



The FOAMLINE

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FISHING OUTFITTERS ASSOCIATION OF MONTANA
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DECEMBER 2009

NEW EXECUTIVE DIRECTOR FOR MBO

Montana Native, First Woman Executive Director Selected

Trudy Phippen, one of 38 candidates for the ED position at the Board of Outfitters, was selected by the Business and Occupational Licensing Bureau of the Dept. of Labor and Industry (DLI) earlier this month. Ms. Phippen will be in her new job as of Monday, 12/14.

A native of Cutbank and graduate of Montana State University, Phippen has a long history working within state and local government: She headed up various social work offices in Glacier, Liberty, and Toole counties, worked as a juvenile probation officer for Montana's 9th Judicial District, moved to Bozeman in 1994 to be clerk of the City Court, then headed for Helena for a decade as a supervisor in the DLI Hearings Bureau, and most recently worked in the Governor's Office.

Bright, interested, personable, and eager, Ms. Phippen attended the MBO meeting on Wednesday, Dec. 10, listening and learning about the variety of issues and histories she'll need to ably administer the Board of Outfitters. Welcome aboard, Trudy!

FISH OUTFITTER OP PLAN OPTIONS REVIEW

Several New Amendments Offered in Outfitter Renewal Pack

The Fall FOAMLINE covered the newly-adopted Fishing Outfitter Operation Plan amendments available from the Board of Outfitters due to FOAM's two-year campaign to simplify and streamline adding many new waterbodies to your op plan. This is just a brief review of those choices to help renewing outfitters in their decision of what to add to their own plans.

New choices include: 1) All waters in the state accessible via the Stream Access Law *that do not require a permit or landowner permission*. So, if you can reach the water by means of the Stream Access Law (including at bridges), checking this option automatically lists them in your operations plan.

If you did not receive the notice about this choice in your outfitter license reapplication packet, you may go to the MBO site, http://mt.gov/dli/bsd/license/bsd_boards/out_board/board_page.asp then head for 'Applications/Forms', and 'License Application Forms', then 'General Forms' and finally, 'Fishing Outfitter Operations Plan Amendment' for the form itself. For instructions, read the 'Important Information Regarding Updating Your Fishing Operations Plan' file found there, too. These files are on our site, too.

2) Most FOAM members are familiar with the FWP Commercial Use Permit that grants us access to all FWP Fishing Access Sites (FAS) throughout the state. Since this is a permit, the waters accessed through FWP FAS are *not* included in the first option above, but can be chosen either as a group (all FAS and associ-

ated waterbodies) or individually (each FAS and associated waterbody from a list). NOTE: If you want all the FAS/Waterbodies, do NOT send in the entire 15-page list - just send the first page with the Stream Access option checked from PART A and Option 1 checked in PART B. If you want just some of the FWP FAS, check them on the other pages and send those pages in to the MBO.

If you have any questions, call FOAM at 406.763.5436.

FOAM MAKES HEADWAY WITH MBO, FWP

Log, Tally Sheet & Equipment Contracts Changes Eyed

Fishing outfitters and FOAM have long lobbied the MBO and FWP to simplify our logs and the green logbooks for the Big Hole, Beaverhead, and Madison rivers and similar papers for the Blackfoot.

Board of Outfitter, FWP, and FOAM representatives met on 12/15 to begin streamlining the entire reporting process. Several possibilities include: 1) Changing a log page column title from "Stream Section" to "Put in / Take out" for accuracy and 2) logging all the standard trip info for individual restricted rivers on separate special log pages. These special log pages would be shared with FWP so they could audit permittee compliance with various restricted river rules.

Since outfitter daily log sheets are currently available to FWP only for criminal investigations, the MBO would have to propose a rule change giving FWP access to these new "restricted river" log pages for audit and enforcement purposes only. No shared records would be available to the public. Log sharing seems like a reasonable tradeoff for reduced paperwork. Of course, FOAM members will be able to comment on any proposed rule.

Next, since 1995, we've had to list "actual clients served" on tally sheets, making us search our logs for individual clients and separating service days from actual clients served.

FOAM reasoned that the law dictating this requirement is keyed directly to hunting outfitters only, and in December convinced MBO Counsel to let staff drop the "Actual Clients Served" from Fishing Outfitter tally sheets, eliminating an unnecessary statistic that's been a longtime hassle.

