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REPORT CONCLUSIONS

As discussed in the Background Information section, penalties involving an individual's guide license may be imposed by the courts prior to any sanction imposed by the Big Game Commercial Services Board (BGCSB). When this happens, the board's disciplinary action essentially ratifies the decision of the courts. Because of differing circumstances involved with each case, the penalties imposed by the courts for similar offenses may vary. Such differences, while within the latitude granted the courts in imposing sentences, often makes BGCSB appear inconsistent in the actions it takes against licensees. Aside from these apparent differing sanctions, we found that, with one exception (see inset below) BGCSB has been consistent in the penalties and sanctions it has imposed on various license holders.

Results of Review

Since December 1989, BGCSB has taken 17 licensing sanction actions. Of those actions, two have gone completely through the administrative hearing process. In both instances the board adopted the hearing officer decisions unanimously.

In five of the eleven actions where licenses were revoked or suspended, the penalty imposed was directed by the courts as a condition of sentencing. In two instances the courts made recommendations regarding license sanctions, but the board chose to impose a more severe penalty. In the four remaining cases, the courts made no recommendation, but the board either suspended or revoked the license.

ONE INSTANCE WHERE BGCSB ACTED INCONSISTENTLY

Two guides both pled no contest to charges of unlawful possession or transportation of game. In both their cases, the courts recommended probation for two years. For one guide, BGCSB followed the court's recommendation. No action was taken against his license but he was put on a two-year probation period.

In contrast, the other guide was prohibited from obtaining a license for three years (his license had expired after the violation) and was placed on probation for two years if he obtained a new license when again eligible.

We found no documented evidence why these two apparently similar situations were treated differently.

Stipulated agreements contained different sanctions

Two assistant guides were both convicted of failure to salvage game. In both cases the court required each individual be denied licensure for two years. Subsequent to this court action the board reached stipulated agreements with both individuals. The board suspended one guide's license for 3½ years as part of her stipulation. The other guide, by contrast, received a 4 year suspension as part of his stipulation agreement.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Division of Fish and Wildlife Protection (FWP) should emphasize and strictly enforce its policies prohibiting participation in the guiding industry.

In December 1984, then Department of Public Safety Commissioner Sundberg issued a policy prohibiting outside employment as guides for all departmental personnel. In a January 1985 memorandum he wrote in response to a FWP officer, he discussed the reasoning behind the policy. Commissioner Sundberg wrote the officer, who had asked that the policy be reconsidered, that

. . . I am convinced that a conflict of interest exists between guiding and enforcement. . . .

Also, the probability of risk to the officer's career and of embarrassing this agency is increased if we allow our personnel to become engaged in this activity. Public perception can be as harmful as an actual occurrence. A complaint, even if unfounded, could cost the Department thousands of dollars to investigate and create unfavorable publicity. . . .

Your request for reconsideration for outside employment as a guide is denied.

Supervisors did not support, and even contradicted, policy

Since 1984, the department's policy has not always been consistently enforced. In the past, supervisory management did not believe that guiding was necessarily a conflict with enforcement. Accordingly, there appears to have been little effort to enforce the policy, and it has been reported that supervisors actually encouraged officers to work in the guiding industry.

Although one officer in particular was widely known to work as an assistant guide, his evaluations did not reflect any concerns over this activity and the individual was even promoted from sergeant to lieutenant during this period.

The clearest reflection of this past attitude on the part of supervisory management can be found in the department's response to the 1988 ombudsman investigation (see discussion in inset on the next page). In response to the ombudsman's report involving an officer's guiding activities, the department stated that the individual had not violated departmental policy because he did not receive compensation. In defending this rather narrow perspective involving the interpretation of the policy, the department wrote that:

[Guiding] is not incompatible or in conflict with the proper discharge of official duties. We have assigned other members of this division to assistant guiding activities in a guide's camp to increase their knowledge of, and familiarity with, guiding operations. It actually makes them better in their enforcement work. . . .

In the case at hand [the department does not] think that there has been a violation so [we] have not passed the complaint on to any other authority. Furthermore we have gone beyond what I think is strictly required and prohibited the activity in question just to avoid the appearance of conflict.

FWP OFFICER CONTINUED TO GUIDE DESPITE DENIAL

The officer who was denied continued outside employment as a guide by Commissioner Sundberg, continued his guiding activities. According to records filed with the Division of Occupational Licensing, the officer guided during 1985, 1986, and 1987. His file included recommendations from hunters he accompanied in the field and evidence that he intended to apply for, and take, the guide licensing examination to be certified as a guide.

1988 Ombudsman Investigation

In September 1988, the Ombudsman investigated a complaint alleging that the officer involved had violated both departmental policy and Executive Branch Ethics Act prohibitions against outside employment that present a conflict of interest with official duties. In a December 1988 finding the ombudsman made a determination that the complaints lodged against the officer were partially justified.

In our view, these statements are not consistent with the intent of the original policy. Such a position by a middle-management DPS official is indicative of a past lax attitude by departmental supervisors regarding the policy. By failing to be sure both the spirit as well as the letter of the policy was enforced, the department allowed its investigatory methods and approaches to be called into question. Since its response to the ombudsman in December 1988, the department is beginning to recognize these past practices and attitudes as a problem.

Department recognizes importance of policy

By November 1990, DPS was taking compliance of the policy much more seriously. The department emphatically reprimanded an officer regarding his unpaid guiding activities. While acknowledging that unpaid assistant guiding may comply with the letter of the policy, the department clearly felt that the activities violated its spirit.

Additionally, DPS acknowledged that the requirements of the Executive Branch Ethics Act of 1986 made it clear that no employee may work in a situation that presents a conflict of interest, irrespective of whether or not they are paid for the work. The department acknowledged that the guiding activities caused the very accusations and allegations that the

policy was designed to avoid and was a source of embarrassment to DPS.

The tone and emphasis of this position represented a different attitude, that is consistent with the intent and philosophy behind the department's original policy. The department should reevaluate the current policy within the context of the Executive Branch Ethics Act, and clearly communicate both the letter and spirit of the prohibition on guiding to all affected personnel.

Recommendation No. 2

DPS should conduct an internal review regarding the basis and procedures involved in developing undercover law enforcement actions on guiding and game violations.

According to the director of FWP, most game law violations are detected and prosecuted through the use of undercover police operations. Our review of disciplinary actions taken against guides by the Big Game Commercial Services Board, tend to confirm this observation. Seven of the ten disciplinary actions reviewed used undercover operations to make the original arrest. The director acknowledged that there is a great deal of discretion allowed over who to "target" for an undercover operation. The officer most prominently involved working as an assistant guide was in the position to influence and use his discretion over who would and would not be subject to an undercover operation.

At a minimum, these circumstances give the appearance that this individual could suppress information regarding the activities of licensed guides with which he was associated, while at the same time making decisions to target others who were competitors of his guide associates. We believe it is important that FWP satisfy the guiding public that undercover operations are appropriately directed and are carried out on the basis of sufficient and reliable criteria.

COMPENSATION A KEY PART OF THE STATUTE'S DEFINITION OF GUIDING

It late 1988 it was DPS' position that the officer involved in allegations of guiding did not violate departmental policy because he did not receive compensation. If the officer did not receive compensation, it appears that he may have misled the Division of Occupational Licensing.

On application forms filed with that agency, the officer attested that he was indeed acting as an assistant guide, and submitted written documentation that he guided hunters under the supervision of a licensed guide. The officer also testified in court that he was not paid as an assistant guide.

AS 08.54.240 (3) defines guiding as:

accompanying or directing a hunter in the field, personally or through an assistant, for compensation, while the hunter or the person accompanying or directing the hunter spots, stalks, pursues, tracks, kills, or attempts to kill big game. . .

Under this definition, if the officer did not receive compensation, then it appears that representations made to the Division of Occupational Licensing were inaccurate.

As discussed in the Auditor's Comment section of this report, BGCSB should scrutinize any assistant guiding experience claimed by this individual, in the context of the statutory definition, if in the future he should apply for licensure as a guide.

AUDITOR'S COMMENTS

Former Commissioner Sundberg warned in 1985 about the dangers of allowing Department of Public Safety personnel to participate in the guiding industry. As cited in Recommendation No. 1, his concerns over embarrassment to the agency, negative public perceptions, and the cost of investigating and dealing with even unfounded complaints all proved to be prophetic.

BGCSB should scrutinize any future guide application

As observed by the Ombudsman, (see inset on the opposite page) the real possible incentive or compensation for the FWP officer-assistant guide, is in the future at the time of his retirement or separation from an FWP.

In our view, the Big Game Commercial Services Board (BGCSB), may offer the best opportunity to provide some equitable, objective resolution of the situation. The board can do this by carefully scrutinizing any assistant guiding experience accumulated while an individual served as an FWP officer.

As discussed in the inset on page 15, accompanying individuals on a guided hunt is not necessarily guiding. The statute requires that an individual receive compensation for guiding a hunter in order for the experience to be relevant to the licensing process. An FWP officer has submitted an application for licensure as a guide, (an application that subsequently has been withdrawn) with documentation substantiating his assistant guiding activities. However, if he was unpaid, as he testified to in court, BGCSB should carefully consider whether or not this experience meets the statutory definition of guiding.

Such scrutiny would nullify any advantage or "indirect" compensation that the FWP officer gained by acting as an assistant guide. Leaving aside the legal discussion of whether uncompensated assistant guiding is qualifying experience in the strictest sense of the law, such scrutiny and consideration would enhance the integrity of the regulatory process.

BGCSB relies in large part on the efforts of FWP to effectively meet its statutory mandate. Any flaw in the integrity of that enforcement effort, either real or perceived, reflects to some degree on the board. By carefully scrutinizing the circumstances and documentation supporting any former FWP officer's application for a guiding license, the board can enhance the integrity of the investigatory efforts of both FWP and itself.

OMBUDSMAN DISCUSSES POSSIBILITY OF FUTURE BENEFIT

In response to the complainant who initiated his agency's 1988 investigation, the Ombudsman replied that

You allege that the real conflict in [the FWP officer's] work as an assistant guide will not be realized until he retires. You assert upon retirement, [the officer] can and will reactivate his assistant guide time (allegedly acquired improperly while he was employed by the division as a fish and wildlife protection officer) and apply it toward his application for a master guide license.

It is altogether possible that this may happen. It is also possible that it will never happen. We can only know for certain what [the officer] will do when he retires when that time comes. I cannot and will not make a guess about [the officer's] future behavior. I cannot hold a case open for years, waiting for a potential conflict of interest to emerge in the form of [the officer's] application for a master guide license.

If, and when, [the officer] does apply for the master guide license, the use of his assistant guide time will be a factual issue. With your keen interest in [the officer's] activities, it is reasonable to expect you to submit testimony to the [BGCSB] if that event occurs in the future. Today, it is a speculative issue....

With the transmission of this letter, I am closing the complaint. You are free to file a new complaint if and when [the officer] reactivates his assistant guide time in an application for a master guide license. You may also file a written complaint under the auspices of the Executive Ethics Act if you wish to press that issue further.

The Ombudsman's response suggests that the only avenue to resolve the complainant's issues lies in how the licensing board will view the "experience" of the FWP officer, if and when he attempts to use it in applying for his guide license.

ISSUES NEEDING FURTHER STUDY

Department of Public Safety (DPS), Fish and Wildlife Protection (FWP) officers have testified in court that decisions regarding investigations and development of possible undercover operations often have been developed from "tips" received through a program known as the Wildlife Safeguard Program.

The Wildlife Safeguard Program encourages the public to phone a toll-free "800" number and report any observations or information they may have about possible game law violations. If these tips are used in the successful prosecution of an individual, then rewards are paid to the hotline informants. The program is run by a private nonprofit organization, and does not receive any direct state funding. DPS does provide support services to the organization such as answering the hotline, selling fund-raising posters, and arranging for the organization to raffle off a hunting permit to raise funds.

As discussed in Recommendation No. 2 in the Findings and Recommendations section, we suggest that DPS reevaluate the criteria it uses to develop undercover operations. In addition, we suggest that the Legislative Budget and Audit Committee may want to consider reviewing the information received over the Wildlife Safeguard hotline and determine if it is being used in a consistent, objective, and unbiased manner.

The conflict of interest discussed at length in this report may be reflected not only in what cases and reported violators that FWP have elected to pursue, but also in the tips and information that may have been ignored. If the agency has received numerous complaints regarding possible violations by a professional guide, the fact that no investigatory action was taken may be significant.

Controls over reward payments may also be possible area of concern

Although state funds are not being directly used, FWP protection officers have, in the past, been involved in passing rewards to informants. Reportedly the rewards are paid in cash, and have been as much as \$2,000. Payouts of these amounts in cash, with the involvement of state employees, provides another possible area or issue that may warrant further study or review.

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

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LEGISLATIVE AUDIT

December 5, 1991

Mr. Randy S. Welker
Legislative Auditor
Alaska State Legislature
P. O. Box W
Juneau, AK 99811

Dear Mr. Welker:

Re: Audit No. 08-4402-91

I am writing in response to your letter and preliminary audit report of October 28, 1991. Thank you for the opportunity to review and comment on the preliminary report, and for your courtesy in allowing us an extension of time. My comments are as follows:

Recommendation No. 1: "The Division of Fish and Wildlife Protection (FWP) should emphasize and strictly enforce its policies prohibiting participation in the guiding industry."

I agree, and we are doing just that. Under the Executive Branch Ethics Act, all requests for outside employment (paid or unpaid) must be submitted to and approved by me. I assure you that I will not approve any requests for involvement in the guiding industry while I am Commissioner. F&WP personnel are well aware of this.

Recommendation No. 2: "DPS should conduct an internal review regarding the basis and procedures involved in developing undercover law enforcement actions on guiding and game violations."

I agree, and we are doing this. The FWP Director and his staff are drafting a policy statement for my review. I anticipate that a final policy will be in place by early next year. For your information, since being appointed Commissioner I have reestablished an Office of Planning and Research within the Department. My staff are reviewing all existing DPS policies and procedures and suggesting revisions for my consideration.

Mr. Randy S. Welker
December 5, 1991
Page 2

On page 15 of your report, in the first paragraph under Recommendation No. 2, I suggest the following changes to the present language: "According to the director of FWP, [most game law violations] most serious guiding violations are detected and prosecuted through the use of undercover police operations." I believe this is a more accurate summary of Col. Jordan's comments, in the context in which they were made. Also: "At one time, the officer most prominently involved working as an assistant guide..." This additional language would make it clear that the situation being described is not the current one, but refers to the past.

