



STATE PARKS AND RECREATION BOARD FWP PROPOSAL & INFORMATION SHEET

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Meeting Date: August 20, 2024

Agenda Item: Smith River Administrative Rulemaking ARM Correction and new Commercial Use ARM

Action Needed: Approval of Notice of Amendment and Adoption for ARM Process

Time Needed on Agenda: 20 Minutes

Background: Montana Fish, Wildlife & Parks is proposing that the Parks and Outdoor Recreation Board take formal action to both (1) amend ARM 12.3.650 to correct an inadvertent error in a date and (2) adopt a pair of new ARM provisions incorporating the commercial outfitter provisions currently contained in the 2022-24 biennial rule for the Smith River State Park and River Corridor.

In terms of the proposed date correction, the board undertook a formal Montana Administrative Procedure Act (MAPA) rulemaking process in 2023 to adopt rules reflecting a new bonus point system for private permits and to incorporate certain biennial rule provisions regarding private permits. In adopting those rules, the department inadvertently included a June 15 date in ARM 12.3.650(6) as the end of the peak floating season, when that date should have been July 15 to correspond with the biennial rule provisions.

In addition to correcting that date, the department is proposing that the board adopt a pair of new ARM rules to incorporate the commercial outfitter provisions currently contained in Section IX of the biennial rule into ARM in the same fashion that the private float trips provisions contained in Section VII of the biennial rule were incorporated into ARM 12.3.650 last year. The only additional language proposed for adoption in the new ARM rules not presently contained in the biennial rule structure is a provision requiring the reallocation of any revoked or abandoned commercial launches among the existing pool of commercial permit holders on the Smith River.

Public Involvement Process: The board first received and considered public comment on this matter at its May 20, 2024, meeting when the department requested authorization to initiate the MAPA administrative rulemaking process. The board then again received and considered public comment on this matter at its June 11, 2024, meeting when it reviewed and approved the department's request for authorization to submit a *Notice of Public Hearing on Proposed Amendment and Proposed Rules* to the secretary of state and formally initiate the MAPA rulemaking process.

As part of that MAPA rulemaking process, department staff conducted a public hearing on the proposed amendment and new rule adoption on July 19, 2024, and both testimony and written public comments were received. The department has now developed a proposed *Notice of Amendment and Adoption* for review and consideration by the board to conclude the MAPA rulemaking process. Copies of both the proposed notice and the written comments received by the department are included with the board's agenda materials. There will be a final opportunity for public comment when the board considers this matter at its Aug. 20, 2024, meeting.



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Alternatives & Analysis:

Alternative A: No Action: The current ARM 12.3.650 would contain an erroneous date for the end of the peak floating season and the commercial outfitter provisions in the biennial rule would not be incorporated into the ARM structure in the same way the board has previously incorporated the private permit float provisions. There would also be no required mechanism for reallocating any commercial launches that might become available.

Alternative B: Proposed Action: Approve the *Notice of Amendment and Adoption* and authorize the department to file it with the secretary of state to formally conclude the MAPA rulemaking process. This will correct the date error in ARM 12.3.650, maintain consistency in the board's incorporation of the biennial rule provisions regarding private and commercial floats into the ARM structure, and provide a mechanism for reallocating any commercial launches among the existing permit holders in the event the need for that ever arises.

Agency Recommendation & Rationale: The department recommends Alternative B to correct the error, maintain consistency, and provide certainty and clarity regarding the allocation of any available commercial launches.

Proposed Motion: I move the Parks and Outdoor Recreation Board approve the *Notice of Amendment and Adoption* as presented and authorize the department to file it with the secretary of state.