

**SUNSET REVIEW**

**OF THE**

**OFFICE OF OUTFITTER REGISTRATION**

**Submitted by the**

**Colorado Department of Regulatory Agencies**

**June 1992**

# TABLE OF CONTENTS

Executive Summary i

## I. Background 1

Sunset Process 1

Historical Information 1

Regulation of River Rafters Under Parks and Recreation 3

The Hunting and Fishing Recreation Industry in Colorado 4

Survey of Outfitters and Clients 6

## II. Other Regulation of Outfitters 7

## III. Review of Statute and Regulations 9

Review of Statute 9

Review of Rules and Regulations 11

## IV. Regulatory Efforts of the Office of Outfitter Registration 12

Complaints 12

Analysis of Complaints Filed Against Outfitters 14

Summary of Disciplinary Actions 16

Office of Outfitter Registration Disciplinary Actions 17

Analysis of Discipline Of Outfitters 18

## V. Should State Regulation of Outfitters Continue? 20

Arguments for Continuation of Regulation 21

Responding to the Regulatory Proponents - The Case For A Free Market 22

Can the State Prevent Unregistered Outfitters from Practicing? 23

Financial Injury to Colorado In A Deregulated Market 24

Conclusion - Consumers Can Protect Themselves In A Free Market 26

## VI. Statutory Recommendations 29

## Appendices

Sunset Statutory Evaluation Criteria 35

1991 Survey of Consumers of Outfitter Services 36

1991 Survey of Registered Outfitters 37

Consumer Comments 38

Comments of Registered Outfitters 40

June 1, 1992

The Honorable Bob Schaffer  
Joint Sunrise/Sunset Review Committee Chairman  
Room 348, State Capitol Building  
Denver, Colorado 80203

Dear Senator Schaffer:

We have completed our evaluation of the Office of Outfitter Registration and are pleased to submit this written report which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to section 24-34-104(8)(a), Colorado Revised Statutes, which states in part:

The Department of Regulatory Agencies shall conduct an analysis and evaluation of the performance of each division, board, or agency or each function scheduled for termination under this section... The Department of Regulatory Agencies shall submit a report and such supporting materials as may be requested, to the Sunrise and Sunset Review Committee, created by joint rule of the Senate and House of Representatives, no later than July 1 of the year preceding the date established for termination...

The report discusses the question of whether there is need for the regulation provided under the Outfitter Law pursuant to C.R.S. 12-55.5-101 et seq. as amended. The report also discusses the effectiveness of the regulatory program in carrying out the intention of the statute and makes recommendations for statutory and administrative changes if the program is continued.

Sincerely,

Steven V. Berson  
Executive Director

## **Executive Summary**

The Department of Regulatory Agencies has conducted the 1992 sunset review of the Office of Outfitter Registration. Outfitters are defined by Colorado statute to be, essentially, individuals who provide transportation, guide services or facilities for the purpose of hunting or fishing on land that they do not own.

This review concludes that the registration program is not needed. The statute includes several strong, self-enforcing provisions. The Department of Regulatory Agencies recommends leaving these provisions in law.

This sunset review found that consumers injured by outfitters wanted their money back. The registration of outfitters and the authority to discipline them does not aid the consumer in this respect. There are other laws that address this issue.

The existing regulatory program is administered well. This is especially noteworthy because state regulation of outfitters has been a "hit or miss" approach for the past twelve years. Outfitters have been housed in two departments of government; they have been licensed, deregulated, examined and re-licensed and now registered. There is much frustration on the part of outfitters, state regulators, and, often, consumers, with Colorado's regulation. For those reasons, the Department recommends that a ten year sunset date be established by the General Assembly if regulation is to continue.

This review makes several other statutory recommendations if regulation is continued. Recommendations are included to distribute a greater percentage of fines collected to the law enforcement agencies involved in the arrest and prosecution. This recommendation is aimed at aiding in the elimination of illegal or unregistered outfitting.

## **I. Background**

### **Sunset Process**

The regulation of outfitters pursuant to article 55.5 of title 12, C.R.S. is scheduled to terminate on July 1, 1993 unless continued by the General Assembly. During the year prior to that date, it is the responsibility of the Department of Regulatory Agencies to conduct a sunset review and evaluation of that regulatory program.

During this review, the Director of the Division of Registrations must demonstrate that there is a need for the continued existence of the program and that the regulation it provides is the least restrictive consistent with the public interest. The Department's findings and recommendations are submitted via this report to the Joint Legislative Sunrise and Sunset Review Committee of the Colorado General Assembly. (Statutory criteria used in this sunset review may be found in Appendix A of this report.)

The scope of this sunset review was comprehensive in nature. Registered outfitters were surveyed by the Office of Policy and Research, as were consumers who had complained to the Division of Registrations against outfitters. Professional associations, state and federal officials were interviewed. Staff of the Office of Outfitter Registration and the Assistant Attorney General assigned to represent the Office of Outfitter Registration were interviewed as well. Regulation of outfitters and guides in other states was reviewed.

### **Historical Information**

The general definition of an outfitter is one who provides the necessary equipment for a particular endeavor. A guide is one who shows the way or provides direction. It is easy to envision many instances in Colorado in which consumers contract for outfitters and guides to enhance a wilderness experience.

Hunting and fishing, of course, come to mind. Whitewater rafting outfitters also provide equipment and guide participants down Colorado's rivers. Ski shops may equip customers with cross-country gear and guide them into the backcountry for overnight "winter camping." Mountain bike and snowmobile businesses, among others, might also be included in the list. Some of these businesses are regulated in Colorado, some are not.

The Division of Registrations is responsible for the regulatory oversight of approximately 500 outfitters in Colorado who are statutorily defined as persons who provide facilities, guide services, or transportation, for compensation, for the purpose of hunting or fishing on land that they do not own. Guides are defined as individuals employed by outfitters to guide, lead, or assist other individuals to and from certain places. The statute specifically exempts from the definition of "outfitter" persons who rent motor vehicles, horses, or other equipment. The regulation of guides and outfitters in Colorado, then, is focused upon a specific industry segment: hunting and fishing outfitters and guides.

Colorado has a long history of regulating this industry; most of that regulation having been administered through the wildlife commissioner or, more recently, the Wildlife Commission and the Division of Wildlife. Guides were regulated from 1903 through 1967 by the Wildlife Commission based upon the guide's competency and reliability. Outfitters were brought into the regulatory net in 1967 and the state's oversight role was beefed up: bonding requirements were added, examinations and criminal penalties were created, and fines for violators gave the state more options to discipline outfitters and guides.

The industry was "de-licensed" in 1981. It is not altogether accurate to say "deregulated" because, as this report will show, other laws and regulations apply to outfitters. Still, the licensing of guides and outfitters under the Colorado Division of Wildlife was repealed July 1, 1981. This movement appears to have been mutually agreeable to the regulatory authority and the industry. The experience of sunset would argue strongly that such agreement is unusual; regulated occupations have historically resisted any attempt to reduce or eliminate licensing.

In 1983, regulation of outfitters returned. A five member board (three outfitters and two public members) was created and placed in the Department of Regulatory Agencies. Over the next several years (there were amendments to the statute in 1985), the regulatory scheme evolved to include rule making authority by the Board, examinations for licensure, liability insurance requirements, and proof of competency in first aid. Regulatory theory holds that such a scheme, with examinations, and requirement for licensure in order to practice the occupation, is the most restrictive.

The outfitters' licensing board underwent sunset review in 1987. As a result of that review, the present regulatory configuration emerged. The Director of the Division of Registrations is empowered by the statute to regulate outfitters through a registration program, proof of financial responsibility, and proof of competency in first aid. The Director also has a broad spectrum of disciplinary options to impose when the law has been violated (please see the statutory review section of this report for a more complete discussion of the regulatory scheme). The Director is authorized to appoint an advisory committee of outfitters.