Other comments: On page 15 of your preliminary report there is a colored block of text which discusses your office's interpretation of the statutory definition of "guiding" as it relates to licensure requirements. I asked the Alaska Department of Law to review the relevant language, and found that they do not agree with your legal interpretation. In light of this, I do not agree with your conclusion that "if the officer did not receive compensation, then it appears that representations made to the Division of Occupational Licensing were inaccurate." I have attached a copy of the memorandum which we received from the Department of Law on this issue.

On page 19 of your report, you suggest that the Legislative Budget and Audit Committee may want to consider reviewing the information received over the Wildlife Safeguard hotline. We certainly have no objection to such a review, and we are confident that information received over the hotline is being handled appropriately, with no bias or special interests involved.

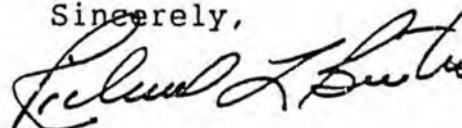
Regarding your comments on controls over reward payments, we would welcome suggestions about the best way to get rewards to informants, while still protecting confidentiality. As you undoubtedly know, no rewards are paid out unless authorized by the Safeguard Boards, which are made up entirely of volunteer private citizens. Contrary to the impression left by your report, the majority of rewards are paid by check. If the informant insists upon anonymity, however, obviously a check cannot be issued. On those occasions when cash must be used, Wildlife Safeguard considers using commissioned officers to deliver it as the safest procedure. The one \$2,000 payment to which you refer was delivered personally to the informant

Mr. Randy S. Welker
December 5, 1991
Page 3

by the Director of FWP. If you can think of a safer or more reliable way to handle these payouts to sources who wish to remain anonymous, please let us know.

Thanks again for the opportunity to comment on your preliminary report. I would be glad to discuss my responses with you further, if you would like.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard L. Burton".

Richard L. Burton
Commissioner

Attachment

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

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OFFICE OF THE COMMISSIONER

November 21, 1991

RECEIVED
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Mr. Randy Welker
Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box W
Juneau, AK 99811

LEGISLATIVE AUDIT

Dear Mr. Welker:

Thank you for the opportunity to review the preliminary audit report regarding consistency of disciplinary penalties of the Big Game Commercial Services Board.

The department concurs with Recommendation No. 1, The Division of Fish and Wildlife Protection (FWP) should emphasize and strictly enforce its policies prohibiting participation in the guiding industry. We believe a state policy should go a step further and include Division of Occupational Licensing staff involved in licensing and investigations of guide-outfitters, as well as Department of Fish and Game employees/biologists who are involved in game management/harvest decisions. During the time period of Commissioner Sundberg's policy on prohibiting outside employment as a guide for FWP employees, the Division of Occupational Licensing requested its employees who were, at the time, licensed as assistant guides, but not employed or associated with any guides, to voluntarily not renew their assistant licenses. This request was made on the basis of possible public perception of impropriety rather than actual complaints. Most recently, it has been brought to our attention that the activities of the Department of Fish and Game employee(s) who are licensed guides and conducting guiding activities may be causing some concern within the guiding industry and public. We believe that employees should be allowed to place their licenses in a suspended status for reactivation at the same level when they leave employment in the job which creates the conflict.

Mr. Randy Welker

-2-

November 21, 1991

With regard to Recommendation No 2, DPS should conduct an internal review regarding the basis and procedures involved in developing undercover law enforcement actions on guiding and game violations. the department agrees that there should be a system in place which ensures some degree of uniformity and consistency in developing undercover operations.

Again, thank you for this opportunity to comment.

Sincerely,



Glenn A. Olds
Commissioner

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Officers' conduct panned

Game guides, troopers too cozy, audit says

By CRAIG MEDRED
Daily News Outdoors editor

Cozy relationships between Alaska big game guides and some Fish and Wildlife Protection troopers have tainted the agency charged with enforcing laws against poaching, according to a study conducted by the Division of Legislative Audit.

To preserve the integrity of wildlife troopers, investigators said, Fish and Wildlife Protection must "emphasize and strictly enforce its policies prohibiting participation in the guiding industry."

Public Safety Commissioner Richard Burton said Friday that Fish and Wildlife will do exactly that.

"I think the issue is done and over with," he said. "I don't know why you guys are even bringing it up again. I'm getting tired of hearing about this. It's something I inherited. We've done what can be done."

Wildlife troopers involved in questionable associations with guides in the past, however, remain on the job, and the fraternization among guides and some troopers continues.

Burton said he would strictly enforce rules barring fish and wildlife troopers from spending annual leave working as big-game guides. But he refused to comment on whether it was proper for troopers to fraternize with guides or stay in their camps.

The audit report, completed last September but not released until this month, also notes Fish and Wildlife's weak efforts to enforce anti-guiding policies in the past. The agency has had a policy against guiding since 1984, but it has been inconsistently enforced, according to the report, which also said the agency should:

- Develop criteria on how it decides who it will investigate.
- Examine its Wildlife Safeguard pay-



Burton

GUIDES: Relationships challenged

Continued from Page A-1

ment program, which pays informants in a way that's similar to the local Crime Stoppers program.

The Division of Legislative Audit cannot, however, require changes.

"In the past, supervisory management did not believe that guiding was necessarily a conflict with enforcement. Accordingly, there appears to have been little effort to enforce the policy, and it has been reported that supervisors actually encouraged officers to work in the guiding industry," the report said.

"Although one officer was widely known to work as an assistant guide, his evaluations did not reflect any concerns over this activity and the individual was even promoted from sergeant to lieutenant during this period."

The officer is not named in the report, but Burton confirmed that he is Lt. Bob Boutang, now the detachment commander in Fairbanks.

Boutang at one time headed statewide investigations for Fish and Wildlife Protection. He spent his vacation time working as an assistant guide for Marlin and Ed Grasser of Palmer.

Marlin is a longtime Alaska guide. Ed, his son, has been the lobbyist for the Alaska Professional Hunters Association, an organization of big-game guides.

As head of statewide investigations, Boutang was in a position to determine which guides were investigated.

Neither Boutang nor the Grassers returned phone calls.

"The director of Fish and

Wildlife) acknowledges that there is a great deal of discretion allowed over who to 'target' for an undercover operation," according to the audit report.

"At a minimum, these circumstances give the appearance that this individual could suppress information regarding the activities of licensed guides with which he was associated while at the same time making decisions to target others who were competitors of his guides associates."

That appearance has only become stronger in recent days.

After Boutang's replacement as director of statewide investigations in 1989, Marlin Grasser became the target of a directed undercover investigation.

Earlier this month the 63-year-old guide was judged guilty of many hunting violations — including wanton waste of a caribou, taking wildlife during a closed season and waste of a fur-bearing animal.

Fish and Wildlife trooper Roger Aulabaugh of Kodiak said investigators there decided to go after Grasser when they learned the guide, who had won a drawing for a Kodiak brown bear permit, planned to go hunting on Kodiak with non-resident hunter John Boatman of Kalama, Wash., in the fall of 1990.

Troopers suspected that Grasser planned to let Boatman shoot a bear, which Grasser would then illegally claim as his own. A guide can collect \$5,000 to \$10,000 for leading such a hunt.

The two men never found a bear, Aulabaugh said, but they did plenty of illegal hunting as troopers watched

from a camp nearby. Aulabaugh said the investigation techniques were not particularly sophisticated. Troopers introduced themselves to Boatman and Grasser as hunters camped down the beach. Then the troopers watched the two men commit wildlife crimes one after another.

"They had no idea we were with the state," Aulabaugh said, "and, more important, they just didn't seem to care."

Among the crimes troopers witnessed was the shooting of a caribou left to rot. Grasser and Boatman took only the head and cape, Aulabaugh said.

For that, a Kodiak judge eventually sentenced them to seven days in jail, ordered them to pay fines of about \$4,000 each, suspended their hunting privileges and put them on probation.

Aulabaugh said that in 15 years on Kodiak Island he had seen few cases so blatant as this. It left him with the impression Grasser had little respect for fish and game laws.

"This was probably not the first time (he did this)," Aulabaugh said.

Boatman was a one-time employee in Grasser's guide camp — the same kind of role filled by Boutang from 1984 to 1987. The Alaska State Troopers once investigated that relationship. Burton would not say what they found.

"There's never been anything to support firing him (Boutang)," he added.

He refused to release the Boutang investigation report because it might subject the department to a lawsuit from Boutang.

TIMELINE

- 1983: Alaska big game Mel Gill, recommends Fish and Wildlife Protection Trooper Bob Boutang be licensed by the State Division of Commerce and Economic Development as an assistant guide.
- 1984: Boutang begins working as an assistant guide for registered guide Marlin Grasser at Grasser's Brooks Range sheep hunting camp.
- 1986: As head of Fish and Wildlife Protection's Office of Statewide Investigations, Boutang writes an article for the Alaska Professional Hunters magazine praising the state's big game guides as promoters of "an outstanding service to clientele from all over the world."
- 1987: Boutang applies for a registered guide license. Edward Grasser, son of Marlin and a guide in the family business, certifies that Boutang has served a three-year apprenticeship with the Grassers. The state licensing office awards Boutang the trooper-to-licensing form of Boutang the guide, so the former can certify that the latter has committed no crimes.
- 1988: A two-part series in the Daily News details relationships between the state's big game guides and Fish and Wildlife troopers. Boutang, under oath in court, is asked whether he ever intended to become a big game guide. "I've got an assistant guide license," he answers, "but I'm not really working for any kind of a guide license. . . . I don't have any future intention on going to be a guide."
- 1989: After Daily News stories detail relationships between the state's big game guides and Fish and Wildlife troopers, the Alaska State Troopers launch an investigation of Boutang's association with guides. The report is never made public. Boutang is transferred from the post at the head of statewide investigations to the head of interior development in Fairbanks.
- 1990: The state Department of Public Safety, which had allowed fish and wildlife troopers to guide so long as they do not receive payment, decides that troopers shouldn't guide under any circumstances.
- 1991: The Division of Legislative Budget and Audit begins investigating Fish and Wildlife Protection and the state guide board. A report completed by fall is withheld from the public at the request of the Department of Public Safety.
- 1992: The report is released. Commissioner of Public Safety Richard Burton says at the problems noted by investigators have been resolved, but he refuses to release the troopers' report on Boutang. Boutang remains at his post in Fairbanks. A legislative budget spokesman says two more investigations are planned.

he didn't think any of the problems noted in Fish and Wildlife have harmed the agency's public image. And he criticized one-time outfitter Bruno Zedler of Anchorage for keeping the issue in the public eye for years.

Zedler was a small-time outfitter targeted for an undercover investigation because some guides didn't like him. He was eventually convicted of guiding without a license for accompanying a

The case is on appeal.

Zedler said Friday he feels vindicated by the audit. Fish and Wildlife has many upright and honest troopers, he said, but the agency has been compromised by a few.

"They lie," he said. "They're a pack of liars."

□ Daily News reporter Ralph Thomas contributed to this story.

AND, DAILY NEWS

1-25-92

1-25-92 DAILY NEWS

Fish, wildlife protection lacking, report says

ASSOCIATED PRESS

JUNEAU — There are gaping holes in Alaska's effort to protect its fish and wildlife — holes that are costing the state millions of dollars a year in lost taxes, a state report says.

Lax enforcement of hunting and fishing laws also is depriving Alaskans of important fish and game species, some of which could be endangered or wiped out if changes are not made, the report says.

Commissioner Richard Burton of the state Public Safety Department commissioned the report from Don Roberts, a retired fish and wildlife protection officer.

Roberts' report says the department's staff is hard-working and tries to do as much as it can, but it isn't enough.

"I found some very dedicated, frustrated people who want to do a really good job with the resource and are hamstrung by a lack of money and equipment," he said in a telephone interview Wednesday from his winter home in Tucson, Ariz.

Burton said he was not surprised by Roberts' findings.

"For some reason, over the past 10 years when we were spending billions of dollars on other things, public safety got ignored," Burton said.

The department's Fish and Wildlife Protection Division has a \$14 million budget this year. Gov. Walter J. Hickel has proposed a \$14.5 million budget for fiscal 1993.

Roberts said there are enforcement problems with many of the state's wildlife harvests, from the red salmon set-net fishery in Cook Inlet to brown bear hunting on the Alaska Peninsula.

The worst problem, he said, is with the crab and bottomfish industries in Southwest and Western Alaska, where fish and wildlife protection officers are overwhelmed.

The Bering Sea crab fishery,

for example, is "seriously neglected," Roberts said. There is only one enforcement vessel, backed up by a lone state trooper in Dutch Harbor, to handle 500,000 square miles of ocean.

"These absurd odds are a joke, literally, among the crab fleet," the report says. "Obviously, there is no way humanly possible to maintain an acceptable level of lawful compliance among crabbers."

Other examples of problem areas identified in Roberts' report are:

- Recreational salmon fishing on the west side of the Kenai Peninsula, a popular area for

summer visitors, is largely ignored because the area's enforcement officers are working on the commercial salmon drift-net fishery.

- The Susitna River Valley, where there is no effective enforcement program to watch over about 30 fishing lodges, and where over-fishing and illegal shipping also may be taking place.

- Spring brown bear seasons on the Alaska Peninsula and elsewhere, which get little enforcement because officers assigned to those regions are at sea, working spring herring and crab fisheries.



Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 7, 1992

To: Members, Senate State Affairs

From: Senator Pat Rodey *Pat*

Subj: SB-375, Prohibiting Fish & Wildlife Officers
from holding big game guide-licenses

This measure has come about as a result of the Legislative Budget & Audit report concerning the Departments of Commerce, Public Safety, and Big Game Commercial Services Board (Audit Control Number: 08-44-2-91) released recently by the Committee. Highlights of the report are in your bill file as is a complete copy of the audit report.

The audit questioned whether it was appropriate for Fish & Wildlife Protection personnel to also hold a guide license.

The audit finds there is need for strict enforcement of the policy prohibiting Fish & Wildlife Protection employees from participating in the guiding industry (Recommendation #1). As with public officials, even the appearance of a conflict-of-interest is likely to erode public confidence.

Passage of SB-375, will clearly define and permit enforcement of state policy while serving and protecting the best interests of all concerned. The measure has the support of the Ombudsman (support letter attached). Fish & Wildlife Protection personnel have a difficult task as it is without the added burden of having their integrity called into question.

