

# North Dakota Guide and Outfitter Handbook and Test Guide

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## **Section I: Introduction -**

### **Director's Comments**

Webster's dictionary defines "Sportsman/woman" as one who engages in sports, especially hunting and fishing; a person, who is fair, generous, and a good loser and a graceful winner. I think we all know what it means to be a good sport. To do what is right; to act in the best interest of the resource by being fair and responsible.

The mission of the North Dakota Game and Fish Department is "... to protect, conserve and enhance fish and wildlife populations and their habitats for sustained public consumptive and non-consumptive use." In that regard, when dealing with the topic of commercialization of these resources for personal monetary gain, ethical and moral considerations must be the foundation of the Department's approach to their regulation.

For Guides and Outfitters, the North Dakota Legislature has set the process for regulating this area of commercialization. You as a guide or outfitter have an important public responsibility to carry-out. You have the opportunity to shape and form a visitor's outdoor experience in our State. In essence, you are an ambassador for the State. His or her impression of US will be based on that experience. These experiences must be learning experiences too. Whether it's explaining the relationships of certain habitats and specific wildlife species or the beauty of a sunrise or sunset, guiding is more than "getting a limit."

The Legislature charges you with many responsibilities. If you are going to guide or outfit in this State, you will be accepting those responsibilities. It's our duty to hold you to them. This North Dakota Guide and Outfitters Handbook and Test Guide are designed to make you successful. You must know your tasks and take them seriously. Our staff stands ready to assist you in navigating the new standards for your industry. Make your efforts a success by giving your clients a rewarding and ethical outdoor experience.

Jeb Williams

Game and Fish Director

## **Section II: Guide and Outfitters**

### **A. Who is a Guide or Outfitter?**

“Guides” are defined as “an individual who is employed by or contracts with a licensed outfitter to help the outfitter furnish personal services for the conduct of outdoor recreational activities directly related to the conduct of activities for which the employing outfitter is licensed.”

An “Outfitter” means a person that holds the person's business operation out to the public for hire or consideration; provides facilities or services for consideration; maintains, leases, or otherwise provides compensation for the use of land and which receives compensation from a third party for use of that land; or otherwise uses equipment or accommodations for consideration for the conduct of outdoor recreational activities, including hunting animals or birds and fishing on lakes, reservoirs, rivers, and streams. An outfitter may act as a guide. State law creates two categories of outfitters- a hunting or a fishing outfitter. An individual can be licensed as both a hunting outfitter and fishing outfitter. The only class of “guide” is a hunting guide. Guides and outfitters can be resident or nonresident.

### **B. Who is Prohibited from Being a Guide and/or Outfitter?**

1. A guide or outfitter license cannot be issued to any individual who within the preceding three years has been convicted of a State or Federal criminal Game and Fish violation. A criminal violation is defined as a law whose possible penalty includes a jail sentence. A conviction includes a deferred imposition of sentence. OR
2. Any individual whose license to hunt or fish is suspended or revoked cannot be issued a guide or outfitters license (NDCC § 20.1-03-37 Source).

### **C. What are the Qualifications to be a Licensed Guide or Outfitter?**

- **Hunting Guide Eligibility Requirements:**
- Must be 18 years of age;
- Must be certified in adult cardiopulmonary resuscitation;
- Must be certified in standard first aid or its equivalent;
- Must have legally hunted in this state for parts of 3 years in a manner directly contributing to the individual's experiences and competency as a Guide; (NOTE: This section may be waived if the employing outfitter would suffer an undue hardship without that individual.)
- Must pass a background check for criminal and game and fish violations (NDCC § 20.1-03-38(3) Source);
- Must satisfactorily pass a written examination which shows the applicant is proficient in the applicable State and Federal laws of hunting wild game; and
- Must be employed by or contract with a licensed hunting Outfitter.

- **Hunting Outfitter Eligibility Requirements:**

- Must have held a hunting Guide license for 2 years OR operated as an exempt hunting outfitter for two years;
- Must have proof of liability insurance (see Section IV for details on insurance);
- Must be certified in adult cardiopulmonary resuscitation;
- Must be certified in standard first aid;
- Must pass a background check for criminal and game and fish violations (NDCC § 20.1-03-38(3) Source);
- Must satisfactorily pass a written examination which shows the applicant is proficient in the applicable State and Federal laws of hunting wild game;
- Application must include acreage used by County to include the name of owner; and
- If the application is a renewal, the applicant must include all acreage by County of day leased land used for the previous year.

