

Original sponsor: Chuckwuk

Offered: 5/13/82
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 637 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the taking, purchase, or sale of
7 certain fishery resources; and providing for an effec-
8 tive date."

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

10 * Section 1. AS 16.05 is amended by adding a new section to read:

11 Sec. 16.05.253. OPERATION OF STATIONARY FISHING GEAR. The Board
12 of Fisheries may require a person who holds a limited entry permit or an
13 interim-use permit under AS 16.43 to be physically present during the
14 operation of net gear or other stationary fishing gear operated from a
15 beach or riparian site, except when the permit holder is traveling to
16 and from the site of a sale of fish caught in the gear.

17 * Sec. 2. AS 16.10 is amended by adding new sections to read:

18 Sec. 16.10.265. PURCHASE OF FISH FROM PERMIT HOLDERS. (a) It is
19 unlawful for an individual while acting as a fish processor or primary
20 fish buyer, or as an agent, director, officer, member, or employee of a
21 fish processor, of a primary fish buyer, or of a cooperative corporation
22 organized under AS 10.15 to intentionally or knowingly make an original
23 purchase of fish from a seiler who does not hold an entry permit or an
24 interim-use permit issued or transferred to the seller in accordance
25 with AS 16.43.

26 (b) An individual who violates (a) of this section is

27 (1) upon a first conviction, guilty of a class B misdemeanor
28 and shall be sentenced to a fine of not less than \$1,000 nor more than
29 \$5,000, and may be sentenced to a definite term of imprisonment of not

1 more than 90 days;

2 (2) upon a second conviction, guilty of a class A misdemeanor
3 and shall be sentenced to a fine of not less than \$5,000 nor more than
4 \$10,000, and may be sentenced to a definite term of imprisonment of not
5 more than one year;

6 (3) upon a third or subsequent conviction, guilty of a class A
7 misdemeanor and shall be sentenced to a fine of not less than \$10,000
8 nor more than \$25,000, and may be sentenced to a definite term of impri-
9 sonment of not more than one year.

10 (c) The commissioner of revenue shall impose upon a fish processor,
11 primary fish buyer, or cooperative corporation organized under AS 10.15,
12 a civil fine equal to the value of fish purchased in violation of this
13 section by (1) the fish processor or primary fish buyer if the fish
14 processor or primary fish buyer is not a corporation; or (2) a director,
15 officer, or employee in a policy-making position of the fish processor,
16 of the primary fish buyer, or of the cooperative corporation. Value is
17 based on the average price paid to fishermen at the time of the viola-
18 tion.

19 (d) The commissioner of revenue may suspend or revoke a business
20 license issued under AS 43.70.020 or a license to engage in the business
21 of processing or buying raw fish if the licensee or an officer, director,
22 or employee in a policy-making position of the licensee has been con-
23 victed of three offenses under this section. Proceedings to suspend or
24 revoke a license are governed by the Administrative Procedure Act
25 (AS 44.62).

26 (e) An organization may not be criminally prosecuted under (a) of
27 this section.

28 (f) As used in this section, "individual" means a natural person.
29 Sec. 16.10.267. POSSESSION OF PERMIT AND IDENTIFICATION BY SELLER.

1 (a) When a fisherman sells fish, the fisherman shall possess

2 (1) an entry permit or interim-use permit issued or trans-
3 ferred to the fisherman under AS 16.43, or other document authorized by
4 regulation to be used in place of an entry permit or interim-use permit;
5 and

6 (2) an identification card that has been issued to the fisher-
7 man by a state or federal agency and that bears a photograph of the
8 fisherman.

9 (b) If requested by the purchaser of the fish or by a peace
10 officer, the fisherman shall present for inspection the identification
11 card, entry permit, interim-use permit, or other document required to be
12 in the fisherman's possession under (a) of this section.

13 (c) Examples of a suitable identification card required under
14 (a)(2) of this section are a motor vehicle operator's license issued
15 under AS 28.15.111 and an identification card issued under AS 18.65.310.

16 (d) A person who violates this section is, upon conviction, guilty
17 of a class B misdemeanor and may be sentenced to a definite term of
18 imprisonment of not more than 90 days. In addition

19 (1) upon a first conviction for a violation of this section,
20 the court may sentence the convicted person to pay a fine of not more
21 than \$5,000 and may order the loss of commercial fishing privileges for
22 a period of not more than three years from the date of conviction;

23 (2) upon a second conviction for a violation of this section,
24 the court may sentence the convicted person to pay a fine of not more
25 than \$10,000 and may order the loss of commercial fishing privileges for
26 a period of not more than three years from the date of conviction;

27 (3) upon a third or subsequent conviction for a violation of
28 this section, the court

29 (A) may sentence the convicted person to pay a fine of

1 not more than \$10,000; and

2 (B) shall order that the convicted person lose commercial
3 fishing privileges for a period of three years from the date of
4 conviction.

