

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

**Board Meeting Minutes of 6/22/2022**

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

**DIVISION STAFF:** Anne Lawler, Bureau Chief  
Tim Frost, Deputy Administrator  
Kent Absec, Licensing Program Manager  
John Price, Investigative Unit Manager  
Nicholas Crema, General Counsel  
Cesley Metcalfe, Board Support Supervisor  
Christian Runnalls, Board Support Specialist  
Susan Knapek, Licensing Specialist

**OTHERS PRESENT:** Joan Callahan, Legal Counsel  
Rick Ward, Idaho Fish and Game  
Aaron Liebermann, Idaho Outfitters and Guides  
Association

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

**PUBLIC COMMENT**

Mr. Liebermann thanked the Board for its work on ZBR and encouraged the Board to consider all ZBR input from the industry.

**CONSENT AGENDA**

Ms. Lawler reviewed the consent agenda. She explained that minutes are delayed due to necessary revisions that will better reflect ZBR discussions.

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

## **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 review a petition for reconsideration. It was seconded by Mr. Weiseth. The vote was: Ms. Stark, aye; Ms. Overacker, aye; Mr. Weiseth, aye; and Mr. Compton, aye. Motion carried.

Ms. Stark made a motion to leave executive session. It was seconded by Ms. Overacker. Motion carried. No decisions were made in executive session.

## **PETITION FOR RECONSIDERATION**

Ms. Stark made a motion to approve Outfitter C in Unit 76 regular deer for the requested use in 2021 to reflect 12 allocated tags. It was seconded by Ms. Overacker. Motion carried.

## **HARDSHIP REQUEST FORM**

Ms. Lawler and the Board discussed items that should be included in a hardship request form that will be drafted by Division staff for review at a future meeting.

## **POTLATCH LAND—BACK 30 OUTFITTER'S REQUEST**

Mr. Compton stated that Back 30 Outfitters is looking for a letter of support from the Board because the Potlatch move is harming their business. He stated that the Board supports private landowners, but that it is not within the Board's purview to weigh in on this matter. No action was taken.

## **MULTIPARTY MOU STATUS**

Ms. Lawler and Ms. Callahan are working on the MOU with the US Forest Service and BLM. The MOU with the Idaho Department of Parks and Recreation has expired and will be reviewed prior to reinstatement.

## **OVERLAP POLICY DISCUSSION WITH SALMON-CHALLIS NATIONAL FOREST**

Ms. Lawler stated that there is no additional information to share with the Board regarding the overlap policy with the Salmon-Challis National Forest.

## **UPDATE ON INVESTIGATIVE UNIT'S WORK RE: OGLB ENFORCEMENT**

Mr. Price explained how the investigative unit works. He stated that he has been referring complaints of unlicensed outfitting to IDFG and law enforcement. In the future, there may be a limited law enforcement status where inspectors will be utilized to issue misdemeanor citations for unlicensed practice.

## **INFORMATION ONLY – SIGNED DISCIPLINE ORDERS**

Mr. Price stated that the items presented were previously signed stipulation orders that have been resolved.

## **COMPLAINT MEMORANDUM**

Mr. Price gave the investigative report.

Ms. Overacker made a motion to close case numbers I-OGB-2021-058 and I-OGB-2022-006. It was seconded by Mr. Weiseth. Motion carried.

## **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; Mr. Weiseth, aye; and Mr. Compton, aye. Motion carried.

Ms. Stark made a motion to leave executive session. It was seconded by Ms. Overacker. Motion carried. No decisions were made in executive session.

Ms. Overacker made a motion close case I-OGB-2022-003 with no action. It was seconded by Ms. Stark. After discussion, motion carried.

Ms. Stark made a motion to close case I-OGB-2022-04 with an advisory letter. It was seconded by Ms. Overacker. Motion carried.

Ms. Stark made a motion to close case number I-OGB-2022-07 with no action. It was seconded by Ms. Overacker. Motion carried.

## **APPLICATION APPROVAL PROCESS**

Mr. Absec reviewed his application approval process for applications that disclose prior disciplinary action. He asked if the Board would be interested in implementing a similar process.

Mr. Weiseth made a motion to authorize Division staff to review and approve applications with criminal background violations involving substance abuse-related felony convictions that are older than five years. It was seconded by Ms. Overacker. Motion carried.

