

MAR 11 2013

March 7, 2013

Rep. Eric Feige  
State Capital Room 3  
Juneau, AK 99801

Dear Rep. Eric Feige,

I'm sure you have been concentrating on other important issues recently however, I would like to take this opportunity to address an issue that will have multiple negative effects on Alaska.

The department of Natural Resources has been directed to implement a private guide concession program covering the entire state. This program has the potential to destroy the livelihood of more than 200 Alaskan families. The state government should support small business not bankrupt us.

One of the alleged reasons behind this program is overcrowding or too many guides. I have personally hunted and guide in one of the most popular areas of the state my entire adult life. I have no problem finding game and rarely see another hunter. Guided non-resident hunters are a very small percentage of Alaskan hunters therefore it is inconceivable that they could be responsible for these perceived problems. By example, the smaller state of Montana has 750 outfitters and 1800 guides! With less guides operating there will be less tourist hunter's dollars going into the state economy and budget of the Department of Fish & Game and causing harm to every business affiliated with the guiding industry.

The best stewards of the land and conservationists are indeed the guides who depend on the resource and their license for their livelihood. There is no true need to put Alaska families out of business and add more onerous regulation on an already over-regulated industry with this bureaucratic morass. No business in the country should be subjected to such restrictions.

The Alaska Professional Hunters Association has been lobbying for this program for years. It is important to note that a very small percentage of Alaska guides are members of this organization. The APHA lobbyist in Juneau may be a nice guy but he does not represent the wishes of the vast majority of the industry.

The state government normally spends a considerable amount of time and money to study various issues in order to determine if they have merit before spending public money to fund them. This program has never had an in depth study to determine if any of these problems exist. If there are problems to any degree in small areas of the state, we already have well-funded state agencies responsible for dealing with these issues.

Therefore, this conceived and expensive program with its incomprehensible 20 page application process that will take months to fill out is unnecessary, unfair and unreasonable. I ask you to use your considerable authority to research the true facts surrounding this assault on a traditional Alaskan way of life. I believe the results will clearly show that no problem exists that could justify destroying the livelihood of so many Alaskan families.

Sincerely,



Ken Lamb  
1515 Noble Street  
Fairbanks, AK 99701  
907-455-7262

***Rocking K Outfitters***

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Dear Legislators;

This is Master Guide #136 Smokey Don Duncan. My sole source of income is from guiding on State lands. I am strongly and adamantly apposed to HB 158. DNR is a good land manager. Their attempt at designing a Guide Concession Program (GCP) is proof enough that they should not be in charge of a GCP. I seriously believe they intentionally put poison pills in the program to either relieve them from managing it or to kill the industry. DNR is not and never has been tasked to manage Guides or to manage game. Nor are DNR employees businessmen.

These are all facts and the facts are:

The BGCSB should never had turned designing a GCP over to DNR.

No one, not the BGCSB, DNR, the BOG, F&G or the Legislature asked, polled or surveyed the guides operating on State lands to get any input on how they felt or what they wanted. Why? Had that been done, the outcome would have been positively different.

Both the BGCSB and DNR have steadfastly refused to regulate transporters for 8 years even while promising to do so "one day". The BGCSB can create Transporter Use Areas under current Statute but they refused to ask for additional Statutes to restrict them to areas. DNR can simply change their own regulations to require transporter land use permits if they utilize State land or water.

There may be some problem areas that need addressing but they are few and usually have something to do with easy access or high dollar game. No attempt was ever made by DNR or the BOG to officially identify those areas and work to solve any problems in those specific areas. A GCP in those areas may be legally defensible. But a Statewide GCP is over kill, injurious and probably illegal according to the Owsichuk decision and past A.G. opinion letters. To survive challenge, a regulation must be reasonably necessary to carry out the purpose of its enabling statutes. See *Kelly v. Zamarello*, 486 P.2d 906, 911 (Alaska 1971). This GCP is a Statewide solution when a Statewide solution is not needed. There is nothing that can not be solved by the BOG, BGCSB, DNR or F&G.

If transporters are not included in the Concession Program then the program can not claim to be based on resource conservation, wildlife management or addressing crowding, real or imagined.

DNR's current GCP does not come close to maximizing the value of the resource by any means. This is evidenced by the high dollar sheep and brown bear areas being priced the same as a black bear area and that will be ruled illegal making this all a waste of time.

DNR did not perform the research needed to call this program "based on resource management". The number of guides/ Guide use areas was a number greedy guides picked and was not based on past numbers or reality. For example Guide Use Area (GUA) 26-01 is about 30,000 square miles and has 350,000 caribou plus moose and

grizzly and it can only have one guide? This area would be exclusive and the lucky guide would get it without paying a premium for exclusivity.

DNR specifically chose to limit guide industry input. Once DNR was charged with the GCP they told the BGCSB that the "Board can comment on the plan just like anyone else." Guides got to comment on DNR's plan. Written comments were accepted and you got 2-3 minutes of public testimony to save your livelihood. Guides and the guide industry did not get to help develop the plan and that is why it is so bad. Repeatedly DNR (in the proposed GCP) asks for paperwork proof that no normal guide would keep or in many cases even have. DNR published a review of the comments by category but frequently failed to address the actual issue with facts or reasonable explanations.

If enacted, the GCP will put 50% of the guides out of business and injure close to 80%, and the 50% figure may now be too low! DNR evidently believes you can make a living or at least be profitable with one GUA that has an 11 day non-resident moose season. My operation uses 3 GUAs so I can have different seasons for various game. One of my areas has been used for 20 years for spring black bear only even though it has fall moose, caribou, black bear and grizzly bear hunting. The season is open year round and the limit is 3 bears/hunter. But I may very well lose or not be able to pick that area for no good **biological reason or** other GCP reasons. DNR never tried to prove 50% of the guides would not be put out of business or to reasonably estimate how many would be put out of business even by simple math. When you compare how many guides are in an area now and compare it to what DNR's GCP allows, you see a reduction of 50% or more in many areas.

