

HB

836

(9)

# COMMITTEE REPORT

## HOUSE

3/18/80

FURTHER:

Date: 3/25/80

Mr. Speaker:

The Committee on RESOURCES has had SSHB 836

"An Act relating to alien and non-resident hunters; and providing for an effective date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for SSHB 836  same title
- new title
- and recommends SSHB 836
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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CHAIRMAN

H. Resources

7/9/80

AGU 125406

Lead 3/25/80 - Reported  
out as CS



# Alaska State Legislature

## House

HOUSE RESOURCES COMMITTEE

FISH & GAME ISSUES

Alvin Osterback, Chairman

Pouch V, State Capitol  
Juneau, Alaska 99811  
(907) 465-3715

### HEARING NOTIFICATIONS

Re: Alien and Nonresident Hunters

BILL	DATE INFORMED	LETTER/PHONE	INFORMED	HEARING DATE
SS HB 836	3/10	4981	Rep. Hurlbert, Sponsor	3/25
	3/17	245-4977	Alaska Professional Hunters Assoc., Randy Smith	3/25
	3/21	4100	Dept. of Fish and Game	3/25
	3/21	586-2807	Jim Keeline, guide (will testify)	3/25
	3/21	4522	Dept. of Public Safety	3/25
	3/21	721-1553	Guide Licensing & Control Board Marc Jensen, Chairman	3/25



*Randy Smith*  
Notif. when # 836

ALASKA PROFESSIONAL HUNTERS ASSOC.

P O BOX 41932  
ANCHORAGE, ALASKA 99509

544-4284



SFE ALASKA WITH    
**JIM H. KEELINE**  
Registered Guide & Pilot

PHOTOGRAPHIC & SIGHTSEEING TRIPS  
FISHING - Daily Varden Salmon  
TRUCK TRIPS - Denali, Copper River, Fairbanks, Mileena  
Hudson Bay, Glacier Bay

*Wants  
to  
testify*

2 1/2 Mile N Douglas  
Juneau, Alaska 99802



P O Box 1333  
Tel (907) 586 2827

CSSSAB 836

As reported  
out of Resources

&

new fiscal  
note

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 26, 1980

SUBJECT: Nonresident alien hunters  
CSSSHB 836

TO: House Resources Committee  
ATTN: Mary Levan, AA

FROM: Kenneth E. Vassar  
Legislative Counsel 

Enclosed is the committee substitute you requested for sponsor substitute for House Bill 836. The fees for licenses established in this bill for nonresident aliens are generally higher than the fees for the same licenses for residents, and the fee for one type of license (hunting and trapping) is 20 times the fee for the same license for residents. I realize you are in a rush to receive this bill, so I have not conducted any research into the equal protection questions these fees raise; I believe that the United States Supreme Court has upheld state fees for fish and game licenses for nonresidents which were as much as seven times the fee for the same licenses for residents and has ruled unconstitutional fees for nonresident licenses which were 100 times the fee for resident licenses. Whether the court would uphold a nonresident fee which is 20 times the resident fee, I cannot say with certainty.

Also, I am confused by the special visitor's sport fishing license fee established in the bill. When would a nonresident alien be considered a visitor and thus eligible for this special fee rather than the general nonresident alien sport fishing fee established in the bill? I realize this simply parallels the special visitor's license already included in AS 16.05.340(a)(6), but I am not sure I understand that provision either.

KEV:jdn

Enclosure

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSSS for House Bill No. 836  
 Title An Act relating to alien and nonresident hunters.  
 Requested by House Resources Committee Date 3/28/80

II. FISCAL DETAIL

Agency Affected \_\_\_\_\_ Revenue \_\_\_\_\_  
 Program Category Affected \_\_\_\_\_ Fiscal Services \_\_\_\_\_  
 BRU, Program, or Subprogram(s) Affected \_\_\_\_\_ Audit Division \_\_\_\_\_

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See attached memorandum to R. D. Stevenson dated 3/28/80.

IV. DATE March 28, 1980 PREPARED BY (N. David Ziemer)  
 AGENCY Department of Revenue, Audit Division  
 PHONE 465-2320  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

ALASKA

# MEMORANDUM

TO:  R. D. Stevenson  
Special Assistant  
Department of Revenue

DATE: March 28, 1980

FILE NO:

TELEPHONE NO:

FROM: N. David Ziemer  
Chief, Audit Services  
Audit Division

SUBJECT: CS SS HB No. 836

This memorandum of fiscal impact has been prepared at the request of Mary Levan, Administrative Assistant to the House Resources Committee.

CS SS HB 836 would require nonresident hunters to use the services of registered guides while in Alaska. It would also raise both hunting and fishing fees for this class of visitor. From usage figures developed by the Alaska Professional Hunters Association, this bill would increase revenues by \$240,820 each year. This increase was computed with two assumptions:

1. The number of nonresident - alien hunters will decrease 25% from current figures due to increased fees and the required use of a guide.
2. The number of nonresident - alien fishermen will remain the same.

There would not be any added fiscal impact to the Department of Revenue.

IV. DATE March 28, 1980 PREPARED BY 1 7 0 / 1 - (N. David Ziemer)  
AGENCY Department of Revenue, Audit Division  
PHONE 465-2320

Original: Legislative Finance  
cc: Budget and Management  
Diana Spencer (Fiscal Liaison, Senate)

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 Requested by House Resources Committee Date 3/28/80

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600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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AGENCY Department of Revenue, Audit Division  
PHONE 465-2320

Original: Legislative Finance  
cc: Budget and Management

CS SS HB 836

as reported  
out of  
House Resources  
(with new fiscal  
note)

SEC. 16.05.340 Lic And TAG FEES.



ALIEN HUNTING AND FISHING LICENSE

Special license for Aliens. . . . .

FEES FOR ALIEN LICENSES ARE AS FOLLOWS:

- Hunting license. . . . . \$150.00
- Hunting and Sportfishing license.. . . \$200.00
- Hunting and Trapping license.. . . . \$300.00
- Fur Dealers license. . . . . \$500.00
- Taxidermy license. . . . . \$500.00

ALIEN FISHING LICENSES:

- Alien Visitor's special Sportfishing license
  - Valid for one (1) day. . . . . \$10.00
  - Valid for Ten (10) days. . . . . \$25.00
- Alien Sportfishing license. . . . . \$50.00

"Alien" Means a person who is not a citizen of the United States and whose permanent place of abode is not the United States.

Am To HB-836 Proposed by  
Alaska Professional Hunters  
Assoc.

1977

Sport Fish & Game Receipts

Prepared By	RS	Date	3-28
Approved By			

Type of license	NUMBER	GROSS	
NR Hunting	4345	260700 #	195525
Alien 25%	1086	- 65175	162900
		195,525	358425 <sup>00</sup>
Alien Lic Fee / 150 <sup>00</sup>	162900 <sup>00</sup>		- 260700 <sup>00</sup>
			<u>\$ 97,725<sup>00</sup></u>
NR Hunting & Fishing	1002	90180 #	67635
Alien 25%	251	- 22545	50200
		67635 <sup>00</sup>	117835 <sup>00</sup>
Alien Lic Fee / 200 <sup>00</sup>	50,200 <sup>00</sup>		- 90180 <sup>00</sup>
			<u>\$ 27655<sup>00</sup></u>
NR Hunting & TRAP	53	10600 #	7950 <sup>00</sup>
Alien 25%	14	- 2650	4200 <sup>00</sup>
		7,950 <sup>00</sup>	12150 <sup>00</sup>
Alien Lic Fee / 300 <sup>00</sup>	4200 <sup>00</sup>		- 10600 <sup>00</sup>
			<u>\$ 1550<sup>00</sup></u>
TOTAL NR Hunt -		\$126,930 <sup>00</sup>	
TOTAL NR Fish -		168,701 <sup>25</sup>	
NR Fish	12411	372330 #	279247.50
Alien 25%	3103	- 93082.50	155500.00
		279,247.50	434,397.50
Alien Lic Fee / 50 <sup>00</sup>	155,150 <sup>00</sup>		- 372,300.00
			<u>\$ 62,097.50</u>
NR 10-Day Fish	34473	517095 #	387821.25
Alien 25%	8618	- 129273.75	215450.00
		387821.25	603271.25
Alien Lic Fee / 25 <sup>00</sup>	215450 <sup>00</sup>		- 517095.00
			<u>\$ 86,176.25</u>
NR 1-Day Fish	16346	81730 #	61297.50
Alien 25%	4086	- 20432.50	40860.00
		61297.50	102157.50
Alien Lic Fee / 10 <sup>00</sup>	40860 <sup>00</sup>		- 81730.00
			<u>\$ 20,427.50</u>

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- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for SSHB 836  same title  
 new title
- and recommends DO PASS
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

**MEMBERS SIGNING  
DO PASS**

*Rich Hallock*  
*Robert H. Hallock*  
*John G. Miller*  
*Clayton L. Swartz*  
*John L. Swartz*  
*and \_\_\_\_\_*  
 \_\_\_\_\_  
 \_\_\_\_\_

**MEMBERS HAVING  
OTHER RECOMMENDATIONS:**

*John L. Swartz*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Clayton L. Swartz*  
**CHAIRMAN**

**BILL ANALYSIS**

ASSIGNMENT DATE \_\_\_\_\_

UNASSIGNED \_\_\_\_\_

<b>DEPARTMENT</b> Public Safety	<b>SPONSOR (PRINCIPAL)</b>	<b>BILL NO.</b> HB 836
<b>DEPARTMENT POSITION</b>  Amendment needed		
<b>DIVISION DIRECTOR</b> Col. Fred Woldstad	<b>DATE</b> 2/28/80	<b>COMMISSIONER</b> William R. Nix
		<b>DATE</b> 2/28/80
<b>GOVERNOR'S OFFICE USE</b>		
<input type="checkbox"/> POSITION NOTED <input type="checkbox"/> POSITION APPROVED <input type="checkbox"/> POSITION DISAPPROVED		
BY: _____ DATE: _____		
<b>SUMMARY</b>		
(1) RELATED BILLS (SIMILAR OR CONFLICTING)		
(2) OTHER AGENCIES AFFECTED BY BILL		
(2) a. ORGANIZATIONAL SUPPORT FOR BILL		(2) b. ORGANIZATIONAL OPPOSITION TO BILL
(3) PROGRAM EFFECTS OF BILL		
(4) FISCAL IMPACT: <input checked="" type="checkbox"/> NONE <input type="checkbox"/> FISCAL ANALYSIS ATTACHED		
(5) AMENDMENTS PROPOSED:		

**(6) COMMENTS**

There is a conflict between 16.05.407 (e) (2) (b) and 16.05.940 (14) - Definition of resident. In 16.05.407 (e) (2) (b), it requires a person, who is not a citizen of the United States, to maintain a permanent place of abode in the State of Alaska for at least 36 consecutive months for the purpose of taking big game animals without the requirement of having an Alaska guide.

However, in 16.05.940 (14), an alien, who has maintained his permanent place of abode in the State for one year, is considered a resident for the purpose of this chapter. There was an amendment to paragraph (14) in 1974, substituting "one year" for "three years".

**Sec. 08.54.100. Qualifications for a master guide license.** A person is entitled to be licensed as a master guide if he

(1) has legally hunted in the state for a part of each of 10 years during which time a substantial source of his income was from guiding or related activities directly contributing to his experience and competency as a guide;

(2) meets all the requirements of a registered guide and has been actively engaged in licensed guiding activities in the state for at least five years preceding application;

(3) has not been convicted of a violation of federal or state sports fishing, game or guiding laws or regulations within the preceding five years;

(4) has consistently performed in a superior manner as evidenced by required reports submitted to the board and by inquiries made by the board to at least two of the guide's clients of record; and

(5) meets additional qualifications which the board may require. (§ 1 ch 17 SLA 1973)

**Editor's note.** — Section 3, ch. 17, SLA 1973, provides: "A person licensed as a registered or master guide, class-A assistant guide or assistant guide as of March 14, 1973 shall, upon application, be issued a registered guide license, master guide license, class-A assistant guide license or assistant guide license, respectively."

**Sec. 08.54.110. Qualifications for registered guide license.** A person is entitled to be licensed as a registered guide if he

(1) is 21 years of age or more;

(2) is a resident of the state and maintains a permanent place of abode in the state;

(3) has practical field experience in the handling of firearms, hunting judging trophies, field preparation of trophies, first aid and photography;

(4) is familiar with the terrain and transportation problems in the district for which the license is requested;

(5) has passed the qualification examination prepared and administered by the board;

(6) has demonstrated to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime involving moral turpitude;

(7) has legally hunted in the state for all or part of each of five years in a manner directly contributing to his experience and competency as a guide;

(8) has been licensed as and performed the services of an assistant guide in the state for a part of each of three years;

(9) submits a written recommendation to the board from a registered guide for whom the applicant has worked.

(10) is capable of performing the physical duties associated with guiding activities;

(11) has been favorably recommended in writing by two hunters that he has guided or assisted in guiding during each year of his three years as an assistant guide, where recommendations have been solicited by the board from a list prepared by the applicant;

(12) meets additional qualifications which the board may require. (§ 1 ch 17 SLA 1973)

*Cross reference.* — See editor's note under AS 08.54.100.

**Sec. 08.54.120. Qualifications for a class-A assistant guide license.** A person is entitled to be licensed as a class-A assistant guide if he

(1) has been employed for at least one season as a licensed assistant guide;

(2) has had at least 20 years experience in the guide district in which he is to be employed; for the purposes of this paragraph physical presence at some time of the year during each of the 20 years constitutes adequate evidence of experience, and military service outside the state for no more than six years shall be accepted as part of the required 20 years experience;

(3) has been recommended in writing as qualified by a registered or master guide to the board. (§ 1 ch 17 SLA 1973)

*Cross reference.* — See editor's note under AS 08.54.100.

**Sec. 08.54.130. Privileges and limitations of class-A assistant guides.** A class-A assistant guide

(1) may not contract for hunts;

(2) shall be under the supervision of a registered or master guide who has contracted with the client for whom the class-A assistant guide is conducting the hunt;

(3) may take charge of a camp and conduct hunts from it without the registered or master guide necessarily being present in the area if the registered or master guide is physically present in the state and is actively supervising in guiding activities. (§ 1 ch 17 SLA 1973)

**Sec. 08.54.140. Qualifications for assistant guide license.** A person is entitled to be licensed as an assistant guide if he

(1) is 19 years of age or more;

(2) is a resident of the state;

(3) is favorably recommended to the board, in writing, by a registered guide;

(4) meets additional qualifications which the board may require;

(5) is in sound physical condition. (§ 1 ch 17 SLA 1973)

*Cross reference.* — See editor's note under AS 08.54.100.

**Sec. 08.54.142. Qualification for transporter license.** (a) No person may engage in the activity of transporting unless he is licensed as a transporter under this chapter. A person may be licensed as a transporter if he

(1) is a resident of the state;

(2) is familiar with the terrain and transportation problems in the district or districts for which the license is requested;

(3) obtains a business license to do business as a transporter under AS 43.70.030.

(b) No person may engage in the activity of transporting by air without an air commerce certificate as required by AS 02.05.040. (§ 2 ch 106 SLA 1976)

*Editor's note.* — Section 1, ch. 106, SLA 1976, provides: "Purpose. It is the purpose of this Act to protect the safety of the citizens of the state and better manage and protect its resources by licensing persons who transport hunters for hire so that reasonable standards and guidelines will be met and activities affecting the state's

game resources will be more accurately monitored and assessed."

Section 10, ch. 106, SLA 1976, provides: "Nothing in this Act gives a person licensed as a transporter a right as an air carrier which he does not otherwise hold under law."

**Sec. 08.54.144. Restriction to transportation.** (a) A licensed transporter may transport persons whose primary purpose is the taking of big game or the associated removing of big game meat and parts of big game, with the intent of receiving monetary or material remuneration for the transportation.

(b) Air carriers who transport persons between airports, landing strips or other landing areas officially listed in the United States government Flight Information Publication, Alaska Supplement, as revised, or the United States government Sectional Aeronautical Charts, as revised, are exempted from the license requirements for transporters under this chapter but shall comply with the reporting provisions as prescribed in AS 02.05.170(f).

(c) Master guides, registered guides, class A assistant guides or assistant guides are exempted from the license requirements for transporters under this chapter but shall comply with the reporting provisions as prescribed in AS 02.05.170(f). (§ 2 ch 106 SLA 1976)

*Editor's note.* — Section 10, ch. 106, SLA 1976, provides: "Nothing in this Act gives a person licensed as a transporter a right as an air carrier which he does not otherwise hold under law."

**Sec. 08.54.146. Transporter report.** A transporter shall maintain a record of (1) the names and addresses of all persons he transports; (2) the type of game transported; (3) an estimate of the quantity of meat

transported; (4) the date of transporting; and (5) if known, the locality where the game was taken. The report shall be submitted to the Department of Fish and Game within 90 days after transporting the game. After receiving a report required under this section, the Department of Fish and Game shall send a copy of it to the Department of Public Safety. (§ 2 ch 106 SLA 1976; am § 4 ch 133 SLA 1976)

Revisor's note (1976). — AS 08.54.146 was added by § 2, ch. 106, SLA 1976, and amended by § 4, ch. 133, SLA 1976. Since the two acts appear to be inconsistent, and ch. 106 is superseded by ch. 133, only the later enactment has been given effect here.

