

S B

164

Date of 5-DAY NOTICE 3/23/89
IN ACCORDANCE WITH UNIFORM RULE 23

U

FURTHER FINANCE

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 4/21/89

2/8/89

Mr. President:

Resources

Committee considered SB 164

additional penalties for violation of commercial fishing laws and
forfeiture of limited entry permits and to transfer of limited entry permits
to avoid forfeiture; efd

and recommended:

- replace with CS SB 164 (Resources) same title
- attached amendment(s) and new title
- _____ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

FISCAL NOTE(S) attached ^{Commerce, Fish & Game} zero fiscal impact
 appropriation no FN attached Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Reik Hallford
Curtis Sturgis
Al Glendon
Paul C. Hauff
John

Butter Johnson ^{do pass}
 Chairman signature and recommendation

Committee backup attached

... of ...

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Penalties for Violation of
Commercial Fishery Laws
 Sponsor: Zharoff
 Requestor: _____

Agency Affected: Fish and Game
 BRU: Commercial Fisheries
 Components: Commercial Fisheries
Special Projects

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by Robert C. Clasby Phone: 465-4210
 Division: Commercial Fisheries Date: 2/13/89
 Approved by Commissioner: Armenakis P. Poulos Date: 2/14/89
 Agency: Fish and Game

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: 4/22/89 Agency Affected: Commerce & Econ. Dev.
 Title: An Act relating to additional penalties for violation of commercial fishing laws BRU: Investments
 Sponsor: Zharoff Components: _____
 Requestor: Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Martin J. Richard, Director Phone: 465-2510
 Division: Investments Date: 12/11/89
 Approved by Commissioner: Larry Mercurieff Date: 12/12/89
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

COMPARISONS OF HB-201, SB-164, and CFEC draft

I will compare the three proposed amendments of penalties for commercial fishing violations by giving the proposals of each draft. Analysis will follow.

1. Additional penalty after 1st or 2nd conviction:

A. CURRENT LAW

MAY suspend c.f. license and right to obtain CFEC permit for a period not more than one year. or

MAY suspend 1 or more CFEC permits and right to obtain c.f. license for not more than one year.

B. HB-201

No changes proposed.

C. SB-164

Same as current; only difference is that penalties have been specified as 2 classes: with or without permits.

D. CFEC PROPOSAL

MAY suspend any or all of a person's c.f. privileges for not more than one year (basically same as current)

2. Additional penalty after 3rd or subsequent conviction:

A. CURRENT LAW

SHALL suspend c.f. license and right to obtain CFEC permit for not more than 3 years. or

SHALL suspend 1 or more CFEC permits and right to obtain c.f. license for not more than 3 years.

B. HB-201

No changes proposed.

C. SB-164

SHALL FORFEIT all CFEC permits. or

SHALL suspend c.f. license and right to obtain permit for not more than 3 years.

D. CFEC PROPOSAL

SHALL suspend all c.f. privileges for not more than 3 years.

3. Regarding transfer or sale of permit during proceedings or suspension.

A. CURRENT LAW

During suspension permit card may not be issued nor may permit be transferred or sold.

B. HB-201

1. During proceedings against permit holder, permit may not be permanently transferred unless allowed by the court.

2. During suspension, a permit card may not be issued to permit holder and permit holder's permit may not be sold or transferred.

C. SB-164

Application to transfer a permit under 16.43.170 must be accompanied by an affidavit that the transfer is not made for the purpose of avoiding forfeiture of the permit. If the permit is transferred to avoid forfeiture, the transfer is void and the permit subject to forfeiture. It is prima facie evidence of intent to avoid forfeiture if proceedings in which the permit may be forfeited are pending against the transferor.

D. CFEC PROPOSAL

A permit subject to possible suspension by the court under (a) or (b) of this section may not be permanently transferred by the person charged except on order of the court.

4. Definitions. The only definition which differs is c.f. privileges.

A. CURRENT: Not defined.

B. HB-201: Privilege of participating in an activity for which a c.f. license is required and the privilege of obtaining a c.f. license.

C. SB-164: Privilege of participating in an activity for which a c.f. license is required.

D. CFEC PROPOSAL: includes a c.f. license, the ability to obtain a c.f. license, a limited entry permit, and the ability to obtain a limited entry permit.

5. Other differences.

SB-164 also addresses the disposition of a CFEC permit that has been forfeited.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

March 20, 1989

The Honorable Bettye Fahrenkamp, Chair
Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Re: SB 164

Dear Senator Fahrenkamp:

We have reviewed Senate Bill ("SB") 164, relating to "additional penalties for violation of commercial fishing laws and forfeiture of limited entry permits and to transfer of limited entry permits to avoid forfeiture," and would like to bring a few matters to your attention.

First, under section 1, substantially different penalties would apply depending on whether the person held a limited entry permit at the time the violation occurred. If, as a policy matter, it is believed desirable to have different penalties apply based on that distinction, it would be helpful to have the record reflect the reasons such a distinction was made. For example, why should a permit holder, upon a first or second conviction, not have the person's right to obtain a limited entry permit suspended while a person not holding a limited entry permit could have that right suspended? It would be helpful if, in the legislative record, there is some justification for this disparity of treatment if, as a policy matter, it is believed that such a disparity is appropriate.

Second, under section 1, AS 16.05.710(a) would be repealed and reenacted to apply to "[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." Proposed AS 16.05.710(a)(1)(A) and (B) and (2)(A) and (B), on the other hand, address convictions "for violating a commercial fishing statute or regulation." This might lead to some confusion because the language is not as explicit as that used earlier in the section. To clear up any confusion, the phrase "violating a commercial fishing statute or regulation" used in subsections (1)(A)

The Honorable Bettye Fahrenkamp

March 20, 1989
Page 2

and (B) and (2)(A) and (2) could be replaced by the phrase "such a violation," which would refer back to the earlier reference to "a misdemeanor for violating AS 16.05.440 -- 16.05.690 or a federal or state commercial fishing statute or regulation."

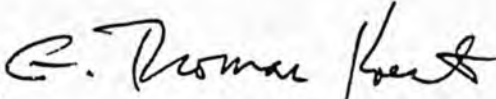
Finally, in section 6, the proposed new subsection (f) to be added to AS 16.43.170 includes the following sentence: "A person who falsifies an affidavit under this subsection is guilty of perjury under AS 11.56.210." It is a common practice in the state for notaries not to place a person under oath before signing an affidavit. Accordingly, the appropriate reference should be to unsworn falsification under AS 11.56.210, not perjury under AS 11.56.200.

We hope you find these comments helpful. If we can provide any additional information, please contact us at your convenience.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:


G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Senator Zharoff
Representative Davidson
Representative Menard
Representative Foster

Bob Evans
Assistant Chief of Staff
Legislative Liaison
Office of the Governor

Bruce Twomley, Chairman
Commercial Fisheries Entry Commission



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259


DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLANDS • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

TO: Senator Bettye Fahrenkamp
Chair - Senate Resources Committee

FROM: Senator Fred F. Zharoff 

DATE: March 6, 1989

RE: CS For Senate Bill 164 - "An Act relating to additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear, forfeiture of limited entry permits, and transfer of limited entry permits; and providing for an effective date."

