

GUIDES AND OUTFITTERS

PRESENT STATE REGULATION

Under North Dakota Century Code (NDCC) Section 20.1-01-02(14), a guide or outfitter is "any resident who holds that person out to the public as a guide or outfitter, and who provides, for compensation, transportation, equipment, arrangement of lodging, or that person's own or another's personal services for the primary purpose of assisting a person or persons to locate or catch fish or to locate, pursue, or hunt small game, big game, or furbearers." An individual may be a hunting guide or outfitter, a fishing guide or outfitter, or both.

Besides the hunting and fishing categories, there are two kinds of guides and outfitters--certified and regular. A certified guide or outfitter must qualify as a regular guide or outfitter. North Dakota Century Code Section 20.1-01-02(14) prohibits nonresidents from acting as guides or outfitters in this state.

Under NDCC Section 20.1-03-37, an individual may not be a regular guide or outfitter unless that individual is licensed. A regular guide or outfitter must pay a license fee. Under Section 20.1-03-12(34), (35), and (36), the annual license fee for a hunting guide or fishing guide is \$100 and the fee for both is \$150. A regular guide or outfitter may not hunt on land owned by or private land enrolled with the Game and Fish Department for the purpose of hunting, provide services to a person who has not obtained the appropriate license, or willfully and substantially misrepresent that individual's facilities, prices, equipment, services, or hunting or fishing opportunities. Private land enrolled by the Game and Fish Department includes the private land open to sportsmen program (PLOTS) and coverlocks program. There are approximately 160,000 acres of PLOTS land and 5,500 acres of coverlocks land open to hunting in this state.

A certified guide or outfitter is subject to additional requirements. A certified guide or outfitter is required to have proof of general liability insurance in the amount of at least \$100,000 per individual and \$300,000 per incident, to be certified in adult cardiopulmonary resuscitation, and be certified in standard first aid or its equivalent. A certified guide or outfitter does have an additional privilege. Under NDCC Section 20.1-03-11.2, the Governor is required to make one-half of the antlered whitetail deer licenses and permits allocated to nonresidents, up to a maximum of 100 licenses, available to certified guides or outfitters. This section limits the number of whitetail deer licenses that a certified guide or outfitter may purchase to five per year. This section requires the guide or outfitter to pay the fee for the whitetail deer license. A certified guide or outfitter may provide

to nonresidents, for compensation, big game guiding and outfitting services and one whitetail deer license per nonresident to hunt whitetail deer. Under Section 20.1-03-12(42), the fee for a whitetail deer license sold to a certified guide or outfitter and provided by them to a nonresident is \$250.

North Dakota Century Code Section 20.1-02-05 enumerates the powers of the Game and Fish Department director. Under subsection 17, the director may adopt rules for the licensing of guides or outfitters and may require records and reports as the director determines necessary. In addition, the director may revoke or refuse to renew the license of any person who violates the rules or fails to provide the records and reports.

Under this rulemaking authority, the director, under North Dakota Administrative Code (NDAC) Section 30-04-03-01, has made being a guide or outfitter without a license a noncriminal offense with a \$250 fee. In addition, under NDAC Section 30-04-03-06, an individual licensed as a guide or outfitter must be "well versed in the hunting laws of North Dakota and in federal laws pertaining to hunting in North Dakota," and it is the guide's or outfitter's responsibility to ascertain that each client is familiar with these laws. The rules also provide for consumer protection provisions which require the guide or outfitter to provide a list of charges before contracting for services; a receipt with the guide's or outfitter's signature, address, and license number; and a written contract listing the services and accommodations, the fee, and the time period of the contract. In addition, under NDAC Section 30-04-03-09, guides and outfitters are required to keep current records of all transactions for three years which are subject to inspection by the Game and Fish Department or any law enforcement officer.

Under NDAC Section 30-04-03-10, the director of the Game and Fish Department is to revoke or refuse to renew the license of a guide or outfitter that is convicted of violating any game or fish law in this state, is convicted of violating any federal law pertaining to hunting, fishing, or trapping, fails to comply with any rules relating to operating as a guide or outfitter, or engages in conduct detrimental to the image and professional integrity of the guiding and outfitting industry. According to a representative from the Game and Fish Department, this section is used and is effective against the individual guide, but does not directly affect that particular guiding business.

Another prohibition on areas guides and outfitters may hunt is in NDAC Section 30-04-02-09. Under this section, an individual may not engage in a commercial enterprise on a state wildlife management

area unless authorized by the Game and Fish Department. According to a representative from the Game and Fish Department, guides are authorized if they comply with federal permit requirements.

FEDERAL REGULATION

There are five federal land management agencies with public land available for hunting. These agencies include the Army Corps of Engineers, Bureau of Land Management, Bureau of Reclamation, United States Fish and Wildlife Service, and the Forest Service. Generally, the Army Corps of Engineers marks the boundary of lands open to walk-in hunting. However, 36 C.F.R. § 327.18 states "the engaging in or solicitation of business on project land or waters without the express written permission of the District Commander is prohibited." Because hunting guides and outfitters are engaged in a commercial activity, guides and outfitters are required to have written permission from the district commander. There are approximately 150,000 acres of Army Corps of Engineers land open to hunting in this state.

Generally, the Bureau of Land Management marks the boundary of lands open to hunting and fishing in accordance with state regulations; however, there are special procedures for special recreational uses. Special recreational uses include commercial uses, e.g., guiding and outfitting. The procedure requires an application for a permit. An environmental analysis is required for any permit issuance. There are no guide or outfitter permits issued for the Bureau of Land Management lands in North Dakota. There are approximately 60,000 acres of Bureau of Land Management land open to hunting in this state.

