

The Rendezvous

*The Official Bulletin of the
Idaho Outfitters & Guides Licensing Board*



STATE OF IDAHO

OUTFITTERS & GUIDES



Summer 2014

CHANGES TO OUTFITTERS & GUIDES ACT

The Board began Negotiated Rule Making in September 2012 to:

- Address ambiguity in existing rules pertaining to outfitter licensure and private membership organizations and clubs.
- Clarify in rule outfitting on private lands and land owner and outfitter responsibilities.
- Replace the current informal moratorium for outfitted turkey and waterfowl hunting that has been in place since 1989 with rules that would set appropriate limits on such activity.

The rule making included six public hearings throughout the state which was done after completing an earlier "Advisory Work Group" process facilitated in cooperation with the IDFG. That process included representatives of various stakeholders (sportsmen groups, outfitter industry and private land owners). Additionally, several surveys were conducted and examined by the Board and after several progressive drafts of rules were publically disseminated by the Board.

The Board ultimately decided at its August 2013 meeting to set aside the rule making for outfitted turkey and waterfowl hunting. In its decision, the Board concluded that the various interests were speculative in their concerns, remained polarized; with all sides fixed in their positions and that a compromise solution was not possible. Throughout this overall process, comments were largely from sportsmen involved with organized groups who opposed outfitted turkey and waterfowl hunting largely due to their belief that access available to the public at large would be adversely impacted.

One fundamental matter, greatly influencing the Board's decision and emphasized during this process was that state regulatory agencies must consistently recognize a land owner's right to control use of their lands. This control includes a private landowner's decision to allow or not allow public access to their lands, or whether to allow outfitting or other commercial uses of any kind.

With the growing interest in outfitting on private land, and private landowners' practice of charging "trespass fees" and related matters such as IDFG's administration of Land Owner appreciation tags, the Board concluded that there was a need to clarify in rule the Board's historical practices and a land owner's responsibilities when it comes to licensure and in doing so, formally exempted landowners who advertise and provide access to their own lands for a fee but not other services such as guiding.

The proposed rule was also intended to clarify license requirements for individuals, membership groups, clubs and organizations that provide or attempt to provide commercial access or outfitted facilities and services.

Ultimately, the Idaho Farm Bureau had legislation introduced which exempted private landowners operating on their own land from licensing as an outfitter. It also required anyone leasing private land to be licensed unless they have written agreement from the private landowner not requiring licensure. Notwithstanding opposition being expressed by the Board, the Idaho Department of Fish and Game, and a number of licensed outfitters as well as from many individuals initially opposing the proposed rule, it passed.

While the total effect of this change is unknown, at a minimum, it complicates existing licensing processes due to the number of licensed outfitters operating on both public and private land and due to this change creating a seeming unique situation where an "Occupational License" is optional based on the ownership of land as explained below.

For outfitters operating solely on public lands or waters this change has no effect on you because you must be properly licensed. For outfitters operating on public lands and/or leased private land, this change has no effect on you, unless you no longer want to be licensed on the leased private land. If so, you will need to amend those private land operating areas from your license. In doing so, please provide a copy of the aforementioned agreement from the private landowner. With outfitters operating totally on lands which they own outright, this change has no effect unless the outfitter no longer wants to be licensed on their private land. If that is the case, they simply do not renew their outfitter license next spring (2015).

While private land owners who provide outfitted or guided services on their own land have a liability exemption put in place by the legislature several years ago, individuals and organizations operating on leased private land without a license are not covered nor will they have the liability exemption provided licensed outfitters and guides. There's an

additional concern being expressed that this change may accentuate a buyer beware situation for the unsuspecting public and the fear that this concern may overlap into the licensed industry.

Finally, the impact this change might have on agency revenue will not be fully understood until the license renewal cycle is complete this time next year. A significant decrease may become a fee increase question for the Board and licensed outfitters and guides whose license fees are used to fund agency operations.

APPLICANTS WITH CRIMINAL HISTORY

In May 2011, the Board adopted a policy where any licensed applicant who has a felony or misdemeanor conviction must be reviewed by IOGLB enforcement with their convictions scored using an objective scoring system found in policy 4007 – 2011 (see on IOGB's website). All applications generating 50 points or more, all felony convictions, all flagrant convictions of Fish and Game laws and failure to disclose information on an application are deferred to the Board to review.

