

**ALASKA LEGISLATURE**

**2016**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000**

167

March 1, 1999

## ORIGINS/BACKGROUND

Alaska Commercial Fishing and Agriculture Bank (CFAB) was created through actions of the State Legislature in 1978, 1979, and 1980. It is incorporated under, and is the sole subject of, a specific statute (today AS 44.81). Although that statute has been amended several times since 1980, its most fundamental provisions remain intact.

Documented history, and the recollections of involved legislators and others, consistently attest that CFAB was created to address limitations to the access to credit facilities by resident Alaska commercial seafood harvesters and processors, and farmers. The effort was, effectively, to establish an "Alaskanized" replication of agricultural production financing entities which had operated for many years as parts of the Federal Farm Credit System, and to make CFAB a private cooperative which could funnel previously unavailable capital to Alaska enterprises.

In addition to being incorporated under AS 44.81, rather than under one of the state's several other business organization statutes, CFAB embodies a number of anomalies which combine to make it a unique entity. For example, despite the name bestowed upon it by the legislature, CFAB is not subject to the Alaska Banking Code, is not authorized to offer or perform any banking functions other than to make loans, and does not meet any known statutory or regulatory definition of a "bank" (which places it at a significant disadvantage with respect to Federal income taxes). Also, although CFAB is mandated by AS 44.81 to be structured and to operate as a cooperative, it is not subject to the Alaska Cooperative Corporation Code. And, as a final example, although the State of Alaska has been CFAB's largest single stockholder for most of its 19-year history, it is a private entity (there have been two formal opinions addressing this point – one by the State Ombudsman in 1985, and one by the Alaska Supreme Court in 1986).

March 1, 1999

term loans, mostly to harvesters, totaling slightly over \$47.0 million in those eight years. (This excludes seasonal loan advances to processors, estimated to total another \$12.0/\$16.0 million.) Net loan losses have been negligible. Net margins, or "profits," have totaled about \$5.1 million after income taxes; \$4.7 million of that has been applied directly to the accounts of borrowing members, while the remainder has been retained for general purposes. During the years 1991 through 1998, CFAB has paid \$1.4 million of Federal income tax and \$179,000 of State income taxes.

AS 44.81 provides for CFAB's accountability to the State Legislature and the Administration. The Governor appoints two of CFAB's seven directors. CFAB is required to submit its Annual Report, including its audited financial statements, to the Governor and the Legislature. The State's bank examiners perform an annual qualitative examination and evaluation of CFAB; their report is also submitted to the Governor and the Legislature. Finally, the Legislative Auditor may be directed to perform a complete or limited audit of CFAB, an authority which has been exercised a number of times.

#### PROBLEMS/DANGERS

Although CFAB's specialization provides some obvious operational advantages to the institution and its constituents, the concentration of risk renders it vulnerable in a manner which could result in failure at a time when it is most needed by resident Alaskans. Its level of risk concentration cannot be found in more conventional lenders. Any deposit-based and/or regulated institution would be sanctioned by its authorities, perhaps harshly, before any risk concentration reached a small fraction of that borne by CFAB. No proprietary or profit-oriented commercial lender would expose itself to such dangers!

March 1, 1999

Similarly, the State of Alaska's bank examiners noted in their May 31, 1998, examination report:

"... The bank's narrow mission to provide financing for Alaska's fishing and agricultural industry has left it vulnerable to the ups and downs of the industry ... This lack of diversification subjects the bank to greater risk of loss during poor fishing harvests ..."

The examiners have made generally similar, but less explicit, comments in previous examination reports.

#### RESPONSE

As suggested earlier, lending does not allow a "quick fix" approach to this matter. Furthermore, CFAB is neither financially positioned nor competent to pursue a course of diversification generally, even were it authorized to do so.

However, observations over time have led CFAB's Board of Directors and management to the conclusion that within Alaska's business infrastructure and economy there is a stratum of small and/or entrepreneurial operators in Alaska resource-related industries other than commercial fishing and agriculture (and other than those forest products activities that CFAB's statute defines as "agriculture") which does not have reliable access to adequate commercial credit. For the purposes of this exercise, and subject to more comprehensive definition for the purpose of legislation, CFAB views "resource-related" industries to include timber, minerals, oil and gas, water, etc., and tourism.

March 1, 1999

ARDORs in Alaska will be supportive; CFAB commits to the effort to organize such support.

### OPPOSITION

There are two conceivable sources of potential opposition, albeit limited.

First, it is possible that some commercial lenders may argue that a broadening of CFAB's authority may introduce inappropriate competition to "their" markets. There is available a considerable body of factual rebuttal to that argument.

Second, it is possible that some of CFAB's existing borrowers, or other commercial seafood harvesters, may perceive that financing tourism-based enterprises implies - at least to some degree - support of interests inimical to their own. However, it is from CFAB's own membership that the greatest number of actual loan requests for such purposes are received, i.e., from commercial harvesters seeking financing to diversify themselves into charterboat operations, bed and breakfasts, outfitting or guiding, etc. CFAB's Directors (six of whom are commercial harvesters) have discussed the issue and seem to believe that both the appearance and the fact of conflict can be minimized. Finally, it is important to recognize and emphasize that CFAB's continuing ability to adequately serve the credit needs of its basic constituencies may very well rely on some form of constructive diversification over time.

## HB339 – Supporters of CFAB bill

### Associations

Alaska Visitors Association  
Alaska Hotel & Motel Association  
Alaska Restaurant & Beverage Association  
Alaska Hospitality Alliance  
City of Seldovia  
Seldovia Chamber of Commerce  
Tok Chamber of Commerce  
Southeast Conference  
Bristol Bay Native Corporation  
Shuyak, Inc.  
Alaska Miners Association

### Individuals and Businesses

Susan Springer	Herring Bay Mercantile	Seldovia
Dave Nanney	Eagle Bed & Breakfast	Haines
Cindy Cashen	Cashen Quarters	Juneau
Craig Weidner	Pullen Creek RV Park	Skagway
Bob Dindinger	Alaska Travel Adventures	Juneau
Neil MacKinnon	Hyalite Mining Co.	Juneau
Daniel Farren	CFAB member	
John Engle	CFAB member	Ketchikan
John Winther	Petersburg Energy LLC	Petersburg
Karl Klupar	Historic Skagway Inn	Skagway
Rosemary Libert	Lynch & Kennedy Dry Goods	Skagway
Frank Rose	Alaska Lodging Mgt.	Fairbanks
Helene Keso	Ridge Way B&B	Juneau
Justin Ripley	Alaska Travel Network	Anchorage
Kirk Hoessle	Alaska Wildland Adventures	Girdwood
David Polushkin		Willow
Michael Gordon	Chilkoot Charlie's	Anchorage
Maurice MacDonald	O'Brady's	Anchorage
Shane Horton	Eagle's Nest Motel	Haines



# ALASKA VISITORS ASSOCIATION

2525 C Street, Suite 400 • Anchorage, Alaska 99503

Phone: (907) 561-5733 • Fax: (907) 561-5727

E-mail: avanet.org • www.visitalaska.org

1999-2000

**Executive Officers**

President

**Bill Pedlar**

Holland America Line  
Seattle, Washington

1st Vice President

**Ann Campbell**

Aurora Consulting  
Anchorage, Alaska

2nd Vice President

**Justin Ripley**

Alaska Tour and Travel  
Anchorage, Alaska

VP Government Relations

**Bob Dindinger**

Alaska Travel Adventures  
Juneau, Alaska

Secretary

**Brett Carlson**

Northern Alaska Tour Company  
Fairbanks, Alaska

Treasurer

**Toni Walker**

Logistics, LLC  
Anchorage, Alaska

Past President

**Ken Dole**

Waterfall Resort/Seabone Aviation  
Ketchikan, Alaska

**Board of Directors**

**Bob Berto**

Southeast Stevedoring

**John Binkley**

Alaska Riverboat Discovery/  
El Dorado Gold Mine

**Dennis Brandon**

Cook Inlet Region, Inc.