Audit Report

**DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
DEPARTMENT OF PUBLIC SAFETY
BIG GAME COMMERCIAL
SERVICES BOARD, CONSISTENCY OF
DISCIPLINARY PENALTIES**

October 1, 1991



Audit Control Number:

08-4402-92

Division of Legislative Audit

P.O. Box W, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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October 8, 1991

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DEPARTMENT OF PUBLIC SAFETY
BIG GAME COMMERCIAL SERVICES BOARD
CONSISTENCY OF DISCIPLINARY PENALTIES

October 1, 1991

08-4402-92

This report reviews the disciplinary actions taken by the Big Game Commercial Services Board since its first meeting in December 1989. The board was created as part of a comprehensive 1989 revision of the statutes related to the licensing of professional hunting guides. The board's primary disciplinary sanction is the authority to suspend or revoke a guide's license.

The audit was conducted in accordance with generally accepted government auditing standards. In this report we discuss our analysis and review of the board's consistency in assessing licensing sanctions. We also discuss the large role that the Division of Fish and Wildlife Protection within the Department of Public Safety plays in the investigations and hearings involved in the disciplinary process.

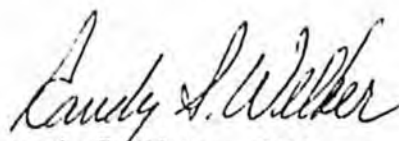

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

In accordance with Title 24 of the Alaska Statutes, and a special request of the Legislative Budget and Audit Committee, we conducted an audit of the Big Game Commercial Services Board (BGCSB). Our audit had two objectives:

1. Determine if the board has been consistent in applying sanctions such as license suspensions and revocations for similar violations of professional standards as set out in statute and regulations.
2. Review the role and impact that the Division of Fish and Wildlife Protection within the Department of Public Safety has had on the license disciplinary process, and assess if that agency has acted consistently and objectively.

Scope and Methodology

The period covered by our audit review involves disciplinary actions taken by BGCSB since its inception in December 1989. Many of the licensing sanctions taken by the board involved cases and allegations that happened as long ago as 1988.

In order to evaluate the consistency of the board's licensing sanctions, we reviewed and considered the following documents:

1. Minutes of all BGCSB meetings, with particular emphasis on the discussion and voting involving proposed hearing officer decisions regarding sanctions against licensees.
2. All hearing officer rulings and proposed decisions submitted to BGCSB.
3. Investigative files at the Division of Occupation Licensing related to the cases that resulted in license sanctions.
4. Transcripts of court testimony of selected disciplinary cases that were adjudicated prior to being considered by BGCSB.
5. Documents provided by individuals disciplined by BGCSB related to their cases.
6. Ombudsman investigation reports and correspondence with the Department of Public Safety and the Department of Commerce and Economic Development.
7. Guide licensing files and files of applicants for guide licenses maintained by the Division of Occupational Licensing.

We also interviewed individuals involved in the disciplinary process including the following:

1. Individual guides or assistant guides that had their licenses suspended or revoked.
2. Division of Occupational Licensing officials and personnel responsible for assisting BGCSB in administering its responsibilities.
3. The director of the Division of Fish and Wildlife Protection, in addition to other officials in the Department of Public Safety.

ORGANIZATION AND FUNCTION

In 1989 the Legislature extensively revised the statutes (Chapter 37, SLA 1989) related to the licensing and regulation of guiding, outfitting, transportation, and other commercial services provided to big game hunters. These extensive revisions were brought on by conflict and confusion within the guiding industry. Guides complained that individuals, calling themselves either "outfitters" or "transporters" were providing unregulated guiding services. Outfitters and transporters claimed that they were not guiding, that their activities were legal, and that the guides were acting to protect their exclusivity and control rather than out of concern for providing better regulation of the industry.

The legislature acted to restore stability and provide comprehensive regulation of all of the professions. The legislature broadened the scope of the pertinent statutes to provide regulatory oversight of both outfitters and transporters in addition to guides. Part of this extensive restructuring was the establishment of the Big Game Commercial Services Board (BGCSB), which replaced its forerunner, the Guide Licensing and Control Board and its more circumscribed regulatory scope.

Big Game Commercial Services Board

The new nine member BGCSB is made up of two licensed guide-outfitters (the new, broader classification for guides and outfitters set out under the revised statutes), two licensed transporters, a commercial use permit holder, a representative from the Board of Game, a representative of Native landholders, and two members from the general public.

The board is responsible for:

1. Administering the licensing examinations for the various licenses it issues.
2. Establishing qualifications necessary for the various licenses it issues.
3. Establishing performance standards for providers of big game commercial services, and regulating the activities of those providers.
4. Compiling and publishing an annual register of service providers in good standing.
5. Prohibiting big game commercial service activities that are "unsportsmanlike, unethical, unsafe, against principles of game conservation, degrading to a profession [regulated by the board], or that adversely affect natural resources."
6. Revoking, suspending, or denying renewal of various licenses or permits it issues, following the requirements of due process.
7. Issuing transporter licenses.

8. Issuing commercial use permits.
9. Registering base camps and facilities used by individuals regulated by the board.

The statutes require BGCSB to meet at least twice annually, specifying that one of the meetings must be in Anchorage and the other "in another municipality."

Division of Occupational Licensing

The Division of Occupational Licensing within the Department of Commerce and Economic Development (DCED) provides administrative assistance and coordination to 21 boards and commissions. These boards and commissions are responsible for establishing qualifications for entry into various professions, proposing legislative amendments, adopting regulations, developing examinations, and disciplining licensed professionals for incompetent, unethical, or illegal behavior.

The division also has a staff of investigators who are responsible for investigating complaints and allegations of license holders violating the standards, ethics, or prohibitions established for the various professions licensed by the State.

DCED employs hearing officers who are responsible for conducting the formal hearings required by the Administrative Procedures Act. These hearings, necessary to the provision of due process, are a central aspect of the license sanctioning process.

Fish and Wildlife Protection

The Division of Fish and Wildlife Protection (FWP) is within the Department of Public Safety. The division is responsible for enforcing various statutes and regulations adopted to protect fish and game resources. FWP officers patrol the State by road, air, and waterway. They have the authority to issue citations, make arrests, seize fish and game taken illegally, and seize equipment used to commit violations.

BACKGROUND INFORMATION

This section discusses three aspects of guiding and licensing which relate to the issues discussed in other sections of this report. The three aspects discussed are: (1) the statutory requirements to be licensed as a guide, (2) the role that the Fish and Wildlife Protection (FWP) Division plays in investigating and disciplining guides, and (3) the investigation and hearing process followed by the Big Game Commercial Services Board (BGCSB) in disciplining guides.

GUIDE LICENSING REQUIREMENTS

To be a guide, an individual must work as an assistant

Under AS 08.54.350(a) an individual must meet 12 statutory requirements in order to receive a guide license. In addition to passing the qualification examinations prepared and administered by the board, two other key requirements are that:

1. the individual has been licensed and active as an assistant guide in three separate years; and
2. the individual has obtained written recommendations from six big game hunters, two for each year of the three most recent years that the individual was active as an assistant guide.

To be an assistant guide, the requirements are less numerous and demanding. Essentially, an applicant must be at least 18 years old, pass a required examination, have been a hunter two of the last five years, be in sound physical condition, and demonstrate a practical knowledge of first aid.

LAW ENFORCEMENT AND COURTS AFFECT GUIDE PENALTIES

There is a close relationship between law enforcement and the disciplinary process of guiding licensees. Disciplinary actions against licensees have historically involved either violation of game laws or guiding without a license. Up until the early 1980s this close relationship was administratively recognized when the Department of Public Safety (DPS) was responsible for administering the guide licensing system.

This relationship is also reflected in the guide licensing statutes. The statutes related to penalties for licensees specifically list four game violations that can result in license revocation: (1) waste of a wild food animal, (2) hunting on the same day airborne, (3) hunting during a closed hunting season, and (4) hunting in areas closed by state or federal regulation.

Because of this close relationship, the licensing board, when taking disciplinary action against license holders, is often in a situation of essentially ratifying a decision made by the courts. The courts often direct that action be taken against an individual's license as part of sentencing. Both BGCSB and its predecessor, the Guide Licensing and Control Board, have disciplined licensees following their arrest and conviction (although conviction is not always required, see inset at right) for game offenses.

FWP investigations affect licensees

The relationship with law enforcement also results in DPS officers (Fish and Wildlife Protection officers, and to a lesser extent the Alaska State Troopers) playing a central part in the investigations and hearings involved in the licensing process. Likewise, the efforts of federal game officers, are also relied on in assessing penalties against licensees.

Investigators at the Division of Occupational Licensing still do play a role in developing accusations involving licensees. However, most of the sanctions taken against licensees are primarily from the arrests made by FWP and Federal game officers. As a result, the manner in which these organizations conduct investigations and develop cases has a direct impact on how effective BGCSB is, and how objective it is perceived to be, in policing its licensees.

ADMINISTRATIVE PROCEDURES ACT

The procedures followed by the Division of Occupational Licensing and BGCSB in disciplining guides are illustrated by the Investigation and Administrative Hearing flowcharts on opposite and following pages respectively. Investigation (typically started by receipt of a notice of judgment, if a guide has been convicted in court) results in an administrative hearing or case closure. Administrative hearing begins with an accusation drafted by the Division of Occupational Licensing and reviewed by the attorney general.

GUIDES COMPLAIN OF "DOUBLE JEOPARDY"

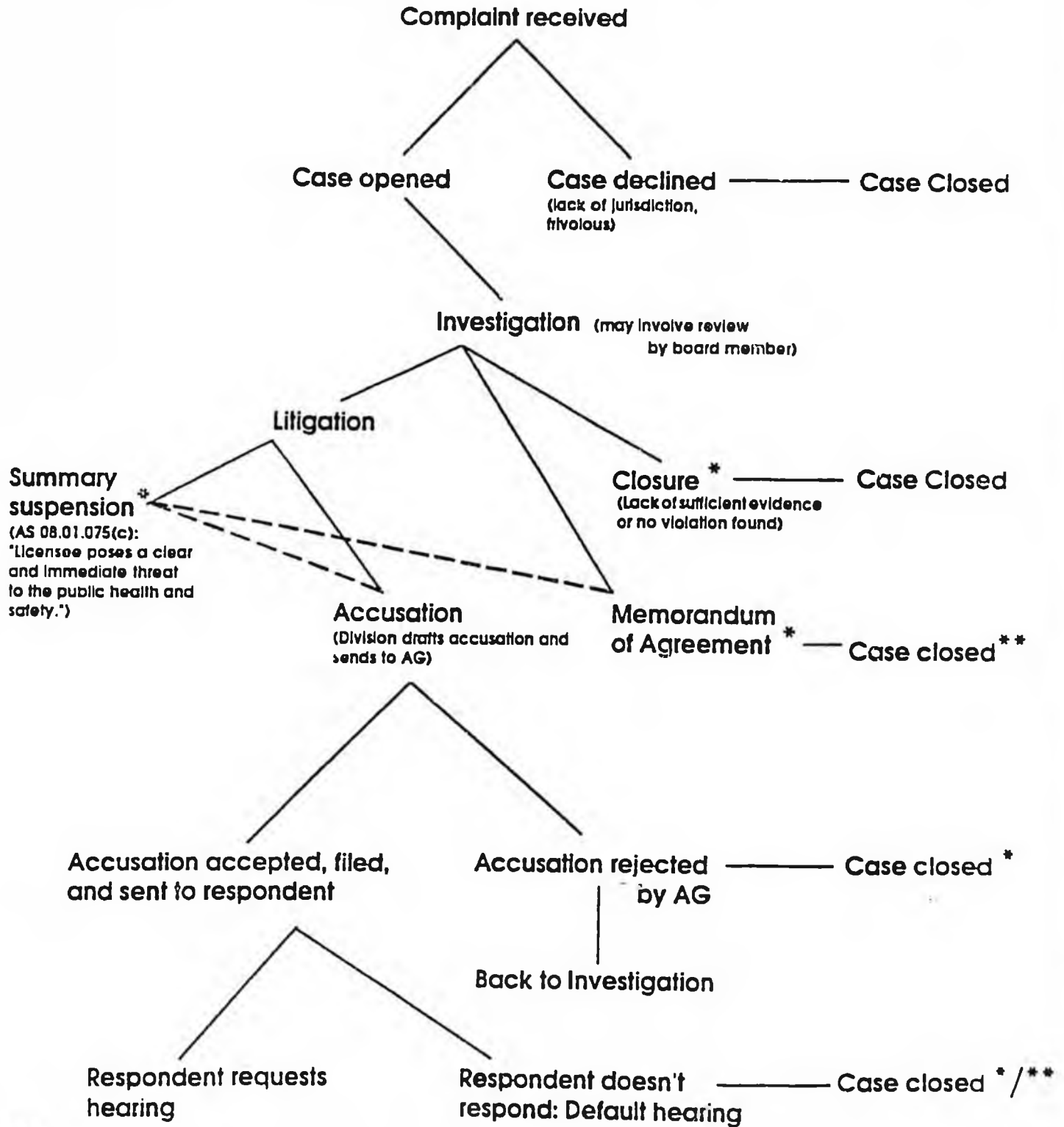
Even when guides are found not guilty by the courts, they may still be subject to licensing penalties from BGCSB. Some guides reported to us that they felt this represented "double jeopardy" that is, being tried twice for the same offense.

The Department of Law's position is that the criminal prosecution and licensing action under the administrative procedures act are two separate judicial processes. Each process requires a different standard of proof.

In a criminal action before the courts, the State must prove guilt "beyond a reasonable doubt." At an administrative hearing the State must only show that an individual is guilty of the accusation by a "preponderance of evidence."

On occasion, the State's "case" is strong enough to meet the preponderance of evidence standard, but not strong enough for the reasonable doubt standard. In those instances, guides often face the same evidence, the same testimony of FWP officers, and the same attorney arguments. As a result, they may find themselves facing a licensing penalty despite being found "not guilty" in court.