I request the Senate Resources Committee to consider CSSB 164 in place of SB 164. The attached draft committee substitute corrects the problems noted in the Department of Commerce & Economic Development's position paper, also attached.

CSSB 164 is designed to solve several problems with regard to the enforcement of Alaska's commercial fishing laws.

-- It strengthens the penalties for commercial fishing violations by requiring the permanent forfeiture of all limited entry permits, rather than three year suspension, upon an individual's third conviction.

-- It closes a loophole in the present law by preventing an individual from legally transferring their permit or permits to avoid suspension or forfeiture.

-- It defines "commercial fishing privilege". Current law provides for the suspension of commercial fishing privileges, but does not define them.

More and more commercial fishermen tell me they feel they are forced to break the law in order to make a season because everyone else is doing it. This situation will only get worse until the economic risk associated with violating the law is greater than the economic reward. The permanent forfeiture of limited entry permits is the most effective way to remedy this situation.

CSSB 164 provides for forfeited permits to be, essentially, retired from the fishery. The number of permits issued in almost all fisheries in Alaska either meets or exceeds the optimum number. This feature will help stabilize participation in the fisheries.

The main part of the bill is the forfeiture provision in Sec. 1. The remaining sections of the bill close loopholes and clarify the enforcement of

the present law (Sec. 2, 3, 4, 8) and specify what is to happen to permits that are forfeited (Sec. 5, 6, 9).

The following backup information is attached:

1. Sectional analysis.
2. Position paper and fiscal note from the Department of Commerce and Economic Development.
3. Bill analysis prepared by the Department of Fish and Game.
4. Memorandum from Mr. David Ingram, Commercial Fisheries Entry Commission hearing officer, explaining the amendments that are needed for the present statute.
5. Attorney General's opinion, dated Feb. 7, 1989, explaining why, under present law, the commission cannot prevent individuals from transferring permits to avoid suspension.
6. Article from the Bristol BayTimes, July 8, 1988.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILLIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

SECTIONAL ANALYSIS

CS For Senate Bill 61 -- "An Act relating to additional penalties for violation of commercial fishing laws and for the theft of commercial fishing gear, forfeiture of limited entry permits, and transfer of limited entry permits; and providing for an effective date."

SECTION 1

Rewrites 16.05.710(a) to provide for the forfeiture of limited entry permits upon an individual's third conviction for the violation of commercial fishing laws.

SECTION 2

Clarifies the language in the existing statute.

SECTION 3

Prevents an individual from transferring a permit to avoid forfeiture or suspension.

SECTION 4

Redefines "commercial fishing license" to include a limited entry permit. Adds new definitions of "commercial fishing privilege" and "commercial fishing statute or regulation".

SECTION 5

Requires forfeited limited entry permits to be returned to the Commercial Fisheries Entry Commission, unless they are being used as security for a loan.

SECTION 6

Directs the Department of Commerce and Economic Development to sell forfeited permits that have been used as security for a loan and use the proceeds to pay the debt, with the excess deposited in the general fund. Prohibits the department from selling the permits to individuals who have either forfeited permits or have them under suspension.

SECTION 7

Prevents an individual from holding a permit if their permits have already been forfeited or if their permits are under a court-ordered suspension.

SECTION 8

voids the transfer of a limited entry permit if it was done in violation of a forfeiture or suspension order.

SECTION 9

Describes the procedures the Alaska Commercial Fishing and Agriculture Bank shall follow if a forfeited permit -- used as collateral for a CFAB loan -- is returned.

SECTION 10

Makes clear that the penalties in the bill will not apply to pending cases. They will apply to crimes committed after the effective date of this act.

SECTION 11

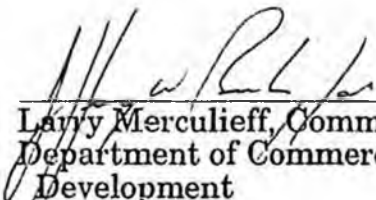
Immediate effective date.

SB 164: "An Act relating to additional penalties for violation of commercial fishing laws and forfeiture of limited entry permits and the transfer of limited entry permits to avoid forfeiture; and providing for an effective date."

This legislation stipulates penalties that a court may impose upon a person convicted of violating federal or state commercial fishing statutes or regulations. Existing statute allows the court to suspend a person's limited entry permits and licenses for up to three years. This legislation would require the forfeiture of all persons' limited entry permits upon third or subsequent convictions. This legislation also contains provisions aimed at preventing a person from transferring a limited entry permit to avoid forfeiture. If, however, an affected permit is securing a loan through our agency or the Commercial Fishing and Agriculture Bank, then that permit may be transferred after a foreclosure action has been completed.

In addition, SB 164 states that the department may not sell an entry permit obtained in a foreclosure action to a person who has forfeited an interim use or entry permit as a result of this legislation. It is anticipated that this provision will have minimal impact on our department's ability to promptly advertise and sell permits, as required under AS 16.10.337.

While the Department of Commerce and Economic Development is neutral on this legislation, there is one potential problem area that should be noted. AS 16.10.337 contains a requirement that all proceeds from the sale of a permit in excess of the amount needed to retire the debt and cover expenses go back to the borrower. As a result, a person who has a loan against a limited entry permit may be able to recoup a portion of his/her investment in the permit in spite of a forfeiture action, whereas, a similar person without a loan would forfeit his/her entire investment.


Larry Mercurieff, Commissioner
Department of Commerce and Economic
Development

Date: 2/14/88

LM/GW/dgl3353D
021689a

FISCAL NOTE

REQUEST:

Revision Date: 2/8/89
 Title: An Act relating to additional penalties for violation of commercial fishing laws
 Sponsor: Zharoff
 Requestor: Resources
 Agency Affected: Commerce & Econ. Dev.
 BR: Investments
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Martin J. Richard, Director Phone: 465-2510
 Division: Investments Date: 2/16/89
 Approved by Commissioner: Larry Merculieff Date: 2/10/89
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)



3.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Commercial Fisheries	BILL NUMBER SB 164	SPONSOR Zharoff
SHORT TITLE OF BILL Penalties for Violation of Commercial Fishery Laws			
DEPARTMENT POSITION Neutral			
PREPARED BY Robert Clabv	DATE 2/10/89	COMMISSIONER'S SIGNATURE <i>Arman H. Deluy</i>	DATE 2/14/89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Public Safety Law Commercial Fisheries	CONSTITUENT GROUP(S) AFFECTED BY BILL Commercial Fishermen
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Unknown

ANALYSIS OF BILL/PROGRAM EFFECTS

Passage of this bill should have no direct affects on the division's programs.

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

4.

