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March 17, 2021

Idaho Fish and Game Commission

Members of the Commission –

The following present the written comments of the Idaho Outfitters and Guides Association (IOGA) regarding:

1. Key, unresolved concerns and considerations regarding treatment of allocated outfitted deer and elk tags, including:
 - 1.a.the intent of key sections of the statute(s) governing allocated outfitted tags;
 - 1.b.the rendered meaning of this aforementioned sections of Statute by Fish & Game Staff;
 - 1.c.the subsequent actions of the Commission pertaining to the allocation of outfitted deer and elk tags in connection with the nonresident limitations of November 20, and;
 - 1.d. The consequences of these on small businesses providing hunt outfitting services across the State.
2. Item 5.D, 5.B on this meeting's agenda for Commission Action, as well as
3. Consideration and inclusion of industry big game and predator recommendations as presented and discussed at outfitter and Department Regional meetings.

Statutory Intent, Implementation & Consequences.

The overarching thrust of these comments have to do with the disjuncture between the intent of key sections of the statute regarding outfitter allocation on the one hand, and the rendered meaning of those same sections by Fish and Game Staff, and associated Commission actions, on the other.

More specifically, it remains the firm position of IOGA that neither the letter nor intent of statute support IDFG Staff's interpretation whereby:

- (a) the number of tags allocated to outfitted hunters is treated as a subset or part of the nonresident tag number(s),
- (b) the use of outfitted-allocated tags be counted/considered as strictly nonresident participation, and;
- (c) the number of tags available to be allocated for use by the outfitted public is limited to 50% of the nonresident quota for each capped hunt absolutely (rather than the number of *additional tags above the original* outfitted hunter tag quota not exceeding 50% of the nonresident quota for each capped hunt).

Commissioners, the IOGA and the many individual hunt outfitters involved in amending the statutes in question were frankly bewildered upon learning that the Department was interpreting these core tenets of the Statute in this way; after literal years of crafting and redrafting the language with input from and communication with the Department—and countless meetings wherein the content and intent of particular tenets in question were discussed and negotiated.

“SEPARATE FROM”

As conveyed by comment to this Commission for the November 2020 meeting, while it is the intent that Allocated tags be a part of the overall number of tags issued in a given hunt, it is clear in Statute that they shall be separate from the number of tags set for residents and nonresidents: *“Such outfitted allocated set-aside tags shall be separate from the tag numbers*

set for residents and nonresidents in each capped or controlled hunt, unit, or game management area.”

Allocated tags may be used by residents or nonresidents; the only requirement is that they be an “outfitted hunter”. This is what makes these tags unique. The outfitted public is a distinct group, and outfitted, allocated tags are—as established in statute—a distinct type of tags.

Hence outfitted use should not strictly be counted/considered as nonresident participation and *“allocated set-aside tags shall be separate from the tag numbers set for resident and nonresidents in each capped or controlled hunt, unit, or game management area.”*¹

“FOR US BY THE OUTFITTED PUBLIC...”

Setting outfitted set-aside and allocated tag numbers separate from and in addition to any nonresident limitations does not detract from the Commission’s intent is to limit nonresident participation:

- Resident hunters have the same opportunity to utilize outfitted tags, and they do.
- Outfitted-allocated tags reflect neither strictly nonresident or resident use; they reflect the use of the outfitted public.
- Hence, considering outfitted use and allocating outfitted tags separately from nonresident and resident tags does not detract from the Commission’s ability to limit strictly nonresident participation. If the commission should ultimately limit outfitted tag numbers by combining them with nonresident tag numbers, the commission would in fact be limiting participation by the outfitted public—resident and nonresident—in addition to limiting nonresident participation.
- In addition, outfitted-allocated tag numbers are already set separately from resident and nonresident numbers in existing controlled and capped hunts.

“ANY ADDITIONAL TAGS ABOVE THE ORIGINAL OUTFITTED HUNTER TAG QUOTA”

The final area of incongruity between statutory language and intent versus current implementation lies in, in short, in the “50% provision.”

Statute states:

"In addition to rules promulgated by the commission regarding allocation, or pursuant to this section, in capped hunts the commission may allocate the number of outfitted hunter elk and deer tags based on the highest number within each of the last two (2) years of all elk or deer tags using the services of an outfitter in each capped hunt. Any additional tags above the original outfitted hunter tag quota may come from the nonresident outfitted hunter set-aside pool or the nonresident quota in the capped hunt, not to exceed fifty percent (50%) of the nonresident quota for each capped hunt. In capped hunts, when tag numbers change for all users, they will apply proportionally to all user groups."

