

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6593 SENATE RESOURCES

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north of 58 degrees 27 minutes 54 seconds north latitude" in 1937. 2 Fed. Reg. 305 (February 12, 1937).

In 1939, regulation of Alaskan fisheries was transferred from the Department of Commerce to the newly formed Fish and Wildlife Service (FWS) in the Department of the Interior. By 1941, the area of Glacier Bay north of 58 degrees 27 minutes 54 seconds was opened to commercial trolling for salmon. See 6 Fed. Reg. 1252 (March 4, 1941); 50 CFR 222.17 (1941). NPS regulations during the same year acknowledged the allowance of commercial fishing in Glacier Bay National Monument. See 6 Fed. Reg. 1627 (March 26, 1941); 36 CFR 2.4(b) (1941).

In 1951, Glacier Bay north of 58 degrees 27 minutes 54 seconds was again closed to all salmon fishing. See 16 Fed. Reg. 2158 (1951); 50 CFR 117.8(d)(1951). NPS regulations continued to acknowledge FWS regulatory allowances for commercial fishing in GLBA. See 20 Fed. Reg. 618 (1955); 36 CFR 1.4(c) (1955).

In accordance with the Alaska Statehood Act of 1958, 72 Stat. 339, management of Alaska's fish and wildlife resources was transferred to the state except on "lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife" Id. at Section 6(c). Nevertheless, FWS regulations continued in full force and effect through 1959 while the state prepared adequate management provisions required by the Act. Id. The only fishing prohibited in GLBA by said regulations continued to be salmon fishing by means other than trolling north of certain latitudes. See 24 Fed. Reg.

2053 et. seq. (March 19, 1959); 50 CFR 101 et. seq. (1959). NPS regulations continued to reference Secretarial regulatory allowances for commercial fishing in GLBA through 1966. See 27 Fed. Reg. 6281 (July 3, 1962); 36 CFR 1.4(b) (1962).

NPS regulations regarding fishing were revised in 1966 and Secretarial allowances for commercial fishing in GLBA were no longer mentioned. Fishing for "merchandise or profit" was prohibited in fresh waters of parklands. 31 Fed. Reg. 12752 (Sept. 29, 1966); 36 CFR 2.13(j)(2) (1967). The revised regulations also stated that "Fishing shall be done in conformity with all state and local laws . . . unless further restricted herein or by special regulations." Id. at 2.13(a), Alaska State law presumably allowed commercial fishing in GLBA marine waters from shortly after statehood through the present.

Enactment of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980 included designation of some wilderness in GLBA. Sec 94 Stat 2371, § 701. In accordance with the Wilderness Act of 1964 consumptive commercial activities are prohibited in wilderness areas. 78 Stat. 892, § 4(c). Consequently, commercial fishing should have come to a halt in the newly designated wilderness portions of GLBA. Nevertheless, it has been allowed to continue, most notably in the Beardslee Islands wilderness section where substantial crabbing activities are growing. ANILCA did not restrict commercial fishing in any other generally applicable wording.

In 1982, the NPS proposed revisions of general regulations including fishing regulations. See 47 Fed. Reg. 11598 et. seq. (March 17, 1982). The resultant final regulations put into effect in 1983 prohibited "commercial fishing, except where specifically authorized by Federal statutory law" including marine waters. 48 Fed. Reg. 30283 (June 30, 1983); 36 CFR 2.3(d)(4).

Nevertheless, other NPS regulations related to the protection of humpback whales in the marine waters of GLBA make reference to continuing, and impliedly allowed, commercial fishing in GLBA marine waters. See 36 CFR 13.65. Whale protection regulations referring to commercial fishing were passed as early as 1980. See 45 Fed. Reg. 85471 (Dec. 30, 1980).

Furthermore, both the NPS General Management Plan (GMP) and Final Environmental Impact Statement regarding wilderness recommendations for GLBA refer to existing and continuing commercial fishing operations.

B. Analysis

Past memoranda and opinions regarding the issue of commercial fishing in GLBA have reached varying and sometimes opposite conclusions. Generally, recent NPS memoranda have concluded that commercial fishing is not allowable. This conclusion was also presented in an informal memorandum prepared by DOI Solicitor, Ruth Ann Story, in August 1989. A formal Solicitor's opinion prepared by J. Roy Spradley, Jr. in August 1983 reached the opposite conclusion - that commercial fishing has been sanctioned by the NPS and is not prohibited. Memorandum to Deputy Undersecretary for Fish, Wildlife and Parks, from Office of the Solicitor, August 12, 1983.

IS COMMERCIAL FISHING CURRENTLY PROHIBITED IN GLBA?

Discussion of this issue should be prefaced with two seemingly unassailable conclusions. The first is that commercial fishing is specifically allowed by ANILCA in the Dry Bay Area of Glacier Bay National Preserve. See 94 Stat. 2384, § 205. The second is that commercial fishing is specifically prohibited in any designated wilderness portions of GLBA - i.e., upper Dundas Bay, Beardslee Islands area, upper Hugh Miller Inlet, Charpentier Inlet, Skidmore Bay, Rendu Inlet, and Adams Inlet. See id. at § 701; and 94 Stat. 2371, § 701.

It is clear that commercial fishing within GLBA, from the time of the original withdrawal in 1925 until 1983, was not prohibited. In fact, commercial fishing was acknowledged in NPS regulations, and regulated - in regard to methods of take, seasonal closures, etc. - by Department of Commerce and FWS regulations.

Taken at face value, the general NPS prohibition on commercial fishing, enacted in 1983, appears to prohibit any and all commercial fishing, "except where specifically authorized by Federal statutory law." 36 CFR 2.3(d)(4). However, as Solicitor Spradley's 1983 memorandum pointed out, in the case of GLBA where commercial fishing has been allowed, and even "sanctioned", it is important to look into the origin of the regulation to determine its applicability.

The revision of the NPS general regulations, that ultimately resulted in the enactment of 2.3(d)(4), was proposed in March 1982. 47 Fed. Reg. 11598. That proposal only prohibited commercial fishing in fresh waters. Id. at 11614, s 2.3(d)(5). As a result of one comment on the proposed regulations questioning the logic of the NPS prohibiting commercial fishing in fresh water but not in marine waters, the regulations were revised to enact 2.3(d)(4). See id. at 30256, 30283. The "Analysis of Comments" stated: "Engaging in commercial activities is prohibited under 36 CFR 5.3. The Service has clarified this provision to make it clear that all commercial fishing is prohibited unless authorized by federal statutory law or regulation." Id. at 30256.

A closer look at 36 CFR 5.3 and its historical relationship to NPS commercial fishing prohibitions or allowances nationwide is warranted. Section 5.3 was enacted in 1966 in its present form. Prior to that, similar regulatory language was contained in 36 CFR 2.31(b) which stated "No person, firm or corporation shall engage in or solicit any business . . . in a park or monument, without permission in writing from the Director." 36 CFR 2.31(b) (1942). The fact that at the same time this prohibition on commercial activities without permit existed, a separate regulation stating that "Fishing . . . for merchandise or profit . . . is prohibited" (except in GLBA, etc.), casts doubt on any intent that 2.4(b) was applicable to commercial fishing. 36 CFR 2.31(b) (1942). The same is true of the concurrent existence of 36 CFR 5.3 (commercial activities prohibition) and 2.13(j)(2) (commercial fresh water fishing prohibition) from 1967 to 1983. Consequently, the logic

behind using the commercial prohibition of 36 CFR 5.3 to legitimize a new prohibition on commercial fishing in marine waters, 36 CFR 2.3(b), without allowing for public comment, is questionable and potentially subject to attack.

Solicitor Spradley's opinion observed that because NPS regulations related to whale protection in Glacier Bay reference the existence of commercial fishing operations and even "indicate that NPS sanctions that activity," the activity should be considered authorized and, therefore, not prohibited by 36 CFR 2.3(d)(4). The validity of the Solicitor's conclusion is bolstered by the questionable process by which 36 CFR 2.3(d)(4) was promulgated.

The most sensible conclusion to this issue is that commercial fishing in the non-wilderness marine waters of Glacier Bay is exempt from the prohibition of 36 CFR 2.3(d)(4) due to the language of 36 CFR 13.65 sanctioning commercial fishing activities at levels at or below those existing in 1976. If it is concluded that 36 CFR 2.3(d)(4) was legitimately promulgated, it can also be argued that as of the date it took effect, October 3, 1983, commercial fishing in any areas of the park outside of Glacier Bay proper were immediately prohibited. Also, as mentioned before, as of the date of passage of ANILCA, December 2, 1980, commercial fishing was prohibited in the wilderness marine waters of GLBA.

DOES AUTHORITY EXIST TO PROHIBIT COMMERCIAL FISHING IN GLBA?

Generally, the NPS Organic Act of 1916 directs the Secretary of the Interior to "conserve the scenery and the natural and historic objects and the wildlife" in the areas within the national park system and to "provide for the enjoyment of same in such manner as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1. The Organic Act also grants the Secretary the authority to implement "rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service."

16 U.S.C. § 3. In addition, the Redwood National Park Act of 1978 states "The authorization of activities shall be construed and the protection, management and administration of" NPS areas "shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." 92 Stat. 166.

Given the above responsibilities and authority spelled out by Congress, and in addition, the purposes for which GLBA was established - including study of flora and fauna - it is clear that authority exists for regulating, or even prohibiting, commercial fishing to protect park resources and/or visitor enjoyment of these resources.

The state of Alaska has raised a question regarding whether the NPS has authority to regulate activities on marine waters over submerged lands to which it claims ownership. However, numerous earlier memoranda including

Solicitor's opinions have concluded that the submerged lands are federal property and, therefore, the state's objections have no validity.

Nevertheless, the NPS must be cognizant of a potential State challenge to NPS jurisdictional authority on this basis.

C. Potential Actions

1. Wilderness Marine Waters

It is advisable that the NPS take immediate steps to prohibit all commercial fishing in designated wilderness waters. To allow such fishing to occur directly contradicts the mandates of the Wilderness Act of 1964.

This action will have a significant effect on commercial crabbing operations in the designated wilderness waters of the Beardslee Islands which have apparently been allowed to continue and grow. Nevertheless, there is no authority to allow for this or any other commercial fishing activity in designated wilderness waters to continue for any period of time. Immediate, courtesy public notice, in the form of a news release stating that commercial fishing in specifically-described designated wilderness waters is prohibited, may be advisable.

2. Other Marine Waters

A variety of options related to restriction and/or prohibition of commercial fishing in non-wilderness marine waters of GLBA exist.

It is important to point out that any regulatory restriction or prohibition should be accompanied by a well developed rationale to justify such action. Implementation of such regulations may result in challenges that the agency action is arbitrary and capricious. Although judicial review of administrative action is highly deferential to the agency and the courts have stated that the Secretary has "broad discretion in determining what actions are best calculated to protect park or public land resources," factually well supported justifications for restrictions will better protect the regulatory action from potential attack.

