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SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: SB 5

BILL NAME: Residents' priority for taking of big game animals.

SPONSOR(S): V. Fischer

RELATED BILLS PENDING: SB 47

DATE INTRODUCED: 1-18-83

REFERRALS: Resources  
Judiciary

INITIAL RESEARCH:

BILL SUMMARY COMPLETED:

SUMMARY BY LEGAL DIVISION:

SPONSOR CONTACTED FOR  
BACKUP MATERIALS:

DEPT. OF LAW SUMMARY:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR  
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS/GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE:

BACKGROUND MATERIAL DISTRIBUTED:

PSA/PRESS RELEASE:

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/COMMITTEE  
SUBSTITUTES DRAFTED:

Bob Hinman ADF-G  
Rep. Hurlbert (sponsor HB 47)  
Mark Jensen (Guides)

**ACTING COMMISSIONER COLLINSWORTH, ADF&G, 2/2/83:**

Decision (because is economic in nature rather than having effect on management of on the fish and wildlife population) rests with the Legislature and the Boards of Fish and Game. However, the Department has taken a stand of qualified opposition because of the impact such a policy would have on the Department's revenue.

In 1982 only 9.7% of licenses were sold to nonresidents, but these sales generated nearly twice the amount of income as did resident licenses. A decline in revenues would affect the Department's management program, thus ultimately affecting residents.

Also, wording ("whenever necessary") is vague - could lead to court involvement.

**COMMISSIONER SUNDBERG, DEPT. OF PUBLIC SAFETY/FISH AND WILDLIFE PROTECTION, 1/27/83:**

Proposed amendment: Require all nonresidents to be guided or in the company of 2nd degree kindred. Afraid bill will otherwise invite an increase in residency falsification on hunting licenses.

**SENATOR VIC FISCHER HAD A HOUSE RESOURCES COMMITTEE SUBSTITUTE DRAFTED:**

Spoke to Ginger Baim in his office, 2/7/83:

Committee Substitute eliminates use of term "nonresident aliens", 'cause are included (?) in definition of nonresidents, and may be legal problems (see enclosed opinions) if restrict people who aren't citizens just because they're not citizens.

Removes "through a permit system". Permitting is an expensive method. Specific language requiring permitting would forbid other management tools (bag limits, seasons) that could be equally effective.

Off the record: This bill is tied to V. Fischer's SB 39 (personal use fishery). Both are a means to relieve the pressure on fish and game resources and to relieve the political pressure on subsistence users.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM  
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ORIGINAL.

SUPREME COURT OF THE UNITED STATES

DAVID B. TERK v. LADD S. GORDON, ETC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW MEXICO

No. 77-1042. Decided June 12, 1978

PER CURIAM.

This case originated as a challenge, under the Privileges and Immunities Clause, U. S. Const., Art. IV, § 2, cl. 1, and under the Fourteenth Amendment, to New Mexico's statutes requiring licenses to hunt game in that State. A three-judge United States District Court upheld the State's statutory provisions insofar as they imposed higher license fees for nonresidents than for residents, but the court also ruled that the statutes governing the allocation of licenses to hunt certain rare species of game were unconstitutional. — F. Supp. — (1977). Plaintiff-appellant Terk, a Texas resident, appeals from that portion of the District Court's judgment that upheld the New Mexico fee discrimination. The defendant-appellees, who are the Director of the State's Department of Game and Fish and the members of the State Game Commission, did not seek review of that portion of the judgment that held the allocation of licenses to be unconstitutional.

The issue as to the fee discrimination between residents and nonresidents is controlled by this Court's recent decision in *Baldwin v. Montana Fish and Game Comm'n.* — U. S. — (May 23, 1978). On appellant Terk's appeal, therefore, the judgment of the United States District Court is affirmed. We express no view, however, on the allocation issue as to which no review was sought.

THE PRECEDING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

AT ALBUQUERQUE  
AUG 25 1977  
JESSE CADAMUS  
CLERK

DAVID B. TERK, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
LADD S. GORDON, individually )  
and as Director of the Department )  
of Game and Fish, State of New )  
Mexico; FLOYD TODD, ALBERT J. )  
BLACK, ROBERT H. FORREST, )  
HOUSTON MCKENZIE, and EDDIE )  
MUNOZ, individually and as )  
members of the State Game )  
Commission, State of New Mexico, )  
 )  
Defendants. )

No. 74-387-M Civil

AUG 26 1977

MEMORANDUM OPINION

This is an action for declaratory and injunctive relief pursuant to 28 U.S.C. 2201 and 2202. Jurisdiction is present pursuant to 28 U.S.C. 1343(3) and 42 U.S.C. 1981 and 1983. Reliance on § 1981 is misplaced. The action is one required to be determined by a three-judge District Court, 28 U.S.C. 2281. Plaintiff alleges that the defendants acting under color of state law are depriving him of rights and privileges secured to him by the United States Constitution through the Privileges and Immunities Clause, §2 of Article IV, and the Fourteenth Amendment.

The plaintiff is a resident of Texas. The defendants are members of the New Mexico Game Commission and serve on the Commission by appointment of the Governor. Ladd Gordon was at material times the Secretary to the Game Commission and Director of the Department of Game and Fish. The defendants acted and are acting under color of state law. N.M.S.A. 53-1-1 et seq. The subject matter of this action concerns the treatment of non-residents who apply for hunting licenses

The license fee structure as set by statute, N.M.S.A.

53-3-6 (1953 Comp., as amended) is as follows:

<u>LICENSE</u>	<u>RESIDENTS</u>	<u>NON-RESIDENTS</u> (1970-74)	<u>NON-RESIDENTS</u> (Current)
Big Game (Deer, Bear, Turkey, Squirrel)	\$ 8.00	\$ 50.25	\$ 50.75
Cougar	10.50	100.50	300.50
Antelope	10.50	40.00	50.50
Barbary Sheep	20.50	100.00	300.50
Bighorn Sheep (both species)	20.50	100.00	300.50
Oryx	100.50	200.50	300.50
Ibex	50.50	200.50	300.50
Elk	15.50	50.50	75.50

The only discrimination practiced upon a non-resident desiring to hunt animals other than Bighorn Sheep, Oryx and Ibex is in charging the different fee. All non-resident applications for big game and cougar licenses are accepted and licenses are issued. Licenses to hunt antelope, elk and barbary sheep on public lands are available in numbers limited by the number of animals available for harvest. Applications for these licenses outnumber the number available for harvest. Licenses are issued to those individuals whose applications are selected by random drawing. Non-residents and residents are selected from this same "pool" and have an equal chance of being selected. Landowner licenses, those issued to hunt on private land, are governed by different rules, but that difference is not germane to this lawsuit.

Hunting for Rocky Mountain and Desert Bighorn sheep, Oryx and Ibex is more limited because of insufficient numbers of animals which can be harvested.

The Desert Bighorn is now found only in the Big Hatchet Mountains and the San Andres-Organ range. Estimated population, based on a 1967 survey, totaled less than 200. The Desert Bighorn has been available for hunting only in token numbers. The animal was not hunted between 1955-1967, and from 1970-1975 the hunt has been limited to five resident licenses. Starting in 1972, one non-resident license has been made available per year because the Game Commission considered the Desert Bighorn head so highly prized as a trophy that non-residents should have an opportunity to hunt the species. The Desert Bighorn is hunted only in the W-3 area which is federal land.

The Rocky Mountain Bighorn is hunted in areas W-1 and W-2, which consists of national forest and other BLM lands. This animal is closely related to the Desert Bighorn but has been available for hunting in larger numbers. Generally about fifteen licenses are available per year.

Non-resident applicants for Bighorn licenses, in addition to paying a higher fee, must confront another hurdle before a license can be issued. Applications must be pooled for a random drawing, but non-residents' applications are pooled and drawn separately from resident applications to fill the allocation of licenses set by the Commission in the proclamation. For example, in 1974 the Commission made the following allocation:

Area W-1 - Up to 10 resident; up to 2 non-resident  
 Area W-2 - Up to 5 resident; 0 non-resident  
 Area W-3 - Up to 5 resident; up to 1 non-resident

The licenses allocated were drawn from the following pools:

<u>Area</u>	<u>Licenses</u> <u>Resident Applications</u>	<u>Licenses</u> <u>Non-Resident Applications</u>
W-1 & W-2	13 from 268	2 from 6
W-3	5 from 269	1 from 69

A hunter may submit only one application for Bighorn sheep and he must not have previously held a license for the species presently sought. Oryx and Ibex licenses are also subject to allocation between residents and non-residents. During the 1974-75 season, there were five resident and no non-resident Oryx licenses. There were three resident and one non-resident Ibex licenses. A Game and Fish Department Officer must accompany the licensees on these hunts and has the power to select the Oryx to be taken by the hunter.

It is admitted that the purpose of the Game Commission's allocation policy is to favor state residents and limit the number of non-resident hunters and to preserve game for state residents. While the Commission feels that a fee differential is proper, it did not advocate the 1973 increase in the license fees. The change came from the Legislature without substantial impetus from the Commission.

These are the basic facts behind this controversy. The following facts were presented by the parties to lend support to their respective theories of the case.

Plaintiff has attempted to show that the animals are migratory. The evidence is that some of the animals range within habitats which cross state lines, but they do not migrate in the normal sense of the word.

The State of New Mexico covers an area of 78 Million acres. Thirty-two million acres are open to free public hunting. There are nine million acres of state lands, nine million acres of national forests and fourteen million acres of public-domain land administered by the Bureau of Land Management within the Department of Interior.

The Department of Game and Fish defends its policies and license fee differentials on the grounds that the burden of

expenditures made by the state which benefit wildlife falls on New Mexico residents and the non-resident fees are levied in an attempt to equalize the burden.

