

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
5961 HOUSE RESOURCES

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1 commissioner of commerce and economic development. The commissioner may  
2 order that the applicant be allowed to take the license examination or be  
3 issued the license if, after reviewing a petition filed by the applicant,  
4 the commissioner finds that

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

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

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

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

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

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

16 (5) sustaining the board's denial or refusal would work a sub-  
17 stantial injustice on the applicant.

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

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

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

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

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

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

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

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

21 (1) the specific location of the camp, cabin, or lodge;

22 (2) the number of big game hunters in each party that will use  
23 the camp, cabin, or lodge; and

24 (3) the kinds or species of big game that will be hunted.

25 (h) A person who furnishes an affidavit under (g) of this section  
26 shall notify the Department of Public Safety of the amount and kinds or  
27 species of big game taken by each hunter who uses the base camp, cabin, or  
28 permanent lodge to which the affidavit relates. Notice shall be given  
29 within 30 days after the game is taken. The Department of Public Safety  
CSHB 112(Res)

1 shall provide the information received under this subsection to the Depart-  
2 ment of Fish and Game.

3 (i) A person who

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

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

9 (j) In this section,

10 (1) "base camp" does not include spike camp, fly camp, or over-  
11 night camp;

12 (2) "big game" and "field" have the meaning given in AS 08.54.-  
13 590, as enacted by sec. 3 of this Act;

14 (3) "guiding" means accompanying or being present with a big  
15 game hunter in the field, personally or through an assistant, for compen-  
16 sation or with the intent or an agreement to receive compensation; "guid-  
17 ing" does not include

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

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

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

26 \* Sec. 14. INITIAL APPOINTMENTS TO BIG GAME COMMERCIAL SERVICES BOARD.  
27 Notwithstanding AS 08.54.300(b), as enacted by sec. 3 of this Act, the  
28 initial appointments to the Big Game Commercial Services Board under

29 (1) AS 08.54.300(b)(1) may also be filled by the appointment of

1 a master guide or registered guide licensed under former AS 08.54.010 -  
2 08.54.240 or a person who lawfully registered a camp, cabin, or lodge under  
3 AS 16.05.787 during 1988 and legally engaged in the business of big game  
4 outfitting in 1986, 1987, and 1988;

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

8 \* Sec. 15. TRANSITION. Litigation, hearings, investigations, and other  
9 proceedings pending under a law amended or repealed by this Act continue in  
10 effect and may be continued and completed notwithstanding an amendment or  
11 repeal provided for in this Act. Licenses, orders, and regulations issued  
12 or adopted under authority of a law amended or repealed by this Act remain  
13 in effect for the term issued or until revoked, vacated, or otherwise  
14 modified under the provisions of this Act.

15 \* Sec. 16. AS 08.54.010, 08.54.030, 08.54.035, 08.54.040, 08.54.045,  
16 08.54.050, 08.54.060, 08.54.070, 08.54.100, 08.54.110, 08.54.120, 08.54.-  
17 130, 08.54.140, 08.54.141, 08.54.150, 08.54.160, 08.54.170, 08.54.180,  
18 08.54.186, 08.54.190, 08.54.195, 08.54.200, 08.54.210, 08.54.220, 08.54.-  
19 230, 08.54.240; AS 16.05.370(b), 16.05.370(c), 16.05.407(e), 16.05.786, and  
20 16.05.787 are repealed.

21 \* Sec. 17. Sections 4, 6, 12, and 13, ch. 160, SLA 1988 are repealed.

22 \* Sec. 18. AS 08.54.310(b)(?), as enacted by sec. 3 of this Act, takes  
23 effect on the earlier of

24 (1) January 15, 1990; or

25 (2) the date of submission to the legislature of a recom-  
26 mendation by the Task Force on Guiding and Game for a resource-based  
27 management system for allocating access to big game hunting opportuni-  
28 ties among guide-outfitters licensed under AS 08.54.

29 \* Sec. 19. Except for AS 08.54.310(b)(1), as enacted by sec. 3 of this

1 Act, this Act takes effect immediately under AS 01.10.070(c).

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ALASKA'S BIG GAME

A Report on the Commercial Aspects of  
its Uses and Users

A Final Report to  
the 16th Legislature

Legislative Task Force on  
Guiding and Game  
January 1989

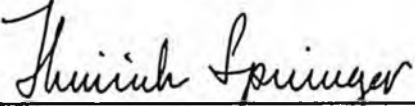
## PREFACE

The Task Force has addressed the points mandated by Legislative Letter of Intent dated May 9, 1988.

The State Supreme Court decision in the Owsichek case dated October 21, 1988, has forced the issue of commercial use of game into a broader perspective. Originally the main emphasis was to clarify the relationship and role of "outfitters". After the court's decision it became clear that all aspects needed to be reexamined, especially the role of "guides", "outfitters", and "transporters". As a result the Task Force recommends some sweeping changes. We tried hard to establish a system that accommodates the constitutional "common use" clause, puts game management and the welfare of game on sound footing, provides a viable economic base for the industry, is cost effective and enforceable, and is simple enough for effective administration.

Big game is one of Alaska's outstanding values, both from a consumptive and non-consumptive use perspective. These recommendations should assist the legislature to formulate laws that fulfill the stated objectives.

We include with our report draft legislation which we feel should be enacted immediately, as well as recommendations for formulating an area-based management concept. We recommend that the Task Force be extended to assist the legislature in defining such a system and creating enabling legislation.

  
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Heinrich Springer, Chairman

# **CORRECTION**

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

ALASKA'S BIG GAME

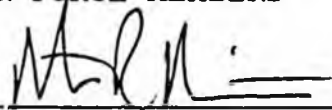
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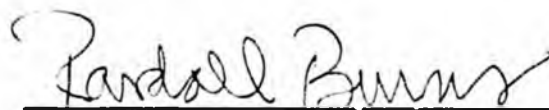
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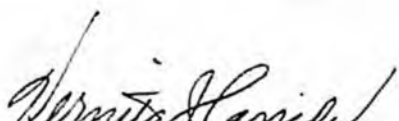
Legislative Task Force on  
Guiding and Game  
January 1989


INTERIM TASK FORCE ON  
GUIDING AND GAME

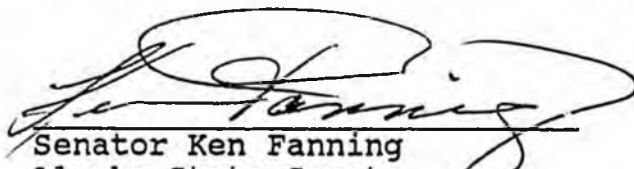
TASK FORCE MEMBERS


  
Mr. Pete Buist  
Alaska Guide Board


  
Mr. Randall Burns  
Alaska Dept. of Commerce &  
Economic Development


  
Ms. Vernita Cassidy  
Public Member

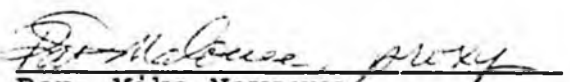
  
Senator Jan Faiks  
Alaska State Senate

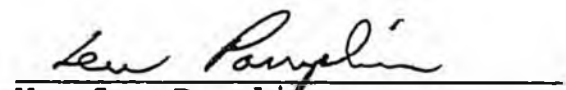
  
Senator Ken Fanning  
Alaska State Senate

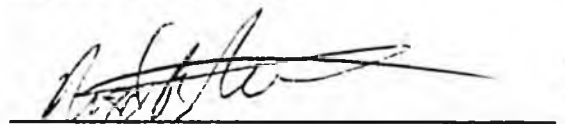
  
Mr. Phil Gilson  
Alaska Department of  
Public Safety


  
Mr. Matthew Iya  
Public Member


  
Mr. Paul Johnson  
Guide Member

  
Rep. Mike Navarre  
Alaska State House of  
Representatives

  
Mr. Lew Pamplin  
Alaska Department of  
Fish & Game

  
Mr. Nick Pierskalla  
Non-Guide Member

  
Ms. Gayle Ranney  
Air Taxi Member

  
Rep. Heinrich Springer  
Alaska State House of  
Representatives

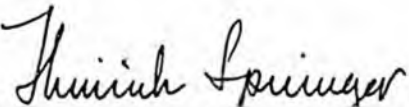
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Heinrich Springer, Chairman

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## TASK FORCE ACTIVITY SUMMARY

The 13 member Task Force on Guiding and Game was created by the legislature through SB 191. Subjects to be covered were contained in a "Letter of Intent" for HCS CS SB 191 (Rules) dated May 9, 1988.

The Task Force conducted the following meetings and work sessions:

July 18, 1988, at Anchorage, Legislative Information Office (LIO), 3111 "C" Street.

October 24-25, 1988, at Fairbanks, LIO, 119 N. Cushman Street.

November 15-16 at Soldotna, Kenai Borough Assembly Chambers.

December 12-15 at Anchorage, LIO, 3111 "C" Street.

Work sessions by teleconference:

January 4, 9, 10, 11, and 13, 1989.

A subcommittee on rural issues held two public meetings at Kotzebue on October 4, 1988, and at King Salmon on October 5, 1988. A subcommittee on data management held two work sessions at Anchorage.

The meetings were preceded by extensive advertisement on radio and in newspapers throughout the state and in all cases allowed access through the communications network of the Legislative Information Office plus toll free numbers for persons in remote locations. In addition, RurAL CAP did an extensive survey collecting opinions from rural residents; and Senator Fanning provided survey data submitted by guides and air taxi operators. All public hearings were well attended.

The Task Force appreciates the cooperation and testimony from many individuals and organizations. Many have given freely of their time and expertise. We want to thank particularly the Alaska State Board of Game; the Alaska State Guide Board; the Alaska Professional Hunter's Association; the Alaska Outfitter's Association; Ray DeMarchi, Canada, British Columbia Ministry of the Environment, Wildlife Branch; and Steve White, Alaska State Department of Law.

The 15th Legislature addressed the problems in the field caused by unregulated "outfitters" through SB 191 and the initial work of the Task Force went in that direction.

On October 21, 1988, a couple of days prior to our Fairbanks meeting, the Supreme Court issued its decision on the Owsichek case. The timing was excellent from the Task Force's work standpoint. And basically the emphasis shifted from "outfitting" to commercial use in general. This is reflected in the recommendations. Some sweeping changes are envisioned and submitted as recommendations for consideration. Although the court decision disallows several logical approaches to game management, we believe it still allows creation of systems that reach the stated objectives.

The Task Force represented a broad cross-section of state agencies and user group viewpoints with varying and often conflicting opinions. The extensive public hearings, research, and in-depth discussions provided not only the forum, but also the background to make careful, enlightened, and fair recommendations for immediate and long-term action which will ensure proper wildlife conservation as well as a stable environment for offering commercial services for big game hunting. A fragile, but important balance has been struck. Our recommendations represent a compromise in which each specific recommendation is important to the effectiveness of the overall policy changes.

The main points of our findings and recommendations are:

- a. Support for "commercial use" of game. Throughout this report the term "commercial use" refers to the providing of hunting services for compensation.
- b. Necessity to regulate all commercial users.
- c. Recognition of three main user groups: Guide-Outfitters, Transporters, and Commercial Permit Holders and establishment of licensure requirements for Guide-Outfitters.
- d. Replace the present Guide Board with a Big Game Commercial Services Board.
- e. Create a state established and controlled area management plan.
- f. Distribute use privileges to the commercial big game industry within the framework of the State's regulations and the Supreme Court's criteria.
- g. Concentrate on long-term plans, but address interim functions.

