

ENVIRONMENTAL ASSESSMENT

Project Name:	Amendment and Repeal of Administrative Rules for Forest Management
Proposed Implementation Date:	November 2020
Proponent:	Montana DNRC, Trust Land Management Division, Forest Management Bureau
Location:	All Forest Management Activities Conducted by Trust Land Management Division
Counties:	Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Custer, Deer Lodge, Fergus, Flathead, Gallatin, Garfield, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis & Clark, Liberty, Lincoln, Madison, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Ravalli, Rosebud, Sanders, Silver Bow, Stillwater, Sweet Grass, Teton, Treasure, Valley, Wheatland, and Yellowstone

I. TYPE AND PURPOSE OF ACTION

Background

Minor revisions to the Forest Management ARMs were completed several times since their original administrative rules adoption in 2003 to address: 1) statutory changes in timber permit allowances, 2) adoption of the HCP in 2012, 3) an HCP settlement agreement to comply with a federal court order, and 4) to clarify the legal implementation requirements of ARMs associated with conservation easements that are tied to many lands recently acquired by DNRC (ARM 36.11.471).

Additionally, since the original full rule set was adopted in 2003, DNRC has acquired approximately 100,000 acres of forest land, the gray wolf and bald eagle were removed from the federal list of Threatened and Endangered species. Recent legislation was passed effectively repealing the timber conservation license process (ARM 36.11.451 through 36.11.456) and increasing the allowable volume under DNRC's timber permit program (36.11.450). All of these listed policy and statute changes further underscoring the need to revise the current ARMs at this time.

Proposed Action

The Trust Land Management Division of the Montana Department of Natural Resources and Conservation (DNRC) proposes to adopt amendments and repeal administrative rules for forest management under the Montana Administrative Procedures Act (MAPA). The proposed amendments focus on five categories.

1. General Rule Clarification and Revision: The proposed amendments serve to eliminate outdated, redundant, and unnecessary definitions and provide consistency, simplicity, better organization and ease of use for the administrative rules. The proposed amendments would incorporate new science and provide easier implementation for field practitioners and consistent resource protection regardless of habitat type groups.

2. Adopting HCP Conservation Strategies:

Grizzly Bear Management (36.11.432): The proposed amendment would adopt the HCP conservation strategies for Grizzly Bear management. While grizzly bears currently retain their federally listed status, the department proposes 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. In addition, the 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.

Threatened and Endangered Species - Canada Lynx (36.11.428(4)): The proposed amendment would adopt the HCP conservation strategies for Canada Lynx to provide consistent habitat definitions and implementation direction to field practitioners.

Watershed Management – Streamside Management Zones, Equipment Restriction Zones and Riparian Management Zone (ARM 36.11.425(5) thru (8)): The proposed amendment allows for

consistent, statewide implementation of riparian timber harvest strategies adopted in the HCP on all class 1 streams as defined under the Montana SMZ law.

Watershed Management – Cumulative Watershed Effects (ARM 36.11.423): The proposed amendment provides specific detail identifying when coarse filter screening for cumulative watershed effects is required to be completed. Implementation of these amendments will increase the consistency of effects analyses across forest management projects on lands outside the HCP project area.

Road Management (ARM 36.11.421): The proposed amendment provides revised road classification definitions that are consistent with the HCP and DNRC data. Proposed amendments also incorporate road inventory and corrective action timelines contained in the HCP.

Fisheries (ARM 36.11.427): The proposed amendment would adopt all aquatic conservation strategies for bull trout, westslope cutthroat trout, and Columbia redband trout on forest management projects outside the HCP project area.

Grazing on Classified Forest Lands (36.11.444): The proposed amendment incorporates HCP measures that minimize adverse effects to grizzly bears associated with livestock grazing for the purpose of management consistency.

Other Non-HCP Related Changes:

3. Federally Listed Threatened and Endangered Species Changes Related to Status Changes: The department proposes to repeal rules pertaining to the gray wolf as it is no longer a federally listed threatened species. Similarly, the department is proposing to transfer, with minor revisions, the ARMs for bald eagle under the revised umbrella ARM for sensitive species following its federal delisting as a threatened species.

4. Sensitive Species Changes:

The department proposes to remove activity restriction deemed unnecessary and of little utility for black-backed woodpeckers and amend the fisher ARM pertaining to connectivity to be consistent with RMZ strategies. All existing ARMs pertaining to sensitive species were transferred under one overarching ARM pertaining to sensitive species to improve organization. The proposed amendments provide format and numbering consistency, along with necessary organization, while offering greater clarity and understanding of the department's commitments to manage for habitat conditions needed by sensitive species.

5. Legislative Updates: 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 the corresponding rule. 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.

II. PROJECT DEVELOPMENT

1. PUBLIC INVOLVEMENT, AGENCIES, GROUPS OR INDIVIDUALS CONTACTED:

Scoping and Public Comment

Date: June 26, 2020

Public Scoped:

- The scoping notice was posted on the DNRC website: <http://dnrc.mt.gov/public-interest/public-notice>
- Statewide Scoping List (ver.12/4/2019)
- DNRC ARM Interested Parties List
- Legal Ad in The Missoulian 6/23/2020-7/4/2020
- Second Legal Ad in The Missoulian 7/14/2020-7/21/2020
- Public Hearing in Missoula held on July 22, 2020 (Seven individuals provided oral testimony)

- Informational presentation via Zoom on June 11, 2020 and available on the DNRC website: <http://dnrc.mt.gov/divisions/trust/forest-management/administrative-rules-for-forest-management>

Agencies Scoped:

- Montana Fish Wildlife and Parks, Environmental Quality Council, The Department of Public Instruction, The office of the Secretary of State, The Attorney Generals office, The office of the Montana state Auditor.
- Tribal Nations: Blackfeet Tribe, Chippewa Cree Tribe, Crow Tribe, The Confederated Salish and Kootenai Tribe, Fort Belknap Tribe, Fort Peck Assiniboine and Sioux Tribes, and The Northern Cheyenne Tribe.

Comments Received: Five letters were received from the following organizations: Friends of the Wild Swan, Weyerhaeuser, Montana Wood Products, American Forest Management and F. H. Stoltze.

Concerns and Results:

- Concerns over the amount of changes being proposed and requested that the rulemaking be broken up into smaller changes with more time.
 - Concern over overcomplicating the rules by adopting the HCP into rule.
 - Concern over how the proposed changes will impact the 2020 Sustainable Yield Calculation.
 - Concern over conflict with the Streamside Management Zone (SMZ) law.
 - Suggestions on definition inclusion and revisions.
 - Concern on removal of definitions.
 - Specific language revision suggestions.
 - Clarification on implementing the HCP rules.
 - Concern for expanding the Grizzly Bear management rules and Canada Lynx rules.
 - Request to see the evaluation of effects from the proposed changes.
 - Request that the economic impact of the proposed changes be disclosed.
 - Concern over grazing lease impact.
 - Concern over greater risk of litigation.
 - Support for changes to ARM 36.11.429 Bald Eagle
 - Support for changes to ARM 36.11.430 Gray Wolf
 - Support for changes to ARM 36.11.447 Categorical Exclusions
 - Support for changes to ARM 36.11.450 Timber Permits
 - Support for changes to ARM 36.11.452-456 Conservation License
- Please see Appendix A for specific comments and responses.

2. OTHER GOVERNMENTAL AGENCIES WITH JURISDICTION, LIST OF PERMITS NEEDED:

United States Fish & Wildlife Service- DNRC is managing the habitats of threatened and endangered species on this project by implementing the Montana DNRC Forested Trust Lands HCP and the associated Incidental Take Permit that was issued by the United States Fish & Wildlife Service (USFWS) in February of 2012 under Section 10 of the Endangered Species Act. The HCP identifies specific conservation strategies for managing the habitats of grizzly bear, Canada lynx, and three fish species: bull trout, westslope cutthroat trout, and Columbia redband trout. These amendments comply with the HCP. The HCP can be found at <http://dnrc.mt.gov/divisions/trust/forest-management/hcp>

3. ALTERNATIVE DEVELOPMENT:

No Action Alternative: Under the No Action Alternative, the Forest Management rules would not be amended at this time.

Action Alternatives: Under the Action Alternative, all of the Forest Management amended rules would be formally adopted under MAPA procedures.

Alternatives Considered and Dismissed from Further Analysis: Separate current proposal into multiple, smaller MAPA processes.

Under this alternative, the Forest Management amended rules would be broken into separate categories and adopted under several distinct MAPA procedures. The department received a number of comments from interested parties during this process that indicated that the proposed changes were difficult to understand and interpret given the volume of changes and types of changes being proposed. Many commenters suggested that the department break up the revision process into 2 or 3 smaller proposals to make necessary changes, targeting required legislative changes first.

Reason Alternative Was Dismissed

First, the MAPA process is an important, involved programmatic endeavor that typically requires 3 to 6 months to complete. While it may seem that it would be beneficial to break up the process into smaller bites, it would undoubtedly require considerably more time and resources to complete; possibly up to two additional years. Scaling back considerably on the scope of the ARM revisions at this juncture, would likely result in the loss of at least 6 months of work and a restart of this process, given the maximum 6-month process duration required by MAPA.

Second, during the time expended on additional rule making processes under a piecemeal approach, inconsistencies, and project implementation and analysis inefficiencies would persist unnecessarily. Further, a piecemeal approach would not address inconsistencies and possible program legal vulnerabilities right now and could potentially maintain disarray in DNRC’s forest management guiding policy for years to come.

Third, the analysis work is done. The proposed rule revisions, with a few exceptions, represent the culminating phase of 10 years of staff investment negotiation, environmental analysis and public involvement associated with the 2012 HCP and 2018 Amendment. Further, the vast majority of the proposed changes have been implemented in the program in practice since 2012 under the HCP as required under the “rule-by-reference” ARM 36.11.470. All of the corresponding MEPA decisions, NEPA decisions, Biological Opinions, and court ordered settlement agreement are a part of the public record and can be made available upon request. Several years of analysis work have been accomplished and codifying this work in rule is all that remains.

From the beginning of this rulemaking process the planning team recognized that the number and nature of proposed ARM revisions would appear daunting to reviewers, and we are sympathetic to that fact. While large and ungainly in appearance to those largely unfamiliar with the content and measures contained in the HCP, the planning team believes finalizing this rule set is necessary to ensure the viability and defensibility of our forest management program at the present time and the vast majority of the effort and work to be completed is done. We also note that many of the changes involve the repeal of ARMS, and/or markup that represents repeal and replacement with other rules. The department believes the most appropriate and responsible action to take is to make all known and necessary revisions now in this important comprehensive process. It makes little sense to leave some ARMs out to address another day when we clearly know all proposed revisions are warranted now when the vast majority of work has been completed to finalize the process.

III. IMPACTS ON THE PHYSICAL ENVIRONMENT

Direct, Indirect, and Cumulative Effects Of The No Action Alternative Common To All Resources: Under the No Action Alternative, DNRC would not adopt the proposed rule revisions, additions, or deletions at this time. Several specific ARMs have been out of date for a number of years (e.g. T & E Bald Eagle and Gray Wolf) and would not be revised at this time and dated conflicting definitions pertaining to lynx habitat and roads would remain and not be addressed at this time. ARMs pertaining to timber conservation licensing that were recently repealed by the Montana Legislature would not be officially removed at this time but would potentially require a separate process and revised proposal notice if a decision were made to revise them. Forest management program staff would be required to continually implement multiple policies and manuals for differing areas of the state, which would maintain program confusion, current implementation inefficiencies, and confusion regarding public disclosure. Under the No Action Alternative there would be no change from the current condition and

existing ARMs would remain in place, which would not be expected to constrain further or adversely affect programmatically any revenue generation capability, forest resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way.

Cumulative Effects Of The Proposed Action Common To All Resources: Under the proposed action we anticipate minimal change in potential for cumulative effects considered at the programmatic scale from the potential effects of the existing rule set. Prior detailed environmental reviews and cumulative effects assessments were conducted on approximately 630,000 acres of HCP covered lands of DNRC's 750,000 acres of commercial forest lands in the HCP environmental review and HCP Amendment processes (DNRC 2010, DNRC 2018). Environmental effects associated with the remaining 120,000 acres (primarily lands east of the Continental Divide) of lands not covered under the HCP would be very similar to those analyzed in these prior analyses. However, the habitat quality, distribution and overall risk to grizzly bears, lynx, bull trout and westslope cutthroat trout are considerably lower in the eastern portion of the state. Minor beneficial effects would be anticipated due to revisions associated with new science, such as habitat definitions for Canada lynx on lands not currently covered under the HCP. Additional temperature buffering and woody debris recruitment effect associated with expanded RMZ buffers on approximately 2,000 acres would also likely occur, however the scale of effect at the statewide scale would be very small. The proposed revisions and repeals would not be expected to drive additional constraints for future sustainable yield calculations for the program beyond those associated with the current rule set. Specific effects related to ARM implementation would continue to be addressed and analyzed at the project level in environmental reviews conducted for individual projects.

4. GEOLOGY AND SOIL QUALITY, STABILITY AND MOISTURE:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

5. WATER QUALITY, QUANTITY AND DISTRIBUTION:

Action Alternative:

ROAD MANAGEMENT (ARM 36.11.421): Amended to clarify road definitions and incorporate road inventory and corrective action requirements under the department's HCP. Increased and explicit timelines for road inventory and corrective actions would have a positive effect on aquatic resources and habitats as result of correcting sediment delivery sites more quickly than the existing conditions. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

WATERSHED MANAGEMENT - CUMULATIVE EFFECTS (ARM 36.11.423): Amended to adopt 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. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

WATERSHED MANAGEMENT - STREASIDE MANAGEMENT ZONES, EQUIPMENT RESTRICTIONS ZONES, AND RIPARIAN MANAGEMENT ZONES (ARM 36.11.425(1) thru (4): Amended to clarify distinction

between equipment restriction zones (ERZ) established to protect high erosion risk sites and riparian management zones (RMZ) where specific tree retention is required. Amending the RMZ application to class one streams outside the HCP project area expands rule application to approximately 280 miles of stream, predominately on eastern Montana lands. Current Class one RMZ buffers include approximately 14,869 acres on HCP covered lands. Incorporation of non-HCP covered lands under this rule would result in approximately 3,959 acres of additional RMZ on forested state trust land. Of this additional buffer area, 1,982 acres would be in the unmanaged portion from the ordinary high water mark (OHWM) to 50 feet, and approximately 1,977 acres would be in the area from 51 feet- to the site potential tree height at 100 years or a minimum of 80 feet, whichever is greater. Increased riparian buffer width has been shown to have beneficial effects on water quality, stream habitat complexity, microclimate, and fisheries habitat (Sweeney and Newbold 2014, DNRC 2018, Albertson et al. 2018, Sugden et al. 2019, Olden et al. 2019). Stream temperatures on DNRC managed lands in western and central Montana area are expected to increase by 2 to 3 degrees Celsius by 2080 (Isaak et al. 2017). While anticipated effects are expected to be locally beneficial to riparian zones and associated resource values including large woody debris, stream shade, stream habitat complexity, and stream temperature, due to the limited scope of the added lands under rule, no additional direct, indirect, or cumulative effects differing from those disclosed in the DNRC HCP FEIS and Supplemental EIS (DNRC 2011, DNRC 2018) would be expected.

WATERSHED MANAGEMENT – WETLAND MANAGEMENT ZONES (ARM 36.11.426): Amended to define an acronym and incorporate language from the SMZ Law. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

6. AIR QUALITY:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

7. VEGETATION COVER, QUANTITY AND QUALITY:

Action Alternative: Several of the ARMs proposed for revision pertain programmatically to the management of vegetation on state trust lands. Descriptions and discussions pertaining to these specific ARMs are provided below.

GENERAL APPLICABILITY 36.11.402(1): This rule was revised to improve the accuracy of the applicability statement in conjunction with a new definition for the term “forest management activities.” Occasionally the department conducts activities for forest management purposes on lands that do not contain forested stands (e.g. hauling logs across a DNRC parcel that contains only open rangeland). This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

BIODIVERSITY - COARSE FILTER APPROACH (ARM 36.11.404): Unique and rare habitats minor term clarification to facilitate implementation. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

BIODIVERSITY – SNAGS AND SNAG RECRUITS (ARM 36.11.411(1)(a)): This revision increases existing snag retention requirements by one large snag and one live recruitment tree per acre on stands occurring within habitat type groups (Green et al. 1992) other than Warm Moist and Wet groups. This would occur on approximately 146,000 additional commercial forest acres most likely to receive harvest prescriptions that would emulate stand-replacement disturbance types. No additional constraints would be expected as the minor additional amounts required may be cull and dead material, and typically make up a portion of reserve trees left in regeneration-type harvest units. Modeling conducted in DNRC’s most recent Sustainable Yield Calculation (2020) indicated that modeled leave tree volume resulted in a conservative estimated a BIO GROSS to BIO NET volume reduction of 6.1 MMBF per year statewide for all snags and reserve trees, which included reserves on 92,055 acres of deferred lands. This revision is consistent with DNRC’s commitments to manage for natural disturbance patterns and processes under the State Forest Land Management Plan (ROD 1996) and ensures that minimum threshold levels can be retained. Large trees, snags and logs can take over 150 years to grow and develop as stands move into latter stages of development, and they can be difficult to maintain due to operational difficulties, wind events, firewood cutting etc. This change is important for effectiveness and consistency regarding implementation and monitoring as harvest units often contain more than one habitat type group creating confusion and difficulties regarding implementation. The proposed revision to require one additional tree and snag is also important for ensuring ample legacy trees, snags, and down logs are present on managed state trust lands in forested community types into the future. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

8. TERRESTRIAL, AVIAN AND AQUATIC LIFE AND HABITATS:

Action Alternative: Under the proposed action, no revisions of ARMs are proposed that would specifically address terrestrial wildlife species other than those federally listed as Threatened, Endangered, or state-listed sensitive species. See subsection nine below in this EA for detailed discussions regarding those species.

ARM revisions proposed pertaining to BIODIVERSITY – SNAGS AND SNAG RECRUITS -- ARM 36.11.411(1)(a), would increase existing snag retention requirements by one large snag and one live recruitment tree per acre on stands occurring within habitat type groups (Green et al. 1992) other than Warm Moist and Wet groups. This would occur on approximately 146,000 additional commercial forest acres statewide that are most likely to receive harvest prescriptions that would emulate stand-replacement disturbance types. This programmatic change would be expected to provide greater assurances that legacy material important for wildlife species that use snags and downed logs would be present in intensively harvested stands post-logging and would have an overall positive effect on snag-using wildlife species. See additional discussion provided under subsection number 7. above regarding this ARM.

ARM revisions proposed pertaining to ROAD MANAGEMENT -- ARM 36.11.421 would clarify monitoring and reporting requirements under the HCP with little change to wildlife security or risk anticipated compared to that of current ARMs. Closure and road inspection frequency are updated in the proposed ARM revision to reflect scheduling requirements in the HCP. Further, this change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

FISHERIES (ARM 36.11.427): Amended to reflect changes in federal and state guidance documents associated with HCP covered fish species. The Restoration Plan for Bull Trout in the Clark Fork River Basin and Kootenai River Basin has been superseded by the Bull Trout Recovery Plan and designated critical habitat (USFWS 2015). Conservation plans identified in rule have been implemented by DNRC as signatories to both the Candidate Conservation Agreement with Assurances for Arctic Grayling since 2006, and the Westslope and Yellowstone cutthroat Memorandum of Understanding since 2007. Regardless of the selected alternative, DNRC would continue to implement and adhere to the terms of these agreements in a continued effort to conserve sensitive aquatic species. Conservation strategies identified in the HCP for Bull trout, Westslope

cutthroat trout, and Columbia redband trout would be applied across all currently occupied habitat on TLMD commercial timber base lands, including sediment delivery reduction, connectivity, and stream habitat protections. Additional protections afforded under the amended rule would apply to occupied habitat outside of the original HCP project area, including approximately 93 miles of stream and 1,198 acres of lake (MFISH 2020). Amended fisheries connectivity rules reflect language in the HCP and apply the conservation strategy and allowances to lands outside the original HCP area. Connectivity corrective actions would follow the same prioritization as outlined in the HCP, based on species presence/absence and genetic purity. While the amendment is expected to result in beneficial effects to native aquatic species, due to the limited scope of effects on fisheries relative to the occupied stream habitat in the state, no additional direct, indirect, or cumulative effects are anticipated outside of those described in the HCP FEIS and Supplemental EIS (DNRC 2011, DNRC 2018).

9. UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES:

Action Alternative: Several of the ARMs proposed for revision pertain programmatically to the management of fish and wildlife habitats on state trust lands. Descriptions and discussions pertaining to these specific ARMs are provided below.

THREATENED AND ENDANGERED SPECIES (ARM 36.11.428): Revisions made to address removal of bald eagle from federally-listed threatened status, and incorporate lynx conservation measures from HCP. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

THREATENED AND ENDANGERED SPECIES – BALD EAGLE (ARM 36.11.429): Repealed to address federal delisting. Measures would be transferred to ARM 36.11.436 – SENSITIVE SPECIES to address the status change, provide consistency, simplicity, improved organization and ease of use. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

THREATENED AND ENDANGERED SPECIES – GRAY WOLF (ARM 36.11.430): Repealed to address federal delisting. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

THREATENED AND ENDANGERED SPECIES – GRIZZLY BEAR (ARM 36.11.431): Measures specific to management of the Swan River State Forest that would be repealed and replaced with measures contained in 36.11.432. HCP measures are currently implemented on the Swan River State Forest as required under ARM 36.11.470. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

GRIZZLY BEAR MANAGEMENT AND PROGRAMMATIC RULES (ARM 36.11.432): Repeals address outdated measures replaced by the HCP (2012), HCP settlement agreement (2016), and HCP Amendment (2018), which have all been implemented since their dates of adoption as required under existing ARM 36.11.470 and the existing ARM 36.11.432 (June 2016). The measures if adopted would require DNRC to afford grizzly bears special status in the future as a sensitive species after recovery of the species occurs and allow for management consistent with the NCDE Conservation Strategy upon delisting. Existing grizzly bear measures for other western Montana lands (ARM 36.11.433) and those for eastern Montana lands (ARM 36.11.434) would be replaced with conservation strategies contained in the HCP, which are based on current scientific information and provide greater program consistency. HCP measures are highly scaled geographically in the state, which address areas of greatest risk to grizzly bears associated with forest management activities. Adoption of the

measures would improve implementation and monitoring efficiency for the program and would not be expected to result in costly constraints associated with staff resources or harvest volume levels. Both the existing grizzly bear commitments in ARMs and those proposed in this 2020 amendment would apply to the full DNRC commercial forest land base (approximately 750,000 acres). This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

GRIZZLY BEAR MANAGEMENT ON WESTERN MONTANA LANDS (ARM 36.11.433): Repealed and replaced by measures contained in ARM 36.11.432, which are based on current scientific information and provide greater program consistency. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

GRIZZLY BEAR MANAGEMENT ON EASTERN MONTANA LANDS (ARM 36.11.434): Repealed and replaced by measures contained in ARM 36.11.432, which are based on current scientific information and provide greater program consistency. The proposed changes would expand specified programmatic protections for grizzly bears in areas that currently are not addressed in current ARMs including the department's Northeastern Land Office, Southern Land Office, and Eastern Land Office. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

THREATENED AND ENDANGERED SPECIES - CANADA LYNX (ARM 36.11.435(4)): Repealed and Replaced by HCP measures contained under revisions now contained in ARM 36.11.428. Under these revised ARMs for lynx, approximately 39,000 acres of potential lynx habitat on Non-HCP lands would receive similar resource protections in scope and scale for scattered lands outside of Lynx Management Areas as measures currently provided under existing ARM 36.11.435 for those same lands. By adopting this change, improved habitat definitions and mitigation measures would be incorporated based on current scientific literature and extensive environmental review in the HCP development and adoption processes (DNRC 2010, DNRC 2018). This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

SENSITIVE SPECIES –BALD EAGLE (ARM 36.11.436 (7)): Transferred from THREATENED AND ENDANGERED ARM 36.11.429 to SENSITIVE SPECIES to address the federal delisting of the species from Threatened status on August 9, 2007. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

SENSITIVE SPECIES –BLACK-BACKED WOODPECKER (ARM 36.11.436 (8)): Transferred from 36.11.438 to improve consistency, improve organization and ease of use. Sub-rule ARM 36.11.436(a) was removed following consideration that: 1) the measure would likely provide limited benefit for the species; 2) as environmental conditions get warmer and drier, the associated prevalence of fire-killed forest conditions needed by the species are likely to be more abundant on the landscape; 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. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

SENSITIVE SPECIES –COMMON LOON (ARM 36.11.436 (9)): Transferred from 36.11.441 to improve consistency, improve organization and ease of use. No other changes proposed. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

SENSITIVE SPECIES –FISHER (ARM 36.11.36 (10)): Transferred from 36.11.440 to improve consistency, improve 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. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

SENSITIVE SPECIES –FLAMMULATED OWL (ARM 36.11.436 (11)): Transferred from 36.11.437 to improve consistency, improve organization and ease of use. No other changes proposed. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

SENSITIVE SPECIES –PEREGRINE FALCON (ARM 36.11.436 (12)): Transferred from 36.11.432 to improve consistency, improve organization and ease of use. No other changes proposed. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

SENSITIVE SPECIES –PILEATED WOODPECKER (ARM 36.11.436 (13)): Transferred from 36.11.439 to improve consistency, improve organization and ease of use. No other changes proposed. This change would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

The following ARMs are proposed for repeal in their current locations and would be moved and included as sub-rules under **SENSITIVE SPECIES (ARM 36.11.436)**. These changes would not be expected to constrain further or adversely affect programmatically the generation of revenue, forest resources, ecological resources, other trust lands resources, or cause other adverse effects to the human environment in a measurable way when compared with management under the HCP and previous version of Forest Management ARMs.

SENSITIVE SPECIES -- FLAMMULATED OWL – ARM 36.11.437 -- Repealed
SENSITIVE SPECIES – BLACK-BACKED WOODPECKER – ARM 36.11.438 – Repealed
SENSITIVE SPECIES – PILEATED WOODPECKER – ARM 36.11.439 – Repealed
SENSITIVE SPECIES – FISHER – ARM 36.11.440 – Repealed
SENSITIVE SPECIES – COMMON LOON – ARM 36.11.441 – Repealed
SENSITIVE SPECIES – PEREGRINE FALCON – ARM 36.11.432 – Repealed

10. HISTORICAL AND ARCHAEOLOGICAL SITES:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management

Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

11. AESTHETICS:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

12. DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AIR OR ENERGY:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

13. OTHER ENVIRONMENTAL DOCUMENTS PERTINENT TO THE AREA:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

IV. IMPACTS ON THE HUMAN POPULATION
--

14. HUMAN HEALTH AND SAFETY:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

15. INDUSTRIAL, COMMERCIAL AND AGRICULTURE ACTIVITIES AND PRODUCTION:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management

Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

16. QUANTITY AND DISTRIBUTION OF EMPLOYMENT:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

17. LOCAL AND STATE TAX BASE AND TAX REVENUES:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

18. DEMAND FOR GOVERNMENT SERVICES:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

19. LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

20. ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

21. DENSITY AND DISTRIBUTION OF POPULATION AND HOUSING:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

22. SOCIAL STRUCTURES AND MORES:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

23. CULTURAL UNIQUENESS AND DIVERSITY:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

24. OTHER APPROPRIATE SOCIAL AND ECONOMIC CIRCUMSTANCES:

Action Alternative: Forest management activities would continue to be guided by the proposed Administrative Rules for Forest Management. The impacts associated with these levels of forest management would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018). No additional direct, indirect, or cumulative effects differing from those disclosed in previously referenced documents would be anticipated.

EA Prepared By:	Name: Sierra Farmer	Date: 09/10/2020
	Title: Forest Management Planner	

List of preparers

Sierra Farmer, MT DNRC Forest Management Bureau – Forest Management Planner – Project Leader
Jeff Schmalenberg, MT DNRC, Forest Management Bureau – Resource Management Supervisor
Ross Baty, MT DNRC, Forest Management Bureau – Program Wildlife Biologist
Mike Anderson, MT DNRC, Forest Management Bureau – Program Fisheries Biologist

References

- Albertson, L. K. V. Ouellet, M. D. Daniels. 2018. Impacts of stream riparian buffer land use on water temperature and food availability for fish. *Journal of Freshwater Ecology*. 33(1): 195-210.
- Green, P., J. Joy, D. Sirucek, W. Hann, A. Zack, and B. Naumann. 1992. Old-growth forest types of the northern region. R-1 SES. USDA Forest Service, Northern Region, Missoula, Montana. 60pp
- Isaak, D. J., S. J. Wenger, E. E. Peterson, J. M. Ver Hoef, D. E. Nagel, C. H. Luce, S. W. Hostetler, J. B. Dunham, B. B. Roper, S. P. Wollrab, G. L. Chandler, D. L. Horan, S. Parkes-Payne. The NorWeST summer stream temperature model and scenarios for the western U.S.: A crowd-sourced database and new geospatial tools foster a user community and predict broad climate warming of rivers and streams. *Water Resources Research*. 53(11):9181-9205.
- Montana Department of Natural Resources and Conservation. 1996. State forest land management plan final environmental impact statement. Montana Department of Natural Resources and Conservation, Forest Management Bureau. Missoula, Montana.
- Montana Department of Natural Resources and Conservation. 2011. Montana Department of Natural Resources and Conservation, Forested State Trust Lands, Habitat Conservation Plan. Volumes I and II.
- Montana Department of Natural Resources and Conservation. 2018. Supplemental Environmental Impact Statement for the proposed amendment to the Endangered Species Act 10(a)(1)(B) permits associated with the Montana Department of Natural Resources and Conservation Forested State Trust Lands Habitat Conservation Plan.
- Montana Department of Natural Resources and Conservation. 2018. Riparian management zone harvest monitoring. Unpublished report on file at DNRC Forest Management Bureau, Missoula, Montana.
- Olden, A., M. Peura, S. Saine, J. S. Kotiaho, P. Halme. 2019. The effect of buffer strips width and selective logging on riparian forest microclimate. *Forest Ecology and Management*. 453:117623.
- Sugden, B. D., R. Steiner, and J. E. Jones. 2019. Streamside management zone effectiveness for water temperature control in Western Montana. *International Journal of Forest Engineering*. 30(2): 87-98.
- Sweeney, B. W. and J. D. Newbold. 2014. Streamside forest buffer width needed to protect stream water quality, habitat, and organisms: A literature review. *Journal of the American Water Resources Association*. 50(3): 560-584
- U.S. Fish and Wildlife Service. 2015. Recovery Plan for the Coterminous United States Population of Bull Trout (*Salvelinus confluentus*).

