

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672

1696 SCOMM 67: GUIDING AND GAME TASK FORCE, 1989-1990

1264

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July 19, 1989

TO: All Members, Legislative Task Force on Guiding and Big Game
 From: William P. Horn and Steven Pradell, Retained Counsel
 File No. 100,700.1
 Re: Options to the Owsichuk decision.

I. INTRODUCTION

To assist the Task Force in developing recommendations regarding a new area management system for allocating guide access to big game, this memorandum sets forth criteria stated by the Court in Owsichuk under which leases and exclusive concessions on State lands can be granted. Additionally, an analysis is made of existing State and Federal statutes and regulations concerning leases and exclusive concessions.

II. THE OWSICHEK DECISION: CRITERIA WHICH COULD BE USED
TO CREATE A PROGRAM OF LEASES OR EXCLUSIVE CONCESSIONS.

In Owsichuk v. State, 763 P.2d 488 (Alaska 1988), the Alaska Supreme Court held that AS 08.54.040 (a)(7), and AS.08.54.195, which gave exclusive guide areas and use areas to hunting guides, was unconstitutional under the common use clause of the Alaska Constitution. The common use clause provides:

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

Alaska Const., art. VIII, §3.

The Court found that the common use clause contained trust principals which guaranteed access to Alaska's fish, wildlife, and water resources, and prohibited against monopolistic grants or special privileges. The Court held that statutes authorizing exclusive guide areas and joint use areas fell within the category of grants prohibited by the common use clause.

However, the Court clearly recognized the constitutionality of leases and exclusive concessions on state lands. The Owsichuk opinion outlines the following criteria which could be used to create a program of leases or exclusive concessions which would survive constitutional attack:

1. A lease or concession should not be granted primarily on the basis of seniority. A competitive process should be created to prohibit the favoring of established guides.
2. The grants must be of finite duration.
3. The grant must not be freely transferable without some

form of consent from the State. Grants should not be administered in such a way that guides may transfer them for a profit.

4. A grant of exclusivity must have a nexus to a bonafide wildlife objective. The regulation should make it clear that this is a primary consideration.
5. The State must be paid valuable consideration for providing such a grant.
6. The court recognized the validity of leases and exclusive concessions on State lands.

In light of these criteria, an examination of existing statutes and regulations granting leases and exclusive concessions has been provided to serve as a model for a task force recommendation.

III. SUMMARY OF EXISTING OPTIONS

The Owsichek Court cited specific statutes and regulations authorizing leases and exclusive concessions on State lands. The Court may uphold a statutory scheme which more closely resembles those procedures.¹

The Court recognized statutes and regulations of the Department of Natural Resources which authorize leases and exclusive concessions on state lands of limited duration, subject to competitive bidding procedures and valuable consideration. For example, under AS.38.05.070, land may be leased for a period of up to 55 years if the commissioner determines that is in the best

¹In a letter of February 14, 1989, to Senator Fahrenkamp, Assistant Attorney General Stephen M. White concluded that any statutory land based system that remotely resembles the EGA scheme would be declared unconstitutional without the adoption of a constitutional amendment. While a constitutional amendment would most easily solve the problem, the Owsichek decision does not require that alternative.

interest of the State. The commissioner may void a lease if he determines that the land is not being used for the purpose issued. AS.38.05.075 provides for public auctions of leases to the highest qualified bidder. The commissioner may prequalify bidders and aggrieved persons may appeal to the superior court. The commissioner may grant a lessee an exclusive right to use and access tide and submerged land. See AS.38.05.075(d).

The Court also recognized AS.41.21.027, which authorizes concession contracts in State parks. Before a concession contract may be issued, the commissioner must make numerous findings. For example, he must identify community concerns, assess existing visitor uses, and assess the effect of the contract on park wildlife, water, scenic values or other uses. For certain concession contracts, a commissioner must find that the proposed contract is based on public need, will implement the purpose of the park unit, will enhance public use and enjoyment of the park, and will not create an unacceptable adverse environmental effect. The State must receive a fair portion of the contractor's receipts and public review and comment is required before concession contracts may be granted, renewed or extended.

Fees for competitive and exclusive commercial use permits are authorized by AS.41.21.026. Before setting fees, the Department of Natural Resources must consider at public hearings the State's operating costs, the normal fees charged for similar

facilities, administration costs and the public interest.²

The Owsich decision also recognized the constitutionality of Alaska's Shore Fisheries Leasing Program. Successful applicants are entitled to lease fishing sites and up to three tracks of tide land for a renewal period not exceeding ten years. Lessees pay an annual rental to the State based upon the costs of administering the program, and all leases are subject to cancellation upon the lessee's failure to regularly fish the leased tract.³

Federal statutes regulate the granting of leases and concession contracts in National Parks. Although these regulations probably would not survive a constitutional challenge under Alaska's common use clause, the task force may incorporate some of these provisions in its recommendations. The National Park Service may grant privileges, leases and permits for the use of land under 16 USC §3. See also 16 USC §20 et seq. Grants are based on resource concerns, which include the appropriate number of grants to meet visitors' needs. Competitive bidding is not required, and assignments or transfers of grants require written approval of the Secretary of the Interior. Permits are granted to hunting guides

²The Owsich decision also referred to the provisions of 11 A.A.C Chapter 14, which establishes procedures for awarding concession contracts. Chapter 14, Repealed July 1, 1989, has been superseded by AS.41.21.026, AS.41.21.127, and AS.36.

³See 11 A.A.C. 64.080-.391, C.W.C. Fisheries, Inc. v. Bunker, 755 P.2d 1115, 1120 (Alaska 1988). See also letter of Assistant Attorney General, supra, fn 1 at p.4 [Opinion that concession based on Shore Fisheries Lease Program would be found unconstitutional].

under two circumstances. First, if there are a limited number of guide positions available, a competitive offering is made based upon the qualifications of the applicants. Concessionaires may be granted a preferential right to provide new or additional accommodations under 16 USC §20c. To promote continuity in operation of facilities and services, preference may be given to concessionaires who have satisfactorily performed to renew contracts or permits. 16 USC §20d. Although concessions may be granted for periods up to 30 years under 16 USC §3, generally concessions are granted for periods of up to 10 years.

Concessionaires have a possessory interest in their structures, which does not end at the expiration of their term. That interest may be assigned and transferred under 16 USC §20e. Franchise fees are determined upon consideration of the probable value to the concessioner of the privileges granted. Protecting the park and providing adequate visitor services at reasonable rates are the primary concerns of the franchise fee agreement, over and above the consideration of revenue to the United States. Concessions exist in approximately 45 states.

In compliance with the National Park Service's Concessions Act, limited entry programs have been established which regulate the number of commercial guides at Mt. McKinley, the number of cruise ships at Glacier Bay, and the number of jetboats at American Creek. In 1986, the American Creek Sportsfishing Guide Service and Jetboat Permit System was adopted in response to excessive numbers of jetboats on the river. Seven permits are

issued for two year periods and give owners the right to store jetboats on the creek. Guides must attend a park service course. The National Park Service, in compliance with ANILCA, must consider the existence of historical operators and allow them to continue. Information regarding concessions in Alaska's National Parks may be found in publication NPS 48. After Owsichuk, special permits have been granted to guides hunting in national parks in Alaska. Under an Interim Emergency Act, these permits expire after two years and are not renewable or transferable. The Park Service would like to interface with Alaska law and create a cooperative agreement for regulating guides, but will issue its own permits if a suitable game management plan is not adopted by the state.

The second method of providing permits to hunting guides is through a commercial use license.⁴ Licenses are generally granted if the Secretary of the Interior does not wish to limit the number of guides in a certain area, and are issued to guides who use the park only as a resource.

IV. CONCLUSION

The Owsichuk opinion suggests that a resource-based management system for allocating access to big game hunting opportunities among guide outfitters may be developed through the use of leases and exclusive concessions. By incorporating criteria outlined in Owsichuk and applicable provisions found in existing statutes and regulations, the task force may propose a system which

⁴See 16 USC §3.

would survive constitutional challenge.

MEMORANDUM

TO: Members, Legislative Task Force on Guiding and Game

THROUGH: Senator Jan Faiks
Chairman

FROM: William P. Horn
Steven Pradell

DATE: September 11, 1989

SUBJ: Outline of Initial Program Proposal

INTRODUCTION

As a result of the conference conducted on August 16,¹ we have prepared the following outline of an initial proposed program. The proposal incorporates the comments of the participants and represents a possible starting point for the Task Force deliberations.

The proposal contains four primary elements: (1) basic limitation rationale and program, (2) open competition for limited or sole authorization to use game units, (3) award criteria and

¹ Participants in the conference included Senator Jan Faiks, Ken Fanning, Lew Pamplin (ADF&G), Steve White (AG), Randall Burns (DCED), Mark Riehle, Steven Pradell, and William Horn.

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decision process, and (4) conditions on granted interests. These are discussed in detail below.

2.

PROGRAM ELEMENTS

1. Limitation -- As a threshold consideration, the program must specify the rationale for establishing a system that limits commercial guiding and outfitting use in specified areas. The program purposes must include express references to wildlife conservation and how limitation will contribute to enhanced wildlife management. Specific findings will have to be included in the new statute and a solid factual basis for both findings and purposes must be presented in the legislative history.

In addition to wildlife management benefits, limitation can serve commercial purposes (i.e., appropriate economic benefits to the State of Alaska as well as to guides/outfitters), benefit resident hunters, and may also affect non-resident hunters. The latter may not enjoy the benefits of the common use clause of the Alaska Constitution. However, too strict limitations on guides/outfitters will deprive the Alaska Department of Fish and Game (ADF&G) of vital revenues. Additionally, a program should not

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unnecessarily restrict non-resident hunting for certain big game species.