FOAM ED Cunningham worked with the board to sponsor legislation allowing outfitters to contract for equipment as well as own it or hold it under written lease. So what, you ask?

As MBO law stands now, outfitters can only 'own or hold under lease' the equipment they use for their operation. So, say an outfitter wants to take several boatloads of clients on any given trip; under current law, they must own or lease the boats used for that trip. We know few outfitters who use their own multiple water-craft for such trips - typically, the outfitter hires a guide with Independent

Contractor status who supply their own boat when working with an outfitter. FOAM wanted the MBO to recognize this common business practice in law. Hence, adding 'contract for' to the current laws addressing equipment requirements for outfitters in several portions of MBO statutes.

FOAM's requested legal changes will be included in Dept. of Labor & Industry legislation prepared for the 2011 session, and FOAM will ask for member support for this DLI bill in early 2011.

MBO BUDGET SCAN REVEALS OVERSIGHTS

Projections Off, But Fee Increase Put Off for Many Years

The previous FOAMLINE discussed the budget problems presented at this August's MBO meeting and the possibility of a licensee fee increase long before the promised 10-year period was up. During the December MBO meeting, Bureau Chief Jeannie Worsech spent considerable time explaining the errors she found after a review of the budget proposal used to determine the fee increases we received a few years back.

In short, the MBO budget projections mistakenly overestimated the income expected from the fee increase. Revenue from guide applications charged the new \$150 fee was less than projected because the rule regarding guide fees was delayed by six months. Similarly, outfitter fee increases, revenue from operation plan fees, and the \$2 hunting client fee income were less than expected. And, the figures underestimated the loss of income due to licensees not renewing due to the increased fees.

Adjusting the budget to reflect the actual income from the fee change, Ms. Worsech predicted with better accuracy that the Board of Outfitter's income, expense, and cash-on-hand at the end of each fiscal year showed no need for a fee increase for some six years. Yes, this is sooner than the promised ten years the board announced during the fee increase, but licensees are not facing an immediate fee increase to fund the board's operations.

Board Chair Lee Kinsey and Ms. Worsech are determined to control expenses in order to keep a fee increase at bay for the estimated six years.

ETHICS AND THE GUIDING INDUSTRY

Part Three of a Series - Tim Tollett, Frontier Anglers, Dillon

After a busy summer, I am back on track with additional input for our future Montana Guiding Fishing Code of Ethics. This is the third installment of an on-going series. See previous FOAM-LINEs for the other parts of the series.

I was reading somewhere the other day and came across the following quote from Aldo Leopold that I thought should be read

by all of us who take our guiding practices as seriously as we do.

"Voluntary adherence to an ethical code elevates the self-respect of the sportsman, but it should not be forgotten that voluntary disregard of the code degenerates and depraves him"

- Aldo Leopold

(A Sand Country Almanac, 1949).

I think Mr. Leopold's idea is the just cause of why we have and need a Code of Ethics that we can all call our own. This time around, I'll touch on some things that get overlooked within our guiding ethics.

Respect Private Property

All bodies of water, whether it is a lake or stream, have some adjoining private property somewhere along their banks. We all need to know these boundaries and respect the property that is private beyond our public waterways. If you conduct business on private property, be responsible for your actions and treat the land as if it belongs to you. Clean up after yourself and your clients and always try to pick up what others have left behind too. Leave gates the way you found them.

Respect Fish

Release fish as quickly as possible. If you or your clients want a picture, use a net, rubber netting preferred, and keep them in the water. Don't toss fish back like a United baggage handler. If they have been played longer than what is justifiable, give them time to recover. Keep them in the water until they have gained their strength back. Remember that when they are caught again, whether by your clients or someone else's, that the smile will be just as big the second time around. If you keep fish, make sure you know the limit and always properly care for them in a reasonable fashion.

Respect your Client

The people that fish with us come from all walks of life. They have been successful in their business just as you have in yours. They don't know what you know about fishing. They may know how to drill on teeth or build a house, but when it comes to fishing, it is up to you to provide them with that opportunity. They have sought you out to pay for your services as a guide to help them catch fish. Be patient, understanding and polite. Your clients are human just like you, and if they were teaching you how to do open heart surgery, they probably wouldn't yell at you to perform your job.

There will be more to come in our next issue of FOAM-LINE. If you want to pass on your comments, please e-mail me at frontieranglers@mcn.net. I would appreciate any and all comments. This is your future.

