

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8636 HOUSE JUDICIARY

HJR

51

CS FOR HOUSE JOINT RESOLUTION NO. 51(FSH)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GREEN

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 limited entry for sport fish guides and allied professions.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article VIII, sec. 15, Constitution of the State of Alaska, is amended to read:

5 SECTION 15. NO EXCLUSIVE RIGHT OF FISHERY. No exclusive right
6 or special privilege of fishery shall be created or authorized in the natural waters of
7 the State. This section does not restrict the power of the State to limit entry into any
8 fishery or into the sport fish guiding profession and closely allied professions for
9 purposes of resource conservation, to prevent economic distress among fishermen and
10 sport fish guides and allied professionals and those dependent upon them for a
11 livelihood and to promote the efficient development of aquaculture in the State.

12 * Sec. 2. The amendment proposed by this resolution shall be placed before the voters of
13 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
14 State of Alaska, and the election laws of the state.

Caribou Unlimited
Ronnie Aldridge
Registered Guide, Outfitter and Taxidermist

HJR 51

I would like to say that I am in favor of this amendment. I guide on the Kenai River for King Salmon and have seen a quality experience turn into a crowded mess over the last several years. The number of guides are increasing every year. Limited entry is the only answer to the guide problem.

Sincerely

Ron Aldridge

Mr. Chairman & Committee Members

My name is Gary Hall

2-28-96

I am in favor of limiting the number of guides on the Kenai River. The limited entry permit should be owned by the guide, and he should have the right to sell the permit at the termination of his business. Preference on selecting limited entry permit holders should consider the following:

1. Higher preference to local guides. The income they derive from guiding is reinvested in our community.
2. Higher preference to guides with a substantial financial investment, such as owning their own boat and equipment. Guides with little or no investment generally work for someone else. They use boats and equipment owned by others, and are not responsible for advertising or booking clients.
3. Preference given based on number of years a person has guided on the Kenai river, not rivers in other states or areas.

Since the limited entry permit process will be a lengthy process, I have recommendation that may effectively limit the number of guides in the future. These things could be implemented easily without congressional action. They are:

1. Registration for the permit must be done in person each year, during the months of January and February.
2. Guides would be required to pay for a three to five year permit, which would demonstrate commitment to the guide industry, and increase initial investment.
3. Every guide, including drift boat guides, would have to belong to an Alaskan based UA consortium.
4. To qualify for a permit a person would have had to have fished in Alaska three out of the last five years. This qualification is similar to that for Assistant Guide Outfitter licenses.

I would like to urge the House Fisheries Committee to consider these points. I request that committee members support that limited entry permits be owned by the guide, so he can realize some of his investment back at retirement by selling the permit along with his business.

5. Change AK residency for guide lic purposes
to be the same as for Permanent Land qualifications
J. Hall



March 2, 1996

House Fisheries and Judiciary Committee Members
Juneau, Alaska 99801-1182

Dear Representative:

I attended the teleconference of the House Special Committee on Fisheries, on February 29, 1996, and offer my comments on HJR 51 and HB 390.

HJR 51 - Constitutional Amendment to Limit Sport Fish Guides

The move by politicians, and fisheries boards and councils, appointed by politicians, to privatize public resources through limited entry or IFQs is contrary to capitalism and free enterprise. I can justify a restriction on access to a public resource because of conservation issues, but have strong reservations on restricting public access to a public resource when the result will be a defacto allocation to commercial fisheries.

I was dismayed by the comments of Rep. Green and other committee members discussing the redefinition of commercial fishers to include charter operators, thereby removing the need for a constitutional amendment. Neither the Internal Revenue Service nor the U.S. Coast Guard nor our ubiquitous insurance companies considers guides/charter operators as commercial fishers.

I do not deny that there may be too many fishing guides/charterboats in some areas, but I believe the supply and demand market should determine who succeeds or does not succeed. Fish and Game already has at its disposal the ability to regulate time and area closures, and bag limits.

HB 390 - Nonresident Anadromous King Salmon Tags

I support the concept of this bill, but not the proposed fee structure. On one hand, Rep. Elton wants to charge a nonresident recreational angler \$1,500 to catch and retain six king salmon (the first is "free"), and call them trophy fish. On the other hand, a nonresident commercial fisher can catch as many of these trophy fish as possible during an open season with no fee. I was encouraged by Deputy Sport Fish Director Burkes comments in recognizing this as a potential reallocation, again, to commercial fishers. Mr. Elton's argument that reallocation would not occur because those wanting more fish would merely have to pay for them, is wrong. Only the filthy rich would pay \$1,500 for six fish and not mind being treated that way in another state or country.

If king salmon are worth that much money as a trophy fish, maybe they should be treated like our bears, sheep, goats, bison and muskox, and not have a commercial harvest of them. Thank you for your time and consideration.

Sincerely,

Beverly P. Minn Kent F. Hall

500 Lincoln Street No.641 Sitka, Alaska 99835 (907) 747-5089

(5)

HOUSE COMMITTEE REPORT

Date Referred to Committee: February 21, 1996

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 2/28/96

The HOUSE SPECIAL COMMITTEE ON FISHERIES Committee considered:

HJR 51

HOUSE JOINT RESOLUTION NO. 51

SPORT FISHING GUIDE LIMITED ENTRY

Proposing an amendment to the Constitution of the State of Alaska relating to limited entry for sport fish guides and allied professions.

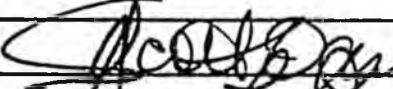
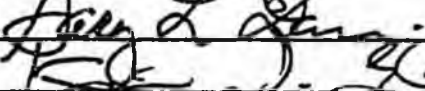
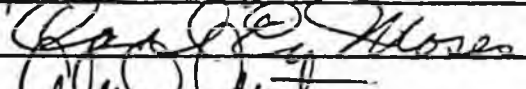
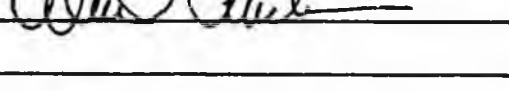

recommends it be replaced with the following committee substitute CSHJR 51 (FSH) the same title a new title

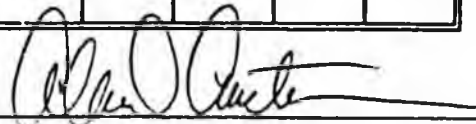
additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) Div. of Elections 2/21/96

zero fiscal note(s) _____ zero fiscal note(s) Dept. of Law 2/21/96

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	S. Ogan	<input checked="" type="checkbox"/>			
	Gary Davis	<input checked="" type="checkbox"/>			
	Kim Elton			<input checked="" type="checkbox"/>	
	Carl Moses			<input checked="" type="checkbox"/>	
		<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE CHAIR: AUSTERMAN 

Alaska State Legislature

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VICE CHAIR, JUDICIARY COMMITTEE
MEMBER, STATE AFFAIRS COMMITTEE

FINANCE SUBCOMMITTEES
DEPT. OF NATURAL RESOURCES
DEPT. OF COMMERCE & ECONOMIC DEVELOPMENT
DEPT. OF ENVIRONMENTAL CONSERVATION

Representative Joe Green

District 12

Sponsor Statement

HJR 51 - Constitutional Amendment to Limit Sport Fish Guides

HJR 51 proposes a constitutional amendment to grant the state the authority to limit entry into the sport fish guide profession. HJR 51 is needed because the state's authority to impose such limits is not clear at this time. We believe that without a constitutional amendment, litigation is sure to follow any attempt to limit sport fish guides under current law.

While it is anticipated that such limits will be the conclusion of a public process, based on scientific data, HJR 51 does not address the specifics of implementing such restrictions. HJR 51 simply grants a clear and concise line of authority from the voters to the state.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

December 4, 1995

SUBJECT: "Open access" provisions of the Alaska Constitution and restrictions on sport fish guides (Work Order No. 9-LS1353)

TO: Representative Joseph Green

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum briefly discusses the implications that the "open access" provisions of article VIII of the Alaska Constitution would have for any proposal to limit the number of sport fish guides.

Any proposal to limit the number of sport fish guides would infringe on the "open access" provisions of the Alaska Constitution, because it would have the effect of restricting free entry into the fishery. See, McDowell v. State, 785 P.2d 1 (Alaska 1989); Owsichek v. State, 763 P.2d 488 (Alaska 1988); Bozanich v. Noerenberg, Alaska Superior Court, First Judicial District, Juneau, Case No. 70-389, March 15, 1971. Even though they are not actually engaged in sport fishing while providing guide services, the Alaska Constitution protects the open access rights of sport fish guides to use fishery resources for professional purposes. "The common use clause makes no distinction between use for personal purposes and use for professional purposes." Owsichek, 763 P.2d at 497; see also, Tongass Sport Fishing Association, 866 P.2d 1314 (Alaska 1994); Alaska Fish Spotters Association, 838 P.2d 798 (Alaska 1992).

The "open access" provisions of article VIII of the Alaska Constitution are the "common use" section¹, "no exclusive right of fishery" clause², and the "uniform application" section³.

¹ Article VIII, sec. 3 states:

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

² Article VIII, sec. 15 states (emphasis added):

No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or
(continued...)

These provisions provide that all persons shall have an equal opportunity to participate in the use of fish and game resources.

The current limited entry system for commercial fisheries (AS 16.43) would violate the open access provisions of the Alaska Constitution, unless the constitution had been amended to allow limited entry. State v. Ostrosky, 667 P.2d 1343 (Alaska 1983), appeal dismissed sub nom. Ostrosky v. Alaska, 467 U.S. 1201, 81 L.Ed.2d 339 (1984). In 1972, article VIII, section 15 was amended to create a limited entry exception to the "no exclusive right of fishery" clause. The limited entry exception provides that "[t]his section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State." Article VIII, sec. 15, in relevant part.

In order to place a limit on the number of sport fish guides, it would be necessary for such limitations to fall under the limited entry exception. Though the limited entry exception was largely adopted in the context of commercial fisheries, the exception does not expressly limit itself to only commercial fisheries. The courts may construe "any fishery" to include sport fisheries as well as commercial fisheries. Thus there is a possibility that the limited entry exception would authorize some form of limitation on the number of sport fish guides.

Assuming that the limited entry exception is construed broadly to include limited entry for sport fish guides, the next obstacle to be overcome is to establish that limitations or restrictions on who may become sport fish guides achieves the three purposes of the limited entry exception: resource conservation, prevention of economic distress among fishermen and others, and promotion of aquaculture. When the Alaska Supreme Court approved the commercial fisheries limited entry program, the court did not examine in any detail whether the program satisfied all of the purposes that the limited entry exception was to achieve. Ostrosky, 667 P.2d at 1190-95. In other cases where the court had occasion to review commercial fisheries limited entry, the court did not rigorously examine whether the program achieved all three of the purposes, but instead seemed to accept a challenged provision if it furthered one or two of the purposes of the limited entry exception. Johns v. Commercial

²(...continued)

authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

³ Article VIII, sec. 17 states:

Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Representative Joseph Green

December 4, 1995

Page 3

Fisheries Entry Commission, 758 P.2d 1256, 1263-64 (Alaska 1988); Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1265 (Alaska 1980). The burden would fall upon the legislature to establish a substantial record in the legislative history that any legislation limiting the number of sport fish guides achieves those purposes.

If the limited entry exception cannot be construed to authorize a limitation on the number of sport fish guides, then the only remaining option is to amend the Alaska Constitution accordingly.

Please contact me, if I can provide additional information on the open access provisions of the Alaska Constitution or other issues relating to sport fish guides.

GU:glc
95-452.glc

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HJR 51

Revision Date: 1/23/96 Dept. Affected: Office of the Governor
 Title: Constitutional Amendment Re: limited entry fi BRU: Elective Operations
sport fish guides Component: General and Primary Elections
 Sponsor: Representative Green
 Requester: Representative Green COMPONENT SERIAL NO. 22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2.2					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	2.2	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$53.4.

Prepared by: Dana LaTour *(Signature)* Phone: 465-5347
 Division: Division of Elections Date: 1/23/96

Approved by: Lt. Governor Fran Ulmer *(Signature)* Date: 1/24/96
 Agency: Office of the Lt. Governor

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HJR 51

Revision Date: _____	Dept. Affected: <u>Department of Law</u>
Title: <u>"...amendment to the Constitution of the State of Alaska relating to limited entry for sport fish guides..."</u>	BRU: <u>Civil Division</u>
Sponsor: <u>Representative Green</u>	Component: <u>General Legal Services</u>
Requester: <u>House State Affairs Committee</u>	COMPONENT SERIAL NO. <u>2087</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

House Joint Resolution 51 proposes an amendment to the Constitution of the State of Alaska that, if approved by Alaska's voters, will permit the state to limit entry into the sport fish guiding profession and closely allied professions who are paid to assist others taking sport fish. Approval of the Resolution will place it on the ballot at the next general election for consideration by the voters. Therefore, approval of the Resolution will not have a fiscal impact for the Department of Law, because it simply places a ballot proposition before the voters. However, we caution that if the proposition is eventually approved by the voters, there will be some legal work for the Department of Law, depending upon the criteria that are established for entry into the sport fish guide profession.

The state's previous actions that established limited entry for commercial fishing resulted in substantial litigation which, until many of the basic issues raised by the program were resolved, took up to three attorneys

Prepared by: <u>Richard I. Pegues, Director</u>	Phone: <u>465-3672</u>
Division: <u>Administrative Services Division</u>	Date: <u>1/22/96</u>
Approved by Commissioner: <u>Bruce M. Botelho, Attorney General</u>	Date: <u>1/22/96</u>
Agency: <u>Department of Law</u>	

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HJR 51

ANALYSIS CONTINUATION:

to handle. There were about 1,547 sport fishing charter vessels registered in 1995, and there were about 1,835 fresh water fishing guides registered in 1995, or nearly 3,400 sport fish guides operating in the state last year. Based on these numbers, and based on past experience, it is not unreasonable to expect that litigation will arise from those who do not qualify under future entry rules. The department estimates the time of one full-time attorney may be required to defend the new limited entry program for a period of two or three years, beginning in FY98, if the voters amend the Constitution. The annual cost will be approximately \$150,000, including the outside cost of expert witnesses. These costs are not shown on the fiscal note, because they are outside the scope of the Resolution.

OPINION

PENINSULA CLARION 12-29-95 P.4

Number of river guides should be limited

A well-known, local Outdoors writer, one I have respect for, recently voiced his opinion concerning the number of guides operating on the Kenai River. I am excited to learn that his "second thoughts," as stated in Dec. 22, 1995, Outdoors section of the Peninsula Clarion, are finally more in line with my thinking. His fresh outlook will hopefully have an important impact on the Kenai River's future during 1996.

A writer's posture and comments made in print are always under attack. But make no mistake, they are important in a free society. On issues of grave importance such as overcrowding on the Kenai River, the "poison pen" carries an influential message that gives anyone an opportunity to make a darn fool out of themselves. And, I intend to make a darn fool out myself until something "realistic" is done to reduce the number of guides on this river!

I would like to clarify what that outdoor writer has recently, politely and carefully illustrated for you concerning Kenai River guides.

I would like to allow you the opportunity to read selected parts of an important 1991 letter I wrote to Clem Tillion, the "fishing czar," who, by the way, was appointed by a governor to make recommendations concerning the river. No offense intended, but I question if Mr. Tillion even knows where Eagle Rock is located.

Before I do that, be aware of the fact that in 1974, I complained about too many Kenai River guides. I wrote a letter to Gov. Jay Hammond expressing my concern, and he responded by telling me he wasn't immediately concerned and that it was a local issue to be handled on the local level.

In 1976, I attended several meetings here and in Anchorage expressing my concern about the growing numbers of Kenai River guides. By 1978, I challenged the Coast Guard and demanded that all guides be licensed, registered and regulated. I won that battle which is another story. I never dreamed the guiding situation would be allowed to get so far out of hand.

In 1978, I retired my status as the "original Kenai River fishing guide" and elected to be a part of the guiding fraternity. I belong to no local fishing organizations, none of them represent me or speak for me. This information is much different than many have been led to believe. I was embarrassed to be put in the same category as some guides at the time. From that point, I constantly worked to control the number of guides working the Kenai River.

I have continued that mission ever since, in various ways. I sent several letters over the years to people who could have been influentially helpful but they proved useless. Now,



many of these folks are concerned. Toc late!

Following are the brief, selected excerpts from a long letter with a list of recommendations I made to Mr. Tillion and Gov. Walter Hickel's office in 1991.

Dear Mr. Tillion:

After our conversation last evening concerning the "Kenai River Guide Problem," I did a bit of brainstorming in an attempt to find and produce a more graceful solution in which to reduce the number of guides on the Kenai River.

I was pleased to learn that we are in concert with our thinking and that we both believe in the need for a drastic reduction of guides on the Kenai River. I anticipated problems in making a compatible solution concerning the number we could all live with. That number has been suggested to you in my letter of Jan. 4, 1991, concerning the lower river. I would hope that the number of guides for the entire river will not exceed 75, including the non-powered drift boats.

I realize there are many potential solutions, some better than others. Whatever you do:

a. Enforce an immediate moratorium on the number of fishing guides able to obtain guide permits for the Kenai River. Issue no more permits as of 9 a.m. ... today. Call Kenai Parks and Recreation and tell them to delay all new permits until further notice from the governor's office.

b. Establish the number of guides you want to operate on the Kenai River. Obtain a Kenai River map and count the well-known holes that are labeled on that map. The map can be obtained at the Moose Range Headquarters located as you enter Soldotna coming in from Homer. For example, from the Soldotna bridge downstream multiply each hole by two (two guides per hole). On the upper reaches, multiply the suggested holes by four (four guides per hole). This should help give you a starting point in which to determine numbers.

c. Once you have established a highly conservative number of guides, send notice to all Kenai River guides that were ever registered with Kenai Parks and Recreation. Try to be fair to meet the least resistance from as many folks as possible.

A sample of ideas for you to ponder for this notice to guides:

NOTICE:

1. One guide, one permit
2. Change the 6 o'clock starting time and

closing time to read 7 and 5. One beginning at 7 a.m. and ending at noon and the other beginning at 1 p.m. and ending at 5 p.m. This would give the non-guide folks an opportunity to fish before or after work for a change without having to get up at 2 a.m. to beat the guides on the river. Clem, this also means that the guides not be allowed on the river before 7 or 1, and that they will be off the river by noon and 5 p.m. A guide will fish either in the morning or the afternoon rotation but not both. (By doing this, already one can see that twice as many guides could operate. Sure it would be a burden but isn't all this mess a burden on the rest of us?)

This equates to \$650 per day per license, x 6 days = \$3,900 per week x 8 June and July weeks = \$31,200. The May, August, September, October (fishing) is "gravy frosting"! One boat, one guide, one license. A hard working guide could easily make \$50,000 and spend the winter months in Mexico.

d. ALL guides who once held permits will receive a form to be completed along with the appropriate requirements. However, a new set of rules will be sent along and a warning will also be enclosed stating that not all guides will have the opportunity to fish this year. If they are not awarded or selected by the computer, or in an annual drawing, they will have to apply again next year, much like I have to when I apply for my sheep and goat permit.

When the rules are being passed out, everyone must have an equal opportunity. I realize it is difficult to wade through my suggestions but call on me if you need questions answered. I have more ideas on the rotating schedule but would hope we never have to come to that sort of participation.

