

OUTFITTERS AND GUIDES LICENSING BOARD
Division of Occupational and Professional Licenses
P.O. Box 83720
Boise, ID 83720-0063

Board Meeting Minutes of March 28 and 29, 2022

BOARD MEMBERS PRESENT: Brad Compton - Chair
Tammy Overacker
Louise Stark

DIVISION STAFF: Anne Lawler, Bureau Chief
Kent Absec, Licensing Program Manager
John Price, Investigative Unit Manager
Nicholas Krema, General Counsel
Cesley Metcalfe, Board Support Supervisor
Christian Runnalls, Board Support Specialist
Susan Knapek, Licensing Specialist
Teresa Saucedo, Customer Service Representative

OTHERS PRESENT: Joan Callahan, Outside Legal Counsel
Misty Lawrence, Division of Financial Management
Chris Sullivan, Idaho Fish and Game
Jeff Bitton, Idaho Outfitters and Guides Association
Aaron Liebermann, Idaho Outfitters and Guides
Association
Eric Riley, Swiftwater Safety Institute
Rick Ward, Idaho Fish and Game
Ash Jenkins, Sportsmans Hunting Adventures
Olin Gardner, Idaho Guide Service Inc.
Lori Thomason, Former Board Executive Director
Tom Long, Cascade Raft & Kayak

DAY 1 – MARCH 28, 2022

The meeting was called to order at 9:00 AM MDT by Brad Compton.

INTRODUCTIONS

Ms. Lawler introduced Division Staff present at the meeting.

PUBLIC COMMENT

Mr. Bitton, Idaho Outfitters and Guides Association, thanked Ms. Lawler and Mr. Runnalls for attending the Outfitter Allocation Symposium.

Mr. Riley, Swiftwater Safety Institute, encouraged the Board to support access to more bodies of water for training purposes.

IDAHO FISH AND GAME UPDATE

Mr. Ward gave an update from the Idaho Department of Fish and Game Commission (IDFG). He informed the Board that due to Chronic Wasting Disease, the Commission proposed emergency changes to hunts in the Clearwater Region. These changes do not affect outfitter tag allocations. The approved changes include a new hunt in Unit 14 and an increase of tags for the controlled mule deer antlered hunt in Unit 14. Several extra tag hunts were eliminated in the Clearwater Region due to the Epizootic Hemorrhagic Disease. These hunts do not affect outfitter tag allocations. Mr. Ward will propose that the 2023 outfitter allocation be taken up at the July Commission meeting. IDFG will be recalculating the nonresident tag limits this year, which will affect the outfitter allocations. Capped and controlled hunts will not be recalculated this year.

Mr. Sullivan from IDFG stated that the Commission set season dates for the spring chinook fisheries to begin April 23rd in the Clearwater Basin, Snake River to Hells Canyon Dam, and the Lower Salmon and Little Salmon Rivers. The runs will be monitored to make in-season adjustments as needed.

CONFERENCE REPORTS

Ms. Lawler stated that she and Mr. Runnalls recently attended the IOGA Outfitter Allocation Symposium where they learned more about the allocation and designation process and met many area outfitters.

Ms. Overacker stated that she recently attended the IOGA Salmon River Chapter spring banquet. The Outfitter Rendezvous will be on April 7th during the Salmon River Select Sale.

CONSENT AGENDA

Ms. Overacker made a motion to approve the consent agenda. It was seconded by Ms. Stark. Motion carried.

TAG DESIGNATION FOR 2022 SEASON.

Ms. Callahan gave a brief overview of tag designations. She stated that the delay for tag designations occurred because designations could not be finalized until the 2021 season use reporting was complete. This was due to a court reinterpretation of the statute regarding which years should be considered for designations.

EXECUTIVE SESSION

Ms. Stark made a motion that the Board enter executive session under Idaho Code § 74-206(1)(d) to consider records that are exempt from disclosure under the Idaho Public Records Law, Idaho Code § 74-106(9). The purpose of the executive session was to consider documents relating to the fitness of an applicant to be granted a license or registration. It was seconded by Ms. Overacker. The vote was: Ms. Stark, aye; Ms. Overacker, aye; and Mr. Compton, aye. Motion carried.

Ms. Stark made a motion to leave executive session. It was seconded by Ms. Overacker. Motion carried.

Mr. Compton stated that Outfitter A reported 2020 tag use for Smokey-Bennet A, which is a section for which the outfitter is not licensed. Ms. Stark made a motion to classify reported use by Outfitter A in Smokey-Bennett A as erroneous and to adjust the tag designations accordingly. It was seconded by Ms. Overacker. Motion carried.

