

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6021 HOUSE RESOURCES

425

HB

494

HOUSE COMMITTEE REPORT

(9)

Date Referred: February 9, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 4/18/90

The RESOURCES Committee considered:

HB 494

HOUSE BILL NO. 494

IMMUNITY: RECREATIONAL LAND USE INJURIES

"An Act relating to civil liability for injuries resulting from recreational use of land."

RECOMMENDATIONS:

- be replaced with _____ the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

[Handwritten signatures]

SIGNING:
(Check approp. column)

Do Not Pass
 No Rec
 Amend

	Do Not Pass	No Rec	Amend
<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>		<input checked="" type="checkbox"/>	

[Handwritten Signature]

 Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: 4/18/90
Title: IMMUNITY: RECREATIONAL LAND USE INJURIES
Sponsor: Rep. Menard
Requestor: House Resources Committee

Agency Affected: All Agencies
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS : (Attach a separate page if necessary)

Prepared by: House Resources Committee Phone: 4944
Division: Representative Curt Menard Date: 4/19/90

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by preparer):

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

STATE OF ALASKA
THE LEGISLATURE

POUCH V. STATE CAPITOL
JUNEAU ALASKA 99811
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

November 24, 1989

*New res req.
1/30/90
deadline
for other states
statutes*

SUBJECT: Immunity for recreational land use
(Work Order No. 6-1747)

TO: Representative Curt Menard

FROM: Michael F. Ford *M.F.*
Legislative Counsel

Enclosed is a draft bill granting immunity to landowners for certain recreational activities. The law is patterned after a Washington law as you requested.

This kind of immunity law raises numerous issues. After discussion of some of these issues with Bill Siedler of your staff, I thought it best to discuss some of these issues by memo. Under existing law, a landowner has a duty to exercise reasonable care to prevent harm to anyone who enters the owner's land, whether invited or not. Assuming a person has been injured while on another's property, most lawsuits revolve around whether the owner exercised the requisite reasonable care. Depending on the facts in each case, liability may or may not attach to the property owner.

Basically the draft you now have narrows the liability of a landowner who is not charging a fee for recreational use of the land. Liability exists only if the owner intentionally caused the injury, or when a latent artificial condition caused the injury and the owner failed to post warning signs. I noticed that considerable litigation occurred over the Washington law, particularly over what is a "latent artificial condition, known to the landowner." There are other examples currently in the Alaska statutes of this kind of immunity, but the scope of the immunity is much narrower. For example AS 09.65.135 limits liability arising from accidents on ski slopes, AS 09.65.090 limits liability for rendering emergency aid, and AS 09.65.097 limits liability for emergency veterinary care. Also there are a number of bills presently pending before the legislature that would

Representative Curt Menard

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November 27, 1989

extend immunity for civil liability to specific groups or in specific situations. Two may be of particular interest, SB 69, limiting the liability of zoos and zoo operators, and SB 229, limiting the liability of the state and municipalities for hazardous recreational activities.

It is very difficult to predict the practical effect of a bill granting immunity from civil liability. You can be sure that there will be substantial litigation over the scope of the immunity, by those persons who seek to recover compensation for their injuries. Please contact me if you have further questions.

MFF:lmb:mi

L8/063

Enclosure

Alaska State Legislature



Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 163-3991
Fax: (907) 163-3351

February 2, 1990

MEMORANDUM

TO: Representative Curt Menard

ATTN: Johanna Munson

FROM: Glenn Gray ^{GTE}
Legislative Analyst

RE: Recreational Liability Laws
Research Request 90.187

You asked for a review of laws in other states which limit the liability of public or private landowners for recreational accidents. You also requested a review of case law regarding these statutes.

Every state, including Alaska, has some kind of legislation limiting liability regarding recreational use of public or private land. The first section of this memorandum provides background information on this topic. The second section summarizes the similarities and differences among these statutes. The third section addresses recent case law. The last section of this memorandum includes a summary of problems concerning recreational use statutes and a brief discussion of model legislation intended to alleviate these problems.

Background

Recreational use statutes were first adopted in the 1960s to respond to a growing trend of landowners closing their land to recreational use. The purpose of the laws was to reduce liability of these landowners and thereby encourage them to keep their property open to hunters, hikers and other recreational users. The Outdoor Recreation Review Commission promoted the concept of limited liability for recreational use of private land, and in 1965 the Council of State Governments supported model legislation (see Attachment A). Thirty states responded by passing legislation. During the 1970s the National Rifle Association and the National Association of Conservation Districts recommended that more states adopt similar statutes. Eighteen additional states passed recreational use legislation during the 1970s and one more state passed legislation during the 1980s.

Several groups have supported model legislation to respond to problems raised by recent civil suits. The American Motorcyclist Association (AMA), the American Forestry Association and the American Legislative Exchange Council (ALEC) have recommended that states amend their current laws to provide more

consistency and to deal with issues raised by case law. This will be explained further at the end of this memorandum.

Comparison of Recreational User Laws

While recreational use statutes have some basic similarities, they differ in some respects and in interpretation by the courts. Recreational use statutes usually apply to general recreational uses, but some states also have additional laws relating to specific kinds of recreation such as snowmobiling, skiing and motorcycling. This portion of the memorandum will address general similarities and differences among the statutes. A more detailed analysis was commissioned by the AMA in 1988 (see Attachment B). The AMA study also includes legislation from all states except Alaska. Attachment C contains recreation liability statutes from Alaska.

There are three basic similarities among recreational liability legislation. First, the statutes usually apply to private landowners who do not levy a fee for use of their land. Second, the use must be recreational in nature and; third, limits to liability are generally only for normal negligence and do not cover the landowner for willful and malicious acts or gross negligence. These common components will be discussed separately below.

Most of the recreational use statutes target private landowners who do not operate commercial recreational facilities. Income derived from concessions often bars the landowner from immunity. Although certain kinds of income are permitted in some states without jeopardizing coverage by recreational use laws, states such as Alabama, Louisiana, Minnesota and Texas clearly exclude landowners who receive a profit.¹ Although in the past these statutes were rarely applicable to state and local entities, this appears to be changing. Through legislative provisions and case law, protection has sometimes been extended to state and local governments, non-profit groups and utility companies provided that the use of the land is free. The Federal Tort Claims Act permits state laws to be applied to federal land and therefore state recreational use laws are generally recognized in federal courts. Thus, the concept of a landowner now tends to be interpreted broadly, in some cases even to include those who lease land or possess easements. Some exceptions to this generalization will be noted in the next section.

Recreational liability statutes are generally applicable to outdoor recreation users in a natural setting. The laws in some states, however, have been

¹The New Hampshire recreational use statute applies to agricultural landowners who charge a fee for people to pick their own produce. Washington law allows landowners to collect a fee of no more than ten dollars for cutting firewood, and Wisconsin law allows the landowners to derive an income of up to \$500 annually and retain the liability protection.

applied to developed parks and indoor recreational facilities. Most states define recreation broadly, but some name specific types of recreation covered by the law. Michigan broadened its statute in 1971 by deleting "outdoor" before "recreation." The extent of a landowner's liability depends on whether the entrant is an invitee, licensee or trespasser. While a landowner is responsible for most kinds of hazards for an invitee, recreational use laws permit more limited liability when the land is open to general recreational users free of charge.

Most statutes absolve the landowner from normal negligence. Unless there is willful, wanton or malicious misconduct, the landowner is not liable for accidents which occur on his or her land. Prior knowledge of a hazard without sufficient action to warn recreational users or prohibit an activity can be construed as exceeding normal negligence.

Case Law Relating to Recreational Liability Statutes

An increasing number of civil suits have challenged the recreational use statutes during the past five years. The courts have generally upheld the major provisions of state recreational use laws but have changed interpretations of how these laws are applied.

Constitutional questions regarding limitation of a recreational user's right for redress have been posed. Laws in at least ten states have been upheld.² Only one state, North Carolina, has repealed a recreation liability law because of its constitutional flaws. North Carolina now has recreational liability laws only for trespassing hunters and trail users.

A brief discussion of case law follows. A more detailed analysis may be found in the 1988 AMA study (see Attachment B). Specific cases relating to recreational liability laws are discussed in the *Recreation and Parks Law Reporter*. Attachment D contains a summary and individual synopses of these cases.

Case law has interpreted recreational liability laws to clarify what kinds of landowners are covered, what kinds of uses are covered and the kinds of fees that can be levied. Whether a defendant is guilty of willful or wanton misconduct is decided on a case-by-case basis.

Although recreational liability laws are almost always applicable to private landowners, coverage for other types of landowners vary from state to state.

²California, Connecticut, Idaho, Indiana, Kentucky, Louisiana, Michigan, Minnesota, North Dakota, and Wisconsin have all upheld the constitutionality of their recreational liability laws.

Case law has been used to determine if governmental entities are covered by recreational liability laws. As a result of court decisions, these statutes are not applicable to state lands in Florida and Indiana but are applicable on state lands in states such as Idaho, Ohio and Pennsylvania. Courts have determined that local governments do not enjoy the protection of state recreational use laws in California, Florida, Minnesota, New Jersey, Washington, and Wisconsin. Courts have also found that state recreational use laws are applicable to lands or waters managed by specific federal agencies in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Indiana, Kentucky, Nevada, North Dakota, Oregon, Pennsylvania, South Carolina, Virginia, Washington, Wisconsin, and Wyoming. The recreational use statute in Idaho was found to be applicable on Indian reservation lands.

Recreational liability laws are generally applicable to natural undeveloped lands, but case law has extended this coverage to other types of areas. These statutes have been found to be germane in developed recreation areas in such states as California, Connecticut, Illinois, Kansas, Kentucky, Nebraska, Michigan, Virginia, and Washington. A New York court found that the state recreational liability statute was not applicable to a developed and supervised city park. Recreational use statutes have also been utilized during court cases concerning accidents on roadways. A North Dakota U.S. Court of Appeals found that the federal government's failure to post a sign warning about a dangerous curve could be considered willful misconduct under the state recreational use statute. The Louisiana statute was found applicable to boat ramps and in one case, playground bleachers, even though the act specifically mentions only outdoor recreation. A 1985 appeals court in Michigan extended limited liability protection to homeowners' backyards.

The question of what fees may be levied by a landowner before he surrenders protection from the law has also been addressed in case law. The general rule regarding prohibition of collecting fees has a few exceptions. A Georgia appeals court found that revenues generated by a non-profit organization did not preclude the landowner from using the recreational use statute. Fees for services are permitted according to Ohio case law but entrance fees are not. A Washington State court found that the fact a concessionaire was renting equipment in a national park did not preclude use of the state's recreational use statute.

Recent Model Legislation

Several problems with existing recreational use statutes have prompted an effort to encourage states to amend their current statutes. These problems include: exclusion of some recreational activities because of an overly restrictive definition of recreation in the statutes; differences in applicability to private and public landowners; inapplicability of laws to those who receive compensation to maintain trails and improve access; and costs associated with defense by landowners to frivolous claims.

Representative Menard
February 2, 1990
Page 5

Model legislation has been drafted by the American Motorcyclist Association (AMA) and the American Legislative Exchange Council (ALEC) to address these problems and to provide more uniformity between laws in the various states. Broadening the recreation definition would enable statutes to apply to new types of recreation not yet popular. Uniform application of laws to all landowners including public and private entities would provide more equitable treatment. The model legislation would also permit landowners to accept compensation for maintenance or to permit other kinds of agreements.³ The model legislation would also permit landowners to collect court fees in the event of frivolous or groundless claims against them. Attachment E contains model legislation recommended by AMA and ALEC.

I hope that this memorandum answers your questions. Please contact me should you desire additional information.

Attachments

³New Hampshire currently permits a lower property tax assessment to landowners who agree to open their land to recreational users.

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 9004

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, RECOMMENDING ADOPTION OF SENATE BILL 229 AN ACT RELATING TO GOVERNMENT LIABILITY FOR DAMAGE OR INJURY RESULTING FROM HAZARDOUS RECREATIONAL ACTIVITIES.

WHEREAS, the City of Valdez urges the State to exercise its responsibility to provide a broad spectrum of recreation opportunities for all Alaskans; and

WHEREAS, certain common recreational activities have an inherent risk of injury which under current state statutes limit the State and its local governments in their ability to provide recreational opportunities to its citizens; and

WHEREAS, municipalities are having to reduce or close recreational services because liability insurance is either unavailable or too expensive; and

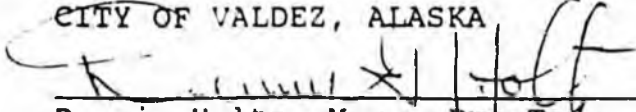
WHEREAS, voluntary organizations help provide communities with a broad spectrum of recreational activities not being offered by the public sector, and establishing a cooperative relationship under the local government would enable them to provide programs they might not otherwise be able to provide; and

WHEREAS, the President's Commission on Americans Outdoors has recommended that the standard of care for which an organization or government should be responsible in providing recreational opportunity be shifted from "mere negligence" to "gross negligence."


NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, that the City of Valdez urges the Alaska State Legislature to adopt an act relating to government liability for damage or injury resulting from hazardous recreational activities.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, this 16th day of January, 1990.

CITY OF VALDEZ, ALASKA


Dennis Holtz, Mayor Pro Tem

ATTEST:


Jeanne Donald, City Clerk



Alpine Camp . Teepee Camp . Ranch Camp . Wilderness Camp
Conference Center

November 10, 1989

Rep. Curt Menard
351 W. Swanson Ave., Ste. 1
Wasilla, Alaska 99687

Dear Curt:

Enclosed you will find a copy of a Washington State law that we feel would be extremely effective here in Alaska if made a part of our statutes.

This law would be especially helpful for guides and camps such as ourselves that have horse arenas and riding clubs. We know there are many people in Alaska who own and maintain horses expressly for the purpose of being used by other people.

We appreciate your consideration in proposing such a bill for Alaska in the days to come.

Sincerely,

Stan Gillespie
Camps Director

SG:cr

Enclosure

cc: Jalmer Kertula
Ronald Larson
Loren Leman



P.O. Box 6114, Westerville, Ohio 43081-6114

Telephone (614) 891-2425
Telex: 245392; Fax: (614) 891-5012

March 8, 1990

The Honorable Curt Menard
Alaska House of Representatives
Chairman, Resources Committee
State Capitol
Juneau, AK 99811

Dear Representative Menard:

Many members of the American Motorcyclist Association (AMA) depend upon accessibility to land for their recreation. We were therefore pleased to see the introduction of House Bill 494, dealing with civil liability for recreational injury. Alaska is one of only two states in the nation which does not now have such a statute.

It is our understanding that due to other pressing concerns, the legislature probably will not have the opportunity to review the bill this year. We are sympathetic to the factors which have caused the Resources Committee much overtime work this session. However, we do believe that a landowner hold-harmless statute would benefit the state.

The aspects of such legislation are varied. To assist the work of the committee when considering this bill, or a similar bill in a subsequent session, please find enclosed the following:

- A compilation of national hold-harmless statutes by AMA. This contains statutes and innovations current through 1988.
- An article I wrote for AMERICAN FORESTS magazine.
- A copy of our model statute.

If I can be of any assistance in this process, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric Lundquist', written over a horizontal line.

Eric Lundquist
Legislative Affairs Specialist
Government Relations

EL/ts

REVISION OF SEPTEMBER, 1988

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. (Legislative Purpose.)

The purpose of this act is to encourage owners of land to make land and water areas available to the public for educational and recreational purposes by limiting their liability toward persons entering thereon for such purposes; by ensuring that through making one's land available for such purposes an owner need not be subjected to waste or a financial burden thereby and to provide a mechanism whereby owners of land may be compensated for expenditures incurred in defense against frivolous or purposeless suits arising under this act.

Section 2. (Definitions.)

In this act, the following words have the meanings indicated:

- (a) "Charge" means price or fee asked for services, entertainment, recreation performed or products offered for sale on land or in return for invitation or permission to go upon land, except as excluded herein.
- (b) "Educational Purpose" means any activity undertaken as part of a formal or informal educational program, and viewing historical, natural, archeological or scientific sights.
- (c) "Land" means all real property, land and water, and all structures, fixtures, equipment and machinery thereon.
- (d) "Owner" means any individual, legal entity or governmental entity and any employee or agent thereof, that has any fee, security, leasehold or possessory interest in land, or in control of the premises.
- (e) "Recreational Purpose" means any activity undertaken for recreation, exercise, education, relaxation, refreshment, diversion or pleasure.

Section 3. (Exclusions.)

As used in this Act, the word "charge" shall not mean:

- (a) Unless otherwise agreed in writing, any lease, dedication, license or easement, or the proceeds thereof, by an owner of land to a non-profit organization or governmental entity for educational or recreational purposes.
- (b) Any action taken by a person, legal entity, non-profit organization or governmental entity other than the owner, or any monetary contribution made, in either event whether or not sanctioned or solicited by the owner, the purpose of which is

to (1) improve access to land for educational or recreational purposes, (2) remedy damage to land caused by educational or recreational use, or (3) provide warning of hazards on, or remove hazards from, land used for educational or recreational purposes.

- (c) Unless otherwise agreed in writing or otherwise provided in the tax code, any property tax abatement or relief received by the owner from the state or local taxing authority in exchange for the owner's agreement to open the land for educational or recreational purposes.
- (d) Unless otherwise agreed in writing, any contribution in kind, services or cash paid to reduce or offset costs and eliminate losses from educational or recreational use.

Section 4. (Duty of Care of Landowner.)

Except as specifically recognized by or provided in this Act, an owner of land owes no duty of care to keep the premises safe for entry or use by others for educational or recreational purposes, or to give any warning of a dangerous condition, use, structure or activity on such premises to persons entering for such purposes.

Section 5. (Limitation of Liability.)

Except as specifically recognized by or provided in this Act, an owner of land who either directly or indirectly invites or permits without charge any person to use such land for educational or recreational purposes does not thereby:

- (a) Extend any assurance that the premises are safe for any purpose,
- (b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed,
- (c) Assume responsibility for or incur liability for any personal injuries, deaths or property damages caused by an act or omission of such persons, or
- (d) Assume responsibility for or incur liability for injury to such person or property caused by any natural or artificial condition, structure or personal property on the land.