- **Fishing Outfitter Eligibility Requirements:**

- Must be 18 years of age;
- Must have proof of liability insurance (see Section IV for details on insurance);
- Must pass a background check for criminal and game and fish violations (NDCC § 20.1-03-38(3) Source);

### **Business Association by an Outfitter**

The department may only issue an outfitter license to a business applicant if the applicant is qualified to conduct the business of outfitting. A corporation or association may qualify for an outfitter license if a majority of stock is owned by licensed outfitters or guides in good standing, or if a limited liability company, the majority membership interest is owned by licensed outfitters or guides in good standing, actively and regularly employed in and responsible for the management, supervision, and operation of the outfitting business. If a business entity owns, is a leaseholder in land, or provides compensation for the use of land and directly or indirectly receives remuneration from hunting on that land, the business entity must be licensed under this title unless exempt under subsection 4 of section 20.1-03-36.1. A business entity may not conduct business operations through a subsidiary, contractor or an agent that would permit the business entity to avoid this chapter.

### **D. Application Process**

A license application must be completely, legibly and accurately filled out and qualifying documents must be included. Copies of CPR training and First Aid requirements may be photocopied showing dates taken and expiration dates of the certifications. Hunting outfitter and Fishing outfitter applicants must provide proof of liability insurance. Hunting guide applicants are not required to furnish proof of liability insurance, but must be covered under the

liability insurance policy of the hunting outfitter employing or contracting with the hunting guide applicant. The applicant should have his or her insurance company or insurance agent provide a "Certificate of Liability Insurance" to the applicant or directly to the Department showing the limits of General Liability coverage that meets the minimum required NDCC § 20.1-03. The applicant must certify that the information stated in the application is true and correct. Any false statement shall be grounds for denial of a license or revocation of a license already issued and shall be considered "Misrepresentation In Application for a License" which is an offense under Game and Fish Law.

After receiving the completed application and supporting documents the Department will conduct the required background checks.

Written tests will be offered with locations and times announced through media outlets and Game and Fish Offices. Individuals seeking testing dates and location may also visit the Department's web site at <http://gf.nd.gov> or call 701-328-6300. A written examination will be administered at least twice each year. However, an individual is prohibited from taking a written examination within 90 days after a previous written examination.

Once an individual is qualified the Department will issue the appropriate license. Any license issued expires on March 31 of each year. An individual may not act as a Guide or Outfitter nor may an Outfitter advertise or otherwise represent to the public as a Guide or Outfitter without being licensed. Thus, it is necessary not to let a license lapse. Renewal applications including reporting requirements should be returned to the Bismarck office prior to the end of the calendar year for the following year's license. Failure to renew a hunting guide or outfitter license for two consecutive years will require the licensee retake the exam before renewing the license.

#### **E. Guide and Outfitter License Schedule**

<b>Guide and Outfitter License Schedule</b>		
<b>Type of License</b>	<b>Resident</b>	<b>Nonresident</b>
Hunting Guides	\$100	\$400
Hunting Outfitter - depending on acreages used for service	\$250/\$500	\$2000
Fishing Outfitter	\$100	\$400
Hunting Outfitter - Day/Freelance Permit	\$200	\$200
Add Fishing or Hunting Authority to License	\$50	\$200

#### **F. Administrative Sanctions in Regards to Guide and Outfitter Licenses**

(NDCC § 20.1-03-39 Source).

The Department through the Director may deny, revoke, suspend, or place on probation an already issued guide or outfitter's license if any of the following circumstances exist:

- Any licensee engages in conduct detrimental to the image and professional integrity of the guiding and outfitting industry;

- The licensee willfully and substantially misrepresents that person's facilities, prices, equipment, services hunting or fishing opportunities as a guide or outfitter;
- The licensee has been convicted of an offense which is not a criminal State or Federal game and fish violation which is determined by the Director to have a direct bearing on the licensee's ability to serve the public as a guide or outfitter;
- The licensee is addicted to the use of intoxicating liquor, narcotics, or stimulants to the extent the licensee's performance of professional duties is affected;
- The licensee has become not qualified or has violated any rule for the licensing of a guide or outfitter by the Director; the licensee has become not qualified under the licensing qualification of the license or violated any rule for the issuing of a license.
- The licensee is convicted of a criminal State or Federal game and fish violation or if the director finds by clear and convincing evidence that such a violation has occurred;
- The licensee provides services to a person who is not properly licensed for the species sought by that person;
- A licensed outfitter utilized any unlicensed person to perform outfitter or guide services on behalf of the outfitter. This subsection applies to outfitters regardless of whether the person who performed the service is otherwise exempt under subsection 4 of section 20.1-03-36.1.

