

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

1693 SCOMM 67: GUIDING AND GAME TASK FORCE, 1989-1990

1261

J. DECLARATORY ORDERS

1. Any person may petition the Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Board.
2. The Board will determine, in its discretion and without notice to petitioner, whether to rule upon any such a petition. The Board shall promptly notify the petitioner of its action and state the reasons for such action.
3. In determining whether to rule upon a petition filed pursuant to this rule, the Board will consider the following matters, among others:
 - a) Whether a ruling on the petition will terminate a controversy or remove uncertainties.
 - b) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more of the petitioners.
 - c) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court but not involving any petitioner.
 - d) Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
 - e) Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colorado R. Civ. P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.
4. Any petition filed pursuant to this rule shall set forth the following:
 - a) The name and address of the petitioner and whether the petitioner is licensed pursuant to C.R.S. 1973, Section 12-55.5-101.
 - b) The statute, rule or order to which the petition relates.

- c) A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.
5. If the Board determines that it will rule on the petition, the following procedure shall apply:
- a) The Board may rule upon the petition based solely upon the facts presented in the petition. In such a case:
 - (1) Any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.
 - (2) The Board may order the petitioner to file a written brief, memorandum or statement of position.
 - (3) The Board may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
 - (4) The Board may dispose of the petition on the sole basis of the matters set forth in the petition.
 - (5) The Board may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.
 - (6) The Board may take administrative notice of facts pursuant to the Administrative Procedure Act (C.R.S. 1973, 24-4-105(8)) and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.
 - (7) If the Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.
 - b) The Board may, in its discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving

all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Board to consider.

6. The parties to any proceeding pursuant to this rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as required by Section 4 of this Rule J. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Board.
7. Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to C.R.S. 1973, 24-4-106.

K. DENIAL, SUSPENSION OR REVOCATION OF LICENSE

1. Any person who violates any provision of these Rules and Regulations or Section 12-55.5-110 (1)(a-g), C.R.S. (1984 Supp.), shall be subject to denial, suspension or revocation of his outfitters license pursuant to Sections 24-4-104 and 24-4-105, C.R.S.(1978).
2. In addition to those grounds for discipline set forth in Section 12-55.5-110 (1), C.R.S.(1984), the Board shall also consider the following as grounds for denial, suspension or revocation of license subject to the provisions of Section 24-4-104 and 24-4-105, C.R.S.:
 - a) An outfitter who is unable to practice outfitting with reasonable skill and safety to the client due to physical or mental disability which may endanger the health or safety of the public.
 - b) An outfitter who submits or causes the submission of false information to the Board.
 - c) An outfitter who has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact.
 - d) An outfitter who intentionally fails to execute a written agreement with any client, or fails to perform obligations promised clients with such frequency as to indicate a general business practice of contractual breach.

- e) An outfitter who fails to provide a written contract within thirty (30) days within receipt and acceptance of deposit from the client, or return deposit to those not accepted.
- f) An outfitter who fails to disclose in the written contract or letter of agreement any material condition of the agreement.

THE STATEMENT OF BASIS AND PURPOSE ADOPTED ON JUNE 17, JULY 22, AND AUGUST 19, 1987, CAN BE FOUND IN THE MINUTES OF THE BOARD ON THE RESPECTIVE DATES. THEY ARE ALSO PUBLISHED IN THE CODE OF COLORADO REGULATIONS

A PROCESS FOR ALLOCATING PUBLIC RECREATION RESOURCES

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There is no question that allocation of recreation opportunities on the West's major whitewater rivers continues to be an overshadowing public policy issue. For nearly a decade, since the first use limit policies were implemented on the Green and Colorado River Systems, there has been an unbroken confrontation involving river managers, outfitters, and the user public. Research as well as legal action and Congressional interest has clarified a few issues but generally has not provided managers with clear, definitive solutions. The authority of agencies to allocate use in some settings has been largely resolved by judicial action and appropriate legal research. Yet, how managers go about allocating scarce recreation opportunities in face of ever increasing demand still needs direction and a framework for solution (Stankey 1977).

The development of national policy for allocating recreation use can provide an overall framework for management of individual river segments. It can help identify the boundaries of what is acceptable and unacceptable in terms of technique and approach. It can establish uniformity in procedure. But, national direction must be cognizant of the unique resource setting and social-political environment of each river as well as the historical development of use patterns and trends. Such a policy would provide the flexibility to tailor use allocation to the social-environmental needs of specific rivers within the larger regional and national contexts of systems of

RECREATION USE ALLOCATION

**PROCEEDINGS OF THE
NATIONAL CONFERENCE ON
ALLOCATION OF RECREATION OPPORTUNITIES
ON PUBLIC LAND BETWEEN THE
OUTFITTED AND NONOUTFITTED PUBLICS**

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A Process for Allocating Public Recreation Resources

THE ALLOCATION PROCESS

Allocating recreational use of public resources involves a number of sequential, interdependent decisions (Utter and McCool 1978) and requires the integration of several disciplines (Utter, McCool, and Gleason 1980). These decisions range from major policy statements on river carrying capacity to those involving the form of applications for use permits. The structure of these public resource allocation policies is framed by goals established by either decision-makers, concerned public, or both. However, there is considerable latitude within these goals as to what approaches and techniques will be effective. Other criteria are then brought to bear when evaluating specific techniques.

Figure 1 briefly summarizes the allocation process as we have defined it. The Figure will be used as a basis for much of the remaining discussion.

Establishment of a Use Limit Policy

River recreation use allocation usually occurs following a managerial decision that use levels and patterns are becoming uncontrollable. Impacts to the resource, visitor dissatisfaction, or intergroup conflict may have reached such a level or are projected to that a limit on recreational use is perceived as necessary. Such use limit policies come in many forms. They may limit use by season, month, week or day. There may be limits on the length of stay, the number of people in a group, the number of outfitters permitted to operate, or where users may camp. Use limit policies are generally measured in one of three ways: groups, persons, or person-days. (How use limit policies are measured will influence manager, visitor, and outfitter strategies for dealing with the allotment and rationing decisions to come later in the allocation process.)

The necessity of use limit policies has been widely accepted by most, if not all, river users. Studies of this

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recreational experiences (Nash 1977), environmental protection goals, and river management legislation.

The purpose of this paper is to review issues associated with river recreation use allocation as exemplified in a recent examination of the Middle Fork Salmon River in central Idaho. The study was designed to critically review use allocation policy with the idea of identifying consequences of alternative allocation policies to different groups of people. The overall purpose of the study was to develop tools and information useful for resolution of the allocation conflict. Out of this study we have developed a process for allocation decision making that will serve as a framework for discussion of these results.

The study effort focused on two principal directions: (1) legal research and (2) survey research. The legal research included examination of various administrative policy, case law and constitutional principles involved in the allocation issue. Often, these principles are ones which managers find most befuddling. Utter (1979) has provided a review of legal action and questions associated with use allocation. This report addresses the survey research component of the study.

The survey research was directed toward (1) identifying potential use allocation techniques and evaluative criteria and (2) responses of river users to these allocation techniques. In early 1978, about 25 river managers, outfitter private users and scientists participated in a workshop addressing use allocation issues. Following the workshop each participant ranked techniques and criteria identified during the workshop. Allocation techniques which passed this test were then presented to Middle Fork users.

Our study of Middle Fork users involved sampling 1,174 river users in 1978 plus 277 individuals rejected during the 1978 lottery for nonoutfitted floating permits. Each individual sampled was sent a mail return questionnaire. A total of 1,166 questionnaires were returned for a response rate of over 80 percent.

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question report considerable user agreement that under certain conditions use limits are acceptable (Schreyer and Nielson 1978; Schreyer et al. 1976). Additionally, much of the litigation and legal research surrounding the allocation controversy has formally recognized not only the necessity of limits but also the legal authority of the agency to impose such limits (Grimm and Wyman 1974; Idaho Wilderness Schools, Inc. *v.* Rex E. Lanham 1976).

The Allocation Decision

Following a decision to limit use of a recreational resource, and in the presence of more people wanting to visit than opportunities available, the manager, automatically, makes a decision to allocate use. Importantly, demand (in noneconomic sense) does not have to be above the seasonal use limit for this decision to occur. The allocation process is triggered if demand is above the limit allowed for any part of the season--such as a particular month.

Should Different Categories of Users Be Recognized?

Historically, the most controversial decision in river recreation management in the West has involved the recognition of different sectors or categories of users. The legal authority of managers to recognize different categories of recreationists based on reasonable and distinctive characteristics has been clarified and settled for some river segments (Eiseman et al. *v.* Andrus et al. 1977; Utter 1979; Wilderness Public Rights Fund *v.* Kleppe et al. 1976). However, the social conflict concerning this decision remains intense and controversial. Major components of this conflict include the amount of recreation use allotted to outfitted and nonoutfitted sectors (the two categories of users most commonly recognized by river managers), the alleged priority outfitted users have over nonoutfitted users;

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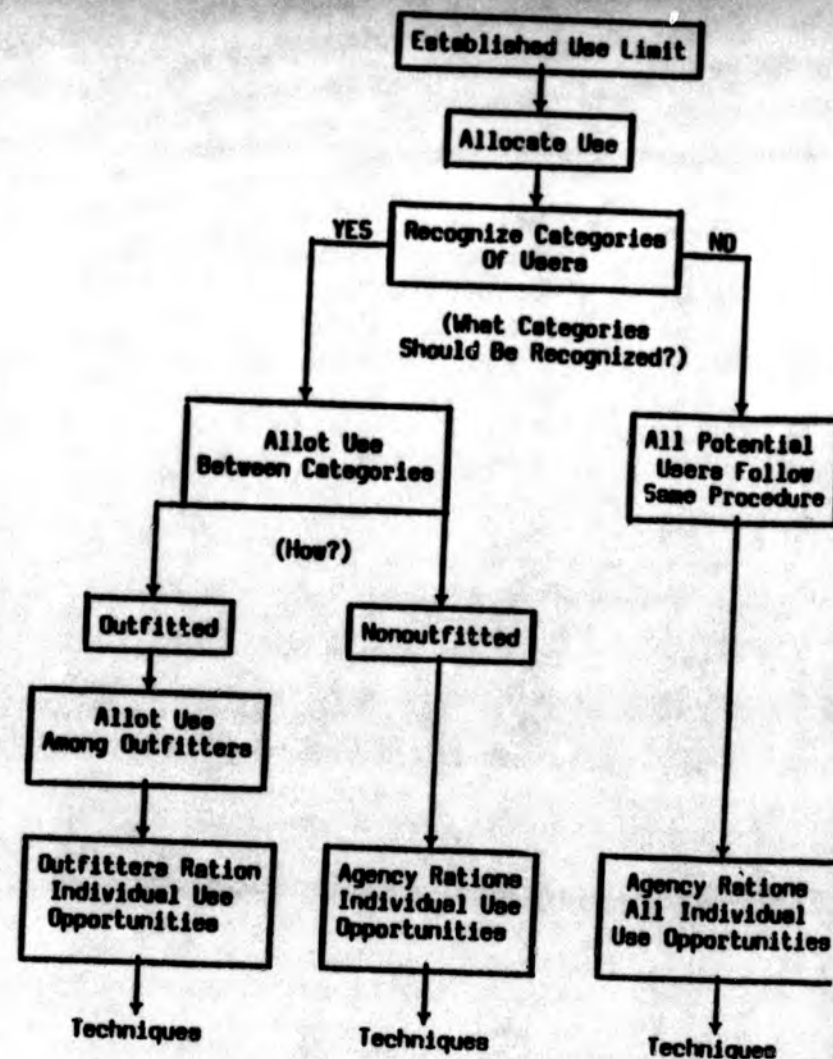


Figure 1. Framework For Use Allocation Decisions

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and perceived inequality in river recreation use opportunity between the two sectors. Incidentally, the placement of educational, minority, disadvantaged, and therapeutic groups into these categories continues to be a ubiquitous management dilemma.

Policy must be articulated on the recognition of sectors before a decision can be reached on the quantity of use allotted to each sector. Managers can either recognize that separate groups exist (and then make allotment and rationing decisions further down the line) or not recognize different categories of users in the allotment process.

Rationing Without Recognition of User Groups

If there is to be no differentiation among groups of users (i.e., no differentiation between outfitted and nonoutfitted sectors) then each potential user is "treated the same" and follows the same process in securing a permit. The techniques used may involve such approaches as advance reservation or first-come, first-served, but one frequently advocated technique is the general lottery (Shelby and Danley 1980). In the lottery, individuals or groups desiring to float a river apply for a permit. Successful applicants would be notified that a launch date had been reserved. Applicants would then decide whether to float on their own or with an outfitter, a list of licensed outfitters would be secured from the managing agency--a process similar to lottery systems for nonresident hunting in several western states.

The primary advantage of this technique is that both outfitted and nonoutfitted groups would go through the same process in securing access to the river. Additionally, managers would not have to decide what quantity of recreational use each sector would receive. There would be disadvantages also. The system would probably be very traumatic to the outfitting industry, resulting in fewer outfitters with less diversity in possible experiences available. Some would argue that because of the uncertainty

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outfitters would face in filling trips, their costs would increase significantly. Managers would be faced with substantial costs that are now absorbed by the private sector. Agencies would have to administer reservations and permits for all floaters--a task that is now assumed by commercial outfitters for their passengers. Finally, this approach implicitly assumes (because potential outfitted users would be given a limited choice) that all outfitters provide similar services and experiences to their customers.

Allotment of Opportunities to Different Sectors

Managers have commonly recognized different sectors in their allocation system and have allotted use to these sectors. In most cases, the allotment has partitioned use only between nonoutfitted and outfitted sectors. This policy involves four major components: sector recognition; sector definition; the quantity of use each sector will receive; and decisions concerning how use opportunities within each sector will be allotted to outfitters or rationed to nonoutfitted individuals.

How Much Use Should Each Sector Receive?

We have attempted to develop criteria for making the use allotment decision as well as assess how different groups respond to proposed techniques. The use allocation workshop discussed earlier identified 27 criteria for evaluating potential allotment techniques. Table 1 shows the eight most important criteria as ranked by workshop participants. Several of these criteria are especially important when evaluating proposed techniques. Obviously fairness and equity are major objectives in most resource allocation contexts. However, what is fair to one group may not be perceived as fair to another. The implication is that operational definitions of these criteria need to be developed. The legality of the system is also important

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Table 1
Eight Important Criteria Useful in
Evaluating Recreation Use Allotment Alternatives,
as Rated by Use Allocation Workshop Participants

1. Fairness and equity to the greatest extent possible for all concerned.
2. Minimization of resource impacts.
3. Intent of river management legislation.
4. Legality.
5. Responsiveness to demand shifts.
6. Consistency with river management objectives.
7. Effect on river experience.
8. Ability to monitor recreational demand.

because this has continued to be a source of frustration to river managers. Shifts in demand between sectors have characterized river recreation for many years. The responsiveness and monitoring criteria would help managers develop a system that is flexible and sensitive to significant changes in use patterns. Consistency with objectives is also important because it includes the administrative feasibility of any proposed system. In an era of decreasing budgets and manpower ceilings this criterion represents the day-to-day realities facing river managers. We suggest that proposed allotment systems be first tested against these criteria prior to further evaluation.

Next, managers determine what quantity of use opportunity each group should receive. The primary approach used in the past has been to evaluate patterns of use for each sector. A base year or set of years is usually examined and the use allotment for each sector is based on that pattern. This "historical base" approach, while having

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some advantages and theoretical support for resource allocation in other sectors of our economy, has some disadvantages to both the outfitted and nonoutfitted sectors (McCool 1978), primarily problems concerning changes in demand between sectors.

Our study evaluated the historical base approach along with other techniques. Eleven techniques were identified during the allocation workshop (Table 2). Each participant evaluated the eleven techniques on the basis of four criteria identified by a variety of authors earlier (Grimm and Wyman 1974; Stankey 1977; Stankey and Baden 1977; Warren 1977): responsiveness of the technique to changes in demand among sectors; the administrative feasibility of the technique in terms of financial and personnel costs imposed upon the managing agency; fairness in providing equal access to nonoutfitted and outfitted sectors; and the technique's economic impact on the outfitting industry.

Table 2
Potential Allotment Techniques Identified
by Use Allocation Workshop Participants

- | | |
|------------------------|---|
| 1. Test Rivers | Make use of a case river (one with no established use limit or one on which the use level has not yet reached the established capacity) and determine how relative demands in the commercial and noncommercial sectors might naturally develop in this "uncontrolled" situation. The percentage split between commercial and noncommercial use would then serve as a guideline for allotment decisions on other rivers. |
| 2. Visitor Impact | Allot use to commercial and noncommercial or other sectors based on per visitor resource impact, i.e., the higher the impact, the smaller the allotment. |
| 3. Public Opinion Poll | Allotment proportions for the different sectors could be determined through the use of a general public opinion poll; e.g., the "Gallup" poll. |

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4. **Percentage Disappointment^a** Allot use each year such that by a given date (say April 1) the number of applicants for the noncommercial, commercial, or other sectors are known and that an equal proportion of each sector receives a permit to float the river; i.e., percent of disappointment.
5. **Historical Use^a** Allotments could be based on established use levels of the different sectors at the time a use limit is set; i.e., historical use.
6. **Even Split^a** An even percentage split (i.e., 50-50) might be employed.
7. **Spatial Zoning** Rivers could be zoned having one section for each sector; e.g., upper end commercial and lower end noncommercial.
8. **Temporal Zoning** Temporal allotments are a possibility; e.g., June might be commercial with July and August reserved for noncommercial use, or, summer might be commercial with fall and spring set apart for noncommercial use. Many other variations are possible.
9. **Congressional Decision** Allotments could be established through legislation; i.e., have Congress decide.
10. **Outfitter Significance** The level of the commercial allotment should reflect the relative importance of the outfitting industry to local economies.
11. **Even Pool^a** A variation of a 50-50 percentage split beginning with that split and allowing for any unused or cancelled launches to be placed in a pool to be available to other sectors for that particular season. The system would begin the following year with the original 50-50 split.

^aMethod was presented to sample of Middle Fork users and lottery rejectees.

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The results (Table 3) indicate that no one technique ranked high on all four criteria. For example, the Percentage Disappointment System (Nash 1977) ranked high on the responsiveness and fairness criteria, but relatively low on the feasibility and economic criteria. The results suggest that allocation techniques need to be examined from a variety of perspectives. The five highest rated techniques were selected to be presented to our sample of river users.

The sampled population also evaluated (1) the current Middle Fork System in order to position the acceptability of other techniques; and (2) the situation where a "no allotment" decision was reached (i.e., no differentiation among sectors). Respondents ranked each technique on a five-point scale ranging from "5," very good, to "1," very poor. Results are shown in Table 4 for the three groups involved. Importantly, the overall order in which the three groups of river users (outfitted, nonoutfitted, rejectees) ranked techniques was similar although the responses were statistically different indicating there was variation in the level of support. The most favored approaches were the current Middle Fork and even-pool systems. Significantly, lottery rejectees, who are generally the most experienced and most critical river users, ranked the "no allotment" alternative (treat everyone the same) below the other two systems.

How Much Use Should Each Outfitter Receive?

Another important question concerns how the available use allotted to the outfitted sector should be allocated to individual commercial outfitters. Closely associated with this question is the issue of how many outfitters should be permitted to operate in any given wilderness or on any stretch of river. Our research did not address those issues, nevertheless they are important ones and deserve further consideration.

Table 3
Evaluation of Potential Allotment
Techniques by Use Allocation Workshop Participants

Technique	----- Criterion -----				Total
	Responseiveness	Administrative Feasibility	Fairness	Economic Impact	
1. Test River	2.6	2.8	2.3	2.6	10.3
2. Visitor Impact	1.9	1.7	2.0	2.6	8.2
3. Public Opinion	2.5	2.0	2.4	2.2	9.1
4. Percentage Disappointment	3.4	2.9	3.8	2.3	12.4
5. Historical Use	1.6	4.3	1.8	3.6	11.3
6. Even Split	1.3	3.9	1.6	2.8	9.6
7. Spatial Zoning	1.3	2.5	1.3	2.0	7.1
8. Temporal Zoning	1.7	2.7	1.6	2.2	8.2
9. Congressional Decision	1.3	3.2	1.7	2.7	8.9
10. Outfitter Significance	1.4	2.2	1.2	3.8	8.6
11. Even Pool	2.9	2.6	2.7	2.8	11.0

Evaluation scores ranged from "1" to "5" with "5" being the "best."

Table 4
Proportion of Respondents Giving
Acceptable Ratings to Allotment Techniques

Allotment Technique	Proportion, Percentage, Giving Acceptable Rating ^a			Chi Square (significance)
	Commercial User	Private User	Rejectees	
Test River (N)	25.2 (452)	18.4 (467)	14.7 (192)	p = .0005
Historical Use (N)	64.8 (446)	48.6 (457)	41.6 (193)	p < .0001
Even Split (N)	52.7 (444)	49.3 (458)	51.8 (191)	p = .0560
Even Pool (N)	86.7 (439)	77.5 (462)	75.6 (192)	p = .0160
Percentage of Disappointment (N)	78.4 (434)	52.2 (449)	46.8 (190)	p < .0001
Treat Everyone the Same (N)	29.6 (429)	57.0 (449)	54.8 (190)	p < .0001
Middle Fork System (N)	92.2 (373)	76.5 (413)	64.2 (177)	p < .0001

^aAn evaluation of "okay," "good," or "very good" constituted an acceptable rating for an allotment technique.