The history of this program suggests that Colorado has moved towards strict regulation of outfitters and then stepped away from that position. The present scheme is less restrictive than the licensing program in place prior to the sunset review of 1987. In most cases, one finds that registration is used when the threat to the public health and safety is minimal. Further, registration is seen as an appropriate option to be used in controlling "fly by night" operators where the damage to the public is usually financial.

### **Regulation of River Rafters Under Parks and Recreation**

Persons who provide guides and services, for compensation, to consumers to raft or float Colorado rivers are regulated by the Department of Natural Resources.

The focus of this regulation is consumer safety. Essentially, the Department of Natural Resources requires that guides, trip leaders, and guide instructors have valid first aid cards and show proof of specific experience in the area of river rafting. For instance, trip leaders must have logged a total of at least 500 river miles as a guide. In order to guide a raft trip, the individual must have received 50 hours of training on a river from a qualified guide instructor.

There is no provision to regulate financial protection of the consumer. If a consumer is financially harmed by a river outfitter, he or she must pursue other options such as civil remedy or recourse to Colorado's consumer protection laws.

This review gave serious consideration to the consolidation of outfitting regulation. However, there are significant differences in the regulatory approaches taken by the two state agencies charged with regulation of these industries.

In short, regulation of river rafters focuses on consumer safety. Regulation of hunting and fishing outfitters appears to focus on financial protection although there is some attention to consumer safety.

The conclusion of this report will recommend that a different course of action should be followed in the regulation of hunting and fishing outfitters. That conclusion dictated that consolidation of regulatory programs, status quo, from one department to another was not the appropriate choice.



## The Hunting and Fishing Recreation Industry in Colorado

Nonresident hunting license sales account for 62% of the Division of Wildlife's revenue from license sales. The economic effect of these sports can be significant for individual communities. It has been estimated that nonresident hunting expenditures are slightly over \$178 million statewide.

Data contained in the following graph from the Department of Wildlife's 1991 Annual Report will illustrate:

<b>ESTIMATED SPORTSMEN EXPENDITURES* FOR HUNTING &amp; FISHING IN COLORADO</b>			
	<b>RESIDENT</b>	<b>NONRESIDENT</b>	<b>TOTAL</b>
ALL HUNTING	\$349,010,200	\$178,180,200	\$527,190,400
DEER HUNTING	\$111,740,200	\$84,224,800	\$195,965,000
PER HUNTER	\$756	\$983	
ELK HUNTING	\$120,201,400	\$87,527,000	\$207,728,400
PER HUNTER	\$1,041	\$1,337	
ALL FISHING	\$425,891,400	\$308,312,400	\$734,203,800

\* Includes secondary economic impact using a local service multiplier of 1.2  
**NOTE:** The above figures do not include the \$61,162,200 contribution made by DOW - total economic impact for Colorado = \$1,322,556,000 in 1989.

Much of this hunting activity is big game hunting. This is the type of hunt most often conducted by outfitters.

It is interesting to note the economic impact of fishing - resident and nonresident. As the above table shows, nonresident fisherman alone are estimated to have spent over \$308 million. Resident fishing expenditures account for another \$425 million.

The concerns over Colorado's tourism monies is an important one. Ninety-two percent of the outfitters surveyed for this sunset review reported that all or most of their clients live in other states. However, the contribution of the Outfitter Registration program to the tourism industry is dubious. It is likely that a relatively small percentage of consumers use outfitting services.

National Figures. Hunting and fishing are popular activities nationwide as these 1985 findings show:

- \* Warm water fishing is the most popular activity. 33.1 million people spent 8.9 billion dollars.
- \* Cold water fishing accounted for 7.4 million participants who spent 3.8 billion dollars.
- \* Big game hunting attracted 7.4 million hunters who spent 2.5 billion dollars.
- \* Non-consumptive wildlife-related trips, defined primarily as observation, photographing, or feeding wildlife accounted for 29.3 million participants and expenditures of 4.4 billion dollars.

Source: A comparison of Long-Run Forecasts of Demand For Fishing, Hunting and Non-consumptive wildlife Recreation Based on the 1980 and 1985 National Surveys, Walsh, Richard G., John, Kun H., and McKean, John R., December 1988, Colorado Water Resources Research Institute, Colorado State University, Fort Collins, CO.

A similar 1987 report made long-run forecasts of participation in these activities. Non-consumptive wildlife recreation is forecasted to be the fastest growing activity. Growth of participation in fishing is expected to continue also. Participation in hunting, however, is expected to decline in the future.

Source: Wildlife and Fish Use Assessment: Long-Run Forecasts of Participation In Fishing, Hunting, and Non-consumptive Wildlife Recreation, Richard G. Walsh, David A. Harpman, Kun H. John, John R. McKean Lauren Lecroy. December 1987

## **Survey of Outfitters and Clients**

As part of this review, the Department surveyed 203 registered outfitters and 54 consumers of outfitting services who had filed a complaint against an outfitter. Surveys were returned by 136 registered outfitters and 29 consumers.

Complete survey results are attached as Appendix B to this report. Responses to particular questions are included throughout the text of this report in relevant sections.

### **Highlights of response by registered outfitters**

- \* Professional outfitters, as an occupation, are a fairly stable group: 50% have been in business ten years or more.
- \* 44% of outfitters employ only one to three guides.
- \* A great deal of outfitting occurs on public land. Only 11% of the respondents conduct all of their business on private land. On the other hand, 28% perform all of their outfitting business on public land and another 27% perform most of their outfitting on public land.
- \* Outfitters are most often employed by clients who do not live in Colorado. 48% responded that all of their clients are from out of state and another 44% report that most of their clients are from out of state. Only 2% reported that all of their clients are Colorado residents.

### **Highlights of Responses by Consumers who filed a Complaint with DORA**

- \* 69% reported that they employ an outfitter less than once a year.
- \* Complainants were very unhappy about their complaint experience. 59% were very dissatisfied and another 24% were somewhat dissatisfied. Only 16% were satisfied or very satisfied.
- \* The results of the complaint process, however, appear to have mixed affects on the consumer's choice to hunt or fish in Colorado. 28% said they will return, 38% said they will not return to Colorado and 34% said that it had no impact on their plans.

## II. Other Regulation of Outfitters

Federal Regulation. Outfitters who operate on federal lands are regulated by federal agencies such as the Federal Bureau of Land Management (BLM) and the United States Forest Service. The Department of Regulatory Agencies' research shows that most Colorado outfitters use BLM land. Highlights of BLM requirements follow.

Federal Bureau of Land Management (BLM). The BLM requires a commercial permit when recreational use is made of public lands for business or financial gain. Outfitters involved in taking game on public lands must provide the BLM with proof that they are registered with the Office of Outfitters Registration, Colorado Department of Regulatory Agencies. The BLM is empowered with significant authority to enforce federal laws against outfitters who hold BLM permits.

- \* Permittee must make all relevant books, documents, and papers available to the BLM for inspection.
- \* BLM may place a permittee on probation or suspension, or revoke the permit if the outfitter violates BLM provisions, including failure to provide services specified in the operating plan.

Other BLM requirements address sanitation, proper care of the environment, and fires. Minimum insurance requirements are also established by BLM. Outfitters seeking a permit to conduct business on BLM land must show proof of the following minimum insurance coverage:

- \* \$100,000 bodily injury for one person;
- \* \$300,000 for any one occurrence; and
- \* \$10,000 property damage for any one occurrence.

Area managers for BLM may require higher coverage where a potential for higher claims exists. (Source: Special Recreation Permit Information, BLM, 1991)

Regulation in Selected States. The accompanying chart provides a snapshot of outfitter regulation in the Rocky Mountain Region. It should be noted that two states have no regulation. While they may not compare closely with Colorado's game industry, it is worth noting that hunting and fishing and tourism continue in both states.

