

Introduced: 3/21/85
Referred: Resources and
Judiciary

1 IN THE SENATE

BY ZHAROFF

2

SENATE BILL NO. 246

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the suspension and revocation of
7 interim-use permits and limited entry permits."

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

9 * Section 1. AS 16.05.710 is amended to read:

10 Sec. 16.05.710. SUSPENSION OF LICENSES AND PERMITS [LICENSE
11 FORFEITURE]. Upon a first or second conviction of a person for a
12 violation of AS 16.05.440 - 16.05.720 or a federal or state law or
13 regulation for the protection of the commercial fish of the state
14 other than a violation of AS 16.43 or a regulation adopted under
15 AS 16.43, the court may, in addition to the penalty imposed by law and
16 in addition to the revocation provided under AS 16.43.961, forfeit the
17 commercial fishing license, interim-use permit, or limited entry
18 permit, of the person for a period of one year. Upon a third convic-
19 tion, the court may, in addition to the penalty imposed by law, for-
20 feit the commercial fishing license, interim-use permit, or limited
21 entry permit, for a period not to exceed three years.

22 * Sec. 2. AS 16.43 is amended by adding new sections to read:

23 Sec. 16.43.961. ADMINISTRATIVE REVOCATIONS RESULTING FROM VIOLA-
24 TION OF A COMMERCIAL FISHING LAW OR REGULATION. (a) If a law en-
25 forcement officer has probable cause to believe that a person who
26 holds a limited entry permit or interim-use permit has intentionally
27 violated or is intentionally violating a commercial fishing law or
28 regulation, the law enforcement officer shall read a notice to the
29 person and give a copy of it to the person. The notice shall advise

1 that

2 (1) the commission suspends the person's permit, and the
3 person may not operate gear in the commercial taking of fishery
4 resources covered by the permit while the permit is suspended;

5 (2) the commission intends to revoke the person's permit;

6 (3) the person has the right to administrative review of
7 the revocation;

8 (4) revocation of the person's permit will take effect in
9 seven days unless the person, within the seven days, requests an
10 administrative review.

11 (b) After reading the notice under (a) of this section, the law
12 enforcement officer shall seize the person's limited entry permit or
13 interim-use permit if it is in the person's possession and shall
14 deliver it to the commission with a sworn report describing the cir-
15 cumstances under which it was seized.

16 (c) Upon receiving a sworn report of a law enforcement officer
17 that states that notice under (a) of this section was provided to the
18 person, and that contains a statement of the circumstances surrounding
19 the arrest and the basis for the officer's probable cause to believe
20 that the person violated or was violating a commercial fishing law or
21 regulation, the commission shall revoke the person's permit effective
22 upon expiration of the seven-day period provided under (a)(4) of this
23 section.

24 (d) The period of revocation of a permit revoked under this
25 section may not extend beyond the date when the criminal action for
26 the violation underlying the revocation is dismissed, ended by
27 acquittal, or ended by conviction. If a criminal action is not filed
28 for the violation underlying the revocation, the period of revocation
29 may not exceed three consecutive openings of the fishery that the

1 permit covers. If more than one criminal action arises out of the
2 violation underlying the revocation and is filed against the person,
3 the commission may revoke the permit until all of the criminal charges
4 have been disposed of, whether by dismissal, acquittal, or conviction.

5 (e) A permit subject to revocation under this section may not be
6 transferred after the date of notice in (a) of this section pending
7 exhaustion of all administrative and judicial remedies arising from
8 action taken under this section.

9 (f) In (a) of this section, a person acts "intentionally" when
10 the person's conscious objective is to commit the violation.

11 Sec. 16.43.965. ADMINISTRATIVE REVIEW OF REVOCATION. (a) A
12 person who has received a notice under AS 16.43.961(a) may make a
13 written request for administrative review of the commission's action
14 under AS 16.43.961(c).