DNR believes that as a guide business, you can move around the State at the drop of a hat and jump in and out of business every 4-10 years. For an old guide like me and many others that have made this our livelihood for 20+ years; once you get pushed out you stay out. My 2 camps and 8 of my 17 boats are in remote locations. They are worth a lot of money where they are and for what I use them for. But if I have to move them back to Fairbanks, they are a liability, not an asset. Portable equipment like the camps have to be worth at least \$2/pound in freight to justify bringing them out cost wise. Which brings me to my next point of fact.

DNR's GCP refuses to allow a retiring guide to sell his operation and equipment and the remaining Guide Concession years. We can not turn over our operation to one of the guides we trained and who knows the area and operation or sell everything to the highest bidder. The Owsichuk decision never said we could not sell our operation but DNR ignores that. I can think of no other business or industry treated this way.

DNR did not consult F&G or area biologists to the degree needed in developing the plan, game allocations, guides/area, resident or non resident use etc... So this plan is not based on management or conservation.

DNR's GCP charges guides extra money for the animals they hunt. \$500 for a brown/grizzly bear, goat or sheep hunter and \$250 for anything else. Plus we will have to



pay a concession fee and our typical land use fee. This will drive non-resident hunters seeking moose, caribou, wolf, black bear, elk, or deer towards a transporter just based on minimum costs. If I did not know better, I would think the GCP was drawn up by a transporter. Is this maximizing the value of the resource? Do you think it is legally defensible? Now consider Kodiak. Most or many of the guides operate on Federal lands under the Federal Concession Plan. But the game belongs to the State. And surely they use some State tidelands, water, roads, airports etc. during the hunt. So why are they exempt from the per hunter or per animal fees that the guides on State lands have to pay?

Back around 1994, Guides had to submit a yearly operations plan that detailed where you intended to hunt and how many animals by species you intended to take in each GUA. We paid a fee for each area and operations plan we submitted. F&G was supposed to review the plans to prevent over harvest when considering all the guides and game to be taken in the area. For 3 years, F&G never looked at the first operations plan even when they were paid. Why? Eventually the State was sued or otherwise forced to refund the operations plan fees that we paid in the form of reduced license fees for several years.

The 2 previous "Guide Boards" were sun-setted over the issue of Guide Concession Areas. The original good old boys Guide Board just could not keep from designing a scoring program that heavily weighted the time spent guiding in the area knowing full well that no one else could out point the guide that held the previous exclusive area. The second Board was axed for pretty much the same reason even though there were different players.

Alaska Professional Hunters Association pushed to get the BGCSB re-created in 2005 with the main purpose being to get back to the exclusive guide areas or as close to it as possible. Since 2005, only APHA members have been appointed to the BGCSB even though they represent **less than 10%** of the industry. According to the database I downloaded from the State web site in 2005, there were about 2500 guides of all classes and between 250-400 transporters, some of which were also licensed as guides. Now, in 2012, there are only about 1600 guides. During this time the BGCSB have raised, nearly doubled, the license fees TWICE, and the BGCSB is now broke and in debt \$600,000 by the end of this year! Why do transporters get 2 representatives on the BGCSB when in 8 years the BGCSB has done next to nothing when it comes to regulating transporters? Why has the Board refused to ask the Legislature to create the "assistant transporter license"? Shouldn't they pay their fair share? Currently a transporter only pays one license fee and they can have unlimited, unvetted pilots, planes, boats etc.....

The GCP was pushed and lobbied so that a few guides could get prime areas of State land with little, less or no competition. But those guides wanted a point system so they would not have to pay or bid a fair price for an area. APHA members and representatives went to every Board of Game meeting complaining of over crowding, reduced hunter experience, possible over-harvest etc... Then the BOG began parroting the same. Then the public. The truth and data facts were seldom used to justify the accusations. Then F&G, the BOG and some guides said all the legal sheep were being harvested in some areas that were used to make the area a drawing permit. Then in 2012 old timer guide Joe

Want mined F&G's database and proved that in that area, and in fact in all sheep areas, 50% of the legal rams survived the hunting season and lived to be taken in future hunting seasons. So that means when you consider the yearly non-hunting mortality the survival rate was well over 50%. His data also showed guided non-residents were more successful simply because they hunted longer. Thus one of the primary examples used to justify the GCP was proven to be invalid.

F&G and the BOG have been talking out of both sides of their mouth. With sheep they have said for 30 years that if we maintain a full curl minimum we can never over-harvest or do any kind of damage. When they thought all the legal sheep were being killed they said it was bad genetically. Now we see that is not and can not be the case. With moose it was 50 inch spread or 3-4 brow tines and we can not over-harvest. If non-residents are restricted to that, then there isn't, can't be, over-harvest. With bears, for 30 years, F&G has said to kill only big male bears. Now they say that killing all the big boars can lead to an over population of young sows and 3- 4 year olds because the big boars no longer kill some of the sows and or cubs. That may be true because now the BOG has been systematically removing the grizzly/brown bear tag requirement for residents to encourage the take of any and all bears nearly everywhere in the State.

Asking a guide to be a "good steward" of the game is crazy talk. We can only control what we do. We can not control transporters, residents or non-resident hunters or other guides. We do not set the seasons or bag limits, the BOG does. For a guide and from a business standpoint, if the game is not there, you will not sell many hunts for long. We are the first hurt by restrictions. If we can not move to another area like transporters do, then we are out of business. We are logistically restricted by the GUA, season, bag limits and the amount of equipment and employees etc...