## REGULATION OF OUTFITTERS AND GUIDES IN SELECTED STATES

STATE	TYPE OF REGULATION	SCOPE OF REGULATION	GOV'T/STATE AGENCY MEMBERS	BOARD
<b>Wyoming</b>	License	Outfitters/ Guides	Dept of Commerce <sup>1</sup>	Seven <sup>2</sup>
<b>Montana</b>	License	Outfitters/ Guides	Dept of Commerce	Seven <sup>3</sup>
<b>Idaho</b>	License	Outfitters/ Guides	Regulatory Agency	Five
<b>Oregon</b>	Registration	Outfitters/ Guides	Marine Board	Seven (Advisory)
<b>New Mexico</b>	No Regulation			
<b>Utah</b>	No Regulation			

<sup>1</sup> Accurate as of 1991; state is reorganizing

<sup>2</sup> Includes two public members and one member of the Fish and Game Commission

<sup>3</sup> Includes one member who is an employee of the Department of fish, Wildlife and Parks, and one public member

### **III. Review of Statute and Regulations**

#### **Review of Statute**

Article 55.5 of Title 12 of the Colorado Revised Statutes provides for the regulation of outfitters in the state of Colorado. An outfitter is statutorily defined as "any individual soliciting to provide or providing, for compensation, facilities, guide services, or transportation for the purpose of hunting or fishing on land that he does not own." The article specifically exempts from regulation those persons who only provide motor vehicles, horses, or other equipment that is rented. (Section 12-55.5-102, C.R.S.)

In order to practice as an outfitter, one must:

- Pay the required fee to the Director of the Division of Registrations within the Colorado Department of Regulatory Agencies;
- Prove that he or she is twenty-one years of age or older;
- Hold a satisfactory first aid card issued by the American Red Cross, or evidence of equivalent training;
- Possess minimum liability insurance coverage of \$50,000 for bodily injury to one person in a single accident and \$100,000 for bodily injury to all persons in a single accident;
- Submit a surety bond of \$10,000 conditional upon compliance with the Outfitters and Guides law and any rules and regulations promulgated under the statute. Section 12-55.5-105, C.R.S.

Conviction for violation of the article is a misdemeanor punishable by a fine of not less than \$1,000.00 and not more than \$5,000.00, or by imprisonment in the county jail for not more than one year, or both. A second or subsequent conviction for violation of the Outfitters and Guides law is a class 5 felony. (Section 12-55.5-105, C.R.S.)

The Director of the Division of Registrations has other disciplinary options against outfitters. He or she may deny, suspend, revoke, or place on probation the registration of an outfitter (section 12-55.5-106, C.R.S.). Also, the Director may issue a letter of admonition (section 12-55.5-106(3), C.R.S.).

The Director has the authority to fine registrants for violation of the article. Subsequent to a finding of a violation under the State Administrative Procedure Act, the Director of the Division of Registrations may impose a fine of at least \$300.00 but not more than \$500.00 per violation for a first offense. Subsequent violations result in fines of not less than \$1,000.00 but not more than \$2,000.00 (section 12-55.5-107, C.R.S.).

Also, the Director may issue an order to cease and desist actions that are a violation of the Outfitters and Guides law, including unregistered activity (section 12-55.8-108, C.R.S.). The penalties provision of the statute also provides that persons working as guides must meet two standards: they must be eighteen years of age, and they must hold acceptable proof of first aid training. The statute defines guide as a person who is employed by an outfitter to guide, lead, or assist any individual to or from a given place.

The standard of performance required of an outfitter is contained in two subsections of the article, concerning disciplinary actions and contract requirements. There are ten grounds for disciplinary action, many are standard Colorado provisions found often in laws regulating occupations. An outfitter's registration may be denied, suspended, or revoked if the registrant:

- Uses false or misleading advertising;
- Is addicted to alcohol or other controlled substances; or
- Has been disciplined in another jurisdiction for grounds that would be a violation at the Colorado statute or has entered a plea of nolo contendere or guilty of a felony.

The statute also contains disciplinary provisions that are more specific to the practice of outfitting. A registrant may be disciplined for:

- Violation of any local, state or federal law related to public land management, wildlife, health, or cruelty to animals;
- Misrepresentation of services, facilities, or equipment to a client or prospective client;
- Conviction of second or third degree criminal trespass; or
- Hiring a guide who does not meet the requirements of the article.

## **Review of Rules and Regulations**

The Division of Registrations, Office of Outfitter Registration has promulgated several rules to augment the statutory authority to regulate the outfitting industry. These rules address several broad areas, including: issuance of the original registration, registration renewal, conduct of outfitter operations such as obtaining prior land use permission to use private land or state land, qualifications of certain employees including guards, and responsibilities of outfitters. There are thirteen individual rules concerning the responsibilities of outfitters. These rules address safety issues such as availability of first aid kits, the requirement to maintain sanitary facilities where services are provided, the requirement to acquaint clients with weather conditions, information about terrain, and information regarding the approximate degree of physical endurance, strength and skill required to conduct the hunt.

Other rules concern complaints, declaratory orders, disciplinary actions, and penalties. In fact, the rules expand upon the disciplinary actions laid out in the statute. For instance, an outfitter who fails to provide to the client a written contract within thirty days of receipt and acceptance of deposit from the client is subject to disciplinary action by the Office of Outfitter Registration. Also, it is grounds for disciplinary action according to the rules if an outfitter fails to disclose in the written contract any material condition of the agreement between the outfitter and the client.

The rules also establish the terms of appointment of an advisory committee by the Director of the Division of Registrations. The rules require that the five members of the advisory committee represent fishing and hunting outfitters and shall have been a practicing outfitter for a minimum of five years preceding his or her appointment. The advisory committee, according to the rules, is required to meet at least twice a year or more often if required by the Director of the Division of Registrations.



## IV. Regulatory Efforts of the Office of Outfitter Registration

### Complaints

The Office of Outfitter Registration investigates complaints of registered outfitters and complaints of violations of the law by registered outfitters. Complaints of unregistered outfitting are assigned to a contract investigator. The Office labels these "Informal Complaints".

Complaints of violations of the outfitter law are investigated by the Division of Registrations' Centralized Investigation Unit. The Office labels these "Formal Complaints." According to the Office, there is no overlap between these two groups. Therefore, the Office has received a total of 338 complaints since July 1988. Of these, 224 were investigated informally and 114 were investigated formally.

### Informal Complaints, July 1988 - December 1991

<u>NUMBER FILED</u>	<u>SOURCE</u>
25	Anonymous
64	Consumer
35	Other agency (DOW, BLM, USFS)
43	Office of Outfitters Registration
1	District Attorney
56	Registered Outfitters
<b>TOTAL 224</b>	

<u>NUMBER FILED</u>	<u>NATURE OF COMPLAINT</u>
162	Nonregistered activity
1	Safety of clients
1	Breach of contract
8	Misrepresentation
1	Offering guarantees
2	No contract provided
10	Violation of State/Federal Laws or Rules & Regulations
3	Advertising
1	Multiple allegations
35	Miscellaneous
<b>TOTAL 224</b>	

<u>NUMBER</u>	<u>DISPOSITION/STATUS</u>
1	Deny registration
5	Refer to hearing
5	Refer to DA
8	Refer to other agency
19	Filed for cumulative effect
55	Dismissed (after investigation)
51	No action (no jurisdiction)
41	Cease & Desist Order issued
2	Letter of Admonition issued
3	Registration issued under probation
1	Miscellaneous
33	Pending
<b>TOTAL 224</b>	

**Formal Complaints**  
**Outfitter Complaints Referred to Centralized Investigation**  
**July 1988 - March 24, 1992**

<u>Number Filed</u>	<u>Source</u>
0	Anonymous
100	Consumer
2	Other Agency (DOW, BLM, USFS)
9	Office of Outfitter Registration
0	District Attorney
3	Registered Outfitters
<b>TOTAL 114</b>	

<u>Number Filed</u>	<u>Nature of Complaint</u>
11	Nonregistered Activity
0	Safety of Clients
5	Breach of Contract
5	Misrepresentation
0	Offering Guarantees
0	No Contract Provided
5	Violation of State/Federal Laws or Rules & Regulations
0	Advertising
0	Multiple Allegations
27	Miscellaneous
46	Substandard Service
15	Unprofessional Conduct
<b>TOTAL 114</b>	
<u>Number Filed</u>	<u>Disposition/Status</u>

0	Deny Registration
7	Refer to Hearing
1	Refer to District Attorney
0	Refer to Other Agency
13	Filed for cumulative Effect
39	Dismissed (after investigation)
5	No Action (no jurisdiction)
0	Cease and Desist Order Issued
13	Letter of Admonition Issued
0	Registration Issued Under Probation
2	Miscellaneous
34	Pending
<b>TOTAL</b>	<b>114</b>

Both sets of data show a fairly high number of pending cases. The Office of Outfitter Registration responds that there are several reasons for this.