For the purpose of Administrative Sanctions, an outfitter is liable if a guide, employed or contracted by the outfitter, violates a criminal provision of this chapter or a State or Federal criminal law pertaining to hunting, fishing or trapping while guiding on behalf of the outfitter. It is an affirmative defense if the outfitter reported the violation to the Department or law enforcement when the outfitter discovered the violation or has not had more than two independent violations by a guide working on behalf of the outfitter in the previous three-year period and the outfitter did not aid in or attempt to conceal evidence of the violation. Also a guide is liable if a client violates a criminal game and fish law if the guide knowingly aids in the violation OR knows of the violation and the guide or client fails to report the violation in a reasonable time.

In addition no person may use the business name, fictitious name, trade name, internet address, world wide web uniform resource identifier, place of business or telephone number of any outfitter who has been convicted of a violation (criminal game and fish violation) for a period of 3 years from the date of conviction without the Director's permission who must find that the new business is significantly separate from the previous owner and the new business does not employ, contract with, or receive assistance from any person who has been prohibited from guiding or outfitting.

#### **G. Who is Exempt from Licensure under the Guide and Outfitter Requirements?**

Any person who provides services on land that the persons owns or leases for bona fide agriculture purposes or provides the service for a nonprofit organization is exempt from the

license requirements of the guide and outfitter rules. The exemption to licensure for “bona fide agriculture purposes” the following definitions apply:

1. "Agriculture" means the production of food, feed, and fiber and other goods by the systematic growing or harvesting of plants, animals, and other life forms and includes aquaculture, cultivation, animal husbandry, and horticulture.
2. "Bona fide" means that the person earnestly intends to devote the land primarily to an agricultural pursuit. In determining a person's intent, a person's use of buildings associated with hunting, such as a hunting facility or accommodation, is generally incompatible with a primary pursuit of agricultural interest, but rather shows that the person's intent is to primarily use the land for hunting.
3. "Primary pursuit" means that the person is:
  - a. Actively engaged in the agricultural interest, which does not include the passive ownership of land. Receiving payment on account of agricultural land enrolled in the federal conservation reserve program does not constitute the active pursuit of agriculture by itself, rather, the individual must also be actively engaged in farming or ranching; and
  - b. Primarily engaged in the agricultural interest, which means the individual's farming or ranching activities must be of the first rank, importance, or value.

To be bona fide lease, the land must be on the individuals FSA farm plan or leased for ranching purposes. If activities are to be conducted on other land or the person employs or contracts with others as guides, a qualified individual must be licensed. Individuals operating under this exemption are encouraged to be qualified as if they were licensed including obtaining proper insurance and safety training to include CPR and First Aid. **However, a person who has been convicted of a state or federal criminal game or fish violation within the last three years or whose license to hunt or fish is under suspension or revocation is not exempt from licensure and would be prohibited from obtaining a guide or outfitter license.**

## **H. Guiding on Prohibited Land**

A person may not act as a hunting guide or hunting outfitter on land the person knows is owned by the state unless the appropriate state agency permits or authorizes the guiding or outfitting, on private land enrolled by the Department for purposes of hunting, on land in which the Department pays in lieu of taxes, on federal land without being authorized or permitted as required by the appropriate federal agency, or on private lands posted against hunting or trespassing without first informing and obtaining permission from the landowner to conduct guiding or outfitting on the land. If the landowner did not grant the permission in writing, there is presumption that the permission did not exist.

## **I. Record Keeping**

All records facilities and equipment kept or used by the outfitter are open to inspection by the director or a game warden. Records may not be deceptive and must be kept in a manner and location that is readily accessible to the director or a game warden during normal business hours.

