

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

In Re Application by the
Internal Revenue
Service (IRS) for
transfer of entry permit
number S01A 58789

**FRANCIS S.
CARLE**

CFEC 96-003-P

FINAL COMMISSION DECISION ON REQUEST TO TRANSFER

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I. INTRODUCTION.

The Internal Revenue Service (IRS) administratively seized property possessed with respect to an Alaskan salmon limited entry permit held by Francis S. Carle, a 61-year-old Alaska Native fisherman from Hydaburg, Alaska. The IRS attempted to sell the right, title and interest of Mr. Carle in and to his fishing privileges at its Anchorage public auction in December of 1995.

Subsequent to this administrative seizure and sale, the IRS applied to the Commission for a voluntary transfer of the privileges completing the application forms as if it were Mr. Carle.

An Alaska limited entry permit is a use privilege that may be transferred only by the Alaska Commercial Fisheries Entry Commission (CFEC), and CFEC is required to review every request for transfer to ensure compliance with the law. AS 16.43.170.

This application for transfer is the first time CFEC has been called upon to review an IRS request for transfer arising from an IRS administrative levy and sale. We agreed to review this request as expeditiously as possible, and, toward that end, we Commissioners are taking up the request directly (without the normal, intermediate procedural levels of review).

Although we provide background and discuss additional issues raised by IRS, this request for transfer presents a simple question of IRS' statutory authority.

We have reviewed¹ IRS' application and conclude federal governing statutes do not authorize the administrative levy and sale of Alaska limited fishing privileges. Therefore, we deny IRS' request.

¹Our review may have been delayed. Apparently, IRS instructed the successful bidder (and proposed transferee whose money IRS now holds) not to cooperate with the Commission. See Exhibit A.

II. FACTS OF IRS' REQUEST FOR TRANSFER OF MR. CARLE'S FISHING PRIVILEGE.

A. Mr. Carle.

Francis S. Carle is a 61-year-old fisherman from the Alaska Native fishing community of Hydaburg on Prince of Wales Island in Southeast Alaska. As an Alaska Native elder, Mr. Carle has maintained for his lifetime a traditional dependence upon commercial fishing as his only means of earning a living to support himself and his extended family (including his wife, two sons, and daughter).

In 1975, pursuant to AS 16.43 *et. seq.*, the State of Alaska Commercial Fisheries Entry Commission (CFEC) originally issued Mr. Carle his Southeast Alaska purse seine entry permit.² The permit is a revocable use privilege. As 16.43.150(e) The state found Mr. Carle would have suffered "significant economic hardship" without the permit, because he was so heavily dependent upon the fishery. In fact, Mr. Carle's dependence on his salmon fishing was so substantial, the state could not have denied him the privilege even if it meant issuing more than the maximum number of entry permits.³

Mr. Carle's Southeast salmon seine permit is one of three such permits in Hydaburg today. Mr. Carle has owned his own seine vessel since 1963. In his seine operation, Mr. Carle employs six crewmembers from Hydaburg.

B. IRS Action.

On November 13, 1995, pursuant to 26 USC 6331(a), the IRS levied upon property

²Entry permit number S01A 58789.

³A.S. 16.43.27(a).

possessed by Mr. Carle with respect to his permit by personally serving him with a Notice of Seizure.⁴

IRS published a notice⁵ for its public auction of property of Mr. Carle and others in the Juneau Empire on November 29, 1995, that stated in part as follows:

Sales are subject to any and all qualifications and/or restrictions established by the Alaska Limited Entry Fishing Commission Successful bidders must meet all qualifications prior to transfer.

Mr. Carle turned to his local tax preparer and Alaska Legal Services Corporation for help. When Mr. Carle's tax preparer was out of town and unable to complete the required work in time, Mr. Carle's attorney sought help from the IRS Problem Resolution Office. Although it is empowered by Congress to do so,⁶ the Problem Resolution Office refused to

⁴Exhibit B.

⁵Exhibit C.

⁶Today IRS has broader responsibility than simply collecting money. Congress has encouraged IRS to avoid inflicting significant hardship on any taxpayer. 26 U.S.C. § 7811 (hereinafter the Internal Revenue Code or IRC) empowers the IRS Problem Resolution Office to order the IRS to "cease any action" and to "release property . . . levied upon" when doing so would avoid inflicting "significant hardship" on the taxpayer. IRS Notice 482 (Rev. June 1991) provides the following examples of "significant hardship[:]" inability to retain housing or utilities, to obtain food, [or] to keep your job Additionally, under IRC § 6343(a) and Treas. Reg. § 301.6343-1(b)(4), an IRS director can be required to release a levy when he determines:

[t]he levy is creating an economic hardship due to the financial condition of an individual taxpayer. This condition applies if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay his or her reasonable basic living expenses. The determination of a reasonable amount for basic living expenses will be made by the director and will vary according to the unique circumstances of the

intervene and stop the sale.⁷

On December 11, 1995, pursuant to 26 USC 6335, the IRS conducted its administrative sale of seized property including that of Mr. Carle. For its public auction sale, IRS set a minimum bid of \$28,150 for Mr. Carle's property.⁸ Pursuant to 26 USC 6335(e)(2), the IRS issued a Certificate of Sale of the right, title and interest of Mr. Carle's property to the successful bidder.⁹ The Certificate of Sale provides in part:

THIS SALE IS CONDITIONAL. Because transfers of Limited Entry Permits are controlled by the State of Alaska, Commercial Fisheries Entry Commission (CFEC), this sale will not become final until the successful bidder is approved for transfer by CFEC. THE TAXPAYER HAS THE RIGHT TO REDEEM THE LIMITED ENTRY PERMIT UP TO THE TIME OF FINAL TRANSFER.

individual taxpayer.

* * *

In determining a reasonable amount for basic living expenses the director will consider . . .

* * *

[t]he amount reasonably necessary for food, clothing, housing (including utilities, home-owner insurance, home-owner dues, and the like), medical expenses (including health insurance), transportation, current tax payments (including federal, state, and local), alimony, child support, or other court-ordered payments, and expenses necessary to the taxpayer's production of income (such as dues for a trade union or professional organization, or child care payments which allow the taxpayer to be gainfully employed); [and]

* * *

[t]he cost of living in the geographic area in which the taxpayer resides

⁷Exhibit D.

⁸Exhibit E. (As of January, 1995, a voluntary request to transfer this permit could command a price of \$78,800).

⁹Exhibit F.

On December 11, 1995, the IRS submitted to CFEC a CFEC Notice of Intent for Permanent Transfer of Entry Permit, executed under penalty of perjury by the IRS as the holder of the permit.¹⁰

On December 12, 1995, at the IRS' request, CFEC provided the IRS with several Request for Permanent Transfer of Entry Permits Due to Involuntary Action forms.

On December 26, 1995, the IRS submitted a Request for Permanent Transfer of Entry Permit executed under penalty of perjury, by the IRS as the holder.¹¹ With this form, the IRS submitted a cover letter from Douglas A. Hartford, Chief of Collection Division, Anchorage District, IRS,¹² that states in part (with emphasis added):

This request for transfer is being made pursuant to the authority contained in 26 U.S.C. § 6331, et seq. On November 13, 1995 the Internal Revenue Service levied upon Mr. Carle's limited entry permit to collect delinquent federal income taxes, lawfully assessed and owing. *By this levy, the IRS acquired whatever rights in the permit Mr. Carle possessed under state law A.S. 16.43.170(b) allows permit holders to transfer permits to another person.*

Accordingly, enclosed you will find a complete Request for Permanent Transfer of Entry Permit, with attachment, signed by the proposed transferee and an Internal Revenue Service representative, on behalf of Mr. Carle. *The IRS has not completed the Request for Permanent Transfer of Entry Permit Due to Involuntary Action form as the restrictions set out in A.S. 16.43.170(g)(6) and (h) are not applicable to transfer requests by permit holders and are invalid to the extent they interfere with revenue collection. Perez v. Campbell, 402 U.S. 637, 649 (1971).*

¹⁰Exhibit G.

¹¹Exhibit H.

¹²Exhibit B.

This request is the first time the Alaska Commercial Fisheries Entry Commission has been called upon to rule on an IRS request for transfer arising from an IRS administrative levy and sale. We agreed to review this request as expeditiously as possible, and, toward that end, we Commissioners are taking up the request directly (without the normal, intermediate procedural levels of review). Having completed our review, we issue this decision.

III. BACKGROUND

Strangers to Alaska and its comprehensive fisheries management system may review this decision. Therefore, we provide the following general background.

A. Alaska's Comprehensive Fisheries Management System.

1. Statehood of Alaska.

Prior to statehood, the Federal Government dominated Alaska for nearly a century.¹³ Opponents of Alaska Statehood argued¹⁴ Alaska "statehood would be contrary to the best interests of this country," in part, because Alaska could only survive as the result of huge federal expenditures:

The economy is an artificial one, bolstered by huge Federal handouts.

* * *

The economy is dependent to the extent of more than two-thirds (2/3) of its income upon Federal Expenditures.

¹³See generally, Gruening, Alaska, The Forty-ninth State, Britannica Book of the Year 1959 (pps. 11-34).

¹⁴Report No. 624 (June 25, 1957), *Providing for the Admission of the State of Alaska into the Union* (House Committee on Interior and Insular Affairs report to accompany H.R. 7999) [Minority Report].

However, the prevailing view was Alaska could survive as a state, but only if Alaska controlled its own natural resources including fisheries.¹⁵

H.R. 7999 will enable Alaska to achieve full equality with existing States, not only in a technical juridical sense, but in practical economic terms as well. It does this by making the new State master in fact of most of the natural resources within its boundaries

* * *

In order to understand clearly the necessity for certain different provisions in the Alaska statehood bill, it is advisable to have in mind some of the basic facts about Alaska's peculiar situation.

* * *

Over 99 percent of the land area of Alaska is owned by the Federal Government. [S]uch a condition is unprecedented . .

* * *

Much of the remaining area of Alaska is covered by glacier, mountains, and worthless tundra. Thus it appeared to the committee that this tremendous acreage of [federal] withdrawals might well embrace a preponderance of the more valuable resources needed by the new State to develop flourishing industries with which to support itself and its people.

* * *

If Alaska is to become a State, it must be a full and equal State, and not a puppet of the Federal Government.

With respect to demands on the Federal Treasury, proponents of statehood also noted¹⁶:

Concretely, the grant of statehood will mean some saving to the Federal Government as the people of Alaska take over part of the burden of supporting certain governmental functions now borne by the United States Treasury.

¹⁵*Id.* [Majority Report].

¹⁶*Id.*

The "extreme degree of Federal domination of Alaskan affairs"¹⁷ and its deleterious effect was very evident in Alaska's salmon fisheries. As long as Alaska remained a Territory, the Federal Government managed Alaska's fisheries. Under federal management, canneries were allowed a monopoly over the Alaska salmon harvest through the use of fish traps. This federal management practice undermined sustained yield management and, over time, resulted in severe harm to the resource. Additionally, federal management of Alaska's fisheries through fish traps denied individuals, who traditionally relied on commercial fishing for their livelihood, the opportunity to fully participate in the commercial harvest. As the result of this exclusion, these individuals and those dependent upon them suffered severe economic distress. This placed a heavy burden on the Territory and the Federal Government to provide basic support to those individuals, their families and their communities.

Senator Ernest Gruening summarized the fishery situation before statehood:

The Salmon Conservation Fiasco.--Another long-standing Alaskan grievance relates to the depletion of what was once Alaska's greatest natural resource, the salmon fishery. It was also the nation's greatest fishery resource.

The Pacific salmon originate in the rivers and lakes of North America's northwest coast; they migrate to sea and return to the waters that gave them birth to spawn and then to die. The salmon industry consists of catching them as they return at the end of their life cycle and processing them, chiefly by canning. Such was the abundance of this resource that Alaska's coastal streams were once solidly red with the mass of anadromous salmon. The first cannery was established in Klawock in 1878 and others followed, financed chiefly by San Francisco capital. Conservation was undreamed of in those days. Not until 1889 did the federal government, alerted by warnings of coming depletion, enact the first regulatory measures. These were continually breached and no adequate means for enforcement were provided. Excessive catches were augmented by a device

¹⁷*Id.*

known as a fish trap, a large structure anchored in the paths of the returning salmon. It was sufficiently costly so as to be available only to those with substantial capital.

Sensing the menace of fish traps, the first Alaska legislature in 1913 urged congress to abolish them, as well as to transfer the fisheries to territorial control. These requests were repeated by all the succeeding legislatures, by referenda in Alaska and by bills to achieve these ends by Alaska's delegates in congress. All this was in vain and the depletion continued. From a high of 8,454,948 cases a quarter of a century ago, the pack dropped to 2,447,448 cases in 1957. For the five years, 1953-1957, the average pack was 2,797,699 cases, the lowest in half a century. So serious were the consequences that the Eisenhower administration felt obliged to declare the fishing villages to be disaster areas--disasters caused not by "Act of God," but by the acts of men.

The Quest for Statehood

These and various lesser frustrations, and the inability to secure needed legislation from congress in fields which the territory was forbidden to enter, speeded up the drive for statehood.

In 1958, President Eisenhower signed the Alaska Statehood Act and the Alaska voters ratified statehood.

With the 1959 Formal Proclamation of Statehood, Alaska's previously ratified constitution¹⁸ became operative and Article VIII, Natural Resources, included the following sections:

Section 3. Common Use. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Section 4. Sustained Yield. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

¹⁸The people of Alaska ratified their constitution on April 24, 1956.

Section 15. No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.

Section 17. Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

At the time the people of Alaska ratified their constitution, they also voted to adopt an ordinance¹⁹ effective concurrently with the constitution. The ordinance provided:

Abolition of Fish Traps

* * *

As a matter of immediate public necessity, to relieve economic distress among individual fishermen and those dependent upon them for a livelihood, to conserve the rapidly dwindling supply of salmon in Alaska, to insure fair competition among those engaged in commercial fishing, and to make manifest the will of the people of Alaska, the use of fish traps for the taking of salmon for commercial purposes is hereby prohibited in all the coastal waters of the State.

2. Alaska's limited entry system.

Through statehood, Alaska gained control and promptly shouldered the heavy burden of managing and rehabilitating its overexploited fishery resources. Alaska's efforts included limiting the number of participants in fisheries as a necessary means to control harvest and to avoid economic distress among participants. We urge careful attention to the following

¹⁹One of only two placed before the voters in addition to that ratifying the constitution.

description²⁰ by our Legislature of the process that created and the choices that shaped our limited entry system:

Alaska's limited entry system is the product of years of effort by the State beginning in 1961. Two previous attempts by the legislature to establish the means to limit entry into Alaska's fisheries failed as the result of legal challenges.

The Alaska legislature persisted, however, because Alaska's salmon fisheries were experiencing a long and threatening decline, while the number of participants continued to increase substantially, which resulted in more and more fishing pressure on a diminishing resource. A limited entry system was the only means by which the State could control a critical variable in the management of its fishery resources: the number of fishermen participating in a given fishery.

Following action by the legislature, in 1972, Alaska voters approved an amendment to Article VIII, Section 15 of the Alaska Constitution, which authorized:

the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Building upon this constitutional foundation, in 1973, the Alaska legislature adopted the Limited Entry Act, which has resulted in the largest limited entry program of its kind in the United States. Limitation of entry into all twenty-six of Alaska's salmon fisheries followed shortly. During 1976, by referendum, the voters of Alaska again supported limited entry by a margin of almost two-to-one. Today, some forty-six of Alaska's fisheries are under limitation.

As a food source important to Alaskans and the world, Alaska's fisheries are without question one of its most important

²⁰Letter of Intent, §16 Ch 211 SLA 1990 (May 3, 1990 Senate Journal 3856) (with emphasis added).

renewable resources. Alaska's fisheries employ a substantial segment of the State's population, and many remote communities rely upon commercial fishing as their primary economic base. Therefore, sound management of its fisheries is crucial to the State of Alaska, and limited entry is an important part of the State's management system.

Extensive biological, economic, historic, and cultural data and analyses have been generated to aid the development, enactment, and review of entry limitation in Alaska. (A partial bibliography is set forth in Appendix A.) Thousands of hours of hearings throughout the State and before the legislature have informed the choices made in shaping Alaska's limited entry system. Alaska's courts have carefully scrutinized the program and developed a body of law governing limited entry in Alaska that is both extensive and unique. (A partial list of cases decided by the Alaska Supreme Court is set forth in Appendix B.)

In addition to direction and support from the legislature and the courts, Alaska's limited entry program has functioned only through the continuing cooperation and support of the Governor of Alaska, the Alaska Departments of Fish and Game, Law, Revenue, Administration, Commerce, and Public Safety, together with that of private citizens, economists, lawyers, scientists, processors, and, particularly, fishermen.

Under AS 16.43.140, no commercial fisherman may operate fishing gear in a limited fishery without an entry permit. The Alaska Commercial Fisheries Entry Commission (CFEC) issues entry permits and administers the program. The entry permit is the critical element of the system and, to an Alaskan fisherman, an entry permit is a legally required tool of his trade. In establishing limited entry and considering the needs of the State and its citizens, the Alaska legislature gave careful consideration to the nature of an entry permit and the privileges that a permit would extend to its holder.

In enacting a limited entry system, if the legislature had been committed only to simplicity and economy, it could have authorized auctioning of a limited number of property rights to its fisheries. The legislature rejected this approach, because it would not have been consistent with the State's most important objectives in establishing a limited entry system.

The legislature recognized that, for the purpose of conservation, the State needed to retain control of its fishery resources. Looking ahead, the legislature wished to ensure that privileges extended through an entry permit could be revoked or modified as necessary and without compensation. Furthermore, to ensure compliance with laws and regulations governing its fisheries, privileges extended must be conditioned upon compliance with those requirements. At the same time, the legislature believed that, in view of the substantial reliance on their fisheries by fishermen and those dependent upon them, privileges should be extended only to qualified, individual fishermen who could demonstrate their dependence.

While recognizing the importance of limiting and controlling fishing privileges, the legislature also intended to provide individual fishermen with a sufficient stake in their fisheries that they would be more likely to have a personal commitment to conservation and enhancement of those fisheries. In recognition of the fact that fishermen, their families, and, in many cases, entire communities, depended upon access to their fisheries for their basic welfare, the legislature believed that any privileges extended should be protected from forced and intemperate transfers. At the same time, because, necessarily, only a limited number of privileges would be extended, the legislature wished to ensure that the State would be reasonably compensated by regular permit fees. Finally, the legislature wished to restrain the unnecessary growth of State bureaucracy.

Among other considerations, the resulting Limited Entry Act and its implementation by CFEC have defined and regulated entry permits in a manner designed to reach these legislative objectives.

The legislature declared that an entry permit and the privileges it carried would not be the property of its holder. AS 16.43.150(e) provides that an entry permit is merely:

a use privilege which may be modified or revoked by the legislature without compensation.

An entry permit must be renewed annually, and is subject to forfeiture if not renewed for two years. The holder must pay an

annual renewal fee established by CFEC based upon "the different rates of economic return for different fisheries." AS 16.43.160(b).

The legislature required CFEC to issue permits only to fishermen applicants who needed the permits the most. Only an individual, and not a vessel nor an organization of any kind, may receive an entry permit.

Under AS 16.43.250, CFEC ranks applicants for entry permits for a particular fishery "according to the degree of hardship which they would suffer" by not receiving a permit from the State. AS 16.43.250 provides the following standards for measuring hardship:

- (1) degree of economic dependence upon the fishery, including, when reasonable for the fishery, the percentage of income derived from the fishery, reliance on alternative occupations, availability of alternative occupations, investment in vessels and gear;
- (2) extent of past participation in the fishery, including, when reasonable for the fishery, the number of years of participation in the fishery, and the consistency of participation during each year.