MEMORANDUM STATE OF ALASKA

TO: Trooper Joe D'Amico
S.I.S.
Division of Fish and
Wildlife Protection
Dept. of Public Safety
5700 E. Tudor Road
Anchorage, AK 99507

DATE: February 8, 1989

FILE NO:

TELEPHONE NO:

SUBJECT: Problems found
in AS 16.05.710

FROM: David A. Ingram *DAL*
Managing Hearing Officer
Commercial Fisheries
Entry Commission
P.O. Box KB
Juneau, AK 99811

As requested by Lt. Mills, I have put together a summary of the problems that we have identified with AS 16.05.710 (Attachment 1 hereto); the statute enacted last year to allow a court to suspend fishing privileges for simple fishing violations as opposed to violations of the Limited Entry Act, AS 16.43. I have also attached draft revisions of the statute for your discussion.

We (meaning F&WP and CFEC) experienced problems with AS 16.05.710 shortly after it was enacted last year. Trooper Dick Dykema at your King Salmon office cited Lowell Stambaugh for a fishing violation, and shortly thereafter, Stambaugh filed a request with CFEC to permanently transfer his entry permit to his father. CFEC refused to complete the transfer pending the outcome of Stambaugh's trial. Stambaugh's father went to court here in Juneau and obtained a November 18 order (Attachment 2 hereto) to the effect that CFEC has no authority under AS 16.05.710 or any other statute to suspend the transferability of an entry permit pending the outcome of a trial. Clearly, the absence of a provision granting such authority was either an oversight by the Legislature, or it believed we had the authority elsewhere. Unless permits are nontransferable pending the outcome of a trial, we can expect many others to get rid of them in advance of trial (to a relative as Stambaugh did, to a friend, to a spouse, etc.) and defeat the intent of the statute.

The court was clearly correct in ruling that the current version of AS 16.05.710 does not expressly grant CFEC the authority to suspend the transferability of a permit pending trial. I have drafted a proposed revision of the statute (Attachment 3) incorporating a provision that creates such a suspension. This particular problem is the most glaring deficiency in the existing statute. Since other difficulties have been experienced and others are foreseeable, however, I have proposed other changes to the statute as well. I have also attached a draft of the more comprehensive changes (Attachment 4). Those changes and the reasons therefor are as follows:

FILE

AS 16.05.710(a) Suspension of Fishing Privileges.

As it currently exists, (a) sets up a conflict with (b) that a court is likely to find confusing. As you'll note, (a) lists specific fishing privileges that can be suspended (a commercial fishing license, ability to obtain a commercial fishing license, a limited entry permit, and the ability to obtain a limited entry permit). In (b), however, reference is made to the suspension of "fishing privileges" without stating what they are. A court might well conclude that the fishing privileges in (b) must be something different than in (a) because of the different language used. My solution has been to make the language in (a) comport with that in (b), i.e., consistently refer to the suspension of "fishing privileges" and define those privileges as being the person's licenses and permits and their ability to obtain other licenses and permits.

Another problem with (a) is that it's vague in referring to what laws are involved. It says that the suspensions can be imposed due to violations of "AS 16.05.440 - AS 16.05.690 or a federal or state commercial fishing statute or regulation." The main problem with this language is that "commercial fishing statute or regulation" is vague and probably too broad. My proposal attempts to cure those problems by clarifying, in (d), what laws are involved and what is meant by a "commercial fishing statute or regulation."

Another problem with (a) as it currently exists is the "either/or" alternatives available to a judge, neither of which are effective. If the judge suspends the person's "commercial fishing license and the right to obtain a limited entry permit," for instance, it may appear that the person is precluded from fishing, but that's not true. Nowhere does it say he can't obtain another commercial license, but for that matter, he may not need one. If he already has a limited entry permit, he can use it as a crewman's license to fish in any fishery and can still use it to fish as a permit holder in the fishery for which the permit was issued. See AS 16.05.480. Conversely, if the court selected the other alternative and suspended "one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license" the person still isn't precluded from obtaining another limited entry permit that could be used in the fishery for which it was issued and could also be used to crew in any fishery. My solution has been to do away with the "either/or" approach and, instead, give the judge the flexibility to penalize the offender just a little (by suspending only one permit, perhaps) or a lot (by suspending all fishing privileges, i.e., all commercial fishing licenses

and permits he may hold as well as his ability to obtain other commercial fishing licenses and permits. This is done by simply referring to "fishing privileges)" as the Legislature has already done in (b) and then defining what is encompassed by that term in (d).

AS 16.05.710(b)

Since it's apparent that the Legislature intended to severely punish one who steals another's fishing gear, I have added language that makes it clear that all of a person's commercial fishing privileges are suspended.

AS 16.05.710(c)

This is the most crucial part of the revision. I have built in the language necessary to make an entry permit nontransferable pending the outcome of the trial unless the court orders that it may be transferred. This is absolutely necessary to avoid the reoccurrence of the incident last fall in which CFEC was ordered to allow a defendant to transfer away his permit prior to trial. I have also made the nontransferability provision applicable to those permits facing possible suspension under (b) based upon a theft conviction.

I drafted the nontransferability provision as I did, giving the court the ability to order CFEC to allow a transfer, in order to protect an accused against stalling tactics by the state and to give the court the discretion to allow a transfer when it's clear to the court that a suspension will not be part of a sentence.

AS 16.05.710(d)

In this definition section, I have included those definitions referred to above and have tightened up others.

I trust that you will find these changes suitable to enforcement needs.

DAI:dan

cc:

Bob Evans
Lt. Rod Mills

Current Version

Sec. 16.05.710. Suspension of commercial license and entry permit. (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 suspend, 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.

(b) Upon a first conviction of a person for a violation of AS 11.46.120 — 11.46.130 in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for one year. Upon a second or subsequent conviction, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for two years.

(c) During the period for which a limited entry permit is suspended under (a) of this section a permit card may not be issued and the permit may not be transferred or sold.

(d) In this section

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

(2) "Limited entry permit" includes an interim use permit. (§ 11 art III ch 94 SLA 1959; am § 1 ch 112 SLA 1961; am § 1 ch 75 SLA 1966; am § 3 ch 73 SLA 1986; am §§ 1, 2 ch 46 SLA 1988)

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 ROSS GLEN STAMBAUGH,)
4 Plaintiff,)
5 v.)
6 COMMERCIAL FISHERIES ENTRY)
7 COMMISSION, STATE OF ALASKA,)
8 Defendant.)

FILED IN THE TRIAL COURTS
STATE OF ALASKA - JUD. DISTRICT
AT

NOV 18 1988

By _____ PG Debut

No. 1JU-88-1839 Civil

9
10 PRELIMINARY INJUNCTION

11 Plaintiff has moved for issuance of a temporary
12 restraining order. After notice, both sides were heard. The
13 CFEC, through counsel, has opposed the motion.

14 The court has considered the brief of plaintiff, the
15 evidence, and the arguments of counsel. The court finds that
16 the requirements for preliminary injunctive relief have been
17 fulfilled: AS 16.05.710 allows no other conclusion.

18 It is hereby ordered that the CFEC is enjoined from
19 suspending approval of the license transfer application
20 regarding Limited Entry no. S03T 55709U solely on the basis of
21 the proposed Transferor's pending criminal charges.

