

## **Chapter 16.51. ALASKA SEAFOOD MARKETING INSTITUTE**

### **Sec. 16.51.010. Alaska Seafood Marketing Institute established.**

There is established the Alaska Seafood Marketing Institute. The institute is a public corporation of the state. It is an instrumentality of the state in the Department of Community and Economic Development, but has a legal existence independent of and separate from the state. Exercise by the institute of the powers conferred by this chapter is an essential governmental function of the state.

### **Sec. 16.51.020. Board of directors.**

(a) The governing body of the institute is a board of directors. The board consists of 25 voting members appointed by the governor. In making appointments to the board, the governor shall consider, but need not appoint, nominees presented by persons engaged in fish processing, the financing of fish processing, or commercial fishing.

(b) Twelve members of the board shall be seafood processors: eight of the seafood processors must have an annual payroll in the state of more than \$2,500,000; four of the seafood processors must have an annual payroll in the state of \$50,000 - \$2,500,000. Twelve members of the board must be engaged in commercial fishing. The governor, to the extent practicable, shall appoint as commercial fishing members of the board persons engaged in commercial fishing in a fishery management region of the state in the same proportion that the region contributes, or is expected to contribute during the next year, to the total salmon marketing tax collected under [AS 43.76.110](#) - 43.76.130. One member of the board shall be a lay person selected by the governor.

(c) The board shall annually elect a chairman and other necessary officers from among its members.

### **Sec. 16.51.030. Term of office.**

The members of the board appointed by the governor under [AS 16.51.020](#) serve three-year terms and may be reappointed. Terms shall be staggered. An appointee to fill a vacancy shall hold office for the balance of the term for which the appointee's predecessor on the board was appointed.

### **Sec. 16.51.040. Removal and vacancies.**

The members of the board appointed by the governor under [AS 16.51.020](#) serve at the governor's pleasure. A vacancy on the board occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

### **Sec. 16.51.050. Quorum.**

Fourteen members of the board appointed under [AS 16.51.020](#) constitute a quorum for the transaction of business and the exercise of the powers and duties of the board.

**Sec. 16.51.060. Compensation of board members.**

Board members receive no salary, but are entitled to per diem and travel expenses authorized by law for other state boards and commissions under [AS 39.20.180](#).

**Sec. 16.51.070. Meetings.**

The board shall meet at least once a year. A meeting of the board shall occur at the call of the chairman, or upon the written request of two members of the board.

**Sec. 16.51.080. Employment of personnel.**

The board may employ and determine the salary of an executive director. The executive director may, with the approval of the board, select and employ additional staff as necessary. The executive director and all employees of the board are in the exempt service under AS 39.25.

**Sec. 16.51.090. Powers of board.**

In carrying out the powers of the institute, the board may

- (1) adopt, alter, and use a corporate seal;
- (2) prescribe, adopt, amend, and repeal bylaws;
- (3) sue and be sued in the name of the institute;
- (4) enter into any agreements necessary to the exercise of its powers and functions;
- (5) cooperate with a public or private board, organization, or agency engaged in work or activities similar to the work or activities of the institute, including entering into contracts for joint programs of consumer education, sales promotion, quality control, advertising, and research in the production, processing, or distribution of seafood;
- (6) conduct, or contract for, scientific research to develop and discover health, dietetic, or other uses of seafood harvested and processed in the state;
- (7) receive contributions of money from persons;
- (8) establish offices in the state and otherwise incur expenses incidental to the performance of its duties;

(9) appear on behalf of the institute before boards, commissions, departments, or other agencies of municipal, state, or federal government;

(10) acquire, hold, lease, sell, or otherwise dispose of property, but such property is limited to that which is necessary to the administrative functioning of the office of the institute;

(11) establish and maintain one or more bank accounts for the transaction of the institute's business;

(12) prepare market research and product development plans for the promotion of any species of seafood and their by-products that may be harvested in the state and processed for sale;

(13) establish committees related to the marketing of salmon and salmon products; the board shall, to the extent practicable, appoint equal numbers of seafood processors and persons engaged in commercial fishing to the committees.

**Sec. 16.51.095. Executive Budget Act.**

The operating budget of the institute shall be prepared and submitted in accordance with AS 37.07 (Executive Budget Act).

