

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8999 SENATE RESOURCES

490

(2)(A) Prior to conducting notice activities subject to subsection 302(b), the operator shall comply with the financial assurance requirements promulgated by the Secretary applicable to such notice activities. Such requirements shall allow operators or owners of mining claims or sites to use bonding pools to statewide or nationwide bonds. Statewide or nationwide bonds shall be in amounts fixed by regulation that cover notice activities at multiple locations statewide or nationwide, as appropriate.

(B) For such notice activities conducted between the date of enactment of this Act and the effective date of such regulations, the operator or owner of the mining claim or site shall provide evidence of financial assurance, in the form and manner authorized by the Secretary's regulations in effect on the date of enactment of this Act, in an amount sufficient to cover the reasonably estimated cost of reclamation required as a result of such notice activities.

(b) Review and Adjustment.--Not later than five years after the financial assurance is provided, and each five years thereafter, or at the request of the operator, the Secretary shall review its adequacy and may increase or decrease the amount of the financial assurance based upon changed circumstances, including a determination by the Secretary that a portion of the reclamation has been completed.

(c) Financial Assurance For Increments.--Financial assurance for increments of mineral activities may be authorized if the financial assurance for an increment covers all reclamation costs within the area covered by the notice or plan of operations for that increment. After reclamation is completed, an operator may apply for, and the Secretary may grant, release of the financial assurance for the completed increment.

SEC. 307. FEDERAL AND STATE AUTHORITY AND COOPERATION.

(a) Cooperative Agreements.--

(1) Upon request from a State, the Secretary shall enter into a cooperative agreement with that State for joint administration of the requirements of this title relating to mineral activities requiring a notice or plan of operations, financial assurances, reclamation, inspection and enforcement if the Secretary determines in writing that such State has the capability to implement the agreement in a manner consistent with the purposes of this title. A cooperative agreement may cover (i) some or all of the responsibilities enumerated in this paragraph, and (ii) some or all mineral activities on Federal land within a State.

(2) Under a cooperative agreement, a State and the Secretary may jointly administer mineral activities on Federal lands. The State and the Secretary shall make an independent and timely decision regarding individual plans of operation under this title, but in no event shall the State's authority under applicable Federal environmental protection statutes be restricted.

(3) Under a cooperative agreement, the State may conduct inspections and monitoring activities, and take enforcement actions deemed necessary to determine or require compliance with the requirements of this Act, other than recommending civil actions under section 308. The Secretary may not take enforcement action where a State under a cooperative agreement already has initiated appropriate enforcement action unless the State requests that the Secretary recommend initiation of a civil action under section 308.

(4) Under a cooperative agreement, the financial assurance sufficient to cover reclamation of Federal lands shall be calculated based on the completion of both the Federal and State reclamation requirements, and may be held as one bond. The financial assurance shall be approved by both the Secretary and the State prior to approval of a plan of operations, and the Secretary and the State may agree that the financial assurance may not be released without Federal and State concurrence. Financial assurance that duplicates financial assurance required under other State or Federal law shall not be required under this title.

(5) if a cooperative agreement is entered into pursuant to this section, the Secretary shall, subject to appropriations, reimburse the State for its regulatory costs in an amount approximating, but not exceeding, the reasonably estimated amount the Secretary would have reasonably expended absent a cooperative agreement.

(6) Each cooperative agreement entered into pursuant to this section shall provide that (i) the Secretary shall take appropriate action, including termination of the agreement, upon a determination that State performance under the agreement is not in substantial compliance with the agreement or the requirements of this title, and (ii) prior to taking any such action, the Secretary shall provide notice to the State allowing the State a reasonable time to come into substantial compliance.

(b) Existing Agreements.--Any cooperative agreement or memorandum of understanding between the Secretary and any State related to the surface management of mineral activities on Federal lands subject to this Act in existence on the date of enactment of this Act shall continue in force unless the Secretary determines such agreement or memorandum of understanding is inconsistent with the provisions of this title.

SEC. 308. ENFORCEMENT, ADMINISTRATIVE AND JUDICIAL REVIEW.

(a) Inspections.--The Secretary, or a State if the State has entered into a cooperative agreement pursuant to section 307, shall conduct a minimum of one complete inspection each year of mineral activities for which a plan of operations or notice is required under section 302 to ensure compliance with the terms of the plan or notice. The operator shall grant access at reasonable times and under reasonable circumstances to the appropriate designated representative of the Secretary or State when requested. The Secretary or the State must give reasonable notice to the operator before commencing any inspection. The Secretary or the State may inspect more frequently, if warranted, and may modify the inspection schedule as necessary for mineral activities that are conducted on a seasonal basis.

(b) Compliance Orders.--

(1) Whenever, on the basis of any inspection authorized by subsection (a), the Secretary finds that the operator is in violation of any term or condition of a plan of operations or notice, the Secretary may issue an order requiring the operator to comply with such requirement, or may request the Attorney General to bring a civil action in accordance with subsection (c): Provided, however, That the Secretary shall not request commencement of a civil action if (i) the violation is corrected within 30 days, and (ii) the violation is neither causing nor likely to cause irreparable harm to the environment or a threat to human health or safety.

(2) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and shall require compliance within a reasonable period of time specified in the order. The Secretary may extend the time specified for compliance for a reasonable period, considering the seriousness of the violation and any good faith efforts to comply with the terms and conditions of the plan of operation.

(c) Civil Actions.--At the request of the Secretary, the Attorney General may institute a civil action in the district court of the United States for the district in which the affected operation is located for a temporary restraining order, injunction, civil penalties as provided in subsection (d), or other appropriate remedy, when the operator (i) violates or refuses to comply with an order issued by the Secretary under subsection (b), or (ii) refuses to allow an inspection authorized under subsection (a).

(d) Civil Penalties.--An operator that fails to comply with the requirements applicable to mineral activities conducted under notice pursuant to section 302 or the terms or conditions of a plan of operations approved under section 302, after notice of such failure and expiration of a reasonable period allowed for abatement as specified pursuant to subsection (b), is subject to a civil penalty of not more than \$5,000 for each day of the continuance of such noncompliance. In determining the amount of the penalty, the Court shall consider the existence or previous violations at the operation, the seriousness of the violation, the likelihood of irreparable harm to the environment and any hazard to the health or safety of the public, whether the operator was negligent, and the good faith of the operator.

(e) Administrative Review.--

(1) Any operator issued a compliance order under this section may apply to the Secretary for review of the order within 30 days of receipt thereof, or as the case may be, within 30 days of such order being modified.

(2) The Secretary shall provide an opportunity for a hearing on the record at the request of the operator.

(3) Pending completion of any review proceedings under this subsection, the operator may file with the Secretary a written request that the Secretary grant temporary relief from any order issued under this section, supported by a detailed statement of reasons for such relief. The Secretary shall expeditiously issue an order or decision granting or denying such relief.

(f) Final Agency Action.--Final agency action under this title shall be subject to judicial review pursuant to 5 U.S.C. 701-706 and 28 U.S.C. 1331.

SEC. 309. SAVINGS CLAUSE.

The provisions of this title shall supersede any provision of the general mining laws or the Federal Land Policy and Management Act, and any standard related to the management of surface resources within the National Forest System contained in or derived from the Organic Administration Act (16 U.S.C. 473 et seq.), the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601 et seq.), or any other law applicable to Federal lands subject to this title within the National Forest System, and any rules promulgated under such laws, only to the extent that such laws or rules conflict or are inconsistent with the provisions of this title. Orders, rules and regulations in effect as of the date of enactment of this Act which govern surface management of mineral activities shall remain in effect under the authority of this title.

TITLE IV--ROYALTY

SEC. 401. ROYALTY.

(a) In General.--The production and sale of locatable minerals (including associated minerals) from any unpatented mining claim (other than those from Federal lands to which subsection 204(b) applies) or any mining claim patented under subsection 204(a) shall be subject to a royalty of three percent of the net proceeds from such production mined and sold from such claim: Provided, That for any mine with an annual gross yield of less than \$500,000 the royalty shall be waived: And provided further, That no royalty shall be payable pursuant to this title with respect to minerals processed at a facility by the same person or entity which extracted the minerals if an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974 with respect to any portion of such facility. The obligation to pay royalties hereunder shall accrue only upon the sale of locatable minerals or mineral products produced from a mining claim subject to such royalty, and not upon the stockpiling of the same for future processing.

(b) Definitions.--For the purposes of this title, the term--

(1) "gross yield" shall mean--

(A) in the case of sales of gold and silver ore, concentrates or bullion, or the sales of other locatable minerals in the form of ore or concentrates, the actual proceeds of sale of such ore, concentrates or bullion;

(B) in the case of sales of beneficiated products from locatable minerals other than those subject to section 401(b)(1)(A), such as cathode, anode or copper rod or wire, or other products fabricated from the locatable minerals, the gross income from mining derived

from the first commercially marketable product determined in the same manner as under section 613 of the Internal Revenue Code;

(C) in the event that ore, concentrates, beneficiated or fabricated products or locatable minerals are used or consumed and are not sold in an arms length transaction, the reasonable fair market value of the ore, concentrates, beneficiated or fabricated products at the mine or wellhead determined from the first applicable of the following:

(i) published or other competitive selling prices of locatable minerals of like kind and grade;

(ii) any proceeds of sale;

(iii) value received in exchange for any thing or service; or

(iv) the value of any locatable minerals in kind or used or consumed in a manufacturing process or in providing a service; and

(D) without limiting the foregoing, the profits or losses incurred in connection with forward sales, futures or commodity options trading, metal loans, or any other price hedging or speculative activity or arrangement shall not be included in gross yield.

(2) "net proceeds" shall mean gross yield, less the following deductions for costs incurred prior to sale or value determination, and none other:

(A) the actual cost of extracting the locatable mineral;

(B) the actual cost of transporting the locatable mineral from the claim to the place or places of reduction, beneficiation, refining, and sale;

(C) the actual cost of reduction, beneficiation, refining, and sale of the locatable mineral.

(D) the actual cost of marketing and delivering the locatable mineral and the conversion of the locatable mineral into money;

(E) the actual cost of maintenance and repairs of--

(i) all machinery, equipment, apparatus, and facilities used in the mine;

(ii) all crushing, milling, leaching, refining, smelting, and reduction works, plants, and facilities; and

(iii) all facilities and equipment for transportation;

(F) the actual cost for support personnel and support services at the mine site, including without limitation, accounting, assaying, drafting and mapping, computer services surveying, housing, camp, and office expenses, safety, and security;

(G) the actual cost of engineering, sampling, and assaying pertaining to development and production;

(H) the actual cost of permitting, reclamation, environmental compliance and monitoring;

(I) the actual cost of fire and other insurance on the machinery, equipment, apparatus, works, plants, and facilities mentioned in subparagraph (E);

(J) depreciation of the original capitalized cost of the machinery, equipment, apparatus, works, plants, and facilities listed in subparagraph (E). The annual depreciation charge shall consist of amortization of the original cost in the manner consistent with the Internal Revenue Code of 1986, as amended from time to time. The probable life of the property represented by the original cost must be considered in computing the depreciation charge;

(K) all money expended for premiums for industrial insurance, and the owner paid cost of hospital and medical attention and accident benefits and group insurance for all employees engaged in the production or processing of locatable minerals;

(L) all money paid as contributions or payments under State unemployment compensation law, all money paid as contributions under the Federal Social Security Act, and all money paid to State government in real property taxes and severance or other taxes measured or levied on production, or Federal excise tax payments and payments as fees or charges for use of the Federal lands from which the locatable minerals are produced; and

(M) the actual cost of the developmental work in or about the mine or upon a group of mines when operated as a unit; and

(c) Limitations and Allocations of Net Proceeds, Gross Yield, and Allowable Costs.--

(1) The several deductions listed in paragraph (b)(2) are intended to allow a reasonable allowance for overhead: Provided, That they do not include any expenditures for salaries, or any portion of salaries, of any person not actually engaged in--

(A) the working of the mine;

(B) the operating of the leach pads, ponds, plants, mills, smelters, or reduction works;

(C) the operating of the facilities or equipment for transportation; or

(D) superintending the management of any of those operations described in subparagraphs (A)-(C).

(2) Ores or solutions of locatable minerals may be extracted from mines comprised of mining claims and lands other than mining claims. Ore or solutions of locatable minerals may be commingled with ores or solutions from lands other than mining claims: Provided, That the operator shall first sample, weigh or measure, and assay the same in accordance with accepted industry standards. In the event of such production from mines comprised of mining claims and other lands and/or in the event of commingling as provided under this paragraph, gross yield, allowable costs and net proceeds for royalty purposes shall be allocated in proportion to mineral products recovered from the mining claims in accordance with accepted industry standards.

(d) Liability for Royalty Payments.--The owner or co-owners of a mining claim subject to the royalty required under this section shall be liable for royalty due to the United States on locatable minerals produced and sold during the period of ownership to the extent of the interest in such claim owned. As used in this subsection, "owner" or "co-owner" shall mean the person or persons owning the right to mine locatable minerals from such claim and receiving the net proceeds of such sale. Any person who makes any royalty payment attributable to the interest of the owner or co-owners liable therefor shall not become liable to the United States for such royalty as a result of making such payment on behalf of such owner or co-owners.

(e) Time and Manner of Payment.--

(1) Royalty payments for production from any mining claim subject to the royalty required in this section shall be due to the United States at the end of the month following the end of the calendar quarter in which the net proceeds from the sale of such production are received by the owner or co-owners. Royalty payments may be made based upon good faith estimates of the gross yield, net proceeds and the quantity of ore, concentrates, or other beneficiated or fabricated products of locatable minerals, subject to adjustment when the actual annual gross yield, net proceeds and quantity are determined by the owner of the mining claim or site or co-owners.

