



# The FOAMLINE

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FISHING OUTFITTERS ASSOCIATION OF MONTANA  
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## DILLON OUTFITTER PASSES AWAY

One of our fellow heroes, Ryan Reichle of Dillon, passed away on Friday, June 19th. Ryan was one of the "Good Guys" and loved what he did: Fishing, hunting, and guiding clients. If anyone would like to donate anything to his son, Sage, or offer your condolences, please contact Tim Tollett at 1-406-683-6736.

## MBO CHANGING OPERATION PLAN RULES

### *FOAM Moves MBO Board Toward Simplicity, Broad Scope*

Long-time outfitters will remember when the Board of Outfitters was established in 1988 and the early MBO directors set out operations plan rules. Those outfitters who had 'all the rivers in Montana' as the boundaries of their op plan have struggled since '88 to add that statewide concept to their plan and still comply with MBO law and rule.

FOAM has sympathized with this need since 1991 and introduced the 'Basins Plan' concept in 2002: an outfitter could list a series of basins that automatically included all the waters in those basins in an op plan. The MBO agreed with this idea in 2002, but, according to the new board counsel, the Basin Plan's simplicity does not fit a strict interpretation of MBO law requiring the 'name and portion' of each river in an op plan, nor the requirement to obtain 'a permit or permission' from land managing agencies or landowners before offering services on these lands. (More about FWP's Commercial Use Permit and FWP FAS's in a moment).

With the legislature contemplating codifying access at bridges in law, FOAM thought about the MBO op plan requirements: listing waters and obtaining permits or permission. What about those waters that don't require a permit or permission to access? What about waters that can be accessed under the provisions of the Stream Access Law? There are a lot of waterbodies we can get to via bridges, walk-wading within the high water boundary, or from other rivers in a boat.

As noted in a previous FOAMLINe, Lee Kinsey, fishing outfitter from Livingston and current Chairman of the MBO, along with Robin Cunningham, FOAM's Executive Director, worked on language for a rule to allow a fishing outfitter to "include in a proposed operations plan a general reference to all surface waters governed by the Montana Stream Access Law, 23-2-302, MCA and accessible by public access points not requiring a permit issued by a state or federal agency." Public access includes state or federal fishing access sites (FAS) and, after the 'Bridge Bill,' most county bridges, but not private access that requires landowner permission.

This language was sent out for public comment, and, during their June meeting, the MBO members reviewed the various

comments received (all positive, all from FOAM members), then voted to adopt the rule as amended with a small language change from Wayne Johnston, ED of the MBO. The MBO rule reviewer deemed Johnston's language too much of a change, instead agreeing with FOAM's request to apply the rule to "new and existing" outfitter's plans. Once the rule with FOAM's language is adopted by the MBO, FOAM will work up a simple op plan amendment request referencing the Stream Access Law and make it available to all FOAM outfitters, most likely in the annual membership packet.

So, what does this mean for outfitters? All those waters you can access without a permit or permission via the Stream Access Law may be included in your op plan. And, you can use FOAM's amendment request for this operation plan update.

Where can a fishing outfitter go under this new rule? You can work on a lot of waters already in your plan - and many more you may not have in your plan - by accessing them at bridges. While you may not be able to launch a boat at all bridges, you can walk-wade anywhere within the Stream Access Law provisions - namely, below the high water boundary. And, you can row to or up the mouth of many waters and walk-wade them below the high water boundary. For example, you could take clients up the Dearborn from the Missouri, up Mill Creek from the Yellowstone, or up the West Fork of the Bitterroot from the Bitterroot main stem, either in your boat or on foot below the high water boundary.

**Remember, the rule only covers waters you get to via public access not requiring a permit.** So, if you use an FWP FAS (or a site covered by a permit administered by any other land mgt. agency like the BLM, USFS, BuRec, etc.) to get to a river, you will need a permit and you'll have to list the portion of water(s) controlled by the permit. This brings us back to the FWP Commercial Use Permit and the FAS's controlled by that permit.

FOAM and the MBO staff are working to build a form listing waterbodies (rivers, lakes, reservoirs) and the FWP FAS's on each so a fishing outfitter can simply check the appropriate FAS's on any particular waterbody - or a single FAS on stillwater - to add that waterbody to their op plan. Hopefully, outfitters can expect this form to be included in your MBO license renewal papers for 2010.