From the statute, and further derived from extensive biological, economic, and other data, CFEC has developed a series of intricate point systems for the purpose of ranking the degree of hardship individual denied applicants would suffer. 20 AAC 05.600-20 AAC 05.742. Each applicant who would suffer significant hardship by denial is entitled to a permit, even if the maximum number of permits for a given fishery would be exceeded thereby. AS 16.43.270(a). To support the State's conservation goals and to recognize some historic and cultural fishing patterns, the system has never rewarded nor encouraged high individual production.

Although permits do not constitute property belonging to their holders, the legislature, subject to control and approval by CFEC, authorized holders to transfer their permits. Doing so advanced several of the State's objectives. Among other

considerations, by not interrupting a holder's use of his entry permit and further authorizing the fisherman to transfer his permit, the fisherman and those dependent upon him held the means to continue their access to the fishery and their livelihood. Additionally, by not cutting off the fisherman's interest (as would have been the case through a lottery or reversion and reissue system) the holder was granted a sufficiently long-term privilege in the fishery so as to be encouraged to both conserve and enhance the fishery resource. Finally, by not requiring the State to select who would be a subsequent recipient of the privilege, the legislature avoided generating an additional and unnecessary State bureaucracy.

Consistent with its grant of only a privilege, the State through CFEC, retained control over all transfers. A permit holder may transfer his permit only upon approval by CFEC. AS 16.43.170. To ensure against intemperate transfers, the legislature requires a 60-day waiting period before a permit may be transferred. A fisherman may revoke an agreement to transfer any time during this 60-day period. A number of legal requirements must be satisfied before CFEC will approve a transfer. AS 16.43.170; 20 AAC 05.710.

Generally, AS 16.43.150(g) prohibits involuntary transfer requiring that an entry permit may not be "attached, distrained, or sold on execution of judgement or under any other process or order of any court." Additionally, a fisherman may not pledge his entry permit as security for a debt. (The legislature recognized that the absence of a property right might impair a fisherman's ability to obtain financing for the purchase of a permit and his fishing operation, and, therefore, established two State authorized loan programs. AS 16.10.333-16.10.377; 44.81.271; and 44.81.230-44.81.250.) Just as a fisherman could not, contrary to State law, create a security interest in his fishing privilege, neither can a creditor.

The legislature recognized that a fisherman's earnings were seasonal and subject to many variables from year-to-year beyond control (for example, weather, predation, and interception). If creditors with short term objectives were allowed to treat an entry permit as a fungible item of property and to seize and force its sale, a fisherman without other means of earning a living, together with those dependent upon him, could well be left destitute. In Alaska, where many

communities in remote areas of the State depend upon commercial fishing as the primary basis for their cash economy, this is a very real possibility. [The legislature notes that the Social Security Administration has acknowledged the wisdom of Alaska's approach by recognizing that an entry permit is essential to self-support, and, therefore, by not considering the market value of a permit as an alternative resource in determining an individual's eligibility for Supplemental Security Income benefits. 50 Fed. Reg. 42683, 42685 (1985).]

Although the State of Alaska could not countenance a system that inexorably would sever fishermen from the source of their livelihood, nonetheless, as a privilege, the legislature has made clear that an entry permit is subject to forfeiture, if its holder fails to abide by the applicable laws. See, for example, AS 16.05.480; 16.05.665; 16.05.710; 16.43.960; 16.43.970. Ultimately, because it has granted to fishermen only a revocable privilege, the State retains the dominion and control necessary to protect and manage its fishery resources.

In conclusion, compelling State interests were served, when the legislature rejected the idea that an entry permit represent a property right belonging to the permit holder. Instead, the legislature chose to establish an entry permit as a mere privilege, subject to State control, and revocable at the will of the State without compensation.

In this manner, Alaska established fundamental policies through its comprehensive fisheries management system. Alaska directed the benefits of the system to individual fishers dependent on the resource (as opposed, for example, to processors, banks, and investment companies). From its unique circumstances giving rise to statehood, Alaska has attempted to protect individual fishers from economic coercion by nonfishers and from forced loss of their livelihood.

When too many participants threatened sustained yield and caused economic distress among fishers, Alaska established limited entry, but not an exclusive right or special privilege of fishery. AS 16.43.150(g) ensures individual fishers are fully accountable only to the state, so no third party can pressure or influence their commercial fishing activities. Consider,

Alaska manages more fishery resources and more coastline than exist in the rest of the United States combined. Currently, Alaska has some 54 enforcement officers in the field. Alaska requires complete authority over fishing activities to ensure compliance with regulations necessary for sustained yield. The risk of losing fishing privileges is a critical incentive to comply with Alaska's requirements for sustained yield of its fisheries.

And Alaska's requirements are many. *See, for example*, AS 16.05; AS 16.10; AS 16.40; AS 16.43, and regulations adopted thereunder. As sovereign, Alaska closely regulates its fisheries, as necessary, to open and close fishing seasons, to prohibit fishing, to limit the size of vessels as well as type and amount of gear, to restrict areas of fishing, to limit the amount of harvest, to ensure escapement, to impose strict liability for certain fishing offenses, to board vessels without warrants, and to forfeit permits, vessels, gear and catch.²¹

In short, the conditions imposed by Alaska on the privilege of commercial fishing [including those set forth in AS 16.43.150(g)] ensure fishers' sole accountability to the state and freedom from third party coercion. Alaska requires full control of the fishing privileges the state extends to manage its fisheries for sustained yield. Thus, limited entry and the

²¹Despite Alaska's best efforts, managing Alaska's fisheries remains complex and uncertain. Complete comprehension of the biology of all fishery resources and how they relate to other species and their environment is not possible (and is further inhibited by lack of adequate research funds from any source). In recognition of this fact, Alaska is conservative in its management and continues to adjust its management system based on any improved understanding. With a wary eye to depleted fisheries throughout the world, Alaska is intent upon maintaining its viable fisheries. And Alaska must work cooperatively with Federal and other fisheries managers in a variety of forums to manage migratory and endangered species. Within the state, Alaska must manage its fisheries for common use among competing user groups (that is, subsistence, commercial, and sport). As competition between these groups increases, the management system becomes increasingly complicated. Further, with respect to commercial salmon fishing, intense competition from worldwide farmed salmon has undermined world markets for Alaska salmon and created an industry-wide crisis. Additionally, the state must manage its fisheries for the safety of the participants and the safety of consumers (the responsibility of the Alaska Department of Environmental Conservation). Finally, Alaska's dependence upon natural resource extraction (for example, timber and mining) demands management of the total environment to preserve its fisheries.

conditions the state imposes upon privileges thereunder are necessary and inextricable parts of Alaska's comprehensive fisheries management system.

3. Alaska's fishing industry.

a. *Generally.*

The economic base of Alaska is dependent upon natural resource industries. The commercial fishing industry is extremely important. The seafood industry is recognized as Alaska's largest source of private sector jobs.²²

Preserving the economic health and stability of Alaska's commercial fishing industry is of utmost importance to the State of Alaska. While the seafood industry is very important to the state as a whole, it is of critical importance to the fragile economic base of many small isolated rural fishing communities.

Applicants from isolated rural fishing communities were originally granted the largest share of limited use privileges, and approximately 78% (more than 10,000) of all use privileges remain in the hands of Alaskans today. Over 50% of the limited use privileges held by Alaskans are held by residents of rural communities. Among rural Alaskans, more than half of all transfers are by gift from a family member to another family member.²³ The

²²See The McDowell Group, Alaska Seafood Industry Study, an Economic Profile of the Seafood Industry. May 1989. Juneau, Alaska.

²³If the state were to eliminate transferability of entry permits in favor of a lottery system or a system where the permits were returned to the state and reissued, such a system would not serve the important state purpose of providing fishing families with the means to ensure their continued access to their traditional fisheries. State v. Ostrosky, 667 P.2d 1184 (Alaska 1983). Additionally, if the state were to attempt to erect a system of reversion and reissuing of entry permits on top of its existing grandfathering system, the system would run the risk of unconstitutionality. See Bozanich v. Reetz, 297 F. Supp. 300 (D. Alaska 1969), *vacated and remanded*, 397 U.S. 82 (1970); Bozanich v. Norenberg, Civil No. 70-389 (Alaska

percentage of limited use privileges held by Alaska residents has changed very little since initial allocation.²⁴

Today Alaska's limited fisheries are recognized as some of the best managed fisheries in the world.²⁵ However, economic returns from the fisheries still fluctuate with variations in survival rates and changes in world markets. Nevertheless, it is vitally important to the state and the nation that the resource conservation benefits and the economic health and stability provided by limited entry be preserved.

b. *The critical role of limited entry to the economic base of rural communities.*

Many small, isolated rural fishing villages have benefited from the stabilization provided by Alaska's program of limited commercial use privileges. Many of these rural villages, particularly in western and southwest Alaska, are composed largely of Alaska Natives, who survive and make their livelihoods in a "mixed, subsistence-cash economy." There are few sources of cash income other than commercial fishing, trapping, government jobs, and government transfer payments.

Characteristics of a "mixed, subsistence-cash economy" cited by the Alaska Department of Fish and Game's (ADF&G) Division of Subsistence are as follows:²⁶

Super.Ct, 1st Judicial Dist., March 8, 1971).

²⁴See Changes in the Distribution Of Alaska's Commercial Fisheries Entry Permits 1975-1993. CFEC report 94-8N. June 1994.

²⁵For example, see Royce, Dr. William F., "Managing Alaska Fisheries for a Prosperous Future", in Fisheries vol 14, no. 2. March/April 1989.

²⁶See Socioeconomic Overview of Salmon Fisheries in the Chignik, Alaska Peninsula, Bristol Bay, and A-Y-K Areas. ADF&G Division of Subsistence. November 1993.

Subsistence hunting, fishing, and gathering provide a major source of the local food supply.

Subsistence is organized by family units, where most food is produced by core households and shared with others through non-commercial sharing networks.

Harvesting and processing technology usually is small scale and modern, and purchased by cash.

The cash sector is typically limited and insecure.

Historically cash is earned through commercial sale of fish and furs.

More recently, cash also is obtained through public sector employment (government grants and subsidies).

One report on Southwest Alaska²⁷ suggests limited entry contributes to "the mutually supportive integration of market production and subsistence," as follows:

Fourth, political factors have made local labor and capital feasible for extracting resources. That is, primarily the local population has supplied the manpower and capital in production. This was achieved in the commercial salmon fishery through the limited entry system.

Nevertheless, the report recognizes limited entry would become a destabilizing influence in the area if permits are sold outside the area. It also notes the risks of open access fisheries:

The limited entry permit system is the other powerful force at work in the region. The loss of commercial permits to outsiders by sale alienates the local society from its resource base. With the development of the fisheries, the market value of commercial permits increases, making sales for short term gain

²⁷See pages 555-557 of Subsistence-Based Economies In Coastal Communities of Southwest Alaska - Technical Paper Number 89. ADF&G Division of Subsistence and the Federal Minerals Management Service. February 1984 (with emphasis added).

more attractive. The opening of new commercial fisheries without limits on outside competition holds the potential for degradation of the resource or loss of the value of the resource to more heavily capitalized competitors. Further, the need to preserve a commercial resource from over-exploitation requires the application of restrictive management systems from state or federal agencies.

In summary, commercial fishing provides one of the few sources of cash income in many isolated rural fishing communities. Cash is needed in these villages both to purchase basic necessities and to purchase gear and equipment needed for subsistence harvests. Limited entry helped stabilize a source of monetary income through the initial allocation of entry permits to applicants in those communities and by preventing the dilution or destruction of that economic base through the influx of large numbers of outsiders.

The State of Alaska must preserve the economic base in such isolated rural fishing villages. With declining oil revenues, State subsidies in such communities may decline by necessity in the near future. Furthermore, Alaska is becoming increasingly responsible for the economic welfare of its citizens as the Federal government significantly downsizes its activities (in part, through reductions in public assistance) in order to balance the Federal budget. The fragile economic base in these communities is of vital importance.

Any substantial loss of permits in these villages would be devastating. Large-scale seizure of entry permits by the IRS and sales to outsiders pose such a threat to the economies of many rural fishing villages. The widespread poverty in many of these villages and the lack of cash and/or available credit means persons within such villages likely would be unable to compete with outsiders at IRS permit auctions.²⁸

²⁸At IRS' December auction in Anchorage, the successful bidder for Mr. Carle's Hydaburg permit was from a community on the road system some 600 air miles away. Successful bidders for the other two permits at auction were from outside of Alaska.

B. IRS has Targeted Individuals in Rural Alaskan Communities.

1. IRS asserts "unlimited supply" of limited entry permits to sell.

a. *IRS data.*

For more than ten years, the IRS has declared its intention to seize and force the sale of limited entry permits, making the state aware the problem is extensive throughout Alaska and heavily concentrated in isolated rural communities. As former Chief of Collections for the IRS, Dave Tucker, announced²⁹ in 1994: "we have an unlimited supply of entry permits to sell."

Mr. Tucker estimated as many as 4,000 limited entry permits held by Alaskans could be at risk of IRS seizure due to failure to file tax returns and failure to pay federal tax obligations.³⁰ Four thousand limited entry permits would constitute roughly 40% of all permits held by Alaskans.³¹ The primary source of this supply of limited entry permits is rural Alaska.

In response to repeated requests from the State, in November of 1993, the IRS provided more specific estimates to the Entry Commission. Exhibit I. This limited view³²

²⁹1994 meeting between state officials and the IRS in the offices of the Division of Investments, Alaska Department of Commerce.

³⁰December 1992 meeting of IRS, CFEC, and the Alaska Commercial Fishing and Agriculture Bank (CFAB).

³¹The IRS did not offer similar information with respect to non-Alaskan permit holders.

³²The estimates provide only a snapshot: numbers of nonfilers are drawn only from 1989 through 1991, and numbers owing balances are drawn from information only through July of 1993. See Exhibit I.

shows as many as 26%³³ of Alaska resident limited entry permit holders³⁴ had failed to meet some federal tax obligations. The majority of individuals did not owe an overwhelming amount of taxes. Among those not in compliance, the IRS estimated 74% owed \$10,000 or less, and 86% owed \$20,000 or less. Because some of these figures are derived from IRS forced filing of returns when an individual has not filed, the amount owing likely would be much less upon filing of actual returns with full deductions for actual expenses.

Most disturbing is the focus on isolated rural fishing communities throughout Alaska. Among others, the IRS report singles out the Dillingham, Bethel, and Wade Hampton 1990 census districts as serious problem areas.³⁵

b. *A glimpse behind the data.*

To put the IRS data in an Alaskan context, we will provide a short profile of one community from each of the three census districts: Dillingham, Bethel, and Wade Hampton.³⁶

(1) Dillingham census district: Togiak profile.

Togiak is located at the head of Togiak Bay, off Bristol Bay, 67 miles west of Dillingham. The 1990 census estimated the city's population at 613 persons (151

³³This percentage would appear to be within national norms for federal tax noncompliance. See generally, Novack, *The Tax Cheater Handbook*, Forbes (November 8, 1993) and n. 59 *infra*.

³⁴The IRS did not present similar data with respect to non-Alaskan permit holders. The percentages included for non-Alaskans are projections of the Alaska percentages.

³⁵Exhibit I.

³⁶The Bethel census district and the Wade Hampton census district are among the poorest in the state.

households), with a per capita income of only \$5,883. The median household income from all sources was \$15,000.

The Alaska Department of Labor estimated that 57% of the persons in Togiak were living in poverty as of the 1990 census.³⁷ According to the Census data, 87.3% of the population were Native Americans.

In 1992, 231 Togiak residents recorded landings on 349 permits in both limited and unlimited fisheries. On average, this represented approximately \$25,954 gross per person. Note that average net earnings and profits for tax purposes would be much smaller than the average gross earnings once operating costs and expenses were subtracted.

CFEC data indicate that 293 permits for limited fisheries were held by Togiak residents in 1993.

(2) Bethel census area: Kipnuk profile.

Kipnuk is located 4 miles inland from the Bering Sea Coast on the west bank of the Kugkaktlik River in the Yukon-Kuskokwim delta. The 1990 census estimated the city's population at 470 persons (99 households), with a per capita income of only \$2,508. The median household income from all sources was only \$4,999.

The Alaska Department of Labor estimated that 77% of the persons in Kipnuk were living in poverty as of the 1990 census. According to the Census data, 97.4% of the population were Native Americans.

³⁷See Alaska Population Overview - 1991 Estimates prepared by the Alaska Department of Labor (July 1993).

In 1992, 88 Kipnuk residents recorded landings in all fisheries. On average, this represented gross earnings of approximately \$12,478 per person. Note that average net earnings and profits for tax purposes would be much smaller than the average gross earnings once operating costs and expenses were subtracted.

CFEC data indicate that 28 limited entry permits were held by persons in Kipnuk at year-end 1993.

(3) Wade Hampton census area: Hooper Bay profile.

Hooper Bay is located 20 miles south of Cape Romanzof, 25 miles south of Scammon Bay in the Yukon-Kuskokwim Delta. The 1990 census estimated the city's population at 845 persons (190 households), with a per capita income of only \$5,088.

The Alaska Department of Labor estimated that 52% of the persons in Hooper Bay were living in poverty as of the 1990 census. According to the Census data, 96.0% of the population were Native Americans.

We previously noted average net earnings and profits for tax purposes would be much smaller than average gross earnings once operating costs and expenses were subtracted. Unfortunately, IRS in making assessments for nonfilers, relies almost entirely on gross earnings figures.³⁸ In order to look behind these gross figures we sought professional help in examining what actual tax obligations might be for the majority of individual fishers in Hooper Bay for the three years covered by IRS' statistical summary.³⁹

³⁸Exhibit J.

³⁹Exhibit K.

Most fishers in Hooper Bay hold only herring permits, and the following table shows their gross earnings from their fishery for the years covered by IRS' estimates:

HOOPER BAY
HERRING GILL NET FISHERY (G34Y)

YEAR	TOTAL PERMITS	PERMITS FISHED	GROSS EARNINGS	AVERAGE FISHING GROSS	FEDERAL TAX DUE ⁴⁰
1989	60	53	\$196,690	\$3,711	0
1990	63	45	72,410	1,609	0
1991	52	42	104,522	2,489	0

c. *IRS summons: a snapshot of IRS' enforcement targets.*

In the summer of 1992, IRS served the Limited Entry Commission with an extensive summons demanding earnings records for more than 2,500 fishers.⁴¹ IRS stated⁴² the individuals targeted by the summons were limited entry permit holders who failed to file returns for the year 1992. The information conveyed by the summons⁴³ is only a snapshot in time: it

⁴⁰In fact, each of the taxpayers represented by these estimates likely would be entitled to a refund for overpayment. See Exhibit K.

⁴¹Exhibit L (CFEC extracted the numbers of individuals by their communities of residence from the summons; we eliminated the names of individuals targeted by the summons.)

⁴²Conversation with former Chief of Collections, David Tucker.

⁴³CFEC has further summarized some of the information contained in the summons in Exhibit M.

represents only part of the problem. As such, we need to cautiously view this information as the tip of an iceberg.

We extracted the following data from the summons to highlight the number of individuals targeted in the particular census districts and communities mentioned in the previous subsection.

Census AreaVillage(s)Number of Individuals
Targeted by IRS
Summons

Dillingham Census Area	Togiak	69
	Other Dillingham area communities	<u>149</u>
	TOTAL	218
Bethel Census Area	Kipnuk	15
	Other Bethel area communities	<u>248</u>
	TOTAL	263
Wade Hampton Census Area	Hooper Bay	18
	Other Wade Hampton area communities	<u>224</u>
	TOTAL	242

2. IRS permit seizures cause significant hardship.

- a. *Isolated Alaskan fishing villages depend upon commercial fishing for their survival.*

All of these data underscore the importance of commercial fishing as a source of livelihood for Alaskans in many isolated fishing villages.⁴⁴ The loss of permits would reduce the monetary income of permit holders, their crewmembers, their families and households, and others in the community sustained through the village's non-commercial sharing networks.

The loss of permits and commercial fishing income would push more residents below the poverty level and increase the community's dependency on public assistance. The loss of commercial fishing income would also reduce the community's ability to purchase the gear, equipment, and supplies needed to harvest subsistence foods for survival.