These recommendations are described in more detail as follows:

## RECOMMENDATIONS

The Task Force adopted protection of game resources as its highest priority and as an umbrella policy. All deliberations and recommendations incorporated this principle. While various agency or user group interests were sometimes compromised, wildlife conservation never was.

The Task Force closely followed the topics stated in the "Letter of Intent" for HCS CS SB 191 (Rules), albeit the Owsichuk decision considerably broadened the scope of our review in some areas. The Task Force makes the recommendations listed below:

1. Commercial use of game is a valid principle.

The Task Force on Guiding and Game recognizes that the commercial utilization of big game is an important part of a sound wildlife resource management system and that the State of Alaska realizes significant social and economic benefits from maintaining a viable commercial big game hunting industry. Alaska's big game hunting opportunities draw international attention and contribute a substantial amount to the state's tourism economy. As the world's human population continues to increase, and the resource base continues to decline, the economic and social value of these hunting opportunities will grow.

The Task Force recognizes and supports the validity of the commercial utilization of game in Alaska, within the existing framework of resource priority allocation.

2. All commercial users need to be regulated.

The State of Alaska should develop a regulatory system which ensures the health of the big game resource and permits the commercial big game hunting industry. For this to occur all commercial users must be subject to consistent and stable regulations.

### 3. Owsichek Case

On October 21, 1988, the Alaska Supreme Court issued its ruling on the constitutionality of the exclusive or restricted guide area system. It clearly stated that the present exclusive guide area system violates the "common use" clause of the state constitution.

Any system needs to address the following points:

1. Open access to the system;
2. Limited duration of use privilege;
3. Validity of a management principle; and,
4. Compensation to the state.

On November 1, 1988, assistant Attorney General, Stephen M. White, issued an analysis of this decision.

On December 8, 1988, the Alaska Supreme Court issued a "stay" of its decision until June 1, 1989, thus allowing the legislative and executive branches time to address the problem.

### 4. Examination of other states and countries.

The Task Force has examined statutes and regulations which apply to other states and countries relating to commercial aspects of game and finds them of limited value. While other areas have faced similar problems as Alaska and have found applicable solutions, their charters and constitutions contain clauses different from ours. Alaska is unique in respect to the constitutional provisions for "common use" of game, subsistence priority, and sustained yield mandate for the taking of game. (Article VIII, Sections 3 and 4, Alaska Constitution.)

### 5. User Group Definition.

The Task Force recommends three commercial user groups: Guide-Outfitter, Transporter, and Commercial Permit Holder.

The Guide-Outfitter can provide a broad range of services statewide, ranging from guiding to outfitting. Guide-Outfitters are the only user group who can provide services in "the field". They should be limited to selecting and operating in no more than three (3) Game Management Units (GMU's).

"The field" means any area outside of established, year-around dwellings, businesses, and other developments normally associated with villages, towns, or cities, excluding hotels and roadhouses located on the state highway system.

The Transporter is limited to providing transportation directly servicing big game hunts.

The Commercial Permit Holder is a third group consisting of service providers such as lodge operators/hunt brokers, expeditors, gear renters and commercial photographers, all of whom need to be identified and regulated. Since most of these already require some form of commercial registration, a commercial use permit will suffice to identify them. "Clubs" present a specific problem which is addressed under separate legislation.

#### 6. User Group Qualifications and Licensure.

##### QUALIFICATIONS:

When appropriate, all commercial users listed below must pass an appropriate examination.

Guide-Outfitter must comply with the requirements under current law for registered or master guides and the term master guide shall be deleted. The Task Force recommends that guide-outfitter licenses shall be issued to a natural person (not an entity).

Class A Guide-Outfitter must comply with the requirements under current law for Class A Assistant Guides, with the following change: reduce the experience requirement from 20 to 10 years. It is recommended that the requirement for a letter of recommendation be deleted. It is further recommended that the state retain the special class of Marine Mammal Guide-Outfitter.

Assistant Guide-Outfitter must be at least 18 years of age, have hunting experience in the state for at least two of the past five years, possess a first aid card and have completed CPR training or equivalent (e.g., EMT or MD). It is recommended that the requirement for a letter of recommendation be deleted.

Transporter must comply with federal and state requirements for operation (transporter utilizing aircraft must have complied with Part 135; transporter utilizing boats must have U.S. Coast Guard license.)

Commercial Permit Holder must comply with federal and state requirements for operation.

All commercial users must comply with all federal and state requirements for operation, including holding lawful permits for lands occupied by the service provider.

USER GROUP LICENSES REQUIRED:

Guide-Outfitter:

1. Alaska business license
2. Guide-Outfitter license (in the appropriate category)
3. Commercial Use permit

Transporter:

1. Alaska business license
2. Transporter license
3. Commercial Use permit

Commercial Permit Holder:

1. Alaska business license
2. Commercial Use permit

Aircraft Operation Requirements:

The Task Force recommends deletion of AS 08.54.210 (a)(6) relating to Federal Aviation regulations (FAR) Part 135 requirements.

Although the Task Force is recommending that the Part 135 portion of SB 191 be deleted, this is not to indicate that the guides are being given a green light to continue using aircraft in their guiding businesses beyond what would be considered "incidental" flying. The Task Force merely feels that the regulation of commercial air commerce is under the authority of the Federal Aviation Administration.

It is suggested that those guides using aircraft for flying beyond that which is considered incidental should begin the process of application for Part 135, or should hire an existing air taxi for that portion of their flying. It is recognized that the maintenance program, the annual check rides and the inspections required for Part 135 are conducive to a safe operation.

In regards to the provisions of Part 135, the Task Force saw no need to develop a legal definition for "incidental", but rather allow the federal agencies to impose a definition as it pertains to aircraft operations (FAR Part 135).

### Rural Concerns:

Rural residents often have excellent guide-outfitter capabilities from a practical standpoint, but sometimes lack the educational and theoretical aspects of the examination process to qualify for a guide-outfitter license.

In addition to recognizing traditional difficulties in rural communities, the Task Force believes that the new board needs to substantially increase its information dissemination activities to enable rural residents interested in becoming licensed guide-outfitters greater access to the licensing procedures. Enabling legislation needs to accommodate this situation.

### 7. User Group Reporting Requirements.

Those engaged in providing commercial services for the purpose of taking game as Guide-Outfitter, Transporter or Commercial Permit Holder must comply with annual reporting requirements based on Department of Fish and Game (ADF&G) and Public Safety final recommendations. Completion of the annual reporting requirement is a prerequisite for licensing (base camp registration).

Individual reports which pertain to the commercial aspects of game shall be confidential.

Decals, for the purpose of law enforcement identification of commercial users, should be required on all aircraft, boats, etc.

### 8. Fee Structure.

The Task Force has considered and established a list of suggested fees as follows:

1. Fixed Commercial Use Permit Fee - \$25 to \$50;
2. Big Game Conservation Fee -- 25% of existing big game tag fee (also known as "head tax"); and,
3. License fee

Not less than 50% of the fees collected should be designated for game management.

## 9. Insurance and Bonding.

The Task Force has reviewed the concept, cost and availability of insurance and bonding for commercial users and has determined that, while they support and encourage having insurance, whenever possible, the market condition and difficulty of acquiring insurance and bonding may pose extreme hardships on a great number of commercial users.

Transporters and some service providers are required to have insurance in their respective fields by other regulations.

## 10. Penalty.

The Task Force has reviewed the statute, AS 08.54.210, and recommends the following changes, as detailed under Article 6 of the recommended legislation for unlicensed guiding, which imposes a felony penalty, and recommends the following changes:

1. Eliminate the mandatory one year sentence;
2. Make first time offenses a misdemeanor with a minimum incarceration of two months, and raise the maximum fine that may be imposed to \$30,000;
3. Make some second time offenses a felony;
4. Do not allow the judge to impose a Suspended Imposition of Sentence (SIS); and
5. Encourage continued cooperation between the Department of Public Safety, Division of Fish and Wildlife Protection and the District Attorney's office.

## 11. Transitional Measures for User Groups.

Those outfitters who have been engaged in the big game commercial services industry as "outfitters", and have complied with current requirements under SB 191 (registered base camps, etc.) and can show financial proof of activity in 1986, 1987, and 1988 (business license, financial documentation, IRS) may continue to operate, in the interim, until new laws have been adopted. Within one year of the effective date of passage of a new law, they must pass the guide-outfitter exam and may continue to operate as outfitters under SB 191 requirements, during that transitional period.

12. Role of State Employee.

The Task Force has examined the question of whether state employees shall be allowed to participate in the commercial taking of game and has determined that the ADF&G and DPS have policies and procedures (P&P) to administer ethics and conflict of interest statutes and that strict adherence must be enforced. They further recommend that the agencies (ADF&G and DPS) request an Attorney General's opinion on the appropriateness of state employees' participation in the commercial game industry.

13. Guide Required Species.

The Task Force has considered the question of adding species to the required guide list and recommends that mountain goats be added to the required guide list.

Based on testimony, this will go a long way to provide some compatibility with the present demand that non-residents require "guides" for hunting of sheep and brown/grizzly bear. Climate, terrain, and nature of these species necessitate assistance to the non-resident hunter.

14. Creation of a new Big Game Commercial Services Board.

The Task Force has reviewed the Legislative Budget and Audit reports for 1985 and 1987. Some problems with the Guide Board are apparent. The Task Force recommends that the Guide Board sunset upon the creation of an expanded board whose function is to regulate the activity and licensing of commercial big game user groups. That board membership shall consist of two Guide-Outfitters, one Transporter, one representative from ADF&G, and one from FWP, one State land manager (DNR), one Native land manager, one public member and one Game Board member. The board shall be administered by the Department of Commerce and Economic Development (DCED).

15. Extension of Task Force on Guiding and Game.

The Supreme Court decision on the Owsichek case shifted the emphasis of the Task Force's work from regulation of "outfitters" to a much broader scope. Since a "management system" is of paramount importance and consequence, the Task Force recommends that it be extended in order to assist the legislature in the formulation of laws pertaining to management system and area concept schemes.

16. Management System.

Due to the resulting time constraints the Task Force was unable to analyze and present a complete recommendation on the management system.

The Supreme Court issued a "stay" of its decision until June 1, 1989, which will allow the legislature to act in a deliberate manner to address this situation. In order to assist the legislature in the formulation of such a law, we recommend to extend this Task Force to capitalize on work already done.

The following preliminary recommendations are given, realizing that additional information is needed:

The Task Force finds that some kind of an area based game management concept is of utmost importance. Nearly all countries and states in the world that manage game have adopted some kind of land based management system. It is necessary to integrate the guiding-outfitting operations into Alaska's well established game management system.

Our constitutional requirements and our complex game resource allocation system (subsistence, resident and non-resident hunting) makes development and administration of an area based system a very difficult task indeed.

The obvious option to allow unrestricted access is not viable, as it would only recreate the conditions that existed in the 60's, which prompted the establishment of an assigned area system in the first place. Subsistence priority rights have been established and need to be incorporated in any management scheme. Although the game is under state jurisdiction, land surface right holders indirectly control access to game. Checkerboard distribution of land holdings further complicates this. Furthermore, federal agencies, who control the majority of land, have different regulations. The major land owners need to participate in the formulation of the management system.

Following their discussions of a management system, the Task Force recommends for immediate action, that:

1. ADF&G be designated as lead agency, whose purpose is to formulate and designate management areas within the present GMU framework; and,
2. DNR needs ability to expeditiously adopt a concession or use system that is compatible with other land uses and the practices of other land areas.

