

SENATE CS FOR CS FOR HOUSE BILL NO. 285(RES) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Amended: 5/10/98

Offered: 4/21/98

Sponsor(s): REPRESENTATIVE IVAN

SENATORS Hoffman, Halford, Duncan

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to suspension or revocation of commercial fishing permits,**
2 **licenses, and privileges; and providing for an effective date."**

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

4 *** Section 1.** AS 16.43 is amended by adding new sections to read:

5 **Article 6A. Point System for Commercial Fishing Violations in Salmon Fisheries.**

6 **Sec. 16.43.850. Point system.** (a) For the purpose of identifying frequent
7 violators of commercial fishing laws in salmon fisheries, the commission shall adopt
8 regulations establishing a uniform system for the suspension of commercial salmon
9 fishing privileges by assigning demerit points for convictions for violations of
10 commercial fishing laws in salmon fisheries that are reported to the commission under
11 AS 16.43.880. The commission shall assess demerit points against a permit holder for
12 each violation of commercial fishing laws in a salmon fishery in accordance with (b)
13 and (c) of this section. The commission shall assess points against a permit holder for
14 the salmon fishery in which the violation of commercial fishing laws occurred.

(b) The commission shall assess demerit points against a permit holder for a conviction of a violation of commercial fishing laws in a salmon fishery under AS 16.05.722, 16.05.723, 16.05.831; AS 16.10.055, 16.10.070 - 16.10.090, 16.10.100, 16.10.110, 16.10.120, 16.10.200 - 16.10.220, and 16.10.760 - 16.10.790 for the following violations in accordance with this schedule:

- (1) fishing in closed waters 6 points;
- (2) fishing during closed season or period 6 points;
- (3) fishing with more than the legal amount of gear 4 points;
- (4) fishing with gear not allowed in fishery 6 points;
- (5) fishing before expiration of transfer period 6 points;
- (6) interfering with commercial fishing gear 4 points;
- (7) fishing with more than the legal amount of gear
on vessel 4 points;
- (8) improper operation of fishing gear 4 points;
- (9) permit holder not present when required 4 points;
- (10) fishing with underlength or overlength vessel 6 points;
- (11) wanton waste of fishery resources 4 points.

(c) Notwithstanding (b) of this section, if a permit holder's first conviction of a violation of commercial fishing laws in a salmon fishery in a 36-month period is a conviction under AS 16.05.722, the number of demerit points assessed against the permit holder for the violation must be one-half of the points assessed for the violation under (b) of this section.

(d) The commission shall suspend a permit holder's commercial salmon fishing privileges for a salmon fishery for a period of

- (1) one year if the permit holder accumulates 12 or more points during any consecutive 36-month period as a result of convictions for violations of commercial fishing laws in the salmon fishery;
- (2) two years if the permit holder accumulates 16 or more points during any consecutive 36-month period as a result of convictions for violations of commercial fishing laws in the salmon fishery;
- (3) three years if the permit holder accumulates 18 or more points

1 during any consecutive 36-month period as a result of convictions for violations of
2 commercial fishing laws in the salmon fishery.

3 **Sec. 16.43.855. Assessment of points.** (a) Notice of each assessment of
4 points shall be given to the permit holder. Notice shall also be given to the permit
5 holder before the expiration of a suspension of commercial salmon fishing privileges
6 under AS 16.43.850(d) that subsequent violations of commercial fishing laws in the
7 salmon fishery may result in further suspensions of the permit. The notice may be
8 given by first class mail.

9 (b) The time periods provided for in AS 16.43.850 for the accumulation of
10 points shall be based on the date of conviction, either on a plea of guilty, nolo
11 contendere, or a forfeiture of bail or collateral, or as a result of a trial, for violation of
12 a commercial salmon fishing law.

13 (c) The assessment of points against a permit holder by the commission under
14 AS 16.43.850 - 16.43.895 is in addition to, and not in substitution for, other provisions
15 of this title and is not a substitute for any penalty imposed by a court.