The Game and Fish Department receives little support from the general fund appropriations. While the Legislature does appropriate funds for annual operations, the monies come from the Game Protection Fund, N.M.S.A. 53-1-8 (1953 Comp., 1975 pp), not the general fund. The source of Game Protection Fund monies is revenue received from the sale of licenses and permits. These funds are generally sufficient to sustain the operations of the Department. Diversion of license fee revenue from the Game Protection Fund disqualifies a state from receiving federal assistance. The Department received a \$45,000 appropriation this fiscal year from the state general fund to implement the Wildlife Conservation Act. N.M.S.A. 53-2-50 (1953 Comp.).

Twenty-five thousand dollars of this appropriation is expended in a manner which will allow the state to qualify for federal assistance under the Pittman-Robertson Act, 16 U.S.C. 669-669j, on a one to three ratio. The source of Pittman-Robertson funds is a federal excise tax on hunting equipment. These funds are allocated back to the states on a formula which considers the size of the state and the number of license issued. The Game and Fish Department receives no other direct aid from the state general fund. It does receive other valuable benefits and services which the state provides to its agencies without charge. The Game and Fish Department does benefit from general fund supported programs of other state agencies. The benefits received, however, are indirect and cannot be reduced to a dollar amount. Included are: some expenditures by the State Park and Recreation Department; predator control activities by the New Mexico Department of

Agriculture operating under agreements with the U. S. Fish and Wildlife Service; disease control activities undertaken by the State Livestock Board; and programs of the State Forestry Department which tend to improve the habitat of wildlife.

Defendants contend other departments also benefit wildlife, but the benefits are so indirect or remote that further elaboration would serve no useful purpose.

There is no evidence that non-resident hunters create any special enforcement problem or otherwise tax the resources of the Game and Fish Department more than resident hunters do.

Mr. Terk applied for license for big game and for Desert Bighorn sheep in area W-3. He tendered with each application the resident application fee. When his applications were rejected, he brought this action. He later paid the non-resident fee for Desert Bighorn, but his application was not drawn and he did not receive a license.

The plaintiff first contends that a license fee differential in the amounts specified in N.M.S.A. 53-3-6 (1953 Comp.) based solely on residency violates the Privileges and Immunities Clause of the Constitution. His second contention is that allocating available licenses for Bighorn, Oryx and Ibex between residents and non-residents solely on the basis of residency violates the Privileges and Immunities Clause of the Constitution.

The plaintiff argues that state regulation of animals interferes with his rights as an American citizen to enjoy public lands. We find no provision of federal law supporting this argument, but we do find a few which refute it. Section 1133(d)(8) of Title 16 states that nothing in the Wilderness

Preservation Act should be construed as affecting the jurisdiction and responsibilities of the several states with respect to wildlife in national forests. The same policy applies to other public lands. The Department of Interior recognizes state authority to control and regulate hunting of wildlife on public land while authority to control the habitat is vested in the United States. 43 C.F.R. Part 24-1.

We have previously held that wild horses and burros do not become "property" of the United States simply by being physically present on United States land. State of New Mexico v. Rogers C.B. Morton, 406 F.Supp. 1237 (DC NM 1975) reversed on other grounds. Sub Nom Kleppe v. New Mexico, 426 U.S. 529 (1975). Whatever control the federal government may assert over wild animals finds its source in the constitutional powers of the federal government to control and protect the public land, not on a theory of ownership of the animals. State of New Mexico v. Rogers C.B. Morton, supra; New Mexico State Game Commission v. Udall, 410 F.2d 1197 (10th Cir. 1969). We are unable to accept the proposition that plaintiff's enjoyment of national forests and wilderness areas is restricted because the state restricts the killing of its wildlife. cf. Schakel v. State, 513 P.2d 412 (Wyo. 1973).

We see nothing significant in the fact that the state receives substantial federal Wildlife Restoration funds pursuant to the Pittman-Robertson Act to carry out the New Mexico Wildlife Conservation Act, N.M.S.A. 53-2-50 through 53-2-59 (1953 Comp.). The fact that the source of federal revenues is a federal excise tax on some hunting equipment does not by itself operate to give citizens of other states a claim to the common property of New Mexico citizens held in trust by the state. There is nothing in the Act, legislative history or administrative regulations to show that Congress intended the

result plain. If is seeking as a condition receiving federal assistance and we cannot infer such a purpose from the general purpose of the legislation; to preserve wildlife for the enjoyment of the people. 43 C.F.R. Part 17; 50 C.F.R. Part 80, 1970 U. S. Code Congressional and Administrative News 4353.

With these issues removed from the case, the remainder of the action closely resembles older cases based on the Privileges and Immunities Clause, Art. IV, §2 Cl.1.

In the recent case of Austin v. New Hampshire, 420 U.S. 656 (1975), the Supreme Court in striking down a tax on non-resident income had an opportunity to re-examine the historical basis for the Privileges and Immunities Clause. The Clause establishes a norm of comity without specifying the particular subjects as to which citizens of one state coming into the jurisdiction of another state are guaranteed equality of treatment. The purpose of the Clause is to fashion a single nation. The fundamental privileges and immunities protected by the Clause are those which tend to achieve this purpose. They are fundamental privileges which attach to the fact of citizenship.

X  
The early cases flatly do not recognize the privilege of recreational hunting to be within the protection of the Clause. In McCready v. Virginia, 94 U.S. 391 (1876), criminal conviction was upheld of a non-resident defendant who planted oysters in a Virginia river bed. The court reasoned that states had the power to control cultivation of oysters in the tide beds through its power to regulate the common property of the people of Virginia. The right to use common property of the state was a property right, not a mere privilege and immunity of citizenship. The court held that the Constitution

did not give citizens of one state an interest in the common property of citizens of another state.

In Geer v. Connecticut, 161 U.S. 519 (1896), the court upheld a statute forbidding removing game from the state even though it was lawfully taken. The court recognized that game animals within a state belong to the people and the state "owns" the game, not as a proprietor, but in its sovereign capacity as representative of its people in common. To hunt and kill game is a privilege, not a right inherent in an individual, and there is no requirement that the state allow citizens of other states to participate in that which they do not own.

The first serious inroads on the power of the state came in the 1948 case of Toomer v. Witsell, 334 U.S. 385 (1948). Georgia residents challenged South Carolina statutes governing commercial shrimping in the three-mile maritime belt. The shrimp migrated from North Carolina to Florida and returned annually. The most advantageous operation of the commercial shrimping fleet would be to follow the shrimp down the coast, but state restrictions on non-resident fishermen enacted partially in retaliation against other states had divided the fishery at state lines. The main component of the South Carolina restriction was a \$2,500 license fee for non-resident boats, which the Court said was exclusionary. One of the privileges protected by Article IV, §2 Cl.1, is that a citizen of State A may do business in State B where there is no substantial reason for discrimination. The court said that the ownership theory was a legal fiction expressive of the importance that a state have power to preserve and regulate the exploitation of an important resource. The court characterized commercial shrimping as a common calling or

business and therefore within the protection of the Privileges and Immunities Clause. See also Mullaney v. Anderson, 342 U.S. 415 (1952).

McCready was distinguished because it did not involve free-swimming, migratory fish and covered only inland waters.

McCready, treated in Toomer, supra, at 400, as a commercial fishing case, was viewed as a narrow exception to the Privileges and Immunities Clause. The continuing validity of Geer was not discussed in Toomer and we have recently found Geer still valid authority on the ownership doctrine, at least to the extent necessary to negate ownership by the United States. State of New Mexico v. Rogers C. B. Morton, supra.

Similar cases followed Toomer in the lower courts. Russo v. Reed, 93 F.Supp. 554 (D.C.Me. 1950) and Edwards v. Leaver, 102 F.Supp. 698 (D.C.R.I. 1952). In Russo the court indicated that sport hunting was not at issue either in the case before it or in Toomer.

In 1971, Maine followed McCready in upholding the validity of a town ordinance which discriminated against non-residents of the town taking shellfish in tidal flats, State v. Alley, 274 A.2d 718 (1971), on the property theory and that the discrimination was justified by municipal involvement in conservation. And, in American Commuters Assoc. v. Levitt, 279 F.Supp. 40 (1967) Aff'd 405 F.2d 1148, (1969), non-residents, although paying income tax on New York derived income, were held not entitled to claim a right to obtain a fishing license for non-commercial purposes for the same fee as that charged to residents, and the court concluded that no substantial constitutional question had been raised. In addition, no showing had been made that the difference in fee was not justified by programs supported by state taxes. The court cited Toomer and then curiously distinguished Toomer

on the grounds that it involved commercial fishing and commerce.

Our research and the briefs disclose cases similar to these, but we find only one case arguable applying Toomer to recreational hunting, Schakel v. State, 513 P.2d 412 (1973), striking down a statute requiring non-residents to have a guide.

Since Justice Holmes in Missouri v. Holland, 252 U.S. 416, 434 (1919), said, "To put the claim of the State upon title is to lean upon a slender reed," and Justice Vinson in Toomer said:

"The whole ownership theory, in fact, is now generally regarded as but a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource. And there is no necessary conflict between that vital policy consideration and the constitutional command that the State exercise that power, like its other powers, so as not to discriminate without reason against citizens of other States."

Courts have been unwilling to end discussion of the different treatments accorded to non-residents even after concluding that the alleged rights and privileges were not within the protection of the Article IV, §2 Cl.1, but have been strongly inclined to further subject the provisions to the analysis accorded to legislative classifications created in the exercise of the State's police power. Indeed, these two provisions overlap to some extent.

If a provision is able to withstand constitutional attack on a police power approach, the McCready theory of ownership and the Geer theory of trusteeship, whatever limitations Toomer may place on the trustee theory, become academic. If, however, the provision does not

withstand police power analysis, a court must decide whether the ownership theory is still alive when applied to recreational hunting or whether modern concepts of the police power have displaced or limited the absolute power formerly conceded to the state under the ownership or trusteeship doctrines. This appears to us to be the most practical way to approach the problem.

