



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2009 Sunset Review: River Outfitters

October 15, 2009





Executive Director's Office
D. Rico Munn
Executive Director

Bill Ritter, Jr.
Governor

October 15, 2009

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado River Outfitters Act. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2010 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis 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 supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 32 of Title 33, C.R.S. The report also discusses the effectiveness of the Division of State Parks and Outdoor Recreation and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

D. Rico Munn
Executive Director





Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

2009 Sunset Review: River Outfitters

Summary

What Is Regulated?

River outfitters perform two main tasks: they guide trips through whitewater rapids in Colorado rivers and guide fishing trips on flat water stretches in Colorado rivers.

Why Is It Regulated?

The River Outfitter License (ROL) program's sole charge is boating safety.

Who Is Regulated?

In Colorado, there are approximately 170 commercial river outfitter licenses issued annually.

How Is It Regulated?

The ROL program employs three temporary rangers who inspect boating equipment, inspect outfitter documentation, including guide qualifications, investigate boating accidents, assist boaters, and enforce all provisions of the River Outfitters Act (Act).

What Does It Cost?

In fiscal year 07-08, the ROL program cost approximately \$76,000 to operate and employed one year-round and 1.5 temporary full-time equivalent employees.

What Disciplinary Activity Is There?

During fiscal year 07-08, the ROL program issued nine fines and 116 verbal warnings to licensees.

Where Do I Get the Full Report?

The full sunset review can be found on the Internet at: www.dora.state.co.us/opr/oprpublications.htm.

Key Recommendations

Continue the River Outfitter License program for nine years, until 2019.

River outfitters guide trips through whitewater rapids and guide fishing trips on flat water stretches on Colorado rivers. The existence of this low profile but seemingly omnipresent program protects the health, safety, and welfare of the public. Observation of the ROL-ranger/regulated-entity interaction confirmed that the ROL program is the least restrictive regulation consistent with furthering the public health, safety and welfare.

Establish a separate Fishing Guide category and qualification guidelines.

The guide qualifications section of the Act does not distinguish between fishing guides and whitewater rafting guides; yet, the two activities are very different. A fishing guide avoids whitewater for several reasons. Because of the incongruities in both the nature of the businesses and the technical expertise needed, the General Assembly should amend into the Act separate qualification standards for Fishing Guides.

Additionally, the State Board of Parks and Outdoor Recreation (Board), should define by rule, a new time-based measurement standard to qualify fishing guides, "trip day," rather than using the current measurement standard of miles traveled.

Major Contacts Made During This Review

Arkansas River Outfitters Association
Colorado Division of Parks and Outdoor Recreation
Colorado Division of Wildlife
Colorado Office of Outfitter Registration
Colorado Outfitters Association
Colorado River Outfitters Association
Colorado Tourism Office
River Management Society
Utah Guides and Outfitters
U.S. Bureau of Land Management
U.S. Forrest Service

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- 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 regulation;
- 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;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- 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;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- 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;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

Regulation, then, has many positive and potentially negative consequences.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. To facilitate input from interested parties, anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.state.co.us/pls/real/OPR_Review_Comments.Main.

The regulatory functions of the Colorado Division of Parks and Outdoor Recreation (CSP) relating to Article 32 of Title 33, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2010, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the River Outfitter License (ROL) program pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of river outfitters should be continued for the protection of the public and to evaluate the performance of the CSP. During this review, the Colorado State Parks and Outdoor Recreation Board and the CSP must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

Methodology

As part of this review, DORA staff interviewed ROL program administration and temporary staff, reviewed ROL program records, including complaint and disciplinary actions, interviewed officials with federal resource management agencies, state and national professional associations, interviewed individual licensees, conducted a survey of licensees, observed field inspections, reviewed Colorado statutes and CSP rules, and reviewed the laws of other states.

Profile of the Profession

A river outfitter is any person or business that advertises to act as a river-running guide and supplies the river-running equipment for compensation. Outfitters offer varied choices of trips on nearly every river in the U.S. The quality of the experience differs by both region and company.² Some experts believe that the western U.S. holds “the finest assemblage of whitewater rivers anywhere on the globe.” River runners are drawn to the vast wilderness, spectacular landscapes that range from high mountains to rugged deserts, and the ease of access to the rivers.³

Colorado has the highest whitewater rafting visitation in the nation.⁴ The overwhelming majority of river trips in Colorado last one day or less, but there are some that last longer. The contribution of river running to the Colorado economy, from 2003 to 2007, averaged \$132 million per year.⁵

The vessels used on the rivers range from kayaks and dories, to inflatable rafts and catacrafts. The rubber river raft is believed to have been invented in the early 1840s by Army Lt. John Fremont and Horace H. Day. They invented the rubber raft with the intention of surveying the Rocky Mountains and the Great Plains.⁶ The first known whitewater use of the raft was in 1842, when Fremont set out to survey the Platte River in Wyoming for the U.S. Navy.⁷ Although the raft was invented in the mid-19th century, it was not until the turn of the century that the first commercial whitewater trip was undertaken. At first, surplus military rafts were used as boats and it was only much later that inflatable rafts were used.⁸

Over time, a scale to measure and classify the intensity of the water flow and the difficulty of the whitewater experience has developed among enthusiasts:⁹

Class 1 – Moving water with small waves and no obstacles.

Class 2 – Bigger waves and no major obstructions.

Class 3 – Longer and rougher than Class 2 with bigger waves, holes, and currents.

Class 4 – Steeper, longer, and more heavily obstructed than Class 3. Often technical, requiring many turns and lateral moves, preliminary scouting is recommended.

² Jim Cassady & Dan Dunlap, *World Whitewater*, Ragged Mountain Press, Camden, ME. (1996). p. xi.

³ *ibid.* p.53.

⁴ Bureau of Land Management, *A Recreation and Visitor Services Strategy*. p. 6. Retrieved January 12, 2009, from www.blm.gov/pgdata/etc/medialib/blm/co/programs/recreation.Par.23531.File.dat/Rec%20Strategy.pdf

⁵ Colorado River Outfitters Association, *Commercial River Use in the State of Colorado 1988-2007*.

⁶ Max Bellamy, Ezine @rticles, *History of Whitewater Rafting*, Retrieved December 29, 2008, from <http://ezinearticles.com/?History-of-Whitewater-Rafting&id=276992&wwwparam=1230580489>

⁷ Mad River Boat Trips, *Wyoming rafting. A rich western history*. Retrieved December 29, 2008, from <http://mad-river.com/history.cfm>

⁸ Max Bellamy, Ezine @rticles, *History of Whitewater Rafting*, Retrieved December 29, 2008, from <http://ezinearticles.com/?History-of-Whitewater-Rafting&id=276992&wwwparam=1230580489>

⁹ Jim Cassady & Dan Dunlap, *World Whitewater*, Ragged Mountain Press, Camden, Me. (1996). p. xvi.

Class 5 – In addition to strong currents, big waves, boulders, and holes, powerful enough to hold or flip boats. These rapids tend to have at least one vertical drop. Many are routinely portaged depending on the water level.

Class 6 – Magnified Class 5 with more problems and hazards, unrunnable to all but teams of expert boaters.

Class U or B – Unrunnable and should never be attempted, unsafe at any level.

Fishing boat trips offer a different type of excitement for the consumer. Simply floating down the river while fishing can be a rejuvenating experience. While a whitewater boat may have eight or more people onboard, a fishing boat typically will have two, plus the guide. Each river has its own distinct characteristics and trips pass through a mixture of environments.

A float trip, as they are often called, will often cover miles of river that are inaccessible to the wading public because the land, not the water, is privately owned. Some of those stretches hold fish that see minimal fishing pressure. Other trips offer anglers the chance to anchor the boat and wade-fish in secluded, prime, holding water.¹⁰

Because catching fish is the objective of the trips, the boats are rarely in water faster than Class 1 or Class 2 rapids.

¹⁰ Cutthroat Anglers. *Guided Trips*. Retrieved July 2, 2009, from www.fishcolorado.com/trips/float.html

Legal Framework

During the early 1980s, the Colorado River Outfitter Association (CROA), a trade organization of Colorado commercial river outfitters, brought the notion of state licensing to the General Assembly. The River Outfitter License (ROL) program was established in 1984 and the first 125 licenses were issued to river outfitters in March 1985.

Because the national government, via the Bureau of Land Management (BLM), the National Park Service (NPS), and the U.S. Forrest Service (USFS), oversees the majority of public land in Colorado, it has a significant role in the manner in which river outfitters conduct business. River outfitters must obtain a recreational use permit prior to launching a trip from, or through, any federal land.

The line dividing jurisdiction between the federal programs and the ROL program is that the ROL's sole regulatory concern is boating safety. While the federal government may be concerned with the safety of citizens on the rivers, safety is not a regulatory directive. The federal government's charge is all other issues involved in the supervision of federally managed land, including issuing recreational use permits. As a matter of unofficial intergovernmental cooperation, the federal agencies will not grant a use permit to any entity that is required to have an ROL license, if the applying entity does not have one.

Memoranda of Understanding

The Colorado Department of Natural Resources, Division of State Parks and Outdoor Recreation (CSP), as the ROL managing agency, also takes part in more formal cooperative efforts with other jurisdictions as well. Memorandums of understanding (MOU) exist with other jurisdictions in order to pool resources and provide administrative efficiencies.

