

***OVERVIEW -
INTERIM TASK
FORCE
GUIDING AND
GAME***



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

M E M O R A N D U M

TO: HOUSE RESOURCES COMMITTEE MEMBERS
FROM: COMMITTEE STAFF
RE: AMENDMENTS TO WORK DRAFT OF 3/3/89 FOR HB 112
DATE: MARCH 13, 1989

THE FOLLOWING ARE CHANGES TO HB 112 3/3/89 WORK DRAFT:

PAGE 5, LINE 25 - 29, PAGE 6, LINE 1, ADDS IN LANGUAGE FOR MASTER GUIDE-OUTFITTER CATEGORY AS FOLLOWS "(b) A person who receives a master guide-outfitter license under sec. 12 of this Act may use the title master guide-outfitter and may annually renew the license unless the license has been revoked or suspended or has lapsed under AS 08.54.440. A master guide-outfitter license is for all purposes under this chapter a guide-outfitter license.

PAGE 6, LINE 2 -4, ADDS LANGUAGE TO CLARIFY THAT A GUIDE-OUTFITTER MAY PROVIDE INCIDENTAL TRANSPORTATION WITHOUT HOLDING A TRANSPORTER LICENSE AS FOLLOWS:

"(c) A guide-outfitter may contract to guide-outfit hunts for big game and may provide transportation to, from, or in the field that is incidental to a guide-outfitted hunt.

PAGE 7, LINE 24, AFTER "MANAGEMENT", ADD "UNITS".

PAGE 13, LINE 17, BEFORE "COMPLAINT", INSERT "WRITTEN".

PAGE 18, LINE 25, AFTER "KNOWINGLY", INSERT "ENTER OR REMAIN".

PAGE 18, LINE 26, AFTER "WITHOUT" INSERT "PRIOR".

PAGE 19, LINES 6-7, DELETE [IF THE PERSON ADVERTISES, USES BOOKING AGENTS, OR USES OTHER MEANS TO PROMOTE BIG GAME HUNTING IN THE STATE] AND ADDS LANGUAGE AT PAGE 23, LINE 3-6, WHICH ALLOWS AN EXEMPTION TO THE TRANSPORTER LICENSE FOR THOSE TRANSPORTERS TO TRANSPORT HUNTERS IN THE FIELD AS AN INCIDENTAL PART OF THEIR BUSINESS.

PAGE 20, LINE 22, AFTER "STATE", DELETE [SPORT FISH].

PAGE 21, LINE 16-18, UNDER DEFINITIONS, ADD A DEFINITION FOR "BASE CAMP". "BASE CAMP" MEANS A GUIDE-OUTFITTER'S OR A MARINE MAMMAL GUIDE-OUTFITTER'S PRIMARY BASE OF OPERATIONS IN THE FIELD; "BASE CAMP" DOES NOT INCLUDE A SPIKE CAMP.

PAGE 22, LINE 7-8, UNDER DEFINITIONS, ADD A DEFINITION FOR "GAME MANAGEMENT UNIT". "GAME MANAGEMENT UNIT" MEANS ONE OF THE 26 GEOGRAPHIC AREAS DEFINED BY THE BOARD OF GAME FOR GAME MANAGEMENT PURPOSES.

TRANSITION SECTION CHANGES

PAGE 28, LINE 13-16: ADD IN LANGUAGE FROM PAGE 6, LINE 17-21:

HAS NOT BEEN CONVICTED OF VIOLATING A STATE OR FEDERAL GAME OR GUIDE-OUTFITTING STATUTE OR REGULATION DURING THE PREVIOUS FIVE YEARS FOR WHICH THE PERSON WAS FINED MORE THAN \$500 OR IMPRISONED FOR MORE THAN FIVE DAYS.

PAGE 28, LINE 5, BEFORE REGISTERED, INSERT "LAWFULLY"

PAGE 28, LINE 8, BEFORE "ENGAGED", INSERT "LEGALLY"

PAGE 28, LINE 20-23, ADD IN REQUIREMENT FOR SIX FAVORABLE HUNTER RECOMMENDATIONS AS IS REQUIRED UNDER GUIDE-OUTFITTER LICENSING.

PAGE 28, LINE 17-19, ADDS IN REQUIRED HUNTING EXPERIENCE IN THE STATE FOR FIVE YEARS AS IS REQUIRED UNDER GUIDE-OUTFITTER LICENSING.

PAGE 28, LINE 28-29, PAGE 29, LINE 1-29, PAGE 30, LINE 1-2, ADD IN AN APPEAL PROCESS SECTION, NOT SUBJECT TO THE A.P.A., WITH ALL DETERMINATIONS BY THE COMMISSIONER.

PAGE 30, LINE 3, DELETE [ONE] AND INSERT "TWO".

PAGE 28, LINE 11, DELETE [ONE], AND INSERT "TWO".

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

February 14, 1989

The Honorable Bettye Fahrenkamp, Chairman
Senate Resources Committee
P.O. Box V
Juneau, Alaska

Dear Senator Fahrenkamp:

To assist your committee in its consideration of Senate Bill 140, I am writing to provide a synopsis of the Owsichek decision and its implications for creating an area management system for allocating guide access to big game.

1. SYNOPSIS OF THE OWSICHEK DECISION.

On October 21, 1988, the Alaska Supreme Court decided that the statutes and regulations that underlie the state's exclusive guide area system ("EGA") are unconstitutional. 1/

On December 8, the court granted the state's request that the effect of this decision be postponed until June 1, 1989. Therefore, the EGA system is currently enforceable. Beginning in June, the system will have no legal effect, and any licensed person may guide hunters in a game management unit for which he or she is certified. 2/

1/ The court uses the term "exclusive guide areas" to describe not only joint use areas but also "restricted guide areas," a term used to describe EGA's since 1986 when the term appeared in AS 08.54.195.

2/ When a guide is licensed by the Division of Occupational Licensing, he or she is "certified" to conduct hunts in only those game management units where the guide has experience. Except for older guides who were "grandfathered" into more units, most guides are limited by regulation to certification in not more than three game management units. 12 AAC 38.200.

(Footnote Continued)

The supreme court based the Owsichek decision on its interpretation of the "common use clause," i.e., article VIII, section 3 of the Alaska Constitution. This clause says, "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

This was the first time the court was called on to interpret the common use clause with respect to wildlife. In earlier decisions, it had discussed the clause in the context of state waters (Wernberg and CWC Fisheries) and in the context of fish (Ostrosky and Johns). In light of its earlier decisions, the court declared that the "common use clause was intended to guarantee broad public access to natural resources."

In order to further clarify the meaning of the common use clause, the court looked at the constitutional history of this clause and at the historic development of wildlife law in general. Concerning the constitutional history, the court said that the purpose of the clause was "anti-monopoly." It also found that the framers of the constitution intended to prohibit "exclusive grants or special privileges" and intended that the public "retain broad access to fish, wildlife and water resources."

In discussing the development of wildlife law, the court said that the common use clause "constitutionalized" the state's public trust duty toward wildlife. This is a duty to manage these resources for the benefit of all the people.

The court summarized its interpretation of the common use clause by stating that the clause was intended to put into the constitution "certain trust principles guaranteeing access to

(Footnote Continued)

At the time of the court's decision, 256 licensed guides had been assigned either exclusive or joint use guide areas. One hundred and eighty four licensed guides had no area to guide in. Therefore, after June 1 the Owsichek decision means that 134 more guides will be able to guide hunts in any of the game units for which they are certified. The additional hunting pressure, of course, varies from unit to unit. For example, the number of eligible guides in units 1, 2, 3, and 4 (southeast Alaska) will increase three-fold (from 13 to 33) while the number of eligible guides in unit 17 (Togiak - Dillingham area) will increase over six fold (from 17 to 129).

the fish, wildlife and water resources of the state" and, at a minimum, this meant a "prohibition against any monopolistic grants or special privileges." It also stated that the clause makes no distinction between use for personal purposes and use for professional purposes; common use applies to commercial guiding as well as recreational hunting.

In deciding that the EGA's violated these principles, the court noted the following features of the system:

1. The EGA system gave one guide the right to exclude all other guides from conducting hunts in his or her EGA. This right was based on the area holder's seniority, that is, his or her use, occupancy, and investment in the area.
2. EGA rights had no time limit, and the system of transferring them, based as it was on the selling of "improvements" and a holder's designation of his or her successor, allowed the selling of areas as if they were a property interest.
3. The assignment of EGA's was not based primarily on wildlife management concerns. The system could not be justified as a game management tool and therefore was unlike licensing requirements, bag limitations, and seasonal restrictions which were proper and "time-honored methods of conserving the resources." In this regard, it is important to note that the court said that even if used as a wildlife management tool, this would not "save the EGA system from unconstitutionality under the anti-monopolistic common use clause."

Finally, the court had made a distinction between the EGA's on one hand and state leases and exclusive concessions on the other. The latter are permissible because they are of limited duration, because they are subject to competitive bidding, because they are limited by contract terms and restrictions, and because the state receives compensation for them.

II. IMPLICATIONS FOR A NEW AREA MANAGEMENT SYSTEM

The Legislative Task Force on Guiding and Big Game has recommended that the state develop a new area management system for allocating access to guiding opportunities among licensed guides. It has recommended the establishment of a land-based concession system. While the Department of Law could defend this type of system, we believe that it would ultimately fail a legal challenge.

We may be able to defend a concession system based on an analogy to the state's current shore fisheries lease program. That program enables the Department of Natural Resources to lease small tracts of shoreline for use by persons who hold set net permits under the state's fisheries limited entry program. For a guide area system to qualify for this analogy and answer some of the concerns raised by Owsichek, the concessions would have to be limited to state owned lands, would have to involve small tracts of land, would have to be limited in duration (one to three years), and would have to provide equal opportunity of access for all qualified guides when the concession was available for reassignment.

Even with these features, we believe that a concession system would still be found unconstitutional because of the severe manner that it would impinge on the common use guarantee as expressed in Owsichek. The analogy to the shore fisheries lease program is weakened by several factors. That program is tied directly to the state's limited entry program, a system of limiting access to fishery resources that has constitutional underpinning. A guide concession would limit access to game opportunities without an equivalent constitutional basis. 3/

State concessions and leases, as such, are not included in the common use clause. When their purpose is to allocate access to resources like timber and grazing land, the state is freer to grant exclusive rights. When allocating exclusive access to fish, wildlife, or waters, however, a land-based system would conflict with the principle of broad public access guaranteed by the common use clause.

3/ In 1972 the Alaska Constitution was amended to allow the state to limit entry into fisheries. Ak. Const. art. VIII, §15. In a later case, the Supreme Court held that although fisheries limited entry is inconsistent with the "common use" clause, this system was validated by the 1972 amendment. State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), appeal dismissed 467 U.S. 1201, 81 L.Ed. 2d 339 (1984).

There is no provision in the constitution that allows for limiting entry to game resources, and currently there is no proposal for such an amendment. (Amendments to the constitution are accomplished by a proposal by each house, passed by at least a 2/3 vote, followed by a majority vote of the public at the next general election. Ak. Const. art. XIII, §1.)

The Honorable Bettye Fahrenkamp
Chairwoman, Senate Resources Committee

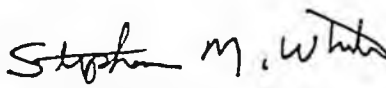
February 14, 1989
Page 5

Even if a system were developed that served only game management purposes and not the economic welfare of a segment of the guiding industry, it would not be safe. The Owsichek court noted that the common use clause precluded exclusive guide areas even if they could be justified as a wildlife management tool. ^{4/} In the court's view, the traditional game management tools -- licensing requirements, bag limits, and seasonal restrictions -- apparently are sufficient to protect the resource without conflicting with the clause. A court would recognize that the state can respond to any increased pressure on game resources by requiring hunter registration, permit drawing, or other methods now available to the Board of Game. Although these techniques may bring unpredictability to the business of guiding, we believe that a court would favor them over a system that has inherent constitutional problems.

In conclusion, a constitutional amendment is the only certain step that will guarantee a stable, long-term system that allows some, but not all qualified guides to have access to game resources in a particular area. We believe that any statutory, land-based system that does not have explicit constitutional underpinning and that resembles even remotely the EGA scheme that was struck down in Owsichek will be destined to the same fate.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Stephen M. White
Assistant Attorney General

SMW:jf

^{4/} Owsichek v. State, Guide Licensing and Control Board, 763 P.2d 488, 497 n.14 (Alaska 1988).

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 112

Page 7, line 7, after "if", through line 13:

Delete all material and insert:

"(1) the person

(A) has been employed for at least one season as a licensed assistant guide-outfitter; and

(B) has had at least 10 years hunting experience in the game management unit in which the person is to be employed; military service outside the state for not more than three years shall be accepted as part of the required 10 years hunting experience; or

(2) the person

(A) physically resides in the game management unit in which the person is to be employed; and

(B) has had at least 15 years hunting experience in the game management unit in which the person is to be employed; military service outside of the state for not more than three years shall be accepted as part of the required 15 years hunting experience."



February 9, 1989

TO: SENATOR FAHRENKAMP, AND ALL SENATE RESOURCE COMMITTEE MEMBERS
 REPRESENTATIVE MENARD, AND ALL HOUSE RESOURCE COMMITTEE MEMBERS

The Alaska Outfitters Association, Inc. (AOA) supports SB 140 and HB 112 at this time. The AOA does have some comments on the bill and some areas of concern. The AOA is not offering any amendments at this time, however should the bill receive what the AOA considers to be negative editing the AOA will become more involved.

AS 08.54.300. CREATION AND MEMBERSHIP OF BOARD

The new board could have a better balance of commercial use members. The different activities represented by the board should not be lumped together. Each activity has its own specific considerations that can only be understood by representation on the board. Please consider that the broad scope of the Task Force duties was not understood by many who are affected by the results, such as wilderness lodge operators, marine charter boat operators and transporters other than air taxis, consequently these other commercial users did not say much at the Task Force hearings.

Sec. 08.54.310. DUTIES AND POWERS

On page 3 lines 26 through 29, the concern is that this may be setting the foundation for another restricted guide area concept, contrary to the Owsichuk decision.

Sec. 08.54.470. COMMERCIAL USE PERMIT HOLDER

The definition of other big game commercial services is too vague and has no definitions. Possibly lines 6 through 10 on page 12 would read better in this manner; In this section "other big game commercial services" includes provision of accommodations and services as defined by the board by regulation.

Sec. 13 TRANSITIONAL OUTFITTERS

Page 26, line 12; A few outfitters with camps registered on federal lands were instructed by representatives of the Department of Public Safety not to register their camps with the state. These few outfitters should be allowed to participate. This may be achieved by a judgement call by Occupational Licensing.

(2)



Page 26, line 17; The AOA would like to see the oral portion of the guide-outfitter exam waived for transitional outfitters or given by someone other than a registered guide. The guide-outfitter exam should be offered as many times as possible during the outfitter transitional period, with the first exam before the 1989 fall hunting season and with ample time after the effective date for study.

Page 26, line 28; There is no business license classified "big game outfitter", with evidence in accordance with number (3) of this section, on this page, any business license for recreational services should be appropriate.

Page 28, line 4; The outfitter affidavit should be considered as confidential information, not information available to the general public.

The AOA wanted a longer transitional period with a different structure but we will accept this, however we ask that you keep in mind the topics mentioned.

Thank you for taking the time to read this list of AOA concerns. We appreciate the interest that our senators and representatives have shown the AOA and look forward to a good working relationship with you in the future.

In closing, please do all you can to pass this legislation in the best possible form and as quickly as possible.

Respectfully,
Paul Ellis
Paul Ellis
Vice-president

3



Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
committee name

committee on SB 140, dated _____
bill/subject

Senator Fahrenkamp:

I very much appreciate being able to present this testimony to the Committee regarding SB 140 and the bill extending the Task Force Study period.

It is very important that action be taken on both these bills. There is a very pertinent consideration that SB 140 does not address - that of determining the legal way to allot commercial use of areas. However, SB 140 should move ahead regardless.

I have several concerns with the bill. First, the composition of the Commercial Services Board - I feel more guides should be on that board. Another point is conservation fees. I believe that the "25% of tag" fee should be added to the tag fee up front. Collecting from the commercial user is going to be extremely cumbersome.

I also would like to see the Master Guide rating retained with perhaps some upgrading of the requirements.

Thank you for considering these points.

Signed: Ray McNutt
Testifier Ray McNutt, Chairman

Alaska Guide Board

Representing (Optional)

Box 469, Sterling, Ak 99672

Address

262-4678

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
 committee name
 SB 140 Guide,
 committee on SB 139 Outfitters, dated 2/13/89
 bill/subject

I am a registered guide in Kodiak. I have been guiding 9 yrs. I did not have my own area. I would like to make the following remarks on the new G/O bill. 1. I strongly oppose the reduction in penalties from a felony to a misdemeanor. This is only going to encourage people to try to get away with more things than they already do. 2. I don't like the idea of someone who has not put the time in, in the field like I did to get my license to be able to sell a registered license just because he outlived for a couple of years. 3. I think on the makeup of the board that I number 3 should be a guide from the time when exclusive areas were ~~legal~~ legal so that 2 "Outfitters" don't get on. That would be unfair for the guides we have been the only ones who have been compromised + been

Signed: William J. Newcomer
 Testifier
Myself

Thank you

Representing (Optional)
Box 2204 Kodiak AK 99615
 Address
907 - 486 - 6096
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Resource
 committee name
 committee on Guide outfitting dated 2/18/89
 bill/subject

In regards to the user fees new & existing that will follow this legislation. These fees except for a minor percentage 10-15% for administration should be delegated to the management of the resources from which they were derived

Signed: William C. Schenk (SCHENK)
 Testifier

[Signature]
 Representing (Optional)

Box 1541-2
 Address

Kenai, AK 99611
 Phone No.

476-5642

TESTIMONY OF THE ALASKA AIR CARRIERS ASSOCIATION
REGARDING SENATE BILL 140/HOUSE BILL 112
BEFORE THE JOINT HOUSE/SENATE
RESOURCE COMMITTEE
February 8, 1989
Juneau, Alaska

Senator Fahrenkamp, Representatives Menard and Jacko, and members of the House and Senate Resource Committees, my name is John Hajdukavich and I am here today on behalf of the Alaska Air Carriers Association.

The bill before you today deals mainly with the regulation of guides and outfitters. It is a carry-over of the debate last year which centered on regulating the outfitters, who were previously unregulated and growing rapidly. We think that the Legislature acted appropriately last year by passing SB 191. Since then, the Supreme Court decided that the existing system of exclusive guide areas was unconstitutional, and the Guide/Outfitters Task Force prepared recommendations which would create a new system of commercial users of big game. Many of the Task Force recommendations are included in SB 140.

The Alaska Air Carriers Association, which currently represents sixty-six carriers, believes that most of the bill seems reasonable, except for two sections. The first is Section 08.54.400, on page 8, which creates a new system of licensed "transporters." We believe this section should be deleted for the following reasons:

1. Air carriers are engaged in the transportation of persons from point to point, regardless of the purpose of one's trip. Almost all carriers charge point-to point fares, not fares

which differ for hunters or other air travelers. ;Most carriers derive a small portion of their revenue from the transportation of hunters. It makes no sense to require carriers to obtain another license specifically for the purpose of transporting hunters to the field. We already have federal 135 certificates and must register all of our aircraft with the Department of Commerce (\$50/aircraft fee) after proof that we have adequate liability insurance (\$150,000/seat).

2. This section also requires transporters to pay a commercial use permit fee. Apparently the theory behind this requirement is that because we derive commercial benefit from game, which is a common property resource, we should pay a fee. We strongly disagree with that theory for the same reason cited above - we simply transport people from point A to point B for the same charter fee, regardless of the intended activity of that person.

If the State wants to tax businesses which benefit from our game resources, then to be fair, the State would have to tax a hunter's trip to Alaska (for non-residents), the sporting goods stores, the grocery stores, the hotels, and any other services that the hunter uses while in Alaska. Arbitrarily singling out the last leg of the trip - the charter to the remote lake or air strip where the hunting takes place - is not reasonable.

The logical extension of this theory, if enacted into statute here for hunting, is to begin charging a transportation tax on any use of state land for any purpose - fishing, hiking,

photography, rafting, etc., as each represent uses of a common property resource. We simply disagree.

3. Another reason cited for these requirements is to "protect the resource." The proposed requirements are a very inefficient means to this end. The best way to "protect the resource" is more effective and frequent field presence of wildlife protection officers. The simplest way to raise money for this purpose is to increase the big game tag fees - because it is the hunters themselves who derive the greatest benefit from the harvest of game - and because it does not require additional administrative costs to collect the increased fees. If air carriers pay the fee for each hunter which harvests game, we will be forced to pass on that fee to the hunter anyway.

4. Existing law already requires air carriers to report activities relating to the transportation of hunters and the harvest of game, and there are stiff fines associated with violation. If there is a problem with compliance of the existing law, it would make more sense to simply increase the fine and do a better job of monitoring the reports, and the same result will be achieved.

AACA's second concern with SB 140 is the proposed repeal of the existing requirement that guides and outfitters obtain Part 135 certificates, just like all other air carriers. The legislature acted responsibly by requiring professional and equal standards for anyone transporting passengers for hire. Guide and outfitters argue that they should not be subject to same require-

ments because their flying is "incidental" to their business. Whether the flying is incidental or not is irrelevant. To protect public safety, anyone who receives compensation is whole or in part for flying people should be subject to the same basic standards of quality and professionalism. Under SB 140, guide/outfitters may fly hunters to the field with only a private pilots' license and an annual plane inspection. There is no requirement for a commercial pilot's license for liability insurance, or other standards required for all other carriers.

We intend to meet with representatives of the guide/outfitters and the Task Force to discuss our continued concerns with SB 140 and to see if there are mutually acceptable solutions which will resolve them.

We thank you for the opportunity to testify on this legislation.

028

Testimony on SB 139 & 140, HB 112 & 113
Wed. 2-8-99 1:30 PM Teleconference

Madam chairman and members of the Committee
I am Byron Haley of 1002 Pioneer Rd, Fairbanks
Alaska 99701 Retired and a 40 year resident
of Fairbanks. I am President of Chitina Dipnetters
Assoc., secretary of the Fairbanks Advisory Committee
to the Boards of Fish and Game, a Life member
of the Tanana Valley Sportmen Assoc. and a
Trustee of the Alaska Outdoor Council.

I am not representing any of these organizations
at this teleconference and this testimony is my
own personal views.

I would like to thank the task
force for there work on this very complex
issue by bring forth a bill that a majority
of the users groups can support, but as
was brought out at Monday teleconference
the job is only half done now comes the
job of making up a management plan for
the whole state which all user groups
can support which is going to take a lot of
work by everyone that is involved and I
would like the Legislature to Pass SB 139 +
HB 113 for a start.

On SB 140 + HB 112

The Big Game Commercial Services Board
home office should be in Anchorage

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so it would be more available to the public, guide-outfitters and Transporters.

There are some changes I think need to be made.

On page 4 lines 12 and 21 after the word hunting the word Fishing should be added. I think it is very important to include the words Fishing, Fishermen or Fish in the bill where ever it is needed. A lot of fishing takes place along with guide-outfitters hunt and would be used very much by a Transporter. Other areas in the bill where the word fishing should be added after the word hunting are as follows

Page 14 lines 8 and 9

Page 15 lines 2, 12, 23 and 24

Page 17 line 22

Page 18 line 10 use the word Fishermen

Page 21 line 7 add Fishermen and line 17 add Fishing.

On page 4 lines 22+23, Page 5 lines 13+14 Delete the words "For which the person was fined more than \$500 or imprisoned for more than five days" Any violation of Fish and Game laws should be used in

issuing or revoking a license. A dollar valuation or imprisonment should not be used in judging any violation of Fish and Game regulation and should be brought before the Big Game Commercial Service Board. a violation is a ~~real~~ violation and should be treated as such.

Under Transporter License Sec. 08. 54. 7.00
Pages ~~8~~⁸, ~~9~~⁹ and ~~10~~¹⁰. There should be some wording to the effect that if a transporter is illegally transporting Fish and Game his Transporter license will be revoked and a renewal denied.

Above all the resource has to be protected at all cost.

This concludes my testimony and I would like to thank the committee for this opportunity to testify.

Byron W. Halcy



Alaska State Legislature

Please enter into the record my testimony to the Resources Committee
committee name

committee on SB. 140, dated Feb 8, 1989
bill/subject

My husband, Jack has been in Alaska 20 years. He began as a packer 19 yrs ago - he worked his way through the system, becoming a registered guide, then a master guide. His major ~~concern~~ ^{concern} is the transition from outfitter to guides. It would be nice to have ^{more} ~~more~~ ^{stricter} ~~stricter~~ qualifications for outfitters to do, in the year what it took Jack 19 yrs. to do. If the transition passes, then what about looking into a rating system such as in place already for the guides, that is, assistant guide, registered guide, then master guide. Then clients would know who they are hiring & what their knowledge & experience is.

One 2nd concern is the composition of the new board. We would like to see a person on there who actually represents the guide profession - with the 2 positions for the guide-outfitter available →

Signed: Sue Robson

Testifier

Robson's Bear Camp

Representing (Optional)

Box 2219 Kodiak Ak 99615

Address

486. 5835

Phone No.

It would be possible that those 2 positions
could be filled by those who were rejected,
thus still representing the same men.

We would recommend retaining the
Master Guide (Rejected) classification.


We urge the extension of the Trial Fee.
We commend them on all the work they
have done.

Thank you.

— Alaska Adventures Unlimited

February 8, 1989

Alaska State Legislature
Sixteenth Legislature
Senate Resources and House Resources Committees Members



Thomas J. Kirstein
Registered Guide
P.O. Box 82808
Fairbanks, Alaska 99708
Telephone (907) 433-0117

Dear Members,

Dear Chair

I'm here today to testify about my current situation as a Licensed Alaskan Registered Guide and how this Guide Task Force Bill (SB-140) relates to me and my future livelihood.

I started my guiding career 10 years ago as a assistant guide and after gaining the years of experience needed to be able to qualify for the registered guide examination and meeting those qualifications, I successfully passed the exam. That was eleven years ago and I'm still very proud to be an Alaskan Registered Guide today!

Over the years I have seen alot of changes that have to deal with the guiding industry. The current Guide Board that was established in the early 1970's and shortly there after the guide area system which was copied from the British Columbia guiding industry and adapted to Alaska's needs. I remember well the difficulty that was undertaken for all guides to adapt and give into this system of restricted guiding areas and the new regulations for guiding and its activities.

The Guide's Board task to impliment this system was monumental during its first conceptions. As time went on and guides began to settle into the area concepts and guide laws, I recall the atmosphere of guiding to become somewhat more personal with real concerns as to ones future in this guiding industry. The years of D-2 and the land grabs sure hurt Alaskan Residents, and the effect was devistating to hundreds of guides who operated their businesses in these areas. As we now begin to look back on that time period not so long ago I wonder if most Alaskan's are not just begining to realize what was lost in the late 70"s.

The past several years as I have become more involved with a concern for the future and making a living in this guiding business, I have invested like many other guides have, a considerable amount of monies into my business based on the system which has been in place now for 15 years. I have a camp located on the Alaska Peninsual and on Kodiak Island where I conduct my guiding services for my clients. The recent supreme court decision has effected my livilihood considerable, and what a surprise to me to now have everything I've worked for tossed out and the lawful rug pulled out from under my feet. The supreme courts decision was obviously based on a very narrow view point towards one persons individual rights, and to say it wasn't a game management tool is beyond that judge's comprehension I feel!

Needless to say the supreme court must of realized their fruitful error with this decision because of its effect on a whole Industry and hundreds of people's livelihoods. thus granting in early December the courts Stay until June 1. My guess would be that thinking some changes would be made to correct the problems discribed in the courts decision of October 21, 1988.

Through many efforts of individuals concerned with their future livelihoods a panal meeting took place in early December which involved all State, Federal land, and Fish & Game agencies. This was the first ever such a gathering of different and varied agencies to deal with one main concern, the policies for guides in the coming future and those actions. To me this meeting had a very important outcome, the Interior Fish & wildlife Dept. came forth with their interium plans for all Federal Refuge Lands, thus putting a limit on the number of commercial users to the level of 1988 which deal with services for Big Game Hunting. Because i guide on Kodiak Island Wildlife Refuge this interium decision was very important due to the fact a emergency Board of Game meeting scheduled for mid-January was cancelled which had plans to deal with a crisis situation that had came up because of the supreme courts decision. Its been very obvious that the Federal agencies and our State Fish and Game Dept. recognized the important of guide areas as an important management tool for the game resources.

During Governor's Sheffield's administration approximately 7 years ago when the guide board was under the sunset review process there was a amendment to delete the portion that addressed transportors, because of a conflict with federal FAA laws. During this same time period Alaska started a large scale advertising plan to build the tourism industry in Alaska. From that time of revamping the guide laws and all the advertising to have more people interested in coming to Alaska, the door was opened to a group of unregulated commercial users for which Senate Bill 191 would finally reconize for what they are worth. I think Senator Cognilli's plan for a task force to deal with this issue was in fact a good one. The undertaking of that job by the Task Force has given proof that the Wildlife Resources in Alaska are important, and that a part of the commercial tourism industry using those resources is very viable to Alaska's future. The recommendations that the Task Force have come forth with, I feel are in the best interest of Alaska's Wildlife Resources. You would think from the previous years of many numerous teleconferences and now with the undertaking by your own Task Force and with all its public input these past months that the issues have been covered and the problems, with solutions reconized.

This coming March Board of Game hearings in Anchorage will determine my future in the guiding profession for those

seasons greatly affecting me will be determined at that time. I will be faced with the possibilities on the Alaska Peninsula of having my Moose season completely closed and the Brown Bear seasons changed or shortened because of the over reaction by the Dept. of Fish and Game. There are nearly two hundred guides whom are licensed for this region called unit 9, but with only about one-third of these being active in previous years. It doesn't take a master mind to see that the resource could easily suffer if all these commercial users hit this region because of this court decision opening up this State to over harvest. This was the problem in the 60's and is exactly what brought about the Guide Board and the Area Concept in the first place. I don't want to tell my clients they can't plan their hunting trips for this spring or for next fall. I don't like being in the situation of knowing that in thirty days from now I may be put out of business because of new regulations governing the Big Game Seasons in my region, that is not very comforting believe me! How would you like to explain this to your clients and return their deposit for services you have promised but no longer can produce. I don't like to think that the State of Alaska lead me down the path all these years holding a carrot out in front. I by my own choosing got into this guiding profession and I am damn proud for doing so, because I believe in our Alaska Renewable Resources and this profession is very unique for North America and to Alaska, its one of a kind!

Senate and House Resources Members page 6

I do honestly feel the State in good faith has given me the methods, means, and the rights to conduct my guiding business under the current system which has been in place for some 15 years. Now to only find out that the system has failed the test is really disheartening. I don't for one minute think the State of Alaska in good faith under the direction of the Guide Board set up the guiding industry to its current level and the guiding area system to have it all through out the window! I do feel the State of Alaska has responsibilities to the people in the guiding industry and all Alaskans to address these problems in a fast timely manner. I would like to ask that this 16th legislature take to heart this plea of testimony to deal with these issues quickly in order to get laws and direction in place to protect the Wildlife Resources of Alaska and get some stability back into the guiding industry.

Thank you all for taking the time to listen and for the efforts of the Guide Task Force.

Sincerely,

A handwritten signature in cursive script that reads "Thomas J. Kirstein". The signature is written in dark ink and is positioned above the printed name.

Thomas J. Kirstein

Iniakuk Lake Lodge

Finest Lodge in the Brooks Range

BERND GAEDEKE
Master Guide

Telephone: (907) 479-6354

P. O. Box 80424
Fairbanks, Alaska 99708

7 February, 1989

Ms. Bettye Fahrenkamp
Chairman
Senate Resource Committee
P.O. Box V
Juneau, AK 99811

ref: SB 139
SB 140

Dear Ms. Fahrenkamp:

I am Bernd Gaedeke, master guide #43, a 28 year resident of Alaska and a full-time guide/outfitter since 1967.

When I first obtained my registered guide license in 1967 I felt extremely proud to become a member of a fairly exclusive group of dedicated and respected professionals. In those days it was still easy to find an area that was not already claimed by another guide. Although there was no exclusive guide area concept at that time, there was a gentlemen's agreement among the guides as to who operated where and any conflicts that arose were usually settled in a gentlemanly fashion. Hunting seasons were much longer and harvest quotas were more generous. I remember when the sheep hunts in the Brooks Range opened on July 15 and the limit was two sheep per hunter.

But within just a few years the number of guides increased rapidly as did the number of hunters. The seasons and bag limits were reduced in order to protect our game resources. Unfortunately there was also an increasing number of guides who were more interested in making big money than in protecting our game populations. These were the so-called vacuum cleaner guides, most of whom are fortunately no longer with us.

Suddenly the guiding industry was out of control and measures had to be taken to not only protect our resource, but to protect a profession that contributes millions of dollars to our economy. The exclusive guide area concept was conceived with the overwhelming support of the guides. The assignment of exclusive guide areas certainly had its flaws, but it was a valuable resource management tool for the Dep't. of Fish & Game as well as for Fish & Wildlife protection. It also gave the guides parameters within which they could operate and plan from year to year how many hunters could be booked in their exclusive areas on a sustained yield basis.

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P. O. Box 80424
Fairbanks, Alaska 99708

Many guides suffered a severe, if not lethal blow when the many new national parks were established under ANILCA in '79. I, for one, lost 50% of my exclusive area to the Gates of the Arctic N.P. I lost my entire sheep hunting area as well as prime bear, moose and caribou habitat. Other guides lost everything and simply gave up.

But despite the numerous set-backs a good number of guides have prevailed and continue to offer some of the best professional services in the world. Guides have always been individuals who could stand on their own two feet and have never depended on the government to bail them out when the chips were falling.

The events that have transpired in recent years have made it evident to all of us and hopefully to all of you that legislation must be enacted in this session if we are to survive as a viable industry. An ever growing number of irresponsible and unethical so-called Outfitters have made a mockery of the guiding industry by being able to pretty much do as they damned well please. I believe that the Legislature should have acted several years ago instead of dragging their feet from one session to the next. We're all getting tired of testifying year after year on the same issues. I personally would like to get on with my life instead of living in limbo from one season to the next, never knowing what tomorrow will bring. I have invested hundreds of thousands of dollars in lodges, camps, inholdings, aircraft and equipment.

I feel it is our state's responsibility to protect our interests as well as those rights granted to us some 15 years ago. We are licensed professionals who have in good faith entered a contractual agreement with our government. We are managing a renewable resource in a responsible manner. Our fees and dues and insurance premiums (as required on all federally managed lands) are climbing at a staggering rate. I often ask myself lately why I'm still in this business, but having invested the best 23 years of my life in an honorable profession, enjoying the outdoors and the many good clients who keep coming back year after year, and especially being totally self-reliant make it all pretty hard to just give up and walk away from. Our backs are to the wall and we're not going to retreat any farther.

Iniakuk Lake Lodge

Finest Lodge in the Brooks Range

BERND GAEDEKE
Master Guide

Telephone: (907) 479-6354

P. O. Box 80424
Fairbanks, Alaska 99708

I know that chairman Springer and his task force have worked very hard at trying to address all the problems that face us. There are some items which I don't fully support, but since time is of the utmost importance in resolving this conflict, I urge you to do so expeditiously.

The bottom line is our resource which must be protected from exploitation. The game board is scheduled to deliberate from March 6 through the 22nd. It is essential that they know laws will be passed during this legislative session which will prevent a total collapse of the present guiding system. Without such assurances they will be forced to place restrictions on the taking of game in numerous critical areas of the state. And this, in turn, will jeopardize the contractual agreements we have signed with our clients.

As a final comment I'd like to recommend that the task force's proposal to re-name the presently licensed master guides and registered guides as Guide/Outfitters, be altered to continue issuance of a Master Guide/Outfitter license to those who are currently licensed as master guides and to allow others the opportunity to achieve the master status under present guidelines. After all, there are master and bachelor degrees issued at our universities and numerous other professions have masters as well as journeymen. I see no valid reason why I should be given a demotion that I did not deserve.

Thank you for your time and PLEASE, resolve this critical issue for once and for all.



Alaska State Legislature

Please enter into the record my testimony to the TASK FORCE ON GUIDING & OUTFITTERY
committee name

committee on HR #139140, dated 2/8/99
bill/subject

I SUPPORT THE PASSING OF THOSE BILLS
EXCEPT FOR SEC 13. I AM AN
ASSISTANT GUIDE. FOR ME TO QUALIFY
TO TAKE THE REG. GUIDE EXAM I
MUST HAVE 3 YRS FIELD EXPERIENCE
AND SIX LETTERS FROM HUNTERS RECOMMENDING
ME. THIS IS NOT FAIR ALLOWING
OUTFITTERS TO WALK IN AND TAKE THE TEST
I ALSO DISAGREE WITH A COMMERCIAL USE FEE.
WE NEED AN EXCLUSIVE GUIDE AREA
SYSTEM I WOULD SUPPORT AN AMENDMENT TO
THE CONSTITUTION.