16 (d) If points are assessed against a permit holder who holds a commercial
17 fishing permit for a salmon fishery under an emergency transfer approved by the
18 commission under AS 16.43.180, the same number of points shall also be assessed
19 against the transferor of the permit. Points assessed against the transferor of the permit
20 under this subsection shall be included in calculations made under AS 16.43.850(d).

21 **Sec. 16.43.860. Suspension.** (a) A permit holder whose commercial salmon
22 fishing privileges for a salmon fishery are suspended under AS 16.43.850 - 16.43.895
23 may not obtain an entry permit or interim-use permit for that salmon fishery during
24 the period of the suspension of the privileges. During the period for which the permit
25 holder's privilege to obtain an entry permit or interim-use permit for a salmon fishery
26 is suspended under this section, the commission may not issue a permit card to the
27 permit holder for that fishery.

28 (b) A permit holder whose privilege of obtaining a commercial fishing permit
29 for a salmon fishery is suspended under as 16.43.850 - 16.43.895 may not

30 (1) engage in the salmon fishery under a crewmember license; or

31 (2) lease or rent the permit holder's interest in a boat to another person

1 if the boat would be used in the salmon fishery for which the permit holder's fishing
2 privileges are suspended.

3 (c) If, during the period for which a permit holder's commercial fishing
4 privileges for a salmon fishery are suspended, the commission establishes a limited
5 entry system for the salmon fishery, the permit holder shall be eligible to obtain an
6 entry permit for that fishery to the extent that the permit holder qualifies for the entry
7 permit under regulations adopted by the commission. If the permit holder qualifies for
8 an entry permit for the fishery, the commission shall withhold issuance of the entry
9 permit until the period of the suspension imposed under AS 16.43.850 - 16.43.895 has
10 expired.

11 (d) The commission may not transfer a commercial fishing permit for a salmon
12 fishery under an emergency transfer under AS 16.43.180 if, at the time of the
13 application for the emergency transfer, the permit holder's commercial salmon fishing
14 privileges for the salmon fishery have been suspended.

15 **Sec. 16.43.870. Notice and appeal.** The commission shall provide notice of
16 determinations of the commission under AS 16.43.850 - 16.43.895. Respondents may
17 request a hearing under regulations adopted by the commission under AS 16.43.110.

18 **Sec. 16.43.880. Required notice to commission.** (a) A court that convicts
19 a person of a violation of commercial fishing laws under this title or under a regulation
20 adopted under this title in a salmon fishery shall forward a record of the conviction to
21 the commission on a weekly basis.

22 (b) A conviction on a plea of nolo contendere accepted by the court or a
23 forfeiture of bail or collateral deposited to secure a defendant's appearance in court
24 that has not been vacated, or as a result of trial, is a conviction for purposes of
25 AS 16.43.850 - 16.43.895.

26 **Sec. 16.43.895. Definitions for AS 16.43.850 - 16.43.895.** In AS 16.43.850 -
27 16.43.895,

28 (1) "commercial fishing law" means a statute or regulation that
29 regulates the conduct of a person engaged in commercial fishing activities by
30 establishing requirements relating to fishing licenses and permits; catch records and
31 reports; size, nature, quantity, or use of fishing vessels, sites, and gear; time, place, or

manner of taking fishery resources; possession, transportation, sale, barter, or waste of fishery resources; or other aspects of commercial fishing;

(2) "commercial fishing permit" means an entry permit or an interim-use permit issued under this chapter;

(3) "commercial salmon fishing privileges" means the privilege of participating in an activity for which a commercial fishing permit to take salmon is required and the privilege of obtaining a commercial fishing permit to take salmon;

(4) "permit holder" includes the holder of a commercial fishing permit as the result of an emergency transfer, an applicant for a commercial fishing permit if the applicant's commercial fishing permit was suspended under AS 16.43.850 - 16.43.895, and a person whose privilege of obtaining a commercial fishing permit for a fishery is suspended under AS 16.43.850 - 16.43.895.

