

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

2443 SCOMM 102: HOUSE SPEC. COMM. ON FISHERIES, 1997-98 185

SCOMM

102:17

Alaska State Legislature House of Representatives

Committees

Rules Committee, Chair
Legislative Council
International Trade & Tourism
Military & Veterans Affairs
World Trade & State/Federal Relations



Interim:
10928 Eagle River Rd. Suite 141
Eagle River, AK 99577

Session:
Alaska State Capitol
Juneau, AK 99801

Sponsor Statement HB 489

This bill requires all commercial fishing boats over 25 feet to be equipped with a transponder so that they can be tracked by the appropriate enforcement or safety institution. The purpose of this tracking is to ensure the safety of the individuals on the boat and to better enforce the current fishing boundaries and laws.

This type of tracking is unique in that the signal is constant, rather than being transmitted only during emergency situations. This legislation will result in safer fisheries and will capture revenues that would have been lost without the extra enforcement.



Representative Pete Kott

Juneau Office (907) 465-3777 Toll Free 1-800-861-KOTT(5688) Fax (907) 465-2819
Eagle River Office (907) 694-8944 Fax (907) 694-8945 E-Mail: representative_pete_kott@legis.state.ak.us



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Sectional Analysis HB 489

Sec. 1 This section is entirely new. It requires any vessel operating in a commercial fishery that is over 25 feet in length to be equipped with a transponder. The transponder must operate while the vessel is engaged in commercial fishing.

Sec. 2 Establishes an effective date of January 1, 1999.



Representative Pete Kott

Juneau Office (907) 465-3777 Toll Free 1-800-861-KOTT(5688) Fax (907) 465-2819
Eagle River Office (907) 694-8944 Fax (907) 694-8945 **E-Mail:** representative_pete_kott@legis.state.ak.us



A "New" Corridor for the 1998 Fishing Season

An important announcement from the Alaska Department of Fish & Game

The Soldotna office of the Department of Fish & Game would like to inform all Cook Inlet drift gillnetters that the three-mile corridor frequently used as a drift gillnetting boundary along the east side of the Central District will be redefined for the coming fishing season. The new line will consist of a series of points described by latitude and longitude and will closely approximate the old corridor.

Dissatisfaction with the three-mile contour line was evident among drifters, enforcement personnel and fishery managers. Drifters frequently expressed their concern that the inability to precisely determine the line location led to inconsistent and lax enforcement, allowing those who chose to push the boundaries of the line to have a distinct advantage over those fishermen who adhered strictly to the line. Enforcement officers had the same frustration, faced with a boundary that was difficult to determine with precision and the need to make cases strong enough to convince prosecutors and judges that a violation had in fact occurred. The use of radar as the most frequent means to determine line location also required the use of a patrol vessel, an enormous drain on the resources of the local Fish and Wildlife Protection office. Fishery managers had to deal with a line that, because of a need for consistency, included some waters that, in their opinion, frequently produced mixed-stock catches contrary to the intent of the restricted area.

The new line will be precisely defined by a series of described points and both fishermen and enforcement officers can use modern navigational technology to accurately track a vessel's location in relation to the boundary. While there are many ways to determine a latitude and longitude, fishermen who intend to spend time fishing as close as possible to the boundary are strongly urged to acquire a Global Positioning Systems (GPS) unit and equip it with an accuracy-enhancing accessory called a differential. Enforcement vessels and aircraft will be DGPS-equipped. DGPS equipment is capable of determining positions with much greater accuracy than simple GPS systems. DGPS units are readily available from marine electronics dealers. Fishermen should take some time to familiarize themselves with the operation of this equipment prior to the season as the new line will be in place the first time a "corridor" period is announced.

The most significant changes to the line will be in three general areas. Open waters will be reduced off Colliers Dock and Humpy Point and increased between the Kenai and Kasilof Rivers. The reductions are intended to improve the performance of the corridor in catching stocks bound for the Kenai and Kasilof Rivers. Any reduction in the catch of Susitna-bound sockeye salmon will help reduce the need to restrict regular openings out in the district.

The preliminary waypoints that will constitute the line are listed below. These points will likely be adjusted slightly prior to the season. They are listed here to allow fishermen to enter them into their equipment and familiarize themselves with the process. Please note that the waypoints are described in degrees, minutes, and decimal fractions of minutes, **not degrees, minutes and seconds**. Fishermen should also be sure that the datum used in their navigational equipment be based on the **North American Datum of 1983**.

The line will begin at a point on the beach at the base of Colliers Dock at 60 degrees, 40.30 minutes N.lat., 151 degrees, 23.00 minutes W.long. It will then proceed to the following points: 60 degrees, 40.30 minutes N.lat., 151 degrees, 26.33 minutes W.long., to 60 degrees 27.27 minutes N.lat., 151 degrees, 25.0 minutes W.long., to 60 degrees, 12.75 minutes N.lat., 151 degrees, 32.05 minutes W.long., to 60 degrees, 06.08 minutes N.lat., 151 degrees 44.05 W.long., and then returning to the beach at the mouth of the Ninilchik small boat harbor at 60 degrees, 03.258 minutes N.lat., 151 degrees 39.919 minutes W.long.

Again, these are preliminary numbers that will likely change slightly prior to the season. The Department would like to thank all those who contributed their time to working out this new approach.

1998/04/24

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION
FREQUENCY ON SELECTED 1998 PERMIT RECORDS
1998 COUNTS OF VESSELS INTENDED TO FISH BY SPECIES & LENGTH CATEGORIES

Vessel Length Categories											Total
Species Category	01-20ft	21-25ft	26-30ft	31-35ft	36-40ft	41-45ft	46-49ft	50-60ft	61-999ft	UNKNOWN	
A	1	0	0	0	0	0	0	0	0	0	1
B	183	148	219	328	349	252	153	299	139	27	2097
C	2	3	9	47	90	99	81	183	106	5	625
D	23	26	37	40	58	41	14	45	14	54	352
E	0	0	0	1	0	0	0	0	2	0	3
F	6	4	2	0	1	2	0	0	0	2	17
G	61	198	230	472	59	75	55	124	3	271	1548
H	1	4	1	0	0	4	9	51	2	2	74
I	5	7	19	29	42	31	25	36	12	26	232
K	1	2	6	9	7	10	10	47	50	5	147
L	47	13	40	38	28	12	16	41	2	56	293
M	40	48	107	188	245	211	125	265	427	10	1687
N	0	0	1	0	0	0	1	1	0	0	3
O	2	2	2	4	5	5	6	19	6	1	52
P	11	15	28	42	66	50	28	49	7	3	299
Q	0	1	1	0	2	2	2	5	0	0	13
R	0	1	2	0	1	1	0	0	0	1	6
S	218	237	685	1463	708	420	254	440	11	2355	6791
T	9	7	17	26	39	20	11	19	233	3	384
U	0	2	1	3	2	2	0	4	0	0	14
W	0	0	0	0	0	0	0	0	3	0	3
Y	6	7	20	34	59	53	45	56	12	0	292
Z	0	0	0	0	0	0	0	1	0	1	2
Total	616	725	1427	2724	1761	1290	835	1706	1029	2822	14935