**Dean Brown**

Princess Tours

**Bill Elander**

Anchorage Convention &  
Visitors Bureau

**Bob Engelbrecht**

NorthStar Trekking

**Jo' n Fox**

Royal Caribbean Cruises Ltd.

**Laurie Herman**

Alaska Railroad

**John Mazor**

Juneau Convention &  
Visitors Bureau

**Margaret Nelson**

Alaska Native Heritage Center

**Gary Odle**

Alaska Travel Adventures

**Arne Olsson**

Hotel Halsingland

**Brad Phillips**

Phillips Cruises & Tours

**Frank Rose**

Alaska Lodging Management/  
Denali Bluffs Hotel

**Kathy Tarr**

Kenai Visitors &  
Convention Bureau

**Tom Tougas**

Kenai Fjords Tours

**Chris von Imhof**

Alveska Resort

**Brad Walker**

Alaska Airlines

**Tina Lindgren**

Executive Director

March 2, 2000

Representative Eldon Mulder  
House Finance Committee Co-Chair  
State Capitol Room 507  
Juneau, AK 99801

Dear Representative Mulder,

I am writing to express the Alaska Visitors Association's support for two bills in the Legislature.

AVA recently voted to support HB 339, which would expand the abilities of the Commercial Fishing and Agriculture Bank to allow loans to small tourism businesses. This new loan option would greatly benefit small tourism businesses and start-up enterprises that might otherwise have difficulty obtaining a regular commercial loan.

AVA also supports House Bill 42, which would discourage frivolous lawsuits by assigning financial penalties for false suits. Many small Alaskan tourism businesses cannot afford the legal fees incurred in such lawsuits, and in some cases the expense of fighting unmerited claims can put an operator out of business. Tourism is the fastest growing industry in the state and the second largest private-sector employer with more and more small Alaskan businesses starting up each year. In order to continue this small business growth, owners need a fighting chance to get their businesses off the ground without the hassle of frivolous litigation.

AVA is a private, non-profit statewide trade association representing all facets of the tourism industry. With more than 500 member businesses, AVA is the largest, statewide visitor industry association representing the full spectrum of visitor industry business interests from small localized rafting operators and wilderness guides to large air and cruise lines. Since 90% of our members are small businesses with fewer than 10 employees, we see that a majority of them would benefit from protection against frivolous lawsuits and increased access to small business loans.

Sincerely,

Anne Adasiak-Andrew

Acting Executive Director

cc: Representative Hudson  
Representative Austerman  
Representative Rokeberg



## ALASKA HOSPITALITY ALLIANCE

Representing Alaska's Finest  
Accommodations • Restaurants • Beverage Operations & Hospitality Suppliers



February 28, 2000

Office of Representative Eldon Mulder  
State Capital  
Juneau, AK 99801

Dear Representative Eldon Mulder:

On behalf of Alaska's Hospitality Industry, we would like to convey our support of your efforts to pass HB339. As an industry trade association, our goal is to develop and sustain a business environment in the state, which allows hospitality industry businesses the opportunity to flourish. This type of legislation helps our industry to achieve that objective by providing members with access to financing that might not otherwise be available.

We are pleased that you have taken the initiative to progress this legislation, and will be happy to mobilize our membership in support of it. Let us know what we can do.

Best regards,

Karen R. Rogina  
Executive Vice President

*UNITED IN A COMMON GOAL TO MAKE ALASKA THE MOST HOSPITABLE PLACE ON EARTH!*

# City Of Seldovia

P.O. Drawer B

Seldovia, Alaska 99663

Phone (907) 234-7643

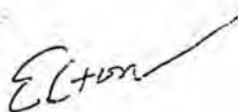
Fax (907) 234-7430

March 3, 2000

Honorable Elton Mulder  
Co-Chair Finance  
State of Alaska  
House of Representatives  
State Capitol  
Juneau, Alaska 99811

Hand Delivered

Reference: HB 339



Dear Representative Mulder:

On behalf of the City of Seldovia and the Seldovia Chamber of Commerce, please let this letter express our support for HB 338, expanding CFAB's authority to handle loans for tourism and natural resources.

The City of Seldovia and its residents are a prime example of the need for CFAB to include tourism and resource development loans in its preview. Seldovia was once the largest city on the Kenai Peninsula. At one time we have over six major seafood processing plants in the community. Now we have none. Natural resource development once provided numerous jobs for area residents, in timber and mining activities. Now there is no activity.

Seldovia is a community that is losing residents every year. Our school population decreased this last year to the point that we lost a teacher. Once a proud and growing community, where everyone who wanted to work had a job, we were a primary example of why CFAB was founded. After all, very few places in Alaska processed more seafood than we did in Seldovia. We now suffer close to 40% unemployment. Future expansion of the fishing industry in Seldovia seems highly unlikely.

✓

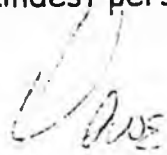
Tourism is one of our major hopes in reversing this downward economic trend. Seldovia is truly a beautiful place. It has the potential of becoming a major destination for both Alaskan and tourists. We are desperately seeking the infrastructure to make this a reality.

For a community that once heavily relied on the fishing industry for its very existence, we are now forced to switch gears. Giving CFAB the authority to include tourism and natural resource development within its scope of operations provides the private sector and the City with an additional and well-respected source of assistance.

Thank you for your time. Please let me know if a resolution from the City of Seldovia and the Seldovia Chamber of Commerce will help achieve passage of your bill.

I hope this letter finds you and your family in good health and enjoying, as best you can, the session.

Kindest personal regards;



Dave Choquette  
City Manager



## **TOK CHAMBER OF COMMERCE**

"Main Street Alaska"

P.O. Box 389  
Tok, Alaska 99780  
(907) 883-5887  
FAX 883-3682

**Representative Eldon Mulder**  
Alaska State Legislature  
State Capitol  
Juneau, Alaska

**February 22, 2000**

**Rep. Mulder:**

As representatives of businesses in our area, the Tok Chamber of Commerce wholeheartedly supports the efforts of House Bill No. 339 to authorize the Alaska Commercial Fishing and Agriculture Bank to make loans relating to tourism and development or exploitation of natural resources.

An additional source of financing for smaller-sized businesses in our area would be welcome indeed.