Ms. Overacker made a motion to approve the 2022 designations as amended. It was seconded by Ms. Stark. Motion carried.

Division staff and the Board discussed the timeline for designations and the methods and content of notification to licensees.

FEDERAL AGENCY COOPERATION UPDATES

Ms. Lawler stated that the draft Predator Overlap Policy and the Department of Lands MOU progress were delayed due to tag designations. Ms. Callahan is reviewing the multi-party MOU.

The Board directed Division staff to contact the Salmon-Challis National Forest regarding the Stan Potts operating area.

LEGAL COUNSEL UPDATE

Ms. Overacker made a motion that the Board enter executive session under Idaho Code § 74-206(1)(f) to consider records that are exempt from disclosure under the Idaho Public Records Law, Idaho Code § 74-106(9). The purpose of the executive session was to discuss pending or imminent litigation with legal counsel. It was seconded by Ms. Stark. The vote was: Ms. Stark, aye; Ms. Overacker, aye; and Mr. Compton, aye. Motion carried.

Ms. Overacker made a motion to leave executive session. It was seconded by Ms. Stark. Motion carried.

DISCUSS PROCESS FOR NOTICES OF INTENT TO LICENSE

Ms. Lawler stated that she has received multiple requests to consider licensure in a new area. Ms. Callahan stated that the rules allow for the requests to be filled through a waitlist or to use a more competitive application process. The Board provided options for Division staff to use in developing a process to license outfitters in new areas.

BOARD RECOGNITION OF EXECUTIVE DIRECTOR THOMASON

Lori Thomason, former Executive Director for the Board, was recognized and presented with an award for her 15 years of service.

COMPLAINT MEMORANDUM

Mr. Price presented the complaint memorandum to the Board.

EXECUTIVE SESSION

Ms. Overacker made a motion that the Board enter executive session under Idaho Code § 74-206(1)(d) to consider records that are exempt from disclosure under the Idaho Public Records Law, Idaho Code § 74-106(9). The purpose of the executive session was to discuss documents relating to the fitness of a licensee to retain a license or registration. It was seconded by Ms. Stark. The vote was: Ms. Overacker, aye; Ms. Stark, aye; and Mr. Compton, aye. Motion carried.

Ms. Stark made a motion to leave executive session. It was seconded by Ms. Overacker. Motion carried.

FOR BOARD DETERMINATION

Ms. Stark made a motion to approve the Division's recommendation and authorize closure in case number 2020-054 with an advisory letter. It was seconded by Ms. Overacker. Motion carried.

DISCIPLINE

Ms. Stark made a motion to issue a license under a general probationary status for case number 2022-005. Motion failed for lack of a second.

Ms. Overacker made a motion to close case number 2022-005 and to approve licensure with an advisory letter. It was seconded by Ms. Stark. Following discussion, the motion carried.

Ms. Stark made a motion to close case number 2022-002 and to approve licensure for a one-year restricted probationary status. It was seconded by Ms. Overacker. Motion carried.

APPLICATIONS

The Board discussed an outfitter request for additional float boating in Area 5. The outfitter was informed that this was not possible due to limitations imposed by Rule 058. The Board agreed to review Rules 058 and 059 as part of the upcoming rules review.

DIVISION UPDATES

Ms. Lawler stated that the Governor's Office has not yet appointed a new member to the Board.

She informed the Board that the Division is on schedule to move into its permanent building by July.

Ms. Lawler also explained the new Townhall Idaho website, which will be an additional location for the public to access meeting information and agendas.

FINANCIAL MEMORANDUM AND UPDATES

The Board reviewed a financial memorandum from the Division Administrator. The memo addressed the State's new financial coding system, as well as individual funds for boards served by the Division. The Board discussed a need for additional staff to properly service the Board.

ZERO-BASED REGULATION

Ms. Lawler restated the purpose and process for ZBR. The Board reviewed staff recommendations for the rules outlined below. Unless otherwise stated, the Board approved the recommendations presented.

Rule 002 – Definitions:

Subsection 02-Authorized Person – Division staff suggested replacing 'enforcement agent' with 'inspector' to align with the Division plans for enforcement.

Subsection 05-Compensation or Consideration – Division staff suggested adding the word 'exchange' as part of the definition for Compensation or Consideration.

