

HB

285

HOUSE COMMITTEE REPORT

(9)

Date Referred to Committee: January 30, 1998

FURTHER REFERRALS:

Date of Committee Action: 2/12/98

The RESOURCES Committee considered:

HB 310

HOUSE BILL NO. 310

UTILIZATION OF GROUND FISH

“An Act relating to the utilization of groundfish; and providing for an effective date.”

recommends it be replaced [] the same title
 with the following committee substitute _____ [] a new title

[] additional referral to _____ Committee
 [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dep/Date) _____
 [] fiscal note(s) _____ [] fiscal note(s) _____

[] zero fiscal note(s) _____ [✓] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Paul Dyson</i>		-	✓	
<i>Walter Williamson</i>			✓	
<i>Tamara Barnes</i>			✓	
<i>Beverly Masek</i>			✓	
<i>Scott Egan</i>	✓			
<i>Bill Hudson</i>	✓			

CHAIR'S SIGNATURE *Bill Hudson* *Scott Egan*

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 285

Revision Date: _____ Dept. Affected: Fish and Game
 Title: An Act relating to suspension or revocation of commercial BRU: Commercial Fisheries (Limited) Entry Commission
fishing permits, licenses and privileges Component: Limited Entry Program Administration
 Sponsor: Rep. Ivan
 Requester: House Resources **COMPONENT SERIAL NO.** 0471

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEDUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: \$ 0.0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There are 600-800 commercial fishing convictions per year which are affected by this bill. The Court System is willing to work out a methodology to electronically transfer the convictions to CFEC on a weekly basis and thereby eliminating any need for additional personal services expenditures to accomplish the work detailed in this bill. Therefore, this bill will have no fiscal impact on this agency.

Prepared By: Roger Kolden Phone: 789-6160
 Agency: Commercial Fisheries (Limited) Entry Commission Date: 2/17/98
 Approved by Commissioner: Bruce Twomley (Signature)
 Agency: Commercial Fisheries (Limited) Entry Commission Date: 2/18/98
PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska State House of Representatives
House District 39



Session

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Juneau, Alaska 99801-1182
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Representative Ivan M. Ivan

MEMORANDUM

TO: Representative Bill Hudson, Co-Chair
Representative Scott Ogan, Co-Chair
House Resources Committee

FROM: Representative Ivan M. Ivan 

DATE: January 12, 1997

RE: Request for Hearing-House Bill 285

Please consider this request to hear House Bill 285, Commercial Fishing Penalties at your earliest possible convenience.

The intent of this legislation is to establish a point system against a commercial fishing permit for commercial fishing violations. The bill outlines the suspension and revocation process the notice and appeal process and the notification to the CFEC by the Department of Public Safety and the Court System, should a certain number of points be accumulated.

I appreciate your consideration of my request. Please do not hesitate to contact my office if I can answer any questions or provide further information.

Thank you.

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Representative Ivan M. Ivan

SPONSOR STATEMENT - HOUSE BILL 285

This bill was introduced to address concerns of illegal fishing activities committed by commercial fishers throughout my district and other commercial fishing communities. It has been said that some of these illegal activities become a philosophy among some fishers as the "cost of doing business" should they be convicted for such activities.

The intent of this legislation is to establish a point system against a commercial fishing permit for a conviction of a violation of commercial fishing laws found under AS 16.05.723. Should 12 or more points be assessed against a permit during any consecutive 48 month period as a result of convictions of violations, the Commercial Fisheries Entry Commission would be given the authority to suspend the permit. The same is true for an accumulation of 16 or more points during any consecutive 60 month period. The commission will revoke an entry or interim use permit if 18 or more points are accumulated during any consecutive 72 month period. Two points will be deducted from the total points assessed against a permit if the permit holder is not convicted of a violation of commercial fishing laws during a 12 month period after the date of the last violation.

The bill outlines the suspension and revocation process, the notice and appeal process and the notification to the commission by the Department of Public Safety and the Court System.

Any points accumulated for commercial fishing violations will be assessed against the permit not the permit holder. Should the permit holder decide to transfer or sell the permit, all the points accumulated by the permit holder will stay with the permit thus providing a disincentive for a permit holder to transfer a permit should it be subject to suspension or revocation.

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SECTIONAL ANALYSIS - HOUSE BILL 285

Section 1: Adds new sections to AS 16.43, Regulation of Entry into Alaska Commercial Fisheries.

Sec 16.43.850. Point System.

