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Bullard
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SENATE CS FOR HOUSE BILL NO. 41(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ORTIZ, Fields, Snyder, Josephson, Story, Hannan, Wool, Vance, Tuck

A BILL

FOR AN ACT ENTITLED

"An Act relating to management of enhanced stocks of shellfish; authorizing certain nonprofit organizations to engage in shellfish enhancement projects; relating to application fees for salmon hatchery permits and shellfish enhancement project permits; and providing for an effective date."

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

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

(c) The board may

(1) consider the need of enhancement projects authorized under AS 16.10.400 and contractors who operate state-owned enhancement projects under AS 16.10.480 to harvest and sell fish produced by the enhancement project that are not needed for brood stock to obtain funds for the purposes allowed under AS 16.10.450 or 16.10.480(d);

(2) consider the need of projects authorized under AS 16.12.010 to harvest and sell shellfish that are not needed for brood stock to obtain funds for

the purposes allowed under AS 16.12.080;

(3) [. 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; **and**

(4) [. 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 **in the amount determined under (h) of this section** [\$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 16.10.400 is amended by adding a new subsection to read:

(h) The department shall establish by regulation an application fee under this section in an amount that provides for the total amount of fees collected under (b) of this section to approximately equal the department's actual costs of processing permit applications under this chapter. The department shall annually review the fee level to determine whether the department's costs of processing permit applications under this chapter are approximately equal to the fees collected. If the review indicates that fees collected and these costs are not approximately equal, the department shall adjust the application fee by regulation. In January of each year, the department shall report the fee level and any revision made for the previous year under this subsection to the office of management and budget.

* **Sec. 4.** AS 16 is amended by adding a new chapter to read:

Chapter 12. Shellfish Enhancement Projects.

Sec. 16.12.010. Permits for shellfish enhancement projects. (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 a project

1 to

2 (1) augment the yield and harvest of shellfish indigenous to state water
3 above naturally occurring levels by natural, artificial, or semiartificial production
4 systems;

5 (2) rehabilitate a shellfish stock that is indigenous to state water by
6 restoring it to its natural levels of productivity; or

7 (3) increase the area of productive natural shellfish habitat.

8 (b) Each applicant for a permit under this section shall apply in a format
9 prescribed by the department and pay an application fee in the amount determined
10 under (f) of this section.

11 (c) A permit issued under this section is nontransferable. If a permit holder
12 sells or leases a facility for which a permit has been issued under this section, the new
13 operator shall apply for a permit under this section.

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

17 (e) The commissioner may not issue a permit under this section unless the
18 commissioner determines that the action would result in substantial public benefits and
19 would not jeopardize natural stocks.

20 (f) The department shall establish by regulation an application fee under this
21 section in an amount that provides for the total amount of fees collected under (b) of
22 this section to approximately equal the department's actual costs of processing permit
23 applications under this chapter. The department shall annually review the fee level to
24 determine whether the department's costs of processing permit applications under this
25 chapter are approximately equal to the fees collected. If the review indicates that fees
26 collected and these costs are not approximately equal, the department shall adjust the
27 application fee by regulation. In January of each year, the department shall report the
28 fee level and any revision made for the previous year under this subsection to the
29 office of management and budget.

30 **Sec. 16.12.020. Hearings before permit issuance.** (a) At least 30 days 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 of shellfish.

(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 project describing the capacity of the facility and other relevant facts that may be of interest to the department or to the public. 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 genetically modified shellfish 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 by 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 location 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 wild 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.

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, as to projects under AS 16.12.010, including the planning,
4 construction, and operation of facilities.

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

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 this chapter.

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

12 **Sec. 16.12.080. Sale of shellfish; use of proceeds; quality and price.** (a) A
13 permit holder that sells shellfish harvested from the natural water of the state, or sells
14 shellfish to another permit holder under this chapter, shall use the funds only for
15 reasonable operating costs, including debt retirement, expanding its facilities, a project
16 permitted under AS 16.12.010, shellfish research, or to assist in meeting the
17 department's costs of managing the affected fisheries for the area in which the
18 shellfish release is located.

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

22 **Sec. 16.12.090. Cost recovery fisheries.** (a) A permit holder may harvest
23 shellfish for a project under AS 16.12.010 in a special harvest area through

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

27 (2) the common property fishery under this section.

28 (b) A permit holder may, by a majority vote of the membership of the permit
29 holder's board of directors, elect to harvest shellfish in a special harvest area
30 established for a project under AS 16.12.010 through the common property fishery. At
31 the request of the permit holder and if the commissioner determines that there are no

allocative issues involved, and after reasonable consultation with affected commercial fishermen, the commissioner may adopt regulations governing the harvest of shellfish in a special harvest area through a common property fishery. The regulations must specify the terms, conditions, and rules under which the common property fishery in the special harvest area shall be conducted, including requirements for holding inspections and reporting of harvests and sales of shellfish taken in the special harvest area. Following adoption of regulations by the department, before January 15 of each year, the permit holder's board, by a majority vote of the board's membership, may determine whether the permit holder will operate under the regulations adopted under this subsection during the current calendar year and shall notify the department if the permit holder intends to operate under the regulations adopted under this subsection. The Board of Fisheries may adopt regulations under AS 16.05.251 regarding a fisheries management plan governing operations under this subsection in a special harvest area, including allocation plans. Participation in the fishery must be open to all interim-use permit and entry permit holders who hold permits to operate a type of gear that may be used in the fishing district in which the special harvest area is located if that type of gear is authorized by regulation to be used in the special harvest area. An interim-use permit holder or an entry permit holder who takes shellfish in a common property fishery in a special harvest area may sell the shellfish to a fish buyer or processor who is licensed to do business in the state.

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

(d) The Department of Revenue may, by regulation, annually by March 1, 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 must 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 project under AS 16.12.010. In setting the assessment, the Department of Revenue 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 of Revenue 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 carrying out a project under AS 16.12.010, including the operation of 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 of Revenue 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 facility for a project under AS 16.12.010 at any time the facility 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) the brood stock source;
- (3) the number, age, gender, and size of spawners;
- (4) the 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) "facility" means a hatchery as defined in AS 16.40.199, a facility for the release of shellfish into natural water of the state, or a facility for a project under AS 16.12.010;

(2) "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;

(3) "shellfish" has the meaning given in AS 16.40.199.

* **Sec. 5.** 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; and
(2) nonprofit organizations holding a permit under AS 16.12 for a
shellfish enhancement project.

* Sec. 6. 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. 7. 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 facility that is permitted
under AS 16.12.010; in this paragraph, "positive control" has the meaning given in
AS 16.40.199;

* Sec. 8. AS 37.05.146(c) is amended by adding new paragraphs to read:

(80) fees collected by the Department of Fish and Game under
AS 16.10.400;

(81) fees collected by the Department of Fish and Game under
AS 16.12.010.

* Sec. 9. 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. 10.** 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. 11.** 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. 12.** 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. 13.** The uncoded law of the State of Alaska is amended by adding a new section to read:

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

* **Sec. 14.** Section 13 of this Act takes effect immediately under AS 01.10.070(c).

1 * **Sec. 15.** Section 10 of this Act takes effect on the effective date of sec. 2, ch. 55, SLA
2 2013.