



The FOAMLINE

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FISHING OUTFITTERS ASSOCIATION OF MONTANA
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SPRING 2004

A NOTE FROM FISH, WILDLIFE & PARKS

RE: Parking at Hwy 89, Carter's Bridge FAS's

Users of the Highway 89 Bridge and Carter's Bridge Fishing Access Sites (FAS) along the Yellowstone River near Livingston need to take note of some new parking enforcement that will start this spring. Due to safety concerns, the highway rights-of-way near these two sites will be posted with "No Parking" signs beginning in late April or early May of 2004, and vehicles (including those with trailers attached) which are parked in the highway right-of-way outside of the designated Fishing Access Sites will be towed at the owners expense. These actions will be taken to provide for the safety of both highway travelers and FAS users, in response to what has become a troublesome trend of FAS users parking along the highway and creating a traffic hazard when the designated access sites are full. "This is a cooperative effort that was initiated by the Montana Department of Transportation, and includes the Montana Highway Patrol, Park County Sheriff's Office, Park County Commission, and Montana Fish, Wildlife & Parks (FWP)," said Jerry Walker, FWP Regional Parks Manager and the person in charge of administering FAS operation and use in Southwestern Montana. "We are looking into ways we might be able to add some more parking at these two sites, but whether that happens or not, parking along the highway outside of the sites will no longer be an option," Walker added.

GOOD ATTENDANCE AT ANNUAL MEETING

Spring Creek Day, Information Topics Prove Popular

The FOAM Annual Membership Meeting held in March in Livingston was one of the best-attended we've ever had. Over 75 members, speakers, and friends enjoyed swapping tales, getting new information about river issues and generally mingling with their peers. On Friday, March 12, about 35 members took advantage of spring weather and fished DePuy's Spring Creek south of Livingston. Boat manufacturers Hyde, Clackcraft, EMR, and Montana Boatbuilders showed off their latest wares on the pond in front of the place while Matt McMeans, director from Ft. Smith, manned the grill to cook a great lunch for everyone. Knots of FOAMies compared notes on business, flexed and cast sample rods from Temple Fork Outfitters Flyrods, or just jawed about their fishing. Cross-staters caught some fish as they learned about the creek and everyone generally

had a good time in the spring sunshine and balmy weather.

The next day, members discussed ethics and etiquette, explaining individual methods for dealing with other anglers during crowded moments on the water. Guest speakers Don Doninger and Paul Roos offered viewpoints from the local angler and long-time professional. Don suggested we talk to boat manufacturers about putting a short discussion of boating etiquette in each driftboat or raft that's sold in Montana, an idea he grabbed from the golfing industry. Paul noted that his most successful method for dealing with other anglers was to spend a little time talking with them at the put-in or take-out, so they understand that outfitters and guides are just like them, hoping to enjoy the river and the time spent fishing.

Other FOAM members had ideas ranging from increasing the fines for "unprofessional conduct" via the Board of Outfitters and listing names of offenders in the FOAMLINE to getting a grip on our own individual behavior before looking at other anglers or boaters. Most agreed that FOAM members should conduct themselves with restraint, courtesy, and professionalism. Afterwards, members noted that they enjoyed this topic, thought it was long overdue, and said they would act differently now that they understood how their fellow members thought about the topic.

At 10 a.m., Victor Bjornberg from Travel Montana, the state tourism bureau, detailed how FOAM members could use the bureau to solicit clientele via print ads, regional brochures, and the internet.

Next, FWP Head of Whirling Disease Studies Dick Vincent brought us up-to-date on WD's spread, the current research, and some hope for the future. Bob Wiltshire of the Federation of Fly Fishers talked (OK, shouted because of a faulty PA system) about several aquatic nuisances, including the New Zealand Mud Snail, a fantastically prolific, rapidly-multiplying menace to freshwater fisheries. These tiny (maximum size, 1/8 of an inch) snails can blanket rocks and streambeds at a rate of something like a million creatures per square yard of river bottom - a single female snail can produce over 300,000 offspring in three years. In such numbers, the snails consume all nutrients in the water column. Up the food chain, insects, plants, and fish all suffer as a consequence of this voracious appetite.

Bob suggested we clean our waders, wading boots

and gear as we do for Whirling Disease to keep from spreading these insidious critters. They can't survive drying out, so take a moment when you exit infested waters and clean up a little to prevent their spread to other streams.

Right after lunch, various flyfishing product representatives (Simms, Spring Brook, Temple Creek Outfitters Flyrods) set up tables displaying their latest gear and drew a crowd of curious bargain-hunters.

Members spent the afternoon learning about the statewide River Recreation Advisory Committee's (RRAC) recommendations to the FWP Commission regarding how to manage Montana's rivers and streams when crowding or conflict are evident. Charlie Sperry, FWP's River Recreation Coordinator, explained the progress from the Beaverhead and Big Hole Biennial Rules through the RRAC consensus-driven process to create the philosophy and mechanics of decision-making to be incorporated into a statewide policy that will be formalized via administrative rule this spring and summer.