The Task Force also recommends for consideration:

The state should establish a lease, concession, or allocation system on a staggered schedule;

The state should derive some financial benefits from the commercial utilization of a public resource; such revenue should be at least partially (not less than 50%) used for game management purposes;

Allocation methods of such use privileges need to be established (lottery, negotiated, competitive bidding, etc.).

Implementation of such legislation requires close work with the Alaska Departments of Law, Natural Resources, Fish and Game, and Public Safety. The Task Force has spent considerable time on these matters and is most willing to assist.

6-0401A  
Utermohle  
1/14/89

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to big game hunting and to the  
7 regulation of big game and marine mammal guide-out-  
8 fitting, transportation, and other commercial ser-  
9 vices for big game hunters; creating the Big Game  
10 Commercial Services Board; and providing for an  
11 effective date."

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

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

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

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

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

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

19 ARTICLE 4. BIG GAME COMMERCIAL SERVICES BOARD

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

26 (b) The board consists of nine members:

27 (1) the commissioner of fish and game or the commissioner's  
28 designee:

29 (2) the commissioner of natural resources or the

1 commissioner's designee;

2 (3) the commissioner of public safety or the commissioner's  
3 designee;

4 (4) two members who are either a licensed guide-outfitter  
5 or class-A guide-outfitter;

6 (5) one member who is a licensed transporter;

7 (6) one member of the Board of Game who is chosen by the  
8 Board of Game;

9 (7) one member who represents Native landholders; and

10 (8) one public member.

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

12 (1) prepare, grade, and administer

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

20 (B) an oral examination of a guide-outfitter who seeks  
21 an amendment of a game management unit certification; the examin-  
22 ation must require demonstration that the guide-outfitter is  
23 qualified to provide guide-outfitted hunts in each new game  
24 management unit for which the guide-outfitter seeks to be certi-  
25 fied;

26 (2) determine qualifications of applicants for class-A  
27 guide-outfitter, marine mammal guide-outfitter, and assistant guide-  
28 outfitter licenses and authorize the issuance of licenses to those who  
29 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 statute or regulation  
7 relating to the provision of big game commercial services; a big game  
8 commercial services provider listed in the register whose license or  
9 permit is revoked or suspended shall be removed from the register  
10 while the provider's license or permit is revoked or suspended;

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

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

18 (7) authorize issuance of transporter licenses;

19 (8) authorize issuance of commercial use permits;

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

22 (b) The board may

23 (1) provide for registration of hunting camps and facil-  
24 ities used by persons who are licensed or who hold a permit under this  
25 chapter;

26 (2) establish, in consultation with the Department of Fish  
27 and Game or Department of Natural Resources, a resource-based manage-  
28 ment system for allocating access to big game hunting opportunities  
29 among guide-outfitters licensed under this chapter;

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

4 Sec. 08.54.320. BOARD REGULATIONS. The board shall adopt proce-  
5 dural and substantive regulations required by this chapter or reason-  
6 ably necessary for its administration.

7 ARTICLE 5. LICENSING.

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

10 (1) is 21 years of age or older;

11 (2) has practical field experience in the handling of  
12 firearms, hunting, judging trophies, field preparation of meat and  
13 trophies, first aid, photography, and related guide-outfitting activi-  
14 ties;

15 (3) is familiar with the terrain and transportation prob-  
16 lems in the game management unit for which the license is requested;

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

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

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

27 (7) has been licensed as and performed the services of a  
28 class-A guide-outfitter or assistant guide-outfitter in the state for  
29 a part of each of three years, or has guide-outfitted in the state for

1 a part of each of three years under a marine mammal guide-outfitter  
2 license issued under AS 08.54.360;

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

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

7 (10) has been favorably recommended in writing by six big  
8 game hunters, two for each year of the person's most recent three  
9 years as a class-A guide-outfitter or assistant guide-outfitter, when  
10 the person has guide-outfitted or assisted in guide-outfitting as a  
11 class-A guide-outfitter or assistant guide-outfitter, whose recommen-  
12 dations have been solicited by the board from a list provided by the  
13 applicant;

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

16 (12) has paid the license fee and commercial use permit  
17 fee.

18 (b) A guide-outfitter may contract to guide-outfit hunts for big  
19 game.

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

24 (1) is 21 years of age or older;

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

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

29 (4) has demonstrated knowledge of the following areas to an

1 extent and degree satisfactory to the board:

2 (A) current fish and game laws and regulations;

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

5 (C) field preparation of trophies;

6 (D) care of game meat;

7 (E) use of guide-outfitting gear;

8 (F) firearm safety;

9 (G) practical first aid; and

10 (H) booking and contracting hunts;

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

15 (6) possesses a business license to provide guide-out-  
16 fitting services; and

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

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

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

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

27 (2) the big game conservation fees due for the period  
28 covered by the current license;

29 (3) the license fee for the next licensing period; and

1 (4) the commercial use permit fee for the next licensing  
2 period.

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

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

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

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

14 (b) A class-A guide-outfitter

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

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

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

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

26 (1) is 18 years of age or older;

27 (2) passes an examination administered by the board;

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

29 (4) has demonstrated practical knowledge of first aid and

1 cardiopulmonary resuscitation;

2 (5) is in sound physical condition; and

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

5 (b) An assistant guide-outfitter

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

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

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

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

14 (2) pays the license fee;

15 (3) pays the commercial use permit fee;

16 (4) provides proof of

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

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

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

25 (b) A transporter may provide transportation services for com-  
26 pensation to big game hunters. A transporter may not provide any  
27 service in the field to big game hunters other than transportation,  
28 except that a transporter may provide accommodations in the field at a  
29 permanent lodge, house, or cabin owned by the transporter or on a boat

1 with permanent living quarters owned by the transporter used for over-  
2 night commercial hunts for Sitka blacktail deer, elk, and marine  
3 mammals.

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

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

9 (2) the big game conservation fees due for the period  
10 covered by the current license;

11 (3) the license fee for the next licensing period;

12 (4) the commercial use permit fee for the next licensing  
13 period; and

14 (5) proof of

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

19 (B) license from the Coast Guard to carry passengers  
20 for hire, if the applicant provides water transportation services  
21 to big game hunters.

22 (d) The department may not renew a transporter license unless  
23 all fees have been paid in full and the activity report required under  
24 (c)(1) of this section and the proof required under (c)(5) of this  
25 section have been filed.

26 (e) A transporter shall place a decal provided by the department  
27 on each plane, boat, vehicle, or other equipment used by the trans-  
28 porter to provide transportation services to big game hunters. The  
29 decal must bear the transporter's license number. The decal is valid

1 only for the plane, boat, vehicle, or other equipment for which the  
2 decal is issued.

3 Sec. 08.54.410. APPEAL TO COMMISSIONER FROM BOARD ON DENIAL OF  
4 LICENSE. The commissioner of commerce and economic development may  
5 order that an applicant for an initial license under AS 08.54.350 -  
6 08.54.400 be allowed to take the license examination or be issued the  
7 license if, after reviewing a petition filed by the applicant, the  
8 commissioner finds that

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

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

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

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

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

18 (4) the applicant is otherwise qualified to take the exam-  
19 ination or to be issued the license; and

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

22 Sec. 08.54.420. RENEWAL OF LICENSES. Notwithstanding AS 08.01.-  
23 100(a), guide-outfitter, marine mammal guide-outfitter, and transport-  
24 er licenses shall be renewed annually on dates set by the department  
25 with the approval of the board.

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

1 every other year the board shall give the examination at a location  
2 other than Anchorage.

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

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

13 (b) Notwithstanding (a) of this section, a guide-outfitter who  
14 fails to renew a license is not required to requalify under AS 08.54.-  
15 350(a)(7), unless the license has been lapsed for three or more years.

16 Sec. 08.54.450. LICENSE AND EXAMINATION FEES. (a) The depart-  
17 ment shall set license fees under AS 08.01.065 for each of the follow-  
18 ing:

- 19 (1) guide-outfitter
- 20 (2) class-A guide-outfitter;
- 21 (3) assistant guide-outfitter;
- 22 (4) marine mammal guide-outfitter;
- 23 (5) transporter.

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

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

1           Sec. 08.54.460. COMMERCIAL USE PERMIT HOLDER. A person, other  
2 than a guide-outfitter, marine mammal guide-outfitter, or a trans-  
3 porter, who provides other big game commercial services for compen-  
4 sation shall register with the board on a form provided by the board  
5 and shall obtain a commercial use permit and pay the annual commercial  
6 use permit fee set under AS 08.54.470. In this section "other big  
7 game commercial services" includes provision of accommodations, hunt  
8 broker services, gear rental services, photographic or videographic  
9 services, expediter services, and services as defined by the board by  
10 regulation.

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

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

17           (c) A guide-outfitter, marine mammal guide-outfitter, and trans-  
18 porter shall pay the commercial use permit fee at the time of applica-  
19 tion for issuance or renewal of a guide-outfitter license, marine  
20 mammal guide-outfitter license, or transporter license.

21           (d) The commissioner of administration shall separately account  
22 for commercial use permit fees deposited in the general fund by the  
23 department. The annual estimated balance in the account may be used  
24 by the legislature to make appropriations to the Department of Fish  
25 and Game and the Department of Public Safety to carry out their re-  
26 spective responsibilities for management of game resources and en-  
27 forcement of game laws.

#### 28                           ARTICLE 6. PENALTIES.

29           Sec. 08.54.500. DISCIPLINE OF GUIDE-OUTFITTERS. (a) The board

1 may hold a hearing to determine whether disciplinary action is neces-  
2 sary if a complaint concerning the guide-outfitting activities of a  
3 licensee who holds any class of guide-outfitter license is filed with  
4 the board by a client of the licensee. The board shall hold a hearing  
5 to determine whether a licensee should be disciplined within a  
6 reasonable time after

7 (1) complaints concerning a licensee's guide-outfitting  
8 activities are filed with the board by three or more of the licensee's  
9 clients from separate hunting parties;

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

12 (3) a licensee has been convicted of a violation of a  
13 federal or state statute or regulation relating to hunting or pro-  
14 vision of big game commercial services.

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

18 (1) engaged in unethical activity, unsafe activity, or  
19 activity that adversely affects the natural resources of the state  
20 when the activity is related to the purposes of providing guide-out-  
21 fitting services; or

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

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

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

29 (2) is incompetent as a guide-outfitter, marine mammal

1 guide-outfitter, class-A guide-outfitter, or assistant guide-out-  
2 fitter; or

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

6 (A) waste of a wild food animal;

7 (B) hunting on the same day airborne;

8 (C) hunting during a closed hunting season; or

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

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

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

27 (1) complaints concerning a licensee's or permittee's  
28 activities are filed with the board by three or more of the licensee's  
29 or permittee's clients from separate hunting parties; or

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

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

7 (1) engaged in unethical activity, unsafe activity, or  
8 activity that adversely affects the natural resources of the state  
9 when the activity is related to the purposes of providing big game  
10 commercial services; or

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

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

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

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

21 (A) waste of a wild food animal;

22 (B) hunting on the same day airborne;

23 (C) hunting during a closed hunting season; or

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

25 (d) If a certified copy of a judgment of conviction of a licens-  
26 ee or permittee for an offense described under (c)(2) of this section  
27 is filed with the board, the board shall immediately suspend the  
28 licensee's or permittee's license or permit. The suspension may be  
29 ordered even if the conviction resulted from a pleas of nolo

1        contendere or if the conviction is under appeal. The suspension  
2        remains in effect until after the final disposition of the  
3        disciplinary proceeding under this section.

