



The FOAMLINE

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FISHING OUTFITTERS ASSOCIATION OF MONTANA
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SPRING 2009

ANNUAL MEETING: MARCH 7 IN MISSOULA

Topics: Permit Plans, Fees, Booking Agents, Insurance

Our FOAM Annual Membership Meeting will be held Saturday, March 7 at the DoubleTree Hotel in Missoula. Time to bring the show to the west side of the divide so we can hear about the RRAFT (River Recreation Advisory for Tomorrow) management proposal for the Blackfoot and other area rivers, among other topics.

Look for the enclosed meeting notice, check your calendar, and send back the sign-up slip and payment for lunch ASAP. As usual, we need a headcount to plan for lunch, so get it on and get it done. Hope to see you there.

BRIDGE ACCESS BILL LOOKING GOOD

HB190 Out of Committee, Moving through House

Legislation to codify recreationist's ability to access streams and rivers at county bridges and a landowner's right to control livestock and manage ground with fences up to bridge abutments is making progress in the House of Representatives.

House Bill 190, sponsored by Rep. Kendall Van Dyk (D, Billings) is the outcome of much pre-session discussion, cooperation, and compromise between representatives of Montana Fish, Wildlife & Parks, Trout Unlimited, the Montana Wildlife Federation, the Stockgrower's Association, the Montana Farm Bureau, the Montana Association of Counties (MACO), and other working groups.

The bill was amended slightly and passed out of the House Fish, Wildlife & Parks Committee by a vote of 16 for, 2 against on January 20. The House of Representatives debated the bill on Monday, January 27, dodged an amendment, and reassigned it to the House Appropriations Committee.

Opponents to the bill were lawyers John Bloomquist representing some members of the Stockgrower's Ass'n. and Lance Lovell, longtime counsel for James Cox Kennedy, a landowner along the Ruby who has argued against bridge access for several years.

Lovell has long argued in Madison County court that the public right-of-way at bridges narrows to the width of a bridge and access at that point is trespassing. This October, District Judge Loren Tucker disagreed, noting the Montana Attorney General's opinion that a public easement exists along bridges and provides public access to waterways. He also upheld the right of landowners to attach fences to bridges.

Van Dyk's bill builds on this opinion and legal premises. FOAM spoke in favor of HB190, and now we'll just have to wait for the eventual outcome. Keep your fingers crossed.

FOAM ARGUES FOR INHERENT RISK BILL

HB150 Incorporates Inherent Risk Concept in Law

FOAM, along with whitewater rafting companies, local counties, and other small business owners, supported House Bill 150, the 'Recreational Safety Act', sponsored by Representative Dee Brown (R, Hungry Horse).

In short, we hope to codify the idea that inherent risk exists in many recreational activities, that the recreational service provider should not be held responsible for injury or damage caused by inherent risk, and that judges should consider inherent risk when a claim or suit is brought against a service provider.

As expected, the MT Trial Lawyers Ass'n opposed the bill as they did in 2003 and 2005. Their lobbyist argued that lawyers were the 'gatekeepers' determining what cases should be brought to court, that judges didn't 'have the time' to consider inherent risk, that insurance premiums wouldn't drop if inherent risk were added to legal consideration, and that such legislation may be determined unconstitutional by the Montana Supreme Court.

However, inherent risk laws have a history of being supported by higher courts in states that have adopted similar legislation, our insurance providers already require acknowledgement of risk (AR) forms, and we think judges, not plaintiffs attorneys, should handle inherent risk considerations. After all, who's better suited: the person who 'runs' the court or the attorney seeking up to 40% commission on the damages paid?

If the bill passes out of the House Judiciary Committee, we'll urge members to contact their representatives to support the proposal in the House. We may not see insurance rates drop, but we might not have to use individual AR forms for each client and we'd each certainly have a legal defense available if we ever appeared in court for a liability case. Something to think about.