**H. Dale Young, Jr.**  
President

**HDY:ss**

1/0

# SOUTHEAST CONFERENCE

*Working for strong economies, healthy communities, and a quality environment in Southeast Alaska*

February 20, 2000

Representative Eldon Mulder  
Room 507  
State Capitol Bldg  
Juneau, AK 99801-1182

Dear Representative Mulder:

The Southeast Conference appreciates your efforts in providing opportunities for Alaska business expansion and development. The Southeast Conference supports HB 339 "An Act authorizing the Alaska Commercial Fishing and Agriculture Bank to make loans to tourism and development or exploitation of natural resources." The availability of financing is one of the most important considerations in any business development and at this time Alaska needs assistance to diversify its economy. The decline of oil production, timber production and low prices for our salmon production are indicators that Alaska must seek to diversify in order to replace lost jobs and to provide jobs for young Alaskans about to enter the workforce.

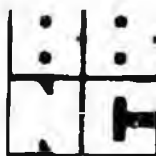
The Alaska Commercial Fishing and Agriculture Bank is capable of taking on this expanded ability to help Alaska businesses. It has been in existence for more than twenty year and has been successful in providing financing to two of Alaska's significant economic sectors namely fishing and agriculture. The experience gained in those areas will be a major benefit in designing a program to assist Alaska tourism and natural resource development projects.

Thank you for introducing HB 339. Please do not hesitate to call on me if you have any questions.

Sincerely,



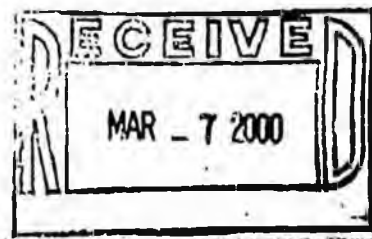
Frank Homan  
Executive Director



# Bristol Bay Native Corporation

*Enriching Our Native Way of Life*

800 Cordova Street, Suite 200 / Anchorage, Alaska 99501-6299 / (907) 278-3602 / fax (907) 276-3924



Representative Norman Rokeberg  
State Capitol, Room 24  
Juneau, AK 99801-1182  
Fax: 907-465-2040

March 6, 2000

Re: House Bill 339

Dear Representative Rokeberg:

I am writing in support of HB # 339 sponsored by Representatives Mulder, Hudson and Austerman, entitled "An Act authorizing the Alaska Commercial Fishing and Agriculture Loan Bank to make loans relating to tourism and development or exploitation of natural resources."

The reason that I support the Bill is because of the enormous benefit that this bill would have for economic development opportunities for village corporations in rural Alaska. Many village corporations in rural Alaska largely have not participated in the growing tourism industry in Alaska. They do not have the venture capital necessary to develop the tourism industry on their lands. When village corporations received their share of the settlement from the Alaska Native Claims Settlement Act, (ANCSA), it was based on a per capita share. Under this formula, if enrollment of the village corporation was under 1,000, it limited their investment portfolio simply because they did not receive enough cash. The cash received was typically spent in the implementation of ANCSA such as Section 14(c) which required that the corporations reconvey to anyone who had a prior use of the land, for expansion of the municipality in the future and for air port expansion. This was a tremendous undertaking and was a financial windfall for the land experts, auditors, and lawyers, but was an economic hardship for the village corporation. Many of us aspire to get into the tourism business but costs are prohibitive when we try to borrow from the existing lending institutions in Alaska.

I understand the concern that some banking institutions of Alaska have about the competition that CFAB would present in the lending industry but if the legislature would adopt HB#339, the earnings would stay in Alaska through the revolving loan philosophy of the co-op. Changes are taking place as I speak. One of Alaska's largest banking institutions is merging with a national conglomerate. The remaining banks have survived the economic downturn of the '80's because of its conservative investment lending practices. I remember when Alaska State Bank, United Bank of Alaska, and other Alaska banks had an expanded portfolio to lend money to rural businesses. They are gone now and no one has stepped forward to fill the

void.

There is some mineral potential on some of the 44 million plus acres conveyed to ANCSA Corporations. The options to develop and exploit that potential is limited. Native corporations have had to search for companies to partner with to develop the mineral potential on Native land. The current trend of the companies that we contact are to focus their exploration money on known reserves and have little interest in exploring or developing the natural resources such as natural gas on our lands. There are known reserves on some Native lands but so far, the companies do not want to risk their venture capital or they consider the prospect too small for their global portfolios.

Sincerely,



Trefon Angasan

Vice President, Shareholder and Corporate Relations

Secretary, Alaska Peninsula Corporation. (A merger of five village corporations in BB)

cc: House of Representatives

Rep. Eldon Mulder  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Ak 99801  
FAX # 907-465-3518

Greetings,  
We support Bill 339 (HB339)

Sincerely,  
Lois Stover, President  
Shuyak Inc  
Box 727 Kodiak Ak 99615

FAX 907-486-5097

Dated 2-15-00

Dear Representative Mulder,

Authorizing the Alaska Commercial Fishing and Agriculture Bank to make loans for natural resource exploitation is a welcomed and potentially important piece of legislation. Capital is a precious commodity in the mineral business and any additional source; especially one with Alaskan expertise will be welcomed by the mining industry. This proposal deserves to become law.

Sincerely,

E. Neil MacKinnon  
Hyak Mining Co.

My name is John Engle and I have been a CFAB member since 1990. I think that they have always been very responsible in their lending operations and deserve support if they want to diversify. This would also benefit others needing financing in whatever areas they choose to get into. I strongly urge you to continue with HB 339 and thank you for your support. Please feel free to ask me for any help I can offer.

John R. Engle

87 Shoup St.  
Ketchikan, AK 99901

F/V Traveler II

*response sent 2-15-00*  
*[Signature]*

Dear Rep. Mulder

2/16/00

In this short note I would like to show my support for Ed Crane & the CFAB Board in their effort to expand CFAB's lending opportunities.

I believe it would be good for CFAB and good for the people of Alaska.

CFAB member, Daniel Farren

Thank you

**Subject: Please support HB 339**

**Date:** Wed, 08 Mar 2000 12:52:40 -0900

**From:** "Susan W. Springer" <hbay@alaska.net>

**Organization:** Herring Bay Mercantile

**To:** Representative\_Eldon\_Mulder@legis.state.ak.us,  
Representative\_Bill\_Hudson@legis.state.ak.us,  
Representative\_Alán\_Austerman@legis.state.ak.us,  
Representative\_Norman\_Rokeberg@legis.state.ak.us,  
Representative\_Lisa\_Murkowski@legis.state.ak.us,  
Representative\_Andrew\_Halcro@legis.state.ak.us,  
Representative\_John\_Harris@legis.state.ak.us,  
Representative\_Jerry\_Sanders@legis.state.ak.us,  
Representative\_Tom\_Brice@legis.state.ak.us,  
Representative\_Sharon\_Cissna@legis.state.ak.us

I'm writing to urge your support for HB339, extending the lending authority of CFAB to include resource development and tourism.

I've owned small businesses in Seldovia, Alaska since 1989: a greeting card company, a bed and breakfast, and for the past six years, a retail gift shop. In 1994, my husband and I purchased a city waterfront lot, built a 1200 sf building, and opened Herring Bay Mercantile the following spring. Because of our income/expense ratio at the time, we did not seek conventional bank financing, relying instead on family financing. We were very fortunate to have family money available to us. The business made a profit its first season and has been profitable each year since. Our business contributes sales tax and property tax revenues

to the community, provides a valuable service for residents, a draw for tourists, employs residents for everything from computer consulting to snowplowing, and donates to absolutely every community and school entity that makes a request.

