

SENATE BILL NO. 172

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/5/16

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to management of enhanced stocks of fish; authorizing the operation of**
2 **nonprofit shellfish hatcheries; relating to application fees for salmon and shellfish**
3 **hatchery permits; and providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 16.05.730(c) is amended to read:

6 (c) The board may consider the need of enhancement projects authorized
7 under AS 16.10.400 and contractors who operate state-owned enhancement projects
8 under AS 16.10.480 to harvest and sell fish produced by the enhancement project that
9 are not needed for brood stock to obtain funds for the purposes allowed under
10 AS 16.10.450 or 16.10.480(d). **The board may consider the need of enhancement**
11 **projects authorized under AS 16.12.010 to harvest and sell shellfish that are not**
12 **needed for brood stock to obtain funds for the purposes allowed under**
13 **AS 16.12.080.** The board may exercise its authority under this title as it considers
14 necessary to direct the department to provide a reasonable harvest of fish, in addition

to the fish needed for brood stock, to an enhancement project to obtain funds for the enhancement project if the harvest is consistent with sustained yield of wild fish stocks. The board may adopt a fishery plan to provide fish to an enhancement project to obtain funds for the purposes allowed under AS 16.10.450, [OR] 16.10.480(d), or AS 16.12.080.

* **Sec. 2.** AS 16.10.400(b) is amended to read:

(b) The application for a permit under this section shall be on a form prescribed by the department and be accompanied by an application fee of \$1,000 [\$100]. The commissioner may waive the submission of an application for a permit to operate a hatchery under AS 16.10.480.

* **Sec. 3.** AS 16 is amended by adding a new chapter to read:

Chapter 12. Shellfish Hatcheries.

Sec. 16.12.010. Permits for shellfish hatcheries. (a) The commissioner or a designee may issue a permit, subject to the restrictions imposed by statute or regulation under AS 16.12.010 - 16.12.199, to a nonprofit corporation organized under AS 10.20, for the construction and operation of a shellfish hatchery.

(b) Each application for a permit under this section must be in a format prescribed by the department and be accompanied by an application fee of \$1,000.

(c) A hatchery permit is nontransferable. If a permit holder sells or leases a hatchery for which a permit is issued under this section, the new operator shall apply for a new permit under this section.

(d) The commissioner shall consult with and solicit recommendations from federal and state agencies and technical experts in the relevant area regarding permit stipulations and issuance.

(e) A permit may not be issued under this section unless the commissioner determines that the action would result in substantial public benefits and would not jeopardize natural stocks.

Sec. 16.12.020. Hearings before permit issuance. (a) At least 30 days before the issuance of a permit under AS 16.12.010, the department shall hold a public hearing in a central location in the vicinity of the proposed release.

(b) Notice of the hearing shall be published in a newspaper of general

1 circulation once a week for three consecutive weeks, with completion of the notice at
2 least five days before the hearing.

3 (c) The hearing shall be conducted by the department. The applicant shall
4 present a plan for the proposed hatchery describing the capacity of the hatchery and
5 other relevant facts that may be of interest to the department or the public. Interested
6 members of the public shall be given an opportunity to be heard.

7 (d) The department shall record and consider objections and recommendations
8 offered by the public at the hearing conducted under this section. The department shall
9 respond in writing, not later than 30 days after the hearing is held, to a specific
10 objection offered by a member of the public at the hearing.

11 **Sec. 16.12.030. Conditions of a permit.** The department shall require, in a
12 permit issued to a hatchery operator, that

13 (1) shellfish procured by the permit holder must be from the
14 department or a source approved by the department;

15 (2) shellfish may not be placed in water of the state other than those
16 specifically designated in the permit;

17 (3) shellfish sold to a permit holder by the state or by another party
18 approved by the department may not be resold or otherwise transferred to another
19 person;

20 (4) shellfish may not be released by the permit holder before
21 department approval, and, for purposes of pathological examination and approval, the
22 department shall be notified of the proposed release at least 15 days before the date of
23 their proposed release by the hatchery;

24 (5) diseased shellfish be destroyed in a specific manner and place
25 designated by the department;

26 (6) shellfish be harvested by the permit holder only at specific
27 locations and under specific conditions as designated by the department;

28 (7) surplus shellfish be made available for sale first to the department
29 and then, after inspection and approval by the department, to operators of other
30 hatcheries authorized by permit to operate under AS 16.12.010 - 16.12.199;

31 (8) if surplus shellfish are sold by a permit holder to another permit

holder, a copy of the sales transaction must be provided to the department;

(9) a release be located in an area where released shellfish will be available to traditional fisheries, subject to the provisions of this chapter and regulations adopted under this chapter.

