

§ 93.320. O'Callaghan v. Rue, 2000, 996 P.2d 88, rehearing denied. Fish ☞ 12

Public interest exception to mootness doctrine allowed Supreme Court to consider whether Commissioner of Fish and Game had authority to promulgate salmon roe stripping regulation and whether the regulation was consistent with the salmon waste law, though the regulation was no longer in effect, where Commissioner's power was issue of public interest and the short-term nature of the regulation meant it might repeatedly circumvent judicial review. AS 16.05.831; Alaska Admin. Code title 5, § 93.320. O'Callaghan v. Rue, 2000, 996 P.2d 88, rehearing denied. Appeal And Error ☞ 781(1)

In determining whether Department of Fish and Game owed actionable duty of care in fisheries data collection and management, the class to which such ruling would apply was the relationship between resource manager and resource user; Department, in making fisheries

closure decisions based on sonar fish counter data, was not acting for particular and immediate benefit of users of autumn chum-salmon run then in progress, but instead for broader benefit of short-term and long-term users statewide, though users of autumn chum-salmon run stood to gain or lose more immediately and directly than other Alaskans. AS 16.05.020(2), 16.05.092(1); Alaska Admin. Code title 5, § 01.249. Mesiar v. Heckman, 1998, 964 P.2d 445. Fish ☞ 12

Public interest exception to mootness doctrine supported consideration of issue of emergency power of Commissioner of Department of Fish and Game over matters previously considered by Board of Fisheries, even though issue was technically moot, in light of likelihood that issue would resurface and avoid review, and in light of importance of conservation and utilization of fish and game resources to public interest. Peninsula Marketing Ass'n v. Rosier, 1995, 890 P.2d 567. Appeal And Error ☞ 781(1)

§ 16.05.030. Repealed

§ 16.05.040. Compensation of commissioner

The commissioner is entitled to the compensation fixed by law and, subject to appropriate state travel regulations, is entitled to reimbursement for actual and necessary traveling and other expenses incurred in the discharge of official duties.

SLA 1959, art I, ch. 94, § 5.

Library References

Fish ☞ 11.

Game ☞ 6.

Westlaw Key Number Searches: 176k11; 187k6.

C.J.S. Fish § 29.

C.J.S. Game §§ 9, 22 to 26, 29, 31, 45, 50.

§ 16.05.050. Powers and duties of commissioner

(a) The commissioner has, but not by way of limitation, the following powers and duties:

(1) through the appropriate state agency and under the provisions of AS 36.30 (State Procurement Code), to acquire by gift, purchase, or lease, or other lawful means, land, buildings, water, rights-of-way, or other necessary or proper real or personal property when the acquisition is in the interest of furthering an objective or purpose of the department and the state;

(2) under the provisions of AS 36.30, to design and construct hatcheries, pipelines, rearing ponds, fishways, and other projects beneficial for the fish and game resources of the state;

(3) to accept money from any person under conditions requiring the use of the money for specific purposes in the furtherance of the protection, rehabilitation, propagation, preservation, or investigation of the fish and game

resources of the state or in settlement of claims for damages to fish or game resources;

(4) to collect, classify, and disseminate statistics, data and information that, in the commissioner's discretion, will tend to promote the purposes of this title except AS 16.51 and AS 16.52;

(5) to take, capture, propagate, transport, buy, sell, or exchange fish or game or eggs for propagating, scientific, public safety, or stocking purposes;

(6) under the provisions of AS 36.30, to provide public facilities where necessary or proper to facilitate the taking of fish or game, and to enter into cooperative agreements with any person to effect them;

(7) to exercise administrative, budgeting, and fiscal powers;

(8) under the provisions of AS 36.30, to construct, operate, supervise, and maintain vessels used by the department;

(9) to authorize the holder of an interim-use permit under AS 16.43 to engage on an experimental basis in commercial taking of a fishery resource with vessel, gear, and techniques not presently qualifying for licensing under this chapter in conformity with standards established by the Alaska Commercial Fisheries Entry Commission;

