SCOMM
102:19

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 28, 1995

SUBJECT: Article VIII, Constitution of the State of Alaska and a moratorium on sport fish charter operators (Work Order No. 9-LS0999)

TO: Representative Alan Austerman
Attn: Amy Daugherty

FROM: George Utermohle
Legislative Counsel

This memorandum summarizes the implications that the "open access" provisions of article VIII of the Alaska Constitution would have for any proposal to place a moratorium on the number of sport fish charter operators.

Any proposal to limit the number of sport fish charter operators would infringe on the "open access" provisions of the Alaska Constitution, because it would have the effect of restricting free entry into the fishery. See, McDowell v. State, 785 P.2d 1 (Alaska 1989); Owsichek v. State, 763 P.2d 488 (Alaska 1988); Bozanich v. Noerenberg, Alaska Superior Court, First Judicial District, Juneau, Case No. 70-389, March 15, 1971. Even though they are not actually engaged in sport fishing while providing charter services, the Alaska Constitution protects the open access rights of sport fish charter operators to use fishery resources for professional purposes. "The common use clause makes no distinction between use for personal purposes and use for professional purposes." Owsichek, 763 P.2d at 497; see also, Tongass Sport Fishing Association v. State, 866 P.2d 1314 (Alaska 1994); Alaska Fish Spotters Association v. State, 838 P.2d 798 (Alaska 1992).

The "open access" provisions of article VIII of the Alaska Constitution are the "common use" section[1], "no exclusive right of fishery" clause[2], and the "uniform application" section[3]. These

---

[1] Article VIII, sec. 3 states:

Common Use. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

[2] Article VIII, sec. 15 states (emphasis added):

(continued...)

provisions provide that all persons shall have an equal opportunity to participate in the use of fish and game resources.

The current limited entry system for commercial fisheries (AS 16.43) would violate the open access provisions of the Alaska Constitution, unless the constitution had been amended to allow limited entry. State v. Ostrosky, 667 P.2d 1343 (Alaska 1983), appeal dismissed sub nom. Ostrosky v. Alaska, 467 U.S. 1201, 81 L.Ed.2d 339 (1984). In 1972, article VIII, section 15 was amended to create a limited entry exception to the "no exclusive right of fishery" clause. The limited entry exception provides that "[t]his section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State." Article VIII, sec. 15, in relevant part.

In order to place a limit on the number of sport fish charter operators, it would be necessary for such limitations to fall under the limited entry exception. Though the limited entry exception was largely adopted in the context of commercial fisheries, the exception does not expressly limit itself to only commercial fisheries. The courts may construe "any fishery" to include sport fisheries as well as commercial fisheries. Thus there is a possibility that the limited entry exception would authorize some form of limitation on the number of sport fish charter operators.

Assuming that the limited entry exception is construed broadly to include limited entry or a moratorium on entry for sport fish charter operators, the next obstacle to be overcome is to establish that limitations or restrictions on who may become sport fish charter operators achieves the three purposes of the limited entry exception: resource conservation, prevention of economic distress among fishermen and others, and promotion of aquaculture. When the Alaska Supreme Court approved the commercial fisheries limited entry program, the court did not examine in any detail whether the program satisfied all of the purposes that the limited entry exception was to achieve. Ostrosky, 667 P.2d at 1190-95. In other cases where the court had occasion to review commercial fisheries limited entry, the court did not rigorously

---

[2]/(...continued)
No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

[3]/ Article VIII, sec. 17 states:

Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

examine whether the program achieved all three of the purposes, but instead seemed to accept a challenged provision if it furthered one or two of the purposes of the limited entry exception. Johns v. Commercial Fisheries Entry Commission, 758 P.2d 1256, 1263-64 (Alaska 1988); Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1265 (Alaska 1980). The burden would fall on upon the legislature to establish a substantial record in the legislative history that any legislation limiting the number of sport fish charters operators achieves those purposes.

If the limited entry exception cannot be construed to authorize a limitation or moratorium on the number of sport fish charter operators, then the only remaining option is to amend the Alaska Constitution accordingly.

If I may be of further assistance, please advise.

GU:glc:klb
95-270.glc

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM December 4, 1995

SUBJECT: "Open access" provisions of the Alaska Constitution and restrictions on sport fish guides (Work Order No. 9-LS1353)

TO: Representative Joseph Green

FROM: George Utermohle
Legislative Counsel

This memorandum briefly discusses the implications that the "open access" provisions of article VIII of the Alaska Constitution would have for any proposal to limit the number of sport fish guides.

Any proposal to limit the number of sport fish guides would infringe on the "open access" provisions of the Alaska Constitution, because it would have the effect of restricting free entry into the fishery. See, McDowell v. State, 785 P.2d 1 (Alaska 1989); Owsichek v. State, 763 P.2d 488 (Alaska 1988); Bozanich v. Noerenberg, Alaska Superior Court, First Judicial District, Juneau, Case No. 70-389, March 15, 1971. Even though they are not actually engaged in sport fishing while providing guide services, the Alaska Constitution protects the open access rights of sport fish guides to use fishery resources for professional purposes. "The common use clause makes no distinction between use for personal purposes and use for professional purposes." Owsichek, 763 P.2d at 497; see also, Tongass Sport Fishing Association, 866 P.2d 1314 (Alaska 1994); Alaska Fish Spotters Association, 838 P.2d 798 (Alaska 1992).

The "open access" provisions of article VIII of the Alaska Constitution are the "common use" section[1], "no exclusive right of fishery" clause[2], and the "uniform application" section[3].

---

[1] Article VIII, sec. 3 states:

Common Use. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

[2] Article VIII, sec. 15 states (emphasis added):

No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or

(continued...)

These provisions provide that all persons shall have an equal opportunity to participate in the use of fish and game resources.

The current limited entry system for commercial fisheries (AS 16.43) would violate the open access provisions of the Alaska Constitution, unless the constitution had been amended to allow limited entry. State v. Ostrosky, 667 P.2d 1343 (Alaska 1983), appeal dismissed sub nom. Ostrosky v. Alaska, 467 U.S. 1201, 81 L.Ed.2d 339 (1984). In 1972, article VIII, section 15 was amended to create a limited entry exception to the "no exclusive right of fishery" clause. The limited entry exception provides that "[t]his section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State." Article VIII, sec. 15, in relevant part.

In order to place a limit on the number of sport fish guides, it would be necessary for such limitations to fall under the limited entry exception. Though the limited entry exception was largely adopted in the context of commercial fisheries, the exception does not expressly limit itself to only commercial fisheries. The courts may construe "any fishery" to include sport fisheries as well as commercial fisheries. Thus there is a possibility that the limited entry exception would authorize some form of limitation on the number of sport fish guides.

Assuming that the limited entry exception is construed broadly to include limited entry for sport fish guides, the next obstacle to be overcome is to establish that limitations or restrictions on who may become sport fish guides achieves the three purposes of the limited entry exception: resource conservation, prevention of economic distress among fishermen and others, and promotion of aquaculture. When the Alaska Supreme Court approved the commercial fisheries limited entry program, the court did not examine in any detail whether the program satisfied all of the purposes that the limited entry exception was to achieve. Ostrosky, 667 P.2d at 1190-95. In other cases where the court had occasion to review commercial fisheries limited entry, the court did not rigorously examine whether the program achieved all three of the purposes, but instead seemed to accept a challenged provision if it furthered one or two of the purposes of the limited entry exception. Johns v. Commercial

---

2/(...continued)
authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

3/ Article VIII, sec. 17 states:

Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Fisheries Entry Commission, 758 P.2d 1256, 1263-64 (Alaska 1988); Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1265 (Alaska 1980). The burden would fall upon the legislature to establish a substantial record in the legislative history that any legislation limiting the number of sport fish guides achieves those purposes.

If the limited entry exception cannot be construed to authorize a limitation on the number of sport fish guides, then the only remaining option is to amend the Alaska Constitution accordingly.

Please contact me, if I can provide additional information on the open access provisions of the Alaska Constitution or other issues relating to sport fish guides.

GU:glc
95-452.glc

Alaska State Legislature

WHILE IN SESSION
CAPITOL BUILDING
JUNEAU, ALASKA 99801-1182
(907) 465-4931
1-800-870-4931
(907) 465-4316 FAX

INTERIM ADDRESS:
716 WEST 4TH AVENUE
ANCHORAGE, ALASKA 99501
(907) 258-8198
(907) 258-8171 FAX

Representative Joe Green
District 10

CHAIRMAN, JUDICIARY COMMITTEE
VICE CHAIRMAN, HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE
MEMBER, RESOURCES COMMITTEE

FINANCE SUBCOMMITTEES
DEPT. OF COMMERCE & ECONOMIC DEVELOPMENT
ALASKA COURT SYSTEM

Sponsor Statement

HJR 38 - Constitutional Amendment to Limit Sport Fish Guides

HJR 38 proposes to amend the Alaska Constitution to clarify that the state can limit the number of sport fish guides under Article 8, Section 15. HJR 38 is needed because the state's authority to impose such limits is not clear at this time.

While it is anticipated that such limits will be the conclusion of a public process, based on scientific data, HJR 38 does not address the specifics of implementing such restrictions. HJR 38 simply grants a clear and concise line of authority from the voters to their state government.

Amendment #1 to HJR 38

Insert on line 8 after "entry" and before "into":

"by means of nontransferable permits"

KENAI RIVER GUIDE TRENDS & NUMBERS
1982-1997 (As of 8/02/97)

YEAR	GUIDES TOTAL	RESIDENTS	NON RESIDENTS	MOTORIZED GUIDES	DRIFT GUIDES	TOTAL FISHING	NON FISHING
1997	400	306 /77%	94/ 23%	312/ 78%	88/ 22%	354/ 88%	46/ 12%
1996	375	287/ 77%	88/ 23%	292/ 78%	83/ 22%	335/ 89%	40/ 11%
1995	357	260/ 73%	97/ 27%	263/ 74%	94/ 26%	314/ 88%	43/ 12%
1994	304	224/ 74%	80/ 26%	214/ 70%	90/ 30%	257/ 85%	47/ 15%
1993	263	196/ 75%	67/ 25%	194/ 74%	69/ 26%	222/ 84%	41/ 16%
1992	275	194/ 71%	81/ 29%	212/ 77%	63/ 23%	238/ 87%	37/ 13%
1991	315	214/ 68%	101/ 32%	229/ 73%	86/ 27%	290/ 92%	25/ 8%
1990	330	234/ 71%	96/ 29%	243/ 74%	87/ 26%	310/ 94%	20/ 6%
1989	312	212/ 68%	100/ 32%	215/ 69%	97/ 31%	292/ 94%	20/ 6%
1988	268	191/ 71%	77/ 29%	184/ 69%	84/ 31%	252/ 94%	16/ 6%
1987	232	188/ 81%	44/ 19%	155/ 67%	77/ 33%	222/ 96%	10/ 4%
1986	198	148/ 75%	50/ 25%	138/ 70%	60/ 30%	187/ 94%	11/ 6%
1985	171	131/ 77%	40/ 23%	131/ 77%	40/ 23%	160/ 94%	11/ 6%
1984	224					214/ 96%	10/ 4%
1983	208					198/ 95%	10/ 5%
1982	217					207/ 95%	10/ 5%

1997 KENAI RIVER GUIDE SUMMARY
AS OF 8/2/97

January : 1	1 Res.	1 Fishing 0 Non Fishing	1 Power
February 6:	6 Res.	6 Fishing 0 Non Fishing	6 Power
March 38:	37 Res. 1 NonRes.	38 Fishing 0 Non Fishing	31 Power 7 Drift
April 173:	155 Res. 18 NonRes.	170 Fishing 3 Non Fishing	149 Power 26 Drift
May 117:	68 Res. 49 NonRes.	93 Fishing 24 Non Fishing	86 Power 31 Drift
June 50:	28 Res. 22 NonRes.	36 Fishing 14 Non Fishing	31 Power 19 Drift
July 14:	11 Res. 3 NonRes.	9 Fishing 5 Non Fishing	8 Power 6 Drift
August 1:	0 Res. 1 NonRes.	1 Fishing 0 NonFishing	1Power 0 Drift

400 TOTAL GUIDES:

306 Residents	354 Fishing	312 Power
94 Non Residents	46 NonFishing	88 Drift

Of the 354 fishing guides, 290 are residents, 64 are non residents

51 new guides registered in 1997

61 1996 guides did not register in 1997

158 registered drift boats for the Kenai River in 1997

314 registered power boats for the Kenai River in 1997

TOTAL: 472 registered boats for the Kenai River in 1997

KENAI RIVER GUIDE STATISTICS
AS OF 8/2/97

1997	1996	1995
Total: 400	Total: 367	Total: 357
Resident: 306	Resident: 283	Resident:260
Non Resident: 94	Non Resident: 84	Non Resident:97
Fishing: 354	Fishing: 329	Fishing: 314
Non Fishing: 46	Non Fishing:38	Non Fishing: 43
Fishing/ Resident: 290	Fishing/ Resident:263	Fishing/ Resident: 243
Fishing/ Non Res: 64	Fishing/ Non Res: 66	Fishing/ Non Res: 71
Non Fishing/ Res:16	Non Fishing/ Res:20	Non Fishing/ Resident:
Non Fishing/NonRes: 30	Non Fishing/NonRes:	Non Fishing/NonRes:

Table 1. 1997 Sport Fish Guide Registration. Approximate counts of guides and vessels registered by Sport Fish Division. Identification of multiple registrations of individual guides was necessarily based on name and address, which are often difficult to match. Counts by area do not sum to region or Statewide total, because both guides and vessels could register in multiple areas and regions.

	Guides registered for this Area				Vessels registered for this Area
	Alaska Resident	Not AK Resident	Residency Unknown	Total	
Southeast: Fresh and Saltwater					
Ketchikan Area	337	86	3	426	411
Prince of Wales Island Area	406	122	5	533	520
Kake/Petersburg/Wrangell Area	402	80	7	489	458
Sitka Area	489	100	8	597	585
Juneau Area	393	70	4	467	442
Haines/Skagway	214	32	1	247	194
Glacier Bay Area	303	60	2	365	318
Yakutat Area	204	61	5	270	128
Southeast: Fresh and Saltwater Region	857	275	11	1143	1039
Southcentral: Saltwater					
Prince William Sound/Copper River Flats	378	42	3	423	275
North Gulf Coast	331	39	1	371	273
Lower Cook Inlet	599	78	3	680	464
Upper Cook Inlet	483	58	1	542	374
Kodiak Island Archipelago	367	52	1	420	227
Alaska Peninsula/Aleutian Islands/Bristol Bay	279	90	6	375	93
Southcentral: Saltwater Region	1021	191	6	1218	721
Southcentral: Freshwater					
Prince William Sound/Copper River Flats Drainages	286	40	3	329	
Upper Copper/Upper Susitna Drainages	293	32	2	327	
North Kenai Peninsula Drainages	487	101	6	594	
South Kenai Peninsula Drainages	397	69	5	471	
Anchorage Area Drainages	183	16	2	201	
Knik Arm Drainages	193	14	3	210	
Susitna River Drainages	460	84	6	550	
West Cook Inlet Drainages	356	76	6	438	
Alaska Peninsula/Aleutian Drainages	325	116	4	445	
Eastern Southwest Alaska Drainages	337	188	7	532	
Central Southwest Alaska Drainages	366	251	9	626	
Western Southwest Alaska Drainages	377	267	11	655	
Kodiak Island Archipelago	315	73	7	395	
Southcentral: Freshwater Region	1306	564	21	1891	
Interior					
Tanana River Area	163	4	1	168	
Kuskokwim River Area	202	113	9	324	10
Seward Peninsula Norton Sound Area	96	10	1	107	8
Northwest Alaska Area	110	6	1	117	11
Yukon River Area	167	19	1	187	20
North Slope Brooks Range Area	116	22	1	139	11
Interior Region	375	134	7	516	29
Statewide	2561	925	36	3522	1707

OPINION

PENINSULA CLARION 12-29-95 P.4

Number of river guides should be limited

A well-known, local Outdoors writer, one I have respect for, recently voiced his opinion concerning the number of guides operating on the Kenai River. I am excited to learn that his "second thoughts," as stated in Dec. 22, 1995, Outdoors section of the Peninsula Clarion, are finally more in line with my thinking. His fresh outlook will hopefully have an important impact on the Kenai River's future during 1996.

A writer's posture and comments made in print are always under attack. But make no mistake, they are important in a free society. On issues of grave importance such as overcrowding on the Kenai River, the "poison pen" carries an influential message that gives anyone an opportunity to make a darn fool out of themselves. And, I intend to make a darn fool out myself until something "realistic" is done to reduce the number of guides on this river!

I would like to clarify what that outdoor writer has recently, politely and carefully illustrated for you concerning Kenai River guides. I would like to allow you the opportunity to read selected parts of an important 1991 letter I wrote to Clem Tillion, the "fishing czar," who, by the way, was appointed by a governor to make recommendations concerning the river. No offense intended, but I question if Mr. Tillion even knows where Eagle Rock is located.

Before I do that, be aware of the fact that in 1974, I complained about too many Kenai River guides. I wrote a letter to Gov. Jay Hammond expressing my concern, and he responded by telling me he wasn't immediately concerned and that it was a local issue to be handled on the local level.

In 1976, I attended several meetings here and in Anchorage expressing my concern about the growing numbers of Kenai River guides. By 1978, I challenged the Coast Guard and demanded that all guides be licensed, registered and regulated. I won that battle which is another story. I never dreamed the guiding situation would be allowed to get so far out of hand.

In 1978, I retired my status as the "original Kenai River fishing guide" and elected to be no part of the guiding fraternity. I belong to no local fishing organizations, none of them represent me or speak for me. This information is much different than many have been led to believe. I was embarrassed to be put in the same category as some guides at the time. From that point, I constantly worked to control the number of guides working the Kenai River.

I have continued that mission ever since, in various ways. I sent several letters over the years to people who could have been influentially helpful but they proved useless. Now, many of these folks are concerned. Too late!

SPENCE DE VITO

Following are the brief, selected exerts from a long letter with a list of recommendations I made to Mr. Tillion and Gov. Walter Hickel's office in 1991.

Dear Mr. Tillion:

After our conversation last evening concerning the "Kenai River Guide Problem," I did a bit of brainstorming in an attempt to find and produce a more graceful solution in which to reduce the number of guides on the Kenai River.

I was pleased to learn that we are in concert with our thinking and that we both believe in the need for a drastic reduction of guides on the Kenai River. I anticipated problems in making a compatible solution concerning the number we could all live with. That number has been suggested to you in my letter of Jan. 4, 1991, concerning the lower river. I would hope that the number of guides for the entire river will not exceed 75, including the non-powered drift boats.

I realize there are many potential solutions, some better than others. Whatever you do:

a. Enforce an immediate moratorium on the number of fishing guides able to obtain guide permits for the Kenai River. Issue no more permits as of 9 a.m. ... today. Call Kenai Parks and Recreation and tell them to delay all new permits until further notice from the governor's office.

b. Establish the number of guides you want to operate on the Kenai River. Obtain a Kenai River map and count the well-known holes that are labeled on that map. The map can be obtained at the Moose Range Headquarters located as you enter Soldotna coming in from Homer. For example, from the Soldotna bridge downstream multiply each hole by two (two guides per hole). On the upper reaches, multiply the suggested holes by four (four guides per hole). This should help give you a starting point in which to determine numbers.

c. Once you have established a highly conservative number of guides, send notice to all Kenai River guides that were ever registered with Kenai Parks and Recreation. Try to be fair to meet the least resistance from as many folks as possible.

A sample of ideas for you to ponder for this notice to guides:

NOTICE:

1. One guide, one permit

2. Change the 6 o'clock starting time and closing time to read 7 and 5. One beginning at 7 a.m. and ending at noon and the other beginning at 1 p.m. and ending at 5 p.m. This would give the non-guide folks an opportunity to fish before or after work for a change without having to get up at 2 a.m. to beat the guides on the river. Clem, this also means that the guides not be allowed on the river before 7 or 1, and that they will be off the river by noon and 5 p.m. A guide will fish either in the morning or the afternoon rotation but not both. (By doing this, already one can see that twice as many guides could operate. Sure it would be a burden but isn't all this mess a burden on the rest of us?)

