

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
1695 SCOMM 67: GUIDING AND GAME TASK FORCE, 1989-1990 1263

(C) hunting during a closed hunting season; or

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

(d) If a certified copy of a judgment of conviction of a licensee who holds any class of guide-outfitter license for an offense described under (c)(3) of this section is filed with the board, the board shall immediately suspend the licensee'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 suspension remains in effect until after the final disposition of the disciplinary proceeding under this section.

Sec. 08.54.505. DISCIPLINE OF TRANSPORTERS AND COMMERCIAL USE PERMITTEES. (a) The board may hold a hearing to determine whether disciplinary action is necessary if a written complaint concerning the big game commercial service activities of a transporter who is licensed under AS 08.54.400 or a commercial use permittee who holds a permit issued under AS 08.54.460 is filed with the board. The board shall hold a hearing to determine whether a licensee or permittee should be disciplined within a reasonable time after

(1) written complaints concerning a licensee's or permittee's activities are filed with the board within a two-year period by three or more of the licensee's or permittee's clients from separate hunting parties; or

(2) a licensee or permittee has been convicted of a violation of a federal or state statute or regulation relating to hunting or provision of big game commercial services.

(b) After a hearing, the board may revoke, suspend, or deny renewal of a transporter license or commercial use permit issued under this chapter, if the board finds that the licensee or permittee

(1) engaged in unethical activity, unsafe activity, or activity that adversely affects the natural resources of the state when the activity is related to the purposes of providing big game commercial services, however the board may not discipline a licensee or permittee under this paragraph for unsafe operation of an aircraft; or

(2) violated a provision of a federal or state statute or regulation relating to hunting or provision of big game commercial services.

(c) The board may not revoke, suspend, or deny renewal of a transporter license or commercial use permit for a violation of a federal or state statute or regulation relating to game or provision of big game commercial services committed by an employee of the licensee or permittee unless the licensee or permittee participated or aided in the violation.

(d) After a hearing, the board shall revoke a license or permit if the board finds that the licensee or permittee

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

(2) 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 state or federal regulation.

(e) If a certified copy of a judgment of conviction of a licensee or permittee for an offense described under (d)(2) of this section

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is filed with the board, the board shall immediately suspend the licensee's or permittee's license or permit. The suspension may be ordered even if the conviction resulted from a plea of nolo contendere or if the conviction is under appeal. The suspension remains in effect until after the final disposition of the disciplinary proceeding under this section.

Sec. 08.54.510. DISCIPLINE: GENERAL PROVISIONS. (a) A person who is disciplined under AS 08.54.500 or 08.54.505 may not engage in the provision of big game commercial services during the period of license or permit revocation or other disciplinary action. A person who is licensed under this chapter, or who holds a permit issued under this chapter, may not hire a person whose license or permit to provide big game commercial services is suspended or revoked under AS 08.54.500 or 08.54.505. A person whose license or permit is suspended or revoked may not be employed by a person who is licensed or who holds a permit under this chapter.

(b) If the board revokes a license or permit under AS 08.54.500 or 08.54.505, the person whose license or permit has been revoked shall surrender immediately the license or permit to the department.

(c) A certified copy of a judgment of conviction of a licensee or permittee for an offense is conclusive evidence of the commission of that offense in a disciplinary proceeding instituted against the licensee or permittee under AS 08.54.500 or 08.54.505 based on that conviction, regardless of whether the conviction resulted from a plea of nolo contendere or the conviction is under appeal, unless the conviction is overturned on appeal.

(d) Within 30 days after conclusion of a hearing under AS 08.54.500 or 08.54.505, the board shall notify the complainant of the results of the hearing, including written reasons justifying a

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decision not to take disciplinary action.

Sec. 08.54.520. UNLAWFUL ACTS. (a) It is unlawful for a

(1) person who is licensed or who holds a commercial use permit under this chapter to knowingly 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 big game commercial services statute or regulation that the person reasonably believes was committed by a client or an employee of the person;

(2) person who is licensed or who holds a commercial use permit under this chapter to knowingly

(A) commit or aid the commission of a violation of this chapter, a regulation adopted under this chapter, or a state fish or game statute or regulation; or

(B) permit the commission of a violation of this chapter, a regulation adopted under this chapter, or a state fish or game statute or regulation that the person knows or reasonably believes is being or will be committed without

(i) attempting to prevent it, short of using force; and

(ii) reporting it;

(3) person without a current commercial use permit issued under this chapter to knowingly provide big game commercial services;

(4) person who is licensed or who holds a commercial use permit issued under this chapter 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 person;

(5) class-A assistant guide-outfitter or an assistant guide-outfitter to knowingly guide-outfit a hunt except while employed

and supervised by a guide-outfitter;

(6) person who holds any class of guide-outfitter license to knowingly enter or remain on state, federal, or private land without prior authorization during the course of providing guide-outfitting services;

(7) person to knowingly guide-outfit without having a current guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter license and hunting license in actual possession;

(8) person without a current guide-outfitter or marine mammal guide-outfitter license to knowingly advertise as or represent to be a guide-outfitter;

(9) person to knowingly provide transportation services to big game hunters without holding a transporter license;

(10) class-A assistant guide-outfitter or an assistant guide-outfitter to knowingly contract for a hunt; or

(11) person to knowingly engage in a big game commercial services activity during the period for which the person's license to conduct that activity is suspended or revoked.

(b) A person who commits an offense set out in (a)(1) - (6) of this section is guilty of a misdemeanor and is punishable by a fine of not more than \$30,000 or by imprisonment up to one year, or both.

(c) A person who commits an offense set out in (a)(7) - (10) of this section is guilty,

(1) for a first offense, of a misdemeanor and is punishable by a fine of not more than \$30,000 or by imprisonment up to one year, or both;

(2) for a second or subsequent offense, of a class C felony.

(d) A person who violates (a)(11) of this section, is guilty of a class C felony.

(e) In addition to the penalties set out in (b), (c) and (d) of this section,

(1) the court may revoke the person's license to provide guide-outfitting or transportation services for not more than five years; and

(2) all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear, and other equipment and paraphernalia used in, or in aid of, a violation of (a) of this section may be seized by persons authorized to enforce this chapter and may be forfeited to the state as provided under AS 16.05.195.

(f) Upon conviction of a person for committing an offense set out in (a) of this section, the execution of sentence may not be suspended and probation may not be granted except on the condition that the minimum term of imprisonment is served. Imposition of sentence may not be suspended.

Sec. 08.54.530. INJUNCTION AGAINST UNLAWFUL ACTION. When in the judgment of the board a person has engaged in an act in violation of AS 08.54.380(b), 08.54.390(b), 08.54.400(b), 08.54.510(a), and 08.54.-520 or the regulations adopted under them, the board may apply to the appropriate court for an order enjoining the action. 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.

Sec. 08.54.540. RESPONSIBILITY OF GUIDE-OUTFITTER FOR VIOLATIONS. A guide-outfitter who contracts to guide-outfit a hunt is equally responsible under AS 08.54.500 for a violation of a federal or state game or guide-outfitting statute or regulation committed by a class-A assistant guide-outfitter or an assistant guide-outfitter

while in the course of the class-A assistant guide-outfitter's or assistant guide-outfitter's employment for the guide-outfitter.

ARTICLE 7. GENERAL PROVISIONS.

Sec. 08.54.550. HUNT RECORDS; CONFIDENTIALITY OF HUNT RECORDS AND ACTIVITY REPORTS. (a) The department shall collect and maintain hunt records provided by guide-outfitters and marine mammal guide-outfitters. A hunt record must include a list of all big game hunters who used the services of the guide-outfitter or marine mammal guide-outfitter, the number of each big game species taken, and other information required by the board. The department shall provide forms for reporting hunt records.

(b) The department shall make hunt records, and activity reports received under AS 08.54.400, available to state and federal agencies charged with the enforcement of statutes and regulations relating to guide-outfitting or game or with management of game if requested for game management or law enforcement purposes. Aggregated data compiled from hunt records and activity reports may be included in reports by the department. For all other purposes, the hunt records and activity reports are confidential and are not subject to inspection or copying under AS 09.25.110 - 09.25.125.

Sec. 08.54.590. DEFINITIONS. In this chapter

(1) "base camp" means a guide-outfitter's or marine mammal guide-outfitter's primary base of operations in the field; "base camp" does not include a spike camp;

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

(3) "big game commercial hunting service" means a service for which the provider of the service must obtain a guide-outfitter,

marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter license;

(4) "big game commercial service" means a service for which the provider of the service must obtain a commercial use permit;

(5) "board" means the Big Game Commercial Services Board;

(6) "compensation" means payment for services including wages or other remuneration but not including reimbursement for actual expenses incurred;

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

(8) "field" means : area outside of established year-round dwellings, businesses, or other developments usually associated with a city, town, or village; "field" does not include permanent hotels or roadhouses on the state road system or state or federally maintained airports;

(9) "game management unit" means one of the 26 geographic areas defined by the Board of Game for game management purposes;

(10) "guide-outfit" means to provide, for compensation or with the intent or with an agreement to receive compensation, big game commercial hunting services in the field; "guide-outfit" includes accompanying or being present with a big game hunter in the field either personally or through an assistant; "guide-outfit" does not include the provision of transportation to, from, or in the field if the person providing the transportation and the person being transported do not stalk, pursue, track, kill, or attempt to kill big game during the provision of transportation;

(11) "hunting club" means an organization that offers use of property or services to individuals who pay a membership fee for the privilege of using the property or services for hunting;

(12) "spike camp" means a camp in the field other than a base camp and includes a fly camp or an overnight camp;

(13) "transportation services" means the carriage for compensation of big game hunters, their equipment, or big game animals harvested by hunters to, from, or in the field; "transportation services" does not include the carriage by aircraft of big game hunters, their equipment, or big game animals harvested by hunters

(A) on nonstop flights between state or federally maintained airports; or

(B) by an air taxi operator or air carrier for which the carriage of big game hunters, their equipment, or big game animals harvested by hunters is only an incidental, as defined by the board, portion of its business;

(14) "unethical activity" means

(A) deception or misrepresentation involving prospective or actual clients either before, during, or following the provision of big game commercial services, including misrepresentations through private or public advertising of the type, duration, cost, or conditions of the services;

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

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

(D) accepting a deposit for big game commercial services without providing before the services are rendered a signed written contract to provide the services.

* Sec. 4. AS 12.55.125(e) is amended to read:

(e) A defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a second felony conviction, two years;

(2) if the offense is a third felony conviction, three years;

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, one year;

(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.520(a)(7) - (10), one year.

* Sec. 5. AS 16.05.407(a) is amended to read:

(a) It is unlawful for a nonresident to hunt, pursue, or take brown bear, grizzly bear, mountain goat [POLAR BEAR], or sheep in this state, unless personally accompanied by

(1) a person who is licensed as a guide-outfitter [MASTER GUIDE, REGISTERED GUIDE], class-A assistant guide-outfitter, [GUIDE] or assistant guide-outfitter [GUIDE] by the Big Game Commercial Services [GUIDE] Board; or

(2) a resident over 19 years of age who is

(A) the spouse of the nonresident; or

(B) related to the nonresident, within and including the second degree of kindred, by marriage or blood.

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* Sec. 6. AS 16.05.407(d) is amended to read:

(d) A nonresident who violates (a) of this section, or who fails to furnish an affidavit under (b) [OR (e)] of this section, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000, or by both.

* Sec. 7. AS 16.05.407 is amended by adding a new subsection to read:

(f) An applicant for a nonresident hunt permit for the taking of an animal specified in (a) of this section shall, if requested by the department, first furnish to the department proof of prior authorization to use state, federal, or private land where the permit hunt will occur. The authorization shall be provided to the applicant by the guide-outfitter with whom the applicant has contracted to guide-outfit the permit hunt.

* Sec. 8. AS 16.05.408(a) is amended to read:

(a) It is a class A misdemeanor for a nonresident alien

(1) to hunt, pursue, or take marine mammals unless personally accompanied by a licensed marine mammal guide-outfitter [GUIDE]; or

(2) to hunt, pursue, or take a big game animal as defined by the Board of Game unless personally accompanied by a guide-outfitter, a [LICENSED MASTER GUIDE, REGISTERED GUIDE, OR] class-A assistant guide-outfitter, or an assistant guide-outfitter licensed [GUIDE] under AS 08.54.

* Sec. 9. AS 16.05.408 is amended by adding a new subsection to read:

(c) Before obtaining a nonresident hunt permit for the taking of an animal specified in (a) of this section, a nonresident alien shall, if requested by the department, first furnish to the department proof of prior authorization to use state, federal, or private land where

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the permit hunt will occur. The authorization shall be provided to the nonresident alien by the guide-outfitter or marine mammal guide-outfitter with whom the nonresident alien has contracted to guide-outfit the permit hunt.

* Sec. 10. AS 39.50.200(b)(48) is amended to read:

(48) Big Game Commercial Services [GUIDE] Board AS 08.54.-300) [(AS 08.54.010)]; and

* Sec. 11. AS 41.23.420(d) is amended to read:

(d) The provisions of AS 41.23.400 - 41.23.510 do not affect the authority of

(1) the Department of Fish and Game, the Board of Fisheries, the Board of Game, or the Big Game Commercial Services [GUIDE LICENSING AND CONTROL] Board under AS 08.54, AS 16, or AS 41.99.010;

(2) the Department of Environmental Conservation under AS 46.03; or

(3) state agencies and municipalities under AS 44.19.145(a)-(11) and AS 46.40.100.

