

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
36.11.402 through 36.11.404, 36.11.411,)
36.11.421, 36.11.423, 36.11.425, 36.11.426,)
36.11.427, 36.11.428, 36.11.432, 36.11.436,)
36.11.444, 36.11.447, and 36.11.450, and the)
repeal of ARM 36.11.429, 36.11.430,)
36.11.431, 36.11.433, 36.11.434, 36.11.435,)
36.11.437 through 36.11.442, and 36.11.451)
through 36.11.456 regarding the management)
of state forested trust lands.)

To: All Concerned Persons

1. On July 22, 2020, at 2:00 p.m., the Department of Natural Resources and Conservation (department) will hold a public hearing in the Clark Fork Conference Room, at the department's Forestry Division Headquarters, 2705 Spurgin Road, Missoula, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The department 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 no later than 5:00 p.m. on July 20, 2020, to advise us of the nature of the accommodation that you need. Please contact Sierra Farmer, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, Montana 59804; telephone (406) 542-4314; sierrafarmer@mt.gov.

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

36.11.402 GENERAL APPLICABILITY (1) The state forest land management rules in this subchapter shall apply to forest management activities on all ~~forested~~ state trust lands administered by the department.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment serves to clarify that these rules apply to all forest management projects regardless of the land classification.

36.11.403 DEFINITIONS Unless the context otherwise requires, the words defined shall have the following meaning when found in these rules:

(1) "Abandoned road" means a road that is impassable to motorized vehicles and is restricted by a non-passable barrier or vegetation but has drainage structures that have not been removed. An abandoned road will not receive motorized use, including low-intensity forest management activities or commercial forest management activities. ~~permanently closed because it is not intended for use for future forest management activities or motorized vehicles and is left in a condition that provides adequate stability and surface drainage without periodic maintenance.~~

(2) through (9) remain the same.

~~(10) "Bear management unit or BMU" means a geographic analysis area previously designated by an interagency technical committee which is meant to accommodate the year-long habitat needs of both male and female grizzly bears.~~

~~(11) (10) "Best management practices or BMPs" means a practice or set of practices adopted and prescribed by the state of Montana to minimize non-point source water pollution from forest practices, as the most effective and practical means of providing minimum water quality protection for forestry operations.~~

(11) "Biological infestation" means any situation where animals, insects, or diseases are present in sufficient amounts to threaten mortality to 25 percent or more of the standing live trees.

(12) through (14) remain the same.

(15) "Channel migration zone" (CMZ) means the width of a flood prone area at an elevation twice maximum bankfull depth.

(15) through (19) remain the same but are renumbered (16) through (20).

~~(20) (21) "Connectivity" means:~~

~~(a) remains the same.~~

~~(b) regarding management of lynx and fisher habitat;~~

~~(i) stand conditions where sapling, pole, mature, or old stands possess at least 40 greater than 39 percent crown canopy closure, in a patch greater than 300 feet wide provide connectivity; and~~

~~(ii) when managing within forest stands associated with riparian and streamside management zones, ARM 36.11.425 shall also be considered to provide habitat connectivity for wildlife, including fisher and Canada lynx.~~

(21) through (23) remain the same but are renumbered (22) through (24).

~~(24) (25) "Desired future condition" means the land or resource conditions that will exist if goals and objectives are fully achieved. It is considered synonymous with appropriate conditions.~~

(25) remains the same but is renumbered 26.

(27) "Equipment restriction zone or ERZ" means a discrete management zone where wheeled or tracked equipment is restricted to operational periods such as dry, frozen, or snow-covered conditions to avoid excessive compaction, displacement, or erosion.

(26) and (27) remain the same but are renumbered (28) and (29).

~~(30) "Fire or other damage" means damage to the trees by fire or other natural agents that cause the tree to die.~~

(28) remains the same but is renumbered (31).

~~(32) "Forest composition" means the presence and proportionate amounts of tree species occurring within a forest stand.~~

(33) "Forest improvement fees" means fees collected for the forest improvement program.

~~(29)~~ (34) "Forest management activities" means activities or operations normally associated with the management of department-administered forest land including:

(a) through (j) remain the same.

(k) inventory road use;

(l) monitoring; and road reconstruction;

(m) grazing of classified forest lands. installation, removal, maintenance, and replacement of stream structures;

(n) inventory;

(o) monitoring;

(p) fertilization;

(q) gravel quarrying; and

(r) grazing of classified forest lands.

~~(30) "Grizzly BMU subunit" means an administrative area designation related to grizzly bear recovery that approximates the home range size of a female grizzly bear.~~

~~(31) "Habitat type group or HTG" means a collection of land areas potentially capable of producing similar plant communities at climax, generally named for the predicted climax community type.~~

(35) "HCP" means the Montana Department of Natural Resources and Conservation Forested State Trust Lands Habitat Conservation Plan.

(32) through (38) remain the same but are renumbered (36) through (42).

(43) "Low-intensity forest management activities" means non-commercial forest management activities, including:

(a) timber inventory;

(b) timber sale preparation;

(c) road location;

(d) road maintenance;

(e) bridge replacement;

(f) mechanical site preparation;

(g) tree planting;

(h) pre-commercial thinning;

(i) prescriptive and hazard reduction burning;

(j) patrol of fall/winter slash burns;

(k) heavy and non-heavy equipment slash treatments;

(l) monitoring;

(m) data collection; and

(n) noxious weed management.

~~(39) "Lynx denning habitat" means mature forest within lynx habitat with numerous downed logs occurring in at least five-acre patches. Younger successional stages offer denning habitat where CWD amounts are high, such as areas with extensive timber blow down.~~

~~(40)~~ (44) "Lynx habitat" means forest lands comprised consisting of subalpine fir or hemlock habitat types, and where:

(a) forest types may be mixed-species composition of:

- (i) subalpine fir;
- (ii) hemlock;
- (iii) Engelmann spruce;
- (iv) Douglas-fir;
- (v) grand fir;
- (vi) western larch;
- (vii) lodgepole pine;
- (viii) hardwoods; and
- (ix) stands dominated by lodgepole pine; or

(b) moist Douglas-fir, grand fir, western red cedar, and Engelmann spruce habitat types where they are intermixed with appreciable amounts of subalpine fir habitat types. Cover types may be mixed species composition (subalpine fir, hemlock, Engelmann spruce, Douglas fir, grand fir, western larch, lodgepole pine and hardwoods), and stands dominated by lodgepole pine.

(45) "Lynx management area (LMA)" means delineated areas containing department lands of notable importance for lynx, where records indicate lynx are likely currently or recently present, or are lands considered important for maintenance of resident lynx populations, where increased levels of lynx conservation commitments are applied.

~~(41) "Lynx non-habitat" means:~~

~~(a) definable winter ranges normally used by high concentrations of big game animals and associated predators regardless of habitat type; or~~

~~(b) the following habitat types:~~

- ~~(i) ponderosa pine and dry Douglas-fir;~~
- ~~(ii) limber pine;~~
- ~~(iii) whitebark pine;~~
- ~~(iv) water;~~
- ~~(v) rock; and~~
- ~~(vi) permanent non-forest areas.~~

(46) "Management subzone" means five administratively defined areas approximating the size of a female grizzly bear home range on the Swan River State Forest where commercial activities are allowed during 3-year active windows followed by at least six years' rest on a rotational basis.

~~(42) "Mature foraging habitat (lynx)" means sawtimber stands within lynx habitat that possess moderate or well-stocked coniferous understory vegetation.~~

~~(43) (47) "Mechanized activity" means all activities associated with:~~

~~(a) and (b) remain the same.~~

~~(c) motorized vehicle trips, including snowmobiles, associated with administrative uses;~~

~~(d) through (i) remain the same.~~

(48) "Minimum asking price" means the lowest purchase price per volume of wood the department will accept on a timber sale.

~~(44) remains the same but is renumbered (49).~~

(45) (50) "Motorized trails" means any route longer than 500 feet that does not qualify as a "road," including those routes that conventional four-wheel drive vehicles could negotiate, a trail without restrictions on motorized use and which

legally allows use by motorized vehicles. Trails used by four-wheel-drive vehicles and motorized trail bikes are examples of this type of access route.

(46) remains the same but is renumbered (51).

(52) "Non-recovery occupied habitat (NROH)" means the fixed land area outside the boundaries of established grizzly bear recovery zones where one would reasonably expect to find grizzly bear use occurring during any year/most years, as further clarified in ARM 36.11.432.

(47) remains the same but is renumbered (53).

(48) (54) "Old growth" means forest stands that meet or exceed the minimum criteria for number, size diameter, and age of these large trees, and stand basal area as noted in "Old-Growth Forest Types of the Northern Region" by P. Green, J. Joy, D. Sirucek, W. Hann, A. Zack, and B. Naumann (1992 and subsequent revisions, USFS Northern Region, internal report).

(49) through (52) remain the same but are renumbered (55) through (58).

(53) (59) "Open road" means a road without limitation on motorized vehicle use, but also includes those accessible to the general public during any portion of the grizzly bear non-denning season where visual screening must be retained.
either:

(a) ~~a road or established trail without restriction on motorized vehicle use;~~

(b) ~~a road that would otherwise meet the definition of a restricted road, but that receives ongoing use of, on average, greater than six vehicle passes per week (e.g., for administrative or commercial purposes), termed low-level use; or~~

(c) ~~a road that would otherwise meet the definition of a restricted road, but receives greater than low-level use for greater than 30 days duration.~~

(54) ~~"Open road density" means the percentage of a defined grizzly bear analysis area that exceeds one mile of open road or motorized trail per square mile.~~

(55) remains the same but is renumbered (60).

(56) (61) "Other suitable habitat (lynx)" means forested habitat within lynx habitat with total stocking reflecting at least 40 percent crown closure in any combination of seedling/sapling, pole, or sawtimber size classes as identified in the department stand level inventory database, and also includes stands of saplings that contain at least 180 stems per acre that are greater than or equal to 6 feet tall. forest lands in lynx habitat that do not meet the habitat definitions for denning, mature foraging, young foraging, or temporary non-lynx habitat, but serve to provide cover to facilitate movement and acquisition of alternative prey species, such as red squirrels.

(57) remains the same but is renumbered (62).

(58) (63) "Pileated woodpecker preferred habitat" means live, mature cottonwood stands and mature conifer forests patches greater than 40 acres with overstory canopies dominated by large-sized western larch or ponderosa pine, and containing Douglas-fir, large snags, and CWD.