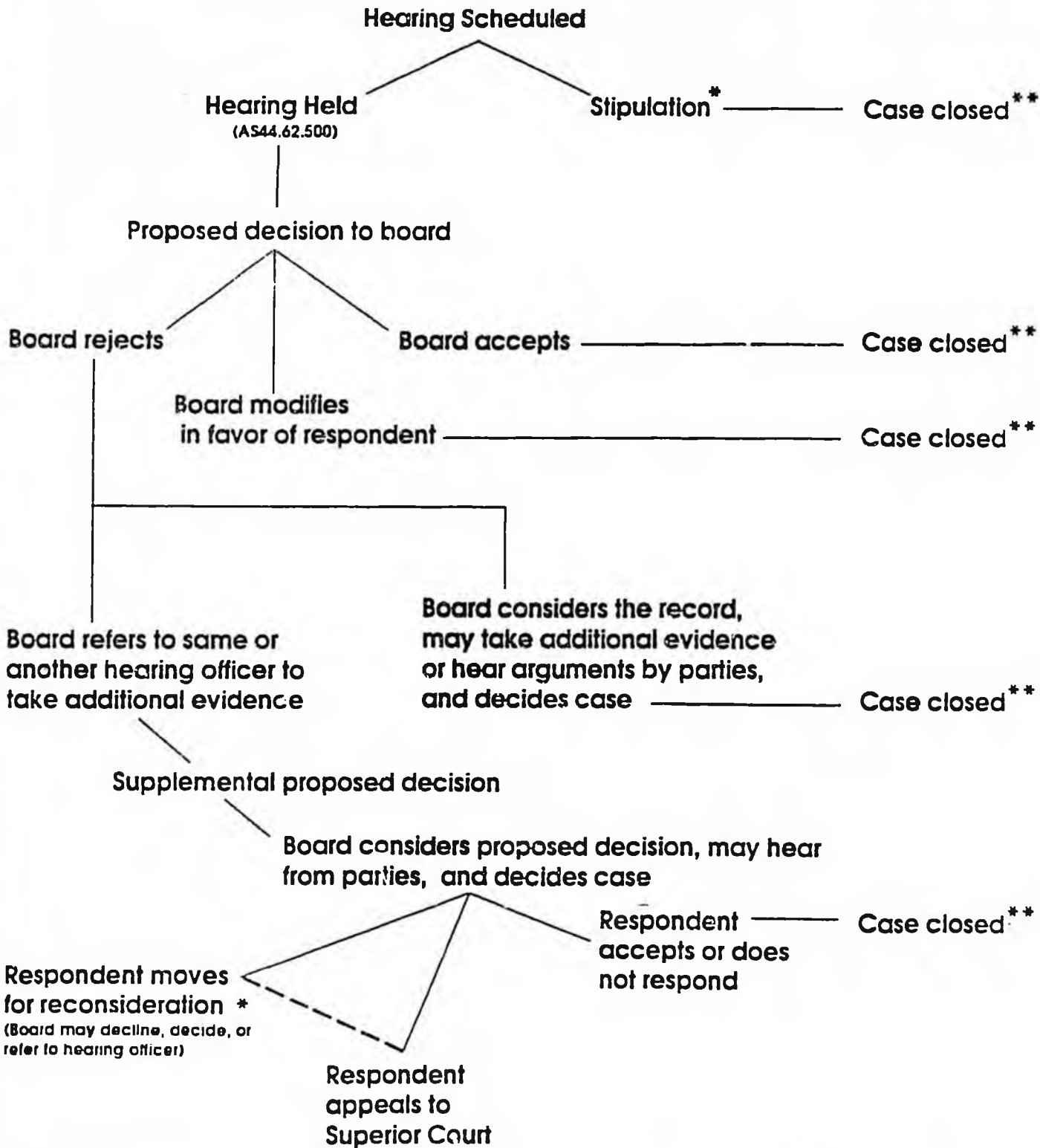
Investigation



** Respondent petitions for reinstatement or reduction of penalty after one year

* Board approval necessary

Administrative Hearing



** Respondent petitions for reinstatement or reduction of penalty after one year

* Board approval necessary

Once an accusation has been accepted by the attorney general, it is sent to the guide or "respondent" who then can request a formal hearing. If the individual does not respond to the accusation, a default hearing is held and a proposed decision is prepared for board consideration and action.

The respondent may request a hearing, but even after it is scheduled the guide may contact the Department of Law and work out an agreement. This agreement, called a stipulation, is essentially a negotiated settlement between the respondent and the Department of Law which sets out various restrictions and penalties.

If a hearing is held, the hearing officer listens to the evidence presented by both the State and the respondent. The hearing officer then issues a proposed decision to the board. The board may in turn reject, accept, or modify the decision to reduce the recommended penalties.

REPORT CONCLUSIONS

As discussed in the Background Information section, penalties involving an individual's guide license may be imposed by the courts prior to any sanction imposed by the Big Game Commercial Services Board (BGCSB). When this happens, the board's disciplinary action essentially ratifies the decision of the courts. Because of differing circumstances involved with each case, the penalties imposed by the courts for similar offenses may vary. Such differences, while within the latitude granted the courts in imposing sentences, often makes BGCSB appear inconsistent in the actions it takes against licensees. Aside from these apparent differing sanctions, we found that, with one exception (see inset below) BGCSB has been consistent in the penalties and sanctions it has imposed on various license holders.

Results of Review

Since December 1989, BGCSB has taken 17 licensing sanction actions. Of those actions, two have gone completely through the administrative hearing process. In both instances the board adopted the hearing officer decisions unanimously.

In five of the eleven actions where licenses were revoked or suspended, the penalty imposed was directed by the courts as a condition of sentencing. In two instances the courts made recommendations regarding license sanctions, but the board chose to impose a more severe penalty. In the four remaining cases, the courts made no recommendation, but the board either suspended or revoked the license.

ONE INSTANCE WHERE BGCSB ACTED INCONSISTENTLY

Two guides both pled no contest to charges of unlawful possession or transportation of game. In both their cases, the courts recommended probation for two years. For one guide, BGCSB followed the court's recommendation. No action was taken against his license but he was put on a two-year probation period.

In contrast, the other guide was prohibited from obtaining a license for three years (his license had expired after the violation) and was placed on probation for two years if he obtained a new license when again eligible.

We found no documented evidence why these two apparently similar situations were treated differently.

Stipulated agreements contained different sanctions

Two assistant guides were both convicted of failure to salvage game. In both cases the court required each individual be denied licensure for two years. Subsequent to this court action the board reached stipulated agreements with both individuals. The board suspended one guide's license for 3½ years as part of her stipulation. The other guide, by contrast, received a 4 year suspension as part of his stipulation agreement.

It has been reported to us that when a stipulation agreement is being developed that the individual being disciplined is generally an active participant in the negotiation process. While it is unclear why there was a difference in the sanctions imposed, it would seem that the slight difference in sanctions is a result of the negotiating posture and success of the two respondents rather than any active decision on the part of BGCSB.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Division of Fish and Wildlife Protection (FWP) should emphasize and strictly enforce its policies prohibiting participation in the guiding industry.

In December 1984, then Department of Public Safety Commissioner Sundberg issued a policy prohibiting outside employment as guides for all departmental personnel. In a January 1985 memorandum he wrote in response to a FWP officer, he discussed the reasoning behind the policy. Commissioner Sundberg wrote the officer, who had asked that the policy be reconsidered, that

. . . I am convinced that a conflict of interest exists between guiding and enforcement. . . .

Also, the probability of risk to the officer's career and of embarrassing this agency is increased if we allow our personnel to become engaged in this activity. Public perception can be as harmful as an actual occurrence. A complaint, even if unfounded, could cost the Department thousands of dollars to investigate and create unfavorable publicity. . . .

Your request for reconsideration for outside employment as a guide is denied.

Supervisors did not support, and even contradicted, policy

Since 1984, the department's policy has not always been consistently enforced. In the past, supervisory management did not believe that guiding was necessarily a conflict with enforcement. Accordingly, there appears to have been little effort to enforce the policy, and it has been reported that supervisors actually encouraged officers to work in the guiding industry.

Although one officer in particular was widely known to work as an assistant guide, his evaluations did not reflect any concerns over this activity and the individual was even promoted from sergeant to lieutenant during this period.

The clearest reflection of this past attitude on the part of supervisory management can be found in the department's response to the 1988 ombudsman investigation (see discussion in inset on the next page). In response to the ombudsman's report involving an officer's guiding activities, the department stated that the individual had not violated departmental policy because he did not receive compensation. In defending this rather narrow perspective involving the interpretation of the policy, the department wrote that:

[Guiding] is not incompatible or in conflict with the proper discharge of official duties. We have assigned other members of this division to assistant guiding activities in a guide's camp to increase their knowledge of, and familiarity with, guiding operations. It actually makes them better in their enforcement work. . . .

In the case at hand [the department does not] think that there has been a violation so [we] have not passed the complaint on to any other authority. Furthermore we have gone beyond what I think is strictly required and prohibited the activity in question just to avoid the appearance of conflict.

FWP OFFICER CONTINUED TO GUIDE DESPITE DENIAL

The officer who was denied continued outside employment as a guide by Commissioner Sundberg, continued his guiding activities. According to records filed with the Division of Occupational Licensing, the officer guided during 1985, 1986, and 1987. His file included recommendations from hunters he accompanied in the field and evidence that he intended to apply for, and take, the guide licensing examination to be certified as a guide.

1988 Ombudsman Investigation

In September 1988, the Ombudsman investigated a complaint alleging that the officer involved had violated both departmental policy and Executive Branch Ethics Act prohibitions against outside employment that present a conflict of interest with official duties. In a December 1988 finding the ombudsman made a determination that the complaints lodged against the officer were partially justified.

In our view, these statements are not consistent with the intent of the original policy. Such a position by a middle-management DPS official is indicative of a past lax attitude by departmental supervisors regarding the policy. By failing to be sure both the spirit as well as the letter of the policy was enforced, the department allowed its investigatory methods and approaches to be called into question. Since its response to the ombudsman in December 1988, the department is beginning to recognize these past practices and attitudes as a problem.

Department recognizes importance of policy

By November 1990, DPS was taking compliance of the policy much more seriously. The department emphatically reprimanded an officer regarding his unpaid guiding activities. While acknowledging that unpaid assistant guiding may comply with the letter of the policy, the department clearly felt that the activities violated its spirit.

Additionally, DPS acknowledged that the requirements of the Executive Branch Ethics Act of 1986 made it clear that no employee may work in a situation that presents a conflict of interest, irrespective of whether or not they are paid for the work. The department acknowledged that the guiding activities caused the very accusations and allegations that the

policy was designed to avoid and was a source of embarrassment to DPS.

The tone and emphasis of this position represented a different attitude, that is consistent with the intent and philosophy behind the department's original policy. The department should reevaluate the current policy within the context of the Executive Branch Ethics Act, and clearly communicate both the letter and spirit of the prohibition on guiding to all affected personnel.

Recommendation No. 2

DPS should conduct an internal review regarding the basis and procedures involved in developing undercover law enforcement actions on guiding and game violations.

According to the director of FWP, most game law violations are detected and prosecuted through the use of undercover police operations. Our review of disciplinary actions taken against guides by the Big Game Commercial Services Board, tend to confirm this observation. Seven of the ten disciplinary actions reviewed used undercover operations to make the original arrest. The director acknowledged that there is a great deal of discretion allowed over who to "target" for an undercover operation. The officer most prominently involved working as an assistant guide was in the position to influence and use his discretion over who would and would not be subject to an undercover operation.

At a minimum, these circumstances give the appearance that this individual could suppress information regarding the activities of licensed guides with which he was associated, while at the same time making decisions to target others who were competitors of his guide associates. We believe it is important that FWP satisfy the guiding public that undercover operations are appropriately directed and are carried out on the basis of sufficient and reliable criteria.

COMPENSATION A KEY PART OF THE STATUTE'S DEFINITION OF GUIDING

It late 1988 it was DPS' position that the officer involved in allegations of guiding did not violate departmental policy because he did not receive compensation. If the officer did not receive compensation, it appears that he may have misled the Division of Occupational Licensing.

On application forms filed with that agency, the officer attested that he was indeed acting as an assistant guide, and submitted written documentation that he guided hunters under the supervision of a licensed guide. The officer also testified in court that he was not paid as an assistant guide.

AS 08.54.240 (3) defines guiding as:

accompanying or directing a hunter in the field, personally or through an assistant, for compensation, while the hunter or the person accompanying or directing the hunter spots, stalks, pursues, tracks, kills, or attempts to kill big game. . .

Under this definition, if the officer did not receive compensation, then it appears that representations made to the Division of Occupational Licensing were inaccurate.

As discussed in the Auditor's Comment section of this report, BGCSB should scrutinize any assistant guiding experience claimed by this individual, in the context of the statutory definition, if in the future he should apply for licensure as a guide.

OMBUDSMAN DISCUSSES POSSIBILITY OF FUTURE BENEFIT

In response to the complainant who initiated his agency's 1988 investigation, the Ombudsman replied that

You allege that the real conflict in [the FWP officer's] work as an assistant guide will not be realized until he retires. You assert upon retirement, [the officer] can and will reactivate his assistant guide time (allegedly acquired improperly while he was employed by the division as a fish and wildlife protection officer) and apply it toward his application for a master guide license.

It is altogether possible that this may happen. It is also possible that it will never happen. We can only know for certain what [the officer] will do when he retires when that time comes. I cannot and will not make a guess about [the officer's] future behavior. I cannot hold a case open for years, waiting for a potential conflict of interest to emerge in the form of [the officer's] application for a master guide license.

If, and when, [the officer] does apply for the master guide license, the use of his assistant guide time will be a factual issue. With your keen interest in [the officer's] activities, it is reasonable to expect you to submit testimony to the [BGCSB] if that event occurs in the future. Today, it is a speculative issue...

With the transmission of this letter, I am closing the complaint. You are free to file a new complaint if and when [the officer] reactivates his assistant guide time in an application for a master guide license. You may also file a written complaint under the auspices of the Executive Ethics Act if you wish to press that issue further.

The Ombudsman's response suggests that the only avenue to resolve the complainant's issues lies in how the licensing board will view the "experience" of the FWP officer, if and when he attempts to use it in applying for his guide license.

AUDITOR'S COMMENTS

Former Commissioner Sundberg warned in 1985 about the dangers of allowing Department of Public Safety personnel to participate in the guiding industry. As cited in Recommendation No. 1, his concerns over embarrassment to the agency, negative public perceptions, and the cost of investigating and dealing with even unfounded complaints all proved to be prophetic.

BGCSB should scrutinize any future guide application

As observed by the Ombudsman, (see inset on the opposite page) the real possible incentive or compensation for the FWP officer-assistant guide, is in the future at the time of his retirement or separation from an FWP.

In our view, the Big Game Commercial Services Board (BGCSB), may offer the best opportunity to provide some equitable, objective resolution of the situation. The board can do this by carefully scrutinizing any assistant guiding experience accumulated while an individual served as an FWP officer.