One such MOU exists among the BLM, USFS, CSP, the Office of Outfitters Registration (OR), and the Colorado Division of Wildlife (DOW). Its stated purpose is to:

... maintain and enhance the quality of service provided to and by the outfitting industry in Colorado on National Forest system lands, BLM administered public lands and state public lands; to achieve consistency of permit issuance, administration, and compliance with applicable Federal, State, and local laws and regulations; and to promote cooperative efforts between all parties in the identification and prosecution of individuals who are operating in violation of applicable federal and state laws and regulations.¹¹

¹¹ Memorandum of Understanding between the Colorado Bureau of Land Management United States Department of Interior and the Rocky Mountain Region Forest Service United States Department of Agriculture Agreement No. 07-MU-11020000-030 and the Colorado Office of Outfitters Registration and the Colorado Division of Wildlife and the Colorado Division of Parks and Outdoor Recreation, on The Coordination and enhancement of Services to and by the Outfitting Industry in Colorado on National Forest System, BLM, and State Public Lands.

Another MOU exists among the BLM, CSP, and CROA, an industry group consisting of ROL licensees. The purpose of this MOU is to improve communications among the signatories concerning river management, limiting the impacts of recreation, enhancing public safety, and promoting partnerships with the public.¹²

The River Outfitters Act

The General Assembly affirms, through Article 32 of Title 33, Colorado Revised Statutes (C.R.S.), (Act), it is state policy to encourage enjoyment of rivers and protect the public's health, safety, welfare, and freedom from injury or danger by licensing river outfitters. It is expressly not the intent of the General Assembly to infringe on private property rights, limit river-running or the use of equipment for no compensation, interfere with public recreational enjoyment of rivers, or obstruct federal land use management. The General Assembly also recognizes the economic impact and the increasing number of participants in river-running.¹³

The Board of Parks and Outdoor Recreation (Board), is instructed to promulgate regulations to govern licensing; regulate river outfitters, guides, guide instructors, and trip leaders; determine hazardous river conditions; and carry out provisions of the Act.¹⁴ However, the CSP Director may grant variances from the Board regulations on a case-by-case basis, if no public endangerment will occur as a result of the variance.¹⁵

Licensure

No person¹⁶ may represent oneself as a river outfitter without first acquiring a license.¹⁷ To obtain a license, a person must complete and submit an application, pay a Board determined fee,¹⁸ currently the fee is \$400 for a standard license,¹⁹ and meet minimum qualifications:

- Incorporate pursuant to Colorado law, if incorporated, or be duly qualified to conduct business in Colorado.²⁰
 - A copy of a current and valid certification of authority must be submitted with the application.²¹
 - The signature on the application must be the executive officer's and it must be attested to by the secretary of the corporation.²²

¹² Memorandum of Understanding between Colorado River Outfitters Association and USDI Bureau of Land Management, Colorado State Office and Colorado State Parks.

¹³ § 33-32-101, C.R.S.

¹⁴ § 33-32-103, C.R.S.

¹⁵ § 33-32-103.5, C.R.S.

¹⁶ Section 33-32-102(5), C.R.S., defines, "person" as any individual, sole proprietorship, partnership, corporation, nonprofit corporation or organization as defined in section 13-21-115.5 (3), C.R.S., limited liability company, firm, association, or other legal entity either located within or outside of Colorado.

¹⁷ § 33-32-104(1), C.R.S.

¹⁸ § 33-32-104(2), C.R.S.

¹⁹ Colorado Division of Parks and Outdoor Recreation, 2009 River Outfitter License Application.

²⁰ § 33-32-105 (1)(a), C.R.S.

²¹ Board Regulation 300-2.

²² Board Regulation 300-1(c).

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- Carry, at minimum, \$300,000 combined single limit liability insurance for property damage and bodily injury.²³
 - Meet Board-established safety standards for river-running.²⁴

A copy of a current, valid certificate of insurance must be submitted with the application certifying comprehensive general liability, commercial general liability, or watercraft liability coverage. It must also provide the names and addresses of both the insurer and the insured, the policy number, the coverage period dates, and statements attesting that: CSP is a certificate holder; CSP will be given written notice by certified mail prior to any modification, termination, or cancellation of the policy; and that the company providing insurance coverage is licensed in Colorado or listed on the approved surplus lines.²⁵ The insurance policy shall insure the licensee against all claims brought against the licensee acting in its capacity as a river outfitter.²⁶ It is the responsibility of the licensee to maintain the minimum insurance coverage at all times while licensed. If the minimum insurance coverage is not maintained then the license becomes invalid.

The Board may deny, suspend, or revoke a license, place a licensee on probation, or issue a letter of admonition if the applicant or licensee:²⁷

- Violates the provisions of the Act or Board regulations;
- Does not meet minimum license requirements;
- Does not have required equipment;
- Has an unqualified employee;
- Is deceitful or fraudulent on the license application;
- Violates another state's laws concerning river outfitting;
- Is convicted, in its capacity as a river outfitter or guide, of second or third degree criminal trespass during any three to five year period of licensure; or
- Enters a plea of *nolo contendere* or deferred prosecution.²⁸

Hearings to deny, suspend, or revoke a license, or to place a licensee on probation, and all appeals of decisions, proceed pursuant to Article 4 of Title 24, C.R.S., which governs rule making and licensing procedures.²⁹

²³ § 33-32-105(1)(b), C.R.S.

²⁴ § 33-32-105(1)(c), C.R.S.

²⁵ Board Regulation 300-5.

²⁶ Board Regulation 300-5(b).

²⁷ § 33-32-109(1), C.R.S.

²⁸ § 33-32-109(2), C.R.S.

²⁹ § 33-32-109(3), C.R.S.

Qualifications

A licensee must keep a qualification record for each guide, trip leader, and guide instructor employed, including subcontractors, at its place of business for three years after termination. The records must be made available at any reasonable time to a peace officer enforcing the Act.³⁰ Minimum qualifications for guides, trip leaders, and guide instructors are:

- Guide – Must be 18 years old, have a valid standard first aid card, cardiopulmonary resuscitation training,³¹ and 50 hours of on-river training from a qualified guide instructor.³² The on-river training must include:³³
 - Rigging and maneuvering the vessel;
 - River currents, eddies, and waves;
 - River hazards;
 - Types and causes of river rapids;
 - Scouting and running rapids;
 - River rescue and emergency procedures;
 - Minimizing outdoor recreation resource impacts; and
 - Proper fit, wearing, and use of personal floatation devices.
- Trip leader – Must have the same basic training as the guide plus 500 river miles as a qualified guide.³⁴
- Guide Instructors – Must have the same basic training as the guide plus at least 1,500 river miles, with 750 of those river miles being logged while acting as a guide.³⁵

Higher education, water sports activities, course instructors are exempt from the qualifications section of the Act.³⁶

Enforcement

The Act may be enforced by any Colorado law enforcement officer, all of whom are authorized by the Act to board a vessel.³⁷ A river outfitter must reimburse all actual expenses incurred by local law enforcement, CSP, or DOW for search and rescue efforts conducted as a result of a regulated trip.³⁸

³⁰ Board Regulation 302-7.

³¹ Board Regulation 302-4(b)(1).

³² § 33-32-105.5(1)(a), C.R.S.

³³ Board Regulation 302-1(b).

³⁴ § 33-32-105.5(1)(b), C.R.S.

³⁵ § 33-32-105.5(1)(c), C.R.S.

³⁶ § 33-32-105.5(2), C.R.S.

³⁷ § 33-32-108(1)(a), C.R.S.

³⁸ § 33-32-108(2), C.R.S.

If a CSP inspection or investigation uncovers a violation of the Act or associated regulations which creates, or may create, an emergency condition hazardous to the health, safety, and welfare of any person, then a cease and desist order must be immediately issued for the violating activity.³⁹ The cease and desist order must include:

- The section of the Act allegedly violated;⁴⁰
- The factual basis for the violation allegation;⁴¹ and
- A mandate that all violating actions cease immediately.⁴²

No stay of a cease and desist order may be issued until a hearing, attended by all involved parties, is held.⁴³ A recipient of a cease and desist order may request a hearing to contest the violation, if the request is made within 30 days of the cease and desist order's issuance.⁴⁴

The Act also establishes a cash fund to finance all direct and indirect costs for Act implementation.⁴⁵

Following the General Assembly mandate, the Board established regulations, beyond the licensing provisions, to implement the Act and provide a safe recreational environment. The subject matter covered by the rules includes:

- Rule 300 - License Application and Issuance
- Rule 301 - Regulated Trips, Passenger Orientation, and Trip Logs
- Rule 302 - Guide, Trip Leader, and Instructor Training and Qualification Records
- Rule 303 - Drinking Water and Sanitation
- Rule 304 - Personal Floatation Devices
- Rule 305 - Vessels and Equipment
- Rule 306 - Vessel Loading Capacity
- Rule 307 - Boat Accidents

³⁹ § 33-32-108(3)(a)(I), C.R.S.

⁴⁰ § 33-32-108(3)(a)(II)(A), C.R.S.

⁴¹ § 33-32-108(3)(a)(II)(B), C.R.S.

⁴² § 33-32-108(3)(a)(II)(C), C.R.S.

⁴³ § 33-32-108(3)(c), C.R.S.

⁴⁴ § 33-32-108(3)(a)(III)(A), C.R.S.

⁴⁵ § 33-32-111, C.R.S.

Program Description and Administration

The River Outfitter Licensing (ROL) program is one of several government regulatory entities regulating some aspect of river systems, what occurs on rivers, and/or the land a river passes through.

Because the national government, through the Bureau of Land Management (BLM), the National Park Service (NPS), and the U.S. Forrest Service (USFS), oversees the majority of Colorado public land, they have a significant role in determining how river outfitters conduct business. All river runners must obtain a federal recreational use permit prior to launching a trip from federal land or water. What divides regulatory jurisdiction between federal responsibility and the ROL responsibility, is that the ROL's sole concern is boating safety for commercial enterprises. Federal agencies issue use permits and regulate several other activities, but they do not regulate safety affairs. The ROL does not issue use permits, does not regulate noncommercial trips, and its mission is safety. In a show of intergovernmental cooperation, the federal agencies will not issue a use permit to any unlicensed, commercial, permit applicant.