GUIDE DIRECTOR NOMINATION NEEDED

Guide-at-Large Directorship Filled by Outfitter

In the mid-90's, FOAM guide members asked for representation on the FOAM Board of Directors, and several Guide-at-Large directors have come and gone.

In the last FOAMLINe, we asked for nominations for this position, but no one stepped forward, so the previous director, Chris Fleck, who has since become an outfitter, was chosen by the Board of Directors as interim Guide-at-Large Director pending a nomination for replacement.

If you, or anyone you know, would like to serve the FOAM guide members, please contact the FOAM offices - PO Box 67, Gallatin Gateway, MT 59730 - 406.763.5436.

FOAM CONSERVATION FUND: RESTART?

FOAM FUND Needs New Directors, New Direction

Started in the spring of 1999, the Montana Fishing Outfitters Conservation Fund - the FUND - served as the 'giveback' group for FOAM, soliciting donations from our clients, matching that income with grants from various foundations, and spending the revenue on small, short-term conservation projects throughout Montana.

Then 9/11 happened, attention was focused on terrorism, and national donations to conservation causes shrank dramatically. The FUND chose to stop solicitations and ceased public operations.

Recently, the FOAM Board of Directors - in lieu of a long-disbanded FUND board - voted to fund two small projects:

- 1) A stream restoration project for Fleshman Creek near Livingston involving local conservation groups and local elementary and high school students - we'd pay for water testing equipment and lab testing, and
- 2) A statewide riparian area noxious weed mapping project headed up by the major conservation groups (TU, FFF, Walleyes Unlimited, MT BASS Federation) and coordinated with the MT Dept. of Agriculture - we would help pay for GPS units and ask for FOAM volunteers to help map weed-infested areas along the rivers we work on.

In spite of the current economic downturn, it may be time

to rebuild the administrative machinery of the FUND by seeking new directors, new advisors, and asking the FOAM membership to help solicit funds.

Our funding system is very simple: Individual FOAM members ask their favorite clients if they'd like to donate for local projects, matching grants are sought, and FUND directors, aided by several advisors, distribute funding (no more than \$5000 per grant) for local projects with immediate quantifiable results.

We'll talk more about this restart at the Annual Meeting in Missoula. If you're interested in helping, call the FOAM offices - 406.763.5436 - with your ideas or willingness to serve. Thanks in advance for any help you can offer. This is clearly a way for FOAM to give back to the resource we depend on and enjoy.

MBO OK's FOAM OP PLAN PROPOSAL

Stream Access Law to Replace Basins Plan

Outfitters may soon refer to the Stream Access law as a way to place all non-permitted Montana waters in their operations plan without individually listing each stream. FOAM's rule proposal was approved by the Montana Board of Outfitters at a recent meeting and will replace the old 'basins' plan with this simpler method. We expect the rule to be out for comment this spring and to take effect as the next fishing season starts. If you have questions, call FOAM. We'll keep you informed via future FOAMLINE newsletters, too.

BOARD of DIRECTORS	
Region 1 (Kootenai, Flathead)	Region 3 (Missouri)
Jim Voeller 862-3448	John Arnold 727-2087
Casey Hackathorn 546-5680	Region 4 (Big Hole, Bhead)
Region 2 (Bitterroot, Clark Fork)	Tim Tolleit 683-5276
Steve Summerhill 586-5373	Guide-at-Large Director
Region 6 (Gallatin)	Chris Fleck 322-0202
Joe Moore 581-6059	
Region 5 (Madison)	
Dennis Alverson 222-0755	
Region 7 (Yellowstone)	
Kurt Olson 666-2473	
Region 8 (Big Horn, Ft. Peck)	

In this Issue:
 - Annual Meeting: March 7, Missoula
 - Bridge Access Bill Update
 - FOAM and Inherent Risk Bill
 - Guide-at-Large Director
 - Conservation FUND restart?
 - Op Plan Proposal OK'd