V. FINDING

25. ALTERNATIVE SELECTED:

The Montana Department of Natural Resources and Conservation has completed the environmental assessment (EA) for the proposed amendment of ARM 36.11.402 through 36.11.404, 36.11.411, 36.11.421 through 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, 36.11.435, 36.11.437 through 36.11.442, 36.11.451 through 36.11.456 regarding the management of state forested trust lands. After a thorough review of the EA, public comments, the project file, Department policies, standards, and guidelines, I have made the following decisions concerning this amendment:

I propose the following modifications **in bold** to ARM 36.11.425(5) based on public comment and negligible direct, indirect and cumulative effects of the action alternative:

36.11.425 WATERSHED MANAGEMENT – STREAMSIDE MANAGEMENT ZONES, EQUIPMENT RESTRICTION ZONES AND RIPARIAN MANAGEMENT ZONE

(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, which includes the minimum width of the SMZ required under ARM 36.11.302, when timber harvests are proposed on sites adjacent to fish bearing streams and lakes and **on HCP covered lands adjacent to all class 1 streams or lakes, which will:**

This modification strikes the balance between department objectives and responsiveness to public comment. The modification of ARM 36.11.425(5) represents the existing conditions regarding the Department's application on Riparian Management Zones and the impacts associated with this modification would fall within the range identified and disclosed both the State Forest Land Management Plan (DNRC 1997) and Montana DNRC Forest Management Habitat Conservation Plan Final Environmental Impact Statement and Supplemental Environmental Impact Statement (DNRC 2011 and 2018).

I have chosen to select a Modified Action Alternative for the following reasons:

- The Modified Action Alternative meets the project Purpose and Need listed under Section I. of the EA:
 - Revise outdated rules and/or associated definitions associated with species no longer listed as Threatened or Endangered
 - Repeals rules associated with statute updates made effective in the 2019 legislature
 - Adopts the primary conservation strategies for Grizzly bear, Canada Lynx and Bull trout from the Departments Habitat Conservation Plan to ensure long-term compliance with the Endangered Species Act while conducting forest management activities.
- This rule review and associated revisions serve an important purpose by addressing several necessary policy changes noted during program monitoring (DNRC 2016) as allowed under ARM 36.11.448(3), and I have determined that the proposed changes are consistent with the intent and philosophy of the State Forest Land Management Plan.
- Provides field staff, resource specialists and program managers with a consistent direction to ensure the annual sustainable yield is offered for sale in an efficient, effective and responsible manner.
- The Modified Action Alternative is consistent with State and local policies, laws, and regulations.

26. SIGNIFICANCE OF POTENTIAL IMPACTS:

Upon review of the project and analysis herein, I find that none of the impacts are severe, enduring, geographically widespread, or frequent. Further, I find that the quantity and quality of the natural resources, including any that may be considered unique or fragile, will not be adversely affected to a significant degree. I find no precedent for the future actions that would cause significant impacts, and I find no conflict with local, State, or federal laws, requirements, or formal plans.

27. NEED FOR FURTHER ENVIRONMENTAL ANALYSIS:

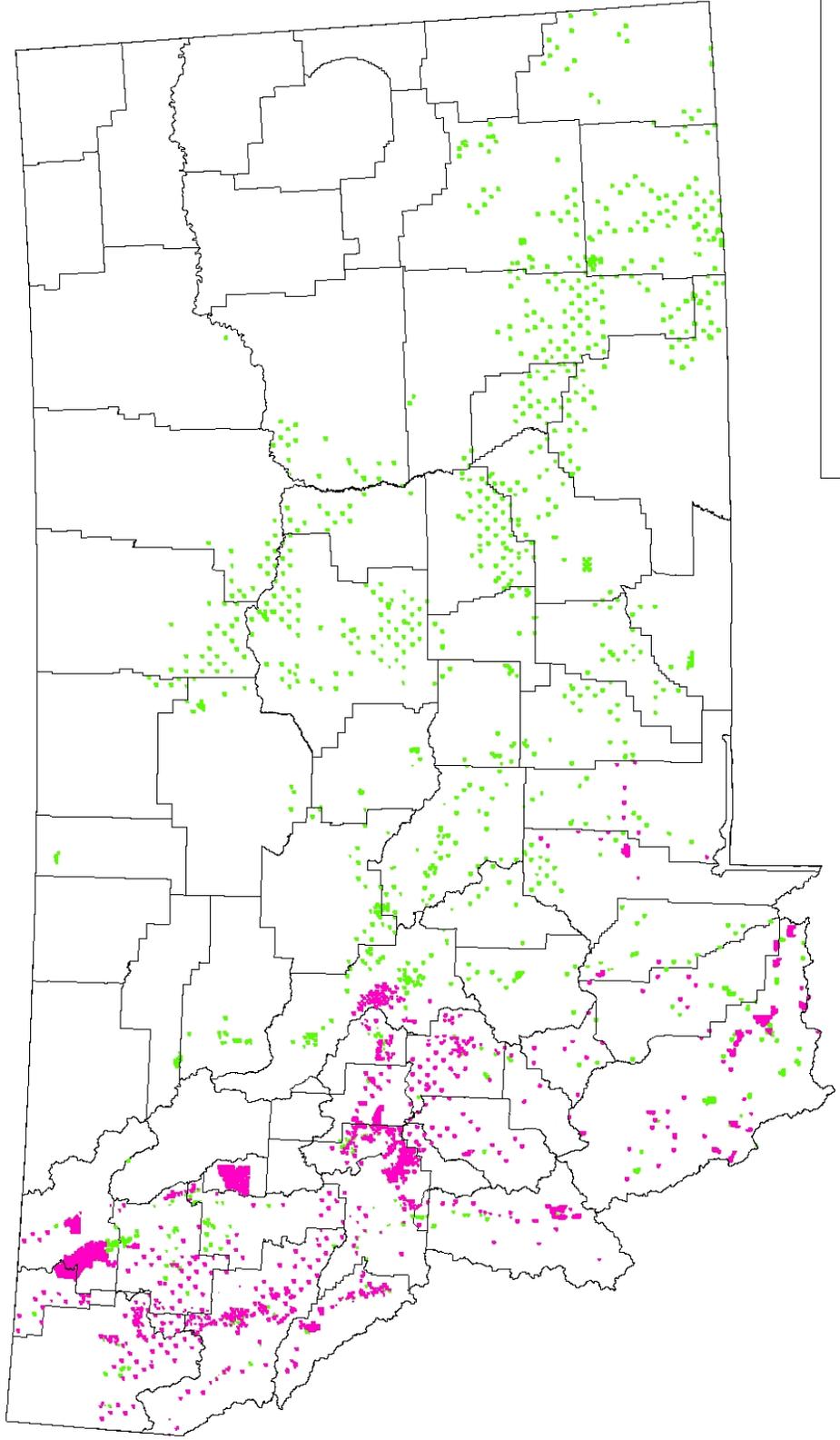
EIS

More Detailed EA

No Further Analysis

EA Approved By:	Name: Dan Rogers
	Title: Forest Management Bureau Chief
Signature: /s/ Dan Rogers	
Date: 09/11/2020	

Vicinity Map
Area Covered by DNRC Proposed Administrative Rules
DNRC 2020 Commerical Timber Base: ~750,000 acres



Legend

- County Boundaries
- FMBHCP_HabitatConservationPlanTracts
- DNRC Trust Lands 2020 Commerical Timber Base

Appendix A
Forest Management Bureau ARM Revision
Public Comment and DNRC Responses

Contents

American Forest Management	20
Friends of the Wild Swan	25
Montana Wood Products Association	32
F.H. Stoltze Land & Lumber Company.....	37
Weyerhaeuser.....	55
Public Hearing Transcript	74



American Forest Management

July 29,2020

Montana Department of Natural Resources and
Conservation Trust Management Division
2705 Spurgin Road
Missoula, MT 59804

RE: Amendment and Repeal of various Forest

Management ARMs To Whom it May Concern,

Please accept the following comments on the amendment and repeal of various ARMs affecting the management of forested State trust lands on behalf of American Forest Management (AFM). AFM manages over 600,000 acres of private forestland in western Montana for our client, SPP Montana, LLC. We have extensive experience in implementing the Montana SMZ law. We also implement a Native Fish Habitat Conservation Plan (Native Fish HCP) on the property, which is now in it's 20th year of successful implementation.

These comments focus on proposed ARM modifications related to Watersheds, Streamside Management Zones, and Fisheries. Specific comments are as follows:

(AFM Comment #1)

- 1) There are so many proposed changes to the ARMs that it is very complex to digest all these at once. In this initial effort, **DNRC should limit modifications to ARMs to only those required by statutory changes. Future rulemaking efforts should be broken up so that the full detail on the many changes can be thoroughly discussed.**

DNRC Response to AFM Comment #1: In winter 2019, the DNRC Forest Management Bureau Planning Team was charged with comprehensively evaluating the existing ARMs rule set for necessary revisions. To ensure a thorough review, the planning team carefully examined the entire rule set. More specifically, the planning team reviewed all portions of ARMs and their definitions that were out of date or inconsistent with other plans, were needed to address new science, or that required revision to help field staff effectively implement and interpret important measures needed to ensure legally defensible project implementation on state trust lands. In conjunction with this review, as periodically required for all state agencies in Montana, a decision was made by the Forest Management Bureau Chief to incorporate all applicable commitments of the DNRC Forest Management Habitat Conservation Plan (HCP) into ARMs for clarity, efficiency, and consistency, and to replace an existing non-descriptive rule adopted in 2012 that serves to implement the HCP in whole by reference (ARM 36.11.470). In January 2020 the fully revised draft rule set was provided to all Forest Management Program personnel to review for accuracy, clarity and implementation feasibility. All comments from staff were addressed in conjunction with numerous calls and communications with managers, field foresters, and resources specialists.

WE'RE IN THIS
TOGETHER

Minor revisions to the Forest Management ARMs were completed several times since their original adoption in 2003 to address: 1) statutory changes in timber permit allowances, 2) adoption of the HCP in 2012, 3) an HCP settlement agreement to comply with a federal court order, and 4) to clarify the legal implementation requirements of ARMs associated with conservation easements that are tied to many lands recently acquired by DNRC (ARM 36.11.471). Additionally, since the original full rule set was adopted in 2003, DNRC has acquired approximately 100,000 acres of forest land, the gray wolf and bald eagle were removed from the federal list of Threatened and Endangered species, and recent legislation was passed effectively repealing the timber conservation license process (ARM 36.11.451 through 36.11.456) further underscoring the need to revise the current ARMs. The following reasons answer why the FMB has chosen to embark on such a large, comprehensive revision of Forest Management ARMs at this time versus conducting rulemaking under several smaller processes.

First, the MAPA process is an important, involved programmatic endeavor that typically requires 3 to 6 months to complete. While it may seem that it would be beneficial to break up the process into smaller bites, it would undoubtedly require considerably more time and resources to complete; possibly up to two additional years. Scaling back considerably on the scope of the ARM revisions at this juncture, would likely result in the loss of at least 6 months of work and a restart of this process, given the maximum 6-month process duration required by MAPA.

Second, during the time expended on additional rule making processes under a piecemeal approach, inconsistencies, and project implementation and analysis inefficiencies would persist unnecessarily. Further, a piecemeal approach would not address inconsistencies and possible program legal vulnerabilities right now and could potentially maintain disarray in DNRC's forest management guiding policy for years to come.

Third, the analysis work is done. The proposed rule revisions, with a few exceptions, represent the culminating phase of 10 years of staff investment negotiation, environmental analysis and public involvement associated with the 2012 HCP and 2018 Amendment. Further, the vast majority of the proposed changes have been implemented in the program in practice since 2012 under the HCP as required under the "rule-by-reference" ARM 36.11.470. All of the corresponding MEPA decisions, NEPA decisions, Biological Opinions, and court ordered settlement agreement are a part of the public record and can be made available upon request. Several years of analysis work have been accomplished and codifying this work in rule is all that remains.

From the beginning of this rulemaking process the planning team recognized that the number and nature of proposed ARM revisions would appear daunting to reviewers, and we are sympathetic to that fact. While large and ungainly in appearance to those largely unfamiliar with the content and measures contained in the HCP, the planning team believes finalizing this rule set is necessary to ensure the viability and defensibility of our forest management program at the present time and the vast majority of the effort and work to be completed is done. We also note that many of the changes involve the repeal of ARMS, and/or markup that represents repeal and replacement with other rules. DNRC believes the most appropriate and responsible action to take is to make all known and necessary revisions now in this important comprehensive process. It makes little sense to leave some ARMs out to address another day when we clearly know all proposed revisions are warranted now when the vast majority of work has been completed to finalize the process.

(AFM Comment #2)

2) To try and incorporate the entire DNRC HCP into rule seems overly complicated. Please

explain why DNRC rules cannot simply adopt the DNRC HCP requirements by reference, rather than try to pull the entire HCP into the ARMs. This adoption by reference is commonly done in Montana. An example are numeric water quality standards by Montana DEQ.

DNRC Response to AFM Comment #2: In 2012, DNRC adopted the HCP by reference under ARM 36.11.470 to provide clarity as to what rules and policies should be applied if conflict arose. This rule was always meant to be a short-term solution to adopting the HCP conservation strategies into rule for long-term assurances, programmatic consistency, effective and efficient implementation, monitoring and reporting.

(AFM Comment #3)

3) DNRC proposes in this rulemaking to expand many HCP requirements to other DNRC Trust Lands. The rationale for this is to make things easier on DNRC foresters, who currently have to implement two sets of streamside protections. **We find this explanation lacking for several reasons:**

A) Currently it is only DNRC foresters in specific geographic areas that have to deal with two sets of requirements. Many just work with one set or the other.

DNRC Response to AFM Comment #3: Foresters on the Stillwater Unit, Swan Unit and Clearwater Unit can have up to four or more sets of requirements and monitoring to incorporate due to blocked vs. scattered lands requirements, presence of some manageable non-HCP lands, and various conservation easements. These many of our core timberlands occur on these units. For them it is not trivial. While consistent implementation for our field staff is one benefit of adopting the proposed rules, it certainly not the only one. Consistent program direction in the form of implementation manuals, training materials as well as monitoring and reporting provide measurable program efficiencies, stability and defensibility.

(AFM Comment #4)

B) We believe it is important that all DNRC foresters be well versed in state SMZ requirements, as this is what is being implemented all across the state on other ownerships, and DNRC is charged with enforcement of these regulations. If these rules are adopted, **we expect that institutional knowledge of the SMZ law at DNRC will diminish**

DNRC Response to AFM Comment #4: DNRC adopted the State Forest Land Management Plan in 1996 and the HCP in 2012, which committed the department to some measures beyond the strict adherence to the SMZ law. DNRC also owns and manages lands with a growing number of conservation easements attached to their deeds that legally require DNRC to implement measures that vary from strict application of the SMZ law. That said, the SMZ law is the foundation for DNRC Riparian Management Zone strategy developed under the HCP and the law provides the prescriptive baseline for tree retention requirements and prohibitions such as, equipment operations, road construction, burning and clear cutting. The SMZ law will continue to be adopted under rules for forest management (ARM 36.11.301 thru 36.11.313) and implemented on every trust land timber sale. As a result, knowledge of the SMZ law and its application is not expected to diminish.

(AFM Comment #5)

C) **Extending DNRC HCP riparian restrictions on all state Trust forest lands provides more restriction. It is not clear to us that this financial impact has been quantified. And also**

unlikely that this restriction was incorporated into the recently updated sustainable yield calculation for trust lands.

DNRC Response to AFM Comment #5: The 2020 Sustainable yield calculation had approximately 750,000 acres of commercial forest land available for harvest before constraints were applied. This includes both classified forest and non-forest lands. Approximately 630,000 of these acres or 84%, has been managed under the proposed ARM revisions for the past 10 years, equating to approximately 85% of the sustainable yield for this same 10-year period. Application of the proposed rules to lands outside of the current HCP project area would result in approximately 1,977 acres of managed RMZ. Furthermore, all the proposed rules were modeled as constraints in the 2020 SYC. This set of constraints and the addition of approximately 14,000 additional acquired lands (representing 1.9% of the 750,000 commercial timber base) resulted in a 17% increase in the annual sustainable year further supporting that no further economic impact would result to trust beneficiaries as a result of adopting the proposed rules. This RMZ analysis is contained in the environmental assessment for this proposed ARM revision process.

DNRC has provided numerous economic assessments pertaining to the cost and feasibility of implementing constraints on DNRC lands. The HCP FEIS analysis and subsequent sustainable yield calculation conducted in 2011 addressed and disclosed the cost to the program of implementing the strategies. As hinted in the comment, the most recent sustainable yield calculation provides one of the best stepwise analyses of the cumulative reduction of volume the various program constraints represent across both HCP and non-HCP covered commercial forest lands. These analyses were disclosed to the public and can be found on the DNRC website or made available upon request.

(AFM Comment #6)

D) There is no technical rationale presented that current SMZ laws are ineffective. In fact, just the opposite, 25 years of DNRC-led state BMP audits since the SMZ rules went into effect indicate that these protections are nearly 100% effective in preventing impacts to streams, based on visual observations. This is supported by scientific research that has found Montana SMZs to be highly protective of stream temperature (see attached journal article).

DNRC Response to AFM Comment #6: DNRC agrees that the Streamside Management Zone law has been highly successful at preventing water quality impacts from sediment delivery during forest management activities. No changes to the law or its implementation on state trust land is proposed here. DNRC commends the commenter on their efforts in contributing to the scientific body of literature regarding the SMZ law effectiveness. While the cited research article indicated that standard buffers applied under the SMZ Law in Montana provided sufficient protection to stream temperature, fish communities, and canopy cover, the broader body of scientific research generally indicates that increased buffer width enhances protective measures afforded to aquatic resources. These (Sweeney and Newbold 2014), findings also generally corroborate the results of RMZ monitoring conducted by DNRC during the first 5 years of HCP implementation. Further research is warranted regarding the law's effectiveness with respect to other stream metrics such as, large woody debris recruitment, habitat complexity, microclimate modification and ramifications of climate change. DNRC's on-going monitoring efforts are focused on providing additional information and clarity to the above referenced response variables.

(AFM Comment #7)

American Forest Management appreciates the opportunity to provide comment on these proposed changes to the ARMs. Montana DNRC does an excellent job of managing an amazing portfolio of forest land across the state, to the betterment of Montana citizens and the Trust. As a fellow forest land manager, we feel strongly that DNRC should not “de-couple” trust lands from the SMZ law, without very good reason. We look forward to the response and continued discussion of the issues raised in this letter.

DNRC Response AFM Comment #7: DNRC is in no means “de-coupling” trust lands from the Montana SMZ law. Montana SMZ law remains the foundation of the riparian timber harvest conservation strategy in the HCP and is the primary regulatory policy on all streams on state trust lands. The Montana SMZ law still remains in the ARMs for Forest Management (36.11.301 through 36.11.313) and will continue to be implemented on all state trust land timber sales.

However, that said, DNRC managers also now have additional realities to consider. By adopting the State Forest Land Management Plan, the Forest Management HCP, and acquiring numerous new forested lands with attached conservation easements, DNRC has further legal obligations now pertaining to timber management within riparian habitats. We believe that having the proposed rule set in place, will greatly aid the consistent, effective, and efficient analysis and implementation of forest management activities on state trust lands. While additional measures and constraints are required now on HCP-covered lands and various easement lands, the DNRC Forest Management Program and trust beneficiaries have benefitted from both the HCP and acquisition of easement lands that were generally acquired at low cost. The HCP has clarified DNRC’s obligations under the Endangered Species Act and provides management certainty into the future. Further, beneficiaries have recently realized considerable sustainable volume increases associated with new land acquisitions containing easements. We believe that these are important realities to consider when evaluating what is in the best interest of trust beneficiaries.

Best Regards,
Brian Sugden,



Forest Hydrologist
District Manager, Montana
American Forest Management
brian.sugden@afmforest.com

Attachment: Sugden et al. (2019). Streamside management zone effectiveness for water temperature control in western Montana.

Friends of the Wild Swan

*Friends of the Wild Swan
PO Box 103
Bigfork, MT 59911*

July 28, 2020

Dept. of Natural Resources and Conservation

2705 Spurgin Road

Missoula, MT 59804

Via email to: sierrafarmer@mt.gov

Please accept the following comments on the Proposed Amendment and Repeal pertaining to the Forest Management Montana Administrative Rules on behalf of Friends of the Wild Swan.

1. 36.11.403 Definitions

(FOWS Comment #1)

(10) Why was the bear management unit definition removed?

DNRC Response to FOWS Comment #1: Conservation measures pertaining to grizzly bears under the HCP that would be adopted under this revision of ARMs no longer require use of this term for the purpose of implementation. As a part of housekeeping and clean-up of the rule set, all unused definitions are proposed for repeal.

(FOWS Comment #2)

(30) Why was grizzly BMU subunit removed?

DNRC Response to FOWS Comment #2: Conservation measures pertaining to grizzly bears under the HCP that would be adopted under this revision of ARMs no longer require use of this term for the purpose of implementation. As a part of housekeeping and clean-up of the rule set, all unused definitions are proposed for repeal.

(FOWS Comment #3)

(31) Habitat type definition should be retained.

DNRC Response to FOWS Comment #3: This term in question is actually Habitat Type Group. This term is no longer necessary to implement the single rule where it was previously used [ARM 36.11.411(a)]. DNRC proposes to improve the clarity of this rule by replacing the phrase "On all habitat type groups" with "In all timber harvest units post-harvest"... " that currently remains in the proposed rule set. Removal of the term Habitat Type Group from definitions or its current use in rule would have no influence on interpretation or implementation of any other existing ARMs, particularly those pertaining to old growth.

(FOWS Comment #4)

(39) Why was lynx denning habitat removed?

DNRC Response to FOWS Comment #4: Conservation measures pertaining to Canada lynx under the HCP that would be adopted under this revision of ARMs no longer require use of this term for the purpose of implementation. Through negotiations with the U.S. Fish and Wildlife Service after consulting with Dr. John Squires (U.S. Forest Service research biologist), the need to define specific habitat patches exhibiting specific structural conditions for lynx denning was reconsidered and is no longer necessary. However, the HCP does contain measures that DNRC is required to implement that support denning sites for lynx, such as

retention of patches of regenerating white woods, snags, large logs, and small patches of blowdown when localized high wind events occur. As a part of housekeeping and clean-up of the rule set, all unused definitions are being proposed for repeal.

(FOWS Comment #5)

(42) Why was lynx mature foraging habitat removed?

DNRC should use the definition of multi-story mature or late successional forest that is in the Northern Rockies Lynx Management Direction: this stage is similar to the old multistory structural stage. However, trees are generally not as old and decaying trees may be somewhat less abundant. Or the old multistory structural stage - Many age classes and vegetation layers mark the old forest, multistoried stage. It usually contains large old trees. Decaying fallen trees may be present that leave a discontinuous overstory canopy. On cold or moist sites without frequent fires or other disturbance, multi-layer stands with large trees in the uppermost layer develop.

DNRC Response to FOWS Comment #5: This definition is outdated and no longer in use. We agree that these described conditions are important for lynx. As with the definition for lynx denning habitat, the definition of Mature Foraging Habitat was reconsidered with the U.S. Fish and Wildlife Service at the time the HCP was negotiated. Following review and consideration of new scientific information provided by Dr. John Squires at the time regarding documented habitat use by radio-collared lynx, the definition of Mature Foraging Habitat was replaced with “Winter Foraging Habitat”. Winter Foraging Habitat is a very similar condition both structurally and ecologically to the original Mature Foraging Habitat definition. However, habitat filters were slightly modified to more closely fit the stand conditions Squires observed to be most important for lynx in western Montana. The word “Winter” was emphasized in the revised habitat class name to reflect the seasonal importance as observed by Squires and others (2010).

(FOWS Comment #6)

(48) old or (54) new

Old growth should be revised to:

"old growth" means forest stands that meet or exceed the criteria for number, diameter and age of large trees, stand basal area and associated characteristics contained in "Old-Growth Forest Types of the Northern Region"....

DNRC Response to FOWS Comment #6: DNRC uses this definition to clearly define when stands meet a minimum objective standard as old growth or not. Green et al. clearly state that the minimum criteria of number and average age of large live trees and stand basal area should be used to identify old growth stands, and those minimum criteria were selected by Green et al. to distinguish stands dominated by large, old trees. The associated characteristics for each old growth type described by Green et al. describe the expected ranges or probabilities of other old growth-associated attributes in stands that meet the minimum criteria, but, as clearly stated by Green et al., should not be used as minimum criteria to identify old growth stands. Given that the associated characteristics describe ranges or probabilities, the suggestion in this comment to include the phrase... “and associated characteristics” muddies this criteria for identifying old growth stands by including such attributes as presence of two or more canopy levels, stand decadence, levels of snags and down logs, etc., that do not have clearly defined thresholds. DNRC acknowledges the associated characteristics described by Green et al. are ecologically important in old growth stands. However, to exclude stands that may be low in one or more of these additional attributes would not give ample ecological consideration for stands of lesser structural or attribute complexity that otherwise would be defined as old growth. To address the presence

of such attributes in old growth stands and the level of development or presence of those attributes, DNRC applies a tool called the Full Old Growth Index to quantify presence and development of those attributes relative to other old growth stands.

(FOWS Comment #7)

(54) **Open road density should be defined.**

DNRC Response to FOWS Comment #7: Conservation measures pertaining to grizzly bears under the HCP that would be adopted under this revision of ARMs no longer require use of this term for the purpose of implementation. In this case, the road miles and locations associated with the transportation plans for the Stillwater and Swan River State Forests, and road mile caps for scattered lands serve as the monitored measurement metrics that provide firm sideboards for road amounts associated with conducting forest management activities. As a part of housekeeping and clean-up of the rule set, all unused definitions are proposed for repeal. DNRC would continue disclose road density estimates for project analyses when warranted under MEPA and provide estimates for interagency cooperative monitoring efforts pertaining to the recovery of grizzly bears.

(FOWS Comment #8)

(68) **Reclaimed road definition should be consistent with the HCP definition which is:**

A road that is impassable due to effective closure. It has been stabilized, and culverts and other structures, if present, have been removed, but the road prism may remain. A reclaimed road will not receive motorized use for low-intensity forest management activities or commercial forest management activities (as defined under the proposed HCP - Alternative 2).

DNRC Response to FOWS Comment #8: The proposed definition reflects minor editorial revisions suggested by the Office of the Secretary of State and internal field staff, which were incorporated to improve conciseness and clarity without affecting interpretation. Upon further review, we believe the proposed definition captures all of the key elements important for precise interpretation and application as intended in proposed ARMs and the HCP.

(FOWS Comment #9)

(98) Please revise: "Temporary road" means a road built using the minimum standard necessary for the anticipated use, and which is reclaimed following use **so it no longer functions as an open road, restricted road or trail...**

DNRC Response to FOWS Comment #9: The definition of a Reclaimed Road as proposed in the Temporary Road requires that it not be passable by motorized vehicles, which ensures no public, administrative, or commercial motorized activity is possible. Thus, we believe this additional suggested language is unnecessary.

(FOWS Comment #10)

Please include a definition of riparian.

DNRC Response to FOWS Comment #10: Comment noted. DNRC will include a definition of riparian area in rule.

(FOWS Comment #11)

2. 36-11-411 Biodiversity – Snags and Snag Recruits

(1)(a) **This should be revised so it is consistent with Green et al.** Type Codes for snags which is a range and varies by the habitat types. The generic 2 snags and 2 snag recruits may not be sufficient for all habitat type groups.

DNRC Response to FOWS Comment #11: The intent of this rule is to provide a minimum density of large trees and snags on DNRC's forested land base, regardless of climax community type classifications. The requirements pertain to the largest tree cohorts in a forest stand. The proposed revision to this ARM provides levels consistent with ranges of large trees across cover types in unmanaged conifer stands in western Montana reported by Harris (1999). DNRC monitoring conducted since 1999 has indicated that such large snags are often not available for retention due to past management practices and that they can be difficult to maintain on managed landscapes, particularly with regard to firewood cutting and wind. Thus, this selected density for retention ensures a base level for minimum retention and provides greater simplification and clarity for implementation than the existing ARM, which specifies retention level by habitat type group. Large trees and snags have been the focus of this ARM given the substantial length of time required to grow large trees, and difficulties with retaining and protecting large snags given operational realities. This ARM does not preclude the retention of additional snags in smaller size classes which may be retained where feasible by forest managers.

(FOWS Comment #12)

3. 36.11.421 Road Management

(11) **Please revise:**

The department shall consider for reclamation roads that are deemed non-essential. The department shall leave reclaimed roads in a condition that provides adequate drainage and stabilization **including removing culverts**, while leaving intact the road prism and capital investment needed to construct that road.

DNRC Response to FOWS Comment #12: The definition of a reclaimed road specifically requires that all culverts must be removed, and it is also a requirement of the HCP. The reference to reclaimed roads in this rule, directly indicates by definition that all drainage structures will be removed. This includes culvert and bridges. Therefore, inclusion of the suggested edit is redundant and unnecessary.

(FOWS Comment #13)

(12) **Please revise:**

The department shall assess road maintenance needs by inspecting conditions, **including culverts**, on both open and restricted roads **annually**.

DNRC Response to FOWS Comment #13: DNRC will edit the proposed rule to reference road and culvert inspections and corrective action timelines that were committed to in the Department's HCP. Under road inventory procedures outlined in the HCP, all culverts would be inventoried and evaluated as part of the road inventory process.

(FOWS Comment #14)

(14) **Do not delete the third sentence and revise to:**
Inspections would occur at least annually.

DNRC Response to FOWS Comment #14: DNRC annually inspects primary closures on restricted roads in Grizzly Bear Recovery Zones, which represents approximately 650 closures, prior to each fall hunting season. Closures outside Grizzly Bear management areas

are inspected during road inventory timelines, during project development and ongoing administrative duties. This approach prioritizes closures protecting high resource value areas while balancing inspection timelines committed to under the HCP and department staff resources. Based on public comment, this language was revised to the following to clarify the role of the HCP inventory schedule and resource value assessment in determining the prioritization of road monitoring:

“The department shall assess road maintenance needs by inspecting conditions on both open and ~~restricted closed roads~~ as determined by the inventory schedule described in the departments HCP 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 HCP.”

(FOWS Comment #15)

4. 36.11.425 Watershed Management - Streamside Management Zones, Equipment Restriction Zones, and Riparian Management Zones

(1) Retain "or on sites that are adjacent to fish bearing streams or lakes."

DNRC Response to FOWS Comment #15: The reference to sites adjacent to fish bearing streams and lakes has been retained in ARM 36.11.425(5) per the commenters recommendation.

(FOWS Comment #16)

(4)(b)(ii) Revise to:

The department shall not allow the operation of wheeled or tracked equipment within an ERZ when it located on slopes less than 35 percent.

DNRC Response to FOWS Comment #16: Soil monitoring results conducted by DNRC (DNRC 2009, 2011) has consistently shown soil impacts increase as local ground slope increases. Data from this monitoring efforts supports the prohibition of equipment operations within ERZ's when local slopes exceed 35 percent. Soil monitoring data and BMP audit results also provide evidence that frozen, dry or snow-covered conditions is an excellent mitigation against excessive soil displacement, compaction and subsequent erosion. Between prohibitions and restrictions within ERZ rules and the Montana SMZ law, DNRC is confident water quality can be fully protected from sediment delivery adjacent to streams during forest management activities.

(FOWS Comment #17)

(5)(a)

Restricting a 100 year site index tree height to 80 feet is not consistent with the HCP at page 2-69 which states: "Site index tree height at age 100 years for a given site was selected as the most practical and effective indicator for identifying the area where forest practices are most likely to affect riparian functions and biological objectives addressed under this strategy. The site index tree height at age 100 years in most DNR streamside riparian stands generally ranges from approximately 30 - 120 feet. The actual site index is largely dependent on the soil and climate of the landscape and other factors affecting the specific productivity of an individual site, but it is measurable at each site."