Mr. Weiseth made a motion to authorize Division staff to review and approve applications with criminal Fish and Game violations that are older than five years. It was seconded by Ms. Overacker. Motion carried.

Mr. Weiseth made a motion to authorize Division staff to review and approve applications with criminal misdemeanor convictions that are older than five years. It was seconded by Ms. Overacker. Motion carried.

## **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 consider documents relating to the fitness of an applicant to be granted a license or registration. It was seconded by Ms. Stark. The vote was: Ms. Overacker, aye; Ms. Stark, aye; Mr. Weiseth, aye; and Mr. Compton, aye. Motion carried.

Ms. Stark made a motion to leave executive session. It was seconded by Ms. Overacker. Motion carried. No decisions were made in executive session.

Ms. Overacker made a motion to approve two requests for one-time special hunts. It was seconded by Mr. Weiseth. Motion carried. Ms. Stark was recused.

Ms. Overacker made a motion to approve application 23360-G with no restrictions. It was seconded by Mr. Weiseth. Motion carried.

Mr. Weiseth made a motion to approve application 17341-G on general probation. The motion failed for lack of a second.

Ms. Stark made a motion to approve application 17341-G on restricted probation. It was seconded by Ms. Overacker. Motion carried.

## **IDFG UPDATE**

Mr. Ward presented an IDFG update regarding big game season setting, outfitter allocations, an upcoming deer and elk investment forum, elk and big horn sheep management plans, and chronic waste disease. He informed the Board that there is rulemaking going on right now that will affect outfitter allocations

## **LEGISLATION UPDATE**

Ms. Lawler presented a legislative update. She informed the Board that the following bills passed the 2022 Legislative session: SB 1296, HB 771, HB 507, SB 1244, HB 520, HB 612, HB 629 and SB 1297.

## **ZERO-BASED REGULATION**

Ms. Lawler presented an updated draft of the Board's administrative rules that include comments from the recent negotiated rulemaking meeting. The Board discussed the following rules:

Rule 057 – Designation of Allocated Deer and Elk Tags:

The Board reviewed a draft of a temporary rule change to address issues encountered during the recent tag designation process. Subsection 02 was updated to state that tag use history will be determined from use recorded by the Idaho Fish and Game Commission (IFGC), and may be adjusted based on tag transfers or Board approved hardship requests. Subsection 04 is updated to state that when IFGC adjusts the number of allocated tags in a hunt after the first year that the hunt was allocated tags, the Board will not average the use. Subsection 05 was updated to address designation of allocated tags that remain after applying subsection 04. Subsection 07 was updated to address tie-breaker scenarios.

Rule 002.05 – Compensation or Consideration and 002.6 – Designated Agent:

The Board discussed possibly moving these two subsections to statute as a best practice described by legal counsel. No changes were made.

Rule 002.03 – Booking Agent:

Mr. Weiseth stated that this subsection should be deleted if all other references to 'booking agent' are deleted from the rules. The Board agreed.

Rule 002.10 – Fishing:

Mr. Weiseth suggested deleting the term "without motors" from subsection b because it is contradictory to subsection 11. The Board agreed.

Rule 002.11 – Float Boats:

Mr. Weiseth suggested adding language to clarify the meaning of downstream steerage. The Board discussed what other entities may permit upstream movement on waterways. Division staff will research this matter and report to the Board at a future meeting.

#### Rule 002.12 – Hazardous Excursions:

Ms. Lawler shared feedback received from the Idaho Outfitters and Guides Association (IOGA) suggesting deletion of the term “outside municipal limits” and “desert or mountainous” and adding the phrase “and are known to involve inherent risk”. The Board discussed previously attempted IOGA legislation regarding this topic that aimed to reduce liability. Ms. Lawler suggested that this subsection should be moved to statute because it describes who must have an outfitter license. The Board agreed.

#### Rule 002.18 – Minor or Incidental Activity:

Ms. Lawler suggested deleting this because it is covered in rule 029. The Board agreed.

#### Rule 002.23 – Power Boats:

Ms. Lawler stated that the Idaho Safe Boating Act defines a vessel instead of a power boat. Division staff will research what terms other states use and report to the Board at a future meeting.