Editor's note. — Section 10, ch. 106, SLA 1976, provides: "Nothing in this Act gives a person licensed as a transporter a right as an air carrier which he does not otherwise hold under law."

Effect of amendment. — Section 4, ch. 133, SLA 1976, substituted "ninety days" for "thirty days" in the second sentence.

**Sec. 08.54.150. Responsibility of registered or master guide for violations.** A registered or master guide contracting for a hunt is equally responsible under § 200 of this chapter for a violation of a federal or state sport fish, game or guide statute or regulation committed by a class-A assistant guide or assistant guide while in the course of his employment. (§ 1 ch 17 SLA 1973)

**Sec. 08.54.170. License fees.** (a) License fees for engaging in the profession of guiding are:

- (1) master guide license, annual ..... \$75
- (2) registered guide license, annual ..... 75
- (3) class-A assistant guide, annual ..... 15
- (4) assistant guide license, annual ..... 10

(b) The license fee for a master guide, registered guide, class-A assistant guide or assistant guide license is in addition to the fee required for a hunting or fishing license.

(c) The license fee for a transporter is \$10. (§ 1 ch 17 SLA 1973; am § 3 ch 106 SLA 1976)

Effect of amendment. — The 1976 amendment added subsection (c).

a person licensed as a transporter a right as an air carrier which he does not otherwise hold under law."

Editor's note. — Section 10, ch. 106, SLA 1976, provides: "Nothing in this Act gives

**Sec. 08.54.180. Examination fee.** An applicant for a guide examination shall pay a fee of \$25. (§ 1 ch 17 SLA 1973)

**Sec. 08.54.185. Additional fees.** In addition to the license and examination fees provided for under this chapter, master guides and registered guides are subject to fees imposed under AS 16.05.340(e). (§ 4 ch 268 SLA 1976)

Legislative committee report. — For report on ch. 268, SLA 1976 (FCCS HCS

CS88SB 335), see 1976 House Journal, p. 910.

**Sec. 08.54.190. Expiration and renewal.** (a) A master guide, registered guide, class-A assistant guide, assistant guide or transporter license expires on December 31, following issuance.

(b) No license may be issued to a class-A assistant guide or assistant guide who has failed to renew his license for two consecutive years unless he again meets the qualifications for initial issuance of the license.

(c) A master or registered guide who fails to renew a license is not required to requalify under § 100(2) or § 110(8) of this chapter, respectively. (§ 1 ch 17 SLA 1973; am § 12 ch 127 SLA 1974; am § 106 SLA 1976)

**Effect of amendments.** -- The 1974 amendment substituted "class-A assistant guide" for "class-A guide" in subsection (b).

The 1976 amendment substituted "assistant guide or transporter license" for "or assistant guide license" in subsection (a) and added "following issuance" to the end of that subsection.

**Editor's note.** -- Section 10, ch. 106, SLA 1976, provides: "Nothing in this Act gives a person licensed as a transporter a right as an air carrier which he does not otherwise hold under law."

**Legislative committee report.** -- For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

**Sec. 08.54.200. Grounds for disciplining a licensee.** (a) The board shall hold a hearing to determine if disciplinary action is necessary if

- (1) complaints concerning the licensee have been filed with the board from three or more clients of separate parties; or
- (2) a licensee has been charged with a violation of federal or state sport fish, game or guide statutes or regulations; or
- (3) a licensee has been convicted of a violation of federal or state sport fish, game or guide statute or regulation.

(b) After a hearing, the board may revoke, suspend, or deny renewal of a license if the board finds that the licensee

- (1) engaged in unethical activity, unsafe activity, or activity which adversely affects the natural resources of the state when such activity is unrelated to the legal and legitimate purposes of the contract hunt; or
- (2) violated a provision of a federal or state sport fish, game or guide statute or regulation.

(c) After a hearing, the board shall revoke a license if the board finds that the licensee

- (1) does not meet the qualifications specified by statute or regulation for the class of license held;
- (2) is incompetent as a master guide, registered guide, class-A assistant guide, or assistant guide;
- (3) has been convicted of two violations of federal or state sport fish, game or guide statutes or regulations.

(d) No person who is disciplined under this section may engage in any guiding or transporting activity during the period of license revocation

or disciplinary action. No person licensed under this chapter may hire or work for a guide whose license is suspended or revoked under this section.

(e) If the board revokes a license it shall notify the Department of Revenue, and the person whose license has been revoked shall return the license to the Department of Commerce and Economic Development. (§ 1 ch 17 SLA 1973; am § 2 ch 43 SLA 1975; am § 5 ch 106 SLA 1976; am § 47 ch 218 SLA 1976)

**Effect of amendments.** — The 1975 amendment substituted "Department of Commerce" for "Department of Fish and Game" in subsection (e).

The first 1976 amendment inserted "or transporting" in subsection (d).

The second 1976 amendment substituted "Department of Commerce and Economic

Development" for "Department of Commerce" at the end of subsection (e).

**Editor's note.** — Section 10, ch. 106, SLA 1976, provides: "Nothing in this Act gives a person licensed as a transporter a right as an air carrier which he does not otherwise hold under law."

**Sec. 08.54.210. Unlawful acts.** (a) It is unlawful for

(1) a master guide, registered guide, class-A assistant guide, assistant guide or transporter to fail to timely report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, violations by a client of a state fish, game or guiding statute or regulation;

(2) a master guide, registered guide, class-A assistant guide, assistant guide or transporter to aid the commission of a violation of this chapter or of AS 16.05 or a regulation promulgated under either chapter, or permit the commission of a violation in his sight without attempting to prevent it, short of using force, and without reporting it;

(3) a person to guide or transport as defined in this chapter without being licensed under this chapter and without having the license in his actual possession; however, for purposes of transporting by air, in the case of a corporation, company, partnership or other business entity, the license may remain at the principal place of business of the business entity;

(4) a person to advertise as or represent himself to be a licensed master guide, registered guide, class-A assistant guide, assistant guide or transporter without being currently licensed, or to falsely advertise services;

(5) a person to guide as defined in this chapter without having a current valid hunting and fishing license in his possession.

(6) a master or registered guide to employ or have under his supervision more than three assistant guides at the same time.

(7) a person to guide as defined in this chapter without paying a fee as prescribed in AS 16.05.340(e).

(b) A person who violates (a)(1) — (6) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both,

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and may have his license revoked for a period up to five years. However, a person who engages in guiding or transporting activity during the period his license is suspended or revoked under this chapter is guilty of a felony punishable, upon conviction, by a fine of not more than \$5,000 and by imprisonment for not less than one year nor more than three years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding or transporting activity engaged in during the period of suspension or revocation shall be confiscated by persons authorized to enforce this chapter. A person who violates (a)(7) of this section, upon conviction, is subject to the same license revocation provision as for a violation of (a)(1) — (6) of this section and, in addition, is punishable by a fine of not more than \$5,000, or by imprisonment for not more than one year, or by both. (§ 1 ch 17 SLA 1973; am §§ 3, 4 ch 43 SLA 1975; am § 6 ch 106 SLA 1976; am § 3 ch 133 SLA 1976; am §§ 5, 6 ch 268 SLA 1976)

**Effect of amendments.** — The 1975 amendment substituted "Department of Public Safety, division of fish and wildlife protection" for "Department of Fish and Game" in subsection (a)(1) and, in subsection (b), deleted "outfitting or" preceding "guiding activity," substituted "his license is suspended or revoked under" for "of disciplinary action under § 200(e) of," and inserted "upon conviction" in the second sentence, deleted "under § 200(e) of this chapter" following "for a felony," and substituted "guiding activity engaged in during the period of suspension or revocation" for "a violation of § 200(e) of this chapter" in the third sentence.

The first 1976 amendment, in subsection (a), substituted "assistant guide or transporter" for "or assistant guide" in paragraphs (1), (2) and (4), deleted "fish and game" following "division of fish and wildlife protection" in paragraph (1), inserted "or transport" near the beginning of paragraph (3). In subsection (b) the

amendment inserted "by" preceding "imprisonment" in the first sentence, and inserted "or transporting" in the second and third sentences.

The second 1976 amendment added paragraph (6) of subsection (a).

The third 1976 amendment added paragraph (7) of subsection (a), and in subsection (b), inserted "(a)(1) — (6) of" in the first sentence and added the fourth sentence.

While none of the 1976 amendments gave effect to the others, all have been given effect in this section as it is set out in this Supplement.

**Editor's note.** — Section 10, ch 106, SLA 1976, provides: "Nothing in this Act gives a person licensed as a transporter a right as an air carrier which he does not otherwise hold under law."

**Legislative committee report.** — For report on ch. 268, SLA 1976 (FCCS HCS CSSSSB 335), see 1976 House Journal, p. 910.

**Sec. 08.54.220. Injunction against unlawful action.** When in the judgment of the board a person or corporation or other entity has engaged in an act in violation of § 130 and §§ 200 — 210 of this chapter or the regulations promulgated under them, the board may apply to the appropriate court for an order enjoining the act. Upon a showing by the board that the person is engaging in the act, the court shall grant injunctive relief or other appropriate order without bond. (§ 1 ch 17 SLA 1973; am § 5 ch 43 SLA 1975)

**Effect of amendment.** — The 1975 amendment substituted "§ 130 and §§ 200 — 210" for "§§ 100 — 200" and "them" for "§ 50 of this chapter" in the first sentence.

Article 3. General Provisions.

Section

240. Definitions

Sec. 08.54.240. Definitions. In this chapter

- (1) "board" means the Guide Licensing and Control Board;
- (2) "guide", "guides" or "guiding" means assisting another person to take game with the intent of receiving monetary or material remuneration for the services, by accompanying and directing that person personally or through a licensed assistant guide for the duration of a hunt, and not solely for the purpose of providing transportation services;
- (3) "resident" means a person who maintains a place of residence within the state; has not claimed residency in another state for the immediately preceding 12 months; shows by all attending circumstances that his intent is to make this state his permanent residence;
- (4) "unethical activity" means
  - (A) deception in any degree involving prospective or actual clients either before, during, or following contract hunts;
  - (B) misrepresentation either through private communication or public advertising of the nature, type, duration, cost, or other conditions of contract hunts.
  - (C) making a guaranty that a species or certain number of species of game will be taken on a contract hunt.
- (5) "transporting" or the "activity of transporting" means conveying a person by any lawful means to an area for remuneration or material benefit in excess of normal operating costs, when the primary purpose of the person being conveyed is the taking of big game and the associated removing of big game meat and parts of big game after big game has been taken; big game as used in this paragraph means game which, if taken by a nonresident, would require a big game tag. (5 1 ch 17 SLA 1973; am 56 7, 8 ch 106 SLA 1976; am § 2 ch 133 SLA 1976)

*Effect of amendments* The first 1976 amendment deleted "accompanying, guiding, or" preceding "assisting another person" near the beginning of paragraph (2), added the language beginning "by accompanying and directing that person" to the end of that paragraph, and added paragraph (5).

The second 1976 amendment added paragraph (4)(C).

*Editor's note.* — Section 10, ch 106, SLA 1976, provides: "Nothing in this Act gives a person licensed as a transporter a right as an air carrier which he does not otherwise hold under law"

Chapter 56. Hotels and Boardinghouses.

Section

- 10. Registration of travelers
- 20. Effect of refusal to register
- 30. Penalty for noncompliance
- 40. Disposition of fines

Section

- 50. Liability for valuables
- 60. Baggage liability
- 70. Definitions

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AGENCY  
JUNEAU, ALASKA 99801  
707-465-1800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 26, 1980

SUBJECT: Nonresident alien hunters  
CSSSHB 836

TO: House Resources Committee  
ATTN: Mary Levan, AA

FROM: Kenneth E. Vassar  
Legislative Counsel 

Enclosed is the committee substitute you requested for sponsor substitute for House Bill 836. The fees for licenses established in this bill for nonresident aliens are generally higher than the fees for the same licenses for residents, and the fee for one type of license (hunting and trapping) is 20 times the fee for the same license for residents. I realize you are in a rush to receive this bill, so I have not conducted any research into the equal protection questions these fees raise; I believe that the United States Supreme Court has upheld state fees for fish and game licenses for nonresidents which were as much as seven times the fee for the same licenses for residents and has ruled unconstitutional fees for nonresident licenses which were 100 times the fee for resident licenses. Whether the court would uphold a nonresident fee which is 20 times the resident fee, I cannot say with certainty.

Also, I am confused by the special visitor's sport fishing license fee established in the bill. When would a nonresident alien be considered a visitor and thus eligible for this special fee rather than the general nonresident alien sport fishing fee established in the bill? I realize this simply parallels the special visitor's license already included in AS 16.05.340(a)(5), but I am not sure I understand that provision either.

KEV:jdn

Enclosure

*LD 113 PJ*

**SPORT FISH & GAME RECEIPTS**  
**Calendar Year 1979**  
**Final - January 1, 1979 thru December 31, 1979**  
**Prepared January 14, 1980**

CODE	TYPE OF LICENSE	NUMBER	GROSS	NET	NET/SPORT	NET/GAME	NET/GENERAL
201	R. Sport Fishing	83,782	\$ 836,726.58	\$ 793,793.33	\$ 793,793.33	\$-----	\$-----
202	R. Hunting	22,618	271,416.00	259,240.47	-----	259,240.47	-----
203-A	R. Hunt/Trap	2,170	32,550.00	30,909.33	-----	28,536.43	2,372.90
204	R. Spt. Fish/Hunt	29,004	638,088.00	604,913.93	274,960.90	329,953.03	-----
205	R. Fish/Hunt/Trap	9,328	233,200.00	220,723.25	88,289.31	114,632.27	17,801.67
206	NR. 10-Day Spt. Fish	34,473	517,095.00	492,039.41	492,039.41	-----	-----
207	NR Sport Fishing	12,411	372,330.00	353,964.63	353,964.63	-----	-----
208	NR Hunting	4,345	260,700.00	248,300.74	-----	248,300.74	-----
209	NR Fish/Hunt	1,002	90,180.00	85,562.50	28,462.04	57,100.46	-----
210	NR Hunt/Trap	53	10,600.00	10,022.98	-----	6,030.43	3,992.55
211	NR 1-Day Spt. Fish	16,346	81,730.00	77,531.45	77,531.45	-----	-----
212	NR Military Spt. Fish	6,980	69,800.00	66,448.15	66,448.15	-----	-----
213	NR Military Small Hunt	979	11,748.00	11,127.95	-----	11,127.95	-----
214	NR Military Fish/Hunt	878	19,316.00	18,431.46	8,377.93	10,053.53	-----
217-3D	R. Trap	1,465	4,395.00	4,189.10	-----	1,532.94	2,656.16
218	Duplicate License	2,205	5,810.00	5,524.47	-----	-----	5,524.47
120	Fish/Fur/Game Farm	4	400.00	381.41	-----	-----	381.41
121	R. Fur Dealer	105	5,250.00	4,942.74	-----	-----	4,942.74
122	NR Fur Dealer	5	1,000.00	931.56	-----	-----	931.56
123	K. Taxidermy	37	2,775.00	2,604.56	-----	-----	2,604.56
124	NR Taxidermy	2	400.00	382.82	-----	-----	382.82
200	Permit Fees	18,915	96,595.00	94,665.50	-----	94,665.50	-----
201-B	R. Blind Spt. Fish	10	2.50	2.37	2.37	-----	-----
205-A	R. 25c Hunt/Fish/Trap	8,334	2,083.50	1,981.92	660.57	1,149.51	171.84
<b>SUBTOTAL</b>		<b>256,151</b>	<b>\$3,564,190.58</b>	<b>\$3,388,616.03</b>	<b>\$2,184,530.09</b>	<b>\$1,162,323.26</b>	<b>\$41,762.68</b>
215	R. Big Game Tags	3,538	90,825.00	87,481.14	-----	87,481.14	-----
216	NR. Big Game Tags	7,301	1,290,050.00	1,229,716.83	-----	1,229,716.83	-----
<b>TOTAL</b>		<b>266,970</b>	<b>\$4,945,065.58</b>	<b>\$4,705,814.00</b>	<b>\$2,184,530.09</b>	<b>\$2,479,521.23</b>	<b>\$41,762.68</b>

*1557*

**RESIDENT TAGS**

D/G Bear	3,533	\$88,325.00
Moose	5	2,500.00
<b>TOTAL</b>	<b>3,538</b>	<b>\$90,825.00</b>

Gross	\$4,945,065.58
Cost	239,251.58
<b>Net</b>	<b>\$4,705,814.00</b>

*4.83%*

Residents entitled to Sport Fish	130,458
Non-residents entitled to Sport Fish	72,090
<b>Total</b>	<b>202,548</b>
Residents entitled to Hunt	71,454
Non-residents entitled to Hunt	7,257
<b>Total</b>	<b>78,711</b>
Residents entitled to Trap	21,297
Non-residents entitled to Trap	53
<b>Total</b>	<b>21,350</b>