2. Open Competition -- The envisioned program would permit open competition to secure the limited interest (i.e., the permit, lease, concession, etc.). Three variant approaches were discussed.

The privately initiated option would enable a prospective guide/outfitter to nominate the area or areas where he would like to hunt and specify whether he wants sole authorization for the area(s). If not seeking sole authorization, the level of effort/proposed take would have to be indicated.

At the other end of the scale was a State initiated program. A state entity would select areas to be made available and determine the number of entrants for each zone (some believe such a determine is beyond the State's capability). Hybrid systems combining features of both approaches could also be developed.

Whether privately or State initiated, the identified or designated areas would be made available to all eligible entrants. Areas would become available on a staggered basis so that some level of competition would occur each year. Interested parties

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would file for the area(s) of their choice. Applications would be considered pursuant to the award criteria.

3. Award Criteria -- Following receipt of the competitive applications, a State entity would select the parties to receive the permit/lease/concession based on specified criteria and an objective process. The discussion indicated support for the use of at least six criteria:

- a. Experience/Knowledge -- applicants must possess sufficient experience regarding or demonstrate adequate knowledge of a nominated/designated area.
- b. Economic Viability -- applicant must demonstrate economic capability to effectively utilize permit/lease/concession if awarded.
- c. Safety -- applicant must show acceptable safety track record or capability to operate in a safe manner.

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- d. Fish and Wildlife Legal Compliance -- applicants must show an absence of significant fish and wildlife violations.
- e. Permits and Licenses -- applicant must possess or show capability to acquire all of the necessary permits and licenses in order to operate in the area in question.
- f. Land Access -- applicant must possess or show capability to acquire the necessary authorizations to enter upon and operate on the land in the area in question.

Applications will be reviewed pursuant to these criteria. Following review, one or more applicants may be deemed eligible to receive the permit/lease/concession. If there are more eligible applicants than available "space", the following selection process will be employed. First, the eligible applicants will be afforded the opportunity to come to some mutual agreement (e.g., district could be "divided" in time or in game species to be sought). If after this process, too many eligible applicants remain, a "tie-breaker" could be employed. There was some support (as well as

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strong opposition to) for use of a lottery to make the final decisions in these cases.

Overall, there was agreement that the new system had to enable new, qualified entrants to succeed in order to satisfy Owischek. In particular, if established guides prevailed over new entrants in every case of head-to-head competition, the system would be more susceptible to a Constitutional challenge.

4. Permit/License Concession Conditions -- Three primary conditions should be attached to the awarded interest. These features are (a) interest duration, (b) transferability, and (c) fees paid to the State.

There was agreement that the duration of the interest had to be long enough to induce good conservation practices by the guide/outfitter and enable them to obtain financing while being short enough so that it isn't a de facto lifetime or generational right. Ten years was considered the maximum legally acceptable length if tied to reasonable rules on transferability although a fifteen-twenty year term appeared to better address the financial interests of guides/outfitters. It was also suggested that for

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big game species with longer life spans (i.e., brown bear and Dall sheep), that longer terms be seriously considered.

A ⁵diligence requirement should also be part of the interest. Failure to use the permit/lease/concession for some period (e.g., one year) would result in its termination. Similarly the interest could be suspended or terminated for good cause.

Transferability was another key feature. The new program should provide for the transfer of the interest during the duration period (i.e., Guide/Outfitter "A" gets a 10 year permit, it could be transferred to Guide/Outfitter "B" in year five who would keep it for the remaining five years). Improvements should be included in any transfer or acquisition scheme. Any and all transfers would be subject to State review and approval. There is precedent for this approach in other State lease programs. It was also noted that with more liberal transferability rules, the guides could probably accept shorter permit duration. The converse is also true. Renewal rights were also discussed. There was interest in examining a right of first refusal arrangement which would enable guide/outfitters to have an ability to extend granted authorizations.

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Finally, the method of ensuring State consideration for grant of this interest was considered. A multitude of options exist but it appears that a combination of an application fee, a per-acre rental fee, and a fixed percentage of gross revenues was an acceptable starting point for most participants. Similar systems are used by Alaska and various Federal agencies.

OTHER ISSUES

There was brief discussion of Federal recognition of the program and consideration of the special issues related to Native corporation lands. It was agreed that these entities would be made aware of Task Force activities in order to solicit their comments. Moreover, the program should be designed so that it will be adopted or recognized by Federal and private entities.

WPH:jap

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by Bill Horn

PROCESS OPTIONS

PRIVATE SYSTEM

1. Guide/Outfitters designate-nominate UCU's as areas;
Submissions occur simultaneously
2. State accepts or rejects the nomination
3. If no competition exists, the area is awarded to nominator;
award is via the award criteria

STATE SYSTEM

1. State proposes new guide areas per accepted criteria
2. Proposals submitted for public review & comment
3. State may modify proposal
4. State-decided areas are offered for competition

HYBRID I

1. Guide-Outfitters nominate areas using UCU's
2. State reviews nominations; it may accept, modify or reject
per accepted criteria
3. State-decided areas are offered for competition

HYBRID II

1. State issues a call for nominations
2. Nominations of areas offered by guide-outfitters & others
3. State reviews nominations & may accept, modify or reject
per accepted criteria
4. State proposed areas submitted for public review & comment
5. State considers comments & decides on areas per accepted
criteria
6. State decided areas are offered for competition

Game Management Proposal Questions and Checklist
• Program Elements A. Limitation Rationale B. Open Competition C. Award Criteria D. Permit/License/ Concession Conditions

- Program Elements
 - A. Limitation Rationale
 - B. Open Competition
 - C. Award Criteria
 - D. Permit/License/
Concession Conditions

A. Limitation Rationale

- What are the purposes of an area management system for allocating guide access to big game?
 - - Wildlife Management
 - - General Economic Benefits
 - - Benefits to Residents
 - - Revenue to the State

B. Open Competition

- Should the program be privately initiated or state initiated?
- What steps start the process?
 - "Nomination" process
 - Carrying capacity determination
 - Sole authorization or joint use
 - Some areas available annually
- Who decides?

C. Award Criteria

- What are the criteria for awarding the new guide access interest?
 - - Experience/Knowledge
 - - Economic Viability
 - - Safety
 - - Fish & Wildlife Legal Compliance
 - - Permits & Licenses
 - - Land Access

D. Permit/License Concession Conditions

- What does the successful applicant get?
- How long does the guide keep his access interest?
- Must it be used annually?
- Can it be transferred, and if so, how?
- Is the interest renewable?
- What fees will be paid to the state?

MEMORANDUM

TO: Legislative Task Force on Guiding and Game
THROUGH: Honorable Jan Faiks, Chairman
FROM: William P. Horn
Steven Pradell
DATE: November 2, 1989
SUBJ: Outline of Proposed Game Management Area
Allocation Program

At the Task Force Meeting on October 5 and 6, a new Game Management Area Allocation program proposal was developed. The Task Force directed that the proposal be written up to enable subsequent thorough review and scrutiny.

I. GAME MANAGEMENT AREA ALLOCATION PURPOSES

A program to competitively allocate designated game management areas is designed to achieve four general purposes: (1) enhance wildlife conservation, (2) provide economic benefits, (3) confer benefits to Alaska citizens, and (4) increase revenue for the State

A game management area allocation system will create general economic benefits for Alaska. An economically viable guide and outfitter industry that can offer a quality hunting experience attracts non-residents willing to spend substantial sums of money in-State. This is especially true with a program that is keyed in part to producing trophy animals. These dollars are spent throughout Alaska and create substantial benefits through the multiplier effect. A sound guide and outfitter industry also enhances the economies of rural Alaska as it is one of the few industries situated in rural and remote areas of Alaska. Lastly, a program which provides ample opportunities to new entrants can offer economic benefits to a wide array of citizens.

Alaska residents will also receive important non-economic benefits from the program. Better wildlife management and conservation will ensure continued open access to wildlife resources and obviate the need for permit, lottery, or draw systems that characterize big game management programs throughout the other states. Safety will be enhanced because of limited numbers of people present in areas designated for sole or limited use. Additionally, resident hunters (and non-hunters) intending to enter a competitively allocated area will be able to check with specific

CORRECTION

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

MEMORANDUM

TO: Legislative Task Force on Guiding and Game
THROUGH: Honorable Jan Faiks, Chairman
FROM: William P. Horn
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of Alaska. Each purpose is an item of legitimate State interest and particular benefits will accrue to the wildlife resources held in common.

Wildlife conservation and management will be enhanced by the program. Unregulated access by guides-outfitters to game management units has previously created chaos. This chaos has hampered efficient wildlife management and been contrary to accepted principles of professional wildlife management. In contrast, a program which competitively awards areas to guides-outfitters for sole or limited joint use assists game management by permitting the creation of efficient and effective wildlife population and harvest monitoring systems. Moreover, guides-outfitters that receive sole or limited joint use of specific areas for a reasonable period of time have a clear incentive to engage in sound conservation practices (i.e., an individual who must rely on a specific area for a number of years is unlikely to decimate the resources he depends on). The combination of a more orderly system that improves management and encourages wildlife conservation will directly facilitate achieving the Alaska Constitutional goal of sustained yield of public wildlife resources. Lastly, these same factors will assist the State in meeting its subsistence obligations pursuant to State and Federal law.

