

OUTFITTERS & GUIDES LICENSING BOARD	POLICY MANUAL	POLICY NUMBER: 2026	PAGE NUMBER: 1 of 9
		SUBJECT: Public Need/Capacity Assessment Framework	Proposed : Adopted: Revised:

1.00.00 POLICY OF THE AGENCY

It is Board policy that “public need” and “capacity analysis” will be determined through quantitative and qualitative analysis of objective information. Ordinarily this information will be obtained from other agencies, industry representatives, the outfitted public, and the public at large often through collaborative efforts.

This document has been prepared to clarify procedures and protocol for use by IOGLB staff (staff) and other agencies in providing information and recommendation to the Idaho Outfitters and Guides Board (Board) relative to public need, capacity analysis and allocation of resources and to establish a record for Board decisions. It is intended to supplement policy 2025 – Outfitting on State and Private Lands.

All need assessments will be conducted by or coordinated through the Board’s Executive Director.

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3.00.00 REFERENCES

4.00.00 GENERAL

4.00.01 The Board’s basis for determining “public need” is:

Idaho Code 36-2101 generally states: *‘The intent of legislation creating the Board is to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the . . . natural resources of Idaho, and the fish and game therein and to that end to regulate and commercial outfitting and guiding services, for the explicit purpose of safeguarding the health, safety, welfare and freedom from injury or danger of such persons;...*

Idaho Code 36 -2107 states the Board has the following powers and duties:

- ❖ *To conduct examinations to ascertain the qualifications of applicants for an outfitter or guide licenses, and to issue such licenses to qualified applicants, with such restrictions and limitations thereon as the Board may find reasonable.*
- ❖ *The Board is expressly vested with the power and the authority to enforce the provisions of this chapter including for the express purpose of safeguarding the health, safety, welfare and freedom from injury or danger of those persons utilizing the services of outfitters and guides, and for the conservation of wildlife and range resources.*

IDAPA 25.01.01.021.states the Board in evaluating an Outfitter Application shall consider the Public Need for the proposed services in the area requested in the application.

With respect to the statutory responsibility of the agency, the identification of public need must be substantiated by appropriate analysis. The following provides general concepts and framework in which this need analysis might be conducted:

- ❖ Public Service – *“the intent of this legislation is to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the . . . natural resources of Idaho, and the fish and game therein” (IC 36-2101) ;*
- ❖ Tourism/Economic Sustainability/Impact - *“The natural resources of the state of Idaho are an invaluable asset to every community in which they abound.” . . . “ The tourist trade is of vital importance to the state of Idaho, and the recreational value of Idaho's natural resources is such that the number of persons who are each year participating in their enjoyment is steadily increasing.” (IC 36-2101);*
- ❖ Visitor safety – *“to regulate commercial outfitting and guiding services, for the explicit purpose of safeguarding the health, safety, welfare, and freedom from injury or danger of such persons”.* (paraphrased IC 36-2101)
- ❖ Conservation/Protection of Idaho’s Natural Resources and Fish And Game – *“To establish uniform standards for licensing outfitted and guided activities in Idaho in order to protect, enhance, and facilitate management of Idaho's fish, wildlife, and recreational resources”.* (IDAPA 25.01.01.001.02)
- ❖ Minimal Interference /Public Opportunity – *“...nor is it the intent of this legislation to interfere in any way with the right of the general public to enjoy the recreational value of Idaho’s. . . natural resources when the services of commercial outfitters and guides are not utilized, nor to interfere with the right of the United States to manage the public lands under its control.” (IC- 2101)*

In an MOU with the IDFG, the Board recognizes the declining recreational access to private lands, and through private lands to public lands, and has agreed to cooperate with IDFG to enhance outfitted and non-outfitted access to, and through, private lands. In this respect, the Board has agreed the proposed outfitting opportunity must not deny public access to public lands or waters accessible only through the private lands or waters that are being proposed for outfitting. The proposed language in the outfitting agreement with a lands or waters owner cannot exclude non-outfitted fishing or hunting opportunities. Nevertheless, it was recognized in that MOU that the landowner still has the right to control access to his property

The concepts of market generated demand and outfitter financial sustainability are not mentioned in governing statutes. Market generated demand is that which is created artificially through advertisement and promotion and market generated demand in itself does not construe need.

