



# The FOAMLINE

VOL. 12, #2

FISHING OUTFITTERS ASSOCIATION OF MONTANA

FALL 2003

## FOAM HEALTH INSURANCE OFFER LAPSES

*Renewed Offer Available Until End of the Year*

Recently, FOAM offered a group health insurance program for our members. In 2002, enough people were interested to seek out rates, but too few people were willing to sign up and the deal died. We tried again in the summer of 2003, but too few members indicated any interest. Maybe the timing was bad, maybe members wanted to make some money before considering insurance . . . who knows? But, we're willing to try one more time this fall.

Between now and the end of the year, FOAM will again ask members to decide if they're interested in a group health insurance policy. We need 120 or so members willing to consider trying our plan before we can seek rates and health coverage details. If you're interested, call the FOAM offices (406-763-5436) before January 1, 2004.

If about 120 members show interest, we'll gather their names, addresses, ages, and some basic health information so an insurance underwriter can assess our "risk". Next, our insurance agent will shop for plans that suit our needs, then let us know the rates, deductibles, and details of coverage. During February, we can mail this information to the interested members, who then decide if they like the terms and join up or not.

FOAM has learned that the health insurance market for outfitters and guides has shrunk considerably, with only a few insurers willing to cover our lifestyles. This could make our association offer all the more attractive.

Take this fall to think about whether you want to try better coverage at a competitive rate when comparing per-dollar cost to coverage and deductibles. Don't let this one get away. GIVE US A CALL, and we'll do our best to build a health insurance program as another benefit of FOAM membership.

## FOAM CONSTITUTION, BY-LAW REVISIONS, ANNUAL MEETING SCHEDULE CHANGES

*Board Suggests Polling, Spring Annual Meeting*

For the past several years, the FOAM annual membership meeting held in early November has been sparsely attended. Many members complained about the end-of-the-year timing and wanted to go back to our old spring-time schedule.

The Board of Directors heeded these ideas and planned our meeting for March 2004, but there's a hitch.

According to our constitution and by-laws, annual meetings are currently the only way to nominate new directors before ballots are mailed out for elections. Holding nominations in November leaves December for elections so new directors can start a their terms on a calendar-year basis in January.

The board recommends changing the constitution to drop nominatons at the annual meeting and updating the by-laws to allow nominations by polling the members via mail and phone. Plus, because FOAM recently incorporated for legal and business entity reasons, we need to change the constitution and bylaws to reflect that status. Finally, President Matt Greemore suggested adding "consideration of all relevant facts and circumstances" to the by-laws dealing with membership revocation and reinstatement. Look for the enclosed ballot in this issue of *The FOAMLINE* to vote on these constitution and by-law changes. Ballots must be received by October 20 to be valid.

This year's annual meeting has been tentatively rescheduled for March 2004, depending on what your ballots dictate. FOAM will notify members of the results in late October. Thanks for your suggestions and consideration. Outfitters, please fill out and send in your ballot.

## RIVER RECREATION ADVISORY COUNCIL PRESENTS FINAL RECOMMENDATIONS

*Statewide Perspective Keys on Planning, not Mechanisms*

On July 10, the River Rec. Council presented their recommendations to the FWP Commission. Steve Luebeck, a Butte angler, provided an overview of the recommendations, Cindy Kittredge, rancher from Cascade, gave a great digital slide show of colorful and scenic views of Montana's great rivers overlaid with the guiding principles the RRAC followed when developing their recommendations, and Robin Cunningham, FOAM outfitter, wrapped up with an explanation of the decision-making process recommended for developing river management plans.

Commissioner John Brenden from Scobey noted the possible expense these recommendations would require, and other commissioners expressed cautious interest. There was a lot of material to absorb and understand, so it's not surprising that the commissioners were a little daunted.

The commission has asked FWP to convene an internal working group to formulate a river management policy based on the RRAC recommendations. Once the basic policy is in place (FOAM holds that it be adopted as a MAPA rule), the specific recommendations of the RRAC

can be implemented on specific rivers. By all accounts, the Blackfoot is next in line, though many others are right behind.

One area needing much more work is permitting. The RRAC is scheduled to reconvene in the near future to review a variety of permitting systems and make further recommendations to the commission. Commission Chairman Dan Walker asked that some type of permits be available by 2004 - perhaps a little hasty, since few rivers have sufficient use data to support a call for permits.

As usual, FOAM will track these developments and participate to the best of our ability, keeping members up to date on any changes.

Our website, [www.foam-montana.org](http://www.foam-montana.org), has a link to the complete RRAC recommendations as presented to the commission in July.

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## BEAVERHEAD, BIG HOLE BIENNIAL RULES MAY CHANGE WITH RRAC GUIDELINES

*Commission Could Alter Basics on One or Both Rivers*

When the FWP Commission re-adopted the current BH2 rules, they made note that they were waiting for the RRAC recommendations and may alter the rules on either or both rivers based on the decision-making process developed by the RRAC.