Yes, making fishing outfitter op plans comply with MBO law is a complicated process, but we're trying to work toward simplicity and comprehensive coverage without using some ridiculously long list of waters. This new 'Stream Access' rule gets us part way, and the proposed FWP FAS form will help, too.

If you have any questions about these rules and op plan developments, please call the FOAM offices, (406) 763-5436 during business hours. FOAM staff will report on any changes or updates to operations plan requirements in future FOAMLINe newsletters.

## ETHICS AND THE GUIDING INDUSTRY

*Part Two of a Series - Tim Tollett of Frontier Anglers, Dillon*

I appreciate everyone's response to my initial stab at getting our Guiding Fishing Ethics reviewed and on track as a whole. (See *March issue, FOAMLINe - ed.*) Everyone was very positive. If you have comments on any part of the series, let me know. My e-mail is [frontieranglers@mcn.net](mailto:frontieranglers@mcn.net).

This second part aims to establish a general list of categories or "topics" that reflect our strong belief of how we view our feelings and commitment towards being leaders and teachers within our industry.

Part 2 starts out where I left off: Just because we have a license to guide does not give us right of ownership of a river or lake. It gives us permission to guide other anglers, and that is all.

Recently, I had two anglers come into my shop and ask about a certain guide who floated by their wading position on the Beaverhead River. He had then pulled his boat over directly across from them, got his clients out of the boat, spread them out, and started fishing. They asked me what I would consider to be the proper etiquette in this situation. "Good question," I said.

On small rivers like the Beaverhead, this sort of interaction between anglers could (and unfortunately does) happen. As an outfitter and a person who believes strongly in fishing ethics and good etiquette, I do not condone behavior like this, especially since the guide didn't acknowledge either of the fishermen or ask them if it was OK to fish at such a close distance to them.

Mind you, if this were to happen on the Madison, Missouri, Big Hole, etc., it may not have posed such a problem, but on small rivers like the Beaverhead, it does.

The important point here is that the guide should have acknowledged the fishermen. Being polite on the water is the very first step towards good ethics and politeness and should be practiced on all our rivers, streams, and lakes every day.

The following are topics that I and my fellow FOAM board members have selected that offer some refinement and definition of our ethical and moral responsibilities.

### Respect your Fellow Fisherman

Always make an effort to be polite to all anglers you encounter on the water, whether they are floating, wading, fishing with bait, flies, or spinners. Smiling at others and acknowledging them creates good vibes and a positive atmosphere on the water.

### River Floating

Make every effort to give other anglers as much space as possible while floatfishing. When on a small river, always try to make eye contact with other fishermen and let them know what

you intend to do. If you are going to continue floating past them, tell them that you will be out of their way as soon as possible.

When floating close to other anglers *always stop fishing*. River float fishermen should never go around another boat only to come back to the same bank and cut them off. The ONLY time that this maneuver should ever be considered is when you have assessed the situation of the other craft and you know that they do not intend to continue floating downstream immediately. Possible situations where this could be the case include lunch breaks, or if the fishermen intend to fish a run for an extended period of time while remaining anchored or stationary.

When landing a fish, don't drop your anchor in front of other float fishermen. Pull over out of the way of others and land your fish. If you don't want to or can't pull over, either have your client land their own fish or pull your oars in and land it yourself. Yes, this can be a bit tricky when floating in rocky areas where safety is paramount, but dropping anchor in front of another boat causes problems for both you and them. Please take a moment to think about how your actions affect others.

### Lake Fishing

Lake fishermen should do their best to not anchor too close to others who are already anchored. This distance should be determined by how large the body of water you are fishing is, who is in the next boat, etc. Use common sense here. Try not to row or motor close to others.

### Boat Ramp Courtesy

Get 'in line' and gear up while you wait your turn to launch your boat. Always have your gear set-up and ready before you approach the actual launching site. Once you have put your boat in, make sure to anchor or beach your boat off to the side of the ramp so others can easily launch behind you.

### Wade Fishing

Keep some space between you and other anglers. Don't encroach on another anglers fishing position. If you want to walk around them to fish another area, always let them know your intent. Being polite will foster camaraderie between anglers and will make for a very enjoyable fishing experience.