I strongly feel, by limiting the guides, and by giving all guides the opportunity to go through the selection process, guides should be able to raise their premiums to somewhat compensate, and also to be able to adjust to the new ruling. At the same time they will make non-guided fishermen and local fishermen happier. Their reputation as a guide on the Kenai will have more credibility and possibly the economy will stabilize.

Good luck!

Finally, I agree, Mr. Outdoor Writer. Yes, the number of guides should be limited but there are only a handful of folks that can make it actually happen. I know! I have been working on it for over 20 years. One of those people is the governor. Another, is the head of the Department of Fish and Game and perhaps the borough mayor. Then there are guys who have the skill and power of the "poison pen." You know, guys like you. Keep up the good work!

Spence De Vito is a former guide and a retired educator.

Second thoughts on the number of tourists and guides on the Kenai

Seven years ago, I said in this column that the number of Kenai River guides should be limited only by the law of supply and demand. If guides are to be limited, there must be a compelling reason for it, I opined. Our tourism industry is too immature to be sitting on the brakes, I reasoned.

Well, I'm having second thoughts about guides and tourists.

I'm not alone either. Many Alaskans worry about the relentless growth of tourism. We worry that no one is keeping track of how tourists are exploiting our natural resources. We worry about the tons of fish and clams being taken out of Alaska in RVs and airplanes. We worry about wildlife viewers and other non-hunters becoming a political force with enough clout to stop hunting. We worry about whether we'll be able to get to the water, come salmon season.

An infinite number of tourists are stressing our finite resources. More and more, we see tourists and tourism not as an economic



LES PALMER
An Outdoor
View

panacea, but as a threat to the reasons we live here.

The numbers are scary. In 1977, resident anglers outnumbered non-residents by a ratio

of 2-to-1. By 1990, Outsiders had caught up. Last year, they outnumbered us by 44,000. Every year, more come.

If tourism were any other business, it would be required to complete annual Environmental Impact Statements. Yet, no one measures its impacts on us Alaskans, or on our environment. Even as the state spends more of our money attracting more tourists and encouraging more tourism businesses, it spends

less enforcing fish and wildlife regulations.

Palmer resident Rod Arno, a guide-outfitter who is also president of the Alaska Outdoor Council, agrees with me that Alaska needs to get a handle on what he calls "commercial users." These include fishing and hunting guides, eco-tour and wildlife-watching outfits, river rafters, transporters, air-taxi operators—everyone who exploits Alaska's natural resources.

Arno says all users are "consumptive users," even those who just watch. And commercial users can be highly consumptive.

"Wildlife viewers exploit wildlife by their presence and by sheer numbers," Arno says. "All commercial users disturb and displace animals."

They can also exert enough political pressure to impact hunting, he says. Every viewing area exploited for "tourist green" is one less where hunters and other users are tolerated.

"If all these commercial uses were licensed, there could be some control on their encroachment into the habitat," Arno says. "There would be money to pay for monitoring their impacts on fish and game populations, and those impacts could be limited."

"I don't know anyone who wants things to get any worse than they are right now. There has to be some limit on commercial users."

For years, some hunting and fishing guides have asked for limited entry. It's high time that idea received serious consideration.

On the conflict-besieged Kenai River, 357 guides registered in 1995, up 53 from the previous year, an all-time record.

All is not well, on the Kenai. The price of a half-day king salmon trip is about what it was 10 years ago, indicating that the value of those trips has been steadily dropping.

Soldotna resident and Kenai River guide Jeff King has wanted to limit guides on the Kenai for sever-

al years, and he has plenty of company. In a carrying-capacity study of the Kenai, limiting the number of guides was what the public wanted most.

But any talk of regulating guides makes them jittery as a chinook in a creek. King is on the Guide Task Force, directed by the Board of Fisheries earlier this year to develop recommendation for managing the development of the fishing guide industry. Getting guides to even admit they should be licensed, let alone limited, is a chore, he says.

"You've got to crawl before you walk, and we're having a helluva time convincing people they ought

to crawl," says King.

Statewide limits aren't necessary, he says. In many parts of Alaska, guiding would be beneficial, and it should be allowed to develop. But in places like the Kenai River, where some professionalism would be desirable, and where users would like to keep some "quality of experience" in their fishing, the number of guides should be limited, he says.

I don't know how best to limit or regulate commercial users. All I know is that it needs doing. Otherwise, we'll soon find that every lowbush cranberry has its own little price tag.

CITY OF KENAI NO PARKING

"Section 13.30.030. After October 1 of each fall until May 1 of the following year, no person shall leave any vehicle unattended on any City street between the hours of 4 a.m. and 8 a.m. of any day." Violators subject to vehicle impoundment.

NO DEPOSITING OF SNOW

"Section 13.30.065. It shall be a violation for any person to deposit or cause to be deposited any snow or ice on or against a fire hydrant or on any sidewalk, roadway or any loading or unloading areas of a public transportation system."

D620211



WILDERNESS WAY

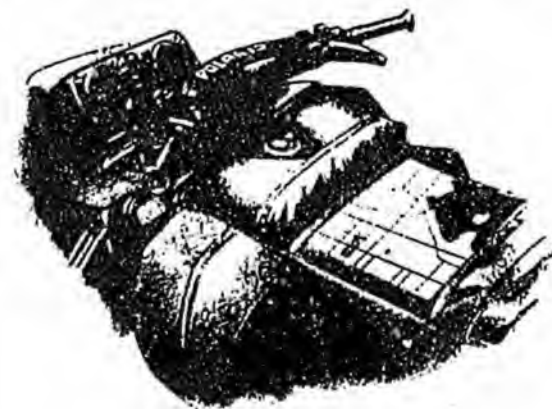
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Book Signing/ Canoe Q & A Session
Friday, Dec. 22 & Saturday, Dec. 23
1:00 pm - 6:00 pm

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The Guidebook to Alaska's Premier
Hiking and Canoeing System

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Nikiski Pool Hours

For Dec. 19th thru Dec. 30th 1995



Jeff King
Kenai River Guide

Box 2711
Soldotna, Alaska 99669
(907) 262-4564

We're Not Small • We're Exclusive

Representative Gail Phillips
Speaker of the House, State Capitol
Juneau Alaska

Dear Gail,

I'm writing to ask for your help with the future of the sportfish guiding industry here on the Kenai as well as statewide. I know you have spent much time learning the complexities of our industry and how it relates to the resource, the commercial industry and the people of our state. I will as quickly as possible outline the rationale for what I consider to be an emergency situation that needs some authority whether it be the Dept. of Fish and Game, the Fish Board, the Legislature or even the Governor to intervene with a moratorium on the growth of guiding here in South-central Alaska. Failing this we at least need to get the process started through HJR 51 or whatever before this industry eats itself alive. Before stating the reasons for a moratorium I will say that its obvious to me that some of the social animosity surrounding our salmon resources are directly related to the unchecked growth in the Sportfishing and charterfishing industries, so, we need a program for many reasons that are all in the best interest of the State. The contentiousness surrounding our salmon allocations is dividing our communities and must be defused, a limited entry scheme for commercial / sport users would go a long way to this end. Every rationale used for limited entry for the commercial fisheries in the early 70's pertains every bit as much now to our current situation as it did then to theirs. Its a shame that many of us sending this message have been ignored through the years and now we face a crisis situation that could have been avoided with a little pro-active concern for the industry. Well, enough of the editorial , below are reasons I feel we need immediate attention.

- 1.) Conservation concerns have been identified with Deep Creek marine King salmon, early and late run Kenai Coho and recently early run Kenai Kings as well as Susitna Kings and Silvers. These fisheries are functionally linked and just as the "catch + release" years here on the Kenai led to extreme growth in the Deep Creek Charter fleet so will problems in the marine fishery add to growth here on the Kenai.
- 2.) The U.S. Coast Guard has given licensing authority to private vendors. This situation has led to ease of licensing with candidates not having the experience that professional standards demand. These vendors furnish answers to the test they administer and often put people through a 5 day course in as short as 2 days.
- 3.) Sportfishing opportunities for salmon have diminished to nothing in the lower 48. We have a "salmon culture" of fishing guides and sportsman who's only options are Alaska and especially south-central Alaska because of its accessibility.

4.) Creel census shows that although unguided use on the Kenai River has leveled off guided use continues upward. If we are comfortable with the current level of use then the only way to keep it is to limit the growing faction. A new record number for guides was set in 95 at an astonishing 357.

5.) The Kenai River Carrying Capacity Study clearly shows that the general public dislikes continued growth in the guide industry.

6.) Speculation is rampant. Because of recent awareness and open dialogue about limiting growth people are entering these fisheries daily for fear of losing a future opportunity. If we don't intend to pursue guide limits we shouldn't even discuss it.

7.) One of my big concerns is for the product we as fishing guides are selling. Its in everyone's best interest to sell the most "quality experience" possible. Because of demands on the resource we see a trend to reduced bag limits, no bait restrictions and "charter specific" regulations from the Fish Board...these do not add to the quality of the experience. Obviously because of the demands on the resource the two approaches to management that are workable are to limit harvest or to limit opportunity, I suggest the later. Are we to have a guide industry that has a certain number of operators running viable business's or are we to have literally hundreds and hundreds of part-time guides who have caused the Fish Board to reduce days of operation with reduced efficiency while fishing in an overcrowded environment???

Gail, I could go on and on so I will stop by saying that no reasonable person could look at the Kenai River and see it any other way than full... i use the analogy that the Kenai is like trying to eat at the Club Paris in Anchorage...its full...you must make a reservation and you can't sit down until someone stands up...period. I know this is a tough issue and I appreciate any help you can give us, as you know I am on the guide / charter task force which recently finalized a suggested plan for Statewide licensing. This of course is a step in the right direction as we need info and minimal standards but I'm afraid it will do little to help our unique problems in South-central Alaska . I still have hope that the task force will at least recognize overused area's here and in Southeast and make recommendations for the future conduct of these. The industry and the State are so diverse its made the task force's mission a very difficult one. Perhaps the best route is that of Joe Green's HJR 51 as the Limited Entry Commission has experience in identifying areas that need a program and the complexities of speculation etc., it has been a tremendously successful program for commercial fisheries management and there is no reason why it can't be for the sport / charter industry....as always I am available for any discussion on this matter.

Your friend,

JAN 19 1996



Jeff King
Kenai River Guide

Box 2711
Soldotna, Alaska 99669
(907) 262-4564

We're Not Small • We're Exclusive

Representative Joe Green
State Capital
Juneau AK.

Dear Joe;

I wanted to write and thank you for the introduction of HJR #51. Being a long time fishing guide here on the Kenai and seeing the industry grow from infancy I am heartened that someone is trying to help us nurture the guiding along into something the entire State can be proud of. I know you're aware of our unique problems here on the Kenai so I won't elaborate any more than to say that all the rationale behind the limited entry scheme of the early 70's pertains every bit as much to our current situation as it did then to the commercial industry.

I wish you success in this resolution and hope you understand that this legislation's introduction means we need it now more than ever. I'm sure you realize that speculation runs rampant anytime someone thinks they must get their "foot in the door" before the door closes. Now that we're having this discussion of limiting participation openly we are in a situation that if this program does not go to fruition its failure will have an entirely reverse effect on the industry.

This is certainly a complex issue with many questions about the administration of a limited entry scheme to be addressed. As of now I am of the thinking that limited entry has been a tremendous success for the state in the commercial fisheries and a guide / charter program should be patterned after it...entirely. After all, the infrastructure is in place for such a program and experience has been gained in identifying overused areas and utilizing our resources for the best value to the State, we should take advantage of this now and not expect our resources and our citizens to accommodate the guide industry from the entire west coast.

As you can imagine I could go on and on about reasons for this program so I will end this by thanking you again and making myself available for any discussions on this matter. I am a member of the statewide guide / charter task force and a 15 year veteran of guiding. I also talked to you two years ago after a resource committee meeting about the future of our industry and appreciated your interest then.

Sincerely,

A handwritten signature in black ink, appearing to be "Jeff King", written over a long horizontal line that extends across the page.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE STATE AFFAIRS
committee name

committee on HJR No. 51, dated 12/29/95
bill/subject

I AM OPPOSED TO HJR NO. 51 TO LIMIT
THE SPORT FISH GUIDE PARTICIPATION. I AM
A LODGE OWNER AND CHARTER BOAT
OPERATOR IN KODIAK. I WOULD PREFER
THAT THE STATE WOULD PLACE LIMITS ON
THE DAILY CATCH AS OPPOSED TO LIMITING
ENTRY FOR GUIDES. IF THE STATE WANTS
TO LIMIT THE RESOURCE THAT SEEMS LIKE
A MORE APPROPRIATE METHOD. WHY ARE
SPORT GUIDES BEING SINCELED OUT WHEN
RECREATIONAL FISHERMAN ARE NOT?

Signed: JOHN WITTEVEEN

Testifier

WILD CREEK LODGE & CHARTERS

Representing (Optional)

BOX 2239 KODIAK, AK. 99615

Address

907-486-3953

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House STATE AFFAIRS
committee name

committee on HJR 51, dated 2/13/96
bill/subject

Madame Chair:

I strongly urge that you allow the process to move forward. We, the state of Alaska are rapidly approaching a crossroads

The department of Fish & Game and the board of Fisheries can not deal with this issue under regulatory change. This resolution allows the exploration of "limited Entry" Allow this industry - "Sport Fish Guides" the opportunity to explore this issue as a management option.

Respectfully: ERIC C STARRUP
Signed: ERIC C STARRUP

Testifier

KODIAK WESTERN CHARTERS

Representing (Optional)

Box 4123

Address

907-486-2200

Phone No.

1992 KENAI RIVER GUIDE SUMMARY
As of 10/15/92

March:	1 Res 0 NonRes	1 Fishing, 0 NFishing	1 Powerboat 0 Drift
April:	30 Res 1 NonRes	31 Fishing 0 NFishing	26 Powerboat 5 Drift
May:	98 Res 44 NonRes	120 Fishing 22 NFishing	113 Powerboat 29 Drift
June:	50 Res 25 NonRes	66 Fishing 9 NFishing	53 Powerboat 22 Drift
July:	13 Res 9 NonRes	19 Fishing 3 NFishing	18 Powerboat 4 Drift
August:	2 Res 1 NonRes	1 Fishing 2 NFishing	1 Powerboat 2 Drift
September:	0 Res 1 NonRes	0 Fishing 1 NFishing	0 Powerboat 1 Drift

275 GUIDES TOTAL:

194 Residents	238 Fishing	212 Powerboat
81 Non-Residents	37 NFishing	63 Drift

53 New guides registered in 1992

49 Brand new guides, 5 previously registered

93 1991 Guides did not re-register in 1992.

2 Guides went from Res. in 1991 to NRes in 1992

Steve Langston

Hal Borg

4 Guides went from NRes in 1992 to Res in 1992:

Terry King

Paul McMillen

C. Larry Mills

David VanLiere

134 Registered Drift boats on Kenai River in 1992

251 Registered Powerboats

Total: 385 Registered Kenai River Guide boats

124 Commercial Operators registered at Deep Creek, of those only 18 were not also registered for the Kenai River. (Note: 4 of the 18 were registered as Kenai River guides in previous years.)

127 Kenai River Guides also registered for Kasilof

24 Non-Competitive Commercial permits were issued for areas other than Deep Creek and Kenai River.

Total of 315 Non-Competitive Commercial Permits issued in 1992

1993 KENAI RIVER GUIDE SUMMARY
As of 10/11/93

February: 3	3 Res. 0 NonRes.	1 Fishing 2 NFishing	3 Powerboat 0 Drift
March: 2	2 Res. 0 NonRes.	2 Fishing 0 NFishing	1 Powerboat 1 Drift
April: 23	22 Res. 1 NonRes.	23 Fishing 0 NFishing	20 Powerboat 3 Drift
May: 131	105 Res. 26 NonRes.	115 Fishing 16 NFishing	99 Powerboat 32 Drift
June: 82	53 Res. 29 NonRes.	69 Fishing 13 NFishing	58 Powerboat 24 Drift
July: 21	10 Res. 11 NonRes.	11 Fishing 10 NFishing	13 Powerboat 8 Drift
August: 1	1 Res. 0 NonRes.	1 Fishing 0 NFishing	0 Powerboat 1 Drift

263 GUIDES TOTAL:

196 Residents	222 Fishing	194 Powerboat
67 Non-Residents	41 Non-Fishing	69 Drift

57 New guides registered in 1993

48 Brand new guides, 9 previously registered

64 1992 Guides did not re-register in 1993

0 Guides went from Resident to Non-Resident in 1993

6 Guides went from Non-Resident in 1992 to Resident in 1993:

Dale Benson	Greg Brush
Catherine Campbell	Rolland LaFond
Pat Tolar	Bill Whitney

127 Registered Drift boats on the Kenai River in 1993

169 Registered Powerboats on the Kenai River in 1993

Total: 296 Registered Kenai River Guide boats in 1993

124
135 Commercial Operators registered at Deep Creek, 109 are Kenai River Guides, 26 are registered for Deep creek only.

122 Kenai River Guides were also registered for Kasilof

27 Non-Competitive Commercial permits were issued for areas other than Deep Creek and Kenai River.

Total of 316 non-Competitive Commercial Permits issued in 1993

1994 KENAI RIVER GUIDE SUMMARY
As of 10/12/94

February:	3	3 Res. 0 NonRes.	3 Fishing 0 NFishing	3 Powerboat 0 Drift
March:	11	11 Res. 0 NonRes.	8 Fishing 3 NFishing	8 Powerboat 3 Drift
April:	33	31 Res. 2 NonRes.	30 Fishing 3 NFishing	24 Powerboat 9 Drift
May:	162	121 Res. 41 NonRes.	138 Fishing 41 NFishing	126 Powerboat 36 Drift
June:	78	44 Res. 34 NonRes.	63 Fishing 15 NFishing	43 Powerboat 35 Drift
July:	15	13 Res. 2 NonRes.	13 Fishing 2 NFishing	9 Powerboat 6 Drift
August:	2	1 Res. 1 NonRes.	2 Fishing 0 NFishing	1 Powerboat 1 Drift

+41

304 GUIDES TOTAL:
 224 Residents ^{204 R}
 80 Non-Residents ^{112 NR}
 257 Fishing ^{204 R}
 47 Non-Fishing ^{51 NR}
 214 Powerboat
 90 Drift ^{17 R}
_{30 NR}

- 76 New guides registered in 1994
- 59 Brand new guides, 18 previously registered
- 49 1993 Guides did not re-register in 1994

- 1 Guides went from Resident to Non-Resident in 1994
Rolland LaFOND
- 5 Guides went from Non-Resident in 1993 to Resident in 1994:
David Anderson David Corey Jerry Strieby
Richard Fowler Mark Glassmaker

157 Registered Drift boats on the Kenai River in 1994
 182 Registered Powerboats on the Kenai River in 1994

+43 Total: 339 Registered Kenai River Guide boats in 1994

+64 219 Commercial Operators registered at Deep Creek, 187 are Kenai River Guides, 32 are registered for Deep creek only.

