

HB

183

(FILE 1)

Alaska State Legislature

RECEIVED JAN 20 1988

REPRESENTATIVE BILL HUDSON

P.O. BOX V
Juneau, Alaska
99811
(907)465-3744 or 4991

COMMITTEES
Transportation
HESS
Telecommunications
Fisheries
International Trade

January 18, 1988

Representative Adelheid Herrmann
Alaska State Legislature
Juneau, Alaska

Dear Adelheid:

Enclosed is a copy of HB 331, relating to the Game Board and game guiding in Alaska, together with the sectional analysis of HB 331.

Your comments would be most appreciated.

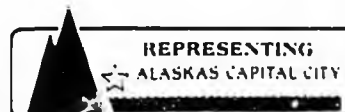
Once you have had a chance to review the enclosed, I'd be very interested in meeting with you to discuss the legislation.

I will be truly grateful, Adelheid, for your insight.

Respectfully yours,


Bill Hudson

Enclosures



RECEIVED JAN 20 1988

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 15, 1988

SUBJECT: Sectional analysis of HB 331
TO: Representative Bill Hudson
FROM: Edward H. Hein *EHA*
Legislative Counsel

Section 1 provides that the governor shall designate the chairman of the Guide Board, rather than having the board members elect a chairman as they currently do.

Section 2 prevents the Guide Board from considering evidence of shortage of game in a district when ruling on a guide's request to transfer to another district.

Section 3 directs the Guide Board to establish restricted (exclusive) guide areas in every game management unit if that would improve or maintain the quality of hunts and would be consistent with sound conservation policies.

Section 4 requires the Guide Board to transfer a guide area to the person recommended by the guide to whom the area is currently assigned, so long as that is not contrary to the public interest. Under existing law the board need not follow the guide's recommendation even if consistent with the public interest.

Section 5 adds four new provisions that: (1) require that the board approve only transfers of whole guide areas, rather than transferring portions of them; (2) allows guides who are jointly sharing portions of a guide area to remove those portions from joint use by presenting their written agreement to do so to the board; (3) prohibits the board from changing the boundaries of a guide area while a petition for transfer of the area is pending before the board; and, (4) requires the board, when assigning a guide area whose boundaries have been redefined by the board, to use the standard criteria, point system, and factors the

board uses in assigning other restricted guide areas.

Section 6 makes it unlawful for anyone but a registered or master guide to advertise or represent themselves as being a guide; restricts use of the title "outfitter" to guides to whom a restricted guide area is assigned. Sec. 6 also makes it unlawful to compensate or agree to compensate someone to guide without a guide license and hunting license. All three offenses would be class "A" misdemeanors. Sec. 6 also removes the requirement that a guide possess a resident hunting license; a nonresident license is sufficient.

Section 7 is identical to Sec. 3 of CSSB 191(2d Res). This section redefines the term "guiding" so that it would be unlawful for a person to be paid to be "in the field" with a hunter, or to provide an established camp to a hunter, unless the person is a licensed guide. The definition provides for three exceptions; a person is not guiding if the person is paid to be with a hunter in a boat with living quarters; at a permanent lodge or structure; or while transporting people to and from the field, as long as the passengers don't hunt along the way.

Section 8 is a duplicate of Sec. 4 of CSSB 191(2d Res). This section adds a definition of "compensation" for purposes of the definition of "guiding."

Section 9 amends AS 16.05.407, which requires nonresident hunters to be accompanied by a licensed guide while hunting certain big game animals. This section of the bill adds moose, black bear, and goat to the list. Sec. 9 also eliminates the exception for nonresidents who hunt with Alaskan relatives instead of a guide. Sec. 9 also requires nonresident walrus hunters to be accompanied by a licensed marine mammal guide or assistant.

Section 10 removes the Guide Board from the state conflict of interest law, AS 39.50.

Section 11 amends three regulations of the Guide Board, but the section references are incorrect. These should read "12 AAC 38.200(f)(1)(C), 12 AAC 38.260(e), and 12 AAC 38.-280(d)(1)." The sections were recently renumbered. The first regulation requires a guide who seeks to transfer to another restricted guide area to present any of five pieces of evidence that the guide will suffer substantial hardship if not allowed to transfer. In keeping with the provisions of Sec. 2 of the bill, this regulation is included for

Representative Bill Hudson
Page 3
January 15, 1988

annulment. The second regulation is inconsistent with the provisions of Sec. 4 of the bill and, therefore, is included for annulment. The third regulation would be superseded by the joint-use agreement provisions in Sec. 5 of the bill, at page 2, lines 14 - 17.

Section 12 provides for an effective date.

EHH:bb
WKB1/059

561-2878

Randall Burns Anch office

465-2535

6-3670

Shook

+6
A.G.
Ed Hein



TELL AD NOT TO
LET HB ON MOOSE
HUNTING GO DOWN.
REQUIRES ALL NON-
RESIDENTS TO HAVE
GUIDE.

P.O. Box 6469 Abilene, Texas 79608 (915) 695-0910

3/21 - 3/29
Amherst
Randall
Barns

+
teleconference

Not 10:30t



440
Keep in
mind

• All Senate Minutes on this Issue

- 1. Guides ^{in their} ~~taxes~~ would contract out - we could do this w/ a limit.... As many areas as guides...
- 2. Cap on Permit outfits w/ cap on how many could be permitted
- 3. Get some \$.....
- 4. History on why Transporters were taken out

FRIDAY - 18th we had Sam / Ned - agenda
Hearings 25th + 28th - Committee only Noted

Packet for Sam

Senate Min.
Bills
Letter of Intent

Get ~~minutes~~ Transcripts in order Ad will collect
for H. Reserves

→ System the fede. are using - get this in ~~figuring~~ writing

→ Kodiak has a good system

→ Sara Scannlin | Beth Stewart Game Board on
TWIS

→ F + G info. she hopes it's in the minutes w/ how
information is provided

* ~~Ed~~ Ed residency memo
Check Wyoming + other States
about residency res. guides...

Alaska

RECEIVED MAR 11 1988

Professional Hunters Association, Inc.

P.O. Box 91932 • 301 E. 77th • Anchorage, Alaska 99509
(907) 522-3221

Dear Governor Cowper,

I understand that you are aware of the bill that Don Young introduced (H.R.623) in 1987. It is a bill to amend the ANILCA to provide for monetary compensation to Professional Registard Guides in Alaska for loss of income resulting from the Alaska Lands Act.

Most of these guides that I know, had held some hope that the efforts of Senators Stevens and Murkowski, in 1982, to redesignate some of the land and remove it from Park status, or at least allow continued sport hunting would sometime become effective. Though a bill was introduced at the same time to compensate the guides, most would have much preferred to have their old hunting areas back in preference to compensation. Consequently only a few with clear vision such as Bud Helmerick, Lynn Castle, and a few of the officers of our Alaska Professional Hunters Association, put much effort into tracking the bill. It was easy to track because it did not go anywhere!

It has now become obvious that none of us will live long enough to see sport hunting return to any of these areas. In fact several of our fellow losers have gone to the "Big Hunting Ground in the Skv" and will never know the outcome. Their only consolation is that they arrived their before Jimmy Carter and should still be able to enjoy the greatest safari of all!

With knowledge that we will never get any of our areas back, we are now prepared to pursue a legislative and or judicial solution. As agrieved guides facing the reality of our situation we have organized. Guides have historically been about as orderly as a pack of wolverines, but the recent cooperation has been overwhelming. I guess they are all getting old and tired of getting kicked around and like an old dog in the corner ready to fight back.

HB 623 has received no opposition. The greatest obstacle is the small number of us (69) that are affected by it. It is difficult to get a bill that serves so few, very much attention in Congress, especially in light of budget restraints. We hope to appeal to Congress' sense of morality as the legality of compensation is well spelled out.

We urge you as our govenor to support us in this effort. With your legal background it would be presumptuous of me to quote the law, however I would like to reaffirm that several of the paramount purposes of the U.S. Constitution are the protection of property rights and personal liberties.

The initial powers of Congress were to be limited and it's authority tightly drawn in the constitution; state legislatures were to protest any usurpations there by further limiting it's authority. However, history reveals that the powers of Congress have become virtually unlimited. Congress routinely enacts statutes intruding into virtually all dimensions of public life.

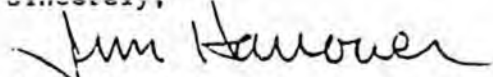
Page 2, cont.

In this situation however, Congress is not only obligated to the guides that were displaced, but to the State of Alaska as well. States have argued that the tenth amendment forbids the bargaining away of sovereignty over areas of traditional state domain, just as they cannot by contract or otherwise bargain away power to regulate private parties in the public interest.

It is our full intention to seek relief through Congress with the hope that a legislative solution can be achieved. In the meantime the Pacific Legal Foundation has agreed to research the law as it applies here and advise us on the merit of filing a suit based on loss and devaluation of personal property as well as loss of concessionary rights.

We are hopeful that with your support and a sympathetic Congress that a judicial solution will be un-necessary, and that this issue that has haunted us for ten years will be finally put to rest.

Sincerely,



Jim Harrower

cc. Senator Ted Stevens
Senator Frank Murkowski
Honorable Don Young
Bud Helmricks



IN REPLY REFER TO:

C38(ARO-OC)

United States Department of the Interior

NATIONAL PARK SERVICE

ALASKA REGIONAL OFFICE
2525 Gambell Street, Room 107
Anchorage, Alaska 99503-2892



29 JAN 1988

Honorable John B. "Jack" Coghill
Chairman, Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Coghill,

As the resource committee hearings on Senate Bill No. 191 will be convening in the near future, Senator Fanning asked us to offer comments for consideration. His request came as the result of a meeting with my concessions staff on January 8.

We are pleased to see the state recognize the problems which can arise by not having a clear definition of "guiding" for the purposes of hunting. We would, however, like to encourage a more restrictive definition than the one proposed. We recommend deleting the word "established" when referring to camps on page 3, line 7 of the bill. The use of the term "established" connotes permanent camps as opposed to temporary camps. The impacts of outfitting for hunting when a camp goes up with the client and down with the client, or when a camp goes up for just several weeks, are not necessarily less than those of an established camp. It has been our experience that the duration of the camp does not, in itself, distinguish between guiding and outfitting. It is the actions of the operator and the management of the camp that makes the distinction.

It has not been our policy to allow outfitting for hunting in the Alaskan national preserves. Unlike many government agencies, we do have the discretion to determine if a commercial activity is both "necessary and appropriate" relative to the purpose of the area. Our current stance will allow any private individual who has the knowledge and expertise to provide his own camp and hunt without a guide. Unguided persons may still rent equipment and charter an air taxi service to transport them to the field, but should be completely self-sufficient in the field. We feel those individuals who are not capable of taking care of all their needs in a wilderness setting are a risk to themselves and to others and probably should hire a registered guide to provide the needed services.

In addition to our concerns for visitor safety, we feel authorization of outfitting of hunting parties within a registered guide's area could have a significant negative impact on that guide's operation and the resources in the unit. Uncontrolled outfitting could lead to overharvesting of game within a guide area. The incentives to practice good game management are less for outfitters than for guides since it is the guides

who have a long-term stake in a guide area. When the game is depleted in an area, the outfitter simply moves on; the guide cannot.

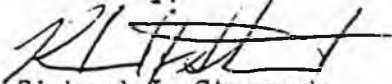
Another issue of concern addressed in the bill is on page 2, lines 16 and 17, whereby it is unlawful for "a person to compensate or agree to compensate another person for guiding..." without being validly licensed as a guide. It seems unrealistic to expect the consumer to be knowledgeable of AS 08.54.210 (a)(9). Keep in mind one of the reasons people hire registered guides is for their knowledge of the game laws. If consumers are duped into believing they have contracted with a legitimate guide, should the state hold the consumers liable?

One last item of concern centers around pilots knowingly dropping hunting parties off in areas closed to hunting. The addition of a statement such as the following would place accountability on air taxi pilots: "It is unlawful for a person to aid and abet a hunting violation by knowingly transporting persons for the purpose of hunting, into areas closed to hunting."

After discussing the various issues and possible resolutions, with our staff and several guides, it seems a simple and viable means to control the conflicts between outfitting and hunting would perhaps be the reinstatement of the transporter license. We found the transporter license to work well with our system of permitting commercial activities and would support its return.

Thank you for the opportunity to comment.

Sincerely,



Richard J. Stenmark
Regional Director

Acting

GUIDE/OUTFITTER MEETING OF JANUARY 7, 1988

IN ATTENDANCE:

Nick Peirskalla, President, Alaska Outfitters Association
Phil Driver, President, Alaska Professional Hunters Association
Brent Jones, Secretary-Treasurer, Alaska Professional Hunters Association
Jay Massey, Alaska Outfitters Association
Charlie Wilcox, Treasurer, Alaska Outfitters Association
Rocky Keen, Alaska Professional Hunters Association
Nelson Stimaker, Alaska Professional Hunters Association
Mel Gillis, Alaska Professional Hunters Association
Ed Grasser, Vice President, Alaska Professional Hunters Association
Wayne H. Walters, Alaska Outfitters Association Spokesman
Vice-President, Fairbanks Chapter AOA
Ken Fanning, Alaska Professional Hunters Association
Michael J. Triolo, Alaska Outfitters Association

On January 7, 1988, representatives of the Alaska Professional Hunters Association met with representatives of the Alaska Outfitters Association to explore areas of possible common ground relative to ensuring regulation of commercial utilization of our big game resources in Alaska. The meeting was held in the Senate Conference Room at the Anchorage legislative offices.

This particular meeting represented a landmark of progress in that it was the first time that the major recognized statewide organizations representing both sides agreed conceptually on several basic principles that should be included in statute.

Representatives at that meeting, and by this report, recognized that many individuals who are not members of these two organizations, and even some of their members, are not likely to be satisfied or pleased with any "compromises" or agreements, such as those discussed.

It was recognized that complete agreement is extremely remote, in that some of the desires of each group of commercial resource users are mutually exclusive.

Discussion did not concentrate on the "non-negotiable" differences; rather, it centered on areas of agreement or possible areas of agreement.

A brief discussion of the history, introduction and movement of SB 191 and HB 183 ensued, as well as a discussion of pre-filed bills and potential legislation which would place

some or all big game species on the guide-required list as a simplified alternative.

APHA noted that at its annual member meeting in December 1987 the members voted to support "guide-required" legislation as perhaps the best and simplest solution. APHA considers SB 191 in its "best" form, as compromise legislation.

The Alaska Outfitters Association noted that it was working on different versions of draft legislation, and that it had some various other states' legislation, and was requesting others. Additionally, various Canadian provinces had been contacted to review their respective situations. They may choose to introduce additional legislation.

Both organizations felt a desire to "control their own" regulatory structure through either separate or common boards with equal representation, whose functions among others would be to license and regulate all groups that are involved in providing services to big game hunters on a commercial basis. Leaders of both groups recognize unacceptable abuses of our fish and game resources as well as dismal business practices which reflect poorly on our state by certain segments of the hunting service industry. As in many instances, bad apples appear to be creating a black mark for all. Prevalent among the abusers seem to be non-resident "outfitters" and previously-registered guides who have lost their licenses through illegal practices, and are now "outfitting." Additionally, it is obvious that others, including quick buck artists, be they resident or non, are guiding illegally and/or outfitting illegitimately, or in a manner inconsistent with proper game conservation and good business practice.

ALL PARTIES PRESENT AGREED UPON THE FOLLOWING:

- 1.) Everyone involved in the commercial activity of assisting big game hunters - guides, transporters, gear providers, air taxis, etc - should be licensed and regulated as such. (Currently, "transporters," "providers," and "outfitters" are not so licensed).
- 2.) All groups should be held equally and legally liable and responsible for known game violations by their clients or employees. Additionally, those who provide transportation or food or equipment should be comparably held responsible for providing for reasonable safety and comfort and accurate and proper advertising and business practices. (Current law requires this of guides).
- 3.) All businesses providing services to hunters as discussed should have signed contracts, accurately describing the services offered. (Current law requires a "SFR" contract by guides).

Several methods of achieving the above goals in actual legislative amendment language were discussed. "Conceptual" amendments are being circulated among the parties to attempt to find common ground where possible.

The confusion with the term "outfitter" was discussed. All agreed that all guides are outfitters, in that they provide some or all of the following: Transportation, pre-hunt correspondence, tents, cabins, camping equipment, food, etc., in addition to personal services in the camps and in the field. Likewise, it was agreed that many transporters, gear providers or "outfitters" don't want to guide, per se, and don't want to provide personal field services.

Since all agreed that licensing requirements were essential, an amendment is being proposed that in essence would create a new licensed class of hunting services provider, and would clarify guide/outfitter as one class, and transporter or transporter/outfitter [NO agreement on the actual names] as another class. This concept would basically reinstate the transporter license which was dropped from the statutes three years ago.

Another amendment is being circulated that would change the makeup of the board (currently 4 public members, 3 guides) to an equal representation of guides and transporter/outfitters. This new board would be empowered to regulate the various "transporter", "provider", and "outfitter" services of all who provide hunter services. This proposal would allow the various providers to help formulate and draft regulations applicable to their particular "degree of service" under the jurisdiction of a board of their peers and the public without creating new and additional boards and the additional conflicting and overlapping responsibilities that would create.

Additional areas of possible solutions to the protection problem of proving that certain types of employees "in the field" are not engaged in guiding activities, such as special permits for occasional photographic accompaniment or special cases where a "white water" carsman is necessary on a float trip, were discussed, and will continue to be explored.

All present recognized the seriousness of the current problem, and desire some legislative solution. Discussion arose concerning the timeliness of solutions, in that the primary booking season of February, March and April is about to begin.

APHA representatives pointed out the importance not only of having legislative solutions in place by mid-summer 1988, but of taking action early to ensure clarification of state law prior to winter commitments to the best degree possible.

In summary, everyone recognizes that there are and will likely continue to be areas of disagreement. Likewise, there appears to be some common ground. Attempts will continue to be made to pinpoint those areas of agreement and work with the Legislature as they take action on pending and/or proposed legislation.

This report was drafted by Senator Ken Fanning, and has been circulated to the officers of both organizations for corrections, deletions, or additions. It is only intended to be a fair and accurate report of the meeting that took place on January 7.

ADDENDUM:

Upon circulation of this report to the various representatives of Alaska Professional Hunters Association and Alaska Outfitters Association, all agreed that it accurately reflected what took place at the meeting.

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4953 HRES HB 183 (FILE 1)

525

BEAR PAW OUTFITTERS, INC.

Contract for Transportation and
Notice of Risk

Bear Paw Outfitters, Inc. is a corporation whose principal business is the outfitting and transportation of photographers, fishermen, hunters, campers, adventurers and other outdoorsmen. Transportation is into scenic remote wilderness areas of Alaska. Camping accommodations and outfitting are available upon request.

Let it be known to all interested parties who enter in and upon and sign this contract, hereby acknowledge that Bear Paw Outfitters, Inc. is not acting as guides for hunting, but transporters of persons, equipment, and related paraphenalia.

By contracting for transportation services with Bear Paw Outfitters, Inc., the Outdoorsman is accepting risks not normally associated with public transportation services. The Outdoorsman's signature on this contract is his acknowledgement that he understands and accepts the risks associated with travel in remote areas. These risks include, but are not limited to fire, flood, wild animal attacks, avalanche, severe weather conditions (including flash floods, blizzards, snow, rain, and wind), treacherous currents, sweepers, floating logs, unseen obstructions, discharge of firearms and other hazards associated with remote travel.

It is the Outdoorsmen's responsibility to inform Bear Paw Outfitters, Inc. of any physical or mental illness he or she may have which may make an extended time in the "bush" a hazard. Bear Paw Outfitters, Inc. expressly disclaims liability for any personal injury or property damage incurred as a result of transportation or other services provided, and the Outdoorsman expressly waives any claim for liability against Bear Paw Outfitters, Inc.

To reserve services, Bear Paw Outfitters, Inc., requires a 30 percent deposit. The entire deposit is refundable upon a 60 day advance notice, but is otherwise non-refundable. Total payment is required prior to rendering of service.

Alaska State Legislature

SENATOR KEN FANNING
P.O. BOX 80929
COLLEGE, ALASKA 99708



P.O. BOX V—STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3880

Senate

M E M O R A N D U M

To: Senators Coghill, Halford and Eliason
Representatives Herrmann, Adams and Grussendorf

From: Senator Ken Fanning *KFP*

Date: January 14, 1988

RE: Report of meeting between guides and outfitters

I want to take the opportunity to give you a preview of the attached report which I will be distributing to members of the House and Senate Resources Committees tomorrow. The report is of a recent meeting between representatives of the guides and outfitters.

As you are aware, SB 191, the guide bill, is back in Senate Resources Committee for additional hearings and possible changes.

I just wanted to keep you abreast of these new developments. If you have questions regarding the meeting or the bill itself, please contact Senator Coghill or his committee aide, Elizabeth Ziegler, or myself or my staff person, John Manly.

COMMERCIAL HUNTING SERVICES

This is a concept paper. It is not designed to address every issue or answer every question, but rather to see if there are general concepts that can be agreed on that will help with the passage of a commercial hunting services bill this session.

- I. Licensed providers of transportation would not be affected by this bill unless:
 - A. they are advertising services or transportation specially for hunters, or
 - B. providing services for hunters beyond transportation (providing or renting gear, campsites, etc.)
- II. Others providing commercial services to hunters would have to be licensed by Board in one of two main categories, Guides/Master Outfitters or Transporter/Outfitters
 - A. Nonresidents hunting any big game in Alaska (bear, sheep, goats, muskox, bison, moose, caribou, deer, others?) would be required to have services of licensed contractor.
 1. Except each Alaska resident hunter could take up to 2, 3?, friends hunting without compensation.

2. Guides would be required for nonresidents to hunt Brown Bear, Sheep, or Goats.
 - a) Except for nonresidents hunting with resident hunter who is kindred in the second degree.
- B. Guides/Master Outfitters and Transporter/Outfitters would both be required to file reports on all contracts and all game taken.
- C. Both would be required to pay head fees on all game taken by clients.
 1. Head fees would be graduated and cumulative, designed to penalize abuse of resource and economically establish a maximum take.
 2. Head fees would be set annually by Board of Game based abundance or scarcity of game.
 - a) could vary by game unit or sub unit.
 - b) would be cumulative from one unit to another.

III. Transporter/Outfitters would be allowed to provide transportation (including air, horse, boat, backpacking, etc.), gear, campsites, and general hunting advice, butchering and packing.

A. Transporter/outfitters are not allowed in the field prior to an animal being killed, except to render assistance in a life (human!) threatening emergency.

1. Transporter contracts would be required to advise clients that if a transporter or employee is in the field with the client, the transporter is criminally liable and the client would also be subject to a large civil fine (\$1,500?).

B. Would be allowed to provide a person in the camp, not in the field, at legally established lodges and cabins, boats with living quarters, and at camps not serviced by air (i.e. camps reached by horse, boats, backpacking, or other ground or water transportation.)

C. Would not be allowed to have person in field or camp if camp reached or serviced by air.

D. If transporters provide air transportation with their own planes, they would be required to meet same safety, insurance, etc., requirements as Part 135 Air Taxi operators.

- IV. Guides would be able to provide the full range of guiding services for all Alaska game.
 - A. Guides would be able to guide only in exclusive or joint use guide areas assigned to them.
 - B. If guides had a transporter license, they could also provide transporter service under the same conditions as a transporter.

- V. Miscellaneous provisions
 - A. Board may investigate guide or transporter after one complaint.
 - B. Either add provisions to make prohibition against sale of exclusive guide areas enforceable or legalize the sale of guide areas.

Original sponsors: Coghill and Faiks

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 191 (3d Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Guide Board and big game
7 guiding, transporting, outfitting, and hunting;
8 establishing a task force on guiding and the commer-
9 cial taking of game; and providing for an effective
10 date."

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

12 * Section 1. AS 08.03.010(c)(20) is amended to read:

13 (20) Guide Board (AS 08.54.010) -- June 30, 1990 [1988].

14 * Sec. 2. AS 08.54.010 is amended to read:

15 Sec. 08.54.010. CREATION AND MEMBERSHIP OF BOARD, For the
16 purposes of licensing and regulating the activities of guides and
17 transporters in the interest of the state's wildlife resources there
18 is created the Guide Board consisting of seven members. No more than
19 three members of the board shall hold or have held a registered,
20 master, or class A assistant guide license. The other members must
21 have a general knowledge of the game resources of the state and may
22 not have a vested interest in the guiding industry. A minimum of 10
23 years residence in the state is required for all members of the board.
24 For administrative purposes, the board is in the Department of Com-
25 merce and Economic Development.

26 ~~* Sec. 3. AS 08.54.140 is amended to read:~~

27 ~~Sec. 08.54.140. QUALIFICATIONS FOR ASSISTANT GUIDE LICENSE. A~~
28 ~~person is entitled to be licensed as an assistant guide if the person~~
29 ~~(1) is 19 years of age or more;~~

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~~(2) [REPEALED~~

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

~~(3) [(4)] meets additional qualifications which the board may require;~~

~~(4) [(5)] is in sound physical condition; and~~

~~(5) is familiar with the terrain and transportation problems in the district for which the license is requested.~~

*Min. Decision
7/11/74
L. J. [unclear]*

* Sec. 4. AS 08.54 is amended by adding new sections to read:

Sec. 08.54.142. TRANSPORTER LICENSE. (a) A person may not engage in the business of transporting unless the person is licensed as a transporter under this chapter.

(b) A person may be licensed as a transporter if the person

(1) pays the annual license fee required under AS 08.54.-170(a);

(2) holds a current Alaska business license to do business as a transporter; and

(3) has not had a guide license revoked by the board.

Sec. 08.54.143. EXEMPTIONS FROM TRANSPORTER LICENSE REQUIREMENT.

(a) A person, other than a licensed guide, who provides air transportation to big game hunters for compensation is exempt from the license requirements for transporters under this chapter unless the person

(1) derives more than 50 percent of gross income as an air carrier from transporting big game hunters or their equipment or game to or from the field; or

(2) provides big game hunting services in addition to air transportation.

(b) A licensed guide who provides transportation services only in the restricted guide area assigned to the guide or the guide's

1 employer is exempt from the license requirements for transporters
2 under this chapter.

3 Sec. 08.54.144. LIMITATIONS ON TRANSPORTERS. (a) A person
4 required to be licensed as a transporter under this chapter may not
5 accompany or be present with a big game hunter in the field for com-
6 pensation or with an intent or an agreement to receive compensation
7 except under the following circumstances:

8 (1) to drop off or pick up the hunter or the hunter's
9 equipment or game;

10 (2) to provide assistance to another person whose health or
11 safety is threatened;

12 (3) if prevented from leaving the field by mechanical
13 failure of a vehicle, an accident, weather, or an act of God;

14 (4) to provide cooking or other personal services to the
15 hunter at a camp not serviced by aircraft, motorized watercraft, or
16 other motorized vehicle, as long as the services do not include spot-
17 ting, stalking, pursuing, tracking, killing, or attempting to kill big
18 game or meat packing;

19 (5) in a boat with living quarters;

20 (6) at a lawfully established cabin or permanent lodge.

21 (b) Advertising for transporting services must state, if appli-
22 cable, that the transporter is not a licensed big game guide or out-
23 fitter and is not authorized by law to provide a guided hunt in the
24 state. A copy or sample of the advertising shall be submitted to the
25 board, as provided in regulations of the board.

26 Sec. 08.54.145. CONTRACTS FOR GUIDING AND TRANSPORTING. A
27 person required to be licensed as a master or registered guide or as a
28 transporter under this chapter may provide services only by written
29 contract. The contract must contain the text of AS 08.54.210. A copy

1 of each contract shall be submitted to the Department of Commerce and
2 Economic Development not later than 30 days after the contract is
3 signed or the services are provided, whichever occurs first. The
4 department shall forward a copy of each contract to the Department of
5 Fish and Game and to the Department of Public Safety, division of fish
6 and wildlife protection.

7 * Sec. 5. AS 08.54.150 is repealed and reenacted to read:

8 Sec. 08.54.150. RESPONSIBILITY OF REGISTERED OR MASTER GUIDE OR
9 TRANSPORTER FOR VIOLATIONS. A registered or master guide contracting
10 for a hunt, or a transporter contracting to transport a big game
11 hunter, is equally responsible under AS 08.54.200 for a violation of a
12 federal or state sport fish, game, guide, or transporter statute or
13 regulation committed by an employee of the guide or transporter,
14 respectively, if

15 (1) the employee is licensed or required to be licensed
16 under this chapter; and

17 (2) the violation was committed in the course of the em-
18 ployment.

19 * Sec. 6. AS 08.54.170(a) is amended to read:

20 (a) The Department of Commerce and Economic Development shall
21 set license fees under AS 08.01.065 for each of the following:

- 22 (1) master guide;
23 (2) registered guide;
24 (3) class A assistant guide;
25 (4) assistant guide;
26 (5) special guide;
27 (6) transporter.

28 * Sec. 7. AS 08.54.200(a) is repealed and reenacted to read:

29 (a) The board shall hold a hearing to determine whether a

1 licensee should be disciplined within a reasonable time after (1) a
2 complaint concerning a licensee's guiding or transporting activities
3 is filed with the board by a client of the licensee; (2) a complaint
4 concerning a licensee's conduct during a life-threatening situation
5 while guiding or transporting is filed with the board; or (3) a li-
6 censee has been convicted of a violation of a federal or state game,
7 guiding, or transporting statute or regulation.

8 * Sec. 8. AS 08.54.200(b) is amended to read:

9 (b) After a hearing, the board may revoke, suspend, or deny
10 renewal of a license, and may withdraw a licensee's restricted guide
11 area assignment, if the board finds that the licensee

12 (1) engaged in unethical activity, unsafe activity, or
13 activity that adversely affects the natural resources of the state
14 when the activity is related to the purposes of the contract hunt or
15 contracted transportation; or

16 (2) violated a provision of a federal or state game, guid-
17 ing, or transporting [GUIDE] statute or regulation.

18 * Sec. 9. AS 08.54.200(d) is amended to read:

19 (d) A person who is disciplined under this section may not
20 engage in a guiding or transporting activity during the period of
21 license revocation or disciplinary action. A person licensed under
22 this chapter may not hire as a guide or transporter a person whose
23 [GUIDE] license is suspended or revoked under this section. A person
24 [GUIDE] whose license is suspended or revoked may not guide or trans-
25 port in the employ of a person licensed under this chapter.

26 * Sec. 10. AS 08.54.200(f) is amended to read:

27 (f) If a certified copy of a judgment of conviction of a li-
28 censee [GUIDE] for an offense described under (c)(3) of this section,
29 or for each of two offenses under (c)(4) of this section, is filed

1 with the board, the board shall immediately suspend the licensee's
2 [GUIDE'S] license. The suspension may be ordered even if the con-
3 viction resulted from a plea of nolo contendere or if the conviction
4 is under appeal. The order remains in effect until after the final
5 disposition of the disciplinary proceeding under this section.

6 * Sec. 11. AS 08.54.200(g) is amended to read:

7 (g) A certified copy of a judgment of conviction of a licensee
8 [GUIDE] for an offense is conclusive evidence of the commission of
9 that offense in a disciplinary proceeding instituted against the
10 licensee [GUIDE] under this section based on that conviction.

11 * Sec. 12. AS 08.54.210 is amended to read:

12 Sec. 08.54.210, UNLAWFUL ACTS, (a) It is unlawful for

13 (1) a guide or a transporter [MASTER GUIDE, REGISTERED
14 GUIDE, SPECIAL GUIDE, CLASS-A ASSISTANT GUIDE, OR ASSISTANT GUIDE] to
15 fail to promptly [TIMELY] report to the Department of Public Safety,
16 division of fish and wildlife protection, and in no event later than
17 30 days, a violation of a state fish, game, [OR] guiding, or trans-
18 porting statute or regulation that the guide or transporter reasonably
19 believes was committed by a client or an employee of the guide or
20 transporter, respectively;

21 (2) a guide or transporter to commit or aid the commission
22 of a violation of this chapter or of a state game, [OR] guiding, or
23 transporting statute or regulation, or for a guide or transporter to
24 permit the commission of a violation that the guide or transporter
25 [KNOWS OR] reasonably believes is being or will be committed without
26 attempting to prevent it, short of using force, and without reporting
27 it;

28 (3) a person to guide without [HAVING] a current valid
29 guide license and [RESIDENT] hunting license in actual possession;

1 (4) a person to advertise as or represent to be a guide
2 without holding a current valid registered or master guide license;

3 (5) a person who offers big game hunting services, includ-
4 ing transportation, for compensation to advertise as or represent to
5 be an outfitter with respect to the services without holding a current
6 valid registered or master guide license;

7 (6) a guide or transporter to intentionally obstruct or
8 hinder or attempt to obstruct or hinder lawful hunting engaged in by a
9 person who is not a client of the guide or transporter, respectively;

10 (7) a person to violate AS 08.54.235;

11 (8) [6] a person to guide without being validly licensed as
12 a guide under this chapter and as a [RESIDENT] hunter under AS 16, or
13 to engage in the business of transporting in violation of AS 08.54.-
14 142;

15 (9) [(7)] an assistant guide to contract to conduct a
16 guided hunt;

17 (10) [(8)] an assistant guide to be in the field ~~of~~ a
18 guided hunt except while employed and supervised by a registered or
19 master guide;

20 (11) a person to provide transportation for which a license
21 is required under AS 08.54.142 if the transportation is in an aircraft
22 for which the ^{operator}~~person~~ does not hold a current valid air taxi/commercial
23 operator (ATCO) operating certificate issued by the Federal Aviation
24 Administration;

25 (12) a guide to provide transportation to a client in the
26 restricted guide area assigned to the guide or the guide's ^{operator} employer if
27 the transportation is in an aircraft

28 (A) for which the ^{operator} guide does not hold a current valid
29 air taxi/commercial operator (ATCO) operating certificate issued

1 by the Federal Aviation Administration; or

2 (B) owned by the guide and the airplane is not
3 operated under the provisions of 14 CFR Part 91.

4
5 (13) a person to be accompanied during a big game hunt by an
6 individual who is guiding the person in violation of (8) of this
7 subsection.

8 (b) A person who violates (a)(1) - (7) [(a)(1) - (5)] of this
9 section is guilty of a misdemeanor and upon conviction is punishable
10 by a fine of not more than \$2,000 [\$1,000] or by imprisonment for not
11 more than one year, or by both, and the person's license may be re-
12 voked for a period up to five years. However, a person who engages in
13 guiding or transporting [ACTIVITY] during the period for which the
14 person's license is suspended or revoked under this chapter, or who
15 violates (a)(8) - (10) [(a)(6) - (8)] of this section, is guilty of a
16 felony punishable upon conviction, by a fine of not more than \$5,000
17 and by imprisonment for not less than one year nor more than three
18 years. In addition to punishment for a felony, all guns, fishing
19 tackle, boats, aircraft, automobiles or other vehicles, camping gear
20 and other equipment and paraphernalia used in, or in aid of, guiding
21 or transporting [ACTIVITY] engaged in during the period of suspension
22 or revocation, or used during a violation of (a)(8) of this section,
23 may be seized by persons authorized to enforce this chapter and may be
24 forfeited to the state as provided under AS 16.05.195. A person who
25 violates (a)(11) or (12) of this section is guilty of a class B misde-
26 meanor and upon conviction is punishable by a fine of not less than
27 \$500 nor more than \$1,000. A person who violates (a)(13) of this
28 section is subject to a civil fine of not more than \$1,500.

29 * Sec. 13. AS 08.54.230 is amended to read:

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Sec. 08.54.230. RECORDS OF GUIDED HUNTS. The Department of Commerce and Economic Development shall collect and maintain records of hunts conducted by guides. The department shall send a copy of records pertaining to each hunt to the Department of Fish and Game and to the Department of Public Safety, division of fish and wildlife protection, and shall make the records available to other state and federal agencies charged with the enforcement of statutes and regulations relating to guiding or game if requested for enforcement purposes. For all other purposes, the records are confidential and are not subject to inspection or copying under AS 09.25.110 - 09.25.-121.