It is recognized in this circuit that a state has wide discretion in exercising the police power. Lamm v. Volpe, 449 F.2d 1202 (10th Cir. 1971). Protection of wildlife is within the police power and the state has great latitude in determining what means are appropriate for its protection. Lacoste v. Department of Conservation, 263 U.S. 545, 552 (1924).

The test to determine the legitimacy of a legislative classification is essentially the same for police power as the equal protection test: whether the classification is reasonable and whether it is rationally related to a legitimate state object. State v. Kemp, 44 NW2d 214 (S.D. 1950); Schakel v. State, supra; Perez Gonzales v. Irizarry, 387 F.Supp. 942 (1974); Clarke v. Redeker, 259 F.Supp. 117 (1966).

This test applies so long as the classification is not based on a suspect criteria or does not affect a fundamental right. Residency is not a suspect criterion, and the scheme does not penalize recent interstate movement. The travel argument was rejected in American Commuters v. Levitt and Toomer type restrictions were indicated to be distinguishable from durational residency requirements in Dunn v. Blumstein, 405 U.S. 330, 340-342 notes 9-13 (1972).

Sport hunting is not a fundamental right or privilege of national citizenship. There are, therefore, no impediments to applying the rational relationship test. We find the disparity in fees charged non-residents to be reasonable and

within the police power of the state. With the exception of three licenses; Cougar, Barbary Sheep and Bighorn Sheep, the non-resident fee ranges from three to six times the resident fee. We feel the State has made a sufficient showing that non-residents receive the benefits of state general fund expenditures which justify the fee differential.

Our review of non-resident tuition cases indicates that the state has wide latitude in setting tuition rates. Starns v. Malkerson, 326 F. Supp. 234 (D.Minn. 1970) Aff'd per Curiam 401 U.S. 985 (1971); Clarke v. Redeker, supra; Sturges v. Washington, 368 F. Supp. 38 (1973). The difference need only be a reasonable attempt to achieve partial cost equalization. Mathematical precision is not required. Williams v. Dandridge, 397 U.S. 471 (1970). In Starns the court recognized the right of the state to require new residents to make some tangible or intangible contribution to the state or its economy before receiving the benefit of the lower tuition fee.

While three of the fee differentials are quite substantial, we feel that the high statutory price of a non-resident license to hunt rare and exotic species for sport which can sustain only very limited hunting is a question of legislative wisdom, not legislative power.

We cannot say that the additional differential is arbitrary when the rareness of the animals is considered. It is not arbitrary to say that non-residents desiring to hunt rare species in New Mexico should make a greater contribution to the Game Protection Fund. We are aware of the fact that with respect to these three rare species we are unable to completely separate a police power analysis from an ownership analysis.

We conclude, therefore, that the present fee structure in N.M.S.A. 53-3-5 (1953 Comp.) is not offensive to the Constitution.

Plaintiff's second contention is that allocation of licenses for Bighorn, Oryx, and Ibex on the basis of residency discriminates impermissibly against non-residents.

It is admitted that the purpose of the allocation policy of the Game Commission is to preserve hunting of the three species for New Mexico citizens. We find no conservation considerations involved and non-residents are not a source of evil. (From the Bighorns' point of view, the residency of the hunter is not relevant.)

The effect of the allocation is to exclude non-residents who have already tendered the non-resident fee solely because they are non-residents. This is outside the limits of the police power.

If it can be done at all, the power to preserve game for one's own citizens must be based on the ownership or trusteeship theory. The issue is whether the power of the state under the ownership or trusteeship doctrines of the earlier cases is absolute or whether it is limited in the same manner as the police power. We have observed a general reluctance to rely solely on the ownership or trusteeship theories, but we find no cases directly overruling the theories. The Supreme Court in Kleppe, supra, at 545, now characterizes the States' power over wild animals in the conjunctive as "trustee and police powers." The better view is that the Commission's authority to regulate game held in trust by the state is exercised under police power. We believe that New Mexico Courts have so held. State v. Heffernan, 41 N.M. 219, 227-228 (1937). See also Arkansas State Game and Fish Commission

V. W. R. Wrapest Co., 76 F.Supp. 323 (D.Ark. 1948). We

conclude, therefore, that the allocation of licenses between residents and non-residents cannot be upheld.

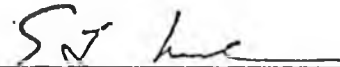
A judgment will be entered in accordance with this opinion.



UNITED STATES CIRCUIT JUDGE



UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT JUDGE

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

*O. J. opinion*  
JAY S. HAMMOND, GOVERNOR

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

465-3666

May 12, 1980

The Honorable Vernon Hurlbert  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: Prohibiting nonresidents from  
hunting caribou and moose  
Our file no.: J-66-627-80

Dear Representative Hurlbert:

You have asked whether the state may prohibit non-residents from recreational hunting for moose and caribou. We believe that such a prohibition would not be upheld against a constitutional challenge.

The United States Supreme Court has held that the pursuit of game for recreational purposes, unlike the pursuit of a livelihood, is not protected by the privileges and immunities clause, article IV, section 2, of the federal constitution. Baldwin v. Montana Fish & Game Comm'n., 436 U.S. 371, 386-388 (1978). However, the equal protection clause, U.S. Const., amend. XIV; Alaska Const., art. I, § 1, does apply, and the different treatment accorded to nonresidents must have a rational basis and be in furtherance of a legitimate governmental objective. Id., at 389-390.

A situation could exist in which prohibiting non-residents from hunting a particular species of game might have a rational basis and be in furtherance of a legitimate governmental objective. In State v. Kemp, 44 N.W.2d 214 (S.D. 1950), nonresident hunters were drawn to South Dakota to hunt pheasants. The pressure on pheasants led the state to restrict pheasant hunting to the hours of noon to sunset. This left the nonresident hunters, who -- unlike the residents -- were not engaged in making a living, with the morning hours on their hands, which they used to shoot waterfowl. As a result, waterfowl populations were decimated. The state adopted -- and the courts upheld -- a ban on nonresident hunting of waterfowl. It is unlikely however, that a similar factual basis exists with respect to moose and caribou hunting by nonresidents in Alaska.

The Honorable Vernon Hurlbert  
May 12, 1980  
Page #2

JAY S. HARRISON, ATTORNEY

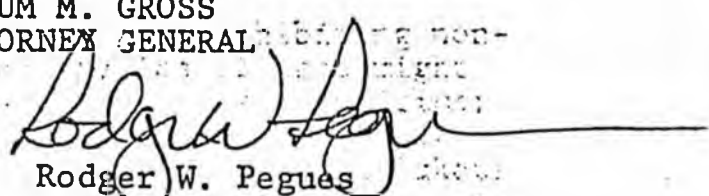
POUCH K-STATE CAPITOL  
BUREAU, ALASKA 99511

It is not simply nonresident hunting that affects the moose and caribou populations here. It is an across-the-board upsurge in hunting by residents as well as nonresidents that is exerting pressure on dwindling wildlife populations. Thus a restriction aimed solely at nonresidents misses the mark since it does not appear to have a reasonable basis with respect to the problem at hand. Accordingly, while a significantly higher license fee may be charged nonresidents as opposed to residents under the rule from Baldwin, total exclusion of nonresidents from hunting moose and caribou would very likely not be upheld.

It is obvious from the cases that sport hunting of moose and caribou as opposed to subsistence hunting, could be banned altogether, either statewide or on a regional basis as needs dictate. If subsistence hunting were rationally defined to exclude hunters who expend more in money to acquire the meat than the monetary value of the meat, the likely result would be a restriction on most nonresident hunters. That incidental effect should not invalidate the ban so long as it is otherwise reasonably calculated to obtain a legitimate governmental objective. But a ban aimed expressly and exclusively at nonresidents would in all likelihood not survive judicial scrutiny, given that nonresident hunters do not appear to have an effect on the wildlife populations that is any different from the effects of resident hunters.

Sincerely yours,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:   
Rodger W. Pegues  
Assistant Attorney General

RWP/pjg

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF FISH AND GAME

333 RASPBERRY ROAD  
ANCHORAGE, ALASKA 99502

December 28, 1979

Representative Vernon Hurlbert  
General Delivery  
Sleetmute, Alaska 99668

Dear Representative Hurlbert:

We talked on the telephone several months ago concerning the problem of foreign hunters coming to Alaska in rather large numbers and not utilizing any guide services. I promised you I'd attempt to draft a bill that would reduce or eliminate the problem and hopefully result in a greater share of our game resource going to residents of Alaska. Attached are two draft bills and some supporting material which I believe will help accomplish the above.

The first bill repeals AS 16.07.407 which is the statute now in existence that requires nonresidents to have a guide for bear and sheep and replaces it with a guide requirement for foreign hunters hunting any big game animal and a guide requirement for nonresident hunters who want to take bear or sheep. The bill essentially sets up a three tier system of hunters similar to what exists in Canada in several of the Provinces. The tiers are:

1. Resident hunter - Anyone who has lived in the State for more than 12 consecutive months and votes here. This category also includes aliens who are living in Alaska and have done so for the past three years.
2. Nonresident hunter - Anyone who is a citizen of the U.S.A. but not a resident of the State as defined above including aliens whose permanent place of abode is the U.S.A.
3. Alien hunter - Anyone who is not a U.S. citizen and whose permanent place of abode is outside the U.S.A.

The U.S. Constitution allows the State to discriminate against aliens and nonresidents but only with good justification (read the attached A.G.'s position paper starting on page 7). I feel confident the State, for conservation and safety reasons, can justify the guide requirement for aliens for all big game. Foreign hunters have considerable difficulty understanding our regulations and because of the language problems cannot reasonably acquire the necessary information and knowledge needed to hunt safely in Alaska. Nonresidents as defined above do not have the

December 28, 1979

language problem which is one reason why I separated them out. I also feel that the guide requirement for nonresidents is already stretching the law and if it were expanded to include all big game, would probably be challenged and fail.

