



The FOAMLINE

VOL. 12, #3

FISHING OUTFITTERS ASSOCIATION OF MONTANA

WINTER 2003

GUIDE-AT-LARGE COLUMN

from Garrett Munson, FOAM director

After another busy season on Montana's waters, it's time again to hunker down and get back to work on the issues that face our industry. As guides, I feel that we are at the core of the commercial outfitting trade, and it is important for us to be involved and have a voice in the processes that make decisions regarding our future. Again, I encourage you to get involved in any way that you can, locally and/or globally, to be a presence.

A good place to start would be to voice an opinion regarding the final recommendations of the River Recommendation Advisory Council, which potentially will be the guiding principles for recreational use of our waterways in the future. This document can be accessed at the FOAM website (www.foam-montana.org), or at the FWP website (www.fwp.state.mt.us). While the public comment phase closed November 28, it's worthwhile to send your thoughts anyway. Write to Charlie Sperry at csperry@state.mt.us or contact your FWP Commissioners through the FWP website. Your home river could be one that will be managed differently in the somewhat near future, and you will probably want to be involved in how that happens.

Another good way to get involved will be at our annual meeting on March 13th in Livingston. We are planning to ramp up our meeting from the past few years, and I hope that the past low number of guides attending will change. Details are in this newsletter, but expect worthwhile discussions, helpful workshops and lots of giveaways from your favorite fishing gear companies (that means free rods, reels, waders, etc.). This is probably the best time and place to get connected with FOAM, and also share your thoughts on how we're doing to represent you. Please come!

Something you can expect for next season if you have your insurance through Montana International is the mandatory use of 'Acknowledgement of Risk' forms. MI is now requiring that outfitters use these forms with our clients, which are similar to the forms used by whitewater outfitters. We all agree that this will be a new logistical pain, but apparently one that can't be avoided. There's more about this in the FOAMLINE.

I believe that FOAM is a solid organization to represent the 370 or so members who are guides, and our

current Board of Directors is committed to promoting and protecting our potential to do business as guides, and expand our business if we choose to in the future. That is why I'm in this position as your representative (it's certainly not for the glory), and why I believe in the work we are doing. I am open to and interested in hearing from you, so please don't hesitate to contact me with any questions or comments - gertymunson@hotmail.com, 406-431-5089. Have a great winter!

RISK FORMS REQUIRED FOR ALL CLIENTS

Outfitters Responsible for Client Signatures

The insurance underwriter representing Capitol Indemnity, our insurance company, now requires all FOAM outfitter members insured under our program have their clients sign what's known as an "acknowledgment of risk" form. The underwriter, Scott Tuxbury, says that Capitol Indemnity believes the forms will avoid frivolous claims and may help reduce insurance premiums in the future.

As explained in the last FOAMLINE, the risk form does *not* exempt anyone from responsibility for claims based on negligence, because it is not a waiver of liability, but it does inform the clients that risks exist that are beyond the control of the FOAM outfitter or guide member and that the client understands and accepts this by "acknowledging" the risks of outdoor, water-based fishing activities.

WHO'S RESPONSIBLE FOR THE SIGNATURE(S)?

In all but one circumstance, the outfitter offering, booking, and logging the trip is responsible for having clients sign the form. No matter whether an outfitter uses a guide who's an employee covered under the outfitter's policy, a guide who's an independent contractor carrying his or her own liability policy coverage, or another outfitter who carries his/her own coverage but acts as a guide, the outfitter who logs the trip for the board of outfitters is responsible for the forms. "Logging" outfitters should provide forms to anyone who guides for them, then make sure the forms get to the clients, are signed, and returned for safekeeping in their files.

The exception: An I.C. guide who's working for an outfitter who's NOT a FOAM member. In this case, the I.C. should list his/her name on the form and is responsible for getting the client's signature(s) and keeping the original form in their files.

NEW FORMS AVAILABLE SOON

Due to this exception and because both outfitters and I.C. guides can have insurance coverage through FOAM, we've replaced the original form you received with a new form with a line for filling in the name of the person actually guiding the client. The form typically should still have the "logging" outfitter's business name at the top, but, by filling in the name of the person "in the field" with the client(s), anyone associated with the services provided is covered by the form.

You will receive a sample of the new form in the mail soon, even if you've already purchased insurance. You can also download the form in PDF format from the "Applications & Forms" page in the Member Services section of our website, www.foam-montana.org.

HOW CAN I GET THE FORMS TO THE CLIENTS?