Species Categories:

A - Abalone	N - Snails
B - Halibut	O - Octopi/Squid
C - Sablefish	P - Shrimp
D - Dungeness Crab	Q - Sea Cucumbers
E - Korean Horsehair Crab	R - Clams
F - Freshwater Fish	S - Salmon
G - Rose Herring	T - Tanner Crab
H - Food/Bait Herring	U - Urchins
J - Gooduck	W - Scallops
K - King Crab	Y - Rockfish
L - Herring Spawn On Kelp	Z - Mussels
M - Misc. Finfish	

* Note: Because vessels may, and frequently do, participate in multiple fisheries, the total number of vessels listed in the table above is larger than the actual number of individually licensed vessels (11,251 Y.T.O.).

YTO = Year to date

P. 02/02

FAX NO. 907 789 6170

CFEC

APR-24-98 FRI 16:45

Table
State of Alaska
Commercial Fisheries Entry Commission
1998 Commercial License Vessel File
Counts of Vessels (Year To Date) By Vessel Length

16:32 Friday, April 24, 19

LENGTH	Frequency	Cumulative Frequency
Missing		1
1-25 ft	4443	4444
26-50 ft	5361	9805
51-75 ft	782	10587
76-150ft	510	11097
151-250ft	124	11221
> 250ft	30	11251

GXPR1405-A 98-04-24

State of Alaska -- Commercial Fisheries Entry Commission
1998 Permit Status Report for All Fisheries

Fishery	Total Permits	Active Permits	Revoked Permits	Active Issued/ Renewed Permits	Active Non- Renewed Permits	Active Resident Permits	Active Non- Resident Permits	Interim Use Permits	Interim Entry* Permits	Permanent Permits	Number of Permanent Transfers	Number of Emergency Transfers
TOTAL	24,287	23,396	891	17,221	6,175	18,456	4,940	8,163	1,484	14,640	273	145

Footnotes:

- * Interim entry permits are interim use permits issued in a fishery which is under limitation. They are issued to qualified applicants while awaiting the final determination of their application.
- All counts for limited fisheries include revoked permanent permits except where 'active permits' is specified.
- A missing value ('.') is used to indicate that this is an unlimited fishery to which the figure does not apply. For example, only interim use permits are issued in unlimited fisheries. They are issued anew every year.
- The counts of transfers above represent the number of transfers, not the number of permits. There can be multiple emergency and permanent transfers of a single permit in a year.
- Residency is based on the residency declared by the permit holder.

Author: Amy Daugherty at LAA_CAP
Date: 4/24/98 2:02 PM
Priority: Normal
TO: Steven.Springer@NOAA.gov at CC2MHS1
Subject:

Steve,

Since I am less than certain this will get to you, I will fax this as well.

HB 489 requires all vessels over 25 feet to have a transponder in order to commercially fish in state waters 0 - 3 miles.

Therefore, some setnet vessels in our setnet fisheries will not be impacted. FYI The vast majority of vessels that fish in state waters are less than 58 feet.

I would appreciate the following information from you:

Can you describe a transponder and how it can be effectively used?

Do you have an idea of what the cost would be to the individual vessels, for them to acquire transponders, and what costs would be incurred beyond the individual vessel transponder purchase in order to make them work within an enforcement or safety system? I believe the sponsor introduced this for the purpose of assisting enforcement. I believe agency support at this time is based on increased safety.

Most fisheries take place away significant distances from coastal towns and villages. Are you aware of other means which would accomplish either of the two goals mentioned above.

Thank you for providing whatever information you can to me. I appreciate the help. (I may also be faxing you some additional info on commercially registered vessels within the state.) Amy Daugherty



United Southeast Alaska Gillnetters

PO Box 22427

Juneau, Alaska 99802

(907) 586-5860 Fax (907) 780-6621

E-mail: usag@alaska.net

April 28, 1998

Rep. Alan Austerman, Chairman
Special House Committee on Fisheries
Alaska State Capitol
Juneau, AK 99801

RE: Opposition to HB 489.

United Southeast Alaska Gillnetters Association (USAG) is celebrating our 20 year as an organization representing SE AK salmon drift gillnet permit holders. Our membership is 160-200+ members out of 480 limited entry permit holders. 72% of the permit holders are Alaskan residents.

Our organization is firmly opposed to HB 489 requiring transponders on all commercial fishing vessels over 25 feet in length. This would be a very expensive and impracticable solution for what purpose. The safety regulations the Coast Guard has developed and enforces more than adequately deals with any safety issues and needs of the commercial fishermen.

USAG called a commercial gear dealer. They have provided our organization with the following information. The approximate cost of a transponder would be \$4,000-\$5,000 dollars each. The supply of transponders might catch up with the demand in 5 years or more if all commercial fishing boats over 25 feet in length were required to have one on board.

The legislation requiring a transponder lacks certain information. What frequency will the transponder be required to operate on? How will having thousands and thousands of these transponders turned on at the same time effect an emergency signal from an EPIRB? Who will monitor the transponders and at what cost?

Since we discussed already that safety is dealt with by the Coast Guard, the requirement for a transponder must be motivated by enforcement purposes. The idea that the information from a transponder could be successfully used is ludicrous. For an example: You are fishing close to a line between open and closed waters to salmon fishing. You get done picking the net and it is all in the boat before reaching the line, but by the time you get off deck and into the cabin to turn the transponder off you are in closed waters. Everything was done legally but if enforcement was only monitoring by transponder locations you could be cited for fishing in closed waters. Who's responsibility is it to prove that your net was in the water at the point you went over the line? If it is the

protection officers responsibility and he could see that your net was still in the water at the time you drifted over the line, then what need or role did the transponder play in the violation and prosecution of the vessel skipper. If you are monitoring transponders from a central location what is to prevent the person turning off the transponder before drifting into closed waters, if he is still fishing.

In the membership of USAG we have a lot of permit holders who are also boat and permit holders in the herring fisheries. The need and cost of having to purchase two transponders at the same time would be crippling to an industry that is currently suffering from low prices of fish. This is not the time to be requesting fishermen to purchase such an expensive piece of equipment without addressing how this can help the commercial fishermen or why this is needed.

