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A M E N D M E N T

OFFERED IN THE HOUSE:

BY: RULES

TO: amend HOUSE BILL No. _____

SENATE BILL No. 834

PAGE: _____

LINE: _____

Page 1, line 13: Add a new section 2 to read:

*Sec. 2. AS 08.54.050 is amended by adding a new subsection to read:

(b) The board shall adopt regulations for marine mammal guiding in accordance with this chapter and the Marine Mammal Protection Act of 1972 (P.L. 92-522, 16 U.S.C. Sections 1361-1407), as amended.

Renumber existing section 2 to Sec. 3.

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A M E N D M E N T

OFFERED IN THE HOUSE:

By: Hulford

To: _____ HOUSE BILL No. _____

SENATE BILL No. SB 834

PAGE: 1

LINE: 12

Line 12 delete "1985", insert "1983"

Add new section to read:

Sec 3 AS 08.54.050 is amended to read:

AS 08.54.050 BOARD REGULATIONS. The board shall adopt procedural and substantive regulations, under the Administrative Procedure Act (AS 44.62), [REQUIRED BY THIS CHAPTER, OR REASONABLY NECESSARY FOR ITS ADMINISTRATION.] where there is a clearly demonstrated need for the regulation. Regulations contrary to this section are void.

EXPLANATION OF THE FULLER AMENDMENT

Mr. Speaker, in 1972 the United States Congress enacted the Marine Mammal Protection Act. The Act prohibits all of the coastal states, including the State of Alaska, from managing or regulating the taking of marine mammals within their territorial waters until management authority is returned by the Federal government on a species-by-species, state-by-state basis.

In 1976 Alaska was successful in regaining authority over the management of walrus, but relinquished that authority in 1979 because of difficulties in operating a state management program consistent with the strict requirements of the Federal Act. At this point in time no state is managing or regulating the taking of marine mammals anywhere in the United States.

After its less than successful experience with walrus management, the Alaska Department of Fish and Game determined, and the rest of our state government agreed, that the only way Alaska could expect to regain management authority over marine mammals was to amend the Marine Mammal Protection Act to provide state management programs with more flexibility.

Last October that effort succeeded.

The amendments to the Marine Mammal Protection Act which the Congress passed last year establish a new, simplified procedure for regaining management authority. Section 109 of the Act, as amended, provides the State an opportunity to regain management authority over all marine mammals in Alaska

by submitting a proposed state program for marine mammal management to the Federal government. If the program is consistent with the purposes and policies of the Marine Mammal Protection Act, then it must be approved, and management authority must be returned.

One of the policies of the Act which the State must satisfy before the state program can be approved by the Federal government is the requirement that the State have a statute or regulation which provides the residents of our coastal communities an opportunity to be licensed as marine mammal hunting guides.

Recently, the Guide Licensing and Control Board adopted new regulations which for the first time establish special standards for marine mammal hunting guides. However, there are two problems with the new regulations.

First, A.S. 08.54.010 - .240 may not delegate the Board sufficient statutory authority to adopt special regulations for the licensing of marine mammal hunting guides. This was found to be the case in a similar situation several years ago when the Alaska Department of Fish and Game told the residents of Nekoryuk that they would have an opportunity to be licensed to guide the musk ox hunt on Nunivak Island, but the Guide Board later determined that it did not have the statutory authority to do so.

Second, Alaska cannot apply for the return of management until the Federal government has issued regulations which spell out the details of what the new amendments to the Marine Mammal Protection Act require the state program to contain.

To date these regulations have not been issued, and, consequently, there is no way for knowing for sure what will be required to satisfy the section of the Act relating to the licensing of marine mammal hunting guides.

The amendment which I've introduced this morning/afternoon solves both of these problems by authorizing the Guide Licensing and Control Board to adopt special regulations for the licensing of marine mammal hunting guides pursuant to standards contained in the new amendments to the Marine Mammal Protection Act. This new authority will provide the Board with the flexibility to ensure that the marine mammal guiding issue does not side track, or slow down, our effort to regain our traditional management authority over marine mammals as soon as possible. The reference in my amendment to the Marine Mammal Act itself is particularly important in this regard because, as I've already mentioned, the other provisions of A.S. 08.54 do not, in and of themselves, provide the Board sufficient statutory authority to adopt special regulations for the licensing of marine mammal hunting guides.