22 The CFEC is hereby ordered to process the application
23 in accordance with AS 16.43.170(b) and 20 AAC 05.1700 et seq.,
24 without regard to the possible consequences of the criminal
25 action.

This is not a mandatory injunction, and does not

1 compel transfer of the permit in question. It merely restrains
2 suspension of transfer proceedings because criminal charges are
3 pending against the transferor. Therefore, for example, if the
4 CFEC moves under AS 16.43.960, it clearly has the authority to
5 suspend the permit holder's ability to transfer the permit upon
6 issuance of a show cause order. AS 16.43.960(b)(5). There may
7 also be other bases for such an action, not addressed here.
8 This court rules only that the CFEC may not suspend transfer
9 because a charge is pending against the transferor. AS
10 16.05.710.

11 No bond is required.

12 IT IS SO ORDERED.

13 Done at Juneau, Alaska this 18th day of November, 1988.

14 *Walter L. Carpenetti*

15 WALTER L. CARPENETTI
16 Superior Court Judge

17
18 CERTIFICATION

19 The undersigned certifies that on the 18th day of
20 November, 1988, a true copy of this
21 document was served on the following attorneys:
STEVEN MARKS; GARY AMENDOLA

22 BY *[Signature]*

23
24
25
Attachment #2
(2 of 2)

DRAFT

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to commercial fishing violations;
and providing for an effective date."

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

*Section 1. AS 16.05.710(c) is amended to read:

(c) A limited entry permit subject to possible suspension by the court under (a) or (b) of this section may not be permanently transferred by the person charged except upon order of the court. During the period for which a limited entry permit is suspended under (a) or (b) of this section, a permit card may not be issued and the permit may not be transferred.

Section 2. This Act takes effect immediately under AS 01.10.070(c).

Attachment #3

DRAFT

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to commercial fishing violations;
and providing for an effective date."

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

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

(a) Upon a person's first or second conviction of a misdemeanor for violating a federal or state commercial fishing statute or regulation, the court may, in addition to other penalties imposed by law, suspend any or all of the person's commercial fishing privileges for a period of not more than one year. Upon a third or subsequent conviction, the court shall, in addition to other penalties imposed by law, suspend all of the person's commercial fishing privileges for a period of not more than three years.

*Section 2. AS 16.05.710(b) is amended to read:

(b) Upon a first conviction of a person for a violation of AS 11.46.120 - 11.46.130 in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, order a suspension of all of the person's commercial fishing privileges for one year. Upon a second or subsequent conviction, the court shall, in addition to the penalty imposed by law, order a suspension of all of the person's commercial fishing privileges for two years.

Attachment #4
(1073)

*Section 3. AS 16.05.710(c) is amended to read:

(c) A limited entry permit subject to possible suspension by the court under (a) or (b) of this section may not be permanently transferred by the person charged except upon order of the court.

During the period for which a limited entry permit is suspended under (a) or (b) of this section, a permit card may not be issued and the permit may not be transferred.

*Section 4. AS 16.05.710(d) is repealed and reenacted to read:

(d) In this section:

- (1) "commercial fishing license" includes a crewmember license;
- (2) "limited entry permit" includes entry permits and interim-use permits issued under AS 16.43;
- (3) "commercial fishing statute or regulation" includes those statutes found in AS 16.05, AS 16.10, and elsewhere in the Alaska Statutes and those regulations adopted by the Board of Fisheries and the commissioner of the Department of Fish and Game that regulate the conduct of those engaged in commercial fishing activities by establishing requirements relating to licenses and permits; catch records and reports; size, nature and use of fishing vessels, sites and gear; time, place and method of taking fishery resources; possession, transportation, sale, barter, and waste of fishery resources; and other aspects of commercial fishing.

Attachment #4
(2 of 3)

(4) 'commercial fishing privileges' includes a commercial fishing license, the ability to obtain a commercial fishing license, a limited entry permit, and the ability to obtain a limited entry permit.

*Section 5. This Act takes effect immediately under AS 01.10.070(c).

Attachment #4
(3 of 3)

Many fishing violators nearing limit of law

by Andrew deValpine
Staff Writer

Close to one-third of the fishermen arrested for fishing violations so far are repeat offenders; one more violation and they could lose their permits, according to the Alaska Division of Fish and Wildlife Protection.

Three violations in 10 years is the limit before the permit is taken.

"There's real potential," said protection officer Lt. Tom Schwantes. "Ten years is a long time."

Almost 30 boats have been cited from the Egegik district, mostly for fishing over the district's lines. All but one have pleaded no contest and been fined five to \$10,000 plus forfeiting fish.

Besides losing permits, three-time violators will be fined three times the value of the product on their boat in addition to a \$15,000 fine. Schwantes thinks the stiff penalties are keeping violations down, though his officers have been busy. Especially in Egegik.

"We started our first big push on (June) 20th. We made our first cases on the 21st," Schwantes said. Most offenses were

for fishing over the district's boundary line some up to one mile.

"They just get to fighting on the line and leap frogging," Schwantes said of the more than 700 boats competing for salmon there. As the tides ebb and flow, Protection is going from the north to south of the bay. But because of a manpower and equipment shortage, enforcement officers can't be on both ends of the line at the same time, Schwantes said; fishing is already frenzied by the time enforcement arrives since it usually takes an hour and a half to go from the north end of the line to the south.

Other districts in Bristol Bay have been relatively quiet, but none match the effort in Egegik. Ugashik, with 50 boats maximum, has only had one opening, and that was a "clean" one, Schwantes said. One officer characterized the season here as a "real gentleman's fishery."

In the Naknek/Kvichak area, where more than 600 boats have registered to fish, the biggest problems have been with transfers and registration. Nor has the Nushagak caused problems. "It doesn't seem to be nearly as aggressive as Egegik," he said.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 485-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

Revised

SECTIONAL ANALYSIS

CS For Senate Bill 164 -- "An Act relating to additional penalties for violation of commercial fishing laws and for the theft of commercial fishing gear, forfeiture of limited entry permits, and transfer of limited entry permits; and providing for an effective date."

~~SECTION 1~~

Deleted — Rewrites 16.05.710(a) to provide for the forfeiture of limited entry permits upon an individual's third conviction for the violation of commercial fishing laws.

SECTION 1

Clarifies the language in the existing statute.

SECTION 2

Prevents an individual from transferring a permit to avoid forfeiture or suspension by making the transfer subject to an order of the court.

SECTION 3

Redefines "commercial fishing license" to include a limited entry permit. Adds new definitions of "commercial fishing privilege" and "commercial fishing statute or regulation".

~~SECTION 5~~

Deleted — Requires forfeited limited entry permits to be returned to the Commercial Fisheries Entry Commission, unless they are being used as security for a loan.

Partially Deleted ~~SECTION 6~~

Deleted — Directs the Department of Commerce and Economic Development to sell forfeited permits that have been used as security for a loan and use the proceeds to pay the debt, with excess proceeds deposited in the general fund. Prohibits the department from selling the permits to individuals who have either forfeited permits or who have them under suspension.

