



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103
(10/1/89)

Agency: Washington State Department of Agriculture

- Permanent Rule
- Emergency Rule

(1) Date of adoption: July 19, 1995

(2) Purpose: To establish a commodity commission to represent Puget Sound Gillnet Salmon License holders with authority to collect assessments to carry out activities in promotion, research, and public information programs and to take necessary action to prevent unfair trade practices.

(3) Citation of existing rules affected by this order:

Repealed: NONE LISTED: This is a new chapter 16-585 RCW Puget Sound Gillnet Salmon Commission
 Amended:
 Suspended:

(4) Authority for adoption:

Statute: RCW 15.65.050
 Other Authority: Chapter 16.65 WAC

(5.1) PERMANENT RULE ONLY

Pursuant to notice filed as WSR 95-05-071 on February 14, 1995(date).
 Describe any changes other than editing from proposed to adopted version:

(5.2) EMERGENCY RULE ONLY

Pursuant to RCW 34.05 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule? Yes No If yes, explain:

(6) Effective date of rule:

- | | |
|---|---|
| Permanent Rules <input checked="" type="checkbox"/> 31 days after filing <input type="checkbox"/> Other (specify) * | Emergency Rules <input type="checkbox"/> Immediately <input type="checkbox"/> Later (specify) |
|---|---|

*(if less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

JUL 19 1995

TIME: 9:45
 WSR 95-15-102

NAME (TYPE OR PRINT)

Jim Jesernig

SIGNATURE

William E. Brooke for Jim Jesernig

TITLE

Director

DATE

July 19, 1995

Chapter 16-585 WAC

PUGET SOUND GILLNET SALMON COMMISSION

NEW SECTION

WAC 16-585-010 Definition of terms. For the purpose of this marketing order:

(1) "Act" means the Washington Agricultural Enabling Act of 1961 or chapter 15.65 RCW.

(2) "Affected area" means Western Washington.

(3) "Affected commodity" means salmon harvested pursuant to Washington, Puget Sound commercial salmon gillnet license or with gear now or hereafter lawfully permitted for use pursuant to Puget Sound commercial salmon gillnet licenses.

(4) "Affected producer" means any person who is a commercial harvester of commercial quantities of salmon taken pursuant to Washington state Puget Sound commercial salmon gillnet license or with gear lawfully permitted for use pursuant to Puget Sound commercial salmon gillnet licenses in the waters of the state of Washington in areas lawfully permitted for such licenses, including in and adjacent to the areas of Puget Sound, the San Juan Islands, Georgia Strait, and the Strait of Juan de Fuca east of Cape Flattery.

(5) "Commercial quantity" means any Puget Sound salmon produced by an affected producer which producer produces an annual quantity greater than zero and sufficient for sale and entry into the stream of commerce for salmon.

(6) "Commission" means the Puget Sound gillnet salmon commission formed pursuant to this order.

(7) "Department" means the department of agriculture of the state of Washington.

(8) "Director" means the director of agriculture of the state of Washington or the duly appointed representative.

(9) "Fiscal year" means the twelve-month period beginning with January 1 of any year and ending with December 31st, both dates being inclusive.

(10) "Order" means this marketing order.

(11) "Person" means any person, firm, association, or corporation.

(12) "Production area" means the waters of the state of Washington in and adjacent to the areas of Puget Sound, the San Juan Islands, Georgia Strait, and the Strait of Juan de Fuca east of Cape Flattery and in which fishing is lawfully permitted pursuant to a Puget Sound commercial salmon gillnet license.

(13) "Puget Sound gillnet salmon" means salmon taken in the waters of the state of Washington in and adjacent to the areas of Puget Sound, the San Juan Islands, Georgia Strait, and the Strait

of Juan de Fuca east of Cape Flattery, or other lawful area permitted pursuant to Puget Sound commercial salmon gillnet license and taken pursuant to Washington state Puget Sound commercial gillnet license or with gear lawfully permitted for use pursuant to Puget Sound commercial salmon gillnet license.

(14) "Puget Sound gillnet salmon commodity board" hereinafter referred to as "board" means the commodity board formed under the provisions of this marketing order.

(15) "Purchase" means obtain through sale, exchange, barter, or trade.

(16) "Salmon" means Puget Sound salmon and salmon products which have been harvested by affected producers as defined in this marketing order. "Salmon" does not include privately farmed or cultivated salmon or salmon products nor salmon harvested pursuant to license issued by the various Treaty Indian Tribes. Nothing herein shall prevent the board from engaging in cooperative marketing of tribal and nontribal salmon.