4            Sec. 08.54.510. DISCIPLINE; GENERAL PROVISIONS. (a) A person  
5        who is disciplined under AS 08.54.500 or 08.54.505 may not engage in  
6        the provision of big game commercial services during the period of  
7        license or permit revocation or other disciplinary action. A person  
8        who is licensed under this chapter, or who holds a permit issued under  
9        this chapter, may not hire a person whose license or permit to provide  
10       big game commercial services is suspended or revoked under AS 08.54.-  
11       500 or 08.54.505. A person whose license or permit is suspended or  
12       revoked may not be employed by a person who is licensed or who holds a  
13       permit under this chapter.

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

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

24           (d) Within 30 days after conclusion of a hearing under AS 08.-  
25        54.500 or 08.54.505, the board shall notify the complainant of the  
26        results of the hearing, including written reasons justifying a deci-  
27        sion not to take disciplinary action.

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

29           (1) person who is licensed or who holds a commercial use

1 permit under this chapter to fail to timely report to the Department  
2 of Public Safety, division of fish and wildlife protection, and in no  
3 event later than 30 days, a violation of a state fish, game, or big  
4 game commercial services statute or regulation that the person reason-  
5 ably believes was committed by a client or an employee of the person;

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

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

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

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

17 (ii) reporting it;

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

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

24 (5) guide-outfitter, marine mammal guide-outfitter, or  
25 transporter to fail to transmit to the department big game conserva-  
26 tion fees due under AS 16.05.344;

27 (6) class-A guide-outfitter or an assistant guide-outfitter  
28 to provide guide-outfitting services in the field on a  
29 guided-outfitted hunt except while employed and supervised by a

1 guide-outfitter; or

2 (7) person to provide guide-outfitter services without  
3 having a current guide-outfitter, marine mammal guide-outfitter,  
4 class-A guide-outfitter, or assistant guide-outfitter license and  
5 hunting license in actual possession;

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

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

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

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

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

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

22 (1) for a first offense, of a misdemeanor and is punishable  
23 by a fine of not more than \$30,000 or by imprisonment for not less  
24 than two months or more than one year, or both;

25 (2) for a second or subsequent offense, of a felony and is  
26 punishable by a fine of not more than \$50,000 or by imprisonment for  
27 not more than three years.

28 (d) A person who violates (a)(11) of this section, is guilty of  
29 a felony punishable, upon conviction, by a fine of not more than

1 \$50,000 and by imprisonment for not more than three years.

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

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

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

12 (f) Upon conviction of a person for committing an offense set  
13 out in (a) of this section, the court may not suspend imposition of  
14 sentence.

15 Sec. 08.54.530. INJUNCTION AGAINST UNLAWFUL ACTION. When in the  
16 judgment of the board a person has engaged in an act in violation of  
17 AS 08.54.380(b), 08.54.390(b), 08.54.400(b), 08.54.510(a), and 08.54.-  
18 520 or the regulations adopted under them, the board may apply to the  
19 appropriate court for an order enjoining the action. Upon a showing  
20 by the board that the person is engaging in the act, the court shall  
21 grant injunctive relief or other appropriate order without bond.

22 Sec. 08.54.540. RESPONSIBILITY OF GUIDE-OUTFITTER FOR VIOLA-  
23 TIONS. A guide-outfitter who contracts to guide-outfit a hunt is  
24 equally responsible under AS 08.54.500 for a violation of a federal or  
25 state sport fish, game, or guide-outfitting statute or regulation  
26 committed by a class-A guide-outfitter or an assistant guide-outfitter  
27 while in the course of the class-A guide-outfitter's or assistant  
28 guide-outfitter's employment for the guide-outfitter.

29 ARTICLE 7. GENERAL PROVISIONS.

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

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

18          Sec. 08.54.590. DEFINITIONS. In this chapter

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

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

23               (3) "department" means the Department of Commerce and  
24               Economic Development;

25               (4) "guide-outfit" means to provide big game commercial  
26               hunting services, for compensation, in the field but does not include  
27               transportation services;

28               (5) "field" means an area outside of established year-round  
29               dwellings, businesses, or other developments usually associated with a

1 city, town, or village; "field" does not include permanent hotels or  
2 roadhouses on the state road system;

3 (6) "transportation services" means the carriage for com-  
4 pensation of big game hunters, their equipment, or big game animals  
5 harvested by hunters to, from, or in the field;

6 (7) "unethical activity" means

7 (A) deception or misrepresentation involving prospec-  
8 tive or actual clients either before, during, or following the  
9 provision of big game commercial services, including misrepresen-  
10 tations through private or public advertising of the type, dura-  
11 tion, cost, or conditions of the services;

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

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

19 (D) accepting a deposit for big game commercial ser-  
20 vices without providing before the services are rendered a signed  
21 written contract to provide the services.

22 \* Sec. 4. AS 16.05 is amended by adding a new section to read:

23 Sec. 16.05.344. BIG GAME CONSERVATION FEE. (a) A big game  
24 conservation fee is due to the state for each animal taken by a hunter  
25 who

26 (1) takes an animal for which the hunter is required to  
27 have a big game tag under AS 16.05.340; and

28 (2) utilizes the services of a guide-outfitter, marine  
29 mammal guide-outfitter, or transporter licensed under AS 08.54 to

1 facilitate the taking of that animal.

2 (b) The big game conservation fee is equal to 25 percent of the  
3 big game tag fee set out in AS 16.05.340.

4 (c) The big game conservation fee shall be paid by the guide-  
5 outfitter or marine mammal guide-outfitter who contracted to guide-  
6 outfit the hunt on which the animal was taken. If the animal was not  
7 taken on a guide-outfitted hunt, then the fee shall be paid by the  
8 transporter who transports the animal from the field.

9 (d) A guide-outfitter, marine mammal guide-outfitter, or trans-  
10 porter shall pay fees due under this section to the Department of  
11 Commerce and Economic Development at the time of application for  
12 renewal of a guide-outfitter license, marine mammal guide-outfitter  
13 license, or transporter license. If the person who owes the fee due  
14 under this section does not apply for renewal of a license under AS  
15 08.54, the person shall pay the fee to the Department of Commerce and  
16 Economic Development by the end of the calendar year in which the  
17 animal was taken.

18 (e) The commissioner of administration shall separately account  
19 for big game conservation fees deposited in the general fund by the  
20 Department of Commerce and Economic Development. The annual estimated  
21 balance in the account may be used by the legislature to make appro-  
22 priations to the Department of Fish and Game and the Department of  
23 Public Safety to carry out their respective responsibilities for  
24 management of game resources and enforcement of game laws.

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

26 (a) It is unlawful for a nonresident to hunt, pursue, or take  
27 brown bear, grizzly bear, polar bear, mountain goat, or sheep in this  
28 state, unless personally accompanied by

29 (1) a person who is licensed as a guide-outfitter. [MASTER

1 GUIDE, REGISTERED GUIDE,) class-A guide-outfitter, [ASSISTANT GUIDE]  
2 or assistant guide-outfitter [GUIDE] by the Big Game Commercial Ser-  
3 vices [GUIDE] Board; or

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

5 (A) the spouse of the nonresident; or

6 (B) is related to the nonresident, within and includ-  
7 ing the second degree of kindred, by marriage or blood.

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

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

14 \* Sec. 7. AS 16.05.408(a) is amended to read:

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

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

19 (2) to hunt, pursue, or take a big game animal as defined  
20 by the Board of Game unless personally accompanied by a guide-outfit-  
21 ter [LICENSED MASTER GUIDE, REGISTERED GUIDE,] or class-A guide-out-  
22 fitter licensed [ASSISTANT GUIDE] under AS 08.54.

23 \* Sec. 8. AS 16.05 is amended by adding a new section to read:

24 Sec. 16.05.783. BIG GAME HUNTING CLUBS PROHIBITED. (a) A  
25 hunting club may not

26 (1) engage in activities in direct support of big game  
27 hunting, including transportation or guide-outfitting of big game  
28 hunters; or

29 (2) provide facilities or services for big game hunting.

1 (b) In this section "hunting club" means

2 (1) an organization that offers use of property or services  
3 to individuals who pay a membership fee for the privilege of using the  
4 property or services for hunting; or

5 (2) a partnership, limited partnership, corporation, or  
6 unincorporated association through which property is jointly owned,  
7 leased, or otherwise held by members of the entity and through which  
8 the members are entitled to use the property for hunting.

9 \* Sec. 9. AS 39.50.200(b)(48) is amended to read:

10 (48) Big Game Commercial Services [GUIDE] Board AS 08.54.-  
11 300 [(AS 08.54.010)]; and

12 \* Sec. 10. AS 41.23.420(d) is amended to read:

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

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

18 (2) the Department of Environmental Conservation under AS  
19 46.03; or

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

22 \* Sec. 11. AS 44.62.330(a)(35) is amended to read:

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

25 \* Sec. 12. TRANSITION: GUIDE-OUTFITTER LICENSES. (a) Notwithstanding  
26 the repeal of AS 08.54.010 - 08.54.240, all licenses issued under AS 08.-  
27 54.010 - 08.54.240 are valid for the period for which the licenses were is-  
28 sued.

29 (b) For the purposes of AS 08.54.300 - 08.54.590 as enacted by sec. 3

1 of this Act, until new licenses are issued under this section, a

2 (1) master guide license issued under former AS 08.54.100 and a  
3 registered guide license issued under former AS 08.54.110 shall be con-  
4 sidered a guide-outfitter license issued under AS 08.54.350;

5 (2) class-A assistant guide license issued under former AS 08.-  
6 54.120 shall be considered a class-A guide-outfitter license issued under  
7 AS 08.54.380;

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

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

13 (1) a master guide or registered guide shall receive a guide-  
14 outfitter license, if the person

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

17 (B) has paid the guide-outfitter license fee and the com-  
18 mercial use permit fee;

19 (2) a class-A assistant guide shall receive a class-A guide-  
20 outfitter license, if the person

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

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

24 (3) an assistant guide shall receive an assistant guide-out-  
25 fitter license, if the person

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

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

29 (d) Notwithstanding (c) of this section, the Department of Commerce

1 and Economic Development may issue a new license under AS 08.54.300 -  
2 08.54.590, without an additional fee, to a person licensed under former  
3 AS 08.54.010 - 08.54.240 before the next renewal period following the  
4 effective date of this Act, if the person satisfies the requirements for  
5 the license and the license is valid only for the same period for which the  
6 replaced license was issued.

7 \* Sec. 13. TRANSITION; OUTFITTERS. (a) Notwithstanding AS 08.54.350,  
8 as enacted by sec. 3 of this Act, a natural person is entitled to receive a  
9 guide-outfitter license if the person

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

12 (2) registered a camp, cabin, or lodge under AS 16.05.787 during  
13 1988;

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

17 (4) passes the guide-outfitter examination administered by the  
18 Big Game Commercial Services Board within one year after the effective date  
19 of this Act;

20 (5) pays the guide-outfitter license fee and the commercial use  
21 permit fee; and

22 (6) possesses a business license to provide guide-outfitting  
23 services.

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

27 (c) A person who satisfies (a)(1) - (3) of this section, holds a  
28 business license as a big game outfitter, and pays a license fee set by the  
29 Department of Commerce and Economic Development is entitled to receive an

1 interim outfitter license pending a final determination of a person's  
2 eligibility for a guide-outfitter license under (a) of this section. The  
3 right to receive and hold an interim outfitter license terminates on the  
4 earlier of

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

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

9 (3) one year from the effective date of this Act.