*55%*  
*10%*  
*.002%*

*LESS Military = 5400*  
*7.5%*

**NON-RESIDENT TAGS**

B/G Bear	1,036	\$ 259,000.00	<i>- 311 -</i>
Black Bear	1,262	126,200.00	<i>- 379 -</i>
Deer	390	13,650.00	
Moose	1,837	367,400.00	<i>- 552 -</i>
Sheep	661	165,250.00	<i>- 188 -</i>
Elk	12	1,500.00	
Goat	392	49,000.00	<i>- 118 -</i>
Caribou	1,387	276,600.00	<i>- 415 -</i>
Wolf	249	12,450.00	
Wolverine	60	3,000.00	
Beaver	-----	-----	
Muskox	15	15,000.00	
Walrus	4	1,000.00	
<b>Total</b>	<b>7,301</b>	<b>\$1,290,050.00</b>	

*3% Alien*

*1.35 Imp/total*

NUMBER SOLD EACH YEAR BY CLASS		1970	1971	1972	1973	1974	1975	1976	1977	1978	1979
201	R. Sport Fishing	39,442	40,503	44,139	47,883	50,593	54,561	66,409	76,892	83,824	87,782
202	R. Hunting	22,148	21,453	19,957	23,875	19,699	16,205	17,003	21,470	21,803	22,618
203-A	R. Hunt/Trap	1,042	854	842	1,059	1,109	1,181	1,328	2,063	1,947	2,170
204	R. Spt. Fish/Hunt	22,951	25,686	27,625	29,937	32,394	34,779	37,380	30,403	29,885	29,004
205	R. Fish/Hunt/Trap	3,955	4,167	4,387	5,343	6,239	7,551	9,606	9,153	9,141	9,328
206	NR 10-Day Spt. Fish	17,397	17,662	19,486	22,166	21,702	24,228	26,706	23,564	28,400	34,473
207	NR Sport Fishing	20,790	18,405	19,269	14,374	16,009	19,753	20,777	12,766	12,935	12,411
208	NR Hunting	9,004	8,033	8,067	7,046	6,636	5,417	5,390	3,636	3,552	4,345
209	NR Fish/Hunt	3,506	3,476	3,592	1,639	1,680	1,640	1,711	803	787	1,102
210	NR Hunt/Trap	9	16	10	23	24	26	37	52	67	53
211	NR 1-Day Spt. Fish	-----	-----	-----	-----	-----	-----	-----	11,174	14,800	16,346
212	NR Military Spt. Fish	-----	-----	-----	-----	-----	-----	-----	6,527	7,447	6,980
213	NR Military Small Hunt	-----	-----	-----	-----	-----	-----	-----	841	1,077	979
214	NR Military Fish/Hunt	-----	-----	-----	-----	-----	-----	-----	987	912	878
217-3B	R. Trap	815	672	822	1,137	890	759	1,210	1,589	1,480	1,465
218	Duplicate License	-----	-----	1,154	1,537	1,611	1,487	2,218	2,748	2,949	2,905
120	Fish/Fur/Game Farm	16	21	18	4	5	1	2	2	2	4
121	R. Fur Dealer	-----	-----	-----	126	136	121	136	107	189	105
122	NR Fur Dealer	-----	-----	-----	2	3	4	3	4	7	5
123	R. Taxidermy	-----	-----	-----	54	42	36	41	45	63	37
124	NR Taxidermy	-----	-----	-----	3	-----	2	-----	1	1	2
	R. Fur Dealer-Taxid.	159	166	171	-----	-----	-----	-----	-----	-----	-----
	NR Fur Dealer-Taxid.	13	7	8	-----	-----	-----	-----	-----	-----	-----
	Rep. & Master Guides	346	352	379	233	-----	-----	-----	-----	-----	-----
	Ass't Guides	458	555	495	60	-----	-----	-----	-----	-----	-----
	Class "A" Ass't Guide	52	65	79	18	-----	-----	-----	-----	-----	-----
200	Permit Fee	-----	-----	-----	-----	-----	-----	-----	218	20,034	18,913
201-B	R. Blind Spt. Fish	4	1	-----	2	3	5	3	2	13	10
204-A	R. 25c Hunt/Fish/Trap	3,359	5,595	5,936	6,658	6,256	5,004	5,281	5,443	6,887	8,334
215	R. Big Game Tags	-----	-----	-----	-----	-----	-----	-----	2,937	3,449	3,338
216	NR Big Game Tags	12,602	11,955	11,866	8,339	8,331	6,956	7,415	5,775	5,426	7,301
TOTAL		160,058	159,844	168,301	171,544	173,362	179,936	202,654	219,242	257,277	266,990

GROSS SPORT FISH AND GAME LICENSE RECEIPTS 1970 thru 1979

1977 NR Hunting - 68%  
 NR Hunting & Fishing - 47%  
 NR Big Game Tags - 78%

STATE OF ALASKA  
DEPARTMENT OF REVENUE  
FISH AND GAME LICENSING

ROSS SPORT FISH AND GAME LICENSE RECEIPTS 1970 THRU 1979

CODE	TYPE OF LICENSE	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979
201	R. Sport Fishing	\$ 197,210	\$ 202,513	\$ 220,693	\$ 239,415	\$ 252,965	\$ 272,805	\$ 332,045.00	\$ 763,250.00	\$ 838,190.00	\$ 876,726.50
202	R. Hunting	155,036	150,171	139,499	167,125	137,823	113,435	119,021.00	250,110.00	261,621.00	271,416.00
203-A	R. Hunt/Trap	10,420	8,540	8,420	10,599	11,090	11,810	13,280.00	30,300.00	29,203.00	12,550.00
204	R. Spt. Fish/Hunt	275,412	308,232	331,300	359,244	388,728	417,368	448,560.00	665,406.00	657,420.00	678,088.00
205	R. Fish/Hunt/Trap	59,325	62,505	65,805	80,145	55,585	113,765	144,090.00	227,555.00	228,525.00	241,200.00
206	NR. 10-Day Spt. Fish	86,935	89,320	97,430	221,660	217,020	242,280	257,060.00	349,080.00	428,875.00	517,095.00
207	NR Sport Fishing	207,900	184,050	192,690	287,480	320,180	399,040	415,540.00	380,480.00	388,010.00	372,330.00
208	NR Hunting	90,040	80,330	80,670	141,320	132,720	108,740	107,800.00	206,680.00	213,170.00	260,700.00
209	NR Fish/Hunt	70,120	69,320	71,840	65,560	67,200	65,600	68,440.00	70,670.00	70,830.00	90,180.00
210	NR Hunt/Trap	930	1,600	1,000	4,600	4,800	5,200	7,400.00	10,400.00	13,400.00	10,600.00
211	NR 1-Day Spt. Fish	-----	-----	-----	-----	-----	-----	-----	55,870.00	74,000.00	81,730.00
212	NR Military Spt. Fish	-----	-----	-----	-----	-----	-----	-----	65,270.00	74,470.00	69,800.00
213	NR Military Small Hunt	-----	-----	-----	-----	-----	-----	-----	10,092.00	12,924.00	11,748.00
214	NR Military Fish/Hunt	-----	-----	-----	-----	-----	-----	-----	21,714.00	20,064.00	19,316.00
215-18	R. Trap	2,445	2,016	2,466	3,411	2,670	2,277	3,630.00	4,767.00	4,440.00	4,395.00
218	Duplicate License	-----	-----	2,308	3,074	3,222	2,974	4,436.00	5,496.00	5,898.00	5,810.00
120	Fish/Fur/Game Farm	80	105	90	400	500	100	200.00	100.00	200.00	400.00
121	R. Fur Dealer	-----	-----	-----	2,520	2,720	2,420	2,720.00	5,320.00	9,430.00	5,240.00
122	NR Fur Dealer	-----	-----	-----	200	300	400	300.00	800.00	1,400.00	1,000.00
123	R. Trapper	-----	-----	-----	2,700	2,100	1,800	2,050.00	3,375.00	4,725.00	2,775.00
124	NR Trapper	-----	-----	-----	450	-----	300	-----	200.00	200.00	400.00
	R. Fur Dealer-Teaid.	3,180	3,320	3,420	-----	-----	-----	-----	-----	-----	-----
	NR Fur Dealer-Teaid.	1,300	700	600	-----	-----	-----	-----	-----	-----	-----
	Reg. & Master Guide	17,300	17,600	18,950	11,650	-----	-----	-----	-----	-----	-----
	Ass't Guide	2,290	2,775	2,475	330	-----	-----	-----	-----	-----	-----
	Class "A" Ass't Guide	523	650	790	180	-----	-----	-----	-----	-----	-----
200	Permit Fee	-----	-----	-----	-----	-----	-----	-----	1,090.00	101,130.00	96,995.00
201-R	R. Blind Spt. Fish	4	1	1	2	3	5	3.00	.50	3.25	2.50
205-A	R. 75c Hunt/Fish/Trap	1,339	1,398	1,484	1,664	1,564	1,251	1,320.75	1,365.75	1,221.75	2,081.50
	<b>SUBTOTAL</b>	\$1,181,756	\$1,184,330	\$1,242,333	\$1,403,720	\$1,619,260	\$1,761,070	\$1,937,895.25	\$1,129,391.25	\$3,639,822.00	\$3,966,190.50
215	R. Big Game Tags	-----	-----	-----	-----	-----	-----	-----	89,575.00	94,775.00	90,825.00
216	NR Big Game Tags	474,415	393,840	404,410	753,625	764,950	617,025	698,075.00	994,945.00	993,640.00	1,270,050.00
<b>TOTAL</b>		\$1,606,171	\$1,578,170	\$1,646,743	\$2,157,145	\$2,384,210	\$2,378,095	\$2,635,970.25	\$4,210,811.25	\$4,528,237.00	\$4,965,065.50

SSHB 836

Bill,

Here's the dope you wanted from the morgue on alien hunters.

But there's more.

A fellow here in town by the name of Bruno Zedler is a wealth of information on the foreign hunter and guide racket. He is ~~xxxxxxxx~~ a naturalized U.S. citizen and Alaskan from Germany and is familiar with the local guides who cheat by putting out too many hunters in too many spike camps and the Germans who are booking hunts in Germany and bringing their clients over here, hunting with them and going back.

He also knows of booking agents in Europe which arrange hunts here for guides who subsequently hire Europeans to do the guiding. One guy, by the name of Hans, was hunted here for about three years without a guiding license. He worked, as did the Obwaller fellow mentioned in the articles, for one of the Brunners.

If you need more, call me. Also Bill Ballinger with the guide board is continuing the state probe into the case against Mort Mason, the fellow who hired Obwaller from Germany.

Bill Blessington

# Foreign Guides Work Openly

By BILL BLESSINGTON  
Times Outdoor Editor

A lack of game law enforcement and loose restrictions on alien hunters have allowed a full-blown international ring of foreign guides and clients to operate openly in Alaska without licenses or regard for wanton waste laws. NOV 1 1979

"I worked for one guide who had eight spike camps set up with individual guides," one German-speaking assistant guide told The Anchorage Times this week.

"And we had two other Germans guiding for us the whole season," he added.

The man, who asked that his name not be used, said he personally saw five moose and two caribou wasted by hunters, who left them in the field, or by the guide, who oversaw their operation and let the meat spoil next to a runway at their base camp. The nameless assistant guide is a 10-year resident of Alaska and was legally licensed to guide hunters this year under the supervision of a registered guide.

The incidents took place on the far side of the Alaska Range, between Lake Clark and Rainy Pass.

And from the same area came reports of at least two "freelance" German-speaking guides who guided their hunters in Europe and came over with them, departing Alaska at the end of the hunting season without benefit of license as either a guide or do business.

Confirmation about the foreign guiding ring came from two other sources, one an Austrian professional hunter who guided in Alaska as an unlicensed assistant guide this year, and from a local hunter who gave three German-speaking men a lift in his plane.

The Austrian, Otto Obwaller of Feinerbrunn in the Tirol, was involved in apparent wanton waste of a moose which was left untouched after a German client cut the head off for the antlers.

Obwaller said he knew of three other Germans working for Alaskan guides this year. In addition, he admitted that this season was his third year working in Alaska as a pirate guide for two Alaskan registered guides. State law prohibits non-residents from guiding.

Local hunter Bill Hudak reported two weeks ago that he encountered three German-speaking men along a river just west of the Alaska Range in September. Two of the men were being guided by the third who told Hudak that their hunt had been organized in Germany.

Two years ago, Obwaller said, he began working for a well-known Anchorage guide who paid him \$60 a day and gave him a bonus for each animal his hunters bagged. Then, according to Obwaller's story, the guide had one other German professional hunter. Last year, said Obwaller, the guide employed an additional German as a guide for a total of three. "If somebody from the Fish and Game showed up," he said, "(the guide) told us to say that we were just packers."

Obwaller claimed he had a falling out with the guide over pay and didn't plan to return to Alaska this year. One of his former German speaking colleagues referred him to another Anchorage guide for this past season and Obwaller said he was paid \$80 per day with a \$200 bonus per animal.

German-speaking guides are in such high demand that a few local registered guides seem willing to take the risks connected with hiring them.

"A lot of the Germans who come over here to hunt are older people," said the anonymous assistant guide. "Many of them are in their 50s, 60s and 70s and they don't speak any English. They specifically ask for German-speaking guides."

This registered guide charged between \$4,000 and \$6,000 per hunt," he continued. "I know that fellow had in excess of 20, maybe 25 hunters go through his camps in five weeks."

"And the state only gets between \$100 and \$250 per hunt for tags and fees. It's no wonder the state ain't got no money to go and enforce the laws."

"I was in camp for 47 days," he said, "and we never saw a protection officer."

Wanton waste is common, according to the assistant guide because the foreign hunters don't know what to expect in Alaska and aren't familiar with the size of moose and caribou.

"I was in camp one day and two Germans hiked in with caribou racks on their backs. In the course of their conversation, I learned that they had no intention of salvaging the meat because of the distance."

"The hunters don't seem to have any judgment for the vastness of the area. They are in good shape because many of them come from Austria or Germany where they are very active and hunt in the mountains to stay in shape so they hunt a full eight hours away from camp in all directions. Then when they down a moose or something, there's no way they can salvage the meat be-

John Vania, regional game supervisor for the Alaska Department of Fish and Game, says the alien hunter problem has surfaced rapidly in the past year.

"Five or 10 years ago," he said, "the European hunter was the best hunter in the field. They took every scrap of meat out and they worked like heck for their game. They were really good hunters." NOV 1 1979

"Now, they can come over here cheap and instead of getting a lot more of the good hunters like we used to, we're getting a lot of slob."

Vania has been requested by one legislator to prepare a bill that would put tighter controls on alien and non-resident hunters. NOV 1 1979

State officials are familiar with the alien guiding operations as well as international booking operations that bring large numbers of foreign hunters into the state seeking moose, caribou and black bear.

"There's one Swede who brings in a bunch of hunters every year," said game biologist Ray Cramer. "Last year he brought in 40 and I'm sure he brought in the same number this year. That's all he does - look for places to hunt and broker the ticket sales and collect the money from other Swedes. He goes all over the world."

Cramer said the booking agent was tough with his hunters about wanton waste and observing local laws. "He told me he went in to pick up two hunters who just had the moose racks and he gave them 24 hours to go back and get the meat or they would have to find their own way back to Sweden."

"They got the meat and took it to a village so it wasn't wasted," Cramer continued. "We put one protection officer on his operation for a season and he couldn't find any waste at all."

Vania says the increasing numbers of non-resident and alien hunters will eventually create friction between themselves and Alaskans seeking big game on smaller and smaller areas.

# Are We Giving It Away?

By Bill Blessington

Times Outdoor Editor OCT 1 1979



Only a week or so ago, this writer had the unfortunate experience of seeing the meat from a great Alaskan animal wasted.

A big moose — a trophy bull in the prime of his life — shot and left to rot. Only the antlers taken out of the woods, eventually stolen.

It's not the first time I've seen such waste but that makes it no easier.

Who did it? I can say and probably will have to under oath.

Who's ultimately responsible? I don't know. The parties who pulled the trigger and cut the head off have left the country. When the moose was shot, it was done with the hunter's full knowledge of the laws about wanton waste. What can you do when you remind someone of the law and all they do is shrug? The licensed guide involved did what he could to arrange salvage of the meat as soon as he arrived on the scene.

It would be dead wrong to portray Alaska's hunters and guides as law-breakers. The vast majority of them respect the law and go out of their way to make sure that game is taken fairly.

But a single incident such as the one I saw, despicable as it was, should not be taken out of context. The context, however, bothers me.

It's simply too easy to break the game laws in Alaska and get away with it. A very thin brown line of less than 70 men and women is the only buffer between the rip off artists or those who don't care and the game which most of us love.

I recently spent a couple of days at Lake Hood, watching plane loads of hunters return to town. The obvious non-residents, dressed in green wool with jaunty caps and tweeds, carried their caribou horns, moose racks and bags to waiting taxis.

But then something struck me as odd. Only baggage came off the planes. I failed to see any meat. It wasn't one plane, it was one after the other, as long as the pass was open.

It is possible that the meat was given to natives for their winter supply. It's also possible that a lot of it was eaten in camp by a crew of hungry hunters.