* Sec. 12. AS 44.62.333(a)(35) is amended to read:

(35) Big Game Commercial Services [GUIDE LICENSING AND CONTROL] Board

* Sec. 13. TRANSITION; GUIDE-OUTFITTER LICENSES. (a) Notwithstanding the repeal of AS 08.54.010 - 08.54.240, all licenses issued under AS 08.54.010 - 08.54.240 are valid for the period for which the licenses were issued.

(b) For the purposes of AS 08.54.300 - 08.54.590 as enacted by sec. 3 of this Act, until new licenses are issued under this section, a

(1) master guide license issued under former AS 08.54.100 and a registered guide license issued under former AS 08.54.110 shall be considered a guide-outfitter license issued under AS 08.54.350;

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(2) class-A assistant guide license issued under former AS 08.54.120 shall be considered a class-A assistant guide-outfitter license issued under AS 08.54.380;

(3) an assistant guide license issued under former AS 08.54.140 shall be considered an assistant guide-outfitter license issued under AS 08.54.390.

(c) At the time of the next license renewal following the effective date of this Act, each person licensed as

(1) a master guide shall receive a master guide-outfitter license if the person

(A) is in good standing at the time of issuance of the license; and

(B) has paid the guide-outfitter license fee and the commercial use permit fee;

(2) a registered guide shall receive a guide-outfitter license if the person

(A) is in good standing at the time of issuance of the license; and

(B) has paid the guide-outfitter license fee and the commercial use permit fee;

(3) a class-A assistant guide shall receive a class-A assistant guide-outfitter license if the person

(A) is in good standing at the time of issuance of the license; and

(B) has paid the class-A assistant guide-outfitter license fee;

(4) an assistant guide shall receive an assistant guide-outfitter license if the person

(A) is in good standing at the time of issuance of the

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license; and

(B) pays the assistant guide-outfitter license fee.

(d) Notwithstanding (c) of this section, the Department of Commerce and Economic Development may issue a new license under AS 08.54.300 - 08.54.590, without an additional fee, to a person licensed under former AS 08.54.010 - 08.54.240 before the next renewal period following the effective date of this Act, if the person satisfies the requirements for the license and the license is valid only for the same period for which the replaced license was issued.

* Sec. 14. TRANSITION; OUTFITTERS. (a) Notwithstanding AS 08.54.350, as enacted by sec. 3 of this Act, a natural person is entitled to receive a guide-outfitter license if the person

(1) applies on a form provided by the Department of Commerce and Economic Development;

(2) lawfully registered a camp, cabin, or lodge under AS 16.05.787 during 1988;

(3) provides evidence satisfactory to the Big Game Commercial Services Board that the person has legally engaged in the business of big game outfitting in 1986, 1987, and 1988;

(4) passes the guide-outfitter examination administered by the Big Game Commercial Services Board within two years after the effective date of this Act;

(5) has not been convicted of violating a state or federal game or guide-outfitting statute or regulation during the previous five years for which the person was fined more than \$500 or imprisoned for more than five days;

(6) has legally hunted in the state for part of each of any five years in a manner directly contributing to the person's experience and competency as a guide-outfitter;

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(7) has been favorably recommended in writing by six big game hunters, two for each year of the person's most recent three years as a big game outfitter, whose recommendations have been solicited by the Big Game Commercial Services Board from a list provided by the applicant;

(8) pays the guide-outfitter license fee and the commercial use permit fee; and

(9) possesses a business license to provide recreational services.

(b) A person who is denied a guide-outfitter license under (a) of this section by the Big Game Commercial Services Board may appeal to the commissioner of commerce and economic development. The commissioner may order that the applicant 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; or

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

(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.

(c) A guide-outfitter license issued under (a) of this section is for all purposes a license issued under AS 08.54.350, as enacted by sec. 3 of

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this Act.

(d) A person who satisfies (a)(1) - (3) of this section, holds a business license as a big game outfitter, and pays a license fee set by the Department of Commerce and Economic Development and the commercial use permit fee is entitled to receive an interim outfitter license pending a final determination of a person's eligibility for a guide-outfitter license under (a) of this section. The right to receive and hold an interim outfitter license terminates on the earlier of

(1) the date of issuance of a guide-outfitter license to the person;

(2) a final determination under (a) of this section that the person is not eligible to receive a guide-outfitter license; or

(3) two years from the effective date of this Act.

(e) A person who holds an interim outfitter license, notwithstanding contrary provisions of AS 08.54, may provide transportation to, from, and in the field to big game hunters and supply other services in the field to big game hunters. The person may not provide guiding services.

(f) A person who holds an interim outfitter license shall promptly report to the Department of Public Safety, division of fish and wildlife protection, but not later than 30 days after the violation, a violation of a state fish, game, or big game commercial services statute or regulation that the person reasonably believes was committed by a client or employee of the person.

(g) A person who holds an interim outfitter license may accompany or be present with a hunter at a base camp, cabin, or permanent lodge in connection with a big game hunt for compensation only if the person has furnished an affidavit to the Department of Public Safety, division of fish and wildlife protection, at least two weeks in advance. The person may not register more than two base camps. The affidavit must be signed by the

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person and must provide the following information:

- (1) the specific location of the camp, cabin, or lodge;
- (2) the number of big game hunters in each party that will use the camp, cabin, or lodge; and
- (3) the kinds or species of big game that will be hunted.

(h) A person who furnishes an affidavit under (g) of this section shall notify the Department of Public Safety of the amount and kinds or species of big game taken by each hunter who uses the base camp, cabin, or permanent lodge to which the affidavit relates. Notice shall be given within 30 days after the game is taken. The Department of Public Safety shall provide the information received under this subsection to the Department of Fish and Game.

(i) A person who

(1) violates (f) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$2,000 or by imprisonment for not more than one year, or by both; or

(2) falsifies an affidavit under (g) of this section is guilty of unsworn falsification under AS 11.56.210.

(j) A person who holds an interim outfitter license shall

(1) carry, while engaged in providing outfitting services, comprehensive general liability insurance of at least \$300,000 per occurrence or at least \$500,000 per annual aggregate or post a financial bond in those amounts; and

(2) if the person personally pilots aircraft to transport clients during the provision of outfitting services, have a commercial pilot's rating or a minimum of 250 hours of flying time in the state.

(k) During the provision of outfitting services, an aircraft used by a person who holds an interim outfitter license or that person's employee to transport clients of the outfitter must carry aviation passenger

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liability insurance of at least \$100,000 per seat or must be subject to a financial bond in that amount.

(1) In this section,

(1) "base camp" does not include spike camp, fly camp, or overnight camp;

(2) "big game" and "field" have the meaning given in AS 08.54.-590, as enacted by sec. 3 of this Act;

(3) "guiding" means accompanying or being present with a big game hunter in the field, personally or through an assistant, for compensation or with the intent or an agreement to receive compensation; "guiding" does not include

(A) providing transportation to or from the field, if the person providing transportation and the persons being transported do not stalk, pursue, track, kill, or attempt to kill big game during the transportation; or

(B) selling, leasing, or renting goods, if the transaction does not take place in the field;

(4) "outfitting" means the provision of services, other than guiding services, to big game hunters in the field for compensation.

* Sec. 15. Section 14(d) of this Act is repealed and reenacted to read:

(d) A person who satisfies (a)(1) - (3), (j), and (k) of this section, holds a business license as a big game outfitter, and pays a license fee set by the Department of Commerce and Economic Development and the commercial use permit fee is entitled to receive an interim outfitter license pending a final determination of a person's eligibility for a guide-outfitter license under (a) of this section. The right to receive and hold an interim outfitter license terminates on the earlier of

(1) the date of issuance of a guide-outfitter license to

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the person;

(2) a final determination under (a) of this section that the person is not eligible to receive a guide-outfitter license; or

(3) two years from the effective date of this Act.

* Sec. 16. INITIAL APPOINTMENTS TO BIG GAME COMMERCIAL SERVICES BOARD. Notwithstanding AS 08.54.300(b), as enacted by sec. 3 of this Act, the initial appointments to the Big Game Commercial Services Board under

(1) AS 08.54.300(b)(1) may also be filled by the appointment of a master guide or registered guide licensed under former AS 08.54.010 - 08.54.240 or a person who lawfully registered a camp, cabin, or lodge under AS 16.05.787 during 1988 and legally engaged in the business of big game outfitting in 1986, 1987, and 1988;

(2) AS 08.54.300(b)(2) may also be filled by the appointment of a person who engaged in the business of providing transportation to big game hunters in 1986, 1987, and 1988.

* Sec. 17. TRANSITION. Litigation, hearings, investigations, and other proceedings pending under a law amended or repealed by this Act continue in effect and may be continued and completed notwithstanding an amendment or repeal provided for in this Act. Licenses, orders, and regulations issued or adopted under authority of a law amended or repealed by this Act remain in effect for the term issued or until revoked, vacated, or otherwise modified under the provisions of this Act.

* Sec. 18. AS 08.54.010, 08.54.030, 08.54.035, 08.54.040, 08.54.045, 08.54.050, 08.54.060, 08.54.070, 08.54.100, 08.54.110, 08.54.120, 08.54.130, 08.54.140, 08.54.141, 08.54.150, 08.54.160, 08.54.170, 08.54.180, 08.54.186, 08.54.190, 08.54.195, 08.54.200, 08.54.210, 08.54.220, 08.54.230, 08.54.240; AS 16.05.370(b), 16.05.370(c), 16.05.407(e), 16.05.786, and 16.05.787 are repealed.

* Sec. 19. Sections 4, 6, 12, and 13, ch. 160, SLA 1988 are repealed.

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* Sec. 20. AS 08.54.310(b)(1), as enacted by sec. 3 of this Act, takes effect on the earlier of

(1) January 15, 1990; or

(2) the date of submission to the legislature of a recommendation by the Task Force on Guiding and Game for a resource-based management system for allocating access to big game hunting opportunities among guide-outfitters licensed under AS 08.54.

* Sec. 21. AS 08.54.395, as enacted by sec. 3 of this Act, and secs. 14(j), 14(k), and 15 of this Act take effect July 15, 1989.

* Sec. 22. Except for AS 08.54.310(b)(1) and 08.54.395, as enacted by sec. 3 of this Act, and secs. 14(j), 14(k), and 15 of this Act, this Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act providing for retroactive
extension of the termination date of the Task...
Sponsor: House Resources
Requestor: House Resources

Affect Agency Legislative Affairs Agency
BRU: Legislative Council
Components Council & Subcommittees

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	5.1	10.1	0	0	0	0
Travel	10.5	10.5	0	0	0	0
Contractual	3.0	3.0	0	0	0	0
Supplies	0	0	0	0	0	0
Equipment	0	0	0	0	0	0
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	*18.6	23.6	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	*18.6	23.6	0	0	0	0
Federal Fund						
Other						
TOTAL	*18.6	23.6	0	0	0	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	1	1	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

* FY 89 funding will be requested in the supplemental bill.

The Task Force on Guiding and Game was established under the jurisdiction of the Legislative Council Committee. This bill version will add 2 members to the Task Force and extend the termination date of the Task Force to Jan. 15, 1990. The Task Force will be composed of 15 members, 3 from the Executive Branch, 2 legislators from the Legislative Branch and 10 public members.

Prepared By: Pamela Stoops, Director
Division: Administrative Services

Phone: 465-3850
Date: 3/8/89

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency

Date: 3/8/89

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
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REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

CONTINUATION OF FISCAL ANALYSIS

It is assumed that travel funds for this task force will be paid as follows:

3 Executive Branch members - absorbed within existing executive branch departments.

2 Legislative Branch members - absorbed within existing Legislative Operating Budget or Session Expenses.

10 Public members - paid by Legislative Council funds as projected below.

Projected expenses for the Task Force on Guiding and Game are as follows:

	FY 89		FY 90
Personal Services - Staff for the Task Force:			
Secretary, Range 14, Step A--3 months 1/2 time	5,100	full-time	10,100
Travel- 2 trips @ 366 x 10 members	7,320		7,320
2 days per diem (\$80)			
2 trips x 10 members	3,200		3,200
Contractual- Advertising-Public Notices	3,000		3,000
	18,600		23,620

Supplies- Will come from existing Legislative Council and Legislative Operating supplies.

Equipment- Will come from existing Legislative Council and Legislative Operating equipment.

FY 89 costs are for one-half year.

FY 90 costs are for one-half year.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 485-3800

May 10, 1989

The Honorable Steve Cowper
Governor
State of Alaska
P.O. Box A
Juneau, Alaska 99811

Re: SCS CSHB 112(Rls) am S
-- big game guides
Our file: 883-89-0032

Dear Governor Cowper:

At Shari Kochman's request on your behalf, we have reviewed SCS CSHB 112(Rls) am S, which deals with the regulation of guide-outfitting, transportation, and other commercial services provided to big game hunters. Although the bill raises a couple of constitutional and interpretation questions, we do not believe that they require a veto. A quick synopsis of the bill's highlights follows.

Sections 1 -- 3 of this bill replace the current Guide Board with a new entity, the Big Game Commercial Services Board. The new, nine-member board's activities will be administered by the Department of Commerce and Economic Development; the board will license and regulate the providers of commercial services to big game hunters. Proposed AS 08.54.300(b)(4), providing for one member of this board to be chosen by the Board of Game from that board's own membership, raises a question of validity under the governor's broad grant of executive-branch appointment authority in art. III of the Alaska Constitution. Proposed AS 08.54.030(b)(5), requiring one member "who represents Native landholders," does not make clear whether that member must be a Native, a Native landholder, or just someone who represents their interests, such as an attorney.

In particular, the board will examine license applicants to test to determine whether they are qualified to provide guide-outfitted hunts in state game management units that

The Honorable Steve Cowper, Governor
Our file: 883-89-0032

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they initially select or for which they later wish to be certified. The board will establish qualifications for other classes and types of guide-outfitters and will issue two new kinds of licenses, i.e., transporters licenses and commercial use permits.