The Department has recently rendered this section of statute to mean that, in any given capped hunt, the number of tags to be allocated for use by the outfitted public may not exceed 50% of the total number of nonresident tags.

However, the intent of this provision within statute—not least the language, which was intensively discussed and drafted in coordination with Department Staff—is to establish a limitation relative to the total number of *additional* tags that may be allocated to outfitters *beyond* their original allocation. It is *not*, in statute, establishing a criteria that the number of tags allocated for use by the outfitted public in a given hunt not constitute more than 50% of the total number of nonresident tags total, or in general.

In Thanks for Partnership on Interim Actions and Mitigation of Impact

Notwithstanding these significant and problematic departures from statutory language and intent, we (IOGA) have remained 'at the table,' in good faith and in the spirit of partnership, over the past months.

Initially we did so in hopes of moving the Department and Commission *back* to the intent of statute. Since the Commission Action of November 20 and the December 1 tag sale, we have done so in hopes of attenuating if not remedying entire the impacts to outfitter businesses that these actions –due to their underlying interpretation of statute– have precipitated.

To their credit, Department Staff recommended that this Commission adopt a temporary rule to add 400 elk tags to the outfitted elk set-aside pool, which will provide the capacity in the set-aside to allocate an additional number of tags, and with this Commission's approval, to bring total elk tag allocation in the newly limited zones to a number commensurate to the

high-reported historic use for 2018/19. To the credit of the members of this Commission, you adopted that rule, which has since been approved unanimously by the Senate Resources and Environment Committee.

We are also grateful to Department Staff for their previous recommendation, and to the Commission for adopting that recommendation, to modify the number of outfitter allocated elk tags set by proclamation at the Commission's November 20, 2020 meeting for the 2021 hunting season to reach 100% of the high outfitted use.

Item 5.D - Outfitter Allocation in newly limited deer units

Further, as regards Agenda Item 5.D "*Revised Outfitter Allocation in newly limited deer units for 2021 seasons,*" IOGA encourages that the Commission adopt the Staff recommendation: that the Commission modify the number of outfitter allocated regular deer and white-tailed deer tags set by proclamation at the Commission's November 20, 2020 meeting, based on 100% of the high outfitted use as reported to IOGLB, and in turn, to increase the 2021 total nonresident limits in the affected units to accommodate this allocated use.

Item 5.B - Big Game Season Setting,

Finally, and in short, as regards Item 5.B: (1) IOGA would like to express its support for the staff recommendations regarding increased wolf population management, and to further encourage that the Commission act to maximize wolf population reductions in backcountry units; (2) IOGA urges that the Commission give consideration to, and include in its actions, the industry big game and predator recommendations as presented and discussed at outfitter and Department Regional meetings held over the past several months. We thank the Department staff for the time and discussion in these meetings.

Conclusion

In closing, we would like to convey to the Commission our appreciation of the Department Staff for their tireless work on behalf of the hunting public and for their ongoing consideration of outfitters, guides and the rural communities where they live and operate. *No less, we would like to thank the Department Staff and you, the members of this Commission, for continuing to support and work in partnership with our Association in service of those outfitters, guides and the outfitted public.*

We recognize the weight of the responsibilities of this Commission and the complexity of the tasks and questions you as commissioners must wrestle with in the perfection of your charge to “preserve, protect, and perpetuate such wildlife, and provide for the citizens of this state and, as by law permitted to others, continued supplies of such wildlife for hunting, fishing and trapping.”

These past months have been trying—for myself, as I know they have been for Department Staff. For a great many outfitters, they have been completely upending. This is an incredibly complex issue and system, as we all certainly can attest. But neither this Commission nor Fish & Game Staff nor members of the outfitting and guiding industry are intimidated by complexity or *heavy lifts*—and it is my sincere hope that we work together, in ongoing partnership, toward resolution of this pressing issue.

Thank you for the time and energy you have already, and generously, given to this issue, to IOGA and the outfitters and guides we both represent—and not least for taking on the responsibilities and service that accompany the role of Commissioner. It is surely and oftentimes thankless service, but I thank you for it, and hope you will not hesitate to call on myself and IOGA if ever we can help or support you in your position and efforts.

Please don't hesitate to follow up with any questions, clarifications, or otherwise to further discuss anything contained in these comments.

Sincerely,

Aaron Lieberman

Aaron Lieberman
Executive Director - Idaho Outfitters & Guides Association