But it's also possible that Alaska is selling its game too cheaply. A policy which not only insults Alaskans and sportsmen but threatens the herds themselves.

## Jack Carter bags 3 ducks

OCT 13 1979

ANCHORAGE  
NEWS

Jack Carter bagged three ducks during a full day of shooting Friday on the Knik River, one of his hunting partners reported.

The President's son — visiting the state for the first time ever — "hit just about every bird he shot at" during a generally slow day of hunting, said Brad Snodgrass of Palmer.

"It was a fair shoot," Snodgrass said. "We could have done a lot better... There were a lot of birds in the area but not many hunters out there to move them around."

Two Secret Service agents joined the 31-year-old Carter and two others for the hunt at a blind owned by Snodgrass. Before going out, Carter purchased the required \$60 nonresident hunting license and a \$7.50 duck stamp.

In all, Snodgrass said, the six-member party brought down "seven or eight" ducks.

Carter told The Daily News prior to the hunt that he hadn't done much duck hunting in his native state. "Georgia isn't on any of the flyways," he said.

The co-owner of a grain elevator in Calhoun, Carter accompanied his wife, Judy, to Anchorage for her appearance as a keynote speaker before

the Alaska Association of Community Education. As director of career education for the Palmer School District, Sr. Snodgrass helped to host the Carters during their visit.

The Carters also delivered a round of speeches at area schools and interviews. They were scheduled to return home today.

Before leaving town, however, Carter was greeted by a blast from the Alaska Waterfowl Association, which issued a statement through secretary Dick White of Anchorage criticizing the duck hunt as being "in quite poor taste."

White said the association's board of directors were "quite incensed about the son of the President who has locked up our lands... coming up here to go duck hunting. It's the epitome of the ancient feudal landlord system."

President Carter's declaration of 17 national monuments in Alaska last December banned sport hunting on some 56 million acres of land, but allowed continued subsistence hunting. The Knik River area where his son hunted Friday was not affected by the presidential order.

# Foreigners Flock To Alaska To

By BILL BLESSINGTON  
Times Outdoor Editor

"Zie elk!"  
"Zie elk!" OCT 11 1979

Less than 100 yards ahead of me was a fine specimen of Alaskan bull moose and a guide. Behind me, was an excited German hunter and his wife who had just spotted the animal in the gathering dusk.

The moose watched us, obviously nervous about the intrusion into his rutting ground. His antlers stood out like twin beacons above his head, their whitened tips and palms in contrast with the rain-soaked brush on a slight rise behind him.

The German, Conrad Wineber, slipped his pack to the ground and after being told to shoot by the guide, Austrian Otto Obwaller, moved ahead of us.

Wineber made no attempt to use cover as I stood frozen. He pushed ahead five yards and ran a round into the chamber of his 375 H & H.

"Shoot, shoot," said Obwaller.

The moose climbed up on top of a ten-foot bank in a single easy movement. He stood there glaring at us.

With an ear-splitting roar, the heavy Saur spoke. I listened for the "thwock" of the bullet hitting its target. Another shot, a third shot, and still no sign that the moose had been hit.

The bull looked off into the brush and took a few steps, disappearing neatly in a scrub of alders and black spruce.

"I don't think he hit it, I didn't hear anything," I said to Obwaller.

The German moved forward, his excitement obvious.

When the guide and I reached the spot where the moose had been standing, there was no sign of blood or hair which would have indicated a hit. I briefly relaxed, thinking that my pack wouldn't get any heavier over the next four miles to a lake where we were scheduled to be picked up.

Off to my left, a small bull looked on, probably wondering what all this new noise had to do with the mating season.

Then another shot rang out forty yards away through the brush. A second shot came just a minute afterward.

"Conrad, zu habst?" shouted Wineber's wife Erica.

"Ja, ja!" came the muffled reply.

The moose had fallen after being cleanly hit and travelling about 50 yards. The huge animal died quietly from the heart/lung shots.

The moose was not a gigantic trophy as far as moose go, but it was a trophy nonetheless for Wineber, a chemist with a German industrial combine.

The brow tines were almost perfectly matched with five well-shaped points on each side. The palms of the antlers stretched 61 inches, both sides almost perfectly symmetrical.

After a photo session, Obwaller began preparing the trophy by severing the moose's head at the atlas joint.

The skinning of the head was to be left for the hunter. An eventual wall mount was planned in the European fashion where the entire skull is left attached to the antlers and mounted on a plaque.

The young bull was still circling us slowly, his curiosity obviously getting the better of his natural sense of wariness! At one point, he stood calmly thirty yards away and watched for several minutes without moving.

Without a sound, he finally moved off. The rutting ground his if he could defend it.

Moose hunting in Alaska has many scenarios. They range from unfortunate ones like this where the hunters did not salvage the meat to those involving horses, bulls standing next to the highway, riverboats and airboats, tent camps on riverbanks and airplanes.

Residents and non-residents alike hunted the woodland giants this year, most of them legally and a very few illegally.

But it is clear that several factors are compounding to increase the pressure drastically on Alaska's moose. Some of them have to do with laws, some of them with administrative decisions both here and in the Iron Curtain countries, some of them with international currency, some with terrorism, some with simple greed.

More and more areas are being closed to hunting in Alaska.

This year sportsmen were shut out of 41 million acres of the state where national monuments were created and placed under the control of the park service.

*outside*

Cont'd.

At the time of the action, President Carter indicated the measure would be temporary. But that term has become a lawyer's term. The net effect of the closure is permanent, at least as far as the Alaska hunter is concerned. And when hunting is closed in one area and left open in others, hunting pressure builds in the areas left open.

Although the D2 bills in Congress set up park preserves which may be open to hunting, a ringer is present in the word "may". If the Wrangells ever reopen to legal hunting, it will be only on a permit basis and, thanks to court rulings, Alaskans will likely get no preference for having their needs for hunting taken care of first.

OCT 11 1979  
More than likely, national permit drawings might be held for the white

sheep, caribou and bears of the Wrangells. And that means tens of thousands of applications from anti-hunting and anti-gun groups who feel they can "save the animals" by foiling legitimate hunters.

The other major increase in hunting pressure in Alaska this year comes from the international scene.

Alaska is cheap and Alaska is a fad.

Hunting in Europe, according to guides, hunters and tourism officials, is expensive, if it is available at all.

"We just don't have the places to hunt that you do," explained Neils Tuxen of Denmark.

As a result, European hunters are used to paying top dollar for hunting and travelling long distances. Good hunting can still be found in some parts of Germany, Austria and the Scandinavian countries. But the best European hunting is behind the Iron Curtain, a fact which has not escaped the attention of tax collectors.

OCT 11 1979  
"A good deer in Rumania costs about \$10,000," explained one hunter.

"They have a very modest fee for a license and a guide but they charge you so many/dollars per gram of horn."

"You literally go out on a hunt and when the guide points out the deer, you count dollars to make sure you have enough for the animal."

Animals taken under the Eastern European system are "sold" to the hunters on the basis of a complicated formula involving weight and size of trophies. The bigger the buck, the bigger the bill.

Hunters, however, don't touch the meat, which is sold in butcher shops as a delicacy. For them, Alaskan wanton waste laws and the packing of meat are something new.

Another hunter said a bear hunt in Russia or Bulgaria could easily run as high as \$12,000 when the costs of transportation, guides, lodging, trophy fees,

licenses and duties were added up.

In Alaska, a non-resident hunter pays \$200 for a tag which would allow him to take any big game animal in the state with the exception of musk ox.

During the past year, a constant downward valuation of the dollar in relation to European currencies has meant lower and lower air fares from Europe to Alaska. Additional savings are also realized by hunters who book two or three week hunts and travel on discount fares.

The net result, according to Bernd Guetschow, the German consul in Alaska, is "that hunting here in Alaska for Germans is cheaper than hunting 300 miles away in Eastern Europe."

"The cost of a guided hunt here is about \$5,000," said Guetschow, "which compares with \$7,000 or \$8,000 there."

In addition to the financial attractiveness of the Alaskan hunt, there has been a closure of most of Africa to legal hunting. The great game herds of Kenya, Mozambique, Gabon and other third world nations have been decimated by poaching and fueled by escalating Asian prices for hides and horns.

The African countries where hunting is still allowed include South Africa and Rhodesia. In Rhodesia, armed guards with automatic rifles accompany hunters on jaunts for plains game. Many parts of South Africa are similarly stressed because of military priorities and tense border situations.

The Middle Eastern countries of Iran and Iraq have closed to sportsmen because of revolution and a growing distrust of foreigners.

Alaska, for now, has some good hunting left. How long the hunting will stay good is a matter of speculation but some signs are evident that the pressure is being felt.

OCT 11 1979  
"It is exotic," said Guetschow and it has a great appeal to Europeans looking for a new place to hunt.

OCT 1 6 1979

man who took President Carter duck hunting says criticism of the hunt by some people was

Snodgrass of Palmer took his brother and friend Joe Miguel of the Anchorage Times Outdoor Editor along with a couple of Alaska State Guard Service men hunting in the Mat-Su Valley Friday.

These are some of the concerns Snodgrass said Monday. "I was looking at it as a little bit of an approach."

Instead of being inhospitable, Jack holed up in a hotel and thought this (hunt) might have a positive effect. He enjoyed it.

Alaska Waterfowl Association issued a statement criticizing the hunt as being "in poor taste" because of President Carter's plan to place 56 million acres of land here into 17 highly recreational monuments.

The association spokesman said Carter's coming to Alaska to "see the epitome of the ancient world system."

Snodgrass said Carter was "very easy to get along with" and didn't get into any big political discussions. He talked about hunting in Alaska and quail in Georgia.

Snodgrass is aware his father had an-

gered people in Alaska," Snodgrass said. "And I'm sure he took back to his father" the Alaska sentiment.

Snodgrass also is a waterfowl artist and president of the Mat-Su chapter of Ducks Unlimited.

Carter shot three ducks, a mallard, a pintail and a scaup, during the

day's hunt on the Knik River, Snodgrass said. The two Secret Service men didn't bag any game.

Carter came to Alaska with his wife, Judy, who was the keynote speaker before a community education conference in Anchorage. The couple left the state Saturday.

## More Game Waste Reported

OCT 1 8 1979

"They just took the four legs off it and the cape and horns and the head."

Another incident of wanton waste of a moose by European hunters was reported in that fashion this week by Bill Hudok of Anchorage.

Hudok said the incident took place last month in the Swift River Valley, on the western slope of the Alaska Range.

Hudok and a friend were flying in Hudok's plane when they spotted three men in the valley. Hudok said he landed and the hunters offered to give him one of the moose's hind-quarters for a ride down to a cabin they were using on the river.

"The fellow who was acting as a guide was a German," said Hudok. "He spoke real good English."

"They're just raping the country," he added.

"The rest of the carcass was just left there," Hudok said. "It was a good sized animal, a real trophy

"I was under the impression that they were working with a guide, since they had the use of the cabin," he said. "One of the Germans was a game warden or field policeman back home and he gave me a little medal."

"The hunter who shot the moose said he probably spent 45,000 marks for the trip to get his trophy. He'd been here before but hadn't gotten a trophy."

Details of the incident have been reported to the Department of Public Safety. The state is continuing another investigation into the reported wanton waste of a bull moose by other European hunters in the Stony River area. That incident was reported in The Anchorage Times last week.

Under state law, wanton waste of game meat is a misdemeanor; so is guiding hunters without a license or operating as a guide inside another guide's exclusive guiding area.

## Hunt Violations Net \$100 Fines

Judge John Mason, in Anchorage District Court, fined two German hunters a total of \$100 each for killing two moose over their limit and wanton waste.

According to Kenneth Rourke of Anchorage, who reported the incident to Fish and Wildlife Protection officers, the two hunters shot four moose some three miles off the Petersville Road in a swamp. Rourke and a department spokesman said the Germans had only two moose tags when the four bulls were killed.

"All they got was a \$100 fine," said Rourke, who found one of the carcasses which had been left to spoil.

"The moose was not skinned and was left in the water for about two days when I found it," said Rourke.

The hunters, Hans-Peter Filtgen and Nanfred Ceraficki, were arrested as a result of Rourke's complaint OCT 1 8 1979

In the Oct. 6 decision, Filtgen received a \$500 suspended fine for killing an overlimit of moose and another \$500 fine for wanton waste. All but \$100 of the wanton waste fine was suspended by Judge Mason.

Ceraficki was fined \$100 for killing the extra moose when \$100 of a \$500 fine was suspended.

A department spokesman said the case was complicated because the Germans apparently gave the meat from the kills to some other hunters they encountered in the field. The other hunters, according to Rourke, had no way of salvaging the meat.

"I think the person who pulls the

trigger should be responsible for the meat," said Rourke.

Two of the bulls shot by the Germans were mulligans, or young bulls; a third had a rack of about 50 inches. According to Game Board member Daryl Farmen, who owns O & C Expeditors, the larger rack was returned to the hunters by the judge the day after it was seized at his warehouse by enforcement agents.

Farmen said he has favored the concept of forcing non-Alaskan hunters to employ registered guides for Alaskan hunts.

"At least it would make somebody responsible for their actions," he said, "and it would cut down on the numbers of them."

A guide's only restriction on non-residents would require an act of the state legislature.

Non-resident hunters are now required to have registered guides only when they hunt brown or porcupine goats and Dall sheep.

Rep. Vern Huribert, D-Sleetmute, said he expects further action in the legislature next year on requiring non-residents to have guides.

A tougher meat salvage law with the guide requirements for non-resident moose and caribou hunts in units 22, 23 and 19 A and C was passed by the House last session and is presently in Senate committee, according to Huribert.

"A moose in my opinion," he said, "is to hunt for subsistence, for meat. The taking of the horns should be incidental. It galls me to see our resources shattered like that," said Huribert.

## Missing Hunter Found Dead

A 51-year-old German hunter was found dead Tuesday near the Kichatna River north of Rainy Pass.

Alaska State Troopers said the man, whose name has not been released, had been missing since Sunday morning. His body was found by a military helicopter at 4:30 p.m. Tuesday, troopers said.

Cause of death was unknown this morning.

OCT 4 1978

The victim reportedly walked away from his two-man camp at 6 a.m. Sunday and failed to return. His disappearance was reported to the Rescue Coordination Center Monday by Ketchum Air Service, troopers said.

A combined air-ground search was conducted by troopers, the rescue center and volunteers from the Alaska Rescue Group.

The German consulate in Seattle has been attempting to notify the victim's relatives in West Germany, troopers said.

## Hunt Victim Identified; Exposure Caused Death

Alaska State Troopers have identified a German hunter found dead Tuesday north of Rainy Pass.

The body of Martin Brackelsberg, 40, was found by a rescue helicopter dispatched to the area when the man was reported missing from a hunting camp, troopers said.

Autopsy results indicate Brackelsberg died of exposure, troopers said.

The victim was a resident of DarinStadt, West Germany.

Brackelsberg had been missing since 6 a.m. Sunday when he left his two-man camp near the Kichatna River, troopers said.

OCT 5 1978

# Guided Alaskan Hunts Prove More Successful

"Hunt in Alaska" . . . OCT 1 1 1979

Big game hunters looking for adventure and a trophy in a foreign country have been flocking to Alaska in increasing numbers for the past three years.

Most of them take home at least one trophy, either a moose or caribou. A smaller number take home black or brown bears.

The marketing of hunting and game in Alaska is now a bigger business than ever before involving international booking agencies, travel agencies and advertising.

The big game guides, in some instances, support hundreds of thousands of dollars worth of loans and mortgages, airplanes, lodges, all terrain vehicles and camps.

There are three major ways in which Alaskans are cashing in on the growing number of non-resident hunters, the largest now being the air taxi operations which transport hunters to and from the field.

Probably the second largest business is the registered guide business where a hunter books a guide for an escorted hunt for a particular species. Guides are required for non-resident sheep and brown or grizzly bear hunters.

The third kind of business available to Alaskans is that of the game and hunter transporter. Anyone with a riverboat, weasel or airplane can, for a \$10 fee, be licensed as a transporter and take hunters and their gear to and from hunting places.

For the Alaskan or out of state hunter on a budget, some good hunting experiences can be obtained with drop off hunts provided by air taxi

operators and transporters.

Under this system, people are flown out for a fee ranging from \$300 to \$1,500 or more and dropped off in a likely looking spot for a specified period of time. Food, tents, camping gear and other services are available from most of the air taxi operators at additional cost.

Registered guides provide a more complete service in most instances by having an employee stay with the hunter during the hunt. The costs run from several thousand dollars for a guided moose hunt to over \$6,000 for some guided brown bear hunts. It's not unusual for clients of registered guides to spend \$10,000 or more for a hunt in Alaska, including air transport, new gear, the guide's fees and tips.

Transporters charge varying rates, depending upon their equipment, location and services. Their businesses usually involve aircraft, although more have sprung up in recent years with riverboats.

The problem for non-resident hunters is that some have purchased a pig in a poke because of loose use of the words "guide" and "outfitter".

What might be advertised as a guide service may in fact be a simple drop off hunt.

And a guide who supposedly cannot operate within another guide's hunting area can do so with impunity under the guise of a "transporter".

"You're almost a fool to get a guide's license anymore," said one guide.

