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### LAWS OUT OF COMPLIANCE

Cook Inlet is primarily a wild salmon Region. The magnitude of PWS inter-regional hatchery straying into these areas, with overlapping legislatively designated jurisdictions, puts Alaska out of compliance with many laws, policies and a number of clauses of the Alaska Responsible Fishery Management Certification.

After consulting the CIRPT, the local ADFG office, and the Hatchery Section, I realize this massive straying is not seriously considered. Wild and artificial fish are not differentiated as the PNP Hatchery Act of 1974 clearly depicts, hatcheries contributing by artificial hatchery programs, "**shall** be operated **without adversely affecting natural stocks of fish**"

Action is needed to safeguard what is touted as clear structure of laws, regulations, and other mandates adopted to mitigate concerns associated with inter-regional straying from hatchery programs..

Why boast the use of local stocks as the brood source when straying is altering the pattern of gene flow and homogenizing wild populations in a different region?

Why bother having a multimillion dollar PWS regional straying study if it doesn't matter that straying as high as 92% from PWS are being found in a Critical Habitat Area/Special Purpose Site 200 miles away?

The Science panel for the PWS study forgot three critical questions: What and how much seafood does this introduced predator biomass eat per day as they grow 500% in the last 4 months of their lives? How is this introduced predation affecting high value seafood abundance in different regions when they stray?

The section chief in Fish and Game's Hatchery Section and a voting member of all Regional Planning Teams, acknowledged at the CIRPT meeting and was quoted in press:

*'the presence of Prince William Sound hatchery fish in the Homer streams is likely not new. so it's likely that straying has been going on from the Prince William Sound hatcheries since their inception in the 1970s,' he said. "Presumably these Prince William Sound pinks that we're finding in Lower Cook Inlet didn't just start now," he said.*

*If this is true than it is no wonder this mysterious component of introduced predation must be added to the equation leading to the demise of our diverse shellfish fisheries in the rich Kachemak Bay nursery.*

The lower Cook Inlet manager also at the meeting said *he was surprised at how little Tutka Bay hatchery pinks strayed. He said he was scratching his head figuring out why the Tutka pinks didn't stray. "Whatever they're doing, they're doing it right," he said of the Cook Inlet Aquaculture Association. "That's what I've told the CIAA board. They need to figure it out and teach Prince William Sound."*

Only 11,000,000 Tutka hatchery fish were released and only 1,000,000 Port Graham fish released so of course there would be low straying from those two hatcheries. Why was this not mentioned? Why the denial? Why the lack of wild fish priority?

This disturbing lack of concern from within the Department for the food web is why I have come to the BOF in sincere hopes this will be meaningfully addressed.

Inter-regional straying is not acceptable.

The Cook Inlet Region wild populations need regulatory protection from hatchery fish trespass.

### **APPLICABLE ALASKAN MANDATES:**

**Article VIII Section 2 General Authority.** The legislature shall provide for the utilization, development, and **conservation** of all natural resources belonging to the state, including land and waters, for the maximum benefit of its people.

**Article VIII Section 3 Common use.** Wherever occurring in their **natural state**, fish, wildlife, and waters are reserved to the people for common use. Natural resources must be managed for the benefit of the people as a whole, (rather than for the benefit of the government, corporations, or private persons.)

**Article VIII Section 4 Sustained Yield** Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the state shall be utilized, developed, and **maintained** on the **sustained yield principle**, subject to **preferences among beneficial uses**.

**Article VIII Section Special Purpose Sites** The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historical, cultural, recreational, or scientific value. It may **reserve them from the public domain** and provide for their administration and preservation for the use, enjoyment, and welfare of the people.

**THE 1974 HATCHERY ACT** “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.**” (92% hatchery straying is not considered reasonable segregation.)

### **AS 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...however, management to achieve an adequate return of fish to enhancement projects for brood stock shall be consistent with sustained yield of wild stocks...**(c) The board may consider the need of enhancement projects **if the harvest is consistent with sustained yield of wild stocks.**

**AS 16.05.831. WASTE OF SALMON.** (a) A person may not waste salmon intentionally, knowingly, or with reckless disregard for the consequences. In this section, "waste" means the failure to utilize the majority of the carcass...of a salmon... **Clause 11** – waste, monitor, control

**AS 16.10.440 REGULATIONS RELATING TO RELEASED FISH** The Board of Fisheries may...amend by regulation adopted in accordance with AS44.62 (Administrative Procedures

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 location designated by the department.