APHA asked for the GCP and hoped they could control it. DNR did not let them in the end. But in the beginning DNR did hold what I call secret meetings that only APHA members knew about. APHA members and officers headed the sub committees. DNR kept most of the industry out of the loop. But now, I am told by an APHA Board member that in their last vote on whether to continue to support the GCP concept, the vote was 5 for and 4 against.

DNR obviously knows how to push paper around as evidenced by this ridiculous GCP application that will take a month or more for me to fill out. I'll wear out 2 printers and a copier. And after all that, people who know nothing about running a business or a guide business will judge my application. DNR says they will allocate about 2 1/2 hours per application. I doubt that would be enough time to even read what I submit at their request. No time has been allocated to confirm or verify that it is not a bunch of lies. So it boils down to a liars contest.

It is also evident that DNR knows next to nothing about running a business or a guiding business. They have no idea what the bills and logistics are or what they cost.

This GCP is set up as a cost plus operation with the guides paying whatever DNR tells them they have to pay. DNR has no incentive to minimize costs. If the Federal Guide Concession Plan is so good and cost effective then why are they so willing to turn it over to the State. The fact is, they try to hide the real costs figures related solely to their concession program but they are losing money on their program. Furthermore their program equates fewer animals taken as a better operation. And the fact is, that is why the majority of proponents of a GCP on State land are also Federal permit holders. The Federal program is not better.

The GCP will have immediate and negative effects on game populations in some areas. In one of my guide areas, guides and their non-resident clients kill 80% of the brown bears and it is a 2 bear limit. Wolf control is being done in part of the unit. Right now there are about 17 guides, mostly bear hunting. The plan is to reduce that number to 5-6. Need I say more?

Knowing all of these facts listed above and seeing DNRs failed attempt at setting up a rational GCP that reasonably addresses the "problems" claimed, I find it unbelievable that anyone in their right mind could propose to let DNR run with this thing. And if HB 158 passes, do you think DNR will start over and try to do it right? Or, will they just run with what they have now?

For the record, what has worked in the past and what will continue to work in the future, is for the Boards and Departments to do their job. The BGCSB manages guides. DNR manages the land. The BOG manages game with input from the Dept. of F&G and the public. The BOG and DNR have been doing good work. I have no faith in the BGCSB since they have failed the industry. Do not destroy the industry because a few greedy guides want the prime areas for next to nothing. For the last 5 years, I have been saying the legislature should tell them (BGCSB, BOG and DNR) to do their job and let the chips fall where they may. Ask them why they can not do their job! And if everything goes to a drawing permit then fine. At least it will be fair. And the areas that need attention will get it. Then we can call it resource management and wildlife conservation. Lastly, after seeing DNRs chalk board with all the important projects they are currently working on and after talking with them and judging their feelings at the start; the rank and file employee never wanted this project. After seeing the poison pills in the work product, I say they still do not want this job. I believe it was forced on them by a governor that didn't stick around too long.

Feel free to pick up the phone and call me anytime for advice on guiding industry issues or explanations about this letter. Please do not support HB 158. And for God's sake; do not insult the other 90% of the industry by confirming another APHA member to the BGCSB.

Here is a web site link to a list of 55+ guides apposed to the GCP. The list grows daily.  
<http://apgs.com/DNR-guide-concession-program.shtml>

Thank you.

Sincerely,

Smokey Don Duncan Master Guide #136  
299 Alvin St.  
Fairbanks AK 99712  
907-457-8318  
apgs@gci.net

## Linda Hay

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**From:** Rep. Mia Costello  
**Sent:** Monday, March 11, 2013 10:13 AM  
**To:** Linda Hay  
**Subject:** FW: Please replace earlier letter re; HB 158  
**Attachments:** TRC Ltr DNR GCP Stoltze -Austerman Finance.docx

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Joshua Walton, Staff  
Office of Representative Mia Costello

Interim phone: (907) 269-0117  
Session phone: (907) 465-4968

**From:** Bobby Fithian [<mailto:bobbyfithian@gmail.com>]  
**Sent:** Monday, March 11, 2013 12:33 AM  
**To:** Rep. Alan Austerman; Rep. Bill Stoltze  
**Cc:** Rep. Mark Neuman; Rep. Mia Costello; Rep. Bryce Edgmon; Rep. Lindsey Holmes; Rep. Cathy Munoz; Rep. Mike Hawker; Rep. Scott Kawasaki  
**Subject:** Please replace earlier letter re; HB 158

Dear Representative,  
Please replace the letter "TRC Ltr DNR GCP" sent a few minutes ago with the one attached to this email.  
Thank you.

**Robert R. Fithian**  
**Chief Executive Officer**  
*Taiga Resources Conservation*  
**HC 60 Box 299C Copper Center, Alaska USA 99573**  
**Phone: (907) 822-3410**  
[www.taigaresources.com](http://www.taigaresources.com)





## Taiga Resources Conservation

*a management and consulting firm specializing in conservation based natural resource industry support. We provide industry, governmental, regional, and community assistance in understanding, developing, and maintaining conservation based initiatives that will help sustain long term stewardship for important social/cultural atmospheres, fish wildlife, land or water habitats, and industry developments within them.*

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March 9, 2013  
Lower Tonsina, Alaska

Representatives Austerman and Stoltze  
Co Chairs, House Finance Committee  
State Capitol  
Juneau AK, 99801  
Re. DNR Guide Concession Program

Dear Representatives Austerman and Stoltze,

Please receive this letter as a show of support and request for the same regarding development of the much needed and long overdue DNR Guide Concession Program (GCP). I am in full support of HB 158. Also, please consider and share as you may like, the following comments about the program.