Signed: Mark A. Roswell
Testifier

Representing (Optional)
Box 3687 Kodiak AK 99615
Address
487-2541
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Joe Hinton
 committee name
 committee on SB 140, dated 2/8-89
 bill/subject

I am an assistant guide on Kodiak and have worked for 3 years as one now with SB140 it lets any outfitter with no field experience take a test & become a registered guide which will flood an already overpopulated area, who will be competing with the guides who originally guided in a specific area for years & affecting the livelihood of many people who rely only on guiding as their livelihood

Signed: Joe Hinton
 Testifier

Representing (Optional)
Box 493 Kodiak, AK 99615
 Address

Phone No.

455-6151

Mary Bishop
1555 Green Circle
Fbx 99709

My name is Mary Bishop. I represent myself only, although I am especially influenced by my activities as a board member of Alaska Fish & Wildlife Spayward — which you may recognize as the State's "crimestopper" program for fish & game violations.

I strongly support legislation like SB 140. I believe it's necessary to regulate all businesses that provide services to big game hunters.

I recently read that the illegal taking of wildlife resources is the 2nd largest illegal dollar grossing activity — 2nd only to drugs. It's an international industry 2nd only to drugs. I don't see Alaskans realize what a potential — or real — problem we have.

~~on a hand.~~

I strongly support our privilege to hunt — but every illegal or unethical activity related to hunting endangers that privilege. I believe legislation like this will aid our state's enforcement agency in its effort to keep tabs on what's going on out in the field. I think that is essential.



Alaska State Legislature

Please enter into the record my testimony to the JT. Resource
 committee on SB139+140 Big Game committee name
Guide dated 2/6/89
 bill/subject

Bill 140:

- ① When will INTERIM - OUTFITTERS LICENSES BE AVAILABLE?
- ② When will license fees be set for Guide - Outfitter licenses + commercial use operator?
- ③ What Business License number (SIC) will apply to Guide - Outfitter - Transporter - Commercial Use permits?
- ④ Sec 13.3 - What is "Satisfactory Evidence," to Board of Big Game Commercial Services, that I have ~~engaged~~ engaged in the business of Big Game outfitting in 1986, 87, +88?

Signed: Bill Gavin

Testifier
GAVIN'S KENAI RIVER CHARTERS

Representing (Optional)
PO BOX 3628 SOLDOTNA AK 99669

Address
262-7746

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House & Senate Resource
committee name

committee on House Bill 112 & Senate Bill 139, dated Feb 8, 1989
bill/subject

I have the following comments on this proposed Legislation:

1. The Big Game Commercial Services board should include representation from Private, Non-native landowners as well as consumer groups.
2. The Big Game Conservation Fee will be passed on to the hunter and will result in increased expense to the hunter. With the increase in license & tag fee's also being proposed will make too much of an increase in one year. This fee is due only if an animal is killed, However the increase fees will probably be charged to the hunter if he kills an animal or not.
3. Adding Mountain Goat to the list of species which a nonresident needs a guide is an obvious attempt to increase income to guides in those areas which have goats. Would an outfitted hunt provided by a licensed guide-outfitter but with out a guide being with you when you killed the animal qualify under this provision?
4. This bill adds additional regulation to the providers of these services. This will increase cost to the hunter and will result in fewer hunters in the state. Then the guides will want a non-resident quota for tags to ~~use~~ maintain profitability for their business.
5. The Big Game Commercial Services Board should only be concerned with the licensing and regulating of providers of services to Big Game hunters. Let the Fish and Game regulate the wildlife ~~resource~~ resource. This would be to do away with restricted areas for guides. Fish and Game ~~should~~ should regulate the number of animals taken in each game management unit.

Signed: Harry N. Champlin
Testifier

Representing (Optional)
Box 428 Delta Jct. AK 99737
 Address
895-4241 Day 895-5004 Home
 Phone No.

6-0401H ✓
Utermohle
3/13/89

Original sponsor: Resources Committee

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 112 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to big game hunting and to the
7 regulation of big game and marine mammal guide-out-
8 fitting, transportation, and other commercial ser-
9 vices for big game hunters; creating the Big Game
10 Commercial Services Board; relating to presumptive
11 sentences for violation of certain big game commer-
12 cial services statutes; and providing for an effec-
13 tive date."

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

15 * Section 1. AS 08.01.010(10) is repealed and reenacted to read:

16 (10) Big Game Commercial Services Board (AS 08.54.300);

17 * Sec. 2. AS 08.03.010(c)(20) is repealed and reenacted to read:

18 (20) Big Game Commercial Services Board (AS 08.54.300) --

19 June 30, 1993.

20 * Sec. 3. AS 08.54 is amended by adding new sections to read:

21 ARTICLE 4. BIG GAME COMMERCIAL SERVICES BOARD.

22 Sec. 08.54.300. CREATION AND MEMBERSHIP OF BOARD. (a) For the
23 purposes of licensing and regulating the activities of providers of
24 commercial services to big game hunters in the interest of the state's
25 wildlife resources there is created the Big Game Commercial Services
26 Board. For administrative purposes, the board is in the Department of
27 Commerce and Economic Development.

28 (b) The board consists of nine members:

29 (1) two members who are licensed guide-outfitters;

1 (2) two members who are licensed transporters, one of whom
2 must be engaged in the business of providing air transportation ser-
3 vices;

4 (3) one member who holds a commercial use permit, but does
5 not hold any class of guide-outfitter license or a transporter
6 license;

7 (4) one member of the Board of Game who is chosen by the
8 Board of Game and who does not hold a commercial use permit;

9 (5) one member who represents Native landholders; and

10 (6) two public members.

11 Sec. 08.54.310. DUTIES AND POWERS. (a) The board shall

12 (1) prepare, grade, and administer

13 (A) a written and oral examination of an applicant for
14 a guide-outfitter license that requires demonstration that the
15 applicant is qualified generally to provide guide-outfitted hunts
16 and, in particular, to guide-outfit in each game management unit
17 the applicant has selected; if an applicant demonstrates limited
18 ability to read or write the English language, the entire examin-
19 ation shall be administered orally; and

20 (B) an oral examination of a guide-outfitter who seeks
21 an amendment of a game management unit certification; the examin-
22 ation must require demonstration that the guide-outfitter is
23 qualified to provide guide-outfitted hunts in each new game
24 management unit for which the guide-outfitter seeks to be certi-
25 fied;

26 (2) determine qualifications of applicants for class-A
27 assistant guide-outfitter, marine mammal guide-outfitter, and assis-
28 tant guide-outfitter licenses and authorize the issuance of licenses
29 to those who qualify;

1 (3) establish performance standards for providers of big
2 game commercial services and regulate the activities of these provid-
3 ers;

4 (4) compile, maintain, and publish an annual register of
5 big game commercial service providers subject to this chapter who have
6 not been convicted of a violation of a state or federal statute or
7 regulation relating to the provision of big game commercial services;
8 a big game commercial services provider listed in the register whose
9 license or permit is revoked or suspended shall be removed from the
10 register while the provider's license or permit is revoked or sus-
11 pended;

12 (5) prohibit guide-outfitting, transporting, and other big
13 game commercial services activities that are unsportsmanlike, uneth-
14 ical, unsafe, against principles of game conservation, degrading to a
15 profession subject to this chapter, or that adversely affect natural
16 resources;

17 (6) after a hearing, revoke, suspend, or deny renewal of a
18 license or permit under AS 08.54.500 - 08.54.510;

19 (7) authorize issuance of transporter licenses;

20 (8) authorize issuance of commercial use permits;

21 (9) meet at least twice annually, once in Anchorage and
22 once in another municipality;

23 (10) provide for registration of base camps and facilities
24 used by persons who are licensed or who hold a permit under this
25 chapter.

26 (b) The board may

27 (1) establish, subject to the prior approval of the commis-
28 sioner of fish and game, a resource-based management system for allo-
29 cating access to big game hunting opportunities among guide-outfitters

1 licensed under this chapter;

2 (2) establish the level of supervision that a guide-out-
3 fitter shall provide for class-A assistant guide-outfitters and assis-
4 tant guide-outfitters who are employed by the guide-outfitter.

5 Sec. 08.54.320. BOARD REGULATIONS. The board shall adopt proce-
6 dural and substantive regulations required by this chapter or reason-
7 ably necessary for its administration.

8 Sec. 08.54.330. BOARD ASSISTANCE. The Department of Fish and
9 Game, Department of Natural Resources, and Department of Public Safety
10 shall provide the board with information, data, or technical assis-
11 tance requested by the board for the purposes of licensing and reg-
12 ulating the activities of providers of commercial services to big game
13 hunters.

14 ARTICLE 5. LICENSING.

15 Sec. 08.54.350. GUIDE-OUTFITTER LICENSE. (a) A natural person
16 is entitled to a guide-outfitter license if the person

17 (1) is 21 years of age or older;

18 (2) has practical field experience in the handling of
19 firearms, hunting, judging trophies, field preparation of meat and
20 trophies, first aid, photography, and related guide-outfitting activi-
21 ties;

22 (3) is familiar with the terrain and transportation prob-
23 lems in the game management unit for which the license is requested;

24 (4) has passed the qualification examinations prepared and
25 administered by the board;

26 (5) has demonstrated to the board sufficient standards of
27 competence and ethical conduct and has not been convicted of a state
28 or federal hunting or guide-outfitting statute or regulation within
29 the last five years for which the person was fined more than \$500 or

1 imprisoned for more than five days;

2 (6) has legally hunted in the state for part of each of any
3 five years in a manner directly contributing to the person's experi-
4 ence and competency as a guide-outfitter;

5 (7) has been licensed as and performed the services of a
6 class-A assistant guide-outfitter or assistant guide-outfitter in the
7 state for a part of each of three years, or has guide-outfitted in the
8 state for a part of each of three years under a marine mammal guide-
9 outfitter license issued under AS 08.54.360;

10 (8) has demonstrated a current knowledge of fishing, hunt-
11 ing, and guide-outfitting regulations;

12 (9) is capable of performing the essential duties associ-
13 ated with guide-outfitting;

14 (10) has been favorably recommended in writing by six big
15 game hunters, two for each year of the person's most recent three
16 years as a class-A assistant guide-outfitter or assistant guide-out-
17 fitter, when the person has guide-outfitted or assisted in guide-out-
18 fitting as a class-A assistant guide-outfitter or assistant guide-out-
19 fitter, whose recommendations have been solicited by the board from a
20 list provided by the applicant;

21 (11) possesses a business license to provide guide-out-
22 fitting services; and

23 (12) has paid the license fee and commercial use permit
24 fee.

25 (b) A person who receives a master guide-outfitter license under
26 sec. 12 of this Act may use the title master guide-outfitter and may
27 annually renew the license unless the license has been revoked or
28 suspended or has lapsed under AS 08.54.440. A master guide-outfitter
29 license is for all purposes under this chapter a guide-outfitter

1 license.

2 (c) A guide-outfitter may contract to guide-outfit hunts for big
3 game and may provide transportation to, from, or in the field that is
4 incidental to a guide-outfitted hunt.

5 Sec. 08.54.360. MARINE MAMMAL GUIDE-OUTFITTER LICENSE. (a) The
6 board may issue a marine mammal guide-outfitter license to a natural
7 person who applies to guide-outfit a hunt for a specific species of
8 marine mammal in a specifically designated area if the person

9 (1) is 21 years of age or older;

10 (2) has, for at least 10 years, resided and hunted in the
11 area of the state in which the applicant is to guide-outfit;

12 (3) is able to perform the duties of a marine mammal guide-
13 outfitter;

14 (4) has demonstrated knowledge of the following areas to an
15 extent and degree satisfactory to the board:

16 (A) current fish and game laws and regulations;

17 (B) relevant characteristics of the specific species
18 to be hunted;

19 (C) field preparation of trophies;

20 (D) care of game meat;

21 (E) use of guide-outfitting gear;

22 (F) firearm safety;

23 (G) practical first aid; and

24 (H) booking and contracting hunts;

25 (5) has not been convicted of violating a state or federal
26 game or guide-outfitting statute or regulation during the previous
27 five years for which the person was fined more than \$500 or imprisoned
28 for more than five days;

29 (6) possesses a business license to provide guide-

1 outfitting services; and

2 (7) has paid the license fee and commercial use permit fee.

3 (b) A marine mammal guide-outfitter may contract to guide-outfit
4 hunts for species of marine mammals for which the marine mammal guide-
5 outfitter license is issued.

6 Sec. 08.54.370. RENEWAL OF GUIDE-OUTFITTER LICENSE AND MARINE
7 MAMMAL GUIDE-OUTFITTER LICENSE. (a) An applicant for renewal of a
8 guide-outfitter license or a marine mammal guide-outfitter license
9 shall submit with the application for renewal

10 (1) the hunt record required under AS 08.54.550 for the
11 period covered by the current license;

12 (2) the license fee for the next licensing period; and

13 (3) the commercial use permit fee for the next licensing
14 period.

15 (b) The department may not renew a license under this section
16 unless all fees have been paid in full and the hunt record has been
17 filed.

18 Sec. 08.54.380. CLASS-A ASSISTANT GUIDE-OUTFITTER LICENSE. (a)
19 A natural person is entitled to a class-A assistant guide-outfitter
20 license if the person

21 (1) has been employed for at least one season as a licensed
22 assistant guide-outfitter; and

23 (2) has had at least 10 years hunting experience in the
24 game management units in which the person is to be employed; military
25 service outside the state for not more than three years shall be
26 accepted as part of the required 10 years hunting experience.

27 (b) A class-A assistant guide-outfitter

28 (1) may not contract to guide-outfit hunts;

29 (2) shall be under the supervision of a guide-outfitter who

1 has contracted with the client for whom the class-A assistant guide-
2 outfitter is conducting the hunt; and

3 (3) may take charge of a camp and conduct guide-outfitter
4 activities from it without the guide-outfitter being present in the
5 area if the guide-outfitter is supervising the guide-outfitting activ-
6 ities.

7 Sec. 08.54.390. ASSISTANT GUIDE-OUTFITTER LICENSE. (a) A
8 natural person is entitled to an assistant guide-outfitter license if
9 the person

- 10 (1) is 18 years of age or older;
11 (2) passes an examination administered by the board;
12 (3) has hunted in the state in two of the last five years;
13 (4) has demonstrated practical knowledge of first aid and
14 cardiopulmonary resuscitation;
15 (5) is in sound physical condition; and
16 (6) meets additional qualifications that the board may
17 establish.

18 (b) An assistant guide-outfitter

- 19 (1) may not contract to guide-outfit hunts; and
20 (2) shall be employed by a guide-outfitter and under the
21 supervision of a guide-outfitter or class-A assistant guide-outfitter
22 at all times while the assistant guide-outfitter is in the field on
23 guide-outfitted hunts.

24 Sec. 08.54.400. TRANSPORTER LICENSE. (a) A person is entitled
25 to a transporter license if the person

- 26 (1) applies on a form provided by the department;
27 (2) pays the license fee;
28 (3) pays the commercial use permit fee;
29 (4) provides proof of

1 (A) an air taxi/commercial operator certificate issued
2 by the Federal Aviation Administration under 14 C.F.R. Part 135,
3 if the person provides air transportation services to big game
4 hunters;

5 (B) licensure by the Coast Guard to carry passengers
6 for hire, if the person provides water transportation services to
7 big game hunters and if licensure is required by the Coast Guard;
8 and

9 (5) has a business license to transport big game hunters.

10 (b) A transporter may provide transportation services for com-
11 pensation to big game hunters and accommodations in the field at a
12 permanent lodge, house, or cabin owned by the transporter or on a boat
13 with permanent living quarters located on salt water. A transporter
14 may also provide, under authority of a commercial use permit, other
15 big game commercial services as defined under AS 08.54.460. A trans-
16 porter may not provide big game commercial hunting services without
17 holding the appropriate license.

18 (c) An applicant for renewal of a transporter license shall
19 submit with the application for renewal

20 (1) an activity report on a form provided by the department
21 for the period covered by the current license; an activity report
22 shall contain information required by the board by regulation;

23 (2) the license fee for the next licensing period;

24 (3) the commercial use permit fee for the next licensing
25 period; and

26 (4) proof of

27 (A) an air taxi/commercial operator certificate issued
28 by the Federal Aviation Administration under 14 C.F.R. Part 135,
29 if the applicant provides air transportation services to big game

1 hunters;

2 (B) licensure by the Coast Guard to carry passengers
3 for hire, if the applicant provides water transportation services
4 to big game hunters and if licensure is required by the Coast
5 Guard.

6 (d) The department may not renew a transporter license unless
7 all fees have been paid in full and the activity report required under
8 (c)(1) of this section and the proof required under (c)(4) of this
9 section have been filed.

10 (e) A transporter shall place a decal provided by the department
11 on each plane, boat, vehicle, or other equipment used by the trans-
12 porter to provide transportation services to big game hunters. The
13 decal must bear the transporter's license number. The decal is valid
14 only for the plane, boat, vehicle, or other equipment for which the
15 decal is issued.

16 Sec. 08.54.410. APPEAL TO COMMISSIONER FROM BOARD ON DENIAL OF
17 LICENSE. The commissioner of commerce and economic development may
18 order that an applicant for an initial license under AS 08.54.350 -
19 08.54.400 be allowed to take the license examination or be issued the
20 license if, after reviewing a petition filed by the applicant, the
21 commissioner finds that

22 (1) the board denied the applicant an opportunity to take
23 the license examination or refused to approve issuance of the license;

24 (2) the board's denial or refusal has been upheld by a
25 final administrative order and the order has not been appealed to the
26 superior court under AS 44.62.560;

27 (3) the board's denial or refusal was based on

28 (A) an error of fact by the board; or

29 (B) the applicant's failure of the license examination

1 due to faulty or unfair examination questions or procedures;

2 (4) the applicant is otherwise qualified to take the exam-
3 ination or to be issued the license; and

4 (5) sustaining the board's denial or refusal would work a
5 substantial injustice on the applicant.

6 Sec. 08.54.420. RENEWAL OF LICENSES. Notwithstanding AS 08.01.-
7 100(a), guide-outfitter, marine mammal guide-outfitter, and transport-
8 er licenses shall be renewed annually on dates set by the department
9 with the approval of the board.

10 Sec. 08.54.430. EXAMINATIONS FOR GUIDE-OUTFITTER LICENSES. (a)
11 The board shall administer the qualification examinations required
12 under this chapter at least twice a year. An examination may not be
13 given within 90 days after the previous examination. At least once
14 every other year the board shall give the examination at a location
15 other than Anchorage.

16 (b) The board shall regularly disseminate information regarding
17 examinations and other qualifications for all classes of guide-out-
18 fitter licenses to residents of the rural areas of the state.

19 Sec. 08.54.440. FAILURE TO RENEW. (a) A license may not be
20 issued to a guide-outfitter, marine mammal guide-outfitter, class-A
21 assistant guide-outfitter, or assistant guide-outfitter who has failed
22 to renew a license issued under this chapter for two consecutive years
23 unless the guide-outfitter, marine mammal guide-outfitter, class-A
24 assistant guide-outfitter, or assistant guide-outfitter again meets
25 the qualifications for initial issuance of the license.

26 (b) Notwithstanding (a) of this section, a guide-outfitter who
27 fails to renew a license is not required to requalify under AS 08.54.-
28 350(a)(7), unless the license has been lapsed for three or more years.

29 Sec. 08.54.450. LICENSE AND EXAMINATION FEES. (a) The

1 department shall set license fees under AS 08.01.065 for each of the
2 following:

- 3 (1) guide-outfitter
- 4 (2) class-A assistant guide-outfitter;
- 5 (3) assistant guide-outfitter;
- 6 (4) marine mammal guide-outfitter;
- 7 (5) transporter.

8 (b) The license fee for the guide-outfitter, marine mammal
9 guide-outfitter, class-A assistant guide-outfitter, or assistant
10 guide-outfitter license is in addition to the fee required for a
11 hunting license.

12 (c) An applicant for a qualifying examination for any class of
13 guide-outfitter license shall pay a fee established by regulations
14 adopted under AS 08.01.065.

15 Sec. 08.54.460. COMMERCIAL USE PERMIT HOLDER. A person, other
16 than a guide-outfitter, marine mammal guide-outfitter, or a trans-
17 porter, who provides other big game commercial services for compen-
18 sation shall register with the board on a form provided by the board
19 and shall obtain a commercial use permit and pay the annual commercial
20 use permit fee set under AS 08.54.470. In this section "other big
21 game commercial services" includes provision of accommodations in the
22 field at a permanent lodge, house, or cabin owned by the commercial
23 use permit holder, hunt broker services, gear rental services, photo-
24 graphic or videographic services, and services as defined by the board
25 by regulation.

26 Sec. 08.54.470. COMMERCIAL USE PERMIT AND FEE. (a) A person
27 who is licensed under this chapter as a guide-outfitter, marine mammal
28 guide-outfitter, or transporter shall obtain an annual commercial use
29 permit and pay an annual commercial use permit fee.

1 (b) The department, in consultation with the board, shall set
2 the amount of the commercial use permit fee.

3 (c) A guide-outfitter, marine mammal guide-outfitter, and trans-
4 porter shall pay the commercial use permit fee at the time of applica-
5 tion for issuance or renewal of a guide-outfitter license, marine
6 mammal guide-outfitter license, or transporter license.

7 (d) The commissioner of administration shall separately account
8 for commercial use permit fees deposited in the general fund by the
9 department. The annual estimated balance in the account may be used
10 by the legislature to make appropriations to the Department of Fish
11 and Game and the Department of Public Safety to carry out their re-
12 spective responsibilities for management of game resources and en-
13 forcement of game laws.

14 ARTICLE 6. PENALTIES.

15 Sec. 08.54.500. DISCIPLINE OF GUIDE-OUTFITTERS. (a) The board
16 may hold a hearing to determine whether disciplinary action is neces-
17 sary if a written complaint concerning the guide-outfitting activities
18 of a licensee who holds any class of guide-outfitter license is filed
19 with the board. The board shall hold a hearing to determine whether a
20 licensee should be disciplined within a reasonable time after

21 (1) complaints concerning a licensee's guide-outfitting
22 activities are filed with the board within a two-year period by three
23 or more of the licensee's clients from separate hunting parties;

24 (2) a complaint concerning a licensee's conduct during a
25 life-threatening situation is filed with the board; or

26 (3) a licensee has been convicted of a violation of a
27 federal or state statute or regulation relating to hunting or pro-
28 vision of big game commercial services.

29 (b) After a hearing, the board may revoke, suspend, or deny

1 renewal of any class of guide-outfitter license, if the board finds
2 that the licensee

3 (1) engaged in unethical activity, unsafe activity, or
4 activity that adversely affects the natural resources of the state
5 when the activity is related to the purposes of providing guide-out-
6 fitting services, however the board may not discipline a licensee
7 under this paragraph for unsafe operation of an aircraft; or

8 (2) violated a provision of a federal or state statute or
9 regulation relating to hunting or provision of big game commercial
10 services.

11 (c) After a hearing, the board shall revoke any class of guide-
12 outfitter license if the board finds that the licensee

13 (1) does not meet the qualifications specified by statute
14 or regulation for the license held;

15 (2) is incompetent as a guide-outfitter, marine mammal
16 guide-outfitter, class-A assistant guide-outfitter, or assistant
17 guide-outfitter; or

18 (3) during the five years immediately preceding the hearing
19 has been convicted of a violation of a federal or state statute or
20 regulation prohibiting

21 (A) waste of a wild food animal;

22 (B) hunting on the same day airborne;

23 (C) hunting during a closed hunting season; or

24 (D) hunting in an area closed by state or federal

25 regulation.

26 (d) If a certified copy of a judgment of conviction of a licens-
27 ee who holds any class of guide-outfitter license for an offense
28 described under (c)(3) of this section is filed with the board, the
29 board shall immediately suspend the licensee's license. The

1 suspension may be ordered even if the conviction resulted from a plea
2 of nolo contendere or if the conviction is under appeal. The suspen-
3 sion remains in effect until after the final disposition of the disci-
4 plinary proceeding under this section.

5 Sec. 08.54.505. DISCIPLINE OF TRANSPORTERS AND COMMERCIAL USE
6 PERMITTEES. (a) The board may hold a hearing to determine whether
7 disciplinary action is necessary if a complaint concerning the big
8 game commercial service activities of a transporter who is licensed
9 under AS 08.54.400 or a commercial use permittee who holds a permit
10 issued under AS 08.54.460 is filed with the board. The board shall
11 hold a hearing to determine whether a licensee or permittee should be
12 disciplined within a reasonable time after

13 (1) complaints concerning a licensee's or permittee's
14 activities are filed with the board within a two-year period by three
15 or more of the licensee's or permittee's clients from separate hunting
16 parties; or

17 (2) a licensee or permittee has been convicted of a viola-
18 tion of a federal or state statute or regulation relating to hunting
19 or provision of big game commercial services.

20 (b) After a hearing, the board may revoke, suspend, or deny
21 renewal of a transporter license or commercial use permit issued under
22 this chapter, if the board finds that the licensee or permittee

23 (1) engaged in unethical activity, unsafe activity, or
24 activity that adversely affects the natural resources of the state
25 when the activity is related to the purposes of providing big game
26 commercial services, however the board may not discipline a licensee
27 or permittee under this paragraph for unsafe operation of an aircraft;
28 or

29 (2) violated a provision of a federal or state statute or

1 regulation relating to hunting or provision of big game commercial
2 services.

3 (c) The board may not revoke, suspend, or deny renewal of a
4 transporter license or commercial use permit for a violation of a
5 federal or state statute or regulation relating to game or provision
6 of big game commercial services committed by an employee of the li-
7 censee or permittee unless the licensee or permittee participated or
8 aided in the violation.

9 (d) After a hearing, the board shall revoke a license or permit
10 if the board finds that the licensee or permittee

11 (1) does not meet the qualifications specified by statute
12 or regulation for the license held; or

13 (2) during the five years immediately preceding the hearing
14 has been convicted of a violation of a federal or state statute or
15 regulation prohibiting

16 (A) waste of a wild food animal;

17 (B) hunting on the same day airborne;

18 (C) hunting during a closed hunting season; or

19 (D) hunting in an area closed by state or federal

20 regulation.

21 (e) If a certified copy of a judgment of conviction of a licens-
22 ee or permittee for an offense described under (d)(2) of this section
23 is filed with the board, the board shall immediately suspend the
24 licensee's or permittee's license or permit. The suspension may be
25 ordered even if the conviction resulted from a pleas of nolo con-
26 tendere or if the conviction is under appeal. The suspension remains
27 in effect until after the final disposition of the disciplinary pro-
28 ceeding under this section.

29 Sec. 08.54.510. DISCIPLINE; GENERAL PROVISIONS. (a) A person

1 who is disciplined under AS 08.54.500 or 08.54.505 may not engage in
2 the provision of big game commercial services during the period of
3 license or permit revocation or other disciplinary action. A person
4 who is licensed under this chapter, or who holds a permit issued under
5 this chapter, may not hire a person whose license or permit to provide
6 big game commercial services is suspended or revoked under AS 08.54.-
7 500 or 08.54.505. A person whose license or permit is suspended or
8 revoked may not be employed by a person who is licensed or who holds a
9 permit under this chapter.

10 (b) If the board revokes a license or permit under AS 08.54.500
11 or 08.54.505, the person whose license or permit has been revoked
12 shall surrender immediately the license or permit to the department.

13 (c) A certified copy of a judgment of conviction of a licensee
14 or permittee for an offense is conclusive evidence of the commission
15 of that offense in a disciplinary proceeding instituted against the
16 licensee or permittee under AS 08.54.500 or 08.54.505 based on that
17 conviction, regardless of whether the conviction resulted from a plea
18 of nolo contendere or the conviction is under appeal, unless the
19 conviction is overturned on appeal.

20 (d) Within 30 days after conclusion of a hearing under AS 08.-
21 54.500 or 08.54.505, the board shall notify the complainant of the
22 results of the hearing, including written reasons justifying a deci-
23 sion not to take disciplinary action.

24 Sec. 08.54.520. UNLAWFUL ACTS. (a) It is unlawful for a

25 (1) person who is licensed or who holds a commercial use
26 permit under this chapter to knowingly fail to timely report to the
27 Department of Public Safety, division of fish and wildlife protection,
28 and in no event later than 30 days, a violation of a state fish, game,
29 or big game commercial services statute or regulation that the person

1 reasonably believes was committed by a client or an employee of the
2 person;

3 (2) person who is licensed or who holds a commercial use
4 permit under this chapter to knowingly

5 (A) commit or aid the commission of a violation of
6 this chapter, a regulation adopted under this chapter, or a state
7 fish or game statute or regulation; or

8 (B) permit the commission of a violation of this
9 chapter, a regulation adopted under this chapter, or a state fish
10 or game statute or regulation that the person knows or reasonably
11 believes is being or will be committed without

12 (i) attempting to prevent it, short of using
13 force; and

14 (ii) reporting it;

15 (3) person without a current commercial use permit issued
16 under this chapter to knowingly provide big game commercial services;

17 (4) person who is licensed or who holds a commercial use
18 permit issued under this chapter to intentionally obstruct or hinder
19 or attempt to obstruct or hinder lawful hunting engaged in by a person
20 who is not a client of the person;

21 (5) class-A assistant guide-outfitter or an assistant
22 guide-outfitter to knowingly guide-outfit a hunt except while employed
23 and supervised by a guide-outfitter;

24 (6) person who holds any class of guide-outfitter license
25 to knowingly enter or remain unlawfully on state, federal, or private
26 land without prior authorization during the course of providing guide-
27 outfitting services;

28 (7) person to knowingly guide-outfit without having a
29 current guide-outfitter, marine mammal guide-outfitter, class-A

1 assistant guide-outfitter, or assistant guide-outfitter license and
2 hunting license in actual possession;

3 (8) person without a current guide-outfitter or marine
4 mammal guide-outfitter license to knowingly advertise as or represent
5 to be a guide-outfitter;

6 (9) person to knowingly provide transportation services to
7 big game hunters without holding a transporter license;

8 (10) class-A assistant guide-outfitter or an assistant
9 guide-outfitter to knowingly contract for a hunt; or

10 (11) person to knowingly engage in a big game commercial
11 services activity during the period for which the person's license to
12 conduct that activity is suspended or revoked.

13 (b) A person who commits an offense set out in (a)(1) - (6) of
14 this section is guilty of a misdemeanor and is punishable by a fine of
15 not more than \$30,000 or by imprisonment for not less than two months
16 or more than one year, or both.

17 (c) A person who commits an offense set out in (a)(7) - (10) of
18 this section is guilty,

19 (1) for a first offense, of a misdemeanor and is punishable
20 by a fine of not more than \$30,000 or by imprisonment for not less
21 than two months or more than one year, or both;

22 (2) for a second or subsequent offense, of a class C fel-
23 ony.

24 (d) A person who violates (a)(11) of this section, is guilty of
25 a class C felony.

26 (e) In addition to the penalties set out in (b), (c) and (d) of
27 this section,

28 (1) the court may revoke the person's license to provide
29 guide-outfitting or transportation services for not more than five

1 years; and

2 (2) all guns, fishing tackle, boats, aircraft, automobiles
3 or other vehicles, camping gear, and other equipment and paraphernalia
4 used in, or in aid of, a violation of (a) of this section may be
5 seized by persons authorized to enforce this chapter and may be for-
6 feited to the state as provided under AS 16.05.195.

7 (f) Upon conviction of a person for committing an offense set
8 out in (a) of this section, the execution of sentence may not be
9 suspended and probation may not be granted except on the condition
10 that the minimum term of imprisonment is served. Imposition of sen-
11 tence may not be suspended.

12 Sec. 08.54.530. INJUNCTION AGAINST UNLAWFUL ACTION. When in the
13 judgment of the board a person has engaged in an act in violation of
14 AS 08.54.380(b), 08.54.390(b), 08.54.400(b), 08.54.510(a), and 08.54.-
15 520 or the regulations adopted under them, the board may apply to the
16 appropriate court for an order enjoining the action. Upon a showing
17 by the board that the person is engaging in the act, the court shall
18 grant injunctive relief or other appropriate order without bond.

19 Sec. 08.54.540. RESPONSIBILITY OF GUIDE-OUTFITTER FOR VIOLA-
20 TIONS. A guide-outfitter who contracts to guide-outfit a hunt is
21 equally responsible under AS 08.54.500 for a violation of a federal or
22 state game or guide-outfitting statute or regulation committed by a
23 class-A assistant guide-outfitter or an assistant guide-outfitter
24 while in the course of the class-A assistant guide-outfitter's or
25 assistant guide-outfitter's employment for the guide-outfitter.

26 ARTICLE 7. GENERAL PROVISIONS.

27 Sec. 08.54.550. HUNT RECORDS; CONFIDENTIALITY OF HUNT RECORDS
28 AND ACTIVITY REPORTS. (a) The department shall collect and maintain
29 hunt records provided by guide-outfitters or marine mammal

1 guide-outfitters. A hunt record must include a list of all big game
2 hunters who used the services of the guide-outfitter or marine mammal
3 guide-outfitter, the number of each big game species taken, and other
4 information required by the board. The department shall provide forms
5 for reporting hunt records.

6 (b) The department shall make hunt records, and activity reports
7 received under AS 08.54.400, available to state and federal agencies
8 charged with the enforcement of statutes and regulations relating to
9 guide-outfitting or game or with management of game if requested for
10 game management or law enforcement purposes. Aggregated data compiled
11 from hunt records and activity reports may be included in reports by
12 the department. For all other purposes, the hunt records and activity
13 reports are confidential and are not subject to inspection or copying
14 under AS 09.25.110 - 09.25.125.

15 Sec. 08.54.590. DEFINITIONS. In this chapter

16 (1) "base camp" means a guide-outfitter's or marine mammal
17 guide-outfitter's primary base of operations in the field; "base camp"
18 does not include a spike camp;

19 (2) "big game" means brown bear, grizzly bear, polar bear,
20 caribou, moose, black bear, bison, Sitka blacktail deer, elk, mountain
21 goat, musk-ox, wolf, wolverine, mountain or Dall sheep, and walrus;

22 (3) "big game commercial hunting service" means a service
23 for which the provider of the service must obtain a guide-outfitter,
24 marine mammal guide-outfitter, class-A assistant guide-outfitter, or
25 assistant guide-outfitter license;

26 (4) "big game commercial service" means a service for which
27 the provider of the service must obtain a commercial use permit;

28 (5) "board" means the Big Game Commercial Services Board;

29 (6) "compensation" means payment for services including

1 wages or other remuneration but not including reimbursement for actual
2 expenses incurred;

3 (7) "department" means the Department of Commerce and
4 Economic Development;

5 (8) "enter or remain unlawfully" has the meaning given in
6 AS 11.46.350(a);

7 (9) "game management unit" means one of the 26 geographic
8 areas defined by the Board of Game for game management purposes;

9 (10) "guide-outfit" means to provide, for compensation or
10 with the intent or with an agreement to receive compensation, big game
11 commercial hunting services in the field; "guide-outfit" includes
12 accompanying or being present with a big game hunter in the field
13 either personally or through an assistant; "guide-outfit" does not
14 include the provision of transportation to, from, or in the field if
15 the person providing the transportation and the person being trans-
16 ported do not stalk, pursue, track, kill, or attempt to kill big game
17 during the provision of transportation;

18 (11) "field" means an area outside of established year-round
19 dwellings, businesses, or other developments usually associated with a
20 city, town, or village; "field" does not include permanent hotels or
21 roadhouses on the state road system or state or federally maintained
22 airports;

23 (12) "spike camp" means a camp in the field other than a
24 base camp and includes a fly camp or an overnight camp;

25 (13) "transportation services" means the carriage for com-
26 pensation of big game hunters, their equipment, or big game animals
27 harvested by hunters to, from, or in the field; "transportation ser-
28 vices" does not include the carriage by aircraft of big game hunters,
29 their equipment, or big game animals harvested by hunters

1 (A) on nonstop flights between state or federally
2 maintained airports; or

3 (B) by an air taxi operator or air carrier for which
4 the carriage of big game hunters, their equipment, or big game
5 animals harvested by hunters is only an incidental, as defined by
6 the board, portion of its business;

7 (14) "unethical activity" means

8 (A) deception or misrepresentation involving prospec-
9 tive or actual clients either before, during, or following the
10 provision of big game commercial services, including misrepresen-
11 tations through private or public advertising of the type, dura-
12 tion, cost, or conditions of the services;

13 (B) making a guaranty that a species or certain number
14 of species of game will be taken on a hunt;

15 (C) engaging in unsafe or unsportsmanlike activities
16 that are detrimental to the game resources of the state, as
17 defined by regulations of the board, including violations of
18 state hunting or big game commercial services statutes or regu-
19 lations; or

20 (D) accepting a deposit for big game commercial ser-
21 vices without providing before the services are rendered a signed
22 written contract to provide the services.