**AS 16.10.750. FINDINGS AND PURPOSE.** (a) **The legislature finds that (2) the state is committed to maintaining and enhancing its wild stocks of salmon by careful management, by initiating a 20-year rebuilding program, and by investing in the fishing industry; (20 years from when?)**

**5 AAC 39.220. POLICY FOR THE MANAGEMENT OF MIXED STOCK SALMON FISHERIES.** (a) **In applying this statewide mixed stock salmon policy for all users, conservation of wild salmon stocks consistent with sustained yield shall be accorded the highest priority.** (d) Most wild Alaska salmon stocks are fully allocated to fisheries capable of harvesting available surpluses. **Consequently, the board will restrict new or expanding mixed stock fisheries unless otherwise provided for by management plans or by application of the board's allocation criteria.** Natural fluctuations in the abundance of stocks harvested in a fishery will not be the single factor that identifies a fishery as expanding or new. **Clause 14**

**5 AAC 39.222. POLICY FOR THE MANAGEMENT OF SUSTAINABLE SALMON FISHERIES.** **to effectively assure sustained yield and habitat protection for wild salmon stocks, fishery management plans and programs require specific guiding principles and criteria,** This Policy, embodied in the State constitution and regulations, includes key elements of the precautionary approach for salmon fisheries and habitats. Faced with the many uncertainties of this magnitude of acknowledged straying, Alaska is not consistent with a conservative approach to the management of salmon stocks, fisheries, artificial propagation, and essential salmon habitats of Cook Inlet. **Clause 7, Clause 16**

**AS 16.20.500 CRITICAL HABITAT AREAS** Established by the State Legislature to protect and Preserve habitat areas especially crucial to the perpetuation of fish and wildlife.

**5 AAC 95.610 CHA POLICY AND GOALS:** Priority should be given to encourage rehabilitation of depleted indigenous fish and wildlife populations. (Pink salmon are not depleted. crab and shrimp are) Enhancement is not at the expense of existing resource values including diversity and abundance and doesn't interfere with public use and enjoyment. Recognize cumulative impacts when considering effects of small incremental developments and action affecting Park and critical habitat area resources. All department management decisions in the critical habitat areas, whether affecting activities undertaken by the department, other agencies or the public, will be in accordance with these goals.

**AS 41.21.131 KACHEMAK BAY STATE PARK** to protect and preserve this land and water **AS 41.21.990** where major values are in their natural geological, faunal or floral characteristics only for the purpose of making the areas available for public enjoyment in a manner consistent with the preservation for natural values.'

**5 AAC 39.290. CLOSED WATERS** **Due to the glut of salmon seen LCI river systems wild coho, chum, pink anadromous stocks and Dungeness crab scraped off the shallow bottom were placed at risk:** In 2017 the Southern District News release #33 declared: "anadromous

waters restrictions in the Tutka SHA are rescinded until further notice. Fishing is permitted up to the fresh water of anadromous streams open seven days per week on a schedule of daily 16-hour commercial fishing periods 6AM to 10PM until further notice.

### **5 AAC 40.005 GENERAL**

The harvest of salmon inhabiting the water of the state, regardless of whether the salmon are naturally or artificially propagated may be conducted only pursuant to regulations adopted by the Board of Fisheries. (b) The harvest of salmon returning to a private nonprofit salmon hatchery will be governed by regulations adopted by the Board of Fisheries. The board will, in its discretion, develop harvesting regulations after review of the harvest plans or other materials, information, and testimony, if any, presented by the regional associations, hatchery operators, the Department of Commerce, Community, and Economic Development, the Department of Fish and Game, fishermen, and other interested parties.

(c) Where hatchery returns enter a segregated location near the release site and can be harvested without significantly affecting wild stocks, a special harvest area may be designated by regulation adopted by the board, within the hatchery permit, or by emergency orders issued by the commissioner.