210 Kenai River Guides were also registered for Kasilof

10 Boat Rental Commercial Operator permits were issued for rental operations from the banks of the Kenai River

44 Non-Competitive Commercial permits were issued for areas other than Deep Creek and Kenai River.

Total of 380 non-Competitive Commercial Permits issued in 1994

1995 KENAI RIVER GUIDE SUMMARY
As of 9/12/95

February:	3	3 Res. 0 NonRes.	3 Fishing 0 NFishing	3 Powerboat 0 Drift
March:	13	13 Res. 0 NonRes.	12 Fishing 1 NFishing	8 Powerboat 5 Drift
April:	40	38 Res. 2 NonRes.	39 Fishing 1 NFishing	33 Powerboat 7 Drift
May:	205	145 Res. 60 NonRes.	177 Fishing 28 NFishing	163 Powerboat 42 Drift
June:	77	49 Res. 28 NonRes.	66 Fishing 11 NFishing	48 Powerboat 29 Drift
July:	17	11 Res. 6 NonRes.	15 Fishing 2 NFishing	8 Powerboat 9 Drift
August:	2	1 Res. 1 NonRes.	2 Fishing 0 NFishing	0 Powerboat 2 Drift

357 GUIDES TOTAL:

260 Residents	314 Fishing	263 Powerboat
97 Non-Residents	43 Non-Fishing	94 Drift
of the 314 fishing guides, 243 are residents, 71 non-residents		
	77%	23%

94 New guides registered in 1995
84 Brand new guides, 10 previously registered
43 1994 Guides did not re-register in 1995

177 Registered Drift boats on the Kenai River in 1995
236 Registered Powerboats on the Kenai River in 1995
Total: 413 Registered Kenai River Guide boats in 1995

134 Commercial Operators registered at Deep Creek, 92 are Kenai River Guides, 42 are registered for Deep creek only.

174 Commercial Operators registered at Kasilof, 166 are Kenai River Guides, 8 are registered for Kasilof only.

10 Boat Rental Commercial Operator permits were issued for rental operations from the banks of the Kenai River. There are 51 rental boats under these permits.

54 Non-Competitive Commercial permits were issued for areas other than Deep Creek and Kenai River.

Total of 464 non-Competitive Commercial Permits issued in 1995

KENAI RIVER GUIDE TRENDS & NUMBERS
1982-1995 (As of 9/06/95)

YEAR	TOTAL GUIDES	RESIDENTS	NON RESIDENTS	MOTORIZED GUIDES	DRIFT GUIDES	TOTAL FISHING	NON FISHING
1995	357	260/ 73%	97/ 27%	263/ 74%	94/ 26%	314/ 88%	43/ 12%
1994	304	224/ 74%	80/ 26%	214/ 70%	90/ 30%	257/ 85%	47/ 15%
1993	263	196/ 75%	67/ 25%	194/ 74%	69/ 26%	222/ 84%	41/ 16%
1992	275	194/ 71%	81/ 29%	212/ 77%	63/ 23%	238/ 87%	37/ 13%
1991	315	214/ 68%	101/ 32%	229/ 73%	86/ 27%	290/ 92%	25/ 8%
1990	330	234/ 71%	96/ 29%	243/ 74%	87/ 26%	310/ 94%	20/ 6%
1989	312	212/ 68%	100/ 32%	215/ 69%	97/ 31%	292/ 94%	20/ 6%
1988	268	191/ 71%	77/ 29%	184/ 69%	84/ 31%	252/ 94%	16/ 6%
1987	232	188/ 81%	44/ 19%	155/ 67%	77/ 33%	222/ 96%	10/ 4%
1986	198	148/ 75%	50/ 25%	138/ 70%	60/ 30%	187/ 94%	11/ 6%
1985	171	131/ 77%	40/ 23%	131/ 77%	40/ 23%	160/ 94%	11/ 6%
1984	224					214/ 96%	10/ 4%
1983	208					198/ 95%	10/ 5%
1982	217					207/ 95%	10/ 5%

F. 06/00
 PER NO. 9072023117
 ALASKA STATE FISHING SERVICE
 NOV 21 03 10L 10-27

Number of river guides should be limited

A well-known, local Outdoors writer, one I have respect for, recently voiced his opinion concerning the number of guides operating on the Kenai River. I am excited to learn that his "second thoughts," as stated in Dec. 22, 1995, Outdoors section of the Peninsula Clarion, are finally more in line with my thinking. His fresh outlook will hopefully have an important impact on the Kenai River's future during 1996.

A writer's posture and comments made in print are always under attack. But make no mistake, they are important in a free society. On issues of grave importance such as overcrowding on the Kenai River, the "poison pen" carries an influential message that gives anyone an opportunity to make a damn fool out of themselves. And, I intend to make a damn fool out myself until something "realistic" is done to reduce the number of guides on this river!

I would like to clarify what that outdoor writer has recently, politely and carefully illustrated for you concerning Kenai River guides. I would like to allow you the opportunity to read selected parts of an important 1991 letter I wrote to Clem Tillion, the "fishing czar," who, by the way, was appointed by a governor to make recommendations concerning the river. No offense intended, but I question if Mr. Tillion even knows where Eagle Rock is located.

Before I do that, be aware of the fact that in 1974, I complained about too many Kenai River guides. I wrote a letter to Gov. Jay Hammond expressing my concern, and he responded by telling me he wasn't immediately concerned and that it was a local issue to be handled on the local level.

In 1976, I attended several meetings here and in Anchorage expressing my concern about the growing numbers of Kenai River guides. By 1978, I challenged the Coast Guard and demanded that all guides be licensed, registered and regulated. I won that battle which is another story. I never dreamed the guiding situation would be allowed to get so far out of hand.

In 1978, I retired my status as the "original Kenai River fishing guide" and elected to be no part of the guiding fraternity. I belong to no local fishing organizations, none of them represent me or speak for me. This information is much different than many have been led to believe. I was embarrassed to be put in the same category as some guides at the time. From that point, I constantly worked to control the number of guides working the Kenai River.

I have continued that mission ever since, in various ways. I sent several letters over the years to people who could have been influential but they proved useless. Now,



SPENCE DE VITO

many of these folks are concerned. Too late!

Following are the brief, selected excerpts from a long letter with a list of recommendations I made to Mr. Tillion and Gov. Walter Hickel's office in 1991.

Dear Mr Tillion:

After our conversation last evening concerning the "Kenai River Guide Problem," I did a bit of brainstorming in an attempt to find and produce a more graceful solution in which to reduce the number of guides on the Kenai River.

I was pleased to learn that we are in concert with our thinking and that we both believe in the need for a drastic reduction of guides on the Kenai River. I anticipated problems in making a compatible solution concerning the number we could all live with. That number has been suggested to you in my letter of Jan. 4, 1991, concerning the lower river. I would hope that the number of guides for the entire river will not exceed 75, including the non-powered drift boats.

I realize there are many potential solutions, some better than others. Whatever you do:

a. Enforce an immediate moratorium on the number of fishing guides able to obtain guide permits for the Kenai River. Issue no more permits as of 9 a.m. ... today. Call Kenai Parks and Recreation and tell them to delay all new permits until further notice from the governor's office.

b. Establish the number of guides you want to operate on the Kenai River. Obtain a Kenai River map and count the well-known holes that are labeled on that map. The map can be obtained at the Moose Range Headquarters located as you enter Soldotna coming in from Homer. For example, from the Soldotna bridge downstream multiply each hole by two (two guides per hole). On the upper reaches, multiply the suggested holes by four (four guides per hole). This should help give you a starting point in which to determine numbers.

c. Once you have established a highly conservative number of guides, send notice to all Kenai River guides that were ever registered with Kenai Parks and Recreation. Try to be fair to meet the least resistance from as many folks as possible.

A sample of ideas for you to ponder for this notice to guides:

NOTICE:

1. One guide, one permit

2. Change the 6 o'clock starting time and

closing time to read 7 and 5. One beginning at 7 a.m. and ending at noon and the other beginning at 1 p.m. and ending at 5 p.m. This would give the non-guide folks an opportunity to fish before or after work for a change without having to get up at 2 a.m. to beat the guides on the river. Clem, this also means that the guides not be allowed on the river before 7 or 1, and that they will be off the river by noon and 5 p.m. A guide will fish either in the morning or the afternoon rotation but not both. (By doing this, already one can see that twice as many guides could operate. Sure it would be a burden-but isn't all this mess a burden on the rest of us?)

This equates to \$650 per day per license, x 6 days = \$3,900 per week x 8 June and July weeks = \$31,200. The May, August, September, October (fishing) is "gravy frosting"! One boat, one guide, one license. A hard working guide could easily make \$50,000 and spend the winter months in Mexico.

d. ALL guides who once held permits will receive a form to be completed along with the appropriate requirements. However, a new set of rules will be sent along and a warning will also be enclosed stating that not all guides will have the opportunity to fish this year. If they are not awarded or selected by the computer, or in an annual drawing, they will have to apply again next year, much like I have to when I apply for my sheep and goat permit.

When the rules are being passed out, everyone must have an equal opportunity. I realize it is difficult to wade through my suggestions but call on me if you need questions answered. I have more ideas on the rotating schedule but would hope we never have to come to that sort of participation.

I strongly feel, by limiting the guides, and by giving all guides the opportunity to go through the selection process, guides should be able to raise their premiums to somewhat compensate, and also to be able to adjust to the new ruling. At the same time they will make non-guided fishermen and local fishermen happier. Their reputation as a guide on the Kenai will have more credibility and possibly the economy will stabilize.

Good luck!

Finally, I agree, Mr. Outdoor Writer. Yes, the number of guides should be limited but there are only a handful of folks that can make it actually happen. I know! I have been working on it for over 20 years. One of those people is the governor. Another, is the head of the Department of Fish and Game and perhaps the borough mayor. Then there are guys who have the skill and power of the "poison pen." You know, guys like you. Keep up the good work!

Spence De Vito is a former guide and a retired educator.

CHARTER VESSELS
 By Community

COMMUNITY	# OF VESSELS	Cumulative TOTAL
ABERDEEN	1	1
AHSAKA	1	2
ALEKNAGIK	1	3
AMANDA PARK	1	4
AMBLER	1	5
ANACORTES	3	8
ANCHOR POINT	22	30
ANCHORAGE	177	207
ANGOON	25	232
ANVIK	2	234
ARLINGTON	1	235
ASTORIA	1	236
AUKE BAY	31	267
BAINBRIDGE ISLAN	1	268
BALDWINVILLE	1	269
BARROW	2	271
BATTLE GROUND	1	272
BEAUFORT	1	273
BEAVERTON	1	274
BELLEVUE	3	277
PELLINGHAM	2	279
BELMONT	1	280
BEND	1	281
BETHEL	14	295
BIG LAKE	3	298
BIGFORK	1	299
BIRD CREEK	1	300
BOTHELL	1	301
BREMERTON	1	302
BROOKINGS	3	305
CAREFREE	5	310
CATHLAMET	1	311
CHATHAM	1	312
CHENEGA	1	313
CHIGNIK	3	316
CHIGNIK LAGOON	1	317
CHIGNIK LAKE	1	318
CHUGIAK	15	333
CLAM GULCH	6	339
CLOQUET	1	340
COFFMAN COVE	2	342
COLTON	1	343
COLUSA	2	345
COOPER LANDING	20	365
COPALIS BEACH	1	366
COPPER CENTER	2	368
COROOVA	41	409
CRAIG	52	461
CRESENT CITY	1	462
DAVIS	1	463
DELTA JUNCTION	1	464
DES MOINES	2	466
DES MOINS	1	467
DILLINGHAM	20	487
DOUGLAS	14	501
DOWNEY	1	502
DURANGO	3	505
DUTCH HARBOR	6	511
EAGLE RIVER	16	527
EDMONDS	3	530
EDNA BAY	5	535
EIELSON AFB	1	536
ELFIN COVE	21	557
ELLENSBURG	2	559
ELMENDORF AFB	4	563
EVERETT	1	564
FAIRBANKS	43	607
FALSE PASS	2	609
FAYETTEVILLE	1	610
FEDERAL WAY	2	612
FERNDALE	3	615
FOREST GROVE	1	616
FORKS	2	618
FORT RICHARDSON	1	619
FRITZ CREEK	2	621
FUNTER BAY	2	623
GAINESVILLE	1	624
GAKONA	15	639
GALENA	1	640
GIRDWOOD	8	648
GOODNEWS BAY	1	649
GRANITE FALLS	1	650
GRANT PASS	1	651
GRANTS PASS	1	652
GRASS VALLEY	1	653
GREAT FALLS	1	654
GRESHAM	2	656
GUSTAVUS	27	683
HAINES	11	694
HALIBUT COVE	2	696
HARBOR	2	698
HEALY	1	699
HOBART BAY	1	700
HOFFMAN ESTATES	1	701
HOMEDALE	1	702

COMMUNITY	# OF VESSELS	Cumulative TOTAL
SEQUIH	3	1704
SEWARD	28	1732
SHAKTOOLIK	1	1733
SILVERTON	1	1734
SISTERS	1	1735
SITKA	169	1904
SKAGWAY	1	1905
SMITH RIVER	8	1913
SNOHOMISH	2	1915
SOLDOTNA	212	2127
ST HELENS	1	2128
ST LOUIS	1	2129
STANFORD	1	2130
STERLING	42	2172
STURGIS	2	2174
TACOMA	3	2177
TALKEETNA	9	2186
TANANA	1	2187
TENAKEE	6	2193
THORNE BAY	12	2205
TIGARD	1	2206
TOGIAK	1	2207
TOK	1	2208
TROUTDALE	1	2209
TWO RIVERS	1	2210
UNALAKLEET	1	2211
UNALASKA	6	2217
VALDEZ	30	2247
VAN NUYS	1	2248
VANCOUVER	3	2251
VASHON	2	2253
WARD COVE	18	2271
WASILLA	30	2301
WELCHES	1	2302
WEST PALM BEACH	2	2304
WESTMINSTER	1	2305
WESTPORT	5	2310
WHALE PASS	1	2311
WHITE MOUNTAIN	1	2312
WHITTIER	1	2313
WILMINGTON	1	2314
WORLAND	1	2315
WRANGELL	44	2359
YAKUTAT	15	2374

CHARTER

<u>V_ACT91</u>	<u>Frequency</u>	<u>Cumulative Frequency</u>
X	2374	2374

FISHING

<u>V_ACT92</u>	<u>Frequency</u>	<u>Cumulative Frequency</u>
X	1151	1151

Frequency Missing = 1223

FREEZER\CANNER

<u>V_ACT87</u>	<u>Frequency</u>	<u>Cumulative Frequency</u>
X	22	22

Frequency Missing = 2352

TENDER\PACKER

<u>V_ACT88</u>	<u>Frequency</u>	<u>Cumulative Frequency</u>
X	157	157

Frequency Missing = 2217

CHARTER ONLY

<u>V_ACT91</u>	<u>Frequency</u>	<u>Cumulative Frequency</u>
X	1207	1207

Frequency Missing = 1167

CHECKED
CHARTER
PLUS ANOTHER
ACTIVITY

CHECKED
CHARTER ONLY

COMMUNITY	CHARTER VESSELS	Cumulative TOTAL
ABERDEEN	1	1
AHSAKA	1	2
AMANDA PARK	1	3
AMBLER	1	4
ANACORTES	2	6
ANCHOR POINT	13	19
ANCHORAGE	94	113
ANGOOK	7	120
ARLINGTON	1	121
ASTORIA	1	122
AUKE BAY	25	147
BAINBRIDGE ISLAN	1	148
BALDWINVILLE	1	149
BARROW	2	151
BELLEVUE	2	153
BELMONT	1	154
BEND	1	155
BETHEL	1	156
BIG LAKE	3	159
BROOKINGS	1	160
CAREFREE	4	164
CHIGNIK LAKE	1	165
CHUGIAK	7	172
CLAM GULCH	5	177
CLOQUET	1	178
COFFMAN COVE	2	180
COLTON	1	181
COLUSA	2	183
COOPER LANDING	15	198
COPALIS BEACH	1	199
CORDOVA	3	202
CRAIG	26	228
DAVIS	1	229
DES MOINES	2	231
DILLINGHAM	19	250
DOUGLAS	4	254
DOWNNEY	1	255
DURANGO	3	258
EAGLE RIVER	4	262
EDMONDS	2	264
ELFIN COVE	9	273
ELLENSBURG	2	275
ELMENDORF AFB	3	278
EVERETT	1	279
FAIRBANKS	21	300
FAYETTEVILLE	1	301
FEDERAL WAY	1	302
FERNDALE	1	303
FORKS	2	305
FORT RICHARDSON	1	306
GAINESVILLE	1	307
GAKONA	6	313
GIRDWOOD	6	319
GRANITE FALLS	1	320
GRANT PASS	1	321
GREAT FALLS	1	322
GRESHAM	2	324
GUSTAVUS	9	333
HAINES	4	337
HARBOR	2	339
HOBART BAY	1	340
HOFFMAN ESTATES	1	341
HOMEDALE	1	342
HOMER	55	397
HOOD RIVER	1	398
HOONAH	4	402
HOPE	1	403
HOUSTON	1	404
HUNTINGTON BEACH	1	405
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IDAHO FALLS	1	410
IGIUGIG	5	415
ILIAMNA	2	417
JOSEPH	1	418
JUNEAU	94	512
KASLOF	11	523
KENAI	30	553
KENT	2	555
KETCHIKAN	144	699
KIANA	1	700
KING SALMON	5	705
KLAWOCK	3	708
KODIAK	13	721
KWETHLUK	1	722
LARSEN BAY	1	723
LODI	1	724
LONGVIEW	1	725
LONGVIEW	1	726
LYNNWOOD	1	727
MANLEY HOT SPRIN	1	728
MEDFORD	1	729
MERCER ISLAND	1	730
MERIDIAN	1	731
MINDEN	1	732
MT VERNON	2	734