- b. *Seizing entry permits undermines a purpose of limited entry (and may not be in the national interest).*

(1) United States' special relationship to Alaska Natives.

Many villages are populated largely by Alaska Natives engaged in a "mixed, subsistence-cash" economy. Commercial fishing is one of the few sources of monetary income available to people in many of these villages.

Monetary income from commercial fishing is for basic necessities and is used to purchase the gear and equipment required to harvest subsistence food needed for basic survival. Permit

⁴⁴In particular, village dependence on commercial fishing is threatened by the precipitous and long-term decline in salmon prices coupled with the failures of some individual runs.

holders, their crewmembers, their families and households, and others who are sustained through non-commercial sharing networks would all suffer from the loss of their commercial fishing economic base.

Preserving the fragile economic base of Alaska's isolated rural fishing communities is in the State and National interest.

The United States government has special responsibility to Alaska Natives⁴⁵ and already spends large amounts of money to help Alaska Natives. A loss of entry permits in these communities would increase dependencies and generate greater demands on the U.S. Treasury. Additionally, the loss of the productive activity provided by commercial fishing would have unmeasurable social costs in these communities.

Alaska Natives, who include most of the residents of Western Alaska, have an historic and cultural relationship to their land and natural resources upon which they depend that predates the existence of Alaska as a territory by many thousands of years. In addition to sharing cultures and languages, Alaska Natives have developed and maintained their own systems of self-government, employed for the care of their resources and people. While cash economies in some areas are very limited and fragile, cohesive Alaska Native cultures survive and depend upon their fisheries and other natural resources as a way of life. These ties to land and resources are more than simply a means to sustain life: they are spiritual. Consequently, it would be fantasy to expect Alaska's most isolated Native residents simply to migrate to an urban area in search of a wage paying jobs.⁴⁶

⁴⁵Adams v. Vance, 570 F.2d 950, 953 n.3 (D.C. Cir. 1978); North Slope Borough v. Andrus, 486 F.Supp. 332, 344 (D.D.C.), *aff'd in part and rev'd in part sub nom. National Wildlife Fed. v. Andrus*, 642 F.2d 590 (D.C. Cir. 1980).

⁴⁶See Alaska Natives and the Land, Federal Field Committee for Development Planning in Alaska (October 1968); Alaska Natives Commission Final Report (Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives, May 1994).

Cash is scarce in many of Alaska's rural villages, while the cost of living is extremely high. The commercial use privileges to harvest local fishery resources are very important for the survival of these communities. If the IRS seizes permits from such villages and auctions them off, it is unlikely local villagers will have the financial resources to bid successfully on the permits seized by the IRS.⁴⁷

(2) Administrative levy and sale may increase overcapitalization
(and decrease federal revenue).

A purpose of limited entry and each limitation for a particular fishery is to minimize overcapitalization. Alaska develops limitation plans on a fishery-by-fishery basis in consultation with the user groups. A change in the character of the user groups as the result of IRS reallocation of entry permits would seriously affect the state's ability to manage.

The total social economic profit from a fishery can be dissipated over time as individual fishermen invest in greater fishing capacity to try to capture a greater share of the total available harvest. Such "investments" do not increase the total harvest of fish from the fishery or the total gross earnings generated by the fishery but do raise the total costs of all of the fishing operations involved in the fishery and thereby lower the total social profits generated by the commercial fishery.⁴⁸ A more thorough description of this process can be found in the

⁴⁷At the IRS auction in December of 1995, two of three successful bidders for use privileges were from outside of Alaska. (The remaining successful bidder lives on the Alaska road system 600 air miles from the island community where the privilege holder resides.)

⁴⁸Note that a privilege holder who invests in greater fishing capacity may capture, at least temporarily, a greater share of the total harvest and total gross earnings from the fishery. Thus this person may have higher profits because of the investment, at least initially, even though the costs associated with his fishing operation have increased. However, this privilege holder's greater share of the harvest will come at the expense of other privilege holders who will have reduced shares of the total catch, reduced gross earnings, and lower profits. Over time, other privilege holders may be forced to "upgrade" their operations to "remain competitive" in the fishery. This process of "overcapitalization", whereby fishermen invest more in fishing capacity to try to gain a

literature on fishery economics.⁴⁹

In many rural Alaska fishing villages, fishers often have less of an investment in vessel, gear, and equipment than do well-financed fishermen from more urban areas. When fishermen from outside the village obtain locally held privileges, this process of increased capitalization in the fishery often occurs. The new person will make a bigger investment in capital, gear, and equipment than will the rural villager who previously held the privilege.

As the result, the total cost of harvesting the fish will increase and the total social profit generated by all privilege holders in the fishery will decrease.

IRS seizures and forced sales of fishing privileges from poorly capitalized fishermen from rural Alaska to well-financed fishermen from more urbanized areas likely will aggravate the overcapitalization process that drives up costs and lowers profits in Alaska's limited fisheries.⁵⁰

In summary, any decision to seize and sell a permit in rural Alaska could destroy the livelihood of an individual permit holder and those dependent upon him for survival. Such

greater share of the total harvest, drives up the total costs associated with the harvest of the fish without increasing the total harvest or gross earnings from the fishery. Thus the process can result in a gradual decline in the "economic rents" obtained from a limited entry fishery.

⁴⁹*For example, see Anderson, Lee G., The Economics of Fisheries Management. 1986. Published by the John Hopkins University Press.*

⁵⁰When better capitalized and more business-oriented fishers purchase privileges at a forced sale, the same forces that lead to overcapitalization generate greater expenses and, consequently, less taxable revenue. Additionally, total gross earnings from a fishery can only be maintained as long as a fishery has been limited to a manageable number of participants whose fishing power is contained. If the number of operations is so high or the fishing power so great the fishery is very difficult to manage in an orderly fashion, overharvests may occur with resulting impacts on the sustained yield of the stocks. Alternatively, to prevent overharvest and damage to the stocks, managers may be forced to manage the fishery so conservatively substantial underharvests of the available surplus may occur.

actions would undermine the fragile economic base of many poor rural Alaska Communities. Moreover, such actions would undermine Alaska's management and run the risk of both increasing outlays from the U.S. Treasury and decreasing the flow of tax revenues to the U.S. Treasury.

3. IRS and CFEC experience in villages.

IRS statistics highlight isolated, rural Native Alaskan villages. Communicating with villagers has always been difficult for distant governmental entities (including our own). For example, every attorney attempting to work within these communities has experienced a similar problem. Commonly, a resident produces a small stack of official letters. The correspondence is invariably years old and unanswered. At an earlier time, the letters were often from the U.S. Department of Interior informing the village resident of the necessity to respond within thirty days or lose the resident's claim to land.

In short, for a variety of reasons, including isolation, culture, language, and lack of formal education, the individuals did not have the capacity to answer such a letter.⁵¹ The inherent risk in governmental communications is for a distant bureaucrat to assume the individual who did not respond to the letter is a bad actor who requires a harsher measure to get his attention.⁵²

⁵¹Documenting this situation is the Wassillie class action against the Entry Commission, settled May 4, 1988. See Riley v. Simon, 790 P.2d 1339 (Alaska 1990).

⁵²For example, elderly Eskimo grandparents in a Western Alaska village held entry permits. The grandfather sold his drift net permit. The couple sought the help of a volunteer tax preparer, who failed to report taxes due on the permit sale and failed to arrange for payment of capital gains tax by the grandparents when they had funds available from the sale. Later, when the IRS discovered the mistake, it assessed the grandparents. By that time, the money from the sale of the permit had been spent, so the grandparents had no funds to pay the assessment. When IRS' letters went unanswered, IRS seized the grandmother's set net entry permit.

Going to a village and meeting the individual can quickly dispel such a notion. Recently, Charles M. Stromme, Chief of Special Procedures for the IRS in Alaska,⁵³ returned from a regional village meeting held in Kasigluk (an Alaska Native village on the Yukon-Kuskokwim Delta) and announced, "my God, we're trying to collect money from people who don't even know we exist!"⁵⁴

Individual insight, however, may not curb a bureaucratic agenda. At least one IRS supervisor has stated limited entry permit seizures should target lower valued limited entry permits in Western Alaska (representing less valuable commercial fisheries), because such lower valued permits are less likely to be rescued from the enforcement process by legal means, and, thereby, IRS could more quickly obtain ultimate legal victory over the State of Alaska.⁵⁵

At a time when IRS is facing severe budget reductions and responding with dramatic consolidation, we fear such a bureaucratic agenda may prevail.⁵⁶

4. State of Alaska and IRS cooperation.

In the face of IRS' threat, the state has extended itself to help IRS achieve tax compliance and avoid IRS seizures of limited entry privileges. In turn, the IRS has supported and joined these efforts. Under the leadership of IRS' District Director Michael R. Allen,⁵⁷ the

⁵³The IRS eliminated Mr. Stromme's position in its current reorganization. See Exhibit M.

⁵⁴1995 Statement to Chairman Twomley.

⁵⁵1995 Statement by IRS to Department of Commerce Division of Investments.

⁵⁶Exhibit M.

⁵⁷His position will be eliminated in IRS' reorganization. *Id.*

IRS in Alaska committed resources to work with individual fishers to achieve voluntary compliance. The state has encouraged and joined in this effort as have private parties.⁵⁸

The State Division of Investments (which manages the Tax Obligation Loan Program) and the Commercial Fishing and Agriculture Bank (CFAB) represent arms of the state established by the Alaska Legislature to avoid economic distress to fishermen and those who depend upon them for a livelihood. State employees have worked hand-in-hand with IRS employees to visit Rural Alaskan communities helping individuals understand and meet their tax obligations, often with the help of the State's Tax Obligation Loan Program. In slightly over a year during which the program has functioned, the state has committed more than \$3.6 million through the Tax Obligation Loan Program. This amount represents revenue the IRS would not likely have received but for the direct effort of the state.

Private individuals have helped as well. The Alaska Business Development Center works with individual permit holders throughout the state. In the Bristol Bay area, the Bristol Bay Economic Development Corporation together with the Bristol Bay Native Association have funded an office to work with local permit holders. In Western Alaska, other regional economic development corporations are looking at the Bristol Bay model in order to develop similar projects. In support, the Division of Investments, the University of Alaska, the Alaska Business Development Center, and the IRS are developing a plan through Volunteer Income Tax Assistance (VITA), to place accounting students in rural communities to assist individuals to meet their federal tax obligations.

A group of private professionals known as the Hard Times Group (in response to the collapse of salmon prices) has conducted seminars for the benefit of distressed fishermen in isolated fishing communities throughout the state with special emphasis on fishing tax problems. University of Alaska Sea Grant Program, Marine Advisory Services, the Alaska Department of Commerce, CFAB, many private commercial lenders, private CPA's, lawyers, Native

⁵⁸Exhibit O.

Corporations, local governments, the Alaska Business Development Center, and fishing groups, all supported and helped finance the efforts of the Hard Times Group.

Finally, the state directly helps IRS collect from Alaska fishers. The state management system requires close monitoring of each individual fisher's catch and estimating the value of their catch. This state management function becomes a valuable tool to the IRS. Similarly, the state licenses and monitors all fish processors. The IRS regularly levies upon fish processors to capture the earnings from individual fish sales. In fact, IRS has requested and many fish processors have now agreed to turn earnings of fishers over to the IRS throughout the season in response to magnetic tapes submitted by the IRS through its Voluntary Processor Electronic IRS Levy Program. Through its comprehensive fisheries management system, the State of Alaska has made its commercial fishers the easiest of collection targets⁵⁹ for the IRS. The IRS takes thorough advantage of this opportunity.

Against this background, it is unnecessary to treat the State permission to fish (represented by a permit) as property which the IRS may seize and sell. Alaska's comprehensive state management system utilizes limited fishing privileges to avoid economic distress to fishermen and those who depend on them for a livelihood. These privileges are essential tools of the State to ensure holders comply with requirements necessary to accomplish sustained yield. To tear these privileges away⁶⁰ by forced seizure and sale creates the ultimate economic distress and denies the State the absolute control over holders required to enforce the terms of the fishing privilege free from interference by others.

⁵⁹As distinguished from other small businesses. In the San Diego area, over 10% of lawyers don't bother to file returns. More than 60% of taxicab drivers (who pay a daily fee to lease a cab and keep all receipts themselves) do not file tax returns. Novack, *The Tax Cheater Handbook*, Forbes (November 8, 1993). In contrast, the State of Alaska has made it relatively easy for the IRS to collect from Alaska's fishers. Simply requiring Alaska to turn over its information on fishers' catch must be easier than reconstructing a taxicab "drivers income using odometer readings or, if need be, oil change invoices." *Id.*

⁶⁰In fact, administrative seizure and sale is the harshest of remedies employed by the IRS. See *Thompson v. U.S.*, 66 F.3d 160, 166 (8th Cir. 1995).

IV. FEDERAL GOVERNING STATUTES RENDER IRS' ADMINISTRATIVE SEIZURE AND SALE OF MR. CARLE'S FISHING PRIVILEGE INEFFECTIVE.

A. Federal Power to Tax Generally.

The Constitution vests Congress with a broad, but not boundless, power to tax. Eisner v. Macomber, 252 U.S. 189, 206 (1920); G.M. Leasing Corp. v. U.S., 429 U.S. 338, 355-359 (1977); Verba v. Ohio Casualty Insurance Co., 851 F.2d 811, 816 (6th Cir. 1988). Congress limits the extent to which taxing power shall be exercised through specific provisions of the Internal Revenue Code (IRC), and, to the extent IRC does not control, non IRC law applies. Thompson v. U.S., 66 F.3d 106, 166; U.S. v. Whiting Pools, Inc., 462 U.S. 198, 208-210 (1983); Camacho v. U.S., 190 B.R. 895, 900-901 (Bankr. D.Ak. 1995); Marre v. U.S. 48 F.3d 823 (5th Cir. 1994); In re Flynn, 169 B.R. 1007 (Bankr. S.D.Ga. 1994), *modified on rehearing*, 185 B.R. 89 (Bankr. S.D. Ga.); Gardner v. U.S., 34 F.3d 985, 988 (10th Cir. 1994); U.S. v. V. & E. Engineer & Construction, 819 F.2d 331, 333 (1st Cir. 1987); Brookbank v. Hubbard, 712 F.2d 399, 400 (9th Cir. 1983); IRS v. Gaster, 42 F.3d 787, 794 (3rd Cir. 1994).

The Supreme Court has been reluctant to limit the Federal government's constitutional power to tax by construction and, thus, presumes the validity of the IRC for that purpose. Morgan v. Commissioner of Internal Revenue, 309 U.S. 78, 80 (1940).

However, the IRS sale of Mr. Carle's property does not concern the power of Congress to assess a tax. Instead, it presents a simple question of statutory authority of the IRS to force collection on taxes already assessed. Controlling law in this Circuit requires the IRS to strictly comply with IRC procedural requirements to collect taxes. Anderson v. U.S., 44 F.3d 795, 801 (9th Cir. 1995); Powelson v. U.S., 979 F.2d 141, 143 (9th Cir. 1992), *cert. den.*, 113 S.Ct. 1844 (1993); Goodwin v. U.S., 935 F.2d 1061, 1065 (9th Cir. 1991).

B. Administrative Levy and Sale Powers of IRS.

1. The governing legal principle.

The governing legal principle⁶¹ is stated in Thatcher v. Powell, 19 U.S. (6 Wheat) 119, 124, 5 L.Ed. 221 (1821), as follows:

That no individual or public officer can sell, and convey good title to, the land of another, unless authorized to do so by express law, is one of those self-evident propositions to which the mind assents, without hesitation; and that the person invested with such power must pursue with precision the course prescribed by law, or his act is invalid, is a principle which has been repeatedly recognized by this court.

2. Federal tax lien.

A lien arises by operation of law upon "all property and rights to property, whether real or personal, belonging to such person" where (1) a tax assessment has been made; (2) a taxpayer has been given notice of the assessment, stating its amount, and demanding payment; and (3) the taxpayer has failed to pay the amount demanded within ten days after the notice and demand. IRC § 6321; Saltzman, IRS Practice and Procedure, ¶ 14.05 (2d ed. 1991). This tax lien does not seize or deprive the taxpayer of his property. It is merely a claim against the taxpayer's property comparable to a Uniform Commercial Code lien of a private creditor. H.R. Rep. No. 1884, 89th Cong., 2nd Sess., 1966-2 CB 815; Saltzman, supra, ¶ 14.04 (2d ed. 1991).

3. Enforcement of federal tax lien.

The IRC provides the government with two methods to enforce the lien: (1) as in the case of Mr. Carle, it may levy, and sell the property administratively without judicial intervention pursuant to IRC §§ 6331-6343 or (2) it may institute suit to foreclose the lien pursuant to IRC § 7403. U.S. v. Hemmen, 51 F.3d 883, 887 (9th Cir. 1995); Saltzman, supra.

⁶¹Quoted and followed in Anderson, 44 F.3d at 800-01.

4. Statutory administrative levy and sale provisions.

The statutory authority for the IRS to levy upon and administratively sell property of a delinquent taxpayer is contained in the Internal Revenue Code (IRC), Subchapter D, Chapter 64, Subtitle F, in particular §§ 6331 "Levy and distraint," 6335 "Sale of seized property," 6338 "Certificate of sale; deed to real property," and 6339 "Legal effect of certificate of sale of personal property and deed of real property." Related provisions are contained in Subchapter C, Chapter 64, Subtitle F governing liens for taxes, in particular § 6321 "Lien for taxes" and in Subchapter A, Chapter 76, Subtitle F, governing civil actions brought by the United States, in particular § 7403 "Action to enforce lien or to subject property to payment of tax."

In their relevant parts, we have set out the controlling federal statutes in this section.

IRC § 6331(a). [in part]

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax.

IRC § 6331(b). [emphasis added]

The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations *existing at the time thereof*. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

§ 6335(e)(1)(B). [in part, emphasis added]

If, at the sale, one or more persons offer to purchase said property for not less than the amount of the minimum price, the property *shall* be declared sold to the highest bidder.

§ 6335(e)(1)(C). [in part, emphasis added]

If no person offers the amount of the minimum price for such property at the sale and the Secretary has determined that the purchase of such property by the United States would be in the best interest of the United States, the property *shall* be declared sold to the United States at such minimum price.

§ 6335(e)(1)(D).

If, at the sale, the property is not declared sold under subparagraph (B) or (C), the property shall be released to the owner thereof and the expenses of the levy and sale shall be added to the amount of tax for the collection of which the levy was made. Any property released under this subparagraph shall remain subject to any lien imposed by subchapter C.

§ 6335(e)(2). [in part, emphasis added]

The Secretary *shall* by regulations prescribe the manner and other conditions of the sale of property seized by levy.

§ 6338(a). [in part, emphasis added]

In the case of property sold as provided in section 6335, the Secretary *shall* give to the purchaser a certificate of sale upon payment in full of the purchase price.

§ 6339(a). [in part, emphasis added]

In all cases of sale pursuant to section 6335 of property (other than real property), the certificate of such sale--

* * *

(2) AS CONVEYANCES.--*Shall* transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(5) AS AUTHORITY FOR TRANSFER OF TITLE TO MOTOR VEHICLES.--If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same

manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

5. Effect of levy.

An IRS levy on a taxpayer's property is a required condition that must be satisfied before the IRS is entitled to conduct an administrative sale of that property under the IRC. 26 U.S.C. 6331(a)(1) provides the IRS may levy upon only "property possessed and obligations existing at the time of the levy." Tull v. U.S., 69 F.3d 394, 397-399 (9th Cir. 1995); *See In re Harrell*, 73 F.3d 218, 219-220 (9th Cir. 1996). In the case of a valid levy on intangible property, the IRS is deemed in constructive possession of the taxpayer's property, not as an owner, but rather as a creditor in order to sell it under IRC administrative procedures. Whiting Pools, 462 US 198; and U.S. v. Sullivan, 33 F.2d 100, 116 (3rd Cir. 1964). In Mr. Carle's case, the IRS' levy on any property possessed by Mr. Carle at the time of such levy did not transfer ownership of such property to the IRS. The levy merely fulfilled an IRC required condition necessary before the IRS was entitled to administratively sell such property. Specifically, the IRS levy did not affect Mr. Carle's right, as a permit holder, to fish under State law. Alaska Statutes, Title 16, Fish and Game.