A game management area allocation system will create general economic benefits for Alaska. An economically viable guide and outfitter industry that can offer a quality hunting experience attracts non-residents willing to spend substantial sums of money in-State. This is especially true with a program that is keyed in part to producing trophy animals. These dollars are spent throughout Alaska and create substantial benefits through the multiplier effect. A sound guide and outfitter industry also enhances the economies of rural Alaska as it is one of the few industries situated in rural and remote areas of Alaska. Lastly, a program which provides ample opportunities to new entrants can offer economic benefits to a wide array of citizens.

Alaska residents will also receive important non-economic benefits from the program. Better wildlife management and conservation will ensure continued open access to wildlife resources and obviate the need for permit, lottery, or draw systems that characterize big game management programs throughout the other states. Safety will be enhanced because of limited numbers of people present in areas designated for sole or limited use. Additionally, resident hunters (and non-hunters) intending to enter a competitively allocated area will be able to check with specific

commercial operators and make arrangements to avoid each other. Finally, better wildlife management provides tangible and intangible benefits to all residents.

The State will acquire significant revenues from an allocation program. It is necessary and appropriate that the State, on behalf of the public, receives valuable consideration for the award of a limited but valuable interest to guides-outfitters. A program that encourages properly regulated non-resident hunting is crucial as seventy-five percent of hunting license and game tag fees are paid by non-residents although they take only ten percent or less of big game species. These revenues are critical to administration of sound wildlife management programs and an allocation system that maintains and enhances quality hunting for non-residents will ensure continued wildlife funding.

II. OPEN COMPETITION

The Task Force agreed that a competitive program should be established. The process to be employed is outlined below:

A. Area Determination

A six step process shall be used to establish the areas which may be awarded to guides-outfitters for sole or limited joint use. First, the Alaska Department of Fish and Game (ADF&G) will issue a call for nominations. The call will ask the public to propose areas to be offered for competitive award. Second, nominations consisting of a Uniform Coding Unit (UCU) or groups of UCU's will be forwarded to ADF&G. ADF&G has mapped the entire state and established the UCU's. These units enable better management of game populations and use of UCU's ensures that the designated areas have sound biological bases. Third, ADF&G will review the nominations and accept, modify or reject them pursuant to the criteria previously adopted by the Task Force (see Attachment). Fourth, ADF&G will publish its proposed areas for public comment and review. Fifth, the areas will be reviewed again by ADF&G in the wake of comments and final decisions made on configuration. Sixth, the designated areas will be made available for competitive award.

The designation process may be regionalized or divided in a manner that ensures that a significant portion of the State will be covered within nine months of enactment. The remainder of

the State must be subjected to this designation process within two years of enactment.

B. Public Offering

ADF&G designated areas shall be offered to the public on an appropriately staggered basis. Each year some areas will be made available. To facilitate the transition to a new system and ensure some appropriate level of annual competition, at least one-fifth of designated areas will be offered each year for the first five years following enactment provided that every designated area shall be offered at least once in the first five years. Awards of sole or limited joint use in these first offerings will be for a term of up to five years. Subsequent awards will be for periods of up to ten years. The offering of awarded areas that have expired, terminated, or been relinquished, and the reoffering of unawarded areas will ensure that annual public offerings will occur.

C. Unawarded Areas

In the case of ADF&G designated areas that are not awarded to a guide/outfitter, the following arrangement governs

which guides-outfitters may offer hunts in such areas. Following the award process, public notice of unawarded areas shall be published. An unawarded area within a Game Management Unit (GMU) may be hunted by a guide/outfitter licensed for that GMU provided that the guide/outfitter "registers" (i.e., timely notifies) the State of his intent to take hunters into an unawarded area. The State shall maintain a central notification point and ensure that the process is simple and quick.

III. APPLICATION AND AWARD CRITERIA

A. Application

Only properly licensed guides-outfitters may apply for sole or limited joint use of ADF&G designated areas. The application must specify the following facts: (1) whether sole use or joint use is being sought, (2) the term of years (up to the legal maximum) being sought, and (3) the species and specific numbers (if applicable) being sought. Applications may be amended pursuant to special notice provided by the State as outlined below.

B. Award Criteria

The Commercial Services Board (CSB) shall make the award determinations among eligible applicants. It shall consult closely with ADF&G in making these decisions. The CSB shall determine the number of guide-outfitters to be awarded an area provided that this number is consistent with sustained yield principles and the wildlife resource parameters provided by ADF&G.

The CSB shall establish a weighted point system to provide for an objective evaluation and ranking of the applications for areas. Each application shall be evaluated an assigned appropriate points for each criterion it satisfies. Points for each criterion may be awarded within a specified range (e.g., ten points for minimum safety compliance fifteen points for an excellent safety record). The system must be properly balanced to ensure that new entrants are not unfairly prejudiced and effectively denied an opportunity to win an award in head-to-head competition with an experienced operator.

There shall be nine award criteria:

1. Guide/outfitter experience in the designated area or on-the-ground knowledge of the area.
2. Economic viability of the proposed guide/outfitter activity. (NOTE: This is designed to screen out "fly by night" operations unable to effectively utilize an area award; however, it is to be a minimum threshold so that large financially secure operations do not automatically gain a significant advantage over smaller operators especially new entrants.)
3. A record of safe operations or demonstrated capability to operate safely.
4. Compliance with fish and wildlife laws and regulations. (NOTE: This might be used as a deduct -- an applicant automatically gets ten points and receives deductions for any previous infractions.)

5. Compliance with trespass limitations. (NOTE: See note immediately above.)
6. Applicant holds necessary permits and licenses necessary to operate and hunt or demonstrates capability to acquire such. Failure to acquire necessary permits and licenses within ninety days of area award results in automatic forfeiture.
7. Applicant holds necessary authorization(s) to conduct activity on land within the designated area (i.e., special use permit from U.S. Fish and Wildlife Service for National Wildlife Refuge lands; permission from native corporations) or demonstrates capability to acquire such. Failure to acquire necessary authorization(s) within ninety days of area award results in automatic forfeiture.
8. An applicant will receive additional points if he has not been awarded the right to guide/outfit in other areas; an applicant seeking his first award will have an advantage over an applicant who already holds the award for one or more other areas.

9. In the case of renewals only, the holder of an award shall receive "bonus" points if he has operated in accordance with regulations, terms, and conditions applicable to that award.

C. Award Process

Following review of applications and initial determinations by the CSB, it may issue notice permitting applications to be revised (e.g., guide A applied for sole use of area 1, CSB decides to allow three joint users into area 1, guide A may amend application for joint use). After modified applications are received and reviewed, proposed final determinations are made by CSB.

In the event of ties (e.g., three applicants receive equal points on sole use applications; five applicants receive equal points for applications to an area for three joint users), the tied applicants will be afforded an opportunity to reach a resolution. If resolution cannot be timely achieved, a lottery or draw shall be used to determine who receives the award.

IV. PERMIT CONDITIONS

The successful guide/outfitter applicant shall receive a permit from the CSB which will authorize the guide/outfitter to either have the sole use or limited joint use to provide hunting services in an ADF&G designated area. The permit may also contain limitations regarding species (e.g., guide A may be awarded sole use of area 1 for Dall sheep, guides B and C may awarded joint use of Area 1 for brown bear).

Permits will initially be awarded for five year terms although an applicant may request and be granted a shorter term permit. After the first cycle of five year permits are issued, the basic permit term shall be ten years. ADF&G may authorize the CSB to issue longer term permits not to exceed fifteen years if the longer term will advance specified wildlife management and conservation objectives. In addition, a guide/outfitter who holds a permit for a designated area shall be accorded a preference in the award of non-resident tags for big game species in that area.

Permits are subject to revocation or suspension for violation of specified terms and conditions. One specific condition shall be a diligence requirement: failure to use the permit for one

Legislative Task Force on
Guiding and Game
November 2, 1989
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year, in the absence of good cause, shall result in revocation
(NOTE: revoked permits will be made available in the following
competitive offering).

Permits may be transferred to other qualified guide/
outfitters. Such transfer is subject to CSB review and may be
approved if transfer is for good cause.

A holder of a permit may seek to have it renewed at the end
of the term. Renewal is not automatic. Instead, a holder must
participate in the competitive process. He shall be awarded
additional points per the award criteria if he has conducted
himself in accord with the permit terms and conditions, as well as
other applicable law, during the permit term. This limited
preferred treatment shall be accorded to a holder for only one
renewal. He may continue to apply for a designated area in the
future but shall not receive any additional renewal points.

The State shall charge appropriate fees for application and
permit award. These fees will ensure that the public receives
valuable consideration for an area permit.

WPH:jap
WPH110M.AGC

Attachment

**Possible Criteria for Developing the Guide-Outfitter
Resource Area Maps***

In order of priority

- 1. Wildlife management concerns**
 - Species abundance and diversity**
 - Administrative wildlife management boundaries (Game Management Unit/Subunits)**
 - Harvest history (target number of potential hunt opportunities)**
- 2. Enforcement concerns**
- 3. Land ownership**
- 4. Administrative restrictions**
- 5. Easily recognizable (in the field) boundary features**
- 6. Access availability and transportation considerations (methods and means restrictions)**
- 7. General approach to the size and number of individual areas**
- 8. The number of guide-outfitters per area**
- 9. Other land uses**
- 10. Existing facilities**
- 11. Others considerations**

*** Provided to the Legislative Task Force on Guiding and Game
by Lew Pamplin, ADF&G, June 29, 1989**

HOW THE GAME MANAGEMENT PROPOSAL WORKS

- Purposes
- Area Determination
- Public Offering
- Applications Taken
- Ranking
- Permit Determinations
- Conditions
- Transfer and Renewal

PURPOSES OF GAME MANAGEMENT AREA ALLOCATION:

- Enhancing Wildlife Conservation
- Providing Economic Benefits
- Benefits to Residents
- Revenue to the State

FIRST. AREAS ARE DETERMINED:

- 1) ADF&G calls for nominations.
- 2) Public proposes areas.
- 3) ADF&G reviews, accepts, modifies or rejects nominations.
- 4) ADF&G publishes proposed areas.
- 5) Public comment and review.
- 6) ADF&G reviews areas.
- 7) ADF&G makes final decisions on configuration.
- 8) Designated areas made available for competitive bidding.

