



LAWS OF ALASKA

1978

Source

Chapter No.

HCSSB 428(Judiciary)

123

AN ACT

Relating to commercial fishing licenses, interim-use permits, entry permits, and vessel licenses; and providing for an effective date.

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

* Section 1. AS 16.05.480(a) is repealed and re-enacted to read:

(a) A person engaged in commercial fishing shall obtain a commercial fishing license. The fee for the license is \$10 for residents, and \$30 for nonresidents. Except for those which are also entry or interim-use permits, all commercial fishing licenses are nontransferable. The commercial fishing license shall be retained in the possession of the licensee, readily accessible for inspection at all times. No more than one fee may be charged annually against a person. For the purposes of this section, "commercial fishing license" includes entry permits and interim-use permits issued under ch. 43 of this title and crewmember fishing licenses.

* Sec. 2. AS 16.05.480(b) is amended to read:

(b) A person applying for a resident commercial license under this section shall provide the proof of residence which the department requires by regulation.

* Sec. 3. AS 16.43.100 is amended by adding a new paragraph to read:

(15) issue educational entry permits to applicants who qualify under the provisions of secs. 275 - 285 of this chapter.

* Sec. 4. AS 16.43.160(a) is repealed and re-enacted to read:

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(a) The commission shall establish annual fees for the issuance and annual renewal of entry permits or interim-use permits. The amount paid by a permit holder under the provisions of AS 16.05.480 shall be credited by the commission toward payment of the fee charged under this section. No more than one credit may be obtained annually by a person.

* Sec. 5. AS 16.43.180(a) is repealed and re-enacted to read:

(a) The commission shall adopt regulations providing for the temporary emergency transfer of entry permits and interim-use permits when illness, disability, death, required military or government service, or other unavoidable hardship prevents the permit holder from participating in the fishery. To alleviate hardship pending a final determination of the permit holder's eligibility for an entry permit, the commission shall adopt regulations providing for the temporary emergency transfer of an interim-use permit issued under sec. 210(b) of this chapter.

* Sec. 6. AS 16.43 is amended by adding a new section to read:

Sec. 16.43.355. COMMISSION REVOCATION OF ENTRY PERMITS. (a) The commission may revoke an entry permit if a person knowingly supplies, assists in supplying, or fails to correct false information provided to the commission for the purpose of

- (1) permit application; or
- (2) permit transfer.

(b) Before revocation, the commission shall serve the permit holder personally or by certified or registered mail with a notice to show cause why the proposed action should not take place. The notice to show cause must

- (1) be supported by an affidavit which may be made on information or belief setting out the facts which are the basis of the proposed action;
- (2) provide for at least 30 days notice of the place, date, and time of the hearing where the permit holder may present evidence in opposition to the proposed action; unless waived in writing by the permit holder, the hearing place shall be held within the judicial district in which the permit holder resides if the permit holder resides in the state; the hearing place shall be at the discretion of the commission for those permit holders residing outside the state;
- (3) specify the statutes or regulations violated;
- (4) state with particularity the action proposed to be taken;
- (5) indicate to the permit holder that his ability to permanently transfer the permit which is the subject of the revocation proceedings has been suspended as of the date of the notice and will continue to be suspended

until the exhaustion of all administrative and judicial remedies; and

(6) provide other information the commission considers proper.

(c) A permit subject to revocation proceedings under this section may not be transferred after the date of the notice in (b) of this section pending exhaustion of all administrative and judicial remedies arising from action taken under this section.

(d) The revocation hearing shall be conducted before a quorum of commissioners and shall be presided over by a hearing officer appointed by the commission who shall rule on the presentation of evidence and other procedural matters. Within a reasonable time after the conclusion of the hearing, the hearing officer shall submit to the attending commissioners a proposed decision based on the record of the hearing and containing findings of fact, conclusions of law, and recommended action. The attending commissioners shall then review the hearing officer's proposed decision and adopt or amend or reject the contents of the proposed decision in the written decision of the commission. A copy of the commission decision shall be mailed to each party or his attorney by certified or registered mail.

(e) The failure of a permit holder properly served under (b) of this section to appear at the hearing is not grounds for setting aside any commission action taken. However, the commission may in its discretion order a continuance or second hearing.

(f) The effective date of the commission decision under this section is the date of the notice to show cause first served upon the permit holder under (b) of this section.

(g) The provisions of this section do not apply to the permit of a person who is a bona fide purchaser.

(h) Judicial review of commission determinations under this section is in accordance with AS 44.62.560 - 44.62.570; however, if a hearing de novo is granted under AS 44.62.570(d), the hearing may, in the discretion of the court, be had with a jury sitting if application for the jury hearing is filed with the court no later than 10 days after service of the notice of appeal.

