



MONTANA
ADMINISTRATIVE
REGISTER



**FISH, WILDLIFE AND PARKS,
MONTANA FISH AND WILDLIFE COMMISSION**

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-424.1

Summary

Implementing House Bill 74 from the 2025 Legislative Session. The bill amended private fish pond and commercial take laws, as requested by the Water Policy Interim Committee, and sponsored by Rep. Ken Walsh. This proposal also amends and repeals ARMs identified by the Fisheries division in the 2021 Governor's Red Tape projects. With the proposed 23 amendments, 21 repeals, and the adoption of 3 new rules, Fisheries has reviewed all 67 administrative rules for its division.

Hearing Date and Time

[hearing_date], at [hearing_time] [hearing_ampm]

Virtual Hearing Information

Virtual Hearing Information

Comments

Comments may be submitted using the contact information below. Comments must be received by [comment_date], at 5:00 p.m.

Accommodations

The agency 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. Requests must be made by [accommodations_deadline], at 5:00 p.m.

Contact

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General Reasonable Necessity Statement

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

12.7.101 APPLICATION

- (1) Any person desiring to harvest nongame fish from any body of water in the state, or whitefish by nets or traps from the Kootenai River or from its tributaries within one mile of the Kootenai River, for sale or commercial distribution must make written application to the director for a commercial fishing permit upon a form furnished by the department.
- (2) The form must be signed by the applicant including mailing address and residence of applicant and stating specifically the waters and species of fish desired for harvest and equipment owned or controlled by applicant.
- (3) If an application is approved, applicant must then give a bond to the department in favor of the state of Montana in the sum of \$1,000 with corporate surety, conditioned on the faithful carrying out of the provisions of the application and permit. The department will then issue a license describing approved waters, species, seasons, and fishing methods.

Authorizing statute(s): Secs. 87-1-201, 87-1-301 MCA

Implementing statute(s): Sec. 87-3-204, ~~87-4-601~~ MCA

Reasonable Necessity Statement

The Statement of Reasonable Necessity for 12.7.101. FWP is amending the implementing statute to reflect that HB 74 from the 2025 session repealed 87-4-601, MCA.

12.7.201 APPLICATION

- (1) A commercial bait fish seining license is required for:
 - (a) the collection of any nongame bait fish, as identified in the current fishing regulations, for the purpose of selling or commercial transportation and distribution; or
 - (b) the possession of 24 dozen (288) or more nongame bait fish, as identified in the current fishing regulations, ~~unless the person is under 15 years of age.~~
- (2) An application for a commercial bait seining license must be submitted on a form provided by the department.
- (3) A \$10 application fee must be submitted with every application. The application fee will be refunded if the application is denied.

Authorizing statute(s): 87-4-609, MCA

Implementing statute(s): ~~87-4-601~~, 87-4-609, MCA

Reasonable Necessity Statement

The Statement of Reasonable Necessity for 12.7.201. FWP is amending the implementing statute to reflect that HB 74 from the 2025 session repealed 87-4-601, MCA. The rule is also being amended to reflect that a bait seining license is required regardless of age.

12.7.202 ISSUANCE

- (1) The department shall issue a commercial bait seining license upon approval of an application.
- (2) The license must specify the terms of the license.
- (3) The department will not license any applicant who has ever had a commercial bait seining license revoked.
- (4) The director may revoke a license based on sufficient evidence of violation of seining laws, regulations, or terms of the license.
- (5) A person may appeal a determination to deny an application or revoke a license. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, will apply.

Authorizing statute(s): 87-4-609, MCA

Implementing statute(s): ~~87-4-601~~, 87-4-602, 87-4-609, MCA

Reasonable Necessity Statement

The Statement of Reasonable Necessity for 12.7.202. FWP is amending the implementing statute to reflect that HB 74 from the 2025 session repealed 87-4-601, MCA. The rule is also being amended to include 12.7.203 and 12.7.204 to reduce regulations.