The following comments are provided from the background of having a deeply bedded history as a leader of professional hunting guide/wildlife conservation advocacy for Alaska, the United States and countries throughout the world as well as a personal thirty year professional guide history in Alaska. Additionally, this history includes leadership within Alaska's mineral industry (past member elected AMA president), long time involvement within Alaska's forestry, energy and agriculture industries. As well, I currently have the honor of representing America's tourism and guide-outfitter industries serving under the appointment of the Secretaries of Interior and Agriculture on the respected Wildlife and Hunting Heritage Conservation Council. Regarding Alaska's subsistence and related social/cultural heritage, I have served at the pleasure of three governors and continue work within the Wrangell-Saint Elias National Park and Preserve Subsistence Resource Commission. I bring forward this unique history with the request that you place no respect for me personally but rather that you find respect for my knowledge, however limited, to the stewardship of natural resource related industry, especially, the professional guide industry.

Without question, the DNR GCP will provide Alaska, our rural communities and professional guide service providers with a viable and important, long term sustainable industry. Without this development, we will see implementation of restrictions on nonresident hunter opportunity that will reduce and in many cases eliminate the viable future of this profession. The reasoning behind this situation lies in the inability of the State of Alaska to restrict the amount of commercial enterprise from the hunting guide profession that currently impacts our precious wildlife populations, our social atmospheres relative to resident and subsistence hunters, other wilderness users and the related law enforcement/legal systems. Most of this negative impact falls into the lap of the Alaska Board of Game or the Federal Subsistence Board in proposal form from the resident public to eliminate or reduce nonresident hunter participation due to overcrowding of guides on state lands. As a person who has attended more Alaska Board of Game meetings than any sitting Board of Game member, I can assure you that the Board Of Game will have no choice but to eventually pass these proposal requests and by doing so, put the future of nonresident hunter participation into restrictive measures that closes the door on economic viability for a professional guide service provider.

Please know that I have seen this same equation play out in numerous western states throughout the

U.S. In each case, resident hunters put forth initiatives which unfairly reduce the number of nonresident hunters through restrictive measures that eliminate the viability of professional hunting guide businesses. The results in each case were as follows:

- A. Elimination of many long time established guide businesses.
- B. Significantly reduced rural economies.
- C. Significant loss of important historical State generated funding for wildlife conservation through nonresident hunting license sales.
- D. Substantial loss of the Pitman-Robertson Wildlife Restoration Funding which is generated by sportsman's excise tax and distributed to each state proportionately to their overall hunting license sales for wildlife conservation.
- E. Reduced overall wildlife conservation and stewardship.

For your review, there is an attachment sent with this letter copied from a Montana newspaper article which will help you further understand this situation. This article was written by a columnist without a full understanding of the impact on individual guide service providers or the fact that hunting is increasing in America but it will help you to see the path which Alaska is currently headed down. There are several other states in just as bad or worse situations that are not identified in this article. If you would like any more of this type of information or just general information on the GCP, please feel free to contact me and I will furnish whatever I can to help you.

What will actually happen to Alaska if we do not establish the GCP, is that long time service providers who have established successful businesses and maintain significant overhead investment, will not be able to effectively compete through the soon to be implemented games of chance that future restrictive drawing permit allocation will provide. These are the same business owners who have long established employee's and established relationships with a labyrinth of other types of rural Alaska businesses. These great service providers, many of them second and third generation will be replaced by service providers who can operate on a more part time basis without having to maintain substantial overhead. Many of these service providers will be nonresidents business owners who can secure licensing in numerous states, work the drawing permit games of chance and provide limited services wherever they may draw clients.

Alaska does not need to follow this course. With the GCP established, the Board of Game can be confident and fair with their conservation based decisions regarding allocation and social atmosphere considerations. Additionally, as a long time Alaska guide service provider who operated primarily on State lands before being awarded a Federal NPS Concession, I can assure you from experience that the GCP will develop better stewardship within the professional guide industry itself. There is a tenor of outcry that we do not need more government in our entrepreneurship world. Please know that after dealing with DNR for many years as a small business owner within the guiding, mining, forestry and agricultural arenas, that I have confidence that they can and will provide a GCP program that will work to provide the viability, sustainability and stewardship that all of us want for Alaska.

Please, I urge you to support and help pass HB 158 for the sustainable future of a important rural Alaskan industry. If I may be of any help to you in this or in any other consideration, please feel free to contact me at any time.

Very Respectfully,



Robert R. Fithian

Cc

House Resources

House Judiciary

House Finance

Senate Resources

**Linda Hay**

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**From:** Israel Payton <truewildernessadventures@yahoo.com>  
**Sent:** Monday, March 11, 2013 10:16 AM  
**To:** Rep. Eric Feige  
**Cc:** Rep. Dan Saddler; Rep. Mike Hawker; Rep. Craig Johnson; Rep. Kurt Olson; Rep. Paul Seaton; Rep. Geran Tarr; Rep. Chris Tuck; Rep. Peggy Wilson  
**Subject:** Letter is attached this time/ Letter from A.G. to DNR ref. Limiting Guides  
**Attachments:** Letter to DNR limiting fishing guides.pdf

Hi Linda,

Sorry, I had alot of windows open and forgot to attach to the email.

Is the Resources meeting today on HB 158 at 1pm?  
And will it be on Legislative tv?

Thanks,  
Israel

--- On **Mon, 3/11/13, Rep. Eric Feige** <[Rep.Eric.Feige@akleg.gov](mailto:Rep.Eric.Feige@akleg.gov)> wrote:

From: Rep. Eric Feige <[Rep.Eric.Feige@akleg.gov](mailto:Rep.Eric.Feige@akleg.gov)>  
Subject: RE: Letter from A.G. to DNR ref. Limiting Guides  
To: "Israel Payton" <[truewildernessadventures@yahoo.com](mailto:truewildernessadventures@yahoo.com)>  
Date: Monday, March 11, 2013, 9:58 AM

Israel – There was no letter attached.