Formal complaints are not directly investigated by the Office of Outfitter Registration. Rather, they are investigated by the Division of Registration's Central Investigation Unit. This investigating unit conducts investigations of consumer complaints for many licensing boards such as the Medical Board to name one. The Office of Outfitter Registration has no direct control over the investigator or his prioritization of cases.

Informal complaints are investigated by contract investigators employed by the Office of Outfitter Registration. These complaints usually are made against unregistered outfitters. Such an investigation may be somewhat complex in that it involves gathering evidence that the unregistered outfitter is contracting business. Both the complainant and the outfitter may live outside of Colorado. Investigatory workflow can easily ebb and flow based on number of complaints received, priority assigned to cases, and cooperation of witnesses.

### **Analysis of Complaints Filed Against Outfitters**

Since the last sunset review in 1987, the Division has received 338 complaints against outfitters. It is instructive to examine these complaints from two perspectives. One, where do the complaints originate? In other words, who is complaining about outfitters? The second important factor to consider is the nature of the complaint. This speaks to the relative importance of the complaint. While it is true that any complaint which establishes that the practice act has been violated is important, limited state resources dictate that cases be prioritized.

The data show that 163 complaints of nonregistered activity were received by the Office. This is the violation most frequently investigated by the Office of Outfitter Registration. The second largest number of complaints concern substandard service by the outfitter.

Of the 224 **informal complaints**, 64 were made by consumers. Registered outfitters accounted for 56 complaints. The Office of Outfitter Registration and other governmental agencies filed 79 complaints. Twenty five anonymous complaints were made.

Sixty four complaints from consumers over a period of three years is not indicative of an industry that is burgeoning with problems. In fact, the majority of complaints (135 out of 224) came from arms of the government, not from consumers.

Of the 114 **formal** complaints, 100 were made by consumers. Only eleven complaints of the total 114 involved nonregistered activity. The majority of the complaints (71) involved contract disputes, misrepresentation, or allegations of substandard service.

No complaints were received which alleged physical harm or being lost in the wilderness.

## **Office of Outfitter Registration**

### **Summary of Disciplinary Actions**

The Office has taken a variety of disciplinary actions since the last sunset. The Office has utilized the full range of its disciplinary authority and options including cease and desist orders, letters of admonition, fines, and revocation of registration. In most instances, cease and desist orders will have been issued to registered outfitters. Letters of Admonition will have been issued to registered outfitters for violations that were not serious enough to require revocation, suspension, or probation.

#### **Cease and Desist Orders Issued**

FY 88/89 - 9

FY 89/90 - 6

FY 90/91 - 10

FY 91/92 - 13

#### **Letters of Admonition**

FY 88/89 - 1

FY 89/90 - 4

FY 90/91 - 12

FY 91/92 - 3  
(through 2/28/92)

#### **Cases Prosecuted or Pending in District Court for Nonregistered Activity (6)**

Case 1. \$100 fine and costs.

Case 2. Disposition not final.

Case 3. \$100 fine and costs. Injunction against outfitting for one year.

Case 4. Disposition not final or unknown.

Case 5. Permanent injunction.

Case 6. Disposition not final or unknown.

## **Office of Outfitter Registration Disciplinary Actions**

The accompanying chart shows the specific disciplinary activity of the Office of Outfitter Registration. In most instances, these disciplinary actions will have been brought against a registered outfitter.

<b>DATE</b>	<b>NATURE OF CASE</b>	<b>DISPOSITION</b>
1.2/26/90	non registered activity	conditional registration with one year probation
2.4/4/90	violations of DOW laws	1 year suspension
3.1/9/90	advertising by false statement	2 month suspension/4 year probation
4.12/12/90	falsification of application	revocation of registration
5.1/29/91	violation of DOW laws	1 year suspension in abeyance/3 year probation
6.2/22/91	violation of DOW laws	3 year suspension serving on bear season remainder in abeyance/4 year probation
7.3/18/91	violation of CA Game & Fish laws	condition registration with 1 year probation
8.4/11/91	falsification of application	1 year probation
9.5/16/91	violation of DOW laws	1 year probation
10.8/29/91	violation of DOW laws	\$500.00 fine/1 year suspension & 3 year probation
11.10/1/91	violation of DOW laws/outfitting without registration	\$300.00 fine/2 year suspension in abeyance/3 year probation
12.10/2/91	violation of DOW laws	\$500.00 fine/2 year probation
13.10/7/91	violation of DOW laws/outfitting without registration	\$300.00 fine/1 year suspension in abeyance/2 year probation
14.10/31/91	outfitting without registration subsequent to C&D Order	\$1,000.00 fine with \$700.00 in abeyance/4 year probation
15.10/31/91	violation of Federal and State game laws	\$500.00 fine with \$250.000 in abeyance/2 year suspension abeyance/5 year probation
16.1/14/92	violation of DOW laws	\$300.00 fine in abeyance/1 year probation
17.2/6/92	guides without first aid	2 year suspension/5 year probation

## **Analysis of Discipline Of Outfitters**

Does discipline of outfitters really protect the public? One measure of regulatory effectiveness is to examine those instances in which an outfitter has been disciplined by the state for non-compliance with Colorado's requirements. In other words, Colorado assures the consumer of minimum standards to be found in outfitters. What happens when a consumer reports that an outfitter doesn't measure up?

It is appropriate to limit this examination to discipline imposed since the last sunset review because the law was materially changed as a result of that review. The Director has

imposed significant discipline, here defined as revocation or suspension of an outfitter's registration, placing an outfitter on probation, or imposing a fine, on seventeen outfitters. All of these cases fell between February, 1990 and February 1992. Some outfitters were charged with multiple violations.

Outfitters were disciplined for violations of wildlife laws in eleven instances. The most frequent outfitter violation is violation of Colorado Department of Wildlife laws. In one other case, an outfitter was disciplined for violation of Wildlife laws in another state. These cases are important because each violation was reported by another government enforcement agency that had already taken action against the outfitter.

It is reasonable, of course, that the outfitter should be disciplined if he or she has violated laws directly related to the profession. The question here, however, is one of public protection. The public is already protected in these cases because the outfitter has violated other laws and this violation has been detected.

These outfitters were disciplined, through criminal penalties, for some action such as taking an animal out of season or hunting without a hunting license. The intent of these laws, it would seem, is to protect Colorado's natural resources (wildlife) and, in these cases, that protection has been imposed by the Division of Wildlife or another governmental agency. It can be seen, therefore, that any discipline imposed by the Office of Outfitter Registration in such cases is secondary. In fact, it relies upon successful detection and prosecution by another agency to enforce the outfitter registration provision.

Some outfitters were disciplined because they did not register with the state - four instances. There are four cases in which outfitters were disciplined for not registering with the state. Others were issued cease and desist orders. The four instant cases involve outfitters who, after being discovered operating illegally, chose to register. In theory, this state action serves as a deterrent to violation of the law and, as a preventative to subsequent public harm. For the purposes of this discussion on discipline imposed by the state, it is sufficient to note that three outfitters were discovered to be operating without registration, were fined, and then registered with the state.