The State of Colorado also regulates commercial fishing outfitters through the Department of Regulatory Agencies' (DORA) Outfitter Registration (OR) program. The OR program's regulatory directive concerns business operating practices, rather than boating safety concerns. The differing programmatic purposes eliminate regulatory overlap. Thirty-one percent of the ROL licensees are also registered with the OR program.

ROL Staffing

The ROL is a boating safety program directed by a Boating Safety Program Coordinator employed by the Colorado Division of State Parks and Outdoor Recreation (CSP) in the Colorado Department of Natural Resources.

The primary chores designated to the program staff are inspecting the boats and boating equipment used on regulated, commercial trips; verifying that the river guides are qualified to pilot regulated trips on Colorado waters; assisting both commercial and noncommercial boating trips, when necessary; and investigating boating accidents that occur on Colorado rivers.

To work with the Boating Safety Program Coordinator, CSP hires temporary rangers to implement program objectives. The following ranger duties come directly from the CSP-propagated job description and provide a good synopsis of a ranger's daily responsibilities:

This is an unarmed law enforcement position (Title 33 Commission) that enforces River Outfitter Licensing laws and regulations; issues citations for violations; patrols various stretches of rivers open to regulated floating trips; patrols various put-in's and take-out's by vehicle, foot or boat. Responds to emergencies and investigates customer complaints. Will complete reports and may be required to appear in court.

Specific duties associated with these positions include:

- Inspections of regulated trips at put-in's, take-out's and on the river to ensure the proper safety equipment and procedures are in place;
- Inspections of guide, trip leader, guide instructor and outfitter files at their place of business to ensure that qualified guides are on regulated trips;
- Thorough investigation of all accidents which occur on regulated trips;
- Work in coordination with Rangers from other venues and jurisdictions (i.e., BLM, Forest Service, National Park Service, Arkansas Headwaters Recreation Area, Yampa River State Park, etc.) to further the goals of the ROL program; and
- Address private property trespass issues that arise.

Typically, the temporary ROL rangers start in early May; they attend in-house training, and then they go into the field working/inspecting guide instruction trips. The early season focus has the ROL rangers educating licensees to address issues before they become problems later in the season. From early to mid-summer most of the rangers' time is spent inspecting whitewater trips and carrying out accident investigations. During the late summer to early fall the time is devoted to inspecting fishing trips, completing accident investigations, and performing office inspections. The season usually ends in early October.

Table 1 reveals the expenditures and full-time equivalent (FTE) employees devoted to program implementation.

Table 1
Fiscal Information

Fiscal Year	Program Expenditures	Permanent FTE	Temporary FTE
03-04	\$52,255	1.0	1.5
04-05	\$76,065	1.0	1.5
05-06	\$55,833	1.0	1.5
06-07	\$50,649	1.0	1.5
07-08	\$75,853	1.0	1.5

The permanent FTE consists of the ROL boating Safety Program Coordinator and office support staff, and the temporary FTE are the ROL rangers.

It is important to note that in the Arkansas Headwaters Recreation Area, which according to ROL administration is the single busiest whitewater stretch of river in the U.S., the provisions of the ROL are enforced by the on-site state park staff. The Boating Safety Program Coordinator and the ROL temporary staff rarely go to the park. When they do, it is usually to assist with special events.

Licensing

License fees are payable in full at the time of application. Any incomplete application will be returned and a refiling fee charged if it is resubmitted.⁴⁶ Licenses are not transferable. If a business is sold or transferred, a new application must be submitted by the new owner.⁴⁷ A licensee must maintain a regular place of business to receive mail and telephone calls. The River Outfitter License must be prominently displayed on the premises. If the business’s physical location, mailing address, or telephone number changes then CSP must be notified within 10 days and it will issue an amended license at no charge.⁴⁸

CSP accepts license applications during November, December, and January for the license year that January falls within. An application filed after January is assessed a late charge.

While the individuals who direct trips on the river are required to reach specific training and experience levels to be titled “guide,” “trip leader,” or “guide instructor,” there is no official license credential issued. River Outfitter Licenses are issued to businesses, which are in turn responsible for documenting the qualifications of each employee.

Table 2 illustrates that both the number of licenses issued and the number of license renewals are fairly consistent from year to year. During the review period, the total number of licenses issued peaked in fiscal year 04-05, at 182 licenses, while the lowest number of licenses issued was 165, during fiscal year 07-08. The number of licenses issued varied a maximum of 10.8 percent from year to year and never by more than 10 licenses. On average, more than 9 of every 10 licenses, 91.6 percent, are renewed.

Table 2
Licenses Issued and Renewed
Fiscal Year 03-04 through 07-08

	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
Total Licenses	172	182	177	168	165
Renewals	151	163	163	162	152
Percent Renewing	87.80	89.60	92.10	96.40	92.10
New	21	19	14	6	13
Ceased Operations	21	11	19	13	20
Limited License	15	19	N/A	N/A	13

⁴⁶ Board Regulation 300-10.

⁴⁷ Board Regulation 300-6.

⁴⁸ Board Regulation 300-8.

The basic license fee is \$400 and the limited license is \$100. A limited license is needed for trips that begin in Colorado but end in another state. CSP did not have a record of the number of limited licenses issued for fiscal year 05-06 or 06-07.

If an applicant applies after January 31, there is an additional \$100 late fee. There is also a refiling fee, \$25, charged for any incomplete application that must be resubmitted. The license fee and a copy of the current certificate of insurance must be filed with an application.

Approximately one third of the river outfitters are also required to register as fishing outfitters with the OR program, which currently costs \$325, and must obtain a fishing license and stamp from DOW, which costs \$31.

Inspections

While on a regulated trip, all licensed outfitters' boats and guides may undergo a river safety inspection. ROL rangers patrol river "put ins" and "take outs," as well as float on the water, and may inspect a licensee at any time. In addition to checking the trip sponsor, leader, number of boats, time, and trip route and duration, ROL rangers examine the boats and their contents for compliance in several areas to help ensure the vessel is water worthy, specifically:⁴⁹

- Vessel Condition
 - Vessel marking;
 - Vessel identification; and
 - Vessel construction.

- Required Operating Gear
 - Three oars;
 - One spare paddle per boat;
 - One adequate bailing device; and
 - Ten-foot minimum, secured bow and stern line.

- Required Safety Gear
 - First-Aid kit with requisite supplies in a clean, dry, suitable container;
 - Throw bag with at least 50 feet of 3/8 inch rope;
 - Serviceable repair kit in a durable container;
 - Air pump (only on inflatable boats); and
 - Personal flotation devices of the proper type, number, and condition, that are fitted correctly.

⁴⁹ Colorado State Parks River Licensing Program, River Safety Inspection Form, DPOR-RO-(DG)-1K-5-95.

- On-River Equipment and Procedures
 - Drinking water - either clean containers or a purification procedure;
 - Trash disposal and fire pans; and
 - Human waste containers.

- Safety Procedures
 - Passenger orientation;
 - Guide assignment; and
 - Trip continuity.

Rangers also perform office inspections. Licenses, trip logs, insurance, and guide qualifications are all examined during the office inspections, and matched against CSP administration and field inspection records for compliance and consistency.

The ROL rangers are also responsible for investigating all reportable accidents that occur during a regulated trip. Accidents are reportable when a person loses consciousness; sustains an injury requiring a physician’s attention; when there is a loss of life; or when any person disappears indicating a possibility of death or injury.⁵⁰ The investigating ranger gets an overview of the incident by contacting the licensee, individuals involved, and, on occasion, local law enforcement. A ranger considers the conditions surrounding the incident and determines whether the accident was due to equipment failure, river conditions, or human error. If deemed necessary, disciplinary action is taken.

Table 3 notes the type and number of contacts made during the review study period. Included are contacts made by CSP staff with both licensed commercial river outfitters and private river trips. Private trips are not regulated; rangers make contact with the trips as a matter of public service. The fluctuation in the number of inspections and contacts could not be explained by CSP staff.

Table 3
ROL River Contacts
Fiscal Year 03-04 through 07-08

	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
Office Records Inspections	48	65	52	36	71
River Safety Inspections	361	353	139	146	240
River Accident Investigations	43	38	28	18	57
Commercial Contacts	2,950	3,950	993	780	1,170
Private Contacts	2,600	3,400	855	425	640
River Assists	15	200	118	77	116

⁵⁰ Board Regulation 307-2a.

Complaints/Disciplinary Actions

Complaints to CSP concerning outfitters are rare and the general mindset of the CSP staff is to bring the boat/guide/trip into compliance to make the river experience safe and exciting for all participants, rather than a strict, by-the-book regulation enforcement policy. Therefore, the number of disciplinary actions noted in Table 4 below, is quite low when compared to the number of contacts made, as noted above in Table 3, for any given year and the number of verbal warnings is high in comparison.

Table 4
Complaints and Disciplinary Actions
Fiscal Year 03-04 through 07-08

Type of Action	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
Complaints	0	0	0	0	3
Revocation	0	0	0	0	0
Surrender of License	0	0	0	0	0
Suspension	0	1	0	0	0
Probation / Practice Limitation	0	0	0	0	0
Letter of Admonition	5	2	0	0	0
License Granted with Probation / Practice Limitations	0	2	0	0	0
License Denied	0	0	0	0	0
Injunction	0	0	0	0	0
Fine	23	36	28	10	9
TOTAL DISCIPLINARY ACTIONS	28	41	28	10	9
TOTAL ACTIONS DISMISSED	0	0	0	0	0
Verbal Warnings	90	110	59	39	116

Analysis and Recommendations

Recommendation 1 – Continue the River Outfitter License program for nine years, until 2019.