This equates to $650 per day per license, x 6 days = $3,900 per week x 8 June and July weeks = $31,200. The May, August, September, October (fishing) is "gravy frosting"! One boat, one guide, one license. A hard working guide could easily make $50,000 and spend the winter months in Mexico.

d. ALL guides who once held permits will receive a form to be completed along with the appropriate requirements. However, a new set of rules will be sent along and a warning will also be enclosed stating that not all guides will have the opportunity to fish this year. If they are not awarded or selected by the computer, or in an annual drawing, they will have to apply again next year, much like I have to when I apply for my sheep and goat permit.

When the rules are being passed out, everyone must have an equal opportunity. I realize it is difficult to wade through my suggestions but call on me if you need questions answered. I have more ideas on the rotating schedule but would hope we never have to come to that sort of participation.

I strongly feel, by limiting the guides, and by giving all guides the opportunity to go through the selection process, guides should be able to raise their premiums to somewhat compensate, and also to be able to adjust to the new ruling. At the same time they will make non-guided fishermen and local fishermen happier. Their reputation as a guide on the Kenai will have more credibility and possibly the economy will stabilize.

Good luck!

Finally, I agree, Mr. Outdoor Writer. Yes, the number of guides should be limited but there are only a handful of folks that can make it actually happen. I know! I have been working on it for over 20 years. One of those people is the governor. Another, is the head of the Department of Fish and Game and perhaps the borough mayor. Then there are guys who have the skill and power of the "poison pen." You know, guys like you. Keep up the good work!

Spence De Vito is a former guide and a retired educator.

PENINSULA CLARION 12-22-95

Second thoughts on the number of tourists and guides on the Kenai

LES PALMER
An Outdoor View

Seven years ago, I said in this column that the number of Kenai River guides should be limited only by the law of supply and demand. If guides are to be limited, there must be a compelling reason for it, I opined. Our tourism industry is too immature to be putting on the brakes, I reasoned.

Well, I'm having second thoughts about guides and tourists.

I'm not alone either. Many Alaskans worry about the relentless growth of tourism. We worry that no one is keeping track of how tourists are exploiting our natural resources. We worry about the tons of fish and clams being taken out of Alaska in RVs and airplanes. We worry about wildlife viewers and other non-hunters becoming a political force with enough clout to stop hunting. We worry about whether we'll be able to get to the water, come salmon season.

An infinite number of tourists are stressing our finite resources. More and more, we see tourists and tourism not as an economic panacea, but as a threat to the reasons we live here.

The numbers are scary. In 1977, resident anglers outnumbered nonresidents by a ratio of 2-to-1. By 1990, Outsiders had caught up. Last year, they outnumbered us by 44,000. Every year, more come.

If tourism were any other business, it would be required to complete annual Environmental Impact Statements. Yet, no one measures its impacts on us Alaskans, or on our environment. Even as the state spends more of our money attracting more tourists and encouraging more tourisin businesses, it spends less enforcing fish and wildlife regulations.

Palmer resident Rod Arno, a guide-outfitter who is also president of the Alaska Outdoor Council, agrees with me that Alaska needs to get a handle on what he calls "commercial users." These include fishing and hunting guides, eco-tour and wildlife-watching outfits, river rafters, transporters, air-taxi operators—everyone who exploits Alaskan's natural resources.

Arno says all users are "consumptive users," even those who just watch. And commercial users can be highly consumptive.

"Wildlife viewers exploit wildlife by their presence and by sheer numbers," Arno says. "All commercial users disturb and displace animals."

They can also exert enough political pressure to impact hunting, he says. Every viewing area exploited for "tourist green" is one less where hunters and other users are tolerated.

"If all these commercial uses were licensed, there could be some control on their encroachment into the habitat," Arno says. "There would be money to pay for monitoring their impacts on fish and game populations, and those impacts could be limited.

"I don't know anyone who wants things to get any worse than they are right now. There has to be some limit on commercial users."

For years, some hunting and fishing guides have asked for limited entry. It's high time that idea received serious consideration.

On the conflict-besieged Kenai River, 357 guides registered in 1995, up 53 from the previous year, an all-time record.

All is not well, on the Kenai. The price of a half-day king salmon trip is about what it was 10 years ago, indicating that the value of those trips has been steadily dropping.

Soldotna resident and Kenai River guide Jeff King has wanted to limit guides on the Kenai for several years, and he has plenty of company. In a carrying-capacity study of the Kenai, limiting the number of guides was what the public wanted most.

But any talk of regulating guides makes them jittery as a chinook in a creek. King is on the Guide Task Force, directed by the Board of Fisheries earlier this year to develop recommendation for managing the development of the fishing guide industry. Getting guides to even admit they should be licensed, let alone limited, is a chore, he says.

"You've got to crawl before you walk, and we're having a helluva time convincing people they ought to crawl," says King.

Statewide limits aren't necessary, he says. In many parts of Alaska, guiding would be beneficial, and it should be allowed to develop. But in places like the Kenai River, where some professionalism would be desirable, and where users would like to keep some "quality of experience" in their fishing, the number of guides should be limited, he says.

I don't know how best to limit or regulate commercial users. All I know is that it needs doing. Otherwise, we'll soon find that every lowbush cranberry has its own little price tag.

CITY OF KENAI
NO PARKING

"Section 13.30.030. After October 1 of each fall until May 1 of the following year, no person shall leave any vehicle unattended on any City street between the hours of 4 a.m. and 8 a.m. of any day." Violators subject to vehicle impoundment.

NO DEPOSITING OF SNOW

"Section 13.30.065. It shall be a violation for any person to deposit or cause to be deposited any snow or ice on or against a fire hydrant or on any sidewalk, roadway or any loading or unloading areas of a public transportation system."

D620/211

Nikiski Pool Hours

For Dec. 19th thru Dec. 30th 1995

WILDERNESS WAY

Give An Autographed Copy For Christmas

Join Us

Book Signing/ Canoe Q & A Session
Friday, Dec. 22 & Saturday, Dec. 23
1:00 pm - 6:00 pm

"The Kenai Canoe Trails"
The Guidebook to Alaska's Premier
Hiking and Canoeing System

Outfit Your Sled

Outfit your sled with awesome Polaris accessories like color-coordinating canvas covers, ski skins and nylon bags with built-in map holders. Or choose other high-quality Polaris accessories to give your sled added utility and a hot look. Stop by today for a Polaris clothing

KENAI RIVER GUIDE LIMIT PROPOSAL

A Proposal to Limit the Number of Sport Fishing Guides in the Kenai River Special Management Area

by the

Division of Parks and Outdoor Recreation
Alaska Department of Natural Resources

March 21, 1991

Alaska Department of NATURAL RESOURCES

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS AND OUTDOOR RECREATION

WALTER J. HICKEL, GOVERNOR

3601 C STREET, SUITE 1200
ANCHORAGE, ALASKA 99503
PHONE: (907) 762-2600

MAILING ADDRESS:
P.O. BOX 107001
ANCHORAGE, ALASKA 99510-7001

March 21, 1991

Dear Reader:

The Kenai River is the most popular sport fishing water in Alaska. Reflecting the demands upon the river's world class fishery is the dramatic growth in the number of professional sport fishing guides registered to work the area. Between 1985 and 1990, the number of fishing guides nearly doubled, increasing from 160 to 310.

The pressure exerted upon the Kenai River fishery by guides and guided anglers has led to this proposal by the State to "limit" the number of professional guides allowed to work on the river.

This plan features a gradual reduction of permit numbers, at a rate less than the historical attrition of guides leaving the river each year. The proposal will allocate permits primarily through a system of ranking professional guiding experience and relevant training and to a lesser extent the amount of money offered to the State of Alaska for the guiding permits.

Other controls on the guide industry are also presented in the document.

This proposal is presented for public review for 45 days; comments are due by May 6, 1991.

Your interest in the Kenai River is appreciated.

Sincerely,

Neil C. Johannsen
Director

TABLE OF CONTENTS

The Issue	1
Background	1
Analysis	2
The Proposal	3
Permit Award Process	5
Public Review Process	5

Appendices

A. Chart of Options	8
B. Analysis of Issues and Options	9
C. Pre-bid Qualification Requirements	15
D. Application Scoring Criteria	16
E. Draft Regulations	25
F. Statistical Information	39
G. Proposed Timeline for Program	41

THE ISSUE

Public concern about the increased number of Kenai River sport fishing guides and the perceived aggressiveness of guides in motor boats has resulted in proposals to reduce the number of guides on the river.

The questions raised by this issue are:

1) Should the number of Kenai River sport fishing guides be limited to protect the natural resources of the river and enhance the recreational experiences of all users of the river? What number of guides is appropriate?

2) How should the permits be issued?

3) What additional controls, if any, should be placed on how the guides operate?

BACKGROUND

In 1984, the legislature delegated responsibility for the oversight and protection of the lands and waters of the Kenai River Special Management Area (KRSMA) to the Alaska Division of Parks and Outdoor Recreation (Parks).

Since 1985, Parks has regulated Kenai River guides under state law (AS 41.21.506(b)(2)) through the issuance of Non-Competitive Park Use Permits (11 AAC 18.030). This program has not limited the number of fishing guides, which has grown from 160 total fishing guides (126 motorized) in 1985 to 310 total fishing guides (227 motorized) in 1990.

The state law establishing the Kenai River Special Management Area provides for DNR to "establish a regulation, licensing, or comparable procedure for professional fishing guides and such additional fishing guide controls as the commissioner considers necessary". Existing administrative regulations allow for the Director of Parks to limit the number of guides through the issuing of competitively awarded park use permits. However, while the basic regulatory framework exists for the establishment of a limit on guides on the river, additional regulations are needed to set the actual number of guides and to clarify the bidding and award procedure for permits.

The comprehensive management plan for the river, which was prepared in 1986, noted that the question of limiting the number of fishing guides had been thoroughly discussed by the citizen advisory board and its committees during the preparation of the plan. The plan recommended that:

- guides not be limited until the new boating regulation and (unlimited) guide permits have a chance to be tried and their effects evaluated;

- Parks monitor commercial guiding to determine whether a limit may be appropriate in the future;

- Parks should research legal options for awarding permits under a limit system; and,

- the system should recognize and give preference to existing guides when permits are awarded.

It should be noted that a subsequent Alaska Supreme Court has ruled in the Owsichek vs. State Guide Licensing and Control Board decision has ruled that the granting of exclusive rights to harvest natural resources should be subject to close scrutiny to meet the common use requirement of the state constitution. However, the decision also stated that leasing and concessions of limited duration and subject to competitive bidding procedures with fees paid to the state are not within the scope of the court's decision.

ANALYSIS

Between 1985 and 1990 there has been a near doubling in both the total number of Kenai River fishing guides (160 up to 310), and the number of motorized fishing guides in particular (126 up to 227). This rapid growth rate combined with the public's perception of being crowded out of the prime fishing holes by aggressive behavior of some motorized fishing guides, has recently resulted in several proposals aimed at limiting the number of Kenai River fishing guides.

At the same time many of the guides have themselves publicly called for a cap on the growth of guide numbers. A concern of the guides is that they may face further "hours and days" access restrictions by the Alaska Board of Fisheries if a limit on the total number of guides is not established. Many professional guides also believe that the high turnover rate of each season's new inexperienced guides, combined with cut-rate prices and unprofessional behavior of some part-time operators, is harming the reputation of the Kenai River guide industry.

The Alaska Department of Natural Resources (DNR), the Kenai River Special Management Area (KRSMA) Advisory Board, and the Cook Inlet Professional Sportfish Association (CIPSA), which represents most of the Kenai River fishing guides, have all recognized the need for comprehensive social and biological carrying capacity studies to be undertaken for the Kenai River. Data from these studies will assist in making long-term management decisions for the Kenai River. However, it will take several years for these studies to be completed and signals of habitat degradation and overcrowding are already abundant. The high annual turnover rate of fishing guides, price wars, and public perceptions of overcrowding from "too many guides" on the river are indications that the capacity of the river for commercial guiding use has already been exceeded. The actions included in this proposal have been recognized as necessary at this time for the good of the river, its resources and its visitors. CIPSA is also on record as not disputing the need for a cap or ceiling on the number of guides.

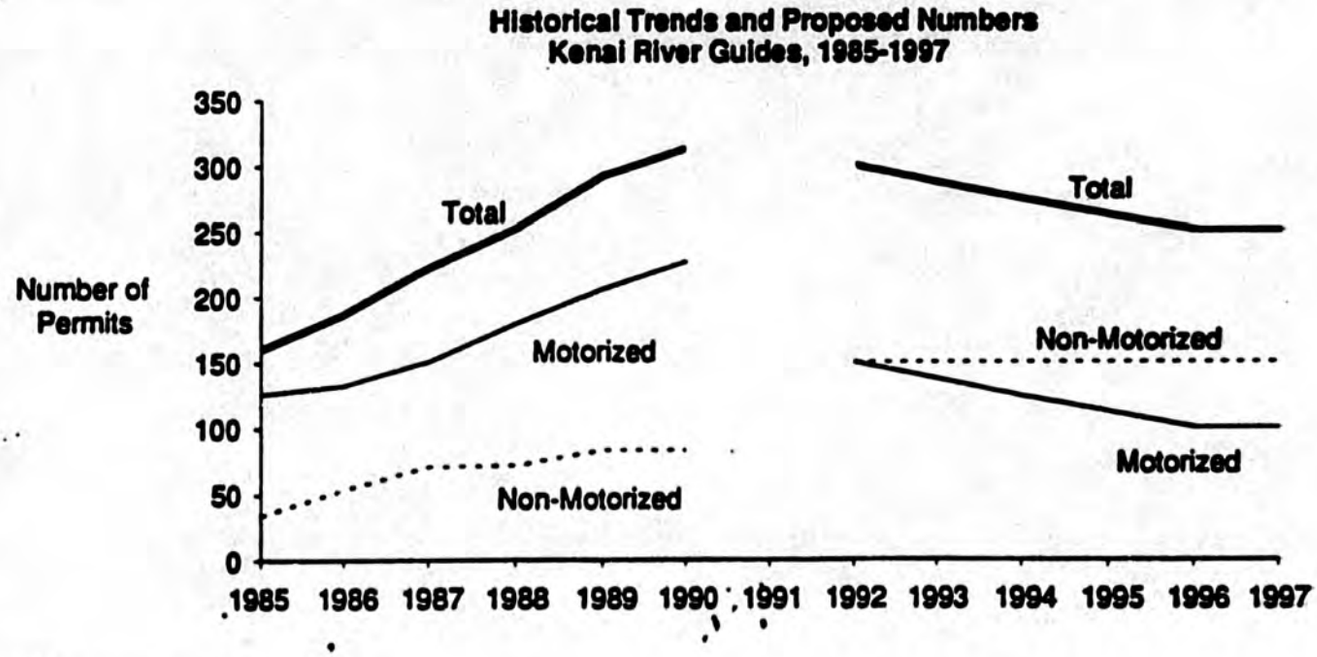
In recent months, many different proposals for limiting the number of guides have been advanced by members of the public, public officials, and user groups. While many valuable ideas have been gleaned from these proposals, many of the suggested strategies do not fall within the confines of the legal authority of DNR. Some of the proposals would result in unreasonable impacts on the local economy, the ability of the public to obtain guides services, or on the guides themselves.

A range of options, which are discussed in Appendices A and B, have been considered in selecting the preferred option for public review. The options range from reducing guide numbers to 100 (50 motorized and 50 non-motorized) to doing nothing and letting guide numbers increase freely.

The following proposal has been selected as the best approach for resolving the present concerns of the public regarding commercial guides on the river.

THE PROPOSAL

The State proposes to limit the number of guides on the river through a competitive process under existing and proposed provisions of 11 AAC 18.040. The following charts illustrates both the existing trends in the number of guides and the way that the proposal will alter the number of guides on the river.



The new system will:

A. Set guide restrictions that:

1) set the total number of fishing guides in 1992 at 300, slightly below the 1990 level of 310;

2) initially limit motorized fishing guide permits to 150 or two-thirds of the number issued in 1990;

3) from 1992 to 1996 reduce the total number of motorized guides to 100 by reducing the number of motorized permits that are re-offered. This rate of reduction is substantially less than the average historical attrition rate of approximately 20% per year between 1985 and 1990;

4) maintain a level of 150 non-motorized, or drift, guides providing an alternative lower impact means of guiding. Non-motorized guides may use motors of less than 10 horsepower for incidental navigation;

5) award permits based upon the following factors and scoring weights:
   a. Professional guiding experience 50%,
   b. Other qualifications and performance factors 25%,
   c. Fee offered to the State 25%;

6) provide four year permits, except during the initial four year transition period when permit terms will vary from one to four years in length;

7) reduce the total number of fishing guides from 310 in 1990 to 250 in 1996;

8) limit the total number of adults in a guide boat to five persons including the guide (two children under 12 count as one adult);

9) require the payment of a minimum permit fee of $500 for residents and $1500 for non-residents;

10) provide for a limit of 40 guides on the river between Kenai and Skilak Lakes which avoids the need for a separate U.S. Fish and Wildlife Service guide limit system in this area. Guide activity in this area will be non-motorized.

B. Change boating rules on the river to:

1) prohibit the anchoring of boats in main navigation channels of the river;

2) prohibit the dragging of anchors, chains or other devices as a means of slowing a boat while floating downriver;

3) prohibit leaving markers or other buoys in the river unless they are permitted;

C. Other:

1) maintain unlimited horsepower status for boats on Kenai and Skilak Lakes;

2) permit applications will be accepted, each year, from July through August for the upcoming year. Applications will be scored during September and notification made October 1. Unsuccessful applicants will have 30 days to appeal decisions. Permits will be available on January 1;

3) annual permit fee (minimum permit fee and bonus bid) must be paid by May 1st to be eligible to conduct guiding activity for that season;

4) a motorized guide permit may be used to conduct non-motorized or drift guiding activities;

5) maintain the requirement for one guide per permit per boat. The guide must be in the boat with the clients. Guide assistants may not be in the boat with clients without the guide present. A person may not hold more than one permit;

6) prohibit permits from being sold or transferred;

7) allow the director of parks to revoke or suspend a permit for cause; and

8) this limitation system does not apply to non-fishing guides.

PERMIT AWARD PROCESS

After meeting pre-qualification requirements, such as required licenses, first aid training, and application requirements, the applicant will submit an application and $50 processing fee for scoring under either or both of the two categories of motorized (up to 35 horsepower) and non-motorized (less than 10 horsepower) guiding operations.

The applications will then be scored for a maximum of 50 points for professional guiding experience. Both Kenai River and other river or non-river guiding experience will be given points. Specific Kenai River experience will receive more points per season than general river experience obtained elsewhere.

Up to 25 points is possible for applicants who possess advanced Coast Guard licenses, special medical or boating safety training, membership in professional guide organizations, own their own boat to be used in guiding, have additional private boating experience on the Kenai River and other considerations.

Point scores of 0 to 25 would be assigned to each of the applications based on the range of the dollar values for bonus bids above the minimum permit fee for the sealed applications received in each category (motorized and non-motorized). Thus, only twenty-five percent of the criteria for allocating guide permits would be financial considerations.

PUBLIC REVIEW PROCESS

This proposal and its accompanying information will be provided to the KRSMA Advisory Board at its March 21st, 1991 meeting. The proposal will undergo a 45-day public review period. Draft regulations to implement the proposed guide limit program will also be available for public review and comment.

The April 11th, 1991 meeting of the advisory board will serve as a forum for public comment and discussion of the proposal. Public hearings on the draft regulations will be held in Soldotna and Anchorage at the following times and locations:

Anchorage, April 17, 1991, 7:00 p.m., Museum of History and Art,
121 West 7th Avenue, Auditorium

Soldotna, April 18, 1991, 7:00 p.m., Kenai Peninsula Borough Office
Building, Assembly Chambers

Public notice of the proposal, public meetings and hearings will be issued through print media and other means. Written comment will be solicited from the public through May 6, 1991.

Written comments on the proposal and draft regulations should be mailed to:

Kenai River Guide Limit Proposal
P.O. Box 1247
Soldotna, Ak 99669
(907) 262-5581

For more information, contact:

Soldotna: Chris Titus (262-5581)
Suzanne Fisler (262-5581)
Walter Ward (262-5581)

Kenai Area Office at Morgan's Landing
(turn off the Sterling Highway at Mile 85 onto Scout Lake Road and follow the signs to Morgan's Landing State Recreation Area).