(2) Each royalty payment or adjustment shall be accompanied by a statement containing--

(A) the name and Bureau of Land Management serial number of the mining claim or claims from which ores, concentrates, solutions or beneficiated products of locatable minerals subject to the royalty required in this section were produced and sold for the period covered by such payment or adjustment;

(B) the estimated (or actual, if determined) quantity of such ore, concentrates, solutions or beneficiated or fabricated products produced and sold from such mining claim or claims for such period;

(C) the estimated (or actual, if determined) gross yield from the production and sale of such ore, concentrates, solutions or beneficiated products for such period;

(D) the estimated (or actual, if determined) net proceeds from the production and sale of such ores, concentrates, solutions or beneficiated products for such period, including an itemization of the applicable deductions described in paragraph (b)(2); and

(E) the estimated (or actual, if determined) royalty due to the United States, or adjustment due to the United States or such owner or co-owners, for such period.

(3) In lieu of receiving a refund under subsection (g), the owner or co-owners may elect to apply any adjustment due to such owner or co-owners as an offset against royalties due from such owner or co-owners to the United States under this Act, regardless of whether such royalties are due for production and sale from the same mining claim or claims.

(f) Recordkeeping and Reporting Requirements.--

(1) An owner, operator, or other person directly involved in the conduct of mineral activities, transportation, purchase, or sale of locatable minerals, concentrates, or products derived therefrom, subject to the royalty required in this section, through the point of royalty computation, shall establish and maintain any records, make any reports, and provide any information that the Secretary may reasonably require for the purposes of implementing this section or determining compliance with regulations or orders under this section. Upon the request of the Secretary when conducting an audit or investigation pursuant to subsection (h), the appropriate records, reports, or information which may be required by this section shall be made available for inspection and duplication by the Secretary.

(2) Records required by the Secretary under this section shall be maintained for three years after the records are generated unless the Secretary notifies the record holder that he or she has initiated an audit or investigation specifically identifying and involving such records and that such records must be maintained for a longer period. When an audit or investigation is under way, such records shall be maintained until the earlier of the date that the Secretary releases the record holder of the obligation to maintain such records or the date that the limitations period applicable to such audit or investigation under subsection (h) expires.

(g) Interest Assessments.--In any case in which royalty payments are not received by the Secretary on the date that such payments are due, or when such payments are less than the amount due, the Secretary shall charge interest on such late payments computed at the rate published by the Department of the Treasury as the "Treasury Current Value of Funds Rate." In the case of an underpayment or partial payment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount, and only for the number of days such payment is late. No other late payment or underpayment charge or penalty shall be charged. In any case in which royalty payments are made in excess of the amount due, or amounts are held by the Secretary pending the outcome of any appeal in which the Secretary does not prevail, the Secretary shall promptly refund such overpayments or pay such amounts to the person or persons entitled thereto, together with interest thereon for the number of days such overpayment or amounts were held by the Secretary, with the addition of interest charged against the United

States computed at the rate published by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(h) Audits, Payment Demands and Limitations.--

(1) The Secretary may conduct, after notice, any audit reasonably necessary and appropriate to verify the payments required under this section.

(2) Any billing or demand letter for royalty due on locatable minerals produced and sold from any mining claim subject to royalty required by this section must be sent or issued not later than three years after the date such royalty was due and must specifically identify the production involved, the royalty allegedly due and the basis for the claim. No action, proceeding or claim for royalty due on locatable minerals produced and sold, or relating to such production, may be brought by the United States, including but not limited to any claim for additional royalties or claim of the right to offset the amount of such additional royalties against amounts owed to any person by the United States, unless judicial suit or administrative proceedings are commenced to recover specific amounts claimed to be due prior to the expiration of three years from the date such royalty is alleged to have been due.

(i) Transitional Rules.--Any mining claim for which a patent is issued pursuant to subsection 204(b) shall not be subject to the obligation to pay the royalty pursuant to this section. Royalty payments for any claim processed under subsection 204(b) shall be suspended pending final determination of the right to patent. For any claim that does not qualify for the issuance of a patent under subsection 204(b), royalties shall be payable under this section on--

(1) previous production between the date of enactment of this Act and the date of such final decision denying the issuance of a patent, plus interest computed at the rate published by the Department of the Treasury as the "Treasury Current Value of Funds Rate"; and

(2) production subsequent to the date of such decision.

(j) Disbursement of Revenues.--The receipts from royalties collected under this section shall be disbursed as follows:

(1) One-half of such receipts shall be paid into the Treasury of the United States and deposited as miscellaneous receipts.

(2) One-quarter of such receipts shall be paid by the Secretary of the Treasury to the State in which the mining claim from which production occurred is located.

(3) One-quarter of such receipts shall be paid into a State Fund or the Federal Fund in accordance with title V; until termination as provided in section 506.

(k) No Implied Covenants.--The owner of a mining claim subject to the provisions of this title shall have no obligation, express or implied, to explore for, develop, produce or market locatable minerals as a result of the obligation to pay a royalty hereunder, and the timing, nature, extent and

manner of exploring, developing, mining and marketing such locatable minerals shall be in the sole discretion of the claim owner.

TITLE V--ABANDONED LOCATABLE MINERALS MINE RECLAMATION PROGRAM

SEC. 501. ABANDONED LOCATABLE MINERALS MINE RECLAMATION FUND.

(a) State Fund.--Any State within which proceeds are collected pursuant to title IV from a mining claim and which wishes to become eligible to receive such proceeds allocated by paragraph 401(j)(3) shall establish and maintain an interest-bearing abandoned locatable mineral mine reclamation fund (hereinafter referred to in this title as "State Fund") to accomplish the purposes of this title.

(b) Federal Fund.--There is established on the books of the Treasury of the United States an interest-bearing fund to be known as the Abandoned Locatable Minerals Mine Reclamation Fund (hereinafter referred to in this title as "Federal Fund") which shall consist of proceeds allocated by paragraph 401(j)(3) from mining claims in a State where a State Fund has not been established or maintained under subsection (a).

SEC. 502. ALLOCATION AND PAYMENTS.

(a) State Fund.--Proceeds collected pursuant to title IV and allocated by paragraph 401(j)(3) shall be paid by the Secretary of the Treasury to the State Fund established pursuant to subsection 501(a) for the State where the mining claim from which the production occurred is located. Payments to States under this subsection with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary of the Interior as having been received, except for any portion of such moneys which is under challenge, which shall be placed in a suspense account pending resolution of such challenge. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be due the United States shall be payable to a State Fund not later than fifteen days after such challenge is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the challenge is resolved. In determining the amount of payments to State Funds under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.

(b) Federal Fund.--Proceeds collected pursuant to title IV, and allocated by paragraph 401(j)(3), from mining claims located in the State which has not established or maintained a State Fund, and such proceeds from mining claims located in a State for which the Secretary's authority has expired under subsection 506(a), shall be credited to the Federal Fund and distributed in accordance with subsection (c).

(c) Transition.--Prior to the time a State establishes a State Fund pursuant to subsection 501(a), any proceeds collected from a mining claim within such State shall be deposited into the Federal Fund and allocated to such State. Once a State establishes a State Fund under subsection 501(a),

the State allocation in the Federal Fund with accrued interest shall be paid by the Secretary of the Treasury to the State Fund in accordance with subsection (a). Commencing three years after the date of enactment of this Act, the Secretary of the Treasury shall distribute proceeds then accrued or which are thereafter credited to the Federal Fund equally among all States which maintain a State Fund established under subsection 501(a), and for which the Secretary of the Treasury's authority has not expired under subsection 506(a).

SEC. 503. ELIGIBLE AREA.

(a) In General.--Subject to subsection (b), lands and water eligible for reclamation under this title shall be Federal lands that--

(1) have been adversely affected by past mineral activities on lands abandoned and left inadequately reclaimed prior to the date of enactment of this Act; and

(2) for which the State determines there is no identifiable party with a continuing reclamation responsibility under State or Federal laws.

(b) Specific Sites and Areas Not Eligible.--The following areas shall not be eligible for expenditures from a State Fund:

(1) Any area subject to a plan of operations submitted or approved prior to, on or after the date of enactment of this Act which includes remaining or reclamation of the area adversely affected by past locatable mineral activities.

(2) Any area affected by coal mining eligible for reclamation expenditures pursuant to section 404 of the Surface Mining Control and Reclamation Act (30 U.S.C. 1234).

(3) Any area designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7912).

(4) Any area that was listed on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9605) prior to the date of enactment of this Act, or where the Environmental Protection Agency has initiated or caused to be initiated a response action pursuant to that Act.

SEC. 504. USES AND OBJECTIVES OF FUNDS.

(a) Use of Funds.--Moneys in a State Fund shall be used for the reclamation of eligible areas. For purposes of this section, reclamation includes--

(1) backfilling, fencing, sealing, or otherwise controlling abandoned underground mine entries to protect public health and safety;

(2) abatement, treatment or control of water pollution;

(3) shaping, grading, contouring and revegetation of land to prevent erosion and sedimentation, or to enhance fish and wildlife habitat;

(4) removal or control of toxic or hazardous materials;

(5) analysis, curation and preservation of structures, buildings, sites or objects listed or eligible for listing pursuant to the National Historic Preservation Act (16 U.S.C. 470a); and

(6) control or reclamation of surface subsidence due to abandoned underground mines.

(b) Priorities.--Expenditures of moneys from a State Fund shall reflect the following priorities in the order stated, but shall not preclude, where feasible and appropriate, a combination of these priorities for cost-effective reclamation:

(1) The protection of public health, safety, general welfare and property from extreme danger from the adverse effects of past mineral activities.

(2) The protection of public health, safety, and general welfare from the adverse effects of past mineral activities.

(c) Liability.--No State, or a contractor for such State engaged in approved reclamation work under this title, or any other entity authorized by a State to conduct approved reclamation activities, shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out reclamation pursuant to this section. This subsection shall not preclude liability for costs and damages as a result of gross negligence or intentional misconduct. For purposes of the preceding sentence, reckless, willful or wanton misconduct shall constitute gross negligence.

SEC. 505. REPORT TO CONGRESS.

Each year, each State with a State Fund under subsection 501(a) shall submit a report to the Congress providing an accounting of the Fund, including identifying sites for which moneys in the Fund have been spent during the preceding year and sites for which moneys shall be allocated in the following year, the amounts spent or expected to be spent on each such site, and an estimate of the number of eligible areas that remain to be reclaimed in the State.

SEC. 506. SUNSET PROVISIONS.

(a) Termination of Authority.--The Secretary of the Treasury's authority to allocate funds to a State Fund under section 502 shall expire on the date that the State submits an annual report to the Congress pursuant to section 505 which reports that there are no areas in the State which remain to be reclaimed.

(b) Termination of Fund.--Upon the termination of authority as provided in subsection (a) with respect to all State Funds, the Federal Fund shall also be terminated, and all proceeds thereafter remaining in the Federal Fund shall be paid into the Treasury of the United States and deposited as miscellaneous receipts.

TITLE VI--ADMINISTRATIVE PROVISIONS

SEC. 601. EFFECTIVE DATE.

The provisions of this Act shall take effect on the date of enactment of this Act, except as otherwise provided in this Act.

SEC. 602. EFFECT ON FEDERAL AND STATE LAWS.

(a) Effect on the General Mining Laws.--The provisions of this Act shall supersede the general mining laws only to the extent such laws conflict with the requirements of this Act. Where no such conflict exists, the general mining laws, including all judicial and administrative decisions interpreting them, shall remain in full force and effect.

(b) Effect on Other Federal and State Laws.--Except as provided in subsection (a), nothing in this Act shall be construed--

(1) as superseding, modifying, amending or repealing any other provision of Federal law, State law or Federal or State regulation enacted pursuant thereto, not expressly superseded, modified, amended or repealed;

(2) without limiting the foregoing, as affecting or intended to affect or in any way interfere with or modify the laws of the States relating to the ownership, control, appropriation, use and distribution of ground or surface waters or the regulation by States of surface or ground water quality; and

(3) as affecting or modifying in any way the rights, obligations or liabilities of any person under other provision of law.

SEC. 604. SEVERABILITY.

If any provision of this Act or the applicability thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.



Alaska State Legislature

Official Business

State Capitol
Juneau AK 99801

SENATE RESOLUTION NO. 6

Endorsing passage of S. 506 and H.R. 1580, measures making responsible changes in the Mining Law of 1872.

By: The Senate Resources Committee

SPONSOR STATEMENT

This resolution supports a recommendation by the Alaska Minerals Commission that the Governor, the Congressional delegation, and the Western Governors' Association support changes to the Mining Law of 1872 as proposed in S. 506 and H.R. 1580.

Much of the federal land in Alaska is open to mineral entry, with high mineral potential. The mining industry recognizes that changes are necessary to the Mining Law as technology changes and mining methods incorporate those changes.

S. 506 and H.R. 1580 amend the law to provide a reasonable royalty from mineral activities, specify reclamation requirements for mineral activities, and create a state program for the reclamation of abandoned hard rock mining sites on federal lands.

HB

58

REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES
VICE-CHAIR RULES

Alaska State Legislature
House of Representatives

DURING SESSION:
STATE CAPITOL, ROOM 108
JUNEAU, ALASKA 99801-1182
1 (907) 465-4843

DURING INTERIM:
716 WEST 41st AVENUE
ANCHORAGE, ALASKA 99501-2133
1 (907) 258-8168

SPONSOR STATEMENT
SCSCSHB 58 (STA)

“An Act establishing the Chickaloon Flats Critical Habitat Area; and providing for an effective date.”