- (a) Establishes assignment of demerit points for convictions of violations of commercial fishing laws. The Commercial Fisheries Entry Commission will adopt regulations establishing a uniform system for the suspension or revocation of a commercial fishing permit as well as the number of demerit points to be assessed for each violation or class of violation of commercial fishing laws consistent with the demerit point scheduled outlined in subsection (b) of this section. One-half the of the points will be assessed for a conviction of a violation of commercial fishing laws under AS 16.05.722 (Strict liability commercial fishing penalties).
- (b) Establishes a schedule of demerit points for violations of commercial fishing laws which are already established under AS 16.05.723.
- (c) Points are to be assessed against a permit holder's limited entry permit or interim use permit.
- (d) Requires the Commercial Fisheries Entry Commission to adopt regulations for the suspension or revocation of a limited entry or interim use permit based on an aggregate number of accumulated points within a specified period of time.

Sec. 16.43.855. Assessment of Points.

- (a) Requires that notice be given to the permit holder when point accumulation reaches 6 points and that further violations of commercial fishing laws may result in further suspensions or revocation of the permit.
- (b) Points will be assessed against the permit based on the date of the violation but will not be assessed until after conviction.

Akiachak • Akiak • Aleknagik • Atmautluak • Bethel • Chefornak • Clark's Point • Dillingham • Eek • Ekuk • Ekwok • Goodnews Bay •
Kasigluk • Kipnuk • Koliganek • Kongiganak • Kwethluk • Kwigillingok • Manokotak • Napakiak • Napaskiak • New Stuyahok • Nunapitchuk •
Oscarville • Plaunum • Portage Creek • Quinhagak • Togiak • Tuntutullak • Twin Hills

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Sectional Analysis
House Bill 285

- (c) States that the assessment of points against a permit is in addition to and not a substitute for other provisions of Title 16 nor is it a substitute for any penalty imposed by a court.
- (d) States that if any points are accumulated against a permit holder's interim use permit those points will be transferred to the permit holder's entry permit if a limited entry system is established for that particular fishery.
- (e) Points assessed against a permit at the time of a permanent or emergency transfer of the permit are transferred with the permit.

Sec. 16.43.860. Reduction of Points. Requires the deduction of two points from the total points assessed against a permit holder's permit if the permit holder has not been convicted of commercial fishing laws in a fishery for which the permit was issued during a 12 month period after the date of the last violation.

Sec. 16.43.865. Suspension and Revocation.

- (a) The commission will suspend or revoke an entry or interim use permit if the permit holder's point accumulation exceeds those outlined under AS 16.43.850. Suspension of the permit is for a one-year period. Revocation of the permit will void the permit and it will be surrendered to the commission.
- (b) A permit holder who has had the permit suspended or revoked may not obtain an entry permit or limited use permit for that fishery for one-year from the date of the suspension or revocation.
- (c) A permit holder whose entry permit or interim use permit has been suspended may participate in the fishery only under a crew member license.
- (d) An entry permit may not be permanently transferred during the period the permit is suspended or if administrative proceedings in which the permit may be suspended or revoked are pending.
- (e) A revoked entry permit that is pledged as security for a loan shall be reassigned or sold as provided by Alaska Statute.
- (f) If a permit holder's interim use permit is suspended and the commission established a limited entry system for that fishery, the permit holder will be eligible to obtain an entry permit for that fishery, if the permit holder qualifies for the entry permit. However, the commission will withhold issuance of the entry permit until the period of suspension has expired.

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Sectional Analysis
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Sec. 16.43.870. Notice and Appeal. The commission will provide notice of appeal and a permit holder whose permit is subject to suspension or revocation.

Sec. 16.43.875. Required Notice to Commission. The four subsections under this section outline reporting notice procedures to the commission from the Department of Public Safety and the Court System.

Sec. 16.43.895. Definitions for AS 16.43.850-16.43.895. Provides definitions for "commercial fishing law," "commercial fishing permit" and "permit holder."

Section 2: Applicability. This act applies to violations that occur on or after the effective date of this bill.

0-LS0879AH
Utermohle
2/16/98

CS FOR HOUSE BILL NO. 285()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

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."

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 16.43.875. 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.

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

- (1) fishing in closed waters 6 points
- (2) fishing during closed season or period 6 points
- (3) fishing with more than the legal amount of gear 4 points
- (4) fishing with gear not allowed in fishery 6 points
- (5) fishing before expiration of transfer period 6 points
- (6) interfering with commercial fishing gear 4 points
- (7) fishing with more than the legal amount of gear
on vessel 4 points
- (8) improper operation of fishing gear 4 points
- (9) employing an unlicensed crewmember 2 points
- (10) fishing without required documents 2 points
- (11) fishing with improperly marked or unmarked vessel . . 2 points
- (12) fishing with improperly marked or unmarked gear . . . 2 points
- (13) permit holder not present when required 6 points
- (14) fishing with underlength or overlength vessel 6 points
- (15) wanton waste of fishing resources 4 points.