Please let this piece of legislation die in this committee. Thank you for considering and listening to our opposition to this legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathy Hansen", with a long horizontal flourish extending to the right.

Kathy Hansen
Executive Director

SCOMM

102:18

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HJR 23

Revision Date: February 24, 1997
Title: Relating to the seizure and sale
of CFEC permits by the IRS
Sponsor: Representative Bill Hudson
Requester: House Special Committee on Fisheries

Dept. Affected: CFEC
BRU: _____
Component: _____
COMPONENT SERIAL NO. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact foreseen by this Resolution

Prepared by: House Special Committee on Fisheries
Division: Chairman, Alan Austerman
Approved by Commissioner: Chairman, Alan Austerman
Agency: _____

Phone: 465-2487
Date: 2-24-97
Date: 2-24-97

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For further distribution information, call the Governor's Legislative Office

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

TONY KNOWLES, GOVERNOR

8800 GLACIER HWY, #109
JUNEAU, AK 99801
(907) 789-6150 Licensing Calls
(907) 789-6160 Other Business
(907) 789-6170 FAX
(907) 789-6180 BBS

February 14, 1997

Mr. Paul Beene
District Director
Internal Revenue Service
915 Second Avenue
Seattle, WA 98174

FAX: (206) 220-6045

Dear Paul:

As I stated in our February 7th phone conversation, my Co-Commissioner Marlene Johnson and I will attend the February 19th meeting in Anchorage to continue our dialogue, conditioned by the substance of this letter. There are fundamental issues we must address.

Our Existing Agreement

First, your January 14 letter acknowledges the State of Alaska has paid the IRS more than \$4.5 million in consideration under its existing agreement with the IRS. In fact, actual expenditures in human resources and dollars have been far greater. In our most recent commemoration of our agreement, the IRS committed its "best efforts" to ensure the benefits of the Tax Obligation Loan Program are available to Alaskans through meaningful intervention by the State and third parties.

We believe the two days' notice you provided the State of your pre-Christmas sale of Alaska limited fishing privileges is an actionable breach of our existing contract. With respect to contracts of which the U.S. is a party, the Federal Government has been held liable under ordinary principles of contract law. United States v. Winstar Corp., 518 U.S. ___, 116 S.Ct. 2432, 135 L.Ed.2d 964 (1996).

Our primary concern is IRS performance of its express duty to cooperate with the State in good faith under our existing agreement. This promise is virtually the only consideration given by the Federal Government in contrast to the substantial commitment of resources and money provided by the State. Now that the Federal Government has reaped the substantial rewards of the contract,

Mr. Paul Beene

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including a shift of tax collection responsibilities from the Federal Government to the State, the IRS may not disregard its promises through a change of policy to obtain self relief from an agreement you may now view as improvident or to pressure the State into acting as you dictate.

Specifically, the IRS has the continuing duty to provide reasonable notice of IRS targets in order to allow for meaningful intervention and help well before an IRS seizure and attempted forced sale of a holder's interest in a permit. Under ordinary contract law, this duty precludes the IRS from taking opportunistic advantage of the State and, also, from acting in a manner which destroys or injures our right to receive the fruits of our agreement.

As your January 14 letter confirmed, the State has enjoyed notable success in assisting taxpayers to achieve IRS compliance with no loss of fishing privileges, a result which the IRS effort, alone, did not accomplish prior to our collaboration.

Your Recent Proposals

As a separate and secondary matter, your January 14 letter urges the State to respond to your recent proposals for a new, supplemental agreement.

To recount the background for your recent proposals, on May 16, 1996, during a phone conversation with former Commissioner Homan and me, you stated, in return for further commitments by the State, IRS would discuss not seizing entry permits. Subsequently, at our July 19, 1996 meeting, in the presence of more than 30 people, you offered to discuss eliminating forced sales of entry permits pursuant to an agreement under which the IRS would collect from the proceeds of fish sales instead of forcing the sale of Alaska limited fishing privileges. In consideration, I offered to discuss potential changes to state law that would support IRS' collections.

A group of participants (including at least one Representative of our Congressional Delegation) met immediately following our July meeting and

Mr. Paul Beene

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confirmed receiving your offer. Shortly thereafter, I sent you a letter asking you to confirm your own statement. Instead, you responded, "I appreciate your sharing your reflections" on the meeting. Despite the fact your answer failed to confirm or qualify your statement, we gave you the benefit of the doubt and pursued discussions with you.

In November, the IRS sent the State four proposals to permanently change Alaska law to require the State of Alaska to assume various new responsibilities to achieve federal tax enforcement. Clearly, the Federal government seeks to shift the costs of meeting its statutory responsibilities to the State through those IRS proposals. For the State to elect to do so, the IRS must promise something meaningful in return. The confusing discussion that followed your proposals prompted us to seek written clarification as to what you are offering the State. After more than six months, you provided the clarification we first sought in July, and it is disturbing.

Your January 14 letter refers to your November proposals for Alaska to permanently change state law and assume responsibilities for the IRS, and you assert:

[t]hese proposals are what the IRS is offering the State.

The Federal government is not the creator of State law. Therefore, nothing is conveyed in IRS' purported offer to the State.

Additionally, in support of one IRS proposal for a change in Alaska law to require the Entry Commission to withhold all seasonal fishing permits until the IRS certifies each yearly applicant for a permit is in full compliance with his federal tax obligations, you represent that Alaska law already makes the same requirement for child support obligations. This is not true. The Alaska Legislature rejected the idea: both the Legislature and our Child Support Enforcement Division recognize that in order to collect from fishermen, fishermen need to be in the water catching fish.

Mr. Paul Beene

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In any event, your January 14 clarification emphasizes no matter what the State may undertake to do for the IRS, you assert the unqualified right, without reasonable notice as our contract requires, to attempt to force the sale of any property interest a delinquent fisher may have in State fishing privileges, particularly in those cases IRS subjectively classifies as "egregious." On December 4, you represented to the Alaska Congressional Delegation that the targets of your pre-Christmas sales of entry permits were such "egregious" cases.

Under 26 USC §6343, Congress created an affirmative duty on the part of the IRS to release a levy when "such levy is creating an economic hardship due to the financial condition of the taxpayer" The clear requirement of §6343 mandates a levy release in all cases of economic hardship, regardless of whether or not the IRS has subjectively designated any such case as "egregious". Despite this mandate, you have insisted the State negotiate an agreement recognizing the purported right of the IRS to attempt the forced sale in cases the IRS determines are "egregious". From your pre-Christmas actions, this amounts to a demand on the State to accept a pledge to do less than Congress has already required.