The purpose of CSHB 58 is to assure adequate habitat for waterfowl. CSHB 58 will not create a stumbling block for future development of resources nor will this legislation inhibit access for outdoor recreational purposes. This legislation strikes a balance between the need to preserve habitat and the possible need to explore and use our natural resources in the future.

Chickaloon Flats is on the northeast side of the Kenai Peninsula, on the Turnagain Arm facing the Anchorage Coastal Refuge and Potter Flats. The area has a local nesting population of ducks and geese. The most important use of this area is as a feeding and resting area for migrating ducks, geese and shore birds. Up to 25,000 birds a day use the mud flats and tidal marsh. For example, the area is often used when Portage Pass is closed due to bad weather. The waterfowl that normally transit the pass have to have a place to rest and feed. Chickaloon Flats is the principal place they use on Turnagain Arm.

Alaska has the most comprehensive waterfowl refuge and critical habitat system of any state in the nation. It is noteworthy that our critical habitat and waterfowl refuge system both protect our state's fragile wildlife habitat areas and allow for the exploration and use of our natural resources. HB 58 seeks to continue the balance between natural resource use and habitat protection.

Chickaloon Flats will be an important addition to our critical habitat system. I urge your positive consideration of this legislation.



ALASKA OUTDOOR COUNCIL

4506 Robble Rd.
JUNEAU, AK. 99801
(907) 463-3830

Mar. 22, 1996

Senator Loren Leman, Chair
Senate Resources Committee
Alaska State Legislature
Juneau, Ak. 99801

Dear Senator Leman:

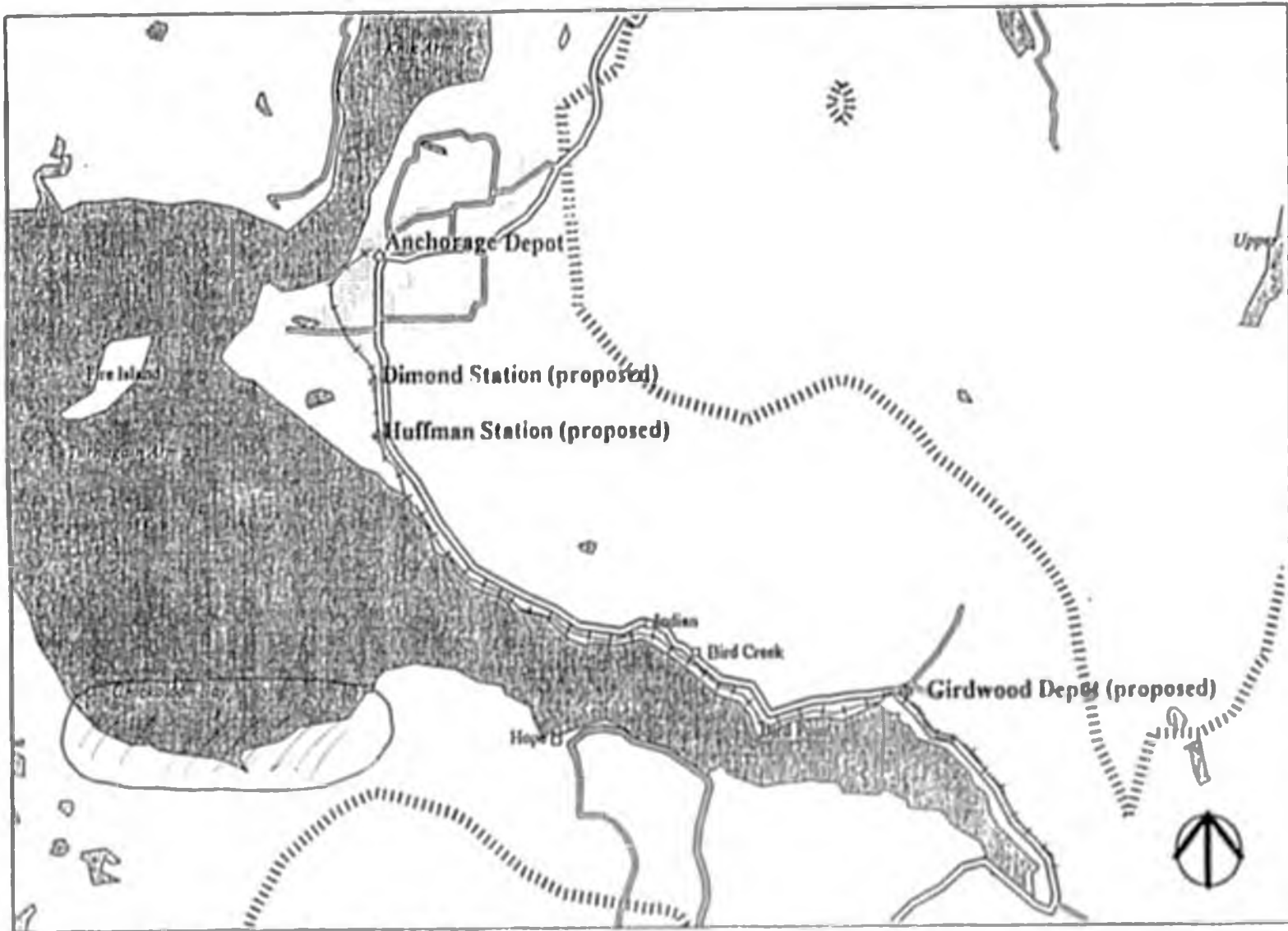
The Alaska Outdoor Council supports HB 58, "Chickaloon Flats Critical Habitat Area" with one caveat. We would like the current bill amended so as to give a better level of protection to traditional access. We suggest amending the bill itself, or the purposes section AS 16.20.500 by inserting appropriate language creating reasonable parameters under which the Commissioner of Fish and Game would be constrained whenever closing any traditional access to a critical habitat area.

Sincerely,

Eddie Grasser
Governmental Affairs

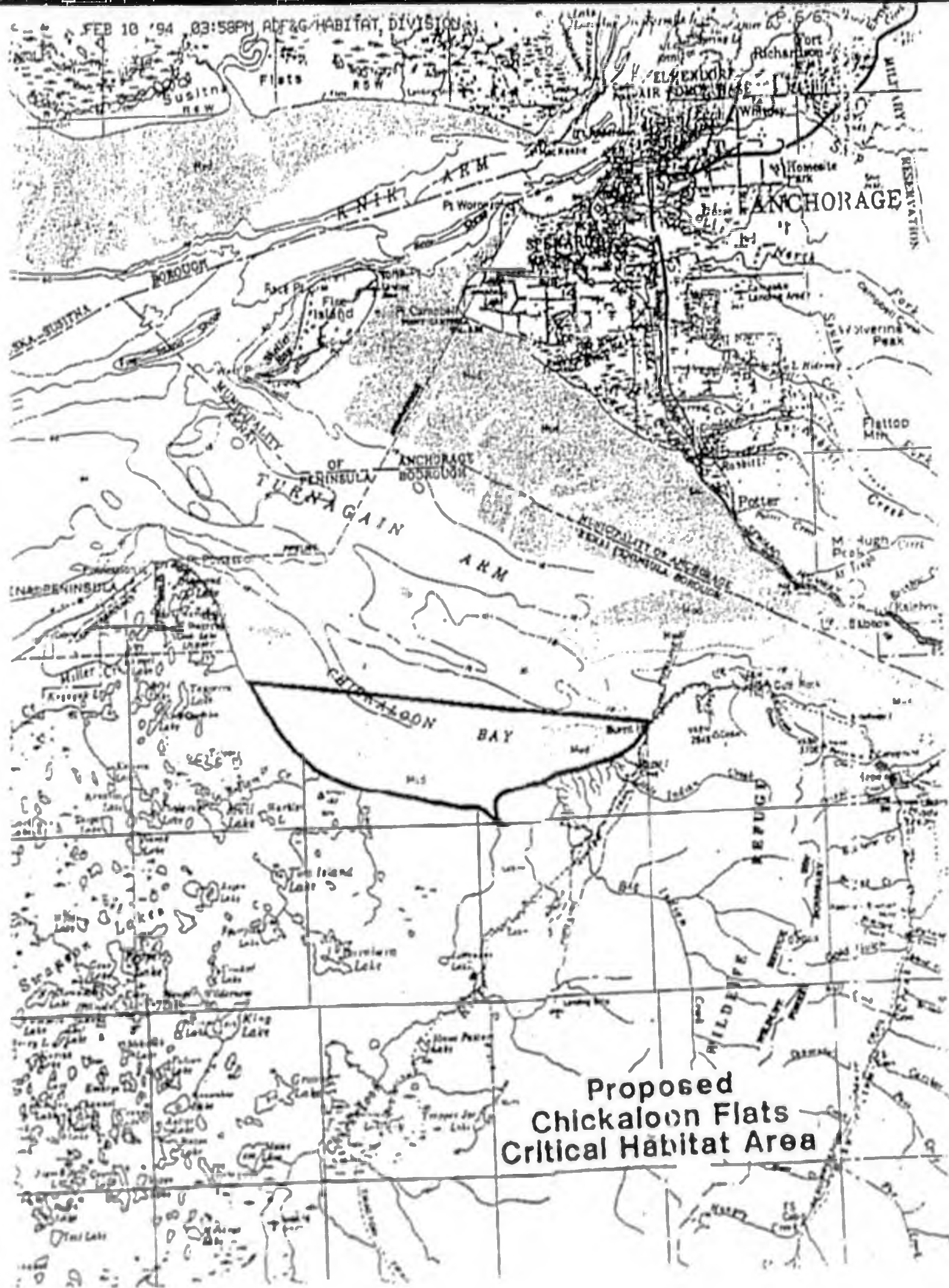
cc: Rep. Con Bunde

Figure 1. Area Map
Girdwood Rail Service Feasibility



Base map Source: DeLorme's MapExpert, Freeport, Maine © 1993 DeLorme Mapping

Scale 1:490,000



**Proposed
Chickaloon Flats
Critical Habitat Area**

PROPOSED CHICKALOON FLATS
CRITICAL HABITAT AREA
BACKGROUND INFORMATION

LOCATION: The proposed Chickaloon Flats Critical Habitat Area is located on the south side of Turnagain Arm at the head of Cook Inlet and is bisected by the Chickaloon River.

AREA DESCRIPTION: The proposed Chickaloon Flats Critical Habitat Area encompasses a large expanse of state-owned tidelands lying within the Kenai Peninsula Borough. Adjacent uplands are managed by the U.S. Fish and Wildlife Service as part of the Kenai National Wildlife Refuge.

FISH AND WILDLIFE RESOURCES: Chickaloon Flats is one of a handful of key waterfowl and shorebird habitats in Cook Inlet that provide vital staging habitat for arctic nesting birds on their way to and from nesting grounds in the north. Created by the dramatic tidal action of Turnagain Arm, the mudflats and tidal marsh at the mouth of the Chickaloon River are critical waterfowl and shorebird feeding and resting habitat during spring and fall migration. In the fall, waterfowl waiting out bad weather replenish energy reserves on Chickaloon Flats before flying south through Turnagain Pass. Up to 25,000 birds per day, including up to 5,000 lesser Canada geese at a time, use the mudflats and tidal marsh for resting and feeding during fall migration. Besides lesser Canada geese, fall migrants include: tundra and trumpeter swans; white-fronted geese; sandhill cranes; mallards; pintails; green-winged teal; shovelers; gadwalls; and American wigeon. Additional waterfowl species found during ice-free months include: red-breasted mergansers, canvasbacks, common merganser, greater scaup, and common goldeneye. Snow geese and swans are most numerous on the flats during spring migration.

Red phalaropes, glaucous-winged gulls, mew gulls, Bonaparte's gulls, arctic terns, common snipe, yellowlegs, dowitchers, semipalmated plovers, sandpipers, whimbrels, and godwits also feed on the productive estuarine tideflats.

PUBLIC USE AND ACCESS: Chickaloon Flats has long been recognized as an important waterfowl hunting area in Cook Inlet. Fall waterfowl hunters access Chickaloon Flats by floatplane, landing on river channels and larger ponds, or arrive by boat from the nearby community of Hope. Four-wheel drive vehicles are also used to access the area along unmaintained pipeline access roads through the Kenai National Wildlife Refuge. Mallards, pintails, wigeon, and green-winged teal are most frequently harvested species.

REFERENCES:

Quimby, Roland L. 1972 Waterbird Habitat and Use of Chickaloon Flats. pp 86.

U.S. Fish and Wildlife Service. 1985 Kenai National Wildlife Refuge Final Comprehensive Conservation Plan. pp 195.

Ketchum



AIR SERVICE, INC.

MAIL: P.O. BOX 190588

ANCHORAGE, ALASKA 99519-0588

907-243-5525

800-433-9114

On the North Shore of Lake Hood

FAX 907-243-8311

Con Bunde
State Capitol
Juneau, AK 99801

February 2, 1995

Dear Representative Bunde,

Ketchum Air Service, Inc. supports HB 58 and the establishment of the Chickaloon Critical Habitat Area. We believe that such areas are beneficial to migratory waterfowl and are a valuable resource for all Alaskans.

Best regards,

Craig L. Ketchum
President



HELP PROTECT OUR WILDERNESS RESOURCES

FISHING · LODGES · CAMPS · CHARTER · CONTRACT · RIVER FLOAT TRIPS · BOATS · MOTORS · RUBBER RAFTS

Alaska Chapter

Waterfowl U.S.A.