(c) The number of points assessed against a permit holder for a conviction of a violation of commercial fishing laws under AS 16.05.722 must be one-half of the points assessed for a conviction of a violation of commercial fishing laws under AS 16.05.723.

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

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

1 any consecutive 48-month period as a result of convictions for violations of
2 commercial fishing laws in the fishery;

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

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

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

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

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

24 **Sec. 16.43.860. Reduction of points.** Two points shall be deducted from the
25 total points assessed against a permit holder for a fishery if the permit holder has not
26 been convicted of a violation of commercial fishing laws in the fishery during the 12-
27 month period after the date of the last violation in the fishery for which the permit
28 holder was assessed points.

29 **Sec. 16.43.865. Suspension.** (a) A permit holder whose commercial fishing
30 privileges for a fishery are suspended under AS 16.43.850 - 16.43.895 may not obtain
31 an entry permit or interim-use permit for that fishery during the period of the

1 suspension of the privileges. During the period for which the permit holder's privilege
2 to obtain an entry permit or interim-use permit for a fishery is suspended under this
3 section, the commission may not issue a permit card to the permit holder for that
4 fishery.

5 (b) A permit holder whose privilege of obtaining a commercial fishing permit
6 for a fishery is suspended under (a) of this section may engage in the fishery only
7 under a crewmember license.

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

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

18 **Sec. 16.43.875. Required notice to commission.** (a) A court that convicts
19 a person of a violation of commercial fishing laws under this title or under a regulation
20 adopted under this title shall immediately forward a record of the conviction to the
21 commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 USE PERMITS AND ENTRY PERMITS AND (2) LOSES ELIGIBILITY FOR
2 INTERIM-USE PERMITS AND FOR ENTRY PERMITS FOR A PERIOD OF
3 THREE YEARS].

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

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

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

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

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

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

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

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

29 (i) Upon the conviction of a person for an offense described under (a), (b), or
30 (g) of this section, the court shall immediately notify the commission of the conviction.
31 The notice provided by the court shall be accompanied by an order suspending

1 commercial fishing privileges and revoking commercial fishing permits under (a) of
2 this section, as appropriate. The commission shall, upon receipt of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE IVAN

TO: CSHB 285 (), Draft 0-LS0879\H

- 1 Page 1, Line 2, after "and privileges"
- 2 Insert "; and providing for an effective date"
- 3 Page 9, insert a new section after Sec. 13.
- 4 "Sec. 14. This act takes effect immediately under
- 5 AS 01.10.070(c)."

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE IVAN

TO: CSHB 285 (), Draft 0-LS0879\H

- 1 Page 4, Line 20, after "this title shall"
- 2 Delete "immediately"
- 3 Page 4, Line 21, after "to the commission"
- 4 Insert "on a weekly basis"

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE IVAN

TO: CSHB 285 (), Draft 0-LS0879\H

- 1 Page 3, Line 27, after "the date of the last"
- 2 Delete "violation"
- 3 Insert "conviction"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE IVAN

TO: HB 285

- 1 Page 5, line 9, after "to commission.":
- 2 Delete "(a) The Department of Public Safety shall notify the
- 3 commission of each alleged violation of a commercial fishing
- 4 law by a permit holder."
- 5 Reletter each subsection accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE IVAN

TO: HB 285

- 1 Page 4, line 23, after "permanently transferred":
- 2 Delete "(1)"
- 3 Page 4, line 24, after "this section":
- 4 Delete "; or (2) if proceedings in which the entry permit may
- 5 be suspended or revoked under this section are pending against
- 6 the entry permit"

Alaska State House of Representatives
House District 39

Session

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Representative Ivan M. Ivan

**CHANGES IN DRAFT 0-LS0879\H, CSHB 285 ()
DATED 2/16/98**

The following changes were made in CSHB 285, draft 0-LS0979\H from the original version of House Bill 285.

1. Points will be assessed against the permit holder rather than the permit as originally stated in HB 285.
2. Deleted revocation process associated with the assessment of points.
3. Added various fishing violations found currently in statute under Title 16 in order to ensure uniformity and clarify that all violations will be subjected to the points system. This is found on page two, lines 3-5 in subsection (b).
4. Reduced from 6 to 4 points, fishing with more than the legal amount of gear. (Page 2, line 8)
5. Added "fishing before expiration of transfer period" as a 6 point violation on page two, line 10.
6. Added underlength to vessel violations on page 2, line 20.
7. Added "wanton waste of salmon resources" as a 4 point violation on page two, line 21.
8. Reduced the time periods for point assessments. A one-year suspension occurs when 12 or more points are assessed in a 36-month period, a two-year suspension occurs when 16 or more points are assessed in a 48-month period and a three-year suspension

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CSHB 285 (), 2/16/98

occurs when a permit holder is assessed 18 or more points within a 60-month period. The previous bill draft had suspensions occurring after a certain amount of points has been assessed for 48-month and 60-month periods and revocation taking place after a 72-month period.