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How Should Individual Use Opportunities Be Rationed in the Nonoutfitted Sector?

The final major decision concerns rationing individual use opportunities within the nonoutfitted sector. Middle Fork users were presented with six rationing techniques identified through a process similar to the allotment techniques (Table 5). Again, significant statistical differences existed among the three groups in their preferences for rationing (Table 6). The results tend to reflect the experience each group has with its own rationing system as applied in this river setting. For example, outfitted floaters commonly make reservations in order to get on the river and it is this technique they favored. Nonoutfitted users favored the lottery. Importantly, lottery rejectees overwhelmingly favored it even though it had recently proved unsuccessful for them. Incidentally, the technique of giving priority for Idahoans was favored by nearly 63 percent of the Idaho users although they rated the lottery even higher.

Table 5
Rationing Techniques Presented to
Middle Fork Questionnaire Respondents

1. LOTTERY (i.e., draw the applicants' names from a hat).
2. KNOWLEDGE AND SKILL REQUIREMENTS Give priority for permits to those who meet wilderness knowledge and skill requirements.
3. ADVANCE RESERVATION Use advance reservations by mail, phone, etc., with early requests favored over later ones.
4. PRIORITY FOR FIRST TIME USERS Give priority for permits to those who have not floated the river before.
5. LOTTERY-RESERVATION Use a combination system such as distributing half the private permits by lottery and the other half by advance reservation (phone or mail, etc.).
6. PRIORITY FOR IDAHOANS Give Middle Fork permit priority to Idahoans.

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Table 6
Proportion of Respondents Giving
Acceptable Ratings to Rationing Techniques

Rationing Technique	Proportion, Percentage, Giving Acceptable Rating ^a			Chi Square (significance)
	Commercial User	Private User	Rejectee	
Lottery (N)	56.6 (449)	79.6 (462)	91.8 (194)	p < .0001
Knowledge and Skill (N)	65.9 (458)	56.2 (464)	51.0 (192)	p = .0005
Advance Reservation (N)	84.3 (457)	54.2 (459)	32.3 (192)	p < .0001
Priority for First Time Users (N)	43.0 (456)	35.8 (456)	42.7 (194)	p = .0180
Lottery-reservation (N)	51.8 (441)	52.5 (450)	38.4 (190)	p = .0150
Priority for Idahoans (N)	21.3 (450)	22.5 (453)	17.3 (191)	p < .0001

^aAn evaluation of "okay," "good," or "very good" constituted an acceptable rating for a rationing technique.

DISCUSSION

The structure and results developed from this research effort have several important implications for the development of national direction for use allocation policy. First, it may be very difficult for such policy to address all the various decisions and details involved in the use allocation process. Such direction might be most helpful in identifying possible goals for allocation techniques, and criteria for evaluating the suitability of techniques in different settings. This approach would recognize the need for flexibility and responsiveness to the social-environmental needs of individual river segments. Second, there needs to be recognition of the inherent interrelatedness of decision-making at the various levels; that which occurs at one level will frame the response at another level. In other words, a distinct formalized process of use allocation such as that briefly presented here should be established and systematically followed.

Third, there is considerable support, at least on the river studied, for maintaining the current allotment sectors. Even the nonoutfitted groups did not prefer as their first or second choice the alternative of placing all potential users in the same classification for a possible lottery. In fact, about 45 percent of these individuals rated this approach "poor to very poor." The principal policy implication is however that this technique, while perhaps unpopular on the Middle Fork, may have more support and interest on other rivers, perhaps those with a smaller use level and fewer outfitters.

Fourth, in terms of allotment decisions, considerable support was shown for an even-pool system. This system has the potential to respond to changes in demand between the two sectors while protecting the economic interests of outfitters. While a 50-50 use allotment may not be suitable for many other rivers, the idea of a pool of unused opportunities accessible to other sectors does demand more attention by policy-makers. The evaluation criteria identified in our study would provide a framework for a

more critical assessment of the suitability of this approach. In order to work, it would be important to make this pool easily available to those who desire it. This approach would meet the monitoring and responsiveness evaluation criteria easily. It would be administratively feasible given further development. Administered correctly, it would provide nonoutfitted individuals numerous opportunities for access to the river. It would also provide a minimal level of use for outfitters.

It is also important to recognize that there will be few settings where any allocation technique can be implemented in its pure form. In fact, it may be beneficial to have a mixture of allotment techniques on any given river so that the weaknesses of one technique are balanced by the strengths of another.

Developing national direction for recreation use allocation policy will require close involvement of the various constituencies: the river manager who will implement such policy, the nonoutfitted group or individual who desires fair access to recreational opportunities, and the commercial outfitter who provides necessary equipment or expertise to those unable to experience a trip on their own.

It will take a recognition of the legitimacy of each constituency before the various issues and conflicts associated with recreation use allocation can be resolved. Each group should recognize it cannot win at the loss of some other group. Each should understand that there are significant commonalities among all groups: each wants to protect the resource, each wants a quality experience, each does not want an expensive bureaucracy, each wants a fair and equitable allocation system. Only with a spirit of cooperation and empathy can we progress on resolving these difficult and complex issues.

APPENDIX P

Tuesday, November 22, 1988, The Anchorage Times

City/State

B

State wants guide ruling postponed

Petition filed in ban on exclusive big-game areas

By BRIAN S. AKKE
Associated Press

JUNEAU — The state has asked the Alaska Supreme Court to postpone until after the effective date of its recent ruling banning exclusive guide areas game hunting.

The court ruled Oct. 21 that exclusive guide areas were unconstitutional. The ruling invalidated permits, deposits, guides, for exclusive or joint use of big areas.

Exclusive guide areas were created in big-game populations by a number of guides who could lead hunting parties in designated areas and then announced

Because of the ruling, 184 state-licensed guides who did not have exclusive guide areas can now lead hunters through any game-management unit for which they are certified. Depending on the unit, the number of eligible guides has increased threefold to sixfold, the state says.

State officials say more time is needed to prepare new regulations to prevent big game from being overhunted.

"The Oct. 21 effective date of this decision creates the need for hastily con-

protect game resources for the spring 1989 bear hunts," Assistant Attorney General Stephen M. White said in a motion requesting the postponement.

"It also creates a potential for a substantial loss of income for guides and creates a potential for ill will from their customers, both of whom have already booked hunts in reliance on the former ruling," White wrote.

White added that it is customary for Alaska guides to be booked six to 12 months in advance and to require a 50 percent deposit upon booking. State fish

have booked spring hunts and deposited more than \$1 million.

In some areas the state Board of Game may use a drawing to allocate nonresident permits which previously were distributed on a first-come, first-served basis. If out-of-state hunters who have already booked hunts are unable to win permits, their deposits will have to be refunded, White said.

"The need to refund deposits will create economic hardship for guides because some of this money has already been spent in preparing for the upcoming

filed Friday.

W. Lewis Pamplin Jr., director of the state Game Division, said in an affidavit that without a postponement the board will have to call an emergency meeting in January at a cost of up to \$15,000.

Charles E. Tulin, the attorney who challenged the exclusive guide area system on behalf of an Anchorage guide, said Monday that he had not fully studied the state's request and was unsure whether he would oppose it. However, he questioned if a postponement could be granted.

White said he expected the court to grant the request.

final plan for the design of this downtown park.

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walks should be constructed, pronto — before the opening of the PAC just six weeks hence. And in the long run, the Town Square won't be harmed one iota.

Anch. 5 Aug 88

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The proposed purchase and demolition of an entire community was unusual, but the homeowners readily acquiesced to plan because they were offered about \$225,000 apiece for homes whose market value averaged less than \$110,000.

When they moved into Lake Hearn in the 1960s and 1970s those homeowners explained was a pastoral area ideal families. In the ensuing years, however, land development produced noise, traffic and other welcome intrusions that invariably accompany urban sprawl.

DeKalb County planners insisted that the proposed \$981 million project would only exacerbate an already intolerable situation.

In mid-1985, county officials overwhelmingly rejected the developer's bid for the rezoning required to construct 10 high-rise buildings with 3.2 million square feet of office space on land designated for housing. One year later, however, that decision

What others say

From the Peninsula Clarion

THE GOVERNOR made one point during his visit to Kenai that can hardly be over emphasized: Alaska needs to engage in an extended public forum on how to handle its future and, especially, the Permanent Fund. . . . Alaska took the first master stroke of sound

planning years ago with the creation of the Alaska Permanent Fund, now almost \$10 billion strong. Still, waiting, however, is the second stroke, the one without which the first means nothing: the answer to the question of how we shall use the fund.

■ Gilson estimates that "several hundred" people currently are considered big-game outfitters in

The proposed nine-member board is intended to be more road-based than the present guide board, which has been widely criticized by members of the guiding industry.

Created by the legislature last spring, the 13-member task force was told to focus on the problems and issues of commercially harvesting big game in Alaska. The mandate included a review of the state Guide Board, as well as other provisions

Despite the Alaska Supreme Court's ruling that exclusive guide areas are unconstitutional, task force members almost unanimously agreed that commercial impacts on big-game species can best be managed by controlling guide/outfitter access to public and private lands.

Transporters are defined as those operators who simply

Alaskan's murder still unsolved

The Associated Press

PRINCE GEORGE, British Columbia — Police are still searching for clues to the murder of an Alaska man whose car was found burning in a car wash last June in this central British Columbia city.

Tourists found the body of Phillip Fraser, 23, of Anchorage, in a gravel pit July 27 about 30 miles east of Stewart near the Alaska border. Police said he had been shot with a pistol.

Since Fraser's car was



found burning June 19, police have followed up more than 500 tips, RCMP Cpl. Dwight Damann said Wednesday.

"We've (Prince George) had about 270 and Prince Rupert has had more," he said. The Prince Rupert detachment is involved because Fraser's

body was found within its jurisdiction.

RCMP said Fraser had traveled the Alaska Highway to the Upper Liard in the Yukon, continuing down Highway 37, the Stewart-Cassier Highway.

He left Anchorage on June 14 on his way to Olympia, Wash., where he planned to enroll in college.

Fraser was last seen at 40 Mile flats, south of Dease Lake in northwestern British Columbia, on June 17 or 18 along with a male hitchhiker.

Man convicted of guiding illegally

The Associated Press

FAIRBANKS — A 30-year-old Seward man has been convicted of two counts of guiding without a license and two counts of wanton waste of a game animal.

The charges against George Romero were the result of an investigation into his 1987 guiding operation in the Brooks Range.

Romero could be jailed for up to three years and fined \$5,000 for each of the felony guiding violations. The maxi-

mum penalty for each count of wanton waste is one year and \$5,000.

The Fairbanks office of the Division of Fish and Wildlife Protection also reports three men have pleaded no contest to illegally possessing and transporting caribou from the Dalton Highway.

Bruce Francis, 36, and David L. Ellis, 46, both of Eagle River, were fined \$500 apiece and ordered to forfeit the caribou. They also were ordered

The sentence was the same for Wallace Darkow, 40, of Elmendorf Air Force Base, except that he was fined \$1,000.

State regulations prohibit the use of firearms within 5 miles of the Dalton Highway from the Yukon River bridge to Prudhoe Bay.

**Regents name
Behrend UAA
chancellor**

to forfeit their rifles, but have the option of buying them back by making \$300 donations to the Wildlife Society and the National Rifle Association.

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the next decade to subsidize a relative handful of airline passengers in 135 cities from Lewiston, Maine, to Merced, Calif. The program is absurd.

Consider: From Kokomo, Ind., it is only 53 miles down Route 31 to Indianapolis. It is about the same distance in Kansas from Hutchinson to Wichita. Out in Arizona, no one would think it a terrible imposition to drive from Winslow to Flagstaff in order to catch a plane. Yet this year Kokomo will get \$355,000, Hutchinson \$176,000 and Winslow \$203,000 just to accommodate a few travelers who find an hour's drive to an airport an intolerable burden upon their time.

Roughly 135 communities share in this largess that falls from congressional skies. In some instances an arguable case

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So, if you need to learn more, or are an alien who cannot afford \$6,000 for a lawyer, consult your nearest law library. Look for Title 8 of either the U.S.C. or U.S.C.A., also immigration law which is basically designed for self-help or an attorney.

Daily News 10/16/88 — Khaldoon N. Saadi

Quit grudge matches in Juneau

Do we need grudge matches in Juneau to cost us more jobs? I would like to think not. It really is time for a change. When things have to be done in the last 30 days of a session to look good because of grudge matches between the House and the Senate, we in the state of Alaska lose. Can we afford another locked session? Give us a break!

The Faiks-Coghill anti-outfitters bill was passed in the last days of the session at the cost of jobs and income to residents of Alaska. The hunting guide association was the special interest behind this bill which put others out of work. The hunting guides cannot even begin to fill in the hole they created.

The outfitters filled a special need and created jobs that the guides would not fill because there was not enough money in it for them.

We need equal access to our government in Juneau. Open the doors to the people and the

media this next session, not just to special interest groups.

The picture that was left to us in the last session was of greed and total self-interest. Alaska is looking at lower oil prices this year. I would strongly recommend that the legislative body get their act together.

— Ronald Jordan

PAC ticket policy is wrong

About the PAC selling only season passes and not seats for individual performances, I agree 100 percent with Mark Dawson (letter, Sept. 30). This is an outright scandal which should be addressed to competent people in power (if there are any).

I tried to buy tickets for "Carmen." Not available until Oct. 3, I was told last week. Then, I was told not available until Oct. 10. Why this extra week delay? "Because we haven't sold enough season passes."

For Nureyev, it's even better. I can buy right now a season pass for four ballet events, but if I want to see Nureyev only, which is my right, I have to wait until Dec. 5, when good seats won't be available (or there may be no seats at all left).

I own a restaurant. What would the PAC people say if I sold lunches and dinners only by books of five? I bet they would go to another restaurant! Unfortunately I cannot go to another PAC, and on top of it, I PAID for this one.

The explanation the PAC people gave me was, "This is our policy." Well, I think this policy stinks!

The PAC shouldn't be managed as a money-maker, but as an educational tool. The PAC must not be run like Ford Motor Company. It is for our kids and grandkids to enjoy and learn from. It is a "cultural" object. The Paris

A dying breed gasps: High court ruling knocks big game guides flat

By CRAIG MEDRED

The News outdoor editor

The last of America's professional hunters gathered in the basement of the Egan Convention Center on Thursday to confront the changes that threaten the foundations of their business and their way of life.

Time, possibly forever, are the exclusive hunting areas that have ensured the economic viability of big game guides in Alaska, assistant attorney general Steve Smith told them.

"We're going to have to see what the free market does to who survives now," said Randall Burns, state director of the Division of Occupational Licensing.

At first, the more than 150 guides in the room refused to believe what they were hearing. They had read, or read about, the state Supreme Court decision that struck down as unconstitutional a law granting guides exclusive hunting areas, but they could not accept the finality of the decision.

The seven members of the state Guide Board were similarly befuddled. It would take hours for them to convince themselves there was nothing that could be done, and their arrival at that conclusion would not come easy.

"I got the drift here that everyone has given up," guide and guide board member Stan Frost said early in the day. "Is that the direction we're going? How do you guys out there feel?"

Shouts and applause answered

from the audience.

How many guides want to fight the Supreme Court? he asked. He called for a show of hands.

A hundred or more arms rose skyward.

But neither the Guide Board nor the legislature can make things the way they were before the court decision, Smith said.

Again and again, he explained that a "common use" provision unique to the Alaska Constitution stipulates that no individual or busi-

ness is entitled to special privileges to hunt or fish.

The state's 400 licensed guides are going to have to work within a system that allows everyone the same opportunity, Smith said.

"No big game guide can operate under that system," countered board member Chuck Weir. "These people are going to have to sell a constitutional amendment, a limited entry system."

See Page C-3, SALMON

Daily News Dec 2, 1980

GUIDES: Dying breed confronts court ruling

Continued from Page C-1

The outcome was a ceiling on the number of salmon fishermen and a permit system that made some fishermen rich. Permits originally given to fishermen for free are now being sold by some of them for more than \$200,000.

Guides don't think voters would ever approve a limited entry system to protect the

professional hunting business.

Most of the 255 guides who once held areas want a way around the Supreme Court decision. They consider themselves in a fight to save a profession that has died most everywhere else.

"We've been accused of looking for a loophole," said guide and guide board chairman Ray McNutt. "I don't want a loophole. I want a

legal system.

"I'm angry because I think I've been betrayed by the state," said guide Kelly Vrem.

Vrem threatened to sue. So did others.

Smith told them to save their money. The state, he said, is immune from suit for following the orders of the court.

Board moves to toughen tests for big-game guides

By CRAIG MEDRED

Daily News reporter

Getting licensed to guide big game hunters in Alaska could become more difficult because of a state Supreme Court decision intended to end inequities in the guiding business.

The Alaska Guide Board on Tuesday decided to toughen the tests given applicants for guide licenses.

The board acted, in part, because the Supreme Court has ruled unconstitutional a law that gave guides private hunting areas. Of 440 guides licensed to work in the state, only 256 had hunting areas, according to the state Division of Occupational Licensing.

Guides without areas had no choice but to work for guides with areas, and knowledge of that restriction might have encouraged the board to let some marginally qualified people into the business over the years, Director of Occupational Licensing Randall Burns told the board.

Passing the exam for a registered guide's license "didn't mean a great deal unless you had an area," said Burns. But with the court decision freeing new guides from the influence of veteran guides, extra attention is going to be needed to ensure competency, he added.

The Supreme Court decision, Burns said later, required that the board take a closer look at guide qualifications — since the board can no longer control which guides get hunting areas.

The board had carefully doled out those areas over the years.

Its actions led to repeated accusations that an "old-boy network" controlled who got the valuable areas. A guide unhappy about the area he was given filed suit against the system, and the state high court left no doubt about its opinion of the practice.

The court said the board's original decision to create exclusive areas, largely to protect the financial interests of guides, clearly violated the state Constitution, which guarantees all Alaskans "common use" of fish and wildlife resources.

"The expression 'for com-

mon use' implies that these resources are not to be subject to exclusive grants or special privilege as was so frequently the case in ancient royal tradition," the court quoted from the papers of the Alaska Constitutional Convention.

"EGAs (exclusive guide areas) resemble the types of royal grants the common use clause expressly intended to prohibit," the court said.

Guide board members, most of whom are guides or financially linked to the guiding business, have expressed displeasure with the decision.

Board member Chuck Weir

on Tuesday said a new system that protects the grandfather rights of guides who had exclusive areas should be developed. Weir is not a guide but is involved in providing insurance to guides.

Burns said the board must recognize that the issue of areas is now outside its purview. The court, he said, has clearly restricted the board to doing what 21 other state job-licensing boards do: setting licensing criteria, guaranteeing competency, and providing consumer protection.

An improved, and fair, test for guide license applicants is

a first step in that direction, Burns added. He has advised the board to hire a professional firm to help write questions for a new guide test.

He is also recommending that the board develop written tests to qualify guides for guiding in each of the state's 26 game management units. State law says guides can guide in only three of the areas. Burns said there should be a written test for each area.

Guides wishing to add or change the units in which they are allowed to guide are now given oral tests. The ob-

jectivity of the oral tests has been questioned.

Oral tests are needed as part of a guide exam, Burns said, but he warned the board that care must be taken to make sure the tests are fair.

One of the board's biggest problems has been a public perception that it's too involved with the business it's supposed to regulate, Burns told the board.

"You need to be sensitive to that," he said.

"I really don't think that's too much of a problem," said Board Chairman and Master Guide Ray McNutt.



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11:50-12:30	Kellogg	Apple
12:40-1:20	Open Plan	IBM
1:30-2:10	Welcome Software	Microage
2:20-3:00	Metier	UNISYS
3:10-3:50	PSDI	Prof. Growth Sys.
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Syndicated Columnist, Pacific News Service, San Francisco

TOPIC:
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NEXT WEEK, DECEMBER 9: "WHO OWNS THE ARCTIC? CANADIAN ARCTIC SOVEREIGNTY," Brigadier-General L.T. Doshan, Deputy Commander, Alaskan NORAD Region, Elmendorf AFB

Meet The Author

Guide ruling opens door for opportunity, mischief

Daily News
11. Dec. 88



Jay Hammond
bushrot'lings

In striking down exclusive guide areas our Supreme Court justices may find their gavels reverberating like an ax handle off a frozen spruce burl. While some may relish whomping a few pesky guides (a group that includes me) for "special privileges," the chips are likely to shower far beyond that fraternity.

Before tracing possible chip trajectory, let's review why exclusive guide areas were created. It was done primarily to protect game, not guides.

Prior to being confined to exclusive areas, guides could operate anywhere in Alaska for which they were licensed. With more guides being licensed, state population increasing, burgeoning competition from "outfitters" not confined to limited areas, easier access into remote wilderness areas and loss of huge expanses of hunting grounds previously available (courtesy of the Alaska Lands bill), game in the remaining huntable areas started taking a pounding. The attitude of some mobile, mass-producing guides seemed to be: "If I don't kill it, someone else will." And kill they did. Some took dozens of bears and scores of moose annually. Cleaning one area out, they, like grim reapers, moved on to another.