Consequently, if my amendment is not adopted, or if the reference to the Marine Mammal Act is deleted, Alaska ironically may find itself in a situation in which for technical reasons it cannot comply with Federal management standards which it participated in developing, and, consequently, the Governor's and the Alaska Department of Fish and Game's three years of work to regain authority over the management of Alaska's walrus, seal, polar bear, sea otter and other marine mammals will have been wasted.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 5, 1982

SUBJECT: Marine Mammal Guides
(Work Order No. 12-2683)

TO: Representative

FROM: Edward H. Hein *EH*
Legislative Counsel

You have asked whether AS 08.54.045 authorizes the Guide Licensing and Control Board to issue special guide licenses for marine mammal hunts as required by the federal Marine Mammal Protection Act amendments for transfer of management authority to the state. AS 08.54.045, adopted in 1973, does not specifically address the question of marine mammal guides. In fact, no state statute addresses the subject of marine mammal guides. As you have pointed out, this statute provides for the issuance of a special guiding permit only where the guide license applicant is prevented by language barriers from securing a regular guide license.

Read in context with AS 08.54.040 and 08.54.050, the special guiding permit statute arguably could be read to authorize the guide board to issue the marine mammal guide licenses. Under these three statutes the guide board does have authority to regulate guiding in general and to issue guide licenses. However, since these statutes do not specifically address the question, a more prudent course would be to adopt a statute which does specifically provide the requirements set out in the Marine Mammal Protection Act.

EHH:jdn

12 AAC 38 is amended by adding new sections to read:

12 AAC 38.155. MARINE MAMMAL GUIDES. Two guide classifications for marine mammals are established as

- (1) "marine mammal guide permit"; and
- (2) "assistant marine mammal guide permit."

Marine mammals designated by the Alaska Department of Fish and Game include: walrus, polar bear, beluga whale, ribbon seal, sea lion, spotted seal, bearded seal, ringed seal and sea otter. (Eff. / / , Reg.)

Authority: AS 08.54.C40(a)(1),
(2), (3), and (8)
AS 08.54.040(6)
AS 08.54.045
AS 08.54.050

12 AAC 38.157. APPLICATIONS AND EXAMINATIONS FOR PERMITS. (a) Application for any marine mammal guiding permits must be made at least five months before the examination date on a form provided by the board. The application shall include a list of those guided hunts the applicant has participated in during his apprenticeship. (A provision shall be made for the initial application and examination under these provisions to allow for application prior to April 1, 1982 to be completed without a designated waiting period.)

(b) Examinations may be administered by authorized representatives of the guide board.

(c) Marine mammal guides' and marine mammal assistant guides' examinations will be administered orally using a format provided by the board. A grade of at least 80% is a passing grade. An applicant who fails the examination may not be reexamined for a period of six (6) months after the date he failed an examination.

(d) An applicant for a marine mammal guide permit must supply the following evidence to the board:

(1) is 21 years of age or more;

(2) is a resident of the rural coastal villages of the state in which he is to guide;

(3) has hunted in the state for all or part of each of ten years in accordance with state and federal laws governing the taking of marine mammals and in accordance with state regulations governing subsistence hunting in a manner directly contributing to his experience and competency as a marine mammal guide;

(4) is physically able to perform the services of a guide;

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

(6) has passed the qualification examination prepared and administered by the board or its agent(s), to include knowledge of the following:

(A) Department of Fish and Game laws and regulations and Guide Licensing and Control Board;

(B) relevant characteristics of the specific species of marine mammals to be hunted;

(C) relevant characteristics of the ice, ocean currents, and weather of the area in which the applicant is to guide;

(D) field preparation of trophies;

(E) care of meat;

(F) firearm safety;

(G) practical first aid;

(H) photography; and

(I) booking and contracting.

(e) An assistant marine mammal guide applying for a marine mammal guide permit must supply the following evidence to the board:

(1) that he was licensed as and performed the services of an assistant, class-A assistant, or special assistant marine mammal guide for a part of each of three years; and

(2) submit a written recommendation to the board from a registered, master or marine mammal guide for whom the applicant has worked.