Anchorage: Al Meiners (762-2617)
Dave Stephens (762-2653)

Alaska State Parks
Suite 1200
3601 C Street
Anchorage, AK 99503

At its May 16th, 1991 meeting, the advisory board will develop board recommendations on the proposal and convey these to the director of state parks. The results of public hearings on the draft regulations will be compiled by state park staff following completion of the public review process. Adjustments to the proposal, including withdrawal or reformulation of the proposal, will be made by the director. If appropriate, a second public review process will be initiated. After a proposal is finalized by the director, regulations to implement the proposal will be completed as required under the Alaska Administrative Procedures Act.

If this or a similar proposal is adopted, it is anticipated that permit application packages would be made available to the guide permit applicants in mid-July, 1991, with a submission deadline of mid- to late-August, 1991. Permit award decisions for 1992 would be made by October 1, 1991. This date will allow guides to plan for their 1992 season client bookings prior to the winter sport shows. The 1992 permits would be available beginning January 1, 1992, upon submission of the remaining required documentation and payment of annual permit fees.

ATTACHED INFORMATION

This proposal has been written in an abbreviated format to assist the reader. More detailed is attached in the following appendices.

Appendix A - Chart of Kenai River guide limit options This chart shows a variety of options that were considered in developing the preferred option. A summary and detailed analysis of options is included.

Appendix B - Analysis of issues and guide limit options This is a written discussion of guide limit issues and different guide limiting options that have been considered in the process of selecting the proposed option.

Appendix C - Pre-bid qualification standards These are the standards that all bidders must meet to be eligible to have their bid proposal considered.

Appendix D - Application scoring criteria This is the system that is proposed to be used to score and rank guide applications. The guides receiving the most points will be offered the permits. A sample scoring sheet is enclosed.

Appendix E - Proposed Kenai River Special Management Area regulations to implement the guide proposal These are the legal rules that are proposed to be established to implement the proposal. The adoption of administrative rules is governed by the Alaska Administrative Procedure Act (AS 44.62). These rules are reviewed by Alaska Attorney General's Office and signed by the Lieutenant Governor before they become effective.

Appendix F - Background Statistical Information (Charts and Graphs) This information has been compiled to provide the reader with background information on Kenai River guiding.

Appendix G - Proposal development and implementation timeline This timeline is proposed to be used to develop, conduct public review of and changes to the proposal, and to implement the proposal.

APPENDIX A - # OPTIONS KENAI RIVER GUIDE PERMITS	OPTION A MAXIMUM CUT 50/50 ALTERNATIVE	OPTION B ROLLBACK TO 1985 LEVEL	OPTION C PROPOSED ATTRITION RATE MODEL	OPTION D ADJUSTED IMPACT (AT 1990 LEVEL)	OPTION E NO ACTION 1990 LEVEL	OPTION F MAXIMUM USE 50/50 ALTERNATIVE
MOTORIZED FISHING GUIDES	50	126	150/100	126	227	227
NON-MOTORIZED FISHING GUIDES	50	34	150/150	184	83	227
TOTAL GUIDES	100	160	300/250	310	310	454
	PROS	PROS	Reduction by '96	PROS	PROS	PROS
	Greatly reduces overall guide impacts	Rolls back use to 1985 level	PROS	Rolls back motorized use to 1985 level	Accomodates all existing use levels	Accomodates all existing motorized guides
	CONS	Reduces overall guide impacts	Reduces motorized use below '85 level	Provides alternative options for unsuccessful motorized applicants	Holds 1990 totals	Provides equal opportunity for nonmotorized uses
	Substantially affects both motorized and nonmotorized use	CONS	Provides alternative options for unsuccessful motor applicants	Holds 1990 totals	No change for local businesses	Boosts local business (allows for 27% increase in "seat average" 1074 up to 1362)
	Offers no alternative options for unsuccessful applicants	Substantially affects nonmotorized use	Reduces '90 guide total gradually	Less impact on local businesses	Maintains existing seat average	CONS
	Substantially affects local businesses (72% reduction in "seat average" 1074 down to 300)	Offers no alternative options for unsuccessful applicants	Moderate impact on local businesses phased over time (35% reduction in "seat average" by 1996 1074 down to 700)	Only 19% reduction in "seat average" 1074 down to 872	CONS	Fails to reduce motorized guide impacts & #'s
		Substantially affects local businesses (47% reduction in "seat average" 1074 down to 572)	CONS	CONS	Fails to reduce motorized guide impacts & #'s	Increases total # of guides on the river & increases total impacts
			May not accomodate all existing motorized guides as motor guides	May not accommodate all existing motorized guides as motor guides	Sets imbalance of motorized to non-motorized uses	
					Guide impacts stay status quo	

Appendix B - Analysis of Issues and Options

Part I - General Analysis

The 35 horsepower boat motor restriction implemented on the Kenai River in 1987 was successful in reducing the rate of boat wake-caused bank erosion due to the initial trend towards smaller, lighter boats producing lower energy wakes. The "calming of the frenzy" which resulted has caused many river users to express a general improvement in their recreational enjoyment of the river. Boating safety was also improved due to the general reduction of boating speeds on the river and the reduction in "mismatch" conflicts of large and small boats.

Over the past two years, technical improvements in outboard motor designs and more efficient propeller matching has resulted in stronger low-end torque producing outboards which still fall within the 35 horsepower rating standard. The result has been the gradual return to service on the river of a number of the large, relatively heavy "guide sleds." Since these larger boats are generally somewhat underpowered, and are often heavily loaded with clients, large boat wakes are again becoming a safety problem and erosion factor.

Between 1985 and 1990 there has been a near doubling in both the total number of Kenai River fishing guides (160 up to 310), and the number of motorized fishing guides in particular (126 up to 227). This rapid growth rate combined with public perceptions of being crowded out of prime fishing holes by aggressive behavior of some motorized guides, has recently resulted in several proposals aimed at limiting the number of Kenai River fishing guides.

At the same time, many Kenai River guide permittees have themselves publicly called for a cap on the growth of guide numbers, fearing that they may face further "hours and days" access restrictions by the Alaska Board of Fisheries if some limit isn't achieved. Many professional Kenai River guides also feel that the high turnover rate of each season's new inexperienced guides, combined with cut-rate prices and unprofessional behavior of some part-time operators, is harming the reputation of the entire Kenai River guiding industry.

The Alaska Department of Natural Resources (DNR), the Kenai River Special Management Area (KRSMA) Advisory Board, and the Cook Inlet Professional Sportfish Association (CIPSA) which represents most of the Kenai River fishing guides, have all suggested the need for comprehensive social and biological carrying capacity studies to be undertaken for the Kenai River. Data from these studies will assist in making long-term management decisions for the Kenai River. However, it will take several years for these studies to be completed and signals of habitat degradation and overcrowding are already abundant. The high annual turnover rate of Kenai River fishing guides, increasingly common "price wars," and public perceptions of overcrowding from "too many guides" on the river are signs that the limits for this type of commercial activity in the KRSMA have already been exceeded.

In addition to its habitat protection goals, DNR is committed to protecting the quality of the recreational experience for all of its visitors, both guided and unguided, and also in maintaining an equal access opportunity for private recreational users of the Kenai River. Without immediate action, it appears likely that this quality of recreational experience for all river users will continue to be degraded by the rapid expansion of commercial activity. The Kenai River is gaining a reputation as a fishing "meat market" rather than for quality trophy fishing. The carrying capacity studies will likely provide data which will call for future refinements and adjustments to any guide limitations enacted now, as well as perhaps further limitations on all river users. There is no reason to postpone actions which are clearly recognized as necessary now for the good of the river and its visitors. CIPSA is also on record as not disputing the need for a cap or ceiling on the number of Kenai River guides.

DNR has clear statutory authority and responsibility to manage recreational uses and commercial activities within the KRSMA to achieve the purposes set forth in AS 41.21.500-514. The DNR commissioner is specifically charged in AS 41.21.506(b)(2) to "establish a registration, licensing, or comparable procedure for professional fishing guides and such additional fishing guide controls as the commissioner considers necessary." This was initially accomplished in 1985 through the issuance of <u>non-competitive</u> commercial park use permits in accordance with 11 AAC 18.030. While raising the level of professionalism among Kenai River guides, this permit system has not limited their numbers, which have annually increased. DNR is proposing to utilize its <u>competitive</u> commercial park use permit regulations contained in 11 AAC 18.040 and additional proposed regulation changes to the KRSMA guide provisions of 11 AAC 20.885-990, in order to limit the total number and operation methods of fishing guides beginning with the 1992 season. 11 AAC 18.040 states that the director may competitively bid a permit for a commercial activity if he or she finds that "<u>there is a need to limit the number of permits to protect public use of the park or to protect park resources</u>, or there is a need to prevent one business or person from monopolizing commercial activities within a park or portion of a park, or <u>without limitation of the number of permits there would likely be a degradation of quality of the recreational experience in the park</u>, or <u>there may be an unlimited demand for space within a park</u>." (emphasis added)

Many different proposals and variations for limiting the number of Kenai River fishing guides have been advanced in recent months by members of the public, public officials, and user groups. While numerous valuable ideas have been gleaned from these proposals, many of the suggested strategies do not fall within the confines of statutory and regulatory authority or constitutional bounds. Others are inappropriate due to the unreasonable impacts that they would have on the local business economy, guided anglers, or the river guides themselves. Still others initially hold promise, but on further examination would be difficult or impossible to practically enforce, or represent inadequate management of the public's resources.

Part II - Alternative Strategy Analysis

The following is a summary discussion of some of the various alternative proposals which were considered but not selected, and the problems associated with each:

A "moratorium" or "freeze" of guides to those permitted in 1990

Numerous proposals call for a moratorium or freeze which would limit Kenai River guides to those permitted in 1990. This would be basically a "grandfather rights" system and most of the proposals suggest that attrition could be used to gradually reduce the guide total to whatever number was deemed appropriate. These proposals have several problems. The Attorney General's (AG) office has stated that for DNR to continue to permit guides under the 11 AAC 18.030 non-competitive permit regulations while refusing permits to qualified new applicants under a moratorium or freeze would not be legal. If the numbers are limited then the 11 AAC 18.040 Competitive regulations must be utilized. More significantly, the equal access and common use provisions of the state constitution do not allow a specific predetermined group to be favored with permits without competition, except via specific exception language through a constitutional amendment such as was done in the limited entry program for commercial fisheries.

Limit by awarding 'Limited Entry'-type permits to existing guides

Various proposals have called for some type of life-time, saleable, transferable, limited entry-type of permits to be issued to all of the Kenai River guides who were permitted as of a certain year, such as 1985 or 1990. Some of these proposals call for attrition to be utilized to gradually reduce the guide total down to various suggested numbers. These proposals all share several significant problems. As already mentioned, there are constitutional problems with any system which benefits a specific predetermined group at the expense of other qualified applicants. The authority to regulate commercial fishermen under limited entry permits rests with the Alaska Commercial Fisheries Entry Commission and results from a specific constitutional amendment to Article VIII, Section 15. Since the Board of Fisheries has historically treated sport fishing guides as a "method and means" of sport harvest, rather than as commercial fishermen, a new specific constitutional amendment would be required to place Kenai River guides under a limited entry-type permit system. Such an amendment would be unlikely for several reasons, including public opinion on limited entry. The awarding of limited entry permits which are saleable would not provide annual revenue to the state which can be used to pay for river management costs. Wise management of the public's constitutionally guaranteed common interest in the Kenai River fish resources dictates that if these resources are to be exploited for commercial gain, then the public should share, to some degree, in a share of the proceeds.

Limiting Kenai River guides through statewide professional licensing of sportfishing guides

Several proposals call for professional licensing of sport fishing guides similar to the system used for hunting guides, rather than use permitting as is done by DNR. Professional licensing in Alaska is done by the Department of Commerce & Economic Development, Division of Occupational Licensing, under specific statutory authority for each type of profession. Thus, additional statutes would be required for fishing

guides to be licensed in this manner. During the first session of the 16th legislature in the spring of 1989, Representative Menard introduced H.B. 267 which called for statewide licensing of sport fishing guides. However, this bill died in the House Resources committee after amendment. An additional consideration is that the provisions of any bill calling for statewide licensing of sport fishing guides are likely to be less stringent than the permitting standards currently in effect for Kenai River guides. Also, an attempt to limit the number of sport fishing guides for the Kenai River through professional licensing would likely fail the constitutional "common use clause" test in view of the Alaska Supreme Court's action in striking down exclusive hunting guide areas in Owsichek vs. State Guide Licensing and Control Board, 763 P. 2nd 488 (Alaska 1998).

Giving a resident or "local-hire" preference to Alaskan guides, or limiting Kenai River sport fishing guide permits to Alaska residents only

Numerous proposals call for Alaska resident guides to be given some level of preference ranging from a bid or scoring advantage to limiting the permit eligibility to residents only. All of these proposals are unconstitutional under the case law surrounding the "interstate commerce clause" of the U. S. Constitution, with the possible exception of a reasonable fee differential between residents and non-residents. Sport fish guiding is a commercial activity, and as such is protected by the constitutional ban on interstate restrictions of free trade. A recent Alaska court decision in Carlson vs. State of Alaska, 798 P.2d 1269 (Alaska 1990), has refined the test regarding differential fees for residents versus non-residents, though appeal of the decision is likely. Basically, this ruling states that the non-resident may be charged a fee which is equal to, but no greater, than the fee charged residents plus whatever percentage of other contributions residents make towards management of the resource involved. The resident's "other contributions" may be in the form of "state taxes which only residents pay," or, according to the court, the resident's "share" of the state's annual oil revenues. To be constitutionally acceptable, the end result must be "substantial equality" in the treatment of residents and non-residents. Prohibition of non-resident guides fails this test.

Proposals to limit Kenai River fishing guide activities through additional hours and day restrictions or a.m/p.m. shifts

All of these various proposals center around further restrictions of the days and hours allowed for guiding activity, or dividing the guide permittees into two groups and reducing guide activity by only allowing half to be on the river at one time. While the Board of Fisheries currently utilizes hours and day restrictions to regulate the Kenai River fishing guides as "methods and means" of harvest, these kinds of regulations do nothing to stop the annual increases in guide numbers. Further restrictions of this kind for social reasons might benefit private unguided users, but would place an unfair burden on both the commercial operators and their guided clients. Park visitors who choose to use the services of a permitted guide should also have equal access to the resources. It is difficult for the guide to plan a tourist service business around a number of access restrictions of this type, considering travel schedules of clients and other factors. Such restrictions may impact the economic viability of the guides' operations, and eventually the quality of service, as they force more and more guides into a part-time business status, instead of encouraging full-time professional guides. The a.m./p.m. shift proposals have many of the same drawbacks, along with

creating additional enforcement complications and equity issues. These types of access restrictions should only be implemented if the overall resource degradation and use congestion problems eventually reach a level that requires further restrictions on all river users.

Part III - Analysis of the Effects of Various Kenai River Guide number proposals and their positive and negative effects

For comparison purposes, the various options were evaluated with a mathematical "seat average" derived by multiplying the number of motorized permits by a constant (average) of 4 seats (per boat) plus the number of non-motorized permits multiplied by a constant of 2 seats. This total number of daily guided angler "seats" available compared with the 1990 total yields a percent of increase or decrease in guided angler presence. (See Appendix A for table summary)

Option A - "Maximum Cut - 50/50 Alternative"
This option proposes 100 Kenai River Fishing Guide Permits total with half of them being motorized and half non-motorized. This option would greatly reduce guide presence and impacts on the river. It represents a 72% reduction in the "seat average" which is a substantial reduction from established commercial use levels. It offers no alternative options for unsuccessful applicants to adapt their operation to a different category of permit. This option would substantially affect both motorized and non-motorized guides, as well as local tourist related businesses and the local economy.

Option B - "Rollback to 1985 Level"
This option proposes a rollback to the historical use level of 1985, the first year of DNR permitting of Kenai River guides. It calls for 160 Kenai River Fishing Guide Permits total, with 126 motorized permits and 34 non-motorized permits. This option would greatly reduce guide presence and impacts on the river, but does nothing to correct the imbalance of motorized to non-motorized commercial use. This option represents a 47% reduction in "seat average" which is a major reduction from established commercial use levels, affecting both motorized and non-motorized operators. It offers no alternative options for unsuccessful applicants to adapt their operation to a different category of permit. This option would substantially affect local tourist related businesses and the local economy.

Option C - "Proposed Attrition Rate Model"
This option proposes that in 1992 there would be a total of 300 Kenai River fishing guide permits issued, 10 permits less than the 1990 total. Of the 300 permits, 150 would be motorized and 150 non-motorized, initially achieving a 50/50 ratio. The number of motorized permits available would be gradually reduced over a four year period to 100 by 1996, resulting in a long-term total of 250 Kenai River fishing guides. The reduction rate of motorized permits over a four year period is substantially less than the historical attrition rate, which would provide for a smooth transition to the reduced number. This option eventually reduces motorized commercial use to below the 1985 level while providing an alternative option for some unsuccessful motorized applicants to convert to non-motorized operations. It significantly reduces the total number of fishing guides, but does so in a gradual

manner that should soften the impact on local tourist related businesses. By 1996, this option represents a moderate impact on local businesses of a 35% reduction in "seat average" phased in over time.

Option D - "Adjusted Impact - 1990 Level"
This option also sets the number of Kenai River fishing guide permits at the 1990 level of 310 total, but adjusts the number of motorized permits down to the 1985 level of 126 and allows for 184 non-motorized permittees. Not all of the motorized guides existing in 1990 could be accommodated as motorized permittees under this option, but the additional non-motorized permits would provide an alternative option for unsuccessful motorized applicants to convert to non-motorized operations. Motorized fishing guide impacts would be significantly reduced. While this option does not reduce the total number of Kenai River fishing guides, it does stop the guide growth rate and reduces impacts. This option would result in a moderate impact on local tourist related businesses as it represents a 19% reduction in the "seat average."

Option E - "No Action - 1990 Level"
This option sets the number of Kenai River fishing guide permits at the 1990 level of permits and use category. The total number of permits would be 310, with 227 motorized and 83 non-motorized, thus institutionalizing the current imbalance of the nearly 3 to 1 ratio of motorized to non-motorized commercial users. This option fails to reduce motorized guide impacts and numbers and fails to reduce the total number of fishing guides, though it would stop the growth rate. It represents no change for local tourist related businesses as the "seat average" remains the same as the 1990 level. While this option may appear attractive to many existing commercial guides, its shortcomings as far as dealing with the resource and recreational impact issues and its failure to adjust the motorized to non-motorized ratio imbalance make it unsatisfactory from a management standpoint.

Option F - "Maximum Use - 50/50 Alternative"
This option achieves a 50/50 ratio of motorized to non-motorized fishing guides while accommodating all 227 of the 1990 motorized guides. The result is a growth in total Kenai River fishing guide numbers to 454 through a halting of the growth rate of motorized guide numbers, while allowing additional non-motorized guides to increase to 227 permittees. This option provides equal opportunity for non-motorized operations, but fails to reduce the motorized guide impacts and increases total guide numbers and impacts. This option increases the "seat average" by 27%.

Appendix C - Pre-bid Qualification Requirements

To be eligible for scoring, each prospective bidder must document through their application and required attachments:

A. that they have the following:

1. **Alaska Business License (SIC #7990 or #7999)**
2. **Kenai Peninsula Borough Authority to Collect Sales Tax**
3. **Alaska Commercial Fisheries Vessel License for guide boat**
4. **if motorized, a USCG "6-passenger" operator's license and current USCG "AK" boat registration # certificate**
5. **an Alaska Sportfishing License**

B. that they submit a properly completed Park Use Permit application

C. pay a $50 non-refundable permit application processing fee

D. will agree to:

1. **Indemnify the state from liability of any kind;**
2. **Properly mark commercial guide vessels w/decals & #s;**
3. **Be aboard the guide vessel during all commercial operations;**
4. **Not fish or allow support staff to fish from the registered guide vessel while guiding during the months of May, June, and July;**
5. **Be liable for any damage to state land, water, or facilities;**
6. **Report any accidents involving personal injury or loss of property, or incidents of wildlife or natural hazards;**
7. **Maintain valid recognized Basic First Aid certification;**
8. **Provide proof of commercial liability insurance at a minimum of $100,000 per individual and $300,000 per event;**
9. **Maintain records and provide accurate and timely required reports; and,**
10. **Comply with other conditions of permit and law.**

Appendix D - Application Scoring Criteria

After pre-qualifying, each applicant will then be scored for a maximum of 100 points based on the following weighted criteria:

50 POINTS MAXIMUM - PROFESSIONAL GUIDING EXPERIENCE:

Points will be assigned to each applicant for general river guiding experience, commercial boat operating experience and experience with any form of commercial guiding activity.

