

## River Recreation ARM (Fish and Wildlife)

### 12.11.401 RIVER RECREATION USE: DEFINITIONS

(1) "Allocation" means distributing limited use opportunities when a rationing system is in place.

(2) "Fixed allocation" means members of a rationed user group or groups do not compete equally for limited opportunities to use a river.

(3) "Management plan" means a plan developed using the processes described in this subchapter for management of recreational use on a river or group of rivers.

(4) "Non-fixed allocation" means 100% of the available use opportunity is allocated to individual river users or parties of river users and not to river service providers.

(5) "Ration" means to regulate use intensity by limiting the amount of use on a river. Rationing requires users to obtain a permit to recreate on a river or requires river service providers to obtain authorization to conduct business on a river. Limitation on the use of a river may apply to one or more user groups and may not necessarily apply to all user groups. To qualify as a rationing strategy, the supply of permits or the amount of authorized use by river service providers must be limited.

(6) "Restrict" means to regulate when and where the public or river service providers can recreate on a river, or the types of recreation that are allowed.

(7) "River service provider" means a business or person that, for monetary or other consideration, provides services on publicly accessible rivers in Montana. This includes angling outfitters licensed by the state of Montana and non-angling river service providers that are not licensed by the state of Montana.

(8) "River user" is someone who uses a river and is not acting as a river service provider.

(9) "River use day" is equivalent to one person recreating on a river for all or part of one day.

(10) "Rule" or "rules" mean regulations pertaining to river recreation adopted through the Montana Administrative Procedure Act (MAPA) .

History: [87-1-301](#), [87-1-303](#), MCA; IMP, [87-1-201](#), [87-1-301](#), [87-1-303](#), MCA; NEW, 2004 MAR p. 2718, Eff. 11/5/04.

### 12.11.405 POLICY STATEMENT CONCERNING RIVER RECREATION RULES

(1) These rules apply to the process of developing, adopting, amending, or repealing management plans or rules that address river recreation. These rules do not apply to fishing seasons, limits, or regulations that the commission will continue to adopt as biennial or annual rules under MAPA's exceptions.

(2) The purpose of these rules is to provide guidance to the commission, the department, and department-appointed citizen advisory committees in the management of recreation on rivers. These rules seek to promote management of river recreation

that provides a full variety of quality recreation for a diverse public and protects natural resources in rivers and on adjacent uplands. These rules also provide guidance for addressing social conflict on rivers.

(3) The general premise of these rules is that the public prefers to recreate on rivers without controls on their recreational experience, other than regulations that are necessary for managing aquatic resources, such as fishing regulations. Educating the public about river recreation issues can lead to modified behavior on rivers and the department can use education as a nonregulatory method to address social problems on rivers. The department should develop strategies for providing river information to all sectors of the recreating public.

(4) The demand on the natural resources and the social experience will continue to grow, and the best approach is a balance between quality of experience and unrestricted use of a limited resource. On any river or stream, there may be a time and a need for management intervention in order to maintain the quality of the river resources and the quality of the recreational experience. The quality of the river resource should be protected as the first and foremost priority.

(5) Further, the general premise of these rules is that if it becomes necessary to manage use on a river, the public prefers that less-restrictive management intervention be tried before proceeding to more-restrictive management intervention, and that rationing of use is the most restrictive form of management intervention.

(6) Individuals appointed to serve on a citizen advisory committee, river users, and those affected by river recreation shall be given an opportunity to be full and integral partners in the development of proposed management plans or rules. Participation of all interested parties is vital when developing management plans.

(7) Planning and management of Montana's river systems should provide for and conserve a full variety of recreation experiences and assure that river recreation historically enjoyed by people in Montana is recognized.

(8) Nonresidents are an important part of the state's tourism economy and rivers are an attraction to visitors. Nonresidents should have reasonable and equitable opportunities compared to other recreational users to enjoy Montana's resources. "Reasonable and equitable" as applied to nonresidents means recreational use that fairly considers the interests of all types of recreational users, and is not intended to mean that each type of recreational user must have the exact same share of use in terms of the timing, amount, and location of use.

