

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672

1686 SCOMM 67: GUIDING AND GAME TASK FORCE, 1989-1990 1254

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our review.

- I. The extent to which the board, commission, or program has operated in the public interest.
 - A. The Board has adopted regulations defining unethical conduct which clarify and strengthen the professional's responsibility to the public.
 - B. The Board does not consistently review the Department of Fish and Game game management information prior to assignment or transfer of an exclusive guiding area (EGA) (see Recommendation No. 1).
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 - A. Regulation 12 AAC 38.054(b) allows an EGA permit holder to designate the qualified guide to whom he wishes to transfer his guide area. These transfers often take precedence over other guide area assignment criteria such as joint user objections, experience in the game unit, or game management considerations (see Recommendation No. 3).
 - B. Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more clients of separate parties regardless of the potential magnitude of the unethical act (see Recommendation No. 5).
- III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.
 - A. Senate Bill No. 294, which was introduced in April 1985 by the Resources Committee, contains the following items which should enhance public protection if ratified:

1. An amendment to AS 08.54.010 would increase game management considerations in regulating guide activities (see Recommendation No. 2).
 2. An amendment to AS 08.54.040 and a proposed new section (AS 08.54.195) would require consistency in procedures used in allocating EGAs (see Recommendation No. 1).
 3. New sections would require those guides that contract with more than one client at a time (an outfitter) to maintain a surety bond of \$5,000 (see Recommendation No. 5).
 4. The bill would require closer supervision over assistant guides while in the field.
 5. Unethical activities would be amended to include unsafe or unsportsmanlike actions that are detrimental to the game resources of the State.
 6. Statutes dictating qualifications for, and restrictions on, transporters would be repealed. Many of the services now being provided by transporters would be subject to the proposed outfitter statutes contained in this bill.
- B. Additional portions of SB 294 which do not appear to us to be in the public's best interest are as follows:
1. Current law limits the number of Board members that have guide licenses to no more than three of the seven members. SB 294's amendment of AS 08.54.010 would require that at least three Board members be active guides. This amendment would increase the potential for expanding the number of industry members on the Board at the expense of public participation.
 2. Currently, AS 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more hunters of separate parties. SB 294 contains an amendment of this statute which would require that these complaints be received within five years prior to the hearing date. This would compound those problems outlined in Recommendation No. 5.

3. Currently, AS 08.54.210(a)(6) makes it unlawful for a master or registered guide to employ or supervise more than three assistant guides at the same time.

SB 294 would repeal this statute and could allow a master or registered guide to employ more assistants than they are capable of effectively supervising. The experience and professional judgement of the master or registered guide may not be available to clients when needed.

Alaska Statute 08.54.141 of this bill also provides that assistant guides shall be supervised at all times while in the field on guided hunts. The potential problem noted above will depend on enactment of this new section and on the Board's interpretation of the term "supervised."

4. Enactment of amendments to AS 08.54.200(c)(3) may unnecessarily restrict those hunting statutes or regulations upon which the Board can take disciplinary action.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

- A. The public is invited to attend Board meetings and to give their input about the workings of the Board. Notices of meetings are advertised in at least five newspapers throughout the State. In addition, guides are notified by registered mail of meetings that might affect them.
- B. Publication of meeting information does not always precede the meeting by a reasonable time period. We found that the public was given less than a one week notice for two of the last eleven Board meetings.
- C. Teleconference meetings are not being noticed publicly. This limits public input at those meetings and may legally jeopardize Board decisions and actions.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

- A. As stated under IV, the public is invited, by published notices in newspapers, to attend Board meetings to give their input about Board regulations or submit written testimony.
- B. Those problems noted in IV B and C above also represent potential problems in this public need area.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

- A. Since July 1983, ten complaints have been filed with the Ombudsman's Office concerning Board activity. Only one of these complaints, alleging improper denial of a registered guide license, was found to be justified.
- B. Since August 1984, 19 complaints against guides have been submitted to the Department of Commerce and Economic Development, Division of Occupational Licensing for investigation. These cases appear to have been investigated in a reasonable fashion and are pending Board action or court rulings.
- C. As mentioned in III above and in Recommendation No. 5, AS 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more hunters of separate parties.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

- A. As of September 1985, 46 master guides and 361 registered guides were licensed in Alaska. These individuals were required to pass both a written and an oral exam, as well as obtaining practical experience in the field, prior to licensure.
- B. The oral portion of the registered guide examination is arbitrary and inconsistent in content and grading. This is because the examination content and grading guidelines are left to the discretion of the individual examiners (see Recommendation No. 4).

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity of interest.

A. The Board established 12 AAC 38.010(c) whereby an applicant for licensure who:

because of a language barrier, is unable to read and competently understand the English language may be excused from taking the written examination, and may be issued a license based on successful completion of the oral portion of the examination and demonstration of his capabilities and experience.

B. Regulations also provide that when assigning guide area permits,

the board will give preference to qualifying guides whose permanent residence is within the district in which the area is located.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

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APPENDIX A
GUIDE LICENSING AND CONTROL BOARD
REVENUES COMPARED WITH EXPENDITURES
June 30, 1985
(UNAUDITED)
(Note 1)

	<u>FY 83</u>	<u>FY 84</u>	<u>FY 85</u>
Revenues (Schedule 1, Note 2)	\$46,000	\$53,735	\$88,678
Expenditures (Note 3)	<u>21,663</u>	<u>13,483</u>	<u>11,777</u>
Excess of Revenues over Expenditures	<u>\$24,337</u>	<u>\$40,252</u>	<u>\$76,901</u>

Schedule 1
Types of Revenues
(Note 4)

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Master Guide License	\$150	Biennially
Registered Guide License	150	Biennially
Class-A Assistant Guide License	30	Biennially
Assistant Guide License	20	Biennially
Transporter License	10	Biennially
Application For A Guide Examination	25	With Application

Note 1

This revenue/expenditure comparison was prepared from available reports prepared by Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

Revenue amounts reported do not include revenue obtained from the sale of game tags or hunting licenses. They only include revenue obtained from fees required to obtain and/or renew guide licenses.

Note 3

Expenditures consist of direct costs resulting from Board activities. These include miscellaneous contractual, travel, and per diem costs incurred by Board members and the Board's licensing examiner. The amounts do not include the administrative expenditures of the Division of Occupational Licensing such as employee salaries or the expenditures made to other departments such as the Department of Law, which assist the boards and the Division.

Note 4

Amounts reflected are those established by statute for FY 85. Chapter 37, SLA 1985 provides that the Department of Commerce and Economic Development shall set license fees effective upon adoption of said regulations.

APPENDIX B
GUIDE LICENSING AND CONTROL BOARD
EXAMINATION STATISTICS

Number of Examinations Given in FY 1984-1985 (Note 1)

<u>Fiscal Year</u>	<u>Written Exam</u>		<u>Oral Exam</u>		<u>Total</u>
	<u>Passes</u>	<u>Fails</u>	<u>Passes</u>	<u>Fails</u>	
1984	22	13	26	7	41
1985	19	9	17	4	30

Note 1

Licensure as a registered guide requires a passing score on both a written and oral examination. Licensure as a master guide requires a passing score on an oral examination only. Licensure as assistant guides and transporters does not require examination.

APPENDIX C
GUIDE LICENSING AND CONTROL BOARD
ADMINISTRATIVE STATISTICS
September 30, 1985

Currently Licensed

Master Guides	46
Registered Guides	361
Class-A Assistant Guides	139
Assistant Guides	829
Transporters	141

Board Meetings Between
July 1, 1983 and June 30, 1985

July 17-22, 1983
October 25-26, 1983
December 7-13, 1983
March 12-17, 1984
December 13-14, 1984
February 9-17, 1985
March 18-20, 1985

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF OCCUPATIONAL LICENSING

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 485-2534

December 23, 1985

Mr. Gerald L. Wilkerson
Legislative Auditor
Legislative Audit Division
Pouch W
Juneau, AK 99811

RECEIVED
DEC 24 1985
**LEGISLATIVE
AUDIT**

Dear Mr. Wilkerson:

Re: Preliminary Audit Findings
Guide Licensing and Control Board

Thank you for the opportunity to comment on your preliminary audit report on the Guide Licensing and Control Board.

Our position remains the same from previous correspondence in that, we concur with your findings and recommendations, and also support continuation of the board. We once again offer the following comments regarding your recommendations:

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

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

Mr. Gerald L. Wilkerson

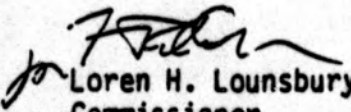
-2-

December 23, 1985

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

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

Sincerely,


Loren H. Lounsbury
Commissioner

LHL/sa1444s
122385b

DEC 19 1985

LEGISLATIVE
AUDIT

Recommendation #1

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

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

Recommendation #2

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

Recommendation #3

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

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

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

Recommendation #4

Oral guide examinations:

There are inconsistencies in administering oral tests. The purpose of the oral test is to determine the applicant's practical field experience and knowledge of game habits, size and the area he is being tested for. Most of this is impossible to determine with a tightly held oral tests with set questions and answers. The examiner should have some flexibility but should not be allowed to wander far afield and asking impertinent questions. There should also be a standard time for the test, say 1 or 1½ hours. One problem that keeps cropping up is first aid. I propose that an applicant be required to have passed a first aid course within the year prior to taking the guide exam.

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

Recommendation #5

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

We are trying to get a section in the new guide bill, (Senate Bill #294) to satisfy the change mentioned above. Bonding is already addressed in S294.

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

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

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

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

An addition to recommendation #4.

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

Comments Regarding Interim Letter #1
Sunset review GLCB

Recommendation # 1.

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

Recommendation # 2.

Agree with Mr. McNutt.

Recommendation #3.

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

Recommendation #4.

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

Recommendation # 5.

Agree with Mr. McNutt.

**A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
GUIDE BOARD**

December 11, 1987

Audit Control Number

08-1305-88-R

**Commissioner, Department of
Commerce and Economic Development**

J. Anthony Smith

**Deputy Commissioners, Department of
Commerce and Economic Development**

John Williams

**Members of the
Guide Board**

**Chairman
Member
Member
Member
Member
Member
Member**

**Ray McNutt
Edward J. Shavings, Sr.
Ben Ballenger
Charles Weir
Stanley Frost
Edward Gamble, Sr.
Arthur Clark**

STATE OF ALASKA

THE LEGISLATURE BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

December 18, 1987

Members of the Legislative Budget
and Audit Committee:

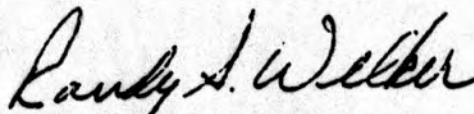
In accordance with the provisions of Titles 24 and 44 of the
Alaska Statutes (sunset legislation), the attached report is
submitted for your review.

A PERFORMANCE REPORT ON THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT GUIDE BOARD

December 11, 1987

Audit Control Number

08-1305-88-R



Randy S. Welker, CPA
Acting Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Guide Board for the past four fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Guide Board should be reestablished. The law now specifies that the Board will terminate June 30, 1988 and will have one year from that date to conclude its affairs.

Scope

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Interviews with the license examiners.
3. Tests of files and documents of licensees.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman Office.
5. Discussions with Board members.
6. Discussions with licensed guides.
7. Minutes of Board meetings and Division correspondence files.
8. Attorney General Opinions applicable to professional boards.

ORGANIZATION AND FUNCTION

The Guide Board was established by the 1973 Legislature and succeeded the Board of Fish and Game, Department of Fish and Game, which previously had regulated the guiding industry. The seven member Board is appointed by the Governor with confirmation by the Legislature and is restricted to having no more than three members as licensed guides. Board members serve staggered terms of three years or until their successors are appointed.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing. The Division assists the Board in the performance of their duties by providing administrative, licensure, and investigative support.

By law, a nonresident may not hunt, pursue, or take brown bear, grizzly bear, polar bear, or sheep in Alaska unless personally accompanied by a licensed master, registered, or assistant guide. Nonresidents hunting with an Alaskan relative are exempt from this requirement. The Guide Board was appointed in part to protect these nonresident hunters from incompetent individuals holding themselves out to be qualified Alaskan guides.