#### Rule 002.25 – Trainee:

Ms. Lawler asked the Board why there is an age limit for a trainee. The Board stated that this should be deleted if references to trainees are deleted from the rest of the rules.

#### Rule 002.26 – Trainee Log:

The Board discussed adding a requirement that outfitters must provide a copy of the training log to trainees upon request. Mr. Weiseth questioned why outfitters currently “own” the license of their guides. Ms. Lawler suggested decoupling guide licensure from outfitters to put responsibility for application accuracy and license maintenance with the guide instead of the outfitter. Guides would also be able to work for multiple outfitters. Mr. Weiseth stated that this approach would solve many practical problems by giving guides ownership of and accountability for their own licenses. Mr. Compton supported the idea of guides having greater accountability for their license. Ms. Stark and Ms. Overacker voiced concern that this approach would increase unlicensed outfitting. Ms. Overacker stated that currently, the outfitter certifies that their guides meet the licensure requirements for specific activities and asked how that would be done if the licenses are decoupled. Mr. Weiseth stated that it would still be up to the outfitter who employs the guide to determine if they are competent to perform activities. Ms. Stark stated that she supports a requirement for guide licensure applicants to pass a jurisprudence exam. Ms. Lawler stated that this change would require a statute update. The Board will continue this discussion at a future meeting.

#### Rule 005 – License Production:

The Board reviewed the changes to this rule that were made at the 3/28/22 meeting. Mr. Weiseth stated that he does not support the requirement that guides must produce proof of licensure within seven days of a request because there are times when guides are in the field for longer than seven days. Ms. Lawler and Mr. Frost stated that most professions are not required to show proof of licensure. Ms. Stark stated that deleting this rule may encourage more unlicensed practice. No additional changes were made to this rule.

#### Rule 007 - License Restrictions:

Ms. Lawler suggested rewording subsection 01 to align with Idaho Code § 36-2112 and deleting subsections 02-04. Ms. Callahan stated that this is an administrative function. The Board agreed to delete subsections 01-04. Ms. Callahan stated that subsection 05 is a licensure exception, which should be moved to the statute. The Board will continue this discussion at a future meeting.

#### Rule 008 – Employment of Outfitters:

The Board deleted this rule because subsections 01 and 02 are redundant of Rules 006.01 and 034.02 and subsections 03 and 04 should be managed by business practices instead of Board regulation.

#### Rule 010 – Compliance with Laws:

The Board reviewed the changes that were approved at the 3/28/22 meeting. Mr. Weiseth asked about the enforceability of preventing an unreasonable risk from biological waste. He also asked why failure to report violations of law and aiding and abetting violations of the Board's laws and rules are listed. Ms. Lawler stated that the Board previously decided to move these sections to the statute. Division staff will research what past discipline has been imposed for environmental infractions.

#### Rule 015 – Annual Date, Fees, and Payment:

Ms. Lawler suggested combining this rule with Rule 025 to create one renewal section. Mr. Weiseth stated that this will not work for guides unless they are licensed independently. The Board agreed to align this rule with DOPL requirements. The Board discussed consolidating fees for individuals that hold multiple licenses. Division staff will conduct additional research for discussion at a future meeting.

#### Rule 18.03 – New Outfitter or Outfitter License Amendment Application – Examinations:

Ms. Lawler shared IOGA feedback requesting that the current general examination for licensure be revised to be activity specific. The Board supported this change. Division staff will research the impact on Board resources for discussion at a future meeting. Ms. Lawler stated that IDFG requested the addition of “fish” to conservation of resources in subsection 09 because fish are not wildlife. The Board agreed to this change.

#### Rule 019 – Outfitter or Designated Agent, Responsibilities:

Previously Rule 012, this was moved to a new Rule 019 at the 3/28/22 meeting. Ms. Lawler stated that IOGA recommended an addition to this rule stating that “an outfitter is also responsible for the actions of all guides and other employees while in the scope of their employment.” The Board agreed to this change.

#### Rule 024 – Standards for Non-Use:

Ms. Lawler suggested moving subsection 02.a. to statute. Mr. Compton voiced concern over allowing the Legislature to define non-use and supported leaving this in rule. Mr. Weiseth suggested adding principal booking party language to subsection 05. Ms. Callahan stated that this should be detailed enough that licensees understand the records they should retain in order to prove use of their license. This subsection was reworded to say that “Outfitters shall maintain records sufficient to demonstrate use of their licensed activities.”