(9) River service providers are an important industry in Montana and should be regulated. There are differences in management considerations between river service providers and private (nonguided) users. Management plans need to provide opportunities for river service providers to compete for the business of paying customers. Management processes should encourage viable and diverse types of commercial services.

(10) Partnerships with other agencies that lead to improved management of the river resources and better services to the public are encouraged.

History: [87-1-301](#), [87-1-303](#), MCA; [IMP](#), [87-1-201](#), [87-1-301](#), [87-1-303](#), MCA; [NEW](#), 2004 MAR p. 2718, Eff. 11/5/04.

**12.11.415 RIVER RECREATION MANAGEMENT PLANS AND RULES:  
DEPARTMENT RESPONSIBILITIES**

(1) The department, using existing information, shall evaluate the social and biological conditions on rivers and identify those rivers where further analysis and planning may be needed in order to prevent or resolve social conflicts.

(2) The department shall implement Title 75, chapter 1, MCA, the Montana Environmental Policy Act (MEPA) when developing a management plan or when proposing rules for a specific river.

(3) When developing a river recreation management plan for a specific river, the department shall conduct an analysis and decision-making process that complies with MEPA and includes collection and analysis of data, appointment of a citizen advisory committee, development of alternatives, and public review and comment.

(4) The department shall develop management plans and recommend rules to the commission based on the following:

- (a) the values and input of the public;
- (b) best available biological information;
- (c) best available social information;
- (d) best available economic information;
- (e) recommendations of the citizen advisory committee;
- (f) input and advice from the commission; and
- (g) MEPA analysis.

(5) Following the adoption of a management plan or rules, the department to the best of its ability shall assess the effectiveness of management actions considering the information and analysis developed in (4) . Based on the assessment, the department, with the concurrence of the commission, may amend or repeal a management plan and the commission may amend or repeal rules as needed.

(6) The department shall include other state, tribal, and federal agencies having jurisdiction over a river or the reach of a river when developing management plans and rules.

History: [87-1-301](#), [87-1-303](#), MCA; [IMP](#), [87-1-201](#), [87-1-301](#), [87-1-303](#), MCA; [NEW](#), 2004 MAR p. 2718, Eff. 11/5/04.

**12.11.420 RIVER RECREATION MANAGEMENT PLANS AND RULES:  
COMMISSION RESPONSIBILITIES**

(1) When concurring in a management plan or when adopting, amending, or repealing rules for a river, the commission shall consider the following:

- (a) recommendations of the citizen advisory committee; (b) public input;
- (c) the best available biological information before the department;
- (d) the best available social information before the department;
- (e) the best available economic information before the department;
- (f) the department's MEPA analysis; and
- (g) any existing river management plan for the river.

(2) There is not a requisite amount of information that the commission shall consider before it is able to make a river recreation management decision.

(3) The commission shall adopt river recreation rules according to MAPA.

(4) Nothing in this subchapter shall prevent the commission from making timely river recreation decisions necessary to address emergency biological conditions, such as drought, or issues of public safety.

History: [87-1-301](#), [87-1-303](#), MCA; [IMP](#), [87-1-201](#), [87-1-301](#), [87-1-303](#), MCA; [NEW](#), 2004 MAR p. 2718, Eff. 11/5/04.

#### **12.11.425 CREATION OF CITIZEN ADVISORY COMMITTEES**

(1) The department shall establish a citizen advisory committee when developing a river recreation management plan or when recommending river recreation rules to the commission. The department shall also establish a citizen advisory committee to consider changes to river recreation management plans or to consider amendments to river recreation rules if the proposed changes or amendments are anticipated to be of significant enough interest to the public to benefit from the participation of a citizen advisory committee.

(2) Members of the citizen advisory committee serve by appointment of the director. In considering appointments the director, through a public process, shall:

(a) identify interests and stakeholders that will be affected by the proposed management plan or regulation; and

(b) appoint members to the committee that represent the identified interests, stakeholders, and perspectives, both locally and statewide.