3105A Lakashore Drive • Suite 105 • Anchorage, Alaska 99517
(907) 243-3235

February 7, 1995

FAX TO 465-2418

Representative Mark Hanley
State Capital
Juneau, AK 99811

RE: HB 58 Chickaloon Flats
Critical Habitat Bill

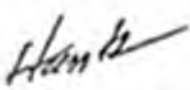
Dear Representative Hanley:

Please support HB 58, the Chickaloon Flats Critical Habitat bill. This area, which is on Turnagain Arm, is on the northeast side of the Kenai Peninnula. The area is especially valuable to ducks, geese and shorebirds that use the area to rest and feed when on migration. There is also local breeding populations of ducks, geese and shorebirds. The local birds tend to be more numerous at Pincer Creek and the Chickaloon River.

This bill will also protect the salmon runs that ascend the Chickaloon River. This is important to commercial, sport and personal use fishermen.

The Chickaloon Flats will remain open for oil and gas production and exploration. Further it will remain open for mineral entry and other traditional uses such as hunting, fishing and camping. We would appreciate your support on this bill.

Sincerely,


C. H. Rosenthal
Chairman-Alaska Chapter
Waterfowl U.S.A.

"Dedicated to increasing our waterfowl resource."

No. 2

Bill Version: SCS CS HB 58 (STA)

(S) Publish Date: 2/23/96

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 1/20/96 Dept. Affected: Fish and Game
 Title: Chickaloon Flats Critical Habitat Area BRU: Habitat and Restoration
 Component: Stream and Refuge Permits
 Sponsor: Rep. Con Bunde
 Requester: Senate State Affairs COMPONENT SERIAL NO. 2099

Expenditures/Revenues (Thousands of Dollars)

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

| | | | | | | |
|----------------------|---|---|---|---|---|---|
| CAPITAL EXPENDITURES | 0 | 0 | 0 | 0 | 0 | 0 |
|----------------------|---|---|---|---|---|---|

| | | | | | | |
|------------------------|---|---|---|---|---|---|
| CHANGE IN REVENUES () | 0 | 0 | 0 | 0 | 0 | 0 |
|------------------------|---|---|---|---|---|---|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|--|--|--|--|--|--|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | | | | | | |

Estimate of any current year (FYE) cost: \$ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Garen Bruce Phone: 485-6143
 Division: Commissioner's Office Date: 1/20/96
 Approved by Commissioner: Frank Rue Date: 1/20/96
 Agency: Fish and Game

PREPARED TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
994 LEGISLATIVE SESSION

Number 1
 Bill Version: CSHB 58(RES)
 (H) Publish Date: 2/3/95

Revision Date: _____
 Title: Chickaloon Flats Critical Habitat Area
 Sponsor: Representative Bunde
 Requestor: House Oil and Gas

Dept. Affected: Fish and Game
 BRU: Habitat and Restoration
 Component: Habitat
 COMPONENT SERIAL NO. _____

| Expenditures/Revenues | (Thousands of Dollars) | | | | | |
|------------------------|------------------------|-------|-------|-------|-------|-------|
| | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
| OPERATING EXPENDITURES | | | | | | |
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL EXPENDITURES | 0 | 0 | 0 | 0 | 0 | 0 |
| CHANGE IN REVENUES | 0 | 0 | 0 | 0 | 0 | 0 |

| FUND SOURCE | (Thousands of Dollars) | | | | | |
|-------------------------|------------------------|---|---|---|---|---|
| 002 Federal Receipts | | | | | | |
| 003 GF Match | | | | | | |
| 004 GF | | | | | | |
| 005 GF/Program Receipts | | | | | | |
| 006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

Estimate of any current year (FY 94) cost: \$ 0

| POSITIONS | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Frank Rus Phone: 465-3065
 Revision: Habitat and Restoration Date: _____
 Approved by Commissioner: [Signature]
 Copy: Alaska Department of Fish and Game Date: _____

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES OF GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY

HB

59

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/14/96

FURTHER: Finance

DATE TURNED INTO OFFICE: 4-18-96

The Resources Committee considered CS FOR HOUSE BILL NO. 59(RES)

Relating to raffles and auctions of certain permits to take big game.

C/3

and recommends:

- be replaced with SEN CS HO 59 (RES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
- same title
 - new title
- House Bill:
- same title
 - technical title
 - new: SCR# _____

| SIGNING DP PASS | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|-------------------------------|----|-----------------------|----|-----|----|
| <i>Rich Halford</i> | ✓ | <i>Amended</i> | ✓ | | |
| <i>Don</i> | ✓ | | | | |
| <i>Tom Kiff</i> | | | | | |
| <i>Deane</i> | | | | | |
| CHAIR: <i>James D. Hunter</i> | ✓ | CHAIR: | | | |

NEW FISCAL NOTE(S):

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

PREVIOUS FISCAL NOTE(S):*

| Department | Date | Zero | Fiscal |
|-------------|---------------|------|------------|
| <i>DF-5</i> | <i>3/1/96</i> | | <i>1.0</i> |
| | | | |
| | | | |
| | | | |
| | | | |

TU
CS
200

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill



Alaska State Legislature


Senate Resources Committee

State Capitol
Juneau AK 99801

Official Business

MEMO

TO: Legal Services
via fax: X2029

FROM: Annette Kreitzer, Aide to
Senate Resources Committee 

DATE: April 17, 1996

RE: FINAL CS for HB 59 LS0282G

Using 9-LS0282G by Utermohle dated 4/11/96, please prepare a FINAL Senate CS for HB 59, Raffle or Auction of Big Game Permits, for delivery to Senate Resources before floor session (11:00 a.m.) tomorrow. There were no additional changes.

Deliver to Room 115 of the Capitol. Thanks.

9-LS0282\G
Utermohle
4/11/96

SENATE CS FOR CS FOR HOUSE BILL NO. 59(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BUNDE, Toolhey, Rokeberg

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to raffles and auctions of certain permits to take big game;
2 and providing for an effective date."

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

4 * Section 1. AS 16.05.343 is repealed and reenacted to read:

5 Sec. 16.05.343. AUCTIONS OR RAFFLES FOR BIG GAME HARVEST
6 PERMITS. (a) The department may donate one bison harvest permit each year for
7 a bison from the Delta bison herd for a competitive auction or raffle. The donation
8 may be made only to a nonprofit corporation established to promote fish and game law
9 enforcement, subject to the terms of a memorandum of understanding developed by
10 the department.

11 (b) The department may donate four elk harvest permits each year for elk from
12 the Etolin Island herd for competitive auctions or raffles. The donations may be made
13 only to nonprofit corporations based in Southeast Alaska that are established to
14 promote fish and game management of hunted species, transplantation of species, and

1 use of fish and game populations for hunting and fishing, subject to the terms of a
2 memorandum of understanding developed by the department.

3 (c) The department, subject to regulations adopted by the commissioner, may
4 issue, through a competitive auction or raffle, up to two harvest permits each year for
5 each of the following big game species: Dall sheep, bison, musk ox, brown or grizzly
6 bear, moose, caribou, and wolf. Notwithstanding AS 36.30, the department may
7 authorize a qualified organization to conduct the auction or raffle on behalf of the
8 department. If the department does authorize a qualified organization to conduct an
9 auction or raffle for a big game species, the department shall make available to a
10 qualified organization based in the state at least one harvest permit for that species.
11 If the auction or raffle is conducted by a qualified organization, the organization may
12 retain an amount from the gross proceeds of the auction or raffle equal to the
13 administrative cost of the auction or raffle plus an amount not to exceed 10 percent
14 of the net proceeds. The proceeds from the auction or raffle of a big game harvest
15 permit may not be used to make a contribution to any candidate for political office or
16 to any organization supporting or opposing ballot propositions or to pay expenses
17 associated with lobbying the legislature or administration. All proceeds from the
18 auction or raffle of the big game harvest permit less the amount that is retained by a
19 qualified organization under this subsection shall be deposited in the fish and game
20 fund under AS 16.05.100. A person who is issued a big game harvest permit under
21 this subsection shall receive upon the person's request a complimentary hunting license
22 and a big game tag for the big game species for which the big game harvest permit
23 is issued. A hunting license issued under this subsection must bear the inscription
24 "Governor's license" or a similar designation. A person who receives a big game
25 harvest permit, hunting license, or big game tag under this subsection may exercise the
26 privileges conveyed by the permit, license, or tag only in accordance with applicable
27 law. In this subsection, "qualified organization" means a nonprofit corporation
28 established to promote fish and game law enforcement or an organization that is
29 established to promote management of hunted game species and use of game
30 populations for hunting and that complies with applicable laws governing activities
31 under this subsection.

1 (d) Auctions and raffles of harvest permits authorized under this section are
2 not subject to AS 05.15.

3 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).



Alaska State Legislature

Official Business

State Capitol
Juneau AK 99801

MEMO

TO: George Utermohle
Legal Counsel
via fax: X2029 two pages

FROM: Annette Kreitzer, Aide to
Senate Resources Committee

DATE: April 10, 1996

RE: CS HB 59(RES)

Please prepare a Resources committee substitute for HB 59 using LS0282F and incorporating Amendment #1 adopted today in Senate Resources. (second page of this fax)

Also, include the following language:

Page 2, line 10:

Insert:

(b) The department may donate four elk harvest permits each year for elk from the Etolin Island herd for competitive auctions or raffles. The donations may be made only to nonprofit corporations based in Southeast Alaska that are established to promote fish and game management of hunted species, transplantation of species and use of fish and game populations for hunting and fishing, subject to the terms of an memorandum of understanding developed by the department.

And reletter the following sections.

* nanks.

#1

AMENDMENT

SENATE
OFFERED IN HOUSE RESOURCES
TO: CSHB 59(RES)

BY REPRESENTATIVE BUNDE

Page 1, lines 6 - 14; page 2, lines 1 - 9

Delete all material in subsection (u)

Insert a new subsection to read:

"(a) The department may donate one bison harvest permit each year for a bison from the Delta bison herd for a competitive auction or raffle. The donation may be made only to a nonprofit corporation established to promote fish and game law enforcement, subject to the terms of a memorandum of understanding developed by the department."

adopted no objections.

AMENDMENT

**OFFERED IN HOUSE RESOURCES
TO: CSHB 59(RES)**

BY REPRESENTATIVE BUNDE

Page 1, lines 6 - 14; page 2, lines 1 - 9

Delete all material in subsection (a)

Insert a new subsection to read:

UEW *5* *ELW*
“(a) The department may donate ~~one~~ *5* bison harvest permit each year for ~~a bison~~ *5*
from the ~~1200~~ *5* bison herd for a competitive auction or raffle. The donation may be made
only to a nonprofit corporation established to promote fish and game law enforcement *management*
subject to the terms of a memorandum of understanding developed by the department.”

Based in 96 Act

*1 bison
species, translocation
of game and
size of game
population for
hunting & fishing*



ALASKA OUTDOOR COUNCIL

4506 Robble Rd.
JUNEAU, AK. 99801
(907) 463-3830

Mar. 22, 1996

Senator Loren Leman, Chair
Senate Resources Committee
Alaska State Legislature
Juneau, Ak. 99801

Dear Senator Leman:

The Alaska Outdoor Council strongly supports HB 59, "Raffle or Auction of Big Game Permits". We believe this legislation would enhance the ability of outdoorsmen to work with the Department of Fish and Game in implementing programs that would enhance Alaska's wildlife resources.

At a time when the State is looking for ways to live within a shrinking budget, the programs allowed under HB 59 would assist hunters, trappers and fishermen in supporting worthwhile projects within ADF&G. This program has great merit and is being put to good use in other states. I have personal knowledge of how successful this program can be, as I worked with a group in Nevada that has access to permits from that state. Working with Nevada's Department of Fish and Game, outdoorsmen there were instrumental in raising the necessary funds which were used to restore several species of wildlife to their traditional habitats.

The Alaska Outdoor Council and its many members would appreciate it very much if the Senate Resources Committee could schedule this bill for action at your earliest possible convenience. Thank you for your time and consideration on our request.

Sincerely,

Eddie Grasser
Governmental Affairs

cc: Rep. Con Bunde

ALASKA WATERFOWL ASSOCIATION

3105A LAKESHORE DRIVE, SUITE 102
ANCHORAGE, ALASKA 99517
TEL. (907) 243-3236

March 20, 1996

FAX TO 465-3810

Senator Loren Leman
State Capitol (MB-3100)
Juneau, AK 99801-1182

RE: HB 59

Dear Loren:

Please support HB 59 which will authorize Governors Tags for big game hunting. This has been a very useful tool in other states to raise money for fish and game conservation purposes.

Good Hunting,


John W. Hendrickson
President

kmp

NO HARD COPY SENT!

REPRESENTATIVE CON BUNDE
CO CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES
VICE CHAIR RULES


Alaska State Legislature
House of Representatives

DURING SESSION
STATE CAPITOL, ROOM 108
JUNEAU, ALASKA 99801-1182
1 (907) 465-4843

DURING INTERIM
718 WEST 4TH AVENUE
ANCHORAGE, ALASKA 99501-2133
1 (907) 258-8188

SPONSOR STATEMENT
CSHB 59 (RES)

The purpose of HB 59 is to allow qualified organizations to raffle or auction big game permits as a revenue source for game management. A qualified organization which auctions a permit can retain a percentage of the sale plus administrative costs, while the remaining amount will be returned to the state for fish and game activities.

HB 59 authorizes the Dept. of Fish and Game to issue one bison harvest permit each year for a bison from the Delta bison herd. The permit may be auctioned or raffled by a qualified organization on behalf of the Dept. of Fish and Game. The organization is entitled to receive reimbursement for expenses plus up to ten percent of the net proceeds to use for the promotion of fish and game law enforcement, and up to 10 percent of the net proceeds.