There are many ways to get these forms to the clients - you can send them a copy when you send your booking confirmation, deposit receipt, or contract, when they come to your shop before the trip, when they're in your lodge or accommodations, when they're riding with you to the river, or anytime *before* the trip starts. It's also a good idea to educate the clients about these forms long before they see them in the shop or at the put-in. Many outfitters have already put a note in their brochures about the forms, the necessity of clients signing them, and a little background on what the forms mean and do.

WHAT'S IN THIS FOR ME?

Just what do the forms do for us as FOAM members? Well, we know from our insurance history that most of our client claims have been for lost or damaged gear, with only one or two claims for low-grade personal injury. Because an acknowledgment of risk form also covers loss or damage to gear, clients can understand that things happen to stuff that we can't avoid and, in turn, they may not want to automatically try to make a claim for damages or loss the outfitter or guide is not directly responsible for. Remember, the point of liability insurance is to cover loss *when the insured FOAM member is responsible for the action that caused the loss*, not for any and all damage, loss, or injury that comes from a guided trip.

Of course, once in a great while, a client may try to get some relief for loss, damage, or injury when either they're to blame or, more likely, no one's to blame because

risks and harm just occur in this type of activity. Our insurers tell us that when a claim is made, all parties, no matter how remotely connected to the incident, can be named in the lawsuit - the guide who "caused" the loss or injury, the outfitter who sponsored the trip, FOAM as an entity, the insurance company itself, and on and on. We can only defend ourselves with reasonable prudence and good conduct. These risk forms are one more step in that process.

And, because the first \$250 of any property loss or damage liability claim is deductible and must be paid by the FOAM member, the form can also keep clients from making a claim on gear they lost or damaged through no fault of your own.

HOW DO I MAKE THIS "SAMPLE" FORM MINE?

Outfitters, please make copies of the forms with your logo on top - the easiest way is to just copy the form with your business card placed in the box at the top - and fill in your business name listed on the first blank space after "provided by." Then, have your clients sign them and keep the documents on file. The signed forms should be kept on file for three years after they were signed. This 3-year period coincides with the statute of limitation on injury claims. Those few I.C. guides who work for an outfitter who's not a FOAM member should keep the forms themselves for the same 3-year period.

SOME QUESTIONS & ANSWERS

Here are some other typical scenarios and what to do:

Question: I have repeat customers who comes several times each season. Do they have to sign a new form each time they come during a year?

Answer: No, only the first time they use your services during any one season. That acknowledgment should hold for each time they come for that year.

Q: What about the people who come the same time each year? Can't I just have them sign one form and let it go forever?

A: No, it's best to start each season with a new form, even with repeat clients.

Q: My lodge (or dude ranch, booking agent, etc.) already has clients sign a risk form. Do I need a separate one for my guiding services?

A: Yes. The FOAM liability insurance and risk forms pertain only to the services we provide as outfitters and

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Guide-at-Large Director Garrett Munson 431-5089

guides. They are separate from all other policies and requirements for the lodge, ranch, etc.

Q: What if the client won't sign the form, or they sign something like "Mickey Mouse" or use an illegible signature?

A: You shouldn't take them on a trip. This is tough, yes, but FOAM members can't risk our long-term, successful insurance program because one client balks at giving their legal signature. Explain that we're required to have them sign the form. Have them read the form and understand that it doesn't release you from providing a safe trip, but only outlines the fact that outdoor sports contain some chance of risk that you can't control, the same risks they've faced all along when fishing with you in the past.

WON'T IT BE TOUGH TO GET CLIENTS TO SIGN?

Whitewater operations and hunting outfitters have been required to use these forms for years, so they're nothing new to the recreation industry. Whitewater businesses typically run through four times (or more) as many people as the most successful fishing operation, and they report little or no resistance to signing. And, remember, their clients come in spontaneously straight off the street, ready to go right away, then encounter these forms while standing in line waiting for the bus to take them to the river. Our typical clients plan long in advance, and we have the time to educate them about these mandatory forms.

WHAT IF I DON'T HAVE A SIGNED FORM TO GO ALONG WITH A CLIENT'S CLAIM?

FOAM doesn't want you to alienate anyone or lose one client due to lousy suspicions based on worst-case legal scenarios. On the other hand, our insurer will tolerate few mistakes and wants to see a signed risk form signed by any client making a claim. If a FOAM member has two incidents of failing to produce a signed risk form when a claim is made, our insurance provider can rescind that individual member's insurance.

The FOAM board of directors urges you to comply with this new requirement. No FOAM outfitter or guide wants to lose their required liability coverage. Let's all do our best to get our clients to sign the forms, then keep the original documents available, just in case.

