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SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 3/16/92

FURTHER:

Date of 5-Day Notice: 3/19/92
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: 3/26/92

Judiciary

Committee considered

SB 449

"An Act relating to the transfer of a limited entry permit, including a transfer due to an execution; and providing for an effective date."

and recommends:

replace with CS SB 449 ()

- same title
- new title
- technical title change (HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

DO PASS:

[Handwritten signatures]

PREVIOUS FISCAL NOTES: Dept/Date

Governor's bill with fiscal notes:
zero fiscal notes F&G 3/12/92 / REV 3/22/92
CAED 3/13/92 / F&G Comm Fish Entry Comm 3/11/92
fiscal notes _____

OTHER RECOMMENDATIONS:

[Handwritten signature]

[Handwritten signature] NO REC

Chair: Signature and Recommendation

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: SB 449

(S) Publish Date: 3-16-92

Revision Date: _____

Department Affected: FISH AND GAME

Title: Regulate the transfer of limited entry fishing permits

BRU: Commercial Fisheries Entry Commission

Component: Limited Entry Program Administration

Sponsor: Rules Committee

Requestor: Governor

COMPONENT SERIAL NO.

	4	7	1
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Roger Kolden Phone: 789-6160

Division: Commercial Fisheries Entry Commission Date: 03/11/92

Approved by Commissioner: _____

Agency: CFEC Date: 3/11/92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: 3/12/92

Department Affected: Fish and Game

Title: Transfer of limited entry permits

BRU: Commercial Fisheries

Component: Commercial Fisheries

Sponsor: Rules Committee by Governor

Requestor:

COMPONENT SERIAL NO.

4	5	9
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Geron Bruce G.B.

Phone: 465-4100

Division: Commissioner's Office

Date: 3/12/92

Approved by Commissioner: Don Somerville

Agency: Department of Fish and Game

Date: 3/12/92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 449

Revision Date: _____

Department Affected: Commerce & Econ. Dev.

Title: Transfer of entry permit on execution

BRU: Investments

Component: _____

Sponsor: Senate Rules by Request of Governor

Requestor: Judiciary

COMPONENT SERIAL NO.

0	3	8	4
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND RESOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

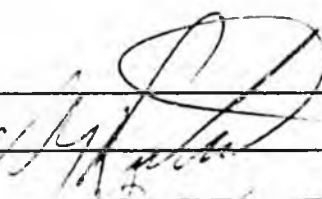
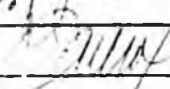
GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS (Attach a separate page if necessary.)

Prepared By: Martin J. Richard, Director  Phone: 465-2510
 Division: Investments Date: 3/23/92
 Approved by Commissioner: Glenn A. Olds 
 Agency: Department of Commerce & Economic Development Date: 3-24-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., and Impacted Agency(ies).

No. 3

FISCAL NOTE

Bill Version: SB 449

(S) Publish Date: 3-16-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Commerce & Econ. Dev.

Title: Draft bill establishing procedures to
govern transfers of entry permits

BRU: Investments

Component: _____

Sponsor: _____

Requestor: _____

COMPONENT SERIAL NO.

0	3	8	4
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

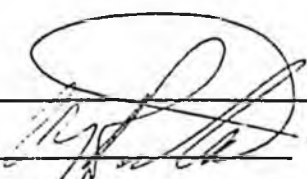
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS (Attach a separate page if necessary.)

Prepared By: Martin J. Richard, Director  Phone: 465-2510

Division: Investments Date: 3/13/92

Approved by Commissioner: Glenn A. Olds  Date: 3-13-92

Agency: Department of Commerce & Economic Development Date: 3-13-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legls. Ofc., and Impacted Agency(ies).

FISCAL NOTE

No. 2
 II Version: SB 449
 (S) Publish Date: 3-16-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: _____
 Title: Regulate transfer of limited entry permits due
to execution
 Sponsor: Governor
 Requestor: _____

Department Affected: Revenue
 BRU: Revenue Operations
 Component: _____

Component Serial No.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: The Department of Revenue is unaffected by this legislation.

