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Bullard
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CS FOR HOUSE BILL NO. 41(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE ORTIZ

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; authorizing the**
3 **Department of Fish and Game to collect fee revenue from applicants for certain salmon**
4 **hatchery permits and from applicants for shellfish enhancement project permits;**
5 **relating to application fees for salmon hatchery permits; and providing for an effective**
6 **date."**

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

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

9 (c) The board may

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

1 or 16.10.480(d);

2 **(2) consider the need of enhancement projects authorized under**
3 **AS 16.12.010 to harvest and sell shellfish that are not needed for brood stock to**
4 **obtain funds for the purposes allowed under AS 16.12.080;**

5 **(3)** [. THE BOARD MAY] exercise its authority under this title as it
6 considers necessary to direct the department to provide a reasonable harvest of fish, in
7 addition to the fish needed for brood stock, to an enhancement project to obtain funds
8 for the enhancement project if the harvest is consistent with sustained yield of wild
9 fish stocks; **and**

10 **(4)** [. THE BOARD MAY] adopt a fishery management plan to
11 provide fish to an enhancement project to obtain funds for the purposes allowed under
12 AS 16.10.450, [OR] 16.10.480(d), **or AS 16.12.080.**

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

14 (b) The application for a permit under this section shall be on a form
15 prescribed by the department and be accompanied by an application fee **in the**
16 **amount determined under (h) of this section** [\$100]. The commissioner may waive
17 the submission of an application for a permit to operate a hatchery under
18 AS 16.10.480.

19 * **Sec. 3.** AS 16.10.400 is amended by adding new subsections to read:

20 (h) 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 regulatory costs under this
23 chapter. The department shall annually review the fee level to determine whether the
24 department's regulatory costs under this chapter are approximately equal to the fees
25 collected. If the review indicates that fee collections and regulatory costs are not
26 approximately equal, the department shall adjust the application fee by regulation. In
27 January of each year, the department shall report the fee level and any revision made
28 for the previous year under this subsection to the office of management and budget.

29 (i) The salmon hatchery permit fees collected under (b) of this section shall be
30 deposited in the state treasury. Under AS 37.05.146(c), the fees shall be accounted for
31 separately, and appropriations from the account are not made from the unrestricted

1 general fund. The legislature may appropriate money from the account for
2 expenditures by the department for necessary costs incurred by the department in the
3 administration of this chapter. Nothing in this subsection creates a dedicated fund or
4 dedicates the money in the account for a specific purpose. Money deposited in the
5 account does not lapse at the end of a fiscal year unless otherwise provided by an
6 appropriation.

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

8 **Chapter 12. Shellfish Enhancement Projects.**

9 **Sec. 16.12.010. Permits for shellfish enhancement projects.** (a) Subject to
10 the restrictions imposed by statute or regulation under this chapter, the commissioner
11 may issue a permit to a nonprofit corporation organized under AS 10.20 for a shellfish
12 enhancement project.

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

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

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

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

25 (f) The department shall establish by regulation an application fee under this
26 section in an amount that provides for the total amount of fees collected under (b) of
27 this section to approximately equal the department's actual regulatory costs under this
28 chapter. The department shall annually review the fee level to determine whether the
29 department's regulatory costs under this chapter are approximately equal to the fees
30 collected. If the review indicates that fee collections and regulatory costs are not
31 approximately equal, the department shall adjust the application fee by regulation. In

1 January of each year, the department shall report the fee level and any revision made
2 for the previous year under this subsection to the office of management and budget.

3 (g) The shellfish enhancement project permit fees collected under (b) of this
4 section shall be deposited in the state treasury. Under AS 37.05.146(c), the fees shall
5 be accounted for separately, and appropriations from the account are not made from
6 the unrestricted general fund. The legislature may appropriate money from the account
7 for expenditures by the department for necessary costs incurred by the department in
8 the administration of this chapter. Nothing in this subsection creates a dedicated fund
9 or dedicates the money in the account for a specific purpose. Money deposited in the
10 account does not lapse at the end of a fiscal year unless otherwise provided by an
11 appropriation.