(64) "Poletimber" means trees with a DBH from 5.0 to 8.99 inches.

(59) through (61) remain the same but are renumbered (65) through (67).

(62) ~~"Rendezvous site" means a gathering site for members of a wolf pack used primarily for pup rearing during the summer and occasionally for security during the fall or early winter.~~

(68) "Reclaimed road" means a road that is impassable to motorized vehicles, but has been stabilized, and drainage features, if present, have been removed. The road prism may remain but is restricted to motorized vehicles by a non-passable barrier or vegetation. A reclaimed road will not receive motorized use, including low-intensity or commercial forest management activities.

~~(63)~~ (69) "Restricted road" means a road that is managed to limit motorized vehicle use seasonally or yearlong, and shall typically have:

(a) a physical barrier, which may be man-made or naturally occurring and include, but are not limited to:

(i) gates;

(ii) barricades;

(iii) earthen berms;

(iv) vegetation;

(v) rocks; or

(b) access controlled by another landowner(s) in a manner that, at a minimum, restricts the use of motorized vehicles by the general public. ~~(in areas other than grizzly security core) means a road on which motorized vehicle use shall be restricted seasonally or yearlong.~~

~~(a) Such roads require physical obstruction, generally a gate, and motorized vehicle use is legally restricted.~~

~~(b) Low-level motorized administrative use by personnel of resource management agencies, their contractors, and their permittees shall be acceptable. Low levels are defined as:~~

~~(i) ongoing use of, on average, less than seven vehicle passes per week; or~~

~~(ii) use greater than six vehicle passes per week, but for a duration of less than 31 days.~~

~~(c) The following uses shall be allowed on restricted roads, and shall not be considered in calculation of use level:~~

~~(i) fire suppression;~~

~~(ii) unforeseen events involving human safety;~~

~~(iii) activities potentially beneficial to bears of duration less than two weeks that include monitoring, tree planting and prescribed burning.~~

~~(64) and (65) remain the same but are renumbered (70) and (71).~~

~~(66)~~ (72) "Road closure" means gates, berms, debris, or other facilities necessary to close existing roads to motorized public use and/or administrative uses. Road closure types are classified as:

(a) Class A road closures can be easily opened and made passable for periodic administrative or seasonal public use;

(b) Class B road closures are not easily passable as they are intended to effectively restrict public and periodic administrative motorized use by the department for extended periods of time, and can typically be removed with the aid of heavy equipment to allow access for future management or emergencies such as wildland fire;

(c) Class P road closures are associated with private lands where access to a department parcel(s) is restricted by a neighboring private landowner(s), and are assumed to be restricted to public, commercial, or agency use unless use levels are specifically known.

(67) remains the same but is renumbered (73).

~~(68) "Road in security core areas" (grizzly bear) means roads within security core areas that have permanent closure devices (unless the security core designation is removed).~~

~~(a) Examples of such closure devices shall include but are not limited to:~~

~~(i) tank traps;~~

~~(ii) large boulders; and~~

~~(iii) dense vegetation.~~

(69) and (70) remain the same but are renumbered (74) and (75).

(76) "Sale-scoping announcement" means the initial public notification of the department's intent to develop a timber sale.

(74) (77) "Salvage" means the removal of dead trees or trees being damaged or killed by injurious agents other than competition, such as fire, insects, disease, or blowdown, to recover the economic value that would be otherwise lost.

(72) and (73) remain the same but are renumbered (78) and (79).

~~(74) "Seasonally secure area" means an area of high seasonal habitat quality that is seasonally secure from:~~

~~(a) motorized access and high non-motorized use; and~~

~~(b) approximates in size that portion of a female grizzly bear's home range where a concentration of use is expected to occur.~~

~~(75) "Security core areas" means areas typically greater than 2500 acres that during the non-denning period:~~

~~(a) are free of motorized access;~~

~~(b) consider the geographic distribution of seasonal habitats important to grizzly bears;~~

~~(c) remain in place for long periods, preferably ten years; and~~

~~(d) are at least 0.3 mile from the nearest access route that can be used by a motorized vehicle.~~

(80) "Security zone" means seven administratively defined areas comprising 22,007 acres on the Stillwater block where, to provide security for grizzly bears during the annual non-denning season of April 1 to November 15, the following is prohibited:

(a) motorized administrative use;

(b) motorized public use; and

(c) construction of additional permanent roads.

(76) through (83) remain the same but are renumbered (81) through (88).

(89) "Spring habitat" (grizzly bear) means:

(a) areas associated with roads possessing restricted status during the spring period on the Stillwater block;

(b) all habitat below 5,200 feet elevation in the Swan River State Forest; and

(c) all habitat below 4,900 feet elevation on scattered parcels within grizzly bear non-recovery occupied habitat and recovery zones.

(90) "Spring period" (grizzly bear) means:

(a) April 1 through June 15 for non-spring habitat and April 1 through June 30 for areas within spring habitat for the Stillwater block;

(b) April 1 through June 15 for lands within the Swan River State Forest and scattered parcels in recovery zones and NROH.

(91) "Stand structure" means the vertical distribution of forest components which include tree height and crown layers of a forest stand.

(92) "Stillwater Block" means the blocked portions of the Stillwater and Coal Creek State Forests.

(84) and (85) remain the same but are renumbered (93) and (94)

(95) "Suitable lynx habitat" means forest stands within habitat types considered to be preferred by lynx that possess a total stocking level reflecting at least 40 percent crown closure in any combination of various stand size classes and combinations as defined by the department's lynx habitat map classifications and descriptions, which include the subsets of summer foraging habitat, winter foraging habitat, and other suitable habitat categories.

(96) "Summer foraging habitat" means dense sapling stands and moderately to densely stocked poletimber stands within suitable lynx habitat that possess abundant horizontal cover.

(86) "Temporary non-lynx habitat" means:

(a) seedling stands;

(b) sapling to old age class stands with less than 40 percent canopy closure;

(c) non-stocked clearcuts; and

(d) stand-replacement burns which are likely to develop future habitat characteristics through forest succession that are important to lynx.

(97) "Temporary non-suitable lynx habitat" means recently harvested or naturally disturbed (e.g., burned) areas that have fewer than 180 saplings per acre at least 6-feet tall, or less than 40 percent total stand canopy cover, but have the potential to be suitable lynx habitat over time.

(98) "Temporary road" means a road built using the minimum standard necessary for the anticipated use, and which is reclaimed following use. Drainage structure(s) must be removed at the end of the temporary use period. Applicable BMPs will be implemented on these roads.

(87) through (90) remain the same but are renumbered (99) through (102).

~~(94) (103) "Visual screening (grizzly bear)" means vegetation and/or topography capable of hiding a grizzly bear from view, providing visual obstruction that makes it difficult to see into adjacent areas from the roadbed. The distance required to provide visual screening, typically 100 feet, is dependent upon the type and density of cover available.~~

(92) through (95) remain the same but are renumbered (104) through (107).

(108) "Wind throw" means trees blown to the ground by wind.

(109) "Winter foraging habitat" means sawtimber stands within lynx habitat that possess multi-layering of moderate or well stocked coniferous vegetation and horizontal cover, and must:

(a) occur on habitat types preferred by lynx;

(b) have one or more of the following species present:

(i) subalpine fir;

(ii) grand fir; or

(iii) Engelmann spruce; and

(c) have at least ten percent canopy closure in trees greater than or equal to nine inches DBH; and

(d) have a minimum of 40 percent total stand crown density in understory and overstory combined.

~~(96) "Young foraging habitat" (lynx) means conifer seedling and sapling stands within lynx habitat with average height greater than or equal to six feet and density greater than or equal to 4,000 stems per acre.~~

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendments serve to eliminate outdated, redundant, and unnecessary definitions and provide consistency, simplicity, better organization, and ease of use.

36.11.404 BIODIVERSITY - COARSE FILTER APPROACH (1) through (1)(d) remain the same.

~~(e) unique characteristics:~~ unique and rare habitats.

(2) remains the same.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment provides clarification and language consistent with the HCP regarding the coarse filter approach.

36.11.411 BIODIVERSITY - SNAGS AND SNAG RECRUITS (1) remains the same.

~~(a) On the warm and moist HTG and the wet HTG, the~~ on all habitat type groups, the department shall retain an average of approximately two snags and two snag recruits over 21 inches DBH, per acre;

~~(b) On all other HTG, the department shall retain an average of approximately one snag and one snag recruit over 21 inches DBH, per acre.~~

~~(c) (b)~~ (b) In all cases, if snags or recruits over 21 inches DBH are not present, the next largest size snag or recruit shall be retained;

~~(d) (c)~~ (c) Retained snags and recruits may be evenly distributed or clumped;

~~(e) (d)~~ (d) If there is an absence of sufficient snags or recruits, some substitution between the two may occur;

(f) remains the same but is renumbered (e).

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment provides easier implementation for field practitioners and consistent resource protection regardless of habitat type groups.

36.11.421 ROAD MANAGEMENT (1) through (8) remain the same.

(9) The department shall determine which roads to ~~close~~ restrict, abandon, or ~~obliterate~~ reclaim during project level analysis.

(10) The department shall consider restricting closure or reclaiming abandonment of roads accessible to motorized vehicles:

(a) and (b) remain the same.

~~(i) In the Swan River state forest, the department shall plan road closures in accordance with the terms of the Swan Valley Grizzly Bear Conservation Agreement, dated February 23, 1995.~~

(11) The department shall consider for reclamation ~~abandonment~~ roads that are deemed non-essential. The department shall leave reclaimed ~~abandoned~~ roads in a condition that provides adequate drainage and stabilization, while leaving intact the road prism and capital investment needed to construct that road.

(12) The department shall assess road maintenance needs by inspecting conditions on both open and restricted ~~closed~~ roads ~~every five years~~. The department shall then prioritize maintenance operations considering the results of the inspections and the resource value in the watershed as determined by the department.

(13) remains the same.

(14) The department shall inspect road closure structures, such as gates and earth berms, as part of ongoing administrative duties and in response to notice of ineffective road closures received from the public. The department shall repair or modify ineffective closures or consider alternative methods of closure. ~~Inspections would occur at least every five years.~~ Repairs would be a high priority when allocating time and budget.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment removes references to the Swan Valley Grizzly Bear Conservation Agreement which is no longer applicable due to termination of the agreement in August 2018. Additionally, the proposed amendment updates language clarifying restricted and reclaimed roads to provide implementation consistency and clarification for field practitioners, as well as revising department language regarding road inventory for consistency with the HCP.