History: [87-1-301](#), [87-1-303](#), MCA; [IMP](#), [87-1-201](#), [87-1-301](#), [87-1-303](#), MCA; [NEW](#), 2004 MAR p. 2718, Eff. 11/5/04.

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#### **12.11.430 RIVER RECREATION MANAGEMENT PLANS AND RULES: CITIZEN ADVISORY COMMITTEE RESPONSIBILITIES**

(1) The purpose of the citizen advisory committee is to advise the department and the commission on the management of recreation on a river, including the development of river recreation management plans and river recreation rules to address social conflicts;

(2) The citizen advisory committee responsibilities are the following:

(a) represent the interests of those affected by river recreation management;

(b) articulate a vision for the river and set goals and objectives in quantitative and qualitative terms that are intended to achieve the vision;

(c) assess river recreation information and existing social and biological conditions on the river;

(d) identify desired or acceptable social and biological conditions for the river;

(e) identify undesired or unacceptable social and biological conditions for the river that would trigger management actions in order to achieve desired or acceptable social and biological conditions;

(f) recommend a range of management actions from less restrictive to more restrictive that should be taken based on the severity of the undesired or unacceptable social and biological conditions;

(g) recommend mechanisms and a timetable for monitoring and evaluating river recreation management plans and river recreation rules; and

(h) submit final recommendations to the department and the commission.

(3) The department shall provide comments to the citizen advisory committee as to whether its recommendations are technically feasible, legal, affordable, measurable, enforceable, and reasonable to administer.

History: [87-1-301](#), [87-1-303](#), MCA; [IMP](#), [87-1-201](#), [87-1-301](#), [87-1-303](#), MCA; [NEW](#), 2004 MAR p. 2718, Eff. 11/5/04.

#### **12.11.435 RESTRICTING OR RATIONING RIVER USE**

(1) The commission shall make the final decision on whether or not to restrict or ration river use and the adoption of rules for doing so.

(2) When determining how a river should be managed, the commission shall consider management methods in the following order:

(a) nonrestrictive management methods;

(b) restrictive management methods; and

(c) rationing methods.

(3) Under conditions or circumstances identified by the commission, the commission may implement rationing management methods before or simultaneously with restriction management methods or implement restrictive management methods before or simultaneously with nonrestrictive management methods.

(4) When developing a management plan or recommending rules to the commission:

(a) the department shall work with a citizen advisory committee to identify the problems and the social conditions that would trigger restrictions or rationing of use; and

(b) the management plan or rule recommendations must describe how restricting or rationing use would address a particular problem.

(5) If rationing is proposed and it becomes necessary to allocate opportunities to use or conduct business on a river, the department, working with the citizen advisory committee, shall recommend an allocation system to the commission. The department may consider all types of allocation systems including fixed systems, nonfixed systems, and variations of these two types.

History: [87-1-301](#), [87-1-303](#), MCA; [IMP](#), [87-1-201](#), [87-1-301](#), [87-1-303](#), MCA; [NEW](#), 2004 MAR p. 2718, Eff. 11/5/04.

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#### **12.11.440 FIXED ALLOCATION**

(1) If a fixed allocation system is proposed for a river, the department and the commission shall seek input from a citizen advisory committee and the general public regarding the following:

(a) the amount of use that would be allocated to each user group; and

(b) the methods used to distribute the use.

(2) If use is allocated to river service providers, the department and the commission shall seek input from a citizen advisory committee, river service providers, and the general public regarding the following:

(a) the method used to determine which individual river service providers would be allocated use; and

(b) the amount of use they would receive.

(3) If a fixed allocation system is adopted for a river, the commission may change the amount of use allocated to a service provider and no property right attaches to that use.

History: [87-1-301](#), [87-1-303](#), MCA; [IMP](#), [87-1-201](#), [87-1-301](#), [87-1-303](#), MCA; [NEW](#), 2004 MAR p. 2718, Eff. 11/5/04.