The function of the Board is primarily regulatory, as mandated by AS 08.54.040. Accordingly, the Board has the capacity to administer examinations, determine qualifications of guides, establish performance standards and regulate activities, maintain guide registers, prohibit harmful guiding activities, conduct hearings regarding licensure, and establish quotas of guides for specified geographical areas (exclusive guiding areas). The Board, through the assignment of exclusive guiding areas, limits hunting pressure by guides within a specific geographical area.

It is this last practice and function of the Board which is the most controversial. The Board's method and policy of assigning exclusive guide areas has become an increasingly contentious procedure. The Board has adopted a policy of eliminating previously allowed joint-use areas and is gradually trying to reestablish exclusive guide areas.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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REPORT CONCLUSION

In our opinion, the Guide Board should be reestablished. The regulation and licensing of qualified guides is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum qualification and experience requirements that provide reasonable assurance that persons licensed are both capable of safely conducting guided hunts and familiar with their prospective guiding areas.

However, we also recommend that the Legislature limit the reestablishment period of the Guide Board to a two year period. The Board's current policy regarding the assignment (see Recommendation No. 1) and transfer of guiding areas (see Prior Audit Recommendation No. 3) along with the pending suit before the Alaska Supreme Court challenging the legal basis of area assignments all involve significant public policy issues.

Resolution of these issues, particularly an adverse ruling in the Supreme Court case, will have an extensive effect on the operations of the Guide Board. We believe that it would be good public policy for the Legislature to limit any statutory extension of the Board to June 30, 1990 in order to provide for formal legislative reevaluation of the Board and its operations within the next two years.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Guide Board should discontinue its blanket policy of eliminating joint-use guiding areas.

Joint-use areas, as the name implies, allow more than one guide to conduct or authorize guided hunts in a given geographical area. In contrast, exclusive guide areas are geographic regions assigned by the Board to one individual. Only that individual may legally conduct or authorize guided hunts in the assigned area. Over the past two years the Guide Board has adopted a policy of eliminating previously approved joint-use areas and encouraging the assignment of only exclusive guide areas.

Such a policy unduly restricts entry into the guiding profession without offering any substantial public benefit. The policy primarily serves the interests of established guides who have previously received exclusive areas. The Board indicated that the primary reason for adopting this policy is to lessen hunting pressure on game resources throughout the State.

The Board adopted this policy without consulting the Division of Game within the Department of Fish and Game (DFG) for that agency's assessment of game populations. The Division reported to us that game populations statewide have generally been stable over the past 5 to 7 years. Even though there may be some justification for having strictly exclusive guide areas in some regions of the State, adoption of a blanket policy on a statewide basis, especially without independent consultation with DFG, is not warranted.

We do not believe that game management is the primary responsibility of the Board. If it were, provisions should be made to place it in an executive branch agency that also has such responsibilities. As part of the Division of Occupational Licensing, its primary purpose is the licensing and regulation of qualified individuals to conduct guided hunts.

Effect of the Policy - Limiting Entry

This policy, in effect, establishes a two-tiered licensing system. Becoming registered is only the first step to becoming an independent, practicing professional guide. An individual must also obtain a viable exclusive guide area in which to conduct business. Essentially, an individual can be licensed but is not allowed to guide in various areas designated as exclusive to other guides.

The implementation of the exclusive area policy; adoption of regulations allowing each guide to have up to three exclusive guiding areas; and the routine approval of guide designated transfers of assigned guiding areas (see discussion in Prior Audit Recommendation 3); all serve to restrict entry into the guiding profession. Such regulations and practices suggest that the Board may be more interested in the protection and development of the proprietary interests of established guides rather than promoting equitable access to the profession for all qualified individuals.

We do not question the Board's legal authority for implementing the exclusive guide area concept, although at the time of this report a lawsuit is pending before the State Supreme Court challenging the Board's authority on this issue. Over the past ten years, the Attorney General has repeatedly stated that assignment of exclusive guide areas is within the Board's statutory authority.

However, the Board should use its authority to the extent necessary to promote hunter safety and consumer protection. Using its authority to restrict effective entry into the profession is not in the best interests of the public. Continued use and even expansion of joint-use guiding areas encourages more competition in the guiding profession and allows an increased number of qualified guides access to viable hunting areas within the State.

Prior Audit Recommendations

In our previous review, "A Performance Report on the Department of Commerce and Economic Development, Guide Licensing and Control Board, November 21, 1985," we reported five recommendations. Many of the issues discussed in these prior recommendations still exist although almost all of them have been addressed to some degree by the Board.

Prior Audit Recommendation No. 1

The Guide Board should develop a prioritized set of criteria to use in assigning both exclusive and joint-use guiding areas.

In our previous report we stated that the Board did not act consistently when they considered the assignment of exclusive and joint-use guiding areas. The criteria on which any given area assignment was made varied from decision-to-decision. We also noted that the Board often did not adequately document the basis on which they made assignment decisions.

This inconsistency on the part of the Board in its decision-making, along with the lack of proper documentation of its rationale, resulted in the loss of effective control over

the activities and policy of the guiding industry. We felt that the Board's responsibility would be better met if it would identify pertinent criteria to be used in area assignment decisions, assign some priorities to the criteria, and apply them consistently.

Legislative Audit's Current Position

Alaska Statute 08.54.040(a)(7) was amended in 1986 and now requires that the Board "provide for an equitable, reasonable, and consistent procedure for limiting the number of guides [in an assigned area]." (Emphasis added.) Additionally, AS 08.54.195 (a) was added and directs the Board to "adopt regulations that establish uniform and consistent criteria, including a point system, to be used by the board when it establishes and assigns a restricted guide area."

The Guide Board is currently in the process of implementing this prior recommendation and meeting its statutory responsibility to adopt regulations that provide for uniform and consistent area assignment criteria. A proposed point system is currently being considered by the Board in conjunction with the Division of Occupational Licensing's regulations specialist.

Prior Audit Recommendation No. 2

The Board should improve methods of obtaining game management information from independent sources, such as the Alaska Department of Fish and Game (ADFG).

One of the primary justifications for the whole concept of exclusive guiding areas is the enhancement of the overall management of the public's game resources. Guides are awarded exclusive or joint-use areas so that they have a long-term interest in managing the game in their area. The Board has adopted regulations [12 AAC 38.053(d)(1)] that require it to consider an area's ability "... to sustain an additional guided hunting operation, in terms of game populations, terrain, methods of hunting, and use by other guides and hunters."

In our prior audit, we stated that the Board rarely considered independent information regarding game populations and management concerns when assigning areas. The Board relied on information provided by applicants and guides operating in the region under consideration. Although we recognized that the assessment of game populations by an active registered guide was an important consideration, we felt that in many instances it had to be understood that the guide offering such information often had vested interest in how the information was presented and interpreted.

We recommended that the Board establish better, more formal communications with ADFG in order to better meet their regulatory and statutory obligation to enhance the management of the State's game resources. We encouraged the Board to improve communications and coordination with ADFG and take steps to include that agency's assessment of game populations and hunting pressures when considering assignment of guiding areas.

Legislative Audit's Current Position

There has been some improvement by the Board in the use of independent game information from ADFG when making its decisions regarding assignment of guide areas. However, as stated previously, the Board's policy of encouraging the creation of only exclusive guide areas has resulted in making many of the concerns behind this prior recommendation irrelevant. Use of independent game information for specific regions of the State no longer appears to be a significant factor in the Board's decision-making process.

Prior Audit Recommendation No. 3

The Board should take more responsibility for area assignments by repealing regulations that allow a guide to designate to whom their area be reassigned.

Registered and master guides may each have a maximum of three guide areas. Typically, when a guide wishes to retire or perhaps become eligible for another, different guide area, he or she is allowed to turn back an existing area assignment to the Board and designate the recipient of the reassignment. Board regulations allow for, but do not necessarily require, this practice.

In our prior audit we found that these designated transfers overrode all other area assignment criteria. Essentially, the Board automatically approved transfers of guiding areas regardless of game management considerations, demonstration of experience in the area by the transfer recipient, and over the objections of affected joint-users. Whereas, the Board evaluated, albeit inconsistently, regular area assignments, our prior audit indicated they gave transfers much less scrutiny.

This lack of scrutiny encouraged the practice of guides selling their assigned areas to other guides in violation of Board regulations. With the Board giving little review to transfers, they greatly increase the potential of area assignments being awarded based solely on economic considerations. This potential abuse is contrary to the Board's statutory responsibility of establishing quotas for guide areas in an equitable and reasonable manner. All qualified guides for an area should receive equal chance at receiving an area assignment regardless of their ability to buy the rights from the previous holder.

It would be a better administrative practice if area assignments were surrendered to the Board; the Board reviewed pertinent and prioritized criteria to determine if the region would support one or more additional guide operations; and then consider all applications for the area under an equitable and reasonable method of allocation. By following such a procedure the Board would promote compliance with its own regulations restricting the transfer of guiding area permits.

Legislative Audit's Current Position

The Board continues to automatically approve almost all transfers of area assignments regardless of game management considerations, demonstration of experience, and over the objections of affected joint-users. On several occasions the Board approved the transfer of assigned joint-use areas contrary to the Board's own stated policy of eliminating joint-use area assignments.

The Board often approves transfers to individuals who would not qualify to receive the assignment had they been an original applicant for the area. We reviewed 19 transfers approved by the Board over the past two years. In 8 of those 19 transfers (42%) the approved recipient did not have any documented guiding experience in the transferred area. Had the individual been an original applicant for the assignment, he or she would have been required to have at least 2 years of documented guiding experience in the applied for area.

We again recommend that the Board evaluate transfers of area assignments as they would original area assignments. Such an evaluation would enable all qualified guides a more equal opportunity to receive an assigned area.

Prior Audit Recommendation No. 4

The Board should adopt procedures to improve the administration of the oral portion of the registered guide examination.

To qualify for licensure as a registered guide, an applicant must successfully pass the registered guide examination. This examination, which is prepared and administered by the Board, is composed of two parts, a written and an oral section. Passage of the examination requires the applicant to obtain a score of 80% on both sections.

The Board procedures require that the oral portion of the registered guide examination be administered by three examiners, consisting of a Board member and two master guides. In our prior report, we stated that the oral portion of the examination was arbitrary and inconsistent in its content and grading. This was due to the practice of allowing examiners to use their individual discretion in determining examination content and grading guidelines.

We noted that the lack of specific guidelines to dictate the objective administration of the oral examination resulted in inconsistent content and grading between individual examinations. The likelihood of exam passage was as much affected by who the examiners were and their individual judgement as it was by the knowledge and competence of the applicant.

We recommended that the Board adopt structured guidelines for the administration of the oral examination. Any such guidelines needed to provide examiners with specific directions as to examination questions to be asked and their assigned grading values.

Legislative Audit's Current Position

The Board has substantially improved administration of the oral portion of the guide examination. The examination score sheet has been redesigned and now includes predetermined categories and assigned grade values. In addition, all oral examinations are tape-recorded which allows objective review of the questions and responses in instances where an applicant may appeal the scoring or content of his or her questions and responses. These changes in the oral examination process has provided the Board with fairer and more consistent administration of the oral examination.

Recommendation No. 5

The Board should seek both statutory and regulatory changes in order to improve the protection of the public from unethical guiding practices.

One of the primary purposes of licensing and regulating guides is to protect the public from unethical guiding practices. In our prior report, we identified regulations and statutes that serve to block effective consumer protection action on the part of the Board and serves to protect guides at the expense of the public. We recommended that the Board enhance its consumer protection responsibilities by taking the following actions:

- A. Pursue amendment of statutes that limit the Board's authority to discipline guides for unethical activity.
- B. Adopt regulations and/or recommend legislation to require guides to post licensing/payment bonds.

Statutory Constraints to Effective Disciplinary Action

Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from "... three or more clients [hunters] of separate [hunting] parties."

The Board's effectiveness and visibility would be enhanced if all allegations regarding unethical guide practices was brought to it for review on a case-by-case basis. It appears that the intent of the statute was to keep down the number of frivolous and unfounded complaints against guides. Other professional licensing boards listen to, and sort through, all cases and complaints, no matter how trivial, as a means of keeping apprised of the conduct of their licensees. We recommended that the Board follow the same practice.