I also wrote a bill for establishing separate "alien" license and tag fees which you might want to consider. Concerning the fee amount, I simply doubled the amount now paid by nonresident hunters. I believe the fees could be made even higher, if you desired, and still stand a court challenge.

Concerning the impact by aliens on our game resources in Alaska I took a look at our brown bear harvest data for the past three years and came up with the following information.

Brown Bear Harvest Data 1977-1979						
<u>Year</u>	<u>Total Kill</u>	<u>Total Nonres. Kill</u>	<u>% of Total Kill</u>	<u>Total Kill by Aliens</u>	<u>% of Total Kill</u>	<u>% of Nonres. Kill</u>
1977	773	446	58	99	13	22
1978	823	471	57	108	13	23
1979	876	545	62	167	19	31

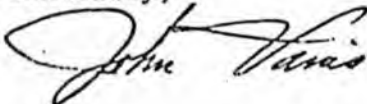
1979 figures are preliminary, more bears may be sealed.

As you can see nonresidents and aliens take a sizeable percentage of our bears and the number harvested by aliens took a significant jump this past year.

I selected the brown bear harvest information because it is the most accurate harvest data we have and it was easy to compile. If you desire similar information on other species we can pull it together but it would take considerable time and it would not be as accurate.

If I can be of more help please let me know.

Sincerely,



John Vania  
Regional Supervisor

Enclosures

585

Resident and Nonresident Hunters' Success:

Alaska Statewide  
1981-1982 Season

Species	Resident Harvest				Nonresident Harvest				Residency Unknown; Unsuc- cessful	Total Hunters	Total Harvest		
	Percentage of Harvest of Species	Successful Hunter		Unsuccessful Hunter		Percentage of Harvest of Species	Successful Hunter					Unsuc- cessful Hunter	
		#	%	#	%		#	%					#
Sheep	67%	<u>561</u>	35%	<u>1,032</u>	65%	33%	<u>278</u>	79%	<u>76</u>	22%	<u>33</u>	2,348*	1,081*
Grizzly Bear	46%	371	9%	4,007	91%	54%	436	44%	551	56%	--	5,365	807
Caribou	91%	<u>1,886</u>	77%	575	23%	9%	<u>1,398</u>	96%	65	4%	<u>29</u>	<u>3,953</u>	14,813**
Moose	88%	<u>4,669</u>	24%	<u>14,492</u>	76%	12%	<u>680</u>	61%	<u>434</u>	39%	<u>434</u>	23,550*	6,000*

Source: Alaska Department of Fish and Game, Division of Game, 1/31/83.

Note: underlined numbers do not include hunters awarded permits through lotteries.

\*Includes hunters who drew permits in lotteries. The Department of Fish and Game is not readily able to separate such hunters by residency status, but staff there have estimated that the proportion of nonresidents among hunters who draw their permits in lotteries is about the same as among other hunters for each species.

\*\*This figure includes an estimated 10,919 unreported caribou kills, and some 500 caribou taken through drawings. In addition, the figure includes more caribou than hunters, because many hunters take more than one caribou with a single permit.

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 47 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a residents' priority for the  
7 taking of big game animals."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. FINDINGS. The legislature finds that

10 (1) in recent years the number of nonresidents hunting big game  
11 in the state has significantly increased, and this trend is expected to  
12 continue;

13 (2) nonresidents hunt big game in the state primarily for sport  
14 and recreation, and for trophy value, while residents hunt big game in the  
15 state primarily to obtain meat for personal and family use which is a  
16 higher beneficial use of the resource; and

17 (3) the conservation, use, and development of the state's big  
18 game populations in the best interests of the state and the nation require  
19 the establishment of a limit on the taking of big game by nonresidents, so  
20 that state residents have an opportunity to obtain big game meat for per-  
21 sonal and family use.

22 \* Sec. 2. AS 16.05.256 is amended to read:

23 Sec. 16.05.256. RESTRICTION ON TAKING BY NONRESIDENT [AND NON-  
24 RESIDENT ALIEN PERMITS]. Whenever it is necessary to restrict the  
25 taking of big game so that the opportunity for Alaska residents to  
26 take big game can be reasonably satisfied in accordance with sustained  
27 yield principles, the Board of Game shall [MAY, THROUGH A PERMIT  
28 SYSTEM,] limit the taking of big game by nonresidents ~~and non-resident~~  
29 ~~aliens~~ to accomplish that purpose.

Introduced: 1/18/83  
Referred: Resources and  
Judiciary

1 IN THE SENATE

BY V.FISCHER

2

SENATE BILL NO. 5

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act establishing a residents' priority for the  
7 taking of big game animals."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. FINDINGS. The legislature finds that

10 (1) in recent years the number of nonresidents and nonresident  
11 aliens hunting big game in the state has significantly increased, and this  
12 trend is expected to continue;

13 (2) nonresident and nonresident aliens hunt big game in the  
14 state primarily for sport and recreation, and for trophy value, while  
15 residents hunt big game in the state primarily to obtain meat for personal  
16 and family use; and

17 (3) the conservation, use, and development of the state's big  
18 game populations in the best interests of the state and the nation require  
19 the establishment of a limit on the taking of big game by nonresidents and  
20 nonresident aliens, so that state residents have an opportunity to obtain  
21 big game meat for personal and family use.

22 \* Sec. 2. AS 16.05.256 is amended to read:

23 Sec. 16.05.256. NONRESIDENT AND NONRESIDENT ALIEN PERMITS.  
24 Whenever it is necessary to restrict the taking of big game so that  
25 the opportunity for Alaska residents to take big game can be reason-  
26 ably satisfied in accordance with sustained yield principles, the  
27 Board of Game shall [MAY], through a permit system, limit the taking  
28 of big game by nonresidents and nonresident aliens to accomplish that  
29 purpose.

MEMORANDUM

February 19, 1979

SUBJECT: Guides  
(Work Order No. 6362)

TO: Representative Vernon L. Hurlbert

FROM: Kenneth E. Vassar, Legislative Counsel

Enclosed is the bill you requested repealing the guide license control board and placing some of its functions in the regional boards established in HB 193. You are already familiar with the constitutional questions that are presented by requiring a nonresident to be accompanied by a guide when hunting for moose, caribou, deer, goats and black bear. We have discussed it previously, so I will not go into it extensively here except to briefly restate the problem.

The statute classifies people into two groups: residents and nonresidents. Nonresidents are required to be accompanied by a licensed guide when hunting for certain animals in the state. To the extent that a statute creates a classification and imposes a greater burden on one class of persons than on another, the state must show some rational basis connecting the classification to a legitimate objective. In the case of the statute under discussion (AS 16.05.407), a legitimate state objective could be stated in terms of the protection of people who are unfamiliar with the characteristics of Alaska's terrain and climate for the period of time when those people are engaging in an inherently dangerous activity. Furthermore, I believe this objective is reasonably related to the classification made in the statute. To the extent that a guide is required when hunting other, less dangerous, animals, the relationship between the objective and the classification is diminished.

Representative Vernon L. Hurlbert  
Page 2  
February 19, 1979

The Montana case which Tom Biss brought to my attention found that a state requirement that nonresident hunters be accompanied by guides was unconstitutional as a violation of equal protection. In that case, State v. Jack, 167 Mont. 456 (1975), the court found that the state had waived the accompaniment requirement in the eastern part of the state. Since the court found no reason to assume that one part of the state was less dangerous than the other, it found that the stated objective of protecting hunters was not related to the classification. To the best of my knowledge, Alaska has not waived the accompaniment requirement in any part of the state; this factor may be sufficient to distinguish Alaska's law from that of Montana; nevertheless, as you know, the equal protection question should be considered very carefully in relation to any amendments to the law.

KEV:nem

Enclosure

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 13, 1980

SUBJECT: Hunting by nonresident aliens and alien  
hunting tags  
(Work Orders No. 7893 and 7894)

TO: Representative Vernon L. Hurlbert

FROM: Kenneth E. Vassar  
Legislative Counsel *(Signature)*

*Check Last Page*

Enclosed are the bills you requested requiring aliens hunting in Alaska to be accompanied by guides and establishing alien licenses and tags. I believe these bills create substantial constitutional problems. There are two provisions of the United States Constitution which would appear to prohibit a state from undertaking the type of classification created in these bills: the equal protection clause of the Fourteenth Amendment and the supremacy clause of Article VI.

1. Equal Protection.

The Fourteenth Amendment provides, "[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws." It has long been settled that the term "person" in this context encompasses aliens as well as citizens of the United States and entitles both citizens and aliens to the equal protection of the laws of the state. Yick Wo v. Hopkins, 118 U.S. 356 (1886); Truax v. Raich, 239 U.S. 33 (1915); Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948). In addition, the United States Supreme Court's opinions have established that classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to strict judicial scrutiny. Graham v. Richardson, 403 U.S. 365 (1971); Nyquist v. Mauclet, 432 U.S. 1 (1977). The court has stated that aliens as a class are a prime example of a "discrete and insular" minority (see United States v. Carolene Products Co., 304 U.S. 144 (1938)) for whom such heightened judicial solicitude is appropriate. Graham, U.S., at 372.

February 13, 1980

Prior to the Graham decision, the court had upheld statutes that, in the absence of overriding treaties, limited the right of noncitizens to engage in exploitation of a state's natural resources. McCready v. Virginia, 94 U.S. 391 (1877); Patsone v. Pennsylvania, 232 U.S. 138 (1914). The theory underlying those cases was that the state had a "special public interest" in favoring its own citizens over aliens in the distribution of limited resources. The special public interest doctrine was heavily grounded on the notion that "[w]hatever is a privilege, rather than a right, may be made dependent upon citizenship." People v. Crane, 214 N.Y. 154, 164 (1915). However, as the court noted in Graham,

"this Court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a "right" or as a "privilege."  
403 U.S. at 374.