DNRC Response to FOWS Comment #17: DNRC has restricted the minimum width of the Riparian Management Zone to 80 feet adjacent to all class one streams. There is no maximum constraint, though site potential tree height at 100 years in Montana is rarely over 120 feet. The

proposed rule states, “have a minimum width equal to the 100-year site index tree height, or 80 feet, *whichever is greater*” thus allowing RMZ widths to be wider than 80 feet but never under that value.

(FOWS Comment #18)

The ARMs should not mandate that it be capped at 80 feet.

DNRC Response to FOWS Comment #18: DNRC has restricted the minimum width of the Riparian Management Zone to 80 feet adjacent to all class one streams. There is no maximum constraint, though site potential tree height at 100 years in Montana is rarely over 120 feet. As indicated in Response to FOWS Comment #17, the proposed rule states, “have a minimum width equal to the 100-year site index tree height, or 80 feet, *whichever is greater*” thus allowing RMZ widths to be wider than 80 feet but never under that value.

(FOWS Comment #19)

5. 36-11-432 Grizzly Bear Management and Programmatic Rules

• (4)(d)

The proposed rule allows maintenance of up to 15 miles of usable temporary roads within the Stillwater block, which shall be built to a minimum standard and reclaimed within one operating season following completion of project related activities.

This is not consistent with the HCP at page 2-21 which states:

"In addition to the permanent roads identified in the transportation plan, DNRC may maintain up to 8 miles of temporary roads at any one time. These roads will be built to a minimum standard and abandoned or reclaimed within one operating season following completion of project-related activity."

The ARMs should conform to the HCP which only allows up to 8 miles of temporary roads at any one time.

DNRC Response to FOWS Comment #19: The allowance of temporary road up to 15 miles includes 7 additional miles of temporary road allowance for lands not covered under the HCP that are newly acquired on the Stillwater Unit. Allowing for temporary road construction and use greatly reduces the need to create and maintain permanent drivable restricted roads on the landscape. As such, they are an important conservation tool used to lessen disturbance to grizzly bears. The added 7 miles include only those amounts allowed under conservation easements tied to newly acquired lands. DNRC must track and not exceed amounts strictly allowed under each easement. See also ARMs 36.11.432(4)(d)(i) and (ii). Adhering to the original 8 miles of temporary road identified for HCP-covered lands would allow for no proportional increase associated with the recent acquisitions, which would impair the ability to meet sustainable harvest objectives for Stillwater Unit.

(FOWS Comment #20)

• Please correct the following inconsistencies between the proposed ARMs and the settlement agreement between Friends of the Wild Swan, et al. and DNRC that apply to the seven geographically distinct security zones in the Stillwater block that comprise 22,007 acres.

(4)(g)(vii)

The proposed rules state: the department will minimize the duration of low intensity forest management activities near security zones to the extent practicable.

The settlement agreement between Friends of the Wild Swan, et al. and DNRC at 2g states: DNRC will minimize the duration of administrative activities near Security Zones to the extent practicable.

DNRC Response to FOWS Comment #20: Comment noted. The suggested correction will be made as requested.

(FOWS Comment #21)

(4)(g)(xii)

The proposed rule states: 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
The settlement agreement between Friends of the Wild Swan, et al. and DNRC at 2b states:
Motorized activities will be allowed during the grizzly bear denning season only, November 16 - March 31 (denning season)

DNRC Response to FOWS Comment #21: This ARM in question was originally included in rules in the June 2016 revision. The language of the original rule [36.11.432(1)(b)(iii)] was as follows: “(iii) allow commercial forest management activities below 6,300 feet elevation during the denning period of each year.” The slight wording difference simply reflects editorial changes to improve the consistency of rule language between the 2016 and proposed 2020 versions. The draft proposed rules (as did the 2016 ARMs) also include a rule [36.11.432(4)(g)(iii)], which is important for interpretation of (4)(g)(xii). That sub-rule prohibits all defined forms of motorized use outside of the November 16 – March 31 denning season. These rules clarify with appropriate definitions what activities are and are not allowed within security zones as agreed. DNRC has packaged the proposed rule set to implement the exact intent and dates of the settlement agreement language. Specifying that commercial forest management activities are allowed in security zones during the winter period below 6,300 feet is an important HCP restriction required to reduce potential disturbance of denning grizzly bears in winter at high elevations. We believe this language accurately captures the requirements of the settlement agreement and the HCP, while providing clarity needed by DNRC specialists and managers for proper implementation.

(FOWS Comment #22)

• (6)(f)(iv) does not include the Missoula Unit - 45 days

DNRC Response to FOWS Comment #22: At the time the HCP was adopted, DNRC was also in the process of relinquishing all Missoula Unit-managed lands existing within the NCDE Grizzly Bear Recovery Zone to the Confederated Salish and Kootenai Tribes. The Missoula Unit no longer has ownership in the recovery zone or need for this 45-day allowance. Therefore, it was removed from the proposed ARMs.

Thank you for addressing these issues.

/s/Arlene Montgomery
Program Director



July 27, 2020

Mr. Dan Rogers Bureau Chief
Montana Department of Natural Resources and Conservation
Trust Management Division
2705 Spurgin Road
Missoula, MT 59804

RE: Amendment and Repeal of Forest Management ARMs

Dear Mr. Rogers,

The mill manufacturing members of the Montana Wood Products Association would like to take this opportunity to comment on the above referenced proposed state actions.

(MWPA Comment #1)

While we recognize the need for periodic review and update of the Administrative Rules of Montana (ARMs), we strongly urge the Trust Management Division to separate the proposed changes into segments and bring each segment to the Land Board for adoption as each segment is thoroughly reviewed and digested by the public.

DNRC Response to MWPA Comment #1: In winter 2019, the DNRC Forest Management Bureau Planning Team was charged with comprehensively evaluating the existing ARMs ruleset for necessary revisions. To ensure a thorough review, the planning team carefully examined the entire rule set. More specifically, the planning team reviewed all portions of ARMs and their definitions that were out of date or inconsistent with other plans, were needed to address new science, or that required revision to help field staff effectively implement and interpret important measures needed to ensure legally defensible project implementation on state trust lands. In conjunction with this review, as periodically required for all state agencies in Montana, a decision was made by the Forest Management Bureau Chief to incorporate all applicable commitments of the DNRC Forest Management Habitat Conservation Plan (HCP) into ARMs for clarity, efficiency, and consistency, and to replace an existing non-descriptive rule adopted in 2012 that serves to implement the HCP in whole by reference (ARM 36.11.470). In January 2020 the fully revised draft rule set was provided to all Forest Management Program personnel to review for accuracy, clarity and implementation feasibility. All comments from staff were addressed in conjunction with numerous calls and communications with managers, field foresters, and resources specialists.

Minor revisions to the Forest Management ARMs were completed several times since their original adoption in 2003 to address: 1) statutory changes in timber permit allowances, 2)

adoption of the HCP in 2012, 3) an HCP settlement agreement to comply with a federal court order, and 4) to clarify the legal implementation requirements of ARMs associated with conservation easements that are tied to many lands recently acquired by DNRC (ARM 36.11.471). Additionally, since the original full rule set was adopted in 2003, DNRC has acquired approximately 100,000 acres of forest land, the gray wolf and bald eagle were removed from the federal list of Threatened and Endangered species, and recent legislation was passed effectively repealing the timber conservation license process (ARM 36.11.451 through 36.11.456) further underscoring the need to revise the current ARMs.

So why embark on such a large, comprehensive revision of Forest Management ARMs at this time versus conducting rulemaking under several smaller processes?

First, the MAPA process is an important, involved programmatic endeavor that typically requires 3 to 6 months to complete. While it may seem that it would be beneficial to break up the process into smaller bites, it would undoubtedly require considerably more time and resources to complete; possibly up to two additional years. Scaling back considerably on the scope of the ARM revisions at this juncture, would likely result in the loss of at least 6 months of work and a restart of this process, given the maximum 6-month process duration required by MAPA.

Second, during the time expended on additional rule making processes under a piecemeal approach, inconsistencies, and project implementation and analysis inefficiencies would persist unnecessarily. Further, a piecemeal approach would not address inconsistencies and possible program legal vulnerabilities right now and could potentially maintain disarray in DNRC's forest management guiding policy for years to come. As we have witnessed in the recent past, things such as new large programmatic projects and litigation can shift work priorities of our limited staff, which can shelve needed ARM revision processes for years.

Third, the analysis work is done. The proposed rule revisions, with a few exceptions, represent the culminating phase of 10 years of staff investment negotiation, environmental analysis and public involvement associated with the HCP and 2018 Amendment. Further, the vast majority of the proposed changes have been implemented in the program in practice since 2012 under the HCP as required under the "rule-by-reference" (ARM 36.11.470). All of the corresponding MEPA decisions, NEPA decisions, Biological Opinions, and court ordered settlement agreement are a part of the public record and can be made available upon request. Years and years of analysis work have been accomplished and codifying this work in rule is all that remains.

From the beginning of this rulemaking process the planning team recognized that the number and nature of proposed ARM revisions would appear daunting to reviewers, and we are sympathetic to that fact. While large and ungainly in appearance to those largely unfamiliar with the content and measures contained in the HCP, the planning team believes finalizing this rule set is necessary to ensure the viability and defensibility of our forest management program at the present time and the vast majority of the effort and work to be completed is done. We also note that many of the changes involve the repeal of ARMS, and/or markup that represents repeal and replacement with other rules. DNRC believes the most appropriate and responsible action to take is to make all known and necessary revisions now in this important comprehensive process. It makes little sense to leave some ARMs out to address another day when we clearly know all proposed revisions are warranted now when the vast majority of work has been completed to finalize the process.

(MWPA Comment #2)

For instance, HB 70 Change to Timber Permit Limits, and HB 441 Elimination of Timber Conservation License were passed by the 2019 legislature and should be adopted by rule. Additionally, rule changes necessary due to delisting of the Gray Wolf and Bald Eagle are ripe for adoption as well.

DNRC Response to MWPA Comment #2: DNRC agrees with the commenter and has incorporated these proposed changes into the Proposal Notice filed with the Secretary of State. While large and ungainly in appearance to those largely unfamiliar with the content and measures contained in the HCP, the planning team believes finalizing this comprehensive rule set is necessary to ensure the viability and defensibility of our forest management program at the present time and the vast majority of the effort and work to be completed is done. We also note that many of the changes involve the repeal of ARMS, and/or markup that represents repeal and replacement with other rules. DNRC believes the most appropriate and responsible action to take is to make all known and necessary revisions now in this important comprehensive process. It makes little sense to leave some ARMs out to address another day when we clearly know all proposed revisions are warranted now when the vast majority of work has been completed to finalize the process.

(MWPA Comment #3)

However, other proposed changes that are more controversial and involved, need further review and vetting and should be set aside and given an opportunity for further discussion.

DNRC Response #3: Please refer to DNRC Response to MWPA Comment #1.

(MWPA Comment #4)

Specific issues of concern include expansion of the entire forest management ARM to all trust lands, proposed amendments to the definitions, and other changes that significantly impact resource management.

Expansion of ARMs to all trust lands is a significant increase in the scope of the application of the rules. We do not believe the proposed expansion has been thoroughly examined. What impact will the expansion have on RMZ's and ERZ's on lands outside of the HCP? The recent adoption of the Sustained Yield Calculation shows that management constraints result in a twenty-five percent reduction in the annual sustained yield. The economic impact of the expansion needs to be fully understood and disclosed. There are numerous concerns with proposed amendments to the definitions that are highlighted and explained in comments submitted by mill members of the association. These concerns need to be thoroughly reviewed and opportunity given to the public for further discussion and resolution prior to asking the Land Board to adopt.

DNRC Response to MWPA Comment #4: The stated 25% yield reduction is in reference to the level of constraint on harvestable timber volume DNRC expects from the maximum amount of volume that could be expected to be biologically produced on DNRC's commercial timberlands. It is important to note that a significant portion of the 25% referenced is influenced by deferred lands that simply cannot be conventionally or legally accessed at this time. Thus, this percentage reflects more than what would be constrained by ARMs alone. Constraints are an important and necessary reality for the for the Forest Management Program to ensure program credibility, sound stewardship, scientific defensibility, and viability into the future (SFLMP, ROD 1996; HCP Amendment ROD, 2018).

The 2020 Sustainable yield calculation had 750,000 acres of commercial forest land available for harvest before constraints were applied. This includes both forest and non-forest lands. Approximately 630,000 of these acres or 84%, has been managed under the proposed ARM revisions for the past 10 years, equating to approximately 85% of the sustainable yield for this same 10-year period. Coupled with the addition of approximately 14,000 acres of acquired forest land and adjustments made to identified acreage deferrals, the 2020 SYC

resulted in a 17% increase in the annual sustainable yield further supporting that no economic impact would result to trust beneficiaries as a result of adopting the proposed rules.

DNRC has provided numerous economic assessments pertaining to the cost and feasibility of implementing constraints on DNRC lands. The HCP FEIS analysis and sustainable yield calculation conducted in 2011 addressed and disclosed the cost to the program of implementing the strategies. As hinted in the comment, the most recent sustainable yield calculation provides one of the best stepwise analyses of the cumulative reduction of volume the various program constraints represent across both HCP and non-HCP covered commercial forest lands. These analyses were disclosed to the public and can be found on the DNRC website or made available upon request.

(MWPA Comment #5)

Proposed rule changes to biodiversity, road, and watershed management walk on the current Streamside Management Zone law. The stream buffers in the SMZ is proven effective in protecting our precious water resources and has done so for over 24 years.

DNRC Response to MWPA Comment #5: DNRC agrees that the Streamside Management Zone law has been highly successful at preventing water quality impacts from sediment delivery during forest management activities. No changes to the law or its implementation on state trust land is proposed here. While buffers applied under the SMZ Law in Montana have been shown to provide sufficient protection to stream temperature, fish communities, and canopy cover in some instances, the broader body of scientific research generally indicates that increased buffer width enhances protective measures afforded to aquatic resources. These findings largely corroborate results obtained from DNRC's monitoring of RMZs during the first 5 years of HCP implementation. Further research is warranted regarding the law's effectiveness with respect to other stream metrics such as, large woody debris recruitment, habitat complexity, microclimate modification and ramifications of climate change. DNRC's ongoing monitoring efforts are focused on providing additional information and clarity to the above referenced response variables.

DNRC managers also have additional realities to consider. By adopting the Forest Management HCP and acquiring numerous new forested lands with attached conservation easements, DNRC has further legal obligations now pertaining to timber management within riparian habitats. We believe that having the proposed rule set in place, will greatly aid the consistent, effective, and efficient analysis and implementation of forest management activities on state trust lands. While additional measures and constraints are required now on HCP-covered lands and various easement lands, the DNRC Forest Management Program and trust beneficiaries have benefitted from both the HCP, and acquisition of easement lands that were generally acquired at low cost. The HCP has clarified DNRC's obligations under the Endangered Species Act and provides management certainty into the future. Beneficiaries have also recently realized considerable sustainable volume increases associated with new land acquisitions containing easements. We believe that these are important realities to consider.

(MWPA Comment #6)

The proposed changes to the threatened and endangered species is significant. The effects of expanding rules for lynx as adopted under the HCP to all trust lands has not been analyzed or disclosed. If adopted, the effect will result in more complexity and management challenges, not less. In addition, proposed changes to grizzly bear management and management of sensitive species has not been fully analyzed and will have significant impact on resource management.

DNRC Response to MWPA Comment #6: The proposed rule revisions, with a few exceptions, represent the culminating phase of 10 years of staff investment in negotiation, environmental analysis and public involvement associated with the HCP and 2018 Amendment. Thus, significant analysis and disclosure has taken place. Further, the vast majority of the proposed changes have been implemented in the program in practice since 2012 under the HCP as required under the “rule-by-reference” (ARM 36.11.470). All of the corresponding MEPA decisions, NEPA decisions, Biological Opinions, and court ordered settlement agreement are a part of the public record and can be made available upon request. Years and years of analysis work have been accomplished and codifying this work in rule is all that remains.

The proposed textual changes to ARMs pertaining to Threatened and Endangered species appear significant but are not significant regarding implementation as they simply reflect inclusion of the full text of HCP measures that have been in place since 2012 on 550,000 acres of DNRC-managed forest land in western Montana. The application of measures to other lands as implied in this comment that are not currently covered under the HCP would be expected to have no measurable additional effect on the forest management program given that the distribution of these two species and habitat suitability are limited considerably in eastern Montana.

Continuing to have sound, science-based measures in place to limit potential “take” of threatened and endangered species is important given that DNRC is required, as are other state and private entities to comply with Section 10 of the Endangered Species Act and not “take” listed species. This is true in DNRC’s case even on lands not covered under the HCP. It is important to note that *existing ARMs* are currently in place for these species in these same areas that would otherwise remain on the books, which provide equally if not greater constraint effect on the program. They also are out of date and create confusion for field practitioners and the public. Under either rule set, given the lower general quality and amounts of suitable habitats found in areas in eastern Montana, constraining effects on the program regarding implementation, procedures, or harvest volume would be very minimal. The benefits of having these clear, consistent forest management rules and definitions to be applied across the state are critically necessary to promote process efficiency and long-term defensibility of the Forest Management Program.

(MWPA Comment #7)

Again, the Division is hoping to adopt the culmination of 17 years of proposed changes in one fell swoop without analysis and disclosure. We strongly urge you to separate the proposed changes into segments and move to adoption as more information is available and more deliberation is given to each area of concern.

DNRC Response #7: Please refer to DNRC Response to MWPA Comment #1 and #6 above.

Thank you for this opportunity to comment.

Sincerely,

Julia Altemus

Julia Altemus
Executive Director



F.H. STOLTZE LAND & LUMBER COMPANY

Lumber Manufacturers

Box 1429 Columbia Falls, MT 59912
Phone (406) 892-7005 Fax (406) 892-1612
www.stoltzelumber.com

July 22, 2020

Montana Department of Natural Resources and
Conservation Trust Management Division

Attn: Sierra Farmer 2705 Spurgin Road
Missoula, MT 59804

RE: Amendment and Repeal of various Forest Management ARMs

To Whom it May Concern,

(FHS Comment #1)

Please accept the following comments, observations and questions regarding the amendment and repeal of various ARMs affecting the management of forested State trust lands on behalf of F.H. Stoltze Land & Lumber Co.

As a general statement, while we recognize the need for periodic review and update of ARMs to be responsive to changes in statute and procedure, **the extent of the proposed changes causes great concern for unintended consequences and increased exposure to litigation from critics and detractors of State Trust Land Management. We wonder if taking a phased approach may allow for better validation of the efficiencies expected rather than throwing all eggs in one basket at one time.**

DNRC Response to FHS Comment #1: In winter 2019, the DNRC Forest Management Bureau Planning Team was charged with comprehensively evaluating the existing ARMs ruleset for necessary revisions. To ensure a thorough review, the planning team carefully reviewed the entire rule set. More specifically, the planning team reviewed all portions of ARMs and their definitions that were out of date or inconsistent with other plans, were needed to address new science, or that required revision to help field staff effectively implement and interpret important measures needed to ensure legally defensible project implementation on state trust lands. In conjunction with this review, as periodically required for all state agencies in Montana, a decision was made by the Forest Management Bureau Chief to incorporate all applicable commitments of the DNRC Forest Management Habitat Conservation Plan (HCP) into ARMs for clarity, efficiency, and consistency, and to replace an existing non-descriptive rule adopted in 2012 that serves to implement the HCP in whole by reference (ARM 36.11.470). In January 2020 the fully revised draft rule set was provided to all Forest Management Program personnel to review for accuracy, clarity and implementation feasibility. All comments from staff were



Good for you. Good for our forests.
www.sfi-program.org
SFI-00160



addressed in conjunction with numerous calls and communications with managers, field foresters, and resources specialists. Minor revisions to the Forest Management ARMs were completed several times since their original adoption in 2003 to address: 1) statutory changes in timber permit allowances, 2) adoption of the HCP in 2012, 3) an HCP settlement agreement to comply with a federal court order, and 4) to clarify the legal implementation requirements of ARMs associated with conservation easements that are tied to many lands recently acquired by DNRC (ARM 36.11.471). Additionally, since the original full rule set was adopted in 2003, DNRC has acquired approximately 100,000 acres of forest land, the gray wolf and bald eagle were removed from the federal list of Threatened and Endangered species, and recent legislation was passed effectively repealing the timber conservation license process (ARM 36.11.451 through 36.11.456) further underscoring the need to revise the current ARMs. So why embark on such a large, comprehensive revision of Forest Management ARMs at this time versus conducting rulemaking under several smaller processes?

First, the MAPA process is an important, involved programmatic endeavor that typically requires 3 to 6 months to complete. While it may seem that it would be beneficial to break up the process into smaller bites, it would undoubtedly require considerably more time and resources to complete; possibly up to two additional years. Scaling back considerably on the scope of the ARM revisions at this juncture, would likely result in the loss of at least 6 months of work and a restart of this process, given the maximum 6-month process duration required by MAPA.

Second, during the time expended on additional rule making processes under a piecemeal approach, inconsistencies, and project implementation and analysis inefficiencies would persist unnecessarily. Further, a piecemeal approach would not address inconsistencies and possible program legal vulnerabilities right now and could potentially maintain disarray in DNRC's forest management guiding policy for years to come.

Third, the analysis work is done. The proposed rule revisions, with a few exceptions, represent the culminating phase of 10 years of staff investment negotiation, environmental analysis and public involvement associated with the HCP and 2018 Amendment. Further, the vast majority of the proposed changes have been implemented in the program in practice since 2012 under the HCP as required under the "rule-by-reference" (ARM 36.11.470). All of the corresponding MEPA decisions, NEPA decisions, Biological Opinions, and court ordered settlement agreement are a part of the public record and can be made available upon request. Years and years of analysis work have been accomplished and codifying this work in rule is all that remains.

From the beginning of this rulemaking process the planning team recognized that the number and nature of proposed ARM revisions would appear daunting to reviewers, and we are sympathetic to that fact. While large and ungainly in appearance to those largely unfamiliar with the content and measures contained in the HCP, the planning team believes finalizing this rule set is necessary to ensure the viability and defensibility of our forest management program at the present time and the vast majority of the effort and work to be completed is done. We also note that many of the changes involve the repeal of ARMS, and/or markup that represents repeal and replacement with other rules. DNRC believes the most appropriate and responsible action to take is to make all known and necessary revisions now in this

important comprehensive process. It makes little sense to leave some ARMs out to address another day when we clearly know all proposed revisions are warranted now when the vast majority of work has been completed to finalize the process.

(FHS Comment #2)

While we will identify some specific issues and areas of concern, due to the complexity of the proposed language, unknown relationships to other agreements and direction and overall scale and scope of proposed changes, it is nearly impossible for a third party such as ourselves to fully understand the scope and effect of the proposed changes. We trust that the Agency has reviewed the proposed changes with a critical eye and fully considered the potential negative consequences in balance with potential efficiencies and improvements, but how do we know? **What if any level of MEPA has been conducted and provided to the public on the proposed changes? We would hope to see an evaluation of the specific effects of the proposed changes in comparison to the no-action alternative of the status quo on a line by line basis.** We honestly don't understand how an informed decision can be made without such a review.

DNRC Response to FHS Comment #2: An environmental assessment was completed by the Department that analyzed the effects of adopting the proposed rules. Effects of the conservation strategies proposed in these rule changes have been significantly analyzed in the DNRC HCP EIS, Supplemental EIS and subsequent Biological Opinions issued by the US Fish and Wildlife Service (USFWS). Effectiveness of the proposed rule revisions have also been monitored for the past ten years and reported to the public, Montana land board, DNRC leadership and the USFWS both annually and more in depth at 5-year increments. These documents can be found on the Department's website (<http://dnrc.mt.gov/divisions/trust/forest-management/hcp>). Additional information regarding implementation of the ARMs and HCP on the Forest Management Program can be found in the State Forest Land Management Plan and Rules Monitoring Reports covering years 1997 to 2016.

In winter 2019 the planning team began carefully reviewing the entire rule set. More specifically, the planning team reviewed all portions of ARMs and their definitions that were out of date or inconsistent with other plans, were needed to address new science, or that required revision to help field staff effectively implement and interpret important measures needed to ensure legally defensible project implementation on state trust lands. In conjunction with this review, as periodically required for all state agencies in Montana, a decision was made by the Forest Management Bureau Chief to incorporate all applicable commitments of the DNRC Forest Management Habitat Conservation Plan (HCP) into ARMs for clarity, efficiency, and consistency, and to replace an existing non-descriptive rule adopted in 2012 that serves to implement the HCP in whole by reference (ARM 36.11.470). In January 2020 the fully revised draft rule set was provided to all Forest Management Program personnel to review for accuracy, clarity and implementation feasibility. All comments from staff were addressed in conjunction with numerous calls and communications with managers, field foresters, and resources specialists.

Throughout all HCP negotiations with the U.S. Fish and Wildlife Service adoption of the HCP, and now during comprehensive review and revision of Forest Management ARMs, DNRC staff have considered both negative, as well as positive impacts on the program. We believe it is also important to note that the Sustainable Yield Calculations conducted in 2011, 2015, and most recently 2020, all incorporated constraints associated with the HCP and no additional measurable constraints would be expected for future calculations that would be associated with any of the proposed ARM revisions.

Also see DNRC Response to FHS Comment #1 above for additional details.

(FHS Comment #3)

One option to consider is to address the items that are driven by specific legislative change, HB 70 Change to Timber Permit Limits, HB 441 Elimination of Timber Conservation License. Some of the changes necessary due to delisting of the Wolf and Bald Eagle may be appropriate at this time.

DNRC Response to FHS Comment #3: DNRC agrees with the commenter and has incorporated these proposed changes into the Proposal Notice filed with the Secretary of State.

While large and ungainly in appearance to those largely unfamiliar with the content and measures contained in the HCP, the planning team believes finalizing this comprehensive rule set is necessary to ensure the viability and defensibility of our forest management program at the present time and the vast majority of the effort and work to be completed is done. We also note that many of the changes involve the repeal of ARMS, and/or markup that represents repeal and replacement with other rules. DNRC believes the most appropriate and responsible action to take is to make all known and necessary revisions now in this important comprehensive process. It makes little sense to leave some ARMs out to address another day when we clearly know all proposed revisions are warranted now when the vast majority of work has been completed to finalize the process.

(FHS Comment #4)

The other issues are large and deserving of full analysis and consideration of effects, specifically riparian and streamside management, grizzly bear management, Canada lynx management and Sensitive Species.

Each of which require detailed cross walk between existing rules and proposed changes to identify unintended consequences and inconsistencies. We suggest each would warrant its own rule change process with adequate notice and public involvement on a timeline more suited to careful consideration.

DNRC Response to FHS Comment #4: An environmental assessment was completed by the department that analyzed the effects of adopting the proposed rules. Effects of the HCP Conservation Strategies proposed for adoption have been extensively analyzed in DNRC HCP EIS, Supplemental EIS and subsequent Biological Opinions issued by the US Fish and Wildlife Service (USFWS). Effectiveness of the proposed rule revisions have also been monitored for the past ten years and reported to the USFWS both annually and more in depth at 5-year increments. Further, the most recent sustainable yield calculation (2020) provides a comprehensive stepwise analysis of the cumulative reduction of volume associated with this full set of program constraints applied across both HCP and non-HCP covered commercial forest lands. These analyses were disclosed to the public and can be found on the Departments website (<http://dnrc.mt.gov/divisions/trust/forest-management>).

In January 2020 the fully revised draft rule set was provided to all Forest Management Program personnel to review for accuracy, clarity and implementation feasibility. Detailed comments were received and fielded by the planning team from numerous veteran DNRC foresters and specialists, which greatly aided in our assessment of unintended consequences, inconsistencies, conflicts among various other rules and requirements. All comments from staff were addressed in conjunction with numerous calls and communications with managers, field foresters, and resources specialists.

(FHS Comment #5)

Specific issues of concern:

36.11.402 – Expansion of the applicability of the entire forest management ARM set to ALL trust lands, beyond just classified forestland is a significant increase in the

scope of application of these rules. **Has the impact of expansion of the rules to all lands been examined?**

DNRC Response to FHS Comment #5: Currently, the Trust Land Management Division manages approximately 5.2 million surface acres of land. The proposed rules would only apply to forest management activities that occur on trust lands which in the 2020 Sustainable Yield Calculation totaled approximately 750,000 acres. Of this commercial timber base, a sizable portion of the rules would not apply as T&E species rules are geographically explicit and would not be particularly constraining on most eastern area lands. It is also important to consider that many ARMs have been in place since 2003 on lands not covered under the HCP, particularly in eastern Montana. In a number of cases, such rules would be replaced with definitions and measures consistent with the HCP. That is, a new rule set would replace the other existing set. We believe the proposed revisions provide a reasonable and responsible changes that will promote analysis and management consistency, which are important program objectives. Overall, we anticipate required constraint levels of the revised ARMs in question to closely mirror those in existing rules, which does not represent a broad expansion of new requirements on additional lands.

(FHS Comment #6)

According to the recent sustained yield calculation report, there are roughly 750,000 acres of classified forestland and also another 180,000ac or non-classified forestland that now would be subject to these rules. Many of these lands are in eastern Montana and do not have the aquatic or wildlife resources that drive much of the ARMs. When the issue of streamside management is looked at, you are expanding extremely aggressive buffer systems from roughly 550,000ac covered under the HCP to the entire 930,000ac of forest land under Trust management. This is nearly a doubling of the impact of said restrictions.

What is the impact to management of those acres of things like RMZ's ERZ's and some of the wildlife constraints? The recent Sustained Yield Calculation (SYC) clearly shows that management constraints have significant impact on Trust Land Management, resulting in more than a 25% reduction in annual sustained yield harvest. **At a minimum, the economic impact to the Trusts of expansion of all constraints across all forest land needs to be disclosed.**

DNRC Response to FHS Comment #6: The stated 25% yield reduction is in reference to the level of constraint on harvestable timber volume DNRC expects from the maximum amount of volume that could be expected to be biologically produced on DNRC's commercial timberlands. It is important to note that a significant portion of the 25% referenced is influenced by deferred lands that simply cannot be conventionally or legally accessed at this time. Thus, this percentage reflects more than what would be constrained by ARMs alone.

The 2020 Sustainable yield calculation had approximately 750,000 acres of commercial forest land available for harvest before constraints were applied. This includes both forest and non-forest lands. Approximately 630,000 of these acres or 84%, has been managed under the proposed ARM revisions for the past 10 years, equating to approximately 85% of the sustainable yield for this same 10-year period. All the proposed rules were modeled as constraints in the 2020 SYC, including approximately 30,000 acres within RMZ's. Coupled with the addition of approximately 14,000 acres of acquired forest land and adjustments made to identified acreage deferrals, the calculation resulted in a 17% increase in the annual sustainable yield. This most recent SYC further supports the fact that no additional economic impact would result to trust beneficiaries as a result of adopting the proposed rules.

DNRC has provided numerous economic assessments pertaining to the cost and feasibility of implementing constraints on DNRC lands. The HCP FEIS analysis and sustainable yield calculation conducted in 2011 addressed and disclosed the cost to the program of implementing the strategies. As hinted in the comment, the most recent sustainable yield calculation provides one of the best stepwise analyses of the cumulative reduction of volume associated with the various program constraints represent across both HCP and non-HCP covered commercial forest lands. These analyses were disclosed to the public and can be found on the DNRC website or made available upon request.