Other discipline imposed - four instances. There were two instances in which outfitters falsified their applications for registration. Discipline was imposed on both outfitters by the Director. There was only one case during the period under review in which an outfitter was disciplined for advertising by false statement. This is significant because proponents of regulation argue that prevention of such deception is at the heart of the outfitter law. It was reported that consumers complained of receiving cold spam instead of elk steaks. Such testimony helped bring back outfitter regulation. There was one instance in which an outfitter was disciplined because a guide did not have first aid training. In this instance, the client suffered an injury and the state imposed discipline because the guide was found to be in violation of the first aid requirement. Litigation is pending in this case.



## **V. Should State Regulation of Outfitters Continue?**

### **From Regulation to Deregulation and Back Again - The Outfitter's Journey**

The Existing Program Is Administered Well. This sunset review recognizes the efforts of the outfitter advisory committee and the Director of the Division of Registrations and his staff in carrying out their duties.

The Advisory Committee. The members of the advisory committee are impressive in their approach to their duties. These individuals commute long distances (most of them live on the western slope) to attend board functions. While they do not serve as a decision making board, they nevertheless tackle their lengthy agenda with diligence and due consideration to the issues of consumer harm contained in the complaints.

Although they do not meet frequently compared to other boards, they do not allow this to impede the Division's regulatory efforts. Committee members regularly receive complaints and disciplinary actions for review between scheduled meetings which they review and return with their recommendations to the Division. Several members of the advisory committee attended the 1991 Board Member Training Seminar conducted by the Department of Regulatory Agencies to enhance board member effectiveness.

The Division of Registrations. The Director of the Division of Registrations is not required to appoint an advisory committee. However, the appointment of the committee and the integration of the committee's recommendations has been a significant component of the effectiveness of this program.

In particular, this review found a high degree of coordination and communication between the regulatory agency and other agencies of government such as the Colorado Division of Wildlife and the United States Forest Service. Also, the Assistant Attorney General assigned to this program has played a significant role in establishing and maintaining that communication. Finally, the Division's complaint, investigation, and disposition data was well maintained and accessible.

Regulation of outfitters in Colorado has been rather turbulent over the past decade. The most recent regulation was imposed prior to the sunrise process so it is difficult to draw a complete picture of the outfitting environment at that time and relate it to the statutory criteria that guide this report. There are some clues, however, of what problems Colorado was facing and why deregulation was considered.

Outfitters leave the Division of Wildlife. In 1981, professional outfitters wanted to be removed from the state's regulation and the Division of Wildlife agreed that this is the direction that Colorado should move.

Excerpts from a June 28, 1981 Denver Post article show that the stage was set for deregulation as the Division of Wildlife contended: outfitters and guides are a "business, nothing more or less..."; outfitters wanted licensing to "eliminate competition"; and that complaints were nebulous and difficult to resolve, such as being served "lousy food."

Another article in the Denver Post (April 16, 1981) agreed with the removal of regulation. Concerning the debate over the positive and negative consequences of removing state regulation, the article argued, "...it is even more likely that the impending change in the way outfitters and guides are regulated in Colorado will make little difference at all."

The Return To Regulation - Why Did It Happen? Professional outfitter associations lobbied for re-regulation in 1983. The primary argument for a return to state regulation contended that consumers were not getting what they bargained for and Colorado, to protect its own tourism interests, should discipline these outfitters.

A 1983 article in the Denver Post reported the following complaints brought by dissatisfied customers of outfitters, "...cold Spam instead of promised elk steaks, unsanitary living conditions, and guides who fought among themselves and terrorized their clients with loaded pistols...." Another cause for complaint was incidents of financial fraud and deceit by outfitters. The same article, citing outfitting industry statistics, stated that about 400 hunters, from a total of 14,000 hunters, had made complaints about outfitters to a variety of governmental authorities.

There was no sunrise process at that time. Of particular note, the 1983 arguments for regulation showed no physical harm to any consumers nor any substantial financial harm.

### **Arguments for Continuation of Regulation**

The basic argument for regulation is that hunters (or fishermen) experiencing poor treatment may not return to Colorado in the future for hunting or fishing. Such decisions could have a significant economic impact on Colorado's tourism dollars, the argument goes.

Some of the problems faced by consumers were reported by the media at the time of the hearings to re-regulate outfitting, as discussed previously in this report. Potential for harm exists when hunters, having forwarded large financial deposits, may be left at the airport. The outfitter cannot be located. Some outfitters take hunters on private land. If the party is caught, the hunters are subject to criminal penalty. Such a list is limited only by the imagination of the "scam artist."

There are certainly some problems and some potential for physical and economic harm to consumers. But, does regulation of outfitters and guides prevent this abuse or ensure that outdoorsmen return to Colorado? Is there a way, short of governmental intrusion in the market, that this type of harm can be prevented?

### **Responding to the Regulatory Proponents - The Case For A Free Market**

This report will argue that consumers can protect themselves in the market without help from the government. The existing regulation will be examined in terms of enforcement and benefit. Then, other avenues of protection available to consumers will be discussed.

1987 Sunset Argued For Deregulation. The Department of Regulatory Agencies argued that the licensing of outfitters be discontinued in 1987. The following reasons were forwarded, based upon the Department's research:

1. The law was ineffective - unlicensed outfitters accounted for most of the complaints.
2. Complaints against unlicensed outfitters alleged only that the outfitter was unlicensed - there was little or no consumer harm.
3. Other laws, state and Federal, would continue to apply to most outfitters if state licensing were eliminated. Only those who operate on private land would be exempt from such oversight.

The Department concluded that if the General Assembly decided that special protection of tourists who used outfitters was required, the least restrictive protection would be to require outfitters to use contracts. This would provide some economic protection to consumers while avoiding the creation of more bureaucracy.

The present registration scheme was reached, apparently as a compromise.

This 1992 Sunset Review finds that the same conditions still exist. The same problems, and lack of harm, exist today in Colorado's registration of outfitters as was the case in the licensing of outfitters in 1987. Complaint data compiled for this review shows that most complaints are made for unregistered outfitting. The second largest number of complaints are made for substandard service.

## **Can the State Prevent Unregistered Outfitters from Practicing?**

As discussed previously in this report, one cannot practice the profession of outfitting in this state unless one is registered. There is no outfitter examination administered by the state, although an exam was developed and used when the program was first turned over to the Department of Regulatory Agencies.

This does not mean, though, that no threshold protection is provided by the present registration scheme. Outfitters must register with the state and provide certain information. At the very least, this means that they can be located. They must show proof of liability insurance coverage which provides some protection to consumers who employ the outfitter and suffer an accident. Outfitters and guides must show acceptable proof of first aid training; again, potentially protecting the consumer who may be involved in an accident. Finally, the outfitter must post a surety bond which arguably offers the consumer financial protection.

In theory, such a scheme prevents unscrupulous outfitters from entering the market. Should a problem occur, the consumer has certain assurances (by the state) that his or her outfitter is financially responsible. A "fly by night operator" would not enter such a restricted market in theory. It is quite difficult to judge fairly the success of market entry restrictions because one is dealing with hypotheticals. Is the consumer so unwary that, absent state regulation, he or she would fall prey to these unscrupulous businesses? Are these outfitters operating anyway, in violation of the law? If so, is the state able to enforce the law and stop this illegal activity?

It must be shown that illegal outfitters are kept out of the marketplace; that consumers cannot protect themselves, financially and physically, from outfitters; and that the state can and does enforce the law against illegal businesses. If these measures cannot be met, then the benefit to Colorado from this restricted market is questionable at best.

