

Guide Concession Program FAQ

January 2013

1. **Question:** What is the Guide Concession Program (GCP)?

Answer: The GCP will select qualified individuals to conduct big game commercial guiding on state land. The program's selection process would involve qualified individuals submitting an application with supporting documentation to the Division of Mining, Land and Water (DMLW), which would then be reviewed and scored by a panel of agency personnel. Concession permits would be awarded and managed by DMLW.

2. **Question:** Why do we need such a program?

Answer: Currently there are no limits on the number of guides conducting commercial big game guiding on state land. The Board of Game (BOG), the Big Game Commercial Services Board (BGCSB) and Representatives from the Big Game Guide Industry have identified a variety of issues and have requested DMLW to analyze and develop a program that would address problems occurring in the field including: lack of wildlife conservation, loss of quality of experience, conflicts between user groups, a lack of land stewardship and inadequate levels of enforcement.

3. **Question:** What legal authority does Department of Natural Resources (DNR) have to develop and manage a program like this?

Answer: The GCP will be authorized pursuant to Alaska Statutes (AS) 38.05.020 – Authority and duties of the commissioner, AS 38.05.035 – Powers and duties of the director, and AS 38.05.850, Permits.

Specifically the general grant in AS 38.05.035(4) gives the director of DNR the power to, “prescribe application procedures and practices for the sale, lease, or other disposition of available land, resources, property, or interest in them;” and AS 38.05.035(6) states that the director may, “under the conditions and limitations imposed by law and the commissioner, issue deeds, leases, or other conveyances disposing of available land, resources, property, or any interests in them.”

Furthermore AS 38.05.035(13)(b)(10)(e) states that: “Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property, or interests in them. In approving a contract under this subsection, the director need only prepare a single written finding. In addition to the conditions and limitations imposed by law, the director may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state.”

4. **Question:** What is a concession?

Answer: A concession is the number of permits available within a concession area. A concession area is a geographic area within the state of Alaska with boundaries defined by DNR. A concession permit is granted under AS 38.05.850 that authorizes non-

exclusive access to state land within a guide concession area and permits commercial big game guiding.

5. **Question:** How many and what types of concessions will be offered?

Answer: There are two types of concessions proposed, "Full Concession," and "Limited Concession". Currently the proposed number of state concessions is 208 Full Concession offerings and 90 Limited Concession offerings. There are different rules and restrictions for each type, please see page 9 of the GCP Management Framework Document for further information on full and limited concessions.

6. **Question:** Will an assistant guide be able to apply and obtain a concession permit?

Answer: No, only registered and master guides will be able to apply for and receive a concession permit.

7. **Question:** Will hunting guides who are not awarded concession permits be allowed to continue operating as hunting guides on general state land under either: a lease, a land use permit, a commercial recreation permit, a commercial recreation day use registration, or any other DNR/DMLW authorization?

Answer: No. As proposed, only concession award winners or their employees will be able to operate as hunting guides on general state land.

8. **Question:** How many guide concession permits will I be able to apply for?

Answer: At this time an applicant will be able to apply for three concession permits and be awarded a maximum of three. As proposed, each applicant can be awarded up to three concession permits, but only one per Guide Concession Area (GCA). The combination of those three concession permits could be either: three full or three limited, two full and one limited, or one full and two limited. If an applicant applies for and is awarded two concession permits within one GCA, that applicant will have to select one of the permits in lieu of the others. The non-selected permit will then go to the next highest scoring applicant.

9. **Question:** What are the categories in the scoring criteria?

Answer: There are four categories in the scoring criteria with each having multiple sub-categories. The four main categories are:

- 1) Demonstrated Experience as a Big Game Guide and Guide Business Owner
- 2) Operating Strategies Used to Protect and Conserve the Natural Resources of the Concession Area
- 3) Operations Plan for a Successful Business While Providing Quality Service to Clients
- 4) Violations/Citations/Convictions/Default History

The answers will be given a point value and the panel assembled to review the applications will review and score each answer. The panel will be responsible for choosing the most qualified applicants based on the scores.