## **J. Watercraft Used while Guiding or Outfitting**

Operators must adhere to the manufacturer's maximum weight restriction when planning an outing. In hunting situations, most times, in addition to the weight of the individual occupants, added equipment including guns, dogs, dog kennels, shells, decoys, waders, heavy clothes being taken along increases the total weight placed in the watercraft. The watercraft could be under maximum number of persons allowed, but still exceed the manufacturer's designed weight (capacity) limit.

Personal Floatation Devices (PFD's) are the most important safety item required. One of the most common practices observed by our Warden staff is having PFD's along but having them stowed in an inaccessible location making them worthless in times of an emergency. PFD's are required to be out and available at all times. Youngsters under the age of 11 must be wearing their appropriate sized Type 1, 2, or 3 PFD while the vessel is in motion.

All watercraft must have a wearable PFD of the appropriate size for the occupant aboard. The PFD must be in serviceable condition and accessible.

A new style of PFD, the inflatable Type V PFD, is allowed. Two approved models are the manual inflation style or the automatic inflation style. The automatic inflation style inflates upon contact with the water and also can be manually inflated. A draw back from the manual mode or style is that it requires the occupant to be conscious and physically able to inflate the device after entering the water. Both styles only count as a legal PFD in the vessel when it is being physically worn by the occupant.

In addition to one wearable PFD per occupant on watercraft 16 feet and larger, a throwable device such as a Type 4 cushion must be on board.

If a watercraft is used between sunset and sunrise, it must be equipped with a white "all points" light attached in the rear of the vessel and "running lights" (red/green) on the front of the boat.

A horn, bell or whistle is also required on watercraft 16 feet or larger. If the watercraft is one with permanently installed gas tanks, a working fire extinguisher must be on board.



## **K. Penalties for Violations**

Any person providing guide or outfitter services without a license or while under suspension, revocation, or denial is guilty of a Class A misdemeanor. The court MUST suspend an individual's hunting, trapping and fishing privileges for at least one year under section 20.1-01-26 if an individual provided guide or outfitter services without a license or while under suspension, revocation, or denial or guided on prohibited lands. Each client guided is a separate and distinct offense.

In addition, any individual that commits an act of fraud while guiding or who illegally takes or causes the death of fish or wildlife may be prosecuted for fraud, theft or conspiracy under the General Criminal Code and shall be liable for the higher amount between the actual compensation received or the value of the fish or wildlife illegally taken or killed.

## **Section III:**

### **Federal and State Laws Affecting Wildlife**

A guide and outfitter is responsible for being thoroughly versed in all laws, rules and regulations that regulate hunting, fishing and boating. In this section, we will attempt to explain the difference in types of rules, potential pitfalls for the guides and outfitters and highlight classical problem areas.

States have the authority to regulate all hunting and fishing within their borders. In some areas and subject matter States share the regulatory responsibility with the Federal Government. And some subject matter comes primarily under Federal jurisdiction.

In general States, regulate non migratory birds and animals hunted within its borders. It sets seasons mostly without consultation with Federal authorities. Federal lands within the State are subject to Federal regulation even during those seasons.

Federal regulation takes primary control on migratory birds, endangered species, and interstate commerce concerning fish and wildlife, including non migratory fish and wildlife.

In North Dakota, the US Fish and Wildlife Service is the Federal agency that regulates these areas for the Federal Government.

### **State Laws**

All authority to regulate hunting and fishing or protection of North Dakota's natural resources rests with the State Legislature. Game and Fish laws created by the Legislature are found in the Century Code under Title 20.1 and this Title is administered by the North Dakota Game and Fish Department.

Ownership of fish and wildlife in North Dakota is held by the State in trust for the public. North Dakota Law states that “Any person catching, killing, taking, trapping, or possessing any wildlife protected by law at any time or in any manner is deemed to have consented that the title there to remains in the state for the purpose of regulating the taking, use, possession and disposition thereof.” (NDCC § 20.1-01-03 Source)

The Legislature makes laws setting standards of care and custody of wildlife for the use of the citizens and visitors of the State. The Legislature meets every two years. Because they cannot react quickly to changing conditions they have authorized the Governor by consultation with the Game and Fish Department to set seasons, prescribe limits and methods of hunting that need to have flexibility. The Governor does this by issuing a Proclamation for each season. The Governor's Proclamation has the force and effect of law and its restrictions are enforced in the same manner as individual statutes in Title 20.1.