* Sec. 14. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.235, TRANSPORTER REPORT. (a) ^{person required to be licensed} A transporter shall record on report forms provided by the Department of Commerce and Economic Development the following information:

- (1) the names and addresses of all persons transported;
- (2) the numbers from the Alaska hunting license and big game tags possessed by each person transported;

(3) the date of transporting; ~~and~~
(4) the game taken; and
(5) if known, the locality where the game was taken.
^{person required to be licensed as a}

(b) A transporter shall have in actual possession, while providing transportation, a report required under this section. The transporter shall enter the information required under (a) of this section as soon as it is available.

(c) The report shall be submitted to the Department of Commerce and Economic Development within 21 days after providing the transportation. The department shall send a copy of each report to the Department of Fish and Game and the Department of Public Safety, division of fish and wildlife protection.

1 (d) This section does not apply to transportation provided by a
2 guide for which a statement of financial remuneration (SFR) is submit-
3 ted to the Department of Commerce and Economic Development, as re-
4 quired under regulations of the board.

5 * Sec. 15. AS 08.54.240(3) is repealed and reenacted to read:

6 (3) "guide" or "guiding" means accompanying or being pre-
7 sent with, or providing a camp or personal service for, a big game
8 hunter in the field, personally or through an assistant, for compen-
9 sation or with the intent or an agreement to receive compensation;
10 "guide" or "guiding" does not include the lawful activities of a
11 licensed transporter under AS 08.54.144(a).

12 (See Page 3, lines 3 - 20)

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18 * Sec. 16. AS 08.54.240 is amended by adding new paragraphs to read:

19 (7) "compensation" means any money, thing of value, or
20 economic benefit conferred on or received by a person in return for
21 services rendered or to be rendered by the person for another;

22 (8) "transport" or "transporting" means, for compensation
23 or with the intent or an agreement to receive compensation,

24 (A) conveying an individual to or from the field for
25 the purpose of taking big game;

26 (B) conveying from the field meat or parts from the
27 big game that the individual has taken; or

28 (C) in conjunction with conveying a big game hunter,
29

1 providing

- 2 (i) hunting or camping gear;
3 (ii) a campsite; or
4 (iii) general hunting advice.

7 * Sec. ~~18~~¹⁷. TASK FORCE ON GUIDING AND GAME. (a) The interim task force
8 on the Guide Board and the commercial taking of big game is established
9 under the jurisdiction of the Legislative Council. The task force consists
10 of the commissioners of fish and game, commerce and economic development,
11 and public safety, or their designees; two members of the senate appointed
12 by the president of the senate; two members of the house of representatives
13 appointed by the speaker of the house; and three members appointed by the
14 governor as follows: one member of the Guide Board; one big game guide
15 licensed under AS 08.54 who is not a member of the Guide Board; and one
16 person engaged in a business, other than guiding, that includes transport-
17 ing big game hunters to and from the field.

18 (b) The task force shall review the operations of the Guide Board and
19 shall study problems and issues concerning the commercial taking of big
20 game in the state and the businesses or professions that provide goods and
21 services to big game hunters in the state. The task force shall submit to
22 the Legislative Council, not later than January 15, 1989, a report on its
23 findings and proposed legislation to address the problems and issues
24 covered in the report.

23 (c) The task force terminates February 1, 1989.

24 * Sec. ~~19~~¹⁸. Notwithstanding the provisions of AS 08.54.210, amended by
25 sec. 12 of this Act, the operation of AS 08.54.210(a)(5), (11), and (12),
26 as added by sec. 12 of this Act, is suspended until January 1, 1989.

27 * Sec. ~~20~~¹⁹. Sections 1 - 3, 5 - 13, 15 - 17, and 19 of this Act take
28 effect immediately under AS 01.10.070(c).

29 * Sec. ~~21~~²⁰. Section 18 of this Act takes effect June 1, 1988.

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* Sec. ²¹~~22~~. Sections 4 and 14 of this Act take effect January 1, 1989.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

STEVE COWPER, GOVERNOR

P. O. BOX D
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-2534

DATE: April 10, 1987
TO: Guide Board
FROM: ~~Kevin D. Henderson~~ Kevin D. Henderson
Regulations Specialist
SUBJECT: Guide Area Quotas and Point System

One of the next major projects which the Guide Board will have to do will be bringing the existing guide regulations into line with statute revisions implemented by the Legislature last year through Senate Bill 294. That legislation made the following two revisions to guide law which must be addressed:

1. the board's authority to establish a quota of guides operating in a specific area, AS 08.54.040(a)(7), was amended to require that the board establish such a quota by an "equitable, reasonable, and consistent procedure"; and
2. AS 08.54.195 was added as a new statute that says the board shall "establish uniform and consistent criteria including a point system to be used by the board when it establishes and assigns a restricted guide area."

These two changes, when implemented by regulation, will make significant changes in the procedure the board uses now. It means that a guide applies for a guide area permit that he or she will not only be required to show base use but will have to have established seniority over others applying for that area. It also means that area will open up only when the number of guides in that area drops below the established quota.

New board member, Stan Frost, has written a proposal for a point system which could apply to guides and I have attached his draft for your reference. As I attempted to draft regulations around this proposal, several concerns arose which I need the board to respond to. Mr. Frost's proposal is a good start but I believe it does not go far enough.

These are some of my observations, please give me your feedback:

1. Since guide areas can only be assigned to registered or master guides, there is no need for quotas or points being assigned to assistant or Class A guides.
2. One of the most difficult aspects of this project is going to be finding a consistent way to establish quotas for every guide area. The board must follow, to the extent possible, the criteria identified in AS 08.54.195(b). Stan Frost's proposal addressed the eligibility of the guide, but the statute also requires that some kind of point system be established to address the number of guides who can operate in each area. When these regulations are in place, the board can no longer be as flexible as in the past.
3. Since nowhere in the statutes are the terms, "exclusive guide area," or "joint use area", I suggest that, when changing regulations, the board simply use the statutory term, "restricted guide area," and then set a quota for each area from one guide to twenty, whichever the board determines to be appropriate.
4. In order to really make this new procedure work, all regulations from 12 AAC 38.051 through 12 AAC 38.057 will need to be rewritten. This will be an excellent time to remove the ambiguity these sections now contain.
5. I need some ideas from the board about an acceptable way to assign points to those who do not already have a guide area assignment. If points are to be awarded to guides who are actively guiding, the board needs to be very careful to assure that guides without assigned areas are not unfairly restricted from opportunity to conduct hunts either in open areas or in another guide's area.
6. Is it feasible for the board to establish a quota for the number of guides in a specific area and actually place that quota number in regulation? In other words, how often will the board need to adjust the quota for a guide area because of variables like moving game population.

I would appreciate your input into these concerns and questions. I am not meaning to confuse the issue. What I do want to communicate is that these statute changes mean major and significant changes need to be made in regulations and past board procedure. We will have to work together to draft regulations that work.

Guide Board

-3-

April 10, 1987

With your responses and whatever other help you can provide, I will attempt to draft regulations for the board to review between meetings. If appropriate, we may go ahead with public notice so that the board can conduct hearings at the next meeting.

Thank you for your cooperation and assistance.

KDH/dg17881D
041087a
Attachment

cc: Helen Welch, Licensing Examiner

Stan Frost

For Kevin Henderson

PURPOSED POINT SYSTEM FOR GUIDES

SINCE THE BEGINNING OF THE EXCLUSIVE GUIDE AREA CONCEPT, IT HAS BECOME CLEAR TO MANY OF US IN THE GUIDING INDUSTRY OF THE NEED FOR A FAIR AND HONEST WAY TO REASSIGN OPEN AREAS (AREAS WHICH HAVE REVERTED BACK TO THE BOARD) TO THOSE WHO ARE MOST QUALIFIED.

I WOULD LIKE TO THROW OUT A FEW IDEAS FOR THE CONSIDERATION OF THE GUIDE BOARD AND THE GUIDING INDUSTRY.

I BELIEVE THE INTENT OF THE GUIDE AREA CONCEPT, WAS TO UPGRADE THE GUIDING PROFESSION BY MAKING US MORE PROFESSIONAL, BY PRACTICING SOME CONSERVATION IN OUR AREAS AND NOT OVERBOOKING. WHAT, MAKES A TRUE PROFESSIONAL IN ANY PROFESSION ? IT SEEMS HE WOULD BE SOMEONE WHO SPENT MANY YEARS LEARNING HIS TRADE. THIS GETS US DOWN TO THE REASONING BEHIND THIS PURPOSED POINT SYSTEM, THOSE WHO SPEND A GREAT DEAL OF TIME IN THE FIELD CONDUCTING GUIDED HUNTS, ARE GOING TO BE LEARNING A GREAT DEAL MORE ABOUT GUIDING, THEN THOSE WHO SPEND VERY LITTLE TIME.

NATURALLY THERE IS A LOT MORE TO BEING A GUIDE/OUTFITTER THEN SPENDING TIME IN THE FIELD, BUT TIME IN THE FIELD, CONDUCTING GUIDED HUNTS, CONTRIBUTES MORE TO THE LEARNING PROSESS ABOUT GUIDING THEN ANY OTHER METHOD, FOR BOTH REGISTERED AND ASSISANT GUIDES, AND CAN BE DOCUMENTED BY THE FINANCIAL REMUNERATION STATEMENT.

THE OBJECT OF THIS POINT SYSTEM IS TO COME UP WITH A SIMPLE WAY OF GIVING DUE CREDIT TO THOSE DEDICATED TO THE GUIDING PROFESSION AND HAVE THEM PUT IN THE TIME TO BECOME TRUE PROFESSIONALS. BY GIVING POINTS TO THE ASSISTANT GUIDE IT WILL PROVIDE AN INCENTIVE TO BE MORE ACTIVE IN GUIDING, AND PASS HIS REGISTERED GUIDE TEST, AS EACH STEP INCREASES HIS POINT TOTAL, WHICH PUTS HIM HIGHER ON THE LIST FOR THE NEXT OPEN AREA.

YOUR COMMENTS WOULD BE APPRECIATED, DROP ME A LINE.

STAN FROST

POINTS

1. MASTER GUIDE 6 points per year license issued and used
2. REGISTERED GUIDE 5 points per year license issued and used
3. ASSISTANT GUIDE 2 points per year license issued and used
(note, issued and used, could mean, he conducted at least 3 or 4 hunts per year.)

JUSTIFICATION

The number of points allowed is not the important question, but only that everyone is treated the same, and each step up the ladder makes them more qualified. When I say issued and used it just seems to me that a guide who actively conducts hunts each year, should have an advantage over one who just pays for his license. Only in that manner can the Alaskan Guide be upgraded to a true Professional. Would a Reg. guide who can-not book any hunts need an area ???

4. DAYS IN THE FIELD CONDUCTING GUIDED HUNTS

1 point per day in each year that the Reg. or Asst. Guide has been in the field conducting guided hunts in the last 10 years, divided by 10 (note, divided by 10 to keep the numbers down, and give an average per year.)

JUSTIFICATION

The more time a man spends doing a job, the more proficient he should become. Give him credit for this. Many Assistant guides will benefit from this as some spend the total season on hunts. (To cover the possibility of accident or sickness to the guide in any given year it might be well to consider allowing him his average point time in the field, to give him time to recover.) 10 years is used because many guides will have 3 or 4 years credit as an Asst. guide and 6 years as a Guide/Outfitter which is not an excessive amount of time to become a full professional.

This time in the field should not include setting up camp before or after the season but only the time when Clients are booked on a hunt. This time can be documented by the FRS.

5. REGISTERED GUIDES WITH NO ASSIGNED AREA

10 points

(note, Guides who have transferred areas to another Guide should not qualify for these points.)

JUSTIFICATION

This gives guides with no area an advantage over those with an area, but they would still have to spend time in the field each year. It would appear that those who have transferred an area have given up their rights to an area and should not get this advantage.

Note; It may not be unreasonable to consider requiring a guide to spend some time in the field each year in order to retain his area. It would be a much better judge of the use an area than the present system.

INITIAL POINT APPLICATION

Name _____ Guide Lic.No _____ Date _____

- (1) I, as a Master Guide, have conducted guided hunts, as a Master Guide for _____ years X 6 points per year which equals _____ POINTS
- (2) I, as a Registered Guide have conducted guided hunts, as a Registered Guide for _____ years X 5 points per year equals _____ POINTS
- (3) I, as an Assistant Guide have conducted guided hunts, as an Assistant Guide for _____ years X 2 points which equals _____ POINTS

NOTE: Do not start with the year that you received your license, list only those years that you conducted hunts under your new license.

- (4) I have been personally present in the field conducting Guided Hunts for the following number of days over the last 10 years as a Master, Registered, or Assistant Guide.

<u>YEAR</u>	<u>NO DAYS</u>	<u>YEAR</u>	<u>NO DAYS</u>
19__	_____	19__	_____
19__	_____	19__	_____
19__	_____	19__	_____
19__	_____	19__	_____
19__	_____	19__	_____
TOTAL	_____	TOTAL	_____
COLUMN 1	_____ PLUS	COLUMN 2	_____ = _____
			DIVIDE by 10 equals _____ POINTS

- (5) I have no areas assigned to me, nor have I transferd any areas and hereby claim an additional 10 points _____ POINTS
- (6) I have not been convicted of any State or Federal Game laws in the last ten years and hereby claim an additional 30 points _____ POINTS

TOTAL NUMBER OF POINTS _____ POINTS

I hereby certify under the penalty of perjury that the above information is true and correct.

X _____ Applicant Date _____

YEARLY POINT APPLICATION

Name _____ Guide Lic.No. _____ Year _____

- (1) I, hereby certify that I have exercised the rights and privileges of my Guides License, by conducting guided hunts in the above calendar year, and hereby claim the following additional points.

Master Guide	6 points	
Registered Guide	5 points	
Assistant Guide	2 points	_____ POINTS

- (2) I, have been personally present in the field conducting Guided hunts for the following number of days in the above calendar year and claim the following points.

No. Days _____ divided by 10 = _____ POINTS

- (3) I, have no areas assigned to me, nor have I transferred any Areas and claim an additional 2 points. _____ POINTS

- (4) I, have not been convicted of any State or Federal game Laws this year and claim an additional 3 points. _____ POINTS

Total number of points to be added to my point score _____ POINT TOTAL

I hereby certify under penalty of perjury that the above information is true and correct.

X _____ Applicant Date _____

SLA 1974; am §§ 16, 17 ch 206 SLA 1975; am § 1 ch 20 SLA 1976; am § 13 ch 151 SLA 1978; am § 4 ch 23 SLA 1983; am § 23 ch 132 SLA 1984)

Effect of amendments. — The 1984 word correction in the first sentence and amendment, in subsection (c), made a added the second sentence.

Sec. 16.05.940. Definitions. In AS 16.05 — AS 16.40

(1) "aquatic plant" means any species of plant, excluding the rushes, sedges and true grasses, growing in a marine aquatic or intertidal habitat;

(2) "barter" means the exchange or trade of fish or game, or their parts, taken for subsistence uses

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature;

(3) "a board" means either the Board of Fisheries or the Board of Game;

(4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish;

(5) "commercial fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish, or other fish resources;

(6) "commissioner" means the commissioner of fish and game unless specifically provided otherwise;

(7) "department" means the Department of Fish and Game unless specifically provided otherwise;

(8) "domestic mammals" include musk oxen, bison, and reindeer, if they are lawfully owned;

(9) "domicile" means the true and permanent home of a person from which the person has no present intention of moving and to which the person intends to return whenever the person is away; domicile may be proved by presenting evidence acceptable to the boards of fisheries and game;

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Sectional Analysis of HB 183
An Act relating to the provision of certain goods or services to hunters
in the field
by Representative Adelheid Herrmann

Section 1:*

Section 1 makes it unlawful for anyone but a licensed guide to be compensated for providing camping equipment, vehicles, or personal services to a hunter or a hunting party while that hunter or hunting party is in the field.

Consistent with the current statute AS 08.54.240 (3), this section also clarifies that "in the field" does not refer to being present in a boat with living quarters, or being at a lodge or base camp.

Section 1 also makes it unlawful for a hunter to compensate anyone but a licensed guide to perform the services of a licensed guide.

*This bill has only one section.

RECEIVED MAR 11 1988

NOTICE OF PROPOSED CHANGE TO
THE REGULATIONS OF THE GUIDE BOARD

Notice is hereby given that the Department of Commerce and Economic Development, Guide Board, under authority vested by AS 08.-54.040(a)(7) and 08.54.050, proposes to adopt a regulation in Title 12 of the Alaska Administrative Code dealing with guide area permits for game management unit 4 to implement AS 08.54.-040(a)(7) and 08.54.195 as follows:

12 AAC 38.295 is added to set a quota of guides who may hold a guiding area permit for game management unit 4. This proposal is similar to a regulation which was adopted by the Guide Board on May 1, 1986 but disapproved by the regulations attorney on July 20, 1987. That disapproval has been challenged in Juneau Superior Court by Karl Lane and Tarleton Smith v. Grace Berg Schaible No. 1JU-87-1949 CIV.

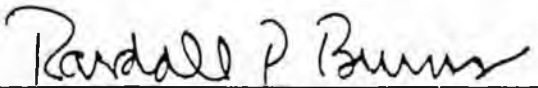
Notice is also given that any person interested may present written statements or arguments relevant to the action proposed by mailing them to Kevin Henderson, Regulations Specialist, Division of Occupational Licensing, P.O. Box D-LIC, Juneau, Alaska 99811, so that they are received no later than Thursday, April 7, 1988.

Notice is also given that written or oral statements or arguments relevant to the action proposed may be presented at a public hearing to be held Friday, April 8, 1988, from 3:00 p.m. to 4:30 p.m., at Centennial Hall, in Juneau, Alaska. This hearing will also be the public hearing required by AS 08.54.195(d) on whether it is in the public interest for the board to deny transfer or reassignment of the existing guide area permits for game management unit 4 until the number of permits is reduced to the quota level.

Copies of the proposed regulation may be obtained by writing to the above address or by telephoning 907-465-2535.

This action is not expected to require an increased appropriation.

The Guide Licensing and Control Board, upon its own motion or at the instance of any interested person, may, after the deadline stated above, adopt the proposal within the scope of this notice without further notice or may decide to take no action on it.


Randall Burns, Director
Div. of Occupational Licensing
Dept. of Commerce &
Economic Development

DATE: 3/3/88

12 AAC 38 is amended by adding a new section to Article 2 to read:

12 AAC 39.295. QUOTA ON GUIDING AREA PERMITS FOR GAME MANAGEMENT UNIT 4. No application for initial issuance or for reassignment of a guiding area permit for game management unit 4, as defined in 5 AAC 78.005(d), will be considered by the board until normal attrition has reduced the number of guides holding guiding area permits for that game management unit to five. At that time, the board will, in its discretion, issue an additional guiding area permit for that game management unit, and the maximum number of guides authorized to hold guiding area permits for game management unit 4 shall be six. (Eff. / /88, Reg.)

Authority: AS 08.54.040(a)(7)

AS 08.54.195(d)

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

December 23, 1985

Mr. Gerald L. Wilkerson
Legislative Auditor
Legislative Audit Division
Pouch W
Juneau, AK 99811**RECEIVED**
DEC 24 1985**LEGISLATIVE
AUDIT**

Dear Mr. Wilkerson:

Re: Preliminary Audit Findings
Guide Licensing and Control BoardThank you for the opportunity to comment on your preliminary audit report
of the Guide Licensing and Control Board.Our position remains the same from previous correspondence in that, we
concur with your findings and recommendations, and also support continuation
of the board. We once again offer the following comments regarding
your recommendations:

In reference to recommendation #1, it is important to note that many
of the actions or decisions made by the Guide Licensing and Control
Board were made upon advice and support of counsel from the Department
of Law. This is done especially in relation to your finding that
hearing officer decisions are replacing that of the Guide Lic
and Control Board where setting quotas for guides are concerned.
However, we believe the board has demonstrated an honest effort to act
accordingly within the parameters of what they perceived to be cor-
rect, based on legal advice.

Regarding recommendation #4, this matter was brought to the attention
of the board by staff of the Division of Occupational Licensing during
previous board meetings. Although the board did acknowledge the need
to address this issue, no time was given to address the oral examina-
tion for registered guides.

Mr. Gerald L. Wilkerson

-2-

December 23, 1985

We strongly support your suggestions in recommendation #5 and feel that, although performance bonds posted by master and registered guides may not be entirely adequate to rectify all complaints, it would certainly allow some means of restitution for injured parties from receiving unethical services.

Thank you once again for the opportunity to comment on your findings and for your cooperation.

Sincerely,


Loren H. Lounsbury
Commissioner

LHL/sa1444s
122385b

The Legislature
Budget and Audit Committee
Jim Griffin, Auditor

DEC 19 1985

LEGISLATIVE
AUDIT

Recommendation #1

The Guide Licensing and Control Board (GLCB) uses the Statements of Financial Remunerations as proof of use and experience in areas when assigning Exclusive Guide Areas (EGA). There have been discrepancies in the past, the last year the GLCB have been adhering closely to the criteria of using SFRs. The GLCB seeks biological and Fish & Game surveys when they are available. This cannot always be done. Some areas Fish & Game haven't run surveys or recent surveys. Most of the time, the GLCB doesn't know which areas will be before them until the applicant comes before the GLCB with his application. This doesn't allow enough time to obtain the information. In cases that are held over and coming before the GLCB at a later date to allow time for soliciting biological information from the Fish & Game biologist located in the area involved. I have sold Fish & Game information in several cases that are coming before the GLCB this next meeting in December 1985.

I hope to get a regulation passed that requires an applicant applying for an EGA to obtain this information from the Fish & Game for presentation to the GLCB.

Along these lines there also should be a regulation requiring the same criteria for a transfer be the same as a new applicant. That is to show proof of experience in the area as would a new applicant. And going farther, an applicant for a transfer from an EGA holder to himself show proof of working with the EGA holder for a certain time. One or two years. Co-signing SFRs could be used as proof as well as additional proof, either in EGAs or joint use areas.

Recommendation #2

Regulation (12 AAC 38.053 (F) (1) applies mostly to applications for joint use areas and EGAs being applied for by more than one guide. The proposal to pass a regulation requiring the applicant to obtain Fish & Game biological information on the area applied for will help in this area.

Recommendation #3

I do not agree that an EGA holder should have to surrender his EGA to the GLCB and not have the opportunity to transfer the EGA to a guide of his choice with the approval of the GLCB. There are many cases where an EGA holder has farmed his area, carefully not to over harvest, so has improved both game populations and size of the animals in the area. To enhance game populations and sportsmen enjoyment is one purpose of the GLCB. Financial investments should also be considered in transfers, land, buildings and equipment related to guiding in the area. A guide who has spent many years building up an area with improvements to game populations should certainly have something to say about who's care the area ~~XXXXXX~~ comes under. Son, ~~XXXXXX~~ Daughter, apprentice or aguide who is well qualified to guide in the area.

The GLCB has a policy not to issue a new applicant an area X in joint use. In other words filing over an area that is already in joint use, or use by only one EGA holder. The GLCB is working to eliminate as much joint use as possible. This can only be done through natural attrition. The GLCB cannot choose two permit holders out of six joint users and pull their permits without due cause. I do think, and it has been the GLCB's policy the last two years. A Ega holder is convicted of some violation that merits revoking his area that is in joint use with others, that area will not be reassigned ~~XXXXXX~~ ..

Where the area is extremely large and dosen't have many joint users some leeway should apply to a new applicant. The guide losing the area should not have a say one way or the other. in the matter. However, in cases such as this very careful scrutiny in all criteria must be made. One thing along these lines. At one time the intent of GLCB to review and reassess all EGAS. Considering size, utilization and condition of game populations. This was never done, primarily because time and budget restrictions wouldn't allow it.

Recommendation #4

Oral guide examinations:

There are inconsistencies in administering oral tests. The purpose of the oral test is to determine the applicat's practical field experience and knowledge of game habits, size and the area's being tested for. Most of this is impossible to determine with a ~~XX~~ tightly held oral tests with set questions and answers. The examiner should have some flexibility but should not be allowed to wonder far afield and asking impertinent questions. There should also be a standard time for the test, say 1 or 1 1/2 hours. One ~~xx~~ problem that keeps cropping up is first aid. I propose that an applicant be required to have passed a first aid course with in the year prior to taking the guide exam.

The GLCB has been trying to upgrade this portion of the guide test. Here again, the increasing number of applications for testing each meeting is also increasing the work load of the GLCB.

Recommendation #5

There should be some changes in Statute 08.54.200 (A) (1). The change should give the GLCB some flexibility on guide complaints. Taking in consideration of the severity of the complaint. Endangering life, flagrant game violations, and unethical practices, etc. The GLCB does have a guiding ethics regulation (12AAC 38.180) The complaint are slowly being corrected since the administration was consolidated in the Department of Commerce, Division of Occupational Licensing. The GLCB investigator is investigating all complaints that come in now.

We are trying to get a section in the new guide bill, (Senate Bill #294) to satisfy the change mentioned above. Bonding is already addressed in §294.

The bill also creates an outfitter's license and repeals the transporters license. This should help to alleviate the wide spread unlicensed guiding. These unlicensed guides are a big factor in guiding complaints.

The bill also goes into more detail on what guiding is. Enforcement people say the present bill doesn't explain guiding enough for them to make a case on ~~unlicensed~~ unlicensed guiding. The new bill should give them the tools they need to enforce that section.

The GLCB would like to conduct more work on all these programs and others as well.

It is very important to the guiding industry that the GLCB not be sun setted. If the guide bill is not extended or a new bill passed, the guiding industry will be plunged into a chaos that it could never recover from. Just about everyone with a super cub or 185 will become instant guides creating an impossible situation for game populations and sportsmen safety.

An addition to recommendation #4.

At this last GLCB meeting we appointed 2 master guides and a registered guide to study the oral test and make up a new one that would standardize the test. These men ~~all~~ all have an educational background.

Comments Regarding Interim Letter #1
Sunset review GLCB

Recommendation # 1.

I agree with all of Mr. McNutt's comments. In addition I might add. There have been a number of meetings to establish a point for awarding and transferring guiding areas. The suggested method that had the most merit was to award points for criteria relating to use of the area, financial investment in the area, residence alternate areas, etc. I would suggest that those who did so much work on this system be contacted and a system be finalized and approved. This will eliminate most of the criticism related to transfers.

Recommendation # 2.

Agree with Mr. McNutt.

Recommendation #3.

I completely agree with Mr. McNutt's comments and would like add emphasis here. The assigned area concept will do more to elevate the quality of guiding in Alaska than any change in years. It gives the area holders a responsibility toward the area and game. Now through leases from the state and permits from the federal government, it will be possible for guides to build permanent structures in many areas. The guides will continue to increase their investments in areas. As the investment both in time and monetary increases so does the guides financial responsibility increase. After working for years to build a high quality operation it seems only just that upon retirement the permit holder would be able to choose his successor, who in nearly every case would be the most qualified person for the transfer no matter what selection criteria were used. There have been abuses of this in the past as there were some transactions that seemed to be merely real estate sales. The GLCB is aware of this and is taking a firm stance against real estate dealers. It would seem that guiding like any other business would allow a successful and ambitious business man to build some value into his business so that when it came time for retirement he would have something to sell. Because the guiding business involves land and resources that belong to the public, the burden of responsibility upon the area permit holder is great. aside from his investment in property and equipment the value lies in his concessionary right to the area and it's wildlife. If he has treated these right with regard and respect and obeyed all covenants both moral and legal it seems only right that he should be able to sell this right to another qualified individual of his choosing. This would allow him to maximize the return for his investment.

Recommendation #4.

The GLCB commented on this in addition to Mr. McNutt's comments and covered it quite thoroughly.

Recommendation # 5.

Agree with Mr. McNutt.

(10) "fish" means any species of aquatic finfish, invertebrate, or amphibian, in any stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic finfish, invertebrate, or amphibian;

(11) "fish derby" means a contest in which prizes are awarded for catching fish;

(12) "fishery" means a specific administrative area in which a specific fishery resource is commercially taken with a specific type of gear; however, the Board of Fisheries may designate a fishery to include more than one specific administrative area, gear type, or fishery resource; in this paragraph "gear" and "type of gear" have the meanings given in AS 16.43.990;

(13) "fishing derby association" means a civic, service, or charitable organization in the state, not for pecuniary profit, whose primary purpose is to promote interest in fishing for recreational purposes and which has been in existence for five years before applying for a permit under this chapter, but does not include an organization formed or operated for gaming or gambling purposes;

(14) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means having the fish or game under positive control, as in a pen, pond, or an area of land or water which is completely enclosed by a generally escape-proof barrier;

(15) "fish stock" means a species, subspecies, geographic grouping or other category of fish manageable as a unit;

(16) "fur dealing" means engaging in the business of buying, selling, or trading in animal skins, but does not include the sale of animal skins by a trapper or hunter who has legally taken the animal, or the purchase of animal skins by a person, other than a fur dealer, for the person's own use;

(17) "game" means any species of bird, reptile, and mammal, including a feral domestic animal, found or introduced in the state, except domestic birds and mammals; and game may be classified by regulation as big game, small game, fur bearers or other categories considered essential for carrying out the intention and purposes of AS 16.05 — AS 16.40;

(18) "game population" means a group of game animals of a single species or subgroup manageable as a unit;

(19) "hunting" means the taking of game under AS 16.05 — AS 16.40 and the regulations adopted under those chapters;

(20) "nonresident" means a person who is not a resident of the state;

(21) "nonresident alien" means a person who is not a citizen of the United States and whose permanent place of abode is not in the United States;

(22) "operator" means the individual by law made responsible for the operation of the vessel;

(23) "personal use fishing" means the taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(24) "resident" means a person who for 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the state; and in the case of a partnership, association, joint stock company, trust, or corporation, "resident" means one that has its main office or headquarters in the state; however, a member of the military service who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this paragraph, and the dependent of a resident member of the military service, who has been living in the state for the preceding year is a resident for the purposes of this paragraph, and a person who is an alien but who for one year has maintained a permanent place of abode in the state is a resident for the purposes of this paragraph;

(25) "rural area" means a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area;

(26) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under AS 16.05 — AS 16.40 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(27) "sport fishing" means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries;

(28) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources by a resident domiciled in a rural area of the state for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(29) "subsistence hunting" means the taking of, hunting for, or possession of game by a resident domiciled in a rural area of the state for subsistence uses by means defined by the Board of Game;

(30) "subsistence uses" means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish


STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

BILL SHEFFIELD, GOVERNOR

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2534

DATE: October 31, 1986
TO: Guide Board members
FROM: Kevin D. Henderson 
Regulations Specialist
SUBJECT: Department of Law review of proposed regulations

Attached is a memorandum from Lawrence Delay, Assistant Attorney General, and my response to that memo concerning the proposed regulations adopted by the board at your last meeting. The board had asked that they be given a chance to review the potential editing of the Attorney General's Office before they are permanently filed. Here is your opportunity.

I suggest that you review Mr. Delay's suggestions carefully and if you have any comment provide them in writing to me or Ray McNutt by November 17, 1986. Together, we can formulate the board's response and transmit it to Lawrence Delay. With your comments he can then complete his final review and get the regulations filed with the Lt. Governor's Office.

Your timely response to this opportunity will be very much appreciated.

KH/wfs4642W
103086a
Enclosures

cc: Helen Welch, Administrative Assistant ✓
Lawrence Delay, Assistant Attorney General

MEMORANDUM

State of Alaska

TO: Kathy Marshall, Director
Division of Occupational Licensing

DATE: October 23, 1986

FILE NO:

TELEPHONE NO: 276-3550

FROM: Harold M. Brown
Attorney General

SUBJECT: Guide Licensing and
Control Board pro-
posed regulations;
File No. 993-86-072

By: *Lawrence C. DeLay*
Lawrence C. DeLay
Assistant Attorney General
Commercial Section-Anchorage

We have reviewed the above-referenced proposed regulations and offer the following comments and suggestions for your consideration. Further work on these proposed regulations will await your response to the suggestions contained herein.

Proposed 12 AAC 38.052(d) reads as follows:

12 AAC 38.052(d) is amended to read:

(d) A copy of written permission required in (a) and (b) of this section must, at all times during the hunt, be on the person of the guide conducting the hunt or in the base camp from which the hunt is conducted, and must be on the person of each employee of the master or registered guide to whom the permission was given. Permission must be written on the statement of financial remuneration to be filed for that hunt. (Eff. 5/12/78, Reg. 66; am 10/11/81, Reg. 80; am 10/15/82, Reg. 84; am 6/16/85, Reg. 94; am __/__/__, Reg. __)

Authority: AS 08.54.040(a)
AS 08.54.050

Comment: The proposed change seeks to provide for an organized method of preserving evidence of written permission in a manner which poses no significant additional burden upon the guide requesting permission.

Suggested Action: The only modifications suggested are to reword the last sentence of the proposed regulation and to

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

OCT 24 1986

DIVISION OF
OCCUPATIONAL LICENSING

present the proposed draft in a form properly indicating the changes. The suggested modifications may be stated as follows:

(d) A copy of the written permission required in (a) and (b) of this section must, at all times during the hunt, be on the person of the guide conducting the hunt or in the base camp from which the hunt is conducted, and must be on the person of each employee of the master or registered guide to whom the permission was given. [A GUIDE RECEIVING WRITTEN PERMISSION SHALL FILE A COPY OF THAT PERMISSION WITH THE BOARD BY DECEMBER 31 OF THE YEAR IN WHICH THE PERMISSION IS GRANTED.] The written permission must be written upon the statement of financial remuneration filed with the hunt.

Proposed 12 AAC 38.054(g) reads as follows:

12 AAC 38.054 is amended by adding subsection (g) to read:

(g) The board may, consistent with AS 08.54.040 and 12 AAC 38.051, adjust a guiding area permit when reassigning that permit.

Comment: This subsection is consistent with the board's power under 12 AAC 38.054 and 12 AAC 38.051 and serves to clarify the board's power to reassign a permit as well as to adjust the boundaries of the guiding area and the number of permit holders in a specified area. However, the only concern with the proposed subsection is that it is not clear exactly what the board may adjust. We presume that the board may only adjust boundaries and the number of permit holders.

Suggested Action: The subsection may be rewritten, if consistent with the board's intent, to state:

When reassigning a permit, the board may, consistent with AS 08.54.040 and 12 AAC 38.051, adjust the boundaries of the area governed by the permit or adjust the number of guides who hold a permit to conduct guided hunts in that area.

Proposed 12 AAC 38.054(h) reads as follows:

12 AAC 38.054 is amended by adding subsection (h) to read :

(h) In game management units one through four, no initial application or application for reassignment will be considered by the board until such time as normal attrition has reduced the number of guides licensed to conduct hunts in those game management units to five. When the total number of guides licensed in units is five, the board will, in its discretion, approve an additional guide to be licensed in that unit. The maximum number of guides authorized to conduct hunts in game units one through four shall be six. (Eff. 5/12/78, Reg. 66; am 10/15/82, Reg. 84; am ___/___/___, Reg. ___)

Authority: AS 08.54.040(a)
AS 08.54.050

Comment: The focus of attention on units one through four raises concerns of unequal treatment. The board is apparently concerned with protecting the livelihood of the permit holders of these units because of game population decline in the face of increased hunting by non-guided as well as guided hunters. If the board chooses to reduce the number of permit holders for this reason, the board may do so by denying new applicants by exercising its authority under 12 AAC 38.051(b)(2) and allowing the number of existing permit holders to be reduced by natural attrition. The proposed subsection is therefore unnecessary and in view of its unequal treatment aspect, likely to create more problems than its solves.

Suggested Action: This subsection should not be added to the regulations.

Proposed 12 AAC 58.056(g) reads as follows:

12 AAC 38.056 is amended by adding a new subsection to read:

(f) Before a matter will be heard by the board at a meeting, all area permit holders affected shall be contacted in writing by certified-return receipt mail by the applicant and the replies received shall be submitted to the board at that meeting. (Eff. 5/12/78, Reg. 66; am

6/16/80, Reg. 74; am 6/27/81, Reg. 78; am
__/__/__, Reg. __)

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

Comment: This subsection will enable the board to determine whether certain interested parties have received notice of a petition filed under 12 AAC 38.056 and requires the burden of providing such notice to be placed upon the petitioner. The only change recommended here is a rewording which clarifies these points.

Suggested Action: The proposed subsection should be rewritten as follows:

Before the board will hear any petition or request brought under this section, the petitioner shall contact all permit holders affected by the petition by certified mail, return receipt requested, and the returned receipts or the replies of the affected permit holders shall be submitted to the board.