Tim Mulligan, FWP commissioner from Whitehall (FWP Region 3), joined in to explain his take on the current BH2 rules, the decisions and recommendations of the RRAC, and how the commission may act when adopting the policy in rule and when applying it to revamp the Beaverhead and Big Hole Rules this fall. Tim was very straightforward, outlining his participation in the RRAC, his hopes for adoption of their recommendations, and his thoughts on the balancing act he must adopt as a commissioner to be faithful to the RRAC recommendations and still represent his Region 3 constituents. Tim's final question was how FOAM and other fishing outfitters would resolve their own differences on appropriate management of commercial use within river recreation management plans.

Robin Cunningham, FOAM representative on the RRAC, explained the positive aspects of the consensus process worked within the RRAC and that it could be a good model for the local Citizen's Advisory Committees that will eventually make recommendations to the FWP Commission on management plans for Montana's rivers and streams.

Fred Wardinsky and Chuck Mazurek, representing Montana International Insurance, spent the next forty-five minutes answering questions about the "Acknowledgment

of Risk" forms required by our underwriter. Some members wondered aloud whether clients would refuse to sign the form while others agreed to comply, seeing no problem with asking clients to help keep our insurance costs down by taking responsibility for some of the risks.

Chuck detailed the few lines in the form he considered problematic and promised to work on new language to be included in a revised form. Fred pointed out that the current form will be acceptable until a newly-worded one is agreed upon and sent to FOAM members by our insurance representative in Butte, Tammy Barnett.

Wayne Johnston, new Executive Director for the Montana Board of Outfitters, and Dan Dellinger, one of the two in-field "Compliance Specialists," relayed the MBO's progress on revamping their rules as part of the transition from the Dept. of Commerce to the Dept. of Labor & Industry, then fielded questions about boat stickers, first aid certificates, Independent Contractor status, and other general outfitter and guide topics.

The day finished up with our raffle, another big success due to the great turn-out. Waders, rods, gear, and books were distributed to many lucky winners (it seemed like Dennis Alverson of Livingston received the lion's share of the items, not hard after buying a Franklin's worth of tickets). Happy hour drew the meeting to a close as members traded fishing and guiding stories fueled with extra beer-driven intensity.

Meeting assessment surveys indicated overall satisfaction with the day, most asking for a repeat of the Spring Creek Day before and many making suggestions for future topics of discussion. Thanks to all who helped make this a success and to those members who attended our 22nd Annual Meeting. Hope to see you again next year.

FOAM MEMBERS USE CPR TO SAVE A LIFE

Elderly Woman Revived via Quick Action on Madison

If you think your first aid certification is just a hassle, read on. In late July on the upper Madison river, FOAM member Michael (Jerry) Green was sharing a two-boat trip with clients and outfitter Bill Saunders. Jerry and his clients were pulled over to re-tie flies when they noticed an elderly couple float by on an under-inflated raft powered by tiny paddles in the high-discharge flows coming from Hebgen Dam. The guys watched as the raft struck a

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boulder in the rock-garden at Horse Creek, saw it swept up in the hydraulics downstream of the rock, take on water, and dump an older woman into the high flow.

Jerry immediately pulled up anchor and headed downstream to the scene, noting no waving arms or heads in the water. As they neared the rock, they heard the husband yelling, "Have you seen my wife?!" They spotted her a ways downstream and pulled fast to catch up, watching her hand slowly rising and falling with the current. One of the clients called to her, but got no response. When she was carried up on a rock, Jerry saw how bad she was: slightly swollen, her skin blue with cold, and her eyes wide open in shock. Her body slipped from the rock as Jerry ferried near her, but one of the clients, Bill, managed to grab her and support her neck to avoid further injury. As they approached shore, Jerry noticed another guide floating along the opposite bank and yelled for him to run to the nearest house and "Call 911 - we have a drowning victim!"

As the boat neared shore, two clients from Jerry's boat, Bill and Bob, jumped out and struggled to get her to the bank while Jerry tied the boat to keep it from drifting away. After checking for a pulse and breathing, Bill and Bob had started rescue breaths with the victim still in the water. After twenty or so breaths, she started to vomit - a good sign. Jerry hastily cleared a spot on the bank, and the trio lifted her clear of the river so they could start chest compressions while continuing with rescue breathing. They gave her more breaths, she vomited violently, and they finally felt a weak pulse . . . "Thank God," said Jerry, who wrapped her in several loose jackets to ward off shock, "because she was freezing cold to the touch." She was still not breathing on her own, and the guys gave her more rescue breaths as she vomited again and uttered ghastly moans. Suddenly, she began to blink and her fingers moved slightly. "As she slowly awoke," remembers Jerry, "we began to comfort her and asked her if she could tell us her name and where she was." She continued to vomit, and the guys monitored her pulse and kept her comfortable.

Meanwhile, Bill Saunders and the rest of the group rowed up, anchored, and pitched in. Bill has been an Emergency Medical Technician for 18 years, so the original trio backed off to let him monitor and control the situation. The woman's husband had struggled to the bank where he was comforted and restrained so Bill could continue to help his wife. Other clients scrambled up the hill to get cell phone reception as a backup to the guide racing to call 911. Luckily, two Search and Rescue members were in the area, received the emergency relay call, and hustled across a nearby field to the scene.