10 (d) A person who holds an interim outfitter license, notwithstanding  
11 contrary provisions of AS 08.54, may provide transportation to, from, and  
12 in the field to big game hunters and supply other services in the field to  
13 big game hunters. The person may not provide guiding services. The person  
14 is responsible for paying to the Department of Commerce and Economic Devel-  
15 opment the big game conservation fee due under AS 16.05.344.

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

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

29 (1) the specific location of the camp, cabin, or lodge;

1 (2) the number of big game hunters in each party that will use  
2 the camp, cabin, or lodge; and

3 (3) the kinds or species of big game that will be hunted.

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

11 (h) A person who

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

15 (2) falsifies an affidavit under (f) of this section is guilty  
16 of perjury under AS 11.56.200.

17 (i) In this section,

18 (1) "big game" and "field" have the meaning given in AS 08.54.-  
19 590, as enacted by sec. 3 of this Act;

20 (2) "base camp" does not include spike camp, fly camp, or over-  
21 night camp;

22 (3) "guiding" means accompanying or being present with a big  
23 game hunter in the field, personally or through an assistant, for compen-  
24 sation or with the intent or an agreement to receive compensation; "guid-  
25 ing" does not include

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

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

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

5 \* Sec. 14. INITIAL APPOINTMENTS TO BIG GAME COMMERCIAL SERVICES BOARD.  
6 Notwithstanding AS 08.54.300(b), as enacted by sec. 3 of this Act, the  
7 initial appointments to the Big Game Commercial Services Board under

8 (1) AS 08.54.300(b)(4) may also be filled by the appointment of  
9 a master guide, registered guide, or a class-A assistant guide licensed  
10 under former AS 08.54.010 - 08.54.240 or a person who registered a camp,  
11 cabin, or lodge under AS 16.05.787 during 1988 and engaged in the business  
12 of big game outfitting in 1986, 1987, and 1988;

13 (2) AS 08.54.300(b)(5) may also be filled by the appointment of  
14 a person who engaged in the business of providing transportation to big  
15 game hunters in 1986, 1987, and 1988.

16 \* Sec. 15. TRANSITION. Litigation, hearings, investigations, and other  
17 proceedings pending under a law amended or repealed by this Act continue in  
18 effect and may be continued and completed notwithstanding an amendment or  
19 repeal provided for in this Act. Licenses, orders, and regulations issued  
20 or adopted under authority of a law amended or repealed by this Act remain  
21 in effect for the term issued or until revoked, vacated, or otherwise  
22 modified under the provisions of this Act.

23 \* Sec. 16. AS 08.54.010, 08.54.030, 08.54.035, 08.54.040, 08.54.045,  
24 08.54.050, 08.54.060, 08.54.070, 08.54.100, 08.54.110, 08.54.120, 08.54.-  
25 130, 08.54.140, 08.54.141, 08.54.150, 08.54.160, 08.54.170, 08.54.180,  
26 08.54.186, 08.54.190, 08.54.195, 08.54.200, 08.54.210, 08.54.220, 08.54.-  
27 230, 08.54.240; AS 16.05.370(b), 16.05.370(c), 16.05.407(e), 16.05.786, and  
28 16.05.787 are repealed.

29 \* Sec. 17. Sections 4, 6, 12, and 13, ch. 160, SLA 1988 are repealed.

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\* Sec. 18. This Act takes effect immediately under AS 01.10.070(c).

1 IN THE HOUSE

2

HOUSE BILL NO.

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act providing for retroactive extension of the  
7 termination date of the Task Force on Guiding and  
8 Game; and providing for an effective date."

9

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

10

\* Section 1. Section 14(d), ch. 160, SLA 1988, is repealed and reenact-  
11 ed to read:

12

(d) The task force terminates on the earlier of

13

(1) January 15, 1991; or

14

(2) the date of enactment into law of

15

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

18

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

20

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

24

\* Sec. 3. Sections 1 and 2 of this Act are retroactive to January 8,  
25 1989.

26

\* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

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28

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## LAWS OF ALASKA

1988

**Source**

HCS CSSB 191(R1a) am H

**Chapter No.**

160

**AN ACT**

Relating to the Guide Board and big game guiding, transporting, outfitting, and hunting and establishing an interim task force on guiding and the commercial taking of big 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 12.

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: June 16, 1988  
Actual Effective Date: Sections 1, 2, 5, 7 - 11, and 14  
take effect June 17, 1988; sections 4, 6, 12, 13, and  
15 take effect June 30, 1989; section 3 takes effect  
January 1, 1989

APPENDIX A

Chapter 160

LIMITED ABILITY TO READ OR WRITE THE ENGLISH LANGUAGE];

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

(3) establish guide performance standards and regulate activity;

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

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

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

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

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

\* Sec. 3. AS 08.54.210 is amended to read:

Sec. 08.54.210. UNLAWFUL ACTS. (a) It is unlawful for

(1) a master guide, registered guide, special guide, class A assistant guide, or assistant guide to fail to timely report to the

Chapter 160

Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, a violation of a state fish, game, or guiding statute or regulation that the guide reasonably believes was committed by a client or an employee of the guide;

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

(3) a person to guide without having a current valid guide license and [RESIDENT] hunting license in actual possession;

(4) a person without a current valid registered or master guide license to advertise as or represent to be

(A) a guide; or

(B) an outfitter offering big game hunting services

[WITHOUT HOLDING A CURRENT VALID GUIDE LICENSE];

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

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

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

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

(h) A person who violates (a)(1) - (5) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$2,000 [\$1,000] or by imprisonment for not more than one year, or by both, and the person's license may be revoked for a period

1 automobiles or other vehicles, camping gear and other equipment and  
2 paraphernalia used in, or in aid of, guiding activity engaged in  
3 during the period of suspension or revocation may be seized by persons  
4 authorized to enforce this chapter and may be forfeited to the state  
5 as provided under AS 16.05.195.

6 \* Sec. 5. AS 08.54.240(3) is repealed and reenacted to read:

7 (3) "guide" or "guiding" means accompanying or being pre-  
8 sent with a big game hunter in the field, personally or through an  
9 assistant, for compensation or with the intent or an agreement to  
10 receive compensation; "in the field" does not include a lawfully  
11 established base camp, cabin, or permanent lodge registered with the  
12 division of fish and wildlife protection under AS 16.05.787 or a boat  
13 with permanent living quarters; "guide" or "guiding" does not include

14 (A) providing transportation to or from the field, if  
15 the persons providing transportation and the persons being trans-  
16 ported do not stalk, pursue, track, kill, or attempt to kill big  
17 game during the transportation; or

18 (B) selling, leasing, or renting goods, if the trans-  
19 action does not take place in the field;

20 \* Sec. 6. AS 08.54.240(3) is amended to read:

21 (3) "guide" or "guiding" means accompanying or being pre-  
22 sent with a big game hunter in the field, personally or through an  
23 assistant, for compensation or with the intent or an agreement to  
24 receive compensation; "in the field" does not include a lawfully  
25 established [BASE CAMP,] cabin [,] or permanent lodge registered with  
26 the division of fish and wildlife protection under AS 16.05.787 or a  
27 boat with permanent living quarters; "guide" or "guiding" does not  
28 include

29 (A) providing transportation to or from the field, if

1 the persons providing transportation and the persons being trans-  
2 ported do not stalk, pursue, track, kill, or attempt to kill big  
3 game during the transportation; or

4 (B) selling, leasing, or renting goods, if the trans-  
5 action does not take place in the field;

6 \* Sec. 7. AS 08.54.240 is amended by adding a new paragraph to read:

7 (7) "base camp" does not include a spike camp, fly camp, or  
8 overnight camp.

9 \* Sec. 8. AS 16.05.370 is amended by adding new subsections to read:

10 (b) A person who sells big game tags shall give to each buyer a  
11 game report form provided by the department, to be completed and  
12 returned by the hunter after big game is taken. The department shall  
13 pay the cost of return postage for the report. The report must speci-  
14 fy the location, amount, and kinds or species of game taken.

15 (c) A person who transports big game from the field for compen-  
16 sation shall, within seven days after providing the transportation,  
17 notify the department of the amount and kinds or species of game  
18 transported.

19 \* Sec. 9. AS 16.05.407(d) is amended to read:

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

25 \* Sec. 10. AS 16.05.407 is amended by adding a new subsection to read:

26 (e) An applicant for a nonresident big game tag for the taking  
27 of moose or caribou shall first furnish to the state, on a form pro-  
28 vided by the state, an affidavit showing where the applicant will be  
29 hunting and what guiding, transportation, or other big game hunting

# **CORRECTION**

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



# LAWS OF ALASKA

1988

**Source**

HCS CSSR 191(R1a) am II

**Chapter No.**

160

**AN ACT**

Relating to the Guide Board and big game guiding, transporting, outfitting, and hunting and establishing an interim task force on guiding and the commercial taking of big 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 12.

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: June 16, 1988  
Actual Effective Date: Sections 1, 2, 5, 7 - 11, and 14  
take effect June 17, 1988; sections 4, 6, 12, 13, and  
15 take effect June 30, 1989; section 3 takes effect  
January 1, 1989

APPENDIX A

AN ACT

Relating to the Guide Board and big game guiding, transporting, outfitting, and hunting and establishing an interim task force on guiding and the commercial taking of big game; and providing for an effective date.

\* Section 1. AS 08.03.010(c)(20) is amended to read:

(20) Guide Board (AS 08.54.010) -- June 30, 1989 (1988).

\* Sec. 2. AS 08.54.040(a) is amended to read:

(a) Except as provided in AS 08.54.045, the board shall

(1) prepare, grade, and administer

(A) a written and oral examination of an applicant for a registered guide license that requires demonstration that the applicant is qualified generally to provide guided hunts and, in particular, to guide 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 registered or master guide who seeks an amendment of a game management unit certification; the examination must require demonstration that the guide is qualified to provide guided hunts in each new game management unit for which the guide seeks to be certified [EXAMINATIONS, WHICH MAY INCLUDE ORAL EXAMINATIONS OF APPLICANTS WHO DEMONSTRATE

LIMITED ABILITY TO READ OR WRITE THE ENGLISH LANGUAGE];

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

(3) establish guide performance standards and regulate activity;

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

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

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

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

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

\* Sec. 3. AS 08.54.210 is amended to read:

Sec. 08.54.210. UNLAWFUL ACTS. (a) It is unlawful for

(1) a master guide, registered guide, special guide, class

A assistant guide, or assistant guide to fail to timely report to the

Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, a violation of a state fish, game, or guiding statute or regulation that the guide reasonably believes was committed by a client or an employee of the guide;

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

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

(4) a person without a current valid registered or master guide license to advertise as or represent to be

(A) a guide; or

(B) an outfitter offering big game hunting services

(WITHOUT HOLDING A CURRENT VALID GUIDE LICENSE);

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

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

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

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

(b) A person who violates (a)(1) - (5) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$2,000 (\$1,000) or by imprisonment for not more than one year, or by both, and the person's license may be revoked for a period

Chapter 160

up to five years. However, a person who engages in guiding activity during the period for which the person's license is suspended or revoked under this chapter, or who violates (a)(6) - (8) of this section, is guilty of a felony punishable, upon conviction, by a fine of not more than \$5,000 and by imprisonment for not more than three years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding activity engaged in during the period of suspension or revocation may be seized by persons authorized to enforce this chapter and may be forfeited to the state as provided under AS 16.05.195.