During the 19 year period, June 11, 1988 to July 10, 2007, 26 of 80 whitewater fatalities, 32.5 percent, occurred when the victim was on a commercial rafting trip.⁵¹ Colorado River Outfitters Association (CROA) statistics show that from 1988 through 2007 there were 7,982,269 commercial user days, i.e., an individual person, on a commercial raft, on a river, for a day. The statistics indicate one fatality for every 332,595 user days. This illustrates that despite some inherent danger, whitewater rafting is reasonably safe.

Is regulation the reason for the difference between the lower number of deaths on regulated commercial trips and the non-regulated private trips? Research conducted in conjunction with this sunset review was unable to answer that question given the available data. Directly comparing the percentage of the total deaths that occur on commercial river trips to the percentage occurring on private trips during the same 19-year period, noted above, is not as applicable as one might assume. Rafters accounted for only 15 of the 54 deaths on the private river trips, 18.8 percent of the 80 total river deaths. Kayakers accounted for 28 of the deaths, 35 percent of the total, and all but two of those victims were classified as experienced paddlers.⁵² There are also several externalities that make the numbers incomparable: private trips involve watercraft that span a large spectrum, from inflatable kayaks and inner tubes, to open canoes and precision kayaks; there are varying degrees of knowledge, experience, daring, and sobriety of those individuals piloting watercraft, commercial and private; the weather and water conditions always add an unknown variable; and there are no numbers that tell us precisely how many private trips are undertaken on Colorado rivers each year. Professionals and regulators generally agree that the estimated number is about equal between the private and commercial trips annually, but that supposition is based on anecdotal evidence. Therefore, analysis of these data is inconclusive in determining the necessity of regulation.

Complaints coming into the Colorado Division of State Parks and Outdoor Recreation (CSP) by consumers concerning licensee practices are virtually nonexistent and the number of safety and office inspections does not appear to have any positive or negative correlation to the number of accidents that occur on the river. See Table 3, page 18, for an enumeration of inspections and accident investigations. During the review period there were tens of thousands of commercial river trips completed on Colorado rivers. This data implies that proactive implementation and enforcement of the River Outfitters Act (Act) does not increase or enhance the health, safety, and welfare of the public, i.e., regulation does not appear to be essential to protect river outfitter clientele.

⁵¹ American Whitewater. *Accident Database*. Retrieved March 10, 2009, from www.americanwhitewater.org/content/Accident_summarize_state_CO_

⁵² *Ibid.*

Despite the lack of definitive evidence necessitating industry regulation, licensees believe, based on the results of a survey conducted for this sunset review during the spring of 2009, that the main charges in the Act are necessary. The two major regulatory charges in the Act are boat safety and ensuring guide qualification.

Pertaining to boat safety inspections, 69.8 percent of the survey respondents affirmed the importance of safety inspections, more than four out of five respondents (80.2 percent) answered that the River Outfitter License (ROL) program inspections are thorough, and 97.7 percent of the licensee respondents agree, 72 percent strongly, that having a properly equipped boat is important.

Responses to questions about guide qualification and regulation were strong but generally not as strong as those above. When asked to respond to the statement, "It is important to ensure that guides are experienced," 97.7 answered positively, while 1.2 percent, only 1 respondent out of 86, disagreed. However, just 32.6 percent of the licensed-outfitter respondents felt that guides should be licensed. Just under half of the licensees, 48.9 percent, thought it more important to have qualified guides than licensed outfitters, while 32.6 percent, approximately one-third of the sample, disagreed and felt licensing the outfitter was more important.

Analysis of the survey in its entirety points to the following inference: safety is an important component of operating a whitewater rafting company and having qualified, unlicensed river guides, piloting well equipped boats is more important than licensing outfitters. This generalized inference confirms the conclusions made by a representative of Department of Regulatory Agencies (DORA) conducting individual and group interviews with licensees.

Add in the statistical indications that the effects of regulation are, at best, questionable in protecting the public health, safety, and welfare, and change seems warranted.

However, the Act should not be sunset. Making sure that commercial whitewater companies are eligible, that is, they have insurance, experienced guides, and the health and safety equipment necessary to operate a rafting business under potentially dangerous circumstances, is important.

In-person observation of the ROL ranger's field performance, inspecting equipment and documentation, confirmed the need for a programmatic enforcement presence regardless of the statistical indications. The relationship observed was more collegial rather than uncooperative or confrontational. Again, survey results verify this observation: 88.4 percent of the licensees responding affirmed that the "ROL program rangers are fair." Mobilizing a staff that patrols Colorado's rivers and whose clear mindset is ensuring that everyone in a boat is safe, rather than writing minor citations, emphasizes the notion that safety is at the core of the program. It is just as important that both consumers and licensees know that there is an entity with the ability to enforce the law when needed. A majority of survey respondents, 61.6 percent, consider the ROL program necessary to protect the consumer.

Given that, for an adventure, or high risk, sport, whitewater rafting is reasonably safe, with few deaths per number of user days; participants know there is a certain amount of risk when they choose to participate; proactive regulation does not appear to make the activity measurably safer; and that there is an industry ethos, indicated by survey results and confirmed by personal interviews, that safety and competence are of primary import, the decision to keep the ROL program in place without major modification was not easily determined. Notwithstanding, the number of inspections performed compared to the number of total contacts made illustrates a wider regulatory presence than enforcement data alone indicates. There are times when analysis must extend beyond the objective numerical data to more qualitative empirical analysis. The existence of a low profile but seemingly omnipresent program does protect the health, safety, and welfare of the public. Observing ROL-ranger/regulated-entity interaction confirmed that program is the least restrictive regulation consistent with furthering the public interest.

For the reasons specified in this analysis, the General Assembly should continue the ROL as a necessary health, safety, and welfare protection for consumers. Because there are no major changes suggested in the recommendations of this sunset review, the General Assembly should schedule the program for a sunset in nine years, in 2019.

Recommendation 2 – Establish a separate Drift-Float Guide category and qualification guidelines.

The guide qualifications section of the Act does not distinguish between fishing guides and whitewater rafting guides, yet the two activities are very different. A fishing guide generally avoids whitewater for several reasons including: the clients are in the boat for the thrill of catching fish not careening down a river at a high rate of speed; fish are very hard to see under a turbulent surface and generally do not feed in whitewater; and it is impossible to steady a boat and fish in most whitewater conditions.

The following are the qualifications required to become a guide for a ROL licensed entity:

Minimum qualifications for guides, trip leaders, and guide instructors are:

- Guide – Must be 18 years old, have a valid standard first aid card, 50 hours of on-river training from a qualified guide instructor.⁵³ The training must include:⁵⁴
 - Rigging and maneuvering the vessel;
 - River currents, eddies, and waves;
 - River hazards;
 - Types and causes of river rapids;
 - Scouting and running rapids;
 - River rescue and emergency procedures;
 - Minimizing outdoor recreation resource impacts; and
 - Proper fit, wearing, and use of personal floatation devices.

⁵³ § 33-32-105.5(1)(a), C.R.S.

⁵⁴ Board Regulation 302-1(b).

-
- Trip Leader – Must have the same basic training as the guide plus 500 river miles as a qualified guide.⁵⁵
 - Guide Instructor – Must have the same basic training as the guide plus at least 1,500 river miles, 750 if those river miles must be logged while acting as a guide.⁵⁶

The whitewater businesses generally do not have problems ensuring that guides in their employ meet the necessary conditions. However, fishing outfitters who float on slow moving currents do have problems meeting the conditions.

To become a guide one must get 50 hours of on-river training from a guide instructor and this is reasonable. The issue here is not with the guide qualifications, it is with the trip leader and guide instructor qualifications. It is very difficult for a fishing outfitter to accumulate the miles required to become a guide instructor and in turn train guides. Similar problems arise getting the experience to qualify as a trip leader.

For example, on the Colorado River, a full-day whitewater trip may travel 12 miles or more, while the fishing trip may travel three miles in the same day. On the Poudre River a half-day whitewater trip travels approximately three miles from put-in to take-out, while a full day fishing trip travels approximately one mile. The whitewater guide has the opportunity to get six miles a day compared to one for the fishing guide. If it were possible for a qualified guide to work every day in a given year on the Poudre River, after that year a fishing guide would still not be qualified to lead a trip regardless of the acumen he/she has acquired as a fisher and guide. However, the counterpart whitewater guide will qualify as a trip leader in less than three months, less than one full rafting season. While safety is important to all operators, guiding the whitewater trip takes more technical boatmanship than the float trip where expertise as a fisher is what determines the quality of the trip for the consumer, but is easier to acquire.

Because this problem concerns time on a river versus distance traveled on a river as a qualifying measure, the State Board of Parks and Outdoor Recreation (Board), define in rule, a new time-based measurement standard for fishing guides, “trip day.” In addition, because of the incongruities in both the nature of the businesses and the technical expertise needed, the General Assembly should amend into the Act separate qualification standards for Fishing Guides.

⁵⁵ § 33-32-105.5(1)(b), C.R.S.

⁵⁶ § 33-32-105.5(1)(c), C.R.S.

-
- Guide – Must be 18 years old, have a valid standard first aid card, 50 hours of on-river training from a qualified guide instructor. The training must include:
 - Rigging and maneuvering the vessel;
 - River currents, eddies, and waves;
 - River hazards;
 - Types and causes of river rapids;
 - Scouting and running rapids;
 - River rescue and emergency procedures;
 - Minimizing outdoor recreation resource impacts; and
 - Proper fit, wearing, and use of personal floatation devices.
 - Trip Leader – Must have the same basic training as the guide plus 40 trip days as a qualified guide.
 - Guide Instructors – Must have the same basic training as the guide plus 60 trip days as a qualified guide.

