

ORDER ADOPTING CHANGES TO
REGULATIONS OF THE DEPARTMENT OF REVENUE

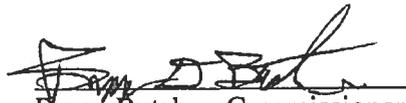
The attached seven pages of regulations, dealing with the common property fishery assessment, are adopted and certified to be a correct copy of the regulation changes that the Department of Revenue adopts under the authority of AS 16.10.455 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Revenue paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

DATE: April 26, 2012
Anchorage, Alaska


Bryan Butcher, Commissioner
Department of Revenue

FILING CERTIFICATION

I, Mead Treadwell, Lieutenant Governor for the State of Alaska, certify that on 25 May, 2012, at 10:40 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


Lieutenant Governor

Effective: _____.

Register: _____.

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MAY 16 2012

MEMORANDUM Tax Division
Department of Revenue
Anchorage, Alaska

State of Alaska
Department of Law

TO: Hon. Bryan Butcher
Commissioner
Department of Revenue

DATE: May 10, 2012

FILE NO.: JU2011200644

TELEPHONE NO.: 465-3600

FROM: Steven C. Weaver 
Assistant Attorney General
Legislation/Regulations Section--Juneau

SUBJECT: Regulations re: common
property fishery assessment
(15 AAC 116.410 - 15 AAC
116.490; 15 AAC 116.700)

Under AS 44.62.060, we have reviewed the attached amendment of these regulations by the Department of Revenue, and approve the changes for filing by the lieutenant governor. I have reviewed this project under a general delegation dated March 20, 2012 from the Regulations Attorney. A duplicate original of this memorandum is being furnished to the lieutenant governor, along with the seven pages of regulations and the related documents.

You might wish to contact the lieutenant governor's office to confirm the filing date and effective date of the attached regulation changes.

The December 11, 2011 public notice, the March 25, 2012 supplemental public notice, and the April 26, 2012 adoption order all state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

In accordance with AS 44.62.125(b)(6), some corrections have been made in the regulations, as shown on the attached copy.

SCW

cc w/enc: Jerry Burnett, Deputy Commissioner & Regulations Contact
Department of Revenue

Matthew R. Fonder, Director
Tax Division
Department of Revenue

Johanna Bales
Tax Division
Department of Revenue

Janis D. Hales
Tax Division
Department of Revenue

Michael Barber
Assistant Attorney General
Commercial & Fair Business Section--Juneau

The chapter heading of 15 AAC 116 is changed to read:

Chapter 116. Common Property Fishery Assessment and Seafood Marketing Assessment.

15 AAC 116 is amended by adding new sections to read:

Article 4. Common Property Fishery Assessment.

Section

- 410. Hatchery reporting requirements
- 415. Common property fishery assessment rate
- 420. Liability for common property fishery assessment
- 425. Annual report and remittance of fee
- 430. Reporting of bonus or other additional payments
- 435. Report by department upon failure to make report or making false or fraudulent report
- 490. Definitions

15 AAC 116.410. Hatchery reporting requirements. (a) In a year when a hatchery permit holder's cost recovery will be conducted by a common property fishery authorized under AS 16.10.455, the hatchery permit holder must provide

- (1) audited financial statements for the hatchery permit holder for the three most recent years preceding the current year;
- (2) the hatchery permit holder's projected current-year costs; and
- (3) the number of salmon, by species, that returned to the hatchery in the three

most recent years and the number of salmon, by species, projected to return to the hatchery in the current year.

(b) The information required under (a) of this section must be filed with the department no later than 30 days following the date that the hatchery permit holder's board, as required under AS 16.10.455(b), notifies the Department of Fish and Game whether the hatchery intends to operate as provided under AS 16.10.455(b). (Eff. ___/___/___, Register ___)

Authority: AS 16.10.455

15 AAC 116.415. Common property fishery assessment rate. (a) A person subject to the common property fishery assessment under AS 16.10.455 shall pay an assessment at a rate determined by the department annually under (e) of this section, on the value of the salmon taken in a terminal harvest area that is subject to a common property fishery assessment.

- (b) The common property fishery assessment rate is a fraction,
- (1) the numerator of which is the projected assessment revenue for the current year; and
 - (2) the denominator of which is the total pounds of salmon projected to return to the terminal harvest area in the current year that will be subject to the common property fishery assessment, multiplied by the projected regional price per pound of salmon for the current year that will be subject to the common property fishery assessment.

(c) To calculate the projected assessment revenue for purposes of (b)(1) of this section, the department, in consultation under (d) of this section with the hatchery permit holder, will

- (1) calculate the total estimated amount of the hatchery permit holder's

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- (A) annual debt service to the state;
- (B) reasonable operating expenses for the year;
- (C) reasonable maintenance expenses for the year; and
- (D) additional revenue needed to develop or maintain a reserve fund up to

100 percent of the hatchery permit holder's annual operating costs; and

(2) subtract, from that total estimated amount, the estimated amount of income from all sources that the hatchery permit holder expects to expend to satisfy the estimates under (1)(A) - (D) of this subsection, other than money estimated to be appropriated under AS 16.10.455(e) to the hatchery permit holder.