Most outfitters and law enforcement authorities seem to agree that illegal outfitting, or the practice by outfitters who are not registered with the state, is the biggest problem with the program. There are about 500 outfitters registered with the Division of Registrations at any given time. When the industry was "de-regulated" in 1981, the Division of Wildlife had over 1,200 outfitters on its licensing rolls.

One explanation that might be advanced is that the registration program is working and it keeps "fly by night" operators out of business; that is why the outfitter ranks have thinned so dramatically since 1981. That is unlikely. Unregistered outfitters account for most of the present complaint activity. Since 1988, the Division has received over 170 complaints against unregistered outfitters. It is more likely that outfitters ignore the state registration. Further, the complaint data does not show that these unregistered outfitters are more harmful than registered outfitters.

Even so, there is no convincing evidence that such prevention is needed for public protection. The conclusion of this discussion will show that consumers can protect themselves in a free market with a moderate amount of effort. Pursuit by the state of unregistered outfitters is required if the regulatory program, and the law, is to maintain integrity. However, one must question the need for state regulation when the threat to the public is apparently small.

### **Financial Injury to Colorado In A Deregulated Market**

Proponents of government regulation argue that direct injury to the consumer by outfitters in a deregulated market is only one part of the picture. Colorado's deregulated market, they continue, will cause the state to lose tourist dollars from hunters. What market segment is represented by these hunters?

Let us assume that there are 500 outfitters in Colorado at any given time. Registered outfitters agree that 50 clients per outfitter, per year, is a reasonable average ratio of outfitter to clients. Of course, some part-time outfitters may only outfit ten hunters while others may outfit over 100 hunters in a year (this includes all seasons: bow and arrow, black powder, and so on).

We may therefore conclude that Colorado's outfitters guide approximately 25,000 hunters each year. Each hunter or fisherman, guided or not, must purchase an appropriate license from the Colorado Division of Wildlife. Data from this agency show how many hunters are licensed in Colorado. Please refer to the graphs on pp. 25-26.

Out of approximately 277,000 nonresident hunters and fishermen, then, 25,000 hire outfitters. It does not appear reasonable to conclude that many, certainly not a majority, of the outdoor sportspersons who come to Colorado use an outfitter. This is a fairly large number, in real terms, but it pales in relation to the total number of non-resident hunters and fisherman.

The only exception to this proposition would be if the illegal outfitting problem is, in effect, enormous in proportion. Even if the remaining 250,000 or so outdoorsmen are dealing with illegal outfitters, the proponent of the regulatory status quo is left with a difficult box: these illegal, incompetent outfitters are not harming anyone, according to the Division's records (which include complaints against unregistered outfitters, many of which are made by other outfitters, not consumers).

This does not mean that there is anything wrong with Colorado's registered outfitters. It only means that there is a market for outfitters and a supply of outfitters exists to meet that demand. Most importantly, that demand is a relatively small percentage of all nonresident participants.

This is not remarkable. Outfitting services can be expensive, often costing thousands of dollars. And, as one wildlife official stated, Colorado has an abundance of public land and a hunter, or group of hunters can determine to conduct their own hunt. Very few outfitters guarantee that a hunter will kill an animal or catch a fish. Many visitors to this state will hunt or fish on their own or with friends.

## **Conclusion - Consumers Can Protect Themselves In A Free Market**

Consumers have information and can make reasoned choices. Hunters seeking an outfitter can gather information about outfitters and make choices. Information needed in order to choose an outfitter is readily available.

Much outdoor information is contained in popular publications like Outdoor Life, Field and Stream, and Peterson's Hunting. Not only do these magazines contain articles and reports, they also contain large amounts of advertising by outfitters. Therefore, these magazines are a direct source of outfitter contacts if, for example, one lives in Florida and wants to hunt or fish in Colorado.

An article in the January 1989 Outdoor Life offered advice and strategy about choosing an outfitter. Although good outfitters outnumber bad by at least ten to one, the author implores hunters to do their homework before booking a hunt. A hunter can follow such simple guidelines as:

- \* Use an outfitter recommended by a friend;
- \* Obtain a list of outfitters from private associations or from magazine advertisements; outfitters who belong to a professional association are likely to be reputable businessmen;
- \* Write outfitters for information and follow up with those who sound most promising - ask for a listing of all hunters from the previous year, not just a few references;
- \* Contact hunters that have hunted with the outfitter;
- \* Contact game wardens, Bureau of Land Management personnel, U.S. Forest Service, even local taxidermists can provide helpful information, and
- \* Negotiate final payment, by check, at the time of the hunt.

The consumer can also require the outfitter provide proof of liability insurance. Outfitters who operate on BLM or U.S. Forest Service land are already required to have coverage. Still, each consumer can determine that the outfitter's coverage or the consumer's own insurance provides protection in the case of injury.

Every person who is licensed to hunt in Colorado must complete a hunter safety training course. Although such training is no substitute for first-aid training and survival training, it is an important part of ensuring safe hunting in Colorado.

The Colorado Outfitters' Association can play an important role in solving the industry's problems. The Association establishes high standards for its membership. The Association represents approximately 50% of all registered Colorado outfitters. By aggressively marketing its standards and thereby educating the public, the industry can do much to prevent patronization of illegal outfitters in Colorado.

Colorado Consumer Protection Act Offers Financial Protection. Deceptive trade practices such as false representation of quantities of goods, food, services, or property, the making of false or misleading statements concerning prices are actionable under Section 6-1-101 et. seq. C.R.S. The broad purpose of the Consumer Protection Act, to provide prompt, economical, and readily available remedies against consumer fraud, seems almost custom made to address the problems faced by outfitter victims. This act, which provides for civil penalties and damages, is enforceable by the Attorney General and District Attorneys. The Consumer Protection Act provides for three times the amount of actual damages sustained, the costs of the action and reasonable attorney fees. Furthermore, action may be brought in the county where the practice or any portion of the practice occurred, or in the county where the outfitter's place of business is located, or the county where the outfitter resides.

The out-of-state hunter's needs are met by these provisions of Colorado's Consumer Protection Act. There have been few cases in which outfitters were disciplined for financial harm or false promises; the Consumer Protection Act could be used to secure recovery in such instances.

The Office of Outfitter Registration argues that the requirement that outfitters provide contracts meeting statutory criteria has been beneficial to consumers. In fact, there are several provisions of the statute that are beneficial to consumers but do not rely upon state regulation to be effective. By leaving these provisions, consumer protection exists, and that protection can be provided by the local law enforcement authorities. It is the local jurisdictions that suffer when consumers come to their community and are victims of outfitter fraud, especially if the outfitter is operating from that community.

This sunset review does not argue that regulation of outfitters is without merit. No doubt, the outfitting industry in Colorado is a little more "user friendly" to out of state hunters and fishermen because of regulation.

This report simply recommends that when an industry can function and when consumers can make reasoned choices, state involvement may be unnecessary.

**Recommendation 1A: The General Assembly should allow the registration of outfitters pursuant to article 55.5 of title 12, C.R.S. to terminate as scheduled.**



**Recommendation 1B: The General Assembly should amend article 55.5 of Title 12, C.R.S. as follows:**

- 1. Repeal: Section 12-55.5-102  
Section 12-55.5-103  
Section 12-55.5-104  
Section 12-55.5-105  
Section 12-55.5-106  
Section 12-55.5-107  
Section 12-55.5-108  
Section 12-55.5-111  
Section 12-55.5-113**
  
- 2. Repeal all definitions from Section 12-55.5-102 except outfitter, guide, peace officer, and person.**

## **VI. Statutory Recommendations**

If the General Assembly decides to continue regulation of outfitters, the following recommendations are made to improve the statute.

### **PROHIBIT OUTFITTERS UNDER DISCIPLINE FROM ACTING AS GUIDE**

**Recommendation 2: The General Assembly should amend section 12-55.5-108 by the addition of a new subsection (3) making it a violation of the article for an outfitter who has had his outfitters license revoked, suspended, or placed on probation, to work as a guide.**

Guides are not regulated in Colorado. If an outfitter's registration is suspended or revoked, the intent is clear that this individual should not practice outfitting in this state. However, the individual may practice as a guide legally. In the extreme, and this has happened, the outfitter's spouse obtains a registration and employees the suspended outfitter as a "guide." No protection of the public is gained when the intent of the law is so easily circumvented.

