

HEB

285

SENATE COMMITTEE REPORT

DATE: 3/23/98

FURTHER:

DATE TURNED
IN TO OFFICE: 4/21/98

Resources Committee considered CS FOR HOUSE BILL NO. 285(RES) am

"An Act relating to suspension or revocation of commercial fishing permits, licenses, and privileges; and providing for an effective date."

and recommends:

- be replaced with S CS HB 285 (RES)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DQ PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Chris Kador</i>	-	<i>Lyla Green</i>	✓		
<i>Drew A. Loman</i>	✓				
CHAIR: <i>Rich Halford</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>DPS</i>	<i>3/31</i>	✓	
<i>CP&L</i>	<i>2/17</i>	✓	

APPLY
TO
S&S

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO: CSHB 285 (RES) am

Revision Date: March 31, 1998 Dept. Affected: Public Safety
 Title: Point system for commercial fishing violations BRU: Fish & Wildlife Protection
 Sponsor: Representative Ivan Component: _____
 Requestor: Senate Resources COMPONENT SERIAL NO. _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GE Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 98) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill will not have any significant fiscal impact on FWP.

Prepared By: Sandy Perry-Provost, Special Assistant Phone: 465-4322
 Division: Commissioners Office Date: March 31, 1998
 Approved by Commissioner: *Ronald L. Oke* Date: March 31, 1998
 Agency: Ronald L. Oke, Dept. of Public Safety

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FISCAL NOTE

No: 2

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO: _____

Bill Version: CSHB 285 (RES)

(H) Publish Date: 2/27/98

Revision Date: 02/20/98

Dept. Affected: Public Safety

Title: Point System for Commercial Fish Violation

BRU: Fish & Wildlife Protection

Component: _____

Sponsor: Representative Ivan

Requestor: House Judiciary

COMPONENT SERIAL NO. _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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-
CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 98) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill would not have any significant fiscal impact on FWP.

Prepared By: Captain Joel Hard Phone: 746-9139
 Division: Fish and Wildlife Protection Date: 02/20/98

Approved by Commissioner: Ronald L. Otte *R. L. Otte* Date: 2/23/98
 Agency: Department of Public Safety

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COMMITTEE COPY

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No: 1
Bill Version: CSHB 285 (RES)
(H) Publish Date: 2/23/98

Revision Date: _____ Dept. Affected: Fish and Game
Title: An Act relating to suspension or revocation of commercial fishing permits, licenses and privileges BRU: Commercial Fisheries (Limited) Entry Commission
Sponsor: Rep. Ivan Component: Limited Entry Program Administration
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						
MISCELLANEOUS						
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
Agency: Commercial Fisheries (Limited) Entry Commission Date: 2/18/98

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House District 39



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Phone: (907) 765-7526

Representative Ivan M. Ivan

SPONSOR STATEMENT-CSHB 285 (RES) am

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 main intent of this legislation is to establish a point system against a commercial fishing permit holder for a conviction of commercial fishing laws found under Title 16. Should 12 or more points be assessed against a permit holder during any consecutive 36-month period as a result of convictions, the Commercial Fisheries Entry Commission is given the authority to suspend the permit for a one-year period. A suspension of two-years occurs when 16 or more points are accumulated during a consecutive 48-month period. A suspension of three-years is invoked when a permit holder accumulates 18 or more points during any consecutive 60 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 conviction.

The bill outlines the assessment of points, the suspension process, the notice and appeal process and the notification to the commission by the Court System.

Another provision of CSHB 285 (RES) am affects emergency transfers of a permit. Should the permit holder decide to transfer the permit, any points accumulated by the person in possession of the permit will also be assessed against the owner of the permit. This provision will discourage permit transfers by a permit holder who has accumulated a large number of points and is trying to avoid suspension by transferring the permit to another fisher.

0-LS0879\Q
Utermohle
4/20/98

SENATE CS FOR 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; and providing for an effective date."