Bonding of Guides

Almost all hunters who use guiding services are nonresidents; a large number from outside of the United States. As a result, when disputes arise between guides and hunters it is often very difficult and expensive for the complaining hunter to seek legal remedies or implement effective administrative action. This difficulty is compounded by the three complaint requirement of the statutes discussed previously.

We recommended that the Board pursue the necessary statutory and regulatory changes that would implement a mandatory requirement that guides post a licensing or payment bond with the Division of Occupational Licensing. Such a bond would allow hunters, and perhaps even employees of the guides, with legitimate grievances and claims against guides an easier, less expensive alternative in obtaining settlement of their claims.

Guiding is a significant industry in the State. It is important that the Board do all it can to maintain the integrity of the guiding industry and uphold the reputation of the Alaskan guides with hunters outside of the State. The Board should recognize the unique type of consumer for guide services and take steps to adequately protect the interest of the out-of-state hunter/consumer.

Legislative Audit's Current Position

Neither of the two parts of this prior report recommendation have been implemented. The same abuses and conditions which led to our previous recommendation still exist. Currently, the Division of Occupational Licensing has three guides who have two complaints each pending against them, but whose cases are being held back from formal report to the Board until another complaint is received. In addition, the Attorney General's Consumer Protection Office is involved with a legal complaint against a guide for receiving money for a contracted hunt without providing services.

Subsequent Comment

The Department of Commerce and Economic Development, Division of Occupational Licensing indicate in their response to this report that current market conditions have made it extremely difficult to obtain bonding in Alaska. Cost of bonding may be so prohibitive that, if required, it would represent another barrier to entry to the guiding profession. (See the agency's response to our report, pages 30-31 and our final statement on page 37 for further discussion of the issues currently involved in obtaining bonding.)

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our review.

- I. The extent to which the Board, commission, or program has operated in the public interest.
 - A. The Board is unduly restricting entry by adopting a policy of gradually eliminating all joint-use guide areas (see Recommendation No. 1).
 - B. The Board has adopted regulations defining unethical conduct which clarify and strengthen the guide's responsibility to the public.
 - C. The Board has adopted the Alaska Professional Hunters Association (APHA) first aid training course as a requirement for new applicants prior to receiving a license.
- II. The extent to which the operation of the Board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 - A. Regulation 12 AAC 38.054(b) allows an EGA permit holder to designate the qualified guide to whom he wishes to transfer his guide area. These transfers often take precedence over other guide area assignment criteria such as joint-user objections, experience in the game unit, or game management considerations (see Prior Audit Recommendation No. 3).
 - B. Alaska Statute 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more clients of separate parties (see Prior Audit Recommendation No. 5).
 - C. The Board does not consistently review the Department of Fish and Game game management information prior to assignment or transfer of an exclusive guiding area (EGA) (see Prior Audit Recommendations No. 1-3).

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

A. At the time this report was being prepared, two pieces of legislation affecting guides and the Guides Board, Senate Bill No. 191 (SB 191) and House Bill 183 (HB 183), were pending before the Legislature. The Guides Board informally supports both pieces of legislation. Although subject to revision, they both would generally require:

1. Larger fees (three times as high) for nonresident guides than resident guides.
2. A broader statutory definition of what would constitute guiding. SB 191 would define guiding as:

being present with, or providing an established camp for, a big game hunter in the field, personally or through an assistant, for compensation or with the intent or an agreement to receive compensation; "guide" or "guiding" does not include accompanying or being present with a hunter (a) in a boat with living quarters; (b) at a permanent lodge or structure; or (c) while providing transportation to or from the field, if the persons providing the transportation and the persons being transported do not stalk, pursue, track, kill, or attempt to kill big game.

3. In a position paper on HB 183 the Department of Public Safety (DPS) states that passage of such legislation would provide the agency with:

an important enforcement tool to investigate and prosecute cases against unlicensed guides in Alaska. [HB 183] should reduce the number of unlicensed guiding activities which will allow us to better utilize our manpower to monitor other resource problems in Alaska. [HB 183] will further allow our uniformed officers to better enforce the laws pertaining to guiding in Alaska. Finally, [HB 183] strengthens the guide bill, making it more enforceable when dealing

with unlicensed guiding activities.... In sum, the passage of the amendments will aid [DPS] in carrying out its responsibilities: The enforcement of state laws and the protection of the fish and wildlife resources in the State of Alaska.

IV. The extent to which the Board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

- A. The public is invited to attend Board meetings and to give their input about the workings of the Board. Notices of meetings are advertised in at least five newspapers throughout the State. In addition, guides are notified by registered mail of meetings that might affect them.
- B. Teleconference meetings are not being noticed publicly. This limits public input at those meetings and may legally jeopardize Board decisions and actions.

V. The extent to which the Board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

- A. As stated under IV, the public is invited, by published notices in newspapers, to attend Board meetings to give their input about Board regulations or submit written testimony.
- B. The problem noted in IV. B. above also represents potential problems in this public need area.

VI. The efficiency with which public inquiries or complaints regarding the activities of the Board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

- A. Since January 1986, nine complaints have been filed with the Ombudsman's Office concerning Board activity. Two of these complaints, (1) alleging guide examination scoring is arbitrary and inconsistent and (2) alleging board's decision to reduce guide area is unfair, are pending administrative proceeding.

B. Since July 1985, 54 complaints against guides have been submitted to the Department of Commerce and Economic Development, Division of Occupational Licensing for investigation. Thirty-three of these cases have been closed, thirteen are currently in administrative hearing proceedings and nine are still pending investigation. Investigations appear to have been conducted in a reasonable fashion.

C. As mentioned in III above and in Recommendation No. 5, AS 08.54.200(a)(1) does not allow the Board to consider complaints of unethical or incompetent guiding practices until receiving complaints from three or more hunters of separate parties.

VII. The extent to which a Board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. As of October 1987, 51 master guides and 348 registered guides were licensed in Alaska. These individuals were required to pass both a written and an oral exam, as well as obtaining practical experience in the field, prior to licensure.

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the Board, commission, or agency to its own activities and the area of activity of interest.

A. The Board established 12 AAC 38.010(c) whereby an applicant for licensure who:

because of a language barrier, is unable to read and competently understand the English language may be excused from taking the written examination, and may be issued a license based on successful completion of the oral portion of the examination and demonstration of his capabilities and experience.

B. Regulations also provide that when assigning guide area permits,

the board will give preference to qualifying guides whose permanent residence is within the district in which the area is located.

- IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIX A
GUIDE BOARD
SCHEDULE OF REVENUES COMPARED WITH EXPENDITURES
For Fiscal Year 1987
(UNAUDITED)
(Note 1)

	<u>FY 87</u>
Revenues (Note 2)	\$153,442
Expenditures (Note 3)	<u>133,205</u>
<u>Excess of Revenues</u> <u>over Expenditures</u>	<u>\$ 20,237</u>

Note 1

The Schedule of Revenues Compared with Expenditures was prepared from available records and discussions with the Division of Occupational Licensing (DOL) personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Schedule of Revenues Compared with Expenditures.

Note 2

Revenue amounts reported do not include revenue obtained from the sale of game tags or hunting licenses. They only include revenue obtained from fees required to obtain and/or renew guide licenses.

Note 3

Expenditures consist of direct costs resulting from board member activities, (i.e., travel and per diem) and an allocation of direct and indirect costs of DOL. The procedures used by DOL for their allocation were not reviewed by us, and we express no opinion regarding their reasonableness. It should be noted, that represented expenditures do not include expenses incurred by other Departments or other divisions of the Department of Commerce and Economic Development in assisting the Board.

APPENDIX B
GUIDE BOARD
SCHEDULE OF ESTIMATED REVENUES
COMPARED WITH BUDGETED EXPENDITURES
For Fiscal Year 1988
(UNAUDITED)
(Note 1)

Average Revenue (Note 2)	\$ 77,675
Less: Expenditures (Note 3)	<u>148,469</u>
<u>Excess of Expenditures over Revenues</u>	<u>\$(70,794)</u>

Schedule 1
Types of Revenues

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Master Guide License	\$240	Biennially
Registered Guide License	240	Biennially
Class-A Assistant Guide License	50	Biennially
Assistant Guide License	50	Biennially
Transporter License	50	Biennially
Application Fee	30	
Examination Fee	25	

Note 1

The Division of Occupational Licensing (DOL) prepared the above Schedule of Estimated Revenues Compared with Budgeted Expenditures. The schedule is included for informational purposes only and has not been audited by us. Accordingly, we do not express an opinion on the Board's Schedule of Estimated Revenues Compared with Budgeted Expenditures.

Note 2

Revenues were estimated based upon the current licensing fees (see Schedule 1) and projected license renewals and application fees for fiscal years 1988 through 1991. Because of a downward trend in Alaska's economy, the projection for revenues includes a factor representing 20% to 30% decline in the number of licensed professionals.

Note 3

Expenditures consist of direct costs associated with Board member activities (i.e., travel and per diem) and an allocation of direct and indirect costs of DOL. It should be noted that represented expenditures do not include expenses incurred by other Departments or other divisions of the Department of Commerce and Economic Development in assisting the Board. Expenditures for the Board represent an allocation of budgeted expenditures for all Boards in the Department for FY 88.

Note 4

The schedule represents the licensing fees currently in effect. Fees were raised in November 1986 in response to legislative intent to make the Boards more self-supporting.

APPENDIX C
GUIDE BOARD
EXAMINATION STATISTICS

Number of Examinations Given in FY 1984-1985 (Note 1)

<u>Fiscal Year</u>	<u>Written Exam</u>		<u>Oral Exam</u>	
	<u>Passes</u>	<u>Fails</u>	<u>Passes</u>	<u>Fails</u>
1985	22	13	26	7
1986	13	16	18	1
1987	16	24	17	0

Note 1

Licensure as a registered guide requires a passing score on both a written and oral examination. Licensure as a master guide requires a passing score on an oral examination only. Licensure as assistant guides and transporters does not require examination.

APPENDIX D
GUIDE BOARD
ADMINISTRATIVE STATISTICS
September 30, 1987

Currently Licensed

Master Guides	51
Registered Guides	348
Class-A Assistant Guides	140
Assistant Guides	854

Board Meetings Between
July 1, 1985 and June 30, 1987

December 2-7, 1985

April 7-11, 1986

December 6-13, 1986

April 11-17, 1987

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 485-2500

OFFICE OF THE COMMISSIONER

January 20, 1988

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JAN 20 1988

LEGISLATIVE
AUDIT

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

Dear Mr. Welker:

This letter is written in response to the Budget and Audit Committee's (hereinafter "Committee") report of its sunset performance review of the Guide Board (hereinafter "Board"). Below is the Department of Commerce and Economic Development's (hereinafter "Department") comments on the Committee's findings and recommendations.

Recommendation No. 1

The Committee has found that "over the past two years, the Guide Board has adopted a policy of eliminating previously approved joint-use areas and encouraging the assignment of only exclusive guide areas." As a result, the Committee recommends that the Guide Board "discontinue its policy of eliminating joint-use guiding areas." After careful consideration, the Department finds that the Committee's recommendation is overbroad. The issues raised by this recommendation are very complicated, and solutions are not readily apparent. In the final analysis, it is our opinion that the very painful and muddled processes that are evident at the meetings of the Guide Board are an accurate reflection of the difficulty in finding any wholly acceptable public solutions to the issues surrounding the assignment of joint-use or restricted guide areas.

For instance, while the Guide Board is created for "the purposes of licensing and regulating the activities of guides in the interest of the state's wildlife resources" (see AS 08.54.010; emphasis added), and while the audit report states that the Committee found the Board adopted this policy without consulting the Division of Game, it is also well known that the Division of Game, for whatever reason(s), is most reluctant to become involved in providing the Guide Board with necessary data. Currently, the Division of Game is under no specific requirement to provide the Board with accurate or pertinent data regarding game populations.

The issue, however, is not simply game "populations," but also the size and quality of the game within each area. While Alaskans most frequently are hunting for subsistence or personal use, with "trophy-sized" game not a prerequisite to a successful hunt, being able to offer large trophy animals is relatively more important to guides whose clients are paying thousands of dollars to come to Alaska from Europe, Asia, and the "Lower 48" for the big game hunt.

