

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672
1708 SCOMM 67: GUIDING AND GAME TASK FORCE, 1989-1990 1276

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CORRESPONDENCE



Alaska Professional Sportsmen's Association

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

RECEIVED

JAN 17 1990

January 5, 1990

JAN FAIKS
SENATE OFFICE

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

Dear Senator Faiks,

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

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

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

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

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

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

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

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

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

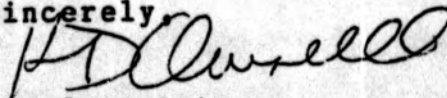
14. Please provide copies of mailing lists used when informing the public of task force public hearing. What professional groups were included? Who compiled these lists. Were all guides, assistant guides and inactive guides included?

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

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

Thank you very much.

Sincerely,

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

Ken Owsichuk
Vice President

Alaska Professional Sportsmen's Assn.

Alaska State Legislature

JUDICIARY
CHAIRMAN
907-465-4523



JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

February 6, 1990

Ken Owsichek
Box 190301
Anchorage, AK 99519

Dear Mr. Owsichek:

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

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

Task Force members:

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

OUT OF SESSION

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

Ken Owsichuk
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February 6, 1990

Staff:

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

Birch, Horton representatives:

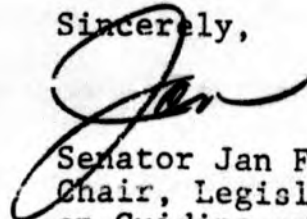
Steve Pradell
William Horn (by telephone)

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

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

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

Sincerely,



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

JF:TBC:pl
WKP1/105
Attachments

Ken Owsichuk
Page 3
February 6, 1990

cc: Governor Cowper

All members of the Legislative
Task Force on Guiding and Game

All State Legislators

William Horn
Birch, Horton, Bittner and Cherot

THE FOLLOWING ATTACHMENT IS A LIST OF ALL TASK FORCE MEETINGS

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

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

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

(newspaper ads, written notice to staff mailing list)

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

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

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

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

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

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

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

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

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

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

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

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

copy

June 29, 1989

PRESS RELEASE

Subject: Legislative Task Force on Guiding and Game

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

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

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

The task force will conduct meetings throughout the legislative interim.

For additional information please call 561-7610.

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

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

for the October 5th & 6th meeting:

Anchorage Daily News
Anchorage Times
Fairbanks Newsminer
Peninsula Clarion
Juneau Empire

For the November 8th meeting:

Anchorage Daily News
Anchorage Times
Fairbanks Newsminer

For the November 20th meeting:

Anchorage Daily News
Anchorage Times
Fairbanks Newsminer
Frontiersman
Peninsula Clarion

Legislative Task Force
on
Guiding and Game
will meet on

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

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

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

at
Anchorage Legislative Information Office
3111 C Street, First Floor

Public Welcome!

Senator Jan Faiks
Task Force Chairman

• For more information, call 561-7610 •

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

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

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



Alaska Professional Sportsmen's Association

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

RECEIVED

JAN 31 1990

January 20, 1990

JAN FAIKS
SENATE OFFICE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Manage the game and limit the kill by permit or registration.

b. Stop "hot spots" or kill zones from developing and spread hunting pressure throughout the state.

c. Stabilize hunting seasons and adjust the management of game by decisions made before the kill as well as after the kill.

d. Leave game management with the proper agencies.

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

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

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

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

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

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

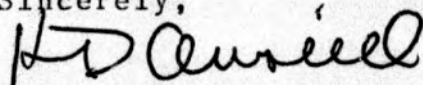
8. The Federal government likes the limited entry concept. It fits right in with their efforts to eventually stop all consumptive uses on park and refuge lands. The task force should recommend that the legislature demand, of the Federal government, the return of control of all fish and game management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

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

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

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

Sincerely,



Kenneth D. Owsichuk
Vice President
Alaska Professional Sportsmen's Association

k1f/KO

cc: Governor Cowper
All Task Force Members
All State Legislators

TASK

SCOMM

67:17

Alaska State Legislature

JUDICIARY
CHAIRMAN
907-465-4523

JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

Alaska Legislative Task Force on Guiding and Game

Members

Jan Faiks, Chairman

State Senator

Pete Buist

Guide Board Member

Randall Burns

Division of Occupational Licensing Director

Vernita Cassidy

Public Member

Ralph Eluska

Native Village Landholder

Ken Fanning

Alaska Senate

Captain Phillip Gilson

Division of Fish and Wildlife Protection

Robert Hinman

Research/Analysis

Lyman Hoffman

State Representative

Mathew Iya

Public Member

Paul Johnson

Big Game Guide

Mike Navarre

State Representative

Lew Pamplin

Division of Wildlife Conservation

Nick Pierskalla

Outfitter

Richard Stern

Air Taxi Operator

OUT OF SESSION

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

Alaska State Legislature

JUDICIARY
CHAIRMAN
907-465-4523

JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

ALASKA LEGISLATIVE TASK FORCE ON GUIDING AND GAME

The Alaska Legislature has directed the Legislative Task Force on Guiding and Game to formulate a recommendation for a comprehensive resource-based management system for the allocation of big game hunting opportunities among guide-outfitters. The recommendation is to be provided in a report to the Legislature no later than January 15, 1990.