Now that we are successful, the Homer branches of NBA and First National Bank of Anchorage have made field trips to Seldovia, urging us to borrow money. We are a very low credit risk, and they'd love to have our business. Interestingly, we were just as low a credit risk six years ago when our personal balance sheet was not as appealing. We had then the same qualities we have now: vision, talent, and tremendous drive. These are the qualities that made our business a success.

I wonder how many more potential entrepreneurs like us are out there in rural Alaska? How many more communities stand to benefit from new business as Seldovia has benefitted from ours? How many of these folks don't qualify for conventional bank loans, yet still possess the skills necessary to succeed?

My husband went on to purchase a commercial fishing boat through CFAB and found them to be thorough yet helpful and easy to deal with. Furthermore, in 1996-97 I served on a Governor's Small Business Assistance Program Task Force and recall being left with several impressions:

1. That CFAB was well respected for its support of small (fisheries) business development through the Fisheries Business Assistance Program (operated by the Alaska Business Development Center).
2. That not many of the state-funded small business assistance programs worked as effectively as the above.
3. Access to start-up and operating capital is one of the primary challenges facing small Alaskan entrepreneurs trying to establish themselves in business.

Today, I serve on the boards of the Alaska Tourism Marketing Council and the Alaska Travel Industry Association. I also am in my second term on the Seldovia City Council. If there is one common theme among these three bodies, it is the need to support small businesses and enhance economic development in Alaska. You have before you, with HB 339, the opportunity to give small Alaskan entrepreneurs a tremendous shot in the arm, without having to find any scarce state dollars in order to do so. Please throw your support behind HB339 for the benefit of all small businesses in Alaska, and for the state's future economic health.

If I may provide you with further information, I'd be happy to do so. I may be reached at 234-7410, 234-7468, or hbay@alaska.net. I'll be out of town from 3/12 through 3/26, but will do my best to respond to you during my absence.

Very truly yours,  
Susan W. Springer

--  
\*\*\*\*\*

Susan W. Springer  
Owner, Herring Bay Mercantile

**PETERSBURG ENERGY LLC**Tel: (907) 772-4414  
Fax: (907) 772-9385P.O. Box 1384  
Petersburg, Alaska 99833

February 21, 2000

The Honorable Eldon Mulder  
Chairman, House Finance Committee  
Alaska State Legislature  
State Capitol, Room 507  
Juneau, Alaska 99811

Dear Chairman Mulder:

Petersburg Energy LLC (PE) is an independent, Alaskan-based oil exploration and production company owned mostly by Alaskan residents. Petersburg Energy presently holds leases on about 12,000 acres of state land on the North Slope, and is actively developing an exploration program with the intent to pursue production as soon as possible.

Petersburg Energy applauds your efforts and those of Representatives Bill Hudson and Alan Austerman in sponsoring House Bill No. 339. This bill will allow the Alaska Commercial Fishing and Agriculture Bank (CFAB) to make loans to Alaskan businesses involved in natural resource development and tourism. Petersburg Energy fully supports the proposed legislation.

While PE's activities have not developed to the point of trying to pursue financial assistance to support field production, we have held discussions with representatives of conventional banking institutions in Alaska and have been told that it is unlikely that commercial loans will be available for this type of enterprise. Broadening CFAB's authority to consider financial opportunities in support of natural resource development provides an Alaskan-owned company like Petersburg Energy a meaningful alternative not presently available to pursue business development plans.

Sincerely,

John R. Winther  
President

cc. Petersburg Energy Board of Directors

22

**Subject:** HB339

**Date:** Fri, 25 Feb 2000 23:47:35 -0800

**From:** "Bob Dindinger" <atalap@email.msn.com>

**Organization:** Microsoft Corporation

**To:** <Representative\_Eldon\_Mulder@legis.state.ak.us>,  
"Representative Bill Hudson" <Representative\_Bill\_Hudson@legis.state.ak.us>,  
<Representative\_Alán\_Austerman@legis.state.ak.us>

**CC:** <Representative\_Lisa\_Murkowski@legis.state.ak.us>,  
<Representative\_John\_Harris@legis.state.ak.us>,  
<Representative\_Andrew\_Halcro@legis.state.ak.us>,  
<Representative\_Tom\_Brice@legis.state.ak.us>,  
<Representative\_Norman\_Rokeberg@legis.state.ak.us>

Dear Representatives Mulder, Hudson, & Austerman

Have reviewed HB339 and support it whole heartedly. The inclusion of tourism businesses in this loan program may well be the States most meaningful action for truly small businesses.

As you know, most Alaska tourism businesses have less than five employees. Given the current nature of Alaska's economy, tourism most probably represents the best opportunity for Alaskan entrepreneurs.

I only have to think back to the early days for my own company (Alaska Travel Adventures) to appreciate the value of this legislation to new businesses.

Bob Dindinger  
Juneau, Alaska

**Subject: HB339**

**Date: Wed, 29 Mar 2000 12:14:43 -0800**

**From: "Helene Keso" <keso@gci.net>**

**To: Representative\_Eldon\_Mulder@legis.state.ak.us**

**CC: Representative\_Eldon\_Mulder@legis.state.ak.us**

Good Afternoon,

It would be very beneficial to open financing to us small business operators in the tourism industry.

I own and operate a small Bed & Breakfast but can not make a living at it unless I expand what I have.

I have " The Ridge Way B&B " in Juneau

<http://home.gci.net/~keso/>

Also, I own the tug Tagish, that would make a fantastic lodge and charter but I do not have the capital to convert her. She is a ship assist and towing/fire vessel and averaged putting \$250,000.00 back into S.E. every year between 1978-1994; while employeed many Alaskans. I have had her for sale for 4 years, but no one has been able to come up with financing. At this point there is no financing for older wooden vessels, even when they are solid and have 20+ years earning power.

<http://home.gci.net/~keso/tagish/>

Please, consider all Alaskans when you are planning. Thank You, Helene Keso (907) 780-4848

**Subject: Support for HB 339**

**Date:** Wed, 29 Mar 2000 12:33:45 -0900

**From:** Dave Nanney <eaglebb@wytbear.com>

**To:** Representative\_Eldon\_Mulder@legis.state.ak.us,  
Representative\_Alan\_Austerman@legis.state.ak.us,  
Representative\_Bill\_Hudson@legis.state.ak.us,  
Representative\_Norman\_Rokeberg@legis.state.ak.us,  
Representative\_Lisa\_Murkowski@legis.state.ak.us,  
Representative\_Andrew\_Halcro@legis.state.ak.us,  
Representative\_John\_Harris@legis.state.ak.us, Representative\_Tom\_Brice@legis.state.ak.us,  
Representative\_Sharon\_Cissna@legis.state.ak.us,  
Representative\_Gene\_Therriault@legis.state.ak.us,  
Representative\_Con\_Bunde@legis.state.ak.us, Representative\_Gary\_Davis@legis.state.ak.us,  
Representative\_Richard\_Foster@legis.state.ak.us,  
Representative\_Gail\_Phillips@legis.state.ak.us,  
Representative\_Bill\_Williams@legis.state.ak.us,  
Representative\_John\_Davies@legis.state.ak.us,  
Representative\_Ben\_Grussendorf@legis.state.ak.us,  
Representative\_Carl\_Moses@legis.state.ak.us

Dear Alaska Representatives,

I am writing in support of the proposal to expand the functions of this lending group to any type of Alaskan business. In these times of restricted state monies it seems only common sense to help grow our economy and available financing is one of the best ways to do just that.

