

**Legislative Task Force
Marketing Committee Recommendations for
Simplifying Regulations Pertaining to Direct Marketing by Fishermen**

Direct marketing, or selling fisheries resources outside the traditional harvester/processor relationship, is providing important business options for today's small boat commercial fishermen. However, the current regulatory and administrative process for this activity is cumbersome and does not quite fit the nature of direct market operations. The matter is further complicated by the fact that regulations sometimes have different effects when applied to our various species fisheries. And, it is not unusual for the agencies to adopt different regulations, or interpret and apply the same laws differently. By supporting cooperative efforts to resolve problem areas and adopting some relatively simple changes, the state of Alaska could take positive action to support small business, promote market diversification of Alaskan fisheries resources, and bolster the Alaskan economy.

Recommendations

A. Design an independent, user-friendly, statutory and regulatory structure specifically for permit holders marketing their own catch (direct marketers).

1. Create new definitions for 'Direct Marketing' and 'Direct Marketers'

a. Direct Marketing

Background: Currently there is no singular descriptive term used to define 'direct marketing'.

- ***Proposed Direct Marketing Definition***

Direct marketing is any activity whereby a permit holder catches and puts on the market a fisheries resource that is: a) unprocessed; or, b) processed by the permit holder or by another licensed fishery business; or, c) unprocessed and exported out of the state; or, d) sold off the boat directly to the public in an unprocessed and unpackaged form; or, e) sold to food establishments which have an ADEC fisheries resources processing waiver.

Committee offers this general language to begin discussion on a universal definition. However, we recognize that there are issues in need of further analysis prior to settling on actual verbiage.

b. Direct Marketer

Background: Direct marketer is best described as a permit holder who catches a fisheries resource and then sells, and/or exports it. Direct marketers neither buy from anyone else or process for anyone else.

The state uses four different licenses/designations to define and regulate direct marketing operations. With any given load of fish a fisherman may fit into one category or as many as two or three, which leads to confusion about which set of requirements

they are expected to follow. Utilizing one term for direct marketers would streamline and clarify the process. The existing categories and requirements are as follows:

Direct Market Category	Description	Permit(s)	Fish Ticket	FBT	SET	SMT	Year End Report
Catcher/Seller	Catches and sells unprocessed fisheries products directly to the public in Alaska.	ADFG Registration	Yes	No	No	No	No
Catcher/Processor	Catches and sells processed fish or fish products off the boat.	DOR, ADFG, DEC	Yes	5%	Yes	Yes	Yes
Catcher/Exporter	Catches and transports unpackaged, unprocessed fish out of state	DOR, ADFG, DEC	Yes	3%	Yes	Yes	Yes
Tax Exclusion	Provides tax exclusion for operator freezing product aboard and selling to a licensed processor in Alaska.	DOR, ADFG, DEC	Maybe	No	No	No	Yes

<p>ADFG: Dept of Fish and Game / DOR: Dept of Revenue / DEC: Dept of Environmental Conservation FBT: Fisheries Business Tax (Rawfish Tax) / SET: Salmon Enhancement Tax / SMT: Salmon Marketing Tax</p>
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Note: Within categories there are often associated issues. For instance, some Catcher/Processors pay a higher rate of FBT than other direct marketers. And, they are liable for fish tickets and taxes, even if they do nothing more than head and freeze their fish and sell to another licensed fisheries business that has the same obligations.

o **Proposed Direct Marketer Definition**

A direct marketer is any permit holder who sells his or her own processed or unprocessed fisheries resource. A direct marketer may not purchase a fisheries resource from another permit holder or custom process fisheries resources for another permit holder.

2. Simplify the three agency (DOR, ADF&G, ADEC) permitting and year end reporting process and create a single application packet for direct marketers with a handbook of relevant information, statutes, regulations, and check lists.

Background: Due to the necessity of implementing the requirements of multiple state and federal agencies, the current application and reporting process is difficult for direct marketers to maneuver. Applications and year-end report requirements should be appropriate to direct marketing activities, not just mirror what was developed for large processors. Over the last several years an informal working group of fishing and agency representatives has made good strides towards improving the reporting method. A more structured approach, involving all affected parties, could expand on these efforts to quickly develop a coordinated process for permitting, as well as streamlining the associated forms and informational packets. This work product could benefit both fishermen and agency staff and potentially provide a cost savings for the state. In addition, yearly in-service training for all related agency personnel on regulations and permitting particulars could greatly improve communication with the public, who is often frustrated by conflicting information they receive from the agencies.

a. Recommend establishing a working group of direct marketers and all affected agencies, facilitated by DCED, to develop an application packet and handbook.

- b. Recommend DOR, DEC and ADFG institute yearly training sessions for staff, to better prepare them to give consistent answers to questions about direct marketing program particulars.**
- 3. Waive fish ticket reporting requirement for catcher/processors delivering to a licensed fisheries business owner who writes and submits fish tickets. For those catcher/processors who write their own fish tickets, allow a single fish ticket to be delivered within 7 days of landing. Clarify the definition of landing and precisely who is responsible for fish ticket reporting.**

Background: A direct marketer is responsible for writing fish tickets and payment of taxes unless they can claim a tax exclusion for selling product to a licensed fishery business in the State of Alaska. This creates problems for some fleets whereby fishermen are deemed to “land” the product and technically process it onboard, yet deliver it to another licensed fisheries business. The tax liability should be tied to the person who writes the fish ticket and it should be clear defined who should write the fish ticket, and in which situations.

- 4. Modify other DOR, DEC, ADFG statutes and regulations to address known problem areas and clarify and eliminate, to the extent possible, inconsistencies and conflicts.**

Background: A significant amount of public testimony was received regarding problematic regulations and/or conflicting regulations between agencies, as well as implementation of those regulations. The direct marketing sub-committee simply did not have time to work with all of the agencies involved and would like the opportunity to continue these discussions and seek solutions. Because most of these issues deal with regulations, not statutes, we believe a working group format will be the best way to deal with the outstanding questions.