In licensing outfitters on lands where commercial operations are not federally permitted, or land where little or no resource management or resource analysis exists such as private lands, IOGLB must conduct the analysis independently or cooperatively with other agencies and often is dependent on analysis from other agencies.

The IDFG as well as the Idaho Department of Commerce, Division of Tourism Development and their Division of Economic and Community Development, each do planning specific to their areas of responsibilities often related to objectives similar to those mentioned herein. The Board typically works closely with IDFG due to consumptive use activities available to Outfitters being dependent on fish and wildlife resources managed by that agency. An MOU exists between IDFG and the Board for this purpose.

4.00.02 The Board’s basis for “capacity analysis” is:

IDAPA section 25.01.01.022. states: “When the board issues an outfitter license, said license shall specify the activity(ies) for which the applicant is licensed, designate specific operating area(s) for each activity, and be based on an operating plan acceptable to the board. In order to safeguard the health, safety, and welfare of the public and for the conservation of wildlife resources, the board may place a limit on the number of outfitter licenses issued within an operating area. An outfitter may not operate in an area for which there is no landowner or land manager statement where applicable. . . .”

IDAPA section 25.01.01.021, 6 7governing the evaluation of an outfitter's application, states the following must be considered:

- The accessibility of the area and the use by the general public, the commercial use already licensed in the area, the particular terrain, and normal weather conditions during the season of operation.
- Total amount of area requested giving due consideration to the affect such license would have upon the environment, the amount of game available to be harvested, the probable impact on the area should additional licenses be issued, and the number of people who can be adequately served in the area.

5.00.00 PROCEDURE

There are three separate steps in the framework for assessing “public need,” determining “capacity” leading to the assignment of outfitter areas and activities in a given area:

- I. Public need for outfitted services – identification of the types and locations of outfitted services that fall within statutory requirements.
- II. Capacity – estimate of total number of people who can use an area during the defined time period based on resource and setting capacity (i.e. meeting management desired conditions and standards).
- III. Assignment – The determining appropriate level of outfitting in a manner consistent with steps I and II and consistent with I.C. 36-2107; 36-2109 and 36-2110.

6.00.0 EXAMPLE

- I. **PUBLIC NEED** (types of outfitted services needed to meet statutory language)

Step 1: Determine what types of activities are appropriate and needed:

Provide opportunities to experience Idaho’s fish and game and other natural resources, learn skills and assist public “*The intent of this legislation is to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the deserts, mountains, rivers, streams, lakes, reservoirs and other natural resources of Idaho, and the fish and game therein*”. Idaho Code 36-2101.

Idaho Code 36-2102 states an "Outfitter" provides “outdoor recreational activities limited to the following: hunting animals or birds; float or power boating on Idaho rivers and streams; fishing on Idaho lakes, reservoirs, rivers and streams; and hazardous desert or mountain excursions.”

IDAPA 25.01.01.002.20 clarifies “hazardous excursions” as: “outfitted or guided activities conducted outside municipal limits in a desert or mountainous environment which may constitute a potential danger to the health, safety, or welfare of participants involved. These activities shall include, but are

not limited to: day or overnight trail rides, backpacking, technical mountaineering/rock climbing, zip lines, cross-country skiing, backcountry alpine skiing, llama and goat packing, snowmobiling, survival courses, and motored and non-motored cycling, but does not include wagon rides or sleigh rides.”

Recognize that many people today are choosing to go on an outfitted trip to enrich their experience by going with someone who is very knowledgeable about the back country and the opportunities available therein; thus, outfitters are not just serving people who can't access the area on their own, some people do not have the skill, equipment or knowledge necessary to experience Idaho's natural resource, fish or wildlife on their own or have special needs that require extra assistance.