Proposed 12 AAC 38.085 reads as follows:

12 AAC 38 is amended by adding a new section to read:

12 AAC 38.085. BASE OF OPERATION. Permit holders in game management units one through four must not conduct or supervise guided hunts from more than one vessel over 18 feet or from no more than one land camp of operation. (Eff. __/__/__, Reg. __)

Authority: AS 08.54.040(a)
AS 08.54.050

Comment: The board's intent behind this proposed section is not clear. One possibility is that the board intends to prevent a hunting party from splitting up into smaller groups. However, it is not clear whether the board has the authority to prevent that from happening.

The proposed section may be in conflict with present guide regulations which do not expressly require guided parties

to remain in one group. Under 12 AAC 38.175, a registered or master guide may employ guides to assist in a guiding operation and when such assistants are employed, the registered or master guide is required by 12 AAC 38.090 to be "in the field and participating in the conduct of the guided hunt." There is no express requirement that assistant guides are to be in the physical presence of their employer guide during the hunt, hence it appears to be permissible for an assistant guide accompanying a hunter to split off from the main group and conduct a hunt as long as that assistant is under the supervision of the employer guide.

The proposed section addresses only units one through four, raising again the suspicion of unequal treatment. The proposed section also appears to have other problems in that the phrase "conduct or supervise guided hunts from ... [a] vessel" is ambiguous if applied to a circumstance where a hunt is first conducted by vessel and later by land. Also, there is no apparent reason for the board's imposition of the 18' limit on the length of the vessel used in the hunt. Is the board encouraging the use of a flotilla of small boats over a single cabin cruiser? Finally, what definition of "land camp of operation" does the board intend to apply? Does the board intend to distinguish between a base camp and a temporary "spike" camp? If so, a new definition section should address this distinction.

Suggested Action: The proposed section should be examined and revised, if necessary, in light of the board's intent and the existing regulatory scheme.

Proposed 12 AAC 38.140(a)(3) reads as follows:

12 AAC 38.140(a) is amended by adding a new paragraph (3) to read:

(3) the applicant must hold a current certification of basic first aid skills prior to taking the examination. (Eff. 6/28/74, Reg. 50; am 6/16/85, Reg. 94; am ___/___/___, Reg. ___)

Authority: AS 08.54.040
AS 08.54.050
AS 08.54.110(2)

Comment: Public policy favors requiring guides to have certified first aid skills in view of the nature of their profession. It is noted that 12 AAC 38.140 imposes licensing

Kathy Marshall, Director
Division of Occupational Licensing

October 23, 1986
Page 6

requirements in addition to those set forth in AS 08.54.110 and that subsection (3) of that statute requires a guide to have "... practical field experience in ... first aid" This requirement is in contrast to the proposed subsection which provides that an applicant for a registered guide license is not allowed to take the examination unless the applicant holds a current certification of first aid skills. However, these two requirements are not wholly duplicative in that one calls for practical experience whereas the other calls for formal certification of those skills.

Suggested Action: This subsection is approved for submittal to the Lieutenant Governor's office.

LCD:ihr

cc: Kevin Henderson ✓
Regulations Specialist
Ray McNutt, Chairman
Guide Licensing & Control Board
Charles Ward, Investigator

MEMORANDUM

State of Alaska

TO: Lawrence C. Delay
Assistant Attorney General
Commercial Section
Department of Law

DATE: October 31, 1986

FILE NO.: 993-86-0072

THRU:

TELEPHONE NO.: 465-2535

SUBJECT: Guide Board proposed
regulations

~~Kevin D. Henderson~~
FROM: Kevin D. Henderson
Regulations Specialist
Division of Occupational Licensing
Department of Commerce and
Economic Development

I have received your October 23, 1986 memorandum to Kathy Marshall concerning proposed regulations adopted by the Guide Board. The Guide Board requested an opportunity to review the comments and editing of the Attorney General's Office prior to the proposed regulations being filed; your review should clearly satisfy that request. I have sent your memo to all guide board members and have asked that they channel their concerns through me or Ray McNutt for forwarding to you.

These regulations were adopted by the board on April 10, 1986 and the adoption order was signed by the chairman on May 1, 1986. On May 12, 1986, they were transmitted to the Department of Law for final review and filing. The proposed regulations were typed in final form, without the changes indicated, in accordance with page 56 of the Drafting Manual for Administrative Regulations, Department of Law, 9th Edition.

On behalf of the division, allow me to respond to your comments and suggestions in the order you presented them.

1. Your suggested change to 12 AAC 38.052(d) is an improvement and appears to be well within your authority under AS 01.05.031(b). This amendment with your change should be approved for filing.
2. Your proposed rewrite of 12 AAC 38.054(g) is consistent with the board's intent and with 12 AAC 38.051 and should be approved for filing.
3. The division concurs with your assessment of 12 AAC 38.054(h) being equally concerned that this subsection provides for unequal treatment. This concern was highlighted by the Legislature in their passage of HCS CSSB 294 (Chapter 71, SLA 1986). Section 6 of that bill amends AS 08.54.040 by adding the word "consistent" to paragraph (7) and section 14 of the same bill adds AS 08.54.195 as a new statute calling for a point system for determining quotas for guide areas, this has yet to be developed. If this section is disapproved, I would suggest that your reasoning be fully explained to the board as guidance for adopting regulations in the future.

4. The division concurs with your revision to 12 AAC 38.056 and feels it is both consistent with the intent of the board and with your authority under AS 01.05.031(b).
5. As I understand it, 12 AAC 38.085 was originally proposed by guides in Southeast as a way of preventing a registered or master guide from conducting several hunts concurrently from more than one base camp. This has been a problem in Southeast especially with the use of larger marine vessels. Apparently there have been times when a single registered or master guide would conduct hunts from two large boats that could sleep several people. The boats would be hunting in different locations and, therefore, making it impossible for the guide to comply with 12 AAC 38.090. The significance of an 18' boat is not clear. Ray McNutt, Guide Board chairman, could be of more help on this proposed regulation.
6. The purpose of 12 AAC 38.140(a)(3) was to assure that an applicant has verifiable first aid knowledge at the time of application so that the Guide Board could remove first aid questions from the written examination. These questions have been controversial in the past. With the passage of SB 294, however, a primary authority for the entire section of 12 AAC 38.140 was removed by the repeal of AS 08.54.110(12). The division is currently working on a new regulation project that will include a proposal to repeal 12 AAC 38.140 entirely. We believe, however, that AS 08.54.110(3) is sufficient authority for requiring first aid certification and suggest that this section be approved and renumbered as a single separate section.

After you have received a response from the board chairman, your final review, editing, and approval for filing of these regulations would be appreciated. We are beginning to work on a major reworking of all guide board regulations, including renumbering. Any comments or suggestions you have concerning the Guide Board and its regulations will be appreciated.

KH/wfs4643W
103186b

cc: Kathy Marshall, Director
Helen Welch, Administrative Assistant ✓
Guide Board members

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY
BUREAU OF FISH & WILDLIFE PROTECTION

BILL SHEPHERD, GOVERNOR

ROBERT J. SUNDBERG
COMMISSIONER

P. O. BOX 5188, ANNEX
ANCHORAGE, ALASKA 99502

February 28, 1983

Clark Engel, Master Guide
4129 Lana Court
Anchorage, Alaska 99504


Dear Clark:

During the past few years the guiding industry through the Guide Board has made substantial improvements in cleaning up the industry and improving the image of guiding in Alaska. The Guide Board distribution of exclusive guide areas and it's thorough investigations of accusations made against members of the guiding industry have gone a long way to improving the guiding business in Alaska.

With over 1,100 licensed guides, ranging from Master Guides to Assistants it takes a well coordinated effort to ensure that the same standards are applied by the guiding industry throughout the state. The industry has an impact upon tourism and upon the image of the state of Alaska through the sportsmen that it caters to. This Board has helped standardize the practices and procedures through which the guides have operated thereby giving the guiding industry in Alaska a good image on the outside. From a law enforcement standpoint, during the past few years we have seen a steady decline in the number of guide related violations. In fact, in FY-82 of the commercial users of the resource, the guiding industry had one of the lowest of violation rates of any in the state. I think this speaks highly on the industry and this trend should be continued. Guiding has a role in Alaska and how big that role will be will depend entirely upon the activities and the image of the industry.

Clark, this isn't much but I hope this will give you and your members some idea of how I felt the industry has progressed and the usefulness of the Board during my few years of association with them.

Sincerely,



Colonel Robert J. Stickles
Director

RJS/rt

Packet

nick jr. shw



Sargent Boutang

in charge ?? 269-5653

LIST

NE AISLE

Personal Arrangements

Car
Airlines/Travel Agent
Place to Stay

Research Questions

List of Guides and Outfitters/Associations - Who represents who
Summary of Master, Assistant, Registered Guide
Proof of Illegal Outfitting
Game Management Unit Map with Overlay of Who has What area
Where Allocation Process fits
Federal Lands/Commercial Operations
Enforcement Actions
Enforcement Dollars
Where does subsistence fit

Problems with Guides/Outfitters

Women training
History of bad experiences
Illegal actions by guide board
Is entry too limited
Illegal Outfitting
Legitimate Outfitting
What's best for the resource
What's best for the economy

Possible Solutions/Angles

More Money for Enforcement
Guides doing a better job at safari shows etc.
Regulating Outfitters
Allocation Process
Fairer way to get your own area
Require Hunters who hire a guide to check registered guide list or revoke license

Phone Log
 Calls made by Rep Herrmann's Office for
 House Resources Committee

TO	#	PLACE
465-4648	Juneau CIO	Juneau
842-5667	Dorothy Carlson	Dillingham
842-5319	Dorothy Dillingham CIO	"
465-3706	Rep Adams	Juneau
465-4942	Rep Herrmann 3x	"
465-2450	Legal Services	71
465-4992	Rep Koponen 2x	"

NA
NA

David McGuire MD - King Salmon → 562-4142[#]

Ed Grasser - Talkeetna → 745-6944

Dennis Harms -

Jay Mussey Cordwood

Joe Klutsch

Naknek → Borough Jim Clark

Toqialk

Bridge #
562-2867

20 ~~11/11/11~~
~~11/11/11~~ of Over Contract C10

• Public

- ~~Bills~~
- ~~Sectional~~
- ~~Press Release~~
- ~~Agendas~~

WRITTEN

Sectional Analysis
More Letters
Resources Calendar
Memo Tam
Memo to Ben re: Lyman
Max re: minutes???

TELECONFERENCE

Call Juneau re: sites
Egegik,
Newhalen
Dorothy
Lyman/re: Bethel
Port Heiden

OUTFITTER CALLS

Carol Klutxch
Karl Lane
White Cougar
Jay Massey
Others in Book
Jim Clark

SET-UP

Pads
Pens
Pencils
Scrap Pads

✓ write, compile xerox

Bills
Public Packets
✓ Sign - In

WITNESSES

Ed
Seargent Boutang

Jack Jordan
Liza McCracken
Keving Henderson/Jenny Strickler

Dave Tim
✓ Chuck Weir (sp?)

Game Board People
Guide Licensing & Control Board People

Beth Ziegler
✓

RESEARCH

Page 9 of Report registered and master guides can have a max. of three exclusive areas/designated areas check on curretn law.

Guide Board Membership - are all guides?

Info. on Examiners and who becomes a guide.

Maps

HOUSE RESOURCES COMMITTEE HEARINGS

Agenda for Hearings & Teleconference On HB 183 - Guides & Outfitters
Representative Adelheid Herrmann, Co-chair
October 14-15, 1987

WEDNESDAY OCTOBER 14, 1987

9:00 AM - 12:00 NOON

- 1 Introductions
- 11 Opening Remarks
Remarks on the Issue . Representative Herrmann
Senator Coghill's Office - Status of SB 191
- 111 History of Guiding in Alaska
Chuck Weir - Member, Guide Licensing and Control Board
Charles Ward & Other Staff, Guide Licensing and Control Board
- 1V Division of Fish and Wildlife Protection
Enforcement actions, Violations, Enforcement Funds
- V Assistant Attorney General
Issues concerning Residency
The Role of the Game Board in making allocations

12:00 NOON - 1:30 PM - LUNCH

1:30 PM - 5:00 PM

- V1 Question/Answers
Questions of witnesses from legislators
Legislators' discussion on issue and suggestions for change
Requests from legislators for further witnesses

THURSDAY OCTOBER 14, 1987

9:00 AM - 12:00 NOON

Carry Over From Wednesday

12:00 Noon - 1:30 PM - Lunch

1:30 PM - 5:00 PM

Public Testimony may begin pending completion of legislators'
discussion

FRIDAY OCTOBER 16, 1987

9:00 AM - 12:00 NOON

1:30 PM - 5:00 PM

These times are reserved for Public Testimony.

STATE OF ALASKA
THE LEGISLATURE

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Resources 3-24-88 8:30 a.m.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to the provision of goods or services to hunters."

Agency Affected: PUBLIC SAFETY
BRU: Fish & Wildlife Protection

Sponsor: Rep. Herrmann
Requestor: House Resources

Components: Enforcement

RECEIVED FEB - 4 1988

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

JWR
2/2/88

Prepared by: Captain Conrad Seibel, Operations Commander
Division: Fish & Wildlife Protection

Phone: 269-5509
Date: 1-28-88

Approved by Commissioner: [Signature]
Agency: PUBLIC SAFETY

Date: 2-2-88

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

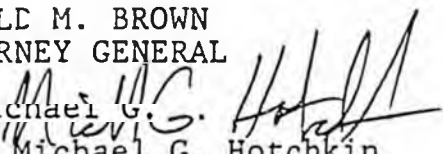
KENNETH D. OWSICHEK,)
)
Appellant,)
)
vs.)
)
STATE OF ALASKA, GUIDE)
LICENSING AND CONTROL BOARD,)
)
Appellee.)
)

Case No. 3AN 79-2387 Civil

APPEAL FROM THE DECISION OF THE GUIDE LICENSING
AND CONTROL BOARD OF THE STATE OF ALASKA

BRIEF OF APPELLEE

HAROLD M. BROWN
ATTORNEY GENERAL

by 
Michael G. Hotchkin
Assistant Attorney General

State of Alaska
Department of Law
1031 W. 4th Ave., Suite 200
Anchorage, Alaska 99501
Telephone: 907-276-3550

Attorney for Appellee

Filed January 30, 1986 in the
Superior Court for the State
of Alaska.

Clerk of the Court

ISSUES PRESENTED

1. Are statutes and regulations that authorize and direct the Guide Licensing and Control Board to conserve the state's game resources and preserve the guiding profession, by regulating guiding activity in guide units 17 and 19 unconstitutional on their faces?
2. Did the guide board properly apply its regulations to Owsichuk, or, in treating him equally with all similarly situated persons applying for exclusive use area permits, unjustly discriminate against him?
3. Can Owsichuk maintain a damages claim against the state in the face of AS 09.50.250, and of the state's common law quasi-judicial immunity from suit?

INTRODUCTION

This appeal involves a challenge to the exclusive use guiding area system, employed since 1974 to regulate big game guiding activities in Alaska. Despite the voluminous arguments advanced, the background of this case and the nature of Owsichuk's challenges to the system are simple. The Guide Licensing and Control Board (the "board"), pursuant to statutes, adopted regulations to implement a system of exclusive use guiding areas, designed to alleviate the tremendous and increasing pressures exerted on the state's sensitive natural resources by professional guides, and further designed to preserve the viability of the guiding profession. In 1976,

Owsichek applied for an area. However, he did not meet the board's stated application criteria, so his application was denied. In 1978 Owsichek reapplied, was found qualified, and, based upon his successful history of guiding in a particular area, was assigned that area for his exclusive guiding use. Because he was not happy with the area assigned to him, Owsichek appealed the board's decision, challenging the basis and the implementation of the entire exclusive use area system. He alleges that the statutes and regulations authorizing the area system are invalid, and that even if the statutes and regulations are valid, the board somehow discriminated against him. Owsichek requests a declaratory judgment and money damages. His charges are without merit.

STATEMENT OF THE CASE

Professional guiding, like other commercial industries which exist by the bounty of Alaska's renewable natural resources, faced a crisis in the early 1970's. Alaska's population explosion, coupled with the efficiency of aircraft-based hunting, led to an overcrowded industry, with too many guides putting too much pressure on a few sensitive areas. Recognizing the problem, the legislature took action in 1973, creating the Guide Licensing and Control Board to regulate the industry. AS 08.54.010. It specifically instructed the board to, inter alia, "establish guide performance standards and regulate activity," and "prohibit guiding activities which are ... unsafe, against principles of conservation, degrading to the guiding profession, or which adversely affect the natural resources." AS 08.54.040(a)(3) and (a)(6). AS 08.54.050 gave

the board broad authority to carry out its duties. 1/

Among the board's first concerns were the problems caused by too many guides operating in too few areas. These problems included potentially volatile conflicts between guides in the bush, Exhibit B, at 5, 7; R. 35, 37, 65-67, 2/, overhunting in sensitive areas leading to depletion of species. R. 13, 34; Tr. 205, and the declining ability of professional guides to make a living. R. 74-75. The board devised a regulatory system to remedy these problems, as well as to spread guide pressures throughout the state, give guides incentive to conserve game resources, increase the quality of guided hunts, assist in policing the profession, allow new guides to break into the profession, and assist in maintaining good relations between the profession and the public. Exhibit B, at 21-24, 35.

In 1974, the board adopted 12 AAC 38.040, which established as guide districts the 26 game units into which the state had been divided 3/, and 12 AAC 38.050, which provided that

1/ A good synopsis of the historic basis for the exclusive area system and the actions of the board was presented to the House Resources Committee by the board's chairman in 1976. It is attached as Exhibit B.

2/ Citation references are: R., record on appeal; Tr., December, 1977 meeting transcript; and O. Br., Appellant's Brief.

3/ The distinction between units and areas is crucial to this case. A "unit" (or district) is one of the major divisions of the state for administrative purposes. An "area" is a subdivision of a unit, which is assigned for the exclusive guiding use of a particular guide or guides. A guide must be certified for any unit in which he wishes to operate; he may then guide in his exclusive area or in any "open" area (areas not assigned to a particular guide) in the unit. Assignment of an area does not pass any rights to the land. The system merely
(Footnote Continued)

guides could register their main camps in certain highly pressured units (16 and 20, and, in 1975, 8), in order to acquire exclusive guiding areas around their camps. In effect, the system "grandfathered" those guides with the greatest experience and investment in particular areas, while encouraging other guides to operate in less pressured areas. ^{4/} Exhibit B, at 13. The system may be compared to the commercial fishing limited entry system, except that while fishermen who did not merit grandfather rights were forced out of their profession altogether, guides who did not merit grandfather rights simply had to move their operations into different areas, and while limited entry involved a single determinative application period, new guides are always able to establish qualifications and, periodically, may apply for exclusive use areas.

In 1976, the legislature expressly endorsed the board's actions, ordering the board to similarly regulate the entire state. AS 08.54.040(a)(8) (eff. 1-1-77) (See pages 11-15, infra.). In January, 1976, the board adopted regulations extending the system to the rest of the state. R. 71, 12 AAC

(Footnote Continued)

provides that as between guides, only certain ones may operate in certain areas. Unguided hunters are not affected at all by the system.

^{4/} 12 AAC 38.050 allowed the board to consider "occupancy, use, and financial value" in awarding areas. The board's policy has always been to rate past use as the highest priority. For units limited before 1977 (i.e., units 8, 16 and 20) board policy required proof of use of the area in four consecutive years. R. 48. For all other units the board has generally required proof of use of the area in three of the five years preceding application (two of five years for temporary permits), although the board varied the standards somewhat to account for differences among units. O. Br. Appendix A; T. 194.

38.050 (as am. 2-25-77). In April of that year the board established November 1, 1976 as the application and qualification deadline for areas in all units not yet limited, and notified all registered and master guides of the deadline. R. 75-76. At its December, 1977 meeting, the board ruled on applications for areas in units 17 and 19, the subjects of this appeal. Rejected applicants for these units were allowed to file petitions, which were heard at the November, 1978 board meeting.

In May, 1978, new regulations were filed, governing all exclusive area applications to be filed during subsequent application periods. 12 AAC 38.051 et seq. These regulations codified the board's application standard requiring three years of use out of the previous five years to obtain an area, and changed other aspects of the system (e.g., the requirement that applicants maintain a camp in the area). Periodically, the board opens units for applications; guides who have been operating in open areas may thus secure those territories as exclusive areas.

Ken Owsichek applied for an area in units 17 and 19 during the 1976 application period, the first year in which he guided hunts, the year he obtained his guide license, and the year he acquired a fishing (and later hunting) lodge on Lake Clark (in unit 9, where Owsichek has never been certified to guide -- his certification is limited to units 17, 18 and 19). The board denied his application, because he did not meet the qualification requirement of two years of use (for a temporary permit) before November, 1976. Owsichek filed a petition, which was referred to a hearing officer. Before the hearing officer, Owsichek and the board agreed that while Owsichek had not been

qualified to receive an area in 1976, he was so qualified in 1978. R. Vol. IIIA, 476-477. He then filed a new application for an extremely large area straddling the border of units 17 and 19. See application maps. The board considered Owsichek's testimony on his use of the area, evidence of its carrying capacity, and the situations of the other guides in the vicinity, as its regulations required. The board granted Owsichek the open portion of the applied-for area, from which he had taken bear, moose and caribou during the previous year. 5/ This area was comparable to areas assigned to other guides. February 1979 meeting, tapes #11 and 12. Owsichek appeals the board's decision.

DISCUSSION

Owsichek's appeal of the board's decision consists of vaguely defined attacks on the validity of the board's statutes, its regulations, and its implementation of the exclusive area system. Notably, he does not analyze the board's application of its statutes and regulations to his exclusive area applications, but rather presents a collection of what he sees as inconsistencies in board decisions during the course of its history, to prove the unconstitutionality of the statutes, regulations and exclusive area system. Owsichek's allegations of inconsistency, and the board's decisions on Owsichek's

5/ Owsichek's repeated assertions that the board denied his application for an area, and that the board's decision put him out of business, are patently false. Owsichek received and holds to this day the portion of his applied-for area in which he had been hunting. Nor has he been put out of business. Since 1979 he has guided more than two dozen hunters in units 17, 18 and 19.

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 191 (
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

DRAFT

5 A BILL

6 For an Act entitled: "An Act relating to the Guide Board and big game
7 guiding, transporting, outfitting, and hunting and
8 establishing an interim task force on guiding and the
9 commercial taking of big game; and providing for an
10 effective date."

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

12 * Section 1. AS 08.01.065 is amended by adding a new subsection to
13 read:

14 (e) Notwithstanding other provisions of this section, the de-
15 partment shall establish the amount of a fee for a nonresident guide
16 license at three times the amount of the fee for a resident guide
17 license.

18 * Sec. 2. AS 08.03.010(c)(20) is amended to read:

19 (20) Guide Board (AS 08.54.010) -- June 30, 1989 [1988].

20 * Sec. 3. AS 08.54.210 is amended to read:

21 Sec. 08.54.210. UNLAWFUL ACTS. (a) It is unlawful for

22 (1) a guide [MASTER GUIDE, REGISTERED GUIDE, SPECIAL GUIDE,
23 CLASS A ASSISTANT GUIDE, OR ASSISTANT GUIDE] to fail to promptly
24 [TIMELY] report to the Department of Public Safety, division of fish
25 and wildlife protection, and in no event later than 30 days, a viola-
26 tion of a state fish, game, or guiding statute or regulation that the
27 guide reasonably believes was committed by a client or an employee of
28 the guide;

29 (2) a guide to commit or aid the commission of a violation

1 of this chapter or of a state game or guiding statute or regulation or
2 to permit the commission of a violation that the guide knows or rea-
3 sonably believes is being or will be committed without attempting to
4 prevent it, short of using force, and without reporting it;

5 (3) a person to guide without having a current valid guide
6 license and resident hunting license in actual possession;

7 (4) a person without a current valid registered or master
8 guide license to advertise as or represent to be

9 (A) a guide; or

10 (B) an outfitter offering big game hunting services

11 [WITHOUT HOLDING A CURRENT VALID GUIDE LICENSE];

12 (5) a guide to intentionally obstruct or hinder or attempt
13 to obstruct or hinder lawful hunting engaged in by a person who is not
14 a client of the guide;

15 (6) a person to guide without being validly licensed as a
16 guide under this chapter and as a resident hunter under AS 16;

17 (7) an assistant guide to contract to conduct a guided
18 hunt;

19 (8) an assistant guide to be in the field on a guided hunt
20 except while employed and supervised by a registered or master guide.

21 (b) A person who violates (a)(1) - (5) of this section is guilty
22 of a misdemeanor and upon conviction is punishable by a fine of not
23 more than \$2,000 [\$1,000] or by imprisonment for not more than one
24 year, or by both, and the person's license may be revoked for a period
25 up to five years. However, a person who engages in guiding activity
26 during the period for which the person's license is suspended or
27 revoked under this chapter, or who violates (a)(6) - (8) of this
28 section, is guilty of a felony punishable, upon conviction, by a fine
29 of not more than \$5,000 and by imprisonment for not less than one year

1 nor more than three years. In addition to punishment for a felony,
2 all guns, fishing tackle, boats, aircraft, automobiles or other vehi-
3 cles, camping gear and other equipment and paraphernalia used in, or
4 in aid of, guiding activity engaged in during the period of suspension
5 or revocation may be seized by persons authorized to enforce this
6 chapter and may be forfeited to the state as provided under AS 16.05.-
7 195.

8 * Sec. 4. AS 08.54.240(3) is repealed and reenacted to read:

9 (3) "guide" or "guiding" means accompanying or being pre-
10 sent with, or providing a camp or personal service for, a big game
11 hunter in the field, personally or through an assistant, for compen-
12 sation or with the intent or an agreement to receive compensation;
13 "guide" or "guiding" does not include accompanying or being present
14 with a hunter

15 (A) in a boat with living quarters;

16 (B) at a lawfully established cabin or permanent
17 lodge;

18 (C) while providing transportation to or from the
19 field, if the persons providing transportation and the persons
20 being transported do not stalk, pursue, track, kill, or attempt
21 to kill big game; or

22 (D) in a camp while attending to horses that are being
23 used to transport big game hunters to or from the field;

24 * Sec. 5. AS 16.05.407 is repealed and reenacted to read:

25 Sec. 16.05.407. NONRESIDENT HUNTING BIG GAME ANIMALS MUST BE
26 ACCOMPANIED. (a) A nonresident may not hunt, pursue, or take a brown
27 bear, grizzly bear, polar bear, goat, or sheep in the state, unless
28 personally accompanied by

29 (1) a guide licensed under AS 08.54; or

1 (2) a resident 20 years of age or older who has hunted in
2 and is familiar with the terrain and environment in the game manage-
3 ment unit in which the hunting takes place and

4 (A) is the spouse of the nonresident; or

5 (B) is related to the nonresident, within and includ-
6 ing the second degree of kindred, by marriage or blood.

7 (b) A nonresident may not hunt, pursue, or take a moose or
8 caribou in the state, unless personally accompanied by

9 (1) a guide licensed under AS 08.54; or

10 (2) a resident 20 years of age or older who

11 (A) does not receive compensation for accompanying the
12 nonresident; and

13 (B) has hunted in and is familiar with the terrain and
14 environment in the game management unit in which the hunting
15 takes place.

16 (c) An applicant for a nonresident big game tag for the taking
17 of an animal specified in (a) or (b) of this section shall first
18 furnish to the state, on a form provided by the state, an affidavit
19 showing that the applicant will be personally accompanied while hunt-
20 ing by a person who is qualified under the terms of (a) or (b) of this
21 section, as appropriate.

22 (d) Before accompanying a nonresident hunter under (a)(2) or
23 (b)(2) of this section, the resident shall furnish to the state, on a
24 form provided by the state, an affidavit showing that the resident
25 meets the requirements of (a)(2) or (b)(2) of this section, as appro-
26 priate.

27 (e) A person who falsifies an affidavit under (c) or (d) of this
28 section is guilty of perjury under AS 11.56.200.

29 (f) A nonresident who violates this section or a resident who

1 violates (d) of this section is guilty of a misdemeanor and upon
2 conviction is punishable by imprisonment for not more than one year,
3 or by a fine of not more than \$5,000, or by both.

4 * Sec. 6. AS 16.05 is amended by adding a new section to read:

5 Sec. 16.05.786. DUTY OF BIG GAME TRANSPORTERS TO REPORT VIO-
6 LATIONS. (a) A person who transports a big game hunter to or from
7 the field for compensation, or with the intent or an agreement to
8 receive compensation, shall promptly report to the Department of
9 Public Safety, division of fish and wildlife protection, and in no
10 event later than 30 days, a violation of a state fish, game, or guid-
11 ing statute or regulation that the person reasonably believes was
12 committed by a client or employee of the person.

13 (b) A person who violates this section is guilty of a misde-
14 meanor and upon conviction is punishable by a fine of not more than
15 \$2,000 or by imprisonment for not more than one year, or by both.

16 * Sec. 7. TASK FORCE ON GUIDING AND GAME. (a) The interim task force
17 on the Guide Board and the commercial taking of big game is established
18 under the jurisdiction of the Legislative Council. The task force consists
19 of the commissioners of fish and game, commerce and economic development,
20 and public safety, or their designees; two members of the senate appointed
21 by the president of the senate; two members of the house of representatives
22 appointed by the speaker of the house; and six members appointed by the
23 governor as follows: one member of the Guide Board; one big game guide
24 licensed under AS 08.54 who is not a member of the Guide Board; and one
25 person engaged in a business, other than guiding, that includes transport-
26 ing big game hunters to and from the field; and three public members.

27 (b) The task force shall review the operations of the Guide Board and
28 shall study problems and issues concerning the commercial taking of big
29 game in the state and the businesses or professions that provide goods and

1 services to big game hunters in the state. The task force shall submit to
2 the Legislative Council, not later than January 15, 1989, a report on its
3 findings and proposed legislation to address the problems and issues
4 covered in the report.

5 (c) The task force terminates January 15, 1989.

6 * Sec. 8. Sections 1, 2, and 4 - 7 of this Act take effect immediately
7 under AS 01.10.070(c).

8 * Sec. 9. Section 3 of this Act takes effect 60 days after the effec-
9 tive date of sec. 1 of this Act.

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STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITAL
JUNEAU ALASKA 99811
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 24, 1988

SUBJECT: Constitutionality of statutes requiring guides
 for nonresident hunters and requiring guides
 to be residents

TO: Representative Adelheid Herrmann
 Co-Chair, House Resources Committee

FROM: Edward H. Hein *EHA*
 Legislative Counsel

You have asked whether state statutes that require non-resident big game hunters to be accompanied by a guide and that require guides to be residents are constitutional.

Under AS 16.05.407, a nonresident who wishes to hunt brown bear, grizzly bear, or sheep must be accompanied by a licensed guide or by a resident relative. The question is whether this statute violates the Equal Protection Clause of the Alaska Constitution, Article I, section 1. That section provides, in part, that "all persons are equal and entitled to equal rights, opportunities, and protection under the law."

The test of constitutionality under this section is whether the discrimination against nonresidents substantially furthers a legitimate goal of the state, which then must be balanced against the nature of the nonresident's interest or right involved. State v. Erickson, 574 P.2d 1, 12 (Alaska 1978). The goals of the state in requiring guides for nonresidents are not stated in the statute, but arguably are hunter safety and enforcement of game laws. These are legitimate state objectives.

The next question is whether the discrimination against most nonresidents substantially furthers these objectives. It is reasonable to conclude that nonresident hunters, on the whole, are less familiar with Alaska's terrain and weather conditions than residents are. Nonresidents may also be

unfamiliar with specific hunting techniques for hunting Alaskan animals, such as the brown bear and dall sheep. Therefore, requiring nonresident hunters to be accompanied by licensed guides is a rational means of protecting their safety. Requiring guides also helps ensure that nonresidents comply with state game laws, particularly since guides are required by law to report violations committed by their clients. But the statutory scheme is flawed, from a constitutional standpoint, in at least two ways.

First, the statute makes an exception for nonresident hunters who are accompanied by a resident who is 20 years of age or older and related within the second degree of kinship. Substituting a resident in place of a licensed guide is not even rationally related to the goal of protecting the nonresident hunter's safety. As one court has stated, this kind of exception is "impossible to reconcile with the theory of safety unless one indulges in the violent presumption that mere residence in this State makes a competent, knowing guide." Schakel v. State, 513 P.2d 412 (Wyoming 1973). It may be that a close relative will be more concerned than another resident for protecting the nonresident, but this does not make the resident relative any more qualified to accompany big game hunters than other residents who are not licensed guides. Second, the list of big game animals for which the nonresident must be accompanied is not complete. Although it covers bears and sheep, it omits goats, moose, and caribou -- animals frequently hunted by nonresidents.

These two flaws in the statute make it vulnerable to constitutional challenge. In particular, the exception for resident relatives is probably unconstitutional. Amending these aspects of the statute would make it more defensible.

The second statute is AS 08.54.210(a)(3) and (6), which make it unlawful for a person to guide without a guide license and a resident hunting license. The effect is to exclude nonresidents from engaging in the business of guiding in the state. This residency requirement is in violation of the Privileges and Immunities Clause of the United States Constitution. The Attorney General has so advised the Department of Commerce and Economic Development and has directed that the requirement not be enforced. The requirement has been removed in various versions of SB 191.

Article IV, section 2 of the United States Constitution provides, in relevant part, that "The citizens of each state should be entitled to all privileges and immunities of citizens in the several states." In line with this purpose, the Court has said that the clause protects fundamental interests -- "those that bear on the vitality of the Nation as a single entity." Baldwin v. Montana Fish and Game Commission, 56 L.Ed.2d 354, 365 (1978). One of the most fundamental interests protected by the Privileges and Immunities Clause is the right to pursue a common calling, ply a trade, or do business in another state. Supreme Court of New Hampshire v. Piper, 84 L.Ed.2d 205 (1985); Toomer v. Witsell, 92 L.Ed. 1460, 1471 (1948). A nonresident's interest in engaging in the business of big game guiding in Alaska is such a fundamental interest and, therefore, is protected by the Privileges and Immunities Clause.

To discriminate against nonresidents, the state must have a substantial reason beyond the mere fact that they are citizens of other states. Toomer at 1471. The state cannot, for example, discriminate solely for the purpose of giving residents an economic advantage over nonresidents. Lynden Transport, Inc. v. State, 532 P.2d 700, 710 (Alaska 1975). The statute identifies no evil caused by nonresidents that requires that they be excluded from guiding in the state. There is no showing that a nonresident is inherently less qualified to be a guide than a resident. A nonresident would have to meet the same qualifications as a resident to obtain a guide license. As one court has stated, "mere residence in this state does not make a competent guide." Powell v. Daily, 712 P.2d 356 (Wyoming 1986). There is no showing that excluding nonresidents from guiding in the state in any way protects the state's game resources. The United States Supreme Court has stated that a "state's interest in its wildlife and other resources must yield when, without reason, it interferes with a nonresident's right to pursue a livelihood in a State other than his own." Baldwin.

The residency requirement for licensed guides is in violation of the Privileges and Immunities Clause of the United States Constitution and is unenforceable.

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(1) calendar year and must be in the possession of any person exercising rights under any fishing or hunting license issued pursuant to W.S. 23-2-101 or 23-2-201. Holders of pioneer licenses as defined under W.S. 23-1-705(d) and (e) and holders of licenses only under W.S. 23-2-201(b)(xi) and (xii) are exempt from the provisions of this section. (Laws 1983, ch. 175, § 1; 1985, ch. 166, § 1; 1986, ch. 69, § 1.)

The 1985 amendment, effective June 1, 1985, inserted "and holders of licenses only under W.S. 23-2-201(b)(xi)" in the last sentence.

The 1986 amendment, effective June 11, 1986, inserted "and (xii)" in the second sentence.

Editor's notes. — Laws 1983, ch. 175, § 2, provides:

"(a) Any person may contribute to the enhancement of fish and wildlife habitat by purchasing a fish and wildlife habitat card. The card shall show the name of the purchaser and shall indicate the amount of the contribu-

tion by a letter designation on the card as follows:

- (i) Five dollars (\$5.00) 'C' Card;
- (ii) Ten dollars (\$10.00) 'B' Card;
- (iii) Twenty dollars (\$20.00) 'A' Card;
- (iv) Fifty dollars (\$50.00) or more 'A+' Card.