36.11.423 WATERSHED MANAGEMENT - CUMULATIVE EFFECTS

(1) and (1)(a) remain the same.

(b) The department shall complete a coarse filter screening on all the following projects; ~~involving substantial vegetation removal or ground disturbance. Except for small scale projects with very low potential for impacts, additional analysis shall be required.~~

(i) upland timber harvest and salvage harvest of more than 15 acres or 50 mbf;

(ii) RMZ harvest of green timber;

(iii) salvage harvest within the RMZ of one or more acres of dead and dying timber;

(iv) new road construction greater than 0.5 miles;

(v) new road construction located within an RMZ; or

(vi) construction of any length of new road that includes the installation of new Class 1 stream crossings.

(c) through (2) remain the same.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment provides specific detail identifying when coarse filter screening for cumulative watershed effects is required to be completed, as well as capturing language in the HCP and applies those specifications to lands not covered under the HCP. Implementation of these amendments will increase the consistency of effects analyses across forest management projects on lands outside the HCP project area.

36.11.425 WATERSHED MANAGEMENT - STREAMSIDE MANAGEMENT ZONES, EQUIPMENT RESTRICTION ZONES, AND RIPARIAN MANAGEMENT ZONES

(1) The department shall establish a riparian management zone (RMZ) an equipment restriction zone (ERZ) adjacent to the minimum width of the SMZ required under ARM 36.11.302 when forest management activities are proposed on sites with high erosion risk or on sites that are adjacent to fish bearing streams or lakes.

(2) and (3) remain the same.

(a) the department shall establish an RMZ with ERZ that when combined with the SMZ has a minimum of 100 feet when activities are located on slopes greater than 25 percent but less than 35 percent;

(b) the department shall establish an RMZ with ERZ that when combined with the SMZ has a minimum of 150 feet when activities are located on slopes greater than or equal to 35 percent, but less than 50 percent;

(c) the department shall establish an RMZ with ERZ that when combined with the SMZ has a minimum of 200 feet when forest management activities are located on slopes greater than or equal to 50 percent; and

(d) the department may modify and shorten RMZ ERZ widths established for high erosion risk when topographic breaks, existing roads or other factors are present that reduce erosion risk and provide suitable sediment delivery filtration. Modified or shortened RMZs ERZs must still meet the minimum width of the SMZ required under ARM 36.11.302 and riparian management zone (RMZ) required under ARM 36.11.425.

(4) The following restrictions apply to forest management activities conducted within an RMZ ERZ established for high erosion risk:

(a) The department shall limit new road construction within an RMZ ERZ to situations in which:

(i) through (iii) remain the same.

(b) The department shall restrict ground-based equipment operations within the ~~RMZ~~ ERZ.

(i) The department shall not allow the operation of wheeled or tracked equipment within an ~~RMZ~~ ERZ when it is located on slopes greater than 35 percent;

(ii) The department shall not allow the operation of wheeled or tracked equipment within an ~~RMZ~~ ERZ when it is located on slopes less than 35 percent, unless the operation can be conducted without causing excessive compaction, displacement, or erosion of the soil;

(iii) The department may allow the use of wheeled or tracked equipment inside of that portion of an SMZ or ~~RMZ~~ ERZ when operated from an established road on the side of the road away from the stream pursuant to ARM 36.11.304.

(c) The department shall restrict cable yarding of logs within and across an ~~RMZ~~ ERZ to cable systems and operations that do not cause excessive ground disturbance within the SMZ or ~~RMZ~~ ERZ.

~~(5) The department shall design harvest prescriptions conducted in SMZs and RMZs located adjacent to fish bearing streams to retain adequate levels of shade and potential large woody debris recruitment to the stream channel by~~ The department shall establish an RMZ when timber harvests are proposed adjacent to all class 1 streams or lakes, which will:

(a) establishing an RMZ that when combined with the SMZ has a minimum slope distance equal to the site potential tree height of the proposed harvest stand at age 100 years have a minimum width equal to the 100-year site index tree height, or 80 feet, whichever is greater;

(b) determining site potential tree height from site index curves developed for local or regional forest types determine the 100-year site index tree height at the project level by field sampling the age and height of several site trees within the riparian stand and comparing those values to locally or regionally develop site index curves;

(c) determining site index of a stand by measuring tree height and age directly from suitable index trees located at the approximate minimum SMZ width. maintain a 50-foot wide no-harvest buffer within class 1 RMZs, which:

(i) will start at the ordinary high-water mark and extend across the RMZ to a slope distance of 50 feet when measured perpendicular to the stream or lake; but

(ii) within the 50-foot wide no-harvest buffer, it may be necessary to allow corridors associated with cable logging systems to fully suspend logs across streams; and

(iii) in these situations, the minimum corridor spacing will be 150 feet with no more than 15 percent of the 50-foot wide no-harvest buffer affected;

(d) retain shrubs and sub-merchantable trees to the fullest extent practicable, and a minimum of 50 percent of the trees greater than or equal to 8 inches DBH for harvest within the remainder of the RMZ;

(e) specify that multiple harvest entries into a specific RMZ stand will only occur if:

(i) the existing RMZ stand is classified as a medium to well-stocked, poletimber or saw timber size class; and

(ii) the proposed harvest meeting the minimum retention tree requirements in ARM 36.11.305; and

(f) extend SMZs to include adjacent wetlands, where the normal SMZ boundary intercepts a wetland. Retention tree requirements are the same as the requirements for the first 50 feet of SMZ.

~~(6) The department shall determine adequate levels of shade retention on a project level basis.~~

~~(a) Adequate levels are those levels that maintain natural water temperature ranges. The department will extend RMZs in situations where channel migration is likely to influence riparian functions that are potentially affected by timber harvests by:~~

(a) establishing a Type 1 Channel Migration Zone (CMZ) within the flood prone area of meandering valley bottom streams that are actively eroding and depositing sediment through lateral migration of the stream channel, where:

(i) the portion of RMZ restricted to 50 percent retention on a Type 1 CMZ is extended to incorporate the entire flood prone area;

(ii) the standard RMZ harvest restrictions will be applied in the event that the width of the flood prone area does not extend beyond the normal RMZ;

(iii) the 50-foot no-harvest buffer will not be extended on a Type 1 CMZ;

(b) establishing a Type 2 CMZ within the flood prone area of unstable streams exhibiting sudden erosion and deposition processes, where:

(i) on a Type 2 CMZ the normal 50-foot RMZ no-harvest buffer is extended to include the entire flood prone area plus an additional 50 feet within the RMZ;

(ii) no timber harvest will occur within the entire flood prone width;

(iii) the delineation of the normal RMZ, including the additional 50 foot no-harvest buffer, will begin at the edge of the flood prone width; and

(iv) examples of sudden erosion and deposition process are:

(A) moderately contained stream channels with evidence of recent sediment deposition in the flood prone area;

(B) alluvial fans; and

(C) debris flows or torrents.

~~(7) The department shall determine adequate levels of large woody debris retention on a project level basis.~~

~~(a) Adequate levels are those levels that maintain stream channel form and function.~~

~~(8) remains the same but is renumbered (7).~~

~~(9) Timber harvests within the SMZ and RMZ of a stream, lake, or other body of water supporting bull trout or any other fish or aquatic species listed under the Endangered Species Act, 16 U.S.C Sections 1531 through 1544, the department shall act pursuant to ARM 36.11.427.~~

(8) Allowances for harvest within the no-harvest portion of class 1 RMZs shall include:

(a) potential harvest of diseased and insect-infested trees when an RMZ is being impacted by disease or insect infestations; where:

(i) such harvest must still meet the minimum retention tree requirements of ARM 36.11.305(2);

(ii) retained trees will include all streambank and downed trees lying within the stream channel or embedded in the stream bank;

(b) harvest of diseased and insect infested trees from the remaining RMZ, outside of the first 50 feet, may exceed those levels necessary to meet the normal 50 percent retention requirement;

(c) the salvage harvest of dead or downed trees which may exceed the normal 50 percent retention requirement in that portion of the RMZ outside of the 50-foot no-harvest buffer in areas within an RMZ that have been subjected to windthrow and/or severe or stand-replacement fires, but:

(i) such harvest must still meet the minimum retention tree requirement of the SMZ Law;

(ii) no salvage harvest of fire-killed trees will occur within the 50-foot no-harvest buffer;

(iii) downed trees lying within the stream channel or embedded in the stream bank will be managed pursuant to ARM 36.11.305(4)(d);

(d) necessary management of a portion of the total Class 1 RMZ acres of forested trust lands using harvest prescriptions designed to meet the minimum retention tree requirements under ARM 36.11.305 (SMZ Law), where:

(i) the RMZ stands target to be managed in this manner will be those stand types where shade-tolerant species exists, and regeneration or maintenance of shade-intolerant tree species is necessary to achieve or maintain desired future stand types or provide long-term riparian functions;

(ii) a 50-foot wide no-harvest buffer will not be required in these situations;
and

(iii) tree retention will be based on the number of trees within the first 50 feet of RMZ on both sides of a stream. Where 50 percent of the trees greater than or equal to 8 inches DBH, or 10 trees per 100-foot segment of stream, whichever is greater, will be retained on each side of the stream.

(10) remains the same but is renumbered (9).

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment allows for consistent, statewide implementation of riparian timber harvest strategies adopted in the HCP.

36.11.426 WATERSHED MANAGEMENT - WETLAND MANAGEMENT ZONES (1) The department shall establish a wetland management zone (WMZ) when forest management activities are proposed within or adjacent to an isolated wetland or adjacent to a wetland found within an SMZ.

(a) through (6) remain the same.

(7) The department shall design harvest prescriptions in a WMZ to protect and retain shrubs and sub-merchantable trees to the fullest extent practicable.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendments define a previously undefined acronym and reflect language in the SMZ Law.

36.11.427 FISHERIES (1) The department shall minimize impacts to fish populations and habitat by implementing the watershed, SMZ, RMZ, and WMZ rules contained in ARM 36.11.422 through 36.11.426.

(2) and (2)(a) remain the same.

(i) The department shall design forest management activities to protect bull trout, habitat by implementing conservation strategies pursuant to ~~The Restoration Plan for Bull Trout in the Clark Fork River Basin and Kootenai River Basin, Montana (June 2000)~~ the Bull Trout Recovery Plan (2015), where applicable.