Thank you,

Tim Tollett

BOARD of DIRECTORS

Region 1 (Kootenai, Flathead)
Jim Voeller
862-3448

Region 3 (Missouri)
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Joe Moore
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666-2473

Guide-at-Large Director Russell Parks 543-7078

A NOTE ON GUIDE-OUTFITTER RELATIONS

Mutual Respect and One Man's Take on Good Business

While working with FOAM members for about twenty years and outfitting for twenty-five, I've met, dealt with, and thought about guides and outfitters and how they work together a lot. Each job has its duties and responsibilities; both jobs can and should work together in what, for lack of a better term, I call good business.

Guides and outfitters who guide typically build solid, long-term personal relationships with clients that are a natural by-product of time spent together on the water and the cornerstone of equally long-term business relations.

Equally strong is the respect guides and outfitters can have for each other, the natural understanding of the mutual cooperation both guide and outfitter need to succeed in our industry. Unfortunately, I've also seen and heard from many outfitters about the breakdown of this respect and cooperation.

Sometimes, when a guide spends a lot of time with a particular client and the client wants to be with that guide again and again, there is a strong temptation for the guide to make arrangements with the client for trips - and even take fees - behind the outfitter's back. This also happens when one outfitter hires another outfitter to help out on a multi-boat trip, or when a non-outfitter flyshop owner thinks the clients are his/her business assets and trades one outfitter-of-record for another in a selfish business move.

We all know guides or shops booking clients is illegal. Yes, outfitters can designate someone, even a guide, as an 'agent' to accept money on their behalf, but that's all; no solicitation for business.

Check the law: "'Guide' means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed."

OK, so what's an outfitter? "'Outfitter' means any person . . . who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person."

And, MBO rules state that outfitters shall "set all terms and conditions with clients" and that guides shall "not make agreements with clients concerning monetary consideration of services offered, or collect fees from clients, *without the express consent of the supervising outfitter.*" (Italics are mine for emphasis.)

It's clear to me that guides do not have the right to do business with clients without the consent of an outfitter, and if they do, they are open to charges of unlicensed practice as an outfitter and subject to new laws that consider that practice a felony tied to fines of up to \$1000 per client per day. The same goes for non-licensed persons, like flyshop owners.

Many outfitters I've talked with are angry when their guides act like unlicensed outfitters or fellow outfitters covertly or openly

book trips with clients they met through other outfitters.

Sure, if the client calls the guide or outfitter directly, there's a the question of "Who's in charge here?" To me, it's very simple - the clients belong to the outfitter who originally booked them. Clearly, a guide shouldn't book the clients; they should simply tell the clients to continue booking with the original outfitter and make it clear to the outfitter that they want to go out with such-and-such guide. Most outfitters recognize the relationship built between guide and client and want to continue good business with both.

The same goes for outfitters who help other outfitters with their clients - respect the good business built up between the booking outfitter and clients, no matter how lucrative it may seem to take the client away from the original outfitter.

Finally, this idea goes double for the guide who has worked for an outfitter for years, then moves up to become an outfitter. Don't steal clients from your former business partner, no matter how long you've guided them. And if the clients call you, I think you have the obligation to tell the original outfitter they've contacted you and spell out your intentions - to have them book with the original and ask to guide them, or to book them yourself. Don't just book them and ignore the other outfitter, thinking, "Well, they called me, not him, so now they're mine."

I'm sure this sounds hokey to those who think a profitable business is more important than good relations between their fellow guides and outfitters or that an attitude of 'survival of the fittest - or most aggressive' is the way to go. And I'm not ignoring the outfitter-guide or outfitter-outfitter relationships that have eroded to bottom-line business without regard or respect for each other's needs and feelings. I'm simply stating what I perceive as 'good business' that extends beyond commerce and embraces those long-term relations I mentioned at the beginning. We can all profit in many ways when this 'good business' is the driver for our industry and characterizes how we deal with our fellow FOAM members.

Sound too naive or too optimistic for you? Sound good? Let me hear from you. Call me at the FOAM offices - 406.763.5436.

- Robin Cunningham

FOAM COMMENTS ON BLACKFOOT PLAN

Seeking More Alternatives to Permitting, Triggers

A draft Blackfoot River Management Plan is out. Get a copy at fwp.mt.gov (look for the Recreation header).