23 * Sec. 4. AS 12.55.125(e) is amended to read:

24 (e) A defendant convicted of a class C felony may be sentenced
25 to a definite term of imprisonment of not more than five years, and
26 shall be sentenced to the following presumptive terms, subject to
27 adjustment as provided in AS 12.55.155 - 12.55.175:

28 (1) if the offense is a second felony conviction, two
29 years;

1 (2) if the offense is a third felony conviction, three
2 years;

3 (3) if the offense is a first felony conviction, and the
4 defendant knowingly directed the conduct constituting the offense at a
5 uniformed or otherwise clearly identified peace officer, fire fighter,
6 correctional officer, emergency medical technician, paramedic, ambu-
7 lance attendant, or other emergency responder who was engaged in the
8 performance of official duties at the time of the offense, one year;

9 (4) if the offense is a first felony conviction, and the
10 defendant violated AS 08.54.520(a)(7) - (10), one year.

11 * Sec. 5. AS 16.05.407(a) is amended to read:

12 (a) It is unlawful for a nonresident to hunt, pursue, or take
13 brown bear, grizzly bear, polar bear, mountain goat, or sheep in this
14 state, unless personally accompanied by

15 (1) a person who is licensed as a guide-outfitter, [MASTER
16 GUIDE, REGISTERED GUIDE,] class-A assistant guide-outfitter, [GUIDE]
17 or assistant guide-outfitter [GUIDE] by the Big Game Commercial Ser-
18 vices [GUIDE] Board; or

19 (2) a resident over 19 years of age who is

20 (A) the spouse of the nonresident; or

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

23 * Sec. 6. AS 16.05.407(d) is amended to read:

24 (d) A nonresident who violates (a) of this section, or who fails
25 to furnish an affidavit under (b) [OR (e)] of this section, is guilty
26 of a misdemeanor and upon conviction is punishable by imprisonment for
27 not more than one year, or by a fine of not more than \$5,000, or by
28 both.

29 * Sec. 7. AS 16.05.408(a) is amended to read:

1 (a) It is a class A misdemeanor for a nonresident alien

2 (1) to hunt, pursue, or take marine mammals unless person-
3 ally accompanied by a licensed marine mammal guide-outfitter [GUIDE];
4 or

5 (2) to hunt, pursue, or take a big game animal as defined
6 by the Board of Game unless personally accompanied by a guide-outfit-
7 ter [LICENSED MASTER GUIDE, REGISTERED GUIDE,] or class-A assistant
8 guide-outfitter licensed [GUIDE] under AS 08.54.

9 * Sec. 8. AS 16.05 is amended by adding a new section to read:

10 Sec. 16.05.783. PROHIBITION. (a) A hunting club may not

11 (1) engage in activities in direct support of big game
12 hunting, including transportation or guide-outfitting of big game
13 hunters; or

14 (2) provide facilities or services for big game hunting.

15 (b) In this section "hunting club" means

16 (1) an organization that offers use of property or services
17 to individuals who pay a membership fee for the privilege of using the
18 property or services for hunting; or

19 (2) a partnership, limited partnership, corporation, or
20 unincorporated association through which property is jointly owned,
21 leased, or otherwise held by members of the entity and through which
22 the members are entitled to use the property for hunting.

23 * Sec. 9. AS 39.50.200(b)(48) is amended to read:

24 (48) Big Game Commercial Services [GUIDE] Board AS 08.54.-
25 300 [(AS 08.54.010)]; and

26 * Sec. 10. AS 41.23.420(d) is amended to read:

27 (d) The provisions of AS 41.23.400 - 41.23.510 do not affect the
28 authority of

29 (1) the Department of Fish and Game, the Board of

1 Fisheries, the Board of Game, or the Big Game Commercial Services
2 [GUIDE LICENSING AND CONTROL] Board under AS 08.54, AS 16, or AS
3 41.99.010;

4 (2) the Department of Environmental Conservation under AS
5 46.03; or

6 (3) state agencies and municipalities under AS 44.19.145(a)-
7 (11) and AS 46.40.100.

8 * Sec. 11. AS 44.62.330(a)(35) is amended to read:

9 (35) Big Game Commercial Services [GUIDE LICENSING AND
10 CONTROL] Board

11 * Sec. 12. TRANSITION: GUIDE-OUTFITTER LICENSES. (a) Notwithstanding
12 the repeal of AS 08.54.010 - 08.54.240, all licenses issued under AS 08.-
13 54.010 - 08.54.240 are valid for the period for which the licenses were is-
14 sued.

15 (b) For the purposes of AS 08.54.300 - 08.54.590 as enacted by sec. 3
16 of this Act, until new licenses are issued under this section, a

17 (1) master guide license issued under former AS 08.54.100 and a
18 registered guide license issued under former AS 08.54.110 shall be con-
19 sidered a guide-outfitter license issued under AS 08.54.350;

20 (2) class-A assistant guide license issued under former AS 08.-
21 54.120 shall be considered a class-A assistant guide-outfitter license
22 issued under AS 08.54.380;

23 (3) an assistant guide license issued under former AS 08.54.140
24 shall be considered an assistant guide-outfitter license issued under
25 AS 08.54.390.

26 (c) At the time of the next license renewal following the effective
27 date of this Act, each person licensed as

28 (1) a master guide shall receive a master guide-outfitter li-
29 cense if the person

1 (A) is in good standing at the time of issuance of the
2 license; and

3 (B) has paid the guide-outfitter license fee and the com-
4 mercial use permit fee;

5 (2) a registered guide shall receive a guide-outfitter license
6 if the person

7 (A) is in good standing at the time of issuance of the
8 license; and

9 (B) has paid the guide-outfitter license fee and the com-
10 mercial use permit fee;

11 (3) a class-A assistant guide shall receive a class-A assistant
12 guide-outfitter license if the person

13 (A) is in good standing at the time of issuance of the
14 license; and

15 (B) has paid the class-A assistant guide-outfitter license
16 fee;

17 (4) an assistant guide shall receive an assistant guide-out-
18 fitter license if the person

19 (A) is in good standing at the time of issuance of the
20 license; and

21 (B) pays the assistant guide-outfitter license fee.

22 (d) Notwithstanding (c) of this section, the Department of Commerce
23 and Economic Development may issue a new license under AS 08.54.300 -
24 08.54.590, without an additional fee, to a person licensed under former
25 AS 08.54.010 - 08.54.240 before the next renewal period following the
26 effective date of this Act, if the person satisfies the requirements for
27 the license and the license is valid only for the same period for which the
28 replaced license was issued.

29 * Sec. 13. TRANSITION; OUTFITTERS. (a) Notwithstanding AS 08.54.350,

1 as enacted by sec. 3 of this Act, a natural person is entitled to receive a
2 guide-outfitter license if the person

3 (1) applies on a form provided by the Department of Commerce and
4 Economic Development;

5 (2) lawfully registered a camp, cabin, or lodge under AS 16.-
6 05.787 during 1988;

7 (3) provides evidence satisfactory to the Big Game Commercial
8 Services Board that the person has legally engaged in the business of big
9 game outfitting in 1986, 1987, and 1988;

10 (4) passes the guide-outfitter examination administered by the
11 Big Game Commercial Services Board within two years after the effective
12 date of this Act;

13 (5) has not been convicted of violating a state or federal game
14 or guide-outfitting statute or regulation during the previous five years
15 for which the person was fined more than \$500 or imprisoned for more than
16 five days;

17 (6) has legally hunted in the state for part of each of any five
18 years in a manner directly contributing to the person's experience and
19 competency as a guide-outfitter;

20 (7) has been favorably recommended in writing by six big game
21 hunters, two for each year of the person's most recent three years as a big
22 game outfitter, whose recommendations have been solicited by the Big Game
23 Commercial Services Board from a list provided by the applicant;

24 (8) pays the guide-outfitter license fee and the commercial use
25 permit fee; and

26 (9) possesses a business license to provide recreational ser-
27 vices.

28 (b) A person who is denied a guide-outfitter license under (a) of
29 this section by the Big Game Commercial Services Board may appeal to the
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1 commissioner of commerce and economic development. The commissioner may
2 order that the applicant be allowed to take the license examination or be
3 issued the license if, after reviewing a petition filed by the applicant,
4 the commissioner finds that

5 (1) the board denied the applicant an opportunity to take the
6 license examination or refused to approve issuance of the license;

7 (2) the board's denial or refusal has been upheld by a final
8 administrative order and the order has not been appealed to the superior
9 court under AS 44.62.560;

10 (3) the board's denial or refusal was based on

11 (A) an error of fact by the board; or

12 (B) the applicant's failure of the license examination due
13 to faulty or unfair examination questions or procedures;

14 (4) the applicant is otherwise qualified to take the examination
15 or to be issued the license; and

16 (5) sustaining the board's denial or refusal would work a sub-
17 stantial injustice on the applicant.

18 (c) A guide-outfitter license issued under (a) of this section is for
19 all purposes a license issued under AS 08.54.350, as enacted by sec. 3 of
20 this Act.

21 (d) A person who satisfies (a)(1) - (3) of this section, holds a
22 business license as a big game outfitter, and pays a license fee set by the
23 Department of Commerce and Economic Development and the commercial use
24 permit fee is entitled to receive an interim outfitter license pending a
25 final determination of a person's eligibility for a guide-outfitter license
26 under (a) of this section. The right to receive and hold an interim out-
27 fitter license terminates on the earlier of

28 (1) the date of issuance of a guide-outfitter license to the
29 person;

1 (2) a final determination under (a) of this section that the
2 person is not eligible to receive a guide-outfitter license; or

3 (3) two years from the effective date of this Act.

4 (e) A person who holds an interim outfitter license, notwithstanding
5 contrary provisions of AS 08.54, may provide transportation to, from, and
6 in the field to big game hunters and supply other services in the field to
7 big game hunters. The person may not provide guiding services.

8 (f) A person who holds an interim outfitter license shall promptly
9 report to the Department of Public Safety, division of fish and wildlife
10 protection, but not later than 30 days after the violation, a violation of
11 a state fish, game, or big game commercial services statute or regulation
12 that the person reasonably believes was committed by a client or employee
13 of the person.

14 (g) A person who holds an interim outfitter license may accompany or
15 be present with a hunter at a base camp, cabin, or permanent lodge in
16 connection with a big game hunt for compensation only if the person has
17 furnished an affidavit to the Department of Public Safety, division of fish
18 and wildlife protection, at least two weeks in advance. The person may not
19 register more than two base camps. The affidavit must be signed by the
20 person and must provide the following information:

21 (1) the specific location of the camp, cabin, or lodge;

22 (2) the number of big game hunters in each party that will use
23 the camp, cabin, or lodge; and

24 (3) the kinds or species of big game that will be hunted.

25 (h) A person who furnishes an affidavit under (g) of this section
26 shall notify the Department of Public Safety of the amount and kinds or
27 species of big game taken by each hunter who uses the base camp, cabin, or
28 permanent lodge to which the affidavit relates. Notice shall be given
29 within 30 days after the game is taken. The Department of Public Safety
CSHB 112(Res)

1 shall provide the information received under this subsection to the Depart-
2 ment of Fish and Game.

3 (i) A person who

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

7 (2) falsifies an affidavit under (g) of this section is guilty
8 of unsworn falsification under AS 11.56.210.

9 (j) In this section,

10 (1) "base camp" does not include spike camp, fly camp, or over-
11 night camp;

12 (2) "big game" and "field" have the meaning given in AS 08.54.-
13 590, as enacted by sec. 3 of this Act;

14 (3) "guiding" means accompanying or being present with a big
15 game hunter in the field, personally or through an assistant, for compen-
16 sation or with the intent or an agreement to receive compensation; "guid-
17 ing" does not include

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

22 (B) selling, leasing, or renting goods, if the transaction
23 does not take place in the field;

24 (4) "outfitting" means the provision of services, other than
25 guiding services, to big game hunters in the field for compensation.

26 * Sec. 14. INITIAL APPOINTMENTS TO BIG GAME COMMERCIAL SERVICES BOARD.
27 Notwithstanding AS 08.54.300(b), as enacted by sec. 3 of this Act, the
28 initial appointments to the Big Game Commercial Services Board under

29 (1) AS 08.54.300(b)(1) may also be filled by the appointment of

1 a master guide or registered guide licensed under former AS 08.54.010 -
2 08.54.240 or a person who lawfully registered a camp, cabin, or lodge under
3 AS 16.05.787 during 1988 and legally engaged in the business of big game
4 outfitting in 1986, 1987, and 1988;

5 (2) AS 08.54.300(b)(2) may also be filled by the appointment of
6 a person who engaged in the business of providing transportation to big
7 game hunters in 1986, 1987, and 1988.

8 * Sec. 15. TRANSITION. Litigation, hearings, investigations, and other
9 proceedings pending under a law amended or repealed by this Act continue in
10 effect and may be continued and completed notwithstanding an amendment or
11 repeal provided for in this Act. Licenses, orders, and regulations issued
12 or adopted under authority of a law amended or repealed by this Act remain
13 in effect for the term issued or until revoked, vacated, or otherwise
14 modified under the provisions of this Act.

15 * Sec. 16. AS 08.54.010, 08.54.030, 08.54.035, 08.54.040, 08.54.045,
16 08.54.050, 08.54.060, 08.54.070, 08.54.100, 08.54.110, 08.54.120, 08.54.-
17 130, 08.54.140, 08.54.141, 08.54.150, 08.54.160, 08.54.170, 08.54.180,
18 08.54.186, 08.54.190, 08.54.195, 08.54.200, 08.54.210, 08.54.220, 08.54.-
19 230, 08.54.240; AS 16.05.370(b), 16.05.370(c), 16.05.407(e), 16.05.786, and
20 16.05.787 are repealed.

21 * Sec. 17. Sections 4, 6, 12, and 13, ch. 160, SLA 1988 are repealed.

22 * Sec. 18. AS 08.54.310(b)(?), as enacted by sec. 3 of this Act, takes
23 effect on the earlier of

24 (1) January 15, 1990; or

25 (2) the date of submission to the legislature of a recom-
26 mendation by the Task Force on Guiding and Game for a resource-based
27 management system for allocating access to big game hunting opportuni-
28 ties among guide-outfitters licensed under AS 08.54.

29 * Sec. 19. Except for AS 08.54.310(b)(1), as enacted by sec. 3 of this

1 Act, this Act takes effect immediately under AS 01.10.070(c).

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ALASKA'S BIG GAME

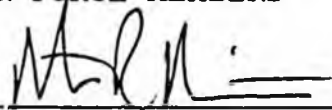
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its Uses and Users

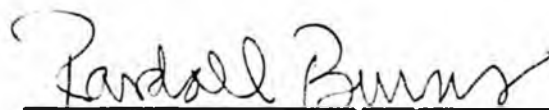
A Final Report to
the 16th Legislature

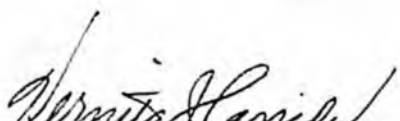
Legislative Task Force on
Guiding and Game
January 1989


INTERIM TASK FORCE ON
GUIDING AND GAME

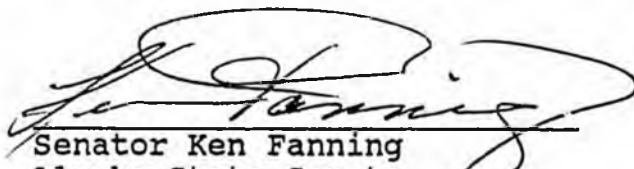
TASK FORCE MEMBERS



Mr. Pete Buist
Alaska Guide Board



Mr. Randall Burns
Alaska Dept. of Commerce &
Economic Development



Ms. Vernita Cassidy
Public Member

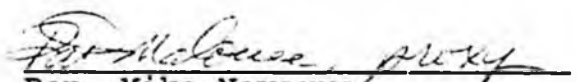

Senator Jan Faiks
Alaska State Senate

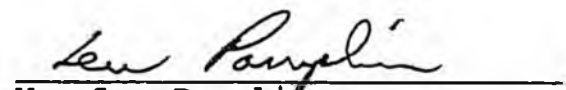

Senator Ken Fanning
Alaska State Senate

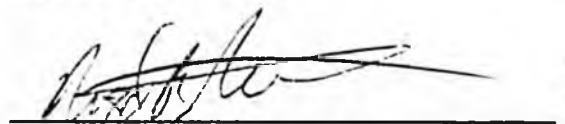

Mr. Phil Gilson
Alaska Department of
Public Safety



Mr. Matthew Iya
Public Member



Mr. Paul Johnson
Guide Member


Rep. Mike Navarre
Alaska State House of
Representatives


Mr. Lew Pamplin
Alaska Department of
Fish & Game


Mr. Nick Pierskalla
Non-Guide Member


Ms. Gayle Ranney
Air Taxi Member


Rep. Heinrich Springer
Alaska State House of
Representatives

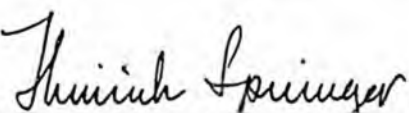
PREFACE

The Task Force has addressed the points mandated by Legislative Letter of Intent dated May 9, 1988.

The State Supreme Court decision in the Owsichuk case dated October 21, 1988, has forced the issue of commercial use of game into a broader perspective. Originally the main emphasis was to clarify the relationship and role of "outfitters". After the court's decision it became clear that all aspects needed to be reexamined, especially the role of "guides", "outfitters", and "transporters". As a result the Task Force recommends some sweeping changes. We tried hard to establish a system that accommodates the constitutional "common use" clause, puts game management and the welfare of game on sound footing, provides a viable economic base for the industry, is cost effective and enforceable, and is simple enough for effective administration.

Big game is one of Alaska's outstanding values, both from a consumptive and non-consumptive use perspective. These recommendations should assist the legislature to formulate laws that fulfill the stated objectives.

We include with our report draft legislation which we feel should be enacted immediately, as well as recommendations for formulating an area-based management concept. We recommend that the Task Force be extended to assist the legislature in defining such a system and creating enabling legislation.



Heinrich Springer, Chairman

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TASK FORCE ACTIVITY SUMMARY

The 13 member Task Force on Guiding and Game was created by the legislature through SB 191. Subjects to be covered were contained in a "Letter of Intent" for HCS CS SB 191 (Rules) dated May 9, 1988.

The Task Force conducted the following meetings and work sessions:

July 18, 1988, at Anchorage, Legislative Information Office (LIO), 3111 "C" Street.

October 24-25, 1988, at Fairbanks, LIO, 119 N. Cushman Street.

November 15-16 at Soldotna, Kenai Borough Assembly Chambers.

December 12-15 at Anchorage, LIO, 3111 "C" Street.

Work sessions by teleconference:

January 4, 9, 10, 11, and 13, 1989.

A subcommittee on rural issues held two public meetings at Kotzebue on October 4, 1988, and at King Salmon on October 5, 1988. A subcommittee on data management held two work sessions at Anchorage.

The meetings were preceded by extensive advertisement on radio and in newspapers throughout the state and in all cases allowed access through the communications network of the Legislative Information Office plus toll free numbers for persons in remote locations. In addition, Rural CAP did an extensive survey collecting opinions from rural residents; and Senator Fanning provided survey data submitted by guides and air taxi operators. All public hearings were well attended.

The Task Force appreciates the cooperation and testimony from many individuals and organizations. Many have given freely of their time and expertise. We want to thank particularly the Alaska State Board of Game; the Alaska State Guide Board; the Alaska Professional Hunter's Association; the Alaska Outfitter's Association; Ray DeMarchi, Canada, British Columbia Ministry of the Environment, Wildlife Branch; and Steve White, Alaska State Department of Law.

The 15th Legislature addressed the problems in the field caused by unregulated "outfitters" through SB 191 and the initial work of the Task Force went in that direction.

On October 21, 1988, a couple of days prior to our Fairbanks meeting, the Supreme Court issued its decision on the Owsichek case. The timing was excellent from the Task Force's work standpoint. And basically the emphasis shifted from "outfitting" to commercial use in general. This is reflected in the recommendations. Some sweeping changes are envisioned and submitted as recommendations for consideration. Although the court decision disallows several logical approaches to game management, we believe it still allows creation of systems that reach the stated objectives.

The Task Force represented a broad cross-section of state agencies and user group viewpoints with varying and often conflicting opinions. The extensive public hearings, research, and in-depth discussions provided not only the forum, but also the background to make careful, enlightened, and fair recommendations for immediate and long-term action which will ensure proper wildlife conservation as well as a stable environment for offering commercial services for big game hunting. A fragile, but important balance has been struck. Our recommendations represent a compromise in which each specific recommendation is important to the effectiveness of the overall policy changes.

The main points of our findings and recommendations are:

- a. Support for "commercial use" of game. Throughout this report the term "commercial use" refers to the providing of hunting services for compensation.
- b. Necessity to regulate all commercial users.
- c. Recognition of three main user groups: Guide-Outfitters, Transporters, and Commercial Permit Holders and establishment of licensure requirements for Guide-Outfitters.
- d. Replace the present Guide Board with a Big Game Commercial Services Board.
- e. Create a state established and controlled area management plan.
- f. Distribute use privileges to the commercial big game industry within the framework of the State's regulations and the Supreme Court's criteria.
- g. Concentrate on long-term plans, but address interim functions.

These recommendations are described in more detail as follows:

RECOMMENDATIONS

The Task Force adopted protection of game resources as its highest priority and as an umbrella policy. All deliberations and recommendations incorporated this principle. While various agency or user group interests were sometimes compromised, wildlife conservation never was.

The Task Force closely followed the topics stated in the "Letter of Intent" for HCS CS SB 191 (Rules), albeit the Owsichek decision considerably broadened the scope of our review in some areas. The Task Force makes the recommendations listed below:

1. Commercial use of game is a valid principle.

The Task Force on Guiding and Game recognizes that the commercial utilization of big game is an important part of a sound wildlife resource management system and that the State of Alaska realizes significant social and economic benefits from maintaining a viable commercial big game hunting industry. Alaska's big game hunting opportunities draw international attention and contribute a substantial amount to the state's tourism economy. As the world's human population continues to increase, and the resource base continues to decline, the economic and social value of these hunting opportunities will grow.

The Task Force recognizes and supports the validity of the commercial utilization of game in Alaska, within the existing framework of resource priority allocation.

2. All commercial users need to be regulated.

The State of Alaska should develop a regulatory system which ensures the health of the big game resource and permits the commercial big game hunting industry. For this to occur all commercial users must be subject to consistent and stable regulations.

3. Owsichek Case

On October 21, 1988, the Alaska Supreme Court issued its ruling on the constitutionality of the exclusive or restricted guide area system. It clearly stated that the present exclusive guide area system violates the "common use" clause of the state constitution.

Any system needs to address the following points:

1. Open access to the system;
2. Limited duration of use privilege;
3. Validity of a management principle; and,
4. Compensation to the state.

On November 1, 1988, assistant Attorney General, Stephen M. White, issued an analysis of this decision.

On December 8, 1988, the Alaska Supreme Court issued a "stay" of its decision until June 1, 1989, thus allowing the legislative and executive branches time to address the problem.

4. Examination of other states and countries.

The Task Force has examined statutes and regulations which apply to other states and countries relating to commercial aspects of game and finds them of limited value. While other areas have faced similar problems as Alaska and have found applicable solutions, their charters and constitutions contain clauses different from ours. Alaska is unique in respect to the constitutional provisions for "common use" of game, subsistence priority, and sustained yield mandate for the taking of game. (Article VIII, Sections 3 and 4, Alaska Constitution.)

5. User Group Definition.

The Task Force recommends three commercial user groups: Guide-Outfitter, Transporter, and Commercial Permit Holder.

The Guide-Outfitter can provide a broad range of services statewide, ranging from guiding to outfitting. Guide-Outfitters are the only user group who can provide services in "the field". They should be limited to selecting and operating in no more than three (3) Game Management Units (GMU's).

"The field" means any area outside of established, year-around dwellings, businesses, and other developments normally associated with villages, towns, or cities, excluding hotels and roadhouses located on the state highway system.

The Transporter is limited to providing transportation directly servicing big game hunts.

The Commercial Permit Holder is a third group consisting of service providers such as lodge operators/hunt brokers, expeditors, gear renters and commercial photographers, all of whom need to be identified and regulated. Since most of these already require some form of commercial registration, a commercial use permit will suffice to identify them. "Clubs" present a specific problem which is addressed under separate legislation.

6. User Group Qualifications and Licensure.

QUALIFICATIONS:

When appropriate, all commercial users listed below must pass an appropriate examination.

Guide-Outfitter must comply with the requirements under current law for registered or master guides and the term master guide shall be deleted. The Task Force recommends that guide-outfitter licenses shall be issued to a natural person (not an entity).

Class A Guide-Outfitter must comply with the requirements under current law for Class A Assistant Guides, with the following change: reduce the experience requirement from 20 to 10 years. It is recommended that the requirement for a letter of recommendation be deleted. It is further recommended that the state retain the special class of Marine Mammal Guide-Outfitter.

Assistant Guide-Outfitter must be at least 18 years of age, have hunting experience in the state for at least two of the past five years, possess a first aid card and have completed CPR training or equivalent (e.g., EMT or MD). It is recommended that the requirement for a letter of recommendation be deleted.

Transporter must comply with federal and state requirements for operation (transporter utilizing aircraft must have complied with Part 135; transporter utilizing boats must have U.S. Coast Guard license.)

Commercial Permit Holder must comply with federal and state requirements for operation.

All commercial users must comply with all federal and state requirements for operation, including holding lawful permits for lands occupied by the service provider.

USER GROUP LICENSES REQUIRED:

Guide-Outfitter:

1. Alaska business license
2. Guide-Outfitter license (in the appropriate category)
3. Commercial Use permit

Transporter:

1. Alaska business license
2. Transporter license
3. Commercial Use permit

Commercial Permit Holder:

1. Alaska business license
2. Commercial Use permit

Aircraft Operation Requirements:

The Task Force recommends deletion of AS 08.54.210 (a)(6) relating to Federal Aviation regulations (FAR) Part 135 requirements.

Although the Task Force is recommending that the Part 135 portion of SB 191 be deleted, this is not to indicate that the guides are being given a green light to continue using aircraft in their guiding businesses beyond what would be considered "incidental" flying. The Task Force merely feels that the regulation of commercial air commerce is under the authority of the Federal Aviation Administration.

It is suggested that those guides using aircraft for flying beyond that which is considered incidental should begin the process of application for Part 135, or should hire an existing air taxi for that portion of their flying. It is recognized that the maintenance program, the annual check rides and the inspections required for Part 135 are conducive to a safe operation.

In regards to the provisions of Part 135, the Task Force saw no need to develop a legal definition for "incidental", but rather allow the federal agencies to impose a definition as it pertains to aircraft operations (FAR Part 135).

Rural Concerns:

Rural residents often have excellent guide-outfitter capabilities from a practical standpoint, but sometimes lack the educational and theoretical aspects of the examination process to qualify for a guide-outfitter license.

In addition to recognizing traditional difficulties in rural communities, the Task Force believes that the new board needs to substantially increase its information dissemination activities to enable rural residents interested in becoming licensed guide-outfitters greater access to the licensing procedures. Enabling legislation needs to accommodate this situation.

7. User Group Reporting Requirements.

Those engaged in providing commercial services for the purpose of taking game as Guide-Outfitter, Transporter or Commercial Permit Holder must comply with annual reporting requirements based on Department of Fish and Game (ADF&G) and Public Safety final recommendations. Completion of the annual reporting requirement is a prerequisite for licensing (base camp registration).

Individual reports which pertain to the commercial aspects of game shall be confidential.

Decals, for the purpose of law enforcement identification of commercial users, should be required on all aircraft, boats, etc.

8. Fee Structure.

The Task Force has considered and established a list of suggested fees as follows:

1. Fixed Commercial Use Permit Fee - \$25 to \$50;
2. Big Game Conservation Fee -- 25% of existing big game tag fee (also known as "head tax"); and,
3. License fee

Not less than 50% of the fees collected should be designated for game management.

9. Insurance and Bonding.

The Task Force has reviewed the concept, cost and availability of insurance and bonding for commercial users and has determined that, while they support and encourage having insurance, whenever possible, the market condition and difficulty of acquiring insurance and bonding may pose extreme hardships on a great number of commercial users.

Transporters and some service providers are required to have insurance in their respective fields by other regulations.

10. Penalty.

The Task Force has reviewed the statute, AS 08.54.210, and recommends the following changes, as detailed under Article 6 of the recommended legislation for unlicensed guiding, which imposes a felony penalty, and recommends the following changes:

1. Eliminate the mandatory one year sentence;
2. Make first time offenses a misdemeanor with a minimum incarceration of two months, and raise the maximum fine that may be imposed to \$30,000;
3. Make some second time offenses a felony;
4. Do not allow the judge to impose a Suspended Imposition of Sentence (SIS); and
5. Encourage continued cooperation between the Department of Public Safety, Division of Fish and Wildlife Protection and the District Attorney's office.

11. Transitional Measures for User Groups.

Those outfitters who have been engaged in the big game commercial services industry as "outfitters", and have complied with current requirements under SB 191 (registered base camps, etc.) and can show financial proof of activity in 1986, 1987, and 1988 (business license, financial documentation, IRS) may continue to operate, in the interim, until new laws have been adopted. Within one year of the effective date of passage of a new law, they must pass the guide-outfitter exam and may continue to operate as outfitters under SB 191 requirements, during that transitional period.

12. Role of State Employee.

The Task Force has examined the question of whether state employees shall be allowed to participate in the commercial taking of game and has determined that the ADF&G and DPS have policies and procedures (P&P) to administer ethics and conflict of interest statutes and that strict adherence must be enforced. They further recommend that the agencies (ADF&G and DPS) request an Attorney General's opinion on the appropriateness of state employees' participation in the commercial game industry.

13. Guide Required Species.

The Task Force has considered the question of adding species to the required guide list and recommends that mountain goats be added to the required guide list.

Based on testimony, this will go a long way to provide some compatibility with the present demand that non-residents require "guides" for hunting of sheep and brown/grizzly bear. Climate, terrain, and nature of these species necessitate assistance to the non-resident hunter.

14. Creation of a new Big Game Commercial Services Board.

The Task Force has reviewed the Legislative Budget and Audit reports for 1985 and 1987. Some problems with the Guide Board are apparent. The Task Force recommends that the Guide Board sunset upon the creation of an expanded board whose function is to regulate the activity and licensing of commercial big game user groups. That board membership shall consist of two Guide-Outfitters, one Transporter, one representative from ADF&G, and one from FWP, one State land manager (DNR), one Native land manager, one public member and one Game Board member. The board shall be administered by the Department of Commerce and Economic Development (DCED).

15. Extension of Task Force on Guiding and Game.

The Supreme Court decision on the Owsichek case shifted the emphasis of the Task Force's work from regulation of "outfitters" to a much broader scope. Since a "management system" is of paramount importance and consequence, the Task Force recommends that it be extended in order to assist the legislature in the formulation of laws pertaining to management system and area concept schemes.

16. Management System.

Due to the resulting time constraints the Task Force was unable to analyze and present a complete recommendation on the management system.

The Supreme Court issued a "stay" of its decision until June 1, 1989, which will allow the legislature to act in a deliberate manner to address this situation. In order to assist the legislature in the formulation of such a law, we recommend to extend this Task Force to capitalize on work already done.

The following preliminary recommendations are given, realizing that additional information is needed:

The Task Force finds that some kind of an area based game management concept is of utmost importance. Nearly all countries and states in the world that manage game have adopted some kind of land based management system. It is necessary to integrate the guiding-outfitting operations into Alaska's well established game management system.

Our constitutional requirements and our complex game resource allocation system (subsistence, resident and non-resident hunting) makes development and administration of an area based system a very difficult task indeed.

The obvious option to allow unrestricted access is not viable, as it would only recreate the conditions that existed in the 60's, which prompted the establishment of an assigned area system in the first place. Subsistence priority rights have been established and need to be incorporated in any management scheme. Although the game is under state jurisdiction, land surface right holders indirectly control access to game. Checkerboard distribution of land holdings further complicates this. Furthermore, federal agencies, who control the majority of land, have different regulations. The major land owners need to participate in the formulation of the management system.

Following their discussions of a management system, the Task Force recommends for immediate action, that:

1. ADF&G be designated as lead agency, whose purpose is to formulate and designate management areas within the present GMU framework; and,
2. DNR needs ability to expeditiously adopt a concession or use system that is compatible with other land uses and the practices of other land areas.

The Task Force also recommends for consideration:

The state should establish a lease, concession, or allocation system on a staggered schedule;

The state should derive some financial benefits from the commercial utilization of a public resource; such revenue should be at least partially (not less than 50%) used for game management purposes;

Allocation methods of such use privileges need to be established (lottery, negotiated, competitive bidding, etc.).

Implementation of such legislation requires close work with the Alaska Departments of Law, Natural Resources, Fish and Game, and Public Safety. The Task Force has spent considerable time on these matters and is most willing to assist.

6-0401A
Utermohle
1/14/89

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to big game hunting and to the
7 regulation of big game and marine mammal guide-out-
8 fitting, transportation, and other commercial ser-
9 vices for big game hunters; creating the Big Game
10 Commercial Services Board; and providing for an
11 effective date."

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

13 * Section 1. AS 08.01.010(10) is repealed and reenacted to read:

14 (10) Big Game Commercial Services Board (AS 08.54.300);

15 * Sec. 2. AS 08.03.010(c)(20) is repealed and reenacted to read:

16 (20) Big Game Commercial Services Board (AS 08.54.300) --
17 June 30, 1993.

18 * Sec. 3. AS 08.54 is amended by adding new sections to read:

19 ARTICLE 4. BIG GAME COMMERCIAL SERVICES BOARD

20 Sec. 08.54.300. CREATION AND MEMBERSHIP OF BOARD. (a) For the
21 purposes of licensing and regulating the activities of providers of
22 commercial services to big game hunters in the interest of the state's
23 wildlife resources there is created the Big Game Commercial Services
24 Board. For administrative purposes, the board is in the Department of
25 Commerce and Economic Development.

26 (b) The board consists of nine members:

27 (1) the commissioner of fish and game or the commissioner's
28 designee:

29 (2) the commissioner of natural resources or the

1 commissioner's designee;

2 (3) the commissioner of public safety or the commissioner's
3 designee;

4 (4) two members who are either a licensed guide-outfitter
5 or class-A guide-outfitter;

6 (5) one member who is a licensed transporter;

7 (6) one member of the Board of Game who is chosen by the
8 Board of Game;

9 (7) one member who represents Native landholders; and

10 (8) one public member.

11 Sec. 08.54.310. DUTIES AND POWERS. (a) The board shall

12 (1) prepare, grade, and administer

13 (A) a written and oral examination of an applicant for
14 a guide-outfitter license that requires demonstration that the
15 applicant is qualified generally to provide guide-outfitted hunts
16 and, in particular, to guide-outfit in each game management unit
17 the applicant has selected; if an applicant demonstrates limited
18 ability to read or write the English language, the entire examin-
19 ation shall be administered orally; and

20 (B) an oral examination of a guide-outfitter who seeks
21 an amendment of a game management unit certification; the examin-
22 ation must require demonstration that the guide-outfitter is
23 qualified to provide guide-outfitted hunts in each new game
24 management unit for which the guide-outfitter seeks to be certi-
25 fied;

26 (2) determine qualifications of applicants for class-A
27 guide-outfitter, marine mammal guide-outfitter, and assistant guide-
28 outfitter licenses and authorize the issuance of licenses to those who
29 qualify;

1 (3) establish performance standards for providers of big
2 game commercial services and regulate the activities of these provid-
3 ers;

4 (4) compile, maintain, and publish an annual register of
5 big game commercial service providers subject to this chapter who have
6 not been convicted of a violation of a state statute or regulation
7 relating to the provision of big game commercial services; a big game
8 commercial services provider listed in the register whose license or
9 permit is revoked or suspended shall be removed from the register
10 while the provider's license or permit is revoked or suspended;

11 (5) prohibit guide-outfitting, transporting, and other big
12 game commercial services activities that are unsportsmanlike, uneth-
13 ical, unsafe, against principles of game conservation, degrading to a
14 profession subject to this chapter, or that adversely affect natural
15 resources;

16 (6) after a hearing, revoke, suspend, or deny renewal of a
17 license or permit under AS 08.54.500 - 08.54.510;

18 (7) authorize issuance of transporter licenses;

19 (8) authorize issuance of commercial use permits;

20 (9) meet at least twice annually, once in Anchorage and
21 once in another municipality.

22 (b) The board may

23 (1) provide for registration of hunting camps and facil-
24 ities used by persons who are licensed or who hold a permit under this
25 chapter;

26 (2) establish, in consultation with the Department of Fish
27 and Game or Department of Natural Resources, a resource-based manage-
28 ment system for allocating access to big game hunting opportunities
29 among guide-outfitters licensed under this chapter;

1 (3) establish the level of supervision that a guide-out-
2 fitter shall provide for class-A guide-outfitters and assistant
3 guide-outfitters who are employed by the guide-outfitter.

4 Sec. 08.54.320. BOARD REGULATIONS. The board shall adopt proce-
5 dural and substantive regulations required by this chapter or reason-
6 ably necessary for its administration.