**5 AAC 40.010. (c) MODIFICATIONS OF APPLICABLE REGULATIONS** Hatchery permit holders conducting a hatchery harvest of salmon within a special harvest area are exempt from provisions of 5 AAC 39.290. CLOSED WATERS

**THE GENETICS POLICY (Davis et al., 1985 Davis and Burkett 1989)** B. Inter-regional: Stocks will not be transported between major geographic areas: Southeast, Kodiak Island, Prince William Sound, Cook Inlet, Bristol Bay, AYK and Interior. II. Protection of wild stocks. A. Gene flow from hatchery fish straying and intermingling with wild stocks may have significant detrimental effects on wild stocks. First priority will be given to protection of wild stocks from possible harmful interactions with introduced stocks.

**DISEASE POLICY (Meyers et al 1988; McDaniel et al., 1994)** Strict health regulation who monitors these strays for disease?

**5 AAC 41.005 FISH TRANSPORT REGULATION** require such considerations as siting hatcheries a distance from significant wild stocks, using only stocks endemic to the region for broodstock minimizing the risk to wild fish.

**THE GENETICIST REVIEW OF FISHERIES TRANSPORT PERMITS 5 AAC 41.010-41.050** are being ignored as there has been little follow up monitoring to ensure the terms or conditions to the permit to protect wild or enhanced is adhered to leading to this after the fact problem.

**5 AAC 41.010 – 41.050. FISHERIES MANAGEMENT REVIEW OF FTP'S** signing of permits with no follow up does not ensure compliance.

## **Key elements of the genetics policy are not being followed:**

**Stock Transport:** *This element addresses section 1 of the Genetics Policy covering stock transports. The policy prohibits interstate or inter-regional stock transports, and uses transport distance and appropriate phenotypic characteristics as criteria for judging the acceptability of donor stocks.*

### **II Protection of wild stocks:**

**Identification of significant or unique wild stocks:** *Significant or unique wild stocks must be identified for each region and species as stocks most important to that region. The Regional Planning Teams should establish criteria for determining significant stocks and recommend such stock designations. (not based on quantity alone)*

**Interaction with or impact on significant stocks:** *Priority is given to protection of significant wild stocks from harmful interactions with interaction with introduced stocks. Stocks cannot be introduced to sites where they may impact significant or unique wild stocks.*

**Use of Indigenous stocks in watersheds with significant wild stocks:** *A watershed with a significant wild stock can only be stocked with progeny from the indigenous stocks. The policy also specifies that no more than one generation of separation from the donor system to stocking of the progeny will be allowed. This means that only progeny from eggs taken from natural broodstock from the watershed may be used, and not progeny of broodstock returning to a hatchery or release site.*

**Example: Tutka and Port Graham Creeks are both significant stocks**

**Establishment of wild stock sanctuaries:** *Wild stock sanctuaries should be established on a regional and species basis. No enhancement activities would be allowed, but gamete removal would be permitted. The guidelines and justifications describe the proposed sanctuaries as gene banks of wild type variability.*

**Example: Port Dick is a wild stock sanctuary getting contaminated by PWS hatchery fish.)**

### **III. Maintenance of genetic variance**

#### **Geneticist review of Fisheries Transport Permits 5 AAC 41.010-41.050**

**Review by geneticist:** *Each application is reviewed by a geneticist who then makes the recommendation to either approve or deny the application. The geneticist may also add terms or conditions to the permit to protect wild or enhanced stocks.*

**Example: on paper this sounds good however, there is little to no follow up or monitoring of these reviews.**



### Case in point:

In 2012, no follow up, no monitoring, and no accountability for the FTP's that permitted 83,000,000 pink salmon from remote genetics to be reared and released in a Special Purpose Site Park known as a shrimp spawning concentration area and a Critical Habitat Area Lagoon known for low circulation with significant stocks of wild salmon placed at risk.

These FTP's were

- Reviewed and cautioned by geneticists,
- permitted by ADFG Fisheries management reviews,
- permitted by Habitat Division,

### Principal Geneticists Stated:

“In the review of pink salmon FTPs 11A-0056, 11A-0057 and 11A-0078, the principal geneticist stated some concern about the distance between the brood sources at Port Dick and Windy Bay and the release site at Halibut Cove. *He emphasized the need to harvest all fish* returning to Halibut Cove to minimize straying to Lower Cook Inlet streams.

