

## FWP RULEMAKING

Environmental Quality Council  
Agency Oversight Subcommittee  
Meeting Minutes and Exhibits  
Date: 3.9.04  
Exhibit No. 19

Below is a list of FWP rulemaking. The standard annual or biennial hunting, fishing, and trapping regulations are not included unless changes were made due to legislation.

Subject	Need	Status
Exotic wildlife	Authorized by SB 442 (2003) to set up process for regulation of exotic species: establish prohibited exotic wildlife, and controlled exotic wildlife. Commission rule.	ARM rule drafting will begin within the next six months.
Fishing – general clean up	Rules needed to implement HB 187 (2003). HB 187 authorized FWP to sell paddlefish tags to residents who purchase a two-day fishing license. Also, changes rules for commercial sale of fish. Regulations for whitefish, Chinook salmon, crappie and yellow perch allowed. Commission rules.	Changes incorporated into biennial fishing regulations in October 9, 2003.  Commercial sale of fish guidelines must be implemented in ARM rules. Rulemaking anticipated within the next 12 months.
Fishing – use of spears/gigs in Fort Peck Reservoir	Regulations needed to allow for use of spears/gigs on Fort Peck for taking salmon or lake trout pursuant to SB 221 (2003). Commission rules.	Changes incorporated into biennial fishing regulations 10/9/03.
Fishing – Beaverhead/Big Hole Restrictions	Over-use and crowding on rivers prompted Commission to adopt rules to protect river resources until River Recreation Advisory Committee could complete its work and make recommendations to Commission about recreational use policy. Commission rules.	Rules changed from biennial to ARM 6/30/03.
Fishing - Commercial Bait Fish Seining Regulations	FWP and Commission responsible under MCA §§ 87-2-101, 87-3-204, 87-3-205, 87-4-609 to make regulations regarding the taking of bait fish. Joint Department and Commission rule.	Regulations reviewed and adopted annually. Current regulations adopted in 10/9/03.

Game Bird Farms/Shooting Preserves	ARM Rule needed to implement changes made in HB 100 (2003). Bill authorized the update of statutes relating to game bird farms and shooting preserves. Department rules.	Enforcement Division has drafted rules for both shooting preserves and game bird farms. Scheduled for public review and final decision this summer.
Game Damage	The Commission plans to amend ARM 12.9.808, Management Seasons, to specify criteria under which management seasons will be implemented immediately. Currently FWP and Commission must use a 30 day comment period to set management seasons. Waiting 30 days implement a management hunt is often too long of a wait. Commission rule.	The process to amend ARM 12.9.808 should begin within the next year.
Game Farm/Alternative Livestock	Update rules to be consistent with I-143. I-143 changed the law in regard to alternative livestock ranches (game farms). Department rules.	ARM rule revision has been drafted. Completion of public review and final decision scheduled within the next six months.
Game Preserve repeal – Green Meadow	Game preserve no longer needed or enforceable. Commission rule.	ARM repeal completed 9/26/03.
Game Preserve boundary adjustment – Teton-Spring Creek Preserve	Landowners experiencing severe game damage. Boundary adjustment to remove them from preserve so that firearm hunts can be held to reduce deer numbers. Commission rule.  Weapons restriction adopted to address adjacent property owners' safety concerns. Commission rule.	ARM amendment completed 1/30/04.  Weapons restrictions adopted in general hunting regulations.
Hunting – annual rule for sale of nonresident combination licenses	Update rule with the changes in the variable priced fees, target quotas and deadlines. Update and refine procedures for license issuance based on department and public input. Commission rule.	Annual rule effective 3/1/04 through 2/28/05 already in place. New annual rule proposal will be considered for a final decision 11/4/04.

Hunting – Bison	SB 395 (2003), gave the Commission authority to establish bison hunts in Gallatin and Park counties. Commission rule.	The Commission is in the scoping process to determine whether or not a bison hunt would be feasible and what specific conditions would need to exist to meet the intent of the statute.
Hunter Education	Update ARM rule from requiring persons under 18 to show proof of hunter's education to requiring persons born after January 1, 1985, to show proof of hunter education pursuant to HB 396 (2003). Commission rule.	Approval to proceed with ARM given by Commission. Proposed rule slated to be filed with Secretary of State 3/1/04.
Hunting license – calculation method for outfitter sponsored, variable priced class B-10 and B-11 licenses	Establish a consistent method for calculating price of B-10 and B-11 licenses. Commission rule.	ARM rule completed 8/1/03.
MEPA	Since department MEPA rules were adopted, many electronic alternatives have been developed. When MEPA involves issues of national concern over 15,000 comments can be received from all over the U.S. Instead of sending a large document out to commentors at considerable postage expense, the documents can now be viewed on FWP website. Rules need to provide for electronic alternatives. Department rules.	Rules may be proposed within the next year.
MEPA	May need to amend department MEPA rules to include provisions from HB 142 (2003) requiring review of EIS's by local governments. Department rules.	Rules may be proposed within the next two years.
Paddlefish egg donations, marketing and roe	Regulations outdated. Department rules.	ARMs may be revised within the next year.