7 ARTICLE 5. LICENSING.

8 Sec. 08.54.350. GUIDE-OUTFITTER LICENSE. (a) A natural person
9 is entitled to a guide-outfitter license if the person

10 (1) is 21 years of age or older;

11 (2) has practical field experience in the handling of
12 firearms, hunting, judging trophies, field preparation of meat and
13 trophies, first aid, photography, and related guide-outfitting activi-
14 ties;

15 (3) is familiar with the terrain and transportation prob-
16 lems in the game management unit for which the license is requested;

17 (4) has passed the qualification examinations prepared and
18 administered by the board;

19 (5) has demonstrated to the board sufficient standards of
20 competence and ethical conduct and has not been convicted of a state
21 or federal hunting or guide-outfitting statute or regulation within
22 the last five years for which the person was fined more than \$500 or
23 imprisoned for more than five days;

24 (6) has legally hunted in the state for part of each of any
25 five years in a manner directly contributing to the person's experi-
26 ence and competency as a guide-outfitter;

27 (7) has been licensed as and performed the services of a
28 class-A guide-outfitter or assistant guide-outfitter in the state for
29 a part of each of three years, or has guide-outfitted in the state for

1 a part of each of three years under a marine mammal guide-outfitter
2 license issued under AS 08.54.360;

3 (8) has demonstrated a current knowledge of fishing, hunt-
4 ing, and guide-outfitting regulations;

5 (9) is capable of performing the essential duties associ-
6 ated with guide-outfitting;

7 (10) has been favorably recommended in writing by six big
8 game hunters, two for each year of the person's most recent three
9 years as a class-A guide-outfitter or assistant guide-outfitter, when
10 the person has guide-outfitted or assisted in guide-outfitting as a
11 class-A guide-outfitter or assistant guide-outfitter, whose recommen-
12 dations have been solicited by the board from a list provided by the
13 applicant;

14 (11) possesses a business license to provide guide-out-
15 fitting services; and

16 (12) has paid the license fee and commercial use permit
17 fee.

18 (b) A guide-outfitter may contract to guide-outfit hunts for big
19 game.

20 Sec. 08.54.360. MARINE MAMMAL GUIDE-OUTFITTER LICENSE. (a) The
21 board may issue a marine mammal guide-outfitter license to a natural
22 person who applies to guide-outfit a hunt for a specific species of
23 marine mammal in a specifically designated area if the person

24 (1) is 21 years of age or older;

25 (2) has, for at least 10 years, resided and hunted in
26 area of the state in which the applicant is to guide-outfit;

27 (3) is able to perform the duties of a marine mammal guide-
28 outfitter;

29 (4) has demonstrated knowledge of the following areas to an

1 extent and degree satisfactory to the board:

2 (A) current fish and game laws and regulations;

3 (B) relevant characteristics of the specific species
4 to be hunted;

5 (C) field preparation of trophies;

6 (D) care of game meat;

7 (E) use of guide-outfitting gear;

8 (F) firearm safety;

9 (G) practical first aid; and

10 (H) booking and contracting hunts;

11 (5) has not been convicted of violating a state or federal
12 game or guide-outfitting statute or regulation during the previous
13 five years for which the person was fined more than \$500 or imprisoned
14 for more than five days;

15 (6) possesses a business license to provide guide-out-
16 fitting services; and

17 (7) has paid the license fee and commercial use permit fee.

18 (b) A marine mammal guide-outfitter may contract to guide-outfit
19 hunts for species of marine mammals for which the marine mammal guide-
20 outfitter license is issued.

21 Sec. 08.54.370. RENEWAL OF GUIDE-OUTFITTER LICENSE AND MARINE
22 MAMMAL GUIDE-OUTFITTER LICENSE. (a) An applicant for renewal of a
23 guide-outfitter license or a marine mammal guide-outfitter license
24 shall submit with the application for renewal

25 (1) the hunt record required under AS 08.54.550 for the
26 period covered by the current license;

27 (2) the big game conservation fees due for the period
28 covered by the current license;

29 (3) the license fee for the next licensing period; and

1 (4) the commercial use permit fee for the next licensing
2 period.

3 (b) The department may not renew a license under this section
4 unless all fees have been paid in full and the hunt record has been
5 filed.

6 Sec. 08.54.380. CLASS-A GUIDE-OUTFITTER LICENSE. (a) A natural
7 person is entitled to a class-A guide-outfitter license if the person

8 (1) has been employed for at least one season as a licensed
9 assistant guide-outfitter; and

10 (2) has had at least 10 years hunting experience in the
11 game management unit in which the person is to be employed; military
12 service outside the state for not more than three years shall be
13 accepted as part of the required 10 years hunting experience.

14 (b) A class-A guide-outfitter

15 (1) may not contract to guide-outfit hunts;

16 (2) shall be under the supervision of a guide-outfitter who
17 has contracted with the client for whom the class-A guide-outfitter is
18 conducting the hunt; and

19 (3) may take charge of a camp and conduct guide-outfitter
20 activities from it without the guide-outfitter being present in the
21 area if the guide-outfitter is supervising the guide-outfitting activ-
22 ities.

23 Sec. 08.54.390. ASSISTANT GUIDE-OUTFITTER LICENSE. (a) A
24 natural person is entitled to an assistant guide-outfitter license if
25 the person

26 (1) is 18 years of age or older;

27 (2) passes an examination administered by the board;

28 (3) has hunted in the state in two of the last five years;

29 (4) has demonstrated practical knowledge of first aid and

1 cardiopulmonary resuscitation;

2 (5) is in sound physical condition; and

3 (6) meets additional qualifications that the board may
4 establish.

5 (b) An assistant guide-outfitter

6 (1) may not contract to guide-outfit hunts; and

7 (2) shall be employed by a guide-outfitter and under the
8 supervision of a guide-outfitter or class-A guide-outfitter at all
9 times while the assistant guide-outfitter is in the field on guide-
10 outfitted hunts.

11 Sec. 08.54.400. TRANSPORTER LICENSE. (a) A person is entitled
12 to a transporter license if the person

13 (1) applies on a form provided by the department;

14 (2) pays the license fee;

15 (3) pays the commercial use permit fee;

16 (4) provides proof of

17 (A) an air taxi/commercial operator certificate issued
18 by the Federal Aviation Administration under 14 C.F.R. Part 135,
19 if the person provides air transportation services to big game
20 hunters;

21 (B) licensure by the Coast Guard to carry passengers
22 for hire, if the person provides water transportation services to
23 big game hunters; and

24 (5) has a business license to transport big game hunters.

25 (b) A transporter may provide transportation services for com-
26 pensation to big game hunters. A transporter may not provide any
27 service in the field to big game hunters other than transportation,
28 except that a transporter may provide accommodations in the field at a
29 permanent lodge, house, or cabin owned by the transporter or on a boat

1 with permanent living quarters owned by the transporter used for over-
2 night commercial hunts for Sitka blacktail deer, elk, and marine
3 mammals.

4 (c) An applicant for renewal of a transporter license shall
5 submit with the application for renewal

6 (1) an activity report on a form provided by the department
7 for the period covered by the current license; an activity report
8 shall contain information required by the board by regulation;

9 (2) the big game conservation fees due for the period
10 covered by the current license;

11 (3) the license fee for the next licensing period;

12 (4) the commercial use permit fee for the next licensing
13 period; and

14 (5) proof of

15 (A) an air taxi/commercial operator certificate issued
16 by the Federal Aviation Administration under 14 C.F.R. Part 135,
17 if the applicant provides air transportation services to big game
18 hunters;

19 (B) license from the Coast Guard to carry passengers
20 for hire, if the applicant provides water transportation services
21 to big game hunters.

22 (d) The department may not renew a transporter license unless
23 all fees have been paid in full and the activity report required under
24 (c)(1) of this section and the proof required under (c)(5) of this
25 section have been filed.

26 (e) A transporter shall place a decal provided by the department
27 on each plane, boat, vehicle, or other equipment used by the trans-
28 porter to provide transportation services to big game hunters. The
29 decal must bear the transporter's license number. The decal is valid

1 only for the plane, boat, vehicle, or other equipment for which the
2 decal is issued.

3 Sec. 08.54.410. APPEAL TO COMMISSIONER FROM BOARD ON DENIAL OF
4 LICENSE. The commissioner of commerce and economic development may
5 order that an applicant for an initial license under AS 08.54.350 -
6 08.54.400 be allowed to take the license examination or be issued the
7 license if, after reviewing a petition filed by the applicant, the
8 commissioner finds that

9 (1) the board denied the applicant an opportunity to take
10 the license examination or refused to approve issuance of the license;

11 (2) the board's denial or refusal has been upheld by a
12 final administrative order and the order has not been appealed to the
13 superior court under AS 44.62.560;

14 (3) the board's denial or refusal was based on

15 (A) an error of fact by the board; or

16 (B) the applicant's failure of the license examination
17 due to faulty or unfair examination questions or procedures;

18 (4) the applicant is otherwise qualified to take the exam-
19 ination or to be issued the license; and

20 (5) sustaining the board's denial or refusal would work a
21 substantial injustice on the applicant.

22 Sec. 08.54.420. RENEWAL OF LICENSES. Notwithstanding AS 08.01.-
23 100(a), guide-outfitter, marine mammal guide-outfitter, and transport-
24 er licenses shall be renewed annually on dates set by the department
25 with the approval of the board.

26 Sec. 08.54.430. EXAMINATIONS FOR GUIDE-OUTFITTER LICENSES. (a)
27 The board shall administer the qualification examinations required
28 under this chapter at least twice a year. An examination may not be
29 given within 90 days after the previous examination. At least once

1 every other year the board shall give the examination at a location
2 other than Anchorage.

3 (b) The board shall regularly disseminate information regarding
4 examinations and other qualifications for all classes of guide-out-
5 fitter licenses to residents of the rural areas of the state.

6 Sec. 08.54.440. FAILURE TO RENEW. (a) A license may not be
7 issued to a guide-outfitter, marine mammal guide-outfitter, class-A
8 guide-outfitter, or assistant guide-outfitter who has failed to renew
9 a license issued under this chapter for two consecutive years unless
10 the guide-outfitter, marine mammal guide-outfitter, class-A guide-
11 outfitter, or assistant guide-outfitter again meets the qualifications
12 for initial issuance of the license.

13 (b) Notwithstanding (a) of this section, a guide-outfitter who
14 fails to renew a license is not required to requalify under AS 08.54.-
15 350(a)(7), unless the license has been lapsed for three or more years.

16 Sec. 08.54.450. LICENSE AND EXAMINATION FEES. (a) The depart-
17 ment shall set license fees under AS 08.01.065 for each of the follow-
18 ing:

- 19 (1) guide-outfitter
- 20 (2) class-A guide-outfitter;
- 21 (3) assistant guide-outfitter;
- 22 (4) marine mammal guide-outfitter;
- 23 (5) transporter.

24 (b) The license fee for the guide-outfitter, marine mammal
25 guide-outfitter, class-A guide-outfitter, or assistant guide-outfitter
26 license is in addition to the fee required for a hunting license.

27 (c) An applicant for a qualifying examination for any class of
28 guide-outfitter license shall pay a fee established by regulations
29 adopted under AS 08.01.065.

1 Sec. 08.54.460. COMMERCIAL USE PERMIT HOLDER. A person, other
2 than a guide-outfitter, marine mammal guide-outfitter, or a trans-
3 porter, who provides other big game commercial services for compen-
4 sation shall register with the board on a form provided by the board
5 and shall obtain a commercial use permit and pay the annual commercial
6 use permit fee set under AS 08.54.470. In this section "other big
7 game commercial services" includes provision of accommodations, hunt
8 broker services, gear rental services, photographic or videographic
9 services, expediter services, and services as defined by the board by
10 regulation.

11 Sec. 08.54.470. COMMERCIAL USE PERMIT AND FEE. (a) A person
12 who is licensed under this chapter as a guide-outfitter, marine mammal
13 guide-outfitter, or transporter shall obtain an annual commercial use
14 permit and pay an annual commercial use permit fee.

15 (b) The department, in consultation with the board, shall set
16 the amount of the commercial use permit fee.

17 (c) A guide-outfitter, marine mammal guide-outfitter, and trans-
18 porter shall pay the commercial use permit fee at the time of applica-
19 tion for issuance or renewal of a guide-outfitter license, marine
20 mammal guide-outfitter license, or transporter license.

21 (d) The commissioner of administration shall separately account
22 for commercial use permit fees deposited in the general fund by the
23 department. The annual estimated balance in the account may be used
24 by the legislature to make appropriations to the Department of Fish
25 and Game and the Department of Public Safety to carry out their re-
26 spective responsibilities for management of game resources and en-
27 forcement of game laws.

28 ARTICLE 6. PENALTIES.

29 Sec. 08.54.500. DISCIPLINE OF GUIDE-OUTFITTERS. (a) The board

1 may hold a hearing to determine whether disciplinary action is neces-
2 sary if a complaint concerning the guide-outfitting activities of a
3 licensee who holds any class of guide-outfitter license is filed with
4 the board by a client of the licensee. The board shall hold a hearing
5 to determine whether a licensee should be disciplined within a
6 reasonable time after

7 (1) complaints concerning a licensee's guide-outfitting
8 activities are filed with the board by three or more of the licensee's
9 clients from separate hunting parties;

10 (2) a complaint concerning a licensee's conduct during a
11 life-threatening situation is filed with the board; or

12 (3) a licensee has been convicted of a violation of a
13 federal or state statute or regulation relating to hunting or pro-
14 vision of big game commercial services.

15 (b) After a hearing, the board may revoke, suspend, or deny
16 renewal of any class of guide-outfitter license, if the board finds
17 that the licensee

18 (1) engaged in unethical activity, unsafe activity, or
19 activity that adversely affects the natural resources of the state
20 when the activity is related to the purposes of providing guide-out-
21 fitting services; or

22 (2) violated a provision of a federal or state statute or
23 regulation relating to hunting or provision of big game commercial
24 services.

25 (c) After a hearing, the board shall revoke any class of guide-
26 outfitter license if the board finds that the licensee

27 (1) does not meet the qualifications specified by statute
28 or regulation for the license held;

29 (2) is incompetent as a guide-outfitter, marine mammal

1 guide-outfitter, class-A guide-outfitter, or assistant guide-out-
2 fitter; or

3 (3) during the five years immediately preceding the hearing
4 has been convicted of a violation of a federal or state statute or
5 regulation prohibiting

6 (A) waste of a wild food animal;

7 (B) hunting on the same day airborne;

8 (C) hunting during a closed hunting season; or

9 (D) hunting in an area closed by federal regulation.

10 (d) If a certified copy of a judgment of conviction of a licens-
11 ee who holds any class of guide-outfitter license for an offense
12 described under (c)(3) of this section is filed with the board, the
13 board shall immediately suspend the licensee's license. The
14 suspension may be ordered even if the conviction resulted from a plea
15 of nolo contendere or if the conviction is under appeal. The
16 suspension remains in effect until after the final disposition of the
17 disciplinary proceeding under this section.

18 Sec. 08.54.505. DISCIPLINE OF TRANSPORTERS AND COMMERCIAL USE
19 PERMITTEES. (a) The board may hold a hearing to determine whether
20 disciplinary action is necessary if a complaint concerning the big
21 game commercial service activities of a transporter who is licensed
22 under AS 08.54.400 or a commercial use permittee who holds a permit
23 issued under AS 08.54.460 is filed with the board by a client of the
24 licensee or permittee. The board shall hold a hearing to determine
25 whether a licensee or permittee should be disciplined within a
26 reasonable time after

27 (1) complaints concerning a licensee's or permittee's
28 activities are filed with the board by three or more of the licensee's
29 or permittee's clients from separate hunting parties; or

1 (2) a licensee or permittee has been convicted of a viola-
2 tion of a federal or state statute or regulation relating to hunting
3 or provision of big game commercial services.

4 (b) After a hearing, the board may revoke, suspend, or deny
5 renewal of a transporter license or commercial use permit issued under
6 this chapter, if the board finds that the licensee or permittee

7 (1) engaged in unethical activity, unsafe activity, or
8 activity that adversely affects the natural resources of the state
9 when the activity is related to the purposes of providing big game
10 commercial services; or

11 (2) violated a provision of a federal or state statute or
12 regulation relating to hunting or provision of big game commercial
13 services.

14 (c) After a hearing, the board shall revoke a license or permit
15 if the board finds that the licensee or permittee

16 (1) does not meet the qualifications specified by statute
17 or regulation for the license held; or

18 (2) during the five years immediately preceding the hearing
19 has been convicted of a violation of a federal or state statute or
20 regulation prohibiting

21 (A) waste of a wild food animal;

22 (B) hunting on the same day airborne;

23 (C) hunting during a closed hunting season; or

24 (D) hunting in an area closed by federal regulation.

25 (d) If a certified copy of a judgment of conviction of a licens-
26 ee or permittee for an offense described under (c)(2) of this section
27 is filed with the board, the board shall immediately suspend the
28 licensee's or permittee's license or permit. The suspension may be
29 ordered even if the conviction resulted from a pleas of nolo

1 contendere or if the conviction is under appeal. The suspension
2 remains in effect until after the final disposition of the
3 disciplinary proceeding under this section.

4 Sec. 08.54.510. DISCIPLINE; GENERAL PROVISIONS. (a) A person
5 who is disciplined under AS 08.54.500 or 08.54.505 may not engage in
6 the provision of big game commercial services during the period of
7 license or permit revocation or other disciplinary action. A person
8 who is licensed under this chapter, or who holds a permit issued under
9 this chapter, may not hire a person whose license or permit to provide
10 big game commercial services is suspended or revoked under AS 08.54.-
11 500 or 08.54.505. A person whose license or permit is suspended or
12 revoked may not be employed by a person who is licensed or who holds a
13 permit under this chapter.

14 (b) If the board revokes a license or permit under AS 08.54.500
15 or 08.54.505, the person whose license or permit has been revoked
16 shall surrender immediately the license or permit to the department.

17 (c) A certified copy of a judgment of conviction of a licensee
18 or permittee for an offense is conclusive evidence of the commission
19 of that offense in a disciplinary proceeding instituted against the
20 licensee or permittee under AS 08.54.500 or 08.54.505 based on that
21 conviction, regardless of whether the conviction resulted from a plea
22 of nolo contendere or the conviction is under appeal, unless the
23 conviction is overturned on appeal.

24 (d) Within 30 days after conclusion of a hearing under AS 08.-
25 54.500 or 08.54.505, the board shall notify the complainant of the
26 results of the hearing, including written reasons justifying a deci-
27 sion not to take disciplinary action.

28 Sec. 08.54.520. UNLAWFUL ACTS. (a) It is unlawful for a

29 (1) person who is licensed or who holds a commercial use

1 permit under this chapter to fail to timely report to the Department
2 of Public Safety, division of fish and wildlife protection, and in no
3 event later than 30 days, a violation of a state fish, game, or big
4 game commercial services statute or regulation that the person reason-
5 ably believes was committed by a client or an employee of the person;

6 (2) person who is licensed or who holds a commercial use
7 permit under this chapter to

8 (A) commit or aid the commission of a violation of
9 this chapter, a regulation adopted under this chapter, or a state
10 fish or game statute or regulation; or

11 (B) permit the commission of a violation of this
12 chapter, a regulation adopted under this chapter, or a state fish
13 or game statute or regulation that the person knows or reasonably
14 believes is being or will be committed without

15 (i) attempting to prevent it, short of using
16 force; and

17 (ii) reporting it;

18 (3) person without a current commercial use permit issued
19 under this chapter to provide big game commercial services;

20 (4) person who is licensed or who holds a commercial use
21 permit issued under this chapter to intentionally obstruct or hinder
22 or attempt to obstruct or hinder lawful hunting engaged in by a person
23 who is not a client of the person;

24 (5) guide-outfitter, marine mammal guide-outfitter, or
25 transporter to fail to transmit to the department big game conserva-
26 tion fees due under AS 16.05.344;

27 (6) class-A guide-outfitter or an assistant guide-outfitter
28 to provide guide-outfitting services in the field on a
29 guided-outfitted hunt except while employed and supervised by a

1 guide-outfitter; or

2 (7) person to provide guide-outfitter services without
3 having a current guide-outfitter, marine mammal guide-outfitter,
4 class-A guide-outfitter, or assistant guide-outfitter license and
5 hunting license in actual possession;

6 (8) person without a current guide-outfitter or marine
7 mammal guide-outfitter license to advertise as or represent to be a
8 guide-outfitter;

9 (9) person to provide transportation services to big game
10 hunters without holding a transporter license;

11 (10) class-A guide-outfitter or an assistant guide-outfitter
12 to contract for a hunt;

13 (11) a person to engage in a big game commercial services
14 activity during the period for which the person's license to conduct
15 that activity is suspended or revoked.

16 (b) A person who commits an offense set out in (a)(1) - (6) of
17 this section is guilty of a misdemeanor and is punishable by a fine of
18 not more than \$30,000 or by imprisonment for not less than two months
19 or more than one year, or both.

20 (c) A person who commits an offense set out in (a)(7) - (10) of
21 this section is guilty,

22 (1) for a first offense, of a misdemeanor and is punishable
23 by a fine of not more than \$30,000 or by imprisonment for not less
24 than two months or more than one year, or both;

25 (2) for a second or subsequent offense, of a felony and is
26 punishable by a fine of not more than \$50,000 or by imprisonment for
27 not more than three years.

28 (d) A person who violates (a)(11) of this section, is guilty of
29 a felony punishable, upon conviction, by a fine of not more than

1 \$50,000 and by imprisonment for not more than three years.

2 (e) In addition to the penalties set out in (b), (c) and (d) of
3 this section,

4 (1) the court may revoke the person's license to provide
5 guide-outfitting or transportation services for not more than five
6 years; and

7 (2) all guns, fishing tackle, boats, aircraft, automobiles
8 or other vehicles, camping gear, and other equipment and paraphernalia
9 used in, or in aid of, a violation of (a) of this section may be
10 seized by persons authorized to enforce this chapter and may be for-
11 feited to the state as provided under AS 16.05.195.

12 (f) Upon conviction of a person for committing an offense set
13 out in (a) of this section, the court may not suspend imposition of
14 sentence.

15 Sec. 08.54.530. INJUNCTION AGAINST UNLAWFUL ACTION. When in the
16 judgment of the board a person has engaged in an act in violation of
17 AS 08.54.380(b), 08.54.390(b), 08.54.400(b), 08.54.510(a), and 08.54.-
18 520 or the regulations adopted under them, the board may apply to the
19 appropriate court for an order enjoining the action. Upon a showing
20 by the board that the person is engaging in the act, the court shall
21 grant injunctive relief or other appropriate order without bond.

22 Sec. 08.54.540. RESPONSIBILITY OF GUIDE-OUTFITTER FOR VIOLA-
23 TIONS. A guide-outfitter who contracts to guide-outfit a hunt is
24 equally responsible under AS 08.54.500 for a violation of a federal or
25 state sport fish, game, or guide-outfitting statute or regulation
26 committed by a class-A guide-outfitter or an assistant guide-outfitter
27 while in the course of the class-A guide-outfitter's or assistant
28 guide-outfitter's employment for the guide-outfitter.

29 ARTICLE 7. GENERAL PROVISIONS.

1 Sec. 08.54.550. HUNT RECORDS; CONFIDENTIALITY OF HUNT RECORDS
2 AND ACTIVITY REPORTS. (a) The department shall collect and maintain
3 hunt records provided by guide-outfitters or marine mammal guide-out-
4 fitters. A hunt record must include a list of all big game hunters
5 who used the services of the guide-outfitter or marine mammal guide-
6 outfitter, the number of each big game species taken, and other infor-
7 mation required by the board. The department shall provide forms for
8 reporting hunt records.

9 (b) The department shall make hunt records, and activity reports
10 received under AS 08.54.400, available to state and federal agencies
11 charged with the enforcement of statutes and regulations relating to
12 guide-outfitting or game or with management of game if requested for
13 game management or law enforcement purposes. Aggregated data compiled
14 from hunt records and activity reports may be included in reports by
15 the department. For all other purposes, the hunt records and activity
16 reports are confidential and are not subject to inspection or copying
17 under AS 09.25.110 - 09.25.125.

18 Sec. 08.54.590. DEFINITIONS. In this chapter

19 (1) "big game" means brown bear, grizzly bear, polar bear,
20 caribou, moose, black bear, bison, Sitka blacktail deer, elk, mountain
21 goat, musk-ox, wolf, wolverine, mountain or Dall sheep, and walrus;

22 (2) "board" means the Big Game Commercial Services Board;

23 (3) "department" means the Department of Commerce and
24 Economic Development;

25 (4) "guide-outfit" means to provide big game commercial
26 hunting services, for compensation, in the field but does not include
27 transportation services;

28 (5) "field" means an area outside of established year-round
29 dwellings, businesses, or other developments usually associated with a

1 city, town, or village; "field" does not include permanent hotels or
2 roadhouses on the state road system;

3 (6) "transportation services" means the carriage for com-
4 pensation of big game hunters, their equipment, or big game animals
5 harvested by hunters to, from, or in the field;

6 (7) "unethical activity" means

7 (A) deception or misrepresentation involving prospec-
8 tive or actual clients either before, during, or following the
9 provision of big game commercial services, including misrepresen-
10 tations through private or public advertising of the type, dura-
11 tion, cost, or conditions of the services;

12 (B) making a guaranty that a species or certain number
13 of species of game will be taken on a hunt;

14 (C) engaging in unsafe or unsportsmanlike activities
15 that are detrimental to the game resources of the state, as
16 defined by regulations of the board, including violations of
17 state hunting or big game commercial services statutes or regu-
18 lations; or

19 (D) accepting a deposit for big game commercial ser-
20 vices without providing before the services are rendered a signed
21 written contract to provide the services.

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

23 Sec. 16.05.344. BIG GAME CONSERVATION FEE. (a) A big game
24 conservation fee is due to the state for each animal taken by a hunter
25 who

26 (1) takes an animal for which the hunter is required to
27 have a big game tag under AS 16.05.340; and

28 (2) utilizes the services of a guide-outfitter, marine
29 mammal guide-outfitter, or transporter licensed under AS 08.54 to

1 facilitate the taking of that animal.

2 (b) The big game conservation fee is equal to 25 percent of the
3 big game tag fee set out in AS 16.05.340.

4 (c) The big game conservation fee shall be paid by the guide-
5 outfitter or marine mammal guide-outfitter who contracted to guide-
6 outfit the hunt on which the animal was taken. If the animal was not
7 taken on a guide-outfitted hunt, then the fee shall be paid by the
8 transporter who transports the animal from the field.

9 (d) A guide-outfitter, marine mammal guide-outfitter, or trans-
10 porter shall pay fees due under this section to the Department of
11 Commerce and Economic Development at the time of application for
12 renewal of a guide-outfitter license, marine mammal guide-outfitter
13 license, or transporter license. If the person who owes the fee due
14 under this section does not apply for renewal of a license under AS
15 08.54, the person shall pay the fee to the Department of Commerce and
16 Economic Development by the end of the calendar year in which the
17 animal was taken.

18 (e) The commissioner of administration shall separately account
19 for big game conservation fees deposited in the general fund by the
20 Department of Commerce and Economic Development. The annual estimated
21 balance in the account may be used by the legislature to make appro-
22 priations to the Department of Fish and Game and the Department of
23 Public Safety to carry out their respective responsibilities for
24 management of game resources and enforcement of game laws.

25 * Sec. 5. AS 16.05.407(a) is amended to read:

26 (a) It is unlawful for a nonresident to hunt, pursue, or take
27 brown bear, grizzly bear, polar bear, mountain goat, or sheep in this
28 state, unless personally accompanied by

29 (1) a person who is licensed as a guide-outfitter. [MASTER

1 GUIDE, REGISTERED GUIDE,) class-A guide-outfitter, [ASSISTANT GUIDE]
2 or assistant guide-outfitter [GUIDE] by the Big Game Commercial Ser-
3 vices [GUIDE] Board; or

4 (2) a resident over 19 years of age who is

5 (A) the spouse of the nonresident; or

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

8 * Sec. 6. AS 16.05.407(d) is amended to read:

9 (d) A nonresident who violates (a) of this section, or who fails
10 to furnish an affidavit under (b) [OR (e)] of this section, is guilty
11 of a misdemeanor and upon conviction is punishable by imprisonment for
12 not more than one year, or by a fine of not more than \$5,000, or by
13 both.

14 * Sec. 7. AS 16.05.408(a) is amended to read:

15 (a) It is a class A misdemeanor for a nonresident alien

16 (1) to hunt, pursue, or take marine mammals unless person-
17 ally accompanied by a licensed marine mammal guide-outfitter [GUIDE];
18 or

19 (2) to hunt, pursue, or take a big game animal as defined
20 by the Board of Game unless personally accompanied by a guide-outfit-
21 ter [LICENSED MASTER GUIDE, REGISTERED GUIDE,] or class-A guide-out-
22 fitter licensed [ASSISTANT GUIDE] under AS 08.54.

23 * Sec. 8. AS 16.05 is amended by adding a new section to read:

24 Sec. 16.05.783. BIG GAME HUNTING CLUBS PROHIBITED. (a) A
25 hunting club may not

26 (1) engage in activities in direct support of big game
27 hunting, including transportation or guide-outfitting of big game
28 hunters; or

29 (2) provide facilities or services for big game hunting.

1 (b) In this section "hunting club" means

2 (1) an organization that offers use of property or services
3 to individuals who pay a membership fee for the privilege of using the
4 property or services for hunting; or

5 (2) a partnership, limited partnership, corporation, or
6 unincorporated association through which property is jointly owned,
7 leased, or otherwise held by members of the entity and through which
8 the members are entitled to use the property for hunting.

9 * Sec. 9. AS 39.50.200(b)(48) is amended to read:

10 (48) Big Game Commercial Services [GUIDE] Board AS 08.54.-
11 300 [(AS 08.54.010)]; and

12 * Sec. 10. AS 41.23.420(d) is amended to read:

13 (d) The provisions of AS 41.23.400 - 41.23.510 do not affect the
14 authority of

15 (1) the Department of Fish and Game, the Board of Fisher-
16 ies, the Board of Game, or the Big Game Commercial Services [GUIDE
17 LICENSING AND CONTROL] Board under AS 08.54, AS 16, or AS 41.99.010;

18 (2) the Department of Environmental Conservation under AS
19 46.03; or

20 (3) state agencies and municipalities under AS 44.19.145(a)-
21 (11) and AS 46.40.100.

22 * Sec. 11. AS 44.62.330(a)(35) is amended to read:

23 (35) Big Game Commercial Services [GUIDE LICENSING AND
24 CONTROL] Board

25 * Sec. 12. TRANSITION: GUIDE-OUTFITTER LICENSES. (a) Notwithstanding
26 the repeal of AS 08.54.010 - 08.54.240, all licenses issued under AS 08.-
27 54.010 - 08.54.240 are valid for the period for which the licenses were is-
28 sued.

29 (b) For the purposes of AS 08.54.300 - 08.54.590 as enacted by sec. 3

1 of this Act, until new licenses are issued under this section, a

2 (1) master guide license issued under former AS 08.54.100 and a
3 registered guide license issued under former AS 08.54.110 shall be con-
4 sidered a guide-outfitter license issued under AS 08.54.350;

5 (2) class-A assistant guide license issued under former AS 08.-
6 54.120 shall be considered a class-A guide-outfitter license issued under
7 AS 08.54.380;

8 (3) an assistant guide license issued under former AS 08.54.140
9 shall be considered an assistant guide-outfitter license issued under
10 AS 08.54.390.

11 (c) At the time of the next license renewal following the effective
12 date of this Act, each person licensed as

13 (1) a master guide or registered guide shall receive a guide-
14 outfitter license, if the person

15 (A) is in good standing at the time of issuance of the
16 license; and

17 (B) has paid the guide-outfitter license fee and the com-
18 mercial use permit fee;

19 (2) a class-A assistant guide shall receive a class-A guide-
20 outfitter license, if the person

21 (A) is in good standing at the time of issuance of the
22 license; and

23 (B) has paid the class-A guide-outfitter license fee;

24 (3) an assistant guide shall receive an assistant guide-out-
25 fitter license, if the person

26 (A) is in good standing at the time of issuance of the
27 license; and

28 (B) pays the assistant guide-outfitter license fee.

29 (d) Notwithstanding (c) of this section, the Department of Commerce

1 and Economic Development may issue a new license under AS 08.54.300 -
2 08.54.590, without an additional fee, to a person licensed under former
3 AS 08.54.010 - 08.54.240 before the next renewal period following the
4 effective date of this Act, if the person satisfies the requirements for
5 the license and the license is valid only for the same period for which the
6 replaced license was issued.

7 * Sec. 13. TRANSITION; OUTFITTERS. (a) Notwithstanding AS 08.54.350,
8 as enacted by sec. 3 of this Act, a natural person is entitled to receive a
9 guide-outfitter license if the person

10 (1) applies on a form provided by the Department of Commerce and
11 Economic Development;

12 (2) registered a camp, cabin, or lodge under AS 16.05.787 during
13 1988;

14 (3) provides evidence satisfactory to the Big Game Commercial
15 Services Board that the person has engaged in the business of big game
16 outfitting in 1986, 1987, and 1988;

17 (4) passes the guide-outfitter examination administered by the
18 Big Game Commercial Services Board within one year after the effective date
19 of this Act;

20 (5) pays the guide-outfitter license fee and the commercial use
21 permit fee; and

22 (6) possesses a business license to provide guide-outfitting
23 services.

24 (b) A guide-outfitter license issued under (a) of this section is for
25 all purposes a license issued under AS 08.54.350, as enacted by sec. 3 of
26 this Act.

27 (c) A person who satisfies (a)(1) - (3) of this section, holds a
28 business license as a big game outfitter, and pays a license fee set by the
29 Department of Commerce and Economic Development is entitled to receive an

1 interim outfitter license pending a final determination of a person's
2 eligibility for a guide-outfitter license under (a) of this section. The
3 right to receive and hold an interim outfitter license terminates on the
4 earlier of

5 (1) the date of issuance of a guide-outfitter license to the
6 person;

7 (2) a final determination under (a) of this section that the
8 person is not eligible to receive a guide-outfitter license; or

9 (3) one year from the effective date of this Act.

10 (d) A person who holds an interim outfitter license, notwithstanding
11 contrary provisions of AS 08.54, may provide transportation to, from, and
12 in the field to big game hunters and supply other services in the field to
13 big game hunters. The person may not provide guiding services. The person
14 is responsible for paying to the Department of Commerce and Economic Devel-
15 opment the big game conservation fee due under AS 16.05.344.

16 (e) A person who holds an interim outfitter license shall promptly
17 report to the Department of Public Safety, division of fish and wildlife
18 protection, but not later than 30 days after the violation, a violation of
19 a state fish, game, or big game commercial services statute or regulation
20 that the person reasonably believes was committed by a client or employee
21 of the person.

22 (f) A person who holds an interim outfitter license may accompany or
23 be present with a hunter at a base camp, cabin, or permanent lodge in
24 connection with a big game hunt for compensation only if the person has
25 furnished an affidavit to the Department of Public Safety, division of fish
26 and wildlife protection, at least two weeks in advance. The person may not
27 register more than two base camps. The affidavit must be signed by the
28 person and must provide the following information:

29 (1) the specific location of the camp, cabin, or lodge;

1 (2) the number of big game hunters in each party that will use
2 the camp, cabin, or lodge; and

3 (3) the kinds or species of big game that will be hunted.

4 (g) A person who furnishes an affidavit under (f) of this section
5 shall notify the Department of Public Safety of the amount and kinds or
6 species of big game taken by each hunter who uses the base camp, cabin, or
7 permanent lodge to which the affidavit relates. Notice shall be given
8 within 30 days after the game is taken. The Department of Public Safety
9 shall provide the information received under this subsection to the Depart-
10 ment of Fish and Game.

11 (h) A person who

12 (1) violates (e) of this section is guilty of a misdemeanor and
13 upon conviction is punishable by a fine of not more than \$2,000 or by
14 imprisonment for not more than one year, or by both; or

15 (2) falsifies an affidavit under (f) of this section is guilty
16 of perjury under AS 11.56.200.

17 (i) In this section,

18 (1) "big game" and "field" have the meaning given in AS 08.54.-
19 590, as enacted by sec. 3 of this Act;

20 (2) "base camp" does not include spike camp, fly camp, or over-
21 night camp;

22 (3) "guiding" means accompanying or being present with a big
23 game hunter in the field, personally or through an assistant, for compen-
24 sation or with the intent or an agreement to receive compensation; "guid-
25 ing" does not include

26 (A) providing transportation to or from the field, if the
27 person providing transportation and the persons being transported do
28 not stalk, pursue, track, kill, or attempt to kill big game during the
29 transportation; or

1 (B) selling, leasing, or renting goods, if the transaction
2 does not take place in the field;

3 (4) "outfitting" means the provision of services, other than
4 guiding services, to big game hunters in the field for compensation.