FOAM will offer a "risk form workshop" with our agent and the underwriter at our annual Membership Meeting scheduled for next spring. Working together, we can make this a small change in our standard operating procedure and keep our eyes on successful business moves while enjoying our chosen profession. Thanks in advance for your help and cooperation . . . we've never needed it more.

ANNUAL MEETING: 3/13/04 IN LIVINGSTON

Spring Creek Day, Workshops, Raffle Scheduled

Saturday, March 13th is the date set for FOAM's annual Membership Meeting at the Best Western Yellow-

stone Inn in Livingston. You may remember we agreed to change the meeting date back to early spring in order to draw the largest number of FOAM members. Well, we're going all out to make this annual meeting a successful event.

We plan to have DePuy's spring creek booked on Friday, March 12th, for FOAM members only, so those attending the Saturday meeting can have a little fun wetting a line the day before. We've got a question-and-answer session to help answer any member questions on insurance and the new risk forms, updates on FWP's statewide river recreation management planning process, workshops covering river ethics and etiquette, river safety, and noxious weeds. The directors are contacting some fishing gear and boat distributors to set up booths so you can check out new stuff and ask questions. Throw in a great lunch, our traditional open membership session, lots of items for our raffle, our infamous Happy Hour, and you have the ingredients for an interesting, informative and fun annual meeting.

Your board of directors is meeting in Helena in January to hash out final plans to make this happen. If you have any ideas, contact your director any time in December and let 'em hear what you think. FOAM staff will send out invitations with registration forms for lunch and such in late January, so keep an eye out for them. We'd like to see you in Livingston. The new springtime meeting date should make it easier for you, to plan on coming.

CRAIG MADSEN APPOINTED TO MBO

Great Falls Outfitter to Represent Fishing Interests

Governor Martz has selected Craig Madsen, owner of Montana River Outfitters, as the Board of Outfitters replacement for Rick Pasquale as the sole fishing outfitter on the board.

A long-time member of both FOAM and the Montana Outfitters and Guides Association, Craig is a retired outdoor science teacher living in Great Falls. First licensed in 1977, he built successful flyfishing operations on the Smith river, the Missouri (both upper and in the "Wild and Scenic" stretches), and the Blackfoot.

"I want to be a conduit between the fishing outfitters and the Board of Outfitters," says Craig. He served as one of the original MBO members in the '80's, and during this new term he wants to fully understand the fiscal side of the governance of outfitting, focusing closely on our fee structure. Craig asks that you "relay your questions or comments about the MBO" to him at 406-761-1677 or craigm@montana.com

RIVER REC. COUNCIL MULLS PERMITS

FWP Commission Asks for Recommendations

After working for nearly a year on general recommendations for a river recreation management process in

Montana, the River Recreation Advisory Council was directed by the Fish, Wildlife & Parks Commission to review and make recommendations on permits and permitting systems. The group touched on the topic in the earlier final draft of discussion presented to the commission in July, but will meet at least twice more to deal with this touchy issue in more depth. At least one commissioner, Dan Walker (Billings) has requested the RRAC design some system "before spring of 2004."

The RRAC will outline each person's "worst fears" and "must haves" relating to permit systems and allocation. Building on these interests, the group will review currently-used models, pick them apart for flaws that won't make them suitable in Montana, and try to find some guiding principles for the local advisory groups to explore on their local rivers.

After meeting once in November, the group made it clear that they favor all other methods (education, registration, moving people around in time and place, setting specific reaches for specific activities, etc.) before resorting to regulations based on permits and/or allocations. It's clear that most everyone on the RRAC wants the spontaneity of "going on the water" - or taking people on the water - and is willing to go to great lengths to preserve that ability before cracking down with numbers and permits.

More immediately, FOAM wonders how the current "rest and rotation" method controlling nonresident floatfishing and commercial service providers will survive this permit discussion and the new RRAC recommendations filtered through the public and the FWP Commission and squeezed into a statewide policy via the rule-making process. Should be interesting. Any developments will be noted in upcoming FOAMLINE issues.

FOAM'S LEGAL CHALLENGE ADVANCES

Butte Sportsmen's Groups Seek Intervention in Suit

Out legal challenge of FWP's authority to regulate river recreation for social factors and the validity of the current Big Hole, Beaverhead Biennial Rules is finally going to the judge. Legal arguments and formal answers to each others briefs have been filed by FOAM and FWP. Once replies to the answers are filed, the decision is up to District Court Judge Mike Salvagni.

