



# *Montana Fish, Wildlife & Parks*

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## **FWP Commercial Use Rules**

**Adopted December 14, 2006**

ARM 12.14.101 DEFINITIONS (1) "Allocation" means distributing limited use opportunities when a rationing system is in place.

(2) "Authorization" means written permission granted to a person or entity by the department to conduct commercial use.

(3) "Commercial use" means any person or entity that utilizes lands under the control, administration, and jurisdiction of the Montana Department of Fish, Wildlife and Parks for consideration. Commercial use includes any person, group or organization, that makes or attempts to make a profit, vend a service or product, receive money, amortize equipment, or obtain goods or services as compensation from participants in activities occurring on land that is under the control, administration, and jurisdiction of the department. This includes nonprofit organizations and educational groups that receive money from participants in activities occurring on department land. This includes a person whose business operates on department land, regardless of that person's physical presence at the site, but does not include a person who rents, sells, or otherwise provides equipment or merchandise that is used on department land unless the renting, selling, or providing of equipment or merchandise takes place on department land. Examples of commercial use that are governed by these rules include but are not limited to: trail rides, guided walks or tours, float trips, guided angling or hunting, game retrieval, professional dog training, equipment rentals, retail sales, food concessions, filming, firewood cutting, construction-related activities, research when accompanied by paying clients, or any combination thereof.

(4) "Commission" means the Department of Fish, Wildlife and Parks Commission of the state of Montana.

(5) "Concession service" means a commercial business that provides multiple services or products on department land. Examples include but are not limited to marinas, lodging, equipment rental or sales, retail sales, and food services.

(6) "Consideration" means something of value given or done in exchange for something of value given or done by another.

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

(8) "Educational group" means an organized group that is officially recognized as an educational or scientific institution by a federal, state, or local government entity. Documentation of this recognition must be on institutional letterhead and include a signature by the head of the institution/department and documentation of official educational or scientific tax exemption as granted by the Internal Revenue Service.

(9) "Fishing access site" means a site or area designated by the department as a fishing access site.

(10) "Mitigation" means an enforceable measure, within the authority of the agency or mutually agreed to by the permit holder that is designed to reduce or prevent undesirable effects or impacts of the proposed use.

(11) "Ration" means to regulate use intensity by limiting the amount of use on a site.

(12) "Restricted water body" means a body of water regulated by special department rules governing commercial use, such as rules that restrict the timing, location, amount, or type of commercial use that occurs. "Restricted water body" may also mean a body of water that is under a cooperative management agreement with another agency concerning commercial use.

(13) "Site" means an individual unit of land, or portion thereof, owned or managed by the department.

(14) "State park" means a site or area designated by the department as a state park.

(15) "Water-based outfitter or guide" means any person who for consideration provides water-related recreation services or supervises someone providing these services. This includes outfitters and guides that are licensed by the state of Montana, and water-based service providers that are not licensed by the state of Montana.

(16) "Wildlife management area" means a site or area designated by the department as a wildlife management area or a wildlife habitat protection area.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.105 APPLICABILITY OF COMMERCIAL USE RULES (1) The following rules shall govern commercial use, as defined in ARM 12.14.101, that occurs on lands under the control, administration, and jurisdiction of the department. Unless otherwise noted in these rules, these rules apply to fishing access sites, state parks, wildlife management areas, administrative sites, and other lands under the control, administration, and jurisdiction of the department.

(2) The department may apply these rules to leased lands when the department has authorization to manage use of these lands. This does not include block management lands or lands under a conservation easement.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.110 EXCEPTIONS TO APPLICABILITY OF COMMERCIAL USE RULES (1) These commercial use rules do not apply to commercial activities or uses that are initiated or invited by the department for the purpose of manipulating, enhancing, or otherwise improving the habitat of a site. Such uses shall continue to be governed by the department's land lease-out policy. Examples include but are not limited to livestock grazing, farming, haying, fencing, and timber harvest.

(2) These commercial use rules do not apply to the leasing of department

land for communication towers, utility easements, and granting of right-of-way. These types of commercial use shall continue to be governed by the department's land lease-out policy.

(3) These commercial use rules do not apply to the leasing of department oil and gas reserves. These uses shall continue to be governed by the department's oil and gas reserves leasing policy.

(4) These commercial use rules do not apply to the transferring of vehicles or people to or from a department site.

(5) These commercial use rules do not apply to the collection of antlers.