5 * Sec. 14. INITIAL APPOINTMENTS TO BIG GAME COMMERCIAL SERVICES BOARD.
6 Notwithstanding AS 08.54.300(b), as enacted by sec. 3 of this Act, the
7 initial appointments to the Big Game Commercial Services Board under

8 (1) AS 08.54.300(b)(4) may also be filled by the appointment of
9 a master guide, registered guide, or a class-A assistant guide licensed
10 under former AS 08.54.010 - 08.54.240 or a person who registered a camp,
11 cabin, or lodge under AS 16.05.787 during 1988 and engaged in the business
12 of big game outfitting in 1986, 1987, and 1988;

13 (2) AS 08.54.300(b)(5) may also be filled by the appointment of
14 a person who engaged in the business of providing transportation to big
15 game hunters in 1986, 1987, and 1988.

16 * Sec. 15. TRANSITION. Litigation, hearings, investigations, and other
17 proceedings pending under a law amended or repealed by this Act continue in
18 effect and may be continued and completed notwithstanding an amendment or
19 repeal provided for in this Act. Licenses, orders, and regulations issued
20 or adopted under authority of a law amended or repealed by this Act remain
21 in effect for the term issued or until revoked, vacated, or otherwise
22 modified under the provisions of this Act.

23 * Sec. 16. AS 08.54.010, 08.54.030, 08.54.035, 08.54.040, 08.54.045,
24 08.54.050, 08.54.060, 08.54.070, 08.54.100, 08.54.110, 08.54.120, 08.54.-
25 130, 08.54.140, 08.54.141, 08.54.150, 08.54.160, 08.54.170, 08.54.180,
26 08.54.186, 08.54.190, 08.54.195, 08.54.200, 08.54.210, 08.54.220, 08.54.-
27 230, 08.54.240; AS 16.05.370(b), 16.05.370(c), 16.05.407(e), 16.05.786, and
28 16.05.787 are repealed.

29 * Sec. 17. Sections 4, 6, 12, and 13, ch. 160, SLA 1988 are repealed.

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* Sec. 18. This Act takes effect immediately under AS 01.10.070(c).

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act providing for retroactive extension of the
7 termination date of the Task Force on Guiding and
8 Game; and providing for an effective date."

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

10 * Section 1. Section 14(d), ch. 160, SLA 1988, is repealed and reenact-
11 ed to read:

12 (d) The task force terminates on the earlier of

13 (1) January 15, 1991; or

14 (2) the date of enactment into law of

15 (A) a licensing system for hunting guides and other
16 persons who provide services to hunters for the purpose of
17 facilitating the harvest of big game; and

18 (B) a management system for allocating rights of
19 access to big game to licensed guides.

20 * Sec. 2. Notwithstanding the qualifications for members of the Task
21 Force on Guiding and Game set out in sec. 14(a), ch. 160, SLA 1988, the
22 members of the task force on January 8, 1989, shall continue to serve until
23 they resign or the task force is terminated.

24 * Sec. 3. Sections 1 and 2 of this Act are retroactive to January 8,
25 1989.

26 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).
27
28



LAWS OF ALASKA

1988

Source

HCS CSSB 191(R1a) am H

Chapter No.

160

AN ACT

Relating to the Guide Board and big game guiding, transporting, outfitting, and hunting and establishing an interim task force on guiding and the commercial taking of big game; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 12.

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 16, 1988
Actual Effective Date: Sections 1, 2, 5, 7 - 11, and 14
take effect June 17, 1988; sections 4, 6, 12, 13, and
15 take effect June 30, 1989; section 3 takes effect
January 1, 1989

APPENDIX A

Chapter 160

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, reasonable, and consistent procedure for limiting the number of guides to that quota; preference may be given to qualified available and willing licensed guides who reside within the designated game unit or subunit;

(8) meet at least twice annually, once in Anchorage and once in another municipality.

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

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

Chapter 160

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.

(h) 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 \$2,000 [\$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

1 automobiles or other vehicles, camping gear and other equipment and
2 paraphernalia used in, or in aid of, guiding activity engaged in
3 during the period of suspension or revocation may be seized by persons
4 authorized to enforce this chapter and may be forfeited to the state
5 as provided under AS 16.05.195.

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

7 (3) "guide" or "guiding" means accompanying or being pre-
8 sent with a big game hunter in the field, personally or through an
9 assistant, for compensation or with the intent or an agreement to
10 receive compensation; "in the field" does not include a lawfully
11 established base camp, cabin, or permanent lodge registered with the
12 division of fish and wildlife protection under AS 16.05.787 or a boat
13 with permanent living quarters; "guide" or "guiding" does not include

14 (A) providing transportation to or from the field, if
15 the persons providing transportation and the persons being trans-
16 ported do not stalk, pursue, track, kill, or attempt to kill big
17 game during the transportation; or

18 (B) selling, leasing, or renting goods, if the trans-
19 action does not take place in the field;

20 * Sec. 6. AS 08.54.240(3) is amended to read:

21 (3) "guide" or "guiding" means accompanying or being pre-
22 sent with a big game hunter in the field, personally or through an
23 assistant, for compensation or with the intent or an agreement to
24 receive compensation; "in the field" does not include a lawfully
25 established [BASE CAMP,] cabin [,] or permanent lodge registered with
26 the division of fish and wildlife protection under AS 16.05.787 or a
27 boat with permanent living quarters; "guide" or "guiding" does not
28 include

29 (A) providing transportation to or from the field, if

1 the persons providing transportation and the persons being trans-
2 ported do not stalk, pursue, track, kill, or attempt to kill big
3 game during the transportation; or

4 (B) selling, leasing, or renting goods, if the trans-
5 action does not take place in the field;

6 * Sec. 7. AS 08.54.240 is amended by adding a new paragraph to read:

7 (7) "base camp" does not include a spike camp, fly camp, or
8 overnight camp.

9 * Sec. 8. AS 16.05.370 is amended by adding new subsections to read:

10 (b) A person who sells big game tags shall give to each buyer a
11 game report form provided by the department, to be completed and
12 returned by the hunter after big game is taken. The department shall
13 pay the cost of return postage for the report. The report must speci-
14 fy the location, amount, and kinds or species of game taken.

15 (c) A person who transports big game from the field for compen-
16 sation shall, within seven days after providing the transportation,
17 notify the department of the amount and kinds or species of game
18 transported.

19 * Sec. 9. AS 16.05.407(d) is amended to read:

20 (d) A nonresident who violates (a) of this section, or who fails
21 to furnish an affidavit under (b) or (e) of this section, is guilty of
22 a misdemeanor and upon conviction is punishable by imprisonment for
23 not more than one year, or by a fine of not more than \$5,000, or by
24 both.

25 * Sec. 10. AS 16.05.407 is amended by adding a new subsection to read:

26 (e) An applicant for a nonresident big game tag for the taking
27 of moose or caribou shall first furnish to the state, on a form pro-
28 vided by the state, an affidavit showing where the applicant will be
29 hunting and what guiding, transportation, or other big game hunting

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**



LAWS OF ALASKA

1988

Source

HCS CSSR 191(R1a) am II

Chapter No.

160

AN ACT

Relating to the Guide Board and big game guiding, transporting, outfitting, and hunting and establishing an interim task force on guiding and the commercial taking of big game; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 12.

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 16, 1988
Actual Effective Date: Sections 1, 2, 5, 7 - 11, and 14
take effect June 17, 1988; sections 4, 6, 12, 13, and
15 take effect June 30, 1989; section 3 takes effect
January 1, 1989

APPENDIX A

AN ACT

Relating to the Guide Board and big game guiding, transporting, outfitting, and hunting and establishing an interim task force on guiding and the commercial taking of big game; and providing for an effective date.

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

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

* Sec. 2. AS 08.54.040(a) is amended to read:

(a) Except as provided in AS 08.54.045, the board shall

(1) prepare, grade, and administer

(A) a written and oral examination of an applicant for a registered guide license that requires demonstration that the applicant is qualified generally to provide guided hunts and, in particular, to guide in each game management unit the applicant has selected; if an applicant demonstrates limited ability to read or write the English language, the entire examination shall be administered orally; and

(B) an oral examination of a registered or master guide who seeks an amendment of a game management unit certification; the examination must require demonstration that the guide is qualified to provide guided hunts in each new game management unit for which the guide seeks to be certified [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, reasonable, and consistent procedure for limiting the number of guides to that quota; preference may be given to qualified available and willing licensed guides who reside within the designated game unit or subunit;

(8) meet at least twice annually, once in Anchorage and once in another municipality.

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

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 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.

(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 \$2,000 (\$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

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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 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.

* Sec. 4. AS 08.54.210 is repealed and reenacted to read:

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 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

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(B) an outfitter offering big game hunting services;

(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 for compensation or hire to transport a hunter to or from the field in an aircraft for which the person does not hold a current valid air taxi commercial operator (ATCO) operating certificate issued by the Federal Aviation Administration under 14 C.F.R. Part 135; in this paragraph, "for compensation or hire" means receiving any monetary consideration for the transportation, regardless of whether the consideration is directly attributable to the transportation; "for compensation or hire" does not include reimbursement for actual expenses incurred for aircraft fuel for the transportation;

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

(8) an assistant guide to contract to conduct a guided hunt;

(9) 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) - (6) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$2,000 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)(7) - (9) 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 more than three years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft,

1 automobiles or other vehicles, camping gear and other equipment and
2 paraphernalia used in, or in aid of, guiding activity engaged in
3 during the period of suspension or revocation may be seized by persons
4 authorized to enforce this chapter and may be forfeited to the state
5 as provided under AS 16.05.195.

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

7 (3) "guide" or "guiding" means accompanying or being pre-
8 sent with a big game hunter in the field, personally or through an
9 assistant, for compensation or with the intent or an agreement to
10 receive compensation; "in the field" does not include a lawfully
11 established base camp, cabin, or permanent lodge registered with the
12 division of fish and wildlife protection under AS 16.05.787 or a boat
13 with permanent living quarters; "guide" or "guiding" does not include

14 (A) providing transportation to or from the field, if
15 the persons providing transportation and the persons being trans-
16 ported do not stalk, pursue, track, kill, or attempt to kill big
17 game during the transportation; or

18 (B) selling, leasing, or renting goods, if the trans-
19 action does not take place in the field;

20 * Sec. 6. AS 08.54.240(3) is amended to read:

21 (3) "guide" or "guiding" means accompanying or being pre-
22 sent with a big game hunter in the field, personally or through an
23 assistant, for compensation or with the intent or an agreement to
24 receive compensation; "in the field" does not include a lawfully
25 established [BASE CAMP,] cabin [,] or permanent lodge registered with
26 the division of fish and wildlife protection under AS 16.05.787 or a
27 boat with permanent living quarters; "guide" or "guiding" does not
28 include

29 (A) providing transportation to or from the field, if

1 the persons providing transportation and the persons being trans-
2 ported do not stalk, pursue, track, kill, or attempt to kill big
3 game during the transportation; or

4 (B) selling, leasing, or renting goods, if the trans-
5 action does not take place in the field;

6 * Sec. 7. AS 08.54.240 is amended by adding a new paragraph to read:

7 (7) "base camp" does not include a spike camp, fly camp, or
8 overnight camp.

9 * Sec. 8. AS 16.05.370 is amended by adding new subsections to read:

10 (b) A person who sells big game tags shall give to each buyer a
11 game report form provided by the department, to be completed and
12 returned by the hunter after big game is taken. The department shall
13 pay the cost of return postage for the report. The report must speci-
14 fy the location, amount, and kinds or species of game taken.

15 (c) A person who transports big game from the field for compen-
16 sation shall, within seven days after providing the transportation,
17 notify the department of the amount and kinds or species of game
18 transported.

19 * Sec. 9. AS 16.05.407(d) is amended to read:

20 (d) A nonresident who violates (a) of this section, or who fails
21 to furnish an affidavit under (b) or (e) of this section, is guilty of
22 a misdemeanor and upon conviction is punishable by imprisonment for
23 not more than one year, or by a fine of not more than \$5,000, or by
24 both.

25 * Sec. 10. AS 16.05.407 is amended by adding a new subsection to read:

26 (e) An applicant for a nonresident big game tag for the taking
27 of moose or caribou shall first furnish to the state, on a form pro-
28 vided by the state, an affidavit showing where the applicant will be
29 hunting and what guiding, transportation, or other big game hunting

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services the applicant will be employing. A person who falsifies an affidavit under this subsection is guilty of perjury under AS 11.56.200.

* Sec. 11. AS 16.05 is amended by adding new sections to read:

Sec. 16.05.786. DUTY OF BIG GAME TRANSPORTERS TO REPORT VIOLATIONS. (a) A person who transports a big game hunter to or from the field for compensation, or with the intent or an agreement to receive compensation, shall promptly 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 person reasonably believes was committed by a client or employee of the person.

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

Sec. 16.05.787. REGISTRATION OF BIG GAME HUNTING BASE CAMPS, CABINS, AND LODGES. (a) A person who is not licensed as a guide under AS 08.54 may accompany or be present with a hunter at a base camp, cabin, or permanent lodge in connection with a big game hunt and for compensation only if the person has not been convicted of violating a game law or regulation during the preceding five years and has furnished an affidavit to the Department of Public Safety, division of fish and wildlife protection, at least two weeks in advance. A person who is not licensed as a guide may not register more than two base camps. The affidavit must be signed by the person and must provide the following information:

(1) the specific location of the camp, cabin, or lodge;

(2) the number of big game hunters in each party that will use the camp, cabin, or lodge; and

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(3) the kinds or species of big game that will be hunted.

(b) A person who furnishes an affidavit under (a) of this section shall notify the Department of Public Safety of the amount and kinds or species of big game taken by each hunter who uses the base camp, cabin, or permanent lodge to which the affidavit relates. Notice shall be given within 30 days after the game is taken.

(c) The Department of Public Safety shall send the information received under (b) of this section and a copy of each affidavit under this section to the Department of Fish and Game.

(d) A person who falsifies an affidavit under this section is guilty of perjury under AS 11.56.200.

* Sec. 12. AS 16.05.787(a) is amended to read:

(a) A person who is not licensed as a guide under AS 08.54 may accompany or be present with a hunter at a [BASE CAMP,] cabin [,] or permanent lodge in connection with a big game hunt and for compensation only if the person has not been convicted of violating a game law or regulation during the preceding five years and has furnished an affidavit to the Department of Public Safety, division of fish and wildlife protection, at least two weeks in advance. The affidavit must be signed by the person and must provide the following information:

(1) the specific location of the [camp,] cabin [,] or lodge;

(2) the number of big game hunters in each party that will use the [CAMP,] cabin [,] or lodge; and

(3) the kinds or species of big game that will be hunted.

* Sec. 13. AS 16.05.787(b) is amended to read:

(b) A person who furnished an affidavit under (a) of this section shall notify the Department of Public Safety of the amount and

1 kinds or species of big game taken by each hunter who uses the [BASE
2 CAMP,] cabin [,] or permanent lodge to which the affidavit relates.
3 Notice shall be given within 30 days after the game is taken.

4 * Sec. 14. TASK FORCE ON GUIDING AND GAME. (a) The interim task force
5 on the Guide Board and the commercial taking of big game is established
6 under the jurisdiction of the legislative council. The task force consists
7 of the commissioners of fish and game, commerce and economic development,
8 and public safety, or their designees; two members of the senate appointed
9 by the president of the senate and two members of the house of representa-
10 tives appointed by the speaker of the house, of whom only one member from
11 each body may have a financial interest in any business involving or relat-
12 ed to the commercial taking of game; and six members appointed by the
13 governor as follows: one member of the Guide Board; one big game guide
14 licensed under AS 08.54 who is not a member of the Guide Board; and two
15 persons engaged in a business, other than guiding, that includes transport-
16 ing big game hunters to and from the field, but only one of whom may be an
17 air taxi operator; and two public members, neither of whom has a financial
18 interest in any business involving or related to the commercial taking of
19 game. The governor shall appoint at least one member from each judicial
20 district in the state. The members shall elect a person to chair the task
21 force.

22 (b) The task force shall review the operations of the Guide Board and
23 shall study problems and issues concerning the commercial taking of big
24 game in the state and the businesses or professions that provide goods and
25 services to big game hunters in the state. The task force shall submit to
26 the legislative council, not later than January 15, 1989, a report on its
27 findings and proposed legislation to address the problems and issues cover-
28 ed in the report.

29 (c) A subpoena requiring the attendance of a witness before the task
30

1 force may be issued by the person chairing the task force if authorized to
2 do so by a majority of the membership of the task force. The provisions of
3 AS 24.25.020 - 24.25.060 apply to subpoenas issued under this subsection
4 and to witnesses called by the task force.

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

6 * Sec. 15. AS 08.54.240(7) is repealed.

7 * Sec. 16. Sections 1, 2, 5, 7 - 11, and 14 of this Act take effect
8 immediately under AS 01.10.070(c).

9 * Sec. 17. Sections 4, 6, 12, 13, and 15 of this Act take effect
10 June 30, 1989.

11 * Sec. 18. Section 3 of this Act takes effect January 1, 1989.
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Official Business

Alaska State Legislature

House of Representatives

Committee on Rules

P. O. Box V
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Phone:
(907) 465-3764
455-3765

Letter of Intent
For
HCS CS SB 191 (Rules)

It is the intent of the Legislature that the task force established under the provisions of SB 191 have full powers to investigate and establish recommendations.

Under the Alaska Constitution, fish and game resources are the common property of the people of Alaska, to be managed by the state in trust for the people's use. During all deliberations of the task force relating to regulating the commercial use of game, the first and highest priority of the task force shall be protection of the game resource. In this context, the task force shall examine how the commercial taking of big game by both residents and nonresidents conforms with the needs of all Alaskans.

Currently, there are numerous types of big game hunting services being provided in Alaska by various commercial operators. The task force shall examine this situation and make recommendations for the appropriate role of guides, gear providers, air taxi operators and other transporters in providing commercial hunting services.

Other states and Canadian provinces have experienced similar commercial hunting pressures and problems. In an effort to assure that Alaska not duplicate the mistakes of others, the task force should obtain as much information as possible about the problems these other jurisdictions have experienced. If solutions were found for problems similar to existing problems in this state, the task force shall review those solutions and recommend accordingly for Alaska.

The Alaska Supreme Court will soon decide *Owsichek v. the State of Alaska*, dealing with the constitutionality of restricted guide areas. The task force shall analyze this decision, and recommend methods of accommodating the court's decision.

The task force shall work closely with the Department of Fish and Game and the Board of Game to create a link between the commercial take of big game and game management, for the protection and benefit of all user groups.

The task force shall examine the potential effects of adding other species to the guide-required list.

APPENDIX B

The task force shall examine the licensing of transporters, and make recommendations as to whether such a system ought to be renewed, and, if so, under what conditions.

The Legislative Budget and Audit Committee completed audits of the Guide Board in 1985 and 1987. The task force shall review the audits and recommend what provisions shall be implemented. Specifically, the task force shall analyze if the guide board is functioning at a level that ensures that the present allocation system is fair and is following the Administrative Procedures Act.

The legislature recognizes that the current big game guide system in Alaska is dependent on the restricted guide area concept for its success. Accordingly, the task force shall examine all aspects of this system, and make recommendations pertaining to its openness and accessibility, including to the question of selling or otherwise transferring the use of restricted guide areas. The task force shall also examine whether the state should lease or permit commercial use areas, or in some other manner establish a restricted use "concessionaire" approach to commercial game management. Throughout these deliberations, the task force shall review the compatibility of the current restricted area system, or any such system proposed, with the state's game allocation system.

The task force shall analyze the joint use concept and supporting agreements between guides in joint use areas, and gauge whether these agreements are in the best interest of all game users, as well as in the best interest of the game resource. In doing so, the task force shall investigate whether one consistent policy for determining guide areas is appropriate, the goal being that all areas are treated equally. The task force shall also examine whether rural residents from remote communities are being afforded an adequate and equal opportunity to participate in the guiding system.

The violation of statutes regulating almost all other professions in Alaska is generally a misdemeanor offense, whereas the act of illegal guiding is a felony offense. The task force shall review this section of law, determine whether this is proper, and make recommendations for any appropriate changes.

The task force shall investigate and make recommendations concerning the propriety of fish and wildlife protection officers, or other state employees whose responsibilities include managing game resources or enforcing the state's guiding and game management laws, holding guide licenses or otherwise participating in the commercial taking of game.

The legislature recognizes that the role of federal agencies in managing and permitting commercial uses of federal parks, reserves,

and other federal lands has a significant direct impact in how the state's guide laws are monitored and enforced. The task force is directed to examine the role of federal agencies in monitoring and permitting these activities.

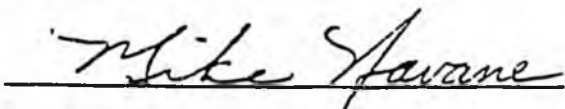
The legislature recognizes that hunting, flying and other travel in Alaska involves certain inherent risks. The task force shall review the issue of differing safety and insurance requirements for air transportation and make a recommendation on the establishment of minimal insurance and safety requirements for guides, lodge owners, and others who are not now regulated.

The task force should review the possibility of bonding requirements for providers of big game hunting services.

The task force should examine all aspects of a head tax, the problems with its use in the past, and what would be the ramifications to game management if it were reinstated.

The task force should work to clarify the definitions of "camp", "in the field", and "big game hunting services". The task force should describe which commercial providers should be allowed in "camps" and "in the field." "Compensation", and "monetary consideration" should also be further defined and explained by the task force. The task force should also provide further explanation of what constitutes a "boat with permanent living quarters."

The task force should also look at the use of dog sleds in big game hunts, and when dogs should be allowed in camps.



Rep. Mike Navarre, Chair
House Rules Committee
May 9, 1988

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

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

File No. S-1650

O P I N I O N

[No. 3389 - October 21, 1988]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Milton Souter, Judge.

Appearances: Charles E. Tulin, Anchorage, for Appellant. Michael G. Hotchkin and Sarah E. McCracken, Assistant Attorneys General, Anchorage, Ronald W. Lorensen, Acting Attorney General, Juneau, for Appellee.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton, and Moore, Justices.

RABINOWITZ, Chief Justice.

We are called upon to decide whether two statutes, AS 08.54.040(7) & .195, comport with article VIII, section 3 of the

NOTICE TO COUNSEL: This opinion will be re-
leased in the free and public at 12:30
p.m. Friday of the date indicated.
In advance of providing a transcript of record
to the court, please advise the clerk of the
court of the date of the release time,
and the name of the persons other than your
counsel in this case of the outcome.
Clerk of the Appellate Courts

Alaska Constitution. These statutes authorize the Guide Licensing and Control Board to grant hunting guides "exclusive guide areas," geographic areas in which only the designated guide may lead hunts and from which all other guides are excluded. Licensed hunters, including other guides, may hunt recreationally in these areas, but only the holder of the exclusive guide area may lead hunts professionally.

I.

In 1973 the legislature created the Guide Licensing and Control Board ("GLCB" or "the Board"). Ch. 17, § 1, SLA 1973. This act set forth the composition, powers and duties of the Board, established guidelines for different classes of guide licenses, defined unlawful acts, and provided for the disciplining of guides. Id. It also authorized the Board generally to "regulate activity" of guides, AS 08.54.040(a)(3), and to adopt regulations "required by this chapter or reasonably necessary for its administration." Id. at 08.54.050. The legislative history reveals that the purposes of the act were "to protect fish and game management" and "to get competent people as guides in Alaska." Alaska Legislative Committee Minutes Microfiche No. 37, House Judiciary Committee, H.B. 1, at 20 (Feb. 2, 1973).

One of the first activities of the Board was to establish a scheme of "exclusive guide areas" (EGAs) and "joint use areas." Under this system, a guide would be able to register his

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camp and be entitled to exclusive guiding privileges in a designated area surrounding it. "Joint use areas" would be assigned where the areas used by two or more guides overlapped.¹ The Board first voted in April 1974 to implement this scheme for Game Management Units 16 and 20.² Shortly thereafter, in July 1974, the Board voted to extend the program to Unit 8 (Kodiak Island).

For the following year, the Board considered applications for EGAs but took no action. In July 1975, the Board granted dozens of exclusive and joint use areas in the three Units for which the regulation was passed. The Board further resolved at that time to extend the program to eleven more Units, including Unit 19. In January 1976, the Board voted to grant EGAs to qualified guides anywhere in the state. Applications were to be based on "occupancy, use, financial value, and such other qualifications as the Board may prescribe." The Board set

1. EGAs and joint use areas will be referred to collectively as EGAs.

2. The Board of Game has divided the state into twenty-six Game Management Units, primarily for purposes of establishing hunting seasons and bag limits for different species. For these purposes, many Units are divided into several subunits with different applicable regulations. See AS 16.05.255; 5 AAC 78.001-.600, 80.001-.600, 83.001-.600, 86.001-.910, 88.001-.910. The Guide Licensing and Control Board has adopted these Units for purposes of licensing hunting guides. 12 AAC 38.200(b) (Eff. 6/28/74). Each licensed guide may be certified to practice in up to three Units. 12 AAC 38.200(c) (Eff. 6/28/74). Unit 16 is in South Central Alaska, near Anchorage, and Unit 20 occupies a large part of Interior Alaska, including Fairbanks.

a deadline of November 1, 1976, for receipt of applications for EGAs. The Board began granting EGAs in Units other than 8, 16 and 20 in December 1976, starting with Units 23-26. EGAs for other Units were granted gradually over the following months.

The Board conducted all of this activity without specific statutory authorization, relying only on the general grant of regulatory power in the 1973 legislation. In 1976 the legislature enacted AS 08.54.040(a)(8) (now AS 08.54.040(a)(7)), which authorized the Board to:

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.

Ch. 133, § 1, SLA 1976. This provision took effect January 1, 1977. Id. at § 5. The legislative history reveals that the intent of this section was to ratify the Board's EGA program. Transcript of Senate Resources Committee Hearing on S.B. 661, at 1, 14-15 (March 12, 1976); Transcript of House Resource Committee Hearing on S.B. 661, at 33-34 (April 27, 1976).

Finally, in 1986 the legislature enacted AS 08.54.195.³ This statute for the first time imposed procedures and criteria

3. Alaska Statute 08.54.195 provides:

(footnote continued)

on the Board with respect to the EGA program. This reform was

(footnote continued)

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 populations 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.

(footnote continued)

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enacted in response to a "sunset report" on the GLCB by the Division of Legislative Audit, which was harshly critical of the Board's implementation of the EGA program.⁴ See Division of Legislative Audit, A Performance Report on the Department of Commerce and Economic Development Guide Licensing and Control Board, Audit Control No. 08.01253-86-R (Nov. 21, 1985).

II.

Kenneth D. Owsichek is a registered guide who was licensed to lead hunts in Game Management Units 17, 18 and 19 in February 1976.⁵ He alleges that he had worked as an assistant guide in this area from 1972 to 1976. He claims that in January 1976, upon passing his guide license examination, he invested

(footnote continued)

(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.

4. The 1986 legislation also modified AS 08.54.045 (6) in response to the sunset report. Specifically, the legislation (1) renumbered it subsection .045(7), (2) required "an equitable, reasonable, and consistent procedure" (emphasized language added in 1986), and (3) provided that "preference may be given" to local resident guides (instead of shall). Ch. 71, § 6, SLA 1986.

5. Units 17, 18 and 19 occupy a large area overlapping parts of Southwest, Western and Interior Alaska. See 5 AAC 83.005(d) (Eff. 7/5/85), 86.005(a) (Eff. 7/5/85), 88.005(b) (Eff. 7/5/85).

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\$300,000 to build a lodge and several cabins together with other facilities for a full-scale guiding operation on Lake Clark. He also claims to have spent \$150,000 on four aircraft to fly in clients.

Owsichek's licensing and concurrent investments occurred at approximately the same time the GLCB decided to extend the EGA program on a statewide basis.⁶ Accordingly, Owsichek submitted an application for EGAs in Units 17 and 19 before the November 1, 1976, deadline established by the Board. The Board considered applications for EGAs in Units 17 and 19 in its December 1977 meeting. Owsichek's application was denied on the ground that he had not submitted "evidence of contracts for guided hunts in the area for two of the five years preceding the application."

Owsichek petitioned for review of this decision. In November 1978, the Attorney General's office found that, based on contracts submitted for hunts in 1976, 1977 and 1978, he was qualified to receive an EGA in Units 17 and 19, and recommended that the Board adopt this decision. In its December 1978 meeting, the Board resolved "that the portion of Mr. Owsichek's

6. As discussed above, the Board had decided to grant EGAs in Unit 19 in July 1975, but did not vote to extend the program to the remainder of the state, including Units 17 and 18, until January 1976, the month Owsichek passed his guide licensing exam and allegedly began building his improvements.

application that is not in conflict with presently granted gide [sic] areas be allowed. That no portion of the application that overlaps or is presently in joint use be granted." By letter dated February 5, 1979, the Board informed Owsichuk of its decision and assigned him area 19:33, in Unit 19. Owsichuk objected to this decision because he was unable to land his planes within the areas granted to him, rendering them "unhuntingable."

On April 6, 1979, Owsichuk filed a complaint in superior court challenging the Board's actions. His amended complaint alleged that: (1) prior to January 1, 1977, the Board lacked authority to promulgate regulations creating EGAs; (2) the actions of the Board violated due process and equal protection under the federal and state constitutions; (3) the actions of the Board were an unconstitutional taking of property; (4) AS 08.54.040(a)(8) was an unconstitutional delegation of authority because of the lack of standards; (5) the statutes and regulations constituted an unlawful impairment of contracts under the Alaska Constitution; (6) the regulations did not comply with what standards existed in the statute; and (7) he suffered damages. By way of relief Owsichuk sought a declaration that the Board's assigning of EGAs is unconstitutional and that he is entitled to recover damages against the state in an amount in excess of \$100,000 as a consequence of the state's illegal and unconstitutional actions.

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After considering the briefs and hearing oral arguments,⁷ the superior court affirmed the actions of the Board, holding "that the Board did not commit any error or abuse of discretion, that its regulations comport with the governing statutes, and that no constitutional infirmity exists in the statutes, regulations or Board decision."

This appeal followed.⁸

III.

A.

Owsichek argues that the EGA statutes and regulations violate the common use clause of the Alaska Constitution, which provides:

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

7. Before considering the case on the merits, the superior court had dismissed the action as an untimely appeal. This court reversed and remanded, holding that the claim for declaratory relief should have been treated as an independent action rather than an appeal, and that due to surprise and excusable neglect the time limit for appeals should have been relaxed as to the claims for damages and an injunction. *Owsichek v. State, Guide Licensing and Control Board*, 627 P.2d 616 (Alaska 1981).

8. After the parties filed their initial briefs, we requested supplemental briefing on the question of whether AS 08.54.040(7) and AS 08.54.195 violated article VIII, section 3, of the Alaska Constitution.

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Alaska Const., art. VIII, § 3. The state argues that this clause is a broad grant of authority to the state to manage these resources, and that it places no limitations on this authority greater than those contained in other constitutional provisions, such as equal protection.⁹

We observe initially that, in guaranteeing people "common use" of fish, wildlife and water resources, the framers of the constitution clearly did not intend to prohibit all regulation of the use of these resources. Licensing requirements, bag limits, and seasonal restrictions, for example, are time-honored methods of conserving the resources that were respected by delegates to the constitutional convention. Questions presented by this case concern the type and extent of permissible regulation consistent with common use.

9. The state also argues that Owsichek has no standing to challenge the system as it existed before January 1, 1977, when AS 08.54.040(1)(7) went into effect, because the Board did not establish any EGAs in Owsichek's Units before that date. In light of our holding that Owsichek is not entitled to damages, see infra Part IV, we need not address this issue. The declaratory relief to which he is currently entitled is unaffected by the date on which he attained standing.

The state does not argue that Owsichek lacks standing under the common use clause. We note that we would reject such an argument. We believe that a professional hunting guide's "use" of the wildlife resource is sufficiently direct that he falls within the protection of the common use clause. See infra note 15.

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This court has never considered these questions before. However, in four cases, we have indicated an intent to apply the common use clause in a way that strongly protects public access to natural resources. First, with respect to article VIII generally, we have written, "A careful reading of the constitutional minutes establishes that the provisions in article VIII were intended to permit the broadest possible access to and use of state waters by the general public."¹⁰ Wernberg v. State, 516 P.2d 1191, 1198-99 (Alaska 1973). Given the text of the common use clause, the same policy should apply to wildlife as well.

In CWC Fisheries v. Bunker, 755 P.2d 1115 (Alaska 1988), we addressed the question of whether a state tidelands grant included an exclusive right of fishery, or whether it was subject to a public trust easement. In holding the latter, we relied in part on the common use clause. While specifically declining to determine whether this clause imposed a higher duty than that imposed by common law public trust principles, id. at

10. Similarly, it has been stated:

The common use clause necessarily contemplates that resources will remain in the public domain, and will not be ceded to private ownership. Since the right of common use is guaranteed expressly by the constitution, it must be viewed as a highly important interest running to each person within the state.

State v. Ostrosky, 667 P.2d 1184, 1196 (Alaska 1983) (Rabinowitz, J., dissenting).

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1120 n.10, we stated, "At least in the absence of some clear evidence to the contrary, we will not presume that the legislature intended to take an action which would, on its face, appear inconsistent with the plain wording of this constitutional mandate." Id. at 1120.

In State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), appeal dismissed, 467 U.S. 1201, 81 L. Ed. 2d 339 (1984), we addressed the constitutionality of limited entry fishing. Limited entry fishing bears an obvious similarity to the EGA scheme in that both place restrictions on the commercial harvesting of a natural resource by giving a special status to a limited number of licensees. In Ostrosky we stated:

[W]e have difficulty squaring the section 3 reservation of fish to the people for common use with a system which grants an exclusive right to fish to a select few who may continue to exercise that right season after season. We accept, therefore, at least for the purposes of this case, the proposition that limited entry is inconsistent with the command of article VIII, section 3.

Id. at 1189. In Ostrosky we held that the Limited Entry Act was not unconstitutional because of a 1972 constitutional amendment explicitly permitting limited entry to fisheries, notwithstanding section 3. Id. at 1190.

In a subsequent limited entry fishing case, Johns v. Commercial Fisheries Entry Comm'n, 758 P.2d 1256 (Alaska 1988), we stated:

In State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), we noted that there is a tension

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between the limited entry clause of the state constitution and the clauses of the constitution which guaranty open fisheries. [Citing sections 3 and 15 of article VIII] We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation.

Id. at 1266.

Since there is no constitutional amendment authorizing EGAs, we must in this case address a common use question similar to that which was not addressed in Ostrosky. We do so, however, in light of our observations in Wernberg, CWC Fisheries, Ostrosky, and Johns that the common use clause was intended to guarantee broad public access to natural resources.

B.

We begin by examining constitutional history to determine the framers' intent in enacting the common use clause. This was a unique provision, not modeled on any other state constitution. Its purpose was anti-monopoly. This purpose was achieved by constitutionalizing common law principles imposing upon the state a public trust duty with regard to the management of fish, wildlife and waters.¹¹

11. Responding to a question about this provision on
(footnote continued)

The framers' reliance on historic principles regarding state management of wildlife and water resources is evident from a written explanation in the committee materials for the term "reserved to the people for common use." This discussion also highlights an intent to prohibit "exclusive grants or special privilege[s]."

Ancient traditions in property rights have never recognized that a private right and title can be acquired by a private person to wildlife in their natural state or to water in general. The title remained with the sovereign, and in the American system of government with its concept of popular sovereignty this title is reserved to the people or the state on behalf of the people. The expression "for common use" implies that these resources are not to be subject to exclusive grants or special privilege as was so frequently the case in ancient royal tradition. Rather rights to use are secured by the general laws of the state. In all English and American legal systems ownership of water cannot be asserted, rights acquire only to the use of water. Once wildlife is captured and removed from their natural state possessory right accrues to the captor, provided that the wildlife was captured in conformity with provisions of law.

Alaska Constitutional Convention Papers, Folder 210, paper prepared by Committee on Resources entitled "Terms" (emphasis

(footnote continued)

the floor of the convention, a member of the Resources Committee explained, "The language here has a lot of history behind it. . . . The language in this section harks back to the old tradition whereby wildlife in its natural state was in the presumed ownership of the sovereign until reduced to possession." 4 Proceedings of the Alaska Constitutional Convention 2492 (Jan. 18, 1956).

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added, except to "use"). Because an EGA is clearly a type of monopoly, "exclusive grant," or at least a "special privilege," this history strongly suggests that the statutes at issue here are unconstitutional. However, this history also states that "rights to use are secured by the general laws of the state," clearly giving the legislature some leeway in regulating use of the resources.

The state finds support for its position in a debate that occurred at the convention over registered trap lines. This debate is significant because, like EGAs, registered trap lines would allow a prior existing user to exclude newcomers from the privilege of harvesting the wildlife resource. On the floor of the convention, a delegate asked whether the common use clause would prohibit registered trap lines, and the spokesman for the Resources Committee responded that it would be "arguable." 4 Proceedings of the Alaska Constitutional Convention 2462-63 (Jan. 17, 1956). In response to this concern, the Resources Committee inserted language in the commentary to the common use clause authorizing registered trap lines: "This provision does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture, to fish in private ponds, or to registered trap lines if authorized by law." 6 Proceedings of the Alaska Constitutional Convention app. V, at 98 (Commentary on Article on State Lands and Natural Resources, Jan. 16, 1956)

(emphasized language added after first draft; cf. id. at 83 (Dec. 16, 1955)).

