

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA SALMON COUNCIL LAW

**Chapter 16 of Part 2, Division 22 of the
California Food and Agricultural Code**

January 1, 2016

CALIFORNIA SALMON COUNCIL LAW

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FOOD AND AGRICULTURAL CODE - FAC***DIVISION 22. MARKETING ADVISORY AND PROMOTIONAL AGENCY LAWS******PART 2. MARKETING ADVISORY AND PROMOTIONAL COUNCILS AND COMMISSIONS*****CHAPTER 16. CALIFORNIA SALMON COUNCIL****ARTICLE 1. Short Title and Definitions**

(Article 1 added by Stats. 1988, Ch. 1500, Sec. 1.)

76501. This chapter shall be known and may be cited as the “California Salmon Marketing and Development Act.”

76502. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

76510. “Council” means the California Salmon Council.

76511. “Commercial salmon vessel operator” is a commercial fisherman who operates a commercial salmon vessel for which a valid commercial salmon vessel permit has been issued pursuant to Article 4.5 (commencing with Section 8230) of Chapter 2 of Part 3 of Division 6 of the Fish and Game Code.

(Added by Stats. 1989, Ch. 53, Sec. 1. Effective June 22, 1989.)

76520. “Exporter” means any individual who is, or an individual working for a partnership, corporation, or any other business unit or organization which is, engaged in the export to a foreign nation or nations of salmon which has been landed in California.

76525. “Fiscal year” means from April 1 of a year to March 31 of the next succeeding year.

76530. “Fisherman” means an individual licensed to commercially harvest fish pursuant to Sections 7850 to 7852, inclusive, of the Fish and Game Code.

(Amended by Stats. 1989, Ch. 53, Sec. 2. Effective June 22, 1989.)

76535. “Handler” means any of the following:

- (a) A processor.
- (b) A receiver.
- (c) A wholesaler.
- (d) An exporter.
- (e) An individual licensed or working for a partnership, corporation, or any other business unit or organization licensed pursuant to subdivision (a) of Section 8032 of the Fish and Game Code and engaged in the California commercial salmon fishery.

76537. “Individual” means a person, as defined in Section 64506.

76540. “Marketing association” means any commercial fishermen’s organization established on either a local, county, or statewide level, incorporated in this state, to enable fishermen to collectively negotiate and issue orders and agreements with receivers for the purchase of their catches, or to otherwise engage in activities permitted of agricultural cooperatives, and whose members are involved in the salmon fishery.

76550. “Processor” means any individual licensed or working for a partnership, corporation, or any other business unit or organization licensed pursuant to Section 8034 of the Fish and Game Code and engaged in the California commercial salmon fishery.

76560. “Receiver” means any individual licensed or working for a partnership, corporation, or any other business unit or organization licensed pursuant to Section 8033 of the Fish and Game Code and engaged in the California commercial salmon fishery.

76570. “Salmon” means the following species of fish:

- (a) King or chinook salmon (*Oncorhynchus tshawytscha*).
- (b) Silver or coho salmon (*Oncorhynchus kisutch*).
- (c) Pink or humpback salmon (*Oncorhynchus gorbuscha*).

76571. “Salmon fishery” means either of the following:

- (a) One or more species of salmon taken offshore California with troll lines for commercial usage, treated as a unit for the purposes of conservation, restoration, management, marketing, or promotion.
- (b) Any economic activity involving the harvesting, receiving, processing, manufacturing, or distributing of salmon described in subdivision (a) and products therefrom.

76572. “Salmon products” means any item manufactured which contains 50 percent or more of salmon flesh or parts from salmon, including the head, scales, skin, bone, or entrails, and which is intended for human consumption, medicine, animal feed, fertilizer, or other purposes.

76580. “Wholesaler” means any individual licensed or working for a partnership, corporation, or any other business unit or organization licensed pursuant to Section 8035 of the Fish and Game Code and engaged in the California commercial salmon fishery.

ARTICLE 2. General Provisions

76600. The Legislature finds and declares that this chapter is enacted in the exercise of the power of this state for the purposes of protecting and furthering the public health and welfare.

(Amended by Stats. 2015, Ch. 307, Sec. 18. Effective January 1, 2016.)

76601. The Legislature further finds and declares that the salmon fishery of this state is affected with a public interest, in that, among other things:

(a) The harvesting, processing, manufacturing, and distributing of salmon and salmon products constitute a paramount industry of this state, which not only provides substantial and required revenues for the state and its political subdivisions and employment and a means of livelihood for many thousands of its population, but which also furnishes essential foods that are vital to the public health and welfare.

(b) The development of the salmon fishery requires, in addition to the protection and restoration of spawning and nursery habitat in rivers, rearing programs designed to rebuild salmon populations, the full utilization and efficient operation of mitigation fish hatcheries, and existing regulations that assure adequate returns of spawning salmon, an aggressive marketing program, and a program to allow for the purchase, during years of low abundance, of the allocation of fish provided to other salmon users in order to assure that the commercial salmon fishery has the maximum access to healthy salmon populations.

(c) The stabilization, maintenance, and expansion of the salmon fishery of California, and of the state, nationwide, and foreign markets for its products are necessary to assure the consuming public an adequate supply of foods which are indispensable in a proper human diet, to protect, for the state and its political subdivisions, a necessary source of tax revenue, to provide and maintain an adequate standard of living for a segment of the population of this state, to maintain proper wage scales for those engaged in the salmon fishery, and to maintain existing employment.