(3) The department shall design forest management activities to protect bull trout, westslope cutthroat trout, and Columbia redband trout habitat by implementing the HCP.

~~(3)~~ (4) As designated by the department, pursuant to ARM 36.11.436 the department shall:

(a) design forest management activities to protect and maintain:

~~(i) westslope cutthroat trout;~~

(ii) through (iv) remain the same but are renumbered (i) through (iii).

(b) and (c) remain the same.

(i) westslope cutthroat and Yellowstone cutthroat trout;

~~(ii) yellowstone cutthroat trout;~~

(iii) and (iv) remain the same but are renumbered (ii) and (iii).

~~(4)~~ (5) When installing new stream crossing structures on fish-bearing streams, 83-5-501, MCA, the Stream Protection Act (124 permits) specifies:

(a) the department shall provide for fish passage as specified in 83-5-501, MCA, the Stream Protection Act (124 permits): by emulating streambed form and function; but

(b) stream crossing providing connectivity to limited or marginal fisheries habitat may not be required to emulate streambed form and function, if otherwise approved under the Stream Protection Act (124 permits).

(6) The department will inventory and assess all stream crossings on known and presumed fish habitat for connectivity on classified forest lands and within the HCP project area; and

(a) the department will prioritize stream crossing improvement based on existing levels of connectivity, species status, and population biological goals while taking into consideration other regulatory agencies or cooperative organization activities and goals.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment updates the reference to the Bull Trout Recovery Plan (2015), which replaced the Restoration Plan for Bull Trout in the Clark Fork and Kootenai River Basin, Montana. The proposed amendment also provides additional protections for HCP-covered species

across non-HCP covered lands to provide more consistent implementation direction to field practitioners. Revised language identifies species that will be afforded protections for non-HCP covered species and species currently covered under state or federal management plans including: the Memorandum of Understanding and Conservation Agreement for Westslope cutthroat trout and Yellowstone cutthroat trout in Montana (2007), and the Candidate Conservation Agreement with Assurances for Fluvial Arctic Grayling in the Upper Big Hole River (2006), on which the department are cooperators. Additional revisions provide the department consistent direction to fisheries management as outlined in the HCP.

36.11.428 THREATENED AND ENDANGERED SPECIES (1) The department shall participate in recovery efforts of threatened and endangered plant and animal species as listed below. The department shall confer in its sole discretion with the United States Fish and Wildlife Service (USFWS) to develop habitat mitigation measures.

(a) through (2) remain the same.

(3) The department staff shall report sightings of threatened and endangered species, ~~except bald eagles,~~ to respective working groups or an appropriate data repository.

~~(a) For bald eagles, only new nest locations shall be reported.~~

(4) With respect to Canada lynx, the department will:

(a) establish and maintain a lynx habitat map utilizing science-based habitat classifications, which may be revised and/or replaced based on improved scientific information upon approval of the forest management bureau chief, including:

(i) summer foraging habitat;

(ii) winter foraging habitat;

(iii) other suitable habitat;

(iv) temporary non-suitable habitat; and

(v) total potential habitat;

(b) commit to the following project-level measures in mapped lynx habitat to provide downed woody structure for lynx escape cover, habitat for prey species, and structure that may provide some potential den sites in the future by:

(i) providing for retention of coarse woody debris using applicable scientific publications;

(ii) emphasizing the retention of downed logs of 15-inch diameter or larger where they occur, and managing to retain at least one large log per acre that is at least 20 feet long; however

(iii) retention of coarse woody debris may be superseded in special management situations where other goals must be considered such as:

(A) fuels management and aesthetic considerations in the urban interface;

(B) projects near recreational areas, where downed wood is collected and burned;

(C) harvest units adjacent to open roads;

(D) broadcast burning; and

(E) meeting mandated hazard reduction requirements; but

(iv) ensuring adequate recruitment for Canada lynx, by retaining an average of two snags and two live snag recruitment trees of greater than 21 inches diameter at breast height (DBH) per acre in stands identified as lynx habitat;

(A) if snags or snag recruitment trees of greater than 21 inches DBH are not present, then the largest snags or snag recruitment trees available will be retained;

(B) snags may be evenly distributed or clumped, but if there is an absence of sufficient snags or recruits, some substitution between the two may occur;

(v) leaving one percent of the definable blowdown area unsalvaged on blowdown salvage projects involving flattened patches, where the material will be retained in a nonlinear patch or patches to the extent practicable;

(c) prohibit motorized forest management activities and prescribed burning associated with forest management activities within 0.25 mile of known active lynx den sites from May 1 through July 15;

(d) proceed with suspended activities if a department biologist has confirmed that lynx have vacated the den site vicinity prior to July 15;

(e) retain small, shade-tolerant trees including grand fir, subalpine fir, and Engelmann spruce in thinned portions of pre-commercial thinning units within mapped lynx habitat that do not pose substantial competition risks to desired crop trees;

(f) retain patches of advanced regeneration of grand fir, subalpine fir, and Engelmann spruce as a component of commercial harvest prescriptions in winter foraging habitat, where canopy cover of retained patches would typically not exceed ten percent of the stand area through implementation of this measure;

(g) design harvest units to maintain a connected network of suitable lynx habitat along RMZs, ridge tops, and saddles on timber sale projects;

(h) document in MEPA analysis the circumstances where maintaining habitat connectivity and travel corridors along ridge tops and saddles are impracticable, which may include:

(i) non-forested ridges;

(ii) non-forested saddles;

(iii) harvest units where cable systems are used;

(iv) locations where habitat associated with scattered parcels is isolated by management on surrounding ownerships;

(v) locations where lynx habitat polygons are isolated within a parcel;

(vi) locations where forest types not preferred by lynx bisect lynx habitat;

(vii) locations where silvicultural, fiduciary, or access objectives cannot be met;

(viii) lodgepole pine stands requiring stand-replacement harvest; and

(ix) retaining trees on sites with high potential for blowdown;

(i) implement the following on total potential lynx habitat on scattered parcels outside of LMAs:

(i) maintain at least 65 percent of total potential lynx habitat as suitable habitat at the land office scale; and

(ii) maintain no more than 35 percent as temporary non-suitable habitat at the land office scale;

(i) implement the following on defined LMAs:

- (i) maintain at least 65 percent of total potential lynx habitat as suitable lynx habitat, and no more than 35 percent as temporary non-suitable habitat;
- (ii) prohibit conversion of more than 15 percent of the total potential lynx habitat to temporary non-suitable habitat per decade within each lynx management area;
- (iii) maintain at least 20 percent of total potential lynx habitat as winter foraging habitat;
- (iv) identify and retain un-thinned 20 percent of each pre-commercial thinning project area in lynx habitat, where:
 - (A) patches will maintain a density of greater than 2,000 stems per acre;
 - (B) in stands where a density of 2,000 stems per acre is not present, areas will be retained with the greatest density available;
 - (C) retention patches will be designed to be at least five acres when possible to facilitate tracking and promote habitat function;
 - (D) retention patches of dense saplings will:
 - (I) emphasize retention of subalpine fir, Engelmann spruce, and/or grand fir, where available;
 - (II) locate retention patches adjacent to other suitable lynx habitat where practicable; and
 - (III) prohibit entry into retention patches for future pre-commercial thinning or commercial harvest until they structurally meet the department's minimum definition of sawtimber.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendments provide format and numbering consistency, along with necessary organization, while offering greater clarity and understanding of the department's commitments to protect endangered and sensitive species. While grizzly bears currently retain their federally listed status, the department proposes to amend ARM 36.11.432 to incorporate conservation strategies consistent with those contained in the HCP and provide management consistency on other lands that occur outside of the HCP project area. Language referring to bald eagles has been removed from this section as eagles were federally delisted in 2007 and are no longer considered threatened. As such, the department proposes to amend ARM 36.11.436 to incorporate the bald eagle, with revisions to provide simplicity, consistency, better organization, and ease of use.

36.11.432 GRIZZLY BEAR MANAGEMENT AND PROGRAMMATIC RULES ON BLOCKED STILLWATER UNIT LANDS ~~(1) To minimize adverse impacts to grizzly bears when conducting forest management activities within the 90,517 acres of land area known as the Stillwater Block, as referenced in the Department of Natural Resources and Conservation Forested State Trust Lands Habitat Conservation Plan (DNRC HCP) the department shall:~~

- ~~(a) establish seven security zones totaling 22,007 acres;~~
- ~~(b) comply with the following restrictions within the established seven security zones:~~

~~(i) prohibit motorized activities, including public, administrative, or commercial forest management, during the grizzly bear "non-denning period" each year (see ARM 36.11.403(46) for "non-denning" definition);~~

~~(ii) permit motorized activities during the grizzly bear "denning period" each year (see ARM 36.11.403(22) for "denning" definition);~~

~~(iii) allow commercial forest management activities below 6,300 feet elevation during the denning period of each year;~~

~~(iv) prohibit any permanent road construction;~~

~~(v) construct and reclaim any temporary roads and/or skid trails in a manner preventing future use by motorized vehicles, including off-road vehicles, during the non-denning period;~~

~~(vi) minimize the duration of air and ground-based harvest activities to the extent practicable when conducting commercial forest management activities near identified security zones during the non-denning period, particularly in known areas of seasonal importance for bears;~~

~~(vii) minimize the duration of administrative activities near security zones to the extent practicable;~~

~~(viii) make efforts to design helicopter flight routes in a manner that avoids and/or minimizes flight time across security zones during the non-denning period, and/or known seasonally secure areas;~~

~~(ix) where practicable, design flight paths to occur greater than one mile from potentially affected security zones during the non-denning period, or areas of known seasonal importance;~~

~~(x) permit short-term disturbance, subject to (vi) and (vii), in any security zone at any time and for the necessary duration to address road sedimentation issues required by the Aquatic Conservation Strategies in the DNRC HCP and ARM 36.11.421; and~~

~~(c) comply with the following measures on the remaining 68,510 acres of blocked lands outside of security zones:~~

~~(i) implement access management and seasonal restrictions, and road construction requirements according to the DNRC HCP Transportation Plan measures that apply to Class B Lands as defined in the DNRC HCP; and~~

~~(ii) allow motorized public activities, commercial forest management activities, and administrative activities during the denning and non-denning periods, as allowed by the DNRC HCP Transportation Plan.~~

(1) The department commits to following programmatic rules regarding grizzly bears, which include:

(a) provide written brochures that describe risks and concerns regarding humans living and working in bear habitat to contractors and their employees conducting forest management activities in forested state trust lands prior to start of operations;

(b) provide grizzly bear encounter avoidance training to new department personnel within one year of their employment date and refreshing the training for veteran employees every five years;

(c) prohibit department employees, contractors, and their employees from carrying firearms while on duty, unless the person is specifically authorized to carry a firearm under DNRC Policy 30621 to reduce direct mortality risk for grizzly bears;

(d) minimize human-bear conflicts by requiring department personnel, contractors, and their employees to:

(i) store all human or pet food, livestock food, garbage, and other attractants in a bear-resistant manner;

(ii) ensure all burnable attractants such as food leftovers or bacon grease will not be buried, discarded, or burned in an open campfire;

(e) minimize construction of new open roads in riparian management zones (RMZs), wetland management zones (WMZs), and avalanche chutes to reduce adverse effects of open roads on grizzly bear populations, however:

(i) in instances where construction of a new open road in an RMZ, WMZ, or avalanche chute is necessary for project or near-term management objectives, the department will minimize this occurrence to the extent possible and document the circumstances in the environmental analysis;

(f) suspend all motorized forest management activities within 0.6 mile (1 kilometer) of an active den site from the date of discovery through May 31 to protect active grizzly bear dens when encountered, unless:

(i) the department confirms that bears have vacated the den site vicinity prior to May 31, whereupon the department may proceed with the suspended activities;

(g) provide visual screening for grizzly bears in RMZs through the implementation of riparian timber harvest prescribed in ARM 36.11.425, and in WMZs through implementation prescribed in ARM 36.11.426;

(h) design helicopter operations requiring flights less than 500 meters (1,640 feet) above ground level for forest management activities in a manner that avoids or minimizes flight time, and where practicable, at least one mile from:

(i) known seasonally important areas in NROH or recovery zones;

(ii) scattered parcels in rest within recovery zones;

(iii) grizzly bear security zones; and/or

(iv) federally designated security core areas in recovery zones to minimize disturbance impacts to grizzly bears;

(i) following federal delisting, the department shall:

(i) consider grizzly bears as a sensitive species warranting special management consideration; and

(ii) adhere to the measures contained in the Northern Continental Divide Ecosystem conservation strategy for grizzly bears (Appendix 9 and 10) when on trust land management division projects.

(2) In NROH, as defined by Wittinger, et al., 2002, where grizzly bear programmatic rules ARM 36.11.432(1) also apply, the department commits to:

(a) minimize construction of new open roads, where:

(i) new roads will only be managed as open when necessary to meet project or near-term management objectives;

(ii) restricted existing roads will generally remain restricted, except in cases where access easements are granted; but

(iii) there is no target or cap on total road densities;

(b) discourage granting of future easements that relinquish control of roads, except for reciprocal access agreements, cost share agreements, and other federal road agreements;

(c) minimize effects to grizzly bears during the spring period by implementing the following measures:

(i) apply restrictions in the Stillwater block on all restricted roads during the spring period as indicated on the Stillwater Transportation Plan;

(ii) prohibit the following forest management activities in spring habitat during the spring period:

(A) commercial forest management activities, including salvage harvests;

(B) pre-commercial thinning;

(C) heavy equipment slash treatment;

(iii) allow ten days total annually on each administrative unit during the spring period in spring habitat for the purposes of mechanical site preparation, road maintenance, and bridge replacement, applicable to any combination of these activities:

(iv) minimize motorized activities on restricted roads during the spring period in spring habitat, with specific restrictions pursuant to ARM 36.11.436 that apply in the Cabinet-Yaak recovery zone and Cabinet-Yaak NROH; however

(v) allow motorized use to conduct the following low-intensity forest management activities in spring habitat during the spring period:

(A) sale preparation;

(B) road location;

(C) tree planting;

(D) prescribed burning;

(E) data collection (including monitoring);

(F) non-heavy-equipment slash treatment, including chainsaws;

(G) patrol of fall/winter slash burns;

(H) noxious weed management; and

(vi) allow commercial forest management activities, including salvage harvests, and low-intensity forest management activities, within 100 feet of an open road during the spring period in spring habitat;

(d) design new clearcut and seed tree cutting units to provide topographic breaks in view or to retain visual screening for bears by ensuring that vegetation or topographic breaks be no greater than 600 feet in at least one direction from any point in the unit; however

(i) where impracticable the department will minimize sight distance to the extent possible, given the site-specific circumstances

(e) managing gravel development in accordance with the HCP.

(3) In federally defined grizzly bear recovery zones, where grizzly bear programmatic rules, ARM 36.11.432(1), and NROH rules, ARM 36.11.432(2) also apply, the department commits to:

(a) assess impacts to important grizzly bear habitat when designing timber sale projects in recovery zones, elements of which include:

(i) berry fields;

(ii) avalanche chutes;

(iii) riparian areas;

- (iv) wetlands;
- (v) white bark pine stands; and
- (vi) unique congregation or feeding areas;
- (b) develop site-specific mitigation measures that minimize impacts to these elements typically involving scheduling activities while bears are not likely to be using an area, or locating roads or skid trails to conserve important vegetative features, such as dense stands or thickets that provide visual screening;
- (c) leave up to 100 feet of vegetation between open roads and clearcut or seed tree harvest units;
 - (i) leaving vegetation may not be practicable in areas such as:
 - (A) landings and skid trails near roads;
 - (B) clearings for traffic safety at road intersections;
 - (C) in localized fuels reduction areas;
 - (D) units harvested by aerial cable;
 - (E) salvage units with limited standing live vegetation near the roadway; and
 - (F) prescribed burn units where open roads serve as control boundaries;
 - (ii) the department will provide screening to the extent practicable when such conditions are present;
- (d) design new clearcut and seed tree cutting units to provide topographic breaks in view or to retain visual screening for bears by ensuring that vegetation or topographic breaks be no greater than 600 feet in at least one direction from any point in the unit; however
 - (i) in instances of impracticability, the department shall minimize sight distance to the extent practicable; and
 - (ii) the department will document the circumstances in the environmental analysis;
- (e) examine all primary road closures in recovery zones annually and repair ineffective closures within one year of identifying the problem;
- (f) prohibit motorized activities at elevations above 6,300 feet on slopes greater than 45 percent from April 1 through May 31;
- (g) ensure that when issuing or granting easements within grizzly bear recovery zones, except federal road agreements such as cost-share agreements with the U.S. Forest Service or road agreements with the Bureau of Land Management:
 - (i) the forest management bureau will have an active role in the review and authorization of future easements across classified forest land in a recovery zone;
 - (ii) easements granted for existing restricted routes or newly proposed routes require the applicant to demonstrate that all other access possibilities have been explored prior to the department considering the application for access across trust lands;
 - (iii) work with easement applicants to incorporate easement terms to avoid or mitigate impacts to bears, which may include, but are not limited to:
 - (A) gated entry;
 - (B) maintenance of visual screening along routes;
 - (C) absorbing costs of gating associated with secondary and primary access routes;
 - (iv) document for each access easement granted in a recovery zone:

(A) how the granting of the easement was evaluated for each access easement granted in a recovery zone;

(B) how alternative routes were considered for each access easement granted in a recovery zone;

(C) how mitigations were considered and applied for each access easement granted in a recovery zone;

(v) work with the existing and future grantees to avoid or mitigate impacts to grizzly bears associated with motorized use as pertaining to access agreements on roads in grizzly bear recovery zones where the department is the grantor.

(4) In the Stillwater Block, where the grizzly bear programmatic rules, ARM 36.11.432(1), NROH rules, ARM 36.11.432(2), and recovery zone rules, ARM 36.11.432(3) also apply, the department commits to:

(a) manage transportation according to specific requirements in the Stillwater Transportation Plan, which includes:

(i) allowable road miles by road class, activity category, restriction type, and road locations;

(ii) permanent routes needed but not yet constructed;

(iii) changes to the plan may only occur following review and approval by the forest management bureau;

(b) document the circumstances if a road is encountered that is not in the Stillwater Transportation Plan, and evidence suggests that the road existed prior to February 2012;

(c) add segment(s) to the Stillwater Transportation Plan and consider the addition(s) part of the original baseline only following adequate documentation and review by the forest management bureau;

(d) maintain up to 15 miles of usable temporary roads within the block, which shall be built to a minimum standard and reclaimed within one operating season following completion of project-related activities;

(i) no more than two miles of temporary roads may be maintained on the Swift-BPA portion of the block;

(ii) no more than five miles of temporary roads may be maintained on the Lazy-Swift portion of the block;

(e) establish an accurate revised baseline, as applicable, for roads that may be added or removed from the Stillwater Transportation Plan when lands are acquired or disposed in the Stillwater block;

(f) maintain informational signs and provide public information pertaining to bear presence and bear awareness on the Stillwater and Coal Creek State Forests;

(g) apply the following to seven geographically distinct security zones in the Stillwater block that comprise 22,007 acres:

(i) no additional permanent roads will be constructed in security zones;

(ii) access needed for management activities will be from existing roads or temporary roads;

(iii) motorized activities including public, department administrative, and department commercial forest management activities are prohibited during the grizzly bear non-denning season from April 1 through November 15 each year;

(iv) commercial forest management activities shall only be allowed during the denning season below 6,300 feet in security zones;

(v) the department shall construct and reclaim temporary roads and skid trails after completion of project activities in a manner that prevents future use by motorized vehicles, including off-road vehicles, during the non-denning season;

(vi) when conducting commercial forest management activities near identified security zones during the non-denning season, the department will minimize the duration of ground-based harvest activities to the extent practicable, particularly in known areas of seasonal importance for bears;

(vii) the department will minimize the duration of low intensity forest management activities near security zones to the extent practicable;

(viii) the department shall make efforts to design helicopter flight routes in a manner that avoids and/or minimizes flight time across security zones, and/or known seasonally secure areas during the non-denning season;

(ix) when conducting commercial forest management activities near identified security zones during the non-denning season, the department will minimize the duration of air-based harvest activities to the extent practicable, particularly in known areas of seasonal importance for bears;

(x) where practicable, the department shall design flight paths to occur greater than one mile from potentially affected security zones and/or areas of known seasonal importance during the non-denning season;

(xi) short-term disturbance will be allowed in any security zones at any time and for the necessary duration to address road sedimentation corrective actions;

(xii) commercial forest management activities, including salvage, are allowed in security zones during the winter period of November 16 through March 31 below 6,300 feet;

(h) limit the number of active gravel pits on the Stillwater block as described in the HCP.