"It's just too much bother to go through the five-or eight-year process, the examinations and the oral tests and then find out that there are no more exclusive guide areas left open."

It's no secret that guided hunters have a better success rate than resident Alaskans when it comes to bagging game.

In 1976, for example, Department of Fish and Game statistics from harvest reports indicate that 4,067 moose were killed by hunters statewide. Of that total, 638 were taken by non-residents who had a 52.7 percent success rate. The state's 15,000-odd hunters who reported that they hunted moose in 1976 had a success ratio of 21.3 percent, although residents took the vast majority of the total.

In 1977, an estimated 4,500 moose were legally taken. Non residents took roughly 12 percent of the total but their success rate was about 60 percent.

Last year, 5,171 moose were harvested legally and reported to the state. Non-residents again took a total of about 12 percent of the kill but with a 57 percent success rate.

For sheep, where a non-resident is required to have a guide, the difference in success rates is more obvious.

In 1976, non-residents had a success rate of 70 percent, residents 29 percent.

In 1977, non-residents had a success rate of 62 percent, residents 29 percent.

In 1978, non-residents had a success rate of 77 percent, residents 33 percent.

For brown and grizzly bears, 823 were taken in Alaska during the 1977-78 regulatory year.

This past spring, 337 of the great bears were taken, 62 percent of them by non-resident hunters with guides.



### SUCH A TERRIBLE WASTE

OCT 11 1979

Otto Obwaller cuts the head off a moose shot just west of Merrill Pass. The moose was taken by a German hunter who left it to rot

after skinning the head. Wanton waste of big game under Alaskan law is a misdemeanor.

## 'Keep Meat Dry, Cool'

# Game Processor Explains Job

"Don't ever let the meat get wet and keep it cool," says Spiro George, the owner of George's Game Processing.

George, as he prefers to be called by his customers, has been in the food business for over 25 years and has been dressing moose, caribou and even ducks in Alaska for close to 20 years.

"The biggest moose I ever saw," he said, "was one that weighed 1,150 pounds when it came in through that door."

George pointed toward the door leading to another portion of his store at Mile 6 on the Old Seward Highway.

"The neck was so big they had to cut it in two different pieces and each of them weighed in at over 100 pounds."

"And you know what?", he asked. "They shot that moose right up off O'Malley Road, put it in the back of a truck and brought it down here."

Although it's not a service available at every neighborhood supermarket, George and two or three other butchers and sausage making firms in Anchorage, will handle a hunter's meat from the moment it comes

back to town.

"We weigh everything when it comes in the door," explained George, who with his wife and son, do all the game processing themselves.

"A man works hard for that moose and I like to make sure he knows why there might be a difference between the weight when the meat comes in and when he takes it home."

George says if meat is well taken care of by hunters, then almost no waste will take place in the butcher shop. George says hunters should bring the meat to their butchers as soon as they come back from a trip, rather than trying to guess the best length of time for aging the meat.

As soon as the game is taken "the hunters should keep their meat in a cool, dry place," he said. "And they must use cloth bags to keep the flies and dirt off the meat."

George and other game processors charge by the pound for meat

cutting, boning, sausage making and grinding.

Mooseburger, for instance, usually has a minimum of 20 percent suet added. The original meat has almost no fat and when ground, does not cook well unless fat is added.

"I have to ship in beef suet from Outside," said George, who also adds beef suet and pork fat to his sausage.

Hunters can have either Polish or summer sausage made from the game. George and the other sausage plants in Anchorage smoke the sausage on the premises and can adjust the recipes to make the sausage hotter or milder according to the taste of the customer.

When a large animal is processed, the hunter can expect to receive steaks, roasts and ground meat much like those obtained from cows.

Smaller animals are cut into roasts and chops, "but its only the name that's different," according to George.

# Parker Cites Harm To Hunters

OCT 19 1979  
Urban sportsmen will get the worst deal under subsistence provisions of D2 legislation, Walt Parker says.

"It's the urban sportsman who has taken it in the shorts, much more so than even the miners," said Parker, former member of the state Game Board and state co-chairman of the now defunct Federal-State Land Use Planning Commission.

He said sporting organizations basically failed in their congressional lobbying efforts to keep large areas of Alaska open to regulated hunting.

"The national organizations tried hard but it was just too big a game for them," he said. "They didn't back our management concept and lost out as a result."

The plan supported by the commission called for joint management of large tracts of land between federal, state and native owners.

Parker says the new national park and monument restrictions on hunting involve essentially only non-native hunters.

"The refuges were set up to take care of the subsistence needs of the natives," he said, "the conflict over the monuments is not with the natives because the monuments are in areas that were never used to any great extent by natives for subsistence purposes."

Parker denied that native leaders forged what one state official termed an "unholy alliance" with environmental groups, exchanging support for large park withdrawals for support on exclusive hunting and fishing rights for natives.

"It was a natural alliance rather than a political plot," said Parker of the seeming agreement between natives and environmentalists on some issues.

Some of the native support for federal oversight of fish and game management in the state was attributed by Parker to "a reaction against the failure of the Alaska Department of Fish and Game to meet the needs of some of the native groups."

"The natives were really dealing in their own interests and occasion-

ally those interests coincided with the environmentalists."

Parker said sportsmen have lost hunting opportunities on 60 percent of the Dall sheep range in the United States as a result of the D2 bills. "And," he said, "they'll lose big on bear too." Parker said he expects drastic changes in hunting opportunities for sportsmen in the state within the next few years.

## Hunting Response

Dear Editor: OCT 20 1979

I was in a sour mood. After a very long day as I read the front page of the Oct. 11 Times, I saw a notice that Outdoor editor, Bill Blessington, had witnessed the waste of a big game animal. And as I read the articles on page 52, I became increasingly incensed.

As an employee of a local airline for the past few years, I have witnessed an increasing number of antlers, taken from animals killed by foreign hunters, coming in from the bush. Even if the European full-skull mount were not in vogue, they would easily be recognizable: they accompanied no meat. With the no-hunting clause in the National Monument laws, us folks in Alaska's big cities are being unfairly restricted. I feel that most of us had come up here to live as self-reliant a life-style as possible, that the term "subsistence," therefore, had been unfairly interpreted by the state and federal governments for people who paid the highest taxes, the most for land and housing and had the least access to this state's wilderness acreage.

Foreign hunters should be placed in a lottery system; the big-game tag fee for lottery-drawn participants should be increased ten-fold; foreign hunters should be accompa-

nied by registered guides on all big game hunts; hunting should be closed during the rut, to all hunters — approximately the month of October, as it would prevent the deaths of animals whose meat would balk a village dog; guides should be held strictly accountable for the meat of animals killed by their clients.

At this point, I am in a state of amazement. In Sunday's "Times", page A-8, a short article stated Jack Carter had killed three ducks. In Letters to the Editor of the same edition, a letter from the Alaska Waterfowl Association protested the projected hunt, which had been written about in articles a few days prior. Monday's Letters to the Editor had an expression of concern about the deaths of three ducks, which (as an aside) happened to occur during open season and in an unrestricted area. Tuesday's front page photo actually showed Jack Carter at the scene of the crime.

If that is the pervasive mentality of us big city hunters, then the anti-hunting people and lock-up types might have a valid point after all.

Where is the outcry for the wasted mouse on the headwaters of the Stony River?

James L. Bachman Jr.  
Muldoon

## State Game Rules Apply

JUNEAU (AP) — Alaska's hunters should keep in mind that state game regulations still apply in national monuments, the Department of Fish and Game said OCT 25 1979.

"A recent opinion by the Department of Law confirms that state laws and regulations still apply on monuments, unless more restrictive federal regulations have been adopted," said Commissioner Ron Skoog of the department.

"Federal agents, not state enforcement officers, will enforce (more restrictive federal rules)," he added.

## Hunting Fines

Dear Editor:

In recent weeks the Anchorage Times has contained several articles concerning violations of hunting regulations by European hunters. Wahnton waste appears to be a habit shared by many foreign hunters visiting our state. In the most recent article two German hunters shot two moose over their allowable limit and left the meat to spoil. The honorable Judge John Mason slapped these naughty hunters on the fingers and fined each of them \$100. He really taught them a lesson for violating our state's game regulations.

The following day the Anchorage Times carried an article about two local hunters who mistakenly shot two sheep which they thought were goats. These hunters carried legal permits for goats and, being honest hunters, took their "goat" horns to

the Alaska Department of Fish and Game to be tagged as required under the conditions of the permit. They were each fined \$250, forfeited their game, and had their hunting privileges suspended for one year. I would bet that Judge John Mason did not rule on this case, or if he did, he certainly has his priorities mixed up.

I will not expound on the punishment received versus the violation committed in the case of the two local hunters. However, I do feel that the violations committed by the two German hunters warranted a much, much stiffer punishment than was handed down by Judge Mason. The punishment in this case certainly did not fit the crime. According to Mr. Hobbs' Letter to the Editor (Friday, October 26) the hunters were even allowed to keep the anti-

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Judge Mason and other judges who hand down minor punishments for violations of fish and game regulations certainly do not have protection of our wildlife resources in mind. I think its time that our judges realize that Alaska's fish and wildlife resources are important on a local, national and international level as evidenced by the people who come to Alaska to harvest them. I suggest that everyone who feels that our judges are being too lenient on fish and game violators keep the names of these judges in mind when they come up for re-election.

Frank Wendling  
SRA Box 559  
Anchorage




Rabb 8 1979

The lowbush moose, also known as the bunny, is beginning a comeback as target for the Alaska hunter. Times Outdoor Editor Bill Blessington tells all about it in Alaska's most comprehensive Outdoor section on page 50 today.

Wilson L. Condon  
Deputy Attorney General  
Department of Law

December 12, 1978

Dave Hardy   
Game Biologist III  
Game Division

Position Paper Review

The enclosed position paper is being drafted by Game Division to address problems arising from unguided alien hunters. Before action can be taken, the following questions require legal review.

1. What actions must a person perform before he can be successfully prosecuted for guiding without a license?
2. If the State chose to pass legislation setting different tag fees and guide requirements for aliens as opposed to nonresident U.S. citizens, what court tests would it have to pass? How should the legislation be drafted so as to maximize the possibility of surviving judicial review?

We appreciate your attention to this matter and await your response at the earliest convenient time.

Enclosure

# MEMORANDUM

TO: Dave Hardy  
Game Biologist III  
Game Division  
P. O. Box 234  
Homer, Alaska 99603

DATE: March 5, 1979

FILE NO

AVRUM M. GROSS  
ATTORNEY GENERAL

TELEPHONE NO.

FROM: By: Sarah Elizabeth Fussner  
Assistant Attorney General  
AGO - Anchorage

11210  
SUBJECT: Position Paper Review -  
Alien Non-Guided Hunts

You have requested the Department of Law to review the issue paper attached to your December 12, 1978 memorandum to Wilson Condon, Deputy Attorney General, regarding alien hunters. Specifically, your questions are:

Question No. 1. "What actions must a person perform before he can be successfully prosecuted for guiding without a license?"

Summary Answer: To be guilty of guiding without a license a person must aid or attempt to aid another person, personally or through an assistant, to hunt, pursue, capture or in any way disturb any species of game when done for monetary or material compensation.

To be guilty of transporting without a license a person must convey another person for the primary purpose of hunting big game or removing parts of big game taken, when the price charged for the service reflects more than the normal operating cost of the transportation.

Analysis. A. It is unlawful to guide without a license pursuant to AS 08.54.210(3). Prosecution for failure to have a current guide license or transporter license when engaging in certain activities is based upon AS 08.54.210(3):

It is unlawful for a person to guide or transport as defined in this chapter without being licensed under this chapter and without having the license in his actual possession; however, for purposes of transporting by air, in the case of a corporation, company, partnership or other business entity, the license may remain at the principal place of the business entity;  
[Emphasis added.]

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The definitions of "guide" and "transport" are critical to any prosecution for guiding or transporting without being licensed. The key language in the definition of "guiding" is "assisting another to take game".

B. Guiding is aiding another to take game for compensation. Attached is a copy of a memorandum from Tom Neacham, Assistant Attorney General, to William Bellingar, Guide Investigator, dated September 26, 1977, which gives a general interpretation of the definition of "guiding". I attach the memorandum for your reference.

The statutory definition of "guiding" is found in AS 08.54.240(2), which states:

"Guide", "guides" or "guiding" means assisting another person to take game with the intent of receiving monetary or material remuneration for the services, by accompanying and directing that person personally or through a licensed assistant guide for the duration of a hunt, and not solely for the purpose of providing transportation services;

The language used in that definition is given further legislative definition as well as regulatory interpretation as discussed below.

The primary concept of the definition of "guide" is assisting another person to take for compensation. The term "take" is defined by the legislature in AS 16.05.940(18) which provides:

"Take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

The term "take" is thus given a very broad meaning by the legislature, and apparently encompasses any intentional invasion of the habitat and peace of an animal, not limited to big game animals ("in any manner disturb...fish or game").

Although the term "take" is not defined in title 8, ch 54, (the title that covers licensing guides), it is

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arguable that the definition of "take" provided in the Fish and Game Code, title 16, ch 5, applies to, or is to be given great weight in construing, the concept of "take" used in the guide licensing statutes and regulations. This is particularly true since there is no conflicting definition of "take" in the guiding laws or regulations (see, in contrast, the distinctly different definition of "resident" that appears in the Fish and Game Code and in the guide licensing title).

The term "take" can be given different emphasis depending on the context of the law. For example, the term "take" when used in a bag limit definition (cf. 5 AAC 81.310 - a hunter must "take" in accordance with bag limits) is likely to be construed by a court to mean actually killing, not merely hunting or pursuing. The need for this construction is obvious when one considers that otherwise a person would be guilty of "taking" an entire flock of birds merely by aiming his gun in their direction. United States v. Chew, III, 540 F.2d 759 (4th Cir. 1976). In Chew, a hunter was convicted of exceeding the bag limit on doves; the appellate court upheld the conviction but in so doing held that the definition of "take" (which was similar to Alaska's) was overly broad when read literally but could be reasonably construed when applied to someone who actually killed too many birds.

Putting together the definition of "take" with that of "guiding" the functions of guiding would appear to extend not only to the act of shooting or killing a game animal, but also to any activities associated with tracking or disturbing game for hire or attempting to do so while in the field.

C. Guiding is not limited to big game. "Guiding" refers to game, not just big game. "Game" is defined in AS 16.05.940(9) to mean:

any species of bird or mammal, including  
a feral domestic animal, found or introduced  
in the state, except domestic birds and mammals;

The Board of Game has classified game as big game, fur animals, small game and unclassified game. 5 AAC 90.020. Thus, guiding activities include assisting in taking all game species for remuneration, although AS 16.05.407 only requires a nonresident hunter to be accompanied by a guide for hunting, pursuing or taking brown bear, grizzly bear, polar bear or sheep.

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In summary, the statutory elements of "guiding" for purposes of criminal prosecution are: aiding or attempting to aid another person, either personally or through an assistant, to hunt, capture, pursue, or in any way disturb any species of game when done for compensation, either for money or goods.

D. Guiding for purposes of guide licensing encompasses additional activities other than assisting in the take in the field. The concept of "guiding", for purposes of licensing and regulating the profession goes beyond the act of aiding another to "take" game for hire. Reading the guide statutes as a whole, the meaning of guiding is expanded to include additional responsibilities. 12 AAC 38.070 "Responsibility of Guide to his Client" provides that a guide must insure that his client has proper licenses and tags, that he take every reasonable measure to insure the safety and comfort of his clients, and that he have adequate first aid, food, shelter and transportation for his clients. Also 12 AAC 38.180 "Guiding Ethics" lists activities that are not condoned by the guide profession, including misrepresenting accommodations and rates, not cooperating with peace officers, making guarantees of success, failing to maintain an adequate camp and facilities, etc. Arguably, all these activities, though they may not necessarily occur while in the field and hunting, must relate to a "contract hunt", i.e. a hunt for hire.

Putting all the above statutes and regulations together, it appears that a guide, in his professional capacity, performs many functions that go beyond the act of "guiding", i.e. hunting or attempting to direct a client to game. A guide is acting in his professional capacity when he writes letters describing his services, rates and accommodations. Similarly he acts in his professional capacity when he prepares the trophies, antlers, horns, etc. taken by his clients. Also a guide acts in his professional capacity when he insures that all meat of trophies are taken and salvaged in accordance with state law. A guide is not, however, legally "guiding" after the hunt is over (i.e. after game is killed), but he is still performing professional services encompassed by the broad licensing powers of the Guide Board -- he could be subject to civil disciplinary actions, not criminal prosecution.

In summary, when a guide performs any of the above-described activities associated with the professional guide, he is subject to disciplinary action against his professional license, but is not subject to criminal prosecution unless he violates a state fish and game or guide law or

regulation, fails to have a current hunting and fishing license, fails to report a violation by his client, or hires more than three assistants. AS 08.54.210.

E. It is unlawful to transport without transporter license. Transporter licenses are required pursuant to AS 08.54.142 and .144. "Transport" is defined in AS 08.54.210(5):

"transporting" or the "activity of transporting" means conveying a person by any lawful means to an area for remuneration or material benefit in excess of normal operating costs, when the primary purpose of the person being conveyed is the taking of big game and the associated removing of big game meat and parts of big game after big game has been taken; big game as used in this paragraph means game which, if taken by a nonresident, would require a big game tag.  
[Emphasis added.]