Some of the points I have hit on here have been at the forefront of many conversations I've had over the years concerning guiding practices. We all need to be aware of how others view us and our actions as guides. We are stewards of the waterways and as guides and outfitters, we need to all be aware that we are the leaders of the future. Teach your children and others around you that you truly respect them and the fishing that we are so privileged to share. We're all in this together.

## BOARD of DIRECTORS

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## WORKERS COMPENSATION EXCLUSIONS

### *Sole Proprietors, Corporate Officers, LLC's and More*

Many FOAM outfitter and guide members wonder about Workers Compensation requirements for various business entities. Outfitters often assume that because they're outfitters, not guides, they are not required to carry WC coverage. Some guides and outfitters form corporations or Limited Liability Companies to dodge WC requirements. How does all this work out?

Many outfitter and guide members wonder if they need an Independent Contractor Exemption Certificate (ICEC), and questions about corporations and LLC's have come to the FOAM offices. FOAM has long been involved in the Independent Contractor Exemption from Worker's Compensation coverage, and we'd like to explain a little more about our understanding of Workers Compensation coverage exclusions based on conversations with and emails from state workers at the Independent Contractor Central Unit in Helena.

Basically, anyone who works in Montana is considered an employee and must be covered by a Workers Compensation policy, UNLESS they are excluded or exempt. An ICEC exempts an IC, and there are other exemptions for, say, real estate agents, and the like. Also, sole proprietors are exempt, unless they "regularly and customarily perform services at locations other than their own fixed business location." Outfitters typically would fall into this 'exemption exclusion', because we service our clients on waters away from our 'fixed business locations', usually our homes or a flyshop. So, while most fishing outfitters think they are exempt from WC coverage as sole proprietors, they are not, unless they get an ICEC and act as an Independent Contractor.

What about corporate officers and limited liability companies? WC Act law reads, "the Workers Compensation Act does not apply to . . . the officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company . . . who is not engaged in the ordinary duties of a worker for the corporation . . . and does not receive pay from the corporation . . . for performance of the duties" or "owns 20% or more of the number of shares of stock in the corporation . . . or owns 20% or more of the limited liability company."

Your own work situation or business entity may be different, so a careful review of the law - (39-71-401(2)(r) - is wise before assuming you're automatically exempt from Work Comp requirements. If you have questions, go to the source and call the Independent Contractor Central Unit of the Dept. of Labor and Industry at (406) 444-9029. A helpful employee there is Dallas Cox, who aided with this article and has advised FOAM on IC and WC issues in the past. Another source for corporate questions is Rose Ann Drake (Sec. of State's Office), (406) 444-5378.

## SUMMERHILL ON GUIDE ENDORSEMENT

### *From Steve Summerhill, FOAM Director, Region 6, BZN*

"So, will you sign my guide license?" These words ring throughout the Gallatin and Madison valleys each spring as many new and upcoming guides look for someone to endorse their

guide license application. I know for myself, as a local outfitter and flyshop owner, I can't count on my fingers and toes how many times I get asked this question. The aim of this article is not to discourage licensing new fishing guides or to stifle growth in our already-slumping industry, but to remind outfitters of the qualifications they are endorsing and possible liability they are accepting when they "endorse" a guide license application or license.

The MBO handbook at page 71 lays out statutory qualifications for guides in 37-47-303(1): "(a) be 18 years of age or older and be physically capable and mentally competent to perform the duties of a guide or pro guide; (b) be endorsed and recommended by an outfitter with a valid license . . . ; (c) have been issued a valid wildlife conservation license." Other guide qualifications are listed in rule on page 14 at Section 24.171.601(1): "An applicant for a guide or pro guide license shall have: (a) not less than one season of experience of hunting or fishing for the type of game for which the applicant will guide or have worked for the outfitter that signs the license for a period of at least six weeks and in the areas to be guided in, or have successfully completed a school licensed by a state, approved by the board, and that trains persons to be a guide or pro guide; (b) knowledge of hunting and fishing techniques to provide the particular services contracted to the client by the endorsing outfitter; and (c) knowledge of equipment, terrain, and hazards to competently provide a safe experience for those persons he or she guides."