6. Administrative sales and the plain language of statutes.

Controlling law in this circuit makes clear in conducting an administrative sale, the government must strictly comply with § 6335. Anderson v. U.S., 44 F.3d at 801 (holding where a sale was postponed or adjourned for a period in excess of 1 month in violation of § 6335(e), the sale was invalid);⁶² Goodwin, 935 F.2d at 1065 (holding that failure to give the notice as

⁶²The sale of Mr. Carle's property took place on December 11, 1995, and has not been finalized to date.

required by § 6335(a) invalidated a sale notwithstanding that the delinquent taxpayer had actual notice of the sale).

Section 6335(e) gives the IRS three possibilities at the time of sale: sell the property, buy it, or release it. Anderson, 44 F.3d at 800. The statutory language is clear that the IRS *shall*: (1) if a bid is made that equals or exceeds the minimum price set by the IRS, declare the property sold to the highest bidder [§ 6335(e)(1)(B)]; and (2) give the purchaser a certificate of sale upon payment of the full price [§ 6338(a)]. The use of the word *shall* leaves no room for discretion. Anderson, 44 F.3d at 799.

Specifically, the IRC requires such property "shall" be declared sold to the highest bidder at the sale. Also, the applicable federal regulations provide the property shall be sold by the IRS "as is" and "where is" and "without recourse" against the IRS with "no guarantys (sic) of warranty, including the validity of title". 26 C.F.R. 310.6335-1(c)(iii). Contrary to the explicit requirements of the IRC and the applicable regulations, the IRS conducted a sale of Mr. Carle's property subject to the condition that CFEC transfer Mr. Carle's permit to the successful bidder. The IRC does not authorize the IRS to sell Mr. Carle's property subject to the condition that the State transfer Mr. Carle's permit to the successful bidder. IRC § 6335(c)(1)(B); IRC § 6338(a); IRC § 6339(a)(2).⁶³ Accordingly, the sale is invalid under IRC as interpreted by our Ninth Circuit Court of Appeals in Anderson and Goodwin.

C. Conclusion.

In its application to transfer Mr. Carle's entry permit, IRS has raised other issues we will discuss briefly in the following section. However, at this point we conclude we must deny the requested transfer of Mr. Carle's fishing privilege. For lack of federal statutory authority, the

⁶³A government permission to engage in a regulated activity does not transfer by operation of law under the IRC. See IRC § 6339(a)(5) and AS 28.10.241(b).

administrative levy and sale (upon which the transfer request is based) appears to be ineffective.

V. OTHER ISSUES RAISED BY IRS.

A. Claim by IRS State Law Invalid.

In making this application, the IRS rejected the procedure required by the state⁶⁴ as follows:

The IRS has not completed the Request for Permanent Transfer of Entry Permit Due to Involuntary Action form as the restrictions set out in A.S. 16.43.170(g)(6) and (h) are not applicable to transfer requests by permit holders and are invalid to the extent they interfere with revenue collection. Perez v. Campbell, 402 U.S. 637, 649 (1971).

Perez v. Campbell, 402 U.S. 637, 29 L.Ed. 2nd 233, 91 Sup. Ct. 1704 (1971), does not stand for the principle that state laws "are invalid to the extent they interfere with revenue collection." The IRS was not a party to Perez, and the IRC was not at issue in Perez. The case presented the U.S. Supreme Court with a glaring conflict between a specific state law and federal bankruptcy law. In short, federal bankruptcy law discharged debts in order to provide a fresh start for the debtor. 29 L.Ed. 2nd at 241. Directly to the contrary, the state law in question provided certain judgment debtors were not relieved of liability by a discharge in bankruptcy. Id. at 238. The five-member majority stated the court must proceed by a 2-step process: (1) look for authoritative construction of the two statutes (federal and state); and (2) determine whether they are in conflict. Id. at 239. With ease, the court found "both statutes authoritatively construed" and concluded they were in direct conflict. Id. Due to direct conflict, the state law violated the Supremacy Clause of the Constitution and was preempted.⁶⁵

⁶⁴Exhibit B.

⁶⁵U.S. Const., Art. VI, Cl. 2.

No such conflict between state and federal law exists with respect to this application. Also as shown in our previous Section IV, IRS' attempted administrative levy and sale was ineffective under the IRC. Therefore, there is no conflict giving rise to preemption.⁶⁶ P.G. & E. v. State, 461 U.S. 190, 103 S.Ct. 1713, 75 L.Ed. 2d 752 (1983).

B. Claim by IRS to Act as the Privilege Holder and Apply for Transfer of Mr. Carle's Fishing Privileges.

1. IRS' believes it can do anything Mr. Carle could do.

IRS claims⁶⁷ as follows:

This request for transfer is being made pursuant to the authority contained in 26 U.S.C. § 6331, et seq. On November 13, 1995 the Internal Revenue Service levied upon Mr. Carle's limited entry permit to collect delinquent federal income taxes, lawfully assessed and owing. *By this levy, the IRS acquired whatever rights in the permit Mr. Carle possessed under state law* A.S. 16.43.170(b) allows permit holders to transfer permits to another person.

* * *

Accordingly, enclosed you will find a complete Request for Permanent Transfer of Entry Permit, with attachment, signed by . . . an Internal Revenue Service representative, on behalf of Mr. Carle.

The IRS, however, is mistaken in concluding that upon the levy, it acquired whatever rights in the permit Mr. Carle possessed under State law.

⁶⁶Additionally, for this application, IRS rejected State procedure required under AS 16.43.170(g) and (h), and, apparently, instructed its proposed transferee not to comply with State procedure. Exhibit A. Instead, IRS selected a procedure of its own creation. Consequently, AS 16.43.170(g) and (h) [which to date have never been applied] are not at issue and not ripe for review.

⁶⁷Exhibit B (with emphasis added).

As previously discussed, a levy is a required condition precedent under the IRC that must be satisfied before the IRS is entitled to conduct an administrative sale under the IRC. 26 U.S.C. 6331(b) provides a levy extends only to "property possessed and obligations existing at the time of the levy." This Congressional limitation means the power of the IRS to levy does *not* extend to all "property or rights to property . . . belonging" to a taxpayer to which an IRC lien attached under 26 U.S.C. 6331. Rather, a levy reaches *only* "property possessed" and "obligations" that exist (i.e., that are fixed and determinable) at the *time* of the levy. See Mutual Life Ins. Co. of New York v. U.S., 343 F.2d 71, 74 (9th Cir. 1965) [Unless and until the Insured made a demand for all or part of the cash surrender or loan value, there was nothing to which a lien could attach under 26 U.S.C. 6331(a)(b)].

In the present circumstance, if Mr. Carle, by virtue of his status as a permit holder, possessed any "property" under the IRC at the time of the IRS levy, it was intangible property. G.M. Leasing Corp. v. U.S., 429 U.S. 338, 350 (1977). In the case of an IRS levy on an intangible, the IRS is deemed in constructive possession of such property (as compared with actual, physical possession) *not as an owner, but, rather, as a lienor in order to sell it under the IRC administrative procedures* and this constructive possession did not divest Mr. Carle of his right, title and interest in such property. U.S. v. Sullivan, 333 F.2d 100, 116 (3rd Cir. 1964) (" . . . the Commissioner acts pursuant to the collection process in the capacity as a lienor as distinguished from the owner."); In re Challenge Air International, Inc., 952 F.2d 384, 387 (11 Cir. 1992) (The levy enforcement provisions of the Internal Revenue Code do not transfer ownership of the property to the IRS); Camacho, 190 B.R. at 900-901.

Accordingly, the IRS levy on any property then possessed by Mr. Carle, by virtue of his status as a holder of the permit, did not transfer ownership of that property to the IRS. Mr. Carle remains the holder of the permit and retains the permission to fish conferred by the State of Alaska. In sum, the IRS levy served upon Mr. Carle simply fulfilled a condition precedent required under the IRC to conduct a subsequent administrative sale under 26 U.S.C. 6335 and,

thus, the IRS is incorrect in its assertion that: "By the levy, the IRS acquired whatever rights in the permit Mr. Carle possessed under state law."⁶⁸

2. Broader issues raised: The nature of an entry permit.

a. *Rights to property: FCC cases.*

The word "property" is commonly equated with "things". However, in its true sense, property is a cultural concept that serves to order relations between people in organized societies. As noted legal philosopher Morris Cohen⁶⁹ observed (emphasis added):

Whatever technical definition of property we may prefer, we must recognize that a property right is a *relation* not between an owner and a thing, but *between the owner and other individuals in reference to things*.

The U.S. Supreme Court and the lower federal courts routinely recognize that, although the IRC sets forth the rules to assess and collect taxes on property, the IRC does not create property; rather, property is created by non IRC law. U.S. v. Bess, 357 US 51, 55 (1958); Aquilino v. U.S., 363 US 509, 512 (1960); U.S. v. Durham Lumber Co., 363 US 522, 526 (1960); U.S. v. Rodgers, 461 US 677, 683 (1983); U.S. v. National Bank of Commerce, 472 US 713,

⁶⁸The IRS established a minimum bid on the sale of Mr. Carle's property. 26 U.S.C. 6335(e)(1)(C) authorizes the United States to purchase the taxpayer's property at IRS administrative sale if no person offers the minimum bid price established by the United States. In Mr. Carle's case, if no bids meeting that minimum bid established by the IRS had been made, the Entry Commission could now be facing a request by the IRS to transfer Mr. Carle's permit to the United States. Considering the "unlimited supply" of Alaskan owned permits the IRS has targeted, the IRS could become a dominant player in a number of Alaskan fisheries. For the Entry Commission, this spectre reinforces the wisdom of Congress' limitations on the IRS as set forth in this section and in our previous Section IV, B.

⁶⁹Cohen, *Property & Sovereignty*, 13 Cornell L.J.Q. 8 (1927).

719-720 (1985); In re Tergwillinger's Catering Plus, Inc., 911 F. 2d 1168, 1171 (6th Cir. 1990) *cert. den'd* Ohio Department of Taxation v. I.R.S., 111 S. Ct. 2815 (1991); In re Kimura, 969 F. 2d 806, 811 (9th Cir. 1992). Alternatively stated, property may not be created under the IRC for the sole purpose of federal seizure. U.S. v. California, 281 F. 2d 726, 728 (9th Cir. 1960).

Lower federal courts addressing the issue have tended to treat the license as a tangible thing (like a car) or have addressed only disposition of proceeds after a license has been transferred by a government regulator. Few courts have considered whether a federal tax lien specifically attaches itself to the license itself, or the use and enjoyment thereof, the qualified right to request the state to transfer the license, or the proceeds thereof.

Since the Lorentzen ruling⁷⁰ that an entry permit represents "property or rights to property" under the IRC, a new line of cases concerning FCC licenses has analyzed the various relationships a licensee may have with third parties and what interests those relationships may affect. The analysis addresses some of the court's remaining questions posed to the parties at the conclusion of the Lorentzen case.

The threshold case, In re Ridgley Communications, Inc., 139 B.R. 374, 377-379 (Bkrtcy. D. Md. 1992), held a third-party creditor of the licensee may not assert a property right to force the sale of the license against the government issuer and explained its reasoning as follows:

[A] license confers certain private rights upon the licensee and that these rights may be sold for profit to a private party, subject to Commission approval. [The] rights between licensees and the Commission are to be distinguished from rights between the licensee and a private third party. It is this distinction that permits a licensee to receive a profit from the transfer of a license to a third party.

* * *

⁷⁰Lorentzen v. U.S., Case No. A90-446 Civil (Mar. 11, 1992 Judgment).

The case of *In re Jewel F. Smith*, 94 Bankr. 220 (Bankr. D. Ga. 1988), [held] a creditor could not take a security interest in the debtor's broadcast license.

* * *

In Smith, the creditor sought to abrogate the rights of the licensee, i.e., its ability to freely initiate a transfer of a license. The right to initiate a transfer is a right granted by the terms of the license and is seriously impaired if it is subject to the dictates of a creditor This interference in the relationship between the licensee and the [FCC] is precisely the evil the FCC was attempting to avoid by the terms of its policy against the recognition of security interests

* * *

[I]n the instant case [the creditor] is not asserting any interest in the rights of a licensee with respect to the FCC. The right to transfer is a right between the FCC and the licensee; the right to receive remuneration for the transfer is a right with respect to the two private parties.

* * *

The right of the licensee crucial to this decision (and the only right recognized by the Court in this case) is the right of the creditor to claim proceeds received by the debtor licensee from a private buyer in exchange for the transfer of the license to that buyer. The right to receive such proceeds is a private right of the licensee that constitutes a proprietary interest . . . asserted against the assignee/transferee and not against the Federal government, in which [the creditor] may properly assert a security interest.

* * *

Prudence dictates that the narrow holding of this opinion be emphasized. The holding is not a recognition of the general right of creditors to take blanket security interests in broadcast licenses. Nor does the security interest recognized here entitle the creditor to "foreclose" on a broadcasting license (i.e., initiate an involuntary transfer of the license to the creditor) or to compel the initiation of a transfer or assignment of a license to a private third party. These are rights of the licensee vis-a-vis the FCC and may not be abrogated by private agreement.

Other courts which subsequently considered this issue relied on the reasoning of the Ridgley Court. State Street Bank and Trust Company v. Arrow Communications, Inc., 833 F. Supp. 41 (D.C. Mass. 1993); In re Atlantic Business and Community Development Corp., 994 F. 2d 1069

(3rd. Cir. 1993); In re Walter Chesky, 9 FCCR 986 (Feb. 24, 1994); In re Thomas Communications, 161 B.R. 621 (S.D.W.Vir. 1993) (Court refused to grant order allowing creditor to "step into the shoes" of the licensee, thereby attempting to restrict and interfere with the FCC's regulation of its licensee); In re PBR Communications, 172 B.R. 132 (Bankr. S.D. Fla. 1994); In re Beach Television Partners, 38 F. 3d 535 (11th Cir. 1994); Cf., In re Tak, 985 F. 2d 916 (7th Cir. 1993) (The FCC license is a privilege, not property); In re General Broadcasting Co., 68 F.3d 213 (8th Cir. 1995).

As reported in In re Walter Chesky, 9 FCCR at 987 (with emphasis added and citations omitted), although a security interest may not be taken in the FCC license itself, a security interest may be taken in the proceeds of the sale of the license to an FCC approved third party:

The Commission has a policy against a licensee giving a security interest in a license. The reason for the policy is that the Commission's statutory mandate requires it to approve the qualifications of every applicant for a license. If a security interest holder were to foreclose on the collateral license, *by operation of law*, the license could transfer hands without the prior approval of the Commission

In contrast, giving a security interest in the proceeds of the sale of a license does not raise the same concerns. When a licensee gives a security interest in the proceeds of the sale of the system, including the license, the licensee's creditor has rights with respect to the money or other assets the licensee receives in exchange for the system and license. *The creditor has no rights over the license itself, nor can it take any action under its security interest until there has been a transfer which yields proceeds subject to the security interest. Thus, when the creditor exercises his security interest, the licensee will no longer be holding the license.*

The FCC's policy is clear. The license, itself, may not transfer by operation of law, and neither the licensee nor his third party creditor may assert a property interest against the government

with respect to the license.⁷¹ Chesky, 9 FCCR 986; Thomas Communications, 161 B.R. 621; PBR Communications, 172 B.R. 132; Beach Television Partners, 38 F.2d 535.

Furthermore, the FCC's distinction between the license and the licensee's right to receive proceeds from an FCC approved transfer of it is the distinction between a privilege as between the licensee and the FCC and a property right as between the licensee and third parties, such as creditors. *See also*, U.S. v. Berkshire Street Railway Co., 219 F.Supp. 861 (DC Mass. 1963) (IRS may not enjoin Commonwealth of Massachusetts from discharging a sovereign function to revoke a franchise from the Department of Public Utilities, because the franchise was a privilege, not property); Tak, 985 F.2d 916 (As a privilege, not property, an FCC license is neither part of the bankrupt's estate nor property to which a UCC security interest may attach). *Compare* Brown v. Baker, 688 P.2d 943 (Alaska 1984) (A promise to retransfer an entry permit is an attempt to create a security interest in the permit and illegal under AS 16.43.150(g) and, therefore, will not be enforced by the courts); Pavone, 860 P.2d 1228.

The IRS accepts FCC policy enunciated in Chesky, 9 FCCR at 987, and does not conduct IRS administrative levy and sales of FCC licenses. The Internal Revenue Manual (IRM) directs IRS' employees as follows:

56(16) 4 FCC Broadcasting Licenses

- (1) Administrative seizure and sale of FCC broadcasting licenses are not feasible due to the difficulties involved in the transfer of ownership without the approval of the Federal Communications

⁷¹The FCC prohibition is Alaska's policy with respect to limited entry permits. AS 16.43.150(g); State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), *appeal dismissed*, 467 US 1201 (1984) (the Alaska Supreme Court compared Alaska limited entry permits to a broadcast license); Brown v. Baker, 688 P.2d 943 (Alaska 1984) (referring to the UCC definition of a security interest, the Alaska Supreme Court held an encumbrance or reservation of a security interest in a limited entry permit is illegal and could not be enforced); Pavone v. Pavone, 860 P.2d 1228 (Alaska 1993).

Commission. However, levy against other assets of the taxpayer business is still appropriate. Such seizures should be handled on a routine basis. As is the case with any issue of a sensitive nature, management should be apprised of pertinent developments.

Although the IRM does not have the force of law, *see Anderson*, 44 F.3d at 799, the IRS "manual provisions do constitute persuasive authority as to the IRS' interpretation of the IRC." *Griswold v. U.S.*, 59 F.3d 1571, 1576 n.8 (11th Cir. 1995).

b. *Nature of an Alaskan limited fishing privilege.*

In Alaska, fish within the jurisdiction of the state are reserved to the people for their common use and no person may have an exclusive right in fishery resources. Article VIII., Section 3, and Section 15, Alaska Constitution. Limited entry permits do not confer an exclusive right or a special privilege of fishery upon the holders: they are a use privilege authorized under Article VIII., Section 15. Accordingly, no person may assert a property right against the State of Alaska to fishery resources.⁷² *State v. Hebert*, 803 P.2d, 866 (Alaska 1990). The permission granted in itself represents only a revocable use privilege. AS 16.43.150(e).

As such, the permission itself is not property. AS 01. 10.060; AS 16.43.150(e); *In re Harrell*, 73 F.3d at 220. The nature of the permission conferred upon the holder is designed to serve fundamental purposes of the State of Alaska. To avoid economic harm, Alaska ensures access to fisheries by those dependent upon them. The State maintains and requires complete control over the holders and corresponding accountability of the holders solely to the State, free from direct economic coercion, in order to ensure compliance with laws regulating Alaska's geographically vast and biologically complex fisheries. The state reserves control over the use of the privilege that may be transferred only by the state. AS 16.43.170.

⁷²Of course, in granting and denying permission, the state must protect constitutional guarantees to individuals under both the federal and state constitutions. *See Estate of Miner v. CFEC*, 635 P.2d 827 (Alaska 1981).

The state does not confer but reserves and strictly prohibits encumbrances, retained rights of repossession, and involuntary transfers. AS 16.43.150. These reservations attached to the permission serve the State's fundamental purposes and can not stand alone any more than the Limited Entry Act can stand apart from the state's comprehensive fisheries management system.⁷³

Kimura, *supra* at 812, held⁷⁴ the state could impose transfer conditions on a license for the state's own benefit and did not limit the benefit to money:

The license existed because the state had issued it. If the licensee acquired something of value, it was because the state had bestowed it upon him. Whatever value the license, as property, may have had to a purchaser depended upon its transferability. If it was transferable, it was because the state had made it so. If the state had seen fit to impose conditions upon issuance or upon transfer of property it has wholly created, that is the state's prerogative so long as its demands are not arbitrary or discriminatory.

