

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARINGS ON  
RULES I through IV pertaining to ) PROPOSED AND ADOPTION  
recreational use and regulating of )  
commercial use on the Madison River )

TO: All Concerned Persons

1. On June 4, 2018, at 6:00 p.m., the Fish and Wildlife Commission (commission) will hold a public hearing at Ennis High School Cafeteria, 223 Charles Ave., Ennis, Montana, to consider the proposed adoption of the above-stated rules.

On June 5, 2018, at 6:00 p.m., the commission will hold a public hearing at Copper King Clarion Inn, 4655 Harrison Ave, Butte, Montana, to consider the proposed adoption of the above-stated rules

On June 7, 2018, at 6:00 p.m., the commission will hold a public hearing at Holiday Inn, 315 Yellowstone Ave., West Yellowstone, Montana, to consider the proposed adoption of the above-stated rules.

On June 8, 2018, at 6:00 p.m., the commission will hold a public hearing at Best Western Grantree Inn, 1325 North 7<sup>th</sup> Ave., Bozeman, Montana, to consider the proposed adoption of the above-stated rules.

2. The commission 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 the department no later than May 25, 2018 to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail [jesssnyder@mt.gov](mailto:jesssnyder@mt.gov).

3. OVERALL STATEMENT OF REASONABLE NECESSITY: The proposed rules are not reducing current Madison River use, only proposing to maintain use at the current level to address increasing pressure on the natural resources due to increasing recreational use.

The commission is proposing administrative rules for the Madison River from the outlet of Quake Lake downstream to its confluence with the Jefferson River that protects the outstanding natural resource values of the Madison River and improves the quality of the recreation experience for all users. The Department of Fish, Wildlife and Parks (the department) has gathered information on Madison River use through mail-in and on-site surveys, scoping meetings, and information public comment regarding how satisfied people were with their experience on the Madison River. The results indicated several areas of concern including crowding of recreationists on the river and at access points, increasing commercial use, and

increasing amount of visitor impacts to natural resources. Data indicates that overall recreational use on the Madison River continues to increase. Most notably, commercial use on the Madison River is rising annually. The number of trips reported by commercial outfitters has increased by 72% since 2008 on the Madison River providing the commission with enough information to propose administrative rules to protect the quality of the angling and recreational experience of the Madison River.

In addition to the proposed rule language, the department has published a draft environmental assessment for public input evaluating the environmental impacts of the proposed rule language in compliance with the Montana Environmental Policy Act (MEPA). The MEPA and rulemaking processes are being done concurrently.

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

NEW RULE I MADISON RIVER (1) The Madison River is closed to fishing from a vessel or float tube, and wade fishing when fishing access is gained by vessel or float tube:

- (a) between the outlet of Quake Lake and Lyons Bridge Fishing Access Site;
  - and
  - (b) between Ennis Fishing Access Site and Ennis Lake.
- (2) Glass bottles and containers are prohibited on the Madison River.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

REASON FOR NEW RULE I: The commission is proposing that two sections of the Madison River, the Quake Lake outlet to Lyons Bridge Fishing Access Site and Ennis Fishing Access Site to Ennis Lake, be restricted to walk/wade fishing only. In these two sections fishing from a vessel or float tube and walk/wade fishing where access is gained by use of a vessel or float tube would be prohibited. The fishing regulations have prohibited fishing from a boat or vessel from the outlet of Quake Lake to Lyons Bridge and from Ennis Bridge to Ennis Lake since 1988 to reduce conflict between walk/wade anglers and float anglers. Despite current regulations, conflicts continue between walk/wade anglers and anglers that use a vessel or float tube to gain access. The commission is proposing that two of the reaches be redefined for the purposes of this rule and fishing regulations. The Quake Lake Outlet to Lyons Bridge reach would be redefined as between Quake Lake outlet and Lyons Bridge Fishing Access Site, and that the Ennis Bridge to Ennis Lake reach would be redefined as between Ennis Fishing Access Site and Ennis Lake. It is necessary to redefine the reach boundaries in the proposed rules so that access to reaches open to fishing from a vessel or float tube is not unintentionally restricted.

The commission is proposing prohibiting glass bottles and containers on the Madison River. In the past years, littering of glass bottles and containers has become an issue on the Madison River. This not only is an esthetic and environmental issue but also poses safety concerns for recreationists on the river.

NEW RULE II MADISON RIVER SPECIAL RECREATIONAL PERMIT

- (1) A Madison River Special Recreational Permit is required for any commercial use on the Madison River.
- (2) The Madison River Special Recreational Permit is considered a commercial use permit and is subject to the requirements of Fish, Wildlife and Parks' Commercial Use Permitting Requirements found in Title 12, Chapter 14, subchapter 1 of the Administrative Rules of Montana.
- (3) Permits will be allocated in a one-time process in 2018 to Madison River Special Recreation Permit holders who reported commercial use on the Madison River in 2016 or 2017. Madison River Special Recreation Permit Use Reports submitted on or before December 31, 2017 will be used to determine 2016 and 2017 commercial use. Once allocated, permittees must reapply annually to maintain their permit.
- (4) Permittees must submit an annual report, as prescribed by the department, including:
- (a) dates of river use;
  - (b) number of clients;
  - (c) access points used; and
  - (d) any other information the department deems necessary.
- (5) Permittees who do not submit an annual report completely and timely—by January 15<sup>th</sup> of the following year—will have their permit revoked.
- (6) A permit is considered abandoned after two consecutive years of no activity reported on the annual report.
- (7) Revoked and abandoned permits may be made available at the department's discretion to all commercial fishing and floating operators via a random lottery to be conducted by the department.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

REASON FOR NEW RULE II: The commission is proposing to curtail growth in the level of commercial use by only issuing permits to permittees that were active and reported use in 2016 and 2017. The highest number of active permits for one year occurred in 2017 and overall there has been a 72% increase in commercial use since 2008. Currently, permits are unlimited and any outfitter in good standing can apply for and receive a permit, which allows them unlimited year-round commercial use of the Madison River. Maintaining the current level of commercial use will alleviate the increasing pressure on the natural resources due the increase in recreational use and protect the angling and recreational experience of the Madison River.