In short, your January 14 letter clarifies the IRS is not offering the State of Alaska any consideration for the changes you would like to see in State law.

Recent Events

It is clear the IRS' recent actions are an improper attempt to pressure the State. In addition, those actions demonstrate a lack of best efforts with respect to our agreement and, also, a failure to act in good faith with respect to the current negotiations.

Consistent with Part 3 of IRS Form 4585, the IRS assured a taxpayer targeted for your pre-Christmas sale: "The minimum bid price is established to protect your interests in the property." This written representation was deceptive. The IRS set the minimum bid at \$3,375, which is a fraction of the average \$30,000 for an authorized State transfer. Affidavits provided to CFEC

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state a Revenue Officer under your direction advised possible buyers as follows: in order to pursue the IRS' present dispute with the State, the IRS intended to sell the particular permits for "substantially below the permits' fair market value" and, once a permit was transferred, it would "open the floodgates" of State permit seizures by the IRS. The affiants stated the Revenue Officer volunteered "the Commissioner of the IRS is aware of the situation and the matter is receiving attention at the highest levels at the IRS Washington D.C., headquarters" and, also, the IRS intended to pursue its disagreement with the State of Alaska "to a conclusion that is satisfactory to the IRS." Based on these affidavits, it appears the IRS willfully breached its duties to the State in an attempt to improperly coerce the State into acting as the IRS dictated.

Moreover, your December 6, 1996 letter states, if we fail to meet your expectations for future negotiations, "fishing entry permits will continue to be seized and sold [and thereby] endanger[] the interests of Alaska taxpayers (e.g., devalued fishing permits, permits sold to non-Alaskans)." Consistent with your letter, a Revenue Officer under your direction has announced he will resell an entry permit from the pre-Christmas sale on one day's notice. A Revenue Officer has threatened the seizure of seven limited entry permits in the Dillingham area at any moment. Additionally, we received a call from a widow in Anchorage who reported a Revenue Officer threatened to sell her fishing privileges and those of her deceased husband for as little as \$3,000.

In addition to disrupting orderly implementation of the Loan Program, IRS' pre-Christmas actions and threatened actions require the Entry Commission as Administrative Law Judges to rule on any claims that result. If we are in the midst of negotiating with you, and, on 2 days' notice, we are required to rule on a related claim, we face a conflict that creates at least an appearance of impropriety. We need sufficient warning from you to be able to withdraw from negotiations before such a conflict arises.

Apart from our requirements to function as Administrative Law Judges under State law, your pre-Christmas actions damaged the climate for cooperation between

Mr. Paul Beene

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February 14, 1997

the State and Federal Government. See the enclosed letter from our Governor to the Alaska Congressional Delegation.

Again, our agreement requires meaningful notice from you identifying your targets well in advance of an IRS forced sale.

Where Do We Go From Here

More than once in the past, we have discussed the possibility of extending the State's Tax Obligation Loan Program presently due to sunset this spring. We committed to explore that alternative. When we talked last Friday, you asked again about this possibility, and I told you the door was not closed to this option. Accordingly, you prepared a letter to Governor Knowles' advocating this alternative.

In contrast to the other IRS proposals, this option makes the most sense for several reasons.

First, the State-IRS "partnership" has proven effective to assist Alaskan fishers damaged by the post-1988 adverse market conditions not only in achieving federal tax compliance, but in ordering their other financial affairs.

Second, our joint cooperation has reaped rewards in cases in which the IRS, alone or through contractors, otherwise has been unsuccessful. In this regard, we are aware the IRS instituted a pilot program in 13 states, including Alaska, through which private collectors were to be hired by the IRS to collect delinquent taxes. According to a recent article, the IRS is disappointed in this program, because the five collection agencies hired by the IRS were able to contact only about 9% of the taxpayers and, according to the collection agencies involved, the poor results were "because the IRS was late in getting the files to them and the files were extremely old."

Third, our mutual cooperation has provided an opportunity to accomplish our respective goals, largely without counterproductive adversarial conflict. We

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believe this effect has and continues to raise our citizens' confidence in our respective governments. Specifically, the process has become less threatening and less fearsome to the lone fisher with tax problems, because we are working together.

Fourth, our cooperation has identified many Federal and State tools available to assist fishers. As a result, these tools have been more fully utilized than has been the case in the past.

Fifth, our respective efforts have put a human face on what otherwise could be characterized as mechanical processing by the IRS in relative isolation from the community. In this time of shrinking federal budgets and operations, we believe our cooperative undertakings should serve as a model for the future. In short, we continue to achieve good results and, thus, should persist on the path we know to be productive.

This week, after conferring with the Commission and the Division of Investments, State Representative Ivan introduced HB 123 to extend the Tax Obligation Loan Program. While this is a positive first step, persuading the Legislature and the Administration of the merits of this legislation will be an extremely difficult task. As you well know, there are very many worthy and competing alternative uses for the same funds. We need meaningful numbers from the IRS to show (1) the extent of the current problem; (2) the extent to which Alaskans have been helped; and (3) the extent of improvement in tax compliance since the original information presented by the former IRS Chief of Collections in 1993. This is the same information we requested more than a year ago consistent with our agreement. The numbers you employed in your January 14 letter suggest a substantial improvement of at least 58%. However, the figures you employed in your more recent letter to the Governor appear inflated. We need some real information from the IRS to present to the Legislature and the Governor.

Mr. Paul Beene

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February 14, 1997

In the interim, we have to operate with the sunset of the Loan Program in mind. We must evaluate and coordinate our outreach efforts to ensure maximizing service to Alaskans and revenue to the federal government. To further this goal, I reported to your Chief of Examination, Mel Joseph, that, on the recommendation of the IRS, the State has already modified its regulations governing permanent fund dividend recipients. Mr. Joseph and I are discussing practical ways to make use of the information that will be generated. This is an experimental work in progress, and we do not yet know whether it will prove to be a practical tool. Nonetheless, we remain committed to working through the process as we promised IRS.

Finally, as we have stressed in this letter, we must have meaningful notice of IRS' targets for seizure and sale well in advance of any action by the IRS so as (1) not to disrupt our planned cooperative efforts, and (2) to allow sufficient time for intervention and help well before an IRS seizure and forced sale.

The Legislature is in session for only 120 days. We hope you will address these points at our meeting on Wednesday, February 19.