15 (b) A request for review must be made within seven days after
16 the person received notice under AS 16.43.961 or the right to review
17 is waived and the action of the commission under AS 16.43.961(c) is
18 final. The Department of Public Safety shall conduct the review for
19 the commission, and shall hold the review hearing within 24 hours
20 after the person's request if the request is timely or if the
21 Department of Public Safety waives the time requirement. If a written
22 request for a review is made after expiration of the seven-day period,
23 and if it is accompanied by the applicant's verified statement
24 explaining the failure to make a timely request for a review, the
25 Department of Public Safety shall receive and consider the request.
26 If the Department of Public Safety finds that the person was unable to
27 make a timely request because of lack of actual notice of the
28 revocation or because of factors of physical incapacity such as
29 hospitalization or incarceration, the Department of Public Safety

1 shall waive the period of limitation, reopen the matter, and grant the
2 review request.

3 (c) A person who has requested a review under this section may
4 request, and the Department of Public Safety may grant for good cause,
5 a delay in the date of the hearing.

6 (d) A person who has requested a hearing under this section and
7 who fails to appear at the hearing, for reasons other than lack of
8 actual notice of the hearing or physical incapacity such as hospitali-
9 zation or incarceration, waives the right to a hearing. The determina-
10 tion of the commission that is based upon the enforcement officer's
11 report becomes final.

12 (e) Notwithstanding AS 16.43.961(b), the hearing under this
13 section shall be held at the Department of Public Safety office
14 nearest to the residence of the person requesting the hearing unless

15 (1) a district court judge or a magistrate has been desig-
16 nated as a hearing officer in the matter by the Department of Public
17 Safety; or

18 (2) the Department of Public Safety and the person agree
19 that the hearing is to be held elsewhere.

20 (f) A review under this section shall be held before a hearing
21 officer designated by the Department of Public Safety. Upon the
22 consent of the administrative director of the state court system, the
23 Department of Public Safety may designate a district court judge or a
24 magistrate to serve as the hearing officer. The hearing officer has
25 the authority to

- 26 (1) administer oaths and affirmations;
27 (2) examine witnesses and take testimony;
28 (3) receive relevant evidence;
29 (4) issue subpoenas, take depositions, or cause depositions

1 or interrogatories to be taken;

2 (5) regulate the course and conduct of the hearing;

3 (6) make a final ruling on the issue.

4 (g) A hearing under this section shall be limited to the issue
5 of whether the law enforcement officer had reasonable grounds to
6 believe that the permit holder violated or was violating a commercial
7 fishing law or regulation.

8 (h) The determination of the hearing officer may be based upon
9 the sworn report of the law enforcement officer. The law enforcement
10 officer need not be present at the hearing unless either the person
11 requesting the hearing or the hearing officer requests in writing
12 before the hearing that the officer be present. If in the course of
13 the hearing it becomes apparent that the testimony of the law enforce-
14 ment officer is necessary to enable the hearing officer to resolve
15 disputed issues of fact, the hearing may be continued to allow the
16 attendance of the law enforcement officer.

17 (i) Testimony given by the person at the hearing is not admis-
18 sible against the person in a criminal trial unless the person's
19 testimony at the trial is inconsistent with that given at the hearing.

20 (j) If the issue set out in (g) of this section is determined in
21 the affirmative by a preponderance of the evidence, the hearing offi-
22 cer shall sustain the action of the commission. If the issue is
23 determined in the negative, the hearing officer shall reverse the
24 commission's action.

25 (k) A hearing officer who sustains the revocation of a permit
26 may grant limited permit privileges if the person whose permit is
27 revoked has not been previously convicted within the preceding 10
28 years of a violation of a commercial fishing law or regulation. The
29 privileges may be granted for the final 60 days during which the

1 permit is revoked if the hearing officer determines that the person's
2 ability to earn a livelihood would be severely impaired without the
3 privileges.

4 (1) Within 30 days of the issuance of the final determination of
5 the hearing officer, a person aggrieved by the determination may file
6 an appeal in superior court for judicial review of the hearing
7 officer's determination. The judicial review shall be on the record,
8 without taking additional testimony. The court may reverse the
9 determination of the hearing officer if the court finds that the
10 hearing officer misinterpreted the law, acted in an arbitrary and
11 capricious manner, or made a determination unsupported by the evidence
12 in the record.

13 (m) The filing of an appeal under (1) of this section does not
14 automatically stay the commission's revocation order. The court may
15 grant a stay of the order only upon a motion and hearing, and upon a
16 finding that there is a reasonable probability that the petitioner
17 will prevail on the merits and that the petitioner will suffer irrepa-
18 rable harm if the order is not stayed.