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

4 * Section 1. AS 16.43 is amended by adding new sections to read:

5 Article 6A. Point System for Commercial Fishing Violations.

6 Sec. 16.43.850. Point system. (a) For the purpose of identifying frequent
7 violators of commercial fishing laws, the commission shall adopt regulations
8 establishing a uniform system for the suspension of commercial fishing privileges by
9 assigning demerit points for convictions for violations of commercial fishing laws that
10 are reported to the commission under AS 16.43.880. The commission shall assess
11 demerit points against a permit holder for each violation of commercial fishing laws
12 in accordance with (b) of this section. The commission shall assess points against a
13 permit holder for the fishery in which the violation of commercial fishing laws
14 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 16.05.722, 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) permit holder not present when required ~~4~~ points;
- (10) fishing with underlength or overlength vessel 6 points;
- (11) taking or possessing prohibited sex or size of fishery
resources 6 points;
- (12) wanton waste of fishery resources 4 points.

(c) 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 any consecutive 48-month period as a result of convictions for violations of commercial fishing laws in the fishery;
- (3) three years if the permit holder accumulates 18 or more points during any consecutive 60-month period as a result of convictions for violations of commercial fishing laws in the fishery.

Sec. 16.43.855. Assessment of points. (a) Notice of each assessment of

1 points shall be given to the permit holder. Notice shall also be given to the permit
2 holder before the expiration of a suspension of commercial fishing privileges under
3 AS 16.43.850(c) that subsequent violations of commercial fishing laws in the fishery
4 may result in further suspensions of the permit. The notice may be given by first class
5 mail.

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

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

13 (d) If points are assessed against a permit holder who holds a commercial
14 fishing permit under an emergency transfer approved by the commission under
15 AS 16.43.180, the same number of points shall also be assessed against the transferor
16 of the permit. Points assessed against the transferor of the permit under this subsection
17 shall be included in calculations made under AS 16.43.850(c).

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

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

27 (1) engage in the fishery under a crewmember license; or

28 (2) lease or rent the permit holder's interest in a boat to another person
29 if the boat would be used in a fishery for which the permit holder's fishing privileges
30 are suspended.

31 (c) If, during the period for which a permit holder's commercial fishing

1 privileges for a fishery are suspended, the commission establishes a limited entry
 2 system for the fishery, the permit holder shall be eligible to obtain an entry permit for
 3 that fishery to the extent that the permit holder qualifies for the entry permit under
 4 regulations adopted by the commission. If the permit holder qualifies for an entry
 5 permit for the fishery, the commission shall withhold issuance of the entry permit until
 6 the period of the suspension imposed under AS 16.43.850 - 16.43.895 has expired.

7 (d) The commission may not transfer a commercial fishing permit for a fishery
 8 under an emergency transfer under AS 16.43.180 if, at the time of the application for
 9 the emergency transfer,

10 (1) the permit holder's fishing privileges for the fishery have been
 11 suspended; or

12 (2) the permit holder has accumulated sufficient points, or is currently
 13 subject to outstanding charges of violating commercial fishing laws in the fishery for
 14 which the permit holder, if convicted of the charges, would accumulate sufficient
 15 additional points to result in the suspension of the permit holder's commercial fishing
 16 privileges for the fishery under AS 16.43.850(c).

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

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

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

28 **Sec. 16.43.895. Definitions for AS 16.43.850 - 16.43.895.** In AS 16.43.850 -
 29 16.43.895,

30 (1) "commercial fishing law" means a statute or regulation that
 31 regulates the conduct of a person engaged in commercial fishing activities by

1 establishing requirements relating to fishing licenses and permits; catch records and
2 reports; size, nature, quantity, or use of fishing vessels, sites, and gear; time, place, or
3 manner of taking fishery resources; possession, transportation, sale, barter, or waste of
4 fishery resources; or other aspects of commercial fishing;

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

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

10 (4) "permit holder" includes the holder of a commercial fishing permit
11 as the result of an emergency transfer, an applicant for a commercial fishing permit
12 if the applicant's commercial fishing permit was suspended under AS 16.43.850 -
13 16 43.895, and a person whose privilege of obtaining a commercial fishing permit for
14 a fishery is suspended under AS 16.43.850 - 16.43.895.