Classifications based on alienage are inherently suspect and subject to strict judicial scrutiny regardless of whether a fundamental right is involved.

A narrow exception to the prohibition on classifications based on alienage was allowed in Sugarman v. Dougall, 413 U.S. 634 (1973). There the court recognized that the state's interest "in establishing its own form of government, and in limiting participation in that government to those who are within 'the basic conception of a political community'" might justify some consideration of alienage, 413 U.S. at 642. But, as Sugarman makes quite clear, the court had in mind a state's historical and constitutional powers to define the qualifications of voters, or of "elective or important nonelective" officials "who participate directly in the formulation, execution, or review of broad public policy." Id., at 647. In re Griffiths, 413 U.S. 717 (1973) decided the same day as Sugarman, reflects the narrowness of the exception. In that case, despite a recognition of the vital public and political role of attorneys, the court found invalid a state court rule limiting the practice of law to citizens. (Two years before Griffiths, incidentally, the Alaska Supreme Court had found unconstitutional a state law prohibiting aliens from practicing law. The law was found to infringe upon the court's power to regulate the practice of law in Alaska and did not involve any equal protection question; however, the court proceeded to declare a bar rule of the court establishing the same prohibition to be of no force or effect on the ground that there was no reasonable relationship between citizenship and ability to practice law. Application of Park, 484 P.2d 690 (1971)).

February 13, 1980

Based on these recent decisions of the United States Supreme Court, it is highly unlikely that a classification based on alienage which either prohibits nonresident aliens from hunting in the state or imposes a higher hunting license fee on nonresident aliens than on other nonresidents would withstand the strict judicial scrutiny applied to suspect classifications.

## 2. Supremacy Clause.

A second reason why the proposed classification would not be likely to withstand constitutional scrutiny emerges from the area of federal-state regulations. The national government has "broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization." Takahashi, 334 U.S., at 419; Hines v. Davidowitz, 312 U.S. 52 (1941).

Congress has broadly declared:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory . . . to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens . . ." 42 USC sec. 1981.

The protection of this statute has been held to extend to aliens as well as to citizens. Takahashi, 334 U.S., at 419 n.7.

In Hines v. Davidowitz, 312 U.S. 52 (1941), the Supreme Court observed that

where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation . . . states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations. 312 U.S., at 66, 67.

And in Takahashi it was said that the states

Representative Vernon L. Hurlbert

Page 4

February 13, 1980

can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states. State laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States conflict with this constitutionally derived federal power to regulate immigration, and have accordingly been held invalid. 334 U.S., at 419.

Thus, it appears that on either equal protection or supremacy clause grounds the classification you have proposed would not be valid under the federal constitution.

This is not to say that classifications based on residency alone are impermissible. The most recent case heard by the United States Supreme Court, Baldwin v. Fish and Game Commission, 436 U.S. \_\_\_\_\_, 46 U.S.L.W. 4501 (May 23, 1978), demonstrates that the state still retains considerable power over its natural resources in terms of limiting their exploitation by nonresidents of the state. Baldwin upheld a state statute imposing a substantially higher (7 1/2 times) license fee for elk hunting for nonresidents than for residents against challenges under the privileges and immunities clause of Article IV, sec. 2, of the United States Constitution and under the equal protection clause of the Fourteenth Amendment.

While Graham appears to have disposed of the "special interest" doctrine for purposes of equal protection, at least insofar as aliens are concerned, Baldwin revived the doctrine for purposes of the privileges and immunities clause. The court noted certain limitations on the powers of states to regulate its natural resources under that doctrine but nevertheless pointed out that it expressed "the importance to its people that a State have power to preserve and regulate the exploitation of an important resource." 46 U.S.L.W., at 4505, citing Douglas v. Seacoast Products, Inc., 431 U.S. 265, 284 (1977), and Toomer v. Witsell, 334 U.S. 385, 402 (1948). The court then followed with an interesting short history of the privileges and immunities clause as it relates to state regulation of natural resources:

It is true that in Toomer v. Witsell the Court in 1948 struck down a South Carolina statute requiring nonresidents of the State to pay a license fee of \$2,500 for each commercial shrimp boat, and residents to pay a fee of only \$25, and did so on the ground that the statute

February 13, 1980

violated the Privileges and Immunities Clause. . . . Less than three years, however, after the decision in Toomer . . . the Court dismissed for the want of a substantial federal question an appeal from a decision of the Supreme Court of South Dakota holding that the total exclusion from the State of nonresident hunters of migratory waterfowl was justified by the State's assertion of a special interest in wildlife that qualified as a substantial reason for the discrimination. State v. Kemp, 73 S.D. 458, 44 N.W.2d 214 (1950), dis'd, 340 U.S. 923 (1951). In that case South Dakota had proved that there was real danger that the flyways, breeding grounds, and nursery for ducks and geese would be subject to excessive hunting and possible destruction by nonresident hunters lured to the State by an abundance of pheasants. Id., at 464, 44 N.W.2d 217.

And the court noted that the question of fundamental rights, as opposed to mere privileges, is an important consideration under the privileges and immunities clause. The court concluded that the recreational hunting of elk in Montana is not a fundamental right and is not protected under the privileges and immunities clause.

Finally, in a short discussion under the equal protection challenge, the court enumerated various distinctions between residents and nonresidents (the payment of state taxes by residents, for example) which led to the reasonable relationship between the legislative classification and the purpose of the law. The conclusion, based on Graham and Baldwin, is clear: a state has broad powers to discriminate against nonresidents in the regulation of its natural resources but has very little, if any, power to discriminate specifically against nonresident aliens.

KEV:ljb

Enclosures

*file  
with  
Attorney  
General's  
opinion.*

February 15, 1980

1 TRANSIENT ALIENS HUNTING GAME ANIMALS MUST BE ACCOMPANIED BY GUIDES

2 A. It is unlawful for a transient alien to hunt, pursue or  
3 take a big game animal in this state, unless personally  
4 accompanied by a person who is licensed as a master guide,  
5 registered guide, class a guide, or assistant guide by the  
6 department. A transient alien hunter who applies for a  
7 nonresident big game tag for the taking of an animal specified  
8 in this section shall first furnish to the state on a form  
9 provided by the state, an affidavit showing that he will be  
10 accompanied in his hunt by a person who is qualified under  
11 terms of this section (as 08.54) a person who falsifies  
12 the required affidavit is guilty of perjury.

13 B. It is unlawful for a transient alien to import polar  
14 bear into this state unless personally accompanied by a  
15 person who is licensed as a master guide, registered guide,  
16 class a guide or an assistant guides under as 08.54

17 C. A transient alien who violates  
18 (a) or this section or a transient alien who violates  
19 (b) or (d) of this section is guilty of a class A.  
20 misdemeanor and upon conviction is punishable by  
21 imprisonment for not more than one year, or by a  
22 fine of not more than \$2,500.00 or by both.

23 D. In this section

24 (1) "Big Game" means Black Bear, Brown Bear, Grizzly Bear,  
25 Polar Bear, Bison, Caribo, Deer, Elk, Goat, Moose, Sheep,  
26 Walrus, Wolf, and Wolverine.

27 (2) Transient alien means a person who is not a citizen  
28 of the united states and whose permanent place of abode is not  
29 in the united states.  
30  
31  
32  
33  
34

*Summer*  
*FY1*

NOTICE OF ADOPTION OF EMERGENCY REGULATION

As required by AS 44.62.250, notice is given that, under the authority of AS 16.05.255, the Alaska Board of Game amended on this date, as an emergency regulation 5 AAC 81.145(c) relating to Transfer of Possession.

This action is not expected to require an increased appropriation.

Copies of this regulation may be obtained by writing to: Alaska Department of Fish and Game, Subport Building, Juneau, AK 99801.

DATE: 1-14-81

*for* *Ronald O. Skoog*  
Ronald O. Skoog, Secretary  
Alaska Board of Game

Register

FISH AND GAME

5 AAC 81.145(c)

PART 3. GAME

CHAPTER 81 HUNTING

5 AAC 81.145(c) is amended to read:

5 AAC 81.145(c) No guide, transporter, or common carrier may possess or transport any big game or its parts unless he first obtains, from the person seeking to transfer possession or to have the big game or its parts transported, a statement signed by the person who took the big game, stating that person's name, address, and license or permit number, and the place the big game was taken. This statement must be produced immediately upon request of any person authorized to enforce AS 16 or regulations promulgated thereunder.

ESTABLISHING A RESIDENTS' PRIORITY FOR THE TAKING OF BIG GAME ANIMALS.

SB 5

V. FISCHER

Mandates that the Board of Game limit the taking of big game (through a permit system) by nonresidents and nonresident aliens whenever necessary to assure Alaskans the opportunity to take big game in accordance with sustained yield principles.