Section 6. (Warning Signs.)

None of the following shall create liability on the part of an owner of land where there is no other basis for such liability:

- (a) The installation of a sign or other form of warning to guard or warn against a dangerous condition, use, structure or activity,
- (b) Any modification made for the purpose of improving the safety of others, or

- (c) The failure to maintain or keep in place any sign, other form of warning or modification made to improve safety.

Section 7. (Willful or Malicious Conduct.)

Nothing in this Act limits in any way any liability which otherwise exists:

- (a) For willful or malicious, but not mere negligent, failure to guard or warn against an ultrahazardous condition, structure, personal property, use or activity, actually known to such owner to be dangerous, or
- (b) For injury suffered in any case where the land is used principally for a commercial, for-profit, educational or recreational enterprise, existing law governing such use is not changed by this Act except as provided herein.

Section 8. (Construction.)

This Act does not:

- (a) Grant or create a right for any person to go on the lands of another without the direct or indirect permission of the landowner,
- (b) Create a duty or care or ground of liability for injury to persons or property,
- (c) Relieve any person using the land of another for educational or recreational purposes from any obligation which he may have in the absence of this Act to exercise care in the persons use of such land and in the persons' activity thereon or from the of the legal consequences of failure to employ such care, or
- (d) Prevent an owner of land from placing reasonable restrictions on the time, place and manner of educational or recreational purposes for which the land may be used.

Section 9. (Complaint - Form.)

A cause of action, the defense for which may lie within this Act, shall, in one of its counts, state that the cause of action is not within this Act.

Section 10. (Answer - Form.)

An answer to a cause of action, one defense for which lies within this Act, shall, in one of its counts, state that the cause of action is within this Act.

Section 11. (Required Joinder.)

- (a) Except as otherwise provided by law, any cause of action, the defense for which may lie within this Act, shall join as defendants, all those who may be considered as an "owner", under this Act, of the land in which the cause of action arose,

Landowners Grapple with Liability Questions

A third generation of state statutes might finally convince forest owners to open more land to American recreationists.

By ERIC J. LUNDQUIST

The fondest memories of our youth usually conjure up carefree outdoor adventures. Mine are of a stream that led to Marley Creek near Baltimore—gathering fossils on a secluded Calvert Cliffs beach, bushwhacking down an old fire trail, and learning to ride a motorcycle in an old quarry. There was camping with my scout troop at Broad Creek, building forts in a small grove of trees near home, and later on, moonlight walks in nearby fields with my girlfriend.

It didn't occur to me then, but now I realize that those pleasures were possible only because of the tolerance or graciousness of a benevolent landowner. Very few of my outdoor pursuits occurred in public parks or other places set aside by the government for recreation.

We want our children to enjoy some of the same

Eric J. Lundquist is a legislative affairs specialist for the American Motorcyclist Association.



Signs barring access to private property are ubiquitous, but laws guarding against liability may eliminate one of the reasons.

activities we so fondly recall. But today most private lands are posted with NO TRESPASSING signs and are no longer available to adventuresome youth.

Not all loss of access to private land has resulted from the incessant onslaught of tract homes across the landscape. We have traditionally been a litigious society, and the fear of lawsuits has gone a long way in convincing

landowners to post their property.

The states have recognized this problem as well as their own inability to provide lands for recreational use. Therefore, most states have passed so-called "hold-harmless" laws in order to provide some protection to landowners from suits arising out of injuries received by recreational users of their land. Much like a contract, hold-harmless agreements arrange for one party to assume the liability inherent to a situation, relieving the other

sporting groups. Since that time, our nation has had an absolute explosion of civil suits—many arising from recreational use of private lands. There has also been a perceived rise in the amount of damages awarded.

At the American Motorcyclist Association (AMA), barely a day goes by when we don't hear from landowners who want to let people use their land but are afraid of liability.

Liability is also a concern of the American Forestry Association, because many of its members are forest landowners. Two years ago, liability was one reason AFA's Trail Riders of the Wilderness program (now renamed American Forest Adventures; see page 50) was disbanded for a year.

Every day at AMA we get calls from recreationists. Areas they once were able to use are now closed off or posted, and they don't know where else to go. In many cases, we find that knowledge of the state's hold-harmless laws can go a long way in solving the problem.

It's unfortunate, but hold-harmless laws are a well-kept secret.

party of that risk.

The laws have been passed in two major pushes. The first of these occurred in the mid-60s and was based upon a model act written by the Council of State Governments. Thirty states responded and enacted hold-harmless laws.

The second generation of laws occurred in the '70s, when an additional 18 states passed bills in response to efforts by various

For some reason, the existing hold-harmless statutes have never been publicized and are used mainly as court-

room maneuvering tools rather than for their original purpose of convincing property owners to make land available for recreation. Most landowners don't know about them. From our contacts and research, it would appear that their lawyers and insurance agents don't know about the laws either. Their advice to landowners most often is to post land to keep people away.

The AMA therefore commissioned a study on the hold-harmless laws by noted recreation law expert Betty van der Smissen. The study, published last June, contains a compilation of all current landowner hold-harmless laws.

It also contains commentary on the basic clauses of most of the laws as well as several helpful charts noting each state's coverages. The chart on this page reviews several of the basic requirements and conditions of the state acts.

We are well aware that AMA members are not the only recreational users facing the problem. As a charter member of the American Recreation Coalition (ARC), a network of recreation-oriented groups, we've found that horse owners, anglers, hikers, campers—in short, almost every recreational group—are running into shrinking land access. The dark cloud of lawsuit anxiety hovers over all.

A report to the President's Domestic Policy Council by the Task Force on Outdoor Recreation Resources and Opportunities in March 1988 underscored the problems that fear of lawsuit imposes upon landowners who

might otherwise provide access to land.

As a result of this report, and at the urging of the

ARC, a loose coalition of associations of owners and users of land has been formed. This coalition, the

Landowner and Recreationist Alliance (LRA), met formally for the first time last June 14 at the Washing-

CURRENT LIABILITY LAWS AND COVERAGES

STATE	YEAR ENACTED	COVERS PUBLIC LANDS	COVERS LANDOWNERS LEASING LAND FOR GOVERNMENT	OTHER CHARGES (I.E. FIREWOOD CHARGE, PARKING FEE) ALLOWED	LANDOWNER CONSENT REQUIRED
Alabama	1965	X		X	
Alaska	None				
Arizona	1983				
Arkansas	1965		X	X	
California	1963	X			
Colorado	1963	X			
Connecticut	1971		X		X
Delaware	1953		X		
DC	None				
Florida	1963				
Georgia	1965				X
Hawaii	1969		X		
Idaho	1976	X	X		X
Illinois	1965		X		
Indiana	1969				
Iowa	1967		X		
Kansas	1965		X		
Kentucky	1968	X	X		
Louisiana	1964	X			
Maine	1979		X		
Maryland	1957		X		X
Massachusetts	1972		X		
Michigan	1974	X			X
Minnesota	1961	X			
Mississippi	1978				X
Missouri	1983	X			
Montana	1965				
Nebraska	1965	X	X		
New Hampshire	1961	X	X		
New Jersey	1968	X	X		
New Mexico	1967				X
New York	1963	X			
North Carolina	None				
North Dakota	1965				
Ohio	1963	X			
Oklahoma	1965		X		
Oregon	1971	X	X		
Pennsylvania	1965	X	X		
Rhode Island	1978		X		X
South Carolina	1962		X		
South Dakota	1966/67		X		
Tennessee	1963	X	X		
Texas	1965			X	
Utah	1979	X	X		
Vermont	1967				
Virginia	1950		X	X	
Washington	1967			X	
West Virginia	1965		X		
Wyoming	1965	X	X		

ton Press Club in our nation's capital.

The meeting emphasized the severity of the problem. Bob Brantley, the immediate past president of the International Association of Fish and Wildlife Agencies, related that Florida lost 10 percent of private lands open to the general public last year alone.

Roy Muth of the International Snowmobile Industry Association stressed that the continued integrity of its private-land-dependent 200,000-mile trail system was in doubt. Dennis Stolte of the American Farm Bureau Federation added that, "Neither love nor money can get insurance policies anywhere to protect the small landowner from injuries to recreational users."

Though AFA is not a member of the newly formed coalition, Executive Vice President Neil Sampson said that the Association is following the work of the coalition with great interest, since its topic is of primary concern to forest landowners.

The alliance determined that the solution to this problem must take two directions. First, knowledge of the existing hold-harmless laws must be more broadly disseminated. Second, the current laws must be strengthened to provide greater protections.

The American Motorcyclist Association is at the forefront of both prongs of this attack. We have published our study of the existing hold-harmless laws and made it available to the public.

We are also working to strengthen the existing laws. Our review of these existing laws has pointed

out many of their deficiencies. I was given the task of translating the solutions into a third generation of hold-harmless legislation.

A revised model act will embrace the best of old and new.

Model legislation has been developed for several purposes. One is to provide greater uniformity among the states for economic, social, or political reasons. Other considerations are avoiding conflicts when the laws of several states are involved in a single case and providing reciprocal rights and remedies between the citizens of different states.

Most model legislation is drafted in response to em-

erging social needs by an individual or group with an interest in the matter. The model is then presented to one or more organizations that develop model laws.

These organizations, such as the National Conference of Commissioners on Uniform State Laws and the American Legislative Exchange Council, further research the proposed model and refine it in such areas as need, content, and constitutionality. With their approval, the model is then presented to state legislators for action. The individual states are, of course, free to approve or disapprove use of the act.

Many of the more modern types of recreational activities are not included in existing statutes. As new modes of recreation become popular, coverage either remains non-existent or has to wait for the vagaries of the legislative process.

For example, the New York statute includes such activities as canoeing, hang-

gliding, and snowmobiling. The law did not include ice-sailboating, and a suit against a lakeside landowner was allowed to proceed. The first proposed change in the law would therefore broaden the definition of recreational use. Instead of the current lists of permitted uses, the new model law would broadly include any conceivable recreational activity.

Government entities are not provided coverage under many existing statutes. We have come a long way since the end of government immunity to lawsuits. However, we believe that in the interest of fairness, and to encourage governments to explore appropriate recreational activities, governments should be treated under the statutes in the same manner as the individual. Therefore, the proposed act would extend protection to state, local, and federal governments.

Opening land to the



Barry Nehr

Established recreational activities may be more difficult to pursue on private property with loss of habitat from development and land indiscriminately posted against trespassers.



The stuff memories are made of—exploring the wonders of nature through the eyes of a child—need not end with our generation.

recreational user is not always without expense to the landowner. Often provision must prudently be made for parking, erosion control, fencing, and trail maintenance. Unfortunately, most current laws provide protection only when nothing is given to the landowner for use of the land.

Some of the states extend protection to landowners when land is leased to the government for recreational purposes, and one or two states provide for some tax relief in exchange for public hunting and fishing access.

The LRA does not believe that this goes far enough. The new model act would extend recreational lease coverage to nonprofit organizations and allow tax abatement as an incentive.

The New Hampshire "Current Use" statute is a good example of a tax-incentive program. Lands open for gratuitous recreational uses are assessed at lower values than similar lands held for speculation.

In addition, the new act would allow provision for fees to be dedicated to improving access, preventing or correcting damage caused by recreational uses, and warning about or removing user hazards in the land. Still excluded from the model act are commercial or other operations intended to generate a profit.

Many of the state laws include some provision requiring the expressed permission of the landowner, sometimes in writing, before coverage is granted. This may have the effect of requiring the landowner to act as a permanent gatekeeper, thereby discouraging recreational uses.

Permission need not always be so formal. The old model act did not require such stringent wordings, and the new act will maintain the old provision regarding landowner permission.

Landowners covered under the old act are not

required to erect warning signs or to otherwise protect users from injury. However, if they do, the courts may impose liability upon the landowner.

This is an old common-law anomaly and has resulted in the enactment in many states of "Good Samaritan" laws, which encourage medical personnel to help any injured person they may encounter.

Similarly, we believe that warning of danger or trying to otherwise protect users from injury should be encouraged. Idaho has successfully made a recent amendment to its law allowing the use of warning signs or other safety measures without fear of liability. The Idaho provision will be included in the new model act.

The current laws have been successful in protecting some landowners. Published case citations involv-

ing private landowners are rare because many never get to the point of trial.

Among the more successful recorded users of the statutes is the Tennessee Valley Authority. With holdings in several states, TVA has achieved a very good track record of successful defenses using the current statutes in actions ranging from injuries received in a fall while fishing to an automobile collision.

However, even successful defense can impose great costs. In many states, the courts are reluctant to award costs to defendants, and in others the court may not award costs unless provided by statute. The new model act includes a provision to award costs to successful defendants when suit has been brought for frivolous purposes.

Access to land for recreational purposes continues to be a growing need. Many opportunities are continuously lost due to the expansion of our cities and the prohibition of uses on some government lands. Private lands are necessary to fill the gaps.

It is hoped that greater dissemination of information on current hold-harmless laws as well as the passage by the states of statutes based on the new model act will provide landowners some added incentive to open their land to users.

The American Legislative Exchange Council has included the Landowner Recreationist Alliance act in its approved list of model acts for consideration by the states. I hope it helps to make for more fond memories of recreational adventure. AF



Some sign companies, such as Nucron Nameplate Inc. (Box 477, N. Olmsted, OH 44070-0477), help the landowner regulate land use without complete restriction. The Landowner and Recreationist Alliance encourages the use of such warning and safety signs.

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nature. Expanding the enumerated list of recreational activities to include sports, hobbies, diversions, and any other recreational activity with language from the Colorado effectively rejects this narrow construction of the statute.

Entrance Fees not a "Charge": Ordinarily, recreational use immunity is lost if a fee is charged for the use of the premises. Including language from the Wisconsin statute, expressly excludes entrance fees from this statutory definition of "charge" as an exception to recreational use immunity.

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(b) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the state or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

Section 7. Nothing in this act shall be construed to:

(a) Create a duty of care or ground of liability for injury to persons or property.

(b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this act to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.

Section 8. [Insert effective date.]

Remove Ambiguity from Statute

It has been said that no one should witness how laws or hot dogs are made. Because if you do, you will not be able to stomach either. One of the ways laws are made is to adopt language from similar statutes in other jurisdictions. This is the approach taken in the "cut and paste" public immunity statute described above. In determining whether a particular recreational use statute applies to public entities in a given jurisdiction, state courts will look primarily to the expressed language of the statute. Consequently, the modifications described above are intended to remove any uncertainty or ambiguity that the state legislature intended to confer broad public immunity under an existing recreational use statute.

Expand "Land" definition: Expanding the definition of land to expressly include public land effectively rebuts the original presumption of the model statute that such statutory immunity was intended for private landowners, not governmental units. In addition, the inclusion of references to urban and improved land would reverse the interpretation by some state courts (e.g. New York, New Jersey, Louisiana) that this statutory immunity is limited to rural or unimproved land. Further, the statutory definitions of "owner" and "person" have been modified with language from recreational use laws in Wisconsin and Colorado to expressly include governmental units.

Expand Scope of "Recreational Purpose": Some jurisdictions, most notably Louisiana, have limited the scope of recreational use immunity to activities traditionally conducted in the "true outdoors," i.e. primarily rural in

NRPA LAW REVIEW MARCH 1987

HOBBY, DIVERSION, OR OTHER SPORTS OR OTHER RECREATIONAL ACTIVITY SUCH (Colorado) the following, or any combination thereof: hunting, fishing, CAMPING (Colorado), swimming, boating, camping, picnicking, hiking, HORSEBACK RIDING, SNOWSHOEING, CROSS COUNTRY SKIING, BICYCLING, RIDING OR DRIVING MOTORIZED RECREATIONAL VEHICLES, SWIMMING, ROCK CLIMBING... OR ENGAGING IN ANY OTHER FORM OF SPORTS OR OTHER RECREATIONAL ACTIVITY (Colorado), INCLUDING PRACTICE AND INSTRUCTION IN ANY THEREOF (New Jersey), pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites, OR OTHER SIMILAR ACTIVITIES UNDERTAKEN FOR RECREATION, EXERCISE, EDUCATION, RELAXATION, OR PLEASURE ON LAND OWNED BY ANOTHER (Missouri). IT SHALL INCLUDE ENTRY, USE OF AND PASSAGE OVER PREMISES IN ORDER TO PURSUE THESE ACTIVITIES. (Maine).

(d) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land. However, charge or consideration DOES NOT INCLUDE... THOSE ENTRANCE FEES PAID TO THE STATE, ITS AGENCIES OR DEPARTMENTS, MUNICIPALITIES, OR THE U.S. GOVERNMENT. (Wisconsin)

Section 3. Except as specifically recognized by or provided in Section 6 of this act, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

Section 4. Except as specifically recognized by or provided in Section 6 of this act, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

- (a) Extend any assurance that the premises are safe for any purpose.
- (b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.
- (c) Assume responsibility for or incur liability for any injury to persons or property caused by an act or omission of such persons.

Section 5. Unless otherwise agreed in writing, the provisions of Section 3 and 4 of this act shall be deemed applicable to the duties and liability of an owner leases to the state or any subdivision thereof for recreational purposes.

Section 6. Nothing in this act limits in any way any liability which otherwise exists:

- (a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

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to illustrate the manner in which minor modifications to the 1965 model statute can broaden the immunity of this legislation to expressly include most public entities. Further, these suggested modifications would extend such immunity to most lands and activities involving public park and recreation agencies. (Modifications to the 1965 model statute appear in italicized capital letters. The state statutes from which this language is derived are also noted in parentheses.)

1965 Model Act as Modified

[Title should conform to state requirements. The following is a suggestion: "An act to encourage landowners to make land and water areas available to the public by limiting liability in connection therewith."]

(Be it enacted, etc.)

Section 1. The purpose of this act is to encourage owners of land to make the land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

Section 2. An used in this act:

(a) "Land" means PRIVATE OR PUBLIC, (Idaho, Washington) land, IMPROVED OR UNIMPROVED (Maine), WHETHER URBAN OR RURAL, (Washington), [including] roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.

(b) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises ,including ANY PRIVATE CITIZEN, A MUNICIPALITY, THE STATE OR THE FEDERAL GOVERNMENT, AND ANY EMPLOYEE OR AGENT OF THE FOREGOING, (Wisconsin).

