

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULE I, II, and III regarding bodies of)
water identified as contaminated with)
Eurasian watermilfoil)

TO: All Concerned Persons

1. On April 26, 2012, the Department Fish, Wildlife and Parks (department) published MAR Notice No. 12-376 pertaining to the public hearings on the proposed adoption of the above-stated rules at page 811 of the 2012 Montana Administrative Register, Issue Number 8.

2. The department has adopted NEW RULE III [12.5.703] as proposed.

3. The department has adopted NEW RULE I [12.5.701] and NEW RULE II [12.5.702] as follows, stricken matter interlined, new matter underlined:

NEW RULE I [12.5.701] IDENTIFIED CONTAMINATED BODIES OF WATER (1) through (2)(c) remain as proposed.

(d) Missouri River:

(i) from Fort Peck Dam to the ~~North Dakota border~~ mouth of the Milk River;

(ii) and (e) remain as proposed.

AUTH: 80-7-1007, MCA

IMP: 80-7-1010, MCA

NEW RULE II [12.5.702] BAIT RESTRICTIONS WITHIN IDENTIFIED CONTAMINATED BODIES OF WATER (1) through (1)(c) remain as proposed.

(2) ~~Commercial bait fish seining is prohibited within any identified contaminated body of water listed in [NEW RULE I].~~ Upon departure of a contaminated body of water all vessels and equipment, including bait buckets, must be free of Eurasian watermilfoil.

AUTH: 80-7-1007, MCA

IMP: 80-7-1010, MCA

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

Comment 1: Five comments were received in support of the rule. The comments acknowledged that the department took angler interests into consideration and that the proposed rules are reasonable and will help prevent the spread of Eurasian watermilfoil.

Response 1: The department appreciates the support and interest in this rulemaking process.

Comment 2: Two comments were received questioning why the restrictions were different for commercial bait seiners than for those taking bait animals for personal use. The belief was expressed that the risk associated with seines and traps used for taking minnows and other bait animals for personal use were just as likely, or more likely, to spread Eurasian watermilfoil than those used by commercial seiners. As such, the commenters were concerned that the rule did not address seines and traps as vectors for Eurasian watermilfoil in addition to contaminated water.

Response 2: The department appreciates the comments and agrees with the concerns over equipment used for seining and trapping. In response to these comments the department has revised proposed NEW RULE II to not allow either the commercial seining or the taking of bait animals for personal use from any contaminated waters listed in NEW RULE I. By removing the exception for taking of bait animals, the prohibitions of 80-7-1010, MCA apply which states that no bait animals can be taken from contaminated waters. Additionally, the department added language to NEW RULE II to emphasize that all vessels and equipment must be free from Eurasian watermilfoil before leaving any contaminated waters.

Comment 3: One comment was received about the listing of the Missouri River from Fort Peck Dam to the North Dakota border as a contaminated body of water. The commenter pointed out that Eurasian watermilfoil has not been detected in the Missouri River below Fort Peck Dam, and even though there was a chance that it could be there, it would most likely be in the Missouri River immediately below Fort Peck Dam. It was stated that department biologists had spent extensive time on the Missouri River below Fort Peck Dam and had not found Eurasian watermilfoil in that stretch of river. The commenter recommended that the listing be removed until Eurasian watermilfoil is confirmed in the Missouri River below Fort Peck Dam.

Response 3: The department appreciates the comment and acknowledges that at the current time no Eurasian watermilfoil has been confirmed in the Missouri River below Fort Peck Dam. The department also acknowledges that the risk is greatest in the section of the river close to the dam where fragments coming through the turbines might take root. Therefore, the department is revising NEW RULE I to read Missouri River from Fort Peck Dam to the mouth of the Milk River.

/s/ Joe Maurier
Joe Maurier, Director
Department of Fish, Wildlife and Parks

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State July 2, 2012