The task force was originally formed in May, 1988 as part of the effort to find a legislative solution to a growing conflict between licensed big game guides and unlicensed "outfitters". The panel recommended sweeping changes which were incorporated into legislation signed into law in May, 1989. It became necessary to extend the one year life of the task force as a result of the October 1988 Alaska Supreme Court decision in the Owsichuk case. The court declared unconstitutional the previously used restrictive guide area system of big game industry management. In the face of the Owsichuk decision, a new management system became essential.

Under the legislative directive, conservation of the resource is to be the foremost purpose of the management system which is now under development. The system must also provide broad access to the resource as guaranteed by the common use clause of the Alaska constitution. The plan must have statewide applicability to help ensure a more standardized system among state, federal and private landowners.

Because of the limited time frame for the panel's work, it retained the law firm of Birch, Horton, Bittner and Cherot to assist in developing recommendations for a management plan that would survive a constitutional challenge. The firm will also assist the task force in writing related legislation.

The 15 member task force met in June and July to organize and establish a work plan. They met again in October to provide the groundwork necessary for Birch Horton to craft the basics of a workable management system which fits the parameters of the legislative directive for the task force. The panel will receive the proposed plan from Birch Horton just prior to its November 8th meeting. Members will discuss and if necessary, offer revisions to the proposal during the meeting. Further response to the plan and discussion of possible legislation will take place during the November 20th meeting. These meetings will also enable the panel to provide information to

OUT OF SESSION

the public and gather public comment concerning the proposed management plan.

It is likely that an early December meeting will be necessary to obtain task force approval of the final proposed plan and corresponding proposed legislation. It is anticipated that the necessary legislation would become law by the end of the legislative session in early May, 1990.

NOVEMBER 6, 1989

Game Management Proposal Questions and Checklist

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

*also for
the competition
trust hunt*

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~~

Guide - Outfitter Resource
Alt. 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

service to the client

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 ^{addition of information} 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.

for
Quality
Information

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 v. 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
Page 13

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

Suede-Outfitter Resource Area
PURPOSES OF ~~GAME MANAGEMENT AREA ALLOCATION:~~ *allocation*
Program.

- 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. *makes final recommendations of boundaries to CCB.*
- ~~7) ADF&G makes final decisions on configuration.~~
- ~~8) 7. Designated areas made available for competitive bidding.~~
Big Game Survey Board adopts areas & makes arrangements for 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. *assuredly.*
- 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~~ *as a*
specify: *form prescribed by CSB*

- ~~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.
in good cause. safety net clause.
- 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.
provided that applicant received area for 5 yrs or less.

10) on 3rd renewal - Dept Comments on Stewardship of area. re game management

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. *if unable*

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.
non-resident permits *that require a guide & outfitter*
- 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.

must include federal sign-off

- 2) Permittees must compete for renewal at end of term.

- 3) CSB may revoke or modify ~~on~~ ^{permit} at any time for violations by the permittee or other causes ~~preposed~~ ^{such as} *for* some management ~~preposed~~ ^{concerns}.

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 26 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.