As discussed in the inset on page 15, accompanying individuals on a guided hunt is not necessarily guiding. The statute requires that an individual receive compensation for guiding a hunter in order for the experience to be relevant to the licensing process. An FWP officer has submitted an application for licensure as a guide, (an application that subsequently has been withdrawn) with documentation substantiating his assistant guiding activities. However, if he was unpaid, as he testified to in court, BGCSB should carefully consider whether or not this experience meets the statutory definition of guiding.

Such scrutiny would nullify any advantage or "indirect" compensation that the FWP officer gained by acting as an assistant guide. Leaving aside the legal discussion of whether uncompensated assistant guiding is qualifying experience in the strictest sense of the law, such scrutiny and consideration would enhance the integrity of the regulatory process.

BGCSB relies in large part on the efforts of FWP to effectively meet its statutory mandate. Any flaw in the integrity of that enforcement effort, either real or perceived, reflects to some degree on the board. By carefully scrutinizing the circumstances and documentation supporting any former FWP officer's application for a guiding license, the board can enhance the integrity of the investigatory efforts of both FWP and itself.

ISSUES NEEDING FURTHER STUDY

Department of Public Safety (DPS), Fish and Wildlife Protection (FWP) officers have testified in court that decisions regarding investigations and development of possible undercover operations often have been developed from "tips" received through a program known as the Wildlife Safeguard Program.

The Wildlife Safeguard Program encourages the public to phone a toll-free "800" number and report any observations or information they may have about possible game law violations. If these tips are used in the successful prosecution of an individual, then rewards are paid to the hotline informants. The program is run by a private nonprofit organization, and does not receive any direct state funding. DPS does provide support services to the organization such as answering the hotline, selling fund-raising posters, and arranging for the organization to raffle off a hunting permit to raise funds.

As discussed in Recommendation No. 2 in the Findings and Recommendations section, we suggest that DPS reevaluate the criteria it uses to develop undercover operations. In addition, we suggest that the Legislative Budget and Audit Committee may want to consider reviewing the information received over the Wildlife Safeguard hotline and determine if it is being used in a consistent, objective, and unbiased manner.

The conflict of interest discussed at length in this report may be reflected not only in what cases and reported violators that FWP have elected to pursue, but also in the tips and information that may have been ignored. If the agency has received numerous complaints regarding possible violations by a professional guide, the fact that no investigatory action was taken may be significant.

Controls over reward payments may also be possible area of concern

Although state funds are not being directly used, FWP protection officers have, in the past, been involved in passing rewards to informants. Reportedly the rewards are paid in cash, and have been as much as \$2,000. Payouts of these amounts in cash, with the involvement of state employees, provides another possible area or issue that may warrant further study or review.

WALTER J. HICKEL, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

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OFFICE OF THE COMMISSIONER

November 21, 1991

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LEGISLATIVE AUDIT

Mr. Randy Welker
Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box W
Juneau, AK 99811

Dear Mr. Welker:

Thank you for the opportunity to review the preliminary audit report regarding consistency of disciplinary penalties of the Big Game Commercial Services Board.

The department concurs with Recommendation No. 1, The Division of Fish and Wildlife Protection (FWP) should emphasize and strictly enforce its policies prohibiting participation in the guiding industry. We believe a state policy should go a step further and include Division of Occupational Licensing staff involved in licensing and investigations of guide-outfitters, as well as Department of Fish and Game employees/biologists who are involved in game management/harvest decisions. During the time period of Commissioner Sundberg's policy on prohibiting outside employment as a guide for FWP employees, the Division of Occupational Licensing requested its employees who were, at the time, licensed as assistant guides, but not employed or associated with any guides, to voluntarily not renew their assistant licenses. This request was made on the basis of possible public perception of impropriety rather than actual complaints. Most recently, it has been brought to our attention that the activities of the Department of Fish and Game employee(s) who are licensed guides and conducting guiding activities may be causing some concern within the guiding industry and public. We believe that employees should be allowed to place their licenses in a suspended status for reactivation at the same level when they leave employment in the job which creates the conflict.

Mr. Randy Welker

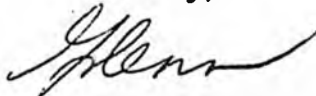
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November 21, 1991

With regard to Recommendation No 2, DPS should conduct an internal review regarding the basis and procedures involved in developing undercover law enforcement actions on guiding and game violations, the department agrees that there should be a system in place which ensures some degree of uniformity and consistency in developing undercover operations.

Again, thank you for this opportunity to comment.

Sincerely,



Glenn A. Olds
Commissioner

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112191b

WALTER J. HICKEL, GOVERNOR



DEPARTMENT OF PUBLIC SAFETY

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LEGISLATIVE AUDIT

December 5, 1991

Mr. Randy S. Welker
Legislative Auditor
Alaska State Legislature
P. O. Box W
Juneau, AK 99811

Dear Mr. Welker:

Re: Audit No. 08-4402-91

I am writing in response to your letter and preliminary audit report of October 28, 1991. Thank you for the opportunity to review and comment on the preliminary report, and for your courtesy in allowing us an extension of time. My comments are as follows:

Recommendation No. 1: "The Division of Fish and Wildlife Protection (FWP) should emphasize and strictly enforce its policies prohibiting participation in the guiding industry."

I agree, and we are doing just that. Under the Executive Branch Ethics Act, all requests for outside employment (paid or unpaid) must be submitted to and approved by me. I assure you that I will not approve any requests for involvement in the guiding industry while I am Commissioner. F&WP personnel are well aware of this.

Recommendation No. 2: "DPS should conduct an internal review regarding the basis and procedures involved in developing undercover law enforcement actions on guiding and game violations."

I agree, and we are doing this. The FWP Director and his staff are drafting a policy statement for my review. I anticipate that a final policy will be in place by early next year. For your information, since being appointed Commissioner I have reestablished an Office of Planning and Research within the Department. My staff are reviewing all existing DPS policies and procedures and suggesting revisions for my consideration.

Mr. Randy S. Welker
December 5, 1991
Page 2

On page 15 of your report, in the first paragraph under Recommendation No. 2, I suggest the following changes to the present language: "According to the director of FWP, [most game law violations] most serious guiding violations are detected and prosecuted through the use of undercover police operations." I believe this is a more accurate summary of Col. Jordan's comments, in the context in which they were made. Also: "At one time, the officer most prominently involved working as an assistant guide..." This additional language would make it clear that the situation being described is not the current one, but refers to the past.

Other comments: On page 15 of your preliminary report there is a colored block of text which discusses your office's interpretation of the statutory definition of "guiding" as it relates to licensure requirements. I asked the Alaska Department of Law to review the relevant language, and found that they do not agree with your legal interpretation. In light of this, I do not agree with your conclusion that "if the officer did not receive compensation, then it appears that representations made to the Division of Occupational Licensing were inaccurate." I have attached a copy of the memorandum which we received from the Department of Law on this issue.

On page 19 of your report, you suggest that the Legislative Budget and Audit Committee may want to consider reviewing the information received over the Wildlife Safeguard hotline. We certainly have no objection to such a review, and we are confident that information received over the hotline is being handled appropriately, with no bias or special interests involved.

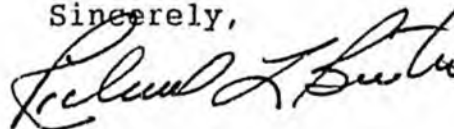
Regarding your comments on controls over reward payments, we would welcome suggestions about the best way to get rewards to informants, while still protecting confidentiality. As you undoubtedly know, no rewards are paid out unless authorized by the Safeguard Boards, which are made up entirely of volunteer private citizens. Contrary to the impression left by your report, the majority of rewards are paid by check. If the informant insists upon anonymity, however, obviously a check cannot be issued. On those occasions when cash must be used, Wildlife Safeguard considers using commissioned officers to deliver it as the safest procedure. The one \$2,000 payment to which you refer was delivered personally to the informant

Mr. Randy S. Welker
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by the Director of FWP. If you can think of a safer or more reliable way to handle these payouts to sources who wish to remain anonymous, please let us know.

Thanks again for the opportunity to comment on your preliminary report. I would be glad to discuss my responses with you further, if you would like.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard L. Burton".

Richard L. Burton
Commissioner

Attachment

MEMORANDUM

State of Alaska

Department of Law

TO: Gayle Horetski
Deputy Commissioner
Department of Public Safety


DATE: December 4, 1991

FILE NO.: 663-92-0271

TEL. NO.: 465-3428

SUBJECT: Assistant guiding under
former AS 08.54.110

FROM:

Dean J. Guaneli 
Assistant Attorney General
Criminal Division Central Office

This is in response to your request for our opinion whether one of the qualifications for becoming a registered guide, under former AS 08.54.110 (repealed in 1989), was that a person have received compensation for acting as an assistant guide. After reviewing the applicable statutes, it is my opinion that, prior to July 1, 1986, it was not necessary to have received compensation in order to have accumulated the necessary level of experience as an assistant guide to become a registered guide, and that after that date a person would not have been acting unreasonably in coming to that same conclusion.

The genesis of your question is an ombudsman's draft report which concludes that to have "performed the services of an assistant guide" under former AS 08.54.110 meant "being employed by a registered guide."¹ The draft report therefore proposes to find that a departmental employee "improperly made conflicting statements" by saying he was qualified to be a registered guide, while at the same time asserting that he had not received compensation for being an assistant guide. For the reasons set out in this memorandum, the ombudsman's conclusion is incorrect.²

Prior to 1989, in order to have been qualified to become a registered guide, a person must have previously "performed the services of an assistant guide." Former AS 08.54.110(a)(7) (prior to 1986 numbered AS 08.54.110(a)(8)). There was no definition of

¹ A preliminary audit report by the Legislative Budget and Audit Committee reviewed an earlier version of the ombudsman's report and came to the same conclusion. Neither the ombudsman's report nor the auditor's report contains any detailed analysis of the statutes involved.

² There also exists an opinion, written by a private attorney representing the subject of the ombudsman's report, concluding that the ombudsman is incorrect. While I have agreed as a general matter with the private attorney's conclusion, I disagree with his analysis and reasoning.

the phrase "performed the services of an assistant guide," although the verbs "guide" and "guiding" were defined in former AS 08.54.240 to include the requirement of compensation.

Under this definition, if you were assisting or directing a hunter in the field for compensation you were "guiding."³ This definition appears, however, to have been inclusive, rather than exclusive, that is, it established that anyone assisting hunters for compensation had to be licensed as a guide, rather than establishing that one who did not receive compensation could not be considered to have performed as a guide.⁴

This definition does not, therefore, answer the question of whether a person must have accepted compensation to have been acting as an assistant guide for purposes of qualifying to become a registered guide. To answer that question, other statutes must be analyzed.

Former AS 08.54.130 required that a "class-A assistant guide" be "under the supervision" of a registered or master guide. There was no requirement of compensation, nor was there a requirement of an employment relationship. Perhaps it was an oversight, but there was no similar requirement that non-class-A assistant guides be supervised by a registered guide, much less employed or compensated. Former AS 08.54.140. In addition, prior to July 1, 1986, AS 08.54.210(a)(6) made it unlawful for a registered or master guide "to employ or supervise" more than three assistant guides at the same time, thus indicating a difference between the concepts of employment and supervision. (Emphasis added.) Again, there was no requirement of compensation.

Moreover, in former AS 08.54.110(a) the legislature used the phrase "performed the services of an assistant guide," rather than the simpler phrase "employed as an assistant guide." The obvious purpose of AS 08.54.110(a) was to assure that, before someone became a registered guide, he had obtained sufficient experience as an assistant guide. There is no indication the legislature intended to require that an assistant guide have accepted compensation.

Based on this statutory scheme, prior to July 1, 1986, a person could have "performed the services of an assistant guide" under former AS 08.54.110, and have been qualified to become a registered guide, without having accepted compensation.

³ The definition of "guiding" changed somewhat in 1986, but that change does not affect this opinion. Sec. 23, ch. 71, SLA 1986.

⁴ The definition of "guide" was used to determine whether a person had committed the offense of "guiding without a license". Former AS 08.54.210.

July 1, 1986, was the effective date of amendments to some of the statutes in AS 08.54. Ch. 71, SLA 1986. In particular, former AS 08.54.210 was amended to make it unlawful for an assistant guide to be along on a guided hunt "except while employed and supervised by a registered or master guide." Former AS 08.54.210(a)(8). (Emphasis added.) Despite this new statute which seemingly required that assistant guides be both employed and supervised by a registered or master guide, there was no change made to former AS 08.54.130, which required class-A assistant guides merely to be under the "supervision" of a licensed guide, with no requirement of either "employment" or "compensation." There was, however, a new statute enacted that required non-class-A assistant guides to be employed and supervised by a registered guide. Former AS 08.54.141.

This ambiguity is difficult to resolve, however a definitive resolution is not necessary. In my opinion, even after July 1, 1986, a reasonable person could have concluded that a person "performed the services of an assistant guide" under former AS 08.54.110, and was qualified to become a registered guide, without having accepted compensation.

Even if there was a requirement of both employment and supervision, the statutes made no mention of "compensation" for assistant guides. The ombudsman's draft report seems to refer to employment and compensation interchangeably, but it appears that in AS 08.54 the legislature treated them differently and recognized three types of master-servant relationships: "supervision," "employment," and "compensation."

Before 1986, the definition of "guide" in AS 08.54.240 included the concept of "monetary or material remuneration." In 1986 that definition was modified to refer to "compensation or with the intent to receive compensation." Neither version of the definition referred to "employment." If the legislature had simply intended to refer to the concept of being "employed," it could have more easily done so than using the complicated phrases necessary to convey the concept of money changing hands.

It is not necessary at this point to try to fully explain the differences between "supervision," "employment," and "compensation." Suffice to say that, even after July 1, 1986, a person, who had waived payment or received only transportation and food while acting as an

Gayle Horetski, Deputy Commissioner
Department of Public Safety
File No. 663-92-0271

December 4, 1991
Page 4

assistant guide on a hunt, would not have been acting unreasonably in asserting that he had not received "compensation," while at the same time seeking to rely on that experience as an assistant guide in attempting to become qualified as a registered guide under AS 08.54.110.⁵

Please contact me if you have questions.