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	3?	Chet Clark, Aniak
1978	13+	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 professional

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 Paimiut 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 zones, 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-Game 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

of 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 F&WP. There has also been concern that although aerially 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 has been done is poorly known. Apparently there was considerable effort to give away meat in Aniak in 1976, 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~~ <sup>aliens</sup> by legislation stipulating different tag fees, guide requirements, or other means for aliens? No
- c) Does the alleged equal protection extended to aliens in the U.S. include "equal rights" in terms of hunting privileges? Yes

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

Calendar Year 1980  
January 1, 1980 thru December 31, 1980  
Prepared January 8, 1981

CODE	TYPE OF LICENSE	NUMBER	GROSS	NET	NET/SPORT	NET/GAME	NET/GENERAL
201	R. Sport Fishing	82,934	\$ 829,340.00	\$ 787,542.02	\$ 787,542.02	\$-----	\$-----
202	R. Hunting	22,945	275,340.00	261,599.54	-----	261,599.54	-----
203-A	R. Hunt/Trap	2,378	35,670.00	34,044.41	-----	34,044.41	-----
204	R. Spt. Fish/Hunt	29,711	653,642.00	620,116.75	281,871.29	338,245.46	-----
205	R. Fish/Hunt/Trap	9,953	248,825.00	236,358.40	94,543.37	141,815.03	-----
206	NR 10-Uny Spt. Fish	35,521	532,815.00	506,790.64	506,790.64	-----	-----
207	NR Sport Fishing	14,174	425,220.00	403,432.63	403,432.63	-----	-----
208	NR Hunting	4,504	270,240.00	256,466.25	-----	256,466.25	-----
209	NR Fish/Hunt	953	85,770.00	81,277.22	27,092.44	54,184.78	-----
210	NR Hunt/Trap	61	12,200.00	17,558.36	-----	11,550.36	-----
211	NR 1-Day Spt. Fish	17,187	85,935.00	81,625.57	81,625.57	-----	-----
212	NR Military Spt. Fish	6,024	60,240.00	57,394.37	57,394.37	-----	-----
213	NR Military Small Hunt	931	11,172.00	10,663.84	-----	10,663.84	-----
214	NR Military Fish/Hunt	840	18,480.00	17,625.79	8,011.71	9,614.08	-----
217-3B	R. Trap	1,526	4,573.00	4,416.09	-----	4,416.09	-----
218	Duplicate Licennc	3,097	6,194.00	5,927.93	-----	-----	5,927.93
120	Fish/Fur/Game Farm	6	600.00	578.59	-----	-----	578.59
121	R. Fur Dealer	111	5,550.00	5,428.89	-----	-----	5,428.89
122	NR Fur Dealer	10	2,000.00	1,924.45	-----	-----	1,924.45
123	R. Taxidermy	52	3,900.00	3,825.94	-----	-----	3,825.94
124	NR Taxidermy	2	400.00	355.76	-----	-----	355.76
200	Permit Fees	30,603	162,370.00	159,144.88	-----	159,144.88	-----
201-B	R. Blind Spt. Fish	7	1.75	1.58	1.58	-----	-----
205-A	R. 25c Hunt/Fish/Trap	9,498	2,374.50	2,259.25	753.09	1,506.16	-----
229	Guide Fees	-----	7,220.00	7,220.00	-----	7,220.00	-----
230	King Salmon/Steelhead Permit	64,734	323,670.00	307,024.40	307,024.40	-----	-----
SUBTOTAL		337,762	\$4,063,747.25	\$3,864,603.55	\$2,556,083.11	\$1,290,478.88	\$18,041.56
215	R. Big Game Tags	3,899	99,850.00	94,991.02	-----	94,991.02	-----
216	NR Big Game Tags	7,314	1,259,895.00	1,195,564.68	-----	1,195,564.68	-----
TOTAL		348,975	\$5,423,492.25	\$5,155,159.25	\$2,556,083.11	\$2,581,034.58	\$18,041.56

**RESIDENT TAGS**

B/G Bear	3,894	\$97,350.00
Muskox	5	2,500.00
<b>TOTAL</b>	<b>3,899</b>	<b>\$99,850.00</b>

**NON-RESIDENT TAGS**

B/G Bear	1,006	\$ 251,500.00
Black Bear	1,774	127,400.00
Deer	582	20,170.00
Moose	1,795	359,000.00
Sheep	592	148,000.00
Elk	42	5,250.00
Goat	717	39,625.00
Caribou	1,420	284,000.00
Wolf	232	11,600.00
Wolverine	43	2,150.00
Blon	-0-	-0-
Muskox	11	11,000.00
Wolver	-0-	-0-

**KING SALMON/STEELHEAD PERMITS**

Fee Exempt 2,721

**GUIDE FEES REPORTED WITH REMITTANCE 34**

GROSS	\$5,423,492.25	
Cost	268,333.00	4.95%
<b>Net</b>	<b>\$5,155,159.25</b>	

Residents entitled to Sport Fish	132,103	
Non-residents entitled to Sport Fish	74,699	206,802
Residents entitled to Hunt	74,485	
Non-residents entitled to Hunt	7,289	81,774
Residents entitled to Trap	23,355	
Non-residents entitled to Trap	61	23,416

**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	274,969.90	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	4,355	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	-----
217-3U	R. Trap	1,465	4,395.00	4,189.10	-----	1,532.94	2,656.16
218	Duplicate License	2,905	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	R. Taxidermy	37	2,715.00	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>SUNTOTAL</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>266,290</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>

RESIDENT TAGS	
B/G Bear	3,533 \$88,325.00
Muskox	5 2,500.00
<b>TOTAL</b>	<b>3,538 \$90,825.00</b>

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

Residents entitled to Sport Fish	130,450
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	3
<b>Total</b>	<b>21,300</b>

55%

10%

.002%

LESS Military = 5400  
7.5%

NON-RESIDENT TAGS	
B/G Bear	1,036 \$ 259,000.00
Black Bear	1,262 126,200.00
Deer	390 13,630.00
Hoare	1,837 367,400.00
Sheep	661 165,250.00
Elk	12 1,500.00
Goat	392 49,000.00
Caribou	1,383 276,600.00
Wolf	249 12,450.00
Wolverine	60 3,000.00
Bison	-----
Muskox	15 15,000.00
Walrus	4 1,000.00
<b>Total</b>	<b>7,301 \$1,290,050.00</b>

1.35 Tags/Hunter

30% Alien

- 311 -

- 377 -

- 552 -

- 195 -

- 118 -

- 415 -

STATE OF ALASKA  
DEPARTMENT OF REVENUE  
FISH AND GAME LICENSING

GROSS 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	\$ 202,515	\$ 220,695	\$ 239,415	\$ 252,965	\$ 272,805	\$ 332,045.00	\$ 763,250.00	\$ 838,190.00	\$ 876,726.58
202	R. Hunting	155,036	150,171	139,699	167,125	137,873	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	10,590	11,090	11,810	13,280.00	30,300.00	29,205.00	17,550.00
204	R. Spt. Fish/Hunt	275,412	308,232	331,500	359,244	388,728	417,348	448,560.00	665,406.00	657,420.00	678,088.00
205	R. Fish/Hunt/Trap	59,325	62,505	65,805	80,125	93,585	113,265	144,090.00	227,555.00	228,525.00	231,200.00
206	NR. 10-Day Spt. Fish	86,935	88,310	97,430	221,660	217,020	242,280	267,060.00	349,080.00	428,875.00	517,095.00
207	NR Sport Fishing	207,900	184,050	192,690	287,480	320,180	395,060	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	213,120.00	260,700.00
209	NR Fish/Hunt	70,120	69,520	71,840	65,560	67,200	65,600	68,440.00	70,670.00	70,830.00	90,180.00
210	NR Hunt/Trap	900	1,500	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	-----	-----	-----	-----	-----	-----	-----	10,992.00	12,924.00	11,748.00
214	NR Military Fish/Hunt	-----	-----	-----	-----	-----	-----	-----	21,714.00	20,064.00	19,316.00
217-38	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	9,450.00	5,250.00
122	NR Fur Dealer	-----	-----	-----	200	300	400	300.00	800.00	1,400.00	1,000.00
123	R. Taxidermy	-----	-----	-----	2,700	2,100	1,800	2,050.00	3,375.00	4,725.00	2,775.00
124	NR Taxidermy	-----	-----	-----	450	-----	300	-----	200.00	200.00	400.00
	R. Fur Dealer-Taxid.	3,180	3,320	3,420	-----	-----	-----	-----	-----	-----	-----
	NR Fur Dealer-Taxid.	1,300	700	600	-----	-----	-----	-----	-----	-----	-----
	Reg. & Mante' Golden	17,300	17,600	18,950	11,650	-----	-----	-----	-----	-----	-----
	Ann't Guides	2,290	2,775	2,475	330	-----	-----	-----	-----	-----	-----
	Class "A" Ann't Guide	520	650	790	180	-----	-----	-----	-----	-----	-----
	Permit Fees	-----	-----	-----	-----	-----	-----	-----	1,090.00	101,130.00	96,595.00
201-B	R. Blind Spt. Fish	4	1	1	2	3	5	3.00	.50	3.25	2.50
205-A	R. 25c Hunt/Fish/Trap	1,339	1,398	1,486	1,664	1,564	1,251	1,320.25	1,365.75	1,721.75	2,083.50
SUBTOTAL		\$1,181,756	\$1,104,330	\$1,271,333	\$1,603,720	\$1,639,260	\$1,761,070	\$1,937,895.25	\$3,129,391.25	\$3,439,822.00	\$3,564,190.58
215	R. Big Game Trap	-----	-----	-----	-----	-----	-----	-----	89,575.00	94,775.00	90,825.00
216	NR Big Game Trap	424,415	371,840	404,410	753,625	704,950	617,025	698,075.00	999,945.00	993,640.00	1,290,050.60
TOTAL		\$1,606,171	\$1,576,170	\$1,675,743	\$2,357,345	\$2,344,210	\$2,378,095	\$2,635,970.25	\$4,218,911.25	\$4,528,237.00	\$4,945,065.58

450  
35

Registered Guides  
Master Guide,

SPORT FISH & GAME RECEIPTS  
Calendar Year 1980  
January 1, 1980 to December 31, 1980  
Prepared January 8, 1981