(d) The essentiality of salmon, low in fat and calories and naturally rich in Omega 3 fatty acids, in proper human nutrition and to the maintenance of a high level of public health is such as to require that the public be made thoroughly aware thereof, and be protected against misrepresentation and deception, by the dissemination of accurate and scientific information relative to the healthful qualities of salmon and salmon products, their various classifications and the food values and industrial and medicinal uses thereof, the methods, care and precautions necessary to their proper harvesting, processing, manufacturing, and distributing, and the necessary costs and expenses thereof, and the necessity and desirability on the part of the public of using and consuming salmon and salmon products of the highest standards of quality.

76602. The Legislature declares that the purposes of this chapter are as follows:

(a) Enable the salmon fishery, with the aid of the state, to develop, maintain, and expand the state, nationwide, and foreign markets for salmon and salmon products harvested, processed, manufactured, sold, or distributed in this state for human consumption, and the use and consumption of salmon and salmon products in those markets.

(b) Enable the salmon fishery to purchase, where there are willing sellers, the allocation rights to harvest salmon, as they may exist, of other salmon user groups to provide fishermen, and thereby the salmon fishery, greater access to salmon stocks than otherwise may have been provided pursuant to a conservation, management, or allocation agreement.

(c) In aid, but not in limitation, of the purpose in subdivision (a), authorize and enable the secretary to formulate and effectuate, directly or in cooperation with other agencies, organizations, including the Oregon Salmon Commission, and instrumentalities that are specified in this chapter, sales stimulation and consumer or other educational programs designed to increase the use and consumption of salmon and salmon products for human consumption.

(d) Provide funds for the administration and enforcement of this chapter by mandatory fees to be collected in the manner prescribed in this chapter.

(Amended by Stats. 2015, Ch. 307, Sec. 19. Effective January 1, 2016.)

76603. This chapter shall be liberally construed.

76604. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, that invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(Amended by Stats. 2015, Ch. 307, Sec. 20. Effective January 1, 2016.)

76605. A violation of this chapter is a misdemeanor.

ARTICLE 3. Administration

76650. The secretary shall administer and enforce this chapter, and may exercise any of the administrative powers that are conferred by Sections 11180 to 11191, inclusive, of the Government Code upon a head of a department. In order to effectuate the declared purposes of this chapter, the secretary may contract to carry out the declared intent and purposes of this chapter.

(Amended by Stats. 2015, Ch. 307, Sec. 21. Effective January 1, 2016.)

76651. Upon recommendation by the council, the secretary may adopt, consistent with this chapter, any regulations that cover the administration and enforcement of this chapter that may be necessary to carry out the purposes and attain the objectives of this chapter, except the secretary shall not engage in any salmon promotion activity or pursue the purchase of allocation rights to harvest salmon without the approval of a majority of the voting members of the council.

(Amended by Stats. 2015, Ch. 307, Sec. 22. Effective January 1, 2016.)

76652. Upon the adoption of any regulations under this chapter, a copy of the regulations shall be displayed on the department's Internet Web site. No regulation shall become effective until five days after the date of display on the Internet Web site and mailing to every marketing association and every receiver that is directly affected by the regulations whose name and address may be on file in the office of the secretary and to every person who files in the office of the secretary a written request for a copy of the regulations.

(Amended by Stats. 2015, Ch. 307, Sec. 23. Effective January 1, 2016.)

ARTICLE 4. California Salmon Council

76700. (a) There is in the state government the California Salmon Council. The council shall be composed of nine voting members and their alternates, and three nonvoting members.

(b) If handlers have become subject to this chapter pursuant to Article 9.5 (commencing with Section 76961), the council shall be composed of 11 voting members and their alternates, and three nonvoting members.

(Amended by Stats. 2015, Ch. 307, Sec. 24. Effective January 1, 2016.)

76701. (a) The voting members of the council shall be appointed by the secretary, after consultation with the Director of Fish and Wildlife, giving due consideration to proper geographic distribution.

(b) The nine members shall include:

- (1) Five commercial salmon vessel operators or their representatives, and their alternates.
- (2) Two handlers who are receivers or processors or their representatives, and their alternates.
- (3) One representative of a handler who is an exporter or a wholesaler, and an alternate.
- (4) One public member, and an alternate.

(c) If handlers become subject to this chapter pursuant to Article 9.5 (commencing with Section 76961), the 11 members shall include:

- (1) Five commercial salmon vessel operators or their representatives, and their alternates.
- (2) Three handlers who are receivers or processors or their representatives, and their alternates.
- (3) Two representatives of a handler who is an exporter or a wholesaler, and their alternates.
- (4) One public member, and an alternate.

(Amended by Stats. 2015, Ch. 307, Sec. 25. Effective January 1, 2016.)

76702. (a) The commercial salmon vessel operators and their alternates shall be selected from lists of nominees submitted by marketing associations and any organization deemed to represent the majority of organized commercial salmon vessel operators, and from nominations by individual commercial salmon vessel operators.

(b) The receivers, processors, wholesalers, or exporters and their alternates shall be selected from lists of nominees submitted by an organization deemed to represent the majority of those organized groups in the state, and from individual receivers, processors, wholesalers, and exporters.

(c) The public member and alternate shall be selected by the secretary from a list submitted by the commercial salmon vessel operators and handler members of the council.

(Amended by Stats. 2015, Ch. 307, Sec. 26. Effective January 1, 2016.)

76703. The voting members of the council shall each be appointed to a three-year term, except that in the first year of the council, three members shall be appointed to one-year terms; three members shall be appointed to two-year terms; and three shall be appointed to three-year terms.