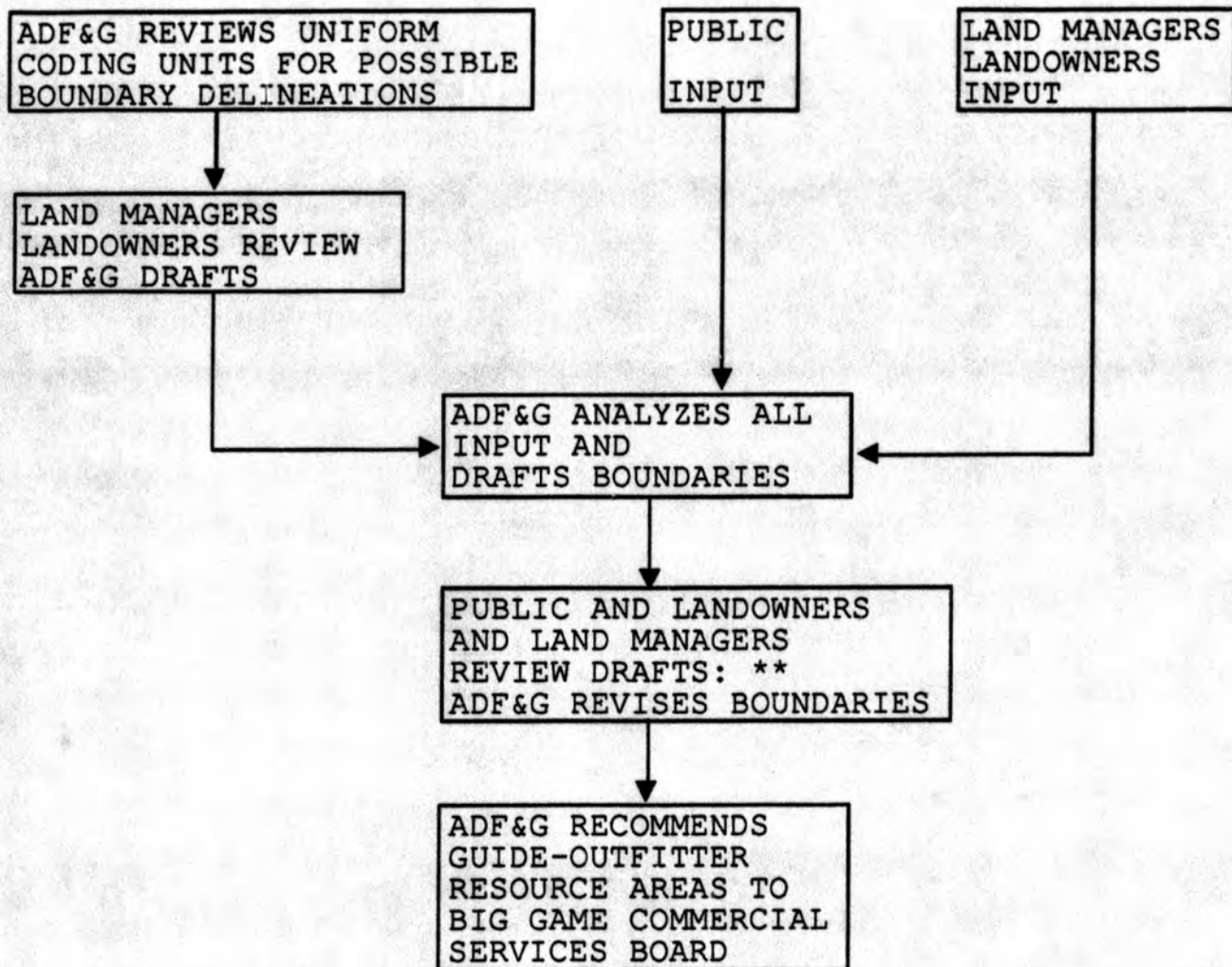
Future Progress Reports

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.

Note @ 1:45pm.

PROCESS FOR DEVELOPING BIG GAME GUIDE-OUTFITTER
RESOURCE AREA MAPS

ALASKA DEPARTMENT OF FISH AND GAME
DIVISION OF WILDLIFE CONSERVATION
NOVEMBER 1989



** Review methods would include sending packets of draft maps out for review; also holding public meetings for comments.

SCHEDULE: For the entire state this process is expected to take two years, within which higher priority areas would be completed first.

PUBLIC PROCESS FOR DEVELOPING BIG GAME GUIDE-OUTFITTER
RESOURCE MAPS

DIVISION OF WILDLIFE CONSERVATION
ALASKA DEPARTMENT OF FISH AND GAME

November 7, 1989

The Legislative Task Force on Guiding and Game has directed the Alaska Department of Fish and Game to solicit initial public input as part of developing big game guide-outfitter resource maps. The following steps could be used to achieve the goal of obtaining public input regarding the locations of boundaries for new guide-outfitter resource areas.

Step 1: ADF&G OPENS PUBLIC INPUT PERIOD

- A. ADF&G conducts a public information campaign to alert people to the process, and how to participate.
- B. ADF&G distributes an order packet for the public to submit to ADF&G to get the actual maps and forms for public comment. Includes a statewide index map of GMUs and titles of 1:250,000 scale quads, and a sheet explaining (a) the process, (b) that the public should designate on the index maps which quad maps they want, and (c) that they have to submit the index map as an order form to ADF&G.
- C. ADF&G sends map order information to organizations and individuals that could include licensed guide-outfitters, APHA, landowners, as well as all who request map sets.

Step 2: PUBLIC INPUT

- A. ADF&G sends out packets of maps and forms to match public orders. Maps are 1:250,000 scale blue-line copies with subunit and UCU boundaries. Forms are for written boundary information, species to be used, ideas and concerns about how boundaries would be determined, and other helpful information. The resource mapping criteria approved by the task force would be clearly presented in the explanatory sheet for the public.
- B. Statewide, ADF&G allows 60 days for the public to obtain maps/forms and return them to ADF&G. Sends letter upon receiving each set of comments/maps, explaining the next steps in the process, and upcoming schedule.

C. During the public review period, ADF&G begins evaluations of each GMU based upon wildlife resource criteria, and reviews uniform coding units for possible boundaries for guide-outfitter areas. ADF&G provides these preliminary drafts to landowners/land managers for their initial review and comment. Landowners/land managers include but are not limited to regional Native corporations, village corporations, boroughs, municipalities, DNR, BLM, FWS, FS. and NPS.

✓ not profit + profit

Step 3: ADF&G ANALYZES ALL INPUT AND DRAFTS BOUNDARIES

At the end of the public review period, ADF&G evaluates all submitted comments, by GMU, and revises earlier proposed boundaries as necessary. Areas will be examined in priority order according to the departmental list.

Step 4: PUBLIC REVIEW OF ADF&G DRAFTS

The new maps are then provided for public review, including landowners/land managers. ADF&G considers all final review comments, and makes any necessary revisions to the draft maps resulting from the review.

Step 5: ADF&G RECOMMENDS GUIDE-OUTFITTER AREAS TO BIG GAME COMMERCIAL SERVICES BOARD

- A. ADF&G prepares legal descriptions and digitized boundaries for the recommended guide-outfitter resource areas. *provide a rationale w rationale for each area*
- B. ADF&G transmits final recommendations to the BGCSB.

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
ADNR	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.

FEEES

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.

The pros and cons of flat fees (e.g. FWS) versus percentage fees were discussed, noting that a percentage fee:

- a) is proportional and fair to operations of any scale
- b) requires much more bookkeeping by guide-outfitters, and becomes especially burdensome for operators dealing with several land managers/landowners
- c) requires more administrative agency staff to handle all the paperwork.