This review is recommending a new, lesser qualification level for fishing guides. A whitewater guide needs far more technical experience to keep clientele safe. Because whitewater guides have a more technically rigorous set of qualifications than the fishing guides, a whitewater guide should be able to guide fishing trips, but the inverse is not appropriate.

The new separate class of guide is meant to qualify flat water fishing guides only. Therefore, to implement this recommendation, the Board must adopt a rule specifically designating stretches of Colorado rivers as “flat water.” If a fishing guide is found on a stretch of river not specifically designated flat water, then that guide should be charged with a class 2 misdemeanor under section 33-32-107(2)(c), C.R.S. The section makes it a violation to, “Operate a vessel with wanton or willful disregard for the safety of persons or property.” The Act currently has a provision mandating licensees employ qualified guides and a disciplinary provision for employing unqualified guides⁵⁷ which may be enough to ensure outfitter responsibility for compliance in these matters.

Adopting a new separate guide category and qualifications for fishing guides will protect consumers by making sure the guides are qualified, and will eliminate an unnecessary regulatory burden.

⁵⁷ §§ 33-32-106(2) and 33-32-109(1)(f), C.R.S.

Recommendation 3 – Require all guides, trip leaders, and guide instructors be trained in cardiopulmonary resuscitation.

Currently, Board Regulation 302-4(b) requires that all guides be trained in cardiopulmonary resuscitation (CPR). This rule takes the Act, which merely requires a standard first-aid card, further and enhances safety.

Because most of the river trips are in remote areas of Colorado and whitewater rafting is an adventure activity that carries a degree of danger, the guide training requirements in the Act should be changed to require all guides, trip leaders, and guide instructors to be trained in CPR. In the event of an accident, performing CPR could possibly save a life. If there is a guarantee that at least one person on every boat, of every regulated trip, is trained in CPR, then the consuming public becomes safer.

Recommendation 4 – Repeal the guide qualification exemption for higher education faculty members.

Institutions of higher education sometimes offer classes in water sports, including river rafting. If the school advertises the class and students pay a fee for the class, then the school is obligated, under the Act, to obtain a river outfitter license. However, the class instructor is exempt from the guide qualification section of the Act.⁵⁸

Research performed for this sunset review found no reason for the higher education exemption. Moreover, if a guide lacks the requisite experience deemed appropriate by the General Assembly, then the passengers in the vessel are in greater danger than they need be. Exempting higher education instructors from the qualifications means there may not be a person on the vessel, or the entire trip, who has ever guided a trip or taken a first-aid class.

The top criterion governing sunset reviews asks if regulation is necessary to protect the health, safety, and welfare of the public. Excusing course instructors from the same qualifications as other guides clearly lessens the protections ordered by the Act without a counterbalance for the public. Therefore, the guide qualification exemption for faculty members of institutions of higher education should be repealed.

⁵⁸ § 33-32-105.5(2), C.R.S.

Recommendation 5 – Redefine “advertising” to include all printed materials and electronic media used in the marketing and messaging of river outfitter operations.

Currently, the definition of advertising in the Act contains a list of several communications mediums from leaflets, to billboards, and television. With widespread use of internet advertising, it is now necessary to add digital advertising to the list.

Rather than continuing to add every new advertising medium, it makes sense to cover all advertising media as generically as possible as long as it applies to river outfitter advertising. A definition that includes, “all printed materials and electronic media used in the marketing and messaging of river outfitter operations,” should cover what needs to be covered by the Act.

The language in section 33-32-104(1), C.R.S., will also need to be amended striking the specific references to print media.

Recommendation 6 – Amend sections 33-32-105.5(b) and 33-32-105.5(c), C.R.S., making language consistent.

Section 33-32-105.5, C.R.S., addresses qualifications for all guide levels. The trip leader qualifications require “...river miles as a qualified guide.”⁵⁹ The guide instructor requires miles “...logged while acting as a guide.”⁶⁰ The verbiage should combine the two standards and be changed to “river miles logged while acting as a qualified guide.” The change will make the Act consistent and eliminate any confusion by either CSP or the licensees.

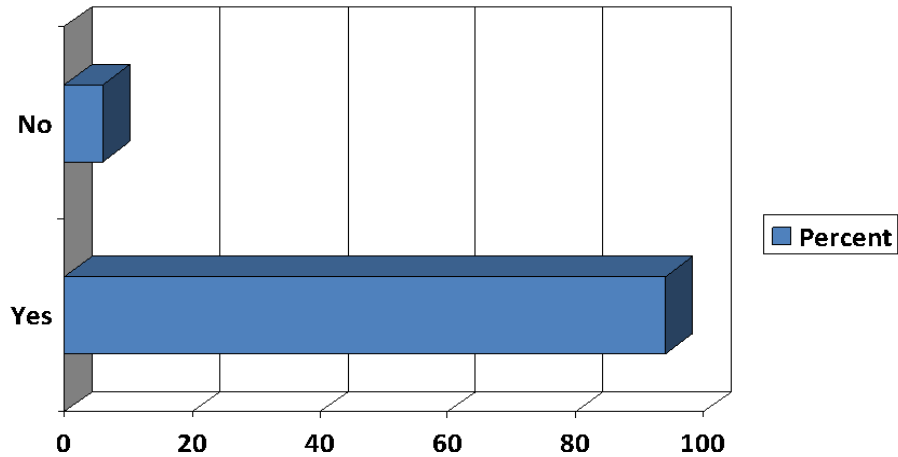
⁵⁹ § 33-32-105.5(b), C.R.S.

⁶⁰ § 33-32-105.5(c), C.R.S.

Appendix A – Survey of River Outfitters

In conjunction with this sunset review, Department of Regulatory Agencies staff conducted a survey of all licensed river outfitters having an email address on record with the Division of State Parks and Recreation, during the spring of 2009. The response rate was very high, nearly 70 percent, indicating an engaged population.

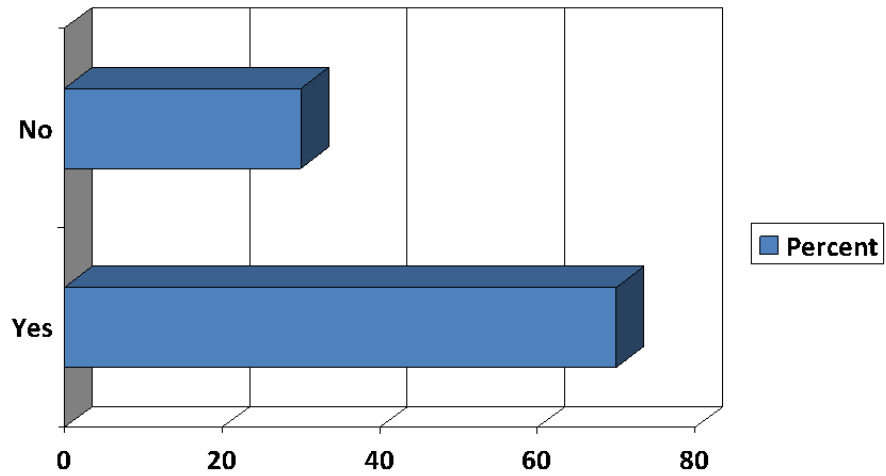
Do you know all areas you may put in and take out of the rivers you run?



Do you know all areas you may put in and take out of the rivers you run?

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Yes	81	94.2%	94.2%	94.2%
No	5	5.8%	5.8%	5.8%

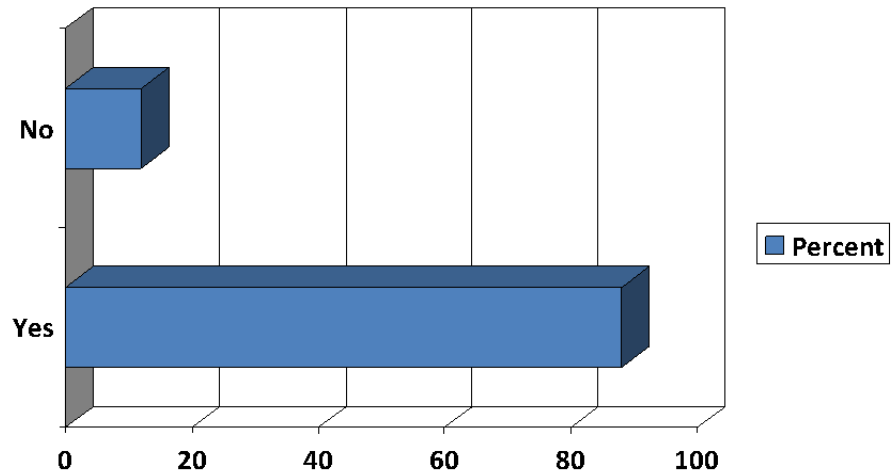
Are river boat safety inspections important?



Are river boat safety inspections important?

