



Oregon

John A. Kitzhaber, MD, Governor

State Marine Board

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February 19, 2013



House Committee on Agriculture and Natural Resources

The Honorable Brad Witt, Chair

The Honorable Sal Equivel, Vice-Chair

The Honorable Caddy McKeown, Vice-Chair

RE: Testimony on House Bill 2039

Dear Committee Chair, Vice Chairs and Members,

This bill modifies ORS 704 in respect to the Oregon Outfitter and Guide Program to improve accountability, funding for law enforcement and program oversight.

In 1984, by Oregon Legislative action, the Oregon State Marine Board accepted management and oversight of the Oregon's Outfitter and Guides program. In 1987, charter vessels were included in the program and in 1993, the Oregon Legislature adopted laws requiring a decal system for guide boats and vehicles to assist law enforcement in tracking illegal guides. The statute also requires all guides operating motorboats on federally navigable waterways to carry a US Coast Guard license. The Outfitter and Guides program functions as a basic registration program which ensures guides are registered, insured, bonded and have current first aid certifications.

In October 2010, as a result of numerous complaints from the guide and outfitter industry, the Board directed staff to conduct a comprehensive review of the Outfitter and Guide program. In January 2011, the Guide Advisory Committee (GAC), as identified in statute, (see Appendix A) convened. A survey was mailed to nearly 1,200 registered guides and charters, and a series of ten regional meetings were held to engage guides and outfitters in the review process.

Following the completion of the review process, the GAC unanimously forwarded a number of administrative rule and statutory change recommendations to the Marine Board. The Board reviewed and endorsed the statutory recommendations included in HB 2039 (see Appendix B).

HB 2039 will update definitions and clarify existing language.

This bill will increase the current \$300,000 minimum liability to \$500,000. Quotes from multiple insurance agents found that costs would increase from \$0 to 0.02% of annual revenues.

Beginning in 2014, fees will increase from \$50 per year to \$150 per year. The increase will fund improved program oversight, outreach efforts and law enforcement specifically targeting illegal guiding activities. Though it is a multiplicative increase, the fee remains small compared to other states, and will result in measurable improvements to program implementation (see Appendix C).



All persons functioning as a fishing guide will be required to be registered as a guide. Currently a registered guide may hire employees to work under his or her registration, creating enforcement and tracking loopholes. Furthermore, a guide whose registration is revoked can continue to practice guiding, as an employee of another guide, with little impact to his or her operation. Several key law enforcement investigations (see Appendix D) illustrate the need for this change. Full registration of all individuals who function as fishing guides will provide more accurate data to the agency, and would increase revenues to fund law enforcement goals.

This bill will require that all guides operating motorboats, at any time during the year, be required to carry a minimum of a USCG OUPV (Six Pak) Inland License. The law would phase in over five years. The key reasons for requiring a Coast Guard license are to:

Establish higher professional standards for guides operating motorboats. A guide must demonstrate the knowledge to pass the rigorous USCG test, a physical exam and submit to random drug testing.

Prevent individuals with drug violations from continuing operation on inland waters.

Address public concern for safety and knowledge. This is similar to the public acceptance of a Commercial Driver's License.

A caveat to the Coast Guard license requirement pertains to rafting guides who use a motor occasionally to move rafts across flat water at the end of a white-water trip.

GAC membership is currently defined in statute but some groups no longer exist. The Marine Board recommends the language identifying participants be removed from statute and be defined in administrative rule, allowing the Marine Board to eliminate or supplement membership as needed.

This bill will upgrade the violations for "failure to comply" from a Class B misdemeanor to a Class A misdemeanor.

In closing, HB 2233 will allow the Marine Board to respond to concerns raised both by the Guide Advisory Committee and law enforcement in the management and oversight of the Oregon's Outfitter and Guides program.

Please allow me to address any questions you may have.