LAWS OF ALASKA

1989

Source

HCS CSSB 139(Res)

Chapter No.

10

AN ACT

Providing for retroactive extension of the termination date of the Task Force on Guiding and Game; increasing the membership of the Task Force on Guiding and Game; authorizing certain agencies to assist the Task Force on Guiding and Game; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1, LINE 13

Approved by the Governor: April 5, 1989
Actual Effective Date: April 6, 1989; Sections 1 - 2 are
retroactive to January 8, 1989

Chapter 10

AN ACT

Providing for retroactive extension of the termination date of the Task Force on Guiding and Game; increasing the membership of the Task Force on Guiding and Game; authorizing certain agencies to assist the Task Force on Guiding and Game; and providing for an effective date.

* Section 1. Section 14(d), ch. 160, SLA 1988, is repeated and re-enacted to read:

(d) The task force terminates on the earlier of

(1) January 15, 1990; or

(2) the date of enactment into law of

(A) a licensing system for hunting guides and other persons who provide services to hunters for the purpose of facilitating the harvest of big game; and

(B) a management system for allocating rights of access to big game to licensed guides.

* Sec. 2. Notwithstanding the qualifications for members of the Task Force on Guiding and Game set out in sec. 14(a), ch. 160, SLA 1988, the members of the task force on January 8, 1989, shall continue to serve until they resign or the task force is terminated.

* Sec. 3. Notwithstanding the number and composition of the Task Force on Guiding and Game set out in sec. 14(a), ch. 160, SLA 1988, the membership of the task force is increased by two additional members appointed by

Chapter 10

1 the governor. Of the two persons appointed to the task force under this
2 section, one person shall have expertise in research and analysis and, if
3 possible, particular knowledge in resource management or allocation systems
4 and may not have a financial interest in a business involving or related to
5 the commercial taking of game and one person shall represent Native village
6 landholders.

7 * Sec. 4. The Office of the Governor, office of management and budget,
8 division of policy and the legislature's House Research Agency and Senate
9 Advisory Council shall provide information, data, research, analysis, and
10 technical assistance to the task force, as requested by the task force, for
11 the purpose of developing a management system for allocating rights of
12 access to big game to licensed guides.

13 * Sec. 5. Sections 1 - 2 of this Act are retroactive to January 8,
14 1989.

15 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

November 7, 1989

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

Dear Senator Faiks:

You have asked us whether fees generated by a concession type system for allocating access to big game hunting opportunities among guide-outfitters may be automatically deposited (i.e. without legislative appropriation) into the Fish and Game Fund. Our answer to this question is no.

The Fish and Game Fund was established as a funding source for carrying out the purposes and provisions of Title 16, Alaska Statutes. AS 16.05.100. The composition of the Fund is provided for in AS 16.05.110. This statute says that, in addition to money appropriated by the legislature, the fund may receive money from particular sources as well as "money from any other source". AS 16.05.110(6). Because concession fees do not satisfy any of the particular descriptions, they could only come in under the catch-all provision.

Automatic deposit, however, must be examined in light of article IX, section 7 of the Alaska Constitution. This section generally prohibits legislation that dedicates revenue to special purposes. It does, however, allow some limited exceptions and exemptions. The section provides in full:

The proceeds of any state tax or license shall not be dedicated to any special purpose except as provided in section 15 of this article (i.e. the Alaska Permanent Fund) or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes on the date of the ratification by the people of Alaska (i.e. on April 24, 1956).

We have interpreted the term "proceeds of any state tax or license" to apply generally to all public funds. See 1975 Op.

REPLY TO:

- ☐ 1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697
- ☐ 1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317
- ☐ P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

The honorable Jan Faiks
Alaska State Senator

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Att'y Gen. No. 9 at 16 (May 2); 1982 Op. Att'y Gen. No. 13 at 7 (Nov. 30); see also State v. Alex, 646 P.2d 203 (Alaska 1982). Thus, the prohibition against dedicated funds would apply to concession fees unless they fall under one of the exceptions or exemptions contained in this section of the constitution.

The exception for the Alaska Permanent Fund and the exception for funds required by the federal government for state participation in federal programs would not apply to concession fees. Therefore, the only remaining issue is whether the exemption applies, that is, whether an automatic dedication of the concession fees to the Fish and Game Fund would be a continuation of a dedication that existed on April 24, 1956, the date that this constitutional section was ratified.

The pre-statehood predecessor to the Fish and Game Fund was the "Fisheries Contingent Receipts Fund" established by the Territorial Legislature in 1953. In this fund, there is only one specific dedication. There, funds "received in settlement of a claim for damages to the fish and wildlife resources of the Territory" may be "expended for the protection, rehabilitation, preservation or conservation of such resources." Sec. 3, Ch. 64 SLA 1953. We have found no instance, however, where fees collected from guides for access to big game hunting opportunities were dedicated to a fund for fish and game purposes prior to the ratification of Article IX, section 7 of the Alaska Constitution.

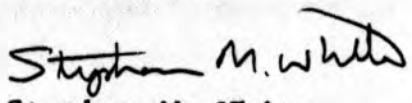
Although we conclude that legislation that automatically dedicates concession fees to the Fish and Game Fund would be unconstitutional, there is nothing that prevents the legislature from annually appropriating these fees to the same purpose. This can be achieved by identifying the fees as an appropriation source and accounting for them as "program receipts" as they are collected.