Over and above this assurance, we have not found an IRS case decided by a federal court that seriously discussed the core issue of a state as sovereign exercising its traditional police powers through the regulatory tool of a license free from federal interference.⁷⁵ AFL

⁷³See generally, A.S. 16.05; A.S. 16.10; A.S. 16.40; A.S. 16.43.

⁷⁴Quoting U.S. v. California, 281 F. 2d at 728.

⁷⁵However, some have deliberated at length about such interference. Senator Ted Stevens included the following in his February 15, 1996 Statement to the Alaska State Legislature:

The freedom and equal status that Alaska was promised in our statehood compact has been a dream deferred. But now, with our unified, experienced, congressional delegation in Washington, D.C., Alaska has the best opportunity since then to achieve our rights as an equal partner in our federal union.

* * *

I believe one sentence should go a long way toward giving

v. American Sash and Door, 335 U.S. 538 (1949) (The police power under the American Constitutional system has been left to the States. It has always belonged to the States and was not surrendered by them to the general government. State police power is the power of self protection on the part of the community, and bears the same relation to the community that the principle of self defense bears to the individual. As such, the exercise of police power by a state is beyond interference by the federal government.); New York v. U.S., 505 U.S. 144 (1992). The state has inherent police power to control, preserve and regulate migratory fish within its jurisdiction and to legislate against injurious practices in its internal commercial and business affairs for the economic benefit of its citizens. See Shephard v. State of Alaska, 897 P.2d 33 (1995); Baldwin v. Fish and Game Commission of Montana, 98 S. Ct. 1852 (1987); Vehicle Bd. of Ca. v. Fox, 439 U.S. 96 (1978). Protection of fishery resources within a state's jurisdiction are particularly within the state's police power, and the state has great latitude in selecting the appropriate means for protecting the resource absent federal regulation or a protected interest of an individual under the Constitution. State v. Hebert, 803 P.2d 863 (Alaska 1990). The primary limitations on a state in the exercise of its police powers are (1) rights of an individual guaranteed by the State or Federal Constitution; and (2) authorized federal regulation preempting state action.

Alaska, and the rest of the states, the power to [fundamentally change our state's relationship with Washington, D.C.]. The sentence is found in the tenth amendment of our Federal Constitution: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." As Chairman of the Governmental Affairs Committee, I intend to introduce legislation to enforce the 10th amendment and make clear that federal laws may not, by inference, interfere with state or local powers. Under my bill, the courts would also be instructed to interpret federal laws and regulations that interfere with state power with a presumption in favor of state authority.

c. *The FCC analysis applied to Alaska limited fishing privileges.*

In light of the FCC analysis and previous discussion, a limited fishing privilege is a governmental permission and does not constitute property. However, the holder of the privilege may acquire certain property by virtue of his status as the holder of a privilege in the form of earnings from the sale to a private party of catch harvested under the privilege and, also, proceeds from a contract of sale with a private person stemming from a transfer of the privilege by the Entry Commission based on the holder's voluntary request. Accordingly, while the fruits of the privilege may be property, the privilege itself is not.

This analysis serves the needs of Alaska as sovereign, because it allows the state the control required to enforce conditions on the privilege.⁷⁶ The analysis serves the needs of third parties (including the IRS), because it defines clearly what they can and can not reach to collect their debts. In this respect, the analysis is consistent with our common sense understanding. In our continuing dialogue with the IRS, we have always maintained the IRS could collect contract proceeds that accrue from a CFEC transfer of the privilege without intruding upon the purposes of the Limited Entry Act.

The analysis also serves to answer questions the Alaska Federal District Court raised in discussions leading to the Lorentzen decision. Specifically, the court recognized an Alaska limited fishing privilege is a revocable privilege as well as "property or rights to property." The court asked where one could draw the line between the privilege and property. This analysis, we believe, provides the answer in the form of a bright line.

⁷⁶IRS may be willing to undermine Alaska's control. The Entry Commission must require sworn statements from parties to a proposed transfer in order to ensure against unlawful transfer and use of the entry permit. Nonetheless, IRS' proposed transferee reported to the Commission the IRS instructed him not to sign anything requested by the Entry Commission. Exhibit A.

Finally, if the rights to property generated by an entry permit are rights to receive the proceeds from contracts between the holder and third parties, then an IRS lien and levy reach those rights (when they exist) but no further. This is the extent of the reach of an IRS lien, and, accordingly, state and federal law are in complete harmony.

VI. ORDER.

For the above-stated reasons, we deny the transfer requested by the IRS of Mr. Carle's salmon limited entry permit.

DATED at Juneau this 4th day of March, 1996

By Direction of the

COMMERCIAL FISHERIES ENTRY COMMISSION

Bruce Twomley, Chairman
Frank Homan, Commissioner
Dale Anderson, Commissioner

by:

A large, stylized handwritten signature in black ink, likely belonging to a member of the Commercial Fisheries Entry Commission.


MEMORANDUM

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

TO: File of Kenneth M. Jones

DATE: February 15, 1996

FILE:

FROM: Susan Haymes 

PHONE: 789-6160/Voice
789-6170/FAX

SUBJECT: Proposed
Transferee/Entry Permit
S01A 58789

Kenneth Jones called February 12, 1996 about the status of the permanent transfer request of entry permit S01A 58789.

I explained the commission was in the process of reviewing the transfer request and I thought a decision would be issued in the next two weeks. I also said that Elerene McClure had just sent a letter requesting additional information the commission needed to complete their review.

Mr. Jones said the IRS told him not to sign anything from the commission. Mr. Jones specifically referred to a "pink form." I explained that was the permanent transfer form and the IRS had already submitted one for the transfer of the permit. I said we needed a copy of the Certificate of Sale for the permit.

He said he would wait for our letter and respond.

Exhibit A

DEC 26 1995

District
DirectorCOMMERCIAL FISHERIES
ENTRY COMMISSION

P.O. Box 101500, Anchorage, Alaska 99510

Dear Mr. Twomley:

On behalf of Francis Carle, the Internal Revenue Service hereby requests a transfer of Permit No. SO1A58789 to Kenneth M. Jones.

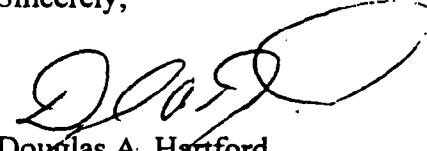
This request for transfer is being made pursuant to the authority contained in 26 U.S.C. § 6331, et seq. On November 13, 1995 the Internal Revenue Service levied upon Mr. Carle's limited entry permit to collect delinquent federal income taxes, lawfully assessed and owing. By this levy, the IRS acquired whatever rights in the permit Mr. Carle possessed under state law. United States v. National Bank of Commerce, 472 U.S. 713, 725 (1985). A.S. 16.43.170 (b) allows permit holders to transfer permits to another person.

Accordingly, enclosed you will find a complete Request for Permanent Transfer of Entry Permit, with attachment, signed by the proposed transferee and an Internal Revenue Service representative, on behalf of Mr. Carle. The IRS has not completed the Request for Permanent Transfer of Entry Permit Due to Involuntary Action form as the restrictions set out in A.S. 16.43.170 (g) (6) and (h) are not applicable to transfer requests by permit holders and are invalid to the extent they interfere with revenue collection. Perez v. Campbell, 402 U.S. 637, 649 (1971).

Please process this request for transfer as expeditiously as possible so that the proposed transferee can make the preparations necessary for fishing the permit well in advance of the next fishing season. Notify Revenue Officer Robert Hernandez, at 907-271-6975, when the transfer has either been completed or denied, and inform him of the grounds, if any, for denial.

Thank you for your prompt attention to this matter.

Sincerely,


Douglas A. Hartford
Chief, Collection Division
Anchorage District

enclosures: as stated

Exhibit B

Public Auction

by Internal Revenue Service

On Monday, December 11, 1995 the Internal Revenue Service, will sell, for the non-payment of federal taxes, 7 Alaska Limited Entry Fishing Permits, 2 Halibut Individual Fishing Quotes, and 1 Condominium.

Bidder registration will begin at 8:00 AM, at the Z.J. Loussac Library, 3600 Denali, Anchorage, Alaska.

Auction time 10:00 AM

Sales are subject to any and all qualifications and/or restrictions established by the Alaska Limited Entry Fishing Commission and the National Marine Fisheries Service, (RAM) Division. Successful bidders must meet all qualifications prior to transfer.

For details about the auction please contact, Joe Skeete at 949 E. 36th Ave., Anchorage, Alaska 99508, or call (907) 271-6845.

Published: November 29, 1995

JUNEAU EMPIRE 11-29-95

Exhibit C

Internal Revenue Service

Department of the Treasury

District
Director

P.O. Box 101500, Anchorage, Alaska 99510

JAN 22 1996

JAN 1 1996

Alaska Legal Services Corporation
419 Sixth Street, Suite 322
Juneau, Alaska 99801

Dear Mr. Davis:

This is in response to your letter dated December 13, 1995, regarding the seizure and sale of Mr. Francis Carle's fishing permit.

In reviewing Mr. Carle's case, it appears that he had several opportunities to resolve his tax problem with the Internal Revenue Service. The seizing and selling of Mr. Carle's permit was our last option to satisfy his delinquent accounts. Although, Mr. Carle's situation may have been a hardship, the Problem Resolution Office could not have intervened at such a late date without reasonable cause. Therefore, your request for a 30-day delay was not justifiable a day before the sale.

Mr. Carle needs to file corrected returns with this office as soon as possible, so that an Audit Reconsideration can be done to determine the correct amount Mr. Carle will owe. When the amount Mr. Carle owes has been established, a full payment will be required to redeem his permit by February 9, 1996, or when the state transfers the permit, whichever is sooner.

If you have any questions, please feel free to contact Douglas Hartford, Chief, Collection Division at (907) 271-6353.

Sincerely,



Michael R. Allen
District Director

Exhibit D



Notice of

Department of the Treasury / Internal Revenue Service

Public Auction Sale

Under the authority in Internal Revenue Code section 6331, the property described below has been seized for nonpayment of internal revenue taxes due from

Francis S. Carlo

The property will be sold at public auction as provided by Internal Revenue Code section 6335 and related regulations.

Date of Sale: December 11 1995

Time of Sale: 10:00 am - pm

Place of Sale: Z.J. Lousac Library Assembly Chambers
3600 Denali St., Anchorage, Alaska

Title Offered: Only the right, title, and interest of Francis S. Carlo in and to the property will be offered for sale. If requested, the Internal Revenue Service will furnish information about possible encumbrances, which may be useful in determining the value of the interest being sold. (See the back of this form for further details.)

Description of Property:

1 Salmon Seine Permit, #S01A 58789, State of Alaska Limited Entry

Minimum Bid: \$28,150.

Southeast Administrative Area

Conditional Sale.

Property may be inspected at:

Commercial Fisheries Entry Commission

Payment Terms:

- ☐ Full payment required on acceptance of highest bid
☒ Deferred payment as follows: 20% of purchase price at time of sale and balance no later than 1:00 P.M., Thursday, December 14, 1995

Form of Payment:

All payments must be by cash, certified check, cashier's or treasurer's check or by a United States postal, bank, express, or telegraph money order. Make check or money order payable to the Internal Revenue Service.

Signature <i>Nancy Lewis</i>	Name and Title (Type) Nancy Lewis, Revenue Officer	Date 10/31/95
Address for information about the sale Internal Revenue Service 949 E. 36th Ave, Anchorage, Alaska 99508		Phone 907-271-6387

Exhibit E
(1 of 2)

Form 2434 (Rev. 4-78)

FORM 2434-B
(Rev. Sept. 1985)

Department of the Treasury — Internal Revenue Service
Notice of Encumbrances Against or Interests in Property Offered for Sale

Authority and Effect of Sale

Pursuant to authority contained in sections 6331 and 6335 of the Internal Revenue Code and the regulations thereunder, and by virtue of a levy issued by authority of the District Director of Internal Revenue, the right, title, and interest [in the property described in the notice of sale] of the taxpayer [whose name appears on the reverse side of this document] will be sold.

Such interest is offered *subject* to any prior outstanding mortgages, encumbrances, or other liens in favor of third parties, which are valid against the taxpayer and are superior to the lien of the United States. The reverse of this document provides information regarding possible encumbrances or interests which may be useful in determining the value of the interest being sold. All interests of record were mailed a notice of sale.

The property will be sold "as is" and "where is" and without recourse against the United States. The Government makes no guaranty or warranty, expressed or implied, as to the validity of the title, quality, quantity, weight, size, or condition of the property, or its fitness for any use or purpose. No claim will be considered for allowance or adjustment or for rescission of the sale based upon failure of the property to conform with any representation, expressed or implied.

Notice of sale has been given in accordance with legal requirements. If the property is offered by more than one method, all bids will be considered tentative until the highest bid has been determined. The property will be sold to the highest bidder, and the sale will be final upon acceptance of the highest bid in accordance with the terms of the sale.

Payment must be made by cash, certified check, cashier's or treasurer's check or by a United States Postal, bank, express, or telegraph money order. All checks or money orders must be made payable to the Internal Revenue Service. A certificate of sale will be delivered to the successful bidder as soon as possible upon receipt of full payment of the purchase price.

Section 6339(c) of the Code states that a certificate of sale of personal property given or a deed to real property executed pursuant to section 6338 will discharge that property from all liens, encumbrances, and titles which are junior to the federal tax lien by virtue of which the levy was made. If real property is involved, section 6337 of the Code provides that the taxpayer, his or her heirs, executors, or administrators, or any person having an interest therein, or lien thereon, or any person in behalf of the taxpayer may redeem real property within 180 days from the date of its sale by the Internal Revenue Service. The redemption price to be paid to the successful bidder is the successful bid price plus 20 percent per year interest from the date of payment by the successful bidder to the date of redemption. If the property is not redeemed within the 180-day period, the District Director shall, upon receipt of the certificate of sale, issue a deed to the purchaser, or his assignee.

Exhibit E
(2 of 2)

Form **2435**
(Rev. March 1992)

Department of the Treasury — Internal Revenue Service

Certificate of Sale of Seized Property

I certify that I sold at public sale the property described below, seized for nonpayment of delinquent internal revenue taxes due from:

Taxpayer's name: Francis S. Carle

Date of sale: December 11, 1995 Sale held at: Z.J. Loussac Library Assembly

Chambers, 3600 Denali in the county of Anchorage, Alaska

Description of property sold:

(If you need more space, please attach a separate sheet.)

1 Salmon Seine Permit, #SOLA58789, State of Alaska Limited Entry

THIS SALE IS CONDITIONAL. Because transfers of Limited Entry Permits are controlled by the State of Alaska, Commerical Fisheries Entry Commission (CFEC), this sale will not become final until the successful bidder is approved for transfer by CFEC. THE TAXPAYER HAS THE RIGHT TO REDEEM THE LIMITED ENTRY PERMIT UP TO THE TIME OF FINAL TRANSFER.

*Intent to transfer filed
available 2/9/96*

RECEIVED
FEB 15 1996

COMMERCIAL
ENTRY COMMISSION

*Robert Hernandez
271-6260
6975*

NOTE: If property listed above includes motor vehicles, airplanes, and/or boats, see information on reverse.

The above property was sold at the highest bid received, and receipt of the bid amount is acknowledged. The sale was conducted as provided by Subchapter D, Chapter 64, of the Internal Revenue Code and related regulations.

Sale amount: \$ 44,000.00 Purchaser's name Kenneth M. Jones

Purchaser's address: Box 1044, Homer, AK 99603

Exhibit F
(1 of 3)

Revenue Officer's Signature

Nancy Sullivan

Revenue Officer's Address

949 E 36th Ave, Anchorage, AK 99508

District

Anchorage, AK

Date

Dec 11, 1995

Part 1 — To Purchaser

Catalog No. 184932 (over)

Form 2435 (Rev. 3-92)

Notice to Purchaser or Purchaser's Assignee

Personnel Property

This certificate transfers to the purchaser all right, title, and interest of the taxpayer in and to the personal property described.

Real Property

If the real property is not redeemed within the time prescribed in section 6337 of the Internal Revenue Code, a deed will be issued as soon as possible after the surrender of this certificate. The deed will convey the right, title, and interest of the taxpayer in and to the real property. Instructions for obtaining a deed are given below.

Redemption Rights

The rights of redemption of real estate after sale, as specified in Code Section 6337(b), are quoted below:

(b) Redemption of Real Estate After Sale.

(1) **Period.**—The owners of any real property sold as provided in section 6335, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within 180 days after the sale thereof.

(2) **Price.**—Such property or tract shall be permitted to be redeemed upon payment to the purchaser, or in case he cannot be found in the county in which the property to be redeemed is situated, then to the Secretary, for the use of the purchaser, his heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum.

How to Obtain a Deed

If the real estate is not redeemed within the 180-day period, the purchaser or assignee may obtain a deed by surrendering this certificate of sale, either by personal delivery or mail, to:

- (1) The District Director of Internal Revenue for the district in which the property is located, marked for the Attention, Chief, Special Procedures; or
- (2) The address of the Internal Revenue Service office shown on the front of this certificate.

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FEB 15 1996

Applicable Sections Under The Internal Revenue Code

SEC. 6338. CERTIFICATE OF SALE: DEED OF REAL PROPERTY

(a) **Certificate of Sale.**—In the case of property sold as provided in section 6335, the Secretary shall give to the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property, such certificate shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor.

(b) **Deed to Real Property.**—In the case of any real property sold as provided in section 6335 and not redeemed in the manner and within the time provided in section 6337, the Secretary shall execute (in accordance with the laws of the State in which such real property is situated pertaining to sales of real property under execution) to the purchaser of such real property at such sale, upon his surrender of the certificate of sale, a deed of the real property by him, reciting the facts set forth in the certificate.

(c) **Real Property Purchased by United States.**—If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary shall at the proper time execute a deed therefore, and without delay cause such deed to be duly recorded in the proper registry of deeds.

SEC. 6339. LEGAL EFFECT OF CERTIFICATE FOR SALE OF PERSONAL PROPERTY AND DEED OF REAL PROPERTY.

(a) **Certificate of Sale Property Other Than Real Property.**—In all cases of sale pursuant to section 6335 of property (other than real property), the certificate of sale—

(1) As evidence.—Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) As conveyances.—Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) As a authority for transfer of corporate stock.—If such property consists of stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) As receipts.—If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) As authority for transfer of title to motor vehicle.—If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the same in lieu of any original or prior certificate, while shall be void, whether canceled or not.

(b) **Deed of Real Property.**—In the case of the sale of real property pursuant to section 6335—

(1) **Deed as evidence.**—The deed of sale given pursuant to section 6338 shall be prima facie evidence of the facts therein stated; and

(2) **Deed as conveyance of title.**—If the proceedings of the Secretary as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

(c) **Effect of Junior Encumbrances.**—A certificate of sale of personal property given or a deed to real property executed pursuant to section 6338 shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States with respect to which the levy was made had priority.

(d) **Cross References.**—

(1) For distribution of surplus proceeds, see section 6342(b).

(2) For judicial procedure with respect to surplus proceeds, see section 7426(a)(2).