As mentioned above, after the commission first lays out a general river management policy, they could review and revise the biennial rule as soon as next spring. FOAM outfitters contacted were interested in changes, mentioning that, come Labor Day, the rules relax considerably and the timing for change would be suitable before the next season starts in the spring. They also noted that the severe drawdowns at Clark Canyon Reservoir and the continued low flows on the Big Hole may warrant some rule changes.

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## NEW INDEPENDENT CONTRACTOR RULING NEEDS CLOSE REVIEW BY HIRING AGENT

*Montana Supreme Court Tightens Key Definitions*

In a recent ruling, the Montana Supreme Court slightly narrowed the circumstances for using independent contractors. The case, *Wild v. Fregein Construction and Montana State Compensation Insurance Fund*, puts new emphasis on an I.C.'s "freedom from control" and helped outline specific factors to determine if an I.C. is "engaged

in an independently established trade."

The Dept. of Labor and Industry has listed a series of factors they apply when considering I.C. circumstances. Look for them on our website ([www.foam-montana.org](http://www.foam-montana.org)) under IC's in the FAQ's section of our Member Services page.

While not substantially changing the hiring agent-I.C. relationship, the factors re-emphasize the need for agents, such as outfitters, to get proof of an I.C.'s exemption *before* using them to provide services, keeping a copy of the exemption, and making sure their working relationship considers the factors outlined by the Department.

If you have any questions, call the Independent Contractor Central Unit of the Workman's Compensation Bureau in the Dept. of Labor and Industry at 444-1446.

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## BOARD OF OUTFITTERS REVAMPS FIRST AID REQUIREMENTS, LOWERS PENALTIES

*Copy of Card; First-time Lapses = Non-public Letter*

The Board of Outfitters is changing the rule for first aid card certification. When applying for a new or renewed outfitter or guide license, you must supply the MBO with a copy of your current first aid certification card. The board dropped the old affidavit system that allowed applicants to "swear" they had a valid card because too many licensees were swearing they had a card but couldn't produce one when asked. New MBO Executive Director Wayne Johnston quipped, "We were letting licensees get enough rope to hang themselves," suggesting the ease of swearing on an affidavit too often meant the outfitter or guide didn't follow through and update their card after sending in the affidavit with their license application.

On the other hand, the board's screening panel, the group responsible for reviewing complaints or licensee misconduct, has decided that first-time offenders whose first aid certification period (and card) runs out while *not serving clients* should only receive a letter instructing them to get the card renewed immediately. This letter is not part of the public record. However, if a licensee is found to be without a valid card *while serving clients* or without a card for the second time while not serving clients, the penalties are increased and become public information.

During the Sept. 27 MBO meeting, board members

### BOARD of DIRECTORS

**Region 1** (Kootenai, Flathead)  
Tim Linehan  
295-4872

**Region 3** (Missouri)  
Pat Straub  
495-0487

**Region 5** (Madison)  
Joe Dilschneider  
682-5356

**Region 7** (Yellowstone)  
Lee Kinsey  
222-4494

**Region 2** (Bitterroot, Clark Fork)  
Jack Mauer  
642-6548

**Region 4** (Big Hole, B'head)  
Matt Greemore  
684-5639

**Region 6** (Gallatin)  
Matson Rogers  
556-1197

**Region 8** (Bighorn, Ft. Peck)  
Matt McMeans  
666-2326

**Guide-at-Large Director** Garrett Munson 447-7174

learned about the types of Red Cross first aid courses offered and some new ways to get certified. First, and least trouble for the licensee, is to “challenge” the first aid test by contacting an available authorized first aid instructor and arranging to take the written and practical tests without review. Next, some instructors are willing to provide a “first aid review,” a brief half-day synopsis of the material, then a test, provided the instructor has at least five students in the review class. Last, there’s the typical day-long instruction and testing for both first aid and CPR, available as a “Community First Aid Safety” course or CFAS. The course takes ten hours and certifies the student in first aid and both adult and child CPR. This is the standard course offered around the state by the Red Cross.

The Red Cross also emphasized that licensees with a soon-to-lapse card should plan ahead and contact an instructor at least a month before the card expires. Outfitter and guide licenses display your card’s expiration date, so everyone should be aware of their own deadline and mark the calendar to stay in compliance.

At the same time, the outfitter board reiterated that the requirement is for first aid certification *only*, not both first aid and CPR or just CPR alone. Typical Red Cross classes combine both first aid and CPR, though the “challenge” and review courses may offer first aid only.

For those interested, anyone can become an authorized Red Cross First Aid Instructor by taking a three-day class and paying \$100 for instruction and materials, then conducting a minimum of one class a year. FOAM is looking to finding a member in each region to take this class and become an instructor to make it easy for other members to get recertified. Please contact the FOAM offices (406-763-5436, rcunningham@montana.net) and let us know if you’re willing to help. Depending on a FOAM board decision, we may be able to help pay the fee, too.

## **NEW OUTFITTER TEST APPROVED BY MBO**

*OK’s List of Study Materials, Open Book Format*

At the September meeting, the MBO gave final review and approval to the redesigned outfitter test. As part of the overall rule revisions, the test is now divided into four parts: 1) a general review of outfitter and guide laws and regulations, including board duties, organization, and some details about the board’s place in the Dept. of Labor and Industry; 2) hunting, 3) fishing, and 4) packing. There are no first aid questions.