The DPOR denied this permit due to incompatibility with Park purpose especially because of risk to Humpy Creek, a Significant stock, It denied the permit to allow questionable genetics in park lagoon waters known as a shrimp spawning concentration area with low flushing that could not withstand the oxygen depletion caused by this magnitude of fish near the parks significant stock Humpy Creek.

The Genetics Lab Sections caution, the Habitat Division CHA stipulations were ignored. The returning adults were not harvested and all fish strayed. The Department took no action. This was swept under the rug of authority. Why was there no accountability?

The State Park and the Park Advisory Board were the only defense for the wild fish priority. Only an obscure reference in the 2013 LCI management Report, mentioned this debacle blaming the denial by the State park.

Why is ADFG not prioritizing wild fish? Why no accountability?

### The Genetics Lab Stated:

“Gametes from Windy Bay and Port Dick egg collection are incubated separately from the Tutka Creek Gametes at TBLH for release only at Halibut Cove. Humpy Creek is a significant stock near Halibut Cove, *so full harvest of the enhanced runs is imperative to minimize straying*. The Windy Bay stock has similar run timing to Humpy Creek, and

*fishery management actions may be necessary to assure adequate escapement to Humpy Creek.”*

*“First, we are concerned by the distance of Port Dick from the release site at Halibut Cove. Little is known about the genetic population structure of pink salmon in this area and hence, little is known about the extent of the genetic risk to pink salmon populations in Lower Cook Inlet”. Similar comments were made for the Windy Bay FTP.*

*Evaluation plans in FTPs for Port Dick and Windy Bay state: “ CIAA will monitor the return for marked fish as directed by ADFG.” However, no plans were indicated to look for the thermal marks, such as sampling streams for straying, or sampling the commercial catch to estimate hatchery contribution.”*

**The supposed protections of the permitting process and evaluations are not being adhered to. They are being ignored and not taken seriously. On paper it looks fine in reality the State of Alaska is out of compliance. This is one of many.**

**In addition, the protections of Pathology or the Sustainable Salmon Policy are also being ignored**

#### **Pathology requirements for FTPs (5 AAC 41.010)**

**Disease history: The Port Dick and Windy Bay stock disease history is unknown.**

#### **Sustainable Salmon Fishery Policy (5 AAC 39.222)**

#### **Management Principles and criteria**

##### **I. Assessment of wild stock interaction and impacts:**

**No plan for evaluating enhanced fish contribution or straying was prescribed by adfg in approving the ftp. And no follow up to ensure all fish were harvested.**

#### **Fisheries management review of FTPs (5 AAC 41.010 – 41.050)**

**Review by management staff:** The FTPs for TBLH program were reviewed and approved by fisheries management staff.

**However, no follow up to ensure all fish were harvested as prescribed**

**As noted in the BMP:**

**“Humpy Creek near the Halibut Cove SHA has a SEG range of 21,650 to 85,550 fish and may require ADFG management action to achieve adequate escapement.”**

**“Humpy creek has achieved the lower SEG every year of the past decade, except 2009, which occurred in a year of no enhanced pink salmon in the area.”**

**What can this mean as per health of this significant wild stock?**

**A trend of low escapements in recent years to Tutka Creek may impede a quick return to full capacity at TBLH. Pink salmon returns to Tutka Creek did not achieve the lower SEG of 6,500 fish from 2006 to 2010 but rebounded to 20,000 fish in 2011, exceeding the upper SEG of 17,000 (Glenn Hollowell, personal communication)**

**After the Tutka hatchery was closed in 2004**

*Dungeness and Tanner are rebounding in “significant numbers”*



## The many Kachemak Bay Designations

1. Constitutional Special Purpose Area – reserved from the public domain **Art.VIII Sec 7.**
2. “scenic park” classification, major values: geologic faunal and floral characteristics **AS 41.21.990**
3. 1970 established as Kachemak Bay State Park administered by DPOR **AS 41.21.131**
4. 1974 designated a biologically sensitive Kachemak Bay Critical Habitat Area. **AS 16.20.590**
5. Known Shrimp spawning concentration area (ADFG Habitat Management Guide, CHA Management Plan)
6. Known Dungeness Reproduction concentration area (ADFG Habitat Management Guide, CHA Management Plan)
7. Known Herring Spawning Concentration Area (ADFG Habitat Management Guide, CHA Management Plan)
8. Known Tanner Mating and Concentration Area (ADFG Habitat Management Guide, CHA Management Plan)
9. Known King Crab Concentration Area (ADFG Habitat Management Guide, CHA Management Plan)
10. Alaska Maritime Wildlife Refuge Headquarters
11. NOAA Habitat Focus Area
12. Kachemak Bay National Estuarine Reserve
13. Western Hemisphere Shorebird Network