By confining guides to small areas it was hoped they would far more prudently harvest game found there. That's what happened. As well, in their self-interest many acted as ex-officio game wardens, reporting violations of bandit guides who invaded their areas.

Obviously there are parallels between exclusive guide areas and fishing limited entry. However, "limited entry" for guides placed far

greater restrictions on them than does limited entry for fishermen. Guides were limited entry into all other areas within a district. Fishermen are permitted to move from area to area within a large district.

Additionally, guides were only permitted to sell their "limited entry permits" to other Alaskans who were licensed guides. Moreover, the transfer had to be approved by the state guide board. No such constraints apply to fishermen. Their permits may be sold to residents, non-residents, aliens, felons or incompetents. No state approval is required.

Curiously, many Alaskans who find nothing amiss with the far more lenient and profitable transfer of fishing limited entry permits sorely resented granting guides a far lesser dispensation. Since fishery limited entry flies even more flagrantly in the face of the court's conclusion than does limited entry for guides, many fishermen were alarmed by the court's decision. Not to worry. In 1982 our constitution was amended to grant fishermen much greater special privileges than those now denied guides.

Where do we go from here? We're not just back to square one where a few bandit guides threatened to decimate game, we're back to square zero. Now there are many more guides, outfitters

and hunters competing for less game than is found in the state of Wisconsin. Gone is a major incentive for guides to harvest game prudently. Once more it's "If I don't kill it the other guy will."

Proposals to curtail such actions will likely include much more stringent regulations. More species and areas would go to restrictive tag systems, lotteries, seasons and bag limits. If so, guides will not be the only losers. Every Alaskan hunter will pay the price in lost freedom of opportunity, unless something else is done to reimpose constraints — like those which attended assignment of restrictive guide areas.

Here are two options: 1. Severely limit the number of animals for which a guide may contract; 2. Keep the same guide area boundaries and institute a system of area licensing similar to that imposed in some fisheries. Every guide would have to register each year for one or two areas in which he wished to guide. He would then be confined to guiding there only, along, of course, with any other guide who so registered. Either of these proposals would at least stifle that grim reaper syndrome.

One plus to the court's action: No longer must I fly hunters 150 miles to my guide area. Now I can take them out in my own back yard, just as outfitters have been permitted to do all along. As a consequence, a penalty for holding a guide license has been removed. The door has been opened to far greater opportunity. Too bad it's an opportunity for unbridled mischief than better game management.

☐ Jay Hammond was governor of Alaska from 1974-1982.

...and investigate them and ask them their sexual preferences? The answer is clearly no.

One more thing. I do not believe the Spenard Action Committee closed down the massage parlors like they claim. I believe the drastic decline of the state's economy was the determining factor. People moved to a more economically beneficial area in which to do business.

We can't let these things happen. Who will be next on their list? You?

Daily News 13/1/88 — Lisa Huntley

Guide industry being destroyed

Hunting guides have been led astray by the State of Alaska. At a time when every job counts in Alaska, the state is about to let a great industry completely destroy itself.

Guides lost their restricted guide areas due to a court decision that proved that guide areas would not stand up to the state Constitution. This was the same type of deal for the commercial fishermen, so the state changed the Constitution and restricted the fishing permits. There was so much wrong with the last issuance of guide areas, however, the state seems like it wants to abolish the entire guide area concept, thus destroying a very valuable tourist industry. What the hell, just drill another well to make up the difference.

ALL federal and state agencies that guard over Alaska's wildlife agree that guide areas are a necessary and productive tool to wildlife management. The Daily News calls guides a dying breed. If Alaska proves to the world's hunters that guides no longer are an interest to the state, then Canada, which manages its guides with professional interest, will take in the millions that Alaska once received.

Most all Alaskan guides are long time Alaska residents. They spend millions in this state. Half the commercial fishermen in Alaska are from out of state. They own permits worth thousands of dollars because the state limited them. All the guides want now is a non-valuable permit to carry on a business into the future. We have invested millions into

our industry only to see it completely destroyed. When we have limited resources, we must limit the takers.

— Mark Miller

Keep hydrants clear of snow

I am president of the Anchorage Fire Department Employees Association. As an auxiliary, we volunteer for many non-profit fund-raisers and fire safety educational activities.

At this time, I would like to mention an

Railroad bonuses

The Anchorage Daily News in its Dec. 2 editorial "Bonus time at ARR" questioned whether the Alaska Railroad's plan to pay employee bonuses is "the best

use of the money." We believe it is. That's obvious or I wouldn't have made the decision. Rest assured, it was a decision that was not made lightly.

As the Daily News points out, there are other ways we could spend the nearly \$700,000 we expect to pay employees. We considered them ourselves. The key point in the editorial, however, seems to be a push for the Alaska Railroad to pay taxes to bolster ailing state and local governments.



Man found guilty of illegal guiding

The Associated Press

An Anchorage man whose guide business was infiltrated by a German-speaking undercover officer has been convicted of providing guide services illegally to big-game hunters from Germany.

Bruno Zedler, 44, was convicted Tuesday in Anchorage Superior Court on three charges of guiding without a license and one charge of possessing and transporting unlawfully taken game, said Trooper Gerry Shanahan of the Alaska Division of Fish and Wildlife Protection.

The case involved a 2½-year investiga-

tion into Zedler's activities involving clients who came to Alaska from Germany to participate in guided hunts, mostly for moose and black bear, Shanahan said.

The clients had neither licenses nor game tags, Shanahan said. Unlawful tags were used to document the illegally taken trophies, many of which were shipped to Europe, he said. Zedler was doing business as Alaska Wilderness Consultants, Shanahan said.

"The investigation at times was complicated by the fact that about 95 percent of the conversations, correspondence and

advertisements were conducted in German," the trooper said.

He said a German-speaking undercover officer gathered evidence by posing as a client and participating in one hunt. Zedler's hunts took place in southwest Alaska and cost several thousand dollars per client, Shanahan said. Other cases involving foreign-language hunting operations are being investigated, he said.

Zedler is scheduled for sentencing Feb. 23 and faces fines, a prison term or both. Shanahan said there are no plans to pursue charges against the German nationals involved the hunts.

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— Ronald Jordan

PAC ticket policy is wrong

About the PAC selling only season passes and not seats for individual performances, I agree 100 percent with Mark Dawson (letter, Sept. 30). This is an outright scandal which should be addressed to competent people in power (if there are any).

I tried to buy tickets for "Carmen." Not available until Oct. 3. I was told last week. Then, I was told not available until Oct. 10. Why this extra week delay? "Because we haven't sold enough season passes."

For Nureyev, it's even better. I can buy right now a season pass for four ballet events, but if I want to see Nureyev only, which is my right, I have to wait until Dec. 5, when good seats won't be available (or there may be no seats at all left).

I own a restaurant. What would the PAC people say if I sold lunches and dinners only by books of five? I bet they would go to another restaurant! Unfortunately I cannot go to another PAC, and on top of it, I PAID for this one.

The explanation the PAC people gave me was, "This is our policy." Well, I think this policy stinks!

The PAC shouldn't be managed as a money-maker, but as an educational tool. The PAC must not be run like Ford Motor Company. It is for our kids and grandkids to enjoy and learn from. It is a "cultural" object. The Paris

Don't scrap guide areas

I've assisted in the Wrangell mountains for the past several years. I've taken residents and non-residents on quality, fair-chase hunts. It's a two day horse-back trip to get to the main camp, through some of the most beautiful country in the world. My reverence for that place deepens every year. No amount of money could cause me to harm the area or its game population. I had plans to become a registered guide and if possible acquire this area. These plans have been killed.

The Guide Board was in need of revision. Favoritism was practiced and there were too many guides for the number of areas available. Some of these "guides" couldn't track an elephant in the snow if it had a nose-bleed. Some are motivated solely by greed with no reverence for the game. But there are a lot of good guides out there, long time Alaskans who've invested a lot of money and years of their lives in their appointed areas and have been devoted stewards of those areas.

A guide needs to have an intimate knowledge, and yes, love for the area he hunts. To scrap the whole system of exclusive areas is a mindless mistake of proportions that will become evident as years pass. The game will suffer and a way of life will die. As for the areas on federal land, they will be allowed to function for a few more years before they are consumed by the Park Service Machine. Then those areas, too, will be gone — forever.

— Steve Lanphier
Palmer

Daily News 1/9/89

Guide rights

Panel says access to hunting areas should be broad

The Alaska Game and Fish Department should continue to assign hunting guides rights to specific areas within specific areas those rights should be reported by a legislative panel.

A draft of the report was to be finished weeks and likely will be in the hands of legislators by late said Rep. Henry Springer, game chairman of the Force on Game and Fish. Springer said the department's recommendations are being reviewed by the Alaska Game and Fish Commission, which met in October. That panel will then make recommendations on the existing method of assigning guide areas.

The court said rights hunt as a guide in an area were not available equally to all guides. Areas were assigned indefinitely by guides, assigned with seniority as principal criterion and sometimes bought and sold if they were private property, the justice said. Thus, the system violated the Alaska Constitution, which says that all life of the state are available for common use by the people.

Springer said he believed the court decision does not prohibit restricted guiding areas. Rather, he said, it requires that qualified guides be given equal access to such areas.

Equal access could be provided by making guide areas available for bid periodically, or by redistributing them, he said.

Springer said the task force report by the task force should be recommended to the legislature.

It also refrains from saying how long a guide should have exclusive guiding rights in an area.

"You have to come up with some reasonable time frame for which that right is valid," Springer said.

The task force, the more likely it is that the Supreme Court will accept it.

Springer said the time frame would depend on the nature of the species involved.

He also said putting areas up for bid or into a lottery system makes it difficult for people to invest with confidence.

"It obviously has some problems from the commercial standpoint," he said. The task force suggests the Department of Fish and Game set the boundaries of the guide areas, based on past and present animal populations, traditional use patterns, and land ownership. At present, the state's Guide Licensing and Control Board decides the size and location of the areas. About 300 areas are

See Page D-1 GUIDE RIGHTS

GUIDE RIGHTS: Panel wants them more available

Continued from Page D-1

divided among 250 licensed guides.

The legislature created the task force last spring to investigate a dispute between guides and the class of commercial hunters called outfit-

ters.

The task force had to expand its focus after the Supreme Court ruled, in October, in favor of licensed guide Ken Owschek. He was not assigned the guide areas he wanted in the late 1970s, and filed a lawsuit against the

state.

Unlike guides, outfitters are prohibited from actually guiding a hunter to an animal in the field. Because of that distinction, the state does not now restrict outfitters to specific areas and does not license them.

Shot down

'Exclusive guide areas' unconstitutional—court

By BRIAN S. AKRE
Associated Press Writer

JUNEAU—The Alaska Supreme Court ruled Friday that state laws allowing "exclusive guide areas," in which only one commercial guide may lead hunting parties, are unconstitutional.

A unanimous court said the laws violate the wildlife "common use" clause of the state constitution, which says the state's naturally occurring fish, wildlife and waters "are reserved to the people for common use."

The ruling means permits for the areas are invalid. Opponents and supporters of the exclusive guide areas said the action will force the state to come up with another way to limit hunting and protect big-game populations.

The court's opinion, written by Justice Jay A. Rabinowitz, noted that the exclusive guide areas allow one guide to exclude others from leading hunts in a defined area.

"These grants are based pri-

marily on use, occupancy and investment, favoring established guides at the expense of new entrants in the market... To grant such a special privilege based primarily on seniority runs counter to the notion of 'common use,'" Rabinowitz wrote.

The ruling is the latest chapter in a 9-year-old case filed by Kenneth Owsichuk of Anchorage, a registered guide who challenged the right of the state Guide Licensing and Control Board to issue the exclusive permits.

Owsichuk owns a lodge at Lake Clark in southwest Alaska, which he built in the late 1970s while the state was developing the permit plan. Owsichuk was granted fewer exclusive guide areas than he wanted, and said the lack of airplane access to those areas he received made them useless. He sued the state, seeking more than \$100,000 damages.

Owsichuk's attorney, Charles E. Tulin of Anchorage, said in a tele-

(See EXCLUSIVE, page 8)

Native leader urges new corporate focus

By BRIAN O'DONOGHUE
Staff Writer

In a rousing speech that prompted a standing ovation from the usually reserved delegates attending the Alaska Federation of Natives Convention, the chief executive of the state's most profitable Native corporation challenged delegates to apply corporate resources to curing social ills instead of business squabbles.

Byron Mallott, chief executive officer of the Sealaska Corp., based in Southeast Alaska, said stockholders in corporations created by the Alaska Native Claims Settlement Act need to consider how history will judge present policies 25 years from now.

"At a time when we had statistics recited to us, as we had today, about alcoholism and suicide, where were the Native corporations?" Mallott asked. "They were fighting

about ANWR (Arctic National Wildlife Reserve)."

When the Indian Child Welfare Act was under consideration in Washington D.C., "Where were the ANCSA corporations? They were fighting over NOLs," Mallott said, referring to legislation restricting the sale of corporate operating losses.

Through the years, legal battles between Native corporations have cost \$25 million in attorney fees, Mallott said. Yet, the AFN is expected to carry on its work for the entire Native community with a paid staff of seven and an annual budget of \$300,000. By contrast, his Sealaska alone boasts 1,459 employees.

"When we were trying to gain money in the thousands to deal with problems, such as have been discussed here today, the ANCSA cor-

(See MALLOTT, page 3)



WELL WISHERS—Toni Tokita and Dwayne Persson as he recovers from surgery at Memorial Hospital. Roberson is also present.

Persson

By PATRICK HUND
Staff Writer

Dwayne Persson learned new survival skills when he spent five days in the Alaska wilderness, skills unlikely to be of use to other adventurers.

Immobilized in his overturned car after a traffic accident on the Parks Highway on Sept. 18, Persson took extraordinary measures to survive.

In an attempt to capture rainwater to drink, he spent two hours pounding the windshield of his 1986 Chevrolet with a pencil. He finally poked through and used an envelope to funnel water into his mouth.

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If you pay for experience be sure you get it

You're going to do some of that great Alaska fishing and hunting you've read about in the expensive glossy magazines that are seemingly never published in Alaska.

The Alaskan guide you chose was advertised among many others. His ad was impressive and, when you called, he told you some great success stories. He probably even sent you some impressive material with pictures and descriptions of past clients and their huge trophy kills. You've paid your \$10,000. Your trip's booked.

Sometime later you board a Boeing 727 and fly to Anchorage. The 727 has been through periodic rigorous FAA inspections. You give little or no thought to the safety aspect of those flights because they are well regulated.

Your Alaskan guide/pilot meets you at your arrival gate and leads you out to his plane. You're tired, but you're almost there. You crawl into his PA-18 Super Cub and watch him fire up the engine.

Your pilot is a private pilot with less than 100 hours of total flight time and little experience in landing on a sand bar—your destination. In addition, he's been flying a C-180 and this P-18 handles differently. Also, it's gone well beyond the needed

100 hour inspection required for air taxi operators. But since he's not an air taxi operator, he doesn't have to comply with that requirement.

The weather at Anchorage International is clear and calm—VFR. However the weather enroute to and at your destination is less than 200, half mile, with intermittent fog and rain. Your pilot has little experience flying in such weather and has no instrument flight training. But he's pretty sure he can make it. Perhaps he'll fly over the top and look for a hole to descend through.

Besides, he's got your 10,000 bucks riding on this trip. He can't blow it now. And what you don't know won't hurt you. But, it's all legal. A low-time, inexperienced private pilot can fly incidental to his business of this sort. This is not a typical situation. But it happens.

The Alaska State legislature attempted to deal with this problem of inexperienced guide/pilots carrying passengers in questionable aircraft. Senate Bill 191 requires guides carrying passengers to be state licensed air taxi operators. This means they'll have to meet the same Part 135 requirements, such as being a commercial pilot with instrument training, and flying aircraft having regular 100 hour inspections.

But that new law may have been an overkill and still may not have solved the problem. Part 135 air taxis have had one of the highest fatality rates in the state in over five years. And there are many, very qualified, excellent guide/private pilots with unblemished accident records.

Besides, it seems there is a perceived loop hole. One guide recently told me that a general consensus among guides is that an air taxi operator must fly clients to the field. Once the client is in the field, a private pilot/guide can fly the client to and from the hunt.

So, if you're planning a trip into Alaska's back country for fishing or hunting, be sure to ask questions of your air taxi pilot and guide/pilot.

You paid the money and have the right. What kind of pilot's license does your pilot hold? Does the pilot hold a current medical certificate? How about an instrument rating? How many pilot-in-command hours does your pilot have flying Alaska? How many hours in his type of aircraft? Verify the information in his log book.

When was the last aircraft FAA maintenance inspection completed? Verify this in the aircraft log book. Check for a visible aircraft certifica-

tion. If it doesn't have one, it cannot legally fly.

Did your pilot do a complete pre-flight before climbing aboard? Check weather? What is the reported weather? Are you willing to fly into it? Did your pilot file a flight plan? Does the plane have survival gear aboard as required by Alaska law? Does it have a working ELT?

There are—without doubt—many excellent Alaskan guides who are also experienced, qualified private commercial and ATP pilots flying well maintained aircraft. A few are not. Therefore, the bottom line is if you are paying for an experienced guide/pilot make sure you are getting an experienced guide/pilot. And don't assume that, because your pilot has a part 135 air taxi license, his service is safe. Ask questions before you spend your money and put your life on the line.

Corrections

November's *Air Alaska's* front page photograph featured a CH-54 Sikorsky Skycrane incorrectly identified as belonging to the "Air National Guard." The craft belongs to the Army National Guard's 1898th Aviation Battalion.



TRAINING—Lernen Fliegen. Der Student ist zum ersten Mal im Cockpit.

This cartoon, featured in the October 1988 issue of *Air Alaska* failed to credit the really talented Bob Stevers who gave *Air Alaska* permission to use it. The cartoon shares one of many pages of similar humor found in "Prop Wash: A Fractured Glossary of Terms," published by the Aviation Book Company, 1640 Victory Blvd., Glendale, CA 91201.

Page numbers on the Holiday Gift Guide were inadvertently switched just prior to press time for November's issue. The confusion no doubt led some readers to question their sanity while hunting for article continuations. We apologize for the confusion.

Ruling may balance outfitter, guide access

By KELLY BOSTIAN
Staff Writer

A ruling by the Alaska Supreme Court on Friday that shot down the right of guides to hunt in their own "exclusive areas" places the historically opposite groups of outfitters and guides on the same side of the table in at least one aspect, according to the chairman of the Task Force on Guiding and Game.

The two groups still have their differences, but the recent ruling put registered guides on the same level as outfitters as far as access is concerned, according to Rep. Heinrich Springer said.

"Before, maybe one or two guides would have exclusive rights to an area. Now guides aren't in a special boat. They're on the same footing that the outfitter is," Springer said. "The question is now, what is a fair way, whether it's an outfitter, transporter or guide, to use an area?"

For the task force, designed to examine the guiding industry and make recommendations to the Legislature, things haven't changed much.

"Things may have changed slightly but the basic reasoning hasn't," Springer said. "What

we're still looking at is the drastic change taking place that has been generated by the outfitting industry."

The ruling couldn't have come at a better time, as far as Heinrich is concerned.

"That case was always a big question mark in formulating all our recommendations," Springer said. "January may have come and we may have been ready and then found out all our work had been for nothing."

The small details of the ruling and unknown effects are what concerns Springer. "I don't think anyone, on this short of notice, knows the fullest extent of the ruling," he said.

In one portion of the decision the Supreme Court said the exclusive area system failed to guarantee proper game management, Springer said.

Because exclusive areas were created with the goal of protecting resources, Springer found that an interesting point.

He said that question is easily dealt with, however, by more closely involving a body such as the Alaska Department of Fish and Game or the Game Board in the guiding industry.

Springer speculated that the

question of common use may be settled by a constitutional amendment. Citing a case involving restricted use in commercial fishing areas, he said the same may come to pass for guiding.

"It's interesting that in nearly every aspect the commercial fishing industry is the same, but they had an amendment out beforehand," Springer said. "I just think the decision is not as catastrophic as some people may think it is. It's not going to destroy guiding."

The task force, which was created in the last legislative session by SB 191, was formed to examine issues in the guiding industry and report to the Legislature next January 15. Springer was chosen as chairman by the 13 members of the group.

The group met Monday and today in the conference room at the Legislative Information Office, 119 North Cushman St. They heard public testimony Monday and this morning from 8 a.m. to noon. The group will be taking public comment through December.

Ruling scrambles game guiding laws

By BRIAN S. AKRE
Associated Press

JUNEAU — The Alaska Supreme Court ruled Friday that state laws allowing "exclusive guide areas," in which only one commercial guide may lead hunting parties, are unconstitutional.

A unanimous court said the

High court shoots down 'exclusive area' provision

laws violate the wildlife "common use" clause of the state constitution, which says the state's naturally occurring fish, wildlife and waters "are reserved to the people for common use."