SECOND. AREAS ARE OFFERED TO THE PUBLIC:

- 1) Staggered basis: at least one-fifth offered each year for first five years.
- 2) First awards up to five years.
- 3) Subsequent awards up to ten years.
- 4) Unawarded and expired areas are re-offered.
- 5) Public notice of unawarded areas, registered Guide-Outfitters licensed for that GMU can hunt.

THIRD. APPLICATIONS ARE TAKEN:

- 1) Licensed Guide-Outfitters pay application fee and specify:
 - a) Sole or joint use;
 - b) Term of years; and
 - c) Species and numbers.
- 2) CSB determines eligible applicants.
- 3) CSB determines number of Guide-Outfitters to be awarded an area.
- 4) CSB establishes weighted point system to evaluate and rank applications. System is fair to new entrants.

FOURTH. APPLICANTS ARE RANKED USING AWARD CRITERIA:

- 1) Experience/knowledge.
- 2) Economic viability.
- 3) Record of safe operations or demonstrated capability to operate safely.
- 4) Fish and Wildlife legal compliance.
- 5) Compliance with trespass limitations.
- 6) Applicant must hold or acquire within ninety days permits and licenses or permit forfeited.
- 7) Applicant must hold or acquire within ninety days authorization to conduct activity on land within area.
- 8) Extra points if applicant has no other areas.
- 9) Extra points the first time applicant with good track record applies to renew.

FIFTH. CSB DETERMINES WHO RECEIVE PERMITS:

- 1) CSB reviews applications and makes initial determinations.
- 2) CSB may allow applications to be revised.
- 3) Modified or revised applications received.
- 4) CSB reviews and proposes final determinations.
- 5) In case of ties, applicants may reach a resolution or lottery or draw is employed.

SIXTH. PERMITEES MUST ADHERE TO CONDITIONS:

- 1) Permits give either sole or limited joint use.
- 2) Permits may limit which species can be taken.
- 3) Permit time limits:
 - a) Initially, five years or less;
 - b) Thereafter, ten years or less; and
 - c) Following ADF&F Findings, CSB can issue up to fifteen year permit to advance wildlife management and conservation objectives.
- 4) Guide-Outfitters with permits in designated areas get preference on non-resident tags for species in that area.
- 5) Revocation for failure to use permit for one year without good cause.
- 6) Permittees pay fee to State.

SEVENTH, PERMITS MAY BE TRANSFERRED OR RENEWED:

- 1) CBS may allow permit transfer to qualified Guide-Outfitters for good cause.
- 2) Permittees must compete for renewal at end of term.

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MEMORANDUM

TO: Legislative Task Force on Guiding and Game

THROUGH: Honorable Jan Faiks, Chairman

FROM: William P. Horn *WPH*

RE: Unresolved Policy Issues

DATE: November 30, 1989

It appears that only five significant policy issues remain unresolved. The following identifies these issues and outlines the basic choices. Once the Task Force makes its decisions, appropriate statutory language will be incorporated into the proposed draft bill.

1. Sole or Joint Use Determination

Option 1A -- Have Big Game Commercial Services Board (CSB) determine prior to receipt of applications whether guide resource areas are to be available for sole use permits or joint use permits.

Under this approach, guide resource areas would be designated as sole or joint areas before applications are accepted. The determination would be made the CSB. Sole use would be exclusive use of the area for all species of big game for the term of the license. Joint use would be shared use of the area including sharing of species or sole use of different species (e.g., guide/outfitters x and y authorized to take 5 species in Area 1; guide/outfitter x authorized to take Dall Sheep in Area 1 -- guide/outfitter y authorized to take other species in area 1). Guide/outfitter applicants would tailor their applications to match the determinations made by the CSB (e.g., a guide/outfitter interested in sole use permit would not apply for an area designated for joint use). Section 08.5.610(g)(3) of the Nov. 17

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Legislative Task Force on Guiding and Game
November 30, 1989

Page 2

Re: Unresolved Policy Issues

Work Draft reflects this option. This approach would also eliminate the need for guide/outfitters to amend their applications as provided for in Section 08.54.640(c) of the work draft bill.

Subissue -- If this approach is adopted, the Task Force should decide whether the CSB determination may be challenged and whether the statute should contain criteria or guidelines for making the sole v. joint use determination.

Option 1B -- Have the CSB determine after receipt of applications whether guide resource areas are to be available for sole use or joint use permits.

This arrangement would have guide/outfitters apply for areas and specify in the application whether they are seeking sole or joint use as explained above. The CSB would make its determinations at the time it reviews the applications. An application amendment process would be authorized to facilitate guide/outfitters (i.e., guide/outfitter x applies for sole use of area 1, CSB determines to make it joint use area, x permitted to amend application and seek joint use permit) (see Section 08.54.640(c) of Work Draft).

Subissue -- If this approach is adopted, the Task Force should decide whether the CSB determination may be challenged and whether the statute should contain criteria or guidelines for making the determination.

2. Unawarded Species in an Area

Option 2A -- Section 08.54.620(b) of the Work Draft ("all allocations of big game") establishes the prospect that not all game species will be awarded through the issuance of sole or joint use permits (e.g., guide/outfitters x and y are awarded joint use of area 1 for all species except caribou). The Work Draft would permit other qualified guide/outfitters to take caribou within area 1.

Option 2B -- Provide that sole or joint use permits shall allocate all of the game species available for guide/outfitters and non-residents within an area. There would be no "unawarded" hunting within areas covered by guide resource area permits. Deletion of the phrase that beings "all allocations of big game species. . . ." would effectuate this option.

Legislative Task Force on Guiding and Game
November 30, 1989

Page 3

Re: Unresolved Policy Issues

3. Land Owner Consent

Option 3A -- Section 08.54.640(b)(5) of the Work Draft requires that guide/outfitters must obtain access authorization from all landowners in a guide resource area. This could require that permission be obtained from all land owners including native allottees, mining claim holders, remote site "homesteaders," etc.

Option 3B -- Adopt a modification that requires guide/outfitters to obtain land access authorization from only significant or major landowners within an area. A definition of such terms will need to be adopted.

4. Land Owner Independence from Program

Option 4A -- Expressly recognize the ability of private land owners to make wholly independent arrangements with licensed guide/outfitters to provide hunting services on the owner's land. The land owner would notify the CSB that its lands should not be included in any guide resource areas.

Option 4B -- Authorize land owners (significant, major, or otherwise) within an area to effectively veto guide/outfitters awarded the area by CSB. Hunting services in an area can only be provided by a licensed guide(s) (1) awarded the area by the CSB and (2) provided access authorization by land owners.

Option 4C -- Direct the CSB (and the State) to use its constitutional authority under Article VIII, Section 16 to preempt landowners and ensure that guide/outfitters awarded an area can use the land therein. Exercise of this authority would constitute a "taking" and require just compensation to the affected land owner.

5. Fees

See separate fees memorandum.

WH/jp

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MEMORANDUM

TO: Legislative Task Force on Guiding & Game

THROUGH: Honorable Jan Faiks
Chairman

FROM: William P. Horn *WP/H*

SUBJ: Fee Proposals

DATE: November 30, 1989

=====

The Task Force has a multitude of options available regarding the creation of a fee structure for the proposed guide/outfitter resource area allocation program.

Application Fees

An application fee may be required. The purposes of such a fee would be two-fold: (1) recover the costs, in whole or in part, of administering the application process and (2) screening out frivolous applications.

Four Systems

Four general fee structures could be adopted by the Task Force: (1) fixed, (2) percentage of gross, (3) per animal taken, or (4) per acre of awarded guide area. These are not necessarily mutually elusive and could be combined into various package. The four approaches are discussed below.

1. Fixed Fee

This is the simplest system. Basic fees for sole use or joint use permits would be set. It could be collected annually and set

Legislative Task Force on Guiding & Game
Honorable Jan Faiks
November 30, 1989

Page 2

to reflect the program goals. Fees could range from levels to ensure that the State gets some fair consideration to levels designed to obtain maximum value. The fees could be statutorily set, set by the Big Game Commercial Services Board (CSB) per criteria, or left to the discretion of the CSB.

Although simple and direct, a fixed fee system may prove inequitable since it would involve imposition of the same fees on operations of disparate size. This might be corrected with a range of fixed fees but that causes the system to begin to lose its attractive simplicity.

2. Percentage of Gross

The Federal agencies presently employ a system in which the lessee, permittee, or concessionaire annually pays a small percentage of its gross revenues to the Federal agency. It ensures that the larger operations pay an appropriate larger share. Applied in this case, it would create a difficult accounting system as the gross receipts of all guides/outfitters would have to be accounted for. I strongly suspect that a significant bureaucracy would have to be created to administer this kind of fee system. On the other hand, the system matches payment to the size of the operation and means the State will be assured of receiving consideration that matches the value of the granted privilege.

3. Per Animal Fee

Holders of area permits would be charged a fee for each animal taken by the holder or his clients within the holder's area. The fee could be fixed for each species or could be established as a percentage of the non-resident tag value of each species. The fee could be made higher for sole use permittees as opposed to joint use permittees.