Test applicants will receive a list of study materials for each section of the test. As of the last MBO meeting, the general section materials included MBO laws and rules, FWP laws and rules, and some organizational materials; the hunting section requires review of MBO and FWP hunting laws and regulations (both big game and upland bird - more on this later), the fishing section covers MBO and FWP fishing laws and regulations, including boating safety and

current fishing regulations (available in the annual booklet from any FWP license dealer), and the packing section calls for Smoke Elser’s packing instruction book.

The first testing period using these new materials and question sections is scheduled for this October, but since the board just ruled on this and MBO staff have to revamp the test itself and check materials, the MBO office is telling current applicants to just study the MBO laws, regs, and general first aid materials as if they were taking the old test.

You must have a current first aid certification to become licensed, because the board has removed all first aid questions from the test. Why? Because it was too hard to keep the test questions current with the updated material used for first aid training. Generally, most of the challenged questions on the outfitter test are first aid ones.

As mentioned in previous issues of the *FOAM-LINE*, the board now wants applicants to be exposed to the material necessary to know the ins and outs of the outfitting business from the compliance and regulatory side. Reading the data before the test, then having it available during the test tends to help applicants get it right, or know how to find the information. The emphasis here is on “continuing education,” rather than a one-time “know it or fail” barrier to the profession.

FOAM is checking with the MBO to see if the hunting test section will be split into big game and upland bird/waterfowl or contain both. It makes sense to us that they be separate, since few bird-hunting outfitters need to know the material necessary for big game hunting. Since these new test segments are part of the “new” revamped rules proposed by the MBO, we can comment on them when they are put out to the public for review. If you have any comments on the hunting section and how it could be divided, contact FOAM.

## **REPLACEMENT BOAT STICKER FEE EYED**

*MBO Wants to Charge for Extra Sticker Sets if Lost*

Boat stickers, now called “watercraft identification tags” are free for all licensees who ask for them each time they apply for their license renewal. But, under a new proposal, if you lose a tag or tags during the season, you will have to pay \$10 for any replacement sets. The stickers themselves cost \$2.50 each and the time MBO staff spends sending them out costs money, too, according to the Board of Outfitters.

MBO enforcement personnel have witnessed outfitters placing stickers on each boat, rather than switching sets from boat to boat. The rule states “Licensees, depending on watercraft ownership, shall apply for sufficient tags to identify all watercraft they may utilize to provide services.” Does this mean you need a set for each boat, or just one set to move from boat to boat? The original intent of the rule was to have the tags removeable and go from boat to boat if

you had more than one or sold one - that's why the rule mentions a "removeable plaque." Either way, one set per outfitter or guide should be enough.

The point is, the MBO staff wants to avoid sending out multiple sets to individuals who just can't seem to keep their boats tagged. Legitimate replacements are one thing, they say, but a guide asking for three sets in a month eats up "crucial staff time" unnecessarily.

Think about this fee proposal and let FOAM know. We'll be commenting on the entire rule package, and, like the hunting test section, this is only one part.

On another related topic, remember that license numbers on the tags are sequential for all licensed professions - that is, each time a new license is issued for whatever profession, that's the next number in sequence. So, for example, if your outfitter (or guide) license number is 10,568, does that mean there's 10,000-some outfitters or guides? No, but that particular licensee got the next license number available for any profession. Incidentally, some lower numbers become available when a licensee retires.

So, use your tags correctly, get replacements if you lose one or both, and let us know what you think about paying for a second set of replacements during the season. (FOAM offices - 406-763-5436, rcunningham@montana.net)

## **ACKNOWLEDGEMENT OF RISK FORMS MAY BE REQUIRED FOR LIABILITY INSURANCE**

### *Insurance Provider Sees Benefit to Keep Rates Low*

As noted in an earlier *FOAMLINe*, our liability insurance carrier *may* require some acknowledgement of risk language to be included with our brochures or client contracts. They claim such language can reduce the likelihood of adverse judgments when a liability claim goes to court. Reduced claims can translate into low rates, say the underwriters.

Indicating and acknowledging possible *risks* is different from asking clients to *wave your liability*. FOAM has determined that waivers of liability are illegal in Montana and has told the insurer this - hence, risk forms instead of the waivers of liability required by other liability insurance underwriters. Find a sample risk form enclosed on the back of the ballot in this *FOAMLINe*. You should have your lawyer review it or draw up one of your own.

FOAM's Executive Director will meet with our agent and the underwriter this September to iron out details. The FOAM board has urged the E.D. to resist a requirement for risk forms, but, unfortunately, this is up to the underwriter. All members will be notified before insurance questionnaires are issued starting in November.

**Outfitter & guide membership applications, insurance questionnaires, and extra outfitter client log pages are now available on our website, [www.foam-montana.org](http://www.foam-montana.org). Go to Member Services, then Applications.**

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