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

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

1 retained.

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

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

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

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

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

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

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

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

1 commercial fishing privileges and revocation of commercial fishing permits under
2 (i) of this section [(1) SHALL FORFEIT TO THE COMMISSION ALL INTERIM-
3 USE PERMITS AND ENTRY PERMITS AND (2) LOSES ELIGIBILITY FOR
4 INTERIM-USE PERMITS AND FOR ENTRY PERMITS FOR A PERIOD OF
5 THREE YEARS].

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

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

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

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

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

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

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

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

31 (i) Upon the conviction of a person for an offense described under (a), (b), or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LEGAL SERVICES

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Juneau, Alaska 99801-2105

MEMORANDUM

April 2, 1998

SUBJECT: SCS CSHB 285(); Suspension of commercial fishing privileges

TO: Senator Rick Halford
Attn: Brett Huber

FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is a draft SCS CSHB 285() relating to suspension of commercial fishing privileges. This version of the bill provides that demerit points for commercial fishing violations are attached to the permit and not to the permit holder.

This version of the bill should be reviewed by the Division of Fish and Wildlife Protection, Alaska Commercial Fisheries Entry Commission, the Division of Investments, and the Commercial Fisheries and Agriculture Bank. This bill as originally introduced provided that the demerit points be attached to the commercial fishing permits; however a number of practical issues were raised by these agencies that dictated that the demerit points be attached to the permit holder. Those issues went away when the demerit points were attached to the permit holder. If you contact the agencies listed above they can inform you of their concerns with the approach taken by the original bill and whether those concerns still exist in regard to the proposed SCS. I can no longer remember what the precise issues were.

If I may be of further assistance, please advise.

GU:lmb
98-048.lmb

Enclosure

0-LS0879L
Utermohle
3/30/98

SENATE CS FOR 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; and providing for an effective date."

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

4 * Section 1. AS 16.43 is amended by adding new sections to read:

5 Article 6A. Point System for Commercial Fishing Violations.

6 Sec. 16.43.850. Point system. (a) For the purpose of identifying frequent
7 violators of commercial fishing laws, the commission shall adopt regulations
8 establishing a uniform system for the suspension of commercial fishing privileges by
9 assigning demerit points for convictions for violations of commercial fishing laws that
10 are reported to the commission under AS 16.43.875. In accordance with (b) and (c)
11 of this section, the commission shall assess demerit points against a commercial fishing
12 permit for the fishery in which the permit holder was convicted for a violation of
13 commercial fishing laws.

14 (b) The commission shall assess demerit points against a permit holder's

1 commercial fishing permit for each conviction of the permit holder for a violation of
 2 commercial fishing laws under AS 16.05.723, 16.05.831; AS 16.10.055, 16.10.070 -
 3 16.10.090, 16.10.100, 16.10.110, 16.10.120 - 16.10.130, 16.10.165, 16.10.173,
 4 16.10.200 - 16.10.220, 16.10.240, 16.10.250, and 16.10.760 - 16.10.790 for the
 5 following violations in accordance with this schedule:

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

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

28 (d) The commission shall suspend a commercial fishing permit for a fishery
 29 for a period of

- 30 (1) one year if the permit accumulates 12 or more points during any
- 31 consecutive 36-month period as a result of convictions of the permit holder for

1 violations of commercial fishing laws in the fishery;

2 (2) two years if the permit accumulates 16 or more points during any
3 consecutive 48-month period as a result of convictions of the permit holder for
4 violations of commercial fishing laws in the fishery;

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

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

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

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

22 (d) Points assessed or assessable against a commercial fishing permit at the
23 time of a permanent or emergency transfer of the permit are transferred with the
24 permit. Points transferred with a permit must be taken into consideration in
25 accordance with the provisions of AS 16.43.850 - 16.43.895 if points are assessed
26 against the permit following the completion of the transfer.