Exhibit F

(2 of 3)

NOTICE OF ENCUMBRANCES

Type of Encumbrance or Interest	Amount of Encumbrance or Interest	Date of Instrument Creating Encumbrance or Interest	Date and Place Recorded	Name and Address of Party Holding Encumbrance or Interest	Date of Information

RECEIVED
FEB 15 1996
COMMERCIAL FISHERIES
ENTRY COMMISSION

Exhibit F (3 of 3)

ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION

NOTICE OF INTENT TO PERMANENTLY TRANSFER ENTRY PERMIT

THIS NOTICE ~~MUST BE ON FILE~~ **MUST BE ON FILE** WITH THE COMMISSION FOR AT LEAST 60 DAYS BEFORE YOU CAN PERMANENTLY ~~TRANSFER~~ **TRANSFER** THE PERMIT TO ANOTHER PERSON. YOU NEED NOT NAME A PROPOSED TRANSFEREE IN THIS NOTICE. THIS NOTICE OF INTENT EXPIRES ONE YEAR FROM THE DATE OF FILING. IF A NEW NOTICE OF INTENT IS RECEIVED PRIOR TO THIS EXPIRATION DATE, IT WILL BE EFFECTIVE IMMEDIATELY WITHOUT AN ADDITIONAL WAITING PERIOD.

I, Francis S. Carle, Social Security Number 574-10-1246
(your name—please print)

Date of Birth August 9, 1934, hereby notify the Commercial Fisheries Entry Commission

that I intend to permanently transfer my entry permit, SO1A58789
(permit number)

☐ Check this box if you wish the Commission to include your name and mailing address in its list of permit holders who intend to sell a permit. This list is open for public inspection. Indicate your phone number if you desire to be listed: _____

For permanent transfer of the entry permit to a particular person, you must also file a Request for Permanent Transfer of Entry Permit form with the Commission. One of these forms will be sent to you with the carbon copy of this Notice of Intent.

IMPORTANT: 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 conditioned upon a subsequent transfer; or (3) attached, distrained, or sold on execution of judgement or under any other process or order of any court.

RECEIVED
DEC 11 1995

MAIL BOTH COPIES OF THIS FORM TO:
ENTRY COMMISSION

ALASKA COMMERCIAL FISHERIES
ENTRY COMMISSION
8800 109 Glacier Hwy.
Juneau, Alaska 99801

AS TELETYPE
November 29, 1995
FOR
Date
ROBERT HERNANDEZ
Revenue Officer
Internal Revenue Service
Signature

949 E 36th Avenue

Mailing Address

Anchorage, AK 99506

City, State and Zip Code

*If you are not the permit holder, attach documents to substantiate your authority (e.g., Power of Attorney, Letters Testamentary, Letters of Guardianship, etc.)

FOR USE OF THE COMMERCIAL FISHERIES ENTRY COMMISSION

Your Notice of Intent to Permanently Transfer was received on _____

You may request a Permanent Transfer of your entry permit, no. _____ at

any time from _____ to _____
(EFFECTIVE DATE)

Exhibit G

CFEC USE ONLY

Transf. Eff. _____
Card/Cert. _____
Mailed/PU _____
Denied _____

REQUEST FOR PERMANENT TRANSFER OF ENTRY PERMIT

PLEASE READ THE INSTRUCTIONS ON THE BACK OF THIS FORM. With this form, submit a copy of the bill of sale, contract for purchase or other transfer agreement. All terms and conditions relating to the transfer must be disclosed to the Commission. Allow approximately 2 weeks for processing of the transfer request.

PART I: TO BE COMPLETED BY THE CURRENT PERMIT HOLDER

I request permanent transfer of permit # S01A58789 which is held by Francis S. Carle
Permit Number Permit Holder's Name (please print)
574-10-1246 08/09/34 who resides at Box 35, Hydaburg, AK 99922
Social Security Number Date of Birth Address of Permanent Residence
and whose contact phone number is: _____
Check if unlisted ☐
Are any charges pending against you for violations of commercial fishing statutes or regulations? YES ☐ NO ☐
If yes, what court is hearing the case? _____
To the best of your knowledge, are there any outstanding liens on file against this permit? YES ☐ NO ☐
If yes, indicate type of lien: ☐ IRS (Internal Revenue Service) ☐ CFAB (Comm'l Fishing & Agri. Bank)
☐ CSE (Child Support Enforcement) ☐ DCED (State of Alaska, Div. of Investments)

PART II: TO BE COMPLETED BY THE PROPOSED TRANSFEREE

Kenneth M. Jones 291-38-3813 6/11/44 56932
Name (please print) Social Security Number Date of Birth ADF&G Number
Box 1044 Homer AK 99603
Permanent Mailing Address: Street or P.O. Box City State Zip Code
907-235-6417 ☒ U.S. Citizen ☒ Alaska Resident Driver's License No. 0469938
Telephone Check if unlisted ☐ ☐ Alien (_____) ☐ Nonresident
Reg. Number
I certify that I am physically able to harvest fish in the fishery for which this permit is valid ☒ YES ☐ NO (If you are not physically able to participate in the fishery, please attach an explanation of your intent in acquiring this permit.)
I have reasonable access to the commercial fishing gear used in this fishery ☒ YES ☐ NO

PART III: AFFIDAVIT (Both parties must read and sign under oath before a Notary Public, or Postmaster in Alaska)

I swear, under penalty of perjury, that the information provided by me on both sides of this form and in all supporting documents is true and completely and accurately describes the terms and conditions of this transfer; that this transfer is not requested as part of a retention of any retained right of repossession or foreclosure, lease, pledge, mortgage, agreement requiring a subsequent transfer, or other encumbrance involving this permit, except as part of a transfer financed in accordance with current law; that I am not prohibited by law or court order from being a party to this transfer. I understand that making a false claim on this form or submitting false documentation in support of this transfer request is a crime under AS 11.56.210 which is punishable by up to one year in prison and/or \$5,000 fine, and may subject me to administrative fines, suspension of fishing privileges and revocation of any entry permits I may hold.

I further understand that entry permits may be subject to federal tax liens and that the Internal Revenue Service (IRS) does NOT notify the CFEC of such liens. I understand that a federal tax lien against a prior holder of an entry permit may still attach to the permit. I understand that this is the only notice the CFEC will provide regarding IRS liens, and that I may contact my lawyer, accountant or business advisor for further information. I understand I may also ask the IRS to search its records of federal tax liens for Alaska residents by calling (907) 271-6260 in Anchorage, or contacting the IRS office nearest the taxpayer's place of domicile for taxpayers residing in states other than Alaska. I understand that I am responsible for protecting myself against the existence of a federal tax lien.

Doris Brown
Mr. Francis Carle, by Doris Brown
Revenue Officer, under the provision
of IRC 6331

Permit Holder

Transferee Kenneth M. Jones

Subscribed and sworn to before me this 21st day of

Subscribed and sworn to before me this 11th day of

December, 1995 at Anchorage
Michele A. Bates-Martin
Notary Public (or Postmaster in Alaska)

December, 1995 at Anchorage, AK
Theresa E. Hayes
Notary Public (or Postmaster in Alaska)

Commission Expires 8-7-96

Commission Expires 5/19/99

Personal information (such as social security number) required on this form pursuant to AS 16.43 will be used for fisheries research, management and licensing purposes. Personal information will be kept confidential, except that it may be disclosed to the Alaska Department of Fish and Game, the National Marine Fisheries Service and the North Pacific Fisheries Management Council as required for the preparation and implementation of fisheries management plans or to other agencies or individuals as required by law or court order. Your name, address, phone number if listed in a public directory, and licenses you hold are public information which may be released.

REQUIRED PERMIT TRANSFER INFORMATION

This questionnaire contains information which must be provided in order for the transfer request to be approved. All responses will be considered confidential and will not be available for public inspection in any manner that would disclose personal information about you or circumstances of this permit transfer. The optional section (Part III) is not part of the statement that must be sworn to and it will be protected by the Alaska Human Rights Law (AS 18.80.225). A copy of your bill of sale or sale contract, and a full explanation of any terms or conditions relating to this transfer must also be submitted.

PART I: TO BE COMPLETED BY THE PROPOSED TRANSFEREE

HOW DID YOU LOCATE THIS PERMIT? (Circle your answer)

- | | | |
|--------------------------------|---------------------------------|--------------------|
| 1. Relative or personal friend | 3. Commission's list of permits | 5. Fish processor |
| 2. Casual acquaintance | 4. Broker | 6. Advertisement |
| | | 7. Other (explain) |

WHAT IS YOUR RELATIONSHIP TO THE PERMIT HOLDER (SELLER)? (Circle your answer)

- | | | |
|---------------------|-------------------------------|--------------------|
| 1. None | 3. Personal friend | 5. Other relative |
| 2. Business partner | 4. Member of immediate family | 6. Other (explain) |

HOW IS THE PERMIT BEING ACQUIRED? (Circle all that apply)

- | | | |
|--|----------|--------------------|
| 1. Permit purchase only | 3. Gift | 5. Inheritance |
| 2. Combined purchase (with vessel, gear, site, etc.) | 4. Trade | 6. Other (explain) |

WHAT IS THE AGREED UPON PURCHASE PRICE OR TRADE VALUE FOR EACH ITEM YOU WILL OBTAIN IN THIS TRANSFER?

- | | | | |
|-----------|-----------|---------------|----|
| 1. Permit | \$ 44,000 | 5. Other | |
| 2. Vessel | \$ | (explain) | |
| 3. Gear | \$ | | |
| 4. Site | \$ | | |
| | | TOTAL PACKAGE | \$ |

WHAT SOURCES OF FINANCING ARE BEING USED? (Circle all that apply)

- | | | | |
|---|-----------|----------------------------------|----|
| 1. Personal Resources (incl. cash) | \$ 44,000 | 6. Transferor (seller) | \$ |
| 2. AK Dept. of Comm (Div of Investment) | \$ | 7. Trade - list items and values | |
| 3. Fish Processor | \$ | a | \$ |
| 4. AK Comm Fish & Agri Bank (CFAB) | \$ | b | \$ |
| 5. Bank or other lending institution | \$ | c | \$ |
| | | 8. Other (explain) | \$ |

IF PERMIT IS BEING TRANSFERRED AS A GIFT, IS IT BEING TRANSFERRED WITH ANY TERMS OF CONDITIONS? YES ☐ NO ☒

If YES, explain all terms

IS THERE ANY AGREEMENT CONCERNING FUTURE TRANSFER(S) OF THE PERMIT? YES ☐ NO ☒

If YES, explain

IS THERE AN AGREEMENT FOR YOU TO PAY THE TRANSFEROR A PORTION OF YOUR EARNINGS FROM FISHING THE PERMIT? YES ☐ NO ☒

If YES, explain

PART II: TO BE COMPLETED BY THE CURRENT PERMIT HOLDER

ARE YOU USING THE SERVICES OF A BROKER TO TRANSFER THIS PERMIT? YES ☐ NO ☒

If YES, which firm or person is acting as broker?

WHAT IS THE NET PRICE YOU WILL RECEIVE FROM SALE OF THE PERMIT? (After paying broker's fees)

HOW MUCH ARE YOU PAYING IN BROKER'S FEES FOR THE PERMIT SALE?

HOW IS THE PURCHASE PRICE TO BE PAID TO YOU?

1. In full at time of transfer

WHAT IS YOUR REASON FOR TRANSFERRING THE PERMIT? (Circle all that apply)

- | | | |
|-------------------|---------------------------------------|------------------------------------|
| 1. Retirement | 3. Entering a different fishery | 5. Fishing is no longer profitable |
| 2. Health problem | 4. To pursue a non-fishing occupation | 6. Other (explain) |

PART III: THIS SECTION IS OPTIONAL, YOU ARE NOT REQUIRED TO COMPLETE IT

WHAT IS YOUR ETHNIC ORIGIN? (circle one)

- | | | | | | | |
|------------------------|------------------|--------------|----------|----------|-------------|----------|
| PERMIT HOLDER (SELLER) | 1. Alaska Native | 2. Caucasian | 3. Black | 4. Asian | 5. Hispanic | 6. Other |
| TRANSFEREE (BUYER) | 1. Alaska Native | 2. Caucasian | 3. Black | 4. Asian | 5. Hispanic | 6. Other |

By signing the affidavit section on the front of this form you are certifying under penalty of perjury that all of the information provided on this form, including this questionnaire, is true and correct and that your bill of sale or sale contract, or other written agreement, completely and accurately describe ALL terms and conditions relating to the transfer of this permit. Making a false claim on this form or submitting false documentation in support of this transfer request is a crime under AS 11.56.210 and punishable by up to one year in prison and/or \$5,000 fine, and may subject you to administrative fines, suspension of fishing privileges and revocation of any limited entry permits you may hold.

REQUEST FOR PERMANENT TRANSFER OF ENTRY PERMIT

INSTRUCTIONS

(1) In order for an entry permit to be permanently transferred, the permit holder must have an effective Notice of Intent to Transfer on file. To be effective, the Notice of Intent must have been on file at the Commission for at least sixty (60) days. There are no exceptions to the sixty day waiting period. The Notice of Intent to Transfer does not require that a transferee be named, nor does filing one obligate the permit holder to transfer the permit.

(2) To request a permanent transfer, the permit holder must submit this form, called a Request for Permanent Transfer of Entry Permit. There are sections which must be completed by the permit holder and others which must be completed by the proposed transferee. It is mandatory that the questionnaire on the back of the first page be completed by both parties. In addition, both parties must have their signatures notarized, but they do not have to sign at the same time or place. **THE PERMIT HOLDER AND TRANSFEREE SHOULD CAREFULLY READ THE AFFIDAVIT SECTION BEFORE SIGNING THE FORM.**

(3) Along with the completed Request for Permanent Transfer form, a copy of the transfer agreement must be submitted. This document will vary depending upon the terms of the transfer. In a cash transaction, it may simply be a copy of the bill of sale. If payments are to be made over a period of time, it may be an installment sales contract with a promissory note. If the permit is being transferred as a trade, the terms being traded, and their value, must be stated. In all cases, the transfer submission must include a full and correct copy of any written transfer agreement. If there is an oral agreement, all terms and conditions of the agreement must be put in writing and both parties must certify to the completeness and accuracy of the statement by signing and having their signatures notarized.

(4) If the permit is renewed for the current year at the time of the transfer request, the permit card must be turned in with the transfer documents. (It is NOT necessary for the permit to be renewed for the current year, however any fees outstanding for prior years must be brought current.) If the permit is not renewed for the current year at the time of transfer, the transferee will have to submit the renewal form and fee in order to renew the permit card.

(5) The permit holder's original limited entry certificate (the blue-colored document similar to a diploma) should be turned in with the transfer request. However, failure to submit the certificate will not delay completion of the transfer.

(6) If the transfer is of a permit held by a deceased fisherman's estate, the legally authorized representative of the estate must complete the transfer documents. A copy of the Letters of Administration or Letters Testamentary verifying that person's legal authority should be submitted with the transfer request.

(7) Additional documentation may be requested by the Commission in some cases. For instance, if the person receiving or transferring the permit is not of legal age (18 in Alaska), or if there have been prior transfers between the permit holder and transferee, it may be advisable to contact the Transfer Section prior to submitting the transfer request to find out if additional materials may be needed.

(8) There is no fee for transfer of a permit, although any annual renewal fees due for prior years must be paid prior to transfer.

GENERAL INFORMATION

Lending: It is NOT legal for entry permits to be leased, pledged, mortgaged, attached, restrained, transferred with any retained right of repossession or foreclosure, or encumbered in any way, or on any condition requiring a subsequent transfer, except as part of a transfer financed in accordance with current law, (i.e. financed by the Commercial Fishing and Agriculture Bank or the State Division of Investments).

Financing: Information regarding financing available from the State for purchase of permits may be obtained from:

- (1) Dept. of Commerce & Economic Development, Division of Investments, P.O. Box 24153, Juneau, AK 99801-4153. Phone (907) 465-2510
- (2) Alaska Commercial Fishing & Agriculture Bank, P.O. Box 92070, Anchorage, AK 99509-2070. Phone (907) 276-2007

Gift Transfers: Permits may be transferred as gifts or as part of an inheritance, in which case there is no exchange of funds, however the majority of transfers involve sale of the permit. All terms and conditions relating to the transfer of the permit must be disclosed when the transfer request is submitted.

Eligibility: In order to receive an entry permit by permanent transfer, the transferee must be physically capable of actively participating in the fishery and have reasonable access to the necessary gear.

Escrow/Transfer of Funds: The commission does not get involved with the financial transaction between buyer and seller, but for the protection of both parties recommends that an escrow account be established with a bank to handle disbursement of funds upon notification that the transfer has been approved. The Commission will notify the escrow agent when the transfer is completed, if requested to do so in writing. Please note that permanent transfers are not official or final until all required documentation has been reviewed and approved by the Commission, even if money has already been paid and documents signed.

Transferability: Nearly all limited entry permits may be freely transferred by the permit holder by completing the proper forms and submitting them to the Commission. However, there are permits in a few fisheries which CANNOT be permanently transferred because they were issued under the "minor economic hardship" provisions of the regulations. These nontransferable permits revert to the State upon the death of the holder (or when the holder stops paying renewal fees) and they are NOT reissued. Fisheries in which there are nontransferable permits include salmon hand troll, Bristol Bay salmon set net and Kodiak beach seine.

Estates: Transferable limited entry permits survive the death of the permit holder. The permit may be transferred directly to the surviving spouse by right of survivorship unless the deceased holder expressed a contrary intent in a will which is probated. A special form is available from the Commission for transferring a permit to the surviving spouse. If the permit is to be transferred to someone other than the surviving spouse, the authorized representative of the estate may make final disposition of the permit upon demonstrating his or her authorization from the appropriate judicial authorities by providing a copy of letters of appointment or administration along with the transfer form.

WARNING

(1) In order to revoke or withdraw this transfer request once it has been filed with the Commission, BOTH parties must submit written requests for revocation or cancellation and deliver them to the Commission.

(2) The Request for Permanent Transfer form must be submitted to the Commission within 30 days of the date signed by the permit holder.

(3) Failure to provide a properly completed transfer form, or a complete and accurate copy of the transfer agreement, or other requested information, will prevent completion of the transfer.

(4) Failure to submit requested documentation or information in support of a transfer request within sixty (60) days of notification will result in DENIAL of the transfer request.

(5) It is ILLEGAL for an entry permit to be LEASED, encumbered in any way, transferred with any retained right of repossession or foreclosure or conditioned upon a subsequent transfer (except as part of a transfer financed by the Alaska Dept. of Commerce & Economic Development, Division of Investments, or the Alaska Commercial Fishing & Agriculture Bank).

(6) An entry permit cannot be permanently transferred while it is subject to a lien filed by the Division of Investments or the Commercial Fishing and Agriculture Bank (C.F.A.B.).

(7) Permits may be subject to federal tax liens and the Internal Revenue Service does not notify the Entry Commission of such liens. The parties to a permit transfer are advised to take appropriate measures to protect themselves from the risks associated with federal tax liens. (Refer to the Affidavit section on the front of the transfer form.)

(8) MAKING A FALSE CLAIM ON THIS FORM IS A CRIME UNDER AS11 56.210 PUNISHABLE BY UP TO ONE YEAR IN PRISON AND/OR \$5,000 FINE. UPON CONVICTION, A PERSON (1) SHALL FORFEIT TO THE COMMISSION ALL PERMITS AND (2) SHALL LOSE ELIGIBILITY TO HOLD PERMITS FOR A PERIOD OF THREE YEARS.

Exhibit H (3 of 3)

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

WALTER J. HICKEL, GOVERNOR

8800 GLACIER HWY. #108
JUNEAU, AK 99901
(907) 788-6150 Licensing Calls
(907) 788-6160 Other Business
(907) 788-6170 FAX

November 9, 1993

Mr. Dave Tucker
Chief, Collection Division
Internal Revenue Service
Department of the Treasury
P.O. Box 101500
Anchorage, AK 99510

Re: IRS analysis of tax delinquencies among limited entry permit holders

Dear Mr. Tucker:

We received your figures concerning tax liabilities among Alaska limited entry permit holders yesterday. I know from our conversations that the production of this information demanded considerable time and attention by you and your staff. Thank you.

As you pointed out in our phone discussion last week, the information does not go as far as we had hoped in delineating the problem by geographic areas. You made clear that the information in this form was as far as the IRS would go in satisfying our request. Nonetheless, the information does help to provide a more informed view of the problem than has been available in the past.