### **CLARIFY LEGISLATIVE DECLARATION**

**Recommendation 3: The General Assembly should amend the Legislative Declaration by repealing "or operates" from section 12-55.5-101.**

Section 102(5) defines an outfitter to be a person who provides outfitter services "for the purpose of hunting on land that he does not own." The legislative declaration states that it is not the intent of the legislation to regulate the actions of a person outfitting on land that he owns or operates.

The problem encountered by the Office is that some outfitters lease land and then claim that they are not required to register as long as they outfit on the leased land. It appears that the intent of the statute is to permit ranchers or farmers to take guests hunting without having to register; they are outfitting on their own property.

By repealing "or operates" from the declaration, the statute will be clarified and the definition of outfitter - "any individual soliciting to provide or providing... hunting or fishing on land that he does not own" will dictate who must register.

## **ELIMINATE REQUIREMENT TO HAVE A BOND**

**Recommendation 4: The General Assembly should repeal the bonding requirement in section 12-55.5-105(d).**

Outfitters are required to post a surety bond in the amount of ten thousand dollars. There is no indication that any claims have been made on any outfitter bond. Further, this report has identified that only a fraction of consumer complaints involve issues that might be actionable against a bond. This requirement places an unnecessary cost on outfitters, is not needed by consumers, and only benefits those who sell bonds.

## **CHANGE DISTRIBUTION OF FINES**

**Recommendation 5: The General Assembly should amend section 12-55.5-107(4) to provide that law enforcement and the Division divide fines collected 50/50.**

Section 12-55.5-107 provides that 25% of fines collected pursuant to the article shall be distributed to "any federal, state, or local law enforcement agency assisting with an investigation." In practical terms, this applies to local law enforcement seeking to stop unregistered outfitters. In order to stop unlicensed outfitters.

These law enforcement officials may be motivated to pursue illegal outfitters operating in their jurisdictions. However, they may not assign a high priority to such cases because of the expense.

The Office of Outfitter Registration does little work in cases such as this. It makes more sense to allow the law enforcement agency responsible for the enforcement to collect enough of the fine money to cover their expenses for enforcement.

## **CLARIFY PROHIBITION AGAINST TRESPASS**

**Recommendation 6: The General Assembly should amend section 12-55.5-106(1)(i) by making any violation of 18-4-503 or 18-4-504 violations of the article.**

The outfitter statute presently prescribes that violation of 18-4-503 (2)(a) and 18-4-504 (2)(a) are violations of the article. These subsections in title 18 refer only to trespass upon statutorily defined agricultural land. The Director should be able to consider, as grounds for discipline, any criminal trespass by an outfitter.

## **CLARIFY PENALTIES LANGUAGE**

**Recommendation 7: The General Assembly should amend article 55.5 of title 12 as follows:**

- 1. Create a new section - 107.5**
- 2. Move existing subsections (2) and (3) from section 105 to 107.5 and renumber 105 accordingly.**
- 3. Reword 107.5 (2): Strike "any person who violates the provisions of this article..." and replace with "any person who violates section 12-55.5-103(i) is guilty..."**

The existing statutory language and construction is confusing on two counts. First, section 105 combines the requirements for registration and penalties for violations. These provisions should be separated to clarify the statute. Second, a strict interpretation of subsection (2) might require that any person who has violated any provision of the article to be prosecuted. In effect, this may remove administrative sanctions as an enforcement tool. The real value of this provision is not to prosecute outfitters who have committed some minor violation of the law but to deter and, if required, to prosecute illegal unregistered outfitters.

## **CLARIFY GROUNDS FOR DISCIPLINE**

**Recommendation 8: The General Assembly should amend section 12-55.5-106 by the addition of "Grounds for Discipline" to the existing title of the section.**

This language would clarify the contents of the section. Section 106 provides the Director authority to deny, suspend, revoke or place on probation an outfitter's registration. Subsection (1)(a) through (1)(j) lists the grounds for disciplinary activity such as violation of any local, state, or federal law related to public land management, wildlife, health, or cruelty to animals. Adding a reference to these provisions to the title would clarify the statute.

## **PROVIDE FLEXIBILITY IN PENALIZING UNREGISTERED OUTFITTER**

**Recommendation 9: The General Assembly should amend section 107 by repealing the following language: "other than 12-55.5-105."**

This language exempts from disciplinary action any outfitter who is operating but not registered. In fact, he is subject to criminal penalty for such action. However, the Office may elect to offer that if the outfitter will register, the Office will place his registration on probation and not prosecute. This flexibility allows the Office to better enforce the law.

## **ESTABLISH TEN YEAR SUNSET**

**Recommendation 10: The General Assembly should 12-55-.5-117 C.R.S. to establish a ten year sunset.**

During the course of this review, much dissatisfaction was expressed by the outfitting industry concerning its up and down regulatory path. It is hard to imagine an industry with more "war stories" to tell: licensed, deregulated, licensed, and now registered; all since 1980.

From the regulatory perspective, it is difficult to regulate when the foundation of the program - the statute - is constantly changing. Administrators must adapt and implement, they have no choice. But this approach allows little opportunity to develop expertise and continuity.

If regulation is deemed necessary and continued by the General Assembly, a sunset date of ten years should be set to allow the program to function.

## **REQUIRE OUTFITTERS TO REPORT POACHING**

**Recommendation 11A: The General Assembly should amend section 12-55-5-101 C.R.S. et seq. by the addition of a section that requires every outfitter operating in Colorado to report any violations of Colorado's wildlife laws to the Division of Wildlife. Failure to report should be a class 1 misdemeanor.**

Protection of Colorado's natural resources is a difficult task. Recently, there has been much attention to poaching across the United States. Some of this poaching occurs in Colorado.

Although the registration of outfitters is not targeted at prevention of poaching, there are ways that it can be used to that end. Furthermore, there is a good government reason for moving in this direction.

Outfitters make money from Colorado's natural resources. They have a vested interest in those resources. They also have a responsibility to protect Colorado resources because of their ability to convert these resources into personal gain. The outfitters contacted for this review need no reminder of their unique relationship. To a person, they accept and carry out their role in protection of Colorado forests and wildlife. It is the ever-present one per cent however, that do the greater damage by poaching and other illegal activities.

Federal and state law enforcement officials report that they are virtually overwhelmed in attempting to enforce poaching laws. Outfitters may spend a good deal of time in the environment where poachers operate. They are in an excellent position to observe and report poaching and illegal activities.

If the General Assembly continues the registration of outfitters, a requirement should be imposed on them to report any known or suspected violations of the outfitter registration law or any wildlife laws.

**Recommendation 11B: The General Assembly should amend section 12-55.5-112 C.R.S. to read:**

**(1) Every agreement or contract for the services of an outfitter shall be void and unenforceable by the outfitter and the outfitter may be subject to penalties under 33-6-102 C.R.S. for violation of articles one to six of title 33.**

Related to the recommendation to require outfitters to report poachers, the outfitters law contains a provision to further aid in the enforcement of wildlife laws.

Section 12-55.5-110, C.R.S. provides severe penalties for operating as an unregistered outfitter including the making void of contracts and agreements and the seizure of equipment used in outfitting. It seems that the legislature foresaw the difficulty in enforcement of the regulatory program and included this strong language to serve as a deterrent.

It is arguable that this penalty may be too severe to be applied to unregistered outfitters. However, it is very appropriate to use this type of penalty against poachers.

By amending this subsection (1) the General Assembly would cross-reference the outfitter law with the law enforcement and penalties article of the wildlife statutes.

## APPENDIX A

### Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulations;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.