(5) In the Swan River State Forest, where grizzly bear programmatic rules, ARM 36.11.432(1), NROH rules, ARM 36.11.432(2), and recovery zone rules, ARM 36.11.432(3) also apply, the department commits to:

(a) manage access and security for grizzly bears by adhering to the Swan River State Forest Transportation Plan which will specify:

(i) five defined management subzones;

(ii) existing road segments by road class, restriction type, and location; and

(iii) permanent routes needed, but not yet constructed by the department;

(b) document the circumstances if a road is encountered that is not in the Swan River State Forest Transportation Plan, and evidence suggests that the road existed prior to February 2012;

(c) add segment(s) to the Swan River State Forest Transportation Plan and consider the addition(s) part of the original baseline only following adequate documentation and review by the forest management bureau;

(d) adjust numbers to accurately reflect baseline road amounts if a Swan River State Forest parcel is sold or traded;

(e) minimize the risk of death or injury to bears, and reduce displacement of bears due to the presence of roads by:

(i) limiting new road construction to the approximate locations and lengths indicated on the Swan River State Forest Transportation Plan map, including caps on additional restricted road amounts allowed under the forest management HCP;

(ii) ensuring temporary roads on the Swan River State Forest will not exceed 6.5 miles in length in any given year;

(A) building these roads to a minimum standard and reclaimed within one operating season following completion of project-related activity;

(f) maintain informational signs and provide public information pertaining to bear presence and bear awareness on the Swan River State Forest;

(g) considering opportunities to work with adjacent landowners in a cooperative manner to support grizzly bear conservation efforts;

(h) conducting commercial forest management activities in each of the defined management subzones, including salvage harvest, for a maximum period of three years, followed by a mandatory rest period of at least six years, where:

(i) each subzone will have its own management schedule independent of the other subzones;

(ii) the three-year management period may be extended due to management delays beyond the control of the department, such as:

(A) extreme weather events;

(B) fire events;

(C) area closures due to fire danger; and

(D) legal injunction;

(iii) contractor equipment failure and extensions to address market fluctuations are not considered allowable delays;

(i) allowing the following activities in rested subzones:

(i) commercial forest management activities are allowed in winter below 6,300 feet without limitation during rest periods as rest status does not apply during the winter period of November 16 through March 31; and

(ii) low-intensity forest management activities are allowed during the rest period, except for restrictions during the spring period as described in ARM 36.11.432(2)(c);

(iii) commercial forest management activities for minor projects, including salvage, are allowed for a limited number of days after the spring period;

(A) for the Swan River State Forest, a total of 30 operating days in aggregate are allowed per year, per rested subzone;

(B) these days can only be used June 16 through September 15;

(C) this 30-day allowance may also be applied to resting subzones that have exceeded rest beyond six years and are not yet ready for large-scale planned commercial harvest;

(D) when tracking the number of operating days allowed for minor projects:

(I) two commercial operations within 0.5-mile radius of one another count as one operation for those days both are active;

(II) operations more than 0.5-mile radius apart are considered distinct and days must be tallied separately;

(III) commercial forest management activities within 100 feet of an open road do not count toward the allowable operating day limits;

(i) conducting salvage harvest activities when necessary on management subzones in rest status under the following order of preference when economically and operationally practicable:

(i) conduct salvage during the winter period;

(ii) for salvage harvest that must occur outside of the winter period, conduct the harvest in an expedient manner;

(iii) days used for operating salvage harvest from June 16 through September 15 shall count toward the 30 days allowed for minor projects;

(iv) the department will forgo unused annual operating days in other inactive subzones to compensate for the number of days required to complete such projects;

(k) extending salvage projects that cannot be accomplished by applying ARM 36.11.432(5)(i) above between 31 and 150 days during non-denning period under the following conditions:

(i) following a 31 to 150-day extension for salvage, the department would be required to restart the rest period; where

(A) in this situation, a full uninterrupted six-year rest period must be achieved before allowing another 31 to 150-day interruption; and

(B) if a salvage harvest during the restarted rest period requires more than 30 days to complete, the action shall require review and approval by the forest management bureau;

(ii) the department will document the necessity for interrupting the rest period;

(iii) a department wildlife biologist will develop a site-specific mitigation plan addressing potential effects on grizzly bears through habitat considerations, timing restrictions, and transportation management and access, examples of which include:

(A) important secure areas;

(B) berry fields;

(C) avalanche chutes;

(D) riparian areas;

(E) wetlands;

(F) white bark pine stands; and

(G) unique congregation or seasonal feeding areas;

(iv) a copy of the mitigation documentation highlighting those measures implemented by the project leader and decision maker, after considering input from the department wildlife biologist, will be submitted to the forest management bureau for review prior to a project decision;

(l) limit the number of active gravel pits on the Swan River State Forest as described in the HCP.

(6) On scattered parcels in recovery zones, where grizzly bear programmatic rules, ARM 36.11.432(1), NROH rules, ARM 36.11.432(2), and recovery zone rules, ARM 36.11.432(3) also apply, the department commits to:

(a) evaluate each open road segment occurring within a forest management project to assess the potential to restrict access on that segment;

(b) not exceed baseline open road amounts at the administrative unit level, established August 31, 2018, on classified forest lands, but increases in open road densities at the project level to address road relocation considerations would not count against the unit-level cap;

(c) conduct commercial forest management activities and salvage harvest for each scattered parcel in a recovery zone for a maximum management period of four years, followed by a mandatory rest period of at least eight years, where each parcel will have its own management schedule independent of other parcels;

(d) extend the four-year management period, when necessary, due to management delays beyond the control of the department, such as:

(i) extreme weather events;

(ii) fire events;

(iii) area closures due to fire danger; and

(iv) legal injunction;

(e) write an explanation of the extension and submit it to the forest management bureau for approval at the time the extension is invoked;

(i) contractor equipment failure is not considered an allowable delay;

(f) within rested parcels:

(i) the rest status does not apply during the winter period of November 16 through March 31, and commercial forest management activities are allowed in winter below 6,300 feet without limitation during rest periods;

(ii) low-intensity forest management activities will be allowed during the rest period, except for restrictions during the spring period, as described in ARM 36.11.432(2)(c);

(iii) commercial forest management activities for minor projects, including salvage, are allowed for a limited number of days after the spring period from June 16 through November 15;

(iv) each administrative unit shall have a maximum number of allowable operating days per year on rested scattered parcels as follows:

(A) Clearwater Unit - 45 days;

(B) Helena Unit - 45 days;

(C) Kalispell Unit - 60 days;

(D) Stillwater Unit (scattered parcels) - 45 days;

(v) when tracking the number of operating days allowed for minor projects two commercial operations within 0.5-mile radius of one another count as one operation for those days both are active;

(vi) operations more than 0.5-mile radius apart are considered distinct, and operating days must be considered additive and tallied separately;

(vii) commercial forest management activities within 100 feet of an open road do not count toward the allowable operating day limits;

(g) conduct salvage harvest activities when necessary on scattered parcels in rest status under the following order of preference when economically and operationally practicable:

(i) conduct salvage during the winter period;

(ii) conduct salvage harvest in an expedient manner when it must occur outside of the winter period;

(iii) days used for operating salvage harvest from June 15 through November 15 shall count against the allowable days per administrative unit for minor projects;

(iv) the department will forgo unused annual allowable operating days usable in other inactive parcels to compensate for the number of days required to complete such larger projects;

(h) salvage harvest that cannot be accomplished using the four approaches listed above may be extended up to 150 days;

(i) the department is not required to restart the 8-year rest period on scattered parcels, but only one interruption is allowed per 8-year rest period per parcel for this purpose;

(i) document the necessity for interrupting the rest period;

(ii) a department wildlife biologist will develop a site-specific mitigation plan addressing potential effects on grizzly bears through timing restrictions, transportation management and access, and habitat considerations, examples of which include:

(A) important secure areas;

(B) berry fields;

(C) avalanche chutes;

(D) riparian areas;

(E) wetlands;

(F) white bark pine stands; and

(G) unique congregation areas;

(iii) a copy of the mitigation documentation highlighting those measures implemented by the project leader and decision maker, after considering input from the biologist, will be submitted to the forest management bureau for review prior to a project decision;

(i) One gravel pit per administrative unit may be operated as described in the HCP.

(7) On scattered lands in the Cabinet-Yaak ecosystem (CYE) and associated NROH, where grizzly bear programmatic rules, ARM 36.11.432(1), NROH rules, ARM 36.11.432(2), recovery zone rules, ARM 36.11.432(3), and rules for scattered parcels in recovery zones ARM 36.11.432(6) also apply, the department commits to:

(a) allow commercial forest management activities, including salvage harvests after the spring period, as it pertains to minor projects implemented during the eight-year rest period in ARM 36.11.432(6)(f), for parcels in both the CYE recovery zone and the CYE NROH, but are limited to the following number of annual operating days per administrative unit:

(i) Libby unit - 90 days total (30 west and 60 east);

(ii) Plains unit - 45 days;

(A) within these maximum operating days, commercial forest management activities and salvage harvest are limited to a total of ten parcels per non-denning season for each unit;

(B) when applying the allowable days, the duration of such management is limited to 15 days in aggregate on each parcel for each unit;

(b) prepare a mitigation plan when conducting salvage projects following ARM 36.11.432(6)(g) on parcels in rest status in the CYE and CYE NROH, as required under ARM 36.11.432(6)(i)(ii), and the project leader will submit the mitigation plan to the forest management bureau for approval prior to a project decision;

(c) conduct motorized use associated with low-intensity forest management activities on up to 50 percent of the parcels as deemed necessary in the CYE recovery zone and CYE NROH in spring habitat during the spring period;

(i) these uses include:

(A) tree planting;

- (B) prescribed burning;
- (C) patrol of slash burns; and
- (D) noxious weed management;
- (ii) any combination of the aforementioned activities is limited to ten days per parcel within the spring period each year;
- (iii) motorized activity in spring habitat during the spring period associated with sale preparation, road location, data collection, and slash treatment is prohibited;
- (iv) up to ten days total per year per administrative unit may be used for the purposes of road maintenance, mechanical site preparation, and bridge replacement;
- (d) design, for scattered parcels in the CYE recovery zone only, helicopter operations less than 500 meters (1,640 feet) above ground level for commercial log yarding to avoid important areas for grizzly bears by requiring flight paths to be at least one mile from scattered parcels in rest or federally designated security core areas;
 - (i) where practicable, flight paths will also be designed to avoid or minimize disturbance to any known seasonally important areas;
- (e) limit, for scattered parcels in the CYE recovery zone and NROH only, helicopter use associated with activities to those requiring less than 48 hours to complete, including, but not limited to:
 - (i) weed control;
 - (ii) prescribed burning ignition and control actions;
 - (iii) aerial seeding; and
 - (iv) moving large pieces of equipment or materials to remote and/or rugged locations.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendments provide format and numbering consistency, along with necessary organization, while offering greater clarity and understanding of the department's commitments to protect endangered and sensitive species. While grizzly bears currently retain their federally listed status, the department proposes to amend ARM 36.11.432 to incorporate conservation strategies consistent with those contained in the HCP and provide management consistency on other lands that occur outside of the HCP project area. Language referring to bald eagles has been removed from this section as eagles were federally delisted in 2007 and are no longer considered threatened. As such, the department proposes to amend ARM 36.11.436 to incorporate the bald eagle, with revisions to provide simplicity, consistency, better organization, and ease of use.