This legislation will allow the Department of Fish and Game to issue, through a competitive auction or raffle, up to two harvest permits each year for each of the following species: Dall sheep, bison, musk ox, brown or grizzly bear, moose, caribou, and wolf. The qualified organization that conducts the auction may retain up to ten percent of the profits plus administrative costs. The remaining profit will be deposited into the Fish and Game fund.

There are at least 11 western states that have provisions for auctioning or raffling big game harvest permits. Every state with a similar program has had a positive impact on their budget. This legislation will provide another revenue source for the Dept of Fish and Game and will enable the continuation of game management programs for the common use of the people.

LEGAL SERVICES

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

(907) 465-3887 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

March 12, 1996

SUBJECT: CSHB 59(RES): Utilization of state revenues for private purposes

TO: Representative Con Bunde
Attn: Patti Swenson

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to your query regarding whether CSHB 59(RES) authorizes the use of state revenues for private purposes.

CSHB 59(RES) provides that the Department of Fish and Game may enter into agreements with qualified organizations to sell harvest permits for certain big game species on behalf of the state. For its efforts on behalf of the state, an organization is entitled to recover its costs in administering the auction or raffle for the permit and to ten percent of the net proceeds of the auction or raffle. The ten percent of the net proceeds that the organization receives is compensation for the services that the organization has provided to the state and is also an incentive for the organization to maximize the net proceeds of the auction or raffle. Ninety percent of the net proceeds of the auction or raffle are returned to the fish and game fund. The greater the net proceeds of the auction or raffle, the greater is the return to the fish and game fund and to the organization.

The money retained by a qualified organization does not represent a diversion of state revenue to private purposes, but is compensation retained by the organization for a service provided to the state.

The money retained by a qualified organization under CSHB 59(RES) is analogous to the compensation retained by vendors of fish and game licenses under AS 16.05.390. Fish and game license vendors are entitled to receive:

- (1) five percent of the fee that is charged for a license or tag or 25 cents for each license or tag sold, whichever is greater; and
- (2) compensation of \$50 per year or \$1 for each license or tag sold during the year, whichever is greater.

Representative Con Bunde

March 12, 1996

Page 2

Monies collected by a qualified organization on behalf of the state are state funds from the moment they are received by the organization and at that point are subject to the constitutional requirement that all state funds be appropriated before expenditure. Thus legislative appropriations authorizing the payment or reimbursement of the qualified organization are required before the organization may retain any proceeds derived from the auction or raffle of a harvest permit. The legislature can make the necessary appropriations as part of the annual operating budget appropriation process.

If I may be of further assistance, please advise.

GU:klb

96-184.klb

Organizations That Auction or Raffle Big Game Permits

Foundation for North American Wild Sheep

| | | Sheep | Moose | Goat |
|--------------|-----------|-----------|----------|----------|
| Nevada | 1984-1993 | \$415,000 | | |
| Montana | 1986-1993 | \$789,000 | \$35,000 | |
| Arizona | 1984-1993 | \$742,000 | | |
| Wyoming | 1983-1993 | \$480,000 | | |
| Utah | 1983-1993 | \$192,000 | | |
| North Dakota | 1986-1993 | \$209,000 | | |
| Idaho | 1988-1993 | \$216,000 | | |
| California | 1988-1993 | \$339,000 | | |
| Colorado | 1989-1993 | \$195,000 | | \$45,000 |
| New Mexico | 1990-1993 | \$238,000 | | |
| Oregon | 1992-1993 | \$159,000 | | |

Safari Club International

| | | | | |
|---------|----------------|------|----------|--|
| Wyoming | Sheep Permit | 1990 | \$36,000 | |
| | Mountain Moose | 1990 | \$10,000 | |
| | Sheep Permit | 1991 | \$24,500 | |

The Safari Club has been auctioning and raffling permits for many years. Only data from recent years was available.

Rocky Mountain Elk Foundation

| | | | |
|------------|---------|------|----------|
| Nevada | Elk Tag | 1993 | \$12,000 |
| California | Elk Tag | 1993 | \$20,000 |
| Arizona | Elk Tag | 1993 | \$42,000 |

The Rocky Mountain has been auctioning and raffling permits for many years. Only data from recent years was available.

1994 SHEEP PERMIT PAYMENT SCHEDULE

UTAH PERMIT

\$51,000 Desert sheep
 \$62,500 Bighorn sheep
 Remit at time of auction less 10%

NEW MEXICO PERMIT

\$58,000 Remit full amount with an invoice for 10% within 30
 days of auction

03

IDAHO PERMIT

\$48,000 Remit 95% by March 30th

ARIZONA PERMIT

\$245,000 Remit 100%

NEVADA PERMIT

\$79,000 Remit 100% by April 22nd with the name of designated
 hunter.

MONTANA PERMIT

\$310,000 Remit 90% within 60 days of auction

MONTANA MOOSE PERMIT

\$9,000 Remit 90% within 60 days of auction

CALIFORNIA PERMIT

\$110,000 Remit 100% within 60 days of auction by

COLORADO SHEEP PERMIT

\$67,000 Remit 90% within 60 days of auction

COLORADO GOAT PERMIT

\$9,500 Remit 90% within 60 days of auction

OREGON PERMIT

\$110,000 Remit 90% within 60 days of auction

NORTH DAKOTA

\$47,500 Remit 90% within 60 days of auction

WASHINGTON PERMIT

\$100,000 Remit 90% within 60 days of auction

TEXAS PERMIT

\$70,000 Remit 90% within 60 days

NEVADA

George Tsukamoto, Chief, Division of Game

All monies from all tags auctioned, elk, deer, antelope and sheep are directed solely for the purchase of helicopters.

George feels this helicopters are the single most effect tool in gathering census information for wildlife.

They have contracted helicopters in the past, however, this is sometimes difficult, i.e. during fire season, and costly - they average 1400 hours of flying time per year at \$475 an hour equals \$665,000.

They started with one helicopter, a B-1 piston, they have since sold that one and purchased two jet ranger helicopters. Their ultimate goal is to have three helicopters.

NEW MEXICO

Andrew Sandoval, Chief Habitat Director, Bighorn Sheep Coordinator

By legislative mandate, the monies from the sheep permit that is auctioned must only go to programs for wild sheep. They are also on a federal aid program, where for every dollar they generate from tags, the federal government will match it with three dollars. For example, this year the auction tag brought \$55,000 for New Mexico, the federal government will match it with \$165,000 for a total of \$220,000, which can only be used for sheep programs.

Projects which they use the money for include: 2 transplants for desert sheep, a historical evaluation of habitat for desert and bighorn sheep. A salting program to separate the recreational users of the land from the sheep to cause them less stress. Follow up of transplants and census and survey work.

Mr. Sandoval expressed his appreciation of FNAWS and hopes that our good working relationship will continue. He is very appreciative of the fact, that without FNAWS, a good many of his sheep programs would not exist.

NORTH DAKOTA

Ron Stromstad, Chief

The monies generated from the tags and GIA funding make up 60% of the budget designated for sheep programs, consequently, all monies from the permits are designated for sheep programs and their administrative costs.

In general, the programs include sheep census, baiting and treating lungworm, analyzing new sites for release of sheep and lambing surveys.

An ongoing program that they have been dealing with for the last two years is multi year bighorn research project, underwritten by FNAWS, Cenex, Meridian Oil, and FNAWS MN-WI chapter, to attempt to isolate methods of mitigating oil and gas developments to the bighorn herd.

OREGON

Walt Van Dyke, Assistant Staff Biologist, Big Game

By department policy, the money from the auction permits is earmarked specifically for sheep projects in an account called "The Bighorn Sheep Donation Fund". Sheep programs have been elevated within the department because of the money generated from the auction permits and our grant-in-aid monies. The auction of the permits also is popular with the general public.

75% of the money is used for trapping and transplants. This year the Oregon Department of fish & wildlife plans to ask for an additional 14 tags for sheep. Walt feels that this is a direct result of the trapping and transplanting programs that have been funded by the auction permits.

The rest of the money goes to disease research in Oregon and support research efforts with University of Washington and University of California, and cooperative programs with other agencies involving habitat improvement i.e. prescribed burns, range rehabilitation and guzzler installments.

Walt says he appreciates the Foundation for all the efforts, and without FNAWS they would not have the money to accomplish all that they have in the last 5 years.

UTAH

Wes Shields - Big Game Program Coordinator

The money from the auction tag permits goes into a dedicated account for wild sheep only (which is approved by the Utah). This money makes up 90% of the budget for the programs for desert and bighorn sheep. All other monies from the routine drawing of permits goes into a general fund, consequently, the money from the auction permit means alot to them.

From the permits that were auctioned this year, the major project is:

They will be giving \$40,000 of the permit money to the Utah Chapter of FNAWS who will in turn buy out the AUM domestic sheep. This will directly affect the Rattlesnake bighorn sheep population that currently competes with 3,000 domestic sheep for grazing land.

The other monies go to survey and transplant work. They are currently working on a program where they have received 25 sheep from Colorado for transplant . They are also working with Arizona on a cooperative management program for the herd near St. George and the Arizona border.

IDAHO

Lloyd Oldenberg, Wildlife Game and Research Manager

All the monies from the auction tags go into a special account that can only be used for wild sheep. This is Idaho Fish & Game Department policy. These funds are supplemented by the Department's budget to complete the projects. As of June 9, 1993, there was \$30,000 in this special account. They are currently doing a sheep census until June 30th. The money will undoubtedly go to paying for the helicopter time.

A list of all the projects that have benefited from the auction permit monies is attached.

One of the things the monies do not support is administrative costs.

COLORADO

Tom Lyle, DNR, Division of Wildlife

Under Colorado law, all monies obtained from the permit must be spent on bighorn sheep. This is exclusive of the in-house budget already targeted for the sheep.

Habitat work is their first priority. They work in cooperation with the Forest Service for habitat improvement. This includes controlled burning, patch cutting and re-vegetation.

One project they had been working on was the compatibility between bighorn sheep and mountain goats. This was a three year project, however the funds ran out after two years. The funds from the auction of the permit will now enable them to finish this project.

Another area where the money is spent is on educational displays.

Colorado is primarily a deer and elk state, and Tom Lyle feels that without the proceeds raised by the FNAWS, the majority of projects for sheep would not have been possible.

CALIFORNIA

Steve Torres, Statewide Program Coordinator for bighorn sheep

The monies generated from the tag goes into a "pot" that is specifically earmarked for bighorn sheep. The \$61,000 raised in 1992 made up about 1/5th of the budget. The attached report outlines all the programs for the sheep, which includes, the collaring of sheep, general research, and translocation.

This year, with the \$100,000 generated, they are excited. They are working on opening a 4th hunting area for bighorn sheep. It will be in the Chocolate Mountains, which is located in the southeastern part of the state, bordering Mexico and Arizona. Most of the money will be used for aerial surveys to determine if populations are ready for harvest.

All monies generated from the sale of tags for bighorn sheep is legislatively mandated to go to the sheep.

ARIZONA

Ray Lee, Big Game Management Supervisor

Under Arizona law, every dollar from the purchase of the permits has to be returned to the Arizona Game and Fish. The money is deposited into an interest bearing account until the Game & Fish department and the Arizona Society of Bighorn sheep can reach an agreement of how the money should be spent. Major projects include: transplants, helicopter fees, capture equipment and medical supplies for injured animals, and water development.

This is their tenth year doing this. Last years expenditures are attached.

FISCAL NOTE

Bill Version: CSHB 52(RES)

(H) Publish Date: 2/7/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 2/2/96
Title: An Act relating to raffles and auctions of certain permits to take big game.
Sponsor: Representative Bunde
Requester: House Finance

Dept. Affected: Fish and Game
BRU: Wildlife Conservation
Component: Wildlife Conservation
COMPONENT SERIAL NO. 473

Expenditures/Revenues

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | 1.0 | 0.0 | 1.0 | 0.0 | 1.0 | 0.0 |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 1.0 | 0.0 | 1.0 | 0.0 | 1.0 | 0.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|----------------------------------|-------------|-------------|-------------|-------------|--------------|--------------|
| CHANGE IN REVENUES (1024) | 25.0 | 25.0 | 50.0 | 50.0 | 100.0 | 100.0 |
|----------------------------------|-------------|-------------|-------------|-------------|--------------|--------------|

FUND SOURCE

(Thousands of Dollars)

| | | | | | | |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other (1024 Fish & Game Fund) | 1.0 | 0.0 | 1.0 | 0.0 | 1.0 | 0.0 |
| TOTAL | 1.0 | 0.0 | 1.0 | 0.0 | 1.0 | 0.0 |

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

See attached page for assumptions used in revenue fund source estimates.

Prepared by: Wayne Regelin, Director
Division: Wildlife Conservation
Approved by Commissioner: Gerard Bunde
Agency: Alaska Department of Fish and Game

Phone: 465-4191
Date: 2/2/96
Date: 2/2/96

COMMITTEE COPY PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

Assumptions:

Operating Expenditures:

Approximately \$1.0 in contracting, advertising, and postage costs would be spent biennially to establish, develop, and provide opportunities for qualified organizations to participate in the program.

Revenue:

The department anticipates that the Fish & Game fund will earn between 25.0 and 100.0 annually from the auction/raffle of big game hunting permits, depending on the number of permits offered, state of the economy, and other variables.

Anticipated earnings are based on experience of other states and raffle of the Delta bison permit. The single Delta bison permit that was raffled in support of the Alaska Fish & Wildlife Safeguard program earned the F&G Fund between 15.0 and 20.0 per annum. The auction of bighorn sheep permits in different western states has raised amounts ranging from 20.0 to 250.0. Permits for other species (e.g., moose, bison, deer, elk, antelope) have earned from 3.0 to 16.0 at auction.