9. A notice of assessment of points will be given to the permit holder after each conviction. This is a change from the permissive language where notice may be given after each assessment until 6 points are accumulated, then the commission would have been required to start giving notice.

10. Removed the subsection that disallowed the permanent transfer of the permit during the suspension period or during the period when the proceedings for suspension or revocation are pending.

11. Removed the Department of Public Safety notification process after an alleged violation. This was changed to the court system's notifying the commission following a conviction.

12. Deleted the subsection where the court was required to forward a permit upon the court's decision to suspend or revoke a permit. This authority now rests with the Commercial Fisheries Entry Commission.

13. Added a subsection, found on page five, line 5, that clarifies that a commercial fishing permit is a privilege which allows one to participate in a fishery and in obtaining a commercial fishing permit.

14. Section 2, page 5, line 17, deleted reference to 16.05.710, which allowed the courts to suspend or revoke a permit. This authority again now rests with the CFEC after a certain number of points have been accumulated. AS 16.05.710 (a) and (d)(1) are repealed in section 12.

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15. Added a new subsection to AS 16.10.33 that terminates the debtor's interest in the permit as of the date the commission revokes the permit. This is found in Section 3.

16. Section 4 adds an amendment to AS 16.10.337(a) that refers to new subsection found in Section 3.

17. Sections 5, 6, 7, 8 and 9 were added at the request of the Commercial Fisheries Entry Commission. A memorandum from Bruce Twomley, Chair of the CFEC, is attached explaining the changes in those statutes.

18. Section 12 repeals AS 16.05.710(a) and (d)(1). AS 16.05.710(a) is the subsection that allowed the courts to revoke or suspend a commercial fishing permit under Title 16 violations. AS 16.05.710 (d)(1) is the definition for commercial fishing law. A new definition for commercial fishing law is found on page 4, line 28. The definitions that have not been deleted are applicable to the other provisions in AS 16.05.710.

MEMORANDUM**STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION****TO:** Tom Wright**DATE:** February 17, 1998**FAX:** 465-4589**PHONE:** (907) 789-6160 VOICE
(907) 789-6170 FAX**FROM:** Bruce Twomley, Chairman **SUBJECT:** Sections 5-9, 2/16/98 Work Draft, CS
for IIB 285

Tom, as you requested, the following paragraph is my understanding of the proposed amendments to AS 16.43.970 in Sections 5-9, 2/16/98 Work Draft, CS for HB 285:

Sections 5 through 9 amend but do not change the effects of the current AS 16.43.970 addressing violations of the Limited Entry Act. Violations of the law by fishers may still result in suspension and revocation of fishing privileges under the existing standards. However, references to "forfeiture" of fishing privileges by the court are eliminated in favor of referrals by the court to the Alaska Commercial Fisheries Entry Commission for suspension or revocation of fishing privileges as directed. It is believed suspension and revocation of fishing privileges by the Commission is more consistent with Alaska Legislature's determination that fishing privileges administered by the Commission are use privileges and not property under AS 16.43.150(e).

cc: George Utermohle

CS FOR HOUSE BILL NO. 285(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

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, " 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 16.43.875. 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.

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

- (1) fishing in closed waters 6 points
- (2) fishing during closed season or period 6 points
- (3) fishing with more than the legal amount of gear 4 points
- (4) fishing with gear not allowed in fishery 6 points
- (5) fishing before expiration of transfer period 6 points
- (6) interfering with commercial fishing gear 4 points
- (7) fishing with more than the legal amount of gear
on vessel 4 points
- (8) improper operation of fishing gear 4 points
- (9) employing an unlicensed crewmember 2 points
- (10) fishing without required documents 2 points
- (11) fishing with improperly marked or unmarked vessel . . 2 points
- (12) fishing with improperly marked or unmarked gear . . . 2 points
- (13) permit holder not present when required 6 points
- (14) fishing with underlength or overlength vessel 6 points
- (15) wanton waste of fishing resources 4 points.

(c) The number of points assessed against a permit holder for a conviction of a violation of commercial fishing laws under AS 16.05.722 must be one-half of the points assessed for a conviction of a violation of commercial fishing laws under AS 16.05.723.

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

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

1 any consecutive 48-month period as a result of convictions for violations of
2 commercial fishing laws in the fishery;

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

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

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

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

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

24 **Sec. 16.43.860. Reduction of points.** Two points shall be deducted from the
25 total points assessed against a permit holder for a fishery if the permit holder has not
26 been convicted of a violation of commercial fishing laws in the fishery during the 12-
27 month period after the date of the last conviction in the fishery for which the permit
28 holder was assessed points.