(10) not later than January 31 of each year, to provide to the commissioner of revenue the names of those fish and shellfish species that the commissioner of fish and game designates as developing commercial fish species for that calendar year; a fish or shellfish species is a developing commercial fish species if, within a specified geographical region,

(A) the optimum yield from the harvest of the species has not been reached;

(B) a substantial portion of the allowable harvest of the species has been allocated to fishing vessels of a foreign nation; or

(C) a commercial harvest of the fish species has recently developed;

(11) to initiate or conduct research necessary or advisable to carry out the purposes of this title except AS 16.51 and AS 16.52;

(12) to enter into cooperative agreements with agencies of the federal government, educational institutions, or other agencies or organizations, when in the public interest, to carry out the purposes of this title except AS 16.51 and AS 16.52;

(13) to implement an on-board observer program authorized by the Board of Fisheries under AS 16.05.251(a)(13); implementation

(A) must be as unintrusive to vessel operations as practicable; and

(B) must make scheduling and scope of observers' activities as predictable as practicable;

(14) to sell fish caught during commercial fisheries test fishing operations;

(15) to establish and charge fees equal to the cost of services provided by the department, including provision of public shooting ranges, broodstock and eggs for private nonprofit hatcheries, department publications, and other direct services, and reasonable fees for the use of state facilities managed by the department; fees established under this paragraph for tours of hatchery

facilities, commercial use of sport fishing access sites, and for operation of state hatchery facilities by private aquaculture associations are not subject to the cost limit under AS 37.10.050(a);

(16) to permit and regulate aquatic farming in the state in a manner that ensures the protection of the state's fish and game resources and improves the economy, health, and well-being of the citizens of the state;

(17) to operate state housing and facilities for employees, contractors, and others in support of the department's responsibilities and to charge rent that is consistent with applicable collective bargaining agreements, or, if no collective bargaining agreement is applicable, competitive with market conditions; rent received from tenants shall be deposited in the general fund;

(18) to petition the Alaska Commercial Fisheries Entry Commission, unless the Board of Fisheries disapproves the petition under AS 16.05.251(g), to establish a moratorium on new entrants into commercial fisheries

(A) that have experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;

(B) that have achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and

(C) for which there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery;

(19) to promote fishing, hunting, and trapping and preserve the heritage of fishing, hunting, and trapping in the state.

(b) The commissioner shall annually submit a report to the Board of Game regarding the department's implementation during the preceding three years of intensive management programs that have been established by the board under AS 16.05.255 for identified big game prey populations.

SLA 1959, art I, ch. 64, §§ 6, 11; SLA 1963, ch. 42, § 1; SLA 1970, ch. 227, § 2; SLA 1973, ch. 79, § 2; SLA 1979, ch. 79, § 12; SLA 1982, ch. 82, § 1; SLA 1984, ch. 132, § 2; SLA 1986, ch. 76, § 2; SLA 1986, ch. 106, § 7; SLA 1986, ch. 138, § 29; SLA 1988, ch. 145, § 6; SLA 1990, ch. 36, §§ 19, 20; SLA 1990, ch. 211, § 1; SLA 1991, ch. 34, § 2; SLA 1992, ch. 30, § 38; SLA 1996, ch. 54, § 1; SLA 1998, ch. 76, § 2; SLA 2005, ch. 87, § 2.

Historical and Statutory Notes

SLA 2005, ch. 87, § 1 provides:
"Legislative Intent. It is the intent of the Alaska State Legislature that the commissioner of fish and game, the Board of Fisheries, and the Board of Game implement their authority to promote fishing, hunting, and trapping and to

preserve the heritage of fishing, hunting, and trapping in the state in a manner consistent with scientific fish and wildlife management principles and the Alaska constitutional principles of common use and sustained yield."

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