(f) An applicant for an assistant marine mammal guide must supply the following evidence to the board:

(1) is 19 years of age or more;

(2) is a resident of the rural coastal villages of the state in which he is to guide;

(3) has hunted in the state for all or part of each of three years in accordance with state and federal laws governing the taking of marine mammals and in accordance with state regulations governing subsistence hunting in a manner directly contributing to his experience and competency as an assistant marine mammal guide;

(4) is physically able to perform the duties of an assistant marine mammal guide; and

(5) has been recommended in writing by a master guide, registered guide, or marine mammal guide permit holder. (Eff. / / , Reg.)

Authority: AS 08.54.040(a)(1),
(2), (3), and (8)
AS 08.54.040(6)
AS 08.54.045
AS 08.54.050

12 AAC 38.159. PRIVILEGES AND LIMITATIONS OF MARINE MAMMAL GUIDES. (a) Marine mammal guide permit holder:

(1) may sign statements of remuneration;

(2) shall be limited to one hunter in the field on any one hunt; and

(3) shall be held responsible for those same responsibilities as a master or registered guide under similar conditions.

(b) An assistant marine mammal guide permit holder;

(1) may not contract hunts;

(b) may not conduct a hunt, and shall be under the immediate supervision of a marine mammal guide and/or registered master or Class-A assistant guide by whom he is employed and/or with whom he is working.

Authority: AS 08.54.040(a)(1),
(2), (3), and (8)
AS 08.54.040(6)
AS 08.54.045
AS 08.54.050

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(1) is 19 years of age or older;

(2) is a resident of the area of the state of which he is to guide;

(3) has legally hunted marine mammals in the state for all or part of each of seven years in a manner directly contributing to his experience and competency as an assistant guide;

(4) is physically able to perform the duties of an assistant marine mammal guide; and

(5) has been recommended in writing by a licensed master guide, registered guide, or marine mammal guide.

(b) An assistant marine mammal guide

(1) may not contract for hunts;

(2) may not conduct a hunt except under the immediate supervision of a marine mammal guide.

* Sec. 12. AS 08.54.050 is amended by adding a new subsection to read:

(b) The board shall adopt regulations for marine mammal guiding in accordance with this chapter and the Marine Mammal Protection Act Amendment of 1981 (P.L. 97-228).

Renumber subsequent bill sections accordingly.

Page 3, line 28:

Delete "license" and insert "permit"

Page 3, after line 28, insert:

"(6) marine mammal guide license.....25

(7) assistant marine mammal guide license.....10"

AMENDED TITLE:

AN ACT CONTINUING THE EXISTENCE OF THE GUIDE LICENSING AND CONTROL BOARD; AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: SENATE RESOURCES COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 3/31/82 IN (H) RESOURCES

SB 834 SENATE ACTION

14:09

4/14/82 PAGE 2 OF 3

| DATE | SEQ | PAGE | LEGISLATIVE ACTION |
|----------|-----|------|---|
| 03/05/82 | 01 | 0465 | FIRST READING -- COMMITTEE REPORTS |
| 03/30/82 | 02 | 0726 | RES -- DP05 |
| 03/31/82 | 03 | 0746 | RLS -- OTHER03 TAKEN UP IMMEDIATELY |
| 03/31/82 | 04 | 0749 | SECOND READING |
| 03/31/82 | 05 | 0749 | ADVANCED TO 3RD READING BY UNAN CONSENT |
| 03/31/82 | 06 | 0749 | THIRD READING |
| 03/31/82 | 07 | 0749 | PASSED BY DIV 19-00-01 |
| 03/31/82 | 08 | 0750 | EFFECTIVE DATE VOTE SAME AS PASSAGE |
| **** | ** | ** | *** ** * |

SB 834 HOUSE ACTION

14:09

4/14/82 PAGE 3 OF 3

| DATE | SEQ | PAGE | LEGISLATIVE ACTION |
|----------|-----|------|--|
| 03/31/82 | 09 | 0993 | FIRST READING -- COMMITTEE REPORTS RESOURCES RULES |
| **** | ** | ** | *** ** * |