\* Sec. 4. AS 08.54.210 is repealed and reenacted to read:

Sec. 08.54.210. UNLAWFUL ACTS. (a) It is unlawful for

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

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

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

(4) a person without a current valid registered or master guide license to advertise as or represent to be

(A) a guide; or

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(B) an outfitter offering big game hunting services;

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

(6) a person for compensation or hire to transport a hunter to or from the field in an aircraft for which the person does not hold a current valid air taxi commercial operator (ATCO) operating certificate issued by the Federal Aviation Administration under 14 C.F.R. Part 135; in this paragraph, "for compensation or hire" means receiving any monetary consideration for the transportation, regardless of whether the consideration is directly attributable to the transportation; "for compensation or hire" does not include reimbursement for actual expenses incurred for aircraft fuel for the transportation;

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

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

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

(b) A person who violates (a)(1) - (6) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$2,000 or by imprisonment for not more than one year, or by both, and the person's license may be revoked for a period up to five years. However, a person who engages in guiding activity during the period for which the person's license is suspended or revoked under this chapter, or who violates (a)(7) - (9) of this section, is guilty of a felony punishable, upon conviction, by a fine of not more than \$5,000 and by imprisonment for not more than three years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft,

1 automobiles or other vehicles, camping gear and other equipment and  
2 paraphernalia used in, or in aid of, guiding activity engaged in  
3 during the period of suspension or revocation may be seized by persons  
4 authorized to enforce this chapter and may be forfeited to the state  
5 as provided under AS 16.05.195.

6 \* Sec. 5. AS 08.54.240(3) is repealed and reenacted to read:

7 (3) "guide" or "guiding" means accompanying or being pre-  
8 sent with a big game hunter in the field, personally or through an  
9 assistant, for compensation or with the intent or an agreement to  
10 receive compensation; "in the field" does not include a lawfully  
11 established base camp, cabin, or permanent lodge registered with the  
12 division of fish and wildlife protection under AS 16.05.787 or a boat  
13 with permanent living quarters; "guide" or "guiding" does not include

14 (A) providing transportation to or from the field, if  
15 the persons providing transportation and the persons being trans-  
16 ported do not stalk, pursue, track, kill, or attempt to kill big  
17 game during the transportation; or

18 (B) selling, leasing, or renting goods, if the trans-  
19 action does not take place in the field;

20 \* Sec. 6. AS 08.54.240(3) is amended to read:

21 (3) "guide" or "guiding" means accompanying or being pre-  
22 sent with a big game hunter in the field, personally or through an  
23 assistant, for compensation or with the intent or an agreement to  
24 receive compensation; "in the field" does not include a lawfully  
25 established [BASE CAMP,] cabin [,] or permanent lodge registered with  
26 the division of fish and wildlife protection under AS 16.05.787 or a  
27 boat with permanent living quarters; "guide" or "guiding" does not  
28 include

29 (A) providing transportation to or from the field, if

1 the persons providing transportation and the persons being trans-  
2 ported do not stalk, pursue, track, kill, or attempt to kill big  
3 game during the transportation; or

4 (B) selling, leasing, or renting goods, if the trans-  
5 action does not take place in the field;

6 \* Sec. 7. AS 08.54.240 is amended by adding a new paragraph to read:

7 (7) "base camp" does not include a spike camp, fly camp, or  
8 overnight camp.

9 \* Sec. 8. AS 16.05.370 is amended by adding new subsections to read:

10 (b) A person who sells big game tags shall give to each buyer a  
11 game report form provided by the department, to be completed and  
12 returned by the hunter after big game is taken. The department shall  
13 pay the cost of return postage for the report. The report must speci-  
14 fy the location, amount, and kinds or species of game taken.

15 (c) A person who transports big game from the field for compen-  
16 sation shall, within seven days after providing the transportation,  
17 notify the department of the amount and kinds or species of game  
18 transported.

19 \* Sec. 9. AS 16.05.407(d) is amended to read:

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

25 \* Sec. 10. AS 16.05.407 is amended by adding a new subsection to read:

26 (e) An applicant for a nonresident big game tag for the taking  
27 of moose or caribou shall first furnish to the state, on a form pro-  
28 vided by the state, an affidavit showing where the applicant will be  
29 hunting and what guiding, transportation, or other big game hunting

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services the applicant will be employing. A person who falsifies an affidavit under this subsection is guilty of perjury under AS 11.56.200.

\* Sec. 11. AS 16.05 is amended by adding new sections to read:

Sec. 16.05.786. DUTY OF BIG GAME TRANSPORTERS TO REPORT VIOLATIONS. (a) A person who transports a big game hunter to or from the field for compensation, or with the intent or an agreement to receive compensation, shall promptly report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, a violation of a state fish, game, or guiding statute or regulation that the person reasonably believes was committed by a client or employee of the person.

(b) A person who violates this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$2,000 or by imprisonment for not more than one year, or by both.

Sec. 16.05.787. REGISTRATION OF BIG GAME HUNTING BASE CAMPS, CABINS, AND LODGES. (a) A person who is not licensed as a guide under AS 08.54 may accompany or be present with a hunter at a base camp, cabin, or permanent lodge in connection with a big game hunt and for compensation only if the person has not been convicted of violating a game law or regulation during the preceding five years and has furnished an affidavit to the Department of Public Safety, division of fish and wildlife protection, at least two weeks in advance. A person who is not licensed as a guide may not register more than two base camps. The affidavit must be signed by the person and must provide the following information:

(1) the specific location of the camp, cabin, or lodge;

(2) the number of big game hunters in each party that will use the camp, cabin, or lodge; and

Chapter 160

(3) the kinds or species of big game that will be hunted.

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

(c) The Department of Public Safety shall send the information received under (b) of this section and a copy of each affidavit under this section to the Department of Fish and Game.

(d) A person who falsifies an affidavit under this section is guilty of perjury under AS 11.56.200.

\* Sec. 12. AS 16.05.787(a) is amended to read:

(a) A person who is not licensed as a guide under AS 08.54 may accompany or be present with a hunter at a [BASE CAMP,] cabin [,] or permanent lodge in connection with a big game hunt and for compensation only if the person has not been convicted of violating a game law or regulation during the preceding five years and has furnished an affidavit to the Department of Public Safety, division of fish and wildlife protection, at least two weeks in advance. The affidavit must be signed by the person and must provide the following information:

(1) the specific location of the [camp,] cabin [,] or lodge;

(2) the number of big game hunters in each party that will use the [CAMP,] cabin [,] or lodge; and

(3) the kinds or species of big game that will be hunted.

\* Sec. 13. AS 16.05.787(b) is amended to read:

(b) A person who furnished an affidavit under (a) of this section shall notify the Department of Public Safety of the amount and

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1 kinds or species of big game taken by each hunter who uses the [BASE  
2 CAMP,] cabin [,] or permanent lodge to which the affidavit relates.  
3 Notice shall be given within 30 days after the game is taken.

4 \* Sec. 14. TASK FORCE ON GUIDING AND GAME. (a) The interim task force  
5 on the Guide Board and the commercial taking of big game is established  
6 under the jurisdiction of the legislative council. The task force consists  
7 of the commissioners of fish and game, commerce and economic development,  
8 and public safety, or their designees; two members of the senate appointed  
9 by the president of the senate and two members of the house of representa-  
10 tives appointed by the speaker of the house, of whom only one member from  
11 each body may have a financial interest in any business involving or relat-  
12 ed to the commercial taking of game; and six members appointed by the  
13 governor as follows: one member of the Guide Board; one big game guide  
14 licensed under AS 08.54 who is not a member of the Guide Board; and two  
15 persons engaged in a business, other than guiding, that includes transport-  
16 ing big game hunters to and from the field, but only one of whom may be an  
17 air taxi operator; and two public members, neither of whom has a financial  
18 interest in any business involving or related to the commercial taking of  
19 game. The governor shall appoint at least one member from each judicial  
20 district in the state. The members shall elect a person to chair the task  
21 force.

22 (b) The task force shall review the operations of the Guide Board and  
23 shall study problems and issues concerning the commercial taking of big  
24 game in the state and the businesses or professions that provide goods and  
25 services to big game hunters in the state. The task force shall submit to  
26 the legislative council, not later than January 15, 1989, a report on its  
27 findings and proposed legislation to address the problems and issues cover-  
28 ed in the report.

29 (c) A subpoena requiring the attendance of a witness before the task  
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1 force may be issued by the person chairing the task force if authorized to  
2 do so by a majority of the membership of the task force. The provisions of  
3 AS 24.25.020 - 24.25.060 apply to subpoenas issued under this subsection  
4 and to witnesses called by the task force.

5 (d) The task force terminates January 15, 1989.

6 \* Sec. 15. AS 08.54.240(7) is repealed.

7 \* Sec. 16. Sections 1, 2, 5, 7 - 11, and 14 of this Act take effect  
8 immediately under AS 01.10.070(c).

9 \* Sec. 17. Sections 4, 6, 12, 13, and 15 of this Act take effect  
10 June 30, 1989.

11 \* Sec. 18. Section 3 of this Act takes effect January 1, 1989.  
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Official Business

# Alaska State Legislature

House of Representatives

Committee on Rules

P. O. Box V  
Juneau, Alaska 99811

Phone:  
(907) 465-3764  
455-3765

Letter of Intent  
For  
HCS CS SB 191 (Rules)

It is the intent of the Legislature that the task force established under the provisions of SB 191 have full powers to investigate and establish recommendations.

Under the Alaska Constitution, fish and game resources are the common property of the people of Alaska, to be managed by the state in trust for the people's use. During all deliberations of the task force relating to regulating the commercial use of game, the first and highest priority of the task force shall be protection of the game resource. In this context, the task force shall examine how the commercial taking of big game by both residents and nonresidents conforms with the needs of all Alaskans.

Currently, there are numerous types of big game hunting services being provided in Alaska by various commercial operators. The task force shall examine this situation and make recommendations for the appropriate role of guides, gear providers, air taxi operators and other transporters in providing commercial hunting services.

Other states and Canadian provinces have experienced similar commercial hunting pressures and problems. In an effort to assure that Alaska not duplicate the mistakes of others, the task force should obtain as much information as possible about the problems these other jurisdictions have experienced. If solutions were found for problems similar to existing problems in this state, the task force shall review those solutions and recommend accordingly for Alaska.

The Alaska Supreme Court will soon decide *Owsichek v. the State of Alaska*, dealing with the constitutionality of restricted guide areas. The task force shall analyze this decision, and recommend methods of accommodating the court's decision.

The task force shall work closely with the Department of Fish and Game and the Board of Game to create a link between the commercial take of big game and game management, for the protection and benefit of all user groups.

The task force shall examine the potential effects of adding other species to the guide-required list.

APPENDIX B

The task force shall examine the licensing of transporters, and make recommendations as to whether such a system ought to be renewed, and, if so, under what conditions.

The Legislative Budget and Audit Committee completed audits of the Guide Board in 1985 and 1987. The task force shall review the audits and recommend what provisions shall be implemented. Specifically, the task force shall analyze if the guide board is functioning at a level that ensures that the present allocation system is fair and is following the Administrative Procedures Act.

The legislature recognizes that the current big game guide system in Alaska is dependent on the restricted guide area concept for its success. Accordingly, the task force shall examine all aspects of this system, and make recommendations pertaining to its openness and accessibility, including to the question of selling or otherwise transferring the use of restricted guide areas. The task force shall also examine whether the state should lease or permit commercial use areas, or in some other manner establish a restricted use "concessionaire" approach to commercial game management. Throughout these deliberations, the task force shall review the compatibility of the current restricted area system, or any such system proposed, with the state's game allocation system.

The task force shall analyze the joint use concept and supporting agreements between guides in joint use areas, and gauge whether these agreements are in the best interest of all game users, as well as in the best interest of the game resource. In doing so, the task force shall investigate whether one consistent policy for determining guide areas is appropriate, the goal being that all areas are treated equally. The task force shall also examine whether rural residents from remote communities are being afforded an adequate and equal opportunity to participate in the guiding system.