76704. The term of office of a member of the council shall begin on April 1 and expire on March 31.

76705. Any vacancy in the membership of the council that occurs during the unexpired term shall be filled by the secretary for the unexpired term from the eligible nominees. No council member or alternate shall serve more than two consecutive three-year terms. Service as an alternate does not disqualify a person to then serve two additional terms as a member, and a member who was appointed for a one-year or a two-year term may serve two additional three-year terms.

(Amended by Stats. 2015, Ch. 307, Sec. 27. Effective January 1, 2016.)

76706. The secretary may remove any member of the council or alternate for cause, and, upon that removal, there is a vacancy that shall be filled in the manner as provided for the unexpired term in Section 76705.

(Amended by Stats. 2015, Ch. 307, Sec. 28. Effective January 1, 2016.)

76707. The secretary shall give notice, not later than January 31 of each year, of the vacancies that will exist upon the expiration of terms on March 31, in writing, to all marketing associations and organizations deemed to represent the majority of organized fishermen, or receivers, processors, wholesalers, and exporters, and shall issue any press releases and public statements that the secretary deems appropriate requesting nominations.

(Amended by Stats. 2015, Ch. 307, Sec. 29. Effective January 1, 2016.)

76708. (a) The notice requesting nominations shall indicate that nominations shall be mailed or sent electronically to the secretary at his or her office in Sacramento and that the secretary shall consider nominations sent electronically or postmarked not later than March 1.

(b) Nominations shall set forth all of the following:

- (1) The name and address of each nominee.
- (2) Whether each nominee is being nominated as a member or alternate member.
- (3) The type of category for which the nominee is being nominated.
- (4) The list of qualifications and supporters, if any, for the nominee.
- (5) The name and address of the nominating marketing association, organization, or individual.

(Amended by Stats. 2015, Ch. 307, Sec. 30. Effective January 1, 2016.)

76709. The nonvoting members of the council shall be representatives of the following agencies, as selected by the secretary:

- (a) The department.
- (b) The Department of Fish and Wildlife.
- (c) The California Sea Grant Program.

(Amended by Stats. 2015, Ch. 307, Sec. 31. Effective January 1, 2016.)

76710. There is no fixed term for nonvoting members of the council. The agencies may, but are not required to, select an alternate for their representative.

76711. A majority of the voting members of the council shall constitute a quorum for the transaction of all business, including the election of officers.

76712. (a) The council shall select annually from its voting members, to serve at its pleasure, a chair and vice chair.

(b) The chair and vice chair, together with four other voting members, selected annually by the council, shall constitute the executive committee of the council. The executive committee shall have and exercise any powers of the council that the council may delegate to it.

(c) If handlers have become subject to this chapter pursuant to Article 9.5 (commencing with Section 76961), the officers and the other members of the executive committee shall be equally divided between commercial salmon vessel operators and handlers.

(Amended by Stats. 2015, Ch. 307, Sec. 32. Effective January 1, 2016.)

76713. The council shall hold two regular meetings in each year at times and places which are fixed by the council. The times for regular meetings shall be fixed so that there is an interval of at least four calendar months between the meetings. Consideration shall be given for the commercial fishing season and no regular meeting shall be held during the commercial salmon season. The council may meet in special meetings at any time and place at the call of the chair or upon the written request of five members of the council. The executive committee shall have two regular meetings each year at times and places which are fixed by it, and may meet in special meetings at any time and place at the call of the chair or on call of a majority of the members of the executive committee.

76714. The voting members of the council shall receive forty dollars (\$40) per day per diem for each day spent in actual attendance at the meetings or on the business of the council and shall be reimbursed for necessary traveling and other expenses incurred in the performance of their official duties, except, during the first year of council operations, when members shall serve at their own expense. Nonvoting members shall be reimbursed at the same rate as voting members when their agencies do not pay their expenses. Alternates shall only be paid expenses and per diem for meetings at which they serve as the replacement for the voting member.

(Amended by Stats. 2015, Ch. 307, Sec. 33. Effective January 1, 2016.)

76715. No member of the council, except members of the executive committee, shall receive compensation for more than three days' service per month. The chair may receive compensation for not more than seven days per month.

(Amended by Stats. 2015, Ch. 307, Sec. 34. Effective January 1, 2016.)

76716. The secretary may require any employee or agent of the council to give a fidelity bond, executed by a surety company that is authorized to do business in this state, in favor of the secretary, in the sum, and containing any terms and conditions, that the secretary may prescribe. The cost of the fidelity bonds of employees or agents of the council shall be paid from the funds that are collected pursuant to this chapter.

(Amended by Stats. 2015, Ch. 307, Sec. 35. Effective January 1, 2016.)

76717. No member or employee of the council shall be held responsible individually to any person for liability on any contract or agreement of the council. All salaries, expenses, costs, obligations, and liabilities that arise out of the administration and enforcement of this chapter are payable only from funds that are collected pursuant to this chapter.

(Amended by Stats. 2015, Ch. 307, Sec. 36. Effective January 1, 2016.)

76718. An alternate member of the council shall sit as a voting member of the council if the member for whom he or she is an alternate fails for any reason to attend any meeting of the council. The alternate member shall be compensated and reimbursed in the same manner and to the same extent as a voting member when so serving. When so serving, the alternate member has all of the powers, duties, liabilities, and immunities of the member in whose place he or she is serving, except that the alternate to the chair or vice chair shall not succeed to the functions of these offices.

