. However, there is also some hatchery operations which confer little or no benefit on the public. The practices of some hatchery operations are detrimental to the public benefit.

Any attempt by the Board of Fisheries to improve the situation must take into consideration this variations in hatchery performance to this standard. Care should be exercised in the regulatory process because of the long standing nature of current practices which, in hindsight, are not in the best interest of the State of Alaska. However, just because the issues are complex, does not mean that they should not be addressed with a view towards increasing the benefit to the public and eliminating operations which are detrimental to the public interest.

Finally, a draft of this report was provided to representatives of NSRAA, SSRAA and DIPAC who attended the Board work session in Fairbanks in October, 1999. The draft was provided because these individuals had to leave the meeting early. Comments on the draft report were received by the Committee. Copies are attached.