5 Sec. 16.10.268. NOTICE OF LIABILITY. (a) The commissioner of
6 labor shall print posters that contain notice of the requirements of
7 AS 16.10.265. The commissioner shall distribute the posters to fish
8 processors, primary fish buyers, and cooperative corporations organized
9 under AS 10.15 for the purpose of buying fish.

10 (b) A fish processor, primary fish buyer, or cooperative corpora-
11 tion organized under AS 10.15 for the purpose of buying fish shall
12 display in a prominent place on its business premises posters provided
13 by the commissioner of labor under (a) of this section.

14 * Sec. 3. AS 16.10.296 is amended to read:

15 Sec. 16.10.296. DEFINITIONS. In AS 16.10.265 - 16.10.296 [AS 16.-
16 10.270 - 16.10.296], unless the context otherwise requires,

17 (1) "commissioner" means the commissioner of labor;

18 (2) "fish" means any species of aquatic finfish, inverte-
19 brates and amphibians, shellfish, or any other raw fishery resource, in
20 any stage of its life cycle, found in or introduced into the state, and
21 includes fish eggs;

22 (3) "fish processor" means a person engaging or attempting to
23 engage in a business for which a license is required under AS 43.75.-
24 010 - 43.75.090;

25 (4) "primary fish buyer" means a person, other than a co-
26 operative corporation organized under AS 10.15, engaging or attempting
27 to engage in the business of originally purchasing or buying any [RAW]
28 fishery resource in intrastate, interstate, or foreign commerce.

29 * Sec. 4. AS 16.43.360(a) is amended to read:

1 (a) A person who violates [OR ASSISTS IN THE VIOLATION OF] a
2 provision of this chapter or a regulation promulgated under this chapter
3 is, upon conviction, guilty of a class B misdemeanor and is punishable
4 by a fine of not more than \$5,000 for a first conviction, and a fine of
5 not more than \$10,000 for a second or third conviction. Upon a third
6 conviction, the person forfeits [SHALL FORFEIT] all interim-use and
7 entry permits held by him and loses eligibility for future issuance or
8 transfer of interim-use or entry permits for a period of three years.
9 Upon a first or second conviction under this section, the court may in
10 its discretion order a forfeiture of interim-use or entry permits held
11 by the person, [HIM] as well as a loss of eligibility for future issuance
12 or transfer of interim-use or entry permits, or order a suspension of
13 fishing rights under interim-use or entry permits held or to be held by
14 the person [HIM] for a period of not more than three years. This sub-
15 section does not apply to violations of AS 16.43.140(a).

16 * Sec. 5. AS 16.43.360 is amended by adding new subsections to read:

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

18 (1) upon a first conviction, guilty of a class B misdemeanor
19 and may be sentenced to a definite term of imprisonment of not more than
20 90 days, or forfeiture of the person's fishing vessel, or both, and
21 shall be sentenced to a fine of not less than \$5,000 nor more than
22 \$10,000 and loss of commercial fishing privileges for a period of one
23 year after the date of conviction;

24 (2) upon a second conviction, guilty of a class A misdemeanor
25 and may be sentenced to a definite term of imprisonment of not more than
26 one year, and shall be sentenced to a fine of not less than \$10,000 nor
27 more than \$20,000, forfeiture of the person's fishing vessel, and loss
28 of commercial fishing privileges for a period of two years after the
29 date of conviction;

1 (3) upon a third or subsequent conviction, guilty of a class
2 A misdemeanor and may be sentenced to a definite term of imprisonment of
3 not more than one year, and shall be sentenced to a fine of not less
4 than \$20,000 nor more than \$50,000, forfeiture of the person's fishing
5 vessel, and loss of commercial fishing privileges for a period of five
6 years after the date of conviction.

7 (h) A person convicted of violating the provisions of AS 16.43.-
8 140(a) forfeits the value of the fishery resources found on board the
9 person's vessel at the time of the violation.

10 * Sec. 6. AS 34.35 is amended by adding a new section to read:

11 ARTICLE 7A. FISHERMEN'S LIEN.

12 Sec. 34.35.391. FISHERMEN'S LIEN. (a) A person who sells fish to
13 a fish processor as defined in AS 16.10.296, or to a primary fish buyer
14 as defined in AS 16.10.296, or to a cooperative corporation organized
15 under AS 10.15, and receives a fish ticket or a record of purchase as
16 described in AS 16.05.690 has a lien upon the property of the fish
17 processor, primary fish buyer, or cooperative corporation for the value
18 of the fish.

19 (b) A person who claims the benefit of this section shall, within
20 90 days of the date the fish are sold, file a claim of lien in the
21 recorder's office of the recording district where the fish were sold.

22 (c) The lien provided in this section is preferred, prior, and
23 superior to a mortgage, attachment, claim, or demand made or filed in
24 the recording district in which the property is located after the date
25 on which the fish are delivered to the buyer of the fish.

26 * Sec. 7. This Act takes effect immediately in accordance with AS 01.10.-
27 070(c).