CODE	TYPE OF LICENSE	NUMBER	GROSS	NET	NET/SPORT	NET/GAME	NET/GENERAL
201	R. Sport Fishing	82,934	\$ 829,340.00	\$ 787,542.02	\$ 787,542.02	-----	-----
202	R. Hunting	22,945	275,340.00	261,599.54	-----	261,599.54	-----
203-A	R. Hunt/Trap	2,378	35,670.00	34,044.41	-----	34,044.41	-----
204	R. Spt. Fish/Hunt	29,711	653,642.00	620,116.75	281,871.29	338,245.46	-----
205	R. Fish/Hunt/Trap	9,953	248,825.00	236,358.40	94,543.37	141,815.03	-----
206	NR 10-Day Spt. Fish	35,521	532,615.00	506,790.64	506,790.64	-----	-----
207	NR Sport Fishing	14,174	425,220.00	403,432.63	403,432.63	-----	-----
208	NR Hunting	4,504	270,240.00	256,466.25	-----	256,466.25	-----
209	NR Fish/Hunt	953	85,770.00	81,277.22	27,092.44	54,184.78	-----
210	NR Hunt/Trap	61	12,200.00	11,558.36	-----	11,558.36	-----
211	NR 1-Day Spt. Fish	17,187	85,935.00	81,625.57	81,625.57	-----	-----
212	NR Military Spt. Fish	6,024	60,240.00	57,394.37	57,394.37	-----	-----
213	NR Military Small Hunt	931	11,172.00	10,663.84	-----	10,663.84	-----
214	NR Military Fish/Hunt	840	18,480.00	17,625.79	8,011.71	9,614.08	-----
217-3B	R. Trap	1,526	4,578.00	4,416.00	-----	4,416.00	-----
218	Duplicate License	3,097	6,194.00	5,927.93	-----	-----	5,927.93
120	Fish/Fur/Game Farm	6	600.00	578.59	-----	-----	578.59
121	R. Fur Dealer	111	5,550.00	5,428.89	-----	-----	5,428.89
122	NR Fur Dealer	10	2,000.00	1,924.45	-----	-----	1,924.45
123	R. Taxidermy	52	3,900.00	3,825.94	-----	-----	3,825.94
124	NR Taxidermy	2	400.00	355.76	-----	-----	355.76
200	Permit Fees	30,603	162,370.00	159,144.88	-----	159,144.88	-----
201-B	R. Blind Spt. Fish	7	1.75	1.58	1.58	-----	-----
205-A	R. 25c Hunt/Fish/Trap	9,498	2,374.50	2,259.25	753.09	1,506.16	-----
229	Guide Fees	-----	7,220.00	7,220.00	-----	7,220.00	-----
230	King Salmon/Steelhead Permit	64,734	323,670.00	307,024.40	307,024.40	-----	-----
SUBTOTAL		337,762	\$4,063,747.25	\$3,864,603.55	\$2,556,083.11	\$1,290,478.88	\$18,041.56
215	R. Big Game Tags	3,899	99,850.00	94,991.02	-----	94,991.02	-----
216	NR Big Game Tags	7,314	1,259,895.00	1,195,564.68	-----	1,195,564.68	-----
TOTAL		348,975	\$5,423,492.25	\$5,155,159.25	\$2,556,083.11	\$2,581,034.58	\$18,041.56

**RESIDENT TAGS**

B/G Bear	3,894	\$97,350.00
Muskox	5	2,500.00
TOTAL	3,899	\$99,850.00

**NON-RESIDENT TAGS**

B/G Bear	1,006	\$ 251,500.00
Black Bear	1,274	127,400.00
Deer	582	20,370.00
Moose	1,795	359,000.00
Sheep	592	148,000.00
Elk	42	5,250.00
Goat	317	39,625.00
Caribou	1,420	284,000.00
Wolf	232	11,600.00
Wolverine	43	2,150.00
Bison	-0-	-0-
Muskox	11	11,000.00
Walrus	-0-	-0-

**KING SALMON/STEELHEAD PERMITS**

Fee Exempt 2,771

**GUIDE FEES REPORTED WITH REMITTANCE 34**

Residents entitled to Sport Fish	132,103
Non-residents entitled to Sport Fish	74,699 206,802
Residents entitled to Hunt	74,485
Non-residents entitled to Hunt	7,289 81,774
Residents entitled to Trap	21,355
Non-residents entitled to Trap	61 21,416

Gross	\$5,423,492.25
Cont	268,333.00
Net	\$5,155,159.25

4.95%

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	83,782
202	R. Hunting	22,148	21,453	19,957	23,875	19,699	16,205	17,003	21,470	21,803	22,610
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	17,387	17,662	19,486	22,166	21,702	24,228	26,706	23,564	28,600	34,473
207	NR Sport Fishing	20,790	18,405	19,269	14,374	16,009	19,953	20,777	12,766	12,935	12,411
208	NR Hunting	9,004	8,033	8,067	7,066	6,636	5,437	5,390	3,656	3,552	4,345
209	NR Fish/Hunt	3,506	3,476	3,592	1,639	1,680	1,640	1,711	803	787	1,002
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	6	-----	-----	-----	-----	-----	-----	-----
	Reg & Master Guides	346	352	379	233	-----	-----	-----	-----	-----	-----
	Ass't Guides	458	555	495	66	-----	-----	-----	-----	-----	-----
	Class "A" Ass't Guide	52	65	79	18	-----	-----	-----	-----	-----	-----
200	Permit Fees	-----	-----	-----	-----	-----	-----	-----	218	20,034	18,915
201-B	R. Blind Spt. Fish	4	1	1	2	3	5	3	2	13	10
205-A	R. 25c Hunt/Fish/Trap	5,359	5,595	5,936	6,658	6,256	5,004	5,281	5,463	6,887	8,334
215	R. Big Game Tag	-----	-----	-----	-----	-----	-----	-----	2,937	3,449	3,538
216	NR Big Game Tag	12,602	11,955	11,866	8,339	8,331	6,956	7,415	5,775	5,426	7,301
<b>TOTAL</b>		<b>160,058</b>	<b>159,644</b>	<b>168,301</b>	<b>171,544</b>	<b>173,362</b>	<b>179,936</b>	<b>202,656</b>	<b>219,242</b>	<b>257,277</b>	<b>266,990</b>

CROSS SPORT FISH AND GAME LICENSE RECEIPTS 1970 thru 1979

STATE OF ALASKA  
DEPARTMENT OF REVENUE  
FISH AND GAME LICENSING

GROSS 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	\$ 202,515	\$ 220,695	\$ 239,415	\$ 252,965	\$ 272,805	\$ 332,045.00	\$ 763,250.00	\$ 838,190.00	\$ 836,726.58
202	R. Hunting	155,036	150,171	139,599	167,125	137,893	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	10,590	11,090	11,810	13,280.00	30,300.00	29,205.00	32,550.00
204	R. Spt. Fish/Hunt	275,412	308,232	331,500	359,244	388,728	417,348	448,560.00	665,406.00	657,420.00	638,088.00
205	R. Fish/Hunt/Trap	59,325	62,505	65,905	80,145	93,585	113,265	144,090.00	227,555.00	228,525.00	231,200.00
206	NR. 10-Day Spt. Fish	86,935	88,310	97,430	221,660	217,020	242,280	267,060.00	349,080.00	428,875.00	517,095.00
207	NR Sport Fishing	207,900	184,050	192,690	287,480	320,180	399,060	415,540.00	380,480.00	398,010.00	372,330.00
208	NR Hunting	90,040	80,330	80,670	141,320	132,720	108,740	107,800.00	206,680.00	213,120.00	260,700.00
209	NR Fish/Hunt	70,120	69,520	71,840	65,560	67,200	65,600	68,440.00	70,670.00	70,830.00	90,180.00
210	NR Hunt/Trap	900	1,600	1,000	4,600	4,800	5,200	7,400.00	10,400.00	13,400.00	10,400.00
211	NR 1-Day Spt. Fish	-----	-----	-----	-----	-----	-----	-----	55,870.00	74,000.00	81,710.00
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	11,740.00
214	NR Military Fish/Hunt	-----	-----	-----	-----	-----	-----	-----	21,714.00	20,064.00	19,316.00
217-3B	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	9,450.00	5,250.00
122	NR Fur Dealer	-----	-----	-----	200	300	400	300.00	800.00	1,400.00	1,000.00
123	R. Taxidermy	-----	-----	-----	2,700	2,100	1,800	2,050.00	3,375.00	4,725.00	2,775.00
124	NR Taxidermy	-----	-----	-----	450	-----	300	-----	200.00	200.00	400.00
	R. Fur Dealer-Taxid.	3,180	3,320	3,420	-----	-----	-----	-----	-----	-----	-----
	NR Fur Dealer-Taxid.	1,300	700	600	-----	-----	-----	-----	-----	-----	-----
	Reg. & Master Guides	17,300	17,600	18,950	11,650	-----	-----	-----	-----	-----	-----
	Ass't Guides	2,290	2,775	2,475	330	-----	-----	-----	-----	-----	-----
	Class "A" Ass't Guide	520	650	790	180	-----	-----	-----	-----	-----	-----
200	Permit Fees	-----	-----	-----	-----	-----	-----	-----	1,090.00	101,130.00	96,595.00
201-B	R. Blind Spt. Fish	4	1	1	2	3	5	3.00	.50	3.25	2.50
205-A	R. 25c Hunt/Fish/Trap	1,339	1,398	1,484	1,664	1,564	1,251	1,320.25	1,365.75	1,721.75	2,083.50
SUBTOTAL		\$1,181,756	\$1,184,338	\$1,242,333	\$1,603,720	\$1,639,260	\$1,761,070	\$1,937,895.25	\$3,129,391.25	\$3,439,822.00	\$3,564,190.58
215	R. Big Game Tags	-----	-----	-----	-----	-----	-----	-----	89,575.00	94,775.00	90,825.00
216	NR Big Game Tags	424,415	393,840	404,410	753,625	744,950	617,025	698,075.00	999,945.00	993,640.00	1,290,050.00
TOTAL		\$1,606,171	\$1,578,178	\$1,646,743	\$2,357,345	\$2,384,210	\$2,378,095	\$2,635,970.25	\$4,218,911.25	\$4,528,237.00	\$4,945,065.58

## THE CONSTITUTIONALITY OF THE PROPOSED BILL

### Alaska Constitution

Article VIII, section 2 authorizes the legislature to provide for the utilization, development, and conservation of all of the state's resources including fish and game. Article VIII, section 4 authorizes the legislature to establish preferences among beneficial uses. Article I, section 1 and Article VIII, section 17 both require that in establishing preferences among beneficial uses the legislature must conform its allocation classifications to the normal constitutional requirements of equal protection.