Prepared by: Rod Mourant *Rod Mourant* Phone: 465-2300
 Division: Commissioner's Office Date: March 12, 1992
 Approved by Commissioner: Darrel J. Rexwinkel *Darrel J. Rexwinkel*
 Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 16, 1992

The Honorable Richard I. Eliason
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

449

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to establish procedures for, and in certain circumstances to restrict, the transfer of limited entry permits. A limited entry permit is required for the commercial taking of certain fishery resources in Alaska.

Section 2 of the bill is a housekeeping measure (1) to clarify that AS 16.43.170(b) applies to all voluntary limited entry permit transfers, not just those transfers governed by an agreement between the permit holder and a third party, and (2) to codify a longstanding practice of the state. Section 3 of the bill sets out the conditions governing the transfer of a limited entry permit when the transfer is requested due to a valid execution on that permit.

Since the enactment of AS 16.43.150(g), which protects a limited entry permit from execution by creditors, the courts have nonetheless ruled in two specific cases that a permit holder's interest in a limited entry permit may be executed upon to satisfy a third-party claim against that permit holder. Under state law, only the Commercial Fisheries Entry Commission ("the commission") is authorized to transfer title of a limited entry permit. The commission's existing statutes do not provide for transfers to a third party in the case of an execution by creditors of a permit holder. The bill is intended to address this statutory deficiency. AS 16.43.150(g) is amended in sec. 1 of the bill, to acknowledge the transfer provisions added by sec. 3 of the bill.

The conditions established in proposed AS 16.43.170(g)(1) - (5), in sec. 3 of the bill, for a transfer related to an execution on the permit conform to those conditions presently required in existing AS 16.43.170(b) for a voluntary transfer of a permit and for transfer of the title of a permit which is held by the Department of Commerce and Economic Development (DCED) under AS 16.10.300 - 16.10.370 or by the Commercial Fishing and Agriculture Bank (CFAB) under AS 44.81. Proposed AS 16.43.170(g)(4) is applicable when the limited entry permit requested to be transferred is subject to a certificate of title issued to DCED or CFAB to secure a loan extended by either entity. Presently, the

Transmittal Letter

The Honorable Richard I. Eliason
March 16, 1992
Page 2

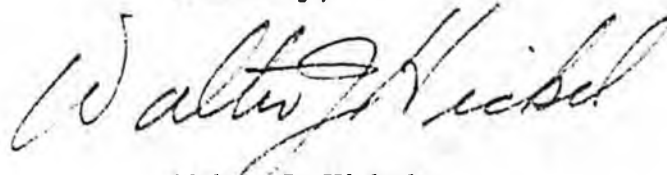
commission denies a holder's request made under AS 16.43.170(b) for the transfer of the title to a limited entry permit if that permit is already subject to such a certificate. Proposed AS 16.43.170(g)(4) would allow the commission, for the same reason, to deny a request for the transfer of the title to a limited entry permit made because of a valid execution against that permit.

The Alaska Statehood Act entrusted Alaska with management of its fish and game resources to further the economic well-being of Alaska. Consistent with this responsibility, and recognizing that many Alaska fishers are dependent solely upon fishing for their livelihoods, sec. 3's proposed AS 16.43.170(g)(6) seeks to protect those fishers' permits from transfer by valid execution if the commission determines that the permit is a "necessary means of support" for the fisher and those dependent upon the fisher.

Finally, the bill provides the State of Alaska with a right of first refusal to purchase a limited entry permit requested to be transferred due to a valid execution against that permit. The state would have an opportunity to purchase a limited entry permit after an execution sale when the state's interests would be served by doing so. See proposed AS 16.43.170(g); sec. 3 of the bill. A similar opportunity is already reserved for the state under Alaska law in the event of foreclosure upon a limited entry permit by DCED or CFAB.

I urge your early and favorable consideration of this bill.

Sincerely,

A handwritten signature in cursive script, reading "Walter J. Hickel". The signature is written in dark ink and is positioned above the printed name and title.