Resolution of the trap line issue begs the question in the instant case. One might argue that addition of the language excluding registered trap lines from the effect of the common use clause was intended to authorize the legislature to enact this type of regulation generally, and that the reasoning should extend to EGAs. However, the language in the commentary is highly specific, which more likely suggests that the common use clause would prohibit all similar regulation, with registered trap lines as a narrow exception in response to the political pressures of the moment.

In a discussion about fishing in lakes, the Constitutional Convention underscored its intent that the public retain broad access to fish, wildlife and water resources, and that these resources not be the subject of private grants. In floor debates, a question arose about the status of a natural lake falling within the boundaries of someone's private property. The delegates agreed that the common use clause guaranteed the public's right to use the lake for fishing, although it did not authorize a trespass across the landowner's property to get to the lake. 4 Proceedings of the Alaska Constitutional Convention 2460 (Jan. 17, 1956). The Convention made it clear that only fish in small private ponds may be owned free of the public's right of access. See id. at 2460-61; 5 Proceedings of the Alaska

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Constitutional Convention app. V, at 98 (Commentary on Article on State Lands and Natural Resources, Jan. 16, 1956). This confirms the view of the common use clause and the public trust expressed in CWC Fisheries v. Bunker, 755 P.2d 1115 (Alaska 1988), holding that a grant of a fee interest in tidelands remains impressed with a public trust easement. It also reinforces our conclusion that grants of exclusive rights to harvest natural resources listed in the common use clause should be subjected to close scrutiny.

C.

As we have noted, the drafters of the common use clause apparently intended to constitutionalize historic common law principles governing the sovereign's authority over management of fish, wildlife and water resources. A review of the history of wildlife law will therefore shed further light on the central issue in this case.

The Supreme Court traced the history of wildlife law from its roots in ancient Rome through its English common law development and transfer to this country in Geer v. Connecticut, 161 U.S. 519, 522-29, 40 L.Ed. 793, 794-97 (1896). In that case, the Court affirmed the defendant's conviction, upholding a state statute forbidding transportation of certain game birds killed in Connecticut across state lines. The Court noted that in England, the right to hunt and fish "[was] vested in the King alone and

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from him derived to such of his subjects as [had] received the grants of a chase, a park, a free warren, or free fishery." Id. at 527, 40 L.Ed. at 796 (quoting 2 W. Blackstone, Commentaries *410). As a recent authority explains:

Stripped of its many formalities, the essential core of English wildlife law on the eve of the American Revolution was the complete authority of the king and Parliament to determine what rights others might have with respect to the taking of wildlife.

M. Bean, The Evolution of National Wildlife Law 12 (rev. ed. 1983).

The Geer court asserted that this authority to regulate taking of wildlife passed to the states upon separation from England. 161 U.S. at 528, 40 L.Ed. at 796. However, unlike the authority vested in the King, the authority of the states, with their guarantees of democratic government, was not plenary.

Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the fact that the power or control lodged in the state, resulting from this common ownership, is to be exercised like all other powers of government as a trust for the benefit of the people, and not as a prerogative for the advantage of the government as distinct from the people, or for the benefit of private individuals as distinguished from the public good.

Id. at 529, 40 L.Ed. at 797 (emphasis added). The Court held that the state's "ownership" of wildlife, in trust for the people, authorized the statute at issue in that case. Id.

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The framers of the common use clause probably relied heavily on Geer. The following statement from the constitutional papers, as quoted above, closely tracks the reasoning of Geer:

The title remained with the sovereign, and in the American system of government with its concept of popular sovereignty this title is reserved to the people or the state on behalf of the people. The expression "for common use" implies that these resources are not to be subject to exclusive grants or special privilege as was so frequently the case in ancient royal tradition.

Alaska Constitutional Convention Papers, Folder 210, paper prepared by Committee on Resources entitled "Terms."

Thus, common law principles incorporated in the common use clause impose upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people.¹² We have twice recognized this duty in our prior

12. The Court overruled Geer's state ownership doctrine in Hughes v. Oklahoma, 441 U.S. 322, 60 L. Ed. 2d 250 (1979). That case involved facts almost identical to Geer: the Oklahoma statute at issue forbade the export of minnows taken from the waters of the state. See id. at 323, 60 L. Ed. 2d at 254. The Court struck down the statute as violative of the commerce clause. Id. at 338, 60 L. Ed. 2d at 263. The Court found the state ownership doctrine to be a legal fiction that created anomalies and did not conform to "practical realities." Id. at 335, 60 L. Ed. 2d at 261. Nothing in the opinion, however, indicated any retreat from the state's public trust duty discussed in Geer. Indeed, the Court stated, "[T]he general rule we adopt in this case makes ample allowance for preserving, in ways not inconsistent with the Commerce Clause, the legitimate state concerns for conservation and protection of wild animals underlying the 19th century legal fiction of state ownership." Id. at 335-36, 60 L. Ed. 2d at 261. As one U.S. District Court

(footnote continued)

decisions. In Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901, 915 (Alaska 1961), aff'd, 369 U.S. 45, 7 L. Ed. 2d 562 (1962), we stated:

These migrating schools of fish, while in inland waters, are the property of the state, held in trust for the benefit of all the people of the state, and the obligation and authority to equitably and wisely regulate the harvest is that of the state.

(Emphasis added.) Similarly, in Herscher v. State, Department of Commerce, 568 P.2d 996, 1003 (Alaska 1977), we noted that the state acts "as trustee of the natural resources for the benefit of its citizens."

The extent to which this public trust duty, as constitutionalized by the common use clause, limits a state's discretion in managing its resources is not clearly defined. The state argues that it imposes no limit at all. While

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noted in a post-Hughes case:

Under the public trust doctrine, the State of Virginia and the United States have the right and the duty to protect and preserve the public's interest in natural wildlife resources. Such right does not derive from ownership of the resources but from a duty owing to the people.

In re Steuart Transp. Co., 495 F. Supp. 38, 40 (E.D. Va. 1980) (allowing federal and state governments to recover damages for migratory waterfowl killed in oil spill).

After Hughes, the statements in the Alaska Constitutional Convention regarding sovereign ownership, quoted supra, are technically incorrect. Nevertheless, the trust responsibility that accompanied state ownership remains. 3339

acknowledging that the common use clause constitutionalizes the state's trust duty, the state asserts, "The sovereign's power to allow and control use of the resources is broad, and restricted only by other constitutional limitations such as equal protection." This assertion clearly overstates the extent of the state's authority under the public trust duty and the common use clause.

First, as noted above, this court has stated in at least four cases that the common use clause is intended to provide independent protection of the public's access to natural resources. See Johns v. Commercial Fisheries Entry Comm'n, 758 P.2d 1256, 1266 & n.12 (Alaska 1988); CWC Fisheries v. Bunker, 755 P.2d 1115, 1120 (Alaska 1988); State v. Ostrosky, 667 P.2d 1184, 1189, 1191 (Alaska 1983), appeal dismissed, 467 U.S. 1201, 81 L. Ed. 2d 339 (1984); Wernberg v. State, 516 P.2d 1191, 1198-99 (Alaska 1973); see also Ostrosky, 667 P.2d at 1196 (Rabinowitz, J., dissenting).

Second, under the state's interpretation, the common use clause would be a nullity. "It is a well accepted principle of judicial construction that, whenever reasonably possible, every provision of the Constitution should be given meaning and effect, and related provisions should be harmonized." Park v. State, 528 P.2d 785, 786-87 (Alaska 1974). To give meaning and effect to the common use clause, it must provide protection of

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the public's use of natural resources distinct from that provided by other constitutional provisions.

Third, the history of the common use clause, as noted above, reveals an anti-monopoly intent to prohibit "exclusive grants" and "special privilege[s]," wholly apart from the limits imposed by other constitutional provisions.

Finally, cases applying the public trust doctrine in navigable waters have frequently struck down state actions in violation of the trust without any reference to either federal or state constitutions. A good example is the lodestar of American public trust law, Illinois Central Railroad Co. v. Illinois, 146 U.S. 387, 36 L.Ed. 1018 (1892). In that case, the Illinois legislature purported to grant to a railroad more than 1,000 acres of land underlying Lake Michigan in the harbor of Chicago. The Court applied the doctrine of the public trust in navigable waters to uphold the legislature's later revocation of the grant:

A grant of all the lands under the navigable waters of a State has never been adjudged to be within the legislative power; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation. The State can no more abdicate its trust over property in which the whole people are interested . . . than it can abdicate its police powers in the administration of government and the preservation of the peace.

Id. at 453, 36 L.Ed. at 1043.

In light of this historical review we conclude that the common use clause was intended to engraft in our constitution

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certain trust principles guaranteeing access to the fish, wild-life and water resources of the state. The proceedings of the Constitutional Convention, together with the common law tradition on which the delegates built, convince us that a minimum requirement of this duty is a prohibition against any monopolistic grants or special privileges. Accordingly, we are compelled to strike down any statutes or regulations that violate this principle.

D.

We conclude that exclusive guide areas and joint use areas fall within the category of grants prohibited by the common use clause. These areas allow one guide to exclude all other guides from leading hunts professionally in "his" area. These grants are based primarily on use, occupancy and investment, favoring established guides at the expense of new entrants in the market, such as Owsichuk. To grant such a special privilege based primarily on seniority runs counter to the notion of "common use."

Moreover, the grants are not limited in duration. The statutes allow holders of EGAs to sell their "improvements," and the GLCB routinely transfers the EGA to the purchaser of the improvements or to the guide's designated successor. This practice allows a guide to effectively sell his EGA as if it were a property interest. See Division of Legislative Audit, A

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Performance Report on the Department of Commerce and Economic Development Guide Board 10-11, Audit Control No. 08-1305-88-R (Dec. 11, 1987) [hereinafter "1987 Report"].

Although the Board justified the program to the legislature as a means of improving wildlife management, see Transcript of Senate Resources Committee Hearing on S.B. 661 (March 12, 1976); Transcript of House Resource Committee Hearing on S.B. 661 (April 27, 1976), it is apparent that area assignments are not based primarily on wildlife management concerns. Rather, as authorized by AS 08.564.195(b) and 12 AAC 38.220(c) & (d) (eff. 5/12/78, am. 10/15/82), the Board bases its decisions on use, occupancy and investment.¹³ See 1987 Report at 9-10. Thus, the EGA program cannot be justified as a wildlife management tool like other restrictions on common use, such as hunting seasons and bag limits.¹⁴

13. Both the statute and the regulations require the Board also to consider "big game populations in the area." AS 08.54.195(b)(4); see 12 AAC 38.220(d)(1). The regulations make it clear that this is a secondary consideration. Id. Moreover, the context of this requirement in both the statute and the regulation suggests that it was enacted only to determine how many guides the game would support economically, not to benefit the game resource directly. Finally, it is clear that the Board simply does not pay much attention to this criterion. A recent legislative report concluded, "Use of independent game information for specific regions of the State no longer appears to be a significant factor in the Board's decision-making process." 1987 Report at 10.

14. We acknowledge that the EGA program may facilitate
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The state argues that EGAs do not deny Owsichuk common use of the wildlife resources because he, like any other member of the public, may hunt recreationally in these areas. We reject this argument. In CWC Fisheries v. Bunker, 755 P.2d 1115, 1121 n.14 (Alaska 1988), we noted that the public trust doctrine guaranteed fishermen access to public resources for "private commercial purposes" as well as for recreation. The same rationale applies to professional hunting guides under the common use

(footnote continued)

wildlife management by giving each guide having an EGA an incentive to conserve wildlife. However, without a specific constitutional provision allowing EGAs, mere usefulness in wildlife management does not suffice to save the EGA program from unconstitutionality under the anti-monopolistic common use clause. In the analogous area of limited entry in commercial fisheries, one purpose of limited entry has always been conservation related. However, this was not sufficient to save precursors to the present limited entry system from findings of unconstitutionality prior to the constitutional amendment allowing limited entry. This history is detailed in State v. Ostrosky, 677 P.2d at 1188, 1199 (Alaska 1983).

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clause.¹⁵ The common use clause makes no distinction between use for personal purposes and use for professional purposes.¹⁶

Nothing in this opinion is intended to suggest that leases and exclusive concessions on state lands are unconstitutional. The statutes and regulations of the Department of Natural Resources authorize leases and concession contracts of limited duration, subject to competitive bidding procedures and valuable consideration. See AS 38.05.070-.075 (authorizing leases and setting forth procedures); AS 41.21.027 (authorizing concession contracts in state parks); 11 AAC 14.200-.260, 14.010-.130 (establishing procedures for awarding concession contracts); see also Alyeska Ski Corp. v. Holdsworth, 426 P.2d 1006, 1009-11 (Alaska 1967) (discussing procedures required by

15. Admittedly, there is a difference between commercial fishermen and professional guides: a commercial fisherman takes his catch himself before selling it to others for consumption, while a hunting guide does not actually take the game, a privilege reserved for the client. We view this as an insignificant distinction that does not remove professional hunting guides from protection under the common use clause. The work of a guide is so closely tied to hunting and taking wildlife that there is no meaningful basis for distinguishing between the rights of a guide and the rights of a hunter under the common use clause.

16. The right to lead hunts professionally is a significant one. Nonresidents of Alaska are required to hire a guide in order to hunt brown bear, polar bear, and sheep, AS 16.05.407, and nonresident aliens must hire a guide to hunt any big game. AS 16.05.408. Thus, the holder of an EGA has a monopoly over this market, which is a substantial one in Alaska, for his geographic area.

law for leasing of state lands); CWC Fisheries v. Bunker, 755 P.2d 1115, 1120-21 (Alaska 1988) (stating in dictum that shore fisheries leasing program would not violate public trust, in part because leases were of finite duration and required annual rental). In contrast, EGAs are not subject to competitive bidding, provide no remuneration to the state, are of unlimited duration, and are not subject to any other contractual terms or restrictions. Rather, as discussed above, they are granted essentially on the basis of seniority, with no rental or usage fee, for an unlimited duration, and are administered in such a way that guides may transfer them for a profit as if they owned them. In these respects the EGAs resemble the types of royal grants the common use clause expressly intended to prohibit. Leases and concession contracts do not share these characteristics.

For these reasons, we hold that AS 08.54.040(7), AS 08.54.195, and the regulations of the Board permitting the assignment of exclusive guide areas are in contravention of article VIII, section 3 of the Alaska Constitution.¹⁷

17. We note that EGAs may also violate article VIII, section 17. This section of Alaska's constitution provides:

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law

(footnote continued)

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Accordingly, Owsichek is entitled to relief declaring the EGAs that have been granted by the Board to be without legal force.¹⁸

IV.

In addition to declaratory relief, Owsichek seeks damages against the state. Because the superior court did not reach this issue, we would ordinarily remand for further proceedings. However, when an issue is raised in the trial court and is adequately briefed by all concerned parties on appeal, this court may consider it. Mullen v. Christiansen, 642 P.2d 1345, 1350-51 (Alaska 1982).

Owsichek bases his claim for damages on allegations that the Board acted without authority in enacting the EGA

(footnote continued)

or regulation.

In Gilman v. Martin, 662 P.2d 120, 126 (Alaska 1983), we noted that this provision may require "more stringent review" of a statute than does the equal protection clause in cases involving natural resources. There is much less constitutional history of this clause than of the common use clause. The commentary states in full, "This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to disposition by the state." 6 Proceedings of the Alaska Constitutional Convention app. V, at 99 (Commentary on Article on State Lands and Natural Resources, Jan. 16, 1956) (emphasis added). Because the parties have not briefed the issue and since we are able to decide the case on other grounds, we need not decide this question.

18. Our resolution of this issue makes it unnecessary for us to decide Owsichek's other challenges to the statutes and to the actions of the Board.

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regulations initially and that the regulations failed to comply with the legislation that was later passed.¹⁹ We need not decide whether these allegations are true. Even if the Board acted without authority or failed to comply with statutory standards, it is immune from suit under the discretionary function exception provided for in the Tort Claims Act,²⁰ as interpreted by our prior decisions.

In at least two cases, we have held that acts of public officials who in good faith misinterpret the law and act in excess of their authority are immune from suit. Earth Movers of Fairbanks, Inc. v. State, 691 P.2d 281, 283-84 (Alaska 1984)

19. Owsichuk does not base his claim for damages on the legislature's enactment of an unconstitutional statute. We note that such a claim would fail under our holding in Vest v. Schafer, 757 P.2d 588, 598 (Alaska 1988), where we wrote, "[W]e do not believe it proper for the judiciary to assess damages against the State on the ground that the legislature enacted a law later held unconstitutional, in the absence of a statute allowing or requiring such damages."

20. Alaska Statute 09.50.250 provides in part:

A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in the superior court. . . . However, no action may be brought under this section if the claim

(1) . . . is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused. . . .

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(police officer lacked authority to temporarily reduce speed limit); Bridges v. Alaska Housing Authority, 375 P.2d 696, 698, 702 (Alaska 1962) (housing authority lacked power to use declaration of taking). We have also held that decisions involving the formulation of basic policy are entitled to immunity. See Industrial Indemnity Co. v. State, 669 P.2d 561, 563 (Alaska 1983).

The EGA program was a major policy initiative of the GLCB. Therefore, even if the Board acted in excess of its authority or failed to comply with the requirements of the statute, it is immune from suit under the discretionary function exception provided for in AS 09.50.250. Furthermore, there is no evidence that the Board acted in bad faith.

V.

Owsichek argues that it was improper for the superior court to assess attorney's fees against him, on the ground that he is a public interest litigant. See Southeast Alaska Conservation Council v. State, 665 P.2d 544, 553-54 (Alaska 1983). Because the state is no longer the prevailing party, the fee award must be vacated and remanded for redetermination.

We note, however, that successful public interest litigants may be entitled to full attorney's fees. City of Anchorage v. McCabe, 568 P.2d 986, 993-94 (Alaska 1977). Thus, the question of whether Owsichek is a public interest litigant may be

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relevant on remand. Since the parties have fully briefed the issue, we will address it here.²¹

We have consistently held that a party will not be deemed a public interest litigant where the party had sufficient economic incentive to bring the lawsuit without regard to the public interest. E.g., Rosen v. State Board of Public Accountancy, 689 P.2d 478, 480 (Alaska 1984). As discussed above, Owsichuk claims that the EGAs in his Units jeopardized the \$450,000 he had invested in his guiding operation, and that he suffered over \$100,000 in damages. This was clearly sufficient economic incentive to bring the suit. Therefore, we conclude that he is not a public interest litigant.

REVERSED and REMANDED.

Appellant 1000.00
Appellant
10-31-88
Rabinowitz
10-19-88
S. Beck

21. The parties' briefing assumes that the state was the prevailing party, which is no longer true. However, we have never distinguished between successful and unsuccessful parties in applying our standards for determining whether a party is a public interest litigant, and we see no reason to make such a distinction. Thus, the public interest analysis does not change if Owsichuk, rather than the state, is viewed as the prevailing party.

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RECEIVED NOV 4 1988

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

November 1, 1988

Senator Jan Faiks
3111 C Street, Suite 525
Anchorage, Alaska 99503

REPLY TO:

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Dear Senator Faiks:

In response to a request from Mark Riehle of your staff, I am writing to give you a synopsis of the recent Owsichek decision and my initial thoughts on its implications. I am including a copy of the decision and will be referring to particular pages in it.

In Owsichek, the Alaska Supreme Court decided that the statutes and regulations that underlie the state's exclusive guide area system ("EGA") ^{1/} are unconstitutional. As of the date of the decision, October 21, 1988, this system has no legal force. (Page 27, last paragraph).

The court based the decision on its interpretation of the "common use clause," i.e., article VIII, section 3 of the Alaska Constitution. This clause says, "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

This was the first time the court was called on to interpret the common use clause with respect to wildlife. In earlier decisions, it had discussed the clause in the context of state waters (Wernberg and CWC Fisheries) and in the context of fish (Ostrosky and Johns). ^{2/} In light of its earlier decisions, the

^{1/}The court uses the term "exclusive guide areas" to describe not only joint use areas but also "restricted guide areas," a term used to describe EGA's since 1986 when the term appeared in AS 08.54.195.

^{2/}In Ostrosky, the court stated that fisheries limited entry was inconsistent with the common use clause, but that this system was saved by a 1972 constitutional amendment that specifically provided for it. (Page 12, first complete paragraph.) The fisheries limited entry amendment is Article VIII, § 15 of the Alaska Constitution.

court declared that the "common use clause was intended to guarantee broad public access to natural resources." (Page 13, first complete paragraph).

In order to further clarify the meaning of the common use clause, the court looked to the constitutional history of this clause (Part B. of the decision, pp. 13-17) and to the historic development of wildlife law in general (Part C. of the decision, pp. 17-23). Concerning the constitutional history, the court said that the purpose of the clause was "anti-monopoly." It also found that the framers of the constitution intended to prohibit "exclusive grants or special privileges" and intended that the public "retain broad access to fish, wildlife and water resources." (Pages 13, second full paragraph through end of section B. on page 17).

In discussing the development of wildlife law, the court said that the common use clause "constitutionalized" the state's public trust duty toward wildlife. This is a duty to manage these resources for the benefit of all the people. (Page 19, last paragraph through end of page 20.)

The court summarized its interpretation of the common use clause by stating "at the clause was intended to put into the constitution certain trust principles guaranteeing access to the fish, wildlife and water resources of the state" and, at a minimum, this meant a "prohibition against any monopolistic grants or special privileges." (Page 22, last paragraph through end of section on page 23.) It also stated that the clause makes no distinction between use for personal purposes and use for professional purposes; common use applies to commercial guiding as well as recreational hunting. (Page 25, first paragraph.)

In deciding that the EGA's violated these principles, the court noted the following features of the system:

1. The EGA system gave one guide the right to exclude all other guides from conducting hunts in his or her EGA. This right was based on the area holder's seniority, that is, his or her use, occupancy, and investment in the area. (Page 23, first complete paragraph.)

2. EGA rights had no time limit, and the system of transferring them, based as it was on the selling of "improvements" and a holder's designation of his or her successor, allowed the selling of areas as if they were a property interest. (Page 23, second complete paragraph.)

3. The assignment of EGA's was not based primarily on wildlife management concerns. (Page 24, first complete paragraph.) The system could not be justified as a game management tool and therefore was unlike licensing requirements, bag limitations, and seasonal restrictions which were proper and "time-honored methods of conserving the resources." (Page 10, first complete paragraph.) In this regard, it is important to note that the court said that even if used as a wildlife management tool, this would not "save the EGA system from unconstitutionality under the anti-monopolistic common use clause." (Page 24, footnote 14.)

Finally, the court made a distinction between the EGA's on one hand and state leases and exclusive concessions on the other. The latter are permissible because they are of limited duration, because they are subject to competitive bidding, because they are limited by contract terms and restrictions, and because the state receives compensation for them. (Page 26, first complete paragraph).

This part of the decision has prompted proposals for enacting a new area system that has some of the features of a lease or concession. For example, it has been suggested that area permits be issued for a limited duration, based on competitive bidding, and with fees paid to the state.

I believe, however, that any system which allows some but not all qualified guides to have access to game resources will not satisfy the principle of common use as expressed by Owsichek. Even if a limited entry system served a game management purpose and not just the economic stability of the guiding industry, it would still have monopolistic features that are contrary to the concept of "common use." (See again footnote 14, beginning on page 24.) It would be a misinterpretation of Owsichek to believe that the common use clause will be satisfied by merely modifying the exclusive area system by adding several features that characterize other state concessions. Unlike wildlife, land leases and other uses of public resources are not listed in the common use clause. Thus, they are freer to allow access by one user and exclude all others.

The Department of Law has been asked to request the court to reconsider the decision or to postpone its effect until June 1 of next year.

Concerning a request for reconsideration, the court will not rehear a case on matters that it has already considered. We would have to point out a law, principle, or important fact that it did not already look at. (Appellate Rule 506). To date,

Senator Jan Faiks
Anchorage, Alaska

November 1, 1988
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neither I nor any other assistant attorney general who is familiar with the case believes that there is a ground for requesting a rehearing. Because the court's decision was unanimous and was published after such a long period of deliberation, it is likely that any lingering doubts about the case have been resolved. For the same reasons, it is highly unlikely, even if the court agreed to rehear the case, that it would reverse its decision.

I believe that unless we can show that the decision will have definite, significant, and adverse consequences, the court will not take the extraordinary step of postponing the effect of its decision. One consequence may be a short-term overharvesting of game resources. I have been communicating with the Director, Division of Game to determine whether Owsichek will cause undue resource pressure that cannot be managed by the Board of Game. Another consequence may be the canceling of client contracts and refund of deposits paid to guides who booked hunts in reliance on the EGA system. I have asked the Division of Occupational Licensing and the Alaska Professional Hunters Association to provide me with information about the number of guides who have existing contracts and the number of persons who now will be eligible to guide in former EGA's.

This information will assist the Department of Law in deciding whether a sound case can be made for postponement of the effective date of the decision. In any event, we have several weeks to gather and analyze data and to make this decision. Mr. Owsichek's attorney and I have asked the court to extend until November 18 the deadline for filing such requests, and I expect that this extension will be granted.

I hope this letter assists your understanding of the Owsichek decision. If you have additional questions, please do not hesitate to contact me.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

Stephen M. White by bt
By: Stephen M. White
Assistant Attorney General

SW/bt

Encl.

Senator Jan Faiks
Anchorage, Alaska

November 1, 1988
Page 5

cc: Rep. Heinrich Springer, Chairman
Alaska Legislative Task Force on Guiding
and Big Game

Randall Burns, Director
Division of Occupational Licensing

Ray McNutt, Chairman
Guide Licensing and Control Board

Rod Swope, Special Staff Assistant
Office of the Governor

IN THE SUPREME COURT OF THE STATE OF ALASKA

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

Supreme Court No. S-1650

ORDER

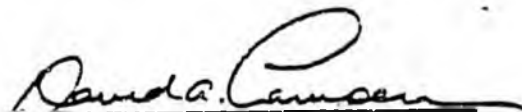
Trial Court No. 3AN 79-2387 Civil

On consideration of the motion for stay of decision, filed on November 18, 1988, and the opposition to the motion, filed on November 28, 1988,

IT IS ORDERED:

The motion for stay is granted. The portion of Opinion No. 3369, filed on October 21, 1988, which declares that the exclusive guide areas granted by the appellee State of Alaska Guide Licensing and Control Board are without legal force is stayed until June 1, 1989.

Entered by direction of Justice Jay A. Rabinowitz at Anchorage, Alaska on December 8, 1988.


DAVID A. LAMPEN
Clerk of the Supreme Court

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
GUIDE BOARD

December 11, 1987

Audit Control Number

08-1305-88-R

Commissioner, Department of
Commerce and Economic Development

J. Anthony Smith

Deputy Commissioners, Department of
Commerce and Economic Development

John Williams

Members of the
Guide Board

Chairman
Member
Member
Member
Member
Member
Member

Ray McNutt
Edward J. Shavings, Sr.
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STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
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December 18, 1987

Members of the Legislative Budget
and Audit Committee:

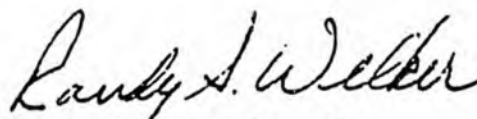
In accordance with the provisions of Titles 24 and 44 of the
Alaska Statutes (sunset legislation), the attached report is
submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
GUIDE BOARD

December 11, 1987

Audit Control Number

08-1305-88-R



Randy S. Welker, CPA
Acting Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Guide Board for the past four fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Guide Board should be reestablished. The law now specifies that the Board will terminate June 30, 1988 and will have one year from that date to conclude its affairs.

Scope

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Interviews with the license examiners.
3. Tests of files and documents of licensees.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman Office.
5. Discussions with Board members.
6. Discussions with licensed guides.
7. Minutes of Board meetings and Division correspondence files.
8. Attorney General Opinions applicable to professional boards.

ORGANIZATION AND FUNCTION

The Guide Board was established by the 1973 Legislature and succeeded the Board of Fish and Game, Department of Fish and Game, which previously had regulated the guiding industry. The seven member Board is appointed by the Governor with confirmation by the Legislature and is restricted to having no more than three members as licensed guides. Board members serve staggered terms of three years or until their successors are appointed.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing. The Division assists the Board in the performance of their duties by providing administrative, licensure, and investigative support.

By law, a nonresident may not hunt, pursue, or take brown bear, grizzly bear, polar bear, or sheep in Alaska unless personally accompanied by a licensed master, registered, or assistant guide. Nonresidents hunting with an Alaskan relative are exempt from this requirement. The Guide Board was appointed in part to protect these nonresident hunters from incompetent individuals holding themselves out to be qualified Alaskan guides.

The function of the Board is primarily regulatory, as mandated by AS 08.54.040. Accordingly, the Board has the capacity to administer examinations, determine qualifications of guides, establish performance standards and regulate activities, maintain guide registers, prohibit harmful guiding activities, conduct hearings regarding licensure, and establish quotas of guides for specified geographical areas (exclusive guiding areas). The Board, through the assignment of exclusive guiding areas, limits hunting pressure by guides within a specific geographical area.

It is this last practice and function of the Board which is the most controversial. The Board's method and policy of assigning exclusive guide areas has become an increasingly contentious procedure. The Board has adopted a policy of eliminating previously allowed joint-use areas and is gradually trying to reestablish exclusive guide areas.

REPORT CONCLUSION

In our opinion, the Guide Board should be reestablished. The regulation and licensing of qualified guides is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum qualification and experience requirements that provide reasonable assurance that persons licensed are both capable of safely conducting guided hunts and familiar with their prospective guiding areas.

However, we also recommend that the Legislature limit the reestablishment period of the Guide Board to a two year period. The Board's current policy regarding the assignment (see Recommendation No. 1) and transfer of guiding areas (see Prior Audit Recommendation No. 3) along with the pending suit before the Alaska Supreme Court challenging the legal basis of area assignments all involve significant public policy issues.

Resolution of these issues, particularly an adverse ruling in the Supreme Court case, will have an extensive effect on the operations of the Guide Board. We believe that it would be good public policy for the Legislature to limit any statutory extension of the Board to June 30, 1990 in order to provide for formal legislative reevaluation of the Board and its operations within the next two years.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Guide Board should discontinue its blanket policy of eliminating joint-use guiding areas.

Joint-use areas, as the name implies, allow more than one guide to conduct or authorize guided hunts in a given geographical area. In contrast, exclusive guide areas are geographic regions assigned by the Board to one individual. Only that individual may legally conduct or authorize guided hunts in the assigned area. Over the past two years the Guide Board has adopted a policy of eliminating previously approved joint-use areas and encouraging the assignment of only exclusive guide areas.

Such a policy unduly restricts entry into the guiding profession without offering any substantial public benefit. The policy primarily serves the interests of established guides who have previously received exclusive areas. The Board indicated that the primary reason for adopting this policy is to lessen hunting pressure on game resources throughout the State.

The Board adopted this policy without consulting the Division of Game within the Department of Fish and Game (DFG) for that agency's assessment of game populations. The Division reported to us that game populations statewide have generally been stable over the past 5 to 7 years. Even though there may be some justification for having strictly exclusive guide areas in some regions of the State, adoption of a blanket policy on a statewide basis, especially without independent consultation with DFG, is not warranted.

We do not believe that game management is the primary responsibility of the Board. If it were, provisions should be made to place it in an executive branch agency that also has such responsibilities. As part of the Division of Occupational Licensing, its primary purpose is the licensing and regulation of qualified individuals to conduct guided hunts.

Effect of the Policy - Limiting Entry

This policy, in effect, establishes a two-tiered licensing system. Becoming registered is only the first step to becoming an independent, practicing professional guide. An individual must also obtain a viable exclusive guide area in which to conduct business. Essentially, an individual can be licensed but is not allowed to guide in various areas designated as exclusive to other guides.

The implementation of the exclusive area policy; adoption of regulations allowing each guide to have up to three exclusive guiding areas; and the routine approval of guide designated transfers of assigned guiding areas (see discussion in Prior Audit Recommendation 3); all serve to restrict entry into the guiding profession. Such regulations and practices suggest that the Board may be more interested in the protection and development of the proprietary interests of established guides rather than promoting equitable access to the profession for all qualified individuals.

We do not question the Board's legal authority for implementing the exclusive guide area concept, although at the time of this report a lawsuit is pending before the State Supreme Court challenging the Board's authority on this issue. Over the past ten years, the Attorney General has repeatedly stated that assignment of exclusive guide areas is within the Board's statutory authority.

However, the Board should use its authority to the extent necessary to promote hunter safety and consumer protection. Using its authority to restrict effective entry into the profession is not in the best interests of the public. Continued use and even expansion of joint-use guiding areas encourages more competition in the guiding profession and allows an increased number of qualified guides access to viable hunting areas within the State.

Prior Audit Recommendations

In our previous review, "A Performance Report on the Department of Commerce and Economic Development, Guide Licensing and Control Board, November 21, 1985," we reported five recommendations. Many of the issues discussed in these prior recommendations still exist although almost all of them have been addressed to some degree by the Board.

Prior Audit Recommendation No. 1

The Guide Board should develop a prioritized set of criteria to use in assigning both exclusive and joint-use guiding areas.

In our previous report we stated that the Board did not act consistently when they considered the assignment of exclusive and joint-use guiding areas. The criteria on which any given area assignment was made varied from decision-to-decision. We also noted that the Board often did not adequately document the basis on which they made assignment decisions.

This inconsistency on the part of the Board in its decision-making, along with the lack of proper documentation of its rationale, resulted in the loss of effective control over

the activities and policy of the guiding industry. We felt that the Board's responsibility would be better met if it would identify pertinent criteria to be used in area assignment decisions, assign some priorities to the criteria, and apply them consistently.

Legislative Audit's Current Position

Alaska Statute 08.54.040(a)(7) was amended in 1986 and now requires that the Board "provide for an equitable, reasonable, and consistent procedure for limiting the number of guides [in an assigned area]." (Emphasis added.) Additionally, AS 08.54.195 (a) was added and directs the Board to "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."

The Guide Board is currently in the process of implementing this prior recommendation and meeting its statutory responsibility to adopt regulations that provide for uniform and consistent area assignment criteria. A proposed point system is currently being considered by the Board in conjunction with the Division of Occupational Licensing's regulations specialist.

Prior Audit Recommendation No. 2

The Board should improve methods of obtaining game management information from independent sources, such as the Alaska Department of Fish and Game (ADFG).

One of the primary justifications for the whole concept of exclusive guiding areas is the enhancement of the overall management of the public's game resources. Guides are awarded exclusive or joint-use areas so that they have a long-term interest in managing the game in their area. The Board has adopted regulations [12 AAC 38.053(d)(1)] that require it to consider an area's ability "... to sustain an additional guided hunting operation, in terms of game populations, terrain, methods of hunting, and use by other guides and hunters."

In our prior audit, we stated that the Board rarely considered independent information regarding game populations and management concerns when assigning areas. The Board relied on information provided by applicants and guides operating in the region under consideration. Although we recognized that the assessment of game populations by an active registered guide was an important consideration, we felt that in many instances it had to be understood that the guide offering such information often had a vested interest in how the information was presented and interpreted.

We recommended that the Board establish better, more formal communications with ADFG in order to better meet their regulatory and statutory obligation to enhance the management of the State's game resources. We encouraged the Board to improve communications and coordination with ADFG and take steps to include that agency's assessment of game populations and hunting pressures when considering assignment of guiding areas.

Legislative Audit's Current Position

There has been some improvement by the Board in the use of independent game information from ADFG when making its decisions regarding assignment of guide areas. However, as stated previously, the Board's policy of encouraging the creation of only exclusive guide areas has resulted in making many of the concerns behind this prior recommendation irrelevant. Use of independent game information for specific regions of the State no longer appears to be a significant factor in the Board's decision-making process.

Prior Audit Recommendation No. 3

The Board should take more responsibility for area assignments by repealing regulations that allow a guide to designate to whom their area be reassigned.

Registered and master guides may each have a maximum of three guide areas. Typically, when a guide wishes to retire or perhaps become eligible for another, different guide area, he or she is allowed to turn back an existing area assignment to the Board and designate the recipient of the reassignment. Board regulations allow for, but do not necessarily require, this practice.

In our prior audit, we found that these designated transfers overrode all other area assignment criteria. Essentially, the Board automatically approved transfers of guiding areas regardless of game management considerations, demonstration of experience in the area by the transfer recipient, and over the objections of affected joint-users. Whereas, the Board evaluated, albeit inconsistently, regular area assignments, our prior audit indicated they gave transfers much less scrutiny.

This lack of scrutiny encouraged the practice of guides selling their assigned areas to other guides in violation of Board regulations. With the Board giving little review to transfers, they greatly increase the potential of area assignments being awarded based solely on economic considerations. This potential abuse is contrary to the Board's statutory responsibility of establishing quotas for guide areas in an equitable and reasonable manner. All qualified guides for an area should receive equal chance at receiving an area assignment regardless of their ability to buy the rights from the previous holder.