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

1 **Sec. 16.43.865. Suspension.** (a) A permit holder whose commercial fishing
2 permit for a fishery is suspended under AS 16.43.850 - 16.43.895 may not obtain an
3 entry permit or interim-use permit for that fishery during the period of the suspension
4 of the privileges. During the period for which the permit holder's privilege to obtain
5 an entry permit or interim-use permit for a fishery is suspended under this section, the
6 commission may not issue a permit card to the permit holder for that fishery.

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

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

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

20 **Sec. 16.43.875. Required notice to commission.** (a) A court that convicts
21 a person of a violation of commercial fishing laws under this title or under a regulation
22 adopted under this title shall forward a record of the conviction to the commission
23 within a week after the date of the conviction.

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

28 **Sec. 16.43.895. Definitions for AS 16.43.850 - 16.43.895.** In AS 16.43.850 -
29 16.43.895,

30 (1) "commercial fishing law" means a statute or regulation that
31 regulates the conduct of a person engaged in commercial fishing activities by

1 establishing requirements relating to fishing licenses and permits; catch records and
2 reports; size, nature, quantity, or use of fishing vessels, sites, and gear; time, place, or
3 manner of taking fishery resources; possession, transportation, sale, barter, or waste of
4 fishery resources; or other aspects of commercial fishing;

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

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

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

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

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

1 retained.

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

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

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

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

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

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

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

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

1 commercial fishing privileges and revocation of commercial fishing permits under
2 (i) of this section [(1) SHALL FORFEIT TO THE COMMISSION ALL INTERIM-
3 USE PERMITS AND ENTRY PERMITS AND (2) LOSES ELIGIBILITY FOR
4 INTERIM-USE PERMITS AND FOR ENTRY PERMITS FOR A PERIOD OF
5 THREE YEARS].

6 * Sec. 7. AS 16.43.970(f) is amended to read:

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

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

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

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

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

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

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

31 (i) Upon the conviction of a person for an offense described under (a), (b), or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Alaska State House of Representatives
House District 39



Session

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Representative Ivan M. Ivan

SECTIONAL ANALYSIS - CSHB 285 (RES) am

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 of a commercial fishing permit. The Commission will also assess demerit points against a permit holder for each violation of commercial fishing laws consistent with the demerit point scheduled outlined in subsection (b) and (c) of this section.
- (b) Establishes a schedule of demerit points for violations of commercial fishing laws which are already established under Title 16.
- (c) One-half the of the points will be assessed for a conviction of a violation of commercial fishing laws under AS 16.05.722.
- (d) Requires the Commercial Fisheries Entry Commission to suspend 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 points are assessed. The Commission must also notify a permit holder before the expiration of a suspension that subsequent violations of commercial fishing laws may result in further suspension of the permit.
- (b) Points will be assessed against the permit holder based on the date of the conviction.

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- (c) States that the assessment of points against a permit holder 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) Points assessed against a permit holder who holds a permit under a permanent or emergency transfer will also be assessed against the transferor of the permit.

Sec. 16.43.860. Reduction of Points. Requires the deduction of two points from the total points assessed 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 conviction.

Sec. 16.43.865. Suspension.

- (a) A permit holder who has had the permit suspended may not obtain an entry permit or limited use permit for that fishery during the period of suspension.
- (b) A permit holder whose entry permit or interim use permit has been suspended may participate in the fishery only under a crew member license
- (c) 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.

Sec. 16.43.870. Notice and Appeal. The commission will provide notice of its' determinations. A permit holder may request a hearing on the determination.

Sec. 16.43.875. Required Notice to Commission.

- (a) The Court System will forward a record of convictions on a weekly basis to the commission.
- (b) A conviction is obtained upon a plea of nolo contendere or a forfeiture of bail or collateral to secure the defendant's appearance in court that has not been vacated.