Yours truly,

COMMERCIAL FISHERIES ENTRY COMMISSION

Dale Anderson, Commissioner
Marlene Johnson, Commissioner
Bruce Twomley, Chairman

by: 

Enclosure

State of Alaska
Office of the Governor

TONY KNOWLES
Governor
P.O. Box 110001
Juneau, Alaska 99811-0001
NEWS RELEASE



Bob King
Press Secretary
Claire Richardson
Deputy Press Secretary
907-465-3500
FAX: 907-465-3533

FOR IMMEDIATE RELEASE: March 4, 1996

96-049

ENTRY COMMISSION DENIES IRS SALMON PERMIT TRANSFER
Knowles Calls Federal Seizure of Permits Harsh, Unwarranted

Saying it's wrong to take away a person's livelihood to settle a tax debt, Governor Tony Knowles today applauded the Commercial Fisheries Entry Commission decision to deny a request by the Internal Revenue Service (IRS) to transfer a salmon fishing permit held by a Hydaburg man.

In a 60 page decision released today, the commission, a quasi-judicial body, said the IRS acted beyond its federal statutory authority in making the request to transfer the permit to the high bidder in a permit auction. Although the IRS has attempted to seize and force the sale of Alaska entry permits for more than a decade, this is the first time the commission has been called upon to issue a formal decision on the subject.

"Taking away an Alaska fisher's right to fish is harsh, unwarranted, and counterproductive," Knowles said. "It is just wrong for the IRS to take away an individual's entry permit - their right to work - when other means to collect taxes from Alaska fishers are readily available. Seizing a permit from an isolated fishing community may well push an entire family onto the welfare rolls at a time when the state and federal government are looking for ways to get people off welfare and back to work."

Knowles noted that commercial fishers are an easy target for the IRS since the state maintains meticulous catch records. But he also noted that the state has taken extraordinary measures to cooperate with the IRS. For several years, the Entry Commission has urged Alaska fishers to meet their tax obligations. In addition, the state has committed \$3.6 million in secured loans through its tax obligation loan program.

"This issue is important to maintain jobs and protect families along Alaska's coast," Knowles said. "We must resist federal intervention that blocks access to traditional fisheries, destroys an individual's means of earning a living, threatens communities and directly interferes with Alaska's comprehensive fisheries management system."

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

JAN 14 1997

TONY KNOWLES, GOVERNOR

8800 GLACIER HWY, #109
JUNEAU, AK 99801
(907) 789-6150 Licensing Calls
(907) 789-6160 Other Business
(907) 789-6170 FAX
(907) 789-6180 BBS

January 10, 1997

The Honorable Bill Hudson
Alaska State Representative
Room 108, State Capitol
Juneau, AK 99801-1182

Dear Representative Hudson:

The enclosed correspondence will bring you up to date on IRS' efforts to force sales of Alaska's limited fishing privileges. For more information about the individual Alaskans who are the targets of IRS' forced sales, we encourage you to contact the Alaska Business Development Center at (907) 562-0335.

As the correspondence provides in more detail, the IRS drew the State into discussions last summer with an offer that now appears to have been an exercise in bait and switch. IRS' new, substitute offer appears to be a sham. (Enclosure A)

Additionally, as the talks were going forward, IRS--contrary to its existing written Memorandum of Understanding with Alaska--gave the State two days' notice and scheduled pre-Christmas sales of two limited entry permits. IRS announced these sales were directed from its highest levels in Seattle and Washington, D.C.

For its pre-Christmas sales, IRS targeted two fishers with dependents who already live on the edge of poverty. IRS offered to sell their \$30,000 entry permits for as little as \$3,375.00.

On very short notice, the Alaska Business Development Center intervened on behalf of the permit holders. The Alaska Business Development Center timely applied to the IRS Director to release the levies and cancel the sales, because the forced sales would cause economic hardship to the permit holders and those dependent upon them. The IRS Director has a duty under existing Federal Statute 26 USC §6343 to release a levy to avoid inflicting economic hardship on a citizen. The IRS Director failed to respond to the Alaska Business Development Center's request.

As the result of further efforts by the Alaska Business Development Center, IRS' Problem Resolution Officer intervened and temporarily postponed one of the sales. IRS sold the other permit held by an older Alaska Native for \$5,005.

As Administrative Law Judges, we at the Entry Commission are required by law to rule on a request to transfer arising from the forced sale. To preserve our ability to perform this function, we can not carry on further negotiations with the IRS while this matter is pending.

January 10, 1997

In the meantime, however, the enclosed letter from IRS' Director threatens to take more hostages and to "endanger[] the interests of Alaska taxpayers (e.g., devalued fishing permits, permits sold to non-Alaskans)" (Enclosure B) A permit holder has already called the Commission to report IRS has threatened to sell her and her deceased husband's permits for as little as \$3,000. Additionally, IRS has announced it will go to the Dillingham area early in the New Year to seize seven additional entry permits.

The primary current issues appear to be:

- (1) during the last months of Alaska's Secured Tax Obligation Loan Program, will the IRS comply with its existing Memorandum of Understanding (Enclosure C); and
- (2) will the IRS Director comply with his duty to avoid inflicting economic hardship on a citizen under 26 USC §6343?

To put this matter in a historic context, we enclose some IRS correspondence from one year ago. Please contrast the enclosed December 6, 1995 letter from the former, Alaska-based District Director as well as the enclosed November 29, 1995 letter from the former IRS Chief of Special Procedures, who was also based in Alaska. (Enclosure D)

IRS' intervening reorganization has removed management from Alaska and placed it in Seattle. IRS' reorganization has transferred or eliminated many of the individual IRS employees who worked constructively with the State.

More than a year ago, we warned that IRS' reorganization created the risk of less understanding and sensitivity to the needs of Alaskans--particularly Rural Alaskan fishers.

We would be happy to provide further information. We welcome any assistance you can provide.

Yours truly,

COMMERCIAL FISHERIES ENTRY COMMISSION

Dale Anderson, Commissioner
Marlene Johnson, Commissioner
Bruce Twomley, Chairman

by: _____



Enclosures

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

TONY KNOWLES, GOVERNOR

8800 GLACIER HWY, #109
JUNEAU, AK 99801
(907) 789-6150 Licensing Calls
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(907) 789-6170 FAX
(907) 789-6180 BBS

JAN 14 1997

December 31, 1996

Mr. Paul Beene
District Director
Internal Revenue Service
915 Second Avenue
Seattle, WA 98174

Dear Paul:

We received your December 6th letter (copy enclosed) on December 13 and are sharing it with our Alaska Congressional delegation.

Your letter highlighted the phone conversation former Commissioner Frank Homan and I had with Patricia Miller on November 13, 1996, and accused us of an "unwillingness to move forward."