.OR ANY PUBLIC ENTITY AS DEFINED IN THE (applicable provision of the state code) WHICH HAS AN INTEREST IN LAND, (Colorado).

"PERSON" INCLUDES ANY INDIVIDUAL REGARDLESS OF AGE, MATURITY OR EXPERIENCE, OR ANY CORPORATION, GOVERNMENT OR GOVERNMENTAL SUBDIVISION OR AGENCY, BUSINESS TRUST, ESTATE, TRUST, PARTNERSHIP, OR ASSOCIATION, OR ANY OTHER LEGAL ENTITY, (Colorado).

(c) "Recreational Purpose" includes, but is not limited to, any SPORTS OR RECREATIONAL ACTIVITY OF WHATEVER NATURE UNDERTAKEN BY A PERSON WHILE USING THE LAND, INCLUDING PONDS, LAKES, RESERVOIRS, STREAMS, PATHS, AND TRAILS APPURTENANT THERETO, OF ANOTHER AND INCLUDES, BUT IS NOT LIMITED TO, ANY

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Minnesota:	Minn. Stat. Ann. §§ 87.01-87-026 (1977).
Mississippi:	Miss. Code Ann. § 89-2-1 at seq. (1985).
Missouri:	Mo. Stat. Ann. §§ 537.345-537.347.
Montana:	Mont. Code Ann. §§ 70-16-301-302.
Nabraska:	Neb. Rev. Stat. §§ 37-1001-1008 (1978).
Nevada:	Nev. Rev. Stat. § 41.510 (1979).
New Hampshire:	N.H. Rev. Stat. Ann. § 212:34 (1978).
New Jersey:	N.J. Stat. Ann. §§ 2A:42A-2-42A-5 (West Supp. 1981).
New Mexico:	N.M. Stat. Ann. § 17-4-7 (1978).
New York:	N.Y. Gen. Oblig. Law § 9-103 (McKinney Supp. 1981).
North Carolina:	N.C. Gen. Stat. §§ 113-120.5-120.6 (1975).
North Dakota:	N.D. Cent. Code §§ 53-08-01-06 (1974).
Ohio:	Ohio Rev. Code Ann. 1533.181 (Page 1978).
Oklahoma:	Okla. Stat. Ann. 76, §§ 10-15 (West 1976).
Oregon:	Ore. Rev. Stat. §§ 105.655-105.680 (1979).
Pennsylvania:	Pa. Stat. Ann. tit. 68, §§ 477-1-477-8 (Purdon Supp. 1981).
Rhode Island:	R.I. Gen. Laws §, 32-6-1 to -7.
South Carolina:	S.C. Code §§ 27-3-10-70 (1977).
South Dakota:	S.D. Comp. Laws Ann. § 20-9-5 (Supp. 1979).
Tennessee:	Tenn. Code Ann. §§ 51-801-805 (1977).
Texas:	Tex. Rev. Civ. Stat. Ann. art. 16 (Vernon 1969).
Utah:	Utah Code Ann. §§ 5714-1 to -7.
Vermont:	Vt. Stat. Ann. tit. 10 § 5212 (1973).
Virginia:	Va. Code § 29-130.2 (Supp. 1981).
Washington:	Wash. Rev. Code Ann. §§ 4.24.200-210 (Supp. 1981)
West Virginia:	W. Va. Code §§ 19-25-25-6 (1977).
Wisconsin:	Wis. Stat. Ann. § 2968 (West 1973).
Wyoming:	Wyo. Stat. § 34-19-101-106 (1977).

With minor variations, many of the above cited forty-nine laws adhere to the format of a model statute described below. This model statute, entitled "Public Recreation on Private Lands: Limitations on Liability," appeared in the 1965 edition of Suggested State Legislation from the Council State Governments. To date, state courts in only nineteen jurisdictions have considered directly or indirectly the applicability of these statutes to public entities. Of this number, twelve jurisdictions have extended limited recreational use immunity to public entities. Under the terms of the Federal Tort Claims Act, these statutes are uniformly held applicable to the federal government. (For a further discussion of the applicability of recreational use statutes to public entities, see the "NRPA Law Review" for October and November 1986, and February 1987.)

Perhaps the real policy issue before the National Recreation and Park Association is, therefore, to encourage and help promote the modification of existing recreational use statutes to broaden existing immunity to include public park and recreation agencies. With this objective in mind, I have superimposed language from existing recreational use statutes in various jurisdictions. The purpose of this rather crude "cut and paste" endeavor is

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A "CUT AND PASTE" OF MODEL REC USE LAW TO INCLUDE PUBLIC

James C. Kozlowski, J.D., Ph.D.

At its meeting in Anaheim, California on October 21, 1986, the Board of Trustees of the National Recreation and Park Association endorsed the following policy: "It is the policy of the Trustees of the National Recreation and Park Association to encourage and help promote the enactment of state recreational use statutes." This policy was one of several statements adopted regarding the perceived "liability crisis." Under a recreational use statute, the landowner owes no duty of care to a recreational user on the premises free of charge. Although there is no liability for ordinary negligence, liability will be imposed for willful or wanton misconduct. Willful or wanton misconduct, unlike ordinary negligence, goes beyond mere carelessness; it is more outrageous behavior which demonstrates an utter disregard for the physical well being of others.

Despite the NRPA policy statement, enactment of recreational use statutes is not the real issue. Forty-nine jurisdictions have already enacted recreational use statutes. My research on this topic identified the following state code citations for existing recreational use statutes. To the best of my knowledge, each of these statutes is still good law.

Alabama:	Ala. Code § 15-1.
Arizona:	Ariz. Rev. Stat. Ann. § 3351.
Arkansas:	Ark. Stat. Ann. §§ 50-1101-1107 (1971).
California:	Cal. Civil Code § 846 (West Supp. 1981).
Colorado:	Col. Rev. Stat. §§ 33-41-101-105 (1974).
Connecticut:	Conn. Gen. Stat. Ann. §§ 52-557f - 557i (Supp 1981).
Delaware:	Del. Code Ann. tit. 7, §§ 5901-5907 (1975).
Florida:	Fla. Stat. Ann. § 375.251 (West 1974).
Georgia:	Ge. Code Ann. §§ 105-403-409 (1968).
Hawaii:	Haw. Rev. Stat. §§ 520-1 to -8.
Idaho:	Idaho Code § 36-1604 (Supp. 1981).
Illinois:	Ill. Ann. Stat. ch. 70 §§ 31-37 (Smith-Hurd Supp. 1981).
Indiana:	Ind. Code Ann. § 14-2-6-3.
Iowa:	Iowa Code Ann. §§ 111C.1-111C.7 (West Supp. 1981).
Kansas:	Kan. Stat. Ann. §§ 58-3201-3207 (1976).
Kentucky:	Ky. Rev. Stat. Ann. § 150.645 (Baldwin Supp. 1980).
Louisiana:	La. Rev. Stat. Ann. § 9:2795 (West Supp. 1981).
Maine:	Me. Rev. Stat. Ann. tit. 12, §§ 3001-3005 (Supp. 1981).
Maryland:	Md. Nat. Res. Code Ann. §§ 5-1102-1108 (1974).
Massachusetts:	Mass. Gen. Laws Ann. ch. 21 § 17C (West 1973).
Michigan:	Mich. Comp. Laws Ann § 300.201 (1967).

James C. Kozlowski
Attorney at Law
7208 Sumpter Lane
Springfield, Virginia 22150

Recreational Injury Law
Recreation and Parks Law Reporter

(703) 455-8474
Licensed in VA, MD & DC

January 12, 1990

Charles F. Kaucic, CLP
Chief, Parks and Recreation
Matanuska - Susitna Borough
P.O. Box 1608
Palmer, Alaska 99645-1608

Dear Mr. Kaucic:

First, let me apologize for not responding sooner to your correspondence of December 8. I get to NRPA rather infrequently and did not pick up your letter until January. I would be happy to review any proposed immunity legislation being considered for Alaska. At present, I do not have a FAX machine; therefore, it would be best to forward any materials to the above address. I have enclosed a copy of an article I did a few years ago for Parks & Recreation magazine which suggested modifications to the model recreational use statute to increase the availability of immunity to public entities.

Sincerely,


James C. Kozlowski, J.D., Ph.D.

Alaska Recreation and Park Association

P.O. Box 102664
Anchorage, Alaska 99510-2664

RESOLUTION NO. 89-3

A RESOLUTION RECOMMENDING ADOPTION OF AN ACT
LIMITING THE LIABILITY OF A REAL PROPERTY OWNER
FOR DAMAGE OR INJURY TO A PERSON RESULTING FROM
RECREATIONAL USE OF REAL PROPERTY

WHEREAS, the Alaska Recreation and Park Association urges the State to exercise its responsibility to provide a broad spectrum of recreation opportunities for all Alaskans, and

WHEREAS, private lands constitute a large percentage of our State's land base, and host many recreational opportunities; and

WHEREAS, the potential for private lands to provide recreational opportunities is great; and

WHEREAS, local owners lacking protection under the law for land which could be defined as being improved under current state statutes by having a foot bridge or trail on it, put personal assets at risk when they allow their land to be used for recreational purposes; and

WHEREAS, the report by the President's Commission on Americans Outdoors recommends that "Local, State and Federal governments consider incentives to private land owners to increase public access, and review existing statutes, policies, regulations, and practices to assure that impediments providing public recreation on private lands are removed", and

WHEREAS, 48 states excluding Alaska have recreational use statutes which provide protection for private landowners when the public uses their land for recreation; and

WHEREAS, the report by the President's Commission on Americans Outdoors recommends further that "Federal and State governments enact or improve recreational use statutes to provide greater protection to governmental entities and private providers who allow the public to use their land for recreation."

NOW THEREFORE, BE IT RESOLVED that the Alaska Recreation and Park Association urges the Alaska State Legislature adopt an act limiting the liability of a real property owner for damage or injury to a person resulting from recreational use of real property.

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 9005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, RECOMMENDING ADOPTION OF AN ACT LIMITING THE LIABILITY OF A REAL PROPERTY OWNER FOR DAMAGE OR INJURY TO A PERSON RESULTING FROM RECREATIONAL USE OF REAL PROPERTY.

WHEREAS, the City of Valdez urges the State to exercise its responsibility to provide a broad spectrum of recreation opportunities for all Alaskans; and

WHEREAS, private lands constitute a large percentage of our State's land base and host many recreational opportunities; and

WHEREAS, the potential for private lands to provide recreational opportunities is great; and

WHEREAS, local owners lacking protection under the law for land which could be defined as being improved under current state statutes by having a foot bridge or trail on it, put personal assets at risk when they allow their land to be used for recreational purposes; and

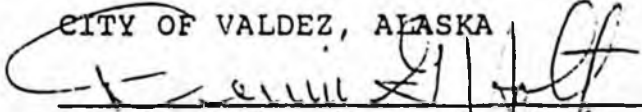
WHEREAS, the report by the President's Commission on Americans Outdoors recommends that "Local, State and Federal governments consider incentives to private land owners to increase public access, and review existing statutes, policies, regulations, and practices to assure that impediments providing public recreation on private lands are removed;" and

WHEREAS, 48 states excluding Alaska have recreational use statutes which provide protection for private landowners when the public uses their land for recreation; and

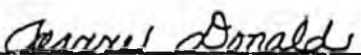
WHEREAS, the report by the President's Commission on Americans Outdoors recommends further that "Federal and State governments enact or improve recreational use statutes to provide greater protection to governmental entities and private providers who allow the public to use their land for recreation."

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, that the City of Valdez urges that the Alaska State Legislature adopt an act limiting the liability of a real property owner for damage or injury to a person resulting from recreational use of real property.

CITY OF VALDEZ, ALASKA


Dennis Holtz, Mayor Pro Tem

ATTEST:


Jeanne Donald, City Clerk

FEB 5 1990

January 11, 1990

James G. Dumont, Legislative Committee Chair
Alaska Recreation and Park Association

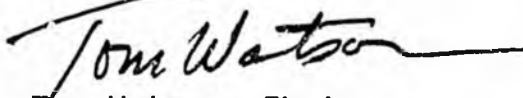
Dear Mr. Dumont,

The Kodiak State Parks Citizens Advisory Board has reviewed the following Senate bills and proposed act:

- Senate Bill 228: An Act Relating to Civil Liability of Certain Volunteers.
- Senate Bill 229: An Act Relating to Government Liability for Damage or Injury Resulting From Hazardous Recreational Activities.
- Recommended Adoption of An Act Limiting the Liability of a Real Property Owner for Damage or Injury to a Person Resulting from Recreational Use of Real Property.

The Advisory Board passed a motion favoring such legislation as far as the concept is concerned. The majority of the advisory board favored the concept as it relates to providing for a more prudent liability insurance environment for those engaged in the type of activities expressed in the above-mentioned bills and proposal.

Sincerely,



Tom Watson, Chair
Kodiak State Parks Advisory Board
c/o POB 228
Kodiak, AK 99615

cc: Scott Burgess

Alaska Municipal League

Policy Statement

1990



Adopted at the Business Meeting
of the 39th Annual Local Government Conference
of the
ALASKA MUNICIPAL LEAGUE
Juneau, Alaska
November 17, 1989

put personal assets at risk due to that lack of protection. To promote and support volunteering, the League supports efforts to remove barriers to encourage volunteers in outdoor recreation activities.

3. Liability of Property Owner: The League supports legislation that would limit the liability of a real property owner for damage or injury to a person resulting from recreational use of real property.

The potential for private lands to provide recreational opportunities is great. Under current statute, landowners are liable for damage or injury to a person resulting from recreational use of their "improved" property. "Improvements" include such things as bridges and trails. Alaska is one of only two states that do not have recreational use statutes that give protection for private landowners when the public uses their land for recreation.

4. Liability for Failure to Take an Incapacitated Person into Custody: The League supports legislation removing any implied liability of a municipality for failing to take a person incapacitated by alcohol into custody.

The decision of the Alaska Supreme Court in *Busby v. Municipality of Anchorage*, which interpreted the intent of the Alaska Legislature in enacting AS 47.37.170 (b), judicially created a duty to take persons incapacitated by alcohol into custody. The effect of this decision has been that municipalities with police powers have been forced to pick up all persons who appear to be incapacitated and put them in a treatment facility, where possible, or in state or municipal correctional facilities. This has been quite expensive for local governments and has required a commitment of already limited public safety resources that Alaska's municipalities can ill afford. The League believes the legislative intent was not to create such a duty for municipalities in enforcing state law, a duty which burdens municipalities with an obligation they are neither equipped nor fairly required to meet. Therefore, the League supports legislation that would remove any such implied liability.

F. STATE POLICIES AFFECTING LOCAL COMMUNITIES

1. State Public Safety Responsibility:

a. The League strongly urges the Legislature to provide funding for the Department of Public Safety so that an adequate level of services can be maintained statewide.

b. The League recognizes the critical need for mandatory certification, training, and background verification for village police officers in the State of Alaska.

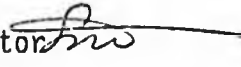
Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325
FAX 461-5480

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

April 18, 1990

TO: Representative Curt Menard, Co-Chair
Representative Cliff Davidson, Co-Chair
Members, House Resources Committee

FROM: Scott A. Burgess, Executive Director 

SUBJECT: HB 494 - Relating to civil liability for injuries resulting from recreational use of land

The Alaska Municipal League supports HB 494, which would provide protection for public or private landowners by limiting the ability of persons injured in outdoor recreational activities to recover civil damages from the landowner.

The *Alaska Municipal League Policy Statement - 1990* includes the following statement (p. 25): "The League supports legislation that would limit the liability of a real property owner for damage or injury to a person resulting from recreational use of real property," and HB 494 does just that.

The potential for private or public lands to provide recreational opportunities is great. Under current statutes, however, landowners are liable for damage or injury to a person resulting from recreational use of their "improved" property. "Improvements" include such things as bridges and trails.

Alaska is one of only two states that do not have recreational use statutes that give protection for private landowners when the public uses their land for recreation. The League supports HB 494, which would provide such protection for both private and public landowners, except under the conditions specified in the bill, and urges its passage.

C/LEG2:hb494.418

HB

502

Michael C. O'Leary
P.O. Box 1052
Cordova, Alaska
99574

House Resources Committee
Co-Chair Rep. Curt Menard
Rep. Cliff Davidson
Rm. 124, Capitol

March 20, 1990

Dear Sirs;

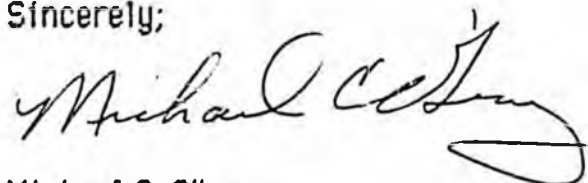
I am writing you concerning the spotter pilot issue, House Bill No. 502. My interest in this bill is a reaction to the Board of Fish's move to outlaw fish spotting in Bristol Bay. My comments are from a fisherman's point of view, which I noticed were missing in your March 16th teleconference.

As a 12 year fisherman in Bristol Bay I see the Board of Fish's decision to outlaw spotting, not as an allocation issue between gear types, but as a reallocation between those drift boats who will obey this new law and those who won't. This law which the Board of Fish, and the Dept. of Fish and Wildlife Protection both acknowledge is not enforceable and will not be enforced, will just allow the boats with no respect for the law to have airplanes therefore allowing them to be more competitive. Also having a law on the books that no one pays attention to, and isn't enforced just contributes to a general disregard for the law. Since Bristol Bay is a wild and sometimes lawless fishery any further degradation of law and order greatly concerns me. Since a great number of the permits being sold in Bristol Bay are being sold by "old timers" who cannot stand the general lawlessness this is an important issue.

In closing I would like to state that I support House Bill No. 502. Spotter pilots have been contributing to the fisheries of the state for 25 years or more. They as well as the fisherman deserve some stability on this issue.

Thank you for your time on this matter, and for taking time to listen to my views.