Equipment Restriction Zones would not limit management objectives within these zones but would limit what types and what conditions specific equipment can be used within them. No retention requirements are prescribed within ERZ's.

Riparian Management Zones have been implemented adjacent to fish bearing streams on State trust lands since the initial adoption of Forest Management Rules in 2003. This policy has been implemented statewide during forest management activities, regardless of land classification. The primary change under the HCP is the application of RMZ's on all Class I streams, regardless of the stream's ability to support a fishery. This constraint was again modeled for the entirety of the commercial forest land base in the 2020 SYC in the form of a 50 foot "grow only" constraint on all Class I streams. Application of the proposed rule on non-HCP covered lands would result in approximately 1,977 acres of additional managed RMZ acres, where 50% retention would be required. DNRC maintains the management flexibility to harvest within this portion of the riparian buffer under both the SMZ law and the proposed RMZ buffer, and as a result, would have minimal economic impact to trust beneficiaries.

(FHS Comment #7)

36.11.403 Definitions:

11. Biological Infestation: As written, how will the agency prove that an insect or disease outbreak will "threaten mortality to 25% or more of the standing live trees". What scale is this statement measure upon? Stand level? Per acre? Per forest? Statewide? Who will judge "threaten mortality"? We encourage an alternate definition that does not include a specific % threshold, defines the scale the infestation is to be measured on or better yet, leaves it up to the discretion of the department to define on a case by case basis.

DNRC Response to FHS Comment #7: The sole purpose of this definition in rule is to provide a measurable metric and threshold necessary to determine when an RMZ harvest allowance may be triggered under ARM 36.11.425(8). Maintaining the percentage in rule is important for objective and consistent application of the rule allowance. The scales of application would typically be the stand or project area, and determinations would be made on a case by case basis by resource specialists and project leaders. Visual estimation may be used for this determination where the percentage is clearly exceeded by the presence of dead or infested trees. In situations where the level of existing infestation may be questionable, measurable fixed or variable standard mortality plots would be used.

(FHS Comment #8)

30. "Fire or Other Damage" As written, it seems the tree would need to be dead prior to being able to salvage or take other management activity. "...agents that causes the tree to die". As we know, specifically with fire damage, mortality may take a year or two to happen, yet the likelihood of mortality may be extremely high. **We**

encourage more broad language that when strictly interpreted does not require the tree to die before action is taken.

DNRC Response to FHS Comment #8: The definition of “Fire or Other Damage” would not itself require a tree to be dead prior to salvage, and the department would retain discretion in determination of the probability of mortality and salvage objectives for affected stands. Additional clarification regarding this topic is provided in the definition of “Salvage.” (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.

(FHS Comment #9)

34. Forest Management Activities: (q) gravel quarrying: While we would agree that gravel extraction in conjunction with road maintenance or construction activity associated with other forest management activities should be included, as strictly interpreted, this would include commercial pit development for commercial sale and off site use to fall under Forest Management Activities, which could be problematic in many ways. We suggest you qualify the activity to be in conjunction with trust land forest management activities.

DNRC Response to FHS Comment #9: All definitions contained in the ARMs are used strictly for the purpose of interpretation and application of the rule set as the terms are specifically used in rule. We believe its use and inclusion in the draft rule set is appropriate and serves the intended purpose. Gravel quarrying is a defined forest management activity in the DNRC Forest Management HCP and would be now under the proposed rule revision. However, it’s inclusion would not prevent revenue generation or development of gravel operations for other purposes. The numbers of active operations allowed at one time are managed across each DNRC administrative unit to minimize disturbance to grizzly bears. DNRC retains the discretion to determine which pits to manage as active and which pits to close. Gravel measures have been implemented in this manner since 2012 with minimal conflict under the Forest Management HCP.

(FHS Comment #10)

44, 45,61, 95,96, 97, 109. Dealing with Lynx: These definitions are relatively strict and descriptive, yet farther along in the ARM’s there is a process where agency professionals define lynx habitat through mapping. We question if this sets up internal conflict between the definitions and the mapping exercise. We encourage you to re-write the definitions to give deference to designation by agency professionals. Similarly, the additional sections in the definition seem repetitive with what is included in the ARM for lynx management.

DNRC Response to FHS Comment #10: The definitions indicated in the comment are descriptive definitions that have ample detail included to allow for their interpretation and application of the rule set for Canada lynx. Detailed mapping protocols that tie directly to DNRC’s stand level inventory were cooperatively constructed with the U.S. Fish and Wildlife Service with input from Dr. John Squires (U.S. Forest Service research biologist) at the time the HCP was developed. These protocols tie directly to each type of lynx habitat defined in the ARMs definition section as referenced in this comment. The protocols and definitions were available for public review during the HCP development process and were originally adopted in the HCP in 2012. They were also deemed sufficient by both agencies during the HCP Amendment review completed in 2018. The habitat mapping protocols may be found in the HCP (2012, Vol. 3) on the DNRC website, or can be made available upon request. Commitments DNRC made in the HCP require that any changes to the mapping protocols be made in cooperation with the U.S. Fish and Wildlife Service given improved scientific information.

DNRC is required to provide changes to lynx habitat acreages annually to the U.S. Fish and Wildlife Service.

After reviewing the definitions and applicable ARMs given the prompt of this comment, we were unable to find any repetitive or confusing aspects warranting further clarification or revision. During completion of the original draft rule set under this MAPA process, the lynx rules and definitions were provided to all Forest Management Program personnel to review for accuracy, clarity and implementation feasibility. DNRC has been following these HCP lynx habitat definitions and procedures since 2012 with few problems. However, confusion regarding ARMs pertaining to lynx that pre-date the HCP that have remained on the books have proven confusing and problematic for field practitioners.

(FHS Comment #11)

47. Mechanized Activity (c) inclusion of snowmobiles: Winter is often the only time where access to some areas for vegetation analysis, pre-sale scouting and planning can take place. We don't understand this new inclusion of limitation on snowmobile access for administrative use during the GB denning season. The myth about snow compaction and lynx competition from other predators has been debunked. **We question why you would arbitrarily further reduce your management options.**

DNRC Response to FHS Comment #11: DNRC's management options have not been reduced arbitrarily by this rule. We agree that winter is an important time to conduct reconnaissance and timber sale preparation activities. This requirement is not a new measure and it has been in place since adoption of the HCP in 2012. It only applies in the case of grizzly bears in Recovery Zone areas on high elevation sites above 6,300 feet from November 15 through March 31 each year. Such areas on state trust lands represent a relatively small acreage and are typically marginally accessible in winter, even by snowmobile, due to deep snow conditions. There is no ARM that constrains use of snowmobiles in lynx habitat other than ARM 36.11.428(4)(c), which only prohibits use within 0.25 miles of a known active lynx den, which would be a rare occurrence. These measures were adopted after careful consideration of the best available science and DNRC's business needs, and they were fully analyzed and disclosed in the HCP development and adoption process.

(FHS Comment #12)

80, 89,90, Grizzly bear restrictions: Grizzly bear management restrictions are extensively covered in other various ARMs including these definitions is confusing, duplicative and potential conflicting with other sections. **Include this level of detail elsewhere, not in definitions.**

DNRC Response to FHS Comment #12: Following additional review at the suggestion of this comment, we believe the definitions as worded are appropriate and necessary for consistent and accurate implementation of the rule set. As previously indicated in other responses, these definitions and measures have been in place for a number of years in association with implementation of the HCP and have been reviewed in detail by Forest Management Program staff. We were unable to identify any conflicts with other sections in the rule set.

(FHS Comment #13)

103. Visual Screening: Inclusion of vague wording "capable of hiding a grizzly bear from view" will be problematic. The old definition properly gave some latitude in "makes it difficult to see into adjacent areas". "Hiding a grizzly bear" is not easy and extremely subjective. Don't tie your hands with statements like this. **We agree with removing the "typically 100 feet" but keep the remainder of the old definition.**

DNRC Response to FHS Comment #13: The definition of visual screening was adopted in the HCP in 2012 under that process and rationale for the requirement, and application of the associated rules can be found in the “Rationale” sections of the HCP for commitments GB-NR4 and GB-RZ2. The HCP provides allowances, which can be applied where circumstances exist that make it difficult to provide effective screening cover, or in situations where cover simply doesn’t exist.

(FHS Comment #14)

108 Wind Throw: The proposed definition is too narrow in “blown to the ground by wind”. Often times, wind throw only partially tips a tree, springing roots, but not blowing “to the ground”, give some latitude for professional foresters to make determinations.

DNRC Response to FHS Comment #14: This definition occurs for descriptive purposes in one rule (ARM 36.11.425(8)(c)) which pertains to an allowance to, “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 wind throw and/or severe or stand-replacement fires.” We believe the definition is adequate for the intended purpose and would not in any way prevent discretionary choices made by field foresters to make judgements regarding necessary silvicultural treatments.

(FHS Comment #15)

36.11.411 Biodiversity – Snags and Snag Recruits: The proposed changes claim to remove confusion. We disagree this is necessary. Trust land managers are professionals and regularly implement complex and site-specific constraints and management activities. Per the SYC, snag retention and recruitment is a significant constraint affecting long term production. Use the right tool in the right location, your professionals can handle it.

DNRC Response to FHS Comment #15: Comment noted. However, in practice since beginning management under the original ARMs in 2003, confusion has persisted between foresters and resource specialists regarding the application of this rule. Harvest units often encompass numerous patches that occur within differing habitat type groups as described in Green et al. (1992) creating confusion regarding how many and where to leave recruitment trees and snags, and how many are necessary on various sites when monitoring.

Large trees, and snags, which ultimately become down logs over time are important for maintaining long-term sources of seed for regeneration, soil structure and soil productivity, as well as important habitat attributes used by many species of wildlife. As such, they are important forest components to consider and retain to promote biodiversity as required by the State Forest Land Management Plan (SFLMP ROD 1996).

Monitoring conducted by DNRC since 2003 has frequently demonstrated that retention or large trees, and particularly snags is often operationally difficult, and that large trees and snags in many cases are simply not available to retain due to past management practices. Large snags are also frequently removed for firewood on all accessible sites. While the modeled effect reflected in the 2020 SYC suggested that significant levels of volume may be constrained due to leave trees, the ARMs allow for a significant portion (if not all) of the associated trees to be non-merchantable and/or cull with minimal economic value. The proposed revision to this ARM provides levels consistent with ranges reported by Harris (1999) regarding snag abundance in coniferous forests of western Montana. We believe that this minor revision to the existing ARM to increase retention by one large tree and one large snag on sites in dry to

moderately dry habitat type groups is reasonable, responsible and consistent with the intent of the SFLMP.

(FHS Comment #16)

36.11.421 Road Management: While we understand the desire to unburden the agency with arbitrary 5-year reinspection periods, removing any reference to a timeframe is equally problematic. Consider using less prescriptive language such as providing a range of time for reinspection while maintaining some level of accountability.

DNRC Response to FHS Comment #16: DNRC will correct this rule to reference the road inventory and corrective action timelines that have been outlined in the Habitat Conservation Plan to further define this rigorous road inventory commitment in rule.

(FHS Comment #17)

36.11.425 Watershed Management: We strongly object to the expanded buffers created in this definition, especially in the context of expanding these rules to encumber all lands, not just lands previously under the HCP.

Specifically, the expanded buffer widths have no basis in actual science of protection of water from sediment, pollution or temperature modification.

To the contrary, the science and 24 years of field reviews shows that the buffers created in the State of Montana Streams Side Management Zone law are sufficient and effective in protecting water quality.

DNRC Response to FHS Comment #17: The scientific findings referenced in the comment are unclear, but DNRC acknowledges the significant work and subsequent results of the statewide Best Management Practices field reviews lead by the DNRC, Forestry Division. While the department recognizes that BMP audits are an effective mechanism to assess the application and effectiveness of SMZ Law requirements on timber sales across the state, they do not provide specific data regarding the magnitude of protections afforded to aquatic resources. Furthermore, the existing science generally indicates increased buffer width enhances protective mechanisms provided to aquatic resources (Sweeney and Newboldt 2014), findings largely corroborated by DNRC results from monitoring of RMZs conducted during the first 5 years of HCP implementation.

As previously mentioned, the proposed rules would apply to approximately 750,000 acres of State trust lands where forest managements activities were modeled in the 2020 SYC and not all 5.2 million acres. However, a smaller subset of these 750,000 acres actually contain streams where these specific ARMs would apply. Specifically, Riparian Management Zones (RMZs) on this land base account for approximately 30,000 acres, which in the 2020 Sustainable Yield Calculation were modeled as “grow only” within the SMZ buffer of Class I streams. The proposed rule set is currently being implemented on approximately 22,000 acres of stream buffers on state trust land (73%). An additional 8,000 acres along Class I streams would be included under these rules with no effect to the annual sustainable yield and subsequent revenue. The managed portion of the RMZ (50 feet out to the site potential tree height), when applied to the additional lands under consideration in this rule, would be approximately 1,977 acres where 50% of the merchantable timber would be retained. The majority of these acres are within DNRC eastern area offices which are low in productivity due to their occurrence on warm, dry sites. These sites and associated stream networks are forecast to be most vulnerable to a warming climate as climate modeling has shown increases in background stream temperatures in Montana of up to 3 degrees Celsius by 2080 (Isaak et al. 2017). It is reasonable, responsible and appropriate for DNRC to expand this commitment to these lands which would be minimally impactful to the trust given the relative existing

abundance of unsellable standing volume due to poor market conditions and limited infrastructure in the area.

(FHS Comment #18)

When the HCP was negotiated, there was extensive environmental review, modeling and characterization of effects of the proposed restrictions. Yet under this rule change the number of acres affected by these restrictions is nearly doubling with NO analysis or disclosure of effects.

DNRC Response to FHS Comment #18: The number of acres affected by the ARM revisions is not nearly doubling. In the most recent sustainable yield calculation process, DNRC identified approximately 750,000 commercial forest acres. Of these acres 583,889 were allocated to management regimes and were included in solution (MBG 2020). The HCP (DNRC 2018) covers approximately 630,000 acres of forested trust land where associated stream buffers are currently applied. Thus, the gross expanded area where the revised ARM would apply would be on approximately 120,000 acres, primarily on land offices in eastern Montana. On these acres there are approximately 280 miles of class 1 streams that would be afforded protections on these added lands, which would result in approximately 1,977 acres of additional managed RMZ, where 50 percent retention would be required. The additional stream buffers would provide further resource protection as climate modeling has shown increases in background stream temperatures in Montana of up to 3 degrees Celsius by 2080 (Isaak et al. 2017). The environmental analysis completed by the Department for this ARM revision process disclosed the additional acres that would be affected by some rules. We further note that, coupled with the addition of approximately 14,000 acres of acquired forest land and adjustments made to identified acreage deferrals, the 2020 Annual Sustainable Yield model that included the proposed rule set as a constraint increased the annual sustainable yield by 17% over the calculation in 2015. Again, added resource protection in the wake of climate change, improving program consistency statewide, site productivity is relatively low, and that the availability of standing volume is not typically a limitation on these lands are important considerations that DNRC has taken into account.

(FHS Comment #19)

We are told this change is necessary because Trust Land foresters have a hard time understanding how the different management strategies are applied from one parcel to the next. That is absurd and quite honestly degrading to the professionals under your employ. The HCP has clear maps that identify parcels under its direction. The proposed rules require a significant amount of professional judgement and site-specific application decisions, determining which set of rules apply is likely the easiest decision they will have to make. The State SMZ law requires professional loggers, foresters and landowners to interpret and apply relatively complex decision-making criteria, yet Trust Land foresters are not able to meet that same standard? This appears to be a wholesale expansion of management restrictions without good justification or adequate examination of effects.

DNRC Response to FHS Comment #19: Comment noted. Please see response to comment #18 above. DNRC foresters with the aid of resource specialists have been implementing these measures on HCP-covered lands since 2012. DNRC believes that reference to the proposed ARM changes as a “wholesale expansion of management restrictions” is a mischaracterization. We believe that what is being proposed represents a very minor expansion of resource protection and that the proposed changes promote efficiency, consistency and are reasonable and responsible considerations (see also response to comment 18 above). The results of the 2020 Sustainable Yield Calculation show that the proposed rules would not limit the ability for DNRC to offer an increased volume of wood

products to the market under the modeled constraints proposed in these rules. Further, DNRC adequately analyzed and disclosed the effects of the proposed rules both at a programmatic level and individually through multiple Environmental Impact Statements and Biological Opinions.

(FHS Comment #20)

Under the HCP, the agency has chosen to utilize these expanded riparian buffers for other uses, specifically wildlife travel corridors, however, the intimation by this ARM is that the buffers are necessary for protection of water resources, which is misleading and detrimental to the integrity and effectiveness of the SMZ law and BMP program that is very successfully implemented across all other ownerships in the State.

DNRC Response to FHS Comment #20: DNRC agrees that riparian management zones are often mitigation areas for numerous species and critical resources by providing such benefits as hiding cover, migration corridors, microclimate regulation, sediment filtering, flood attenuation, stream shade and woody debris recruitment. This was done by design for several negotiated with the U.S. Fish and Wildlife Service that are contained in the HCP. DNRC fails to see how the proposed rules are detrimental to the Montana Streamside Management Zone law as the SMZ law is still retained in Forest Management Rules (36.11.302 thru 36.11.313) with no proposed changes considered. During the last few years while undergoing substantial programmatic policy development, the DNRC Forest Management program has provided appropriate analyses whenever warranted, provide ample opportunities for public comment, and provide transparency throughout our decision making and reporting processes. As previously mentioned, DNRC acknowledges the significant work and subsequent results of the statewide Best Management Practices field reviews lead by the DNRC, Forestry Division, as well as the effectiveness of the Montana Streamside Management Zone law in protecting water quality impacts resulting from forest management activities. DNRC considers the Forestry Division BMP Review Program as the cornerstone for ensuring clarity, consistency, integrity, and effectiveness of the SMZ law and BMP program in Montana.

(FHS Comment #21)

We strongly disagree with the blanket direction for “no harvest” buffers in the RMZ and CMZ areas. In order for any buffer, regardless of width, to be effective in protecting water quality or providing wildlife movement corridors, the vegetation must be managed to be thrifty and vibrant. Especially in Montana forest types, where natural vectors of change tend to be dramatic or even catastrophic in nature, adopting a “let nature manage” attitude in our most critical landscapes makes no sense.

Certainly, management objectives within the buffer should be modified to promote healthy and effective vegetative zones, but creating a starting point of no management is not responsible to either the trust or the natural environment you are stewarding. As currently worded, management is the “exception” to the rule and unfortunately usually conducted in response to either insect and disease activity or fire, after the damage is done. Proactive management is the best strategy for maintaining effective buffers.

DNRC Response to FHS Comment #21: Numerous opportunities exist in the proposed rules to manage within the “no harvest” portion of the RMZ as explicitly stated in 36.11.425(8). The outlined situations provide significant management flexibility to achieve desired future conditions within riparian management zones for a variety of species and/or beneficial uses. DNRC is unaware of the science supporting the claim that harvest within riparian buffers is necessary to maintain healthy forest stands capable of supporting multiple resource values.

The 50-foot no harvest buffer measure originated as a negotiated component of the HCP, and the buffers pertain to the most sensitive sites in riparian systems. At the time of negotiation, the necessary width was highly scrutinized by DNRC to maintain the important balance between resource protection and revenue generation. The agreed-to buffers help ensure adequate sediment filtration from upland sources, stream shading, and adequate large woody debris recruitment will be maintained. They further serve to buffer the effects of potential windthrow that can occur in association with adjacent harvest units intensively harvested to meet other important silvicultural objectives. Losses to windthrow can be substantial and they often go unnoticed, particularly on parcels in isolated or remote locations. Thus, information in this comment does not recognize that fact. The no harvest buffers are one part of an important suite of resource protection measures DNRC implements to ensure our commitment is met to support biodiversity and maintain a defensible and viable forest management program through time.

(FHS Comment #22)

36.11.428 Threatened and Endangered Species The proposed changes are significant on all fronts. Once again, under consideration of expanding the management direction for lynx developed in the context of the HCP (550,000ac) to all Trust lands (930,000ac), the effects simply have not been analyzed and disclosed. The justification is to simplify, yet the effect result in more complexity and management challenges. Especially as lynx populations continue to expand, understanding how to manage lynx outside of the HCP area deserves some discussion and analysis.

DNRC Response to FHS Comment #22: DNRC is not aware of any scientifically documented sustained expansion of lynx populations in Montana. The proposed textual changes to ARMs pertaining to Threatened and Endangered species appear significant but are not significant regarding implementation as they simply reflect inclusion of the full text of HCP measures that have been in place since 2012 on 550,000 acres of DNRC-managed forest land in western Montana. The application of measures to other lands as mentioned in this comment that are not covered under the HCP would be expected to have no measurable additional effect on the forest management program given that the distribution of lynx and grizzly bears and habitat suitability for them are limited considerably in eastern Montana. Continuing to have sound, science-based measures in place to limit potential “take” of federally listed threatened and endangered species is important given that DNRC is required to comply with Section 10 of the Endangered Species Act and not “take” listed species. This is true even on lands not covered under the HCP. It is important to note that existing ARMs are currently in place for these species in these same areas that would otherwise remain on the books, which are outdated and provide equally if not greater constraint effect on the program. Under either rule set, given the lower general quality and amounts of suitable habitats found in areas in eastern Montana, constraining effects on the program regarding implementation, procedures, or harvest volume would be very minimal. The benefits of having these clear, consistent forest management rules and definitions to be applied across the state are necessary to promote process efficiency and long-term defensibility of the Forest Management Program.

(FHS Comment #23)

36.11.432 Grizzly Bear Management and Programmatic Rules Given the ongoing discussion over grizzly bear management across the state, including convening a special governors Grizzly Bear Council, arbitrarily expanding grizzly bear management direction to all 930,000 ac of Trust Land with forest management activities is a big step. Much of the proposed grizzly bear management on the Stillwater unit is outside of the HCP process, was part of a negotiated lawsuit

settlement with no environmental analysis or public input. Similarly, the changes to the Swan Grizzly Bear Management program have been substantial over the last decade and will likely need to change going ahead. To adopt today's management practices as specific rules while in a rapidly changing management landscape may not be in the best interest of the State. Managing habitats going ahead will become more complex as populations increase and management objectives change. Tying the hands of land managers by adopting very prescriptive rules may not be the best strategy. The department regularly issues management direction based on current conditions and best science that needs to be responsive and adaptive in nature. The ARM process should be less prescriptive and allow adaptive management to take place on a regional and site by site, case by case manner that accounts for best available information and changing conditions.

DNRC Response to FHS Comment #23: DNRC is not arbitrarily expanding grizzly bear management direction across the state. Current ARMs that are dated would still apply to state trust lands on eastside land offices when forest management activities are conducted. These dated ARMs proposed for replacement have been on the books since 2003 when they were originally adopted. HCP measures have been implemented by DNRC since 2012 as required under ARM 36.11.470. Under this process, DNRC is proposing to adopt revised rules and definitions based on improved scientific information that have received considerable prior public review and analysis in cooperation with the U.S. Fish and Wildlife Service. As such, they serve to clarify DNRC's responsibilities under the Endangered Species Act, provide an efficient and consistent implementation framework, and ensure the long-term defensibility and credibility of the program with regard to endangered species concerns. These were identified important beneficial objectives of the HCP. Application of these ARMs would not create new onerous hardship for the program as implied in this comment given the minimally constraining characteristics of the revised ARMs themselves and the limited distribution of grizzly bears and Canada lynx in eastern Montana. See also Response 22 for further discussion regarding this point.

Appealing or addressing any aspect of the settlement agreement referred to in the comment is moot and beyond the scope of this proposal and process. The settlement agreement was agreed to in federal court in conjunction with a lawsuit involving the HCP on October 9, 2015. Cooperating in the settlement agreement discussions and coming to a prompt agreement was DNRC's preferred legal remedy to resolve the associated complaint in federal court. The all measures associated with the settlement agreement have been in place in the existing ARMs since 2016. Revisions proposed now related to the agreement pertain solely to necessary ARM organization and housekeeping needs.

DNRC is unclear what Swan Grizzly Bear Management "program" is being referenced in the comment. DNRC management pertaining to grizzly bear habitat in the Swan Valley was consistently and cooperatively conducted under the Swan Valley Grizzly Bear Conservation Agreement from 1995 until 2018. This Agreement was dissolved on August 31, 2018 at the request of DNRC to the U.S. Fish and Wildlife Service and U.S. Forest Service -- Flathead National Forest. At that time, the measures currently in use were analyzed and adopted through the 2018 HCP Amendment process. These measures (with minor revisions) were originally crafted, proposed and initially analyzed in the 2012 HCP public process as well. The relevant documentation can currently be found on DNRC's website. To be clear, DNRC undertook efforts to have measures in place for the Swan River State Forest in 2012 (that were further analyzed and adopted in 2018) to ensure program and policy stability and viability into the future. It is DNRC's intent that the measures currently being implemented on the Swan River State Forest will be those used for management with considerable certainty for the remainder of the HCP 50-year term. Again, to be clear, this effort only serves to provide more

certainty in terms of future policy changes pertaining to grizzly bears. One of the most significant, primary DNRC objectives for acquiring an HCP was for this stability and program certainty with regard to endangered species protections.

DNRC maintains discretion regarding future rule making and has ample options through the adaptive management process to make necessary adjustments or allowances over time. Thus, we disagree that adopting the proposed ARMs would tie the hands of forest managers. Adopting measures now pertaining to the Swan River State Forest through this process is simply an important and necessary house-keeping task to better organize and clarify for field staff and the public DNRC's commitments and protections for grizzly bears.

DNRC believes that the level of detail provided in the HCP and associated ARMs being proposed is adequate and appropriate for consistent, defensible, and efficient implementation on state trust lands. Adaptive management mechanisms are in place, and new, relevant scientific information is reviewed annually by DNRC in cooperation with the U.S. Fish and Wildlife Service as a part of required coordination and monitoring discussions.

(FHS Comment #24)

36.11.436 Sensitive Species: We agree that it makes sense to group sensitive species management issues in one section of the ARMs. Similar to our other comments, we question if adopting prescriptive directives in the ARM is the best strategy when dealing with populations and habitats that are regularly evolving and changing. Allowing some flexibility for agency professionals to develop management strategies that best achieve multiple benefits while allowing for innovation and adaptation on site specific basis.

DNRC Response to FHS Comment #24: Comment noted. Developing and implementing clear, effective rules requires the continual balancing of a mix of both general and more prescriptive measures, depending on the species (or resource) and its requirements. We believe the proposed ARM revisions provide the necessary prescriptive detail, as well as necessary room for flexibility when warranted. As previously mentioned in other responses, many of the protection measures contained in this ARM revision process have already been in place and implemented for years. Following many years of ARM implementation, we are keenly aware that rules written in a general fashion can provide room for creativity and flexibility. However, rules generally written can also result in considerable inefficiency and inconsistency involving many phone calls and consultations, particularly when they are applied across a state-wide program over many years. This can be due to the continual "re-inventing of a wheel" each time a resource specialist and forester work together to apply a simple resource protection measure.

(FHS Comment #25)

36.11.444 Grazing on NROH. Similar to other issues, what effect will this have on existing grazing leases? I suspect as GB expands, this could become an issue on some parcels, but have no way of knowing.

DNRC Response to FHS Comment #25: The only potential effect the proposed rules would have on existing grazing leases would be that operations currently utilizing a grazing lease on State trust land in a grizzly bear recovery zone would not have the option to convert their existing leases from cattle to small livestock, such as goats or sheep. To date, this type of conversion has not been proposed to DNRC by a grazing leasee operating in grizzly bear recovery zones.

(FHS Comment #26)

36.11.447 Categorical Exclusions. We support this change and it is consistent with the changes in HB 70.

DNRC Response to FHS Comment #26: Comment noted.

(FHS Comment #27)

36.11.450 Timber Permits: We support this change and it is consistent with the changes in HB 70.

DNRC Response to FHS Comment #27: Comment noted.

(FHS Comment #28)

36.11.429 Bald Eagle: We support this change as it is consistent with delisting of the Bald Eagle from T&E list.

DNRC Response to FHS Comment #28: Comment noted.

(FHS Comment #29)

36.11.430 Gray Wolf: We support this change as it is consistent with delisting of the gray wolf from T&E list.

DNRC Response to FHS Comment #29: Comment noted.

(FHS Comment #30)

36.11.452 - 456 Timber Conservation License: We support these changes as they are consistent with HB441

DNRC Response to FHS Comment #30: Comment noted.

(FHS Comment #31)

Stoltze has been an active reviewer of DNRC management actions for decades. We have participated extensively in the HCP process, grizzly bear management, State Forest Land Management Plan, Sustained Yield Calculations and many project specific analysis. We certainly understand the pressures the agency is trying to balance. That being said, we often question why decisions are made that continually add layers of restriction and regulation, many of which are self-imposed.

DNRC Response to FHS Comment #31: DNRC appreciates the many detailed and thoughtful reviews over the years. We also appreciate the acknowledgement of the many pressures facing agencies and forest managers today. DNRC must continue to make the best business choices possible for trust beneficiaries given a very complex and ever-changing economic, environmental, political, and policy environment. As such, DNRC continues to make concerted efforts to balance the many competing interests faced while providing sound stewardship and accomplishing our overarching charge to generate revenue for state trust beneficiaries. While the textual additions and repeals being proposed to the Forest Management ARMs in this process may give the impression of adding more requirements or layers, they actually remove many measures entirely and replace existing ARMs with necessary more current revisions. The final resulting ARMS represent a considerable necessary improvement by providing a comprehensive set of implementation policy with current definitions and improved organization. These revisions will ultimately provide

increased program efficiency, defensibility, management flexibility, and long-term program stability in the foreseeable future.

(FHS Comment #32)

We feel strongly that the best decisions are made on the ground by experienced and qualified professionals with site specific issues, conditions and criteria in mind. It becomes difficult to make adaptive decisions when there are cookie cutter prescriptive rules and regulations arbitrarily applied across the board. The agency has many very capable and adept professionals who are able to understand and apply complex management schemes that result in innovative and rewarding outcomes. Prescriptive rules and direction limit or outright prohibit problem solving and flexibility to balance multiple resource concerns and objectives.

DNRC Response to FHS Comment #32: Please see DNRC Response to FHS Comment #24 above. DNRC is continually strives to balance the use of prescriptive measures and flexibility. While very prescriptive measures can be implemented at the cost of flexibility, they can provide considerable efficiency and program consistency. These benefits can be realized from the beginning of each project from its development through implementation and monitoring phases. We believe the HCP and this rule set address these important considerations.

(FHS Comment #33)

We understand it has taken the Agency 18 months to pull together these proposed rule changes and we don't doubt it! The level of complexity and interconnectedness of the proposed changes coupled with the other ARM's not changed make it nearly impossible to get a clear picture of the impacts. We strongly suggest some of the more comprehensive changes, specifically to riparian, Canada lynx and grizzly bear, be postponed until a comprehensive analysis of the impacts can be provided both to the decision makers and the public. We have been told this is the culmination of 17 years of no rule changes, however, catching up all at once really does not make sense to us.

