



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

April 24, 2003

CC:PA:CBS:Br3

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GL-105425-03

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MEMORANDUM FOR: MICHAEL BENTLEY, ASSOCIATE AREA COUNSEL,
CC:SB:6:HOU:2

FROM: Joseph W. Clark
Chief, Branch 3 (Collection, Bankruptcy & Summonses)
CC:PA:CBS:Br3

SUBJECT: _____
Your ref: GL-105425-03

This responds to your request for advice concerning the Service's summons authority and federal restrictions on sales records of persons engaged in the fishing industry. This document is not to be cited as precedent.

LEGEND: None required.

The Service is examining the above-named taxpayer, a fisherman who operates in the _____ waters and sells his catches to purchasers located in that state. Every time the taxpayer conducts a sale, the purchaser must file a trip ticket showing the dollar amount and tonnage. This information is forwarded to the _____. The Service wishes to summon this information from the state agency, but the agency has indicated that it believes it would be prevented from complying with the summons by state law and a federal administrative order. You have correctly noted that, consistent with the supremacy clause of the federal Constitution, the Service's summons authority overcomes any state law confidentiality right or privilege. See Couch v. United States, 409 U.S. 322, 335 (1973). However, the federal administrative order that applies here, i.e., Administrative Order 216-100, issued by the National Oceanic and Atmospheric Administration (NOAA)/ National Marine Fisheries Service (NMFS), requires separate analysis.

We have consulted with the Deputy Assistant General Counsel for Sustainable Fisheries (NOAA) and have been advised that Administrative Order 216-100 was published under 16 U.S.C. 1801, et seq. (the Magnuson Act), which contains a

separate confidentiality provision in section 1881(b) and (c). Administrative Order 216-100 was published to administer those confidentiality provisions. In pertinent part, section 4 of that order provides that confidential information can be disclosed pursuant to a subpoena issued by an agency of competent jurisdiction but such disclosure must be approved by the General Counsel, NOAA. (We interpret the reference to an administrative subpoena to be synonymous with an administrative summons.)

The Service generally defers to federal confidentiality requirements, and it should do so here. If the Service ultimately decides to summon data protected by the Magnuson Act and Administrative Order 216-100, it should first send its request for information to the Office of the General Counsel (NOAA) for approval. Prior to doing that, however, we were advised that the Service should first contact _____ to ascertain whether the information it seeks is in fact reported to the NOAA / NMFS pursuant to the federal statutes. We were informed that the precise type of information reported to NOAA / NMFS differs from state to state, and the Service may discover that the information it seeks is not in the possession of those agencies.

If you have questions or comments, please contact the Chief, Branch 3 at (202) 622-3630.