The key concepts in this definition are (1) the person transporting is charging more than the tariff rate for air taxi flying or more than normal operating costs; (2) the primary purpose or intent of the person being transported is to hunt big game; (3) unlike the definition of "guiding", transporting is limited to big game.

Big game is defined in 5 AAC 90.020(3) to include:

black bear, brown and grizzly bear,  
polar bear, bison, caribou, Sitka  
blacktail deer, elk, mountain goat,  
moose, musk oxen, mountain or Dall  
sheep, wolf and wolverine.

The definition of "transporting" further limits big game to those species for which a nonresident must have a tag. This refers to AS 16.05.34(9) "License and tag fees" which provides:

A nonresident may not take a big game animal without previously purchasing a numbered, nontransferable, appropriate tag, issued to him as provided in (16) of this subsection.

The tags listed in AS 16.05.340(16) include black bear, brown or grizzly bear, polar bear, bison, caribou, deer,

elk, goat, moose, sheep, walrus, wolf and wolverine. The one species that does not appear both in 5 AAC 90.020(3) and AS 16.05.340(a) is musk oxen, which is hunted by permit only and tags are provided if a season is open. AS 16.05 350.

In summary, those activities for which a person must hold a current transporter license include:

to convey a person for the primary purpose of hunting big game or to remove the parts of big game taken, when the price charged for the service reflects more than the normal operating cost of the transportation.

F. Example of guiding without a license A person who performs the above actions relating to transporting or guiding as it is defined for criminal cases without a license could be prosecuted under AS 08.54.210. By this analysis, an alien, for example, who offers a package hunt for Swedes or Germans for moose in Alaska and either personally or through an assistant, aids the hunters to take the game, and who charges for the service more than the normal operating costs of transportation to the field, is guilty of guiding and transporting without a license.

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Question No. 2. If the state chose to pass legislation setting different tag fees and guide requirements for aliens as opposed to non-resident U.S. citizens, what court tests would it have to pass? How should the legislation be drafted so as to maximize the possibility of surviving judicial review?

Summary Answer: A state law that discriminated against aliens by charging them a higher hunting license fee would be subject to strict judicial scrutiny and would have to be the least drastic means of furthering a compelling state interest.

Analysis of this rather complex question requires several steps: (1) Who is an "alien"? (2) What is the basis for classifying aliens differently from U.S. citizens? (3) What state interest is protected?

A. Aliens Defined. An alien is defined generally as a citizen or subject of a foreign state or a foreign government (see Black's Law Dictionary, at 95 and DeCano v. State, 110 P.2d 627 (Wash. 1941)). The Board of Fisheries defines "alien" in 5 A.C. 39.975 as:

[A] person who is not a citizen of the United States, and who does not have a petition for naturalization pending before the district court.

An alien may be a resident alien or a non-resident alien, and may live legally in the United States even though he is not naturalized. Aliens living within the United States are granted certain protections (to make contracts, sue and be sued, be protected by law enforcement, etc.) and as a result they owe a temporary and local allegiance to the country in which they reside.

B. Basis of Challenge to Laws that Discriminate Against Aliens. Whether a law that discriminates against an alien will withstand constitutional scrutiny may depend on whether the alien is: (1) an alien not lawfully in the state; (2) a non-resident alien; or (3) a resident alien.

Probably a law prohibiting an alien not lawfully in the U.S. from taking fish and game would be upheld under a state's police powers. (See, e.g., AS 16.05.905, prohibiting aliens not lawfully admitted to the U.S. from engaging in commercial fishing or taking marine mammals in territorial waters.)

Laws or regulations that discriminate against a non-resident alien, a non-resident citizen, or a resident alien, are subject to attack under:

- (1) Article IV § 2 of the U.S. Constitution - privileges and immunities;
- (2) 14th Amendment of the U.S. Constitution - equal protection;
- (3) Article I § 8 of the U.S. Constitution - commerce clause; or
- (4) Article VI, U.S. Constitution - supremacy clause.

Analysis of the constitutionality of the law or regulation depends on which constitutional challenge is raised.

(1) Privileges and Immunities. A law or regulation aimed directly at aliens could not be overturned under the privileges and immunities clause, because that clause protects only citizens. Similarly, a law that discriminated against non-resident American citizens by restricting or prohibiting them from sport hunting might arguably withstand a privileges and immunities challenge on the grounds that sport hunting, unlike commercial fishing, is not a right of citizenship to be protected, but is merely a privilege.

The test applied by the U.S. Supreme Court to determine whether a law that discriminates against non-residents violates the privileges and immunities clause was set out in Toomer v. Witsell, 334 U.S. 385 (1948). The court there struck down a South Carolina shrimp fishing law that charged non-residents one hundred times the resident license fee for shrimping in its three-mile coastal waters. The court distinguished its earlier decision, McCready v. Virginia, 94 U.S. 391 (1876), (which had upheld a law allowing Virginia citizens only to plant oysters in state tidal waters) on the grounds that McCready involved non-migratory fish in inland waters and that it was based on an outdated "ownership" theory of fish game. The court then held that the ability to engage in commercial fishing is a right protected by the privileges and immunities clause, and that no law may discriminate against non-citizens (of the state) unless "there is something to indicate that non-citizens constitute a peculiar source of the evil at which the statute is aimed" Toomer, supra at 398.

In a subsequent case, the U.S. Supreme Court addressed a similar privileges and immunities challenge to a Montana law that charged non-residents a higher hunting license fee. The court in Baldwin v. State Fish and Game Commissioner, U.S. \_\_\_, 98 S.Ct. 1852 (1978) upheld the scheme, on the ground that the privileges and immunities clause does not encompass recreational sport hunting:

Some distinctions between residents and non-residents merely reflect the fact that this is a Nation composed of individual States, and are permitted; other distinctions are prohibited because they hinder the formation, the purpose, or the development of a single union of those states. Only with respect to those "privileges" and "immunities" bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and non-resident, equally.... Equality in access to Montana elk is not basic to the maintenance or well-being of the Union. U.S. at 98 S.Ct. at 1861-62.

Thus the initial test for a privileges and immunities challenge is whether the law affects a right to engage in a livelihood or whether the activity is merely recreational and a sport. If the latter, a privileges and immunities challenge will not prevail.

(2) Equal Protection Under 14th Amendment.

State laws that discriminate against aliens or non-residents must withstand a different test when challenged under the "equal protection" clause of the 14th Amendment.

First, the court must determine whether the class discriminated against is "inherently suspect" or if the law affects a "fundamental right." If so, the court will "strictly scrutinize" the intent and purpose of the law to establish whether there is a "compelling state interest" that necessitates the law and that the law is the least drastic means to further that interest. Dunn v. Blumstein, 405 U.S. 330 (1972). If the classification is not "suspect," and the right not "fundamental" the court will restrict its review of the law to a determination whether the law and the classification it establishes is "rationally related to a permissible state interest."

The Court in Baldwin, supra, at 1862 concluded that recreational hunting was not a "fundamental right" (for purposes of privileges and immunities analysis which protects a longer list of rights than does the equal protection clause. (Hicklin v. Orbeck, 565 P.2d 159, 168 n.16 (Alaska 1977), rev'd on the grounds U.S., 57 L.Ed.2d 397 (1978)). However, the class of aliens (regardless of residency) has been held to be a suspect class for state laws, though not federal laws. Mathews v. Diaz, 426 U.S. 67 (1976), Sugarman v. Dougall, 413 U.S. 634 (1973) (civil service); Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948) (commercial fishing); Frovlov v. Delo, 383 N.Y.S.2d 470 (N.Y. 1976) (hunting license). Thus, in order to uphold a law that discriminated between resident citizens and resident aliens, the state would have to show that distinguishing the class of aliens was necessary to further a compelling state interest. Frovlov, supra, at 472; Takahashi, supra at 416-17. A classification based solely on alienage must thus correspond to the class from which an "evil" is to be feared. Patsone v. Commonwealth of Pennsylvania, 232 U.S. 138 (1914) (upholding a state law prohibiting aliens from killing game for sport and to that end making possession of shotguns by aliens unlawful).

It may thus be more difficult to demonstrate that a law directed at aliens only is directed at the primary source of the problem. The court in Takahashi, supra at 419 held:

The protection of this section [8 U.S.C. § 41 relating to rights of all persons under U.S. Jurisdiction] has been held to extend to aliens as well as to citizens. Consequently the section and the Fourteenth Amendment on which it rests in part protect "all persons" against state legislation bearing unequally upon them either because of alienage or color...The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide "in any state" on an equality of legal privileges with all citizens under non-discriminatory laws. [Footnotes omitted.]

The court concluded that the power of a state to apply its laws exclusively to alien inhabitants is "confined within narrow limits." Takahashi, supra at 420.

Applying this language to an Alaska law that would bar aliens from hunting, or otherwise restrict their ability to engage in sport hunting, its validity would depend in part on whether the privilege of sport hunting is encompassed by the privileges citizens can also enjoy. Arguably, sport hunting is not such a privilege enjoyed by all citizens, but is a special privilege that may be restricted to state citizens in order to protect the resource. In Patsone v. Pennsylvania, 232 U.S. 138 (1914) (cited in Takahashi, supra at 410) the Supreme Court sustained, against Fourteenth Amendment due process and equal protection challenges, a state law barring aliens from hunting wild game in the interest of conserving game for citizens of the state. The distinction between the Patsone and Takahashi cases apparently was that in Patsone the court found no conflicting federal law or treaty, that the privilege of taking wild game was not a right of citizenship, and a state could keep game for its own citizens. (Citing Geer v. Connecticut, 161 U.S. 519 (1896)).

Takahashi, suggests that to earn a living by fishing is a right of citizenship, and that:

To whatever extent the fish in the three-mile belt off California may be capable of ownership by California, we think that "ownership" is inadequate to justify California in excluding any or all aliens who are lawful residents of the state from making a living by fishing in the ocean off its shores while permitting all others to do so.

Based on the Takahashi case, it appears that a law directed at non-residents, rather than aliens (whether resident or non-resident), would be easier to justify.

Earlier analysis used to uphold state laws directed at non-residents (citizen or alien) relied on the theory of "state ownership" of fish and game resources. In re Eberle, 98 F. 295 (7th Cir. 1899) (upholding state law charging non-residents a much higher hunting license fee); State v. Tower, 24 A. 898 (Me. 1892) (upholding a state law forbidding non-residents from hunting in the state).

The "state ownership" theory is that the wild game (and fish) in a state is the property of the state under its "sovereign ownership." Patsone v. Pennsylvania, 232 U.S. 138 (1914) (no resident aliens may hunt deer); McCready v. Virginia, 94 U.S. 391 (1877) (state title to oysters in tide waters). This analysis has, in recent years, been severely eroded, although not overruled. Fish that migrate have been deemed not the state's property, Toomer v. Witsell, 334 U.S. 385 (1948) and state laws prohibiting aliens from commercial fishing in territorial waters, when the aliens held a federal gear license, have been stricken. Douglas v. Seacoast Products, Inc., 431 U.S. 265 (1977). Although the ownership theory has been deemed "but a fiction," Toomer v. Witsell, 334 U.S. 385, 402 (1948), and a "slender reed," Missouri v. Holland, 252 U.S. 416, (1920) nevertheless it has not been overruled.

Courts today have, however, tended to replace "ownership" concepts with the principle that under a state's police powers, the state is trustee of the fish and game within its borders and may take reasonable measures to protect and manage it. Baldwin, supra at 1864 (Burger concur. . State v. Kemp, 44 N.W.2d 214 (S.D. 1950), dis'd 340 U.S.923 (1951) (U.S. S.Ct.dis'd for want of "substantial federal question" a South Dakota law excluding non-resident from hunting migratory waterfowl.)

Alaska's supreme court has taken a similar approach to protection of its natural resources. The court in Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977) struck down the durational (one year) residency requirement for pipeline jobs, on the grounds that, under equal protection analysis, a "fundamental right" (travel or migration) was infringed upon and the law must be strictly scrutinized; however the court also upheld a non-durational residency provision, claiming the right to work is not a fundamental right, and therefore the law must merely "bear a fair and substantial relation to a permissible state interest." Hicklin, supra at 167. The court relied on McCready v. Virginia, 94 U.S. 391 (1877) and the Alaska Constitution Art. VIII § 2, that holds Alaska's natural resources for the benefit of her people, to conclude that the natural resources of the state "belong" to Alaskans "in a way that, in our federal system, Alaska's society and economy in general do not." Hicklin, supra, at 169. The United States Supreme Court reversed the state decision in Hicklin v. Orbeck, \_\_\_ U.S. \_\_\_, 57 L.Ed.2d 397 (1978), however, stating that Alaska's hire law violates

the privileges and immunities clause because the state failed to show that non-residents are "a peculiar source of the evil" and because the Alaska hire preference does not bear a substantial relationship to the problem. The Supreme Court further held that the theory of state ownership of its resources does not remove a law concerning that resource from the prohibitions of the privileges and immunities clause.

The analysis suggested by the above equal protection cases, assuming "strict scrutiny" is not used, is whether the state can present sufficient evidence that the discriminatory law is justified by problems that class creates. For example, the court in Baldwin, supra found that residents contributed to the feeding of elk, that non-resident hunting pressure threatened the resource, and that the law was supportable on these and similar grounds. In contrast, the court in Gullaney v. Anderson, 342 U.S. 415 (1952) struck down a territorial fishing law that required aliens and non-residents to pay higher fishing license fees; the court found no evidence that the higher fee represented actual compensation to the state for a higher enforcement burden, but did not rule out the possibility that this could be a legitimate basis for discrimination. Thus the "rational basis" for the law was not established, and it failed constitutional scrutiny.

(3) Supremacy Clause: Art. VI § 2.

Constitutional challenges to discriminatory state laws based on the supremacy clause fall into two categories: first, laws directed at aliens that conflict with rights granted to aliens under federal laws or treaties; second, state laws that impinge upon a federally granted license or privilege. Both types of cases receive the analysis discussed by the court in Takahashi, supra: no law that conflicts with a treaty, or with a particular federal right or privilege, will survive U.S. Supreme Court scrutiny. Federal legislation pre-empts state law in fields that have been traditionally occupied by the states only where there is a manifest intent of Congress. This has been held to include federal vessel licenses to engage in fisheries. Douglas v. Seacoast Products, Inc., 524 ed.2d 204. See also Kleppe v. New Mexico, 426 U.S. 529 (1976) which struck down a state wild burro law that "conflicted" with a federal law protecting the animals on federal lands.

Assuming there is no overriding federal law involved, a state could pass a discriminatory law if it is based on, and rationally related to, a valid state interest. Since the Baldwin court has concluded that sport hunting is not a fundamental right of citizenship, a sport hunting law aimed at restricting non-residents or aliens would probably survive a challenge under the supremacy clause.

(4) Commerce Clause; Art. I § 8. A state law that restricted access by non-residents or aliens to a resource and thereby detrimentally affected interstate commerce, could be struck down under the commerce clause. For example, the court in Douglas v. Seacoast Products, Inc., U.S., 52 L.Ed.2d 304 (1977) held that Congress had the power to regulate the taking of fish in state waters where there was some effect on interstate commerce. The court struck down a Virginia law that limited the right of non-residents and aliens to catch fish in territorial waters.

It is unlikely that this analysis would find a similar sport hunting law invalid, since the Baldwin court has held sport hunting to be a purely recreational activity, not a source of livelihood.

Summary. Whether Alaska could pass a constitutionally supportable law or regulation that restricted the ability of non-residents or aliens from taking game would depend on whether the state could gather enough evidence showing the need to protect this resource and showing that the non-residents or aliens were a special threat.

The evidence to look at includes: the higher tax burden borne by state residents, which taxes support game management; the likelihood of enforcement problems generated by aliens or non-residents; the likelihood of non-residents or aliens not abiding by, or being familiar with, state game laws; dangers to non-residents and aliens unfamiliar with climate, terrain, wildlife habits [see attached article on point]; the need to limit the overall take of the species; protection of game and conservation purposes.

If the state simply charges a higher license fee to non-residents, the evidence to support this will be easy to supply. If only aliens are charged a higher fee, the burden will be much higher on the state. [The burden of proof is on the one who challenges the law, of course, but once the discrimination is established, the state must defend the classification.]

A second possibility for legislation would be to require all aliens to be accompanied by guides. If directed only at aliens and not non-resident citizens, it would be necessary to demonstrate that aliens present a different danger to the game (because of language barriers making it difficult to comprehend rules, training, allegiance to laws, culture, or other reasons).

The easier-to-justify approach would be to require all non-residents (aliens or citizens) to be accompanied by guides. The justification then would rest on: greater likelihood of violations due to unfamiliarity with laws; costs of enforcement and need to have the guide function as a person responsible for the legality of the hunt; danger to the non-resident who is not familiar with weather, terrain, and animals, and the likely cost to the state of aiding non-residents in distress.