29 **Sec. 16.43.865. Suspension.** (a) A permit holder whose commercial fishing
30 privileges for a fishery are suspended under AS 16.43.850 - 16.43.895 may not obtain
31 an entry permit or interim-use permit for that fishery during the period of the

1 suspension of the privileges. During the period for which the permit holder's privilege
2 to obtain an entry permit or interim-use permit for a fishery is suspended under this
3 section, the commission may not issue a permit card to the permit holder for that
4 fishery.

5 (b) A permit holder whose privilege of obtaining a commercial fishing permit
6 for a fishery is suspended under (a) of this section may engage in the fishery only
7 under a crewmember license.

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

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

18 **Sec. 16.43.875. Required notice to commission.** (a) A court that convicts
19 a person of a violation of commercial fishing laws under this title or under a regulation
20 adopted under this title shall forward a record of the conviction to the commission on
21 a weekly basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 USE PERMITS AND ENTRY PERMITS AND (2) LOSES ELIGIBILITY FOR
2 INTERIM-USE PERMITS AND FOR ENTRY PERMITS FOR A PERIOD OF
3 THREE YEARS].

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

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

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

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

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

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

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

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

29 (i) Upon the conviction of a person for an offense described under (a), (b), or
30 (g) of this section, the court shall immediately notify the commission of the conviction.
31 The notice provided by the court shall be accompanied by an order suspending

1 commercial fishing privileges and revoking commercial fishing permits under (a) of
2 this section, as appropriate. The commission shall, upon receipt of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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;

(2) \$6,000 for a second conviction or for a subsequent conviction not described in (3) of this subsection; and

(3) \$9,000 for a third or subsequent conviction within a 10-year period.

(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.

History -

(sec. 3 ch 46 SLA 1988; am sec. 1 ch 47 SLA 1995)

Amendment Notes -

The 1995 amendment, effective August 24, 1995, in subsection (a), added "conviction or for a subsequent conviction not described in (3) of this subsection; and" at the end of paragraph (2), added the paragraph (3) designation, in paragraph (3), added "\$9,000 for a third" at the beginning and "within a 10-year period" at the end, and made a minor stylistic change.

Editors Notes -

Section 6 of ch. 46, SLA 1988, which enacted 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."

Decisions -

No absolute liability. - This section does not establish absolute liability; the statute simply eliminates culpable mental state as an element of specified fish and game violations.

Clucas v. State, 815 P.2d 384 (Alaska Ct. App. 1991).

"First in time, first in right" defense. - Because the "first in time, first in right" defense does not implicate the culpable mental state involved in a case, prosecution of a fish and game case under this section does not preclude the defense from being raised. *Clucas v. State*, 815 P.2d 384 (Alaska Ct. App. 1991).

Sanction of fine and forfeiture. - This section states that fishermen may be sanctioned in two ways for their conduct - fine and forfeiture. The statute allows the state to seize the illegal catch itself, or, if it has already been sold, the statute allows the state to seize the proceeds or fair market value of the sale. *McCann v. State*, 817 P.2d 484 (Alaska Ct. App. 1991).

Intent of forfeiture language. - The clear intent of the forfeiture language in this section is to prevent the violator from profiting in any way from the illegal catch. Nothing in the statute allows for a forfeiture in order to "make the state whole". *McCann v. State*, 817 P.2d 484 (Alaska Ct. App. 1991).

No offset of violator's operating costs. - This section makes no provision, in a forfeiture

order, for offsetting the fair market value of the illegal catch with the violator's operating costs. Millman v. State, 841 P.2d 190 (Alaska Ct. App. 1992).

Forfeiture order was improper. - where the state fined defendant the maximum amount, seized undersized crabs, and ordered him to pay a percentage of the fair market value of the seized crabs. McCann v. State, 817 P.2d 484 (Alaska Ct. App. 1991).

Maximum fine upheld. - Findings that defendant caught a "high percentage" of undersized crabs and that he exhibited "extreme carelessness" in using a bent measuring stick to measure the crabs constituted sufficient justification for the imposition of the maximum fine. McCann v. State, 817 P.2d 484 (Alaska Ct. App. 1991).

Quoted in Waiste v. State, 808 P.2d 286 (Alaska Ct. App. 1991).

Cited in State v. Lawler, Ct. App. Op. No. 1473 (File No. A-5728), P.2d (1996).

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

History -

(sec. 3 ch 46 SLA 1988)

Editors Notes -

Section 6 of ch. 46, SLA 1988, which enacted 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."

Decisions -

Legislative intent. - Although this section is broadly worded, it does not supersede all Board of Fisheries regulations that specify a mens rea other than negligence. Given the lack of any clear expression of legislative intent, such an interpretation would be unwarranted. *Waiste v State*, 808 P.2d 286 (Alaska Ct. App. 1991).

