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Bullard
3/21/16

CS FOR HOUSE BILL NO. 300()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to management of enhanced stocks of shellfish; authorizing certain**
2 **nonprofit organizations to engage in shellfish stock rehabilitation efforts, carry out**
3 **shellfish enhancement projects, and operate shellfish hatcheries; relating to application**
4 **fees for salmon hatchery permits; and providing for an effective date."**

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

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

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

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 management 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 Stock Rehabilitation Efforts, Enhancement Projects, and Hatcheries.

Sec. 16.12.010. Permits for shellfish stock rehabilitation, enhancement projects, or hatcheries. (a) Subject to the restrictions imposed by statute or regulation under this chapter, the commissioner may issue a permit to a nonprofit corporation organized under AS 10.20 for stock rehabilitation, an enhancement project, or the construction and operation of a shellfish hatchery.

(b) Each applicant for a permit under this section shall apply in a format prescribed by the department and pay an application fee of \$1,000.

(c) A permit issued under this section is nontransferable. If a permit holder sells or leases a facility for which a permit has been issued under this section, the new operator shall apply for a 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) The commissioner may not issue a permit 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 circulation once a week for three consecutive weeks, with completion of the notice at least five days before the hearing.

(c) The department shall conduct the hearing. The applicant shall present a plan for the proposed stock rehabilitation effort, enhancement project, or hatchery describing relevant facts that may be of interest to the department or to the public and the capacity of the facility. The department shall give interested members of the public an opportunity to be heard.

(d) The department 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 under this chapter, that the permit holder

(1) procure shellfish from the department or a source approved by the department;

(2) place shellfish only in water of the state specifically designated in the permit;

(3) not procure or place genetically modified shellfish into the water of the state;

(4) not resell or transfer shellfish sold to a permit holder by the state or by another party approved by the department;

(5) not release shellfish before approval of the department, and, for purposes of pathological examination and approval, that the permit holder notify the department at least 15 days before the date of the proposed release of shellfish;

(6) destroy diseased shellfish in a specific manner and place designated by the department;

(7) harvest shellfish only at specific locations and under specific conditions as designated by the department;

(8) make surplus shellfish available for sale first to the department and then, after inspection and approval by the department, to other permit holders operating under this chapter;

(9) provide a copy of the sales transaction to the department if surplus shellfish are sold by a permit holder to another permit holder;

(10) release shellfish in an area where the 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 by the department of noncompliance, 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 under the circumstances, not to exceed four years. During the period 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 permit holder under this chapter 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 a permit holder.

(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 permit holders, 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 this chapter.

1 **Sec. 16.12.060. Department assistance and cooperation.** (a) Before and after
2 permit issuance under AS 16.12.010, the department shall make reasonable efforts,
3 within the limits of time and resources, to advise and assist applicants or permit
4 holders, as appropriate, as to stock rehabilitation efforts, enhancement projects, or the
5 planning, construction, and operation of facilities.

6 (b) Nothing in this section exempts an applicant or permit holder from
7 compliance with this chapter or from compliance with the regulations or restrictions
8 adopted under this chapter.

9 **Sec. 16.12.070. Brood stock sources.** (a) The department shall approve the
10 source and number of shellfish taken for use as brood stock under AS 16.12.010 -
11 16.12.199.

12 (b) Where feasible, a permit holder shall first take shellfish from stocks native
13 to the area in which the shellfish will be released.

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

20 (b) A permit holder shall ensure that shellfish harvested and sold for human
21 consumption are of comparable quality to shellfish harvested by commercial fisheries
22 in the area and are sold at prices commensurate with the current market.

23 **Sec. 16.12.090. Cost recovery fisheries.** (a) A permit holder may harvest
24 shellfish for a stock rehabilitation effort, an enhancement project, or a hatchery in

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

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

30 (b) A permit holder may, by a majority vote of the membership of the permit
31 holder's board, elect to harvest shellfish in a special harvest area established for stock

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

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

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

(e) The Department of Revenue shall deposit the assessments collected under this section in the general fund. The legislature may appropriate the funds collected under this section to the permit holder who is rehabilitating stock, carrying out an enhancement project, or operating a facility in the special harvest area in which the assessment was levied. A permit holder shall use funds appropriated under this subsection for the purposes set out under AS 16.12.080(a). The legislature may also appropriate funds collected under this section to the Department of Revenue for costs incurred by the department under this section.