Linda Hay

House Resources Committee Aide

Representative Eric Feige

House Resources Co-Chair

State Capitol Room 126

907-465-3715 - Direct

907-321-1249 - Cell

[linda.hay@akleg.gov](mailto:linda.hay@akleg.gov)



**From:** Israel Payton [<mailto:truewildernessadventures@yahoo.com>]

**Sent:** Monday, March 11, 2013 1:12 AM

**To:** Rep. Eric Feige

**Cc:** Rep. Dan Saddler; Rep. Mike Hawker; Rep. Craig Johnson; Rep. Kurt Olson; Rep. Paul Seaton; Rep. Geran Tarr; Rep. Chris Tuck; Rep. Peggy Wilson

**Subject:** Letter from A.G. to DNR ref. Limiting Guides

Dear Chair of the House Resources Committee,

Please see attached letter from the A.G. to the Commissioner of DNR I think it is very relevant to the issue at hand of HB 158.

The only facts that DNR has put forward in the reasoning for the GCP is Appendix C <http://dnr.alaska.gov/mlw/gcp/documents/appendix-C.pdf>

The numbers indicate that from 2000 to 2010 there was a DECREASE of guided hunters from 4678 hunters in 2000 to 3034 hunters in 2010 a 33% (1600 hunters) drop.

The facts for the need for this Bill/ GCP are not there.

Thank you,

Israel Payton



Hon. Harold C. Heinze  
Commissioner  
Department of Natural Resources

September 27, 1991

993-90-0049 and  
993-91-0105  
465-3600

Parks/Kenai River guide  
regulations projects

Jeffrey W. Bush  
Assistant Attorney General  
and Regulations Attorney

As outlined below, we have completed our review and are prepared to approve for filing most of the general regulations on parks, file no. 993-90-0049, once the issue of helicopter use in the Wood-Tikchik State Park is resolved. With respect to the KRSMA sport-fish guide regulations, file no. 993-91-0105, we cannot approve them in their current form because, if put into effect, the limited entry permit system would clearly violate several provisions of the Alaska Constitution.

**Parks, file no. 993-90-0049:**

We recently received a copy of a memorandum from you to Lieutenant Governor Coghill dated September 18, 1991, which proposes to change 11 AAC 20.375 to outlaw the use of private helicopters in Wood-Tikchik State Park, but then proposes to "grandfather" in an exception to the prohibition for the single operator working in the area at the present time.

Our research concludes that to "grandfather" in one individual permittee on a permanent basis would violate the Alaska Constitution's equal protection clause (art. I, sec. 1) and equal application provision (art. VIII, sec. 17). Although we have opined in the past that certain grandfather provisions may be defensible (see 1986 Inf. Op. Att'y Gen. (883-86-0076; May 28)), that is only arguably true where the distinction created is based on a valid and substantial state interest. In the present case, we cannot find any significant state interest that is being furthered by the proposed exception. In fact, the exception is directly at odds with the management plan for the park, which was adopted by the Wood-Tikchik State Park Management Council in accordance with the legislative mandate under AS 41.21.164.

Therefore, the proposed revision cannot be approved.

Several other acceptable options are available, however. The department could simply remove 11 AAC 20.375 from the project. We understand that Lieutenant Governor Coghill prefers this approach. <sup>1/</sup> Alternatively, the department could leave the absolute prohibition on helicopters in 11 AAC 20.375; this was the substance of the regulation as adopted by your department. As a potential compromise, a third option would be for the department to adopt the absolute prohibition now but delay the effective date of the section, to allow the current operator to continue his helicopter operations for some period of time. We await your instructions before proceeding with these regulations.

**Kenai River guide limitation, file no. 993-91-0105**

The current proposal to limit the number of guides on the Kenai River is patently unconstitutional. The proposal would set up a system in which anyone wishing to guide on the river could apply to the department for a permit. Permits would be issued for a five-year period (1/5 each year) to those applicants scoring the highest number of points, which would be awarded based on several factors. Proposed 11 AAC 20.887. The most significant factor, and the one of greatest concern from a constitutional perspective, is the proposal to award five points for each year of guiding experience on the Kenai River. Proposed 11 AAC 20.887(d)(1). Since we can assume that all other factors will generally cancel themselves out, the system will naturally heavily favor current permittees over new entrants to the program, because a current permittee who is required to reapply when his/her permit expires would automatically get 25 points for the preceding five years of experience gained as a permit holder. This is precisely the kind of special preference rejected by the Supreme Court in Owsichuk v. State, 763 P.2d 488 (Alaska 1988).

In Owsichuk, the Supreme Court stated that it would not accept any monopoly system to regulate the use of our fish or wildlife. There are to be no "exclusive grants or special privileges." Id. at 493, citing Alaska Constitutional Convention papers; see also McDowell v. State, 785 P.2d 1, 6 (Alaska 1989).

This prohibition on exclusive grants or privileges applies not only to a grant to a single person or corporation but to any special group or number of people. McDowell, 785 P.2d at 7. The system that was rejected in Owsichuk was "based primarily on use,

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<sup>1/</sup> If you would like to revisit this issue later, we could designate the rest of this project as Part 1 and submit it to the lieutenant governor at this time for filing, and designate 11 AAC 20.375 as Part 2 for further work.

occupancy and investment, **favoring established guides at the expense of new entrants in the market.**" 736 P.2d at 496, emphasis added. The Court noted that "to grant such a special privilege based primarily on seniority runs counter to the notion of common use." Id.