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

Section 2: Amends AS 16.05.723(a), Misdemeanor commercial fishing penalties. Deletes AS 16.05.710 which gave the court the authority to suspend or revoke a permit. This authority now rests with the Commission after a certain number of points have been accumulated.

Section 3: Adds a new subsection to AS 16.10.335, Loans for purchase of Alaska limited entry permits. This subsection terminates a debtor's interest in a limited entry permit as of the date the Commission revokes the permit. This is to ensure the lending institution (the Division of Investments) is protected and can recoup its loan.

Section 4: Amends AS 16.10.337(a), Deficiencies and transfer of entry permits after foreclosure. This amendment refers to the new subsection found in section 3 of this bill.

Sections 5, 6, 7, 8, 9: AS 16.43.970(a), Penalties. The changes in these five sections do not change the effects of the current statute addressing violations of the Limited Entry Act. Violations in the law may still result in suspension and revocation under this act. However, references to forfeiture of fishing privileges by the court are eliminated in favor of referrals by the court to the Commission for suspension or revocation of fishing privileges as directed. Suspension and revocation of fishing privileges by the Commission is more consistent with the Legislature's determination that fishing privileges administered by the Commission are use privileges and not property under AS 16.43.150(e).

Section 10: Adds a new subsection to AS 44.81.247, Termination of permit interest. This subsection terminates a debtor's interest in a limited entry permit as of the date the Commission revokes the permit. This is to ensure the lending institution (CFAB) is protected and can recoup its loan.

Section 11: Amends AS 44.81.250(a), Transfer of entry permits after foreclosure. This amendment references the new subsection found in Section 10 of this bill.

Section 12: Repeals AS 16.05.710(a) and 16.05.710 (d)(1), Suspension of commercial license and entry permit. Subsection (a) allowed the courts to revoke or suspend a limited entry permit due to Title 16 violations. This authority now rests with the Commission due to points accumulations or violations of the Limited Entry Act.

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Subsection (d)(1) is the definition of "commercial fishing law." The definition of "commercial fishing law" is now found in Section 1 of this bill.

Section 13: Applicability. This act applies to violations of commercial fishing laws that occur on or after the effective date of this bill.

Section 14: Immediate effective date.

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

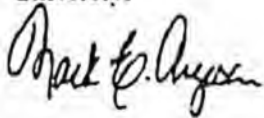
Sites

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



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January 26, 1998

Edward E. Crane
President

VIA FAX 907-465-4589

Representative Ivan Ivan
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Re: HB285

Dear Representative Ivan,

This is to express and discuss some concerns regarding certain provisions of House Bill No. 285. We note that HB285 is scheduled by the House Resources Committee for a first hearing on January 29.

We hope that the following discussion will make clear that CFAB's concerns relate only to the possibility that certain provisions of HB285 as drafted, in some situations, may have unintended consequences and/or result in disadvantage to CFAB and its resident fishing community owners. We take no issue with the apparent philosophies and purposes of HB285, and certainly do not wish to be viewed as "opposed" to the legislation!

CFAB is the only privately-owned lender which makes loans secured by the pledges of limited entry permits, under the statutory authority of AS 44.81.215(7). The State of Alaska, through the Department of Commerce's Division of Investments makes similar loans; however, this letter presents CFAB's perspectives only.

The vast majority of CFAB loans secured by limited entry permit pledges are serviced, and ultimately repaid, in a relatively routine manner. It is in only the small remainder of cases that serious and protracted delinquencies occur. For a variety of reasons, ranging from CFAB's own policies to its recognition of the realities

Alaska Commercial Fishing and Agriculture Bank

of salmon harvesting economics, it is not at all unusual for a serious loan delinquency to be tolerated by CFAB for three years or more, and a perhaps-surprising number of those are ultimately satisfactorily resolved through payments and/or modification of terms. It is again in only a small number of those seriously delinquent situations that the loan is formally declared to be in default. "Default" is a legally-significant status which might be practically viewed as "the beginning of the foreclosure process." Once more we must say that it is in only a very small minority of these default cases that CFAB actually completes the foreclosure process by auctioning the limited entry permit involved. During the past five years, CFAB has sold only five limited entry permits.