Such a system should be relatively simple to administer. It also matches payment to the State to the actively level of the guide/outfitter. Moreover, a slightly higher fee structure for sole use permits reflects the greater value of the privilege granted by such a permit.

4. Per Acre Fee

Holders of permits would be charged a per acre for the acreage with guide resource areas where they hold sole or joint use permits. A higher rate would be charged for sole use permits. This is a relatively simple system and matches payment to the privilege (i.e., larger areas cost more than smaller ones). It is

Legislative Task Force on Guiding & Game
Honorable Jan Faiks
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Page 3

likely to have the effect of making guide areas smaller and does not reflect the varying quality of different geographic regions (e.g., a fee of \$X per acre may be a bargain on the Alaska Peninsula and an overcharge in the Brooks Range).

CONCLUSION.

Each of these systems has benefits and disadvantages. Additionally, they are not mutually exclusive: all can be combined in different fashion. The critical criteria appear to be (1) simplicity of administration, (2) fair payment to the State, and (3) no undue burdens imposed on guide/outfitters.

I would suggest that you consider a combination of the per animal and per acre systems. A nominal per acre fee would demonstrate that the guide/outfitter is paying for the privilege of offering hunts, to the exclusion of others, on a specified piece of real estate. A per animal fee would match payment to activity and ensure a fair return to the State. This combination appears to satisfy the concerns articulated in the Owsichuk decision.

/jp

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MEMORANDUM

RECEIVED

DEC 11 1989

JAN FAIKS
SENATE OFFICE

TO: Legislative Task Force on Guiding and Game

THROUGH: Honorable Jan Faiks
Chairman

FROM: William P. Horn *WPH*

DATE: December 7, 1989

SUBJ: Criteria for Sale or Joint Use Determination

INTRODUCTION

I suggest that the Task Force consider adoption of the following criteria to govern Big Game Commercial Services Board (CSB) determination of whether a guide resource area is available for a sole use or joint use permit. Most of the criteria are applicable under pre-application or post-application determination procedures. Any criteria that the Task Force adopts can be incorporated into the proposed bill.

PROPOSED CRITERIA

1. Species Present and Related Management Considerations.
Long lived species such as Dall sheep and brown bear lend themselves to trophy management. Areas with these species may be better suited to sole use permits to induce sound, long range management and attendant uses. On the other hand, an area with strong caribou populations may be better for joint use. The CSB, in conjunction with ADF&G, should first consider species mix and management needs/objectives in sole v. joint decisions.

Legislative Task Force on
Guiding and Game
December 7, 1989
Page 2

2. Amount of Game Available. The numbers of available game species would be a second consideration. Areas with low productivity and low numbers would be hard to set up for joint use. Areas with large populations appear more suitable for shared use.

3. Impact on Resident Hunters. Alaska citizens are the beneficiaries of the common use clause. Their interests should be a primary consideration in deciding whether an area will be available for sole or joint use by guide/outfitters.

4. Economic Viability. The economic effects of sole or joint use permits should be another consideration. Arrangement which effectively eliminate a viable guide/outfitter industry are contrary to the thrust of this program. Permit classifications that thwart viable operations should be avoided.

5. Competition. Areas that are subject to intense competition (i.e., there are numerous applications to guide/outfit in an area) should be prime candidates for joint use status. This assumes that joint use status is not at odds with the other criteria. It will be easier to employ this criterion in a post-application decision program.

WPH:jap
WPH152M.AGC

APPENDIX

J

July , 1989

MEMORANDUM

TO: Jan
FROM: Cheryl
SUBJECT: RSA of funds to Fish and Game

Attached are the two fiscal notes from the Guide Bill:

CED shows that 103.0 is expected to be generated in program receipts from licensing fees and it will cost 98.8 of this amount to support their activities. This was fully funded in operating budget;

DF&G shows a cost of 90.0 in general funds, and as you know, 45.0 of this was funded in operating budget.

You stated you want to take 45.0 from CED and give it to DF&G. Since CED's fiscal note indicates they were going to use nearly all of the program receipts generated in order to fund their operation in FY 90, there would be no excess program receipts to transfer to DF&G unless Occupational Licensing is willing to give up 45.0 which it had budgeted.

Did Randall indicate this was okay?

did - see him & verify - go over the "fact" of the plan note.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SCS CSHB 112
PUBLISH DATE: 4/25/89

2nd
(FIN)

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act Relating to Commercial
Services for Big Game Hunters
Sponsor: Resources Committee
Requestor: _____

Agency Affected: Fish and Game
BRU: Wildlife Conservation
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	31.5	76.9	67.5	58.2	58.2	58.2
TRAVEL	1.5	5.0	3.0	1.0	1.0	1.0
CONTRACTUAL		.5	.5	.5	.5	.5
SUPPLIES		1.7	1.0	1.0	1.0	1.0
EQUIPMENT		6.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	33.0	90.0	72.0	60.7	60.7	60.7

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) The FY89, FY90, and FY91 expenditures are necessary to coordinate the development of a computerized area-based management system for use in administering the guide/outfitting industry. The FY92, FY93, and FY94 expenditures would depend on the guide/outfitter area management system which is devised and ADF&G's role in that system.

Prepared by: W. Lewis Pamplin, Jr., Director Phone: 465-4190
Division: Wildlife Conservation Date: 2/15/89

Approved by Commissioner: [Signature] Date: 2/15/89
Agency: Fish and Game

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Changes in SCS CSHB 112 (Fin) have no fiscal impact. This fiscal note is appropriate. 4/19/89 *ML*

Changes in SCS CSHB 112 (Rules) have no fiscal impact. This fiscal note is appropriate. 4/24/89 *MS/L*

page 1 of 2

FISCAL NOTE FOR HOUSE BILL 112
Page 2 of 2

	FY89		FY90		FY91		FY92	
	Mos.	Cost	Mos.	Cost	Mos.	Cost	Mos.	Cost
LINE 100								
WB III @ \$4.5/month	3	13.5	11	49.5	11	49.5	11	49.5
AP II @ \$3.3/month	3	9.9	5	16.5	3	9.9	1	3.3
DPC II @ \$2.7/month	3	8.1	4	10.8	3	8.1	2	5.4
TOTAL		31.5		76.8		67.5		58.2
LINE 200 TRAVEL		1.5		5.0		3.0		1.0
LINE 300 CONTRACTUAL SERVICES		0.0		0.5		0.5		0.5
LINE 400 SUPPLIES		0.0		1.7		1.0		1.0
LINE 500 EQUIPMENT		0.0		6.0		0.0		0.0
TOTAL		33.0		90.0		72.0		60.7*

* This total may vary with the role that ADF&G ultimately plays in the guide/outfitter area management system.

Alaska State Legislature

JUDICIARY
CHAIRMAN
907-465-4523



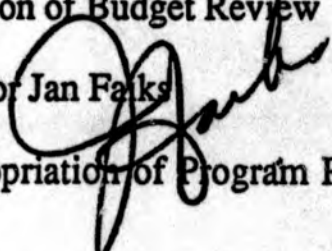
JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

July 28, 1989

MEMORANDUM

TO: Alison Elgee, Director
Division of Budget Review

FROM: Senator Jan Fawks 

SUBJECT: Appropriation of Program Receipts

Last session the Legislature approved House Bill 112 (chapter 37 SLA 89) relating to big game hunting. Section 08.54.470 establishes a "Commercial Use Permit and Fee". AS 08.54.470(d) provides:

"The commissioner of administration shall separately account for commercial use permit fees deposited in the general fund by the department. The annual estimated balance in the account may be used by the legislature to make appropriations to the Department of Fish and Game and the Department of Public Safety to carry out their respective responsibilities for management of game resources and enforcement of game laws."

Anticipated program receipts from the commercial use permit fee were not appropriated as part of the fiscal notes for SCS CSHB 112(RIs) am S. The Division of Occupational Licensing estimates \$50,000 will be generated from this fee in FY 90.

At its last meeting, the Task Force on Guiding and Game expressed interest in determining if there is a mechanism, other than waiting for action by the

OUT OF SESSION

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

next Legislature, by which \$45,000 of the FY 90 program receipts from the commercial use permit fee could be appropriated to the Department of Fish and Game for development of a computerized guide/outfitter area-based management system. (The Legislature approved a \$90,000 fiscal note for Fish and Game as part of HB 112 for this purpose, but the amount was reduced to \$45,000 by the free conference committee).

I am interested in learning if the Office of Management and Budget's Revised Program mechanism through the Legislative Budget and Audit Committee is applicable under these circumstances. If it is, on behalf of the Task Force, I request your consideration of this request.

Your anticipated assistance in reviewing the Task Force's request is appreciated. Should you need any additional information, please give Cheryl Frasca of my staff a call at 561-7610.

Thank you.

cc: Randall Burns, Division of Occupational Licensing

Alaska State Legislature

JUDICIARY
CHAIRMAN
907-465-4523



JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

July 28, 1989

MEMORANDUM

TO: Tam Cook, Director
Division of Legal Services

FROM: Senator Jan Faiks *[Signature]*

SUBJECT: Appropriation of Program Receipts

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OUT OF SESSION

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next Legislature, by which \$45,000 of the FY 90 program receipts from the commercial use permit fee could be appropriated to the Department of Fish and Game for development of a computerized guide/outfitter area-based management system. (The Legislature approved a \$90,000 fiscal note for Fish and Game as part of HB 112 for this purpose, but the amount was reduced to \$45,000 by the free conference committee).