36.11.436 SENSITIVE SPECIES (1) through (6) remain the same.

(7) BALD EAGLE:

(a) the department shall manage for bald eagles consistent with the Montana Bald Eagle Management Guidelines (2010);

(b) to guide management, the department may use site-specific management plans by a qualified biologist where applicable;

(c) maintenance of habitat for breeding bald eagles, where no site-specific management plans are in place, shall include recognition and delineation of three management zones around each active bald eagle nest, including:

(i) nest site area;

(ii) primary use area; and

(iii) home range;

(d) the department shall consider the following when conducting forest management activities within nest site areas:

(i) mechanized activities are restricted between February 1 and August 15, unless:

(A) the territory is documented as unoccupied during that breeding season;

(B) the eagles have fledged;

(C) nesting has failed;

(D) eagles have left the nesting area; or

(E) if allowed as specified in a site-specific management plan;

(ii) helicopter activity for forest management purposes shall not occur within 1,000 feet of an occupied bald eagle nest; however, the department may grant exceptions for other motorized activities such as road repair, maintenance, and planting, if, following site review and documentation, activities are deemed to be:

(A) of short duration;

(B) outside of critical nesting periods; and

(C) of minimal risk to nesting adults or offspring;

(iii) harvest within 330 feet of an active nest tree is prohibited, and the department shall design timber harvests to maintain the structural and ecological characteristics of the nest site area to include:

(A) moderate to well-stocked overstory;

(B) large emergent trees;

(C) snags;

(D) a multi-storied canopy; and

(E) vegetative screening from nearby low and high intensity human activity;

(iv) the department shall protect such areas from firewood cutting and gathering, to the extent practicable;

(v) the department shall limit additional human activity, both low and high intensity, over which it has control between February 1 and August 15 unless it has been documented by a qualified biologist that:

(A) the eagles have fledged;

(B) nesting has failed; or

(C) the eagles have left the nesting area;

(vi) the department shall limit permanent development associated with forest management activities;

(vii) the department shall close existing roads and trails under its control to motorized use between February 1 and August 15, if:

(A) vegetative screening from the nest is insufficient to prevent undue disturbance and human use is high; or

(B) the eagles' behavioral response suggests it is necessary;

(e) the department shall include the following considerations when conducting forest management activities within bald eagle primary use areas:

(i) limit mechanized activities between February 1 and August 15, unless it has been documented by a qualified biologist that:

(A) the nest site is unoccupied during that breeding season;

(B) the eagles have fledged;

(C) nesting has failed;

(D) eagles have left the nesting area;

(E) it has been demonstrated that eagles show tolerance to the activity; or

(F) if allowed as specified in a site-specific management plan;

(ii) low intensity and high intensity activities may be allowed during this restriction period if ample visual screening, including vegetative cover and/or topography, is present between the affected portion of the primary use area and the active nest tree;

(iii) the department may grant exceptions for such activities as:

(A) road repair;

(B) maintenance; and

(C) planting if following site review and documentation, activities are deemed

to:

(I) be of short duration;

(II) be outside of critical nesting periods; and

(III) present minimal risk to nesting adults or offspring;

(iv) design timber harvests and salvage to maintain structural and ecological characteristics particularly:

(A) moderate or greater stocking in overstory;

(B) large emergent trees;

(C) multi-storied canopy, if present;

(D) snags;

(E) potential nest trees;

(F) perch trees;

(G) roost trees; and

(H) vegetative screening from areas of both low and high intensity human activity;

(v) low intensity human activity may occur, but high intensity human activity, over which the department has control, shall not occur between February 1 and August 15, unless ample visual screening, including vegetative cover and/or topography, is present between the primary use area and nest tree, or it has been documented by a qualified biologist that:

(A) the nest site is unoccupied during that breeding season;

(B) the eagles have fledged;

(C) nesting has failed;

(D) eagles have left the nesting area;

(E) it has been demonstrated that eagles show tolerance to the activity; or

(F) otherwise allowed in a site-specific management plan;

(vi) minimize permanent development associated with forest management activities;

(vii) minimize construction of new roads, trails, and open access routes;

(f) the department shall consider the following when conducting forest management activities within the bald eagle home range:

(i) design timber harvests to protect, and/or enhance, key habitat components that already exist in close proximity to:

(A) lakes;

(B) rivers;

(C) wetlands;

(D) meadows; or

(E) known flight paths, such as:

(I) large snags;

(II) large perch trees;

(III) emergent trees; and

(IV) roost trees;

(ii) design projects involving human activities, both low and high intensity, to minimize disturbance to foraging and roosting eagles, and to avoid conflict in frequently used areas during the nesting season;

(iii) minimize construction of new roads, trails, and open access routes.

(8) BLACK-BACKED WOODPECKER:

(a) when developing prescriptions for harvest in areas burned within the last five years in forest patches greater than 40 acres in size, the department will:

(i) manage at least ten percent of the burned acreage in an unharvested condition that is broadly representative of the entire burn (i.e., similar habitat types, fire intensity, elevations, stand density, and stand age class prior to burn) to be determined using site-specific information at the project level;

(ii) manage such areas in relatively contiguous blocks favoring close proximity to unharvested fire-killed deferred stands on neighboring ownerships considering the habitat needs of black-backed woodpeckers; and

(iii) leave standing sub-merchantable burned trees where soil, slope stabilization, and human safety concerns allow.

(9) COMMON LOON:

(a) for all lakes where common loon nesting pairs exist, the department shall:

(i) limit construction of new permanent roads, structures, or permanent developments within a 500-foot radius of the nest site; and

(ii) limit mechanized activity within a 500-foot radius of the nest site between April 15 and July 15;

(b) for lakes which have been recently occupied but for which no currently nesting pair resides, the department shall:

(i) survey lakeshores for nesting loons prior to developing plans for lakeshore development, road construction, or timber harvest activities that will occur within 500 feet of the lakeshore;

(ii) prior to finalizing plans for any new roads, developments, timber sales, or intensive motorized activity that will occur on or near any lake potentially suitable for use by loons, design appropriate mitigation measures specific to the situation; and

(iii) if nesting is not documented, identify sites for proposed projects that would least likely be occupied by nesting loons in the future.

(10) FISHER:

(a) The department shall assess fisher habitat on projects that contain preferred fisher cover types for lands administered by the department's northwest land office and southwest land office;

(b) when conducting forest management activities, as consistent with 77-5-301 and 77-5-302, MCA, the department shall:

(i) implement retention measures contained in ARM 36.11.425 when managing within preferred fisher cover types associated with riparian and streamside management zones to provide habitat and connectivity;

(A) where treatments reduce stand density below moderately stocked levels, the department shall make efforts to provide forest connectivity along the opposite stream bank;

(B) the department shall define a minimum of one buffered management zone connecting to other fisher habitat through sites where individual perennial and intermittent stream courses are difficult to define, such as those braided with many channels;

(C) the department shall retain large snags, snag recruits, and CWD pursuant to ARM 36.11.409 through 36.11.414, and promote recruitment if existing abundances are below expected levels;

(D) following large-scale stand replacement disturbance events in preferred fisher cover types, the department shall give consideration to maintaining an abundance of large snags and CWD within 100 feet of class 1 streams and 50 feet of class 2 streams;

(E) when practicable, the department shall avoid constructing new roads in preferred fisher cover types within 100 feet of class 1 streams or 50 feet of class 2 streams, and where feasible, the department shall incorporate use of temporary roads, and obstruct or obliterate unnecessary existing roads;

(c) the department shall manage for at least one 300-foot-wide forested patch providing connectivity between adjacent third order drainages, preferably in saddles, where landscape conditions allow;

(d) the department shall consider importance of late-successional riparian and upland forest in meeting the life requisites of fishers.

(11) FLAMMULATED OWL:

(a) when harvesting timber where greater than 50 contiguous acres of flammulated owl preferred habitat types exist, the department shall:

(i) favor seral ponderosa pine on sites where historical fire regimes favor it;

(ii) favor older-aged ponderosa pine or, secondarily, Douglas-fir for retention or recruitment on warm, dry slopes;

(iii) retain and recruit large-sized snags pursuant to ARM 36.11.404;

(iv) open up dense stands on warm, dry slopes towards a basal area of 35 to 80 square feet;

(v) promote non-uniform stands and retain occasional dense patches of conifer regeneration and shrubs.

(12) PEREGRINE FALCON:

(a) the department shall manage for peregrine falcons within a 0.25 mile radius of a known nest site, and develop appropriate silvicultural mitigation measures for the particular situation;

(b) the department shall limit human activity, both low and high intensity, and mechanized activity typically within a 0.5 mile radius from known nest sites between March 1 and August 1; and

(c) the department shall determine distances for activity restrictions on a site-specific basis for aerial operations.