Upon receiving a complete application, applicants and their sponsoring outfitters are notified by standard letter that additional review is required, whether the matter is to be denied or deferred to the Board and that a special processing fee is assessed on any guide or any other applicant whose license requires additional processing such as those that require IOGLB Enforcement review. Special Processing fees are summarized in IDAPA 25.01.01.015.07. Appeals rights are explained in the letter.

One can argue that recouping the total costs from someone or time and inconvenience to the applicant or their employing outfitters based upon this policy may not make good sense. One can also argue, there is benefit in helping outfitters find good employees and understand their potential employee's criminal background. Finally, there is the argument that this policy is a benefit to people with a criminal past that will help them get back into gainful employment rather than simply have their application denied based upon their past criminal conduct.

By statute, the primary purpose of licensing outfitters and guides is to safeguard the health, safety, welfare and freedom from injury or danger of those persons using the services of an outfitter and the public in general. Therefore, putting qualified, capable, and conscientious people with unknowing members of the public trusting that licensed individuals providing services to them will do the right thing every time must continue to be a concern of this Board. The Board has taken the position that cost recovery is appropriate to some who have brought problems on themselves that this Board must address and that this industry as a whole must otherwise finance.

OUTFITTER OPERATING AREAS

Once again the Licensing Board staff is asking all outfitters to review their licensed operating area descriptions and to compare them to the licensed area map on the Board's website. This means reading the worded area description and reviewing the map to verify they are in sync with each other. In nearly all instances, the worded area description takes legal precedence on where an outfitter is licensed to operate. If the map is inaccurate, please send the staff a BLM, Forest Service or a corrected map identifying the discrepancies. To do so, using a colored marker, please outline the corrected area map. Identify in writing on the map which operating area is being clarified. Also, write your business name and license number on the map as well. This map will be used to correct the digitized map on the Board's website.

If you believe the worded area description is in error, please contact your permit administrator and have them contact Lori Thomason to determine what course of action is needed to correct the situation.

ONE-TIME HAZARDOUS EXCURSIONS POLICY

At their June 2014 Meeting, the Board adopted a policy to allow outfitters interested in providing very specific "Hazardous Excursion" type activities such as boat safety or white water rescue courses some latitude to operate under a one-time special authorization in a very limited locations outside of existing licensed operating areas. Policy 2028.1 – 2014 is available on the Board's website at <http://oglb.idaho.gov/rules>.

ROBIN BROWN - OFFICE SPECIALIST II

The "newest" OGLB staff, Robin Brown has been a transplanted Idahoan since 1977 when she moved to the Treasure Valley with her family from Washington as a teenager. She has an Associate's degree as a medical secretary and a Bachelor's degree in Office Administration. She has had a variety of work experiences, with most of her working career in government, including the City of Boise, San Bernardino County, California and the State of Idaho. Robin's responsibilities at IOGLB are answering the phone and acting as the agency receptionist, processing incoming and outgoing mail, online and offline license applications and amendment requests, accounts payable, and backing up Office Supervisor Lori Thomason as the buy/sell coordinator. Robin will reach her 7th anniversary with IOGLB in August. She has been married to Ron for 13 years, and they share their lives with their dogs, Casper and Hans; cats, Percy and Zeuss; and watch over her father and his dog Fonzie, who live next door to them.

UPDATED USER MANUALS

The Licensing staff are updating and clarifying in the User Manuals for *New Outfitter Applications; Buy and Selling an Outfitter Business and for Major and Minor Amendments and*

Guide Licensing Handbook. Manuals and forms are available on IOGLB's website at www.oglb.idaho.gov – documents tab

S. E. IDAHO RIVERS

Monica Zimmerman with Idaho Falls District Bureau of Land Management (BLM) appeared at the Board June, 2014 to update them on the capacity study for SS1, SN1, and SH3 sections of the Snake River and the TE3 of the Teton River. Jeremy Casterson, BLM Upper Snake Field Manager and Tracy Hollingshead, Palisades District Ranger, Caribou/Targhee NF, USFS participated by phone. Ms. Zimmerman presented a preliminary range of alternatives. She said that an extensive public outreach effort had been made thus far, and that the Federal Agency's intent was to work with the Board in narrowing down this preliminary range of alternatives which would then be presented for additional public input and moved toward a decision. The intent is to do this jointly with the Board's rule making process. The Board asked Director Howard to work with the BLM and USFS to narrow down this preliminary range of alternatives and to report back at a future a board meeting.