Because of the possibilities Alaska has to offer in the way of hunting opportunity and combination hunts, we expect that as the program develops and becomes established, the long-term potential for revenue will increase.

HB

102

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 102

1995 LEGISLATIVE SESSION

Revision Date: January 27, 1995

Department: Commerce and Economic Development

Title: An Act extending the termination date of the

BRU: Occupational Licensing

Big Game Commercial Services Board

Component: Operations

Sponsor: House Resources Committee

Requestor: House Resources Committee

COMPONENT SERIAL N 1844

Expenditures/Revenues

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 95 | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 |
|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES | 174.0 | 174.0 | 174.0 | 174.0 | 174.0 | 174.0 |
| TRAVEL | 27.5 | 27.5 | 27.5 | 27.5 | 27.5 | 27.5 |
| CONTRACTUAL | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 | 56.7 |
| SUPPLIES | 1.2 | 1.2 | 1.2 | 1.2 | 1.2 | 1.2 |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 249.2 | 259.4 | 259.4 | 259.4 | 259.4 | 259.4 |

CAPITAL EXPENDITURES

CHANGE IN REVENUES

| | | | | | | |
|--|-------|-------|-------|-------|-------|-------|
| | 324.1 | 188.0 | 324.1 | 191.1 | 324.1 | 194.7 |
|--|-------|-------|-------|-------|-------|-------|

FUND SOURCE

(Thousands of Dollars)

| | | | | | | |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 General Fund | | | | | | |
| 1005 GF/Program Receipts | 249.2 | 259.4 | 259.4 | 259.4 | 259.4 | 259.4 |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 249.2 | 259.4 | 259.4 | 259.4 | 259.4 | 259.4 |

Estimate of any current year (FY 95) cost: \$

219.6

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 2 | 2 | 2 | 2 | 2 | 2 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

HB 102 extends the termination date of the Big Game Commercial Services Board to June 30, 1998. The expenditures shown above are included in the FY 98 operating budget request and the revenue identified are reflected in revenue projections. The board is in its final year of existence unless legislation is passed to continue the board.

Prepared by: Jennifer Strickler, Admin. Officer

Phone: 465-2144

Division: Occupational Licensing

Date: 1/27/95

Approved by Commissioner: William L. Hensley

Date: 1/27/95

Agency: Commerce and Economic Development

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further dist

ative Office

DEPARTMENT OF FISH AND GAME
POSITION PAPER

Bill No: HB 102

Sponsor: House Resources Committee

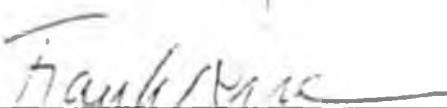
Division: Wildlife Conservation

Bill Title: An Act extending the termination date of the Big Game Commercial Services Board.

Department Position: Support

Background/Legislative Intent: This bill would extend the termination date of the Big game Commercial Services Board until June 30, 1998.

Analysis of Bill/Program Effects: A sunset provision in statute resulted in termination of the board in June 1994. This board provides a valuable service by assuring that those individuals licensed as big game guide-outfitters are qualified and capable of providing the services expected of them by their clients. The board also plays an important role in distributing the guided hunting effort so that discrete big game populations are not subjected to excessive hunting pressure.



Commissioner's Signature

22.95

Date

SENATE COMMITTEE REPORT

DATE: 3/2/95

FURTHER: Finance

DATE TURNED INTO OFFICE: 11-24-95

Resources Committee considered HOUSE BILL NO. 102

"An Act extending the termination date of the Big Game Commercial Services Board."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

technical change

new: SCR# _____

| SIGNING DO PASS | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|----------------------------------|----|-----------------------|----|-----|----|
| <i>[Signature]</i> | ✓ | | | | |
| <i>[Signature]</i> | ✓ | | | | |
| <i>[Signature]</i> | | | | | |
| <i>[Signature]</i> | | | | | |
| <i>[Signature]</i> | | | | | |
| CHAIR: <i>[Signature]</i> | ✓ | | | | |

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

| Department | Date | Zero | Fiscal |
|------------|------|------|---------|
| C+ED | 2/78 | | \$249.2 |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Hundley v. The Monster Summary

Mr. H believes that the State Division of Occupational Licensing have unlawfully and arbitrarily acted against him due to the regulations put in place by the Big Game Commercial Services Board.

History:

In the Spring of 1993 the Board adopted guide area scheme as a regulations package. Mr. H sees this GAS as a defense to the Boards sunset. He believes that the AK Professional Hunters Association sees the Board as a way to reinvent the old exclusive GAS and to allocate the areas back to the original area holders.

The Board adopted the scheme by stating that the program would require no funding---therefore no scrutiny by the House or Senate Finance Committees and no real eyebrows raised in the administration. The board then taxed the licensed guide-outfitters to pay for the cost of the scheme, about \$700.

Mr. H believes that the St of AK has a constitutional ban against dedicated funds and this funding is against the law.

Problem:

According to regulations adopted by the Board, guide outfitters can only guide within the geographical boundary lines drawn up in a statewide mapping project incorporating 22000 Unified Coding Units. into new guide areas with certain exceptions.

The board will, in its discretion, allow a guide-outfitter who is already registered in three use areas, to register for a portion of an additional use area that is adjacent to a use area in which the guide outfitter is already registered, if the Board finds that because a use area boundary does not coincide with a land ownership boundary, that portion of the adjacent use area would otherwise remain unused.

He met the merits of the regulation and submitted the application for the 4th area. The division notified me that I could not submit a 4th area application and for all intents and purposes, could never hope to be included in the selection process for awarding the area.

Mr. H submitted legal paperwork to a hearing office in response to the A.G.'s office summary judgment against my case. He issued a 9 page decision spelling out that the area scheme was unconstitutional and did not meet legislative intent.

Mr. H was told by Div. of Licensing and by Scott Ogan (board member) to circumvent the regulations and form "co-ops" with other guides to sign each others paperwork. This program is only in its first year and it is already deteriorating to the old elusive guide area scheme.

In Summary:

The legislative letter of intent is very clear, but is not being followed. This compromises and jeopardizes the legality of the programs statutory authority.

Mr. H believes that the limitation of only being able to vie for 3 guide areas with no other option to participate in the selection process in other areas regardless of long term commitments and relationships with landholders, is arbitrary and without justification and is only placed in regulation because " that's the way it is used to be under the exclusive guide area scheme and that's the way its gonna be now."

The Board does not have the funding to adequately carry out their duties and does not disseminate the information concerning the constant rewriting and amending of regulations which have the force of law, thereby denying licensed guides due process in the implementation of these programs.

An industry is being manipulated through shrewdly leveraged political maneuvering by these old guides who want to regain control of their exclusive guide areas.

HB 102

THOMAS N. SCARBOROUGH
1676 TAROKA DRIVE
FAIRBANKS, ALASKA 99709
(907) 479-3412

February 20, 1995

Senator Rick Halford
State Capitol - Room 508
Juneau, Alaska 99801-1182

Re: House Bill No. 102, An Act extending the termination date of the Big Game Commercial Services Board.

Dear Rick:

The providing of Big Game Commercial Services has become an extremely complicated system of rules and regulations administrated by both the State of Alaska and the Federal Government. The State of Alaska Department of Commerce and Economic Development, Division of Occupational Licensing is the Administrative agency assigned to administer Big Game Commercial Services. The Federal Agencies consisting of Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Forest Service and National Park Service as land managers directly interact with those providing Big Game Commercial Services. Private Land Holders as land managers also are required to provide land use permits.

Big Game Commercial Services is generally viewed by the public as the Big Game Hunting Guide Industry. Actually the State Statutes are much boarder that this. They include any one providing:

1. Ground, water or air transportation to big game hunters. Transporter license required.
2. Guide-outfit hunting for a specific marine mammal. Special license required. (I do not believe any license have ever been issued)
3. Big Game Commercial Services service for compensation, other than a guide-outfitter, marine mammal guide-outfitter or transporter. Commercial use permit required.

A Board consisting of 9 members is appointed by the Governor for the purpose of licensing and regulating the above activities. Make up of Board is stipulated by statute. The State Departments of Fish and Game, Department of Natural Resources and Department of Public Safety are to provide technical assistance.

Sen. Halford Ltr. cont. Re: House Bill No. 102, An Act extending the termination date of the Big Game Commercial Services Board.

The history of previous Big Game Commercial Services prior to 1989 was to create a closed fraternity for a select number of Big Game Guides. This system was found to be unconstitutional by the Alaska Supreme Court. The result was a revised set of statutes for Big Game Commercial Services. These have proved to be very cumbersome to work with by the Board and costly to the industry. Some members of the Big Game Guiding industry have worked diligently to find some legal way to return the system back to that similar to 1989. This has caused confusion and in my opinion a lot of wasted effort.

The Federal Agencies have been quite cooperative with working with the Board. With the exception of the Department of Public Safety, other State agencies have ignored the Big Game Commercial Services industry. This includes the Dept. of Fish and Game. The attitude of ADF&G is hard to understand as approximately 80 % of State of Alaska funds dedicated to wildlife management are generated by this industry.

The Dept. of Commerce has supplied one staff person to deal with Big Game Commercial Services. Overall the fees (taxes) paid by the industry amounts to about \$400,000 per year. Actual expenditures by the Dept. of Commerce including charges by Attorney Generals staff for legal assistance totals only about \$200,000.

The Big Game Guiding industry has been estimated to generate upwards of 100 million dollars of business per year. This must be considered a portion of the tourist industry. Most of this money is spent right here in Alaska. Very different to the major providers of tourist services. The State of Alaska provides the tourist industry with 7 to 10 million dollars each year for advertising. None of these dollars are used to promote the Big Game Guiding (hunting) industry.

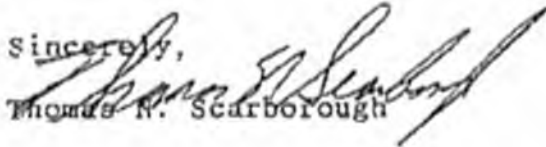
It can be concluded very quickly that Big Game Services is an important industry to Alaska. It can also be quickly seen that the State of Alaska Government agencies have little interest in Big Game Guiding even though this is a 100 million dollar renewable industry. Something different must be done.

I believe the only solution is to establish a private (or quasi private) board. This Board could then represent the Big Game industry. It could also have a staff which could truly service the industry and achieve cooperation from

Sen. Halford Ltr. cont. Re: House Bill No. 102, An Act extending the termination date of the Big Game Commercial Services Board.

involved State and Federal agencies. A change in some state statutes may be required to achieve a private board to oversee Big Game Commercial Services. Obviously the fees required of the industry must be revised. A simple way to achieve this would be to sunset the current Board and then set up a process to revise the statutes next legislative session. This would force the industry to reevaluate where it is at today and what might be done to correct the current situation. I believe with proper management this could be a renewable industry to Alaska of several times what it is today. This will not occur unless major changes are made.

Sincerely,


Thomas N. Scarborough

cc to: DOC

Lake Country Lodge

HC-2 Box 852, Soldotna, Alaska 99669

Phone: (907) 283-5821 / (907) 781-2245 FAX: (907) 283-9177

March 17, 1995

Sen. Loren Leman
Juneau, AK

Dear Loren;

Hope things are going well in Juneau, for you. Sounds like you have lots of big problems again as usual.

I am writing you about the Big Game Commercial Services Board. Although, I don't know the Bill #, I understand there is one which would extend it another three years, rather than let it die under the sunset provisions.

For my part, I would like you to vote AGAINST extension. The Board is very expensive and serves no good purpose. All its regulations continue to knock at the door of bringing back the "good ol' boys club" of Big Game Guides and their exclusive use areas, which as you know was declared unconstitutional, and the system completely disbanded.

As an active Big Game Guide/Outfitter and operator of Lake Country Lodge, I sure hope you allow the Big Game Commercial Services Board to sunset and die a nice quiet death.

Thank you;


John C. Davis

Lake Country Lodge &
KSRM, Inc.

NOTICE OF ADOPTION OF EMERGENCY REGULATIONS

BIG GAME COMMERCIAL SERVICES BOARD

Use Area Registration

AK
file
w/ their
bill.

As required by AS 44.62.250, notice is given that, under the authority of AS 08.54.310 and AS 08.54.320, the Big Game Commercial Services Board adopted, on March 1, 1995, as an emergency regulation, amendments to 12 AAC 38.820 relating to registration in a guide-outfitter use area, to implement, interpret, and make specific AS 08.54.310 and AS 08.54.320.

The emergency regulation amends 12 AAC 38.820 to provide for a guide-outfitter to register for a use area outside of a regularly scheduled application period under specific circumstances, including obtaining landowner authorization for that area. This amendment creates an exception to existing regulations that limit when a guide-outfitter may register for a use area or surrender one use area registration to register in another use area.

This regulation took effect March 20, 1995. The emergency regulation will expire July 17, 1995, unless it is made permanent by the Big Game Commercial Services Board.