Unlike under the current Kenai River proposal, in Owsichek the Court was faced with a system in which the guide permit, the "exclusive guide area," was of unlimited duration. The Court relied, in part, on this factor in its analysis in Owsichek. 763 P.2d at 496. We do not believe, however, that this distinction is significant enough to make the current proposal defensible. The Owsichek Court based its decision not only on the unlimited duration of the special privilege granted by the state, but also on the fact that the privilege was granted at all. Id. Moreover, the system proposed for the Kenai River so heavily favors established guides over new entrants as to make the permits effectively of unlimited duration.

Even if we were able to overcome these constitutional hurdles, there is a serious question whether any system to limit guide numbers would be defensible at the present time. Your department recently furnished us back-up information that supposedly justifies the proposed guide limits. This information, however, shows that the actual fishing pressure on the river has not significantly changed since 1983, and in fact it declined in 1990 and 1991. Furthermore, the evidence shows that although the actual number of guides has increased over this period, guided angler hours still constitutes only 40% of the total fishing effort on the river.

To survive challenge, a regulation must be reasonably necessary to carry out the purpose of its enabling statutes. See Kelly v. Zamareello, 486 P.2d 906, 911 (Alaska 1971). When the regulation affects access to fish, it must also impinge as little as possible on the constitution's open fishery clauses (Art. VIII, secs. 3 and 15). Johns v. CFEC, 758 P.2d 1256, 1266 (Alaska 1988); State v. Ostrosky, 667 P.2d 1184, 1191 (Alaska 1983). Assuming the department has the authority to adopt a regulation to limit the number of guides on the river and proposes to do so in a constitutional manner, the department still must be able to demonstrate that the limitation is reasonably necessary. The data supplied to us supports neither the conclusion that there is a problem of overcrowding or of increasing fishing pressure, nor the conclusion that limiting the number of guides alone would help solve the problem, if it were

found to exist. 2/

For the reasons outlined above, we cannot approve for filing any regulations proposing to limit the number of guides through a system that favors existing guides over new entrants. If we assume, however, that your department can find sufficient empirical evidence that a problem of overcrowding or increasing crowding exists on the river and that a limitation on the number of guides would alleviate the problem, we can suggest possible systems that would be defensible. A pure lottery system, in which lottery participants qualify based on criteria that do not favor established guides over new entrants, would be the best system and clearly would not violate constitutional prohibitions.

The length of the permit would have to be reasonable, but we believe the proposed five-year period would not cause any serious problems. We recommend the department seriously consider this option.

If the department finds the lottery option unpalatable, a concession system, in which any qualified guide applicant could bid and permits would go to the highest bidders, would arguably be defensible. The Court in Owsichuk indicated that such a system might survive constitutional challenge (763 P.2d at 497), although there is a strong possibility the Court would reject such a system because it would favor the wealthy. See Ostrosky, 667 P.2d at 1198 (Chief Justice Rabinowitz, dissenting). We would likely approve a regulatory scheme based on such a concession system (assuming that there is sufficient evidence that the system was reasonably necessary) and leave it to the courts to decide the program's legality.

Enclosed are your original adoption order and supporting documents for this project. We will now close our file on this project. If you wish to pursue an alternative guide limitation program for the river, please contact us and we will open a new regulations file for that project at that time.

JWB:cl

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2/ Even if we assume that the river is overcrowded (and has been since 1983), DNR's current proposal is to issue 220 permits plus 30 lodge concession permits. Proposed 11 AAC 20.885(h) and (i). This further undermines our argument, because these figures do not represent a significant reduction from current guide numbers and thus are not designed to alleviate the alleged problem.



Hon. Harold Heinze, Comm'r, DNR  
Our file: 993-90-0049 and 993-91-0105

September 27, 1991  
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cc w/enc.: Neil Johannsen, Director  
Division of Parks  
  
John B. Coghill  
Lieutenant Governor  
  
Elizabeth Barry  
Assistant Attorney General  
Anchorage

**APPENDIX C:**

**Occupational Licensing Guide and Contracted Hunt Data**

The following spreadsheet details two types of information in three different years: 2000, 2009 and 2010. The first type of information is the number of hunting guides and the second is the number of contracted hunts per Guide Use Area. Each type is organized according to Guide Use Area and year.

Some Guide Use Areas are not on the spreadsheet. This occurs when there is either no or very little state land within the Guide Use Area.