That phone conversation was prompted by our November 6th receipt of your request to change Alaska law in a variety of ways to disadvantage Alaskans in order to help the IRS. There were two items of substance in that conversation. (1) We told Patricia Miller it was entirely unclear what IRS was offering the state in return, and we needed written clarification from you to share with our Governor and Attorney General in order to develop a thoughtful response. Beginning last July, we have consistently requested such a confirming statement from you. (2) We then discussed a mutually agreeable schedule for going forward. Patricia Miller asked, "realistically, can you expect to have anything back to us before the end of January?" I said, depending on when we received your response, we hoped to have preliminary written comments back to the IRS by the end of the year.

Paul, no one could rationally interpret our actions to date as "an unwillingness to move forward."

Please recall, last July, in the presence of more than 30 people, you made an offer that led the state into these discussions. You offered to discuss eliminating forced sales of entry permits through an agreement under which the IRS would collect from the proceeds of fish sales (that is, the money generated) instead of forcing the sale of Alaska limited entry permits. Now, for the first time, your letter makes clear you have (without explanation) withdrawn your July offer and switched to a promise to force the sales of Alaska fishing privileges "in the most egregious cases."

Enclosure A
(1 of 3)

CORRECTION

**THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION**



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

TONY KNOWLES, GOVERNOR

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JUNEAU, AK 99801
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JAN 14 1997

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915 Second Avenue
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Your letter highlighted the phone conversation former Commissioner Frank Homan and I had with Patricia Miller on November 13, 1996, and accused us of an "unwillingness to move forward."

That phone conversation was prompted by our November 6th receipt of your request to change Alaska law in a variety of ways to disadvantage Alaskans in order to help the IRS. There were two items of substance in that conversation. (1) We told Patricia Miller it was entirely unclear what IRS was offering the state in return, and we needed written clarification from you to share with our Governor and Attorney General in order to develop a thoughtful response. Beginning last July, we have consistently requested such a confirming statement from you. (2) We then discussed a mutually agreeable schedule for going forward. Patricia Miller asked, "realistically, can you expect to have anything back to us before the end of January?" I said, depending on when we received your response, we hoped to have preliminary written comments back to the IRS by the end of the year.

Paul, no one could rationally interpret our actions to date as "an unwillingness to move forward."

Please recall, last July, in the presence of more than 30 people, you made an offer that led the state into these discussions. You offered to discuss eliminating forced sales of entry permits through an agreement under which the IRS would collect from the proceeds of fish sales (that is, the money generated) instead of forcing the sale of Alaska limited entry permits. Now, for the first time, your letter makes clear you have (without explanation) withdrawn your July offer and switched to a promise to force the sales of Alaska fishing privileges "in the most egregious cases."

Enclosure A
(1 of 3)

December 31, 1996

Additionally, please remember, following your July offer, we again told you (for at least the third time) the state could not participate in discussions if the IRS pursued forced sales of entry permits during the negotiation process.

Now, having given the state two days' notice, you scheduled forced sales of two entry permits on December 11.

In its current Memorandum of Understanding (copy enclosed) with the State of Alaska, IRS promised "joint efforts to provide tax assistance to Alaska Commercial Fishers . . ." in order

to give the [Alaska tax obligation] loan program and our outreach efforts the best opportunity to succeed

* * *

The parties agree to jointly use their best efforts to develop a meaningful outreach program to encourage individuals needing assistance to participate in the new loan program and to satisfy their past due tax obligations.

* * *

Joint efforts will include communicating with the Alaska Federation of Natives (AFN) and its member organizations, the University of Alaska, fish processors, as well as other groups and individuals who may be able to contribute.

* * *

[J]oint outreach efforts will be coordinated so employees from the IRS and [the State] can jointly meet with the taxpayers to apply for the loan and resolve tax problems.

Contrary to IRS' written promises, your actions toward the targets of your December 11 forced sales systematically deny potential benefits of the loan program to individual Alaskans and destroy an opportunity for the IRS to collect substantial revenue through the loan program. As IRS publications celebrate, Alaska's secured tax obligation loan program has so far raised more than \$4 million in revenue for the IRS. In short, your actions beg the question, of what value is a promise from the IRS?

Moreover, you represented to our Congressional delegation that your targets for your December 11 sales were "the most egregious cases." You have thus provided all observers with your definition of "most egregious" and made clear your new, substitute offer to Alaska amounts to substantially less than is already required of you to avoid inflicting economic hardship on a citizen under existing federal statute 26 USC §6343.

Enclosure A
(2 of 3)

December 31, 1996

Now, you declare "fishing entry permits will continue to be seized and sold" by the IRS so as to "endanger[] the interests of Alaska taxpayers (e.g., devalued fishing permits, permits sold to non-Alaskans) . . ." unless your expectations are met.

Consistent with your declaration, a woman recently reported to the Commission that IRS threatened to sell her and her deceased husband's entry permits for as little as \$3,000. Additionally, IRS has announced it will go to the Dillingham area after the first of the year to seize 7 more entry permits.

Your actions have created a conflict for the Alaska Commercial Fisheries Entry Commission. You have asked the Commission to negotiate a matter. Now you have taken actions that will require the Commissioners, as administrative law judges, to rule on the matter. As long as this conflict persists, the Commission is precluded from further participation in the discussions you request.

Yours truly,



Dale Anderson, Commissioner
Marlene Johnson, Commissioner
Bruce Twomley, Chairman

Enclosures

cc: The Honorable Tony Knowles, Governor of Alaska
The Honorable Bruce M. Botelho, Attorney General
The Honorable Ted Stevens, U.S. Senator
The Honorable Frank H. Murkowski, U.S. Senator
The Honorable Donald E. Young, U.S. Congressman
The Honorable Members of the Alaska State Legislature
Participants in IRS' July 1996 Symposium
The Honorable Margaret Milner Richardson, Commissioner of the IRS

Enclosure A
(3 of 3)

Internal Revenue Service

Department of the Treasury

DEC 13 1996

District
Director

915 Second Ave., Seattle, Wash. 98174

OFEC

DEC 06 1996

Bruce Twomley
Commercial Fisheries Entry Commission
8800 Glacier Highway #109
Juneau, AK 99801

Dear Bruce:

I received your letter dated November 22, 1996, and am somewhat disappointed that what appears to be your unwillingness to move forward with the opportunities presented.