The plan is the product of the River Recreation Advisory for Tomorrow (RRAFT) Committee and outlines stretch-by-stretch characteristics, suitable use types and levels, future objectives, and thresholds for more concentrated management on the Blackfoot River. This group's efforts are grounded in the quality work of the Blackfoot Challenge and the previous BLM Special Recreational Permit (SRP) process.

FOAM will offer comments on two aspects of the proposal: a section outlining the threshold of use levels for Reach 3 from Harry Morgan to Russell Gates, and the possible 'overflow' issue between Reach 3 and Reaches 4 and 5. Let's take these one at a time.

Reach 3: We support the self-registration method chosen

to collect use data, through we question the mechanics: How will users register? What incentive is there for all to register? How accurately will registration reflect use patterns?

And, we question the “40 launches per day” based on “fifteen-minute intervals between launches” as the standard used to gauge “frequency of encounters” in this reach. Anyone who’s floated knows that delays, stopping, floating ahead, and other basics will upset any standard interval between floating craft or launch parties. We’ll just have to see how and if this standard is supported by use data collected in 2011 and 2012.

FOAM comments emphasize intermediate steps we can suggest or take to offset any fixed or allocated permit systems. Clearly, any decisions should be based on user data collected in a responsible way rather than anecdotal or subjective comments garnered at random. And, we stress involvement with the department’s decision-making long prior to any actual recommendations are set for FWP Commission consideration. We hope the RRAFT Committee is not the last opportunity for dialogue between interested and affected parties and FWP.

Reach 4 and Upper Reach 5: To manage the possibility of “overflow” from Reach 3 upstream, FOAM commented “Combining use data collected in Reach 3 with monitoring of conditions in Reach 4 and Upper Reach 5 is the appropriate method for gauging use patterns and anticipating standards development long before critical use levels in these lower reaches dictate application of more serious management techniques.”

FWP FAS COMMERCIAL RULES RENEWED

Commission Creates Daily Permit, Adopts New Definitions

At their November meeting, the FWP Commission reviewed the current Commercial Use Rules regarding use of FWP lands and Fishing Access Sites (FAS) statewide. The department recommended continuing the current rules with the addition of more accurate definitions of outfitter and guide taken directly from Board of Outfitters statutes, and unlicensed service providers, now considered “water-based service providers” to distinguish them from licensed outfitters and guides.

Fees for use of FAS were kept the same: \$100 for outfitters, guides, and “water-based service providers.” And, as of March, 2010, outfitters, guides, and water-based service providers can buy any number of date-specific daily permits for \$15/day rather than the season-long \$100 permit. This change was in response to whitewater guides who work only a few days and didn’t want to purchase a year-long permit for a disproportionate fee of \$100.

With the daily permit rule in mind, if you operate solely on a permitted and/or restricted river, you do not need to purchase a Commercial Use Permit. However, if you do work on controlled waters, but want to occasionally work on another stream and use an FWP FAS to access it, you can purchase these daily permits and have at it.

No other changes were approved for this now-standardized Commercial Use Permit rule. So far, so good, right?

- FWP FAS Commercial Rules: A Good Change
- Blackfoot Mgt Plan Comments
- Guide-Outfitter Relations: One Guy's Opinion
- Ethics & the Guiding Industry, Part 3
- FOAM Gets Changes from MBO
- Op Plan Options Review
- New Executive Director for Board of Outfitters

In This Issue

Fishing Outfitter Website Development - Seeking a reasonably-priced professional online presence? Web-wrx has been building outfitter sites and revamping existing sites for 5 years. 15% off regular fee for newly-licensed fishing outfitters. www.web-wrx.com or call (406) 763-4761.

For Sale: 141 Beaverhead Days - \$350/day. Outfitter will consider splitting Beaverhead/Big Hole Use Days. Special Use days are becoming hard to find. Tim Tollett sales agent, 406.925.1225. (Carriage House Realty, Bill Forrester broker). Representing a long-use outfitter.

New Driftboat Manufacturer: RivTech Driftboats - The only vacuum-infused driftboat on the market. Look for RivTech at one of the upcoming “Great Rockies Sport Shows” Billings, Jan 15, 16, 17; Bozeman, Jan 29, 30, 31; Great Falls, Feb 5, 6, 7. rivtechdriftboats.com

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