Step 2: For the activities identified, what role can outfitters play within the confines of governing statutes:

- ❖ **Public Service** – *“the intent of this legislation is to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the . . . natural resources of Idaho, and the fish and game therein (tourism);”*

What activities require specialized skills, equipment, or knowledge to safely and responsibly visit an area? What activities occur or could occur that are difficult to learn in a responsible and safe manner without instruction? What activities occur or could occur that an outfitter can add to public services/enjoyment regardless of the skill level of the participant? What role can outfitters play in helping people meet these objectives? Are these activities appropriate given existing laws, regulations, and desired setting?

- ❖ **Tourism/ Economic Sustainability / Impact.** *“The natural resources of the state of Idaho are an invaluable asset to every community in which they abound.” . . . “ The tourist trade is of vital importance to the state of Idaho, and the recreational value of Idaho's natural resources is such that the number of persons who are each year participating in their enjoyment is steadily increasing.”;*

What role does outfitting play in the economy and how can this role be enhanced – i.e. keep more money circulating within local area? What is the significance of diversification within the industry and what role does should outfitter viability play.

- ❖ **Visitor safety** – *“to regulate commercial outfitting and guiding services, for the explicit purpose of safeguarding the health, safety, welfare and freedom from injury or danger of such persons”.*

Outfitters can help with public safety by clearing/maintaining trails, monitoring conditions, sponsoring educational clinics, reporting illegal activity, restoring campsites, assisting with search and rescue efforts, or assisting people who do not have the knowledge or resources to properly use Idaho's natural resources., etc.

How can outfitting further promote public health, safety, welfare and freedom from injury or danger of persons using Idaho's fish, wildlife, and recreational resources?

- ❖ **Conservation/Protection of Idaho's Natural Resources and Fish And Game** – *“To establish uniform standards for licensing outfitted and guided activities in Idaho in order to protect, enhance, and facilitate management of Idaho's fish, wildlife, and recreational resources”.*

Outfitters can help with resource stewardship by monitoring wildlife, working with resource management agencies to address conservation, sponsoring educational clinics, reporting illegal activity, or assisting people who do not have the knowledge or resources to properly use Idaho's natural resources, etc.

What are key resource needs that outfitters could assist with? What role can outfitters play in helping build a constituency for the stewardship of Idaho's fish, wildlife, and recreational resources?

PRODUCT: Within specific area, region or statewide: List public needs or interest; identify indifference and list public concern or opposition. List of specific activities and ways outfitters can meet "public needs."

II. CAPACITY (Estimates of capacity can be done for the entire area or for each separate management area. Capacity estimates may be separated by season – e.g. winter vs. summer/fall)

❖ **Assessment of Demand/Supply/Opportunities**

➤ **Determine current services available**

- *What are the current services offered, number of licenses, amount of authorized use – summer, fall winter?*
- *What is the current utilization of existing outfitting licenses?*
- *For each of the current services offered, assess whether the service is consistent with identified "public needs"*
- *The accessibility of the area and the use by the general public, the commercial use already licensed in the area, the particular terrain, and normal weather conditions during the season of operation.*
- *Total amount of area requested giving due consideration to the affect such license would have upon the environment, the amount of game available to be harvested, the probable impact on the area should additional licenses be issued, and the number of people who can be adequately served in the area.*

➤ **Determine desired future services to meet public need. (Note: it is helpful to get outfitter and other public input on desired future services)**

- *What types of activities or opportunities are being requested (either via special use applications or via phone calls from public)?*
- *What is anticipated future mix of activities/opportunities given recreational trends (including institutional outfitting)? Does the area offer some unique opportunities that could be met by outfitted services?*

PRODUCT: Possibly a matrix displaying current services offered; list of desired future services to meet public need or list of services to be phased out or such additional factors as determined by the Board.