The ruling means permits for the areas are invalid. Opponents and supporters of the exclusive guide areas said the action will force the state to come up with another way to limit hunting and

protect big-game populations.

The court's opinion, written by Justice Jay A. Rabinowitz, noted that the exclusive guide areas allow one guide to exclude others from leading hunts in a de-

fined area.

"These grants are based primarily on use, occupancy and investment, favoring established guides at the expense of new entrants in the market. . . . To

grant such a special privilege based primarily on seniority runs counter to the notion of 'common use,' " Rabinowitz wrote.

The ruling is the latest chapter in a 9-year-old case filed by Kenneth Owsichuk of Anchorage, a registered guide who challenged the right of the state

See Game law, page A-10

Native claims debated

Law expert predicts sovereignty victory

By BOB ORTEGA
Times Writer

FAIRBANKS — One of the country's foremost experts on Indian law says that there's no doubt the U.S. Supreme Court will uphold the sovereignty

Getting pumped for Halloween



Soviets heed call of whales

Icebreaking ship awaits go-ahead

WASHINGTON (AP) — The Soviet Union has offered to break a path to the stranded whales in Alaska with an icebreaking ship next week if current negotiations

Eskimo ingenuity pays off; grays inch toward freedom

'Voyage Home' benefits whales

For those who want more whale drama than the Arctic ice can provide, an Anchorage radio station and theater chain have organized a benefit showing of a Star Trek movie with a plot that focuses on whales.

The State Department, meanwhile, said it has asked Soviet authorities what assets they may have available to help free the whales.

The State Department, meanwhile, said it has asked Soviet authorities what assets they may have available to help free the whales.

The Eskimo volunteers, meanwhile, many of them whale hunters, worked about eight hours to cut a string of rectangular holes about 10 feet wide and 30 feet long at 30-foot intervals. As night fell, the two dozen volunteers had nearly a half-

"Farmer Jones and his wife, Pearl." The pumpkin couple are sitting outside the Van Hornet's home on West 15th Avenue.



pushed from two different directions in clearing an escape route for the imprisoned mammals. The (H 54 Skytrane worked about an hour and a half, punching four holes 15 to 20 feet in diameter through the foot-thick ice.

Today: High 35° Sunday: Cloudy

WATERS

A-2

By BRUCE BARTLEY

Associated Press

BARROW — Three gray whales trapped in the Beaufort Sea for more than two weeks have begun moving from breathing holes toward the open water.

There are nearly a dozen Alaska sovereignty cases now in court. The state is asking the federal court to dismiss them, but the federal court has refused. And Amodeo said the state will continue its court battles that may challenge state authority.

A-10 Saturday, October 22, 1988, The Anchorage Times

Game law: Court invalidates 'exclusive guide area' permits

Continued from page A-1

Guide Licensing and Control Board to issue the exclusive permits.

Owsichuk owns a lodge at Lake Clark, which he built in the late 1970s while the state was developing the permit plan. Owsichuk was granted fewer exclusive guide areas than he wanted, and said the lack of airplane access to those areas he received made them useless. He sued the state, seeking more than \$100,000 in damages.

The court ruled Friday that the state is immune from damages, but remanded the case back to Anchorage Superior

Court to consider attorney fees.

In a telephone interview from Seattle, Owsichuk said Friday night that he was satisfied with the outcome.

"It's been a long struggle through the years. I'm a little disappointed about the damages, because it was a pretty flagrant violation. But we just went into it on the principle," he said.

Owsichuk's attorney, Charles E. Tulin of Anchorage, said in a telephone interview from Detroit that the permit plan was "ill-conceived and poorly implemented."

Tulin said the framers of the constitution wanted to preserve Alaska's fish and game resources for all citizens, and the

exclusive guide areas thwarted that goal.

"The licensed guide could, upon receiving the exclusive guide area, control the property with rights of sale and transfer — presumably forever — just as if he owned the property," Tulin said. "This is just the kind of government regulation Alaskans can do without."

Sen. Rick Halford, R-Chugiak, is a guide and longtime opponent of the exclusive guide areas. A primary goal behind the program was to limit competition, he said.

"The Supreme Court decision that compares it to a royal grant is all too accurate," Halford said.

Now the industry and public

must come up with an alternative system "that is fair, equitable and yet doesn't throw the whole industry into chaos," he added.

Supporters of exclusive guide areas argue they are needed to maintain big-game populations. Guides have incentive to limit hunting in their areas and thereby ensure there are enough animals to sustain hunts in succeeding years.

"They were brought about because we had operators in the state who were cleaning out areas and moving on," said Phil Driver of Anchorage, a registered guide for 18 years and president of the Alaska Professional Hunters Association.

"The state's going to have to come up with something to protect the game resource from commercial exploitation," Driver said.

Guide Paul Johnson of Elfin Cove said the court's ruling "is a very unfortunate decision as far as wildlife is concerned."

"There has to be a way to manage the resource, and it's a necessary tool. I don't know what they're going to do now," he said.

Outfitters have avoided violating the law by dropping hunters off in exclusive guide areas without actually guiding them in. Some say the increase in that activity has hurt big-game populations.

"I would assume that (the ruling) could lead to an aggravation of the game-population problems," said Art Clark of Anchorage, who serves on the Guide Licensing and Control Board.

Randall Burns, director of the state Occupational Licensing Division, said the board will meet at the end of November to discuss alternatives.

About 250 guides hold permits for exclusive guide areas, but some are joint permits in which parts of the areas overlap, Burns said. There are 501 areas designated.

As for Owsichuk, he said he will add guided hunting trips to the activities available at his successful fly-in fishing lodge.

Whales: Progress

Continued from page A-1

work essential to successful whaling, the Eskimos cut the ice in slabs and used their long poles to push the blocks under the surrounding ice.

effort. "The next step will be to close the first hole, and then begin moving them out. It goes very slow at first, but the whales learn."

The use of de-icing devices, which keep the holes open



How the rescue has shaped up

Associated Press

Here is a chronology of major events in the attempts to free the three trapped whales in Barrow.

Oct. 13 — The whales were discovered trapped in ice east of Point Barrow. They were

STATE OF ALASKA



GUIDE BOARD

**CENTRALIZED LICENSING STATUTES, AS 08.01-AS 08.03
GUIDE BOARD STATUTES, AS 08.54
OCCUPATIONAL LICENSING REGULATIONS, 12 AAC 02.
GUIDE BOARD REGULATIONS, 12 AAC 38**

Revised: April 1988

CENTRALIZED LICENSING ACT, AS 08.01

MISCELLANEOUS PROVISIONS, AS 08.02

REESTABLISHMENT OF REGULATORY BOARDS, AS 08.03

**CHAPTER 01
CENTRALIZED LICENSING**

Section

- 10. Applicability of chapter
- 20. Board organization
- 25. Public members
- 30. Quorum
- 35. Appointments
- 40. Transportation and per diem
- 50. Administrative duties of department
- 60. Application for license
- 65. Fees established by regulation
- 70. Administrative duties of boards
- 75. Disciplinary powers of the boards
- 80. Department regulations
- 87. Powers and duties of department
- 90. Applicability of the Administrative Procedure Act
- 100. License renewal, lapse and reinstatement
- 102. Citation for unlicensed practice
- 103. Procedure and form of citation
- 104. Failure to obey citation
- 105. Penalty for improper payment
- 110. Definitions

Sec. 08.01.010. Applicability of chapter. This chapter applies to the

- (1) Board of Public Accountancy (AS 08.04.010);
- (2) Board of Chiropractic Examiners (AS 08.20.010);
- (3) Board of Dental Examiners (AS 08.36.010);
- (4) *[Repealed, § 48 ch 94 SLA 1987.]*
- (5) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);
- (6) State Medical Board (AS 08.64.010);
- (7) Board of Nursing (AS 08.68.010);
- (8) Board of Examiners in Optometry (AS 08.72.010);
- (9) Board of Pharmacy (AS 08.80.010);
- (10) Board of Veterinary Examiners (AS 08.98.010);
- (11) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);
- (12) Board of Marine Pilots (AS 08.62.010);
- (13) Board of Dispensing Opticians (AS 08.71.010);
- (14) Guide Board (AS 08.54.010);
- (15) State Physical Therapy and Occupational Therapy Board (AS 08.84.010);
- (16) Board of Nursing Home Administrators (AS 08.70.010);
- (17) regulation of professional geologists under AS 08.02.011;
- (18) Board of Barbers and Hairdressers (AS 08.13.010);
- (19) Athletic Commission (AS 05.05 and AS 05.10);
- (20) regulation of construction contractors under AS 08.18;
- (21) regulation of collection agencies under AS 08.24;
- (22) regulation of morticians under AS 08.42;
- (23) regulation of concert promoters under AS 08.92;
- (24) regulation of audiologists under AS 08.11;
- (25) regulations of hearing aid dealers under AS 08.55;
- (26) regulation of the practice of naturopathy under AS 08.45;
- (27) Real Estate Commission (AS 08.88.011).

Sec. 08.01.020. Board organization. Board members are appointed by the governor and serve at the pleasure of the governor. Unless otherwise provided, the governor may designate the chair of a board, and all other officers shall be elected by the board members. Unless otherwise provided, officers of a board are the chair and the secretary. A board may provide by regulation that three or more unexcused absences from meetings are cause for removal. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1987)

Sec. 08.01.025. Public members. No public member of a board may:

- (1) be engaged in the occupation which the board regulates;
- (2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or
- (3) have a direct financial interest in the occupation which the board regulates. (§ 1 ch 258 SLA 1976)

Sec. 08.01.030. Quorum. A majority of the membership of the board constitutes a quorum unless otherwise provided. (§ 1 ch 59 SLA 1966)

Sec. 08.01.035. Appointments. Members of boards subject to this chapter and members of the Real Estate Commission under AS 08.88 are appointed for staggered terms of four years. A member of a board serves until a successor is appointed. An appointment to fill a vacancy on a board is for the remainder of the unexpired term. A member who has served all or part of two successive terms on a board may not be reappointed to that board unless four years have elapsed since the person has last served on the board. (§ 3 ch 94 SLA 1987)

Sec. 08.01.040. Transportation and per diem. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180. (§ 1 ch 59 SLA 1966)

Sec. 08.01.050. Administrative duties of department. (a) The department shall perform the following administrative and budgetary services when appropriate:

- (1) collect and record fees;
- (2) maintain records and files;
- (3) issue and receive application forms;
- (4) notify applicants of acceptance or rejection as determined by the board or as determined by the department under AS 08.11 for audiologists, under AS 08.40 for electrical administrators, under AS 08.45 for naturopaths, or under AS 08.55 for hearing aid dealers;
- (5) designate dates examinations are to be held and notify applicants;
- (6) publish notice of examinations and proceedings;
- (7) arrange space for holding examinations and proceedings;
- (8) notify applicants of results of examinations;
- (9) issue licenses or temporary licenses as authorized by the board or as authorized by the department under AS 08.11 for audiologists, under AS 08.40 for electrical administrators, under AS 08.45 for naturopaths, or under AS 08.55 for hearing aid dealers;

(10) issue duplicate licenses upon submission of a written request by the licensee attesting to loss of or the failure to receive the original and payment by the licensee of a fee established by regulation adopted by the department;

(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;

(12) compile and maintain a current register of licensees;

(13) answer routine inquiries;

(14) maintain files relating to individual licensees;

(15) arrange for printing and advertising;

(16) purchase supplies;

(17) employ additional help when needed;

(18) perform other services that may be requested by the board;

(19) provide inspection, enforcement, and investigative services to the boards and for the occupations listed in AS 08.01.010, regarding all licenses issued by or through the department;

(20) retain and safeguard the official seal of a board and prepare, sign, and affix a board seal, as appropriate, for licenses approved by the board.

(b) The form and content of a license, authorized by a board listed in AS 08.01.010, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned.

(c) *[Repealed, § 49 ch 94 SLA 1987.]* (§ 1 ch 59 SLA 1966; am § 1 ch 102 SLA 1976; am § 39 ch 218 SLA 1976; am § 2 ch 258 SLA 1976; am §§ 1, 2 ch 49 SLA 1980; am § 1 ch 82 SLA 1980; am § 2 ch 141 SLA 1980; am § 1 ch 166 SLA 1980; am § 1 ch 48 SLA 1983; am § 3 ch 56 SLA 1986; am § 3 ch 131 SLA 1986; am § 2 ch 74 SLA 1987; am § 21 ch 87 SLA 1987; am §§ 4, 49 ch 94 SLA 1987)

Sec. 08.01.060. Application for license. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department. (§ 1 ch 59 SLA 1966)

Sec. 08.01.065. Fees Established by Regulation. (a) The department shall adopt regulations that establish the amount and manner of payment of application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by this chapter.

(b) The department may not adopt a regulation under (a) of this section unless the board responsible for regulating the affected occupation concurs.

(c) A fee established under this section should reflect, but should not exceed, the actual costs to the department of the activity for which the fee is charged except that the department may establish a fee that is less than the cost of the activity for which the fee is charged if the department determines that it is not reasonable to impose the full cost of the activity on the applicant or licensee.

(d) The commissioner of administration shall separately account for occupational licensing fees deposited in the general fund by the department. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the activities of the division of occupational licensing. (§ 2 ch 37 SLA 1985; am § 4 ch 138 SLA 1986; am § 3 ch 74 SLA 1987; am § 5 ch 94 SLA 1987)

Sec. 08.01.070. Administrative duties of boards. Each board shall perform the following duties in addition to those provided in its respective law:

- (1) take minutes and records of all proceedings;
- (2) hold a minimum of one meeting each year;
- (3) hold at least one examination each year;
- (4) request, through the department, investigation of violations of its laws and regulations;
- (5) prepare and grade board examinations;
- (6) set minimum qualifications for applicants for examination and license;
- (7) forward a draft of the minutes of proceedings to the department within 20 days after the proceedings;
- (8) forward results of board examinations to the department within 20 days after the examination is given;
- (9) notify the department of meeting dates and agenda items at least 15 days before meetings and other proceedings are held;
- (10) submit before the end of the fiscal year an annual performance report to the department stating the board's accomplishments, activities, and needs. (§ 1 ch 59 SLA 1966; am § 6 ch 94 SLA 1987)

Sec. 08.01.075. Disciplinary powers of boards. (a) A board may take the following disciplinary actions, singly or in combination:

- (1) permanently revoke a license;
 - (2) suspend a license for a specified period;
 - (3) censure or reprimand a licensee;
 - (4) impose limitations or conditions on the professional practice of a licensee;
 - (5) require a licensee to submit to peer review;
 - (6) impose requirements for remedial professional education to correct deficiencies in the education, training, and skill of the licensee;
 - (7) impose probation requiring a licensee to report regularly to the board on matters related to the grounds for probation;
 - (8) impose a civil fine not to exceed \$5,000.
- (b) A board may withdraw probationary status if the deficiencies that required the sanction are remedied;
- (c) A board may summarily suspend a licensee from the practice of the profession before a final hearing is held or during an appeal if the board finds that the licensee poses a clear and immediate danger to the public health and safety. A person is entitled to a hearing before the board to appeal the summary suspension

within seven days after the order of suspension is issued. A person may appeal an adverse decision of the board on an appeal of a summary suspension to a court of competent jurisdiction.

(d) A board may reinstate a suspended or revoked license if, after a hearing, the board finds that the applicant is able to practice the profession with skill and safety.

(e) A board may accept the voluntary surrender of a license. A license may not be returned unless the board determines that the licensee is competent to resume practice and the licensee pays the appropriate renewal fee.

(f) A board shall seek consistency in the application of disciplinary sanctions. A board shall explain a significant departure from prior decisions involving similar facts in the order imposing the sanction. (§ 7 ch 94 SLA 1987)

Sec. 08.01.080. Department regulations. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

(1) how an examination is to be conducted;

(2) what is contained in application forms;

(3) how a person applies for an examination or license. (§ 1 ch 59 SLA 1966)

Sec. 08.01.087. Powers and duties of department. (a) The department may, upon its own motion, conduct investigations to determine whether a person has violated a provision of this chapter or a regulation adopted under it, or a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010 the commissioner may, if the commissioner considers it in the public interest, and after notification of a proposed order or action by telephone or telegraph to all board members, if a board regulates the act or practice involved, unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or the commissioner's designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, an order issued under it, or with a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010;

(3) examine or have examined the books and records of a person whose business activities require licensure by a board listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010; the commissioner may require the person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents. (§ 3 ch 258 SLA 1976; am § 4 ch 56 SLA 1986; am § 4 ch 131 SLA 1986)

Sec. 08.01.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations adopted and proceedings held under this chapter, except those under AS 08.01.087(b). (§ 1 ch 59 SLA 1966; am § 4 ch 258 SLA 1976)

Sec. 08.01.100. License renewal, lapse and reinstatement. (a) Licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A license subject to renewal shall be renewed on or before the date set by the department. If the license is not renewed by the date set by the department, the license lapses. In addition to renewal fees required for reinstatement of the lapsed license, the department may impose a delayed renewal penalty, established by regulation, that shall be paid before a license that has been lapsed for more than 60 days may be renewed. The department may adopt a delayed renewal penalty only with concurrence of the appropriate board.

(c) When continuing education or other requirements are made a condition of license renewal, the requirements shall be satisfied before a license is renewed.

(d) Except as otherwise provided, a license may not be renewed if it has lapsed for five years or more. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1968; am § 3 ch 49 SLA 1980; am § 1 ch 56 SLA 1980; am § 1 ch 58 SLA 1980; am § 1 ch 75 SLA 1980; am § 1 ch 130 SLA 1980; am § 1 ch 162 SLA 1980; am § 2 ch 166 SLA 1980; am § 3 ch 37 SLA 1985; am §§ 8, 9, 10 ch 94 SLA 1987)

Sec. 08.01.102. Citation for unlicensed practice. The department may issue a citation for a violation of a license requirement of a board or profession listed in AS 08.01.010 if there is probable cause to believe a person has practiced a profession for which a license is required without holding the license. Each day a violation continues after a citation for the violation has been issued constitutes a separate violation. (§ 11 ch 94 SLA 1987)

Sec. 08.01.103. Procedure and form of citation. (a) A citation issued under AS 08.01.102 must be in writing. A person receiving the citation is not required to sign a notice to appear in court.

(b) The time specified in the notice to appear on a citation issued under AS 08.01.102 shall be at least five days, not including weekends and holidays, after the issuance of the citation, unless the person cited requests an earlier hearing.

(c) The department is responsible for the issuance of books containing appropriate citations, and shall maintain a record of each book issued and each citation contained in it. The department shall require and retain a receipt for every book issued to an employee of the department.

(d) The department shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. Upon its deposit with the court, the citation may be disposed of only by trial in the court or other official action taken by the magistrate, judge or prosecutor. The department may not dispose of a citation, copies of it, or of the record of its issuance except as required under this subsection and (e) of this section.

(e) The department shall require the return of a copy of every citation issued by the department and of all copies of a citation that has been spoiled or upon which an entry has been made and not issued to an alleged violator. The department shall also maintain, in connection with each citation, a record of the disposition of the charge by the court where the original or copy of the citation was deposited.

(f) If the form of citation includes the essential facts constituting the offense charged, and if the citation is sworn to as required under the laws of this state for a complaint charging commission of the offense alleged in the citation, then the citation when filed with a court having jurisdiction is considered to be a lawful complaint for the purpose of prosecution. (§ 11 ch 94 SLA 1987)

Sec 08.01.104. Failure to obey citation. Unless the citation has been voided or otherwise dismissed by the magistrate, judge, or prosecutor, a person who without lawful justification or excuse fails to appear in court to answer a citation issued under AS 08.01.102, regardless of the disposition of the charge for which the citation was issued, is guilty of a class B misdemeanor. (§ 11 ch 94 SLA 1987)

Sec. 08.01.105. Penalty for improper payment. An applicant shall pay a penalty of \$10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor. (§ 3 ch 258 SLA 1976)

Sec. 08.01.110. Definitions. In this chapter

- (1) "board" includes the boards and commissions listed in AS 08.01.010;
- (2) "department" means the Department of Commerce and Economic Development;
- (3) "commissioner" means the commissioner of commerce and economic development;
- (4) "license" means a license, certificate, permit, or registration or similar evidence of authority issued for an occupation or board listed in AS 08.01.010;
- (5) "licensee" means a person who holds a license;
- (6) "occupation" means a trade or profession listed in AS 08.01.010. (§ 1 ch 59 SLA 1966; am § 40 ch 218 SLA 1976; am § 5 ch 258 SLA 1976; am § 5 ch 56 SLA 1986; am § 5 ch 131 SLA 1986)

CHAPTER 02. MISCELLANEOUS PROVISIONS.

Section

10. Professional designation requirements
11. Professional geologist
20. Limitation of liability for members of licensing boards

Sec. 08.02.010. Professional designation requirements. (a) An audiologist licensed under AS 08.11, a person licensed in the state as a chiropractor under AS 08.20, a dentist under AS 08.36, a medical practitioner or osteopath under AS 08.64, a registered nurse under AS 08.68, an optometrist under AS 08.72, a registered pharmacist under AS 08.80, a registered physical therapist or occupational therapist under AS 08.84, or a psychologist under AS 08.86, shall use as professional identification appropriate letters or a title after that person's name which represents that person's specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays personal professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and uses the letters "M.D." or the title "doctor" or "physician" or another title that tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "naturopath", or the like.

