

Meeting Date: November 19, 2015

Agenda Item No. 5A

Agenda Item: IOGLB/IDFG Memorandum of Understanding (**Action**)

Bureau Chief Approval: _____

Prepared by: Brad Compton for Ed Schriever

Background:

IOGLB and the Idaho Department of Fish and Game (IDFG) work cooperatively on various matters of mutual interest, such as determining the appropriate involvement of outfitters and guides in their use of Idaho's fish and wildlife; resolving or mitigating for conflict between outfitted and nonoutfitted hunters, anglers, and trappers; managing approximately 1,800 allocated elk zone tags and 250 allocated controlled hunt deer and elk tags; conducting covert and open investigations and prosecuting criminal and administrative related matters; and coordinating and mapping of outfitter licensed operating areas.

In January 2008, IOGLB and IDFG signed an MOU providing procedures and guidance for coordination and cooperation between the agencies on the appropriate management of Idaho's fish and wildlife resources related to the licensing and regulation of Idaho's outfitting industry. Passage of H.B. 597 in 2014 eliminated outfitter licensing requirements on private land; creating an inconsistency between State policy and the IOGLB/IDFG MOU. The change in State policy, combined with some outdated procedures in the current MOU, warrant a revision.

A small Department team consisting of representatives from the Director's Office, Legal, Enforcement Bureau, Wildlife Bureau, Clearwater Region, Salmon Region and Upper Snake Region worked with Jake Howard (Executive Director, IOGLB) and members of his staff to revise the MOU.

On August 26, 2015, the IOGLB provided conditional approval of a revised MOU (attached), pending Idaho Fish and Game Commission (Commission) approval.

Statutory Authority and/or Policy Issues:

Idaho Code 36-104 and Idaho Code 36-2107 grant authority to the Commission and IOGLB to enter into cooperative agreements with state agencies. The proposed MOU is a non-fiduciary instrument that has no effect on individual agency authorities or regulations.

Public Involvement Process:

Not applicable.

Justification:

Changes in Idaho State law regarding outfitting requirements, combined with outdated procedures and policies referenced in the existing MOU have prompted the need for a revised MOU.

Action Requested:

Approve the revised IOGLB/MOU.

Staff Recommendation:

Approve and obtain necessary signatures to implement the revised MOU.

MEMORANDUM OF UNDERSTANDING
Between
IDAHO DEPARTMENT OF FISH AND GAME (IDFG)
And
IDAHO OUTFITTERS AND GUIDES LICENSING BOARD (IOGLB)

WHEREAS, the IDFG is the Idaho State Agency governed by a Commission responsible for the preservation, protection, perpetuation and management of all wild animals, wild birds, and fish within the State of Idaho in order to provide continued supplies of such wildlife for hunting, fishing and trapping, and;

WHEREAS, the IOGLB is the Idaho State Agency governed by a Board responsible for licensing and regulating all commercial outfitter activities on public lands or waters with the expressed purpose of safeguarding the health, safety, welfare and freedom from injury or danger of those persons utilizing the services of outfitters and guides, and conserving wildlife and range resources. Further, IOGLB is responsible for licensing and regulating all commercial outfitter activities on private lands upon voluntary request for licensure from landowners and their employees who provide facilities or services on privately owned properties. Further, licensure by IOBLG is required for those who obtain permission to outfit or guide on private property unless a written agreement with the property owner does not require licensure, and;

WHEREAS, the IDFG and IOGLB recognize that the fish and wildlife resources of Idaho are owned and managed by the State of Idaho for the benefit of the public, and that commercial outfitting enterprise is a regulated privilege; where outfitters who provide hunting and fishing opportunities using Idaho fish and wildlife resources are licensed by IOGLB for the benefit of the public; and it is with these principles as the highest priority that this MOU has been prepared, and;

WHEREAS, IDFG and IOGLB recognize that most outfitter businesses are largely supported by hunting and fishing opportunities using the fish and wildlife resources of Idaho and that management changes and decisions made by IDFG and IOGLB may greatly affect the livelihood of those members of public who are supported by these businesses; and,

WHEREAS, hunting and fishing provide important cultural, recreational, and economic benefits to the State of Idaho. The 2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation estimates 447,000 anglers (5,507,000 user days) and 246,000 hunters (3,227,000 user days) expending nearly \$900 million in equipment and trip related expenditures. Normal multiplier effects indicate that fishing and hunting in Idaho generates more than \$1 billion; supporting more than 15,000 jobs, and contributing nearly \$100 million in state and local tax revenues.

WHEREAS, IOGLB annually licenses 380 to 410 outfitter businesses which provide diverse services such as hunting, fishing, boat tours and related boating activities, backcountry skiing, motorized and non-motorized (bicycle and equestrian) trail rides, zip line tours and other licensed activities to the outfitted public. These private businesses in turn employ roughly 2600 licensed designated agents, licensed guides and other staff annually. On the average, these outfitter businesses serve over 100,000 individuals annually including residents and non-residents generating close to 400,000 use days recreating in Idaho. Upwards of ninety-five percent (95%) of the approximately 400 licensed outfitter businesses operate on public lands administered by state and federal agencies, are special use permitted, and pay a land use fee, typically three percent (3%) of gross income, for the privilege of operating on public lands Combined with operating expenses that include state licensing, bonding, insurance and a multitude of other business

expenses, it is estimated that the outfitting industry as a whole has a multiplier effect that contributes in excess of \$100 million dollars to Idaho's economy, particularly in rural Idaho.