Thank you

Shane Horton, Eagles Nest Motel Haines, Alaska  
Eagles\_Nest@wytbear.com

Dear Representative Mulder,

I am writing in support of House Bill 339, providing lending authority to not only commercial fishermen but opening CFAB up to certain Alaskan small businesses.

I am looking at my 10th season as a Bed and Breakfast owner in Juneau Alaska. I see many Bed and Breakfasts having a hard time obtaining loans when they wish to enlarge their business or begin a remodeling venture. These are successful hardworking Alaskans who are frustrated because the red tape and rules Banks have set up prevent them from seeing their dreams realized. Some end up selling the business and leaving Alaska.

Alaskan Innkeepers are known to be among the hardest working, most dependable visionaries in our state. Banks should drool when we walk through their doors. We pay our bills and we look to expand. Most of us are living our dream by running a tourism business and we want to keep operating in the best capacity possible. Often we run into dead end streets with banking loans unavailable because of various restrictions.

I hope you will be able to get this bill onto the floor and passed. The majority of Alaskans know tourism is a successful venture and we need to keep it that way. This bill would help.

Sincerely,  
Cindy Cashen  
Cashen Quarters Bed & Breakfast  
315 Gold Street  
Juneau, Alaska  
<http://www.cashenquarters.com>  
[jsclc3@ptialaska.net](mailto:jsclc3@ptialaska.net)  
586-9863 Fax: 907 586-9861

House Bill 339

"An Act relating to the Alaska Commercial Fishing and Agriculture Bank."

Dear Representative: I heartily support HB 339 as it would give very timely financial assistance to fledgling tourism and resource development businesses and assist Alaska in diversification of its economy.

Yours truly, Dave Nanney Haines, Alaska Tel: 766-2763  
email: eaglebb@wytbear.com

CRAIG MARTIN WEIDNER  
PULLEN CREEK RV PARK  
P. O. BOX 324  
SKAGWAY, AK 99840

CRASHED WITHIN 24 HRS  
PULLEN CREEK RV PARK  
P. O. BOX 324  
SKAGWAY, AK 99840

To,

Representative Eldon Mulder

In regards to House Bill 339.

The access to financing for tourism + the preservation of natural resources is sorely needed in Alaska. Funds for these endeavors would produce jobs and benefit local economies as well as the state as a whole. As a businessman I believe access to financing for these targeted areas is crucial for Alaska's economy.

Craig Weidner  
Pullen Creek RV Park  
P.O. Box 324  
Skagway Alaska  
99840

800-936-3731

**Subject: hb339**

**Date:** Wed, 23 Feb 2000 13:41:58 -0500

**From:** "Rosemary V. Libert" <info@lynch-kennedy.com>

**To:** <Representative\_Eldon\_Mulder@legis.state.ak.us>,  
<Representative\_Norman\_Rokeberg@legis.state.ak.us>,  
<Representative\_Lisa\_Murkowski@legis.state.ak.us>,  
<Representative\_John\_Harris@legis.state.ak.us>,  
<Representative\_Andrew\_Halcro@legis.state.ak.us>,  
<Representative\_Tom\_Brice@legis.state.ak.us>

Dear Honorable House Members,

Please support HB 339 in expanding the Fish and Agricultural banks charter to include Alaska based tourism projects. As a small business owner, I know how difficult to find financing for projects. Just the creation of this financing avenue would make current financial institutions in the rural areas more responsive to our needs.

Karl E. Klupar  
Rosemary V. Libert  
Skagway, Alaska

owners

Historic Skagway Inn, LLC  
Lynch & Kennedy Dry Goods, Inc

**Subject:** HB339

**Date:** Wed, 23 Feb 2000 10:45:26 -0900

**From:** Frank Rose <aklm@ptialaska.net>

**Organization:** Alaska Lodging Mgt., Inc.

**To:** Representative\_Eldon\_Mulder@legis.state.ak.us,  
Representative\_Bill\_Hudson@legis.state.ak.us,  
Representative\_Alان\_Austerman@legis.state.ak.us

**CC:** Representative\_Norman\_Rokeberg@legis.state.ak.us,  
Representative\_Lisa\_Murkowski@legis.state.ak.us,  
Representative\_John\_Harris@legis.state.ak.us,  
Representative\_Andrew\_Halcro@legis.state.ak.us,  
Representative\_Tom\_Brice@legis.state.ak.us

I want to speak in favor of HB339. I believe that the extension of this loan program to allow CFAB lending authority to visitor industry businesses is an opportunity that must be endorsed. As I understand it, the program has not been very active relative to its intended purpose of providing loans to fishing related business. The visitor industry remains a viable and growing sector of our economy and one where small business make up the majority of this industry. To provide opportunity for these businesses to grow is an excellent investment in our state.

Frank Rose  
Alaska Lodging Mgt., Inc.  
PO Box 72478  
Fairbanks, AK 99707



**Subject: House Bill 339**

**Date:** Wed, 23 Feb 2000 12:28:08 EST

**From:** KirkAWA@aol.com

**To:** Representative\_Eldon\_Mulder@legis.state.ak.us

**CC:** Representative\_Norman\_Rokeberg@legis.state.ak.us,  
Representative\_Lisa\_Murkowski@legis.state.ak.us,  
Representative\_John\_Harris@legis.state.ak.us,  
Representative\_Andrew\_Halcro@legis.state.ak.us,  
Representative\_Tom\_Brice@legis.state.ak.us, Representative\_Bill\_Hudson@legis.state.ak.us,  
Representative\_Alán\_Austerman@legis.state.ak.us

February 23, 2000

Dear Representative Mulder,

This is just a short note to say that we support House Bill 339. This bill would provide needed financial assistance to small tourism businesses. As you know, tourism is a growing and thriving force in our economy, and small businesses often need financial support to grow, expand, and compete with the "Walmarts" of the tourism industry, the cruise lines and their related companies. A diverse tourism industry is a strong and vital tourism industry, and this bill would be very helpful in this regard. Thank you for the opportunity to comment.

Respectfully,

Kirk Hoessle, President  
Alaska Wildland Adventures

**Subject: HB 339**

**Date:** Thu, 24 Feb 2000 14:00:39 -0900 (AKST)

**From:** Albert Clough <aclough@ptialaska.net>

**To:** Representative\_Eldon\_Mulder@legis.state.ak.us

Representative Mulder-

This email is in support of HB 339. Expansion of loan access can provide positive benefits to the development of various natural resource projects (to include small and medium sized mining ventures) throughout Alaska. Thank you for your efforts to expand the list of projects which would qualify for funding through the Alaska Commercial Fishing and Agriculture Bank.