Sec. 16.12.040. Alteration, suspension, or revocation of permit. (a) If a permit holder fails to comply with the conditions and terms of the permit issued under AS 16.12.010 within a reasonable period after notification of noncompliance by the department, the permit may be suspended or revoked, in the discretion of the commissioner.

(b) If the commissioner finds that the operation of the permitted activity is not in the best interests of the public, the commissioner may alter the conditions of the permit to mitigate the adverse effects of the operation, or, if the adverse effects are irreversible and cannot be mitigated sufficiently, initiate a termination of the operation under the permit over a reasonable period of time under the circumstances, not to exceed four years. During the period of time that the operation is being terminated, the permit holder may harvest shellfish under the terms of the permit but may not release additional shellfish.

Sec. 16.12.050. Regulations relating to released shellfish. (a) Shellfish released into the natural water of the state by a hatchery operated under AS 16.12.010 - 16.12.199 are available to the people for common use and are subject to regulation under applicable law in the same way as shellfish occurring in their natural state except when they are in a special location designated by the department for harvest by the hatchery operator.

(b) The Board of Fisheries may, after the issuance of a permit by the commissioner, amend by regulation adopted in accordance with AS 44.62 (Administrative Procedure Act), the terms of the permit relating to the source of brood stock, the harvest of shellfish by hatchery operators, and the specific locations designated by the department for harvest. The Board of Fisheries may not adopt a regulation or take an action regarding the issuance or denial of a permit required in AS 16.12.010 -16.12.199.

Sec. 16.12.060. Department assistance and cooperation. (a) Before and after

1 permit issuance under AS 16.12.010, the department shall make reasonable efforts,
 2 within the limits of time and resources, to advise and assist applicants or permit
 3 holders, as appropriate, in the planning, construction, or operation of shellfish
 4 hatcheries.

5 (b) Nothing in this section exempts an applicant or permit holder from
 6 compliance with AS 16.12.010 - 16.12.199 or from compliance with the regulations or
 7 restrictions adopted under AS 16.12.010 - 16.12.199.

8 **Sec. 16.12.070. Brood stock sources.** (a) The department shall approve the
 9 source and number of shellfish taken for use as brood stock under AS 16.12.010 -
 10 16.12.199.

11 (b) Where feasible, shellfish taken by a hatchery operator shall first be taken
 12 from stocks native to the area in which the shellfish will be released, and then, upon
 13 department approval, from other areas, as necessary.

14 **Sec. 16.12.080. Sale of shellfish; use of proceeds; quality and price.** (a) A
 15 shellfish hatchery operator that sells shellfish harvested from the natural water of the
 16 state, or sells shellfish to another hatchery operating under a permit issued under
 17 AS 16.12.010 - 16.12.199, shall use the funds only for reasonable operating costs,
 18 including debt retirement, expanding its facilities, shellfish rehabilitation projects,
 19 shellfish research, or the department's costs of managing the affected fisheries for the
 20 area in which the shellfish release is located.

21 (b) Shellfish harvested by a permit holder and sold for human consumption
 22 must be of comparable quality to shellfish harvested by commercial fisheries in the
 23 area and must be sold at prices commensurate with the current market.

24 **Sec. 16.12.090. Cost recovery fisheries.** (a) A hatchery permit holder may
 25 harvest shellfish for a facility in

26 (1) a special harvest area through agents or employees of or persons
 27 under contract with the permit holder as provided under a permit from the department
 28 or regulations of the Board of Fisheries; or

29 (2) a special harvest area through the common property fishery under
 30 this section.