We hope this answers your question.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:


Stephen M. White
Assistant Attorney General

SMW:jf

TRAVEL SCHEDULE FOR NOVEMBER 4 - 6

Sunday, November 5

1:05am (Saturday night) depart Anchorage for Washington, thru Seattle & Chicago, arrive at 4:11pm

Hotel : Nov. 5
Radisson Mark Plaza Hotel
5000 Seminary Road
Alexandria, VA 22311-1995
confirmation #11513

Monday, November 6

8:00am - Call Nikki, Rep. Young's office, she will know then if he will be available to see you. (202)225-5765

12:15pm - Meet Bill Horn for lunch at his office at:
1155 Connecticut Ave, NW Suite 200
the entrance is on "M" street
(202)659-5800

together you and Bill can go to 2pm meeting

2:00pm - Meeting with John Turner, Director of Fish & Wildlife Service
18th & C, Interior Bldg, Rm 3256
(202)343-4717 - Debbie, secretary

Connie Harriman, Assistance Director, Fish & Wildlife Service and Jim Ridenour, Director, National Park Service, will not be able to join you. However, members of their staff should be in the meeting as well as anyone else Mr. Turner felt has sufficient knowledge in the areas of discussion.

Hotel : Nov. 6
Embassy Suite Hotel
(703)979-9799
confirmation #65212028

Tuesday, November 7

8:00am depart Washington for Anchorage, thru Chicago & Seattle, arrive at 4:00pm

Ken
Randall

Check on the legality of
adjacent landowners having
to approve the hunting permit
of a guide that wants to
hunt on land next door.



LAWS OF ALASKA

1989

Source

SCS CSHB 112(R1a) am S

Chapter No.

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AN ACT

Relating to big game hunting and to the regulation of big game and marine mammal guide-outfitting, transportation, and other commercial services for big game hunters; creating the Big Game Commercial Services Board; relating to presumptive sentences for violation of certain big game commercial services statutes; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1, LINE 15

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: May 11, 1989

Actual Effective Date: AS 08.54.310(b)(1), as enacted by sec. 3, is conditional; secs. 14(j), 14(k), 15, and AS 08.54.395 as enacted by sec. 3, take effect July 15, 1989; remainder of Act takes effect May 12, 1989

AN ACT

Relating to big game hunting and to the regulation of big game and marine mammal guide-outfitting, transportation, and other commercial services for big game hunters; creating the Big Game Commercial Services Board; relating to presumptive sentences for violation of certain big game commercial services statutes; and providing for an effective date.

* Section 1. AS 08.01.010(10) is repealed and reenacted to read:

(10) Big Game Commercial Services Board (AS 08.54.300);

* Sec. 2. AS 08.03.010(c)(20) is repealed and reenacted to read:

(20) Big Game Commercial Services Board (AS 08.54.300) -- June 30, 1993.

* Sec. 3. AS 08.54 is amended by adding new sections to read:

ARTICLE 4. BIG GAME COMMERCIAL SERVICES BOARD.

Sec. 08.54.300. CREATION AND MEMBERSHIP OF BOARD. (a) For the purposes of licensing and regulating the activities of providers of commercial services to big game hunters in the interest of the state's wildlife resources there is created the Big Game Commercial Services Board. For administrative purposes, the board is in the Department of Commerce and Economic Development.

(b) The board consists of nine members:

(1) two members who are licensed guide-outfitters;

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(2) two members who are licensed transporters, one of whom must be engaged in the business of providing air transportation services;

(3) one member who holds a commercial use permit, but does not hold any class of guide-outfitter license or a transporter license;

(4) one member of the Board of Game who is chosen by the Board of Game and who does not hold a commercial use permit;

(5) one member who represents Native landholders; and

(6) two public members.

Sec. 08.54.310. DUTIES AND POWERS. (a) The board shall

(1) prepare, grade, and administer

(A) a written and oral examination of an applicant for a guide-outfitter license that requires demonstration that the applicant is qualified generally to provide guide-outfitted hunts and, in particular, to guide-outfit in each game management unit the applicant has selected; if an applicant demonstrates limited ability to read or write the English language, the entire examination shall be administered orally; and

(B) an oral examination of a guide-outfitter who seeks an amendment of a game management unit certification; the examination must require demonstration that the guide-outfitter is qualified to provide guide-outfitted hunts in each new game management unit for which the guide-outfitter seeks to be certified;

(2) determine qualifications of applicants for class-A assistant guide-outfitter, marine mammal guide-outfitter, and assistant guide-outfitter licenses and authorize the issuance of licenses to those who qualify;

1 (3) establish performance standards for providers of big
2 game commercial services and regulate the activities of these provid-
3 ers;

4 (4) compile, maintain, and publish an annual register of
5 big game commercial service providers subject to this chapter who have
6 not been convicted of a violation of a state or federal statute or
7 regulation relating to the provision of big game commercial services;
8 a big game commercial services provider listed in the register whose
9 license or permit is revoked or suspended shall be removed from the
10 register while the provider's license or permit is revoked or sus-
11 pended;

12 (5) prohibit guide-outfitting, transporting, and other big
13 game commercial services activities that are unsportsmanlike, uneth-
14 ical, unsafe, against principles of game conservation, degrading to a
15 profession subject to this chapter, or that adversely affect natural
16 resources;

17 (6) after a hearing, revoke, suspend, or deny renewal of a
18 license or permit under AS 08.54.500 - 08.54.510;

19 (7) authorize issuance of transporter licenses;

20 (8) authorize issuance of commercial use permits;

21 (9) meet at least twice annually, once in Anchorage and
22 once in another municipality;

23 (10) provide for registration of base camps and facilities
24 used by persons who are licensed or who hold a permit under this
25 chapter.

