

1 HB407
2 147217-2
3 By Representatives Sessions, Long, Sanderford and Scott
4 RFD: Agriculture and Forestry
5 First Read: 07-MAR-13

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8 SYNOPSIS: Under existing law, a saltwater commercial
9 hook and line fishing license is provided for.

10 This bill would designate the license as a
11 commercial fishing license and specify activities
12 relating to saltwater commercial fishing which
13 would require a person to be licensed.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 To amend Section 9-12-113 of the Code of Alabama
20 1975, relating to licenses for saltwater fishing; to provide
21 for and specify the activities for which a saltwater
22 commercial fishing license is required.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Section 9-12-113 of the Code of Alabama
25 1975, is amended to read as follows:

26 "§9-12-113.

1 "(a) Each license or permit issued by the
2 Commissioner of Conservation and Natural Resources or his or
3 her authorized agent shall state the name of the applicant.

4 "(1) If the applicant is a resident of the State of
5 Alabama, the applicant shall pay the following fees:

6 "a. One hundred dollars (\$100) for commercial ~~hook~~
7 ~~and line~~ fishing.

8 "b. Three hundred dollars (\$300) on each net or
9 seine permit, plus an additional five hundred dollars (\$500)
10 per permit for the taking of Roe Mullet and Spanish Mackerel,
11 as defined by regulation of the Department of Conservation and
12 Natural Resources.

13 "c. One thousand five hundred dollars (\$1,500) for
14 each purse seine license.

15 "(2) Nonresidents shall pay the following fees:

16 "a. Two hundred dollars (\$200) for commercial ~~hook~~
17 ~~and line~~ fishing.

18 "b. One thousand five hundred dollars (\$1,500) for
19 each net or seine permit, plus an additional two thousand five
20 hundred dollars (\$2,500) per permit for the taking of Roe
21 Mullet and Spanish Mackerel, as defined by regulation of the
22 Department of Conservation and Natural Resources.

23 "c. Three thousand dollars (\$3,000) for each purse
24 seine license except where the nonresident of the State of
25 Alabama is a resident of a state which has a reciprocal
26 fishing agreement with the State of Alabama, in which case the

1 fee shall be the same as the fee for an Alabama resident in
2 that state.

3 "(3) A commercial fishing license shall be required
4 for any person to do any of the following:

5 "a. Sell or attempt to sell finfish or take or
6 attempt to take, by the use of hook and line, rod and reel,
7 cast net, gig, trot line, spear gun, or bow and arrow, or
8 other gear as defined by regulation or to possess or transport
9 for commercial purposes finfish from those waters under the
10 jurisdiction of the Marine Resources Division of the
11 Department of Conservation and Natural Resources, as provided
12 in Rule 220-2-.42, Alabama Administrative Code.

13 "b. Possess finfish for commercial purposes on board
14 a boat in those waters under the jurisdiction of the Marine
15 Resources Division of the Department of Conservation and
16 Natural Resources, as provided in Rule 220-2-.42, Alabama
17 Administrative Code.

18 "c. Off-load or land a catch of finfish to a
19 resident or nonresident seafood dealer, regardless of where
20 the fish were taken.

21 "(4) A commercial fishing license shall not be
22 required for a commercial gill net license holder validly
23 licensed under this section, in order for the licensee to
24 take, possess, or sell his or her catch taken with a gill net,
25 seine, or other entangling net, nor shall it be required for
26 the taking, possession, and sale of finfish taken with a
27 licensed commercial shrimp boat.

1 "(b) The net and seine permits provided for pursuant
2 to subdivision (1) of subsection (c) shall not be transferable
3 from one person to another for a period of three years from
4 October 1, 1995, or until a transfer system is developed by
5 departmental regulation, except in the case of proven physical
6 hardship, as determined within the sole discretion of the
7 Director of the Marine Resources Division. The Department of
8 Conservation and Natural Resources shall by regulation
9 establish a system for the transfer of the permits within a
10 three-year period. In establishing the system, the department
11 shall provide that there shall be no financial gain realized
12 by the transferor of the permits. The net and seine permits
13 provided for pursuant to subdivision (2) of subsection (c)
14 shall not be transferable under any circumstances, including
15 physical hardship, and shall not be transferred to any other
16 applicant by the department.