**Sec. 16.51.100. Duties of board.**

The board shall

(1) conduct programs of education, research, advertising, or sales promotion designed to accomplish the purposes of this chapter;

(2) promote all species of seafood and their by-products that are harvested in the state and processed for sale;

(3) develop market-oriented quality specifications for Alaska seafood to be used in developing a high quality image for Alaska seafood in domestic and world markets, and adopt and distribute recommendations regarding the handling of seafood from the moment of capture to final distribution;

(4) prepare market research and product development plans for the promotion of all species of seafood and their by-products that are harvested in the state and processed for sale;

(5) submit an annual report to the governor describing the activities of the institute and notify the legislature that the report is available;

(6) develop marketing programs based on the "inspection" and "premium quality" seals designed under [AS 17.20.066](#) and use the seals in advertising and promotion efforts of the institute;

(7) collect, organize, distribute, and make available to the public information on prices paid and market conditions for raw salmon and salmon products and provide this information on a regular and timely basis to all salmon fishermen who hold permits under AS 16.43 and to all nonprofit salmon enhancement organizations that hold a permit under [AS 16.10.400](#);

(8) cooperate with commercial salmon fishermen, fishermen's organizations, seafood processors, the Alaska Fisheries Development Foundation, the Fisheries Industrial Technology Center, state and federal agencies, and other relevant persons and entities to investigate market reception to new salmon product forms and develop commodity standards and future markets for salmon products;

(9) establish a salmon marketing committee to assist and advise the board in administering the salmon marketing program that is funded through the tax collected under [AS 43.76.110](#) - 43.76.130; the committee shall consist of seven persons selected by the board, as follows:

(A) four persons shall be engaged in commercial salmon fishing and hold salmon permits under AS 16.43, of whom

(i) one person shall be a member of the board of directors of the institute; and

(ii) three persons shall be Alaska residents from different salmon administrative areas established by the Alaska Commercial Fisheries Entry Commission; and

(B) three persons shall be engaged in processing of salmon, of whom

(i) one person shall be a member of the board of directors of the institute;

(ii) one person shall be a salmon processor who is not on the board of directors of the institute and who has an annual payroll in the state of more than \$2,500,000; and

(iii) one person shall be a salmon processor who is not on the board of directors of the institute and who has an annual payroll in the state of \$50,000 - \$2,500,000.

#### **Sec. 16.51.110. Prohibited promotions.**

The board may not promote or make a contract that promotes seafood by

(1) geographic origin other than from the state generally;

(2) geographic region of the state; or

(3) specific brand name.

**Sec. 16.51.120. Seafood marketing assessment.**

(a) A seafood marketing assessment shall be levied on the value of seafood products produced in Alaska as provided in (b), (c), (d), or (e) of this section if an election is held under [AS 16.51.140](#) at which the assessment is approved by eligible processors who together produce at least 51 percent of the value of seafood products produced in Alaska in the calendar year.

(b) Each processor shall pay a seafood marketing assessment of .1 percent of the value of seafood products produced in Alaska by the processor.

(c) Each processor shall pay a seafood marketing assessment of .2 percent of the value of seafood products produced in Alaska by the processor.

(d) Each processor shall pay a seafood marketing assessment of .3 percent of the value of seafood products produced in Alaska by the processor.

(e) Each processor shall pay a seafood marketing assessment of .4 percent of the value of seafood products produced in Alaska by the processor.

(f) An election under (a) of this section shall be held if the proposed election for the levying of an assessment under (b), (c), (d), or (e) of this section is approved by a majority of the whole membership of the board at a regularly scheduled meeting.

(g) Notwithstanding (a) - (e) of this section and [AS 16.51.150](#) (c), a processor is not subject to, or liable for payment of, an assessment under this section on the value of the seafood products produced in Alaska if the value of seafood products produced in Alaska by the processor is less than \$50,000 in a calendar year. This subsection does not exempt a processor from liability for payment of taxes imposed under AS 43.75 or AS 43.77.

**Sec. 16.51.130. Termination of the seafood marketing assessment.**

(a) A seafood marketing assessment levied under [AS 16.51.120](#) (b), (c), (d), or (e) shall be terminated by the commissioner of revenue if

(1) an election is held under [AS 16.51.140](#) in which the termination is approved by eligible processors who together produce at least 51 percent of the total value of seafood products produced in Alaska during the calendar year; or

(2) the board, at a regularly scheduled meeting, adopts a resolution approved by two-thirds of the voting membership of the board requesting the commissioner of revenue to terminate the assessment.

(b) An election under (a)(1) of this section shall be held if

(1) the proposed election for the termination of the assessment is approved by a majority of the whole membership of the board at a regularly scheduled meeting; or

(2) a petition is presented to the director of elections requesting termination of the assessment by eligible processors who together produce at least 25 percent of the total value of seafood products produced in Alaska during the calendar year.