The apparently probable reason that the "final solution" comes into play so infrequently is that most borrowers who are in default and who have no foreseeable capacity to cure the defaults realize, after analyses, that it is in their respective financial interest to sell the permits themselves, pay CFAB from the proceeds, and pocket the net difference. Allowing the foreclosure process to run its course almost always results in additional costs which reduce the ultimate net difference available to the borrower/permitholder.

All of the above is to provide background to the following discussion of HB285.

Our understanding of HB285 is that it will, among other effects, place a convicted repeat violator in jeopardy of losing his/her permit by suspension or revocation with only a minimal opportunity for mitigation. More specifically it appears, as an example, that a permitholder could accumulate 16 points during a 72-month period, receive a 2-point reduction as a result of a "clean record" during the 12 months following the latest point assessment, and then go through a period of several years during which the permit would be "tainted" by the decreasingly effective balance of outstanding points.

The latter feature would almost certainly result in financial disadvantage to the offending permitholder in the event of a sale of the permit during the period in which there are points effectively outstanding. For example, a prospective permit purchaser might be willing to pay \$100,000 for a "clean" permit in a particular fishery, but would be willing to pay only \$80,000 for a permit which has had 8 points assessed against it in the past 36 months, reasoning that his or her own violations – inadvertent or otherwise – in the ensuing 12, 24, or 36 months could result in suspension or revocation of the permit. In such a hypothetical situation, the original permitholder would effectively pay a \$20,000 penalty as a result of the point accumulation. Again, if that is among the intents of HB285, we take no issue with it.

Our concern relates to a hypothetical situation such as the above in which the original permitholder owes CFAB \$95,000, say, and has no other assets or sources of repayment. Our analysis of the effects of HB285's proposed Sections 16.43.855.(c). and 16.43.865.(e). is that if CFAB were forced to foreclose its lien on the permit at issue, CFAB would wind up selling the "tainted" permit and would record a \$15,000 loss (\$95,000 loan less \$80,000 proceeds). The borrower/permitholder, though, (again assuming he/she has no other assets CFAB can effectively reach) would have had a \$95,000 obligation extinguished by an asset which he/she could have sold for only \$80,000. Moreover, since CFAB is structured as a cooperative, the \$15,000 loss is not simply "institutional" but is effectively borne by all of its other resident harvester borrowers! We assume that the potential for such a circumstance is an unintended consequence of the provisions of HB285.

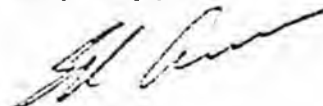
As this matter was discussed internally, one early suggestion was to propose to you a provision in HB285 that points would be "erased" upon foreclosure by CFAB (or DoI). We do not believe that would serve your intent. If there were such a provision, and using the same hypothetical situation, a borrower/permitholder who is in a mood to liquidate his/her fishing operation would simply do nothing and force CFAB to foreclose. CFAB would wind up with a "clean" permit to sell, presumably

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for \$100,000, and would be legally obligated to pay the \$5,000 of net proceeds to the original permitholder. So the latter would receive the full benefit of the \$100,000 permit value rather than the "discounted" value of \$80,000, just because there happened to be a CFAB loan! Again, we do not believe that is consistent with HB285's intents.

We would be able to speak to this issue (by telephone) at the Resources Committee's Hearing on Thursday. We're not sure that is either appropriate or necessary: First, because it is a relatively complex matter to explain and has little to do with the overall substance of HB285; and, Second, because we do not want to be construed as opposing HB285. We would be much more comfortable if we had the opportunity to discuss our concerns by phone within the next day or so with whichever of your aides is responsible for the progress of HB285. It would seem, if we've made our concerns clear and if you are willing to accommodate them, that we can find a mutually acceptable way to address them within the context of your basic purposes.

Very truly yours,



Edward E. Crane
President

cc: Martin Richard, Division of Investments
Cameron Jensen