Four sportsmen's groups from Butte, including the Anaconda Sportsmen's Assoc., the Skyline Sportsmen's Assoc., George Grant Chapter of Trout Unlimited, and the public lands access group PLAAI, have filed a motion to act as intervenors in the challenge, seeking to have their "rights more fully represented." If their motion is granted, they will join FWP as parties to the challenge and offer other arguments defending "Montana's resources and our relationship with the state as beneficiaries of the Public Trust Doctrine."

FOAM's legal counsel, Mike Cusick, has filed an

objection to their intervention, pointing out that they've known about this challenge for years and only now, during the last moments of the trial schedule, have decided to weigh in with their arguments. If they're allowed in, we'll have to file extra motions listing our points against their contentions at a time when our and FWP's formal motions and arguments have already been made. In legal terms, Mike's point is their intervention is not "timely." We'll see how the judge rules.

At the same time, FOAM has stated all along that our association is in favor of controlling recreational use when and if it affects the biology of any stream, and we have fought right along with other conservation groups to improve management so resource degradation doesn't occur. Frankly, we have defended the quality of the resource and access to it right along with these four groups. However, their legal arguments for natural resource protection may be posing as proxies for resident priority access.

Pending a decision on this intervenor status, final arguments are due by mid-December when all materials will be in the judge's hands, awaiting a decision sometime in early 2004. Even if the groups join in the challenge, we could have a decision by the time of our annual meeting in March.

BLM REGULATING PERMITS ON BLACKFOOT

Madison Permitting Process On Hold Due to Budget Cuts

As part of overall management progress on the Blackfoot river, the Bureau of Land Management must apply a "Special Recreation Permit" (SRP) system for three groups or activities - commercial entities, organized groups (think fraternity or Boy Scout floats), and competitive events like kayak or canoe races. The BLM is using the long-established Blackfoot Recreational Steering Committee (RSC), made up of landowners, recreationists, commercial service providers, and interested citizens, to help iron out details on each facet of the system. FOAM's Executive Director, Robin Cunningham, who sits on the BLM Western Resource Advisory Committee or RAC, has been appointed liaison between the BLM RAC and the RCS to keep the RAC informed of the group's progress. The Western RAC reviews and comments on the permit process before it goes into place.

The RSC has used consensus (or a "super-majority voting scheme) to set up their own Blackfoot Management Plan, dividing the river into seven "management reaches" and laid down specific use and management expectations for each segment. This process closely mirrors the recommendations of the statewide RRAC and can serve as a model for how the RRAC's process could work in the real world. Since permitting is part of BLM river management process, the BLM is leading the way by allowing citizen and recreationist consensus-based input into their decision-making process. The RSC has certainly earned the trust required for the feds

to accept their recommendations, but Dick Fichtler, BLM lead on this permitting procedure, and Nancy Anderson, BLM's Missoula Field Office head, deserve credit for broadening the scope of responsibility to include affected parties in an agency decision.

So far, the RSC has decided to apply a framework similar to the mock-Limits of Acceptable Change model the RRAC recommended. That is, there are specific decision steps and descriptions; they include: 1) establishing "goals" that broadly define what the group/agency wants to accomplish, 2) setting "objectives," measurable, time-specific indicators used to measure progress toward "goals," expressed as long-term or short-term steps, 3) "standards," *required* management activities that address how to achieve specific objectives, 4) "guidelines" which act as *suggested* activities, priorities, processes, or prescriptions that are useful in meeting objectives, and 5) "actions," specific, required steps that insure that standards are achieved.

What does this mean in real terms? On the Blackfoot, there are five "goals": 1) Develop a Special Rec. Permit (SRP) management framework which insures the conservation of natural resources and perpetuates the quality and diversity of recreational experiences, with the objectives of a) keeping the SRP mgt. framework consistent with the RSC river reach designations, and b) developing an SRP mgt. framework that is consistent with the RRAC recommendations. Goal #2) Define an efficient SRP process that minimizes administration for both the agency and the permittee, reflected in objectives a) pre-define locations and permit stipulations for organized groups and competitive events, and b) use current technologies, such as the Web, to transfer information between the agencies and the permittee. Goal #3) Develop an SRP system which helps to insure that group activities are conducted in a safe manner by the permittees using a single objective - All commercial angling permittees shall have a current license from the MBO. Goal #4) The SRP process will be compatible with existing (BLM) agency policies and regulations via two objectives: a) All SRP permittees shall have liability insurance, and b) the Blackfoot SRP framework shall not result in value being attached to the permit. Goal #5) Use the SRP system to efficiently gather user information from permittees.