I am interested in learning if Legislative Budget and Audit has the authority to approve such an appropriation, or if there is another means of accomplishing this goal. I have also made a similar request for information from the Office of Management and Budget to learn if a Revised Program through Budget and Audit Committee is possible.

As always, your anticipated assistance is appreciated. Should you need any additional information, please give Cheryl Frasca of my staff a call at 561-7610.

Thank you.

RECEIVED

AUG 14 1989

STATE OF ALASKA
THE LEGISLATURE

JAN FAIKS
SENATE CLERK
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

August 8, 1989

SUBJECT: Authorization of the Department of Fish and Game to expend program receipts from the commercial use permit fee under AS 08.54.470

TO: Senator Jan Faiks

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether there is a procedure by which the Department of Fish and Game could be authorized to expend \$45,000 of program receipts from the commercial use permit fee under AS 08.54.470 during fiscal year 1990 without waiting for action by the Legislature during the next session. This \$45,000 is to be used to further develop a computerized guide-outfitter area-based management system for which the Legislature has already appropriated another \$45,000 as part of the cost of implementing ch. 37, SLA 1989 (HB 112-relating to licensing of guide-outfitters) during fiscal year 1990.

1. Can the Legislative Budget and Audit Committee approve an appropriation of program receipts to the Department of Fish and Game?

The short answer is no.

The state may not expend state funds except in accordance with an appropriation of the funds by the Legislature. (Alaska Constitution art. IX, sec. 13) The power of the Legislature to appropriate state funds cannot be delegated to a committee of the Legislature. (Kelley v. Hammond, First Judicial District, CA 77-4 (1978)) Thus the Legislative Budget and Audit Committee may not appropriate funds for expenditure by state agencies. Likewise the power of the Legislative Budget and Audit Committee to approve the increase of an appropriation through the revised program process set out

under AS 37.07.080(h) has been found to be unconstitutional by a superior court. (Id.) The Alaska Supreme Court is likely to concur with the decision of the superior court if the issue is ever presented to the court.

Thus in order for the Department of Fish and Game to expend program receipts from the commercial use permit fee during fiscal year 1990 those program receipts must be included within an appropriation made by the Legislature.

2. Is there a means that would allow expenditure of fiscal year 1990 program receipts by the Department of Fish and Game to supplement an appropriation for a computerized management system without waiting for the Legislature to take action during next session?

The short answer is yes, but. . .

The state often receives unanticipated program receipts between sessions of the Legislature. In order to allow the state to expend these funds without waiting for an authorization during the next session of the Legislature, the Legislature annually makes a conditional appropriation of new or additional program receipts as part of the state's operating budget. The appropriation for fiscal year 1990 is contained in sec. 2, ch. 116, SLA 1989 and reads:

Federal or other program receipts that exceed the amounts appropriated in this Act are appropriated conditioned upon compliance with the program review provisions of AS 37.07.080(h). (emphasis added)

Program receipts derived from the commercial use permit fee under AS 08.54.470 are included within the term "other program receipts."

Under the terms of sec. 2, ch. 116, SLA 1989 the program receipts derived from the commercial use permit fee may be expended to supplement the existing appropriation for the computerized management system if the program receipts have not already been appropriated by ch. 116 and the program review procedures set out in AS 37.07.080(h) are followed. Under AS 37.07.080(h) the governor must submit a revised program to the Legislative Budget and Audit Committee and 45 days must elapse between the submission of the revised program and expenditure of the program receipts, unless the Legislative Budget and Audit Committee approves earlier

expenditure of the program receipts. The role of the Legislative Budget and Audit Committee in this process is largely advisory because even if the committee disapproves the expenditure, the governor may expend the program receipts at the end of the 45 day period after informing the committee of his intent to do so.

Once it is determined that program receipts have not been previously appropriated and the program review procedures are completed, the preconditions to the appropriation of the program receipts are satisfied. Those program receipts then become appropriated funds under sec. 2, ch. 116, SLA 1989 and may be expended by the department.

According to the information provided in your memorandum, the program receipts derived from the commercial use permit fee during fiscal year 1990 have not been appropriated. Thus these program receipts are still available for appropriation under sec. 2, ch. 116, SLA 1989 to supplement the initial appropriation of \$45,000 to the Department of Fish and Game for a computerized guide-outfitter area-based management system, provided that the governor and the Legislative Budget and Audit Committee comply with the program review provisions of AS 37.07.080(h).

Having concluded that the Department of Fish and Game may be authorized under sec. 2, ch. 116, SLA 1989 to expend program receipts from the commercial use permit fee, I must advise that the appropriation of program receipts under sec. 2 and similar provisions in prior years is subject to challenge as an invalid delegation of the appropriation power. Despite the long-standing acceptance of the program receipts appropriation process under sec. 2 by the Legislative Budget and Audit Committee and numerous governors, it is questionable whether the Alaska Constitution actually permits the governor to exercise such a broad and open-ended power over expenditure of program receipts during the interim between legislative sessions. Section 2 is a virtual delegation of the legislative appropriation power to the governor who then determines how much and for which purposes program receipts may be expended without a meaningful opportunity for legislative oversight before the funds are spent.

If I may be of further assistance, please advise.

GU:mi:gc
wkmi4/062

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

STEVE COWPER, GOVERNOR

333 RASPBERRY ROAD
ANCHORAGE, ALASKA 99518-1599
PHONE: (907) 344-0541

August 30, 1989

*Mark
FYI*

RECEIVED

SEP 1 1989

JAN FAIKS
SENATE OFFICE

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

Dear Senator Faiks:

I am pleased to announce that we have appointed Marianne See to the Wildlife Biologist position in charge of developing the guide-outfitter resource area maps which may be used in the future to assist in regulating this industry. Marianne has extensive experience as a biologist in Alaskan state, federal, and private sectors. Her diverse background includes statewide wildlife map and report production, geographic information management, technical writing, project coordination and management, interagency coordination, and biological research.

She previously has worked for the Department of Fish and Game, as well as the Bureau of Land Management, and an environmental consulting firm. She holds a Bachelor's degree in Environmental Sciences, and a Master's degree in Ecology from the University of Alberta.

We are fortunate to attract Marianne back to state service to work on this challenging project. Her phone number is 267-2420 in the Statistics Section, Division of Wildlife Conservation in Anchorage.

Sincerely,

W. Lewis Pamplin, Jr.

W. Lewis Pamplin, Jr.
Director
Division of Wildlife Conservation

cc: Task Force Members
SuzAnne Miller, Information Management Coordinator, Division
of Wildlife Conservation
Marianne See, Wildlife Biologist, Division of Wildlife
Conservation

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

STEVE COWPER, GOVERNOR

333 RASPBERRY ROAD
ANCHORAGE, ALASKA 99518-1599
PHONE: (907) 344-0541

August 30, 1989

Mr. Walter O. Stieglitz, Regional Director
U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, Alaska 99503

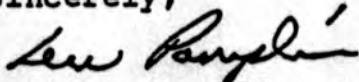
Dear Mr. ~~Stieglitz~~ ^{Walt}:

The Legislative Task Force on Guiding and Game has initiated development of a new resource based management system that may be used to assist in allocating access to big game hunting opportunities among guide-outfitters. Toward this end, the Department of Fish and Game is the designated lead agency to create maps of guide-outfitter resource areas that could be the basis of the management system. The criteria developed by the Task Force for delineating these areas include wildlife management concerns, enforcement concerns, land ownership, administrative restrictions (federal, state, and local government regulations), recognizable field boundaries, access availability and transportation considerations, and others. The task force plans to initiate a public process to receive input from interested parties.

Because it will be essential to keep federal and state agencies informed and involved in the development of this new system, we are asking your help with identifying the key people in your agency who should receive information and participate in the necessary meetings. Please indicate, at your earliest convenience, the names (and addresses) of your staff who should be included on our mailing lists.

Thank you for your assistance. Any specific inquiries may be directed to Marianne See, our project staff coordinator in Anchorage (267-2420).

Sincerely,


W. Lewis Pamplin, Jr.
Director

Division of Wildlife Conservation

cc: Senator Jan Faiks
SuzAnne Miller, Information Management Coordinator, Division
of Wildlife Conservation
Marianne See, Division of Wildlife Conservation

The same letter sent to the following:

VNameVMr. Walter O. Stieglitz, Regional Director
U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, Alaska 99503
VNameIIVMr. Stieglitz

VNameVMr. Boyd Evison, Regional Director
U.S. National Park Service
2525 Gambell Street
Anchorage, Alaska 99503-2892
VNameIIVMr. Evison

VNameVMr. Gary Gustafson, Director
Division of Land and Water Management
Department of Natural Resources
Pouch 7-005
Anchorage, Alaska 99510
VNameIIVMr. Gustafson

VNameVMr. Michael Penfold, State Director
Alaska State Office
U.S.D.I. Bureau of Land Management
222 West 7th Avenue, #13
Anchorage, Alaska 99513-7599
VNameIIVMr. Penfold

VNameVMr. Michael A. Barton, Regional Forester
U.S.D.A. Forest Service
Alaska Regional Office
P. O. Box 21628
Juneau, Alaska 99802-1628
VNameIIVMr. Barton

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99902-2000
PHONE: (907) 465-4100

RECEIVED

SEP 25 1989

JAN FAIKS
SENATE OFFICE

September 11, 1989

The Honorable Jan Faiks
Chairman
Alaska Legislative Task Force
on Guiding and Game
Alaska State Senate
P.O. Box V
Juneau, AK 99811

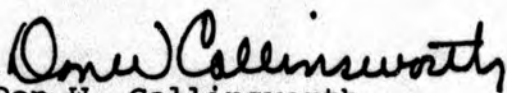
Dear Senator Faiks:

Thank you for your letter on the progress of the Task Force on Guiding and Game. Capable legal support will provide assistance in developing a workable management system for the big game industry in Alaska.