## Occupational Licensing Data

11-01-2011

Guide Use Area	2000	2009	2010
1-01	3 Guides/13 Hunts	3 Guides/2 Hunts	3 Guides/1 Hunt
1-02	7 Guides/55 Hunts	5 Guides/31 Hunts	5 Guides/36 Hunts
6-01	5 Guides/111 Hunts	6 Guides/120 Hunts	5 Guides/155 Hunts
6-02	6 Guides/34 Hunts	8 Guides/39 Hunts	8 Guides/44 Hunts
6-03	7 Guides/29 Hunts	5 Guides/47 Hunts	4 Guides/35 Hunts
6-04	4 Guides/16 Hunts	7 Guides/50 Hunts	7 Guides/36 Hunts
6-05	5 Guides/9 Hunts	3 Guides/13 Hunts	3 Guides/9 Hunts
7-01	5 Guides/4 Hunts	4 Guides/6 Hunts	6 Guides/7 Hunts
8-01	3 Guides/5 Hunts	4 Guides/4 Hunts	2 Guides/1 Hunt
8-02	3 Guides/3 Hunts	6 Guides/20 Hunts	8 Guides/31 Hunts
8-03	4 Guides/5 Hunts	14 Guides/29 Hunts	9 Guides/9 Hunts
8-04	2 Guides/8 Hunts	6 Guides/8 Hunts	7 Guides/5 Hunts
8-26	5 Guides/5 Hunts	5 Guides/4 Hunts	4 Guides/9 Hunts
8-27	3 Guides/6 Hunts	6 Guides/2 Hunts	5 Guides/4 Hunts
8-28	5 Guides/10 Hunts	7 Guides/19 Hunts	9 Guides/14 Hunts
8-29	12 Guides/42 Hunts	17 Guides/51 Hunts	17 Guides/34 Hunts
8-30	10 Guides/17 Hunts	17 Guides/52 Hunts	14 Guides/24 Hunts
8-31	No Data	No Data	1 Guide/9 Hunts
9-01	9 Guides/8 Hunts	7 Guides/12 Hunts	3 Guides/1 Hunt
9-02	14 Guides/24 Hunts	8 Guides/8 Hunts	4 Guides/3 Hunts
9-03	6 Guides/6 Hunts	3 Guides/1 Hunt	1 Guide/2 Hunts
9-04	27 Guides/106 Hunts	23 Guides/85 Hunts	18 Guides/40 Hunts
9-05	8 Guides/18 Hunts	2 Guides/6 Hunts	2 Guides/3 Hunts
9-06	2 Guides/10 Hunts	3 Guides/6 Hunts	3 Guides/No Data
9-07	2 Guides/15 Hunts	1 Guide/5 Hunts	2 Guides/2 Hunts
9-08	No Data	1 Guide/1 Hunt	1 Guide/ No Data
9-12	6 Guides/13 Hunts	4 Guides/29 Hunts	3 Guides/15 Hunts
9-19	4 Guides/ 2 Hunts	4 Guides/22 Hunts	2 Guides/1 Hunt
9-25	9 Guides/48 Hunts	11 Guides/54 Hunts	10 Guides/29 Hunts
9-26	6 Guides/33 Hunts	6 Guides/39 Hunts	6 Guides/22 Hunts
9-29	4 Guides/27 Hunts	9 Guides/62 Hunts	9 Guides/68 Hunts
9-30	6 Guides/38 Hunts	7 Guides/24 Hunts	6 Guides/32 Hunts
9-99	4 Guides/22 Hunts	6 Guides/42 Hunts	5 Guides/31 Hunts
12-01	6 Guides/35 Hunts	8 Guides/39 Hunts	8 Guides/24 Hunts
12-03	1 Guide/No Data	2 Guides/No Data	2 Guides/2 Hunts
13-01	26 Guides/133 Hunts	25 Guides/96 Hunts	25 Guides/99 Hunts
13-02	24 Guides/108 Hunts	20 Guides/28 Hunts	21 Guides/39 Hunts
13-03	8 Guides/14 Hunts	9 Guides/10 Hunts	13 Guides/11 Hunts
13-04	5 Guides/8 Hunts	9 Guides/7 Hunts	9 Guides/2 Hunts
13-05	19 Guides/123 Hunts	10 Guides/29 Hunts	13 Guides/26 Hunts
13-06	8 Guides/36 Hunts	6 Guides/6 Hunts	10 Guides/6 Hunts
13-07	3 Guides/4 Hunts	5 Guides/17 Hunts	9 Guides/24 Hunts
14-01	10 Guides/26 Hunts	9 Guides/25 Hunts	11 Guides/24 Hunts
14-02	8 Guides/12 Hunts	3 Guides/8 Hunts	5 Guides/3 Hunts
14-03	6 Guides/6 Hunts	5 Guides/8 Hunts	4 Guides/15 Hunts
14-04	13 Guides/23 Hunts	11 Guides/34 Hunts	13 Guides/31 Hunts