When you compare these real-world concepts to the RRAC recommendations, once again, they are almost identical. FOAM is gratified that the BLM chose to honor the RRAC recommendations, both in spirit and word (objective "b" of goal #1). We're also aware the permits, from the BLM point of view, are mandatory in order to satisfy the BLM's defined role of administering commercial (and organized & competitive) services in order to compensate the agency for our use of their access and for public safety.

This Blackfoot permit decision-making process will

be the first model to bridge the gap between the federal procedure and the RRAC recommendations, so it's important that FOAM has a representative (one who helped develop the RRAC recommendations) at the table to monitor the progress of both the federal and the state agencies while they deal with this facet of river recreation management.

MADISON RIVER PERMITS ON HOLD FOR NOW

Commercial recreational use permits apparently will not be established on the Madison river this season. Tim Bozorth, BLM Dillon Field Manager, explained that his budget has shrunk so much, he doesn't see how his area can afford to go ahead with plans to implement any permit system this year. Of course, this doesn't mean the SRP process is gone, only delayed. All the more reason to see how the citizen advisory council role the Blackfoot Rec. Steering Committee will play pans out on that river. If successful, there's no reason FOAM can't play a substantial role in developing the BLM Special Rec. Permit process on the Madison. Stay tuned.

FOAM DIRECTORS UP FOR ELECTION

Don't Forget to Send in Your Ballot

Five FOAM director positions are currently turning over and we need your votes to secure election of the nominated candidates. They include Tim Linehan from FOAM Region 1 (Kootenai, Flathead), Matt Greemore, Region 4 (Big Hole, Beaverhead), Matson Rogers, Region 6 (Gallatin), Lee Kinsey, Region 7 (Yellowstone), and Garrett Munson (Helena) as Guide-at-large director representing guides statewide.

If you live or work in Regions 1,4,6, or 7, or were a 2003 guide member, you should have received a ballot for the regional director or guide-at-large director nominees. The ballots also provide for a write-in candidate of your choosing. All ballots are due in the FOAM offices by December 31.

MEMBERSHIP, INSURANCE APPS ONLINE

Extra Outfitter Log Pages, Sample Risk Forms, Too

Check the FOAM website (www.foam-montana.org) for 2004 membership applications and insurance questionnaires. You'll find these and other forms on the "Applications" part of the "Member Services" pages. Applications, questionnaires and forms are all in PDF format, requiring Adobe Acrobat to open and print them. If you don't already have Acrobat, use the link on the Application page to get it. We've also put up extra log pages and a sample "Acknowledgment of Risk" form for those outfitters who need them.

You can also find our FOAM website listing application. New outfitter members who want to have their business listed on our "Find an Outfitter" reference page should

download and print the form, then send it to the FOAM offices, PO Box 67, Gallatin Gateway MT 59730. Current outfitter members who want to update their listings should send their updated listings or changes to the FOAM offices by mail, email (info@foam-montana.org or rcunningham@montana.net), or phone 406-763-5436.

FOAM FIRST AID INSTRUCTORS AVAILABLE

But, We Still Need Instructors for Many Other Areas

The last FOAMLINE sent out a call for extra first aid instructors to help our members keep their first aid certification up to date and to make application for new licenses from the Board of Outfitters easier.

So far, five people have stepped forward to make themselves available for basic first aid recertification classes. Here's a list of areas, names, and contact info:

Missoula area

(Hamilton) Peter Pilkey, 406-363-5495 or
Fred Weisbecker, 406-375-9317

(Lolo) Jeff Kroll, 406-273-4918

Twin Bridges area

Chris Sywassink, 406-684-5960, (after 3/2004)

Livingston area

Mary Jo Wertz, 406-686-4412

Before you contact these people, remember that they need

some lead time - more than a day, usually - to put together a class, they may have minimum attendance numbers (like 5 or more people before they'll offer a class), and they can charge for their services.

Also, remember to think ahead about recertification and keeping your card up to date. The expiration date of your first aid card is printed on your outfitter or guide license, so make a note of the ending date of your certification period, then make arrangements to keep current at least a month before your certification expires.

You can also contact the American Red Cross of Montana at <http://montanaredcross.org/districts.html> or by calling 1-800-ARC-MONT (800-272-6668). They can help you find the Red Cross district, instructors, and training schedules in your area.

FOAM still needs volunteer instructors for Kalispell, Helena, Bozeman, Billings, Ft. Smith, and the Ft Peck area (Glasgow). If you or anyone you know is willing to help keep our members (or anyone else in need of certification) up to date, please contact the FOAM offices (406-763-5436).

We thank the current volunteers for their willingness to help FOAM members and the communities they serve. First aid instruction and training can help us save anyone in need, not just our clients.

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