* **Sec. 2.** AS 16.05.710(a) is amended to read:

(a) Upon the conviction of a person for a misdemeanor or felony violation of a commercial fishing law of this state, in a fishery other than a commercial salmon fishery, the court, in addition to other penalties imposed by law,

(1) may suspend one or more of the person's commercial fishing privileges and licenses for a period of not more than one year [,] if the conviction is the person's first or second misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state, in a fishery other than a commercial salmon fishery, or another jurisdiction; or

(2) shall suspend one or more of the person's commercial fishing privileges and licenses for a period of not more than three years [,] if the conviction is the person's third or subsequent misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state, in a fishery other than a commercial salmon fishery, or another jurisdiction.

* **Sec. 3.** AS 16.10.335 is amended by adding a new subsection to read:

(g) If a limited entry permit that has been pledged as security under AS 16.10.333 or 16.10.338 is revoked under AS 16.43.970, the debtor's interest in the permit is terminated by operation of law without further notice as of the date that the revocation takes effect.

1 * **Sec. 4.** AS 16.10.337(a) is amended to read:

2 (a) Upon a foreclosure on an entry permit as provided in AS 16.10.335 or the
 3 termination of a debtor's interest in an entry permit under AS 16.10.335(g), the
 4 commissioner shall offer the commission a right of first refusal if the permit is subject
 5 to a buy-back program under AS 16.43.290 - 16.43.330 at a price equal to the amount
 6 outstanding on the note plus any costs the department directly incurred in
 7 administering the loan.

8 * **Sec. 5.** AS 16.43.970(a) is repealed and reenacted to read:

9 (a) A person who violates a provision of this chapter or a regulation adopted
 10 under this chapter is, upon conviction, guilty of a class B misdemeanor and is
 11 punishable by a fine of not more than \$5,000 for a first conviction, and a fine of not
 12 more than \$10,000 for a second or third conviction. Upon a first or second conviction
 13 under this subsection, the court may in its discretion also order the commission to
 14 suspend the commercial fishing privileges of the person for a period of not more than
 15 three years and to revoke one or more or all commercial fishing permits held by the
 16 person. Upon a third or subsequent conviction under this subsection, the person is also
 17 subject to a loss of commercial fishing privileges as provided under (i) of this section.
 18 This subsection does not apply to violations of AS 16.43.140(a).

19 * **Sec. 6.** AS 16.43.970(b) is amended to read:

20 (b) A person who knowingly makes a false statement to the commission for
 21 the purpose of obtaining a benefit, including the issuance, renewal, duplication, or
 22 transfer of an entry or interim-use permit or vessel license or a person who assists
 23 another by knowingly making a false statement to the commission for the purpose of
 24 obtaining a benefit for another, is guilty of the crime of unsworn falsification as set
 25 out in AS 11.56.210. Upon conviction, the person is also subject to suspension of
 26 commercial fishing privileges and revocation of commercial fishing permits under
 27 (i) of this section [(1) SHALL FORFEIT TO THE COMMISSION ALL INTERIM-
 28 USE PERMITS AND ENTRY PERMITS AND (2) LOSES ELIGIBILITY FOR
 29 INTERIM-USE PERMITS AND FOR ENTRY PERMITS FOR A PERIOD OF
 30 THREE YEARS].

31 * **Sec. 7.** AS 16.43.970(f) if amended to read:

(f) **A commercial fishing** [AN ENTRY] permit **revoked** [FORFEITED] under this section that is **pledged** [TAKEN] as security for a loan under AS 16.10.333, **or 16.10.338**, or AS 44.81.231 shall be reassigned as provided in AS 16.10.337 or AS 44.81.250.