(c) The institute shall provide notice of an election in accordance with [AS 16.51.140](#) within 60 days after receiving notice from the director of elections that a valid petition under (b)(2) of this section has been received.

(d) The seafood marketing assessment is terminated on the effective date stated on the ballot.

Sec. 16.51.140. Procedures for an election to approve or terminate a seafood marketing assessment.

(a) The institute may conduct an election under this section after the director of elections approves

(1) the notice to be published by the institute;

(2) the ballot to be used in the election; and

(3) the registration and voting procedures for the approval or termination of the seafood marketing assessment.

(b) In conducting the election under this section, the institute shall adopt the following procedures:

(1) the proposed levy or termination of the assessment shall be adopted at a regularly scheduled meeting of the board held not less than 60 days before the date on which the ballots must be postmarked to be counted unless the election is for termination of the assessment and has been initiated by a petition under [AS 16.51.130](#)(b)(2);

(2) the institute shall hold at least one meeting, not less than 30 days before the date on which ballots must be postmarked to be counted, to explain the reason for the proposed seafood marketing assessment or termination of the assessment and to explain the voting procedure to be used in the election; the institute shall provide notice of the meeting by

(A) mailing the notice to each eligible processor; and

(B) publishing the notice in at least one newspaper of general circulation in each region of the state at least two weeks before the meeting;

(3) the institute shall mail ballots to each eligible processor not more than 45 days before the date specified as the date ballots must be postmarked;

(4) the ballot must

(A) indicate whether the assessment is to be levied under AS 16.51.120(b), (c), (d), or (e) and must state the percentage of the assessment;

(B) indicate the effective date of the levy of the assessment or termination of the assessment;

(C) ask whether the assessment shall be levied or, if the election is to terminate the assessment, whether the assessment shall be terminated;

(5) the ballots shall be returned by mail and shall be counted by the director of elections or a representative.

(c) The director of elections shall certify the results of an election under this section if the director determines that the requirements of (a) and (b) of this section have been satisfied.

(d) For the purposes of this section a ballot submitted by a corporation is presumed valid if the ballot is signed by an individual who is indicated to be an officer of the corporation and the ballot is imprinted with the corporate seal.

#### **Sec. 16.51.150. Determination of value.**

(a) Upon request from the director of elections, the commissioner of revenue shall determine

(1) the total value of seafood products produced in Alaska during any calendar year;

(2) whether the eligible processors approving the levy or termination of a seafood marketing assessment together produced at least 51 percent of the total value of seafood products produced in Alaska during the calendar year; or

(3) whether the eligible processors petitioning for an election under [AS 16.51.130](#) (b)(2) together produced at least 25 percent of the total value of seafood products produced in Alaska during the calendar year.

(b) The total value of seafood products produced in Alaska in a calendar year is the sum of the

(1) total value of the fisheries resource on which the tax imposed under [AS 43.75.015](#) and 43.75.100 is levied in that calendar year; and

(2) total value of the fisheries resource on which the tax imposed under AS 43.77 is levied in that calendar year.

(c) The value of seafood products produced in Alaska by a processor during a calendar year is the sum of the

(1) total value of the fisheries resource on which the processor must pay the tax imposed under [AS 43.75.015](#) and 43.75.100 in that calendar year; and

(2) total value of the fisheries resource on which the processor must pay the tax imposed under [AS 43.77.010](#) in that calendar year.

**Sec. 16.51.160. Collection of assessments and disposition of proceeds.**

(a) Each processor shall remit to the Department of Revenue before April 1 of each year the total amount of the seafood marketing assessment owed on the value of seafood products produced in Alaska by the processor in the previous calendar year.

(b) *[Repealed, Sec. 28 ch 90 SLA 1991].*

**Sec. 16.51.170. Enforcement of assessments.**

The provisions of AS 43.05 and AS 43.10 apply for the enforcement and collection of the seafood marketing assessment.

**Sec. 16.51.180. Definitions.**

In this chapter,

(1) "board" means the board of directors of the Alaska Seafood Marketing Institute;

(2) "eligible processor" means a processor who would be liable for payment of a seafood marketing assessment levied under [AS 16.51.120](#);

(3) "institute" means the Alaska Seafood Marketing Institute;

(4) "processor" means a person who is liable for

(A) the tax imposed under [AS 43.75.015](#);

(B) the tax imposed under [AS 43.75.100](#); or

(C) the landing tax imposed under AS 43.77;



(5) "produce" means perform an activity upon which a tax is imposed under AS 43.75 or AS 43.77, including the purchase, production, landing, or export of a fisheries resource.