The Legislature also has delegated rulemaking authority to the Game and Fish Director to adopt rules to regulate an activity such as that given to regulate guides and outfitters. Promulgated rules are reviewed by the Legislative Administrative Rules Committee prior to their implementation.

Penalties for violation of Game and Fish Laws can be either “criminal” or “non-criminal”. Criminal statutes carry a potential penalty of a non set fine and jail sentence upon conviction and are judged in the judicial system by the standard of “beyond a reasonable doubt.” Non-criminal statutes have a set fee for a violation of that statute or rule and are judged in the judicial system by the standard of a “preponderance of the evidence.”

The bulk of criminal Game and Fish statutes are either class B or class A misdemeanor with the exception of a couple of statutes where under certain circumstances a violation would be a Class C Felony. Many minor violations are classified as non-criminal and carry a specific fee as a penalty up to a maximum of \$250.

Under North Dakota law, two other types of penalties can occur. If an offense is a criminal offense, a person convicted may be subject to loss of all equipment including vehicles used or held with intent to be used to take fish or wildlife. No forfeiture of equipment or vehicles can occur for a non-criminal violation. A person's license to hunt, fish and trap may be suspended for three years on any criminal offense. Hunting on posted land carries a mandatory suspension for one year. All other suspensions are at the discretion of the Court hearing the case. Non-criminal offenses are not subject to license suspensions.

North Dakota is a member of the Interstate Wildlife Violator Compact. So any suspension of a license in North Dakota may become a suspension in all other member states. Conversely if an out of state conviction results in a suspension in that state and that state is a member of the compact, the individual could lose his or her license privileges in this State. It is the

responsibility of the person suspended to check their status with the other States in the Compact.

### **Federal Law**

The primary Federal Acts administered by the U.S. Fish and Wildlife Service are the Migratory Bird Treaty Act, Duck Stamp Act, Lacey Act, Bald Eagle Act and Endangered Species Act. All these “Acts” were created by the United States Congress to regulate and protect fish and wildlife that moves from State to State or whose status has become endangered and requires the resources of the Federal Government to save it. The Service is highly visible in North Dakota mostly in duck and goose management and its administration of Refuges and Waterfowl Production Areas. North Dakota has more Federal Wildlife Refuges than any other State in the Nation.

In the implementation of the Acts enumerated above, the Service has rule making authority to carry out the mandates of the Act. These Federal laws each impose criminal penalties for violations.

The Migratory Bird Treaty Act sets seasons for hunting of migratory birds. The Service sets a framework for fall waterfowl hunting by flyway and gives States the options of setting their seasons within that framework. Season length and bag limits are what most people see.

The Lacey Act makes it a Federal Offense to transport or ship illegally taken or possessed wildlife or fish into Interstate Commerce (transported out of the state). Depending on the value of the wildlife or fish and on the fees paid for service to take the illegal wildlife or fish a violation of the Lacey Act can be a Felony.

These are the two major Federal laws that regulate activities normally associated with Guiding and Outfitting.

### **Areas of Special Concern**

#### **A. Harvest of Fish or Wildlife that has a Daily and or Possession Limit**

Both State and Federal Law concerning migratory birds impose daily limits and possession limits. Party Hunting or fishing is prohibited A client that takes over his or her limit IS in violation. Daily limits are the number that an individual may take in any calendar day.

**Example 1** - A party of 3 goes out for a morning goose hunt. During the hunt each take 3 non mallard ducks along with the geese. The daily limit for ducks that year is 5. In the afternoon they wish to go out again and hunt ducks. The birds from the morning hunt were eaten for lunch and the carcasses disposed. How many ducks could be taken by each hunter in the afternoon hunt? Correct answer is each hunter could only take 2 more ducks of the correct species during the afternoon hunt.

**Example 2** - Three hunters are spread out along the edge of a marsh. One hunter has more birds flying by and knocks down 8 ducks. The daily limit is 6. A partner hunter has a dog that retrieves 2 of the ducks. The second hunter takes 4 ducks that his dog retrieves. The third hunter takes 6 ducks. Each hunter leaves the field carrying 6 ducks each. Was there a violation? Yes. The hunter that killed 8 ducks exceeded the limit by two.

In a group hunt situation, it is sometime difficult to know who has killed a certain bird. In such a situation, hunters need to immediately assign the bird to someone which will help prevent them from exceeding the limit by accident.