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Yes	60	69.8%	69.8%	69.8%
No	26	30.2%	30.2%	30.2%

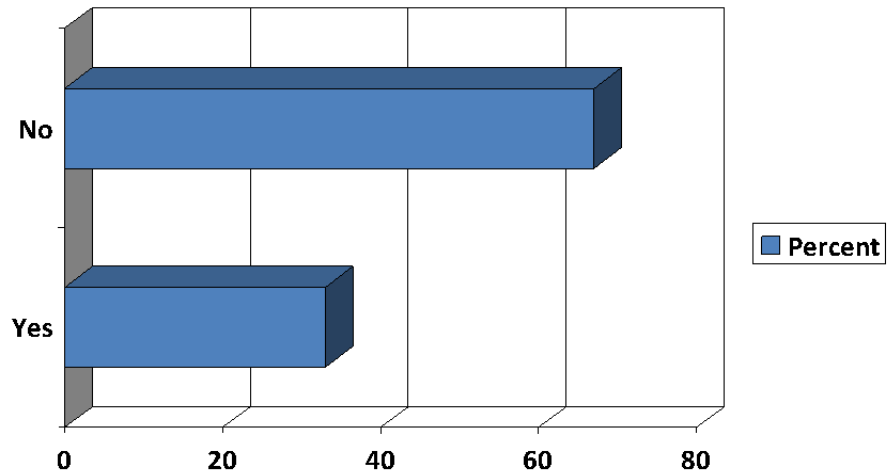
Are the ROL program rangers fair?



Are the ROL program rangers fair?

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Yes	76	88.4%	88.4%	88.4%
No	10	11.6%	11.6%	11.6%

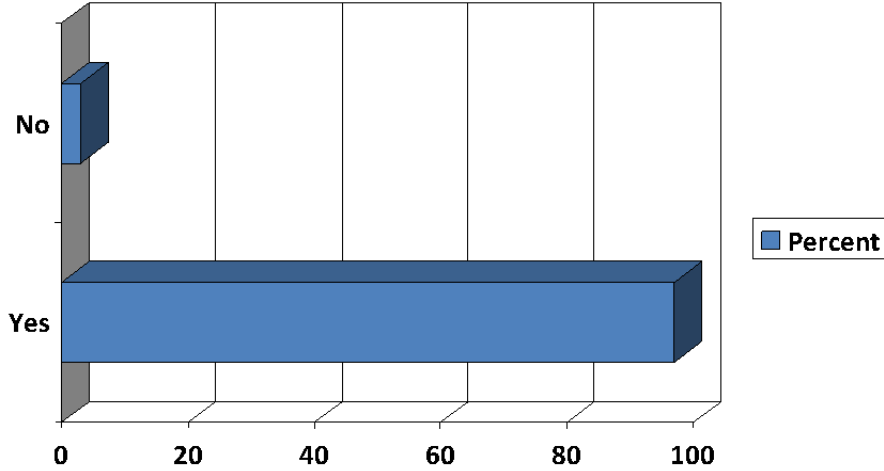
Do you think individual guides should be licensed?



Do you think individual guides should be licensed?

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Yes	28	32.6%	32.6%	32.6%
No	58	67.4%	67.4%	67.4%

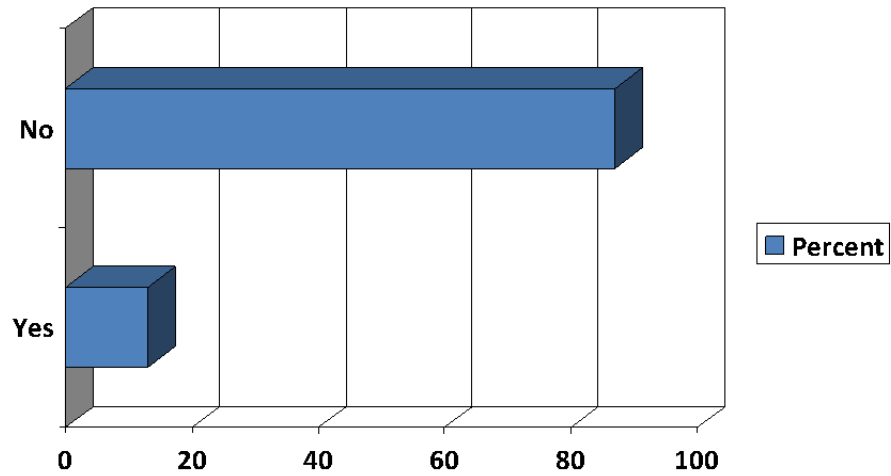
Is it important to have liability insurance?



Is it important to have liability insurance?

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Yes	83	96.5%	96.5%	96.5%
No	3	3.5%	3.5%	3.5%

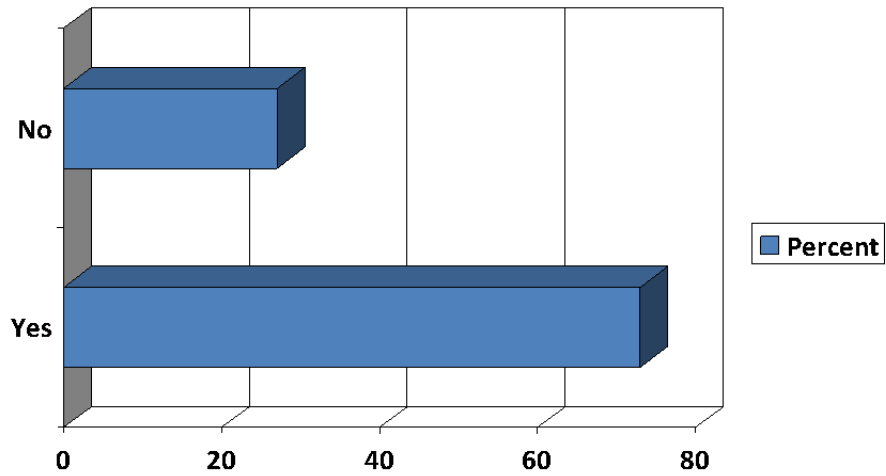
Is on-the-job drug testing of river guides needed?



Is on-the-job drug testing of river guides needed?

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Yes	11	12.8%	12.8%	12.8%
No	75	87.2%	87.2%	87.2%

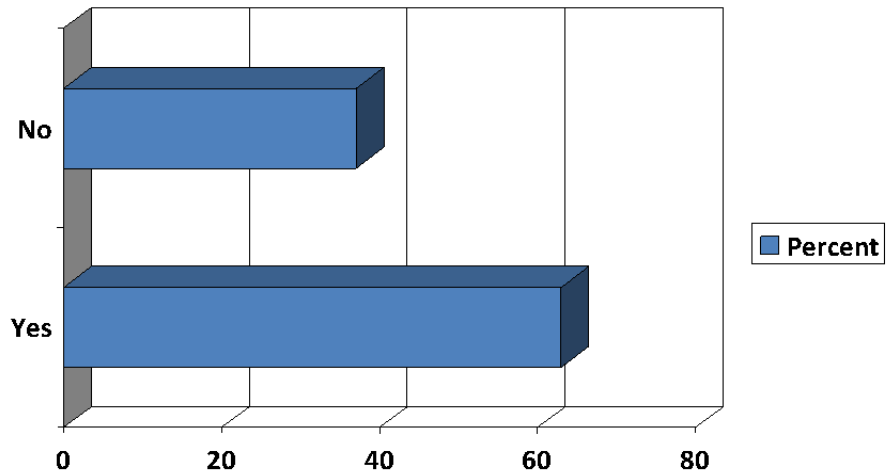
Do you belong to a professional association?



Do you belong to a professional association?

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Yes	63	73.3%	73.3%	73.3%
No	23	26.7%	26.7%	26.7%

Do you hold a license issued by another agency?



Do you hold a license issued by another agency?

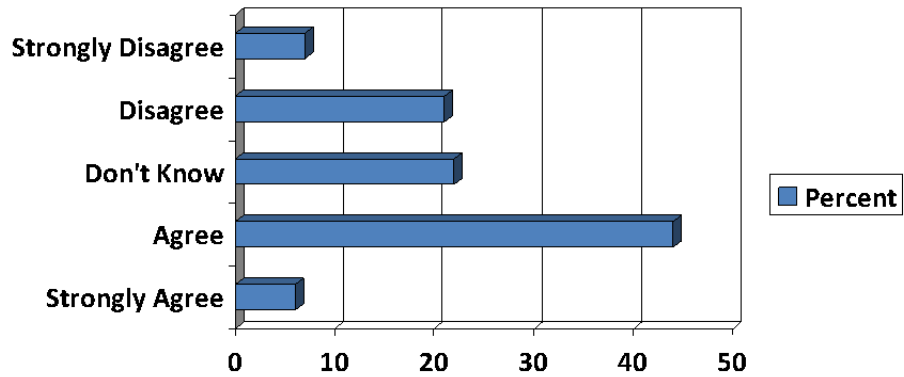
Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Yes	54	62.8%	62.8%	62.8%
No	32	37.2%	37.2%	37.2%

Q.8a If yes which one(s)?

Item	Frequency	Percent
(Not Answered)	32	37.2%
DORA	2	2.3%
BLM	2	2.3%
Colorado State Parks	2	2.3%
AHRA	5	5.8%
(Unique responses)	43	50.0%
(Total)	86	100.0%

Sample Answering: 54 responses

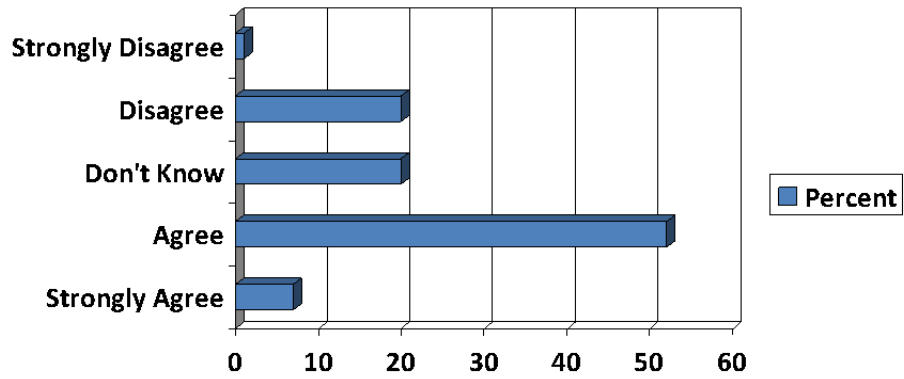
The current ROL program protects businesses and consumers.