Forfeiture only of fish for which convicted. - Subsection (a) of this section provides for the mandatory forfeiture only of fish taken or retained as a result of the violation for which the defendant has been convicted. When the statute is so construed, the defendant must still overcome the presumption that all fish on board his vessel were taken as the result of the violation for which he was convicted. *McNabb v. State*, 860 P.2d 1294 (Alaska Ct. App. 1993).

Amount of fine not dependent on violation. - Unlike the forfeiture authorized by subsection (a) of this section, the fine provided for in subsection (b) of the statute does not depend on the amount of fish taken as a result of the violation. The statute contemplates a fine which is based on the value of the fish on board a vessel, whether they were taken illegally or not. *McNabb v. State*, 860 P.2d 1294 (Alaska Ct. App. 1993).

Cited in *McCann v. State*, 817 P.2d 484 (Alaska Ct. App. 1991); *Scudero v. State*, Ct. App. Op. No. 1469 (File No. A-5954), P.2d (1996).

Sec. 16.10.333. Loans for purchase of Alaska limited entry permits.

(a) Loans under AS 16.10.310(a) may be made to an individual commercial fisherman for the purchase of a limited entry permit upon certification by the commission that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the commission.

(b) Upon approval by the commissioner, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the commissioner as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the department in administering the loan.

(c) The commissioner is not liable for any act or omission resulting from permit ownership nor will that act or omission affect the commissioner's title to the permit or the commissioner's rights under it.

(d) Upon satisfaction of the note by the debtor, the commissioner shall certify to the commission that the note has been satisfied.

(e) Upon certification as provided in (d) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner.

(f) [Repealed, sec. 34 ch 79 SLA 1985]

History -

(sec. 4 ch 83 SLA 1978, am sec. 1 ch 106 SLA 1980; am sec. 8, 34 ch 79 SLA 1985)

Cross References -

For the reassignment of entry permits taken as security for loans after such permits are revoked, see AS 16.43.960(i).

Decisions -

Cited in *Anderson v. Anderson*, 736 P.2d 320 (Alaska 1987)

Sec. 16.10.337. Deficiencies and transfer of entry permits after foreclosure.

(a) Upon a foreclosure on an entry permit as provided in AS 16.10.335, the commissioner shall offer the commission a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 - 16.43.330 at a price equal to the amount outstanding on the note plus any costs the department directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 - 16.43.330, the department shall promptly advertise and sell the permit. If the proceeds of the sale of a permit exceed the amount necessary to pay the note in full, plus penalties, costs of administration of the note, and attorney fees, the excess shall be transferred by the commissioner to the debtor. At any time until the permit has been sold under this subsection the debtor may repurchase the permit by paying the department the amount necessary to pay the note in full, plus penalties, costs of administration of the note, and attorney fees, as determined by the commissioner.

(c) [Repealed, sec. 72 ch 113 SLA 1982].

(d) Nothing in this section affects the right of the commissioner to institute legal action for a deficiency resulting from a default on a note given under AS 16.10.333. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees.

History -

(sec. 4 ch 83 SLA 1978; am sec. 72 ch 113 SLA 1982; am sec. 5 ch 7 SLA 1983)

Cross References -

For the reassignment of entry permits taken as security for loans after such permits are revoked, see AS 16.43.960(i).

Sec. 16.43.110. Regulations and hearing procedures.

(a) The commission may adopt regulations, consistent with law, necessary or proper in the exercise of its powers or for the performance of its duties under this chapter.

(b) The commission shall adopt regulations, consistent with due process of law, that govern practice and procedure and the conduct of all investigations, hearings, and proceedings which it holds.

(c) The Alaska Rules of Evidence apply to investigations, hearings, and proceedings before the commission, except when the commission determines that their application is not required in order to assure fair treatment of all parties and that the evidence is relevant and of the sort on which responsible persons are accustomed to rely in the conduct of serious matters.

(d) The commission, a commissioner, or an employee authorized by the commission may administer oaths, certify to all official acts, and issue subpoenas and other process to compel the attendance of witnesses and the production of testimony, records, papers, accounts, and documents in an inquiry, investigation, hearing, or proceeding before the commission in any part of the state. The commission may petition a court to enforce its subpoenas or other process.

(e) The commission shall adopt regulations to provide for the correction of administrative error.

History -

(sec. 1 ch 79 SLA 1973; am sec. 1 ch 47 SLA 1981; am sec. 6 ch 145 SLA 1984)

Decisions -

Fees upheld. - Limited Entry Act fees were intended to substitute for the previous differential gear license fees as the means of ensuring nonresident contribution toward the cost; therefore, the 3:1 differential in fees was a proper implementation of the purposes of the Act. *Carlson v. State*, 798 P.2d 1269 (Alaska 1990).