12.7.701 AUTHORIZATION FOR DEPARTMENT AND COMMERCIAL FISH PLANTING

- (1) The fish species on the following list and those listed in 87-5-714, MCA, may be introduced or transplanted by the department. This includes plants made by the U.S. Fish and Wildlife Service ~~fish and wildlife service~~ fish hatcheries at the department's request, commercial hatchery stocking of licensed private and commercial ponds when approved by the department and commercial hatchery stocking of waters on private lands when approved by the department. List of fish species approved:
- ~~(2) The commission concurs, in accordance with its authority under 87-5-711, MCA, that the department's experiences with and studies of prior fish plantings and the requirements of the commission's rules on fish planting (ARM 12.7.601 and 12.7.602) constitute a scientific investigation required by 87-5-714, MCA, and the plan required by 87-5-713, MCA, for those species listed in 87-5-714, MCA, or listed in (1) of this rule.~~

<u>Common Name</u>	<u>Scientific Name</u>
White Sturgeon sturgeon	<u><i>Acipenser transmontanus</i></u>
Pallid Sturgeon sturgeon	<u><i>Scaphirhynchus albus</i></u>
Shovelnose Sturgeon sturgeon	<u><i>Scaphirhynchus platyrhynchus</i></u>
Paddlefish	<u><i>Polyodon spathula</i></u>
Goldeye	<u><i>Hiodon alosoides</i></u>
Mountain Whitefish whitefish	<u><i>Prosopium williamsoni</i></u>
Pygmy Whitefish whitefish	<u><i>Prosopium coulteri</i></u>
Coho Salmon salmon	<u><i>Oncorhynchus kisutch</i></u>
Westslope Cutthroat Trout cutthroat trout	<u><i>Oncorhynchus clarkii</i></u> <i>Salmo clarki lewisi</i>
Yellowstone Cutthroat Trout cutthroat trout	<u><i>Oncorhynchus virginalis</i></u> <i>Salmo clarki bouvieri</i>
Atlantic Salmon salmon	<u><i>Salmo salar</i></u>
Bull Trout trout	<u><i>Salvelinus confluentus</i></u> <i>malma</i>
Splake	<u><i>Salvelinus fontinalis-</i></u> <u><i>Salvelinus namaycush hybrid</i></u>
Arctic Grayling grayling	<u><i>Thymallus arcticus</i></u>
Northern Pearl Dace dace	<u><i>Margariscus nachtriebi</i></u> <i>Semotilus margarita</i>
Creek Chub chub	<u><i>Semotilus atromaculatus</i></u>
Northern Redbelly Dace redbelly dace	<u><i>Chrosomus</i></u> <i>Phoxinus eos</i>
Finescale Dace dace	<u><i>Chrosomus</i></u> <i>Phoxinus neogaeus</i>
Flathead Chub chub	<u><i>Platygobio</i></u> <i>Hybopsis gracilis</i>
Sturgeon Chub chub	<u><i>Macrhybopsis</i></u> <i>Hybopsis gelida</i>
Sicklefin Chub chub	<u><i>Macrhybopsis</i></u> <i>Hybopsis meeki</i>
Lake Chub chub	<u><i>Couesius plumbeus</i></u>
Emerald Shiner shiner	<u><i>Notropis atherinoides</i></u>
Sand Shiner shiner	<u><i>Notropis stramineus</i></u>
Brassy Minnow minnow	<u><i>Hybognathus hankinsoni</i></u>
Plains Minnow minnow	<u><i>Hybognathus placitus</i></u>
Western Silvery Minnow silvery minnow	<u><i>Hybognathus argyritis</i></u> <i>Hesperoleucus symmetricus</i>

Fathead Minnow minnow	<i>Pimephales promelas</i>
Longnose Dace dace	<i>Rhinichthys cataractae</i>
Redside Shiner shiner	<i>Richardsonius balteatus</i>
Smallmouth Buffalo buffalo	<i>Ictiobus bubalus</i>
Bigmouth Buffalo buffalo	<i>Ictiobus cyprinellus</i>
Channel Catfish catfish	<i>Ictalurus punctatus</i>
Stonecat	<i>Noturus flavus</i>
Burbot	<i>Lota lota</i>
Plains Killifish killifish	<i>Fundulus zebrinus</i>
Mosquitofish	<i>Gambusia affinis</i>
Brook Stickleback stickleback	<i>Culaea inconstans</i>
Sauger	<i>Sander canadensis</i> <i>Stizostedion canadense</i>
Iowa Darter darter	<i>Etheostoma exile</i>
Rocky Mountain Sculpin Mottled sculpin	<i>Uranidea</i> <i>Cottus</i> <i>bairdi</i>
Columbia Slimy Sculpin Slimy sculpin	<i>Uranidea</i> <i>Cottus</i> <i>cognatus</i>
Torrent Sculpin sculpin	<i>Uranidea</i> <i>Cottus</i> <i>rhotheus</i>
Cedar Sculpin Shorthead sculpin	<i>Uranidea schitsuumsh</i> <i>Cottus</i> <i>confusus</i>
Spoonhead Sculpin sculpin	<i>Uranidea ricei</i> <i>Cottus</i> <i>ricei</i>

(2) The commission determines, in accordance with its authority under 87-5-711, MCA, that the department's experiences with and studies of prior fish plantings constitute a scientific investigation as required by 87-5-714, MCA, and the plan required by 87-5-713, MCA. That the species in (1) of this rule possess no threat or harm to native wildlife and plants or to agricultural production, and that the transplantation or introduction of the species in (1) have significant benefits to the public.