Walter J. Hickel
Governor

*offer SB449
amendment in
Judiciary
Tuesday*

MEMORANDUM

TO: The Honorable Pat Rodey
Vice-Chairman
Senate Judiciary Committee

DATE: March 24, 1992

FAX NO: 789-6170

TELEPHONE NO: 789-6160

FROM: COMMERCIAL FISHERIES
ENTRY COMMISSION
Bruce Twomley, Chairman
Rich Listowski,
Commissioner
Frank Homan, Commissioner

SUBJECT: SB 449; Corrected Page
2 of Proposed Senate
Judiciary Committee
Substitute

Yesterday we submitted to you a proposed Judiciary Committee substitute for SB 449.

The interlined statutory citation is correct on page 1 of our proposal but incorrect in the two entries on page 2. The correct statutory citation in all three cases is AS 16.10.338.

Attached is a corrected page 2 of the proposed Judiciary Committee substitute for SB 449. Please substitute the attached page 2 for the original page 2 we submitted to you yesterday.

Thank you.

cc: Honorable Rick Halford, Chairman, Senate Judiciary Committee
Martin Richard, Director of the Division of Investments, Department of Commerce
Greg Winegar, Manager of the Juneau Lending Branch, Department of Commerce
Lori Nottingham, Deputy Legislative Liaison, Office of the Governor
Deborah Behr, Esq., Assistant Attorney General
John T. Baker, Esq., Assistant Attorney General

TO: The Honorable Rick Halford
Chairman
Senate Judiciary Committee

DATE: March 18, 1992

FAX NO: 789-6170

TELEPHONE NO: 789-6160

SUBJECT: Governor's SB 449

FROM: COMMERCIAL FISHERIES
ENTRY COMMISSION
Bruce Twomley, Chairman
Frank Homan, Commissioner
Rich Listowski,
Commissioner

As you know, Governor Walter J. Hickel has introduced SB 449 now referred to your Senate Judiciary Committee. The proposed Bill addresses the fact that two court decisions have declared that certain creditors may validly execute upon entry permits to enforce claims against the permit holders. The proposed legislation is the first attempt by the State to regulate transfers of entry permits due to these valid executions. The legislation does not discriminate between such creditors.

Section 3 of the proposed legislation will:

1. For the first time regulate transfers of entry permits due to valid execution;
2. Require such transfers to conform to state law;
3. Protect the revolving loan funds of the State Commercial Fishing Loan Program and the Commercial Fishing and Agricultural Bank (CFAB) by denying transfer of a permit which is security for a loan from either of these programs;
4. Attempt to protect fishers who most need their entry permits; and
5. Grant the State the right of first refusal with respect to the permit sold at a valid execution sale.

Please call, if you have any questions or comments.

cc: Lori Nottingham, Deputy Legislative Liaison, Office of the Governor
Deborah E. Behr, Esq., Assistant Attorney General
John T. Baker, Esq., Assistant Attorney General

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

March 26, 1992

SUBJECT: CS SB 449 (Judiciary)

TO: Senator Rick Halford, Chairman
Senate Judiciary Committee

FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is the CS SB 449 (Judiciary) which had been requested by the Judiciary Committee. The CS contains the changes that the committee requested.

However, I should note that a question exists as to whether the references to AS 16.10.338 should be included on page 2, lines 6 and 20 of the CS. In both instances, the context of the bill relates to a certificate for a permit issued under AS 16.10.338. Unlike AS 16.10.333(b)(1)-(2) and AS 44.81.230(b)(1)-(2), AS 16.10.338 does not provide for issuance of a certificate for a permit. There have been no regulations issued under AS 16.10.338. So there is no mention in either statute or regulation of a certificate issued under AS 16.10.338.

It may be the practice of the Department of Commerce and Economic Development to issue certificates for permits when the permits are used as collateral under AS 16.10.338, in which case it would be appropriate to reference AS 16.10.338 at these locations in SB 449. But, if the department does not issue certificates for permits used as collateral under AS 16.10.338, then some additional language may be necessary to properly bring AS 16.10.338 within the coverage of the bill.

If I may be of further assistance, please advise.

