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Senator Kevin Meyer
Alaska State Senate
State Capitol Room 518
Juneau AK 99801

Dear Senator Meyer,

I am writing to express my strong opposition to SB79. The bill contains provisions that will harm the sport fishing industry and the economic benefits that the industry brings to Alaska. The bill adds an expensive and unnecessary layer of regulations to an already heavily regulated industry. The bill imposes broad reporting requirements upon the proposed Guide Services Board that the board lacks the background or funding to accomplish. In direct contradiction to its stated purposes, the bill has the potential to compromise safety, and through the imposition of limited entry, cause rather than remedy economic distress among guided businesses. I support the status quo requirements that charter operators and guides be licensed, carry liability insurance and submit timely and accurate harvest reports.

1. Purpose

Section 1 of the draft legislation states that the purpose of this act is to promote the health, safety, and welfare of the guided fish angler and the stability of the sport fish guide industry in the state by regulating the activities of providers of sport fishing guide, outfitter, and transportation services. While these are admirable goals, I am obligated to point out that to my knowledge there has not been an accidental fatality in the Alaskan guided sport fish industry since 1998, when a deckhand was fatally injured during a docking operation. Further, aside from the impact of declining halibut biomass and the concurrent imposition of limited entry upon the guided recreational halibut industry, the industry is healthy and relatively stable. Most importantly, nothing in the proposed legislation truly supports the stated purposes.

In late 2007, ADF&G formed a "Statewide Limited Entry Task Force" committee and tasked it with exploring the imposition of limited entry on guided sport fisheries statewide. Rather than take the first step in the problem solving process, the committee proceeded to cut and paste the Big Game Guide Services legislation, for the most part substituting "Sport Fish" for the term "Big Game". ***The critical step that this committee failed to take was identification of the problem.*** ADF&G conducted outreach across the state on its proposal, and with over 95% of respondents in opposition to the idea, they wisely dropped the proposal. Aside from a more politically correct name, very little has changed in terms of content since the Statewide Limited Entry Task Force proposed these changes. The true purpose of SB79 is most likely the imposition of limited entry upon sport fishing guides, outfitters and transporters.

2. Board Duties: Written Exams

One of the duties assigned to the proposed guide services board is preparation and grading of a written qualification examination for a sport fishing guide license. This brings up a number of questions:

- A. Are existing guides required to take this exam upon implementation of this program?
- B. Are exam questions multiple choice or essay?
- C. Is grading pass/fail? If so, what is a passing score?
- D. Is grading on the curve? If so, a certain percentage of applicants will fail by definition.

An additional written certification exam has been added for each limited entry area. In addition to the above questions, how would the board create such an examination if no board member is familiar with the area?

It is important that the answers to these questions are answered now, since depending on the answers, the availability of licensed guides and outfitters could be excessively constrained upon implementation of such a program. In fact, with difficult enough exams, limited entry could effectively be imposed upon the industry.

3. Board duties: Sanctions

The bill authorizes the Board to impose sanctions on licensees. I suggest that the Courts already have the authority to do this. Giving the Board the power to sanction licensees is an unnecessary duplication of powers, and as recent history in big game hunting suggests, such powers will not prevent laws from being broken.

4. Board duties: Reporting to the Governor on Sport Fishery economics.

The bill requires the board to report to the governor on the effect of sport fishing on the state's economy.

- The board will be mostly composed of sport fishing guides, not qualified economists.
- Sport fishing guides have little knowledge of the economics of the unguided sport fishery.
- Legitimate economic studies cost money. How much did the last state economic study on the value of recreational fisheries cost? The bill makes no mention of the funding source for a comprehensive annual study.

5. Licensing and Certification: Master Guide

The proposed legislation contains provisions allowing a person who has guided for 12 of the past 15 years to advertise as a "Master Guide". This provision is absurd. It discriminates against young people, since it requires a person be at least 30 years old, as there are Coast Guard minimum age requirements for

motorized operations. Further, having been a guide for 12 of 15 years does not necessarily make a person a good guide. In fact, a person satisfying these requirements might well have served time in jail for 3 of those 15 years.

6. Licensing and Certification: Sport fishing assistant guide

Other than the age requirement being lowered from 18 to 16 years of age, it appears the requirements for Guide and Assistant guide are the same. Coast Guard license requirements are for age 18 and higher, so a 16 year old assistant guide on the same boat is no more than a deckhand and an assistant guide on another motorized boat will be required to be Coast Guard licensed. *Why retain this class of guide at all, other than to artificially limit the number of qualified guides?*

7. Licensing and Certification: Sport fishing transporter

The bill adds transporter, requiring many lodge and water and air taxi operators to get yet another license. What good is this license requirement, other than require an already regulated vessel or aircraft operator to pay another fee? The bill proposes to regulate air commerce when aircraft are used for transporting fishers and their catch. What does the FAA have to say about this? Is this legislation really meant to apply to each of the hundreds of part 135 pilots who routinely transport fishers and their gear to and from Alaskan fishing destinations?