The Wildlife Conservation Division has hired an experienced and knowledgeable individual, Ms. Marianne See, to develop wildlife resource information for use by the Task Force. She and Wildlife Conservation Director, Lew Pamplin will continue to work closely with the Task Force during development of the management plan.

Thank you again for keeping us abreast of your progress.

Sincerely,


Don W. Collinsworth
Commissioner

DISTRIBUTED 10/6/89

by Lew Pamplin

Criteria for Developing the Guide-Outfitter
Resource Area Maps**

Top priority

- * Wildlife management concerns
 - Species abundance and diversity
 - Administrative wildlife management boundaries
(Game Management Unit/Subunits/Uniform Coding Units)
 - Harvest history
- * Enforcement concerns

Additional, co-equal concerns

- * Land ownership
- * Administrative restrictions
- * Easily recognizable (in the field) boundary features
- * Access availability and transportation considerations (methods and means restrictions)
- * General approach to the size and number of individual areas
- * Other land uses
- * Existing facilities
- * Other considerations

** Approved by the Legislative Task Force on Guiding and Game on July 19, 1989.

BIG GAME GUIDE-OUTFITTER RESOURCE AREA MAPS

STATUS REPORT

NOVEMBER 3, 1989

ALASKA DEPARTMENT OF FISH AND GAME
DIVISION OF WILDLIFE CONSERVATION

Background

In a recent decision by the Alaska Supreme Court, the former system for managing big game guide-outfitters was declared invalid, which nullified those areas previously designated for use by specific guide-outfitters. As a result, the Legislative Task Force on Guiding and Game has initiated development of a new resource based management system that may be used to assist in allocating access to big game hunting opportunities among guide-outfitters. The Alaska Department of Fish and Game is the designated lead agency to create maps of guide-outfitter resource areas that could be the basis of the management system.

Progress to Date

Mapping criteria

The Task Force evaluated a wide array of factors that should be considered when developing the new guide-outfitter resource areas. They determined that the primary concerns are wildlife management, and enforcement. Ranking next in importance are several co-equal factors that include land ownership, administrative restrictions, easily recognizable field boundary features, available access and type of transportation, general approach to the size and number of individual areas, other land uses, and other considerations.

The basic "building block" for new resource areas for guide-outfitting will be watersheds that have already been mapped on a statewide basis as part of the Alaska Department of Fish and Game's system for managing wildlife harvest data. These mapped watersheds are referred to as uniform geographic coding units. They will be evaluated in terms of wildlife management concerns and enforcement, as well as the other factors listed above. Units may be aggregated into larger areas, based upon these evaluations.

Public Involvement

Through a thorough public review process, the public will be closely involved with developing the proposed guide-outfitter resource areas. Public proposals for these areas will soon be solicited and reviewed along with agency concerns regarding the wildlife resources. Draft maps resulting from this process will be reviewed by the public prior to being revised and submitted to the Big Game Commercial Services Board.

Schedule

The map development phase is planned for a two year period. During this time the 25 game management units in the state will be mapped in a sequence that reflects the degree of industry interest and potential pressure on the wildlife resources. The proposed priority list for the 26 units will soon be made available for public comment.

Future Progress Reports

The Alaska Department of Fish and Game will be reporting on map project progress at upcoming meetings of the Task Force. Additional information may be obtained by contacting the project coordinator, Marianne See, in Anchorage at 907-267-2179.

MEMORANDUM

RECEIVED

STATE OF ALASKA

SEP 12 1989

TO: Alison Elgee JAN FAIKS
Division Director SENATE OFFICE
Division of Budget Review
Office of the Governor

DATE: August 30, 1989

FILE NO:

TELEPHONE NO: 465-4100

FROM: Warren W. Wiley
Assistant Commissioner
Department of Fish and Game

SUBJECT: RPL to receive and
expend program
receipts

The Department of Fish and Game, Division of Wildlife Conservation, requests authority to expend \$45,000 in receipts collected by the Department of Commerce, Division of Occupational Licensing. These receipts represent fees collected from Guides and Outfitters.

This funding will permit the department to develop a computer based guide/outfitter area management system for the Task Force on Guiding and Game as part of their review of that industry. The 1989 Legislative Session had approved \$90,000 as part of the department fiscal year 1990 budget, however that amount was reduced to \$45,000 by the free conference committee. The free conference committee funding level will not allow the department to complete the system.

The Division of Occupational Licensing estimates the use fees will generate more than \$50,000 in program receipts during FY 90. These fees are not appropriated revenues and were not included as part of the fiscal notes for SCS CSHB 112(R1s) am S. Last session the Legislature approved House Bill 112 (chapter 37 SLA 89) related to big game hunting. Section 08.54.470 establishes a "Commercial Use Permit Fee." AS 08.54.470(d) provides:

"The commissioner of administration shall separately account for commercial use permit fees deposited in the general fund by the department. The annual estimated balance in the account may be used by the legislature to make appropriations to the Department of Fish and Game and the Department of Public Safety to carry out their respective responsibilities for management of game resources and enforcement of game laws."

Additional information:

1. Funding availability: Funding is available from program receipts collected by the Department of Commerce.
2. New/Expanded Services: Development of a computer based guide/outfitter area management information system.

Alison Elgee

-2-

August 30, 1989

3. Impact on general funds: No additional general funds are required.
4. Positions funded: No new positions will be required. Existing department positions will be utilized.
5. Technical/budgetary aspects: Funding required:

71000 Personal Services	<u>\$ 45,000.00</u>
Total funding	\$ 45,000.00

If I can be of any assistance or provide any additional information, please do not hesitate to call on me.

cc: Beverly D. Reaume

WWW/BDR/DSH/eej



IN REPLY REFER TO:

RF/9684r/48-49

United States Department of the Interior

FISH AND WILDLIFE SERVICE
1011 E. TUDOR RD.
ANCHORAGE, ALASKA 99503

DEC 07 1989



RECEIVED

DEC 13 1989

JAN FAIKS
SENATE OFFICE

Lewis Pamplin
Alaska Department of Fish and Game
333 Raspberry Road
Anchorage, Alaska 99502

Dear Lew:

Recently we sent a questionnaire to all refuge managers in an attempt to determine the potential problems that may result if there were no control over the number of guides. We also asked them for the estimated annual harvest by guided hunters and unguided hunters. From the information received, we hope to be able to find out which areas of the state are the highest priority for developing the proposed guide/outfitter resource maps. A summary of the responses is enclosed.

Most of the potential problems identified related to the possible conflict between increased numbers of sport hunters and subsistence users, or potential problems with: overcrowding in prime hunting areas; overcrowding in areas with limited access; conflicts with unguided hunters; and reduction in the number of trophy animals. The refuges that identified potential impacts to wildlife populations were: Alaska Peninsula/Becharof and Izembek National Wildlife Refuges for brown bears; Izembek National Wildlife Refuge for caribou; Arctic National Wildlife Refuge for sheep; and Arctic and Alaska Peninsula National Wildlife Refuges for moose.

Of interest is the percent of the various species taken by guided hunters on refuges.

Brown bears	36.2%
Black bears	5.7%
Caribou	8.9%
Sheep	39.9%
Deer	5.0%
Moose	7.1%

Also of interest is the fact that 113 guides currently have special use permits to operate on refuges. Those refuges with the most demand, Alaska Peninsula/Becharof, Kodiak, and Arctic National Wildlife Refuges indicated the most potential resource problems (with the exception of Kodiak National Wildlife Refuge, where the harvest is regulated by state permits).

Based on this information, we recommend the highest priority be given to developing guide/outfitter resource maps and implementing the proposed guide/outfitter allocation system for the following refuge areas:

- | | |
|---|-------------------|
| 1. Alaska Peninsula/Becharof, Izembek National Wildlife Refuges | GMU 9 |
| 2. Arctic National Wildlife Refuge | GMU 26B, 26C, 25A |
| 3. Kodiak National Wildlife Refuge | GMU 8 |

The second highest priority should be given to:

- | | |
|------------------------------------|-----------|
| 4. Kenai National Wildlife Refuge | GMU 15, 7 |
| 5. Togiak National Wildlife Refuge | GMU 17 |

The remaining refuge areas are listed in order of priority:

- | | |
|--|--------|
| 6. Koyukuk National Wildlife Refuge | GMU 21 |
| 7. Innoko National Wildlife Refuge | GMU 21 |
| 8. Selawik National Wildlife Refuge | GMU 23 |
| 9. Tetlin National Wildlife Refuge | GMU 12 |
| 10. Nowitna National Wildlife Refuge | GMU 21 |
| 11. Yukon Flats National Wildlife Refuge | GMU 25 |
| 12. Yukon Delta National Wildlife Refuge | GMU 18 |
| 13. Alaska Maritime National Wildlife Refuge | GMU 10 |
| 14. Kanuti National Wildlife Refuge | GMU 24 |

If you have any questions regarding the guide/outfitter issue, please contact John Kurtz at 786-3355.