GU:pl
92-208.plm

Enclosure

SENATE BILL NO. 449

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/16/92
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the transfer of a limited entry permit, including a transfer due to
2 an execution; and providing for an effective date."

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

4 * Section 1. AS 16.43.150(g) is amended to read:

5 (g) Except as provided in AS 16.10.333 - 16.10.337, AS 44.81.210, 44.81.225, and
6 44.81.230 - 44.81.250, an entry permit may not be

7 (1) pledged, mortgaged, leased, or encumbered in any way;
8 (2) transferred with any retained right of repossession or foreclosure, or on any
9 condition requiring a subsequent transfer; or

10 (3) attached, distrained, or sold on execution of judgment or under any other
11 process or order of any court. except as provided in AS 16.43.170(g) and (h).

12 * Sec. 2. AS 16.43.170(b) is amended to read:

13 (b) Except as provided in (c) and (e) of this section, the holder of an entry permit may
14 transfer the permit to another person or to the commission upon 60 days notice of intent to

3/24/92

Corrected p. 2

1 transfer under regulations adopted by the commission. No sooner than 60 days nor later than 12
 2 months from the date of notice to the commission, the holder of an entry permit may transfer the
 3 permit. If the proposed transferee, other than the commission, can demonstrate the present ability
 4 to participate actively in the fishery and the transfer [AGREEMENT] does not violate any
 5 provision of AS 16.43 or regulations adopted thereunder, and if a certificate for the permit
 6 under AS 16.10.333(b)(1) - (2),^{AS 16.10.338} or AS 44.81.230(b)(1) - (2) is not in effect, the commission
 7 shall approve the transfer and reissue the entry permit to the transferee provided that neither party
 8 is prohibited by law from participating in the transfer.

9 * Sec. 3. AS 16.43.170 is amended by adding new subsections to read:

10 (g) A person may request the commission to transfer an entry permit due to an execution
 11 on the holder's interest in that permit. The request shall be made in the form and manner
 12 provided in AS 16.43 and regulations adopted thereunder. The commission may deny a request
 13 for transfer of an entry permit due to an execution of a holder's interest in that permit if

14 (1) the execution does not comply with legal requirements or otherwise is not
 15 valid;

16 (2) the transfer violates a provision of AS 16.43 or regulations adopted
 17 thereunder;

18 (3) the proposed transferee or other party to the transfer is prohibited by law from
 19 participating in the transaction;

20 (4) a certificate for the permit under AS 16.10.333(b)(1) - (2),^{AS 16.10.338} or
 21 AS 44.81.230(b)(1) - (2) is in effect at the time of the proposed transfer;

22 (5) the proposed transferee of the entry permit, other than the commission, cannot
 23 demonstrate the present ability to actively participate in the fishery; or

24 (6) the holder of the entry permit as shown by the records of the commission
 25 demonstrates, under regulations adopted by the commission, that the entry permit is a necessary
 26 means of support for the holder and those dependent upon the holder.

27 (h) Notwithstanding (g) of this section, the commission may not approve a request for
 28 transfer of an entry permit after an execution sale unless the parties to the transfer offer the
 29 commission a right to purchase the permit at the same price and on the same terms as those of
 30 that execution sale. If the commission exercises its right to purchase the permit, the permit then
 31 shall be transferred to the commission.

SB 449: "Transfer of entry permit on execution."

Since enactment of AS 16.43.150(g), which protected limited entry permits from execution by creditors, the courts have nonetheless ruled in two cases that a permit holder's interest in a permit may be executed upon to satisfy a third party claim. Under Alaska law, only the Commercial Fisheries Entry Commission (CFEC) is authorized to transfer title to a permit. Currently, the CFEC's statutes do not provide for transfers in the case of execution by creditors. This bill is intended to address this deficiency.

Subsections 2 and 3 of the bill addresses the situation where a permit is collateral for a loan through the Department of Commerce and Economic Development or the Commercial Fishing and Agriculture Bank (CFAB). CFEC currently denies requests for the transfer of entry permits under this situation and this legislation incorporates the same requirement with respect to requests for the transfer of entry permits made in connection with a valid execution.