(6) These commercial use rules do not apply to trapping or commercial activities under Title 87, chapter 4, parts 2 through 10, MCA (taxidermists, fur dealers, alternative livestock, shooting preserves, fish ponds, sale of game, menageries and zoos, game bird farms, and fur farms), except commercial dog training and field trials conducted for commercial purposes.

(7) These commercial use rules do not apply to the press or the news media when photographing, filming, or reporting on activities that occur on department land.

(8) These commercial use rules do not apply to consignment sales when the department sells merchandise on behalf of a business and a portion of the revenue is allocated to the department.

(9) These commercial use rules do not apply to commercial activities or uses that are initiated or invited by the department for the purpose of addressing public safety concerns. Examples include but are not limited to hazardous tree removal and fuel reduction efforts to reduce fire danger.

(10) These commercial use rules do not apply to fishing tournaments conducted by nonprofit organizations.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.115 GENERAL POLICY (1) Department land belongs to the people of Montana and the department manages these sites and associated resources in trust for the benefit of current and future generations of the people. The department's primary responsibilities are to maintain or enhance the resources of these sites and to provide benefits to the public from these sites.

(2) Some types of commercial use can help the department to achieve its resource management goals and/or provide desired services to the public when properly managed. Commercial use must be managed to prevent or minimize conflicts with the public and the intended purposes of a site.

(3) Commercial use on department lands is a privilege, not a right. Authorization to conduct commercial use may be denied, amended, or revoked at any time for cause. Historical commercial use of a site does not convey a right to conduct commercial use in the future. If it becomes necessary to ration and allocate commercial use, the department is not required to allocate opportunities based on historical use of a site.

(4) The department may prohibit, restrict, condition, or otherwise manage commercial use, including placing stipulations on the type, timing, location, duration, and quantity of commercial use. Reasons for prohibiting, restricting, conditioning, or otherwise managing commercial use include but are not limited to:

- (a) protecting resources or mitigating impacts to resources;
- (b) preventing or minimizing conflicts with the intended purpose for which the department acquired, maintains, or manages a site;
- (c) preserving the public's ability to recreate on or otherwise use a site;
- (d) providing for the public's safety and welfare; or
- (e) other purposes identified by the department.

(5) Restrictions, including prohibitions, rationing, and allocation on water-based outfitters and guides on rivers and fishing access sites shall be governed by the department's statewide river recreation rules.

(6) The purpose and management objectives can vary from one type of department land to another and from one site to another. The public's use and expectations can vary from one type of department land to another and from one site to another. The opportunities to conduct commercial use may be different depending upon where the use would occur, and the department may develop policies that provide additional guidance for managing commercial use at fishing access sites, state parks, wildlife management areas, and other department lands.

(7) The department may establish special criteria for a particular site or prohibit commercial use altogether based on the management objectives and conditions of that site.

(8) The department may prohibit or condition commercial use that would displace the general public. The department may temporarily alter public use opportunities at fishing access sites and state parks to accommodate commercial use on a case-by-case basis in the interest of public safety and security or when there is the potential for short-term conflicts.

(9) The department must comply with federal aid requirements when authorizing commercial use on department land purchased or managed with federal aid.

(10) Commercial hunting outfitting is prohibited on all department land and on water bodies that are located entirely within the boundaries of department land. Commercial fishing outfitting is prohibited on all wildlife management areas. The department may authorize commercial use that is solely for the purpose of assisting the public in the retrieval of legally harvested game animals. The department may authorize a commercial hunting outfitter to:

(a) travel on a designated trail across department land solely for the purpose of gaining access to federal lands where the commercial hunting outfitter is authorized to conduct use; and

(b) use a fishing access site solely for the purpose of gaining access to water bodies where the commercial hunting outfitter is authorized to conduct use.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.120 COMMERCIAL USE PERMITS (1) A permit is required in advance to conduct commercial use on lands under the control, administration, and jurisdiction of the department.

(2) The department administers two types of commercial use permits:

(a) fishing access site permit; and

(b) restricted use permit.

(3) The department may issue a commercial use permit to a person as an individual, or as a representative of an entity or business. When authorizing water-based fishing outfitting or guiding, the department may only issue the permit to a licensed outfitter or guide. The applicant must obtain all other licenses or permits required by state or federal law in order to receive a commercial use permit.