Before the Department can reasonably assess the validity of the recommendation that the Guide Board discontinue its policy of eliminating joint-use guiding areas, the Department believes the Legislature must consider the nature of the agency it has created and the concept of requiring nonresidents and nonresident aliens who wish to "hunt, pursue or take" big game to be accompanied by a licensed guide (see AS 16.05.407 and AS 16.05.408).

As recently as 1986, the Legislature saw fit to formalize Alaska's guiding system by specifically providing for the establishment and assignment of "restricted" (or exclusive) guide areas (see Chapter 71, SLA 1986). It seems somewhat contrary to legislative intent to have the Legislature specifically provide for the establishment of restricted guide areas in one year and the Guide Board to be criticized in practically the next year for establishing such areas.

This is not to say that the Department does not appreciate the concerns which have given rise to the Committee's recommendation. Indeed, the Department is particularly sensitive to allegations that the Guide Board is, as suggested, "more interested in the protection and development of the proprietary interests of established guides rather than promoting equitable access to the profession for all qualified individuals." However, the recommendation also seems somehow "too easy." It has not taken into account the ultimate issue: despite Alaska's size, there is not -- and will never be -- sufficient hunting areas or big game animals in those areas to give every registered guide joint-use -- let alone exclusive use -- of an area.

Alaska must realize that big game is a limited resource. A report that states there has been a stable game population statewide for the past five years does not describe -- by guide area -- the impact over the past years in the number, size, and quality of the big game animals found in that area.

The established guiding system creates specific guide areas across the state. A resident hunter, however, may hunt in any area of the state, irrespective of what guide or guides may also have been assigned that area. In addition, "outfitters," unlike Alaska's guides, are not limited to taking clients to particular regions of the state. An outfitter can transport clients anywhere, allow those individuals to hunt in an area until the number, size, or quality of the game coming out seems to be depleted, then move on to other areas which, perhaps, have not been over-hunted. It is important to realize that a guide can conduct hunts only in his or her assigned area(s), and is at the mercy, if you will, of resident hunters and outfitters.

The Department believes that a variety of special and public interests are presently fighting over a limited public resource that generates lucrative business through the provision of wilderness hunting (with outfitters) or guiding experiences. The pressures on the Guide Board have never been higher than right now. In its defense, the Guide Board has never received adequate support from the executive branch, having been avoided by Fish and Game, abandoned by Public Safety, seriously neglected by Commerce and Economic Development, and alternately ignored or criticized by the Department of Law. On the other hand, it is probably equally true that, until very recently, the Guide Board (and the guiding industry) would not have wanted and would have probably attempted to reject any proffered consistent, active administrative oversight of its activities.

The continued implementation of restricted or "exclusive" guide areas has brought the rather fragile guiding industry to a crisis point, with its flaws now being highlighted and focused on by its frustrated critics. But the fact remains, having created the Guide Board and statutorily agreed to regulate the guiding industry, the results of that decision are complex and the recent legislation recognizing the Board's creation of restricted areas only further complicates the matter. The legislation requires the promulgation in regulation of a "point system to be used by the board when it establishes and assigns a restricted guide area" [see AS 08.54.195(a)]. The legislation also establishes criteria that the Board must consider before it may assign a restricted area. These conditions, however, only further indicate that the Legislature recognizes that both resource and economic factors [see AS 08.54.195(b)(2), (3), (4), (5) and (e)] play an important part in determining the viability of the guiding industry.

Therefore, while the Committee's report finds that the Guide Board's actions to encourage the assignment of restricted areas serve to "unduly restrict entry into the guiding profession," the Guide Board can point to AS 08.54.195 as requiring the Board to weigh economic factors in deciding on the "quota of licensed operating guides who may operate within designated geographical game units" [AS 08.54.040(a)(2)]. This language would seem to recognize that the Guide Board may well have to limit the number of guides with assigned areas. We read this to mean, so long as the Board is guided by regulations creating a point system that will provide applicants with protection from subjective or arbitrary Board decisions, that the Guide Board may well limit the number of registered guides holding areas through the assignment of restricted guide areas.

The Department believes the Committee is right to find serious fault with the Guide Board for the Board's failure to develop regulations establishing area quotas and the point system, but we suggest the Committee should hesitate to fault the Board for attempting to solve what the guiding industry sees as an increasingly difficult situation (i.e., the increasing pressure on the big game resource) when the Legislature recently formalized the Board's authority to meet this problem through restricting area assignments.

As you note, the constitutionality of the guide area concept is currently before the court. In the meantime, so long as the Legislature believes the well-being of a guide's economic interest in an area is an important factor in setting quotas for a particular guide area, then the Department is hard put to unqualifiedly support the Committee's broad recommendation that the Guide Board simply "discontinue" the elimination of joint-use guiding areas.

The Department believes, before it can support such a recommendation, that more research needs to be done and regulations need to be put into place establishing proper assessment criteria for guide area assignments, whether joint-use or restricted. There may well be justification for some restricted areas, and there may well be justification for either opening up some presently restricted areas or adding additional users to current joint-use areas. The Department presently has no way of objectively or independently evaluating either the petitions brought before the Board or the validity of the current area assignments.

Until the Division of Occupational Licensing can provide the level of administrative support truly necessary to assist the Guide Board in reaching more objective evaluations, the experience and testimony of Board members and guides who appear before the Board should continue to

be relied upon. It is, after all, the job the statute gives the Board to do. The fact that the executive branch has, up until now, failed to provide the necessary support to the Board to professionalize its activities and decision-making process is no reason to suddenly tie its hands.

Prior Audit Recommendation No. 1

As stated above, the Department concurs in the Committee's recommendation that the Board place in regulation its criteria for establishing guide area quotas. Such regulations are currently being developed. It is expected that this project will be both time-consuming and very controversial. We hope the Board will complete this project by the end of 1988. We believe the Board appreciates the serious need for these guidelines and will work hard to put a quota and point system in place by year's end. The staff of the Division of Occupational Licensing will work closely with the Board in developing these regulations.

Prior Audit Recommendation No. 2

The Department concurs with the recommendation that the Board "improve" its methods of obtaining game management information from independent sources, including the Alaska Department of Fish and Game. However, as you are aware, the Division of Game is most reluctant to become actively involved in this area of game regulation. If the Board is to "improve," then we believe that there must be more than the anticipation of cooperation by executive branch agencies on the part of the Legislature. One possible solution would be statutory language mandating the provision of game management data from Fish and Game to the Guide Board. The data should be made available in ways that are useful to the Board and in a time frame that will meet the Guide Board's needs. The presence of game biologist expertise at Board meetings would also be more than helpful; it would assist in professionalizing Board decisions.

Prior Audit Recommendation No. 3

The Department concurs with the recommendation that the Board prohibit the transfer of an area from one guide to another. The Department fully supports your belief that all qualified guides should receive an equal chance at receiving an area assignment, as long as some mechanism is created that guarantees the guide relinquishing an area adequate compensation for the lawful property improvements he or she made while holding the area.

The current system is no doubt in place because the guide relinquishing an area certainly does not intend to simply walk away from what is, in many cases, tens of thousands of dollars in improvements in the area, leaving it for the next lucky guide who comes along. The statute says that a guide "may sell or otherwise transfer a lodge, camp or other lawful improvement to property located in a restricted guide area. Sales price may not exceed fair market value" [AS 08.54.195(e)]. If the Board could create a system wherein all applicants for a relinquished area were required to post proof of an ability to compensate the former guide for any improvements at fair market value, then all applicants could be considered equally and the area awarded according to the established criteria.

One matter that deserves further discussion, however, concerns the transfer of a guide area to a guide's heir. The guiding industry very much supports transfer to an heir. Whether the Legislature would condone such a practice should be made clear in statute. Otherwise, the Department would most likely continue to believe that all transfers should be prohibited.

Prior Audit Recommendation No. 4

We are pleased by the Committee's finding in this recommendation that the Board has done much to improve the oral examination of the Guide Board. The Department will continue to work with the Guide Board to improve the quality and objectivity of the guide exam.

Prior Audit Recommendation No. 5

The Department concurs with the recommendation that the Board pursue an amendment to AS 18.54, eliminating the need to receive three separate complaints before the Board can pursue an investigation against a guide for unethical or incompetent practices. We would support such action by the Legislature in the bill which reestablishes the Guide Board.

The recommendation that the Board pursue the posting of a performance bond by guides is more difficult to evaluate. On its face, the Department understands the Committee's reasons for seeking such bonding, and concurs with the suggestion that such a practice might well provide a more efficient, less expensive claim settlement process. However, the Division of Occupational Licensing's experience with contractor bonding has also led us to recognize that the impact of a bonding requirement on the guiding industry might be very severe.

As you are no doubt aware, the current economic situation in Alaska has made it extremely difficult to get bonding. It is possible, but current bonding companies often require the provision of unencumbered assets totalling in excess of \$100,000 for a \$10,000 bond. The current poor bonding market in Alaska has effectively eliminated some persons from the contractor industry because they cannot meet the requirements imposed by the bonding companies. This would, no doubt, have the same affect in the guiding industry.

This might also mean that guides who are holding little used areas might relinquish the areas rather than meet the bonding requirement, which would be all to the good, as it would free up areas for guides without areas who are seriously interested in guiding. At the same time, the bonding requirement might discourage or keep out some younger, less well-established guides who do not have adequate assets or resources, the very same guides for whom the Committee is interested in providing better access to the system. (This problem is partially countered in the construction area by allowing a contractor to make a cash deposit in the amount of the bond, but often a cash deposit is difficult for the smaller contractor to make.)

The Department appreciates this recommendation by the Committee and believes it certainly deserves consideration, but its potential impact on guides should probably be more thoroughly evaluated prior to any formal action by either the Board (through regulations) or the Legislature (through legislation) to require bonding of guides.

Final Comments

The Department is committed to improving the workings of the Guide Board. We have identified the following as areas where we believe immediate improvements are necessary:

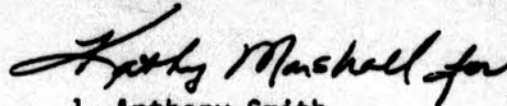
1. the general administrative support provided by the Division of Occupational Licensing;
2. better technical data from the Division of Game;
3. the Board's maps of the guide areas and assignments; and
4. guide area application or guide area transfer procedures.

January 20, 1988

In conjunction with the guiding industry, the Department will be approaching the Legislature for funding to provide more adequate staffing to the Board and for some form of computerized mapping of the guide areas. In the meantime, we are in the process of temporarily transferring the Guide Board's licensing examiner to Juneau so that that position will have the benefit of additional staff assistance and supervisory support while the Department attempts to more adequately support the difficult work of the Guide Board.

This audit has been another mechanism utilized by us to assist the Department in proper administration of the guide statutes and in helping the Guide Board to review its role. We have appreciated its independent evaluation of the Guide Board's performance.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Anthony Smith".

J. Anthony Smith
Commissioner

JAS/mst7074m

011988b

cc: All Members of the Guide Board

STEVE COWPER, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF OCCUPATIONAL LICENSING

7TH FLOOR FRONTIER BLDG.
3001 C STREET, SUITE 722
ANCHORAGE, ALASKA 99503
PHONE: (907) 581-2878

RECEIVED

February 2, 1988

FEB - 5 1988

Mr. Gerald L. Wilkerson
Legislative Auditor
Legislative Audit Division
Pouch W
Juneau, Alaska 99811

**LEGISLATIVE
AUDIT**

ATTN: Jim Griffin

Recommendation #1

The Guide Board did not adopt a blanket policy of eliminating all joint use guide area permits.

The guide Board did adopt a policy to eliminate joint use guide area permits as much as possible and in situations that involve small overlaps of boundaries. The board will grant transfers to an heir of a guide or to another guide who inherits a guide's permit. In just about all cases when this occurs, the guide inheriting the permit has worked for the guide holding the area for a number of years. This criteria is applied to a retiring guide. In these cases as well as regular transfers small overlaps are eliminated as much as possible. This is the area that brings the criticisms of the board not acting in a consistent manner on reassigning guide area permits. In most cases each transfer is different.