TECHNICAL ADVISORY COMMITTEE (TAC)

There were several responses to an invitation letter sent to outfitters and guides in October expressing interest in filling the vacancy on the TAC. The TAC was established to give the IOGLB technical expertise and guidance on applications submitted for outfitters or guides providing Technical Mountaineering, and Level 1 or 2 skiing. Participation as a TAC member is totally voluntary, and there is no compensation involved. The TAC advises Director Howard and ultimately the Board on an applicant's qualifications and certifications in order to insure that the applicants have the correct training to be consistent with the safety requirements for the hazardous activities which they provide to the public. After reviewing applications he was appointing Hannah North. Director Howard will also write a letter to existing TAC members to ask them about a member rotation schedule as per earlier direction from the Board.

AGENCY TRAINING

There were two Federal Agency training classes provided this year to the United States Forest Service and the Bureau of Land Manager Permit Administrators and federal agency staff by IOGLB. Office Supervisor Lori Thomason provided the training. One class was in Ketchum and the other class was in Grangeville. Between the two classes there were 30 participants. These classes are beneficial and informative to the permitting agencies explaining the processes, and why we need certain information from them. This training is beneficial for the permit administrators to understand joint agency processes so they can also educate the outfitters. It also informs the federal agencies what they can expect from the IOGLB.

FEDERAL AGENCY MOU UPDATE

The annual MOU meeting between the United States Forest Service and the Bureau of Land Management and IOGLB this year was held in April in Ketchum. The MOU is reviewed on a yearly basis to determine if any issues have surfaced that need to be addressed. Cost recovery was brought up as an item that needs to be examined, however the Board indicated at their June meeting, it does not feel that it should try and educate outfitters on federal cost recovery due to the complexity of the cost recovery process.

ENFORCEMENT - IOGLB COVERT CASES

Case No. 2011-054 Timothy C. Putnam - Fremont County Illegal Outfitting/Unlicensed. \$1000 fine (\$500 to IOGLB) \$1,600 cost recovery to IDFG Covert/Undercover Guided Fishing Trip on Henry's River by IDFG with assistance from IOGLB.. Putnam was found guilty in Fremont County Magistrate Court in 2012

Case No. 2011-063 Jason Craig - Washington County Illegal Outfitting/Unlicensed. \$1,200 fine (\$500 to IOGLB) Covert/Under cover Guided Waterfowl Hunting Trip on the Snake River by IDFG with assistance from IOGLB. Craig had 2 counts filed in Magistrate. Court and Trial Scheduled 10/05/11 entered a Guilty Plea, 1 count dismissed, \$1,200 Fines, probation, 5 days jail, \$1,000 restitution to IDFG, \$500 to IOGLB - Withheld in Washington County Magistrate Court

Case No. 2011-076 Natasha Burnett - Canyon County Illegal Outfitting/Unlicensed. \$250 fine (\$125 to IOGLB) Investigation by Canyon County Sheriff Office and IOGLB regarding unlicensed trail rides and injury to clients/Burnett pled guilty in Canyon County Magistrate Court in 2012

Case No. 2012-007 Dustin D. Darbin - Canyon County. Illegal Outfitting/Unlicensed. \$2,296 fine (\$1,000 to IOGLB) Covert/Undercover Guided Waterfowl Bird Hunting Trip on Snake River by IDFG with assistance from IOGLB. Darbin was charged with 4 counts of Unlicensed Outfitter/Guiding (Waterfowl) without a License (Received 2 convictions and 2 counts were dismissed) on 07/12/11 Canyon County. Magistrate Court \$2,296 Fines \$1,000 to IOGLB in 2012

Case No. 2012-015 Lawry Wilde - Fremont County. Illegal Outfitting/Unlicensed guiding. \$1,200 fine (\$500 to IOGLB) \$6,194.82 paid to IOGLB in cost recovery. Covert/Undercover Guided Snowmobile Trip in Island Park by IOGLB Enforcement w/IDFG assistance. Wilde entered a Guilty plea of Illegal Outfitting in Fremont County Magistrate Court, was ordered to pay \$1,191 court fines and fees, \$500 of fines and cost recovery to be reimbursed to IOGLB for investigation in amount of \$6,194.82 dollars, 30 days jail suspended, and 1 year unsupervised probation till 06/06/2013. IOGLB received payment of cost recovery or restitution from Fremont County Magistrate Court in the amount of \$6,194.82 dollars which was payment in full on 01/04/14.