Sincerely;



Michael C. O'Leary



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Commercial Fish/Admin	BILL NUMBER HB 502	SPONSOR Menard
SHORT TITLE OF BILL Regulation of Fish Spotters			
DEPARTMENT POSITION Neutral, note letter from Board of Fisheries opposing section two.			
PREPARED BY Robert C. Clasby	DATE 3/5/90	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 3/15/90

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Unknown	CONSTITUENT GROUP(S) AFFECTED BY BILL Fish Spotters Commercial Salmon and Herring Fishermen
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown
FISCAL IMPACT: <input type="checkbox"/> NONE <input checked="" type="checkbox"/> FISCAL NOTE ATTACHED	

BACKGROUND/LEGISLATIVE INTENT

The intent of the legislation appears to be two pronged. The legislation places requirements on fish spotters that are directed towards safety concerns. The legislation would also prohibit the Board of Fisheries from regulating fish spotters for allocative reasons.

ANALYSIS OF BILL/PROGRAM EFFECTS

The legislation establishes within the Department of Fish and Game licensing and registration systems for fish spotters. These systems will have an effect on the department's programs. The department will have to expend human and fiscal resources to establish and maintain the licensing and registration systems. Information gained from the system may be of some use to the Division of Commercial Fisheries in evaluating inseason fleet efficiency.

- AMENDMENTS PROPOSED
1. Since the department has no expertise in determining aircraft liability matters, we recommend that requirement be deleted. Perhaps the legislature or Division of Insurance can make that determination.
 2. Delete section two as recommended in the enclosed letter from the Board of Fisheries.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Regulation of Fish Spotters

Agency Affected: Fish and Game
BRU: Commercial Fisheries

Sponsor: Representative Menard
Requestor: Governor

Components: Commercial Fisheries

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	2.0	2.0	2.0	2.0	2.0	2.0
TRAVEL	0					
CONTRACTUAL	0					
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	0					
LAND & STRUCTURES	0					
GRANTS, CLAIMS	0					
MISCELLANEOUS	0					
TOTAL OPERATING	3.0	3.0	3.0	3.0	3.0	3.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	3.0	3.0	3.0	3.0	3.0	3.0
FEDERAL FUNDS						
OTHER						
TOTAL	3.0	3.0	3.0	3.0	3.0	3.0

POSITIONS:

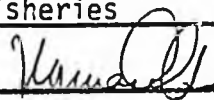
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The Division of Commercial Fisheries will need about \$3.0 Thousand per year for personnel time and forms to conduct the spotter registration. Any costs for FY 90 will be minimal.

Prepared by: Robert C. Clasby
Division: Commercial Fisheries

Phone: 465-4210
Date: March 5, 1990

Approved by Commissioner: 
Agency: _____

Date: 3/15/90

Distribution (by preparer):

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

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

BOARD OF FISHERIES

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4110

The Alaska Board of Fisheries discussed House Bill No. 502 this morning at its regulatory meeting in Anchorage.

The Board has decided not to comment on HB 502 as a whole. The overall merits of the bill are up to the legislature. However, the board unanimously objected to:

"Section 2. AS 16.05.251 is amended by adding a new subsection to read:

(g) The Board of Fisheries may restrict the operations of fish spotters in a fishery when restrictions are necessary to protect the conservation of a resource."

if the intent of this new subsection is to restrict the boards authority to manage fish spotters only for conservation reasons. This would be undermining and erode the authority of the Board to manage the resource.

The Board of Fisheries implements regulations to conserve the resource, to provide for orderly fisheries, and to allocate the resource among the various user groups and gear types. The proposed new subsection (g) would eliminate some "tools" the board uses to manage the fisheries and we are strongly opposed to being charged with the responsibility of regulating the fisheries without having the full authority to do so.



Bud Hodson
Chairman

March 15, 1990



U.S. Department
of Transportation
Federal Aviation
Administration

Alaskan Region

222 W. 7th Avenue # 14
Anchorage, Alaska
99513-7587

DEC 8 1985

Mr. Dan Plano
HC33, Box 2872
Wasilla, Alaska 99687

Dear Mr. Plano:

This is in response to your letter regarding the airman certification required to engage in aerial fish spotting. Enclosed with your letter was a contract, typical of those used by aerial fish spotters, outlining the terms under which they conduct such activity.

Review of the contract indicates that the aircraft to be used is provided by the spotter. The spotter is compensated for all fuel and oil expenditures associated with the aircraft's operation. In addition, the spotter receives room and board and is paid a percentage of each boat's catch.


Section 61.118 of the Federal Aviation Regulations (FAR) precludes a private pilot from acting as pilot-in-command of an aircraft for compensation or hire. A private pilot may, for compensation or hire, act as pilot-in-command of an aircraft in connection with any business or employment if the flight is only incidental to that business or employment.

Operation of an aircraft is not merely incidental to aerial fish spotting, it is an integral part of that activity without which it could not occur. For this reason, a private pilot may not act as pilot-in-command of an aircraft so engaged.

FAR Section 61.139 provides that the holder of a commercial pilot certificate may act as pilot-in-command of an aircraft for compensation or hire.

We hope you find this information helpful. If further assistance is required, please advise.

Sincerely,


Thomas S. Westall
Manager, Flight Standards
Division

STANDARD OPERATING PROCEDURES FOR FISH SPOTTING

1. Commercial Pilot Qualifications
 - a. Current medical
 - b. Rated in type of aircraft
 - c. Biennial flight review
2. Airworthy Aircraft
 - a. Registration
 - b. F.C.C. radio license
 - c. Airworthiness certificate
 - d. Owners manual
 - e. Weight and balance data
3. Aircraft Recommendations
 - a. 3-point strobe system
 - b. Forward landing light
 - c. Two-place aircraft
 1. recommend pilot in command and observer in congested area
 - d. Recommend skylights installed
 - e. Recommend emergency parachutes for each occupant or for entire aircraft
 - f. Radios: minimum, 1 aircraft VHF, 1 Marine VHF
 - g. Contrasting color pattern/paint scheme
 - h. Recommend large 12" numbers
4. Operating Procedures
 - a. Climb-out and descents away from traffic area (left hand)
 - b. All turns in pattern to left
 - c. Maintain altitude
 - d. Recommend take-off and landings away from moored boats, on beaches away from foot traffic
 - e. Be aware of small speeding skiffs, motorcycles, 3-wheelers, etc.
5. Safety Seminars
 - a. The Association encourages "on the fishing grounds" safety seminars prior to any salmon or herring fisheries
 1. included in seminar: F.A.A.
Protection Officers
Management Personnel
Other interested parties

Alaska State Legislature

Legislative Research Agency



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 163-3991
Fax: (907) 163-3351

January 17, 1990

MEMORANDUM

TO: Representative Curt Menard
ATTN: Bill Fieldler
FROM: Glenn Gray ^{GTG}
Legislative Analyst
RE: Regulating Aerial Fish Spotters
Research Request 90.157

You requested information about the use and regulation in other states of aerial fish spotters by commercial fishermen. You asked specifically about required safety training courses, minimum liability insurance requirements, or other regulations states may have imposed on those engaged in aerial fish spotting.

Background

The practice of using air reconnaissance to locate fish by commercial fishermen occurs on the East, West and Gulf Coasts of the U.S. On the East Coast, fish spotters are employed in the tuna, herring and menhaden fisheries. This practice occurs along Florida's coasts for mackerel and bait fish. Along the Gulf Coast, fish spotters are commonly used to locate red and black drum (herring-like fish) and menhaden. On the West Coast, the use of fish spotters is common in California and Alaska and also occurs to a lesser degree in Washington and Oregon. California fishermen use this technique to locate swordfish, tuna, anchovies, mackerel, and other pelagic fish. Fish spotters are used in Alaska for the herring and salmon fisheries. Aerial fish spotters were once common in Oregon and Washington but are seldom used today due to closures in fisheries where it is practical to employ pilots.

Issues

The use of commercial fish spotters has sparked controversy on all coasts. The three most common concerns are possible resource depletion, safety and

fairness. Many people are concerned that the use of fish spotters will lead to over-harvest of a particular fishery. Safety concerns have been expressed in most areas where aerial spotters are used. During fishery openings large numbers of planes are clustered in a localized area resulting in accidents and near misses. The use of fish spotters also tends to concentrate boats and adds to a safety problem on the water. The issue of fairness is often voiced by fishermen who can't afford to hire pilots. They feel that those fishermen using spotters have an unfair advantage. Other concerns include the use of planes to herd fish towards nets, to scare fish away from other fishermen's nets, to spy on other fishermen's catches, and to signal fishermen when law enforcement agents are approaching.

Regulation of Commercial Fish Spotters

Although there are significant controversies related to aerial fish spotting, few states have regulated this practice. Those states that have regulated fish spotting have done so primarily as an aspect of the management of a particular fishery. Although safety issues are sometimes mentioned as a justification for state action, regulations most often relate to conservation and fisheries management concerns. A discussion of some regulatory attempts follows.

The California State Legislature gave the Fish and Game Commission authority to regulate fish spotters during the mid-1970s. This resulted in a prohibition to use planes to spot swordfish. This decision was later reversed but some stipulations still exist. Because California law requires anyone assisting in the taking of fish to be licensed, pilots who spot fish are required to have a commercial fishing license. Planes used in fish spotting operations must be clearly marked on the underside of the wings. Fishermen are also required to notify the Department of Fish and Game prior to any change in pilots or aircraft (see Attachment A).

Regulations are currently being considered by the National Marine Fisheries Service (NMFS) to limit aerial fish spotters in the Northeast Coast tuna fishery (see Attachment B). Because tuna is not covered by the 1976 Magnuson Fishery Conservation and Management Act, the proposed regulations would be applicable within the state's three mile limit and possibly beyond the 200 mile federal limit. Federal involvement in this area was initiated after the Maine State legislature failed to pass legislation banning spotter planes. State legislators thought that such regulation was best handled at the federal level (see Attachment C).

Alaska also has some experience in regulating fish spotters. The use of aircraft to locate salmon was prohibited in June 1988 by the Board of Fisheries (5 AAC 39.292). During June 1989, this provision was removed for Cook Inlet and during July 1989, the entire regulation was repealed. The board removed the blanket prohibition although it may still close specific management units

Representative Menard
January 17, 1990
Page 3

on a case-by-case basis. A bill was introduced in the 14th Alaska State Legislature to regulate the practice of herding fish by aircraft but it did not become law. [CS SS HB167(JUD) passed the House but was not passed out of the Senate Resources Committee.]

Few regulations concern safety considerations and insurance requirements specifically for fish spotters. State fishery agencies are reluctant to address anything but resource concerns. The Federal Aviation Administration (FAA), however, requires fish spotters to obtain a commercial pilot certificate. This document is issued only after a written examination and flight test have been passed. Pilots are also required to have received training from an authorized flight instructor and to have logged at least 250 hours of flight time (see Attachment D). Currently no requirement exists for insurance or specific safety training for fish spotters. The FAA would not regulate a specific group of commercial pilots such as fish spotters. Any requirements for insurance or safety training would apply to all commercial pilots within a particular aircraft rating.

Although states are reluctant to become involved in regulating anything other than resource issues, there appears to be some room for state intervention in this area as long as it does not conflict with federal legislation. As an example, the legislature recently required guide outfitters to obtain insurance for the air transport of clients (see Attachment E).

I hope this information answers your questions. Please contact us if you desire additional information.

Attachments

Attachment A

**California Fish and Game Regulations
Relating to the Use of Airplanes in the Swordfish Fishery**

107. Broadbill Swordfish.

(a) Permit Required.

(1) The owner or operator of a vessel taking broadbill swordfish for commercial purposes shall have obtained a valid swordfish permit and shall be in possession of said permit when engaged in such activities.

(2) To Whom Issued. The department shall issue a permit to the owner or operator of a currently registered vessel. The applicant, if the holder of an expired swordfish permit, shall have complied with subsection (e) dealing with records during the preceding year, or during the last year such applicant held a permit, in order to be eligible for a permit.

(3) Where Issued. Permits will be issued at department offices in Long Beach and San Diego.

(b) Limitations of Permit. Not more than one permit shall be issued to any operator. No permit shall be valid for more than one vessel. Permits shall not be assigned or transferred from person to person or from vessel to vessel unless so authorized by the department.

(c) Duration of Permit. Except as otherwise provided, permits issued pursuant to these regulations shall be in force from April 1 through March 31 of the following year, or if issued after the beginning of such term, for the remainder thereof.

(d) Vessel Identification. Permittee's vessel shall display its assigned permit number in 10" high x 2" wide black Roman alphabet letters and Arabic numerals. Figures shall be black on a white background on both sides of the superstructure of the vessel. Numbers shall be displayed at all times while operating under a swordfish permit.

(e) Each permittee shall complete an accurate record of all swordfishing activities at the end of each day of operation under this permit on forms provided by the department. Such record shall be sent to the nearest Fish and Game office on a monthly basis and must be postmarked no later than the fifth day of the next month. Information required on these forms shall include, but not be limited to:

(1) Permittee did or did not actively fish swordfish during the previous month;

(2) Location of fishing operations;

(3) Number of swordfish sighted;

(4) Number of swordfish attempted to be taken;

(5) Number of swordfish landed;

(6) Approximate weight of fish taken;

(7) Such other information as the department may request.

All such records shall be deemed confidential.

(f) Conditions of Permit. Provisions of the Fish and Game Code relating to commercial fish except as modified by the provisions of these regulations, shall be a condition of all permits to be fully performed by the holders thereof, their agents, servants, employees, or those acting under their direction or control.

(g) Cost of Permit. The fee for the permit shall be \$150.00.

(h) Methods of Take.

(1) Swordfish may be taken only with hand-held hook and line or hand-thrusted harpoon.

(2) Aircraft may be used to directly assist a permittee or any person in the taking of any species of fish while operating under a swordfish permit.

(A) Only aircraft with current FAA registration and aircraft pilots licensed pursuant to Section 1050, Fish and Game Code, may conduct flights for permittees. FAA identification number of all aircraft and names and commercial fishing license numbers of pilots shall be shown on the swordfish application and permit. Such aircraft shall display the letters "SW" on the underside of each wing in block Roman alphabet at least 24 inches high x 3 inches wide, black in color and on a white background.

(B) Permittees shall notify the department in writing 48 hours prior to fishing operations of any changes or additions of pilots and/or aircraft.

(i) Notification Procedure. The department shall notify permittees if the director, pursuant to Section 8577 of the Fish and Game Code, closes the swordfish harpoon fishery or any area where the fishery is conducted. The department shall notify permittees by certified mail and by public announcement on VHF/Channel 16 between 0800 hours and 1000 hours during normal business days. Radio transmissions shall commence 48 hours prior to the effective date of a closure and shall continue for 24 hours after the effective date of such action. It shall be the responsibility of the permittee to daily monitor the named radio channel during the specified hours.

(j) Revocation of Permits. Any permit may be revoked and canceled by the commission upon breach or violation of any fish and game law or regulation or violation of the terms or conditions of the permit by the holders thereof, their agents, servants, employees or those acting under their direction and control.

NOTE: Authority cited: Sections 1050, 8394 and 8578, Fish and Game Code. Reference: Sections 1050, 8394, 8394.5, 8577 and 8578, Fish and Game Code.

HISTORY:

1. Amendment filed 6-9-77 as an emergency; effective upon filing (Register 77, No. 24). For prior history, see Register 76, No. 30.

2. Certificate of Compliance filed 7-28-77 (Register 77, No. 31).

3. Amendment filed 3-25-81; effective thirtieth day thereafter (Register 81, No. 13).

4. Amendment filed 1-19-81; effective thirtieth day thereafter (Register 81, No. 43).

5. Relettering of subsection (i) to subsection (j) and new subsection (l) filed 5-17-83; effective thirtieth day thereafter (Register 83, No. 21).

6. Amendment of subsection (b) (2) filed 10-19-84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 42).

107.1. Possession of Gill Nets by Swordfish Permittees.

(a) Except as provided in subsection (b), any person operating under the authority of a swordfish permit as specified in Section 107 of these regulations may not possess a gill net aboard a swordfish permit vessel, except that set gill nets may be possessed, provided that the intent to use such gear has been declared on the application for a swordfish permit.

*Commercial
Fishing Permit
Required*

Attachment B

Proposed Regulations by the National Marine Fisheries Service

Clay, Duval, St. Johns, and Union Counties. The species is threatened by habitat loss due to residential land development, by habitat alteration due to the planting of dense stands of pine for pulpwood, and by suppression of naturally-occurring fires that formerly maintained open, grassy understory vegetation beneath the pines.

Salpingostylis coelestina was proposed for listing as an endangered species, with no critical habitat, in the Federal Register of May 19, 1989 (54 FR 21832).

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On June 30, 1989, the Service received a written request for a public hearing from Mr. Armond R. Tomassetti, vice president of Rayland Company, Inc., a subsidiary of ITT Rayonier. On July 3, the Service received written requests from Mr. W.D. Ericksen, Director, Forest Resources Southeast, RTOC Limited Partnership (ITT Rayonier Inc. Southeast Forest Resources), and from Mr. William E. Durham, General Manager, Southwood Properties (a division of St. Joe Paper Company).

The Service has scheduled this public hearing for August 3, 1989, from 7:00 p.m. to 9:00 p.m. in the conference room of the Beaches Branch Library on highway A1A (Third Street) three blocks south of its junction with U.S. Highway 90 (Atlantic Boulevard), in Neptune Beach, Florida. Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The comment period for this proposal closes on August 17, 1989. Written comments should be submitted to the Service office in the ADDRESSES section.

Author

The primary author of this notice is David Martin, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216 (904/791-2580 or FTS 946-2580).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 et seq., Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 99-

625, 100 Stat. 3500; Pub. L. 100-478, 102 Stat. 2306, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

David B. Allen,

Acting Regional Director.

Dated: July 11, 1989.

[FR Doc. 89-16646 Filed 7-14-89; 8:45 am]

BILLING CODE 4310-49-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 89649-9149]

RIN 0648-AC40

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to change the time frame during which the daily catch rate for giant Atlantic bluefin tuna in the General category may be adjusted, and to prohibit the use of spotter aircraft as an aid to fishing for Atlantic bluefin tuna in all but the Purse seine category. For the past several years the General category quota has not been taken. Allowing an adjustment of the daily catch rate from the beginning of the fishing season should provide for full use of the quota. Banning the use of spotter aircraft should maintain the traditional nature of the Harpoon Boat category and prevent the catch from being concentrated among fewer vessels.

