



The FOAMLINE

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FISHING OUTFITTERS ASSOCIATION OF MONTANA
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OUTFITTER ASSISTANT BILL “IMPROVED”

FOAM Forges Changes That Protect Public, Curb Abuse

House Bill 187, legislation that permits outfitters to replace injured or absent guides with unlicensed “outfitter assistants” (OA’s) was amended in the Senate to better protect the public and limit random abuse of the privilege.

Outfitters who use OA’s are responsible under Board of Outfitter misconduct and disciplinary provisions for any “errors or omissions” an OA makes while serving clients. And, the outfitter is responsible for ensuring the OA “safeguards the public health, safety, and welfare while promoting services.”

Because an OA must carry proof of employment in the field, temporary documentation standards were set in the revised bill. Specifically, an outfitter who replaces a guide with an OA must explain the reason for the replacement and affirm with their signature that the replacement was for emergency purposes.

Finally, the bill is set to expire automatically on September 1, 2015. This two-year “test period” will allow the Board of Outfitters to collect data on OA’s such as how many are used, how long they are in the field, the reasons they’re used, etc. If the process is successful, abused, or has unexpected impacts, the 2015 legislature will review and decide whether or not to continue this unlicensed practice. A stopgap measure, at best, for a bad idea.

A big “Thanks” to those members who helped FOAM fight to get these amendments in place. The amendments’ champion, Sen. Elsie Arntzen (R, Billings), negotiated to make sure the public was protected. The bill’s sponsor, Rep. Kelly Flynn (R, Townsend), has agreed to leave the amendments untouched when the bill is presented in the House for final approval before going to Gov. Bullock for signing.

This revised HB187, though still basically flawed, now has a chance to prove - or not - its value in the field when applied within the sideboards and safeguards in place. Time will tell.

BOARD REVIEWING LICENSEE ADVERTISING

MBO May Update Outfitter/Guide Ad Rules For New Media

Originally based on print media, Board of Outfitter rules covering who may advertise and what ads should contain are clearly outdated and unprepared to deal with the web and social media. Starting in June, the board will review and consider changes to their ad rules.

Over time, many questions have been posed, including just what constitutes an ad - clearly, magazine and newspaper ads are common - but so are billboards, handbills, brochures, business cards, as well as hats, t-shirts and other clothing with logos, mottos, emblems, and such. Then, there’s blogging, Facebook, Pinterest,

LinkedIn, and many other, newer and emerging social media platforms, right on down to instant messaging systems like Twitter.

Should an outfitter have to list their business name, address, phone number and license number on all forms of ads? Just some? Which ones? What’s the difference between an ad and a logo, motto, slogan, or emblem? This is a big topic, and the board will work hard to tackle all these questions in several meetings.

As for guide advertising, the Board of Outfitter rules are plain: A guide may not advertise outfitting services unless they own the outfitting business. And, by law, outfitters are the only licensees, except for that guide-owner, who are authorized to advertise and solicit clients.

But, many outfitters and guides mistakenly think it’s okay for a guide to hand out to the public business cards with their name and address, so long as the outfitter’s contact info is on the card, too. Other sections of board rule mention such terms as ‘designated’ and ‘agent’ when applied to guides, adding to the confusion. FOAM wants to work with the outfitter board to clear up the rules and the confusion regarding advertising for all licensees.

A comprehensive review and possible new rules can make plain just what an ‘ad’ is, and who can do what with ads. This business/licensee interface is somewhat new territory for some outfitter board members, and they should take the time to develop proper guidelines, rules, and penalties, then reach out to educate all outfitters and guides on whatever they eventually decide.

The FOAM Board of Directors is spending time asking basic questions about outfitters, guides, and ads so they can develop recommendations for the outfitter board to use in their deliberations. The guide advertising question may only pertain to the fishing industry, much like the OA need is tied to the hunting outfitters, but all advertising scenarios can benefit from some close, thoughtful scrutiny. FOAM will keep you informed about any changes.

IC STATUS FOR OUTFITTERS, GUIDES

Independent Contractor Questions from FOAM Annual

Joel Silverman, a Helena attorney and fishing guide, presented a talk about independent contractorship at our Annual Meeting in Bozeman in early March. IC questions came thick and fast from those attending, and here’s a brief rundown on the discussion.

Silverman walked through the familiar ICEC (IC Exemption Certificate) application method commonly used by most guides and some outfitters. He reminded outfitters to get an ICEC, too, and not think just because they are outfitters or sole proprietors, they are automatically exempt from Workers Compensation laws.

Silverman described a manager-managed limited liability corporation as an alternate route for licensees. The “man-man LLC” exemption from Work Comp is a bit more complicated, since it requires forming a corporation, holding board meetings, and taking minutes that cover specific topics. But, with a corporation, an outfitter’s personal assets can be protected by separating them from business assets. Yes, this LLC option may cost some dough to set it up via an attorney, but, after initial costs, at \$15 a year, it may be cheaper than the ICEC.

FOAM has a brief explanation about this alternate IC exemption on our FAQ page. Look for “What is the Limited Liability Corporation exemption” topic for details. We will publish a more complete explanation soon and get it up on our website for distribution.

A FOAM guide from Livingston called the offices the other day asking about IC status, and suggested FOAM remind guides to keep their IC status current and outfitters to always check that the guide you’re contracting with has and presents a valid, current ICEC. Good idea, members. No one needs to be caught out in a questionable outfitter-guide working relationship.

MADISON RIVER CAC WORK COMPLETED

Management Recommendations To Be Presented to FWP

After ten meetings spread over about a year, the Madison River Citizen’s Advisory Committee has worked out a series of suggestions for managing social aspects of fishing and recre-

ation on the Madison. The group unanimously agreed that on the need for detailed data-gathering to find out just who’s doing what where and when before any final decisions are made and certainly before any rules are adopted.

Some recommendations are keyed to the whole river, while other suggestions tie activities, problems, and proposed solutions to a series of clearly designated stretches, starting at the Yellowstone National Park border and following the river down to Headwaters State Park.

A document outlining the group’s suggestions is being finalized and reviewed right now, and it’s recommendations will be briefly vetted by FWP staffers for legality and consistency. The CAC’s final recommendations will be presented to the FWP Commissioners on April 11 in Helena, when a representative of the Madison group will present the document with an overview to the commissioners. Next, the document will be sent out for public comment. Finally, FWP will review these comments and integrate any suggestions into the document, then make a recommendation and presentation to the commissioners for their consideration, all leading up to a management plan complete with guidelines and possible rules. No timetable for adoption of the proposed management plan has been set.

FOAM members represented local and out-of-area outfitters and guides and their points of view throughout the consensus process. Go to <http://fwp.mt.gov/recreation/management/madison/> for more details and upcoming steps in the presentation.

BOARD of DIRECTORS			
Region 1 (Kootenai, Flathead) Jason Lanier 387-5340	Region 2 (Bitterroot, Clark Fork) Russell Parks 543-7078	Region 3 (Missouri) Mark Raiser 459-8739	Region 4 (Big Hole, Beaverhead) Matt Greemore 684-5639
Region 5 (Madison) Joe Moore 581-6059	Region 6 (Gallatin) Dave McKee 582-0980	Region 7 (Yellowstone) Eric Adams 223-2488	Region 8 (Big Horn, Ft. Peck) Steve Galletta 666-2473
Guide-at-Large Director Peter Shanafelt 360-5430			

- Outfitter Assistant Bill “Improved”
- MBO Reviewing Outfitter, Guide Advertising
- IC Status Review, Update
- Madison River Management Update

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