26 (b) The board may

27 (1) establish, subject to the prior approval of the commis-
28 sioner of fish and game, a resource-based management system for allo-
29 cating access to big game hunting opportunities among guide-outfitters
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licensed under this chapter;

(2) establish the level of supervision that a guide-outfitter shall provide for class-A assistant guide-outfitters and assistant guide-outfitters who are employed by the guide-outfitter.

Sec. 08.54.320. BOARD REGULATIONS. The board shall adopt procedural and substantive regulations required by this chapter or reasonably necessary for its administration.

Sec. 08.54.330. BOARD ASSISTANCE. The Department of Fish and Game, Department of Natural Resources, and Department of Public Safety shall provide the board with information, data, or technical assistance requested by the board for the purposes of licensing and regulating the activities of providers of commercial services to big game hunters.

ARTICLE 5. LICENSING.

Sec. 08.54.350. GUIDE-OUTFITTER LICENSE. (a) A natural person is entitled to a guide-outfitter license if the person

(1) is 21 years of age or older;

(2) has practical field experience in the handling of firearms, hunting, judging trophies, field preparation of meat and trophies, first aid, photography, and related guide-outfitting activities;

(3) is familiar with the terrain and transportation problems in the game management unit for which the license is requested;

(4) has passed the qualification examinations prepared and administered by the board;

(5) has demonstrated to the board sufficient standards of competence and ethical conduct and has not been convicted of a state or federal hunting or guide-outfitting statute or regulation within the last five years for which the person was fined more than \$500 or

1 imprisoned for more than five days;

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

5 (7) has been licensed as and performed the services of a
6 class-A assistant guide-outfitter or assistant guide-outfitter in the
7 state for a part of each of three years, or has guide-outfitted in the
8 state for a part of each of three years under a marine mammal guide-
9 outfitter license issued under AS 08.54.360;

10 (8) has demonstrated a current knowledge of fishing, hunt-
11 ing, and guide-outfitting regulations;

12 (9) is capable of performing the essential duties associ-
13 ated with guide-outfitting;

14 (10) has been favorably recommended in writing by six big
15 game hunters, two for each year of the person's most recent three
16 years as a class-A assistant guide-outfitter or assistant guide-out-
17 fitter, when the person has guide-outfitted or assisted in guide-out-
18 fitting as a class-A assistant guide-outfitter or assistant guide-out-
19 fitter, whose recommendations have been solicited by the board from a
20 list provided by the applicant;

21 (11) possesses a business license to provide guide-out-
22 fitting services; and

23 (12) has paid the license fee and commercial use permit
24 fee.

25 (b) A person who receives a master guide-outfitter license under
26 sec. 12 of this Act may use the title master guide-outfitter and may
27 annually renew the license unless the license has been revoked or
28 suspended or has lapsed under AS 08.54.440. A master guide-outfitter
29 license is for all purposes under this chapter a guide-outfitter
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license.

(c) A guide-outfitter may contract to guide-outfit hunts for big game and may provide transportation to, from, or in the field that is incidental to a guide-outfitted hunt.

Sec. 08.54.360. MARINE MAMMAL GUIDE-OUTFITTER LICENSE. (a) The board may issue a marine mammal guide-outfitter license to a natural person who applies to guide-outfit a hunt for a specific species of marine mammal in a specifically designated area if the person

(1) is 21 years of age or older;

(2) has, for at least 10 years, resided and hunted in the area of the state in which the applicant is to guide-outfit;

(3) is able to perform the duties of a marine mammal guide-outfitter;

(4) has demonstrated knowledge of the following areas to an extent and degree satisfactory to the board:

(A) current fish and game laws and regulations;

(B) relevant characteristics of the specific species to be hunted;

(C) field preparation of trophies;

(D) care of game meat;

(E) use of guide-outfitting gear;

(F) firearm safety;

(G) practical first aid; and

(H) booking and contracting hunts;

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

(6) possesses a business license to provide guide-

outfitting services; and

(7) has paid the license fee and commercial use permit fee.

(b) A marine mammal guide-outfitter may contract to guide-outfit hunts for species of marine mammals for which the marine mammal guide-outfitter license is issued.

Sec. 08.54.370. RENEWAL OF GUIDE-OUTFITTER LICENSE AND MARINE MAMMAL GUIDE-OUTFITTER LICENSE. (a) An applicant for renewal of a guide-outfitter license or a marine mammal guide-outfitter license shall submit with the application for renewal

(1) the hunt record required under AS 08.54.550 for the period covered by the current license;

(2) the license fee for the next licensing period; and

(3) the commercial use permit fee for the next licensing period.

(b) The department may not renew a license under this section unless all fees have been paid in full and the hunt record has been filed.