(17) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade, whether directly or through agents.

(18) "Handler" or "processor" shall mean those who purchase, process for market, or otherwise obtain from affected producers the affected commodity for further handling or sale in the course of commerce. "Handler" and "processor" includes those who catch and then obtain from themselves, process, or further handle for subsequent direct sale to the public the affected commodity after having themselves produced that commodity as affected producers.

(19) "Process" means to prepare the affected commodity or product therefrom by filleting, heading, gutting, canning, cooking, smoking, fermenting, dehydrating, drying or packaging.

(20) "Affected unit" means one pound landed weight of salmon.

NEW SECTION

WAC 16-585-020 Puget Sound gillnet salmon commodity board.

(1) Administration. The provisions of this marketing order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) Board membership. The board shall consist of seven members, six of whom shall be affected producers. The director shall appoint one additional member who is not an affected producer to represent the department and the general public.

(3) Qualifications for board membership. The producer members of the board shall be practical producers of the affected commodity and shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been actually engaged in producing such commodity within the state of Washington for a period of five years and has during that period derived a substantial portion of their income therefrom and who is not primarily engaged in business directly as a handler or other dealer. The qualification of members of the board as herein set forth must continue during their terms of office.

(4) Term of office.

(a) The term of office for members of the board shall be three years unless the marketing order is terminated earlier. One-third of the membership as nearly as possible shall be elected each year.

(b) Membership positions on the board shall be designated numerically as follows: Affected producers shall have positions one through six and, the member appointed by the director shall have position seven.

(c) The term of office for the initial board members shall be as follows:

Positions one and four shall be for one year from the date of first election or until the first subsequent annual election is held.

Positions two and five shall be for two years from the date of first election or until the second subsequent annual election is held.

Positions three and six shall be for three years from the date of first election or until the third subsequent annual election is held.

(5) Nominations for election of board members. Each year the director shall call for a nomination meeting. Such meeting shall be held at least thirty days in advance of the date set by the director for the election of board members. Notice of every such meeting shall be published in a newspaper of general circulation in Western Washington not less than ten days in advance of the date of such meeting; and, in addition, written notice of every such meeting shall be given to all affected producers according to the list maintained by the director pursuant to RCW 15.65.200. Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting.

Nominations may also be made within five days after any such meeting by written petition filed with the director signed by not less than five affected producers entitled to have participated in said meeting.

If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the vacancy by mail to all affected producers. The notice shall call for nominations in accordance with this marketing order and shall give the final date for filing nominations which shall not be less than twenty days after the notice was mailed.

When only one nominee is nominated for any position on the board the director shall deem that said nominee satisfies the requirements of the position and then it shall be deemed that said nominee has been duly elected.

(6) Election of board members.

(a) The members of the board shall be elected by secret mail ballot held during the month of February of each year under the supervision of the director. Producer members of the board shall be elected by a majority of the votes cast by the affected producers. Each affected producer shall be entitled to one vote.

(b) If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(c) Notice of every election for board membership shall be published in a newspaper of general circulation within the affected area defined in this marketing order not less than ten days in advance of the date of such election. Not less than ten days prior

to every election for board membership, the director shall mail a ballot of the candidates to each producer entitled to vote whose name appears upon the list thereof compiled and maintained by the director in accordance with RCW 15.65.200. Any other producer entitled to vote may obtain a ballot by application to the director upon establishing his/her qualifications. Nonreceipt of a ballot by any person entitled to vote shall not invalidate the election of a board member.

(7) Removal of board members. A board member may be removed by a vote of the board if that member fails to attend any three consecutive meetings of the board, duly noticed.

(8) Vacancies prior to election. In the event of a vacancy on the board, the board shall appoint a qualified person to fill the unexpired term.

(9) Quorum. A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(10) Board compensation. No member of the board shall receive any salary or other compensation, but each member may be compensated for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board in accordance with RCW 43.03.230 together with travel expenses in accordance with RCW 43.03.050 and 43.03.060. A board member may, in the discretion of the board, serve and be compensated as an employee of the commission.