(4) A commercial use permit is not a property right and may be revoked, amended, or suspended at any time for cause. Causes for revoking, amending, or suspending a permit include but are not limited to the following:

- (a) failure to comply with the commercial use rules;
- (b) failure to pay required permit fees;
- (c) falsifying records of use;
- (d) failure to comply with the terms of the permit;
- (e) failure to comply with state or federal rules or laws pertaining to resource and land management;
- (f) failure to obtain other required state or federal permits;
- (g) impacts on resources or the public; or
- (h) changing conditions or management objectives at a site.

(5) The availability, terms, and conditions of a commercial use permit may vary based on the regulations and management plan in place at the site where the use would occur. The department may refuse applications for a permit if the use would occur at a site where commercial use is rationed and there are no additional opportunities to conduct such use.

(6) The department may require commercial users to report their use of department land. The department may require commercial users to maintain and have on their person for department inspection a logbook for recording commercial use. The department shall include specific reporting requirements as permit or contract stipulations.

(7) A commercial use permit may only be used by the holder of the permit. The permit holder may not sell, lease, or rent the permit, or otherwise receive compensation from another person for the opportunity to use the permit. The permit holder may hire or contract persons to provide authorized services provided that said persons do not recruit clients, make agreements with clients concerning monetary consideration or services provided, collect fees from clients, or advertise any business other than the permitted business when conducting the permitted use. The permit holder is responsible for ensuring that the persons hired or contracted comply with the terms of the permit.

(8) The permit holder may pay an agent to recruit clients, make arrangements with clients concerning monetary consideration or services provided, and collect fees from clients provided that the agent does not conduct the authorized services.

(9) A commercial use permit is not transferable and is void when a business is sold or transferred. Upon the sale or transfer of a permitted business, the person selling the business shall notify the new owner that the new owner is required to obtain a new commercial use permit pursuant to this subchapter.

(10) If the recipient of a commercial use permit sells or transfers in entirety the part of his/her business that is operated under that commercial use permit, the department shall issue a new commercial use permit to the new owner so long as the seller has remitted all fees due to the department and so long as the buyer has obtained all other licenses or

permits required by state or federal law and agrees to the terms of the permit. The new permit shall have the same expiration date as the seller's permit. The new permit shall have the same expiration date as the seller's permit.

(11) If the recipient of a commercial use permit sells or transfers in entirety the part of their business that operated under that commercial use permit, any rationed units of use that were previously allocated to the seller shall be reallocated to the new owner of that business. Upon the sale or transfer of a permitted business, the person selling or transferring the business shall notify the new owner that the use of rationed units of use is subject to change pursuant to rules adopted by the commission and that no property right attaches to the rationed units of use.

(12) The recipient of a commercial use permit may not sell, lease, rent, or otherwise receive compensation from another person for the opportunity to use client days or other allocated units of use, temporarily or permanently except that Smith River outfitters may lease, rent or otherwise receive compensation from another Smith River outfitter for the opportunity to use a Smith River outfitter launch within a single use season.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.125 FISHING ACCESS SITE PERMIT (1) A fishing access site permit is required to conduct water-based outfitting at fishing access sites and other department land that provide access to a nonrestricted water body.

(2) A fishing access site permit is required to conduct water-based guiding at fishing access sites and other department land that provides access to water bodies.

(3) A fishing access site permit authorizes a water-based outfitter to conduct water-based outfitting at any fishing access site or other department land in the state that provide access to a nonrestricted water body unless the department specifies that a restricted use permit is required for the site. A water-based outfitter must obtain a restricted use permit to conduct water-based outfitting at a fishing access site or other department land that provides access to a restricted water body.

(4) A fishing access site permit authorizes a water-based guide, operating under the authority of a water-based outfitter, to conduct water-based guiding at any fishing access site or other department land for which the outfitter is authorized to conduct use.

(5) A fishing access site permit is an annual permit that is valid for the license year in which the permit is issued.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.130 FISHING ACCESS SITE PERMIT: APPLICATION PROCESS (1) A fishing access site permit may be obtained at a department regional office or through the department's internet licensing system so long as the applicant provides the required application information and remits the required permit fee.

(2) The department may require the following when applying for a fishing access site permit:

(a) a completed permit application form;

- (b) an outfitter or guide license number if providing angling services;
- (c) an automated license system number;
- (d) permit fee; and
- (e) proof of insurance that the department judges sufficient to protect the public and the state of Montana.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.135 FISHING ACCESS SITE PERMITTING DECISIONS (1) There shall be no limit on the number of fishing access site permits issued.