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

(g) In this section,

(1) "special harvest area" means an area designated by the commissioner or the Board of Fisheries where shellfish may be harvested by permit

holders under this chapter and by the common property fishery;

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

Sec. 16.12.100. Inspection by the department. (a) A permit holder shall allow the department to inspect the permit holder's stock rehabilitation facility, enhancement project facility, or hatchery at any time the stock rehabilitation facility, enhancement project facility, or hatchery is in operation. The department shall conduct the inspection in a reasonable manner.

(b) The department shall bear the cost of an inspection performed under this section.

Sec. 16.12.110. Annual report. A person who holds a permit under this chapter shall submit an annual report not later than December 15 to the department. The report must be made on a form prescribed by the department and contain information pertaining to

- (1) species;
- (2) brood stock source;
- (3) number, age, gender, and size of spawners;
- (4) number of eggs collected and juveniles produced; and
- (5) the number, age, gender, and size of harvested shellfish attributable to releases by the permit holder.

Sec. 16.12.199. Definitions. In this chapter,

(1) "enhancement project" means a project to augment the yield and harvest of shellfish above naturally occurring levels; enhancement projects include projects implementing artificial or semi-artificial shellfish production systems or projects to increase the area of productive natural shellfish habitat;

(2) "facility" means a hatchery or other facility for a stock rehabilitation effort or fishery enhancement project;

(3) "genetically modified shellfish" means shellfish whose genetic structure has been altered at the molecular level by recombinant DNA and RNA techniques, cell fusion, gene deletion or doubling, introduction of exogenous genetic material, alteration of the position of a gene, or other similar procedure using artificial processes;

(4) "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;

(5) "shellfish" means a species of crustacean, mollusk, or other invertebrate, in any stage of its life cycle, that is indigenous to state water;

(6) "stock rehabilitation" means efforts to restore a shellfish stock to its natural levels of productivity.

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

(a) In addition to entry permits, interim-use permits, and educational permits, the commission may issue special harvest area entry permits to

(1) holders of private, nonprofit hatchery permits issued by the Department of Fish and Game under AS 16.10.400 - 16.10.475 **for salmon; or**

(2) **nonprofit organizations holding a permit under AS 16.12 for a shellfish stock rehabilitation effort, a shellfish enhancement project, or a shellfish hatchery.**

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

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

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

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

* **Sec. 7.** AS 43.20.012(a) is amended to read:

(a) The tax imposed by this chapter does not

(1) apply to an individual;

(2) apply to a fiduciary;

(3) for a tax year beginning after December 31, 2012, apply to an

Alaska corporation that is a qualified small business and that meets the active business requirement in 26 U.S.C. 1202(e) as that subsection read on January 1, 2012; [OR]

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

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

* **Sec. 8.** AS 43.20.012(a), as repealed and reenacted by sec. 2, ch. 55, SLA 2013, is amended to read

(a) The tax imposed by this chapter does not apply to

(1) an individual;

(2) a fiduciary; [OR]

(3) the income received by a regional association qualified under AS 16.10.380 or nonprofit corporation holding a hatchery permit under AS 16.10.400 from the sale of salmon or salmon eggs under AS 16.10.450 or from a cost recovery fishery under AS 16.10.455; or

(4) the income received by a nonprofit corporation holding a permit under AS 16.12.010 from the sale of shellfish under AS 16.12.080 or from a cost recovery fishery under AS 16.12.090.

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

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

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

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

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

1 read:

2 TRANSITION: REGULATIONS. The Department of Fish and Game may adopt
3 regulations necessary to implement this Act. The regulations take effect under AS 44.62
4 (Administrative Procedure Act), but not before the effective date of the law implemented by
5 the regulation.

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

7 * **Sec. 13.** Section 8 of this Act takes effect on the effective date of sec. 2, ch. 55, SLA
8 2013.