#### Rule 025 – Outfitter Renewal:

Ms. Lawler stated that this rule should be brought into alignment with the DOPL renewal requirements. The Board decided to delete the dates specified and combine this rule with the record-keeping section in Rule 024.

#### Rule 026 – Operating Area Adjustments:

Ms. Lawler stated that IDFG requested the addition of “fish conservation” to the main section of the rule. The Board agreed to this change. The Board reviewed changes that were approved at the 4/26/22 meeting. The Board updated language in subsection 05 to be more descriptive of whose approval should be sought for hot pursuit. The Board also approved a suggestion by IOGA to add a new subsection authorizing standing outfitter and land manager agreements for overlap predator areas.

#### Rule 027 – Outfitter License Priority:

Ms. Lawler suggested combining this rule with Rules 025 and 015 to create a single license renewal section. The Board discussed the importance of open competition. Ms. Callahan stated that the rule is redundant of statute. The Board, however, decided to retain this rule to prioritize outfitters.

#### Rule 028 – Outfitter Business Purchase, License Considerations:

Ms. Lawler stated that the Board does not have the statutory authority to require advanced payment refunds. The Board deleted subsection 02.

#### Rule 030 – Availability of Outfitting Opportunities:

Ms. Lawler shared an IOGA request that anyone on the waiting list be notified before their five years expire. The Board and Division staff discussed the logistics of tracking that information and determined that Division does not currently have the resources to efficiently track expiration dates. No changes were made.

#### Rule 034 - Guide Application Requirement – General:

Ms. Lawler shared an IOGA suggestion to create a new subsection for guide renewal that requires less information than what is required for initial licensure, and that requires guides to complete renewal of their license. The Board recognized that this is part of the larger conversation about decoupling guide and outfitter licenses. IOGA also requested that CPR be required. The Board stated that if guide licensure becomes independent, this could be an Outfitter business decision. Ms. Lawler suggested deleting subsections 02.a through 02.d and moving the requirements to the application form. The Board agreed. The Board discussed how the amendment process could be expedited in subsection 03. Mr. Weiseth stated that the process would change with independent guide licensure. Division staff will work on alternative language for review at a future meeting.

#### Rule 037 – Boatman License Trainees:

Mr. Weiseth asked if this rule can be deleted because trainee is already defined in Rule 002.25. The Board agreed.

#### Rule 038 – Float Boat Guide – Unclassified Rivers and Rule 039 – Float Boat Guide – Classified Rivers:

Ms. Lawler suggested combining these rules. Ms. Stark stated that the training is different. Mr. Weiseth stated that there would be a lot of pushback from guides on unclassified rivers about having to increase training hours. The Board agreed to combine the rule with subsections for each specific topic. Subsection 02 for classified rivers was simplified to state that each trip on a classified river must have a lead boat guide qualified on that specific river.

#### Rule 040 – Float Boatman Qualifications – Classified Rivers:

Mr. Weiseth suggested deleting the last half of subsection 01 because it is already stated in other sections of rule. The Board agreed.

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

Mr. Frost stated that comments have been received that advocate for everything from leaving the rule as it is, to deleting anything that is regulated by federal land managers, to only maintaining the river capacities. He requested guidance from the Board to make any potential changes before the rules go proposed. Mr. Weiseth stated that the limitations in this rule inherently prevent growth for new activities. Mr. Compton stated that the rule is created to reduce conflict among outfitters and also to reduce conflict and interference from the non-outfitted public, which is a statutory requirement. Ms. Stark stated that non-use on the river sections must be investigated. The Board again discussed the possibility of moving the table to policy and whether it is enforceable. Mr. Compton stated that feedback is needed from IDFG before making changes. Division staff will meet with IDFG to obtain additional feedback for discussion at a future meeting. No changes were made.

**NEXT MEETING** was scheduled for Tuesday, July 12<sup>th</sup> at 12:00 PM MT.

## **ADJOURNMENT**

Mr. Compton adjourned the meeting at 4:45 PM MT.