- a. Establish working group of direct marketers and all affected agencies to identify issues and develop solutions to problematic or confusing regulations. For instance:**
 - i. Determine whether or not a fisherman dressing a fish and putting roe in a bucket needs a DEC permit.
 - ii. Clarify DEC regulations so that direct marketers understand what is required with to disposal of fish processing waste, sanitation, etc.
 - iii. Clarify DEC rules to ensure that a direct marketers contracting with a custom processor do not need a processor’s license provided the product is unprocessed on delivery.

B. Restructure regulations and statutes to create a simple, fair, and uniform tax structure for direct marketers.

1. Expand tax exclusion located in statutes at AS 43.75.017 so that direct marketers selling processed product to licensed fisheries businesses in Alaska are excluded from tax liability.

Background: The tax exclusion was originally provided for trollers who freeze fisheries resources onboard, but sell to a processor (licensed fishery business in Alaska). There are now other direct marketers selling to fisheries businesses who would like to dress salmon onboard to raise the quality and value of the end product. These fishermen are sometimes asked to deliver a head-off product, which throws them into the realm of “processing”. And, direct marketers might not have time to clean and head all of their catch during the peak of the run, but will clean what they can to get the higher price. It becomes confusing when the direct marketer is liable for the fish ticket and tax liability on the product that is headed and the fisheries business they are selling to is responsible for the remainder of the load of fish. This problem could be resolved if the tax exclusion was modified to cover fresh processed product that is sold to a licensed fishery business.

○ ***Recommended amendment to AS 43.75.017 Exclusion from fisheries business tax:***

A person is not liable for the fisheries business tax under AS.43.75.015 when the fishery resource is [frozen] **processed** aboard a fishing vessel if

- (1) the vessel is operated as a commercial fishing vessel under a valid commercial fishing license;
- (2) the fishery resource is not processed beyond heading, gutting or cleaning, **and / or** freezing and glazing;
- (3) the fishery resource was caught by the vessel; and the fishery resource is sold by the person claiming a exclusion for the tax to a fisheries business licensed under this chapter

2. Assess all direct marketers 3% fisheries business tax (a.k.a. rawfish tax).

Background: All floating processors pay 5% fisheries business tax. The original rationale was developed around large, often non-resident, vessels that spend very little time in Alaska ports. However, we now have a growing fleet of small direct marketing boats that do not sit for months offshore. Many of these boats are home-ported in Alaska and rely on local communities to provide for basic services, groceries, fuel, and supplies. It seems appropriate that these direct marketers be charged the same 3% rate as is paid by the shoreside processors.

3. Adjust statute so direct marketers pay all tax liabilities annually on one standardized return, based on the average annual ex-vessel price published by DOR.

Background: It is both fair and practical to utilize average annual ex-vessel pricing for tax purposes. The Fisheries Resource Landing Tax (FRLT) on large-scale factory trawl operations is calculated in this way and other models exist. For example, in the NMFS halibut and sablefish IFQ cost recovery fee program, vessel owners may use “actual ex-vessel value” or opt for the “standard ex-vessel value”, which by regulation is calculated during the last quarter of each calendar year by the NMFS Regional Administrator.

Using average annual ex-vessel price (i.e. price paid to fishermen by processors) would ensure that direct marketers pay Fisheries Business Tax (FBT) on the same basis as other processors. In fact, a recent memorandum from Alaska Legal Services suggests that it is appropriate to assess the tax based on *the prevailing value paid for fisheries resources of like kind and quality by fisheries businesses in the same market area to fishermen who own their vessels*. When the direct marketer is both fisherman and processor, the memo states that the market value should be determined *at a point where the resource is transferred from [the] harvesting side of the business to the processing side of the business*.

Today, direct marketers pay FBT at the first “arms length” sale point – or, the “point of transfer”. This provides a disincentive for fishermen who might otherwise be interested in adding value to their product through additional processing. For instance:

A 6 lb coho sold to a shoreside processor generates \$.09 in FBT [6lbs X \$.50 per lb X 3% shoreside tax rate = \$.09].

However, a direct market fisherman who heads, guts and freezes his catch onboard and then sells it to a smoker on the East Coast for \$2.00 CIF (cost/insurance/freight) pays more in taxes, even though the fish weighs less after processing.

So, for the same 6 lb fish, the direct marketer pays a total of \$.40 in FBT [6lbs round weight = 4 lbs *processed* weight X \$2.00 CIF price X 5% floating processor tax rate = \$.40].

While the shoreside processor pays tax on unprocessed product, the fisherman pays tax on the processed fish *and* the costs associated with the sale. As a floating processor s/he also pays a higher rate of tax (5%).

So, in this instance the direct marketer pays nearly four and a half times as much in FBT as the shorebased processor. Of the \$.31 cent discrepancy between the two tax bills, the higher rate (5% v. 3%) of taxation accounts for about \$.06, while the remaining \$.25 is directly related to the “point of transfer” – meaning the tax was applied to a processed as opposed to an unprocessed product.

Annual reporting of taxes on a standardized return should address concerns regarding the volume and timing of tax returns.

4. Close tax loopholes (e.g. catcher/sellers don’t currently pay SET or SMT)

Background: This is simply a matter of fairness. All salmon direct marketers do not now pay salmon enhancement and marketing taxes, yet everyone benefits from those programs. The statute should be amended to include SMT/SET tax from fishermen selling their catch directly to the consumer. Note that there could be inconsistencies in other areas of the law with regard to this item, so this area warrants additional research.