

**HOUSE BILL NO. 128**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE ORTIZ

Introduced: 2/15/17

Referred: House Special Committee on Fisheries, Finance

**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 enhancement projects; relating to  
3 application fees for salmon 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

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

12 (2) consider the need of enhancement projects authorized under  
13 AS 16.12.010 to harvest and sell shellfish that are not needed for brood stock to  
14 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 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 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 shellfish enhancement project.

(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

1 the issuance of a permit under AS 16.12.010, the department shall hold a public  
2 hearing in a central location in the vicinity of the proposed release of shellfish.

3 (b) Notice of the hearing shall be published in a newspaper of general  
4 circulation once a week for three consecutive weeks, with completion of the notice at  
5 least five days before the hearing.

6 (c) The department shall conduct the hearing. The applicant shall present a  
7 plan for the proposed shellfish enhancement project describing relevant facts that may  
8 be of interest to the department or to the public and the capacity of the facility. The  
9 department shall give interested members of the public an opportunity to be heard.

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

14 **Sec. 16.12.030. Conditions of a permit.** The department shall require, in a  
15 permit issued under this chapter, that the permit holder

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

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

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

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

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

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

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

31 (8) make surplus shellfish available for sale first to the department and

1 then, after inspection and approval by the department, to other permit holders  
2 operating under this chapter;

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

5 (10) release shellfish in an area where the shellfish will be available to  
6 traditional fisheries, subject to the provisions of this chapter and regulations adopted  
7 under this chapter.

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

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

20 **Sec. 16.12.050. Regulations relating to released shellfish.** (a) Shellfish  
21 released into the natural water of the state by a permit holder under this chapter are  
22 available to the people for common use and are subject to regulation under applicable  
23 law in the same way as shellfish occurring in their natural state except when they are  
24 in a special location designated by the department for harvest by a permit holder.

25 (b) The Board of Fisheries may, after the issuance of a permit by the  
26 commissioner, amend by regulation adopted in accordance with AS 44.62  
27 (Administrative Procedure Act), the terms of the permit relating to the source of brood  
28 stock, the harvest of shellfish by permit holders, and the specific locations designated  
29 by the department for harvest. The Board of Fisheries may not adopt a regulation or  
30 take an action regarding the issuance or denial of a permit required in this chapter.

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, as to shellfish enhancement projects, 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 AS 16.12.010 -  
 10 16.12.199.

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

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

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

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

29 (b) A permit holder may, by a majority vote of the membership of the permit  
 30 holder's board, elect to harvest shellfish in a special harvest area established for an  
 31 enhancement project through the common property fishery. At the request of the

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

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

31 (d) The Department of Revenue may, by regulation, annually, by March 1 of

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

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

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

28 (g) In this section,

29 (1) "special harvest area" means an area designated by the  
30 commissioner or the Board of Fisheries where shellfish may be harvested by permit  
31 holders under this chapter and by the common property fishery;

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

2 **Sec. 16.12.100. Inspection by the department.** (a) A permit holder shall  
3 allow the department to inspect the permit holder's enhancement project facility at any  
4 time the enhancement project facility is in operation. The department shall conduct the  
5 inspection in a reasonable manner.

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

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

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

18 **Sec. 16.12.199. Definitions.** In this chapter,

- 19 (1) "enhancement project" means a project to  
20 (A) augment the yield and harvest of shellfish above naturally  
21 occurring levels by natural, artificial, or semi-artificial production systems;  
22 (B) rehabilitate a shellfish stock by restoring it to its natural  
23 levels of productivity; or  
24 (C) increase the area of productive natural shellfish habitat;  
25 (2) "facility" means a hatchery or other facility for a shellfish  
26 enhancement project;  
27 (3) "genetically modified shellfish" means shellfish whose genetic  
28 structure has been altered at the molecular level by recombinant DNA and RNA  
29 techniques, cell fusion, gene deletion or doubling, introduction of exogenous genetic  
30 material, alteration of the position of a gene, or other similar procedure using artificial  
31 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.

\* **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 enhancement project.

\* **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 facility 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 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

1 (Administrative Procedure Act), but not before the effective date of the law implemented by  
2 the regulation.

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

4 \* **Sec. 13.** Section 8 of this Act takes effect on the effective date of sec. 2, ch. 55, SLA  
5 2013.