"(b) Cards shall be approximately two and one-quarter (2¹/₄) inches by three and one-quarter (3¹/₄) inches in size. All proceeds from the voluntary purchase of such cards shall be transferred to the game and fish fund under W.S. 23-1-501."

ARTICLE 4. GUIDES AND OUTFITTERS

§ 23-2-401. Guides required; exceptions; issuance of resident guide license.

(a) No nonresident shall hunt big or trophy game animals on any designated wilderness area, as defined by federal or state law, in this state unless accompanied by a licensed professional guide or a resident guide. There shall be at least one (1) licensed professional guide or resident guide accompanying each two (2) nonresident hunters. The commission may also specify other areas of the state, or specific big or trophy game species, for which a licensed professional or resident guide is required for nonresidents, for purposes of proper game management, protection of hunter welfare and safety, or better enforcement of game fish laws. The commission may allow licensed guides to accompany more than two (2) hunters but no more than six (6) hunters in specific areas.

(b) Any resident possessing a valid resident big or trophy game animal license may apply for and receive a resident guide license. The resident guide license shall be issued without charge or bond by the commission, any district supervisor or resident game warden upon receipt of an affidavit from the resident stating the names and addresses of the nonresident hunters to be guided, the game to be hunted, the area to be hunted, and that the resident has not received nor will accept directly or indirectly any compensation for his services as a guide. A resident guide shall not guide more than two (2) nonresident hunters in any calendar year on any national forest, wilderness area, national game refuge, or national park, except as provided in W.S. 23-2-401, nor shall he accept any compensation or gratuity for his services.

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The name and license number of the nonresident hunter shall be placed on the back of the resident guide license and stamped or signed by the issuer.

(c) A resident landowner may guide hunters on land owned by or deeded land leased to him without a guide license, or he may authorize nonresidents hunting without a guide on those lands. The license must bear the signature of the landowner, lessee, or agent of the owner on whose private property he is hunting as evidence that permission to hunt has been granted. (Laws 1939, ch. 65, § 47; 1943, ch. 112, § 9; C.S. 1945, § 47-401; Laws 1946, Sp. Sess., ch. 2, § 4; 1949, ch. 88, § 2; 1957, ch. 168, § 2; W.S. 1957, § 23-54; Laws 1961, ch. 109, § 1; 1969, ch. 129, § 2; 1973, ch. 249, § 1; W.S. 1957, § 23.1-49; Laws 1975, ch. 81, § 1.)

Repealing clauses. — Laws 1946, Sp. Sess., ch. 2, § 8, repealed all acts or parts of acts inconsistent with this act.

Requirement that nonresident employ guide held constitutional. — Subsection (a), requiring nonresident big game hunters who hunt in federal wilderness areas to employ guides, does not violate the equal protection provisions of the federal and state constitutions, nor the privileges and immunities clause of the United States constitution. *O'Brien v. State*, 711 P.2d 1144 (Wyo. 1986).

The requirement that a nonresident employ a guide to accompany him into a federal wilderness, in which he has a valid license to hunt, is specifically authorized by the National Wilderness Preservation System Act and regulations, and does not violate the supremacy clause. *O'Brien v. State*, 711 P.2d 1144 (Wyo. 1986).

Law reviews. — For note on constitutional considerations and the new Wyoming Guide Law, see IX Land & Water L. Rev. 169 (1974).

§ 23-2-402. License required for professional guides; qualifications; suspension or revocation of license.

(a) No person shall engage in the business of guiding for any consideration or compensation without a professional guide's license. Any competent person who possesses the following qualifications shall upon payment of the license fee, receive a professional guide's license:

- (i) Citizen of the United States;
- (ii) At least eighteen (18) years of age;
- (iii) Resident of Wyoming;
- (iv) Knowledgeable of trophy care and appropriate game and fish laws;

(v) Can satisfactorily pass a written or oral examination which is devised and administered at the discretion of the commission. The examination may include knowledge of the area, of hunting practices, of big game, or guiding practices and of game and fish laws.

(b) The commission may suspend or revoke a professional guide's license on the grounds provided by W.S. 23-2-405(a)(iii).

(c) As used in this section "professional guide" means any person employed for any pecuniary profit or other gain, who provides professional services to aid any person in taking any of the game animals, fish or birds in this state. A professional guide shall not furnish any meals or accommoda-

port damage; claims for damages;
time for filing; determination; ap-
peal; arbitration.

ARTICLE 1. GENERAL PROVISIONS

§ 23-1-101. Definitions of wildlife.

(a) As used in this act:

(i) "Big game animal" means antelope, bighorn sheep, deer, elk, moose or mountain goat;

(ii) "Exotic species" means any wild animals, including amphibians, reptiles, mollusks, crustaceans or birds not found in a wild, free or unconfined status in Wyoming;

(iii) "Furbearing animal" means badger, beaver, bobcat, marten, mink, muskrat or weasel;

(iv) "Game bird" means grouse, partridge, pheasant, ptarmigan, quail, wild turkey and migratory game birds;

(v) "Game fish" means bass, catfish, crappie, grayling, ling, northern pike, perch, salmon, sauger, sunfish, trout, walleye or whitefish;

(vi) "Migratory game bird" means all migratory game birds defined and protected under federal law;

(vii) "Predacious bird" means English sparrow and starling;

(viii) "Predatory animal" means coyote, jackrabbit, porcupine, raccoon, red fox, wolf, skunk or stray cat;

(ix) "Protected animal" means black-footed ferret, fisher, lynx, otter, pika or wolverine;

(x) "Protected bird" means migratory birds as defined and protected under federal law;

(xi) "Small game animal" means cottontail rabbit or snowshoe hare, and fox, grey and red squirrels;

(xii) "Trophy game animal" means black bear, grizzly bear or mountain lion;

(xiii) "Wildlife" means all wild mammals, birds, fish, amphibians, reptiles, crustaceans and mollusks, and bison designated by the Wyoming game and fish commission and the Wyoming livestock board within Wyoming. (Laws 1939, ch. 65, § 2; 1943, ch. 112, § 1; C.S. 1945, § 47-102; Laws 1957, ch. 45, §§ 1, 2; ch. 178, §§ 2, 3; W.S. 1957, § 23-1; Laws 1959, ch. 89, § 1; 1965, ch. 45, §§ 1, 2; ch. 184, §§ 4, 5; 1973, ch. 249, § 1; W.S. 1957, § 23.1-1; Laws 1979, ch. 63, § 2; ch. 140, § 1.)

Cross references. — As to hunting and trapping licenses generally, see §§ 23-2-101 to 23-2-306. For regulatory provisions concerning birds and animals, see §§ 23-3-101 to 23-3-116. For regulatory provisions concerning fish, see §§ 23-3-201 to 23-3-205. For regulatory provi- sion concerning wildlife, see §§ 23-3-301 to 23-3-308. For provisions concerning protection and propagation of fish, see §§ 23-4-101 to 23-4-103. As to game bird farms, see §§ 23-5-101 to 23-5-110. As to fishing pre- serves, see §§ 23-5-201 to 23-5-204. As to

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"A. I have an opinion. And my opinion is that probable is a heavier word than I would use. And I would have to say that he suffered a heart attack in and around the events of having been involved in a truck accident, and there is a possible causal relationship, due to the background of the known arteriosclerosis, and that I think to deny that relationship would be foolish.

"But I think for me to say probable cause would also be saying more than I can absolutely say.

"Q. . . .

"Do you, in your opinion, see it as a likely cause? Is that a better word?"

"THE WITNESS: I don't think that I can say that's the likely cause, because I just don't know the physiologic way that happens. I think there is an undeniable relationship.

"I think there is a—there is something that happened in this man's day that does not happen every day in the course of his job, and that in and around that unusual event he had a heart attack. "And we know that stressful situations sometimes seem related to heart attacks. And to say that there is absolutely no relationship between those two things would be incredulous."

The direct causal connection requirement is not whether or not the truck accident was the probable cause of appellee's myocardial infarction, but whether, as stated in *Kaan*,

" . . . it is more probable than not that work exertion or stress contributed in a material degree to the precipitation, aggravation, or acceleration of a myocardial infarction." *Kaan v. State ex rel. Wyoming Worker's Compensation Division*, 689 P.2d at 1389.

The cardiologist was not asked the question in such a manner that he could recite the magic words in a concise affirmative opinion statement. His statements, however, when considered together, satisfy the holding in the *Kaan* case:

" . . . I think there is an undeniable relationship.

"I think there is a—there is something that happened in this man's day that does not happen every day in the course of his job, and that in and around that unusual event he had a heart attack. "And we know that stressful situations sometimes seem related to heart attacks. And to say that there is absolutely no relationship between those two things would be incredulous."

We, therefore, affirm the order of the trial court.



Keiran W. O'BRIEN, Appellant
(Defendant),

v.

STATE of Wyoming, Appellee
(Plaintiff).

No. 85-112.

Supreme Court of Wyoming.

Jan. 13, 1986.

Defendant was convicted by a justice of the peace for Park County, of hunting in federal wilderness area without a guide. His conviction was affirmed by the District Court, Park County, John T. Dixon, J., and he appealed. The Supreme Court, Raper, J., Retired, held that statute distinguishing between residents and nonresidents with respect to guide requirement did not violate equal protection.

Affirmed.

Cardine, J., filed a dissenting opinion.

1. Constitutional Law §48(1, 3)

There is presumption of constitutionality of statute and burden is on attacker to

show unconstitutionality beyond reasonable doubt.

2. Constitutional Law ⇨48(3)

Reasonable doubts as to constitutionality are resolved by upholding statute, if possible.

3. Constitutional Law ⇨213.1(2)

When ordinary interest is involved in equal protection challenge, then court merely examines to determine if there is rational relationship between classification made by statute or statutes being viewed and legitimate legislative state objective. U.S.C.A. Const. Amend. 14; Const. Art. 1, § 34.

4. Constitutional Law ⇨213.1(2)

When fundamental interest is affected or if classification is inherently suspect, then classification must be subjected to close scrutiny in equal protection challenge to determine if it is necessary to achieve compelling state interest. U.S.C.A. Const. Amend. 14; Const. Art. 1, § 34.

5. Constitutional Law ⇨236

Elk hunting is sport, not fundamental right, and thus constitutionality under equal protection of statute [W.S.1977, § 23-2-401 (a, b)] distinguishing between residents and nonresidents with respect to guide requirement for hunters was subject to review under rational relationship test. U.S.C.A. Const. Amend. 14; Const. Art. 1, § 34.

6. Constitutional Law ⇨236

Game ⇨4

Statute [W.S.1977, § 23-2-401 (a, b)] distinguishing between residents and nonresidents with respect to guide requirement for big game hunting in wilderness areas did not violate equal protection where the classification was rationally connected with State's expressed objective of better enforcement of game and fish laws as well as hunter welfare and safety. U.S.C.A. Const. Amend. 14; Const. Art. 1, § 34.

7. Constitutional Law ⇨207(1)

Game ⇨4

Statute [W.S.1977, § 23-2-401 (a, b)] distinguishing between residents and nonresidents with respect to guide requirement for big game hunting in wilderness areas did not violate privileges and immunities clause [U.S.C.A. Const. Art. 4, § 2, cl. 1] where no fundamental right was involved.

8. States ⇨4.13

Statute [W.S.1977, § 23-2-401 (a, b)] distinguishing between residents and nonresidents with respect to guide requirement for big game hunting in federal wilderness areas in Wyoming was not preempted by national wilderness preservation system in light of provision in federal Wilderness Act [16 U.S.C.A. § 1133(c)(7)] stating that nothing in the chapter is to be construed as affecting jurisdiction or responsibility of states with respect to wildlife and fish in national forests. Wilderness Act, § 4(c)(7), 16 U.S.C.A. § 1133(c)(7); U.S.C.A. Const. Art. 6, cl. 2.

Ernest F. Fuller, Jr. of Bormuth, Freeman & Fuller, Cody, and Michael K. Davis of Redle, Yonkee & Arney, Sheridan, for appellant.

A.G. McClintock, Atty. Gen., Gerald A. Stack, Deputy Atty. Gen., John Renneisen, Sr. Asst. Atty. Gen., Marion Yoder, Asst. Atty. Gen., and Cheryl Solon, Legal Intern, for appellee.

Timothy J. Kirven and Felecia A. Rotellini, Legal Intern, of Kirven & Kirven, Buffalo, for amicus curiae Wyoming Outfitters Ass'n.

Before THOMAS, C.J., and ROONEY,* BROWN and CARDINE, JJ., and RAPER, J., Retired.

RAPER, Justice, Retired.

Keiran W. O'Brien (appellant) was convicted, and fined \$100 by a justice of the peace for Park County, on January 18, 1984, of hunting in a federal wilderness

* This case was decided prior to the retirement of

Justice Rooney on November 30, 1985.

area unaccompanied by a licensed professional guide or resident guide, in violation of W.S. 23-2-401(a) and (b).¹ On appeal to the district court, Park County, Fifth Judicial District, sitting as an appellate court, the conviction was affirmed after the district judge had given the matter his close attention and thoughtful consideration as reflected in a comprehensively written opinion. Appellant appeals from the order of affirmance.

The issues advanced by the appellant are:

"I.

"Does Wyoming Statute Section 23-2-401(a), requiring nonresident big game hunters who hunt in federal wilderness areas to employ guides violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?"

"II.

"Does Wyoming Statute Section 23-3-401(a) violate the Privileges and Immunities Clauses of the United States Constitutions [sic]?"

"III.

"Does Wyoming Statute Section 23-2-401(a) violate the Supremacy Clause of the United States Constitution because it

1. W.S. 23-2-401(a) and (b):

"(a) No nonresident shall hunt big or trophy game animals on any designated wilderness area, as defined by federal or state law, in this state unless accompanied by a licensed professional guide or a resident guide. There shall be at least one (1) licensed professional guide or resident guide accompanying each two (2) nonresident hunters. The commission may also specify other areas of the state, or specific big or trophy game species, for which a licensed professional or resident guide is required for nonresidents, for purposes of proper game management, protection of hunter welfare and safety, or better enforcement of game [and] fish laws. The commission may allow licensed guides to accompany more than two (2) hunters but no more than six (6) hunters in specific areas.

"(b) Any resident possessing a valid resident big or trophy game animal license may apply

conflicts with the purposes of the National Wilderness Preservation System Act and federal regulations thereunder?"

We will affirm the decision of the district court and appellant's conviction.

Appellant, at the time of his citation on September 28, 1983, was a 46-year-old Minnesota resident having in his possession a valid "Wyoming Non-Resident Elk and Fishing Privilege" license. He and his brothers had set up two hunting camps in the Park County section of the Teton wilderness area of the Teton National Forest. At the time of his citation at one of the campsites, and at the trial, appellant admitted he had been hunting elk in the federal wilderness area without a licensed guide. He knew at that time that Wyoming law required him to have such a guide when hunting big game animals in a wilderness area. Elk are big game animals. W.S. 23-1-101(a)(i).

Appellant further admitted that he had hunted in the Wyoming wilderness from 1980 to 1983 intentionally without a guide because he felt the guide requirement was unconstitutional. He was an experienced hunter, familiar with the wilderness area in which he was hunting having been there on a ten or eleven-day camping trip with a Wyoming resident friend living in that area. In 1980 he had hunted for two weeks 20 to 30 miles from the area he was

for and receive a resident guide license. The resident guide license shall be issued without charge or bond by the commission, any district supervisor or resident game warden upon receipt of an affidavit from the resident stating the names and addresses of the nonresident hunters to be guided, the game to be hunted, the area to be hunted, and that the resident has not received nor will accept directly or indirectly any compensation for his services as a guide. A resident guide shall not guide more than two (2) nonresident hunters in any calendar year on any national forest, wilderness area, national game refuge, or national park, except as provided in section 23-1-49(a) [§ 23-2-401(a)], nor shall he accept any compensation or gratuity for his services. The name and license number of the nonresident hunter shall be placed on the back of the resident guide license and stamped or signed by the issuer."

hunting when he was issued the citation. He also testified at the trial that to hire a guide would cost between \$1,500 and \$2,000 for a ten-day trip.

In *Schakel v. State*, Wyo., 513 P.2d 412 (1973), this Court declared unconstitutional the predecessor statute to the one under which appellant was convicted and which we now consider. Since that time the amended version of W.S. 23-54 (1957), now W.S. 23-2-401, supra note 1, has been in effect. These two developments cast a different light on the problem and lead to a different conclusion than *Schakel*. The state in *Schakel* pointed out that W.S. 23-54 (1957) had been repealed in its entirety and replaced, but this Court properly refused to then consider the new statute as applicable. In addition, the United States Supreme Court in *Baldwin v. Fish and Game Commission of Montana*, 436 U.S. 371, 98 S.Ct. 1852, 56 L.Ed.2d 354 (1978), has held that recreational hunting is not a fundamental right protected by the Privileges and Immunities Clause of the United States Constitution. We therefore write on a clean slate, though some principles of law enunciated in *Schakel* remain viable. It may appear that different views are now present. If so, such differences can be attributed to discoveries in the field of law unearthed by *Baldwin*, as well as the statutory amendment. The recent case of *Powell v. Daily*, Wyo., 712 P.2d 356 (1986), involves an entirely different question, i.e., the resident requirement for a professional guide, so we will do no more than distinguish it later in this opinion.

[1.2] In considering a constitutional attack on a statute, basic principles must be kept in mind. There is a presumption of constitutionality, and the burden is on the attacker to show unconstitutionality beyond a reasonable doubt. *Bell v. State*, Wyo., 693 P.2d 769 (1985). Reasonable doubts as to constitutionality are resolved

by upholding the statute, if possible. *Armiño v. State*, Wyo., 678 P.2d 864 (1984).

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution has a parallel in Art. 1, § 34 of the Wyoming Constitution.² This Court has held those respective provisions are equivalents. *Washakie County School District Number One v. Herschler*, Wyo., 606 P.2d 310, cert. denied 449 U.S. 824, 101 S.Ct. 86, 66 L.Ed.2d 28 (1980). Therefore, our holding on the equal protection question herein shall be under both the United States and Wyoming Constitutions.

I

[3.4] There are two tests designed to determine if statutory classifications meet equal protection requirements. The first is employed where the interest affected is an ordinary one and the second where a fundamental interest is at issue. When an ordinary interest is involved, then a court merely examines to determine if there is a rational relationship between a classification made by the statute or statutes being viewed and a legitimate legislative state objective. In other words, if the court perceives that the legislature had some arguable basis for choosing the end and the means, it will sustain the law. *Cheyenne Airport Board v. Rogers*, Wyo., 707 P.2d 717 (1985). When a fundamental interest is affected or if a classification is inherently suspect, then the classification must be subjected to close scrutiny to determine if it is necessary to achieve a compelling state interest. The latter test requires that the state establish that there is no less onerous alternative by which its objective may be achieved. *Washakie County School District Number One v. Herschler*, supra.

Baldwin settles the matter of whether the right to hunt is a fundamental right in

2. Amendment XIV, § 1, Amendments to the Constitution of the United States: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Arti-

cle 1, § 34, Wyoming Constitution: "All laws of a general nature shall have a uniform operation."

relation to the Privileges and Immunities Clause³ of the United States Constitution:

"Does the distinction made by Montana between residents and nonresidents in establishing access to elk hunting threaten a basic right in a way that offends the Privileges and Immunities Clause? • • Elk hunting by nonresidents in Montana is a recreation and a sport. In itself—wholly apart from license fees—it is costly and obviously available only to the wealthy nonresident or to the one so taken with the sport that he sacrifices other values in order to indulge in it and to enjoy what it offers. It is not a means to the nonresident's livelihood. The mastery of the animal and the trophy are the ends that are sought; appellants are not totally excluded from these. The elk supply, which has been entrusted to the care of the State by the people of Montana, is finite and must be carefully tended in order to be preserved.

"Appellants' interest in sharing this limited resource on more equal terms with Montana residents simply does not fall within the purview of the Privileges and Immunities Clause. Equality in access to Montana elk is not basic to the maintenance or well-being of the Union. Appellants do not—and cannot—contend that they are deprived of a means of a livelihood by the system or of access to any part of the State to which they may seek to travel. We do not decide the full range of activities that are sufficiently basic to the livelihood of the Nation that the States may not interfere with a nonresident's participation therein without similarly interfering with a resident's participation. Whatever rights or activities may be 'fundamental' under the Privileges and Immunities Clause, we are persuaded, and hold, that elk hunting by

3. We observe an obvious interplay between the Equal Protection and the Privileges and Immunities Clauses. Some conditions to their application are the same. The involvement of a fundamental right is one of them.

4. W.S. 23-1-101(a)(i): "'Big game animal' means antelope, bighorn sheep, deer, elk, moose or mountain goat."

nonresidents in Montana is not one of them." 98 S.Ct. at 1862-1863.

We consider all of the observations of the Supreme Court of the United States applicable in Wyoming, as well.

[5] Since elk hunting is a sport and not a fundamental right,⁴ we then need only apply the less rigorous test applied to an ordinary right, and we need only examine to determine if there is a rational relationship between the classification made by the statute or statutes being viewed and a legitimate state objective. The statutory classification we are here viewing is that nonresidents, in addition to having a Wyoming nonresident hunting license, must, when hunting big and/or trophy game animals⁴ on any designated wilderness area in Wyoming as defined by federal law, be accompanied by a licensed professional or resident guide. W.S. 23-2-401, *supra* note 1. No such requirement is placed on resident hunters. The question is then whether there is a rational relationship between that classification between nonresidents and residents and a legitimate legislative state objective.

By W.S. 23-1-103, all wildlife⁵ in Wyoming is declared to be the property of the state, and the purpose of the act (W.S. 23-1-101 through 23-6-207 as amended from time to time) and the policy of the state are to provide an adequate and flexible system for the control, propagation, management and regulation of all Wyoming wildlife.

The declaration of ownership and preemption by the state of the management and control of all wildlife in Wyoming has constitutional sanction. As said in *Lacoste v. Department of Conservation of State of Louisiana*, 263 U.S. 545, 44 S.Ct. 186, 68 L.Ed. 437 (1924), the wildlife within the

5. W.S. 23-1-101(a)(xiii): "'Wildlife' means all wild mammals, birds, fish, amphibians, reptiles, crustaceans and mollusks, and bison • • • within Wyoming."

borders of a state are owned by the state in its sovereign capacity for the common benefit of all its people. Because of such ownership and in the exercise of its police power, the state may regulate the taking and use thereof. *Baldwin* spoke approvingly of *Lacoste* in connection with police power in pointing out that the state has great latitude in determining what means are appropriate for the protection of wildlife. We hasten to agree with *Schakel*, however, that the enlightened concept of this ownership is one of a trustee with the power and duty to protect, preserve and nurture the wild game. *Baldwin* observes that though in most respects all those in a state must be treated equally, the state need not always share those things held in trust for its own people.

To carry out the state function of wildlife management, the Wyoming game and fish commission was legislatively created, W.S. 23-1-201, with extensive powers and duties, W.S. 23-1-302, including direction of the Wyoming game and fish department created by W.S. 23-1-401. A unique feature of game and fish management is that it is not financed by state appropriated funds, but primarily from hunting and fishing license fees and some federal grants. According to the 1984 Annual Report (Report) of the Wyoming game and fish department, an official publication required by W.S. 23-1-503,⁶ the department had income of \$23,393,488.53 of which \$15,730,839.30 was from licenses plus \$540,750 from nonresident big game application fees. Report at 73. Its expenditures were \$16,918,177.33. Report at 71. Wildlife management is a substantial state activity in terms of cost.

Enforcement of game and fish laws is a significant role the state must perform,

6. We take judicial notice of official reports of state departments. *Washakie County School District Number One v. Herschler*, 606 P.2d at 322 n. 16. We selected the 1984 Annual Report for use because it covers the period July 1, 1983, to June 30, 1984, during which appellant was licensed and arrested.

according to the chief game warden in 1984 when he said, "Law Enforcement is an on-going activity of the Division and is an important part of wildlife management." There were 2,642 arrests and fines amounting to \$267,361 in 1983. Report at 12. There is some appropriated fund expense, in that connection, probably not measurable, except by some cost accounting method not to our knowledge undertaken, in that not only Wyoming game and fish department personnel are directed and authorized to arrest violators but also "every Wyoming law enforcement officer is authorized, empowered, and directed to arrest without a warrant, any person found violating any provision of" the game and fish act. W.S. 23-6-101.

[6] As a part of the game and fish scheme of enforcement, guides play an important part. Every guide is required and "shall promptly report to the department or any game warden each violation of this act or order of the commission by any person guided." W.S. 23-2-403. One of the requirements and qualifications of the professional guide is that he have knowledge of the wilderness area, of hunting practices, of big game or guiding practices, and of game and fish laws. It is to be expected that nonresidents in many if not most cases would not have that knowledge and the familiarity to carry on the sport within the wilderness areas of Wyoming in a safe and law-abiding way. The hunter is protected and violations avoided through the guide requirement. It must be recalled that the legislatively stated purposes of requiring guides are "for purposes of proper game management, protection of hunter welfare and safety, or better enforcement of the game [and] fish laws." W.S. 23-2-401(a).⁷ It expresses legislative intent.

7. This provision was not in W.S. 23-54 (1957), considered in *Schakel*. W.S. 23-54 (1957), in part:

"A. . . . It shall be unlawful for any person who is not the owner of a resident license or permit lawfully authorizing the same to hunt, pursue or kill, or attempt to hunt, pursue or kill any elk, deer, bear, moose or mountain sheep on any land within any na-

We do not undertake to suggest that out-of-state hunters violate game laws to a greater extent than resident hunters. There is no empirical data available in Wyoming to sustain such a suggestion. The guide requirement is one of passive action to discourage violation of the law, unknowingly or knowingly. In Baldwin, it was observed that Montana has a law making guides responsible for reporting game law violations committed by persons in their hunting parties and that this in a sense makes a guide a surrogate warden and seems to bolster the state's warden force. We thus perceive a rationality and connection with the expressed state objective of better enforcement of the game and fish laws.

Schakel, in discussing safety, felt it significant that antelope were not included; that it was as unsafe to hunt antelope as elk. Antelope are now included as a big game animal. W.S. 23-1-101(a)(i), supra note 4. *Schakel* also noted that a wilderness area is by its definition clearly a more dangerous area to one not acquainted with the area.⁸ W.S. 23-2-401(a) is now limited

tional forest, national park or national game refuge within the boundaries of the State of Wyoming, any part of which is open to the hunting of deer, elk, moose or mountain sheep at any time during the calendar year in which said hunting is done, unless accompanied by a licensed guide; provided, however, that parties of two or more such persons hunting together need not be accompanied by more than one licensed guide for each two such persons.

"B. * * * No such licensed guide shall be required for not more than two non-residents hunting together when accompanied without compensation or gratuity by a resident of the State of Wyoming who is the owner of a resident big game license and a resident guiding permit. A resident guiding permit shall be issued, without charge and without bond, by the Cheyenne office or by any district supervisor or by any resident deputy game warden of the Wyoming game and fish commission to any resident of Wyoming owning a big game license in effect if and when such resident shall make and file an affidavit stating the names and addresses of not more than two non-resident hunters to be guided, the game to be hunted, the area in which they will hunt, and that such resident has not received nor will accept directly or indirectly any remuneration whatsoever. A resident

to wilderness area. We notice that by W.S. 23-2-402(a)(v) a professional guide must take an examination which may include knowledge of hunting practices. This would include firearm handling and safety while hunting. So we find that hunter welfare and safety is a factor in requiring nonresidents to be accompanied by a guide and perceive it to be a rational legislative objective as stated in the statute.

While the appellant's statement of issues refers only to W.S. 23-2-401(a), we also see the noncompensated resident guide licenses as provided in W.S. 23-2-401(b), supra note 1, as a rational means of proper game management, protection of hunter welfare and safety, and better enforcement of game and fish laws. When the noncompensated resident guide obtains his license to guide a nonresident, he must furnish an affidavit stating the names and addresses of the nonresidents to be guided, the game to be hunted, and the area to be hunted. When the license is issued, the name and license number of the nonresident must be placed on the back of the resident guide

guide shall not guide more than two non-residents in each calendar year regardless of the number of resident guiding permits issued to him in each calendar year."

8. 16 U.S.C.A. § 1131(c) (1985):

"A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value."

license and stamped or signed by the issuer. This makes sense because it furnishes intelligence to the Wyoming game and fish department of who and where the hunters are and what they are hunting. This is an aid to the game warden assigned to that area in patrolling his territory and anticipating hunting pressure in the vicinity. In the event of a reported or suspected violation, it furnishes immediately, locally available investigative sources even after the hunter has left the state. In the event of lost hunters or dangerous high country storms, it permits a better check on the safety of hunters or rescue efforts if that should be required. We discern that keeping track of hunters is an important aspect of game management, hunter welfare and safety, and enforcement. There are undoubtedly difficulties of supervision of hunting in the wilderness area where every attempt is made to keep the surrounding and large expanses of land and timber in a primitive state.

Perhaps there are some nonresident hunters who are fully capable of looking out for themselves in particular areas and pose no problem to enforcement, but it is reasonable to conclude and more likely that they should have help. Baldwin points out that a statutory classification impinging upon no fundamental interest need not be drawn so as to fit with precision the legitimate purposes animating it. That a statute might have furthered its underlying purpose more artfully, more directly, or more completely does not warrant a conclusion that the method it chose is unconstitutional.

Appellant has not carried his burden of establishing irrationality of one of the means chosen by the state to carry on the business of game management for its citizens and citizens of other states within its boundaries. We hold W.S. 23-2-401 constitutional in not violating the equal protection provisions of the federal and state constitutions.

9. 16 U.S.C.A. § 1133(d)(7) (1985):

II

[7] Article IV, § 2, United States Constitution, provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Section 1 of the Fourteenth Amendment of the Constitution is somewhat repetitive of that declaration of right and states that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; * * * nor deny to any person within its jurisdiction the equal protection of the laws." We need not concern ourselves with any fine distinctions that may exist between the language of Art. IV, § 2 and that in the Fourteenth Amendment with respect to privileges and immunities. We are here dealing with the privileges and immunities of citizens of the state of Wyoming to the extent they may apply to the citizen of another state—Minnesota—temporarily in the state of Wyoming to engage in the recreational sport of big game hunting for elk in a wilderness area. Under such circumstances we must examine Art. IV, § 2 and decide under those facts and circumstances whether the questioned activity of the state is prohibited. There is no comparable or parallel provision in the Wyoming Constitution except that "[t]he State of Wyoming is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land." Article 1, § 37, Wyoming Constitution.

Appellant, as a resident of Minnesota, claims that W.S. 23-2-401(a), supra note 1, violates the Privileges and Immunities Clause of the United States Constitution in that appellant, as a nonresident, has been afforded access to a federal wilderness area on a different basis than residents of the state of Wyoming. Appellant, however, agrees that the National Wilderness Preservation System does not interfere with the jurisdiction of states over wildlife and fish.⁹

"Nothing in this chapter shall be construed as affecting the jurisdiction or responsibilities of

Baldwin summarizes some situations in which state citizenship or residency can be used to distinguish among persons:

" * * * Suffrage, for example, always has been understood to be tied to an individual's identification with a particular State. [Citation.] No one would suggest that the Privileges and Immunities Clause requires a State to open its polls to a person who declines to assert that the State is the only one where he claims a right to vote. The same is true as to qualification for an elective office of the State. [Citations.] Nor must a State always apply all its laws or all its services equally to anyone, resident or nonresident, who may request it so to do. [Citations.] Some distinctions between residents and nonresidents merely reflect the fact that this is a Nation composed of individual States, and are permitted; other distinctions are prohibited because they hinder the formation, the purpose, or the development of a single Union of those States. Only with respect to those 'privileges' and 'immunities' bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and nonresident, equally. Here we must decide into which category falls a distinction with respect to access to recreational big-game hunting." *Baldwin*, 98 S.Ct. at 1860.

We have in Part I of this opinion placed weight on the ownership in trust of the state's wildlife. However, that position must yield when without reason it interferes with a nonresident's right to pursue a livelihood in a state other than his own. That right is protected by the Privileges and Immunities Clause. Such a case is *Toomer v. Witsell*, 334 U.S. 385, 69 S.Ct. 1156, 92 L.Ed. 1460 (1948), upon which appellant relies. In that instance the Court struck down a South Carolina statute requiring nonresidents of South Carolina to pay a license fee of \$2,500 for each com-

mercial shrimp boat and residents to pay a fee of only \$25 on the ground that it violated the Privileges and Immunities Clause. Other burdens were also placed on nonresidents such as requiring proof before issuance of an annual license that they had paid South Carolina income taxes on profits from operations the preceding year and requiring boats licensed to travel for shrimp in the state's waters to dock at a South Carolina port and unload, park and stamp their catch before transporting to another state or waters thereof. Violations entailed suspension of the violator's license. The Court held that commercial fishing like other common callings is within the purview of the Privileges and Immunities Clause. The key word is commercial which translates into livelihood and distinguishes it from recreational fishing and hunting.¹⁰ When a statute interferes with the right to make a living (pursue a common calling) by a nonresident, then a fundamental right is involved, and we apply a different test than when the right to engage in recreation is involved.

The district judge relied on *State v. Antonich*, Wyo., 694 P.2d 60 (1985), and applied the test there set out when analyzing a privileges and immunities claim. First the court must ascertain whether a statute burdens a fundamental right or activity since only those privileges and immunities bearing upon the concept of interstate harmony fall within the scope and purpose of the clause. Second, the court must examine the reasons for the discriminatory treatment to determine their validity and their relation to the degree of discrimination imposed by the statute. The district court, then sitting as an appellate court, determined that in the light of *Baldwin* no fundamental right was involved in that hunting is a recreational sport and not a fundamental right. In such cases the Privileges and Immunities Clause did not come into play, and there was no constitutional viola-

the several States with respect to wildlife and fish in the national forests."

10. *Toomer v. Witsell* explains that the ownership theory is really 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.

tion in that regard. We agree with the thorough analysis of the district judge.

A most recent case in this Court, *Powell v. Daily*, supra, where the issue was whether W.S. 23-2-402(a)(ii), requiring a professional guide, amongst the other statutory qualifications, to have been a resident of Wyoming for a period of one year, was prohibited by the Privileges and Immunities Clause. It was held that such a requirement restricts the right of an Idaho resident to pursue a means of livelihood, and pursuing a common calling, plying a trade and doing business in another state are fundamental rights protected by the Privileges and Immunities Clause. W.S. 23-2-402(a) does specifically refer to the professional guide as being "in the business of guiding." *Powell* is a nonresident livelihood case in a fundamental right category while the nonresident hunter who is in Wyoming seeking recreation and pursuing a sport does not possess such a protected right. There is no conflict between *Powell* and the case we now have at hand. *Powell* deals with statutes from the point of view of the professional guide with a livelihood at stake—a fundamental right. We here deal with the hunter who has no fundamental right at stake. Our holding must necessarily take a different, less serious slant, accordingly. Where fundamental rights are involved, the test is entirely different and more stringent. *Schakel* was not a livelihood case but a hunter case. The complexion of the *Schakel* case has been completely changed by *Baldwin* and statutory amendment. The references in *Powell* to the *Schakel* case are not applicable to the hunter case we have here.

III

[8] The Supremacy Clause of the Constitution of the United States is found in the second clause of Art. VI:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the

Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The appellant claims that the requirement that he employ a guide to accompany him into a federal wilderness, in which he has a valid license to hunt, burdens his right of access guaranteed him by the National Wilderness Preservation System. His claim is broadened to a charge that the guide law is inconsistent with the objectives of the National Wilderness Preservation System in that there is a limitation to his access as a licensed hunter when he has no need for a guide. Appellant concludes that the federal legislation and regulations preempt the professional guide requirement of W.S. 23-2-401(a).

The argument is most difficult to follow in the face of a specific provision, 16 U.S.C.A. § 1133(c)(7), supra note 9, stating that nothing in the chapter is to be construed as affecting the jurisdiction or responsibilities of the several states with respect to wildlife and fish in the national forests. A further provision, 16 U.S.C.A. § 1133(d)(5) (1985) states that "[c]ommercial services may be performed within the wilderness areas designated by this chapter to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas." Professional guiding is a commercial service in that such guides are compensated for their work. We have held that the use of such guides is a rational requirement of the statute requiring nonresidents to be accompanied by a licensed guide when hunting big game. This is consistent with the responsibility of the state of Wyoming with respect to wildlife.