The new board may by regulation establish, with the prior approval of the commissioner of fish and game, a resource-based management system for allocating access to big game hunting opportunities among licensed guide-outfitters. This authority, however, will not be effective until the earlier of July 15, 1990, or the submission to the legislature of a recommendation for this system by the Task Force on Guiding and Big Game that was extended by ch. 10, SLA 1989 (derived from HCS CSSB 139(Res)).

Proposed AS 08.54.350, 08.54.360, 08.54.380, and 08.54.390 establish the prerequisites for various types of guide licenses. Beside different requirements for licensing, class-A and assistant guide-outfitters are distinguished by the guiding activities they may pursue. Although both must be supervised by the employing guide-outfitter, the class-A assistant will also be authorized to take charge of and guide from a camp even if his employer is not present.

Two licensing prerequisites raise a constitutional issue. Proposed AS 08.54.360(a)(2) and 08.54.380(a)(2)(A) require state residency as a condition for receiving a marine mammal guide-outfitter license or a class-A assistant guide-outfitter license respectively. In 1986, we concluded that the requirement of having an Alaska resident hunting license in order to act as a guide was a violation of the privileges and immunities clause of art. IV, sec. 2, cl. 1, of the United States Constitution. 1986 Op. Att'y Gen. No. 2 (Sept. 29; 661-87-0063). The rationale developed in that opinion applies here. As in the earlier situation, we believe that these conditions can be severed from the remaining requirements that are valid. AS 01.10.030; Lynden Transport, Inc. v. State, 532 P.2d 700, 711 (Alaska 1975).

Proposed AS 08.54.395 sets minimum liability insurance requirements for guide-outfitters and sets pilot licensing, and passenger liability insurance requirements for licensees who plan to transport clients by aircraft. Section 21 of the bill gives

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these requirements a delayed effective date of July 15, 1989. (Under sec. 22, most of the rest of the Act is to take effect immediately, under AS 01.10.070(c).)

Two types of commercial service providers who were previously unregulated by the state will be required to obtain a license or permit. Proposed AS 08.54.400 establishes conditions for issuing and renewing a transporters license for persons who carry big game hunters in aircraft or boats. Proposed AS 08.54.460 requires all other persons who provide commercial services to big game hunters to obtain a permit and pay an annual fee. This group includes lodge owners and persons who rent equipment and provide photographic services, but it does not include hunting clubs, which are specifically prohibited from providing commercial services for compensation. Proposed AS 08.54.470 will require all other licensees to obtain the commercial use permit and pay the fee. These fees will be separately accounted for and may be appropriated by the legislature to the Department of Fish and Game and the Department of Public Safety (i.e., this is the standard "program receipts" language).

Proposed AS 08.54.500 -- 08.54.540 deal with procedures for disciplining guide-outfitters, transporters, and commercial use permittees. They also describe unlawful acts by these persons, and establish penalties for violations. These provisions authorize the enjoining of certain unlawful acts, and establish a guide-outfitter's vicarious liability for violations committed by class-A and assistant guide-outfitters employed by the guide-outfitters.

Section 5 adds mountain goats and deletes polar bears from the list of species for which nonresident hunters must be accompanied by either a class of guide-outfitter or by a resident Alaska relative.

Sections 7 and 9 require accompanied nonresident and nonresident alien hunters to provide proof of authority to use land where their hunt will occur.

Section 14 allows for licensing as guide-outfitters certain persons who have provided unregulated outfitting services during the past three years and who meet other qualifications, including passing the guide-outfitter exam within two years. It also establishes an appeal process for applicants who have been denied a license under this scheme. For the next two years or

The Honorable Steve Cowper, Governor
Our file: 883-89-0032

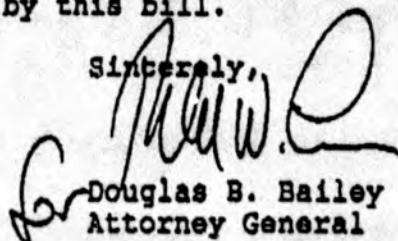
May 10, 1989
Page 4

until the person receives or is denied a guide-outfitter license, a former outfitter may hold an "interim outfitter license." This license will enable the outfitter to provide transportation and services other than guiding if the person registers up to two base camps with the Department of Public Safety and reports the game taken by clients. After July 15, 1989, an applicant for an interim outfitter license must also satisfy certain liability insurance and aircraft pilot licensing requirements. Sections 15 and 21 of the bill.

A "letter of intent" offered by Representative Navarre (1989 House Jour., p. 917-18) was adopted by the House (1989 House Jour., p. 919). A Senate Finance Committee letter (1989 Senate Jour., p. 1307) was adopted by the Senate (1989 Senate Jour., p. 1422). Both versions declared an "intent" that the new board consider the implications of the Alaska Supreme Court's decision in Owaichek v. State, Guide Licensing and Control Board, 763 P.2d 488 (Alaska 1988) when establishing the management system authorized in proposed AS 08.54.310(b)(1) (sec. 3 of the bill). And both versions of the letter set out several features that the respective houses of the legislature believe should be in this system. Such letters can provide helpful guidance, but they are not binding. South Central Health Planning and Development, Inc. v. Commissioner of Administration, 628 P.2d 551, 553 (Alaska 1981).

Other than the constitutional and other issues that we have noted above, such as the residency requirements for licensing and the board-member appointment system, we spot no legal problems presented by this bill.

Sincerely,



Douglas B. Bailey
Attorney General

DDB:SKW:jf

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

RECEIVED

MEMORANDUM

June 27, 1989

JUN 28 1989

JAN FAIKS
SENATE OFFICE

SUBJECT: Sectional Summary of SCS CSHB 112 (Rules) am S; An Act relating to big game hunting and to the regulation of big game and marine mammal guide-outfitting, transportation, and other commercial services for big game hunters, creating the Big Game Commercial Services Board; relating to presumptive sentences for violation of certain big game commercial services statutes; and providing for an effective date.

TO: Senator Jan Faiks

FROM: George Utermohle *GU*
Legislative Counsel

The following is a sectional summary of SCS CSHB 112 (Rules) am S, as requested by Mark Riehle of your staff.

Please note that a summary of a bill should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill repeals and reenacts AS 08.01.010(10) to provide that the Big Game Commercial Services Board is subject to and benefits from centralized licensing procedures under AS 08.01

Section 2 of the bill repeals and reenacts AS 08.03.010(c)-(20) to provide that the Big Game Commercial Services Board terminates on June 30, 1993 under the "sunset" provisions of AS 08.03.

Section 3 of the bill amends AS 08.54 by adding new sections creating the Big Game Commercial Services Board and providing for the regulation of guide-outfitting, transportation, and other commercial services for big game hunters.

ARTICLE 4. BIG GAME COMMERCIAL SERVICES BOARD.

Sec. 08.54.300 establishes the Big Game Commercial Services Board (Board) in the Department of Commerce and Economic Development. The Board consists of nine members. Two members of the board are licensed guide-outfitters. Two members of the Board are licensed transporters. One member of the Board is a commercial use permit holder who is not a guide-outfitter or transporter. One member of the Board is a member of the Board of Game who is chosen by the Board of Game. One member is a person who represents Native landholders. Two members of the Board are public members. The guide-outfitter, transporter, commercial use permit holder, and public members of the Board, as well as the representative of Native landholders, are appointed by the governor.

Sec. 08.54.310 sets out the duties and powers of the Board. The Board shall prepare, grade, and administer examinations for guide-outfitters licenses and for game management unit certifications; determine qualifications for class-A assistant guide-outfitter, marine mammal guide-outfitter, and assistant guide-outfitter licenses; establish performance standards for providers of big game commercial services and regulate the activities of these providers; publish an annual list of big game commercial services providers; prohibit big game commercial services that are unsportsmanlike, unethical, unsafe, etc; revoke, suspend, or deny renewal of licenses and permits; authorize issuance of transporter licenses and commercial use permits; meet at least twice each year; and provide for registration of base camps and other facilities.

The Board may establish a management system for guide-outfitters and establish standards of supervision that a guide-outfitter must exercise over class-A assistant guide-outfitters and assistant guide-outfitters.

Sec. 08.54.320 provides that the Board shall adopt regulations as required by this chapter and as necessary for administration of this chapter.

Sec. 08.54.330 provides that the Department of Fish and Game, Department of Natural Resources, and Department of Public Safety shall provide the Board with information necessary to regulate providers of big game commercial services.

ARTICLE 5. LICENSING.

Sec. 08.54.350 sets out the minimum qualifications necessary for a guide-outfitter license. A person who currently holds a master guide license may receive a master guide-outfitter license, but is in all other respects treated as a guide-outfitter. A guide-outfitter may contract to guide-outfit hunts for big game.

Sec. 08.54.360 sets out the minimum qualifications necessary for a marine mammal guide-outfitter license. A marine mammal guide-outfitter may contract to guide-outfit hunts for marine mammals.

Sec. 08.54.370 sets out the requirements for renewal of guide-outfitter and marine mammal guide-outfitter licenses. The department may not renew a license unless these requirements are satisfied.

Sec. 08.54.380 sets out the minimum qualifications necessary for a class-A assistant guide-outfitter license. A class-A assistant guide-outfitter may not contract to guide-outfit hunts. A class-A assistant guide-outfitter must be under the supervision of a guide-outfitter but may take charge of a camp in the absence of a guide-outfitter.

Sec. 08.54.390 sets out the minimum qualifications necessary for an assistant guide-outfitter license. An assistant guide-outfitter may not contract to guide-outfit hunts and must be employed by a guide-outfitter and supervised by a guide-outfitter or class-A assistant guide-outfitter while in the field on a hunt.

Sec. 08.54.395 sets out additional requirements for guide-outfitters. This section takes effect July 15, 1989.

Guide-outfitters and marine mammal guide-outfitters must carry a minimum amount of comprehensive general liability insurance or post a financial bond.

Any guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter who pilots an aircraft to transport clients shall have a commercial pilot's rating or a minimum of 250 hours of flying time in the state.

All aircraft that transport clients of guide-outfitters during the provision of big game commercial hunting services must carry a minimum amount of aviation passenger liability insurance or be subject to a financial bond in the required amount.

Sec. 08.54.400 sets out the requirements for obtaining and renewing a transporter license.

A transporter may provide transportation services to big game hunters. A transporter may also provide accommodations to big game hunters in the field in certain situations. A transporter must place a decal provided by the department on each piece of transportation equipment that the transporter uses in providing transportation services to big game hunters.

Sec. 08.54.410 provides for an appeal to the commissioner of commerce and economic development if an applicant for any class of guide-outfitter license or transporter license is denied a license by the Board. Specific criteria that an appellant must satisfy in order to file an appeal under this section are set out.

Sec. 08.54.420 provides that guide-outfitter, marine mammal guide-outfitter, and transporter licenses are renewed annually.

Sec. 08.54.430 provides for examinations for any class of guide-outfitter license that may be required under this chapter. The Board shall administer qualification examinations at least twice a year and at least once each two years shall administer the examinations at a location outside of Anchorage. The examinations must be administered at least 90 days apart.

The Board shall regularly provide information on examinations and qualifications for all classes of guide-outfitter licenses to residents of rural areas.

Sec. 08.54.440 provides for renewal of all classes of guide-outfitter licenses after the license has lapsed. If any class of guide-outfitter license has lapsed for two consecutive years, the applicant must satisfy the requirements for initial issuance of the license.

A guide-outfitter who fails to renew a license does not have to repeat the three year apprenticeship as a class-A assistant guide-outfitter or an assistance guide-outfitter unless the guide-outfitter license has been lapsed for three years or more.

Sec. 08.54.450 provides that the department shall set fees for examinations and licenses required under this chapter. A license fee for any class of guide-outfitter license is in addition to the fee paid for a hunting license.

Sec. 08.54.460 requires that a person, other than a licensed guide-outfitter, marine mammal guide-outfitter, or transporter, who provides other big game commercial services for compensation register with the Board, obtain a commercial use permit, and pay the commercial use permit fee. Examples of "other big game commercial services" are listed.

A commercial use permit may not be issued to a hunting club. A hunting club may not provide other big game commercial services for compensation.

Sec. 08.54.470 requires guide-outfitters, marine mammal guide-outfitters, and transporters to obtain an annual commercial use permit and pay the commercial use permit fee.

The department, in consultation with the Board, shall set the amount of the commercial use permit fee.

A guide-outfitter, marine mammal guide-outfitter, or transporter shall pay the commercial use permit fee with the application for issuance or renewal of their license.

The commissioner of administration shall separately account for the fees received for commercial use permits. The legislature may use the money received for commercial use permits to make appropriations to the Department of Fish and Game and the Department of Public Safety for game management and enforcement of game laws.

ARTICLE 6. PENALTIES.

Sec. 08.54.500 sets out the procedures for discipline of a person who holds any class of guide-outfitter license.

The Board may hold a disciplinary hearing upon receiving a written complaint about the guide-outfitter licensee. The

Board shall hold a disciplinary hearing upon receiving three written complaints from members of three separate hunting parties about a licensee's activities or a written complaint about a licensee's conduct in a life-threatening situation or if the licensee is convicted of certain state or federal laws.

The Board may revoke, suspend, or deny renewal of any class of guide-outfitter license after a hearing if the Board finds that the licensee engaged in certain proscribed activities or violated certain state or federal laws.

The Board shall revoke any class of guide-outfitter license after a hearing if the Board finds that the licensee is not qualified for the license held, is incompetent, or has been convicted of certain state or federal laws during the preceding five years.

The Board shall immediately suspend any class of guide-outfitter license if a certified copy of a judgment of conviction of a licensee for certain state or federal crimes is filed with the Board.