The current ROL program protects businesses and consumers.

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Strongly Agree	5	5.8%	5.8%	5.8%
Agree	38	44.2%	44.2%	44.2%
Don't Know	19	22.1%	22.1%	22.1%
Disagree	18	20.9%	20.9%	20.9%
Strongly Disagree	6	7.0%	7.0%	7.0%

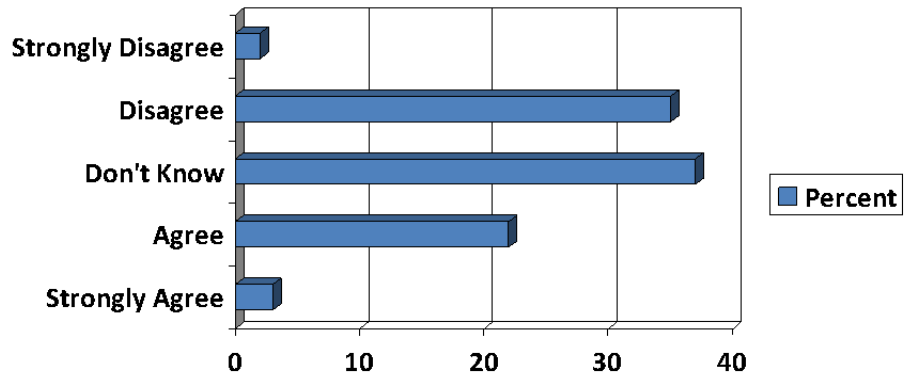
Rangers are helpful on the river.



Rangers are helpful on the river.

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Strongly Agree	6	7.0%	7.0%	7.0%
Agree	45	52.3%	52.3%	52.3%
Don't Know	17	19.8%	19.8%	19.8%
Disagree	17	19.8%	19.8%	19.8%
Strongly Disagree	1	1.2%	1.2%	1.2%

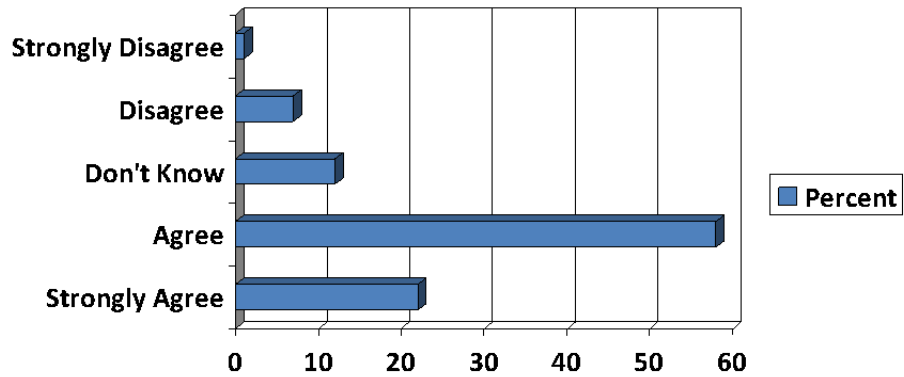
The ROL program does too many inspections.



The ROL program does too many inspections.

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Strongly Agree	3	3.5%	3.5%	3.5%
Agree	19	22.1%	22.1%	22.1%
Don't Know	32	37.2%	37.2%	37.2%
Disagree	30	34.9%	34.9%	34.9%
Strongly Disagree	2	2.3%	2.3%	2.3%

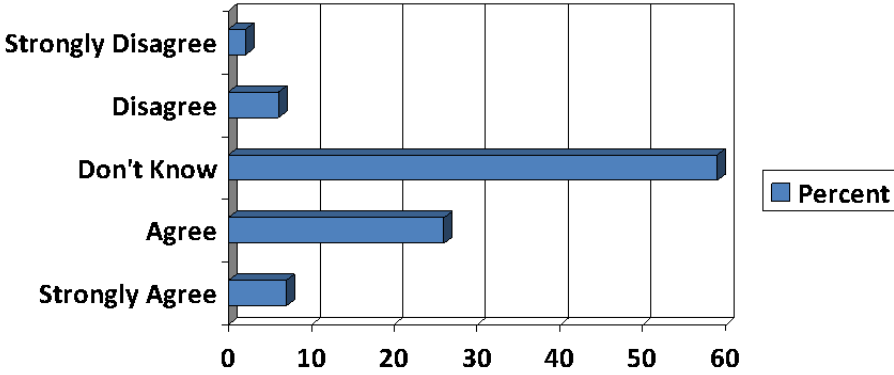
ROL inspections are thorough.



ROL inspections are thorough.

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Strongly Agree	19	22.1%	22.1%	22.1%
Agree	50	58.1%	58.1%	58.1%
Don't Know	10	11.6%	11.6%	11.6%
Disagree	6	7.0%	7.0%	7.0%
Strongly Disagree	1	1.2%	1.2%	1.2%

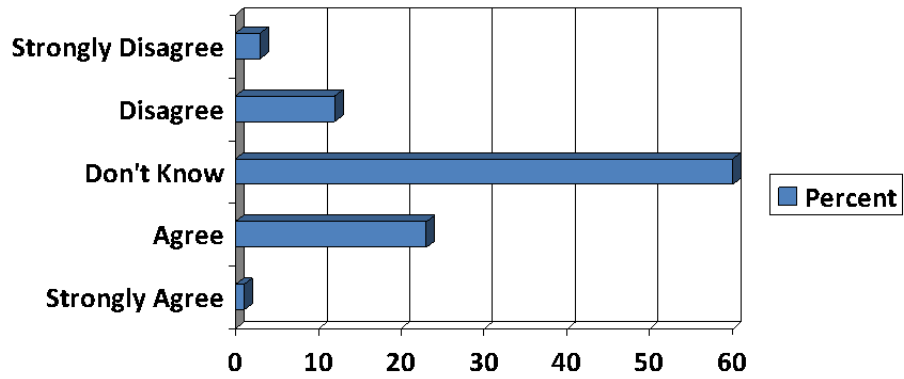
ROL investigations are thorough.



ROL investigations are thorough.

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Strongly Agree	6	7.0%	7.0%	7.0%
Agree	22	25.6%	25.6%	25.6%
Don't Know	51	59.3%	59.3%	59.3%
Disagree	5	5.8%	5.8%	5.8%
Strongly Disagree	2	2.3%	2.3%	2.3%

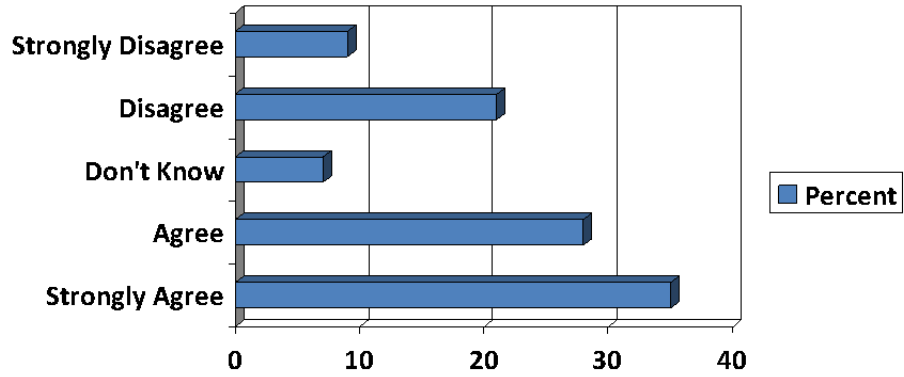
ROL investigations are fair.



ROL investigations are fair.

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Strongly Agree	1	1.2%	1.2%	1.2%
Agree	20	23.3%	23.3%	23.3%
Don't Know	52	60.5%	60.5%	60.5%
Disagree	10	11.6%	11.6%	11.6%
Strongly Disagree	3	3.5%	3.5%	3.5%

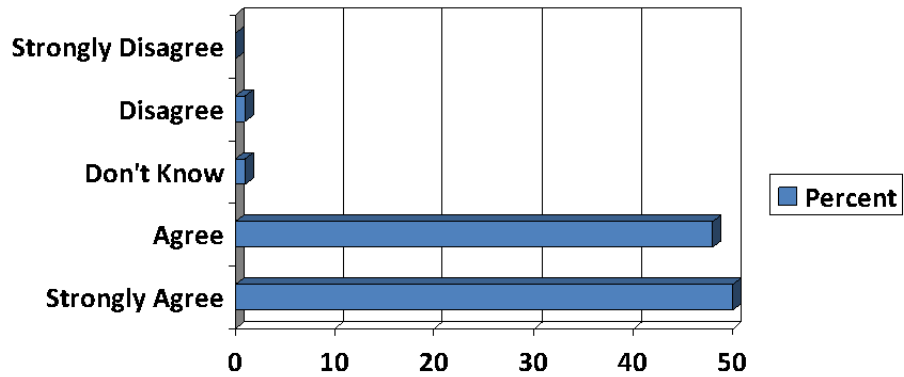
The ROL is important to keep unqualified outfitters from operating.



The ROL is important to keep unqualified outfitters from operating.