(Amended by Stats. 2015, Ch. 307, Sec. 37. Effective January 1, 2016.)

76719. The Legislature finds and declares that commercial salmon vessel operators, receivers, processors, wholesalers, or exporters appointed to the council pursuant to this article are intended to represent and further the interest of a particular agricultural industry concerned, and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds and declares that, with respect to persons who are appointed to the council, the particular agricultural industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

(Amended by Stats. 1989, Ch. 53, Sec. 6. Effective June 22, 1989.)

ARTICLE 5. Powers and Duties

76750. The duties of the council shall be advisory, except as to those duties that may be delegated to it by the secretary or as otherwise designated in this chapter. The council may, subject to the approval of the secretary, exercise any of the following powers that may be delegated to the council by the secretary:

- (a) Recommend to the secretary administrative regulations that relate to the administration and enforcement of this chapter.
- (b) Investigate all matters that affect the administration of this chapter, and to report violations of this chapter to the secretary.
- (c) Employ and, at its pleasure, discharge a manager and such clerical help and other employees as it deems necessary, and to prescribe their duties and powers and fix their compensation.
- (d) Contract with, or employ, and at its pleasure, discharge any other persons that it deems necessary, and in the cases of those persons it shall employ, to outline their powers and duties and fix their compensation.
- (e) Establish offices and incur expenses incidental thereto.
- (f) Make contracts and other agreements that may be proper to promote the sale of salmon and salmon products on either a local, state, national, or international basis.
- (g) (1) Cooperate with any other local, state, or national commission, organization, or agency, whether voluntary or created by state or federal law, including, but not limited to, the Oregon Salmon Commission, and instrumentalities that are engaged in work or activities similar to the work and activities of the council, and to recommend to the secretary the making of contracts and agreements with those organizations or agencies for carrying on joint programs of education, research, publicity, and advertising.
(2) Recommend to the secretary the making of contracts and agreements with other councils, commodity commissions, or producer organizations for joint programs of publicity and advertising where those products are compatible with the promotion of salmon and salmon products.
(3) In matters of research, cooperate with organizations of recognized professional standing that are adequately equipped with facilities for the research that is contemplated.
- (h) Recommend to the secretary the institution and promotion of scientific research to develop or discover, or both, the health, food, therapeutic, dietetic, and other uses of salmon.
- (i) (1) Receive, invest, and disburse funds pursuant to Article 8 (commencing with Section 76900).
(2) Allocate funds to agencies not specifically or solely engaged in carrying on research or promotion for salmon, if the council and the secretary are satisfied that those allocations will be beneficial to the California salmon fishery and will tend to effectuate the declared purposes of this chapter.

(j) Present facts to, and negotiate with, state, federal, and foreign agencies on matters that affect this chapter.

(Amended by Stats. 2015, Ch. 307, Sec. 38. Effective January 1, 2016.)

76751. The council shall keep books, records, and accounts of all its transactions, dealings, contracts, agreements, funds, and expenditures that it deems necessary. The books, records, and accounts shall at all times be open to inspection and audit by the director.

76752. A member, alternate, agent, or employee of the council shall not do any of the following:

(a) Appear before any legislative committee of the state or federal government as a representative of the council unless requested to do so by that committee.

(b) Lobby in any manner as a representative of the council.

76753. Funds which are collected pursuant to this chapter shall not be used for political contributions.

76754. The council shall prepare, annually, summarized statements of the activities in which it has been engaged in the previous annual period, and of the activities in which it proposes to engage in the ensuing annual period. The statements shall be made available to all marketing associations, organizations of fishermen and receivers, processors, wholesalers, and exporters, and individuals that request them in writing.

ARTICLE 6. Education, Research, and Public Information Programs

76800. The secretary shall conduct, or may cause the council to conduct, programs of education, research, or public information, that are designed to accomplish the following purposes, among others:

- (a) Increase the consumption of salmon and salmon products.
- (b) Gather, publicize, and diffuse accurate and scientific information that shows the importance of the use and consumption of salmon and salmon products in relation to the public health, economy, and diet, and proper nutrition of children and adults.
- (c) Study means and methods that are employed in harvesting, processing, manufacturing, marketing, and distributing salmon and salmon products in order to comply with the sanitary and other regulations that are imposed by municipalities, this state, and the United States.
- (d) Gather and disseminate information regarding the high standards that are observed and imposed to ensure pure and wholesome salmon and salmon products.
- (e) Gather and disseminate information regarding the harmful effects on the public health resulting from the breakdown or instability of the salmon fishery, the factors and conditions peculiar to the salmon fishery that tend to cause an unbalanced production, and the price of salmon and salmon products in relation to the cost of other items of food in a balanced diet.
- (f) Gather and disseminate information regarding the factors that tend to promote increased consumption of salmon and salmon products, stabilize the fishery, and foster a better understanding and more efficient cooperation among fishermen, receivers, processors, and the consuming public.

(Amended by Stats. 2015, Ch. 307, Sec. 39. Effective January 1, 2016.)

76801. No program or activity which is conducted or sponsored pursuant to this chapter shall make false or unwarranted claims, or disparage the quality, value, use, or sale of any commodity authorized by law to be marketed in this state, nor shall any program be conducted with reference to a private brand or trade name which refers to salmon or salmon products.

76802. The council shall not expend council funds for the advertising of brand name salmon products. The council may expend council funds to conduct cost-sharing advertising with nonbrand name salmon products.