The board has on numerous cases asked the Department of Fish & Game for biological information with limited success. We do ask the applicant for a transfer or a new assignment to get this information if they can. This also isn't always possible because the board doesn't know what areas are to be involved in a given meeting. As Chairman I have asked our Director, Randall Burns, to see what could be done to relieve this situation.

While game management is not the primary responsibility of the guide board, it is in the criteria of issuing guide area permits. 12AAC 38.210 (b) (2) addresses that, not only in the area involved but also adjoining areas.

Regarding the effect of the policy being a limited entry. The situation probably would be better if it was on a limited entry scale such as commercial Fisheries. Both industries involves renewal resources that belong to everyone. Limited entry for the guiding industry would make the guide board's job much easier.

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Page 2.

Mr. Gerald L. Wilkerson:

We have in the neighborhood of 400 registered and Master Guides and we are licensing around 10 to 15 twice per year. There is just not the clientele or suitable areas available for that number of guides. Federal withdrawals sure haven't helped the situation. Even though we have that demand on areas there are still some open and can be used by any registered guide. Granted, these aren't the best areas for guiding operations but they are a start. I do admit that there are some guides who hold very large areas. I believe these should be looked at closely and should they not be utilized to their potential, divided to make room for some of the younger guides to get into the guiding business. This was a stated policy of the previous board after they had covered the state with assignments. This never happened with the previous board. The work load that this was never attempted. I have wanted to do this ever since I have been a member of the board. Budget and time has precluded that happening. I believe if a value was put on a guiding area permit, we would see guides applying for what they actually need for a realistic use of the area. I realize this will have to be accomplished through the legislature.

Recommendation #2

As mentioned above, I have asked our Director to address this issue.

Recommendation #3

I still do not agree that an area holder should surrender his guide area to the board when he wishes to transfer whether he be retiring getting out because of health or what ever reason. There is no other business that a man can't sell or give it to whoever he wants to. While our statutes and regulations do not allow selling an area permit they do allow for a guide to sell his improvements that supported his guide area permit. The assigned area permit has done more to elevate the quality of the guiding industry in Alaska than anything that's taken place in the past. The responsibility it gives to the permit holder for the game resource, prompts a guide to upgrade their business and increase his investments in the area he has. As investments in both time and monetary increases so does the guides financial responsibility increase. After years working to build a high quality business it's only right that upon retirement the permit holder be able to choose his successor. This^{one} in just about all cases is the most qualified person for the transfer no matter what selection criteria is used. There have been abuses of this in the past as there were transfers that seemed to be nothing

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Page 3

Mr. Gerald L. Wilkerson:

more than real estate sales. The Guide Board is aware of this situation and is taking a firm stance against these kind of dealings.

If your recommendation is adopted, assigning areas regardless of their ability to buy the rights of the previous holder, Since it is illegal to buy the rights of the holder, I assume that this would take in the previous holder's improvements. Should this be implemented, it could mean a man working to improve the area both resource and monetary wise could lose everything he worked for.

I do agree that in some cases people that weren't as well qualified as others have gotten area permits through transfers. I would like to see a regulation put in that the transferee be required to work with the permit holder a certain number of years to qualify for the transfer. I think this should be for at least two years, would prefer longer.

Recommendation #4

The current oral examination is as fair as an oral examination can be. The oral portion of the examination is the most important of the two parts.

Recommendation #5

The guide board did address this issue during the last guide bill (294) passage to no avail. We also tried to get an outfitter section included. Both were deleted by the legislature. We are faced with getting another bill through the legislature this session. So far none has been introduced to my knowledge. We plan to push for each individual complaint to come before the board for a hearing. I believe this will alleviate the need for bonding guides.

We also need to pursue Senate bill 191 regarding outfitters & unlicensed guiding. This unregulated activity is causing a lot of the complaints against the guiding industry as well as a detriment to the game resources of the state. The resource being the more important. This is one reason the guide board has to limit the guides operating in some areas of the state. The well populated area around King Salmon with moose and caribou is one as well as some areas on the north slope.

One other thought. I don't believe a time limit should be put on the life of the guide board. Changes takes time and some regulations as long as two years.

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STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

January 29, 1988

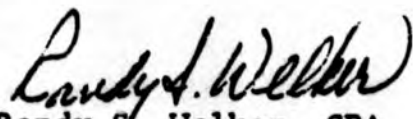
Members of the Legislative Budget
and Audit Committee:

We have reviewed the Department of Commerce and Economic Development, Division of Occupational Licensing's response to our preliminary report. Our comments regarding the response follows:

Prior Audit Recommendation No. 5

As pointed out in the Division of Occupational Licensing (DOL's) response, it currently does appear that our prior audit recommendation regarding the bonding of guides is problematical. DOL indicates in their response that imposition of a bonding requirement may have a very severe impact on individuals both in the guiding industry and those trying to enter the profession. One of our primary concerns when evaluating the performance of any professional licensing board is the degree to which the board provides equitable and fair entry into the regulated profession.

Certainly, given DOL's experience in this area with other professions and their assessment of the current market situation for obtaining bonding, their comments regarding the advisability of requiring bonds are well-founded. If current market conditions are so severe that obtaining performance bonding would have an adverse impact on individuals trying to enter or stay in the guiding profession, thus serve to limit competition in the industry, then we concur with DOL's assessment.


Randy S. Welker, CPA
Acting Legislative Auditor
Division of Legislative Audit

Alaska State Legislature

Senate Advisory Council



P.O. Box V
State Capitol
Juneau, Alaska 99811
Phone: (907) 465-3114

DRAFT

MEMORANDUM

To: Senator Ken Fanning
Alaska State Senate

Hunting Guide Task Force Members

From: Sheila F. Helgath, Ph.D. *[Signature]*
Senate Advisory Council

Date: September 15, 1988

Re: Permits Required of Guides/Outfitters on Federal and State Lands
Information Request Number 88-003302 (Revision #1)

You have requested that the Senate Advisory Council provide information on the permitting requirements for outfitters and guides operating on Federal and State of Alaska lands and any other information Senate Advisory Council may have on the issue of allocation of scarce resources. I have made the information on laws in other areas and on insurance available to House Research Agency and the Division of Occupational Licensing.

A) Public Policy Objectives

The allocation of scarce resources between private citizens and different commercial user groups has been addressed at many levels by federal and state agencies. For example, allocation of sport and commercial fishing, wilderness use, hunting, and river running are scarce natural resources that have been allocated between the general public and commercial users. Below are summaries of public policy objectives that have re-occurred throughout the federal and state agencies addressing these types of complex resource allocation issues.

The first public policy objective has been to protect the renewable resource. This is usually done by separating the conservation decision i.e. the amount of game available to be harvested from the allocation scheme. This separation is now achieved through the Board of Fisheries and the Board of Game in the management of fish and game in Alaska. Since the different mechanisms to regulate outfitting/guiding effect the ability of management to protect the resource and therefore the conservation of the resource; the

task force may want a specific analysis of the conservation consequences of the different types of regulatory or allocative schemes that are being proposed. The different options are listed below in public policy six.

The second public policy objective has been to insure that the range of hunting experiences be preserved. In recreation management this concept is called the Recreation Opportunity Spectrum (ROS). ROS recognizes that different groups of people desire different types of experiences in the out of doors. For example, some people receive great pleasure from thinking about and preparing for a trip, learning to hunt in an area on their own, and having the opportunity for a solitary experience while others prefer to have an experience in which they do not have to participate in any of the preparations. Individuals often move from one part of the recreation spectrum to other parts throughout their lifetime depending on factors such as knowledge, age, soci-economic ability, and opportunity to participate. Public managers involved in the allocation of scarce resources have had as a goal the preservation of a range of opportunities.

The third public policy objective has been to provide some form of economic return to the state to compensate for the cost of managing the natural resource. Most of the federal and state agencies have some permitting fees which capture some of the economic rent for the agencies. Inherent in this concept is also the concern that full utilization of the resource be made. The demand for game hunting opportunities is so great that all sectors will want more than is permitted. However, the system of rationing should be flexible enough to respond if changes in demand occur. It should be emphasized that rationing use is usually only done after all other means of management have been tried.

The fourth public policy objective has been to provide a stable economic base for the commercial users. This economic base is often accomplished by providing a consistent and stable allocation to the commercial groups such as a percentage of the carrying capacity. In other parts of the United States the different commercial providers of recreational services, such as river running or wilderness outfitting, usually prefer some mechanism by which they can anticipate and reserve their allocation base while the non-commercial users prefer a lottery system. Whether a system which would assure a portion of the allowable game harvest is preferred by guides, outfitters, and the general public of Alaska is unknown at this time.

The fifth public policy objective has been to minimize legal challenges to the permitting process. Allocative schemes have withstood constitutional challenges and other legal challenges when the objectives and mechanisms for allocation are clearly laid out. Public administration theory suggests that this can be accomplished through a process in which all parties are allowed to participate and help set the objectives for the actions to be taken. Opportunity for the affected to make input, clearly understood rules, and equity seem to be the key to minimizing legal challenges.

The sixth public policy objective has been to allocate use between types

of users and then to ration use within those groups to individuals. Techniques that have been used in wilderness and river management include rationing by;

- (1) advance reservation,
- (2) lottery,
- (3) queuing,
- (4) price,
- (5) merit, and
- (6) historical use.

Attached in Appendix One is an example of how the Task Force might evaluate the different licensing schemes.

B) Federal and State Statutory Considerations

The State of Alaska has other specific public policy issues to consider as a result of the Alaska National Interest Land Conservation Act (ANILCA). ANILCA requires the State to consider subsistence. If the State does not meet the requirement of priority preference for subsistence use then the Federal Government has the right to pre-empt game management. As a result there are different requirements by state land management agencies for subsistence hunting camps than for commercial camps, for example, no fees. In the past the Board of Game has had to address issues of conflict between subsistence users and guides or outfitters. One example is the airplane restriction which was placed in a corridor along the Noatak to preserve the caribou hunting opportunity for subsistence users who take the animals as they cross the river¹. Conflicts between rural residents over game, lack of opportunity to be guides, and waste of meat are prompting suggestions that if any new species are added to the guide list that a point system be developed which insures local resident participation. To summarize subsistence users are another class of game users who will be affected by the choice of licensing schemes.

In addition ANILCA gives a priority to Native Corporations in some areas if a revenue producing activity is to occur, allows for hunting, and allows hunting camps in some of the areas. The following section of the Federal statutes provide the context in which hunting and fishing occur on federal lands.

51 Ch. 16.3102 Definitions

- (17) The term "fish and wildlife" means any member of the animal

¹Game taken under Alaska's subsistence law can not be sold only bartered, given away, or used by the hunter. Canada, I believe, has a very different system in which villages are given a combined allocation which can be used for subsistence, or for outfitting and guiding, or leased to a commercial operator.

kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or part thereof.

(18) The term "take" or "taking" as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct. (Pub. L. 96-487, Title I ss 102, Dec.22, 1980, 94 Stat. 2375.)

51 Ch. 16.3197 Revenue-producing visitor services

(a) Notwithstanding any other provision of law, the Secretary, under such terms and conditions as he determines are reasonable, shall permit any persons who, on or before January 1, 1979 were engaged in adequately providing any type of visitor service within any area established as or added to a conservation system unit to continue providing such type of service and similar types of visitor services within such area if such service or services are consistent with the purposes for which such unit is established or expanded.

(b) Preference

Notwithstanding provisions of law other than those contained in subsection (a) of this section, in selecting persons to provide (and in contracting for the provision of) any type of visitor service for any conservation system unit, except sport fishing and hunting guiding activities, the Secretary--

(1) shall give preference to the Native Corporation which the Secretary determines is most directly affected by the establishment or expansion of such unit by or under the provisions of this Act;

(2) shall give preference to persons whom he determines, by rule, are local residents; and

(3) shall, consistent with the provisions of this section, offer to Cook Inlet Region, Incorporated, in cooperation with Village Corporations within the Cook Inlet Region when appropriate, the right of first refusal to provide new revenue producing visitor services within the Kenai National Moose Range or that portion of the Lake Clark National Park and Preserve within the boundaries of the Cook Inlet Region that right to remain open for a period of ninety days as agreed to in paragraph VIII of the document referred to in section 12 of the Act of January 2, 1976 (Public Law 94-204).