Sincerely,

Walt Stiglich

Regional Director

Enclosure

POTENTIAL PROBLEMS

ESTIMATED AVERAGE ANNUAL HARVEST

Wildlife Refuges	NUMBERS OF GUIDES UNDER PERMIT 1989	Brown Bear		Black Bear		Caribou		Sheep		Deer		Moose	
		Guided Hunters	Unguided Hunters	Guided Hunters	Unguided Hunters	Guided Hunters	Unguided Hunters	Guided Hunters	Unguided Hunters	Guided Hunters	Unguided Hunters	Guided Hunters	Unguided Hunters
Alaska Maritime	1	2	1	0	0	6	30	0	0	0	0	0	0
Arctic	17	15	15	1	5	30	170	90	110	0	0	18	60
Alaska Peninsula/ Becharof	45	75	270	0	0	225	750	0	0	0	0	57	105
Innoko	2	0	0	2	?	0	?	0	0	0	0	10	30
Izenbek	8	50	15	0	0	25	300	0	0	0	0	0	1
Kanuti	0	0	2	0	6	0	10	0	0	0	0	0	35
Kenai	6	2	9	6	88	1	16	4	30	0	0	11	450
Kodiak	19	63	52	0	0	0	0	0	250	4750	0	0	0
Koyukuk	1	0	1	1	75	0	25	0	0	0	0	4	270
Nowitna	0	0	0	0	?	0	0	0	0	0	0	0	55
Selawik	2	0	10	2	7	5	1500	0	0	0	0	5	85
Tetiia	2	2	2	0	4	0	2	3	5	0	0	2	12
Togiak	5	8	2	0	0	0	0	0	0	0	0	?	?
Yukon Delta	3	5	5	0	40	0	25	0	0	0	0	0	100
Yukon Flats	3	2	10	4	40	1	150	0	1	0	0	4	240
TOTAL	113	224	394	16	265	293	2978	97	146	250	4750	111	1443
Percent Harvested by Guided Hunters		36.2		5.7		8.9		39.9		5.0		7.1	

A - Potential Impact To Wildlife Resources

B - Potential Impact To Subsistence Users

C - Other Potential Impact (Quality, Limited Access, Unguided Hunters etc.)

APPENDIX

K

#2
Marianne See
10/18/89

Meeting Summary

INTERAGENCY MEETING ON BIG GAME-GUIDE-OUTFITTING

ADF&G October 18, 1989

Participants Representing:

BLM	Terry O'Sullivan
NPS	Rebecca Kaiser
USFWS	John Kurtz
USFS	Leo Keeler
A.WNR	Ron Swanson
	Mike Sullivan
ADF&G	Marianne See
Sen. Faiks	Mark Riehle

The following text summarizes specific recommendations or issues identified by topic during the discussions.

BIG GAME GUIDE-OUTFITTER RESOURCE AREA MAPS

ADF&G indicated that their proposed ranking of game management units for preparing draft maps would be submitted to the task force for comment and public review at an upcoming meeting.

All agencies agreed that it will be important to include the input of guide-outfitters along with agency biologists and the general public in the process of developing the maps of guide-outfitter resource areas.

The federal representatives all indicated that:

a) the state should try to align guide-outfitter resource areas with landowner/land manager boundaries, as much as possible, and boundaries should be easily recognizable in the field,

b) federal land management agencies want to be involved in the process of delineating guide-outfitter resource areas,

c) they are concerned that the size of the new areas could be large enough for the potential of joint use by guide-outfitters. These agencies clearly stated that in any system that designates where commercial operators could be, the federal land managers' concern is the quality of experience for the user of public lands, which in this case is the guided hunter. The agencies provide public use for a broad spectrum of users, and have to allocate opportunities among many types of users.

NPS indicated that they do not favor joint use on lands they manage because of past problems with joint use, as well as their concessions program criteria which encourages as few

operators per area as necessary. FWS indicated that they might have to subdivide any large guide-outfitter areas in order to minimize joint use.

COMPATIBILITY OF FEDERAL AND STATE AUTHORIZATIONS FOR GUIDE-OUTFITTER RESOURCE AREAS

The DNR and the federal managers indicated that:

a) they favor the state issuing permits for guide-outfitter resource areas; they do not favor issuing leases. The comparable federal authorizations are permits, not leases, and would not be compatible with leases. DNR also noted that under state law, leases must be competitively awarded at auction.

b) administrative requirements for the guide-outfitter applicant should be the same wherever possible, for all land managing agencies. This would minimize burdensome paperwork for guide-outfitters as well as state and federal agencies. Examples could include required elements in operational plans, and insurance requirements.

Terms of Authorizations for Guide-Outfitter Resource Areas

a) Landowner or Land Manager Permission

The FS indicated that a federal land use permit can be issued prior to an applicant receiving all necessary state licences, authorizations, proof of insurance, etc. The FS does this, then calls the licensing board prior to the hunting season to verify that their permit holder is licensed and authorized to use a guide-outfitter area. If not, the permit is cancelled.

b) Transferability

With the exception of NPS, the federal land managers do not allow their permits to be transferred. The BLM, FS and FWS do allow a new owner of a guide-outfitter business to apply for the necessary permit(s), but they must assess the new owner's application and plan, and thus do not automatically issue the permit. NPS concessions policies allow NPS to approve sales of concessions, then transfer the authorization.

The federal representatives agreed that if the state incorporates transferability into the new guide-outfitter management system, each federal agency would have to evaluate each proposed new operator against federal agency standards before issuing a new authorization to use federal lands.

c) Operational Plan (Plan of Operations)

The federal agencies currently require an operational plan from guide-outfitters seeking a land use permit. The state and federal representatives indicated that, if the state adopts this requirement too, the state and federal requirements for information in these plans should be the same, where possible. Even so, there will likely be some differences between agencies on certain required information. Also it is likely that each applicant's plan may be evaluated somewhat differently by each agency because of specific agency mandates.

FEDERAL INPUT TO THE TASK FORCE

The federal land management agency representatives discussed possible options that would allow them to present advisory comments to the task force during meetings regarding pertinent federal regulations and policy. They requested that federal agency representatives be recognized in an advisory capacity during task force meetings by the Chairman, whose representative indicated that he would forward this concern.

NOTE: Regarding the following topics, ADF&G noted during the meeting that these could be taken up with the Big Game Commercial Services Board.

DELINEATING LEVELS OF USE BY GUIDE-OUTFITTERS IN RESOURCE AREAS, AND ALLOCATING THE AREAS

DNR indicated that there may be a need to place a limit on the number of guide-outfitters in resource areas to prevent excessive pressures on state lands. With substantial fees required for using federal and private lands, state lands are likely to attract more guide-outfitters to state lands than in past years.

All federal representatives indicated that their agencies wanted a say in:

- a) how many resource areas for guide-outfitters would be designated in the federal land units (parks, preserves, forests, refuges, etc.),
- b) who would be selected to use those areas.

If the federal agencies were taking the lead in making these allocation determinations instead of the state, it would generally be done through their respective federal land use

planning processes, with the exception of NPS. In these processes, they would consider commercial guide-outfitting as one of many components of the public. The NPS concessions program is distinctly different in that the public (guided hunter) initiates the need for the commercial service, not the guide-outfitter. NPS generally limits commercial development to one vendor per type of service in an area, and seeks service continuity by contracting with one business as long as possible. NPS is not likely to return to the former CUL (commercial use license) system, and instead will probably continue to manage guide-outfitting under the concessions program.

The federal representatives indicated that the federal land managers need to work with the allocating entity (Big Game Commercial Services Board), and need to work within certain timeframes. Federal agencies need enough time for their evaluation process, which include:

- a) All federal land management agencies are required to carry out an ANILCA Sec. 810 evaluation of subsistence uses in their consideration of all uses for any given area in relation to an application for a use permit.
- b) For any new permit for a guide-outfitter, BLM and FS must use the Environmental Assessment (EA) process, which includes public notification and public comments. The FWS makes a compatibility determination. FWS indicated that if the provisions of the new systems for (a) delineating guide-outfitter resource areas and (b) assigning their use would be compatible with FWS permits, then FWS may potentially be able to do a blanket EA on the whole system instead of on each individual guide-outfitter resource area. When individual EAs are required for each proposed federal land use permit, there must be sufficient time for the process, including public review, prior to having the state authorize the use of a specific area for guide-outfitting. FS needs 60 days for the public review before they issue permits.
- c) NPS is also concerned about having adequate lead time to process applicants prior to the hunting season. They must release a prospectus (request for proposals or applications) in advance. For example, for guide-outfitting in 1991, NPS must release the prospectus by April 1990.

Federal representatives suggested ways that federal land managers could interface with the Big Game Commercial Services Board, for areas on federal lands:

- a) A 3-step process was suggested:
 - 1. guide-outfitter areas area established
 - 2. land manager indicates desired number of guide-outfitters per area
 - 3. guide-outfitters are selected per area
- b) three alternative selection options were suggested:
 - 1. the CSB could jointly select permittees with the federal land manager,
 - 2. the CSB could select, with federal land manager having a veto authority,
 - 3. the CSB could select a qualified pool (if more than one applicant per area), then federal land manager could select finalist

SELECTION METHODS

The state representatives indicated this has not yet been determined, but that a sequence of methods could potentially be used by the state, depending upon the relationship of the number of applicants to the numbers of available authorizations. For example, if there were more applicants than authorizations in an area, those found to be qualified could then be entered into a lottery or other selection method. Any authorizations issued would need to be consistent with any current state area or management land use plan. Where a plan does not exist a site specific plan might be needed. It was noted by the federal representatives that in cases with more applicants than authorizations, lotteries are more readily defended against possible legal challenge than are more subjective selection methods.

FEES

The FS and BLM noted that the 3% fee (of gross revenues) for that portion of any guide-outfitting business on those federal lands was negotiated with the guide-outfitting industry in the lower 48.

DNR pointed out that if fees for use of state lands are comparable to those for federal lands it could substantially increase costs for guide-outfitters, however if fees for state lands are substantially lower than for using federal or private lands, there may be an increased demand on state lands.