Sincerely,



Scott Brewen, Director

attachment: Appendices A-D

Guide Advisory Group (ORS 704.060)

| # ORS Designated Advisory Group | | | | | |
|--|---|---|---|--|--|
| 2 | Oregon Guides & Packers | Brian Sykes, Board of Directors | | brian@oregonrafting.com | 541-385-5947 w |
| | Oregon Guides & Packers | Steve Mathers, President | Owner – Battle Creek Outfitters (Hunting) 20129 Mathers Road Bend, OR 97701 | mathers@bendnet.com | 541-389-0743 |
| 1 | McKenzie River Guides | Steve Schaefer, President | | sgsfish@aol.com | 541-896-3789 |
| 1 | Eastern Oregon Outfitters & Guides Association | Mark Halley | | mark@mosssprings.com | 541-562-1181 |
| 1 | Rogue River Guides Association | Vernon Grieve | PO Box 543, Shady Cove, OR 97539 | herefishy@embarqmail.com | 541-878-2004 |
| 1 * | Northwest Guides & Anglers Association | Bob Rees | PO Box 1196 Tillamook OR 97141-1196 | brees@pacifier.com | 503-812-9036 |
| 1 * | South Coast guides | Gary Early | | val@earlyfishing.com | 541-469-0525 |
| 3 OSMB Designated | | | | | |
| | Oregon Hunters Association | Mike Ayers / Duane Bernard | Scappoose / Medford | roguewhitewater@charter.net ; jdmbernard@msn.com | |
| | Coastal / At Large | Joe Rohleder | PO Box 211 Waldport OR 97394 | rohleder@teleport.com | 541-563-3973 C 503-559-7942 |
| | NW / At Large | Jack Glass | 1208 E Columbia River Hwy Troutdale OR 97606 | Jackfish4u@yahoo.com | 503-666-5370 |
| Agency/Advisory | | | | | |
| | ODFW | Curt Melcher / Rick Hargrave | | richard.j.hargrave@state.or.us | 503-947-6214 |
| | Oregon State Police | Lt. David Anderson / Lt. Ethan Wilson | | David.J.Anderson@state.or.us Ethan.k.wilson@state.or.us | 503-863-1303 |
| | OSMB | Trey Carskadon | 20414 SW 70 th Avenue Tualatin OR 97062 | trey@bdcadvertising.com | 503-723-5723 x102 503-201-4669 c |
| ORS / Defunct | | | | | |
| 1 | Rogue River Outfitters | NO LONGER EXISTS | | | |
| 1 | Deschutes River Public Outfitters | NO LONGER EXISTS | | | |
| 1 | Tillamook Guides Association | NO LONGER EXISTS | | | |
| OSMB Staff | | | | | |
| | Randy Henry | | | Randy.h.henry@state.or.us | 503-378-2611 |
| | Janess Eilers | | | Janess.eilers@state.or.us | 503-378-2599 |

Section by Section Summary of Changes

Section 1: Clarifies or updates definitions. Removing “exclusively” from (1) recognizes that some guide employees work for multiple guides. (2)(b) singles out persons with a US Coast Guard Operator of Uninspected Passenger Vessel license – also known as a “6 pack license” because it limits the individual to six or fewer passengers for hire. This is a key designation because it defines a person with this license as an Ocean Guide and not as a Charter, as defined in ORS 830, and proposed for modification in SB 25. (4)(a) clarifies at what point an individual meets the definition of Outfitter and Guide. (4)(b)(B) is a key provision because it establishes that employees of outfitter guides are not outfitter guides unless they function as a fishing guide. This establishes the requirement for any person who functions as a fishing guide to register as an individual guide.

Section 3: Items (1) and (2) were moved here from Section 1 for clarification. (3) is a key change because it more clearly defines the term “costs or expenses for a trip” to help individuals and law enforcement know at what point a person should register as a guide. Sharing the cost of consumable items used during the trip, such as fuel, food, bait, etc., is of course acceptable. If the operator seeks reimbursement for moorage, insurance, boat payments or other non-trip-related costs, the operator is now essentially taking individuals for hire and should register as a guide.