Notice is also given that the Big Game Commercial Services Board intends to make this regulation permanent under AS 44.62.260, and any interested person may present written statements or arguments relevant to that proposed action by writing to:

JoAnne Cummings
Regulations Specialist
P.O. Box 110806
Juneau, AK 99811-0806

Written comments must be received no later than **Monday, April 24, 1995.**

Additionally, any interested person may present oral statements or arguments relevant to the proposed action at a hearing to be held on April 26, 1995, beginning at 9:00 a.m., at the following teleconference sites:

Frontier Building
3601 C Street, Suite 778
Anchorage, Alaska

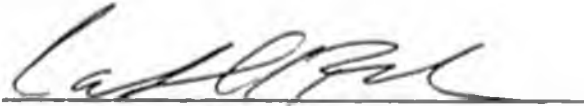
State Office Building
9th Floor, Conference Room B
333 Willoughby Avenue
Juneau, Alaska

State Office Building
Conference Room
675 Seventh Avenue
Fairbanks, Alaska

If you are a person with a disability who may need a special modification in order to comment on the proposed action, please contact JoAnne Cummings at the Division of Occupational Licensing, (907) 465-2537, no later than April 17, 1995, to make any necessary arrangements.

A copy of the emergency regulation may be obtained by writing to the address above or by calling (907) 465-2537.

This action is not expected to require an increased appropriation.



Catherine A. Reardon, Director
Division of Occupational Licensing

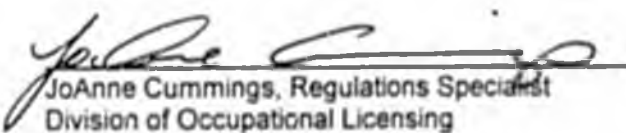
Date: 3/20/95
Juneau, Alaska

ADDITIONAL REGULATIONS NOTICE INFORMATION
AS 44.62.190(d)

1. **Adopting agency:** Department of Commerce and Economic Development, Big Game Commercial Services Board
2. **General subject of regulation:** Registration in a guide-outfitter use area
3. **Citation of regulation:** 12 AAC 38.820
4. **Reason for the proposed action:** Development of program standards
5. **Cost of implementation to the state agency:** No costs are expected in FY 95 or in subsequent years.
6. **Contact person for the regulations:**

JoAnne Cummings, Regulations Specialist
Division of Occupational Licensing
P O Box 110806
Juneau, AK 99811-0806
(907) 465-2537

7. **Origin of the proposed action:** Department of Commerce and Economic Development, Big Game Commercial Services Board

8. 
JoAnne Cummings, Regulations Specialist
Division of Occupational Licensing

Date: 3/20/95

STATE OF ALASKA - OFFICE OF THE GOVERNOR
Boards and Commissions Office

Membership Roster

(042) BIG GAME COMMERCIAL SERVICES

| Member | Appointed | Reappointed | Term Exp. |
|---|-----------|-------------|-----------|
| Vacant Position Public | | | 06/30/97 |
| Vacant Position Commercial Use Permit Holder/Restricted | | | 06/30/98 |
| Glen Alsworth Transporter/restricted 2425 Merrill Field Drive Anchorage, AK 99501 | 08/29/89 | 06/15/90 | 06/30/94 |
| Peter R. Buist Guide-Outfitter P.O. Box 71561 Fairbanks, AK 99707 | 08/01/91 | | 06/30/95 |
| Richard Burley Board of Game/Restricted 1165 Coppot Street Fairbanks, AK 99709 | | 11/15/93 | 06/30/97 |
| Glenn W. Fredericks Native landholders rep. 1400 Virginia Court Anchorage, AK 99510 | 10/28/92 | | 06/30/96 |
| Paul E. Johnson Guide-outfitter -- Chair P.O. Box 22 Elfin Cove, AK 99825 | 08/29/89 | 07/13/92 | 06/30/96 |
| Thomas N. Scarborough Public P.O. Box 80868 Fairbanks, AK 99708 | 08/01/91 | 06/30/93 | 06/30/97 |
| Eric C. Stirrup Transporter/Restricted P.O. Box 4123 Kodiak, AK 99815 | 08/24/91 | | 06/30/95 |



Official Business

Alaska State Senate

Senate Finance Committee

HB 102

Mail Stop 3100
State Capitol
Juneau Alaska 99801-0182

MEMORANDUM

TO: All Senators

FROM: Senator Rick Halford

DATE: April 29, 1995

SUBJECT: House Bill 102 - Big Game Commercial Services Board Extension

Recently Joe Klutch, president of the Alaska Professional Hunters Association sent out the enclosed letter regarding House Bill 102 which extends the Big game Commercial Services Board.

For your information I have enclosed a copy of Mr. Klutch's letter and my response with enclosures. My response was intended to clear up the misleading information in his letter.

If you have any questions or need further information, please call my office at 4958. Thank you.



Official Business

Alaska State Senate

Senate Finance Committee

April 27, 1995

Mail Stop 31001
State Capitol
Juneau, Alaska 99801-0182

Dear Registered Guide,

You may have recently received a letter from Joe Klutch regarding the Big Game Commercial Services Board (BGCSB) which conveys some misleading information.

I would respond to Mr. Klutch personally but he is apparently not available. He is correct that I was unable to change my schedule on short notice to meet with him except briefly while he was in Juneau but failed to mention that he also canceled one of the appointments.

Last year at the end of the session I agreed to a one year extension of the Board without correcting the long-standing statutory areas of concern for two reasons; it was late in the session and the house bill had a narrow title which did not allow significant changes to the law. Now the House has again offered an extension with no amendments or clean-up language permitted under the existing bill title. Legislative rules do not allow an amendment in the second body which is not covered in the title.

Having been through this exercise last year I do not intend to go through it again in the same way. I will not support the continuation of the Board without repeal of a number of unnecessary provisions. It is ridiculous that the BGCSB enforce insurance provisions, requirements of other state agencies, the FAA, the Coast Guard or spend its time and considerable funds trying to recreate the unconstitutional pre-Owsichuk area system. All that the board spends just results in increased license fees.

I would like to see the BGCSB extended with changes and have made this clear to anyone who asked. A simple licensing board can provide licensing and examination without having to be a lawyer to understand it.

I have dealt with these issues for the past 25 years both inside and outside the legislative process. During that time sadly the A.P.H.A. has been a chief defender of many abuses which cost individuals tens of thousands of dollars to overturn in court. Even today large operators support unnecessary regulations in an effort to limit entry and competition. Board efforts to increase apprenticeship time to five years aren't to get better assistance guides but to keep a pool of low cost labor available. The self-serving rhetoric and inflammatory predictions of doom are no more new than they are accurate.

I'm enclosing two opinions from the Department of Law and an amendment to delete the unconstitutional provisions in current law which were proposed jointly by the Commissioners of Commerce, public Safety, Fish and Game and Natural Resources when the provisions were adopted originally.

Arguing the area system is a waste of breath. The false hopes, wasted effort by guides trying to comply and all the mapping, recording and B.S. surrounding that system will fall of their own weight so they can stay in the law as far as I'm concerned. I will not however support all the other provisions which unnecessarily and ineffectively harass the industry.

Sincerely,



RICK HALFORD

RH:kg

Alaska

Professional Hunters Association, Inc.

P.O. Box 91932 • 301 E. 77th • Anchorage, Alaska 99509
(907) 522-3221

4-22-1995

To: All APHA, SCF, FNAWS members and fellow sportsmen of
Alaska

From: Joe Klutsch

Dear Friends,

House Bill 102 which would extend the Big Game Commercial Service Board is now in jeopardy of being killed in the Senate Finance Committee chaired by Senator Rick Halford. The Bill passed the House of Representatives by a 39 yeas - 1 excused absence vote. It moved out of the Senate Resources Committee on Saturday the 22nd and was referred to the Senate Finance Committee chaired by Senator Rick Halford.

Senator Halford has been completely unwilling to discuss any of his specific concerns with me despite numerous attempts to meet with him personally. He has indicated that it is his belief that the BOCSB and the regulation package establishing the registration area system serves no management purpose whatsoever. As chairman of the Finance Committee and Senate Majority Leader, he is in a position to prevent HB 102 from passing.

If HB 102 dies in his Committee, the Big Game Commercial Service Board will cease to exist in July of this year. All the regulations related to guiding will expire also. This means complete open access on State lands and no more registration areas. Chaos in the field, conflicts with other guides and users and excessive harvest on many key big game species will result. This translates into reduced or closed seasons for guided hunters. Make no mistake about it. If the State Board of Game doesn't do it, the Federal Subsistence Board will.

I am asking every one of you who has trusted myself and the APHA Board of Directors to act on your behalf, to respond by calling the following members of the Senate Majority and request in a respectful but urgent and forceful manner that they urge Senator Halford to move HB 102 out of his Committee and on to passage. Your future in the guiding

profession depends on it.

Please call and if possible write in the next week the following Senators and ask them in no uncertain terms to convince Senator Halford to move HB 102 on to passage. It is a simple Board extension bill.

Senators:

- Steve Frank ... 465-3709
- Lyda Green ... 465-6600
- Tim Kelly ... 465-3822
- Loren Leman ... 465-2095
- Mike Miller ... 465-4976
- Drue Pearce** ... 465-4993 ✓ - Senate President *****
- Steve Rieger ... 465-3879
- Bart Sharp ... 465-3004
- Robin Taylor ... 465-3873
- John Torgerson ... 465-2928

Senator Halford
465-4959

465-4925 fax

You will probably not be able to talk to most of these Senators personally. But you will talk to staff members who will definitely convey your message if you are respectful, credible and make clear the urgency of this situation. Ask them to talk to Senator Halford and urge him to move HB 102 on to passage!

The reasons are as follows:

Sun setting the BGCSS means complete deregulation of commercial hunting activities.

Big Game populations will be over hunted in many areas.

Conflicts with other guides, general residents and subsistence users will occur resulting in low quality hunting opportunities.

An 80 to 100 million dollar a year industry will be further crippled.

The Federal Government will take even more control of hunting activities.

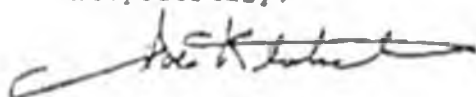
Alaska has one of the better systems in the world for regulating and allocating harvest of game. We cannot afford to throw it away because a few individuals have a personal problem!

It has taken eight years to re-structure a system since
Dmscheck. Its not perfect by any means, but its better
than no regulation at all!

Make follow up calls or Fax PM messages to these Senators.
ASK if they are getting results from Senator Halford. TIME
IS CRITICAL!!! The legislature may adjourn within a week
and our extention bill could die with it.

As the President of APHA, I have asked very little of each
of you except the confidence and trust that you feel I have
earned and nothing could be more important than that. But
now, I am asking you to do as I have requested in this
letter and to do it now! To a great extent, your future in
the guiding profession will hinge on your response to this
request! I am confident that you will respond accordingly.

Respectfully,



Joe Klussch
President - APHA

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 N 4TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: 907 276-3550

131 NATIONAL CENTER
100 CUSHMAN ST
SUITE 400
FAIRBANKS ALASKA 99701-4679

November 29, 1988

P O BOX K—STATE CAPITOL
JUNEAU, ALASKA 99801-2300
PHONE: (907) 465-3600

Dear

Thank you for your letter about various guide industry issues. I appreciate your candor and courage in expressing some realities that are often "swept under the rug" by guides who want us to merely resurrect the old exclusive guide area system with a new name and slightly different form.

As you probably know, this office asked that the court's decision invalidating the EGA system be postponed until June 1, 1989. We were directed to make this request due to political pressure exerted by the APHA and to game management concerns raised by the Division of Game.

Although our request may seem that we are endorsing the old system, that is not the case. I believe that this request is the "last hurrah" for a system that was anti-competitive, ridden with abuse, and did not serve game conservation. Thus, it was declared unconstitutional, and I believe that any similar system that allocates game on an exclusive, area wide basis, no matter what it is called, would also be illegal.

As the Assistant Attorney General who advises the Guide Board, I will be encouraging the Department of Commerce and Economic Development and the legislature to limit the board to the sole function of licensing and de-licensing guides. Economic survival within the industry should be determined by the marketplace, like it is with any other occupation. Game conservation issues should be handled by the organization that is better equipped to deal with this responsibility, the Game Board.

Again, thank you for your letter. I sent a copy of it to the director of the Division of Occupational Licensing, and I encourage you to send a copy to Representative Henry Springer, P.O. Box V, Juneau, Alaska 99811, who is the chairman of the Interim Task Force on Guiding and Big Game. I also encourage you

Appendix C-1

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

February 14, 1989

The Honorable Bettye Fahrenkamp, Chairwoman
Senate Resources Committee
P.O. Box V
Juneau, Alaska

Dear Senator Fahrenkamp:

To assist your committee in its consideration of Senate Bill 140, I am writing to provide a synopsis of the Owsichuk decision and its implications for creating an area management system for allocating guide access to big game.

1. SYNOPSIS OF THE OWSICHER DECISION.

On October 21, 1988, the Alaska Supreme Court decided that the statutes and regulations that underlie the state's exclusive guide area system ("EGA") are unconstitutional. 1/

On December 8, the court granted the state's request that the effect of this decision be postponed until June 1, 1989. Therefore, the EGA system is currently enforceable. Beginning in June, the system will have no legal effect, and any licensed person may guide hunters in a game management unit for which he or she is certified. 2/

1/ The court uses the term "exclusive guide areas" to describe not only joint use areas but also "restricted guide areas," a term used to describe EGA's since 1986 when the term appeared in AS 08.54.195.

2/ When a guide is licensed by the Division of Occupational Licensing, he or she is "certified" to conduct hunts in only those game management units where the guide has experience. Except for older guides who were "grandfathered" into more units, most guides are limited by regulation to certification in not more than three game management units. 12 AAC 38.200.

(Footnote Continued)

Appendix 1-3

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

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

November 29, 1988

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99801-0000
PHONE: (907) 465-3600

Dear

Thank you for your letter about various guide industry issues. I appreciate your candor and courage in expressing some realities that are often "swept under the rug" by guides who want us to merely resurrect the old exclusive guide area system with a new name and slightly different form.