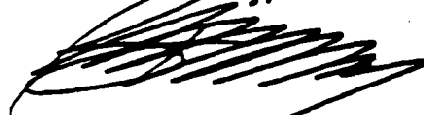
I believe that the information will help get the attention of people who may be willing to help address the problem. I plan to distribute the information as we have discussed. Before I do, I will call you with some questions. I want to make sure that I have a clear understanding of this material. From our previous conversation, I understand that the geographic areas listed as having the greatest incidence of tax delinquencies among limited entry permit holders are set forth in alphabetical order rather than in an order that would reflect magnitude of the problem. I also understand that, for nonfilers, the IRS is drawing upon information from the years 1980 through 1991. As to those permit holders who have filed but owe balances to the IRS, I understand that the IRS is drawing from information through July of 1993.

Exhibit I
(1 of 6)

Mr. Dave Tucker
November 9, 1993
Page 2

Again, thank you. I believe that the information will serve our joint outreach efforts.
I will call you shortly.

Yours Truly,

A handwritten signature in black ink, appearing to read 'Bruce Twonley', with a large, sweeping flourish at the end.

Bruce Twonley, Chairman

Exhibit I
(2 of 6)

Internal Revenue Service

Department of the Treasury

District
Director

P.O. Box 101500, Anchorage, Alaska 99510

RECEIVED

NOV 08 1993

CFEC

NOV 3 1993

Bruce Twomley, Commissioner
State of Alaska
Commercial Fisheries Entry Commission
8800 Glacier Highway, #109
Juneau, AK 99801

Dear Mr. Twomley:

This letter is in response to your request of September 20, 1993, that the Internal Revenue Service provide your agency with data detailing the scope of tax delinquencies among limited entry permit (LEP) holders.

As you know from our ongoing discussions, a dilemma is posed for the Service by your request. We are actively pursuing ways to reduce the incidence to tax delinquencies through improvements to our own education and assistance efforts, and by encouraging involvement of interested third parties. For this reason we would like to meet your request for detailed information. The dilemma results from the extremely restrictive language and intent of IRC 6103 which prohibits disclosure of tax information without specific authorization. In fact, the Internal Revenue Code imposes criminal penalties for breaches of confidentiality.

We have reviewed the data and have determined that in most locales the incidence of tax delinquencies exceeds our disclosure threshold. That is, the specific data is of such magnitude that the confidentiality of individual taxpayers would be breached by disclosure. By definition the locales of the greatest magnitude are the ones in which we have the greatest common interest. Even taxpayers in full compliance could by unfortunate inference have their reputations tarnished.

What we can provide is summary data for both Alaska resident and non Alaska resident limited entry permit holders. In addition, we can list the regions of Alaska with the highest incidence of non filing and non payment problems.

Be assured that all regions share in the overall high volume of tax delinquencies. The IRS will continue to provide service to all Alaskans. We invite the ideas and assistance of all

Exhibit I
(3 of 6)

Bruce Twonley

interested parties. We would welcome joint sponsorship of outreach activities, particularly in the seven regions identified. Please contact me at (907) 271-6353 to discuss our plan of action.

Sincerely,

A handwritten signature in cursive script that reads "Dave Tucker".

Dave Tucker
Chief, Collection Division

Enclosure

Exhibit I
(4 of 6)

RECEIVED
NOV 08 1993
CFEC

Summary of Tax Delinquencies Among LEP Holders

	IRS <u>Non Filers</u>	IRS <u>Balance Due*</u>	IRS <u>Total</u>	LEP <u>Holders</u>	<u>Percent</u>	<u>Amount Due</u>
Alaska Resident	1,173 (Actual)	1,111 (Actual)	2,284 (Actual)	8,802	26	\$13.7M (Actual)
Non Alaska Resident	333 (Estimate)	315 (Estimate)	648 (Estimate)	2,504	26	\$3.9M (Estimate)
Total	1,506 (Estimate)	1,426 (Estimate)	2,932 (Estimate)	11,306	26	\$17.6M ** (Estimate)

** Estimate Including Non-Filers = \$30M+

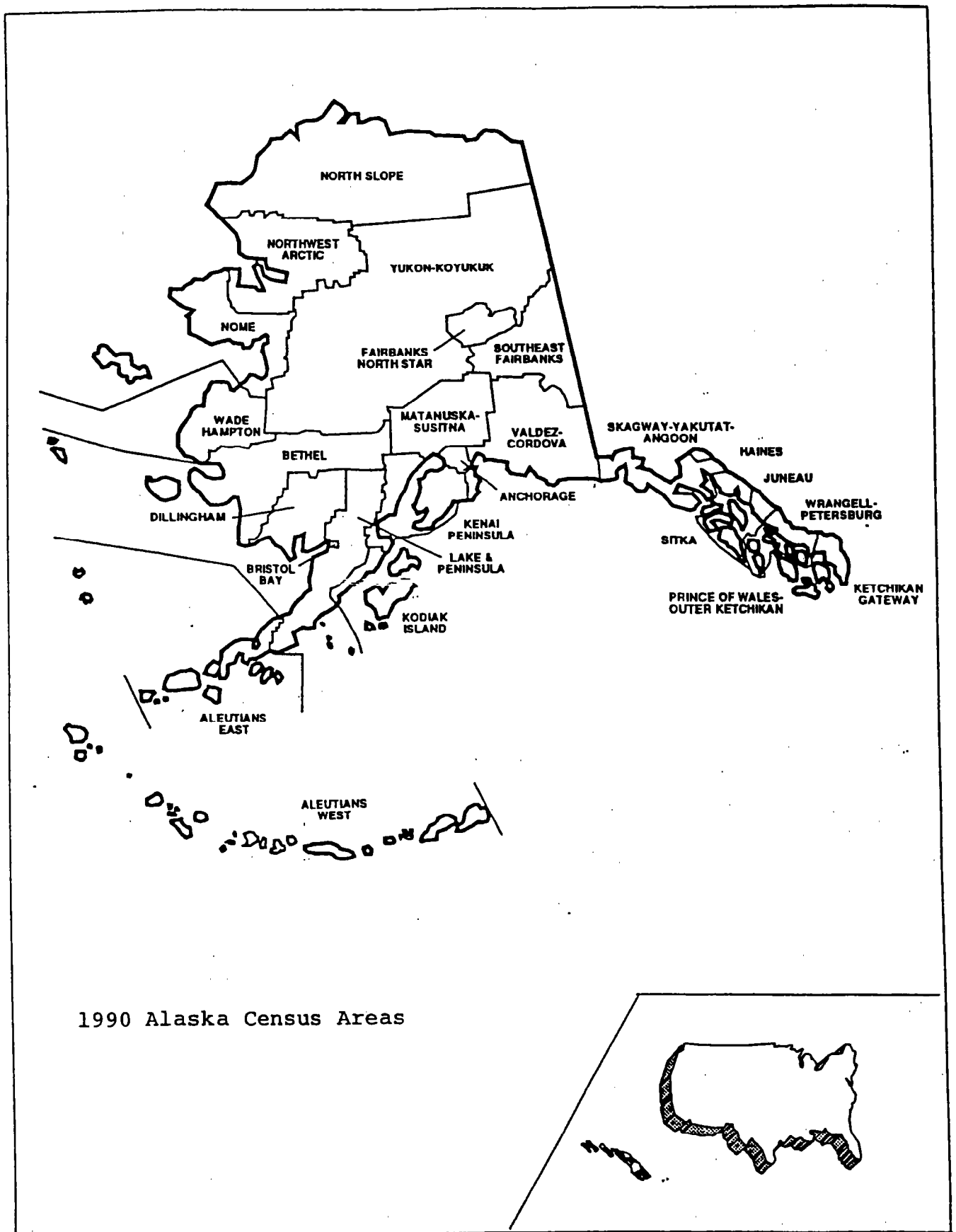
*Breakdown of Alaska Resident Balance Due Taxpayers by Amount Owed

<u>\$0-10,000</u>	<u>\$10,001-20,000</u>	<u>\$20,001-50,000</u>	<u>\$50,001-100,000</u>	<u>\$100,000+</u>	<u>Total</u>	<u>Balance Due</u>
827	130	101	32	21	1111	\$13.7M

Regions with the Greatest Incidence of Tax Delinquencies Among LEP Holders

<u>Region</u>	<u>Greatest Problem(s)</u>
Bethel	Non Filing/Non Payment
Bristol Bay and Dillingham	Non Filing/Non Payment
Haines Borough & Skagway-Yakutat-Angoon	Non Filing/Non Payment
Kenai Peninsula Borough	Non Payment
Kodiak Island Borough	Non Payment
Lake and Peninsula Borough	Non Payment
Wade Hampton	Non Filing

Exhibit I
(5 of 6)



ALASKA BUSINESS DEVELOPMENT CENTER, INC.

3335 Arctic Blvd., Suite 203 • Anchorage, Alaska 99503 • (907) 562-0335 • 1-800-478-3474 (AK only) • FAX (907) 562-6988

MEMORANDUM

Date: February 27, 1996

To: Mr. Bruce Twomley
State of Alaska
Limited Entry Commission

From: Gary Selk, President
Alaska Business Development Center, Inc.

Subj: Fishing related issues

There are three issues I would like to bring to your attention in connection with the work presently underway by the Limited Entry Commission, in the areas concerning limited entry permit holders.

1) It is my understanding that when the Internal Revenue Service does a substitute filing (force filing) that the fish ticket information is obtained through the State of Alaska, Department of Fish and Game and the total poundage per species is multiplied by the prevailing rate per pound, per species for the area to arrive at the total Gross earnings. A personal deduction is granted but NO operational costs are computed nor are any other deductions granted. I have spoken with several CPA's and an ex-Internal Revenue Service agent and this is also their understanding. As you can see, this would grossly overstate the total amount of money owed by the individual and when the return is filed, in many cases, there is no tax or very little is owed.

2) When trying to determine what a normal or average operational cost would be for the Hooper Bay area herring gillnet fishery I believe that 25% of their gross revenue would be a conservative estimate and if they traveled to the Kaltag area the average cost would be closer to 35%, if not higher.

3) Many fisherman in Western Alaska have always been forced to depend upon public assistance when not fishing. Today, this problem is aggravated by low returns and low fish prices. This situation is not likely to improve in the foreseeable future. Canneries as they are now and will likely be in the future, are no longer providing money for their living expenses in anticipation of the next season and without public assistance many families would not survive.

If there is any other information that I can provide please do not hesitate to contact me personally.

Exhibit J

TOTAL P.02

C. KAYE SAUR
11111 NAVROT CIRCLE
ANCHORAGE, ALASKA 99516
(907)349-3610
FAX (907)349-8581

February 27, 1996

Bruce Twomley, Chairman
Commercial Fisheries Entry Commission
8800 Glacier Highway, Suite 109
Juneau, Alaska 99801

Dear Mr. Twomley:

At your request, based on information provided by your office, I have computed Federal Income Tax for the years 1989, 1990 and 1991 for a hypothetical commercial fisherman.

The Internal Revenue Service identified to you that the greatest problem in the Wade Hampton area was non filing of tax returns. You selected the village of Hooper Bay in the Wade Hampton fishery district for me to use in my computations. We agreed that it was fair to assume that all of the permit holders received the Alaska Permanent Fund Dividend in each year since they were all Alaska residents.

The basis for using gross income times 25% as an estimate of business expenses is based on the following factors. I spoke with Gary Selk of Alaska Business Development Center who confirmed that the 25% figure was a conservative estimate of operational expenses such as boat depreciation, fuel, maintenance, net repair, provisions and supplies for the Hooper Bay herring gill net fishery. He told me that, in his opinion the percentage could be considerably higher in cases where the permit holder was making permit payments, boat payments and crew payments.

As you know I am a retired Certified Public Accountant who, while practicing public accounting, had many clients who were commercial fishermen and for whom I prepared income tax returns. Based on that experience I concur with Mr. Selk's opinions regarding the operational expenses.

I hope that the information I have provided to you is sufficient. If I can be of any further assistance please let me know.

Sincerely,

C. Kaye Saur

Exhibit K
(1 of 2)

HOOPER BAY
HERRING GILL NET FISHERY (G34Y)

	1989	1990	1991
Average fishing gross	\$3,711	\$1,609	\$2,489
Business expenses (25%)	(928)	(402)	(622)
Net self employment income	2,783	1,207	1,867
Alaska permanent fund	1,746	1,905	1,862
One-half self employment tax	(-0-)	(79)	(143)
Adjusted gross income	4,529	3,033	3,589
Standard deduction	(5,000)	(5,200)	(5,700)
Personal exemptions	(6,000)	(6,150)	(6,450)
Taxable income	(6,471)	(8,317)	(8,564)
Income tax	-0-	-0-	-0-
Self employment tax	342	157	286
Earned income credit	(390)	(170)	(313)
Overpayment due to taxpayer	\$ 48	\$ 13	\$ 27

Assumption that the taxpayer is married with one dependant child is based on State of Alaska Commercial Fisheries Entry Commission (CFEC) Permit Holder Age Composition Analysis for Hooper Bay Permit Holders. The analysis shows that for 1989 59.1% of the permit holders were ages 21 through 50; 1990 58.8% were ages 22 through 51; 1991 57.6% were ages 23 through 50.

Average fishing gross is base on CFEC reports of commercial fishing catch data for Alaska residents aggregated by Alaska Census Division and City, in this case Hooper Bay. This report shows the following:

YEAR	TOTAL PERMITS	PERMITS FISHED	GROSS EARNINGS
1989	60	53	\$196,690
1990	63	45	\$ 72,410
1991	52	42	\$104,522

The average was computed by dividing gross earnings by the number of permits fished. The table above represents herring gill net permits only. There were 2 salmon permits fished in 1989 and 1990 and 5 salmon permits fished in 1991. Since so few salmon permits were fished the assumption was that those numbers would not be representative in any meaningful way.

Refer to attached letter to Bruce Twomley, Chairman Commercial Fisheries Entry Commission for additional information.

Exhibit K
(2 of 2)

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

PROJECT NUMBER : 94139
PROJECT NAME : IRS Selective Permit Information

Report #6 - IRS Data by Area & Community

Geographic Areas	City	Permit Holders
ALEUTIANS EAST BOROUGH	AKUTAN	2
	ALEXANDER CREEK	1
	CHENEGA	3
	COLD BAY	1
	FALSE PASS	1
	KING COVE	9
	NELSON LAGOON	5
	OSCARVILLE	1
	SAND POINT	18
-----		-----
ALEUTIANS EAST BOROUGH		41
ALEUTIANS WEST CENSUS AREA	ANCHORAGE	17
	ATKA	1
	DUTCH HARBOR	16
	MOSER BAY	1
	NINILCHIK	14
	SAINT GEORGE ISL	1
	SAINT PAUL ISLAND	1
	UNALASKA	5
-----		-----
ALEUTIANS WEST CENSUS AREA		56
ANCHORAGE BOROUGH	ANCHORAGE	126
	CHUGIAK	7
	EAGLE RIVER	5
	GIRDWOOD	1
	INDIAN	1
-----		-----
ANCHORAGE BOROUGH		140
BETHEL CENSUS AREA	AKIACHAK	5
	AKIAK	7
	ANIAK	4
	ATMAUTLUAK	4
	BETHEL	44
	CHEFORNAK	8
	CHUATHBALUK	1
	EEK	10
	GOODNEWS BAY	26
	KASIGLUK	5
	KIPNUK	15
	KONGIGANAK	5
	KWETHLUK	14
	KWIGILLINGOK	8
	LOWER KALSKAG	2
	MEKORYUK	9
	NAPAKIAK	14
	NAPASKIAK	4
	NEWTOK	3
	NIGHTMUTE	2
	NUNAPITCHUK	3
	PLATINUM	2
	QUINHAGAK	22
	STONY RIVER	1
	TOKSOOK BAY	7
	TULUKSAK	18
	TUNTUTULIAK	16
	TUNUNAK	4
-----		-----
BETHEL CENSUS AREA		263
BRISTOL BAY BOROUGH	NAKNEK	27
	SOUTH NAKNEK	10
-----		-----
BRISTOL BAY BOROUGH		37
DILLINGHAM CENSUS AREA	ALEKNAGIK	16
	CLARKS POINT	9
	DILLINGHAM	81
	KOLIGANEK	3
	MANOKOTAK	27
	NEW STUYAHOK	8
	PORTAGE CREEK	1
	TOGIAK	69
	TWIN HILLS	4
-----		-----
DILLINGHAM CENSUS AREA		218
FAIRBANKS NORTH STAR BOROUGH	ESTER	1
	FAIRBANKS	13

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

PROJECT NUMBER : 94139
PROJECT NAME : IRS Selective Permit Information

Report #6 - IRS Data by Area & Community

Geographic Areas	City	# Permit Holders
FAIRBANKS NORTH STAR BOROUGH	NORTH POLE	2
FAIRBANKS NORTH STAR BOROUGH		16
HAINES BOROUGH	HAINES	10
JUNEAU BOROUGH	AUKE BAY	3
	DOUGLAS	3
	JUNEAU	50
JUNEAU BOROUGH		56
KENAI PENINSULA BOROUGH	ANCHOR POINT	23
	CLAM GULCH	9
	FRITZ CREEK	5
	HALIBUT COVE	1
	HOMER	66
	KASTLOF	19
	KENAI	27
	NIKISHKA	2
	NIKISKI	8
	NIKOLAEVSK	1
	PORT GRAHAM	1
	SELDOVIA	7
	SEWARD	19
	SOLDOTNA	31
	STERLING	3
	TYONEK	3
KENAI PENINSULA BOROUGH		225
KETCHIKAN GATEWAY BOROUGH	KETCHIKAN	63
	SAXMAN	1
	WARD COVE	5
	WHALE PASS	1
KETCHIKAN GATEWAY BOROUGH		70
KODIAK ISLAND BOROUGH	CHINIAT	1
	KODIAK	115
	LARSEN BAY	1
	OLD HARBOR	13
	OUZINKIE	9
	PORT LIONS	4
KODIAK ISLAND BOROUGH		143
LAKE AND PENINSULA BOROUGH	CHIGNIK	1
	CHIGNIK LAGOON	3
	ELEGIK	18
	ILIAMNA	7
	KOKHANOK	4
	LEVELOCK	8
	NEWHALEN	1
	NONDALTON	7
	PEDRO BAY	1
	PILOT POINT	10
	PORT HEIDEN	5
	WOODLAND HILLS	1
LAKE AND PENINSULA BOROUGH		66
MATANUSKA-SUSITNA BOROUGH	BIG LAKE	5
	CHICKALOON	1
	PALMER	14
	TALKEETNA	2
	WASILLA	20
MATANUSKA-SUSITNA BOROUGH		42
NOME CENSUS AREA	ELIM	12
	GOLOVIN	3
	KOYUK	1
	NOME	7
	SAINT MICHAEL	5
	SHAKTOOLIK	11
	SHISHMAREF	1
	STEBBINS	10
	UNALAKLEET	36
	WHITE MOUNTAIN	2
NOME CENSUS AREA		88

Exhibit L
(2 of 6)