10. **Question:** Does size of development have a positive or negative effect on scoring?
Answer: We are working toward resource conservation and how an applicant addresses that depends on their operating goals and needs.
11. **Question:** Will I gain extra points because I have an established camp under a commercial recreation permit, land use permit or lease with the state?
Answer: No.
12. **Question:** Will the questions be required to be answered in essay style, true or false, or multiple choice?
Answer: Most questions will require a written explanation and supporting documentation for each answer will be required.
13. **Question:** Will there be a bidding process or a set price for each concession?
Answer: All fees amounts mentioned below are not final and are presented for the purposes of the GCP Management Framework Document. The goals of the GCP fee structure are to cover the cost of the GCP. The department will be requesting that all fees will be solely program receipted to the GCP and not to the state's general fund. All of the final fee amounts will be established in regulation. The proposed fees for the GCP are as follows:
- **Application Fee:** Every application must be accompanied by a proposed \$250 application fee. This fee is to cover the administrative costs for handling and preparing applications for the evaluation panel(s).
 - **Annual Fee:** All concession holders will be required to pay an annual fee for the duration of the concession permit. This fee will be based upon the actual program cost of running the GCP, including: staff salaries, administrative costs, calculated loss of revenue from decreased permit fees, inflation proofing for the program and accounting for concession vacancies. Currently, the annual program cost is estimated at \$1,168,000.00. The annual fees for full and limited concessions are different due to the level of administrative costs for each permit type. The proposed annual fee for full concessions (208 offerings) is \$2000.00 and is \$1000.00 for a limited concession (90 offerings) based on the preferred scoring option.
 - **Client Fee:** There is a proposed per client fee assessed annually. These fees would apply to non-resident clients. The client fee would be paid by the contracting guide of that client to the state. The proposed client fee is \$500 per client for those species that require a guide for non-residents (brown bear, Dall sheep, mountain goat) and \$250 per client for all other species. This fee is per client/per contracted hunt only, no matter the number of animals pursued by that client within that contracted hunt. For example, if a client is pursuing a brown bear *and* a Dall sheep, the client fee is \$500 for that contracted hunt. If a client is pursuing a brown bear *and* a moose the

client fee is also \$500 for that contracted hunt. If a client is pursuing a moose *and* a caribou the client fee is \$250 for that contracted hunt.

- **Liability Insurance:** Per 11 AAC 96.065, concession holders shall secure, and maintain in force, insurance during the term of the authorization.
 - **Bonding:** After consideration of the potential risk to the state, per 11 AAC 96.060(a), the department may require bonding for GCP concessions. Bonds for any other authorizations such as land use permits or leases will still be necessary.
14. **Question:** Who will be on the Evaluation Panel and how will the applications be scored?
Answer: The evaluation panel will consist of agency personnel and the panel members will remain anonymous. The full and limited concession applicants will be scored and considered separately. There may be more than one panel, representing different regions of an agency's jurisdiction. The panel will select the highest scoring applicants by adding Forms A-C of the scoring criteria and subtracting points from Form D (see page 12 of the GCP Management Framework Document).
15. **Question:** What if there is a tie in the process?
Answer: Ties in scores for the same concession area and type will be settled in the following manner:
- If a GCA has the same number of concessions available as there are applicants tied with the highest score, these applicants will be offered a concession.
 - If a tie occurs between applicants and there are not enough concessions to make an offer to all applicants with the same score, the tie will be broken by the scores on pre-determined questions from the scoring criteria. DMLW will determine which questions are the tie-breakers prior to the panel(s) reviewing of any applications. The applicant who had the highest combined score on the pre-determined questions will be offered a concession.
 - If a tie has occurred on the combined scores of the pre-determined questions, then the highest and lowest score from those questions will be dropped and the median score used to determine the winner.
 - If a tie remains after the steps above, a random lottery draw of the tied applicants will be used to decide the winner.
16. **Question:** If I am selected for a concession permit will I be allowed overnight camping in the area on state land?
Answer: Yes, upon award of the concession permit you will be authorized to camp within the concession area for up to 14 days. Camps or improvements staying in one location in excess of 14 days will be required to secure additional authorization from the appropriate

land owner. The process for obtaining an authorization may vary between state or federal land owners.

17. **Question:** How many years will I be able to keep the concession?

Answer: As proposed, the initial concession offerings will be staggered. All of the concessions in the state will be offered in the first year but one third of those will be authorized for four years, one third for seven years, and one third for 10 years. At the end of the four and seven year terms, the next concessions offered for those same areas will be authorized for 10 years. This means that once the first concession period is complete, all of the concessions statewide will be authorized for 10 years. There will be a review and renewal at five years required on the seven and 10 year concessions in their first term and then on every concession award thereafter. The review will consist of a records check for compliance with the concession permit requirements and regulations and a check for any changes in violation history. If the concession holder is in good standing and wants to continue the contract, a renewal for the second five years will be issued non-competitively.

18. **Question:** Why is there a five year review and renewal clause?

Answer: The review will consist of a records check for compliance with the concession permit requirements, regulations and check for any changes in violation history. It also gives the concession holder the opportunity to cancel the remaining term for any reason. If the concession holder is in good standing and wants to continue the permit, a renewal for the second five years will be issued non-competitively.