Albert H. Clough, P. Geol.  
Chair, Juneau Branch, Alaska Miners Association

P.O. Box 449  
Willow AK

99688

Representative Eldon Mulder  
Alaska state legislature  
state Capitol (MS 3100)  
Juneau Alaska

99801-1182

Dear MR. Mulder,

It is good to know that  
our elected officials are trying to  
diversify the main loaning institute  
so that it can exist. I support  
HB 339 and I hope you vote  
for it.

Thank you.

David Polushkin  
David Polushkin

# MEMORANDUM

## STATE OF ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION

**TO: HOUSE FINANCE  
COMMITTEE**

**DATE:** April 3, 2000

**PHONE:** (907) 789-6160 VOICE  
(907) 789-6170 FAX

Representative Eldon Mulder, Co-Chair  
Representative Gene Therriault, Co-Chair  
Representative Con Bunde, Vice-Chair  
Representative Gary Davis  
Representative Gail Phillips  
Representative Alan Austerman  
Representative Bill Williams  
Representative Richard Foster  
Representative John Davies  
Representative Ben Grussendorf  
Representative Carl Moses

**FROM:** Commercial Fisheries Entry Commission  
Marlene Johnson, Commissioner  
Mary McDowell, Commissioner  
Bruce Twomley, Chairman

**SUBJECT:** HB339; the special nature of Alaska limited commercial fishing privileges and the Commercial Fishing and Agriculture Bank (CFAB)

As requested by the office of Co-Chairman Mulder, we are providing this memorandum to the House Finance Committee as background on the nature of limited entry permits in Alaska and the special role of the Commercial Fishing and Agriculture Bank (CFAB) under Alaska law.

The Alaska legislature created Alaska's limited entry program and CFAB in order to meet special needs of the State of Alaska and its fishing industry.

Attached is an excerpt<sup>1</sup> from the commission's Carle decision (which refused an IRS attempt to force the transfer of an entry permit) including (pps. 15-20) relevant legislative history of Alaska's limited entry program. In part, the Alaska legislature has declared:

Under AS 16.43.140, no commercial fisherman may operate fishing gear in a limited fishery without an entry permit . . . . The Entry permit is the crucial element of the system and, to an Alaskan fisherman, an entry permit is a legally required tool of his trade.

\* \* \*

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

<sup>1</sup> We would be happy to provide copies of the full decision. Please note it is well over 60-pages long.

regulations governing its fisheries, privileges extended must be conditioned upon compliance with those requirements.

\* \* \*

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.

\* \* \*

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.

\* \* \*

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 . . .

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 . . . .

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. [CFAB and the Commercial Fishing Revolving Loan Fund] 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.

CFAB is one of the two state created loan programs referred to in this legislative history. In turn, CFEC has a special relationship with CFAB. By statute, we provide monthly estimated values of entry permits based on our information from actual transfers. Additionally, we help CFAB perfect its security interests in Alaska limited fishing privileges.

We are often told outside fishers have an advantage over Alaska fishers in obtaining loans because they have access to more sources of financing. CFAB is one of the state's means to meet this challenge by financing the purchase of Alaska's limited fishing privileges by Alaska residents.

At the same time, limiting the ability to take security interests in permits as collateral to the two state created loan programs provides Alaskans an advantage in obtaining financing that nonresidents do not have. Additionally, this restriction serves the purposes expressed by the Alaska Legislature.

Particularly in these times of dramatically fluctuating world markets and variations in run strength, there are hungry creditors who would be delighted to seize and force the sale of limited entry permits. If Alaska law were struck down or changed to authorize doing so, it would be a relatively easy way for any creditor to collect debts. However, such an event would put the livelihood of many Alaska fishers at risk and reverse important state policy grounded in Alaska's conservation needs.

Finally, as reflected in the attached excerpt from the Carle decision, the IRS asserts the right to seize and force the sale of entry permits. Additionally, the Entry Commission is currently in litigation with an out-of-state bankruptcy trustee, who is attempting to seize and force the sale of an Alaska limited entry permit. The special status of Alaska limited entry fishing privileges held by a fisher but tightly regulated by the state is an important element of the state's defense against these claims.

In conclusion, as a special state created lending institution, CFAB is vital to the Alaska commercial fishing industry and the state's interest in its fisheries.

**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**

TABLE OF CONTENTS

I. INTRODUCTION. . . . . 5

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

A. Mr. Carle. . . . . 6

B. IRS Action. . . . . 6

III. BACKGROUND . . . . . 10

A. Alaska's Comprehensive Fisheries Management System. . . . . 10

1. Statehood of Alaska. . . . . 10

2. Alaska's limited entry system. . . . . 14

3. Alaska's fishing industry. . . . . 22

a. *Generally.* . . . . 22

b. *The critical role of limited entry to the economic base of rural communities.* . . . . 23

B. IRS has Targeted Individuals in Rural Alaskan Communities. . . . . 26

1. IRS asserts "unlimited supply" of limited entry permits to sell. . . . 26

a. *IRS data.* . . . . 26

b. *A glimpse behind the data.* . . . . 27

(1) Dillingham census district: Togiak profile. . . . . 27

(2) Bethel census area: Kipnuk profile. . . . . 28

(3) Wade Hampton census area: Hooper Bay profile. . . . . 29

c. *IRS summons: a snapshot of IRS' enforcement targets.* . . . . 30

2. IRS permit seizures cause significant hardship. . . . . 33

a.	<i>Isolated Alaskan fishing villages depend upon commercial fishing for their survival.</i>	33
b.	<i>Seizing entry permits undermines a purpose of limited entry (and may not be in the national interest).</i>	33
(1)	<u>United States' special relationship to Alaska Natives.</u>	33
(2)	<u>Administrative levy and sale may increase overcapitalization (and decrease federal revenue).</u>	35
3.	IRS and CFEC experience in villages.	37
4.	State of Alaska and IRS cooperation.	38
IV.	<b>FEDERAL GOVERNING STATUTES RENDER IRS' ADMINISTRATIVE SEIZURE AND SALE OF MR. CARLE'S FISHING PRIVILEGE INEFFECTIVE.</b>	41
A.	Federal Power to Tax Generally.	41
B.	Administrative Levy and Sale Powers of IRS.	42
1.	The governing legal principle.	42
2.	Federal tax lien.	42
3.	Enforcement of federal tax lien.	42
4.	Statutory administrative levy and sale provisions.	43
5.	Effect of levy.	45
6.	Administrative sales and the plain language of statutes.	45
C.	Conclusion.	46
V.	<b>OTHER ISSUES RAISED BY IRS.</b>	47
A.	Claim by IRS State Law Invalid.	47
B.	Claim by IRS to Act as the Privilege Holder and Apply for Transfer of Mr. Carle's Fishing Privileges.	48

1.	IRS' believes it can do anything Mr. Carle could do. ....	48
2.	Broader issues raised: the nature of an entry permit. ....	50
a.	<i>Rights to property: FCC cases.</i> .....	50
b.	<i>Nature of an Alaskan limited fishing privilege.</i> .....	55
c.	<i>The FCC analysis applied to Alaska limited fishing privileges.</i> ..	58
VI.	ORDER. ....	59

## 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 reviewed<sup>1</sup> 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.