Rationales for restrictive or prohibitive regulatory actions might include:

- derogation of park resources by commercial fishing operations;
- derogation of whale habitat by commercial fishing operations;
- derogation of visitor enjoyment by commercial fishing operations; and,
- an increase in commercial fishing vessel use beyond 1976 use levels established by 36 CFR 13.65(b)(3)(iii)(A) as maximum unregulated use levels.

It should be noted that if further protection of whale habitat is cited as a reason for commercial fishing restrictions, such justification may activate all of the procedural requirements of 36 CFR 13.65(b)(2)(iii).

- a. Option #1 - Immediate prohibition of all commercial fishing in GLBA by repeal of allowance contained in 36 CFR 13.65. By revising 36 CFR 13.65 to eliminate all references to commercial fishing the existing regulatory allowance for such commercial fishing, as noted in the Spradley opinion as an exception to the 36 CFR 2.3(d)(4) prohibition, is removed. Consequently, 36 CFR 2.3(d)(4) would be fully effectual throughout GLBA and prohibit all commercial fishing. A good rationale for this action is required.

- b. Option #2 - Develop new regulations, and amend existing regulations to: limit commercial fishing in Glacier Bay proper to current, or 1976, levels; limit commercial fishing elsewhere in GLBA to current levels; and, prohibit all commercial fishing as of designated future date. In order to limit commercial fishing in Glacier Bay proper, permits could be issued under authority of 36 CFR 13.65(b)(3) if commercial fishing vessel use has exceeded 1976 levels, or otherwise be issued according to a new regulation generally requiring authorization of commercial fishing. To limit commercial fishing in other areas of GLBA, permits could be issued under authority of 36 CFR 5.3 or a new permitting regulation potentially necessitated for Glacier Bay proper. An amendment to

36 CFR 13.65 prohibiting all commercial fishing at a designated future date within a reasonable time period (3-5 years) would need to be promulgated. This would eliminate the need for potential subjective allowances under a different type of phase-out. A good rationale for this action is required.

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II. Subsistence and Personal Use Fishing

A. Background

There are indications of sporadic traditional fishing use of marine waters within GBA by native populations of Hoonah and other local villages in prehistoric and historic times. Uses in some areas subject to glaciation have fluctuated with advances and retreats of glaciers.

As early as 1924, Congress recognized rights to subsistence/personal use fishing in Alaskan waters within the act authorizing the Secretary of Commerce

to regulate fishing in Alaska. 43 Stat. 464. That act stated: "That nothing contained herein shall prevent the taking of fish for local food requirements or for use as dog feed." Id. at 466.

By 1948, commercial fishing had apparently grown to the extent that the new managing agency, USFWS, found it necessary to more specifically protect native fishing rights. The following regulation was enacted:

§ 102.21 Native fishing rights. No trap shall be established in any site in which any Alaskan native or natives has or have any rights of fishery, by virtue of any grant or by virtue of aboriginal occupancy, by any person other than such native or natives, but this section shall not be construed as permitting any exercise of such rights contrary to any of the provisions of the regulations in this subchapter. Any native or natives claiming such rights may petition the Secretary of the Interior for a hearing with respect to the validity of such claim, and prior to any such determination such claimant and any interested parties desiring to appear in opposition to such claim shall have an opportunity to be heard.

13 Fed. Reg. 8687 (December 29, 1948); 50 CFR 102.21 (1949). "Natives and native Indians" were defined in the regulations as "Members of the aboriginal races inhabiting Alaska when annexed to the U.S. and their descendants of the whole or half blood." 13 Fed. Reg. 8685; 50 CFR 101.6. The regulations also defined "Personal use fishing" as "The taking or attempting to take of any

species of fish or shellfish for ultimate consumption by the taker and his family." 13 Fed. Reg. 8685; 50 CFR 101.9.

A 1959 amendment to the Alaska Statehood Act of 1958 mandated that:

As a compact with the United States said state and its people do agree and declare that they forever disclaim all right and title . . . to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe

73 Stat. 191.

As a result of Alaska statehood, and the resultant change in fisheries management authority from the Federal government to the State (see 72 Stat. 339 § 6(e)), federal regulations regarding general, commercial, and native fishing in Alaska waters changed. The USFWS regulations enacted in 1959 to cover Alaskan fishing in the interim period before state management was begun did not include any mention of native fishing. See 15 Fed. Reg. 2054 et. seq. (March 19, 1959). The apparent importance of such regulations was to continue

strict regulation of commercial fishing. The regulations did redefine "personal use fishing" as "the taking or attempting to take of any species of fish or shellfish for purposes other than for sale or barter" including continued authorization of use as "dog-feed." Id. at 2055.

Bureau of Indian Affairs regulations, promulgated in 1960, covered native fishing rights. See 25 Fed. Reg. 3079 (April 9, 1960). The stated purpose of said regulations was to "protect certain fishing rights which have long been recognized; which derive from the Act of June 6, 1924, as amended, 48 U.S.C. 221 et. seq. [43 Stat. 464], other Federal statutes, regulations and custom; and which were secured to the Alaska Eskimos, Indians and Aleuts by section 4 of the Alaska Statehood Act of July 7, 1958." Id. The regulations also stated:

In all waters of Alaska Indians, Eskimos and Aleuts shall be permitted to take salmon or other species of fish for personal use except in those waters where the State of Alaska has determined that a complete prohibition on all fishing is necessary to prevent the destruction of existing salmon or other fish populations.

Id. at 3080; 25 CFR 88.7. This particular regulation was changed shortly thereafter to read:

Subsistence or personal use fishing rights granted by Federal law to the Indians of Alaska, are preserved in the Statehood Act. The 1960 edition of the Regulations of the Alaska Board of Fish and Game for Commercial Fishing in Alaska has substantially provided for continuance of these

rights and no additional provision therefor is made at this time in the regulations in this part.

25 Fed. Reg. 4864 (June 2, 1960).

Neither the proclamation creating GLBA in 1925, or that enlarging the Monument in 1939, made any reference to fishing. Early NPS regulations prohibited all forms of fishing in Glacier Bay National Monument, except commercial fishing, by methods other than use of a "hook and line, the rod or line being held in the hand" 36 CFR 2.4(b) (1942, 1956, 1962). In 1966 the NPS regulations regarding fishing were revised to limit the hook and line restriction to fresh waters only, thus allowing for fishing with nets, seines, traps, etc. in marine waters. See 31 Fed. Reg. 12752, § 2.13(j) (September 29, 1966). The most recent alteration of the regulations regarding fishing in marine waters specifically states that: "Except as otherwise designated, fishing with a net, spear, or weapon in the salt waters of park areas shall be in accordance with State law." 48 Fed. Reg. 30283 (June 30, 1983); 36 CFR 2.3(e) (1988). NPS regulations have consistently stated that all fishing in park areas shall or must be done in conformity with state law unless otherwise provided. See 36 CFR 2.4(b) (1942); 36 CFR 2.13(a) (1967); 36 CFR 2.3(a) (1988).

In ANILCA, Congress addressed subsistence use of park areas in various respects. Section 203 directs the Secretary to administer areas of the National Park System and allow subsistence uses "in national preserves and, where specifically permitted by this Act, in national monuments and parks."

94 Stat. 2371 (1980). Said administration is specifically made "subject to valid existing rights." Id. Subsistence uses by local residents were not specifically permitted in Glacier Bay National Park. See id. at § 202(1).

In general regard to the taking of fish and wildlife, Section 1314(c) states:

The taking of fish and wildlife in all conservation system units shall be carried out in accordance with the provisions of this Act and other State and Federal law. Those areas designated as national parks or national park system monuments in the state shall be closed to the taking of fish and wildlife, except that . . .

(2) fishing shall be permitted by the Secretary in accordance with the provisions of this Act and other applicable State and Federal law.

Id. at § 1314(c)(2).

B. Analysis

There are two ways to analyze the laws and regulations regarding subsistence fishing use and to some degree, personal fishing use, in GLBA. One analysis results in a conclusion that subsistence fishing is strictly prohibited in GLBA, the other results in a conclusion that subsistence fishing and personal use fishing is allowable.

IS SUBSISTENCE FISHING CURRENTLY PROHIBITED IN GLBA?

Recent NPS memoranda have exclusively taken the position that subsistence fishing is prohibited in GLBA. Indeed, this conclusion is the most readily apparent, although not necessarily correct.

The conclusion that subsistence use is not allowable is based upon the language of ANILCA's Section 203 which directs the Secretary to allow such uses "where specifically permitted by this Act, in national monuments and parks." Because Section 202(1), which created GLBA does not specifically permit subsistence uses it can be argued that the Secretary may not allow such use. Furthermore, the legislative history of the Act supports this conclusion. Senate Report No. 96-413 on H.R.39, the formative bill preceding ANILCA, stated: "Subsistence uses will be allowed within the preserve, but not in the park." Id. at 164 (1979). The Congressional Record of November 12, 1980 contained a similar comment that "subsistence uses, sport hunting, sport fishing [apparently in error], and trapping are not allowed in the park." Id. at 10539. In addition, Section 816 states: "All national parks and park monuments in Alaska shall be closed to the taking of wildlife except for subsistence uses to the extent specifically permitted by this Act." 94 Stat. 2430 (emphasis added). However, the section only references wildlife, not fish.

IS SUBSISTENCE FISHING, AND/OR PERSONAL USE FISHING, ALLOWABLE IN GLBA?

It is apparent that "subsistence/personal use" fishing was allowable within GLBA prior to the passage of ANILCA. The Act of 1924 authorizing the Secretary of Commerce to regulate Alaskan fisheries also recognized and

protected a right to take "fish for local food requirements or for use as dog feed." 43 Stat. 446. Nothing in the legislation creating (1925) or enlarging (1939) Glacier Bay National Monument specifically disallowed fishing. The pertinent language in the Act of 1924 remained the law of consequence until the Alaska Statehood Act was passed and amended in 1959 to ensure that fishing rights held by Indians, Eskimos, and Aleuts would be protected. See 72 Stat. 339, as amended by 73 Stat. 141, 334, 6(e). Although the State of Alaska assumed authority for management of fisheries in 1960, the Bureau of Indian Affairs clarified, in its regulations, that "subsistence or personal use fishing rights" were granted to Indians of Alaska and would be protected. See 25 Fed. Reg. 3079; and, 25 Fed. Reg. 4864.

ANILCA did not specifically prohibit subsistence/personal use activities in GLBA. AS noted, the Act did state that "subsistence uses by local residents shall be allowed in national preserves and, where specifically permitted by this Act, in national monuments and parks." 94 Stat. 2371 at § 203. Language creating Glacier Bay National Park did not specifically permit subsistence uses within the Park. Nevertheless, Section 203 also states that the Secretary's administration of the parks is "subject to valid existing rights." Id. Subsistence fishing rights are arguably valid existing rights as described above.