ARTICLE 7. Purchase of Allocation Shares

76850. The Attorney General shall annually review all applicable state and federal laws, regulations, and procedures used to set salmon fishing seasons and shall determine whether allocations of rights to harvest salmon held by users, including tribal interests, may lawfully exist for purchase, trade, or exchange or under what conditions that purchase, trade, or exchange may lawfully be made.

76851. If the Attorney General determines under Section 76850 that selling allocation rights to harvest salmon would be binding and consistent with California public policy and if an agreement for purchase of allocation rights of harvest is determined to be lawful and binding, the Director of Fish and Wildlife may, in consultation with the secretary, develop a program to authorize the transfer of the allocation rights consistent with all other state or federal laws and regulations. Upon authorization by the Director of Fish and Wildlife, the secretary may, at a price and quantity agreed to by the council, and with funds available from the council, enter into an agreement for the purchase of the allocation rights to harvest from another user holding bona fide rights to harvest stocks of salmon.

(Amended by Stats. 2015, Ch. 307, Sec. 40. Effective January 1, 2016.)

76852. The council, in any negotiations for the purchase of tribal allocations of rights to harvest, if any, however they may exist, may, with the secretary, seek federal or other funds as may be available to match the council funds for the purchase of allocation rights to harvest in recognition of the federal government's responsibility to the Indian people and their resources.

(Amended by Stats. 2015, Ch. 307, Sec. 41. Effective January 1, 2016.)

ARTICLE 8. Financial Provisions

76900. Programs and administration of the activities that are conducted pursuant to this chapter shall be funded as follows:

(a) (1) Every fisherman who sells salmon to any person who is required to be licensed as a fish receiver pursuant to Section 8033 of the Fish and Game Code shall pay the fee specified in Sections 76902 and 76905 for each pound, or fraction thereof, of salmon taken and sold by the fisherman to the fish receiver. The fee shall be collected from the fisherman and remitted to the secretary by any person licensed to receive fish to whom the salmon are sold.

(2) Every fisherman licensed pursuant to Section 8033.5 of the Fish and Game Code who sells salmon to the ultimate consumer shall pay the fee specified in paragraph (1) and, if handlers have become subject to this chapter pursuant to Article 9.5 (commencing with Section 76961), shall also pay the fee specified in paragraph (1) of subdivision (b) for each pound, or fraction thereof, of salmon taken and sold by the fisherman to the ultimate consumer. The fees shall be remitted to the secretary by the fisherman.

(b) (1) Every handler subject to this chapter pursuant to Article 9.5 (commencing with Section 76961) shall pay the fee specified in Sections 76902 and 76905 for each pound, or fraction thereof, of salmon received from a fisherman. The fee shall be remitted to the secretary by the handler.

(2) Every handler subject to this chapter pursuant to Article 9.5 (commencing with Section 76961) shall pay the fee specified in paragraph (1) and shall also pay the fee specified in paragraph (1) of subdivision (a) for each pound, or fraction thereof, of salmon that the handler has caught while conducting the activities of a commercial fisherman for his or her own processing or sale. The fees shall be remitted to the secretary by the handler.

(Amended by Stats. 2015, Ch. 307, Sec. 42. Effective January 1, 2016.)

76901. Consistent with Section 8041 of the Fish and Game Code, the following persons shall remit the fees required by subdivision (a) of Section 76900 to the secretary:

(a) Any person who is required to be licensed as a fish receiver by Section 8033 of the Fish and Game Code, and receives salmon in this state from persons conducting the activities of a commercial fisherman.

(b) Any commercial fisherman licensed pursuant to Section 8033.5 of the Fish and Game Code who sells salmon to the ultimate consumer.

(Amended by Stats. 2015, Ch. 307, Sec. 43. Effective January 1, 2016.)

76901.5. (a) Each person who is required by this chapter to collect a fee from fishermen or pay a fee as a handler shall maintain a complete and accurate record of all transactions subject to the fee. These records shall contain any information required by the secretary relating to the collection of fees, shall be preserved for a period of three years, and shall be available for review immediately upon demand by the secretary or the secretary's duly authorized agent.

(b) Any information obtained by the secretary or the secretary's duly authorized agent from inspection or audit of records shall be confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding.

(Amended by Stats. 2015, Ch. 307, Sec. 44. Effective January 1, 2016.)

76902. Except as specified in Section 76905, the amount of fees due under this article shall be determined by multiplying the weight in the round of salmon by two cents (\$0.02). For the purposes of establishing the weight in the round of salmon brought ashore, a conversion factor of 10 percent shall be applied to the weight of salmon brought ashore in a dressed condition.

(Repealed and added by Stats. 1989, Ch. 53, Sec. 13. Effective June 22, 1989.)

76903. The fees imposed under this article shall be paid monthly to the secretary within 60 days after the last day of each month. If fees are not paid within 60 days after the month for which they are due, the secretary shall collect amounts owing under the procedures prescribed for sales and use taxes provided in Chapter 5 (commencing with Section 6451) of Part 1 of Division 2 of the Revenue and Taxation Code, insofar as they may be applicable, and for those purposes, "board" means the department and "the date of which the tax became due and payable," means that date 60 days after the month for which it is due.

(Amended by Stats. 2015, Ch. 307, Sec. 45. Effective January 1, 2016.)

76904. Sections 8058 to 8070, inclusive, of the Fish and Game Code apply to claims for overpayment of fees to the secretary. For purposes of this section, "department," as used in those sections, means the Department of Food and Agriculture, and "landing tax" means the fees imposed pursuant to this article.