For the purpose of experience computation, a "season" equals at least four "active months" each with a minimum of at least 12 days of documentable required activity per month. An aggregate of 20 days from several months which do not meet the standard "active month" criteria may be counted as one "active month." Partial season credit will be prorated at 25% per active month basis to a total of 100% maximum for a particular year. No more than two "seasons" of experience may be credited for a single calendar year. Double credit for the same month may not be claimed based on different experience criteria within the same category.

Credit will not be given for experience gained from illegal activity, i.e. operations conducted without required applicable permits or licenses.

An application may be scored for either or both of the two overall operation-type categories.

Successful applicants in either of the two overall operation-type categories may have their application scored for the Upper Kenai River Endorsement, if they so indicated their interest. Only 40 permittees will receive this special endorsement and they will be the only fishing guides authorized to operate on the Kenai River between Kenai and Skilak Lakes.

Different types of experience receive different values as they relate to the particular category of permit or endorsement being applied for as follows:

Category 1: For Motorized (up to 35 horsepower) Kenai River Fishing Guide Park Use Permit applicants:

3 Points for each season of motorized Kenai River Fishing Guide experience with documented permit history;
2 Points for each season of non-motorized Kenai River Fishing Guide experience with documented permit history;
1 Point for each season of motorized professional river guiding experience with documented permit history on other than the Kenai River System;

1 Point for each season of documentable commercial boat operations experience of any kind not included in the above river guiding experience; and,
1 Point for each season of documentable commercial guiding experience of any kind not included in the above river guiding experience.

Category 2: For Non-motorized (includes incidental motor use less than 10 Horsepower if USCG licensed) Kenai River Fishing Guide Park Use Permit applicants:

3 Points for each season of non-motorized Kenai River Fishing Guide experience with documented permit history;
2 Points for each season of motorized Kenai River Fishing Guide experience with documented permit history;
2 Points for each season of Non-Fishing Kenai River Guide experience with documented permit history;
1 Point for each season of non-motorized professional river guiding experience with documented permit history on other than the Kenai River System;
1 Point for each season of documentable commercial boat operations experience of any kind not included in the above river guiding experience; and,
1 Point for each season of documentable commercial guiding experience of any kind not included in the above river guiding experience.

For Upper Kenai River Fishing Guide Endorsement (Joint Federal/State Permit Endorsement) (May be applied to either a successful Motorized or Non-Motorized permittee, but Upper Kenai River guiding activities are authorized as Non-Motorized only) (Limited to 40 guide permittees for operation between Kenai and Skilak Lakes):

3 Points for each season of experience of combined State Park Kenai River Fishing Guide and USF&WS or USFS documented permit history for operation on the Upper Kenai River between Kenai and Skilak Lakes;
2 Points for each season of other Kenai River Fishing Guide experience with documented permit history;
2 Points for each season of Kenai River Non-Fishing Guide experience with documented permit history for the Kenai River Canyon;
2 Points for each season of documentable commercial Class III+ whitewater boat operation experience not on the Kenai River System;

1 Point for each season of documentable commercial boat operations experience of any kind not included in the above river guiding experience; and,
1 Point for each season of documentable commercial guiding experience of any kind not included in the above river guiding experience.

25 POINTS MAXIMUM - MISC. QUALIFICATIONS & PERFORMANCE FACTORS:

Qualifications: Value 1 Point maximum for each of the following:

a) Member in good standing of a professional sport fish guiding association or organization recognized by AK State Parks;

b) Holder of a valid USCG 6-passenger operator's license, or certification of passing a Boating or Marine Safety Training Program or Class recognized by AK State Parks within the past seven years;

c) Holder of a valid USCG operator's license in a category higher than the 6-passenger license;

d) Currently valid certification for CardioPulmonary Resuscitation;

e) Currently valid certification for Advanced First Aid, ETT, EMT-1, or higher, or certification of training in treatment of Hypothermia and Cold Water Near-Drowning at a level above basic first aid;

f) Sworn and notarized affidavit with two attesting witnesses documenting three or more seasons of private boat operation experience by the applicant on the Kenai River prior to any commercial experience credited in the previous section;

g) Sworn and notorized affidavit by the employer guide and one other the attesting witness documenting one or more seasons of assistant or apprentice Kenai River fishing guide experience aboard a registered guide boat under the direct instruction of a permitted Kenai River fishing guide.

h) Sworn and notorized affidavit by the employer guide and one other attesting witness documenting two or more seasons of assistant or apprentice river guiding experience aboard a registered commercial guide boat anywhere, so long as the experience is gained under the direct instruction of a legally permitted or licensed river guide.

i) Sworn and notorized affidavit by the employer guide and one other attesting witness documenting three or more seasons of assistant or apprentice guiding experience of any kind, anywhere, so long as the experience is gained under the direct instruction of a legally permitted or licensed guide.

j) Owns the vessel that the applicant will be using for the proposed guide operation on the Kenai River and the vessel is licensed by the Alaska Commercial Fisheries Entry Commission; and,

k) Is a holder of an additional Federal or State use permit for commercial guiding activity on the Kenai Peninsula.

Performance Factors: Value 1 Point maximum for each of the following:

a) Submission of complete and accurate Application Packet and required pre-qualifications documentation;
b) Timely and accurate submission of Annual Use Reports and Log Data;
c) Not more than one Warning of Violation of permit stipulations within the past three years;
d) No suspension or revocation of any Alaska State Park Use Permit during the past five years;
e) Not more that three Notices to File of Verified and Substantiated Visitor Complaints for guiding operations during the previous permit period (after investigation by State Park Rangers);
f) No Convictions for State Park Regulation violations within the past five years;
g) No Convictions for State or Federal Fish & Game violations within the past five years;
h) No Convictions for State Boating Safety Statutes or Regulation violations within the past five years;
i) No Convictions for violation of state laws involving jailable offenses during the past five years;
j) No History of reportable Boating Accidents with fault or Convictions for failure to make a required boating accident report within the past five years;
k) No Notices of Violation from the USCG for unsafe conditions, improper boating operation, or lack of required equipment within the past five years; or,
l) No Convictions of negligent or reckless or DWI operation of any vehicle or watercraft within the past five years.

Negative Performance Factors: Value -1 Point for each of the following:

a) for each of two or more convictions for State Park Regulation violations within the past five years;
b) for each of two or more convictions for State or Federal Fish & Game violations within the past five years;
c) for each of two or more convictions of State Boating Safety Statutes or Regulation violations within the past five years;
d) for each of two or more convictions of state laws involving jailable offenses during the past five years;
e) for each of two or more reportable Boating Accidents with fault or Convictions for failure to make a required boating accident report within the past five years;
f) for each of two or more Notices of Violation from the USCG for unsafe conditions, improper boating operation, or lack of required equipment within the past five years; and

g) for each of two or more Convictions of negligent or reckless or DWI operation of any vehicle or watercraft within the past five years.

h) for a bounced, or NSF, checks to the State Parks during the past permit period; and,

i) if the applicant is not current on their payment of Kenai Peninsula Borough Sales Tax Returns.

25 POINTS MAXIMUM - FEE OFFERED:

Applicants may offer two separate bids, one for each of the two overall permit categories: Motorized (up to 35 Horsepower) and Non-Motorized (with incidental motor use less than 10 Horsepower). Point Scores of 0 to 25 will be assigned to each of the bids based on the range of the dollar value above the minimum for the sealed bids received in that overall category. Points will range from the minimum bid with an assigned value of 0, to the maximum bid received for that application year with an assigned value of 25.

The annual permit fee will be the minimum of $500 Resident/$1,500 Non-resident, plus the additional annual bid offered by the applicant.

Sample Kenai River Fishing Guide Permit Applicant Scoring Sheet

PROFESSIONAL GUIDING EXPERIENCE - 50 POINTS MAXIMUM:
(A "season" equals 4 "active months" each with a minimum of 12 days of documentable required activity per month. An aggregate of 20 days of activity from several non-qualifying months may be counted as 1 active month. No more than two "seasons" of activity may be credited for a single calendar year. Double credit for the same month may not be claimed based on different experience criteria within the same category. To receive credit for any experience claimed, documentation acceptable to State Parks must be submitted by the applicant.)

CATEGORY 1: for Motorized (up to 35 Horsepower) Kenai River Fishing Guide Park Use Permit applicants:
Seasons of:

Motorized Kenai River fish guide experience	____X 3 points=	_____
Non-motorized Kenai River fish guide experience	____X 2 points=	_____
Other Motorized river guiding experience	____X 1 point =	_____
Other commercial boat operation experience	____X 1 point =	_____
Other commercial guiding experience	____X 1 point =	_____

Category 1 Total Score = _____

CATEGORY 2: for Non-motorized (incl. incidental motor use less than 10 Horsepower if USCG licensed) Kenai River Fishing Guide Park Use Permit applicants:
Seasons of:

Non-motorized Kenai River fish guide experience	____X 3 points=	____
Motorized Kenai River fish guide experience	____X 2 points=	____
Non-fishing Kenai River guide experience	____X 2 points=	____
Other Non-motorized river guiding experience	____X 1 point =	____
Other commercial boat operation experience	____X 1 point =	____
Other commercial guiding experience	____X 1 point =	____

Category 2 Total Score = _____

Special Endorsement: Upper Kenai River Fishing Guide Endorsement (Joint Federal/State Permit Endorsement) Successful applicants in either Category 1 or 2 above may also request that their application be scored for this Upper Kenai River Fishing Guide Endorsement that will be limited to a maximum of 40 guides authorized to conduct operations between Kenai and Skilak Lakes.)
Seasons of:

Upper Kenai River fish guide experience	____X 3 points=	____
Other Kenai River fish guide experience	____X 2 points=	____
Upper Kenai River Non-fish guide experience	____X 2 points=	____
Other Class III+ river guide experience	____X 2 points=	____
Other commercial boat operation experience	____X 1 point =	____
Other commercial guiding experience	____X 1 point =	____

Special Endorsement Score = _____

MISC. QUALIFICATIONS & PERFORMANCE FACTORS - 25 POINTS MAXIMUM:
(Value of 1 Point maximum for each of the following items upon submission of documentation acceptable to State Parks)

Qualifications:

Member of a professional fish guide association (1 point) ____
USCG 6-pack license or Marine Safety Training (1 point) ____
USCG license of higher category than 6-pack (1 point) ____
Current CardioPulmonary Resuscitation certification (1 point) ____
Current Adv.First Aid, ETT, EMT-1 or higher certification or Adv.Hypothermia & Cold Water training (1 point) ____
Sworn affidavit w/witnesses of three or more seasons of private Kenai River boat operation experience (1 point) ____
Sworn affidavit by employer & witness of one or more seasons of assistant Kenai River guide experience (1 point) ____
Sworn affidavit by employer & witness of two or more seasons of other river assistant guide experience (1 point) ____
Sworn affidavit by employer & witness of three or more seasons of any kind assistant guide experience (1 point) ____
Owns the registered guide vessel that will be used for his/her proposed Kenai River guiding operation (1 point) ____
Holds additional federal or state use permits for commercial guiding activity on the Kenai Peninsula (1 point) ____

Performance Factors:

Submission of complete & accurate park use permit application and required documentation (1 point) ____
Timely and accurate submission of required reports (1 point) ____
No bounced or NSF checks to State Parks during the previous permit period (1 point) ____
Applicant current on Kenai Peninsula Borough sales tax returns during the previous permit period (1 point) ____
Not more than one Warning of Violation for permit stipulation violation within the past three years (1 point) ____
No suspension or revocation of State Park Use Permit during the past five years (1 point) ____
Not more than three Notices to File of verified and substantiated visitor complaints during the previous permit period (1 point) ____
No Convictions for State Park Regulations violations within the past five years (1 point) ____
No Convictions for State or Federal Fish & Game violations within the past five years (1 point) ____
No Convictions for State Boating Safety statute or regulation violations within the past five years (1 point) ____
No Convictions for violation of any state laws involving jailable offenses within the past five years (1 point) ____
No History of reportable Boating Accidents with fault or Convictions for failure to make a required boating accident report within the past five years (1 point) ____
No Notices of Violation from the USCG for unsafe conditions, improper boating operation, or lack of required equipment within the past five years (1 point) ____

No Convictions of negligent or reckless or DWI operation of any vehicle or watercraft within the past five years (1 point) ____

Misc. Qualifications & Performance Factors Sub-total _____

Negative Performance Factors:
(Subtract 1 Point from the above Misc. Qualifications & Performance Factors Subtotal for each of the following:)

For each of two or more convictions for State Park Regulation violations within the past five years (-1 point)____

For each of two or more convictions for State or Federal Fish & Game violations within the past five years (-1 point)____

For each of two or more convictions of State Boating Safety statutes or regulations within the past five years (-1 point)____

For each of two or more convictions of state laws involving jailable offenses during the past five years (-1 point)____

For each of two or more reportable Boating Accidents with fault or convictions for failure to make a required boating accident report within the past five years (-1 point)____

For each of two or more Notices of Violations from the USCG for unsafe conditions, improper boating operation, or lack of required equipment within the past five years (-1 point)____

For each of two or more convictions of negligent or reckless or DWI operation of any vehicle or watercraft within the past five years (-1 point)____

Negative Performance Factors Total = _____

FEE OFFERED - 25 POINTS MAXIMUM:
(Applicants may offer two separate fee bids one for each of the two overall permit categories: Category 1 - Motorized (up to 35 Horsepower) and Category 2 - Non-Motorized (with incidental motor use less than 10 Horsepower). Minimum fees are $500 Resident / $1500 Non-Resident, and bids will be an annual payable amount for each year of the permit to be utilized. Point Scores ranging from 0 to 25 will be assigned to each of the bids based on the range of the dollar value <u>above</u> the minimum for the sealed bids received in that overall category. Points will range from the minimum bid with an assigned value of 0, to the maximum additional fee bid received for that application year with an assigned value of 25.

CATEGORY 1 BID: (Motorized) This is my (circle): 1st Choice / 2nd Choice I am an Alaskan (circle): Resident / Non-Resident			**CATEGORY 2 BID:** (Non-Motorized) This is my (circle): 1st Choice / 2nd Choice I am an Alaskan (circle): Resident / Non-Resident	
$500	$1500	- Minimum Fee -	$500	$1500
+$_____	+$_____	- Additional Bid -	+$_____	+$_____
$	$	Total Annual - Fee Offered -	$	$

Kenai River Fishing Guide Permit Applicant Scoring Sheet Recap

CATEGORY 1 - MOTORIZED K.R. GUIDE (up to 35 Horsepower)

Category 1 - Professional Guiding Experience Total = _____

Misc. Qualifications & Performance Factors Subtotal = + _____

Negative Performance Factors (Subtract negative) = (- _____)

Total Category 1 Experience, Qualifications & Performance Factors Score (Max 75) = _____

Score awarded to Category 1 Fee Bid offered (Max 25) = + _____

Total Category 1 Score _____

CATEGORY 2 - NON-MOTORIZED K.R. GUIDE (incidental less than 10 HP)

Category 2 - Professional Guiding Experience Total = _____

Misc. Qualifications & Performance Factors Subtotal = + _____

Negative Performance Factors (Subtract negative) = (- _____)

Total Category 2 Experience, Qualifications & Performance Factors Score (Max 75) = _____

Score awarded to Category 2 Fee Bid offered (Max 25) = + _____

Total Category 2 Score _____

SPECIAL ENDORSEMENT - UPPER KENAI RIVER FISHING GUIDE ENDORSEMENT
(Available only to 40 successful applicants from Category 1 or Category 2 above)

Special Endorsement - Pro. Guiding Experience Total = _____

Misc. Qualifications & Performance Factors Subtotal = + _____

Negative Performance Factors (Subtract negative) = (- _____)

Total Special Endorsement Experience, Qualifications & Performance Factors Score (Max 75) = _____

Score awarded to applicable category additional Fee bid offered (Max 25) = + _____

Total Special Upper K. R. Endorsement Score _____

Part 1. Office of the Commissioner (11 AAC 03--11 AAC 05)

Part 2. Parks, Recreation and Public Use (11 AAC--11 AAC 20)

PART 1. OFFICE OF THE COMMISSIONER

Chapter

---

05. Fees for Department Services (11 AAC 05.010--11 AAC 05.900)

CHAPTER 05. FEES FOR DEPARTMENT SERVICES

Section

010. Fees

DRAFT

11 AAC 05.010. is amended to read:

11 AAC 05.010. FEES. (a) Non-refundable fees to apply for authorizations, and fees to obtain publications or services from the department, are as follows:

---

(12) parks and outdoor recreation, except for activities in a state park under a concession contract

---

(I) the fees for non-competitive park use permits for a commercial activity, as defined in 11 AAC 12.340 are

(i) a $50 non-refundable permit application processing fee;

(ii) an additional permit fee not to exceed $250 for residents and a permit fee not to exceed $750 for non-residents <u>if a permit is issued</u> [, EXCEPT THAT FOR ANY FISHING GUIDE SERVICES, NOT INCLUDING NON-FISHING FLOAT TOUR GUIDES, WITHIN THE KENAI RIVER SPECIAL MANAGEMENT AREA A $450 PERMIT FEE FOR RESIDENTS AND A $1350 PERMIT FEE FOR NON-RESIDENTS IS REQUIRED IF THE APPLICATION IS GRANTED].

(J) the fees for competitive park use permits for a commercial activity, as defined in 11 AAC 12.340 are

(i) a $50 non-refundable permit application processing fee; and

(ii) the applicant's annual fee bid offer to the state in accordance with 11 AAC 18.040 (d) if a permit is issued.

(K) [J] the fee for overnight use of a developed group campsite is $25 or $1 per person, per night, whichever is greater;

(L) [K] for purposes of this paragraph, "director" means the director of the division of Parks and Outdoor recreation, in the department;

(M) [L] for the purposes of this paragraph, "overnight use" means using or occupying a campsite by a person or vehicle, or erecting a tent or shelter or arranging bedding, or both, in order to stay any time at a site between 6:00 p.m. and 9:00 a.m. local time;

(N) [M] for the purposes of this paragraph, "vehicle" means a motorized or non-motorized device capable of carrying people or objects, or towing a trailer, and includes automobiles, trucks, motorhomes, campers, trailers or aircraft when it is used as the principal means of access to or occupancy of a campsite;

(O) [N] for purposes of this paragraph, "resident" means a natural person who for the preceding 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the state; however, a member of the military service, who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this chapter, and any dependent of a resident member of the military service, who has been living in the state for the preceding 12 consecutive months [THE SAME AS DEFINED IN AS 16.05.940]. (Eff. 1/1/86, Register 96; am 8/10/86, Register 99; am 9/28/86, Register 99; am 8/23/87, Register 103; am 1/28/88, Register 105; am 7/1/89, Register 110; addt'l am 7/1/89, Register 110; am / / , Register ; am / / , Register)

Authority: AS 03.10.020 AS 38.50.160
AS 38.05.020 AS 44.37.020

DRAFT

containing falsification of material fact, or who in attesting to another applicant's eligibility willfully misrepresents, exercises gross negligence, or recklessly disregards a material fact pertaining to that eligibility shall be subject to immediate disqualification from further consideration for permit issuance or revocation of an existing permit for a period of one year from the discovery of the falsification. This administrative penalty is in addition to possible criminal penalties which may apply. (Eff. 5/11/85, Register 94; am 7/1/89, Register 110, am / / , Register)

Authority: AS 41.21.020
AS 41.21.040

---

11 AAC 18.040 is amended to read:

11 AAC 18.040 COMPETITIVE PARK USE PERMITS FOR COMMERCIAL ACTIVITIES

DRAFT

(c) A permit issued under this section must

---

(3) terminate after no more than five years [WITH A POSSIBILITY OF RENEWAL FOR FIVE MORE YEARS,] and it is revocable at any time that the director determines that the criteria set by 11 AAC 18.025(c) are not being met, the public interest is not otherwise served, or the terms and conditions of the permit are not followed.

(d) The minimum bid price for a permit under this section will be set by the director but may not exceed $500 for residents and $1,500 for non-residents [IS $200] per permit per calendar year. [,AND THIS] This minimum bid will be set [MAY BE INCREASED BY THE DIRECTOR] to give the state a fair and reasonable return in light of the cost of administering the activity [PERMITTED UNDER THIS SECTION], the impact of the proposed activity on the park, the incidental benefit that might be provided to the visitors and the park, goods or services provided to the state, and the gross business receipts attributable to the activity.