## APPENDIX B

### 1991 Survey of Consumers of Outfitter Services

#### TOTAL 29 RESPONSES

**1. Frequency of employing an outfitter.**

Once a year -- 8	28%
Less than once a year -- 20	69%
More than once a year -- 1	3%

**2. How did they determine DORA was appropriate agency?**

Referred by other agency -- 18	62%
Friend -- 8	28%
Other -- 3	10%

**3. Did DORA fairly investigate?**

Yes -- 9	31%
No -- 15	52%
Don't know what DORA did w/complaint -- 5	17%

**4. Did DORA investigate in a timely manner?**

Yes -- 18	62%
No -- 10	34%

**5. Were you satisfied with resolution of complaint?**

Very satisfied -- 2	6%
Somewhat satisfied -- 3	10%
Somewhat dissatisfied -- 7	24%
Very dissatisfied -- 17	59%

**6. What impact does complaint have on future plans to hunt or fish in Colorado?**

Positive -- 8	28%
Negative -- 11	38%
No Impact -- 10	34%

## 1991 Survey of Registered Outfitters

### TOTAL 136 RESPONSES

**1. How long have you been an outfitter in Colorado?**

Ten years or more -- 69	50%
Five to ten years -- 21	15%
Five years or less -- 46	34%

**2. How many guides do you employ in a typical season?**

One to three -- 60	44%
Three to five -- 40	29%
More than five -- 30	22%

**3. How much outfitting is performed on public land?**

All -- 38	28%
Most, but not all -- 37	27%
Some, but not most -- 45	33%
None -- 16	11%

**4. How many outfitting clients live in other states?**

All -- 65	48%
Most, but not all -- 60	44%
Some, but not most -- 8	5%
None -- 3	2%

**5. Compared with five years ago, how well does DORA regulate outfitting?**

Much better -- 14	10%
Somewhat better -- 30	22%
About the same -- 37	27%
Somewhat worse -- 6	4%
Much worse -- 7	5%
I was not registered/licensed five years ago -- 42	31%

## **Consumer Comments**

- \*"In my opinion, if the regulatory agency does not do something more than it has been many hunters like me (who save for a year or two to make such a hunt) will definitely hunt in other states."
- \*"I would have reported another outfitter, but I did not think it would result in any action."
- \*"This process was a waste of time."
- \*"We were told prior to filing the complaint that due to the power of these hunting outfitters our complaint would fall on deaf ears. They were right."
- \*"Regulation should be much stiffer on outfitters. They are giving Colorado a bad name in the industry."
- \*"You did nothing to help me, why would I want to throw away more money hunting in Colorado again."
- \*"1985 was our last year to hunt Colorado - one bad experience was enough."
- \*"The guy we used wasn't even a licensed outfitter at the time, but he got a license later even though we had complained about him."
- \*"It won't make any difference if guys are licensed or not - the hunter will still have to do complete research on his own before using their service."
- \*"I hunt every year now in New Mexico or Montana. Your control of outfitters stinks."
- \*"Not even a reprimand or warning issued to this fraud. He is still bilking the unsuspecting."
- \*"There seems to be no satisfaction for the hunters that have been cheated and no way for them to stop a bad outfitter from cheating others."
- \*"Your department resolved my complaint as best they could. My situation was not resolved to my satisfaction because I didn't have anything in writing which is not the fault of your department."

\*"My hunting party of eight men had given a deposit of \$300.00 each to a guide with the understanding that it would be refunded if we were not successful in the draw for black powder permits. We did not get drawn and were not refunded our money. I felt then and still feel now that it was a waste of my time to file the complaint. I am still out my money."

\*"My guide couldn't find our camp on the way in. It will probably be an extremely cold day in hell before I hunt in Colorado. If outfitters and their "trained guides" are anything like those guys I paid money for I feel sorry for you!"

\*"Hunters from all over the US tell the same story about the deal and promises made. We just chalked that one up to a bad experience but we think you should do something about these bad outfitters because it makes us hunters not trust any outfitters. We did enjoy your beautiful state and would like to return someday."

\*"I will be more thorough in preparation of booking an outfitter. I want my questions answered in writing."

## **Comments of Registered Outfitters**

\*"I am glad that we have Regulatory Agencies to protect the consumers."

\*"Having been and still am in the outfitting business for over fifty years, I can safely say that we need the registration of outfitters."

\*"There is room for a lot of improvement. Illegal outfitting should be a big concern."

\*"Spend more time and money on outlaws."

\*"Registration is needed in Colorado."

\*"I see no need for continued regulation - about fifty percent of the guides that take hunters out are not registered now. What services do we receive from the department for the money we send in other than the paid permission to advertise?"

\*"I don't feel there is any need to have a license for Colorado guides. Public safety is regulated by the Forest Service and BLM. All guides must have insurance and permits for this."

\*"I know of many outfitters outfitting right in front of your noses and you could care less. I could clean up this mess in a few short years. If I ran my business like you run yours I would be broke."

\*"The Outfitter Licensing Board has done nothing for me but send its annual demand for payment. It cannot control illegal outfitting. I see no reason for such a one-sided arrangement to continue."

\*"Too much red tape. It's getting to the point that its hardly worth the hassle of outfitting. I have never seen nor heard from anybody from the state regulatory agency. But I believe outfitters should be licensed."

\*"As far as I can tell your department has done nothing to stop outlaw outfitters or enforce any of the laws already on the books so what good is it. I feel we need to be regulated but don't feel we receive any help in the area of illegal outfitters."

\*"I feel the fee is reasonable. The information you send out is informative. Some regulation is necessary to ensure that the clients are treated fairly and that business in general stays fair."

- \*"It is of the utmost importance for the future of a professional outfitting industry in Colorado to have continued regulation of that industry. Funding should be increased for investigation and prosecution and also increased to expand the stall at the Outfitters Registration Office. But that funding shouldn't have to come from the increased fees on registered outfitters."
- \*"I don't know whether you need to continue outfitter regulation or not. It seems as though outfitters are regulated by BLM, USFS, state police, etc."
- \*"In the forty five years my family has been in the business, not one client has ever asked to see a license or registration. I believe the quality of service provided will establish the good and bad outfitters very quickly."
- \*"Remove regulation and let the marketplace weed out the bad ones."
- \*"I don't know what the answer is, but if it continues we might just as well forget the licenses, bonds, permits, insurance and let everyone go and set up and do business without all the hassle. The illegal people are overriding the legal ones."
- \*"I am 100% for being registered."
- \*"Regulation of outfitting in the State of Colorado is probably not needed."
- \*"Regarding illegal outfitting, oldtimers as well as newcomers are doing it whenever and wherever they want. It's like poaching the deer and elk - you catch a few but not the majority. Outfitting and guiding is a very expensive business. I feel that if the regulations are dropped the influx of new small-time outfitters wouldn't make that big of a difference to me."
- \*"The best thing about outfitter regulation is that it forces outfitters to purchase proper insurance before being registered. Regulation is about as bad as it was five years ago."
- \*"No business person would go into outfitting without the necessary insurance, etc. You do not test ability or look into quality of equipment, etc., you just raise the cost of doing business."
- \*"Keep it the way it is now. I think we are doing great."
- \*"I am quite comfortable with the present situation."

\*"Either the qualifications and testing needs to become more stringent or the practice of allowing others to use a license prohibited or the whole continued regulation should be eliminated."

\*"I think you guys have been doing a great job. Without Regulatory Agencies we would have too many illegal outfitters. If you are going to regulate then enforce your regulations! There are just as many or more illegals operating."

\*"What are you doing about shoddy outfitters that don't provide decent service to their clients - can you regulate that? What can you do to protect the public from the type of outfitter that refuses to refund money if they do not fulfill their obligations to the client?"

\*"Let's spend our tax dollars in the direction of getting rid of illegal outfitters and let us professional outfitters do our jobs without any more added expense."