Bill Saunders made a plan to transport the woman in Jerry's boat to the Windy Point access a half-mile away. Jerry ripped seats out of his boat to make room for her, and Bill grabbed a sleeping pad from his boat to make her

comfortable and stable. With the two S&R people, the crew rowed her downstream to Windy Point, where the Ennis Ambulance team waited. Once ashore again, she was strapped to a backboard and raced to the hospital where she was reunited with her husband. Except for a mild cold, the victim, Elaine, recovered completely, thanks to Jerry, his clients, and Bill Saunders. FOAM salutes Jerry and Bill for their resourcefulness, compassion, and long-time training. Good job, guys!

MBO OK's FISHING BUSINESS TRANSFERS

FWP to Transfer Use Days on Regulated Rivers

As a long-term solution initiated by Rep. Steve Gallus' HB 411 from the 2003 Legislative Session, fishing outfitters who sell or transfer their entire fishing business can transfer their generated use days on regulated rivers.

FOAM supported the legislation, then worked with the Montana Board of Outfitters to draw up letters of notice for the MBO and FWP from the transferring outfitter to the business recipient. The letters outline the particulars of the business, the number of days transferred, and the river(s) involved. At the latest MBO meeting, the board invited Bob Lane, FWP legal counsel, to discuss the new law and how transfers might work. Both agencies eventually agreed to accept these form letters to simplify the business exchange and transfer of use days. If you are interested in obtaining draft copies of these letters, contact the FOAM offices at (406) 763-5436 or email info@foam-montana.org

FWP DRAFTS STATEWIDE POLICY IN RULE

Despite RRAC Recommendations, Commission in Control

The River Rec. Advisory Committee's consensus-based recommendations are being formulated by FWP and the FWP Commission into a draft statewide policy which will be adopted as an administrative rule. The original draft policy was presented to the commission in March, but was not well-received.

Commissioners John Brendan (Scobey) and Dan Walker (Billings) questioned the tone of the recommendations, wondering if they undermined the commission's authority. These commissioners were concerned with the detailed decision-making process at the core of the RRAC recommendations. The idea of progressive development of management actions from the least restrictive to rationing and allocation as the harshest management action seemed to put Brendan and Walker off. To clarify that the commission could take *any* action at *any* time, they asked FWP legal counsel to adjust the language to make it clear the commission was in charge of decision-making.

Following that lead, FWP rewrote the draft, adding phrases like "Nothing in [these rules] shall prevent the department and commission from changing a management plan as needed" or "from changing a management plan or

rule when it [the commission] decides the change is necessary.” The problem is, the policy doesn’t list criteria to define “as needed” or “necessary.” How will the commission or FWP determine a change is needed? Politics? Public outcry? A series of complaint letters?

The RRAC was determined to have all decisions and management actions based on data blended with values to safeguard against snap decisions driven by public demand instead of facts. This current draft policy seems to replace that idea with commission and department authority to act as they see fit with no mention of controlling data or values. Perhaps the department is just being cautious and offering the commissioners maximum flexibility - we hope so.

Still, FOAM wonders why FWP was so quick to side with the commissioners’ requests for definitive authority instead of sticking to the decision-making process and progressive restrictions promoted by the RRAC. Since FWP was willing to spend funds hosting and facilitating the RRAC to develop the recommendations, you’d think FWP would give them a little support for their hard work and justify their recommendations to the commissioners.

Nonetheless, we will attend the FWP Commission meeting on Thursday, April 15 at the FWP Region 3 headquarters in Bozeman to offer our comments and argue for the RRAC recommendations. With a little luck, logic will

prevail and the RRAC ideas will become a good policy.

I.C. STATUS RULING AFFECTS MEMBERS

Case Scrutinizes Independent Contractor Requirements

In *Wild v. Fregein*, an independent contractor hired by a contractor was injured on the job and requested Workers Compensation payments. The Dept. of Labor and Industry investigated the work relationship between the I.C. and the contractor, then argued in court that the working relationship proved the I.C. was really an employee and that the contractor, as an employer, owed the Work Comp fund back payments.

To avoid similar rulings against you, outfitters should make sure an I.C. guide gives you a copy of their exemption certificate, then sign a written contract with the I.C. guide. For other details and cautions regarding hiring IC.’s, go to <http://erd.dli.state.mt.us/wcregs/faq7.htm> for a discussion of I.C. status and the law. Also, see the FOAM website (www.foam-montana.org) for “What is an Independent Contractor” in FAQ’s under Member Services for specifics about employee versus I.C. status from the *Wild v. Fregein* case (in PDF format), or contact the Independent Contractor Central Unit of the Dept. of Labor & Industry at <http://erd.dli.state.mt.us/wcregs/iccu.asp> for a complete overview of I.C. status and legal requirements.

* FOAM Annual Meeting Wrap-up
* FOAM Members Save a Life
* Fishing Outfitter Use Transfer OK’d
* River Recreation Policy and FWP
* I.C. Requirements Revisited

In This Issue

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