AS 38.05.035	AS 44.37.025
AS 16.05.940	AS 41.06.020
AS 27.21.030	AS 41.21.020
AS 27.21.940	AS 41.21.026
AS 38.09.110	AS 38.35.020
AS 41.21.506	AS 46.15.020

CHAPTER 18. SPECIAL PARK USE PERMITS

Article

1. Park Uses (11 AAC 18.010-11 AAC 18.040)
2. General Provisions (11 AAC 18.200)

ARTICLE 1. PARK USES

Section

---

25. Procedure

---

40. Competitive Park Use Permits for Commercial Activities

DRAFT

11 AAC 18.025 is amended to read:

11 AAC 18.025. PROCEDURE.

(b) Except for permits under 11 AAC 18.040, the [THE] director shall respond within thirty days to a written application made under this section.

(f) A permit may not be assigned without the prior written approval of the director. A permit issued under 11 AAC 18.040 may not be assigned.

(h) A park use permit applicant who falsifies any material fact on his/her permit application, or who submits supportive documentation

(eff. 5/11/85, Register 94; am 1/28/88, Register 105, am 2/3/88, Register 105, am / / , Register)

Authority: AS 41.21.020 AS 41.21.506
AS 41.21.026 AS 41.21.950
AS 41.21.040 AS 41.21.955

ARTICLE 2. GENERAL PROVISIONS

Section
200. Definitions

DRAFT

11 AAC 18.200 is amended by adding new sections to read:

11 AAC 18.200. DEFINITIONS. In this chapter

---

(12) "resident" means a natural person who for the preceding 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the state; however, a member of the military service, who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this chapter, and any dependent of a resident member of the military service, who has been living in the state for the preceding 12 consecutive months;

(13) "guide services" means services offered or supplied by any person to another person with the intent of receiving valuable consideration through barter, trade, or other commercial means, by accompanying and directing that person's activities in a state park; for the purposes of this section, guide services include, but are not limited to, operating a vehicle to provide transportation for any recreational activity including hunting, fishing, hiking, skiing, mountaineering, photography, sightseeing, rafting, kayaking, canoeing, and flying; supplying equipment and personal instruction for its use; baiting hooks; netting and cleaning fish; cooking meals; assisting with rod and reel operation; assisting in the taking of wildlife; leading;

progress by dragging an anchor or other object of insufficient weight or utilizing a line or chain of insufficient scope.

(d) Subsection (c) above shall not apply to the momentary slippage of an anchor which may occur while it is being raised or lowered, or to inadvertent slippage due to a failed anchoring attempt so long as fishing activity from the boat does not continue until the watercraft's downriver progress has ceased.

(e) No person may leave an anchored buoy unattended in the Kenai River Special Management Area, unless authorized by the director under 11 AAC 18.010. (Eff. / / , Register)

Authority: AS 41.21.020
AS 41.21.506

DRAFT

---

11 AAC 20.885 is amended to read:

11 AAC 20.885. KENAI RIVER GUIDE PERMITS. (a) No person may provide guide services within the Kenai River Special Management Area without first obtaining a valid Kenai River Guide Permit issued by the division of the appropriate type for the commercial activity to be conducted.

(f) Non-Fishing Guide permits will be issued under 11 AAC 18.030. No person permitted as a Non-Fishing Guide may provide any services, transportation or assistance to another person in pursuit of catching or taking fish or game, or the experience associated with attempting to catch or take fish or game.

(g) Sport Fishing Guide permits and endorsements will be limited in accordance with 11 AAC 18.040 and awarded in a competitive manner by scoring applicants on documented seasons of guiding experience, supplemental qualifications and performance factors, and the annual fee bid offered to the state.

11 AAC 20.860. BOAT MOTOR USE.

(f) In this section, "propshaft horsepower rating" and "equivalent propshaft horsepower rating" mean either the boat motor's original manufacturer rated and labeled horsepower [, OR, IN THE CASE] or the altered horsepower of a boat motor altered or de-tuned by the manufacturer or dealer under (c) of this section, [THE ALTERED HORSEPOWER OF A BOAT MOTOR] provided that the boat motor's horsepower has been rated as dynamometer tested horsepower at the last output driveshaft with the engine operating at the midpoint RPM of the full throttle speed range recommended by the manufacturer. The addition of a jet drive unit to any boat motor does not change the equivalent propshaft horsepower rating of the motor powerhead and driveshaft configuration for the purposes of this section. (Eff. 5/11/85, Register 94; am 4/25/86, Register 98; am 7/1/89, Register 110; am / / , Register)

Authority: AS 41.21.020
AS 41.21.506

DRAFT

Article 15 is amended by adding a new section to read:

11 AAC 20.862 BOATING METHODS. (a) No guide permittee may operate a motor powered boat in the Kenai River Special Management Area, except upon Kenai or Skilak Lakes, with more than five adults aboard, including the operator. For the purposes of this section, two children under age 12 may be counted as one adult. Each child age 12 and older is counted as an adult.

(b) No person may anchor a boat in the Kenai River Special Management Area in a manner obstructing a primary traffic channel of any section of the river.

(c) No person may for the purpose of fishing in the Kenai River Special Management Area slow, but fail to stop, a boat's downriver

11 AAC 20.860. BOAT MOTOR USE.

(f) In this section, "propshaft horsepower rating" and "equivalent propshaft horsepower rating" mean either the boat motor's original manufacturer rated and labeled horsepower [, OR, IN THE CASE] or the altered horsepower of a boat motor altered or de-tuned by the manufacturer or dealer under (c) of this section, [THE ALTERED HORSEPOWER OF A BOAT MOTOR] provided that the boat motor's horsepower has been rated as dynamometer tested horsepower at the last output driveshaft with the engine operating at the midpoint RPM of the full throttle speed range recommended by the manufacturer. The addition of a jet drive unit to any boat motor does not change the equivalent propshaft horsepower rating of the motor powerhead and driveshaft configuration for the purposes of this section. (Eff. 5/11/85, Register 94; am 4/25/86, Register 98; am 7/1/89, Register 110; am / / , Register)

Authority: AS 41.21.020
AS 41.21.506

DRAFT

Article 15 is amended by adding a new section to read:

11 AAC 20.862 BOATING METHODS. (a) No guide permittee may operate a motor powered boat in the Kenai River Special Management Area, except upon Kenai or Skilak Lakes, with more than five adults aboard, including the operator. For the purposes of this section, two children under age 12 may be counted as one adult. Each child age 12 and older is counted as an adult.

(b) No person may anchor a boat in the Kenai River Special Management Area in a manner obstructing a primary traffic channel of any section of the river.

(c) No person may for the purpose of fishing in the Kenai River Special Management Area slow, but fail to stop, a boat's downriver

(h) The total number of sport fishing guide permits offered or existing under 11 AAC 18.040 to conduct motorized sport fish guiding operations on Kenai and Skilak lakes and the Kenai River between river miles 4.3 and 50 will be

(1) Effective January 1, 1992, 150, with thirty eight permits for a term of one year, thirty eight permits with a two year term, thirty seven permits with a three year term, and thirty seven permits with a four year term.

DRAFT

(2) Effective January 1, 1993, 137.

(3) Effective January 1, 1994, 124.

(4) Effective January 1, 1995, 112.

(5) Effective January 1, 1996, 100.

(i) Effective January 1, 1992, the total number of sport fishing guide permits offered under 11 AAC 18.040 to conduct non-motorized sport fish guiding operations on Kenai and Skilak lakes and the Kenai River between river miles 4.3 and 50 will be 150. Thirty eight permits with a term of one year will be offered. Thirty eight permits with a term of two years will be offered. Thirty seven permits with a term of three years will be offered. Thirty seven permits with a term of four years will be offered.

(j) Effective January 1, 1992, a total of 40 sport fishing guides permitted under (h) and (i) above will be authorized to conduct non-motorized sport fish guiding operations on the Kenai River between river miles 65 and 82 under an Upper Kenai River Fishing Guide Endorsement.

(k) Effective January 1, 1993, new sport fishing guide permits offered will be for a term of four years.

(l) In the case of a tie for the last permit offered under (h) - (k) above, a lottery drawing will be held between the tied applicants.

(m) Non-motorized sport fishing guides holding an appropriate United States Coast Guard license may use a boat motor of less than ten horsepower when such use is incidental to their primary non-motorized means of travel, such as for crossing flat or slow water areas, and the motor is not operated during fishing activity or to engage in prolonged or repeated upstream travel.

(n) A natural person may hold only one valid Special Park Use Permit for Kenai River sport fish guiding. Permits may not be held by companies, corporations, or other business entities. A permitted guide may register more than one guide boat on his/her permit, but a permitted guide must be aboard a guide boat whenever it is used in the Kenai River Special Management Area for guiding activities.

(o) No permitted guide, support staff or any other employees or assistants may fish from a registered guide boat in the Kenai River Special Management Area during the months of May, June, and July while clients are present.

DRAFT

(p)(1) The director may revoke a park use permit at any time without compensation to the permittee or liability to the authorizing agency in accordance with 11 AAC 18.025 (h) or 11 AAC 18.040 (c)(3) or (g), or as provided in (2) below.

(2) A park use permit may be immediately suspended or revoked by the director or authorized representative for:

(A) Loss or expiration of United States Coast Guard operators license;

(B) Loss or expiration of required liability insurance coverage;

(C) Loss of Alaska sport fishing license by court conviction;

(D) Conviction of any felony crime or other jailable offense;

(E) Conviction of a gross public safety violation relating to boating activity;

(F) Conviction of conducting commercial activities in the Kenai River Special Management Area without a permit of the appropriate type;

(G) Conviction of violation of Alaska State Park boating or guide regulations;

(H) Two convictions for violation of Alaska State Park regulations within a one-year period or three convictions within a five-year period.

(3) A park use permit may be immediately suspended for up to five guiding days by an authorized state park officer for:

(A) Citation or arrest for any felony crime or other jailable offense within the area covered by the permit;

(B) Citation or arrest for violation of Alaska State Park boating regulations;

DRAFT

(C) Citation or arrest for violation of any Alaska Department of Fish and Game regulation or statute;

(D) Citation or arrest for assisting or allowing clients to violate any Alaska Department of Fish and Game regulation or statute;

(E) Citation or arrest for use of a motor in a non-motorized area except in an emergency;

(F) Citation or arrest for manifestly unsafe operation of a watercraft.

(4) A permittee whose permit is suspended under (3) above may appeal to the Kenai Area superintendent, who will hold an administrative review hearing within 24 hours. (Eff. 7/1/89, Register 110; am / / , Register)

Authority: AS 41.21.020
AS 41.21.506

Article 15 is amended by adding a new section to read:

11 AAC 20.890. BOAT RENTALS. (a) No person may provide boats for use or intended for use primarily in the Kenai River Special Management Area as a commercial activity as defined in 11 AAC 12.340 (19) without a commercial park use permit with specific authorization for rental activities. (Eff. / / , Register)

Authority: AS 41.21.020
AS 41.21.040
AS 41.21.506

ARTICLE 16. SPECIAL PROVISIONS

Section
---
990. Definitions

DRAFT

11 AAC 20.990 is amended by adding new sections to read:

11 AAC 20.990. DEFINITIONS. As used in this chapter,

---

(21) "non-fishing guide" means any person who provides guide services excluding any services, transportation or assistance provided to another person in pursuit of catching or taking fish or game, or the experience associated with attempting to catch or take fish or game;

(22) "sport fishing guide" means any person who provides guide services to another person in pursuit of catching or taking fish or game, or the experience associated with attempting to catch or take fish or game;

(23) "motorized sport fishing guide" means any sport fishing guide holding a Motorized Competitive Commercial Park Use Permit and authorized for all legal methods of boat operations;

(24) "non-motorized sport fishing guide" means any sport fishing guide holding a Non-Motorized Competitive Commercial Park Use Permit and authorized only for non-motorized boat operations; if also the holder of a valid United States Coast Guard commercial motorboat operators license, a non-motorized sport fishing guide is authorized to operate a boat with a motor of less than 10 horsepower, provided that its use is incidental to the primary non-motorized means of travel, the area is not closed to motor boat operations, and the motor is not operated during fishing activity or to engage in prolonged or repeated upstream travel;

(25) "primary traffic channel" of a river includes both the deepest channel commonly utilized by motorized boats for upstream travel and the fishing drift channel commonly utilized by boats floating downstream with the current;

DRAFT

(26) "season" means four active months of at least twelve days each of documentable required activity. (Eff. 5/11/85, Register 94; am 2/3/88, Register 105; am 7/1/89, Register 110; am / / , Register ; am / / , Register)

Authority: AS 41.21.020
AS 41.21.040
AS 41.21.506

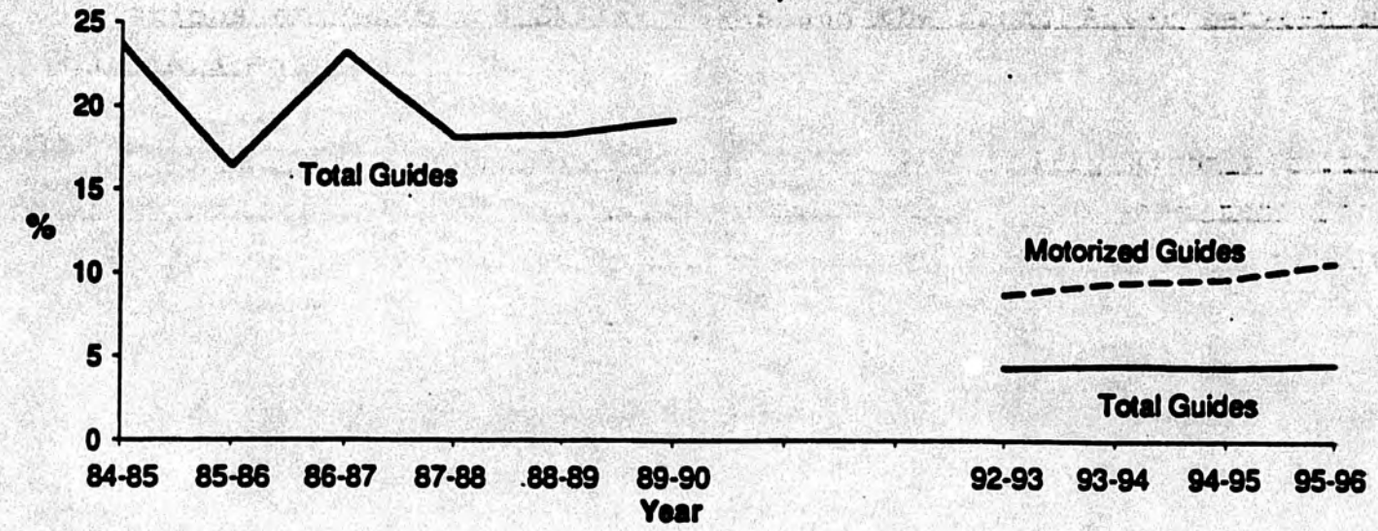
END

APPENDIX F
STATISTICAL INFORMATION

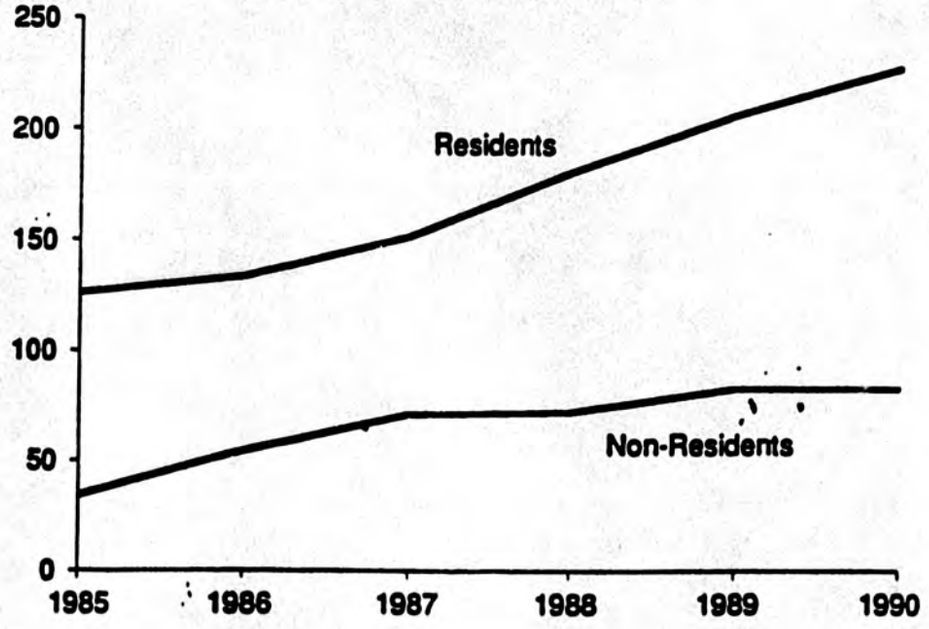
KENAI RIVER GUIDE TRENDS AND NUMBERS
1982-1990

Year	Total	Residents	Non-Residents	Fishing	Non-Fishing	Fishing Motor	Fishing Drift	Non-Fishing Motor	Non-Fishing Drift
1990	330	234	96	310	20	227	83	16	4
1989	312	212	100	289	23	206	83	9	14
1988	268	191	77	252	16	180	72	4	12
1987	232	188	44	222	10	151	71	4	6
1986	198	148	50	187	11	133	54	5	6
1985	171	131	40	160	11	126	34	5	6
1984	224			214	10				
1983	208			198	10				
1982	217			207	10				

Historical and Proposed Annual Attrition Rates
Kenai River Guides, 1985-1996



Resident / Non-Resident Numbers
Kenai River Guides, 1985-90



APPENDIX G

PROPOSED TIMELINE FOR PROGRAM KENAI RIVER GUIDE LIMIT PROPOSAL

March 21, 1991	Proposal and draft regulations released at Kenai River Advisory Board meeting.
March 21, 1991	Forty-five day public comment period begins.
April 11, 1991	Kenai River Advisory Board meets on proposal.
April 17, 18, 1991	DNR conducts public hearings on draft regulations, Anchorage and Soldotna.
April, 1991	Advisory Board may schedule special work sessions.
May 6, 1991	Public comment period ends.
May 6-15, 1991	Public comment tabulated and analyzed.
May 16, 1991	Advisory Board meets to develop recommendations to DNR.
May 23, 1991	Regulations revised and signed by DNR commissioner, submitted to ~~Department~~ of Law for final review.
June 10, 1991	Regulations signed into law, becoming effective 30 days later. Advisory notice to prospective applicants mailed out.
July 10, 1991	Regulations effective, guide permit application packets made available.
August 23, 1991	Deadline for submission of 1992 applications.
September 2, 1991	Applicants notified of receipt of completed applications.
October 1, 1991	1992 permit award notification.
January 2, 1992	1992 permits issued.

MEMORANDUM

State of Alaska
Department of Law

TO: Hon. Harold C. Heinze
Commissioner
Department of Natural Resources

DATE: September 27, 1991

FILE NO: 993-90-0049 and
993-91-0105

TEL. NO.: 465-3600

SUBJECT: Parks/Kenai River guide regulations projects

FROM: Jeffrey W. Bush
Assistant Attorney General
and Regulations Attorney

As outlined below, we have completed our review and are prepared to approve for filing most of the general regulations on parks, file no. 993-90-0049, once the issue of helicopter use in the Wood-Tikchik State Park is resolved. With respect to the KRSMA sport-fish guide regulations, file no. 993-91-0105, we cannot approve them in their current form because, if put into effect, the limited entry permit system would clearly violate several provisions of the Alaska Constitution.

Parks, file no. 993-90-0049:

We recently received a copy of a memorandum from you to Lieutenant Governor Coghill dated September 18, 1991, which proposes to change 11 AAC 20.375 to outlaw the use of private helicopters in Wood-Tikchik State Park, but then proposes to "grandfather" in an exception to the prohibition for the single operator working in the area at the present time.

Our research concludes that to "grandfather" in one individual permittee on a permanent basis would violate the Alaska Constitution's equal protection clause (art. I, sec. 1) and equal application provision (art. VIII, sec. 17). Although we have opined in the past that certain grandfather provisions may be defensible (see 1986 Inf. Op. Att'y Gen. (883-86-0076; May 28)), that is only arguably true where the distinction created is based on a valid and substantial state interest. In the present case, we cannot find any significant state interest that is being furthered by the proposed exception. In fact, the exception is directly at odds with the management plan for the park, which was adopted by the Wood-Tikchik State Park Management Council in accordance with the legislative mandate under AS 41.21.164.