---

<sup>1</sup>Our 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.<sup>2</sup> 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.<sup>3</sup>

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

---

<sup>2</sup>Entry permit number S01A 58789.

<sup>3</sup>A.S. 16.43.27(a).

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

IRS published a notice<sup>5</sup> 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,<sup>6</sup> the Problem Resolution Office refused to

---

<sup>4</sup>Exhibit B.

<sup>5</sup>Exhibit C.

<sup>6</sup>Today 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> 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 . . . .

<sup>7</sup>Exhibit D.

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

<sup>9</sup>Exhibit 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.<sup>10</sup>

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.<sup>11</sup> With this form, the IRS submitted a cover letter from Douglas A. Hartford, Chief of Collection Division, Anchorage District, IRS,<sup>12</sup> 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).*

---

<sup>10</sup>Exhibit G.

<sup>11</sup>Exhibit H.

<sup>12</sup>Exhibit 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.<sup>13</sup> Opponents of Alaska Statehood argued<sup>14</sup> 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.

---

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

<sup>14</sup>Report 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. 7979) [Minority Report].

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

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 noted<sup>16</sup>:

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.

---

<sup>15</sup>*Id.* [Majority Report].

<sup>16</sup>*Id.*

The "extreme degree of Federal domination of Alaskan affairs"<sup>17</sup> 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

---

<sup>17</sup>*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 constitution<sup>18</sup> 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.

---

<sup>18</sup>The 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 ordinance<sup>19</sup> 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

---

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

description<sup>20</sup> 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

---

<sup>20</sup>Letter 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.<sup>21</sup>

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

---

<sup>21</sup>Despite 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.<sup>22</sup>

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.<sup>23</sup> The

---

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

<sup>23</sup>If 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.<sup>24</sup>

Today Alaska's limited fisheries are recognized as some of the best managed fisheries in the world.<sup>25</sup> 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:<sup>26</sup>

---

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

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

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

<sup>26</sup>See 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 Alaska<sup>27</sup> 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

---

<sup>27</sup>See 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.<sup>28</sup>

---

<sup>28</sup>At 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.

**HB**

**339**

**SFIN**

**FILE**



## REPRESENTATIVE ELDON MULDER

DISTRICT 23 - MULDOON & FORT RICHARDSON  
ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
"PROUD TO BE A MULDOONER"



### SPONSOR STATEMENT

#### House Bill 339

**"An Act relating to the Alaska Commercial Fishing and Agriculture Bank."**

HOUSE BILL 339 expands the lending authority of the Commercial Fishing and Agriculture Bank (CFAB) and enables it to make loans to Alaskan small business enterprises involved in natural resource development and tourism. Presently, CFAB may make loans to Alaska residents engaged only in commercial agriculture or fishing. The bank seeks expanded authority to provide financing opportunities to small Alaskan business entrepreneurs who generally have trouble obtaining commercial loans because of their relative small size and lack of financial experience.

The Alaska State Legislature created CFAB in AS 44.81 in 1980. This statute governs CFAB's operation and provides for its accountability to the Legislature and Administration. Because CFAB is incorporated under this unique and specific statute, it requires legislative approval for any changes in operational authority.

Twenty years ago, limited access to commercial financing by resident Alaska commercial seafood harvesters, processors and farmers stimulated the need for CFAB as a private cooperative. The State of Alaska responded by providing CFAB's initial capital through the purchase of \$32.0 million of Special Preferred Stock in 1980. CFAB began making monthly payments in 1991 to the State of Alaska, repurchasing increments of the stock. In September of 1998, the stock repurchase agreement was completed as specified in statute and today CFAB is owned solely by its past and present borrowing members.

In 1986, The Alaska Supreme Court identified CFAB as a private entity. AS44.81 states it is not subject to the Alaska Cooperative Corporation Code or the Alaska Banking Code. It pays federal and state corporate income tax, state auditing fees and is subject to legislative audits. In short, CFAB is now a private lender operating within the free enterprise system with limited ties to the State of Alaska.

CFAB's auditors, from both the public and private sector, give the bank favorable reviews but consistently note the concentration in agricultural and fishing industry loans results in an unusual level of risk exposure and vulnerability to the ups and downs of these industries.

House Bill 339 recognizes these underlying concerns and resolves the issue by allowing CFAB to go beyond the present restrictions found in AS 44.81.215 and expand its customer base to other Alaskan industries needing loan assistance.

# MEMORANDUM

STATE OF ALASKA  
COMMERCIAL FISHERIES ENTRY COMMISSION

**TO: HOUSE FINANCE  
COMMITTEE**

**DATE:** April 3, 2000

**PHONE:** (907) 789-6160 VOICE  
(907) 789-6170 FAX

Representative Eldon Mulder, Co-Chair  
Representative Gene Therriault, Co-Chair  
Representative Con Bunde, Vice-Chair  
Representative Gary Davis  
Representative Gail Phillips  
Representative Alan Austerman  
Representative Bill Williams  
Representative Richard Foster  
Representative John Davies  
Representative Ben Grussendorf  
Representative Carl Moses

**FROM:** Commercial Fisheries Entry Commission  
Marlene Johnson, Commissioner  
Mary McDowell, Commissioner  
Bruce Twomley, Chairman

**SUBJECT:** HB339; the special nature of Alaska limited commercial fishing privileges and the Commercial Fishing and Agriculture Bank (CFAB)

As requested by the office of Co-Chairman Mulder, we are providing this memorandum to the House Finance Committee as background on the nature of limited entry permits in Alaska and the special role of the Commercial Fishing and Agriculture Bank (CFAB) under Alaska law.

The Alaska legislature created Alaska's limited entry program and CFAB in order to meet special needs of the State of Alaska and its fishing industry.

Attached is an excerpt<sup>1</sup> from the commission's Carle decision (which refused an IRS attempt to force the transfer of an entry permit) including (pps. 15-20) relevant legislative history of Alaska's limited entry program. In part, the Alaska legislature has declared:

Under AS 16.43.140, no commercial fisherman may operate fishing gear in a limited fishery without an entry permit . . . . The Entry permit is the crucial element of the system and, to an Alaskan fisherman, an entry permit is a legally required tool of his trade.

\* \* \*

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

<sup>1</sup> We would be happy to provide copies of the full decision. Please note it is well over 60-pages long.

regulations governing its fisheries, privileges extended must be conditioned upon compliance with those requirements.

\* \* \*

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.

\* \* \*

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.

\* \* \*

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 . . .

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 . . . .

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. [CFAB and the Commercial Fishing Revolving Loan Fund] 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.

CFAB is one of the two state created loan programs referred to in this legislative history. In turn, CFEC has a special relationship with CFAB. By statute, we provide monthly estimated values of entry permits based on our information from actual transfers. Additionally, we help CFAB perfect its security interests in Alaska limited fishing privileges.

We are often told outside fishers have an advantage over Alaska fishers in obtaining loans because they have access to more sources of financing. CFAB is one of the state's means to meet this challenge by financing the purchase of Alaska's limited fishing privileges by Alaska residents.