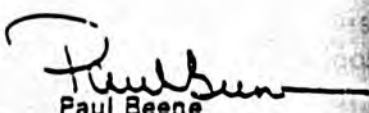
As Pat Miller made clear in her telephone conversation with you on November 13, 1996, the IRS is ready and willing to implement procedures which will minimize the possibility of a fishing entry permit being seized and sold. In an attachment to the minutes of our October 10, 1996, meeting, we presented proposals for five possible procedures which would have this effect. As Pat stated, the IRS is unwilling to forego the right to seize and sell a fishing entry permit in egregious cases, where all other efforts to work with the taxpayer have failed.

Your re-statement of your points from your October 21, 1996, letter in your November 22, 1996, letter and your unwillingness to accept Pat's definitive answers to your questions during the November 13, 1996, telephone call cause me concern. The delay in moving forward to resolve the issues at hand ultimately endangers the interests of Alaska taxpayers (e.g., devalued fishing permits, permits sold to non-Alaskans). Opportunities for cooperation and relief have been offered, yet your office has not addressed any of the proposals advanced, nor have you originated other ideas or proposals that would serve our mutual interests.

I need your assurance that you are prepared to negotiate in good faith and that fishing entry permits will continue to be seized and sold in appropriate circumstances under current operating procedures. With your cooperation, revised procedures could be implemented which would increase voluntary compliance and minimize the burden and impact on Alaska taxpayers.

I have attached copies of the five proposals and ask for your creative input and commitment toward making these, or alternative proposals, work to our mutual benefit. Unless I feel that progress is being made by mid-January 1997, I will have no alternative but to pursue this matter with Governor Knowles. I have had high hopes that we could resolve this critical issue; I regret that our progress has not been more substantive to date.

Sincerely,


Paul Beene
District Director

Attachments

Enclosure 8

MEMORANDUM OF UNDERSTANDING

INTERNAL REVENUE SERVICE

AND

STATE OF ALASKA DIVISION OF INVESTMENTS
AND COMMERCIAL FISHERIES ENTRY COMMISSION

The purpose of this memorandum is to outline the scope and responsibilities of employees working for the Internal Revenue Service (IRS) and the Division of Investments (DOI) and Commercial Fisheries Entry Commission (CFEC), in their joint efforts to provide tax assistance to Alaska Commercial Fishers.

The Alaska legislature has passed and the Governor has signed SB 251 which will provide loans to certain commercial fishers to satisfy their federal tax obligations and protect their limited entry permits. The parties understand and agree that, in order to give the loan program and our outreach efforts the best opportunity to succeed, we will take the following steps:

1. IRS will participate with DOI in joint outreach activities including the appointment of an IRS representative to facilitate SB 251 loan applications;
2. IRS will appoint a representative to coordinate IRS assistance for SB 251 implementation;
3. IRS will affix mailing labels to, and mail, postage-paid envelopes provided by DOI which will contain a flyer explaining the loan program, and which will bear a return address which makes reference to the Special Fishing Loan Program; IRS will provide a new post office box (different from its current post office box) which will be included in the return address for returned undeliverable mail;
4. IRS will provide returns filing information and confirmation of payment agreements on remaining balances after receipt of the signed taxpayers' authorization for release of tax information;
5. IRS will provide balance due information and basic lien subordination information to DOI via two-way fax inquiry;
6. In cases where DOI is able to loan an amount which will partially satisfy a borrower's tax liability, and where IRS is able to work out satisfactory payment arrangements for the balance, IRS will subordinate its lien to DOI in the amount of the loan, exclusive of any fees that DOI may charge the borrower;

Enclosure C
(1 of 3)

7. Until September 30, 1994, IRS will not employ its electronic fish processor levy to those taxpayers who owe \$30,000 or less, except in those cases where the government's interest is threatened by statute expirations before December 31, 1995; other levies may take place at IRS' discretion;

8. DOI agrees to appoint a loan officer as liaison to IRS to coordinate the implementation of SB 251;

9. DOI will include a waiver of rights to privacy of tax return-related information in its loan application package;

10. DOI agrees to aggressively publicize the existence of the loan program created by SB 251.

The parties agree to jointly use their best efforts to develop a meaningful outreach program to encourage individuals needing assistance to participate in the new loan program and to satisfy their past due tax obligations. As resources permit, the IRS and DOI are committed to travel to selected areas of the state.

The parties understand that meaningful outreach can best occur with the help of trained local individuals who are trusted in the community selected for outreach, and the parties agree to use their best efforts to develop this human resource. Joint efforts will include communicating with the Alaska Federation of Natives (AFN) and its member organizations, the University of Alaska, fish processors, as well as other groups and individuals who may be able to contribute.

Where an individual has been designated and trained to be a local contact and helper in the outreach process, IRS will employ its best efforts to provide names of individuals whom the IRS would like to contact.

When time and funding permit, joint outreach efforts will be coordinated so employees from the IRS and DOI can jointly meet with the taxpayers to apply for the loan and resolve tax problems.

State employees will be provided with disclosure authorization forms so loan applicants can authorize village administrators, council members or other representatives to assist them in resolving outstanding tax problems.

IRS employees assigned to the project will focus on Federal tax compliance issues. To the extent that information they identify relates to or impacts on state tax issues, such information will be shared with the State of Alaska, Department of Revenue.

Enclosure C
(2 of 3)

The loan provisions of SB 251 are in effect for three years after the effective date of the act. The IRS and DOI representatives will meet yearly to exchange general information and develop new objectives. Any changes to the memorandum must be agreed to in writing by the signers.

APPROVED:

STATE OF ALASKA
DEPARTMENT OF COMMERCE


Martin Richard, Director
Division of Investments

Signed at Tucson, AZ, this
20th day of July, 1994

INTERNAL REVENUE SERVICE
ANCHORAGE DISTRICT


Michael R. Allen
District Director

Signed at Anchorage, AK, this
22nd day of July, 1994

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION


Dale G. Anderson, Commissioner
Commercial Fisheries Entry Commission

Signed at JUNEAU - AK, this
20th day of JULY, 1994

Enclosure C
(3 of 3)

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 *GU*
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); Owsichuk 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." Owsichuk, 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" section¹, "no exclusive right of fishery" clause², and the "uniform application" section³. 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.

Representative Alan Austerman

March 28, 1995

Page 3

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); Owsichuk 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." Owsichuk, 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" section¹, "no exclusive right of fishery" clause², and the "uniform application" section³.

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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.