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Strongly Agree	30	34.9%	34.9%	34.9%
Agree	24	27.9%	27.9%	27.9%
Don't Know	6	7.0%	7.0%	7.0%
Disagree	18	20.9%	20.9%	20.9%
Strongly Disagree	8	9.3%	9.3%	9.3%

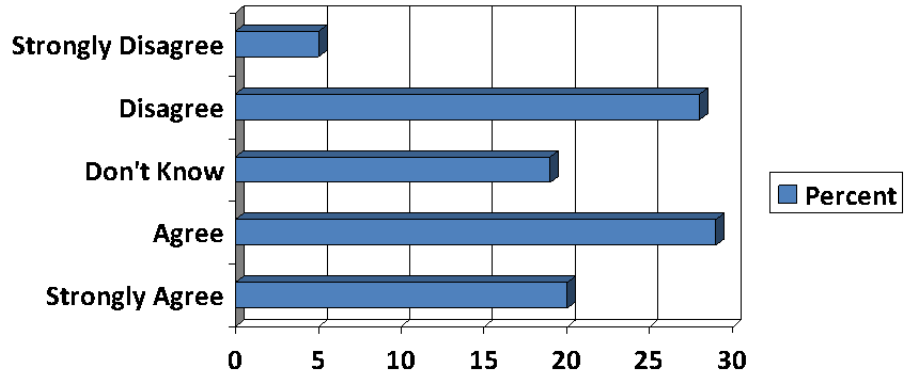
It is important to ensure that guides are experienced.



It is important to ensure that guides are experienced.

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Strongly Agree	43	50.0%	50.0%	50.0%
Agree	41	47.7%	47.7%	47.7%
Don't Know	1	1.2%	1.2%	1.2%
Disagree	1	1.2%	1.2%	1.2%
Strongly Disagree	0	0.0%	0.0%	0.0%

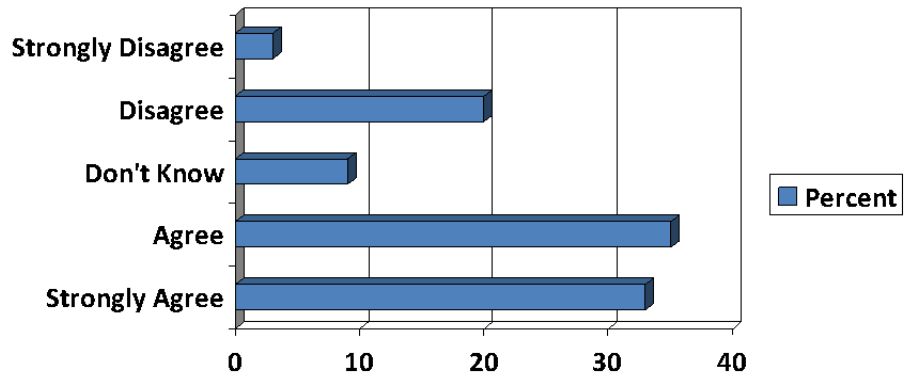
Having qualified guides is more important than licensing outfitters.



Having qualified guides is more important than licensing outfitters.

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Strongly Agree	17	19.8%	19.8%	19.8%
Agree	25	29.1%	29.1%	29.1%
Don't Know	16	18.6%	18.6%	18.6%
Disagree	24	27.9%	27.9%	27.9%
Strongly Disagree	4	4.7%	4.7%	4.7%

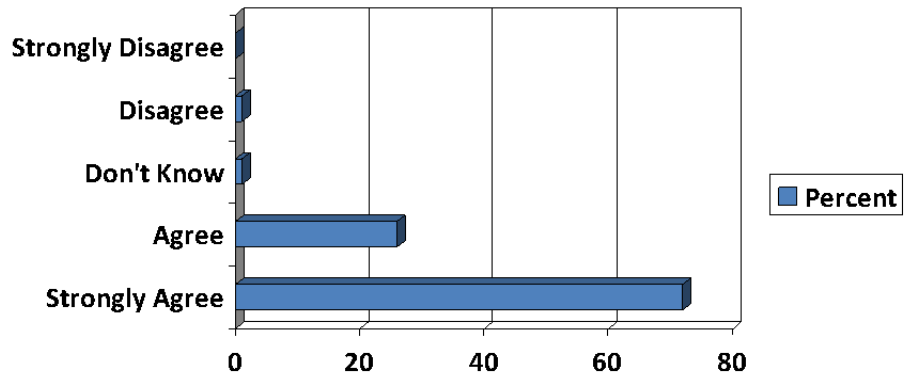
Fishing Outfitters should have different qualifications from Whitewater Outfitters.



Fishing Outfitters should have different qualifications from Whitewater Outfitters.

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Strongly Agree	28	32.6%	32.6%	32.6%
Agree	30	34.9%	34.9%	34.9%
Don't Know	8	9.3%	9.3%	9.3%
Disagree	17	19.8%	19.8%	19.8%
Strongly Disagree	3	3.5%	3.5%	3.5%

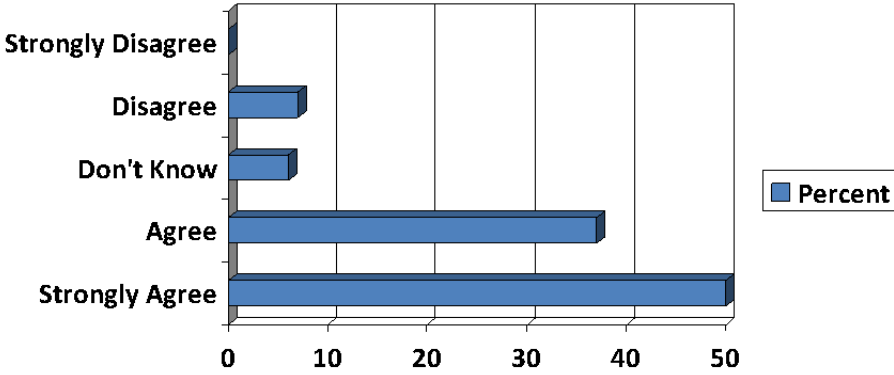
It is important to have a properly equipped boat on the river.



It is important to have a properly equipped boat on the river.

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Strongly Agree	62	72.1%	72.1%	72.1%
Agree	22	25.6%	25.6%	25.6%
Don't Know	1	1.2%	1.2%	1.2%
Disagree	1	1.2%	1.2%	1.2%
Strongly Disagree	0	0.0%	0.0%	0.0%

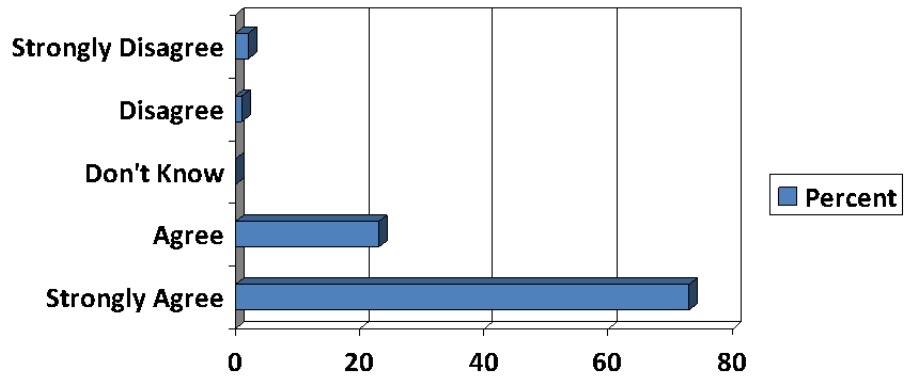
It is important to have specific river related items in a first aid kit.



It is important to have specific river related items in a first aid kit.

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Strongly Agree	43	50.0%	50.0%	50.0%
Agree	32	37.2%	37.2%	37.2%
Don't Know	5	5.8%	5.8%	5.8%
Disagree	6	7.0%	7.0%	7.0%
Strongly Disagree	0	0.0%	0.0%	0.0%

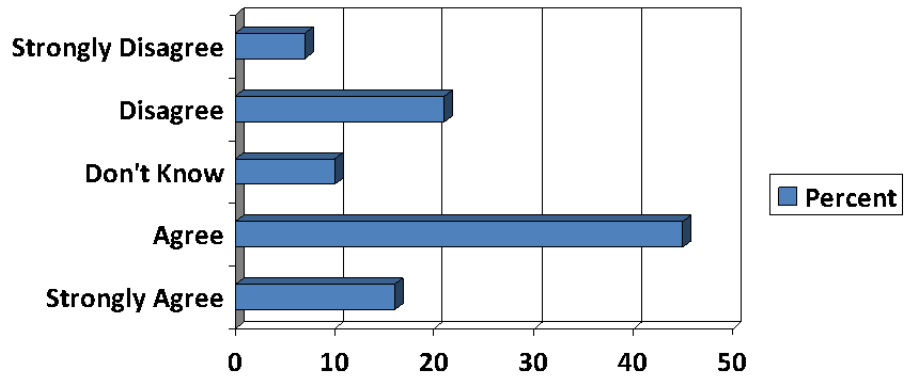
It is important to educate passengers prior to putting into the river?



It is important to educate passengers prior to putting into the river?

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Strongly Agree	63	73.3%	73.3%	73.3%
Agree	20	23.3%	23.3%	23.3%
Don't Know	0	0.0%	0.0%	0.0%
Disagree	1	1.2%	1.2%	1.2%
Strongly Disagree	2	2.3%	2.3%	2.3%

The ROL program is necessary to protect the consumer.



The ROL program is necessary to protect the consumer.

Choice	Count	Percentage of Sample Answering	Percentage of Sample Asked	Percentage of Total Sample
Strongly Agree	14	16.3%	16.3%	16.3%
Agree	39	45.3%	45.3%	45.3%
Don't Know	9	10.5%	10.5%	10.5%
Disagree	18	20.9%	20.9%	20.9%
Strongly Disagree	6	7.0%	7.0%	7.0%