

BEFORE THE STATE PARKS AND RECREATION BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 12.3.650 and the adoption of)	PROPOSED AMENDMENT AND
NEW RULES I and II pertaining to the)	ADOPTION
Smith River private and commercial)	
use permit system)	

TO: All Concerned Persons

1. On July 19, 2024, at 10:00 a.m., the State Parks and Recreation Board (board) will hold a public hearing via the ZOOM meeting platform to consider the proposed amendment and adoption 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: +1 646 558 8656
Meeting ID: 824 1382 8204
Passcode: 008333

2. The board 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 (FWP), no later than 5:00 p.m., on July 5, 2024, to advise us of the nature of the accommodation that you need. Please contact Crissy Bell, Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 594-8071; or e-mail to cbell@mt.gov.

3. Statement of Reasonable Necessity. The board has statutory authority to establish rules governing the issuance of recreational use permits (both private and commercial) for the Smith River. The board promulgated ARM 12.3.650 and 12.3.651 in 2023 to establish certain regulations historically contained in the board's Smith River State Park and River Corridor Biennial Rule (biennial rule), to recognize new legislative limits on permits for nonresidents, and to reflect a new bonus point system authorized by the legislature. The purpose of the proposed amendment to ARM 12.3.650(6) is to correct an inadvertent reference to "June 15" as the end of the peak season and to have the rule reflect the "July 15" date that is the historical end of the peak season as reflected in the biennial rule. The purpose of NEW RULE I and NEW RULE II is to establish certain regulations relating to commercial use that have been historically contained in the biennial rule in the same fashion as was accomplished in promulgating the private permit provisions in ARM 12.3.650 in 2023.

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

12.3.650 SMITH RIVER PERMIT (1) A permit and payment of floating fees are required to float the Smith River from the Camp Baker put-in to the Eden Bridge take-out year-round. This requirement does not apply to a landowner conducting a day float solely for the purpose of performing maintenance on their contiguous fee title property adjacent to the Smith River in the permitted section of the river.

(2) The permit authorizes the holder and the members of their group to a float beginning on the date specified on the permit.

(3) The permit is issued to an individual and is non-transferable and non-refundable.

(4) A person must submit a permit application to participate in the general lottery. A person must be a minimum of 12 years of age at the time they submit a permit application. No person may submit more than one permit application. A person may purchase an unlimited number of Smith River Super Permit lottery chances.

(5) A permit season begins on April 1 and continues through March 31 of the following year. The percentage of overall permits issued to nonresidents is limited by 23-2-408(1)(b), MCA.

(a) The department shall use a general random lottery to allocate permits that authorize a launch date from April 1 through August 15.

(b) Permits that authorize a launch date from August 16 through March 31 must be obtained by contacting the department's regional office in Great Falls.

(6) A person receiving a permit through the general lottery for a launch date during the peak season of May 15 through ~~June 15~~ July 15 may not apply for a permit the following calendar year for a launch date within this same time period. They may apply for a permit outside of the peak season, accompany another permitted group during the peak season, obtain a cancelled launch permit, or apply for a Super Permit. The department may waive this restriction for trips cancelled due to unsafe conditions caused by inclement weather or river flows, insufficient flows for navigability, or other similar exigent circumstances, not including trips cancelled due to undesirable fishing conditions.

(7) Any permits on dates not fully subscribed during the general lottery shall be made available by the end of March on a first come, first served basis subject to 23-2-408, MCA.

(8) The recipient of a permit must notify the department's regional office in Great Falls or the Camp Baker ranger station when cancelling a permit.

(9) A person cancelling their permit less than two days before their launch date shall be prohibited from applying for a permit the following permit season. This restriction does not apply if the river flows are below 100 cubic feet per second. The department may waive the cancellation penalty for permits cancelled less than two days prior to the launch date due to unsafe conditions caused by inclement weather or river flows, insufficient flows for navigability, or other similar exigent circumstances, not including trips cancelled due to undesirable fishing conditions.

(10) A cancelled permit shall be made available on a daily, first come, first served basis subject to 23-2-408(1)(b), MCA.

(11) Each year the department shall conduct an additional lottery that is separate from the general lottery and is used to issue one permit (Smith River Super Permit) that is valid any day of the year of issuance. An individual may purchase an

unlimited number of Super Permit lottery chances. The department may reserve one permit from the general lottery or a cancelled permit to ensure compliance with 23-2-408(1)(b), MCA.

(12) Additional rules governing recreation and commercial use on the Smith River can be found in the board's Smith River biennial rules.

AUTH: 23-1-102, 23-1-106, 23-1-111, 23-2-408, MCA

IMP: 23-2-408, 23-2-409, MCA

REASON: The purpose of the proposed amendment is to correct an inadvertent reference to "June 15" as the end of the peak season and to have the rule reflect the "July 15" date that is the historical end of the peak season as contained in the biennial rule.

5. The proposed new rules are as follows:

NEW RULE I (ARM 12.11.6801) SMITH RIVER COMMERCIAL USE

PERMIT (1) No person, group or entity may conduct commercial use within the Smith River State Park and River Corridor without first obtaining a commercial use permit from the department.

(2) Commercial use shall be administered in accordance with the department's commercial use rules, including but not limited to the department's authority to establish terms and conditions for commercial use.