As written, I think this is pretty straightforward, but in layman's terms for the fishing outfitter, it means that the guide must have either one full year (season) of experience angling for the type of fish you are trying to catch, OR have worked for you in some capacity for a period of at least six weeks in your region, OR have completed a board-certified state-licensed school. In addition, you vouch for their fishing technique knowledge and ability to handle equipment and hazards in order to safeguard the client(s). **When you as an outfitter sign a license or license application for a guide, you are endorsing the fact that this guide indeed has these qualifications.**

Further, beginning on page 19 of the handbook, rules state that "An outfitter shall: (d) not endorse an guide or pro guide license until the outfitter has made reasonable inquiry and determined that the guide or pro guide is qualified for licensure" and "(o) not employ or retain a guide or pro guide without first confirming that the guide or pro guide has current basic first aid certification." Failure to check these qualifications are considered unprofessional conduct by the MBO and can lead to disciplinary action against the outfitter.

Now, is this to say that if you sign your neighbor's guide license because he seems like a nice guy and may do a few trips for you that the MBO is going to be after you? Probably not, but if your neighbor does indeed take a trip for you in a pinch and happens to sink his boat and injure or lose his clients, you may wind up with more liability than you think.

Your FOAM directors struggle each season with the question, "How do we continue to maintain the image and professionalism of the outfitting industry?" I think that in many cases,

this starts with each and every outfitter realizing that the guide licenses they endorse, the guides they hire, and, most importantly, the way your guides conduct themselves on the water is a reflection of you and your business. According to the MBO, it is your responsibility as an outfitter to make sure that the guides you endorse are qualified to be on the water with clients. I realize that this article is, in the main, "preaching to the choir," but there are a few who, for whatever reason, seem to feel that endorsing a guide is no big deal. Please keep in mind that for the professionalism and image of our industry as a whole, the rest of us care and want only qualified guides on our waters.

- Steve Summerhill, FOAM Director, Region 6, Bozeman

## FOAM DONATES TO SEVERAL KID'S DAYS

### *Big Hole, Bighorn Youth Events Promote FOAM, Fishing*

Several FOAM directors have requested and received small donations from FOAM to help offset expenses and encourage recruitment of volunteers for a couple of kid's days that will introduce youngsters to the basics of flyfishing.

On the Big Hole, the Meriweather Ranch held a short class on casting, flies, reading the water, and such, then turned the kids loose to fish under the guidance of several FOAM members and other volunteers. T-shirts with FOAM's logo prominently displayed with a list of other sponsors were handed out to the kids, who will probably wear them everywhere they go this summer.

Note: Yes, there may be controversy over the plans the Meriweather Ranch has in mind along the Big Hole, but FOAM's involvement doesn't endorse the ranch; it is only to sponsor greater youth participation in flyfishing and conservation.

The well-established Bighorn River Alliance is promoting a Youth Adventure on that river during late June. Again, FOAM donated a small amount to buy some barbecue supplies and makings for a great picnic lunch the kids will enjoy. Local FOAM members will volunteer to help like they did on the Big Hole.

The Alliance is re-evolving as a voice and force for the Bighorn river. Water levels, streamside conservation, riparian habitat recovery, and other topics drive their current agenda. Check them out if you're interested.

FOAM hopes our small forays into youth fishing days around the state will encourage kids to get outside, fish a little, and become interested and involved in fisheries, conservation, and fish habitat. You know, stuff they don't find on the Xbox or Wii console. We're glad we could help. If you know of other such events, please contact your FOAM director about them. The FOAM board is cautious about donations, but kids are the future of the game and our industry. They seem like a solid investment.

## GUIDE-AT-LARGE DIRECTOR ELECTED

### *Director Represents FOAM Guide Members Statewide*

Chris Fleck, FOAM's previous Guide-at-Large Director moved up to become an outfitter, so FOAM held an election for his replacement. Rick Rossi of Butte and Russell Parks of Missoula were nominated.

Russell Parks, long-time guide and business partner of Casey Hackathorn, was elected to the position. He will start representing our guide members at the next FOAM Board of Directors meeting scheduled for early December, 2009.

Thanks to Rick Rossi for his interest in the position, congratulations to Russell, and thanks to the guides who voted.

**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, 91 Big Hole 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.

### CLASSIFIED ADS

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