Section 1314(c)(2) makes it clear that the taking of fish is to be permitted by the Secretary not only in accordance with the provisions of ANILCA, but as controlled by other applicable State and Federal law as well. See id. at

§ 1314. Again, as noted in the foregoing, Federal law not only allowed subsistence/personal use fishing in Alaskan waters but required the State to protect native subsistence fishing rights.

Finally, Section 1316(a) states: "On all public lands where the taking of fish and wildlife is permitted in accordance with the provisions of this Act or other applicable State and Federal law the Secretary shall permit, subject to reasonable regulation to ensure compatibility, the continuance of existing uses See id. at § 1316 (emphasis added). Subsistence fishing is permitted by State law, and arguably protected, at least for Indians, by Federal law. See 43 Stat. 464; and, 73 Stat. 141. In order to ensure the compatibility of fishing activities and protection of park resources the NPS has promulgated fishing regulations over the years. These general regulations have affected, but arguably never eliminated subsistence/personal use fishing rights in GLBA.

In passing ANILCA, Congress found and declared that:—"The continuation of the opportunity for subsistence uses by rural residents of Alaska . . . is essential" Id. at § 801(i) (emphasis added). Congress also found that: "continuation of the opportunity for subsistence uses of resources . . . is threatened" Id. at § 801 (3) (emphasis added). Consequently, Congress declared that it was necessary "to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands Id. at § 801(4)

for continued subsistence uses on the public lands Id. at § 801(4)

(emphasis added).

In light of all of the provisions and savings clauses of ANILCA regarding subsistence uses, the taking of fish and wildlife, and the protection of park areas, does it make logical sense to interpret the act to prohibit previously existing, legally sanctioned and protected, subsistence fishing rights in the waters of GLBA? Congress was obviously dedicated to protecting the continuance of subsistence uses. Where such uses are incompatible with the protection of park resources, Congress provided the authority to restrict or potentially eliminate subsistence use. See Id. at § 810 and § 815(1). Where subsistence uses are based upon valid existing rights predating ANILCA, the Secretary can still limit such uses to protect park resources under the broad protective authority of 16 U.S.C. §§ 1, 1a-1, and 3. Consequently, an interpretation of ANILCA that allows for subsistence use in GLA is sensible and does not preclude protection of park resources, if necessary, even if restriction of subsistence uses must result.

C. Potential Actions

1. Option #1 - Prohibit subsistence and personal use fishing in GLBA by promulgation of regulations. Regardless of whether subsistence fishing in GLBA is considered statutorily prohibited or allowed by ANILCA, if the NPS wishes to make a prohibition enforceable it has been concluded that a regulation is needed. The regulation could

be literally aimed at prohibiting subsistence or personal use fishing, however, this might increase the likelihood of political reaction, or result in a battle of semantics with the Alaska Department of Fish and Game (ADF&G). If the regulation did specify a prohibition on subsistence and personal use fishing, those activities should be strictly defined.

As discussed, it might be more acceptable to generically prepare a new fishing regulation limiting all fishing, including fishing in marine waters, to use of "hook and line, with the rod or line being closely attended" based upon 36 CFR 2.3(d)(1). Of course, this would effectively eliminate commercial fishing as well. In addition, if such a simplified prohibition were adopted, the ADF&G might still issue subsistence and personal use permits and although permittees would be limited to use of hook and line they would not be subject to sportfishing bag limits.

2. Option #2 - Allow subsistence and personal use fishing to continue without regulation. As aforementioned, there is a substantial argument that subsistence and personal use fishing is allowable in CEBA. The ADF&G has issued permits for such use in 1989. If left unregulated, these uses would be limited by 36 CFR 2.3 and any applicable ADF&G regulations. Consequently, subsistence and/or personal use fishing could be pursued by permittees in fresh waters with a "hook and line" (36 CFR 2.3(d)(1)), and in marine waters "in accordance with State law" (36 CFR 2.3(c)).

There is the potential for conflict over the distinction between fresh and salt water zones. The State's definition could be accepted, or a regulation could be drawn up to define the difference. If the regulatory option is chosen in regard to this matter, it might be an issue best covered as a nation-wide regulatory amendment to 36 CFR 2.3.

3. Option #3 - Allow regulated subsistence fishing to continue, but eliminate personal use fishing. Again, this option relies on a stance that the law allows for subsistence use. Regulations within 36 CFR Part 13 would need to be revised to acknowledge allowances for subsistence fishing use in GLBA and identify criteria for qualification for such rights. It should be noted that interesting possibilities for limiting subsistence use fishing to Native Americans alone exist in this particular circumstance.

In order to eliminate personal use fishing, regulations specifically prohibiting such use in marine waters would need to be promulgated. Whether regulations prohibiting personal use in fresh waters would be deemed necessary is questionable. Currently, wherever the State might permit personal use fisheries they can exist in the parks subject only to the NPS "hook and line" restriction. To our knowledge, State authorized personal use fisheries have not posed a problem in the fresh waters of any

park area. Prohibiting personal use fishing in the fresh waters of GLBA is probably not a substantive issue. Consequently, a regulation prohibiting salt water fishing by any means other than hook and line except for subsistence, and possibly commercial permittees, would eliminate all meaningful personal use fishing.

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COMMERCIAL FISHERIES STATISTICS

GLACIER BAY NATIONAL PARK

ALASKA DEPARTMENT OF FISH AND GAME
DIVISION OF COMMERCIAL FISHERIES
MARCH 2, 1990

Table . Southeast Alaska salmon fisheries.
 Total commercial catch of salmon
 in district 114 combined fishery.

Year	Chinook	Sockeye	Coho	Pink	Chum	Total
1960	23659	96	81461	3519	277	109012
1961	12823	127	85632	4793	535	103910
1962	21688	11	72122	3272	522	97615
1963	52755	751	176468	24749	999	255722
1964	71865	380	91692	15618	611	180166
1965	30568	257	135242	18477	1771	186315
1966	20053	229	71867	8746	1256	102151
1967	25714	27	114892	20726	2070	163429
1968	32505	124	177220	26375	1112	237336
1969	35973	495	126883	37858	430	201639
1970	18123	64	96298	29690	599	144774
1971	14913	225	102681	36130	3678	157627
1972	14423	204	94087	27335	4114	140163
1973	23590	293	96117	39022	4709	163731
1974	26979	351	89736	39488	4462	161016
1975	18865	160	13641	9599	490	42755
1976	18350	187	72273	6511	588	97909
1977	21843	1705	96460	56258	3605	179871
1978	19620	894	190039	120809	5710	337072
1979	9275	1002	24006	85616	3446	123345
1980	14821	696	25513	28770	2771	72571
1981	13908	2331	94155	134518	2521	247433
1982	16900	440	132858	83529	828	234555
1983	18018	2168	114657	130309	3968	269120
1984	23434	3257	115977	105058	6024	253750
1985	15088	3145	118448	481931	10860	629472
1986	7117	452	66492	12481	2752	89294
1987	10437	3553	80443	198539	3448	296420
1988	11741	3287	75506	143996	14918	249448
1989	10999	10480	196003	714461	10632	942575
Average	21868	1246	100962	88273	3324	215673

Combined gears: handtroll power troll

Table Southeast Alaska salmon fisheries.
 Weekly number of boats of salmon
 in district 114 power troll fishery.

Stat Week	Average Midweek Date	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Mean	Std.dev
1	Jan. 3	0	0	0	0	0	0	0	0	0	0	0	0
2	Jan. 8	0	0	0	0	0	0	0	4	3	0	4	1
3	Jan. 15	0	0	0	2	1	0	2	1	0	1	1	1
4	Jan. 22	0	0	0	0	1	0	1	0	2	0	1	1
5	Jan. 29	0	0	0	0	1	4	1	2	2	0	2	1
6	Feb. 5	0	0	0	0	0	3	3	0	1	0	2	1
7	Feb. 12	0	0	0	0	2	0	1	0	2	0	2	1
8	Feb. 19	0	1	0	0	3	2	0	0	0	1	2	1
9	Feb. 26	0	0	0	2	4	1	0	1	3	0	2	1
10	Mar. 5	0	3	1	3	8	3	0	1	2	2	3	2
11	Mar. 12	0	0	0	0	12	3	1	1	6	1	4	4
12	Mar. 19	0	1	2	2	6	2	7	1	5	12	4	4
13	Mar. 26	1	0	1	6	14	9	12	2	10	17	8	6
14	Apr. 2	0	6	5	9	23	17	12	3	17	27	13	8
15	Apr. 9	0	7	7	10	30	15	7	4	9	31	13	10
16	Apr. 16	4	11	9	17	1	18	17	7	19	0	11	7
17	Apr. 23	17	0	0	0	0	1	0	0	0	0	9	11
18	Apr. 30	17	0	0	0	0	0	0	0	0	0	17	0
19	May 7	19	0	0	0	0	0	0	0	0	0	19	0
20	May 14	30	8	0	0	0	0	0	0	0	0	19	16
21	May 21	21	35	28	55	0	0	0	0	0	0	35	15
22	May 28	29	28	43	53	0	0	0	0	0	0	38	12
23	Jun. 4	29	29	62	49	25	63	0	0	85	0	49	22
24	Jun. 11	36	15	39	56	49	61	0	0	0	0	43	17
25	Jun. 18	26	20	24	0	49	0	9	6	53	27	18	18
26	Jun. 25	35	29	50	0	57	0	31	33	0	6	34	16
27	Jul. 2	24	1	43	9	1	66	26	30	9	32	24	20
28	Jul. 9	29	38	38	40	37	59	21	28	36	67	39	14
29	Jul. 16	22	55	47	54	53	62	34	45	45	84	50	16
30	Jul. 23	13	45	47	58	63	71	46	64	62	86	56	20
31	Jul. 30	19	54	60	49	83	116	37	54	66	89	63	28
32	Aug. 6	24	67	0	55	84	98	27	47	39	112	61	31
33	Aug. 13	9	44	118	0	61	75	24	38	108	71	61	36
											0	61	43
34	Aug. 20	35	106	113	93	14	1	20	81	84	0	91	44
35	Aug. 27	8	161	111	102	133	90	67	74	74	0	109	39
36	Sep. 3	33	160	118	91	143	121	70	106	138	0	98	39
37	Sep. 10	20	107	83	93	121	147	65	106	139	0	66	28
38	Sep. 17	26	66	79	74	61	67	24	77	116	0	25	15
39	Sep. 24	0	29	44	27	0	4	7	26	37	0	5	6
40	Oct. 1	0	2	1	0	15	0	0	4	3	0	19	15
41	Oct. 8	0	2	10	11	18	0	0	26	44	0	11	13
42	Oct. 15	1	3	8	3	6	0	0	26	33	0	11	11
43	Oct. 22	0	1	7	3	8	0	0	18	31	0	10	9
44	Oct. 29	0	3	5	0	4	0	0	17	22	0	8	10
45	Nov. 5	1	0	4	1	2	0	0	13	25	0	6	8
46	Nov. 12	0	1	1	2	1	0	0	18	14	0	4	6
47	Nov. 19	1	1	2	1	1	0	1	16	9	0	5	5
48	Nov. 26	0	0	0	1	1	0	0	10	9	0	2	2
49	Dec. 3	0	0	0	2	0	0	1	4	0	0	1	1
50	Dec. 10	0	0	1	2	1	1	0	1	2	0	4	2
51	Dec. 17	0	0	0	0	0	0	1	5	5	0	2	1
52	Dec. 24	0	0	0	0	0	0	1	2	2	0	2	1

4.