Therefore, the proposed revision cannot be approved. Several other acceptable options are available, however. The department could simply remove 11 AAC 20.375 from the project. We

understand that Lieutenant Governor Coghill prefers this approach. 1/ Alternatively, the department could leave the absolute prohibition on helicopters in 11 AAC 20.375; this was the substance of the regulation as adopted by your department. As a potential compromise, a third option would be for the department to adopt the absolute prohibition now but delay the effective date of the section, to allow the current operator to continue his helicopter operations for some period of time. We await your instructions before proceeding with these regulations.

Kenai River guide limitation, file no. 993-91-0105

The current proposal to limit the number of guides on the Kenai River is patently unconstitutional. The proposal would set up a system in which anyone wishing to guide on the river could apply to the department for a permit. Permits would be issued for a five-year period (1/5 each year) to those applicants scoring the highest number of points, which would be awarded based on several factors. Proposed 11 AAC 20.887. The most significant factor, and the one of greatest concern from a constitutional perspective, is the proposal to award five points for each year of guiding experience on the Kenai River. Proposed 11 AAC 20.887(d)(1). Since we can assume that all other factors will generally cancel themselves out, the system will naturally heavily favor current permittees over new entrants to the program, because a current permittee who is required to reapply when his/her permit expires would automatically get 25 points for the preceding five years of experience gained as a permit holder. This is precisely the kind of special preference rejected by the Supreme Court in Owsichek v. State, 763 P.2d 488 (Alaska 1988).

In Owsichek, the Supreme Court stated that it would not accept any monopoly system to regulate the use of our fish or wildlife. There are to be no "exclusive grants or special privileges." Id. at 493, citing Alaska Constitutional Convention papers; see also McDowell v. State, 785 P.2d 1, 6 (Alaska 1989). This prohibition on exclusive grants or privileges applies not only to a grant to a single person or corporation but to any special group or number of people. McDowell, 785 P.2d at 7. The system that was rejected in Owsichek was "based primarily on use, occupancy and investment, **favoring established guides at the expense of new entrants in the market.**" 736 P.2d at 496, emphasis added. The Court noted that "to grant such a special privilege

---

1/ If you would like to revisit this issue later, we could designate the rest of this project as Part 1 and submit it to the lieutenant governor at this time for filing, and designate 11 AAC 20.375 as Part 2 for further work.

based primarily on seniority runs counter to the notion of common use." Id.

Unlike under the current Kenai River proposal, in Owsichek the Court was faced with a system in which the guide permit, the "exclusive guide area," was of unlimited duration. The Court relied, in part, on this factor in its analysis in Owsichek. 763 P.2d at 496. We do not believe, however, that this distinction is significant enough to make the current proposal defensible. The Owsichek Court based its decision not only on the unlimited duration of the special privilege granted by the state, but also on the fact that the privilege was granted at all. Id. Moreover, the system proposed for the Kenai River so heavily favors established guides over new entrants as to make the permits effectively of unlimited duration.

Even if we were able to overcome these constitutional hurdles, there is a serious question whether any system to limit guide numbers would be defensible at the present time. Your department recently furnished us back-up information that supposedly justifies the proposed guide limits. This information, however, shows that the actual fishing pressure on the river has not significantly changed since 1983, and in fact it declined in 1990 and 1991. Furthermore, the evidence shows that although the actual number of guides has increased over this period, guided angler hours still constitutes only 40% of the total fishing effort on the river.

To survive challenge, a regulation must be reasonably necessary to carry out the purpose of its enabling statutes. See Kelly v. Zamarello, 486 P.2d 906, 911 (Alaska 1971). When the regulation affects access to fish, it must also impinge as little as possible on the constitution's open fishery clauses (Art. VIII, secs. 3 and 15). Johns v. CFEC, 758 P.2d 1256, 1266 (Alaska 1988); State v. Ostrosky, 667 P.2d 1184, 1191 (Alaska 1983). Assuming the department has the authority to adopt a regulation to limit the number of guides on the river and proposes to do so in a constitutional manner, the department still must be able to demonstrate that the limitation is reasonably necessary. The data supplied to us supports neither the conclusion that there is a problem of overcrowding or of increasing fishing pressure, nor the conclusion that limiting the number of guides alone would help solve the problem, if it were found to exist. 2/

2/ Even if we assume that the river is overcrowded (and has been since 1983), DNR's current proposal is to issue 220 permits plus 30 lodge concession permits. Proposed 11 AAC 20.885(h) and (i). This further undermines our argument, because these figures

For the reasons outlined above, we cannot approve for filing any regulations proposing to limit the number of guides through a system that favors existing guides over new entrants. If we assume, however, that your department can find sufficient empirical evidence that a problem of overcrowding or increasing crowding exists on the river and that a limitation on the number of guides would alleviate the problem, we can suggest possible systems that would be defensible. A pure lottery system, in which lottery participants qualify based on criteria that do not favor established guides over new entrants, would be the best system and clearly would not violate constitutional prohibitions. The length of the permit would have to be reasonable, but we believe the proposed five-year period would not cause any serious problems. We recommend the department seriously consider this option.

If the department finds the lottery option unpalatable, a concession system, in which any qualified guide applicant could bid and permits would go to the highest bidders, would arguably be defensible. The Court in Owsichek indicated that such a system might survive constitutional challenge (763 P.2d at 497), although there is a strong possibility the Court would reject such a system because it would favor the wealthy. See Ostrosky, 667 P.2d at 1198 (Chief Justice Rabinowitz, dissenting). We would likely approve a regulatory scheme based on such a concession system (assuming that there is sufficient evidence that the system was reasonably necessary) and leave it to the courts to decide the program's legality.

Enclosed are your original exemption order and supporting documents for this project. We will now close our file on this project. If you wish to pursue an alternative guide limitation program for the river, please contact us and we will open a new regulations file for that project at that time.

JWB:cl

cc w/enc.: Neil Johannsen, Director
Division of Parks

John B. Coghill
Lieutenant Governor

Elizabeth Barry
Assistant Attorney General
Anchorage

---

do not represent a significant reduction from current guide numbers and thus are not designed to alleviate the alleged problem.

The Feasibility of Limited Entry and Permit Exchange For the Guided Sport Fishery

See pgs 1-8
especially 5

Prepared by:

Susan M. Shirley
Ben Muse

April 9, 1992

CFEC Briefing Report 92-07

Commercial Fisheries Entry Commission
8800 Glacier Highway #109
Juneau, Alaska 99801
Telephone: (907) 789-6160 FAX: 789-6170

The Feasibility of Limited Entry and Permit Exchange for the Guided Sport Fishery

Table of Contents

Introduction 1

Review of Current Limited Entry Program 1

Statutory Changes Needed to Limit the Guided Sport Industry 3

Constitutionality of Limiting Entry for Charter Vessels 5
Proposed limited entry for the Kenai River guides 6

Data Necessary for Limiting Entry in the Guided Sport Fishery 6
Problems created by lack of data 7

Limited Entry in Different Types of Charter Operations 9

Market Means to Allocate Fish Among Limited Fisheries 9
Current authority to allow exchange of entry permits 10
Problems with value equivalent exchange 12
Problems with king salmon equivalent exchanges 14
Possible individual quota alternatives 16

Summary 17

Appendices 18
Appendix 1 18
Appendix 2 19
Vessel licenses 19
ADF&G charter vessel registration 19
Coast Guard license 20
Alaska business license 20
Charter vessel crew members 21
Log books and reporting requirements 21
Sport fish creel surveys 22
Other possible data sources 22

The Feasibility of Limited Entry and Permit Exchange for the Guided Sport Fishery

Introduction

Commercial salmon trollers in Alaska recently asked for and received an allocation of the chinook salmon quota established by the Pacific Salmon Treaty. In their petition to the Board, the trollers attributed the "disruption of historic chinook sharing patterns" to the rapid growth in the guided sport industry.

Limited entry was discussed as a possible method of controlling the growth of the guided sport industry and protecting the interests of the commercial trollers and the independent sport anglers. Entry into the commercial power troll fishery was limited in 1975, and entry into the commercial hand troll fishery was limited in 1980.

The Commercial Fisheries Entry Commission was requested by Senator Jones to investigate the feasibility of limiting access into the guided sport fishery in Alaska (see memorandum in Appendix 1). A program to allow the conversion of troll permits to guided sport permits was also proposed to allow a market means of allocating fish to their highest valued use. This report reviews the existing limited entry program and its applicability to the guided sport industry, and evaluates the proposal to allow expansion of the guided sport industry by the purchase of commercial troll permits.

Review of Current Limited Entry Program

Senator Jones proposed declaring a moratorium on the number of guided sport fishers. The only moratorium the Commercial Fisheries Entry Commission (the Commission or CFEC) could implement, under the current program, would be a temporary moratorium. The Alaska Legislature added the moratorium authority to the limited entry statute in 1991 for commercial fisheries under certain conditions.[1]

A temporary moratorium can only be implemented in fisheries which have experienced recent increases in fishing effort which exceed low levels of effort, fisheries in which the harvest may be approaching or exceeding a maximum sustainable level, or fisheries for which there is insufficient information necessary to promote conservation and sustained yield management. The Board of Fisheries must approve a request by the commissioner of the Department of Fish and Game before the CFEC can propose a

[1] AS 16.43.225

moratorium. If all these conditions are met, the moratorium can last a maximum of four years.

A moratorium on new entrants would not offer a long-term or permanent solution for the guided sport fishery. The only long-term solution the Commission could offer under the current statutes would be a full-scale limited entry program.

In evaluating the proposal, a determination must be made as to whether the guided sport industry could be limited using the existing limited entry statute (AS 16.43). We will review the current limited entry program, and then follow with an examination of the current statute and the feasibility of using it to limit the guided sport industry.

Alaska's current limited entry program was established by the legislature in 1973 to regulate entry into the commercial fisheries for all fishery resources in the state. The Commission administers the license-type limited entry program in which permits are issued to individuals and are not tied to a particular vessel.

The Commission usually studies a fishery carefully before proposing entry limitation regulations to determine if limiting the fishery would serve the following purposes:

> . . . to promote the conservation and the sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry into the commercial fisheries . . .[2]

During the study, the level of participation, catch, and earnings in a fishery as well as consistency of participation, vessel characteristics, distribution of catch and earnings among participants, changes in effort levels, and the number of operators per vessel are examined. The information sources for these studies will be described later in this report.

---

[2]AS 16.43.010

The CFEC limits a fishery by first establishing a maximum number[3] reflecting current participation levels.[4] Following the determination of the maximum number,

> . . . the commission shall adopt regulations for ranking applicants for entry permits according to the degree of hardship which they would suffer by exclusion from the fishery . . . based upon a reasonable balance of . . . degree of economic dependence upon the fishery . . . and extent of past participation in the fishery.[5]

Because the number of applicants for a limited entry fishery typically exceeds the maximum number, a priority classification system is necessary to allocate permits among the applicants. The classification system is intended to measure an applicant's reliance on the fishery and the relative hardship an applicant would suffer if excluded from an initial allocation of a limited entry permit.

Statutory Changes Needed to Limit the Guided Sport Industry

A number of statutory changes would be necessary in order to apply the current limited entry program to the guided sport fishery. The charter industry in Alaska is currently considered a sport rather than a commercial fishing enterprise. Sport fishing has been defined as the taking of or attempting to take for personal use and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries.[6] Commercial fishing has been defined as the taking, fishing for, or possession of fish, shellfish or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels.[7] While sport fishing guides do provide a

---

[3]The number of permits which will be issued.

[4]The Alaska Supreme Court in *Johns v. State, CFEC*, 758 P.2d 1256 (Alaska 1988) stated that the commission should select a maximum number which is no less than the highest number of units of gear fished in the four years prior to limitation.

[5]AS 16.43.250

[6]AS 16.05.940(28)

[7]AS 16.05.940(5)

commercial service, that service is not "commercial fishing" as defined by existing state law. The actual user who purchases the services of a guide is a sport fisher.[8]

State statutes and regulations have consistently dealt with sport fishing and guiding as distinct and apart from commercial fishing.[9] The current limited entry statutes address only commercial fishing. For example, AS 16.43.010 says in part . . . "by regulating and controlling entry into the commercial fisheries" . . . and in AS 16.43.990(3) "fishery means commercial taking of a specific fishery resource." A number of statutory changes would be necessary in order for the existing limited entry program to be applicable to the charter fishery. In addition to amending the limited entry statutes, the definitions of commercial fishing in the CFEC regulations would need to be changed to accommodate charter fishing operations.

A statutory change would be necessary to allow limited entry permits to be issued to charter operators. The current statute directs the Commission to accept applications for limited entry permits only from holders of gear licenses and interim use permits who have harvested fishery resources commercially.[10] Because charter operators have not been required to have either gear licenses or interim use permits, the statute would have to be amended in order to issue limited entry permits to charter operators in the guided sport fishery.

The problem of applying the limited entry program to the charter fishery may be more fundamental than the limits of the current statutory authority, however. Amending the limited entry statutes to include the guided sport or charter fishery might raise constitutional issues.

---

[8]CFEC memo to Clement V. Tillion. "Limitation of Entry for Kenai River Sport Fishing Guides." January 3, 1991.

[9]Ibid.

[10]AS 16.43.260(a)

Constitutionality of Limiting Entry for Charter Vessels

The Commission previously addressed constitutional issues in a discussion of establishing a moratorium on the issuance of charter vessel licenses.[11] The questions of constitutionality which arose during the license moratorium discussions are likely the relevant issues in limiting entry into the charter boat industry.

The Alaska Constitution was specifically amended in 1972 to allow the state to limit entry into fisheries. Article 8, Section 15 states:

> No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

The amendment provided the state with authority to limit entry into "any fishery," but the intent of the amendment was to address commercial fisheries. Any legislation that would tend to place restrictions on the taking of fish other than that specifically provided for by the amendment would have to be justified.

Even if recreational charter vessels could be brought within the constitutional authority for limited entry of commercial fishermen, there still could be a legal challenge. As the Alaska Supreme Court stated in *Johns v. State, CFEC*, 758 P.2d 1256 (Alaska 1988):

> In *State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983), we noted that there is a tension between the limited entry clause of the state constitution and the clauses of the constitution which guarantee open fisheries. We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely prevention of economic distress to fishermen and resource conservation. *Ostrosky* 667 P.2d at 1191.

---

[11]CFEC memo to Rep. Jerry Mackie. "Draft Legislation Establishing a Moratorium on Issuance of Vessel Licenses for Vessels Used in Charter Service for the Recreational Taking of Fish and Shellfish." March 18, 1992.

Proposed limited entry for the Kenai River guides

The Attorney General's office rejected a Department of Natural Resources (DNR) regulatory proposal in 1991 to limit the number of fishing guides on the Kenai River. The DNR proposed regulations for a competitive bid and point system which would be used to allocate a reduced number of guide permits. Points were to be awarded for past participation, number of guide days, other activities that would demonstrate experience as a guide, and the amount of money bid for a guide permit. Every five years all permits would have been reallocated using a similar competitive point system.

Jeff Bush, of the Attorney General's office, rejected DNR's proposal because the point system awarded applicants based on their prior experience in the sport guide fishery. The point system gave preference to those people who were already Kenai guides and thereby violated the equal protection rights granted by the constitution. Under DNR's broad statutory authority, the number of permits could be reduced or frozen without violating the constitution by offering guide permits by competitive bid or public auction.[12]

Data Necessary for Limiting Entry in the Guided Sport Fishery

Assuming the constitutional and statutory problems could be resolved, questions still remain as to the practicality of limiting the guided sport industry under AS 16.43. Data on past participation is not available for charter operators, an important factor which could add to the cost of limitation.

Past participation was mandated by the legislature as one of the primary means for measuring the qualifications of an applicant for a limited entry permit. An accurate and readily accessible source of data is therefore very important for the efficient implementation of a limited entry program.

---

[12]Assistant Attorney General Jeff Bush based his decision in part on *Owischek v. State*, 763 P.2d 488 (Alaska 1988), in which the Alaska Supreme Court rejected special preference for use of fish or wildlife "based primarily on use, occupancy and investment, favoring established guides at the expense of new entrants in the market." *Owischek*, 736 P.2d at 496.

The data necessary for determining the maximum number for a limited entry fishery and for assigning points in a priority classification system have been readily available through the statewide fish ticket database and the CFEC permit and vessel licensing databases. In past fisheries limitations, the CFEC has occasionally supplemented the existing databases with mail and telephone surveys and interviews.[13] The applicants' income tax records, receipts (fuel, bait, etc.), log books and business ledgers have been routinely used to verify an applicant's income dependence and economic investment in a fishery.

Data sources for participation of charter operators are not complete or as readily available as those previously used for commercial fishery limitations. There are several data sources which may be used to identify persons who may have intended to operate a charter vessel: the CFEC vessel license database, the ADF&G charter vessel registration file, Coast Guard licensing data and Alaska business license data. A review of each data source is contained in Appendix 2. However, none of these data sources verify which licensed and registered vessels actively participated as charter operations.

Problems created by lack of data

The lack of a readily available and reliable source of information on past participation would create problems if the current limited entry process was used to limit access in the guided sport fishery. The maximum number decision is based on a determination of past participation in the fishery. A substantial effort would be required to determine the level of participation before a decision could be made to establish a maximum number and limit entry.

If the constitutional and statutory provisions were in place to allow limited entry in the guided sport fishery, the Commission may be able to identify potential charter operators by ADF&G charter registrations, Coast Guard "six-pack" licensing records and business license records from the Department of Commerce and Economic Development. These data sources will also only identify persons who may have intended to charter, and may not necessarily represent persons who actually participated as charter operators.

---

[13]Mail and telephone surveys were conducted in the Southeast sablefish longline fisheries in 1986. Additional information was also obtained through a special permit application in the Bristol Bay (Togiak) herring spawn on kelp fishery in 1990.

The lack of participation data would also create problems in a priority classification or point system for ranking applicants for a limited charter fishery. The additional steps necessary to gather and verify information on charter participants could result in substantial time delays and administrative expense. Without good data on participation, limitation of a charter vessel fleet could be much more expensive than the limitation of a commercial fishery.

Current CFEC statutes require that a point system be used for initial allocation of permits and that it be based upon a reasonable balance of the degree of an applicant's economic dependence upon the fishery and their extent of past participation in the fishery. Points have been awarded in previous priority classification systems for the number of years a person fished and for consistency of participation.

Measures of consistency of participation have included the number of fish or pounds of fish harvested and/or the number of weeks (or days) with landings in the fishery. In the charter fishery, emphasis on number of trips made or number of clients may be more relevant than pounds of fish harvested and number of landings. Regardless of the variable used to determine consistency of participation, extra effort and expense in the form of interviews, surveys or affidavits would be necessary to document participation as a charter operator. One CFEC hearing officer estimated that the claims made on every application would have to be verified, and that roughly half of the applicants might request hearings to adjudicate disputed claims.

Even if the Commission decided to "grandfather" all previous charter operators into a limited entry fishery, participation data would still be necessary to determine who would be grandfathered in. An advantage of the grandfathering approach would be to alleviate hearings to adjudicate additional point claims for economic dependence, availability of alternative occupations and extraordinary circumstances.

Point systems have included economic dependence factors to rank applicants. Income dependence on the fishery and investment in vessel and gear used in the fishery have been verified largely through tax records and other documentation provided by the applicant, and not through existing databases such as permit and licensing files or fish ticket files. The evidentiary problems for determining economic dependence in the charter fishery should not be substantially different than those for other limited entry commercial fisheries.

Limited Entry in Different Types of Charter Operations

The current limited entry program awards permits to the gear operator rather than to the vessel owner. In the limitation of the commercial salmon fisheries, most of the gear operators were also the vessel owners. The vessel owner in the guided sport fishery may not always be the operator.