Sec. 08.54.505 provides for the discipline of transporters and commercial use permittees.

The Board may hold a disciplinary hearing regarding the activities of a transporter or commercial use permittee upon receipt of a written complaint about the transporter or commercial use permittee. The Board shall hold a disciplinary hearing upon receiving three written complaints from members of three separate hunting parties about the transporter's or permittee's activities or if the transporter or permittee is convicted of certain state or federal laws.

The Board may revoke, suspend, or deny renewal of a transporter license or commercial use permit after a hearing if the Board finds that the licensee or permittee engaged in certain proscribed activities or violated certain state or federal laws.

The Board shall revoke a transporter license or commercial use permit after a hearing if the Board finds that the licensee or permittee is not qualified for the license or permit or has been convicted of certain state or federal laws during the preceding five years.

The Board shall immediately suspend a transporter license or commercial use permit, if a certified copy of a judgment of conviction of licensee or permittee for certain state or federal crimes is filed with the Board.

Sec. 08.54.510 sets out general provisions applicable to disciplinary proceedings.

A person who is disciplined under AS 08.54.500 or 08.54.505 may not engage or be employed in the business of providing big game commercial services during a period of license or permit revocation or other disciplinary action. A person who is licensed under this chapter or who holds a commercial use permit may not employ a person whose license or permit under this chapter is suspended or revoked.

A license or permit that has been revoked must be surrendered immediately to the department.

A certified copy of a judgment of conviction is conclusive evidence of the commission of the offense in a disciplinary proceeding of the Board, regardless of whether the conviction resulted from a plea of nolo contendere or the conviction is under appeal, unless the conviction is overturned on appeal.

The Board shall notify a complainant of the result of the Board's hearing within 30 days after the hearing. The Board must also notify a complainant of its reasons for not taking disciplinary action.

Sec. 08.54.520 sets out unlawful acts involving the provision of big game commercial services and establishes the penalties for those acts.

A person may be punished by a fine of not more than \$30,000 or imprisonment for not more than one year or both for

- (1) failing to report violations of certain laws by a client or employee if the person holds a license or permit issued under this chapter;
- (2) committing, aiding in the commission of, or allowing a violation of certain fish and game laws if the person holds a license or permit issued under this chapter;

- (3) providing big game commercial services without holding a commercial use permit;
- (4) obstructing the lawful hunting activities of hunter who is not a client of the person, if the person holds a license or permit under this chapter;
- (5) providing guide-outfitting services except while employed and supervised by a guide-outfitter, if the person is a class-A assistant guide-outfitter or assistant guide-outfitter;
- (6) entering or remaining on state, federal, or private land without prior authorization, if the person holds any class of guide-outfitter license.

A person may be punished by a fine of not more than \$30,000 or imprisonment for not more than one year or both for a first offense or by a fine of not more than \$50,000 or imprisonment for not more than five years for a second or subsequent offense for

- (1) providing guide-outfitter services without having an appropriate class of guide-outfitter license and hunting license in actual possession;
- (2) advertising or to representing to be a guide-outfitter without holding a guide-outfitter or marine mammal guide-outfitter license;
- (3) providing transportation services to a big game hunter without holding a transporter license;
- (4) contracting to lead a hunt, if the person is a class-A assistant guide-outfitter or assistant guide-outfitter.

A person who provides big game commercial services while the person's license to provide those services is suspended or revoked is punishable by a fine of not more than \$50,000 or by imprisonment for not more than five years.

A person who is convicted of an act set out in this section may also be subject to revocation of the person's license to provide guide-outfitter and transportation services for not more than five years and forfeiture of guns, boats, aircraft, and other equipment used in committing the act.

If a person is convicted of an act set out in this section, a court may not suspend imposition or execution of sentence and the person may not be granted probation until the minimum sentence is served.

Sec. 08.54.530 provides that the Board may obtain an injunction to stop a person from violating certain provisions of this chapter.

Sec. 08.54.540 provides that a guide-outfitter is subject to discipline by the Board under AS 08.54.500 for violations of certain state and federal laws committed during the course of employment by a class-A assistant guide-outfitter or assistant guide who is employed by the guide-outfitter.

ARTICLE 7. GENERAL PROVISIONS.

Sec. 08.54.550 provides for the collection of certain information and reports from guide-outfitters, marine mammal guides, and transporters. This information is confidential except that aggregated information may be released in reports by the department.

Sec. 08.54.590 established definitions for "base camp", "big game", "big game commercial hunting services", "big game commercial service", "board", "compensation", "department", "field", "game management unit", "guide-outfit", "hunting club", "spike camp", "transportation services", and "unethical activity".

Section 4 of the bill amends AS 12.55.125(e), by establishing a one year presumptive sentence for a first felony conviction if the offender is convicted of AS 08.54.520(a)(7) - (10).

Section 5 of the bill amends AS 16.05.407(a) by adding mountain goat to and deleting polar bear from the list of species for which a nonresident hunter is required to utilize the services of a guide-outfitter and by making certain technical changes that are necessary to conform with the remainder of the bill.

Section 6 of the bill amends AS 16.05.407(d) by making a technical change that is necessary to conform to the repeal of AS 16.05.407(e).

Section 7 of the bill amends AS 16.05.407 by adding a new subsection to require that nonresident hunters provide proof of prior authorization to use the land where the hunt will occur, when the nonresident hunter applies for a hunt permit for a big game species listed in AS 16.05.407(a). (See Section 5 of the bill.)

Section 8 of the bill amends AS 16.05.408(a) by making technical changes necessary to conform with Section 3 of the bill.

Section 9 of the bill amends AS 16.05.408 by adding a new subsection to require that nonresident alien hunters provide proof of prior authorization to use the land where the hunt will occur, when the nonresident alien hunter applies for a hunt permit for a big game animal.

Section 10 of the bill amends AS 39.50.200(b)(48) in order that the members of the Big Game Commercial Services Board are subject to the conflict of interest law.

Section 11 of the bill amends AS 41.23.420(d) by making a technical change that is necessary to conform to section 3 of the bill.

Section 12 of the bill amends AS 44.62.330(a)(35) to provide that the Big Game Commercial Services Board is subject to certain provisions of the Administrative Procedure Act.

Section 13 of the bill provides for the transition from the existing classes of guide licenses to the new classes of guide-outfitter licenses.

All classes of guide licenses that are in effect on the effective date of this bill continue to be valid for the period for which the licenses were originally issued.

Persons who currently hold master guide licenses shall be issued master guide-outfitter licenses. Persons who currently hold registered guide licenses shall be issued guide-outfitter licenses. Persons who currently hold class-A assistant guide licenses shall be issued class-A assistant guide-outfitter licenses. Persons who currently hold assistant guide licenses shall receive an assistant guide-outfitter license. The new licenses shall be issued to the current licensee at the time of the next license renewal following the effective date of this bill, if the person is

in good standing at the time of issuance and pays the appropriate fees.

If the Department of Commerce and Economic Development can issue new licenses sooner than is required by this section, the department may do so without charge to the licensee.

Section 14 of this bill provides that natural persons who have provided big game outfitting services in the past may qualify for a guide-outfitter license.

In order to qualify for a guide-outfitter license under this section, the person must have registered a camp, cabin, or lodge under AS 16.05.787 during 1988, engaged in the business of big game outfitting in 1986, 1987, and 1988, passed the guide-outfitter examination within two years from the effective date of this bill, and satisfied other requirements.

A person who is denied a guide-outfitter license under this section by the Big Game Commercial Services Board may under certain circumstances appeal the action of the Board to the commissioner of commerce and economic development.

A person who provides sufficient proof of past history as a big game outfitter may receive an interim outfitter license that is valid for a period not to exceed two years from the effective date of this bill.

A person who holds an interim outfitter license may provide transportation and other big game commercial services to hunters in the field, except that the person may not provide big game guiding services.

A person who holds an interim outfitter license must promptly report violations of certain laws committed by a client or employee of the person.

A person who holds an interim outfitter license must register base camps, cabins, and lodges that the person uses in providing big game outfitting services. The person must report the amount and kinds of big game taken by each hunter who uses the registered camp, cabin, or lodge.

A person who holds an interim outfitter license and who fails to report violations of certain laws by clients and employees is punishable by a fine of not more than \$2,000 or

imprisonment for up to one year or both. Falsification of an affidavit of registration for a base camp, cabin, or lodge constitutes the crime of unsworn falsification under AS 11.56.210.

A person who holds an interim outfitter license must carry a minimum amount of comprehensive general liability insurance or post a financial bond. If a person who holds an interim outfitter license pilots an aircraft to transport clients, then the person must have a commercial pilot's rating or 250 hours of flying time in the state.

An aircraft used to carry clients of an interim outfitter during the provision of outfitting services must carry a minimum amount of aviation passenger liability insurance or be subject to a financial bond.

The terms "base camp", "big game", "field", "guiding", and "outfitting" are defined.

Section 15 of the bill amends Section 14(d) of the bill in order to require that, after July 15, 1989, applicants for an interim outfitters license comply with the insurance and flight training or experience requirements set out in Section 14(j) and (k) of the bill.

Section 16 of the bill allows certain extraordinary appointments to fill the initial vacancies on the Big Game Commercial Services Board.

The guide-outfitter seats on the Board may initially be filled by persons who are either a master guide or registered guide under current law or who registered a camp, cabin, or lodge under AS 16.05.787 during 1988 and engaged in the business of big game outfitting in 1986, 1987, and 1988.

The transporter seats on the Board may initially be filled by persons who engaged in the business of providing transportation to big game hunters in 1986, 1987, and 1988.

Section 17 of the bill provides for the continuance of legal proceedings, hearings, investigations, and regulations during the transition from the current guide statutes (AS 08.54.010 - 08.54.240) to the guide-outfitter statutes contained in this bill.

Section 18 of the bill provides for the repeal of the current guide statutes (AS 08.54.010 - 08.54.240); the requirement for big game tag harvest reports and big game transporter reports (AS 16.05.370(b) and (c)); the requirement that nonresident hunters provide information on big game hunting services used in taking moose and caribou (AS 16.05.-407(e)); provisions relating to the duty of big game transporters to report violations of certain state law (AS 16.05.-786); and the requirement for registration of big game hunting base camps, cabins, and lodges (AS 16.05.787).

Section 19 of the bill provides for the repeal of certain amendments to AS 08.54 and AS 16.05 that are scheduled to take effect on July 1, 1989.

Section 20 of the bill provides that the power of the Big Game Commercial Services Board to develop a resource based management system for allocating access to big game hunting opportunities among guide-outfitters under AS 08.54.310(b)(1) does not take effect until the earlier of January 15, 1990 or the date of submission of a report on this subject by the Task Force on Guiding and Game.

Section 21 of the bill provides that those provisions of the bill relating to insurance and flight training or experience requirements for all classes of guides-outfitters and interim outfitters take effect July 15, 1989.

Section 22 of the bill provides that the remainder of the bill takes effect immediately after it is signed by the governor.

Except for those provisions of the bill that are subject to secs. 20 and 21 of the bill, the bill took effect May 12, 1989.

GU:mi
wkmi4/039

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

RECEIVED

POUCH Y. STATE CAPITOL
NOV 13 1989
JUNEAU, ALASKA 99811
907.465.3800
JAN FAIKS
SENATE OFFICE

MEMORANDUM

November 8, 1989

SUBJECT: Legislation implementing the proposals of
the Task on Guiding and Game
(Work Order No. 6-1718)

TO: Steven Pradell
Birch, Horton, Bittner, and Cherot

FROM: George Utermohle *GU*
Legislative Counsel

Yesterday morning I received your fax of material relating to the legislation that will be proposed by the Task Force on Guiding and Game. I should begin drafting the bill today. Considerable work will be involved in translating the proposal into bill form. It is not possible to make a firm commitment as to when a draft will be available for your review, but I would hope to have something for you by Friday, November 17.

Please let me know if the Task Force decides to change parts of the proposal at its meeting today.

I am sure that I will have to consult with you on a number of issues as the bill is drafted. Please feel free to contact me at any time.

GU:lmb
L3/019

cc: Senator Faiks

Mark F.I.

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

COPY

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

November 17, 1989

SUBJECT: Legislation implementing the proposals of the
Task Force on Guiding and Game
(Work Order No. 6-1718)

TO: Steven Pradell
Birch, Horton, Bittner and Cherot

FROM: George Utermohle
Legislative Counsel

This memorandum accompanies the first draft of a bill to implement the proposals of the Task Force on Guiding and Game.

The bill includes those items discussed in your memorandum to the Task Force and in the revisions of the memorandum by the Task Force. The bill is not complete. The changes to existing law that are necessary in order to accommodate the new law added by the bill have not been included because at this early stage it is not clear what those changes will be.

In some parts of the bill I have attempted to flesh out the proposals of the Task Force. I tried not to exceed the scope of the proposals of the Task Force.

This is only a first draft of the bill. Changes are expected. It is still possible to significantly change the bill and the concepts underlying the bill, if the changes are made in the near future.

For the lack of another term to describe the areas being established by the bill, I have called them "guide-outfitter use areas."

The bill does not address the interaction between the rights given to guide-outfitters under a use area licenses and those of sport and subsistence hunters. It may be useful to mention that the rights of sport and subsistence hunters are not affected by the issuance of a use area license.

The bill is mostly silent on when the decision to issue a sole use area license or a joint use area license is to be made. The notice of offering of use areas must include a statement of whether the use area is available for sole or joint use, but that is the only reference to a decision being made as to which use is preferred in a use area. If it is important that this decision be made at a particular point in the application process, then the bill should address this issue and specify the criteria that the board should use in making the decision. However, it is not essential that the bill address this issue because the board can decide when to make the decision on sole and joint use areas, provided that the board is given authority to make the decision.