The supplemental applicable Code of Federal Regulations, 36 CFR 293.8, specifically authorizes commercial services "to the extent necessary for realizing the recreational or other wilderness purposes, which may include, but are not limited to, the public services generally offered by packers, outfitters, and guides."

From the clear language of the National Wilderness Preservation System and regulations, we can find neither prohibition nor inconsistency but in fact find specific authority. W.S. 23-2-401(a) does not violate the Supremacy Clause of the Constitution of the United States.

Affirmed.

CARDINE, Justice, dissenting.

I dissent.

I would hold that § 23-2-401, W.S.1977, violates the Equal Protection Clause of the Fourteenth Amendment and is unconstitutional. It has no rational relationship to the objectives it seeks to promote. This result is consistent with our holding in *Schakel v. State*, Wyo., 513 P.2d 412 (1973).

The majority opinion reaches a result different from *Schakel* (which held the predecessor of § 23-2-401—§ 23-54—unconstitutional) because of the amendment of the statute and because of the holding in *Baldwin v. Fish and Game Commission of Montana*, 436 U.S. 371, 98 S.Ct. 1852, 56 L.Ed.2d 354 (1978). *Baldwin* merely makes clear that only a low level of constitutional scrutiny need be applied because hunting is not a fundamental right; *Baldwin* does not alter our scrutiny of this statute from that applied in *Schakel*. *Schakel* spoke of a "reasonable and appropriate" means, which is a low level of scrutiny. It is the same requirement applied in the majority opinion.

I cannot find that the statute under attack, § 23-2-401, is a rational means to accomplish legitimate state ends. The ends sought are set forth in § 23-2-401(a) as proper game management, protection of hunters, and better enforcement of the game and fish laws. All of these are legitimate ends. The problem is whether a statute, which classifies on the basis of residence and requires only nonresidents to be accompanied by a guide in wilderness areas, is a rational means to accomplish these ends.

I inquire first whether the statute is rationally related to the objective of enforcing the game laws. It is true that guides must know the game laws and report violations. It is also likely that nonresident hunters do not have the same knowledge and are less likely to hunt in a safe and law-abiding manner without guides. The question, however, is whether the classification, which does not require a resident to have a guide, is rationally related to the objective. The court's opinion states that it is not suggested "that out-of-state hunters violate game laws to any greater extent than resident hunters." If nonresidents are no more likely to violate game laws than residents, a statute which classifies by residency has no rational relationship to the objective of enforcing game laws.

The next inquiry is whether the statute is rationally related to the goal of promoting hunter safety. Unlike the statute attacked in *Schakel v. State*, supra, this amended statute requires that a nonresident have a guide when hunting any big game animal in wilderness areas.

I cannot reconcile *Schakel* with the majority opinion. *Schakel* attacked the statute in question, § 23-54, W.S.1957 quoted on pages 7-8 of the opinion, as having little if any relationship to promoting hunter safety. One reason for the attack was that nonresident antelope hunters were not required to have a guide. The statute in this case does not require nonresident small game hunters or fisherman to have a guide. It would seem that nonresident small game hunters and fishermen are as likely to lose their way in a wilderness area as are big game hunters. And, if the potential problem is the handling of firearms, there is nothing to suggest that nonresidents are any more likely to mishandle their firearms than are residents.

Schakel also held that § 23-54 had little to do with safety because it provided that a resident, without qualifications, could guide up to two nonresident hunters if he did so without compensation and after filing an affidavit with the Game and Fish Commission. A very similar provision is now

found in § 23-2-401(b), W.S.1977. Schakel stated that this provision was "impossible to reconcile with the theory of safety unless one indulges in the violent presumption that mere residence in this State makes a competent, knowing guide . . ." If an affidavit will suffice to qualify a guide, why cannot a nonresident supply the Game and Fish Commission with the same information as a resident and qualify? The reason he cannot can only be understood by indulging in "the violent presumption" referred to in Schakel.

Schakel also questioned the provision of § 23-54 which permitted the uncompensated resident guide to guide no more than two nonresidents in any calendar year. This same provision is found in § 23-2-401(b). There is no apparent reason why, after guiding two nonresidents, the uncom-

pensated guide becomes a threat to hunter safety and can guide no more. The provision suggests that the statute seeks objectives other than hunter safety.

Finally, in the absence of any evidence that nonresidents have a different effect on the game population than do residents, I fail to see how the statute rationally relates to the objective of proper game management.

I believe that even with the lowest level of scrutiny this statute should be held unconstitutional.



State, Wyo., 483 P.2d 519 (1971), which involved the same statutes and contention. The same question was raised earlier this term in the case of *Binger v. State, Wyo.*, 712 P.2d 349 (1986). Appellant in that case relied upon the same authorities as here argued and which this Court rejected. Disposal of this case is governed by the two before-mentioned cases.

Affirmed.



Calvin POWELL, Petitioner (Plaintiff),

v.

O.R. "Bud" DAILY, Frances Osborn, Ed P. Moriarity, Gene Harriet, Alice Hays, Denzel L. Coffey, and Dennis Daly, constituting the Wyoming Game and Fish Commission; and W. Donald Dexter, Director of the Wyoming Game and Fish Department, Respondents (Defendants).

No. 85-81.

Supreme Court of Wyoming.

Jan. 8, 1986.

Idaho resident filed an action for a declaration that residency requirement of Wyoming statute governing game and fish guide licenses was unconstitutional. The District Court, Laramie County, Joseph F. Maier, J., certified the constitutional issue. The Supreme Court, Rose, J. (Retired), held that, Wyoming statute, requiring applicant for game and fish guide license to be a resident of Wyoming for a period of one year, burdened a fundamental right with a degree of discrimination which did not bear a close relation to any of the state's asserted reasons for the discriminatory treatment and, thus, violated the privileges and immunities clause of the Federal Constitution.

Question answered, and case remanded.

Rooney, J., with whom Brown, J., joined, filed a dissenting opinion.

1. Constitutional Law ⇨207(2)

Pursuing a common calling, plying a trade, and doing business in another state are "privileges" protected by the privileges and immunities clause of the Federal Constitution. U.S.C.A. Const. Art. 4, § 2, cl. 1.

See publication Words and Phrases for other judicial constructions and definitions.

2. Constitutional Law ⇨207(2)

Guiding hunters and fishermen in Wyoming, for which guide license was required by W.S. 1977, § 23-2-402(a)(iii), was a "business" and, thus, a fundamental right protected by the privileges and immunities clause of the Federal Constitution. U.S.C.A. Const. Art. 4, § 2, cl. 1.

See publication Words and Phrases for other judicial constructions and definitions.

3. Game ⇨4

State's duty or right to use wildlife resources for benefit of its people does not mean that laws enacted in connection with those resources are free from constitutional scrutiny.

4. Constitutional Law ⇨207(2)

Fish ⇨9

Game ⇨4

W.S. 1977, § 23-2-402(a)(iii), requiring applicant for game and fish guide license to be a resident of Wyoming for a period of one year, burdened a fundamental right with a degree of discrimination which did not bear a close relation to any of the state's asserted reasons for the discriminatory treatment and, thus, violated the privileges and immunities clause of the Federal Constitution. U.S.C.A. Const. Art. 4, § 2, cl. 1.

John B. Rogers, Cheyenne, for petitioner.
A.G. McClintock, Atty. Gen., Lawrence J. Wolfe, Sr. Asst. Atty. Gen., and Marion

Yoder, Asst. Atty. Gen., Cheyenne, for respondents.

Before THOMAS, C.J., and ROSE,* ROONEY,** BROWN and CARDINE, JJ.

ROSE, Justice.

This case is presented to us through the certification of a constitutional issue from the District Court of the First Judicial District in Wyoming. The question presented is whether § 23-2-402(a)(iii), W.S.1977, violates the Privileges and Immunities Clause of the United States Constitution. Because the challenged statute burdens a fundamental right, and because the degree of discrimination does not bear a close relation to any of the State's asserted reasons for the discriminatory treatment, we hold that § 23-2-402(a)(iii) impermissibly infringes upon the privileges and immunities of the citizens of states other than Wyoming.

BACKGROUND

Petitioner Calvin Powell resides in Idaho Falls, Idaho. Powell applied to the Wyoming Game and Fish Commission for a guide license so that he could guide hunters and fishermen in Wyoming. Powell stated in his application that he had 30 years of hunting and fishing experience in Idaho, Montana, and Wyoming, and four years of hunting experience on the private ranches in Wyoming where he would be working as a guide.

The game and fish officer in Laramie County rejected Powell's application because Powell was not a resident of the state of Wyoming. Powell appealed this rejection to the Wyoming Game and Fish Commission (Commission) requesting a "waiver" of the residency requirement of § 23-2-402(a)(iii).

Section 23-2-402(a), W.S.1977, states:

"(a) No person shall engage in the business of guiding for any consideration or compensation without a professional guide's license. Any competent person

who possesses the following qualifications shall upon payment of the license fee, receive a professional guide's license:

- "(i) Citizen of the United States;
- "(ii) At least eighteen (18) years of age;
- "(iii) Resident of Wyoming;
- "(iv) Knowledgeable of trophy care and appropriate game and fish laws;
- "(v) Can satisfactorily pass a written or oral examination which is devised and administered at the discretion of the commission. The examination may include knowledge of the area, of hunting practices, of big game, or guiding practices and of game and fish laws."

The Commission refused to "waive" the statutory requirement and, relying upon our decision in *Belco Petroleum Corporation v. State Board of Equalization*, Wyo., 587 P.2d 204 (1978), refrained from passing upon the constitutional questions Powell attempted to raise concerning the statute.

Powell filed a petition for review in district court, which resulted in the court's upholding the Commission's refusal to consider the constitutional questions involved. Powell then filed a declaratory-judgment action in the same court seeking to have the court hold the residency requirement of § 23-2-402(a)(iii) to be void, and to order the Commission to disregard the requirement in acting upon his application. The district court certified the constitutional question involved to this court, after stipulation of the parties, pursuant to §§ 1-13-101 through 1-13-107, W.S.1977, and Rule 52(c), W.R.C.P.

The question to be answered is:

"Whether W.S. 23-2-402(a)(iii) which requires an applicant as a Game and Fish Guide to be a resident of the State of Wyoming for a period of one (1) year is contrary to constitutional right, power, or immunity (Article I, Sections 2 and 4 of the Wyoming Constitution and Article

* Retired November 1, 1985.

** Retired November 30, 1985.

IV, Section 2 and Amendment XIV of the United States Constitution) in that it infringes upon the applicant's rights of national citizenship and effectively restricts his right to interstate travel in pursuance of and in furtherance of his right to earn a living in his chosen field."

Powell claims that the statutory scheme which requires a guide to be a resident of Wyoming for not less than one year¹ restricts his fundamental constitutional right to pursue his chosen means of livelihood, establishes a discriminatory scheme which does not bear a close relation to a valid interest of the State, and relies upon a durational residency requirement. Thus, Powell contends that the statute is fatally deficient.

The State, on the other hand, maintains that "guiding" is not a fundamental right, but is instead merely a recreational privilege and that restricting that privilege to residents is a valid exercise of the State's police power. The State also urges that because protection of wildlife lies peculiarly within the ambit of the State's police power, we must give the legislature great latitude in determining what means are appropriate for wildlife protection.

PRIVILEGES AND IMMUNITIES CLAUSE ANALYSIS

Article IV, § 2 of the United States Constitution provides in relevant part:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

This court has recently dealt with another challenge to a state enactment under the Privileges and Immunities Clause in *State v. Antonich*, Wyo., 604 P.2d 60, 61-62 (1985).

"An examination of a state enactment to determine its validity under the privileges-and-immunities clause involves a two-step analysis. First, the reviewing

1. The definition of resident for purposes of § 23-2-102(a)(iii) is found in § 23-1-102(a)(ix), W.S.1977, 1985 Cum.Supp:

"'Resident' means a United States citizen who has been a resident of Wyoming for not less

court must determine whether the statute burdens a fundamental right or activity, since only those 'privileges' and 'immunities' which bear upon the concept of interstate harmony fall within the scope and purpose of the clause. *United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden*, 465 U.S. 208, —, 104 S.Ct. 1020, 1027, 79 L.Ed.2d 249, 258-259 (1984); *Baldwin v. Fish and Game Commission of Montana*, 436 U.S. 371, 383-388, 98 S.Ct. 1852, 1860-1862, 56 L.Ed.2d 354 (1978); *Toomer v. Witsell*, 334 U.S. 385, 395-396, 68 S.Ct. 1156, 1161-1162, 92 L.Ed. 1460 (1948). Second, the court must examine the reasons for the discriminatory treatment to determine their validity and their relation to the degree of discrimination imposed by the statute. This portion of the test was developed by the United States Supreme Court in *Toomer v. Witsell*, supra:

" 'Like many other constitutional provisions, the privileges and immunities clause is not an absolute. It does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus the inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them. The inquiry must also, of course, be conducted with due regard for the principle that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures.' (Emphasis added.) 334 U.S. at 396, 68 S.Ct. at 1162.

than one (1) year and who has not claimed residency elsewhere for any purpose during that one (1) year period immediately preceding the date of application for a license, permit or certificate. * * *

Toomer court established that classifications based on non-citizenship can be unconstitutional.

"... unless there is something to indicate that non-citizens constitute a peculiar source of the evil at which the statute is aimed." 334 U.S. at 398, 68 S.Ct. at 1163."

Fundamental Right

In *State v. Antonich*, supra, the statute in issue was the Wyoming Preference Act of 1971, §§ 16-6-201 through 16-6-203, 1977 (October 1982 Replacement), which required contractors to employ available Wyoming laborers for public projects in preference to nonresident laborers. The State conceded, in *State v. Antonich*, supra, that the act burdened a fundamental right. 694 P.2d at 62. Here, the State claims that guiding, which is not a fundamental right but is "merely a recreational activity." We cannot agree with the State's conclusion.

"[T]he pursuit of a common calling is one of the most fundamental of those rights protected by the [Privileges and Immunities] Clause." *Supreme Court of Massachusetts v. Piper*, — U.S. —, 451 U.S. 1272, 1277 n. 9, 84 L.Ed.2d 205 (1981). The clause "has long been held to prohibit States' attempts to discriminate against nonresidents who seek to ply their trade interstate." *Id.* at 1281 (Rehnquist, concurring). The Supreme Court has repeatedly found that "'one of the privileges which the Clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that State.'" *Id.* at 1281 (quoting *Toomer v. Witsell*, 334 U.S. 395, 68 S.Ct. 1156, 1162, 92 L.Ed. 1466 (1948)). All of these statements make clear that pursuing a common calling, plying a trade, and doing business in another state are fundamental rights protected by the clause.

The State maintains that guiding is not any of the above activities but is, instead, a recreation. According to the State, guiding is rarely a sole means of livelihood for Wyomingites, and part-time seasonal hunting and fishing guiding may well be considered a recreational activity. The State relies on *Baldwin v. Fish and Game Commission of Montana*, 436 U.S. 371, 98 S.Ct. 1852, 56 L.Ed.2d 354 (1978), as support for this contention. In *Baldwin* the United States Supreme Court was confronted with the question of whether a hunting license fee seven and one-half times greater² for nonresidents than that charged for residents violated the Privileges and Immunities Clause. The Court stated:

"... [A] state's interest in its wildlife and other resources must yield when, without reason, it interferes with a nonresident's right to pursue a livelihood in a State other than his own, a right that is protected by the Privileges and Immunities Clause." 436 U.S. at 386, 98 S.Ct. at 1861.

However, the right to hunt for elk was no more than a chance to engage temporarily in a recreational activity in a sister state, and was not fundamental. Elk hunting was not a means of the nonresident's livelihood; there, the mastery of the animal and the trophy were the ends sought. *Baldwin v. Fish and Game Commission of Montana*, supra, 436 U.S. at 388, 98 S.Ct. at 1862.

Clearly the Supreme Court has held that the hunter is only engaging in a recreational activity and that receiving such an opportunity is not a fundamental right. On the other hand, pursuing a common calling, plying a trade, and doing business in another state are fundamental rights protected by the clause. The State would have this court hold that the guide is a hunter, not a businessperson.

[2] The question of whether "guiding" is within the ambit of a common calling, trade or business or whether it is merely recreational can be answered by reading

² The difference in fees was based on a combination license; the nonresident who wished to

hunt only elk paid 25 times as much as the resident. 436 U.S. at 374, 98 S.Ct. at 1855.

preserve, protect, and nurture the wild game—not an arbitrary power to make discriminatory laws affecting the hunting thereof.”

Likewise, the United States Supreme Court has noted that state ownership does not place a statute completely beyond the Privileges and Immunities Clause. *Hicklin v. Orbeck*, 437 U.S. 518, 529, 98 S.Ct. 2482, 2489, 57 L.Ed.2d 397 (1978). Speaking of a state's relation to its natural resources, the United States Supreme Court has stated that the ownership theory is but a fiction expressing in legal shorthand the importance to its people of a state's power to preserve and regulate the exploitation of an important resource.

“ * * * [T]here 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.” *Toomer v. Witsell*, supra, 334 U.S. at 402, 68 S.Ct. at 1165.

“ * * * [A] State's interest in its wildlife * * * must yield when, without reason, it interferes with a nonresident's right to pursue a livelihood in a State other than his own * * *.” *Baldwin v. Fish and Game Commission of Montana*, supra, 436 U.S. at 386, 98 S.Ct. at 1861.

We recognize the importance of scarce resources such as elk, moose and other game animals to both Wyoming and the entire country. The importance of the resource and the State's duty to use such resources for the benefit of its people cannot, however, change the fact that this statute discriminates against nonresidents when they have not been identified as a peculiar source of evil. We have previously said that classifications based on non-citizenship cannot stand

“ * * * unless there is something to indicate that non-citizens constitute a peculiar source of the evil at which the statute is aimed.” [*Toomer v. Witsell*, supra,] 334 U.S. at 398, 68 S.Ct. at 1163.” *State v. Antonich*, supra, 694 P.2d at 62.

Even if the State has pointed to a particular evil caused by nonresidents, the statute prohibiting all nonresidents from guiding in Wyoming does not precisely fit any evil identified. The Supreme Court of Montana dealt with a similar statute requiring outfitters to be residents of Montana. That court found that such classification did not even bear a reasonable relationship to a legitimate governmental interest. *Godfrey v. Montana State Fish & Game Commission*, supra. We believe that the statute in the present case burdens a fundamental right and so must overcome even a stricter test than that applied by the Montana court. A statute burdening a fundamental right “offends the privileges-and-immunities clause unless a close link exists between valid reasons for the Act and the discrimination practiced.” *State v. Antonich*, supra, 694 P.2d at 62. The statute fails to pass this test.

[4] Section 23-2-402(a)(iii) burdens a fundamental right. Because it does so and because the degree of discrimination does not bear a close relation to any of the State's asserted reasons for the discriminatory treatment, we hold that the statute violates the Privileges and Immunities Clause of Art. IV, § 2 of the United States Constitution.

Remanded for further proceedings consistent with this opinion.

ROONEY, Justice, dissenting, with whom BROWN, Justice, joins.

I agree with the general law set forth in the majority opinion, but I do not believe that we have sufficient facts before us upon which to apply such law. Accordingly, the opinion in this case is an advisory one and, thus, is improper. The matter should be remanded to the district court for the purpose of an evidentiary hearing to establish the facts, if such exist, upon which a determination of a constitutional question will be dispositive.

Rule 52(c), W.R.C.P., provides:

“In all cases in which a district court reserves an important and difficult constitutional question arising in an action

or proceeding pending before it, the district court before sending the question to the Supreme Court for decision, shall (1) dispose of all necessary and controlling questions of fact and make special findings of fact thereon, and (2) state its conclusions of law on all points of common law and of construction, interpretation and meaning of statutes and of all instruments necessary for a complete decision of the case. No constitutional question shall be deemed to arise in an action unless, after all necessary special findings of fact and conclusions of law have been made by the district court, a decision on the constitutional question is necessary to the rendition of final judgment. The question reserved shall be specific, and shall identify the constitutional provision to be interpreted. The special findings of fact and conclusions of law required by this subdivision of this rule shall be deemed to be a final order from which either party may appeal, and such appeal may be considered by the Supreme Court simultaneously with the reserved question."

Pursuant to this subsection, the district court must dispose of all necessary and controlling questions of fact and state its conclusions of law on all points of construction, interpretation and meaning of statutes. *Griffith ex rel. Workmen's Compensation Department v. Stephenson*, Wyo., 494 P.2d 546 (1972); *Harding v. State*, Wyo., 478 P.2d 64 (1970).

The power of the Supreme Court to decide reserved constitutional questions does not authorize the court to render advisory opinions. *State v. Rosachi*, Wyo., 549 P.2d 318 (1976); *Tobin v. Pursel*, Wyo., 539 P.2d 361 (1975).

In this case, the certification from the district court contains a section captioned "Statement of Facts," but it is no more than a recital of the previous procedure in the matter; i.e., plaintiff submitted his application for a guide license to the game warden; it was refused because plaintiff was not a resident of Wyoming as required by statute; the refusal of the game warden

was appealed to the Wyoming Game and Fish Commission; the commission, after consultation with the Attorney General's office, supported the decision of the game warden; an appeal of the administrative ruling to the district court resulted in affirmance of the decision of the Wyoming Game and Fish Commission; plaintiff filed a declaratory judgment action; and the question before us was certified to this court. The trial court did not make any conclusions of law.

The record also contains findings by the trial court which recite:

"THIS MATTER having come before the Court upon the Stipulation of the parties to reserve a constitutional question to the Wyoming Supreme Court pursuant to the provisions of Rule 52(c) of the Wyoming Rules of Civil Procedure, the Court does find as follows:

"1. The parties have stipulated to all necessary and controlling questions of fact;

"2. The only question of law necessary for a complete decision of the case is the constitutional question being reserved to the Wyoming Supreme Court;

"3. A decision on the constitutional question is necessary to the rendition of final judgment."

However, the only stipulation in the record reads:

"The parties to this matter hereby stipulate that it is appropriate to reserve the constitutional question presented herein to the Supreme Court of the State of Wyoming and, for that reason, that Petitioner's Motion to that effect should be granted by the Court without further hearing."

The complaint for the declaratory judgment also makes only a recital of previous procedures taken in the case. Through denials, the answer places in issue the refusal by the Wyoming Game and Fish Commission to accept plaintiff's request for a guide license. The majority opinion reflects the undecided factual issue.

"Powell claims that the statutory scheme which requires a guide to be a resident of Wyoming for not less than one year restricts *his* fundamental constitutional right to pursue *his* chosen means of livelihood, establishes a discriminatory scheme which does not bear a close relation to a valid interest of the State,¹¹ and relies upon a durational residency requirement. Thus, Powell contends that the statute is fatally deficient.

"The State, on the other hand, maintains that 'guiding' is not a fundamental right, but is instead merely a recreational privilege and that restricting that privilege to residents is a valid exercise of the State's police power. The State also urges that because protection of wildlife lies peculiarly within the ambit of the State's police power, we must give the legislature great latitude in determining what means are appropriate for wildlife protection." (Emphasis added and footnote omitted.)

The factual condition behind these two contentions has not been resolved.

There is no finding by the trial court that guiding is plaintiff's "chosen means of livelihood." Plaintiff's application for a guide license (attached to the complaint) reflects that he will guide for Bolten Ranch Outfitters and that he has "4 years hunting experience on private ranches in Wyoming, where I will be working." The obvious fact questions then are whether the "working" is other than "guiding," and, if no, what the "means of livelihood" is during the time other than that in the short hunting season each year.

Included in the correspondence presented during the review of the administrative action was a letter from plaintiff's attorney to the senior assistant attorney general in which it was represented that plaintiff was "involved in the 'blue print' business" in Idaho Falls, Idaho. It also stated that he " * * * spends a considerable amount of his time (upwards of six months each year) in the State of Wyoming actively

involved in hunting and fishing activities which he pursues for compensation. * * *

The question is not whether plaintiff has been violating the law for the past activities pursued for compensation, but whether plaintiff desires the guide license as a means of livelihood. The "business of guiding for any consideration or compensation" as recited in the statute does not mean that one receiving a guide license is using it to provide his livelihood. He may never actually use it, or he may use it primarily as a recreational activity which provides a little "pocket money." Many people use an avocation as a recreational activity. If plaintiff is doing so here, he is not concerned with a fundamental right and lacks the required standing to test the constitutionality of the statute. We should have the facts in this respect before addressing the issue certified to us. Perhaps such facts would make proper the result reached by the majority opinion. Justice White wrote in an opinion concurring in the result in *Supreme Court of New Hampshire v. Piper*. — U.S. —, 105 S.Ct. 1272, 1281, 84 L.Ed.2d 205 (1985):

"Respondent Piper lives only 400 yards from the New Hampshire border. She has passed the New Hampshire bar and intends to practice law in New Hampshire. Indeed, insofar as this record reveals, the only law office she will maintain is in New Hampshire. But because she will commute from Vermont rather than reside in New Hampshire, she will not be allowed to practice in the latter state.

"I have no doubt that the New Hampshire residency requirement is invalid as applied to respondent Piper. Except for the fact that she will commute from Vermont, she would be indistinguishable from other New Hampshire lawyers. There is every reason to believe that she will be as able as other New Hampshire lawyers to maintain professional competence, to stay abreast of local rules and procedures, to be available for sudden hearings, and to satisfy any require-

1. The majority opinion refers to defendants as

the "State."

ments of a member of the New Hampshire bar to perform pro bono and volunteer work. It does not appear that her nonresidency presents a special threat to any of the state's interests that is not shared by lawyers living in New Hampshire. Hence, I conclude that the Privileges and Immunities Clause forbids her exclusion from the New Hampshire bar. "The foregoing is enough to dispose of this case. I do not, and the Court itself need not, reach out to decide the facial validity of the New Hampshire residency requirement. I would postpone to another day such questions as whether a state may constitutionally condition membership in the New Hampshire bar upon maintaining an office for the practice of law in the state of New Hampshire.

"I concur in the judgment invalidating the New Hampshire residency requirement as applied to respondent Piper." (Emphasis added.)

We do not pass on constitutional questions until matters of fact or of statutory construction which may dispose of the case have been decided by the trial court. *Boode v. Allied Mutual Insurance Company*, Wyo., 458 P.2d 653 (1969); *McFarland v. City of Cheyenne*, 48 Wyo. 86, 42 P.2d 413 (1935); *In re Gillette Daily Journal*, 44 Wyo. 226, 11 P.2d 265 (1932), as supplemented by 45 Wyo. 173, 17 P.2d 665 (1933).

Finally, I direct attention to the nature of this action, which is one for a declaratory judgment. This fact does not circumvent the proscription against advisory opinions or the requirement of justiciable controversy. *Aetna Casualty and Surety Company v. Langdon*, Wyo., 624 P.2d 240 (1981); *Witzenburger v. State ex rel. Wyoming Community Development Authority*, Wyo., 577 P.2d 1386 (1978), *Police Protective Association of Casper v. City of Casper*, Wyo., 575 P.2d 1146 (1978).

I would return this case to the district court for reception of evidence and findings thereon relative to the need on the part of plaintiff for a guide license to enable him

to exercise his fundamental right to earn a livelihood rather than a desire on his part to use it primarily to further his recreational activity. I would refuse to answer the certified question in a vacuum. After the facts have been determined by the trial court, the question can properly be certified.



George DOTSON, Appellant
(Defendant),

v.

The STATE of Wyoming,
Appellee (Plaintiff).

No. 85-134.

Supreme Court of Wyoming.

Jan. 8, 1986.

Defendant was found guilty and sentenced in the justice of the peace court for knowingly making a false statement and document required for sale and transfer of a motor vehicle, and he appealed. The District Court, Park County, John T. Dixon, J., affirmed the judgment, and defendant appealed. The Supreme Court, Guthrie, J., Retired, held that fact that prosecutor who prosecuted defendant was not a member of the state bar, even though he was acting as deputy county attorney, did not justify granting relief from judgment.

Affirmed.

1. Criminal Law §1163(1)

Defendant who seeks relief from criminal conviction based on alleged errors has burden of establishing that the errors prejudiced him. Rules Crim.Proc., Rule 49(a); Justice and Municipal Courts Criminal Rule 23(g)(1).

the entire record and are convinced the defendant was afforded fair, complete, and unbiased hearings on his sentence and motion. In its judgment and sentence the trial court recommended that psychiatric treatment be given defendant if needed. We are certain this recommendation will be given proper consideration by those charged with the administration of the penitentiary and State Hospital, taking into account the method of accomplishing any such needs as shall reasonably protect the interests of the public.

The judgment and sentence of the trial court is affirmed.

Affirmed.

McCLINTOCK, J., was not a member of this court at the time of oral argument, and he therefore did not participate in the consideration or decision of the case.



Karl W. SCHAHEL, a/k/a Karl Schakel,
Appellant (Defendant below),

v.

The STATE of Wyoming, Appellee
(Plaintiff below).

No. 4200.

Supreme Court of Wyoming.
Aug. 27, 1973.

Holder of nonresident deer license was convicted before the District Court, Albany County, Vernon G. Bentley, J., of hunting deer on national forest lands without guide and he appealed. The Supreme Court, Guthrie, J., held that statute prohibiting any person not the owner of a resident license or permit from hunting certain animal species on national land within the State unless accompanied by a licensed guide did not operate to preserve or pro-

tect wildlife or promote the safety of hunters and constituted a denial of equal protection.

Reversed and remanded with directions.

McClintock, J., did not participate.

1. Constitutional Law ⇨46(1)

Question of whether statute under which defendant had been convicted was unconstitutional was not moot even though statute had been repealed after defendant's conviction as judgment of conviction had been entered and general savings clause permitted it to be carried into effect. W. S.1957, § 8-21; Sec. 23-54, W.S.1957, C. 1967.

2. Criminal Law ⇨1134(3)

Question of validity of judgment is moot when judgment cannot be carried into effect.

3. Constitutional Law ⇨208(3)

State cannot discriminate against citizens of other states merely because of their citizenship.

4. Game ⇨3½

State is not the owner of wildlife within State but holds such wildlife as trustee; thus, State is not free to attach any conditions to hunting of such wildlife as it desires but has only the power and duty to preserve, protect and nurture the wild game, not an arbitrary power to make discriminatory laws affecting the hunting thereof. Sec. 23-54, W.S.1957, C. 1967.

5. Constitutional Law ⇨230(1)

Game ⇨4

Statute prohibiting any person not the owner of a resident license or permit from hunting certain animal species on national land within State unless accompanied by licensed guide did not operate to preserve and protect wildlife or promote safety of hunters and, therefore, was not within police power of the State but, rather, denied nonresident hunters equal protection. Sec. 23-54, W.S.1957, C. 1967; Const. art. 21, § 26; Wilderness Act, § 2(c), 16 U.S.C.A. §

1131(c); U.S.C.A.Const. art. 1, § 8; art. 4, § 2; art. 6, cl. 1 et seq., Amend. 14.

John E. Stanfield, Smith, Stanfield & Mendicino, Laramie, for appellant.

Clarence A. Brimmer, Atty. Gen., Donald H. Hall, Sp. Asst. Atty. Gen., Cheyenne, for appellee.

Before PARKER, C. J., and McEWAN, GUTHRIE, and McINTYRE, JJ.

Mr. Justice GUTHRIE delivered the opinion of the court.

This appeal is from a judgment against the appellant, finding him guilty of violating § 23-54, W.S.1957.¹ The sole question raised is the constitutionality of that section.

Schakel, who had purchased a nonresident deer license, was arrested on October

6, 1972, while hunting deer on National Forest lands without a guide. In all other particulars he was complying with the regulations as they govern hunting. Schakel was a resident of Colorado, although he owned substantial properties in Wyoming and had owned property here for some years. He was well acquainted with this area.

Schakel moved to dismiss the original complaint in justice of the peace court upon the basis of the unconstitutionality of this statute. This motion was overruled, and when no other evidence was submitted in his defense the court entered its finding of guilty and assessed a fine of \$100 and \$4 in costs. Upon appeal to the district court Schakel again raised the question of the constitutionality thereof and introduced his testimony and that of Dewey Henderson, Deputy Supervisor of the Wyoming Game and Fish Commission for the district

1. " * * * It shall be unlawful for any person who is not the owner of a resident license or permit lawfully authorizing the same to hunt, pursue or kill, or attempt to hunt, pursue or kill any elk, deer, bear, moose or mountain sheep on any land within any national forest, national park or national game refuge within the boundaries of the State of Wyoming, any part of which is open to the hunting of deer, elk, moose or mountain sheep at any time during the calendar year in which said hunting is done, unless accompanied by a licensed guide; provided, however, that parties of two or more such persons hunting together need not be accompanied by more than one licensed guide for each two such persons. " * * * No such licensed guide shall be required for not more than two non-residents hunting together when accompanied without compensation or gratuity by a resident of the State of Wyoming who is the owner of a resident big game license and a resident guiding permit. A resident guiding permit shall be issued, without charge and without bond, by the Cheyenne office or by any district supervisor or by any resident deputy game warden of the Wyoming game and fish commission to any resident of Wyoming owning a big game license in effect if and when such resident shall make and file an affidavit stating the names and ad-

dresses of not more than two non-resident hunters to be guided, the game to be hunted, the area in which they will hunt, and that such resident has not received nor will accept directly or indirectly any remuneration whatsoever. A resident guide shall not guide more than two non-residents in each calendar year regardless of the number of resident guiding permits issued to him in each calendar year.

" * * * A resident landowner may guide non-resident hunters on land owned by or deeded land leased to such resident landowner without any guide license or permit, or authorize non-residents to hunt without a guide on land owned by or deeded land leased to such resident landowner.

" * * * Any person convicted of guiding or hunting contrary to the provisions of this section or of violating or permitting the violation of any of the game and fish laws of the state while acting as a guide, shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) or imprisoned in the county jail for not less than thirty (30) days nor more than three (3) months and it shall be mandatory on the part of the commission to revoke said resident guiding permit and refuse to issue a further permit for the succeeding year."

covering Albany, Platte, Goshen, Laramie, and the eastern half of Carbon Counties.

Although other constitutional questions were raised in the motion, appellant argues and relies only upon the Fourteenth Amendment and Art. 4, § 2, Art. 1, § 8, and Art. 6 of the Constitution of the United States, and Art. 21, § 26 of the Wyoming Constitution.

[1, 2] The State suggests that this matter is moot because § 23-54 has been repealed in its entirety and replaced with ch. 249, § 3, S.L. of Wyoming, 1973. This is not moot because of the judgment heretofore entered herein and the effect of our general savings clause, § 8-21, W.S.1957. The test is as set out in *Belondon v. State, Wyo.*, 379 P.2d 828, 829, and cases cited therein, which recognized that a judgment is moot when it cannot be carried into effect—unlike this judgment. This appeal is in no particular changed or modified by such repeal and the amended statute, which was not before the trial court nor is it before us. We will not consider the provisions thereof as they do not apply herein. There might be some inference drawn that the legislature recognized certain weaknesses in this statute by the inclusion of all big game or trophy animals, which now include antelope, and the inclusion of wilderness areas in such enactment.

The State contends that Schakel has no constitutional right herein which has been infringed upon or denied. This position is based upon two premises, i. e., that the State being the owner of the wildlife is free to attach any such conditions it desires, and that a hunting license is a mere boon or privilege with the apparent inference there is no limit upon the power to attach conditions thereto. We have heretofore held that the validity of game and fish laws is subject to examination under the limitations of police power, *Cross v. State, Wyo.*, 370 P.2d 371, 374, 93 A.L.R.2d 1357.

[3] The State, conceding that proper classification is essential to the constitu-

tionality of the statute, suggests that because this law applies equally to all nonresidents and appellant was not treated any differently than other nonresidents, this is not discriminatory. This does not end judicial inquiry but still leaves a burden upon the court to decide if the classifications created by the statute are proper in accomplishing their purpose under the equal protection clause, *McLaughlin v. State of Florida*, 379 U.S. 184, 85 S.Ct. 283, 288, 13 L.Ed.2d 222, on remand, *Fla.*, 172 So.2d 460, and *Carrington v. Rash*, 380 U.S. 89, 85 S.Ct. 775, 778, 13 L.Ed.2d 675, on remand, *Tex.*, 389 S.W.2d 945. The State cannot discriminate against citizens of other states merely because of their different citizenship, *Toomer v. Witsell*, 334 U.S. 385, 68 S.Ct. 1156, 1162, 92 L.Ed. 1460, rehearing denied, 335 U.S. 837, 69 S.Ct. 12, 93 L.Ed. 389.