SECTION 4

SECTION ~~4~~⁵

Prevents an individual from holding a permit if their permits ~~have already been forfeited or if their permits~~ are under a court-ordered suspension.

SECTION ~~5~~⁶

Voids the transfer of a limited entry permit if it was done in violation of a ~~forfeiture or~~ suspension order.

~~SECTION 9~~

Deleted ✓

Describes the procedures the Alaska Commercial Fishing and Agriculture Bank shall follow if a forfeited permit -- used as collateral for a CFAB loan -- is returned to CFAB. Excess funds from CFAB's sale of the permit shall be transmitted to the Commercial Fisheries Entry Commission for deposit in the general fund.

SECTION ~~10~~⁷

Makes clear that the penalties in the bill will not apply to pending cases. They will apply to crimes committed after the effective date of this act.

SECTION ~~11~~⁸

Immediate effective date.

Original sponsor: Zharoff

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 164 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to additional penalties for viola-
7 tion of commercial fishing laws and for theft of
8 commercial fishing gear, forfeiture of limited entry
9 permits, and transfer of limited entry permits; and
10 providing for an effective date."

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

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

13 Deleted (a) A person convicted of a misdemeanor for violating a state
14 commercial fishing statute or regulation is, in addition to other
15 penalties provided by law, subject to the following penalties:

16 (1) if the person held a limited entry permit at the time
17 the violation occurred, the court

18 (A) upon the person's first or second conviction for
19 violating a federal or state commercial fishing statute or regu-
20 lation while holding a limited entry permit, may suspend, for a
21 period of not more than one year, any or all of the person's
22 commercial fishing privileges; and

23 (B) upon the person's third or subsequent conviction
24 for violating a federal or state commercial fishing statute or
25 regulation while holding a limited entry permit, shall forfeit
26 [all] the person's limited entry permits and shall suspend the
27 person's commercial fishing privileges for a period of not more
28 than three years; or

29 (2) if the person did not hold a limited entry permit at

1 the time the violation occurred, the court

2 (A) upon the person's first or second conviction for
3 violating a federal or state commercial fishing statute or regu-
4 lation while not holding a limited entry permit, may suspend, for
5 a period of not more than one year, any or all of the person's
6 commercial fishing privileges; and

7 (B) upon the person's third or subsequent conviction
8 for violating a federal or state commercial fishing statute or
9 regulation while not holding a limited entry permit, shall sus-
10 pend, for a period of not more than three years, the person's
11 commercial fishing privileges.

12 * ~~Sec. 2~~ AS 16.05.710(b) is amended to read:
13 ~~Sec. 1~~

14 (b) Upon a first conviction of a person for a violation of
15 AS 11.46.120 - 11.46.130 in which the property is commercial fishing
16 gear as defined in AS 16.43.990, the court shall, in addition to the
17 penalty imposed by law, suspend all [ORDER A SUSPENSION] of the per-
18 son's commercial fishing privileges for one year. Upon a second or
19 subsequent conviction, the court shall, in addition to the penalty
20 imposed by law, suspend all [ORDER A SUSPENSION] of the person's
21 commercial fishing privileges for two years.

22 * Sec. ~~1~~² AS 16.05.710(c) is amended to read:

23 (c) If proceedings in which a limited entry permit may be for-
24 feited or suspended under this section are pending against a permit
25 holder, the permit may not be permanently transferred, except upon the
26 order of the court in which the proceedings are pending, and a perma-
27 nent transfer of the permit, except upon the order of the court, is
28 void. During the period for which a limited entry permit or the
29 permit holder's privilege to hold a limited entry permit is suspended
under [(a) OF] this section, a permit card may not be issued to the

1 permit holder and the permit holder's permit may not be transferred or
2 sold.

3 * Sec. ~~4~~³ AS 16.05.710(d) is repealed and reenacted to read:

4 (d) In this section

5 (1) "commercial fishing license" means a limited entry
6 permit or a crew member license;

7 (2) "commercial fishing privilege" means the privilege of
8 participating in an activity for which a commercial fishing license is
9 required and the privilege of obtaining and holding a commercial
10 fishing license;

11 (3) "commercial fishing statute or regulation" means a
12 statute or regulation that regulates the conduct of a person engaged
13 in commercial fishing activities by establishing requirements relat-
14 ing to fishing licenses and permits; catch records and reports; size,
15 nature, or use of fishing vessels, sites, and gear; time, place, or
16 manner of taking fishery resources; possession, transportation, sale,
17 barter, or waste of fishery resources; or other aspects of commercial
18 fishing;

19 (4) "limited entry permit" means an entry permit or an
20 interim use permit issued under AS 16.43.

21 * Sec. 5. AS 16.05.710 is amended by adding a new subsection to read:

22 Deleted - (e) A limited entry permit forfeited under this section must be
23 returned to the Alaska Commercial Fisheries Entry Commission. The
24 limited entry permit may not be reissued, unless the limited entry
25 permit is taken as security for a loan under AS 16.10.333 or AS 44.-
26 81.230 or the limited entry permit is for a fishery in which new
27 limited entry permits are being issued under AS 16.43.330. If the
28 limited entry permit forfeited under this section is taken as security
29 for a loan under

1 (1) AS 16.10.333, the limited entry permit must be trans-
2 ferred under AS 16.10.337; or

3 (2) AS 44.81.230, the limited entry permit must be trans-
4 ferred under AS 44.81.252.

5 Deleted * Sec. 6. AS 16.10.337 is amended by adding new subsections to read:

6 (e) An entry permit forfeited under AS 16.05.710 and available
7 for transfer under this section shall be offered to the commission, if
8 the permit is subject to a buy-back program under AS 16.43.290 -
9 16.43.330, at a price equal to the amount outstanding on the note plus
10 costs the department directly incurred in administering the loan. If
11 the commission does not exercise its right to purchase the permit
12 within 30 days after it receives the offer or if the permit is not
13 subject to a buy-back program under AS 16.43.290 - 16.43.330, the
14 department shall promptly advertise and sell the permit. If the
15 proceeds of the sale of a permit exceed the amount necessary to pay
16 the note in full, plus penalties, costs of administration of the note,
17 and attorney fees, the commissioner shall deposit the excess in the
18 general fund. Nothing in this subsection affects the right of the
19 commissioner to institute legal action for a deficiency resulting from
20 the sale of a permit forfeited under AS 16.05.710. In addition to a
21 deficiency, the debtor is liable for the costs of administering the
22 note and for costs and attorney fees.

23 Sec. 4 (e)(d) The department may not sell an entry permit under this
24 section to a person who has forfeited an interim-use or entry permit
25 under AS 16.05.710 or whose privilege to obtain or hold an entry
26 permit is suspended under AS 16.05.710.