(13) PILEATED WOODPECKER:

(a) the department shall manage stands containing pileated woodpecker preferred habitat in larger, rather than smaller blocks, whenever practicable;

(i) where large contiguous tracts of such stands are unavailable, the department shall consider management of smaller stands in close proximity to one another, or close to similar stands on adjacent ownerships;

(ii) the department shall consider areas of pileated woodpecker preferred habitat of less than 40 acres, unless they are close to other appropriate stands;

(iii) within pileated woodpecker preferred habitat, the department shall manage for snags, snag recruits, and CWD according to ARM 36.11.411, 36.11.413, and 36.11.414, particularly favoring retention of western larch, ponderosa pine, and black cottonwood, considering amounts that would historically occur on similar sites;

(A) the department shall consider broken-top snags greater than 20 feet tall priority candidates for retention;

(iv) where appropriate, the department shall manage to encourage retention of black cottonwood, particularly where it can attain large size.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment combines all sensitive species rules under one rule, providing consistency, simplicity, better organization, and ease of use. The bald eagle is no longer listed as a threatened and endangered species and has been incorporated into the sensitive species rule set. As a part of the amendment of this rule, ARM 36.11.436(8)(a) pertaining to the activity restriction was removed, given that: 1) the measure would likely provide limited benefit to the species; 2) with warmer drier conditions anticipated fire-killed forests are not likely to be limiting for the species; and 3) conflicts would be reduced in situations where the department would be restricting operational access on shared roads, while other landowners are not, rendering implementation of the measure on department lands impractical.

36.11.444 GRAZING ON CLASSIFIED FOREST LANDS AND OTHER LANDS WITHIN GRIZZLY BEAR RECOVERY ZONES AND NON-RECOVERY OCCUPIED HABITAT (NROH) (1) The department shall inspect grazing licenses issued on all classified forest trust lands before the renewal date to determine:

(a) through (13) remain the same.

(14) The department shall discourage the issuance of new grazing licenses and leases for the purpose of grazing sheep or other small livestock on NROH lands.

(15) Prior to issuing a license or lease for the use of small livestock on NROH lands for the purpose of weed control, a mitigation plan shall be prepared for the purpose of minimizing impacts to grizzly bears prior to issuing the decision; which

(a) will include a description of the location of the project and documentation identifying known activity by bears in the area;

(b) may include, but is not limited to, requirement of a full-time shepherd, guard dogs, nighttime electric pens, lessee assuming cost of losses incurred by predators, prohibition of grazing in spring habitat during spring periods, attending training on hazing techniques, and maintaining a list of professionals providing hazing services.

(16) On NROH and grizzly bear recovery zone lands, the department will cooperate with other parties, agencies, and bear management specialists on a case-by-case basis to address prompt removal of livestock carcasses identified as creating the potential for bear-human encounters.

(17) On lands within grizzly bear recovery zones, the department will prohibit authorization of any new small livestock (smaller than a cow) grazing licenses or leases, including those for the purposes of weed control, and will also not convert existing licenses to allow the grazing of small livestock.

(18) On lands within grizzly bear recovery zones, the department will not initiate establishment of new grazing licenses; however, proposals initiated by the public for larger, less vulnerable classes of livestock (such as cows and horses) may be considered and allowed.

AUTH: ~~77-1-202~~, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendment incorporates HCP measures that minimize adverse effects to grizzly bears associated with livestock grazing for the purpose of management consistency.

36.11.447 CATEGORICAL EXCLUSIONS (1) through (3)(g) remain the same.

(h) Issuing permits for temporary use of or easements for permanent access on existing roads.

(i) through (k) remain the same.

(l) Gathering small quantities of forest products for personal or commercial use, such as:

(i) through (v) remain the same.

(w) Individual timber permits sales of up to ~~400,000~~ 500,000 board feet, or salvage harvests of up to 500,000 board feet if no extraordinary circumstances occur as outlined in ARM 36.11.447(2)(a) through (j).

(x) low-intensity forest management activities as defined in ARM 36.11.403 (43).

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed amendments will provide clarity on issuing temporary use permits on existing roads; include commercial use for gathering small quantities of forest products; provide clarity for the field; streamline certain forest management activities without extraordinary circumstances; and

correspond with Chapter 82, Laws of 2019 (House Bill 70), an act increasing the amount of timber allowed for sale under commercial permits.

36.11.450 TIMBER PERMITS (1) remains the same.

(2) Under the authority of 77-5-212, MCA, the department may issue commercial timber permits at commercial rates, and without advertising, for sales that do not exceed ~~100,000~~ 500,000 board feet of timber, ~~or, in cases of emergency salvage, do not exceed 500,000 board feet of timber.~~

(a) through (c) remain the same.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, 77-5-212, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, 77-5-212, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 82, Laws of 2019 (House Bill 70), an act increasing the amount of timber allowed for sale under commercial permits and amending 77-5-201 and 77-5-212, MCA. The department is amending all corresponding rules.

4. The department proposes to repeal the following rules:

36.11.429 THREATENED AND ENDANGERED SPECIES - BALD EAGLE

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The proposed repeal is necessary as the bald eagle is no longer listed as a threatened and endangered species. The department proposed to amend ARM 36.11.436-Sensitive Species as a set of rules for all current and future sensitive species, including the bald eagle. This will provide consistency, simplicity, better organization, and ease of use.

36.11.430 THREATENED AND ENDANGERED SPECIES - GRAY WOLF

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule as the gray wolf is no longer a federally listed threatened species.

36.11.431 THREATENED AND ENDANGERED SPECIES - GRIZZLY BEAR

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.432 to be consistent with conservation strategies contained in the HCP. The amendments to ARM 36.11.432 are necessary to incorporate

measures based on more current scientific information, and to provide management consistency on other lands that occur outside of the HCP project area.

36.11.433 GRIZZLY BEAR MANAGEMENT ON OTHER WESTERN MONTANA LANDS

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.432 to be consistent with conservation strategies contained in the HCP. The amendments to ARM 36.11.432 are necessary to incorporate measures based on more current scientific information, and to provide management consistency on other lands that occur outside of the HCP project area but adopt similar rules consistent with conservation strategies contained in the HCP. The revised rules are necessary to incorporate measures based on more current scientific information, and to provide management consistency on other lands that occur outside of the HCP.

36.11.434 GRIZZLY BEAR MANAGEMENT ON EASTERN MONTANA LANDS

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.432 to be consistent with conservation strategies contained in the HCP. The amendments to ARM 36.11.432 are necessary to incorporate measures based on more current scientific information, and to provide management consistency on other lands that occur outside of the HCP project area.

36.11.435 THREATENED AND ENDANGERED SPECIES - CANADA LYNX

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.428 as a set of all current and future listed threatened and endangered species, including the Canada lynx, to provide format and numbering consistency, and necessary organization, and incorporate conservation strategies consistent with those contained in the HCP which are based on more current scientific information, and to provide management consistency on other lands that occur outside of the HCP project area.

36.11.437 SENSITIVE SPECIES - FLAMMULATED OWL

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.436. This will provide consistency, simplicity, better organization, and ease of use.

36.11.438 SENSITIVE SPECIES - BLACK-BACKED WOODPECKER

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.436 as a set of rules for all current and future sensitive species. This will provide consistency, simplicity, better organization, and ease of use.

36.11.439 SENSITIVE SPECIES - PILEATED WOODPECKER

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.436 as a set of rules for all current and future sensitive species. This will provide consistency, simplicity, better organization, and ease of use.

36.11.440 SENSITIVE SPECIES – FISHER

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.436 as a set of rules for all current and future sensitive species. This will provide consistency, simplicity, better organization, and ease of use. As a part of the proposed amendment to ARM 36.11.436, several sections were revised to provide consistency with the HCP riparian harvest strategy definitions and commitments and provide clarifications regarding required tree retention levels suitable for providing habitat connectivity for fisher and Canada lynx.

36.11.441 SENSITIVE SPECIES - COMMON LOON

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.436 as a set of rules for all current and future sensitive species. This will provide consistency, simplicity, better organization, and ease of use.

36.11.442 SENSITIVE SPECIES - PEREGRINE FALCON

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The department proposes to repeal this rule and amend ARM 36.11.436 as a set of rules for all current and future sensitive species. This will provide consistency, simplicity, better organization, and ease of use.

36.11.451 DEFINITIONS

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

REASONABLE NECESSITY: The proposed repeal eliminates outdated and unnecessary definitions and moves remaining definitions to ARM 36.11.403, providing consistency, simplicity, and ease of use.

36.11.452 TIMBER CONSERVATION LICENSE APPLICATION
CONDITIONS AND FORMS

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 407, Laws of 2019 (House Bill 441) an act eliminating timber conservation licenses for state lands and repealing 77-5-208, MCA. The bill was signed by Governor Bullock on May 9, 2019, becoming effective immediately. The department is repealing all corresponding rules.

36.11.453 TIMBER CONSERVATION LICENSE BIDDING AND BONDING

AUTH: 77-5-201, MCA
IMP: 77-5-208, 77-5-223, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 407, Laws of 2019 (House Bill 441) an act eliminating timber conservation licenses for state lands and repealing 77-5-208, MCA. The bill was signed by Governor Bullock on May 9, 2019, becoming effective immediately. The department is repealing all corresponding rules.

36.11.454 TIMBER CONSERVATION LICENSE CONDITIONS AND
RESTRICTIONS

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 407, Laws of 2019 (House Bill 441) an act eliminating timber conservation licenses for state lands and repealing 77-5-208, MCA. The bill was signed by Governor Bullock on May 9, 2019, becoming effective immediately. The department is repealing all corresponding rules.

36.11.455 ASSIGNMENTS

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 407, Laws of 2019 (House Bill 441) an act eliminating timber conservation licenses for state lands and repealing 77-5-208, MCA. The bill was signed by Governor Bullock on May 9, 2019, becoming effective immediately. The department is repealing all corresponding rules.

36.11.456 TIMBER CONSERVATION LICENSE CONTRACT TERMINATION

AUTH: 77-5-201, MCA
IMP: 77-5-208, MCA

REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 407, Laws of 2019 (House Bill 441) an act eliminating timber conservation licenses for state lands and repealing 77-5-208, MCA. The bill was signed by Governor Bullock on May 9, 2019, becoming effective immediately. The department is repealing all corresponding rules.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted in writing to: Sierra Farmer, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, Montana 59804; telephone (406) 542-4314; sierrafarmer@mt.gov, and must be received no later than 5:00 p.m., July 29, 2020.

6. Mark Phares, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless

a mailing preference is noted in the request. Such written request may be mailed or delivered to Aliselina Strong, P.O. Box 201601, 1539 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail astrong@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do apply and have been fulfilled. The primary bill sponsors were contacted on June 11, 2020, via email.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Mark Phares
MARK PHARES
Rule Reviewer
Natural Resources and Conservation

Certified to the Secretary of State June 16, 2020.