DATE: Comments on this proposed rule must be received on or before August 7, 1989.

ADDRESSES: Comments on the proposed rule should be sent to Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Atlantic Bluefin Tuna Regulations."

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, Atlantic Bluefin Tuna Policy Analyst, Plan Administration Branch, NMFS Northeast Regional Office, 508-281-8324.

SUPPLEMENTARY INFORMATION: The regulations that govern the Atlantic bluefin tuna fishery at 50 CFR Part 285 provide at § 285.24(a), that the Assistant

Administrator for Fisheries, NOAA (Assistant Administrator), on or about September 1, may adjust the daily catch limit for the General category to a maximum of three giant Atlantic bluefin tuna (ABT) per day per vessel.

This provision was first implemented in 1984 (49 FR 29706, July 24, 1984). At that time, the availability of ABT to fishermen was much higher than it has been the last 3 years. An objective of the ABT regulations is to provide an opportunity to fish for ABT to as many participants in the fishery as possible. To foster this objective, the catch limit was set at one ABT per day per vessel for the General category. A multiple catch limit would have resulted in an early attainment of the quota and closure of the fishery due to the relatively greater availability of ABT and the ability of a small number of experienced and successful participants in the fishery to catch large numbers of these fish. The September 1 date was chosen because most of the occasional participants in the fishery would have finished their fishing for the season by that date. After September 1, there was no compelling reason to keep the daily catch limit at one ABT per day if a sufficient portion of the quota remained.

The circumstances of the fishery have changed dramatically since the daily catch limit was first implemented. In 1988, only a little over one-half of the quota for the General category was harvested. NOAA has concluded that the daily catch limit was a factor in not harvesting the quota. Since the purpose of the catch limit is to allow for the maximum use of the quota while ensuring that the season remains open from June to October, a more flexible approach to adjusting the daily catch limit seems appropriate. This rule would remove the reference to the September 1 date in the regulation, and allow the Assistant Administrator to adjust the daily catch limit upward or downward at any time during the season as circumstances warrant.

In 1986, NMFS received a petition from a number of harpoon fishermen to ban the use of spotter aircraft in all but the Purse Seine category. (Banning the use of spotter aircraft in the Purse Seine category would essentially prevent the harvest of the quota for that category.) A meeting was held with representatives of the harpoon fishermen to explore the issue. They complained that the proliferation of spotter aircraft, particularly in the Harpoon Boat category, was changing the traditional nature of the fishery. On March 31, 1988, NMFS published a notice (53 FR 10415) soliciting comments on the petition.

Many comments were received, the majority of which supported the ban. A meeting was also held with a number of spotter pilots who presented information in rebuttal to the information provided by the harpoon fishermen.

The Harpoon Boat category was established in 1980 based upon information supplied by a small number of harpoon fishermen. They presented evidence that supported the conclusion that there was a small traditional fishery that should be segregated from the General category. The harpoon fishery could only be pursued under optimal weather and sea conditions since one had to be able to see the fish to make an accurate strike with a harpoon. The fact that there are a limited number of days during the season that permit the fish to be harvested by this technique supports a multiple daily catch allowance. Applying the General category daily catch limit could severely hamper the ability of traditional harpooners to take even the small quota that was set aside for the Harpoon Boat category.

After a review of all the information presented on this issue, NMFS believes that it is in the best interests of the fishery to prohibit the use of spotter aircraft to aid in the harvest of ABT, except in the Purse Seine category. NMFS believes that the growing use of these aircraft changes the traditional nature of both the Harpoon Boat and General categories since optimal weather and sea conditions are less important for harpooners fishing with the aid of aircraft. The use of these aircraft, together with the large increase of vessels permitted in the Harpoon Boat category, has greatly accelerated the rate at which their quota is caught. NOAA believes that a number of boats are attracted to this category because of the lack of a daily catch limit and the possibility of enhancing their catch through the use of an airplane.

NMFS is also concerned that the use of aircraft will concentrate the catch among fewer vessels. Information provided to NMFS indicates that roughly 80 percent of the 1988 catch in the Harpoon Boat category was harvested by the 4% of the vessels in the category assisted by aircraft.

In addition to fewer individuals catching most of the fish, an increased catch rate may cause a premature closure of the fishery, precluding many others a reasonable opportunity to fish. There is also concern that the increased pressure represented by the use of these aircraft will cause the fish to sound, thereby decreasing opportunity for their capture by traditional methods.

The use of spotter aircraft also poses safety concerns. NMFS has an

obligation to manage this fishery through regulations that do not jeopardize the safety of participants. This concern is currently reflected in the requirement that only a vessel that is capable of travelling to and from the fishing grounds under its own power is eligible for a permit. To allow otherwise, given the value of these fish and the distance of the fishing grounds from shore, could induce someone to take an unreasonable risk. The use of a spotter aircraft allegedly attracts other vessels. This could prove dangerous if several vessels converge in the area. The experience that gave rise to the requirement that vessels had to stay 100 yards (91.4 m) or more from the corkline of a purse seine net fishing for ABT provides ample evidence of the risk to vessel and personal safety represented by several boats attempting to harvest the same fish.

Consequently, NMFS believes that a ban on the use of spotter airplanes is necessary to ameliorate the problems cited above.

Classification

The Northeast Regional Office is preparing an environmental assessment for this rule. You may obtain a copy of the environmental assessment from the address listed above: The Under Secretary for Oceans and Atmosphere, NOAA (Under Secretary) has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of \$100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S. based enterprises are anticipated.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposal to ban the use of aircraft to assist ABT fishing operations will not affect a substantial number of entities because only about ten of the estimated 10,000 vessels in the fleet use aircraft at the present time. Therefore, approximately ten pilots will be affected as well. These pilots generally derive the bulk of their employment from the swordfish, menhaden, and bluefin tuna purse seine fisheries. Because the use of aircraft in the bluefin tuna handgear fisheries is a new development, the degree of investment has not been such

that a substantial economic impact would result. However, it does appear that the introduction of spotter aircraft may have a significant impact on the traditional fishermen who are being displaced. Furthermore, the purpose of the proposed change in the daily catch limit time frame is to relieve a regulatory restriction on the participants in the General category to allow full use of the quota. Removing the reference date for a decision to adjust the daily catch limit will allow the Assistant Administrator to set the daily catch limit to reflect the availability of the fish during a fishing season. As a result, a regulatory flexibility analysis was not prepared.

The Under Secretary determined that this proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 11, 1989.

James E. Douglas, Jr.,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 285 is proposed to be amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for Part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. Section 285.24 is amended by revising paragraph (a) to read as follows:

§ 285.24 Catch limits.

(a) From June 1, vessels permitted in the General category under § 285.21(b) may catch only one giant Atlantic bluefin tuna per day per vessel. The Assistant Administrator may adjust the daily catch rate limit to a maximum of three giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota. The Assistant Administrator will publish a notice in the Federal Register of any adjustment in the allowable daily catch limit made under this paragraph. Operators of vessels permitted in the General category may

possess giant Atlantic bluefin tuna in an amount not to exceed a single day's catch as allowed by the daily catch limit in effect at that time.

3. Section 285.31 is amended by adding a new paragraph (a)(30) to read as follows:

§ 285.31 Prohibitions.

(a) . . .

(30) Use an aircraft as an aid to fish for Atlantic bluefin tuna, unless a valid permit for the Purse Seine category has been issued to the vessel.

[FR Doc. 69-16630 Filed 7-14-69; 8:45 am]
BILLING CODE 3510-22-M

Attachment C

Article About a Proposed Spotter Plane Ban
in the Commercial Fisheries News, August 1989

AH: Glen Gray

Portland for, Falmouth against

In response to your phone request.

Tuna spotter plane ban gets mixed reviews

PORTLAND, ME - For reasons ranging from safety to economics, fishermen attending a July 6 public hearing in Portland voiced strong support for a ban on the use of spotter planes in the tuna fishery for all gear categories except purse seiners.

But at a hearing the following night in Falmouth, MA, fishermen, buyers, and pilots unanimously opposed the proposed ban. They argued that those who supported a spotter plane ban were trying to return to a style of fishing that is gone forever.

The National Marine Fisheries Service (NMFS) conducted several public hearings early in July to solicit input on two proposed changes to Atlantic bluefin tuna regulations:

- To ban spotter planes as aids to tuna fishing for vessels in the hand gear categories (harpoons, kegs, hand lines, and rods and reels); and
- To allow the NMFS regional director to adjust the daily catch limit for the general category up or down at any time during the season. Tuna season starts with a one-fish-per-day limit, which cannot be adjusted until "on or about Sept. 1," more than half-way through the tuna season.

Critical timing

The proposed rule outlining these two changes was expected to be published in the *Federal Register* during the second week in July.

Once the proposed rule is published, a 21-day comment period follows. After that, the final rule can be published and implemented as soon as the paperwork is completed by NMFS.

Standard procedure requires a "cool-

ing-off period," a 30-day delay in actual implementation of the new regulations, after the final rule is published.

However, according to Joel MacDonald, attorney with the NOAA General Counsel's office at NMFS in Gloucester, the cooling off period can be waived.

"My legal opinion is that there is little justification to waive the cooling-off period on the spotter plane issue," he said. "But there is no reason not to waive it" for the two-fish adjustment issue.

Spotter pilots and those who use them could successfully argue that a ban on spotter planes instituted in midseason would cause them economic losses, MacDonald explained.

However, the early daily catch adjustment has wide support, he said. If the cooling-off period is waived, the NMFS regional director could conceivably allow fishermen in the general category to take two fish per day as early as Aug. 1.

Hearing comments

Besides the Portland and Falmouth hearings, NMFS also held public hearings in Newport, RI (attended by 2 people); Gloucester, MA; and Riverhead, NY (each attended by 25 people).

The hearing in Portland, attended by some 110 fishermen, was sweet satisfaction for many in the room. The movement to ban spotter planes was initiated in Maine.

In the spring of 1988, a bill was introduced in the Maine Legislature to ban the use of spotter planes in state waters. But the bill was labeled as an issue that should be handled on the federal level and never got off the ground.

Some of Maine's most skillful tuna fishermen, including veteran harpooners, attended the Portland hearing. They testified about the need to preserve the traditional nature of the fishery, keep the airways safe, and keep tuna from being spooked. Applause filled the room after each speaker.

Raleigh Edgerly of Rochester, NH, spoke of witnessing near collisions among spotter planes. "People are going out there in weather they shouldn't be out there in," he said.

David Linney of York Harbor guessed there might be as many as 30 planes looking for tuna this season - all flying within a finite amount of air space.

"This was not part of the tradition," said Linney, who also testified that planes influence the behavior of tons. "They drive fish down. The fish'll stay 20' down."

Steve Weiner, who has been tuna fishing for more than 25 years, was the first fisherman in Maine to hire a spotter pilot. But since then, and after listening to the objections of his peer group, Weiner said he had put some serious thought into the matter.

"After a lot of soul searching, I favor the ban on airplanes," he said.

The tone in Falmouth, however, was quite different. Of the nearly 30 people who attended, not one spoke in favor of a ban on spotter planes.

"Spotter planes are a divisive issue, but, as a group, we are opposed to any further restrictions," said Steve Moreton, president of the East Coast Tuna Association.

"People say it's a change in tradition, but the real change is in dollars," he con-

tinued. "More boats are trying to make money. It's a business. (Use of) spotter planes is an emotional issue, not a fishery management issue."

If safety is the real concern, then NMFS should "qualify and register" spotter plane pilots, Moreton suggested.

Cape Cod fisherman William Chaprales characterized the proposed ban on spotter planes as "outright discrimination," and said that what harpooners really need is a larger quota.

"The reason people in Maine are going crazy over this is competition; 75 tons is not enough," he said of the harpoon boat category's bluefin allocation. "We should go back to a 150-ton quota for the harpooners so they can fish."

Catch adjustment

Almost everyone at both hearings supported allowing an earlier adjustment of the daily catch limit. They said they should have the opportunity to catch two fish per day rather than one, especially considering that the general category quota of 650 tons has not been filled in three years.

NMFS also asked for comments on two alternative proposals to discourage the use of spotter planes: a daily catch limit on the harpoon boat category; and elimination of the harpoon category with that quota reassigned to the general category.

Anyone with questions regarding bluefin tuna management can contact Kathi Rodrigues, NMFS policy analyst, at (508) 281-9324.

Janice M. Plante
Lorelei Savona

Attachment D

Federal Aviation Administration Regulations
Concerning Commercial Pilot Certificates

placed on the certificate of an applicant who qualifies under paragraph (d) or (e) of this section.

(d) Until May 1, 1987, for a helicopter rating an applicant must have at least a total of 40 hours of flight instruction and solo flight time in aircraft with at least 15 hours of solo flight time in helicopters, which must include—

(1) A takeoff and landing at an airport that serves both airplanes and helicopters;

(2) A flight with a landing at a point other than an airport; and

(3) Three hours of cross-country flying, including one flight with landings at three or more points, each of which must be more than 25 nautical miles from each of the other two points.

(e) Until May 1, 1987, for a gyroplane rating an applicant must have at least a total of 40 hours of flight instruction and solo flight time in aircraft with at least 10 hours of solo flight time in a gyroplane, which must include—

(1) Flights with takeoffs and landings at paved and unpaved airports; and

(2) Three hours of cross-country flying, including a flight with landings at three or more points, each of which must be more than 25 nautical miles from each of the other two points.

[Doc. No. 24650, Amdt. 61-77, 51 FR 40704, Nov. 7, 1986, as amended by Amdt. 61-78, 52 FR 4846, Feb. 17, 1987]

§ 61.115 Glider rating: Aeronautical experience.

An applicant for a private pilot certificate with a glider rating must have logged at least one of the following:

(a) Seventy solo glider flights, including 20 flights during which 360° turns were made.

(b) Seven hours of solo flight in gliders, including 35 glider flights launched by ground tows, or 20 glider flights launched by aero tows.

(c) Forty hours of flight time in gliders and single-engine airplanes, including 10 solo glider flights during which

§ 61.117 Lighter-than-air rating: Aeronautical experience.

An applicant for a private pilot certificate with a lighter-than-air category rating must have at least the aeronautical experience prescribed in paragraph (a) or (b) of this section, appropriate to the rating sought.

(a) *Airships.* A total of 50 hours of flight time as pilot with at least 25 hours in airships, which must include 5 hours of solo flight time in airships, or time performing the functions of pilot in command of an airship for which more than one pilot is required.

(b) *Free balloons.* (1) If a gas balloon or a hot air balloon with an airborne heater is used, a total of 10 hours in free balloons with at least six flights under the supervision of a person holding a commercial pilot certificate with a free balloon rating. These flights must include—

(i) Two flights, each of at least 1 hour's duration, if a gas balloon is used, or of 30 minutes' duration, if a hot air balloon with an airborne heater is used;

(ii) One ascent under control to 5,000 feet above the point of takeoff, if a gas balloon is used, or 3,000 feet above the point of takeoff, if a hot air balloon with an airborne heater is used; and

(iii) One solo flight in a free balloon.

(2) If a hot air balloon without an airborne heater is used, six flights in a free balloon under the supervision of a commercial balloon pilot, including at least one solo flight.

[Doc. No. 11802, Amdt. 61-60, 38 FR 3181, Feb. 1, 1973, as amended at 38 FR 9292, Apr. 13, 1973]

§ 61.118 Private pilot privileges and limitations: Pilot in command.

Except as provided in paragraphs (a) through (d) of this section, a private pilot may not act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may he, for compensation or hire, act as pilot in command of an aircraft.

(a) A private pilot may, for compensation or hire, act as pilot in command of an aircraft in connection with any business or employment if the flight is

Federal Aviation Administration, DOT

only incidental to that business or employment and the aircraft does not carry passengers or property for compensation or hire.

(b) A private pilot may share the operating expenses of a flight with his passengers.

(c) A private pilot who is an aircraft salesman and who has at least 200 hours of logged flight time may demonstrate an aircraft in flight to a prospective buyer.

(d) A private pilot may act as pilot in command of an aircraft used in a passenger-carrying airlift sponsored by a charitable organization, and for which the passengers make a donation to the organization, if—

(1) The sponsor of the airlift notifies the FAA General Aviation District Office having jurisdiction over the area concerned, at least 7 days before the flight, and furnishes any essential information that the office requests;

(2) The flight is conducted from a public airport adequate for the aircraft used, or from another airport that has been approved for the operation by an FAA inspector;

(3) He has logged at least 200 hours of flight time;

(4) No acrobatic or formation flights are conducted;

(5) Each aircraft used is certificated in the standard category and complies with the 100-hour inspection requirement of § 91.169 of this chapter; and

(6) The flight is made under VFR during the day.

For the purpose of paragraph (d) of this section, a "charitable organization" means an organization listed in Publication No. 78 of the Department of the Treasury called the "Cumulative List of Organizations described in section 170(c) of the Internal Revenue Code of 1954," as amended from time to time by published supplemental lists.

§ 61.119 Free balloon rating: Limitations.

(a) If the applicant for a free balloon rating takes his flight test in a hot air balloon with an airborne heater, his pilot certificate contains an endorsement restricting the exercise of the privilege of that rating to hot air balloons with airborne heaters. The restriction may be deleted when the

holder of the certificate obtains the pilot experience required for a rating on a gas balloon.

(b) If the applicant for a free balloon rating takes his flight test in a hot air balloon without an airborne heater, his pilot certificate contains an endorsement restricting the exercise of the privileges of that rating to hot air balloons without airborne heaters. The restriction may be deleted when the holder of the certificate obtains the pilot experience and passes the tests required for a rating on a free balloon with an airborne heater or a gas balloon.

§ 61.120 Private pilot privileges and limitations: Second in command of aircraft requiring more than one required pilot.

Except as provided in paragraphs (a) through (d) of § 61.118 a private pilot may not, for compensation or hire, act as second in command of an aircraft that is type certificated for more than one required pilot, nor may he act as second in command of such an aircraft that is carrying passengers or property for compensation or hire.

Subpart E—Commercial Pilots

§ 61.121 Applicability.

This subpart prescribes the requirements for the issuance of commercial pilot certificates and ratings, the conditions under which those certificates and ratings are necessary, and the limitations upon those certificates and ratings.