WHEREAS, the IDFG and the IOGLB recognize outfitting as a viable industry deserving full consideration in the planning process and to unify, so far as feasible, agency policy and procedures regarding the Outfitter industry, and;

WHEREAS, the federal agencies are required by the National Environmental Policy Act (NEPA) to evaluate the need for when and where outfitting services are to be conducted on federal lands or waters and water, and to formally request IDFG comment on impacts to fishing, hunting and trapping from outfitting on federal lands or waters and water, and to coordinate federal permitting decisions related to outfitting on federal lands or waters and water with the IOGLB, and;

WHEREAS, outfitting services are also conducted on state and private lands, and IOGLB formally requests IDFG comment on impacts to fishing, hunting and trapping from outfitting on these resources; and,

WHEREAS, both IDFG and IOGLB recognize the declining recreational access to and across private lands, and will cooperate to enhance outfitted and non-outfitted access to, and through, private lands for hunting and fishing; and,

WHEREAS, both IDFG and IOGLB recognize that decisions necessary to process outfitter license applications should be based on biologically determined or socially defined inputs related to resource management issues; and,

WHEREAS, IDFG and IOGLB recognize that potential 'conflict' exists between the outfitted and non-outfitted public, and that this MOU includes provisions to help assist in addressing such potential conflict, and;

WHEREAS, IDFG and IOGLB share in overlapping responsibilities to enforce various statutes found in Idaho Code (Title 36, Chapter 21), have worked cooperatively in the past and due to the need to share resources for increased efficiency and effectiveness of the public services they provide, they have identified a need to clarify roles and responsibilities; and,

THEREFORE, this Memorandum of Understanding (MOU) provides procedures and guidance for coordination and cooperation between IDFG and IOGLB on the appropriate management of the licensing and regulation of Idaho's Outfitter industry.

IN AS SUCH:

IDFG and IOGLB mutually agree:

- 1) To provide complete interchange of information in matters of mutual interest.
- 2) To hold a joint meeting each year to review all conflicts or issues that occurred over the past year and to discuss MOU changes and other policy matters. The IOGLB Executive Director will coordinate the meeting on even numbered years and the IDFG Director will coordinate the meeting on odd numbered years. The meeting will be held in May each year.
- 3) That process involved in analyzing public interests must be open and objective with the intent to minimize personal and professional bias and conflicts of interest. IDFG will conduct public

surveys relative to authorities of IDFG. IOGLB will conduct public surveys relative to authorities of IOGLB. In instances of surveying and analyzing data where issues relative to authorities and interests overlap then IDFG and IOGLB will work together.

- 4) That the number of outfitters permitted to use a particular resource (capacity) will be necessary and appropriate to serve the public need, and will be determined through quantitative and qualitative analysis of objective information, including public opinion and input.
- 5) Both agencies agree to work jointly to identify, assess, and resolve conflict according to applicable laws. These efforts will include:
 - A) Fully and accurately explaining the use of this term when applied to a given situation.
 - B) Using public processes designed to inform the public and accurately assess public opinion and desires for managing guided hunting and fishing activities relative to the overall public hunting and fishing opportunity and experience.
 - C) Address confrontation between individual or groups of individuals criminally and administratively when necessary.
- 6) To jointly develop and maintain a comprehensive database and GIS system identifying outfitter operating areas in the state.
- 7) To cooperate in the enforcement of Idaho law governing outfitters by reporting complaints, violations or unsatisfactory performance; advising each other of any convictions of outfitters or guides for violations of federal or state law or regulations; and subject to availability, provide facilities, transportation and staff in support of respective enforcement activities.
- 8) To resolve impasses in administering the terms of this MOU, IOGLB or IDFG will use the following procedures:
 - A) In the event the IOGLB or IDFG reach an impasse with the USFS or the BLM regarding outfitting or guiding activities, IDFG and IOGLB will first attempt to come to agreement then IOGLB and IDFG jointly notifies the responsible federal officer in writing. IOGLB'S MOU with these agencies refers the matter to the appropriate Regional Forester or to the BLM State Director.
 - B) In the event the IOGLB and IDFG reach an impasse where state land managed by the Idaho Department of Lands (IDL) is of concern, either Director will notify the other Director in writing, the respective Directors may arrange a meeting of both the IDFG and IOGLB Directors with the IDL Director for further discussion.
 - C) In the event the IOGLB and IDFG reach an impasse in other non-federal areas of concern, either Director will notify the other Director in writing, the respective Directors may arrange for a joint meeting of IOGLB Board Members and IDFG Commissioners.
- 9) To cooperatively develop forms and reports (for example the OG 25 Form) to provide useful information for decision-making purposes to each agency.