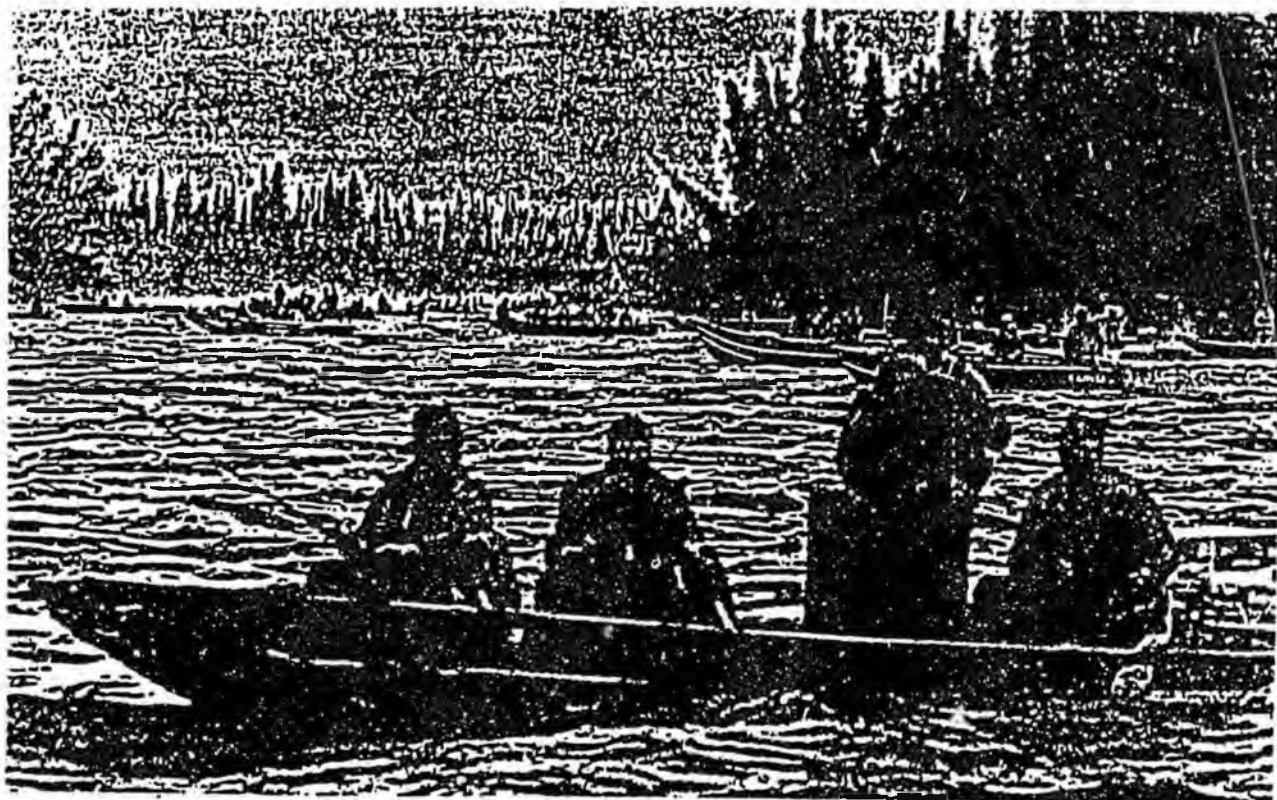
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AHSANKA	1	2
AMANDA PARK	1	3
AMBLER	1	4
ANACORTES	2	6
ANCHOR POINT	13	19
ANCHORAGE	94	113
ANGOON	7	120
ARLINGTON	1	121
ASTORIA	1	122
AUKE BAY	25	147
BAINBRIDGE ISLAN	1	148
BALDWINVILLE	1	149
BARROW	2	151
BELLEVUE	2	153
BELMONT	1	154
BEND	1	155
BETHEL	1	156
BIG LAKE	3	159
BROOKINGS	1	160
CAREFREE	4	164
CHIGNIK LAKE	1	165
CHUGIAK	7	172
CLAM GULCH	5	177
CLOQUET	1	178
COFFMAN COVE	2	180
COLTON	1	181
COLUSA	2	183
COOPER LANDING	15	198
COPALIS BEACH	1	199
CORDOVA	3	202
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DAVIS	1	229
DES MOINES	2	231
DILLINGHAM	19	250
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DOWNNEY	1	255
DURANGO	3	258
EAGLE RIVER	4	262
EDMONDS	2	264
ELFIN COVE	9	273
ELLENSBURG	2	275
ELMENDORF AFB	3	278
EVERETT	1	279
FAIRBANKS	21	300
FAYETTEVILLE	1	301
FEDERAL WAY	1	302
FERNDALE	1	303
FORKS	2	305
FORT RICHARDSON	1	306
GAINESVILLE	1	307
GAKOHA	6	313
GIROWOOD	6	319
GRANITE FALLS	1	320
GRANT PASS	1	321
GREAT FALLS	1	322
GRESHAM	2	324
GUSTAVUS	9	333
HAINES	4	337
HARBOR	2	339
HOPART	1	340
IGLOO	1	341
IGLOO	1	342
IGLOO	55	397
IGLOO	1	398
IGLOO	4	402
IGLOO	1	403
HOUSTON	1	404
HUNTINGTON BEACH	1	405
HYDABURG	4	409
IDAHO FALLS	1	410
IGIUGIG	5	415
ILIAMNA	2	417
JOSEPH	1	418
JUNEAU	94	512
KASTILOF	11	523
KENAI	30	553
KENT	2	555
KETCHIKAN	144	699
KIANA	1	700
KING SALMON	5	705
KLAWOCK	3	708
KODIAK	13	721
KWETHLUK	1	722
LARSEN BAY	1	723
LODI	1	724
LONGVIEW	1	725
LONGVIEW	1	726
LYNNWOOD	1	727
MANLEY HOT SPRIN	1	728
MEDFORD	1	729
MERCER ISLAND	1	730
MERIDIAN	1	731
MINDEN	1	732
MT VERNON	2	734

KENAI RIVER GUIDE LIMIT PROPOSAL



*A Proposal to Limit the Number of Sport Fishing Guides
in the Kenai River Special Management Area*

by the

**Division of Parks and Outdoor Recreation
Alaska Department of Natural Resources**

March 21, 1991



Alaska Department of
**NATURAL
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EAGLE RIVER	4	262
EDMONDS	2	264
ELFTN COVE	9	273
ELLENSBURG	2	275
ELMENDORF AFB	3	278
EVERETT	1	279
FATBANKS	21	300
FAYETTEVILLE	1	301
FEDERAL WAY	1	302
FERNDALE	1	303
FORKS	2	305
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GAINESVILLE	1	307
GAKONA	6	313
GIRDWOOD	6	319
GRANITE FALLS	1	320
GRANT PASS	1	321
GREAT FALLS	1	322
GRESHAM	2	324
GUSTAVUS	9	333
HAINES	4	337
HARBOR	2	339
HOBART BAY	1	340
HOFFMAN ESTATES	1	341
HOMEDALE	1	342
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NENANA	1	735
NEWBERG	1	736
NIKISKI	1	737
NINILCHIK	20	757
NOME	1	758
NORTH POLE	8	766
NOVATO	1	767
OREGON CITY	1	768
OROFINO	1	769
PALMER	7	776
PELICAN	2	778
PETERSBURG	25	803
PLACIDA	1	804
POINT HADLOCK	1	805
PORT HADLOCK	4	809
PORT LIONS	3	812
PORT TOWNSEND	1	813
PORTLAND	4	817
POULSBO	3	820
PUYALLUP	1	821
QUINHAGAK	6	827
RENTON	5	832
RIDGEFIELD	2	834
RIVERSIDE	1	835
ROSEVILLE	1	836
SALCHA	2	838
SAN DIEGO	1	839
SAND POINT	2	841
SEATTLE	12	853
SELOOVIA	1	854
SEQUIM	1	855
SEWARD	18	873
SISTERS	1	874
SITKA	58	932
SKAGWAY	1	933
SMITH RIVER	6	939
SNOHOMISH	2	941
SOLOOTNA	148	1089
ST HELENS	1	1090
ST LOUIS	1	1091
STERLING	28	1119
TACOMA	1	1120
TALKEETNA	5	1125
TENAKEE	2	1127
THORNE BAY	8	1135
TIGARD	1	1136
TROUTDALE	1	1137
UNALAKLEET	1	1138
VALDEZ	12	1150
VAN NUYS	1	1151
VANCOUVER	2	1153
VASHON	1	1154
WARD COVE	7	1161
WASILLA	19	1180
WELCHES	1	1181
WEST PALM BEACH	2	1183
WESTMINSTER	1	1184
WESTPORT	1	1185
WILMINGTON	1	1186
WORLAND	1	1187
WRANGELL	15	1202
YAKUTAT	5	1207

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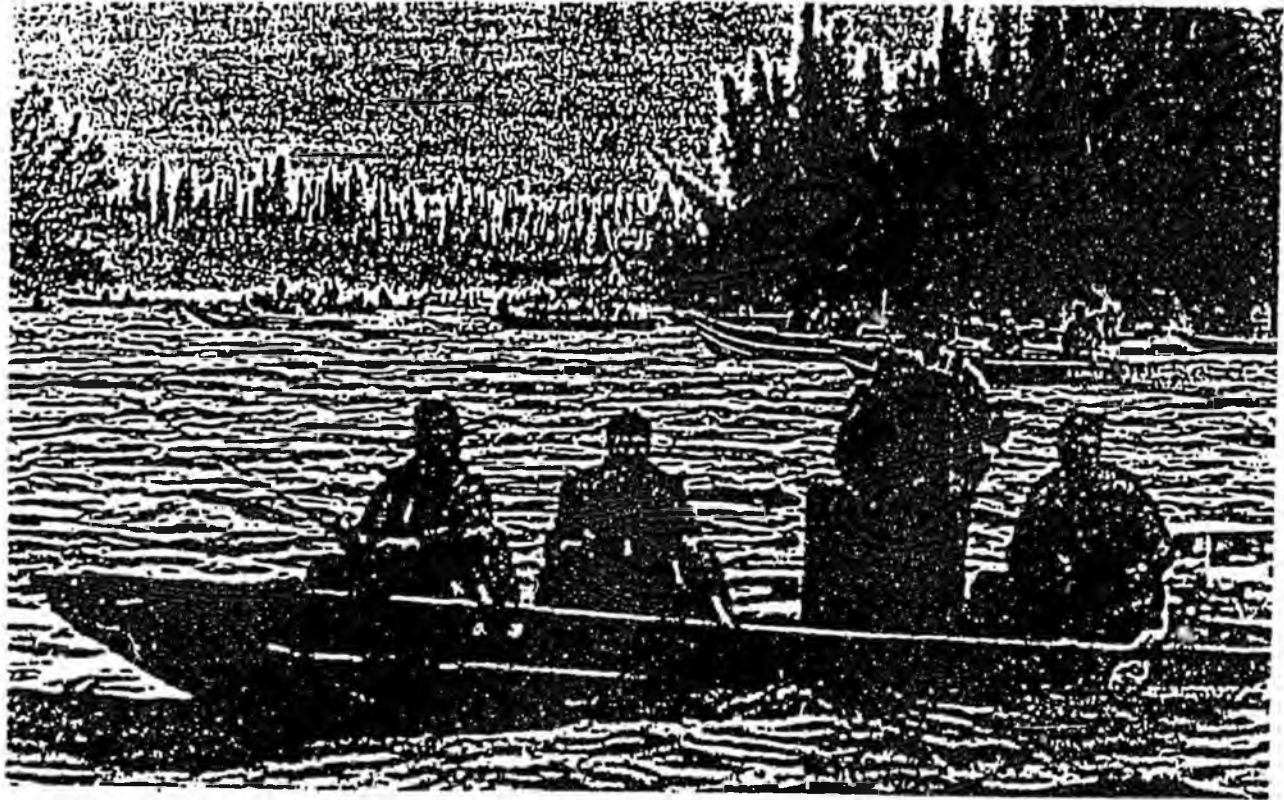
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VANCOUVER	2	1153
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KENAI RIVER GUIDE LIMIT PROPOSAL



*A Proposal to Limit the Number of Sport Fishing Guides
in the Kenai River Special Management Area*

by the

**Division of Parks and Outdoor Recreation
Alaska Department of Natural Resources**

March 21, 1991



Alaska Department of
**NATURAL
RESOURCES**

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS AND OUTDOOR RECREATION

WALTER J. HICKEL, GOVERNOR

3601 C STREET, SUITE 1200
ANCHORAGE, ALASKA 99503
PHONE: (907) 762-2600

MAILING ADDRESS:
P.O. BOX 107001
ANCHORAGE, ALASKA 99510-7001

March 21, 1991

Dear Reader:

The Kenai River is the most popular sport fishing water in Alaska. Reflecting the demands upon the river's world class fishery is the dramatic growth in the number of professional sport fishing guides registered to work the area. Between 1985 and 1990, the number of fishing guides nearly doubled, increasing from 160 to 310.

The pressure exerted upon the Kenai River fishery by guides and guided anglers has led to this proposal by the State to "limit" the number of professional guides allowed to work on the river.

This plan features a gradual reduction of permit numbers, at a rate less than the historical attrition of guides leaving the river each year. The proposal will allocate permits primarily through a system of ranking professional guiding experience and relevant training and to a lesser extent the amount of money offered to the State of Alaska for the guiding permits.

Other controls on the guide industry are also presented in the document.

This proposal is presented for public review for 45 days; comments are due by May 6, 1991.

Your interest in the Kenai River is appreciated.

Sincerely,



Neil C. Johannsen
Director

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THE ISSUE

Public concern about the increased number of Kenai River sport fishing guides and the perceived aggressiveness of guides in motor boats has resulted in proposals to reduce the number of guides on the river.

The questions raised by this issue are:

1) Should the number of Kenai River sport fishing guides be limited to protect the natural resources of the river and enhance the recreational experiences of all users of the river? What number of guides is appropriate?

2) How should the permits be issued?

3) What additional controls, if any, should be placed on how the guides operate?

BACKGROUND

In 1984, the legislature delegated responsibility for the oversight and protection of the lands and waters of the Kenai River Special Management Area (KRSMA) to the Alaska Division of Parks and Outdoor Recreation (Parks).

Since 1985, Parks has regulated Kenai River guides under state law (AS 41.21.506(b)(2)) through the issuance of Non-Competitive Park Use Permits (11 AAC 18.030). This program has not limited the number of fishing guides, which has grown from 160 total fishing guides (126 motorized) in 1985 to 310 total fishing guides (227 motorized) in 1990.

The state law establishing the Kenai River Special Management Area provides for DNR to "establish a regulation, licensing, or comparable procedure for professional fishing guides and such additional fishing guide controls as the commissioner considers necessary". Existing administrative regulations allow for the Director of Parks to limit the number of guides through the issuing of competitively awarded park use permits. However, while the basic regulatory framework exists for the establishment of a limit on guides on the river, additional regulations are needed to set the actual number of guides and to clarify the bidding and award procedure for permits.

The comprehensive management plan for the river, which was prepared in 1986, noted that the question of limiting the number of fishing guides had been thoroughly discussed by the citizen advisory board and its committees during the preparation of the plan. The plan recommended that:

- guides not be limited until the new boating regulation and (unlimited) guide permits have a chance to be tried and their effects evaluated;
- Parks monitor commercial guiding to determine whether a limit may be appropriate in the future;
- Parks should research legal options for awarding permits under a limit system; and,
- the system should recognize and give preference to existing guides when permits are awarded.

It should be noted that a subsequent Alaska Supreme Court has ruled in the Owsichek vs. State Guide Licensing and Control Board decision has ruled that the granting of exclusive rights to harvest natural resources should be subject to close scrutiny to meet the common use requirement of the state constitution. However, the decision also stated that leasing and concessions of limited duration and subject to competitive bidding procedures with fees paid to the state are not within the scope of the court's decision.

ANALYSIS

Between 1985 and 1990 there has been a near doubling in both the total number of Kenai River fishing guides (160 up to 310), and the number of motorized fishing guides in particular (126 up to 227). This rapid growth rate combined with the public's perception of being crowded out of the prime fishing holes by aggressive behavior of some motorized fishing guides, has recently resulted in several proposals aimed at limiting the number of Kenai River fishing guides.

At the same time many of the guides have themselves publicly called for a cap on the growth of guide numbers. A concern of the guides is that they may face further "hours and days" access restrictions by the Alaska Board of Fisheries if a limit on the total number of guides is not established. Many professional guides also believe that the high turnover rate of each season's new inexperienced guides, combined with cut-rate prices and unprofessional behavior of some part-time operators, is harming the reputation of the Kenai River guide industry.

The Alaska Department of Natural Resources (DNR), the Kenai River Special Management Area (KRSMA) Advisory Board, and the Cook Inlet Professional Sportfish Association (CIPSA), which represents most of the Kenai River fishing guides, have all recognized the need for comprehensive social and biological carrying capacity studies to be undertaken for the Kenai River. Data from these studies will assist in making long-term management decisions for the Kenai River. However, it will take several years for these studies to be completed and signals of habitat degradation and overcrowding are already abundant. The high annual turnover rate of fishing guides, price wars, and public perceptions of overcrowding from "too many guides" on the river are indications that the capacity of the river for commercial guiding use has already been exceeded. The actions included in this proposal have been recognized as necessary at this time for the good of the river, its resources and its visitors. CIPSA is also on record as not disputing the need for a cap or ceiling on the number of guides.

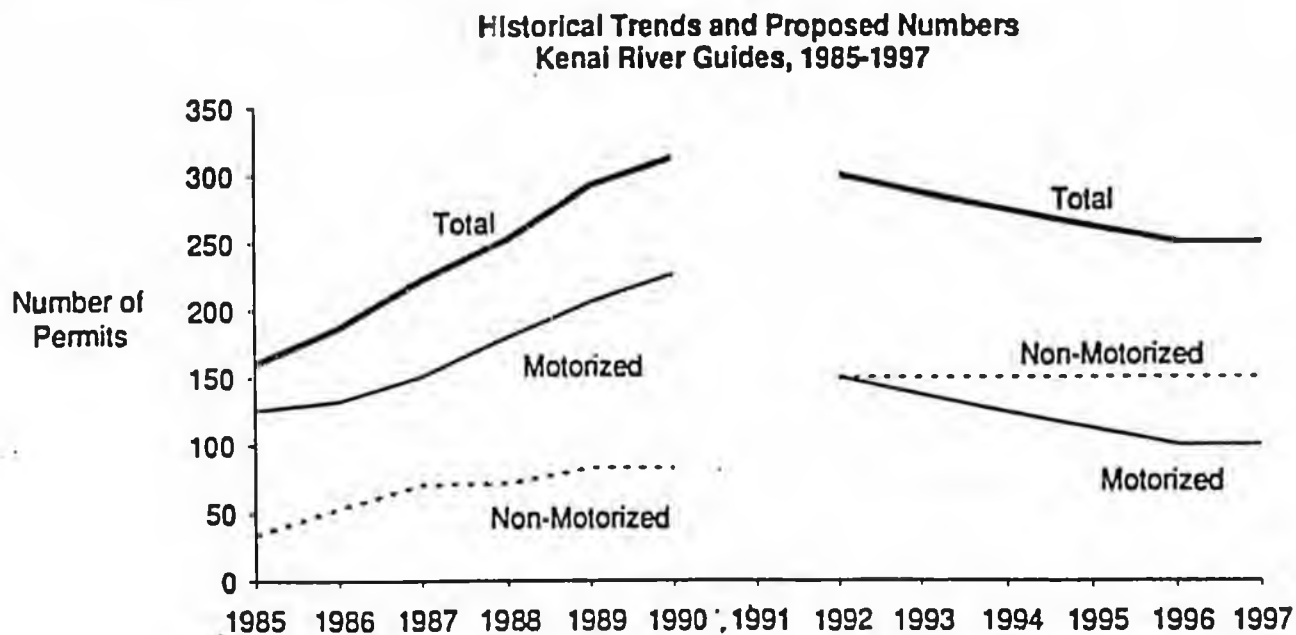
In recent months, many different proposals for limiting the number of guides have been advanced by members of the public, public officials, and user groups. While many valuable ideas have been gleaned from these proposals, many of the suggested strategies do not fall within the confines of the legal authority of DNR. Some of the proposals would result in unreasonable impacts on the local economy, the ability of the public to obtain guides services, or on the guides themselves.

A range of options, which are discussed in Appendices A and B, have been considered in selecting the preferred option for public review. The options range from reducing guide numbers to 100 (50 motorized and 50 non-motorized) to doing nothing and letting guide numbers increase freely.

The following proposal has been selected as the best approach for resolving the present concerns of the public regarding commercial guides on the river.

THE PROPOSAL

The State proposes to limit the number of guides on the river through a competitive process under existing and proposed provisions of 11 AAC 18.040. The following charts illustrates both the existing trends in the number of guides and the way that the proposal will alter the number of guides on the river.