(d) The department will consult with the Department of Commerce, Community, and Economic Development for assistance in identifying current-year market conditions and salmon market trends. The department will consult with the hatchery permit holder to ensure the projected assessment revenue includes all cost components identified under AS 16.10.455(d). The department will consult with representatives of affected commercial fishermen for assistance in determining the projected regional price per pound of salmon subject to the common property fishery assessment.

(e) The common property fishery assessment rate for the calendar year 2012 for Hidden Falls Hatchery is ²⁰twenty percent. (Eff. __/__/__, Register __)

Authority: AS 16.10.455

15 AAC 116.420. Liability for common property fishery assessment. (a) A person participating under AS 16.43 in a common property fishery shall pay a common property fishery

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assessment at the rate established by the department under 15 AAC 116.410 - 15 AAC 116.490 on salmon harvested in an area and during the time of year designated by the commissioner of fish and game as a common property fishery under AS 16.10.455.

(b) Except as provided under (c) of this section, a buyer who acquires salmon from a person who is subject to a common property fishery assessment under AS 16.10.455 shall collect the assessment at the time of purchase.

(c) A person who transfers salmon to a buyer who is not a fisheries business licensed under AS 43.75 is liable for the payment of the common property fishery assessment imposed under 15 AAC 116.410 - 15 AAC 116.490 if, at the time possession of the salmon is transferred to the buyer, the common property fishery assessment has not been collected. (Eff.

___/___/___, Register ___)

Authority: AS 16.10.455

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← 15 AAC 116.425. Annual report and remittance of tax. (a) A buyer responsible for the collection of the common property fishery assessment under 15 AAC 116.420 shall file an annual report for each business location on a form or in a format prescribed by the department, reporting

- (1) the name of the buyer;
- (2) the buyer's federal employer identification number (EIN) or social security

number;

- (3) the buyer's fisheries business license number;
- (4) the year of purchase;

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(5) the total pounds and value of salmon by hatchery and species, ^{that} which the buyer has purchased or acquired; and

(6) the signature, printed name, ^{and} title of the buyer or its authorized representative, and date of signing.

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(b) If a person other than the buyer is liable under 15 AAC 116.420(c) for payment of the common property fishery assessment, the person shall file the report required under (a) of this section, reporting

(1) the name of the person;

(2) the person's federal employer identification number (EIN) or social security number;

(3) the person's fisheries business license number;

(4) the year of sale or export;

(5) the total pounds and value of salmon by hatchery and species, ^{that} which the person has sold or exported; and

(6) the signature, printed name, ^{and} title of the person or its authorized representative, and date of signing.

(c) No later than October 31 of the year in which the common property fishery was conducted, the annual report required under this section shall be filed with the department, together with each assessment required to be collected. (Eff. __/__/__, Register __)

Authority: AS 16.10.455

15 AAC 116.430. Reporting of bonus or other additional payments. (a) A buyer making a bonus or other additional payment to a person after October 31 for salmon purchased in the previous reporting period shall collect the assessment on and file a report of the bonus or additional payment made. The buyer shall file a report on a form or in a format prescribed by the department, reporting

- (1) the year in which the salmon were initially reported; and
- (2) the additional value paid for the salmon acquired in a previous year.

(b) No later than the last day of the month following the month in which a bonus or additional payment was made, the report required under this section shall be filed, together with each assessment required to be collected. (Eff. __/__/__, Register __)

Authority: AS 16.10.455

15 AAC 116.435. Report by department upon failure to make report or making false or fraudulent report. If a person fails to file a report at the time prescribed under 15 AAC 116.410 - 15 AAC 116.490 or makes, willfully or otherwise, a false or fraudulent report, the department will make the report from the information it obtains. (Eff. __/__/__, Register __)

Authority: AS 16.10.455

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15 AAC 116.490. Definitions. In 15 AAC 116.410 - 15 AAC 116.490, unless the context requires otherwise,

- (1) "buyer" means a person who purchases or otherwise acquires salmon from a person who participates in a common property fishery;

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(2) "department" means the Department of Revenue;

(3) "person" means an individual, partnership, association, limited liability company, corporation, or any group or combination acting as a unit;

(4) "projected regional price" means the average price of salmon

(A) reported to the department in the prior year on returns filed under AS 43.75 (fisheries business license and taxes) that reflect processing activity in the area nearest to the terminal harvest area where the common property fishery assessment will be imposed; and

(B) adjusted up or down after taking into account current-year market conditions and salmon market trends;

(5) "salmon" means Pacific salmon and Pacific salmon byproducts such as roe if sold separately by the holder of the limited entry permit under AS 16.43. (Eff. __/__/__, Register __)

Authority: AS 16.10.455

The lead-in language of 15 AAC 116.700 is amended to read:

15 AAC 116.700. Definitions. In AS 16.51 and 15 AAC 116.600 - 15 AAC 116.700,

[THIS CHAPTER]

...

(Eff. 12/17/82, Register 84; am __/__/__, Register __)

Authority: AS 16.51.150 AS 16.51.180 AS 43.05.080

AS 16.51.160