

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/21/98

Referred: Rules

Sponsor(s): REPRESENTATIVE IVAN

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.

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

1 (b) The commission shall assess demerit points against a permit holder for a
2 conviction of a violation of commercial fishing laws under AS 16.05.722, 16.05.723,
3 16.05.831; AS 16.10.055, 16.10.070 - 16.10.090, 16.10.100, 16.10.110, 16.10.120 -
4 16.10.130, 16.10.165, 16.10.173, 16.10.200 - 16.10.220, 16.10.240, 16.10.250, and
5 16.10.760 - 16.10.790 for the following violations in accordance with this schedule:

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

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

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

- 27 (1) one year if the permit holder accumulates 12 or more points during
- 28 any consecutive 36-month period as a result of convictions for violations of
- 29 commercial fishing laws in the fishery;
- 30 (2) two years if the permit holder accumulates 16 or more points during
- 31 any consecutive 48-month period as a result of convictions for violations of

1 commercial fishing laws in the fishery;

2 (3) three years if the permit holder accumulates 18 or more points
3 during any consecutive 60-month period as a result of convictions for violations of
4 commercial fishing laws in the fishery.

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

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

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

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

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

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

- 1 (1) engage in the fishery under a crewmember license; or
2 (2) lease or rent the permit holder's interest in a boat to another person
3 if the boat would be used in a fishery for which the permit holder's fishing privileges
4 are suspended.

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

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

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

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

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

27 **Sec. 16.43.895. Definitions for AS 16.43.850 - 16.43.895.** In AS 16.43.850 -
28 16.43.895,

29 (1) "commercial fishing law" means a statute or regulation that
30 regulates the conduct of a person engaged in commercial fishing activities by
31 establishing requirements relating to fishing licenses and permits; catch records and

1 reports; size, nature, quantity, or use of fishing vessels, sites, and gear; time, place, or
 2 manner of taking fishery resources; possession, transportation, sale, barter, or waste of
 3 fishery resources; or other aspects of commercial fishing;

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

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

9 (4) "permit holder" includes the holder of a commercial fishing permit
 10 as the result of an emergency transfer, an applicant for a commercial fishing permit
 11 if the applicant's commercial fishing permit was suspended under AS 16.43.850 -
 12 16.43.895, and a person whose privilege of obtaining a commercial fishing permit for
 13 a fishery is suspended under AS 16.43.850 - 16.43.895.

14 * **Sec. 2.** AS 16.05.723(a) is amended to read:

15 (a) A person who negligently violates AS 16.05.440 - 16.05.690, or a
 16 regulation of the Board of Fisheries or the department governing commercial fishing,
 17 is guilty of a misdemeanor and in addition to punishment under other provisions in this
 18 title, including AS 16.05.195 [AND 16.05.710], is punishable upon conviction by a
 19 fine of not more than \$15,000 or by imprisonment for not more than one year, or by
 20 both. In addition, the court shall order forfeiture of any fish, or its fair market value,
 21 taken or retained as a result of the commission of the violation, and the court may
 22 forfeit any vessel and any fishing gear, including any net, pot, tackle, or other device
 23 designed or employed to take fish commercially, that was used in or in aid of the
 24 violation. Any fish, or its fair market value, forfeited under this subsection may not
 25 also be forfeited under AS 16.05.195. For purposes of this subsection, it is a
 26 rebuttable presumption that all fish found on board a fishing vessel used in or in aid
 27 of a violation, or found at the fishing site, were taken or retained in violation of
 28 AS 16.05.440 - 16.05.690 or a commercial fisheries regulation of the Board of
 29 Fisheries or the department, and it is the defendant's burden to show by a
 30 preponderance of the evidence that fish on board or at the site were lawfully taken and
 31 retained.

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

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

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

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

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

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

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

25 (b) A person who knowingly makes a false statement to the commission for
26 the purpose of obtaining a benefit, including the issuance, renewal, duplication, or
27 transfer of an entry or interim-use permit or vessel license or a person who assists
28 another by knowingly making a false statement to the commission for the purpose of
29 obtaining a benefit for another, is guilty of the crime of unsworn falsification as set
30 out in AS 11.56.210. Upon conviction, the person **is also subject to suspension of**
31 **commercial fishing privileges and revocation of commercial fishing permits under**

1 **(i) of this section** [(1) SHALL FORFEIT TO THE COMMISSION ALL INTERIM-
 2 USE PERMITS AND ENTRY PERMITS AND (2) LOSES ELIGIBILITY FOR
 3 INTERIM-USE PERMITS AND FOR ENTRY PERMITS FOR A PERIOD OF
 4 THREE YEARS].

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

6 (f) **A commercial fishing** [AN ENTRY] permit **revoked** [FORFEITED] under
 7 this section that is **pledged** [TAKEN] as security for a loan under AS 16.10.333, **or**
 8 **16.10.338**, or AS 44.81.231 shall be reassigned as provided in AS 16.10.337 or
 9 AS 44.81.250.

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

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

12 (1) upon a first conviction, guilty of a class B misdemeanor and may
 13 be sentenced to a definite term of imprisonment of not more than 90 days, or forfeiture
 14 of the person's fishing vessel, or both, and shall be sentenced to a fine of not less than
 15 \$5,000 nor more than \$10,000 and loss of commercial fishing privileges **under (i) of**
 16 **this section** [FOR A PERIOD OF ONE YEAR AFTER THE DATE OF
 17 CONVICTION];

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

23 (3) upon a third or subsequent conviction, guilty of a class A
 24 misdemeanor and may be sentenced to a definite term of imprisonment of not more
 25 than one year, and shall be sentenced to a fine of not less than \$20,000 nor more than
 26 \$50,000, forfeiture of the person's fishing vessel, and loss of commercial fishing
 27 privileges **under (i) of this section** [FOR A PERIOD OF FIVE YEARS AFTER THE
 28 DATE OF CONVICTION].

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

30 (i) Upon the conviction of a person for an offense described under (a), (b), or
 31 (g) of this section, the court shall immediately notify the commission of the conviction.

1 The notice provided by the court shall be accompanied by an order suspending
 2 commercial fishing privileges and revoking commercial fishing permits under (a) of
 3 this section, as appropriate. The commission shall, upon receipt of

4 (1) an order from the court under (a) of this section, suspend the
 5 commercial fishing privileges of a person for the period set by the court and revoke
 6 commercial fishing permits held by the person as directed by the court;

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

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

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

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

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

24 (j) In this section, "commercial fishing permit" and "commercial fishing
 25 privileges" have the meanings given in AS 16.43.895.

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

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

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

1 (a) Upon foreclosure of a pledge of an entry permit under AS 44.81.241 -
2 44.81.249 or the termination of a debtor's interest in an entry permit under
3 AS 44.81.247(b), the bank shall determine if the permit is subject to a buy-back
4 program under AS 16.43.290 - 16.43.330 and, if it is subject to a buy-back program,
5 shall offer the permit to the commission at a price equal to the outstanding
6 indebtedness on the loan.

7 * **Sec. 12.** AS 16.05.710(a) and 16.05.710(d)(1) are repealed.

8 * **Sec. 13.** APPLICABILITY. This Act applies to violations of commercial fishing laws
9 that occur on or after the effective date of this Act.

10 * **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).