Table . Southeast Alaska salmon fisheries.
 Weekly number of boats of salmon
 in district 116 power troll fishery.

Stat Week	Average Midweek Date	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Mean	Std.dev
1	Jan. 3	0	0	0	0	0	0	0	0	0	0	0	0
2	Jan. 8	0	0	0	0	0	0	0	0	0	0	0	0
3	Jan. 15	0	0	0	0	0	0	0	0	0	0	1	0
4	Jan. 22	0	0	0	0	1	0	0	0	0	0	0	0
5	Jan. 29	0	0	0	0	0	0	0	0	0	0	1	0
6	Feb. 5	0	0	0	0	0	0	0	1	0	0	1	0
7	Feb. 12	0	0	0	0	0	0	0	0	0	0	0	0
8	Feb. 19	0	0	0	0	0	0	0	0	0	0	0	0
9	Feb. 26	0	0	0	0	0	0	0	6	0	0	6	0
10	Mar. 5	0	0	0	0	2	0	0	0	0	0	4	2
11	Mar. 12	0	0	0	5	1	0	0	1	0	0	1	1
12	Mar. 19	0	0	0	2	1	0	0	1	0	0	3	0
13	Mar. 26	0	0	0	3	0	0	0	0	1	0	1	0
14	Apr. 2	0	0	0	0	1	0	0	0	1	0	2	1
15	Apr. 9	0	0	0	0	2	0	0	0	0	0	2	1
16	Apr. 16	0	0	3	3	0	0	1	0	0	0	2	0
17	Apr. 23	2	0	0	0	0	0	0	0	0	0	2	0
18	Apr. 30	10	0	0	0	0	0	0	0	0	0	10	0
19	May 7	4	0	0	0	0	0	0	0	0	0	4	0
20	May 14	8	2	0	0	0	0	0	0	0	0	5	4
21	May 21	5	18	9	60	0	0	0	0	0	0	23	25
22	May 28	6	19	9	74	0	0	0	0	0	0	27	32
23	Jun. 4	6	19	4	46	13	26	0	0	0	0	19	16
24	Jun. 11	2	16	14	26	19	32	0	0	0	0	18	10
25	Jun. 18	3	24	2	1	10	0	5	2	0	0	7	8
26	Jun. 25	3	19	24	0	17	0	25	11	0	7	15	8
27	Jul. 2	4	0	15	0	0	38	30	26	0	20	22	12
28	Jul. 9	6	33	6	16	14	36	17	11	13	28	18	11
29	Jul. 16	0	28	30	25	29	35	24	20	26	13	26	6
30	Jul. 23	3	25	27	34	29	63	30	50	52	18	33	18
31	Jul. 30	3	66	29	53	61	101	17	36	50	15	43	29
32	Aug. 6	3	52	0	51	65	77	10	34	44	59	44	25
33	Aug. 13	12	14	76	0	52	21	3	12	75	29	33	28
34	Aug. 20	27	8	83	82	0	0	15	44	54	0	45	30
35	Aug. 27	16	70	71	129	36	85	56	83	27	0	64	35
36	Sep. 3	11	57	69	86	37	48	55	62	58	0	54	21
37	Sep. 10	5	17	35	45	32	41	22	16	41	0	28	14
38	Sep. 17	2	2	23	59	8	12	9	1	23	0	15	18
39	Sep. 24	0	1	6	23	2	1	0	0	7	0	7	8
40	Oct. 1	0	0	0	1	0	0	0	0	0	0	1	0
41	Oct. 8	0	0	0	0	0	0	0	0	0	0	0	0
42	Oct. 15	0	0	0	0	1	0	0	0	1	0	1	0
43	Oct. 22	0	0	0	0	1	0	0	0	1	0	1	0
44	Oct. 29	0	0	0	0	0	0	0	0	0	0	0	0
45	Nov. 5	0	0	0	0	0	0	0	1	0	0	1	0
46	Nov. 12	0	0	0	0	0	0	0	0	0	0	0	0
47	Nov. 19	0	0	0	0	0	0	0	0	0	0	0	0
48	Nov. 26	0	0	0	0	0	0	0	0	0	0	0	0
49	Dec. 3	0	0	0	0	0	0	0	0	0	0	0	0
50	Dec. 10	0	0	0	0	0	0	0	0	0	0	0	0
51	Dec. 17	0	0	0	0	0	0	0	0	0	0	0	0
52	Dec. 24	0	0	0	0	0	0	0	0	0	0	0	0

6.

Table . Southeast Alaska salmon fisheries.
 Weekly number of boats of salmon
 in subarea 11480 purse seine fishery.

Excun

Stat Week	Average Midweek Date	1980	1981	1982	1983	1984	1985	1986	1987	1988
23	Jun. 4	0	0	0	0	0	0	0	0	0
24	Jun.11	0	0	0	0	0	0	0	0	0
25	Jun.18	0	0	0	0	0	0	0	0	0
26	Jun.25	0	0	0	0	0	0	0	0	0
27	Jul. 2	0	0	0	0	0	0	0	0	0
28	Jul. 9	0	0	0	0	0	0	0	0	0
29	Jul.16	0	0	0	0	0	0	0	0	0
30	Jul.23	0	0	0	0	0	0	0	0	0
31	Jul.30	0	0	0	0	0	0	0	0	0
32	Aug. 6	0	0	0	0	0	0	0	0	0
33	Aug.13	0	0	0	0	0	0	0	0	0
34	Aug.20	8	0	0	0	9	4	0	26	0
35	Aug.27	0	68	0	0	19	0	17	0	15
36	Sep. 3	63	60	0	0	29	22	0	0	0
37	Sep.10	0	0	0	0	38	0	0	27	0
38	Sep.17	63	37	0	28	0	0	0	37	62
39	Sep.24	56	0	0	0	24	0	0	39	0
40	Oct. 1	0	0	0	0	0	0	18	0	0
41	Oct. 8	0	0	0	0	0	0	0	0	0
42	Oct.15	0	0	0	0	0	0	0	0	0
43	Oct.22	0	0	0	0	0	0	0	0	0
44	Oct.29	0	0	0	0	0	0	0	0	0
45	Nov. 5	0	0	0	0	0	0	0	0	0
Total		190	165	0	28	119	26	35	129	77

Page 1

Table . Southeast Alaska salmon fisheries.
 Weekly number of boats of salmon
 in subarea 11480 purse seine fishery.

Stat Week	Average Midweek Date	1989	Mean	Std.dev
23	Jun. 4	0	0	0
24	Jun.11	0	0	0
25	Jun.18	0	0	0
26	Jun.25	0	0	0
27	Jul. 2	0	0	0
28	Jul. 9	0	0	0
29	Jul.16	0	0	0
30	Jul.23	0	0	0
31	Jul.30	0	0	0
32	Aug. 6	0	0	0
33	Aug.13	2	2	0
34	Aug.20	0	12	10
35	Aug.27	0	30	26
36	Sep. 3	0	44	21
37	Sep.10	0	33	8
38	Sep.17	0	45	16
39	Sep.24	0	42	16
40	Oct. 1	0	18	0
41	Oct. 8	0	0	0
42	Oct.15	0	0	0
43	Oct.22	0	0	0
44	Oct.29	0	0	0
45	Nov. 5	0	0	0

S.

SHELLFISH STATISTICS

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
BLUE KING CRAB

02:23:1990
14:53:00

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 114700 114710 114720 114730 114740 114750 114770 0000

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1977/78	760	1	1	760
1978/79	508	1	1	508
1981/82	1,776	1	1	1,776
1982/83	16,335	6	10	1,634
1983/84	23,633	9	13	1,818
1984/85	793	2	2	397
1985/86	128	2	2	64
1986/87	474	3	3	158
1987/88	691	3	5	138
1988/89	2,976	1	6	496

MOST RECENT YEAR'S

SHOULD BE CONSIDERED PRELIMINARY.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
TANNER CRAB

02/23/1990
14:52:06

Port: ALL GEAR TYPES

Area:

Dist:

Sub : 114700 114710 114720 114730 114740 114750 114770 0000

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1972/73	60,408	1	13	4,647
1973/74	30,809	0	5	6,162
1974/75	136,552	6	17	8,032
1975/76	142,489	7	17	8,382
1976/77	603,601	14	48	12,575
1977/78	19,864	2	2	9,932
1978/79	63,231	3	10	6,323
1979/80	129,969	8	15	8,665
1980/81	257,987	7	17	15,176
1981/82	378,866	11	23	16,472
1982/83	184,736	12	14	13,195
1983/84	204,621	12	21	9,744
1984/85	57,028	7	8	7,129
1985/86	93,864	4	11	8,533
1986/87	118,160	6	14	8,440
1987/88	61,494	8	11	5,582
1988/89	76,308	4	10	7,631

.....
MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

13

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
SRPIMP

03/02/1990
13:45:20

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 114700 114710 114720 114730 114740 114750 114770 0000

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1979/80	5,499	1	1	5,499
1980/81	9,744	1	1	9,744
1981/82	336	1	1	336

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

15

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
TANNER CRAB

01/07/1990
13:09:15

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 114600

17.