17 "(c) In addition to all other requirements to be
18 permitted pursuant to this section, except as otherwise
19 provided for residents age 62 years or older under certain
20 conditions as may be subsequently determined by the
21 department, all applicants for net and seine permits shall
22 submit the following:

23 "(1) Proof that the applicant purchased a license
24 under this section in at least two of the five years during
25 the period of 1989 through 1993 and proof, in the form of
26 unamended original income tax returns including Alabama state
27 income tax returns for all applicants in accordance with

1 procedures established by departmental regulations, that the
2 applicant recognized his or her applicable Alabama income and
3 derived at least 50 percent of his or her gross income from
4 the capture and sale of seafood species in at least two of the
5 five years during the period of 1989 through 1993 and in
6 subsequent years for annual renewal; or

7 "(2) Proof that the applicant purchased a license
8 under this section every year from 1989 through 1993, and,
9 unless exempt from filing under the Alabama income tax law,
10 proof that the applicant filed an Alabama income tax return
11 from 1989 through 1993, and in subsequent years for annual
12 renewal.

13 "For the license year beginning October 1, 1997,
14 only, any permittee who obtained a net and seine permit
15 pursuant to subdivision (2) may obtain a permit transferable
16 in the same manner as a permit pursuant to subdivision (1)
17 upon submitting proof in the form of unamended original income
18 tax returns including Alabama state income tax returns for all
19 applicants in accordance with procedures established by
20 departmental regulations, that the applicant recognized his or
21 her applicable Alabama income and derived at least 50 percent
22 of his or her gross income in 1996 from the capture and sale
23 of seafood species, provided the permittee must meet the gross
24 income requirements to continue to renew a permit issued
25 pursuant to subdivision (1) in subsequent years. A permittee
26 who receives a permit pursuant to the provision in the
27 preceding sentence may not receive a permit pursuant to

1 subdivision (2) thereafter. The Alabama Department of Revenue
2 shall verify, upon request, to the Director of the Marine
3 Resources Division of the Alabama Department of Conservation
4 and Natural Resources the income tax return of the applicant
5 if the applicant authorizes the release of the information.
6 Authorization by the applicant to release the information
7 shall be a prerequisite for a permit.

8 "(d) Only one permit shall be issued per individual.
9 The department shall issue each permittee one decal or placard
10 which shall be visibly displayed on the permittee's designated
11 vessel or vessels in accordance with regulations promulgated
12 by the Department of Conservation and Natural Resources. The
13 decal or placard may only be displayed on an Alabama
14 registered vessel and may not be displayed on an out-of-state
15 registered vessel. A permittee shall have only one net or
16 seine in use at any time and shall be present and have the
17 permit in his or her possession when the net or seine is in
18 use or in transit, provided the presence of the permittee
19 shall not be required when the boat is docked, refueling, or
20 at a launch site.

21 "(e) All nets and seines, except purse seines, and
22 seines 25 feet or less, shall bear a tag showing the name and
23 number of the permittee and any other identification as
24 required by regulation, when the nets or seines are in use or
25 on board a boat in the waters of Alabama. A designated vessel
26 of 45 feet in length or less, as measured down the centerline,
27 may have properly marked nets which are the property of the

1 owner of the designated vessel on board the vessel but no fish
2 may be in contact with the nets and provided that the vessel
3 is not in motion and is moored or anchored when the permittee
4 is not present. An initial designated vessel may be replaced
5 by another vessel owned by the permittee that is no longer
6 than 110 percent of the original vessel subject in all events
7 to a maximum of 45 feet except in certain cases which may be
8 waived by the Director of the Division of Marine Resources
9 upon presentation of evidence that a permittee owned a vessel
10 longer than 45 feet prior to the passage of this amendatory
11 act.