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#### **12.11.445 NONFIXED ALLOCATION**

(1) If nonfixed allocation is proposed for a river, the department and the commission shall seek input from a citizen advisory committee and the general public regarding the following:

(a) overall amount of use that would be allocated to individual river users or parties of river users; and

(b) the methods used to distribute the opportunities to use the river.

(2) When river allocation is nonfixed:

(a) service providers and their employees may not apply for opportunities to use the river for any reason other than to use the river as a private user; and

(b) the commission may consider exceptions for a nonfixed allocation that allows a river service provider to submit an application form on behalf of a known client as long as that client is present at the time of use.

History: [87-1-301](#), [87-1-303](#), MCA; [IMP](#), [87-1-201](#), [87-1-301](#), [87-1-303](#), MCA; [NEW](#), 2004 MAR p. 2718, Eff. 11/5/04.

#### **12.11.450 TRANSFERABILITY OF RIVER USE DAYS**

(1) The sale or transfer of a licensed or nonlicensed river service provider business and the transfer of river use days shall comply with [37-47-310](#) (4) , MCA, and shall not be prohibited as long as all legal requirements are fulfilled.

(2) Use of any transferred river use days is subject to change pursuant to rules adopted by the commission.

(3) No property right attaches to the transferred river use days.

History: [87-1-301](#), [87-1-303](#), MCA; [IMP](#), [87-1-201](#), [87-1-301](#), [87-1-303](#), MCA; [NEW](#), 2004 MAR p. 2718, Eff. 11/5/04.

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#### **12.11.455 RIVER RECREATION MANAGEMENT PLANNING MANUAL**

(1) Upon adoption of these rules, the department must develop a river recreation planning manual that provides details on implementation of the

analysis and decision-making framework in conjunction with MEPA and MAPA. The manual will incorporate the recommendations of the river recreation advisory council as expressed in their final report of July 10, 2003, including the guiding principles.

(2) The river recreation planning manual must provide direction to the department on the following elements of the analysis and decision-making framework:

- (a) prioritizing river recreation planning and management needs;
- (b) collecting and analyzing data;
- (c) appointing and working with a citizen advisory committee;
- (d) incorporating the recommendations of a citizen advisory committee into a management plan; and
- (e) implementing, monitoring, and evaluating a management plan or rules.

(3) The department and its citizen advisory committees must consider the river recreation planning manual when developing a river recreation management plan or recommending river recreation rules to the commission.

History: 87 1-301, [87-1-303](#), MCA; IMP, [87-1-201](#), [87-1-301](#), [87-1-303](#), MCA; [NEW](#), 2004 MAR p. 2718, Eff. 11/5/04.

#### **12.14.120 COMMERCIAL USE PERMITS**

(1) A permit is required in advance to conduct commercial use on department lands and restricted waterbodies.

(2) The department may issue a commercial use permit to a person as an individual, or as a representative of an entity or business. When authorizing water-based fishing outfitting or guiding, the department may only issue the permit to a licensed outfitter or guide. The applicant must obtain all other licenses or permits required by state or federal law in order to receive a commercial use permit.

(3) A commercial use permit authorizes the permittee to conduct commercial use subject to the conditions designated on the permit.

(4) A commercial use permit is valid for the time period specified on the permit, not to exceed five years. The permit holder may request changes to a multi-year permit through submission of an updated plan of operation or other material.

(5) The department may place conditions on the commercial use permit, including but not limited to the type, timing, location, duration, volume of the use, and any other conditions the department deems necessary. The department's statewide river recreation rules shall govern the development of conditions for water-based outfitters and guides on rivers and fishing access sites.

(6) The department may require commercial users to report their use of department land. The department may require commercial users to maintain and have on their person for department inspection a logbook for recording commercial use. The department shall include specific reporting requirements as permit or contract stipulations.

(7) A commercial use permit may only be used by the holder of the permit. The permit holder may not sell, lease, or rent the permit, or otherwise receive compensation from another person for the opportunity to use the permit. The permit holder may hire or

contract persons to provide authorized services provided that said persons do not recruit clients, make agreements with clients concerning monetary consideration or services provided, or advertise any business other than the permitted business when conducting the permitted use. The permit holder is responsible for ensuring that the persons hired or contracted comply with the terms of the permit.