## Occupational Licensing Data

11-01-2011

15-03	4 Guides/11 Hunts	2 Guides/45 Hunts	3 Guides/32 Hunts
16-01	5 Guides/8 Hunts	28 Guides/102 Hunts	28 Guides/59 Hunts
16-02	19 Guides/186 Hunts	33 Guides/88 Hunts	34 Guides/40 Hunts
16-03	16 Guides/37 Hunts	32 Guides/43 Hunts	32 Guides/28 Hunts
16-04	9 Guides/62 Hunts	17 Guides/39 Hunts	16 Guides/ 41 Hunts
16-05	2 Guides/12 Hunts	9 Guides/13 Hunts	13 Guides/23 Hunts
17-01	10 Guides/44 Hunts	8 Guides/3 Hunts	8 Guides/19 Hunts
17-02	35 Guides/203 Hunts	16 Guides/75 Hunts	17 Guides/52 Hunts
17-03	42 Guides/247 Hunts	23 Guides/116 Hunts	24 Guides/68 Hunts
17-04	19 Guides/153 Hunts	8 Guides/50 Hunts	7 Guides/26 Hunts
17-05	17 Guides/124 Hunts	13 Guides/60 Hunts	18 Guides/81 Hunts
17-06	8 Guides/37 Hunts	4 Guides/39 Hunts	4 Guides/20 Hunts
18-02	2 Guides/No Data	2 Guides/No Data	1 Guide/No Data
18-03	1 Guide/4 Hunts	3 Guides/28 Hunts	4 Guides/18 Hunts
19-01	4 Guides/8 Hunts	6 Guides/20 Hunts	5 Guides/11 Hunts
19-02	1 Guide/No Data	4 Guides/No Data	3 Guides/4 Hunts
19-03	26 Guides/472 Hunts	15 Guides/141 Hunts	15 Guides/118 Hunts
19-04	24 Guides/441 Hunts	18 Guides/52 Hunts	18 Guides/45 Hunts
19-05	7 Guides/18 Hunts	5 Guides/41 Hunts	6 Guides/40 Hunts
19-06	5 Guides/52 Hunts	7 Guides/6 Hunts	6 Guides/19 Hunts
19-07	9 Guides/115 Hunts	9 Guides/30 Hunts	9 Guides/19 Hunts
19-08	11 Guides/83 Hunts	9 Guides/26 Hunts	9 Guides/25 Hunts
19-09	6 Guides/49 Hunts	6 Guides/6 Hunts	7 Guides/15 Hunts
19-10	15 Guides/106 Hunts	15 Guides/62 Hunts	17 Guides/61 Hunts
19-11	No Data	2 Guides/2 Hunts	2 Guides/No Data
19-12	9 Guides/65 Hunts	12 Guides/83 Hunts	14 Guides/100 Hunts
19-13	No Data	2 Guides/No Data	1 Guides/1 Hunt
19-14	No Data/No Data	No Data/No Data	No Data/No Data
20-01	5 Guides/64 Hunts	5 Guides/13 Hunts	5 Guides/12 Hunts
20-02	5 Guides/21 Hunts	9 Guides/34 Hunts	8 Guides/10 Hunts
20-03	6 Guides/14 Hunts	8 Guides/48 Hunts	9 Guides/35 Hunts
20-04	20 Guides/148 Hunts	21 Guides/227 Hunts	22 Guides/194 Hunts
20-05	4 Guides/4 Hunts	6 Guides/14 Hunts	8 Guides/15 Hunts
20-06	3 Guides/1 Hunts	2 Guides/2 Hunts	3 Guides/5 Hunts
20-07	6 Guides/11 Hunts	9 Guides/18 Hunts	8 Guides/20 Hunts
20-08	3 Guides/4 Hunts	6 Guides/19 Hunts	7 Guides/10 Hunts
20-09	1 Guide/5 Hunts	1 Guide/2 Hunts	2 Guides/No Data
20-10	No Data	5 Guides/12 Hunts	4 Guides/5 Hunts
20-11	4 Guides/18 Hunts	6 Guides/7 Hunts	5 Guides/15 Hunts
20-12	No Data/2 Hunts	3 Guides/No Data	3 Guides/No Data
21-01	10 Guides/106 Hunts	6 Guide/7 Hunts	7 Guides/20 Hunts
21-02	2 Guides/6 Hunts	4 Guides/2 Hunts	4 Guides/No Data
21-03	4 Guides/20 Hunts	4 Guides/2 Hunts	4 Guides/11 Hunts
21-04	4 Guides/16 Hunts	2 Guides/35 Hunts	3 Guides/16 Hunts
21-05	6 Guides/35 Hunts	2 Guides/38 Hunts	2 Guides/33 Hunts
22-01	1 Guide/3 Hunts	2 Guides/20 Hunts	2 Guides/21 Hunts
22-02	1 Guide/10 Hunts	1 Guide/27 Hunts	1 Guide/22 Hunts



## Occupational Licensing Data

11-01-2011

22-03	1 Guide/No Data	2 Guides/1 Hunts	2 Guides/No Data
22-04	1 Guide/5 Hunts	No Data	No Data
22-05	2 Guides/10 Hunts	2 Guides/4 Hunts	2 Guides/12 Hunts
22-06	4 Guides/35 Hunts	5 Guides/7 Hunts	3 Guides/3 Hunts
22-07	7 Guides/58 Hunts	5 Guides/46 Hunts	6 Guides/37 Hunts
23-01	3 Guides/39 Hunts	6 Guides/12 Hunts	5 Guides/15 Hunts
23-02	5 Guides/21 Hunts	3 Guides/32 Hunts	3 Guides/14 Hunts
23-03	No Data	No Data/4 Hunts	No Data
23-04	3 Guides/8 Hunts	5 Guides/7 Hunts	4 Guides/1 Hunt
23-05	2 Guides/2 Hunts	2 Guides/15 Hunts	2 Guides/13 Hunts
23-06	7 Guides/67 Hunts	9 Guides/41 Hunts	8 Guides/67 Hunts
23-07	2 Guides/10 Hunts	1 Guide/1 Hunt	1 Guide/No Data
24-01	5 Guide/42 Hunts	6 Guides/23 Hunts	5 Guides/35 Hunts
24-02	No Data	1 Guide/2 Hunts	1 Guide/1 Hunt
24-03	1 Guide/4 Hunts	2 Guides/12 Hunts	8 Guides/23 Hunts
24-04	2 Guides/21 Hunts	5 Guides/14 Hunts	2 Guides/1 Hunt
24-05	4 Guides/23 Hunts	4 Guides/24 Hunts	4 Guides/14 Hunts
25-01	1 Guide/11 Hunts	1 Guide/7 Hunts	1 Guide/21 Hunts
25-02	7 Guides/38 Hunts	5 Guides/73 Hunts	8 Guides/61 Hunts
25-03	5 Guides/19 Hunts	5 Guides/80 Hunts	2 Guides/32 Hunts
25-03A	No Data	No Data	4 Guides/20 Hunts
25-03B	No Data	No Data	2 Guides/7 Hunts
25-09	No Data/3 Hunts	1 Guide/1 Hunt	1 Guide/1 Hunt
25-10	No Data/1 Hunt	No Data	No Data/10 Hunts
25-11	2 Guides/No Data	1 Guide/No Data	1 Guide/ 1 Hunt
26-06	3 Guides/17 Hunts	5 Guides/82 Hunts	7 Guides/152 Hunts
26-07	2 Guides/6 Hunts	6 Guides/12 Hunts	6 Guides/5 Hunts
26-08	3 Guides/14 Hunts	3 Guides/23 Hunts	4 Guides/9 Hunts
26-09	1 Guide/22 Hunts	1 Guide/46 Hunts	2 Guides/37 Hunts
26-10	No Data	No Data	No Data
26-11	1 Guide/No Data	3 Guides/1 Hunt	2 Guides/7 Hunts
26-12	No Data	No Data	2 Guides/8 Hunts
26-13	3 Guides/3 Hunts	3 Guides/No Data	3 Guides/No Data