

CS FOR SENATE BILL NO. 22(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY SENATORS STEVENS, Micciche

Offered: 2/13/19

Referred: Finance

Sponsor(s): SENATOR STEVENS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to mariculture; relating to the Board of Fisheries; relating to the**
2 **commissioner of fish and game; relating to management of enhanced stocks of shellfish;**
3 **authorizing certain nonprofit organizations to engage in shellfish enhancement projects;**
4 **and providing for an effective date."**

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

6 * **Section 1.** AS 16.05.300 is amended by adding a new subsection to read:

7 (c) The Board of Fisheries shall hold at least one annual public hearing
8 regarding the status of shellfish enhancement projects, shellfish hatcheries, and the
9 mariculture industry in the state. The board may hold a hearing under this subsection
10 in conjunction with another public hearing or meeting. At a hearing held under this
11 subsection, the commissioner of fish and game or the commissioner's designee shall
12 address the status of the state's mariculture industry. Before a hearing, the board may
13 identify specific mariculture-related matters of interest for discussion at the hearing
14 and request that the commissioner or the commissioner's designee address those issues

at the hearing. The board shall provide reasonable notice of each public hearing held under this subsection. The notice must include the date, time, and place of the hearing. In this subsection, "enhancement project," "hatchery," and "shellfish" have the meanings given in AS 16.12.199.

* **Sec. 2.** 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 enhancement 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. 3.** 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. 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

1 may issue a permit to a nonprofit corporation organized under AS 10.20 for a shellfish
2 enhancement project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) If the commissioner finds that the operation of the permitted activity is not
28 in the best interests of the public, the commissioner may alter the conditions of the
29 permit to mitigate the adverse effects of the operation or, if the adverse effects are
30 irreversible and cannot be mitigated sufficiently, initiate a termination of the operation
31 under the permit over a reasonable period under the circumstances, not to exceed four

1 years. During the period that the operation is being terminated, the permit holder may
2 harvest shellfish under the terms of the permit but may not release additional shellfish.

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

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

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

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

22 **Sec. 16.12.070. Brood stock sources.** (a) The department shall approve the
23 source and number of shellfish taken for use as brood stock under AS 16.12.010 -
24 16.12.199.

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

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

1 of managing the affected fisheries for the area in which the shellfish release is located.

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

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

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

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

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

1 that type of gear is authorized by regulation to be used in the special harvest area. An
2 interim-use permit holder or an entry permit holder who takes shellfish in a common
3 property fishery in a special harvest area may sell the shellfish to a fish buyer or
4 processor who is licensed to do business in the state.

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

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

30 (e) The Department of Revenue shall deposit the assessments collected under
31 this section in the general fund. The legislature may appropriate the funds collected

under this section to the permit holder who is carrying out an enhancement project, 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 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 enhancement project facility at any time the enhancement project 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) "enhancement project" means a project to

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

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

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

(2) "facility" means a hatchery or other facility for a shellfish 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.

* **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; or**

(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 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. 9.** 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

1 **permit under AS 16.12.010 from the sale of shellfish under AS 16.12.080 or from**
 2 **a cost recovery fishery under AS 16.12.090.**

3 * **Sec. 10.** AS 43.76.390 is amended to read:

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

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

9 **APPLICABILITY.** AS 16.10.400(b), as amended by sec. 3 of this Act, applies to
 10 salmon hatchery permits applied for on or after the effective date of sec. 3 of this Act.

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

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

17 * **Sec. 13.** Section 12 of this Act takes effect immediately under AS 01.10.070(c).

18 * **Sec. 14.** Section 9 of this Act takes effect on the effective date of sec. 2, ch. 55, SLA
 19 2013.