

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 12.11.501 and 12.11.4101 pertaining to closing the Shields River to all motorized watercraft) NOTICE OF ADOPTION AND AMENDMENT)

TO: All Concerned Persons

1. On September 11, 2020, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-530 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1690 of the 2020 Montana Administrative Register, Issue Number 17.

2. The commission has adopted the following rule as proposed: New Rule I (12.11.633).

3. The commission has amended the following rule as proposed: ARM 12.11.4101.

4. The commission has amended ARM 12.11.501 not included in the original proposal, new matter underlined, deleted matter interlined:

12.11.501 LIST OF WATER BODIES The following is a list of specific regulations on bodies of water with the reference where the rules regarding those bodies of water are located:

(1) through (102) remain the same.

(103) Shields River ARM 12.11.633

(103) through (121) remain the same but are renumbered (104) through (122).

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

IMP: 87-1-303, MCA

REASON: The commission maintains ARM 12.11.501 as a cross-reference to assist with locating rules pertaining to specific water bodies. The commission is amending ARM 12.11.501 to include the Shields River.

5. The commission has thoroughly considered the comments and testimony received. A summary of the comments received and the commission's responses are as follows:

COMMENT #1: The commission received comments in opposition of the proposed rule banning motorized use on the Shields River. Comments opposing the proposal stated that removal of motorized use on the Shields would impact the public's ability

to access the waterway as access for non-motorized use is limited, questioned the safety issues on the river as well as the technological advancements of motorized vessels, and stated that the existing 10-horsepower restriction was sufficient.

RESPONSE #1: The commission discussed the concerns related to these comments. The commission discussed access and the small impact this would have as there is very little motorized recreation occurring on the Shields River currently and that recreational use with motorized watercraft is better suited to and provided on larger rivers in the area such as the Yellowstone River. Ultimately, the commission decided that the potential safety issue was sufficient to adopt the rule banning motorized use on the Shields River.

COMMENT #2: The commission received two comments requesting that a citizen advisory committee should be created pursuant to ARM 12.11.425 before removing motorized access on the Shields River.

RESPONSE #2: These comments reference ARM 12.11.425. A citizen advisory committee is required when the department undertakes formalized river recreation planning as listed in subchapter ARM Title 12, chapter 11, subchapter 4. River recreation planning is initiated by the department, not a petition.

This rule proposal was the result of the citizen-submitted petition allowed under 2-4-315, MCA, to change a boating regulation. This was not a formal river recreation planning process and therefore does not require the formation of a citizen advisory committee.

COMMENT #3: The commission received comments in support of the proposed rule banning motorized use on the Shields River. Comments in support referenced protection of habitat of native fish, streambed degradation, advancements in technology rendering the existing 10-horsepower limit inadequate, safety concerns of potential collisions with people, livestock and structures in narrow and blind spots of the river, and noise.

RESPONSE #3: The commission has adopted the rule as proposed banning motorized use on the Shields River.

COMMENT #4: The commission received a comment suggesting that the 10-horsepower restriction remain but that jet boats should be banned.

RESPONSE #4: Banning a specific type of drive or motorized activity is very difficult as there are no consistent definitions that define a jet boat. There are enough variations in boating drive technology that from an enforcement and legal perspective, it would be difficult to ban jet boats.

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

/s/ Shane Colton
Shane Colton
Chair
Fish and Wildlife Commission

Certified to the Secretary of State January 5, 2021.