The department supports this legislation but recommends the following amendments:

Amend Section 1 of the bill as follows:

AS 16.43.150(g) should include a reference to AS 16.10.338. This section allows the department to use a limited entry permit as collateral for loans made under AS 16.10.310(a). AS 16.10.333 only relates to limited entry permits that were purchased with loan proceeds.

Amend Section 2 of the bill as follows:

AS 16.43.170(b) should also include a reference to AS 16.10.338 for the same reasons as explained above.

Amend Section 3 of the bill as follows:

AS 16.43.170(g)(4) should also include a reference to AS 16.10.338 for the same reasons as explained above.



Glenn A. Olds, Commissioner

Date: 3-24-92

Already, IRS may be seizing fishing permits

by DABNEY VAN LIERE

Hundreds of rural Alaskan commercial fishermen and crewmembers could be in danger of losing their livelihoods. They could also face criminal charges if they don't file their taxes with the Internal Revenue Service.

Limited Entry Commission Chairman Bruce Twomley of Juneau and IRS spokeswoman Marilyn Steen are both hopeful that many rural fishermen can solve their current tax problems without jeopardizing their permits — now "tentatively" ruled personal property, subject to liens and seizure.

Anchorage tax lawyer Robert Brink is hopeful as well, but he says, in reality, a lot of rural fishermen are risking their permits and livelihoods, even though they may not be aware of the danger. "They're more 'sitting ducks' now than they used to be," says Brink. "If I were a fish captain or especially a self-employed crewmember, I would file this year, even if no taxes may be owed — due to low prices last year — and set up payments for any back taxes" on earnings from past profitable year."

Brink is chairman of the tax section for the Alaska Bar Association. He says many Rural Alaskan captains now have tax problems because they failed to report total profits from processors (possibly because they didn't have enough money left for taxes) or reported profits incorrectly. They also oftentimes neglected to give self-employed crewmembers IRS 1099 forms for their share of the catch. The self-employed crewmembers could have past tax problems if they failed to report their 1099 income. IRS regulations require self-employed crewmembers to file a return if they made over \$400 on their 1099 share of the catch. Therefore they should get their 1099s and file this year, even though they may not have finished this year. If they don't file, the IRS will file for them, place liens on property, and require payments.

According to Brink, U.S. District Court Judge James Singleton's new permit ruling (ACF, January 24, 1992) could prompt the IRS to quickly seize the permits of rural Alaskan captains who have not reported past profits, without giving them a chance to set up a tax payment plan. "The ruling could also eventually make it easier for the IRS to bring felony charges against any fisherman who does not file, for willful tax violations."

However, Brink also says IRS permit seizures may not cause total catastrophe because Judge Singleton has also ruled that the IRS must work with the Alaska Limited Entry Commission to transfer any seized permits. "The IRS is not going to get any special considerations. The state allows only one permit to be held by a taxpayer for the same category of limited entry fishery," says Brink. He figures it could take some time for the IRS to find someone to whom they can transfer the permit. This could provide more time for fishermen to file for bankruptcy and set up payments.

Limited Entry Commission Chairman Twomley says there's still some time before the IRS can seize any permits. "The state has been fighting to keep the IRS from taking permits for over 10 years. We're not lying down now," says Twomley. "The ink's not dry on that ruling. The state is trying to get the best deal it can get and will be arguing the language to be included in the final ruling."

The Limited Entry Commission does not expect to see the written decision from the Federal District Court until late February or early March. "Then there could be even more

(See: *Rural Fishermen*, page 23)

(from page 22)

changes in wording and a possible decision to appeal," says Twomley. "That should give some people time to solve their tax problems."

Twomley thinks the IRS could be targeting Alaska's commercial fishermen, trying to get more fishermen to file accurate returns. "The IRS has added 22 new agents over the past couple of years. Many of them are probably working on this," says Twomley.

Twomley is also aware that the IRS has already slapped liens on the total assets of many rural Alaskans, possibly including some limited entry permits — even though the state and IRS are still in court negotiations. Twomley doesn't know exactly how many permits have liens on them, because the various IRS offices have not given the commission that information.