Quoted in *Simpler v. State*, 723 P.2d 227 (Alaska 1986); *Johns v. Commercial Fisheries Entry Comm'n*, 758 P.2d 1256 (Alaska 1988).

Cited in *Kalmakoff v. State*, 693 P.2d 844 (Alaska 1985)

Sec. 16.43.120. Application of Administrative Procedure Act.

(a) The administrative adjudication procedures of AS 44.62 (Administrative Procedure Act) do not apply to adjudicatory proceedings of the commission except that final administrative determinations by the commission are subject to judicial review as provided in AS 44.62.560 - 44.62.570.

(b) AS 44.62.010 - 44.62.320 and 44.62.640 apply to regulations adopted by the commission.

History -

(sec. 1 ch 79 SLA 1973)

Decisions -

The right to preemptorily challenge a judge - exists in an appeal to the superior court from a final administrative determination of the Alaska Commercial Fisheries Entry Commission. *State, Com. Fisheries Entry Comm'n v. Polushkin*, 628 P.2d 6 (Alaska 1981).

Rejection of application for permit constituted final administrative determination - where there was no more time to submit evidence or alter the decision through administrative means. *Ostman v. State, Com. Fisheries Entry Comm'n*, 678 P.2d 1323 (Alaska 1984).

Timeliness of functional administrative appeal. - An applicant's independent action brought in superior court some three years after the commission's denial of his application for an entry permit, from which decision he had failed to make an administrative appeal, was functionally an administrative appeal and subject to dismissal for failure to state a claim upon which relief could be granted, since the action was untimely, and a court decision, rendered subsequent to the denial of his request, which invalidated a regulation similar to that upon which his denial was based, would not be applied retroactively so as to require the commission to reconsider the application. *Haynes v. State, Com. Fisheries Entry Comm'n*, 746 P.2d 892 (Alaska 1987).

Applied in *White v. Alaska Com. Fisheries Entry Comm'n*, 678 P.2d 1319 (Alaska 1984).

Quoted in *Anderson v. State, Com. Fisheries Entry Comm'n*, 654 P.2d 1320 (Alaska 1982).

Cited in *Wickersham v. State, Com. Fisheries Entry Comm'n*, 680 P.2d 1135 (Alaska 1984).

Sec. 44.81.231. Pledge of permits.

(a) A limited entry permit issued under AS 16.43 may be pledged by the holder as security for a loan authorized under AS 44.81.236 if the certificate for the pledged permit lists the bank as the legal owner of the permit and the pledger as the equitable owner of the permit.

(b) Annual permit cards issued under the pledged permit must be in the name of the equitable owner who shall be responsible for compliance with the laws that govern the permit as if the equitable owner were the holder of the permit.

(c) Co-borrowers or guarantors on a loan secured by one or more pledged permits do not have a right in the pledged permit of the equitable owner, whether by subrogation or other manner.

(d) Upon payment of the loan, the bank shall certify to the Commercial Fisheries Entry Commission that the loan has been repaid, and the commission shall amend the permit certificate to list the equitable owner as the holder, and the legal interest of the bank shall terminate.

(e) In anticipation of a possible foreclosure under AS 44.81.241 - 44.81.250, the equitable owner of a permit that is pledged as security for the loan may nominate a person to whom the permit may be transferred if the pledge is foreclosed under AS 44.81.245.

History -

(sec. 19 ch 34 SLA 1996)

Effective Date Notes -

Section 19, ch. 34, SLA 1996, which enacted this section, took effect on August 20, 1996.

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Decisions -

Cited in *Anderson v. Anderson*, 736 P.2d 320 (Alaska 1987) (decided under former AS 44.81.230).

Sec. 44.81.250. Transfer of entry permits after foreclosure.

(a) Upon foreclosure of a pledge of an entry permit under AS 44.81.241 - 44.81.249, the bank shall determine if the permit is subject to a buy-back program under AS 16.43.290 - 16.43.330 and, if it is subject to a buy-back program, shall offer the permit to the commission at a price equal to the outstanding indebtedness on the loan.

(b) If the permit is not subject to a buy-back program, or if the commission fails to buy back the permit within 30 days after the commission receives the offer, the bank shall sell the permit to a person who qualifies as a transferee of an entry permit under AS 16.43 and the regulations adopted by the commission. The bank shall give preference to an offer to purchase a permit made by a state resident if the price offered is equal to or greater than the price offered by a nonresident. If the proceeds of the sale of a permit exceed the amount necessary to pay the indebtedness in full, the bank shall remit the excess to the borrower.