Generally, the Bureau of Reclamation marks the boundaries of lands open to hunting and fishing in accordance with state regulations. In addition, the Bureau of Reclamation transfers management of lands under its jurisdiction to other entities called managing partners. Regardless of who is responsible for management, guides and outfitters are considered concessions. For a concession to be approved, there must be a demonstrable public need, there must be an environmental analysis, it must be ensured that exclusive use will not occur, and approval is awarded on a competitive bidding process. There are approximately 165,000 acres of Bureau of Reclamation land open to hunting.

The United States Fish and Wildlife Service has two major types of land that may be open to hunting. Generally, waterfowl production areas have marked boundaries of land open to hunting and fishing in accordance with state regulations. Wildlife refuges have marked boundaries. However, each refuge is managed under different specific regulations. As a rule, a hunter may hunt legal game on a waterfowl production area. As for wildlife refuges, some are open to hunting but not for waterfowl. The regulations for wildlife refuges are very specific for each refuge.

As for guides and outfitters, 50 C.F.R. § 29.97 requires that a person soliciting business or conducting a commercial enterprise on these properties is required to have a special permit. Region VI of the United States Fish and Wildlife Service, which includes the states of Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, and Wyoming, does not issue permits to hunting guides or outfitters as a matter of policy because of the implied preferential treatment for guides or outfitters and clients. There are approximately 260,000 acres of waterfowl production areas and 280,000 acres of wildlife refuges open to hunting in this state.

Generally, the United States Forest Service marks the boundaries of lands open to hunting and fishing in accordance with state regulations. However, 36 C.F.R. § 251.50 requires guides or outfitters to be authorized by permit to operate on Forest Service land. Before a permit is issued, a needs assessment must be completed. This needs assessment examines compliance with the existing management plan, resource conditions, citizen and agency input, appropriateness of use, prospective social conflicts and tolerance, and other factors. There are approximately 1.1 million acres of Forest Service land open to hunting in this state.

2001 LEGISLATIVE ACTION

During the 2001 legislative session, the Legislative Assembly enacted two bills that related to guides and outfitters. Senate Bill No. 2449 created statutory qualifications and restrictions for guides and outfitters. The bill created NDCC Section 20.1-03-37, which was previously described in this memorandum. House Bill No. 1274 allowed certified guides, instead of as previously allowed all guides, to receive whitetail deer licenses under Section 20.1-03-11.2.

During the 2001 legislative session, the Legislative Assembly considered two bills that related to guides and outfitters which did not pass. House Bill No. 1069, as introduced, would have prohibited a guide or outfitter from having a firearm or other weapon in immediate possession while afield with a person employing that individual as a guide or outfitter. Otherwise, the bill was very similar to Senate Bill No. 2449.

Senate Bill No. 2394, as introduced, would have required guides and outfitters to pay sales tax on provided services. In addition, the bill required landowners who charge a fee for hunting to be licensed outfitters and to post the land open for hunting for a fee. Under the bill, an outfitter would have had to file records reporting the fees collected to the Game and Fish Department for sharing with the Tax Commissioner.

HISTORY

In 1996 the Game and Fish Department adopted rules to govern the activities and licensing of hunting

and fishing guides and outfitters to become effective on January 1, 1997. Among other things, these rules would have required proof of liability coverage, certification in adult cardiopulmonary resuscitation, and certification in standard first aid for all guides or outfitters. During review of the rules by the Legislative Council's interim Administrative Rules Committee, committee members observed that several issues covered in the rules had been the subject of proposed legislation that failed in 1995. The committee approved a motion to void the rules because the rules were the topic of failed legislation, created policy that should be the subject of legislation for consideration by the Legislative Assembly, and appeared to be a fence-building effort by the Guides and Outfitters Association. Representatives from the Game and Fish Department countered that the department was advised by individual legislators during the 1995 legislative session that these issues should be addressed through administrative rules and that the department tried to accommodate that suggestion in working on these rules. Representatives from the department agreed to further amend the rules to eliminate the previously listed requirements in the rules that were controversial. Upon agreement with the department on the additional amendments, the committee withdrew its motion to void the rules.

The number of hunting guide and outfitter licenses has increased fourfold since 1990. In December 2001 there were 332 licensed hunting guides. There were 82 licensees in 1990, 141 in 1995, and 270 in 2000. The only reduction in the number of hunting guides and outfitters was in 1997. In 1996 there were 164 licensees and a similar number--171--in 1998. However, in 1997 there were 122 licensees, a drop of approximately 25 percent in one year.

After the agreement with the Administrative Rules Committee, the Game and Fish Department adopted rules that created the requirement that a guide or outfitter is required to furnish each client a written contract and removed the requirement that records of all guide or outfitter transactions be filed in the Game and Fish Department office in Bismarck each year.

OTHER STATES' REGULATIONS

Among the states there are major differences in the systems by which guides and outfitters are regulated. Wyoming, as well as other states, has a system much like the system for other occupational and professional boards in this state. For instance, there is an investigation, examination, and board. At the other end of the spectrum, South Dakota does not license guides or outfitters. South Dakota prohibits guiding on state-owned or managed game production areas, state parks, recreation areas, and lakeside use areas, federal land leased or under agreement to the state which is posted as a game production area and managed for wildlife purposes, or private land leased or under agreement with the Game, Fish and Parks Department for purposes of providing public access or on highways or other public rights of way within the state. Other caveats include:

1. Wyoming requires guides and outfitters to report violations of game and fish laws.
2. Idaho and other states license outfitters separately from guides. In this instance, guides work for a business called an outfitter.
3. Montana has a dual outfitter and guide licensing system and exempts a person who owns real property for the primary pursuit of bona fide agricultural interests from the definition of outfitter.