(6) "promote or make a contract that promotes seafood" means to advertise or publicize, or make a contract for advertising or publicizing, the use, value, attractiveness, or quality of seafood;

(7) "seafood" means finfish, shellfish, and fish by-products, including but not limited to salmon, halibut, herring, flounder, crab, clam, cod, shrimp, and pollock, but does not include aquatic farm products as defined in [AS 16.40.199](#);

(8) *[Repealed, Sec. 13 ch 81 SLA 1996].*

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#### **Sec. 43.75.015. Fisheries business tax.**

(a) A person engaged in a fisheries business is liable for and shall pay the tax levied by this section on the value of each of the following fisheries resources processed during the year at the rate set out after each:

(1) salmon canned at a shore-based fisheries business - four and one-half percent;

(2) salmon processed by a shore-based fisheries business, except salmon for which the tax is due under (1) of this subsection, and all other fisheries resources processed by a shore-based fisheries business - three percent;

(3) fisheries resources processed by a floating fisheries business - five percent.

(b) Instead of the taxes levied by (a) of this section, a person who processes a developing commercial fish species is liable for and shall pay a tax equal to

(1) one percent of the value of the developing commercial fish species processed by a shore-based fisheries business during the year; and

(2) three percent of the value of the developing commercial fish species processed by a floating fisheries business during the year.

(c) A person engaging or attempting to engage in a fisheries business who first actually and physically processes the fishery resource, or a person who purchases a fishery resource that is frozen from a person excluded by [AS 43.75.017](#) from liability for the tax, is liable for and shall pay to the department the entire tax imposed by this section. In determining this tax liability, the person may deduct from the value of the fishery resources processed the value of fishery resources that are canned or processed for other

fisheries businesses. A person taking the deduction authorized by this subsection shall report all information relating to the deduction in accordance with regulations adopted by the department.

**Sec. 43.75.100. Tax imposed on taking of fishery resource.**

(a) A person taking, purchasing, or otherwise acquiring a fishery resource that has not been subject to the tax imposed in [AS 43.75.015](#) is subject to the tax levied in [AS 43.75.015](#) on the value of the fishery resource if the person

(1) transports the fishery resource to a point outside the taxing jurisdiction of the state for subsequent processing or sale outside the taxing jurisdiction of the state;

(2) sells the fishery resource outside the taxing jurisdiction of the state; or

(3) has the fishery resource processed by a fisheries business in the state.

(b) The rate of tax that shall be paid by a person whose liability for the tax is established by this section is the rate of tax that would have been due under [AS 43.75.015](#) if the fisheries business that first actually and physically processed the fish had been liable to pay the tax.

**Sec. 43.75.110. Duty of taxpayer and payment of tax.**

A person subject to taxes under [AS 43.75.100](#) shall make a return stating the value of fisheries resources taken, purchased, or otherwise acquired during the license year for sale to fisheries businesses outside of the taxing jurisdiction of the state computed as required by [AS 43.75.100](#), and other information to carry out the provisions of AS 43.75.100 as may be prescribed by the department. The return must contain the license number and must be signed by the taxpayer or an authorized agent, under penalty of unsworn falsification. If a receiver, trustee, or assign is operating the property or business, that person shall make the return for the person. A tax due on the basis of such return shall be collected in the same manner as if collected from the person of whose business the receiver, trustee, or assign has custody and control. The requirements for time and place of payment of tax, and the obligation to keep records and make the records available to the commissioner are the same as those prescribed in AS 43.75.011 - 43.75.050.

**Sec. 43.77.010. Landing tax.**

A person who engages or attempts to engage in a floating fisheries business in the state and who owns a fishery resource that is not subject to AS 43.75 but that is brought into the jurisdiction of, and first landed in, this state is liable for and shall pay a landing tax on the value of the fishery resource. The amount of the landing tax is

(1) for a developing commercial fish species, as defined under AS 43.75.290, one percent of the value of the fishery resource at the place of landing;

(2) for a fish species other than a developing commercial fish species, three percent of the value of the fishery resource at the place of the landing.

Sec. 43.77.015. Obligations and payments under fishery cooperative contracts.

(a) The department shall deposit a payment made to the state under a contract subject to sec. 210(f), American Fisheries Act, P.L. 105-277, into the separate account established under [AS 43.77.050](#) (b).

(b) An obligation imposed by a contract subject to sec. 210(f), American Fisheries Act, P.L. 105-277, shall be treated as if it were a tax under this chapter for purposes of [AS 43.77.020](#). A payment made to satisfy the obligation imposed by the contract shall be treated as if it were tax revenue collected under this chapter for purposes of AS 43.77.060.