The new system will:

A. Set guide restrictions that:

1) set the total number of fishing guides in 1992 at 300, slightly below the 1990 level of 310;

2) initially limit motorized fishing guide permits to 150 or two-thirds of the number issued in 1990;

3) from 1992 to 1996 reduce the total number of motorized guides to 100 by reducing the number of motorized permits that are re-offered. This rate of reduction is substantially less than the average historical attrition rate of approximately 20% per year between 1985 and 1990;

4) maintain a level of 150 non-motorized, or drift, guides providing an alternative lower impact means of guiding. Non-motorized guides may use motors of less than 10 horsepower for incidental navigation;

5) award permits based upon the following factors and scoring weights:

- a. Professional guiding experience 50%,
- b. Other qualifications and performance factors 25%,
- c. Fee offered to the State 25%;

6) provide four year permits, except during the initial four year transition period when permit terms will vary from one to four years in length;

7) reduce the total number of fishing guides from 310 in 1990 to 250 in 1996;

8) limit the total number of adults in a guide boat to five persons including the guide (two children under 12 count as one adult);

9) require the payment of a minimum permit fee of \$500 for residents and \$1500 for non-residents;

10) provide for a limit of 40 guides on the river between Kenai and Skilak Lakes which avoids the need for a separate U.S. Fish and Wildlife Service guide limit system in this area. Guide activity in this area will be non-motorized.

B. Change boating rules on the river to:

1) prohibit the anchoring of boats in main navigation channels of the river;

2) prohibit the dragging of anchors, chains or other devices as a means of slowing a boat while floating downriver;

3) prohibit leaving markers or other buoys in the river unless they are permitted;

C. Other:

1) maintain unlimited horsepower status for boats on Kenai and Skilak Lakes;

2) permit applications will be accepted, each year, from July through August for the upcoming year. Applications will be scored during September and notification made October 1. Unsuccessful applicants will have 30 days to appeal decisions. Permits will be available on January 1;

3) annual permit fee (minimum permit fee and bonus bid) must be paid by May 1st to be eligible to conduct guiding activity for that season;

4) a motorized guide permit may be used to conduct non-motorized or drift guiding activities;

5) maintain the requirement for one guide per permit per boat. The guide must be in the boat with the clients. Guide assistants may not be in the boat with clients without the guide present. A person may not hold more than one permit;

6) prohibit permits from being sold or transferred;

7) allow the director of parks to revoke or suspend a permit for cause; and

8) this limitation system does not apply to non-fishing guides.

PERMIT AWARD PROCESS

After meeting pre-qualification requirements, such as required licenses, first aid training, and application requirements, the applicant will submit an application and \$50 processing fee for scoring under either or both of the two categories of motorized (up to 35 horsepower) and non-motorized (less than 10 horsepower) guiding operations.

The applications will then be scored for a maximum of 50 points for professional guiding experience. Both Kenai River and other river or non-river guiding experience will be given points. Specific Kenai River experience will receive more points per season than general river experience obtained elsewhere.

Up to 25 points is possible for applicants who possess advanced Coast Guard licenses, special medical or boating safety training, membership in professional guide organizations, own their own boat to be used in guiding, have additional private boating experience on the Kenai River and other considerations.

Point scores of 0 to 25 would be assigned to each of the applications based on the range of the dollar values for bonus bids above the minimum permit fee for the sealed applications received in each category (motorized and non-motorized). Thus, only twenty-five percent of the criteria for allocating guide permits would be financial considerations.

PUBLIC REVIEW PROCESS

This proposal and its accompanying information will be provided to the KRSMA Advisory Board at its March 21st, 1991 meeting. The proposal will undergo a 45-day public review period. Draft regulations to implement the proposed guide limit program will also be available for public review and comment.

The April 11th, 1991 meeting of the advisory board will serve as a forum for public comment and discussion of the proposal. Public hearings on the draft regulations will be held in Soldotna and Anchorage at the following times and locations:

Anchorage, April 17, 1991, 7:00 p.m., Museum of History and Art,
121 West 7th Avenue, Auditorium

Soldotna, April 18, 1991, 7:00 p.m., Kenai Peninsula Borough Office
Building, Assembly Chambers

Public notice of the proposal, public meetings and hearings will be issued through print media and other means. Written comment will be solicited from the public through May 6, 1991.

Written comments on the proposal and draft regulations should be mailed to:

Kenai River Guide Limit Proposal
P.O. Box 1247
Soldotna, Ak 99669
(907) 262-5581

For more information, contact:

Soldotna: Chris Titus (262-5581)
Suzanne Fidler (262-5581)
Walter Ward (262-5581)

Kenai Area Office at Morgan's Landing
(turn off the Sterling Highway at Mile 85 onto Scout Lake Road and
follow the signs to Morgan's Landing State Recreation Area).

Anchorage: Al Meiners (762-2617)
Dave Stephens (762-2653)

Alaska State Parks
Suite 1200
3601 C Street
Anchorage, AK 99503

At its May 16th, 1991 meeting, the advisory board will develop board recommendations on the proposal and convey these to the director of state parks. The results of public hearings on the draft regulations will be compiled by state park staff following completion of the public review process. Adjustments to the proposal, including withdrawal or reformulation of the proposal, will be made by the director. If appropriate, a second public review process will be initiated. After a proposal is finalized by the director, regulations to implement the proposal will be completed as required under the Alaska Administrative Procedures Act.

If this or a similar proposal is adopted, it is anticipated that permit application packages would be made available to the guide permit applicants in mid-July, 1991, with a submission deadline of mid- to late-August, 1991. Permit award decisions for 1992 would be made by October 1, 1991. This date will allow guides to plan for their 1992 season client bookings prior to the winter sport shows. The 1992 permits would be available beginning January 1, 1992, upon submission of the remaining required documentation and payment of annual permit fees.

ATTACHED INFORMATION

This proposal has been written in an abbreviated format to assist the reader. More detailed is attached in the following appendices.

Appendix A - Chart of Kenai River guide limit options This chart shows a variety of options that were considered in developing the preferred option. A summary and detailed analysis of options is included.

Appendix B - Analysis of issues and guide limit options This is a written discussion of guide limit issues and different guide limiting options that have been considered in the process of selecting the proposed option.

Appendix C - Pre-bid qualification standards These are the standards that all bidders must meet to be eligible to have their bid proposal considered.

Appendix D - Application scoring criteria This is the system that is proposed to be used to score and rank guide applications. The guides receiving the most points will be offered the permits. A sample scoring sheet is enclosed.

Appendix E - Proposed Kenai River Special Management Area regulations to implement the guide proposal These are the legal rules that are proposed to be established to implement the proposal. The adoption of administrative rules is governed by the Alaska Administrative Procedure Act (AS 44.62). These rules are reviewed by Alaska Attorney General's Office and signed by the Lieutenant Governor before they become effective.

Appendix F - Background Statistical Information (Charts and Graphs) This information has been compiled to provide the reader with background information on Kenai River guiding.

Appendix G - Proposal development and implementation timeline This timeline is proposed to be used to develop, conduct public review of and changes to the proposal, and to implement the proposal.

APPENDIX A - #. OPTIONS

	OPTION A MAXIMUM CUT 50/50 ALTERNATIVE	OPTION B ROLLBACK TO 1985 LEVEL	OPTION C PROPOSED ATTRITION RATE MODEL	OPTION D ADJUSTED IMPACT (AT 1990 LEVEL)	OPTION E NO ACTION 1990 LEVEL	OPTION F MAXIMUM USE 50/50 ALTERNATIVE
KENAI RIVER GUIDE PERMITS						
MOTORIZED FISHING GUIDES	50	126	* 150/100 *	* 126 *	227	227
NON-MOTORIZED FISHING GUIDES	50	34	* 150/150 *	* 184 *	83	227
TOTAL GUIDES	100	160	* 300/250 *	* 310 *	310	454
	PROS	PROS	* Reduction by '96 *	* PROS *	PROS	PROS
	Greatly reduces overall guide impacts	Rolls back use to 1985 level	* PROS *	* Rolls back motorized use to 1985 level *	Accommodates all existing use levels	Accommodates all existing motorized guides
	CONS	Reduces overall guide impacts	* Reduces motorized use below '85 level *	* Provides alternative options for unsuccessful motorized applicants *	Holds 1990 totals	Provides equal opportunity for nonmotorized uses
	Substantially affects both motorized and non-motorized use	CONS	* Reduces '90 guide total gradually *	* Provides alternative options for unsuccessful motor applicants *	No change for local businesses	Boosts local business (allows for 27% increase in "seat average" 1074 up to 1362)
	Offers no alternative options for unsuccessful applicants	Substantially affects non-motorized use	* Moderate impact on local businesses phased over time (35% reduction in "seat average" by 1996 1074 down to 700) *	* Holds 1990 totals *	Maintains existing seat average	
	Substantially affects local businesses (72% reduction in "seat average" 1074 down to 300)	Offers no alternative options for unsuccessful applicants	* Reduces '90 guide total gradually *	* Less impact on local businesses *	CONS	
		Substantially affects local businesses (47% reduction in "seat average" 1074 down to 572)	* Moderate impact on local businesses phased over time (35% reduction in "seat average" by 1996 1074 down to 700) *	* Only 19% reduction in "seat average" 1074 down to 872 *	FAILS TO REDUCE motorized guide impacts & #'s	CONS
			* May not accommodate all existing motorized guides as motor guides *	* May not accommodate all existing motorized guides as motor guides *	Sets imbalance of motorized to non-motorized uses	FAILS TO REDUCE motorized guide impacts & #'s
					Guide impacts stay status quo	Increases total # of guides on the river & increases total impacts

Appendix B - Analysis of Issues and Options

Part I - General Analysis

The 35 horsepower boat motor restriction implemented on the Kenai River in 1987 was successful in reducing the rate of boat wake-caused bank erosion due to the initial trend towards smaller, lighter boats producing lower energy wakes. The "calming of the frenzy" which resulted has caused many river users to express a general improvement in their recreational enjoyment of the river. Boating safety was also improved due to the general reduction of boating speeds on the river and the reduction in "mismatch" conflicts of large and small boats.

Over the past two years, technical improvements in outboard motor designs and more efficient propeller matching has resulted in stronger low-end torque producing outboards which still fall within the 35 horsepower rating standard. The result has been the gradual return to service on the river of a number of the large, relatively heavy "guide sleds." Since these larger boats are generally somewhat underpowered, and are often heavily loaded with clients, large boat wakes are again becoming a safety problem and erosion factor.

Between 1985 and 1990 there has been a near doubling in both the total number of Kenai River fishing guides (160 up to 310), and the number of motorized fishing guides in particular (126 up to 227). This rapid growth rate combined with public perceptions of being crowded out of prime fishing holes by aggressive behavior of some motorized guides, has recently resulted in several proposals aimed at limiting the number of Kenai River fishing guides.

At the same time, many Kenai River guide permittees have themselves publicly called for a cap on the growth of guide numbers, fearing that they may face further "hours and days" access restrictions by the Alaska Board of Fisheries if some limit isn't achieved. Many professional Kenai River guides also feel that the high turnover rate of each season's new inexperienced guides, combined with cut-rate prices and unprofessional behavior of some part-time operators, is harming the reputation of the entire Kenai River guiding industry.

The Alaska Department of Natural Resources (DNR), the Kenai River Special Management Area (KRSMA) Advisory Board, and the Cook Inlet Professional Sportfish Association (CIPSA) which represents most of the Kenai River fishing guides, have all suggested the need for comprehensive social and biological carrying capacity studies to be undertaken for the Kenai River. Data from these studies will assist in making long-term management decisions for the Kenai River. However, it will take several years for these studies to be completed and signals of habitat degradation and overcrowding are already abundant. The high annual turnover rate of Kenai River fishing guides, increasingly common "price wars," and public perceptions of overcrowding from "too many guides" on the river are signs that the limits for this type of commercial activity in the KRSMA have already been exceeded.

In addition to its habitat protection goals, DNR is committed to protecting the quality of the recreational experience for all of its visitors, both guided and unguided, and also in maintaining an equal access opportunity for private recreational users of the Kenai River. Without immediate action, it appears likely that this quality of recreational experience for all river users will continue to be degraded by the rapid expansion of commercial activity. The Kenai River is gaining a reputation as a fishing "meat market" rather than for quality trophy fishing. The carrying capacity studies will likely provide data which will call for future refinements and adjustments to any guide limitations enacted now, as well as perhaps further limitations on all river users. There is no reason to postpone actions which are clearly recognized as necessary now for the good of the river and its visitors. CIPSA is also on record as not disputing the need for a cap or ceiling on the number of Kenai River guides.

DNR has clear statutory authority and responsibility to manage recreational uses and commercial activities within the KRSMA to achieve the purposes set forth in AS 41.21.500-514. The DNR commissioner is specifically charged in AS 41.21.506(b)(2) to "establish a registration, licensing, or comparable procedure for professional fishing guides and such additional fishing guide controls as the commissioner considers necessary." This was initially accomplished in 1985 through the issuance of non-competitive commercial park use permits in accordance with 11 AAC 18.030. While raising the level of professionalism among Kenai River guides, this permit system has not limited their numbers, which have annually increased. DNR is proposing to utilize its competitive commercial park use permit regulations contained in 11 AAC 18.040 and additional proposed regulation changes to the KRSMA guide provisions of 11 AAC 20.885-990, in order to limit the total number and operation methods of fishing guides beginning with the 1992 season. 11 AAC 18.040 states that the director may competitively bid a permit for a commercial activity if he or she finds that "there is a need to limit the number of permits to protect public use of the park or to protect park resources, or there is a need to prevent one business or person from monopolizing commercial activities within a park or portion of a park, or without limitation of the number of permits there would likely be a degradation of quality of the recreational experience in the park, or there may be an unlimited demand for space within a park." (emphasis added)

Many different proposals and variations for limiting the number of Kenai River fishing guides have been advanced in recent months by members of the public, public officials, and user groups. While numerous valuable ideas have been gleaned from these proposals, many of the suggested strategies do not fall within the confines of statutory and regulatory authority or constitutional bounds. Others are inappropriate due to the unreasonable impacts that they would have on the local business economy, guided anglers, or the river guides themselves. Still others initially hold promise, but on further examination would be difficult or impossible to practically enforce, or represent inadequate management of the public's resources.

Part II - Alternative Strategy Analysis

The following is a summary discussion of some of the various alternative proposals which were considered but not selected, and the problems associated with each:

A "moratorium" or "freeze" of guides to those permitted in 1990

Numerous proposals call for a moratorium or freeze which would limit Kenai River guides to those permitted in 1990. This would be basically a "grandfather rights" system and most of the proposals suggest that attrition could be used to gradually reduce the guide total to whatever number was deemed appropriate. These proposals have several problems. The Attorney General's (AG) office has stated that for DNR to continue to permit guides under the 11 AAC 18.030 non-competitive permit regulations while refusing permits to qualified new applicants under a moratorium or freeze would not be legal. If the numbers are limited then the 11 AAC 18.040 Competitive regulations must be utilized. More significantly, the equal access and common use provisions of the state constitution do not allow a specific predetermined group to be favored with permits without competition, except via specific exception language through a constitutional amendment such as was done in the limited entry program for commercial fisheries.

Limit by awarding "Limited Entry"-type permits to existing guides

Various proposals have called for some type of life-time, saleable, transferable, limited entry-type of permits to be issued to all of the Kenai River guides who were permitted as of a certain year, such as 1985 or 1990. Some of these proposals call for attrition to be utilized to gradually reduce the guide total down to various suggested numbers. These proposals all share several significant problems. As already mentioned, there are constitutional problems with any system which benefits a specific predetermined group at the expense of other qualified applicants. The authority to regulate commercial fishermen under limited entry permits rests with the Alaska Commercial Fisheries Entry Commission and results from a specific constitutional amendment to Article VIII, Section 15. Since the Board of Fisheries has historically treated sport fishing guides as a "method and means" of sport harvest, rather than as commercial fishermen, a new specific constitutional amendment would be required to place Kenai River guides under a limited entry-type permit system. Such an amendment would be unlikely for several reasons, including public opinion on limited entry. The awarding of limited entry permits which are saleable would not provide annual revenue to the state which can be used to pay for river management costs. Wise management of the public's constitutionally guaranteed common interest in the Kenai River fish resources dictates that if these resources are to be exploited for commercial gain, then the public should share, to some degree, in a share of the proceeds.

Limiting Kenai River guides through statewide professional licensing of sportfishing guides

Several proposals call for professional licensing of sport fishing guides similar to the system used for hunting guides, rather than use permitting as is done by DNR. Professional licensing in Alaska is done by the Department of Commerce & Economic Development, Division of Occupational Licensing, under specific statutory authority for each type of profession. Thus, additional statutes would be required for fishing

guides to be licensed in this manner. During the first session of the 16th legislature in the spring of 1989, Representative Menard introduced H.B. 267 which called for statewide licensing of sport fishing guides. However, this bill died in the House Resources committee after amendment. An additional consideration is that the provisions of any bill calling for statewide licensing of sport fishing guides are likely to be less stringent than the permitting standards currently in effect for Kenai River guides. Also, an attempt to limit the number of sport fishing guides for the Kenai River through professional licensing would likely fail the constitutional "common use clause" test in view of the Alaska Supreme Court's action in striking down exclusive hunting guide areas in Owsichek vs. State Guide Licensing and Control Board, 763 P. 2d 488 (Alaska 1998).

Giving a resident or "local-hire" preference to Alaskan guides, or limiting Kenai River sport fishing guide permits to Alaska residents only

Numerous proposals call for Alaska resident guides to be given some level of preference ranging from a bid or scoring advantage to limiting the permit eligibility to residents only. All of these proposals are unconstitutional under the case law surrounding the "interstate commerce clause" of the U. S. Constitution, with the possible exception of a reasonable fee differential between residents and non-residents. Sport fish guiding is a commercial activity, and as such is protected by the constitutional ban on interstate restrictions of free trade. A recent Alaska court decision in Carlson vs. State of Alaska, 798 P.2d 1269 (Alaska 1990), has refined the test regarding differential fees for residents versus non-residents, though appeal of the decision is likely. Basically, this ruling states that the non-resident may be charged a fee which is equal to, but no greater, than the fee charged residents plus whatever percentage of other contributions residents make towards management of the resource involved. The resident's "other contributions" may be in the form of "state taxes which only residents pay," or, according to the court, the resident's "share" of the state's annual oil revenues. To be constitutionally acceptable, the end result must be "substantial equality" in the treatment of residents and non-residents. Prohibition of non-resident guides fails this test.

Proposals to limit Kenai River fishing guide activities through additional hours and day restrictions or a.m/p.m. shifts

All of these various proposals center around further restrictions of the days and hours allowed for guiding activity, or dividing the guide permittees into two groups and reducing guide activity by only allowing half to be on the river at one time. While the Board of Fisheries currently utilizes hours and day restrictions to regulate the Kenai River fishing guides as "methods and means" of harvest, these kinds of regulations do nothing to stop the annual increases in guide numbers. Further restrictions of this kind for social reasons might benefit private unguided users, but would place an unfair burden on both the commercial operators and their guided clients. Park visitors who choose to use the services of a permitted guide should also have equal access to the resources. It is difficult for the guide to plan a tourist service business around a number of access restrictions of this type, considering travel schedules of clients and other factors. Such restrictions may impact the economic viability of the guides' operations, and eventually the quality of service, as they force more and more guides into a part-time business status, instead of encouraging full-time professional guides. The a.m./p.m. shift proposals have many of the same drawbacks, along with

creating additional enforcement complications and equity issues. These types of access restrictions should only be implemented if the overall resource degradation and use congestion problems eventually reach a level that requires further restrictions on all river users.