(c) At any time before foreclosure of a pledge of a permit, or within 30 days following foreclosure of a pledge of a permit, the equitable owner or former equitable owner may nominate a person to assume the loan. A person nominated must qualify as a transferee of the permit under AS 16.43 and must qualify to assume the loan under the requirements of the bank. If the person qualifies, the permit shall be transferred to the nominee upon the nominee's assumption of the loan.

(d) This section does not affect the right of the bank to institute legal actions against the borrowers, guarantors, or other sureties for performance to collect the indebtedness owing on the loan and to take other legal action on the collateral securing the loan.

History -

(sec. 5 ch 53 SLA 1979; am sec. 15 - 17 ch 51 SLA 1980; am sec. 6 - 8 ch 70 SLA 1989; am sec. 6 ch 39 SLA 1991; am sec. 37 ch 30 SLA 1992; am sec. 22 ch 34 SLA 1996)

Revisors Notes -

Formerly AS 44.54.250. Renumbered in 1980.

Amendment Notes -

The 1989 amendment, effective May 31, 1989, added "If the debtor has not previously nominated a qualified person to assume the note under AS 44.81.230(f)" at the beginning of the second sentence in subsection (b); inserted the reference to "44.81.210(a)(20)" in the first sentence in subsection (d); and added subsection (e).

The 1991 amendment, effective June 13, 1991, in subsection (d), substituted "note for a loan made under" for "note given under" and inserted "44.81.225," and "or 44.81.235," and made a stylistic change.

The 1992 amendment, effective May 16, 1992, deleted "and commercial fishing participation" following "met the residency" in the second sentence of subsection (c).

The 1996 amendment, effective August 20, 1996, rewrote this section.

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter to this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

PO Box 532
King Salmon, AK 99613
TEL 907-246-7483
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January 26, 1997

Honorable Senator Rick Halford
Juneau, AK

Dear Senator Halford:

Illegal fishing in Bristol Bay is increasing annually. We all hear of commercial fishers fishing over the line, in closed waters during the cover of darkness or fog, before their 48 hour transfer time is up, with extra gear, and before the fishing period is open. These are some examples of what is happening. We need legislation to deter illegal fishing.

With today's illegal fishers it is like the modern day gold rush with no marshal in town. A 12 point system on the permits and boat, plus a monetary fine just like an Alaska drivers' license is recommended. Some fishers feel they do not have to adhere to the rules and regulations and make the statement, "If I get caught fishing over the line it's a \$2500 fine. The cost of doing business. No big thing. I cleared \$7000 before I was caught. I still made money with the fine." The person who fished legally becomes frustrated.

With the point system an illegal fisher would receive 6 points against the permit and 6 points against the boat, plus a monetary fine. Illegal fishers would no longer be saying, "That its the cost of doing business." With this system both the permit and boat are at stake with only 6 more points left on each before being removed from the fishery. Then most cases of illegal fishing would cease because the penalties are too high.

If that permit and boat was put on the market to be sold, points against the permit and boat would be attached. It would drive down the value of the permit and boat giving a person without a permit and boat a chance to buy into a fishery at a lower cost. Also, if there was a permit and boat on the market that had no points attached the value would go up.

A person who had acquired 12 points on the permit and boat within five years the permit and boat would be removed from the fishery forever. The person whose name was on the permit would not be able to fish in the fishery again either as a permit holder or crew person.

A person who had points deducted from the permit and boat and had no more point deductions within five years the permit and boat would resort back to zero points.

The legislation must include the same penalties for fisheries that aren't included under the limited entry program, such as, the herring fishery. The penalties received would be administered under the Limited Entry system.

The points attached to each violation has to be severe enough to deter the person from doing any illegal fishing.

The following are suggested penalties that should be against the boat and permit:

Fishing in Closed Waters-----6 points

Fishing with Extra Gear-----6 points

Selling Subsistence Fish-----6 points

-(with subsistence permit revoked for 5 years)

Fishing Before 48 Hour Transfer Period-----5 points

Boats Fishing with Extra Gear Onboard-----4 points

Fishing Between Set-Net Sites-----4 points

Crew Fishing Without License-----1 point

Boat Fishing Without Necessary Paperwork

-Blue Card Registration-----1 point

Numbers Covered on Boat-----Warning

-next offense-----1 point

Buoy Not Marked-----Warning

-next offense-----1 point

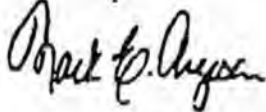
Sites

Fishing more than two 25 Fathom Sites with 1 permit---6 points

Drifting-----6 points

If you agree with this concept, legislation is needed. If you have any questions or need further clarification please call me at 246-7483. Any legal fisher shouldn't disagree with this approach.

Sincerely,



Mark E. Angasan