In order to obtain a guide-outfitter use area license, the applicant must have authorizations to use the land within the use area or obtain the authorizations soon after receiving the license. The bill presently requires that the successful applicant for a use area license obtain the necessary authorizations within 90 days after first receiving the license. The advantage of a fixed deadline for obtaining the necessary authorizations is that the final status of the license can be established sooner than under a system of unspecified and flexible deadlines. Conceivably the successful applicant may not be able to reach an quick agreement with land owners in the use area even though the applicant is earnestly seeking an agreement. Such a situation may justify an extension of time to obtain the authorizations, but in the meanwhile the use area may be closed to use by the successful applicant as well as all other guide-outfitters, some of whom may be able to obtain the necessary authorizations.

The use of a fixed deadline, as proposed in the bill, should not impose a hardship on the successful applicant. Under the criteria for ranking the applicants, the applicant should have some experience in or knowledge of the use area. Thus the applicant would have already obtained the necessary authorizations or at least be familiar with the land owners and know whether it is reasonable to expect to obtain the authorizations within the time permitted.

Should the applicant be required to obtain authorizations from all land owners in the use area? Should the applicant be disqualified because he or she can obtain land use authorizations for only half of the land in the use area?

What if the half of the land for which the guide-outfitter can get approval is the only land on which big game can be found? AS 08.54.520(a)(6) requires only that a guide-outfitter have an authorization to use state, federal, or private land if the guide-outfitter is knowingly present on such land. To require a guide-outfitter to obtain authorizations for land that the guide-outfitter will never use during the course of providing guide-outfitted hunts exceeds the requirements of AS 08.54.520(a)(6) and will make the application process for use area licenses unnecessarily rigorous.

Should the applicant obtain authorizations for small parcels of land in the use area, such as homesteads, Native allotments, mining claims? Should the applicant obtain approval from occupiers of land who hold less than fee or unvested rights, such as leaseholders, adverse possessors, and holders of contested Native allotments and unpatented mining claims? Will the applicant be responsible for searching land records to determine all of the landowners within the use area? Will the board be responsible for determining that the applicant has actually received authorizations from all landowners and other persons who have a right to control access to land in the use area?

Either the bill can set out the criteria to be used in determining whether the applicant has satisfied the requirement for obtaining prior land use authorizations or it can establish criteria that the board will apply in making that determination. Each guide-outfitter use area is potentially a unique area that is not susceptible to fixed, uniform criteria, so some discretion should be conferred on the board in order to achieve fair and reasonable resolutions of land use authorization issues in unusual situations.

In many instances under the former exclusive guiding areas, the guides made physical improvements to their areas in order to enhance their operations, such as tent camps and, conceivably even, cabins. Would the guide-outfitters who make such improvements be entitled to any additional credit for the improvements when they reapply for a license for that use area? Such credit would make it easier for a guide-outfitter to retain a license for the use area and thus would be counter to the goal of maximizing competition for use areas, however, it would encourage a guide-outfitter to make capital investments in his or her use area. Any competitive advantage that is created could be offset by giving

Steven Pradell
Page 4
November 17, 1989

additional credit in some manner to guide-outfitters who do not have use area licenses.

The bill allows guide-outfitter use area licenses to be transferred without going into any detail as to the conditions that may apply. May the transfer be temporary, in effect being a lease of the license? May the license be transferred for valuable consideration, i.e. sold? Can the transfer of the licenses be used to circumvent the application and ranking procedures for obtaining use area licenses?

The bill makes the Department of Commerce and Economic Development responsible for setting the use area license issuance fee and establishes conceptual guidelines under which the amount of the fee is established. As the bill is drafted, the department determines

- (1) whether there will be a flat fee for all use area licenses or a variable fee based on the availability of big game resources in each use area;
- (2) how the fee will be set in regards to recovering a fair return (economic rent) for the use of state wildlife resources;
- (3) whether the fee will be paid in a lump sum at the time of issuance of the use area license or annually during the term of the license.

The bill is silent on what powers the department will have to ensure collection of the license issuance fee or to revoke the license for nonpayment of the fee.

The bill relates only to guide-outfitters. There are no references to marine mammal guide-outfitters. AS 08.54 provides for the issuance of marine mammal guide-outfitters licences in anticipation that the state will at some time in the future receive authority to manage marine mammals. Should the board have the authority to establish marine mammal guide-outfitter use areas in the event that marine mammal hunting becomes possible?

Please contact me at (907) 465-2450, if you need me to elaborate on some part of the bill or on my foregoing comments or if I can provide further assistance.

GU:lmb:mi
L8/048
~~cc: Senator Faiks~~

Enclosure

AKI

AKHIOK KAGUYAK, INC.

December 8, 1989

Honorable Jan Faiks, Chairman
Legislative Task Force on Guiding and Game
3111 C Street, Suite 525
Anchorage, AK 99503

RE: Amendment to Guide-Outfitter Legislation

Dear Senator Faiks:

I am hereby submitting a proposed amendment to the November 17, 1989 Work Draft of the Senate Bill for "An Act relating to guide-outfitter use Areas." This amendment clarifies the types of landowner authorizations required to satisfy license criteria number 5. The proposed action would amend criteria (5) on page five, line 9, by removing the words "on land" after the word "hunts" and replacing the removed words with "from all significant landowners." The amended criteria (5) would read as follows:

(5) the applicant's history of compliance with AS 08.54.520(a) in regard to prior authorization to enter or remain on state, federal, or private land, and whether the applicant has obtained the prior authorizations necessary to guide-outfit hunts from all significant land owners within the use area or has demonstrated the ability to acquire the necessary prior authorizations;

This amendment clarifies the intent of criteria (5) by making it clear that a guide does not need authorization from all the owners of small inholdings to acquire his license or permit for a guide area but does need the authorization of all significant land owners within the guide area. By requiring such authorizations, trespass problems will be minimized; game will be taken from throughout the guide area resulting in balanced management; cooperation between the area's landowners and guides would be encouraged; land ownership boundaries, except small inholdings, would not be arbitrary barriers to the fair chase of the hunt; and significant private landowners would be encouraged to keep their lands open to guided hunting due to their involvement in the system.

I look forward to discussing this amendment with you and the Task Force on Monday, December 11, 1989.

Sincerely,

Ralph L Eluska

Ralph Eluska
President

DH/laf

WORK DRAFT

WORK DRAFT

WORK DRAFT

** Jan, amendment
Location of our ~~language~~ on new
draft of legislation*

1 see is certified by the board.

2 (b) The board shall evaluate and rank applications for guide-
3 outfitter use area permits according to the following criteria:

4 (1) the applicant's experience in or knowledge of the use
5 area;

6 (2) the economic viability of the applicant's proposed
7 guide-outfitting operation in the use area;

8 (3) the applicant's history of safety in guide-outfitting
9 hunts or demonstrated ability to guide-outfit hunts safely;

10 (4) the applicant's history of compliance with state and
11 federal fish and game and guide-outfitting statutes and regulations;

12 (5) the applicant's history of compliance with AS 08.54.-
13 520(a) in regard to prior authorization to enter or remain on state,
14 federal, or private land;

15 (6) whether the applicant has obtained those prior autho- *from all significant*
16 rizations to use state, federal, or private land; *land owners.* that are reasonably
17 necessary to conduct guide-outfitted hunts within the use area or has
18 demonstrated the ability to acquire those authorizations;

19 (7) whether the applicant holds all permits and licenses
20 necessary to guide-outfit hunts in the use area or has demonstrated
21 the ability to obtain the necessary permits and licenses;

22 (8) whether the applicant holds any other use area permits;
23 an applicant who does not hold a use area permit shall receive addi-
24 tional preference in ranking of the applicant's application;

25 (9) whether the applicant is seeking the first renewal of a
26 use area permit for a specific use area and whether the applicant
27 complied with the terms of the use area permit; an applicant for a
28 first renewal of a use area permit for a specific use area who has
29 complied with the terms of the use area permit shall receive

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 15, 1989

SUBJECT: Revision of legislation relating to guide-outfitter use area permits following the Task Force meetings of December 11 - 12, 1989 (Work Order No. 6-1718)

TO: Senator Jan Faiks
Chair, Task Force on Guiding and Game

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum accompanies the Task Force bill as revised subsequent to the December 11 - 12 meetings of the Task Force. The bill contains those changes made by the Task Force.

Page 1, lines 10 - 18: Section 1(a)(1) and (a)(2) as adopted by the Task Force have been combined in a single paragraph.

Page 1, lines 22 - 24: The language adopted by the Task Force was revised to maintain consistent form and style. The Task force should review the new language to ensure that the intended meaning has not been altered.

Page 4, lines 17 - 26: This subsection has been rewritten to require that in a joint use area all big game species are included under the use area permits granted for the use area when all of the use area permits are considered together.

Page 7, lines 5 - 12: The Task Force language relating to reevaluation of applications to determine the best qualified applicants has been rewritten to simplify the language.

The attached amendment is included for the consideration of the Task Force. The amendment moves those provisions relating to preferences for use area permits out of the subsection relating to qualifications to receive use area permits and into a new subsection. This amendment eliminates the confu-

Senator Jan Faiks
Page 2
December 15, 1989

sion of preferences with qualifications that exists in the present draft and addresses each issue separately.

GU:mi
wkmi5/056

Enclosure

A M E N D M E N T

TO: W.O. 6-1718A (dated 12/15/89)

Page 6, line 24:

Delete ";

Insert "."

Page 6, line 25 through page 7, line 4:

Delete all material

Insert a new subsection to read:

"(c) An applicant shall receive a preference for a use area permit if the applicant

(1) is determined to be qualified by the board; and

(2) does not hold a use area permit or is seeking the first renewal of a use area permit for a specific use area."

Reletter the following subsections accordingly.



Kelly Vrem Registered Guide & Outfitter

P.O. Box 670742 • Chugiak, AK 99567 • (907) 688-3736

Senator Jan Faiks
Members of the Guiding and
Outfitting Task Force

December 12 1989

Chairman Faiks,

First let me express my thanks for the time and effort you and the members of the Task Force have put forth during the last months. Yours is a thankless and underappreciated job. The complexities of the Guiding business would be enough without the problems generated by the "Supremes" you have a difficult job to balance the needs of the various players in the commercial hunting business. It has been my pleasure to observe that the Task Force has what I see to be a pretty clear understanding of nature of the business. I know guiding will never be the same as it was but I am confident that you are taking the proper amount of time and research to come as close to as you can to a fair settlement within the constraints placed on you.

At this time I would like to once again request that you would allow Guides to prequalify for several Game Management Units. I would propose that a Guide might only be permitted to operate in 3 GMU's at any one time. The Guide could notify the proper authorities of his or her intentions 60 to 90 days in advance of the guiding activities.

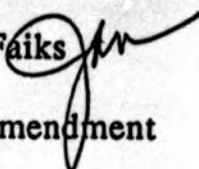
Under the present system There is 6 to 12 months of lag time to exchange GMU'S. This results in a large number of people clustered id some of the choice units myself included. I have my eye on many open areas that were unclaimed under the old area system. To prospect one of these now would expose me to risks of losing up to a year of time. I am ready and willing to prospect new areas if I can make the proper adjustments in a timely manner. I do not think this would result in stampedes of guides charging around the state. All the proven "Plums" are spoken for. This type of system would would allow the newly licensed guides to do some exploration and still retain the option of trying to obtain one of these "plum" areas.

Thanks again for your efforts.

Kelly Vrem

December 22, 1989

MEMORANDUM

TO: George Utermohle
FROM: Senator Jan Faiks 
SUBJECT: Guide Bill Amendment

Good

Please prepare an amendment for the Guide Task Force's consideration at its January 4th and 5th meeting which would allow guides to prequalify for several Game Management Units as described in the attached letter.

Because my Anchorage office is closed for the move to Juneau, I can be reached at my Anchorage home should you have any questions. That number is 346-1556.

Thank you.

Amendment
#2

1-4.

A M E N D M E N T

TO: 6-1718A (dated 12/15/89)

BY FAIKS

Page 1, line 6, after "permit":

Insert ", guide-outfitters,"

Page 10, after line 26:

Insert a new bill section to read:

"* Sec. 4. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.355. GAME MANAGEMENT UNIT CERTIFICATION. (a) The board shall certify guide-outfitters licensed under AS 08.54.350 to guide-outfit hunts within a game management unit. The board may not certify a guide-outfitter to guide-outfit hunts in more than three game management units at one time.

(b) A guide-outfitter may not guide-outfit hunts in a game management unit unless the guide-outfitter is certified by the board to guide-outfit hunts in the game management unit.

(c) The board shall allow a guide-outfitter to prequalify for certification for each game management unit in which the guide-outfitter is competent to guide-outfit hunts. The board shall allow a guide-outfitter to ~~readily~~ transfer a certification between game management units."

Renumber the following bill sections accordingly.

STATE OF ALASKA



LYMAN F. HOFFMAN
CO-CHAIRMAN
HOUSE FINANCE COMMITTEE

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3706

HOUSE OF REPRESENTATIVES

DISTRICT 25

AKIACHAK
AKIAK
ATMAUTLUAK
BETI IEL
CHEFORNAK
EEK
GOODNEWS BAY
KASIGLUK
KIPNUK
KONGIGANAK
KWETHLUK
KWIGILLINGOK
MEKORYUK
NAPAKIAK
NAPASKIAK
NEWTOK
NIGHTMUTE
NUNAPITCHUK
OSCARVILLE
PLATINUM
QUINHAGAK
TOKSOOK BAY
TUNTUTULIAK
TUNUNAK

M E M O R A N D U M

TO: Senator Jan Faiks
Chairperson, Guiding & Big Game Task Force

FROM: Representative Lyman Hoffman *Lyman*
Co-Chairman, House Finance Committee

DATE: January 19, 1990

SUBJ: Proposed amendments to Final Draft

=====

Please find attached an amendment I wish to offer to the final draft of the Task Force's legislation that will be discussed on Monday, January 22 at the scheduled 9:00 am meeting.