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

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

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

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

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

- 28 (1) procure shellfish from the department or a source approved by the
29 department;
- 30 (2) place shellfish only in water of the state specifically designated in
31 the permit;

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

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

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

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

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

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

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

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

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

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

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

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

12 **Sec. 16.12.060. Department assistance and cooperation.** (a) Before and after
13 permit issuance under AS 16.12.010, the department shall make reasonable efforts,
14 within the limits of time and resources, to advise and assist applicants or permit
15 holders, as appropriate, as to shellfish enhancement projects, including the planning,
16 construction, and operation of facilities.

17 (b) Nothing in this section exempts an applicant or permit holder from
18 compliance with this chapter or from compliance with the regulations or restrictions
19 adopted under this chapter.

20 **Sec. 16.12.070. Brood stock sources.** (a) The department shall approve the
21 source and number of shellfish taken for use as brood stock under AS 16.12.010 -
22 16.12.199.

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

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

31 (b) A permit holder shall ensure that shellfish harvested and sold for human

1 consumption are of comparable quality to shellfish harvested by commercial fisheries
2 in the area and are sold at prices commensurate with the current market.

3 **Sec. 16.12.090. Cost recovery fisheries.** (a) A permit holder may harvest
4 shellfish for a shellfish enhancement project in

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

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

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

1 property fishery in a special harvest area may sell the shellfish to a fish buyer or
2 processor who is licensed to do business in the state.

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

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

28 (e) The Department of Revenue shall deposit the assessments collected under
29 this section in the general fund. The legislature may appropriate the funds collected
30 under this section to the permit holder who is carrying out an enhancement project,
31 including the operation of a facility, in the special harvest area in which the

1 assessment was levied. A permit holder shall use funds appropriated under this
2 subsection for the purposes set out under AS 16.12.080(a). The legislature may also
3 appropriate funds collected under this section to the Department of Revenue for costs
4 incurred by the department under this section.

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

9 (g) In this section,

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

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

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

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

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

24 (1) species;

25 (2) the brood stock source;

26 (3) the number, age, gender, and size of spawners;

27 (4) the number of eggs collected and juveniles produced; and

28 (5) the number, age, gender, and size of harvested shellfish attributable
29 to releases by the permit holder.

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

31 (1) "enhancement project" means a project to

1 (A) augment the yield and harvest of shellfish above naturally
2 occurring levels by natural, artificial, or semiartificial production systems;

3 (B) rehabilitate a shellfish stock by restoring it to its natural
4 levels of productivity; or

5 (C) increase the area of productive natural shellfish habitat;

6 (2) "facility" means a hatchery or other facility for a shellfish
7 enhancement project;

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

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

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

17 * **Sec. 5.** AS 16.43.400(a) is amended to read:

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

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

22 (2) **nonprofit organizations holding a permit under AS 16.12 for a**
23 **shellfish enhancement project.**

24 * **Sec. 6.** AS 16.43.430 is amended to read:

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

29 * **Sec. 7.** AS 17.20.049(b)(1) is amended to read:

30 (1) "farmed fish" means fish that is propagated, farmed, or cultivated
31 in a facility that grows, farms, or cultivates the fish in captivity or under positive

1 control but that is not a salmon hatchery that is owned by the state or that holds a
2 salmon hatchery permit under AS 16.10.400 **or a shellfish facility that is permitted**
3 **under AS 16.12.010**; in this paragraph, "positive control" has the meaning given in
4 AS 16.40.199;

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

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

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

10 * **Sec. 9.** AS 43.20.012(a) is amended to read:

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

12 (1) apply to an individual;

13 (2) apply to a fiduciary;

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

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

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

25 * **Sec. 10.** AS 43.20.012(a), as repealed and reenacted by sec. 2, ch. 55, SLA 2013, is
26 amended to read

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

28 (1) an individual;

29 (2) a fiduciary; [OR]

30 (3) the income received by a regional association qualified under
31 AS 16.10.380 or nonprofit corporation holding a hatchery permit under AS 16.10.400

1 from the sale of salmon or salmon eggs under AS 16.10.450 or from a cost recovery
2 fishery under AS 16.10.455; or

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

6 * **Sec. 11.** AS 43.76.390 is amended to read:

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

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

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

14 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

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

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

21 * **Sec. 15.** Section 10 of this Act takes effect on the effective date of sec. 2, ch. 55, SLA
22 2013.