(b) A person subject to (a) of this section who fails to comply with the requirements of (a) of this section shall be given notice of noncompliance by that person's appropriate licensing board. If, after a reasonable time, with opportunity for a hearing, the person's noncompliance continues, the board may suspend or revoke the person's license or registration, or administer other disciplinary action which in its determination is appropriate. (§ 1 ch 6 SLA 1973; am § 11 ch 6 SLA 1984; am § 2 ch 97 SLA 1987)

Sec. 08.02.011. Professional geologist. The commissioner of commerce and economic development shall certify an applicant as a professional geologist if the applicant is certified as a professional geologist by the American Institute of Professional Geologists. (§ 2 ch 142 SLA 1980; AS 08.53.010)

Sec. 08.02.020. Limitation of liability for members of licensing boards and peer review committees. A person is not liable for damages or other relief in an action by reason of the person's performance of a duty, function, or activity as a member of a licensing board or peer review committee established to review a licensing matter, or by reason of a recommendation or action of the board or peer review committee when the person acts in the reasonable belief that the action or recommendation is warranted by facts known to the person or to the board or peer review committee after reasonable efforts to ascertain the facts upon which the action or recommendation is made. (§ 45 ch 102 SLA 1976; am § 12 ch 94 SLA 1987)

CHAPTER 03. TERMINATION, CONTINUATION AND REESTABLISHMENT OF REGULATORY BOARDS.

Section

- 10. Termination dates for regulatory boards
- 20. Procedures governing termination, transition and continuation

Sec. 08.03.010. Termination dates for regulatory boards.

(a) *[Repealed, § 4 ch 14 SLA 1987.]*

(b) *[Repealed, § 4 ch 14 SLA 1987.]*

(c) The following boards have the termination date provided by this subsection:

- (1) Board of Nursing (AS 08.68.010)—June 30, 1991.
- (2) Board of Chiropractic Examiners (AS 08.20.010)—June 30, 1988.
- (3) Board of Examiners in Optometry (AS 08.72.010)—June 30, 1988.
- (4) Board of Pharmacy (AS 08.80.010)—June 30, 1989.
- (5) Board of Dispensing Opticians (AS 08.71.010)—June 30, 1988.
- (6) Board of Dental Examiners (AS 08.36.010)—June 30, 1988.
- (7) Board of Veterinary Examiners (AS 08.98.010)—June 30, 1989.
- (8) State Physical Therapy and Occupational Therapy Board (AS 08.84.010)—June 30, 1989.
- (9) Board of Nursing Home Administrators (AS 08.70.010)—June 30, 1990.
- (10) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010)—June 30, 1991.
- (11) State Medical Board (AS 08.64.010)—June 30, 1991.
- (12) Board of Marine Pilots (AS 08.62.010)—June 30, 1991.
- (13) *[Repealed, § 13 ch 6 SLA 1984.]*
- (14) *[Repealed, § 48 ch 94 SLA 1987.]*
- (15) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011)—June 30, 1988.
- (16) Board of Barbers and Hairdressers (AS 08.13.010)—June 30, 1989.
- (17) Board of Public Accountancy (AS 08.04.010)—June 30, 1988.
- (18) Real Estate Commission (AS 08.88.011)—June 30, 1991.
- (19) Board of Governors of the Alaska Bar Association (AS 08.08.040)—June 30, 1989.
- (20) Guide Board (AS 08.54.010)—June 30, 1988.

(d) *[Repealed, § 3 ch 78 SLA 1979.]*

(e) *[Repealed, § 3 ch 78 SLA 1979.]*

Sec. 08.03.020. Procedures governing termination, transition and continuation. (a) Upon termination, each board listed in AS 08.03.010 shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(b) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(c) a board scheduled for termination under AS 08.03.010—08.03.020 may be continued or reestablished by the legislature for a period not to exceed four years unless the board is continued or reestablished for a longer period under AS 08.03.010. (§ 2 ch 74 SLA 1979; am § 2 ch 36 SLA 1980; am § 2 ch 37 SLA 1980; am § 2 ch 38 SLA 1980; am § 2 ch 39 SLA 1980; am § 2 ch 40 SLA 1980; am § 2 ch 41 SLA 1980; am § 2 ch 42 SLA 1980; am § 2 ch 67 SLA 1980; am § 2 ch 87 SLA 1980)

ALASKA STATUTES

GUIDE BOARD
AS 08.54

**CHAPTER 54.
GUIDES.****Article**

1. Guide Board (§§ 08.54.010—08.54.070)
2. Licensing (§§ 08.54.100—08.54.220)
3. General Provisions (§§ 08.54.230—08.54.240)

**ARTICLE 1.
GUIDE BOARD****Section**

10. Creation and membership of board
30. Chairman of board
35. Quorum; voting requirement
40. Powers and duties
45. Special guide license
50. Board regulations
60. Board hearing
70. Compensation and expenses

Sec. 08.54.010. Creation and membership of board. For the purposes of licensing and regulating the activities of guides in the interest of the state's wildlife resources there is created the Guide Board consisting of seven members. No more than three members of the board shall hold or have held a registered, master, or class A assistant guide license. The other members must have a general knowledge of the game resources of the state and may not have a vested interest in the guiding industry. A minimum 10 years residence in the state is required for all members of the board. For administrative purposes, the board is in the Department of Commerce and Economic Development. (§ 1 ch 17 SLA 1973; am § 3 ch 71 SLA 1986)

Sec. 08.54.020. Appointment and term of office. *[Repealed, § 49 ch 94 SLA 1987. For current law, see AS 08.01.033]*

Sec. 08.54.030. Chairman of the board. The board shall elect one of its members as chairman. (§ 1 ch 17 SLA 1973)

Sec. 08.54.035. Quorum; voting requirement. Four members of the board constitute a quorum for the transaction of business, for the performance of a duty, and for the exercise of any power under this chapter. The board may not adopt a regulation, revoke, suspend, or deny renewal of a license, or assign, modify, or revoke a restricted guide area unless the action is approved by a vote of a majority of the full membership of the board. (§ 5 ch 71 SLA 1986)

Sec. 08.54.040. Powers and duties. (a) Except as provided in AS 08.54.045, the board shall

(1) prepare, grade and administer examinations, which may include oral examinations of applicants who demonstrate limited ability to read or write the English language;

(2) determine qualifications of applicants for licenses and authorize the issuance of licenses to those who qualify;

(3) establish guide performance standards and regulate activity;

(4) compile, maintain and publish an annual register of master and registered guides who have not been convicted of a violation of a state game or guiding statute or regulation; a guide listed in the register whose license is revoked or suspended shall be removed from the register while the guide's license is revoked or suspended;

(5) prohibit guiding activities which are unsportsmanlike, unethical, unsafe, against principles of conservation, degrading to the guiding profession, or which adversely affect the natural resources;

(6) after a hearing, revoke, suspend or deny renewal of a license in accordance with AS 08.54.200;

(7) establish a quota of licensed operating guides who may operate within designated geographical game units or subunits of the state and provide for an equitable and reasonable procedure for limiting the number of guides to that quota; preference shall be given to qualified available and willing licensed guides who reside within the designated game unit or subunit.

(8) meets at least twice annually, once in Anchorage and once in another municipality.

(b) *[Repealed, § 27 ch 71 SLA 1986.]* (§ 1 ch 17 SLA 1973; am § 1 ch 133 SLA 1976; am §§ 6, 27 ch 71 SLA 1986)

Sec. 08.54.045. Special guide license. The board may issue a special guide license to a person who applies to conduct a guided hunt for a specific species of marine mammal in a specifically designated area if the applicant

- (1) is 21 years of age or older;
- (2) has, for at least 10 years, resided and hunted in the area of the state in which the applicant is to guide;
- (3) is able to perform the duties of a special guide;
- (4) has demonstrated knowledge of the following areas to an extent and degree satisfactory to the board:
 - (A) fish and game laws and regulations;
 - (B) relevant characteristics of the specific species to be hunted;
 - (C) field preparation of trophies;
 - (D) care of game meat;
 - (E) use of guiding gear;
 - (F) firearm safety;
 - (G) practical first aid;
 - (H) booking and contracting hunts;
- (5) has not been convicted of a game or guiding law violation during the previous five years;
- (6) has not been convicted of a crime involving moral turpitude. (§ 1 ch 17 SLA 1973; am § 7 ch 71 SLA 1986)

Sec. 08.54.058. Board regulations. The board shall adopt procedural and substantive regulations, under the Administrative Procedure Act (AS 44.62), required by this chapter or reasonably necessary for its administration. (§ 1 ch 17 SLA 1973)

Sec. 08.54.060. Board hearing. The Administrative Procedure Act (AS 44.62) applies to proceedings and hearings under this chapter. (§ 1 ch 17 SLA 1973)

Sec. 08.54.070. Compensation and expenses. Members of the board receive no salary, but are entitled to per diem and travel expenses authorized by law for other boards. (§ 1 ch 17 SLA 1973)

**ARTICLE 2.
LICENSING.****Section**

- 100. Qualifications for a master guide license
- 110. Qualifications for registered guide license
- 120. Qualifications for a class-A assistant guide license
- 130. Privileges and limitations of class-A assistant guide license
- 140. Qualifications for assistant guide license
- 141. Privileges and limitations of assistant guide license
- 150. Responsibility of registered or master guide for violations
- 160. Licensing of marine mammal guides
- 170. License fees
- 180. Examination fee
- 186. Registered guide examination
- 190. Failure to renew
- 195. Restricted guide areas
- 200. Discipline of licensees
- 210. Unlawful acts
- 220. Injunction against unlawful action

Sec. 08.54.100. Qualifications for a master guide license. A person is entitled to be licensed as a master guide if the person

- (1) has legally hunted in the state for a part of each of 10 years during which time a substantial source of the person's income was from guiding or related activities directly contributing to the person's experience and competency as a guide;
- (2) meets all the requirements of a registered guide and has been actively engaged in licensed guiding activities in the state for at least five years preceding application;
- (3) has not been convicted of a violation of federal or state sport fishing, game or guiding laws or regulations within the preceding five years;
- (4) has consistently performed in a superior manner as evidenced by required reports submitted to the board and by inquiries made by the board to at least two of the guide's clients of record; and
- (5) meets additional qualifications which the board may require. (§ 1 ch 17 SLA 1973)

Sec. 08.54.110. Qualifications for registered guide license. (a) A person is entitled to be licensed as a registered guide if the person

- (1) is 21 years of age or older;
- (2) has practical field experience in the handling of firearms, hunting, judging trophies, field preparation of trophies, first aid and photography;
- (3) is familiar with the terrain and transportation problems in the district for which the license is requested;
- (4) has passed the qualification examination prepared and administered by the board;

(5) has demonstrated to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime involving moral turpitude;

(6) has legally hunted in the state during any five years in a manner directly contributing to the person's experience and competency as a guide;

(7) has been licensed as and performed the services of an assistant guide in the state for a part of each of three years, or has guided in the state for a part of each of three years under a special guide license issued under AS 08.54.045;

(8) submits a written recommendation to the board from a registered guide for whom the applicant has worked or from two registered guides; however, the requirements of this paragraph do not apply to a person who has guided under a special guide license for three years;

(9) is capable of performing the essential duties associated with guiding;

(10) has been favorably recommended in writing by two hunters that the person has guided or assisted in guiding during each year of the person's three years as an assistant guide, whose recommendations have been solicited by the board from a list provided by the applicant.

(b) The commissioner of commerce and economic development may order that an applicant for an initial license under this section be allowed to take the license examination or be issued the license if, after reviewing a petition filed by the applicant, the commissioner finds that

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

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

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

(A) an error of fact by the board;

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

(C) an erroneous or false statement in a recommendation submitted under (a)(8) of this section;

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

(5) sustaining the board's denial or refusal would work a substantial injustice on the applicant. (§ 1 ch 17 SLA 1973; am § 19 ch 67 SLA 1983; am §§ 8, 9 ch 71 SLA 1986)

Sec. 08.54.120. Qualifications for a class-A assistant guide license. A person is entitled to be licensed as a class-A assistant guide if the person

(1) has been employed for at least one season as a licensed assistant guide;

(2) has had at least 20 years experience in the guide district in which the person is to be employed; for the purposes of this paragraph physical presence at some time of the year during each of the 20 years constitutes adequate evidence of experience, and military service outside the state for no more than six years shall be accepted as part of the required 20 years experience;

(3) has been recommended in writing as qualified by a registered or master guide to the board. (§ 1 ch 17 SLA 1973)

Sec. 08.54.130. Privileges and limitations of class-A assistant guides. A class-A assistant guide

- (1) may not contract for hunts;
- (2) shall be under the supervision of a registered or master guide who has contracted with the client for whom the class-A assistant guide is conducting the hunt;
- (3) may take charge of a camp and conduct hunts from it without the registered or master guide necessarily being present in the area if the registered or master guide is physically present in the state and is actively supervising in guiding activities. (§ 1 ch 17 SLA 1973)

Sec. 08.54.140. Qualifications for assistant guide license. A person is entitled to be licensed as an assistant guide if the person

- (1) is 19 years of age or more;
- (2) *[Repealed, §19 ch 67 SLA 1983.]*
- (3) is favorably recommended to the board, in writing, by a registered guide;
- (4) meets additional qualifications which the board may require;
- (5) is in sound physical condition. (§ 1 ch 17 SLA 1973; am § 19 ch 67 SLA 1983)

Sec. 08.54.141. Privilege and limitations of assistant guide license. An assistant guide

- (1) may not contract to conduct a guided hunt; and
- (2) shall be employed and supervised by a registered or master guide at all times while the assistant guide is in the field on guided hunts. (§ 10 ch 71 SLA 1986)

Secs. 08.54.142—08.54.146. Transporter licensing. *[Repealed, § 27 ch 71 SLA 1986.]*

Sec. 08.54.150. Responsibility of registered or master guide for violations. A registered or master guide contracting for a hunt is equally responsible under AS 08.54.200 for a violation of a federal or state sport fish, game or guide statute or regulation committed by a class-A assistant guide or assistant guide while in the course of the class-A assistant guide's or assistant guide's employment. (§ 1 ch 17 SLA 1973)

Sec. 08.54.160. Licensing of marine mammal guides. The board may establish qualifications and issue licenses for marine mammal guides. (§ 2 ch 13 SLA 1983; am § 32 ch 37 SLA 1985)

Sec. 08.54.170. License fees. (a) The Department of Commerce and Economic Development shall set license fees under AS 08.01.065 for each of the following:

- (1) master guide;
- (2) registered guide;
- (3) class-A assistant guide;
- (4) assistant guide;
- (5) special guide.

(b) The license fee for a master guide, registered guide, special guide, class-A assistant guide, or assistant guide license is in addition to the fee required for a hunting license. (§ 1 ch 17 SLA 1973; am § 3 ch 106 SLA 1976 am § 4 ch 81 SLA 1984; am §§ 33, 54 ch 37 SLA 1985; am § 11 ch 71 SLA 1986)

Sec. 08.54.180. Examination fee. An applicant for a guide examination shall pay a fee established by regulations adopted under AS 08.01.065. (§ 1 ch 17 SLA 1973; am § 34 ch 37 SLA 1985)

Sec. 08.54.185. Additional fees. *[Repealed, § 27 ch 71 SLA 1986.]*

Sec. 08.54.186. Registered guide examination. The board shall administer the qualification examination required under AS 08.54.110 at least twice a year. An examination may not be given within 90 days after the previous exam. At least once every other year the board shall give the examination at a location other than Anchorage. (§ 12 ch 71 SLA 1986)

Sec. 08.54.190. Failure to renew. (a) *[Repealed, § 23 ch 81 SLA 1984.]*

(b) A license may not be issued to a class-A assistant guide or assistant guide who has failed to renew a license issued under this chapter for two consecutive years unless the class-A assistant guide or assistant guide again meets the qualifications for initial issuance of the license.

(c) A master or registered guide who fails to renew a license is not required to requalify under AS 08.54.100(2) or AS 08.54.110(8), respectively.

(d) *[Repealed, § 49 ch 94 SLA 1987.]* (§ 1 ch 17 SLA 1973; am § 12 ch 127 SLA 1974; am § 4 ch 106 SLA 1976; am § 23 ch 81 SLA 1984; am § 13 ch 71 SLA 1986; am § 49 ch 94 SLA 1987)

Sec. 08.54.195. Restricted guide areas. (a) Under AS 08.54.040(a)(7), the board may establish and assign restricted guide areas for master guides or registered guides. The board shall adopt regulations that establish uniform and consistent criteria, including a point system, to be used by the board when it establishes and assigns a restricted guide area.

(b) The board shall consider the following factors before it assigns a restricted guide area:

(1) the extent to which the guide who has applied for the area has guided in the game management unit in which the area is located;

(2) the extent to which the guide occupied and invested in the area;

(3) the effects, including the economic effect, on other guides that would result from creation of the area;

(4) big game population in the area;

(5) the land ownership status of the area; and

(6) other relevant facts or circumstances.

(c) The board may adopt regulations limiting the number of clients with which a guide may contract for hunts in a restricted guide area used by more than one guide.

(d) Unless the board determines after a public hearing that it is not in the public interest to do so, the board may transfer a restricted guide area to a person qualified for assignment who has been recommended by the guide to whom the area is assigned, or by a person authorized to represent the guide, if the recommendation is made

(1) after five years have elapsed from the date of the assignment of the guide area; or

(2) during the first five years after the date of assignment and the guide has died or suffered a major disability, as defined by the board.

(e) A guide may not sell or lease a restricted guide area. A guide may sell or otherwise transfer a lodge, camp, or other lawful improvement to property located in a restricted guide area. Sales price may not exceed fair market value. (§ 14 ch 71 SLA 1986)

Sec. 08.54.200. Grounds for disciplining a licensee. (a) The board shall hold a hearing to determine whether a licensee should be disciplined within a reasonable time after (1) complaints concerning a licensee's guiding activities are filed with the board by three or more of the licensee's clients from separate parties; (2) a complaint concerning a guide's conduct during a life-threatening situation is filed with the board; or (3) a licensee has been convicted of a violation of a federal or state hunting or guiding statute or regulation. The board may hold a hearing to determine whether disciplinary action is necessary if a complaint concerning a licensee's guiding activities is filed with the board by a client of the licensee.

(b) After a hearing, the board may revoke, suspend, or deny renewal of a license, and may withdraw a licensee's restricted guide area assignment, if the board finds that the licensee

(1) engaged in unethical activity, unsafe activity, or activity that adversely effects the natural resources of the state when the activity is related to the purposes of the contract hunt; or

(2) violated a provision of a federal or state game or guide statute or regulation.

(c) After a hearing, the board shall revoke a license and shall withdraw a licensee's restricted guide area assignment if the board finds that the licensee

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

(2) is incompetent as a master guide, registered guide, special guide, class-A assistant guide, or assistant guide;

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

(A) waste of a wild food animal;

(B) hunting on the same day airborne;

(C) hunting during a closed hunting season; or

(D) hunting in an area closed by federal regulation; or

(4) during the five years immediately preceding the hearing, has been convicted of two violations of a state statute or regulation prohibiting hunting in a restricted area not assigned to the licensee and without proper written permission.

(d) A person who is disciplined under this section may not engage in a guiding activity during the period of license revocation or disciplinary action. A person licensed under this chapter may not hire as a guide a person whose guide license is suspended or revoked under this section. A guide whose license is suspended or revoked may not guide in the employ of a person licensed under this chapter.

(e) If the board revokes a license it shall notify the Department of Revenue, and the person whose license has been revoked shall return the license to the Department of Commerce and Economic Development.

(f) If a certified copy of a judgment of conviction of a guide for an offense described under (c)(3) of this section, or for each of two offenses under (c)(4) of this section, is filed with the board, the board shall immediately suspend the guide's license. The suspension may be ordered even if the conviction resulted from a plea of nolo contendere or if the conviction is under appeal. The order remains in effect until after final disposition of the disciplinary proceeding under this section.

(g) A certified copy of a judgment of conviction of a guide for an offense is conclusive evidence of the commission of that in a disciplinary proceeding instituted against the guide under this section based on that conviction.

(h) Within 30 days after a hearing under this section, the board shall notify the complainant of the results of the hearing, including written reasons justifying a decision not to take disciplinary action. If the board decides not to hold a discretionary hearing, the board shall give the complainant written notice of its reasons within 30 days after making the decision.