Subsection 07-Enforcement Agent – Division staff suggested removing this section because enforcement agents will no longer be used.

Subsection 09-First Aid Card – Division staff suggested revising the language to focus on first aid training. The Board and staff discussed the possibility of removing this rule in the future, depending on the verbiage chosen for other rules.

Subsections 10.c and d-Fishing – Division staff suggesting deleting these definitions because the terms are not used elsewhere in the rules. Mr. Compton pointed out that these are already defined by Idaho Fish and Game.

Subsection 22-Out of Pocket Costs – Division staff suggested replacing the word 'cost' with 'expenses' for consistency with other rules.

Subsection 26-Training Log – Division staff suggested rewording this rule for clarity. The Board is accepting of this idea if it can still request and review training logs.

Subsection 27-Unethical/Unprofessional Conduct – Division staff suggested deleting portions of this section that are duplicative of Idaho Code § 36-2113 and combining the rest in Rule 010.

Rule 005 – License Production:

Ms. Lawler requested input from the Board on whether the terms of license production can be updated. Following discussion, the Board changed the requirement to allow licensees seven days to provide proof of licensure.

Rule 006 – First Aid Kit:

Division staff suggested that this rule be incorporated into a new rule, 019. – Outfitter Responsibilities.

Rule 007 – License Restrictions:

Ms. Lawler requested input from the Board on the necessity of this rule. Following Board input, Division staff said that they would incorporate this rule into the application section. The Board deleted subsections .02 and .03 as unnecessary or redundant of Idaho Code § 36-2112. Subsection .04 was deleted as redundant of Idaho Code § 36-2107(a). The Board stated that subsection .05 on regarding temporary employment should be in statute.

Rule 008 – Employment of Outfitters:

Ms. Lawler stated that this rule deals mainly with business practices and asked the Board for input on whether it is appropriate to have these considerations in rule. Ms. Stark stated that subsection 01 was written to prevent subcontracting of operating areas. Ms. Callahan stated that the rule informs outfitters how the law applies to them when they are acting as a guide for another outfitter. The Board deleted subsections

01-03 and will address these matters on the website as an FAQ. The Board discussed moving subsection .04 to Rule 010.

Rule 010 – Compliance with Laws:

Division staff suggested changing the title to Disciplinary Action/Unethical and Unprofessional Conduct. The rule includes 002.27, which was moved from definitions. The Board added a provision for providing false information or misrepresentation to the Board or other agencies. This may be added to Idaho Code § 36-2113(1)(a) if the Board submits a statute change. Subsections 01 and 02 were deleted as unnecessary.

Rule 012 – Outfitter Responsibilities:

Division staff suggested moving this to a new rule, 019. – Outfitter Responsibilities, that provides continuity of outfitter application requirements and responsibilities.

Rule 015 – Annual Date, Fees, and Payment:

Ms. Lawler asked the Board for input on whether this rule can be revised for consistency with Division Statute and a two-year renewal cycle. The Board stated that a two-year renewal may work well with outfitters. The Board discussed the current one-year license structure for guides and mobility issues that may be caused by changing to a two-year cycle. Ms. Overacker stated that outfitters will not want to pay two-year renewal fees for a guide they employ for only one year. Ms. Lawrence, Division of Financial Management, suggested that the Board discuss the possibility of making guide licenses independent from outfitter licenses. Guides would report employment with at least one outfitter, but would be responsible for obtaining and maintaining their own license. The Board expressed concern over how this would work with Idaho's outfitter licensure that is specific to designated operating areas. Division staff will research this matter.

Rule 020 – Examination:

Division staff suggested adding this as subsection 03 to Rule 018 to provide continuity of outfitter application requirements.

Rule 022 – Issuance of Outfitter License:

Division staff suggested deleting this rule and appending the language to Rule 018.04.

Rule 019 – Outfitter Responsibilities:

The Board discussed moving Outfitter Responsibilities to a Board approved form. Division staff suggested moving language from Rule 012 to this rule for continuity of outfitter application requirements and responsibilities.

Rule 018 – New Outfitter or Outfitter License Amendment Application:

Division staff suggested moving Rule 022 to subsection 04 of this rule for continuity of application requirements.

ADJOURNMENT

Mr. Compton adjourned day one of the meeting at 4:59 PM MDT.

DAY 2 – MARCH 29, 2022

Day two of the meeting was called to order at 10:00 AM MDT by Brad Compton.