<p>Parks biennial fee rule</p>	<p>Determine fees where applicable and user rules for parks and FAS's. Commission rules.</p> <p>Amend rule to delete resident day-use fees. Implementing SB 336 (2003) providing for funding in optional \$4.00 vehicle registration fee.</p>	<p>Adopted by Commission 12/11/03</p> <p>Commission deleted resident day-use fees in Parks Biennial Fee Rule at 12/11/03 Commission meeting.</p>
<p>Parks biennial fee rule – Thompson Chain of Lakes Camping fees</p>	<p>FWP charges camping fees at approximately 40 fishing access sites to offset the greater expense of operating sites where camping occurs. At Thompson Chain of Lakes a substantial amount of camping occurs, fees proposed by Commission to offset costs as well as to ensure FAS users statewide were being treated equally. Commission rules.</p>	<p>Biennial fee rule amendment adopted by Commission 12/11/03. This rule now included in biennial rule.</p>
<p>Prairie dogs - translocation</p>	<p>Support for conservation plan for prairie dogs required alternatives to control and conserve animals. Rules needed to implement relocating animals. Joint Department and Commission rules.</p>	<p>ARM proposal filed with Secretary of State 2/17/04. Four rule hearings scheduled in March.</p>
<p>Prairie Dogs – shooting regulations on public land</p>	<p>Prairie dogs are a species of special concern. Shooting regulations for public land were adopted to protect them during their breeding and rearing periods. Additionally, rules were needed to promote success of the black-footed ferret reintroductions on BLM lands in S. Phillips County by closing shooting of black-tailed prairie dogs over an estimated 25,000 acres of prairie dog colonies where black-footed ferrets have been reintroduced, while simultaneously replacing a controversial “firearm discharge closure” enacted by BLM for that purpose.</p> <p>Commission rule.</p>	<p>Biennial rule adopted 2/12/04.</p>
<p>Shooting range grants</p>	<p>Regulations outdated. Implementing HB 389 (1999). Department rules.</p>	<p>ARM rulemaking completed 9/12/03</p>

Water - closure of Ryan, Cochrane and Morony reservoirs	Potentially dangerous draw downs by PPL Montana on reservoirs creates boating hazardous. During FERC relicensing MPC/PPL Montana agreed to management plan and settlement agreement funding other recreation areas to mitigate loss of recreational opportunity by this rule. Commission rules.	ARM rulemaking completed 4/25/03
Water - emergency closures of two water bodies for fire fighting	Hazardous condition for recreators existed. Fire fighting aircraft flying low and scooping and pumping water from Placid Lake and Nevada Lake. Commission rules.	Placid Lake effective 8/14/03 until 8/18/03. Nevada Lake effective 8/18/03 until later in the day 8/18/03.
Water – emergency closure Painted Rocks Reservoir	High water flows and safety boom failure at Painted Rocks Reservoir. Suction of water going over the spillway sufficient to carry watercraft or persons in the water over the top of the spillway to the Bitterroot River 130 feet below. Commission rule.	Emergency rule effective 6/3/03 to 6/27/03.
Water – no wake zones proposed: Swan River	Rule proposed in response to petition from citizens. Swan River petitioners state that river is shallow and rocky and has numerous recreators floating, making speed hazardous. Commission rule.	ARM rule in process. Rule scheduled for Commission final decision at March 11, 2004, meeting.
Water – no wake zones proposed: Yellow Bay	Rule proposed in response to petition from University of Montana. Petitioner states boats and water skiers interfering with U of M's teaching and research. U of M has a biological station in Yellow Bay. Commission rule.	ARM rule in process. Rule scheduled for Commission final decision at March 11, 2004, meeting
Water – River Recreation Advisory Committee	Increasing recreational use of rivers in Montana has led to conflicts among user groups. The River Recreational Advisory Committee was appointed to develop Commission policy to resolve conflicts and protect resource. The policy may be codified as ARM rules. Commission rules.	Policy as drafted by committee is finished. Department will recommend that commission adopt policy as proposed ARMs at 3/11/04 Commission meeting. Conversion of policy to ARM rules will begin if Commission gives its approval to begin the rulemaking process.

Water rule update	Outdated format of water rules near dams. Reformatted to make consistent with other water rules. Corrected rule errors found in biannual review of rules. No substantive changes made except where rule was incorrect due to errors in 2001 water rule clean up. Commission rules.	ARM rule corrections adopted 11/28/03
Water -Smith River Special Use Area Rule  Smith River Special Landowner Rule (Section (K) of Smith River Special Use Area Rule)	MCA § 23-2-408 authorizes Commission to provide for administration of Smith River waterway. Rule carries out mandate.  This part of the rule resolved conflicts with landowners along the river regarding floating. Commission rule.	Rule adopted by Commission 12/11/03.
Wildlife habitat carrying capacity.	HB 42, 2003 Legislative Session, required FWP to determine carrying capacity for deer, elk and antelope and manage populations below those numbers. Commission rule.	Permanent rulemaking will only be proposed if Commission believes that a formal ARM needs to be implemented. The current annual rule process will otherwise be used in concert with the season setting process.
Zoo/Menageries	Update rules. Separate rules from game farm rules. Department rules.	Rules are currently being drafted. Completion of revision process within the next 6 months.