19. **Question:** What process will I have to go through once the awarded concession expires?

Answer: When the term is over you will need to re-apply through the same competitive application and selection process. No preference will be gained specifically for being the previous concession holder.

20. **Question:** Will the concession areas be transferable once issued to the winner?

Answer: No, concessions areas will not be transferable.

21. **Question:** How will new guides and smaller, yet already established guides be able to reasonably compete and be awarded concessions in the new GCP?

Answer: The GCP seeks to ensure that the opportunity exists for all types of operators to be able to successfully compete for a concession and that we have a fair and competitive process for all sizes of operations. Another concern stated in the *Owsichuk* decision is that the original EGAs did not allow new entrants into the guiding industry. "These grants are based primarily on use, occupancy and investment, favoring established guides at the expense of new entrants into the market, such as *Owsichuk*. To grant such a special privilege based primarily on seniority runs counter to the notion of, 'common use.'" In order to address these three concerns, the department has decided to create two types of concessions within many of the GCAs. The types are: full concession and limited concession (for a more information please see page 9 of the GCP Management Framework Document).

22. **Question:** What will happen to my leased site if I do not win a concession area?
Answer: If the lease holder is not selected to operate in the area, DMLW will provide an opportunity to modify the operations plan of the lease to allow for use other than big game guiding.
23. **Question:** How long will I have to remove my property from state land if I am not awarded a concession?
Answer: Award notifications and results would be available by early fall, 2014. If you were not a recipient of a concession you would have until December 31, 2014 to remove all personal property from state land. Each location will be reviewed independently to allow sufficient time to remove personal property.
24. **Question:** How will the state deal with predator control areas?
Answer: DMLW will be working closely with the Department of Fish and Game (ADF&G) and the BOG to address these issues. We are working together to develop the framework to not interfere with the ADF&G predator control management.
25. **Question:** How will this affect the transporters or other commercial operators?
Answer: The GCP does not address transporters and air taxis though there have been numerous public comments about issues and conflicts related to these operations. DNR understands and recognizes the role of transporters and air taxis in the broader system of hunting in Alaska. DNR is committed to further research and evaluation of the issues and need for potential management strategies surrounding this industry.
26. **Question:** If I am guiding on private land, but need to use public land for access, will I need a permit for access on the public land?
Answer: Access types and methods that fall under Generally Allowed Uses of State Land are not affected by this program. If your access method is not generally allowed, a permit may be required. If you do not hold a concession on state land, you will not be allowed to conduct big game guiding.
27. **Question:** Will the GCP be implemented on private or Native land?
Answer: No. The current management practices on private and Native lands will remain unaffected by the GCP. As proposed, the program will only be implemented on general state and DPOR lands. BLM is a potential partner in the GCP. If BLM decides to become a partner, then the GCP may be implemented on their lands as well.
28. **Question:** What is the timeline for the concessions to be implemented?
Answer: The department is looking to make applications available to the public January 1, 2014. The deadline for receiving applications would be April 1, 2014. Award notifications and results would be available early fall, 2014. GCAs would be effective by January 1, 2015. The time frame is preliminary and may change due to staffing and funding for the program.
29. **Question:** Will the public have another opportunity to give input on the terms of the concessions, the map boundaries and the number of guides per concession area?

Answer: In February of 2012, consistent with AS 38.05.945, the proposed decision was advertised and distributed for agency and public comment for a 68 day comment period beginning February 15th and ending April 23rd. Notice of the proposed decision was published on the DNR website, in the Anchorage Daily News, The Juneau Empire, and the Fairbanks Daily News-Miner on February 19, 2012. Three public meetings and four web based meetings were held during the comment period.

An additional comment period on the Management Framework Document will begin on January 23, 2013 through February 28, 2013. Public meetings will be held in Juneau, Anchorage, and Fairbanks. All meeting times and dates will be posted on the GCP website.

30. **Question:** What role do the BLM and DPOR have in the process?

Answer: This program will affect all tentatively approved and patented general state lands, as well as state managed tidelands, submerged lands, shorelands, and those state lands managed by DNR's Division of Parks and Outdoor Recreation (DPOR) where commercial guiding is allowed. A Memorandum of Understanding is currently under consideration between DNR and the Bureau of Land Management (BLM) to apply the GCP to their lands.

In June 2012, DNR formed an Interagency Steering Committee with representatives from Alaska Department of Fish and Game (ADF&G), DPOR, and BLM. The purpose of the committee is to cooperatively design and develop the framework of the GCP. DNR hosted multiple meetings with the cooperating agencies to decide on key issues brought forward by public comments and other agencies.