Section 4: Items (1)(b) explicitly notes the requirement that the business be registered with the Secretary of State. (1)(c) moves designation of particular first aid courses to rule so they may be updated as courses change. (1)(e) is the first part of a two-part process that, by 2018, will require all guides operating power boats carry a US Coast Guard License. (1)(g) sets the liability insurance minimum to \$500,000, up from the \$300,000 minimum set in 1984. (1)(i) establishes that a guide or employee cannot have a felony or misdemeanor conviction related to an outdoor activity in the prior 24 months. (4)(a) is important because it raises the annual fee to \$150. (4)(b) and (c) raises the minimum fee for a non-resident guide to \$150.

Section 5: Item (2) requires an employee of a guide to carry documentation showing their employment by another individual. This will improve enforcement where unlicensed guides may claim they are employed by other guides.

Section 7: This is a key section. It implements mandatory US Coast Guard licensing for all guides operating powerboats on any Oregon waterways. Currently this is limited to waterways determined navigable by the US Coast Guard. Note that any waterway that is tidally influenced is, by default, considered navigable. This section phases in on January 1, 2018, giving outfitters & guides five years to comply. (2)(b) is the only exemption to this requirement, and singles out inflatable boats (rafts) that use a motor for downstream transport. This action occurs primarily on the Owhyee River in Malheur County where the river empties into the reservoir, requiring a flat-water transport of several miles.

Section 8: Clarifies existing language.

Section 9: Item (2) provides to the courts the option of revoking an outfitter and guide license for a felony or misdemeanor related to guide laws as well as fish and wildlife laws. It should be noted that many poaching violations result in misdemeanor convictions. Outfitters and guides are key stewards of wildlife resources and should have a thorough understanding of, and respect for, fish and wildlife laws. Item (4) extends the authority the Board the option to revoke, suspend or deny for a felony or misdemeanor conviction. Such convictions are rare. Typically, poaching or illegal harvest convictions are downgraded to violations, resulting in a “conditional registration”, which basically puts the guide on probation for 24 months.

Section 10: Item (1)(d) states that ocean guides – who would formerly have operated under the Marine Board’s Charter statute, must match the carriage requirements specific to ocean operation that are listed in ORS 830.

Section 11: Current statute specifically dictates which guide organizations will be on the Guide Advisory Committee. Several of the organizations no longer exist. This language maintains the spirit of the law in this statute, but shifts selection of the organizations to administrative rule so the Marine Board can change membership as organizations come and go. Administrative Rule language will be drafted to identify participants based on professional and geographic diversity. SB 25 also will modify this section by adding no more than 1 Charter Operator to the GAC.

Section 12: Further implements the changes to the GAC.

Section 13: Upgrades the violations for “failure to comply” from a Class B misdemeanor to a Class A misdemeanor. This change was recommended by the GAC. A Class B misdemeanor is a fine of \$435, while a Class A can be \$6450. Controlled hunts can sell for many thousands of dollars. The GAC felt that an unlicensed guide should face a significantly steeper violation than a Class B misdemeanor.

Western Region US Outfitter Guide Licensing Fees Comparisons

Idaho

| | |
|--------|---|
| \$ 400 | Outfitter First time application fee plus \$400 (\$450) license fee |
| \$ 20 | Guide First time application fee plus \$140 (\$160) license fee |

Wyoming

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|--------|-------------------------------|
| \$1600 | Outfitter New Application Fee |
| \$ 600 | Renewal fee |

Montana

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|--------|---|
| \$1300 | New/Original License and Examination Application |
| \$ 450 | License Amendment and Examination Application |
| \$ 150 | Re-Application |
| \$ 500 | New Operation Plan/Inspection Application |
| \$ 100 | Net Client Hunter Use Transfer Application (NCHU) (Hunting Applicants Only) |

Washington Fishing

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|--------|-----------------------------|
| \$ 330 | Resident Non-Salmon Charter |
| \$ 220 | Resident Food Fish Guide |
| \$ 250 | Resident Game Fish Guide |