At the same time, limiting the ability to take security interests in permits as collateral to the two state created loan programs provides Alaskans an advantage in obtaining financing that nonresidents do not have. Additionally, this restriction serves the purposes expressed by the Alaska Legislature.

Particularly in these times of dramatically fluctuating world markets and variations in run strength, there are hungry creditors who would be delighted to seize and force the sale of limited entry permits. If Alaska law were struck down or changed to authorize doing so, it would be a relatively easy way for any creditor to collect debts. However, such an event would put the livelihood of many Alaska fishers at risk and reverse important state policy grounded in Alaska's conservation needs.

Finally, as reflected in the attached excerpt from the Carle decision, the IRS asserts the right to seize and force the sale of entry permits. Additionally, the Entry Commission is currently in litigation with an out-of-state bankruptcy trustee, who is attempting to seize and force the sale of an Alaska limited entry permit. The special status of Alaska limited entry fishing privileges held by a fisher but tightly regulated by the state is an important element of the state's defense against these claims.

In conclusion, as a special state created lending institution, CFAB is vital to the Alaska commercial fishing industry and the state's interest in its fisheries.

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

## TABLE OF CONTENTS

I.	INTRODUCTION.	5
II.	FACTS OF IRS' REQUEST FOR TRANSFER OF MR. CARLE'S FISHING PRIVILEGE.	
	A. Mr. Carle.	6
	B. IRS Action.	6
III.	BACKGROUND	10
	A. Alaska's Comprehensive Fisheries Management System.	10
	1. Statehood of Alaska.	10
	2. Alaska's limited entry system.	14
	3. Alaska's fishing industry.	22
	a. <i>Generally.</i>	22
	b. <i>The critical role of limited entry to the economic base of rural communities.</i>	23
	B. IRS has Targeted Individuals in Rural Alaskan Communities.	26
	1. IRS asserts "unlimited supply" of limited entry permits to sell.	26
	a. <i>IRS data.</i>	26
	b. <i>A glimpse behind the data.</i>	27
	(1) <u>Dillingham census district: Togiak profile.</u>	27
	(2) <u>Bethel census area: Kipnuk profile.</u>	28
	(3) <u>Wade Hampton census area: Hooper Bay profile.</u>	29
	c. <i>IRS summons: a snapshot of IRS' enforcement targets.</i>	30
	2. IRS permit seizures cause significant hardship.	33

1. IRS' believes it can do anything Mr. Carle could do. . . . . 48

2. Broader issues raised: the nature of an entry permit. . . . . 50

    a. *Rights to property: FCC cases.* . . . . . 50

    b. *Nature of an Alaskan limited fishing privilege.* . . . . . 55

    c. *The FCC analysis applied to Alaska limited fishing privileges.* . . . . 58

VI. ORDER. . . . . 59

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

TABLE OF CONTENTS

I. INTRODUCTION. . . . . 5

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

A. Mr. Carle. . . . . 6

B. IRS Action. . . . . 6

III. BACKGROUND . . . . . 10

A. Alaska's Comprehensive Fisheries Management System. . . . . 10

1. Statehood of Alaska. . . . . 10

2. Alaska's limited entry system. . . . . 14

3. Alaska's fishing industry. . . . . 22

a. *Generally.* . . . . 22

b. *The critical role of limited entry to the economic base of rural communities.* . . . . 23

B. IRS has Targeted Individuals in Rural Alaskan Communities. . . . . 26

1. IRS asserts "unlimited supply" of limited entry permits to sell. . . . 26

a. *IRS data.* . . . . 26

b. *A glimpse behind the data.* . . . . 27

(1) Dillingham census district: Togiak profile. . . . . 27

(2) Bethel census area: Kipnuk profile. . . . . 28

(3) Wade Hampton census area: Hooper Bay profile. . . . . 29

c. *IRS summons: a snapshot of IRS' enforcement targets.* . . . . 30

2. IRS permit seizures cause significant hardship. . . . . 33

a.	<i>Isolated Alaskan fishing villages depend upon commercial fishing for their survival.</i>	33
b.	<i>Seizing entry permits undermines a purpose of limited entry (and may not be in the national interest).</i>	33
(1)	<u>United States' special relationship to Alaska Natives.</u>	33
(2)	<u>Administrative levy and sale may increase overcapitalization (and decrease federal revenue).</u>	35
3.	IRS and CFEC experience in villages.	37
4.	State of Alaska and IRS cooperation.	38
IV.	<b>FEDERAL GOVERNING STATUTES RENDER IRS' ADMINISTRATIVE SEIZURE AND SALE OF MR. CARLE'S FISHING PRIVILEGE INEFFECTIVE.</b>	41
A.	Federal Power to Tax Generally.	41
B.	Administrative Levy and Sale Powers of IRS.	42
1.	The governing legal principle.	42
2.	Federal tax lien.	42
3.	Enforcement of federal tax lien.	42
4.	Statutory administrative levy and sale provisions.	43
5.	Effect of levy.	45
6.	Administrative sales and the plain language of statutes.	45
C.	Conclusion.	46
V.	<b>OTHER ISSUES RAISED BY IRS.</b>	47
A.	Claim by IRS State Law Invalid.	47
B.	Claim by IRS to Act as the Privilege Holder and Apply for Transfer of Mr. Carle's Fishing Privileges.	48

1. IRS' believes it can do anything Mr. Carle could do. .... 48

2. Broader issues raised: the nature of an entry permit. .... 50

    a. *Rights to property: FCC cases.* ..... 50

    b. *Nature of an Alaskan limited fishing privilege.* ..... 55

    c. *The FCC analysis applied to Alaska limited fishing privileges.* .. 58

VI. ORDER. .... 59

## 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 reviewed<sup>1</sup> 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.

---

<sup>1</sup>Our review may have been delayed. Apparently, IRS instructed the successful bidder (and proposed transferee whose permit 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.<sup>2</sup> 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.<sup>3</sup>

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

---

<sup>2</sup>Entry permit number S01A 58789.

<sup>3</sup>A.S. 16.43.27(a).

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

IRS published a notice<sup>5</sup> 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,<sup>6</sup> the Problem Resolution Office refused to

---

<sup>4</sup>Exhibit B.

<sup>5</sup>Exhibit C.

<sup>6</sup>Today 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> 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 . . . .

<sup>7</sup>Exhibit D.

<sup>8</sup>Exhibit E. (As of January, 1995, a voluntary request to transfer this permit could command a price of \$73,800).

<sup>9</sup>Exhibit 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.<sup>10</sup>

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.<sup>11</sup> With this form, the IRS submitted a cover letter from Douglas A. Hartford, Chief of Collection Division, Anchorage District, IRS,<sup>12</sup> 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).*

---

<sup>10</sup>Exhibit G.

<sup>11</sup>Exhibit H.

<sup>12</sup>Exhibit 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.<sup>13</sup> Opponents of Alaska Statehood argued<sup>14</sup> 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.

---

<sup>13</sup>See generally, Gruening, Alaska, The Fortv-ninth State, Britannica Book of the Year 1959 (pps. 11-34).

<sup>14</sup>Report 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.<sup>15</sup>

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 noted<sup>16</sup>:

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.

---

<sup>15</sup>*Id.* [Majority Report].

<sup>16</sup>*Id.*