If there are any questions concerning these amendments, please contact my office.

Thank you.

A M E N D M E N T

BY REP. HOFFMAN

TO: W.O. 6-1718A (dated 1/11/90)

Page 11, lines 17 - 18:

Delete "or a marine mammal guide-outfitter license"

Insert "[OR A MARINE MAMMAL GUIDE-OUTFITTER LICENSE]"

Page 12, lines 1 - 2:

Delete ", marine mammal guide-outfitter,"

Insert "[, MARINE MAMMAL GUIDE-OUTFITTER]"

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

January 31, 1990

SUBJECT: Sectional Summary of SB 422; An Act relating to guide-outfitter use area permits, the Big Game Commercial Services Board, and guide-outfitters, transporters, and providers of other big game commercial services

TO: Senator Jan Faiks

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is a sectional summary of SB 422.

A sectional summary or analysis of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill sets out the findings of the Legislature and the purpose of the bill.

Section 2 of the bill amends AS 08.54 by adding new sections relating to guide-outfitter use areas and use area permits.

Sec. 08.54.610 authorizes the Big Game Commercial Services Board to establish guide-outfitter use areas based on recommendations made by the Department of Fish and Game.

The board may amend the boundary of an established use area if the Department of Fish and Game concurs in the change and affected guide-outfitters are given an opportunity to comment on the proposed boundary.

Sec. 08.54.620 provides that the board shall offer available use areas to qualified guide-outfitters each year. The board may request recommendations from the public for use areas to be offered.

The board shall determine whether use areas will be offered for sole or joint use by guide-outfitters before the offering is made. Use areas for which permits have expired, been relinquished by the permittee, or revoked by the board may be offered at the next offering of use areas.

The notice of offerings must include specific information regarding each use area.

Sec. 08.54.630 establishes the privileges conferred by use area permits and registration permits and the duties of guide-outfitters under use area permits and registration permits.

A use area permit or registration permit authorizes a guide-outfitter to guide-outfit hunts in the use area for those species listed in the permit. A use area permit or registration permit may limit the number of clients that a guide-outfitter may guide-outfit in the use area.

Use area permits may authorize joint or sole use of the use area. Guide-outfitted hunts for all big game species within a use area must be authorized under joint use area permits, when all use area permits for the use area are considered together.

Use areas for which use area permits have not been awarded are open to use by qualified guide-outfitters who obtain registration permits. Registration permits are valid for one calendar year.

A guide-outfitter may not guide-outfit hunts in a use area unless the guide-outfitter has a use area permit or registration permit authorizing guide-outfitted hunts in the use area.

A guide-outfitter shall physically participate in field operations conducted under the authority of a use area permit or registration permit.

Sec. 08.54.640 establishes eligibility and application procedures for guide-outfitter use area permits. The Department of Commerce and Economic Development shall set the application fee for a use area permit.

Sec. 08.54.650 sets out the procedures for evaluating applications and awarding guide-outfitter use area permits. The

board shall evaluate applications for use area permits under criteria listed in the bill.

The board shall determine which applicants are qualified to receive a use area permit and shall award the available use area permits to the best qualified guide-outfitters. The board may not award a use area permit to an applicant who does not satisfy the minimum requirements.

The board shall allow a successful applicant for a use area permit 120 days to obtain any additional permits, licenses, and land use authorizations that are necessary to guide-outfit hunts in the use area. If the successful applicant cannot obtain the permits, licenses, and land use authorizations within 120 days, the successful applicant loses the use area permit and the board shall award the use area permit to the next best applicant.

Sec. 08.54.660 sets out the provisions relating to the term of use area permits, suspension and revocation of use area permits, and operations plans.

The term of a guide-outfitter use area permit is 10 years, unless the board and the Department of Fish and Game agree that a longer term would further promote wildlife conservation and management. The maximum possible term of a use area permit is 15 years.

The board may suspend or revoke a use area permit in specified situations. Use area permits are automatically suspended or revoked when specified events occur. Hearings to suspend or revoke a use area permit may be combined with other disciplinary proceedings involving the permittee.

A use area permit may be revoked and the terms of a use area permit or operations plan may be altered by the board for wildlife management and conservation considerations.

A guide-outfitter may not conduct guide-outfitted hunts except as provided under an operations plan approved by the board. The board must approve changes to the operations plan before the guide-outfitter may change the manner in which the guide-outfitting operation is conducted.

Sec. 08.54.670 provides for the assignment of use area permits by the board.

The board may assign a use area permit if certain conditions are met.

The sale of guide-outfitter facilities and equipment between the former use area permittee and the assignee of the permit is subject to review by the board and may cause the assignment of the permit to be voided.

An assigned use area permit is valid only for the period for which the use area permit was originally issued.

Use area permits may not be assigned if the use area permit or the permittee's guide-outfitter license has been suspended or if proceedings in which the permittee's guide-outfitter license or use area permit may be suspended are pending against the permittee.

Sec. 08.54.680 provides that the board shall maintain and publish a list of unawarded use areas that are potentially available for use by qualified guide-outfitters.

The board shall maintain an information center where information on use areas and guide-outfitters, transporters, and providers of other big game commercial services can be obtained.

Sec. 08.54.690 sets out the definitions of "joint use" and "sole use".

Section 3 of the bill amends AS 08.54.310(a) by enlarging the duties of the Big Game Commercial Services Board. The board, in addition to its existing duties, shall establish a procedure for certifying guide-outfitters to guide-outfit hunts within game management units and a system of guide-outfitter use areas to allocate big game hunting opportunities among guide-outfitters.

Section 4 of the bill amends AS 08.54 by adding a new section establishing a procedure for certifying guide-outfitters to guide-outfit hunts within a game management unit. Guide-outfitters must obtain a certification for a specific game management unit before guide-outfitting hunts in that game management unit.

Section 5 of the bill amends AS 08.54.370(a) by requiring guide-outfitters and marine mammal guide-outfitters to submit additional information and fees at the time of applying

for renewal of their licenses. A guide-outfitter shall submit an amended operations plan if the guide-outfitter intends to change the nature of the guide-outfitter's guide-outfitting operation during the next year. A guide-outfitter must also pay the wildlife conservation fee that is due for the past year.

Section 6 of the bill amends AS 08.54 by adding a new section establishing the wildlife conservation fee. Guide-outfitters and transporters are required to pay the wildlife conservation fee. The amount of the fee is \$25 for each big game animal, except deer, that was taken by a client of a guide-outfitter or that was taken by a customer of a transporter on a non-guide-outfitted hunt and transported by the transporter. The fee for each deer is \$5.

The funds generated by this fee may be used by the legislature to support game management and game law enforcement programs.

Section 7 of the bill amends AS 08.54.590(13). The definition of "transportation services" is amended to include air taxis and air carriers who advertise hunting services to the public regardless of whether the provision of hunting services is only an incidental portion of their business.

Section 8 of the bill sets out a detailed process for the identification of proposed guide-outfitter use areas by the Department of Fish and Game. The department shall submit its proposals to the Big Game Commercial Services Board. The process followed by the department is exempt from the Administrative Procedure Act.

Section 9 of the bill provides for preliminary determination of eligibility for guide-outfitter use area permits. During the interim between the passage of this bill and the full implementation of the guide-outfitter use area program, guide-outfitters may apply for a preliminary determination of eligibility to receive a use area permit in those game management units in which the guide-outfitter is certified to guide-outfit hunts. A preliminary determination of eligibility for a use area permit does not guarantee that the guide-outfitter will receive a use area permit when the permits are actually awarded.

Section 10 of the bill requires the Big Game Commercial Services Board to offer all use areas created by the board dur-

Senator Jan Faiks
Page 6
January 31, 1990

ing the first five years that offerings of use areas are made.

Section 11 of the bill is a severability clause.

Section 12 of the bill repeals AS 08.54.310(b)(1) which is the power of the Big Game Commercial Services Board to establish a resource-based management system for allocating access to big game hunting opportunities among guide-out-fitters. This provision has been moved from a power of the board to a duty of the board by sec. 3 of the bill.

GU:pl
WKP1/047

APPENDIX

H



Alaska State Legislature

HOUSE OF REPRESENTATIVES/
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 488-3718

HAND DELIVERED

RECEIVED
Department of Law

MAR 16 1989

AM 7,8,9,10,11,12,1,2,3,4,5,6 PM

Letter of Intent
For
HCS CS SB 139 (Res)

It is the intent of the legislature that the task force established under the provisions of SB 139 shall consider the implications of the Owsichuk decision issued by the Alaska Supreme Court on October 21, 1988 when developing the resource-based management system for allocating big game hunting opportunities among guide-outfitters.

It is the intent of the legislature that the foremost purpose of any management system should be the conservation of game resources. Any system that places restrictions on free market competition between guides must be based on clear findings that such restrictions are needed to prevent harmful impacts on game populations that cannot be prevented through licensing requirements, bag limits, seasonal restrictions, or other traditional game management tools that are now available to the state.

Without a constitutional amendment, a system would have to provide the broad access guaranteed by the common use clause of the constitution. The system would have to have access rights that are limited in duration, and the system would have to provide equal opportunity to all qualified guides when these rights are reassigned. In order to prevent the development of non-uniform policies by various federal, state, and private landowners, the system should have statewide applicability.

February 14, 1989

The Honorable Bettye Fahrenkamp, Chairwoman
Senate Resources Committee
P.O. Box V
Juneau, Alaska

Dear Senator Fahrenkamp:

To assist your committee in its consideration of Senate Bill 140, I am writing to provide a synopsis of the Owsichuk decision and its implications for creating an area management system for allocating guide access to big game.

1. SYNOPSIS OF THE OWSICHEK DECISION.

On October 21, 1988, the Alaska Supreme Court decided that the statutes and regulations that underlie the state's exclusive guide area system ("EGA") are unconstitutional. 1/

On December 8, the court granted the state's request that the effect of this decision be postponed until June 1, 1989. Therefore, the EGA system is currently enforceable. Beginning in June, the system will have no legal effect, and any licensed person may guide hunters in a game management unit for which he or she is certified. 2/

1/ The court uses the term "exclusive guide areas" to describe not only ~~joint~~ use areas but also "restricted guide areas," a term used to describe EGA's since 1986 when the term appeared in AS 08.54.195.

2/ When a guide is licensed by the Division of Occupational Licensing, he or she is "certified" to conduct hunts in only those game management units where the guide has experience. Except for older guides who were "grandfathered" into more units, most guides are limited by regulation to certification in not more than three game management units. 12 AAC 38.200.

(Footnote Continued)

The Honorable Bettye Fahrenkamp
Chairwoman, Senate Resources Committee

February 14, 1989
Page 2

The supreme court based the Owsichuk decision on its interpretation of the "common use clause," i.e., article VIII, section 3 of the Alaska Constitution. This clause says, "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

This was the first time the court was called on to interpret the common use clause with respect to wildlife. In earlier decisions, it had discussed the clause in the context of state waters (Wernberg and CWC Fisheries) and in the context of fish (Ostrosky and Johns). In light of its earlier decisions, the court declared that the "common use clause was intended to guarantee broad public access to natural resources."

In order to further clarify the meaning of the common use clause, the court looked at the constitutional history of this clause and at the historic development of wildlife law in general. Concerning the constitutional history, the court said that the purpose of the clause was "anti-monopoly." It also found that the framers of the constitution intended to prohibit "exclusive grants or special privileges" and intended that the public "retain broad access to fish, wildlife and water resources."

In discussing the development of wildlife law, the court said that the common use clause "constitutionalized" the state's public trust duty toward wildlife. This is a duty to manage these resources for the benefit of all the people.

The court summarized its interpretation of the common use clause by stating that the clause was intended to put into the constitution "certain trust principles guaranteeing access to

(Footnote Continued)

At the time of the court's decision, 256 licensed guides had been assigned either exclusive or joint use guide areas. One hundred and eighty four licensed guides had no area to guide in. Therefore, after June 1 the Owsichuk decision means that 184 more guides will be able to guide hunts in any of the game units for which they are certified. The additional hunting pressure, of course, varies from unit to unit. For example, the number of eligible guides in units 1, 2, 3, and 4 (southeast Alaska) will increase three-fold (from 13 to 33) while the number of eligible guides in unit 17 (Togiak - Dillingham area) will increase over six fold (from 17 to 129).

The Honorable Bettye Fahrenkamp
Chairwoman, Senate Resources Committee

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Page 3

the fish, wildlife and water resources of the state" and, at a minimum, this meant a "prohibition against any monopolistic grants or special privileges." It also stated that the clause makes no distinction between use for personal purposes and use for professional purposes; common use applies to commercial guiding as well as recreational hunting.

In deciding that the EGA's violated these principles, the court noted the following features of the system:

1. The EGA system gave one guide the right to exclude all other guides from conducting hunts in his or her EGA. This right was based on the area holder's seniority, that is, his or her use, occupancy, and investment in the area.
2. EGA rights had no time limit, and the system of transferring them, based as it was on the selling of "improvements" and a holder's designation of his or her successor, allowed the selling of areas as if they were a property interest.
3. The assignment of EGA's was not based primarily on wildlife management concerns. The system could not be justified as a game management tool and therefore was unlike licensing requirements, bag limitations, and seasonal restrictions which were proper and "time-honored methods of conserving the resources." In this regard, it is important to note that the court said that even if used as a wildlife management tool, this would not "save the EGA system from unconstitutionality under the anti-monopolistic common use clause."