Alaska

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|--------|--|
| \$ 50 | Fishing Guide Only; \$50 business license |
| \$ 100 | Hunting application fee (nonrefundable) |
| \$ 50 | Registered Guide-Outfitter qualification examination fee |
| \$ 200 | (per unit, maximum 3 units) Game Management Unit Certification examination fee |
| \$ 450 | Resident license fee (not required until after applicant has passed examination) |

2012 Outfitter & Guide LE Enforcement Pilot Project Summary

Overview

With the endorsement of the Guide Advisory Committee (GAC), as identified in ORS 704.060, the Oregon State Marine Board (OSMB) and the Oregon State Police (OSP) entered into an Interagency Agreement to conduct a pilot enforcement project to assess and respond to illegal guiding complaints in Oregon. The project ran from February 1 through November 1, 2012. The goal of the investigation was to test the effectiveness of the OSP Special Investigations Unit in investigating illegal outfitter, guide and charter operations.

In addition, beginning July 2012, the Marine Board provided funding to three county sheriff marine programs to incorporate regular checks into outfitters and guides operating boats on Oregon waterways during the course of a season.

During the course of the pilot project, staff made numerous contacts with outfitters, guides and charters to address complaints and allegations. Convictions were evaluated and current processes for tracking and recording violations were instituted. Staff developed relationships with the US Coast Guard to ensure proper notifications of violations are forwarded to federal licensing authorities.

Initial investigation began in south coast winter steelhead rivers and extended through spring Chinook fishing and fall Chinook fishing. Areas of focus were Curry County, Coos County and Tillamook County, as numerous complaints of illegal activity are commonly reported in these areas. Common complaints include such activities as unlicensed guides, non-resident guides without proper Oregon licensing, illegal charter operations, private individuals offering trip sharing, and aggressive or illegal operation by registered guides.

In conjunction with on-water activities, 100 outfitter and guide 2012 season registration applications were randomly selected for the OSP Special Investigations Unit to review. The documents were reviewed to ensure that they truthfully reported any violations over the past two years, as required.

OSMB worked with the GAC and outfitters and guides to funnel complaints and allegations of illegal conduct to proper authorities. Staff developed a regular protocol for forwarding reports to the OSP Special Investigations Unit. Results are noted below.

During the nine month pilot project, the OSP Special Investigations Unit opened and investigated thirty cases where potential illegal activity was suspected. Of the thirty cases:

- 29 required some level of undercover work;
- 14 cases were unfounded;
- 5 had no substantiated allegations;
- 4 had no violations observed;
- 4 cases resulted in citations;
- 2 require additional investigation with violations observed; and
- 1 deemed a civil matter

Of the 100 applications reviewed, five individuals properly noted past violations and one did not (case pending).

In all, the OSP Special Investigations Unit staff and field personnel documented 880.50 work hours. Crimes included no guide or charter license; exceeding limit for salmon/steelhead; unlawful taking of trout in catch-and-release only area; angling while suspended; unlawful method/snagging; borrowing and loaning of harvest tags; and false application on guide's license.

Lessons Learned:

Investigations are sensitive and time-consuming. Confidential communication is crucial.

Relationships between the OSP Special Investigations Unit, OSP fish and wildlife officers, and county marine patrols is crucial, and while generally good, there is an opportunity for improvement.

Communication gaps remain where violations by off-duty guides are not properly reported.

Public education about hiring legal guides and reporting illegal behavior is needed.

People who disregard Marine Board laws are generally willing to disregard fish and wildlife laws.

Marine Board staff observed that while county programs provide a valuable service to guides using boats, they are less effective in addressing specific illegal behavior due both to their visibility and familiarity to the local guide community.

OSP Special Investigations Unit is an essential and irreplaceable tool to address illegal guiding activities.

Recommendations:

The Marine Board recognizes the importance of officers to continue to work both overtly and covertly to address illegal operations. To assist in this endeavor, loopholes in current laws must be addressed so that investigations and convictions will result in meaningful sanctions to illegal operators. Moreover, in curtailing illegal operations within their industry, GAC leadership and guide organizations must develop strong working relationships with its membership. Finally, the Marine Board will implement database improvements to allow for more accurate tracking of outfitter guides, charters and their employees.