(c) Visitor service defined

As used in this section, the term "visitor service" means any service made available for a fee or charge to persons who visit a conservation system unit, including such services as providing food, accommodations, transportation, tours, and guides excepting the guiding of sport hunting and fishing. Nothing in this Act

shall limit or affect the authority of the Federal Government or the State of Alaska to license and regulate transportation services. (Pub. L. 96-487, Title XIII, ss 1307, Dec. 2, 1980, 94 Stat. 2479.)

51 Ch. 16.3201. Administration of national preserves

A National Preserve in Alaska shall be administered and managed as a unit of the National Park System in the same manner as a national park except as otherwise provided in this Act and except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve under applicable State and Federal law and regulation. Consistent with the provisions of section 3126 of this title, within national preserves the Secretary may designate zones where and periods when no hunting, fishing, trapping, or entry may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment. Except in emergencies, any regulations prescribing such restrictions relating to hunting, fishing, or trapping shall be put into effect only after consultation with the appropriate State agency having responsibility over hunting, fishing, and trapping activities. (Pub. L. 96-487, Title XIII ss 1313, Dec. 2, 1980, 94 Stat. 2483.)

51 Ch. 16.32021 Taking of fish and wildlife

(a) Responsibility and authority of State of Alaska

Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands except as may be provided in subchapter II [author note this is the subsistence section] of this chapter, or to amend the Alaska constitution.

51 Ch.16.3204 Allowed uses

(a) Establishment and use of new facilities

On all public lands where the taking of fish and wildlife is permitted in accordance with the provisions of this Act or other applicable State and Federal law the Secretary shall permit, subject to reasonable regulation to insure compatibility, the continuance of existing uses, and the future establishment, and use, of temporary campsites, tent platforms, shelters, and other temporary facilities and equipment directly and necessarily related to such activities. Such facilities and equipment shall be constructed, used, and maintained in a manner consistent with the protection of the area in which they are located. All new facilities shall be constructed of materials which blend with, and are compatible with, the immediately surrounding ... (Pub. L. 96-487, Title XIII, ss 1316)

C) Permit Requirements on Federal Lands

1) United States Forest Service

Regulatory Authority: Forest Service Manual 2721.34 concerning special use permits and Forest Service Manual 2721.34 concerning outfitter and guide services.

The Forest Service requires concession and special use permits of anyone operating on Forest Lands for commercial purposes except that the permit may be waived by the U.S. F. S. for periodic incidental use. The Forest Service has a stated policy of not issuing permits if the same activity can be conducted on private land.

Guiding is defined as "Includes the provision of assistance such as supervision, protection, education, training, transportation, interpretation, and guiding services. It includes such personal services as leading, teaching, cooking, packing, or otherwise assisting recreationists in their pursuit of a natural resource based outdoor recreation experience."

Outfitting is defined as "Includes the provision of equipment, supplies, livestock, and materials. It includes such outfitting services as rental of boats, skis, horses, tents, and other equipment or gear."

Allocation of use is based upon the Forest Service planning process and upon the historical use of the area by the guide/outfitter. Amount of use approved is at the discretion of the authorized officer. Allocation amount authorized is reduced if the holder has consistently failed to use less than 70 percent of assigned amount during the previous 5 years. Permits are issued for up to five years.

Permittees are required to report amount of use, and fees, and if using animals to file a grazing report. They are required to pay estimated fees in advance of the season. Fees are based upon a market rate appraisal.

All guiding and outfitting base camps that are in place on U.S.F.S. lands are required to obtain a special use permit unless the permit is specifically waived at the managers discretion.

2) National Park Service (NPS)

Regulatory Authority: 39 Stat. 535, 16 U.S.C. 3; P. L. 89-249, 79-Stat. 969, 16 U.S.C.; P. L. 94-458, 47 Stat. 412, 40 U.S.C. 303 (b); 67 Stat. 495, 16 U.S.C.; P.L. 87-608 (76 Stat. 405, 40 U.S.C. 303 (c); P.L. 96-514, 94 Stat. 2962, 16 U.S.C. 20 b; 36 Code Federal Regulations, Section 5.3, 36 CFR Part 51; and Management Policies Manual Chapter VIII.

There are three types of permits authorized by the National Park Service. "Contracts" if the visitor service includes a large capital investment by the business. Contracts range from 1 to 30 years and a percentage of the gross receipts is paid to the government. "Permits" are issued with minimal concessioner investment and or the National Park Service

*After Owens Lake, NPS has been removed
guide points in Paled*

wishes to control the amount of use or operator numbers. For example, charter boats are given permits. Permits are issued for 5 years and permittees are charged either a flat fee or a percentage. Permits are awarded through a competitive bid process. The third is a commercial use license in which there are no limits. "The types of companies holding commercial use licenses are guiding services for fishing, backpacking, river running, and air taxi operators." The license is for 1-2 years and a processing fee is charged.

The NPS has a policy of not permitting what under state law would be guiding activity such as base camps in the National Park Preserves (see Kaiser letter in Appendix Two). The philosophy is that the preserves are for a wilderness experience and the hunter should have the skills to operate independently. Outfitters under state legislation can now apply to the NPS as "air taxi" operators for commercial use licenses.

3) Fish and Wildlife Service (F&WS)

Regulatory Authority: Special Use Permit Handbook, PL 96-487 (ANILCA Section 810).

The Fish and Wildlife Service requires permits of all commercial guiding activities (ranging from recreational photography to hunting and guiding trips) a \$100 administrative fee to apply for a special use permit. Also require a report of annual operations including number of clients, days, and area of operation, names of assistant guides, the Alaska transporter license, and \$300,000 liability insurance bond. Permits are not transferable or sub-leasable.

The F&WS specifically requires a special use permit for guiding and hunting activities and base camps (see list of requirements in Appendix Two). Temporary camps are allowed but are required to be "kept free of litter, debris, and humane waste, and maintained in a clean and sanitary manner." The type and use of these may be limited at the discretion of the manager. Tent frames are allowed at the managers discretion more permanent structures are not allowed. Basecamps are to be located on durable sites such as gravel bars or are to be rotated every 3 to 5 days if site is not durable. The camp is to be removed at the end of the season. Transporters must have a State of Alaska Transporter license and must report to the refuge manager before entering the refuge.

4) Bureau of Land Management

Regulatory Authority: 43 CFR 8372.1-1 and BLM Manual H-8372-1 Special Recreation Permits for Commercial Use.

"Permits are required for all commercial recreational use of the public lands and related waters including those whose base of operations is off public lands, but who rent equipment or livestock for use on public lands if they, their employees, or agents occupy or use public lands or related waters in connection with their rental program." Any profit making organization is

automatically considered commercial use. This permit would be required of anyone setting up a hunting or a guiding camp.

Permits are issued first come first serve until a desired capacity level is reached. When capacity is reached BLM attempts indirect allocation such as hardening sites or enhancing other opportunities. The method chosen for allocation depends upon the situation and is at the discretion of the manager. Methods chosen include (not all inclusive) lottery, historical use, competitive system, and common pools. Permits are transferable subject to prior approval by the BLM which reserves the right to change the conditions of the permit. Fees are 3% with a \$50 minimum payable in advance. The required insurance liability is the same as the U.S.F.S.

The procedure is to submit an application on BLM Form 8370-1 120 days to one year in advance of the season. A statement of financial capability, operating plan and associated maps, certificates of safety training, list and condition of equipment and livestock, layout and description of facilities, proposed advertising, customer rates, and an insurance policy or certificate of insurance is required in the permit. Permits from other agencies, private land owners approval of use, and all appropriate Federal, State, and local licenses need to be obtained. Permits are issued for up to five years and fees are paid in advance and also include insurance and bonding requirements.

Hunting base camps are included in these special use permit requirements.

5) U. S. Coast Guard

Regulatory Authority: 46 CFR 10.

While not a land management agency the U. S. Coast Guard requires licensing of all boats that carry passengers for hire. There are two classes of licensed boats; those carrying from one to six passengers are licensed as a "Motor Boat Operator" and those licensed for greater than 7 passengers "Masters and Mates". The larger carriers go through extensive inspections and requirements on the hull, motor, radio, and wiring. In addition all boats carrying passengers for hire are required to have lifesaving equipment, fire extinguisher, lights, life jackets, and venting if the gasoline motor is enclosed (see Appendix Two, Coast Guard for the complete list).

The State of Alaska is the only state in the Union that does not have a boater registration program. Because the State does not have a registration program it does not receive Federal money for a boater safety program. The Coast Guard does not enforce standards on lakes and rivers considered to be state territory.

B) Permit Requirements on State Lands

1) Division of Parks and Recreation

Regulatory Authority: 11 AAC 05.010; 11 AAC 12.245 and 250; 11 AAC 18.030 Park Use Permits for Commercial Activities; AS 41.21.

The Division of Parks and Recreation has a concessionaire type of approach to the permit operations similar to the National Park Service. To obtain a permit for operating a guided hunting service in a State Park the guide must;

- (1) have all appropriate Federal, State, and Borough licenses such as an Alaska State Guide License,
- (2) indemnify the state and its officers from liability,
- (3) mark all vehicles being used,
- (4) be present in vehicles used,
- (5) not fish when clients are present in the Kenai River Special Management Area,
- (6) be liable for natural resource damage,
- (7) report accidents,
- (8) have nationally recognized first aid certification,
- (9) have \$100,000/\$300,000 individual/incident insurance,
- (10) report clients served, and
- (11) comply with special conditions of permit.

The permittee pays a non-refundable \$50 application fee and an additional \$250 fee if the permit is granted.

Guiding is defined as the "provision of personal services or assistance to recreationists in their pursuit of a natural or cultural resource based recreation experience of any kind." Outfitting is defined as the "provision of equipment, supplies, or other materials for compensation in any form within a unit of the Alaska Park System."

Provisions for hunting camps are included under the above permit requirements..

2) Division of Land and Water

Regulatory Authority: A.S. 38.05.035; 11 AAC 96.010-.140.

The Division of Land and Water requires a permit if commercial activity is taking place upon State lands. As a general rule of thumb, if less than two weeks of activity is occurring they do not enforce the permit requirements. (This policy may be undergoing revisions) The permit is the same for all uses and requires a \$50 filing fee. The applicants must give their name, address, a map with the location of the activity indicated, and a description of the intended activity.

Hunting camps are provided for under the above permitting process.

3) Department of Environmental Conservation (DEC)

Regulatory Authority: 18 AAC 60.

Depending upon the size of the operation, specifically the amount of solid waste generated, the Department's Regional Supervisors and staff have

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the discretion to require a solid waste permit for hunting or outfitting camps.

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Appendix One

Example of Development, Evaluation and Criteria of Rationing Systems

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Appendix Two

Agency Permit Forms, Regulations, and Other Requirements

U.S. Forest Service

U. S. Dept. Interior National Park Service

U. S. Fish and Wildlife Service

U.S. Dept. Interior Bureau of Land Management

U. S. Coast Guard

State of Alaska Division of Parks and Recreation

State of Alaska Division of Land and Water



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

September 30, 1988

MEMORANDUM

TO: Representative Ben Grussendorf
FROM: David Teal, Director *Teal*
RE: Task Force on Guiding and Game
Research Request 89.006

At the request of Randall Burns, Director of Occupational Licensing, you directed the House Research Agency to monitor the proceedings of the Interim Task Force on Guiding and Game. The task force's charge is to review the operations of the guide board and study problems and issues concerning the commercial taking of big game in Alaska. The purpose of our assignment is to prepare the agency for anticipated discussion of guide/game-related issues during the forthcoming legislative session and to provide limited research assistance to the task force.

At its July 18, 1988 meeting, the task force asked me to gather information regarding other states' approaches to regulation of 1) guides, outfitters and transporters and 2) resident and nonresident hunters. In addition, I was asked to explore general public policy issues related to the responsibilities of the task force. This memorandum responds to those requests and is intended to be a catalyst for discussion at the October 24 and 25 meeting of the task force.

Summary

The degree of regulation of guiding ranges from none (in several states) to Alaska's creation of exclusive guiding rights. Several large states license guides for specific areas, and some limit the number of guides that have access to certain areas, but the Alaska system appears most limiting to effective practice of the profession. Guide boards in other states generally focus on licensing as a means to promote public welfare and safety; Alaska's licensing system appears to lean heavily toward economic protection of a small group of guides.