(11) Powers and duties of the board. The board shall have the following powers and duties:

(a) To administer, enforce, and control the provisions of this order as the designee of the director;

(b) To elect a chairperson and such other officers as it deems advisable;

(c) To employ and discharge at its discretion such assistance and personnel, including attorneys engaged in private practice of law, subject to the approval and supervision of the attorney general, as the board determines necessary and proper to carry out the purpose of the order and to effectuate the policies of the act;

(d) To pay from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of the order. Such expenses may be paid by check, draft, or voucher in such form and in such manner and upon the signature of such person as the board may prescribe;

(e) To reimburse any applicant who has deposited funds with the director in order to defray the costs of formulating the order;

(f) To establish a fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day;

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, disbursements, moneys, and other financial transactions made and done pursuant to this order. Such records, books, and accounts shall be audited as provided in the act subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year. A copy of such audit shall be delivered within thirty

days after the completion thereof to the governor, the director, the state auditor, and each member of the board;

(h) To require bond of board members and employees of the board in positions of trust in an amount the board deems necessary. Premiums for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington;

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year;

(j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters;

(k) To recommend to the director, administrative rules, orders and amendments thereto for the exercise of his or her power in connection with this order;

(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of this order and the act, along with the necessary authority and procedure for obtaining such information;

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon the person by the act or this order;

(n) To confer with and cooperate with the legally constituted authorities of other states of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders;

(o) To authorize the members of the commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined in RCW 15.38.030(1) or any agricultural chemical which is of use or potential use in producing the affected commodity, and may authorize the expenditure of commission funds for this purpose;

(p) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section;

(q) To sue or be sued;

(r) To borrow money and incur indebtedness.

(12) Procedures for board.

(a) The board shall hold regular meetings, at least semiannually, and such meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act).

(b) The board shall hold an annual membership meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least ten days prior to the meeting by written notice to each producer and by notifying the regular news media.

(c) The board shall establish by resolution, the time, place, and manner of calling special meetings of the board with reasonable notice to the members.

NEW SECTION

WAC 16-585-030 Marketing order purposes. This marketing order is to promote the general welfare of the state, to enable producers of commercially harvested Puget Sound gillnet salmon to help themselves establish orderly, fair, sound, efficient, unhampered marketing and to fulfill the purposes of the act. To carry out the purposes of this marketing order, the board may provide for programs in the following areas:

(1) Establish plans and conduct programs for advertising, labeling, sales, promotion, public relations, and consumer education, and/or other programs for maintaining present markets and/or creating new or larger markets for Puget Sound commercially harvested gillnet salmon and salmon products. Such programs shall be directed toward increasing the sale, improving the markets, or promoting Puget Sound gillnet salmon and salmon products without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of commercial gillnet salmon products nor disparage the quality, value, sale, or use of any other agricultural commodity.

(2) Provide for research in the production, management, harvest, harvest management, harvest selectivity, harvest regulation or proposed regulation, protection against harvest impact on habitat or other species, processing and/or marketing of commercial gillnet salmon products and expend the necessary funds for such purposes. Insofar as practicable, such research shall be carried on by experiment stations of Washington State University or the University of Washington, but if in the judgment of the board, said experiment stations do not have the facilities for a particular project or if some other research agency has better facilities therefore, the project may be carried out by other research agencies selected by the board.

(3) Provide for marketing information and services to affected producers.

(4) Investigate and take necessary action to prevent unfair trade practices and to correct where possible, trade practices which hinder marketing of Washington gillnet salmon products.

(5) Allocation of assessments collected from affected producers shall be made by the board using the following formula:

(a) All operating costs will be borne by all affected producers.

(b) All programs, plans, research, and marketing deemed by the board to be in the collective best interest of all affected producers, regardless of salmon or salmon product produced, will be borne by all affected producers.

NEW SECTION

WAC 16-585-040 Assessments and collections. (1) The assessment on all commercial gillnet salmon harvested in the production area shall be as follows: Two percent of the landed value of salmon shall be assessed to the producer.

(2) For the purpose of collecting assessments, the board may require the person subject to the assessment or the person responsible for collection of producer assessments to give adequate assurance or security for its collection and/or payment.

(3) For the purpose of assuring and verifying compliance with the recordkeeping and reporting requirements of this order and the act, the director and the board through its duly authorized employees, shall have access to and the authority to audit and examine such records.

(4) All reports and records furnished or submitted by producers, handlers or processors to, or obtained by, the board or employees of the board which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular producer or handler or processor from whom received, shall be treated as confidential, and the reports shall not be disclosed to board members and shall at all times be kept in the custody and under the control of one or more employees of the board who shall not disclose such information to any person other than the director, or his authorized agents. Disclosure of compilations of general reports from data and information submitted by producers is authorized subject to the prohibition of revealing individual producers' or handlers' identities or operations.