Currently, permit holders are required to submit a report annually and the proposed annual report language is provided for consistency and clarification.

NEW RULE III MADISON RIVER SPECIAL RECREATION PERMIT

RESTRICTIONS (1) For the purposes of this rule, "trip" is defined as:

- (a) one launch of one vessel by the permittee or an agent of the permittee and associated clients; or

(b) walk/wade use by the permittee or an agent of the permittee and associated clients.

(2) Permit holders are not to exceed a maximum daily number of three trips between the Quake Lake outlet and Lyons Bridge Fishing Access Site.

(3) Permit holders are restricted from Lyons Bridge Fishing Access Site to Ennis Fishing Access Site as follows:

(a) from October 1 through June 15 a maximum daily number of five trips; and

(b) from June 16 through September 30 a maximum daily number of ten trips.

(3) Permit holders are not to exceed a maximum daily number of three trips between Ennis Fishing Access Site and Ennis Lake.

(4) Permit holders are not to exceed a maximum daily number of five trips from Warm Springs Recreation Area to Greycliff Fishing Access Site.

(5) Commercial trips are prohibited as follows:

(a) between the Quake Lake outlet and Lyons Bridge Fishing Access Site on Saturdays;

(b) between Lyons Bridge Fishing Access Site and Palisades Recreation Area on Sundays;

(c) between Palisades Recreation Area and McAtee Bridge Fishing Access Site on Mondays;

(d) between McAtee Bridge Fishing Access Site and Varney Bridge Fishing Access Site on Tuesdays;

(e) between Varney Bridge Fishing Access Site and Ennis Fishing Access Site on Wednesdays;

(f) between Ennis Fishing Access Site and the inlet of Ennis Lake on Thursdays;

(g) between Warm Springs Recreation Area and Greycliff Fishing Access Site on Fridays; and

(h) between Greycliff Fishing Access Site and the confluence with the Jefferson River.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

REASON FOR NEW RULE III: For the Madison River Special Use Permit and the proposed restrictions, the commission is proposing to define “trip” to include float trips and walk/wade trips. The commission is proposing this definition to clarify that the proposed restrictions do not only pertain to float trips on the Madison River. The definition of a “trip” is not intended to affect a permittee’s ability to stop along the river as long as the stop is not another launch with new associated clients.

The commission is proposing to restrict the number of commercial trips per day per designated section of the Madison River so that daily use is capped at contemporary use levels and commercial use is better distributed throughout the river.

The commission is proposing to designate seven sections of the Madison River as non-commercial sections for specific days of the week starting on Saturday

and proceed consecutively downriver. All commercial use on the water would be prohibited within the non-commercial sections on the specified day. Non-commercial sections are designed to provide less crowded conditions for non-commercial users, both resident and non-resident, while still providing adequate opportunity each day of the week for commercial users in terms of open water and section length.

The commission is proposing to prohibit commercial use on the Madison River between Greycliff Fishing Access Site and the confluence with the Jefferson River. The commission has adopted a Policy Statement Concerning River Recreation as ARM 12.11.405 and recognizes that “the public prefers to recreate on rivers without controls on their recreational experience”. However, pursuant to ARM 12.11.405, to “maintain the quality of the river resources and the quality of the recreational experience”, “[T]he quality of the river resources should be protected as the first and foremost priority.” The issue of quality of the recreational experience is very relevant in this stretch of river because it is coveted by recreationists who value a primitive floating experience with unique scenery and plentiful wildlife. The prohibition on commercial use will help to ensure the primitive experience remains unchanged. The impact of this on commercial users will be minimal, because this stretch currently has less than 1% of the commercial use on the Madison River. The low commercial usage is due in large part to the thermal properties of this stretch of river during the summer months which creates warmer water temperatures, often causing fishing restrictions or closures.

#### NEW RULE IV REVIEW OF RIVER RECREATION RULES FOR THE MADISON RIVER

(1) The commission shall review the rules governing recreational use on the Madison River every five years starting in 2024.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

REASON FOR NEW RULE IV: The commission may deem it necessary to adjust the proposed river recreation rules for the Madison River, including the special recreation permit, to address future changes in the recreational use of the river, user satisfaction, conditions of the fishery, or any other data and information accumulated over each five-year period to ensure the rules are effective.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Madison River Recreation Plan, Department of Fish, Wildlife and Parks, 1400 South 19th, Bozeman, MT, 59718; or e-mail [madisonrivercom@mt.gov](mailto:madisonrivercom@mt.gov), and must be received no later than June 15, 2018.

6. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons

who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The commission and department recognize that there may be impacts to individual small business owners. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

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Rebecca Dockter  
Rule Reviewer  
Department of Fish, Wildlife and Parks

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Dan Vermillion  
Chair  
Fish and Wildlife Commission

Certified to the Secretary of State May 1, 2018.