In addition to their participation on the Interagency Steering Committee, BLM is a potential landowner partner in the GCP. If BLM commits to the GCP, contracting guides who wish to operate on their lands will have to be the DNR concession permittee for that area. It is expected that the permits, stipulations, and fees that BLM currently requires of operators will remain, though the system of fee collection and administration may be streamlined amongst the agencies.

As a first step in potentially joining DNR as a partner in the GCP, BLM has begun their own process to address commercial hunting guide capacities for BLM lands in Alaska. BLM conducted a 60 day public notice and scoping period to investigate commercial hunting guide Special Recreation Permit capacities for BLM lands in Alaska. The scoping period began on July 9, 2012 and ended on September 9, 2012.

31. **Question:** Why do we need such a program in Kodiak since there are already tag drawings which limit the number of operators in the area?

Answer: The department has decided to implement this program statewide. We understand some areas are currently experiencing higher conflicts than others but we need to keep state wide continuity for the guiding community.

32. **Question:** Will the GCAs be made into Guide Use Areas?

Answer: The concession area boundaries are subdivisions of the Guide Use Areas. Decisions regarding the Guide Use Areas are under the control of the BGCSB. DMLW will only be making decisions with regards to the concession area boundaries.

33. **Question:** Is this really going to happen?

Answer: The department is actively working on building this program as a viable and helpful tool for the commercial big game guiding industry. We have the support of many in the industry in addition to the other agencies and boards involved. However, without additional staff and the necessary legislative funding to support this program, the department cannot commit to implementing such a program.

34. **Question:** Is the proposed client fee per day per client?

Answer: No, the proposed client fee is per client only. You would pay either the proposed \$250 or \$500 for each client you serve no matter how many days they were guided in the field.

35. **Question:** Are Alaska residents given preference over non-residents in applying for or being awarded a concession?

Answer: Alaska residents are not given preference over non-residents in either the application process or in the awarding of a concession (see question 37). However, as proposed in the Scoring Criteria, the amount of time spent in a local area while engaged in certain activities is given consideration.

36. **Question:** Why doesn't this program exclude non-residents from applying?

Answer: The Commerce Clause of the United States Constitution has been regularly interpreted by the Supreme Court of the United States to discourage in-state discrimination against non-residents. The clause can be invoked if state regulations appear to limit interstate commerce, or regulate it in a way that is prejudicial to other state's interests. Excluding non-residents from applying and participating in the guide concession program would clearly be in conflict with the Commerce Clause.

37. **Question:** How many assistant guides does a full concession permit allow?

Answer: A full concession permits the contracting guide to employ up to six assistant guides per awarded guide concession.

38. **Question:** How many assistant guides does a limited concession allow?

Answer: A limited concession permits the contracting guide to employ up to one assistant guide per awarded guide concession.

39. **Question:** Why are full and limited concessions proposed to be limited to six and one assistant guide(s) per concession respectively?

Answer: Concessions are proposed to be limited in the number of assistant guides in order to help meet the wildlife conservation aspect of the program. The number of concessions in an area has been determined by many factors, including: guided hunter pressure information from the Department of Commerce, Community and Economic

Development's (DCCED) Division of Corporations, Business and Professional Licensing "Occupational Licensing," public comment and input, as well as feedback from ADF&G biologists. If the number of assistant guides is not limited per guide concession, potential problems of hunter overcrowding and overharvest of game populations may continue.

40. **Question:** Is there a limit on other staff, besides assistant guides, that I can hire?

Answer: There are no limits on employees or staff that are not required to hold a professional license by statute (AS 08.54.605-AS 08.54.640). Examples of these types of staff include, but are not limited to: camp-host, packer, or cook.

41. **Question:** Is there a limit on the number of clients a full concession holder is allowed within a calendar year?

Answer: There is not a limit on the number of clients a full concession holder is allowed during a calendar year. A full concession holder will supply the department with the number of clients they plan to accommodate through the application and these terms may become binding.

42. **Question:** Is there a limit on the number of clients a limited concession holder is allowed within a calendar year?

Answer: A limited concession holder is limited to a maximum of four clients per calendar year per concession area.

43. **Question:** How will the department decide which GCAs will be selected for the four, seven, and 10 year initial terms?

Answer: The department has assigned what term of duration a concession is initially given based upon which ADF&G Region a GCA falls within.

44. **Question:** Which areas fall under four, seven, and 10 year terms?

Answer: GCAs that fall within ADF&G Regions I, II and V all have an initial term of four years. GCAs that fall within ADF&G Region IV all have an initial term of seven years. GCAs that fall within ADF&G Region III all have an initial term of 10 years (see Appendix F).