27 * Sec. 5 AS 16.43.140 is amended by adding a new subsection to read:

28 (d) A person may not hold an interim-use or entry permit issued
29 or transferred under this chapter or transferred under AS 16.10.337 or

1 AS 44.81.250 or 44.81.252, if the person ~~has ever forfeited an interim~~
2 ~~in use or entry permit under AS 16.05.710 or the person~~ is subject to
3 a current order under AS 16.05.710 suspending the person's privilege
4 to obtain or hold an interim use or entry permit.

5 * Sec. ~~6~~ AS 16.43.170 is amended by adding a new subsection to read:

6 (f) The permanent transfer of an entry permit is void if pro-
7 ceedings in which the entry permit may be ~~forfeited or~~ suspended under
8 AS 16.05.710 are pending against the permit holder at the time of
9 transfer unless the transfer of the entry permit is ordered by the
10 court in which the proceedings are pending.

11 * Sec. 9. AS 44.81 is amended by adding a new section to read:

12 Sec. 44.81.252. TRANSFER OF ENTRY PERMITS AFTER FORFEITURE. (a)
13 Upon forfeiture under AS 16.05.710 of an entry permit that is taken as
14 security for a loan under AS 44.81.230, the bank shall offer the
15 commission a right of first refusal, if the permit is subject to a
16 buy-back program under AS 16.43.290 - 16.43.330, at a price equal to
17 the amount outstanding on the note plus costs the bank directly in-
18 curred in administering the loan.

19 (b) If the commission does not exercise its right of first
20 refusal within 30 days after it receives the offer, or if the permit
21 is not subject to a buy-back program under AS 16.43.290 - 16.43.330,
22 the bank shall promptly sell the permit to a qualified person, chosen
23 as provided in this subsection, who assumes the note subject to all
24 rights and liabilities of the original debtor. The commission shall
25 provide the bank with a list of persons chosen by lottery who qualify
26 as transferees of entry permits under AS 16.43 and regulations adopted
27 by the commission and who have met the residency and commercial fish-
28 ing participation requirements of AS 44.81.210(a)(20). The bank shall
29 then determine, in order of presentation, any remaining

1 qualifications. The bank shall allow the first applicant meeting all
2 qualifications to assume the note. If the commission is unable to
3 provide a list of one or more qualified persons within 15 days, or if
4 no person listed is determined by the bank to be qualified to assume
5 the note, the bank may sell the permit to an individual commercial
6 fisherman who has been a state resident for two years immediately
7 preceding the date of the sale.

8 (c) If the proceeds of the sale exceed the amount necessary to
9 pay the note in full, plus penalties, costs of administration of the
10 note, and attorney fees, the bank shall transmit the excess to the
11 commission for deposit in the general fund.

12 (d) Nothing in this section affects the right of the bank to
13 institute legal action for a deficiency resulting from the sale of a
14 permit forfeited under AS 16.05.710. In addition to a deficiency, the
15 debtor is liable for the costs of administering the note and for costs
16 and attorney fees.

17 * Sec. 10. The provisions of this Act are applicable to cases involving
18 a commercial fishing violation or theft of commercial fishing gear that
19 occurs on or after the effective date of this Act.

20 * Sec. N⁸. This Act takes effect immediately under AS 01.10.070(c).

6-0309E ✓
Utermohle
3/28/89

Original sponsor: Zharoff

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 164 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to additional penalties for viola-
7 tion of commercial fishing laws and for theft of
8 commercial fishing gear, forfeiture of limited entry
9 permits, and transfer of limited entry permits; and
10 providing for an effective date."

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

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

13 (a) A person convicted of a misdemeanor for violating a state
14 commercial fishing statute or regulation is, in addition to other
15 penalties provided by law, subject to the following penalties:

16 (1) if the person held a limited entry permit at the time
17 the violation occurred, the court

18 (A) upon the person's first or second conviction for
19 violating a federal or state commercial fishing statute or regu-
20 lation while holding a limited entry permit, may suspend, for a
21 period of not more than one year, any or all of the person's
22 commercial fishing privileges; and

23 (B) upon the person's third or subsequent conviction
24 for violating a federal or state commercial fishing statute or
25 regulation while holding a limited entry permit, shall forfeit
26 all the person's limited entry permits and shall suspend the
27 person's commercial fishing privileges for a period of not more
28 than three years; or

29 (2) if the person did not hold a limited entry permit at

1 the time the violation occurred, the court

2 (A) upon the person's first or second conviction for
3 violating a federal or state commercial fishing statute or regu-
4 lation while not holding a limited entry permit, may suspend, for
5 a period of not more than one year, any or all of the person's
6 commercial fishing privileges; and

7 (B) upon the person's third or subsequent conviction
8 for violating a federal or state commercial fishing statute or
9 regulation while not holding a limited entry permit, shall sus-
10 pend, for a period of not more than three years, the person's
11 commercial fishing privileges.

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

13 (b) Upon a first conviction of a person for a violation of
14 AS 11.46.120 - 11.46.130 in which the property is commercial fishing
15 gear as defined in AS 16.43.990, the court shall, in addition to the
16 penalty imposed by law, suspend all [ORDER A SUSPENSION] of the per-
17 son's commercial fishing privileges for one year. Upon a second or
18 subsequent conviction, the court shall, in addition to the penalty
19 imposed by law, suspend all [ORDER A SUSPENSION] of the person's
20 commercial fishing privileges for two years.

21 * Sec. 3. AS 16.05.710(c) is amended to read:

22 (c) If proceedings in which a limited entry permit may be for-
23 feited or suspended under this section are pending against a permit
24 holder, the permit may not be permanently transferred, except upon the
25 order of the court in which the proceedings are pending, and a perma-
26 nent transfer of the permit, except upon the order of the court, is
27 void. During the period for which a limited entry permit or the
28 permit holder's privilege to hold a limited entry permit is suspended
29 under [(a) OF] this section, a permit card may not be issued to the

1 permit holder and the permit holder's permit may not be transferred or
2 sold.

3 * Sec. 4. AS 16.05.710(d) is repealed and reenacted to read:

4 (d) In this section

5 (1) "commercial fishing license" means a limited entry
6 permit or a crew member license;

7 (2) "commercial fishing privilege" means the privilege of
8 participating in an activity for which a commercial fishing license is
9 required and the privilege of obtaining and holding a commercial
10 fishing license;

11 (3) "commercial fishing statute or regulation" means a
12 statute or regulation that regulates the conduct of a person engaged
13 in commercial fishing activities by establishing requirements relat-
14 ing to fishing licenses and permits; catch records and reports; size,
15 nature, or use of fishing vessels, sites, and gear; time, place, or
16 manner of taking fishery resources; possession, transportation, sale,
17 barter, or waste of fishery resources; or other aspects of commercial
18 fishing;

19 (4) "limited entry permit" means an entry permit or an
20 interim use permit issued under AS 16.43.