* **Sec. 8.** AS 16.43.970(g) is amended to read:

(g) A person who violates the provisions of AS 16.43.140(a) is

(1) upon a first conviction, guilty of a class B misdemeanor and may be sentenced to a definite term of imprisonment of not more than 90 days, or forfeiture of the person's fishing vessel, or both, and shall be sentenced to a fine of not less than \$5,000 nor more than \$10,000 and loss of commercial fishing privileges **under (i) of this section** [FOR A PERIOD OF ONE YEAR AFTER THE DATE OF CONVICTION];

(2) upon a second conviction, guilty of a class A misdemeanor and may be sentenced to a definite term of imprisonment of not more than one year, and shall be sentenced to a fine of not less than \$10,000 nor more than \$20,000, forfeiture of the person's fishing vessel, and loss of commercial fishing privileges **under (i) of this section** [FOR A PERIOD OF TWO YEARS AFTER THE DATE OF CONVICTION];

(3) upon a third or subsequent conviction, guilty of a class A misdemeanor and may be sentenced to a definite term of imprisonment of not more than one year, and shall be sentenced to a fine of not less than \$20,000 nor more than \$50,000, forfeiture of the person's fishing vessel, and loss of commercial fishing privileges **under (i) of this section** [FOR A PERIOD OF FIVE YEARS AFTER THE DATE OF CONVICTION].

* **Sec. 9.** AS 16.43.970 is amended by adding new subsections to read:

(i) Upon the conviction of a person for an offense described under (a), (b), or (g) of this section, the court shall immediately notify the commission of the conviction. The notice provided by the court shall be accompanied by an order suspending commercial fishing privileges and revoking commercial fishing permits under (a) of this section, as appropriate. The commission shall, upon receipt of

(1) an order from the court under (a) of this section, suspend the commercial fishing privileges of a person for the period set by the court and revoke

commercial fishing permits held by the person as directed by the court;

(2) a notice from the court that a person has been convicted of a third or subsequent violation of (a) of this section, suspend all commercial fishing privileges of the person for a period of three years from the date of conviction and revoke all commercial fishing permits held by the person;

(3) a notice from the court that a person has been convicted of a violation described under (b) of this section, suspend all commercial fishing privileges of the person for a period of three years from the date of conviction and revoke all commercial fishing permits held by the person;

(4) a notice from the court that a person has been convicted of a violation described under (g)(1) of this section, suspend all commercial fishing privileges of the person for a period of one year from the date of conviction;

(5) a notice from the court that a person has been convicted of a violation described under (g)(2) of this section, suspend all commercial fishing privileges of the person for a period of two years from the date of conviction;

(6) a notice from the court that a person has been convicted of a violation described under (g)(3) of this section, suspend all commercial fishing privileges of the person for a period of five years from the date of conviction.

(j) In this section,

(1) "commercial fishing permit" means an entry permit or an interim-use permit issued under this chapter;

(2) "commercial fishing privileges" means the privilege of participating in an activity for which a commercial fishing permit is required and the privilege of obtaining a commercial fishing permit.

*** Sec. 10.** AS 44.81.247 is amended by adding a new subsection to read:

(b) If a limited entry permit that has been pledged as security under AS 44.81.231 is revoked under AS 16.43.970, the debtor's interest in the permit is terminated by operation of law without further notice as of the date that the revocation takes effect.

*** Sec. 11.** AS 44.81.250(a) is amended to read:

(a) Upon foreclosure of a pledge of an entry permit under AS 44.81.241 -

1 44.81.249 or the termination of a debtor's interest in an entry permit under
2 AS 44.81.247(b), the bank shall determine if the permit is subject to a buy-back
3 program under AS 16.43.290 - 16.43.330 and, if it is subject to a buy-back program,
4 shall offer the permit to the commission at a price equal to the outstanding
5 indebtedness on the loan.

6 * **Sec. 12.** APPLICABILITY. This Act applies to violations of commercial fishing laws
7 in a salmon fishery that occur on or after the effective date of this Act.

8 * **Sec. 13.** This Act takes effect immediately under AS 01.10.070(c).