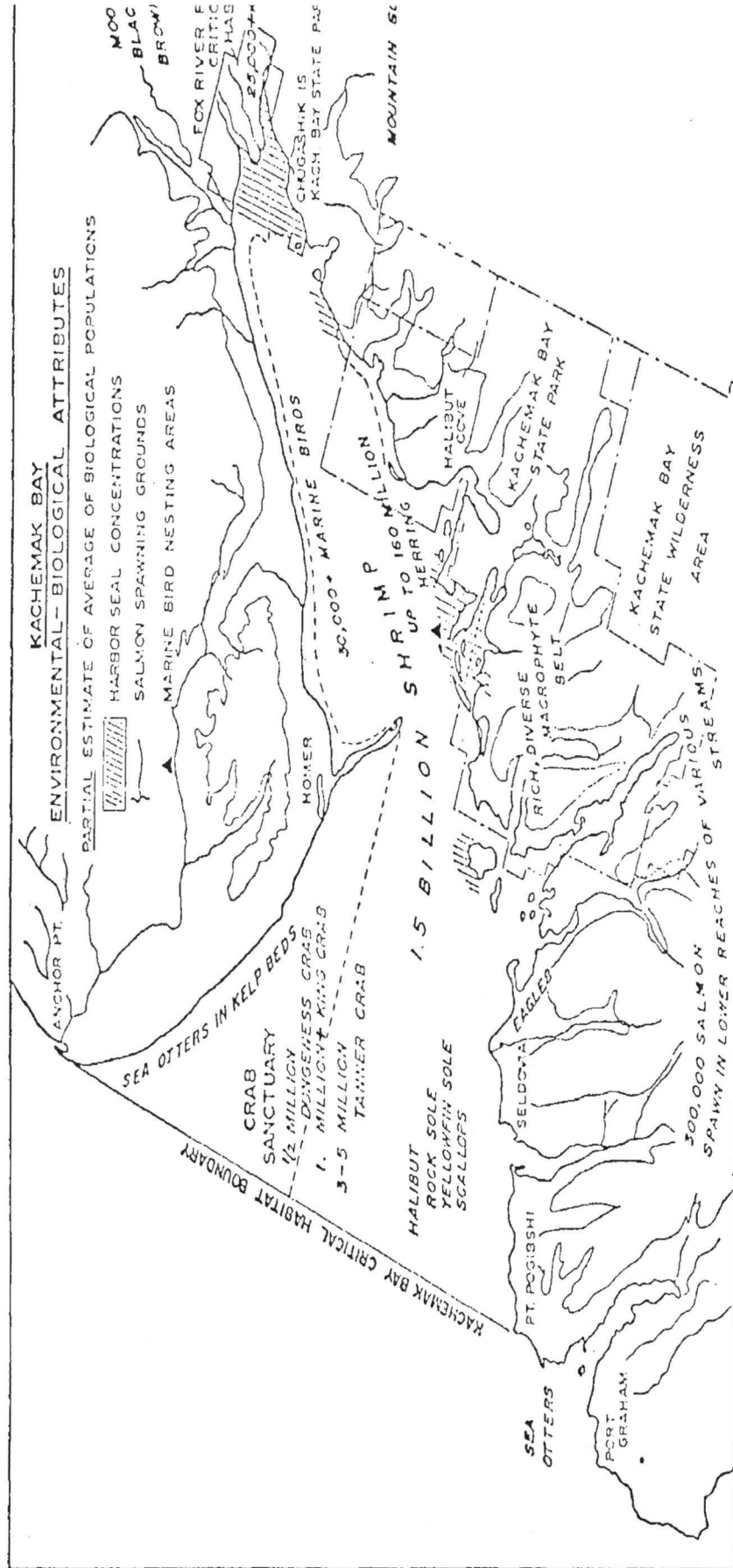


Figure 2-8 Kachemak Bay: graphic summary of environmental/biological attributes (M. Wennekens, AEII Anchorage, personal communication)