



MONTANA FISH AND WILDLIFE COMMISSION FWP PROPOSAL & INFORMATION SHEET

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Meeting Date: February 13, 2025

Agenda Item: Administrative Rulemaking Petition – Surf/Wakeboard Boats – Swan Lake

Action Needed: Decision to Initiate MAPA Rulemaking Process or Decision to Deny Petition

Time Needed on Agenda for this Presentation: 15 minutes

Background: On August 9, 2024, the Commission received a citizen petition requesting that the Commission adopt various administrative regulations relating to wake surfing / wakeboarding activities on Swan Lake. Under § 2-4-315, MCA, an interested person may petition an agency to request the promulgation, amendment, or repeal of an administrative rule.

Public Involvement Process & Results: Written public comments will be accepted through January 28, 2025, and the Commission will take public comments at its February 13, 2025, meeting during consideration of this agenda item.

Analysis & Alternatives: Under this provision of the Montana Administrative Procedure Act (MAPA), the Commission can either deny the petition or initiate a MAPA rulemaking process involving the solicitation of public comment and a hearing on a proposed rule, followed by consideration of the adoption (or non-adoption) of the proposed rule. Under § 2-4-315, MCA, a decision to deny the petition or to initiate rulemaking proceedings must be in writing and based on record evidence. The alternatives presented under the statute are as follows:

Alternative A: Approve the petition for rulemaking and initiate the MAPA rulemaking process for the proposed adoption of regulations relating to wake surfing / wakeboarding activities on Swan Lake.

Alternative B: Deny the petition for rulemaking. The current status quo would remain in place, which includes a controlled no wake speed restriction on Swan Lake from shoreline to 200 feet from shoreline (ARM 12.11.115) and a controlled no wake speed from its northern outlet to the southern tip of the southernmost island in the outlet channel (ARM 12.11.3106).

Agency Recommendation & Rationale: The Commission has been given authority by the Legislature to adopt and enforce rules governing the recreational use of public lakes. Any rules adopted by the Commission under that statutory authority [§ 87-1-303(2), MCA]:

“ . . . must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding . . . ”

The Commission has, within the past 2-3 years, received similar petitions to restrict wake surfing / wakeboarding activities on both Lake Five and Half-Moon Slough. The Commission directed the formation of citizen advisory / working groups in response to those petitions, with those groups developing and bringing proposed regulation structures back to the Commission for its review. After considering the information from those groups, and



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consideration of the department's advisement as to the absence of any documented public safety or resource concerns, the Commission voted to **not** initiate any MAPA rulemaking processes for either water body.

The current petition, as submitted, seeks to alter or amend various provisions in FWP's *2024 Montana Boating Laws* publication, which **summarizes** various statutes and administrative regulations that are not unique to Swan Lake. Department staff have been in contact with the petitioners to let them know that:

- nearly all of the requests in the petition relate to statutory language that the Commission does not have authority to alter through rulemaking; and
- further clarification is needed regarding both (1) the geographic scope and (2) specific character of a watercraft restriction that would at least fall within the Commission's rulemaking authority.

Department staff have also advised the petitioners of a willingness to assist in drafting that further clarification language, but no further steps in that regard have been taken. Based on its current structure, however, the agency recommends that the Commission deny the petition for the reasons set forth above, i.e., as containing requests for statutory changes that are not within the Commission's rulemaking authority and the lack of clarity as to any actual watercraft restriction that the Commission would have authority to establish through rulemaking.

Proposed Motion: Based on the petition's contents and the information presented to the Commission, I move that the Fish and Wildlife Commission deny the rulemaking petition.

Alternative Motion (not department-recommended): Based on the petition's contents and the information presented to the Commission, I move that the Fish and Wildlife Commission grant the petition to initiate rulemaking and direct the petitioner, with the administrative assistance of the department, to draft proposed rule language to present to the Commission.