(Amended by Stats. 2015, Ch. 307, Sec. 46. Effective January 1, 2016.)

76904.5. The secretary may consult with and enter into agreements with the Director of Fish and Wildlife where necessary and reasonable, to assist in the administration of this chapter and in enforcing compliance with this chapter. If an agreement is established, the secretary shall reimburse the Department of Fish and Wildlife for administrative costs associated with this chapter.

(Amended by Stats. 2015, Ch. 307, Sec. 47. Effective January 1, 2016.)

76905. After one year after the establishment of the council, and not before the commercial salmon season of 1990, the council may recommend to the secretary an increase over and above the two cents (\$0.02) per pound fee required by Section 76902 for the council to carry out its duties under this chapter. The council shall consider the budget for the council, funding for activities conducted pursuant to Article 6 (commencing with Section 76800) and Article 7 (commencing with Section 76850), as well as the market price of salmon, landing taxes imposed by the Department of Fish and Wildlife, assessments charged by marketing associations, and any other relevant factor affecting the economics of the salmon fishery. The council shall, in making any determination to increase fees, consult with marketing associations and, if the recommended increase would exceed seven cents (\$0.07) per pound of salmon sold, the council shall conduct a vote of persons on the secretary's lists established pursuant to Article 9 (commencing with Section 76950) and, if applicable, Article 9.5 (commencing with Section 76961). The secretary may not increase any fee without a majority approval of the voting members of the council.

(Amended by Stats. 2015, Ch. 307, Sec. 48. Effective January 1, 2016.)

76906. (a) All money that is collected by the secretary pursuant to this chapter shall be deposited in any bank, or other depository that is approved by the Director of Finance, allocated to the purposes of this chapter only, and disbursed by the secretary or the council only for the necessary expenses that are incurred by the council and the secretary in carrying out this chapter, including expenses generated by the auditing requirement contained in this section. Money that is so collected shall be deposited and disbursed in conformity with appropriate auditing regulations that are prescribed by the secretary. The expenditure of the money is exempt from Sections 925.6 and 16304 of the Government Code.

(b) All expenditures by the council and the secretary shall be audited at least once every two years by one of the following means:

- (1) By contract with a certified public accountant.
- (2) By contract with a public accountant holding a valid permit issued by the California Board of Accountancy.
- (3) By contract with a public accounting firm.
- (4) By agreement with the Department of Finance.

(Amended by Stats. 2015, Ch. 307, Sec. 49. Effective January 1, 2016.)

76907. Money that is deposited pursuant to Section 76906 may be invested and reinvested by the Treasurer or the council in any of the securities described in Article 1 (commencing with Section 16430) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, or placed in a depository as provided in Chapter 4 (commencing with Section 16500) of Part 2 of Division 4 of Title 2 of the Government Code, and handled in the same manner as money in the State Treasury. For these purposes, the money may also be combined with funds that are determined by the secretary to be available for investment pursuant to Section 58939. Any increment that is received from investment, reinvestment, or deposit made by the Treasurer shall be remitted to the council. The Treasurer may deduct from the remittance an amount equal to the reasonable cost

incurred in carrying out this section or may bill the council for the costs and the council shall pay the costs from money that is collected for it pursuant to this chapter.

(Amended by Stats. 2015, Ch. 307, Sec. 50. Effective January 1, 2016.)

76908. The secretary, after consultation with the council, shall prepare an annual budget that sets forth in reasonable detail the proposed expenditures that the secretary deems necessary for the performance by him or her and by the department of the duties that are imposed upon them by this chapter. The secretary shall also prepare and submit to the council an annual statement, in reasonable detail, of the secretary's expenditures pursuant to this chapter.

(Amended by Stats. 2015, Ch. 307, Sec. 51. Effective January 1, 2016.)

76909. The secretary may receive funds in amounts that may be reasonable and necessary to defray the initial expenses in making effective this chapter. The secretary shall reimburse those persons from whom those funds are received in the amounts received from any funds that are received by the secretary pursuant to this article.

(Amended by Stats. 2015, Ch. 307, Sec. 52. Effective January 1, 2016.)

76910. The secretary may accept contributions to advance the purposes of this chapter. If requested by the donor, the contributions shall be segregated and separately maintained for the use of the council.

(Amended by Stats. 2015, Ch. 307, Sec. 53. Effective January 1, 2016.)

ARTICLE 9. Implementation and Voting Procedure for Fishermen

(Article 9 repealed and added by Stats. 2015, Ch. 307, Sec. 55.)

76950. On or before August 15, 1989, the secretary shall establish a list of commercial salmon vessel operators eligible to vote on implementation of this chapter. In establishing the list, the secretary may require that handlers and commercial salmon vessel operators submit the names and mailing addresses of all commercial salmon vessel operators who harvested salmon during the previous season, as evidenced by receipts prepared under Section 8043 of the Fish and Game Code, together with the volume of salmon landed. The secretary may also request the assistance of the Director of Fish and Wildlife for the names of all commercial salmon vessel operators who landed salmon the previous season and the volume of landings for each vessel. The request for the information shall be in writing and shall be subject to the confidentiality provisions of Section 8022 of the Fish and Game Code. The list shall be filed within 30 days following receipt of the written notice.

(Repealed and added by Stats. 2015, Ch. 307, Sec. 55. Effective January 1, 2016.)