IRS Public Affairs Officer Marilyn Steen says "Yes, IRS agents are targeting on the Alaskan fishing industry because the industry as a whole has an extremely high percentage of fishermen who do not file returns and/or set up tax payment plans." However says Steen, the agents are trying to educate commercial fishermen to make it easier for them to comply with the tax laws, not cause more problems.

Steen explains that several years ago, Alaska District IRS officials decided that rural Alaskan fisherman might not be filing their tax returns because they might not know how to do so. They might not know what incomes they needed to report, what expenses they could deduct and what earned credits they could take. For instance, says Steen, "the earned credit low income taxpayers can take if a child lives with them. Over the years the rules have changed so that more taxpayers can claim the credit even though they now have a higher income than they had when they were not allowed to claim the credit." Also, the child no longer has to be a dependent.

IRS agents started one of their first workshops at the University of Alaska's Chukchi campus in Kotzebue, a couple of years ago. A local Kotzebue fish buyer says one day they held a seminar for small businesses, the next day they met with fishermen and the third day they talked with individuals. "When they first got here there were problems with withholdings for boats and 1099s, but they showed permit holders how to keep records and do paperwork. They also allowed them to do 1099s, so now hardly any permit holders have trouble," says the fish buyer. "The workshop was really successful. Now the IRS sends people up to help every year."

According to the Kotzebue fish buyer, most of the problems started because some fishermen did not let "knowledgeable" people do their tax returns.

Another person reported that IRS agents also spent time in King Cove during that time. There were some problems but the IRS agents seem to be leaving King Cove alone now.

Steen says IRS agents opened an office in Kodiak this past summer and visited quite a few boats in Kodiak, Dutch Harbor and Bristol Bay to give workshops. She says the IRS realizes that fishermen often have a hard time filing their returns when they are onboard the boats most of the time. A January 9 IRS news release says District IRS Director Rob-

Rural fishermen, contd.

ert Brock has directed Alaska IRS employees to increase opportunities for education and discussion, such as those offered by the Kodiak office.

Steen did not originally say that any liens were filed in Kodiak but the January 9 release mentioned that tax liens had been filed to secure delinquent taxes. The *Alaska Journal of Commerce* tax lien lists for August, 1991 show that the IRS filed eight liens over \$10,000 each, totaling over \$135,960 against Alaskans living in the Kodiak recording

area. In September, the IRS filed 21 more liens over \$10,000 each, totaling over \$693,700 with the Kodiak recording office.

Steen says the IRS is placing liens on total assets including permits because money is owed to the government. According to Steen, a taxpayer can incur a lien with or without an audit of returns. In the case of those who do not file, the IRS is filing for them and placing liens on their total assets. Those liens will not be taken off until all delinquent taxes are paid," says Steen.

However, the IRS will work with fishermen to file accurate returns even if the IRS has already filed for them. In some cases the fisherman will incur a corrected lien with a lesser amount due for penalties.

A quick glance at the tax liens recorded at various recording offices around the state shows that quite a few Alaskans who received liens in 1991 now have corrected liens of a lesser amount or have been released from their liens all together.

Even if a permit is eventually seized and auctioned for transfer, any profit after payment of taxes and IRS expenses would be given to the taxpayer fisherman. "Some permit holders are asking us to go ahead and offer their permits for auction," says Steen. They want to be finished with IRS payments.

Steen urges fishermen to contact the IRS even though they think they can't pay, to set up payment plans. That way they may save their permits, if and when the time comes for seizure.

Steen also says "Certainly, some Rural Alaskan fishermen are at risk of facing criminal charges for tax evasion. "They know who they are," says Steen.

Any taxpayer can receive a \$125,000 fine and/or one year in jail for minor failure to file without overt acts of tax evasion or a fine of \$250,000 and/or five years in jail if they willfully do not file and overtly evade paying their taxes.

"But they don't have to go to jail or pay those taxes," says Steen. They just need to contact the IRS before it's too late. "Even then the IRS might be able to work things out with taxpayers who do not file tax returns."

