



# LAWS OF ALASKA

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Chapter No.

83

## AN ACT

Amending the Commercial Fishing Loan Act; and providing for an effective date.

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

\* Section 1. AS 16.10.310(a)(1)(A) is amended to read:

(A) individual commercial fishermen who have been state residents for a continuous period of five years immediately preceding the date of application for a loan under secs. 300 - 370 of this chapter and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under ch. 43 of this title for any one of the past five years, and who actively participated in the fishery during that period, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels; and

\* Sec. 2. AS 16.10.310(a)(1) is amended by adding a new subparagraph to read:

(C) corporations, partnerships, or joint ventures, 100 per cent of which are owned by individual commercial fishermen who have been state residents for a continuous period of five years immediately preceding the date of application for a loan under secs. 300 - 370 of this chapter and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under ch. 43 of this title for any three of the past five years, and who actively participated in the fishery during that period, for the repair, restoration or upgrading of existing vessels and gear, for the purchase of gear, and for the construction and purchase of vessels.

\* Sec. 3. AS 16.10.320 is repealed and re-enacted to read:

Sec. 16.10.320. LIMITATIONS ON LOANS. (a) Except as provided in (b), (c), (d), and (e) of this section, commercial fishing loans granted under secs. 300 - 370 of this chapter

- (1) may not exceed \$500,000;
- (2) may not exceed a term of 15 years;
- (3) may not bear interest exceeding seven per cent;
- (4) shall be secured by a first priority lien and appropriate security agreement; and
- (5) may not exceed 75 per cent of the appraised value of the collateral used to secure the loan.

(b) A lien in favor of the state is not required for loans guaranteed fully by the federal government under the Federal Ship Financing Act of 1972 (46 U.S.C. secs. 1271-1279(b); 86 Stat. 909), as amended. In the case of a security agreement given to secure a loan made under secs. 300 - 370 of this chapter and covering a vessel documented under the laws of the United States and so long as the Ship Mortgage Act of 1920 (46 U.S.C. secs. 911-984; 41 Stat. 1000), as amended, and the Shipping Act of 1916 (46 U.S.C. secs. 801-842; 39 Stat. 728), as amended, remain ambiguous with respect to whether or not a state or state agency qualifies as a citizen of the United States for purposes of those Acts, the first lien requirement of this section may be satisfied by the recordation and endorsement of a first preferred ship mortgage under the Ship Mortgage Act of 1920, and by perfection of a security interest under the Uniform Commercial Code - Secured Transactions (AS 45.05.-690 - 45.05.794), if the approval of the Secretary of Commerce is obtained under 46 U.S.C. sec. 839 for the transfer to the department of the interest in a vessel documented under the laws of the United States. In the case of a security agreement given to secure a loan made under secs. 300 - 370 of this chapter and covering a vessel documented under the laws of the United States, the first lien requirement of this section may also be satisfied by use of a trust deed and bond issue under it, if the trustee is a citizen of the United States and obtains a first preferred ship mortgage on the vessel under the Ship Mortgage Act of 1920, and the approval of the Secretary of Commerce is obtained under 46 U.S.C. secs. 839 and 961 for the transfer of the bond or bonds to the department if the trustee is not a trustee approved by the Secretary of Commerce under 46 U.S.C. secs. 808, 835 and 961.

(c) A commercial fishing loan for the construction of a new fishing vessel or the purchase of an existing fishing vessel may be secured by a second priority lien or mortgage which is subordinate to a valid first priority lien or mortgage in favor of a private lending institution if the total financing does not exceed 75 per cent of the appraised value of the collateral used to secure the loan. A loan granted under this subsection

(1) shall be to an obligor who has previously obtained a commitment for a commercial fishing loan from a private lending institution;

(2) may not exceed \$1,000,000 or 35 per cent of the total purchase price of the fishing vessel, whichever amount is less;

(3) may not exceed a term of 15 years;

(4) may not bear interest exceeding seven per cent, except that loans granted under this subsection may bear interest at a rate not to exceed eight per cent if the commissioner determines that an increase in the interest rate is necessary for the security of the loan.

(d) Except as provided in (e) of this section, no more than one commercial fishing loan may be made to a person for the purchase, construction, repair or upgrading of a fishing vessel or its gear. A loan to an associate of the borrower is considered to be a loan to the borrower. For the purposes of this section, "associate of the borrower" means

(1) a corporation or other organization of which the borrower is an officer, director or partner, or is, directly or indirectly, the beneficial owner of 10 per cent or more of any class of equity securities;

(2) a person who is, directly or indirectly, the beneficial owner of 10 per cent or more of any class of equity securities of the borrower;

(3) a trust or other estate in which the borrower has a substantial beneficial interest or as to which the borrower serves as trustee or in a similar fiduciary capacity;

(4) a relative or spouse of the borrower or a relative of the spouse, who has the same home as the borrower;

(5) a person directly or indirectly controlling, controlled by, or under common control with, the borrower.