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

PROJECT NUMBER : 94139
PROJECT NAME : IRS Selective Permit Information

Report #6 - IRS Data by Area & Community

Geographic Areas	City	# Permit Holders
NORTHWEST ARCTIC BOROUGH	KOTZEBUE	30
	NOATAK	1
	NOORVIK	2
NORTHWEST ARCTIC BOROUGH		33
PR OF WALES-OUTER KTN CENSUS AREA	CRAIG	27
	HYDABURG	10
	KLAWOCK	5
	METLAKATLA	20
	MEYERS CHUCK	2
	POINT BAKER	9
	THORNE BAY	2
PR OF WALES-OUTER KTN CENSUS AREA		75
SITKA BOROUGH	PORT ALEXANDER	7
	SITKA	66
	TENAKEE	4
SITKA BOROUGH		77
SKAGWAY-YAKUTAT-ANGOON CENSUS AREA	ANGOON	9
	ELFIN COVE	9
	GUSTAVUS	4
	HOONAH	20
	PELICAN	11
	SKAGWAY	1
	YAKUTAT	42
SKAGWAY-YAKUTAT-ANGOON CENSUS AREA		96
SOUTHEAST FAIRBANKS CENSUS AREA	HEALY	2
	TANACROSS	1
SOUTHEAST FAIRBANKS CENSUS AREA		3
VALDEZ-CORDOVA CENSUS AREA	COPPER CENTER	1
	CORDOVA	52
	GLENNALLEN	1
	TATITLEK	1
	VALDEZ	9
	WHITTIER	5
VALDEZ-CORDOVA CENSUS AREA		69
WADE HAMPTON CENSUS AREA	ALAKANUK	44
	CHEVAK	7
	EMMONAK	42
	FORTUNA LEDGE	3
	HOOPER BAY	18
	KOTLIK	22
	MARSHALL	12
	MOUNTAIN VILLAGE	37
	PILOT STATION	8
	RUSSIAN MISSION	4
	SAINT MARYS	16
	SCAMMON BAY	18
	SHELDON POINT	11
WADE HAMPTON CENSUS AREA		242
WRANGELL-PETERSBURG CENSUS AREA	KAKE	8
	PETERSBURG	31
	WRANGELL	27
WRANGELL-PETERSBURG CENSUS AREA		66
YUKON-KOYUKUK CENSUS AREA	ANVIK	1
	FORT YUKON	2
	GALENA	4
	GRAYLING	1
	HOLY CROSS	2
	KALTAG	8
	NENANA	5
	NULATO	7
	RAMPART	1
	RUBY	1
	STEVENS VILLAGE	2
	TANANA	4
YUKON-KOYUKUK CENSUS AREA		38

Exhibit L
(3 of 6)

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

PROJECT NUMBER : 94139
PROJECT NAME : IRS Selective Permit Information

Report #6 - IRS Data by Area & Community

Geographic Areas	City	# Permit Holders
ALASKA	EDNA BAY	2
WASHINGTON	ABERDEEN	8
	ACME	1
	AMANDA PARK	1
	ANACORTES	9
	ARLINGTON	2
	AUBURN	1
	BAINBRIDGE IS	1
	BATTLEGROUND	1
	BELLEVUE	1
	BELLINGHAM	19
	BLAINE	8
	BOTHELL	2
	BREMERTON	2
	BRINNON	1
	BURLINGTON	1
	CAMANO ISLAND	1
	CARNATION	1
	CATHLAMET	4
	CHEHALIS	2
	CHINOOK	1
	CLE ELUM	1
	CONWAY	1
	COPALIS BEACH	2
	COSMOPOLIS	1
	CUSTER	1
	DARRINGTON	1
	DEER PARK	1
	DUVALL	2
	EATONVILLE	1
	EDMONDS	10
	ELMA	1
	ENUMCLAW	1
	EVERETT	6
	FEDERAL WAY	2
	FERNDAL	2
	FOX ISLAND	1
	FREELAND	1
	FRIDAY HARBOR	7
	GIG HARBOR	8
	GRAHAM	1
	HADLOCK	2
	HAMILTON	1
	HOQUIAM	2
	HOQUIUM	1
	HUMPTULIPS	1
	ISSAQUAH	5
	KENT	3
	KINGSTON	1
	KIRKLAND	1
	LAKE STEVENS	1
	LONG BEACH	1
	LONGBRANCH	1
	LONGVIEW	1
	LYMAN	1
	LYNDEN	1
	LYNNWOOD	2
	LYNNWOOD	1
	MAPLE VALLEY	1
	MARYSVILLE	2
	MILL CREEK	1
	MOCLIPS	3
	MONTESANO	1
	MOUNT VERNON	4
	MT VERNON	2
	MUKILTEO	2
	NASALLE	1
	NEAH BAY	1
	NORTH BEND	1
	NORTH PORT	1
	OAK HARBOR	1
	OCEAN CITY	1
	OCEAN SHORES	1
	OLYMPIA	6
	OROVILLE	1
	POINT ROBERTS	1
	PORT ANGELES	4
	RAINIER	1
	SEATTLE	37
	SEDRO WOOLLEY	1

Exhibit L
(4 of 6)

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

PROJECT NUMBER : 94139
PROJECT NAME : IRS Selective Permit Information

Report #6 - IRS Data by Area & Community

Geographic Areas	City	# Permit Holders
WASHINGTON	SEQUIM	1
	SHELTON	1
	SKAMOKAWA	1
	SNOHOMISH	1
	SNOQUALMIE	1
	SOUTH CLE ELUM	1
	SPANAWAY	3
	STANWOOD	1
	SUMAS	1
	TACOMA	5
	TAHOLAH	3
	TOKELAND	1
	TOLEDO	1
	TOPPENISH	1
	VANCOUVER	5
	VASHON	2
	VAUGHN	1
	WASHOUGAL	1
	WAUNA	1
	WESTPORT	2
	WOODINVILLE	1
	YAKIMA	2
	YELM	2
-----		-----
WASHINGTON		257
OREGON	ALBANY	1
	ASTORIA	8
	AURORA	1
	BEND	2
	CASCADE LOCKS	2
	CENTRAL POINT	1
	CLACKAMAS	1
	CORBETT	1
	CORVALLIS	1
	DALLAS	1
	EAGLE CREEK	1
	GERVAIS	3
	GLENEDEN BEACH	1
	HOOD RIVER	1
	MILWAUKIE	1
	NEWBERG	2
	NEWPORT	4
	NORTH POWDER	1
	OREGON CITY	1
	PORT ORFORD	3
	PORTLAND	6
	PRINEVILLE	2
	SALEM	1
	SCAPPOOSE	1
	SILETZ	1
	SPRINGFIELD	1
	WARRENTON	1
	WARRINGTON	1
	WOODBURN	14
-----		-----
OREGON		65
CALIFORNIA	ARCATA	1
	CONCORD	1
	EL GRANADA	1
	EUREKA	1
	FAIRFIELD	2
	FORT BRAGG	1
	GARBERVILLE	1
	LOOMIS	1
	LOS ANGELES	1
	MARTINEZ	1
	MCKINLEYVILLE	1
	MENDOCINO	1
	MIDDLETOWN	1
	MONTEREY	4
	MORRO BAY	1
	MOSS BREACH	1
	NORTHRIDGE	1
	OAKHURST	1
	PACIFIC GROVE	1
	PETALUMA	1
	PLACERVILLE	1
	RESEDA	1
	SAINT HELENA	1

Exhibit L
(5 of 6)

STATE OF ALASKA
September 9, 1994

COMMERCIAL FISHERIES ENTRY COMMISSION

PROJECT NUMBER : 94139
PROJECT NAME : IRS Selective Permit Information

Report #6 - IRS Data by Area & Community

Geographic Areas	City	# Permit Holders
CALIFORNIA	SAN DIEGO	4
	SAN MATEO	1
	SANTA BARBARA	1
	SANTA ROSA	1
	SEASIDE	1
	THREE RIVERS	1
	WILMINGTON	1
	WOODLAND HILLS	1
-----		-----
CALIFORNIA		38
OTHER		19
	ANTHONY	1
	BOCA RATON	1
	BOUNTIFUL	1
	BROADUS	1
	CAMP WOOD	1
	CEDAR PARK	1
	CHATTANOOGA	1
	CHESTERTOWN	1
	COERUDALENE	1
	DAVIE	1
	EAST BALDWIN	1
	ELMHURST	1
	ERIE	1
	EVANT	1
	FULTON	1
	GEDDES	1
	GLOUCESTER	1
	HONOLULU	2
	ISHINOMAKI	1
	JASPER	1
	KAPAA, KAUAI	1
	LENORE	1
	MAYPEARL	1
	MCALLEN	1
	MILAN	1
	NEOSHO	1
	OLATHE	1
	PIQUA	1
	PRESCOTT	1
	RIGGINS	1
	SAANICHTON	1
	STATELINE	1
	SUN VALLEY	2
	TELLURIDE	1
	WESTPOINT	1
-----		-----
OTHER		56
		=====
		2588

Exhibit L
(6 of 6)

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

WALTER J. HICKEL, GOVERNOR

8800 GLACIER HWY, #109
JUNEAU, AK 99801
(907) 789-6150 Licensing Calls
(907) 789-6160 Other Business
(907) 789-6170 FAX

October 21, 1994

The Honorable Lyman Hoffman
Alaska State Representative
P.O. Box 886
Bethel, AK 99559-0886

Re: State Loans to Limited Entry Permit Holders for Payment of
Delinquent Taxes

Dear Representative Hoffman:

I was very glad to see you at AFN and to have the opportunity to discuss implementation of the new State Loan Program, which you helped establish. The new program to provide loans to entry permit holders for payment of delinquent taxes is now being implemented, and I have enclosed some brochures and applications. The IRS and the State are planning joint outreach efforts to implement the program, and we expect that they will be coming to Bethel. The two key individuals for this project are:

State Loan Program: Geoff Whistler
465-2510

IRS: Larry Hice
271-6260

I think that we agree that (although the program is scheduled to run for three years) right now is the best time for people to take advantage of the program. The future is always uncertain, and at the moment, fewer individuals are trying to borrow money from the loan program, for other purposes, so a substantial amount of loan funds are available right now.

Additionally, enclosed is some related information. You may know that, last summer, the IRS served the Entry Commission with a Summons asking for 1992 catch records for an extensive list of individuals. We understand from the IRS that the list represented permit holders who had failed to file income tax returns during 1992.

We reorganized the information from the Summons so that we could see the number of individuals targeted by community and by region. Enclosed are the numbers that we thought would be important to you (actually we covered a larger geographic area). Bear in mind that, for the most part, the numbers reflect permit holders who failed to file returns in 1992--therefore, this is only part of the picture of the overall tax noncompliance problem.

Exhibit M
(1 of 5)

October 21, 1994

Of course, because the list represents individual nonfilers, there could well be happy endings to the individual stories. Upon filing returns getting square with the IRS and getting the benefit of deductions for their expenses, many of these individuals may not owe anything to the IRS. However, until they do get square with the IRS, there is a risk that the IRS will estimate their taxes and add penalties and interest to their estimates. We also know that permit holders are an easy target for the IRS enforcement.

As you know, getting help to the individuals who most need this program will not be easy. However, the IRS has really extended itself. I understand from the new director, Michael R. Allen, that the IRS may actually expend some funds to pay local liaisons for that purpose. I further understand that the State Loan Program will help share that cost.

We all welcome your support for the program. We would be very grateful for any help you can provide in getting information out about the new program and bringing people to the new program.

For your information, I have shared the same information with Myron Naneng, President of AVCP, as well as Gerry Pilot (AVCP's credit and finance officer).

Thank you.

Cordially,



Bruce Twomley, Chairman

Enclosures

cc: Michael R. Allen
Charles M. Stromme
Larry Hice
Martin Richard
Geoff Whistler

Exhibit M
(2 of 5)

GEOGRAPHIC AREACITY# P E R M I T
HOLDERS

BETHEL CENSUS AREA	Akiachak	5
	Akiak	7
	Aniak	4
	Atmautluak	4
	Bethel	44
	Chefornak	8
	Chuathbaluk	1
	Eek	10
	Goodnews Bay	26
	Kasigluk	5
	Kipnuk	15
	Kongiganak	5
	Kwethluk	14
	Kwigillingok	8
	Lower Kalskag	2
	Mekoryuk	9
	Napakiak	14
	Napaskiak	4
	Newtok	3
	Nightmute	2
	Nunapitchuk	3
	Platinum	2
	Quinhagak	22
	Stony River	1
	Toksook Bay	7
	Tuluksak	18
	Tuntutuliak	16
	Tununak	4
TOTAL		263

GEOGRAPHIC AREACITY# P E R M I T
HOLDERS

BRISTOL BAY BOROUGH	Naknek	27
	South Naknek	10
TOTAL		37
DILLINGHAM CENSUS AREA	Aleknagik	16
	Clarks Point	9
	Dillingham	81
	Koliganek	3
	Manokotak	27
	New Stuyahok	8
	Portage Creek	1
	Togiak	69
	Twin Hills	4
TOTAL		218
WADE HAMPTON CENSUS AREA	Alakanuk	44
	Chevak	7
	Emmonak	42
	Fortuna Ledge	3
	Hooper Bay	18
	Kotlik	22
	Marshall	12
	Mountain Village	37
	Pilot Station	8
	Russian Mission	4
	Saint Marys	16
	Scammon Bay	18
	Sheldon Point	11
TOTAL		242

HOFFMAN

GEOGRAPHIC AREA

CITY

P E R M I T
HOLDERS

LAKE AND PENINSULA BOROUGH	Chignik	1
	Chignik Lagoon	3
	Egegik	18
	Iliamna	7
	Kokhanok	4
	Levelock	8
	Newhalen	1
	Nondalton	7
	Pedro Bay	1
	Pilot Point	10
	Port Heiden	5
TOTAL		65

Exhibit M
(5 of 5)

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

August 11, 1995

The Honorable Ted Stevens
United States Senator
522 Hart Building
Washington, DC 20510-0201
FAX: (202) 224-2354

TONY KNOWLES, GOVERNOR

8800 GLACIER HWY, #100
JUNEAU, AK 99801
(907) 789-6150 Licensing Calls
(907) 789-6160 Other Business
(907) 789-6170 FAX
(907) 789-6180 BBS

Bruce Twomley, Chairman
Frank Homan, Commissioner
Dale Anderson, Commissioner

Dear Senator Stevens:

On October 1, 1995, the IRS will begin a one-year transition during which 63 current IRS districts will be reduced to 33 new districts. The plan will eliminate the current Alaska district and some Alaska services will be transferred to a new district based in Seattle. As the IRS stated in its May 2, 1995 press release:

The [new] district offices [like Seattle] will be the agency's primary locations for taxpayers on education, assistance or compliance matters

Already, when Alaskans call their taxpayer assistance "800" number, they are connected to someone in Seattle. As part of the proposed change (decided upon in Seattle), Alaska will lose its state director, Michael R. Allen (the only Alaska director in our experience to attend an AFN Convention and to visit an Alaska Native village). Additionally, we will lose Alaska's Chief of Special Procedures, Charles M. Stromme, who has extended himself to make the IRS understandable and accessible to individual taxpayers and to help Alaskan fishermen avoid tax problems and protect their means of earning a living (that is, their entry permits). (Enclosed for reference is a letter written by United Fishermen of Alaska to Mr. Allen in praise of Mr. Stromme.)

Among fishermen in Alaska, the principal area of tax compliance problems is rural Alaska. Mr. Allen has committed substantial IRS resources for outreach to rural Alaska taxpayers. We would not anticipate decision makers in Seattle to be as understanding of Alaska's unique geography and various cultures. Yet, such an understanding is critical to be an effective tax collector and to avoid doing more harm than good.

The changes we highlighted may be symptomatic of potential harm to Alaska taxpayers. Fewer resources in Alaska may result in less attention to individual Alaskan taxpayers and more sweeping bureaucratic collection measures (e.g., wholesale seizures and forced sales of Alaska limited entry permits).

Please examine the proposed changes within the IRS to ensure Alaskans will not be harmed in the process. We urge you to be especially alert to any proposed reduction in staff assigned to problem resolution.

Yours Truly,
COMMERCIAL FISHERIES ENTRY COMMISSION


Bruce Twomley, Chairman

Exhibit N

Enclosure

RECEIVED
AUG 25 1994
CFEC

MEMORANDUM OF UNDERSTANDING
INTERNAL REVENUE SERVICE

AND

STATE OF ALASKA DIVISION OF INVESTMENTS
AND COMMERCIAL FISHERIES ENTRY COMMISSION

The purpose of this memorandum is to outline the scope and responsibilities of employees working for the Internal Revenue Service (IRS) and the Division of Investments (DOI) and Commercial Fisheries Entry Commission (CFEC), in their joint efforts to provide tax assistance to Alaska Commercial Fishers.

The Alaska legislature has passed and the Governor has signed SB 251 which will provide loans to certain commercial fishers to satisfy their federal tax obligations and protect their limited entry permits. The parties understand and agree that, in order to give the loan program and our outreach efforts the best opportunity to succeed, we will take the following steps:

1. IRS will participate with DOI in joint outreach activities including the appointment of an IRS representative to facilitate SB 251 loan applications;
2. IRS will appoint a representative to coordinate IRS assistance for SB 251 implementation;
3. IRS will affix mailing labels to, and mail, postage-paid envelopes provided by DOI which will contain a flyer explaining the loan program, and which will bear a return address which makes reference to the Special Fishing Loan Program; IRS will provide a new post office box (different from its current post office box) which will be included in the return address for returned undeliverable mail;
4. IRS will provide returns filing information and confirmation of payment agreements on remaining balances after receipt of the signed taxpayers' authorization for release of tax information;
5. IRS will provide balance due information and basic lien subordination information to DOI via two-way fax inquiry;
6. In cases where DOI is able to loan an amount which will partially satisfy a borrower's tax liability, and where IRS is able to work out satisfactory payment arrangements for the balance, IRS will subordinate its lien to DOI in the amount of the loan, exclusive of any fees that DOI may charge the borrower;

Exhibit O
(1 of 3)

7. Until September 30, 1994, IRS will not employ its electronic fish processor levy to those taxpayers who owe \$30,000 or less, except in those cases where the government's interest is threatened by statute expirations before December 31, 1995; other levies may take place at IRS' discretion;

8. DOI agrees to appoint a loan officer as liaison to IRS to coordinate the implementation of SB 251;

9. DOI will include a waiver of rights to privacy of tax return-related information in its loan application package;

10. DOI agrees to aggressively publicize the existence of the loan program created by SB 251.

The parties agree to jointly use their best efforts to develop a meaningful outreach program to encourage individuals needing assistance to participate in the new loan program and to satisfy their past due tax obligations. As resources permit, the IRS and DOI are committed to travel to selected areas of the state.

The parties understand that meaningful outreach can best occur with the help of trained local individuals who are trusted in the community selected for outreach, and the parties agree to use their best efforts to develop this human resource. Joint efforts will include communicating with the Alaska Federation of Natives (AFN) and its member organizations, the University of Alaska, fish processors, as well as other groups and individuals who may be able to contribute.

Where an individual has been designated and trained to be a local contact and helper in the outreach process, IRS will employ its best efforts to provide names of individuals whom the IRS would like to contact.

When time and funding permit, joint outreach efforts will be coordinated so employees from the IRS and DOI can jointly meet with the taxpayers to apply for the loan and resolve tax problems.

State employees will be provided with disclosure authorization forms so loan applicants can authorize village administrators, council members or other representatives to assist them in resolving outstanding tax problems.

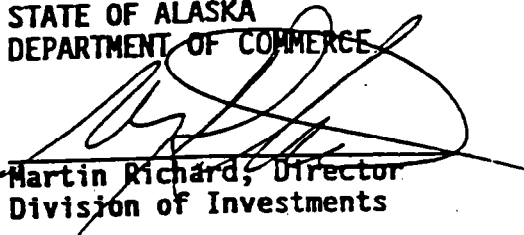
IRS employees assigned to the project will focus on Federal tax compliance issues. To the extent that information they identify relates to or impacts on state tax issues, such information will be shared with the State of Alaska, Department of Revenue.

Exhibit O
(2 of 3)

The loan provisions of SB 251 are in effect for three years after the effective date of the act. The IRS and DOI representatives will meet yearly to exchange general information and develop new objectives. Any changes to the memorandum must be agreed to in writing by the signers.

APPROVED:

STATE OF ALASKA
DEPARTMENT OF COMMERCE


Martin Richard, Director
Division of Investments

Signed at Juneau, Alaska, this
20th day of July, 1994

INTERNAL REVENUE SERVICE
ANCHORAGE DISTRICT


Michael R. Allen
District Director

Signed at Anchorage, AK, this
22nd day of July, 1994

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION


Dale G. Anderson, Commissioner
Commercial Fisheries Entry Commission

Signed at JUNEAU - AK, this
20th day of JULY, 1994

Exhibit O
(3 of 3)