



# LAWS OF ALASKA

1988

**Source**

SCS CSHB 364 (Res)

**Chapter No.**

46

**AN ACT**

Relating to commercial fishing violations; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9.

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: May 24, 1988  
Actual Effective Date: May 25, 1988

AN ACT

Relating to commercial fishing violations; and providing  
for an effective date.

\* Section 1. AS 16.05.710(a) is repealed and reenacted to read:

(a) A person convicted of a misdemeanor for violating AS 16.05.-  
440 - 16.05.690 or a federal or state commercial fishing statute or  
regulation is, in addition to other penalties provided by law, subject  
to the following penalties:

(1) upon a first or second conviction the court may sus-  
pend, for a period of not more than one year,

(A) the person's commercial fishing license and the  
right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits  
and the person's right to obtain a commercial fishing license;  
and

(2) upon a third or subsequent conviction the court shall  
suspend, for a period of not more than three years,

(A) the person's commercial fishing license and the  
right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits  
and the person's right to obtain a commercial fishing license.

\* Sec. 2. AS 16.05.710 is amended by adding new subsections to read:

(c) During the period for which a limited entry permit is sus-  
pended under (a) of this section a permit card may not be issued and

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1 the permit may not be transferred or sold.

2 (d) In this section

3 (1) "commercial fishing license" includes a crew member  
4 license;

5 (2) "limited entry permit" includes an interim use permit.

6 \* Sec. 3. AS 16.05 is amended by adding new sections to read:

7 Sec. 16.05.722. STRICT LIABILITY COMMERCIAL FISHING PENALTIES.

8 (a) A person who without any culpable mental state violates AS 16.-  
9 05.440 - 16.05.690, or a regulation of the Board of Fisheries or the  
10 department governing commercial fishing, is guilty of a violation and  
11 upon conviction is punishable by a fine of not more than

12 (1) \$3,000 for a first conviction; and

13 (2) \$6,000 for a second or subsequent conviction.

14 (b) In addition, the court shall order forfeiture of any fish,  
15 or its fair market value, taken or retained as a result of the commis-  
16 sion of the violation. For purposes of this subsection, it is a  
17 rebuttable presumption that all fish found on board a fishing vessel  
18 used in or in aid of a violation, or found at the fishing site, were  
19 taken or retained in violation of AS 16.05.440 - 16.05.690 or a com-  
20 mercial fisheries regulation of the Board of Fisheries or the depart-  
21 ment. It is the defendant's burden to show by a preponderance of the  
22 evidence that fish on board or at the site were lawfully taken and  
23 retained.

24 (c) A person charged with a violation under this section is  
25 entitled to a trial by court but not by jury, and is not entitled to  
26 representation at public expense.

27 Sec. 16.05.723. MISDEMEANOR COMMERCIAL FISHING PENALTIES. (a)

28 A person who negligently violates AS 16.05.440 - 16.05.690, or a  
29 regulation of the board of fisheries or the department governing

commercial fishing, is guilty of a misdemeanor and in addition to punishment under other provisions in this title, including AS 16.05.-195 and 16.05.710, is punishable upon conviction by a fine of not more than \$15,000 or by imprisonment for not more than one year, or by both. In addition, the court shall order forfeiture of any fish, or its fair market value, taken or retained as a result of the commission of the violation, and the court may forfeit any vessel and any fishing gear, including any net, pot, tackle, or other device designed or employed to take fish commercially, that was used in or in aid of the violation. Any fish, or its fair market value, forfeited under this subsection may not also be forfeited under AS 16.05.195. For purposes of this subsection, it is a rebuttable presumption that all fish found on board a fishing vessel used in or in aid of a violation, or found at the fishing site, were taken or retained in violation of AS 16.05.-440 - 16.05.690 or a commercial fisheries regulation of the board of fisheries or the department, and it is the defendant's burden to show by a preponderance of the evidence that fish on board or at the site were lawfully taken and retained.

(b) If a person is convicted under this section of one of the following offenses, then, in addition to the penalties imposed under (a) of this section, the court may impose a fine equal to the gross value of the fish found on board or at the fishing site at the time of the violation:

- (1) commercial fishing in closed waters;
- (2) commercial fishing during a closed period or season;
- (3) commercial fishing with unlawful gear, including a net, pot, tackle, or other device designed or employed to take fish commercially; or
- (4) commercial fishing without a limited entry permit

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1 holder on board if the holder is required by law or regulation to be  
2 present.

3 (c) Upon a third misdemeanor conviction within a period of 10  
4 years for an offense listed in (b) of this section or any combination  
5 of offenses listed in (b) of this section, the court shall impose, in  
6 addition to any penalties imposed under (a) of this section, a fine  
7 equal to three times the gross value of the fish found on board or at  
8 the fishing site at the time of the offense, or a fine equal to  
9 \$10,000, whichever is greater.

10 \* Sec. 4. AS 16.05.925 is amended to read:

11 Sec. 16.05.925. PENALTY FOR VIOLATIONS. Except as provided in  
12 AS 16.05.430, 16.05.722, 16.05.723, [16.05.720,] 16.05.831, and 16.-  
13 05.860, a person who violates AS 16.05.920, or a regulation adopted  
14 under this chapter or AS 16.20, is guilty of a class A misdemeanor.

15 \* Sec. 5. AS 16.05.720 is repealed.

16 \* Sec. 6. Notwithstanding the provisions of this Act, in a case pending  
17 on the effective date of this Act involving a commercial fishing violation  
18 that occurred before the effective date of this Act, the court shall apply  
19 the law that was in effect on the date the violation occurred.

20 \* Sec. 7. This Act takes effect immediately under AS 01.10.070(c).  
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