The violation of statutes regulating almost all other professions in Alaska is generally a misdemeanor offense, whereas the act of illegal guiding is a felony offense. The task force shall review this section of law, determine whether this is proper, and make recommendations for any appropriate changes.

The task force shall investigate and make recommendations concerning the propriety of fish and wildlife protection officers, or other state employees whose responsibilities include managing game resources or enforcing the state's guiding and game management laws, holding guide licenses or otherwise participating in the commercial taking of game.

The legislature recognizes that the role of federal agencies in managing and permitting commercial uses of federal parks, reserves,

and other federal lands has a significant direct impact in how the state's guide laws are monitored and enforced. The task force is directed to examine the role of federal agencies in monitoring and permitting these activities.

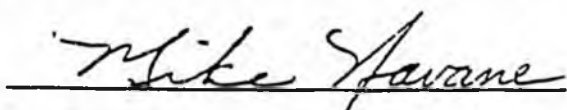
The legislature recognizes that hunting, flying and other travel in Alaska involves certain inherent risks. The task force shall review the issue of differing safety and insurance requirements for air transportation and make a recommendation on the establishment of minimal insurance and safety requirements for guides, lodge owners, and others who are not now regulated.

The task force should review the possibility of bonding requirements for providers of big game hunting services.

The task force should examine all aspects of a head tax, the problems with its use in the past, and what would be the ramifications to game management if it were reinstated.

The task force should work to clarify the definitions of "camp", "in the field", and "big game hunting services". The task force should describe which commercial providers should be allowed in "camps" and "in the field." "Compensation", and "monetary consideration" should also be further defined and explained by the task force. The task force should also provide further explanation of what constitutes a "boat with permanent living quarters."

The task force should also look at the use of dog sleds in big game hunts, and when dogs should be allowed in camps.



Rep. Mike Navarre, Chair  
House Rules Committee  
May 9, 1988

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

KENNETH D. OWSICHEK, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF ALASKA, GUIDE )  
 LICENSING AND CONTROL BOARD, )  
 )  
 Appellee. )

File No. S-1650

O P I N I O N

[No. 3389 - October 21, 1988]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Milton Souter, Judge.

Appearances: Charles E. Tulin, Anchorage, for Appellant. Michael G. Hotchkin and Sarah E. McCracken, Assistant Attorneys General, Anchorage, Ronald W. Lorensen, Acting Attorney General, Juneau, for Appellee.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton, and Moore, Justices.

RABINOWITZ, Chief Justice.

We are called upon to decide whether two statutes, AS 08.54.040(7) & .195, comport with article VIII, section 3 of the

NOTICE TO COUNSEL: This opinion will be re-  
leased in the free and public at 12:30  
p.m. Friday of the date indicated.  
In advance of providing a transcript of record  
to the court, please advise the clerk of the  
court of the date of the release time,  
and the name of the persons other than your  
counsel in this case of the outcome.  
Clerk of the Appellate Courts

Alaska Constitution. These statutes authorize the Guide Licensing and Control Board to grant hunting guides "exclusive guide areas," geographic areas in which only the designated guide may lead hunts and from which all other guides are excluded. Licensed hunters, including other guides, may hunt recreationally in these areas, but only the holder of the exclusive guide area may lead hunts professionally.

I.

In 1973 the legislature created the Guide Licensing and Control Board ("GLCB" or "the Board"). Ch. 17, § 1, SLA 1973. This act set forth the composition, powers and duties of the Board, established guidelines for different classes of guide licenses, defined unlawful acts, and provided for the disciplining of guides. Id. It also authorized the Board generally to "regulate activity" of guides, AS 08.54.040(a)(3), and to adopt regulations "required by this chapter or reasonably necessary for its administration." Id. at 08.54.050. The legislative history reveals that the purposes of the act were "to protect fish and game management" and "to get competent people as guides in Alaska." Alaska Legislative Committee Minutes Microfiche No. 37, House Judiciary Committee, H.B. 1, at 20 (Feb. 2, 1973).

One of the first activities of the Board was to establish a scheme of "exclusive guide areas" (EGAs) and "joint use areas." Under this system, a guide would be able to register his

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camp and be entitled to exclusive guiding privileges in a designated area surrounding it. "Joint use areas" would be assigned where the areas used by two or more guides overlapped.<sup>1</sup> The Board first voted in April 1974 to implement this scheme for Game Management Units 16 and 20.<sup>2</sup> Shortly thereafter, in July 1974, the Board voted to extend the program to Unit 8 (Kodiak Island).

For the following year, the Board considered applications for EGAs but took no action. In July 1975, the Board granted dozens of exclusive and joint use areas in the three Units for which the regulation was passed. The Board further resolved at that time to extend the program to eleven more Units, including Unit 19. In January 1976, the Board voted to grant EGAs to qualified guides anywhere in the state. Applications were to be based on "occupancy, use, financial value, and such other qualifications as the Board may prescribe." The Board set

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1. EGAs and joint use areas will be referred to collectively as EGAs.

2. The Board of Game has divided the state into twenty-six Game Management Units, primarily for purposes of establishing hunting seasons and bag limits for different species. For these purposes, many Units are divided into several subunits with different applicable regulations. See AS 16.05.255; 5 AAC 78.001-.600, 80.001-.600, 83.001-.600, 86.001-.910, 88.001-.910. The Guide Licensing and Control Board has adopted these Units for purposes of licensing hunting guides. 12 AAC 38.200(b) (Eff. 6/28/74). Each licensed guide may be certified to practice in up to three Units. 12 AAC 38.200(c) (Eff. 6/28/74). Unit 16 is in South Central Alaska, near Anchorage, and Unit 20 occupies a large part of Interior Alaska, including Fairbanks.

a deadline of November 1, 1976, for receipt of applications for EGAs. The Board began granting EGAs in Units other than 8, 16 and 20 in December 1976, starting with Units 23-26. EGAs for other Units were granted gradually over the following months.

The Board conducted all of this activity without specific statutory authorization, relying only on the general grant of regulatory power in the 1973 legislation. In 1976 the legislature enacted AS 08.54.040(a)(8) (now AS 08.54.040(a)(7)), which authorized the Board to:

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

Ch. 133, § 1, SLA 1976. This provision took effect January 1, 1977. Id. at § 5. The legislative history reveals that the intent of this section was to ratify the Board's EGA program. Transcript of Senate Resources Committee Hearing on S.B. 661, at 1, 14-15 (March 12, 1976); Transcript of House Resource Committee Hearing on S.B. 661, at 33-34 (April 27, 1976).

Finally, in 1986 the legislature enacted AS 08.54.195.<sup>3</sup> This statute for the first time imposed procedures and criteria

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3. Alaska Statute 08.54.195 provides:

(footnote continued)

on the Board with respect to the EGA program. This reform was

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(footnote continued)

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

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

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

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

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

(4) big game populations in the area;

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

(6) other relevant facts or circumstances.

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

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

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

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

(footnote continued)

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enacted in response to a "sunset report" on the GLCB by the Division of Legislative Audit, which was harshly critical of the Board's implementation of the EGA program.<sup>4</sup> See Division of Legislative Audit, A Performance Report on the Department of Commerce and Economic Development Guide Licensing and Control Board, Audit Control No. 08.01253-86-R (Nov. 21, 1985).

## II.

Kenneth D. Owsichek is a registered guide who was licensed to lead hunts in Game Management Units 17, 18 and 19 in February 1976.<sup>5</sup> He alleges that he had worked as an assistant guide in this area from 1972 to 1976. He claims that in January 1976, upon passing his guide license examination, he invested

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(footnote continued)

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

4. The 1986 legislation also modified AS 08.54.045 (6) in response to the sunset report. Specifically, the legislation (1) renumbered it subsection .045(7), (2) required "an equitable, reasonable, and consistent procedure" (emphasized language added in 1986), and (3) provided that "preference may be given" to local resident guides (instead of shall). Ch. 71, § 6, SLA 1986.

5. Units 17, 18 and 19 occupy a large area overlapping parts of Southwest, Western and Interior Alaska. See 5 AAC 83.005(d) (Eff. 7/5/85), 86.005(a) (Eff. 7/5/85), 88.005(b) (Eff. 7/5/85).

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\$300,000 to build a lodge and several cabins together with other facilities for a full-scale guiding operation on Lake Clark. He also claims to have spent \$150,000 on four aircraft to fly in clients.

Owsichek's licensing and concurrent investments occurred at approximately the same time the GLCB decided to extend the EGA program on a statewide basis.<sup>6</sup> Accordingly, Owsichek submitted an application for EGAs in Units 17 and 19 before the November 1, 1976, deadline established by the Board. The Board considered applications for EGAs in Units 17 and 19 in its December 1977 meeting. Owsichek's application was denied on the ground that he had not submitted "evidence of contracts for guided hunts in the area for two of the five years preceding the application."

Owsichek petitioned for review of this decision. In November 1978, the Attorney General's office found that, based on contracts submitted for hunts in 1976, 1977 and 1978, he was qualified to receive an EGA in Units 17 and 19, and recommended that the Board adopt this decision. In its December 1978 meeting, the Board resolved "that the portion of Mr. Owsichek's

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6. As discussed above, the Board had decided to grant EGAs in Unit 19 in July 1975, but did not vote to extend the program to the remainder of the state, including Units 17 and 18, until January 1976, the month Owsichek passed his guide licensing exam and allegedly began building his improvements.

application that is not in conflict with presently granted gide [sic] areas be allowed. That no portion of the application that overlaps or is presently in joint use be granted." By letter dated February 5, 1979, the Board informed Owsichuk of its decision and assigned him area 19:33, in Unit 19. Owsichuk objected to this decision because he was unable to land his planes within the areas granted to him, rendering them "unhuntingable."

On April 6, 1979, Owsichuk filed a complaint in superior court challenging the Board's actions. His amended complaint alleged that: (1) prior to January 1, 1977, the Board lacked authority to promulgate regulations creating EGAs; (2) the actions of the Board violated due process and equal protection under the federal and state constitutions; (3) the actions of the Board were an unconstitutional taking of property; (4) AS 08.54.040(a)(8) was an unconstitutional delegation of authority because of the lack of standards; (5) the statutes and regulations constituted an unlawful impairment of contracts under the Alaska Constitution; (6) the regulations did not comply with what standards existed in the statute; and (7) he suffered damages. By way of relief Owsichuk sought a declaration that the Board's assigning of EGAs is unconstitutional and that he is entitled to recover damages against the state in an amount in excess of \$100,000 as a consequence of the state's illegal and unconstitutional actions.

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After considering the briefs and hearing oral arguments,<sup>7</sup> the superior court affirmed the actions of the Board, holding "that the Board did not commit any error or abuse of discretion, that its regulations comport with the governing statutes, and that no constitutional infirmity exists in the statutes, regulations or Board decision."

This appeal followed.<sup>8</sup>

### III.

#### A.

Owsichek argues that the EGA statutes and regulations violate the common use clause of the Alaska Constitution, which provides:

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

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7. Before considering the case on the merits, the superior court had dismissed the action as an untimely appeal. This court reversed and remanded, holding that the claim for declaratory relief should have been treated as an independent action rather than an appeal, and that due to surprise and excusable neglect the time limit for appeals should have been relaxed as to the claims for damages and an injunction. *Owsichek v. State, Guide Licensing and Control Board*, 627 P.2d 616 (Alaska 1981).