DNRC Response to FHS Comment #33: As previously stated, the proposed rules have undergone significant analyses in multiple environmental review processes, federal biological opinion reviews and resolved litigation challenges over the past decade. The rules and have been implemented on hundreds of timber sale projects during the past 10 years on 68% of DNRC forested acres, which provide 85% of the annual sustainable yield. Additionally, DNRC has conducted an environmental assessment in conjunction with this MAPA process to disclose potential effects of rule adoption. Conclusions from that review indicated no impacts to the program and/or revenue generation capacity following adoption and implementation. Coupled with the addition of approximately 14,000 acres of acquired forest land and adjustments made to identified acreage deferrals, the 2020 Annual Sustainable Yield incorporated all the proposed rules as model constraints, which resulted in a 17% increase in potential annual harvest. The final resulting ARMS represent a considerable necessary improvement for the program by providing revised comprehensive implementation policy with current definitions and improved organization. DNRC is confident that these revisions will ultimately provide increased program efficiency, defensibility, management flexibility, and long-term program stability into the foreseeable future.

(FHS Comment #34)

We sincerely appreciate the opportunity to comment. We look forward to the response and deliberation on the issues we raised. More importantly we look forward to DNRC continuing to be a successful manager of the Trust Lands assets for multiple benefits into the future and want to see ARMs in place that support that venture.

DNRC Response to FHS Comment #34: Comment noted. We strongly believe this proposal appropriately and responsibly supports that venture.

Sincerely,



Paul R. McKenzie
Lands & Resource Manager



70 Sunset Drive Kalispell, MT 59901



Montana Department of Natural Resources and Conservation
Attn: Sierra Farmer
Trust Management Division 2705 Spurgin Road
Missoula, MT 59804

To Whom it May Concern,

(WEY Comment #1)

The following comments are being submitted regarding the proposed repeal and amendment of multiple ARM's regarding the management of state trust lands outlined in MAR Notice No. 36-22-203. We appreciate the opportunity to provide comment on the proposed rule changes being presented and we understand the DNRC has long desired to update it's ARM's and this notice is the result of over 18 months of work by the agency. This notice proposes comprehensive updates in great detail and we thank the agency considering our comments and we would like to recognize those within the agency who have spent time composing the updates. We don't deny that an update to the ARM's is needed but to try to update everything all at once seems rushed from our perspective. We suggest starting with simple changes such as those affected by actions of the 2019 Legislative session (HB's 70 & 441) and also changes related to species being removed from the Threatened & Endangered (T&E) Species List.

DNRC Response to WEY Comment #1: We believe this rule-revision process has been anything but rushed given the many years DNRC's forest management program policy framework has been undergoing revisions. In winter 2019, the DNRC Forest Management Bureau Planning Team was charged with comprehensively evaluating the existing ARMs ruleset for necessary revisions. To ensure a thorough review, the planning team carefully reviewed the entire rule set. More specifically, the planning team reviewed all portions of ARMs and their definitions that were out of date or inconsistent with other plans, were needed to address new science, or that required revision to help field staff effectively implement and interpret important measures needed to ensure legally defensible project implementation on state trust lands. In conjunction with this review, as periodically required for all state agencies in Montana, a decision was made by the Forest Management Bureau Chief to incorporate all applicable commitments of the DNRC Forest Management Habitat Conservation Plan (HCP) into ARMs for clarity, efficiency, and consistency, and to replace an existing non-descriptive rule adopted in 2012 that serves to implement the HCP by reference (ARM 36.11.470). In January 2020 the fully revised draft rule set was provided to all Forest Management Program personnel to review for accuracy, clarity and implementation feasibility. All comments from staff were addressed in conjunction with numerous calls and communications with managers, field foresters, and resources specialists.

Minor revisions to the Forest Management ARMs were completed several times since their original adoption in 2003 to address: 1) statutory changes in timber permit allowances, 2) adoption of the HCP in 2012, 3) an HCP settlement agreement to comply with a federal court order, and 4) to clarify the legal implementation requirements of ARMs associated with conservation easements that are tied to many lands recently acquired by DNRC (ARM 36.11.471). Additionally, since the original full rule set was adopted in 2003, DNRC has

acquired approximately 100,000 acres of forest land, the gray wolf and bald eagle were removed from the federal list of Threatened and Endangered species, and recent legislation was passed effectively repealing the timber conservation license process (ARM 36.11.451 through 36.11.456) further underscoring the need to revise the current ARMs.

So why embark on such a large, comprehensive revision of Forest Management ARMs at this time versus conducting rulemaking under several smaller processes?

First, the MAPA process is an important, involved programmatic endeavor that typically requires 3 to 6 months to complete. While it may seem that it would be beneficial to break up the process into smaller bites, it would undoubtedly require considerably more time and resources to complete; possibly up to three additional years. Scaling back considerably on the scope of the ARM revisions at this juncture, would likely result in the loss of at least 6 months of work and a restart of this process, given the maximum 6-month process duration required by MAPA.

Second, during the time expended on additional rule making processes under a piecemeal approach, inconsistencies, and project implementation and analysis inefficiencies would persist unnecessarily. Further, a piecemeal approach would not address inconsistencies and possible program legal vulnerabilities right now and could potentially maintain disarray in DNRC's forest management guiding policy for years to come.

Third, the analysis work is done. The proposed rule revisions, with a few exceptions, represent the culminating phase of 10 years of staff investment negotiation, environmental analysis and public involvement associated with the HCP and 2018 Amendment. Further, the vast majority of the proposed changes have been implemented in the program in practice since 2012 under the HCP as required under the "rule-by-reference" (ARM 36.11.470). All of the corresponding MEPA decisions, NEPA decisions, Biological Opinions, and court ordered settlement agreement are a part of the public record and can be made available upon request. Years and years of analysis work have been accomplished and codifying this work in rule is all that remains.

From the beginning of this rulemaking process the planning team recognized that the number and nature of proposed ARM revisions would appear daunting to reviewers, and we are sympathetic to that fact. While large and ungainly in appearance to those largely unfamiliar with the content and measures contained in the HCP, the planning team believes finalizing this rule set is necessary to ensure the viability and defensibility of our forest management program at the present time and the vast majority of the effort and work to be completed is done. We also note that many of the changes involve the repeal of ARMS, and/or markup that represents repeal and replacement with other rules. DNRC believes the most appropriate and responsible action to take is to make all known and necessary revisions now in this important comprehensive process. It makes little sense to leave some ARMs out to address another day when we clearly know all proposed revisions are warranted now when the vast majority of work has been completed to finalize the process.

(WEY Comment #2)

In our opinion changes related to expanding the Habitat Conservation Plan (HCP) to the entirety of the DNRC's land base need further examination and rule **changes need engagement from stakeholders before being adopted.**

DNRC Response to WEY Comment #2: An Environmental Assessment was completed by the Department that analyzed the effects of adopting the proposed rules. Effects of the HCP

Conservation Strategies proposed for adoption have been extensively analyzed in DNRC HCP EIS, Supplemental EIS and subsequent Biological Opinions issued by the U.S. Fish and Wildlife Service (USFWS). Effectiveness of the proposed rule revisions have also been monitored for the past ten years and reported to the USFWS both annually and more in depth at 5-year increments. These documents can be found on the Department's website (<http://dnrc.mt.gov/divisions/trust/forest-management/hcp>). We understand the complexity of the proposed revisions is somewhat daunting and we welcome further engagement with stakeholders to answer questions and provide important information.

In January 2020 the fully revised draft rule set was provided to all Forest Management Program personnel to review for accuracy, clarity and implementation feasibility. Detailed comments were received and fielded by the planning team from numerous veteran DNRC foresters and specialists, which greatly aided in our assessment of unintended consequences, inconsistencies, conflicts among various other rules and requirements. All comments from staff were addressed in conjunction with numerous calls and communications with managers, field foresters, and resources specialists.

(WEY Comment #3)

Weyerhaeuser is a major consumer of wood fiber from DNRC Trust Lands and we are very concerned that the proposed ARM's will negatively impact the ability of the DNRC to effectively execute forest management on its Trust Lands and will have unintended consequences in the future. We feel that expanding the rules of the HCP to non-HCP lands exposes the agency to a greater risk of litigation particularly as they relate to T&E species and a multitude of recent lawsuits against the USFS on similar grounds supports this statement. In our opinion the expansion of HCP rules across the land base is unnecessarily burdensome to land managers and will have the opposite effect of the purported need for simplification and consistency on the landscape. We are in strong opposition to the rules related to expanded riparian buffers as they are overly restrictive and there is no scientific basis that increased buffers and reduced tree harvest actually increase the protection of riparian and aquatic resources.

DNRC Response to WEY Comment #3: Currently, the Trust Land Management Division manages approximately 5.2 million surface acres of land. The proposed rules would only apply to forest management activities that occur on trust lands which in the 2020 Sustainable Yield Calculation totaled approximately 750,000 acres. Of this commercial timber base, a sizable portion of the rules would not apply as T&E species rules are geographically explicit and would not be particularly constraining on most eastern area lands. It is also important to consider that many ARMs have been in place since 2003 on lands not covered under the HCP, particularly in eastern Montana. In a number of cases, such rules would be replaced with definitions and measures consistent with the HCP. That is, a new rule set would replace the other existing set. We believe the proposed revisions provide a reasonable and responsible changes that will promote implementation efficiency, legal defensibility, and analysis consistency, which are important program objectives. Overall, we anticipate required constraint levels of the revised ARMs in question to closely mirror those in existing rules, which we believe does not represent a broad expansion of new requirements on additional lands.

Riparian Management Zones have been implemented adjacent to fish bearing streams on State trust lands since the initial adoption of Forest Management Rules in 2003. This policy has been implemented statewide during forest management activities, regardless of land classification. The primary change under the HCP conservation strategy is the application of RMZ's on all Class I streams, regardless of the streams ability to support a fishery. This constraint was again modeled for the entirety of the commercial forest land base in the 2020

SYC in the form of a 50 foot “grow only” constraint on all Class I streams. DNRC maintains the management flexibility to harvest within this portion of the riparian buffer and as a result, will have no further economic impact to trust beneficiaries.

The existing science generally indicates increased buffer width enhances protective mechanisms provided to aquatic resources (Sweeney and Newboldt 2014). These findings largely corroborate results from DNRC monitoring of RMZs that was conducted during the first 5 years of HCP implementation. The majority of these acres are within DNRC eastern area offices which are low in productivity due to their occurrence on warm, dry sites, and the associated stream networks are forecast to be most vulnerable to a warming climate. Climate modeling has shown increases in background stream temperatures in Montana of up to 3 degrees Celsius by 2080 (Isaak et al. 2017). It is reasonable, responsible and appropriate for DNRC to expand this commitment to these lands which would be minimally impactful to the trust given the relative existing abundance of unsellable standing volume due to poor market conditions and limited infrastructure in the area. Further research is warranted regarding the SMZ law’s effectiveness with respect to other stream metrics such as stream temperature, large woody debris recruitment, shade, habitat complexity, microclimate modification and ramifications of climate change. DNRC’s on-going monitoring efforts are focused on providing additional information and clarity to the above referenced response variables.

(WEY Comment #4)

We are also concerned that the proposed rule changes are inconsistent with the constraints imposed on the recently adopted 2020 Sustained Yield Calculation (SYC) and the agency will encounter difficulties balancing the changes to the ARM’s with a sustainable harvest level. We simply do not understand the desire to artificially burden your land management options through self-imposed restrictions and increased legal exposure.

DNRC Response to WEY Comment #4: The proposed changes would require no additional balancing of ARMs with the sustainable harvest calculation constraints. Following careful review, the proposed rule changes are consistent with the constraints in the 2020 Sustainable Yield Calculation, and no additional constraints associated with these rules would be anticipated regarding future sustainable yield calculations.

Currently, the Trust Land Management Division manages approximately 5.2 million surface acres of land. The proposed rules would only apply to forest management activities that occur on trust lands which in the 2020 Sustainable Yield Calculation totaled approximately 750,000 acres. Of this commercial timber base, a sizable portion of the rules would not apply as T&E species rules are geographically explicit and would be minimally constraining on most eastern area lands. It is also important to consider that many ARMs have been in place since 2003 on lands not covered under the HCP, particularly in eastern Montana. In a number of cases, such rules would be replaced with definitions and measures consistent with the HCP. That is, a similar new rule set would replace the other existing set. We believe the proposed revisions provide a reasonable and responsible changes that will promote analysis and management consistency, which are important program objectives. Overall, we anticipate required constraint levels of the revised ARMs in question to closely mirror those in existing rules, which we believe does not represent a broad expansion of new requirements on additional lands.

The proposed ARMs reflect years of careful analysis thought and planning to address management of habitat for federally listed species on state trust lands to provide certainty and legal defensibility for the DNRC Forest Management Program into the future. The proposed

revisions remain consistent with the philosophy and intent of the State Forest Land Management Plan.

(WEY Comment #5)

The proposed changes are substantial and we have attempted to encompass all concerns below but the way they are presented in MAR Notice No. 36-22-203 is difficult to comprehend the full scope as only the changes are outlined and language remaining the same is not included; it is difficult to appreciate the full scope of the rulemaking. This is reason enough to delay a full-scale adoption of the proposed changes as it is difficult to make a fully informed decision on what the changes will mean with only part of the information available.

DNRC Response to WEY Comment #5: Please refer to DNRC Response to WEY Comment #1 above.

(WEY Comment #6)

Please consider the comments below regarding specific changes.

36.11.402 General Applicability: The amendment strikes the word “forested” to broaden the scope of applicability to encompass all state lands yet the announcement at the top of the page that defines which ARM’s will be affected states that it applies to the management of state *forested* trust lands. This language is inconsistent.

DNRC Response to WEY Comment #6: Currently, the Trust Land Management Division manages approximately 5.2 million surface acres of land. The proposed rules would only apply to forest management activities that occur on commercially forested trust lands, which in the 2020 Sustainable Yield Calculation totaled approximately 750,000 acres. Many of the acres in the 2020 SYC are classified as grazing lands, but contain forest stands available for harvest. The change in general applicability is to address the action these rules would regulate and not the land base on which they occur. The title of the proposal notice reflects forested lands, regardless of land classification. We apologize for any added confusion.

Of the commercial timber base, a sizable portion of the rules would not apply as T&E species rules are geographically explicit and would not be particularly constraining on most eastern area lands. It is also important to consider that many ARM’s have been in place since 2003 on lands not covered under the HCP, particularly in eastern Montana. In a number of cases, such rules would be replaced with definitions and measures consistent with the HCP. That is, a new rule set would replace the other existing set. We believe the proposed revisions provide reasonable and responsible changes that will promote analysis and management consistency, which are important program objectives. Overall, we anticipate required constraint levels of the revised ARM’s in question to closely mirror those in existing rules, which we believe does not represent a broad expansion of new requirements on additional lands.

(WEY Comment #7)

Furthermore, simply striking the word forested has enormous impact as discrete rules written to address specific forestland management issues is now expanded to encompass the entirety of DNRC’s land base; most of the ARM’s were written for Western MT forest management and are now proposed to be expanded to Eastern MT lands. We question what is driving the desire to change this one word to prescribe a one size fits all approach and whether the full management and economic ramifications of this change have been explored.

DNRC Response to WEY Comment #7: Please refer to DNRC Response to WEY Comment #6 above.

(WEY Comment #8)

When considering the constraints on the land base the recent Sustained Yield Calculation (SYC) demonstrates that self-imposed management constraints have a roughly 25% reduction on available timber harvest based on current rules. The 2020 SYC was compiled and subsequently approved by the Land Board based on current ARM's and now the DNRC is proposing to change the ARM's under which it's SYC was developed. From our perspective this process is backwards, changing the constraints placed on DNRC land management after adopting new harvest targets under existing constraints is self-defeating.

DNRC Response to WEY Comment #8: Following close review, the proposed rule changes are consistent with the constraints in the 2020 Sustainable Yield Calculation, and no additional constraints associated with these rules would be anticipated regarding future sustainable yield calculations.

The stated 25% yield reduction is in reference to the level of constraint on harvestable timber volume DNRC expects from the maximum amount of volume that could be expected to be biologically produced on DNRC's commercial timberlands. It is important to note that a significant portion of the 25% referenced is influenced by deferred lands that simply cannot be conventionally or legally accessed at this time. Thus, this percentage reflects more than what would be constrained by ARMs alone.

The 2020 Sustainable yield calculation had 750,000 acres of commercial forest land available for harvest before constraints were applied. This includes both forest and non-forest lands. Approximately 630,000 of these acres or 84%, has been managed under the proposed ARM, equating to approximately 85% of the sustainable yield for this same 10-year period. All the proposed rules were modeled as constraints in the 2020 SYC. These constraints coupled with the addition of approximately 14,000 acres of acquired forest land and adjustments made to identified acreage deferrals resulted in a 17% increase in the annual sustainable yield further supporting that no economic impact would result to trust beneficiaries as a result of adopting the proposed rules.

DNRC has provided numerous economic assessments pertaining to the cost and feasibility of implementing constraints on DNRC lands. The HCP FEIS analysis and sustainable yield calculation conducted in 2011 addressed and disclosed the cost to the program of implementing the strategies. As hinted in the comment, the most recent sustainable yield calculation provides one of the best stepwise analyses of the cumulative reduction of volume the various program constraints represent across both HCP and non-HCP covered commercial forest lands. These analyses were disclosed to the public and can be found on the DNRC website or made available upon request.

(WEY Comment #9)

36.11.406 Definitions:

11. **Biological Infestations:** The proposed language change to "threaten mortality to 25% or more of the standing live trees" is arbitrary and provides no baseline or defined method of measure. What are you measuring 25% or more of? Instead, we suggest flexible language allowing for management considerations on a site-specific basis.

DNRC Response to WEY Comment #9: The sole purpose of this definition in rule is to provide a measurable metric and threshold necessary to determine when an RMZ harvest allowance

may be triggered under ARM 36.11.425(8). Maintaining the percentage in rule is important for objective and consistent application of the rule allowance. The scales of application would typically be the stand or project area, and determinations would be made on a case by case basis by resource specialists and project leaders. Visual estimation may be used for this determination where the percentage is clearly exceeded by the presence of dead or infested trees. In situations where the level of existing infestation may be questionable, measurable fixed or variable standard mortality plots would be used.

(WEY Comment #10)

27. Equipment Restriction Zone or ERZ: The word restriction implies an absolute prohibition of operating equipment rather than an allowance with limitations. The opportunity for regulatory creep from defining an area with specific parameters to defining an area with an absolute prohibition is high, we suggest changing the language to something like “Special Operation Zone”, for example.

DNRC Response to WEY Comment #10: Equipment Restriction Zones would not limit tree retention within these zones but would limit what types and what conditions specific equipment can be used within them. We believe the distinction between restriction and prohibition is clearly defined in ARM 36.11.425(4)(b).

(WEY Comment #11)

30. Fire or Other Damage: The effects of fire on a tree are often not realized until a year or more after a fire and it is commonly recognized by foresters that a tree may in fact be dying and mortality is likely but the tree is not in fact dead yet. Limiting this definition to “agents that cause the tree to die” limits management decisions; we suggest changing the definition to allow more discretion and flexibility.

DNRC Response to WEY Comment #11: The definition of “Fire or Other Damage” would not itself require a tree to be dead prior to salvage, and the department would retain discretion in determination of the probability of mortality and salvage objectives for affected stands. Additional clarification regarding this topic is provided in the definition of “Salvage.” (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.

(WEY Comment #12)

43. Low Intensity Forest Management Activities (e) bridge replacement: under this proposed definition bridge installation, culvert installation, culvert replacement, road construction, road reconstruction, road obliteration would not be included. We suggest adding additional activities to the definition.

DNRC Response to WEY Comment #12: The definition of low intensity forest management activities was negotiated with the US Fish and Wildlife Service during the development of the HCP. The specific activities that were included had negligible disturbance effects in duration and/or intensity to the surrounding area from equipment operations. As defined, culvert and bridge replacement are included under road maintenance. The activities of bridge installation and culvert installations are typically associated with road construction and are not considered low intensity. Likewise, for road reconstruction and reclamation.

(WEY Comment #13)

44, 45, 61, 95, 96, 97 & 109: Definitions relating to Lynx: The definitions described here are stringent in their interpretation and implementation; later in the proposed ARM’s are specific Lynx management directions and the language is more flexible. There is likely conflict between the definitions and Lynx

specific management discussed in 36.11.428; we suggest striking definitions and keeping Lynx management in T&E ARM's instead.

DNRC Response to WEY Comment #13: The definitions indicated in the comment are descriptive definitions that have ample detail included to allow for their interpretation and application of the rule set for Canada lynx. Detailed mapping protocols that tie directly to DNRC's stand level inventory were cooperatively constructed with the U.S. Fish and Wildlife Service with input from Dr. John Squires (U.S. Forest Service research biologist) at the time the HCP was developed. These protocols tie directly to each type of lynx habitat defined in the ARMs definition section as referenced in this comment. The protocols and definitions were available for public review during the HCP development process and were originally adopted in the HCP in 2012. They were also deemed sufficient by both agencies during the HCP Amendment review completed in 2018. The habitat mapping protocols may be found in the HCP (2012, Vol. 3) on the DNRC website, or can be made available upon request. Commitments DNRC made in the HCP require that any changes to the mapping protocols be made in cooperation with the U.S. Fish and Wildlife Service given improved scientific information. DNRC is required to provide changes to lynx habitat acreages annually to the U.S. Fish and Wildlife Service.

After reviewing the definitions and applicable ARMs given the prompt of this comment, we were unable to find any repetitive or confusing aspects warranting further clarification or revision. During completion of the original draft rule set under this MAPA process, the lynx rules and definitions were provided to all Forest Management Program personnel to review for accuracy, clarity and implementation feasibility. DNRC has been following these definitions and procedures since 2012 with few problems. However, confusion regarding ARMs pertaining to lynx that pre-date the HCP that have remained on the books have proven confusing and problematic for field practitioners. These are good examples of the types of rules we are proposing to clean up in this process.

(WEY Comment #14)

Mechanized Activity (c) inclusion of snowmobiles: Including snowmobiles in the definition of mechanized activity and thereby limiting their use could have unforeseen impacts on administrative use when over the snow travel is often the most beneficial form of travel. Additionally, this limits the implementation of recreational leases and their ability to generate additional revenue. Including snowmobiles seems an arbitrary inclusion.

DNRC Response to WEY Comment #14: We agree that winter is an important time to conduct reconnaissance and timber sale preparation activities. This requirement is not a new measure and it has been in place since adoption of the HCP in 2012. It only applies in the case of grizzly bears in Recovery Zone areas on high elevation sites above 6,300 feet from November 16 through March 31 each year. Such areas on state trust lands represent a relatively small acreage and are typically marginally accessible, even by snowmobile, due to deep snow conditions during that period. There is no ARM that constrains use of snowmobiles in lynx habitat other than ARM 36.11.428(4)(c), which only prohibits use within 0.25 miles of a known active lynx den. This would be a rare occurrence. These measures were adopted after careful consideration of the best available science and DNRC's business needs, and they were fully analyzed and disclosed in the HCP development and adoption process.

(WEY Comment #15)

Minimum asking price: DNRC typically sells its timber sales on a per ton basis which is a unit of weight, not volume. Suggest changing the language from "price per volume of wood" to "price per unit".

DNRC Response to WEY Comment #15: DNRC has edited the definition to reflect the commenter's suggestion.

(WEY Comment #16)

63. Pileated woodpecker preferred habitat: The term "large-sized" is too subjective, is the DNRC's desire to provide more flexibility or more distinct focus to the habitat definition? If the latter, then we suggest adding a defined DBH range.

DNRC Response to WEY Comment #16: This reference to "large-sized" trees of different species in the definition has been in place without issue since the original ARMs were adopted in 2003. This portion of the definition does not reflect a proposed change. Rather it is a portion of the existing definition that provides ample reference to give users a general understanding of habitat needs that allows for more detailed inclusion of specific parameters that can be modeled using current scientific literature. The definition can necessarily be tailored to various elevational zones, age classes, and cover types used by the species. The portion of the definition proposed in this revision simply clarifies that habitat patches considered as suitable should at least 40 acres or more for analysis and modeling purposes etc.

(WEY Comment #17)

68. Reclaimed Road: The term "reclaimed" connotes complete deconstruction of the road, drainage features, and road prism and does not suggest the road is available for future use but the definition describes it otherwise. We suggest changing "reclaimed" to "stored"; for example, the USFS has different levels of road storage whereby roads are taken out of active use but are stabilized, access is controlled, and are hydrologically self-maintaining but the road prism remains for potential future use or wildfire access.

DNRC Response to WEY Comment #17: The term Reclaimed Road was formally agreed to and incorporated in the development of the HCP. This definition has received considerable internal and public review during the HCP analysis and SEIS Amendment processes during the last 10 years. We believe this definition clearly describes what is required and it has been in use during the last 10 years. (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. At DNRC's discretion under this definition, reclaimed roads may be re-constructed for future use given that the prism may remain intact, or they may be more permanently "put to bed" through re-contouring or use of similar methods to meet site-specific management objectives. Often roads targeted for reclamation are in poor locations that do not meet BMPs and/or are not necessary for future management.

(WEY Comment #18)

69. Restricted Road: We support the simplification of the definition.

DNRC Response to WEY Comment #18. Comment noted.

(WEY Comment #19)

72. Road Closure (b) Class B: Appears to be the same intent as # 68-Reclaimed Road but has a different definition. Suggest cleaning up/consolidating both definitions to provide more clarification. The proposed language changes are too similar but have different classifications.

DNRC Response to WEY Comment #19: This definition relates to the type of closure that controls access to a road rather than the road classification for motorized use such as open, restricted, abandoned or reclaimed. A significant distinction is warranted between Class A and Class B road closures as Class A closures are passable-- typically gates, while Class B closures are impassable such as earthen berms or debris. These distinctions are important for road data management and analysis. These definitions have evolved and been integrated into GIS road tracking data during the last 10 years, and they are key to implementation of the Stillwater and Swan transportation plans under the HCP.

(WEY Comment #20)

80, 89 & 90: Definitions relating to Grizzly Bears: Grizzly Bear provisions are covered elsewhere in the proposed ARM revisions and having duplicative definitions and rules can create conflict and leave implementation open to scrutiny. Like the Lynx definitions we suggest dropping Grizzly Bear definitions and leaving their management directions to the specific ARM's.

DNRC Response to WEY Comment #20: Without additional information, we are unclear how the proposed revisions to definitions regarding grizzly bears would create conflicts or leave implementation open to scrutiny. Our intent was the opposite, and we believe after lengthy reviews in the HCP process and internal review conducted by field staff, we have accomplished our intent. The terms in question that are defined, in most cases, occur many places in the ARMs. Thus, a practitioner would likely have an extremely difficult time implementing a number of the rules that pertain to definitions 80, 89, and 90 without them. In some cases, there is purposeful consistent redundancy provided for things such as dates that pertain to particular periods or seasons, however we are not aware of any that are in conflict.

(WEY Comment #21)

103. Visual Screening: The new definition is too difficult to achieve, we suggest rewriting the definition to still allow for flexibility and applicability in different situations. Vegetation “capable of hiding a grizzly bear from view” is particularly difficult to achieve and a more flexible screening goal is suggested such as “vegetation partially obscuring a grizzly bear from view on an open road”. Hiding 100% of a grizzly bear is rarely possible, even in situations where no forest management has occurred.

DNRC Response to WEY Comment #21: This definition of visual screening was formally adopted in 2012 under the HCP, and it has been implemented in rule by reference since 2016 (ARM 36.11.470). Difficulty achieving effective screening of bears depends on the local topography and vegetation. A bear behind a hill can easily be completely hidden from view as can bears behind dense shrub cover and conifer regeneration. DNRC has conducted validation surveys that indicated that conifer saplings at least six feet tall that were spaced 14 feet or less apart provide effective screening cover for grizzly bears. Patch size and width are also important considerations for effectively implementing measures involving visual screening cover. DNRC believes the definition conveys clear intent to aid the accurate and effective implementation of the associated ARMs [36.11.432(1)(g), 36.11.432(2)(d), and 36.11.432(3)(b) and (d)]. These same points raised in this comment were also raised by DNRC foresters regarding how to provide cover in situations when it is simply absent on some sites. Thus, the concern was discussed at length with the U.S. Fish and Wildlife Service during HCP development. As such, exception and allowance language were identified that addresses these concerns, which is now included to aid implementation and address this issue [See ARMs 36.11.432(2)(d)(i), and (3)(c)(ii), and (3)(d)(i) and (ii)].

(WEY Comment #22)

108. Wind Throw: This definition is too restrictive, wind events damage trees in many ways, even in the same location. “Blown to the ground by wind” precludes trees only partially blown over, trees blown over but suspended above the ground by other trees, and trees partially broken by wind but with part of the stem still standing. We strongly suggest this definition be written to allow more latitude to acknowledge trees damaged by a wind event.

DNRC Response to WEY Comment #22: This definition occurs for descriptive purposes in one rule (ARM 36.11.425(8)(c)), which pertains to an allowance to “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 wind throw and/or severe or stand-replacement fires.” We believe the definition is adequate for the intended purpose and would not in any way prevent discretionary choices made by field foresters to make judgements regarding necessary silvicultural treatments.

(WEY Comment #23)

11: Biodiversity- Snags and Snag Recruits: In the 2020 SYC revisions Snags and Snag recruits were a specific constraint placed on the model; ensure the proposed ARM changes are in line with the SYC constraints.

DNRC Response to WEY Comment #23: The 2020 SYC model constraints regarding the ARMs that address snag and recruitment retention (ARM 36.11.411) were specifically developed to ensure compatibility with this rule set (See Montana DNRC Sustainable Yield Calculation Report, April 9, 2020; Table 15 p. 40, and Appendix D p. 69. Appendix N p. 122). Additional volume-reducing constraints in future calculations would not be required following adoption of this revision.

(WEY Comment #24)

6.11.421 Road Management: See earlier comments on definitions of reclaimed roads. Removal of the mandatory 5-year inspection period for road maintenance and closures is concerning as this will likely lead to a lack of accountability, resource degradation and an increase in scrutiny. We strongly suggest adding a timeframe to ensure accountability and implementation, if the 5-year timeline is too stringent then lengthen to 7 or 10 years for example. We suggest you reference the peer-reviewed article published in Forest Science in 2018 citing the efficacy of Montana’s forest road BMP’s in reducing sediment delivery streams and need to inspect roads for BMP improvements or maintenance. Without a specified timeframe to ensure accountability how does the agency propose to routinely monitor it’s road systems? The article titled “Estimated Sediment Reduction with Forestry Best Management Practices Implementation on a Legacy Forest Road Network in the Northern Rocky Mountains” can be found here: [di: 10.1093/forsci/fxx006](https://doi.org/10.1093/forsci/fxx006).

DNRC Response to WEY Comment #24: DNRC will edit the proposed rule to reference the road inventory and corrective action timelines that were committed to in the Departments HCP. DNRC will complete road inventories in all watersheds supporting bull trout (including core and nodal habitat) by 2021 as described in the departments HCP. DNRC will complete road inventories in all watersheds supporting westslope cutthroat trout or Columbia redband trout by 2031 as described in the HCP. Corrective actions will be completed on all identified sites with high risk of sediment delivery located within bull trout watersheds by 2026 as described in the HCP. Corrective actions will be implemented at all identified high-risk sites in watersheds supporting westslope cutthroat trout or Columbia redband trout by 2036 as described in the HCP. DNRC will continue to implement the road sediment source inventories and corrective actions on a project level basis after HCP commitments are achieved.