(3) No state raised fish shall be planted into any waters of the state where public access for fishing is denied. Fish shall not be placed in stream locations closer than one-half mile from portions of the stream where public access is denied. This restriction does not apply to state owned access areas.

Authorizing statute(s): Secs: 87-1-301, 87-5-704, 87-5-711 MCA

Implementing statute(s): Secs. 87-3-202, 87-5-704, 87 87-5-713, 87-5-714 MCA

Reasonable Necessity Statement

ARM 12.7.701 is proposed to be amended as there were updates to the latin binomials across the fisheries world and the proposed amendments update the rule to the current scientific names. The Shorthead Sculpin was previously mistakenly identified so the rule is being updated to reflect the correct species name. Finally, the rule is being amended to remove the current underlines under the scientific names.

12.7.801 DEFINITION

- (1) "Fishing contest" is any event, ~~contest, derby or tournament~~ where an entry fee is charged or where people are expected to compete with other participants to win prizes or cash based on the capture of an individual fish or combination of fish. Fishing contests involving ~~fewer than 30~~ or fewer people with prizes for cash ~~prizes~~ or merchandise worth \$500 or less do not require a permit but must comply with the provisions of this subchapter.

Authorizing statute(s): 87-3-121, MCA

Implementing statute(s): 87-3-121, MCA

Reasonable Necessity Statement

ARM 12.7.801 and 12.7.805 are being amended to bring the administrative rules up to date with current practices, consolidate application requirements, and to reflect statutory changes.

12.7.805 DEPARTMENT DECISION

- (1) The department will issue a decision regarding applications no later than February 1 for open water contests or October 1 for ice-fishing contests. The department may approve an application as submitted, approve an application with modifications or deny an application. When an application is approved with modifications, the applicant must respond to the department within 20 days of receipt of the department's written decision if the modifications are unacceptable. Failure to do so will constitute acceptance of the decision.
- (2) An application may be denied if in the opinion of the department any of the following are found to exist:
 - (a) the contest will have detrimental impacts on fish populations, the aquatic ecosystem or the surrounding area;

- (b) the contest would conflict with management goals for the host water or waterbodies;
 - (c) the contest conflicts with other proposed contests or intended uses of the host water or waterbodies;
 - (d) the proposed contest would be held during a period of heavy recreational use on the host body or bodies of water, increasing the likelihood of conflicts with other users; and
 - (e) there is significant public opposition to the proposed contest based on biological or recreational conflict concerns. Public comments will be provided to the sponsor on request.
- (3) Conditions may be placed on contests to:
- (a) minimize fish mortality in catch and release contests;
 - (b) regulate harvest;
 - (c) reduce user conflicts; or
 - (d) require supplemental trash removal, restroom facilities, or other maintenance at department access sites when routine facilities and maintenance are inadequate for the contest.
- (4) Contests may not be scheduled and approved for consecutive weekends on any body of water less than 100,000 surface acres in size.
- (5) Contests may not be scheduled on holiday weekends, including but not limited to New Years Day, Easter, Mother's Day, Memorial Day, Father's Day, Fourth of July and Labor Day, Indigenous Peoples' Day, Columbus Day, Veteran's Day,
- (6) The department will notify the applicant of its decision by mail. The department shall notify the public with an announcement released to all major state newspapers and through notice published on the department web site.
- (7) The applicant or any person supporting or opposing an application may appeal the decision of the department to the commission. An appeal may be made on any grounds or arguments made to the department during the department's evaluation and consideration of the application. A notice of appeal must be filed with the commission within 20 days of written notice of the department's decision.
- (8) The commission's decision to approve the application as submitted, to approve the application with modifications, or to deny the application will be made on the criteria in ARM 12.7.805. The commission's decision is final.
- (9) Upon a showing of good cause, the department may waive the application of any rule except where waiver is precluded by statute.

- (10) During approved catch-and-release fishing contest hours, fish caught for contest purposes and released alive by contest participants are not considered part of their daily limit. Contest participants may not have more than the daily limit in their possession at any time. All fish must be released alive at the end of the day unless the fish died as a result of handling during the contest.

Authorizing statute(s): 87-3-121, MCA

Implementing statute(s): 87-3-121, MCA

12.7.807 PROHIBITED CONTESTS

- (1) Contests involving any listed species or species of concern are prohibited except for Yellowstone Cutthroat Trout (*Oncorhynchus virginalis*~~*Oncorhynchus clarki bouvieri*~~) or Westslope Cutthroat Trout (*Oncorhynchus clarki lewisi*) stocked in lakes or reservoirs.
- (2) All contests involving wild trout (*Salmo oncorhynchus* or *Salvelinus*) in streams or rivers are prohibited. ~~Contests for brook trout (*Salvelinus fontinalis*) that are restricted to anglers 14 years or younger are allowed until July 17, 2017.~~

Authorizing statute(s): 87-3-121, MCA

Implementing statute(s): 87-3-121, MCA

Reasonable Necessity Statement

ARM 12.7.807 is proposed to be amended to update scientific names, and to remove outdated regulations.

12.7.901 WHEN EGGS WILL BE SOLD

- (1) The department will offer to sell eggs from its brood stock only when the following conditions are met:
 - (a) the department owns eggs that are surplus to its needs; and

- (b) eggs certified to be disease free under the procedures of ARM 12.7.501 are not available from private sources within the state.

Authorizing statute(s): Sec. 87-1-201 MCA

Implementing statute(s): Extension, Sec. 2 Ch. 152, L. 1987, Eff. 10/1/87, 87-4-609, MCA

Reasonable Necessity Statement

ARMs 12.7.901 through 12.7.906 are being amended to reflect that 87-4-601, MCA was repealed by House Bill 74 in the 2025 legislative session, and that the rules are now implementing the regulation of commercial taking of fish or aquatic organisms under 87-4-609, MCA.

12.7.902 SOURCE OF EGGS TO BE SOLD

- (1) The department will sell eggs only from its hatchery held stocks. Eggs from natural runs will not be sold.

Authorizing statute(s): Sec. 87-1-201 MCA

Implementing statute(s): Extension, Sec. 2 Ch. 152, L. 1987, Eff. 10/1/87, 87-4-609, MCA

12.7.903 BUYERS' LIST

- (1) Licensed commercial fish pond operators wishing to be notified of egg sales must file with the department their name, email address, and a phone number where they can be reached during normal business hours.

Authorizing statute(s): Sec. 87-1-201 MCA

Implementing statute(s): Extension, Sec. 2 Ch. 152, L. 1987, Eff. 10/1/87, 87-4-609, MCA

12.7.904 SALES PROCEDURES

- (1) When the department determines that the conditions of ARM 12.7.901 have been met, it will notify all licensed commercial fish pond operator's on the buyer's list of the number of eggs available.
- (2) The department will make no more than two attempts to notify by telephone each buyer on the buyer's list of the availability of surplus eggs.
- (3) Following the phone call from the department, the potential buyer has four days within which to submit a bid.
- (4) In order to be considered by the department, a bid must be accompanied by a deposit in the form of a certified check, money order or personal check for ten percent of the bid amount.
- (5) If the high bidder declines the eggs or fails to meet other conditions of the sale, the ten percent deposit will be forfeited and the eggs will be offered to the next highest bidder, who will be offered the eggs at his bid price.

Authorizing statute(s): Sec. 87-1-201 MCA

Implementing statute(s): Extension, Sec. 2 Ch. 152, L. 1987, Eff. 10/1/87, 87-4-609, MCA

12.7.905 TRANSFER PROCEDURES

- (1) Eggs will be released to the operator or his representative upon receipt of bid amount at the state hatchery where the surplus occurs. The state hatchery will provide egg shipping cartons prior to actual transfer. The operator will be required to sign a surplus fish egg sale responsibility disclaimer, which will be provided by the department.

Authorizing statute(s): Sec. 87-1-201, MCA

Implementing statute(s): Sec. ~~87-4-601~~ 87-4-609, MCA

12.7.906 METHODS OF PAYMENT

- (1) Payment is due at time of transfer. Payment can be made with a personal check, a certified check or a money order. Cash will not be accepted.

Authorizing statute(s): ~~Sec. 87-1-201,~~ MCA

Implementing statute(s): ~~Sec. 87-4-601~~ 87-4-609, MCA

12.7.1201 PURPOSE

The purpose of these rules is to:

- (1) ~~The purpose of these rules is to~~ adopt procedures to implement the functions of the commission and the department in the future fisheries improvement program established in 87-1-272 , MCA. The purpose of the program is to restore essential habitats for the growth and propagation of wild fish populations in lakes, rivers, and streams through voluntary means. Funds may be used for long-term enhancement of streams and stream banks, in-stream flows, water leasing, lease or purchase of stored water or other voluntary programs to enhance wild fish and their habitats.
- (2) administer a river restoration program established in 87-1-257, 87-1-258, and 87-1-259, MCA, along with the future fisheries improvement program.

Authorizing statute(s): ~~Sec. 87-1-201,~~ 87-1-301, MCA

Implementing statute(s): ~~Sec. 87-1-257, 87-1-258,~~ 87-1-272, 87-1-273, MCA

Reasonable Necessity Statement

ARMs 12.7.1201 through 12.7.1208 are proposed to be amended to combine the application processes for the River Restoration Program along with applications for the Future Fisheries Program to reduce duplication of regulations. ARMS 12.7.1104 through 12.7.1112 are proposed to be repealed below.

12.7.1202 DEFINITIONS

As used in these rules, the following definitions apply:

- (1) "Commission" means the fish, wildlife and parks commission.
- ~~(2)~~ "Department" means the Department of Fish, Wildlife and Parks.
- ~~(3)~~ "Native fish" means fish species that were present in a given water body prior to the influence of European contactman.
- (4) "Program" means the future fisheries improvement program provided for in 87-1-272 , MCA, and the River Restoration program provided for in 87-1-257, MCA, as implemented in these rules.
- (5) "Restoration" means to restore to a natural or near natural condition.
- (6) "Review panel" means the future fisheries improvement review panel.
- (7) "Wild fish" means fish populations that sustain themselves through natural reproduction in lakes, reservoirs, rivers, or streams.

Authorizing statute(s): 87-1-201, 87-1-301, MCA

Implementing statute(s): 87-1-257, 87-1-272, 87-1-273, MCA

12.7.1203 PROJECT APPLICATION, RANKING, AND APPROVAL

- (1) Applications for program funding must be submitted on forms supplied by the department.
- ~~(2)~~ Applicants proposing projects on lands other than their own must include written consent of the landowner and/or lessee for the project, including an agreement for any maintenance and evaluation activities that may be necessary.
- ~~(3)~~ Eligible projects that have been approved by the review panel will be reviewed, evaluated and ranked by a committee that includes at least two department personnel with a background in fishery biology and an understanding of the habitat requirements of fish and one member of the review panel.
- ~~(4)~~~~(2)~~ The department will submit a list of recommended projects to the commission for consideration at public hearings conducted as part of regularly scheduled commission meetings. The commission will grant final approval for project funding.
- ~~(5)~~~~(3)~~ The department and the commission will use the following criteria to evaluate and prioritize projects:
 - (a) the degree to which the project optimizes public benefits to wild fisheries;

- (b) whether the project benefits a native fish species with emphasis on species of special concern;
- (c) the importance of the river or stream ~~(determined from the Montana interagency database—a ranking of the habitat and species value of stream reaches)~~;
- (d) the expected benefits of the project relative to cost;
- (e) the long-term effectiveness of the restoration;
- (f) the level of in-kind services or cost-sharing from other sources.

~~(6)~~(4) All applicants will receive written notification of action taken on their project proposals after the commission has made a final decision.

~~(7)~~(5) Projects will be approved for funding only if account money is available as requested to complete the projects. Each approved project sponsor must enter into a written agreement with the department ~~on a form prepared by the department~~.

~~(8)~~(6) When deemed necessary, the department will solicit outside technical design review of projects.

~~(9)~~(7) No project completed under this program may restrict or interfere with any water rights or property rights of landowners adjacent to projects.

~~(10)~~(8) Funds from this account may not be used to acquire any interest in land.

Authorizing statute(s): See: 87-1-201, 87-1-301, MCA

Implementing statute(s): See: 87-1-257, 87-1-272, 87-1-273, MCA

12.7.1204 PERMITS

- (1) The project applicant is responsible for obtaining all necessary permits required to complete the project. Permits must be obtained prior to project initiation to qualify for payment of funds.

Authorizing statute(s): See: 87-1-201, 87-1-301, MCA

Implementing statute(s): See: 87-1-257, 87-1-272, 87-1-273, MCA

12.7.1205 INSPECTION AND PAYMENT BY DEPARTMENT

- (1) Funds granted from the account shall be used only for purposes described in the final project agreement. Itemized invoices of expenses and receipts approved by the applicant must be submitted to the department for payment.
- (2) Payment may be made in installments for completed work as the project progresses. Upon completion of a project, a final inspection and payment will be made within 45 days by the department. If the department determines after inspection that the project is not complete, final payment shall be withheld pending completion and re-inspection.
- (3) Unanticipated expenses of up to 10% of total project costs can be approved by the department.
- (4) Additional funding may be available to complete or repair a project if a natural catastrophic event damages or destroys the project while the project is under construction. requests for additional funding will be evaluated by the department.

Authorizing statute(s): 87-1-201, ~~87-1-301~~, MCA

Implementing statute(s): 87-1-257, 87-1-272, 87-1-273, MCA

12.7.1206 PROJECT MAINTENANCE

- (1) Projects funded under the program such as fences, bridges, fish screens, or other channel restoration measures will become the property of the landowner. Fish habitat improvement projects such as spawning channel development, fish barrier removal, fish screens, and riparian enhancements must be maintained for the useful life of the project by the applicant.
- (2) Projects with demonstrated benefits to public fisheries and conservation of rivers may be eligible for maintenance funding under this program. Maintenance costs of up to 10 percent of total project costs can be approved by the department, or maintenance funding may be requested by submitting an application on a form provided by the department.

Authorizing statute(s): 87-1-201, ~~87-1-301~~, MCA

Implementing statute(s): 87-1-257, 87-1-272, 87-1-273, MCA

12.7.1207 PROJECT MONITORING

- (1) Restoration projects shall be evaluated by either the applicant or the department according to terms stipulated in the project agreement. Monitoring will be conducted on each completed project at times agreeable to the landowner. The type and frequency of monitoring will be established by the department.

Authorizing statute(s): 87-1-201, ~~87-1-301~~, MCA

Implementing statute(s): 87-1-257, 87-1-272, 87-1-273, MCA

12.7.1208 EFFECT OF RULE VIOLATIONS

- (1) Any person or organization falsifying financial statements or using program funds for purposes other than the intended project will be disqualified from further participation in the program and will be required to reimburse the department for any compensation received.

Authorizing statute(s): 87-1-201, ~~87-1-301~~, MCA

Implementing statute(s): 87-1-257, 87-1-272, 87-1-273, MCA

12.7.1401 COOPERATIVE FISHING ACCESS AGREEMENTS

- (1) The department may provide ~~monetary benefits under 87-1-285, MCA~~, to a landowner who enters into a cooperative agreement with the department to allow public fishing access across or on the landowner's property.
- (2) In determining whether ~~or not~~ to enter into a cooperative agreement and ~~or~~ the ~~amount of monetary benefits provided paid~~ under the agreement, the department shall evaluate the public benefit of acquiring access to the site. Priority is given to properties that provide the greatest fishing access for the lowest cost. ~~The department shall use the 2002 private land fishing access scoring form to make this~~

evaluation. This form is incorporated by reference as part of this rule and is available from the Department of Fish, Wildlife and Parks, Fisheries Division, 1420 East Sixth Ave., P.O. Box 200701, Helena, MT 59620-0701.

(3) Cooperators in the program may receive various benefits, including but not limited to:

(a) payments to offset potential impacts associated with allowing public fishing access on the landowners property;

(b) assistance in the construction and maintenance of roads, fencing, gates, parking areas, and signage to the property; or

(c) department oversight and management of public use at the site;

The score a site receives on the 2002 fishing access scoring form will determine the amount of landowner benefits, if any, that the department offers to the landowner for the purpose of acquiring fishing access.

(4) Compensation schedules will be set by the department in program guidelines and based on legislative appropriations~~prorated biennially to conform to legislative appropriations for the program.~~

Authorizing statute(s): 87-1-285, MCA

Implementing statute(s): 87-1-285, 87-1-286, MCA

Reasonable Necessity Statement

ARM 12.7.1401 is proposed for amendment to update Cooperative Fishing Access Agreements scoring criteria to using program guidelines to provide flexibility and to reflect and modernize the way landowners are compensated in alignment with statute.

ADOPT

The rules proposed to be adopted are as follows:

NEW RULE 1 (12.7.603) DEFINITIONS

For the purposes of this subchapter the following definitions apply:

- (1) “Adjacent streams or lakes” of “adjacent waters” means any stream, lake, or other body of water which could receive water from the pond due to overflow, breach, release, or other means.

- (2) “Appropriate beneficial use” means a purpose of ‘fisheries’ or ‘fish and wildlife’ are included as a beneficial use of the water right.
- (3) “Artificial means” includes, but is not limited to, the diversion of water, the excavation and/or placement of fill, and/or addition of membranes or other materials to control the volume of water at a site.
- (4) “Associated ‘water right’” is defined in 85-2-102, MCA, that includes an appropriate beneficial use and a reservoir record correctly identifying the legal land description, the surface area, and capacity of the pond to be licensed.
- (5) “Floodplain” is the area mapped by the Montana Department of Natural Resources and Conservation as having a 1% annual chance of flooding.
- (6) “Instream pond” is a naturally occurring pond not created by artificial means.
- (7) “Invasive species” has the meaning provided in 80-7-1003, MCA.
- (8) “Lawfully controls” means to control the bed of the pond and all land abutting the shores of the pond through written agreement with the owner.
- (9) “Pathogens” are designated in ARM 12.7.502.
- (10) “Owns” or “owner” means to hold in fee title the bed of the pond and all land abutting the shores of the pond.
- (11) “Tributary spring or stream” is a naturally occurring water source immediately adjacent to or within the pond.
- (12) “Unacceptable risk” or “risk of introduction” includes, but is not limited to, a high likelihood of escapement from a private pond to adjacent waters.

Authorizing statute(s): 87-4-606, 87-4-607, MCA

Implementing statute(s): 87-4-603, 87-4-606, 87-4-607, MCA

Reasonable Necessity Statement

NEW RULE 2 (12.7.604) APPLICATION

- (1) A private pond stocking license is required for stocking fish in a private pond.
- (2) The application fee must be submitted with the application by check or credit card at a regional office, area office, or headquarters prior to the license being issued.

- (3) An application fee can not be refunded once an onsite inspection or environmental assessment has been completed by the department.

Authorizing statute(s): 87-4-606, 87-4-607, MCA

Implementing statute(s): 87-4-603, 87-4-606, 87-4-607, MCA

NEW RULE 3 (12.7.605) ISSUANCE

- (1) The department shall issue a private pond license upon approval of a correct and complete application.
- (2) The license must specify the terms and conditions of the license which may include:
 - (a) the duration of the license;
 - (b) the timing of license renewal;
 - (c) the species licensed by the department to be stocked;
 - (d) the source of the fish to be stocked;
 - (e) the required construction, implementation, operation, and maintenance of measures or devices to prevent species from escaping into adjacent waters.
- (3) The department may revoke a license based on sufficient evidence of violation of the terms and conditions of a license.
- (4) A person may appeal a determination by the department to deny an application or revoke a license. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, will apply.

Authorizing statute(s): 87-4-606, 87-4-607, MCA

Implementing statute(s): 87-4-603, 87-4-606, 87-4-607, MCA

REPEAL

The rules proposed to be repealed are as follows:

12.7.203 REVOCATION

Authorizing statute(s): 87-4-609, MCA

Implementing statute(s): 87-4-601, 87-4-609, MCA

Reasonable Necessity Statement

ARMs 12.7.203 and 12.7.204 are being repealed, and moved into 12.7.202.

12.7.204 APPEAL

Authorizing statute(s): 87-4-609, MCA

Implementing statute(s): 2-4-631, 87-4-601, 87-4-609, MCA

12.7.601 GENERAL POLICY FOR FISH PLANTING

Authorizing statute(s): 87-1-301 MCA

Implementing statute(s): 87-3-202 MCA

Reasonable Necessity Statement

ARMs 12.7.601 and 12.7.602 are proposed for repeal, and are being replaced by the Private Pond Licensing New Rules 1, 2 and 3 above, to implement HB 74 from the 2025 legislative session.

12.7.602 SPECIFIC POLICY FOR STREAM PLANTING

Authorizing statute(s): Sec. 87-1-301 MCA

Implementing statute(s): Sec. 87-3-202 MCA

12.7.808 WAIVER

Authorizing statute(s): 87-3-121, MCA

Implementing statute(s): 87-3-121, MCA

Reasonable Necessity Statement

ARMs 12.7.808 and 12.7.809 are proposed for repeal because the requirements have been added to ARM 12.7.805 above.

12.7.809 APPEAL TO THE COMMISSION

Authorizing statute(s): 87-3-121, MCA

Implementing statute(s): 87-3-121, MCA

12.7.1001 DEFINITIONS

Authorizing statute(s): Sec. 87-4-601 MCA

Implementing statute(s): Sec. 87-4-601 MCA

Reasonable Necessity Statement

ARMs 12.7.1001 through 12.7.1006 are being repealed because the paddlefish roe or egg donation to nonprofit corporation for marketing as caviar statute, 87-4-601, MCA, has been repealed in House Bill 74 from the 2025 legislative session, and the rules are no longer necessary.

12.7.1002 SELECTION OF CORPORATION AND NOTICING

Authorizing statute(s): Sec. 87-4-601 MCA

Implementing statute(s): Sec. 87-4-601 MCA

12.7.1003 CRITERIA IN SELECTING NONPROFIT CORPORATION

Authorizing statute(s): Sec. 87-4-601 MCA

Implementing statute(s): Sec. 87-4-601 MCA

12.7.1004 OPERATING PLAN

Authorizing statute(s): Sec. 87-4-601 MCA

Implementing statute(s): Sec. 87-4-601 MCA

12.7.1005 RECORDS

Authorizing statute(s): 87-4-601 MCA

Implementing statute(s): 87-4-601 MCA

12.7.1006 PERMIT

Authorizing statute(s): Sec. 87-4-601 MCA

Implementing statute(s): Sec. 87-4-601 MCA

12.7.1104 PROJECT APPLICATION

Authorizing statute(s): 87-1-201, MCA

Implementing statute(s): 87-1-257, MCA

Reasonable Necessity Statement

ARMs 12.7.1104 through 12.7.1112 are proposed for repeal because the application process for the River Restoration Program are considered along with applications for the Future Fisheries Program, so all requirements have been incorporated into ARMs 12.7.1200s to reduce duplication of regulations.

12.7.1105 PROJECTS

Authorizing statute(s): 87-1-201, MCA

Implementing statute(s): 87-1-257, MCA

12.7.1106 PROJECT REVIEW AND ASSESSMENT

Authorizing statute(s): 87-1-201, MCA

Implementing statute(s): 87-1-257, MCA

12.7.1107 PERMITS

Authorizing statute(s): 87-1-201, MCA

Implementing statute(s): 87-1-257, MCA

12.7.1108 INSPECTION AND PAYMENT BY DEPARTMENT

Authorizing statute(s): 87-1-201, MCA

Implementing statute(s): 87-1-257, MCA

12.7.1109 PROJECT MAINTENANCE

Authorizing statute(s): 87-1-201, MCA

Implementing statute(s): 87-1-257, MCA

12.7.1110 EVALUATION

Authorizing statute(s): 87-1-201, MCA

Implementing statute(s): 87-1-257, MCA

12.7.1111 RECORDS

Authorizing statute(s): 87-1-201, MCA

Implementing statute(s): 87-1-257, MCA

12.7.1112 EFFECT OF RULE VIOLATIONS

Authorizing statute(s): 87-1-201, MCA

Implementing statute(s): 87-1-257, MCA

Small Business Impact

House Bill 74 from the 2025 legislative session is the result of the Water Policy Interim Committee (WPIC)'s interim study of private ponds as required by House Bill 520 of the 2023 legislative session. The materials supporting the legislative study can be found in the archives online: [HB 520: Interim study of private ponds - Montana State Legislature](#), (last accessed 12/9/2025.) As a part of that study, legislators determined to propose an increase the cost of a private pond permit from \$10 to \$600 for an initial application fee, and \$250 for a renewal after 10 years. According to the WIPC's interim study materials approximately 1 new and 9 renewed commercial private pond permits each year, some of which may be small businesses. That results in increased revenue to FWP from \$100 to \$2,750, while FWP's costs to administer commercial permits averages \$8,472 per year. These increases are in statute, and are not a part of FWP's proposed rule making.

HB 74 also repealed the paddlefish roe program in 87-4-301, MCA. The program has not been utilized in the previous five years, and will have no fiscal impact on a small business. This repeal is in statute, and is not a part of FWP's proposed rule making.

FWP's documentation of the small business impact analysis is available upon request.

Bill Sponsor Notification

New Rules 1 through 3, and the proposed repeal of ARMs 12.7.1101 through 12.7.1006 are based on the changes in statute found in House Bill 74, sponsored by Rep. Walsh in the 2025 legislative session. FWP initially contacted Rep. Walsh at his legislative email address on September 30, 2025. FWP provided Rep. Walsh with the draft proposal notice on December 22, 2025. Rep. Walsh had no suggested changes or comments to the above proposed new rules and repeals required by HB 74.

Interested Persons

The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department, commission or board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to the Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East

Sixth Avenue, Helena, MT 59620-0701, or may be completed online at
<https://public.govdelivery.com/accounts/MTFWP/subscriber/new> .

Rule Reviewer

Jaime MacNaughton

Approval

Christy Clark, Director

Lesley Robinson, Chair, Montana Fish and Wildlife Commission