31 (b) A hatchery permit holder may, by a majority vote of the membership of

1 the hatchery permit holder's board, elect to harvest shellfish in a special harvest area
2 established for that facility through the common property fishery. At the request of the
3 permit holder and if the commissioner determines that there are no allocative issues
4 involved, and after reasonable consultation with affected commercial fishermen, the
5 commissioner may adopt regulations governing the harvest of shellfish in a special
6 harvest area through a common property fishery. The regulations must specify the
7 terms, conditions, and rules under which the common property fishery in the special
8 harvest area shall be conducted, including requirements for holding inspections and
9 reporting of harvests and sales of shellfish taken in the special harvest area. Following
10 adoption of regulations by the department, before January 15 of each year, the permit
11 holder's board of directors, by a majority vote of the board's membership, may
12 determine whether the hatchery will operate under the regulations adopted under this
13 subsection during the current calendar year and shall notify the department if the
14 hatchery intends to operate under the regulations adopted under this subsection. The
15 Board of Fisheries may adopt regulations under AS 16.05.251 regarding a fisheries
16 management plan governing operations under this subsection in a special harvest area,
17 including allocation plans. Participation in the fishery must be open to all interim-use
18 permit and entry permit holders who hold permits to operate a type of gear that may be
19 used in the fishing district in which the special harvest area is located if that type of
20 gear is authorized by regulation to be used in the special harvest area. An interim-use
21 permit holder or an entry permit holder who takes shellfish in a common property
22 fishery in a special harvest area may sell the shellfish to a fish buyer or processor who
23 is licensed to do business in the state.

24 (c) As a condition of participation in a common property shellfish fishery in a
25 special harvest area under this section, a fisherman who participates in the fishery is
26 subject to the payment of the assessment levied under (d) of this section on the
27 projected value of the shellfish or on the pounds of shellfish harvested. The
28 assessment is levied on the shellfish that the fisherman takes in the special harvest area
29 and sells to a licensed buyer. The buyer of the shellfish must be licensed under
30 AS 43.75, and the buyer shall collect the assessment on shellfish taken in a special
31 harvest area at the time of purchase and remit the assessment to the Department of

1 Revenue in accordance with regulations adopted by the Department of Revenue.

2 (d) The Department of Revenue may, by regulation, annually, by March 1 of
3 each year, set the assessment levied on shellfish taken in a special harvest area in
4 consultation with the Department of Commerce, Community, and Economic
5 Development, the hatchery permit holder, and representatives of affected commercial
6 fishermen. The assessment shall provide sufficient revenue to cover debt service,
7 reasonable operating expenses, reasonable maintenance expenses, and development or
8 maintenance of a reserve fund up to 100 percent of annual operating costs of the
9 shellfish hatchery. In setting the assessment, the department shall consider the
10 estimated harvest of shellfish in the special harvest area, the projected price to be paid
11 for shellfish in the region, the amount of the existing reserve held by the permit holder,
12 and the amount by which the assessment collected in previous years exceeded or fell
13 short of the amount anticipated to be collected. The assessment may not exceed 50
14 percent of the value of the shellfish. The department may levy the assessment as a
15 percentage of the projected value of the shellfish harvested in the special harvest area
16 or as a flat rate on each pound of shellfish harvested in the area, to the nearest whole
17 cent.

18 (e) The Department of Revenue shall deposit the assessments collected under
19 this section in the general fund. The legislature may appropriate the funds collected
20 under this section to the hatchery permit holder who operates a facility in the special
21 harvest area in which the assessment was levied. A hatchery permit holder shall use
22 funds appropriated under this subsection for the purposes set out under
23 AS 16.12.080(a). The legislature may also appropriate funds collected under this
24 section to the Department of Revenue for costs incurred by the department under this
25 section.

26 (f) A person who violates a regulation adopted under (b) of this section is
27 guilty of a violation under AS 16.05.722 or a misdemeanor under AS 16.05.723. A
28 person who violates a regulation adopted by the Department of Revenue under (c) of
29 this section is guilty of a class A misdemeanor.

30 (g) In this section,

31 (1) "facility" means a hatchery or shellfish rehabilitation project for

1 which a permit is issued under AS 16.12.010 - 16.12.199;

2 (2) "special harvest area" means an area designated by the
3 commissioner or the Board of Fisheries where shellfish may be harvested by the
4 hatchery operators and by the common property fishery;

5 (3) "value" has the meaning given in AS 43.75.290.

6 **Sec. 16.12.100. Inspection of hatchery.** (a) As a condition of and in
7 consideration for a permit to operate a hatchery under AS 16.12.010 - 16.12.199, an
8 inspection of the hatchery facility by department inspectors shall be permitted by the
9 permit holder at any time the hatchery is operating. The inspection shall be conducted
10 in a reasonable manner.

11 (b) The cost of an inspection performed by the department under this section
12 shall be borne by the department.

13 **Sec. 16.12.110. Annual report.** (a) A person who holds a permit for the
14 operation of an shellfish hatchery under AS 16.12.010 - 16.12.199 shall submit an
15 annual report no later than December 15 to the department to include information
16 pertaining to species; brood stock source; number, age, gender, and size of spawners;
17 number of eggs collected and juveniles produced; and the number, age, gender, and
18 size of harvested shellfish attributable to hatchery releases, on a form to be provided
19 by the department.