12 "(f) All permits issued shall be issued to
13 individual persons only. A purse seine license may be issued
14 to a person, firm, or corporation. A nonresident, as mentioned
15 in this section, for the purposes of all permits issued, is
16 defined to be any person who has not been continuously
17 domiciled in this state for more than one continuous year
18 prior to the date of the issuance of the license and for the
19 purpose of purse seine licenses, a nonresident is defined to
20 be any person, firm, or corporation who has not been domiciled
21 in this state for more than one continuous year immediately
22 prior to the date of the issuance of the license. Any
23 nonresident fishing with a resident commercial gill net
24 license holder shall not provide any gill nets, trammel nets,
25 haul nets, or other fishing equipment to the resident
26 commercial gill net license holder. All persons on board must

1 have proof of residency in the form of a valid state driver's
2 license or state nondriver identification card.

3 "(g) All licenses and permits issued pursuant to
4 this section shall expire on September 30 thereafter
5 irrespective of the date of the issuance of the same.

6 "(h) All nets and seines fished in an illegal
7 manner, or in an illegal area, are declared to be a nuisance
8 and may be confiscated, along with the entire catch, boat,
9 motor, and any other fishing gear in the violator's
10 possession, and all of the items may be held as evidence by
11 any agent of the Department of Conservation and Natural
12 Resources. After conviction of the person in whose possession
13 the device or items were found or when the operator of the
14 device has not been determined after a period of 30 days, the
15 device or items shall be forfeited to the Department of
16 Conservation and Natural Resources which shall destroy or
17 otherwise dispose of the device or items as it shall deem
18 advisable or in lieu of forfeiture, the court may impose
19 additional fines.

20 "(i) All game fish taken by nets or seines under
21 this law shall be immediately returned to the waters where
22 they were taken with the least possible injury to the fish.
23 Possession of game fish in violation of this subsection will
24 be considered as using a net or seine in an illegal manner.
25 Saltwater game fish are defined as follows: Spotted Seatrout
26 (Cynoscion nebulosus); Red Drum (Sciaenops ocellata); Tarpon
27 (Megalops atlanticus); and those species designated by

1 regulation of the Department of Conservation and Natural
2 Resources. The department shall by regulation to the extent
3 possible establish a tagging system to regulate importation or
4 sale of the above listed species or species added by
5 regulation.

6 "(j) In addition to any other penalties provided in
7 this section, a violation of this section or any regulation
8 promulgated pursuant to this section, shall be a Class B
9 misdemeanor punishable as provided by law; provided, however,
10 that there shall be a mandatory minimum fine of two thousand
11 dollars (\$2,000) for first offenses of utilizing a net or
12 seine without the required license or permit hereunder, and
13 any subsequent violation of subsection (a) committed within a
14 three-year period of the date of conviction shall be a Class A
15 misdemeanor, punishable by a mandatory minimum fine of three
16 thousand dollars (\$3,000) and a mandatory minimum imprisonment
17 of 10 days. Any person violating this section or any
18 regulation promulgated pursuant to this section shall be
19 strictly liable and it shall not be necessary to prove any
20 criminal intent for conviction.

21 "A 10-point system is also hereby established to
22 provide that in the event a person is convicted of the
23 following offenses as set out in subdivisions (1) to (5),
24 inclusive, below in a manner so as to acquire ten or more
25 points within a three-year period the department shall
26 automatically and permanently revoke all licenses or permits
27 issued and the licenses, permits, and any decal issued to that

1 person shall be surrendered immediately by the licensee or
2 permittee to the Director of the Division of Marine Resources
3 upon conviction. Points shall be considered for a period of
4 three years from the date of conviction and shall be as
5 follows:

6 "(1) Sale, purchase, trade or barter of game fish,
7 10 points.

8 "(2) Fishing in closed areas, 5 points.

9 "(3) Retention of game fish, 5 points.

10 "(4) Fishing with improperly marked gear, 4 points.

11 "(5) Points for any other offense established or
12 designated by regulation of the Department of Conservation and
13 Natural Resources, shall be as provided in the regulation
14 relating to the prohibitions of this section."

15 Section 2. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.