76951. Any commercial salmon vessel operator whose name does not appear upon the secretary's list of commercial salmon vessel operators affected may have his or her name established on the list by filing with the secretary a signed statement, identifying himself or herself as a commercial salmon vessel operator and furnishing evidence of having made landings the previous year through the submission of receipts prepared under Section 8043 of the Fish and Game Code. Failure to be on the list does not exempt a commercial salmon vessel operator from paying assessments under this chapter.

(Repealed and added by Stats. 2015, Ch. 307, Sec. 55. Effective January 1, 2016.)

76952. This chapter, except as necessary to conduct an implementation referendum vote under this article, shall not become operative until the secretary finds in an implementation referendum conducted by the secretary under this article that at least 40 percent of the total number of commercial salmon vessel operators from the list established by the secretary have participated by voting in the referendum, and the secretary finds either of the following:

(a) Sixty-five percent or more of the commercial salmon vessel operators who voted in the referendum voted in favor of implementing this chapter, and the commercial salmon vessel operators who voted in the referendum marketed 51 percent or more of the total quantity of salmon landed in the preceding fiscal year by all the commercial salmon vessel operators who voted in the referendum.

(b) Fifty-one percent of the commercial salmon vessel operators who voted in the referendum voted in favor of implementing this chapter, and the commercial salmon vessel operators who voted in the referendum marketed 65 percent or more of the total quantity of salmon landed in the preceding fiscal year by all of the commercial salmon vessel operators who voted in the referendum.

(Repealed and added by Stats. 2015, Ch. 307, Sec. 55. Effective January 1, 2016.)

76953. The secretary shall establish a period in which to conduct the implementation referendum that shall not be more than 60 days in duration, and may prescribe additional procedures as may be necessary to conduct the referendum. If the initial period established is less than 30 days, the secretary may extend that period. However, the total referendum period may not exceed 60 days.

(Repealed and added by Stats. 2015, Ch. 307, Sec. 55. Effective January 1, 2016.)

76953.5. (a) Before the referendum vote is conducted by the secretary, the proponents of the council shall deposit with the secretary the amount that the secretary determines is necessary to defray the expenses of preparing the necessary lists and information and conducting the referendum vote.

(b) Any funds not used in carrying out this article shall be returned to the proponents of the council who deposited the funds with the secretary.

(c) Upon establishment of the council, the council may reimburse the proponents of the council for any funds deposited with the secretary that were used in carrying out this article, and for any legal expenses and costs incurred in establishing the council.

(d) After approval by the Commercial Salmon Trollers Advisory Committee created pursuant to Section 7862 of the Fish and Game Code, the Department of Fish and Wildlife may expend funds collected pursuant to Section 7861 of the Fish and Game Code, for payment to the Secretary of Food and Agriculture to pay necessary costs incurred in conducting the implementation referendum vote. If the commercial salmon vessel operators who voted in the implementation referendum voted in favor of implementing this article, as provided in Section 76952, the council shall reimburse the Commercial Salmon Stamp Account in the Fish and Game Preservation Fund all amounts received from that fund.

(Repealed and added by Stats. 2015, Ch. 307, Sec. 55. Effective January 1, 2016.)

76954. Nonreceipt of a ballot shall not invalidate a referendum.

(Repealed and added by Stats. 2015, Ch. 307, Sec. 55. Effective January 1, 2016.)

76955. (a) If the secretary finds that a favorable vote has been given, the secretary shall so certify and give notice of the favorable vote to all commercial salmon vessel operators whose names and addresses may be on file with the secretary.

(b) If the secretary finds that a favorable vote has not been given, the secretary shall so certify and declare all provisions of this chapter inoperative.

(Repealed and added by Stats. 2015, Ch. 307, Sec. 55. Effective January 1, 2016.)

ARTICLE 9.5. Implementation and Voting Procedure for Handlers

(Article 9.5 added by Stats. 2015, Ch. 307, Sec. 56.)

76961. On or before January 31, 2016, the secretary shall establish a list of handlers eligible to vote on whether they shall be subject to this chapter. In establishing the list, the secretary may require that handlers provide receipts of the quantity of salmon received from commercial salmon vessel operators in the previous season. The secretary may also request the assistance of the Director of Fish and Wildlife in compiling the list. The request for the information shall be in writing and shall be subject to the confidentiality provisions of Section 8022 of the Fish and Game Code. The list shall be filed within 30 days following receipt of the written notice.

(Added by Stats. 2015, Ch. 307, Sec. 56. Effective January 1, 2016.)

76962. Any handler whose name does not appear upon the secretary's list of handlers may have his or her name established on the list by filing with the secretary a signed statement, identifying himself or herself as a handler. Failure to be on the list does not exempt a handler from paying assessments under this chapter.

(Added by Stats. 2015, Ch. 307, Sec. 56. Effective January 1, 2016.)

76963. This chapter shall not apply to handlers until the secretary finds in a referendum conducted by the secretary under this article that at least 40 percent of the total number of handlers from the list established by the secretary have participated by voting in the referendum, and the secretary finds either of the following:

(a) Sixty-five percent or more of the handlers who voted in the referendum voted in favor of being subject to this chapter, and the handlers who voted in the referendum handled 51 percent or more of the total quantity of salmon landed in the preceding fiscal year by all the handlers who voted in the referendum.

(b) Fifty-one percent of the handlers who voted in the referendum voted in favor of being subject to this chapter, and the handlers who voted in the referendum marketed 65 percent or more of the total quantity of salmon landed in the preceding fiscal year by all of the handlers who voted in the referendum.

(Added by Stats. 2015, Ch. 307, Sec. 56. Effective January 1, 2016.)