21 * Sec. 5. AS 16.05.710 is amended by adding a new subsection to read:

22 (e) A limited entry permit forfeited under this section must be
23 returned to the Alaska Commercial Fisheries Entry Commission. The
24 limited entry permit may not be reissued, unless the limited entry
25 permit is taken as security for a loan under AS 16.10.333 or AS 44.-
26 81.230 or the limited entry permit is for a fishery in which new
27 limited entry permits are being issued under AS 16.43.330. If the
28 limited entry permit forfeited under this section is taken as security
29 for a loan under

1 (1) AS 16.10.333, the limited entry permit must be trans-
2 ferred under AS 16.10.337; or

3 (2) AS 44.81.230, the limited entry permit must be trans-
4 ferred under AS 44.81.252.

5 * Sec. 6. AS 16.10.337 is amended by adding new subsections to read:

6 (e) An entry permit forfeited under AS 16.05.710 and available
7 for transfer under this section shall be offered to the commission, if
8 the permit is subject to a buy-back program under AS 16.43.290 -
9 16.43.330, at a price equal to the amount outstanding on the note plus
10 costs the department directly incurred in administering the loan. If
11 the commission does not exercise its right to purchase the permit
12 within 30 days after it receives the offer or if the permit is not
13 subject to a buy-back program under AS 16.43.290 - 16.43.330, the
14 department shall promptly advertise and sell the permit. If the
15 proceeds of the sale of a permit exceed the amount necessary to pay
16 the note in full, plus penalties, costs of administration of the note,
17 and attorney fees, the commissioner shall deposit the excess in the
18 general fund. Nothing in this subsection affects the right of the
19 commissioner to institute legal action for a deficiency resulting from
20 the sale of a permit forfeited under AS 16.05.710. In addition to a
21 deficiency, the debtor is liable for the costs of administering the
22 note and for costs and attorney fees.

23 (f) The department may not sell an entry permit under this
24 section to a person who has forfeited an interim-use or entry permit
25 under AS 16.05.710 or whose privilege to obtain or hold an entry
26 permit is suspended under AS 16.05.710.

27 * Sec. 7. AS 16.43.140 is amended by adding a new subsection to read:

28 (d) A person may not hold an interim-use or entry permit issued
29 or transferred under this chapter or transferred under AS 16.10.337 or

1 AS 44.81.250 or 44.81.252, if the person has ever forfeited an inter-
2 im-use or entry permit under AS 16.05.710 or the person is subject to
3 a current order under AS 16.05.710 suspending the person's privilege
4 to obtain or hold an interim use or entry permit.

5 * Sec. 8. AS 16.43.170 is amended by adding a new subsection to read:

6 (f) The permanent transfer of an entry permit is void if pro-
7 ceedings in which the entry permit may be forfeited or suspended under
8 AS 16.05.710 are pending against the permit holder at the time of
9 transfer unless the transfer of the entry permit is ordered by the
10 court in which the proceedings are pending.

11 * Sec. 9. AS 44.81 is amended by adding a new section to read:

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17 the amount outstanding on the note plus costs the bank directly in-
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19 (b) If the commission does not exercise its right of first
20 refusal within 30 days after it receives the offer, or if the permit
21 is not subject to a buy-back program under AS 16.43.290 - 16.43.330,
22 the bank shall promptly sell the permit to a qualified person, chosen
23 as provided in this subsection, who assumes the note subject to all
24 rights and liabilities of the original debtor. The commission shall
25 provide the bank with a list of persons chosen by lottery who qualify
26 as transferees of entry permits under AS 16.43 and regulations adopted
27 by the commission and who have met the residency and commercial fish-
28 ing participation requirements of AS 44.81.210(a)(20). The bank shall
29 then determine, in order of presentation, any remaining

1 qualifications. The bank shall allow the first applicant meeting all
2 qualifications to assume the note. If the commission is unable to
3 provide a list of one or more qualified persons within 15 days, or if
4 no person listed is determined by the bank to be qualified to assume
5 the note, the bank may sell the permit to an individual commercial
6 fisherman who has been a state resident for two years immediately
7 preceding the date of the sale.

8 (c) If the proceeds of the sale exceed the amount necessary to
9 pay the note in full, plus penalties, costs of administration of the
10 note, and attorney fees, the bank shall transmit the excess to the
11 commission for deposit in the general fund.

12 (d) Nothing in this section affects the right of the bank to
13 institute legal action for a deficiency resulting from the sale of a
14 permit forfeited under AS 16.05.710. In addition to a deficiency, the
15 debtor is liable for the costs of administering the note and for costs
16 and attorney fees.

17 * Sec. 10. The provisions of this Act are applicable to cases involving
18 a commercial fishing violation or theft of commercial fishing gear that
19 occurs on or after the effective date of this Act.

20 * Sec. 11. This Act takes effect immediately under AS 01.10.070(c).
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29

Original sponsor: Zharoff

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 164 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to additional penalties for viola-
7 tion of commercial fishing laws and for theft of
8 commercial fishing gear and to transfer of limited
9 entry permits; and providing for an effective date."

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

11 * Section 1. AS 16.05.710(b) is amended to read:

12 (b) Upon a first conviction of a person for a violation of
13 AS 11.46.120 - 11.46.130 in which the property is commercial fishing
14 gear as defined in AS 16.43.990, the court shall, in addition to the
15 penalty imposed by law, suspend all [ORDER A SUSPENSION] of the per-
16 son's commercial fishing privileges for one year. Upon a second or
17 subsequent conviction, the court shall, in addition to the penalty
18 imposed by law, suspend all [ORDER A SUSPENSION] of the person's
19 commercial fishing privileges for two years.

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

21 (c) If proceedings in which a limited entry permit may be sus-
22 pending under this section are pending against a person, the permit may
23 not be permanently transferred, except upon the order of the court in
24 which the proceedings are pending, and a permanent transfer of the
25 permit, except upon the order of the court, is void. During the
26 period for which a person's limited entry permit or a person's privi-
27 lege to obtain a limited entry permit is suspended under [(a) OF] this
28 section, a permit card may not be issued to the person and the per-
29 son's permit may not be transferred or sold.

1 * Sec. 3. AS 16.05.710(d) is repealed and reenacted to read:

2 (d) In this section

3 (1) "commercial fishing license" means a limited entry
4 permit or a crew member license;

5 (2) "commercial fishing privilege" means the privilege of
6 participating in an activity for which a commercial fishing license is
7 required and the privilege of obtaining and holding a commercial
8 fishing license;

9 (3) "commercial fishing statute or regulation" means a
10 statute or regulation that regulates the conduct of a person engaged
11 in commercial fishing activities by establishing requirements relat-
12 ing to fishing licenses and permits; catch records and reports; size,
13 nature, or use of fishing vessels, sites, and gear; time, place, or
14 manner of taking fishery resources; possession, transportation, sale,
15 barter, or waste of fishery resources; or other aspects of commercial
16 fishing;

17 (4) "limited entry permit" means an entry permit or an
18 interim-use permit issued under AS 16.43.

19 * Sec. 4. AS 16.10.337 is amended by adding a new subsection to read:

20 (e) The department may not sell an entry permit under this
21 section to a person whose privilege to obtain or hold an entry permit
22 is suspended under AS 16.05.710.