[4] This law must be viewed as having been exercised under the general police power and in furtherance of the preservation, nurture, and management of the wildlife of the State, and that the State holds as a trustee rather than as owner of such wildlife. We have so held insofar as the waters of this State are concerned under our constitutional provision declaring waters to be the property of the State, *Merrill v. Bishop*, 74 Wyo. 298, 287 P.2d 620, 625, and *Lake De Smet Reservoir Company v. Kaufmann*, 75 Wyo. 27, 292 P.2d 482, 486. We think this most persuasive in face of the fact that the ownership theory as it affects wildlife is merely statutory. This trust relationship would give the State the power and the duty to preserve, protect, and nurture the wild game—not an arbitrary power to make discriminatory laws affecting the hunting thereof.

We have heretofore noted that police power is not unlimited but that it is subject to the limitations of due process, *State v. Langley*, 53 Wyo. 332, 84 P.2d 767, 770, and *Cross v. State*, supra. In the case of *Bulova Watch Company v. Zale Jewelry Company, Wyo.*, 371 P.2d 409, 417, while

recognizing the large scope of police power, we clearly delineated certain necessary requirements for its validity:

" * * * the means adopted for its exercise must be reasonable and designed to accomplish the end in view; that the purposes for which the police power is invoked must have relation to the public weal, must be within the scope and in furtherance of that power, and the means adopted must be reasonable and appropriate for the accomplishment of and have a substantial connection with the end in view; * * *"

Under these clear guidelines and the record in this case we must examine this statute.

[5] The record in this case and the only evidence presented in connection with the application of this statute was by an officer of the Game and Fish Commission and was directed to the question of proper management and control of wildlife in his district, and that testimony shows that the section herein attacked had created serious problems and caused over hunting on adjoining Bureau of Land Management lands and had resulted since 1964 in the serious depletion of deer in areas adjoining the National Forest. The deer herds in the Iron Mountain, the Shirley Mountain areas of Medicine Bow, and the Saratoga Valley next to the forest had been over harvested, and other parts of the areas had been under harvested as a result of the operation of this statute. The State offered no evidence in this area whatever, suggesting by argument only that if the law be held void a heavier kill may be shifted to the forest lands because nonresidents may not wish to secure permission to hunt on private land and suggested a possibility of overkill upon them. This is based solely on inference and in no manner upon any evidence. From the record here before us this statute has operated not to subserve the purposes of the preservation and protection of wildlife but to its detriment. This fails the test we have heretofore recognized in connection with police power that the means

adopted be reasonable and designed to accomplish the end in view and be appropriate for the accomplishment of this duty to protect and nurture the game, *Bulova Watch Company v. Zale Jewelry Company*, supra.

The State asserts another proposition to sustain this statute, which is the safety of the hunter. An examination of the statute demonstrates that it can have little if any relationship to such objective. The dangers to a hunter of antelope would seem as great as to a hunter of deer. We can see no manner in which it would be any less dangerous for an antelope hunter than a deer hunter in the same area at the same time. A wilderness area by its definition would be clearly a more dangerous area to one not acquainted with the area. See 16 U.S.C.A., ch. 23, § 1131(c), p. 178, 1973 Cum.P.P. Yet under this statute no guide would be required.

We think it also proper to judicially notice the fact that at least Sections 16 and 36 would be State lands lying within the boundaries of National Forests all over the State and that if safety were a prime factor these should have been included. The addition of the provision that any resident owner of a big game license may receive a guide license and guide two nonresident hunters without bond or without any qualifications whatsoever without remuneration therefor is impossible to reconcile with the theory of safety unless one indulges in the violent presumption that mere residence in this State makes a competent, knowing guide whether he be acquainted with the area or not. It may also be suggested that no reason appears why after two such guiding expeditions the resident licensed hunter would then become an incompetent guide and expose the third such nonresident hunter to danger.

This statute has been recognized as discriminatory in a most sensitive area, being confined in its operations to territory owned and administered by the federal government. This has not escaped the notice of the Public Land Review Commis-

JUNE 24, 1973

sion, which recommended the revision of such discriminatory differences between residents and nonresidents and styles them as unjustified in noticing this statute.²

Because this statute created a discriminatory classification and because the record in this case demonstrates that it did not reasonably tend to accomplish or have any substantial connection with any of the purposes stated by the State and it is not rea-

sonable and appropriate for the accomplishment of these ends, this statute was therefore void.

Reversed and remanded with an order to set aside the fine and costs which were charged to the defendant.

McCLINTOCK, J., was not a member of the court at the time of the hearing of this case and took no part in this decision.

2. One-Third of the Nation's Land: A Report to the President and to the Congress

by the Public Land Law Review Commission, pp. 174, 175 (June 20, 1970).

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HERRMANN

RECEIVED FEB - 1 1988

NAME: W.M. FRENCHY DE RUSHE'

TITLE:

ADDRESS: PO BOX 58018

CITY: FAIRBANKS

PHONE: 451-8304

ZIP: 99711

BILL NO:

SUBJECT: APPT. TO GUIDE BOARD

MESSAGE: I RECOMMEND YOU SUPPORT PETE BUIST FOR APPOINTMENT TO GUIDE BOARD.
KNOWLEDGEABLE; SENSIBLE; DEPENDABLE; PETE WILL AFFORD REPRESENTATION ON THE
BOARD FOR THE INTERIOR, AND WILL MOST CERTAINLY EXEMPLIFY THE POSITION.
EOM/MJD

POMID: 07150417

DATE: 02/01/88

TIME: 15:04:17

LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES REPRESENTATIVES

ADAMS	BARNES
BOUCHER	BOYER
BROWN	CATO
COLLINS	COTTEN
DAVIDSON	DAVIS
DOHLEY	ELLIS
FRANK	FURNACE
GOLL	GRUENBERG
GRUSSENDORF	HANLEY
HOFFMAN	HUDSON
KOPONEN	LARSON
MARTIN	MENARD
MILLER	NAVARRE
PEARCE	PETTYJOHN
PHILLIPS	POURCHOT
RIEGER	SHULTZ
SPRINGER	SUND
SWACKHAMMER	TAYLOR
ULMER	WALLIS
ZAWACKI	

KENNETH OWSICHEK vs STATE OF ALASKA, GUIDE LICENSING AND CONTROL BOARD

The case of Owsicheck vs State of Alaska, Guide Licensing and Control Board involves a broad challenge to the exclusive use guiding area system.

A decision on the case is pending in the Alaska Supreme Court. Final arguments have been made and the court has until approximately May 1st to do something. It is expected that a draft decision will be circulated at that time. A final decision will most likely be made sometime in the fall of 1988, however, the court has the prerogative to hold the case indefinitely.

The two main issues being addressed are:

1. Does state law relating to guiding, AS 08.54.040(7) or AS 08.54.195, violate article VIII, section 3, of the Alaska Constitution?

The section states:

"Whenever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

2. Did the guide board treat Owsicheck equally in applying its regulations?

HISTORY OF THE CASE

Kenneth Owsicheck applied for an area in 1976 but did not meet the Board's application criteria and so his application was denied. He reapplied in 1978, was found qualified based upon his history of guiding in a particular area and was assigned that area for his exclusive guiding use.

The application covered an extremely large area straddling the border of two units, 17 and 19. Based on his use of the area, evidence of its carrying capacity and the situations of the other guides in the vicinity the board granted Owsicheck the open portion of the application area. This area was comparable to other areas assigned to other guides and Owsicheck had hunted successfully there in the past.

He was not happy with the area and appealed the board's decision. He alleges that the statutes and regulations authorizing the area system are invalid and that even if the statutes and regulations are valid, the board somehow discriminated against him.

STATE OF ALASKA



GUIDE BOARD

CENTRALIZED LICENSING STATUTES, AS 08.01-AS 08.03
GUIDE BOARD STATUTES, AS 08.54
OCCUPATIONAL LICENSING REGULATIONS, 12 AAC 02.
GUIDE BOARD REGULATIONS, 12 AAC 38

REVISED EDITION

ATTENTION ALL GUIDES!

Please read this booklet thoroughly. It contains new statutes and regulations including

1. new centralized licensing statutes passed in 1987 (ch 49, SLA 1987);
2. statute changes made by the Legislature in 1986 (ch 71 SLA 1986);
3. the rearranging and renumbering of all Guide Board regulations; and
4. new regulations effective August 20, 1987, including 12 AAC 38.250(d), 12 AAC 38.260(g), 12 AAC 38.280(f) and 12 AAC 38.315.

Revised: July 1987

CENTRALIZED LICENSING ACT, AS 08.01

MISCELLANEOUS PROVISIONS, AS 08.02

REESTABLISHMENT OF REGULATORY BOARDS, AS 08.03

**CHAPTER 01
CENTRALIZED LICENSING**

Section

- 10. Applicability of chapter
- 20. Board organization
- 25. Public members
- 30. Quorum
- 35. Appointments
- 40. Transportation and per diem
- 50. Administrative duties of department
- 60. Application for license
- 65. Fees established by regulation
- 70. Administrative duties of boards
- 75. Disciplinary powers of the boards
- 80. Department regulations
- 87. Powers and duties of department
- 90. Applicability of the Administrative Procedure Act
- 100. License renewal, lapse and reinstatement
- 102. Citation for unlicensed practice
- 103. Procedure and form of citation
- 104. Failure to obey citation
- 105. Penalty for improper payment
- 110. Definitions

Sec. 08.01.010. Applicability of chapter. This chapter applies to the

- (1) Board of Public Accountancy (AS 08.04.010);
- (2) Board of Chiropractic Examiners (AS 08.20.010);
- (3) Board of Dental Examiners (AS 08.36.010);
- (4) Repealed by § 48 ch 94 SLA 1987;
- (5) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);
- (6) State Medical Board (AS 08.64.010);
- (7) Board of Nursing (AS 08.68.010);
- (8) Board of Examiners in Optometry (AS 08.72.010);
- (9) Board of Pharmacy (AS 08.80.010);
- (10) Board of Veterinary Examiners (AS 08.98.010);
- (11) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);
- (12) Board of Marine Pilots (AS 08.62.010);
- (13) Board of Dispensing Opticians (AS 08.71.010);
- (14) Guide Board (AS 08.54.010);
- (15) State Physical Therapy Board (AS 08.84.010);
- (16) Board of Nursing Home Administrators (AS 08.70.010);
- (17) regulation of professional geologists under AS 08.02.011;
- (18) Board of Barbers and Hairdressers (AS 08.13.010);
- (19) Athletic Commission (AS 05.05 and AS 05.10);
- (20) regulation of construction contractors under AS 08.18;
- (21) regulation of collection agencies under AS 08.24;
- (22) regulation of morticians under AS 08.42;
- (23) regulation of concert promoters under AS 08.92;
- (24) regulation of the practice of naturopathy under AS 08.45;
- (25) regulation of audiologists under AS 08.11;
- (26) regulations of hearing aid dealers under AS 08.55;
- (27) Real Estate Commission (AS 08.88.011).

Sec. 08.01.020. Board organization. Board members are appointed by the governor and serve at the pleasure of the governor. Unless otherwise provided, the governor may designate the chair of a board, and all other officers shall be elected by the board members. Unless otherwise provided, officers of a board are the chair and the secretary. A board may provide by regulation that three or more unexcused absences from meetings are cause for removal. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1987)

Sec. 08.01.025. Public members. No public member of a board may:

- (1) be engaged in the occupation which the board regulates;
- (2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or
- (3) have a direct financial interest in the occupation which the board regulates. (§ 1 ch 258 SLA 1976)

Sec. 08.01.030. Quorum. A majority of the membership of the board constitutes a quorum unless otherwise provided. (§ 1 ch 59 SLA 1966)

Sec. 08.01.035. Appointments. Members of boards subject to this chapter and members of the Real Estate Commission under AS 08.88 are appointed for staggered terms of four years. A member of a board serves until a successor is appointed. An appointment to fill a vacancy on a board is for the remainder of the unexpired term. A member who has served all or part of two successive terms on a board may not be reappointed to that board unless four years have elapsed since the person has last served on the board. (§ 3 ch 94 SLA 1987)

Sec. 08.01.040. Transportation and per diem. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180. (§ 1 ch 59 SLA 1966)

Sec. 08.01.050. Administrative duties of department. (a) The department shall perform the following administrative and budgetary services when appropriate:

- (1) collect and record fees;
- (2) maintain records and files;
- (3) issue and receive application forms;
- (4) notify applicants of acceptance or rejection as determined by the board or as determined by the department under AS 08.11 for audiologists, under AS 08.40 for electrical administrators, under AS 08.45 for naturopaths, or under AS 08.55 for hearing aid dealers;
- (5) designate dates examinations are to be held and notify applicants;
- (6) publish notice of examinations and proceedings;
- (7) arrange space for holding examinations and proceedings;
- (8) notify applicants of results of examinations;
- (9) issue licenses or temporary licenses as authorized by the board or as authorized by the department under AS 08.11 for audiologists, under AS 08.40 for electrical administrators, under AS 08.45 for naturopaths, or under AS 08.55 for hearing aid dealers;
- (10) issue duplicate licenses upon submission of a written request by the licensee attesting to loss of or the failure to receive the original and payment by the licensee of a fee established by regulation adopted by the department;

- (11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;
- (12) compile and maintain a current register of licensees;
- (13) answer routine inquiries;
- (14) maintain files relating to individual licensees;
- (15) arrange for printing and advertising;
- (16) purchase supplies;
- (17) employ additional help when needed;
- (18) perform other services that may be requested by the board;
- (19) provide inspection, enforcement, and investigative services to the boards and for the occupations listed in AS 08.01.010, regarding all licenses issued by or through the department;
- (20) retain and safeguard the official seal of a board and prepare, sign, and affix a board seal, as appropriate, for licenses approved by the board.

(b) The form and content of a license, authorized by a board listed in AS 08.01.010, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned.

(c) Repealed by § 49 ch 94 SLA 1987. (§ 1 ch 59 SLA 1966; am § 1 ch 102 SLA 1976; am § 39 ch 218 SLA 1976; am § 2 ch 258 SLA 1976; am §§ 1, 2 ch 49 SLA 1980; am § 1 ch 82 SLA 1980; am § 2 ch 141 SLA 1980; am § 1 ch 166 SLA 1980; am § 1 ch 48 SLA 1983; am § 3 ch 56 SLA 1986; am § 3 ch 131 SLA 1986; am §§ 4, 49 ch 94 SLA 1987)

Sec. 08.01.060. Application for license. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department. (§ 1 ch 59 SLA 1966)

Sec. 08.01.065. Fees Established by Regulation. (a) The department shall adopt regulations that establish the amount and manner of payment of application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by this chapter.

(b) The department may not adopt a regulation under (a) of this section unless the board responsible for regulating the affected occupation concurs.

(c) A fee established under this section should reflect, but should not exceed, the actual costs to the department of the activity for which the fee is charged except that the department may establish a fee that is less than the cost of the activity for which the fee is charged if the department determines that it is not reasonable to impose the full cost of the activity on the applicant or licensee.

(d) The commissioner of administration shall separately account for occupational licensing fees deposited in the general fund by the department. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the activities of the division of occupational licensing. (§ 2 ch 37 SLA 1985; am § 4 ch 138 SLA 1986; am § 3 ch 74 SLA 1987; am § 5 ch 94 SLA 1987)

Sec. 08.01.070. Administrative duties of boards. Each board shall perform the following duties in addition to those provided in its respective law:

- (1) take minutes and records of all proceedings;
- (2) hold a minimum of one meeting each year;
- (3) hold at least one examination each year;
- (4) request, through the department, investigation of violations of its laws and regulations;
- (5) prepare and grade board examinations;
- (6) set minimum qualifications for applicants for examination and license;
- (7) forward a draft of the minutes of proceedings to the department within 20 days after the proceedings;
- (8) forward results of board examinations to the department within 20 days after the examination is given;
- (9) notify the department of meeting dates and agenda items at least 15 days before meetings and other proceedings are held;
- (10) submit before the end of the fiscal year an annual performance report to the department stating the board's accomplishments, activities, and needs. (§ 1 ch 59 SLA 1966; am § 6 ch 94 SLA 1987)

Sec. 08.01.075. Disciplinary powers of boards. (a) A board may take the following disciplinary actions, singly or in combination:

- (1) permanently revoke a license;
- (2) suspend a license for a specified period;
- (3) censure or reprimand a licensee;
- (4) impose limitations or conditions on the professional practice of a licensee;
- (5) require a licensee to submit to peer review;
- (6) impose requirements for remedial professional education to correct deficiencies in the education, training, and skill of the licensee;
- (7) impose probation requiring a licensee to report regularly to the board on matters related to the grounds for probation;
- (8) impose a civil fine not to exceed \$5,000.

(b) A board may withdraw probationary status if the deficiencies that required the sanction are remedied;

(c) A board may summarily suspend a licensee from the practice of the profession before a final hearing is held or during an appeal if the board finds that the licensee poses a clear and immediate danger to the public health and safety. A person is entitled to a hearing before the board to appeal the

summary suspension within seven days after the order of suspension is issued. A person may appeal an adverse decision of the board on an appeal of a summary suspension of a court of competent jurisdiction.

(d) A board may reinstate a suspended or revoked license if, after a hearing, the board finds that the applicant is able to practice the profession with skill and safety.

(e) A board may accept the voluntary surrender of a license. A license may not be returned unless the board determines that the licensee is competent to resume practice and the licensee pays the appropriate renewal fee.

(f) A board shall seek consistency in the application of disciplinary sanctions. A board shall explain a significant departure from prior decisions involving similar facts in the order imposing the sanction. (§ 7 ch 94 SLA 1987)

Sec. 08.01.080. Department regulations. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

- (1) how an examination is to be conducted;
- (2) what is contained in application forms;
- (3) how a person applies for an examination or license. (§ 1 ch 59 SLA 1966)

Sec. 08.01.087. Powers and duties of department. (a) The department may, upon its own motion, conduct investigations to determine whether a person has violated a provision of this chapter or a regulation adopted under it, or a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010 the commissioner may, if the commissioner considers it in the public interest, and after notification of a proposed order or action by telephone or telegraph to all board members, if a board regulates the act or practice involved, unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or the commissioner's designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, an order issued under it, or with a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010;

(3) examine or have examined the books and records of a person whose business activities require licensure by a board listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010; the commissioner may require the person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents. (§ 3 ch 258 SLA 1976; am § 4 ch 56 SLA 1986; am § 4 ch 131 SLA 1986)

Sec. 08.01.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations adopted and proceedings held under this chapter, except those under AS 08.01.087(b). (§ 1 ch 59 SLA 1966; am § 4 ch 258 SLA 1976)

Sec. 08.01.100. License renewal, lapse and reinstatement. (a) Licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A license subject to renewal shall be renewed on or before the date set by the department. If the license is not renewed by the date set by the department, the license lapses. In addition to renewal fees required for reinstatement of the lapsed license, the department may impose a delayed renewal penalty, established by regulation, that shall be paid before a license that has been lapsed for more than 60 days may be renewed. The department may adopt a delayed renewal penalty only with concurrence of the appropriate board.

(c) When continuing education or other requirements are made a condition of license renewal, the requirements shall be satisfied before a license is renewed.

(d) Except as otherwise provided, a license may not be renewed if it has lapsed for five years or more. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1968; am § 3 ch 49 SLA 1980; am § 1 ch 56 SLA 1980; am § 1 ch 58 SLA 1980; am § 1 ch 75 SLA 1980; am § 1 ch 130 SLA 1980; am § 1 ch 162 SLA 1980; am § 2 ch 166 SLA 1980; am § 3 ch 37 SLA 1985; am §§ 8, 9, 10 ch 94 SLA 1987)

Sec. 08.01.102. Citation for unlicensed practice. The department may issue a citation for a violation of a license requirement of a board or profession listed in AS 08.01.010 if there is probable cause to believe a person has practiced a profession for which a license is required without holding the license. Each day a violation continues after a citation for the violation has been issued constitutes a separate violation. (§ 11 ch 94 SLA 1987)

AS 08.01.103. Procedure and form of citation. (a) A citation issued under AS 08.01.102 must be in writing. A person receiving the citation is not required to sign a notice to appear in court.

(b) The time specified in the notice to appear on a citation issued under AS 08.01.102 shall be at least five days, not including weekends and holidays, after the issuance of the citation, unless the person cited requests an earlier hearing.

(c) The department is responsible for the issuance of books containing appropriate citations, and shall maintain a record of each book issued and each citation contained in it. The department shall require and retain a receipt for every book issued to an employee of the department.

(d) The department shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. Upon its deposit with the court, the citation may be disposed of only by trial in the court or other official action taken by the magistrate, judge or prosecutor. The department may not dispose of a citation, copies of it, or of the record of its issuance except as required under this subsection and (e) of this section.

(e) The department shall require the return of a copy of every citation issued by the department and of all copies of a citation that has been spoiled or upon which an entry has been made and not issued to an alleged violator. The department shall also maintain, in connection with each citation, a record of the disposition of the charge by the court where the original or copy of the citation was deposited.

(f) If the form of citation includes the essential facts constituting the offense charged, and if the citation is sworn to as required under the laws of this state for a complaint charging commission of the offense alleged in the citation, then the citation when filed with a court having jurisdiction is considered to be a lawful complaint for the purpose of prosecution. (§ 11 ch 94 SLA 1987)

Sec 08.01.104. Failure to obey citation. Unless the citation has been voided or otherwise dismissed by the magistrate, judge, or prosecutor, a person who without lawful justification or excuse fails to appear in court to answer a citation issued under AS 08.01.102, regardless of the disposition of the charge for which the citation was issued, is guilty of a class B misdemeanor. (§ 11 ch 94 SLA 1987)

Sec. 08.01.105. Penalty for improper payment. An applicant shall pay a penalty of \$10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor. (§ 3 ch 258 SLA 1976)

Sec. 08.01.110. Definitions. In this chapter

- (1) "board" includes the boards and commissions listed in AS 08.01.010;
- (2) "department" means the Department of Commerce and Economic Development;
- (3) "commissioner" means the commissioner of commerce and economic development;
- (4) "license" means a license, certificate, permit, or registration or similar evidence of authority issued for an occupation or board listed in AS 08.01.010;
- (5) "licensee" means a person who holds a license;
- (6) "occupation" means a trade or profession listed in AS 08.01.010. (§ 1 ch 59 SLA 1966; am § 40 ch 218 SLA 1976; am § 5 ch 258 SLA 1976; am § 5 ch 56 SLA 1986; am § 5 ch 131 SLA 1986)

CHAPTER 02 MISCELLANEOUS PROVISIONS

Section

10. Professional designation requirements
11. Professional geologist
20. Limitation of liability for members of licensing boards

Sec. 08.02.010. Professional designation requirements. (a) An audiologist licensed under AS 08.11, a person licensed in the state as a chiropractor under AS 08.20, a dentist under AS 08.36, a medical practitioner or osteopath under AS 08.64, a registered nurse under AS 08.68, an optometrist under AS 08.72, a registered pharmacist under AS 08.80, a registered physical therapist under AS 08.84, or a psychologist under AS 08.86, shall use as professional identification appropriate letters or a title after that person's name which represents that person's specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays personal professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and uses the letters "M.D." or the title "doctor" or "physician" or another title that tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "naturopath", or the like.

(b) A person subject to (a) of this section who fails to comply with the requirements of (a) of this section shall be given notice of noncompliance by that person's appropriate licensing board. If, after a reasonable time, with opportunity for a hearing, the person's noncompliance continues, the board may suspend or revoke the person's license or registration, or administer other disciplinary action which in its determination is appropriate. (§ 1 ch 6 SLA 1973; am § 11 ch 6 SLA 1984)

Sec. 08.02.011. Professional geologist. The commissioner of commerce and economic development shall certify an applicant as a professional geologist if the applicant is certified as a professional geologist by the American Institute of Professional Geologists. (§ 2 ch 142 SLA 1980; AS 08.53.010)

Sec. 08.02.020. Limitation of liability for members of licensing boards and peer review committees. A person is not liable for damages or other relief in an action by reason of the person's performance of a duty, function, or activity as a member of a licensing board or peer review committee established to review a licensing matter, or by reason of a recommendation or action of the board or peer review committee when the person acts in the reasonable belief that the action or recommendation is warranted by facts known to the person or to the board or peer review committee after reasonable efforts to ascertain the facts upon which the action or recommendation is made. (§ 45 ch 102 SLA 1976; am § 12 ch 94 SLA 1987)

CHAPTER 03 TERMINATION, CONTINUATION AND REESTABLISHMENT OF REGULATORY BOARDS

Section

- 10. Termination dates for regulatory boards
- 20. Procedures governing termination, transition and continuation

Sec. 08.03.010. Termination dates for regulatory boards.

(a) Repealed by § 4 ch 14 SLA 1987.

(b) Repealed by § 4 ch 14 SLA 1987.

(c) The following boards have the termination date provided by this subsection:

- (1) Board of Nursing (AS 08.68.010)—June 30, 1991.
- (2) Board of Chiropractic Examiners (AS 08.20.010)—June 30, 1988
- (3) Board of Examiners in Optometry (AS 08.72.010)—June 30, 1988.
- (4) Board of Pharmacy (AS 08.80.010)—June 30, 1989.
- (5) Board of Dispensing Opticians (AS 08.71.010)—June 30, 1988.
- (6) Board of Dental Examiners (AS 08.36.010)—June 30, 1988.
- (7) Board of Veterinary Examiners (AS 08.98.010)—June 30, 1989.
- (8) State Physical Therapy Board (AS 08.84.010)—June 30, 1989.
- (9) Board of Nursing Home Administrators (AS 08.70.010)—June 30, 1990.
- (10) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010)—June 30, 1991.
- (11) State Medical Board (AS 08.64.010)—June 30, 1991.
- (12) Board of Marine Pilots (AS 08.62.010)—June 30, 1991.
- (13) Repealed by § 13 ch 6 SLA 1984.
- (14) Repealed by § 48 ch 94 SLA 1987.
- (15) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011)—June 30, 1988.
- (16) Board of Barbers and Hairdressers (AS 08.13.010)—June 30, 1989.
- (17) Board of Public Accountancy (AS 08.04.010)—June 30, 1988.
- (18) Real Estate Commission (AS 08.88.011)—June 30, 1991.
- (19) Board of Governors of the Alaska Bar Association (AS 08.08.040)—June 30, 1989.
- (20) Guide Board (AS 08.54.010)—June 30, 1988.

(d) Repealed by § 3 ch 78 SLA 1979.

(e) Repealed by § 3 ch 78 SLA 1979.

Sec. 08.03.020. Procedures governing termination, transition and continuation. (a) Upon termination, each board listed in AS 08.03.010 shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(b) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(c) a board scheduled for termination under AS 08.03.010—08.03.020 may be continued or reestablished by the legislature for a period not to exceed four years unless the board is continued or reestablished for a longer period under AS 08.03.010. (§ 2 ch 74 SLA 1979; am § 2 ch 36 SLA 1980; am § 2 ch 37 SLA 1980; am § 2 ch 38 SLA 1980; am § 2 ch 39 SLA 1980; am § 2 ch 40 SLA 1980; am § 2 ch 41 SLA 1980; am § 2 ch 42 SLA 1980; am § 2 ch 67 SLA 1980; am § 2 ch 87 SLA 1980)

GUIDE BOARD STATUTES, AS 08.54

CHAPTER 54. GUIDES.

Article

1. Guide Board (§§08.54.010—08.54.070)
2. Licensing (§§08.54.100—08.54.220)
3. General Provisions (§§ 08.54.230—08.54.240)

ARTICLE 1.
GUIDE BOARD

Section

10. Creation and membership of board
20. Appointment and term of office
30. Chairman of board
35. Quorum; voting requirement
40. Powers and duties
45. Special guide license
50. Board regulations
60. Board hearing
70. Compensation and expenses

Sec. 08.54.010. Creation and membership of board. For the purposes of licensing and regulating the activities of guides in the interest of the state's wildlife resources there is created the Guide Board consisting of seven members. No more than three members of the board shall hold or have held a registered, master, or class A assistant guide license. The other members must have a general knowledge of the game resources of the state and may not have a vested interest in the guiding industry. A minimum 10 years residence in the state is required for all members of the board. For administrative purposes, the board is in the Department of Commerce and Economic Development. (§ 1 ch 17 SLA 1973; am § 3 ch 71 SLA 1986)

Sec. 08.54.020. Appointment and term of office. The members of the board shall be appointed by the governor and confirmed by the legislature for staggered terms of three years or until their successors are appointed. A member may be removed at the pleasure of the governor. (§ 1 ch 17 SLA 1973; am § 4 ch 71 SLA 1986)

Sec. 08.54.030. Chairman of the board. The board shall elect one of its members as chairman. (§ 1 ch 17 SLA 1973)

Sec. 08.54.035. Quorum: voting requirement. Four members of the board constitute a quorum for the transaction of business, for the performance of a duty, and for the exercise of any power under this chapter. The board may not adopt a regulation, revoke, suspend, or deny renewal of a license, or assign, modify, or revoke a restricted guide area unless the action is approved by a vote of a majority of the full membership of the board. (§ 5 ch 71 SLA 1986)

Sec. 08.54.040. Powers and duties. (a) Except as provided in AS 08.54.045, the board shall

(1) prepare, grade and administer examinations, which may include oral examinations of applicants who demonstrate limited ability to read or write the English language;

(2) determine qualifications of applicants for licenses and authorize the issuance of licenses to those who qualify;

(3) establish guide performance standards and regulate activity;

(4) compile, maintain and publish an annual register of master and registered guides who have not been convicted of a violation of a state game or guiding statute or regulation; a guide listed in the register whose license is revoked or suspended shall be removed from the register while the guide's license is revoked or suspended;

(5) prohibit guiding activities which are unsportsmanlike, unethical, unsafe, against principles of conservation, degrading to the guiding profession, or which adversely affect the natural resources;

(6) after a hearing, revoke, suspend or deny renewal of a license in accordance with AS 08.54.200;

(7) establish a quota of licensed operating guides who may operate within designated geographical game units or subunits of the state and provide for an equitable and reasonable procedure for limiting the number of guides to that quota; preference shall be given to qualified available and willing licensed guides who reside within the designated game unit or subunit.

(8) meets at least twice annually, once in Anchorage and once in another municipality.

(b) Repealed by § 27 ch 31 SLA 1976 (§ 1 ch 17 SLA 1973; am § 1 ch 133 SLA 1976; am §§ 6, 27 ch 71 SLA 1986)

Sec. 08.54.045. Special guide license. The board may issue a special guide license to a person who applies to conduct a guided hunt for a specific species of marine mammal in a specifically designated area if the applicant

(1) is 21 years of age or older;

(2) has, for at least 10 years, resided and hunted in the area of the state in which the applicant is to guide;

(3) is able to perform the duties of a special guide;

(4) has demonstrated knowledge of the following areas to an extent and degree satisfactory to the board:

- (A) fish and game laws and regulations;

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

(C) field preparation of trophies;

(D) care of game meat;

(E) use of guiding gear;

(F) firearm safety;

(G) practical first aid;

(H) booking and contracting hunts;

(5) has not been convicted of a game or guiding law violation during the previous five years;

(6) has not been convicted of a crime involving moral turpitude. (§ 1 ch 17 SLA 1973; am § 7 ch 71 SLA 1986)

Sec. 08.54.050. Board regulations. The board shall adopt procedural and substantive regulations, under the Administrative Procedure Act (AS 44.62), required by this chapter or reasonably necessary for its administration. (§ 1 ch 17 SLA 1973)

Sec. 08.54.060. Board hearing. The Administrative Procedure Act (AS 44.62) applies to proceedings and hearings under this chapter. (§ 1 ch 17 SLA 1973)

Sec. 08.54.070. Compensation and expenses. Members of the board receive no salary, but are entitled to per diem and travel expenses authorized by law for other boards. (§ 1 ch 17 SLA 1973)

ARTICLE 2. LICENSING

Section

- 100. Qualifications for a master guide license
- 110. Qualifications for registered guide license
- 120. Qualifications for a class-A assistant guide license
- 130. Privileges and limitations of class-A assistant guide license
- 140. Qualifications for assistant guide license
- 141. Privileges and limitations of assistant guide license
- 142. [Repealed]
- 144. [Repealed]
- 146. [Repealed]
- 150. Responsibility of registered or master guide for violations
- 160. Licensing of marine mammal guides
- 170. License fees
- 180. Examination fee
- 185. [Repealed]
- 186. Registered guide examination
- 190. Failure to renew
- 195. Restricted guide areas
- 200. Discipline of licensees
- 210. Unlawful acts
- 220. Injunction against unlawful action

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

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

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

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

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

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

Sec. 08.54.110. Qualifications for registered guide license. (a) A person is entitled to be licensed as a registered guide if the person

(1) is 21 years of age or older;

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

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

- (4) has passed the qualification examination prepared and administered by the board;
 - (5) has demonstrated to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime involving moral turpitude;
 - (6) has legally hunted in the state during any five years in a manner directly contributing to the person's experience and competency as a guide;
 - (7) has been licensed as and performed the services of an assistant guide in the state for a part of each of three years, or has guided in the state for a part of each of three years under a special guide license issued under AS 08.54.045;
 - (8) submits a written recommendation to the board from a registered guide for whom the applicant has worked or from two registered guides; however, the requirements of this paragraph do not apply to a person who has guided under a special guide license for three years;
 - (9) is capable of performing the essential duties associated with guiding;
 - (10) has been favorably recommended in writing by two hunters that the person has guided or assisted in guiding during each year of the person's three years as an assistant guide, whose recommendations have been solicited by the board from a list provided by the applicant.
- (b) The commissioner of commerce and economic development may order that an applicant for an initial license under this section be allowed to take the license examination or be issued the license if, after reviewing a petition filed by the applicant, the commissioner finds that
- (1) the board denied the applicant an opportunity to take the license examination, or refused to approve issuance of the license;
 - (2) the board's denial or refusal has been upheld by a final administrative order, and the order has not been appealed to the superior court under AS 44.62.560;
 - (3) the board's denial or refusal was based on
 - (A) an error of fact by the board;
 - (B) the applicant's failure of the license examination due to faulty or unfair examination questions or procedures; or
 - (C) an erroneous or false statement in a recommendation submitted under (a)(8) of this section;
 - (4) the applicant is otherwise qualified to take the examination or to be issued the license; and
 - (5) sustaining the board's denial or refusal would work a substantial injustice on the applicant.
- (§ 1 ch 17 SLA 1973; am § 19 ch 67 SLA 1983; am §§ 8, 9 ch 71 SLA 1986)

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

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

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

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

(1) may not contract for hunts;

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

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

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

(1) is 19 years of age or more;

(2) Repealed by § 19 ch 67 SLA 1983.

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

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

(5) is in sound physical condition. (§ 1 ch 17 SLA 1973; am § 19 ch 67 SLA 1983)

Sec. 08.54.141. Privilege and limitations of assistant guide license. An assistant guide

(1) may not contract to conduct a guided hunt; and

(2) shall be employed and supervised by a registered or master guide at all times while the assistant guide is in the field on guided hunts. (§ 10 ch 71 SLA 1986)

Sec. 08.54.142. Qualifications for transporter license. Repealed by § 27 ch 71 SLA 1986.

Sec. 08.54.144. Restriction to transportation. Repealed by § 27 ch 71 SLA 1986.

Sec. 08.54.146. Transporter report. Repealed by § 27 ch 71 SLA 1986.

Sec. 08.54.150. Responsibility of registered or master guide for violations. A registered or master guide contracting for a hunt is equally responsible under AS 08.54.200 for a violation of a federal or state sport fish, game or guide statute or regulation committed by a class-A assistant guide or assistant guide while in the course of the class-A assistant guide's or assistant guide's employment. (§ 1 ch 17 SLA 1973)

Sec. 08.54.160. Licensing of marine mammal guides. The board may establish qualifications and issue licenses for marine mammal guides. (§ 2 ch 13 SLA 1983; am § 32 ch 37 SLA 1985)

Sec. 08.54.170. License fees. (a) The Department of Commerce and Economic Development shall set license fees under AS 08.01.065 for each of the following:

(1) master guide;

(2) registered guide;

- (3) class-A assistant guide;
- (4) assistant guide;
- (5) special guide.