### **B. Possession Limits**

Outfitters may arrange to have the clients birds cleaned. We will discuss species identification in another section, but here, we will is possession limits. Migratory birds generally have a twice the daily limit for a possession limit. That limit is the total number of birds that is under the control of the individual including at his motel, game processor, living quarters or in a freezer. Upland game has a limit that is a multiple of a single daily limit. The Daily Limit is the number of a species that can be acquired in any one calendar day.

**Example** - Two hunters each take a daily limit of ducks on day one of their hunt. The birds are cleaned, tagged as required along with species identification being left on the birds. They take the birds to a locker plant in town for storage. On day 2, hunter 1 shoots his limit of 6 ducks and hunter 2 takes 4. That night they eat two birds of hunter 1's for supper. The rest of the birds are cleaned and saved as required in a cooler in their motel room. How many ducks can each hunter take on day 3? The correct answer is each could take 2 more ducks of the correct species which would place them at their possession limit..

### **C. Migratory Birds Left at a Place Other than the Hunter's Residence.**

Federal Law requires that any migratory game bird left at a place other than that person's residence must be tagged. The regulation states “No person shall put or leave any migratory game birds at any place other than at his or her personal abode or in the custody of another person for picking, cleaning, processing, shipping, transportation or storage (including temporary storage) or for the purpose of having taxidermy services performed unless such birds have a tag attached, signed by the hunter, stating his address, the total number and species of birds, and the date such birds were killed.”

This applies to all hunters whether they are residents or non-residents or if they were guided or not.

### **C1. Record Keeping of Persons Cleaning Birds for Another.**

Those operations that conduct cleaning service of birds taken by a client must comply with record keeping requirements of Federal law. State law requires all processed game birds leave species identification on all birds. See section D.

Federal law classifies these activities as a migratory bird preservation facility. No person can conduct the operations of a bird preservation facility unless it keeps “accurate records which can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained and show; 1. The number of each species; 2. The location where take; 3. The date such birds were received; 4. The name and address of the person from whom such birds were received; 5. The date such birds were disposed of and 6. The name and address of the person to whom such birds were delivered.” Records of these transactions must be kept for 1 year following the last entry on the record.

#### **D. Species Identification**

All game birds must have a fully feathered wing or head attached till the bird has reached its final place of storage. For upland game birds leaving a leg attached would be sufficient to comply with the species identification requirements.

#### **E. Transportation of Game in North Dakota**

In North Dakota, all persons must accompany their own game during its transportation. In the case of a big game animal, a transportation permit can be obtained from an authorized law enforcement officer once an animal has been harvested and properly tagged, to let a second party transport that animal in a specific vehicle along a specified route to a location. The permit must be obtained prior to another person transporting the animal.

#### **F. Hunting on Posted Land**

North Dakota law makes hunting on posted land violation a mandatory loss of hunting, fishing and trapping privileges. Land that has signs prohibiting hunting or trespass should be honored even if the letter of the “Posted Land” requirements hasn't been met. A person controlling a certain parcel of land only needs to post a sign prohibiting hunting or trespass along the roadway or if the land is not adjacent to a roadway along the land. The sign must carry the name of the person posting such land. On unfenced land, the signs should not be farther apart than each half mile and on fenced land signs need only be present at the gates to the land. An element of this offense is that entry onto the land had to be for hunting purposes.

Another section of law is called Criminal Trespass. It is not in Title 20.1 under Game and Fish law but is a criminal statute that applies to any entry on land (not necessarily for any purpose) that has been posted in a reasonable manner. Many times an offense is prosecuted under this statute where proof that the entry for hunting purposes is in question.

#### **G. Guiding on PLOTS or WMA's**

North Dakota Law prohibits a guide or outfitter from taking or directing clients to hunt on land owned or private land enrolled by the Department or on land for which the Department pays in lieu of tax payments. These areas are marked as Private Land Open To Sportsmen or Wildlife Management Areas and have yellow signs along its boundaries. Federal law also prohibits guides and outfitter from taking clients on Waterfowl Production Areas and National Wildlife

Refuges which are open to public use without being permitted to do so. Other Federal lands are also restricted by the Federal Agency controlling those lands. Questions of legal commercial activity on these lands should be directed to the controlling agency in question. (NOTE SEE SECTION 2 H FOR GUIDING ON PROHIBITED LANDS)

#### **H. Hunting or Fishing for Another**

Under North Dakota state law each person must only take his or her own game or fish. “Party” hunting or fishing is prohibited. Federal law also prohibits “party hunting” for migratory birds. Any species that has a number limit restricting how many can be harvested by each individual per day applies to each individual separately. Each person's daily limit must be taken by that person.