(8) A guide hired or contracted by an outfitter to provide authorized services may collect payment on behalf of the outfitter for services provided. Any and all payments must:

- (a) be collected only with the express consent of the supervising outfitter; and
- (b) name the outfitter that hired or contracted the services.

(9) The requirements in (8) do not prohibit the person hired or contracted from receiving a tip that is separate from the payment received for services provided as authorized by the sponsoring outfitter.

(10) The permit holder may pay an agent to recruit clients, make arrangements with clients concerning monetary consideration or services provided, and collect fees from clients provided that the agent does not conduct the authorized services.

(11) A commercial use permit is not transferable and is void when a business is sold or transferred. Upon the sale or transfer of a permitted business, the person selling the business shall notify the new owner that the new owner is required to obtain a new commercial use permit pursuant to this subchapter.

(12) If the recipient of a commercial use permit sells or transfers in entirety the part of his/her business that is operated under that commercial use permit, the department shall issue a new commercial use permit to the new owner so long as the seller has remitted all fees due to the department and so long as the buyer has obtained all other licenses or permits required by state or federal law and agrees to the terms of the permit. The new permit shall have the same expiration date as the seller's permit.

(13) If the recipient of a commercial use permit sells or transfers in entirety the part of their business that operated under that commercial use permit, any rationed units of use that were previously allocated to the seller shall be reallocated to the new owner of that business. Upon the sale or transfer of a permitted business, the person selling or transferring the business shall notify the new owner that the use of rationed units of use is subject to change pursuant to rules adopted by the commission and that no property right attaches to the rationed units of use.

(14) The recipient of a commercial use permit may not sell, lease, rent, or otherwise receive compensation from another person for the opportunity to use client days or other allocated units of use, temporarily, or permanently except that Smith River outfitters may lease, rent, or otherwise receive compensation from another Smith River outfitter for the opportunity to use a Smith River outfitter launch within a single use season.

History: [23-1-105](#), [23-1-106](#), [23-1-111](#), [87-1-301](#), [87-1-303](#), MCA; [IMP](#), [23-1-105](#), [23-1-106](#), [87-1-303](#), MCA; [NEW](#), 2007 MAR p. 88, Eff. 1/26/07; [AMD](#), 2009 MAR p. 2245, Eff. 11/26/09; [AMD](#), 2014 MAR p. 2648, Eff. 10/24/14; [AMD](#), 2015 MAR p. 18, Eff. 1/16/15.



#### 12.14.165 RATIONING AND ALLOCATION OF COMMERCIAL USE

(1) The department's statewide river recreation rules shall govern the rationing and allocation of commercial use on rivers, including fishing access sites that provide access to rivers.

(2) The department may recommend that the commission or board ration and allocate commercial use on department land that provides access to lakes, or department administrative site. The department may consider the following when making rationing and allocation recommendations to the commission or board:

(a) laws, rules, policies, management plans, and land use plans for the site;

(b) overall mission, goals, and objectives of the site;

(c) input from the public;

(d) public safety concerns;

(e) biological, natural, or cultural resource conditions;

(f) social conditions;

(g) user conflicts;

(h) past performance of commercial users;

(i) public demand for commercial use; and

(j) other factors as determined by the department.

(3) The department shall describe what actions have already been taken to address a particular problem or concern, why rationing is necessary, and how rationing of use would address a particular problem or concern.

(4) To the extent possible, the department must monitor and evaluate commercial use of a site to determine whether rationing is necessary and to assess whether rationing has improved conditions.

History: [23-1-105](#), [23-1-106](#), [87-1-301](#), [87-1-303](#), MCA; [IMP](#), [23-1-105](#), [23-1-106](#), [23-1-111](#), [87-1-303](#), MCA; [NEW](#), 2007 MAR p. 88, Eff. 1/26/07; [AMD](#), 2009 MAR p. 2245, Eff. 11/26/09; [AMD](#), 2014 MAR p. 2648, Eff. 10/24/14.