❖ **Identification of areas of concern including but not limited to public need; resource capability, access and etc:**

EXAMPLES OF POSSIBLE CONCERNS	YES	NO
Are there areas where other adjoining use such as residences, agricultural use, traffic corridors or public access warrant or discourage the requested use?		
Is the area under consideration winter range where human presence may be detrimental?		
Are wildlife, fish, or plant species a concern or other critical resource concern that warrants discouraging human activity during certain times of the year, but not others?		
Is the area under consideration intermingled with public or private lands where outfitting may lead to conflict?		
Are there areas where recreational stock grazing isn't advised due to range conditions/forage utilizations standards?		
Are there areas where soil types that do not support that proposed use can be maintained to an acceptable standard?		
Does the area requested have size, terrain or other resource limitations that may be detrimental in providing the activity requested?		
Will the proposed activities be in conflict with other outfitters in the area?		
Will the proposed outfitting opportunity limit public access to public lands or waters that are accessible only through the private lands or waters?		
Will the outfitters holding allocated tags in an IDFG controlled hunt area be disrupted by the proposed activity provided by another outfitter?		
Does access, terrain or such matters as the lack of boat launch sites or suitable campsites make it inappropriate for the activities being considered?		
Would a change in the overall concentration of outfitters lead to conflicts between outfitters or between outfitted and non-outfitted publics or with private land owners?		
Historically, has public use of the land or waters proposed as part of the request been restricted?		
Are big game population objectives suggesting the need for more or less hunting pressure or harvest levels?		
Are anglers or hunters in the area currently satisfied with their experience and how would the proposal affect this?		
Do potential resource or safety concerns suggest that visitation by outfitted publics (whose use can be managed closely by the agency) would be better than visitation by non-outfitted, non-permitted publics?		

Will licensing an outfitter on private lands in the area requested disrupt and help deter illegal commercial use occurring in the area?		
Is the Land Owner Appreciation Program (LAP) considered as per the provisions of the IDAPA rules?		
Are there other matters not listed above that should be considered by the Board?		

PRODUCT: Yes answers need to be explained. Should a recommendation be made to restrict or limit a license, the rationale must be explained and documented. Documentation must explain the rationale (objectives or standards) where outfitted use might be beneficial, areas where outfitted use should be restricted or that it not be allowed. For example:

Should the recommendation be that an outfitter is limited to X number of harvestable elk in a given area, then, explain why X is the recommended number and provide reasonable documentation, i.e., harvest numbers, bull/cow ratio, cow/calf ratio, depredation issues, etc.

If public access is an issue, then if the land has never been closed before or if it has been closed, then explain how long and why; explain the surrounding land use and closures; length of time and proximity to the proposed area; explain other access alternatives.

If the recommendation is the “public” does not support the activity, then explain who the public is that does not support the activity and how the information was obtained and when. When the restriction is specific to outfitters or outfitted public and not the general public, then the explanation must rationalize the difference.

If there is a conflict between outfitters and public, or outfitter and outfitter, be clear who was involved, when and provide supporting documentation.

While it is difficult to provide examples of each scenario, it is important to recognize the Board’s decision must be in compliance with the Outfitter and Guide Act and its Rules and be reasonable, based upon facts in the record.

❖ Estimate total capacity using resource limiting factors

The goal here is to come up with an estimate of total capacity (expressed in measureable terms of people, harvest) for a defined season of use.

The IOGLB rules define an operating area and the IOGLB rules/law discuss how and why the IOGLB may adjust operating areas. Historically, most outfitted public land operating areas have been determined and assigned through a cooperative effort of the IOGLB and federal land management agencies. In the development of resource management plans, federal agencies oftentimes analyze public need and resource capacity for outfitting. In doing so, they often seek input from other entities including IDFG who manages the Idaho fish and wildlife resources. In this regard, the Board has developed an MOU with the federal land management agencies and collaborates with them on such matters as defining operating area boundaries, determining activities, processing sales etc.

The difficulty with nonfederal lands is this analysis has been limited to certain activities or species or has not been done at all. The Board's involvement with capacity and assignment of operating areas and activities, on state or private lands, typically concerns use of fish or wildlife resources. As such, it is important that the Board collaborate with IDFG on both capacity and assignment of resources. Policy 2026 has been developed for this purpose.

Because of the unique nature of the Board's responsibility, all public need analysis and determinations will be facilitated by or coordinated through the Board's Executive Director.