(i) In this section "two violations of a state statute or regulations" means two violations of a single statute or a single regulation, or violations of two statutes or two regulations, or one violation of a statute and one violation of a regulation. (§ 1 ch 17 SLA 1973; am § 2 ch 43 SLA 1975; am § 5 ch 106 SLA 1976; am § 47 ch 218 SLA 1976; am §§ 15—19 ch 71 SLA 1986)

Sec. 08.54.210. Unlawful acts. (a) It is unlawful for

(1) a master guide, registered guide, special guide, class-A assistant guide, or assistant guide to fail to timely report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, a violation of a state fish, game, or guiding statute or regulation that the guide reasonably believes was committed by a client or an employee of the guide;

(2) a guide, to commit or aid the commission of a violation of this chapter or of a state game or guiding statute or regulation or to permit the commission of a violation that the guide knows or reasonably believes is being or will be committed without attempting to prevent it, short of using force, and without reporting it;

(3) a person to guide without having a current valid guide license and resident * hunting license in actual possession;

(4) a person to advertise as or represent to be a guide, without holding a current valid guide license;

(5) a guide to intentionally obstruct or hinder or attempt to obstruct or hinder lawful hunting engaged in by a person who is not a client of the guide;

** The Department of Law has determined the "resident" requirement in AS 08.54.210(a)(3) and (a)(6) is unconstitutional, therefore this requirement is not enforced.*

(6) a person to guide without being validly licensed as a guide under this chapter and as a resident * hunter under AS 16;

(7) an assistant guide to contract to conduct a guided hunt;

(8) an assistant guide to be in the field on a guided hunt except while employed and supervised by a registered or master guide.

(b) A person who violates (a)(1)-(5) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both, and the person's license may be revoked for a period up to five years. However, a person who engages in guiding activity during the period for which the person's license is suspended or revoked under this chapter, or who violates (a)(6) - (8) of this section, is guilty of a felony punishable, upon conviction, by a fine of not more than \$5,000 and by imprisonment for not less than one year nor more than three years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding activity engaged in during the period of suspension or revocation may be seized by persons authorized to enforce this chapter and may be forfeited to the state as provided under AS 16.05.195. (§ 1 ch 17 SLA 1973; am §§ 3, 4 ch 43 SLA 1975; am § 6 ch 106 SLA 1976; am § 3 ch 133 SLA 1976; am §§ 5, 6 ch 268 SLA 1976; am §§ 20, 21 ch 71 SLA 1986)

Sec. 08.54.220. Injunction against unlawful action. When in the judgment of the board a person or corporation or other entity has engaged in an act in violation of AS 08.54.130 and AS 08.54.200-08.54.210 or the regulations promulgated under them, the board may apply to the appropriate court for an order enjoining the act. Upon a showing by the board that the person is engaging in the act, the court shall grant injunctive relief or other appropriate order without bond. (§ 1 ch 17 SLA 1973; am § 5 ch 43 SLA 1975)

ARTICLE 3. GENERAL PROVISIONS.

Section

230. Records of guided hunts

240. Definitions

Sec. 08.54.230. Records of guided hunts. The Department of Commerce and Economic Development shall collect and maintain records of hunts conducted by guides. The department shall make the records available to state and federal agencies charged with the enforcement of statutes and regulations relating to guiding or game if requested for enforcement purposes. For all other purposes, the records are confidential and are not subject to inspection or copying under AS 09.25.110-09.25.121. (§ 22 ch 71 SLA 1986)

Sec. 08.54.240. Definitions. In this chapter

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

(2) "board" means the Guide Board;

(3) "guide" or "guiding" means accompanying or directing a hunter in the field, personally or through an assistant, for compensation or with the intent or an agreement to receive compensation, while the hunter or the person accompanying or directing the hunter spots, stalks, pursues, tracks, kills, or attempts to kill big game; in this paragraph, "in the field" does not include being present in a boat with living quarters or at a lodge or base camp;

* The Department of Law has determined the "resident" requirement in AS 08.54.210(a)(3) and (a)(6) is unconstitutional, therefore this requirement is not enforced.

(4) "resident" has the meaning given in AS 16.05.940;

(5) "restricted guide area" is a geographical area of the state the boundaries of which are determined by the board, and in which guided hunts may be conducted only by the guides to whom the area is assigned under AS 08.54.195;

(6) "unethical activity" means

(A) deception or misrepresentation involving prospective or actual clients either before, during, or following a contract hunt, including misrepresentation through private or public advertising of the type, duration, cost or conditions of the contract hunt;

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

(C) engaging in unsafe or unsportmanlike activities that are detrimental to the game resources of the state, as defined by regulations of the board, including violations of state hunting or guiding statutes or regulations; or

(D) accepting a deposit for guiding services without providing before the hunt a signed contract to provide the services. (§ 1 ch 17 SLA 1973; am §§ 7, 8 ch 106 SLA 1976; am § 2 ch 133 SLA 1976; am § 19 ch 67 SLA 1983; am § 23 ch 71 SLA 1986)

PROFESSIONAL AND VOCATIONAL REGULATIONS

OCCUPATIONAL LICENSING
12 AAC 02

**Title 12.
PROFESSIONAL AND VOCATIONAL
REGULATIONS**

**Part 1. Boards and Commissions Subject to
Centralized Licensing
(12 AAC 04—12 AAC 72)**

**Part 1
Boards and Commissions
Subject to Centralized Licensing**

Chapter

- 02. Department of Commerce and Economic Development, Division of Occupational Licensing
(12 AAC 02.010—12 AAC 02.990)
- 04. Board of Public Accountancy
(12 AAC 04.005—12 AAC 04.990)
- 06. Athletic Commission
(12 AAC 06.010—12 AAC 06.990)
- 07. Audiologists (12 AAC 07.010)
- 08. (Repealed)
- 09. Board of Barbers and Hairdressers
(12 AAC 09.005—12 AAC 09.915)
- 16. Board of Chiropractic Examiners
(12 AAC 16.010—12 AAC 16.910)
- 20. Collection Agency Board
(No regulations filed)
- 21. Construction Contractors
(12 AAC 21.010—12 AAC 21.300)
- 24. (Repealed)
- 28. Board of Dental Examiners
(12 AAC 28.010—12 AAC 28.990)
- 30. Board of Dispensing Opticians
(12 AAC 30.010—12 AAC 30.050)
- 32. Board of Electrical Examiners
(12 AAC 32.010—12 AAC 32.990)
- 36. State Board of Registration for Architects, Engineers and Land Surveyors
(12 AAC 36.010—12 AAC 36.250)
- 38. Guide Licensing
(12 AAC 38.005—12 AAC 38.990)
- 40. State Medical Board
(12 AAC 40.010—12 AAC 40.990)
- 44. Board of Nursing
(12 AAC 44.010—12 AAC 44.940)
- 46. Board of Nursing Home Administrators
(12 AAC 46.010—12 AAC 46.900)
- 48. Board of Examiners in Optometry
(12 AAC 48.010—12 AAC 48.080)

- 52. Board of Pharmacy
(12 AAC 52.010—12 AAC 52.900)
- 54. State Physical Therapy Board
(12 AAC 54.010—12 AAC 54.940)
- 56. Board of Marine Pilots
(12 AAC 56.010—12 AAC 56.990)
- 60. Board of Psychologist and Psychological Associate Examiners
(12 AAC 60.010—12 AAC 60.900)
- 64. Real Estate Commission
(12 AAC 64.010—12 AAC 64.950)
- 68. Board of Veterinary Examiners
(12 AAC 68.010—12 AAC 68.900)
- 72. (Deleted)

**CHAPTER 2
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING**

Article

- 1. Collection of Fees
(12 AAC 02.010—12 AAC 02.030)
- 2. Occupational Licensing Fees
(12 AAC 02.100—12 AAC 02.350)
- 3. Examination Review Procedures
(12 AAC 02.400)
- 4. General Provisions
(12 AAC 02.900—12 AAC 02.990)

**ARTICLE 1
COLLECTION OF FEES**

Section

- 10. Licensing and renewal fees
- 20. Prorating renewal fees
- 30. Prorating initial renewal fees

12 AAC 02.010. LICENSING AND RENEWAL FEES. (a) The department will collect fees and issue receipts for licensing and for license renewal for the boards listed in AS 08.01.010.

(b) The department will not issue a license or renew a license unless the applicable fees established in AS 08 or in this chapter have been collected, and a receipt has been prepared.

(c) Except as otherwise provided in 12 AAC, applications for initial licensure or renewal of license will be considered filed as of the date stamped on the document, when it is received in the division office.

(d) Except as otherwise provided in 12 AAC, an incomplete application, and supporting documentation for initial licensure or renewal of a license, will be considered abandoned after one year from the date of the last correspondence in the file.

(e) An application fee is not refundable. (Eff. 10/2/81, Reg. 80; am 12/5/84, Reg. 92; am 3/6/86, Reg. 97)

Authority: AS 08.01.050
AS 08.01.060
AS 08.01.065
AS 08.01.080
AS 08.01.100

12 AAC 02.020. PRORATING RENEWAL FEES. The department will prorate the first license renewal fees following initial licensure, in accordance with 12 AAC 02.030. All renewal fees, including penalty and delinquent fees must be paid by the licensee applying for renewal of a license, except as provided for in 12 AAC 02.030 (a)(1) and (b)(1). (Eff. 10/2/81, Reg. 80; am 12/5/84, Reg. 92)

Authority: AS 08.01.050
AS 08.01.080
AS 08.01.100

12 AAC 02.030. PRORATING INITIAL RENEWAL FEES. (a) When the department issues an initial biennial license

(1) within the 30 days before the date by which it must be renewed, the applicant shall pay the entire license fee but is not required to pay the prescribed renewal fee until the second renewal date;

(2) within the 12 months before the date by which the license must be renewed, the applicant shall pay the entire license fee, and shall pay one-half of the prescribed renewal fee at the time of renewal or

(3) more than 12 months before the date by which the license must be renewed, the applicant shall pay the entire license fee, and shall pay the entire prescribed renewal fee at the time of renewal.

(b) When the department issues a quadrennial initial license

(1) within the 60 days before the date by which the license must be renewed, the applicant shall pay the entire license fee but is not required to pay the prescribed renewal fee until the second renewal date;

(2) within 24 months before the date by which the license must be renewed, the applicant shall pay the entire license fee, and shall pay one-half of the prescribed renewal fee at the time of renewal;

(3) more than 24 months before the date by which the license must be renewed, the applicant shall pay the entire license fee, and the applicant shall pay the entire prescribed renewal fee at the time of renewal.

(c) The department will not prorate renewal fees if the initial licensing fee is \$100.00 or less.

(d) The department will not prorate fees for applications, examinations, reexaminations, credential review or investigations, temporary or emergency permits, locum tenens permits, certificates or other such fees established in AS 08. or this chapter. (Eff. 10/2/81, Reg. 80; am 3/28/82, Reg. 81; am 12/5/84, Reg. 92; am 3/6/86, Reg. 97)

Authority: AS 08.01.065
AS 08.01.080
AS 08.01.100

**ARTICLE 2
OCCUPATIONAL LICENSING FEES**

Section

- 100. Fees established by department**
105. Administrative fees
230. Guide board

12 AAC 02.100. FEES ESTABLISHED BY DEPARTMENT. The fees established in this chapter have been adopted by the department with the concurrence of the applicable board or commission listed in AS 08.01.010. (Eff. 3/6/86, Reg. 97)

Authority: AS 08.01.065

12 AAC 02.105. ADMINISTRATIVE FEES. Except as otherwise provided in this chapter for a particular board or occupation, the following fees apply to all boards and professions listed in AS 08.01.010.

- (1) duplicate license fee, \$5;
- (2) fee for verification or certification to another state of Alaska license, registration or examination, \$5;
- (3) name change, except for construction contractors, \$5;
- (4) photocopy fee, \$.25 per page;
- (5) returned check fee, \$20;
- (6) penalty for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days, \$20;
- (7) exam postponement fee, \$20; and
- (8) wall certificate fee, \$20. (Eff. 9/27/86, Reg. 99; am 11/20/86, Reg. 100; am 4/3/88, Reg. 105)

Authority: AS 08.01.065
AS 08.01.100

12 AAC 02.230. GUIDE BOARD. The following fees are established

- (1) application fee, \$30;
- (2) guide examination fee, \$25;
- (3) master guide license fee, for all or part of a biennial license period, \$240;
- (4) registered guide license, for all or part of a biennial license period, \$240;
- (5) class-A assistant guide license, for all or part of a biennial license period, \$50;
- (6) assistant guide license, for all or part of a biennial license period, \$50; and
- (7) Repealed 4/3/88. (Eff. 3/6/86, Reg. 97; am 4/3/88, Reg. 105)

Authority: AS 08.01.010(14)
AS 08.01.065
AS 08.54.170
AS 08.54.180

**ARTICLE 3.
EXAMINATION REVIEW PROCEDURES.****Section****400. Examination review****12 AAC 02.400. EXAMINATION REVIEW.** (a)

For nationally prepared and administered examinations, the examination review procedures established by the national examination organization will be used in conjunction with the procedures established in this section. National examinations which have no provision for examination review are not available for review under this section.

(b) An applicant who wishes to review a failed examination shall submit a written request to the division within 30 days after the notice of examination results was mailed to the applicant.

(c) All examination reviews will be conducted in the presence of division staff at the time and location determined by the division. An examination review will not be conducted within 30 days of the next examination the applicant is scheduled to take.

(d) Only an applicant who has failed an examination may participate in the examination review and the applicant may review only his or her own examination.

(e) An application may use the same reference materials during an examination review that were allowed during the examination itself, but applicants may not use other materials or take notes or make copies of any kind. All materials brought to an examination review are subject to inspection by the division staff. (Eff. 4/3/88, Reg. 105)

Authority: AS 08.01.050
AS 08.01.080

**ARTICLE 4
GENERAL PROVISIONS****Section****900. Current address****990. Definitions**

12 AAC 02.900. CURRENT ADDRESS. A person licensed, registered, or certified by a board or

commission listed in AS 08.01.010, or in an occupation listed in AS 08.01.010, shall maintain a current, valid mailing address on file with the division at all times. The latest mailing address on file with the division is the address that will be used for official communications, notifications, and service of legal process. (Eff. 4/3/88, Reg. 105)

Authority: AS 08.01.050
AS 08.01.080
AS 08.01.087

12 AAC 02.990. DEFINITIONS. As used in this chapter

(1) "department" means the Department of Commerce and Economic Development;

(2) "division" means the division of occupational licensing, Department of Commerce and Economic Development;

(3) "license" means a license, certificate, permit, registration or similar evidence of authority issued by the division or by one of the boards listed in AS 08.01.010;

(4) "licensee" means person who holds a license issued by the division or by one of the boards listed in AS 08.01.010. (Eff. 12/5/84, Reg. 92)

Authority: AS 08.01.050
AS 08.01.080
AS 08.01.100

PROFESSIONAL AND VOCATIONAL REGULATIONS

**GUIDE BOARD
12 AAC 38**

PROFESSIONAL AND
VOCATIONAL REGULATIONSCHAPTER 38.
GUIDE LICENSINGINTRODUCTION TO
TABLES OF COMPARATIVE SECTIONS

On December 1, 1986 the Department of Commerce and Economic Development recodified Title 12, Chapter 38, of the Alaska Administrative Code (AAC) relating to the Guide Board in an effort to make the chapter easier to use by both the Guide Board and the general public and to allow for the future adoption of new sections. The standard codifying procedure used in the AAC has been retained. History notes under the sections in their new location carry forward the history in their former location.

For the convenience of the reader, two tables of comparative sections are set out below. The first table sets out the old 12 AAC 38 section numbers in the first column and the new location in the second column. The second table reverses the order.

TABLE OF COMPARATIVE SECTIONS

Previous Reference Number	New Reference Number
12 AAC 38.010	12 AAC 38.015
12 AAC 38.020	12 AAC 38.900
12 AAC 38.030	12 AAC 38.005
12 AAC 38.040	12 AAC 38.200
12 AAC 38.050	12 AAC 38.050
12 AAC 38.051	12 AAC 38.210
12 AAC 38.052	12 AAC 38.250
12 AAC 38.053	12 AAC 38.220
12 AAC 38.054	12 AAC 38.260
12 AAC 38.055	12 AAC 38.270
12 AAC 38.056	12 AAC 38.280
12 AAC 38.057	12 AAC 38.230
12 AAC 38.058	12 AAC 38.290
12 AAC 38.060	12 AAC 38.240
12 AAC 38.070	12 AAC 38.300
12 AAC 38.080	12 AAC 38.310
12 AAC 38.090	12 AAC 38.320
12 AAC 38.100	12 AAC 38.330
12 AAC 38.110	12 AAC 38.340
12 AAC 38.120	12 AAC 38.350
12 AAC 38.130	12 AAC 38.130
12 AAC 38.140	12 AAC 38.025
12 AAC 38.150	12 AAC 38.035
12 AAC 38.155	12 AAC 38.065
12 AAC 38.156	12 AAC 38.075
12 AAC 38.160	12 AAC 38.360
12 AAC 38.170	12 AAC 38.370

Previous Reference
Number

12 AAC 38.175
12 AAC 38.180
12 AAC 38.190

New Reference
Number

12 AAC 38.380
12 AAC 38.390
12 AAC 38.990

REVERSE TABLE OF COMPARATIVE SECTIONS

New Reference
NumberPrevious Reference
Number

12 AAC 38.005	12 AAC 38.030
12 AAC 38.015	12 AAC 38.010
12 AAC 38.025	12 AAC 38.140
12 AAC 38.035	12 AAC 38.150
12 AAC 38.050	12 AAC 38.050
12 AAC 38.065	12 AAC 38.155
12 AAC 38.075	12 AAC 38.156
12 AAC 38.130	12 AAC 38.130
12 AAC 38.200	12 AAC 38.040
12 AAC 38.210	12 AAC 38.051
12 AAC 38.220	12 AAC 38.053
12 AAC 38.230	12 AAC 38.057
12 AAC 38.240	12 AAC 38.060
12 AAC 38.250	12 AAC 38.052
12 AAC 38.260	12 AAC 38.054
12 AAC 38.270	12 AAC 38.055
12 AAC 38.280	12 AAC 38.056
12 AAC 38.290	12 AAC 38.058
12 AAC 38.300	12 AAC 38.070
12 AAC 38.310	12 AAC 38.080
12 AAC 38.320	12 AAC 38.090
12 AAC 38.330	12 AAC 38.100
12 AAC 38.340	12 AAC 38.110
12 AAC 38.350	12 AAC 38.120
12 AAC 38.360	12 AAC 38.160
12 AAC 38.370	12 AAC 38.170
12 AAC 38.380	12 AAC 38.175
12 AAC 38.390	12 AAC 38.180
12 AAC 38.900	12 AAC 38.020
12 AAC 38.990	12 AAC 38.190

**CHAPTER 38.
GUIDE LICENSING****Article**

1. License Requirements
(§§ 12 AAC 38.005—12 AAC 38.130)
2. Guiding Area Permits
(§§ 12 AAC 38.200—12 AAC 38.290)
3. Professional Conduct
(§§ 12 AAC 38.300—12 AAC 38.390)
4. General Provisions
(§§ 12 AAC 38.900—12 AAC 38.990)

**ARTICLE 1.
LICENSE REQUIREMENTS.****Section**

05. Application for licensure
15. Registered guide examination
25. [Deleted]
35. Requirements for a master guide license
50. [Repealed]
65. Requirements for a marine mammal guide license
75. Requirements for assistant marine mammal guide license
130. [Repealed]

12 AAC 38.005. APPLICATION FOR LICENSURE.

An applicant for a master, registered, class-A assistant, assistant, marine mammal or assistant marine mammal guide license must

(1) make written application on the forms provided by the department;

(2) pay the fees established in 12 AAC 02.230; and

(3) meet the qualifications set out in AS 08.54.100, AS 08.54.110, AS 08.54.120, AS 08.54.140, 12 AAC 38.065, or 12 AAC 38.075. (Eff. 8/28/74, Reg. 50; am 4/22/88, Reg. 106)

Authority: AS 08.54.040
AS 08.54.050

12 AAC 38.015. REGISTERED GUIDE EXAMINATION. (a) An applicant who desires to take the registered guide examination shall submit to the department

(1) a complete application, including all supporting documents, in accordance with 12 AAC 38.005, 60 days before the examination date;

(2) a list of hunters the applicant has guided or assisted in guiding as an assistant or class A

assistant guide;

(3) a letter or letters of recommendation from a registered or master guide as required by AS 08.54.110(a)(8); and

(4) a notarized statement, subject to the penalties for unsworn falsification, that there has been no conviction of the applicant within the last five years and no currently pending criminal charges against the applicant for violations of a federal or state hunting or guiding statute or regulation.

(b) The registered guide examination is a written examination except that an oral examination will be given under AS 08.54.040(a)(1) to those who demonstrate limited ability to read or write the English language.

(c) A score of 80 percent is required to pass the registered guide examination.

(d) An applicant for a registered guide license who fails the examination and desires to retake the next scheduled examination shall make a written request and submit the required examination fee to the department no later than 30 days before the next examination.

(e) An applicant for a registered guide license who demonstrates to the board limited ability to read or write the English language, will be exempt from the written examination and will, in the board's discretion, be issued a license after passing an oral examination and a thorough review of the applicant's capabilities and experience.