Case No. 2012-039 Michael J. Stockton - IOGLB Board Unprofessional Conduct/Unlicensed. Guide \$3,000 to IOGLB

Michael F. Branch - Clearwater County Unlicensed Guide, \$175. IOGLB Enforcement Investigation of Covert/Undercover Guided Hunt w/IDFG. Unprofessional Conduct Complaint w/Branch as unlicensed guide for Michael Stockton – Outfitter/Owner. 03/13/2013 convicted in Clearwater County of Outfitting/Guiding without a License. Court fines and fees of \$390 dollars (\$175 dollars to IOGLB), 10 days jail suspended, 6 months unsupervised probation. Michael Stockton to be heard at Board hearing scheduled 08/15/2013 / Continuance stipulation signed 11/15/2013 - \$3,000 fine, 5 yrs restrictive probation until 11/15/2018.

Case No. 2012-043 Michael Navidomskis - Custer/Fremont County. Illegal Outfitting, Unlicensed. \$1,000 Custer County Illegal Outfitting Unlicensed \$500 Fremont County. Covert/Undercover Guided Fly Fishing Trip on Snake River by IDFG with assistance from IOGLB. IDFG Marc Arms 09/06/12 covert investigation initiated with Navidomskis attended 3 classes and fished Idaho 3 times (S Fork Boise, Island Park, Salmon River - Stanley), Ore/MT./WY/British Columbia arrested in BC, Fremont County conviction Illegal outfitting \$1,210 fines, suspended jail, 2 years probation 10/17/2013. Custer County, conviction Illegal outfitting \$2,220 fines, suspended jail, 2 years probation 11/25/2013

2012-068 Bradley A. McJunkin - Canyon County. Illegal Outfitting/Unlicensed \$503 fine (\$250 to IOGLB) IDFG covert Undercover investigation of Craig's List ad for guided bass fishing on Lake Lowell. Covert trip by IDFG, referred to Canyon County. Prosecutor jury trial and Wadley subpoenaed for testimony jury trial 10/30/2012. McJunkin pled guilty of Outfitting without a License, conviction, \$503 fine, probation 11/27/2013

Case No. 2012-108 Robert A. Wharff - Bear Lake County Illegal Outfitting/Unlicensed guide \$503 fine (\$250 to IOGLB) IDFG Covert/Undercover Investigation of Robert Wharff Owner/Outfitter for RAW Adventures and Mont Joseph Beardall – Unlicensed Guide for RAW Adventures - 11/07/2012 – Robert Wharff was convicted of Employment of Unlicensed Guide in Bear Lake County, with court fines and fees of \$500 dollars (\$250 dollars to IOGLB), no jail or probation. 10/06/2012 - Mont J. Beardall convicted of outfitting and guiding without a guide's license while in pursuit of Bull Elk, in Bear Lake County, with court fines and fees of \$500 dollars (\$250 dollars to IOGLB), no jail or probation. Board Hearing held upon Robert A. Wharff on 04/3/2013 and testimony and evidence produced at hearing. Subject Beardall was present, but was not charged, as at time was not licensed by IOGLB, thus there was no jurisdiction. IOGLB Board concluded that Wharff was in violation of Unprofessional Conduct, Engaging in unlicensed activities, employing an unlicensed guide by outfitter, conviction of IDFG laws, etc. Judgment by Board was cost recovery in the amount of \$839 dollars, 1 year of restrictive probation till 04/03/2014, retake and successfully pass outfitter exam. IOGLB received payment of \$839 dollars in cost recovery by credit card from Wharff on 06/05/2013. Further, he did complete and successfully pass the ordered outfitter exam.

Case No. 2013-043 Craig Cox - Washington County, Illegal Outfitting/Unlicensed guide. \$500 (\$250 to IOGLB) Covert/Undercover Guided Bass Fishing Trip on the Snake River/Brownlee by IOGLB Enforcement with IDFG assistance. Cox entered an Alford Plea Guilty on 09/16/13, \$502 court fines, 5 days jail, 1 year unsupervised probation of Illegal Outfitting in Washington County Magistrate Court (No restitution)

Case No. 2013-095 Delbert Jepson - Boundary County. Illegal Outfitting/Unlicensed. Pending Investigation Steve Laut Boundary County. Employing Unlicensed Guide Pending Investigation Covert/Undercover Guided Lake Trout Fishing Trip on Priest Lake by IOGLB Enforcement w/IDFG assistance, charges pending in Boundary County Magistrate Court

The Board and Executive Director welcome your thoughts and ideas.

Please send to your comments to licensing@oglb.idaho.gov