#### 12.14.120 COMMERCIAL USE PERMITS

(1) A permit is required in advance to conduct commercial use on department lands and restricted waterbodies.

(2) The department may issue a commercial use permit to a person as an individual, or as a representative of an entity or business. When authorizing water-based fishing outfitting or guiding, the department may only issue the permit to a licensed outfitter or guide. The applicant must obtain all other licenses or permits required by state or federal law in order to receive a commercial use permit.

(3) A commercial use permit authorizes the permittee to conduct commercial use subject to the conditions designated on the permit.

(4) A commercial use permit is valid for the time period specified on the permit, not to exceed five years. The permit holder may request changes to a multi-year permit through submission of an updated plan of operation or other material.

(5) The department may place conditions on the commercial use permit, including but not limited to the type, timing, location, duration, volume of the use, and any other conditions the department deems necessary. The department's statewide river

recreation rules shall govern the development of conditions for water-based outfitters and guides on rivers and fishing access sites.

(6) The department may require commercial users to report their use of department land. The department may require commercial users to maintain and have on their person for department inspection a logbook for recording commercial use. The department shall include specific reporting requirements as permit or contract stipulations.

(7) A commercial use permit may only be used by the holder of the permit. The permit holder may not sell, lease, or rent the permit, or otherwise receive compensation from another person for the opportunity to use the permit. The permit holder may hire or contract persons to provide authorized services provided that said persons do not recruit clients, make agreements with clients concerning monetary consideration or services provided, or advertise any business other than the permitted business when conducting the permitted use. The permit holder is responsible for ensuring that the persons hired or contracted comply with the terms of the permit.

(8) A guide hired or contracted by an outfitter to provide authorized services may collect payment on behalf of the outfitter for services provided. Any and all payments must:

- (a) be collected only with the express consent of the supervising outfitter; and
- (b) name the outfitter that hired or contracted the services.

(9) The requirements in (8) do not prohibit the person hired or contracted from receiving a tip that is separate from the payment received for services provided as authorized by the sponsoring outfitter.

(10) The permit holder may pay an agent to recruit clients, make arrangements with clients concerning monetary consideration or services provided, and collect fees from clients provided that the agent does not conduct the authorized services.

(11) A commercial use permit is not transferable and is void when a business is sold or transferred. Upon the sale or transfer of a permitted business, the person selling the business shall notify the new owner that the new owner is required to obtain a new commercial use permit pursuant to this subchapter.

(12) If the recipient of a commercial use permit sells or transfers in entirety the part of his/her business that is operated under that commercial use permit, the department shall issue a new commercial use permit to the new owner so long as the seller has remitted all fees due to the department and so long as the buyer has obtained all other licenses or permits required by state or federal law and agrees to the terms of the permit. The new permit shall have the same expiration date as the seller's permit.

(13) If the recipient of a commercial use permit sells or transfers in entirety the part of their business that operated under that commercial use permit, any rationed units of use that were previously allocated to the seller shall be reallocated to the new owner of that business. Upon the sale or transfer of a permitted business, the person selling or transferring the business shall notify the new owner that the use of rationed units of use is subject to change pursuant to rules adopted by the commission and that no property right attaches to the rationed units of use.

(14) The recipient of a commercial use permit may not sell, lease, rent, or otherwise receive compensation from another person for the opportunity to use client days or other allocated units of use, temporarily, or permanently except that Smith River

outfitters may lease, rent, or otherwise receive compensation from another Smith River outfitter for the opportunity to use a Smith River outfitter launch within a single use season.

History: [23-1-105](#), [23-1-106](#), [23-1-111](#), [87-1-301](#), [87-1-303](#), MCA; IMP, [23-1-105](#), [23-1-106](#), [87-1-303](#), MCA; NEW, 2007 MAR p. 88, Eff. 1/26/07; AMD, 2009 MAR p. 2245, Eff. 11/26/09; AMD, 2014 MAR p. 2648, Eff. 10/24/14; AMD, 2015 MAR p. 18, Eff. 1/16/15.