Part III - Analysis of the Effects of Various Kenai River Guide number proposals and their positive and negative effects

For comparison purposes, the various options were evaluated with a mathematical "seat average" derived by multiplying the number of motorized permits by a constant (average) of 4 seats (per boat) plus the number of non-motorized permits multiplied by a constant of 2 seats. This total number of daily guided angler "seats" available compared with the 1990 total yields a percent of increase or decrease in guided angler presence. (See Appendix A for table summary)

Option A - "Maximum Cut - 50/50 Alternative"

This option proposes 100 Kenai River Fishing Guide Permits total with half of them being motorized and half non-motorized. This option would greatly reduce guide presence and impacts on the river. It represents a 72% reduction in the "seat average" which is a substantial reduction from established commercial use levels. It offers no alternative options for unsuccessful applicants to adapt their operation to a different category of permit. This option would substantially affect both motorized and non-motorized guides, as well as local tourist related businesses and the local economy.

Option B - "Rollback to 1985 Level"

This option proposes a rollback to the historical use level of 1985, the first year of DNR permitting of Kenai River guides. It calls for 160 Kenai River Fishing Guide Permits total, with 126 motorized permits and 34 non-motorized permits. This option would greatly reduce guide presence and impacts on the river, but does nothing to correct the imbalance of motorized to non-motorized commercial use. This option represents a 47% reduction in "seat average" which is a major reduction from established commercial use levels, affecting both motorized and non-motorized operators. It offers no alternative options for unsuccessful applicants to adapt their operation to a different category of permit. This option would substantially affect local tourist related businesses and the local economy.

Option C - "Proposed Attrition Rate Model"

This option proposes that in 1992 there would be a total of 300 Kenai River fishing guide permits issued, 10 permits less than the 1990 total. Of the 300 permits, 150 would be motorized and 150 non-motorized, initially achieving a 50/50 ratio. The number of motorized permits available would be gradually reduced over a four year period to 100 by 1996, resulting in a long-term total of 250 Kenai River fishing guides. The reduction rate of motorized permits over a four year period is substantially less than the historical attrition rate, which would provide for a smooth transition to the reduced number. This option eventually reduces motorized commercial use to below the 1985 level while providing an alternative option for some unsuccessful motorized applicants to convert to non-motorized operations. It significantly reduces the total number of fishing guides, but does so in a gradual

manner that should soften the impact on local tourist related businesses. By 1996, this option represents a moderate impact on local businesses of a 35% reduction in "seat average" phased in over time.

Option D - "Adjusted Impact - 1990 Level"

This option also sets the number of Kenai River fishing guide permits at the 1990 level of 310 total, but adjusts the number of motorized permits down to the 1985 level of 126 and allows for 184 non-motorized permittees. Not all of the motorized guides existing in 1990 could be accommodated as motorized permittees under this option, but the additional non-motorized permits would provide an alternative option for unsuccessful motorized applicants to convert to non-motorized operations. Motorized fishing guide impacts would be significantly reduced. While this option does not reduce the total number of Kenai River fishing guides, it does stop the guide growth rate and reduces impacts. This option would result in a moderate impact on local tourist related businesses as it represents a 19% reduction in the "seat average."

Option E - "No Action - 1990 Level"

This option sets the number of Kenai River fishing guide permits at the 1990 level of permits and use category. The total number of permits would be 310, with 227 motorized and 83 non-motorized, thus institutionalizing the current imbalance of the nearly 3 to 1 ratio of motorized to non-motorized commercial users. This option fails to reduce motorized guide impacts and numbers and fails to reduce the total number of fishing guides, though it would stop the growth rate. It represents no change for local tourist related businesses as the "seat average" remains the same as the 1990 level. While this option may appear attractive to many existing commercial guides, its shortcomings as far as dealing with the resource and recreational impact issues and its failure to adjust the motorized to non-motorized ratio imbalance make it unsatisfactory from a management standpoint.

Option F - "Maximum Use - 50/50 Alternative"

This option achieves a 50/50 ratio of motorized to non-motorized fishing guides while accommodating all 227 of the 1990 motorized guides. The result is a growth in total Kenai River fishing guide numbers to 454 through a halting of the growth rate of motorized guide numbers, while allowing additional non-motorized guides to increase to 227 permittees. This option provides equal opportunity for non-motorized operations, but fails to reduce the motorized guide impacts and increases total guide numbers and impacts. This option increases the "seat average" by 27%.

Appendix C - Pre-bid Qualification Requirements

To be eligible for scoring, each prospective bidder must document through their application and required attachments:

A. that they have the following:

1. Alaska Business License (SIC #7990 or #7999)
2. Kenai Peninsula Borough Authority to Collect Sales Tax
3. Alaska Commercial Fisheries Vessel License for guide boat
4. if motorized, a USCG "6-passenger" operator's license and current USCG "AK" boat registration # certificate
5. an Alaska Sportfishing License

B. that they submit a properly completed Park Use Permit application

C. pay a \$50 non-refundable permit application processing fee

D. will agree to:

1. Indemnify the state from liability of any kind;
2. Properly mark commercial guide vessels w/decals & #s;
3. Be aboard the guide vessel during all commercial operations;
4. Not fish or allow support staff to fish from the registered guide vessel while guiding during the months of May, June, and July;
5. Be liable for any damage to state land, water, or facilities;
6. Report any accidents involving personal injury or loss of property, or incidents of wildlife or natural hazards;
7. Maintain valid recognized Basic First Aid certification;
8. Provide proof of commercial liability insurance at a minimum of \$100,000 per individual and \$300,000 per event;
9. Maintain records and provide accurate and timely required reports; and,
10. Comply with other conditions of permit and law.

Appendix D - Application Scoring Criteria

After pre-qualifying, each applicant will then be scored for a maximum of 100 points based on the following weighted criteria:

50 POINTS MAXIMUM - PROFESSIONAL GUIDING EXPERIENCE:

Points will be assigned to each applicant for general river guiding experience, commercial boat operating experience and experience with any form of commercial guiding activity.

For the purpose of experience computation, a "season" equals at least four "active months" each with a minimum of at least 12 days of documentable required activity per month. An aggregate of 20 days from several months which do not meet the standard "active month" criteria may be counted as one "active month." Partial season credit will be prorated at 25% per active month basis to a total of 100% maximum for a particular year. No more than two "seasons" of experience may be credited for a single calendar year. Double credit for the same month may not be claimed based on different experience criteria within the same category.

Credit will not be given for experience gained from illegal activity, i.e. operations conducted without required applicable permits or licenses.

An application may be scored for either or both of the two overall operation-type categories.

Successful applicants in either of the two overall operation-type categories may have their application scored for the Upper Kenai River Endorsement, if they so indicated their interest. Only 40 permittees will receive this special endorsement and they will be the only fishing guides authorized to operate on the Kenai River between Kenai and Skilak Lakes.

Different types of experience receive different values as they relate to the particular category of permit or endorsement being applied for as follows:

Category 1: For Motorized (up to 35 horsepower) Kenai River Fishing Guide Park Use Permit applicants:

- 3 Points** for each season of motorized Kenai River Fishing Guide experience with documented permit history;
- 2 Points** for each season of non-motorized Kenai River Fishing Guide experience with documented permit history;
- 1 Point** for each season of motorized professional river guiding experience with documented permit history on other than the Kenai River System;

- 1 Point for each season of documentable commercial boat operations experience of any kind not included in the above river guiding experience; and,
- 1 Point for each season of documentable commercial guiding experience of any kind not included in the above river guiding experience.

Category 2: For Non-motorized (includes incidental motor use less than 10 Horsepower if USCG licensed) Kenai River Fishing Guide Park Use Permit applicants:

- 3 Points for each season of non-motorized Kenai River Fishing Guide experience with documented permit history;
- 2 Points for each season of motorized Kenai River Fishing Guide experience with documented permit history;
- 2 Points for each season of Non-Fishing Kenai River Guide experience with documented permit history;
- 1 Point for each season of non-motorized professional river guiding experience with documented permit history on other than the Kenai River System;
- 1 Point for each season of documentable commercial boat operations experience of any kind not included in the above river guiding experience; and,
- 1 Point for each season of documentable commercial guiding experience of any kind not included in the above river guiding experience.

For Upper Kenai River Fishing Guide Endorsement (Joint Federal/State Permit Endorsement) (May be applied to either a successful Motorized or Non-Motorized permittee, but Upper Kenai River guiding activities are authorized as Non-Motorized only) (Limited to 40 guide permittees for operation between Kenai and Skilak Lakes):

- 3 Points for each season of experience of combined State Park Kenai River Fishing Guide and USF&WS or USFS documented permit history for operation on the Upper Kenai River between Kenai and Skilak Lakes;
- 2 Points for each season of other Kenai River Fishing Guide experience with documented permit history;
- 2 Points for each season of Kenai River Non-Fishing Guide experience with documented permit history for the Kenai River Canyon;
- 2 Points for each season of documentable commercial Class III+ whitewater boat operation experience not on the Kenai River System;
- 1 Point for each season of documentable commercial boat operations experience of any kind not included in the above river guiding experience; and,
- 1 Point for each season of documentable commercial guiding experience of any kind not included in the above river guiding experience.

25 POINTS MAXIMUM - MISC. QUALIFICATIONS & PERFORMANCE FACTORS:

Qualifications: Value 1 Point maximum for each of the following:

- a) Member in good standing of a professional sport fish guiding association or organization recognized by AK State Parks;
- b) Holder of a valid USCG 6-passenger operator's license, or certification of passing a Boating or Marine Safety Training Program or Class recognized by AK State Parks within the past seven years;
- c) Holder of a valid USCG operator's license in a category higher than the 6-passenger license;
- d) Currently valid certification for CardioPulmonary Resuscitation;
- e) Currently valid certification for Advanced First Aid, ETT, EMT-1, or higher, or certification of training in treatment of Hypothermia and Cold Water Near-Drowning at a level above basic first aid;
- f) Sworn and notarized affidavit with two attesting witnesses documenting three or more seasons of private boat operation experience by the applicant on the Kenai River prior to any commercial experience credited in the previous section;
- g) Sworn and notarized affidavit by the employer guide and one other the attesting witness documenting one or more seasons of assistant or apprentice Kenai River fishing guide experience aboard a registered guide boat under the direct instruction of a permitted Kenai River fishing guide.
- h) Sworn and notarized affidavit by the employer guide and one other attesting witness documenting two or more seasons of assistant or apprentice river guiding experience aboard a registered commercial guide boat anywhere, so long as the experience is gained under the direct instruction of a legally permitted or licensed river guide.
- i) Sworn and notarized affidavit by the employer guide and one other attesting witness documenting three or more seasons of assistant or apprentice guiding experience of any kind, anywhere, so long as the experience is gained under the direct instruction of a legally permitted or licensed guide.
- j) Owns the vessel that the applicant will be using for the proposed guide operation on the Kenai River and the vessel is licensed by the Alaska Commercial Fisheries Entry Commission; and,
- k) Is a holder of an additional Federal or State use permit for commercial guiding activity on the Kenai Peninsula.

Performance Factors: Value 1 Point maximum for each of the following:

- a) Submission of complete and accurate Application Packet and required pre-qualifications documentation;
- b) Timely and accurate submission of Annual Use Reports and Log Data;
- c) Not more than one Warning of Violation of permit stipulations within the past three years;
- d) No suspension or revocation of any Alaska State Park Use Permit during the past five years;
- e) Not more than three Notices to File of Verified and Substantiated Visitor Complaints for guiding operations during the previous permit period (after investigation by State Park Rangers);
- f) No Convictions for State Park Regulation violations within the past five years;
- g) No Convictions for State or Federal Fish & Game violations within the past five years;
- h) No Convictions for State Boating Safety Statutes or Regulation violations within the past five years;
- i) No Convictions for violation of state laws involving jailable offenses during the past five years;
- j) No History of reportable Boating Accidents with fault or Convictions for failure to make a required boating accident report within the past five years;
- k) No Notices of Violation from the USCG for unsafe conditions, improper boating operation, or lack of required equipment within the past five years; or,
- l) No Convictions of negligent or reckless or DWI operation of any vehicle or watercraft within the past five years.

Negative Performance Factors: Value -1 Point for each of the following:

- a) for each of two or more convictions for State Park Regulation violations within the past five years;
- b) for each of two or more convictions for State or Federal Fish & Game violations within the past five years;
- c) for each of two or more convictions of State Boating Safety Statutes or Regulation violations within the past five years;
- d) for each of two or more convictions of state laws involving jailable offenses during the past five years;
- e) for each of two or more reportable Boating Accidents with fault or Convictions for failure to make a required boating accident report within the past five years;
- f) for each of two or more Notices of Violation from the USCG for unsafe conditions, improper boating operation, or lack of required equipment within the past five years; and

- g) for each of two or more Convictions of negligent or reckless or DWI operation of any vehicle or watercraft within the past five years.
- h) for a bounced, or NSF, checks to the State Parks during the past permit period; and,
- i) if the applicant is not current on their payment of Kenai Peninsula Borough Sales Tax Returns.

25 POINTS MAXIMUM - FEE OFFERED:

Applicants may offer two separate bids, one for each of the two overall permit categories: Motorized (up to 35 Horsepower) and Non-Motorized (with incidental motor use less than 10 Horsepower). Point Scores of 0 to 25 will be assigned to each of the bids based on the range of the dollar value above the minimum for the sealed bids received in that overall category. Points will range from the minimum bid with an assigned value of 0, to the maximum bid received for that application year with an assigned value of 25.

The annual permit fee will be the minimum of \$500 Resident/\$1,500 Non-resident, plus the additional annual bid offered by the applicant.

Sample Kenai River Fishing Guide Permit Applicant Scoring Sheet

PROFESSIONAL GUIDING EXPERIENCE - 50 POINTS MAXIMUM:

(A "season" equals 4 "active months" each with a minimum of 12 days of documentable required activity per month. An aggregate of 20 days of activity from several non-qualifying months may be counted as 1 active month. No more than two "seasons" of activity may be credited for a single calendar year. Double credit for the same month may not be claimed based on different experience criteria within the same category. To receive credit for any experience claimed, documentation acceptable to State Parks must be submitted by the applicant.)

CATEGORY 1: for Motorized (up to 35 Horsepower) Kenai River Fishing Guide Park Use Permit applicants:

Seasons of:

Motorized Kenai River fish guide experience _____ X 3 points= _____
Non-motorized Kenai River fish guide experience _____ X 2 points= _____
Other Motorized river guiding experience _____ X 1 point = _____
Other commercial boat operation experience _____ X 1 point = _____
Other commercial guiding experience _____ X 1 point = _____

Category 1 Total Score = _____

CATEGORY 2: for Non-motorized (incl. incidental motor use less than 10 Horsepower if USCG licensed) Kenai River Fishing Guide Park Use Permit applicants:

Seasons of:

Non-motorized Kenai River fish guide experience _____ X 3 points= _____
Motorized Kenai River fish guide experience _____ X 2 points= _____
Non-fishing Kenai River guide experience _____ X 2 points= _____
Other Non-motorized river guiding experience _____ X 1 point = _____
Other commercial boat operation experience _____ X 1 point = _____
Other commercial guiding experience _____ X 1 point = _____

Category 2 Total Score = _____

Special Endorsement: Upper Kenai River Fishing Guide Endorsement (Joint Federal/State Permit Endorsement) Successful applicants in either Category 1 or 2 above may also request that their application be scored for this Upper Kenai River Fishing Guide Endorsement that will be limited to a maximum of 40 guides authorized to conduct operations between Kenai and Skilak Lakes.)

Seasons of:

Upper Kenai River fish guide experience _____ X 3 points= _____
Other Kenai River fish guide experience _____ X 2 points= _____
Upper Kenai River Non-fish guide experience _____ X 2 points= _____
Other Class III+ river guide experience _____ X 2 points= _____
Other commercial boat operation experience _____ X 1 point = _____
Other commercial guiding experience _____ X 1 point = _____

Special Endorsement Score = _____

MISC. QUALIFICATIONS & PERFORMANCE FACTORS - 25 POINTS MAXIMUM:
 (Value of 1 Point maximum for each of the following items upon submission of documentation acceptable to State Parks)

Qualifications:

- Member of a professional fish guide association (1 point) _____
- USCG 6-pack license or Marine Safety Training (1 point) _____
- USCG license of higher category than 6-pack (1 point) _____
- Current CardioPulmonary Resuscitation certification (1 point) _____
- Current Adv.First Aid, ETT, EMT-1 or higher certification or Adv.Hypothermia & Cold Water training (1 point) _____
- Sworn affidavit w/witnesses of three or more seasons of private Kenai River boat operation experience (1 point) _____
- Sworn affidavit by employer & witness of one or more seasons of assistant Kenai River guide experience (1 point) _____
- Sworn affidavit by employer & witness of two or more seasons of other river assistant guide experience (1 point) _____
- Sworn affidavit by employer & witness of three or more seasons of any kind assistant guide experience (1 point) _____
- Owens the registered guide vessel that will be used for his/her proposed Kenai River guiding operation (1 point) _____
- Holds additional federal or state use permits for commercial guiding activity on the Kenai Peninsula (1 point) _____

Performance Factors:

- Submission of complete & accurate park use permit application and required documentation (1 point) _____
- Timely and accurate submission of required reports (1 point) _____
- No bounced or NSF checks to State Parks during the previous permit period (1 point) _____
- Applicant current on Kenai Peninsula Borough sales tax returns during the previous permit period (1 point) _____
- Not more than one Warning of Violation for permit stipulation violation within the past three years (1 point) _____
- No suspension or revocation of State Park Use Permit during the past five years (1 point) _____
- Not more than three Notices to File of verified and substantiated visitor complaints during the previous permit period (1 point) _____
- No Convictions for State Park Regulations violations within the past five years (1 point) _____
- No Convictions for State or Federal Fish & Game violations within the past five years (1 point) _____
- No Convictions for State Boating Safety statute or regulation violations within the past five years (1 point) _____
- No Convictions for violation of any state laws involving jailable offenses within the past five years (1 point) _____
- No History of reportable Boating Accidents with fault or Convictions for failure to make a required boating accident report within the past five years (1 point) _____
- No Notices of Violation from the USCG for unsafe conditions, improper boating operation, or lack of required equipment within the past five years (1 point) _____

No Convictions of negligent or reckless or DWI operation of any vehicle or watercraft within the past five years (1 point) _____

Misc. Qualifications & Performance Factors Sub-total _____

Negative Performance Factors:

(Subtract 1 Point from the above Misc. Qualifications & Performance Factors Subtotal for each of the following:)

- For each of two or more convictions for State Park Regulation violations within the past five years (-1 point) _____
- For each of two or more convictions for State or Federal Fish & Game violations within the past five years (-1 point) _____
- For each of two or more convictions of State Boating Safety statutes or regulations within the past five years (-1 point) _____
- For each of two or more convictions of state laws involving jailable offenses during the past five years (-1 point) _____
- For each of two or more reportable Boating Accidents with fault or convictions for failure to make a required boating accident report within the past five years (-1 point) _____
- For each of two or more Notices of Violations from the USCG for unsafe conditions, improper boating operation, or lack of required equipment within the past five years (-1 point) _____
- For each of two or more convictions of negligent or reckless or DWI operation of any vehicle or watercraft within the past five years (-1 point) _____

Negative Performance Factors Total = _____

FEE OFFERED - 25 POINTS MAXIMUM:

(Applicants may offer two separate fee bids one for each of the two overall permit categories: Category 1 - Motorized (up to 35 Horsepower) and Category 2 - Non-Motorized (with incidental motor use less than 10 Horsepower). Minimum fees are \$500 Resident / \$1500 Non-Resident, and bids will be an annual payable amount for each year of the permit to be utilized. Point Scores ranging from 0 to 25 will be assigned to each of the bids based on the range of the dollar value above the minimum for the sealed bids received in that overall category. Points will range from the minimum bid with an assigned value of 0, to the maximum additional fee bid received for that application year with an assigned value of 25.

