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246

TO: Terry Bannister
Legal Services Division

FROM: Senator Fred F. Zharoff

DATE: March 4, 1986

RE: SB 246

I have discussed with the Senate Resources Committee the possibility of a committee substitute for Senate Bill No. 246, "An Act relating to the suspension and revocation of interim-use permits and limited entry permits", which you originally drafted. I have outlined below the changes the committee staff and I would like to see included in a draft committee substitute.

Section 1:

In line 15, ^{and 19} change "may" to "shall". We want to make the suspension of fishing privileges mandatory upon conviction for a fishing violation. We also want to make mandatory suspension a penalty for violations of certain Alaska Board of Fisheries regulations -- fishing when the season is closed, and illegal use of gear. We wish to give the judge discretion, however, ("may" instead of "shall") in cases of fishing within a closed area.

We would like to have a letter of intent prepared that if an individual knowingly or intentionally fishes within closed waters, the permit should be suspended. This would be to distinguish from the individual who could make a case that he fell asleep and floated across the line.

One other common violation is not having the permit holder present on board the vessel when engaged in commercial fishing. We would like language to the effect that upon conviction of a violation for this offense, the violator forfeits their ability to hold a permit or fishing license for the fishery in which the violation occurred for one year for first and second offenses, and for a period not to exceed three years for the third and additional offenses.

Section 2:

All of the language in Sec. 2 of SB 246 should be deleted.

Additional Sections:

If an individual participates in and becomes an accessory to illegal fishing activity, their airplane or boat (if used in the crime) would be forfeited to the state.

If you have questions or need additional information, please contact Karl Ohls in my office.

APR 23 1985

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 246
Title: Relating to Suspension and
Revocation of Fishing Permits
Sponsor: Zharoff
Requestor: Furgelewski
Date of Request: 4/17/85

FISCAL DETAIL

Agency Affected: Department of Fish & Game
Program Category Affected: Natural
Resource Management
BRU, Program or Subprogram(s) Affected: Commercial Fisheries Entry Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This bill provides for administrative suspension or revocation of commercial fishing permits to take effect immediately upon discovery of suspected illegal fishing activities to thus prevent continued fishing while a criminal action may be pending. The potential for an increase in the number of permit suspensions or revocations will not significantly impact the commission.

Prepared By: Christine Kelly Phone: 465-4081
Division: Commercial Fisheries Entry Commission Date: 4/22/85

Approved by Commissioner: Bruce Twonley Date: 4/22/85
Agency: Commercial Fisheries Entry Commission

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

Bannister
3/14/86

Original sponsor: Zharoff

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 246 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to commercial fishing violations."

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

8 * Section 1. AS 16.05.710 is repealed and reenacted to read:

9 Sec. 16.05.710. SUSPENSION OF LICENSES AND PERMITS. (a) Except
10 as otherwise provided in this section, upon a first or second convic-
11 tion of a person for a violation (1) of AS 16.05.440 - 16.05.720, (2)
12 of a federal or state law other than AS 16.43, for the protection of
13 the commercial fish of the state, (3) for commercial fishing with
14 unlawful gear, (4) for commercial fishing in closed waters, if the
15 person committed the violation intentionally or knowingly, or (5) for
16 commercial fishing during a closed period or season, the court shall,
17 in addition to the penalty imposed by law, suspend the commercial
18 fishing license, interim-use permit, or limited entry permit of the
19 person for one year. Upon a third conviction, the court shall, in
20 addition to the penalty imposed by law, suspend the commercial fishing
21 license, interim-use permit, or limited entry permit of the person for
22 a period not to exceed three years. In this subsection, "state law"
23 does not include a regulation.

24 (b) Except for a violation of a state regulation adopted under
25 AS 16.43, and except as otherwise provided in this subsection, upon a
26 first or second conviction of a person for a violation of a state
27 regulation for the protection of the commercial fish of the state, the

1 permit of the person for one year. Upon a third conviction, the court
2 may, in addition to the penalty imposed by law, suspend the commercial
3 fishing license, interim-use permit, or limited entry permit of the
4 person for a period not to exceed three years.

5 (c) Upon a first or second conviction of a person for commercial
6 fishing in closed waters if the person did not commit the violation
7 intentionally or knowingly, the court may, in addition to the penalty
8 imposed by law, suspend the commercial fishing license, interim-use
9 permit, or limited entry permit of the person for one year. Upon a
10 third conviction, the court may, in addition to the penalty imposed by
11 law, suspend the commercial fishing license, interim-use permit, or
12 limited entry permit of the person for a period not to exceed three
13 years.

14 (d) In this section

15 (1) "intentionally" has the meaning given in AS 11.81.-
16 900(a); and

17 (2) "knowingly" has the meaning given in AS 11.81.900(a)
18 and does not include floating into closed waters after unintentionally
19 falling asleep.

20 * Sec. 2. AS 16.05.720(c) is amended to read:

21 (c) A person who is convicted of commercial fishing in closed
22 waters, commercial fishing during a closed period or season, or com-
23 mercial fishing with unlawful gear including but not limited to
24 nets, pots, tackle, or other devices designed or employed to take fish
25 commercially, is guilty of a misdemeanor and in addition to the penal-
26 ty imposed under (a) of this section is punishable by a fine of not
27 less than the gross value to the person [FISHERMAN] of the fish found
28

1 subsection, and in addition to the license and permit suspension
2 provisions [FORFEITURE PROVISION] in AS 16.05.710, the fine may [SHALL
3 BE] not be less than three times the gross value to the person [FISH-
4 ERMAN] of the fish found on the vessel or at the fishing site, or, if
5 no fish are found on the vessel or at the fishing site, a fine of not
6 more than \$10,000.

7 * Sec. 3. AS 16.05.190 is amended by adding a new subsection to read:

8 (b) In this section, "in aid of", when applied to commercial
9 fishing violations, includes the use of a vessel or aircraft to inform
10 a person of the location of state or federal law enforcement person-
11 nel.

12 * Sec. 4. AS 16.05.195 is amended by adding a new subsection to read:

13 (g) In this section, "in aid of", when applied to commercial
14 fishing violations, includes the use of a vessel or aircraft to inform
15 a person of the location of state or federal law enforcement person-
16 nel.