The Alaska Supreme Court has held that there is no "fundamental right" to fish in Alaska (commercial, sport, or subsistence), Isakson v. Rickey, 550 P.2d 359 (Alaska 1976). The court has never addressed the right to hunt, but it unquestionably would arrive at a similar result.

Because no "fundamental rights" are at risk, legislatively established allocations among beneficial uses will conform to the constitutional requirements of equal protection as long as each allocation classification is "reasonable, not arbitrary," and rests "upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced are treated alike," State v. Wylie, 516 P.2d 142 (Alaska 1973). However, such classifications need not result in perfect equality or uniformity, Suber v. Alaska Bond Comm., 414 P.2d 546 (Alaska 1966); Commercial Fisheries Entry Comm'n v. Apokedak, 606 P.2d 1255 (Alaska 1980).

The proposed bill establishes two new allocation classifications. For game the bill for the first time differentiates between nonresident hunting and resident hunting. Treating these two groups dissimilarly bears a "fair and substantial relation" to the object of the legislation which is to protect game populations from overhunting and to protect the ability of all Alaska residents to provide for the nutritional needs of their families by having an opportunity to put meat on the table. The legislative findings in section 1 specifically note that nonresident hunting is not concerned with meat while that is the object of most resident hunting.

For fish the bill establishes a new classification called "personal use fishing" which is defined as fishing for personal or family consumption on a fish stock for which the fisherman has not established a customary and traditional use and, consequently, has no subsistence fishing priority). This classification is based upon legislative concerns similar to those for the hunting classification, i.e. nutritional needs of Alaska residents.

Both the fish and the game allocation classifications conform to the equal protection standards set forth in Alaska case law.

#### United States Constitution

The leading case of the United States Supreme Court on the issue of the constitutionality (under the U.S. Constitution)

of a state discriminating against nonresidents in allocating access to game resources is Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371, 98 S.Ct. 1852, 56 L.Ed.2d 354 (1978). In Baldwin several nonresidents plus a resident guide whose business depended almost exclusively on nonresidents sued Montana over the licensing requirements for elk hunting. The fees for nonresidents were seven and a half times as great as those for residents. The suit alleged that this disparity of treatment violated both the Privileges and Immunities Clause and the Equal Protection Clause of the U.S. Constitution. The court upheld Montana on both arguments.

First it held that nonresident hunting is "purely recreational, noncommercial, nonlivelihood" in nature, and, consequently, nonresident hunting is not the kind of "fundamental" right or activity protected by the Privileges and Immunities Clause. Secondly, it held that since no fundamental rights were involved the different treatment of residents and nonresidents would satisfy federal equal protection standards so long as there was some "rational basis" for the discrimination. The court found a rational basis in that the discrimination was reasonably related to the preservation of a finite resource. The court also took specific note of the fact that resident hunters usually hunted for meat and nonresidents for horns, a difference which probably contributed to the rationality of the classification disparity.

The court also noted with approval its dismissal of the appeal in State v. Kemp, 44 N.W.2d 214 (S. Dakota 1950) appeal dismissed 340 U.S. 923, 71 S.Ct. 498, 95 L.Ed. 667 (1951).

In Kemp the South Dakota Supreme Court upheld a state statute which flatly prohibited any nonresident hunting of pheasants.

Applying Baldwin to the game classifications proposed in the bill, it is clear that the specific legislative findings on conservation, and on the difference between resident meat hunters and nonresident trophy hunters, satisfies the Baldwin test.

The fish classifications are similar, but on even firmer constitutional ground since no nonresident discrimination is intended. If the Board of Fisheries' use of the new "personal use fishing" classification results in any restriction on the sport or commercial fisheries, those restrictions will apply equally to resident and nonresident sport and commercial fishermen. It should be noted, however, that any discrimination in favor of resident commercial fishermen over nonresident commercial fishermen probably is violative of the Commerce Clause, Douglas v. Seacoast Products, Inc., 431 U.S. 265, 97 S.Ct. 1740, 52 L.Ed.2d 304 (1977), but that concern is not relevant to the allocation classifications established in the proposed bill.

# STATE OF ALASKA

## DEPARTMENT OF PUBLIC SAFETY

DIVISION OF FISH & WILDLIFE PROTECTION

BILL SHEFFIELD, GOVERNOR

Robert J. Sundberg  
Commissioner

P. O. BOX 6188, ANNEX  
ANCHORAGE, ALASKA 99502

January 27, 1983

FEB 1 1983

Senator Bettye Fahrenkamp  
Chairman, Senate Resources Committee  
State Capitol  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

I would like to present the following positions which the Division of Fish & Wildlife Protection, Department of Public Safety hold with regard to the subsequent Senate Bills under proposal:

S.B. 2 - Opposed

- (1) Would be nearly impossible to enforce as it would require vessels be measured while fishing, generally hard to do under most water conditions.
- (2) Would also negate 16.05.520 which establishes a vessel identification number which is required to be displayed, thus making all effected vessels unidentifiable from any distance.
  - (a) Would negate 5 AAC 06.342, 09.342, 15.342, 21.342, 39.120(3)(c),(3), 39.120(4)(c); 39.120(5), 39.270(c), 39.381(b) and 39.374.
  - (b) Would make those sections in (a) above unenforceable as these sections all require a number emanating from a vessel license.

S.B. 5 - Neutral (with amendment)

Proposed Amendment:

Require all nonresidents to be guided or in the company of 2nd degree kindred.

As written the bill will invite an increase in residency falsification on hunting licenses. These are not usually identified until after the season is over and consequently the people are already out of state.

Senator Bettye Fahrenkamp  
Chairman, Senate Resources Committee

January 27, 1983

Assigning nonresidents to guides will increase control of the nonresidents. We would propose that permits be issued to the guides in the areas where the Board determines a population of animals warrants allowing nonresidents to hunt.

Nonresident aliens are already required to use a guide and since that requirement became effective enforcement problems with nonresident aliens has declined sharply.

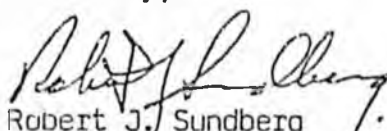
S.B. 12 - Neutral

This bill may prove to be detrimental in the future to some of the smaller fishermen.

S.B. 51 - Neutral

No Comment.

Sincerely,

  
Robert J. Sundberg  
Commissioner

rec 3-10-83



Senator Vic Fischer

Alaska State Legislature

Pouch V • Juneau, Alaska 99811 • (907) 465-4954

3/7/83

EXPLANATION OF SENATE BILL 5  
An Act Establishing a Residents' Priority  
for the taking of big game animals

SB 5 will require the Board to implement a resident hunting priority when game populations are not adequate to meet harvest requirements without jeopardizing either sustained yield or a reasonable opportunity for residents to obtain food for personal use. In such cases, nonresident hunting would be restricted only to the extent reasonably necessary to protect sustained yield and resident hunting opportunities.

There is a fundamental difference among user groups who harvest big game animals in Alaska. Most animals harvested by residents (both urban and rural) is taken to provide meat for Alaska dinner tables or for other personal consumptive uses. The majority of big game animals harvested by non-residents is taken to obtain a big game trophy.

When the game population is sufficient in size, the Board of Game should, and indeed does, adopt hunting regulations which authorize both resident and non-resident hunting.

A problem arises when the big game population is not sufficient to sustain both residents and non-residents without jeopardizing residents' ability to harvest for food or personal consumptive use and sustained yield.

When this occurs, and hunting must be restricted, logic and sound public policy require that trophy hunting and non-residents be curtailed by the Board before hunting opportunities by residents are restricted.

Last year the Alaska legislature adopted this policy when it established a resident hunting priority (codified as AS 16.05.256) which authorized, but does not require, the Alaska Board of Game to implement resident hunting priority in situations in which the Board determines that implementation of the priority is appropriate.

SB 5 amends AS 16.05.256 to establish a resident hunting priority as a mandatory, rather than discretionary, state policy. This change is consistent with section 2, Article VIII of the Alaska Constitution. Section 2 requires the legislature (rather than the Board of Game) to establish state policy for the utilization of big game animals "for maximum benefit of the people." The Board is responsible for implementing the policy on a case-by-case basis, considering the biological status of, and hunting pressures on, particular big game populations.

SB 5 includes a series of findings detailing reasons for establishing a resident hunting priority. Court rulings on state rights to differentiate between resident and non-resident hunting have been many and varied.

A primary consideration on whether a state law is upheld has been the findings establishing a legitimate state need to set priorities based on residency. The findings section in SB 5, therefore, is crucial in meeting any court challenges to Alaska's right to differentiate among user groups.

SB 5 does not unnecessarily or arbitrarily restrict or eliminate non-resident hunting. As long as resident and non-resident hunting of big game animals can be authorized without jeopardizing sustained yield, SB 5 will not affect current Board regulations. In addition, fundamental principles of Alaska constitutional and administrative law prohibit the Board of Game from restricting or eliminating non-resident hunting.

STATE OF ALASKA  
PRELIMINARY STATEMENT OF FISCAL IMPACT

MAR 2 1983

Bill No: SB 5 Date on Bill: \_\_\_\_\_  
 Title: Act establishing a residents' priority for the taking of big game animals  
 Sponsor: V. Fischer  
 Requestor: \_\_\_\_\_

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			0	0	0	0		

b. Revenues:

Revenue			0	0	0	0		
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2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

No Fiscal Impact

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Col. Robert J. Stickles *RJS* Phone: 269-5532  
 Division: Fish & Wildlife Protection Date: 3/4/83

Approved by Commissioner: *[Signature]* Date: 3/10/83  
 Department: Public Safety

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83