(WEY Comment #25)

23: Watershed Management-Cumulative Effects: The “Reasonable Necessity” for the proposed amendment states that expansion of HCP specific language to all Trust Lands “will increase the consistency of effects analyses across forest management projects on lands outside the HCP project area.” Easing analysis is hardly a compelling reason to expand a restrictive process with a specific footprint to lands across the state and makes no mention of the additional operational constraints the amendments will place on trust land forest management implementation. This is an administrative consideration with widespread and long-lasting impacts on the ground and we strongly feel further discussion is required.

DNRC Response to WEY Comment #25: The amended cumulative watershed effects rule does not ease analysis requirements by the Department, but rather allows for consistent effects analyses to be completed on timber sale projects regardless of geographic location. As previously discussed, the proposed rules would only apply to forest management activities that occur on trust lands, which in the 2020 Sustainable Yield Calculation totaled approximately 750,000 acres. Of this commercial timber base, a sizable portion of the rules would not apply as T&E species rules are geographically explicit and would be minimally constraining on most eastern area lands. It is also important to consider that many ARMs have been in place since 2003 on lands not covered under the HCP, particularly in eastern Montana. In a number of cases, such rules would be replaced with definitions and measures consistent with the HCP. That is, a new rule set would replace the other existing set. We believe the proposed revisions provide reasonable and responsible changes that will promote analysis and management consistency, which are important program objectives. Overall, we anticipate required constraint levels of the revised ARMs in question to closely mirror those in existing rules, which we believe does not represent a broad expansion of new requirements on additional lands.

(WEY Comment #26)

36.11.425 Watershed Management-Streamside Management Zones, Equipment Restriction Zones, and Riparian Managements Zones: We strongly oppose these proposed changes as there is no scientific basis for the change and the “Reasonable Necessity” is not the least bit convincing. As stated previously we oppose expanding the HCP to all state trust lands and thereby oppose modifying the SMZ/ERZ/RMZ rules for trust lands. The DNRC Forestry Assistance Bureau has been monitoring SMZ/BMP implementation and effectiveness biannually since 1990 and has demonstrable data indicating Montana’s SMZ law and BMP guidelines provide excellent protection of riparian and aquatic resources. The 2018 audit report indicates 99% of practices on State land met or exceed SMZ/BMP application and provided adequate protection. This data collected and compiled by your very agency contradicts the need for changing existing ARM’s and instead indicates that the current rules work very well. The proposed changes to ARM’s in fact dispute the Forestry Assistance Bureau’s consistent data driven assertion that the current set of rules are easy to interpret, provide flexibility of implementation across a broad landscape, and effectively protect resources within the SMZ corridor. If the proposed ARM’s were approved, they could undermine Montana’s SMZ law and BMP guidelines and have long-term unintended consequences could require more FTE’s to implement as the complexity increases.

DNRC Response to WEY Comment #26: The SMZ law is the foundation for DNRC Riparian Management Zone strategy developed under the Departments HCP and provided the prescriptive baseline for tree retention requirements and prohibitions such as, equipment operations, road construction, burning and clear cutting among other prohibited actions.

The SMZ law will continue to be adopted under rules for forest management (ARM 36.11.301 thru 36.11.313) and implemented on every trust land timber sale. Measures contained in the proposed ARMs for forest management apply strictly and solely to Montana state trust lands and would not undermine the application of the SMZ law or BMPs as applied to other state and private ownerships.

In the most recent sustainable yield calculation process, DNRC identified approximately 750,000 commercial forest acres. Of these acres, 583,889 were allocated to management regimes and were included in solution (MBG 2020). The HCP (DNRC 2018) covers approximately 630,000 acres of forested trust land where associated stream buffers would be applied. Thus, the gross expanded area where the revised ARM would apply would be on approximately 120,000 acres, primarily on land offices in eastern Montana. On these acres there are approximately 280 miles of class 1 streams protections on these added lands would result in approximately 1,977 acres of additional managed RMZ, where 50 percent retention would be required. The additional stream buffers would provide further resource protection as climate modeling has shown increases in background stream temperatures in Montana of up to 3 degrees Celsius by 2080 (Isaak et al. 2017).

The environmental analysis completed by the department for this ARM revision process disclosed the additional acres that would be affected by some rules. We further note that, coupled with the addition of approximately 14,000 acres of acquired forest land and adjustments made to identified acreage deferrals, the 2020 Annual Sustainable Yield model that included the proposed rule set as a constraint increased the annual sustainable yield by 17% over the calculation in 2015. Again, added resource protection in the wake of climate change, improving program consistency statewide, site productivity is relatively low, and that the availability of standing volume is not typically a limitation on these lands are important considerations that DNRC has taken into account.

(WEY Comment #27)

We also suggest referring to the following peer-reviewed article citing the efficacy of Montana's current SMZ and BMP approaches to forest management before enacting changes on a system that is already clearly exemplary. The article titled "Montana's Forestry Best Management Practices Program: 20 Years of Continuous Improvement" was co-authored by DNRC employee Gary Frank can be found here: <https://doi.org/10.5849/jof.12-029>.

DNRC Response to WEY Comment #27: DNRC agrees that the Streamside Management Zone law and Best Management Practices for Forestry have been highly successful at preventing water quality impacts from sediment delivery during forest management activities. No changes to the law and/or its implementation on state trust land is proposed here. DNRC agrees with the commenter regarding the contribution of the cited publication on furthering the scientific body of literature regarding the effectiveness of the SMZ law and BMPs. Further research is warranted regarding the law's effectiveness with respect to other stream metrics such as stream temperature, large woody debris recruitment, shade, habitat complexity, microclimate modification and ramifications of climate change. DNRC's on-going monitoring efforts are focused on providing additional information and clarity to the above referenced response variables.

(WEY Comment #28)

We feel that the expansion of the HCP to all State Trust lands and the amendment of the current ARM's to change application of SMZ's/ERZ's/RMZ's will unnecessarily burden the agency with additional self-mandated provisions, complicate implementation of what is now a simple and

demonstrably effective set of rules, and undermine the current laws and practices governing private lands. It will also remove a significant portion of the State's land base from active management and instead adopt a "leave it alone" policy on streamside buffers that are widely recognized as critical corridors for both terrestrial and aquatic wildlife. A "leave it alone" policy removes the option for DNRC to manage these corridors in the event of major disturbance such as wildfire, wind or insects and can have unforeseen procedural and economic impacts. We suggest a thorough and collaborative review of streamside buffer rules be undertaken instead of the current proposed changes. Again, Weyerhaeuser is strongly opposed to this proposed change.

DNRC Response to WEY Comment #28: In the most recent sustainable yield calculation process, DNRC identified approximately 750,000 commercial forest acres. Of these acres, 583,889 were allocated to management regimes and were included in solution (MBG 2020). The HCP (DNRC 2018) covers approximately 630,000 acres of forested trust land where associated stream buffers would be applied. Thus, the gross expanded area where the revised ARM would apply would be on approximately 120,000 acres, primarily on land offices in eastern Montana. On these acres there are approximately 280 miles of class 1 streams protections on these added lands would result in approximately 1,977 acres of additional managed RMZ, where 50 percent retention would be required. The additional stream buffers would provide further resource protection as climate modeling has shown increases in background stream temperatures in Montana of up to 3 degrees Celsius by 2080 (Isaak et al. 2017). The environmental analysis completed by the Department for this ARM revision process disclosed the additional acres that would be affected by some rules. We further note that, the 2020 Annual Sustainable Yield model that included the proposed rule set as a constraint coupled with the addition of approximately 14,000 acres of acquired forest land and adjustments made to identified acreage deferrals, increased the annual sustainable yield by 17% over the calculation in 2015. Again, added resource protection in the wake of climate change, improving program consistency statewide, site productivity is relatively low, and that the availability of standing volume is not typically a limitation on these lands are important considerations that DNRC has taken into account.

Riparian Management Zones have been implemented adjacent to fish bearing streams on State trust lands since the initial adoption of Forest Management Rules in 2003. This policy has been implemented statewide during forest management activities, regardless of land classification. The primary change under the HCP conservation strategy is the application of RMZ's on all Class I streams, regardless of the streams ability to support a fishery. This constraint was again modeled for the entirety of the commercial forest land base in the 2020 SYC in the form of a 50 foot "grow only" constraint on all Class I streams. DNRC maintains the management flexibility to harvest within this portion of the riparian buffer and as a result, will have no further economic impact to trust beneficiaries. DNRC addresses numerous resource needs and values when conducting forest management projects to comply with many laws and requirements, first and foremost are compliance with the State Forest Land Management Plan and generating revenue for trust beneficiaries. Some required measures DNRC must implement do include consideration of fragmentation, habitat connectivity, and movement corridors for wildlife. Addressing such issues is important for ensuring the credibility and long-term program viability of the forest management program will be maintained. The proposed measure revisions allow for considerable discretion and management flexibility for DNRC foresters and resource specialists. In no way would the proposed revisions result in unnecessary burdens or prevent the department from addressing management needs such as salvage associated with wildfires, insects and disease, wind or other natural events.

(WEY Comment #29)

26: Watershed Management- Wetland Management Zones: Similar to previous comments, we feel further encumbering the agency by adding additional self-imposed layers of regulation without a demonstratable need is short sighted and can have unintended consequences. We suggest eliminating Wetland Management Zones and instead focus on the management of wetlands based on the current SMZ law and BMP guidelines. Additionally, the “Reasonable Necessity” states that the proposed amendments were to define a previously undefined acronym; if this is the case why isn’t this addressed under 36.11.403-Definitions? This inconsistent approach to updating ARM’s indicates the proposed changes have not been thoroughly vetted.

DNRC Response to WEY Comment #29: Please see response to comments #26 and #28 regarding adding additional self-imposed layers of regulation without need. The acronym “WMZ” (definition 94) was identified in rule in 2003 and as a result was spelled out in 36.11.426(1) in this proposal rather than using the acronym. Watershed Management – Wetland Management Zones rules were adopted originally in 2003 and are necessary to provide field practitioners specific definitions for consistent identification of wetlands on state lands. Management within and adjacent to WMZ’s is guided by the SMZ law and provisions in the rule. The term WMZ was used and adopted in the HCP in 2012 and wetland considerations are referenced numerous times in the HCP. Two specific grizzly bear commitments (GB-PR4, and GB-PR6) now also rely on the term and definition and have been applied since 2012. The definition of WMZ would remain in the final version of ARMs following their formal adoption. Please note, as changes are not being proposed to this definition, it is not depicted in the current draft.

(WEY Comment 30)

36.11.427 Fisheries: Similar to previous comments this proposed ARM change would apply HCP rules across the entirety of the trust lands land base and we feel this rubber stamp approach to land management does not lend itself well to the diversity found across the state. It has the appearance of prescribing HCP rules for bull trout and cutthroat trout on streams that may not have ever supported these species.

DNRC Response to WEY Comment #30: Amendments provided in ARM 36.11.427 update references to interagency plans DNRC is signatory to and provide clear direction regarding when fish passage will be addressed at a site, taking into consideration Montana Fish, Wildlife and Parks (MTFWP) population management goals. With respect to the applicability of rules regarding fish species, DNRC relies on site specific data for fisheries presence/absence either gathered by the Department or MTFWP and does not speculate on historic and/or future species status of a stream when applying rules related to a fish species.

(WEY Comment #31)

36.11.428 Threatened and Endangered Species: We support the removal of bald eagle from this rule.

DNRC Response to WEY Comment #31: Comment noted.

(WEY Comment #32)

We suggest the proposed ARM changes as they pertain to Lynx be limited to one section rather than have potentially conflicting rules in in the definition section and under this T&E section. Like previous

comments, we suggest that the expansion of these rules to the entirety of the trust lands ownership is unnecessarily burdensome, provides little latitude for land management, greater complexity in implementation, and adds more acres deferred from management. The 2020 SYC included 9,406 acres constrained by Lynx habitat under the existing ARMS's, how many additional acres will be encumbered by the proposed rule changes and how will that affect implementation of the sustained yield harvest on the ground? Similar to comments for 36.11.427-Fisheries, this proposed rule change has the appearance of prescribing HCP rules for Lynx onto areas that may not have ever supported these species.

DNRC Response to WEY Comment #32: Having both clear, applicable definitions and ARM sections is consistent with MAPA and ARM requirements for state agencies. The draft ARMs as proposed have undergone preliminary review and editing by the Secretary of State's Office. The proposed textual changes to ARMs pertaining to Threatened and Endangered species appear significant, but are not as they simply reflect inclusion of the full text of HCP measures that have been in place since 2012 on 550,000 acres of DNRC-managed forest land in western Montana under a rule by reference (ARM 36.11.470). The application of measures to other lands, as mentioned in this comment, that are not currently covered under the HCP would be expected to have no measurable additional effect on the forest management program. This is because the distribution of this species and habitat suitability are limited considerably in eastern Montana. After further review, we are aware of no conflicting rules or definitions in the proposed rule set. Mitigation measures for lynx have been applied by DNRC since 2003 based on where habitat occurs in the state using current habitat mapping based on DNRC's stand level inventory data. If DNRC were to proceed and not adopt the revised ARMs, *existing* outdated habitat definitions and ARMs currently in place for this species in these same "expanded" areas would remain on the books, which provide equally if not greater constraining effects on the program. Furthermore, retaining the outdated habitat definitions and measures in rule would perpetuate existing confusion and legal vulnerability for the program. Under either rule set, given the lower general quality and amounts of suitable habitat found in eastern Montana, constraining effects on the program regarding implementation, procedures, or harvest volume would be virtually immeasurable. Having revised clear, consistent forest management rules and definitions applicable across the state are necessary to promote process efficiency and long-term defensibility of the Forest Management Program.

Constraints as applied for Canada lynx have remained very consistent since the 2011 calculation prior to adoption of the HCP. Detectable differences have primarily been related to the application of the calculation models to an expanding land base due to recent periodic land acquisitions where the same rule sets and constraints have been applied. Detailed descriptions of how lynx habitat was constrained in the 2020 calculation may be found in Appendix N of the 2020 report (MBG 2020, pp. 120-125). Considerably more acres were constrained for lynx habitat in all of the calculations including 2011, 2015, and 2020 than the 9,406 acres referenced in the comment (See pp. 47 and 48 in MBG 2020 final report). Of note, in the 2020 calculation there was no apparent additional volume reduction associated with lynx constraints when they were run at their location in sequence with other previous constraints.

(WEY Comment #33)

36.11.432 Grizzly Bear Management and Programmatic Rules: Similar to previous comments we do not support the expansion of HCP rules written for a specific area and management objective be expanded to the entirety of the land base. The proposed ARM changes place undue constraints on land managers without offering a compelling reason for expanding HCP rules to the entire land base. The proposed rules are lengthy and far reaching and the consequences need to be thoroughly examined

rather than rushed through in a bundled rules revision package. The Grizzly Bear environment is rapidly evolving and placing specific constraints on an ever-changing environment seems short sighted. For example the governor's Grizzly Bear Action Council (GBAC) which is comprised of multiple stakeholders is having difficulty agreeing on a path forward for Grizzly Bear management in the state, we suggest the proposed changes are hasty and may not be in alignment with forthcoming GBAC recommendations. Additionally, how do the proposed changes impact acres deferred from management and how does this associate with the recently adopted 2020 SYC?

DNRC Response to WEY Comment #33: Contrary to the perception, DNRC is not expanding grizzly bear management direction across the state. We apologize for this appearance. Current ARMs that are dated would still apply to state trust lands on eastside land offices when forest management activities are conducted if the proposed rules are not adopted. These dated ARMs proposed for replacement have been on the books since 2003 when they were originally adopted. HCP measures have been implemented by DNRC since 2012 as required under ARM 36.11.470. Under this process, DNRC is proposing to adopt revised rules and definitions based on improved scientific information that have received considerable prior public review and analysis in cooperation with the U.S. Fish and Wildlife Service. As such, they serve to clarify DNRC's responsibilities under the Endangered Species Act and ensure the long-term defensibility and credibility of the program with regard to endangered species concerns, which were key important beneficial objectives identified in the HCP development process. We believe this is an important consideration. The proposed rule set reflects revision work that was initiated in 2004 with initiation of the HCP process. Thus, we believe that development, analysis, public disclosure, and adoption of these measures to this point has been anything but rushed. Application of these ARMs would not create new onerous hardship for the program as implied in this comment given the minimally constraining characteristics of the revised ARMs themselves and the limited distribution of grizzly bears in eastern Montana. The benefits of having these clear, consistent forest management rules and definitions to be applied across the state are necessary to promote process efficiency and long-term defensibility of the Forest Management Program.

The HCP and associated 50-year Incidental Take Permit and ARMs provide considerable management consistency, certainty and stability regarding an ever-changing policy environment and distribution regarding grizzly bears. While the GBAC serves an important role for informing grizzly bear management and recovery efforts in Montana, recommendations provided by that group are unlikely to substantially influence or circumvent HCP measures adopted as ARMs in the foreseeable future. Any proposed future changes would require review from the U.S. Fish and Wildlife Service, and analysis and disclosure in applicable MAPA and MEPA processes. This proposed draft rule set would cause no additional deferrals of forested timberland, and all measures from this proposed rule set were considered and addressed in the 2020 SYC. Detailed descriptions of grizzly bear constraints applied in the 2020 SYC can be found on pages 119-124 of the final SYC report (MBG 2020).

(WEY Comment #34)

36.11.444 Grazing on Classified Forest Lands and Other Lands Within Grizzly Bear Recovery Zones and Non-recovery occupied Habitat (NROH): Similar to previous comments we oppose the expansion of HCP rules onto all lands. What are the potential economic impacts of this proposed grazing lease rule change? Is the agency acting in the best interest of the trust by limiting grazing leases and therefore it's potential economic return?

DNRC Response to WEY Comment #34: The only potential effect the proposed rules would have on existing grazing leases would be that operations currently utilizing a grazing lease on

State trust land in grizzly bear recovery zones would not have the option to convert their existing leases from cattle to small livestock, such as goats or sheep. To date, this type of conversion has not been proposed to DNRC by a grazing lessee operating in grizzly bear recovery zones.

(WEY Comment #35)

36.11.447 Categorical Exclusions. We support this change and it is consistent with the changes in HB 70.

DNRC response to WEY Comment #35: Comment noted.

(WEY Comment #36)

36.11.450 Timber Permits: We support this change and it is consistent with the changes in HB 70.

DNRC Response to WEY Comment #36: Comment noted.

(WEY Comment #37)

36.11.429 Bald Eagle: We support this change as it is consistent with delisting of the gray wolf from Threatened and Endangered Species list.

DNRC Response to WEY Comment #37: Comment noted.

(WEY Comment #38)

36.11.430 Gray Wolf: We support this change as it is consistent with delisting of the gray wolf from Threatened and Endangered Species list.

DNRC Response to WEY Comment #38: Comment noted.

(WEY Comment #39)

36.11.452 - 456 Timber Conservation License: We support these changes as they are consistent with the passage of HB441

DNRC Response to WEY Comment #39: Comment noted.

(WEY Comment #40)

Weyerhaeuser appreciates the opportunity to provide comment on this proposed rule change and we hope our commentaries are taken under advisement. To reiterate, we are opposed to the proposed rule changes and feel that this process has been rushed and the “one size fits all” management approach outlined in the changes are not the appropriate strategy for a landscape as diverse as Montana’s. We feel that the proposed changes are driven by administrative processes rather than a functional or scientific necessity and they allow for little flexibility in implementation. Additionally, the proposed changes could result in increased FTE’s to implement, lower grazing permit revenues, further constraints on timber management and potential conflict with the sustained yield calculation model.

DNRC Response to WEY Comment #40: Comment noted. We believe that updating, packaging and cleaning up the many various measures, that for the most part DNRC has been implementing since 2012 will provide considerable program efficiencies and certainty for years to come. Measures contained in the proposed revision are highly scaled according to various

regions across the state as to the degree of resource protection and degree of constraint required on timber sales. Thus, a “one-size-fits-all” approach in this regard is not being proposed. The revisions primarily reflect formal codification of firm commitments DNRC has already analyzed, disclosed, and adopted which will help ensure a solid future for the DNRC Forest Management Program and that are in the best interest of state trust beneficiaries. That said, we recognize that the perceived volume of the changes and revised organization appear somewhat overwhelming. Please refer to DNRC Response #1 for additional details.

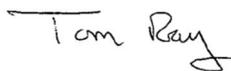
Weyerhaeuser looks forward to further discussion on changes to the DNRC forestry ARM’s and we thank you for your time.

Sincerely,
Jared Richardson



Montana Raw Material Manager

Tom Ray



Montana Timberlands Manager

Public Hearing Transcript

AUDIO TRANSCRIPT 7/22/2020 DNRC HEARING

AUDIO TRANSCRIPTION OF

The Montana Department of Natural Resources & Conservation
Public Hearing to Adopt Administrative Rules for the Management of State Forested Trust Lands

Hearing conducted on July 22, 2020

Transcribed by Melissa K. Gum, RDR, CRR, CRC, Jeffries Court Reporting, Inc., 1015 Mount Avenue, Suite B, Missoula, Montana 59801, (406) 721-1143, Freelance Court Reporter and Notary Public for the State of Montana, Residing in Corvallis, Montana, jrcourt@montana.com

1 AUDIO DISCLAIMER

2
3 The recording quality of the audio
4 provided, in whatever form or medium, will affect,
5 influence and control the quality of the
6 transcript produced.

7
8 Since no court reporter was present at
9 the proceeding, we cannot assure or certify the
10 accuracy of this taped transcription. It should
11 be known and understood that portions of the tape
12 that are not clearly discernible will be
13 transcribed using the context and content of
14 material that is audible.

15
16 The assurance we can provide is that we
17 will endeavor to provide the most thorough and
18 complete transcript that is possible.

19
20
21

1 (Whereupon, the following transcript was
2 transcribed from an audio link. The reporter was
3 not present to verify any spellings or speaker
4 identifications.)

5 MS. FARMER: Welcome, everyone. We'll
6 get started in about five minutes. We'll give

7 people a few more minutes to get on.
8 (Pause in proceedings.)
9 MS. FARMER: All right. I think we'll
10 go ahead and get started. Thank you, everyone,
11 for joining us for the public hearing to adopt
12 administrative rules for the management of state
13 forested trust lands.
14 My name is Sierra Farmer, and I've been
15 designated to preside over and conduct this
16 hearing.
17 Can I get a confirmation that you can
18 hear me? If anyone could just pop on and let me
19 know if you can hear me.
20 UNIDENTIFIED SPEAKER: Yes.
21 MS. FARMER: Thank you.
22 UNIDENTIFIED SPEAKER: Yep. Thank you.
23 MS. FARMER: With me, I have Jeff
24 Schmalenberg, the resource section manager for the
25 Forest Management Bureau, and Mark Phares is legal

1 counsel, Department of Natural Resources and
2 Conservation.
3 I will now present information pertinent
4 to all rule-making hearings. Montana
5 Administrative Procedure Act requires that I read
6 the notice of functions of the Administrative Rule
7 Review Committee.
8 Notice of function of the Administrative
9 Rule Review Committee, Interim Committees and the
10 Environmental Quality Counsel. Administrative
11 rule review is a function of Interim Committees
12 and the Environmental Quality Counsel (EQC).
13 These Interim Committees and the EQC have
14 administrative rule review, program evaluation,
15 and monitoring functions for the following
16 executive branch agencies and the entities
17 attached to agencies for administrative purposes.
18 The Economic Affairs Interim Committee
19 includes Department of Agriculture and Department
20 of Commerce, Department of Labor and Industry,
21 Department of Livestock, Office of the State
22 Auditor and Insurance Commissioner, and Office of
23 Economic Development.
24 The Education and Local Government
25 Interim Committee includes State Board of

1 Education, Board of Public Education, Board of
2 Regents of Higher Education, and the Office of
3 Public Instruction.
4 The Children, Families, Health, and
5 Human Services Interim Committee includes the
6 Department of Public Health and Human Services.
7 Law and Justice Interim Committee
8 includes the Department of Corrections and
9 Department of Justice.
10 Energy and Telecommunications Interim
11 Committee includes the Department of Public
12 Service Regulation.
13 The Revenue and Transportation Interim
14 Committee includes the Department of Revenue and
15 Department of Transportation.
16 State Administration and Veterans'
17 Affairs Interim Committee includes the Department
18 of Administration, Department of Military Affairs,
19 and Office of the Secretary of State.
20 Environmental Quality Counsel includes
21 the Department of Environmental Quality,
22 Department of Fish, Wildlife, and Parks, and the
23 Department of Natural Resources and Conservation.
24 The Water Policy Interim Committee,
25 where the primary concern is the quality of --

1 quality or quantity of water, includes the
2 Department of Environmental Quality, Department of
3 Fish, Wildlife, and Parks, and the Department of
4 Natural Resources and Conservation.
5 These interim committees and the EQC
6 have the authority to make recommendations to an
7 agency regarding the adoption, amendment, or
8 appeal of a rule or to request that the agency
9 prepare a statement of the estimated economic
10 impact of a proposal.
11 They also may poll the members of the
12 legislature to determine if a proposed rule is
13 consistent with the intent of the legislature or,
14 during a legislative session, introduce a bill
15 repealing a rule or directing an agency to adopt
16 or amend a rule or a joint resolution recommending
17 that an agency adopt, amend, or repeal a rule.
18 The interim committees and the EQC
19 welcome comments and invite members of the public

20 to appear before them or to send written
21 statements in order to bring to their attention
22 any difficulties with the existing or proposed
23 rules. The mailing address is P.O. Box 201706,
24 Helena, Montana, 59620-1706.
25 The Department of Natural Resources and

1 Conservation keeps a list of interested people who
2 wish to receive notices of rule-making actions
3 proposed by the agency. If you would like your
4 name added to the mailing list, please send a
5 written request at any time to Aliselina Strong,
6 Department of Natural Resources and Conservation,
7 P.O. Box 201601, Helena, Montana, 59620, or email
8 it to dnrc_publicinfo@MT.gov.

9 At this hearing, any interested person
10 may submit data, views, or arguments orally or in
11 writing. Written testimony carries the same
12 weight as oral testimony presented today.

13 (Unintelligible) give me any written comments.

14 Interested persons may also submit
15 written comments no later than 5:00 p.m. on
16 July 29th, 2020, to Sierra Farmer, the Department
17 of Natural Resources and Conservation, 2705
18 Spurgin Road, Missoula, Montana, 59804, or email
19 them to sierrafarmer@mt.gov.

20 We published the proposed rules and
21 notice of hearing in Issue No. 12 of Montana
22 Administrative Register on June 26th, 2020, sent
23 copies to interested persons and organizations.
24 Copies are available today on our website at
25 dnrc.mt.gov/divisions/trust/forest-management/

1 [administrative-rules-for-forest-management](http://dnrc.mt.gov/divisions/trust/forest-management/).

2 You can also see that we have on the
3 screen a link to those websites if you need to
4 pull those up.

5 The purpose of this hearing is to
6 collect testimony on the rules proposed for
7 adoption. If you want to recommend specific
8 changes in language, please submit them in
9 writing, if possible.

10 All witnesses must sign the witness
11 register. In this instance, as our virtual
12 meeting, the recording will suffice for the

13 witness register. When called upon, please
14 identify yourself for the record at the beginning
15 of your testimony, state your name, and specify
16 the correct spelling and who you represent, if
17 anyone, if it's someone other than yourself. And
18 I will accept oral testimony in the order the
19 participants are shown on the screen.
20 Your testimony should include your name,
21 affiliation, if any, complete statement, and
22 whether you are a proponent, opponent, or making a
23 general statement. There will be no rebuttal or
24 additional statements given by any witness unless
25 I request it.

1 As presiding officer, I may question or
2 examine witnesses. At this time, I will open the
3 hearing in the matter of adopting administrative
4 rules for the management of state forested trust
5 lands.
6 So I'm going to go ahead and click on
7 people in the participant list that you can see on
8 the far right. It looks like right now there are
9 13 people in the queue.
10 So we'll go -- we'll start right now.
11 Aliselina Strong is with the Department and not
12 here to make comments. So we'll start with
13 Brent --
14 UNIDENTIFIED SPEAKER: Actually, Brent,
15 he's also with the Department.
16 MS. FARMER: Oh. And Brent is also with
17 the Department. Yes, sorry.
18 So we'll go ahead and start now with
19 Brian. It shows up as Brian S. Again, if you
20 could please specify your name, affiliation, if
21 you have any, the complete statement, and whether
22 you are a proponent, opponent, or making a general
23 statement. So, Brian, we'll start with you,
24 please.
25 MR. SUGDEN: Can you hear me now?

1 MS. FARMER: We can hear you, yeah.
2 MR. SUGDEN: Great. So my name is Brian
3 Sugden, and I am district manager with American
4 Forest Management based in Kalispell, Montana.
5 I manage 630,000 acres of former Plum
6 Creek and former Weyerhaeuser property between

7 Kalispell and Libby or Missoula to Libby, and that
8 property is covered by a native fish Habitat
9 Conservation Plan that's now in its 20th year of
10 implementation.
11 And as a hydrologist -- as a forest
12 hydrologist, I've been -- was involved in the
13 conception and development of that plan and then
14 responsible for implementation, effectiveness
15 monitoring, and annual reporting of that plan
16 since its inception. So, again, just over 20
17 years.
18 So I guess I'm giving testimony today I
19 think primarily as a general statement at this
20 point. That may change before I submit written
21 comments next week for the record, but in general
22 my -- my comments are related to the -- you know,
23 the watershed management, streamside management
24 zone section.
25 And from what I gather, basically this

1 rule change would essentially, you know, adopt in
2 administrative rules the requirements that DNRC is
3 currently implementing on trust lands under --
4 that are managed under the DNRC HCP -- Habitat
5 Conservation Plan, which is not only a fish
6 protection strategy, but also a wildlife -- a
7 terrestrial wildlife, grizzly bear, and lynx
8 strategy.

(Brian Sugden, PH Comment #1)

9 So I guess a primary concern that I've
10 got is that these rules and standards that are
11 incorporated into the HCP are developed and
12 negotiated to meet a standard for issuance of an
13 incidental take permit for listed species, which I
14 believe are above and beyond what is needed for
15 just general water quality protection of streams
16 and fish in Montana.

DNRC Response to Brian Sugden, PH Comment #1: Many of the proposed changes to the draft rule set are not related to the HCP in any way, but are important needed changes to address conflicting definitions, unused definitions, legislated repeals, and measures for two federally de-listed species.

Regarding HCP concerns, it is important to note that measures contained and applied in the HCP are very scaled in their level of constraint according to geographic locations in the state where habitat values and risks to covered species are greatest. By design, the areas where greatest protections and restrictions apply are covered under the HCP. For grizzly bears, on lands outside of federally defined recovery zones, or occupied habitat very few restrictions apply. Similarly, for lynx, on parcels where no habitat is present, as indicated by current

habitat maps, no restrictions apply. Riparian Management Zones have been implemented adjacent to fish bearing streams on State trust lands since the initial adoption of Forest Management Rules in 2003. This policy has been implemented statewide during forest management activities, regardless of land classification. The primary change under the HCP conservation strategy is the application of RMZ's on all Class I streams, regardless of the streams ability to support a fishery. This constraint was again modeled for the entirety of the commercial forest land base in the 2020 SYC in the form of a 50 foot "grow only" constraint on all Class I streams. Application of the proposed rule would result in approximately 1,977 acres of additional managed RMZ acres, where 50% retention would be required. DNRC maintains the management flexibility to harvest within this portion of the riparian buffer under both the SMZ law and the proposed RMZ buffer, and as a result, will have minimal economic impact to trust beneficiaries. By applying HCP measures in this manner, significant parts of the state require few if any additional restrictions on forest management activities if the species, and/or habitats are not present. In this regard, the perceived expansion of highly constraining levels of HCP commitments to other parts of the state not formally covered by the HCP is a misconception. What DNRC is proposing is one set of comprehensive, consistent, and current definitions and practices that would provide DNRC with considerable efficiencies for daily communication, environmental analyses and clarity when communicating with internal staff, decision makers, public officials, and members of the public.