At least three types of charter operations exist in the guided sport fishing industry: the independent owner-operators of single charter vessels, the owners of vessels who lease them to licensed charter operators, and the owners of fishing lodges specializing in sport fishing charters who may own several to many vessels and hire skippers to run them. The lodge owners may own the charter vessels and gear but may hire operators to skipper their vessels. The ADF&G estimated that the largest component of the southeastern Alaska charter vessels was the independent owner-operators. Only 50 to 75 of the 401 charter vessels registered in southeastern Alaska in 1991 were owned by fishing lodges.[14]

If a limited entry program were implemented in the guided sport fishery, a statutory change would be necessary to determine who should receive limited entry permits in the different types of charter operations--the vessel owner or the operator (skipper). The lodge owners may feel they deserve the permits because of their substantial investments in the guided sport industry. Focht reviewed the methods used to regulate guided sport fisheries in states other than Alaska in his report on Kenai River guides.[15]

Market Means to Allocate Fish Among Limited Fisheries

As part of his proposal Senator Jones suggested that the number of sport guides could grow through the exchange of troll permits for guide permits. He said:

---

[14]Gary Sanders, Regional Management Coordinator, ADF&G Division of Sport Fish, said there are people who register their vessels as charter vessels in southeastern Alaska and then lease them to licensed charter operators. These registrations have increased in anticipation of possible limited entry in the guided sport fishery.

[15]Focht, Rick. 1984. Regulating Commercial Sport Fishing Guides on the Kenai River. Commercial Fisheries Entry Commission Briefing Paper No. 84-7.

> Once the historic allocation is determined, next look at a program whereby the guided sport industry is allowed to grow through the purchase and transferal of transferable power and hand troll licenses. The Board of Fisheries would deal with this transfer of allocation and make decisions according to the new allocations. Some type of rating would be established to determine the equivalent value of a trolling license. That could be recommended by the entry commission.

Senator Jones appears to propose: (1) limited entry for sport guides, (2) a rule that lets people buy one or more troll permits and exchange them for a guide permit, (3) Board of Fisheries conversion of an appropriate amount of quota, in a separate regulatory procedure, when permits are exchanged, (4) and an exchange rate for troll and guide licenses set by the Limited Entry Commission.

This is an interesting idea, that uses market forces to make allocation decisions currently made by the Board of Fisheries, but it may be hard to make it work within the context of a license limitation program. This section discusses the current authority for this program, the problems of basing exchange rates on permit market values or king salmon harvests, and the potential for market allocation with transferable individual quotas.

Current authority to allow exchange of entry permits[16]

Subsection AS 16.43.100(12) of the Limited Entry law may give the Commission the power to allow these exchanges. The Commission shall:

> provide for the transfer and reissuance of entry permits for alternative types of legal gear, in a manner consistent with the purposes of this chapter. . .

As noted earlier, the purposes of the chapter are:

> . . . to promote the conservation and the sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry into the

---

[16] This discussion draws on a conversation with Entry Commission hearing officer Frank Glass but it does not necessarily reflect his views.

commercial fisheries in the public interest and without unjust discrimination.[17]

Subsection AS 16.43.100(12) is not clear. Even if it authorizes permit exchange between fisheries, other parts of the law may need to be changed to allow permit exchanges. The three issues discussed below are (1) the relationship of permit exchange to the purposes of the limited entry law and to the state constitution, (2) the limited entry law's limit on the number of permits a person may hold, and (3) the problems of coordination between the Board of Fisheries and the Entry Commission.

(1) The purposes of the limited entry law and the open fisheries provisions of the state constitution will generally prevent unlimited movement of entry permits between fisheries. The movement of too many permits from one fishery to another might lead to conservation and economic problems in the receiving fishery while the movement of too many permits out of a fishery might violate the open fisheries provisions of the state constitution.[18]

The optimum numbers article of the limited entry law lets the Entry Commission change the number of permits in a fishery if a change is needed to meet the purposes of the law or the open fisheries requirements of the constitution.[19] An optimum number determination, or some other type of decision on permit target levels for the two fisheries, may be needed before the Commission could allow a shift of permits from one fishery to another under AS 16.43.100(12). The existing optimum numbers provisions tend to ignore the fact that different fisheries may exploit the same stocks. For this, and other reasons, the current optimum numbers provision may not be applicable to the program envisaged, but the law does not provide any alternative target-setting procedure.

---

[17] AS 16.43.010

[18] Open fisheries issues have become particularly important as the Alaska Supreme Court has emphasized the tension between the limited entry clause of the state constitution and other clauses which guarantee open fisheries. The Court has indicated that the optimum number provisions of the Limited Entry law are a way to introduce new permits to a fishery if a small number of permits in the fishery tends to create an "exclusive fishery...exceeding the constitutional purposes of limited entry." See the Court's decision in the *Johns v. State, CFEC*, 758 P.2d 1256 (Alaska 1988).

[19] See the Alaska Supreme Court decision in *Johns*, 1988.

(2) Current limits on the number of permits a person can hold would also make it hard to use the existing law to carry out permit exchanges between fisheries. Under both of the permit exchange methods discussed below, a person might have to trade more than one troll permit for a guide permit. The Limited Entry law prohibits anyone from owning more than one permit in a fishery. This would have to be changed for a permit exchange program to work.

(3) Finally, there may be coordination problems between the Board of Fisheries and the Entry Commission. Under current law, the Board of Fisheries allocates fish between gear types independently of actions taken by the Commercial Fisheries Entry Commission. While the Board and Commission would undoubtedly coordinate their actions, there is no guarantee that permit exchanges allowed by the Commission will be validated by Board allocation changes.

Under Senator Jones' proposal troll permits would be converted into sport guide permits at rates set by the Commercial Fisheries Entry Commission.[20] The following two sections discuss some of the complex issues raised by a proposal to convert permits on the basis of either the relative market values of the permits, or of the relative historical harvests of king salmon associated with the permits. Questions are raised about the possibility that people would have weak incentives to convert troll to guide permits, the possibility that lags in information gathering and regulatory processes may cause conversion ratios to lag the market, problems raised because entry permits are large lumpy items and their values may not be multiples of each other, and the possibility that persons moving from one fishery to another may leave persons in the old fishery worse off, or may hurt persons already in the fishery they enter.

Problems with value equivalent exchange

Senator Jones proposes that the Entry Commission determine the rate at which troll permits could be exchanged for sport guide permits. The Entry Commission might base the exchange rate on relative permit values. For example, if troll permits sold for $40,000, and sport guide permits for $80,000, the Commission might adopt a regulation allowing people to exchange two troll permits for one sport guide permit. If one or

---

[20] Senator Jones does not appear to contemplate conversion of sport guide permits into troll permits. Guide to troll permit conversions appear to raise the possibility of large increases in total fishing power due to the larger amounts of gear fished by trollers.

more people did this, the Board of Fisheries might reallocate part of the troll quota to the sport guide fishery. Thus a reallocation of quota from the troll fishery to the guide fishery would be accompanied by purchases of troll permits.[21]

If guide permit prices were higher than troll permit prices a person seeking to enter the guide fishery would have a choice of buying a guide permit or of buying the equivalent value of troll permits. While the aggregate permit values may be about the same with either option, the transactions costs may be higher for a person who plans to enter by buying troll permits since he may have to seek out and negotiate the purchase of several permits to get enough permits to become a guide. If the troll permit prices are greater than the guide permit prices it would be less expensive to buy the guide permit. These results hold for a person with a troll permit who wishes to become a guide as well as for a person without permits who wishes to become a guide, although if someone already has one troll permit the relative disadvantage of becoming a guide by exchanging several less expensive troll permits is reduced.

In addition to this question about the incentives of fishermen to exchange permit packages of equal value, there are questions about the Commission's ability to accurately measure permit prices and set exchange rates. For example, there are lags inherent in the Entry Commission's permit appraisal and regulation drafting process. The appraisals of the different permits and the transfer ratios set in regulation may lag the market. If the formal transfer ratios do not accurately reflect actual permit prices there may be times when it is impossible to afford transferring permits from the troll to the guide fishery, and other times when it may be a bargain.

Permit "lumpiness" is another important problem. Permits are sold as discrete units, and it may not be possible to match up the values of discrete numbers of the permits of each type very closely. Thus if permits in one fishery were selling for $50,000 and permits in a second fishery for $125,000, it would not be possible to match the permit values up within $25,000. This may be less of a problem in the troll fishery where the relatively inexpensive hand troll permits could be used to "make change." However, suppose power troll permits were selling for $45,000, hand troll permits were selling for $8,500 and guide permits were selling for $20,000. Few would want to trade

---

[21]At the March, 1992, meeting of the Board of Fisheries, Assistant Attorney General Steve White indicated that allocating chinook salmon among different user groups within the sport fishery may exceed the Board's authority. A statutory change may be required to enable the Board to allocate salmon to the guided sport fishery.

one power troll permit for one guide permit, and it would not be possible to make an equal value exchange with the hand troll permits.

Finally, there is an important potential problem with external costs. Fishermen who shift from trolling to guiding can impose costs on fishermen already in the guide fishery or on fishermen left behind in the troll fishery. These are called "external costs" since they are imposed on someone besides the decision maker. Consider the following two examples.

A person who exchanges troll permits for a guide permit leaves one common property fishery for another. He will probably be buying permits from marginal troll fishermen.[22] If the Board of Fisheries transfers quota equal to the harvest from these permits in recent years, a relatively small number of pounds will be taken out of the troll fishery since the permits come from marginal fishermen. This poundage is the new guide's contribution or "dowry" when he enters the guide fishery. However, his harvest in the common property guide fishery is not limited to the quota he brings. If his guide harvest is greater than the quota he brings, he will reduce the average harvest of the people who were already sport guides.

Alternatively, the Board of Fisheries might transfer quota equal to the average king salmon harvest per permit in the troll fishery. In this case a fisherman who shifts will probably do so having bought marginal permits, but he will be taking more fish from the troll quota than his permits had been used to catch. The average harvest of the active trollers remaining in the fishery will drop. In each of the cases just discussed, the fisherman imposes a cost on other fishermen when he transfers the permits; in the first case a cost is imposed on people who already have guide permits, in the second case a cost is imposed on the trollers who are left behind.

Problems with king salmon equivalent exchanges

The Entry Commission might base the exchange rate on the relative harvests of troll and guide permits. Suppose power troll permit holders had average harvests of 1,000 king salmon and guide permit holders had average harvests of 2,000 king salmon.

---

[22] A highliner from the troll fishery may choose to move over to the guide fishery. It is also possible for a highliner in the troll fishery to buy permits from marginal fishermen and use them to trade for a guide permit. He could then keep and use both permits.

The Entry Commission might base its exchange rate on these relative salmon harvests and let a person who had two power troll permits exchange them for one sport guide permit. If one or more people did this, the Board of Fisheries might reallocate part of the troll quota to the sport guide fishery.

This may pose problems because there is no necessary, direct relation between the average pounds of king salmon landed in a fishery and the permit prices that prevail in that fishery. One reason is that the permit prices in a fishery reflect the value placed on the permit by a marginal fisherman, that is, by someone who just finds it worth his while to remain in the fishery. However, all other things equal, a marginal fisherman is likely to catch less than the average number of fish. In addition, the demand and cost conditions differ enormously between the troll and sport guide fisheries. This will affect the relative values placed on permits to operate in those fisheries.

Suppose troll permit holders caught an average of 1,000 kings and guides caught an average of 1,000 kings. The Commission might establish a ratio of one troll permit to one guide permit. But the troll permits might sell for $40,000 while the guide permits sold for $80,000. There would be an incentive for lots of trollers to exchange their troll permits for guide permits. In fact persons who were not fishermen at all would have an incentive to buy troll permits so as to exchange them for guide permits. This movement would drive the troll prices up and the guide prices down until both prices were equal or until all the troll permits were gone.

On the other hand, if the troll permits cost more than the guide permits, incentives to shift from one fishery to the other would be weak.[23] Further, if the permit prices were still $40,000 and $80,000, but if trollers caught an average of 1,000 fish while the guides caught an average of 3,000 fish it would take three troll permits to buy a guide permit. In this case incentives to accumulate troll permits and exchange them for a guide permit would also be weak since it would cost $120,000 to get an $80,000 sport guide permit.

In general, if the ratio of the average troll catch to the average guide catch was less than the ratio of their respective permit prices few would accumulate troll permits

---

[23] Although it is possible that some marginal trollers may be highline guides and may be willing to exchange the reduction in permit values for a higher income stream. For example, an older troller may not be physically capable of continuing to troll. He may have the fish knowledge and the people skills, however, to be an excellent guide.

to move into the sport guide fishery. If the ratio of the average troll catch to the average guide catch was greater than the ratio of their respective permit prices, people would accumulate troll permits and use them to buy guide permits because the total cost of the troll permits would be less than the value of the guide permit. This would continue until the permit price ratio equaled the ratio of average harvests or until all the troll permits were gone.

Possible individual quota alternatives

Transferable individual fisherman's quotas might provide an alternative way to achieve market based allocations of king salmon between the two user groups. Under an individual fisherman's quota program each person in a fishery has the right to harvest a given part of the fishery total allowable catch. If the allowable catch was 100,000 king salmon a year, and a person had an individual quota for one percent of the catch, he would be allowed to harvest 1,000 king salmon. If the quotas were transferable he could change the size of his harvest by buying more quota or by selling quota.

Under an individual quota system the quota would gradually be purchased by the people who could put it to its highest valued use. Trollers who had lower costs per unit of harvest would gradually buy it from other trollers. If both trollers and guides were allowed to buy quota, the quota would gradually be purchased by whoever could put it to its most valuable use, no matter whether they were trollers or guides.

Market forces would produce an allocation of quota between the two fisheries that put each pound of quota to its highest valued use. This would be accomplished without the Board of Fisheries having to make any allocation decisions between the fleets.

Individual quotas are not a cure all, and they raise problems such as the initial allocation of quota and enforcement. Moreover, at this time, the state does not have the statutory authority to develop individual quota programs.

Summary

Limiting access in the guided sport or charter fishing industry would require substantive revisions of the existing limited entry statutes. Regulatory definitions of sport and commercial fishing would have to be changed to accommodate the charter fishery. Determining the constitutionality of limiting entry into a recreational fishery would be paramount.

The administrative burden of limiting entry in a guided sport fishery would be substantial and expensive. The lack of a readily available and reliable data source to identify participants in the charter industry would necessitate a lengthy process of gathering and verifying evidence from all persons claiming to have been a charter operator. Even the simplest method of limitation, "grandfathering" all previous charter operators into the fishery, would require the same degree of verification of past participants, although the need for a complex point system could be eliminated by this approach.

Market based reallocations of limited entry permits from one fishery to another are an interesting idea, however they would likely require changes in the limited entry law and the practical problems are those of estimating and updating the exchange rates while avoiding unbalanced exchanges that penalize one fishery or the other, the "lumpiness" of the permits, and the weakness of the incentive to buy troll permits to enter the guide fishery under some arrangements. Individual quotas for king salmon may be an approach worth further exploration.

Appendix 1

Alaska State Legislature

Sen. Lloyd Jones, Chair
Sen. Sam Cotten, Vice-Chair
Sen. Dick Eliason, Member
Sen. Steve Frank, Member
Sen. Rick Halford, Member
Sen. Curt Menard, Member
Sen. Fred Zharoff, Member

P.O. Box V
Juneau, AK 99811

907 465-4907
Fax 907 465-3922

Senate Resources Committee

March 8, 1992

RECEIVED
MAR 09 1992
COMMERCIAL FISHERIES
ENTRY COMMISSION

Commercial Fisheries Entry Commission
8800 Glacier Highway, Suite 109
Juneau, Alaska 99801-8079

Dear Commissioners:

The allocation of King Salmon is an issue now before the Board of Fisheries. I have spoken to commercial trollers and charter boat operators as a result of this issue and SB 397. Individuals from both of these groups have presented the following idea as possibly a partial solution to the current and future allocation problem.

I would like to have your researchers investigate the feasibility of this limited entry scenario. Establish the authority of Commercial Fisheries Entry Commission to have jurisdiction over the guided sport fishery. Declare a moratorium on the number of guided sport fishers delineating the different subgroups into specific categories, for example, lodges, charter boats, etc. Then examine a method determining how to allocate licenses based upon the different gear group's historic participation in the fishery.

Once the historic allocation is determined, next look at a program whereby the guided sport industry is allowed to grow through the purchase and transferal of transferable power and hand troll licenses. The Board of Fisheries would deal with this transfer of allocation and make decisions according to the new allocations. Some type of rating would be established to determine the equivalent value of a trolling license. That could be recommended by the entry commission.

This scenario would assist in solving the over allocation of troll permits and the growing guide industry would have the opportunity to expand if there were a willing seller. I realize this would not apply to areas where there aren't troll fisheries . I do think this might be a solution for southeast Alaska. Please let me know if you think this is viable and feel free to offer any refinements to this idea.

Sincerely,

Lloyd Jones

Senator Lloyd Jones, Chairman
Senate Resources Committee

LJ:tco MS0302

Appendix 2

Vessel licenses

All vessels used in charter service in any area of Alaska for the recreational taking of fish and shellfish are required to have a vessel license. For each vessel licensed, the types of activities (charter, fishing, freezer/canner, or tender/packer) applicable to the vessel are indicated on the license application. The vessel licensing database dates to 1978, although some vessel data may be available back to 1969.[24]

ADF&G charter vessel registration

The Department of Fish and Game required all charter operations in southeastern Alaska to register yearly beginning in 1982. Prior to that time, some charter vessels registered voluntarily. The ADF&G registration data[25] are available from at least 1978, but data from 1978 to 1982 should be considered incomplete.

Either the vessel owner or operator may register a charter vessel. A fishing lodge which operates more than one vessel and/or hires more than one skipper (or guide) may register a list of all vessels and a list of all licensed operators who are authorized to operate any of the charter vessels.

At the time charter vessel registrations became mandatory, sport fishing from either a commercial hand or power troll vessel was prohibited by regulation unless the vessel was fishing during a salmon derby or in derby waters, or unless the vessel was

---

[24]The North Pacific Fisheries Management Council contracted the CFEC to compile vessel data from ADF&G files, Coast Guard records and CFEC data to provide a compendium of the best available vessel data for the years 1969 through 1980.

[25]Information provided at the time of vessel registration includes the vessel owner's name, address, telephone number, residency, date and location of vessel registration, vessel name and ADF&G number, vessel port (location of vessel operation), Alaska business license number, the operator's Coast Guard license number, ownership of commercial salmon troll permits, percent of vessel use (commercial fishing, charter, etc.), and the percent of time the charter will be used for fishing, hunting, and sightseeing activities. The charter registration also indicates additional operators and their names, addresses, residency and Coast Guard license numbers.

also licensed as a charter vessel. Many trollers began to license their boats as charter vessels, even if they never operated as a charter, so they could use their trolling vessels for sport fishing. The number of charter registrations increased from 139 in 1982 to 317 by 1984 largely due to the increase in commercial trollers registering as charter boats.[26] Because of the situation described above, charter registrations during 1982 through 1984 may not accurately represent the number of true charter operations. The Board of Fisheries addressed the problem in 1985 when it further defined a charter operation by requiring proof of a Coast Guard license and an Alaska business license at the time the vessel was registered for charter. The more stringent license requirements were hoped to discourage trollers from registering as charters for the purpose of being able to sport fish from the same vessel.[27] Following the Board's action, the number of charter registrations decreased in 1985 and 1986.

Cook Inlet is the only other area of the state which requires registration of charter vessels. Charter vessel registrations have only been required in Cook Inlet since 1991.

Coast Guard license

All charter operators are required to have a Coast Guard license. Most charter operators have an Uninspected Passenger Vessel license ("six-pack" license) which enables then to carry no more than six paying passengers aboard their vessel.

Alaska business license

All charter operators are required to purchase an Alaska business license. At the Board of Fisheries meeting held in March, 1992, in Juneau, the Department of

---

[26]Gary Sanders, Regional Management Coordinator, ADF&G Division of Sport Fish. An Analysis of the Recreational Fishery for Chinook Salmon in Southeast Alaska. Presentation to the Board of Fisheries. March, 1992.

[27]If a commercial troller wishes to use his/her vessel for sport fishing prior to commercial trolling, he/she may specify on the CFEC vessel license application form an effective date for commercial troll registration. The vessel may not be used for commercial salmon trolling before the effective date, and may not be used for salmon sport fishing after the effective date.

Commerce and Economic Development reported that about 600 persons had checked the standard industrial code for charters (7999) on their business license applications in 1991, almost 200 more than the 401 charter registrations ADF&G recorded in 1991.

Two possible sources for the discrepancy in the number of charters were identified. Some persons who obtained a business license for charter may not have taken the next step and registered their vessel as a charter operation. Some persons may also have included, for their business license, other types of charter activities not identified or recognized by ADF&G.

Charter vessel crew members

Crew members on charter fishing vessels are not required to purchase a crew member license from ADF&G.[28] There are currently no public records which identify persons who assisted charter operators.