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGES POUNDS PER LANDING
1980/81	3,492	1	1	3,492
1982/83	24,070	2	2	12,035
1983/84	3,591	1	1	3,591
1984/85	11,453	3	4	2,863
1985/86	13,137	1	6	2,190
1986/87	595	1	2	298
1987/88	6,812	3	3	2,271
1988/89	17,974	4	5	3,595

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
BROWN KING CRAB

03/02/1990

13:10:54

Gear: ALL GEAR TYPES

Area:

Dist: 116

Sub :

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1984/85	577	1	1	577

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
TANNER CRAB

03/02/1990

13:10:54

Gear: ALL GEAR TYPES

Area:

Dist: 116

Sub :

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1980/81	58,387	2	4	14,597
1983/84	2,212	1	2	1,106
1986/87	9,591	1	2	4,796
1987/88	20,303	1	2	10,152

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

19.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
BLUE KING CRAB

03/02/1990

13:14:40

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 114230

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1982/83	1,003	3	3	334
1984/85	7	1	1	7

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
BROWN KING CRAB

03/02/1990

13:14:40

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 114230

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1980/81	43,401	5	5	8,680
1981/82	28,682	8	8	3,585
1982/83	44,656	8	14	3,190
1983/84	10,516	6	9	1,168
1984/85	7,016	3	4	1,754
1987/88	702	2	2	351
1988/89	3,991	3	5	798

21,

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
TANNER CRAB

03/05/1990

08:09:54

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 114800 588668 888888 888888 888888 888888 888888 888888 888888

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1972/73	20,759	1	4	7,690
1976/77	4,297	1	1	4,297
1977/78	30,270	2	4	7,568
1978/79	25,577	0	3	9,859
1979/80	15,192	2	4	3,798
1980/81	23,314	3	3	7,771
1981/82	72,576	6	8	9,197
1982/83	133,022	16	21	6,334
1983/84	9,660	1	1	9,660
1984/87	1,416	1	1	1,416
1987/88	30,448	4	9	3,383
1988/89	53,155	5	9	5,906

23.

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
DUNGEONS CRAB

01/05/1990

08:09:54

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 11400 00000 00000 00000 00000 00000 00000 00000 00000 00000

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1972/73	5,030	1	1	5,030
1973/74	3,231	0	1	3,231
1957/58	28	1	1	28

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

REPORT NO: HC 1.1

POUNDS, VESSELS, LANDINGS BY SEASON
RED KING CRAB

01/05/1990

08:09:54

Gear: ALL GEAR TYPES

Area:

Dist:

Sub : 11400 00000 00000 00000 00000 00000 00000 00000 00000 00000

SEASON	CATCH IN POUNDS	NUMBER OF VESSELS	NUMBER OF LANDINGS	AVERAGE POUNDS PER LANDING
1976/77	1,604	1	1	1,604
1979/80	4,760	1	2	2,130

MOST RECENT YEAR'S DATA SHOULD BE CONSIDERED PRELIMINARY.

25.



CITIZENS ADVISORY COMMISSION
on Federal Areas

Suite 4H
Fairbanks, Alaska 99701
19071 456-2012
Fax 456-2039

February 21, 1990

Dear interested party:

The Citizens' Advisory Commission on Federal Areas was made aware of increasing concern regarding the future of commercial and subsistence fishing in Glacier Bay National Park during its February 2-3 meeting in Juneau.

At that meeting, a number of local people described their apprehension that commercial and subsistence fishing would be terminated at Glacier Bay in the near future. During and after the meeting, the National Park Service indicated that a closure is not imminent. However, the agency does consider commercial and subsistence fishing illegal in Glacier Bay National Park, and is considering alternatives which include elimination of these activities in the future.

The Commission has decided to provide a forum for local involvement in resolving this issue. We have invited Regional Director Boyd Evison of the National Park Service to meet with local people in order to clarify his agency's position, and to participate in substantive discussions on the future of commercial and subsistence fishing in Glacier Bay National Park.

The first meeting will be held on March 5 from 1:00-5:30 p.m. in the Hickel Room of Centennial Hall, Juneau. Representatives of the Governor's office, the Alaska Department of Fish & Game, the Department of Law, commercial and sport fishing organizations, fish and game advisory bodies, Native and Conservation groups, and all other interested persons are invited to attend. For people unable to be present at the Juneau meeting, local meetings will be held in Hoonah on March 6th, Pelican on March 7th, Gustavus on March 8th and Yakutat on March 9th.

The Citizens' Advisory Commission on Federal Areas encourages you to consider this issue, attend one or more of the scheduled meetings noted above and share your views. We are hopeful that your specific suggestions will help reduce the potential for conflict in Glacier Bay National Park. For further information, please call Commission staff @ 456-2012 or Representative Peter Goll @ 465-4925.

Sincerely,

Michael Welsh

for Stan Leaphart
Executive Director

gog



Citizens' Advisory Commission on Federal Areas

Suite 401
Fairbanks, Alaska 99701
(907) 456-2012
Fax: 456-2039

F A C T S H E E T

The Citizens Advisory Commission on Federal Areas was established in 1981 by the Alaska Legislature to aid Alaskan citizens affected by the management of federal lands. When Congress passed the Alaska National Interest Lands Conservation Act (ANILCA) in December, 1980, many Alaskans feared that this legislation would create more problems, more restrictions and more regulations for the federal lands in Alaska. The Commission is designed to help avoid and, if necessary, find solutions to such problems.

WHAT DOES THE COMMISSION DO?

The Commission is an advisory agency of the executive branch of state government. Its duties include determining the impact of federal regulations, legislation and management decisions on Alaska's citizens; determining if federal agency actions follow law and Congressional intent; and recommending corrective actions for any problems it discovers.

The Commission, through the State Attorney General's office, can file suit against a federal agency or official if the Commission determines that the federal agency or official is violating an act of Congress, Congressional intent or the best interest of the State of Alaska. The Commission has until June 30, 1998 to accomplish its task.

HOW IS THE COMMISSION FUNDED?

The Commission was funded through FY 1983 by its enabling legislation. Following FY 1983, funding has been through the regular state operating budget.

HOW IS THE COMMISSION RELATED TO THE ALASKA LAND USE COUNCIL?

The Commission is entirely separate from the Alaska Land Use Council (ALUC). The ALUC was established by the ANILCA to provide for cooperative planning and management between Federal and State agencies. There are some similarities between the Council and the Commission - the desire to have cooperation, consultation, and coordination between Federal and State agencies and the citizens of Alaska. However, actions taken by and recommendations made by the Alaska Land Use Council are independent of Commission decisions. ALUC benefits from public participation gained by the functioning of its own advisory group, The Land Use Advisors Committee.

WHY IS THE COMMISSION NEEDED?

The Commission provides citizens an additional way to question and participate in the decision making process on federal lands in Alaska. The Commission provides a single agency which can deal with any complaint regarding a federal land management agency. Additionally, the Commission can identify potential problems during the development of management plans and regulations that can be corrected prior to implementation, thus avoiding unnecessary future problems. The Commission also functions as an information source for individuals or groups interested in current and future planning efforts and management activities by federal agencies.

HOW DOES THE COMMISSION IDENTIFY PROBLEMS OR CONCERNS OF LOCAL AREAS?

The Commission relies in large part on individuals to identify specific problems. Commission staff also contacts individuals and organizations to inform them of planning activities and gather input on related issues. The Commission may appoint advisory groups in any area of the state to help identify local concerns. Along with this responsibility, advisory groups may be asked to review federal regulations and management plans, and identify potential impacts brought about by the plans or regulations.

IS THE COMMISSION ONLY CONCERNED WITH THE IMPLEMENTATION OF ANILCA?

The scope of the Commission includes all federal land management areas in Alaska.

WHAT IS THE COMPOSITION OF THE COMMISSION?

The Commission has 16 members, eight appointed by the governor and eight appointed by the legislature. The eight legislative appointees include two State senators and two State representatives. Most State commissions are appointed entirely by the governor. It was hoped that legislative influence would help bring local concerns more directly to the Commission.

HOW CAN THE COMMISSION HELP ME?

You can notify any Commissioner or Commission staff member about concerns you have. The Commission can give you information or tell you where to find it on any federal land area in Alaska. If you would like more information, contact any Commission member or the Fairbanks staff at:

250 Cushman Street, Suite 4H
Fairbanks, Alaska 99701
(907) 456-2012
FAX # (907) 456-2012

April 6, 1990

SENATE JOURNAL

p. 3258

HJR 92

CS FOR HOUSE JOINT RESOLUTION NO. 92 (Resources) by the Resources Committee,

Relating to subsistence use and commercial fishing in Glacier Bay National Park.

was read the first time and referred to the Resources Committee.

April 19, 1990

SENATE JOURNAL

p. 3456

HJR 92

The Resources Committee considered CS FOR HOUSE JOINT RESOLUTION NO. 92 (Resources) (Relating to subsistence use and commercial fishing in Glacier Bay National Park) and a majority of the committee recommended do pass. The report was signed by Senator Fahrenkamp, Chair, and concurred in by Senators Halford, Frank, Zharoff, Eliason and Sturgulewski.

Zero fiscal note published today from Department of Fish and Game. Previous House zero fiscal note.

CS FOR HOUSE JOINT RESOLUTION NO. 92 (Resources) was referred to the Rules Committee.

April 24, 1990

SENATE JOURNAL

p. 3553

HJR 92

The Rules Committee considered CS FOR HOUSE JOINT RESOLUTION NO. 92 (Resources) (Relating to subsistence use and commercial fishing in Glacier Bay National Park) and a majority of the committee recommended calendar. The report was signed by Senator Sturgulewski, Chair, and concurred in by Senators Kerttula, Rodey and Kelly.

CS FOR HOUSE JOINT RESOLUTION NO. 92 (Resources) is on today's calendar.

HJR 92

Senator Rodey moved and asked unanimous consent that CS FOR HOUSE JOINT RESOLUTION NO. 92 (Resources) (Relating to subsistence use and commercial fishing in Glacier Bay National Park) be held to the April 25 calendar. Without objection, the resolution will be on the April 25 calendar.

FISCAL NOTE

REQUEST:

Revision Date: 4/12/90 Agency Affected: Dept. of Fish and Game
 Title: An Act relating to subsistence use and commercial fishing in Glacier Bay Nat. Park BRU: Subsistence
 Sponsor: Resources Committee Components: Subsistence
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

No FY 90 Fiscal Impact.

Prepared by: Steve Behnke, Director *Steve Behnke*
 Division: Subsistence

Phone: 465-4147
 Date: 4-12-90

Approved by Commissioner: *Donna H. Wiley*
 Agency: Department of Fish and Game

Date: 4-12-90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Fishing In Glacier Bay National Park
 Sponsor: Rules Committee
 Requestor: House Resources Committee

Agency Affected: All Agencies
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: House Resources Committee Phone: 465-4944
 Division: Representative Curt Menard Date: 3/30/90

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

H J R

93

SENATE COMMITTEE REPORT

DATE: 3/27/90

FURTHER:

DATE TURNED INTO OFFICE: 3-27-90

Resources

Committee considered

HJR 93

Relating to the seizure and forced sale of Alaska commercial fisheries limited entry permits by the Internal Revenue Service.

and recommended:

- replace with _____ CS _____
- or adopt _____ CS _____
- attached amendment(s)
- _____ letter of intent adopted

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

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

fiscal note(s) _____ Dept/Date: _____

fiscal note(s) _____ Dept/Date: _____

zero fiscal note(s) _____

zero fiscal note(s) House Resources Committee

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

~~_____~~

_____ *Draw no rec* _____

Fabrentina De Pass
Chair: Signature and Recommendation

6-2359H
Utermohle
3/26/90

*Not
adopted*

Original sponsor(s): Resources Committee

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR HOUSE JOINT RESOLUTION NO. 93 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Relating to the seizure and forced sale
6 of Alaska commercial fisheries limited
7 entry permits by the Internal Revenue
8 Service.