One problem with the required guide approach is that as the law (AS 16.05.407) now stands guides are only required for brown bear, grizzly bear, polar bear and sheep. This makes it difficult to justify a guide requirement based on safety of the hunter, since it does not include goat, moose and other species that present as great or greater potential hazards to the hunter, in terms of terrain, weather, etc. Thus AS 16.05.407 would have to be expanded to include all species.

In State v. Jack, supra, the supreme court in Montana struck down a state law requiring guides for non-residents on national forest, wilderness or game refuge lands or state game refuges. The basis for the decision was that because the law did not apply to deer and antelope, it could not be based on legitimate safety needs, and therefore had no reasonable connection with the classification.

In conclusion, although the Supreme Court has severely eroded a state's sovereign ownership of game, it has not ruled out the possibility of establishing a constitutionally sound law reserving sport hunting to resident citizens. In order to draft a supportable resident law or regulation, the state or state board must demonstrate clearly that the purpose of the discriminatory law is strictly related to valid biological interests, essential state management goals and similar unimpeachable motives and that the law does not conflict with established federal laws or treaties.

SEF:ln

cc: , Robert Hinman  
Marcus Jensen  
Ronald Skoog  
Col. Wolstad  
Bill Bellingar  
Den Harris  
Ron Somerville  
John Ginsberg

Attachment

ISSUE PAPER NO.

DATE: \_\_\_\_\_

I. ISSUE:

The impact of unguided hunting for moose and black bear by large numbers of non-U.S. residents.

II. BACKGROUND:

Historically, various constraints have been placed on hunting activities of nonresidents, be they U.S. or foreign citizens. At present, nonresidents are required to purchase a nonresident license and nonresident tags for big game and are required to contract with a licensed guide to hunt sheep and brown/grizzly bear. These regulations do not differentiate between nonresidents and aliens (with some minor exceptions). Until two to three years ago, foreign hunters generally hired guides, and many still do. The small number of guided foreign hunters who formerly hunted moose, bear, goat or caribou was not significant.

For the preceding two seasons, beginning in fall 1976, and in the current season, large numbers (45 hunters in 1977) of hunters have been scheduled for moose (and occasionally black bear) hunts in the Innoko River drainage and the Koyukuk River drainage.

<u>Year</u>	<u>No. hunters</u>	<u>No. camps</u>	<u>No. moose</u>	<u>No. blk. bear</u>	<u>Air taxi operator</u>
1976	35	10+	20+	6	Anchorage-based charter outfit*
1977	45**	10+	28	37	Chet Clark, Aniak
1978	15+	7***	7	7	Chet Clark, Aniak

\* Vanderpool temporarily hauled hunters after 3 air crashes

\*\* Includes Galena group of 12 hunters

\*\*\* Iditarod and Reindeer Lake

The general scheme has been that Oke Stena, a Swedish national who also arranges salmon fishing trips out of King Salmon in the summer, arranges for a group of hunters from a particular country (Sweden and Germany, so far) to come as a group to a "jumping-off place" such as Aniak and Galena. An anchorage taxidermist, Louie Brunner, is apparently involved in some way also. Base camps are set up at various places, to which the foreign hunters are ferried by air taxi operators. The foreign hunters are not accompanied by an Alaskan guide or packer as far as I know, but according to Pete Shepherd, some of the hunters in 1977 were professionals!

hunters, or foresters from Sweden. Presumably, they do their own hunting, butchering and packing. According to Shepherd, most meat is given away, but in one season meat was being refused because it had not been well cared for. Shepherd estimates that the trips cost \$3,500 to \$4,000 +, which includes round-trip air fare from Sweden.

In 1976 most of the meat was disposed of by giving it to villagers. However, some was reportedly refused as unfit to eat. The 1977 meat was largely unaccounted for and some may have spoiled in the field. Nothing is known about the 1978 meat disposition.

Hunting activity and camps were rather widespread in 1976 and many conflicts resulted from this action. In 1977 more camps were put in the Iditarod River area, upper Stony and Galena area. Some were transported to the Paimut drainage (Reindeer Lake) and several other large lakes in this area. In 1978 nearly all the activity was in the Iditarod River valley except one camp at Reindeer Lake.

### III. CURRENT SITUATION:

As shown in Table 1, 1978 hunting pressure by aliens was down, but with increasing experience on the part of the organizers and increased knowledge of this opportunity abroad, we can foresee increased alien hunting activity in the future. Rural residents bitterly resent "outside" hunters, especially aliens. We can expect that this situation will bring increasing pressure for subsistence zoning, regulations against aircraft, and other measures.

Questions and concerns resulting from this situation include:

(1) Does providing these services to hunters constitute guiding? Thus far, Fish and Wildlife Protection apparently does not feel that it is, because they have made no arrests on this basis. Again, according to Shepherd, Fish and Wildlife Protection obtained an informal opinion from the Attorney General's office that indicated "guiding" does not occur unless the guide accompanies the hunter and points out the game. It has been reported that an air taxi operator involved has performed these functions.

(2) The influx of numbers of hunters causes concern among local people, in part because they question the right of foreign hunters to so readily and cheaply hunt in Alaska, and partly because the influx of hunters is real or perceived competition to local hunters.

(3) ADF&G-Came is concerned that this inexpensive, wholesale importation of hunters, coupled with an almost unlimited demand for hunting in Alaska, could be detrimental to (a) local residents who want or need meat, and (b) populations of the hunted species. Thus far, these problems have been limited or non-existent, but the potential is clear, particularly since Interior moose populations are generally low.

(4) There have been numerous unconfirmed (possibly exaggerated) reports

o. game waste by these hunters. In two cases, Alaskans have claimed to have seen carcasses of one or more moose left in the field, with antlers removed. Such reports are characteristically long after the fact, and I know of none that have been confirmed by ADF&G or FGWP. There has also been concern that although aeriually transported hunters may observe the letter of the waste law, considerable meat may still be left in the field. Reportedly meat from moose killed has been distributed to local people, but to what extent this have been done is poorly known. Apparently there was considerable effort to give away meat in Aniak in 1955, but success in doing so was poor, reportedly because meat was "sour".

(5) Importing numbers of hunters has aggravated existing conflicts between local and fly-in hunters.

(6) Importing numbers of hunters may not be reconcilable with the new subsistence law.

#### IV. ACTIONS TAKEN:

Little action has been taken. Protection field officers have been contacted. The problem has been discussed within the Game Division and with some members of the public. No solutions have been found, aside from establishment of controlled use areas (sans fly-in hunting) by the Board.

In response to public demand, partially the result of alien hunting, the Board of Game has established the Paradise, Kalskag, and Koyukuk Management Areas, where use of aircraft is not allowed in moose hunting. A number of resolutions and complaints have been received from rural groups regarding this situation.

#### V. RECOMMENDATIONS FOR FUTURE ACTION:

1) The Division of Game should request answers from the Department of Law for the following:

- a) Does any of the above constitute guiding without a license?
- b) Can the State discriminate between nonresident U.S. citizens and license by legislation stipulating different tag fees, guide requirements, or other means for aliens?
- c) Does the alleged equal protection extended to aliens in the U.S. include "equal rights" in terms of hunting privileges?

2) If legal opinions in (1) allow, the Department recommends that legislation be adopted that would require aliens to be guided by a registered guide when hunting any big game in Alaska.

3) The Department further recommends that both this Department and the Department of Public Safety closely monitor alien hunting activities in

# TELEGRAM

ALASCOM, INC.  
PHONE: 586-6442  
JUNEAU, AK 99802

HB836

02042 KL ANCHORAGE ALASKA 63 04-06 1022 WST

PMS REP ALVIN OSTERBACK  
JUNEAU AK

80 APR 6 PM 3 54

WE ARE OPPOSED TO HB836. THIS MEASURE WOULD TEND TO CREATE  
A MONOPOLY FOR THE GAME BIRDS INDUSTRY. ALASKAN WILDLIFE A  
RENEWABLE RESOURCE, MUST BE MANAGED FOR ALL PEOPLE, NOT A  
SPECIAL INTEREST GROUP.

THE BILL DOES NOT PROMOTE EFFECTIVE WILDLIFE MANAGEMENT AND IS  
DETRIMENTAL TO TOURISM, ALASKAN WILDLIFE AND THE INDUSTRY.

YOUR VOTE AGAINST PASSAGE OF HB 836 IS URGENTLY REQUESTED.

LAKE HOOD AIR TAXI ASSOCIATION

PATCH KETCHUM ACTING PRESIDENT, ANCHORAGE AK

Wilson L. Condon  
Deputy Attorney General  
Department of Law

December 12, 1978

Dave Hardy *DH*  
Game Biologist III  
Game Division

Position Paper Review

The enclosed position paper is being drafted by Game Division to address problems arising from unguided alien hunters. Before action can be taken, the following questions require legal review.

1. What actions must a person perform before he can be successfully prosecuted for guiding without a license?
2. If the State chose to pass legislation setting different tag fees and guide requirements for aliens as opposed to nonresident U.S. citizens, what court tests would it have to pass? How should the legislation be drafted so as to maximize the possibility of surviving judicial review?

We appreciate your attention to this matter and await your response at the earliest convenient time.

Enclosure

# MEMORANDUM

TO Dave Hardy  
Game Biologist III  
Game Division  
P. O. Box 234  
Homer, Alaska 99603

DATE March 5, 1979

FILE NO

AVRUM M. GROSS  
ATTORNEY GENERAL

TELEPHONE NO

FROM By: Sarah Elizabeth Fussner  
Assistant Attorney General  
AGO - Anchorage

SUBJECT Position Paper Review -  
Alien Non-Guided Hunts

You have requested the Department of Law to review the issue paper attached to your December 12, 1978 memorandum to Wilson Condon, Deputy Attorney General, regarding alien hunters. Specifically, your questions are:

Question No. 1. "What actions must a person perform before he can be successfully prosecuted for guiding without a license?"

Summary Answer: To be guilty of guiding without a license a person must aid or attempt to aid another person, personally or through an assistant, to hunt, pursue, capture or in any way disturb any species of game when done for monetary or material compensation.

To be guilty of transporting without a license person must convey another person for the primary purpose of hunting big game or removing parts of big game taken, when the price charged for the service reflects more than the normal operating cost of the transportation.

Analysis. A. It is unlawful to guide without a license pursuant to AS 08.54.210(3). Prosecution for failure to have a current guide license or transporter license when engaging in certain activities is based upon AS 08.54.210(3):

It is unlawful for a person to guide or transport as defined in this chapter without being licensed under this chapter and without having the license in his actual possession; however, for purposes of transporting by air, in the case of a corporation, company, partnership or other business entity, the license may remain at the principal place of the business entity;  
[Emphasis added.]

March 5, 1979

The definitions of "guide" and "transport" are critical to any prosecution for guiding or transporting without being licensed. The key language in the definition of "guiding" is "assisting another to take game".

B. Guiding is aiding another to take game for compensation. Attached is a copy of a memorandum from Tom Meacham, Assistant Attorney General, to William Bellingar, Guide Investigator, dated September 26, 1977, which gives a general interpretation of the definition of "guiding". I attach the memorandum for your reference.

The statutory definition of "guiding" is found in AS 08.54.240(2), which states:

"Guide", "guides" or "guiding" means assisting another person to take game with the intent of receiving monetary or material remuneration for the services, by accompanying and directing that person personally or through a licensed assistant guide for the duration of a hunt, and not solely for the purpose of providing transportation services;

The language used in that definition is given further legislative definition as well as regulatory interpretation as discussed below.

The primary concept of the definition of "guide" is assisting another person to take for compensation. The term "take" is defined by the legislature in AS 16.05.940(18) which provides:

"Take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

The term "take" is thus given a very broad meaning by the legislature, and apparently encompasses any intentional invasion of the habitat and peace of an animal, not limited to big game animals ("in any manner disturb...fish or game").

Although the term "take" is not defined in title 8, ch 54, (the title that covers licensing guides), it is

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arguable that the definition of "take" provided in the Fish and Game Code, title 16, ch 5, applies to, or is to be given great weight in construing, the concept of "take" used in the guide licensing statutes and regulations. This is particularly true since there is no conflicting definition of "take" in the guiding laws or regulations (see, in contrast, the distinctly different definition of "resident" that appears in the Fish and Game Code and in the guide licensing title).

The term "take" can be given different emphasis depending on the context of the law. For example, the term "take" when used in a bag limit definition (cf. 5 AAC 81.310 - a hunter must "take" in accordance with bag limits) is likely to be construed by a court to mean actually killing, not merely hunting or pursuing. The need for this construction is obvious when one considers that otherwise a person would be guilty of "taking" an entire flock of birds merely by aiming his gun in their direction. United States v. Chew, III, 540 F.2d 759 (4th Cir. 1976). In Chew, a hunter was convicted of exceeding the bag limit on doves; the appellate court upheld the conviction but in so doing held that the definition of "take" (which was similar to Alaska's) was overly broad when read literally but could be reasonably construed when applied to someone who actually killed too many birds.

Putting together the definition of "take" with that of "guiding" the functions of guiding would appear to extend not only to the act of shooting or killing a game animal, but also to any activities associated with tracking or disturbing game for hire or attempting to do so while in the field.

C. Guiding is not limited to big game. "Guiding" refers to game, not just big game. "Game" is defined in AS 16.05.940(9) to mean:

any species of bird or mammal, including  
a feral domestic animal, found or introduced  
in the state, except domestic birds and mammals;

The Board of Game has classified game as big game, fur animals, small game and unclassified game. 5 AAC 90.020. Thus, guiding activities include assisting in taking all game species for remuneration, although AS 16.05.407 only requires a nonresident hunter to be accompanied by a guide for hunting, pursuing or taking brown bear, grizzly bear, polar bear or sheep.

In summary, the statutory elements of "guiding" for purposes of criminal prosecution are: aiding or attempting to aid another person, either personally or through an assistant, to hunt, capture, pursue, or in any way disturb any species of game when done for compensation, either for money or goods.

D. Guiding for purposes of guide licensing encompasses additional activities other than assisting in the take in the field. The concept of "guiding", for purposes of licensing and regulating the profession goes beyond the act of aiding another to "take" game for hire. Reading the guide statutes as a whole, the meaning of guiding is expanded to include additional responsibilities. 12 AAC 38.070 "Responsibility of Guide to his Client" provides that a guide must insure that his client has proper licenses and tags, that he take every reasonable measure to insure the safety and comfort of his clients, and that he have adequate first aid, food, shelter and transportation for his clients. . . . Also 12 AAC 38.180 "Guiding Ethics" lists activities that are not condoned by the guide profession, including misrepresenting accommodations and rates, not cooperating with peace officers, making guarantees of success, failing to maintain an adequate camp and facilities, etc. Arguably, all these activities, though they may not necessarily occur while in the field and hunting, must relate to a "contract hunt", i.e. a hunt for hire.

Putting all the above statutes and regulations together, it appears that a guide, in his professional capacity, performs many functions that go beyond the act of "guiding", i.e. hunting or attempting to direct a client to game. A guide is acting in his professional capacity when he writes letters describing his services, rates and accommodations. Similarly he acts in his professional capacity when he prepares the trophies, antlers, horns, etc. taken by his clients. Also a guide acts in his professional capacity when he insures that all meat of trophies are taken and salvaged in accordance with state law. A guide is not, however, legally "guiding" after the hunt is over (i.e. after game is killed), but he is still performing professional services encompassed by the broad licensing powers of the Guide Board -- he could be subject to civil disciplinary actions, not criminal prosecution.

In summary, when a guide performs any of the above-described activities associated with the professional guide, he is subject to disciplinary action against his professional license, but is not subject to criminal prosecution unless he violates a state fish and game or guide law or

regulation, fails to have a current hunting and fishing license, fails to report a violation by his client, or hires more than three assistants. AS 08.54.210.

E. It is unlawful to transport without transporter license. Transporter licenses are required pursuant to AS 08.54.142 and .144. "Transport" is defined in AS 08.54.210(5):

"transporting" or the "activity of transporting" means conveying a person by any lawful means to an area for remuneration or material benefit in excess of normal operating costs, when the primary purpose of the person being conveyed is the taking of big game and the associated removing of big game meat and parts of big game after big game has been taken; big game as used in this paragraph means game which, if taken by a nonresident, would require a big game tag.  
[Emphasis added.]

The key concepts in this definition are (1) the person transporting is charging more than the tariff rate for air taxi flying or more than normal operating costs; (2) the primary purpose or intent of the person being transported is to hunt big game; (3) unlike the definition of "guiding", transporting is limited to big game.

Big game is defined in 5 AAC 90.020(3) to include:

black bear, brown and grizzly bear,  
polar bear, bison, caribou, Sitka  
blacktail deer, elk, mountain goat,  
moose, musk oxen, mountain or Dall  
sheep, wolf and wolverine.

The definition of "transporting" further limits big game to those species for which a nonresident must have a tag. This refers to AS 16.05.340(9) "License and tag fees" which provides:

A nonresident may not take a big game animal without previously purchasing a numbered, nontransferable, appropriate tag, issued to him as provided in (16) of this subsection.