§ 61.123 Eligibility requirements: General.

To be eligible for a commercial pilot certificate, a person must—

(a) Be at least 18 years of age;

(b) Be able to read, speak, and understand the English language, or have such operating limitations placed on his pilot certificate as are necessary for safety, to be removed when he shows that he can read, speak, and understand the English language;

(c) Hold at least a valid second-class medical certificate issued under Part 67 of this chapter, or, in the case of a glider or free balloon rating, certify that he has no known medical deficiency that makes him unable to pilot

a glider or a free balloon, as appropriate;

(d) Pass a written examination appropriate to the aircraft rating sought on the subjects in which ground instruction is required by § 61.125;

(e) Pass an oral and flight test appropriate to the rating he seeks, covering items selected by the inspector or examiner from those on which training is required by § 61.127; and

(f) Comply with the provisions of this subpart which apply to the rating he seeks.

(Doc. No. 11802, Amdt. 61-60, 38 FR 3161, Feb. 1, 1973, as amended by Amdt. 61-64, 41 FR 61392, Nov. 22, 1976)

§ 61.125 Aeronautical knowledge.

An applicant for a commercial pilot certificate must have logged ground instruction from an authorized instructor, or must present evidence showing that he has satisfactorily completed a course of instruction or home study, in at least the following areas of aeronautical knowledge appropriate to the category of aircraft for which a rating is sought.

(a) *Airplanes.* (1) The regulations of this chapter governing the operations, privileges, and limitations of a commercial pilot, and the accident reporting requirements of the National Transportation Safety Board;

(2) Basic aerodynamics and the principles of flight which apply to airplanes; and

(3) Airplane operations, including the use of flaps, retractable landing gears, controllable propellers, high altitude operation with and without pressurization, loading and balance computations, and the significance and use of airplane performance speeds.

(b) *Rotorcraft.* (1) The regulations of this chapter which apply to the operations, privileges, and limitations of a commercial rotorcraft pilot, and the accident reporting requirements of the National Transportation Safety Board;

(2) Meteorology, including the characteristics of air masses and fronts, elements of weather forecasting, and the procurement and use of aeronautical weather reports and forecasts;

(3) The use of aeronautical charts and the magnetic compass for pilotage

and dead reckoning, and the use of radio aids for VFR navigation;

(4) The safe and efficient operation of helicopters or gyroplanes, as appropriate to the rating sought; and

(5) Basic aerodynamics and principles of flight which apply to rotorcraft and the significance and use of performance charts.

(c) *Glider.* (1) The regulations of this chapter pertinent to commercial glider pilot operations, privileges, and limitations, and the accident reporting requirements of the National Transportation Safety Board;

(2) Glider navigation, including the use of aeronautical charts and the magnetic compass, and radio orientation;

(3) The recognition of weather situations of concern to the glider pilot from the ground and in flight, and the procurement and use of aeronautical weather reports and forecasts; and

(4) The safe and efficient operation of gliders, including ground and aerotow procedures, signals, critical sailplane performance speeds, and safety precautions.

(d) *Airships.* (1) The regulations of this chapter pertinent to airship operations, VFR and IFR, including the privileges and limitations of a commercial airship pilot;

(2) Airship navigation, including pilotage, dead reckoning, and the use of radio aids for VFR and IFR navigation, and IFR approaches;

(3) The use and limitations of the required flight instruments;

(4) ATC procedures for VFR and IFR operations, and the use of IFR charts and approach plates;

(5) Meteorology, including the characteristics of air masses and fronts and the procurement and use of aeronautical weather reports and forecasts;

(6) Airship ground and flight instruction procedures; and

(7) Airship operating procedures and emergency operations, including free ballooning procedures.

(e) *Free balloons.* (1) The regulations of this chapter pertinent to commercial free balloon piloting privileges, limitations, and flight operations;

(2) The use of aeronautical charts and the magnetic compass for free balloon navigation;

(3) The recognition of weather conditions significant to free balloon flight operations, and the procurement and use of aeronautical weather reports and forecasts appropriate to free ballooning;

(4) Free balloon flight and ground instruction procedures; and

(5) Operating principles and procedures for free balloons, including emergency procedures such as crowd control and protection, high wind and water landings, and operations in proximity to buildings and power lines.

(Doc. No. 11802, Amdt. 61-60, 38 FR 3161, Feb. 1, 1973, as amended by Amdt. 61-77, 51 FR 40704, Nov. 7, 1986)

§ 61.127 Flight proficiency.

The applicant for a commercial pilot certificate must have logged instruction from an authorized flight instructor in at least the following pilot operations. In addition, his logbook must contain an endorsement by an authorized flight instructor who has given him the instruction certifying that he has found the applicant prepared to perform each of those operations competently as a commercial pilot.

(a) *Airplanes.* (1) Preflight duties, including load and balance determination, line inspection, and aircraft servicing;

(2) Flight at critically slow airspeeds, recognition of imminent stalls, and recovery from stalls with and without power;

(3) Normal and crosswind takeoffs and landings, using precision approaches, flaps, power as appropriate, and specified approach speeds;

(4) Maximum performance takeoffs and landings, climbs, and descents;

(5) Operation of an airplane equipped with a retractable landing gear, flaps, and controllable propeller(s), including normal and emergency operations; and

(6) Emergency procedures, such as coping with power loss or equipment malfunctions, fire in flight, collision avoidance precautions, and engine-out procedures if a multiengine airplane is used.

(b) *Helicopters.* (1) Preflight duties, including line inspection and helicopter servicing;

(2) Straight and level flight, climbs, turns, and descents;

(3) Air taxiing, hovering, and maneuvering by ground references;

(4) Normal and crosswind takeoffs and landings;

(5) Recognition of and recovery from imminent flight at critical/rapid descent with power (settling with power);

(6) Airport and traffic pattern operations, including collision avoidance precautions and radio communications;

(7) Cross-country flight operations;

(8) Operations in confined areas and on pinnacles, rapid decelerations, landing on slopes, high-altitude takeoffs, and run-on landings; and

(9) Simulated emergency procedures, including failure of an engine or other component or system, and approaches to a hover or landing with one engine inoperative in multiengine helicopters, or autorotational descents with a power recovery to a hover in single-engine helicopters.

(c) *Gyroplanes.* (1) Preflight operations, including line inspection and gyroplane servicing;

(2) Straight and level flight, turns, climbs, and descents;

(3) Flight maneuvering by ground references;

(4) Maneuvering at critically slow airspeeds, and the recognition of and recovery from high rates of descent at slow airspeeds;

(5) Normal and crosswind takeoffs and landings;

(6) Airport and traffic pattern operations, including collision avoidance precautions and radio communications;

(7) Cross-country flight operations; and

(8) Emergency procedures, such as power failures, equipment malfunctions, maximum performance takeoffs and landings and simulated liftoffs at low airspeed and high angles of attack.

(d) *Glider.* (1) Preflight duties, including glider assembly and preflight inspection;

(2) Glider launches by ground (auto or winch) or by aerotows (the appli-

cant's certificate is limited to the kind of tow selected);

(3) Precision maneuvering, including straight glides, turns to headings, steep turns, and spirals in both directions;

(4) The correct use of sailplane performance speeds, flight at critically slow airspeeds, and the recognition of and recovery from stalls entered from straight flight and from turns; and

(5) Accuracy approaches and landings, with the nose of the glider coming to rest short of and within 100 feet of a line or mark.

(e) *Airships.* (1) Ground handling, mooring, and preflight operations;

(2) Straight and level flight, turns, climbs, and descents, under VFR and simulated IFR conditions;

(3) Takeoffs and landings with positive and with negative static lift;

(4) Turns and figure eights;

(5) Precision turns to headings under simulated IFR conditions;

(6) Preparing and filing IFR flight plans, and complying with IFR clearances;

(7) IFR radio navigation and instrument approach procedures;

(8) Cross-country flight operations, using pilotage, dead reckoning, and radio aids; and

(9) Emergency operations, including engine-out operations, free ballooning an airship, and ripcord procedures (may be simulated).

(f) *Free balloons.* (1) Assembly of basket and burner to the envelope, and rigging, inflating, and tethering of a free balloon;

(2) Ground and flight crew briefing;

(3) Ascents;

(4) Descents;

(5) Landings;

(6) Operation of airborne heater, if balloon is so equipped; and

(7) Emergency operations, including the use of the ripcord (may be simulated), and recovery from a terminal velocity descent if a balloon with an airborne heater is used.

[Doc. No. 11802, Amdt. 61-60, 38 FR 3161, Feb. 1, 1973, as amended by Amdt. 61-77, 51 FR 40704, Nov. 7, 1986; Amdt. 61-79, 52 FR

§ 61.129 Airplane rating: Aeronautical experience.

(a) *General.* An applicant for a commercial pilot certificate with an airplane rating must hold a private pilot certificate with an airplane rating. If he does not hold that certificate and rating he must meet the flight experience requirements for a private pilot certificate and airplane rating and pass the applicable written and practical test prescribed in Subpart D of this part. In addition, the applicant must hold an instrument rating (airplane), or the commercial pilot certificate that is issued is endorsed with a limitation prohibiting the carriage of passengers for hire in airplanes on cross-country flights of more than 50 nautical miles, or at night.

(b) *Flight time as pilot.* An applicant for a commercial pilot certificate with an airplane rating must have a total of at least 250 hours of flight time as pilot, which may include not more than 50 hours of instruction from an authorized instructor in a ground trainer acceptable to the Administrator. The total flight time as pilot must include—

(1) 100 hours in powered aircraft, including at least—

(i) 50 hours in airplanes, and

(ii) 10 hours of flight instruction and practice given by an authorized flight instructor in an airplane having a retractable landing gear, flaps, and a controllable pitch propeller; and

(2) 50 hours of flight instruction given by an authorized flight instructor, including—

(i) 10 hours of instrument instruction, of which at least 5 hours must be in flight in airplanes, and

(ii) 10 hours of instruction in preparation for the commercial pilot flight test; and

(3) 100 hours of pilot in command time, including at least:

(i) 50 hours in airplanes.

(ii) 50 hours of cross-country flights, each flight with a landing at a point more than 50 nautical miles from the original departure point. One flight must have landings at a minimum of three points, one of which is at least 150 nautical miles from the original departure point if the flight is con-

ducted in Hawaii, or at least 250 nautical miles from the original departure point if it is conducted elsewhere.

(iii) 5 hours of night flying including at least 10 takeoffs and landings as sole manipulator of the controls.

[Doc. No. 11802, Amdt. 61-60, 38 FR 3161, Feb. 1, 1973, as amended by Amdt. 61-73, 47 FR 46066, Oct. 14, 1982]

§ 61.131 Rotorcraft ratings: Aeronautical experience.

An applicant for a commercial pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience as a pilot:

(a) After April 30, 1987, for a helicopter class rating, 150 hours of flight time, including at least 100 hours in powered aircraft, 50 hours of which must be in a helicopter, including at least—

(1) 40 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a helicopter, including—

(i) 3 hours of cross-country flying in helicopters;

(ii) 3 hours of night flying in helicopters, including 10 takeoffs and landings, each of which must be separated by an en route phase of flight;

(iii) 3 hours in helicopters preparing for the commercial pilot flight test within 60 days before that test; and

(iv) Takeoffs and landings at three points other than airports; and

(2) 100 hours of pilot-in-command flight time, 35 hours of which must be in a helicopter, including at least—

(i) 10 hours of cross-country flying in helicopters, including one flight with a landing at three or more points, each of which must be more than 50 nautical miles from each of the other two points; and

(ii) Three takeoffs and landings in helicopters, each of which must be separated by an en route phase of flight, at an airport with an operating control tower.

(b) After April 30, 1987, for a gyroplane class rating, 150 hours of flight time in aircraft, including at least 100 hours in powered aircraft, 25 hours of which must be in a gyroplane, including at least—

(1) 40 hours of flight instruction

10 hours of which must be in a gyroplane, including at least—

(i) 3 hours of cross-country flying in gyroplanes;

(ii) 3 hours of night flying in gyroplanes, including 10 takeoffs and landings; and

(iii) 3 hours in gyroplanes preparing for the commercial pilot flight test within 60 days before that test; and

(2) 100 hours of pilot-in-command flight time, 15 hours of which must be in a gyroplane, including at least—

(i) 10 hours of cross-country flying in gyroplanes, including one flight with a landing at three or more points, each of which is more than 50 nautical miles from each of the other two points; and

(ii) Three takeoffs and landings in gyroplanes at an airport with an operating control tower.

(c) Until May 1, 1987, for a helicopter rating at least 150 hours of flight time as pilot, including at least—

(1) 100 hours in powered aircraft and at least 50 hours in helicopters;

(2) 100 hours of pilot in command time, including a cross-country flight with landings at three points, each of which is more than 50 nautical miles from each of the other points;

(3) 40 hours of flight instruction from an authorized flight instructor, including 15 hours in helicopters; and

(4) 10 hours as pilot in command in helicopters, including—

(i) Five takeoffs and landings at night;

(ii) Takeoffs and landings at three different airports that serve both airplanes and helicopters; and

(iii) Takeoffs and landings at three points other than airports.

(d) Until May 1, 1987, for a gyroplane rating at least 200 hours of flight time as pilot, including—

(1) 100 hours in powered aircraft;

(2) 100 hours as pilot in command, including a cross-country flight with landings at three points, each of which is more than 50 nautical miles from each of the other two points;

(3) 75 hours as pilot in command in gyroplanes, including—

(i) Flights with takeoffs and landings at three different paved airports

(ll) Three flights with takeoffs and landings at an airport with an operating control tower; and

(4) Twenty hours of flight instruction in gyroplanes, including 5 hours in preparation for the commercial pilot flight test.

[Doc. No. 24860, Amdt. No. 61-77, 51 FR 40704, Nov. 7, 1986, as amended by Amdt. 61-78, 52 FR 4847, Feb. 17, 1987]

§ 61.133 Glider rating: Aeronautical experience.

An applicant for a commercial pilot certificate with a glider rating must meet either of the following aeronautical experience requirements:

(a) A total of at least 25 hours of pilot time in aircraft, including 20 hours in gliders, and a total of 100 glider flights as pilot in command, including 25 flights during which 360° turns were made; or

(b) A total of 200 hours of pilot time in heavier-than-air aircraft, including 20 glider flights as pilot in command during which 360° turns were made.

§ 61.135 Airship rating: Aeronautical experience.

An applicant for a commercial pilot certificate with an airship rating must have a total of at least 200 hours of flight time as pilot, including—

(a) Fifty hours of flight time as pilot in airships;

(b) 30 hours of flight time performing the duties of pilot in command in airships, including—

(1) 10 hours of cross-country flight; and

(2) 10 hours of night flight; and
(c) 40 hours of instrument time, of which at least 20 hours must be in flight with 10 hours of that flight time in airships.

§ 61.137 Free balloon rating: Aeronautical experience.

An applicant for a commercial pilot certificate with a free balloon rating must have the following flight time as pilot:

(a) If a gas balloon or a hot air balloon with an airborne heater is used, a total of at least 35 hours of flight time

(2) 10 flights in free balloons, including—

(i) Six flights under the supervision of a commercial free balloon pilot;

(ii) Two solo flights;

(iii) Two flights of at least 2 hours duration if a gas balloon is used, or at least 1 hour duration if a hot air balloon with an airborne heater is used; and

(iv) One ascent under control to more than 10,000 feet above the take-off point if a gas balloon is used or 5,000 feet above the take off point if a hot air balloon with an airborne heater is used.

(b) If a hot air balloon without an airborne heater is used, 10 flights in free balloons including—

(1) Six flights under the supervision of a commercial free balloon pilot; and

(2) Two solo flights.

§ 61.139 Commercial pilot privileges and limitations: General.

The holder of a commercial pilot certificate may:

(a) Act as pilot in command of an aircraft carrying persons or property for compensation or hire;

(b) Act as pilot in command of an aircraft for compensation or hire; and

(c) Give flight instruction in an airship if he holds a lighter-than-air category and an airship class rating, or in a free balloon if he holds a free balloon class rating.

§ 61.141 Airship and free balloon ratings: Limitations.

(a) If the applicant for a free balloon class rating takes his flight test in a hot air balloon without an airborne heater, his pilot certificate contains an endorsement restricting the exercise of the privileges of that rating to hot air balloons without airborne heaters. The restriction may be deleted when the holder of the certificate obtains the pilot experience and passes the test required for a rating on a free balloon with an airborne heater or a gas balloon.

(b) If the applicant for a free balloon class rating takes his flight test in a hot air balloon with an airborne heater, his pilot certificate contains an

Federal Aviation Administration, DOT

of the privileges of that rating to hot air balloons with airborne heaters. The restriction may be deleted when the holder of the certificate obtains the pilot experience required for a rating on a gas balloon.

Subpart F—Airline Transport Pilots

AUTHORITY: Secs. 313(a), 314, 601, and 607; 49 U.S.C. 1354(a), 1355, 1421, and 1427.

§ 61.151 Eligibility requirements: General.

To be eligible for an airline transport pilot certificate, a person must—

(a) Be at least 23 years of age;

(b) Be of good moral character;

(c) Be able to read, write, and understand the English language and speak it without accent or impediment of speech that would interfere with two-way radio conversation;

(d) Be a high school graduate, or its equivalent in the Administrator's opinion, based on the applicant's general experience and aeronautical experience, knowledge, and skill;

(e) Have a first-class medical certificate issued under Part 67 of this chapter within the 6 months before the date he applies; and

(f) Comply with the sections of this part that apply to the rating he seeks.

[Doc. No. 1179, 27 FR 7985, Aug. 10, 1962. Redesignated by Doc. No. 11802, Amdt. 61-60, 38 FR 3161, Feb. 1, 1973]

§ 61.153 Airplane rating: Aeronautical knowledge.