(b) The license fee for a master guide, registered guide, special guide, class-A assistant guide, or assistant guide license is in addition to the fee required for a hunting license. (§ 1 ch 17 SLA 1973; am § 3 ch 106 SLA 1976 am § 4 ch 81 SLA 1984; am §§ 33, 54 ch 37 SLA 1985; am § 11 ch 71 SLA 1986)

Sec. 08.54.180. Examination fee. An applicant for a guide examination shall pay a fee established by regulations adopted under AS 08.01.065. (§ 1 ch 17 SLA 1973; am § 34 ch 37 SLA 1985)

Sec. 08.54.185. Additional fees. Repealed by § 27 ch 71 SLA 1986.

Sec. 08.54.186. Registered guide examination. The board shall administer the qualification examination required under AS 08.54.110 at least twice a year. An examination may not be given within 90 days after the previous exam. At least once every other year the board shall give the examination at a location other than Anchorage. (§ 12 ch 71 SLA 1986)

Sec. 08.54.190. Failure to renew. (a) Repealed by § 23 ch 81 SLA 1984.

(b) A license may not be issued to a class-A assistant guide or assistant guide who has failed to renew a license issued under this chapter for two consecutive years unless the class-A assistant guide or assistant guide again meets the qualifications for initial issuance of the license.

(c) A master or registered guide who fails to renew a license is not required to requalify under AS 08.54.100(2) or AS 08.54.110(8), respectively.

(d) A master guide, registered guide, special guide, class-A assistant guide, or assistant guide license expires biennially, on a date set by the Department of Commerce and Economic Development. (§ 1 ch 17 SLA 1973; am § 12 ch 127 SLA 1974; am § 4 ch 106 SLA 1976; am § 23 ch 81 SLA 1984; am § 13 ch 71 SLA 1986)

Sec. 08.54.195. Restricted guide areas. (a) Under AS 08.54.040(a)(7), the board may establish and assign restricted guide areas for master guides or registered guides. The board shall adopt regulations that establish uniform and consistent criteria, including a point system, to be used by the board when it establishes and assigns a restricted guide area.

(b) The board shall consider the following factors before it assigns a restricted guide area:

- (1) the extent to which the guide who has applied for the area has guided in the game management unit in which the area is located;
- (2) the extent to which the guide occupied and invested in the area;
- (3) the effects, including the economic effect, on other guides that would result from creation of the area;
- (4) big game population in the area;
- (5) the land ownership status of the area; and

(6) other relevant facts or circumstances.

(c) The board may adopt regulations limiting the number of clients with which a guide may contract for hunts in a restricted guide area used by more than one guide.

(d) Unless the board determines after a public hearing that it is not in the public interest to do so, the board may transfer a restricted guide area to a person qualified for assignment who has been recommended by the guide to whom the area is assigned, or by a person authorized to represent the guide, if the recommendation is made

(1) after five years have elapsed from the date of the assignment of the guide area; or

(2) during the first five years after the date of assignment and the guide has died or suffered a major disability, as defined by the board.

(e) A guide may not sell or lease a restricted guide area. A guide may sell or otherwise transfer a lodge, camp, or other lawful improvement to property located in a restricted guide area. Sales price may not exceed fair market value. (§ 14 ch 71 SLA 1986)

Sec. 08.54.200. Grounds for disciplining a licensee. (a) The board shall hold a hearing to determine whether a licensee should be disciplined within a reasonable time after (1) complaints concerning a licensee's guiding activities are filed with the board by three or more of the licensee's clients from separate parties; (2) a complaint concerning a guide's conduct during a life-threatening situation is filed with the board; or (3) a licensee has been convicted of a violation of a federal or state hunting or guiding statute or regulation. The board may hold a hearing to determine whether disciplinary action is necessary if a complaint concerning a licensee's guiding activities is filed with the board by a client of the licensee.

(b) After a hearing, the board may revoke, suspend, or deny renewal of a license, and may withdraw a licensee's restricted guide area assignment, if the board finds that the licensee

(1) engaged in unethical activity, unsafe activity, or activity that adversely effects the natural resources of the state when the activity is related to the purposes of the contract hunt; or

(2) violated a provision of a federal or state game or guide statute or regulation.

(c) After a hearing, the board shall revoke a license and shall withdraw a licensee's restricted guide area assignment if the board finds that the licensee

(1) does not meet the qualifications specified by statute or regulation for the class of license held;

(2) is incompetent as a master guide, registered guide, special guide, class-A assistant guide, or assistant guide;

(3) during the five years immediately preceding the hearing has been convicted of a violation of a federal or state statute or regulation prohibiting

(A) waste of a wild food animal;

(B) hunting on the same day airborne;

(C) hunting during a closed hunting season; or

(D) hunting in an area closed by federal regulation; or

(4) during the five years immediately preceding the hearing, has been convicted of two violations of a state statute or regulation prohibiting hunting in a restricted area not assigned to the licensee and without proper written permission.

(d) A person who is disciplined under this section may not engage in a guiding activity during the period of license revocation or disciplinary action. A person licensed under this chapter may not hire as a guide a person whose guide license is suspended or revoked under this section. A guide whose license is suspended or revoked may not guide in the employ of a person licensed under this chapter.

(e) If the board revokes a license it shall notify the Department of Revenue, and the person whose license has been revoked shall return the license to the Department of Commerce and Economic Development.

(f) If a certified copy of a judgment of conviction of a guide for an offense described under (c)(3) of this section, or for each of two offenses under (c)(4) of this section, is filed with the board, the board shall immediately suspend the guide's license. The suspension may be ordered even if the conviction resulted from a plea of nolo contendere or if the conviction is under appeal. The order remains in effect until after final disposition of the disciplinary proceeding under this section.

(g) A certified copy of a judgment of conviction of a guide for an offense is conclusive evidence of the commission of that in a disciplinary proceeding instituted against the guide under this section based on that conviction.

(h) Within 30 days after a hearing under this section, the board shall notify the complainant of the results of the hearing, including written reasons justifying a decision not to take disciplinary action. If the board decides not to hold a discretionary hearing, the board shall give the complainant written notice of its reasons within 30 days after making the decision.

(i) In this section "two violations of a state statute or regulations" means two violations of a single statute or a single regulation, or violations of two statutes or two regulations, or one violation of a statute and one violation of a regulation. (§ 1 ch 17 SLA 1973; am § 2 ch 43 SLA 1975; am § 5 ch 106 SLA 1976; am § 47 ch 218 SLA 1976; am §§ 15—19 ch 71 SLA 1986)

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

(1) a master guide, registered guide, special guide, class-A assistant guide, or assistant guide to fail to timely report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, a violation of a state fish, game, or guiding statute or regulation that the guide reasonably believes was committed by a client or an employee of the guide;

(2) a guide, to commit or aid the commission of a violation of this chapter or of a state game or guiding statute or regulation or to permit the commission of a violation that the guide knows or reasonably believes is being or will be committed without attempting to prevent it, short of using force, and without reporting it;

(3) a person to guide without having a current valid guide license and resident * hunting license in actual possession;

(4) a person to advertise as or represent to be a guide, without holding a current valid guide license;

(5) a guide to intentionally obstruct or hinder or attempt to obstruct or hinder lawful hunting engaged in by a person who is not a client of the guide;

* The Department of Law has determined the "resident" requirement in AS 08.54.210(a)(3) and (a)(6) is unconstitutional, therefore this requirement is not enforced.

(6) a person to guide without being validly licensed as a guide under this chapter and as a resident * hunter under AS 16;

(7) an assistant guide to contract to conduct a guided hunt;

(8) an assistant guide to be in the field on a guided hunt except while employed and supervised by a registered or master guide.

(b) A person who violates (a)(1)-(5) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both, and the person's license may be revoked for a period up to five years. However, a person who engages in guiding activity during the period for which the person's license is suspended or revoked under this chapter, or who violates (a)(6) - (8) of this section, is guilty of a felony punishable, upon conviction, by a fine of not more than \$5,000 and by imprisonment for not less than one year nor more than three years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding activity engaged in during the period of suspension or revocation may be seized by persons authorized to enforce this chapter and may be forfeited to the state as provided under AS 16.05.195. (§ 1 ch 17 SLA 1973; am §§ 3, 4 ch 43 SLA 1975; am § 6 ch 106 SLA 1976; am § 3 ch 133 SLA 1976; am §§ 5, 6 ch 268 SLA 1976; am §§ 20, 21 ch 71 SLA 1986)

Sec. 08.54.220. Injunction against unlawful action. When in the judgment of the board a person or corporation or other entity has engaged in an act in violation of AS 08.54.130 and AS 08.54.200-08.54.210 or the regulations promulgated under them, the board may apply to the appropriate court for an order enjoining the act. Upon a showing by the board that the person is engaging in the act, the court shall grant injunctive relief or other appropriate order without bond. (§ 1 ch 17 SLA 1973; am § 5 ch 43 SLA 1975)

ARTICLE 3 GENERAL PROVISIONS

Section

230. Records of guided hunts

240. Definitions

Sec. 08.54.230. Records of guided hunts. The Department of Commerce and Economic Development shall collect and maintain records of hunts conducted by guides. The department shall make the records available to state and federal agencies charged with the enforcement of statutes and regulations relating to guiding or game if requested for enforcement purposes. For all other purposes, the records are confidential and are not subject to inspection or copying under AS 09.25.110—09.25.121. (§ 22 ch 71 SLA 1986)

Sec. 08.54.240. DEFINITIONS. In this chapter

(1) "big game" means brown bear, grizzly bear, polar bear, caribou, moose, black bear, bison, Sitka blacktail deer, elk, mountain goat, musk-ox, wolf, wolverine, mountain or Dall sheep, and walrus;

(2) "board" means the Guide Board;

(3) "guide," or "guiding" means accompanying or directing a hunter in the field, personally or through an assistant, for compensation or with the intent or an agreement to receive compensation, while the hunter or the person accompanying or directing the hunter spots, stalks, pursues, tracks, kills, or attempts to kill big game; in this paragraph, "in the field" does not include being present in a boat with living quarters or at a lodge or base camp;

* *The Department of Law has determined the "resident" requirement in AS 08.54.210(a)(3) and (a)(6) is unconstitutional, therefore this requirement is not enforced.*

(4) "resident" has the meaning given in AS 16.05.940;

(5) "restricted guide area" is a geographical area of the state the boundaries of which are determined by the board, and in which guided hunts may be conducted only by the guides to whom the area is assigned under AS 08.54.195;

(6) "unethical activity" means

(A) deception or misrepresentation involving prospective or actual clients either before, during, or following a contract hunt, including misrepresentation through private or public advertising of the type, duration, cost or conditions of the contract hunt;

(B) making a guaranty that a species or certain number of species of game will be taken on a contract hunt;

(C) engaging in unsafe or unsportmanlike activities that are detrimental to the game resources of the state, as defined by regulations of the board, including violations of state hunting or guiding statutes or regulations; or

(D) accepting a deposit for guiding services without providing before the hunt a signed contract to provide the services. (§ 1 ch 17 SLA 1973; am §§ 7, 8 ch 106 SLA 1976; am § 2 ch 133 SLA 1976; am § 19 ch 67 SLA 1983; am § 23 ch 71 SLA 1986)

OCCUPATIONAL LICENSING REGULATIONS
12 AAC 02

Title 12. PROFESSIONAL AND VOCATIONAL REGULATIONS

Part 1. Boards and Commissions Subject to Centralized Licensing (12 AAC 04—12 AAC 72)

Part 1 Boards and Commissions Subject to Centralized Licensing

Chapter

- 02. Department of Commerce and Economic Development, Division of Occupational Licensing (12 AAC 02.010—12 AAC 02.900)
04. Board of Public Accountancy (12 AAC 04.005—12 AAC 04.430)
06. Athletic Commission (12 AAC 06.010—12 AAC 06.990)
08. (Repealed)
09. Board of Barbers and Hairdressers (12 AAC 09.005—12 AAC 09.915)
16. Board of Chiropractic Examiners (12 AAC 16.010—12 AAC 16.910)
20. Collection Agency Board (No regulations filed)
21. Construction Contractors (12 AAC 21.010—12 AAC 21.300)
24. (Repealed)
28. Board of Dental Examiners (12 AAC 28.010—12 AAC 28.990)
30. Board of Dispensing Opticians (12 AAC 30.010—12 AAC 30.050)
32. Board of Electrical Examiners (12 AAC 32.010—12 AAC 32.990)
36. State Board of Registration for Architects, Engineers and Land Surveyors (12 AAC 36.010—12 AAC 36.250)
38. Guide Licensing (12 AAC 38.010—12 AAC 38.190)
40. State Medical Board (12 AAC 40.010—12 AAC 40.990)
44. Board of Nursing (12 AAC 44.010—12 AAC 44.940)
46. Board of Nursing Home Administrators (12 AAC 46.010—12 AAC 46.900)
48. Board of Examiners in Optometry (12 AAC 48.010—12 AAC 48.080)
52. Board of Pharmacy (12 AAC 52.010—12 AAC 52.900)
54. State Physical Therapy Board (12 AAC 54.010—12 AAC 54.940)

- 56. Board of Marine Pilots (12 AAC 56.010—12 AAC 56.990)
60. Board of Psychologist and Psychological Associate Examiners (12 AAC 60.010—12 AAC 60.900)
64. Real Estate Commission (12 AAC 64.010—12 AAC 64.950)
68. Board of Veterinary Examiners (12 AAC 68.010—12 AAC 68.900)
72. (Deleted)

CHAPTER 2 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT DIVISION OF OCCUPATIONAL LICENSING

Article

- 1. Collection of Fees (12 AAC 02.010—12 AAC 02.030)
2. Occupational Licensing Fees (12 AAC 02.100—12 AAC 02.270)
3. General Provisions (12 AAC 02.900)

ARTICLE 1 COLLECTION OF FEES

Section

- 10. Licensing and renewal fees
20. Prorating renewal fees
30. Prorating initial renewal fees

12 AAC 02.010. LICENSING AND RENEWAL FEES. (a) The department will collect fees and issue receipts for licensing and for license renewal for the boards listed in AS 08.01.010.

(b) The department will not issue a license or renew a license unless the applicable fees established in AS 08 dealing with one of the boards listed in AS 08.01.010 have been collected and a receipt has been prepared.

(c) Except as otherwise provided in 12 AAC, applications for initial licensure or renewal of license will be considered filed as of the date stamped on the document, when it is received in the division office.

(d) Except as otherwise provided in 12 AAC, an incomplete application, and supporting documentation for initial licensure, or renewal of a license, will be considered abandoned after one year from the date of the last correspondence in the file.

Ref

(e) An application fee is not refundable. (Eff. 10/2/81, Reg. 80; am 12/5/84, Reg. 92)

Authority: AS 08.01.050
AS 08.01.060
AS 08.01.080
AS 08.01.100

shall pay the entire license fee, and shall , half of the prescribed renewal fee at the ti. renewal;

(3) more than 24 months before the date date by which the license must be renewed, the applicant shall pay the entire prescribed renewal fee at the time of renewal.

12 AAC 02.020. PRORATING RENEWAL FEES.

The department will prorate the first license renewal fees following initial licensure, in accordance with 12 AAC 02.030. All renewal fees, including penalty and delinquent fees must be paid by the licensee applying for renewal of a license, except as provided for in 12 AAC 02.030 (a)(1) and (b)(1). (Eff. 10/2/81, Reg. 80; am 12/5/84, Reg. 92)

Authority: AS 08.01.050
AS 08.01.080
AS 08.01.100

(c) The department will not prorate renewal fees if the initial licensing fee is \$100.00 or less.

(d) The department will not prorate fees for applications, examinations, reexaminations, credential review or investigations, temporary or emergency permits, locum tenens permits, certificates or other such fees prescribed by statute, or by regulation, of one of the boards listed in AS 08.01.010. (Eff. 10/2/81, Reg. 80; am 3/28/82, Reg. 81; am 12/5/84, Reg. 92)

Authority: AS 08.01.080
AS 08.01.100

12 AAC 02.030. PRORATING INITIAL RENEWAL FEES. (a) When the department issues an initial biennial license

(1) within the 30 days before the date by which it must be renewed, the applicant shall pay the entire license fee but is not required to pay the prescribed renewal fee until the second renewal date;

(2) within the 12 months before the date by which the license must be renewed, the applicant shall pay the entire license fee, and shall pay one-half of the prescribed renewal fee at the time of renewal or

(3) more than 12 months before the date by which the license must be renewed, the applicant shall pay the entire license fee, and shall pay the entire prescribed renewal fee at the time of renewal.

(b) When the department issues a quadrennial initial license

(1) within the 60 days before the date by which the license must be renewed, the applicant shall pay the entire license fee but is not required to pay the prescribed renewal fee until the second renewal date;

(2) within 24 months before the date by which the license must be renewed, the applicant

**ARTICLE 2
OCCUPATIONAL LICENSING FEES**

Section

- 100. Fees established by department
- 105. Administrative fees
- 230. Guide board

12 AAC 02.100. FEES ESTABLISHED BY DEPARTMENT. The fees established in this chapter have been adopted by the department with the concurrence of the applicable board or commission listed in AS 08.01.010. (Eff. 3/6/86, Reg. 97)

Authority: AS 08.01.065

12 AAC 02.105. ADMINISTRATIVE FEES. Except as otherwise provided in this chapter for a particular board or occupation, the following fees apply to all boards and professions listed in AS 08.01.010.

- (1) duplicate license fee, \$5;
- (2) fee for verification or certification to another state of Alaska license or registration, \$5;
- (3) name change, except for construction contractors, \$5;
- (4) photocopy fee, \$.25 per page;
- (5) returned check fee, \$20;
- (6) penalty for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days, \$20;
- (7) exam postponement fee, \$20; and
- (8) duplicate wall certificate fee, \$20. (Eff. 9/27/86, Reg. 99; am 11/20/86, Reg. 100)

Authority: AS 08.01.065
AS 08.01.100

12 AAC 02.230. GUIDE BOARD. The following fees are established

- (1) application fee, \$30;
- (2) guide examination fee, \$25;
- (3) master guide license fee, for all or part of a biennial license period, \$240;

(4) registered guide license, for all or part of a biennial license period, \$240;

(5) class-A assistant guide license, for all or part of a biennial license period, \$50;

(6) assistant guide license, for all or part of a biennial license period, \$50; and

(7) transporter license, for all or part of a biennial license period, \$50. (Eff. 3/6/86, Reg. 97)

Authority: AS 08.01.010(14)
AS 08.01.065
AS 08.54.170
AS 08.54.180

**ARTICLE 3
GENERAL PROVISIONS**

Section

900. Definitions

12 AAC 02.900. DEFINITIONS. As used in this chapter .

(1) "department" means the Department of Commerce and Economic Development;

(2) "division" means the division of occupational licensing, Department of Commerce and Economic Development;

(3) "license" means a license, certificate, permit, registration or similar evidence of authority issued by the division or by one of the boards listed in AS 08.01.010;

(4) "licensee" means person who holds a license issued by the division or by one of the boards listed in AS 08.01.010. (Eff. 12/5/84, Reg. 92)

Authority: AS 08.01.050
AS 08.01.080
AS 08.01.100

GUIDE BOARD REGULATIONS, 12 AAC 38

INTRODUCTION TO
TABLES OF COMPARATIVE SECTIONS

On December 1, 1986 the Department of Commerce and Economic Development recodified Title 12, Chapter 38, of the Alaska Administrative Code (AAC) relating to the Guide Board in an effort to make the chapter easier to use by both the Guide Board and the general public and to allow for the future adoption of new sections. The standard codifying procedure used in the AAC has been retained. History notes under the sections in their new location carry forward the history in their former location.

For the convenience of the reader, two tables of comparative sections are set out below. The first table sets out the old 12 AAC 38 section numbers in the first column and the new location in the second column. The second table reverses the order.

TABLE OF COMPARATIVE SECTIONS

Previous Reference Number	New Reference Number
12 AAC 38.010	12 AAC 38.015
12 AAC 38.020	12 AAC 38.900
12 AAC 38.030	12 AAC 38.005
12 AAC 38.040	12 AAC 38.200
12 AAC 38.050	12 AAC 38.050
12 AAC 38.051	12 AAC 38.210
12 AAC 38.052	12 AAC 38.250
12 AAC 38.053	12 AAC 38.220
12 AAC 38.054	12 AAC 38.260
12 AAC 38.055	12 AAC 38.270
12 AAC 38.056	12 AAC 38.280
12 AAC 38.057	12 AAC 38.230
12 AAC 38.058	12 AAC 38.290
12 AAC 38.060	12 AAC 38.240
12 AAC 38.070	12 AAC 38.300
12 AAC 38.080	12 AAC 38.310
12 AAC 38.090	12 AAC 38.320
12 AAC 38.100	12 AAC 38.330
12 AAC 38.110	12 AAC 38.340
12 AAC 38.120	12 AAC 38.350
12 AAC 38.130	12 AAC 38.130
12 AAC 38.140	12 AAC 38.025
12 AAC 38.150	12 AAC 38.035
12 AAC 38.155	12 AAC 38.065
12 AAC 38.156	12 AAC 38.075
12 AAC 38.160	12 AAC 38.360
12 AAC 38.170	12 AAC 38.370
12 AAC 38.175	12 AAC 38.380
12 AAC 38.180	12 AAC 38.390
12 AAC 38.190	12 AAC 38.990

REVERSE TABLE OF COMPARATIVE SECTIONS

New Reference Number	Previous Reference Number
12 AAC 38.005	12 AAC 38.030
12 AAC 38.015	12 AAC 38.010
12 AAC 38.025	12 AAC 38.140
12 AAC 38.035	12 AAC 38.150
12 AAC 38.050	12 AAC 38.050
12 AAC 38.065	12 AAC 38.155
12 AAC 38.075	12 AAC 38.156
12 AAC 38.130	12 AAC 38.130
12 AAC 38.200	12 AAC 38.040
12 AAC 38.210	12 AAC 38.051
12 AAC 38.220	12 AAC 38.053
12 AAC 38.230	12 AAC 38.057
12 AAC 38.240	12 AAC 38.060
12 AAC 38.250	12 AAC 38.052
12 AAC 38.260	12 AAC 38.054
12 AAC 38.270	12 AAC 38.055
12 AAC 38.280	12 AAC 38.056
12 AAC 38.290	12 AAC 38.058
12 AAC 38.300	12 AAC 38.070
12 AAC 38.310	12 AAC 38.080
12 AAC 38.320	12 AAC 38 th 090
12 AAC 38.330	12 AAC 38.100
12 AAC 38.340	12 AAC 38.110
12 AAC 38.350	12 AAC 38.120
12 AAC 38.360	12 AAC 38.160
12 AAC 38.370	12 AAC 38.170
12 AAC 38.380	12 AAC 38.175
12 AAC 38.390	12 AAC 38.180
12 AAC 38.900	12 AAC 38.020
12 AAC 38.990	12 AAC 38.190

**CHAPTER 38
GUIDE LICENSING**

Article

1. License Requirements
(§§12 AAC 38.005—12 AAC 38.130)
2. Guiding Area Permits
(§§12 AAC 38.200—12 AAC 38.290)
3. Professional Conduct
(§§12 AAC 38.300—12 AAC 38.390)
4. General Provisions
(12 AAC 38.900—12 AAC 38.990)

**ARTICLE 1
LICENSE REQUIREMENTS**

Section

05. Licenses
15. Examinations
25. [Deleted]
35. Requirements for a master guide license
50. [Repealed]
65. Requirements for a marine mammal guide license
75. Requirements for assistant marine mammal guide license
130. [Repealed]

12 AAC 38.005. LICENSES. (a) A person must purchase his registered guide license within one year of passing the guiding examination or his eligibility lapses.

(b) An application for a guide license shall be made to the Division of Occupational Licensing, Department of Commerce, P.O. Box D, Juneau, Alaska 99811. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

12 AAC 38.015. EXAMINATIONS. (a) The application for a guide examination must be made at least five months before the examination date on a form provided by the board. The application for examination shall include a listing of all hunters the applicant has guided or assisted in guiding during his apprenticeship and a letter of recommendation from any registered or master guide for whom he has worked.

(b) Guide examinations will be administered by the board or its authorized representatives at times and places as announced by the board.

(c) The registered guide examination will consist of a written and an oral portion. Successful completion of the written portion is a prerequisite to eligibility to take the oral portion. The registered guide examination will be designed to reveal the qualifications of the candidate to engage in guiding in the district of his choice. However, an applicant who, because of a language barrier, is unable to read and competently understand the English language may be excused from taking the written examination, and may be issued a license based on successful completion of the oral portion of the examination and demonstration of the applicant's capabilities and experience. Failure to achieve a passing score of at least 80 percent on either the written or oral portion of the examination constitutes a failure of the entire examination. A candidate receiving a failing score is eligible to be reexamined at the next available date of examination, and must retake both the written and oral portions of the examination unless excused from the written portion as provided in this subsection.

(d) A person contesting the results of any portion of the registered guide examination shall direct his appeal and the grounds for it in writing to the Chairman, Guide Licensing and Control Board, Department of Commerce and Economic Development, Division of Occupational Licensing, P.O. Box D, Juneau, Alaska 99811, within 30 days after written notice was personally served or mailed to the applicant. (Eff. 6/26/74, Reg. 50; am 6/15/80, Reg. 74; am 3/28/82, Reg. 81; am 11/21/84, Reg. 92)

Authority: AS 08.54.040(a)(1) & (2)
AS 08.54.050

12 AAC 38.025. REQUIREMENT FOR A REGISTERED GUIDE LICENSE. Deleted 8/20/87.

Editor's Note: This section, formerly designated 12 AAC 38.140, was deleted from Reg. 103 on 8/20/87 by the Department of Law under AS 44.62.125(b)(6) and AS 01.05.031(b)(11) because in §8 ch 71 SLA 1986, the Legislature repealed the board's previous authority under former AS 08.54.110(12) to require additional qualification of applicants for registered guide licenses.

12 AAC 38.035. REQUIREMENTS FOR A MASTER GUIDE LICENSE. In addition to the requirements of AS 08.54.100, to be qualified for a master guide license a person must have acted as a registered guide for 12 consecutive years. (Eff. 6/18/74, Reg. 50)

Authority: AS 08.54.050
AS 08.54.100(5)

12 AAC 38.050. REGISTRATION OF MAIN CAMP.
Repealed 5/12/78.

12 AAC 38.065. REQUIREMENTS FOR A MARINE MAMMAL GUIDE LICENSE. (a) To help provide economic opportunity for residents of rural coastal Alaska who engage in subsistence uses of marine mammals, the board will, in its discretion, issue a marine mammal guide license to an applicant who meets the following criteria:

- (1) is at least 21 years old;
- (2) has legally hunted marine mammals during each of at least ten years, in a manner directly contributing to his experience and competency as a marine mammal guide;
- (3) is physically able to perform the services of a marine mammal guide;
- (4) demonstrates to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime of moral turpitude;
- (5) passes a qualification examination approved by the board and administered by the board or its agent, which covers the following areas:
 - (A) fishing, hunting, and guiding regulations;
 - (B) relevant characteristics of marine mammals;
 - (C) relevant characteristics of the ice, ocean, currents, and weather;
 - (D) field preparation of trophies;
 - (E) care of meat;
 - (F) firearms safety;
 - (G) practical first aid;

(H) photography; and

(I) booking and contracting guided hunts.

(b) A marine mammal guide will be authorized only to contract for and conduct guided hunts for species of marine mammals and in geographic areas of the state designated by the board.

(c) No marine mammal guide may contract for, or guide, more than two hunters in the field on any one hunt.

(d) A marine mammal guide must comply with AS 08.54 and 12 AAC 38. (Eff. 10/15/82, Reg. 84)

Authority: AS 08.54.040(a) and (b)
AS 08.54.050

12 AAC 38.075. REQUIREMENTS FOR ASSISTANT MARINE MAMMAL GUIDE LICENSE. (a) To help provide economic opportunity for residents of rural coastal Alaska who engage in subsistence uses of marine mammals, the board will, in its discretion, issue an assistant marine mammal guide license to an applicant who meets the following criteria:

- (1) is at least 19 years old;
- (2) has legally hunted marine mammals during each of at least seven years, in a manner directly contributing to his experience and competency as an assistant marine mammal guide;
- (3) is physically able to perform the duties of an assistant marine mammal guide; and
- (4) demonstrates to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime of moral turpitude.
 - (b) No assistant marine mammal guide may
 - (1) book or contract for a guided marine mammal hunt;
 - (2) conduct a guided hunt for marine mammals; or
 - (3) guide for a marine mammal, unless under the immediate supervision of a licensed marine mammal guide. (Eff. 10/15/82, Reg. 84)

Authority: AS 08.54.040(a) and (b)
AS 08.54.050

12 AAC 38.130. REQUIREMENTS FOR AN ASSISTANT GUIDE LICENSE. Repealed 5/12/79.

ARTICLE 2 GUIDING AREA PERMITS

Section.

- 200. Restrictions to districts
- 210. Guiding area permits
- 220. Application and qualification for guiding area permit
- 230. Minimum use of guiding area permit
- 240. Statement of financial remuneration
- 250. Use of a guiding area assigned to another guide
- 260. Reassignment of guiding area permit
- 270. Death or mental incapacity of guiding area permit holder
- 280. Changes to guiding area permits
- 290. Ground for revocation or suspension of a guiding area permit

12 AAC 38.200. RESTRICTION TO DISTRICTS. (a) A guide may conduct guiding activities only in districts for which he is certified.

(b) Twenty-six guide districts are established and defined as being identical to those areas described as game management units by the Board of Fish and Game in 5 AAC 90.010, as of January 1, 1974, with the addition of the following subdistrict:

(1) repealed 6/15/80;

(2) repealed 6/6/79;

(3) 27—Arctic Coastal, consisting of all land, including islands, and waters within the jurisdiction of the State of Alaska extending seaward from a point one mile inland from the mean high tide line north of 58 North latitude, beginning at the mouth of the King Salmon River near Egegik and extending northward around the western and northern Alaska coastline to the eastern boundary of District 26. This district is designated for the hunting of marine mammals exclusively. "Marine mammals" means those mammals identified by the Alaska Board of Game as marine mammals.

(c) A guide licensed under AS 08.54 as of June 28, 1974 is restricted to certification to guide in those districts for which he was certified on that date. A guide licensed or entitled to renewal under AS 08.54 as of April 11, 1980 and certified in Districts 18, 18A, 22, 23, or 26 is hereby certified for Unit 27.

(d) Except as provided in (c) above, no guide may be certified for more than three districts, in addition to District 27.

(e) A master guide or registered guide may serve as a class-A assistant guide in districts for which he is not certified.

(f) Notwithstanding any provision of this section, a guide may petition the board for a transfer of certification to another district if he demonstrates to the satisfaction of the board

(1) that he will incur substantial hardship if a transfer is not permitted as evidenced by

(A) substantial land withdrawals from hunting within his district;

(B) significant reclassifications of land within his district;

(C) depletion of game as evidenced by actions of the Department of Fish and Game; or

(D) other demonstrations of hardship; and

(2) that he is qualified to guide in the district to which he wishes to be transferred. (Eff. 6/28/74, Reg. 50; am 2/25/77, Reg. 61; am 6/6/79, Reg. 70; am 6/15/80, Reg. 74; am 3/28/82, Reg. 81)

Authority: AS 08.54.040(3) and (6)
AS 08.54.050

12 AAC 38.210. GUIDING AREA PERMITS. (a) Guiding area permits will be issued by the board to guides qualifying under 12 AAC 38.220 and 12 AAC 38.260 for exclusive or joint use of a specified area in order to limit the number of guides allowed to guide for big game animals in that area.

(b) The board will determine the size, boundaries and number of guiding areas assigned to a master or registered guide and is not limited by number or boundaries of guide districts that may be included. In determining the size and boundaries of a guiding area, the board will consider, but is not limited to, the following criteria:

(1) size and boundaries applied for by the guide applicant;

(2) abundance and distribution of game populations in the area and adjacent areas that may be affected, and the ability of these populations to sustain hunting pressures;

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(3) Repealed.

(4) value and location of applicant's investments in the area;

(5) likely impact of the applicant's guiding business on other guides in joint use or in adjacent areas;

(6) applicant's past use of and experience in the area;

(7) applicant's local residency;

(8) availability of alternative areas and applicant's dependence on guiding in the requested area;

(9) effect of hunting and land use regulations in that area.

(c) Each guiding area will be assigned a unique identification code.

(d) Notwithstanding any other provisions of this section, no new exclusive guiding area permits will be issued for District 27, as defined in 12 AAC 38.200(a)(3); however, this subsection does not affect valid existing guiding area permits issued for Nunivak Island before March 1, 1981.

(e) An applicant who is aggrieved by a board decision regarding the size or boundaries of a guiding area is entitled to a hearing under AS 44.62.370 to review the board's action; a hearing must be requested within 15 days after the guide receives written notice of the board's action. (Ef. 5/12/78, Reg. 66; am 6/27/81, Reg. 78; am 11/21/84, Reg. 92)

Authority: AS 08.54.040(a)(3), (6) & (8)
AS 08.54.050

12 AAC 38.220. APPLICATION AND QUALIFICATION FOR GUIDING AREA PERMIT. (a) An applicant for initial issuance of a guiding area permit must, at the time of application and at the time the application is reviewed by the board, be a registered or master guide in good standing and must be certified in the district or districts in which the applied for guiding area is located. If civil or criminal charges for violation of a state or federal sport fish, game, or guiding law or regulation are pending against a guide at the time

the board is to review the application, the board may defer action on the application until conclusion of the civil or criminal action.

(b) In order to be considered, an applicant must submit to the board, on or before the published deadline, an application which describes the proposed geographic boundaries of the guiding area being applied for and a 1:250,000 scale map showing the proposed boundaries.

(c) Each application must include satisfactory documentation of the applicant's past use, occupancy, or financial investment in the guiding area applied for. The application may include other relevant information if it is substantiated by satisfactory documentation.

(d) The board will, in its discretion, issue a permanent guiding area permit to a qualified applicant who can substantiate his use, occupancy, or financial investment in the guiding area for at least three of the five years immediately preceding the published deadline for filing the application for that particular unit. The board will, in its discretion, issue a temporary guiding area permit to a qualified applicant who can substantiate his use, occupancy or financial investment in the guiding area for at least two of the five years immediately preceding the published deadline for filing the application for that particular unit. In determining whether to issue a guiding area permit, the board will give preference to qualifying guides whose permanent residence is within the district in which the area is located and will consider criteria including the following:

(1) ability of the area to sustain an additional guided hunting operation, in terms of game populations, terrain, methods of hunting, and use by other guides or hunters; and

(2) amount of investments in the applied for area, and length of use in the district.

(e) The holder of a temporary guiding area permit may apply for a permanent permit after one additional year of use, in the temporary guiding area.

(f) The board will not issue to a master or registered guide more than three exclusive or joint use guide area permits, either on a temporary or permanent basis.

(g) In this section "use" means conducting guided hunts as a registered or master guide in the district in which the applied for area is located, as evidenced by statements of financial remuneration submitted under 12 AAC 38.240(b). (Eff. 5/12/78, Reg. 66; am 10/15/82, Reg. 84)

Authority: AS 08.54.040(a)
AS 08.54.050

12 AAC 38.230. MINIMUM USE OF GUIDING AREA. Each holder of a guiding area permit must be a currently licensed guide and must conduct at least two contracted big game hunts during each calendar year within each guiding area, as evidenced by statements of financial remuneration filed in accordance with 12 AAC 38.240. The board will, in its discretion, require any other documentation to demonstrate that the contracts were fulfilled. If, in any calendar year, the holder of a guiding area permit fails to conduct two guided big game hunts in that guiding area, the permit holder must submit to the department by January 31 of the following calendar year, a written statement explaining the failure to use the area. Failure to conduct at least two guided big game hunts each calendar year in the guiding area as required by this section constitutes grounds for revocation of the guiding area permit, unless the permit holder can demonstrate to the satisfaction of the board that circumstances beyond the permit holder's control precluded conducting the required hunts. (Eff. 5/12/78, Reg. 66; am 6/27/81, Reg. 78; am 11/21/84, Reg. 92)

Authority: AS 08.54.040(a)(3), (6) & (8)
AS 08.54.050

12 AAC 38.240. STATEMENT OF FINANCIAL REMUNERATION. (a) Before hunting with a client, a guide shall complete or have completed a statement of financial remuneration or "SFR" in triplicate on a form provided by the board for this purpose, and shall state

- (1) that financial or material remuneration for services was received;
- (2) the dates of the contract hunt;
- (3) the species to be hunted for and
 - (A) the client's hunting license number;
 - (B) the big game tag numbers, by species;

(C) the harvest ticket numbers, by species;

(4) the signature of the guide area permit holder, if applicable;

(5) the legal signatures of the guide contracting the hunt and of the client.