Representative Joseph Green

December 4, 1995

Page 3

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
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1-800-870-4931
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716 WEST 4TH AVENUE
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CHAIRMAN, JUDICIARY COMMITTEE
VICE CHAIRMAN, HEALTH, EDUCATION,
& SOCIAL SERVICES COMMITTEE
MEMBER, RESOURCES COMMITTEE

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

Representative Joe Green
District 10

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**

Total: 400
Resident: 306
Non Resident: 94

Fishing: 354
Non Fishing: 46

Fishing/ Resident: 290
Fishing/ Non Res: 64
Non Fishing/ Res: 16
Non Fishing/NonRes: 30

1996

Total: 367
Resident: 283
Non Resident: 84

Fishing: 329
Non Fishing: 38

Fishing/ Resident: 263
Fishing/ Non Res: 66
Non Fishing/ Res: 20
Non Fishing/NonRes:

1995

Total: 357
Resident: 260
Non Resident: 97

Fishing: 314
Non Fishing: 43

Fishing/ Resident: 243
Fishing/ Non Res: 71
Non Fishing/ Resident:
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,



SPENCE
DE VITO

many of these folks are concerned. Too late!

Following are the brief, selected excerpts 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.

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

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



LES PALMER

An Outdoor View

panacea, but as a threat to the reasons we live here.

The numbers are scary. In 1977, resident anglers outnumbered non-residents 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 tourism 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 sever-

al 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. 10th thru Dec. 30th 1995



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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

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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

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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 Owsichuk 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.

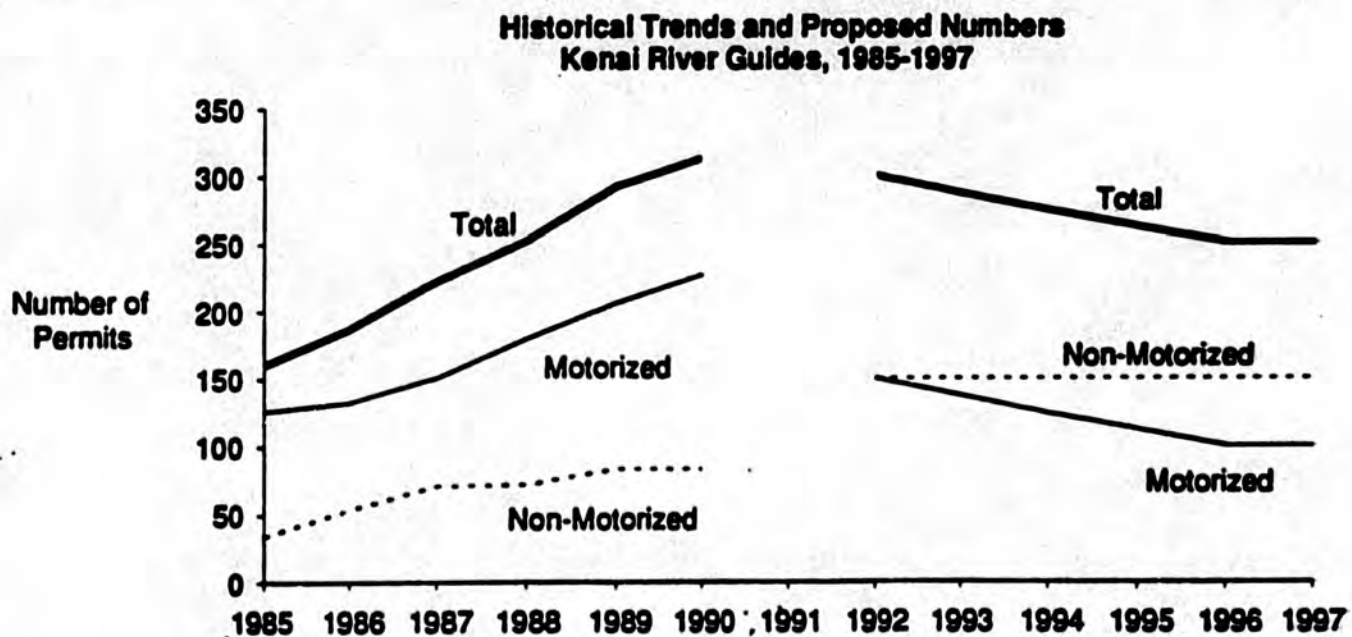
In recent months, many different proposals for limiting the number of guides have been advanced by members of the public, public officials, and user groups. While many valuable ideas have been gleaned from these proposals, many of the suggested strategies do not fall within the confines of the legal 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	PROS	Reduction by '96	PROS	PROS	PROS
Greatly reduces overall guide impacts	Rolls back use to 1985 level	Reduces overall guide impacts	PROS	Rolls back motorized use to 1985 level	Accommodates all existing use levels	Accommodates all existing motorized guides
CONS	CONS	CONS	Provides alternative options for unsuccessful motor applicants	Provides alternative options for unsuccessful motorized applicants	Holds 1990 totals	Provides equal opportunity for nonmotorized uses
Substantially affects both motorized and non-motorized use	Substantially affects non-motorized use	Offers no alternative options for unsuccessful applicants	Reduces '90 guide total gradually	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	Offers no alternative options for unsuccessful applicants	Moderate impact on local businesses phased over time (35% reduction in "seat average" by 1996)	Less impact on local businesses	Only 19% reduction in "seat average" 1074 down to 872	Maintains existing seat average	CONS
Substantially affects local businesses (72% reduction in "seat average" 1074 down to 300)	Substantially affects local businesses (47% reduction in "seat average" 1074 down to 572)	May not accommodate all existing motorized guides	CONS	CONS	Fails to reduce motorized guide impacts & #'s	Fails to reduce motorized guide impacts & #'s
			May not accommodate all existing motorized guides	May not accommodate all existing motorized guides	Sets imbalance of motorized to non-motorized uses	Increases total # of guides on the river & increases total impacts

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 non-competitive 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 competitive 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 "there is a need to limit the number of permits to protect public use of the park or to protect park resources, or there is a need to prevent one business or person from monopolizing commercial activities within a park or portion of a park, or without limitation of the number of permits there would likely be a degradation of quality of the recreational experience in the park, or there may be an unlimited demand for space within a park." (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 Owsichuk vs. State Guide Licensing and Control Board, 763 P. 2d 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 notarized 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 notarized 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 notarized 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 than 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) _____
- Owens 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 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 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

\$500

\$1500

- Minimum Fee -

+ \$ _____

+ \$ _____

- Additional Bid -

Total Annual

- Fee Offered -

\$

\$

CATEGORY 2 BID:

(Non-Motorized)

This is my (circle):

1st Choice / 2nd Choice

I am an Alaskan (circle):

Resident / Non-Resident

\$500

\$1500

+ \$ _____

+ \$ _____

\$

\$

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, Qualifi-
cations & 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 if a permit is issued [, 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 38.05.020

AS 38.50.160
AS 44.37.020

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

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

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AS 41.21.506

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