DJG:jf

cc: Division of Occupational Licensing
Department of Commerce and Economic Development

⁵ It should be noted that the current definition of "compensation" in AS 08.54.590 excludes "reimbursement for actual expenses incurred", which suggests that an assistant guide who obtains transportation and food has not accepted "compensation". It should also be noted that the current guide-outfitter statutes in AS 08.54.350 -- 590 contain the same ambiguity as past statutes, by continuing to refer to the concepts of "supervision", "employment" and "compensation". As a practical matter, the division of occupational licensing did not previously, and does not now, inquire whether assistant guides have been paid in determining their qualifications to become a registered guide.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box W
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

January 2, 1992

Members of the Legislative Budget and Audit Committee:

A formal legal review of the language in the guide licensing statutes is included in the response of the Department of Public Safety. The analysis addresses the issue raised in the inset on page 15 regarding the concept of compensation and how it relates to the statutory definition of guiding. From a layman's reading of the statute it appears that if an individual serves as an assistant guide but is not paid for their services, then perhaps that experience does not qualify as assistant guiding experience.

The Department of Law's (DOLaw) analysis concluded that

...prior to July 1, 1986, it was not necessary to have received compensation in order to have accumulated the necessary level of experience as an assistant guide to become a registered guide, and that after that date a person would not have been acting unreasonably in coming to that same conclusion.

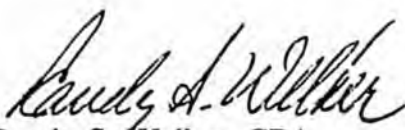
The analysis is developed from DOLaw's review of the history of the changes in statutory language, especially with the amendments made in 1986. After concluding that the concept of compensation was absent from the statutes prior to July 1, 1986, DOLaw feels the changes made created some ambiguity by introducing the concept of compensation. The analysis goes on to conclude

This ambiguity is difficult to resolve, however a definitive resolution is not necessary. In my opinion, even after July 1, 1986, a reasonable person could have concluded that a person "performed the services of an assistant guide" under former AS 08.54.110, and was qualified to become a registered guide, without having accepted compensation. ... Suffice to say that, even after July 1, 1986, a person, who had waived payment or received only transportation and food while acting as an assistant guide on a hunt, would

not have been acting unreasonably in asserting that he had not received "compensation," while at the same time seeking to rely on that experience as an assistant guide in attempting to become qualified as a registered guide . . .

The primary purpose of raising the point in the audit report was to more fully substantiate our audit evidence that the Fish and Wildlife Protection officer was on record as serving as an assistant guide. The issue of compensation and the apparent contradiction with court testimony was a secondary issue that had been raised by the investigator at the Division of Occupational Licensing at the time of the original internal investigation. In our review of the records and documents related to that investigation, we found no evidence that this particular issue had been satisfactorily resolved or analyzed. In view of DOLaw's response this issue has now been formally addressed.

The central point of our discussion remains unaffected. To restate, the Big Game Commercial Services Board (BGCSB) has a vital interest in maintaining the integrity and independence of the investigations involved in the licensing disciplinary process. The board should do all it can within its statutory powers to strengthen and improve that process. Accordingly, BGCSB should carefully consider granting guide licenses to individuals who gained necessary, qualifying experience when they were employed in positions involving either real or apparent conflicts of interest.


Randy S. Welker, CPA
Legislative Auditor

STATE OF ALASKA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF FISH AND WILDLIFE PROTECTION

OFFICER'S INFORMATION MANUAL

APPROVAL: <u><i>Jack W. Jordan</i></u>	Policy No.: <u>C-9</u>
PAGE <u>1</u> of <u>2</u>	Date: <u>July 16, 1990</u>
	SUBJECT: <u>OUTSIDE EMPLOYMENT</u>

All requests for employment outside the Department are reviewed by the Commissioner's Office on a case by case basis. However, the following guidelines have been previously established concerning certain types of work which will not be approved.

1. Alcohol dispensary business
2. Guiding profession
3. Commercial fishing or sport fish guiding

The permission may be withdrawn if a conflict or the appearance of a conflict, with the discharge of the employee's official duties arises.

In the Ethics Law governing outside employment (AS 39.52.170), there is further clarification stating; no public employee may work for (paid or unpaid) an organization other than the employee's own department if that work is incompatible, or in conflict with the proper discharge of official duties.

Please note two important points above:

1. The work is paid or unpaid.
2. Appearance of a conflict is sufficient grounds for disapproval.

Permission for outside employment must be renewed annually.

Requests for outside employment should be made in memo form and must be accompanied by a blue Ethics Disclosure Form. An example of the form follows this policy. Forms are available from the Commissioner's Office and the Department of Public Safety Personnel Office.

Please note that under the Executive Branch Ethics Act, the only person authorized to sign the Ethics Disclosure Form for this Department on behalf of the Commissioner is the "Designated Ethics Supervisor", Special Assistant Gretchen Pence.

Ethics Disclosure Form

Outside Employment or Services Notification

To: Designated Supervisor

Subject: Certification of Outside Employment or Services (AS 39.52.170)

In accordance with AS 39.52.170(b), I hereby officially report my employment or provision of services outside the Department of _____

These outside duties will in no way affect my usual State duties or duty hours in this Department. This employment or service consists of the following:

Hours and days of the week _____

I understand that for any employment outside State service, no State owned/operated facilities, supplies, equipment and/or vehicles (including personnel time and effort) shall be utilized in any manner whatsoever.

_____ (Signature)	_____ (Date)
_____ (Printed Name)	_____ (PCN)
_____ (Job Title)	_____ (Location)

Designated Supervisor's Acknowledgement

Your notification of engagement in outside employment or service has been received.

Acknowledgement of your outside employment or service is made with the understanding that your outside work will not in any way detract from or be in conflict with the proper discharge of your official duties as an employee of this Department.

Please note that any change in your outside service or employment must be reported when it occurs.

(Signature-Designated Supervisor)

(Date)

Fish and Wildlife Protection

The Status of
Enforcement Effectiveness,
Morale, and
Equipment

in the
Division of
Fish and Wildlife Protection
Alaska Department of Public Safety

submitted to Commissioner Richard Burton
June 8, 1991

by Don M. Roberts
Lt. Colonel, Public Safety
(Retired)

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Fish and Wildlife Protection

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INTRODUCTION

This report focuses on ten categories related to the Division of Fish and Wildlife Protection, Alaska Department of Public Safety, as identified by Commissioner Richard Burton:

1. Are programs adequate to protect the resource?
2. Equipment adequacy?
3. Attitude and morale of personnel.
4. Staffing levels and location.
5. Are funds appropriately allocated among various programs?
6. Training.
7. Suggestions from personnel for improvement of working conditions and divisional efforts.
8. Are duty performances in compliance with job descriptions?
9. Strengths and weaknesses of program performance.
10. Consistency in implementation of Department policies and objectives.

Between May 1 and June 6, 1991, information was gathered by conducting personal interviews with 62 commissioned and civilian personnel of the Division of Fish and Wildlife Protection, with five commissioned personnel of the Alaska State Troopers, and with three biologists of the Alaska Department of Fish and Game (ADFG).

In addition, program plans, work schedules, Division policies and reports, and a legislative report (prepared by the House Special Committee on Fisheries, April 3, 1986) were examined.

Comments derived from personal interviews were not restricted to the above topics. Personnel were encouraged to comment on all aspects of the Division and of management of Alaska's wildlife resources.

Interviews were conducted during business hours at the five detachment headquarters and at various posts. Fish and Wildlife Protection (FWP) Troopers from Nome and Galena were interviewed while they were on business in Soldotna and Anchorage, respectively. Interviews lasted from one-and-a-half hours to five hours.

Personnel were particularly candid, courteous, and cooperative, from commander Col. Jack Jordon, down to the newest trooper.

Most impressive was the sincere attitude and dedication displayed by all members of the Division toward Alaska's wildlife resources and professional law enforcement.

Each section begins with an executive overview, followed by detailed discussion, comments, and recommendations.

ARE PROGRAMS ADEQUATE TO PROTECT THE RESOURCE?

The first thing the average world citizen thinks of when Alaska is mentioned is its spectacular wildlife resources. Then they may remember that there also are oil fields in this vast and rich state.

Yet, wildlife enforcement capabilities have been dangerously declining in an era of expanding resource use--and abuse. Some species of wildlife are neglected continuously due to a lack of personnel and of sufficiently sophisticated equipment.

Long before the discovery of oil, wildlife resources were Alaska's economic base, initially for the survival and trade of indigenous cultures, and later, for the commercial demands of world markets. In particular, salmon, king crab and, more recently, bottom fishing, have reaped enormous wealth for Alaska and its exploiters.

In the past 15 years, Alaska sport fishing has increased in popularity, drawing adventure-seekers from all continents. Moose and brown bear also have numerous worldwide Nimrods. Harvesting of these resources generates billions in revenues for Alaska, according to ADFG harvest reports and Public Safety records.

A significant statistic appeared last year: in 1989 Alaska's fisheries revenues had exceeded oil revenues.

If properly managed, wildlife resources can continue to provide a sustainable and strong economic foundation in Alaska, long after the last oil field dries up, if enforcement programs are sufficiently funded and staffed.

The ADFG, charged with management of Alaska's wildlife resources, has 665 permanent personnel, 806 temporaries spread among seven divisions, and 78 employees in its Division of Administrative Service (for a total of 1,549).

In comparison, the Department of Public Safety's Division of Fish and Wildlife Management, charged with enforcing all state statutes (in Title 16, 5AAC) and all regulations promulgated by the Boards of Fish and Game and of the ADFG, has 84 commissioned officers to protect all of Alaska's wildlife.

If each vessel and crew, and if each officer, from sergeant on down, is considered as one patrol unit, then only about 65 commissioned units, including investigators, actually are available for enforcement duties.

Regular days off, sick leave, and annual leave result in deployment of a mere handful of wildlife officers at any one time.

This is a grave and dangerous disparity in light of the immense mission of the Division to protect a multi-billion dollar resource.

It is ludicrous to believe that 84 commissioned personnel, from the Director to the newest recruit, can adequately patrol, control, investigate, and prosecute violations against Alaska's fish and wildlife resources.

The people of Alaska, as evidenced by the State Constitution and related statutes, place exceptional value on our wildlife resources.

"The public is convinced that Alaska's fish and wildlife resources are threatened by the lack of adequate enforcement on the fishing and hunting grounds. . . . That Alaskans want more wildlife officers in the field is very clear." (Report and Recommendations by the House Special Committee on Fisheries, April 3, 1986.)

Five years ago, when the cited report was written, the Division of Fish and Wildlife Protection had 102 commissioned personnel. In 1980 and 1981, about 122 commissioned positions existed. The division has suffered a near one-third reduction in enforcement strength in the last decade.

Ironically and sadly, as pressures on the resources have increased, the protection effort has decreased. The development of new commercial fisheries, growing worldwide interest in Alaska sport fishing, in big game hunting, and in guiding activities have stepped up the number of resource users--and abusers.

The House Report also stated, "The area of fish and wildlife enforcement that appears to be suffering most with increased harvest pressure and lack of increased enforcement personnel is Alaska's rapidly growing recreational fishery. The Department of Public Safety has placed its lowest enforcement priority on sport fishing, in part because officers must concentrate on problems posed by the highly efficient commercial fleets during the salmon season."

The enforcement dilemma has been exacerbated in the last five years as the number of fish and wildlife protection troopers has diminished.

FWP troopers are taken from assignments in the Interior to work the fisheries, leaving their respective areas vulnerable. The same is true on the Kenai Peninsula.

During the heaviest use period for the popular rivers on the west coast of the peninsula (late June through July), all fish and wildlife troopers from Homer, Ninilchik, and Soldotna are working the commercial salmon drift fishery.

This exodus results in no control of the en masse sport fishery and the potential for taking fish beyond allowable limits and in closed areas. It is believed that non-residents are canning cases of sport-caught salmon and transporting the product out of state for sale. The Division has received reports of roadside selling of canned Alaska salmon in places such as Arizona, New Mexico, and California.

A similar situation exists in the Susitna River Valley where about 30 fishing lodges are operated, most by foreign or outside owners (according to the B Detachment Commander). No effective enforcement program is in place to control the over-harvesting and shipment of illegally-taken fish.

Curtailling such activities will require covert operations. The stocks of affected fish are on the spawning grounds and are critical to propagation of the species.

Nor is the red salmon setnet fishery receiving the attention it should in Cook Inlet. Some operators of this gear type have a tendency to fish early (during closed periods), when the fish are running and the tide is rising during the night and the very early morning hours. Patrols of this fishery are almost non-existent. Enforcement efforts center on the driftnet fishery.

The problem is two-fold: a lack of personnel for 24-hour enforcement (necessary for the fishery) is coupled with a lack of reporting of violations of colleagues by setnetters. Instead, most complaints are generated by the driftnetters. Thus, they attract the bulk of enforcement.

In addition, there has not been an enforcement effort in the Outer District of Cook Inlet for several years. This is an 80-boat seine fishery for chum and pink salmon.

The ADFG commercial fisheries biologist (who has been in charge of the area for one season) reports that chum stocks in Port Dick, Windy Bay, Rocky Bay, and other streams in the district are way down.

Perhaps this can be attributed to high seas foreign fleets. Unfortunately, seiners often have earned a reputation for being efficient robbers of creeks and closed areas and it may not be unreasonable to conclude that the illegal taking of fish has been a strong contributor to the decline of the chum stocks in the Outer District of the inlet.

Controlling and counteracting the likelihood of illegal fishing will require an old-fashioned "stake out" program, as has been successful in the past. This means more personnel and equipment.

Another example of inadequate enforcement is a lack of an appropriate effort in working the spring brown bear seasons. In areas where there is a spring bear season, fish and wildlife troopers are sent elsewhere to help manage spring herring and crab fisheries.

Areas such as the Alaska Peninsula have spring bear openings every other season. This year there was no season, so troopers worked the fisheries. Nor was there sufficient funding to support travel, per diem and overtime to allow some coverage on the peninsula, so a large brown bear area was left wide open to anyone savvy enough to hunt the animal out of season. Unfortunately, there are plenty of hunters who fit into that category.

Thus, some species of wildlife are neglected continuously due to a lack of personnel and sufficiently sophisticated equipment.

The Bering Sea Crab fisheries fall into the category of seriously neglected. It should be remembered that there is some sort of crab season running in Bristol Bay or the Bering Sea from Nov. 1, through the following July and August, demanding the efforts of FWP troopers.

Concrete evidence, supported by concluded criminal and civil case, proves that crabbers are taking illegal-size crab and fishing in closed waters.