Finally, the court had made a distinction between the EGA's on one hand and state leases and exclusive concessions on the other. The latter are permissible because they are of limited duration, because they are subject to competitive bidding, because they are limited by contract terms and restrictions, and because the state receives compensation for them.

II. IMPLICATIONS FOR A NEW AREA MANAGEMENT SYSTEM

The Legislative Task Force on Guiding and Big Game has recommended that the state develop a new area management system for allocating access to guiding opportunities among licensed guides. It has recommended the establishment of a land-based concession system. While the Department of Law could defend this type of system, we believe that it would ultimately fail a legal challenge.

The Honorable Bettye Fahrenkamp
Chairwoman, Natural Resources Committee

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Page 4

We may be able to defend a concession system based on an analogy to the state's current shore fisheries lease program. That program enables the Department of Natural Resources to lease small tracts of shoreline for use by persons who hold set net permits under the state's fisheries limited entry program. For a guide area system to qualify for this analogy and answer some of the concerns raised by Owsichuk, the concessions would have to be limited to state owned lands, would have to involve small tracts of land, would have to be limited in duration (one to three years), and would have to provide equal opportunity of access for all qualified guides when the concession was available for reassignment.

Even with these features, we believe that a concession system would still be found unconstitutional because of the severe manner that it would impinge on the common use guarantee as expressed in Owsichuk. The analogy to the shore fisheries lease program is weakened by several factors. That program is tied directly to the state's limited entry program, a system of limiting access to fishery resources that has constitutional underpinning. A guide concession would limit access to game opportunities without an equivalent constitutional basis. 3/

State concessions and leases, as such, are not included in the common use clause. When their purpose is to allocate access to resources like timber and grazing land, the state is freer to grant exclusive rights. When allocating exclusive access to fish, wildlife, or waters, however, a land-based system would conflict with the principle of broad public access guaranteed by the common use clause.

3/ In 1972 the Alaska Constitution was amended to allow the state to limit entry into fisheries. Ak. Const. art. VIII, §15. In a later case, the Supreme Court held that although fisheries limited entry is inconsistent with the "common use" clause, this system was validated by the 1972 amendment. State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), appeal dismissed 467 U.S. 1201, 81 L.Ed. 2d 339 (1984).

There is no provision in the constitution that allows for limiting entry to game resources, and currently there is no proposal for such an amendment. (Amendments to the constitution are accomplished by a proposal by each house, passed by at least a 2/3 vote, followed by a majority vote of the public at the next general election. Ak. Const. art. XIII, §1.)

The Honorable Bettye Fahrenkamp
Chairman, Senate Resources Committee

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Page 5

Even if a system were developed that served only game management purposes and not the economic welfare of a segment of the guiding industry, it would not be safe. The Owsichuk court noted that the common use clause precluded exclusive guide areas even if they could be justified as a wildlife management tool. 4/ In the court's view, the traditional game management tools -- licensing requirements, bag limits, and seasonal restrictions -- apparently are sufficient to protect the resource without conflicting with the clause. A court would recognize that the state can respond to any increased pressure on game resources by requiring hunter registration, permit drawing, or other methods now available to the Board of Game. Although these techniques may bring unpredictability to the business of guiding, we believe that a court would favor them over a system that has inherent constitutional problems.

In conclusion, a constitutional amendment is the only certain step that will guarantee a stable, long-term system that allows some, but not all qualified guides to have access to game resources in a particular area. We believe that any statutory, land-based system that does not have explicit constitutional underpinning and that resembles even remotely the EGA scheme that was struck down in Owsichuk will be destined to the same fate.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:

Stephen M. White

Stephen M. White
Assistant Attorney General

SMW:jf

4/ Owsichuk v. State, Guide Licensing and Control Board, 763 P.2d 488, 497 n.14 (Alaska 1988).

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☐ 1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

☐ 1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

☒ P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3800
FAX: (907) 463-5295

June 28, 1989

The Hon. Jan Faiks
Alaska State Legislature
3111 C Street, Suite 525
Anchorage, Alaska 99503

Dear Senator Faiks:

Mark Riehle of your staff has asked me to provide a brief update on the Owsichuk decision for the Interim Task Force on Guiding and Big Game.

As you may recall, the state obtained a stay of the Alaska Supreme Court's decision that struck down the restricted guide area system. The stay expired at the beginning of this month. Therefore since June 1, the restricted guiding areas that were formerly administered by the Guide Board are no longer enforceable. A licensed guide may now legally guide in any of the game management units for which he or she has been certified by the Board.

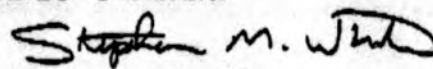
The state did not seek a rehearing on the Owsichuk decision and did not appeal it to a higher court. There are several collateral issues concerning attorneys fees and court costs that are still being disputed by this department and Mr. Owsichuk's attorney. Otherwise, the substantive part of this decision stands as published last October.

Please do not hesitate to contact me if I can provide further assistance to the Task Force.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:



Stephen M. White
Assistant Attorney General

SMW:jf

Dear Senator Fails

RECEIVED

DEC 1989

12/6/89

RECEIVED

DEC 5 1989

JAN FAIKS

SENATE OFFICE

DEC 1 1989

RECEIVED

Under Federal and State Freedom of Information acts I request the following

1. All legal opinions, formal and informal on the "Owsich decision" and guide areas.
2. All letter notes, memoranda^{etc} dealing with Guide areas, the Owsich decision and the Alaska Constitution.
3. All legal opinions from Bill Horn, his associates or law firm on Guide areas, and the Owsich decision, and our constitution.
4. ~~Was~~ was the State's attorney general's offices used and if so why was ~~an~~ a private outside firm hired?
 - A. Who authorized hiring a private outside firm.
 - B. Do you know Bill Horn.
 - C. Do you know the principles at Bush Horton.
 - D. Why was their firm selected
 - E. How much have the private law

1/2/61/87

firms charged and how much
will their total bill be? Who
is paying for the private law firm
used in the Guide area plan?

5. a list of all persons who traveled to
other states, or countries, ^{in working with} ~~all~~ task forces,
game boards etc

A. Their exact business

B. length of trip

C. who they met with

D. Cost of each trip.

E. Where is this money coming from?

6. Was this Travel necessary to benefit the
state?

\$

Please send to Ken Owsichek

Box 190 301

Anch AK 99519

or call for a pick up 243 5899

Thank you

Ken Owsichek



Alaska Professional Sportsmen's Association

Representing Alaska's Big Game Guides, Outfitters, Air Taxis, Sport Fishing Guides,
Lodges and Support Industries

RECEIVED

JAN 17 1990

January 5, 1990

JAN FAIKS
SENATE OFFICE

Senator Jan Faiks
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Faiks,

Under the State and Federal Freedom of Information requests,
I request the following;

1. A list of all the private attorneys and or law firms that have been used, are being used or will be used by the task force and game board or other entities for developing a big game management plan and how they were selected.
2. Please list the fees paid to these attorneys or law firms for their services and future services. Please include the hourly rate and the total paid. Also please list where these monies came from and who authorized the these expenditures.
3. For each attorney retained by the state for the "big game management plan", please state the areas these people or firms are working in or list their clients and credentials and what their objectives are for the state.
4. What is the authority for state agencies to hire private attorneys? Please specify and include copies of authority.
5. Was the state's attorney general's office contacted to help formulate the "big game plan"? Please list those attorneys contacted and provide the copies of memos, letters and material that they furnished in reference to the constitutionality of the issues and/or management plans.
6. Were local hire preferences used before going outside the state to hire attorneys or firms.

7. Who authorized the funds and who selected the people to go to several Canadian provinces to study their game management systems. Who went on these trips, what were their objectives, how long did the trips last and how much did these trips cost. Where did this money come from?

8. What was the reason for studying a foreign system when that country has a different constitution than ours?

9. What persons are responsible for the drafting of a proposed bill by Utermohle, 11/17/89?

10. Did the A.G.'s office go over this draft before it was approved? If so, who reviews it and what were their comments?

11. Please supply all legal opinions, formal and informal, memos, notes and letters used to develop the new E.G.A. scheme.

12. What authority is used to exempt the department from the administrative procedure act as listed on page 10 of the work draft dated 12/6/89 by Utermohle?

13. Section 1, Page 1 of the work draft bill dated 12/6/89 says that the legislature has found that unregulated access to game management units by guide-outfitters has hindered management of guided hunters. Please provide copies of these "findings of fact" by the legislature.

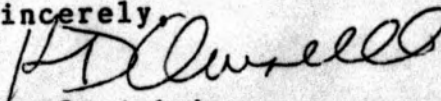
14. Please provide copies of mailing lists used when informing the public of task force public hearing. What professional groups were included? Who compiled these lists. Were all guides, assistant guides and inactive guides included?

15. I request a copy of "the findings" by the legislature of all the conflicts among guides as stated in Section 1, Page 1, 11/17/89.

16. I request the "findings of fact" by the legislature as in Section 1, Page 1 of 11/17/89 draft that unregulated access decreases the quality of the hunting experience.

Thank you very much.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ken Owsichuk', written in a cursive style.

Ken Owsichuk
Vice President

Alaska Professional Sportsmen's Assn.



Alaska Professional Sportsmen's Association

**Representing Alaska's Big Game Guides, Outfitters, Air Taxis, Sport Fishing Guides,
Lodges and Support Industries**

January 20, 1990

The Governor's Task Force on Guiding and Big Game
The Governor
The Alaska State Legislature

Dear Task Force Members, Governor, and Members of the State
Legislature:

The Alaska Professional Sportsmen's Association is an Alaskan non-profit corporation made up of hunting guides, outfitters, air taxi operators, transporters, fishing guides and lodges, taxidermists, every day fishermen and outdoor sportsmen and women who use our lands and renewable resources including our "common use" resources of water, fish and game. We include support industries such as sporting equipment supply stores, hotels, restaurants, etc. Our main purposes are to maintain equal access to our fish, game and waters and to promote proper game and fish management.

Although a young organization, less than a year old, we have already caused major changes in law and in the manner state and federal agencies treat sportsmen. This also includes ongoing litigation, litigation under preparation, recent Supreme Court decisions and an investigation into possible violations of the Federal Civil Right's Act by Federal, State and/or Local government officials.

Many of our members have been upset at the Task Force about the lack of fair and equitable public notice which should include mailings to the people who will be regulated and most impacted by recommendations of the task force. Although there are less than 500 registered guides and assistant guides in Alaska, they have not been directly notified, as would reasonably be expected, of what the task force is doing, what direction it is heading and what it's recommendation is to the Governor and Legislature. In addition, most of our members feel that the existing public process, as practiced especially by this Task Force, is no

longer a meaningful process and may have violated state notice requirements. Our members look back to public meetings in 1988 and 1989 when the public was invited to speak at these meetings, and it became quite obvious that the Task Force was determined to remain on one track - back to an exclusive guide area concept, in direct violation of our state constitution and recent Supreme Court decisions. We have also had reports that the Task Force did not have "enough time" or "money" to notify everyone effected by their deliberations or recommendations so the Task Force put together "selective" mailouts. We have requested a copy of this list and requested an explanation as to its development.

A mailing to all registered guides/outfitters and transporters does not cost that much. Simply sending out the handouts from Task Force meetings to this small group would have done a great deal to fairly satisfy notice requirements. We have also requested proof of notice of all meetings of the Task Force which we believe were deficient.

We ask the Task Force, Governor and members of the Legislature to read pages 9 through 24 of the Owsichuk decision of our State Supreme Court. It clearly deals with the "common use clause" researching back to the founding days of our constitution and our state. The court examined the "Why" of the words of our constitution. The Supreme Court offered the first and most substantial insight into the meaning of "common use" in their Owsichuk decision. This was not a decision about leases and contracts but about "common use" of the waters, fish and game within the state of Alaska. The CWC fisheries case and several other cases fully back up the "common use" language and the intent of it's actions. In addition, guiding itself was given a "common use" designation. Guides are not the "users" of the game but supply guide, outfitter and transport services to the real users.

The legislature, and its appointed boards and commissions, have the responsibility to uphold our constitution and all of its provisions. Their purpose is not to find ways around our Constitution, but rather ways to expand its meaning - always reminded of the author's intent. Our public servants are not supposed to tell the people what to do but rather represent the goals and aspirations of Alaskan's in solving public problems. That means they must notify and listen to those most effected. Not cow tow to former Federal officials who now are given cozy consulting contracts. In

this position, our representatives are TRUSTEES of all Alaska's waters, fish and game. The fish and game and waters do not belong to the administrative or legislative branches of government. They belong to the people of Alaska and are there for "common use".

It is apparent that the exclusive guide area scheme will not be put to rest by this Task Force. Because of the continued actions of a few to keep the EGA concept alive - in whatever form, the charge of the Task Force, the expectations of Alaskan's and the public process have been subverted. You occasionally asked for "public comments" but have already committed to a new guide area scheme. Your handouts and draft legislation make that clear. And yet there are tested alternatives to the resource allocation and permitting issues which the Task Force and ADF&G continue to dismiss as "administratively" unworkable. And yet they work in most states - and have for decades.

We want the Task Force and the Alaska Legislature to know that we are doing our best to participate, in a constructive manner, and are following this Task Force very closely. Anything resembling an exclusive guide area concept will be brought before the court requesting injunction as quickly as it is signed into law. You know this and many familiar with the Task Force have already admitted that the process will start all over again at great public expense.

Why not provide alternatives to the guiding and outfitting industry and to the legislature that you know can stand the test of the court. As mentioned, we are exploring further constitutional and now federal civil rights violations by state, federal and local government officials that we already believe may subject individuals in government to stiff fines and possible criminal charges.