(2) The regional supervisor may deny or revoke a fishing access site permit for failure to comply with the terms of the permit, violating department rules and regulations, or other infractions identified by the department. If a nonrestricted water body is reclassified as a restricted water body, a fishing access site permit is no longer valid at the sites that provide access to the restricted water body. The fishing access site permit holder may apply for a restricted use permit to use these sites.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.140 RESTRICTED USE PERMIT (1) A restricted use permit is required for the following:

(a) water-based outfitting at a fishing access site or other department land that provides access to a restricted water body; and

(b) all other types of commercial use at a fishing access site, state park, wildlife management area, or department administrative site.

(2) A restricted use permit authorizes the recipient of the permit to conduct commercial use of the type, and at the locations, designated on the permit.

(3) A restricted use permit is valid for the time period specified on the permit, not to exceed five years. The department may modify the terms and conditions of the permit at any time. The permit holder may also request changes to a multi-year permit through submission of an updated plan of operation or other material.

(4) The department may place stipulations on the restricted use permit, including but not limited to the type, timing, location, duration, and volume of the use. The department's statewide river recreation rules shall govern the development of stipulations for water-based outfitters and guides on rivers and fishing access sites.

(5) The department may authorize the recipient of a restricted use permit to conduct use at more than one location.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.145 RESTRICTED USE PERMIT: APPLICATION PROCESS (1) A restricted use permit application must be submitted to the regional office that oversees the site or sites where the use would occur. If use is proposed for sites located in more than

one department administrative region, the application may be submitted to one of the regional offices and the department may issue a single permit to authorize the use.

(2) The completed application should be submitted at least 45 days before the use is intended to begin or at least ten days before a special event, filming activity, or incidental commercial use lasting less than five days. The time period required to process applications begins when the applicant has submitted all of the required information. The department may process completed applications received after these time periods on a case-by-case basis. The department may require additional time to process an application if the department determines that an environmental analysis is required.

(3) The department may require the following when applying for a restricted use permit:

- (a) a completed restricted use permit application;
- (b) an outfitter or guide license number if providing angling services;
- (c) an automated license system number;
- (d) permit fee;
- (e) deposit or damage security bond;
- (f) proof of insurance that the department judges sufficient to protect the public and the state of Montana;
- (g) proof of workers' compensation and/or an independent contractor exemption certificate;
- (h) information explaining how the proposed use would benefit the public's resources or the public's enjoyment of the site; and
- (i) other relevant information in sufficient detail to allow the department to evaluate the nature and impact of the proposed activity, including measures the applicant will use to prevent or mitigate adverse impacts.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.150 RESTRICTED USE PERMITTING DECISIONS (1) The department has discretion over whether to issue a restricted use permit. Permitting decisions are based on the following factors to the extent that they are relevant:

- (a) conformance with laws, rules, policies, management plans, and land use plans;
- (b) contribution to the overall mission, goals, and objectives of the site;
- (c) public safety;
- (d) conflicts with other users in regard to type of use, timing, duration, location, site capacity, and other similar considerations;
- (e) resource impacts and protection;
- (f) extent to which the public interest is served;
- (g) effects on adjacent lands;
- (h) whether in the past the applicant complied with the terms of his/her permit or other authorization from the department and other agencies;
- (i) whether the department has the fiscal and human resources to oversee the proposed use; and
- (j) such other circumstances that the department finds appropriate.

(2) The availability, terms, and conditions of a restricted use permit may vary based on the regulations and management plan in place at the site where the use would occur. Prior to issuing a permit to conduct commercial use at a wildlife management area, the department must prepare a commercial use plan for that site. The commercial use plan shall:

(a) identify the types of commercial use that may be authorized at the site;  
(b) establish the terms, conditions, and volume of commercial use that may be authorized; and

(c) establish the methods for allocating commercial use permits

(3) The department's statewide river recreation rules shall govern permitting decisions that would ration, allocate, or otherwise restrict water-based outfitting and guiding opportunities on rivers and fishing access sites. This does not include permitting decisions when the applicant or permit holder has violated the terms of a permit or violated department rules or regulations.

(4) Upon adoption of these rules, the department may continue to issue permits that were established prior to the adoption of these rules. The department shall administer these permits consistent with these commercial use rules.