Alaska's exclusive guiding areas appear to be the root of many of the commercial user conflicts the task force is to address. Other states minimize conflicts between guides, outfitters and transporters by specifying that a guide license is required by those who provide any assistance other than renting equipment out of the field. Other licensing systems reduce conflicts over the roles of various players, but most do little to directly reduce pressure on the game resources.

Discussion of Alaska guiding/game issues generally focuses on user groups rather than on all citizens of Alaska. The Alaska Constitution states that resources of the state are to be used for the maximum benefit of citizens. Game--or the right to hunt it commercially--clearly has value in excess of that now captured by the state. One could argue that the state should capture the fair market value of commercial hunting rights, particularly when those rights are exclusive and involve nonresident hunters.

The merits of subsistence/sport/commercial uses of common property resources could be debated endlessly; there is no action that the task force can take that will satisfy all users fully. One thing is clear--without specification of objectives, action is unlikely to meet those objectives. If we accept the premise that the economic objective of resource conservation policy is to maximize the flow of net social benefits to the people of Alaska, then some actions become more obvious choices. Those actions include 1) requiring nonresident hunters of any big game or trophy species to be accompanied by a licensed guide and 2) devising a system that allows the state to capture some of the fair market value of hunting rights.

Appropriate Roles of Participants in Guiding/Hunting Activities

In recognition of conflicts among commercial user groups in Alaska, the Letter of Intent which accompanied SB 191 (which established the task force) directed the task force to examine other states' laws in order to aid Alaska in determining the appropriate roles of guides, outfitters and transporters. My review of statutes indicates that states typically require all service providers--guides, outfitters, transporters and any others offering assistance to hunters in the field--to obtain a guide license. I found no obvious conflicts in the roles of providers; individuals are generally free to choose what type of services they wish to

provide.¹ However, simply licensing all forms of hunting service providers will not resolve the conflicts among Alaska user groups. I believe that a discussion of the role of the state will help task force members put the roles of service providers in context. The following discussion is an amalgamation of several state and provincial laws as well as literature on the theory of allocation of scarce resources.

Game resources are the common property of the people of the state, to be managed by the state to maximize the flow of net social benefits to the people of the state. The result of this charge is that

- 1) States manage game by the principle of maximum sustainable yield. Such conservation of game resources ensures that benefits will continue to accrue to future citizens.
- 2) State residents are often given preference in the allocation of game resources. Quotas and lower cost licenses are two common methods to ensure resident preference.
- 3) States sometimes require nonresident hunters of big game to be accompanied by a guide. By increasing the cost of hunting for nonresidents, such regulations can have two desirable consequences; they increase the amount of money flowing from other states into the local economy and they reduce pressure on game by reducing the number of nonresident hunters.
- 4) States may make a conscious effort to capture the value of hunting rights and/or to distribute the benefits that accrue to service providers. As a common property resource, game belongs to all citizens, not just to various user groups. The federal and provincial governments recognize that commercial users of common property resources are essentially selling resources they do not own, and often lease access rights to--and/or tax the gross receipts of--commercial users of resources. Most states do not make such obvious attempts to capture the value of commercial access to game resources; they assume that income taxation and/or the "trickle down" theory will adequately redistribute the value of common property game resources to all citizens.

¹It is only fair to say that a reader of Alaska statutes would probably see no conflict in the roles of guides, outfitters and transporters in this state--each has a function that, based on public purchase of services, is apparently appropriate. Conflict also depends on perspective; when I asked about problems in Maine, I was told that the system worked well and that the only thing that might be seen as a problem is public complaints about the quality of guides. The state is considering more stringent qualifications for hunting guides, of which there are about 7,000, all licensed for statewide service. When I asked if they didn't get in each other's way, I was told "sure, but that's their problem."

- 5) States often regulate guiding activities by requiring that guides be licensed. The primary reason for licensing guides is to promote public safety and welfare by ensuring that guides are qualified, bonded and/or insured. Licensing is used by some states to limit commercial access to specific high pressure hunting areas.

In summary, the role of the state is to regulate hunting and guiding in order to protect game resources and promote public welfare and safety. Most states that license guides require anyone assisting hunters for compensation to obtain a guiding license. Guides are often required to 1) demonstrate experience, good character and knowledge of first aid, firearms and other skills; 2) possess or control equipment adequate to accomplish the purpose of their class of license; 3) possess or control a permanent base of operations in each area in which they are licensed; 4) obtain permission and/or permits required to hunt on lands within each area in which they are licensed; and 5) show proof of a surety or performance bond (from \$1,000 to \$5,000) and liability insurance (generally \$300,000). Guiding licenses may be revoked for violating hunting laws or regulations, failing to perform advertised services, or performing any immoral, unethical or dishonorable act toward a client. These licensing requirements are intended to ensure that commercial users of game resources are qualified to provide satisfactory services to the paying public.

In their regulation of hunting service providers, most states follow a principle of rationing theory which states that regulation more restrictive than required to keep impacts within acceptable limits is inappropriate. The result is that 1) licensing requirements are no more restrictive than required to protect the public and 2) guiding activities are no more restrictive than required to protect the game resources.²

Typically, guides, outfitters and transporters can be licensed for multiple areas and share those areas with numerous other commercial users. Areas are closed to additional license applicants only when hunting pressure demands it. In Alaska, guides are granted exclusive guiding areas. This practice severely restricts effective entry to the guiding profession and leaves many qualified potential guides with no area in which to guide hunts. This situation gives rise to the current guide/outfitter conflict in which outfitters infringe upon exclusive guiding rights by offering "catered hunts."

²This statement requires some qualification. A few states noted that the public has expressed dissatisfaction with guiding services. Those states consider current guiding license requirements to be too lenient and intend or desire to raise guiding quality by raising licensing standards.

Based on a comparison of Alaska's regulatory system with other states' and with theoretical ideals, Alaska's regulation of hunting service providers is overly restrictive and, therefore, inappropriate. Note, however, that it is the role of the state, not the roles of the service providers, that appears to be inappropriate. Also note that it is impossible to determine the appropriateness of any roles without clear specification of objectives.

Resident vs. Nonresident Hunters

Residents of most states pay lower fees for hunting rights than do nonresidents. Residents may gain other advantages through lotteries, quotas or other systems that limit nonresident hunting relative to resident hunting. In addition, several states that regulate guiding specify that nonresidents must be guided on some or all big game hunts. The range of activities requiring a guide is extremely broad. Maine requires nonresidents to be guided only on hunts for black bear, and only if dogs are used. Wyoming requires nonresidents to employ a guide for any big game hunt.

Determining the appropriateness of nonresident restrictions cannot be done without specifying objectives. Appropriate policy will depend upon whether the state wishes to maximize the flow of cash from other states into Alaska, provide equal access to game resources, reduce pressure on game resources, or strike a balance between these and other potential objectives.

Other Issues

Alaska's guiding system has several incongruities:

- 1) Alaska requires nonresident hunters to use a guide for some, but not all, big game species;
- 2) Alaska does not license all commercial hunting service providers, yet has relatively stringent requirements for those who are required to obtain a license;
- 3) Alaska has a relatively large variety and number of big game, yet severely restricts the opportunity to practice the profession of guiding; and
- 4) Alaska is constitutionally charged with managing game resources for the maximum benefit of Alaskans, yet does not attempt to capture the fair market value of hunting rights.

Several of the task force members would probably state that the solution to these and other issues which the task force must address is simple, but is politically unacceptable. Ironically, the simple solutions envisioned might differ radically. This should be an indication that the solution is not simple. Focusing on issues in isolation will be unproductive; consensus on policy will be reached only by focusing on a system of opportunities after clearly specifying objectives. In this regard, I can be of little assistance to the task force; I can tell them what is, but not what should be. If the task force chooses to discuss the issues raised in this memorandum, I am prepared to add to those discussions by citing specific state laws and/or papers on the allocation of resources. I am also prepared to explore the advantages and disadvantages of various policy actions and to perform other research which the task force might require.

Alaska State Legislature

Senate Advisory Council



P.O. Box V
State Capitol
Juneau, Alaska 99811
Phone: (907) 465-3114

MEMORANDUM

To: Senator Bettye Fahrenkamp
Alaska Senate

From: Richard Rainey *RR*
Senior Analyst

Date: October 20, 1988

Subject: Big Game Guiding Regulations
Research Request 88-003313

You have requested that the Senate Advisory Council provide you with summary information concerning the statutory and regulatory efforts of other states to address the problems of conserving and allocating big game resources. You sent to this office a collection of materials gathered by the Council of State Governments (CSG) to serve as the basis of that analysis. I have surveyed that information, which consisted of statutes, regulations, and informational pamphlets, very briefly in order to meet the deadline of October 24 noted in your memo, restricting my focus to law and regulation applicable to guides and outfitters, per your instructions.

I. Basic Guiding and Outfitting Regulations

Twelve states were represented in the CSG packet: California, Colorado, Idaho, Louisiana, Maine, Minnesota, Montana, North Carolina, Tennessee, Oregon, West Virginia, and Wyoming. Of these twelve, Louisiana and Tennessee do not require the licensing of guides and/or outfitters. Minnesota and North Carolina apparently do license guides (Minnesota only for bear hunts), but the materials provided did not directly address any particulars in that regard. In the remaining eight states, the bulk of regulations were most directly concerned with the competence of licensees and the safety and protection of the consumers of their services.

Most or all states have basic requirements for guide and/or outfitter licensing in the following areas:

1. Minimum age of applicants (18 years in all states except California, 21 years).

2. Certification of first aid training (California requires training in rescue operations and Maine requires cardio-pulmonary resuscitation training or emergency medical technician certification).
3. Applicants must pass written and/or oral examinations.
4. Trip records must be maintained and be available to state regulators.
5. Proof of knowledge (beyond that required for examinations) concerning game species and populations, care of game kills, hunting techniques, and specific geographic areas is commonly required.
6. Five states require that licensed persons obtain liability insurance, most with limits of \$300,000 for bodily injury and \$10,000 or \$25,000 for property damage. Six states demand surety bonds in varying amounts (\$1,000, \$5,000, or \$10,000).
7. Several states require that applicants pass physical examinations.

II. Definitions of Outfitter and Guide

The definitions of the terms "guide" and "outfitter" used in other states for licensing purposes are often different than Alaska's definitions. California and Maine have only guide classifications, from which source all services, facilities, equipment, and transportation are provided to clients. In Oregon a combined nomenclature, "outfitter and guide", is used, which person is empowered to provide the full range of services and materials necessary to mount a hunt. West Virginian outfitters provide all services (outfitters may call themselves guides if so desired). In the remaining states (Colorado, Idaho, Montana, and Wyoming), outfitters are licensed to provide the facilities, guiding services and other assistance, transportation, and equipment needed to prosecute a hunt. In each of these states, guides must be licensed but can operate only as employees of outfitters and may only provide their personal services as a guide, i.e. leading clients to and from hunting areas, locating game, caring for kills, etc.

III. Conservation and Allocation Measures

In none of the states surveyed, were game conservation measures directly incorporated into statutes or regulations governing guiding or outfitting activities. Conservation management, as in Alaska, is most commonly expressed in bag limits, season and area closures, and restrictions on the inputs of hunting ventures (such as the equipment that may be employed or the means of transportation allowed). Apparently, no special measures applying only to

hunting professionals are in effect in the eight states for which I was supplied information (except perhaps in West Virginia, which does not allow outfitters to engage in bear hunts). Professionals are, of course, required to have specific and comprehensive knowledge of local wildlife law and regulations and conservation practices in order to become licensed. Restrictions on individual hunters and overall species and area limitations would apply, in any case, on a guided hunt just as on an unguided hunt. Additionally, usually permission must be obtained from public or private land managers to hunt on lands under their jurisdiction.