IDFG agrees:

- 1) To recognize that IOGLB must rely upon information provided by other agencies and organizations in their decisions and that IOGLB must be prepared to defend any license denials or license limitations in court and as such an IOGLB decision must be supported by an existing law or rule and the information used in the decision must be well founded and substantiated.
- 2) That because outfitting without a license is a criminal offense with severe consequences and because Idaho law must be applied equally to everyone, the IDFG and IOGLB's administration of Idaho law must be reasonable and fair.
- 3) That the administration, management and enforcement of outfitting requires biological and sociological information and agrees to provide the best available substantiated biological and sociological data and information related to fish and wildlife resources and to fish and wildlife recreation, as part of administrative processes initiated by a federal agency or the IOGLB in relation to outfitter applications for licenses or amendments.
- 4) To provide official input upon receipt of either a federal lands or water management agency "analysis" notice or IOGLB request for input.
- 5) To collaborate and coordinate with IOGLB on matters of resource allocations, such as big game tags.
- 6) To inform and discuss with IOGLB matters relating to the occupancy and use of public lands or waters by licensed outfitters.
- 7) To inform and discuss with IOGLB matters related to IOGLB policy or programs and prior to the issuance of a public document or policy change.
- 8) To assist IOGLB in enforcement of state and federal laws, rules and regulations pertaining to outfitting, and report any violations by or convictions of outfitters and/or guides.
- 9) To provide clear reasoning and rationale for differences when disproportionate reductions or increases are recommended between outfitted and non-outfitted public use of fish and wildlife resources by IDFG.
- 10) To cooperatively examine the inclusion of outfitter allocated tags in the IDFG computerized licensing system.

IOGLB agrees:

- 1) To collaboratively review with IDFG any proposal involving a new hunting or fishing outfitter license or opportunity, or a Major Amendment or other substantive change to any existing hunting or fishing outfitter license is being considered, prior to issuing any decisions and to provide an explanation when decisions are issued.
- 2) To ensure that IDFG receives the appropriate information including the outfitter's operation plan (including expected use or limits on use), area description and maps when soliciting official IDFG input, as well as the same information for other outfitters currently operating and using the same resources as the new outfitter.

- 3) To inform and discuss with IDFG any proposed changes in outfitter rules, regulations, policies, and licensing procedures in Idaho pertaining to IDFG.
- 4) To assist IDFG in enforcement of state and federal law and regulations, and to report fish and game violations by or convictions of outfitters and guides to IDFG.
- 5) To provide by August 1 of each year, to the Director of the Department of Fish and Game, in a manner and form prescribed by the Director, the number of fish and wildlife taken in each management unit the prior year.

Definitions used by IOGLB and IDFG:

- 1) The term "Conflict" in the context of this MOU can be one of or a combination of the following:
 - A) *A conflict of ideas; incompatibility or interference, as of one idea, desire, event, or activity with another.*
 - B) *The competition for the use of limited wildlife and land and water resources.*
 - C) *Confrontation between individuals or groups of individuals.*
- 2) Incidental - IOGLB no longer uses the word "incidental" in describing outfitter activities; however, "incidental" continues to appear in some historic outfitter operating area descriptions. In these instances, the term "incidental" should be considered and used interchangeably with the term "minor" as described below.
- 3) Minor Activity is a licensed activity the nature of which must be carried out in conjunction with a major activity, but is not the primary purpose of the excursion.
- 4) Minor Amendment includes all outfitter license amendment requests that can be processed by the Board without necessitating outside research or recommendation of a lands or waters managing agency or other agency before the Board takes final action on said amendment request.
- 5) Major Activity is a licensed activity, the nature of which requires a significant commitment of time and effort by an outfitter in its execution and is intended to provide a significant amount of income to an outfitter.
- 6) Major Amendment includes all outfitter license amendment requests requiring Board research or recommendation of a lands or waters management agency or other agency before the Board takes final action on the amendment request.
- 7) The term "public" is inclusive, and includes a very broad spectrum of individuals and groups; including but not limited to, outfitted and non-outfitted hunters, trappers, fisherman, private landowners, Idaho sportsmen groups, outfitters and special interest groups.

Administration

- 1) This Memorandum of Understanding supersedes all previous MOUs pertaining to agreements between IDFG and IOGLB.
- 2) Nothing contained in this document limits or affects in any way the authority of the IDFG or limits or affects the authority of the IOGLB in administering the laws of Idaho, or abiding by federal laws or regulations. This MOU is not intended to and shall not specifically benefit any third party.
- 3) Specific work projects or activities which involve the transfer of funds, services, or property between the parties to this MOU require the execution of separate agreements or contracts, contingent upon the availability of funds.
- 4) Additions to, deletions from, and amendments to this agreement may be proposed by either party and become effective upon approval by both parties.
- 5) Either party(s), in writing, may terminate the instrument in whole, or in part, within 180 days by providing written formal notice to the other party.
- 6) This instrument is executed as of the date shown on the signature page and will be reviewed by the parties on or before January 15, 2019, to determine whether to renew or revise the MOU.

