

BEFORE THE PARKS AND RECREATION BOARD
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF) NOTICE OF PUBLIC HEARING ON
New Rules I and II pertaining to the) PROPOSED ADOPTION
Smith River bonus point permit)
system.)
)

TO: All Concerned Persons

1. On September 29, 2023 at 10:00 AM the Montana Parks and Recreation Board will hold a public hearing via the ZOOM meeting platform to consider the proposed adoption and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the telephonic public hearing in the following way:

Dial by telephone: + 1 646 558 8656
Meeting ID: 820 2847 1950
Passcode: 780988

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Fish, Wildlife and Parks (FWP), no later than 5:00 p.m., on September 22, 2023, to advise us of the nature of the accommodation that you need. Please contact Regina Reynolds, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail to Regina.Reynolds@mt.gov.

3. Statement of Reasonable Necessity. The Parks and Recreation Board has statutory authority to establish rules governing the issuance of Smith River recreational use permits. The 2023 Legislature passed House Bill (HB) 846, which created a bonus point authority for Smith River permit applications, limited permits for nonresidents, and provided rulemaking authority to the Board. The purpose of the proposed rules is to mimic the already successfully implemented hunting bonus point system which will provide consistency and clarity for the public and the agency in this new permitting process.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I (ARM 12.3.650) SMITH RIVER PERMIT (1) A permit and payment of floating fees are required to float the Smith River from the Camp Baker put-in to the Eden Bridge take-out year-round. This requirement does not apply to a landowner conducting a day float solely for the purpose of performing maintenance on their contiguous fee title property adjacent to the Smith River in the permitted section of the river.

(2) The permit authorizes the holder and the members of their group to a float beginning on the date specified on the permit.

(3) The permit is issued to an individual and is non-transferable and non-refundable.

(4) A person must submit a permit application to participate in the general lottery. A person must be a minimum of 12 years of age at the time they submit a permit application. No person may submit more than one permit application. A person may purchase an unlimited number of Smith River Super Permit lottery chances.

(5) A permit season begins on April 1 and continues through March 31 of the following year. The percentage of overall permits issued to nonresidents are limited by MCA § 23-2-408.

(a) The department shall use a general random lottery to allocate permits that authorize a launch date from April 1 through August 15.

(b) Permits that authorize a launch date from August 16 through March 31 must be obtained by contacting the department's regional office in Great Falls.

(6) A person receiving a permit through the general lottery for a launch date during the peak season of May 15 through June 15 may not apply for a permit the following calendar year for a launch date within this same time-period. They may apply for a permit outside of the peak season, accompany another permitted group during the peak season, obtain a cancelled launch permit, or apply for a Super Permit. The department may waive this restriction for trips cancelled due to unsafe conditions caused by inclement weather or river flows, insufficient flows for navigability, or other similar exigent circumstances, not including trips cancelled due to undesirable fishing conditions.

(7) Any permits on dates not fully subscribed during the general lottery shall be made available by the end of March on a first come, first serve basis subject to MCA § 23-2-408.

(8) The recipient of a permit must notify the department's regional office in Great Falls or the Camp Baker ranger station when cancelling a permit.

(9) A person cancelling their permit less than two days before their launch date shall be prohibited from applying for a permit the following permit season. This restriction does not apply if the river flows are below 100 cubic feet per second. The department may waive the cancellation penalty for permits cancelled less than two days prior to the launch date due to unsafe conditions caused by inclement weather or river flows, insufficient flows for navigability, or other similar exigent circumstances, not including trips cancelled due to undesirable fishing conditions.

(10) A cancelled permit shall be made available on a daily, first come, first serve basis subject to (5) above.

(11) Each year the department shall conduct an additional lottery that is separate from the general lottery and is used to issue one permit ("Smith River Super Permit") that is valid any day of the year of issuance. An individual may purchase an unlimited number of Super Permit lottery chances. The department may reserve one permit from the general lottery or a cancelled permit to ensure compliance with (5).

(12) Additional rules governing recreation and commercial use on the Smith River can be found in the Board's Smith River biennial rules.

AUTH: 23-1-102, 23-1-106, 23-1-111, 23-2-408, MCA
IMP: 23-2-408, 23-2-409, MCA

REASON: The Board is proposing this rule to place the Board's general biennial Smith River regulations regarding permits into administrative rule, while implementing the provisions of HB 846 from the 2023 legislative session.

NEW RULE II (ARM 12.3.651) SMITH RIVER BONUS POINTS (1) Smith River bonus points are non-refundable and non-transferable between applicants.

(2) Smith River bonus points do not apply to hunting permits or licenses.

(3) A person may purchase only one bonus point per year and may:

(a) purchase a bonus point when applying for a Smith River permit by paying the fee established in 23-2-409, MCA; or

(b) if the person is otherwise eligible to apply for a Smith River permit and chooses not to apply that year, they may purchase a bonus point only between July 1 and September 30 of that year.

(4) The department may only apply accumulated bonus points to a person's chance to obtain a Smith River permit if the person purchases a bonus point when applying for the permit.

(5) The department shall square the number of bonus points a person has accumulated when conducting the drawing for Smith River permits.

(6) If an applicant for a Smith River permit has elected to participate in the bonus points program and is unsuccessful in the drawing, they shall retain the bonus points they purchased.

(7) An applicant's bonus points accumulate until the applicant is successful in drawing a permit.

(8) If an applicant is successful in drawing a Smith River permit, the applicant's bonus points are reduced to zero for the Smith River.

(9) If the following special circumstances occur, an applicant who is successful in drawing a Smith River permit may retain their accumulated bonus points if the applicant:

(a) is a member of the armed forces and is either deployed outside the continental United States in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) or deployed in response to a state or national emergency; or

(b) is affected by a catastrophic or major natural disaster or man-made event that requires the applicant's assistance as a member of a local, state, or federal management agency.

(10) A qualifying applicant under (9) must notify the department a minimum of 14 days prior to the launch date of their permit.

(11) The director or designee may authorize exceptions for extenuating circumstances.

AUTH: 23-1-102, 23-1-106, 23-1-111, 23-2-408, MCA
IMP: 23-2-408, 23-2-409, MCA

REASON: The Board is proposing this rule to place the Board's general biennial Smith River permit regulations into administrative rule, while implementing the provisions of HB 846 from the 2023 legislative session.

5. The Department contacted HB 846's primary sponsor Rep. Tom France on June 16, 2023 by telephone and an email. Rep. France indicated that he prefers the Smith River bonus point system mimic the hunting bonus point system as much as possible. Rep. France has reviewed the proposed rules herein and the approximate timeline of the rulemaking process.

6. Although the fees associated with the Smith River Bonus Point system were set by the legislature, the Board is including the revenue estimate provided to the legislators in its fiscal note. The anticipated cumulative income is estimated to be \$158,160 each fiscal year and the number of persons affected is estimated to be 14,514 based on the number of people who applied for a permit in 2022.

7. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Colin Maas, Department of Fish, Wildlife and Parks, 4600 Giant Springs Road, Great Falls, Montana, 59405; or email fwpsmithrulecomments@mt.gov, and must be received no later than 5:00 p.m., October 10, 2023.

8. Regina Reynolds or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

9. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department, board or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to: Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to regina.reynolds@mt.gov.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and repeal of the above-referenced rules will not significantly and directly impact small businesses as the points may only be purchased by individuals.

/s/
Jaime MacNaughton
Rule Reviewer

/s/
Russ Kipp
Chair
Board of Parks and Recreation

s/
Dustin Temple
Director
Fish, Wildlife and Parks

Certified to the Secretary of State August 29th, 2023.