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 WHEREAS the Alaska commercial fisheries limited entry program was
11 established in 1973 to promote the conservation and sustained yield manage-
12 ment of Alaska's fishery resources and to promote the economic health and
13 stability of the commercial fishing industry in the state; and

14 WHEREAS a fisherman is required to have a commercial fisheries limited
15 entry permit in order to fish in a limited entry fishery in the state; and

16 WHEREAS a limited entry permit is a required tool of trade for an
17 Alaska commercial fisherman; and

18 WHEREAS Alaska commercial fishermen are often dependent upon their
19 ability to fish in a limited entry fishery as the primary means of earning
20 a living; and

21 WHEREAS the families and communities of Alaska commercial fishermen
22 are also dependent upon the earnings of those fishermen that participate in
23 limited entry fisheries; and

24 WHEREAS state law provides that limited entry permits are merely use
25 privileges subject to revocation without compensation, are not property
26 subject to claims of creditors, and are not generally subject to forced
27 transfer by order of a court; and

28 WHEREAS the Internal Revenue Service proposes to force the sale of
29 eight limited entry permits on March 29, 1990; and

1 WHEREAS each of these limited entry permits was granted to an Alaska
2 fisherman because the fisherman was more dependent on the fishery than
3 other applicants; and

4 WHEREAS the Internal Revenue Service intends to sell the limited entry
5 permits at less than their market value; and

6 WHEREAS the legal authority of the Internal Revenue Service to seize
7 and force the sale of limited entry permits has not been confirmed by a
8 court; and

9 WHEREAS legal issues surrounding the forced sale of the limited entry
10 permits will further depress the prices that prospective buyers will be
11 willing to pay for the permits at the sale; and

12 WHEREAS the Internal Revenue Service has other less destructive means
13 available to collect tax obligations, including seizure of assets, attach-
14 ment of earnings, and negotiated payment plans, that would not result in
15 undue hardship on the taxpayer or require the forced sale of limited entry
16 permits; and

17 WHEREAS the Internal Revenue Service's seizure and forced sale of
18 limited entry permits, a required tool of the trade for commercial fisher-
19 men in Alaska, threatens to deprive commercial fishermen of their means of
20 earning a living and paying their taxes;

21 BE IT RESOLVED that the Alaska State Legislature recognizes the duty
22 of all citizens to pay their tax obligations, but condemns the proposed
23 forced sale of Alaska commercial fisheries limited entry permits by the
24 Internal Revenue Service and respectfully requests the Internal Revenue
25 Service to pursue alternative means to collect tax obligations of Alaska
26 commercial fishermen; and be it

27 FURTHER RESOLVED that the governor is requested to oppose the proposed
28 forced sale of Alaska commercial fisheries limited entry permits by the
29 Internal Revenue Service by all lawful means; and be it

1 FURTHER RESOLVED that the Alaska delegation in Congress is requested
2 to take appropriate and expeditious action to prevent the forced sale of
3 Alaska commercial fisheries limited entry permits and to eliminate this
4 threat to the livelihood of Alaska commercial fishermen.

5 COPIES of this resolution shall be sent to the Honorable George Bush,
6 President of the United States; the Honorable Dan Quayle, Vice-President of
7 the United States and President of the U.S. Senate; the Honorable Thomas S.
8 Foley, Speaker of the U.S. House of Representatives; the Honorable Nicholas
9 F. Brady, Secretary of the U.S. Department of the Treasury; the Honorable
10 Fred T. Goldberg, Jr., Commissioner of the Internal Revenue Service, U.S.
11 Department of the Treasury; Robert Brock, Alaska District Director,
12 Internal Revenue Service, U.S. Department of the Treasury; and to the
13 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and
14 the Honorable Don Young, U.S. Representative, members of the Alaska delega-
15 tion in Congress.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465 3474 • 465-3844 (Labor and Commerce Committee)

*Waive
5 day rule*

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Bettye Fahrenkamp
Chair - Senate Resources Committee

FROM: Senator Fred F. Zharoff *[Signature]*

DATE: March 23, 1990

RE: House Joint Resolution 93 - "Relating to the seizure and forced sale of Alaska commercial fisheries limited entry permits by the Internal Revenue Service."

I respectfully request that HJR 93 be scheduled for a hearing in the Senate Resources Committee at the earliest opportunity.

There is a great deal of urgency behind HJR 93. The resolution is aimed at the Internal Revenue Service's plans to auction six to eight limited entry permits to the highest bidders in Anchorage on March 29. ~~HJR 93~~ is the House companion version of SJR 82, which was introduced by the Senate Resources Committee on March 20.

The resolutions are almost identical. After reviewing the two resolutions I wish to ~~suggest one change in HJR 93.~~ I recommend that two additional names be added to the COPIES section: the Honorable Nicholas F. Brady, Secretary of the U.S. Department of the Treasury, and Robert Brock, Alaska District Director, Internal Revenue Service.

Thank you for your consideration of this request.

*Urgency: the IRS
auction is scheduled for Thurs.*

*Please waive the
5 day rule*

HJR 93

REPRESENTATIVE
C.E. "SWACK" SWACKHAMMER

Alaska State Legislature



House of Representatives MEMORANDUM

SOLDOTNA

312 TYEE STREET
SOLDOTNA, ALASKA 99699
(907) 262-7841

JUNEAU

BOX V
JUNEAU, ALASKA 99811
(907) 465-2689

TO: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

FROM: Representative C.E. Swackhammer *Swack*

DATE: March 23, 1990

RE: House Joint Resolution 93

House Joint Resolution 93 condemns the proposed forced sale of limited entry permits by the Internal Revenue Service and requests that the agency pursue alternative means to collect tax obligations of Alaska commercial fishermen. This issue is of a timely nature since the I.R.S. proposes to sell eight permits by March 29, 1990. The Senate Resources Committee is the resolution's only committee of referral. Therefore, I would respectfully request the five day rule be waived and a hearing on this resolution be conducted as soon as possible.

Back-up material is attached.

Thank you for your consideration of my request. If you have any questions please contact Tom Wright of my staff or me.

Attachments

CES/tw

HJR93

MEMORANDUM

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

TO: Hon. Swack Swackhammer
House of Representatives
Attn: Tom Wright

DATE: March 7, 1990

FILE NO:

TELEPHONE NO: 465-4081

FROM: Commercial Fisheries Entry
Commission
Bruce Twomley, Chairman
Rich Listowski, Commissioner
Phil Smith, Commissioner

SUBJECT: Status of IRS
seizure and forced
sale of entry
permits

Thank you for your phone call yesterday in which you inquired about the IRS and its desire to seize and sell entry permits currently in the hands of Alaska fishermen. As we discussed, the IRS is attempting to seize and force the sale of Alaska limited entry permits. A public auction of eight such permits is scheduled to occur in Anchorage on March 29.

The IRS action is contrary to State law: the Alaska Legislature has made it clear that entry permits are use privileges and not property generally subject to seizure and forced sale by creditors. AS 16.43.150

Additionally, the IRS action is unnecessarily destructive. To an Alaskan fisherman, an entry permit is a necessary tool of the trade required by State law. Entry permits were initially issued only to those fishermen most dependent upon their, respective, fisheries. The IRS has alternative means to collect tax obligations (for instance, payment plans, seizure of assets, and attachment of earnings). Forcibly depriving a fisherman of her or her entry permit creates the grave risk of destroying -- for all time -- that fisherman's livelihood.

Attached is a copy of the recent letter from the Attorney General to the IRS setting forth the State's position. (Exh. A) In compliance with State law, the Commission will not transfer entry permits merely as the result of the IRS' auction. The IRS has anticipated this response and has been informing prospective buyers that they may have to sue the State.

Also attached is our letter to those permit holders whose permits the IRS proposes for auction. (Exh. B) We warn the permit holders that they must help themselves. The Commission's action may hurt them by further driving down the price that buyers are prepared to pay at

auction (the IRS is already offering some shockingly low prices). In turn, unless they help themselves by pursuing individual remedies, if the IRS finds a way to roll over the State's opposition, the individual permit holders will have to live with the results of the sale.

The IRS has taken a curious approach to its proposed sale, as reflected in the attached newspaper article (Exh. C) The IRS suggests that winning bidders file a class action suit to pry permits away from the State. The IRS is offering bargain basement prices (for example, an Alaska Peninsula seine permit valued at more than \$200,000 is being offered by the IRS for \$26,000).

IRS' approach suggests, at least, two possibilities. First, they appear to be making an effort to build public sentiment against the State by creating this group of interested, successful bidders. Second the IRS is so tentative that it may suggest that IRS officials may not be united on how hard to push on this issue.

Generally, the IRS has been made sensitive to public opinion. The IRS is now forced to operate under the recently adopted federal Taxpayer's Bill of Rights. Additionally, a series of reports culminating in a recent publication are extremely critical of the IRS (Exh. D)

Ultimately, it appears almost inevitable that this issue will end up in court. Until that time, the Commission will remain steadfast in our effort to uphold State law.

Thanks, again, for your interest in this issue. Please let us know if we can offer additional information, and be assured that we will keep you informed as the issue unfolds.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 2, 1990

Richard A. Schult
Revenue Officer
Internal Revenue Service
P.O. Box 101500
Anchorage, AK 99510-1500

Re: Proposed forced sale of
commercial fishing limited entry
permits and notices of intent
filed by the Internal Revenue
Service -- Our file 663-90-0325

Dear Mr. Schult:

From an article and advertisements in the Anchorage Daily News, we have learned that the Internal Revenue Service ("IRS") proposes to force the sale of eight (8) Alaska commercial fishing limited entry permits. (A list of the permit numbers and the names of their holders is attached.) Apparently in support of the proposed sale, you have signed and submitted to the Alaska Commercial Fisheries Entry Commission ("CFEC") a number of "Notice of Intent to Transfer" forms with respect to each of the permits. None of those forms have been signed by the permit holders.

The State of Alaska has informed the IRS on several occasions that, in limiting entry to Alaska's fisheries, the Alaska Legislature declared that limited entry permits are use privileges subject to revocation without compensation and not property. AS 16.43.150(e). Consistent with that definition of the nature of entry permits, the Alaska Legislature placed a number of restrictions upon the holder of an entry permit and generally prohibited forced transfer of an entry permit: "Except [under limited circumstances], an entry permit may not be . . . attached, distrained, or sold on execution of judgment or under any other process or order of any court." AS 16.43.150(g).