Sec. 08.54.380. CLASS-A ASSISTANT GUIDE-OUTFITTER LICENSE. (a) A natural person is entitled to a class-A assistant guide-outfitter license if

(1) the person

(A) has been employed for at least one season as a licensed assistant guide-outfitter; and

(B) has had at least 10 years hunting experience in the game management units in which the person is to be employed; military service outside the state for not more than three years shall be accepted as part of the required 10 years hunting experience; or

(2) the person

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(A) physically resides in the game management unit in which the person is to be employed;

(B) has had at least 15 years hunting experience in the game management unit in which the person is to be employed; military service outside of the state for not more than three years shall be accepted as part of the required 15 years hunting experience; and

(C) has passed qualification examinations prepared and administered by the board.

(b) A class-A assistant guide-outfitter

(1) may not contract to guide-outfit hunts;

(2) shall be under the supervision of a guide-outfitter who has contracted with the client for whom the class-A assistant guide-outfitter is conducting the hunt; and

(3) may take charge of a camp and conduct guide-outfitter activities from it without the guide-outfitter being present in the area if the guide-outfitter is supervising the guide-outfitting activities.

Sec. 08.54.390. ASSISTANT GUIDE-OUTFITTER LICENSE. (a) A natural person is entitled to an assistant guide-outfitter license if the person

(1) is 18 years of age or older;

(2) passes an examination administered by the board;

(3) has hunted in the state in two of the last five years;

(4) has demonstrated practical knowledge of first aid and cardiopulmonary resuscitation;

(5) is in sound physical condition; and

(6) meets additional qualifications that the board may establish.

(b) An assistant guide-outfitter

(1) may not contract to guide-outfit hunts; and

(2) shall be employed by a guide-outfitter and under the supervision of a guide-outfitter or class-A assistant guide-outfitter at all times while the assistant guide-outfitter is in the field on guide-outfitted hunts.

Sec. 08.54.395. INSURANCE AND OTHER REQUIREMENTS FOR GUIDE-OUTFITTERS. (a) A guide-outfitter or marine mammal guide-outfitter, while engaged in providing big game commercial hunting services shall carry, as a minimum, comprehensive general liability insurance of \$300,000 per occurrence or \$500,000 per annual aggregate or post a financial bond in those amounts.

(b) If a guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or an assistant guide-outfitter personally pilots an aircraft to transport clients during the provision of big game commercial hunting services, the guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter shall have a commercial pilot's rating or a minimum of 250 hours of flying time in the state.

(c) During the provision of big game commercial hunting services, an aircraft used by a guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter to transport clients must carry aviation passenger liability insurance of at least \$100,000 per seat or must be subject to a financial bond in that amount.

Sec. 08.54.400. TRANSPORTER LICENSE. (a) A person is entitled to a transporter license if the person

(1) applies on a form provided by the department;

(2) pays the license fee;

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(3) pays the commercial use permit fee;

(4) provides proof of

(A) an air taxi/commercial operator certificate issued by the Federal Aviation Administration under 14 C.F.R. Part 135, if the person provides air transportation services to big game hunters;

(B) licensure by the Coast Guard to carry passengers for hire, if the person provides water transportation services to big game hunters and if licensure is required by the Coast Guard; and

(5) has a business license to transport big game hunters.

(b) A transporter may provide transportation services for compensation to big game hunters and accommodations in the field at a permanent lodge, house, or cabin owned by the transporter or on a boat with permanent living quarters located on salt water. A transporter may also provide, under authority of a commercial use permit, other big game commercial services as defined under AS 08.54.460. A transporter may not provide big game commercial hunting services without holding the appropriate license.

(c) An applicant for renewal of a transporter license shall submit with the application for renewal

(1) an activity report on a form provided by the department for the period covered by the current license; an activity report shall contain information required by the board by regulation;

(2) the license fee for the next licensing period;

(3) the commercial use permit fee for the next licensing period; and

(4) proof of

(A) an air taxi/commercial operator certificate issued

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by the Federal Aviation Administration under 14 C.F.R. Part 135, if the applicant provides air transportation services to big game hunters;

(B) licensure by the Coast Guard to carry passengers for hire, if the applicant provides water transportation services to big game hunters and if licensure is required by the Coast Guard.

(d) The department may not renew a transporter license unless all fees have been paid in full and the activity report required under (c)(1) of this section and the proof required under (c)(4) of this section have been filed.

(e) A transporter shall place a decal provided by the department on each plane, boat, vehicle, or other equipment used by the transporter to provide transportation services to big game hunters. The decal must bear the transporter's license number. The decal is valid only for the plane, boat, vehicle, or other equipment for which the decal is issued.

Sec. 08.54.410. APPEAL TO COMMISSIONER FROM BOARD ON DENIAL OF LICENSE. The commissioner of commerce and economic development may order that an applicant for an initial license under AS 08.54.350 - 08.54.400 be allowed to take the license examination or be issued the license if, after reviewing a petition filed by the applicant, the commissioner finds that

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

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

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

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(A) an error of fact by the board; or

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

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

(5) sustaining the board's denial or refusal would work a substantial injustice on the applicant.

Sec. 08.54.420. RENEWAL OF LICENSES. Notwithstanding AS 08.01.-100(a), guide-outfitter, marine mammal guide-outfitter, and transporter licenses shall be renewed annually on dates set by the department with the approval of the board.