The Division has a single 120-foot vessel and a crew of five (supported by a lone trooper in Dutch Harbor) to patrol and control violations across 500,000 square miles of ocean. These absurd odds are a joke, literally, among the crab fleet. Obviously, there is no way, humanly possible, to maintain an acceptable level of lawful compliance among crabbers.

The king crab fisheries of Homer and Kodiak are a thing of the past. A lack of adequate enforcement certainly contributed to the dramatic decline in king crab stocks.

Will the State of Alaska, required by its constitution to manage its resources on the principle of sustained yield, permit the same fate to occur in the Bering Sea? Already, evidence suggests that similar consequences are in the offing for crab and bottomfish, as well.

Trawlers not registered to fish in Alaska frequently work inside the three-mile limit. The Division receives report of such activity long after the incident occurs. Nonetheless, the Division's Statewide Investigations Section (SIS) is pursuing cases and has seized logs of some of the suspected vessels. The ultimate goal is to file charges and bring such investigations to a satisfactory conclusion.

Factory trawlers can go anywhere, take fish, process it and leave the area without paying any fee or taxes to Alaska, thus, costing the State millions in revenues. The raw fish tax generates between \$50 million to \$60 million annually. It's like that more than that is escaping state coffers.

Last year total net civil and criminal fines received by the State through prosecution of wildlife resource violations amounted to \$1.3 million.

These figures compared to the enormous ex-vessel value of salmon. For example:

Bristol Bay

1990 \$199,935,000.

Alaska Peninsula

1990 \$ 40,000,000.

Cook Inlet

1990 \$ 40,700,000.

1989 \$ 59,100,000.

1988 \$212,800,000.

1987 \$101,500,000.

Last year, salmon from those three areas brought fishermen \$280,635,000. Meanwhile, the Bering Sea crab fishery is a billion dollar bonanza.

The most critical bottom line, however, is the resource, the preservation of species.

Alaska's constitution prohibits the dedication of revenues to specific programs. However, it is difficult for a prudent and thinking person to understand how the State of Alaska can receive millions in revenues from fish taxes, civil and criminal fines, and the sale of forfeited vessels, fishing gear, and aircraft, and yet quibbles over the cost of operating an effective agency to enforce a multi-billion dollar resource. Alaska's policy makers are arguing over what amounts to nickels and dimes, in comparison to the overall value of the State's wildlife resources.

The State can spend pour millions into research and management, and and promulgate volumes of regulations, but all is for naught without adequate law enforcement.

EQUIPMENT ADEQUACY

In some areas equipment is quite sufficient, such as the new 4x4 Super cab pickup truck coming on line, the new long

track snow machines, 4x4 ATVs and a few new, handy talkie radios.

However, the resource users' equipment generally is far superior to that used by the enforcement division. It is critical that the Division keep pace in the equipment categories of electronics, vessels, aircraft, etc. The Division lags behind the sophistication of the resource users and must make a significant investment in equipment if enforcement officers are to control--not simply compete--with those who violate and abuse various wildlife species.

Aircraft

Discussions with Aircraft Supervisor Ron Samsal and several pilot troopers confirm that this section is a credit to the Department of Public Safety. The section is doing an outstanding job of supporting Alaska State Troopers and Fish and Wildlife Protection (FWP).

The Ranger helicopters now in use are quite old and serious consideration should be given to replacing them in the very near future. These aircraft are used in search and rescue, medivac missions, prisoner search, and some FWP enforcement programs.

There is a need for at least two more Super Cubs to be used in FWP work. They can be deployed in various areas of the state, but A Detachment is in dire need of aircraft support. Using an aircraft instead of a boat, or in conjunction with a vessel, will increase the efficiency of the FWP troopers in southeastern Alaska.

There is a crying need for a turbo prop aircraft primarily to be used in partnership with patrol vessels in the Bering Sea. Appropriate aircraft would include an Air King or the new-to-the-market Seastar by Dornier Composite Aircraft of Germany. The Seastar is a push-pull, twin-engine, amphibious aircraft with tremendous single-engine capabilities.

The Grumman Goose, while a well-built workhorse, does not have similar single-engine strength, thus is unsafe over the open sea.

The King Air also has good single-engine capabilities. The Seastar probably is preferable because of the safety and rescue advantage of its water landing capabilities, a feature which also could enable apprehensions at sea.

Each aircraft costs between \$3 million to \$4 million. Such a plane would not be used solely in the Bering Sea, but can be used throughout the state in various programs, as well as for Governors' travel.

Selected aircraft must be equipped with the latest and best satellite communications and electronic equipment. Scrimping on such equipment doesn't make sense if the intention is to detect and deter violators in vast and remote areas.

The primary use of the aircraft will be to support Bering Sea patrols. A turbo craft would save enforcement officers considerable time, money, and effort by sighting crab pot and vessel locations and directing patrol vessels to the area.

Such new equipment would be amortized over 30 to 40 years. For example, the Grumman aircraft were manufactured nearly 50 years ago. Yet, with serious maintenance and some hull rebuilding, they have continued to serve the state and to fill a need for airborne enforcement.

Vessels

The Vessel Section of the Division should parallel the Aircraft Section, i.e., all vessels 32 feet and longer should come under the control of the Vessel Supervisor for purposes of budgeting and maintenance (which includes yard schedules).

Each Detachment Commander should have direct operational control of the vessel in his or her detachment without having to check with a supervisor. Commissioned vessel personnel

would be under the Supervisor of the Detachment Commander wherever they might be assigned, whether the vessel personnel are permanent or on temporary assignment.

In the early 1980s, the Division purchased five 32-foot Mod U Tech boats, of a gillnetter-type design. No one person interviewed had anything good to say about these vessels. They are slow (eight knots, tops), poorly designed, and top-heavy. When encountering three-foot or higher seas, the power block rigging, or anything else sticking up in the air, must be lowered flat to the deck or the boat risks capsizing. This is according to the instructions of the manufacturer!

In seas higher than three feet, the vessel does not ride the sea, but goes through the waves, causing the boat to be under water much of the time.

It would be prudent for the Division to surplus or replace these vessels as soon as possible before a life is lost. Replacement vessels should be chosen based on the needs of each post trooper.

Patrol Vessel (P/V) Vigilant

Serious consideration should be given to retiring this vessel due to its lack of ability in heavy seas and, more important, due to corrosion damaging the aluminum hull and framing. There are some inaccessible compartments that also could have some serious corrosion and some support already have been replace. If the condition of this vessel has not been addressed in detail by the Vessel Supervisor, the Commissioner may wish to request such a written report.

P/V Enforcer and Trooper

These old vessels are in good condition and continue to perform a necessary function in fishing enforcement.

P/V Wolstad

This is a good ship and performs quite well in heavy seas. The vessel can carry about 70 crab pots, but rolls violently, which is particularly dangerous for personnel when they are pulling pots. It's a wonder no one has been injured or killed in such situations.

It is planned to install stabilizers this year which should correct the degree of roll.

Other Vessel Needs

As previously mentioned, the Bering Sea/Bristol Bay crab fisheries cover about half-million square miles. A single patrol vessel is insignificant in comparison. Moreover, the Wolstad simply can't be out there all the time.

Band-aid enforcement is inappropriate and inadequate for a multi-billion dollar resource.

There is an urgent need to an additional large, sea-going vessel that can carry crab pots.

Lt. Tom Schwantes, Sgt. Don Starbard, and Vessel Supervisor Monty Compton report that a vessel known as a mud boat, of 170 to 180 feet, would be ideal for westward seas conditions. Mud boats were used to haul drilling mud in the Gulf of Mexico. Several have been converted to crab vessels and are used in the Bering Sea. They are of steel hull construction, very seaworthy, and can hold up to 400 crab pots.

Apparently, a mud boat can be purchased and outfitted for little more than half of the cost of building a new vessel.

Radios

The majority of the FWP troopers still carry and use the old handy talkies. They are cumbersome and ineffective much

of the time from various locations. Instead, the Sabre radio should be purchased for standard issue.

Satellite communications should be installed in all the aircraft and vessels. This is particularly important for the Wolstad, Vigilant, and the new mud boat, when purchased. All of the commercial crab vessels have state-of-the-art communications. FWP vessels use single side band (SSB) radios which are unreliable, encounter many dead spots, are hard to understand and, most important, can be heard by anyone else with an SSB (as are common on the commercial crabbers).

It is recommended that before equipment is purchased for a post, the post trooper is consulted as to the needs of the site.

PERSONNEL ATTITUDE AND MORALE

This section should be prefaced with recognition that, almost without exception, every FWP trooper interviewed for this report was grateful for the visit, for the attention of the Commissioner, and for the concern focused on the Division.

Overall, the morale and attitude of the Division is quite good. The troopers like their jobs, believe in the resource and cooperate well with the Division of Alaska State Troopers.

The major factors affecting morale are:

- No stability. Every change of administration--and sometimes during an administration--the Division is disrupted by threats of being abolished, of moving officers into blue uniforms, of being returned to its original home of the ADFG, and/or of having the AST commander placed in charge of FWP, as well.

- Lack of strong leadership and direction within the Division.

■ Problems with the Public Safety Employees' Association contract.

■ Shortage of personnel and equipment to adequately protect the resource (as addressed above).

Once again, recent changes in the executive branch have caused the Division to suffer from the above-cited rumors. Naturally, this sort of scuttlebutt affects every last trooper on the roster. These issues must be put to rest once and for all.

It is imperative that some housekeeping occur with regard to related statutes. The duties of the Department of Public Safety and of the Divisions of the Alaska State Troopers, Fish and Wildlife Protection, the Fire Marshal and the Division of Motor Vehicles clearly be spelled out. Such clarification should not entail any sort of fiscal note.

Specificity in the statutes is supported by the House Special Committee Report on Fisheries:

"The Division of Fish and Wildlife Protection should retain its full divisional status. There should be a clear separation in the primary responsibilities between fish and wildlife protection officers and general law enforcement troopers. Except in one-trooper posts, FWP officers should engage in general law enforcement duties only when they clearly do not interfere with Title 16 responsibilities, or in life-threatening situations."

The report also states: "Evident throughout the process (of gathering information) was the high level of public concern for increased enforcement on the fishing and hunting grounds."

It is therefore strongly recommended that a bill be submitted by the Department through the Governor to amend current statutes to formally establish a Division of Wildlife Enforcement within the Department of Public Safety, with the

Mission of the Division as stated in the 1990 Fish and Wildlife Protection Command Report (changes underlined):

"The primary mission of the Division of Wildlife Enforcement is to protect Alaska's fish and wildlife resources through enforcement of laws and regulations governing use of natural resources within Alaska and its adjacent waters, as well as through increasing the knowledge of, and respect for, fish and wildlife laws and regulations.

Wildlife Enforcement Troopers also participate[s] in the overall mission of the Department of Public Safety through enforcement of criminal laws and participation in Search and Rescue operations."

Protection of Alaska's wildlife resources, for economic value and propagation of the species, is a very specialized field. Particular training, knowledge, and experience are required to be an effective trooper in wildlife enforcement.

The head of the Division must have a direct line to the Commissioner. The Director (Colonel) not only needs such a relationship with the commissioner, but he or she also must have a direct line down through the hierarchy of supervisors who also are wildlife enforcement officers with similar training, experience, and background.

Any program or organization chart is only as good as the people who fill the various positions. It would be inappropriate to have an officer with a general law enforcement background supervise a specialized unit, such as wildlife enforcement. Certainly, there are exceptions, but normally, such an arrangement would not be optimal. Nor, would it be appropriate to have a wildlife enforcement trooper supervise a division dedicated to general law enforcement.

Such a combination was attempted in Kodiak a few years ago (a "brown shirt" supervising a "blue shirt"), but it was not successful.

Some fish and game departments utilize a regional concept with one person serving as a regional supervisor over all law enforcement and wildlife biologists in the district. Two primary factors made the situations less than positive: the supervisor tended to favor the division from he he was drawn and he lacked the depth of knowledge to make the best-reasoned decisions.

Strength of Leadership

FWP troopers felt that leadership and direction from the Director's Office is not strong enough or clear enough. Interviewees also felt that three Detachment Commanders fell into the same category.

In response to an interview question, troopers reported that visits from the Colonel, captains, lieutenants, and sergeants range from one or twice in the last four years to "never."

One of the best ways to ensure accountability of officers and their programs is for supervisors to get into the field and spend time with subordinates for several days. The supervisor should work along side the officer to learn about his or her problems, about the area, about equipment needs, etc.

Such visits increase morale, keep supervisors up to date on post problems, and allow better appraisal of individual troopers and their enforcement programs.

It is recommended that sergeants spend more time in the field as a working trooper performing similar duties. With as few people as the division has, every commissioned officer needs to assist in performing field responsibilities. The same recommendation could be made for lieutenants whose skills would be particularly welcome in the field during busy seasons.

PSEA Contract Problems

Three complaints repeatedly were cited as great sources of frustration for troopers:

- forced transfers;
- difficulty in getting transferred out of a remote post;
- and having the same days off every week.

The above problems apparently have been created by terms of the PSEA contract. However, I have not studied the contract, as it was not within the scope of this report.

A trooper can state on a form his or her preference for being stationed in a remote or urban area. Apparently, this record is difficult to change at a later time, however. Some troopers have been transferred to areas to which they did not wish to move, resulting in placing families in sub-standard housing.

Also, troopers stationed in one-person posts are unhappy because they are required to take the same days off every week. This is ironic because a basic rule of being a game warden is that a routine pattern never be set. The public must be kept guessing about when an officer will show up next.

Perhaps it is desirable for FWP troopers to negotiate within the PSEA contract their own agreement, more suitable to their type of work, with the Department of Public Safety. The current PSEA contract apparently is better-suited for the structure of the AST, and is not as workable as FWP officers may desire.

PSEA President Joe D'Amico has signed an agreement that permits FWP troopers greater flexibility (Article 15, Section 11). For example, it allows spreading the 40-hour work week over seven days, not just the five days between regular days off.

This should permit troopers in a one-person post to work those hours and days that will be most productive depending on the circumstances. Unfortunately, FWP Director, Col. Jack Jordan, was informed by the administrative services division in Juneau that it is not possible to pay FWP troopers if they work flex schedules.

It is recommended that the Commissioner confer with Col. Jordan to further explore the status of this issue and to resolve the administrative complications.

Miscellaneous

In some one-officer posts, where a single AST trooper is stationed, the trooper often takes annual leave in the summer, the busiest season. Thus, the FWP trooper is overwhelmed with law enforcement duties and, often, wildlife enforcement ends up taking a back seat.

And, leave blackouts prohibit FWP troopers from hunting.