(f) A registered guide license must be issued no later than one year after the applicant passes the registered guide examination or the applicant's eligibility for the license lapses. (Eff. 8/28/74, Reg. 50; am 6/15/80, Reg. 74; am 3/28/82, Reg. 81; am 11/21/84, Reg. 92; am 4/22/88, Reg. 106)

Authority: AS 08.54.040
AS 08.54.050
AS 08.54.110
AS 08.54.200

12 AAC 38.025. REQUIREMENT FOR A REGISTERED GUIDE LICENSE. Deleted 8/20/87.

Editor's Note: This section, formerly designated 12 AAC 38.140, was deleted from Reg. 103 on 8/20/87 by the Department of Law under AS 44.62.123(b)(6) and AS 01.05.031(b)(11) because in § 8 ch 71 SLA 1C36, the Legislature repealed the board's previous authority under former AS 08.54.110(12) to require additional qualification of applicants for registered guide licenses.

12 AAC 38.035. REQUIREMENTS FOR A MASTER GUIDE LICENSE. In addition to the requirements of AS 08.54.100, to be qualified for a master guide license a person must have acted as a registered guide for 12 consecutive years. (Eff. 6/18/74, Reg. 50)

Authority: AS 08.54.050
AS 08.54.100(5)

12 AAC 38.050. REGISTRATION OF MAIN CAMP.
Repealed 5/12/78.

12 AAC 38.065. REQUIREMENTS FOR A MARINE MAMMAL GUIDE LICENSE. (a) To help provide economic opportunity for residents of rural coastal Alaska who engage in subsistence uses of marine mammals, the board will, in its discretion, issue a marine mammal guide license to an applicant who meets the following criteria:

- (1) is at least 21 years old;
- (2) has legally hunted marine mammals during each of at least ten years, in a manner directly contributing to the applicant's experience and competency as a marine mammal guide;
- (3) is physically able to perform the services of a marine mammal guide;
- (4) demonstrates to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime of moral turpitude;
- (5) passes a qualification examination approved by the board and administered by the board or its agent, which covers the following areas:
 - (A) fishing, hunting, and guiding regulations;
 - (B) relevant characteristics of marine mammals;
 - (C) relevant characteristics of the ice, ocean, currents, and weather;
 - (D) field preparation of trophies;
 - (E) care of meat;
 - (F) firearms safety;
 - (G) practical first aid;

(H) photography; and

(I) booking and contracting guided hunts.

(b) A marine mammal guide will be authorized only to contract for and conduct guided hunts for species of marine mammals and in geographic areas of the state designated by the board.

(c) No marine mammal guide may contract for, or guide, more than two hunters in the field on any one hunt.

(d) A marine mammal guide must comply with AS 08.54 and 12 AAC 38. (Eff. 10/15/82, Reg. 84; am 4/22/88, Reg. 106)

Authority: AS 08.54.040
AS 08.54.050
AS 08.54.160

12 AAC 38.075. REQUIREMENTS FOR ASSISTANT MARINE MAMMAL GUIDE LICENSE. (a) To help provide economic opportunity for residents of rural coastal Alaska who engage in subsistence uses of marine mammals, the board will, in its discretion, issue an assistant marine mammal guide license to an applicant who meets the following criteria:

- (1) is at least 19 years old;
 - (2) has legally hunted marine mammals during each of at least seven years, in a manner directly contributing to the applicant's experience and competency as an assistant marine mammal guide;
 - (3) is physically able to perform the duties of an assistant marine mammal guide; and
 - (4) demonstrates to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime of moral turpitude.
- (b) No assistant marine mammal guide may
- (1) book or contract for a guided marine mammal hunt;
 - (2) conduct a guided hunt for marine mammals; or
 - (3) guide for a marine mammal, unless under the immediate supervision of a licensed marine

mammal guide. (Eff. 10/15/82, Reg. 84; am. 4/22/88, Reg. 106)

Authority: AS 08.54.040
AS 08.54.050
AS 08.54.160

12 AAC 38.130. REQUIREMENTS FOR AN ASSISTANT GUIDE LICENSE. Repealed 5/12/79.

**ARTICLE 2.
GUIDING AREA PERMITS**

Section.

- 200. Restrictions to districts
- 210. Guiding area permits
- 220. Application and qualification for guiding area permit
- 230. Minimum use of guiding area permit
- 240. Statement of financial remuneration
- 250. Use of guiding area assigned to another guide
- 260. Reassignment of guiding area permit
- 270. Death or mental incapacity of guiding area permit holder
- 280. Changes to guiding area permits
- 290. Ground for revocation or suspension of a guiding area permit

12 AAC 38.200. RESTRICTION TO DISTRICTS. (a) A guide may conduct guiding activities only in districts for which he is certified.

(b) Twenty-six guide districts are established and defined as being identical to those areas described as game management units by the Board of Fish and Game in 5 AAC 90.010, as of January 1, 1974, with the addition of the following subdistrict:

(1) repealed 6/15/80;

(2) repealed 6/6/79;

(3) 27—Arctic Coastal, consisting of all land, including islands, and waters within the jurisdiction of the State of Alaska extending seaward from a point one mile inland from the mean high tide line north of 58 North latitude, beginning at the mouth of the King Salmon River near Egegik and extending northward around the western and northern Alaska coastline to the eastern boundary of District 26. This district is designated for the hunting of marine mammals exclusively. "Marine mammals" means those mammals identified by the Alaska Board of Game as marine mammals.

(c) A guide licensed under AS 08.54 as of June 28, 1974 is restricted to certification to guide in those districts for which he was certified on that date. A guide licensed or entitled to renewal under AS 08.54 as of April 11, 1980 and certified in Districts 18, 18A, 22, 23, or 26 is hereby certified for Unit 27.

(d) Except as provided in (c) above, no guide may be certified for more than three districts, in addition to District 27.

(e) A master guide or registered guide may serve as a class-A assistant guide in districts for which he is not certified.

(f) Notwithstanding any provision of this section, a guide may petition the board for a transfer of certification to another district if he demonstrates to the satisfaction of the board

(1) that he will incur substantial hardship if a transfer is not permitted as evidenced by

(A) substantial land withdrawals from hunting within his district;

(B) significant reclassifications of land within his district;

(C) depletion of game as evidenced by actions of the Department of Fish and Game; or

(D) other demonstrations of hardship; and

(2) that he is qualified to guide in the district to which he wishes to be transferred. (Eff. 6/28/74, Reg. 50; am 2/25/77, Reg. 61; am 6/6/79, Reg. 70; am 6/15/80, Reg. 74; am 3/28/82, Reg. 81)

Authority: AS 08.54.040(3) and (6)
AS 08.54.050

12 AAC 38.210. GUIDING AREA PERMITS. (a) Guiding area permits will be issued by the board to guides qualifying under 12 AAC 38.220 and 12 AAC 38.260 for exclusive or joint use of a specified area in order to limit the number of guides allowed to guide for big game animals in that area.

(b) The board will determine the size, boundaries and number of guiding areas assigned to a master or registered guide and is not limited by number or boundaries of guide districts that may be included. In determining the size and boundaries of a guiding area, the board will consider, but is not limited to, the following criteria:

(1) size and boundaries applied for by the guide applicant;

(2) abundance and distribution of game populations in the area and adjacent areas that may be affected, and the ability of these populations to sustain hunting pressures;

(3) repealed 11/21/84;

(4) value and location of applicant's investments in the area;

(5) likely impact of the applicant's guiding business on other guides in joint use or in adjacent areas;

(6) applicant's past use of and experience in the area;

(7) applicant's local residency;

(8) availability of alternative areas and applicant's dependence on guiding in the requested area;

(9) effect of hunting and land use regulations in that area.

(c) Each guiding area will be assigned a unique identification code.

(d) Notwithstanding any other provisions of this section, no new exclusive guiding area permits will be issued for District 27, as defined in 12 AAC 38.200(b)(3); however, this subsection does not affect valid existing guiding area permits issued for Nunivak Island before March 1, 1981.

(e) An applicant who is aggrieved by a board decision regarding the size or boundaries of a guiding area is entitled to a hearing under AS 44.62.370 to review the board's action; a hearing must be requested within 15 days after the guide receives written notice of the board's action. (Eff. 5/12/78, Reg. 66; am 6/27/81, Reg. 78; am 11/21/84, Reg. 92)

Authority: AS 08.54.040(a)(3), (6) & (8)
AS 08.54.050

12 AAC 38.220. APPLICATION AND QUALIFICATION FOR GUIDING AREA PERMIT. (a) An applicant for initial issuance of a guiding area permit must, at the time of application and at the time the application is reviewed by the board, be a

registered or master guide in good standing and must be certified in the district or districts in which the applied for guiding area is located. If civil or criminal charges for violation of a state or federal sport fish, game, or guiding law or regulation are pending against a guide at the time the board is to review the application, the board may defer action on the application until conclusion of the civil or criminal action.

(b) In order to be considered, an applicant must submit to the board, on or before the published deadline, an application which describes the proposed geographic boundaries of the guiding area being applied for and a 1:250,000 scale map showing the proposed boundaries.

(c) Each application must include satisfactory documentation of the applicant's past use, occupancy, and financial investment in the guiding area applied for, as applicable. The application may include other relevant information if it is substantiated by satisfactory documentation.

(d) The board will, in its discretion, issue a permanent guiding area permit to a qualified applicant who can substantiate his use, occupancy, or financial investment in the guiding area for at least three of the five years immediately preceding the published deadline for filing the application for that particular unit. The board will, in its discretion, issue a temporary guiding area permit to a qualified applicant who can substantiate his use, occupancy or financial investment in the guiding area for at least two of the five years immediately preceding the published deadline for filing the application for that particular unit. In determining whether to issue a guiding area permit, the board will give preference to qualifying guides whose permanent residence is within the district in which the area is located and will consider criteria including the following:

(1) ability of the area to sustain an additional guided hunting operation, in terms of game populations, terrain, methods of hunting, and use by other guides or hunters; and

(2) amount of investments in the applied for area, and length of use in the district.

(e) The holder of a temporary guiding area permit may apply for a permanent permit after one additional year of use, in the temporary guiding area.

(f) The board will not issue to a master or registered guide more than three exclusive or joint use guide area permits, either on a temporary or permanent basis.

(g) In this section "use" means conducting guided hunts as a registered or master guide in the district in which the applied for area is located, as evidenced by statements of financial remuneration submitted under 12 AAC 38.240(b). (Eff. 5/12/78, Reg. 66; am 10/15/82, Reg. 84; am 4/22/88, Reg. 106)

Authority: AS 08.54.040
AS 08.54.050

12 AAC 38.230. MINIMUM USE OF GUIDING AREA. Each holder of a guiding area permit must be a currently licensed guide and must conduct at least two contracted big game hunts during each calendar year within each guiding area, as evidenced by statements of financial remuneration filed in accordance with 12 AAC 38.240. The board will, in its discretion, require any other documentation to demonstrate that the contracts were fulfilled. If, in any calendar year, the holder of a guiding area permit fails to conduct two guided big game hunts in that guiding area, the permit holder must submit to the department by January 31 of the following calendar year, a written statement explaining the failure to use the area. Failure to conduct at least two guided big game hunts each calendar year in the guiding area as required by this section constitutes grounds for revocation of the guiding area permit, unless the permit holder can demonstrate to the satisfaction of the board that circumstances beyond the permit holder's control precluded conducting the required hunts. (Eff. 5/12/78, Reg. 66; am 6/27/81, Reg. 78; am 11/21/84, Reg. 92)

Authority: AS 08.54.040(a)(3), (6) & (8)
AS 08.54.050

12 AAC 38.240. STATEMENT OF FINANCIAL REMUNERATION. (a) Before hunting with a client, a guide shall complete or have completed a statement of financial remuneration or "SFR" in triplicate on a form provided by the board for this purpose, and shall state

(1) that financial or material remuneration for services was received;

(2) the dates of the contract hunt;

(3) the species to be hunted for and

(A) the client's hunting license number;

(B) the big game tag numbers, by species;

(C) the harvest ticket numbers, by species;

(4) the signature of the guide area permit holder, if applicable;

(5) the legal signatures of the guide contracting the hunt and of the client.

(6) the typed or printed names and addresses of the guide and the client;

(7) the guiding area permit unique identifying code assigned under 12 AAC 38.210, or if an open area, the Game Management Unit number.

(b) The original of the statement required in (a) of this section must be sent to the department within 21 days after completion of the hunt.

(c) The guide is responsible for furnishing one copy of the statement to the client.

(d) One copy of the statement must be filed in camp for the duration of the hunt, and after that, at the guide's regular place of business for four years, and must be produced for inspection upon request by an agent of the department or anyone authorized under AS 16 to enforce game regulations.

(e) Statements of financial remuneration as well as other supporting documentation regarding guide/client contractual agreements which are maintained on file by the department will be considered confidential information requiring a court order for production to a person or an agency other than the Guide Board.

(f) Statements of financial remuneration cancelled before a hunt must be reported to the department within 21 days after the date of cancellation. (Eff. 6/28/74, Reg. 50; am 5/12/78, Reg. 66, am 11/21/84, Reg. 92)

Authority: AS 08.54.050

12 AAC 38.250. USE OF GUIDING AREA ASSIGNED TO ANOTHER GUIDE. (a) A guide may not

(1) lease or rent a guiding area to another guide for monetary or material gain;

(2) contract for or conduct a guided big game hunt in an exclusive guiding area not assigned to that guide by the board without first obtaining written permission from the guide who is assigned that guiding area; and

(3) conduct a guided big game hunt in a joint-use guiding area not assigned to that guide by the board without first obtaining written permission from each joint-use permit holder.

(b) A copy of the written permission required by (a) of this section must, at all times during the hunt, be on the person of the guide conducting the hunt or kept in the base camp from which the hunt is conducted.

(c) The written permission required by (a) of this section must be written on the statement of financial remuneration filed for the hunt and must include the

(1) dates for which the permission is valid;

(2) species and number of big game animals to be hunted;

(3) date permission is signed and signature of each person holding a permit for the guiding area.

(d) A guide who gives written permission to another to use a guiding area, may be held equally responsible with the guide receiving the permission, in a proceeding for revocation of the permit, for any violations in or misuse of the guiding area committed during the time authorized in the written permission. (Eff. 5/12/78, Reg. 66; am 10/11/81, Reg. 80; am 10/15/82, Reg. 84; am 6/16/85, Reg. 94; am 8/20/87, Reg. 103; am 4/2/88, Reg. 106)

Authority: AS 08.54.040(a)
AS 08.54.050

12 AAC 38.260. REASSIGNMENT OF GUIDING AREA PERMIT. (a) Guiding area permits are not transferable by the permit holder. The board will, in its discretion, reassign a guiding area permit

(1) upon the death of the permit holder or upon a judicial determination that the permit holder is mentally incompetent;

(2) upon revocation or suspension of a guiding area permit;

(3) if the permit holder voluntarily relinquishes the guiding area permit; and

(4) upon application for reassignment.

(b) Under (a)(4) of this section, a permit holder may apply to the board for reassignment of his or her guiding area permit to a designated master or registered guide; the application must be made jointly by the permit holder and the designated master or registered guide. Approval of the reassignment will be given only upon a finding by the board, after notice and opportunity for a hearing, that the designated registered or master guide is qualified to guide in the area, is certified in the district or districts in which the applied for guiding area is located, and that the reassignment is consistent with the public interest. The board will consider the designated master or registered guide's past use, occupancy, or financial investment in the guiding area and other relevant and reliable information in determining whether the designated master or registered guide is qualified.

(c) Except as otherwise provided in this chapter, an applicant for a guiding area permit which is to be reassigned must meet the requirements of 12 AAC 38.220(a) and make application in the manner prescribed for initial issuance of a guiding area permit.

(d) If an applicant cannot establish past use of the guiding area to be transferred or is not certified in the district or districts in which the guiding area is located, the board will consider experience and current use in another area of similar terrain if the applicant can establish to the satisfaction of the board that he or she is competent because of other relevant factors to conduct guiding activities in the guiding area.

(e) The board will consider the recommendations of the prior holder of the guiding area permit to be reassigned and will, in areas of joint use, consider the recommendations of the other holders of permits for the guiding area.

(f) When an area has been revoked or suspended under (a)(2) of this section, the area is closed to all guided hunting until it is reassigned.

(g) The board will, in its discretion and consistent with AS 08.54.040 and 12 AAC 38.210, adjust a guiding area permit when reassigning that permit. (Eff. 5/12/78, Reg. 66; am 10/15/82, Reg. 84; am 8/20/87, Reg. 103)

Authority: AS 08.54.040
AS 08.54.050

12 AAC 38.270. DEATH OR MENTAL INCAPACITY OF GUIDING AREA PERMIT HOLDER. (a) Upon the death of a holder of a guiding area permit, the board will, in its discretion, grant a waiver, for a time specified by the board, of the requirements of 12 AAC 38.230 if application is made by the estate within 90 days after death. Failure to make application within 90 days is considered a voluntary relinquishment of the permit. At any time during the period of the waiver, an heir may apply to the board for a reassignment of the permit to a person designated by the heir.

(b) Upon a judicial determination that a guiding area permit holder is mentally incompetent, the board will, in its discretion, grant a waiver, for a time specified by the board, of the requirements of 12 AAC 38.230 if application is made by the permit holder's guardian within 90 days after a judicial determination of the permit holder's mental incompetency. Failure to make application within 90 days is considered a voluntary relinquishment of the permit. At any time during the period of the waiver the guardian may apply to the board for a reassignment of the permit to a person designated by the guardian. (Eff. 5/12/78, Reg. 66)

Authority: AS 08.54.040(a)(3), (6) & (8)
AS 08.54.050

12 AAC 38.280. CHANGES TO GUIDING AREA PERMITS. (a) A guide may petition the board at a regularly scheduled meeting for amendments to a guiding area permit. The board will, in its discretion and consistent with 12 AAC 38.210, adjust a guiding area boundary.

(b) The board will give each petitioner reasonable notice of the date and place of the meeting during which his or her petition is scheduled for review. The board will not hear a petition unless the petitioner, or a person authorized by the petitioner in writing to appear in his or her behalf, personally appears at the scheduled time.

(c) When a petition concerns a joint use guiding area permit, the board will send each joint use permit holder a copy of the petition and reasonable notice of the date and place of the meeting at which the petition is scheduled to be heard; each joint use permit holder may appear before the board and present testimony relevant to the petition.

(d) the board will, in its discretion, issue an exclusive guiding area permit for an area or portion of an area already granted in joint use only upon finding that

(1) all other affected guides in joint use agree to the change; or

(2) creation of an exclusive guiding area is required by changes in game populations, hunting regulations, weather patterns, or land use laws or regulations, and other guides in joint use of the area will not be detrimentally affected by the change; in determining whether other guides may be detrimentally affected, the board will consider projected loss of hunting clients, revenue, investments, access and other similar concerns.

(e) A guide aggrieved by a board decision under this section is entitled to an administrative hearing to review the decision in accordance with AS 44.52.370. The guide must request such a hearing within 15 days after receipt of a notice from the board of the board's action.

(f) Before a matter covered by this section will be heard by the board at a meeting, the petitioner must contact all area permit holders affected by certified mail - return receipt requested and the petitioner must submit the return receipts along with any replies received to the board. (Eff. 5/12/78, Reg. 66; am 6/16/80, Reg. 74; am 6/27/81, Reg. 78; am 8/20/87, Reg. 103; am 4/22/88, Reg. 106)

Authority: AS 08.54.040
AS 08.54.050

12 AAC 38.290. GROUNDS FOR REVOCATION OR SUSPENSION OF A GUIDING AREA PERMIT. The board will, in its discretion, revoke or suspend a guiding area permit or permits if the permit holder

(1) violates a federal or state sport fish, game or guiding statute or regulation while guiding;

(2) has a guide license revoked or suspended, or is denied renewal of a license, for violation of a federal or state sport fish, game or guiding statute or regulation, other than for nonpayment of current license fees; or

(3) is found by the board to have misused a guiding area.

(b) The board will, in its discretion, revoke or suspend a guiding area permit if it finds that the application for the guiding area permit or reassignment of the guiding area contained false or misleading information. (Eff. 5/12/78, Reg. 66, am 11/21/84, Reg. 92)

Authority: AS 08.54.040(a)(3), (6) & (8)
AS 08.54.050

ARTICLE 3. PROFESSIONAL CONDUCT.

Section

- 300. Responsibility to the client
- 310. Survival gear
- 315. Bases of operation in southeast Alaska
- 320. Presence of guide required
- 330. Taking of game by guides
- 340. Transporting meat
- 350. Cooperation with officials
- 360. Improper certification
- 370. Improper reporting
- 380. Employment and supervision of assistants
- 390. Guiding ethics

12 AAC 38.300. RESPONSIBILITY TO THE CLIENT. (a) Before conducting a hunt it is the guide's responsibility to be sure that the proper hunting license, game tags, and harvest reports for the big game species being hunted are in the client's possession.

(b) The guide is responsible for attaching the appropriate tags to any game taken by the client and for having all game sealed or marked as required in 5 AAC 81—5 AAC 92.