(5) Any moneys collected or received by the board pursuant to the provisions of this marketing order during or with respect to any year, may be refunded on a pro rata basis at the close of such year or at the close of such period as the board determines to be reasonably adapted to effectuate the declared policies of the act and the purposes of this marketing order, to all persons from whom such moneys were collected or received or may be carried over into and used with respect to the next succeeding year.

(6) Any due and payable assessment herein levied in such specified amount as provided under the act and this marketing order and any assessment which is required hereunder to be collected, shall constitute a personal debt of every person so assessed, responsible for collection, or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of such assessment or such other sum on or before the date due, the board may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the board may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent plus the costs and expenses of suit and a reasonable attorney's fee therein, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

(7) Assessments may, with the concurrence of the affected producer, be collected prospectively.

NEW SECTION

WAC 16-585-050 Time--Place--Method for payment and collection of assessments--Landing reports. The following procedure is established for the reporting and paying of assessments:

(1) At the time of salmon landing, first sale and/or completion of a Washington department of fish and wildlife landing receipt (fish ticket), the producer shall pay and the handler shall collect and deduct from the price paid to the producer the producer's two percent assessment on the landed value of the salmon. This collection and deduction shall be accurately reported on the fish ticket.

(2) No later than thirty days from the last day of any month in which any Puget Sound salmon has been obtained by a handler, each such handler shall:

(a) Remit to the board all sums required to be collected and deducted from affected producers upon their landings during that month for a total of two percent of the landed value of Puget Sound gillnet salmon obtained by that handler during that month.

(b) Provide to the board with such remittance a report indicating the full name, address, and commercial salmon fishing license number of each affected producer from whom the said handler has purchased or obtained affected commodity during the said month and for each such affected producer, indicate the landed value of the salmon purchased or obtained, and the amount of the producer's two percent assessment which has been collected from that producer.

(3) The board may require cold storage facilities storing Puget Sound gillnet salmon to file with the board information and reports regarding the amount of the affected commodity in storage, the date of receipt, and the name, address, and commercial salmon fishing license number of each such owner, and may require that such salmon not be shipped from a cold storage facility until the facility has been notified by the commission that the commodity owner has paid the commission for any assessments imposed by this marketing order.

(4) All assessments due from affected producers under this order shall be payable at the time of completion of a Washington department of fish and wildlife landing receipt (fish ticket) and shall be paid by the producer and collected by the handler at that time and shall be remitted to the board as provided in this order.

(5) Producer-handlers shall pay the producer assessments and shall fulfill all the responsibilities of handlers and producers under this order including the collection, recordkeeping, reporting, and remittance of assessments.

(6) When, in the judgment of the board, a particular handler or producer-handler has demonstrated its unreliability to make the collection or remittance of the producer assessments called for in this order, the board may require that said handler or producer-handler not transport, carry, ship, sell, market or otherwise handle or dispose of any of the affected commodity until every due and payable assessment provided for under this order has been paid to the board and the receipt issued.

NEW SECTION

WAC 16-585-060 Obligations of the board. Obligations incurred by the board or employees or agents thereof pertaining to their performance or nonperformance or misperformance of any matters or things authorized, required, or permitted them by the act or this order, and any other liabilities or claims against them or any of them shall be enforced in the same manner as if the whole organization under this order were a corporation. No liability for the debts or actions of the board, employees, or agents incurred in their official capacity under this order shall exist either against the board, officers, employees, and/or agents in their individual capacity, nor against the state of Washington or any subdivision or instrumentality thereof nor against any other organization, administrator, or board (or employee or agent thereof) established pursuant to this act or the assets thereof. The board, and its agents and employees, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other board, member of the board, or other person. The liability of the members of the board shall be several and not joint and no member shall be liable for the default of any other member.

NEW SECTION

WAC 16-585-070 Termination of this order. This order shall be terminated if the director finds that fifty-one percent by number and fifty-one percent by volume of production of the affected producers assent to such action. The director may ascertain without compliance with RCW 15.65.050 through 15.65.130 of the act whether such termination is assented to whenever twenty percent by number or twenty percent by volume of production of the affected producers file written applications with the director for termination. The termination shall become effective at the end of the fiscal year.

NEW SECTION

WAC 16-585-080 Effective time. This marketing order for Puget Sound salmon shall become effective on or after April 1, 1995, and shall remain in full force and effect until terminated under the provisions of the act.

NEW SECTION

WAC 16-585-090 Separability. If any provisions hereof are declared invalid, or the applicability thereof to any person, circumstances, or thing is held invalid, the validity of the remainder hereof or of the applicability thereof to other person, circumstances, or thing shall not be affected thereby.