An applicant for an airline transport pilot certificate with an airplane rating must, after meeting the requirements of §§ 61.151 (except paragraph (a) thereof) and 61.155, pass a written test on—

(a) The sections of this part relating to airline transport pilots and Part 121, Subpart C of Part 65, and §§ 91.1 through 91.9 and Subpart B of Part 91 of this chapter, and so much of Parts 21 and 25 of this chapter as relate to the operations of air carrier aircraft;

(b) The fundamentals of air navigation and use of formulas, instruments, and other navigational aids, both in aircraft and on the ground, that are necessary for navigating aircraft by in-

(c) The general system of weather collection and dissemination;

(d) Weather maps, weather forecasting, and weather sequence abbreviations symbols, and nomenclature;

(e) Elementary meteorology, including knowledge of cyclones as associated with fronts;

(f) Cloud forms;

(g) National Weather Service Federal Meteorological Handbook No. 1, as amended;

(h) Weather conditions, including icing conditions and upper-air winds, that affect aeronautical activities;

(i) Air navigation facilities used on Federal airways, including rotating beacons, course lights, radio ranges, and radio marker beacons;

(j) Information from airplane weather observations and meteorological data reported from observations made by pilots on air carrier flights;

(k) The influence of terrain on meteorological conditions and developments, and their relation to air carrier flight operations;

(l) Radio communication procedure in aircraft operations; and

(m) Basic principles of loading and weight distribution and their effect on flight characteristics.

[Doc. No. 1179, 27 FR 7985, Aug. 10, 1962, as amended by Amdt. 61-11, 29 FR 14916, Nov. 4, 1964; Amdt. 61-30, 32 FR 5770, Apr. 11, 1967; Amdt. 61-64, 36 FR 13911, July 22, 1971. Redesignated by Doc. No. 11802, Amdt. 61-60, 38 FR 3161, Feb. 1, 1973, as amended by Amdt. 61-64, 41 FR 51392, Nov. 22, 1976]

§ 61.155 Airplane rating: Aeronautical experience.

(a) An application for an airline transport pilot certificate with an airplane rating must hold a commercial pilot certificate or a foreign airline transport pilot or commercial pilot license without limitations, issued by a member state of ICAO, or he must be a pilot in an Armed Force of the United States whose military experience qualifies him for a commercial pilot certificate under § 61.73.

(b) An applicant must have had—

(1) At least 250 hours of flight time as pilot in command of an airplane, or as copilot of an airplane performing

Attachment E

**State of Alaska Statutes Concerning Regulation
of Pilots Engaged in Outfitter/Guide Operations**

(2) shall be employed by a guide-outfitter and under the supervision of a guide-outfitter or class-A assistant guide-outfitter at all times while the assistant guide-outfitter is in the field on guide-outfitted hunts. (§ 3 ch 37 SLA 1989)

Sec. 08.54.395. Insurance and other requirements for guide-outfitters. (a) A guide-outfitter or marine mammal guide-outfitter, while engaged in providing big game commercial hunting services shall carry, as a minimum, comprehensive general liability insurance of \$300,000 per occurrence or \$500,000 per annual aggregate or post a financial bond in those amounts.

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

(c) During the provision of big game commercial hunting services, an aircraft used by a guide-outfitter, marine mammal guide-outfitter, class-A assistant guide-outfitter, or assistant guide-outfitter to transport clients must carry aviation passenger liability insurance of at least \$100,000 per seat or must be subject to a financial bond in that amount. (§ 3 ch 37 SLA 1989)

Effective dates. — Section 21, ch. 37, SLA 1989, provides: "AS 08.54.395, as enacted by sec. 3 of this Act *** takes effect July 15, 1989."

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

- (1) applies on a form provided by the department;
- (2) pays the license fee;
- (3) pays the commercial use permit fee;
- (4) provides proof of

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

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

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

(b) A transporter may provide transportation services for compensation to big game hunters and accommodations in the field at a permanent lodge, house, or cabin owned by the transporter or on a boat with permanent living quarters located on salt water. A transporter may also provide, under authority of a commercial use permit, other

big game transporter holding

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big game commercial services as defined under AS 08.54.460. A transporter may not provide big game commercial hunting services without holding the appropriate license.

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

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

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

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

(4) proof of

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

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

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

(e) A transporter shall place a decal provided by the department on each plane, boat, vehicle, or other equipment used by the transporter to provide transportation services to big game hunters. The decal must bear the transporter's license number. The decal is valid only for the plane, boat, vehicle, or other equipment for which the decal is issued. (§ 3 ch 37 SLA 1989)

Sec. 08.54.410. Appeal to commissioner from board on denial of license. The commissioner of commerce and economic development may order that an applicant for an initial license under AS 08.54.350 — 08.54.400 be allowed to take the license examination or be issued the license if, after reviewing a petition filed by the applicant, the commissioner finds that

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

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

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

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

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

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



A.F.S.A.

Alaska Fish Spotters Association.

Box 221829 Anchorage, Alaska 99522-1829

(907) 495-6370

(907) 376-4983

Feb 6, 1990

Legislative Members
Sixteenth Legislature

Fish spotting has been in existence in Alaska since aircraft first arrived in the state. It was very popular with the large cannery fleets in the 1940's and 50's. Today, the aircraft are used in all aspects of the different fisheries. Spotting as we know it now has been in use for the last 20 to 25 years. As the fisheries have become more competitive and higher paced, the spotter has become more popular. With this increased popularity has come an increased number of pilots and airplanes. We, the Spotter Assoc. feel that with increased number of aircraft in the fishery, it is time to regulate there usuage. We feel it is imperative that the state help our endeavors in making this profession safer.

The current fisheries are high dollar, fast paced, expensive businesses. With the number of permit holders in these fisheries, especially the herring fishery, there are more and more unqualified pilots. Our goal is to provide a safer more professional pilot to the fishing community.

Because of the unique environment that the fish spotter operates in, we feel that there needs to be additional requirements for the qualifications of the pilots. In addition to these requirements, we feel there is considerable information to be gained by management if these pilots and aircraft are registered by the state.

The Alaska Fish Spotter Assoc came in being in 1988. We have approx. 180 members with about 100 of them being active spotter pilots. There are approx. 90 % of our members that are Alaska Residents. Thank-you very much.

Sincerely

Dennis Thacker Vice Pres.

Alaska Fish Spotters Assoc.



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3715

MEMORANDUM

To: House Resources Committee Members
From: Rep. Menard *CM*
Re: HB 502, Licensing of Fish Spotters
Date: March 15, 1990

I have introduced HB 502 in response to a request from several fish spotters in my district. Presently, fish spotters are only regulated by the Federal Aviation Administration. The state authority to regulate fish spotters is presently in question.

Due to the hectic nature of fisheries in Alaska, I think it is important to require minimum standards for safety, professionalism and liability insurance for all fish spotters and allow only fish spotters who meet minimum standards to provide these services in Alaska.

This bill will provide clear direction for the Board of Fish in regulating the participation of fish spotters in the commercial fishing industry. The bill will also require fish spotters to register with the local Fish and Game biologist in the area they will be acting.

Explanation of HB 502

QUALIFICATIONS

Sets up minimum qualifications for fish spotters including; minimum age of 18 years, valid commercial pilots license, certificate of safety training and liability insurance (amount determined by the Department of Fish and Game).

REQUIREMENTS

Sets up minimum requirements for fish spotters to hold a license, be accompanied by at least one passenger in the aircraft, register with the department of Fish and Game biologist in charge of the fishery in which the spotter will be acting and mark their aircraft with fluorescent orange markings on the wing tips and edge of the tail and with 24 inch tail numbers.

VIOLATIONS

Class B misdemeanor

DEFINITION OF FISH SPOTTER

Н В

516

FYI

Alaska Department of Fish and Game
Division of Wildlife Conservation

BRIEFING PAPER ON MOOSE FARMING

Who's
issue?

SB 472 and HB 516 would amend AS 16.40.010 and AS 16.40.020 to allow moose to be raised as domestic animals for commercial purposes and allow meat from these animals to be sold. AS 16.40.010 allows the Department of Fish and Game to grant surplus buffalo or muskoxen to persons or groups for the purpose of raising and breeding these animals as domestic stock for commercial purposes. The proposed legislation would add moose to the species that could be granted to individuals for private ownership.

The Department of Fish and Game is opposed to SB 472 and HB 516 for biological, economic, and social reasons.

Wildlife Management Concerns

Moose are the most highly sought after game species by resident and nonresident hunters. About 7,500 to 8,000 moose are harvested each year by about 50,000 hunters. In 1989, drawing permit hunts were oversubscribed by more than 25,000 requests. Moose also provide a major food base for other important wildlife species. Tourists, photographers, and outdoor enthusiasts eagerly seek opportunities to observe moose.

The primary proponent of this legislation (Mr. Nick Columbo from Delta) has proposed capturing moose along the Alaska Railroad near Talkeetna as a source of moose for his commercial operation. He claims this would reduce the number of moose killed by trains. Several thousand moose occur in this area and it would be impossible to predetermine which moose might be killed by a train. Whether moose are killed by trains or removed to moose farms, the result is the same--fewer moose along the railroad corridor. Public demand for moose in this area (GMU 14A and 14B) is very high. The 1989 season for resident hunters was for 1 bull and lasted from 20 to 30 days. In GMU 14A, there was also a cow season by drawing permits; 12,500 hunters entered the drawing for 400 permits. Our records indicate that about 4,000 hunters pursued moose in these game management subunits during the 1989 season. These hunters harvested over 700 moose. Obviously, the demand for moose greatly exceeds the supply in this area. The same is true for nearly all other parts of Alaska.

Farming of moose will require large acreages. Mr. Columbo has requested a lease of 4,000 acres of state land near Delta for his operation. Fencing of this land would exclude its use by other moose and many other wildlife species. Also, predators such as grizzly bears, black bears, and wolves are common near Delta and most other places where game farming might occur. Conflicts

between a moose farm and predators are certain. Passage of this legislation and approval of Mr. Columbo's lease request would remove 4,000 acres of productive state-owned wildlife habitat from production of wildlife for general public use and enjoyment. Predator populations over a much larger area would likely be impacted.

The Department would be responsible for ensuring the general welfare and humane treatment of moose on farms because moose are classified as big game animals and the public expects us to ensure the humane treatment of all wildlife. The Alaska Zoo in Anchorage is a good example of where the public demanded Departmental oversight beyond required permit conditions. A large moose farm as envisioned by Mr. Columbo would pose several problems. Moose are not a herd animal. Cows with calves are solitary and other moose seldom occur in groups of more than 4 or 5. To place 100 plus moose into a 4,000-acre pasture will create aggressive behavior that could injure many animals. Such dense stocking rates could also cause disease problems and these diseases could be transmitted to wild moose or domestic species outside the enclosure.

A larger problem would be created by passage of HB 516/SB 472 when people use this legislation to own a few moose as a hobby or to promote their tourist business. Such road-side attractions are notorious for mistreatment of animals and Alaska has strictly prohibited such activity in the past. Individuals holding moose to promote their tourist trade will likely have no training in animal husbandry or knowledge of how to handle a large, wild animal. Even moose bottle-raised and accustomed to humans can become very aggressive and dangerous. The state may be held liable for allowing untrained people to hold wild animals if a moose injured someone.

Allowing the sale of moose meat will create serious law enforcement problems. Poaching of moose for commercial sale will become more common and difficult to enforce. Unethical moose farmers could work with poachers to confuse law enforcement. Allowing sale of moose meat will add an economic incentive to poachers that currently is absent. For this reason, in Alberta and several other provinces where elk farming is common, the sale of elk meat is prohibited. Farmers in Alberta can sell only antlers and breeding stock to other farms.

Current levels of wildlife law enforcement are inadequate to cope with this new burden. In West Germany, where sale of wildlife is legal, there are 65,000 armed wildlife protection agents (game wardens) or 1 for every 1.5 square miles (Geist 1988, Conservation Biology, 2(1):15-27). Still, poaching is considered a problem. In Alaska we have about 75 Fish and Wildlife Protection Officers plus about 300 employees of the Department of Fish and Game who are deputized. Counting even part-time deputized officers, this is 1 officer per 1,500 square miles of land. It is very unlikely that the level of law enforcement

would be raised to adequately enforce game regulations if sale of moose meat is allowed.

Economic Reality

Moose are expensive to maintain in captivity. An average moose will consume 20 to 30 pounds of food per day in the summer and 10 to 12 pounds in the winter. The most productive areas in the state can support 6 to 8 moose per square mile during the winter. Mr. Columbo plans to stock in excess of 16 moose per square mile on his farm. A high level of supplemental feeding will be required. Moose have evolved to eat leaves and stems of woody plants. They cannot survive long-term on a diet which sustains cows, sheep, or horses. All moose held in captivity throughout the world are fed native browse or a pelleted ration that contains 33% aspen sawdust. This pelleted food is expensive, roughly twice the cost of domestic livestock feed.

Game farming has proven economical in some parts of Canada, most notably Alberta where elk and bison farms are common. However, none of these farms raise moose commercially because they are not profitable. A few farmers in Alberta do have 1 or 2 moose; the most owned by any one farmer is 6 animals. This farm is a wild animal park for tourists. No moose farms exist in the Yukon Territory.

The Yukon Territory, Department of Renewable Resources contracted with a private consulting firm in 1986 to analyze the economic feasibility of game ranching in the Yukon. This report concluded that moose are not suitable animals for game farming because of their tendency to acquire density-related disease. The Yukon government subsequently adopted a game ranching policy that prohibits the use of moose in game farming. The same report concluded that elk farming might be economically viable, but the average initial investment for an elk farm would be from \$400,000 to \$450,000 and annual operating costs would be \$17,000 to \$20,000, excluding labor. No income was predicted for the first 2 years of operation.

Moose farming is not economically feasible in areas where game farms have been established and much effort has been spent to establish markets for wild game products. To expect such endeavors to succeed in Alaska where no infrastructure exists and no market has been established is not realistic. The state has promoted agricultural projects in the past that resulted in continuing subsidies. We consider providing 100 publicly owned moose to private ownership a subsidy. Also, fencing 4,000 acres with a fence that will adequately enclose moose and exclude bison (a wild bison herd occurs in this area) will be very costly and could result in a request for a subsidy through a state loan.

Some proponents of moose farming have referred to reports from Russia where they think moose have been used successfully as work animals, for milk production, or for meat production. These

reports are not true. Russia initiated a large moose domestication project in the early 1940's. They built 2 large farms, one in the Pechora River Valley and one in central Siberia. Both farms closed in the mid-1960's because they were economic failures. It is difficult to obtain information on this project because the Soviets do not publicize their failures. However, moose specialists on our staff have obtained some scientific reports and have had several discussions with Soviet biologists who worked on the project. A synopsis of what we learned follows:

Moose could not be used for work animals except during winter. Moose do not have sweat glands, so working the moose during summer caused overheating and death. Milk production was low; to achieve a modest amount of production the moose had to be milked 6 times per day and labor costs were prohibitive. The Soviets learned they could produce as many moose through intensive management of wild animals as on the farms. They also had many behavior problems and had to hand-cut browse to feed the moose. The moose farm in the Pechora River Valley operates today as a field research center to study moose nutrition and physiology. The other farm was abandoned.

Social Considerations

Alaska's wildlife resources are a highly valuable economic asset. Wildlife contributes hundreds of millions of dollars annually to Alaska's economy through tourism, guiding, hunting, and subsistence. Tourists list the opportunity to see wildlife as their primary reason for visiting Alaska. The experience of observing wildlife will be diminished in value if tourists observe moose at road-side attractions and game farms.

The foundation of wildlife management in the United States is public ownership of the wildlife resource and a prohibition on commercial use (sale of meat or animal parts) of the wildlife resources. These 2 basic premises make it possible for most citizens to participate in hunting at a low cost and increase the desirability of wild meat because it can only be obtained through hunting. The use of wildlife in Europe has deteriorated, in large part, due to private ownership of game. Only about 3% of Europeans are hunters because costs are prohibitive and game meat can be purchased. Legalization of moose farms would start Alaska on a path to private hunting preserves and the European system of hunting. We strongly believe that such action would be a major error and would be detrimental to successful wildlife management in Alaska.

**Tanya L Marsh
1178 Nenana St
Fairbanks, Ak. 99709
474-0627**

**3444 Nowell Ave #D308
Juneau, Ak. 99788
463-5630**

April 18, 1990

**Alaska State Legislature
Room 124 Capitol
Juneau, Ak. 99811**

To: All House Resource Committee Members,

In regards to HB 516, I would like to present an unpleasant vision that is entirely possible for the future if this bill for moose farming is allowed to pass.

Perhaps moose farming will begin as letting the moose roam in a fenced in lot with plenty of room to run and exercise their needs. However, after the demand for moose meat and hide grows, which would take almost no time at all, the moose would be confined to pens with out any consideration to their primal instincts and their sensitivity as a living being.

When cattle ranching first began in the 'Wild West' the cows were treated perhaps as humanely as possible for a creature born on death row. They had plenty of land to roam, and were even kept safe from predators.

Do you know how cows are raised now? Today? They are raised in factories-treated no more kindly than an assemblyman treats any given part of a car he is creating.

The cows have no space to turn around in their pens, spend their lives hundreds lined up in rows under a single roof, and are fed so many chemicals, that consumers should be terrified to eat what is found in the grocers freezer.

Because of our greed for the 'final product,' farming has become one of the most degrading and inhumane acts we could do to our fellow creatures.

With the several proposals of moose farming that have come up, the prospect of the money that would come back to the State of Alaska is very encouraging. However, the source for the money would come at a high cost-another living beings life.

I don't see farming animals at a mass rate and honorable way for a state to make money and create jobs for it's residents.

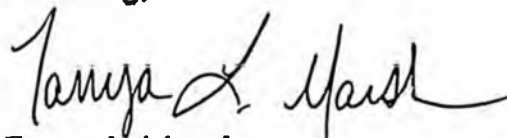
The thought of domesticating a creature as free and beautiful as a moose should not have even been thought of.

I can see the compassion in taking orphaned moose into a monitored area, but not for slaughter in it's later life! Helping them to survive on their own is a duty we should more than willingly do for them since it was our fault that it's mother is dead.

The only reason these moose should be kept in our reach is to give them the stability that they need to make it on their own when they are old enough. Meaning: We take them in as a calf because their mother's have been killed by one of our cars, or our trains, then raise them until they are competent enough to survive on their own.

I strongly urge you to hold compassion for the moose's rights and do not support this legislative act.

Sincerely,

A handwritten signature in cursive script that reads "Tanya L. Marsh". The signature is written in black ink and is positioned above the printed name.