#### **I. Gifting of Small Game**

Gifting of small game is permitted if conducted in the proper manner. To comply with both State and Federal law, “no person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds and the date such birds were taken.” Birds received at the donor's or donee's personal abode need not be tagged. Legally gifted game birds do terminate possession on those birds by the donor. Gifting procedures will be outlined in the Governor's proclamation setting seasons for small game.

Remember, species identification is required for any game bird transported that has not reached its final destination.

#### **J. Guiding within the Boundaries of an Indian Reservation**

Most Reservations within North Dakota have a checkerboard style of land ownership and control within its boundaries. It is undisputed that the Tribes have a right to regulate the activities of its members and may restrict activities of non members on lands it does control within the boundaries of the Reservation.

The 2005 session of the North Dakota State Legislature set out standards for recognition of licenses purchased by non tribal members to hunt on Indian land within the exterior boundaries of a recognized reservation. Starting August 1, 2005 a hunter having a valid Tribal hunting license may hunt on tribal land described as land “within the exterior boundaries of an Indian reservation held in trust by the federal government for the benefit of an Indian tribe or an Indian and land within the exterior boundaries of an Indian reservation owned in fee by an Indian tribe or an Indian,” does not need to have a State license. The Governors proclamation may set limits for hunters who have both a State and Tribal license.

Land that is non Indian owned within any reservation is under State jurisdiction when applied to non members of that reservation. A State of North Dakota license is required to hunt on those lands by non reservation members.

## **A Scenario of how Everything Can Work for the Guide, Outfitter and Clients**

**The Happy Hunters** - An outfitter will be guiding 3 clients the following day on a field duck and goose hunt. The evening before the hunt the outfitter meets the hunters to take care of the paperwork. The outfitter records the hunters' names and addresses and looks at their licenses to insure that each has the right license for the species to be hunted. Each hunter receives from the outfitter an advanced charge list outlining the cost for the guiding services including what is and is not provided by the outfitter.

They make arrangements to meet in the morning and discuss what to bring for equipment, clothes and lunch. Because a large decoy spread is going to be used, the outfitter has two assistants (licensed guides) start setting decoys at 4 AM. Upon arrival, the outfitter and his two guides place the hunters in the appropriate blinds and the hunt ensues. By 11 AM most of the action is over and the hunters and guides take down the set. Fifteen Canada geese and 5 snow geese along with 10 mallards were killed during the hunt.

Returning to town, photos of the birds are taken and each hunter attaches a pre-made tag (which was provided by the outfitter) to the birds for cleaning and storage. At the outfitter's premises the birds are cleaned leaving species identification as required. None of the hunters took more than 3 Canada geese. The client's birds were individually stored and frozen with species and tag information visible for inspection should a Warden stop by. At the end of the hunt the clients paid the outfitter. A receipt was given to the hunters listing the amount paid and on the face of the receipt it indicated that payment was "For Guide Services." The outfitter records the transaction on his record sheets including dates guided and which guides provided the services. A successful time was had by all.

## **Section IV:**

### **Insurance**

A new requirement placed on outfitters is the requirement of obtaining and having in full force general liability insurance coverage on the individual outfitter and his or her business operations. State law requires hunting and fishing outfitters to carry a minimum of \$100,000 per individual and \$300,000 per accident. General liability for businesses is not written per individual and per accident (that's how some auto insurance policies read). Business policies are written per occurrence and in the aggregate. In order to comply with the statute, an outfitter would have to carry the following limits: \$300,000 per occurrence and \$300,000 aggregate. From a compliance standpoint, that covers the minimal insurance required in the statute.

General liability insurance is designed to provide liability protection for the insured in the event their operations as an outfitter (to include his or her guides) caused bodily injury or property damage to others.