8. After the parties filed their initial briefs, we requested supplemental briefing on the question of whether AS 08.54.040(7) and AS 08.54.195 violated article VIII, section 3, of the Alaska Constitution.

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Alaska Const., art. VIII, § 3. The state argues that this clause is a broad grant of authority to the state to manage these resources, and that it places no limitations on this authority greater than those contained in other constitutional provisions, such as equal protection.<sup>9</sup>

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

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9. The state also argues that Owsichek has no standing to challenge the system as it existed before January 1, 1977, when AS 08.54.040(1)(7) went into effect, because the Board did not establish any EGAs in Owsichek's Units before that date. In light of our holding that Owsichek is not entitled to damages, see infra Part IV, we need not address this issue. The declaratory relief to which he is currently entitled is unaffected by the date on which he attained standing.

The state does not argue that Owsichek lacks standing under the common use clause. We note that we would reject such an argument. We believe that a professional hunting guide's "use" of the wildlife resource is sufficiently direct that he falls within the protection of the common use clause. See infra note 15.

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This court has never considered these questions before. However, in four cases, we have indicated an intent to apply the common use clause in a way that strongly protects public access to natural resources. First, with respect to article VIII generally, we have written, "A careful reading of the constitutional minutes establishes that the provisions in article VIII were intended to permit the broadest possible access to and use of state waters by the general public."<sup>10</sup> Wernberg v. State, 516 P.2d 1191, 1198-99 (Alaska 1973). Given the text of the common use clause, the same policy should apply to wildlife as well.

In CWC Fisheries v. Bunker, 755 P.2d 1115 (Alaska 1988), we addressed the question of whether a state tidelands grant included an exclusive right of fishery, or whether it was subject to a public trust easement. In holding the latter, we relied in part on the common use clause. While specifically declining to determine whether this clause imposed a higher duty than that imposed by common law public trust principles, id. at

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10. Similarly, it has been stated:

The common use clause necessarily contemplates that resources will remain in the public domain, and will not be ceded to private ownership. Since the right of common use is guaranteed expressly by the constitution, it must be viewed as a highly important interest running to each person within the state.

State v. Ostrosky, 667 P.2d 1184, 1196 (Alaska 1983) (Rabinowitz, J., dissenting).

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1120 n.10, we stated, "At least in the absence of some clear evidence to the contrary, we will not presume that the legislature intended to take an action which would, on its face, appear inconsistent with the plain wording of this constitutional mandate." Id. at 1120.

In State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), appeal dismissed, 467 U.S. 1201, 81 L. Ed. 2d 339 (1984), we addressed the constitutionality of limited entry fishing. Limited entry fishing bears an obvious similarity to the EGA scheme in that both place restrictions on the commercial harvesting of a natural resource by giving a special status to a limited number of licensees. In Ostrosky we stated:

[W]e have difficulty squaring the section 3 reservation of fish to the people for common use with a system which grants an exclusive right to fish to a select few who may continue to exercise that right season after season. We accept, therefore, at least for the purposes of this case, the proposition that limited entry is inconsistent with the command of article VIII, section 3.

Id. at 1189. In Ostrosky we held that the Limited Entry Act was not unconstitutional because of a 1972 constitutional amendment explicitly permitting limited entry to fisheries, notwithstanding section 3. Id. at 1190.

In a subsequent limited entry fishing case, Johns v. Commercial Fisheries Entry Comm'n, 758 P.2d 1256 (Alaska 1988), we stated:

In State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), we noted that there is a tension

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between the limited entry clause of the state constitution and the clauses of the constitution which guaranty open fisheries. [Citing sections 3 and 15 of article VIII] We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation.

Id. at 1266.

Since there is no constitutional amendment authorizing EGAs, we must in this case address a common use question similar to that which was not addressed in Ostrosky. We do so, however, in light of our observations in Wernberg, CWC Fisheries, Ostrosky, and Johns that the common use clause was intended to guarantee broad public access to natural resources.

B.

We begin by examining constitutional history to determine the framers' intent in enacting the common use clause. This was a unique provision, not modeled on any other state constitution. Its purpose was anti-monopoly. This purpose was achieved by constitutionalizing common law principles imposing upon the state a public trust duty with regard to the management of fish, wildlife and waters.<sup>11</sup>

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11. Responding to a question about this provision on  
(footnote continued)

The framers' reliance on historic principles regarding state management of wildlife and water resources is evident from a written explanation in the committee materials for the term "reserved to the people for common use." This discussion also highlights an intent to prohibit "exclusive grants or special privilege[s]."

Ancient traditions in property rights have never recognized that a private right and title can be acquired by a private person to wildlife in their natural state or to water in general. The title remained with the sovereign, and in the American system of government with its concept of popular sovereignty this title is reserved to the people or the state on behalf of the people. The expression "for common use" implies that these resources are not to be subject to exclusive grants or special privilege as was so frequently the case in ancient royal tradition. Rather rights to use are secured by the general laws of the state. In all English and American legal systems ownership of water cannot be asserted, rights acquire only to the use of water. Once wildlife is captured and removed from their natural state possessory right accrues to the captor, provided that the wildlife was captured in conformity with provisions of law.

Alaska Constitutional Convention Papers, Folder 210, paper prepared by Committee on Resources entitled "Terms" (emphasis

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(footnote continued)

the floor of the convention, a member of the Resources Committee explained, "The language here has a lot of history behind it. . . . The language in this section harks back to the old tradition whereby wildlife in its natural state was in the presumed ownership of the sovereign until reduced to possession." 4 Proceedings of the Alaska Constitutional Convention 2492 (Jan. 18, 1956).

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added, except to "use"). Because an EGA is clearly a type of monopoly, "exclusive grant," or at least a "special privilege," this history strongly suggests that the statutes at issue here are unconstitutional. However, this history also states that "rights to use are secured by the general laws of the state," clearly giving the legislature some leeway in regulating use of the resources.

The state finds support for its position in a debate that occurred at the convention over registered trap lines. This debate is significant because, like EGAs, registered trap lines would allow a prior existing user to exclude newcomers from the privilege of harvesting the wildlife resource. On the floor of the convention, a delegate asked whether the common use clause would prohibit registered trap lines, and the spokesman for the Resources Committee responded that it would be "arguable." 4 Proceedings of the Alaska Constitutional Convention 2462-63 (Jan. 17, 1956). In response to this concern, the Resources Committee inserted language in the commentary to the common use clause authorizing registered trap lines: "This provision does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture, to fish in private ponds, or to registered trap lines if authorized by law." 6 Proceedings of the Alaska Constitutional Convention app. V, at 98 (Commentary on Article on State Lands and Natural Resources, Jan. 16, 1956)

(emphasized language added after first draft; cf. id. at 83 (Dec. 16, 1955)).

Resolution of the trap line issue begs the question in the instant case. One might argue that addition of the language excluding registered trap lines from the effect of the common use clause was intended to authorize the legislature to enact this type of regulation generally, and that the reasoning should extend to EGAs. However, the language in the commentary is highly specific, which more likely suggests that the common use clause would prohibit all similar regulation, with registered trap lines as a narrow exception in response to the political pressures of the moment.

In a discussion about fishing in lakes, the Constitutional Convention underscored its intent that the public retain broad access to fish, wildlife and water resources, and that these resources not be the subject of private grants. In floor debates, a question arose about the status of a natural lake falling within the boundaries of someone's private property. The delegates agreed that the common use clause guaranteed the public's right to use the lake for fishing, although it did not authorize a trespass across the landowner's property to get to the lake. 4 Proceedings of the Alaska Constitutional Convention 2460 (Jan. 17, 1956). The Convention made it clear that only fish in small private ponds may be owned free of the public's right of access. See id. at 2460-61; 5 Proceedings of the Alaska

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Constitutional Convention app. V, at 98 (Commentary on Article on State Lands and Natural Resources, Jan. 16, 1956). This confirms the view of the common use clause and the public trust expressed in CWC Fisheries v. Bunker, 755 P.2d 1115 (Alaska 1988), holding that a grant of a fee interest in tidelands remains impressed with a public trust easement. It also reinforces our conclusion that grants of exclusive rights to harvest natural resources listed in the common use clause should be subjected to close scrutiny.

C.

As we have noted, the drafters of the common use clause apparently intended to constitutionalize historic common law principles governing the sovereign's authority over management of fish, wildlife and water resources. A review of the history of wildlife law will therefore shed further light on the central issue in this case.

The Supreme Court traced the history of wildlife law from its roots in ancient Rome through its English common law development and transfer to this country in Geer v. Connecticut, 161 U.S. 519, 522-29, 40 L.Ed. 793, 794-97 (1896). In that case, the Court affirmed the defendant's conviction, upholding a state statute forbidding transportation of certain game birds killed in Connecticut across state lines. The Court noted that in England, the right to hunt and fish "[was] vested in the King alone and

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from him derived to such of his subjects as [had] received the grants of a chase, a park, a free warren, or free fishery." Id. at 527, 40 L.Ed. at 796 (quoting 2 W. Blackstone, Commentaries \*410). As a recent authority explains:

Stripped of its many formalities, the essential core of English wildlife law on the eve of the American Revolution was the complete authority of the king and Parliament to determine what rights others might have with respect to the taking of wildlife.

M. Bean, The Evolution of National Wildlife Law 12 (rev. ed. 1983).

The Geer court asserted that this authority to regulate taking of wildlife passed to the states upon separation from England. 161 U.S. at 528, 40 L.Ed. at 796. However, unlike the authority vested in the King, the authority of the states, with their guarantees of democratic government, was not plenary.

Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the fact that the power or control lodged in the state, resulting from this common ownership, is to be exercised like all other powers of government as a trust for the benefit of the people, and not as a prerogative for the advantage of the government as distinct from the people, or for the benefit of private individuals as distinguished from the public good.

Id. at 529, 40 L.Ed. at 797 (emphasis added). The Court held that the state's "ownership" of wildlife, in trust for the people, authorized the statute at issue in that case. Id.

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The framers of the common use clause probably relied heavily on Geer. The following statement from the constitutional papers, as quoted above, closely tracks the reasoning of Geer:

The title remained with the sovereign, and in the American system of government with its concept of popular sovereignty this title is reserved to the people or the state on behalf of the people. The expression "for common use" implies that these resources are not to be subject to exclusive grants or special privilege as was so frequently the case in ancient royal tradition.

Alaska Constitutional Convention Papers, Folder 210, paper prepared by Committee on Resources entitled "Terms."

Thus, common law principles incorporated in the common use clause impose upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people.<sup>12</sup> We have twice recognized this duty in our prior

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12. The Court overruled Geer's state ownership doctrine in Hughes v. Oklahoma, 441 U.S. 322, 60 L. Ed. 2d 250 (1979). That case involved facts almost identical to Geer: the Oklahoma statute at issue forbade the export of minnows taken from the waters of the state. See id. at 323, 60 L. Ed. 2d at 254. The Court struck down the statute as violative of the commerce clause. Id. at 338, 60 L. Ed. 2d at 263. The Court found the state ownership doctrine to be a legal fiction that created anomalies and did not conform to "practical realities." Id. at 335, 60 L. Ed. 2d at 261. Nothing in the opinion, however, indicated any retreat from the state's public trust duty discussed in Geer. Indeed, the Court stated, "[T]he general rule we adopt in this case makes ample allowance for preserving, in ways not inconsistent with the Commerce Clause, the legitimate state concerns for conservation and protection of wild animals underlying the 19th century legal fiction of state ownership." Id. at 335-36, 60 L. Ed. 2d at 261. As one U.S. District Court

(footnote continued)