For the Board to place limits or restrictions, information must be provided quantitatively or qualitatively in terms of measurement with an explanation of how the measurement correlates to other factors. Some examples of limiting factors might be probability of adding to existing congestion at put-in and take-out facilities or trail heads, tolerance of sensitive wildlife species, existing public use, available outfitter big game tag allocation, etc. For an example, if a recommendation is that an outfitter be limited or restricted to say harvesting one (1) elk in a given area, then provide a comparative explanation of why one (1) is the correct number. Or, if the bull to cow ratio is a problem or if the available animals in the area are a problem, then this should be explained.

PRODUCT: Estimated total capacity for season in terms quantitative or qualitative measurement.

III. ASSIGNMENT

The Outfitters and Guides Act, Title 36, Chapter 21 and accompanying IDAPA rules do not define "assignment" per se.

"Assignment" is defined as processes explained herein to assign or allot land or water based areas to a specific outfitter business where that business will operate. Assignment sets that business apart from other businesses for a particular purpose of providing outfitted facilities and services to the public in that given area, including guided activities.

Assignment is not to be confused with "Allocation of Deer and Elk Tags" Rule 57 of the IOGLB, or IDAPA 13 TITLE 01 CHAPTER 04, Sections 505 and 506 that specify how the Idaho Fish and Game Department determines deer and elk tag allocation for hunters, non-outfitted and outfitted, in restricted zones and controlled hunts. In this respect, the number of deer or elk tags are allocated to qualified outfitters among their assigned operating areas within each game management area, unit or zone. Big game tag allocation distribution is determined by the Board pursuant to Section 36-408(d) and 36-408(j), Idaho Code, based on historical use and a tag allocation factor shall be noted on the license of each outfitter so affected. The Allocation Manual of the IOGLB is specific as to the processes used to distribute allocated deer and elk tags among qualified outfitters.

IV. REQUIREMENTS/MINIMUM ACCEPTED STANDARDS (Note: the following requires additional consideration and further development.

- **Major amendment must be submitted**
- **Lease agreement will be required. The leases must specify the following:**
 - **Outfitter Name, address. Etc.;**
 - **Land owner name address, phone number etc.;**
 - **Legal description of area to be leased;**

- Time frame i.e., when lease begins and when it expires;
 - Termination clause with a requirement both parties will notify the Board within 10 days of termination;
 - Terms of the lease specific operation dates, location, activities;
 - Financial agreements;
 - Use of equipment provided by the landowner;
 - Services provided by the landowner.
 - Acknowledgement that the area will be digitized and be maintained on IOGLB's website.
- The outfitter must provide a map of area described in the lease in the following detail so it can be digitized by IDFG.
 - Detail requirements to be determined.
- Outfitter will be responsible to report lease that expires or terminates.
 - Renewal statement will be provided with license renewal application.
 - All leases without specific termination dates will automatically terminate March 31, annually and will require new major amendment application.
 - Other leases will be reviewed and reauthorized on five year intervals.
- Examples of policies that need to be explored:
 - What is the Board policy on historical outfitter areas that encompass numerous land owners?
 - How many outfitters can operate in a given area i.e., what type of buffer would be required?
 - Possibly: no more than one outfitter can provide big game hunt services on private land in 100 square miles.
 - Possibly: 10 % of private land with turkey habitat within a 100 sq mile may be outfitted for turkey hunting.
 - Possibly: Less than one thousand (1000) acres may be insufficient for big game hunting activities on private land unless the terrain was a factor. Waterfowl hunting and turkey hunting or recreation activities like snowmobiling or skiing may have other scenarios.
 - So on and etc.
 - The “unique opportunity” of outfitters licensed on public lands that surround private land areas or that are immediately adjacent to them cannot be disrupted by private land outfitters.
 - This is a particular issue on intermingled lands.
 - What will be the administrative policy of “Recreation” (Non-consumptive activities) on Private lands
 - What are the affects of hunting clubs with associated leased lands on the outfitting industry and self-guided public?
 - MOU's are needed between IDFG, State Lands and Idaho Department of Parks and Recreation for Administration of Outfitters expecting to be licensed to operate on those lands.