23 * Sec. 5. AS 16.43.140 is amended by adding a new subsection to read:

24 (d) A person may not hold an interim-use or entry permit issued
25 or transferred under this chapter or transferred under AS 16.10.337 or
26 AS 44.81.250 or 44.81.252, if the person is subject to a current order
27 under AS 16.05.710 suspending the person's privilege to obtain or hold
28 an interim-use or entry permit.

29 * Sec. 6. AS 16.43.170 is amended by adding a new subsection to read:

1 (f) The permanent transfer of an entry permit is void if pro-
2 ceedings in which the entry permit may be suspended under AS 16.05.710
3 are pending against the permit holder at the time of transfer unless
4 the transfer of the entry permit is ordered by the court in which the
5 proceedings are pending.

6 * Sec. 7. The provisions of this Act are applicable to cases involving
7 a commercial fishing violation or theft of commercial fishing gear that
8 occurs on or after the effective date of this Act.

9 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).
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Current Version

Sec. 16.05.710. Suspension of commercial license and entry permit. (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 suspend, 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.

(b) Upon a first conviction of a person for a violation of AS 11.46.120 — 11.46.130 in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for one year. Upon a second or subsequent conviction, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for two years.

(c) During the period for which a limited entry permit is suspended under (a) of this section a permit card may not be issued and the permit may not be transferred or sold.

(d) In this section

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

(2) "Limited entry permit" includes an interim use permit. (§ 11 art III ch 94 SLA 1959; am § 1 ch 112 SLA 1961; am § 1 ch 75 SLA 1966; am § 3 ch 73 SLA 1986; am §§ 1, 2 ch 46 SLA 1988)



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

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DURING SESSION:

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DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

SECTIONAL ANALYSIS

CS For Senate Bill 164 -- "An Act relating to additional penalties for violation of commercial fishing laws and for the theft of commercial fishing gear, forfeiture of limited entry permits, and transfer of limited entry permits; and providing for an effective date."

SECTION 1

Rewrites 16.05.710(a) to provide for the forfeiture of limited entry permits upon an individual's third conviction for the violation of commercial fishing laws.

SECTION 2

Clarifies the language in the existing statute.

SECTION 3

Prevents an individual from transferring a permit to avoid forfeiture or suspension by making the transfer subject to an order of the court.

SECTION 4

Redefines "commercial fishing license" to include a limited entry permit. Adds new definitions of "commercial fishing privilege" and "commercial fishing statute or regulation".

SECTION 5

Requires forfeited limited entry permits to be returned to the Commercial Fisheries Entry Commission, unless they are being used as security for a loan.

SECTION 6

Directs the Department of Commerce and Economic Development to sell forfeited permits that have been used as security for a loan and use the proceeds to pay the debt, with excess proceeds deposited in the general fund. Prohibits the department from selling the permits to individuals who have either forfeited permits or who have them under suspension.

SECTION 7

Prevents an individual from holding a permit if their permits have already been forfeited or if their permits are under a court-ordered suspension.

SECTION 8

voids the transfer of a limited entry permit if it was done in violation of a forfeiture or suspension order.

SECTION 9

Describes the procedures the Alaska Commercial Fishing and Agriculture Bank shall follow if a forfeited permit -- used as collateral for a CFAB loan -- is returned to CFAB. Excess funds from CFAB's sale of the permit shall be transmitted to the Commercial Fisheries Entry Commission for deposit in the general fund.

SECTION 10

Makes clear that the penalties in the bill will not apply to pending cases. They will apply to crimes committed after the effective date of this act.

SECTION 11

Immediate effective date.

SM 164

will be personally accompanied while hunting by a person who is qualified under the terms of (a) of this section. A person who falsifies the required affidavit is guilty of perjury under AS 11.56.200.

(c) [Repealed, § 27 ch 71 SLA 1986.]

(d) A nonresident who violates (a) of this section, or who fails to furnish an affidavit under (b) or (e) of this section, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000, or by both.

(e) An applicant for a nonresident big game tag for the taking of moose or caribou shall first furnish to the state, on a form provided by the state, an affidavit showing where the applicant will be hunting and what guiding, transportation, or other big game hunting services the applicant will be employing. A person who falsifies an affidavit under this subsection is guilty of perjury under AS 11.56.200. (§ 1 ch 86 SLA 1967; am §§ 39, 40 ch 59 SLA 1982; am § 1 ch 74 SLA 1982; am § 1 ch 111 SLA 1984; am §§ 24, 25, 27 ch 71 SLA 1986; am §§ 9, 10 ch 160 SLA 1988)

Effect of amendments. — The 1988 amendment, effective June 17, 1988, inserted "or (e)" in subsection (d) and added subsection (e).

Article 4. Licensing of Commercial Fishing Crewmembers and Vessels.

<p>Section 710. Suspension of commercial license and entry permit 720. [Repealed] 722. Strict liability commercial fishing penalties</p>	<p>Section 723. Misdemeanor commercial fishing penalties</p>
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Sec. 16.05.710. Suspension of commercial license and entry permit. (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 suspend, 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.

05.710

§ 16.05.720

FISH AND GAME

§ 16.05.722

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(b) Upon a first conviction of a person for a violation of AS 11.46.120 — 11.46.130 in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for one year. Upon a second or subsequent conviction, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for two years.

(c) During the period for which a limited entry permit is suspended under (a) of this section a permit card may not be issued and the permit may not be transferred or sold.

(d) In this section

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

(2) "Limited entry permit" includes an interim use permit. (§ 11 art III ch 94 SLA 1959; am § 1 ch 112 SLA 1961; am § 1 ch 75 SLA 1966; am § 3 ch 73 SLA 1986; am §§ 1, 2 ch 46 SLA 1988)

Effect of amendments. — The 1988 amendment, effective May 25, 1988, repealed and reenacted subsection (a), which formerly related to the same subject matter, and added subsections (c) and (d).

Editor's notes. — Section 6 of ch. 46, SLA 1988, which amended this section, provides: "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Sec. 16.05.720. Penalties. [Repealed, § 5 ch 46 SLA 1988.]

Sec. 16.05.722. Strict liability commercial fishing penalties.

(a) A person who without any culpable mental state violates AS 16.05.440 — 16.05.690, or a regulation of the Board of Fisheries or the department governing commercial fishing, is guilty of a violation and upon conviction is punishable by a fine of not more than

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

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

(b) 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. 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. 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.

(c) A person charged with a violation under this section is entitled to a trial by court but not by jury, and is not entitled to representation at public expense. (§ 3 ch 46 SLA 1988)

Effective dates. — Section 7, ch. 46, SLA 1988, makes this section effective May 25, 1988, in accordance with AS 01.10.070(c).

Editor's notes. — Section 6 of ch. 46, SLA 1988, which enacted this section, pro-

vides: "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Sec. 16.05.723. Misdemeanor commercial fishing penalties.

(a) A person who negligently violates AS 16.05.440 — 16.05.690, or a 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 holder on board if the holder is required by law or regulation to be present.

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

(§ 3 ch 46 SLA 1988)