20 **Sec. 16.12.199. Definitions.** In AS 16.12.010 - 16.12.199,

21 (1) "hatchery" means a facility for the artificial propagation of stock,
22 including rearing of shellfish and release of shellfish into the natural water of the state;

23 (2) "shellfish" means a species of crustacean, mollusk, or other
24 invertebrate, in any stage of its life cycle, that is indigenous to state water or that is
25 authorized to be imported into the state under a permit issued by the commissioner.

26 * **Sec. 4.** AS 16.43.400(a) is amended to read:

27 (a) In addition to entry permits, interim-use permits, and educational permits,
28 the commission may issue special harvest area entry permits to holders of private,
29 nonprofit hatchery permits issued by the Department of Fish and Game under
30 AS 16.10.400 - 16.10.475 for salmon or AS 16.12.010 - 16.12.199 for shellfish.

31 * **Sec. 5.** AS 16.43.430 is amended to read:

1 **Sec. 16.43.430. Authorized gear.** For the purposes of harvesting salmon **or**
 2 **shellfish**, a special harvest area entry permit holder may employ any fishing gear
 3 designated as legal gear in the applicable special harvest area by the Board of
 4 Fisheries.

5 * **Sec. 6.** AS 17.20.049(b)(1) is amended to read.

6 (1) "farmed fish" means fish that is propagated, farmed, or cultivated
 7 in a facility that grows, farms, or cultivates the fish in captivity or under positive
 8 control but that is not a salmon hatchery that is owned by the state or that holds a
 9 salmon hatchery permit under AS 16.10.400, **or a shellfish hatchery that holds a**
 10 **permit under AS 16.12.010** in this paragraph, "positive control" has the meaning
 11 given in AS 16.40.199;

12 * **Sec. 7.** AS 17.20.345(c) is amended to read.

13 (c) A person who donates to a food bank salmon from a hatchery that operates
 14 under a permit issued under AS 16.10.400 - 16.10.470 **or shellfish from a hatchery**
 15 **that operates under a permit issued under AS 16.12.010 - 16.12.199** is immune
 16 from liability as provided in this section if the salmon **or shellfish are** [IS] apparently
 17 fit for human consumption at the time of its donation, even if the hatchery does not
 18 have a permit issued by the Department of Environmental Conservation under this
 19 chapter or other statute to process fisheries products for human consumption.

20 * **Sec. 8.** AS 43.20.012(a) is amended to read:

21 (a) The tax imposed by this chapter does not

22 (1) apply to an individual;

23 (2) apply to a fiduciary;

24 (3) for a tax year beginning after December 31, 2012, apply to an
 25 Alaska corporation that is a qualified small business and that meets the active business
 26 requirement in 26 U.S.C. 1202(e) as that subsection read on January 1, 2012; [OR]

27 (4) for a tax year beginning after June 30, 2007, apply to the income
 28 received by a regional association qualified under AS 16.10.380 or nonprofit
 29 corporation holding a hatchery permit under AS 16.10.400 from the sale of salmon or
 30 salmon eggs under AS 16.10.450 or from a cost recovery fishery under AS 16.10.455;
 31 **or**

1 **(5) apply to income received by a nonprofit corporation holding a**
2 **hatchery permit under AS 16.12.010 from the sale of shellfish under AS 16.12.080**
3 **or from a cost recovery fishery under AS 16.12.090.**

4 * **Sec. 9.** AS 43.76.390 is amended to read:

5 **Sec. 43.76.390. Exemption.** AS 43.76.350 - 43.76.399 do not apply to salmon
6 **or shellfish** harvested under a special harvest area entry permit issued under
7 AS 16.43.400.

8 * **Sec. 10.** The uncoded law of the State of Alaska is amended by adding a new section to
9 read:

10 **APPLICABILITY.** AS 16.10.400(b), as amended by sec. 2 of this Act, applies to
11 salmon hatchery permits applied for on or after the effective date of this Act.

12 * **Sec. 11.** The uncoded law of the State of Alaska is amended by adding a new section to
13 read:

14 **TRANSITION: REGULATIONS.** The Department of Fish and Game may proceed to
15 adopt regulations necessary to implement this Act. The regulations take effect under AS 44.62
16 (Administrative Procedure Act), but not before the effective date of this Act.

17 * **Sec. 12.** Section 11 of this Act takes effect immediately under AS 01.10.070(c).