* Sec. 7. AS 16.43.360(a) is amended to read:

(a) A person who violates or assists in the violation of a provision of this chapter or a regulation promulgated under this chapter is, upon conviction, guilty of a misdemeanor and is punishable by a fine of not more than \$5,000 for a first conviction, and a fine of not more than \$10,000 for a second or third conviction. Upon a third conviction, the person shall forfeit all interim-use and entry permits held by him and loses eligibility for future issuance or transfer of interim-use or entry permits for a period of three years. Upon a first or second conviction under this section, the court may in its discretion order a forfeiture of interim-use or entry permits held by him as well as a

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loss of eligibility for future issuance or transfer of interim-use or entry permits or order a suspension of fishing rights under interim-use or entry permits held or to be held by him for a period of not more than three years.

* Sec. 8. AS 16.43.360(b) is amended to read:

(b) A person who knowingly makes a false statement of fact in the application for or renewal of an interim-use permit or an entry permit or vessel license application or renewal or in the application for a transfer under secs. 170 - 180 of this chapter, or a person who assists another by knowingly making a false statement of fact in support of the other person's application for issuance or renewal of an interim-use permit or an entry permit or vessel license is guilty of a misdemeanor and shall forfeit all interim-use permits and entry permits held by him and shall lose eligibility for interim-use permits and for entry permits for a period of three years and is punishable by a fine of not more than \$5,000.

* Sec. 9. AS 16.43.360 is amended by adding a new subsection to read:

(e) Notwithstanding any other provision of this section, no interim-use or entry permit may be transferred while under suspension, without the consent of the commission.

* Sec. 10. AS 16.43 is amended by adding new sections to read:

ARTICLE 4A. EDUCATIONAL ENTRY PERMITS.

Sec. 16.43.275. EDUCATIONAL ENTRY PERMITS. (a) In addition to entry permits and interim-use permits, the commission may issue educational entry permits to public, private or denominational educational institutions accredited by the Department of Education or accredited institutions, career or vocational programs approved by the Alaska Commission on Postsecondary Education, or full-time nonprofit residential child care facilities licensed by the Department of Health and Social Services, division of social services, if

(1) the program is offered to students at the junior high school level or above;

(2) the issuance of an educational entry permit is reasonably necessary to the instruction of students under courses offered by the applicant for the educational entry permit;

(3) the program is offered by an institution which is located in the state and has been in operation for at least two years; and

(4) the institution offering the program is not a correspondence institution.

(b) An educational entry permit may only be used in a program conducted by the recipient of the permit for the purpose of training students in the methods of commercial

fishing.

(c) The commission may issue educational entry permits notwithstanding the establishment of maximum or optimum numbers under secs. 240 and 290 of this chapter.

Sec. 16.43.277. TERM AND CONDITIONS OF EDUCATIONAL ENTRY PERMIT. (a) Educational entry permits may be applied for on an annual basis and shall be issued for a term of one year. The permits are nontransferable.

(b) A recipient may be issued an educational entry permit for each fishery in the administrative area the commission determines to be appropriate, considering the nature of the educational program and the location of the educational or vocational institution. The recipient of an educational entry permit may not be issued educational entry permits in more than one administrative area except as issued by the commission in its discretion upon good cause shown.

(c) An educational entry permit issued under sec. 275 of this chapter may be used by any agent or employee authorized by the recipient of the educational entry permit.

(d) Annual fees for educational entry permits shall be as specified by commission regulation under the authority of sec. 160 of this chapter.

Sec. 16.43.279. DISPOSITION OF FISH. Fish caught under the authority of an educational entry permit are the property of the recipient of the permit. The recipient may sell the fish and use the proceeds to pay for the costs of the training program. Revenues generated from the sale of fish harvested under an educational entry permit shall be paid to the general fund to the extent the revenues exceed costs of the training program.

Sec. 16.43.281. ACCOUNTING OF HARVEST. The recipient of an educational entry permit shall report to the commission costs and earnings, amount of harvest, and other information the commission requires to monitor training programs of recipients of educational entry permits.

Sec. 16.43.283. ADOPTION OF REGULATIONS. (a) Use privileges granted under secs. 275 - 285 of this chapter are subject to the regulations of the Board of Fisheries which may adopt regulations exclusively applicable to the use of educational entry permits.

(b) The commission shall publish regulations relating to the issuance of educational entry permits, establishing eligibility criteria for recipients of the permits, and such other matters as are reasonably necessary to implement secs. 275 - 285 of this chapter.

Sec. 16.43.285. DEFINITION. For the purposes of secs. 275 - 285 of this chapter, the term "recipient" means the entity to which an educational entry permit is issued.

* Sec. 11. AS 23.35.060 is amended to read:

Sec. 23.35.060. CREATION AND ADMINISTRATION OF

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FISHERMEN'S FUND. There is created a fund, designated as the "fishermen's fund." The Department of Revenue is the custodian of the fund and the Department of Labor shall administer it. The fund shall be composed of 60 per cent of the money derived by the state from all commercial fishermen's licenses and money appropriated to carry out the purpose of secs. 10 - 150 of this chapter.

* Sec. 12. AS 16.05.480(c) is repealed.

* Sec. 13. Sections 1, 2, 4, and 11 of this Act are retroactive to January 1, 1978.

* Sec. 14. This Act takes effect immediately in accordance with AS 01.10.070(c).