It would be a better administrative practice if area assignments were surrendered to the Board; the Board reviewed pertinent and prioritized criteria to determine if the region would support one or more additional guide operations; and then consider all applications for the area under an equitable and reasonable method of allocation. By following such a procedure the Board would promote compliance with its own regulations restricting the transfer of guiding area permits.

Legislative Audit's Current Position

The Board continues to automatically approve almost all transfers of area assignments regardless of game management considerations, demonstration of experience, and over the objections of affected joint-users. On several occasions the Board approved the transfer of assigned joint-use areas contrary to the Board's own stated policy of eliminating joint-use area assignments.

The Board often approves transfers to individuals who would not qualify to receive the assignment had they been an original applicant for the area. We reviewed 9 transfers approved by the Board over the past two years. In 8 of those 9 transfers (89%) the approved recipient did not have any documented guiding experience in the transferred area. Had the individual been an original applicant for the assignment, he or she would have been required to have at least 2 years of documented guiding experience in the applied for area.

We again recommend that the Board evaluate transfers of area assignments as they would original area assignments. Such an evaluation would enable all qualified guides a more equal opportunity to receive an assigned area.

Prior Audit Recommendation No. 4

The Board should adopt procedures to improve the administration of the oral portion of the registered guide examination.

To qualify for licensure as a registered guide, an applicant must successfully pass the registered guide examination. This examination, which is prepared and administered by the Board, is composed of two parts, a written and an oral section. Passage of the examination requires the applicant to obtain a score of 80% on both sections.

The Board procedures require that the oral portion of the registered guide examination be administered by three examiners, consisting of a Board member and two master guides. In our prior report, we stated that the oral portion of the examination was arbitrary and inconsistent in its content and grading. This was due to the practice of allowing examiners to use their individual discretion in determining examination content and grading guidelines.

We noted that the lack of specific guidelines to dictate the objective administration of the oral examination resulted in inconsistent content and grading between individual examinations. The likelihood of exam passage was as much affected by who the examiners were and their individual judgement as it was by the knowledge and competence of the applicant.

We recommended that the Board adopt structured guidelines for the administration of the oral examination. Any such guidelines needed to provide examiners with specific directions as to examination questions to be asked and their assigned grading values.

Legislative Audit's Current Position

The Board has substantially improved administration of the oral portion of the guide examination. The examination score sheet has been redesigned and now includes predetermined categories and assigned grade values. In addition, all oral examinations are tape-recorded which allows objective review of the questions and responses in instances where an applicant may appeal the scoring or content of his or her questions and responses. These changes in the oral examination process has provided the Board with fairer and more consistent administration of the oral examination.

Recommendation No. 5

The Board should seek both statutory and regulatory changes in order to improve the protection of the public from unethical guiding practices.

One of the primary purposes of licensing and regulating guides is to protect the public from unethical guiding practices. In our prior report, we identified regulations and statutes that serve to block effective consumer protection action on the part of the Board and serves to protect guides at the expense of the public. We recommended that the Board enhance its consumer protection responsibilities by taking the following actions:

- A. Pursue amendment of statutes that limit the Board's authority to discipline guides for unethical activity.
- B. Adopt regulations and/or recommend legislation to require guides to post licensing/payment bonds.

Statutory Constraints to Effective Disciplinary Action

Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from "... three or more clients [hunters] of separate [hunting] parties."

The Board's effectiveness and visibility would be enhanced if all allegations regarding unethical guide practices was brought to it for review on a case-by-case basis. It appears that the intent of the statute was to keep down the number of frivolous and unfounded complaints against guides. Other professional licensing boards listen to, and sort through, all cases and complaints, no matter how trivial, as a means of keeping apprised of the conduct of their licensees. We recommended that the Board follow the same practice.

Bonding of Guides

Almost all hunters who use guiding services are nonresidents; a large number from outside of the United States. As a result, when disputes arise between guides and hunters it is often very difficult and expensive for the complaining hunter to seek legal remedies or implement effective administrative action. This difficulty is compounded by the three complaint requirement of the statutes discussed previously.

We recommended that the Board pursue the necessary statutory and regulatory changes that would implement a mandatory requirement that guides post a licensing or payment bond with the Division of Occupational Licensing. Such a bond would allow hunters, and perhaps even employees of the guides, with legitimate grievances and claims against guides an easier, less expensive alternative in obtaining settlement of their claims.

Guiding is a significant industry in the State. It is important that the Board do all it can to maintain the integrity of the guiding industry and uphold the reputation of the Alaskan guides with hunters outside of the State. The Board should recognize the unique type of consumer for guide services and take steps to adequately protect the interest of the out-of-state hunter/consumer.

Legislative Audit's Current Position

Neither of the two parts of this prior report recommendation have been implemented. The same abuses and conditions which led to our previous recommendation still exist. Currently, the Division of Occupational Licensing has three guides who have two complaints each pending against them, but whose cases are being held back from formal report to the Board until another complaint is received. In addition, the Attorney General's Consumer Protection Office is involved with a legal complaint against a guide for receiving money for a contracted hunt without providing services.

Subsequent Comment

The Department of Commerce and Economic Development, Division of Occupational Licensing indicate in their response to this report that current market conditions have made it extremely difficult to obtain bonding in Alaska. Cost of bonding may be so prohibitive that, if required, it would represent another barrier to entry to the guiding profession. (See the agency's response to our report, pages 30-31 and our final statement on page 37 for further discussion of the issues currently involved in obtaining bonding.)

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our review.

- I. The extent to which the Board, commission, or program has operated in the public interest.
 - A. The Board is unduly restricting entry by adopting a policy of gradually eliminating all joint-use guide areas (see Recommendation No. 1).
 - B. The Board has adopted regulations defining unethical conduct which clarify and strengthen the guide's responsibility to the public.
 - C. The Board has adopted the Alaska Professional Hunters Association (APHA) first aid training course as a requirement for new applicants prior to receiving a license.

- II. The extent to which the operation of the Board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 - A. Regulation 12 AAC 38.054(b) allows an EGA permit holder to designate the qualified guide to whom he wishes to transfer his guide area. These transfers often take precedence over other guide area assignment criteria such as joint-user objections, experience in the game unit, or game management considerations (see Prior Audit Recommendation No. 3).
 - B. Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more clients of separate parties (see Prior Audit Recommendation No. 5).
 - C. The Board does not consistently review the Department of Fish and Game game management information prior to assignment or transfer of an exclusive guiding area (EGA) (see Prior Audit Recommendations No. 1-3).

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

A. At the time this report was being prepared, two pieces of legislation affecting guides and the Guides Board, Senate Bill No. 191 (SB 191) and House Bill 183 (HB 183), were pending before the Legislature. The Guides Board informally supports both pieces of legislation. Although subject to revision, they both would generally require:

1. Larger fees (three times as high) for nonresident guides than resident guides.
2. A broader statutory definition of what would constitute guiding. SB 191 would define guiding as:

being present with, or providing an established camp 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 permanent lodge or structure; or (c) while providing transportation to or from the field, if the persons providing the transportation and the persons being transported do not stalk, pursue, track, kill, or attempt to kill big game.

3. In a position paper on HB 183 the Department of Public Safety (DPS) states that passage of such legislation would provide the agency with:

an important enforcement tool to investigate and prosecute cases against unlicensed guides in Alaska. [HB 183] should reduce the number of unlicensed guiding activities which will allow us to better utilize our manpower to monitor other resource problems in Alaska. [HB 183] will further allow our uniformed officers to better enforce the laws pertaining to guiding in Alaska. Finally, [HB 183] strengthens the guide bill, making it more enforceable when dealing

with unlicensed guiding activities.... In sum, the passage of the amendments will aid [DPS] in carrying out its responsibilities: The enforcement of state laws and the protection of the fish and wildlife resources in the State of Alaska.

- IV. The extent to which the Board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.
- A. The public is invited to attend Board meetings and to give their input about the workings of the Board. Notices of meetings are advertised in at least five newspapers throughout the State. In addition, guides are notified by registered mail of meetings that might affect them.
 - B. Teleconference meetings are not being noticed publicly. This limits public input at those meetings and may legally jeopardize Board decisions and actions.
- V. The extent to which the Board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
- A. As stated under IV, the public is invited, by published notices in newspapers, to attend Board meetings to give their input about Board regulations or submit written testimony.
 - B. The problem noted in IV. B. above also represents potential problems in this public need area.
- VI. The efficiency with which public inquiries or complaints regarding the activities of the Board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.
- A. Since January 1986, nine complaints have been filed with the Ombudsman's Office concerning Board activity. Two of these complaints, (1) alleging guide examination scoring is arbitrary and inconsistent and (2) alleging board's decision to reduce guide area is unfair, are pending administrative proceeding.

B. Since July 1985, 54 complaints against guides have been submitted to the Department of Commerce and Economic Development, Division of Occupational Licensing for investigation. Thirty-three of these cases have been closed, thirteen are currently in administrative hearing proceedings and nine are still pending investigation. Investigations appear to have been conducted in a reasonable fashion.

C. As mentioned in III above and in Recommendation No. 5, AS 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more hunters of separate parties.

VII. The extent to which a Board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. As of October 1987, 51 master guides and 348 registered guides were licensed in Alaska. These individuals were required to pass both a written and an oral exam, as well as obtaining practical experience in the field, prior to licensure.

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the Board, commission, or agency to its own activities and the area of activity of interest.

A. The Board established 12 AAC 38.010(c) whereby an applicant for licensure 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 his capabilities and experience.

B. Regulations also provide that when assigning guide area permits,

the board will give preference to qualifying guides whose permanent residence is within the district in which the area is located.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIX A
GUIDE BOARD
SCHEDULE OF REVENUES COMPARED WITH EXPENDITURES
For Fiscal Year 1987
(UNAUDITED)
(Note 1)

	<u>FY 87</u>
Revenues (Note 2)	\$153,442
Expenditures (Note 3)	<u>133,205</u>
<u>Excess of Revenues</u> <u>over Expenditures</u>	<u>\$ 20,237</u>

Note 1

The Schedule of Revenues Compared with Expenditures was prepared from available records and discussions with the Division of Occupational Licensing (DOL) personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Schedule of Revenues Compared with Expenditures.

Note 2

Revenue amounts reported do not include revenue obtained from the sale of game tags or hunting licenses. They only include revenue obtained from fees required to obtain and/or renew guide licenses.

Note 3

Expenditures consist of direct costs resulting from board member activities, (i.e., travel and per diem) and an allocation of direct and indirect costs of DOL. The procedures used by DOL for their allocation were not reviewed by us, and we express no opinion regarding their reasonableness. It should be noted, that represented expenditures do not include expenses incurred by other Departments or other divisions of the Department of Commerce and Economic Development in assisting the Board.

APPENDIX B
GUIDE BOARD
SCHEDULE OF ESTIMATED REVENUES
COMPARED WITH BUDGETED EXPENDITURES
For Fiscal Year 1988
(UNAUDITED)
(Note 1)

Average Revenue (Note 2)	\$ 77,675
Less: Expenditures (Note 3)	<u>148,469</u>
<u>Excess of Expenditures over Revenues</u>	<u>\$(70,794)</u>

Schedule 1
Types of Revenues

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Master Guide License	\$240	Biennially
Registered Guide License	240	Biennially
Class-A Assistant Guide License	50	Biennially
Assistant Guide License	50	Biennially
Transporter License	50	Biennially
Application Fee	30	
Examination Fee	25	

Note 1

The Division of Occupational Licensing (DOL) prepared the above Schedule of Estimated Revenues Compared with Budgeted Expenditures. The schedule is included for informational purposes only and has not been audited by us. Accordingly, we do not express an opinion on the Board's Schedule of Estimated Revenues Compared with Budgeted Expenditures.

Note 2

Revenues were estimated based upon the current licensing fees (see Schedule 1) and projected license renewals and application fees for fiscal years 1988 through 1991. Because of a downward trend in Alaska's economy, the projection for revenues includes a factor representing 20% to 30% decline in the number of licensed professionals.

Note 3

Expenditures consist of direct costs associated with Board member activities (i.e., travel and per diem) and an allocation of direct and indirect costs of DOL. It should be noted that represented expenditures do not include expenses incurred by other Departments or other divisions of the Department of Commerce and Economic Development in assisting the Board. Expenditures for the Board represent an allocation of budgeted expenditures for all Boards in the Department for FY 88.

Note 4

The schedule represents the licensing fees currently in effect. Fees were raised in November 1986 in response to legislative intent to make the Boards more self-supporting.

APPENDIX C
GUIDE BOARD
EXAMINATION STATISTICS

Number of Examinations Given in FY 1984-1985 (Note 1)

<u>Fiscal</u> <u>Year</u>	<u>Written Exam</u>		<u>Oral Exam</u>	
	<u>Passes</u>	<u>Fails</u>	<u>Passes</u>	<u>Fails</u>
1985	22	13	26	7
1986	13	16	18	1
1987	16	24	17	0

Note 1

Licensure as a registered guide requires a passing score on both a written and oral examination. Licensure as a master guide requires a passing score on an oral examination only. Licensure as assistant guides and transporters does not require examination.

APPENDIX D
GUIDE BOARD
ADMINISTRATIVE STATISTICS
September 30, 1987

Currently Licensed

Master Guides	51
Registered Guides	348
Class-A Assistant Guides	140
Assistant Guides	854

Board Meetings Between
July 1, 1985 and June 30, 1987

December 2-7, 1985

April 7-11, 1986

December 6-13, 1986

April 11-17, 1987

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500

OFFICE OF THE COMMISSIONER

January 20, 1988

RECEIVED
JAN 20 1988

LEGISLATIVE
AUDIT

Mr. Randy Welker
Acting Legislative Auditor
Division of Legislative Audit
Budget and Audit Committee
P.O. Box W
Juneau, AK 99811

Dear Mr. Welker:

This letter is written in response to the Budget and Audit Committee's (hereinafter "Committee") report of its sunset performance review of the Guide Board (hereinafter "Board"). Below is the Department of Commerce and Economic Development's (hereinafter "Department") comments on the Committee's findings and recommendations.

Recommendation No. 1

The Committee has found that "over the past two years, the Guide Board has adopted a policy of eliminating previously approved joint-use areas and encouraging the assignment of only exclusive guide areas." As a result, the Committee recommends that the Guide Board "discontinue its policy of eliminating joint-use guiding areas." After careful consideration, the Department finds that the Committee's recommendation is overbroad. The issues raised by this recommendation are very complicated, and solutions are not readily apparent. In the final analysis, it is our opinion that the very painful and muddled processes that are evident at the meetings of the Guide Board are an accurate reflection of the difficulty in finding any wholly acceptable public solutions to the issues surrounding the assignment of joint-use or restricted guide areas.

For instance, while the Guide Board is created for "the purposes of licensing and regulating the activities of guides in the interest of the state's wildlife resources" (see AS 08.54.010; emphasis added), and while the audit report states that the Committee found the Board adopted this policy without consulting the Division of Game, it is also well known that the Division of Game, for whatever reason(s), is most reluctant to become involved in providing the Guide Board with necessary data. Currently, the Division of Game is under no specific requirement to provide the Board with accurate or pertinent data regarding game populations.

The issue, however, is not simply game "populations," but also the size and quality of the game within each area. While Alaskans most frequently are hunting for subsistence or personal use, with "trophy-sized" game not a prerequisite to a successful hunt, being able to offer large trophy animals is relatively more important to guides whose clients are paying thousands of dollars to come to Alaska from Europe, Asia, and the "Lower 48" for the big game hunt.

Before the Department can reasonably assess the validity of the recommendation that the Guide Board discontinue its policy of eliminating joint-use guiding areas, the Department believes the Legislature must consider the nature of the agency it has created and the concept of requiring nonresidents and nonresident aliens who wish to "hunt, pursue or take" big game to be accompanied by a licensed guide (see AS 16.05.407 and AS 16.05.408).

As recently as 1986, the Legislature saw fit to formalize Alaska's guiding system by specifically providing for the establishment and assignment of "restricted" (or exclusive) guide areas (see Chapter 71, SLA 1986). It seems somewhat contrary to legislative intent to have the Legislature specifically provide for the establishment of restricted guide areas in one year and the Guide Board to be criticized in practically the next year for establishing such areas.

This is not to say that the Department does not appreciate the concerns which have given rise to the Committee's recommendation. Indeed, the Department is particularly sensitive to allegations that the Guide Board is, as suggested, "more interested in the protection and development of the proprietary interests of established guides rather than promoting equitable access to the profession for all qualified individuals." However, the recommendation also seems somehow "too easy." It has not taken into account the ultimate issue: despite Alaska's size, there is not -- and will never be -- sufficient hunting areas or big game animals in those areas to give every registered guide joint-use -- let alone exclusive use -- of an area.

Alaska must realize that big game is a limited resource. A report that states there has been a stable game population statewide for the past five years does not describe -- by guide area -- the impact over the past years in the number, size, and quality of the big game animals found in that area.

The established guiding system creates specific guide areas across the state. A resident hunter, however, may hunt in any area of the state, irrespective of what guide or guides may also have been assigned that area. In addition, "outfitters," unlike Alaska's guides, are not limited to taking clients to particular regions of the state. An outfitter can transport clients anywhere, allow those individuals to hunt in an area until the number, size, or quality of the game coming out seems to be depleted, then move on to other areas which, perhaps, have not been over-hunted. It is important to realize that a guide can conduct hunts only in his or her assigned area(s), and is at the mercy, if you will, of resident hunters and outfitters.

The Department believes that a variety of special and public interests are presently fighting over a limited public resource that generates lucrative business through the provision of wilderness hunting (with outfitters) or guiding experiences. The pressures on the Guide Board have never been higher than right now. In its defense, the Guide Board has never received adequate support from the executive branch, having been avoided by Fish and Game, abandoned by Public Safety, seriously neglected by Commerce and Economic Development, and alternately ignored or criticized by the Department of Law. On the other hand, it is probably equally true that, until very recently, the Guide Board (and the guiding industry) would not have wanted and would have probably attempted to reject any proffered consistent, active administrative oversight of its activities.

The continued implementation of restricted or "exclusive" guide areas has brought the rather fragile guiding industry to a crisis point, with its flaws now being highlighted and focused on by its frustrated critics. But the fact remains, having created the Guide Board and statutorily agreed to regulate the guiding industry, the results of that decision are complex and the recent legislation recognizing the Board's creation of restricted areas only further complicates the matter. The legislation requires the promulgation in regulation of a "point system to be used by the board when it establishes and assigns a restricted guide area" [see AS 08.54.195(a)]. The legislation also establishes criteria that the Board must consider before it may assign a restricted area. These conditions, however, only further indicate that the Legislature recognizes that both resource and economic factors [see AS 08.54.195(b)(2), (3), (4), (5) and (e)] play an important part in determining the viability of the guiding industry.

Therefore, while the Committee's report finds that the Guide Board's actions to encourage the assignment of restricted areas serve to "unduly restrict entry into the guiding profession," the Guide Board can point to AS 08.54.195 as requiring the Board to weigh economic factors in deciding on the "quota of licensed operating guides who may operate within designated geographical game units" [AS 08.54.040(a)(2)]. This language would seem to recognize that the Guide Board may well have to limit the number of guides with assigned areas. We read this to mean, so long as the Board is guided by regulations creating a point system that will provide applicants with protection from subjective or arbitrary Board decisions, that the Guide Board may well limit the number of registered guides holding areas through the assignment of restricted guide areas.

The Department believes the Committee is right to find serious fault with the Guide Board for the Board's failure to develop regulations establishing area quotas and the point system, but we suggest the Committee should hesitate to fault the Board for attempting to solve what the guiding industry sees as an increasingly difficult situation (i.e., the increasing pressure on the big game resource) when the Legislature recently formalized the Board's authority to meet this problem through restricting area assignments.

As you note, the constitutionality of the guide area concept is currently before the court. In the meantime, so long as the Legislature believes the well-being of a guide's economic interest in an area is an important factor in setting quotas for a particular guide area, then the Department is hard put to unqualifiedly support the Committee's broad recommendation that the Guide Board simply "discontinue" the elimination of joint-use guiding areas.

The Department believes, before it can support such a recommendation, that more research needs to be done and regulations need to be put into place establishing proper assessment criteria for guide area assignments, whether joint-use or restricted. There may well be justification for some restricted areas, and there may well be justification for either opening up some presently restricted areas or adding additional users to current joint-use areas. The Department presently has no way of objectively or independently evaluating either the petitions brought before the Board or the validity of the current area assignments.

Until the Division of Occupational Licensing can provide the level of administrative support truly necessary to assist the Guide Board in reaching more objective evaluations, the experience and testimony of Board members and guides who appear before the Board should continue to

be relied upon. It is, after all, the job the statute gives the Board to do. The fact that the executive branch has, up until now, failed to provide the necessary support to the Board to professionalize its activities and decision-making process is no reason to suddenly tie its hands.

Prior Audit Recommendation No. 1

As stated above, the Department concurs in the Committee's recommendation that the Board place in regulation its criteria for establishing guide area quotas. Such regulations are currently being developed. It is expected that this project will be both time-consuming and very controversial. We hope the Board will complete this project by the end of 1988. We believe the Board appreciates the serious need for these guidelines and will work hard to put a quota and point system in place by year's end. The staff of the Division of Occupational Licensing will work closely with the Board in developing these regulations.

Prior Audit Recommendation No. 2

The Department concurs with the recommendation that the Board "improve" its methods of obtaining game management information from independent sources, including the Alaska Department of Fish and Game. However, as you are aware, the Division of Game is most reluctant to become actively involved in this area of game regulation. If the Board is to "improve," then we believe that there must be more than the anticipation of cooperation by executive branch agencies on the part of the Legislature. One possible solution would be statutory language mandating the provision of game management data from Fish and Game to the Guide Board. The data should be made available in ways that are useful to the Board and in a time frame that will meet the Guide Board's needs. The presence of game biologist expertise at Board meetings would also be more than helpful; it would assist in professionalizing Board decisions.

Prior Audit Recommendation No. 3

The Department concurs with the recommendation that the Board prohibit the transfer of an area from one guide to another. The Department fully supports your belief that all qualified guides should receive an equal chance at receiving an area assignment, as long as some mechanism is created that guarantees the guide relinquishing an area adequate compensation for the lawful property improvements he or she made while holding the area.

The current system is no doubt in place because the guide relinquishing an area certainly does not intend to simply walk away from what is, in many cases, tens of thousands of dollars in improvements in the area, leaving it for the next lucky guide who comes along. The statute says that 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" [AS 08.54.195(e)]. If the Board could create a system wherein all applicants for a relinquished area were required to post proof of an ability to compensate the former guide for any improvements at fair market value, then all applicants could be considered equally and the area awarded according to the established criteria.

One matter that deserves further discussion, however, concerns the transfer of a guide area to a guide's heir. The guiding industry very much supports transfer to an heir. Whether the Legislature would condone such a practice should be made clear in statute. Otherwise, the Department would most likely continue to believe that all transfers should be prohibited.

Prior Audit Recommendation No. 4

We are pleased by the Committee's finding in this recommendation that the Board has done much to improve the oral examination of the Guide Board. The Department will continue to work with the Guide Board to improve the quality and objectivity of the guide exam.

Prior Audit Recommendation No. 5

The Department concurs with the recommendation that the Board pursue an amendment to AS 18.54, eliminating the need to receive three separate complaints before the Board can pursue an investigation against a guide for unethical or incompetent practices. We would support such action by the Legislature in the bill which reestablishes the Guide Board.

The recommendation that the Board pursue the posting of a performance bond by guides is more difficult to evaluate. On its face, the Department understands the Committee's reasons for seeking such bonding, and concurs with the suggestion that such a practice might well provide a more efficient, less expensive claim settlement process. However, the Division of Occupational Licensing's experience with contractor bonding has also led us to recognize that the impact of a bonding requirement on the guiding industry might be very severe.

As you are no doubt aware, the current economic situation in Alaska has made it extremely difficult to get bonding. It is possible, but current bonding companies often require the provision of unencumbered assets totalling in excess of \$100,000 for a \$10,000 bond. The current poor bonding market in Alaska has effectively eliminated some persons from the contractor industry because they cannot meet the requirements imposed by the bonding companies. This would, no doubt, have the same affect in the guiding industry.

This might also mean that guides who are holding little used areas might relinquish the areas rather than meet the bonding requirement, which would be all to the good, as it would free up areas for guides without areas who are seriously interested in guiding. At the same time, the bonding requirement might discourage or keep out some younger, less well-established guides who do not have adequate assets or resources, the very same guides for whom the Committee is interested in providing better access to the system. (This problem is partially countered in the construction area by allowing a contractor to make a cash deposit in the amount of the bond, but often a cash deposit is difficult for the smaller contractor to make.)

The Department appreciates this recommendation by the Committee and believes it certainly deserves consideration, but its potential impact on guides should probably be more thoroughly evaluated prior to any formal action by either the Board (through regulations) or the Legislature (through legislation) to require bonding of guides.

Final Comments

The Department is committed to improving the workings of the Guide Board. We have identified the following as areas where we believe immediate improvements are necessary:

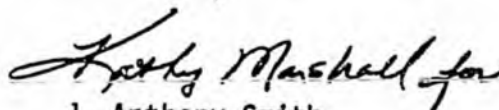
1. the general administrative support provided by the Division of Occupational Licensing;
2. better technical data from the Division of Game;
3. the Board's maps of the guide areas and assignments; and
4. guide area application or guide area transfer procedures.

January 20, 1988

In conjunction with the guiding industry, the Department will be approaching the Legislature for funding to provide more adequate staffing to the Board and for some form of computerized mapping of the guide areas. In the meantime, we are in the process of temporarily transferring the Guide Board's licensing examiner to Juneau so that that position will have the benefit of additional staff assistance and supervisory support while the Department attempts to more adequately support the difficult work of the Guide Board.

This audit has been another mechanism utilized by us to assist the Department in proper administration of the guide statutes and in helping the Guide Board to review its role. We have appreciated its independent evaluation of the Guide Board's performance.

Sincerely,



J. Anthony Smith
Commissioner

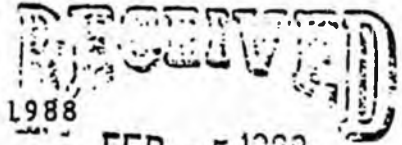
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011988b

cc: All Members of the Guide Board

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF OCCUPATIONAL LICENSING

7TH FLOOR FRONTIER BLDG.
3601 C STREET, SUITE 722
ANCHORAGE, ALASKA 99503
PHONE: (907) 561-2878



February 2, 1988

Mr. Gerald L. Wilkerson
Legislative Auditor
Legislative Audit Division
Pouch W
Juneau, Alaska 99811

LEGISLATIVE
AUDIT

ATTN: Jim Griffin

Recommendation #1

The Guide Board did not adopt a blanket policy of eliminating all joint use guide area permits.

The guide Board did adopt a policy to eliminate joint use guide area permits as much as possible and in situations that involve small overlaps of boundaries. The board will grant transfers to an heir of a guide or to another guide who inherits a guide's permit. In just about all cases when this occurs, the guide inheriting the permit has worked for the guide holding the area for a number of years. This criteria is applied to a retiring guide. In these cases as well as regular transfers small overlaps are eliminated as much as possible. This is the area that brings the criticisms of the board not acting in a consistent manner on reassigning guide area permits. In most cases each transfer is different.

The board has on numerous cases asked the Department of Fish & Game for biological information with limited success. We do ask the applicant for a transfer or a new assignment to get this information if they can. This also isn't always possible because the board doesn't know what areas are to be involved in a given meeting. As Chairman I have asked our Director, Randall Burns, to see what could be done to relieve this situation.

While game management is not the primary responsibility of the guide board, it is in the criteria of issuing guide area permits. 12AAC 38.210 (b) (2) addresses that, not only in the area involved but also adjoining areas.

Regarding the effect of the policy being a limited entry. The situation probably would be better if it was on a limited entry scale such as commercial Fisheries. Both industries involves renewal resources that belong to everyone. Limited entry for the guiding industry would make the guide board's job much easier.

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

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Page 2.

Mr. Gerald L. Wilkerson;

We have in the neighborhood of 400 registered and Master Guides and we are licensing around 10 to 15 twice per year. There is just not the clientele or suitable areas available for that number of guides. Federal withdrawals sure haven't helped the situation. Even though we have that demand on areas there are still some open and can be used by any registered guide. Granted, these aren't the best areas for guiding operations but they are a start. I do admit that there are some guides who hold very large areas. I believe these should be looked at closely and should they not be utilized to their potential, divided to make room for some of the younger guides to get into the guiding business. This was a stated policy of the previous board after they had covered the state with assignments. This never happened with the previous board. The work load that this was never attempted. I have wanted to do this ever since I have been a member of the board. Budget and time has precluded that happening. I believe if a value was put on a guiding area permit, we would see guides applying for what they actually need for a realistic use of the area. I realize this will have to be accomplished through the legislature.

Recommendation #2

As mentioned above, I have asked our Director to address this issue.

Recommendation #3

I still do not agree that an area holder should surrender his guide area to the board when he wishes to transfer whether he be retiring getting out because of health or what ever reason. There is no other business that a man can't sell or give it to whoever he wants to. While our statues and regulations do not allow selling an area permit they do allow for a guide to sell his improvements that supported his guide area permit. The assigned area permit has done more to elevate the quality of the guiding industry in Alaska than anything that's taken place in the past. The responsibility it gives to the permit holder for the game resource, prompts a guide to upgrade their business and increase his investments in the area he has. As investments in both time and monetary increases so does the guides financial responsibility increase. After years working to build a high quality business it's only right that upon retirement the permit holder be able to choose his successor. This ^{ones} in just about all cases is the most qualified person for the transfer no matter what selection criteria is used. There have been abuses of this in the past as there were transfers that seemed to be nothing

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

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Page 3

Mr. Gerald L. Wilkerson:

more than real estate sales. The Guide Board is aware of this situation and is taking a firm stance against these kind of dealings.

If your recommendation is adopted, assigning areas regardless of their ability to buy the rights of the previous holder, Since it is illegal to buy the rights of the holder, I assume that this would take in the previous holder's improvements. Should this be implemented, it could mean a man working to improve the area both resource and manatory wise could lose evrything he worked for.

I do agree that in some cases people that weren't as well qualified as others have gotten area permits through transfers. I would like to see a regulation put in that the transferee be required to work with the permit holder a certain number of years to qualify for the transfer. I think this should be for at least two years, would prefer longer.

Recommendation #4

The current oral examination is as fair as an oral examination can be. The oral porton of the examination is the most important of the two parts.

Recommendation #5

The guide board did address this issue during the last guide bill (294) passage to no avail. We also tried to get an outfitter section included. Both were deleted by the legislature. We are faced with getting another bill through the legislature this session. So far none has been introduced to my knowledge. We plan to push for each individual complaint to come before the board for a hearing. I beleive this will alleviate the need for bonding guides.

We also need to pursue Senate bill 191 regarding outfitters & unlicensed guiding. This unregulated activity is causing a lot of the complaints against the guiding industry as well as a detriment to the game resources of the state. The resource being the more important. This is one reason the guide board has to limit the guides operating in some areas of the state. The well populated area around King Salmon with moose and caribou is one as well as some areas on the north slope.

One other thought. I don't beleive a time limit should be put on the life of the guide board. Changes takes time and some regulations as long as two years.

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

January 29, 1988

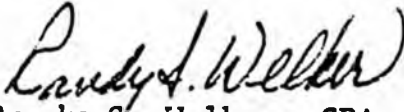
Members of the Legislative Budget
and Audit Committee:

We have reviewed the Department of Commerce and Economic Development, Division of Occupational Licensing's response to our preliminary report. Our comments regarding the response follows:

Prior Audit Recommendation No. 5

As pointed out in the Division of Occupational Licensing (DOL's) response, it currently does appear that our prior audit recommendation regarding the bonding of guides is problematical. DOL indicates in their response that imposition of a bonding requirement may have a very severe impact on individuals both in the guiding industry and those trying to enter the profession. One of our primary concerns when evaluating the performance of any professional licensing board is the degree to which the board provides equitable and fair entry into the regulated profession.

Certainly, given DOL's experience in this area with other professions and their assessment of the current market situation for obtaining bonding, their comments regarding the advisability of requiring bonds are well-founded. If current market conditions are so severe that obtaining performance bonding would have an adverse impact on individuals trying to enter or stay in the guiding profession, thus serve to limit competition in the industry, then we concur with DOL's assessment.


Randy S. Welker, CPA
Acting Legislative Auditor
Division of Legislative Audit

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
GUIDE LICENSING AND CONTROL BOARD

November 21, 1985

Audit Control Number

08-1253-86-R

Commissioner, Department of
Commerce and Economic Development

Loren H. Lounsbury

Deputy Commissioners, Department of
Commerce and Economic Development

Terry Elder
Greg Baker

Members of the
Guide Licensing and Control Board

Chairman
Member
Member
Member
Member
Member
Member

Ray McNutt
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STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

November 22, 1985

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the
Alaska Statutes (sunset legislation), the attached report is
submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
GUIDE LICENSING AND CONTROL BOARD

November 21, 1985

Audit Control Number

08-1253-86-R



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Guide Licensing and Control Board for the past four fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Guide Licensing and Control Board should be reestablished. The law now specifies that the Board will terminate June 30, 1986 and will have one year from that date to conclude its affairs.

Scope

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Interviews with the license examiners.
3. Tests of files and documents of licensees.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman Office.
5. Discussions with Board members.
6. Minutes of Board meetings and Division correspondence files.
7. Attorney General Opinions applicable to professional boards.

ORGANIZATION AND FUNCTION

The Guide Licensing and Control Board was established by the 1973 Legislature and succeeded the Board of Fish and Game, Department of Fish and Game, which previously had regulated the guiding industry. The seven member Board is appointed by the Governor with confirmation by the Legislature and is restricted to having no more than three members as licensed guides. Board members serve staggered terms of three years or until their successors are appointed.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing. The Division assists the Board in the performance of their duties by providing administrative, licensure, and investigative support.

By law, a nonresident may not hunt, pursue, or take brown bear, grizzly bear, polar bear, or sheep in Alaska unless personally accompanied by a licensed master, registered, or assistant guide. Nonresidents hunting with an Alaskan relative are exempt from this requirement. The Guide Licensing and Control Board was appointed in part to protect these nonresident hunters from incompetent individuals holding themselves out to be qualified Alaskan guides.

The function of the Board is primarily regulatory, mandated by AS 08.54.040. Accordingly, the Board has the capacity to administer examinations, determine qualifications of guides, establish performance standards and regulate activities, maintain guide registers, prohibit harmful guiding activities, conduct hearings regarding licensure, and establish quotas of guides for specified geographical areas (exclusive guiding areas). The Board, through the assignment of exclusive guiding areas, limits hunting pressure by guides within a specific geographical area.

In addition, the Board licenses "transporters"; a licensed "transporter" is a person who transports hunters for hire.

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Guide Licensing and Control Board should be reestablished. The regulation and licensing of qualified guides is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum qualification and experience requirements that provide reasonable assurance that persons licensed are both capable of safely conducting guided hunts and familiar with their prospective guiding areas. Assurance that those licensed act in a competent manner is also provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

However, the following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Guide Licensing and Control Board (GLCB) should develop a prioritized set of criteria to use in assigning both exclusive and joint-use guiding areas (EGAs).

Alaska Statute 08.54.040(a)(8) allows GLCB to:

Establish a quota of licensed operating guides who may operate within designated geographical 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 guides who reside within the designated game unit or subunit.

GLCB has implemented this provision through the establishment of both exclusive and joint-use guide areas (EGAs), which limit the number of guides who can conduct hunts in various regions of the State. The GLCB's authority to assign EGAs is supported by an April 1977 Attorney General memorandum which determined that GLCB's regulations and activities implementing exclusive guiding areas were within their statutory powers.

This limitation on the practice of guiding ostensibly provides public benefits by providing for better game management; promotion and enforcement of ethical guiding practices; enhancing the "wilderness" aspect of big game hunting experience by separating guided hunting parties; and allows for the separation of non-compatible forms of hunting. The limits are also designed to provide for a greater degree of safety to the guided hunter by allowing guides to become familiar with the terrain and seasonal weather conditions of their assigned area.

GLCB does not act consistently when considering the assignment of exclusive and joint-use guiding areas. The criteria on which any given area assignment decision is made varies from decision to decision. Additionally, GLCB often does not adequately document the basis on which they make their assignments. We found inconsistencies and contradictions in the way that GLCB applied the following criteria when awarding EGAs:

1. Game Management Information - GLCB does not consistently review game management information in their area assignment decisions. What game information they do consider usually is second hand and anecdotal, provided by applicants or current users (see Recommendation No. 2).

2. Demonstration of Experience - When applying for an EGA, applicants must demonstrate that they have had guiding experience in the applicable game unit. Guides demonstrate their experience through the submittal to GLCB of a Statement of Financial Remuneration (SFR) for each guided hunt. SFRs list the names of hunters, guides assisting in the hunt, game units hunted, and the type of game taken.

Under the Board's regulations, SFRs are the primary evidence of a guide's activity and familiarity with the game unit involved. However, we found instances where the Board awarded EGAs to guides with no SFRs in the appropriate game unit, while denying other EGA applicants because they had no SFRs on file demonstrating their experience or activity.