76964. The secretary shall establish a period in which to conduct the referendum that shall not be more than 60 days in duration, and may prescribe additional procedures as may be necessary to conduct the referendum. If the initial period established is less than 30 days, the secretary may extend that period. However, the total referendum period may not exceed 60 days.

(Added by Stats. 2015, Ch. 307, Sec. 56. Effective January 1, 2016.)

76965. (a) Before the referendum vote is conducted by the secretary, the proponents of this article shall deposit with the secretary the amount that the secretary determines is necessary to defray the expenses of preparing the necessary lists and information and conducting the referendum vote.

(b) Any funds not used in carrying out this article shall be returned to the proponents of this article who deposited the funds with the secretary.

(c) Upon passage of the referendum, the council may reimburse the proponents of this article for any funds deposited with the secretary that were used in carrying out this article, and for any legal expenses and costs incurred in approval of this article.

(Added by Stats. 2015, Ch. 307, Sec. 56. Effective January 1, 2016.)

76966. Nonreceipt of a ballot shall not invalidate a referendum.

(Added by Stats. 2015, Ch. 307, Sec. 56. Effective January 1, 2016.)

76967. (a) If the secretary finds that a favorable vote has been given, the secretary shall so certify and give notice of the favorable vote to all handlers whose names and addresses may be on file with the secretary.

(b) If the secretary finds that a favorable vote has not been given, the secretary shall so certify and declare this article inoperative.

(Added by Stats. 2015, Ch. 307, Sec. 56. Effective January 1, 2016.)

ARTICLE 10. Continuation

(Article 10 added by Stats. 2015, Ch. 307, Sec. 57.)

76971. (a) Between January 1, 2019, and February 28, 2019, and in the same period each five years thereafter, the secretary shall, by the public hearing procedure, and if appropriate, the procedure specified in this article, determine whether the council program provided for in this chapter shall continue in effect.

(b) If the secretary finds from evidence received at the hearing that a substantial question exists as to whether the council program is contrary to or does not effectuate the declared purposes or provisions of this chapter or receives in writing a referendum petition with the signatures of 25 percent or more of the number of commercial salmon vessel operators who made landings in the previous year, as evidenced by receipts prepared under Section 8043 of the Fish and Game Code, and, if applicable, 25 percent or more of the handlers who are subject to this chapter, the council program shall be submitted to referendum as provided in this article.

(Added by Stats. 2015, Ch. 307, Sec. 57. Effective January 1, 2016.)

76972. If the secretary determines that a referendum procedure is appropriate, the secretary shall establish a referendum period of not to exceed 30 days during which period ballots shall be submitted to every commercial salmon vessel operator and, if applicable, every handler subject to this chapter on a statewide basis. If the secretary determines that the referendum period does not provide sufficient time for the balloting, the secretary may extend the referendum for an additional period not to exceed 30 days. The ballots shall provide a “yes” or “no” voting alternative to the following question: “Shall the California Salmon Council be continued for the next five fiscal years commencing April 1, following this referendum?”

(Added by Stats. 2015, Ch. 307, Sec. 57. Effective January 1, 2016.)

76973. If the council program is submitted to a referendum as provided in this article, the secretary shall find that commercial salmon vessel operators and, if applicable, handlers subject to this chapter statewide have approved the council program if the secretary finds either of the following:

(a) Sixty-five percent or more of the total number of commercial salmon vessel operators and handlers, who voted in the referendum and who harvested 51 percent or more of the total amount of salmon landed during the previous fiscal year by all commercial salmon vessel operators and handlers who voted in the referendum, approve the program.

(b) Fifty-one percent or more of the total number of commercial salmon vessel operators and handlers, who voted in the review referendum and who harvested 65 percent or more of the total amount of salmon landed during the previous fiscal year by all commercial salmon vessel operators and handlers who voted in the review referendum, approve the program.

(Added by Stats. 2015, Ch. 307, Sec. 57. Effective January 1, 2016.)

76974. (a) This chapter shall continue if commercial salmon vessel operators and handlers vote for continuation in accordance with the requirements of this article.

(b) This chapter shall not continue in operation if commercial salmon vessel operators and handlers vote not to continue in accordance with the requirements of this article.

(c) If commercial salmon vessel operators vote for continuation and handlers do not vote for continuation, or if handlers vote for continuation and commercial salmon vessel operators do not vote for continuation, this chapter shall continue to be operative for the group voting for continuation and shall no longer apply to the group voting against continuation.

(Added by Stats. 2015, Ch. 307, Sec. 57. Effective January 1, 2016.)

ARTICLE 11. Termination

(Article 11 added by Stats. 2015, Ch. 307, Sec. 58.)

76981. If the commercial salmon vessel operators and the handlers vote to terminate the council pursuant to Article 10 (commencing with Section 76971), the council shall remain in existence for the purpose of furnishing the secretary with a complete record of its outstanding financial obligations, accrued and to accrue. The secretary shall pay from the money deposited and disbursed any outstanding obligations and any obligations incurred by the secretary and the department under the terms and provisions of this section. Any money that remains shall be retained by the secretary to defray the expenses of formulation, issuance, administration, or enforcement of any subsequent program for salmon promotion. If no such program is undertaken within a period of three years from the date of termination of the council, that money shall be withdrawn from the approved depository and paid into the special account for enhancement and restoration programs established pursuant to Section 7861 of the Fish and Game Code.

(Added by Stats. 2015, Ch. 307, Sec. 58. Effective January 1, 2016.)