As a consequence, state procedures allow only the holder of an entry permit to initiate a transfer of that permit. No provisions exist for a forced transfer. Accordingly, we are returning to you each of the "Notice of Intent to Transfer" forms that you have filed on behalf of the IRS.

It also has been reported that, in light of the absence of any provisions in state law for forced transfer of entry

EXH. A

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

Richard A. Schult
Revenue Officer
Internal Revenue Service

March 2, 1990
Page 2.

permits, the IRS may suggest to prospective bidders at any sale that, if successful, they should sue the state to gain possession of the permits. We presume from this that the IRS will at least inform prospective bidders that there may be a problem in obtaining possession of the permits.

Beyond that, however, we seriously question the wisdom of the IRS attempting to wash its hands of any legal questions surrounding the proposed sale and transfer any risk to prospective bidders. The depressing effect this action will have on potential bids is obvious. The social and economic costs such action will inflict on potential bidders, the permitholders, and the state are not so obvious, but nonetheless substantial.

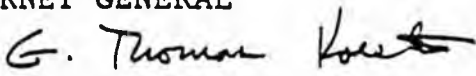
These questions become even more significant if, as we understand, many of the permitholders involved are actively seeking ways other than forced sales to pay their tax obligations. Given the legal uncertainties surrounding the proposed forced sales, sound policy would seem to dictate that all other potential alternative remedies be exhausted before embarking on such a questionable approach.

We therefore urge the IRS to reconsider its attempts to force sales of entry permits and to look to alternative means to enforce tax obligations, such as attachment of assets and earnings and negotiating payment plans. At the same time, we recognize the obligation all citizens have to support their government. Should a fisherman be persuaded to sell his or her permit to obtain funds to pay a tax obligation, the CFEC remains ready to transfer the permit at the request of the holder. Absent a request to transfer by the holder, however, our hands are tied.

We hope you will reconsider the proposed forced sales.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

Richard A. Schult
Revenue Officer
Internal Revenue Service

March 2, 1990
Page 3

GTK:dlm

Enclosure

cc: Robert W. Brock
District Director
Anchorage District Internal Revenue Service
949 East 36th Avenue
Anchorage, Alaska 99508

Commercial Fisheries Entry Commission

February 26, 1990

Permit holders and entry permit numbers with respect to which the
IRS has filed Notices of Intent to Transfer:

Malcolm J. Brown	S01E 59399E
Malcolm J. Brown	S03E 59179U
William Shellikoff	S01M 64041X01ER
Steve E. Williams	S04T 314I01KN
Chris A. Gundersen	S01M 58154X
Wilbur M. McGlashan	S01M 60579E01 HR
Andy Kalmakoff	S01L 61370VO1MR
George L. Gatter	S03T 56879M

PERMITS AS TO WHICH THE IRS HAS SERVED
NOTICES OF SEIZURE ON THE ENTRY COMMISSION

<u>HOLDER</u>	<u>PERMIT NUMBER</u>	
Olga Chukwak General Delivery Levelock, AK 99625	S04T 56856Q	Bristol Bay set gill net
Robert C. Clucas SR 2, Box 900 Clam Gulch, AK 99568	S04H 60756N	Cook Inlet set gill net
<u>George L. Gatter</u> Box 82 Naknek, AK 99635	S03T 56879M	Bristol Bay drift gill net
<u>Chris Gundersen</u> Box 76 Sand Point, AK 99661	S01M 58154X	Peninsula-Aleutians purse seine
Paul K.J. Gundersen Box 91 Sand Point, AK 99661	S03M 61677G	Peninsula-Aleutians drift gill net
Leroy E.J. Harris HC 2, Box 528 Kas .of AK 99610	S01K 61000C	Kodiak purse seine
<u>Andy Kalmakoff</u> General Delivery Chignik Lake, AK 99564	S01L 61370V	Chignik purse seine
<u>Wilbur M. McGlashan</u> Box 31 Sand Point, AK 99661	S01M 60579E	Peninsula-Aleutians purse seine
Harry E. Shipman Box 1985 Cordova, AK 99574	S03E 58715Q	Prince William Sound drift gill net
Charles T. Vanderende troll Box 71 Point Baker, AK 99927	S15B 55805E	Statewide power
Robert L. Vest Box 613 Soldotna, AK 99669	S03H 65657O	Cook Inlet drift gill net
<u>Steven E. Williams</u> Box 375 King Salmon, AK 99613	S04T 60314I	Bristol Bay set gill net

*Underlining of names indicates permits which the IRS proposes to auction on March 29, 1990.

PERMITS AS TO WHICH IRS HAS SERVED NOTICE OF IRS LIENS
UPON THE ENTRY COMMISSION

<u>Holder</u>	<u>Permit Number</u>	
Knute Anderson General Delivery False Pass, AK 99583	S03M 56622U	Peninsula-Aleutians drift gill net
Randall M. Bos Box 1125 Chickaloon, AK 99674	S03E 55391X	Prince William Sound drift gill net
Alec Constantine Box 82005 Tyonek, AK 99682	S04H 59116G	Cook Inlet set gill net
Aleck Constantine Box 49047 Port Heiden, AK 99549	S03T 57218F	Bristol Bay drift gill net
Johnny S. Constantine General Delivery Chignik Lake, AK 99564	S01L 57808I	Chignik purse seine
Robert G. Deigh Box 66 Egegik, AK 99579	S03T 58116K	Bristol Bay drift gill net
Lorraine C. Evans Box 70065 South Naknek, AK 99670	S04T 56213V	Bristol Bay set gill net
Todd W. Granger Box 1292 Cordova, AK 99574	S03E 56553I	Prince William Sound drift gill net
Peter N.J. Gronholdt Box 87 Sand Point, AK 99661	S03M 58155U	Peninsula-Aleutians drift gill net
Bernard C. Joe Box 32321 Mountain Village, AK 99632	S04Y 62666S	Lower Yukon gill net
Nick J. Katelnikoff Box 3863 Kodiak, AK 99615	S01K 60249S	Kodiak purse seine
Kenneth G.J. Kirkman 217 Heintzleman Anchorage, AK 99503	S01E 60874E	Prince William Sound purse seine

Donald P.S. Kompkoff 621 Cato Street Chenega Bay, AK 99576	S03E 60513C	Prince William Sound drift gill net
Paul J. Kompkoff Box 1732 Cordova, AK 99574	S03E 596950	Prince William Sound drift gill net
Michael A. Lopez Box 1004 Petersburg, AK 99833	S01A 57288B	Southeast purse seine
<u>John P. Lorentzen</u> Box 380 Cordova, AK 99574	S03E 61653B	Prince William Sound drift gill net
Edward A. Mack Box 95 King Cove, AK 99612	S03M 57432Z	Peninsula-Aleutians drift gill net
Charles A. Nelson Box 72 Egegik, AK 99579	S03T 59874W	Bristol Bay drift gill net
Johnny A. Nelson General Delivery Nelson Lagoon, AK 99571	S03M 57344X	Peninsula-Aleutians drift gill net
William R. Reid Box 1234 Cordova, AK 99574	L21E 65740R	Prince William Sound herring pound
Harold F. Roberts 213 E 8th Avenue #6 Anchorage, AK 99501	S03T 56571W	Bristol Bay drift gill net
<u>William G. Shellikoff</u> General Delivery False Pass, AK 99583	S01M 64041	Peninsula-Aleutians purse seine
Steven R. Smith Box 1724 Cordova, AK 99574	S03T 56724C G01E 64545R	Bristol Bay drift gill net PWS herring purse seine
Daniel R. Thistle Box 521235 Big Lake, AK 99652	S04H 597540	Cook Inlet set gill net
James P. Totemoff Box 1232 Cordova, AK 99574	S01E 59472U	Prince William Sound purse seine

*Underlining of names indicates permits which the IRS proposes to auction on March 29, 1990.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

COMMERCIAL FISHERIES ENTRY COMMISSION

P.O. BOX KB
JUNEAU, ALASKA 99811-0302
PHONE: (907) 465-4081

March 2, 1990

Re: Internal Revenue Service
Forced Sale of Your Entry Permit

Dear Permit Holder:

As we trust you are fully aware at this point, the Internal Revenue Service (IRS) proposes to force the sale of your entry permit on March 29, 1990.

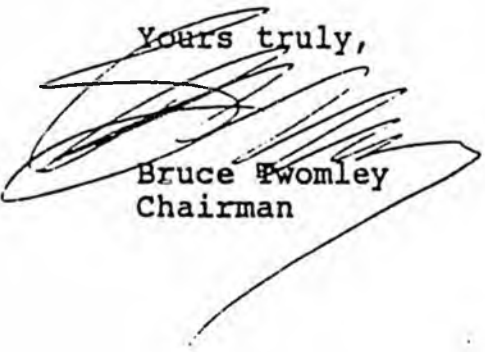
The State has been resisting this kind of action by the IRS since at least 1981 and will continue to do so. Enclosed is a copy of a letter the Attorney General has sent to the IRS concerning your entry permit.

The fact that the State is resisting the IRS may not help you: in fact it may hurt you unless you take action on your own behalf. The State's opposition will likely discourage higher bids at the IRS auction. If the IRS finds a way to roll over the State's opposition, you will have to live with the results of the sale, unless you have protected yourself.

Therefore, if you have not already done so, we urge you to get qualified professional help and to take action on your own behalf. The situation varies from case to case, and there may be helpful remedies that you could pursue on your own. Therefore, we urge you to seek the help of a lawyer, accountant, or other advocate qualified to address IRS issues.

You, or anyone on your behalf, is welcome to call me to discuss these matters. Please act quickly.

Yours truly,



Bruce Twomley
Chairman

BT:dan
Enclosure

STEVE CLWPER

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

December 24, 1986

The Honorable Lawrence B. Gibbs
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Dear Commissioner Gibbs:

Re: IRS Seizure and Forced Sale of Alaska Limited
Entry Permits

I am writing to request your assistance in resolving a longstanding problem facing Alaska fishermen and the state. The Internal Revenue Service (IRS) is attempting to seize and force the sale of Alaska limited entry permits to satisfy alleged tax obligations of Alaska fishermen. From the specific example below, involving an Alaska Native set net fisherman from Yakutat, you can see that the IRS is not being very selective in employing this draconian measure.

You may recall that the Alaska Legislature, under Alaska Statute 16.43.150(g), sought to protect from creditors and court orders limited entry permits as the necessary tool of trade of a fisherman. Under Alaska Statute 16.43.150(e), the Alaska Legislature also declared that entry permits were no more than a use privilege which the Legislature could modify or revoke at will; that is, entry permits are something less than property subject to IRS enforcement measures. State law governs the underlying legal question as to whether an Alaska limited entry permit is property. Aquilino v. United States, 363 US 509, 513, 4 L. Ed. 2d 1365, 80 S. Ct. 1277 (1960). Additionally, Article I, Section 1, of our Alaska Constitution guarantees to individuals a right to the rewards of their own industry.