(3) Commercial outfitters and guides conducting angling trips must be licensed by the State of Montana. The commercial outfitters authorized to conduct commercial float trips on the Smith River are limited to those outfitters identified in Appendix A to the State Parks and Recreation Board's Smith River biennial rules. The department may update Appendix A as necessary to reflect business transfers.

(4) Any commercial launches held by the outfitters currently identified in Appendix A that may become available by no longer being allocated to a valid commercial use permit will be made available to the remaining outfitters identified in Appendix A via a random lottery to be conducted by the department. In the event any commercial launches remain available after that initial lottery, they will be made available to other licensed outfitters via a second random lottery to be conducted by the department.

AUTH: 23-1-102, 23-1-106, 23-1-111, 23-2-408, MCA

IMP: 23-2-408, 23-2-409, MCA

REASON: The board is proposing this rule to place portions of the board's biennial rule relating to commercial use into administrative rule in the same fashion as was done with the portions relating to private permit floats in 2023, and to adopt a specific mechanism for reallocating any commercial launches formerly associated with a commercial use permit that is no longer issued.

While the department already has the general authority in ARM 12.14.121(6) to reallocate rationed units of use in the event of a commercial use permit revocation,

the proposed rule would require reallocation of these specific rationed units of use (i.e., commercial launches) among the current rationed unit holders through a random lottery process. Apart from permit revocation, other possible circumstances that could result in the availability of rationed launches for reallocation would include (a) the death of a permit holder with no subsequent sale or transfer of the permitted business to a buyer/transferee eligible to receive their own commercial use permit or (b) an inter vivos sale or transfer of the permitted business to a buyer/transferee who is ineligible to receive their own commercial use permit. If any commercial launches remain available after the initial lottery among the Appendix A outfitters, they will be made available to other licensed outfitters through a second random lottery process.

Apart from the addition of the proposed provision in (4) establishing the lottery process for reallocation, there are no differences between the language of the proposed rule and the current biennial rule.

NEW RULE II (ARM 12.11.6802) SMITH RIVER COMMERCIAL USE PERMIT RESTRICTIONS (1) Commercial outfitters are limited to a maximum of 73 float trips per calendar year.

(2) The department shall establish commercial outfitter float trip dates in consultation with the commercial outfitters and in accordance with the following criteria:

(a) For launch dates during April and from August 1 through 15, all commercial outfitters must finalize their float trip dates seven days prior to the private permit lottery referenced in ARM 12.3.650. Commercial outfitters seeking to reschedule a float trip in the above-referenced timeframe after the private permit lottery must use the reservation system to request a cancelled float trip. All commercial float trips not reserved by an outfitter as required above will be available to the public in the private permit lottery.

(b) For launch dates during May, June, and July, all commercial float trips not reserved by a commercial outfitter will be designated "On Hold" and will not be included in the private permit lottery referenced in ARM 12.3.650. After the lottery, commercial outfitters may utilize available "On Hold" float trips 29 or more days in advance of an available date. All commercial float trips not utilized by an outfitter will be available to the public via the reservation system 28 days prior to the float trip date. Commercial outfitters seeking to reschedule a float trip to an available date 28 days or fewer from a desired float trip date must use the public reservation system to request an open float trip.

(3) There is a maximum of one commercial float trip allowed on Mondays, Tuesdays, Thursdays, Fridays, and Saturdays and a maximum of two commercial launches allowed on Sundays and Wednesdays. This equates to a maximum of nine commercial float trips per week.

(4) Commercial outfitters must cancel all un-booked float trips a minimum of 14 days prior to the float trip date. The park manager may waive disciplinary action for float trips cancelled less than 14 days prior to the float trip date due to unsafe conditions caused by inclement weather or river flows, insufficient flows for navigability, or other similar exigent circumstances. This does not include float trips cancelled due to undesirable conditions.

- (5) Commercial float trip fees must be paid at Camp Baker prior to launching.
- (6) The park manager may waive the float trip fee and other related fees for a maximum of two commercial float trips each season on a case-by-case basis when the commercial user donates one or more float trips to a recognized charitable or not-for-profit event and the commercial user is not compensated. No additional commercial float trips may be authorized under this provision. Commercial outfitters requesting a fee waiver must submit a written request to the park manager a minimum of 30 days prior to the anticipated float trip date. Waiver requests shall be considered in the order received.

AUTH: 23-1-102, 23-1-106, 23-1-111, 23-2-408, MCA
IMP: 23-2-408, 23-2-409, MCA

REASON: The board is proposing this rule to place portions of the board's biennial rule relating to commercial use into administrative rule in the same fashion as was done with the portions relating to private permit floats in 2023. There are no differences between the language of the proposed rule and the current biennial rule.

- 6. The board anticipates no fiscal impact from the amendment and adoption of the rules proposed in this notice.
- 7. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Deb O'Neill, Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or email doneill@mt.gov, and must be received no later than 5:00 p.m., July 22, 2024.
- 8. Jeffrey M. Hindoién or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.
- 9. FWP maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by FWP, the State Parks and Recreation Board, or the Fish and Wildlife 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 requests may be mailed or delivered to: Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to <https://public.govdelivery.com/accounts/MTFWP/subscriber/new>.
- 10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.
- 11. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment and adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Jeffrey M. Hindoien
Jeffrey M. Hindoien
Rule Reviewer

/s/ Russ Kipp
Russ Kipp
Chair
State Parks and Recreation Board

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

Certified to the Secretary of State June 11, 2024.