Log books and reporting requirements

No state agency, including the Sport Fish Division of ADF&G, requires any type of log book or reporting requirements for charter operators. ADF&G has no records of the number of trips made, number of clients per trip, or earnings per trip. The Coast Guard does not require any reporting or maintenance of log books for "six-pack" license holders and does not specify the type of activity for which the license was issued. A list of "six-pack" license holders may consist of operators of sightseeing and hunting charters as well as operators of sport fish charters.

In 1992, the Board of Fisheries provided ADF&G with additional authority to implement a log book program. A voluntary log book program may be implemented in 1992 to estimate the catch and effort in the charter fleet in southeastern Alaska.

The log books may not provide an accurate source of data, however. The charter boat log book may have similar problems inherent with other log book programs. Fishermen may willingly or through imprecise record keeping report inaccurately. Limited entry for the guided sport fishing operations has been a topic of discussion because of the recent controversy over the chinook salmon allocation at the Board of

[28]Kristin Wright, ADF&G Records and Licensing.

Fisheries meeting[29] and the rapidly growing charter fleet in southeastern Alaska. Some charter operators may report larger harvests, more trips or more clients in their log books than actually occurred in an attempt to establish a record of participation in anticipation of limited entry.

Sport fish creel surveys

In southeastern Alaska, ADF&G conducts in-season creel surveys in the Juneau and Ketchikan areas. In 1992, the creel surveys will be expanded to include Petersburg, Sitka, Wrangell and the Craig/Klawock area. The creel survey targets about 15% of all sport anglers, and should not target unguided sport anglers differently than sport anglers who fished from charter boats. The sport fishing salmon harvest estimated from the creel survey can be compared to the harvest estimated from the log books to assess the accuracy of log book reporting for the fleet as a whole.[30] The creel survey would not address the accuracy of individual log books, however, and does not provide any information on the identity of persons or vessels participating in the sport fishery.

Other possible data sources

Data on some charter fishing operations may be available from charter booking agents such as Juneau Sportfishing. Booking agents generally represent multiple charter operations. Gary Sanders of ADF&G Sport Fish Division said he thought that there was one booking agent for each of the communities of Juneau, Ketchikan and Sitka. He thought that about half of the charter boats operating in Juneau and Sitka worked through booking agents. Although about 25% of all charter boats in southeastern Alaska operated out of Ketchikan last year, only a small number worked through a booking agent.

---

[29]The Alaska Trollers Association petitioned the Board of Fisheries to allocate a percentage of the chinook quota established by the U.S./Canada Salmon Treaty to the commercial troll fleet. At its March, 1992, meeting in Juneau, the Board allocated 83% of the chinook quota to the commercial trollers.

[30]Independent sport fishers also participate voluntarily in a log book program for ADF&G.

The types of data a booking agent might be expected to provide would be information pertinent to their business such as number and dates of trips, number of clients for each trip, and charter fees. Charter operators themselves might be able to provide evidence from their personal and business tax records to document their participation and extent of participation in the charter industry. Charter operators may also be able to provide documentation of liability insurance for their business as further evidence of participation in the fishery.

Crew members would have to verify their participation on a charter vessel by providing evidence of contracts with the charter operators and tax records. There are no licensing or registration records that document participation by or licensing of crew members aboard charter vessels.

MISSION STATEMENT
GUIDE/CHARTER TASK FORCE

April 14, 1995

The guide/charter industry is an important component of fisheries throughout Alaska, providing access to fishing opportunities throughout Alaska. At its March 1995 meeting, the Alaska Board of Fisheries considered proposals relating to the Alaskan guide/charter industry. Given the complexity of this issue, the Board created a task force to make recommendations regarding the orderly development of the Alaskan guide/charter industry. The task force is composed of members of the Alaskan guide/charter industry and the public.

The task force's mission is to evaluate and recommend regulatory and legislative options regarding the management and development of the Alaska guide/charter industry. The task force has identified the following issues for consideration and review:

1. guide/charter definitions
2. requirements/standards
3. guide/charter restrictions
4. guide/charter reporting
5. statewide licensing
6. participation

The task force will be scheduling meetings throughout Alaska to solicit public comment. The task force is scheduled to report back to the Board of Fisheries at its October 1995 meeting and to complete their recommendations for possible regulatory and statutory actions by the end of January 1996.

For further information, please contact Bud Hodson, Chairman Guide/Charter Task Force, at (907) 243-8450 or Doug Vincent-Lang of the Alaska Department of Fish and Game, Division of Sport Fish, at (907) 267-2218.

Task Force Members

Bud Hodson, chair
Tikchik Narrows Lodge
(907) 243-8450

Ken Dole
Waterfall Resort, Ketchikan
(907) 225-9461

Ken Parker
Juneau Charterboat Association
(907) 789-0702

Robert Ward
A-Ward Charters, Homer
(907) 235-7014

John Goodhand
Goodhand's Fishing Charter, Valdez
(907) 479-5562

Jeff King, vice chair
King's Budget Charters, Kenai
(907) 262-4564

Bruce Knowles
Big Fishermen Charters, Wasilla
(907) 745-4965

Pat Carter
Recreational angler, Anchorage
(907) 465-2647

Lynn Whitmore
Chairman, Homer Advisory Board
(907) 235-8551

Guide/Charter Task Force

First Meeting, April 14, 1995, Regal Alaskan Hotel

Meeting Notes (prepared by Mr. Vincent-Lang)

In attendance:

Task Force Members: Bud Hodson, Ken Parker, Robert Ward, John Goodhand, Jeff King, Bruce Knowles, Pat Carter, Lynn Whitmore (Ken Dole was absent)

Board of Fisheries Members: Larry Engel (Virgil Umphenour and John White were absent)

ADF&G Staff: Doug Vincent-Lang, Robert Bentz, Kelly Hepler, Kevin Delaney

The Public: Lenny DiPaolo, Jim Braller, John Lewis, John Webster, Jane DiCosimo, Sally Hamm, Joseph Hanes, Jim Stevens, Mel Erickson, Theo Matthews, Jim Richardson

Larry Engel gave the group introductory remarks. He explained the department proposal and board deliberations that lead to the creation of the task force. He also explained what he wanted the task force to accomplish and the timeline for reporting.

The task force then dealt with organization:

- Bud Hodson was elected the chair and Jeff King the vice chair and the meeting was turned over to the newly elected chair.
- The task force voted to operate under Robert's Rules of Order. The group also decided to have majority rule regarding all decisions/votes, with an option for a minority opinion to be written. The group also decided to not have Board of Fisheries members vote.
- The group decided to hold open meetings in which audience participation would be welcomed through the chair.
- The group decided form subcommittees to study/evaluate issues.
- The group discussed membership on the task force. After much discussion, the group decided to limit their membership to the individuals named by the Board of Fisheries chair. The group felt that expansion to include other interest would make it more difficult to achieve their mission. They also felt that groups not represented had the ability to voice their opinions through task force members or through attendance at meetings. Based on this decision, the chair stated the responsibility of individual task force members to "look beyond" their own personal interests.
- The group added Lynn Whitmore to the task force. This decision was made based on a misunderstanding that Mr. Whitmore was on the task force based on a discussion with Mr. Bower, a Board of Fisheries member. Also, adding Mr. Whitmore to the group made the number of voting members an odd number, so that tie votes would not occur. Lastly, Mr. Whitmore represents the general public, a group the task felt was under-represented.
- The group stated their desire to hold public meetings throughout the state to solicit public opinion.

- The group decided that each task force member should appoint an alternate that can represent them in the event they may be unavailable. The alternate would be able to vote in their place. Each member was asked to tell the chair who their alternate would be.
- Lastly, the group decided that each member should prepare a one paragraph resume stating their affiliation and credentials.

The group then moved on to development of a mission statement. The group brainstormed ideas. After considerable discussion, the group established that the guide/charter industry:

- provides the public access to fishing opportunities throughout Alaska;
- enhances the diversity of fishing opportunities throughout Alaska; and,
- is an important component of tourism and is a significant contributor to the economies of the state and local communities.

The group also established that:

- demand for fishing opportunity is increasing and that
- the guide/charter industry is developing in response to this increasing demand;

and that:

- variable perceptions exist regarding this industry;
- regional differences exist in the guide/charter industry;
- conflicts exist in fully utilized fisheries;
- that this industry, like any industry, requires a fair and equitable operating schedule for its continued health;
- that there is a need for the orderly development of this industry; and,
- limited information exists with respect to this industry.

Based on this the task force established its mission ***to evaluate and recommend regulatory and legislative options regarding the management and development of the Alaska guide/charter industry.*** Considerable time went into developing a draft mission statement. The group also discussed a timeline of action, which they included into the mission statement. The draft mission statement is attached. The group asked that the Board or Fisheries chair present the mission statement and timeline for action to the North Pacific Fisheries Management Council when they consider the halibut charterboat issue on April 23. Mr. Engel stated he would be pleased to do this.

The group then moved onto a discussion of what topics the group should study. After considerable discussion, the group decided to focus on the following topic areas:

1. guide/charter definitions
2. requirements/standards
3. guide/charter restrictions
4. guide/charter reporting
5. statewide licensing
6. participation (i.e., license limitation, moratorium)

The group then moved onto a discussion of the process that should used to address these issues. The group initially focused on some discussion of guide/charter definitions. After about 45 minutes of discussion, the group decided the best approach would be to assign task members to chair committees on each topic area. The following assignments were made:

Definitions: Bob Ward

Restrictions: Ken Parker

Standards/Requirements: Jeff King

Reporting: Bruce Knowles

Licensing: Pat Carter

Participation: No one assigned at present

The decided that the chair of each committee would be responsible for gathering comments/information pertaining to each subject area and form a report on their findings back to the task force at a later date.

The group closed by addressing a timeline for action. After hearing from the chair of the Board of Fisheries, the group decided that it would aim towards reporting back to the Board of Fisheries at its October 1995 meeting and to complete their recommendations for possible regulatory and statutory actions by the end of January 1996. The group also decided to hold another meeting on May 5, 1995. The meeting would be set up as a teleconference and would begin at 7 p.m.. Mr. Hodson stated he would make the arrangements for the teleconference with Mr. Vincent-Lang.

Meeting notes prepared by Mr. Vincent-Lang.

Guide/Charter Task Force

Second Meeting. May 9, 1995, Teleconference

Meeting Notes (prepared by Mr. Vincent-Lang)

Teleconference stations:

Anchorage (Regal Alaskan Hotel). Juneau (ADF&G HQ office), Sitka (Barbara Bingham's house), Fairbanks (John Goodhand's house); Soldotna (Jeff King's house), Homer (Lynn Whitmore's house), Kodiak (Dave Bungi's house), Palmer (Larry Engel's house). We tried to connect to Dr. John White's house in Bethal, however were only able to reach a recorder). We never received a telephone number for Virgil Umphenour to connect him into the conference.

In attendance:

Task Force Members: Bud Hodson, Ken Parker, Robert Ward, John Goodhand, Jeff King, Bruce Knowles, Lynn Whitmore, Ken Dole (Pat Carter was absent)
Board of Fisheries Members: Larry Engel (Virgil Umphenour and Dr. John White were absent)
ADF&G Staff: Doug Vincent-Lang, Robert Bentz
The Public: *In Anchorage*: Greg Markson, Greg & Sally Hamm, Jerry Schanhals, Tim Codney, Ed Dersham, B Bennett, Willis J. Thayer, Joe Caraway, Steve Riddle, Dan Watts, Eruk Williamson, Steven Whitney, Werner Frauer Felder, Mike Pierce, Juy Snow. Joseph Hanes, Jim Stevens, Mel Erickson, Theo Matthews, Jim Richardson. *In Juneau*: Dick and Sarah Cameron.
(I NEED THE LIST OF ATTENDEES AT THE OTHER TELECONFERENCE STATIONS).

1. **Review of past meeting actions:**
   - unanimously approved notes of April 14thg meeting
   - unanimously approved the mission statement

2. **Review of the agenda**
   - unanimously approved as written
   - the chair discussed the organization and conduct of the teleconference, which was unanimously approved by the group

3. **Review of the April 1995 meeting of the North Pacific Fishery Management Council**
   - Doug Vincent-Lang gave an account of the legal opinion offered to the NPFMC by NOAA general council (Ms. Lisa Linderman). In short, the opinion stated that under the Halibut Treaty, Halibut Act, and Magnuson Act, the federal government holds pre-emptory authority over the state with respect to halibut, including regulatory authority within state waters. Based on this, she stated that the state (through the Board of Fisheries) could not adopt regulations which were more lenient or more restrictive than federal regulations (that is, state regulations have to mirror federal regulations). She also stated that the responsibility for adoption of regulations cannot be deferred to the state. She added, however, that the state could act as an intermediary in the development of an acceptable regulatory package, but that the federal government, through the North Pacific Fishery Management Council, had the responsibility for adopting the regulations. Ms. Linderman also stated that the state could not adopt closures designed at re-allocating halibut within state waters. For example, the state could not close areas to commercial longlining for halibut with the sole purpose of preventing competition between recreational and commercial users of halibut. However, upon further questioning, she added that the state could close areas to longlining if the state could demonstrate a stock conservation concern for another species, such as rockfish. Ms. Linderman told the Council she would have a written opinion available in May or June, at which point the state would have their legal

council examine the opinion to see if we agree with it.
- Mr. Engel agreed with Mr. Vincent-Lang, adding that the Board of Fisheries will review the legal opinion when it comes out. Mr Engel also added that he did not have the opportunity to present the Council the task force's creation and mission statement at their April meeting, as he was requested to do by the task force at their last meeting. A letter is being sent to Mr. Rick Lauber, chair of the Council, to notify them of these actions.
- Mr. Vincent-Lang also stated that the Council did not take a staff report regarding the approach to be utilized for the analyses of the halibut charter issue. The approach that was laid out in the staff report was to have the analyses proceed utilizing a 2-step approach. The first step would be to determine the allocation scheme for halibut among affected users. This analyses would need to be consistent with the national standards contained in the Magnuson Act. In this step, a cost-benefit analyses and net economic value for each user of the halibut resource would need to be determined. Once the allocation scheme is determined, the second step would focus on evaluation of regulatory options to achieve the selected allocation. A subsequent meeting with the Council staff indicates that the approach described above will be used.

4. **Committee Reports**
- The group acknowledged receiving the packet of information from Mr. Hodson.
- Mr. king presented the task force information pertaining to requirements and standards from Mr. King. A summary of this information is attached.
- Mr. Knowles presented the task force information pertaining to guide reporting requirements. A summary of this information is attached.

5. **Discussion of Licensing/Registration Requirements**

- Mr. Vincent-Lang described the current regulations in place regarding statewide registration of businesses offering sport fishing guide opportunities that the Board of Fisheries adopted at the March 1995 meeting. Concern was raised that this registration program would not prevent speculation and that the number of registered guide businesses may not reflect the number of active guide operations. Mr. Vincent-Lang noted the difference between the current program for guide registration in Cook Inlet versus the new program. The old program required registration of guides, the new program requires registration of business and guides employed by them. Mr. Vincent-Lang stated that guides registered under the old forms will be asked to register under the new program, noting that this information may be helpful to the task force.
- This was followed by a brainstorming session on licensing/registration. Mr Whitmore presented the task force information pertaining to guide licensing. A summary of this information is attached. The group talked about guide testing, resident vs. nonresident fees, enforceability, safety, liability ins. and other factors related to licensing
- A motion was raised asking whether the group felt a statewide licensing program was needed. This motion was passed unanimously. This was followed by a discussion of what such a program should look like. The licensing program they envisioned was not to limit or cap the number of guides, but to license them in the same manner that nurses, general contractors, etc. are licensed by the state. The group passed a motion to work a two-tiered licensing system: 1) a license for guide businesses which would be done by the owner of a charter boat, lodge, river guide, etc. that would be handled through Department of Commerce and 2) an individual fishing guide license that each guide working for a guiding business would be required to have and would be handled by ADF&G along the lines of a commercial crew member license. These licensing fees would go toward paying for our assessment of the guiding industry.

6. **Future Meetings/Other Business**
- The group agreed to postpone any further meetings until either late September or early October as they were all getting into their field seasons. Mr. Hodson agreed to set up the next meeting date.
- Mr Goodhand's number for the summer will be (907) 835-4333.
- Please remember to send in your alternates and short resumes to Mr. Vincent-Lang.

Meeting Notes: Guide/Charter Task Force
October 19, 1995; 7 p.m.

Regal Alaska Hotel (Anchorage) with teleconference hookups with Fairbanks, Sitka, Delta Junction, Palmer

Attendance:

Task Force Members: Hodson, King, Ward, Tucker (for Knowles), and Goodhand
Board Members: Engel and Umpenhour
ADF&G Staff: Vincent-Lang, Delaney, Minard, and DeCisco

① Mr. Hodson started the meeting with introductions and a review of the meeting agenda. He also presented the Task Force members with the minutes of the last meeting which were unanimously accepted as written.

② Mr. Hodson gave a short update as to where the Task Force is. He discussed the motions passed by the Task Force at their last meeting relating to licensing. He also presented the group a draft framework of the two-tied licensing system discussed at the last meeting.

③ Mr. Hodson accepted comments from Task Force members. Major comments include:

- Mr. Tucker and Mr. Ward stated the need for a "reasonable" fee and paperwork system.
- Mr. Tucker stated his desire to have the business licensing run through the Department of Commerce & Economic Development.
- Mr. Hodson reiterated that under current law, a license limitation system could not be implemented. To implement such a system would require an amendment to the state constitution.
- Mr. Hodson stated that he did not want to wrap ethics into the licensing system. He stated his opinion that it is difficult to regulate ethics.
- Mr. Hodson stated his desire to have outfitters covered under the licensing system.
- Mr. Engel and Mr. Umpenhour stated the interest the Board and the legislature has in the Task Force and their progress. He also expressed support in the activities of the Task Force to date.

④ Mr. Hodson then opened the meeting to public comment. Major comments include:

- Why does the task force want to begin a licensing system if a limited entry system can't be implemented?
- Some wanted a differential licensing cost based on residency.
- Many stated that the fees should only be sufficient to cover administrative costs of the licensing system.
- Many felt they were currently over licensed and wanted to know what the new system would provide them in return for their fees. They also asked if some of the current licensing might disappear in the new system were to be implemented.
- Some stated there is a need to have a differential licensing system based on salt versus fresh water.
- Some also stated there is a need to have a differential licensing system based on big versus small operators.

- Some asked that guides be required to meet certain requirements (i.e., training, insurance, etc...) prior to licensing to assure for industry integrity.
- Some expressed their desire to not allow non-resident citizens to become licensed guides.
- Some expressed their desire to mandate that non-residents be required to utilize a licensed guide to sport fish.
- Some expressed a desire to assure that adequate enforcement is provided to assure existing and new requirements are being met.
- Several expressed an interest in linking existing databases to provide needed management information.
- Several people raised concern over air taxis and outfitters and how they might fit into the licensing system.
- Several expressed concern over the lack of public notice with the task force and its activities. They wished to see us use our registration database to increase public awareness of the task force.

5. Assignments and Future Direction:

- Mr. King, Mr. Ward, and Mr. Hodson agreed to draft a straw dog 2-tiered licensing system for the task force to review
- Mr. Goodhand and Mr. Tucker (w/ Mr. Knowles) agreed to draft a definition for outfitters and transporters and agreed to formulate a recommendation as to how they might fit into a 2-tiered licensing system.
- The group agreed to hold a work session of the Task Force on November 2nd in Anchorage.
- The group also agreed to hold another public meeting of the Task Force on November 16 in Anchorage with teleconference hookups to other areas based on need.
- The group also decided to hold public meeting throughout Alaska (possibly Kenai, Juneau, and Fairbanks) during the next few months
- The group asked Doug Vincent-Lang to present the Board of Fisheries an update on the Task Force's activities to date at their Juneau work session.

TWO-TIED LICENSING SYSTEM

Sport Fishing Guide/Outfitter Services Business License

All companies who provide sport fishing guide/outfitter services would be required to obtain this license. This license would be run through the Department of Commerce & Economic Development

- **fee (annual fee sufficient to offset program costs)**
- **proof of insurance**
- **reporting requirements**

Sport Fishing Guide/Outfitter License

All people acting as fishing guides/outfitters would be required to obtain this license. This license would be administered through the Alaska Department of Fish and Game, similar to the current commercial crew members license.

- **fee (annual fee sufficient to offset program costs)**
- ***Requirements: CPR, Sport Fishing License, Age, Residency (could not be a non-resident alien), Reporting, In possession in field, etc...***