The supposed "chaos and confusion" that you claim in your findings of the guiding profession was not created by the Owsichuk decision. The chaos that exists was created by the actions of special interest groups trying to protect their unconstitutionally guaranteed incomes and investments with an exclusive guide area concept that deprived all Alaskans, under law, of their common use of fish, game and waters within our state and found illegal by our Supreme Court only after one Alaskan refused to "playball".

The failure of the EGA system has been made apparent by the increasing issuance of more and more legislation and

regulations on all factions of the hunting and visitor guiding industry. These regulations are like sand bags being thrown against a poorly constructed and crumbling dam. Not only has the exclusive guide area system been declared unconstitutional; IT DOES NOT WORK. The government control that had become necessary to keep the EGA system going was indeed creating chaos long before the Owsichuk decision. It is now easier for a doctor to get a license in the State of Alaska than it is to become licensed as a guide/outfitter. Total government control has not worked in socialist and communist countries and it will not work with our guiding industry.

The state's EGA system has also created a dangerous situation for the guiding industry on Federal land. The system gives the Federal agencies a way to eliminate all guiding on Federal land by attrition. It gives them a way to eliminate a "mangement problem". A problem which is consistant with the Theology of some Federal agencies, when they should (under various legal mandates) be exploring expanded visitor uses.

To say that it is the Guide Board or Task Force's responsibility to conserve game is incorrect. Guide licensing and game management are two separate and unrelated legal and game management concepts. Trying to manage game by limiting, restricting and putting unnecessary requirements on guides, outfitters, air taxis, etc. is not "game" management unless it is a component of an overall "take" permitting program. Game must be managed by wildlife behavioral professionals, game biologists, not politicians or the guide industry.

The purpose of the EGA system was to protect the income of a privileged few. It was not to conserve game. For those who continue to tell themselves that the purpose of the EGA and the Task Force's recommendations are to conserve game or is "resource based", are lying to themselves. Look at the industry in the last year of the EGA system - the game was not being preserved by the EGA system and the chaos of THAT EGA system is still obvious. Unfortunately, we anticipate this will continue under the new proposal. As Vice President of The Alaska Professional Sportsmen's Association I recommend:

1. A total rewrite and simplification of guide laws. Establish two licenses. One license would be for guiding or outfitting all species of big game. This license should require a two year apprenticeship, taking no less than one

guided hunter a year to qualify. The second license would be for guiding or outfitting to take moose, caribou and black bear only. This would require a one year apprenticeship. There is no reason to separate guiding from outfitting as they are so close that they are impossible to separate rationally and the Supreme Court found them both to be common users.

2. Establish a lottery and registration permit system for all non-residents. They are the consumptive "users" of the game, not the guides or outfitters. The lottery should be 6 to 8 months prior to the hunting season. Among other advantages, such a permit system will:

- a. Manage the game and limit the kill by permit or registration.
- b. Stop "hot spots" or kill zones from developing and spread hunting pressure throught the state.
- c. Stabilize hunting seasons and adjust the management of game by decisions made before the kill as well as after the kill.
- d. Leave game management with the proper agencies.

3. The guiding/outfitter test should be administrated one or two times a month by a college or a private firm the same way insurance license tests and other licensing tests are given. A practical test given in this manner insures fairness, equality and an acceptable level of competency in a guide. This eliminates bias and favoritism. The Division of Licensing should only issue a license to a person who passes the test, not dictate how one might get a license.

4. Discriminatory users fees, presently charged only of guides, outfitters, transporters, etc. should be eliminated. The present type of user fee violates equal protection under the law and discourages visitors. The standard tag and license fees are themselves user fees and can only be charged to the hunter who takes the game not to the person providing a guiding service to the hunter. The guide is only one link in a long chain of services provided a hunter. Hotels, restaurants, airlines, taxis all provide services. The system should also leave the choice of which guide or outfitter or service provider a visitor wishes to use to the visitor. It is not the government's role to dictate who a visitor must choose to provide guiding service.

5. Any and all licensed commercial service providers should be allowed to operate in the entire state. Allowing some guides to hunt the entire state while others are limited to

one game unit also violates the common use and equal protection clauses of our constitution. A game permit system eliminates the need to limit the areas in which a guide can operate. The game is managed by the allowed permits acquired by the visitor and all the other users.

6. The state should not mandate unreasonable insurance. Our legislature took it upon itself to mandate insurance levels for guides when doctors and other professionals are not required by law to have insurance. This was done without reasonable public notice and input and imposed at the most difficult time of the season. The legislature's effect on the industry by mandating such unreasonable insurance requirements was to eliminate the "small guy". Remember that insurance does nothing to protect the hunter, the game or the guiding industry. If anything, it causes the guide to take more game, over and over, in order to pay the costs of the insurance. Guiding is a private service business and the state should treat it as such. Alaska has civil courts in place to handle any negligence or complaints between a guide and clients. Use this system. It is much more appropriate and cost effective.

7. A point system, much like the driver's license system, should be established to discipline guides. This would reduce the favoritism we have seen in the past and it would let a guide know where he or she stands when convicted of a fish or game violation. This point system should be reasonable and should not be used as a means of reducing the number of guides but of putting more pressure on those who violate. A point system should eliminate the substantial cost of hearings and greatly reduce the cost of enforcement.

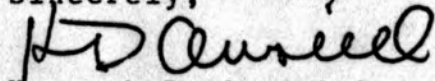
8. The Federal government likes the limited entry concept. It fits right in with their efforts to eventually stop all consumptive uses on park and refuge lands. The task force should recommend that the legislature demand, of the Federal government, the return of control of all fish and game management in the state to the state. All other 49 states have control of their resident fish and game and Alaska should not be treated differently. Law suits are already being developed to attack this inequality. It is time Alaska becomes a state and not an extension of the Federal Department of the Interior.

9. The task force should establish policies that encourage tourism and use of our renewable resources. The state spends millions of dollars to bring tourists to Alaska but

once they are here, the state doesn't want them to do anything other than take the train or ride the road. Does the state really want visitors to have access to our recreational resources?

10. The task force should recommend policies that establish scientific management of our fish and game, not policies that socioeconomically manage people. Equal access (common use) to our waters, fish and game is guaranteed by our constitution. It is the duty of the Task Force and our Legislature to act accordingly. The members of APSA believe in equal access, common use and wise use.

Sincerely,



Kenneth D. Owsichuk

Vice President

Alaska Professional Sportsmen's Association

k1f/KO

cc: Governor Cowper
All Task Force Members
All State Legislators

TASK

Alaska State Legislature

JUDICIARY
CHAIRMAN
907-465-4523



JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

February 6, 1990

Ken Owsichuk
Box 190301
Anchorage, AK 99519

Dear Mr. Owsichuk:

Attached is a detailed description of the notices provided for all meetings of the Legislative Task Force on Guiding and Game that you requested. After the initial meeting of June 29th which was held for the purpose of organizing the task force, each meeting was preceded by phone calls to task force members to establish a time and meeting place for the upcoming meeting. Once a date was agreed to, staff notified the members by mail or phone depending upon the time available before the meeting date. Also, again depending upon the time available before the meeting, various forms of public notice of the meeting were provided. The type of public notice provided for each meeting is identified in the attachments.

For the sake of thoroughness, I will also mention that on August 16th some task force members, but not a quorum, met with representatives of Birch, Horton, Bittner, and Cherot Law Offices for the purpose of discussing the scope of the work that the firm would provide for the task force. This gathering did not constitute a meeting for purposes of application of AS 44.62.310, but was, rather, an administrative gathering between staff and some task force members to discuss matters relating purely to the internal workings of the task force. The following people attended this gathering:

Task Force members:

Senator Faiks
Ken Fanning (by telephone)
Lew Pamplin (Wildlife Conservation)
Randall Burns (Occupational Licensing)

OUT OF SESSION

3111 C STREET ANCHORAGE, ALASKA 99503 907-561-7610

Ken Owsichek
Page 2
February 6, 1990

Staff:

Mark Riehle (Senator Faiks)
Steve White (Assistant Attorney General)

Birch, Horton representatives:

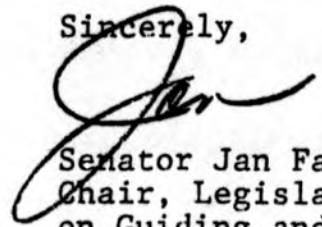
Steve Pradell
William Horn (by telephone)

I was discouraged to learn from my staff that, following your visits to my office in November and December, despite being urged to do so, you declined to participate in the task force hearings, suggesting instead that you had better things to do. I regret that you apparently felt it would be useless to offer testimony to the task force or to listen to the panel's discussions of issues. Significant changes based upon testimony were made to recommendations adopted by the task force. I feel that the task force could have benefited from your comments.

Much of your letter of January 20, 1990 consists of objections you have to policy decisions made by the task force. I regret your dissatisfaction with those policy decisions and can only urge you to bring these concerns to the attention of the legislative committees that will be working on the guiding legislation. It is not too late to attempt to influence those decisions.

In closing let me assure you that every effort was made to notify interested persons of meetings of the Legislative Task Force on Guiding and Game, that public testimony was actively solicited, and that public comments were seriously considered by members of the task force before recommendations were adopted.

Sincerely,



Senator Jan Faiks
Chair, Legislative Task Force
on Guiding and Game
(terminated January 25, 1990)

JF:TBC:pl
WKPl/105
Attachments

Ken Owsichek
Page 3
February 6, 1990

cc: Governor Cowper

All members of the Legislative
Task Force on Guiding and Game

All State Legislators

William Horn
Birch, Horton, Bittner and Cherot

THE FOLLOWING ATTACHMENT IS A LIST OF ALL TASK FORCE MEETINGS

JUNE 29, 1989 - (work session) (posted Public Notices at Anchorage LIO, Senate Secretary posting)

JULY 19, 1989 - (work session) (notice may have been posted at the Anchorage LIO and notice may have been given to one or both of the Anchorage newspapers but no records exist to verify)

OCTOBER 5-6, 1989 - (combination work session/regular meeting with public comment)

(newspaper ads, written notice to staff mailing list)

NOVEMBER 8, 1989 - (regular meeting - public comment)

(posted Public Notice at Anchorage LIO, newspaper ads, written notice to staff mailing list and to approximately 1500 commercial licensees, landowners, agencies from agency lists, available to statewide teleconference network)

NOVEMBER 20, 1989 - (regular meeting - public comment)

(posted Public Notice at Anchorage LIO, newspaper ads, written notice to staff mailing list and to approximately 1500 commercial licensees, landowners, agencies from agency lists, available to statewide teleconference network)

DECEMBER 11-12, 1989 - (regular meeting - public comment)

(posted Public Notice at Anchorage LIO, newspaper ads, written notice to staff mailing list, available to statewide teleconference network)

JANUARY 4-5, 1990 - (work session with public comment)

(posted Public Notice at Anchorage LIO, available to statewide teleconference network)

JANUARY 22, 1990 - (final meeting - work session)
(available to teleconference network)

(posted Public Notice at Anchorage LIO, available to statewide teleconference network)

The attached press release was issued by the Legislative Task Force on Guiding and Game following their June 29, 1989 organizational meeting.

The release was provided to all radio, television and newspaper outlets in Alaska.

copy

June 29, 1989

PRESS RELEASE

Subject: Legislative Task Force on Guiding and Game

Senator Jan Faiks was elected Chairman of the Legislative Task Force on Guiding and Game during an organizational meeting in Anchorage Friday, June 29th.

The panel is made up of 15 members who represent the general public, Alaska natives, industry, the legislature and state agencies. The task force will develop a resource-based management system for allocating big game hunting opportunities among guide-outfitters.

Under the chairmanship of former Representative Henry Springer, in January the task force presented the Legislature with a package of recommendations. The effort resulted in the passage of House Bill 112 and Senate Bill 139. Both have been signed by the Governor. HB 112 provides for changes in regulations pertaining to the commercial big game industry in Alaska. SB 139 extended the task force for another year to develop recommendations for a statewide big game management plan.

The task force will conduct meetings throughout the legislative interim.

For additional information please call 561-7610.

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The following is a list of newspapers in which advertisements were placed for the Legislative Task Force on Guiding and Game

Attached is a sample ad (all adds were similar with dates and times changed)

for the October 5th & 6th meeting:

Anchorage Daily News
Anchorage Times
Fairbanks Newsminer
Peninsula Clarion
Juneau Empire

For the November 8th meeting:

Anchorage Daily News
Anchorage Times
Fairbanks Newsminer

For the November 20th meeting:

Anchorage Daily News
Anchorage Times
Fairbanks Newsminer
Frontiersman
Peninsula Clarion

Legislative Task Force
on
Guiding and Game
will meet on

October 5th
10 a.m. to 4:30 p.m. • Work Session

7 to 9 p.m.
Public Testimony
Game Management Plan Options

October 6th
10 a.m. to 4:30 p.m. • Work Session

at
Anchorage Legislative Information Office
3111 C Street, First Floor

Public Welcome!

Senator Jan Faiks
Task Force Chairman

• For more information, call 561-7610 •

Also included in the packet to Mr. Owsichek was a copy of the "staff-generated" task force related mailing list of about 140 individuals compiled during the time from June 29, 1989 to January 25, 1990.

The list was comprised of individuals and organizations who requested their names be placed on "the mailing list", in addition to task force members and others directly involved in the task force work either on a continuing or a temporary basis.

In addition to individuals and organizations on this list, mailed notices of meetings were sent to native organizations, village entities and all municipalities. Names and addresses for these groups were obtained from federal agencies in the form of mailing labels. Notices were also sent to licensed guide-outfitters and licensed members of related occupations, including air transporters and commercial use permit holders. These names and addresses were supplied by the Division of Occupational Licensing in the form of mailing labels.

APPENDIX

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