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Greetings,

Please consider the below changes to SB 172 to clarify and uphold the wild spawning fish population policies and constitutional articles of the State of Alaska and to create a broader partnership to oversee Commercial Hatchery operations to avert "adverse affects on natural stocks of fish" and Alaskans .

## **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

1 to the fish needed for brood stock, to an enhancement project to obtain funds for the  
 2 enhancement project if the harvest is consistent with sustained yield of wild fish  
 3 stocks. And all comprehensive measures have been taken to first comprehend, mitigate or correct underlying causes of localized depletions of wild naturally spawning shellfish, gear/allocation conflict. Habitat structure damage, wild stock interaction, predation or outcompetition by other hatchery fish activities.  
 The board may adopt a fishery plan to provide fish to an enhancement project  
 4 to obtain funds for the purposes allowed under AS 16.10.450, [OR] 16.10.480(d), or  
 5 AS 16.12.080.

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

7 (b) The application for a permit under this section shall be on a form  
 8 prescribed by the department and be accompanied by an application fee of \$1,000  
 9 [\$100]. The commissioner may waive the submission of an application for a permit to  
 10 operate a hatchery under AS 16.10.480.

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

## 12 **Chapter 12. Shellfish Hatcheries.**

13 **Sec. 16.12.010. Permits for shellfish hatcheries.** (a) The commissioner or  
 14 a designee with the Independent Neutral Council (INC) and the Board of Fisheries  
 15 BOF may issue a permit, subject to the restrictions imposed by statute or  
 16 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 only after being  
presented with comprehensive measures first taken to comprehend, mitigate or  
correct underlying causes of localized depletions of wild naturally spawning  
shellfish, gear/allocation conflict. Habitat structure damage, wild stock interaction,  
predation or outcompetition by other hatchery fish activities.

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

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

22 (d) The commissioner shall consult with and solicit recommendations from  
 23 federal and state agencies and technical experts in the relevant area regarding permit  
 24 stipulations and issuance. An Independent Neutral Council (INC) will be created to  
aid oversight with the commissioner, the department, and the BOF

25 (e) A permit may not be issued under this section unless the commissioner  
Independent Neutral Council (INC)

26 determines that the action would result in substantial public benefits and obvious  
27 return for the maximum benefit of the Alaskan people. and would not  
28 jeopardize outcompete, replace or genetically alter natural stocks of wild fish species.  
29 **Sec. 16.12.020. Hearings before permit issuance.** (a) At least 90 [30] days  
30 before  
31 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

circulation once a week for **eight** [three] consecutive weeks, with completion of the notice at least **thirty** [five] days before the hearing.

(c) The hearing shall be conducted by the department **and the Independent Neutral Council (INC)**. The applicant shall present a plan for the proposed hatchery describing the capacity of the hatchery, **Condition of surrounding habitat structure, wild stock interaction, measures taken to first comprehend, mitigate or correct underlying causes of localized depletions, gear/allocation conflict** and

other relevant facts that may be of interest to the department or the public. Interested members of the public shall be given an opportunity to be heard.

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

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

(1) shellfish procured by the permit holder must be from the department or a source approved by the department **the Independent Neutral Council (INC) and the Board of Fisheries (BOF)**;

(2) shellfish may not be placed in water of the state other than those specifically designated in the permit, **native to the area eggs were taken**;

(3) shellfish sold to a permit holder by the state or by another party approved by the department **and the Independent Neutral Council (INC)** may not be resold or otherwise transferred to another person;

(4) shellfish may not be released by the permit holder before department approval, and, for purposes of pathological examination and approval, the department shall be notified of the proposed release at least **(30)** 15 days before the date of their proposed release by the hatchery;

(5) diseased shellfish be destroyed in a specific manner and place designated by the department **signed off by three employees pathology lab**;

(6) shellfish be harvested by the permit holder only at specific locations **native to the area where eggs were taken** and under specific conditions as

designated by the department **The INC and the BOF**

- 28 (7) surplus shellfish be made available for sale first to the department  
29 and then, after inspection and approval by the department **signed off by three**  
**employees of the genetics lab, and the INC** 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 **and INC and BOF;**

(9) a release be located in an area where released shellfish will be available to traditional fisheries, **in their native habitat** 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, **and the Independent Neutral Council (INC) and BOF,** the permit may be suspended or revoked, in the discretion of the commissioner and **the INC.**

(b) If the commissioner **and INC** finds that the operation of the permitted activity is not

**for the maximum benefit and not** in the best interests of the **Alaskan** public, **or wild natural fish stocks,** the commissioner **shall** [ 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 **shall** [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

29 regulation or take an action regarding the issuance or denial of a permit required in  
30 AS 16.12.010 -16.12.199.

31 **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. **costs to be reimbursed to the department at the applicants expense.**

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, **the INC and the**  
**BOF** 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 **only** [first]  
 12 be taken  
 13 from stocks native to the area in which the shellfish will be released, [~~and then, upon~~  
 14 ~~department approval, from other areas, as necessary~~].

15 **Sec. 16.12.080. Sale of shellfish; use of proceeds; quality and price.** (a) A  
 16 shellfish hatchery operator that sells **hatchery** shellfish harvested from the natural  
 17 water of the  
 18 state, or sells **hatchery** shellfish to another hatchery operating under a permit  
 19 issued under  
 20 AS 16.12.010 - 16.12.199, shall use the funds only for reasonable **frugal** operating  
 21 costs,  
 22 including debt retirement, expanding its facilities, shellfish rehabilitation projects,  
 23 shellfish research, or the department's costs of managing the affected fisheries for the  
 24 area in which the shellfish release is located. **Funds shall not be used for**  
**administration or arbitration.**

25 (b) Shellfish harvested by a permit holder and sold for human consumption  
 26 must be of comparable quality to shellfish harvested by commercial fisheries in the  
 27 area and must be sold at prices commensurate with the current market **and markets in**  
**other parts of the state shall not be devalued by excess hatchery shellfish flooding**  
**the supply demand markets.**

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

30 (1) a special harvest area **without the use of** [~~through~~] agents **without**  
**the use of** 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 **to eliminate special privileges and benefits to**  
**select employees, agents or board members of the permit holder** ; 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, **and the Hatchery permit holders affected**  
**fisherman** 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, **INC and BOF** 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 **the INC and the BOF**, before January 15  
of each year, the permit  
11 holder's board of directors, by a majority vote of the board's membership, **and**  
**affected fisherman** 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  
**allowed ½ of all shellfish available and 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 **only if this activity is providing an obvious return for the maximum benefit  
of the Alaskan people.**

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

which a permit is issued under AS 16.12.010 - 16.12.199;

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

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

(4) “

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

(b) The cost of an inspection performed by the department under this section shall be borne by the department and will be reimbursed by the permit holder.

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

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

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

(2) "shellfish" means a species of crustacean, mollusk, or other

(3) “enhancement” means

(4) “rehabilitation means to restore, to put back in good condition, reestablished on a firm sound basis to bring or restore to an optimum state of health

(5) “maintain” means to keep in existence or continuance of natural health and condition. Efficiently, self sustaining, to hold against attack to defend

(6) “conserve” means to keep from being damaged, lost, or wasted

(7) develop means to grow gradually become gradually fuller, larger,

**better, stronger, more effective,**

24 invertebrate, in any stage of its life cycle, that is indigenous to state water  
**Imported shellfish are not permitted into the state.** ~~[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 **IINC and BOF** 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 uncodified 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 uncodified 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 in one year [immediately] under AS  
 01.10.070(c).