(c) A guide shall take every reasonable measure to assure the safety and comfort of the client and is responsible for having available

(1) adequate first aid supplies;

(2) sufficient food to provide for emergencies that might render the party immobile;

(3) shelter which is normally considered satisfactory and comfortable under field conditions; and

(4) transportation or communications or arrangements to obtain them without hardship or unreasonable delay. (Eff. 6/28/74, Reg. 50; am 4/22/88, Reg. 106)

Authority: AS 08.54.040
AS 08.54.050

12 AAC 38.310. SURVIVAL GEAR. A guide is responsible for assuring that each aircraft operated by the guide and used in any phase of a hunt conducted by the guide, carries survival gear as required by AS 02.35.110. (Eff. 6/28/74, Reg. 50; am 4/22/88, Reg. 106)

Authority: AS 08.54.040
AS 08.54.050

12 AAC 38.315. BASES OF OPERATION IN SOUTHEAST ALASKA. A guiding area permit holder in game management units one through four may not conduct or supervise guided hunts from more than one vessel over 18 feet or from no more than one land camp. (Eff. 8/20/87, Reg. 103)

Authority: AS 08.54.040(a)
AS 08.54.050

12 AAC 38.320. PRESENCE OF GUIDE REQUIRED. A master, registered or class A assistant guide must be in the field and participating in the conduct of the guided hunt whenever assistant guides are guiding. (Eff. 6/28/74, Reg. 50; am 11/2/75, Reg. 56)

Authority: AS 08.54.050

12 AAC 38.330. TAKING OF GAME BY GUIDES. (a) A guide may not take big game animals or marine mammals while acting as a guide, except in cases of actual emergency when a bear or other animal is about to escape after being wounded. It is then the duty of the guide to take action as the guide considers necessary.

(b) It is unlawful for a master guide, registered guide, class-A assistant guide, or assistant guide who is guiding a hunter for walrus to take or assist in taking any walrus other than the animal taken by the client. However, one crewman other than

the guide may take one single cow walrus and its calf if this taking does not exceed the bag limit prescribed by regulations of the Board of Game. (Eff. 6/28/74, Reg. 50; am 6/12/77, Reg. 62; am 4/22/88, Reg. 106)

Authority: AS 08.54.040
AS 08.54.050

12 AAC 38.340. TRANSPORTING MEAT. A guide is responsible for transporting the meat of big game animals, except bear, wolves, and wolverine, taken by the guide's client from the site of the kill to its destination or to a common carrier for shipping to its destination for the purpose of human consumption. If the meat is delivered to a person other than the person who took the animal, a signed and dated statement or receipt stating the kind and quantity of meat received in approximate pounds or named portions of the carcass must be obtained from the recipient and presented upon request to any officer authorized to enforce this chapter. (Eff. 6/28/74, Reg. 50; am 4/22/88, Reg. 106)

Authority: AS 08.54.040
AS 08.54.050

12 AAC 38.350. COOPERATION WITH OFFICIALS. Failure on the part of a guide to assist the Departments of Fish and Game, Public Safety and Commerce and Economic Development in determining the truth of any statements reported in accordance with 12 AAC 38 is unethical conduct. (Eff. 6/28/74, Reg. 50; am 6/12/77, Reg. 62; am 11/21/84, Reg. 92; am 4/22/88, Reg. 106)

Authority: AS 08.54.040
AS 08.54.050

12 AAC 38.360. IMPROPER CERTIFICATION. No master or registered guide may improperly certify that a person has met the qualifications for a guide license. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

12 AAC 38.370. IMPROPER REPORTING. A guide may not knowingly falsify any information required by the Alaska Department of Fish and Game or the Guide Board. (Eff. 6/28/74, Reg. 50; am 4/22/88, Reg. 106)

Authority: AS 08.54.040
AS 08.54.050

12 AAC 38.380. EMPLOYMENT AND SUPERVISION OF ASSISTANTS. Repealed 4/22/88.

12 AAC 38.390. GUIDING ETHICS. Unethical activity includes, but is not limited to

(1) not fully cooperating with state and federal wildlife officials or not abiding by and advising clients and personnel of all applicable conservation and game laws and regulations or condoning their violation;

(2) misrepresenting or not clearly defining rates, accommodations and services to prospective clients prior to booking and acceptance of deposit, or otherwise misleading prospective clients through false or fictitious advertising;

(3) being unwilling or incapable of making financial restitution to a client for any breach of contract by the guide or the guide's employees, owing to no fault of the client;

(4) not advising clients of game population to the best of the guide's ability based on past performances in hunting areas and not advising the client of the chances of encountering the species desired in the time allotted;

(5) making "guarantees" as to the success of a hunt or the number of pieces of game to be collected;

(6) not maintaining and providing stock, mechanical equipment, gear, food supplies and facilities to a quality and condition to provide services equal to or better than described in the guide's advertising, correspondence, verbal declaration or contractual agreements;

(7) not maintaining a neat, orderly and sanitary camp at all times, or not providing reasonably well-prepared, palatable and balanced camp meals for clients and personnel in keeping with the conditions of the hunt;

(8) contracting for more hunts or for more hunters at any one time than the guide or the guide's employees can adequately serve;

(9) hiring guides that are improperly licensed, or ill trained in the arts of woodsmanship, judging trophies, cooking, first aid, photography, firearms, trophy preparation and caring for clients;

(10) failing, while guiding a client, to take all precautions if an animal is wounded;

6/28/74, Reg. 50; am 2/25/77, Reg. 61; am 11/21/84, Reg. 92)

(11) failing to use every means at the guide's disposal to bag any wounded animal while it is in danger of escaping, or, if in a serious emergency, while human life or well-being is endangered;

Authority: AS 08.54.040(a)(4) & (5)
AS 08.54.050

(12) filling a client's game tag or bag limit;

12 AAC 38.990. DEFINITIONS. Unless otherwise indicated, in this chapter

(13) failing, barring unforeseen conditions, to properly prepare, according to generally accepted procedures, all antlers, horn, hides and capes to be delivered to the taxidermist or to the client at the conclusion of a hunt in a satisfactory and unspoiled condition;

(1) "competence" means a professional standard of conduct which satisfactorily implements, under field conditions, the knowledge and qualifications of a guide;

(14) failing to endeavor to salvage all meats of trophies taken by the client, in accordance with state law;

(2) "transport" means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export.

(15) promoting hunting or the taking of trophies by means other than fair chase: specifically, the pursuit of a trophy in an illegal or unsportsmanlike manner, by herding, driving or chasing of animals with the use of any mechanically powered equipment;

(3) "board" means the Guide Board;

(4) "department" means the Department of Commerce and Economic Development. (Eff. 6/28/74, Reg. 50 am 11/21/84, Reg. 92; am 4/22/88, Reg. 106)

Authority: AS 08.54.040
AS 08.54.050

(16) failing to practice sound wildlife conservation or failing to create an awareness of conservation needs and practices during the guide's associations with the public. (Eff. 6/28/74, Reg. 50; am 4/22/88, Reg. 106)

Authority: AS 08.54.040
AS 08.54.050

ARTICLE 4. GENERAL PROVISIONS.

Section

900. Guide register

990. Definitions

12 AAC 38.900. GUIDE REGISTER. (a) On February 15 of the register year, the names of all persons holding a master guide or registered guide license will be entered by the board and must be published for distribution to the public.

(b) All guides shall advise the board of their current address and all changes of address. (Eff.

STATE OF ALASKA
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
GUIDE BOARD
P.O. BOX D-LIC
JUNEAU, ALASKA 99811-0800

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**MANAGING ALASKA'S
COMMERCIAL USERS OF BIG GAME**

A Report on a Proposed New Management System

**A Final Report to
the 16th Legislature**

**Legislative Task Force on
Guiding and Game**

January 1990

VOLUME I OF II

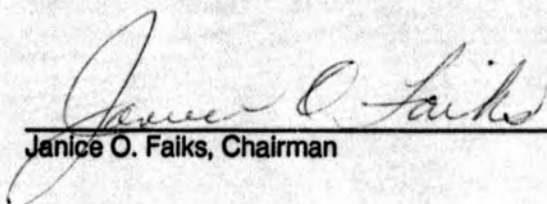
PREFACE

In the Letters of Intent from the Alaska House, dated April 6, 1989 and the Senate dated April 25, 1989, the Task Force was directed to forge a new resource-based management system for allocating big game hunting opportunities among guide-outfitters.

The Legislature stressed that conservation and management of big game resources is the foremost purpose of the management system. The system must provide broad access to game resources as guaranteed under the common use clause of Alaska's state constitution. This system, developed with input from public and private landowners, must be applicable throughout the state to help ensure a more standardized system of managing commercial use of wildlife. The state must receive compensation for commercial use. The new system must also ensure a viable industry, clearly basing any free market restrictions on wildlife management concerns.

The Task Force has addressed the constitutional questions raised by the Alaska Supreme Court decision in the Owsichuk case of October 21, 1988 which declared the former guide management system unconstitutional. That decision has been closely examined so that the proposed new system will be consistent with constitutional provisions.

The 15 member task force believes that the proposed system meets the legislative directives, and therefore we fully support the draft legislation included with this report. We urge the Legislature to swiftly implement the draft legislation to bring much-needed stability to the industry and enable greater cooperation among the state, federal and private landowners in Alaska.



Janice O. Fails, Chairman



Robert A. "Bob" Finnman, Vice-Chairman

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BACKGROUND

The Legislative Task Force on Guiding and Game was formed in May 1988 to find a legislative solution to a growing conflict between licensed big game guides and unlicensed "outfitters". The panel recommended sweeping changes incorporated in House Bill 112 which was signed into law in May 1989. During the time that the Task Force was working on these issues, the Alaska Supreme Court released its decision in the Owsichuk case (October 22, 1988) and declared the exclusive guide area system unconstitutional. Legislation was subsequently passed to extend the life of the Task Force to January 15, 1990 so that a new management system for big game guide-outfitters could be formulated.

What the Owsichuk Decision Meant

The Alaska Supreme Court in Owsichuk reviewed the background of the common use clause in Alaska's constitution, and the state's obligation and options to manage the use of wildlife resources. The Court stated:

"Thus, common law principles incorporated in the common use clause impose upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people. ... We observe initially that, in guaranteeing people 'common use' of fish, wildlife and water resources, the framers of the constitution clearly did not intend to prohibit all regulation of the use of these resources. Licensing requirements, bag limits, and seasonal restrictions, for example, are time-honored methods of conserving the resources that were respected by delegates to the constitutional convention. Questions presented by this case concern the type and extent of permissible regulation consistent with common use."

In examining the former guide system, including the Exclusive Guide Areas or EGAs, the Court concluded that it was seriously flawed because it was not based upon wildlife resource concerns:

"Although the Board justified the program to the legislature as a means of improving wildlife management...it is apparent that area assignments are not based primarily on wildlife management concerns. Rather, ...the Board bases its decisions on use, occupancy and investment. ... Thus, the EGA program cannot be justified as a wildlife management tool like other restrictions on common use, such as hunting seasons and bag limits."

The Court clearly stated that there are other types of programs that legitimately authorize and thereby limit access to state resources:

"Nothing in this opinion is intended to suggest that leases and exclusive concessions on state lands are unconstitutional. The statutes and regulations of the Department of Natural Resources authorize leases and concession contracts of limited duration, subject to competitive bidding procedures and valuable consideration."

However, the Court did not consider that the former guide system met these requirements and they went on to say that:

"...EGAs are not subject to competitive bidding, provide no remuneration to the state, are of unlimited duration, and are not subject to any other contractual terms or restrictions. Rather, as discussed above, they are granted essentially on the basis of seniority, with no rental or usage fee, for an unlimited duration, and are administered in such a way that guides may transfer them for a profit as if they owned them. In these respects the EGAs

resemble the types of royal grants the common use clause expressly intended to prohibit. Leases and concession contracts do not share these characteristics."

What the Legislature has Directed the Task Force to Accomplish

In its directive to the Task Force, the Legislature stressed that conservation of Alaska's wildlife resources must be the foremost purpose of the new management system. The system must provide broad access as guaranteed by the common use clause of the Alaska constitution. It should have statewide applicability to allow for a more standardized system among state, federal, and private landowners. These directives also were discussed in the Task Force report "Alaska's Big Game: A Report on the Commercial Aspects of its Uses and Users", January 1989.

The Task Force has made every effort to ensure that its recommendations address the State Supreme Court decision in the Owsichuk case. The following elements specifically address the court's findings:

1. Commercial opportunities to use wildlife resources will be based upon wildlife management objectives.
2. The authorization process treats all applicants fairly and does not automatically favor applicants on the basis of seniority in industry.
3. The authorization for commercial use is of finite duration.
4. The state receives compensation for use authorizations.
5. The transfer (assignment) of use areas is without financial profit to individual guide-outfitters and is subject to review and approval by the regulatory board.

TASK FORCE ACTIVITY SUMMARY

The Task Force on Guiding and Game was extended from January 1989 to January 15, 1990 by SB 139, which also expanded the group from 13 to 15 members. Most meetings and work sessions were chaired at the Legislative Information Office, 3111 "C" Street, and teleconferenced to other locations. The August 16th work session was held at the Anchorage offices of Birch, Horton, Bittner and Cherot, and the January 22nd meeting was chaired from Juneau.

June 29, 1989 - Organizational meeting; chairman elected
July 19, 1989 - Work session
August 16, 1989 - Work session
October 5-6, 1989 - Regular meeting with public comment
November 8, 1989 - Regular meeting with public comment
November 20, 1989 - Regular meeting with public comment
December 11-12, 1989 - Regular meeting with public comment
January 4-5, 1990 - Work session with public comment
January 22, 1990 - Final meeting to approve final report
and draft legislation

The meetings were open to the public and allowed access through the communications network of the Legislative Information Office plus toll free numbers for persons in remote locations. Public hearings were well attended and were scheduled at regular meetings and one work session.

Because of the limited time frame for the Task Force to complete its work, it retained a law firm to assist in developing its recommendations. The firm of Birch, Horton, Bittner, and Cherot was selected for its expertise in several pertinent areas, including recreational services franchising and licensing programs. Their staff included individuals experienced in fish and wildlife use allocation programs, Alaska fish and wildlife laws, and state administrative statutes (see also "Birch Horton Contract" in Appendices, Vol. II). These consultants provided information on the array of viable constitutional options for a big game guide-outfitting industry management system.

The Task Force also examined management systems for guide-outfitting that are used in other western states and Canadian provinces (see also ADF&G report in Appendices, Vol. I).

The Task Force acknowledges the many individuals and organizations providing testimony and other assistance during the meetings. We particularly want to extend our appreciation to Stephen White of the Alaska Department of Law; Heinrich Springer, Chairman of the Alaska Board of Game; SuzAnne Miller and Marianne See of the Alaska Department of Fish and Game; and Mark Riehle of Senator Faiks' staff.

We also appreciate the input of the federal and state land management agencies including the Alaska Department of Natural Resources, U.S. Fish and Wildlife Service, National Park Service, U.S. Forest Service, and the Bureau of Land Management. In addition, federal land management staff in Washington D.C. met with Chairman Faiks on November 1, 1989 to hear a progress report and to offer their support and cooperation toward a new state management system for big game guide-outfitting.

SUMMARY OF PUBLIC HEARINGS

The Task Force welcomed public testimony, and provided opportunities at regular meetings to receive written and verbal comments. Over the course of the meetings, approximately 100 people testified, with over 500 additional people present as observers. Verbal testimony was recorded, although it was not possible to transcribe all the recordings due to limited staff time. Written testimony, letters, and transcriptions of some verbal testimony are included in the Appendices.

The public expressed considerable interest in Task Force proceedings, and was well aware of the inherently conflicting interests that the Task Force was addressing. For example, the Chairman of the Board of Game testified that big game management concerns would be best served by terms for guide-outfitter use area permits that would be as long as 20 or 30 years. He substantiated this point with historical data from other states and countries. However, he acknowledged that too long a term for permits could be inconsistent with the state's constitutional mandate for a high degree of access to wildlife resources (Appendices, Vol. I).

Other competing interests were brought out in public testimony. Some guide-outfitters who did not have restricted guide areas under the former system have testified in favor of a selection process that does not favor prior area holders. However, several of those who had former areas supported a selection preference favoring former area holders. They wanted to increase the chance of re-acquiring those areas in which they had a substantial financial investment, and thus continue their business operations. Two of the federal land management agencies indicated a strong preference for sole use authorizations, while two others favored a system that allows joint use of permit areas.

Resident hunters testified that during this interim period between systems, the number of guide-outfitters increased in some areas and interfered with the quality of their hunting experiences. Testimony also indicated that the large and growing number of transporters are contributing to concentrations of hunters in some areas, thereby affecting wildlife availability as well as other commercial opportunities.

Many of those offering public testimony expressed their concerns that the new guide-outfitter management system provide opportunities for commercially viable operations, while at the same time protecting and conserving the wildlife resource that supports this industry. The industry would not remain internationally competitive without trophy animals. Those individuals hoping to be involved with this industry testified that they feared that a new system might include considerable administrative work, high fees, incompatibility with federal programs, short permit terms, or automatic lotteries for all applicants seeking use areas permits. Most individuals who testified favored a minimum of additional bureaucratic requirements and fees for guide-outfitters.

Private landowners and federal land managers offered their concerns that their management objectives and procedures be respected by provisions of the new system for designating guide-outfitter resource areas, and for subsequently allocating these areas. Separate meetings were held with some of these groups to help identify and address their concerns (see Appendices, Vol. II).

The Task Force considered all ideas proposed during public testimony, and incorporated some of them into the design of the proposed management system. However, there were no comprehensive solutions presented in public testimony which the Task Force felt could be adopted that would meet the objectives identified in Owsichek.

FINDINGS

The Task Force finds that:

- * the big game guide-outfitting industry should be promptly regulated in a manner that conserves the wildlife resource, is consistent with the constitutional common use clause, and provides economic viability to the industry;
- * an area-based system for guide-outfitting is necessary for managing commercial use opportunities to prevent damage to some big game resources from overharvest of populations or species that have a low recovery capacity or that exist in low abundance;
- * there are competing and conflicting interests that must be considered in developing a new administrative management system, and that any proposal therefore will represent a compromise among those interests;
- * if to protect big game populations from unregulated access by guide-outfitting, the state has to resort to management tools like shorter seasons, lower bag limits, or more permits, the result will be further restriction in hunting opportunities for resident and nonresident hunters.
- * guide-outfitting and related commercial uses of the big game resource can contribute significantly to the state's economy by increasing tourism and supporting a variety of related businesses, particularly in the rural regions of the state;
- * uncertainty about how and when a new system might operate is causing the guide-outfitting industry to lose clients to other international competitors, thus losing revenues that would otherwise come into the state;
- * federal land managers, while willing to cooperate to consolidate interagency administrative requirements, are developing plans to manage guide-outfitting on public lands if the state fails to promptly adopt a new system;
- * fees associated with commercially using wildlife resources need to be proportional to the use of the resource, yet be simple to calculate and not an additional burden to the increasing costs associated with guide-outfitting;
- * the recent decision by the Alaska Supreme Court regarding the state's subsistence law (in McDowell et al, December 22, 1989) does not affect the proposed legislation submitted with this report.

RECOMMENDATIONS

Certain basic findings and features of the management system developed as the draft legislation evolved, which the Task Force recommends to the Legislature as follows:

1. Guide-Outfitter Use Areas. To provide a resource-based management system that will benefit wildlife resources and promote a stable and successful guide-outfitting industry, guide-outfitter use areas must be established.

The areas should be based primarily on wildlife management considerations; that is, reflect the diversity of species, population levels of wildlife, and the demands on the resource by other users. They must be large enough to provide a reasonable opportunity for a viable guide-outfitting enterprise.

The Alaska Department of Fish and Game (ADF&G) will have responsibility for recommending boundaries of the use areas to the Big Game Commercial Services Board (Board). The Board shall adopt these areas as recommended, unless ADF&G approves proposed amendments (see also Appendix for description of ADF&G mapping project).

2. Schedule of Offerings of Use Areas. To provide an orderly entry by guide-outfitters into the new system, the Board should stagger the offerings of use areas to qualified guide-outfitters. In the first five years of the program, all areas of the state should be offered.
3. Pre-application Filing Period. Prior to the first offering of use areas, the Board should establish a pre-application filing period by game management units or subunits. Such a procedure will expedite the initial offering of areas and allow the Board and ADF&G to concentrate initial efforts in areas most in demand and where wildlife and conservation concerns are greatest.
4. Application Procedures. Application procedures must be established that are fair to all applicants and provide sufficient information to allow the Board to determine the most qualified applicant for each area. Applications will include appropriate forms, application fee, and proposed operational plans that will include locations of base camps, the number of clients, and the big game species to be hunted.
5. Evaluation of Applications and Permit Issuance. The Board must adopt procedures which provide equal opportunity to all qualified applicants. Evaluation of the applicants' qualifications must be objective and use specific criteria which include: experience in the area; operations plan; economic feasibility; safety record; record of compliance with fish and game laws and with trespass statutes; landowner permission; and necessary licenses and permits. The Board shall issue guide-outfitter use area permits to the most qualified applicant(s).
6. Conditional Permits. To provide time for a successful applicant to obtain all the necessary licenses, permit, or landowner's permission, the Board shall issue a conditional use area permit that is valid for 120 days. This conditional permit does not allow guide-outfitting, and expires if the applicant does not obtain the necessary authorizations within 120 days. If the permit expires, the Board offers the use area permit to the next best qualified applicant for that area.
7. Unawarded Areas. Use areas that are available but not awarded will be open to use by guide-outfitters who are certified to guide-outfit hunts in the game management unit and