CATEGORY 1 BID:

(Motorized)

This is my (circle):

1st Choice / 2nd Choice

I am an Alaskan (circle):

Resident / Non-Resident

\$500

\$1500

- Minimum Fee -

+\$ _____

+\$ _____

- Additional Bid -

CATEGORY 2 BID:

(Non-Motorized)

This is my (circle):

1st Choice / 2nd Choice

I am an Alaskan (circle):

Resident / Non-Resident

\$500

\$1500

+\$ _____

+\$ _____

Total Annual

- Fee Offered -

\$

\$

\$

\$

Kenai River Fishing Guide Permit Applicant Scoring Sheet Recap

CATEGORY 1 - MOTORIZED K.R. GUIDE (up to 35 Horsepower)

Category 1 - Professional Guiding Experience Total = _____

Misc. Qualifications & Performance Factors Subtotal = + _____

Negative Performance Factors (Subtract negative) = (- _____)

Total Category 1 Experience, Qualifications &
Performance Factors Score (Max 75) = _____

Score awarded to Category 1 Fee Bid offered (Max 25) = + _____

Total Category 1 Score

CATEGORY 2 - NON-MOTORIZED K.R. GUIDE (incidental less than 10 HP)

Category 2 - Professional Guiding Experience Total = _____

Misc. Qualifications & Performance Factors Subtotal = + _____

Negative Performance Factors (Subtract negative) = (- _____)

Total Category 2 Experience, Qualifications &
Performance Factors Score (Max 75) = _____

Score awarded to Category 2 Fee Bid offered (Max 25) = + _____

Total Category 2 Score

SPECIAL ENDORSEMENT - UPPER KENAI RIVER FISHING GUIDE ENDORSEMENT
(Available only to 40 successful applicants from Category 1 or
Category 2 above)

Special Endorsement - Pro. Guiding Experience Total = _____

Misc. Qualifications & Performance Factors Subtotal = + _____

Negative Performance Factors (Subtract negative) = (- _____)

Total Special Endorsement Experience, Qualifi-
cations & Performance Factors Score (Max 75) = _____

Score awarded to applicable category additional
Fee bid offered (Max 25) = + _____

Total Special Upper K. R. Endorsement Score

Part 1. Office of the Commissioner (11 AAC 03--11 AAC 05)

Part 2. Parks, Recreation and Public Use (11 AAC--11 AAC 20)

PART 1. OFFICE OF THE COMMISSIONER

Chapter

05. Fees for Department Services (11 AAC 05.010--11 AAC 05.900)

CHAPTER 05. FEES FOR DEPARTMENT SERVICES

Section

010. Fees

DRAFT

11 AAC 05.010. is amended to read:

11 AAC 05.010. FEES. (a) Non-refundable fees to apply for authorizations, and fees to obtain publications or services from the department, are as follows:

(12) parks and outdoor recreation, except for activities in a state park under a concession contract

(I) the fees for non-competitive park use permits for a commercial activity, as defined in 11 AAC 12.340 are

(i) a \$50 non-refundable permit application processing fee;

(ii) an additional permit fee not to exceed \$250 for residents and a permit fee not to exceed \$750 for non-residents if a permit is issued [, EXCEPT THAT FOR ANY FISHING GUIDE SERVICES, NOT INCLUDING NON-FISHING FLOAT TOUR GUIDES, WITHIN THE KENAI RIVER SPECIAL MANAGEMENT AREA A \$450 PERMIT FEE FOR RESIDENTS AND A \$1350 PERMIT FEE FOR NON-RESIDENTS IS REQUIRED IF THE APPLICATION IS GRANTED].

(J) the fees for competitive park use permits for a commercial activity, as defined in 11 AAC 12.340 are

(i) a \$50 non-refundable permit application processing fee;
and

(ii) the applicant's annual fee bid offer to the state in accordance with 11 AAC 18.040 (d) if a permit is issued.

(K)[J] the fee for overnight use of a developed group campsite is \$25 or \$1 per person, per night, whichever is greater;

(L)[K] for purposes of this paragraph, "director" means the director of the division of Parks and Outdoor recreation, in the department;

(M)[L] for the purposes of this paragraph, "overnight use" means using or occupying a campsite by a person or vehicle, or erecting a tent or shelter or arranging bedding, or both, in order to stay any time at a site between 6:00 p.m. and 9:00 a.m. local time;

(N)[M] for the purpose of this paragraph, "vehicle" means a motorized or non-motorized device capable of carrying people or objects, or towing a trailer, and includes automobiles, trucks, motorhomes, campers, trailers or aircraft when it is used as the principal means of access to or occupancy of a campsite;

(O)[N] for purposes of this paragraph, "resident" means a natural person who for the preceding 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the state; however, a member of the military service, who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this chapter, and any dependent of a resident member of the military service, who has been living in the state for the preceding 12 consecutive months [THE SAME AS DEFINED IN AS 16.05.940]. (Eff. 1/1/86, Register 96; am 8/10/86, Register 99; am 9/28/86, Register 99; am 8/23/87, Register 103; am 1/28/88, Register 105; am 7/1/89, Register 110; addt'l am 7/1/89, Register 110; am / / , Register ; am / / , Register)

Authority: AS 03.10.020

AS 38.50.160

AS 38.05.020

AS 44.37.020

containing falsification of material fact, or who in attesting to another applicant's eligibility willfully misrepresents, exercises gross negligence, or recklessly disregards a material fact pertaining to that eligibility shall be subject to immediate disqualification from further consideration for permit issuance or revocation of an existing permit for a period of one year from the discovery of the falsification. This administrative penalty is in addition to possible criminal penalties which may apply. (Eff. 5/11/85, Register 94; am 7/1/89, Register 110, am / / , Register)

Authority: AS 41.21.020
AS 41.21.040

11 AAC 18.040 is amended to read:

11 AAC 18.040 COMPETITIVE PARK USE PERMITS FOR COMMERCIAL
ACTIVITIES

DRAFT

(c) A permit issued under this section must

(3) terminate after no more than five years [WITH A POSSIBILITY OF RENEWAL FOR FIVE MORE YEARS,] and it is revocable at any time that the director determines that the criteria set by 11 AAC 18.025(c) are not being met, the public interest is not otherwise served, or the terms and conditions of the permit are not followed.

(d) The minimum bid price for a permit under this section will be set by the director but may not exceed \$500 for residents and \$1,500 for non-residents [IS \$200] per permit per calendar year. [,AND THIS] This minimum bid will be set [MAY BE INCREASED BY THE DIRECTOR] to give the state a fair and reasonable return in light of the cost of administering the activity [PERMITTED UNDER THIS SECTION], the impact of the proposed activity on the park, the incidental benefit that might be provided to the visitors and the park, goods or services provided to the state, and the gross business receipts attributable to the activity.

AS 38.05.035
 AS 16.05.940
 AS 27.21.030
 AS 27.21.940
 AS 38.09.110
 AS 41.21.506

AS 44.37.025
 AS 41.06.020
 AS 41.21.020
 AS 41.21.026
 AS 38.35.020
 AS 46.15.020

CHAPTER 18. SPECIAL PARK USE PERMITS

Article

- 1. Park Uses (11 AAC 18.010-11 AAC 18.040)
- 2. General Provisions (11 AAC 18.200)

ARTICLE 1. PARK USES

Section

25. Procedure

40. Competitive Park Use Permits for Commercial Activities

11 AAC 18.025 is amended to read:

11 AAC 18.025. PROCEDURE.

(b) Except for permits under 11 AAC 18.040, the [THE] director shall respond within thirty days to a written application made under this section.

(f) A permit may not be assigned without the prior written approval of the director. A permit issued under 11 AAC 18.040 may not be assigned.

(h) A park use permit applicant who falsifies any material fact on his/her permit application, or who submits supportive documentation

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(eff. 5/11/85, Register 94; am 1/28/88, Register 105, am 2/3/88, Register 105, am / / , Register)

Authority:	AS 41.21.020	AS 41.21.506
	AS 41.21.026	AS 41.21.950
	AS 41.21.040	AS 41.21.955

ARTICLE 2. GENERAL PROVISIONS

Section

200. Definitions

DRAFT

11 AAC 18.200 is amended by adding new sections to read:

11 AAC 18.200. DEFINITIONS. In this chapter

(12) "resident" means a natural person who for the preceding 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the state; however, a member of the military service, who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this chapter, and any dependent of a resident member of the military service, who has been living in the state for the preceding 12 consecutive months;

(13) "guide services" means services offered or supplied by any person to another person with the intent of receiving valuable consideration through barter, trade, or other commercial means, by accompanying and directing that person's activities in a state park; for the purposes of this section, guide services include, but are not limited to, operating a vehicle to provide transportation for any recreational activity including hunting, fishing, hiking, skiing, mountaineering, photography, sightseeing, rafting, kayaking, canoeing, and flying; supplying equipment and personal instruction for its use; baiting hooks; netting and cleaning fish; cooking meals; assisting with rod and reel operation; assisting in the taking of wildlife; leading;

progress by dragging an anchor or other object of insufficient weight or utilizing a line or chain of insufficient scope.

(d) Subsection (c) above shall not apply to the momentary slippage of an anchor which may occur while it is being raised or lowered, or to inadvertent slippage due to a failed anchoring attempt so long as fishing activity from the boat does not continue until the watercraft's downriver progress has ceased.

(e) No person may leave an anchored buoy unattended in the Kenai River Special Management Area, unless authorized by the director under 11 AAC 18.010. (Eff. / / , Register)

Authority: AS 41.21.020
AS 41.21.506

DRAFT

11 AAC 20.885 is amended to read:

11 AAC 20.885. KENAI RIVER GUIDE PERMITS. (a) No person may provide guide services within the Kenai River Special Management Area without first obtaining a valid Kenai River Guide Permit issued by the division of the appropriate type for the commercial activity to be conducted.

(f) Non-Fishing Guide permits will be issued under 11 AAC 18.030. No person permitted as a Non-Fishing Guide may provide any services, transportation or assistance to another person in pursuit of catching or taking fish or game, or the experience associated with attempting to catch or take fish or game.

(g) Sport Fishing Guide permits and endorsements will be limited in accordance with 11 AAC 18.040 and awarded in a competitive manner by scoring applicants on documented seasons of guiding experience, supplemental qualifications and performance factors, and the annual fee bid offered to the state.

11 AAC 20.860. BOAT MOTOR USE.

(f) In this section, "propshaft horsepower rating" and "equivalent propshaft horsepower rating" mean either the boat motor's original manufacturer rated and labeled horsepower [, OR, IN THE CASE] or the altered horsepower of a boat motor altered or de-tuned by the manufacturer or dealer under (c) of this section, [THE ALTERED HORSEPOWER OF A BOAT MOTOR] provided that the boat motor's horsepower has been rated as dynamometer tested horsepower at the last output driveshaft with the engine operating at the midpoint RPM of the full throttle speed range recommended by the manufacturer. The addition of a jet drive unit to any boat motor does not change the equivalent propshaft horsepower rating of the motor powerhead and driveshaft configuration for the purposes of this section. (Eff. 5/11/85, Register 94; am 4/25/86, Register 98; am 7/1/89, Register 110; am / / , Register)

Authority: AS 41.21.020
AS 41.21.506

DRAFT

Article 15 is amended by adding a new section to read:

11 AAC 20.862 BOATING METHODS. (a) No guide permittee may operate a motor powered boat in the Kenai River Special Management Area, except upon Kenai or Skilak Lakes, with more than five adults aboard, including the operator. For the purposes of this section, two children under age 12 may be counted as one adult. Each child age 12 and older is counted as an adult.

(b) No person may anchor a boat in the Kenai River Special Management Area in a manner obstructing a primary traffic channel of any section of the river.

(c) No person may, for the purpose of fishing in the Kenai River Special Management Area slow, but fail to stop, a boat's downriver

11 AAC 20.860. BOAT MOTOR USE.

(f) In this section, "propshaft horsepower rating" and "equivalent propshaft horsepower rating" mean either the boat motor's original manufacturer rated and labeled horsepower [, OR, IN THE CASE] or the altered horsepower of a boat motor altered or de-tuned by the manufacturer or dealer under (c) of this section, [THE ALTERED HORSEPOWER OF A BOAT MOTOR] provided that the boat motor's horsepower has been rated as dynamometer tested horsepower at the last output driveshaft with the engine operating at the midpoint RPM of the full throttle speed range recommended by the manufacturer. The addition of a jet drive unit to any boat motor does not change the equivalent propshaft horsepower rating of the motor powerhead and driveshaft configuration for the purposes of this section. (Eff. 5/11/85, Register 94; am 4/25/86, Register 98; am 7/1/89, Register 110; am / / , Register)

Authority: AS 41.21.020
AS 41.21.506

DRAFT

Article 15 is amended by adding a new section to read:

11 AAC 20.862 BOATING METHODS. (a) No guide permittee may operate a motor powered boat in the Kenai River Special Management Area, except upon Kenai or Skilak Lakes, with more than five adults aboard, including the operator. For the purposes of this section, two children under age 12 may be counted as one adult. Each child age 12 and older is counted as an adult.

(b) No person may anchor a boat in the Kenai River Special Management Area in a manner obstructing a primary traffic channel of any section of the river.

(c) No person may for the purpose of fishing in the Kenai River Special Management Area slow, but fail to stop, a boat's downriver

(h) The total number of sport fishing guide permits offered or existing under 11 AAC 18.040 to conduct motorized sport fish guiding operations on Kenai and Skilak lakes and the Kenai River between river miles 4.3 and 50 will be

(1) Effective January 1, 1992, 150, with thirty eight permits for a term of one year, thirty eight permits with a two year term, thirty seven permits with a three year term, and thirty seven permits with a four year term.

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(2) Effective January 1, 1993, 137.

(3) Effective January 1, 1994, 124.

(4) Effective January 1, 1995, 112.

(5) Effective January 1, 1996, 100.

(i) Effective January 1, 1992, the total number of sport fishing guide permits offered under 11 AAC 18.040 to conduct non-motorized sport fish guiding operations on Kenai and Skilak lakes and the Kenai River between river miles 4.3 and 50 will be 150. Thirty eight permits with a term of one year will be offered. Thirty eight permits with a term of two years will be offered. Thirty seven permits with a term of three years will be offered. Thirty seven permits with a term of four years will be offered.

(j) Effective January 1, 1992, a total of 40 sport fishing guides permitted under (h) and (i) above will be authorized to conduct non-motorized sport fish guiding operations on the Kenai River between river miles 65 and 82 under an Upper Kenai River Fishing Guide Endorsement.

(k) Effective January 1, 1993, new sport fishing guide permits offered will be for a term of four years.

(l) In the case of a tie for the last permit offered under (h) - (k) above, a lottery drawing will be held between the tied applicants.

(m) Non-motorized sport fishing guides holding an appropriate United States Coast Guard license may use a boat motor of less than ten horsepower when such use is incidental to their primary non-motorized means of travel, such as for crossing flat or slow water areas, and the motor is not operated during fishing activity or to engage in prolonged or repeated upstream travel.

(n) A natural person may hold only one valid Special Park Use Permit for Kenai River sport fish guiding. Permits may not be held by companies, corporations, or other business entities. A permitted guide may register more than one guide boat on his/her permit, but a permitted guide must be aboard a guide boat whenever it is used in the Kenai River Special Management Area for guiding activities.

(o) No permitted guide, support staff or any other employees or assistants may fish from a registered guide boat in the Kenai River Special Management Area during the months of May, June, and July while clients are present.

DRAFT

(p)(1) The director may revoke a park use permit at any time without compensation to the permittee or liability to the authorizing agency in accordance with 11 AAC 18.025 (h) or 11 AAC 18.040 (c)(3) or (g), or as provided in (2) below.

(2) A park use permit may be immediately suspended or revoked by the director or authorized representative for:

- (A) Loss or expiration of United States Coast Guard operators license;
- (B) Loss or expiration of required liability insurance coverage;
- (C) Loss of Alaska sport fishing license by court conviction;
- (D) Conviction of any felony crime or other jailable offense;

- (E) Conviction of a gross public safety violation relating to boating activity:
- (F) Conviction of conducting commercial activities in the Kenai River Special Management Area without a permit of the appropriate type:
- (G) Conviction of violation of Alaska State Park boating or guide regulations:
- (H) Two convictions for violation of Alaska State Park regulations within a one-year period or three convictions within a five-year period.

(3) A park use permit may be immediately suspended for up to five guiding days by an authorized state park officer for:

- (A) Citation or arrest for any felony crime or other jailable offense within the area covered by the permit:
- (B) Citation or arrest for violation of Alaska State Park boating regulations:
- (C) Citation or arrest for violation of any Alaska Department of Fish and Game regulation or statute:
- (D) Citation or arrest for assisting or allowing clients to violate any Alaska Department of Fish and Game regulation or statute:
- (E) Citation or arrest for use of a motor in a non-motorized area except in an emergency:
- (F) Citation or arrest for manifestly unsafe operation of a watercraft.