Tanya L. Marsh



Member
Finance Committee

Alaska State Legislature

REPRESENTATIVE DICK SHULTZ

P.O. Box V
Juneau, Alaska 99801
(907) 465-4940
Home P.O. Box 487
Tok, Alaska 99780

MEMORANDUM

TO: HOUSE RESOURCES COMMITTEE

SUBJECT: HB 516 (DOMESTICATION OF MOOSE)

DATE: APRIL 17, 1990

This legislation simply allows (not mandates) the Department of Fish and Game to allow surplus (not just any) moose to be subject to animal husbandry.

Obviously, the present Department will not allow this activity to occur even though they themselves have held moose in captivity at the Kenai research station for years.

My constituent, Nick Colombo from Delta does not wish to own the moose he proposes to husband. He has simply asked the Department to allow him to remove the moose being destroyed from the railroad and retain them on his land in Delta.

He has offered to use his own money, and allow the Department to conduct research on the animals. He will obtain surplused ag land and provide scientifically approved containment measures. He has pledged to work with the Department jointly and if after five years the plan is not a success he will release all the moose.

This pilot project, if approved by the commissioner could mean the beginning of an exciting era of possibilities for Alaska. Native corporations and other entrepreneurs with large amounts of suitable habitat could provide not only a valuable subsistence food, but also fill the rapidly expanding market for low fat, organically raised game meat. Elk, bison, and deer meat sells for over \$ 7.00 per pound and is available throughout the United States in health food stores and in more and more restaurants.

We presently raise reindeer (domesticated caribou), and bison. Elk was added to the list of animals the commissioner may also approve. Moose should also be on the list and this bill would accomplish that.

To paraphrase a famous quote by a President named Kennedy, "Some people look at new directions and ask why. I look at new directions and ask why not?"

The Department of Fish and Game are more than happy to ask "why not" when they are advancing fiscal requests for their wildlife ventures. I can only hope they will step forward and support this partnership as a step a brighter future for resource enhancement in Alaska.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 28, 1990

The Honorable Dick Shultz
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Dear Dick,

Thanks for sending a copy of your letter to legislators regarding Mr. Colombo's desire to keep moose on his farm. I agree that we should review all suggestions for reducing moose losses in the Mat-Su Valley. I've shared Mr. Colombo's proposal with the appropriate members of my cabinet and staff for their consideration. They'll contact Mr. Colombo directly if they have questions or comments.

Since State law would have to change to allow moose ranching, I suspect you'll be lobbying your colleagues on this issue. My staff and I will watch closely to see what might emerge from the Legislature. I'll keep your views in mind should such a measure reach me for action.

Thanks for sharing your thoughts.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper".

Steve Cowper
Governor

cc: Commissioner Don Collinsworth
Department of Fish and Game

Commissioner Lennie Gorsuch
Department of Natural Resources



P.O. BOX 966, DELTA JUNCTION, ALASKA 99737

D. Nick Colombo

(907) 895-4388

January 10, 1990

The Honorable Dick Shultz
Alaska Legislature
P. O. Box V
Juneau, Alaska 98811

Dear Dick:

I am hereby submitting a proposal which I wish to be introduced to the 16th Legislature of the State of Alaska for consideration and approval. My proposal is for the legislature to change the law to allow me to establish game ranching in Alaska with the introduction of moose as a source of red meat.

I realize that the state can not allow everyone to raise moose but am suggesting a program being used in Whitehorse, Yukon Territory, Canada to raise elk by private individuals. The Canadian government supplies the rancher, free of charge, a mutually agreed number of elk, shipped from the Elk Island Reserve in Edmonton to establish the game farm. In return, the rancher provides the land, fencing, housing and care of the animals. The original elk remain the property of the government but he is given a percentage of the offspring and the remainder are turned loose in the wilds for introduction of elk in the Whitehorse area. One proposal would be to use this concept for moose. The Fish and Game Board will argue that pen-reared moose will not survive in the wild upon release. I wish to clarify the term "penned." I will be fencing three to four thousand acres which is prime moose habitat in the Farm Project in Delta. The moose will not even realize they are penned. The only difference will be that the moose will be on the other side of the fence upon their release for the hunters to harvest.

A second proposal to consider, for the benefit of the people of Alaska, is that when the moose herd is built up to the point of harvest, the various game clubs have a drawing among its membership to come to the ranch and harvest the moose for the head and hide as a good number of hunters are only interested in a trophy and the meat to be processed for resale.

A third proposal would be for the subsistence hunter to harvest a specified number of moose, thereby assuring them a yearly supply of moose meat and easing the pressure on subsistence hunting. According to Fish and Game records, SIX thousand moose are harvested each year but 60,000 people apply for a moose permit. At this rate, the Fish and Game will NEVER produce enough moose for all the people of Alaska.

The state and federal governments have spent and will continue to spend millions of dollars each year on the study of moose which they could do on my ranch at minimum cost to the state.

I suggest that the legislature consider one or a combination of the above proposals on a five year experiment. If at the end of five years, the ranch is a success, I be allowed to continue. If not, I will apologize to the people of Alaska and release all the moose in the wild.

My plans for establishing the game farm and acquiring moose is to capture the moose from the railroad as the enclosed proposal will explain.

Sincerely,

Nick Colombo

Nick Colombo



P.O. BOX 966, DELTA JUNCTION, ALASKA 99737

D. Nick Colombo

(907) 895-4388

PROPOSAL

1. I be allowed to capture one hundred (100) head of yearling moose per year from the Alaska Railroad right-of-way.
2. I would transport them to the Delta area, where there is 100,000 acres of cleared land suitable for moose habitat.
3. Fence the required number of acres to protect the herd.
4. Raise them as domestic animals for a red meat industry.
5. Set up a visiting program to educate not only the tourist but the people of Alaska.

BENEFITS PRODUCED BY THIS PROPOSAL

1. Fewer moose kills will result along the Alaska RR, thus saving time and money for clearing, as well as producing better PR for the railroad.
2. The state has thousands of acres that are laying fallow because of the unsuccessful attempt at farming in the Delta area. I would and could improve the fallow land with fencing and making the farm a success.
3. This would not interfere with the moose available to the hunter or subsistence user because the moose are currently being killed. I am requesting only yearlings which are not legal bounty anyway.
4. Alaska imports most of its red meat from the lower 43 or from Australia. We could not only furnish exotic, low cholesterol meat to Alaska but begin an export business to the world.
5. Delta is economically depressed with the state foreclosing on farms, homes and commercial properties. This could help recover the economic situation in Delta Junction.
6. Trucking would once again become a profitable industry in the state. Back-hauling would be cheaper, sparking the industry even further.
7. With the extreme colds, food supplies ran short in Alaska because of transportation problems. We could become more self-sufficient in providing food and products from ourselves.
8. As a private game farm, the hassles at State Fish and Game would not be a real problem. Political pressures would be relieved at the State level.

This is not setting a precedent, since reindeer, musk-ox and bison farms have already been established using our state's wildlife to originate these managed farms.

Please consider this proposal. I will be more than happy to furnish any information that you want or need. I have done extensive research in this project and am convinced that it can work. I am therefore asking the legislature to consider changing the law to allow me to raise moose as a domestic animal, creating a red meat industry, bearing in mind that my program would be a result of capturing the moose on the railroad before they are killed and a total loss to the people and the State of Alaska.

Alaska State Legislature



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 165-3991
Fax: (907) 163-3351

Legislative Research Agency

December 7, 1989

MEMORANDUM

TO: Representative Dick Schultz

FROM: Paula d. Scavera *PdS*
Legislative Analyst

RE: State Appropriations for the Delta Bison
Research Request 90.098

You asked for information regarding the amount of state money appropriated for the Delta bison herd, including appropriations for bison range enhancement. After discussing this matter with the Departments of Fish and Game, Natural Resources, Community and Regional Affairs, Environmental Conservation and the Office of Management and Budget and reviewing state appropriation bills, I have documented that from FY 80 to FY 90, a total of \$1,711,635 has been appropriated for the Delta bison and range.¹

In 1979 the legislature appropriated \$20,000 (Chapter 40, SLA 1979) for FY 80 to the Department of Fish and Game for the "development and implementation of a management plan for bison in Delta Junction."

In 1984 the legislature appropriated \$1,541,400 (Chapter 59, SLA 1984) to the Department of Fish and Game in the capital budget for the Delta Bison Range. This money has been used throughout the years in varying amounts for capital improvements on the range and as of October 26, 1989, there was a balance of \$146,156. The department plans on using that balance for controlled burns and reseeding activities within the next 12 months.

Also in 1984, the legislature appropriated to the Department of Natural Resources, Division of Forestry, \$60,000 (Chapter 59, SLA 1984) "for the administration of timber sales on the Delta Junction bison range and fire suppression activities associated with required burning on the range."

¹Specific capital budget appropriations account for \$1,621,400 of this total with the remaining \$90,235 having been expended or allocated from operating funds. In addition, \$49,400 in operating funds has been requested for FY 91.

Representative Shultz
December 7, 1989
Page 2

The Department of Fish and Game, Division of Wildlife Conservation began using operating funds for on-going maintenance activities for the Delta Bison Range in FY 89. The total spent for maintenance activities in FY 89 was \$42,235. The division has allocated \$48,000 from operating funds for Delta Bison Range maintenance in FY 90 and is requesting \$49,400 for maintenance in FY 91.

If we can be of further assistance, please contact this agency.

Attachments



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Wildlife Conservation	BILL NUMBER HB 516	SPONSOR Shultz
SHORT TITLE OF BILL An Act Authorizing moose farming			
DEPARTMENT POSITION Opposed			
PREPARED BY Wayne Regelin	DATE 04-16-90	COMMISSIONER'S SIGNATURE <i>Armen A. Griles</i>	DATE 4/17/90

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Fish and Wildlife Protection Agriculture	CONSTITUENT GROUPS AFFECTED BY BILL All Citizens of Alaska
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

This legislation would amend AS 16.40.010 and 16.40.020 to allow moose to be raised as domestic animals for commercial purpose and allow meat from these animals to be sold. The Department of Fish and Game and the Board of Game would be responsible for determining a surplus of moose existed that could be captured and turned over to private ownership.

ANALYSIS OF BILL PROGRAM EFFECTS

Moose are the most highly sought after big game species by hunters and outdoor enthusiasts for viewing and photography. Over 50,000 hunters pursued moose in 1989, harvesting about 7,500 to 8,000. Drawing permit applications are oversubscribed by more than 25,000 requests. The demand for moose greatly exceeds the available supply. One proponent of the legislation wants the state to provide him with 100 moose from near Talkeetna to begin his operation. Demand for moose in this area is extremely high.

Moose farming will require large acreages. The primary proponent of this legislation plans to lease state agricultural land near Delta for a moose farm. Highly productive state-owned wildlife habitat would be removed from production of wildlife for general public use and enjoyment. Conflicts between moose farms and large predators are certain to occur. (Cont. on page 2)

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

ANALYSIS OF BILL/PROGRAM EFFECTS

Populations of wolves, black bears, and grizzly bears will be impacted over a large area surrounding any moose farm.

Ensuring the general welfare and humane treatment of moose on farms will become a responsibility of the department. Moose are not a herd animal and crowding 100 plus moose onto small areas will cause behavior and disease problems. Diseases could be spread to wildlife and domestic animals outside the farm.

Some individuals will use this legislation to own a few moose as a hobby or to promote their tourist business. Allowing wildlife to be exploited by road-side attractions diminishes the value of all wildlife and could lead to legal liability for the state if animals are abused or someone is injured by a moose.

Allowing sale of moose meat will create serious law enforcement problems. Poachers will have an added economic incentive that is currently lacking. The current level of wildlife law enforcement is inadequate to cope with such a new burden.

Moose are expensive to maintain in captivity. The high stocking levels planned for moose farms will require a high level of supplemental feeding. Moose require a special diet, they cannot survive on diets which sustain domestic livestock. Moose farming has proven to be uneconomical in Canada where game farms are common. The Yukon territory prohibited the use of moose and game farms. Moose are not raised commercially in Alberta because they are not profitable. To expect moose farming to succeed in Alaska where no infrastructure exists and no market has been established is not realistic. The state has promoted agriculture projects in the past that resulted in continuing subsidies. We consider providing 100 publicly owned moose to private ownership a subsidy.

Alaska's wildlife resources contribute hundreds of millions of dollars annually through tourism, guiding, hunting, and subsistence. Tourists list viewing wildlife as their primary reason for visiting Alaska. This experience will be diminished in value if tourists observe moose at road-side attractions and game farms.

Public ownership of wildlife and prohibiting sale of game meat are the foundation of wildlife management in North America. We strongly believe that passage of HB 516 (SB 472) would be a major error and would be detrimental to successful wildlife management in Alaska.

(Please see the department briefing paper on moose farming for additional information.)

FISCAL NOTE

REQUEST:

Revision Date: 2/12/90
Title: An Act Authorizing Moose Farming
Sponsor: Shultz
Requestor: Shultz

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	52.0	55.5	56.9	59.7	58.7	60.0
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	63.8	65.5	66.9	68.3	68.3	70.0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	63.8	65.5	66.9	68.3	68.3	70.0
FEDERAL FUNDS						
OTHER						
TOTAL	63.8	65.5	66.9	68.3	68.3	70.0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) No FY 90 impact.

A permanent full-time Wildlife Biologist III will be hired in a statewide position (located in Fairbanks) to coordinate all activities related to game farming. This employee would issue permits, inspect facilities and animals, work with Fish and Wildlife Protection officers on enforcement problems, and assist the Division of Agriculture in establishing a system for meat inspection and testing for diseases.

Prepared by: Waune Regelin
Division: Wildlife Conservation
Approved by Commissioner: [Signature]
Agency: _____

Phone: _____
Date: 456-5156
April 12, 1990
Date: 4/17/90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

HB

520

HOUSE COMMITTEE REPORT

(9)

Date Referred: March 7, 1990
(L&C waived)

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 4-9-90

The RESOURCES Committee considered:

HB 520

HOUSE BILL NO. 520

AUTHORIZE HEALY PROJECT/AS 36.30 WAIVER

"An Act relating to authorization for the issuance of bonds and procurement for certain demonstration projects; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
- [] _____ [] a new title
- [] have attached amendment(s)
- [X] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
- [] zero fiscal note _____
- [] zero with analysis _____

- [] fiscal note(s) _____
- [] zero fiscal note(s) _____
- [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Chip Davidson DAVIDSON
Carl Menard MENARD
Ben Sharp SHARP
Walt Furnace FURNACE
Richard Foster FOSTER

	Do Not Pass	No Rec	Amend
<u>Bill Hudson</u> HUDSON			✓

Chip Davidson
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
 Title: Act relating to issuance of bonds and procurement for certain development projects ARJ: Alaska Industrial Development and Export Authority
 Sponsor: Rep. Boyer, Menard, et al. Components: _____
 Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	122,000.0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS	92,000.0					
OTHER	30,000.0					
TOTAL	122,000.0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Analysis is attached as page 2.

Prepared by: Bertram L. Waanon, Executive Director Phone: (907) 561-8050
 Division: Alaska Industrial Development & Export Authority

Approved by Commissioner: Larry Mercurieff *[Signature]* Date: 3-5-90
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

ANALYSIS - FISCAL NOTE - HB 520

Section 1 of this bill would give AIDEA the authority to issue up to \$85 million in bonds for the Healy cogeneration project.

The estimated construction cost of the project is \$192 million. It is estimated that up to \$70 million in bonded debt will be required. The \$85 million figure contained in the bill provides a cushion for cost overruns that may exceed the current estimate. The actual amount of bonds will most likely be less. In addition to the AIDEA bond authorization, capital appropriations of \$92 million in federal funds and \$30 million in state funds will be required.

The state funds are shown under "other" in the fiscal note as the exact source is undetermined. The fiscal note shows all appropriations for the project in FY 91 since all appropriations will be required before AIDEA can issue bonds for the project. We anticipate that the project will be completed in FY 96 and that the expenditure by fiscal year will be as follows:

FY 91	\$ 8,000.0
FY 92	11,000.0
FY 93	46,000.0
FY 94	52,000.0
FY 95	58,000.0
FY 96	<u>17,000.0</u>
Total	\$192,000.0

HB

541

HOUSE COMMITTEE REPORT

(9)

Date Referred: February 12, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 4/5/90

The RESOURCES Committee considered:

HR 541

HOUSE BILL NO. 541

GUIDELINES FOR LITIGATION SETTLEMENT

"An Act relating to certain agreements, compromises, and settlements entered into by the Departments of Natural Resources and Revenue."

RECOMMENDATIONS:

- be replaced with CS HB 541 (RES) the same title
- a new title a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

[Signature] MEYERD
[Signature] DAVIDSON
[Signature] JACKO
[Signature] DAVIS

	Do Not Pass	No Rec	Amend
<u>[Signature]</u> SHARP	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>[Signature]</u> HUDSON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[Signature]
Chairman's Signature

From the desk of

 **Richard A. Fineberg**
Juneau, Alaska 99801

401 8th St. - Apt. 208
tel 907 / 463-3568

To: Jay Nelson
Staff Assistant, House Resources Committee

Date: April 13, 1990

Re: HB 541

The following amendments to CS HB 541 (Res), WORK DRAFT 6-1806E, reflect Resource Committee discussion of this measure and Jack Chenoweth's memorandum of April 9. Essentially, these amendments cover two points:

1. There is a discrepancy between HB 541 as introduced and the manner in which that bill's purpose was consistently described to the committee during its discussions. The bill was described to the committee as affecting large settlements involving a tax or royalty payment for a year least five years prior to the current year. However, the original bill's language omitted the limiting phrase and therefore covers all assessments or claims larger than \$10 million, regardless of age. This correction inserts a "five-year prior" clause to match the language of the measure with the sponsor's intent and the Resource Committee's understanding of its purpose (as indicated by testimony and committee discussion).

2. The Commissioner of Revenue pointed out that notification of the governor would be more appropriate than notification of various agencies. This change to notification procedures would be consistent with the sponsor's intent and the explicit concerns of at least one committee member (Rep. Hudson).

In my estimation, these amendments would provide the appropriate starting point for discussion of HB 541 in the Finance Committee.