(6) the typed or printed names and addresses of the guide and the client;

(7) the guiding area permit unique identifying code assigned under 12 AAC 38.210, or if an open area, the Game Management Unit number.

(b) The original of the statement required in (a) of this section must be sent to the department within 21 days after completion of the hunt.

(c) The guide is responsible for furnishing one copy of the statement to the client.

(d) One copy of the statement must be filed in camp for the duration of the hunt, and after that, at the guide's regular place of business for four years, and must be produced for inspection upon request by an agent of the department or anyone authorized under AS 16 to enforce game regulations.

(e) Statements of financial remuneration as well as other supporting documentation regarding guide/client contractual agreements which are maintained on file by the department will be considered confidential information requiring a court order for production to a person or an agency other than the Guide Board.

(f) Statements of financial remuneration cancelled before a hunt must be reported to the department within 21 days after the date of cancellation. (Eff. 6/28/74, Reg. 50; am 5/12/78, Reg. 66, am 11/21/84, Reg.92)

Authority: AS 08.54.050

12 AAC 38.250. USE OF GUIDING AREA ASSIGNED TO ANOTHER GUIDE. (a) No guide may contract for or conduct a guided big game hunt in an exclusive guiding area not assigned to him by the board without first obtaining written permission from the guide to whom the guiding area is assigned.

(b) No guide may conduct a guided big game

hunt in a joint use guiding area not assigned to him by the board without first obtaining written permission from each joint use permit holder.

(c) As used in this section, the "written permission" must include the following information:

- (1) dates for which the permission is valid;
- (2) species and number of big game animals to be hunted;
- (3) date permission is signed and signature of each person holding a permit for the area.

(d) A copy of the written permission required in (a) and (b) of this section must, at all times during the hunt, be carried on the person of the guide conducting the hunt or in the base camp from which the hunt is conducted, and a copy must also be carried on the person of each employee of the master or registered guide to whom the permission was given. The permission must be written on the statement of financial remuneration required by 12 AAC 38 to be filed for that hunt.

(e) No guide may lease or rent a guide area to another guide for monetary or material gain. The only lawful reasons for allowing use of another's area are the following:

(1) the guide seeking to grant permission to another is unable to conduct a contracted hunt due to physical or mental incapacity;

(2) a state or federal law or regulation adopted not more than nine months before the date of proposed use has closed or otherwise restricted hunting in the guiding area of the guide seeking use of another's area, making guiding in his own area infeasible; or

(3) migration or movement of caribou out of a guide's own area necessitates guiding in another's area.

(f) Each guide who gives written permission to another to use his exclusive or joint use guiding area, may be held equally responsible with the guide receiving the permission, in a hearing before the board for revocation of the permit, for any violations in or misuse of the guiding area committed during the time authorized in the written permission. (Eff. 5/12/78, Reg. 66; am 10/11/81, Reg. 80; am 10/15/82, Reg. 84; am 6/16/85, Reg. 94; am 8/20/87, Reg. 103)

Authority: AS 08.54.040(a)
AS 08.54.050

12 AAC 38.260. REASSIGNMENT OF GUIDING AREA PERMIT. (a) Guiding area permits are not transferable by the permit holder. The board will, in its discretion, reassign a guiding area permit

(1) upon the death of the permit holder or on a judicial determination that the permit holder is mentally incompetent;

(2) upon revocation or suspension of a guiding area permit;

(3) if the permit holder voluntarily relinquishes the guiding area permit; and

(4) upon application for reassignment.

(b) Under (a)(4) of this section, a permit holder may apply to the board for reassignment of his or her guiding area permit to a designated master or registered guide; the application must be made jointly by the permit holder and the designated master or registered guide. Approval of the reassignment will be given only upon a finding by the board, after notice and opportunity for a hearing, that the designated registered or master guide is qualified to guide in the area, is certified in the district or districts in which the applied for guiding area is located, and that the reassignment is consistent with the public interest. The board will consider the designated master or registered guide's past use, occupancy, or financial investment in the guiding area and other relevant and reliable information in determining whether the designated master or registered guide is qualified.

(c) Except as otherwise provided in this chapter, an applicant for a guiding area permit which is to be reassigned must meet the requirements of 12 AAC 38.220(a) and make application in the manner prescribed for initial issuance of a guiding area permit.

(d) If an applicant cannot establish past use of the guiding area to be transferred or is not certified in the district or districts in which the guiding area is located, the board will consider experience and current use in another area of similar terrain if the applicant can establish to the satisfaction of the board that he or she is competent because of other relevant factors to conduct guiding activities in the guiding area.

(e) The board will consider the recommendations of the prior holder of the guiding area permit to be reassigned and will, in areas of joint use, consider the recommendations of the other holders of permits for the guiding area.

(f) When an area has been revoked or suspended under (a)(2) of this section, the area is closed to all guided hunting until it is reassigned.

(g) The board will, in its discretion and consistent with AS 08.54.040 and 12 AAC 38.210, adjust a guiding area permit when reassigning that permit. (Eff. 5/12/78, Reg. 66; am 10/15/82, Reg. 84; am 8/20/87, Reg. 103)

Authority: AS 08.54.040(a)
AS 08.54.050

12 AAC 38.270. DEATH OR MENTAL INCAPACITY OF GUIDING AREA PERMIT HOLDER. (a) Upon the death of a holder of a guiding area permit, the board will, in its discretion, grant a waiver, for a time specified by the board, of the requirements of 12 AAC 38.230 if application is made by the estate within 90 days after death. Failure to make application within 90 days is considered a voluntary relinquishment of the permit. At any time during the period of the waiver, an heir may apply to the board for a reassignment of the permit to a person designated by the heir.

(b) Upon a judicial determination that a guiding area permit holder is mentally incompetent, the board will, in its discretion, grant a waiver, for a time specified by the board, of the requirements of 12 AAC 38.230 if application is made by the permit holder's guardian within 90 days after a judicial determination of the permit holder's mental incompetency. Failure to make application within 90 days is considered a voluntary relinquishment of the permit. At any time during the period of the waiver the guardian may apply to the board for a reassignment of the permit to a person designated by the guardian. (Eff. 5/12/78, Reg. 66)

Authority: AS 08.54.040(a)(3), (6) & (8)
AS 08.54.050

12 AAC 38.280. CHANGES TO GUIDING AREA PERMITS. (a) Petitions for amendments to guide area permits will be accepted for all guide districts and will be reviewed at a regularly scheduled meeting of the board. Petitions are limited to the following amendments:

(1) reassignment of a guiding area permit;

(2) changes within the boundaries of a guide area assigned to the petitioner including reducing permit area size, clarifying boundaries, and creating exclusive guiding areas in areas already assigned in joint use, as provided in (d) of this section; however, no petition will be accepted seeking expansion of guiding permit area size.

(b) The board will give each petitioner reasonable notice of the date and place of the meeting during which his petition is scheduled for review. No petition will be heard by the board unless the petitioner, or a person authorized by him in writing to appear in his behalf, personally appears at the scheduled time.

(c) When a petition concerns a joint use guiding area permit, the board will send each joint use permit holder a copy of the petition and reasonable notice of the date and place of the meeting at which the petition is scheduled to be heard; each joint use permit holder may appear before the board and present testimony relevant to the petition.

(d) the board will, in its discretion, issue an exclusive guiding area permit for an area or portion of an area already granted in joint use only upon finding that

(1) all other affected guides in joint use agree to the change; or

(2) creation of an exclusive guiding area is required by changes in game populations, hunting regulations, weather patterns, or land use laws or regulations, and other guides in joint use of the area will not be detrimentally affected by the change; in determining whether other guides may be detrimentally affected, the board will consider projected loss of hunting clients, revenue, investments, access and other similar concerns.

(e) A guide aggrieved by a board decision under this section is entitled to an administrative hearing to review the decision in accordance with AS 44.52.370. The guide must request such a hearing within 15 days after receipt of a notice from the board of the board's action.

(f) Before a matter covered by this section will be heard by the board at a meeting, the petitioner must contact all area permit holders affected by certified mail - return receipt requested and the

petitioner must submit the return receipts along with any replies received to the board. (Eff. 5/12/78, Reg. 66; am 6/16/80, Reg. 74; am 6/27/81, Reg. 78; am 8/20/87, Reg. 103)

Authority: AS 08.54.040
AS 08.54.050

12 AAC 38.290. GROUNDS FOR REVOCATION OR SUSPENSION OF A GUIDING AREA PERMIT. The board will, in its discretion, revoke or suspend a guiding area permit or permits if the permit holder

- (1) violates a federal or state sport fish, game or guiding statute or regulation while guiding;
- (2) has a guide license revoked or suspended, or is denied renewal of a license, for violation of a federal or state sport fish, game or guiding statute or regulation, other than for nonpayment of current license fees; or
- (3) is found by the board to have misused a guiding area.

(b) The board will, in its discretion, revoke or suspend a guiding area permit if it finds that the application for the guiding area permit or reassignment of the guiding area contained false or misleading information. (Eff. 5/12/78, Reg. 66, am 11/21/84, Reg. 92)

Authority: AS 08.54.040(a)(3), (6) & (8)
AS 08.54.050

**ARTICLE 3.
PROFESSIONAL CONDUCT**

Section

- 300. Responsibility of guide to his client
- 310. Survival gear
- 315. Bases of operation in southeast Alaska
- 320. Presence of guide required
- 330. Taking of game by guides
- 340. Transporting meat
- 350. Cooperation with officials
- 360. Improper certification
- 370. Improper reporting
- 380. Employment and supervision of assistants
- 390. Guiding ethics

12 AAC 38.300. RESPONSIBILITY OF GUIDE TO HIS CLIENT. (a) It is the responsibility of a guide to ascertain that a client has a proper license and

appropriate tags and harvest reports, in his possession, for the big game species being hunted before hunting. The guide is responsible for attaching appropriate tags to any game taken by his client and is responsible for having all game sealed or marked as required by Alaska Department of Fish and Game regulations.

(b) A guide shall take every reasonable measure to assure the safety and comfort of his clients. He is responsible for having available the following:

- (1) adequate first aid supplies;
- (2) sufficient food to provide for emergencies that might render the party immobile;
- (3) shelter which is normally considered satisfactory and comfortable under field conditions;
- (4) transportation or communications or arrangements to obtain them without hardship or unreasonable delay. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

12 AAC 38.310. SURVIVAL GEAR. A guide is responsible for assuring that each aircraft operated by him and used in any phase of a hunt conducted by him, carries survival gear as required by AS 02.35.110. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

12 AAC 38.315. BASES OF OPERATION IN SOUTHEAST ALASKA. A guiding area permit holder in game management units one through four may not conduct or supervise guided hunts from more than one vessel over 18 feet or from no more than one land camp. (Eff. 8/20/87, Reg. 103)

Authority: AS 08.54.040(a)
AS 08.54.050

12 AAC 38.320. PRESENCE OF GUIDE REQUIRED. A master, registered or class A assistant guide must be in the field and participating in the conduct of the guided hunt whenever assistant guides are guiding. (Eff. 6/28/74, Reg. 50; am 11/2/75, Reg. 56)

Authority: AS 08.54.050

12 AAC 38.330. TAKING OF GAME BY GUIDES.

(a) No guide may take big game animals or marine mammals while acting as a guide, except in cases of actual emergency when a bear or other animal is attacking or when a bear or other animal is about to escape after being wounded. It is then the duty of the guide to take such actions as he considers necessary.

(b) It is unlawful for a master guide, registered guide, class-A assistant guide or assistant guide guiding a hunter for walrus to take or assist in taking any walrus other than the animal taken by the client he is guiding; however, one crewman other than the guide may take one single cow walrus and its calf if this taking does not exceed the bag limit as prescribed by regulations of the board of Game. (Eff. 6/28/74, Reg. 50; am 6/12/77, Reg. 62)

Authority: AS 08.54.050

12 AAC 38.340. TRANSPORTING MEAT. A guide is responsible for transporting the meat of big game animals, except bear, wolves, and wolverine, taken by his client from the site of the kill to its destination or to a common carrier for shipping to its destination for the purpose of human consumption. If the meat is delivered to a person other than the person who took the animal, a signed and dated statement or receipt stating the kind and quantity of meat received in approximate pounds or named portions of the carcass must be obtained from the recipient and presented upon request to any officer authorized to enforce this chapter. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

12 AAC 38.350. COOPERATION WITH OFFICIALS. Failure on the part of a guide to assist the Departments of Fish and Game, Public Safety and Commerce and Economic Development in determining the truth of any statements reported in accordance with 12 AAC 38 is considered a violation of ethical conduct. (Eff. 6/28/74, Reg. 50; am 6/12/77, Reg. 62; am 11/21/84, Reg. 92)

Authority: AS 08.54.050

12 AAC 38.360. IMPROPER CERTIFICATION. No master or registered guide may improperly certify that a person has met the qualifications for a guide license. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

12 AAC 38.370. IMPROPER REPORTING. No guide may knowingly falsify any information required to be set out on any form required by the Alaska Department of Fish and Game or the Guide Board. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

12 AAC 38.380. EMPLOYMENT AND SUPERVISION OF ASSISTANTS. A registered or master guide may employ an unlimited number of registered, master, or class A guides to assist in his guiding operation; a registered or master guide may employ or have under his supervision an unlimited number of employees and helpers who hold assistant guide licenses, but not more than three employees may act in the capacity of, or be employed as, assistant guides at the same time by the same registered or master guide. No assistant guide employed or acting in a capacity other than as assistant guide may count any period of such other employment toward qualification for a registered, master or class A guide license. (Eff. 6/15/80, Reg. 74)

Authority: AS 08.54.210(a)(6)
AS 08.54.050
AS 08.54.040(a)(2)

12 AAC 38.390. GUIDING ETHICS. Unethical activity includes, but is not limited to

(1) not fully cooperating with state and federal wildlife officials or not abiding by and advising clients and personnel of all applicable conservation and game laws and regulations or condoning their violation;

(2) misrepresenting or not clearly defining rates, accommodations and services to prospective clients prior to booking and acceptance of deposit, or otherwise misleading prospective clients through false or fictitious advertising;

(3) being unwilling or incapable of making financial restitution to a client for any breach of contract by the guide or his employees, owing to no fault of the client;

(4) not advising clients of game population to the best of the guide's ability based on past performances in hunting areas and advising him of his chances of encountering the species he desire in the time allotted;

(5) making "guarantees" as to the success of a hunt or the number of pieces of game to be collected;

(6) not maintaining and providing stock, mechanical equipment, gear, food supplies and facilities to a quality and condition to provide services equal to or better than described in the guide's advertising, correspondence, verbal declaration or contractual agreements;

(7) not maintaining a neat, orderly and sanitary camp at all times, or not providing reasonably well-prepared, palatable and balanced camp meals for clients and personnel in keeping with the conditions of the hunt;

(8) contracting for more hunts or for more hunters at any one time than the guide or his employees can adequately facilitate rendering services for;

(9) hiring guides that are improperly licensed, or ill trained in the arts of woodsmanship, judging trophies, cooking, first aid, photography, firearms, trophy preparation and caring for clients;

(10) failing, while guiding a client, to take all precautions if an animal is wounded;

(11) failing to use every means at his disposal to bag any wounded animal while it is in danger of escaping, or if in a serious emergency, human life or well-being is endangered;

(12) filling a client's game tag or bag limit;

(13) failing, barring unforeseen conditions, to properly prepare, according to generally accepted procedures, all antlers, horn, hides and capes to be delivered to the taxidermist or to the client at the conclusion of a hunt in a satisfactory and unspoiled condition;

(14) failing to endeavor to salvage all meats of trophies taken by his client, in accordance with existing state law;

(15) promoting hunting or the taking of trophies by means other than fair chase: specifically, the pursuit of a trophy in an illegal or unsportsmanlike manner, by herding, driving or chasing of animals with the use of any mechanically powered equipment;

(16) failing to practice sound wildlife conservation or failing to create an awareness of conservation needs and practices during his associations with the public. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.040(6)
AS 08.54.050

ARTICLE 4
GENERAL PROVISIONS

- Section
- 900. Guide register
- 990. Definitions

12 AAC 38.900. GUIDE REGISTER. (a) On February 15 of the register year, the names of all persons holding a master guide or registered guide license will be entered by the board and must be published for distribution to the public.

(b) All guides shall advise the board of their current address and all changes of address. (Eff. 6/28/74, Reg. 50; am 2/25/77, Reg. 61; am 11/21/84, Reg. 92)

Authority: AS 08.54.040(a)(4) & (5)
AS 08.54.050

12 AAC 38.990. DEFINITIONS. Unless otherwise indicated, in this chapter

(1) "competence" means a professional standard of conduct which satisfactorily implements, under field conditions, the knowledge and qualifications of a guide;

(2) "transport" means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export.

(3) "board" means the Alaska Guide Board;

(4) "department" means the Department of Commerce and Economic Development. (Eff. 6/28/74, Reg. 50 am 11/2/84, Reg. 92)

Authority: AS 08.54.040
AS 08.54.050

STATE OF ALASKA
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
GUIDE BOARD
P.O. BOX D-LIC
JUNEAU, ALASKA 99811-0800

BULK RATE
U.S. Postage
PAID
Juneau, AK 99811
Permit No. 63

POSTMASTER: This parcel may be opened
for postal inspection if necessary.



DRAFT 3/21/88

POST SEASON RESOURCE EVALUATION REPORT

Party Name/No. Htrs _____

Dates: From: _____ To: _____

Exact Location: _____

Total No. Spotted: _____ Kills: Detail time, size, cal/bullet

Total No. Spotted:	Kills:	Detail time, size, cal/bullet
Moose Bulls	_____	_____
	_____	_____
	_____	_____
	_____	_____
Moose Cows	_____	_____
Moose Calves	_____	_____
Brown Bears	_____	_____
Wolves	_____	_____
Black Bears	_____	_____
Caribou	_____	_____
	_____	_____
	_____	_____
	_____	_____

MOOSE: Was bull called _____ did he charge _____ was he spotted, in willows _____, meadows _____, slough _____, hilltop _____ or timber _____.

Number of other hunters seen: _____, game other hunters had already taken when seen _____

No., kind and size of fish caught: _____

Describe suspicions of illegal or unethical activity on reverse, identification of hunters or airplane, reported to whom and when.

Other positive or negative factors or situations noticed, note on reverse.

Quantity of meat taken home _____ lbs, donated _____ lbs

From the above information, the outfitter calculates opportunity rate, kill rate, average size, tracks no. of bulls and hunters seen by the year for a given area to note increases/decreases in game and hunters. Outfitter also notes factors that may have adversely affected hunt; examples: (7 days of solid rain, too warm, late rut, etc.)

Print Name _____ Signature _____ Date _____

RECEIVED APR - 7 1988

DAVID L. LAZER

MASTER GUIDE
AND OUTFITTER

Hunting — Fishing — Photography



LAZER'S GUIDE SERVICE

STAR ROUTE A, BOX 6877

PALMER, ALASKA 99645

907-745-4504

4-7-88

Dear Sir,

I have been actively guiding and outfitting in Alaska for 20 yrs. I am totally opposed to any new regulation that would change the present guide system to include other big game.

I do believe the non-resident outfitters should be controlled but not at the expense of resident Alaskan outfitters. I am a member of the AOA (Alaska Outfitters Association).

The exclusive use, big money guides are trying to monopolize all big game which will make Alaska strictly a rich man's hunt and will eliminate the livelihood of many long time Alaskans. Approx. half my income is from outfitted caribou and deer hunts. I cannot make a living on my sheep area alone. I average 4-5 sheep ^{hunters} per year. I also have to joint use my area with 3 other guides. They have bigger and more areas than I.

SB 191, proposed amendment page 1 #4, seeks to eliminate outfitters from taking any big game hunts. And page 2 #B (sec. AS 08.54.240(3)), is absolutely no good. "lawfully established or permanent lodge". It is not legal to build structures on Federal land. I've been using tents for base camp. I would rather it read "Base camp".

Also I am totally against HB 183, 331, 431.

Sincerely David Lazer

PROPOSED AMENDMENT TO SENATE BILL #191 (FINANCE CS)

ADD A NEW SECTION TO READ AS FOLLOWS, AND ADD A SECOND EFFECTIVE DATE FOR THIS SECTION 60 DAYS AFTER THE REST OF THE BILL:

* Sec. ____ AS 08.54.210(a) is amended to read:

Sec. 08.54.210. UNLAWFUL ACTS. (a) It is unlawful for

(1) a guide [MASTER GUIDE, REGISTERED GUIDE, SPECIAL GUIDE, CLASS A ASSISTANT GUIDE, OR ASSISTANT GUIDE] to fail to promptly [TIMELY] report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, a violation of a state fish, game, or guiding statute or regulation that the guide reasonably believes was committed by a client or an employee of the guide;

(2) a guide to commit or aid the commission of a violation of this chapter or of a state game or guiding statute or regulation or to permit the commission of a violation that the guide knows or reasonably believes is being or will be committed without attempting to prevent it, short of using force, and without reporting it;

(3) a person to guide without having a current valid guide license and resident hunting license in actual possession;

(4) a person without a current valid registered or master guide license to advertise as or represent to be

(A) a guide; or

(B) an outfitter offering "big game" hunting services

[WITHOUT HOLDING A CURRENT VALID GUIDE LICENSE];

(5) a guide to intentionally obstruct or hinder or attempt to obstruct or hinder lawful hunting engaged in by a person who is not a client of the guide;

(6) a person to guide without being validly licensed as a guide under this chapter and as a resident hunter under AS 16;

(7) an assistant guide to contract to conduct a guided hunt;

(8) an assistant guide to be in the field on a guided hunt except while employed and supervised by a registered or master guide.

(?)

(

)

PROPOSED AMENDMENT TO SENATE BILL #191 (FINANCE CS)

ADD A NEW SECTION TO READ AS FOLLOWS:

* Sec. ____ AS 08.54.240(3) is repealed and reenacted to read:

(3) "guide" or "guiding" means accompanying or being present with, or providing a camp or personal service for, a big game hunter in the field, personally or through an assistant, for compensation or with the intent or an agreement to receive compensation; "guide" or "guiding" does not include accompanying or being present with a hunter

(A) in a boat with living quarters;

(B) at a lawfully established cabin, or permanent lodge;

(C) while providing transportation to or from the field, if the persons providing transportation and the persons being transported do not stalk, pursue, track, kill, or attempt to kill big game; or

*add
base camp),
not legal to have
cabin or permanent
structure in Fed. land.*

RECEIVED MAR 29 1988

I am writing concerning a proposed new law (HB 183, HB 331, HB 451, and SB 191) concerning guides & outfitters for non-resident hunters in the great state of Alaska. Please help to not let outfitters be outlawed because there are lots of people like me that cannot afford to hire a guide. The money we contribute to the economy of Alaska would stop because we would no longer be able to hunt if we are forced to hire a guide. I love Alaska and hope to return many times so please leave us a choice between guides & outfitters. Thank you very much

Jerry W. Ditch
P.O. Box 572
Mayfield, Ky.
42066

P. O. Box 670071
Chugiak, Ak. 99567
February 22, 1988

Mr. Mike Davis
Alaska State Legislature
P.O. Box V (MS3100)
Juneau, Ak. 99811

Dear Mr. Davis,

Our precious wildlife resources are being raped by a group illegally guiding hunters who are calling themselves outfitters. In the past three to five years this activity has exploded into a major problem.

The fate of the wildlife resource in this case, rests entirely upon the laws that you pass regarding these illegal outfitters.

Persons who didn't have the ambition to become licensed guides found a loophole, and so many operations have started that they seriously threaten our valuable wildlife resources.

The illegal outfitters mode of operation is generally to wholesale Alaska resources. To make their operation pay they need to sell alot of game. One illegal outfitter on Ugashik Lake took more than 30 caribou hunters last fall.

Most of the illegal outfitters are borderline guiding to outright guiding hunters, which is a felony, but they are still operating.

Mr. Mike Davis -2- February 22, 1988

Since there are no controls, they usually go into one area, wipe out the game and move on. Several illegal outfitters even use this as a selling point when selling their hunts.

Several illegal outfitters are not even residents of Alaska.

A licensed registered guide is limited to his area of operation so it would be foolish for him not to be a good steward of the game resources. However, he is at the mercy of the outfitters who move in and out of guide areas wiping out the game population.

You are going to hear cries that we are putting illegal outfitters out of business. Absolutely every last one of these illegal outfitters knew they were walking a very gray, thin line between legal and illegal. Everyone knew they were testing the law to the limit.

We should not have let them make such a fool out of our system to this point, and we must pass a tough law to protect the resources ethics and order of our State now.

This is a serious problem. You are the one that can make the difference. I urge you to support S.B. 191, EXCLUDING SECTION 11. Every resident of this State will benefit from properly controlled game harvest.

Sincerely,

Dennis Harms

Dennis Harms
Alaska Master Guide

P.S. Feel free to call me if you need more specific information.



RECEIVED MAR 23 1988

Mountain Monarchs of Alaska

P.O. BOX 1426 • Kenai, Alaska 99611 • (907) 283-4010 • (907) 688-1569

March 11, 1988

Dear Adelheid,

My name is Dave Leonard, I'm thirty years old and a representative character of the younger guides in the State of Alaska. I'm writing in support of Senate Bill 191 which addresses the current problem Alaskans, and their game resources, face with illegitimate guides posing as outfitters. I've been in the guiding industry for thirteen years now. I started out working as a horse wrangler and packer for a Master Guide. My wages were merely room and board. I had a goal of someday becoming a licensed Alaskan guide. I studied the long ago established system and began the steps of becoming an Alaskan guide. The apprentice program seemed rather difficult at times I must admit. However, I wanted to someday be a guide & outfitter so I stuck with the apprenticeship realizing if I had chose to be a doctor, lawyer, or other professional, I also would have been faced with a training and apprenticeship to serve.

Gradually I worked my way up through the system, meeting criteria established by the State of Alaska for the various levels of guide classification. I went on to meet the State's criteria for Registered Guide in 1981. I was very proud that day as I had worked hard and reached a major goal in my life. I continued working for various Registered and Master Guides across Alaska, to endeavor to get a better general working knowledge of the industry as well as the resource. I put alot of time and effort into studying the system established by the state, and in 1985 I applied for two restrictive guide areas. I was assigned one but denied the other. I appealed the board's decision on the denial and won. Today I hold two restrictive guide areas and operate my own professional guiding & outfitting business in NorthWest Alaska. I personally know of a good many young Registered Guides who are applying and being assigned restrictive guide areas. The system works well, however it has no place for freeloaders or individuals not willing to work hard toward reaching a goal of professionalism. This particular system is no different than any other licensed profession.

The State of Alaska itself, has never recognized the term "outfitter" as a single term. In Canada or any of the lower forty-eight states, a person refers to an "outfitter" as the individual who owns a professional guiding business and met criteria established by that particular state or province. When a client books a hunt with a "illegitimate guide", posing as an outfitter, he or she is more than upset when they learn that the State of Alaska actually allowed them to be taken advantage of. Which is most often the case.

(cont.)



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P.O. BOX 1426 • Kenai, Alaska 99611 • (907) 283-4010 • (907) 688-1569

(2)

Simply speaking an active guide must have an outfit in order to conduct business. That is where the term " Guide & Outfitter " came from years ago. A guide is an outfitter and an outfitter is a guide , the two terms go hand in hand. The english language is sometimes a bit tricky and even confusing. I would like to make an analogy of the " Guide & Outfitter" vs. "illegitimate guide (outfitters) problem currently under discussion, with hope that it will help you as legislators, comprehend the problem as the professional guides of Alaska see it. .

Analogy:

Joe is an intelligent, highly motivated individual. He wants to practice law but he does not want to be a lawyer. Law school would take years of work and be extremely costly. There Joe decides to take a bit of a short-cut. He doesn't want to attend school or deal with an exam administered by the B.A.R. association. So he does some reading, obtains a business license and prints cards up referring to himself as a " Legal Advisor ". He represents the client outside the courtroom and does every service an Attorney does except personally stand up before the Judge and defend his client. However he sits in the courtroom and coaches his client along each step of the way. Joe receives monetary remuneration for his services but he is not responsible for circumstances caused by his " legal advice because other than a business license he has circumvented the professional board which he falls under. He is operating in what is known as a grey area of the law. He is not an Attorney, hence his B.A.R. license cannot be revoked. Since Joe is already operating in a grey area of the law he decides to go for broke, each case over stepping the law a bit more and a bit more. Law school dropouts and B.A.R. flunkies are watching Joe and are quite envious of his situation not to mention his income. Several years pass by and now there are almost as many legal advisors as there are attorneys. Like a magnet this line of work has drawn individuals whom are out to make a fast buck then head on to the next city where they can find new faces to take advantage of. Remember though, Joe is not an Attorney he is a " legal advisor".

This exemplifies our situation in Alaska with the illegitimate guides posing as outfitters. Throughout the English language a large number of terms can often describe the same object or person. Attorney or Legal Advisor ? Guide or Outfitter? This is the question you as legislators will have to answer.

Like the licensed guides, the attorneys join together and complain about the exploitation of the law field by these " legal advisors". They take this problem to the legislature in the form of a bill which would tighten any grey areas of the law regarding qualifications of legal practice. Such as S B 191 which would close the current loophole in Alaska's law.

(cont.)



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(3)

Like the guides, the attorneys have some good points on which to base their stand.

Just like the State of Alaska did by establishing criteria for guiding requirements and ethics, the B.A.R. established criteria and statutes by which law shall be practiced and each person met this before becoming an attorney. It took a lot of time and money, however these were the rules if an individual chose to practice law. The criteria was established and the system works toward keeping up the professional standards of the industry. Call yourself a legal advisor if you like but you must meet the same requirements of an Attorney. The same should pertain to illegitimate guides posing as outfitters, they too should be required to meet the requirements for the specific field in which they fall under. " Guiding ".

This situation leads to the law industry as a whole being dragged down due to sub-standard quality not to mention a black mark for the state in which the misrepresentation took place.

Such is the same case with the illegitimate guides posing as outfitters. In the professional hunting world we are learning that many would be Alaskan hunters are choosing the Canadian provinces for their big game excursions primarily due to the illegitimate guiding situation which has infiltrated our system. In Canada, the government gives recognition to the guiding industry as it's a viable industry and treated as such. Their Provincial governments have not and would not stand for their game populations to be abused by incompetent individuals whom are circumventing the law.

The legal advisors claim that there never should have been a loophole in the law in the first place. Also they claim someone should have stopped them before they had vested interest in the business. They go on to argue that legislation covering the loophole would put them out of business or make them become Attorneys and come under a restrictive board.

We as professional guides and outfitters have a very strict set of statutes and ethics to abide by, failure to do so can mean revocation of our licences and our restrictive areas. We fall under the Guide Licensing and Control Board.

The "legal advisors" just like the " illegitimate guides" posing as outfitters, claim that making them come under a licensing board would be an invasion of "free enterprise". Maybe we should let free enterprise reign through society. If an individual wants to be a doctor, he's a medicine

(cont)



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(4)

man. If an individual wishes to be a Certified Public Accountant he or she is a "figurehead". You wish to commercial fish but have no permit you call yourself a "fish catcher" rather than a commercial fisherman. A grey area exists in any occupation or profession.

However, in the event of negligence, who is responsible? No one any longer has to meet any professional standards and therefore chaos infiltrates a once working system.

Likewise we have a very similar problem with professional guiding vs. illegitimate guiding (outfitting) in the State of Alaska.

I trust that you as our legislators are very well informed and up on this situation. If so you are aware that a considerably higher percentage of illegitimate guide (outfitters) are non-residents rather than Alaskans. I have spent alot of time talking to many of these individuals at the various hunting shows across the continental U.S.A. Their main sales pitch seems to be, "Why pay a professional guide \$ 4000 for a moose when you can hire an outfitter to do exactly the same thing for \$ 500?" I asked an illegitimate guide (outfitter) at a show in Houston Texas, "Just how many moose can you harvest in a fall season?" His reply, "As many hunters as I can book. You see Alaska is a very large state, there are lots of moose." "Last year we took forty-some odd bulls but we're gonna hunt more area next year so our harvest should be quite a bit higher."

I walked away totally appalled. My restricted guide area hosts a healthy moose population, however I could'nt imagine harvesting over five bulls per season looking at it from the game management point of view.

Those kind of numbers are overwhelming and in the end all legitimate Alaskan user groups, subsistence users included, will be the losers.


It's been said before, "Ninety percent of a solution is fully understanding the overall problem". Good sound judgement and common logic are two qualities one might exercise when addressing this situation you as legislators are faced with this session.

If senate bill 191 passes into law, you our legislators, would not be invading anyone's free enterprise. You would merely be managing Alaska's game resources in a responsible manner.

However, if it doesn't pass you as Alaskans will see our states game resources depleted to a level that would take nothing short of a miracle to undue. Not to mention an "Old Time" viable industry destroyed that was once our great state's second largest, outranked only by commercial fishing.

In the end, the oil tycoons will have killed the salmon runs off and be squabbling over the last drop of oil and rural Alaskans will be left with a raped and garbage strewn "WILDERNESS". We can all go on welfare and dream of the "Old Days". Thank you for your time.

Sincerely,


Dave Leonard
Registered Guide
State # AA495

Proposed timber cut may affect recreational area

by Russ Redick, executive director, ASA

The Department of Natural Resources (DNR), after being deluged with criticism about a proposed timber sale in northern Cook Inlet, has agreed to rewrite its proposal.

DNR is proposing to lease 215,000 acres of state-owned timber in the second highest used recreation area in the state with essentially no planning. Apparently they would dispose of the timber under the terms of something called the Forest Management Act (FMA) which is not even a state law and will not be unless currently proposed SB 112 is enacted.

Organizations such as the Alaska Sportfishing Association were not even notified of the proposal. With almost no public hearings and absolutely no evaluation of impact on other businesses and industries, DNR closed testimony January 4, 1988 on plans to initiate the major timber cut.

According to an Anchorage Daily News report, state forestry officials have been bombarded with complaints about the plan and now will "take a fresh look" and rewrite the proposal in an attempt to satisfy critics.

Critics ask what this new economic project will do for the region, the salmon resource, sport fishermen, lodges and guides? Major timber cuts, bridges and roads will have a great impact on the regions booming sportfishing industry.

The recently completed sport fish economic survey shows the sport fishery in that area was worth 8 million dollars in 1986 and growing with little, if any, state involvement. This area also produces about 30% of all commercially caught Cook Inlet salmon, the bulk of Cook Inlet's coho and the largest king salmon population of any Cook Inlet water.

Approximately 16% of the state's sport fishing effort, some 250,000 man days, is expended in this area.

In response to the proposed cut, the Department of Fish & Game produced a 4 page criticism of just about every aspect of the project.

Has any of this been given any serious consideration? Absolutely not!

When asked, one of the foresters states that they planned to cut within the proposed corridors reserved for public recreation under HB 93 (the recreational rivers bill)

Logging may or may not be good business for state land in Cook Inlet. However the method and process being used by DNR is wrong. They are not considering the recreational or economic benefits of sport fishing. This project must be put onto a normal planning and public review time schedule.

Incidentally, you anglers who fish other areas of the state have a stake in this proposal. If fishing in northern Cook Inlet declines or becomes less attractive, those fisherman can always come and join you.

Outdoor enthusiasts who believe the state is not planning this project in a reasonable manner should write a letter to Governor Steve Cowper, P.O.Box A, Juneau, AK 99811. Send copies to DNR, Commissioner Judy Brady, 3601 C Street, Anchorage, AK 99503 and to your legislators. Demand that the process be stopped until an environmental and economic analysis is completed on a normal review schedule that allows for adequate public input.

Don't expect someone else to write your letter. Only you can do it. They may think you will swallow all this without objection — after all they never even bothered to tell us what was planned. Let's wake them up.

1986 REVENUE SOURCES for State Fish and Wildlife Agencies

Lighter Shading:

A portion of this money comes from

Darker Shading: