

BEFORE THE FISH AND WILDLIFE COMMISSION AND
THE DEPARTMENT OF FISH, WILDLIFE and PARKS

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 12.4.203, 12.4.205, 12.4.206,) PROPOSED AMENDMENT AND
12.4.207, and 12.4.210 and the) REPEAL
repeal of ARM 12.4.204 and 12.4.208)
pertaining to the block management)
program)

TO: All Concerned Persons

1. On December 1, 2023, at 1:00 p.m., the Department of Fish, Wildlife and Parks (FWP) and the Fish and Wildlife Commission (commission) will hold a public hearing via the ZOOM meeting platform to consider the proposed amendment and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the telephonic public hearing in the following way:

Dial by telephone: + 1 206 337 9723
Meeting ID: 889 6774 5276
Passcode: 562637

2. FWP and 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 FWP, no later than 5:00 p.m., on November 17, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

3. General Statement of Reasonable Necessity. FWP and the commission are proposing to initiate a comprehensive update to the block management program's administrative rules. Particularly, FWP and the commission intend on removing outdated and repetitive language, further clarifying outstanding language, and ensuring compliance with statutory requirements. The purpose of the proposed block management rules is to update them for the first time in more than 25 years.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

12.4.203 DEFINITIONS ~~Wherever used in ARM 12.4.201 through 12.4.210, unless a different meaning clearly appears from the context~~ The following definitions apply to this subchapter:

(1) "Accessible state lands" means ~~these~~ state lands under the jurisdiction of the Montana ~~d~~Department of ~~n~~Natural ~~r~~Resources and ~~e~~Conservation ~~which are accessible as described in ARM 36.25.165.~~

(2) "BMA" means a block management area. A BMA is a specified area on which, by cooperative agreement between the landowner, other resource management agencies, and the department, public hunting is permitted with certain restrictions or use rules.

~~(3) "Block management tabloid" means the document printed annually which provides statewide information on the block management program and describes means through which hunters may get specific information on block management opportunities.~~

(3) "Commercial filming of hunting activity" means the film, electronic, magnetic, digital, or other recording of a moving image by a person, business, or other entity for a commercial purpose.

(4) "Commercial hunting activity" means any activities in which money, goods, or services a consideration is are required as a condition for hunting.

(5) "Cooperator" means a private or public landowner or land management agency with which the department enters into an agreement for the purposes of ~~the~~ allowing hunting access on a BMA.

(6) "Department" means the Montana Department of Fish, Wildlife, and Parks.

(7) "Director" means the director of the Montana Department of Fish, Wildlife, and Parks.

(8) "DNRC" means the Montana Department of Natural Resources and Conservation.

(9) "Hunter day" means one hunter who hunts on a cooperator's property during a calendar day.

(10) "Hunting season" means the time during which game birds and game animals may be legally taken in accordance with as defined by the Fish and Wildlife Commission regulations under 87-1-304, MCA.

(11) "Livestock loss insurance" means a program which provides reimbursement to livestock owners whose animals are injured or killed as the direct result of allowing public hunting on their property.

(12) "Outfitting" means the act of providing hunting-related services in exchange for money, goods, or services a consideration as defined in 37-47-101(5), MCA.

~~(13) "Regional office" means the headquarters of a department administrative region.~~

~~(14)~~(13) "Regional supervisor" means the supervisor of a regional office.

~~(15) "Use season" means the period of time during which a BMA is open and functioning, allowing public hunting.~~

AUTH: 87-1-301, 87-1-303 MCA

IMP: 87-1-265, 87-1-301, 87-1-303, MCA

REASON: FWP is proposing amendments to this rule to reflect deleted language and grammatical changes, as well as to provide the public with understandable language.

12.4.205 USE OF BLOCK MANAGEMENT AREAS (1) The following governs use of BMAs:

(a) Use restrictions for each BMA shall be established by negotiation between department personnel and the cooperator. Restrictions may include but may not be limited to:

(i) restrictions on vehicle use or off-road travel for access or downed game retrieval;

(ii) number of hunters or hunting parties utilizing a BMA per day;

(iii) times and places at which permission slips or other instructions are provided on-site to the public; and

(iv) duration of the use season.

(b) When lands under the authority of federal agencies are proposed for inclusion in a BMA, the managing federal agency must approve the inclusion.

(c) If a hunter reserves permission on a BMA that restricts hunter numbers or requires reservations, that hunter cannot reserve permission on another BMA, for that same day, unless the hunter receives permission from the cooperator. The cooperator maintains On BMAs which restrict hunter numbers, a cooperator may allow additional hunters at his or her discretion to allow additional hunters on the BMA.

(d)(2) The cooperator and the department reserve the right to deny access to a BMA for cause. Reasons for denying access may include including but not limited to: intoxication, violation of BMA rules, or previous misconduct on a BMA. A willful violation of BMA rules regulations on private property which set the terms for entrance on a cooperator's property can be grounds for terminating privileges on a BMA and may result in a misdemeanor citation under 87-6-415 87-3-304, MCA, hunting without landowner permission. BMAs may also be temporarily closed by the cooperator, in conjunction with the department, due to weather, livestock operations, fire danger, or other conditions or circumstances which would place public safety or resources in jeopardy.

(e) Priority consideration for block management enrollment will be given for lands that are open to all species and gender of game birds and animals available in huntable numbers, with access provided by the cooperator concurrent with applicable fall hunting season dates. Any restrictions on the gender or species available for hunting on a BMA, other than those established by the commission, must be approved by the regional supervisor in writing, documenting any biological or management reasons for such restrictions before implementation of the BMA. Species and gender restrictions, other than those established by the commission, may not be imposed on state or federal land.

(f)(3) BMAs which impose daily hunter number limits will allow free, equitable and equal opportunities for access to all hunters requesting use of the BMA, based on a daily hunter number capacity agreed upon by the cooperator and the department. The allocation of this hunter capacity will be on a first come, first served basis. In the event that hunting demand for a certain BMA is greater than supply, similar hunting opportunities may be offered on other days on the BMA or on other BMAs. On BMAs where hunter demand regularly exceeds available opportunity, the department, where practical, or the cooperator, with department approval, will develop equitable methods of allocation such as telephone reservations or drawings.

~~(g) During periods when a BMA is not in operation and commission-established hunting seasons are in effect, access to private land is at the discretion of the landowner. These periods will be duly noted on enrollment forms as well as in information distributed to the public. During such non-block management periods, accessible federal and state lands will remain open to the public for recreation under rules and regulations adopted by the appropriate land management agency. Hunter days that occur when a BMA is not in operation and does not provide access to the general public will not be counted towards any compensation given the landowner to offset potential impacts of public hunting on the property.~~

~~(h) Enrollment in the block management program may be terminated by the department or the cooperator if the terms of the contract or enrollment form are violated; or, by the department or the cooperator within 30 days following the end of the hunting season. DNRC may withdraw state lands from inclusion in a BMA under ARM 26.3.199C. Any such notice must be in writing. A contract or enrollment may be canceled and a cooperator's property withdrawn from the program at any time due to circumstances beyond the control of the cooperator or the department, such as death, illness, natural disaster, or acts of nature.~~

~~(i) Cooperators may enroll in or contract to participate in the block management program for up to 5 years at a time. However, this will be contingent on the annual availability of funds to operate the BMA.~~

~~(j) Reservations for hunting opportunities on BMAs which restrict hunter numbers may not be accepted by cooperators or department personnel operating a BMA on behalf of a cooperator before September 1 preceding the opening of a use season.~~

~~(k) On BMAs which restrict hunter numbers or require reservations, a hunter cannot reserve permission on more than one BMA per day.~~

(4) With department approval, a cooperator may impose reasonable limitations through temporary closure of a BMA to address concerns related to high fire danger, rest-days, weather-related impacts to a travel route, safety, or agricultural production activities, such as livestock handling or harvest and planting of crops, so long as:

(a) the cooperator notifies the department regional headquarters at least 24 hours prior to the closure;

(b) the cooperator or department personnel post signage indicating the closure; and

(c) the closure is removed within 24 hours after the conditions causing the closure no longer exist.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-265, 87-1-301, 87-1-303, MCA

REASON: FWP is proposing amendments to this rule to reflect and provide clearer guidelines concerning the use of block management areas, as well as to advance the Governor's Office Red Tape Relief Initiative.

12.4.206 COMPENSATION TO COOPERATORS (1) ~~Cooperators in the program may receive various forms of compensation for their participation including, but not limited to, the following:~~

~~(a) department oversight and supervision of hunting on a BMA including the development and implementation of a hunter reservation system administered by the department when practical. For cooperators who elect to have the department provide personnel whose primary duty it is to manage hunting on their property, a compensation value will be assigned to those services by the department, with that amount deducted from the total of any monetary compensation for which the cooperator is otherwise eligible under (1)(c) and (2) of this rule;~~

~~(b) supplying of permission books or other materials which document hunter use, signs or hunting season related supplies; and~~

~~(c) monetary compensation to offset potential impacts associated with allowing public hunting access. These impacts include, but are not limited to, those identified in 87-1-267(5), MCA, and time spent dealing with hunters. Payments to cooperators will be made following the close of the use season and the submission of hunter use documents (permission slips, etc.) to the department.~~

~~(2) Payments to cooperators will be set by the department, figured in the following manner and dependant on available funding Cooperators enrolled in the BMA program may receive the following types of payments:~~

~~(a) a basic enrollment payment which will be provided to anyone enrolled in the program;~~

~~(b) a basic hunter day impact payment which will be provided to all cooperators and computed at an amount per hunter day;~~

~~(c) a length of season impact payment which will be available in addition to other impact payments to for cooperators who place no restrictions on commission-established fall hunting seasons for any species legally available in huntable numbers on their property. This rate will be set at one-third of the base impact payment;~~

~~(d) a species/gender sex impact payment which will be available in addition to other impact payments, to for cooperators who place no restrictions on the species and gender sex of elk, deer, antelope, upland game birds, and waterfowl, available in huntable numbers as they exist on their property. This rate will be set at one-third of the base impact payment;~~

~~(e) cooperators who provide access corridors to isolated state or federal lands, with no enrollment of deeded land permitting public hunting access, will be eligible for compensation at 50% of the base impact payment and if no restrictions are placed on the length of season, 50% of the length of season impact payment, based on the number of hunters for which access is provided;~~

~~(f) in situations involving unique hunting opportunities or special management circumstances, compensation may be negotiated on a case-by-case basis at a rate not to exceed limits set in 87-1-267(7), MCA. Compensation amounts in these situations will require written approval of the regional supervisor; and~~

~~(g) for those cooperators who elect to receive monetary compensation under this rule, a method of measuring hunter use on the property must be used to document hunter days. This may include, but is not limited to permission slips, daily use rosters or other methods which will accurately reflect the hunter use of a~~

cooperator's property. For those areas with unrestricted access where rosters or permission slips may not be practical, standard department hunter use accounting methods will be used to calculate hunter days.

(3)(2) Additional forms of compensation may also include Cooperators may also receive compensation for:

(a) livestock loss insurance payable at full market value of any loss up to \$5,000;

(b) the supplying of wildlife damage materials and supplies; and

(c) permitting wildlife game damage hunts;

(d) participating in a unified aggregate cooperative;

(e) every five years of participation in the BMA program; and

(f) participation in other department cooperative programs.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-265, 87-1-301, 87-1-303, MCA

REASON: FWP is proposing amendments to this rule to clarify the types of payments cooperators may receive, as well as to advance the Governor's Office Red Tape Relief Initiative.

12.4.207 OUTFITTING AND COMMERCIAL HUNTING ACTIVITY

(1) Outfitting and commercial hunting activities on BMAs are not consistent with the intent of providing free public access to recreational opportunities on private lands. Outfitting may not take place on a BMA unless public recreation and hunting opportunities are not unreasonably restricted and the cooperator and regional supervisor approve the activity.

(2) This rule does not regulate licensed outfitters legally operating on federal or state lands under license or permit obtained from the U.S. Department of Interior Bureau of Land Management, U.S. Department of Agriculture Forest Service, DNRC, or other resource management agency.

(3) A report documenting outfitting activities on the BMA must be supplied by the cooperator, to the department, within thirty days of the contract ending date. At a minimum, the outfitting activities report must explain:

(a) total number of days outfitted hunting occurred;

(b) total number of outfitted hunters who hunted;

(c) total number of outfitted hunter days that occurred; and

(d) total number of game animals, by species and sex harvested by outfitted hunters.

(4) A cooperator, who is also a licensed outfitter, is not eligible to receive block management compensation for any activities conducted by their own hunting clients.

(5) If a cooperator receives compensation from an outfitter or clients, the cooperator is not entitled to a basic hunter day impact payment for the days associated with that use.

(6) Commercial filming of hunting activity is not consistent with the intent of free public hunting access on private lands and is not allowed without express consent from the cooperator.

AUTH: 87-1-301, 87-1-303, MCA
IMP: 87-1-265, 87-1-301, 87-1-303, MCA

REASON: FWP is proposing amendment to this rule to better reflect the requirements of cooperators who allow outfitting or commercial hunting activities on their property, to prohibit cooperators from double-dipping or receiving payments in two programs, and to ensure statutory compliance.

12.4.210 COMPLAINT RESOLUTION SYSTEM (1) If a cooperator or a public hunter has an issue and the issue has not been resolved by regional department staff, the cooperator or hunter may submit a formal complaint to the regional supervisor. Formal complaints BMA-cooperators or hunters may make complaints to the department of problems they have encountered on a BMA. The department shall use the following procedure to investigate and resolve complaints.

~~(a) Block management personnel are encouraged to work on-site to address problems before they reach the complaint stage.~~

~~(b) Formal complaints must be in writing, signed by the complainant, and should describe and may be presented to any department employee. Complaints need to include information describing the events that transpired, the BMA involved, the name(s) and contact information of those involved, and, if relevant, any vehicle description and the names, addresses and, if possible, phone numbers of all individuals involved.~~

~~(c) Complaints will be turned in immediately to the regional supervisor of the region in which the problem occurred and documented for tracking purposes.~~

~~(d) (2) The regional supervisor will review the complaint and is responsible for assessing complaints and initiate initiating the appropriate level of investigation. If the complaint involves state lands or federal lands, the supervisor will involve the appropriate management agency in resolving the complaint.~~

~~(e) At the conclusion of the investigation, the regional supervisor will provide written notification to the complainant and the director. department field services administrator of The notice will include the results of the investigation as well as and any action(s) taken as a result of the investigation. Other parties directly involved with the complaint (cooperator, land management agencies, etc.) will also be notified.~~

~~(f) (3) A complainant may appeal the action taken by a regional supervisor to the director. The director will review the complaint and investigation and issue a written decision.~~

~~(g) Following the close of the hunting season, the field services division of the department will review and summarize all complaints lodged during the preceding hunting season. Each regional office will get a copy of this summary as well as identification of problem areas and suggested solutions.~~

~~(h) For BMAs with any complaints which remain unresolved on March 1 annually after having been investigated through this process, the complaints will be reviewed as set forth in ARM 36.25.167 to determine if a public review is necessary to assess if continued enrollment in the program is appropriate.~~

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-265, 87-1-301, 87-1-303, MCA

REASON: FWP is proposing amendments to this rule to better reflect existing practices, as well as to advance the Governor's Office Red Tape Relief Initiative.

5. The department proposes to repeal the following rules:

12.4.204 CRITERIA FOR PARTICIPATION

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-301, 87-1-303, MCA

REASON: FWP is proposing repeal of this rule to provide flexibility in determining the appropriate criteria for participating in the block management program, while also advancing the Governor's Office Red Tape Relief Initiative.

12.4.208 INFORMATION DISSEMINATION

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-301, 87-1-303, MCA

REASON: FWP is proposing repeal of this rule to advance the Governor's Office Red Tape Relief Initiative.

6. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Charlie Sperry, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or email fwpprk@mt.gov, with "BLOCK MANAGEMENT ARM" in the subject line and must be received no later than 5:00 p.m., December 4, 2023.

7. Christina Bell or another hearing officer appointed by FWP has been designated to preside over and conduct the hearing.

8. FWP maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by FWP or the commission. 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. 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 cbell@mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply. However, Senate Bill 58 raised the block management payment cap to \$50,000.00. In that regard, FWP notified the bill sponsor of its intent to initiate rulemaking for the block management program on June 19, 2023, by email.

10. With regard to the requirements of 2-4-111, MCA, FWP has determined that there are 1,400 landowners participating in the block management program. The new raise in cap, as it relates to block management payments, from \$25,000 to \$50,000, will result in a net gain to participating landowners. As a result of the increased payment landowners will receive, outfitters may be impacted and may be required to pay additional funds to lease the landowner's property. FWP cannot quantify the fiscal impact to outfitters. Accordingly, there is a potential to impact small businesses.

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

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

/s/ Dustin Temple
Dustin Temple
Director
Fish, Wildlife and Parks

Certified to the Secretary of State October 24, 2023.