As you probably know, this office asked that the court's decision invalidating the EGA system be postponed until June 1, 1989. We were directed to make this request due to political pressure exerted by the APHA and to game management concerns raised by the Division of Game.

Although our request may seem that we are endorsing the old system, that is not the case. I believe that this request is the "last hurrah" for a system that was anti-competitive, ridden with abuse, and did not serve game conservation. Thus, it was declared unconstitutional, and I believe that any similar system that allocates game on an exclusive, area wide basis, no matter what it is called, would also be illegal.

As the Assistant Attorney General who advises the Guide Board, I will be encouraging the Department of Commerce and Economic Development and the legislature to limit the board to the sole function of licensing and de-licensing guides. Economic survival within the industry should be determined by the marketplace, like it is with any other occupation. Game conservation issues should be handled by the organization that is better equipped to deal with this responsibility, the Game Board.

Again, thank you for your letter. I sent a copy of it to the director of the Division of Occupational Licensing, and I encourage you to send a copy to Representative Henry Springer, P.O. Box V, Juneau, Alaska 99811, who is the chairman of the Interim Task Force on Guiding and Big Game. I also encourage you

Appendix 5-1

Mr. Tom Hundley

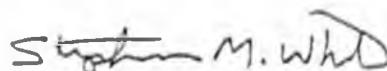
November 28, 1988
Page 2

to express your thoughts to the legislature this winter when the
guide industry will again be an issue.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:



Stephen M. White
Assistant Attorney General

SMW:jf

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 485-3600

February 14, 1989

The Honorable Bettye Fahrenkamp, Chairwoman
Senate Resources Committee
P.O. Box V
Juneau, Alaska

Dear Senator Fahrenkamp:

To assist your committee in its consideration of Senate Bill 140, I am writing to provide a synopsis of the Owsichek decision and its implications for creating an area management system for allocating guide access to big game.

1. SYNOPSIS OF THE OWSICHEK DECISION.

On October 21, 1988, the Alaska Supreme Court decided that the statutes and regulations that underlie the state's exclusive guide area system ("EGA") are unconstitutional. 1/

On December 8, the court granted the state's request that the effect of this decision be postponed until June 1, 1989. Therefore, the EGA system is currently enforceable. Beginning in June, the system will have no legal effect, and any licensed person may guide hunters in a game management unit for which he or she is certified. 2/

1/ The court uses the term "exclusive guide areas" to describe not only joint use areas but also "restricted guide areas," a term used to describe EGA's since 1986 when the term appeared in AS 08.54.195.

2/ When a guide is licensed by the Division of Occupational Licensing, he or she is "certified" to conduct hunts in only those game management units where the guide has experience. Except for older guides who were "grandfathered" into more units, most guides are limited by regulation to certification in not more than three game management units. 12 AAC 38.200.

(Footnote Continued)

The supreme court based the Owsichek decision on its interpretation of the "common use clause," i.e., article VIII, section 3 of the Alaska Constitution. This clause says, "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

This was the first time the court was called on to interpret the common use clause with respect to wildlife. In earlier decisions, it had discussed the clause in the context of state waters (Wernberg and CWC Fisheries) and in the context of fish (Ostrosky and Jonns). In light of its earlier decisions, the court declared that the "common use clause was intended to guarantee broad public access to natural resources."

In order to further clarify the meaning of the common use clause, the court looked at the constitutional history of this clause and at the historic development of wildlife law in general. Concerning the constitutional history, the court said that the purpose of the clause was "anti-monopoly." It also found that the framers of the constitution intended to prohibit "exclusive grants or special privileges" and intended that the public "retain broad access to fish, wildlife and water resources."

In discussing the development of wildlife law, the court said that the common use clause "constitutionalized" the state's public trust duty toward wildlife. This is a duty to manage these resources for the benefit of all the people.

The court summarized its interpretation of the common use clause by stating that the clause was intended to put into the constitution "certain trust principles guaranteeing access to

(Footnote Continued)

At the time of the court's decision, 256 licensed guides had been assigned either exclusive or joint use guide areas. One hundred and eighty four licensed guides had no area to guide in. Therefore, after June 1 the Owsichek decision means that 134 more guides will be able to guide hunts in any of the game units for which they are certified. The additional hunting pressure, of course, varies from unit to unit. For example, the number of eligible guides in units 1, 2, 3, and 4 (southeast Alaska) will increase three-fold (from 13 to 33) while the number of eligible guides in unit 17 (Togiak - Dillingham area) will increase over six fold (from 17 to 129).

the fish, wildlife and water resources of the state" and, at a minimum, this meant a "prohibition against any monopolistic grants or special privileges." It also stated that the clause makes no distinction between use for personal purposes and use for professional purposes; common use applies to commercial guiding as well as recreational hunting.

In deciding that the EGA's violated these principles, the court noted the following features of the system:

1. The EGA system gave one guide the right to exclude all other guides from conducting hunts in his or her EGA. This right was based on the area holder's seniority, that is, his or her use, occupancy, and investment in the area.
2. EGA rights had no time limit, and the system of transferring them, based as it was on the selling of "improvements" and a holder's designation of his or her successor, allowed the selling of areas as if they were a property interest.
3. The assignment of EGA's was not based primarily on wildlife management concerns. The system could not be justified as a game management tool and therefore was unlike licensing requirements, bag limitations, and seasonal restrictions which were proper and "time-honored methods of conserving the resources." In this regard, it is important to note that the court said that even if used as a wildlife management tool, this would not "save the EGA system from unconstitutionality under the anti-monopolistic common use clause."

Finally, the court had made a distinction between the EGA's on one hand and state leases and exclusive concessions on the other. The latter are permissible because they are of limited duration, because they are subject to competitive bidding, because they are limited by contract terms and restrictions, and because the state receives compensation for them.

II. IMPLICATIONS FOR A NEW AREA MANAGEMENT SYSTEM

The Legislative Task Force on Guiding and Big Game has recommended that the state develop a new area management system for allocating access to guiding opportunities among licensed guides. It has recommended the establishment of a land-based concession system. While the Department of Law could defend this type of system, we believe that it would ultimately fail a legal challenge.

We may be able to defend a concession system based on an analogy to the state's current shore fisheries lease program. That program enables the Department of Natural Resources to lease small tracts of shoreline for use by persons who hold set net permits under the state's fisheries limited entry program. For a guide area system to qualify for this analogy and answer some of the concerns raised by Owsichuk, the concessions would have to be limited to state owned lands, would have to involve small tracts of land, would have to be limited in duration (one to three years), and would have to provide equal opportunity of access for all qualified guides when the concession was available for reassignment.

Even with these features, we believe that a concession system would still be found unconstitutional because of the severe manner that it would impinge on the common use guarantee as expressed in Owsichuk. The analogy to the shore fisheries lease program is weakened by several factors. That program is tied directly to the state's limited entry program, a system of limiting access to fishery resources that has constitutional underpinning. A guide concession would limit access to game opportunities without an equivalent constitutional basis. 3/

State concessions and leases, as such, are not included in the common use clause. When their purpose is to allocate access to resources like timber and grazing land, the state is free to grant exclusive rights. When allocating exclusive access to fish, wildlife, or waters, however, a land-based system would conflict with the principle of broad public access guaranteed by the common use clause.

3/ In 1972 the Alaska Constitution was amended to allow the state to limit entry into fisheries. Ak. Const. art. VIII, §15. In a later case, the Supreme Court held that although fisheries limited entry is inconsistent with the "common use" clause, this system was validated by the 1972 amendment. State v. Ostrosky, 667 P.2d 1184 (Alaska 1983). appeal dismissed 407 U.S. 1201, 51 L.Ed. 2d 339 (1984).

There is no provision in the constitution that allows for limiting entry to game resources, and currently there is no proposal for such an amendment. (Amendments to the constitution are accomplished by a proposal by each house, passed by at least a 2/3 vote, followed by a majority vote of the public at the next general election. Ak. Const. art. XIII, §1.)

The Honorable Bettye Fahrenkamp
Chairwoman, Senate Resources Committee

February 14, 1980
Page 1

Even if a system were developed that served only game management purposes and not the economic welfare of a segment of the guiding industry, it would not be safe. The Ovsichok court noted that the common use clause precluded exclusive guide areas even if they could be justified as a wildlife management tool. In the court's view, the traditional game management tools -- licensing requirements, bag limits, and seasonal restrictions -- apparently are sufficient to protect the resource without conflicting with the clause. A court would recognize that the state can respond to any increased pressure on game resources by requiring hunter registration, permit drawing, or other methods now available to the Board of Game. Although these techniques may bring unprofitability to the business of guiding, we believe that a court would favor them over a system that has inherent constitutional problems.

In conclusion, a constitutional amendment is the only certain step that will guarantee a stable, long-term system that allows some, but not all, qualified guides to have access to game resources in a particular area. We believe that any statutory, land-based system that does not have explicit constitutional underpinning and that resembles even remotely the IGA scheme that was struck down in Ovsichok will be destined to the same fate.

Sincerely yours,

GRACE BERG SCHABLE
ATTORNEY GENERAL

By:


Stephen M. Vaita
Assistant Attorney General

¹ Ovsichok v. State, Guide Licensing and Control Board, 753 P.2d 438, 497 n.14 (Alaska 1988).

We have proposed instead, two amendments. This first one would remove the three state agency representatives from the Big Game Commercial Services Board (CSB). In their place, we have added one seat for the class of commercial use permit holders discussed in AS 08.54.460, not previously represented on the board, and increased the public membership on the board from one to three.

In addition, we have clarified that the board member appointed by the Board of Game cannot, while serving on the CSB, also hold a commercial use permit. This would ensure that the Board of Game representative did not have a financial interest in the big game hunting industry while on the board, thus attempting to maintain (along with the additional public members) some balance of special interests on the board.

In addition, because we recognize that much of the impetus behind the Task Force's decision to place state agency representation on the CSB came from a desire that the board be assured of receiving adequate information and data from the various departments, we have proposed Amendment No. 4, which will state, in statute, that the Departments of Fish and Game, Natural Resources, and Public Safety must provide the board with technical assistance and information.

Amendment No. 2: Board Duties

This amendment clarifies that the roster of big game commercial services providers maintained by the CSB should list only those qualified to be listed, regardless of the origin (federal or state) of the convictions.

Amendment No. 3: Management System

A majority of the members of the Task Force were fairly clear in their desire to recreate, to the maximum extent possible, an area scheme similar in construction to that which was held unconstitutional in Owsichuk v. State, Guide Licensing and Control Board, 763 P.2d 488 (Alaska 1988). To this end, proposed AS 08.54.310(b)(2) provides that the CSB may "establish, in consultation with the Department of Fish and Game or the Department of Natural Resources, a resource-based management system for allocating access to big game hunting opportunities among guide-outfitters licensed under this chapter" (emphasis added). The inclusion of the Department of Natural Resources makes clear that a land-based, as well as resource-based system is contemplated. We are concerned over the constitutionality of this section.

Article VIII, section 3 of the Alaska Constitution provides: "wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use." In Owsichuk, the Court held that the statutes authorizing the establishment of restricted guide areas were unconstitutional under this common use provision.

The court also noted that the common use provision precluded restricted guide areas even if they could be justified as a wildlife management tool. In the court's view, traditional management tools -- "[l]icensing requirements, bag limits, and seasonal restrictions" -- are apparently

sufficient to protect game resources without conflicting with common use guarantees.

A majority of the Task Force, however, believes that some system of limitation may be available through the granting of leases and concessions on state lands. Inclusion of the commissioner of natural resources (or designee) on the proposed board and the grant of authority to "establish" an allocation system "in consultation" with the Department of Natural Resources signals, we believe, an intent to employ the state's land management authority to recreate, to the extent possible, the type of area system found unconstitutional in Owsichek.

As contemplated by the Task Force, commercial guide-outfitting concessions on state lands would involve fairly large tracts of land for substantial periods of time and would, again to the extent feasible, legally preclude anyone other than the designated concessionaire(s) from leading guided or outfitted hunts in the areas for which the concessions are granted. (Some members of the Task Force also expressed strong support for some form of preference rights under which individuals currently holding restricted guide areas would be given priority in obtaining such concessions.)

Other points must also be considered. First, the scheme presently contemplated by the Task Force would apply only to state land. It could not be applied to federal land or privately owned land (including land owned by Native corporations). It thus would not provide the statewide economic relief the guide-outfitters are seeking, nor would it provide Alaskans with what we most want: a game management system that will extend across all lands and be agreeable to all land owners. If we do not cooperatively develop a game management system acceptable to all land owners, the resulting loss of control over our statewide game resources will defeat any comprehensive attempt to manage our big game resources by the required sustained yield concepts. Finally, even with such a program, the limited duration of the exclusive concessions which could be granted probably would not provide the kind of long-term economic security and certainty the guide-outfitters desire.

In brief, it seems to us that the court has signalled in Owsichek that the common use clause requires that there be equal opportunity of access to the resource for all qualified guide-outfitters, and that traditional fish and game management tools -- e.g., licensing requirements, bag limits, and seasonal restrictions (we also believe these also include random permit drawings for both sport and commercial hunts) -- be used to protect the resource, at least unless and until the Alaska Constitution is amended to authorize exclusive guide areas.

Our proposed amendment removes the language providing the CSB with the authority to "establish" any kind of game management system. We believe that that must be done by the appropriate resource agencies. Instead, we suggest the board be given authority to "consult" with the Departments of Fish and Game and Natural Resources with respect to the creation of a resource-based management system that makes provision for commercial hunting opportunities for guide-outfitters.