BRISTOL BAY

NEWS

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IRS catches bingo winners

by DABNEY VAN LIERE

U.S. Attorney Wevley Shea says Alaska has a high incidence of failures to file tax returns, failures to make tax payments. "The tax problems are at all levels, in both urban and rural Alaska, says Shea.

A team of special Internal Revenue Service agents from the Criminal Investigation Division in Anchorage are investigating and working with U.S. Attorney Shea and Department of Justice attorneys in Washington D.C. to prosecute tax fraud of all types including social security abuse, failure to properly account for income from pull tabs and everything else, including self-employed income.

"If we didn't perceive a problem, we would not be proceeding. There will be more indictments," says Shea.

No targets

But "we're not out to get anyone," says Shea. "We're not targeting rural Alaskans, as was possibly implied in a previous report by the *Anchorage Times*.

According to Shea, "there are just some people here in Alaska who are independent. They think they don't have to pay taxes on income from any source, like everyone else. They think they can hide. Well, not anymore. We'll find them." Shea says he hopes "this sends a message to Anchorage, Juneau, Fairbanks, Barrow, Kodiak and everywhere else in Alaska, that they simply cannot ignore tax obligations and tax fraud ... fraud of any nature. No matter how remote they are, we'll find them."

Bingo problems

One of the areas where there are problems is with people incorrectly or inaccurately reporting income from bingo and pull tabs.

Bingo and pull tabs are tremendously popular in Alaska in both urban and rural areas alike. Non-profit organizations and communities (through local taxes) use proceeds from bingo and pull tabs to raise funds. Many individual Alaskans in both rural and urban Alaska also use bingo and pull tab winnings to augment low monthly income from wage and seasonal jobs.

Kotzebue bingo

Late last month, several tax consultants who wish not to be identified, voiced concern that the IRS was possibly targeting rural Alaska because quite a few Kotzebue clients reported that IRS agents were questioning their reported bingo winnings from 1987.

One of the consultants wondered if the IRS agents were possibly doing something illegal. IRS statutes say an agent needs to get an uncoerced signed waiver from the taxpayer in order to continue audits for additional taxes after three years have passed, since the return was filed. However, if an IRS agent suspects that a taxpayer has failed to report an item of gross income which is more than

25 percent of the gross income on the return, the IRS agent can audit and assess additional taxes for up to six years past the return's filing date.

In Kotzebue's case, a tax preparer sent reports to the IRS from non-profit bingo and pull tab concerns totaling the winnings of individual people on a dollar for dollar basis instead of only reporting them when they won a game or games totaling over \$1200 for bingo, \$600 for pull tabs.

IRS statutes require individual taxpayers to report the full amount of their winnings on standard IRS form 1040 (the long version). They may deduct their losses up to the amount of their winnings on Itemized Deduction Schedule A and include them in their total itemized deductions on IRS Form 1040, line 34.

More taxes assessed

When IRS agents compared the winners tax returns with reports from the bingo and pull tabs concerns in Kotzebue, they found discrepancies. Therefore they asked the winners to file amended returns and pay additional taxes or show full accurate documentation on their losses. The IRS also placed liens on their total assets until the additional taxes are paid.

According to the tax consultants, some people filed amended returns with adequate documentation so they did not have to pay additional taxes. Some paid the additional taxes. Some residents have asked the IRS Problem Resolutions office to help them.

The tax consultants don't know whether there are any commercial fishermen who might now have liens on their limited entry permits (along with total assets) because of bingo problems. But Anchorage tax lawyer Robert Brink says he has heard of at least one elderly Eskimo permit holder from another community, who might have jeopardized her permit because of bingo problems.

Keep accurate records

Bingo players everywhere should keep accurate records of winnings and losses, warns Brink. He suggests that bingo and pull tab players should keep a daily journal of all monies won or lost. If possible, says Brink, players should also pay for cards and tabs by check or an automatic teller card, ask for receipts and keep receipts and/or pull tab stubs in order to document their winnings and losses. IRS agents generally want to see documentation to support the daily journal.