Legal arguments aside, IRS seizure and sale of Alaska limited entry permits can work a terrible hardship on Alaska

fishermen and can result in the transfer out of state of Alaska limited entry permits. For example, the IRS is presently attempting to force the sale of a Yakutat set gill net entry permit belonging to an Alaska Native named George Ramos. Mr. Ramos' entry permit is worth about \$27,625. on the open market. Mr. Ramos has made regular payments toward his obligation, and the IRS concedes that his tax liability is now reduced to \$9,500. Mr. Ramos, with the help of a tax preparer, filed an amended return indicating the amount he owes the IRS is now \$4,000. The IRS has refused to evaluate the amended return and is insisting upon payment of \$9,500 before it will determine the exact amount owing. Mr. Ramos cannot afford to pay the \$9,500. The IRS is going forward with the forced sale of Mr. Ramos' entry permit and is prepared to sell the permit for as little as \$9,561.70. The forced sale of Mr. Ramos' entry permit will destroy his ability to make a modest living. Additionally, the forced sale raises the risk that the permit will transfer to someone outside the state. The IRS has already been in touch with at least one permit broker in connection with this sale.

From a purely federal standpoint, it would seem clear that the destruction of a fisherman's means to earn a living would undermine a continuing source of revenue to the United States.

This issue affects a number of Alaska fishermen. The IRS has filed a series of federal tax liens with the Alaska Commercial Fisheries Entry Commission.

Necessarily, the state is preparing to litigate the issues, but I would prefer not to wager the well-being of Alaska fishermen upon a favorable outcome in court. It occurs to me that, in the short term, with your help, the IRS might agree to guidelines whereby Alaska limited entry permits are an enforcement target of last resort only after all other reasonable measures have been exhausted (for example, agreed upon payment schedules). For the longer term, federal legislation could exempt Alaska limited entry permits as a necessary tool of trade from federal tax enforcement.

You are undoubtedly aware that the United States Department of Health and Welfare and the Social Security Administration have taken a more reasonable approach to Alaska limited entry permits. Pursuant to 20 CFR Sec. 416.1222, Alaska limited entry permits are largely exempt from consideration as a cash resource. 50 Fed. Reg. 42,684 (October 22, 1985).

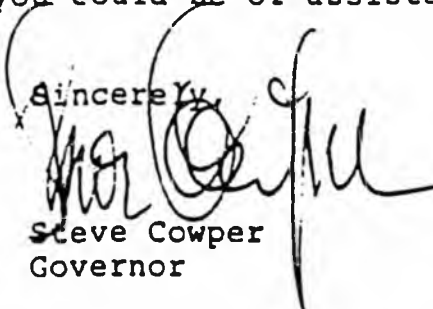
Hon. Lawrence B. Gibbs

-3-

December 24, 1986

I would be very grateful if you could be of assistance in this matter.

Sincerely,



Steve Cowper
Governor

cc: John Katz, Special Counsel
State/Federal Relations
Attention: Eric Laschever
Policy and Program Specialist
Office of the Governor

Joseph W. Geldhof
Assistant Attorney General
Department of Law
M/S 0300

Penetrating book gives frightening view of IRS' inner workings

A LAW UNTO ITSELF: Power, Politics and the IRS, by David Burnham; Random House (420 pages, \$22.50)

By JACK A. SEAMONDS
Knight-Ridder Newspapers

Stunning — there is no other way to describe investigative reporter David Burnham's penetrating and often intimidating look inside one of America's most feared and most pervasive agencies — the Internal Revenue Service.

With 123,000 employees — five times the size of the Federal Bureau of Investigation and twice the size of the Central Intelligence Agency — the IRS also has at its disposal the investigative powers of huge computers and laws in the U.S. tax code that make it a small, stand-alone government.

Burnham — for 15 years an award-winning reporter for the New York Times — probes areas of the IRS where no reporter has so thoroughly dug before.

For example:

Virtually every U.S. president from Herbert Hoover to Richard Nixon has used the investigative powers for political goals.

Senior IRS officials, using their own or an administration's political agenda, have harassed

With 123,000 employees the IRS also has at its disposal the investigative powers of huge computers and laws in the U.S. tax code that make it a small, stand-alone government. The IRS has an arrogance that is backed up with legal authority.

various groups lobbying on behalf of homosexual rights, the environment and civil rights. When a New York lawyer was hired in 1975 to form a tax-exempt educational foundation on behalf of homosexuals, called the Fund For Human Dignity, the IRS set down four conditions that had to be met for the designation. Among them: that the Fund for Human Dignity include in any discussion panel an "avowed enemy" of homosexuality and avoidance of "social interchange" at group meetings. The tax-exempt status wasn't granted until the Carter administration ushered in a new IRS director.

Perhaps most chilling because it dealt with millions of middle-class Americans, IRS mismanagement and poor computer systems led to improper, widespread and incorrect enforcement actions. Some of the examples cited in Burnham's book are merely amusing; others are

tragic.

In 1987, 10-year-old Shannon Burns of San Jose, Calif., had accumulated \$804 in her savings account when the IRS slapped a lien on the money. Because Shannon was a minor, her father's name was also on the account — and her father owed the IRS \$1,000. The agency was determined to get the money, even from a 10-year-old child. An IRS spokesperson said that the IRS collection division took the action because "They're pretty hard-nosed. That's their job."

In another case, the IRS literally stole money, falsely deposited it and, when the error came to light, refused to return the money. A retired postal worker, Donald Thurow, sent a \$1,300 mortgage payment in July 1986 to his bank. Somehow, eight days later, the check arrived at the IRS Fresno, Calif., service center, where Internal Revenue Service was stamped over the name of Thurow's bank and the check

was deposited in the U.S. Treasury. Thurow didn't learn of the error until his bank called looking for the mortgage payment.

Because Thurow didn't owe the IRS money, he and his lawyer filed for a refund of the \$1,300. The IRS ignored Thurow's pleas for six months. So Thurow filed suit against the IRS for the \$1,300, attorney fees, interest — and \$50,000 in punitive damages. The IRS was so incensed at the demand for punitive damages that the agency asked a federal judge to force Thurow's lawyer to pay the government's legal fees in the suit. Thurow ultimately got his money back.

An isolated case? Unlikely. Thurow's lawyer, Montie J. Day, says that after the story was published in San Francisco newspapers, he was approached by others who had checks stolen and deposited by the IRS.

The IRS' 1988 annual report says the agency processed 194 million tax returns during the

year. That's a huge undertaking by any bureaucracy, and mistakes are inevitable.

But the IRS has an arrogance that is backed up with legal authority, Burnham contends. If your car insurance company makes mistakes, you can complain, write the company, tell your agent to fix the problem or go to another insurance company. But there is only one IRS.

That arrogance and the enormous power of the IRS — the presumption that the IRS is right and it is a taxpayer's burden to prove innocence, for instance — is perhaps the overriding theme of Burnham's book.

Virtually all income taxes in America paid by individuals are paid in advance by payroll deduction. To that extent, the voluntary compliance by Americans in paying taxes is largely involuntary. Burnham suggests that mismanagement, corruption and arrogance in the IRS in dealing with taxpayers may lead the average citizen to rethink, say, reporting all income, paying taxes on dividends and correctly listing all dependents.

The underlying danger, Burnham concludes, is that an IRS which loses the faith of the American people is on a collision course with disaster.

TAXPAYERS' NIGHTMARE

EXH. D



PERMITS: IRS, state conflict

Continued from Page C-1

Those whose permits have been seized still have more than a month to pay up their back taxes and regain their fishing rights. At least one fisherman intends to do just that.

"I owe \$130,000 in back taxes," said Chris Gundersen, a Sand Point fisherman. "It's kind of a bum deal. I'm not going to let them sell it (the permit) at auction. I will pay it off."

Other fishermen with seized permits could not be reached for comment Thursday.

Limited entry permits were created in 1983 by a state legislature desperate to find a way to curb the number of fishery participants at a time when salmon stocks were near record lows. The legislation created complex criteria (largely based on past experience) to determine who could participate in each of Alaska's regional salmon fisheries.

Fishermen who received those permits were free to fish them for as long as they chose, or sell or give the permits away.

But legislators, according to a state House Research Agency memorandum, didn't want an asset that could be acquired by speculators or canneries. So they defined the permits as a privilege that could "not be pledged, leased or encumbered in any way," although they later amended the act to allow two state lending agencies to use the permits as collateral.

A 1979 state attorney general's opinion declared the permits were not a property right. Therefore, if the legislature chose to revoke or otherwise tamper with the limited entry system, it would not have to compensate fishermen for any losses in permit values.

In the '80s, values of more than 12,000 salmon and herring permits soared as stocks rebounded to record levels and markets improved. The permits currently have a combined market value of more than \$1 billion, according to a House Research Agency study.

For years, the Internal Revenue Service has sought to seize the permits of fishermen who owe back taxes, according to Listowski. Several times in the past they seized permits, but fishermen always paid off the back taxes before the issue ended up in the courts.

Commission officials have negotiated with IRS officials in an effort to forestall new seizures. But the IRS now appears determined to force the issue. Listowski said.

BUSINESS

Anchorage Daily News

FRIDAY

SECTION C Feb. 23, 1990

Fishing permits up for sale

IRS stirs debate with state over auction of seized papers

By HAL BERNTON
Daily News reporter

The Internal Revenue Service is trying to sell eight limited-entry fishing permits worth more than \$14 million at a first-of-a-kind auction. The March 29 sale appears certain to trigger a major clash with the state, which views these fishing rights as a privilege — not property — and exempt from federal seizure.

The state Commercial Fisheries Limited Entry Commission controls the permits that regu-

late access to Alaska salmon and herring harvests. And commission officials say they will not approve any transfers to the auction's winning bidders.

"There is no value without the transfer papers," said Rich Listowski, a commercial fisheries commissioner.

IRS officials insist that a permit is property — subject to seizure for unpaid taxes just like real estate, automobiles and jewelry.

"Our position is that it's a

valuable asset that we are entitled to seize, and would expect the state to transfer the permits," said Marilyn Steen, an IRS spokeswoman.

The IRS is suggesting to prospective winning bidders that they could file a class action suit to pry the permits away from the state, she said.

State officials say they are prepared to defend their position in court.

In the meantime, to ensure

there will be plenty of bidders at the March auction, the IRS is advertising the permit sale nationwide, Steen said. Due to the conflict with the state, the IRS expects the permits to sell at well below current market values.

The permits up for sale offer access to some of Alaska's most lucrative salmon fisheries — Bristol Bay, False Pass Chignik and Prince William Sound.

Please see Page C-4 PERMITS

EXH. C