(5) For permit systems established prior to the adoption of these commercial use rules, when a restricted use permit expires, the department shall review the previously authorized commercial use and may issue a new restricted use permit to the permit holder upon application so long as the applicant complied with the terms of his/her permit or other authorization from the department and other agencies and so long as the applicant complied with the laws, rules, and policies of the department and other agencies. The department may adjust the terms and conditions of the new permit, including the allocated units of use.

(6) For permit systems established after the adoption of these commercial use rules, the department may develop a permit renewal system under which the previous permit holder and other commercial users are eligible to apply for the new permit. The department's statewide river recreation rules shall govern the development of a permit renewal system for water-based outfitting and guiding on rivers and fishing access sites.

(7) The regional supervisor, in concurrence with the appropriate division administrator, shall be responsible for restricted use permitting decisions.

(8) A person who has been denied a restricted use permit or a person whose commercial use permit has been suspended or cancelled may appeal the permitting decision in writing to the director within 30 days of the date of mailing of the notice of the permitting decision. Persons not appealing within 30 days have waived their right to appeal.

(9) The director or the director's designee shall issue a written decision on the appeal. The director's decision is final.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.155 CONCESSION CONTRACT (1) The department may develop a concession contract to authorize a commercial business on department land. The

department shall waive the requirement to obtain a commercial use permit when the commercial use is authorized through a concession contract.

(2) The department shall honor the terms set forth in contracts established prior to the adoption of these rules. The department shall apply these rules when those contracts expire.

(3) When developing and administering concession contracts, the department shall follow the state purchasing and contracting guidelines.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.160 COMMERCIAL USE FEES (1) The department may require payment of fees for conducting commercial use on land owned or managed by the department. Permit fees pursuant to this rule shall be established through commission rulemaking. The department shall establish concession contract fees on a case-by-case basis. The commission may adjust permit fees as necessary to reflect changes in costs and the market and in situations where the department has an agreement or joint-permit system with other agencies.

(2) The department may waive commercial use fees on a case-by-case basis for educational groups when the following conditions are met:

(a) the group is from a bona fide institution that meets the definition of an educational group;

(b) the group provides a written explanation of the educational purpose of the visit; and

(c) the use is not primarily for recreational purposes.

(3) The department may waive or adjust commercial use fees on a case-by-case basis when the proceeds from the use or event are donated to the maintenance, management, or the improvement or development of facilities, at the site where the use occurs.

(4) The department may waive or adjust commercial use fees when a service provider donates their services for a charitable cause and is not compensated for the service.

(5) The department may charge a processing fee for recovery of costs associated with preparing an environmental analysis document when processing a permit application.

(6) Applicants must pay the required fees by the date specified in the terms of the permit.

(7) With approval from the legislature, the department shall use the permit fees from commercial use at fishing access sites to help support the fishing access site program, river recreation management, and enforcement.

AUTH: 2-4-102, 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 2-4-102, 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.165 RATIONING AND ALLOCATION OF COMMERCIAL USE (1) The department's statewide river recreation rules shall govern the rationing and allocation of commercial use on rivers, including fishing access sites that provide access to rivers.

(2) The regional supervisor, in concurrence with the appropriate division administrator, director, and the commission, may ration and allocate commercial use at a state park, wildlife management area, or department administrative site. The regional supervisor may consider the following when making rationing and allocation decisions:

- (a) laws, rules, policies, management plans, and land use plans for the site;
- (b) overall mission, goals, and objectives of the site;
- (c) input from the public;
- (d) public safety concerns;
- (e) biological conditions;
- (f) social conditions;
- (g) use conflicts;
- (h) past performance of commercial users;
- (i) public demand for commercial use; and
- (j) other factors as determined by the department.

(3) The regional supervisor shall describe what actions have already been taken by the department to address a particular problem or concern, why rationing is necessary, and how rationing of use would address a particular problem or concern.

(4) To the extent possible, the department must monitor and evaluate commercial use of a site to determine whether rationing is necessary and to assess whether rationing has improved conditions.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA  
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

ARM 12.14.170 COORDINATING WITH OTHER AGENCIES (1) The department may design a commercial use permit system for a site in coordination with another agency so long as the permit system complies with department rules and regulations and the permitted commercial use is consistent with department restrictions on commercial use.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA  
IMP: 23-1-105, 23-1-106, 87-1-303, MCA