(4) A permittee whose permit is suspended under (3) above may appeal to the Kenai Area superintendent, who will hold an administrative review hearing within 24 hours. (Eff. 7/1/89, Register 110; am / / , Register ;)

Authority: AS 41.21.020
AS 41.21.506

Article 15 is amended by adding a new section to read:

11 AAC 20.890. BOAT RENTALS. (a) No person may provide boats for use or intended for use primarily in the Kenai River Special Management Area as a commercial activity as defined in 11 AAC 12.340 (19) without a commercial park use permit with specific authorization for rental activities. (Eff. / / , Register)

Authority: AS 41.21.020
AS 41.21.040
AS 41.21.506

ARTICLE 16. SPECIAL PROVISIONS

Section

990. Definitions

DRAFT

11 AAC 20.990 is amended by adding new sections to read:

11 AAC 20.990. DEFINITIONS. As used in this chapter,

(21) "non-fishing guide" means any person who provides guide services excluding any services, transportation or assistance provided to another person in pursuit of catching or taking fish or game, or the experience associated with attempting to catch or take fish or game;

(22) "sport fishing guide" means any person who provides guide services to another person in pursuit of catching or taking fish or game, or the experience associated with attempting to catch or take fish or game;

(23) "motorized sport fishing guide" means any sport fishing guide holding a Motorized Competitive Commercial Park Use Permit and authorized for all legal methods of boat operations;

(24) "non-motorized sport fishing guide" means any sport fishing guide holding a Non-Motorized Competitive Commercial Park Use Permit and authorized only for non-motorized boat operations; if also the holder of a valid United States Coast Guard commercial motorboat operators license, a non-motorized sport fishing guide is authorized to operate a boat with a motor of less than 10 horsepower, provided that its use is incidental to the primary non-motorized means of travel, the area is not closed to motor boat operations, and the motor is not operated during fishing activity or to engage in prolonged or repeated upstream travel;

(25) "primary traffic channel" of a river includes both the deepest channel commonly utilized by motorized boats for upstream travel and the fishing drift channel commonly utilized by boats floating downstream with the current;

DRAFT

(26) "season" means four active months of at least twelve days each of documentable required activity. (Eff. 5/11/85, Register 94; am 2/3/88, Register 105; am 7/1/89, Register 110; am / / , Register ; am / / , Register)

Authority: AS 41.21.020
AS 41.21.040
AS 41.21.506

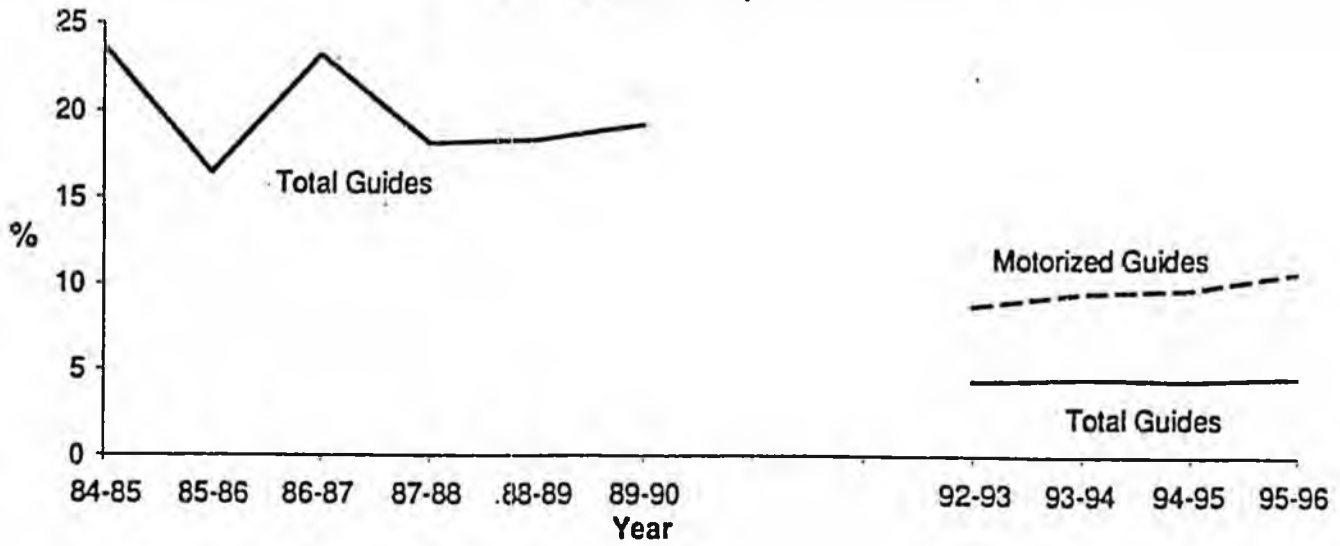
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**APPENDIX F
STATISTICAL INFORMATION**

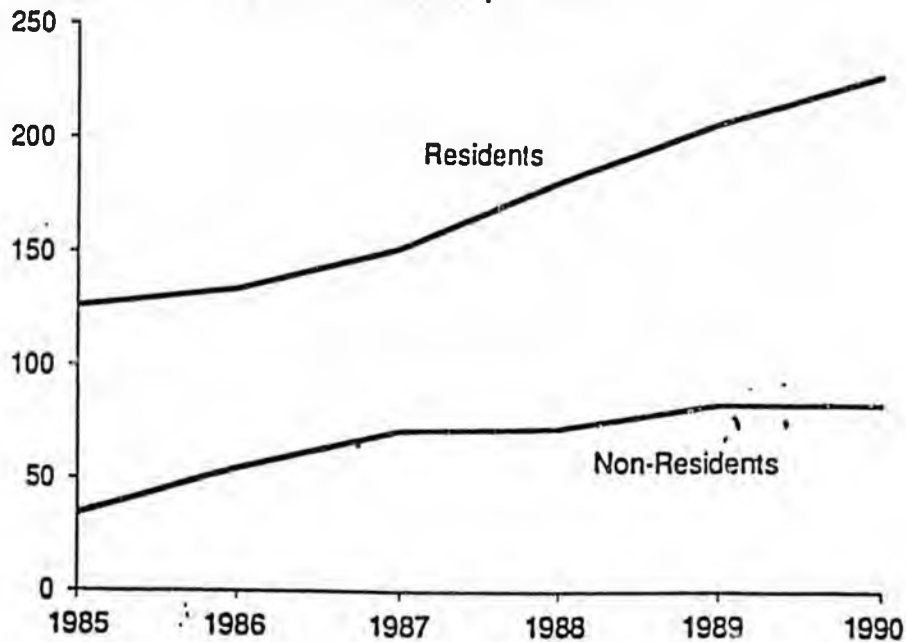
**KENAI RIVER GUIDE TRENDS AND NUMBERS
1982-1990**

Year	Total	Residents	Non-Residents	Fishing	Non-Fishing	Fishing Motor	Fishing Drift	Non-Fishing Motor	Non-Fishing Drift
1990	330	234	96	310	20	227	83	16	4
1989	312	212	100	289	23	206	83	9	14
1988	268	191	77	252	16	180	72	4	12
1987	232	188	44	222	10	151	71	4	6
1986	198	148	50	187	11	133	54	5	6
1985	171	131	40	160	11	126	34	5	6
1984	224			214	10				
1983	208			198	10				
1982	217			207	10				

**Historical and Proposed Annual Attrition Rates
Kenal River Guides, 1985-1996**



**Resident / Non-Resident Numbers
Kenal River Guides, 1985-90**



APPENDIX G

PROPOSED TIMELINE FOR PROGRAM KENAI RIVER GUIDE LIMIT PROPOSAL

March 21, 1991	Proposal and draft regulations released at Kenai River Advisory Board meeting.
March 21, 1991	Forty-five day public comment period begins.
April 11, 1991	Kenai River Advisory Board meets on proposal.
April 17, 18, 1991	DNR conducts public hearings on draft regulations, Anchorage and Soldotna.
April, 1991	Advisory Board may schedule special work sessions.
May 6, 1991	Public comment period ends.
May 6-15, 1991	Public comment tabulated and analyzed.
May 16, 1991	Advisory Board meets to develop recommendations to DNR.
May 23, 1991	Regulations revised and signed by DNR commissioner, submitted to Department of Law for final review.
June 10, 1991	Regulations signed into law, becoming effective 30 days later. Advisory notice to prospective applicants mailed out.
July 10, 1991	Regulations effective, guide permit application packets made available.
August 23, 1991	Deadline for submission of 1992 applications.
September 2, 1991	Applicants notified of receipt of completed applications.
October 1, 1991	1992 permit award notification.
January 2, 1992	1992 permits issued.

MEMORANDUM

State of Alaska

Department of Law

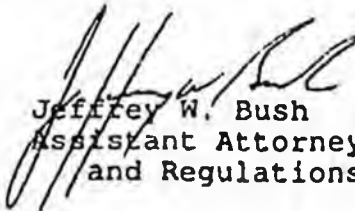
TO: Hon. Harold C. Heinze
Commissioner
Department of Natural Resources

DATE: September 27, 1991

FILE NO: 993-90-0049 and
993-91-0105

TEL. NO: 465-3600

SUBJECT: Parks/Kenai River guide
regulations projects

FROM: 
Jeffrey W. Bush
Assistant Attorney General
and Regulations Attorney

As outlined below, we have completed our review and are prepared to approve for filing most of the general regulations on parks, file no. 993-90-0049, once the issue of helicopter use in the Wood-Tikchik State Park is resolved. With respect to the KRSMA sport-fish guide regulations, file no. 993-91-0105, we cannot approve them in their current form because, if put into effect, the limited entry permit system would clearly violate several provisions of the Alaska Constitution.

Parks, file no. 993-90-0049:

We recently received a copy of a memorandum from you to Lieutenant Governor Coghill dated September 18, 1991, which proposes to change 11 AAC 20.375 to outlaw the use of private helicopters in Wood-Tikchik State Park, but then proposes to "grandfather" in an exception to the prohibition for the single operator working in the area at the present time.

Our research concludes that to "grandfather" in one individual permittee on a permanent basis would violate the Alaska Constitution's equal protection clause (art. I, sec. 1) and equal application provision (art. VIII, sec. 17). Although we have opined in the past that certain grandfather provisions may be defensible (see 1986 Inf. Op. Att'y Gen. (883-86-0076; May 28)), that is only arguably true where the distinction created is based on a valid and substantial state interest. In the present case, we cannot find any significant state interest that is being furthered by the proposed exception. In fact, the exception is directly at odds with the management plan for the park, which was adopted by the Wood-Tikchik State Park Management Council in accordance with the legislative mandate under AS 41.21.164.

Therefore, the proposed revision cannot be approved. Several other acceptable options are available, however. The department could simply remove 11 AAC 20.375 from the project. We

Hon. Harold Heinze, Comm'r, DNR
Our file: 773-90-0049 and 993-91-0105

September 27, 1991
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understand that Lieutenant Governor Coghill prefers this approach. 1/ Alternatively, the department could leave the absolute prohibition on helicopters in 11 AAC 20.375; this was the substance of the regulation as adopted by your department. As a potential compromise, a third option would be for the department to adopt the absolute prohibition now but delay the effective date of the section, to allow the current operator to continue his helicopter operations for some period of time. We await your instructions before proceeding with these regulations.

Kenai River guide limitation, file no. 993-91-0105

The current proposal to limit the number of guides on the Kenai River is patently unconstitutional. The proposal would set up a system in which anyone wishing to guide on the river could apply to the department for a permit. Permits would be issued for a five-year period (1/5 each year) to those applicants scoring the highest number of points, which would be awarded based on several factors. Proposed 11 AAC 20.887. The most significant factor, and the one of greatest concern from a constitutional perspective, is the proposal to award five points for each year of guiding experience on the Kenai River. Proposed 11 AAC 20.887(d)(1). Since we can assume that all other factors will generally cancel themselves out, the system will naturally heavily favor current permittees over new entrants to the program, because a current permittee who is required to reapply when his/her permit expires would automatically get 25 points for the preceding five years of experience gained as a permit holder. This is precisely the kind of special preference rejected by the Supreme Court in Owsichek v. State, 763 P.2d 488 (Alaska 1988).

In Owsichek, the Supreme Court stated that it would not accept any monopoly system to regulate the use of our fish or wildlife. There are to be no "exclusive grants or special privileges." Id. at 493, citing Alaska Constitutional Convention papers; see also McDowell v. State, 785 P.2d 1, 6 (Alaska 1989). This prohibition on exclusive grants or privileges applies not only to a grant to a single person or corporation but to any special group or number of people. McDowell, 785 P.2d at 7. The system that was rejected in Owsichek was "based primarily on use, occupancy and investment, favoring established guides at the expense of new entrants in the market." 736 P.2d at 496, emphasis added. The Court noted that "to grant such a special privilege

1/ If you would like to revisit this issue later, we could designate the rest of this project as Part 1 and submit it to the lieutenant governor at this time for filing, and designate 11 AAC 20.375 as Part 2 for further work.

Hon. Harold Heinze, Comm'r, DNR
Our file: 773-90-0049 and 993-91-0105

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based primarily on seniority runs counter to the notion of common use." Id.

Unlike under the current Kenai River proposal, in Owsichek the Court was faced with a system in which the guide permit, the "exclusive guide area," was of unlimited duration. The Court relied, in part, on this factor in its analysis in Owsichek. 763 P.2d at 496. We do not believe, however, that this distinction is significant enough to make the current proposal defensible. The Owsichek Court based its decision not only on the unlimited duration of the special privilege granted by the state, but also on the fact that the privilege was granted at all. Id. Moreover, the system proposed for the Kenai River so heavily favors established guides over new entrants as to make the permits effectively of unlimited duration.

Even if we were able to overcome these constitutional hurdles, there is a serious question whether any system to limit guide numbers would be defensible at the present time. Your department recently furnished us back-up information that supposedly justifies the proposed guide limits. This information, however, shows that the actual fishing pressure on the river has not significantly changed since 1983, and in fact it declined in 1990 and 1991. Furthermore, the evidence shows that although the actual number of guides has increased over this period, guided angler hours still constitutes only 40% of the total fishing effort on the river.

To survive challenge, a regulation must be reasonably necessary to carry out the purpose of its enabling statutes. See Kelly v. Zamarello, 486 P.2d 906, 911 (Alaska 1971). When the regulation affects access to fish, it must also impinge as little as possible on the constitution's open fishery clauses (Art. VIII, secs. 3 and 15). Johns v. CFEC, 758 P.2d 1256, 1266 (Alaska 1988); State v. Ostrosky, 667 P.2d 1184, 1191 (Alaska 1983). Assuming the department has the authority to adopt a regulation to limit the number of guides on the river and proposes to do so in a constitutional manner, the department still must be able to demonstrate that the limitation is reasonably necessary. The data supplied to us supports neither the conclusion that there is a problem of overcrowding or of increasing fishing pressure, nor the conclusion that limiting the number of guides alone would help solve the problem, if it were found to exist. 2/

2/ Even if we assume that the river is overcrowded (and has been since 1983), DNR's current proposal is to issue 220 permits plus 30 lodge concession permits. Proposed 11 AAC 20.885(h) and (i). This further undermines our argument, because these figures

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Our file: 773-90-0049 and 993-91-0105

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Page 4

For the reasons outlined above, we cannot approve for filing any regulations proposing to limit the number of guides through a system that favors existing guides over new entrants. If we assume, however, that your department can find sufficient empirical evidence that a problem of overcrowding or increasing crowding exists on the river and that a limitation on the number of guides would alleviate the problem, we can suggest possible systems that would be defensible. A pure lottery system, in which lottery participants qualify based on criteria that do not favor established guides over new entrants, would be the best system and clearly would not violate constitutional prohibitions. The length of the permit would have to be reasonable, but we believe the proposed five-year period would not cause any serious problems. We recommend the department seriously consider this option.

If the department finds the lottery option unpalatable, a concession system, in which any qualified guide applicant could bid and permits would go to the highest bidders, would arguably be defensible. The Court in Owsichek indicated that such a system might survive constitutional challenge (763 P.2d at 497), although there is a strong possibility the Court would reject such a system because it would favor the wealthy. See Ostrosky, 667 P.2d at 1198 (Chief Justice Rabinowitz, dissenting). We would likely approve a regulatory scheme based on such a concession system (assuming that there is sufficient evidence that the system was reasonably necessary) and leave it to the courts to decide the program's legality.

Enclosed are your original adoption order and supporting documents for this project. We will now close our file on this project. If you wish to pursue an alternative guide limitation program for the river, please contact us and we will open a new regulations file for that project at that time.

JWB:cl

cc w/enc.: Neil Johannsen, Director
Division of Parks

John B. Coghill
Lieutenant Governor

Elizabeth Barry
Assistant Attorney General
Anchorage

do not represent a significant reduction from current guide numbers and thus are not designed to alleviate the alleged problem.

**The Feasibility of
Limited Entry and Permit Exchange
For the Guided Sport Fishery**

Prepared by:

Susan M. Shirley
Ben Muse

*See pgs 1-8
especially 5*

April 9, 1992

CFEC Briefing Report 92-07

Commercial Fisheries Entry Commission
8800 Glacier Highway #109
Juneau, Alaska 99801
Telephone: (907) 789-6160 FAX: 789-6170

The Feasibility of Limited Entry and
Permit Exchange for the Guided Sport Fishery

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The Feasibility of Limited Entry and Permit Exchange for the Guided Sport Fishery

Introduction

Commercial salmon trollers in Alaska recently asked for and received an allocation of the chinook salmon quota established by the Pacific Salmon Treaty. In their petition to the Board, the trollers attributed the "disruption of historic chinook sharing patterns" to the rapid growth in the guided sport industry.

Limited entry was discussed as a possible method of controlling the growth of the guided sport industry and protecting the interests of the commercial trollers and the independent sport anglers. Entry into the commercial power troll fishery was limited in 1975, and entry into the commercial hand troll fishery was limited in 1980.

The Commercial Fisheries Entry Commission was requested by Senator Jones to investigate the feasibility of limiting access into the guided sport fishery in Alaska (see memorandum in Appendix 1). A program to allow the conversion of troll permits to guided sport permits was also proposed to allow a market means of allocating fish to their highest valued use. This report reviews the existing limited entry program and its applicability to the guided sport industry, and evaluates the proposal to allow expansion of the guided sport industry by the purchase of commercial troll permits.

Review of Current Limited Entry Program

Senator Jones proposed declaring a moratorium on the number of guided sport fishers. The only moratorium the Commercial Fisheries Entry Commission (the Commission or CFEC) could implement, under the current program, would be a temporary moratorium. The Alaska Legislature added the moratorium authority to the limited entry statute in 1991 for commercial fisheries under certain conditions.¹

A temporary moratorium can only be implemented in fisheries which have experienced recent increases in fishing effort which exceed low levels of effort, fisheries in which the harvest may be approaching or exceeding a maximum sustainable level, or fisheries for which there is insufficient information necessary to promote conservation and sustained yield management. The Board of Fisheries must approve a request by the commissioner of the Department of Fish and Game before the CFEC can propose a

¹AS 16.43.225

Feasibility of Limited Entry and Permit Exchange for the Guided Sport Fishery

The CFEC limits a fishery by first establishing a maximum number³ reflecting current participation levels.⁴ Following the determination of the maximum number,

. . . the commission shall adopt regulations for ranking applicants for entry permits according to the degree of hardship which they would suffer by exclusion from the fishery . . . based upon a reasonable balance of . . . degree of economic dependence upon the fishery . . . and extent of past participation in the fishery.⁵

Because the number of applicants for a limited entry fishery typically exceeds the maximum number, a priority classification system is necessary to allocate permits among the applicants. The classification system is intended to measure an applicant's reliance on the fishery and the relative hardship an applicant would suffer if excluded from an initial allocation of a limited entry permit.

Statutory Changes Needed to Limit the Guided Sport Industry

A number of statutory changes would be necessary in order to apply the current limited entry program to the guided sport fishery. The charter industry in Alaska is currently considered a sport rather than a commercial fishing enterprise. Sport fishing has been defined as the taking of or attempting to take for personal use and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries.⁶ Commercial fishing has been defined as the taking, fishing for, or possession of fish, shellfish or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels.⁷ While sport fishing guides do provide a

³The number of permits which will be issued.

⁴The Alaska Supreme Court in *Johns v. State, CFEC*, 758 P.2d 1256 (Alaska 1988) stated that the commission should select a maximum number which is no less than the highest number of units of gear fished in the four years prior to limitation.

⁵AS 16.43.250

⁶AS 16.05.940(28)

⁷AS 16.05.940(5)

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

The Feasibility of Limited Entry and Permit Exchange for the Guided Sport Fishery

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