8. Kenai River exception

The bill contains provisions for waiving requirements for guides on the Kenai River if the sport fishing guide-operator license holder employing the licensed guide has lost the services of a licensed guide because of unforeseen circumstances; and is unable to hire as a replacement an available licensed guide who has satisfied all the requirements of this paragraph, including those required by regulation. The Kenai River is crowded and dangerous. ***What makes the Kenai River so special as to be able to have requirements waived in the middle of the season, while such a provision is not offered to all guides in all waters?***

9. Cost of implementation

Who is going to pay for this program? Implementation of the board, travel expenses for board members, creation and administration of tests, and most importantly, enforcement, all cost money. Before passing legislation creating the Guide Services Board, it might be a good idea to calculate what it is going to cost and who is going to pay these costs.

10. Barriers to Entry and Exit from business

By adding unknown costs and new requirements to the various licensee titles, the bill will make continued business less profitable than it already is while hindering entry and exit from the business. The proposed legislation adds unknown expenses to a very high overhead business. Gas prices are close to all time highs, and diesel is surpassing highs with the implementation of ultra-low sulfur requirements. Added expenses must be passed on to the customer and at a certain price point the customer will balk and go elsewhere.

SB79 makes no mention of license transfers under limited entry. If a limited entry license cannot be transferred with a business sale, there is little likelihood of finding a buyer.

11. Jurisdiction in federal waters

How would this legislation apply in federal waters where sport fishing occurs?

12. Limited Entry

Section 08.57.030(b)(3) of the bill allows the board to establish as necessary for resource conservation purposes and to promote economic stability within the sport fishing guide industry, guide use areas, limit the number of licensees who may operate in a guide use area, and establish a guide concession program to regulate the maximum number of licensees in sport fish guide use areas. ***In other words, the board can establish limited entry in a specific area, has the authority to eliminate fishers with a long history in that area, and further, can charge the fishers that remain for the right to continue operations.***

It should be obvious that economic stability is not promoted for those who are booted out of an area, nor is it promoted by charging an unknown concession fee to those who remain. Second, certainly with respect to Federal fisheries, the proposed guide board would not have the final say on whether limited entry goes into effect or not. Third, rarely does a limited entry program conserve resources; rather it facilitates reallocation from one user group to another. Anglers who previously fished with disenfranchised guides are either forced to fish with the favored few, or more often are forced to access the resource privately if at all. ***Experience has shown that conservation is best served by carefully monitoring harvest, and closing the fishery if harvest goals are exceeded.***

If limited entry is to be imposed on guided recreational fisheries, there must either be demonstrable economic distress among fishermen or conservation issues that the imposition of limited entry is designed to remedy. The common use clause of the Alaska Constitution states that “Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.” Article 8, Section 15 builds on the common use clause: “No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.” Since neither resource conservation nor the prevention of economic distress are likely outcomes resulting from a decision to limit entry, it will be reasonable to question any such actions by the board.

From a practical standpoint, both freshwater and saltwater guides cover miles of fishing grounds, based on wind, waves and where the fish are on a given day. On some days, a typical trip out of Homer may range 60 to 70 miles out, while on other days, weather may force the fleet to remain within Kachemak Bay. Restricting saltwater guides to certain boundaries will limit their ability to satisfy customer requirements and further limit opportunities to fish on most available days. Finally, the practicality of establishing and enforcing a multitude of arbitrary boundaries on ocean waters must be considered.

13. Safety

As previously noted, the USCG-licensed captains who command every motorized vessel in Alaska's guided fishing fleet have by far the best safety record of all public boaters in Alaska's waters. It is not a trivial matter to earn a Coast Guard license, requiring an 80 hour course, several hundred days on the water, a non-trivial written test, background checks, and mandatory enrollment in a drug testing program, among other things. A bill that has the potential to further limit the number of available licensed fishing guides in Alaska, either by imposition of stringent test standards or by approval of limited entry, will have the effect of limiting the public's safest form of access to their fishery resources. If the public is denied access to the resource via licensed guides, more people will be tempted to access the resource via private boats. Should this leakage from guided to non-guided access occur, it will come with a statistically measurable decrease in safety, in direct contradiction with the purpose of the bill. I urge the Senators to very carefully consider this possibility.

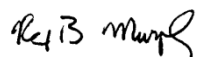
14. Conclusions

This is at least the third attempt at passing legislation to create a guide services board. ADF&G explored this issue in 2007 and 2008 and dropped it when over 95% of those surveyed were in opposition. Last year, the bill died in committee, again no doubt because the majority of concerned constituents opposed the legislation. A recent publication contained comments suggesting the proposed legislation provided for increased representation for the charter industry in fisheries management issues. I suggest that this legislation does just the opposite, by placing a select group of political appointees in a position to make decisions that the people of Alaska should be making.

After no fewer than 3 attempts to create a Sport Fish Guide Services Board, I implore the Senators to consider why such a board is needed. To date, neither the Statewide Limited Entry Task Force nor the sponsors of this legislation have made a sincere effort to identify the problem that the proposed legislation supposedly resolves. ***In the absence of a defensible problem statement, the proposed legislation is a pointless waste of time and money.***

In closing, I suggest that SB79 be tabled in favor of continuation of the current requirements for guided fishing business owners and guides.

Respectfully,



Rex Murphy