DIVISION UPDATES

Ms. Lawler provided a status update on House Bill 520. She also explained the new process for Board members to access meeting materials. Ms. Lawler presented a draft designation letter for licensees and accepted feedback from the Board.

LAWS AND RULES

The Board continued its ZBR review of staff recommendations for the rules outlined below. Unless otherwise stated, the Board approved the recommendations presented.

Rule 023 – Third Party Agreements:

Ms. Lawler asked the Board for the history of this rule. Ms. Callahan stated that the ultimate purpose of this rule is to know who is responsible for a client, but that it really just provides guidance on how to avoid violating the law. The Board discussed adding an exemption to Idaho Code § 36-2103 for booking agents. The Board also discussed adding aiding and abetting unlicensed outfitting to Idaho Code § 36-2113 as a disciplinary offense. The Board discussed defining the outfitter and client contractual relationship. With these changes Rule 023 will be deleted, and any additional guidance will be added to the Board's website.

Rule 024 – Standards for Non-Use:

Division staff suggested deleting the introductory language of this rule as duplicative of the Board's purpose. The Board discussed defining non-use in Idaho Code § 36-2102 but chose to leave it in rule. The Board deleted subsection 03 as an unnecessary explanation of the discipline process. The Board deleted subsection 04 as unnecessary and will add non-use examples to the website. The Board moved subsection 06 to Rule 028 for continuity of outfitter business sale considerations. Subsection 07 was deleted because the Board already has discretion to determine if there is good cause for non-use during a finding of facts. The Board discussed possibly defining non-use in statute and adding the language "without good cause" to ensure that a waiver can be considered by the Board.

Rules 037-041:

Division staff asked the Board for history on these rules and whether there is a way to consolidate or condense them. The Board stated that input from the boating industry is needed before making any changes.

Rule 026 – Operating Area Adjustments:

Ms. Lawler asked the Board for input on whether any changes can be made to this rule. The Board stated that this is an important process. The rule will be reworded to retain the Board's authority, but process details will be moved to the Board's website.

Rule 027 - Outfitter License Priority:

Division staff suggested moving this rule to the renewal section.

Rule 028 – Outfitter Business Purchase, License Considerations:

Division staff suggested moving this rule to the renewal or licensure section. No change was made to the rule.

Rule 029 – Outfitter Bond or Insurance Cancellation:

The Board deleted this rule as unnecessary. Failure to maintain licensure qualifications and unprofessional conduct are already grounds for an emergency suspension.

Rule 030 – Availability of Outfitting Opportunities:

Division staff asked the Board for input on how the waiting list process works. The Board explained the process and stated that it needs discretion in these decisions. Division staff will provide any suggested changes at a future meeting.

Rule 034.01 – First Aid Card:

Division staff suggested changing the title to Standard First Aid Training and updating the language to reflect the requirement for current first aid certification.

Rule 051 – Placement of Hunting Camps and Leaving Outfitter's Operating Area, Big Game Hunting, and Incidental Trapping:

Division staff asked the Board for input on the purpose of this rule. Ms. Stark explained that the rule was written to address complaints regarding drop camps being placed too close to operating area borders. The Board discussed possibly moving subsection 01 to the operating area section. This will be discussed again at a future meeting. Subsection rule 03 was deleted and added to the definition of hazardous excursion in Rule 002.12.

Rule 052 – Boat Transport of Hunting Clients:

The Board stated that this rule should be moved to the boating sections of the rules.

Rule 046 – Skiing, Non-hazardous and Hazardous Terrain Outfitter, Designated Agent, Ski Guide and Ski Guide Trainee:

The Board discussed requesting that the Technical Advisory Committee assist in rewriting the qualifications for the activities addressed in this section. Division staff will research this possibility.

Rule 059 – River, Lake and Reservoir Power and Float Outfitter Limits:

Division staff suggested reducing the table in rule to a limited list of waterways with primary jurisdiction vested in the State. The remainder of the waterways in the table could be moved to the Board's website. Mr. Compton stated that the table should remain in rule to prevent unintentionally transferring to federal agencies the authority to regulate recreational waterway activities. The Board stated that it would like to have discretion to adjust segments of the table without the need for negotiated rulemaking. The Board stated that it lacks the industry knowledge to change this rule. No changes were made.

FUTURE MEETING DATES

April 12, 2022, at 9:00 AM MDT

April 26, 2022, at 8:30 AM MDT

June 7, 2022, at 8:30 AM MDT

ADJOURNMENT

Mr. Compton adjourned day two of the meeting at 1:19 PM MDT.