



# The *FOAMLINE*

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FISHING OUTFITTERS ASSOCIATION OF MONTANA  
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## **FWP COMMERCIAL USE RULES ADOPTED**

### *FOAM's Concerns Addressed, Reasonable Fees Set*

The Fish, Wildlife & Parks commissioners discussed, changed, and adopted the proposed commercial use rules at their December meeting. These rules govern most commercial uses of land administered for the public by FWP and implement permits with fees for that use.

Key points of the commercial use rules include:

1.) Two types of use permits, each with a separate fee schedule and conditions -

a. Fishing Access Site Permits allow the holder to conduct commercial use at all FWP FAS and 'other department land that provides access to water bodies' - think Big Springs State Park or Headwaters State Park - throughout the state. The permit fee is \$100 for fishing outfitters and guides. Permits are planned to be offered online via FWP's Automated Licensing System (ALS) and at FWP regional offices. They are valid for a year beginning with the FWP license year, March 1 to February 28. There is no limit to the number of FAS permits available, and they are required for outfitters who use the accesses directly themselves or indirectly via guides. This means all FOAM outfitter and guide members will need a permit.

b. Restricted Use Permits are required to use FAS on managed or controlled rivers or river stretches, such as the Beaverhead, Big Hole, Blackfoot, and Alberton Gorge area of the Clark Fork. Only outfitters need Restricted Use Permits. Applications for these permits must be submitted 45 days before intended use begins; permits are valid for no more than five years and may stipulate 'type, timing, location, duration, and volume of use.' Fees will be determined by regional supervisors and may be levied in one of three ways -

i. 3% of gross income derived from use of sites under the administration of a restricted permit,

ii. \$5 per client day conducted on restricted sites for any part of a day, or

iii. \$4 per allocated client day on those rivers or stretches with allocated use, regardless of whether all allocated use was used or not.

FOAM advocated for techniques ii and iii, thinking no one wants to audit their books for income figures, but can easily count the client days tied to specific stretches and FAS's based on the tally sheets we submit to the Montana Board of Outfitters (MBO).

2.) FOAM successfully argued that only licensed fishing outfitters or guides could hold permits; no business entity could hold one.

3.) We asked for and got language changed to ensure that any restriction or allocation of fishing outfitter or guide use would be

determined by the statewide River Recreation Management Policy instead of FWP regional supervisors and the public without commercial input.

4.) A licensed outfitter may sell the part of his or her business that is 'operated under a commercial use permit' - as opposed to their entire business - and FWP 'shall issue a new permit to the new owner' so long as the new owner has all required licenses and permits and agrees to the terms of the commercial use permit.

5.) While a permit holder may trade client days with other permit holders, a permittee may not 'sell, lease, rent, or otherwise receive compensation from another person for the opportunity to use client days, launches, or allocated units of use, temporarily or permanently', with one possibly controversial exception: the commissioners voted to allow Smith River outfitters to trade, lease, or rent their allocated launches among themselves.

6.) Since restricted use permits may require 'proof of workers compensation and/or an independent contractor exemption certificate' (ICEC) and many FOAM outfitters have formed business corporations or limited liability companies (LLC's), FOAM did some research and found that certain corporate officers and managers of LLC's do not need workers compensation coverage nor ICEC's; see 39-71-401(2)(r), MCA. The commissioners and FWP agreed to waive this requirement in corporate or LLC circumstances.

7.) FOAM also pointed out that FWP should not distinguish between the 'commercial' public - those who use our services - and the 'non-commercial' public who don't. Commissioner Tim Mulligan agreed and required FWP to drop the terms 'commercial' and 'non-commercial' from the rules, using simply 'public' instead.

8.) FOAM asked that funds from the FAS permit fees be used to administer the program and excess revenue going to the FAS acquisition and maintenance program. Fees from the restricted use permits should pay for administration of the program and river management plan development and application

FOAM will publish the entire commercial use rules and fee schedule on our website once FWP formally issues them. We thank those directors and members who helped over the last 15 months to develop and advocate FOAM's position on these rules.

## **FOAM ANNUAL MEETING SET FOR MARCH**

*Saturday, March 10, 2007, at the Holiday Inn in Bozeman*

Our association annual meeting will feature a shorter agenda of speakers and will devote the afternoon session to discussion and consideration of developing a fishing outfitter moratorium proposal for the 2009 legislative session.

Speakers invited include Norma Nickerson of the U. of Montana's Institute for Tourism & Recreation Research (ITRR).

She worked with FOAM to develop the survey that gathered business information about the outfitting industry this spring and summer. Norma will discuss that survey's findings. Also scheduled are Susan James and Tim Bozorth, BLM officials who will be developing with FWP a Special Recreation Permit system for the Madison river. Add in Charlie Sperry, FWP's River Management go-to guy, a Clark Fork Coalition rep discussing the Milltown Dam removal, and Wayne Johnston of the MBO, and we've got a full morning.

Several FOAM directors have requested we talk about a possible fishing outfitter moratorium. From their point of view, changing resource and business conditions require a renewed discussion, and they chose this annual meeting to see how the membership feels. We will also talk about a membership survey to gauge members thinking on the need, effectiveness, and pro's and con's of a moratorium, to make sure the FOAM board gets input from their constituents. During the two years between now and the 2009 legislative session, we will have time to decide whether or not to request a moratorium and to craft terms suitable for the spoken needs of our members. Nothing may come of this, but starting a discussion two years ahead of any possible legislative proposal deadline should give us plenty of time to accurately assess both membership thinking and ways to word such a proposal if one is sought.

FOAM will mail out a formal notice of our annual meeting during January. Plan on being there and helping your industry while enjoying some time with your fellow FOAM members.

## WORKING RELATIONSHIPS & OUTFITTERS

### *Are Licensees Adequately Protecting Themselves?*

FOAM members are occasionally disciplined for violating Board of Outfitter laws or rules relating to business operations. Flyshops or lodges with an outfitter of record, booking agents, guides or other outfitters as partners - a lot of business relationships are formed in our industry, and licensees should monitor their business practices to avoid violating regulations.

Remember, the MBO can discipline licensed outfitters and guides, but a non-licensed business cooperator, partner, or associate, including outfitters or guides whose licenses are revoked, may escape consequences if and when something goes wrong liability-wise or a business practice violates MBO laws and rules. It's your license that's at risk, so protect it.

FOAM urges its members to know regulations regarding soliciting clients, taking bookings and deposits, authorizing trips, and supervising guides. If you use a booking agent, make sure you have a contract that favors your needs and protects your license in case of disputes, client reaction, or disappointment. If you're an outfitter working as a guide, avoid setting terms or conditions for your hiring outfitter and only handle fees with their permission. If you're a guide with IC status, remember that you're still a guide and cannot solicit clients, handle fees, or represent outfitting services without the express consent of an outfitter.

If you have any questions, contact the FOAM offices or the FAQ section of our website, [www.foam-montana.org](http://www.foam-montana.org).

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Region 4 (Big Hole, B'head)  
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Jack Mauer  
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Region 7 (Yellowstone)  
Lee Kinsey  
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Region 5 (Madison)  
Joe Diltschneider  
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Region 3 (Missouri)  
Pat Straub  
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### BOARD OF DIRECTORS

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