

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 12.5.507 and 12.5.508 ) PROPOSED AMENDMENT  
pertaining to angling restriction and )  
fishing closure criteria )

TO: All Concerned Persons

1. On August 1, 2022, at 1:30 p.m., the Fish and Wildlife Commission (commission) will hold a telephonic public hearing via the ZOOM meeting platform to consider the proposed amendment of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone: 1 206 337 9723  
Meeting ID: 846 4460 0798  
Password: 327085

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 of Fish, Wildlife and Parks (department), no later than 5:00 p.m. on July 22, 2022, 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. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

12.5.507 ANGLING RESTRICTION AND FISHING CLOSURE CRITERIA

(1) The department shall use the following criteria to determine whether to implement angling restrictions in streams:

(a) angling pressure as determined by the department has the potential to contribute to excessive fish mortality; and

(b) one or more of the following environmental conditions has been determined by the department to exist:

(i) on in streams managed for nonnative salmonid streams designated by the department in the Statewide Fisheries Management Plan, daily maximum water temperatures reach or exceed 73 degrees Fahrenheit at any time during the day for three consecutive days;

~~(ii)~~ (iv) stream ~~or river~~ flows fall to or below the 5th percentile of daily mean values for this day flow level based upon hydrologic records for that water body; or

(ii) in cutthroat trout streams designated by the department in the Statewide Fisheries Management Plan, daily maximum water temperature equal to or

exceeding 66 degrees Fahrenheit at any time during the day for three consecutive days;

(iii) in bull trout streams designated by the department in the Statewide Fisheries Management Plan, a daily maximum water temperature equal to or exceeding 60 degrees Fahrenheit at any time during the day for three consecutive days; ~~or~~

~~(iv) (v) water conditions meet the criteria for angling restrictions as stated in a Drought Management Plan; or~~

(c) other biological or environmental conditions such as, but not limited to, water body pollution, disease, or concentration of angling pressure due to other restrictions or closures that the department determines have the potential to contribute to excessive fish mortality.

(2) A fishing closure may be implemented when:

(a) conditions of (1) develop or degrade;

(b) dissolved oxygen is equal to or less ~~that~~ than 4 ppm when measured in the early morning before sunrise; or

~~(c) water conditions meet the criteria for fishing closures as stated in a Drought Management Plan; or~~

~~(d) other biological or environmental conditions such as, but not limited to, water body pollution, disease, and shifts in angling pressure exist that the department determines have the potential to adversely affect the fishery.~~

(3) An angling restriction or fishing closure may be delayed or may not be implemented by the department if criteria are forecast to be met for a short duration.

AUTH: 87-1-301, MCA

IMP: 87-1-301, MCA

12.5.508 REOPENING WATERS (1) Except on waters with a drought management plan, Once an angling restriction or fishing closure is implemented, it will remain in effect until September 15 or until reopening criteria described in (2), or (3), or (4) have been met, or until August 31.

(2) The department may reopen streams managed for nonnative salmonids when the department determines in its discretion that daily maximum water temperature does not exceed 70 degrees Fahrenheit for three consecutive days.

(3) The department may reopen streams managed for cutthroat trout when the department determines that daily maximum water temperature does not exceed 66 degrees Fahrenheit for three consecutive days.

~~(3) (4)~~ Streams designated by the department to have bull trout shall remain closed until the following conditions occur:

(a) daily maximum water temperature equals or does not exceed 60 degrees Fahrenheit for three consecutive days; and

(b) when flow regimes provide adequate security habitat.

(5) Reopening waters may be delayed by the department if:

(a) reopening criteria is forecast to be met for a short duration;

(b) conditions on priority waters defined by the department in the Statewide Fisheries Management Plan do not provide adequate security habitat; or

(c) angling pressure due to restrictions and closures on other waterbodies has the potential to contribute to excessive fish mortality.

AUTH; 87-1-301, MCA

IMP; 87-1-301, MCA;

REASON: In 2008, the Fish and Wildlife Commission adopted administrative rules, authorizing the department to implement angling restrictions or angling closures during periods of drought pursuant to criteria in ARM 12.5.507. These rules are intended to minimize fishery impacts from angling during periods of extremely high temperature, low flow, or both. In most years, angling restrictions and closures, as defined in these rules, may be used on only one or two waters. In extreme years, such as 2021, 33 restrictions or closures were implemented.

The commission is proposing amendments to ARM 12.5.507 and 12.5.508 to incorporate criteria for cutthroat trout fisheries and to provide additional guidance for when a restriction or closure will be implemented or lifted. FWP data and other research has found that the current restriction and closure criteria for salmonids (daily maximum temperatures reach or exceed 73 degrees Fahrenheit any time of day for three consecutive days) exceed the mortality threshold for cutthroat trout. The department has determined that adopting criteria at 66 degrees Fahrenheit for cutthroat fisheries would better reduce angling impacts to cutthroat during drought. Other proposed amendments are intended to avoid scenarios where restrictions or closures would be implemented or lifted over a short period of time before a closure or restriction would be re-implemented or lifted again (i.e., an on-again-off-again scenario). For example, a hoot owl restriction (i.e., fishing allowed only from midnight to 2:00 p.m.) may be in place on a river section, and rain or a short-term weather event may push water temperature above reopening criteria. Under this scenario, water conditions are expected to only improve for a handful of days before temperatures rise again. Under existing rules, the department must lift a restriction for a few days before restricting again when conditions deteriorate. This reduces the closure's benefit to the fishery because it fails to minimize angling impact during what is still a biologically stressful time for fisheries. It also increases public confusion because the public would not have a clear understanding of when a restriction has been lifted or when one has been implemented.

4. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Department of Fish, Wildlife and Parks, Attn: Fisheries, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail [fwpfishcomments@mt.gov](mailto:fwpfishcomments@mt.gov), and must be received no later than August 5, 2022.

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

6. 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 a 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: 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 [jesssnyder@mt.gov](mailto:jesssnyder@mt.gov).

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

8. With regard to the requirements of 2-4-111, MCA, the commission has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Kevin Rechkoff  
Kevin Rechkoff  
Rule Reviewer

/s/ Lesley Robinson  
Lesley Robinson  
Chair  
Fish and Wildlife Commission

Certified to the Secretary of State June 28, 2022.