STAFFING LEVELS AND GEOGRAPHIC LOCATION

A number of wildlife areas in Alaska are left "bare" due to scant staffing. Additional posts are necessary.

For example, there is no FWP trooper between Fairbanks and Willow along the Parks Highway system. The Fairbanks office stations one lieutenant, one sergeant, and seven or eight FWP troopers. Transfer of one of the trooper to Cantwell, Healy, or Clear could handle the pressure of resource users on the western half of the Denali Highway, south of Cantwell and north to Nenana. This would eliminate travel time to and from Fairbanks and permit greater productivity of the trooper on duty.

Several other areas require additional personnel or new or re-established posts.

Coldfoot - Make this a two-trooper post, particularly in light of plans by the Alaska Department of Transportation to open the Dalton Highway all the way to Prudhoe Bay. Road patrols can coordinate with FWP aircraft. Having a partner permits coverage even while one is on leave.

Delta - Make this a two-trooper post which can assist the Tok post as pressure dictates (such as the caribou season along the Taylor Highway or when the Tok trooper is on leave). Another officer could enable ground-air coordination.

King Salmon - Make this a two-trooper post with one of the positions a sergeant who could supervise the Bristol Bay salmon and crab fisheries programs, and colleagues in King Salmon and Dillingham. This would allow the Detachment Commander more time to conduct detachment-wide supervision over other use areas.

Dutch Harbor - Make this a two-trooper post. Dutch is the hub of the Bering Sea crab and bottom fish industry. Recent investigations by the division and case records indicate a tremendous pressure in the area that warrants a strengthened enforcement effort.

Vessels - Hire an additional boat crew of five qualified to operate the P/V Vigilant, the P/V Wolstad. An extra crew would increase vessel effectiveness as the boats would not have to sit in the harbor if personnel were on leave. Keeping vessel(s) in the Bering Sea almost constantly by switching crews in Dutch Harbor would permit greater enforcement penetration. Much valuable patrol time is lost for the Wolstad, for example, by running the long route back to Kodiak where it then lays up during the crews' time home.

Statewide Investigative Section (SIS)

Law enforcement professionals agree that the most effective methods of solving serious criminal activity are professional investigations and sophisticated covert operations.

Division records verify very successful undercover programs have been conducted in investigating illegal guiding and taking of game. Some covert program have been used to detect commercial fishing violations, as well.

A good example is a program coordinated in July, 1989 and 1990, during the Bristol Bay red salmon fishery. A gillnetter vessel was leased and two SIS investigators posed as commercial fishermen. During dark or very foggy periods, they travelled up the Naknek River and other closed areas. Eighty-two citations were issued to 40 boats fishing closed waters. Twenty-one boats were seized, although none were forfeited. Resulting civil and criminal fines reached nearly \$700,000, more than paying for a very effective enforcement operation.

The value of careful investigation, backed up with forensic support, is illustrated by the arrest and conviction of a Bering Sea crab vessel, known as the Discovery, and its crew in 1988.

The vessel took king crab (red) in Bristol Bay, a closed area and claimed to have taken them near Adak. An extensive investigation of fish tickets and weather reports, supplemented with excellent forensic work, showed that crab from the Adak area had different physical features than those of Bristol Bay. Overwhelming evidence caused the defense to settle on civil and criminal fines of \$565,000.

There are other cases involving bear and commercial fisheries; but the above examples clearly demonstrate the serious caliber of offenses against Alaska wildlife that occur and which must be prosecuted.

Intelligence gathering by SIS indicates that massive violations of a serious nature are very common. Decision makers in Alaska must awaken to the heinous crimes being committed against our wildlife resources.

Currently, the SIS staff consists of one sergeant and three troopers. While they are doing outstanding work, they are swamped. Their efforts more than pay for their wages, but they only are able to tackle the tip of the iceberg.

It is recommended that SIS staff be increased from three to eight troopers (plus the existing sergeant). Also, a clerk typist II or III is necessary to assist with the workload.

Intelligence information received by SIS lead investigators to believe that the amount of commercial activity on the fishing grounds of Alaska is far greater than every imagined. Indications are that numerous vessels are taking fish products and never make a landing in an Alaska port, thus escaping the raw fish tax. If this information is correct, million of dollars are being kept from the State's treasury.

One SIS investigator suggested that an investigator, jointly funded by the departments of Public Safety, Revenue, and Fish and Game be stationed in Seattle. In an undercover capacity, this investigator could be in a position to determine the magnitude of the problem of "escaping vessels" and who is involved. This idea deserves serious consideration.

Director's Office

Three commissioned personnel (one colonel and two captains) and two administrative assistants make up the staff of the Director's office.

Division reviews, designed to audit agency compliance with operating procedures and policies, have not occurred in recent years due to time and personnel constraints.

It is recommended that a lieutenant position for the Director's office be established to conduct Division audits and to assist the captains in a variety of duties.

APPROPRIATELY ALLOCATED FUNDS

Considering the monies available, funding is relatively evenly distributed. The complaint in this category is that the bulk of the effort goes toward commercial fishing. It appears that enforcement may be saturated in Bristol Bay (this sounds like it contradict what you said earlier about lack of enforcement there) and in the Cook Inlet salmon driftnet fisheries.

The Commissioner is encouraged to closely review those efforts this summer. It may well be that some of the FWP troopers could be used to help control the serious problems along the salmon streams of the Susitna Valley of the Kenai River system.

TRAINING

A previous study has been completed on this subject by Mike Korhonen, as of April 5, 1991. It is quite evident that training over the past several years has been almost non-existent.

In addition to Korhonen's suggestions for improvement of training, there are other topics pertinent to conducting a professional wildlife enforcement program and to promoting safety for the FWP troopers. These subjects should be included in Academy and in-service training:

1. intensive coverage of Title 16 AS;
2. principles of fish and game management (40 hours);
3. wildlife enforcement patrol techniques and field crime scene investigations (outside instructors, such as Dan France and Al Thompson, could be used);
4. identification of fish and game species;
5. identification of all types of commercial fishing gear;

6. methods of preserving evidence in fish and game cases;
7. Arctic survival;
- 8 and cross-cultural training to familiarize troopers with Alaska's diverse Native community.

Subjects of in-service training ought to include:

1. small engine repair,
2. self-defense,
3. marine navigation,
4. report writing refresher course,
5. and use of breathalyzer.

SUGGESTIONS FOR IMPROVING WORKING CONDITIONS AND DIVISION EFFORTS

The following are the most common suggestions derived from interviews for this report:

- Permit officers to work a flexible schedule.
- Increase the person power.
- Conduct more special programs, both uniformed and covert.
- Remedy the discrepancy between sergeants' and lieutenants' pay.
- Hire summer help for the clerk typists' in detachment headquarters to keep up with the seasonal increase in workload (citations, complaints, case reports, etc.). This is particularly critical in Soldotna, Kodiak, and Palmer.
- Establish interview rooms in Tok, Soldotna, Kodiak and the Mat-Su Valley.

■ Allow some leave (even just a few days) during fall hunting season. This is very important to several FWP troopers and should be seriously considered by the Director.

It is recommended that more special program be conducted, such as one executed for a two-week period during September, 1989, in the Iliamna, Twin Lakes, and King Salmon areas. The program was coordinated by Sgt. Joe D'Amico of SIS and involved 21 FWP troopers. The program resulted in 1727 contacts, 68 citations, 74 warnings, 80 wasted animals being investigated, 13 search and rescue missions (with 16 people rescued), 445 aircraft hours, 212 guide/outfitter contacts, and 35 stake out days. A very effective program!

IS DUTY PERFORMANCE IN COMPLIANCE WITH JOB DESCRIPTIONS?

No problem was detected in this area.

STRENGTHS AND WEAKNESSES OF FISH AND WILDLIFE PROTECTION PROGRAM PERFORMANCE

Weaknesses outweigh strengths, primarily because of the lack of personnel and of state-of-the-art equipment, and partially because of a lack of strong leadership and direction.

Strengths include:

■ Quality personnel. FWP troopers are interested in and dedicated to Alaska's wildlife resources.

■ Good working relationship with AST.

Being a division of the Department of Public Safety.

Weaknesses include:

■ It is critical that a good relationship be maintained with District Attorneys (DAs) and courts. These officials are extremely busy, so it's a must that all presented cases are solidly built on a firm foundation of complete investigation. Reports must be professionally written so that the DA clearly can understand everything in the report.

An effort is necessary to have DAs and judges understand the importance and value of Alaska's wildlife resources. Apparently, there is some friction with the DA and court in Kenai. The fines for commercial fishing violations are low, such as \$500, and sometimes are suspended without fish being forfeited.

This type of response by a DA or court only serves to make a mockery of the law and to encourage further violations. It is incumbent upon the Detachment commander to maintain a continuous dialogue with the DA and courts on the value of protecting the resource.

■ The inability to work a flexible schedule.

■ Having too many FWP troopers take the same days off. For example, the Soldotna monthly work schedule showed a roster of seven troopers, including the lieutenant and sergeants, plus a Fish and Wildlife Enforcement Officer (FWEO) through May 15, as well as an additional FWEO from May 16-31.

Six personnel take off Saturday and Sunday every week, with no supervisor on duty. That left three officers on duty on the weekend (and four after May 16). Also, the majority of the duty occurred from 6 a.m. to 4 p.m.. There appears to be no enforcement effort during the vulnerable hours of near an during darkness.

In Fairbanks the work schedule of January 1, 1991, through June 15, 1991, shows a roster of eight commissioned personnel, the lieutenant not included. If that officer were included, the schedule indicated five officers have every weekend off; the other four have either Saturday or Sunday off. That leaves only two FWP troopers on duty for the

weekend with no supervisor. Shifts covered 7 a.m. until 5 p.m.

Work schedules of these two locations are not conducive to adequate enforcement coverage.

CONSISTENCY IN IMPLEMENTING DEPARTMENTAL POLICIES AND OBJECTIVES

No serious problems were detected.

FINAL COMMENTS AND RECOMMENDATIONS

The Fish and Wildlife Enforcement Officer program should be examined more closely by the Office of the Commissioner.

FWEOS

Evidently, FWEO positions were created with the idea of hiring individuals with at least six months of law enforcement experience as seasonal employees so that the Division could get along with considerable fewer full-time FWP troopers. FWEO enforcement authority is limited to Title 16 AS regulations under 5AAC.

A problem arises when the FWEO in full uniform, wearing a badge, drives in a marked Public Safety vehicle with red lights. On occasion, they are confronted with situations that require general law enforcement authority and experience. The public does not realize the limited authority of the officer and expects him or her to respond to all problems.

A lack of permanent troopers, coupled with seasonal pressures, causes FWEOS sometimes to be assigned trooper-type duties, oftentimes beyond their authority, experience, and training.

Enhancement Fisheries

Enhancement fisheries are being conducted quite successfully in several areas of the state, creating a sustainable economic base.

These popular programs have, however, created a real problem for FWP. Troopers are expected to monitor and referee all enhancement openings, even though the openings are for private stocks. The sole purpose of having troopers on site is to prevent boats from crossing the line prior to the signal to begin fishing. Meanwhile, wild fish stocks that need protection are vulnerable to illegal taking.

It is recommended that private, non-profit hatcheries hire and pay seasonal employees to monitor the openings. If Public Safety interviews applicants, commissions them to enforce Title 16 AS and 5AAC, and the hatchery provides the wages, FWP troopers would be free to focus on wild stocks where needed. Persons hired by the hatcheries would perform other duties associated with the operation when not monitoring openings.

Uniforms

In one Detachment a lieutenant and two sergeants were on duty in civilian clothes. One sergeant was working with Detachment Investigations, so his attire would have been appropriate. However, if a professional profile is to be created and maintained, uniforms should be worn by all supervisors on a regular basis.

Of the five lieutenants interviewed, only one was in uniform, which he wears on most duty days.

Sergeants' and Lieutenants' Exams

There is a reluctance on the part FWP troopers to take the sergeants' exam, and for sergeants to take the

lieutenants' exam. This is because a new sergeant ends up at the bottom of the seniority list and could be transferred to a post that he or she considers undesirable.

Sergeants complain that if they become a lieutenant, they could make less money than a sergeant working for them. Also, the Division can, at will, transfer lieutenants.

Part of the problem may be within PSEA. If FWP troopers do decide to form their own bargaining unit with PSEA, they should consider the promotional path.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
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Juneau, Alaska 99801-2101

MEMORANDUM

January 24, 1992

SUBJECT: Sectional Summary: Draft bill prohibiting state troopers and fish and wildlife protection personnel from holding big game guide-outfitting licenses (Work Order No. 7-LS1809)

TO: Representative Lyman Hoffman

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is a sectional summary of a draft bill that prohibits state troopers and fish and wildlife protection personnel from concurrently holding active big game guide-outfitting licenses.

The bill adds a new section to AS 08.54, the big game guide-outfitting statutes. Subsection (a) prohibits state troopers and fish and wildlife protection personnel of the Department of Public Safety from holding an active guide-outfitter license, marine mammal guide-outfitter license, class-A assistant guide-outfitter license, or assistant guide-outfitter license. This subsection would prevent all state troopers and fish and wildlife protection personnel from acquiring guide-outfitter licenses after the effective date of the bill.

Subsection (b) suspends any guide-outfitter license held by a person who becomes employed by the Department of Public Safety as a state trooper and fish and wildlife protection officer after the effective date of the bill. Many persons who become guide-outfitters are also well-suited for employment as state troopers and fish and wildlife protection officers and can provide valuable services to the Department of Public Safety and the state as law enforcement officers. This provision allows the Department of Public Safety to hire such persons as state troopers and fish and wildlife protection personnel while preventing these persons from being actively engaged in guide-outfitting by suspending their guide-outfitting licenses.

If I may be of further assistance, please advise.

GU:pl:gc
92-038.plm
Enclosure

BILL SUMMARY 1/24/92
Legal Counsel to HOFFMAN

FISCAL NOTE

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

BILL NO. SB 375

Revision Date: _____ Department Affected: Public Safety

Title: "An Act prohibiting certain law enforcement officers from holding...licenses" BRU: Fish & Wildlife Protection

Sponsor: Senator Hoffman Component: Enforcement & ISU

Requestor: Senate State Affairs COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated.

Prepared By: Captain Conrad G. Seibel Phone: 269-5509

Division: Fish & Wildlife Protection Date: 2/1/92

Approved by Commissioner: *Paul A. ...* for Richard L. Burton

Agency: Department of Public Safe '3/92