(e) Two or more individual commercial fishermen who each satisfy the requirements specified in sec. 310(a)(1)-(A) of this chapter may jointly obtain a commercial fishing loan for the construction of a fishing vessel or the purchase of an existing fishing vessel. Loans granted under this subsection

(1) may not exceed the amount specified in (a)(1) of this section multiplied by the number of qualified commercial fishermen applying for the loan;

(2) may not exceed a term of 15 years;

(3) shall be secured by a first priority lien and appropriate security agreement;

(4) may not bear interest exceeding seven per

(5) may not exceed 75 per cent of the appraised value of the collateral used to secure the loan.

\* Sec. 4. AS 16.10 is amended by adding new sections to read:

Sec. 16.10.333. LOANS FOR PURCHASE OF ALASKA LIMITED ENTRY PERMITS. (a) Loans under sec. 320(a) of this chapter 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 ch. 43 of this title 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 his title to the permit or his 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.

Sec. 16.10.335. DEFAULT AND FORECLOSURE. (a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under sec. 333 of this chapter, the commissioner shall provide the debtor, by registered or certified mail sent to his last known address on file with the commissioner, with a notice of default which includes

(1) a description of the security given for the note including the number assigned to the pledged permit by the commission;

- (2) the date upon which the default occurred;
- (3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;
- (4) a statement that the debtor may, within 15 days of the postmark date of the notice, request a hearing at which he may submit evidence showing he has not defaulted;
- (5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;
- (6) a statement that the note may be paid in full less unearned interest within 90 days from the postmark date of the notice;
- (7) the place where reinstatement or payment in full may be made; and
- (8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a) of this section, his equitable interest is terminated by operation of law without further notice. Any entry permit cards issued to him under the permit shall be cancelled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the commissioner.

Sec. 16.10.337. DEFICIENCIES AND TRANSFER OF ENTRY PERMITS AFTER FORECLOSURE. (a) Upon a foreclosure on an entry permit as provided in sec. 335 of this chapter, 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 notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of sec. 333(a) of this chapter. If qualified, he may assume all rights and liabilities of the original debtor.

(c) If the debtor is unable to nominate a qualified person to assume the note under (b) of this section, the permit must be made available to a qualified person, chosen as provided in this section, who must assume the note subject to all rights and liabilities of the original debtor. The commission shall provide the commissioner with

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a list of persons chosen by lottery who qualify as transferees of entry permits under ch. 43 of this title and regulations adopted by the commission and who have met the residency and commercial fishing participation requirements of sec. 310(a) of this chapter. The commissioner then shall determine, in order of presentation, any remaining qualifications. The commissioner shall allow the first applicant meeting all qualifications to assume the note.

(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 sec. 333 of this chapter. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees.

Sec. 16.10.339. REGULATIONS. The commission, with the approval of the department, shall adopt regulations to implement secs. 333 - 337 of this chapter.

Sec. 16.10.342. SPECIAL ACCOUNT ESTABLISHED. (a) There is established as a special account within the commercial fishing revolving loan fund the foreclosure expense account.

(b) The commissioner may credit the foreclosure expense account with money earned as a result of an increased interest rate on a commercial fishing loan granted under sec. 320(c) of this chapter.

(c) The commissioner may expend money credited to the foreclosure expense account when necessary to protect the state's security interest in collateral on loans granted under secs. 300 - 370 of this chapter or to defray expenses incurred during foreclosure proceedings after a default by an obligor.

\* Sec. 5. AS 16.10.360 is amended by adding new paragraphs to read:

(3) "commission" means the Alaska Commercial Fisheries Entry Commission;

(4) "debtor" means an individual commercial fisherman who either initially contracts for a loan under secs. 333 - 337 of this chapter or assumes a loan as provided in those sections.

\* Sec. 6. AS 16.43.150(g) is amended to read:

(g) Except as provided in AS 16.10.333 - 16.10.337, an entry permit may not be:

(1) pledged, mortgaged, leased, or encumbered in any way;

(2) transferred with any retained right of repossession or foreclosure; or

(3) attached, distrained, or sold on execution of judgment or under any other process or order of any court.

\* Sec. 7. AS 16.43.170(a) is amended to read:

(a) Except as provided in AS 16.10.333 - 16.10.337, entry permits and interim-use permits are transferable only through the commission as provided in this section and sec. 180 of this chapter and under regulations adopted by the commission.

\* Sec. 8. This Act takes effect July 1, 1978.