The tags listed in AS 16.05.340(16) include black bear, brown or grizzly bear, polar bear, bison, caribou, deer,

elk, goat, moose, sheep, walrus, wolf and wolverine. The one species that does not appear both in 5 AAC 90.020(3) and AS 16.05.340(a) is musk oxen, which is hunted by permit only and tags are provided if a season is open. AS 16.05.350.

In summary, those activities for which a person must hold a current transporter license include:

to convey a person for the primary purpose of hunting big game or to remove the parts of big game taken, when the price charged for the service reflects more than the normal operating cost of the transportation.

F. Example of guiding without a license A person who performs the above actions relating to transporting or guiding as it is defined for criminal cases without a license could be prosecuted under AS 08.54.210. By this analysis, an alien, for example, who offers a package hunt for Swedes or Germans for moose in Alaska and either personally or through an assistant, aids the hunters to take the game, and who charges for the service more than the normal operating costs of transportation to the field, is guilty of guiding and transporting without a license.

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Question No. 2. If the state chose to pass legislation setting different tag fees and guide requirements for aliens as opposed to non-resident U.S. citizens, what court tests would it have to pass? How should the legislation be drafted so as to maximize the possibility of surviving judicial review?

Summary Answer: A state law that discriminated against aliens by charging them a higher hunting license fee would be subject to strict judicial scrutiny and would have to be the least drastic means of furthering a compelling state interest.

Analysis of this rather complex question requires several steps: (1) Who is an "alien"? (2) What is the basis for classifying aliens differently from U.S. citizens? (3) What state interest is protected?

A. Aliens Defined. An alien is defined generally as a citizen or subject of a foreign state or a foreign government (see Black's Law Dictionary, at 95 and DeCano v. State, 110 P.2d 627 (Wash. 1941)). The Board of Fisheries defines "alien" in 5 AAC 39.975 as:

[A] person who is not a citizen of the United States, and who does not have a petition for naturalization pending before the district court.

An alien may be a resident alien or a non-resident alien, and may live legally in the United States even though he is not naturalized. Aliens living within the United States are granted certain protections (to make contracts, sue and be sued, be protected by law enforcement, etc.) and as a result they owe a temporary and local allegiance to the country in which they reside.

B. Basis of Challenge to Laws that Discriminate Against Aliens. Whether a law that discriminates against an alien will withstand constitutional scrutiny may depend on whether the alien is: (1) an alien not lawfully in the state; (2) a non-resident alien; or (3) a resident alien.

Probably a law prohibiting an alien not lawfully in the U.S. from taking fish and game would be upheld under a state's police powers. (See, e.g., AS 16.05.905, prohibiting aliens not lawfully admitted to the U.S. from engaging in commercial fishing or taking marine mammals in territorial waters.)

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Laws or regulations that discriminate against a non-resident alien, a non-resident citizen, or a resident alien, are subject to attack under:

- (1) Article IV § 2 of the U.S. Constitution - privileges and immunities;
- (2) 14th Amendment of the U.S. Constitution - equal protection;
- (3) Article I § 8 of the U.S. Constitution - commerce clause; or
- (4) Article VI, U.S. Constitution - supremacy clause.:

Analysis of the constitutionality of the law or regulation depends on which constitutional challenge is raised.

(1) Privileges and Immunities. A law or regulation aimed directly at aliens could not be overturned under the privileges and immunities clause, because that clause protects only citizens. Similarly, a law that discriminated against non-resident American citizens by restricting or prohibiting them from sport hunting might arguably withstand a privileges and immunities challenge on the grounds that sport hunting, unlike commercial fishing, is not a right of citizenship to be protected, but is merely a privilege.

The test applied by the U. S. Supreme Court to determine whether a law that discriminates against non-residents violates the privileges and immunities clause was set out in Toomer v. Witsell, 334 U.S. 385 (1948). The court there struck down a South Carolina shrimp fishing law that charged non-residents one hundred times the resident license fee for shrimping in its three-mile coastal waters. The court distinguished its earlier decision, McCready v. Virginia, 94 U.S. 391 (1876), (which had upheld a law allowing Virginia citizens only to plant oysters in state tidal waters) on the grounds that McCready involved non-migratory fish in inland waters and that it was based on an outdated "ownership" theory of fish game. The court then held that the ability to engage in commercial fishing is a right protected by the privileges and immunities clause, and that no law may discriminate against non-citizens (of the state) unless "there is something to indicate that non-citizens constitute a peculiar source of the evil at which the statute is aimed" Toomer, supra at 398.

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In a subsequent case, the U.S. Supreme Court addressed a similar privileges and immunities challenge to a Montana law that charged non-residents a higher hunting license fee. The court in Baldwin v. State Fish and Game Commissioner, \_\_\_ U.S. \_\_\_, 98 S.Ct. 1852 (1978) upheld the scheme, on the ground that the privileges and immunities clause does not encompass recreational sport hunting:

Some distinctions between residents and non-residents merely reflect the fact that this is a Nation composed of individual States, and are permitted; other distinctions are prohibited because they hinder the formation, the purpose, or the development of a single union of those states. Only with respect to those "privileges" and "immunities" bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and non-resident, equally.... Equality in access to Montana elk is not basic to the maintenance or well-being of the Union. \_\_\_ U.S. at 98 S.Ct. at 1861-62.

Thus the initial test for a privileges and immunities challenge is whether the law affects a right to engage in a livelihood or whether the activity is merely recreational and a sport. If the latter, a privileges and immunities challenge will not prevail.

(2) Equal Protection Under 14th Amendment.  
State laws that discriminate against aliens or non-residents must withstand a different test when challenged under the "equal protection" clause of the 14th Amendment.

First, the court must determine whether the class discriminated against is "inherently suspect" or if the law affects a "fundamental right." If so, the court will "strictly scrutinize" the intent and purpose of the law to establish whether there is a "compelling state interest" that necessitates the law and that the law is the least drastic means to further that interest. Dunn v. Blumstein, 405 U.S. 330 (1972). If the classification is not "suspect," and the right not "fundamental" the court will restrict its review of the law to a determination whether the law and the classification it establishes is "rationally related to a permissible state interest."

The Court in Baldwin, supra, at 1862 concluded that recreational hunting was not a "fundamental right" (for purposes of privileges and immunities analysis which protects a longer list of rights than does the equal protection clause. (Hicklin v. Orbeck, 565 P.2d 159, 168 n.16 (Alaska 1977), rev'd on the grounds \_\_\_ U.S. \_\_\_, 57 L.Ed.2d 397 (1978)). However, the class of aliens (regardless of residency) has been held to be a suspect class for state laws, though not federal laws. Mathews v. Diaz, 426 U.S. 67 (1976), Sugarman v. Dougall, 413 U.S. 634 (1973) (civil service); Takahashi v. Fish and Game Commission, 334 U.S. 411 (1948) (commercial fishing); Frovlov v. Delo, 383 N.Y.S.2d 470 (N.Y. 1976) (hunting license). Thus, in order to uphold a law that discriminated between resident citizens and resident aliens, the state would have to show that distinguishing the class of aliens was necessary to further a compelling state interest. Frovlov, supra, at 472; Takahashi, supra at 416-17. A classification based solely on alienage must thus correspond to the class from which an "evil" is to be feared. Patsone v. Commonwealth of Pennsylvania, 232 U.S. 138 (1914) (upholding a state law prohibiting aliens from killing game for sport and to that end making possession of shotguns by aliens unlawful).

It may thus be more difficult to demonstrate that a law directed at aliens only is directed at the primary source of the problem. The court in Takahashi, supra at 419 held:

The protection of this section [8 U.S.C. § 41 relating to rights of all persons under U.S. Jurisdiction] has been held to extend to aliens as well as to citizens. Consequently the section and the Fourteenth Amendment on which it rests in part protect "all persons" against state legislation bearing unequally upon them either because of alienage or color...The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide "in any state" on an equality of legal privileges with all citizens under non-discriminatory laws. [Footnotes omitted.]

The court concluded that the power of a state to apply its laws exclusively to alien inhabitants is "confined within narrow limits." Takahashi, supra at 420.

Applying this language to an Alaska law that would bar aliens from hunting, or otherwise restrict their ability to engage in sport hunting, its validity would depend in part on whether the privilege of sport hunting is encompassed by the privileges citizens can also enjoy. Arguably, sport hunting is not such a privilege enjoyed by all citizens, but is a special privilege that may be restricted to state citizens in order to protect the resource. In Patsone v. Pennsylvania, 232 U.S. 138 (1914) (cited in Takahashi, supra at 410) the Supreme Court sustained, against Fourteenth Amendment due process and equal protection challenges, a state law barring aliens from hunting wild game in the interest of conserving game for citizens of the state. The distinction between the Patsone and Takahashi cases apparently was that in Patsone the court found no conflicting federal law or treaty, that the privilege of taking wild game was not a right of citizenship, and a state could keep game for its own citizens. (Citing Geer v. Connecticut, 161 U.S. 519 (1896)).

Takahashi, suggests that to earn a living by fishing is a right of citizenship, and that:

To whatever extent the fish in the three-mile belt off California may be capable of ownership by California, we think that "ownership" is inadequate to justify California in excluding any or all aliens who are lawful residents of the state from making a living by fishing in the ocean off its shores while permitting all others to do so.

Based on the Takahashi case, it appears that a law directed at non-residents, rather than aliens (whether resident or non-resident), would be easier to justify.

Earlier analysis used to uphold state laws directed at non-residents (citizen or alien) relied on the theory of "state ownership" of fish and game resources. In re Eberle, 98 F. 295 (7th Cir. 1899) (upholding state law charging non-residents a much higher hunting license fee); State v. Tower, 24 A. 898 (Me. 1892) (upholding a state law forbidding non-residents from hunting in the state).

The "state ownership" theory is that the wild game (and fish) in a state is the property of the state under its "sovereign ownership." Patsone v. Pennsylvania, 232 U.S. 138 (1914) (no resident aliens may hunt deer); McCready v. Virginia, 94 U.S. 391 (1877) (state title to oysters in tide waters). This analysis has, in recent years, been severely eroded, although not overruled. Fish that migrate have been deemed not the state's property, Toomer v. Witsell, 334 U.S. 385 (1948) and state laws prohibiting aliens from commercial fishing in territorial waters, when the aliens held a federal gear license, have been stricken. Douglas v. Seacoast Products, Inc., 431 U.S. 265 (1977). Although the ownership theory has been deemed "but a fiction," Toomer v. Witsell, 334 U.S. 385, 402 (1948), and a "slender reed," Missouri v. Holland, 252 U.S. 416, (1920), nevertheless it has not been overruled.

Courts today have, however, tended to replace "ownership" concepts with the principle that under a state's police powers, the state is trustee of the fish and game within its borders and may take reasonable measures to protect and manage it. Baldwin, *supra* at 1864 (Burger concur.); State v. Kemp, 44 N.W.2d 214 (S.D. 1950), dis'd 340 U.S. 923 (1951) (U.S. S.Ct. dis'd for want of "substantial federal question" a South Dakota law excluding non-resident from hunting migratory waterfowl.)

Alaska's supreme court has taken a similar approach to protection of its natural resources. The court in Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977) struck down the durational (one year) residency requirement for pipeline jobs, on the grounds that, under equal protection analysis, a "fundamental right" (travel or migration) was infringed upon and the law must be strictly scrutinized; however the court also upheld a non-durational residency provision, claiming the right to work is not a fundamental right, and therefore the law must merely "bear a fair and substantial relation to a permissible state interest." Hicklin, *supra* at 167. The court relied on McCready v. Virginia, 94 U.S. 391 (1877) and the Alaska Constitution Art. VIII § 2, that holds Alaska's natural resources for the benefit of her people, to conclude that the natural resources of the state "belong" to Alaskans "in a way that, in our federal system, Alaska's society and economy in general do not." Hicklin, *supra*, at 169. The United States Supreme Court reversed the state decision in Hicklin v. Orbeck, \_\_\_ U.S. \_\_\_, 57 L.Ed.2d 397 (1978), however, stating that Alaska's hire law violates

the privileges and immunities clause because the state failed to show that non-residents are "a peculiar source of the evil" and because the Alaska hire preference does not bear a substantial relationship to the problem. The Supreme Court further held that the theory of state ownership of its resources does not remove a law concerning that resource from the prohibitions of the privileges and immunities clause

The analysis suggested by the above equal protection cases, assuming "strict scrutiny" is not used, is whether the state can present sufficient evidence that the discriminatory law is justified by problems that class creates. For example, the court in Baldwin, supra found that residents contributed to the feeding of elk, that non-resident hunting pressure threatened the resource, and that the law was supportable on these and similar grounds. In contrast, the court in Gullaney v. Anderson, 342 U.S. 415 (1952) struck down a territorial fishing law that required aliens and non-residents to pay higher fishing license fees; the court found no evidence that the higher fee represented actual compensation to the state for a higher enforcement burden, but did not rule out the possibility that this could be a legitimate basis for discrimination. Thus the "rational basis" for the law was not established, and it failed constitutional scrutiny.

(3) Supremacy Clause: Art. VI § 2.

Constitutional challenges to discriminatory state laws based on the supremacy clause fall into two categories: first, laws directed at aliens that conflict with rights granted to aliens under federal laws or treaties; second, state laws that impinge upon a federally granted license or privilege. Both types of cases receive the analysis discussed by the court in Takahashi, supra: no law that conflicts with a treaty, or with a particular federal right or privilege, will survive U.S. Supreme Court scrutiny. Federal legislation pre-empts state law in fields that have been traditionally occupied by the states only where there is a manifest intent of Congress. This has been held to include federal vessel licenses to engage in fisheries. Douglas v. Seacoast Products, Inc., 524 ed.2d 204. See also Kleppe v. New Mexico, 426 U.S. 529 (1976) which struck down a state wild burro law that "conflicted" with a federal law protecting the animals on federal lands.

Assuming there is no overriding federal law involved, a state could pass a discriminatory law if it is based on, and rationally related to, a valid state interest. Since the Baldwin court has concluded that sport hunting is not a fundamental right of citizenship, a sport hunting law aimed at restricting non-residents or aliens would probably survive a challenge under the supremacy clause.

(4) Commerce Clause; Art. I § 8. A state law that restricted access by non-residents or aliens to a resource and thereby detrimentally affected interstate commerce, could be struck down under the commerce clause. For example, the court in Douglas v. Seacoast Products, Inc., \_\_\_ U.S. \_\_\_, 52 L.Ed.2d 304 (1977) held that Congress had the power to regulate the taking of fish in state waters where there was some effect on interstate commerce. The court struck down a Virginia law that limited the right of non-residents and aliens to catch fish in territorial waters.

It is unlikely that this analysis would find a similar sport hunting law invalid, since the Baldwin court has held sport hunting to be a purely recreational activity, not a source of livelihood.

Summary. Whether Alaska could pass a constitutionally supportable law or regulation that restricted the ability of non-residents or aliens from taking game would depend on whether the state could gather enough evidence showing the need to protect this resource and showing that the non-residents or aliens were a special threat.

The evidence to look at includes: the higher tax burden borne by state residents, which taxes support game management; the likelihood of enforcement problems generated by aliens or non-residents; the likelihood of non-residents or aliens not abiding by, or being familiar with, state game laws; dangers to non-residents and aliens unfamiliar with climate, terrain, wildlife habits [see attached article on point]; the need to limit the overall take of the species; protection of game and conservation purposes.

If the state simply charges a higher license fee to non-residents, the evidence to support this will be easy to supply. If only aliens are charged a higher fee, the burden will be much higher on the state. [The burden of proof is on the one who challenges the law, of course, but once the discrimination is established, the state must defend the classification.]

A second possibility for legislation would be to require all aliens to be accompanied by guides. If directed only at aliens and not non-resident citizens, it would be necessary to demonstrate that aliens present a different danger to the game (because of language barriers making it difficult to comprehend rules, training, allegiance to laws, culture, or other reasons).

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The easier-to-justify approach would be to require all non-residents (aliens or citizens) to be accompanied by guides. The justification then would rest on: greater likelihood of violations due to unfamiliarity with laws; costs of enforcement and need to have the guide function as a person responsible for the legality of the hunt; danger to the non-resident who is not familiar with weather, terrain, and animals, and the likely cost to the state of aiding non-residents in distress.

One problem with the required guide approach is that as the law (AS 16.05.407) now stands guides are only required for brown bear, grizzly bear, polar bear and sheep. This makes it difficult to justify a guide requirement based on safety of the hunter, since it does not include goat, moose and other species that present as great or greater potential hazards to the hunter, in terms of terrain, weather, etc. Thus AS 16.05.407 would have to be expanded to include all species.

In State v. Jack, supra, the supreme court in Montana struck down a state law requiring guides for non-residents on national forest, wilderness or game refuge lands or state game refuges. The basis for the decision was that because the law did not apply to deer and antelope, it could not be based on legitimate safety needs, and therefore had no reasonable connection with the classification.

In conclusion, although the Supreme Court has severely eroded a state's sovereign ownership of game, it has not ruled out the possibility of establishing a constitutionally sound law reserving sport hunting to resident citizens. In order to draft a supportable resident law or regulation, the state or state board must demonstrate clearly that the purpose of the discriminatory law is strictly related to valid biological interests, essential state management goals and similar unimpeachable motives and that the law does not conflict with established federal laws or treaties.

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Attachment