Several states do employ simple (at least on the surface) allocation mechanisms, which are individually described below:

1. Idaho - Outfitters must apply for licenses for specifically described areas and their activities must be confined to these areas. Areas are not standardized units prescribed by the state, but are individually described by license applicants. No exclusive use is granted. The Idaho Outfitter and Guide Board, which regulates the outfitting and guiding professions, may, at its discretion, adjust the boundaries requested. Such adjustments are permissible to eliminate or ameliorate conflict between users, conservation concerns, and hazards to users. All disputes over areas are settled by the board.
2. Oregon - Outfitters and guides are simply required to describe on license applications the geographic area which they intend to use. No further provisions for regulation are apparent.
3. Montana - Outfitters must file an operations plan and may operate only in specific, non-exclusive areas for which they are licensed. Area transfers are permitted and new areas may be entered provided there will be no conflict with existing uses. The Montana Department of Fish, Wildlife, and Parks has authority to determine transfer and conflict issues.
4. Wyoming - Outfitters may operate only in areas approved by application. Areas are not exclusive to a single outfitter. Wyoming Game and Fish Commission district supervisors have the authority to make such approvals and their decisions may be appealed to the commission. The commission may, at its discretion, regulate professional outfitting services in specific areas. The agency can designate district areas and limit the number of outfitters licensed to operate in an area and restrict the species of game that can be taken. Wyoming also requires that all non-resident hunters be accompanied by a licensed professional guide or a resident guide (one guide for every two non-resident hunters). Any resident licensed to hunt big or trophy game may be licensed as a resident guide without additional fees or requirements. Resident guides may not accept any compensation for services.

Senator Fahrenkamp
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Page 4

I cannot be certain that this synopsis of conservation and allocation measures is complete because the CSG package may have been incomplete. In the cases of four states which do license commercial hunting ventures, statutes only were provided. It is possible that regulations from those states may have additional provisions in these spheres.

In summary, conservation issues can only be addressed by a much broader survey of statutes, regulations, and agency programs, which time does not allow. Allocation measures can be crudely understood by outlining statutes and regulations, but such an approach does not provide any insight into the practical application of such guidelines, nor can their success be even guessed at absent additional information. In order to gauge these elements and assess the relevance of allocation regimes elsewhere for Alaska, it would be necessary, at the very least, to have an understanding of the policy goals of other states and knowledge of the differences between game species and populations, harvest levels and pressures, and user conflicts in each of these states and in Alaska. No other state, for instance, has to construct allocation policy around the subsistence priority use of fish and wildlife resources mandated by both state and federal law in Alaska.

OCTOBER 21, 1988

THE FOLLOWING IS A LIST OF SOURCE MATERIALS WHICH WERE FURNISHED BY COUNCIL OF STATE GOVERNMENTS (CSG), FORWARDED TO THE SENATE ADVISORY COUNCIL TO SUMMARIZE FOR THE GUIDE TASK FORCE MEMBERS:

CALIFORNIA

EXCERPTS FROM THE CALIFORNIA FISH AND GAME CODE CHAPTER 5, HUNTING AND FISHING GUIDES; TITLE 14, PART 745, GUIDE LICENSES; PART 746 PROCEDURES FOR LICENSE OR PERMIT REVOCATIONS OR SUSPENSIONS.

COLORADO

1988 - HB 1139- CONCERNING THE REGULATION OF OUTFITTING; PERMANENT RULES AND REGULATIONS OF THE OFFICE OF OUTFITTERS REGISTRATION, ADOPTED JULY 1988, INCLUDES DEFINITIONS, OUTFITTER REGISTRATION, OPERATIONS AND RESPONSIBILITIES, COMPLAINTS, DISCIPLINARY ACTIONS AND PENALTIES, OTHER REMEDIES AND ADVISORY COMMITTEE.

IDAHO

RULES AND REGULATIONS OF THE IDAHO FISH AND GAME COMMISSION GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO;

CONTROLLED HUNT REGULATIONS FOR MOOSE, BIGHORN SHEEP, AND MOUNTAIN GOAT;

1988 IDAHO BIG GAME REGULATIONS;

TITLE 36 - FISH AND GAME

-OUTFITTER AND GUIDES ACT

-OUTFITTERS AND GUIDES BOARD RULES AND REGULATIONS

OUTFITTER LICENSE APPLICATION AND OTHER FORMS

GUIDE LICENSE APPLICATION AND OTHER FORMS.

LOUISIANA

1988-89 HUNTING, FISHING AND MOTORBOAT REGULATIONS.

MAINE

MAINE 1988 - 1989 HUNTING AND TRAPPING REGULATIONS SUMMARY; INLAND FISHERIES AND WILDLIFE RULES (INCLUDES HUNTING AND TRAPPING, WILDLIFE MANAGEMENT AREAS, LICENSED GUIDES--AS WELL AS FISHERIES MANAGEMENT, SCIENTIFIC COLLECTION, CAPTIVITY OF WILD ANIMALS, ETC); INLAND FISHERIES AND WILDLIFE LAWS (12MRSA PART 10, CH 701-721, 1979 CH 420, SEC 1 AND AS AMENDED) EFFECTIVE AUGUST 1988.

MINNESOTA

MINNESOTA BIG GAME STATUTES (CH 97B.431) BIG GAME - BEAR GUIDING.

SOURCE MATERIALS LIST
OCTOBER 21, 1988
PAGE TWO

MONTANA

STATE OF MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS 1987:
A COMPILATION OF STATUTES RELATION TO FISH, WILDLIFE, PARKS,
OUTDOOR RECREATION, AND CERTAIN OTHER NATURAL RESOURCES OF THE
STATE OF MONTANA: INCLUDES TITLE 87- FISH AND WILDLIFE;
CHAPTER 4- COMMERCIAL ACTIVITIES;
BOARD OF OUTFITTERS, DEPARTMENT OF COMMERCE ADMINISTRATIVE
RULES;
CHAPTERS 47 - OUTFITTERS AND GUIDES.

NORTH CAROLINA

1987 STATUTES, CONSERVATION AND DEVELOPMENT CHAPTER 113,
GENERAL PROVISIONS, HUNTING AND FISHING GUIDE LICENSE,
SUSPENSION AND REVOCATION OF LICENSES AND PERMITS.

OREGON

1987-88 OREGON WILDLIFE AND COMMERCIAL FISHING CODES.

TENNESSEE

1988/89 TENNESSEE HUNTING AND TRAPPING GUIDE (SUMMARY OF
HUNTING AND TRAPPING REGULATIONS.

WEST VIRGINIA

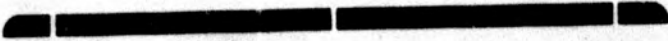
1988 HUNTING AND TRAPPING REGULATIONS
TITLE 47, LEGISLATIVE RULES, DEPARTMENT OF NATURAL RESOURCES,
SERIES 50-HUNTING OR FISHING OUTFITTERS AND GUIDES
20-2-23- OUTFITTERS AND GUIDES--GENERALLY; DEFINITIONS
20-2-24- OUTFITTERS AND GUIDES - QUALIFICATIONS
20-2-26 SAME-LICENSE FEE, BOND, REVOCATION OF LICENSE,
PENALTIES;
APPLICATION FOR OUTFITTER AND GUIDE LICENSE;
COMMERCIAL WHITEWATER ADVISORY BOARD-COMMERCIAL WHITEWATER
OUTFITTERS;
SENATE BILL NUMBER 215---AMENDS ARTICLE 2. WILDLIFE RESOURCES,
CH. 20-2-3. OUTFITTERS AND GUIDES-GENERALLY DEFINITIONS.

WYOMING

1988 WYOMING DEER, ANTELOPE, ELK, AND TROPHY GAME REGULATIONS
(GRIZZLY BEAR, BLACK BEAR, MOUNTAIN LION);
WYOMING STATUTES: GENERAL PROVISIONS; GUIDES AND OUTFITTERS
(INCLUDES FEES); GAME AND FISH COMMISSION REGULATION GOVERNING
OUTFITTERS.

British Columbia Packet:

1. POLICY ON ALLOCATION
2. PROCEDURE FOR GUIDE OUTFITTER LICENCE
3. POLICY ON GUIDING ACTIVITIES
4. GUIDE OUTFITTER'S CERTIFICATE
5. GUIDE OUTFITTER'S LICENCE
6. ASSISTANT GUIDE LICENCE
7. REPORT AND DECLARATION OF GUIDE OUTFITTER
8. NON-RESIDENTS' HUNTING LICENCE APPLICATION
9. 1988/89 HUNTING AND TRAPPING REGULATION SYNOPSIS
10. 1988/89 LIMITED ENTRY HUNTING REGULATION SYNOPSIS
11. 1988/89 GUIDE OUTFITTERS IN BRITISH COLUMBIA

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APPENDIX J



Province of
British Columbia
Ministry of
Environment

POLICY MANUAL

VOLUME	SECTION	SUBSECTION	PAGE
4	7	01.01	1 of 2
SUBJECT			
Allowable Harvest			

This policy replaces:

None

Staff, organizations directly affected:

All Wildlife Management Staff
Regional Directors
Conservation Officers
Hunters
Guide Outfitters

Policy statement:

IT IS THE POLICY OF THE MINISTRY

to set allowable harvest limits on animals to be taken from each game population when such limits are needed to achieve an optimum sustained yield and provincial and/or regional wildlife management objectives for hunting and non-hunting use.

Definition:

"Allowable harvest" - means the optimum number of animals that can be removed by man from a herd or population which will be replenished through the populations natural production to meet management objectives.

"Optimum Sustained Yield" - means the maintenance of populations of game capable of producing a desired number of animals for human harvest and other mortality over extended periods of time.

Procedure manual cross-reference:

Volume 4 Section 7 subsection 01.01

Other cross-references:

Ministry Policy Manual Volume 4 Section 7
subsections 01.03 Allocation of hunting privileges
02.01 Capture, possession and use of Raptorial
Birds
03.01 Management of furbearers

PREPARED BY	AUTHORIZATION
NAME D.R. Halladay	NAME B.E. Marr
POSITION Dep. Director	POSITION Deputy Minister
Wildlife	SIGNATURE
	DATE EFFECTIVE Sept. 30, 1985
	REVISION NO.



Province of
British Columbia
Ministry of
Environment

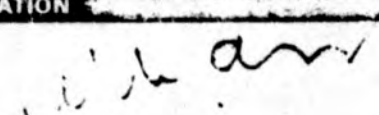
POLICY MANUAL

VOLUME	SECTION	SUBSECTION	PAGE
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SUBJECT
Allowable Harvest

Reasons for Policy:

1. To state clearly that the position of the Ministry is to recommend limits on the harvest of game animals only when provincial and/or regional objectives or the optimum sustained yield of those animals are not or will not be met.
2. To state clearly that the position of the Ministry is to optimize hunting use of the wildlife resource as an important aspect of integrated management objectives for wildlife.

PREPARED BY	AUTHORIZATION
NAME D.R. Halladay	NAME B.E. Marr
POSITION Dep. Director	POSITION Deputy Minister
Wildlife	SIGNATURE 
	DATE EFFECTIVE Sept. 30, 1985
	REVISION N°



Province of
British Columbia
Ministry of
Environment

POLICY MANUAL

VOLUME	SECTION	SUBSECTION	PAGE
4	7	01.02	1 of 2
SUBJECT			
Open Seasons			

This policy replaces:

None

Staff, organizations directly affected:

All Wildlife Management Staff
Regional Directors
Conservation Officers
Hunters
Guide Outfitters

Policy Statement:

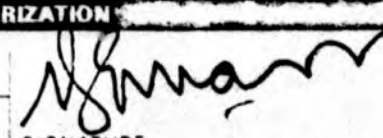
IT IS THE POLICY OF THE MINISTRY

- 1) to recommend open seasons for a game population where it is consistent with management objectives;
- 2) to minimize the regulation of hunter opportunity; and
- 3) to set the allowable harvest for game populations every three (3) years where practicable.

Definitions:

"Open season" - means a specified period of time under the Wildlife Act during which a species of wildlife may be lawfully hunted or taken. It does not include trapping.

"Allowable harvest" - means the optimum number of animals that can be removed by man from a herd or population which will be replenished through the populations natural production to meet management objectives.

PREPARED BY	AUTHORIZATION
NAME D.R. Halladay	NAME B.E. Marr
POSITION Dep. Director	POSITION Deputy Minister
Wildlife	SIGNATURE 
	DATE EFFECTIVE Sept. 30, 1985
	REVISION NO.