



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Fish and Game

OFFICE OF THE COMMISSIONER
Headquarters Office

1255 West 8th Street
P.O. Box 115526
Juneau, Alaska 99811-5526
Main: 907.465.4100
Fax: 907.465.2332

TO: Mr. John Jensen, Chair
Alaska Board of Fisheries

DATE: January 14, 2018

FROM: Sam Cotten, Commissioner *Sam R. Cotten*
Department of Fish and Game

PHONE: 465-6141

SUBJECT: Emergency Petition to the Alaska Board of Fisheries (board) requesting the board reverse a department decision to allow a 20 million increase in the number of pink salmon eggs taken by Valdez Fisheries Development Association (VFDA) at the Solomon Gulch Hatchery (SGH) in 2018.

Action Requested

On May 16, 2018 a group of 19 stake holders submitted a petition requesting the board make a finding of emergency and reverse a department decision to allow a 20 million increase in the number of pink salmon eggs to be harvested by VFDA in 2018.

Background

Prince William Sound (PWS) hatchery pink salmon production began in 1975 with the establishment of the regional aquaculture association, Prince William Sound Aquaculture Association. The petition is directed at "Private Non-Profit hatcheries" in Prince William Sound, the impact actually falls upon VFDA. Valdez Fisheries Development Association was subsequently established in 1978 and SGH was built in 1981 and first released pink salmon fry in 1982. VFDA is not part of the regional aquaculture association. PWS hatchery combined pink salmon production grew to reach the current permitted capacity of 775 million eggs in 2017. From 1984 the VFDA program gradually grew as production increases were approved incrementally growing permitted pink salmon production from 50 million to 230 million eggs in 1991. It remained at that level until 2014 when VFDA submitted a permit alteration request (PAR) to increase their pink salmon egg take by 70 million eggs from 230 million to 300 million eggs at their SGH facility. The PAR was amended at the 2014 PWS Regional Plan Team (RPT) meeting to provide an increased pink salmon egg take of 20 million in 2016 with an additional 20 million eggs in 2018, conditionally authorized pending completion of required hatchery infrastructure. Thus, VFDA permitted capacity increased from 230 million eggs to 250 million eggs in 2016 and to the current level of 270 million eggs in 2018. Further increases were not recommended until more comprehensive research directed at better understanding of total wild stock returns, stock identification, and run timing are implemented.

The 2014 increase request was delayed for two years because large increases in PWS pink salmon production may have affected study design for the Alaska Hatchery Research Program. This study was specifically designed to provide information about straying and effects of interaction between hatchery and wild fish to guide future decisions on salmon hatchery production in PWS and Southeast Alaska. It was also recommended at that time that as SGH facility capacity increases, future PARs should consider an incremental approach to increased capacity. An incremental

approach will allow time for assessment of straying proportions in Eastern District streams and provide for evaluation of potential effects on fishery management prior to consideration of additional increases.

From the beginning of Alaska's salmon fishery enhancement program, it was recognized that salmon stray and that hatchery stocks would stray; consequently, policies and regulations were adopted to mitigate concerns associated with straying. What is less well understood is the effect of straying on wild stocks. In 2012 the department, in collaboration with NOAA Fisheries, University of Alaska, Prince William Sound Science Center, aquaculture associations, and the fishing industry, initiated a multi-year study examining the genetic structure of pink and chum salmon in Prince William Sound and Southeast Alaska, the extent and annual variability in pink and chum salmon straying in these areas, and the impact on productivity of Prince William Sound and Southeast Alaska pink and chum salmon due to straying of hatchery-produced fish. Results of this study will improve understanding of recent results showing presence of PWS hatchery-produced pink salmon in some Lower Cook Inlet (LCI) streams.

Though no statute expressly grants the board regulatory authority over hatchery production *per se*, it may exercise considerable influence over hatchery production through its authority to directly amend hatchery permit terms relating to fish and egg harvesting (AS 16.10.440(b)). This influence is tempered by previous guidance to the board that it may not adopt regulations that effectively veto or override a fundamental department policy decision regarding whether to authorize the operation of a hatchery or adopt regulations preventing the department from exercising its authority to permit a hatchery operation¹. While the board does have authority to amend permit terms related to fish and egg harvest by hatcheries, it is unclear whether the Alaska Legislature intended that authority to be used in regulating the take of hatchery-produced fish in a Special Harvest Area where the common use clause no longer applies (O'Callahan v. Rue, 996 P.2d 88). At the time AS 16.10.440(b) was amended (1979) there were very few hatchery brood stock sources and it was necessary for hatchery operators to obtain brood stock from wild sources. The take of wild salmon for hatchery brood stock has allocative implications the board may potentially wish to consider. Additionally, the board authority over possession, transport and release of live fish had not yet been delegated to the department when AS 16.10.440(b) was amended.

Finding of Emergency

Under criteria listed in the Joint Board Petition Policy used by the board in determining whether an emergency exists, paragraph (f) of 5 AAC 96.625 reads, in pertinent part:

...In this section, an emergency is an unforeseen, unexpected event that either threatens a fish or game resource, or an unforeseen, unexpected resource situation where a biologically allowable resource harvest would be precluded by delayed regulatory action and such delay would be significantly burdensome to the petitioners because the resource would be unavailable in the future.

This petition is for the board to use its authority under AS 16.10.440(b) and reverse a department decision to allow a 20 million increase in the number of pink salmon eggs taken by VFDA SGH in 2018. The petition does not satisfy criteria described in 5 AAC 96.625(f) because it is not

unforeseen that some level of straying occurs in pink salmon stocks and concerns over straying effects and potential fishery management complications arising from increased pink salmon production levels were discussed by the RPT and department when the 2014 SGH PAR was considered and approved. Furthermore, while there were relatively high numbers of PWS hatchery-produced salmon found in several recent sampling events in LCI streams, not enough information is currently available to determine whether their presence threatens a fish or game resource.

Summary

The petition does not demonstrate that approval a 20 million increase in the number of pink salmon eggs to be harvested by VFDA in 2018 is an unforeseen, unexpected event threatening a fish or game resource. Therefore, based on the information available to me I cannot conclude that an emergency under 5 AAC 96.625(f) exists. Accordingly, I deny the emergency petition pursuant to AS 46.62.230.

cc: Glenn Haight, Executive Director, Alaska Board of Fisheries
Scott Kelley, Director, Division of Commercial Fisheries
Tom Brookover, Director, Division of Sport Fisheries
Hazel Nelson, Director, Division of Subsistence
Seth Beausang, Chief Assistant Attorney General, Department of Law
Bradley Meyen, Senior Assistant Attorney General, Department of Law

¹Robert C. Nauheim and Lance B. Nelson, November 6, 1997, Memorandum to Dr. John White, Chair, Alaska Board of Fisheries and The Honorable Frank Rue, Commissioner, Alaska Department of Fish and Game, *Authority of the Board of Fisheries Over Private Nonprofit Hatchery Production*, 14 pages.