3. Transfers of guiding areas - GLCB has been essentially approving transfers of guiding areas with little or no consideration of any other criteria such as game management, objections of joint users, or experience of the guide receiving the transferred area (see Recommendation No. 3).

This inconsistency on the part of GLCB in its decision-making, along with the lack of proper documentation of its rationale, ultimately results in a loss of effective control over the activities and policy of the guiding industry.

During the past four years, hearing officers have repeatedly found Board decisions to be arbitrary and capricious with little or no support. In effect, the Board has abdicated much of its control over area assignments through its inconsistent application of criteria. Hearing officer decisions are beginning to effectively replace GLCB in setting quotas for guides. Essentially, GLCB has not fully met its statutory responsibility to adopt an equitable and reasonable procedure for the assignment of guide areas.

We believe GLCB's responsibility would be better met by identifying pertinent criteria to be used in area assignment decisions, assigning some priorities to those criteria, and applying them consistently.

Recommendation No. 2

GLCB should improve methods of obtaining game management information from independent sources, such as the Alaska Department of Fish and Game (ADFG).

One of the primary justifications for the whole concept of EGAs is to enhance overall management of the public's game resources. Guides are awarded exclusive or joint-use areas so that they have a long-term interest in managing the game

in their EGA. GLCB has adopted regulations [12 AAC 38.053(d) (1)] that require it to consider an area's ability "... to sustain an additional guided hunting operation, in terms of game populations, terrain, methods of hunting, and use by other guides and hunters."

As stated in Recommendation No. 1, we found that GLCB rarely considers independent information regarding game populations and management concerns when assigning EGAs. GLCB relies on information provided by applicants and guides operating in the region under consideration. Certainly, the assessment of an active registered guide is important and should be considered. However, whether coming from an applicant or current user, it must be recognized that the guide has a vested interest in how the information is presented and interpreted.

Oftentimes, information presented to the Board is conflicting, depending on the desire of the guide. New applicants for areas claim game is plentiful, and the area is underutilized. Current users, on the other hand, emphasize game scarcity and hunting pressures.

If GLCB established better, more formal communications with ADFG they would better meet their regulatory and statutory obligation to enhance the management of the State's game resources. ADFG information may be no better than that of guides; however, it is more independent and more objectively developed. ADFG is charged with management of the State's game resources, and guided, non-resident hunters take up to an estimated 40% of the game in the State. We believe GLCB should attempt to improve communications and coordination with ADFG while taking steps to include their assessment of game populations and hunting pressures when considering assignment of EGAs.

Recommendation No. 3

GLCB should take more responsibility for area assignments by repealing regulations that allow a guide to designate to whom his EGA be reassigned.

Registered and master guides may each have a maximum of three EGAs. Typically, when a guide wishes to retire or perhaps become eligible for another, different EGA, he is allowed to turn back an existing EGA to the Board and designate the recipient of this reassignment. GLCB regulations currently allow, but do not necessarily require, this practice.

We found that these designated transfers override all other area assignment criteria. Essentially, GLCB has been automatically approving transfers of EGAs regardless of game management considerations, demonstration of experience

in the area by the transferee, and over the objections of affected joint users. Whereas GLCB evaluates, albeit inconsistently, regular area assignments, our review indicated they gave transfers much less scrutiny.

We believe that this lack of scrutiny encourages the practice of guides selling their EGAs to other guides in violation of GLCB regulations. With the Board giving little review to transfers, they greatly increase the potential of EGAs being awarded based solely on economic consideration; i.e., can the designated recipient afford to buy the area from its holder? This potential abuse is contrary to GLCB's statutory responsibility of establishing quotas for guide areas in an equitable and reasonable manner. We feel that all qualified guides for the area should receive equal chance at receiving an EGA, regardless of their ability to "buy" the rights from the previous holder.

By not adequately reviewing transfers of guide areas, the GLCB is missing an opportunity to achieve one of its stated policy goals. In the Board's FY 85 annual report, they state one of their policy objectives is to not allow additional joint use in areas that already have enough guides operating.

We feel that it would be better if the EGAs were surrendered to the Board; the Board review pertinent and prioritized criteria to determine if the region would support one or more additional guide operations; then consider all applications for the area under a equitable and reasonable method of allocation. Such a method could take into consideration unique qualifications such as a son or daughter who had worked as an assistant to their father, or perhaps a registered guide, who had "apprenticed" in the region under the surrendering EGA holder and accordingly, is more knowledgeable of the area than other applicants. By following such a procedure the Board would promote compliance with its own regulation restricting the transfer of guiding area permits.

Recommendation No. 4

GLCB should adopt procedures to improve the administration of the oral portion of the registered guide examination.

The oral portion of the registered guide examination is arbitrary and inconsistent in content and grading. This is because the examination content and grading guidelines are left to the discretion of the individual examiners.

To qualify for licensure as a registered guide, an applicant must successfully pass the registered guide examination. This examination, which is prepared and administered by GLCB, is composed of two parts, a written and an oral section. Passage of the examination requires the applicant to obtain a score of 80% on both sections.

GLCB procedures require the oral portion of the registered guide examination to be administered by three examiners, consisting of a Board member and two master guides. Questions asked by the examiners are based on an oral exam sheet, which does not limit examiners to specific questions nor does it provide predetermined question grading values.

This allows individual examiners to emphasize whatever subject areas they wish in the questioning of applicants. Despite the lack of specific grading criteria on which to base examination scores, instances were noted in which applicants narrowly failed exams by combined examiner scores as high as 79%.

The inconsistency of exam content and grading is demonstrated by the following example. In February 1985, an applicant failed the oral portion of the examination. The reason for failure noted by the examiners was that the applicant needed more hunting experience in the field. Examiners recommended the applicant obtain specific area experience along with spring, late fall, and winter experience. One month later, the applicant took the oral examination again, and was passed by an examination committee made up of three different examiners.

GLCB appears to have demonstrated its own doubts regarding the validity of oral examination results. GLCB's regulation 12 AAC 38.010(c), states the failure to achieve a passing score on either section of the examination constitutes failure of the entire examination. However, on several occasions, after having been petitioned by applicants who passed the written portion of the exam while failing the oral portion, the Board waived the requirement that the written portion of the examination be retaken.

The lack of specific guidelines dictating the objective administration of the oral portion of the registered guide examination has resulted in inconsistent content and grading between individual examinations. The likelihood of exam passage is as much affected by who the examiners are and their individual judgement as it is by the knowledge and competence of the applicant.

Structured guidelines governing the administration of the oral portion of the registered guide examination should be implemented by GLCB. These guidelines need to provide examiners with specific directions as to examination questions to be asked and their assigned grading values. If implemented, structured guidelines will provide a more objective means of administering the examination. This will provide the Board with more of a fair and consistent test of applicant competence.

Recommendation No. 5

GLCB should seek both statutory and regulatory changes in order to improve the protection of the public from unethical guiding practices.

One of the primary purposes of licensing and regulating guides is to protect the public from unethical guiding practices. We identified regulations and statutes that serve to block effective consumer protection action on the part of GLCB and serves to protect guides at the expense of the public. We recommend that GLCB enhance its consumer protection responsibilities by taking the following actions:

- A. Pursue amendment of statutes that limit GLCB's authority to discipline guides for unethical activity.
- B. Adopt regulations and/or recommend legislation to require guides to post performance bonds.

Statutory Constraints to Effective Disciplinary Action

Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from "... three or more clients [hunters] of separate [hunting] parties."

In the course of our review we found four instances where guides had two allegations of unethical guiding activity, as defined by GLCB's regulations, but still had not been brought before the Board for review. Law enforcement officials told us that the statute requiring three separate complaints was particularly onerous for effective resolution of consumer complaints. Law enforcement officials are put in the position of consumer ombudsman, trying to mediate and negotiate settlements of hunter-and-guide or guide-and-guide disputes.

GLCB's effectiveness and visibility would be enhanced if all allegations regarding unethical guide practices was brought to it for review on a case-by-case basis. It appears that the intent of the statute was to keep down the number of frivolous and unfounded complaints against guides. Other professional licensing boards listen to, and sort through, all cases and complaints, no matter how trivial, as a means of keeping apprised of the conduct of their licensees. We recommend that GLCB begin doing the same.

Bonding of Guides

Almost all hunters who use guiding services are non-residents, a large number from outside of the United States. As a result, when disputes arise between guides and hunters it is often very difficult and expensive for the complaining

hunter to seek legal remedies or implement administrative action. This difficulty is compounded by the three complaint requirement of the statutes discussed previously.

In the course of our review, we noted four cases where a non-resident hunter and guide were disputing the refundability of a deposit. One example, two out-of-state hunters sent in deposits of \$2,500 six months in advance of a hunt. Just prior to their departure for Alaska, the guide notified them that he would have to cancel their hunt. He offered to apply their deposits to a hunt the next year, but the hunters decided they wanted a refund. The guide did not respond to requests, and due to the statutory three complaint requirement, law enforcement officials were not able to bring the dispute before GLCB. The two hunters retained a Fairbanks attorney to pursue legal remedies, but soon abandoned the effort due to costs of litigation.

We recommend that GLCB pursue the necessary statutory and regulatory changes that would implement a mandatory requirement that guides post performance bonds. Performance bonds would allow hunters with legitimate grievances and claims against guides an easier, less expensive alternative in obtaining settlement of their claims. Guiding is a large industry in the State. It is important that GLCB do all it can to maintain the integrity of the guiding industry and uphold the reputation of the Alaskan guides with hunters outside of the State. The Board should recognize the unique type of consumer for guide services and take steps to adequately protect the interest of the out-of-state hunter/consumer.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our review.

- I. The extent to which the board, commission, or program has operated in the public interest.
 - A. The Board has adopted regulations defining unethical conduct which clarify and strengthen the professional's responsibility to the public.
 - B. The Board does not consistently review the Department of Fish and Game game management information prior to assignment or transfer of an exclusive guiding area (EGA) (see Recommendation No. 1).

- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 - A. Regulation 12 AAC 38.054(b) allows an EGA permit holder to designate the qualified guide to whom he wishes to transfer his guide area. These transfers often take precedence over other guide area assignment criteria such as joint user objections, experience in the game unit, or game management considerations (see Recommendation No. 3).
 - B. Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more clients of separate parties regardless of the potential magnitude of the unethical act (see Recommendation No. 5).

- III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.
 - A. Senate Bill No. 294, which was introduced in April 1985 by the Resources Committee, contains the following items which should enhance public protection if ratified:

1. An amendment to AS 08.54.010 would increase game management considerations in regulating guide activities (see Recommendation No. 2).
 2. An amendment to AS 08.54.040 and a proposed new section (AS 08.54.195) would require consistency in procedures used in allocating EGAs (see Recommendation No. 1).
 3. New sections would require those guides that contract with more than one client at a time (an outfitter) to maintain a surety bond of \$5,000 (see Recommendation No. 5).
 4. The bill would require closer supervision over assistant guides while in the field.
 5. Unethical activities would be amended to include unsafe or unsportsmanlike actions that are detrimental to the game resources of the State.
 6. Statutes dictating qualifications for, and restrictions on, transporters would be repealed. Many of the services now being provided by transporters would be subject to the proposed outfitter statutes contained in this bill.
- B. Additional portions of SB 294 which do not appear to us to be in the public's best interest are as follows:
1. Current law limits the number of Board members that have guide licenses to no more than three of the seven members. SB 294's amendment of AS 08.54.010 would require that at least three Board members be active guides. This amendment would increase the potential for expanding the number of industry members on the Board at the expense of public participation.
 2. Currently, AS 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more hunters of separate parties. SB 294 contains an amendment of this statute which would require that these complaints be received within five years prior to the hearing date. This would compound those problems outlined in Recommendation No. 5.

3. Currently, AS 08.54.210(a)(6) makes it unlawful for a master or registered guide to employ or supervise more than three assistant guides at the same time.

SB 294 would repeal this statute and could allow a master or registered guide to employ more assistants than they are capable of effectively supervising. The experience and professional judgement of the master or registered guide may not be available to clients when needed.

Alaska Statute 08.54.141 of this bill also provides that assistant guides shall be supervised at all times while in the field on guided hunts. The potential problem noted above will depend on enactment of this new section and on the Board's interpretation of the term "supervised."

4. Enactment of amendments to AS 08.54.200(c)(3) may unnecessarily restrict those hunting statutes or regulations upon which the Board can take disciplinary action.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

- A. The public is invited to attend Board meetings and to give their input about the workings of the Board. Notices of meetings are advertised in at least five newspapers throughout the State. In addition, guides are notified by registered mail of meetings that might affect them.
- B. Publication of meeting information does not always precede the meeting by a reasonable time period. We found that the public was given less than a one week notice for two of the last eleven Board meetings.
- C. Teleconference meetings are not being noticed publicly. This limits public input at those meetings and may legally jeopardize Board decisions and actions.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

- A. As stated under IV, the public is invited, by published notices in newspapers, to attend Board meetings to give their input about Board regulations or submit written testimony.
- B. Those problems noted in IV B and C above also represent potential problems in this public need area.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

- A. Since July 1983, ten complaints have been filed with the Ombudsman's Office concerning Board activity. Only one of these complaints, alleging improper denial of a registered guide license, was found to be justified.
- B. Since August 1984, 19 complaints against guides have been submitted to the Department of Commerce and Economic Development, Division of Occupational Licensing for investigation. These cases appear to have been investigated in a reasonable fashion and are pending Board action or court rulings.
- C. As mentioned in III above and in Recommendation No. 5, AS 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more hunters of separate parties.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

- A. As of September 1985, 46 master guides and 361 registered guides were licensed in Alaska. These individuals were required to pass both a written and an oral exam, as well as obtaining practical experience in the field, prior to licensure.
- B. The oral portion of the registered guide examination is arbitrary and inconsistent in content and grading. This is because the examination content and grading guidelines are left to the discretion of the individual examiners (see Recommendation No. 4).

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity of interest.

A. The Board established 12 AAC 38.010(c) whereby an applicant for licensure 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 his capabilities and experience.

B. Regulations also provide that when assigning guide area permits,

the board will give preference to qualifying guides whose permanent residence is within the district in which the area is located.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIX A

GUIDE LICENSING AND CONTROL BOARD
REVENUES COMPARED WITH EXPENDITURES

June 30, 1985
(UNAUDITED)
(Note 1)

	<u>FY 83</u>	<u>FY 84</u>	<u>FY 85</u>
Revenues (Schedule 1, Note 2)	\$46,000	\$53,735	\$88,678
Expenditures (Note 3)	<u>21,663</u>	<u>13,483</u>	<u>11,777</u>
Excess of Revenues over Expenditures	<u>\$24,337</u>	<u>\$40,252</u>	<u>\$76,901</u>

Schedule 1
Types of Revenues
(Note 4)

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Master Guide License	\$150	Biennially
Registered Guide License	150	Biennially
Class-A Assistant Guide License	30	Biennially
Assistant Guide License	20	Biennially
Transporter License	10	Biennially
Application For A Guide Examination	25	With Application

Note 1

This revenue/expenditure comparison was prepared from available reports prepared by Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

Revenue amounts reported do not include revenue obtained from the sale of game tags or hunting licenses. They only include revenue obtained from fees required to obtain and/or renew guide licenses.

Note 3

Expenditures consist of direct costs resulting from Board activities. These include miscellaneous contractual, travel, and per diem costs incurred by Board members and the Board's licensing examiner. The amounts do not include the administrative expenditures of the Division of Occupational Licensing such as employee salaries or the expenditures made to other departments such as the Department of Law, which assist the boards and the Division.

Note 4

Amounts reflected are those established by statute for FY 85. Chapter 37, SLA 1985 provides that the Department of Commerce and Economic Development shall set license fees effective upon adoption of said regulations.

APPENDIX B

GUIDE LICENSING AND CONTROL BOARD
EXAMINATION STATISTICS

Number of Examinations Given in FY 1984-1985 (Note 1)

<u>Fiscal</u> <u>Year</u>	<u>Written Exam</u>		<u>Oral Exam</u>		<u>Total</u>
	<u>Passes</u>	<u>Fails</u>	<u>Passes</u>	<u>Fails</u>	
1984	22	13	26	7	41
1985	19	9	17	4	30

Note 1

Licensure as a registered guide requires a passing score on both a written and oral examination. Licensure as a master guide requires a passing score on an oral examination only. Licensure as assistant guides and transporters does not require examination.

APPENDIX C

GUIDE LICENSING AND CONTROL BOARD
ADMINISTRATIVE STATISTICS
September 30, 1985

Currently Licensed

Master Guides	46
Registered Guides	361
Class-A Assistant Guides	139
Assistant Guides	829
Transporters	141

Board Meetings Between
July 1, 1983 and June 30, 1985

July 17-22, 1983

October 25-26, 1983

December 7-13, 1983

March 12-17, 1984

December 13-14, 1984

February 9-17, 1985

March 18-19, 1985

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 Board

Thank you for the opportunity to comment on your preliminary audit report on 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 Licensing 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 correct, 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 examination for registered guides.

Mr. Gerald L. Wilkerson

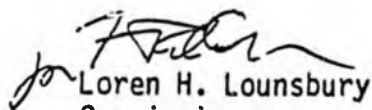
-2-

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 do allow time for soliciting biological information from the Fish & Game biologist located in the area involved. I have solicited 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 (n) (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 a guide 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 ~~X~~ ..

Where the area is extremely large and doesn'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 applicant's practical field experience and knowledge of game habits, size and the area he is 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 wander far afield and asking impertinent questions. There should also be a standard time for the test, say 1 or 1½ 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 within 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 complaints 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 S294.

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 ~~are~~ all have an educational background.

Comments Regarding Interim Letter #1
Sunset review GLCB

Recommendation # 1.

I agree with all of Mr. McMutt'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. McMutt.

Recommendation #3.

I completely agree with Mr. McMutt's comments and would like to 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. McMutt's comments and covered it quite thoroughly.

Recommendation # 5.

Agree with Mr. McMutt.

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 ~~are~~ all have an educational background.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 4, 1989

SUBJECT: Sectional Summary of SB 140; An Act relating to big game hunting and to the regulation of big game and marine mammal guide-outfitting, transportation, and other commercial services for big game hunters, creating the Big Game Commercial Services Board; and providing for an effective date.

TO: Senator Bettye Fahrenkamp

FROM: George Utermohle *GU*
Legislative Counsel

The following is a sectional summary of SB 140 requested by Nancy Peterson of your staff.

Please note that a summary of a bill should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill repeals and reenacts AS 08.01.010(10) to provide that the Big Game Commercial Services Board is subject to and benefits from centralized licensing procedures under AS 08.01.

Section 2 of the bill repeals and reenacts AS 08.03.-010(c)(20) to provide that the Big Game Commercial Services Board terminates on June 30, 1993 under the "sunset" provisions of AS 08.03.

Section 3 of the bill adds new sections to AS 08.54.

ARTICLE 4. BIG GAME COMMERCIAL SERVICES BOARD.

Sec. 08.54.300 establishes the Big Game Commercial Services Board (Board) in the Department of Commerce and Economic Development. The Board consists of nine members. Three members of the Board are the commissioners (or their designee) of fish and game, natural resources, and public safety.

Two members of the board are either guide-outfitters or class-A guide-outfitters. One member of the Board is a transporter. One member of the Board is a member of the Board of Game who is chosen by the Board of Game. One member is a person who represents Native landholders. And one member of the Board is a public member. The guide-outfitter, transporter, and public members of the Board, as well as the representative of Native landholders, are appointed by the governor.

Sec. 08.54.310 sets out the duties and powers of the Board. The Board shall prepare, grade, and administer examinations for guide-outfitters licenses and for game management unit certifications; determine qualifications for class-A guide-outfitter, marine mammal guide-outfitter, and assistant guide-outfitter licenses; establish performance standards for providers of big game commercial services and regulate the activities of these providers; publish an annual list of big game commercial services providers; prohibit big game commercial services that are unsportsmanlike, unethical, unsafe, etc; revoke, suspend, or deny renewal of licenses and permits; authorize issuance of transporter licenses and commercial use permits; and meet at least twice each year.

The Board may provide for registration of hunting camps and facilities; establish a management system for guide-outfitters; and establish standards of supervision that a guide-outfitter must exercise over class-A guide-outfitters and assistant guide-outfitters.

Sec. 08.54.320 provides that the Board shall adopt regulations as required by this chapter and as necessary for administration of this chapter.

ARTICLE 5. LICENSING.

Sec. 08.54.350 sets out the minimum qualifications necessary for a guide-outfitter license. A guide-outfitter may contract to guide-outfit hunts for big game.

Sec. 08.54.360 sets out the minimum qualifications necessary for a marine mammal guide-outfitter license. A marine mammal guide-outfitter may contract to guide-outfit hunts for marine mammals.

Sec. 08.54.370 sets out the requirements for renewal of guide-outfitter and marine mammal guide-outfitter licenses. The department may not renew a license unless these requirements are satisfied.

Sec. 08.54.380 sets out the minimum qualifications necessary for a class-A guide-outfitter license. A class-A guide-outfitter may not contract to guide-outfit hunts. A class-A guide-outfitter must be under the supervision of a guide-outfitter but may take charge of a camp in the absence of a guide-outfitter.

Sec. 08.54.390 sets out the minimum qualifications necessary for an assistant guide-outfitter license. An assistant guide-outfitter may not contract to guide-outfit hunts and must be employed by a guide-outfitter and supervised by a guide-outfitter or class-A guide-outfitter while in the field on a hunt.

Sec. 08.54.400 sets out the requirements for obtaining and renewing a transporter license.

A transporter may provide transportation services to big game hunters. A transporter may also provide accommodations to big game hunters in the field in certain situations. A transporter must place a decal provided by the department on each piece of transportation equipment that the transporter uses in providing transportation services to big game hunters.

Sec. 08.54.410 provides for an appeal to the commissioner of commerce and economic development if an applicant for any class of guide-outfitter license or transporter license is denied a license by the Board. Specific criteria that an appellant must satisfy in order to file an appeal under this section are set out.

Sec. 08.54.420 provides that guide-outfitter, marine mammal guide-outfitter, and transporter licenses are renewed annually.

Sec. 08.54.430 provides for examinations for any class of guide-outfitter license that may be required under this chapter. The Board shall administer qualification examinations at least twice a year and at least once each two years shall administer the examinations at a location

outside of Anchorage. The examinations must be administered at least 90 days apart.

The Board shall regularly provide information on examinations and qualifications for all classes of guide-outfitter licenses to residents of rural areas.

Sec. 08.54.440 provides for renewal of all classes of guide-outfitter licenses after the license has lapsed. If any class of guide-outfitter license has lapsed for two consecutive years, the applicant must satisfy the requirements for initial issuance of the license.

A guide-outfitter does not have to repeat the three year apprenticeship as a class-A guide-outfitter or an assistance guide-outfitter unless the guide-outfitter license has been lapsed for three years or more.

Sec. 08.54.450 provides that the department shall set fees for examinations and licenses required under this chapter. A license fee for any class of guide-outfitter license is in addition to the fee paid for a hunting license.

Sec. 08.54.460 requires that a person, other than a licensed guide-outfitter, marine mammal guide-outfitter, or transporter, who provides other big game commercial services for compensation register with the Board, obtain a commercial use permit, and pay the commercial use permit fee. Examples of "other big game commercial services" are listed.

Sec. 08.54.470 requires guide-outfitters, marine mammal guide-outfitters, and transporters to obtain an annual commercial use permit and pay the commercial use permit fee.

The department, in consultation with the Board, shall set the amount of the commercial use permit fee.

A guide-outfitter, marine mammal guide-outfitter, or transporter shall pay the commercial use permit fee with the application for issuance or renewal of their license.

The commissioner of administration shall separately account for the fees received for commercial use permits. The legislature may use the money received for commercial use permits to make appropriations to the Department of Fish and Game and the Department of Public Safety for game management and enforcement of game laws.

ARTICLE 6. PENALTIES.

Sec. 08.54.500 sets out the procedures for discipline of a person who holds any class of guide-outfitter license.

The Board may hold a disciplinary hearing upon receiving a complaint about the guide-outfitter licensee. The Board shall hold a disciplinary hearing upon receiving three complaints from members of three separate hunting parties about a licensee's activities or a complaint about a licensee's conduct in a life-threatening situation or if the licensee is convicted or certain state or federal laws.

The Board may revoke, suspend, or deny renewal of any class of guide-outfitter license after a hearing if the Board finds that the licensee engaged in certain proscribed activities or violated certain state or federal laws.

The Board shall revoke any class of guide-outfitter license after a hearing if the Board finds that the licensee is not qualified for the license held, is incompetent, or has been convicted of certain state or federal laws during the preceding five years.

The Board shall immediately suspend any class of guide-outfitter license if a certified copy of a judgment of conviction of a licensee for certain state or federal crimes is filed with the Board.

Sec. 08.54.505 provides for the discipline of transporters and commercial use permittees.

The Board may hold a disciplinary hearing regarding the activities of a transporter or commercial use permittee upon receiving a complaint about the transporter or commercial use permittee. The Board shall hold a disciplinary hearing upon receiving three complaints from members of three separate hunting parties about the transporter's or permittee's activities or if the transporter or permittee is convicted of certain state or federal laws.

The Board may revoke, suspend, or deny renewal of transporter license or commercial use permit after a hearing if the Board finds that the licensee or permittee engaged in certain proscribed activities or violated certain state or federal laws.

The board shall revoke a transporter license or commercial use permit after a hearing if the Board finds that the licensee or permittee is not qualified for the license or permit or has been convicted of certain state or federal laws during the preceding five years.

The Board shall immediately suspend a transporter license or commercial use permit, if a certified copy of a judgment of conviction of licensee or permittee for certain state or federal crimes is filed with the Board.

Sec. 08.54.510 sets out general provisions applicable to disciplinary proceedings.

A person who is disciplined under AS 08.54.500 or 08.54.505 may not engage or be employed in the business of providing big game commercial services during a period of license or permit revocation or other disciplinary action. A person who is licensed under this chapter or who holds a commercial use permit may not employ a person whose license or permit under this chapter has been suspended or revoked.

A license or permit that has been revoked must be surrendered immediately to the department.

A certified copy of a judgement of conviction is conclusive evidence of the commission of the offense in a disciplinary proceeding of the Board, regardless of whether the conviction resulted from a plea of nolo contendere or the conviction is under appeal, unless the conviction is overturned on appeal.

The Board shall notify a complainant of the result of the Board's hearing within 30 days after the hearing. The Board must also notify a complainant of its reasons for not taking disciplinary action.

Sec. 08.54.520 sets out unlawful acts involving the provision of big game commercial services and establishes the penalties for those acts.

A person may be punished by a fine of not more than \$30,000 or imprisonment for not less than two months or more than one year or both for

- (1) failing to report violations of certain laws by a client or employee if the person holds a license or permit issued under this chapter;
- (2) committing, aiding in the commission of, or allowing a violation of certain fish and game laws if the person holds a license or permit issued under this chapter;
- (3) providing commercial big game services without holding a commercial use permit;
- (4) obstructing the lawful hunting activities of hunter who is not a client of the person, if the person holds a license or permit under this chapter;
- (5) failing to transmit big game conservation fees to the department;
- (6) providing guide-outfitting services except while employed and supervised by a guide-outfitter, if the person is a class-A guide-outfitter or assistant guide-outfitter.

A person may be punished by a fine of not more than \$30,000, or imprisonment for not less than two months or more than one year, or both for a first offense or by a fine of not more than \$50,000 or imprisonment for not more than three years for a second or subsequent offense for

- (1) providing guide-outfitter services without having an appropriate class of guide-outfitter license and hunting license in actual possession;
- (2) advertising or to representing to be a guide-outfitter without holding a guide-outfitter or marine mammal guide-outfitter license;
- (3) providing transportation services to a big game hunter without holding a transporter license;
- (4) contracting to lead a hunt, if the person is a class-A guide-outfitter or assistant guide-outfitter.

A person who provides big game commercial services while the person's license to provide those services is suspended or

revoked is punishable by a fine of not more than \$50,000 or by imprisonment for not more than three years.

A person who is convicted of an act set out in this section may also be subject to revocation of the person's license to provide guide-outfitter and transportation services for not more than five years and forfeiture of guns, boats, aircraft, and other equipment used in committing the act.

A court may not suspend imposition of sentence, if a person is convicted of an act set out in this section.

Sec. 08.54.530 provides that the Board may obtain an injunction to stop a person from violating certain provisions of this chapter.

Sec. 08.54.540 provides that a guide-outfitter is subject to discipline by the Board under AS 08.54.500 for violations of certain state and federal laws committed during the course of employment by a class-A guide-outfitter or assistant guide who is employed by the guide-outfitter.

ARTICLE 7. GENERAL PROVISIONS.

Sec. 08.54.550 provides for the collection of certain information and reports from guide-outfitters, marine mammal guides, and transporters by the department. This information is confidential except that aggregated information may be released in reports by the department.

Sec. 08.54.590 established definitions for "big game", "board", "department", "guide-outfit", "field", "transportation services", and "unethical activity".

Section 4 of the bill amends AS 16.05. by adding a new section.

Sec. 16.05.344 establishes a big game conservation fee to be paid by guide-outfitters, marine mammal guide-outfitters, and transporters for certain big game animals taken by their clients. The amount of the fee is equal to 25 percent of the big game tag paid by the client under AS 16.05.340. The fee shall be paid to the Department of Commerce and Economic Development at the time that the guide-outfitter, marine mammal guide-outfitter, or transporter apply for renewal of their licenses. If the person who owes the fee to the department does not review the person's license, then the

fee must be paid by the end of the calendar year in which the animal was taken.

The commissioner of administration shall separately account for big game conservation fees deposited in the general fund. The funds in the account may be appropriated by the legislature to fund the game management activities of the Department of Fish and Game and the game law enforcement activities of the Department of Public Safety.

Section 5 of the bill amends AS 16.05.407(a) by adding mountain goat to the list of species for which a nonresident hunter is required to utilize the services of a guide-outfitter and by making certain technical changes that are necessary to conform with the remainder of the bill.

Section 6 of the bill amends AS 16.05.407(d) by making a technical change that is necessary to conform to the repeal of AS 16.05.407(e).

Section 7 of the bill amends AS 16.05.407(a) by making a technical change that is necessary to conform with Section 3 of the bill.

Section 8 of the bill amends AS 16.05 by adding a new section.

Sec. 16.05.783 prohibits hunting clubs from supporting big game hunting activities or providing facilities or services for big game hunting.

"Hunting club" is defined.

Section 9 of the bill amends AS 39.50.200(b)(48) in order that the members of the Big Game Commercial Services Board are subject to the conflict of interest law.

Section 10 of the bill amends AS 41.23.420(d) by making a technical change that is necessary to conform to section 3 of the bill.

Section 11 of the bill amends AS 44.62.330(a)(35) to provide that the Big Game Commercial Services Board is subject to certain provisions of the Administrative Procedure Act.

Section 12 of the bill provides for the transition from the existing classes of guide licenses to the new classes of guide-outfitter licenses.

All classes of guide licenses that are in effect on the effective date of this bill continue to be valid for the period for which the licenses were originally issued.

Persons who currently hold master guide or registered guide licenses shall be issued guide-outfitter licenses. Persons who currently hold class-A assistant guide licenses shall be issued class-A guide-outfitter licenses. Persons who currently hold assistant guide licenses shall receive an assistant guide-outfitter license. The new licenses shall be issued to the current licensee at the time of the next license renewal following the effective date of this bill, if the person is in good standing at the time of issuance and pays the appropriate fees.

If the Department of Commerce and Economic Development can issue new licenses sooner than is required by this section, the department may do so without charge to the licensee.

Section 13 of this bill provides that natural persons who have provided big game outfitting services in the past may qualify for a guide-outfitter license.

In order to qualify for a guide-outfitter license under this section, the person must have registered a camp, cabin, or lodge under AS 16.05.787 during 1988, engaged in the business of big game outfitting in 1986, 1987, and 1988, passed the guide-outfitter examination, and satisfied other requirements.

A person who provides sufficient proof of past history as a big game outfitter may receive an interim outfitter license that is valid for a period not to exceed a year from the effective date of this bill.

A person who holds an interim outfitter license may provide transportation and other big game commercial services to hunters in the field, except that the person may not provide big game guiding services.

A person who holds an interim outfitter license must promptly report violations of certain laws committed by a client or employee of the person.

A person who holds an interim outfitter license must register base camps, cabins, and lodges that the person uses in providing big game outfitting services. The person must report the amount and kinds of big game taken by each hunter who uses the registered camp, cabin, or lodge.

A person who holds an interim outfitter license and who fails to report violations of certain laws by clients and employees is punishable by a fine of not more than \$2,000 or imprisonment for up to one year or both. Falsification of an affidavit of registration for a base camp, cabin, or lodge constitutes perjury.

The terms "base camp", "big game", "field", "guiding", and "outfitting" are defined.

Section 14 of the bill allows certain extraordinary appointments to fill the initial vacancies on the Big Game Commercial Services Board.

The guide-outfitter and class-A guide-outfitter seats on the board may initially be filled by persons who are either a master guide, registered guide, or a class-A assistant guide under current law or who registered a camp, cabin, or lodge under AS 16.05.787 during 1988 and engaged in the business of big game outfitting in 1986, 1987, and 1988.

The transporter seat on the board may initially be filled by persons who engaged in the business of providing transportation to big game hunters in 1986, 1987, and 1988.

Section 15 of the bill provides for the continuance of legal proceedings, hearings, investigations, and regulations during the transition from the current guide statutes (AS 08.54.010 - 08.54.240) to the guide-outfitter statutes contained in this bill.

Section 16 of the bill provides for the repeal of the current guide statutes (AS 08.54.010 - 08.54.240); the requirement for big game tag harvest reports and big game transporter reports (AS 16.05.370(b) and (c)); the requirement that nonresident hunters provide information on big game hunting services used in taking moose and caribou (AS 16.05.407(e)); provisions relating to the duty of big game transporters to report violations of certain state law (AS 16.05.786); and the requirement for registration of big game hunting base camps, cabins, and lodges (AS 16.05.787).

Senator Bettye Fahrenkamp
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February 4, 1989

Section 17 of the bill provides for the repeal of certain amendments to AS 08.54 and AS 16.05 that are scheduled to take effect on July 1, 1989.

Section 18 of the bill provides that the bill takes effect immediately.

GU:gc
W6/082

Alaska State Legislature

Senate Resources Committee

Senator Bettye Fahrenkamp, Chairman

Senator Jay Kerttula, Vice Chairman
Senator Dick Eliason
Senator Steve Frank
Senator Rick Halford
Senator Arliss Sturgulewski
Senator Fred Zharoff



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M E M O R A N D U M

TO: Committee Members, House Resources Committee

FROM: Committee Staff

RE: Committee Meeting, February 6

Date: February 4, 1989

On Monday, February 6, 1989, the Senate and House Resources Committee will meet jointly at 1:30 p.m. in the Butrovich Room to consider SB 139, Relating to the Extension of the Task Force on Guiding and Game, and SB 140, Relating to big game hunting and to the regulation of big game and marine mammal guide-outfitting, transportation, and other commercial services for big game hunters, guide-outfitting and other commercial services providers.

Heinrich Springer, who was chairman of the interim Task Force on Guiding and Game, will brief members on the recommendations and the legislation developed by the Task Force. That proposed legislation was introduced by both the House and Senate Resources Committees as House Bills 112 and 113, and Senate Bills 139 and 140.

HB 113 and SB 139 would extend the Interim Task Force on Guiding and Game to continue to work on the complex issue of developing a management system for allocating rights of access to big game among guides (or guide-outfitters under SB 140). It would create a licensing system for commercial services providers for big game hunters.

HB 112 and SB 140 would sunset the existing Guide Board and create an expanded regulatory board whose powers would include those previously charged to the Guide Board. It would allow the board to provide for registration of hunting camps and facilities, and would establish, in consultation with the Departments of Fish and Game or Natural Resources, a resource-based management system for allocating access to big game hunting opportunities among guide-outfitters. Further, the board has authority to establish the level of supervision that guide-outfitters provide to class-A guide-outfitters and assistant guide-outfitters under their employ.

Other provisions in the bill delineate the structure whereby all persons who directly or indirectly receive compensation from the commercial harvest of Alaska's big game would be required to obtain a permit or license. That big game resource belongs to all Alaskans, who value that resource to the extent that a "common use" of game provision is specified in Alaska's constitution.

Several provisions of SB 140 would allow for transition measures for those currently operating as "outfitters" to become licensed as "guide-outfitters".

Among fees established would be a commercial use permit fee, to be paid by all commercial services providers, and a big game conservation fee (head tax). Both fees would be separately accounted for and may be used by the legislature to fund game management and enforcement of game resources.

The bill would provide for disciplinary procedures and penalty provisions for commercial service providers to big game hunters. It adds "mountain goats" to the current species list, brown/grizzly bears and dall sheep, requiring a guide (non-residents and non-resident aliens). The bill defines "guide-outfit" and "field". The bill prohibits "hunting clubs", and provides for confidentiality of hunt records and reports.

A sectional analysis has been prepared by legal services and will explain more fully the provisions in HB 112 and SB 140.