If the HCP-consistent measures and definitions are not adopted as proposed on lands not formally covered under the HCP, old ARMs on the books since 2003 will remain, which provide equally if not more onerous measures for grizzly bears and lynx. In the case of Canada lynx, outdated habitat definitions would be a part of the application of these older rules, creating growing legal risk. The protections of the Endangered Species Act follow each listed species, as determined by their presence and distribution. Thus, DNRC has a legal requirement to avoid take of these species when individuals or habitats are present whether they occur in places such as Condon, Fort Benton, or Red Lodge, Montana, for example. The proposed rule set appropriately scales the level of necessary mitigation to areas most necessary to minimize risk of take of federally listed species.

We believe adopting this proposed rule set that contains revisions consistent with the philosophy and intent of the State Forest Land Management Plan that have received considerable prior review by the U.S. Fish and Wildlife Service, DNRC managers, and the public is the best means of addressing various current programmatic needs right now. The importance of these revisions to improve program efficiency and defensibility cannot be overstated.

(Brian Sugden, PH Comment #2)

17 So, as I understand it, this -- you
18 know, these administrative rule changes will
19 essentially take the standards that are in the HCP
20 now on about 600,000 acres of land and then expand
21 those to maybe an additional approximate
22 300,000 acres of land.

DNRC Response to Brian Sugden, PH Comment #2: Approximately 750,000 acres of commercial timberland occur on state trust lands in Montana (MBG 2020). Approximately 630,000 acres are currently managed under the HCP (DNRC HCP Amendment, 2018). Thus, the commitments proposed would revise measures currently being applied on the remaining 120,000 acres. These acres still currently are managed under constraints provided in ARMs that were adopted in 2003 and generally contain fewer streams and much less suitable habitat for grizzly bears and Canada lynx. Measures proposed are scaled geographically according to geographic locations in the state where habitat values and risks to covered species are

greatest. As such, additional requirements proposed under the draft rule set would be minimal. See Response #1 for additional details.

23 And, as I understand it, the rationale
24 for that is, you know, simplicity and, you know,

(Brian Sugden, PH Comment #3)

25 the DNRC staff -- apparently it's difficult to
1 keep track of two sets of rules, but I think it's
2 important to say, you know, several things. One
3 is, you know, the rest of us in Montana implement
4 the Streamside Management Zone law very simply on,
5 you know, tens of thousands of acres of private
6 land in Montana. It's not that hard. And, you
7 know, I think just to make it simple on DNRC
8 doesn't sound like a particularly good rationale.
9 Second, you know, the incremental
10 conservation between the SMZ law and what's
11 provided for under the DNR HCP is significant.
12 There's significant more regulation under those
13 stream buffers, and, you know, that should really
14 be justified. DNRC should justify why it is that
15 all of that incremental, you know, dramatic
16 increase in restriction is needed to protect, you
17 know, the aquatic life on the other 300,000 acres
18 not covered by the HCP.

DNRC Response to Brian Sugden, PH Comment #3: Foresters on the Stillwater Unit, Swan Unit and Clearwater Unit can have up to four or more sets of requirements and monitoring to incorporate due to blocked vs. scattered lands requirements, presence of some manageable non-HCP lands, and various conservation easements. These many of our core timberlands occur on these units. For them these matters are not trivial.

Please see responses #1 and #2 above. A dramatic increase in restriction is not being proposed in the revised rule set, however, we acknowledge the in-text revisions are sizeable out of necessity. Since the original Forest Management ARMs were adopted in 2003, numerous changes have occurred that must be addressed for the program to remain viable. A significant body of work and review have been accomplished to get the necessary revisions to this point and packaged.

In the most recent sustainable yield calculation process, DNRC identified approximately 750,000 commercial forest acres. Of these acres 583,889 were allocated to management regimes and were included in solution (MBG 2020). The HCP (DNRC 2018) covers approximately 630,000 acres of forested trust land where associated stream buffers currently applied. Thus, the gross expanded area where the revised ARM would apply would be on approximately 120,000 acres, primarily on land offices in eastern Montana. On these acres there are approximately 280 miles of class 1 streams protections on these added lands would result in approximately 1,977 acres of additional managed RMZ, where 50 percent retention would be required. The additional stream buffers would provide further resource protection as climate modeling has shown increases in background stream temperatures in Montana of up to 3 degrees Celsius by 2080 (Isaak et al. 2017). The environmental analysis completed by the Department for this ARM revision process disclosed the additional acres that would be affected by some rules. We further note that, the 2020 Annual Sustainable Yield model that included the proposed rule set as a constraint coupled with the addition of approximately

14,000 acres of acquired forest land and adjustments made to identified acreage deferrals increased the annual sustainable yield by 17% over the calculation in 2015.

Again, added resource protection in the wake of climate change, improving program consistency statewide, site productivity is relatively low, and that the availability of standing volume is not typically a limitation on these lands are important considerations that DNRC has taken into account.

19 So I guess that's a --that's a key point.

20 Also, you know, there's been a lot of

21 research that has been done by Weyerhaeuser and

22 Plum Creek on the effectiveness of the native fish

23 habitat conservation in Montana.

(Brian Sugden, PH Comment #4)²⁴ There's published research that indicates that the Montana

25 SMZ law is actually very effective at protecting

1 water quality and fish.

DNRC Response to Brian Sugden, PH Comment #4: DNRC agrees that the Streamside Management Zone law has been highly successful at preventing water quality impacts from sediment delivery during forest management activities. No changes to the law or its implementation on state trust land is proposed here. DNRC commends the commenter on their efforts in contributing to the scientific body of literature regarding the SMZ law effectiveness. While the cited research article indicated that standard buffers applied under the SMZ Law in Montana provided sufficient protection to stream temperature, fish communities, and canopy cover, the broader body of scientific research generally indicates that increased buffer width enhances protective measures afforded to aquatic resources, findings largely corroborated by DNRC results from monitoring of RMZs conducted during the first 5 years of HCP implementation. Further research is warranted regarding the law's effectiveness with respect to other stream metrics such as, large woody debris recruitment, habitat complexity, microclimate modification and ramifications of climate change. DNRC's on-going monitoring efforts are focused on providing additional information and clarity to the above referenced response variables.

1 I've got a recent

2 publication from last year -- it was published in

3 the International Journal of Forest Engineering --

4 that looked at Montana Streamside Management Zone

5 effectiveness for water temperature control and

6 found that the law was fully protected.

7 So I guess in closing, you know, again,

8 I'm really limiting my comments to the streamside

9 management regulation part of the rule change, but

(Brian Sugden, PH Comment #5)

10 I really feel like DNRC needs to justify why

11 expanding those to the -- you know, current HCP

12 lands to all of forest land is justified and, you

13 know, kind of justify as well the precedent of why

14 the Montana SMZ law is not effective apparently

15 at -- you know, at providing adequate protection.

DNRC Response to Brian Sugden, PH Comment #5: DNRC adopted the State Forest Land Management Plan in 1996 and the HCP in 2012, which committed the department to some measures beyond the strict adherence to the SMZ law. DNRC also owns and manages lands with a growing number of conservation easements attached to their deeds that legally require DNRC to implement measures that vary from strict application of the SMZ law. That said, the SMZ law is the foundation for DNRC Riparian Management Zone strategy developed under the HCP and the law provides the prescriptive baseline for tree retention requirements and prohibitions such as, equipment operations, road construction, burning and clear cutting. The SMZ law will continue to be adopted under rules for forest management (ARM 36.11.301 thru 36.11.313) and implemented on every trust land timber sale. As a result, knowledge of the SMZ law and its application is not expected to diminish.

DNRC agrees that the Streamside Management Zone law and Best Management Practices for Forestry have been highly successful at preventing water quality impacts from sediment delivery during forest management activities. No changes to the law and/or its implementation on state trust land is proposed here. DNRC recognizes that there is a body of scientific literature regarding the effectiveness of the SMZ law and BMPs. We also note that further research is warranted regarding the law's effectiveness with respect to other stream metrics such as stream temperature, large woody debris recruitment, shade, habitat complexity, microclimate modification and ramifications of climate change. DNRC's on-going monitoring efforts are focused on providing additional information and clarity to the above referenced response variables.

Please see also DNRC Response to PH Comment #1 through #4 above.

16 So that concludes my comments.
17 MS. FARMER: Thank you, Brian. Thanks,
18 Brian.
19 Next, we will go on to Christine
20 Johnson. It looks like you are next, if you want
21 to go ahead. And, again, state your name and
22 affiliation, if any, and a complete statement of
23 whether you're a proponent, opponent, or making a
24 general statement.
25 MS. JOHNSON: Good afternoon. I am
1 Christine Johnson. I am the owner of Nine Mile
2 Venture, the only certified woman-owned logging
3 company in the state of Montana, and

(Christine Johnson, PH Comment #6)

4 I am pretty much going to ditto what Brian had just said. And
5 us working with the DNRC on several -- several
6 logging projects, where there is a lot of water on
7 the land, we have worked with the professionals at
8 the DNRC, who are more than capable of making
9 educated decisions on the best interests of the
10 land, of the water use and water rights and
11 protecting all of the wildlife and other habitats
12 that are on there. (PH Comment #6)

DNRC Response to Christine Johnson, PH Comment #6: Comment noted. Please see responses to PH comments #1 through #5 above.

(Christine Johnson, PH Comment #7)

13 I as well think that it does not need to
14 be included in changes and will create some very
15 unintended consequences for not only the DNRC, but
16 for the environment and those habitats that are
17 trying to be protected by not being able to be
18 well-managed as well as they have been currently.
19 It will also cut into the state trust
20 dollar amounts that are going to be able to be
21 accessed by not managing the land as well.

DNRC Response to Christine Johnson, PH Comment #7: Following years of analysis, review, and implementation, DNRC is proposing this revised rule set with eyes wide open. DNRC has been implementing the HCP since 2012 and has reached a point where a comprehensive set of policy revisions are necessary. It could also reasonably be argued currently that DNRC is very much experiencing unintended consequences of having outdated ARMs, which cause confusion, monitoring difficulties and implementation inconsistencies. We believe that the potential for the suggested unintended consequences on the ground regarding resource management concerns is minimal, and greatly outweighed by reduced program consistency, daily inefficiencies and legal vulnerabilities. Ample operating flexibility is contained in all aspects of the proposed rule set and significant discretion will continue to be allowed for DNRC managers to ensure proper protection and management of sensitive and important habitats, as well as revenue generation. Ensuring near and long-term revenue generation capabilities while providing adequate resource protection and sound stewardship remain important objectives for DNRC.

22 And I will also be submitting written
23 comment better than what I was just saying. So
24 thank you.

25 MS. FARMER: Thank you, Christine.

1 It looks like on the list we now have
2 Dan Rogers, who is our Forest Management Bureau
3 bureau chief. Welcome, Dan.

4 And we'll now move on to David Brummer
5 for the next comment.

6 MR. BRUMMER: Yes. My name is David
7 Brummer. I'm the regional procurement and
8 marketing manager for Stimson Lumber Company.
9 I've worked for Stimson since 2006 in
10 various aspects of the company. And currently as
11 part of my business, I bid and operate on agency
12 timber sales across three different states:
13 Eastern Washington, North Idaho, and Western
14 Montana.

15 I just have a couple of general
16 comments, as I will be submitting written

(David Brummer, PH Comment #8)

17 comments. I would -- would agree with the
18 comments that have been made already in regards to
19 applying the HCP management requirements on the
20 non-HCP lands just for the sake of assisting in
21 implementation.

DNRC Response to David Brummer, PH Comment #8: Comment noted. Please see responses to PH comments #1 through #7 above.

22 As I stated, I deal with an FPA in
23 Washington state, I deal with Idaho's FPA, and I
24 deal with Montana's streamside laws in Montana.
25 And so

(David Brummer, PH Comment #9)

1 I don't see that having to cover all the lands in Montana under the HCP makes a whole lot
2 sense from a forester's standpoint. So that's
3 my comment on that.

DNRC Response to David Brummer, PH Comment #9: Many of the proposed changes to the draft rule set are not related to the HCP in any way, but are important needed changes to address conflicting definitions, unused definitions, legislative repeals, and two federally de-listed species.

Regarding HCP concerns, it is important to note that measures contained and applied in the HCP are very scaled in their level of constraint according to geographic locations in the state where habitat values and risks to covered species are greatest. By design, the areas where greatest protections and restrictions apply are covered under the HCP. For grizzly bears, on lands outside of federally defined recovery zones, or occupied habitat very few restrictions apply. Similarly, for lynx, on parcels where no habitat is present, as indicated by current habitat maps, no restrictions apply. Riparian Management Zones have been implemented adjacent to fish bearing streams on State trust lands since the initial adoption of Forest Management Rules in 2003. This policy has been implemented statewide during forest management activities, regardless of official state land classifications. The primary change under the HCP conservation strategy is the application of RMZ's on all Class I streams, regardless of the streams ability to support a fishery. This constraint was again modeled for the entirety of the commercial forest land base in the 2020 SYC in the form of a 50 foot "grow only" constraint on all Class I streams. Application of the proposed rule would result in approximately 1,977 acres of additional managed RMZ acres, where 50% retention would be required. DNRC maintains the management flexibility to harvest within this portion of the riparian buffer under both the SMZ law and the proposed RMZ buffer, and as a result, will have minimal economic impact to trust beneficiaries. By applying HCP measures in this manner, significant parts of the state require few if any additional restrictions on forest management activities if the species, and/or habitats are not present. In this regard, the perceived expansion of highly constraining levels of HCP commitments to other parts of the state not formally covered by the HCP is a misconception. What DNRC is proposing is one set of comprehensive, consistent, and current definitions and practices that would provide DNRC with considerable efficiencies for daily communication, environmental analyses and clarity when communicating with internal staff, decision makers, public officials, and members of the public.

If the HCP-consistent measures and definitions are not adopted as proposed on lands not formally covered under the HCP, old ARMs on the books since 2003 will remain, which provide equally if not more onerous measures for grizzly bears and lynx. In the case of Canada lynx, outdated habitat definitions would be a part of the application of these older rules, creating growing legal risk for the program. The protections of the Endangered Species Act follow each listed species, as determined by their presence and distribution. Thus, DNRC has a legal requirement to avoid take of these species when individuals or habitats are present whether they occur in places such as Condon, Fort Benton, or Red Lodge, Montana, for example. The proposed rule set appropriately scales the level of necessary mitigation to areas most necessary to minimize risk of incidental take of federally listed species.

We believe adopting this proposed rule set that contains revisions consistent with the philosophy and intent of the State Forest Land Management Plan that have received considerable prior review by the U.S. Fish and Wildlife Service, DNRC managers, and the public is the best means of addressing various current programmatic needs right now. The importance of these revisions to improve program efficiency and defensibility cannot be overstated.

5 The other comment I have is in regards to this -- the updates to this have been about 15
6 or 16 years in the making, and it is -- it's very

(David Brummer, PH Comment #10)

7 long, and there's a lot of changes. And my
8 preference would have been if we could have done
9 this in maybe three different sections. My
10 concern is there's so much in here that's --
11 that's changing that. There's going to be -- the
12 law of unintended consequences that it's hard to
13 see how some of this is going to really impact
14 management on the DNRC lands.

DNRC Response to David Brummer, PH Comment #10: Because of the firm sideboards of the MAPA rule-making process, breaking the proposed rule set into three separate adoption projects would be much less efficient and take up to 3 additional years to complete. All of the proposed revisions are necessary today and the vast majority of the work has now been accomplished and identified in the proposed changes.

Following years of HCP and ARM analysis, review, implementation, and monitoring DNRC is proposing this revised rule set with eyes wide open. DNRC has been implementing the HCP since 2012 and has reached a point where a comprehensive set of policy revisions are very necessary. It could also reasonably be argued currently that DNRC is very much experiencing unintended consequences of having outdated ARMs, which cause confusion, monitoring difficulties and implementation inconsistencies. We believe that the potential for unintended consequences on the ground regarding resource management concerns is minimal, and greatly outweighed by reduced program consistency, daily inefficiencies and legal vulnerabilities. DNRC's continued commitments to monitoring will continue to ensure that any adverse consequences can promptly be addressed and remedied. Ample operating flexibility is contained in all aspects of the proposed rule set and significant discretion will continue to be allowed DNRC managers to ensure proper protection and management of sensitive and important habitats, as well as revenue generation. Ensuring near and long-term revenue generation capabilities while providing adequate resource protection and sound stewardship remain important objectives for DNRC.

15 So those are my comments. And, as I

16 said, we will provide some written comments
17 probably later this week or next week. Thank you.
18 MS. FARMER: Thank you, David.
19 It looks like next on the list we have
20 J. Richardson. If you want to go ahead and unmute
21 and go ahead and tell us your name, affiliation,
22 your complete statement, whether you're a
23 proponent, opponent, or have a general statement.
24 MR. RICHARDSON: Can you hear me?
25 MS. FARMER: Yes, we can.
1 MR. RICHARDSON: Okay. My name is Jared
2 Richardson. I am the regional raw material
3 manager for Weyerhaeuser and represent three mills
4 located in the Flathead Valley.
5 In general, I am against the proposed
6 rule changes. To -- to reiterate what's been said
7 earlier, it is a lot of -- a lot of very
8 wide-sweeping rules that are proposed to be
9 changed all at once. It's 17 years of rules
10 proposed to be changed within a very short period

(Jared Richardson, PH Comment #11)

11 of time, and I think—I feel a lot of the
12 proposed changes are maybe shortsighted and don't
13 necessarily represent the best interests of the
14 agency, and there are potential unintended
15 consequences.

DNRC Response to Jared Richardson, PH Comment #11: The draft rule set proposed contains important comprehensive revisions that are intended to serve the DNRC Forest Management Program well into the foreseeable future. Thus, we do not believe they are short sighted in any way. To get to this point, years of discussion, planning, HCP and ARM analysis, review, implementation, training and monitoring have taken place. DNRC is proposing this revised rule set with eyes wide open. DNRC has been implementing the HCP since 2012 and has reached a point where a comprehensive set of policy revisions are necessary. It could also conversely be argued now that DNRC is very much experiencing unintended consequences of having outdated ARMs, which cause confusion, monitoring difficulties and implementation inconsistencies. Again, we believe that the potential for unintended consequences on the ground regarding resource management concerns is minimal, and greatly outweighed by reduced program consistency, daily inefficiencies and legal vulnerabilities. DNRC's continued commitments to monitoring will continue to ensure that any adverse consequences can promptly be addressed and remedied. Ample operating flexibility is contained in all aspects of the proposed rule set and significant discretion will continue to be allowed DNRC managers to ensure proper protection and management of sensitive and important habitats, as well as revenue generation. Ensuring near and long-term revenue generation capabilities while providing adequate resource protection and sound stewardship remain important objectives for DNRC.

(Jared Richardson, PH Comment #12)

16 I will reiterate what has already been

17 said regarding concerns for SMZ expansion
18 across -- across the land base to emulate the HCP
19 across the entire trust land management land base,
20 the forest practices that the DNRC hangs its hat
21 on, the effectiveness of the Montana SMZ law, and
22 then its biannual monitoring and reports prepared
23 for the legislature reflect that effectiveness as
24 well.

DNRC Response to Jared Richardson, PH Comment #12: The SMZ law is the foundation for DNRC Riparian Management Zone strategy developed under the HCP and provided the prescriptive baseline for tree retention requirements and prohibitions such as, equipment operations, road construction, burning and clear cutting among other prohibited actions. The SMZ law will continue to be adopted under rules for forest management (ARM 36.11.301 thru 36.11.313) and implemented on every trust land timber sale. Measures contained in the proposed ARMs for forest management apply strictly and solely to Montana state trust lands and would not undermine the application of the SMZ law or BMPs as applied to other state and private ownerships.

In the most recent sustainable yield calculation process, DNRC identified approximately 750,000 commercial forest acres. Of these acres 583,889 were allocated to management regimes and were included in solution (MBG 2020). The HCP (DNRC 2018) covers approximately 630,000 acres of forested trust land where associated stream buffers would be applied. Thus, the gross expanded area where the revised ARM would apply would be on approximately 120,000 acres, primarily on land offices in eastern Montana. On these acres there are approximately 280 miles of class 1 streams protections on these added lands would result in approximately 1,977 acres of additional managed RMZ, where 50 percent retention would be required. The additional stream buffers would provide further resource protection as climate modeling has shown increases in background stream temperatures in Montana of up to 3 degrees Celsius by 2080 (Isaak et al. 2017). The environmental analysis completed by the Department for this ARM revision process disclosed the additional acres that would be affected by some rules. We further note that, the 2020 Annual Sustainable Yield model that included the proposed rule set as a constraint, coupled with the addition of approximately 14,000 acres of acquired forest land and adjustments made to identified acreage deferrals, increased the annual sustainable yield by 17% over the calculation in 2015. Again, added resource protection in the wake of climate change, improving program consistency statewide, site productivity being relatively low, and the fact that availability of standing volume is not typically a limitation on these lands are all important considerations that DNRC has taken into account.

(Jared Richardson, PH Comment #13)

25 I would also direct you to the actual
1 scientific studies with supporting data that Brian
2 Sugden referenced as to the effectiveness of the
3 existing SMZ law.

DNRC Response to Jared Richardson, PH Comment #13: DNRC agrees that the Streamside Management Zone law and Best Management Practices for Forestry have been highly successful at preventing water quality impacts from sediment delivery during forest management activities. No changes to the law and/or its implementation on state trust land is proposed here. DNRC agrees with the commenter regarding the contribution of the cited publication on furthering the scientific body of literature regarding the effectiveness of the

SMZ law and BMPs. Further research is warranted regarding the law's effectiveness with respect to other stream metrics such as stream temperature, large woody debris recruitment, shade, habitat complexity, microclimate modification and ramifications of climate change. DNRC's on-going monitoring efforts are focused on providing additional information and clarity to the above referenced response variables.

(Jared Richardson, PH Comment #14)

4 I believe the rationale, again, it
5 doesn't hold a lot of -- a lot of water to make
6 things easier for DNRC foresters to implement.
7 The way the rules are changed, it does not appear
8 to be any easier to interpret. The
9 interpretations of the -- the way I read the
10 proposed rules really speak to a more complicated
11 process.
12 And I think -- I think the rationale
13 that the proposed changes to the SMZ, what will
14 make it easier for DNRC foresters doesn't speak
15 very highly to the -- to the competency of the
16 DNRC foresters, and it doesn't seem like the
17 agency necessarily puts a lot of stock in the
18 ability of its own employees to implement their
19 rules, if that's the interpretation.

DNRC Response to Jared Richardson, PH Comment #14: Following years of HCP and ARM analysis, review, implementation, training and monitoring DNRC is proposing this revised rule set with eyes wide open. DNRC has been implementing the HCP since 2012 and has reached a point where a comprehensive set of policy revisions are necessary. The HCP currently applies to 630,000 acres of 750,000 acres of commercial forest land. Very little in the proposed rule set would be "new" to foresters charged with implementing them.

What DNRC is proposing is one set of comprehensive, consistent, and current definitions and practices that would provide DNRC with considerable efficiencies for daily communication, environmental analyses and clarity when communicating with internal staff, decision makers, public officials, and members of the public.

If the HCP-consistent measures and definitions are not adopted as proposed on lands not formally covered under the HCP, old ARMs on the books since 2003 will remain, which provide equally if not more onerous measures for grizzly bears and lynx. In the case of Canada lynx, outdated habitat definitions would be a part of the application of these older rules, creating growing legal risk. No changes to the SMZ law are being proposed.

We believe adopting this proposed rule set that contains revisions consistent with the philosophy and intent of the State Forest Land Management Plan that have received considerable prior review by the U.S. Fish and Wildlife Service, DNRC managers, and the public is the best means of addressing various current programmatic needs right now. The importance of these revisions to improve program efficiency and defensibility cannot be overstated.

(Jared Richardson, PH Comment #15)

20 And then, also, the DNRC just approved a
21 sustained yield calculation based on the current
22 ARMs as they're written now with certain

23 management constraints put in, and now they're
24 planning on changing those ARMs and imposing
25 additional management constraints. And so my
1 question is: Wouldn't that then change the SYC?
2 That seems like the cart is before the proverbial
3 horse in this case.

DNRC Response to Jared Richardson, PH Comment #15: Following close review, the proposed rule changes are consistent with the constraints in the 2020 Sustainable Yield Calculation, and no additional constraints associated with these rules would be anticipated regarding future sustainable yield calculations.

(Jared Richardson, PH Comment #16)

4 I am preparing written comments, which I
5 will submit before the deadline also. There are
6 several other areas of concern that I have, and I
7 would agree with David Brummer's earlier comment
8 in that I feel that this process could be done in
9 stages, maybe adopting some ARMs initially that
10 are already supported by House bills -- House bill
11 passages. Change those rules and then work -- and
12 then move to the more complicated ARMs and engage
13 the stakeholders on that -- on that process.

DNRC Response to Jared Richardson, PH Comment #16: Because of the procedural sideboards of the MAPA rule-making process, breaking the proposed rule set into three separate adoption projects would be much less efficient and take up to 3 additional years to complete. Each rule revision process would involve vetting and revising separately packaged proposed changes again with internal legal staff, field staff and managers, members of the public, board of land commissioners, and Secretary of State's office for the purposes of editing and final publication. These steps greatly magnify the time it takes to make important revisions. Such work also necessarily occurs while staff are accomplishing other normal duties associated with timber sale preparation. All of the proposed revisions are necessary today and the vast majority of the work has now been accomplished and identified in the proposed changes to address known program inefficiencies and nagging vulnerabilities. We acknowledge that it has been 17 years since the original ARMs were adopted in 2003 and that the proposed comprehensive set of revisions appears somewhat daunting. However, we believe that waiting until future years 18, 19 or even 20 to complete known and necessary to address the identified programmatic policy revisions would not represent an efficient and responsible use of staff resources.

14 Thank you.
15 MS. FARMER: Thank you, Jared.
16 Let's see, it looks like next in the
17 alphabetical list is Julia Altemus. Julia, are
18 you ready to comment?
19 MS. ALTEMUS: Hi. Yes. Good afternoon.
20 Can you hear me okay?
21 MS. FARMER: We can.
22 MS. ALTEMUS: Thank you. Thanks for the
23 opportunity to comment. Again, this is Julia

24 Altemus, and I am here on behalf of the Montana
25 Wood Products Association. A lot of my members
1 are also giving comments. We will give written
2 comment by the deadline.

(Julia Altemus, PH Comment #17)

3 I guess I would have to say that in
4 general we are opposed to what's being proposed
5 except for in the case we do -- would support
6 adopting the case of some of the legislation that
7 has passed in recent years, which was House Bill
8 70 and House Bill 441. I mean, I think that those
9 do need to be looked into more.
10 But the rest of them, honestly, 17
11 years, a huge ask. I mean, this is a big
12 document.
It has a lot of ramifications, not just
13 within the SMZ, but there are some issues with
14 definitions. There are some issues with grizzly
15 bear and lynx.
16 And I think that we need to break it up.
17 There should have been -- maybe not trying to do
18 this after 17 years, but break it up in phases, as
19 has been mentioned, because I do think there's
20 some low-hanging fruit that would be easy probably
21 to adopt.

DNRC Response to Julia Altemus, PH Comment #17: Because of the procedural sideboards of the MAPA rule-making process, breaking the proposed rule set into three separate adoption projects would be much less efficient and take up to 3 additional years to complete. Each rule revision process would involve vetting and revising separately packaged proposed changes again with internal field staff and managers, members of the public, board of land commissioners, and Secretary of State's office for the purposes of editing and final publication. These steps greatly magnify the time it takes to make important revisions. Such work also necessarily occurs while staff are accomplishing other normal duties associated with timber sale preparation. All of the proposed revisions are necessary today and the vast majority of the work has now been accomplished and identified in the proposed changes to address known program inefficiencies and outdated rules.

We acknowledge that it has been 17 years since the original ARMs were adopted in 2003 and that the proposed comprehensive set of revisions appears somewhat daunting. However, we believe that waiting until future years 18, 19 or even 20 to complete known and necessary to address the identified programmatic policy revisions would not represent an efficient and responsible use of staff resources.

22 But then I think we really do need a
23 deeper dive on some of the issues that we do have.
24 So, again, I appreciate the ability to
25 comment, and I know I have members that have more
1 specific comments to make, and so I'm going to
2 stop here and then just -- I will submit our

3 written comments by the end of the deadline.
4 Thank you.
5 MS. FARMER: Thank you, Julia.
6 Let's see, next we have Marissa
7 Stockton. Marissa, are you ready to comment?
8 Marissa, are you able to hear us, and do you want
9 to comment? Okay. I think I'm going to keep
10 going, then.
11 Next on the list we have -- doesn't have
12 a name, but it says (unintelligible) guest. Does
13 anyone know if that is you? Would you unmute and
14 please tell us your name, affiliation, and a
15 complete statement and whether you're a proponent,
16 opponent, or have just a general statement. Is
17 there an (unintelligible) guest? Is there
18 somebody on the phone? (Unintelligible).
19 UNIDENTIFIED SPEAKER: Ask them to
20 unmute.
21 MS. FARMER: Okay. I'm going to keep
22 going, and we'll circle back. Oh, thanks,
23 Marissa.
24 Okay. Let's go down now to Pat Beddow.
25 Patrick, would you like to comment?
1 MR. BEDDOW: Good afternoon. Yeah. I'm
2 with Superintendent Arntzen's office, education
3 office, and I'm just basically wanting to listen
4 and observe what -- what the comments are so we
5 can all have a good idea of what's going on, so I
6 appreciate it. Thank you.
7 MS. FARMER: Thanks, Patrick.
8 Okay. Next in line, it looks like Paul
9 McKenzie. Are you ready to comment? Again,
10 please state your name, your affiliation, and a
11 complete statement of whether you're a proponent,
12 opponent, or just have a general statement.
13 MR. McKENZIE: Good afternoon. For the
14 record, my name's Paul McKenzie. I'm a resource
15 manager for F.H. Stoltze Land & Lumber. And I
16 assume you can hear me okay?
17 UNIDENTIFIED SPEAKER: You're a little
18 quiet, Paul. I don't know if you can turn up or
19 get closer, but we can hear you.
20 MR. McKENZIE: Okay. I'll try to -- is
21 that better?
22 UNIDENTIFIED SPEAKER: Yeah. That's
23 better. Thank you.
24 MR. McKENZIE: Okay. So a lot of my
25 comments have already been stated, but I will -- I

1 guess this is a general statement because there's
2 portions of the ARMs that we somewhat agree with
3 and certainly portions of the ARMs that we think
4 need more consideration.