Sec. 08.54.430. EXAMINATIONS FOR GUIDE-OUTFITTER LICENSES. (a) The board shall administer the qualification examinations required under this chapter at least twice a year. An examination may not be given within 90 days after the previous examination. At least once every other year the board shall give the examination at a location other than Anchorage.

(b) The board shall regularly disseminate information regarding examinations and other qualifications for all classes of guide-outfitter licenses to residents of the rural areas of the state.

Sec. 08.54.440. FAILURE TO RENEW. (a) A license may not be issued to a guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter who has failed to renew a license issued under this chapter for two consecutive years unless the guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter again meets the qualifications for initial issuance of the license.

(b) Notwithstanding (a) of this section, a guide-outfitter who fails to renew a license is not required to requalify under

AS 08.54.350(a)(7), unless the license has been lapsed for three or more years.

Sec. 08.54.450. LICENSE AND EXAMINATION FEES. (a) The department shall set license fees under AS 08.01.065 for each of the following:

- (1) guide-outfitter
- (2) class-A assistant guide-outfitter;
- (3) assistant guide-outfitter;
- (4) marine mammal guide-outfitter;
- (5) transporter.

(b) The license fee for the guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter license is in addition to the fee required for a hunting license.

(c) An applicant for a qualifying examination for any class of guide-outfitter license shall pay a fee established by regulations adopted under AS 08.01.065.

Sec. 08.54.460. COMMERCIAL USE PERMIT HOLDER. (a) A person, other than a guide-outfitter, marine mammal guide-outfitter, or a transporter, who provides other big game commercial services for compensation shall register with the board on a form provided by the board and shall obtain a commercial use permit and pay the annual commercial use permit fee set under AS 08.54.470. In this section "other big game commercial services" includes provision of accommodations in the field at a permanent lodge, house, or cabin owned by the commercial use permit holder, hunt broker services, gear rental services, photographic or videographic services, and services as defined by the board by regulation.

(b) A commercial use permit may not be issued to a hunting club.

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A hunting club may not provide other big game commercial services for compensation.

Sec. 08.54.470. COMMERCIAL USE PERMIT AND FEE. (a) A person who is licensed under this chapter as a guide-outfitter, marine mammal guide-outfitter, or transporter shall obtain an annual commercial use permit and pay an annual commercial use permit fee.

(b) The department, in consultation with the board, shall set the amount of the commercial use permit fee.

(c) A guide-outfitter, marine mammal guide-outfitter, and transporter shall pay the commercial use permit fee at the time of application for issuance or renewal of a guide-outfitter license, marine mammal guide-outfitter license, or transporter license.

(d) 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.

ARTICLE 6. PENALTIES.

Sec. 08.54.500. DISCIPLINE OF GUIDE-OUTFITTERS. (a) The board may hold a hearing to determine whether disciplinary action is necessary if a written complaint concerning the guide-outfitting activities of a licensee who holds any class of guide-outfitter license is filed with the board. The board shall hold a hearing to determine whether a licensee should be disciplined within a reasonable time after

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

parties;

(2) a written complaint concerning a licensee's conduct during a life-threatening situation is filed with the board; or

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

(b) After a hearing, the board may revoke, suspend, or deny renewal of any class of guide-outfitter license, if the board finds that the licensee

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

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

(c) After a hearing, the board shall revoke any class of guide-outfitter license if the board finds that the licensee

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

(2) is incompetent as a guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter; or

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

(A) waste of a wild food animal;

(B) hunting on the same day airborne;

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(C) hunting during a closed hunting season; or

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

(d) If a certified copy of a judgment of conviction of a licensee who holds any class of guide-outfitter license for an offense described under (c)(3) of this section is filed with the board, the board shall immediately suspend the licensee's license. The suspension may be ordered even if the conviction resulted from a plea of nolo contendere or if the conviction is under appeal. The suspension remains in effect until after the final disposition of the disciplinary proceeding under this section.

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

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

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

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

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

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

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

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

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

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

(A) waste of a wild food animal;

(B) hunting on the same day airborne;

(C) hunting during a closed hunting season; or

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

regulation.

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

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

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

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

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

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

decision not to take disciplinary action.

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

(1) person who is licensed or who holds a commercial use permit under this chapter to knowingly fail to timely report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, a violation of a state fish, game, or big game commercial services statute or regulation that the person reasonably believed was committed by a client or an employee of the person;

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

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

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

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

(ii) reporting it;

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

(4) person who is licensed or who holds a commercial use permit issued under this chapter to intentionally obstruct or hinder or attempt to obstruct or hinder lawful hunting engaged in by a person who is not a client of the person;

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

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and supervised by a guide-outfitter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 08.54.530. INJUNCTION AGAINST UNLAWFUL ACTION. When in the judgment of the board a person has engaged in an act in violation of AS 08.54.380(b), 08.54.390(b), 08.54.400(b), 08.54.510(a), and 08.54.520 or the regulations adopted under them, the board may apply to the appropriate court for an order enjoining the action. Upon a showing by the board that the person is engaging in the act, the court shall grant injunctive relief or other appropriate order without bond.

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

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

ARTICLE 7. GENERAL PROVISIONS.

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

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

Sec. 08.54.590. DEFINITIONS. In this chapter

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

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

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