**Example 1:** On land you lease for hunting you dig pits to be used by your clients. At the end of the season the pits are not filled, and along comes someone not aware that the pits exist who drives into one of them causing extensive damage to their vehicle. They are upset and blame you as the “pit hazard” was not marked. Do they have a claim? Perhaps. Did your negligence in not marking the pits contribute to the injury or damage to the auto? The answer to these questions will determine your liability. The best part of liability insurance is that even if the claim is groundless or fraudulent, the company is supposed to defend the claim on your behalf and pay the loss if indeed you are found negligent.

**Example 2:** You set some clients in a perfect spot. It's windy, but these are experienced hunters and the cold weather doesn't look too bad. Later the weather gets much worse. Cold, snow and you are unable to get back to them at the designated time. They try walking out but the visibility is poor and they get lost. By the time you find them, one of the clients has suffered a heart attack. The rest are cold, wet, and hypothermic but everyone survives. The warmer they get the hotter they get and you find yourself in a law suit because “you should have known the weather was changing for the worse.” Do they have a claim? Sure - they can claim anything. Do you have a defense? You hope so but the court may have to decide that issue. Will your insurance protect you? The company may decide that the suit is groundless and deny any liability on your part. They still have to defend if you and the outfitting business end up in court. OR, they could decide to make the claimant an offer of settlement before they end up in court.

General liability insurance is intended to cover losses due to bodily injury or property damage. But such policies may also contain provisions limiting coverage, clarifying coverage, or excluding coverage completely. General liability insurance will cover your liability for operation of mobile equipment (like your ATV) but not your automobile. You need an auto insurance policy for that coverage. General liability will not provide any coverage for owned watercraft. You will need a separate policy for that too, however some companies may endorse watercraft liability coverage onto your General Liability policy. To be sure, an outfitter must carefully examine these issues with his or her insurance agent.

### **Here are Some Questions for Your Agent.**

- Will my homeowners or farm policy cover my guide services?
- Can my homeowner's policy be endorsed to cover my guide service?
- How about farm policy endorsements?
- Will my personal watercraft insurance cover my use as a guide?
- Should I let my insurance agent know I am an outfitter?
- Does my auto coverage provide any coverage?

The bottom line is you must notify your insurance agent of what you are doing and how you want to do it so he or she can find the right coverage for you.



Insurance is a prerequisite for obtaining a hunting or fishing outfitters license. To show proof of insurance have your company issue to the North Dakota Game and Fish Department a document called a Certificate of Liability Insurance. The Department must also get notified if you or your insurance company cancels your policy.

## **Section V: First Aid and CPR Training**

An applicant for a hunting guide license and an outfitter acting as a guide shall provide the director proof that the individual is certified in adult cardiopulmonary resuscitation or its equivalent and in standard first aid or its equivalent. (NDCC § 20.1-03-37 (2) Source).

Standard First Aid and CPR classes are offered by the American Red Cross. Certifications last for a period of 3 years for First Aid and 2 years on CPR. At the completion of training a certification card will be issued for each. A copy of that certification is satisfactory to comply with the training requirement of the guide and outfitter laws. If an applicant holds a certification that exceeds the content of Standard First Aid (i.e.: First Responder, EMT, Paramedic) that certification and expiration date will qualify for the First Aid requirement.

Each American Red Cross chapter can provide applicants with times and places to acquire the training. At your local level, you may want to contact your ambulance service who may be able to advise you of a local instructor that can complete your training. If they don't know of a local instructor, the Red Cross chapter locations and phone numbers are provided below.

For your license to remain in good standing, CPR and first aid requirements must be current. If either certification expires during a license period, it is the license holder's responsibility to re-certify and provide proof of certification prior to the expiration of that certification.

Many things can happen when in hunting or fishing setting. Gunshot wounds, heart attacks, strokes, hypothermia, vehicle and boat accidents, slips and falls, sprained ankles, embedded fishhooks, and an almost unlimited number of other incidents can befall the guide or outfitter's client. Being proactive with safety procedures can minimize client's exposure to accidents.

### **American Red Cross Chapter Locations and Phone numbers:**

- Grand Forks (actually located in East Grand Forks) - 218-773-9565;
- Fargo - 701-364-1800
- Wahpeton - (Breckenridge) 218-643-1465
- Jamestown - 701-252-3550;
- Bismarck - 701-223-6700;
- Dickinson - 701-483-8704;
- Minot - 701-852-2828.

Also in the Devils Lake area training has been provided through the Lake Region Ambulance Service phone number 701-662-8832.