(Paul McKenzie, PH Comment #18)

5 You know, it's really difficult -- these
6 are wide -- wide-reaching landscape-based changes
7 that take a lot of good consideration to
8 understand the pros and cons, and we trust that
9 the agency has had the opportunity to do so, but
10 at the same point in time, it's hard for us as a
11 third party sometimes to see the analysis that
12 goes on here. So we're just going to state our
13 concerns and hope that the agency can respond to
14 those in a reasonable and informed manner to help
15 inform the decision makers.

DNRC Response to Paul McKenzie, PH Comment #18: The draft rule set proposed contains important comprehensive revisions that are intended to serve the DNRC Forest Management Program well into the foreseeable future. To get to this point, years of discussion, planning, HCP and ARM analysis, review, implementation, training and monitoring have taken place. DNRC is proposing this revised rule set with eyes wide open. DNRC has been implementing the HCP since 2012 and has reached a point where a comprehensive set of policy revisions are necessary. DNRC's continued commitments to monitoring will continue to ensure that any adverse consequences can promptly be addressed and remedied. Ample operating flexibility is contained in all aspects of the proposed rule set and significant discretion will continue to be allowed DNRC managers to ensure proper protection and management of sensitive and important habitats, as well as revenue generation. Ensuring near and long-term revenue generation capabilities while providing adequate resource protection and sound stewardship remain important objectives for DNRC.

(Paul McKenzie, PH Comment #19)

16 Specifically, like has been said before,
17 you know, this is a culmination of 17 years' worth
18 of not doing rule updates. And my understanding
19 is that the agency has been working on this for
20 quite a while, and I don't doubt it, given the
21 complexity of what's being proposed here.
22 So I, too, am supportive of maybe
23 considering breaking this rule change process into
24 multiple phases. I think there's certain things
25 that are kind of straightforward. There's a
1 couple of changes that are in response to
2 legislative changes from the last session dealing
3 specifically with House Bill 70 and House Bill
4 441. There's some cleanup that has to do with
5 some delisting of species that's probably pretty
6 straightforward, you know, I think is appropriate

7 to address, you know, in the near term; but some
8 of the other things are complex enough that I
9 think that it takes careful consideration.

DNRC Response to Paul McKenzie, PH Comment #19: Minor revisions to the Forest Management ARMs were completed several times since their original adoption in 2003 to address: 1) statutory changes in timber permit allowances, 2) adoption of the HCP in 2012, 3) an HCP settlement agreement to comply with a federal court order, and 4) to clarify the legal implementation requirements of ARMs associated with conservation easements that are tied to many lands recently acquired by DNRC (ARM 36.11.471). Additionally, since the original full rule set was adopted in 2003, DNRC has acquired approximately 100,000 acres of forest land, the gray wolf and bald eagle were removed from the federal list of Threatened and Endangered species, and recent legislation was passed effectively repealing the timber conservation license process (ARM 36.11.451 through 36.11.456) further underscoring the need to revise the current ARMs.

So why embark on such a large, comprehensive revision of Forest Management ARMs at this time versus conducting rule making under several smaller processes?

First, the MAPA process is an important, involved programmatic endeavor that typically requires 3 to 6 months to complete. While it may seem that it would be beneficial to break up the process into smaller bites, it would undoubtedly require considerably more time and resources to complete; possibly up to three additional years. Scaling back considerably on the scope of the ARM revisions at this juncture, would likely result in the loss of at least 6 months of work and a restart of this process, given the maximum 6-month process duration required by MAPA. Each rule revision process would involve vetting and revising separately packaged proposed changes again with internal legal staff, field staff and managers, members of the public, board of land commissioners, and Secretary of State's office for the purposes of editing and final publication. These steps greatly magnify the time it takes to make important revisions. Such work also necessarily occurs while staff are accomplishing other normal duties associated with timber sale preparation.

Second, during the time expended on additional rule making processes under a piecemeal approach, inconsistencies, and project implementation and analysis inefficiencies would persist unnecessarily. Further, a piecemeal approach would not address inconsistencies and possible program legal vulnerabilities right now and could potentially maintain disarray in DNRC's forest management guiding policy for years to come.

Third, the analysis work is done. The proposed rule revisions, with a few exceptions, represent the culminating phase of 10 years of staff investment negotiation, environmental analysis and public involvement associated with the HCP and 2018 Amendment. Further, the vast majority of the proposed changes have been implemented in the program in practice since 2012 under the HCP as required under the "rule-by-reference" (ARM 36.11.470). All of the corresponding MEPA decisions, NEPA decisions, Biological Opinions, and court ordered settlement agreement are a part of the public record and can be made available upon request. Years and years of analysis work have been accomplished and codifying this work in rule is all that remains.

From the beginning of this rule making process the planning team recognized that the number and nature of proposed ARM revisions would appear daunting to reviewers, and we are sympathetic to that fact. While large and ungainly in appearance to those largely unfamiliar with the content and measures contained in the HCP, the planning team believes finalizing this rule set is necessary to ensure the viability and defensibility of our forest management program at the present time and the vast majority of the effort and work to be completed is done. We also note that many of the changes involve the repeal of ARMS, and/or markup that represents repeal and replacement with other rules. DNRC believes the most appropriate and responsible action to take is to make all known and necessary revisions now in this important

comprehensive process. It makes little sense to leave some ARMs out to address another day when we clearly know all proposed revisions are warranted now when the vast majority of work has been completed to finalize the process.

(Paul McKenzie, PH Comment #20)

10 Just to reiterate, you know, the
11 expansion of the application of these rules beyond
12 just classified forest lands, you know, I think we
13 had 750,000 acres of classified forest lands that
14 will now be expanded to the balance of forested
15 trust lands, which is roughly 930,000 acres. And
16 then you start looking at specific issues like
17 watershed, streamside management zone protections,
18 the expansion is even greater, where you're taking
19 HCP direction and expanding it across a much
20 larger landscape.

DNRC Response to Paul McKenzie, PH Comment #20: Approximately 750,000 acres of commercial timberland occur on state trust lands in Montana (MBG 2020). Approximately 630,000 acres are currently managed under the HCP (DNRC HCP Amendment, 2018). Thus, the commitments proposed would revise measures currently being applied on the remaining 120,000 acres. These acres still currently are managed under constraints provided in ARMs that were adopted in 2003 and generally contain fewer streams and much less suitable habitat for grizzly bears and Canada lynx. Measures proposed are scaled geographically according to geographic locations in the state where habitat values and risks to covered species are greatest. As such, additional requirements proposed under the draft rule set would be minimal. See Response to PH Comment #1 for additional details.

The current 2020 Sustainable Yield Calculation incorporated all of the requirements contained in the rule set proposed for adoption. No related additional constraints would be required. Minor expanded protections associated with buffers on non-HCP lands were accounted for in the RMZ constraint for aquatics and wildlife connectivity and would not by themselves account for volume necessitating additional constraints.

(Paul McKenzie, PH Comment #21)

21 You know, that HCP process was very
22 involved, took a lot of analysis, a lot of
23 disclosure, a lot of consideration. And, quite
24 honestly, a lot of the issues that drove the HCP
25 decision-making process really don't apply to many
1 of these extra acres that were outside of the
2 original HCP consideration. So expanding some of
3 these pretty constrictive directions to these
4 other acres really takes some consideration,
5 specifically within the streamside management zone
6 stuff, some of the requirements for zero harvest
7 in the first 50 feet buffer, you know, there's
8 reasons for having those expanded buffers and
9 increased restrictions that are justified under
10 the HCP but may not be justified across the entire
11 land base; and I think looking at that in detail

12 and balancing the pros and cons of that is really
13 important.

DNRC Response to Paul McKenzie, PH Comment #21: Regarding HCP concerns, it is important to note that measures contained and applied in the HCP are very scaled in their level of constraint according to geographic locations in the state where habitat values and risks to covered species are greatest. By design, the areas where greatest protections and restrictions apply are covered under the HCP, particularly in bull trout core, grizzly bear recovery zones, and defined lynx management areas. For grizzly bears, on lands outside of federally defined recovery zones, or occupied habitat very few restrictions apply. Similarly, for lynx, on parcels where no habitat is present, as indicated by current habitat maps, no restrictions apply. By applying HCP measures in this manner, significant parts of the state require few if any additional restrictions on forest management activities if the species, and/or habitats are not present. In this regard, the perceived expansion of highly constraining levels of HCP commitments to other parts of the state not formally covered by the HCP is a misconception. What DNRC is proposing is one set of comprehensive, consistent, and current definitions and scaled practices that would provide DNRC with considerable efficiencies for daily communication, environmental analyses and clarity when communicating with internal staff, decision makers, public officials, and members of the public.

If the HCP-consistent measures and definitions are not adopted as proposed on lands not formally covered under the HCP, old ARMs on the books since 2003 will remain, which provide equally if not more onerous measures for grizzly bears and lynx. In the case of Canada lynx, outdated habitat definitions would be a part of the application of these older rules, creating growing legal risk. The protections of the Endangered Species Act follow each listed species, as determined by their presence and distribution. Thus, DNRC has a legal requirement to avoid take of these species when individuals or habitats are present whether they occur in places such as Condon, Fort Benton, or Red Lodge, Montana, for example. The proposed rule set appropriately scales the level of necessary mitigation to areas most necessary to minimize take of federally listed species.

We believe adopting this proposed rule set that contains revisions consistent with the philosophy and intent of the State Forest Land Management Plan that have received considerable prior review by the U.S. Fish and Wildlife Service, DNRC managers, and the public is an appropriate and valuable means to address various current programmatic needs right now. The importance of these revisions to improve program efficiency and defensibility cannot be overstated.

Following close review, the proposed rule changes are consistent with the constraints in the 2020 Sustainable Yield Calculation, and no additional constraints associated with these rules would be anticipated regarding future sustainable yield calculations. The 2020 Sustainable yield calculation had 750,000 acres of commercial forest land available for harvest before constraints were applied. This includes both forest and non-forest lands. Approximately 630,000 of these acres or 84%, has been managed under the proposed ARM revisions for the past 10 years, equating to approximately 85% of the sustainable yield for this same 10-year period. Coupled with the addition of approximately 14,000 acres of acquired forest land and adjustments made to identified acreage deferrals, all the proposed rules were modeled as constraints in the 2020 SYC resulting in a 17% increase in the annual sustainable yield, further supporting that no economic impact would result to trust beneficiaries as a result of adopting the proposed rules. The current 2020 Sustainable Yield Calculation incorporated the requirements contained in the rule set proposed for adoption. Thus, no related additional constraints would be required. Minor expanded protections associated with buffers on non-HCP lands were accounted for in the RMZ constraint for aquatics and wildlife connectivity and would not by themselves account for volume necessitating additional constraints.

14 We hate to be our own worst enemy in

15 providing more restrictions upon ourselves when we
16 already have layers and layers and layers out
17 there.
18 Likewise, with grizzly bear or lynx,
19 that landscape is changing dramatically. You
20 know, much of the -- much of the habitat
21 management that is included in those rules were
22 things that were, you know, established, you know,

(Paul McKenzie, PH Comment #22)

23 ten plus years ago. The landscape is very
24 different today. Both those species, the tools we
25 have available for management, habitats have
1 changed. Some of the best science has changed.
2 And so I think you have to be really careful about
3 just blanket adoption of what we're currently
4 doing. Maybe opportunities to be less descriptive
5 and more prescriptive in how we manage those,
6 reference other documents that maybe have a little
7 more flexibility in them, and ultimately give the
8 decision-making ability back to professionals that
9 are in the field that are dealing with
10 site-specific issues and information and can make
11 the best informed decisions.

DNRC Response to Paul McKenzie, PH Comment #22: Under this process, DNRC is proposing to adopt revised rules and definitions based on improved scientific information that have received considerable prior public review and analysis in cooperation with the U.S. Fish and Wildlife Service. As such, they serve to clarify DNRC's responsibilities under the Endangered Species Act and ensure the long-term defensibility and credibility of the program with regard to endangered species concerns, which were key important beneficial objectives identified in the HCP development process. We believe this is an important consideration. The proposed rule set reflects revision work that was initiated in 2004 with initiation of the HCP process. The benefits of having these clear, consistent forest management rules and definitions to be applied across the state are important to promote process efficiency and long-term defensibility of the Forest Management Program.

The HCP and associated 50-year Incidental Take Permit and ARMs actually provide considerable management consistency, certainty and stability regarding an ever-changing policy environment and distribution regarding grizzly bears and Canada lynx. Any proposed future changes to the HCP would require review from the U.S. Fish and Wildlife Service, and any further ARM revisions would require analysis and disclosure in applicable MAPA and MEPA procedural review processes. This proposed draft rule set would cause no additional future deferrals of forested timberland, and all measures from this proposed rule set were considered and addressed in the 2020 SYC. Detailed descriptions of grizzly bear and Canada lynx constraints applied in the 2020 SYC can be found on pages 119-124 of the final SYC report (MBG 2020).

Ample operating flexibility is contained in all aspects of the proposed rule set and significant discretion will continue to be allowed DNRC managers to ensure proper protection and management of forest resources and important habitats, as well as revenue generation. We

believe the proposed rule set appropriately addresses all of DNRC's legal commitments and strikes an important balance between management flexibility and program consistency.

(Paul McKenzie, PH Comment #23)

12 We have a lot of really, really talented
13 and experienced folks with the DNRC, and that's
14 really where the best decision-making takes place;
15 and when we have overly prescriptive rules, it
16 takes some of that decision space away from them
17 and usually results in -- and products maybe
18 aren't as good as they could be.

DNRC Response to Paul McKenzie, PH Comment #23: Ample operating flexibility is contained in all aspects of the proposed rule set and significant discretion will continue to be allowed DNRC managers to ensure proper protection and management of forest resources and important habitats. We believe the proposed rule set appropriately addresses all of DNRC's legal commitments and strikes an important balance between management flexibility, resource protection, and program consistency.

(Paul McKenzie, PH Comment #24)

19 So I guess with that -- I do have some
20 written comments that I'll submit. There's some
21 observations we have with some of the definitions
22 that we think are problematic or maybe haven't
23 fully -- been fully considered that we'd like you
24 to consider.

DNRC Response to PH Comment #24: Comment noted.

(Paul McKenzie, PH Comment #25)

25 But in general, I think this is -- this
1 is a broad set of changes here that I think
2 requires careful and deliberate consideration and
3 analysis of the pros and cons and (unintelligible)
4 and hope we can find the time and process to do
5 so.

DNRC Response to Paul McKenzie, PH Comment #25: The draft rule set proposed contains important comprehensive revisions that are intended to serve the DNRC Forest Management Program well into the foreseeable future. To get to this point, many years of discussion, planning, HCP and ARM analysis, review, implementation, training and monitoring have taken place. DNRC is proposing this revised rule set with eyes wide open. DNRC has been implementing the HCP since 2012 and has reached a point where a comprehensive set of policy revisions are necessary. Additional analysis is included in an environmental assessment completed for this proposed rule set.

Ample operating flexibility is contained in all aspects of the proposed rule set and significant discretion will continue to be allowed DNRC managers to ensure proper protection and management of forest resources and important habitats, as well as revenue generation. We

believe the proposed rule set appropriately addresses all of DNRC's legal commitments and strikes an important balance between management flexibility and program consistency.

6 So thank you for the opportunity to
7 comment, and we will submit written comments here
8 shortly.

9 MS. FARMER: Okay. Thanks, Paul.
10 Next on the list is Rick Franke. Rick,
11 are you able to unmute and comment? Again, give
12 your name, affiliation.

13 MR. FRANKE: Yeah. Hi, this is Rick
14 Franke. I'm the fiber manager with Roseburg
15 Forest Products in Missoula. Got a little
16 background noise right here at the plant. I
17 apologize for that.
18 We use residual products from all the
19 sawmills in Montana. That's our interest in this.
20 I don't actually have any prepared
21 comments at this time. I'm just listening in and
22 appreciate the opportunity to hear the comments.
23 Just taking some notes. Thank you.

24 MS. FARMER: Great. Thanks, Rick.
25 Next we have Will from the Secretary of

1 State's office. Will, do you have comments?

2 MR. SELPH: Can you hear me? Christine,
3 can you hear me?

4 MS. FARMER: We can hear you now. Yep.

5 MR. SELPH: I'd just kind of echo what
6 Patrick Beddow said. Will Selph from the
7 Secretary of State's Office, Secretary of State
8 Cory Stapleton's Land Board adviser. Appreciate
9 everyone's input and thoughts and comments today.
10 And, again, just participating to be an observer
11 as, obviously, part of the authorizing board that
12 started this process, so we appreciate everyone's
13 time and energy and effort in being here today and
14 look forward to hearing more.

15 MS. FARMER: Okay. Thank you. Thanks,
16 Will.

17 Okay. It looks like Tom Schultz is next
18 on the list. Tom, are you ready to comment?

19 MR. SCHULTZ: I am. So, Tom Schultz.
20 I'm the VP of resources for IFG. We operate in
21 the Intermountain. We have mills in Idaho, and we
22 have a mill in St. Regis. We purchase about
23 10 percent of the wood that DNRC offers for sale.
24 I'm fairly familiar with the rule set
25 from years ago. The rules initially made a
1 differentiation between scattered lands and block

2 lands. When the HCP was developed, the primary
3 intent was to secure incidental take permits. It
4 was really to protect the trust lands long term
5 from risk of litigation, and the lands that were
6 selected to be in the HCP, it was a very

(Tom Schultz, PH Comment #26)

7 meticulous process. To do that, certain lands
8 were excluded that had higher and better uses, but
9 it was really the core timber base that was
10 identified to be in the HCP.

DNRC Response to Tom Schultz, PH Comment #26: Prior to adoption of the HCP, DNRC undertook a detailed assessment of the lands included for coverage. Specific criteria for inclusion considered: 1) the lands in relation to the distribution of the threatened and endangered species being covered, 2) the potential for program exposure, 3) the commercial timber harvest potential regarding available stands on the reviewed parcels, 4) other existing land uses, and 5) higher and better current or future use consideration for each parcel. Since the original assessment and selection of lands, DNRC managers have dealt with maintaining duplicate data fields, analysis inconsistency and application of outdated habitat protections on some parcels that arguably should have originally been included in the HCP. This is particularly true for parcels containing commercially manageable stands that occur in the expanding distribution of grizzly bears.

(Tom Schultz, PH Comment #27)

11 And I guess recognizing that, the
12 initial rule set was conceived pre-HCP, and these
13 rules are trying to bring the HCP into the rule
14 set. I think there's merit in doing that, but
15 I also think the same meticulous nature of selecting
16 the lands from inclusion in the HCP should also be
17 considered with the rules.
18 And I recognize that it might be easier
19 sometimes from an administrative perspective to
20 think a one-size-fits-all approach might be
21
22
23
24 sometimes is preferable.

DNRC Response to Tom Schultz, PH Comment #27: We believe that identification and vetting of lands for the purpose of applying ARMs in this case as compared with the HCP covered lands evaluation process is a bit “apples and oranges.” DNRC identified lands for HCP protections that are specifically listed on a 50-year incidental take permit and that are subject to accounting and documentation processes for the USFWS should they be removed from inclusion. The official inclusion of such lands that would not contain dramatically conflicting uses in the HCP was an important consideration. What is being proposed in the draft rule set is to have a consistent and implementable rule set that provides reasonable and adequate resource protection on forested state trust lands. This is same in concept of how the 1996 State Forest Land Management Plan Resource Management Standards and 2003 Forest

Management ARMs were applied from their initiation. We also note that the general notion that all HCP measures are highly restrictive is incorrect. Considerable management flexibility and allowances to address special circumstances are contained in HCP measures, and the measures are highly scaled geographically based on the presence of covered species and/or important habitats. We believe that to further specifically vet and possibly create additional rule sets for additional subsets of lands, primarily in eastern Montana, would create further confusion and program inconsistency over time. Further, forested lands in eastern Montana tend to be highly similar, ecologically simple, and of relatively low value for HCP-covered T&E species, which would not warrant highly refined assessments or rule sets.

Again, it is important to note that measures contained and applied in the HCP are very scaled in their level of constraint according to geographic locations in the state where habitat values and risks to covered species are greatest. By design, the areas where greatest protections and restrictions apply are covered under the HCP, particularly in bull trout core areas, grizzly bear recovery zones, and defined lynx management areas. For grizzly bears, on lands outside of federally defined recovery zones, or occupied habitat very few restrictions apply. Similarly, for lynx, on parcels where no habitat is present as indicated by current habitat maps, no restrictions apply. Riparian Management Zones have been implemented adjacent to fish bearing streams on State trust lands since the initial adoption of Forest Management Rules in 2003. This policy has been implemented statewide during forest management activities, regardless of land classification. The primary change under the HCP conservation strategy is the application of RMZ's on all Class I streams, regardless of the streams ability to support a fishery. This constraint was again modeled for the entirety of the commercial forest land base in the 2020 SYC in the form of a 50 foot "grow only" constraint on all Class I streams.

Application of the proposed rule would result in approximately 1,977 acres of additional managed RMZ acres, where 50% retention would be required. DNRC maintains the management flexibility to harvest within this portion of the riparian buffer under both the SMZ law and the proposed RMZ buffer, and as a result, will have minimal economic impact to trust beneficiaries. By applying HCP measures in this manner, significant parts of the state require few if any additional restrictions on forest management activities if the species, and/or habitats are not present. In this regard, the perceived expansion of highly constraining levels of HCP commitments to other parts of the state not formally covered by the HCP is a misconception. What DNRC is proposing is one set of comprehensive, consistent, and current definitions and practices that would provide DNRC with considerable efficiencies for daily communication, environmental analyses and clarity when communicating with internal staff, decision makers, public officials, and members of the public.

If the HCP-consistent measures and definitions are not adopted as proposed on lands not formally covered under the HCP, old ARMs on the books since 2003 will remain, which provide equally if not more onerous measures for grizzly bears and lynx. In the case of Canada lynx, outdated habitat definitions would be a part of the application of these older rules, creating growing legal risk. The protections of the Endangered Species Act follow each listed species, as determined by their presence and distribution. Thus, DNRC has a legal requirement to avoid take of these species when individuals or habitats are present whether they occur in places such as Condon, Fort Benton, or Red Lodge, Montana, for example. The proposed rule set appropriately scales the level of necessary mitigation to areas most necessary to minimize take of federally listed species.

We believe adopting this proposed rule set that contains revisions consistent with the philosophy and intent of the State Forest Land Management Plan that have received considerable prior review by the U.S. Fish and Wildlife Service, DNRC managers, and the public is the best means of addressing various current programmatic needs right now. The importance of these revisions to improve program efficiency and defensibility cannot be overstated.

(Tom Schultz, PH Comment #28)

25 I think in particular on the grizzly
1 bear stuff, as bears continue to expand, I think
2 trying to apply a one-size-fits-all approach is
3 problematic, and historically the lands at least
4 east of the Divide for the most part would have
5 been excluded from the HCP.

DNRC Response to Tom Schultz, PH Comment #28: As long as grizzly bears are a federally listed species, they are afforded protection under the Endangered Species Act. Thus, as their distribution expands farther east on lands not covered under the HCP, the department's legal exposure can increase. Thus, having federally reviewed measures in place on non-covered lands as proposed is the department's preferred option at this time. Again, the general notion that all HCP measures are highly restrictive is incorrect, and we question how the application and analysis of consistent habitat protection measures would be problematic. Please see Response #27 above for additional details regarding this topic.

(Tom Schultz, PH Comment #29)

6 So I think as you look at how to apply
7 the rules, I think the HCP -- the boundary of the
8 lands in the HCP still makes a lot of sense for
9 the rule set, and trying to expand the rule set
10 for certainty and excuses beyond that I think
11 could be problematic, whether it's for the bears
12 or even on some of the water issues, where you
13 maybe don't have some of the species that are
14 present on the east side and west side.

DNRC Response to Tom Schultz, PH Comment #29: Regarding HCP concerns, it is important to note that measures contained and applied in the HCP are very scaled in their level of constraint according to geographic locations in the state where habitat values and risks to covered species are greatest. By design, the areas where greatest protections and restrictions apply are covered under the HCP, particularly in bull trout core, grizzly bear recovery zones, and defined lynx management areas. For grizzly bears, on lands outside of federally defined recovery zones, or occupied habitat very few restrictions apply. Similarly, for lynx, on parcels where no habitat is present, as indicated by current habitat maps, no restrictions apply. By applying HCP measures in this manner, significant parts of the state require few if any additional restrictions on forest management activities if the species, and/or habitats are not present. In this regard, the perceived expansion of highly constraining levels of HCP commitments to other parts of the state not formally covered by the HCP is a misconception. What DNRC is proposing is one set of comprehensive, consistent, and current definitions and practices that would provide DNRC with considerable efficiencies for daily communication, environmental analyses and clarity when communicating with internal staff, decision makers, public officials, and members of the public. If the HCP-consistent measures and definitions are not adopted as proposed on lands not formally covered under the HCP, old ARMs on the books since 2003 will remain, which provide equally if not more onerous measures for grizzly bears and lynx. In the case of Canada lynx, outdated habitat definitions would be a part of the application of these older rules, creating growing legal risk. The protections of the Endangered Species Act follow each listed species, as determined by their presence and distribution. Thus, DNRC has a legal requirement to avoid take of these species when individuals or habitats are present whether they occur in

places such as Condon, Fort Benton, or Red Lodge, Montana, for example. The proposed rule set appropriately scales the level of necessary mitigation to areas most necessary to promote survival and recovery of the species.

We believe adopting this proposed rule set that contains revisions consistent with the philosophy and intent of the State Forest Land Management Plan that have received considerable prior review by the U.S. Fish and Wildlife Service, DNRC managers, and the public is an appropriate and valuable means to address various current programmatic needs right now. The importance of these revisions to improve program efficiency and defensibility cannot be overstated.

Following close review, the proposed rule changes are consistent with the constraints in the 2020 Sustainable Yield Calculation, and no additional constraints associated with these rules would be anticipated regarding future sustainable yield calculations. The 2020 Sustainable Yield Calculation had 750,000 acres of commercial forest land available for harvest before constraints were applied. This includes both forest and non-forest lands. Approximately 630,000 of these acres or 84%, has been managed under the proposed ARM revisions for the past 10 years, equating to approximately 85% of the sustainable yield for this same 10-year period. Coupled with the addition of approximately 14,000 acres of acquired forest land and adjustments made to identified acreage deferrals, all the proposed rules were modeled as constraints in the 2020 SYC resulting in a 17% increase in the annual sustainable yield further supporting that minimal economic impact would result to trust beneficiaries as a result of adopting the proposed rules. The current 2020 Sustainable Yield Calculation incorporated the requirements contained in the rule set proposed for adoption. Thus, no related additional constraints would be required. Minor expanded protections associated with buffers on non-HCP lands were accounted for in the RMZ constraint for aquatics and wildlife connectivity and would not by themselves account for volume necessitating additional constraints.

(Tom Schultz, PH Comment #30)

15 And I think Paul did a nice job, I
16 think, in talking about some of the changes that
17 were to update to bring the (unintelligible) in
18 compliance with some of the recent legislative
19 changes, the mechanics information, as well as on
20 the information regarding the timber permits. I
21 think that's good stuff.

DNRC Response to Tom Schultz, PH Comment #30: Because of the procedural sideboards of the MAPA rule-making process, breaking the proposed rule set into three separate adoption projects would be much less efficient and take up to 3 additional years to complete. Each rule revision process would involve vetting and revising separately packaged proposed changes again with internal legal staff, field staff and managers, members of the public, board of land commissioners, and Secretary of State's office for the purposes of editing and final publication. These steps greatly magnify the time it takes to make important revisions. Such work also necessarily occurs while staff are accomplishing other normal duties associated with timber sale preparation. All of the proposed revisions are necessary today and the vast majority of the work has now been accomplished and identified in the proposed changes to address known program inefficiencies and outdated rules.

We acknowledge that it has been 17 years since the original ARMs were adopted in 2003 and that the proposed comprehensive set of revisions appears somewhat daunting. However, we believe that waiting until future years 18, 19 or even 20 to complete known and necessary to address the identified programmatic policy revisions would not represent an efficient and responsible use of staff resources.

(Tom Schultz, PH Comment #31)

22 But, again, I would just caution a
23 blanket one-size-fits-all approach in expanding
24 the rule set to all forested lands beyond what's
25 in the primary timber base, realizing that at some
1 point in time it's likely that those lands could
2 be used for other resource management
3 perspectives, we could undo the management of
4 those by expanding these unnecessarily.

DNRC Response to Tom Schultz, PH Comment #31: Lands where the proposed ARMs would apply all occur in the primary/commercial timber base. We can think of no circumstances as suggested in the comment where we might “undo” the management on some lands by revising existing measures on the subject lands for the purpose of reasonable and consistent resource protection. Adoption of the proposed rule set would in no way influence other land uses or forego other revenue generation opportunities. DNRC would continue to retain full management discretion to address any land use considerations as necessary.

5 Thanks for the opportunity to comment.
6 MS. FARMER: Thanks, Tom. It looks like
7 on the list we have William Peck. William, are
8 you ready to comment? And, please, again, state
9 your name, affiliation, state whether you have a
10 comment or whether you're making a general
11 statement.

12 UNIDENTIFIED SPEAKER: You know what, I
13 think Willy is -- we're good. IFG is good. We're
14 covered. So thanks. Willy doesn't need to
15 comment.

16 MS. FARMER: Okay. Is there anyone else
17 that did not comment that would like to comment?
18 Seeing none, we will -- we will keep this Zoom
19 call open until 4 o'clock if anyone else comes on
20 at a later date and would like to comment, but we
21 will pause the recording for now until we see new
22 participants. We appreciate everyone's comments.
23 And at the moment right now, we'll go ahead and
24 pause the hearing.

25 (Pause in proceedings.)

1 MS. FARMER: Okay. Thanks, everyone,
2 for staying on. It's about -- a little after
3 3:00, and we've been sitting here for about 20
4 minutes waiting to see if anyone else would join,
5 and so far we have not seen anyone else join.
6 We'll wait about 15 more minutes and see if anyone
7 else that has not yet commented would like to
8 comment, and then at about maybe 3:20, we will end
9 the hearing at that point.

10 (Pause in proceedings.)

11 MS. FARMER: Thanks, everyone, for
12 staying on. We are at about 3:20, and we've
13 decided that we will stay on for about ten more
14 minutes, until 3:30, and at that point, we're
15 going to go ahead and call the hearing closed.
16 Again, if there is anyone that's popped
17 on that would like to comment that has not yet
18 commented, please do let us know.
19 (Pause in proceedings.)
20 (Hearing concluded.)
21 * * *

1 C E R T I F I C A T E

2
3 STATE OF MONTANA)

4 : ss.

5 County of Ravalli)

6 I, Melissa K. Gum, RDR, CRR, CRC, Freelance Court Reporter and Notary Public for the
7 State of Montana, residing in Corvallis, Montana, do hereby certify:

8 That I was authorized to and did transcribe
9 the testimony and evidence in this cause to the best of my ability from the audio file I received.

10 That the foregoing pages of this transcript represent my best effort to transcribe an
11 audio file of a proceeding where I was not in attendance.

12 I further certify that I am not an attorney
13 nor counsel of any of the parties; nor a relative or employee of any attorney or counsel
14 connected with the action, nor financially interested in the action.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and seal on this the 27th day of July, 2020.

17
18 Melissa K. Gum, RDR, CRR, CRC Freelance Court Reporter
19 Notary Public, State of Montana Residing in Corvallis, Montana.
20 My Commission expires: 7/26/2023
21
22
23
24
25