## BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 12.11.501, 12.11.3901,	)	PROPOSED AMENDMENT AND
12.11.3940 and the adoption of NEW	)	ADOPTION
RULE I regarding recreational use on	)	
Lake Alva, Harpers Lake, and Lake	)	
Marshall	)	

TO: All Concerned Persons

- 1. On June 5, 2013, at 6:30 p.m., the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at the Seeley Lake Community Center, 3248 Hwy 83 North, Seeley Lake, Montana, to consider the proposed amendment and adoption of the above-stated rules.
- 2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than May 24, 2013, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.
- 3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:
- <u>12.11.501 LIST OF WATER BODIES</u> The following is a list of specific regulations on bodies of water with the reference where the rules regarding those bodies of water are located:
  - (1) Alva Lake ARM 12.11.3901
  - (2) through (62) remain the same but are renumbered (1) through (61).
  - (62) Lake Alva ARM 12.11.3901
  - (63) through (67) remain the same.
  - (68) Lake Marshall NEW RULE I
  - (68) through (113) remain the same but are renumbered (69) through (114).

AUTH: 23-1106, 87-1-301, 87-1-303, MCA

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

<u>Reasonable Necessity</u>: ARM 12.11.501 lists bodies of water with specific regulations and references the rule pertaining to the bodies of water. The commission is proposing amending ARM 12.11.501 to include the proposed amendment and adoption of this notice.

12.11.3901 ALVA LAKE ALVA (1) remains the same.

(2) All watercraft on Alva Lake Alva pulling, taking off with, and landing water skiers will travel in a general, consistent, counterclockwise direction are limited to a controlled no wake speed as defined in ARM 12.11.101.

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

Reasonable Necessity: The commission is proposing amendments to the current rule language and also correcting the name from Alva Lake to Lake Alva. The recreational opportunity provided on the 298 acres of Lake Alva is unique in the Clearwater Chain of Lakes. Historically, Lake Alva has been a destination for people seeking a less developed and quieter setting for water based recreation. Lake Alva is completely surrounded by public land and has no residential development, unlike the other larger lakes in the chain that have a boat ramp. Public opinion suggests that, in the past few years, high-speed motorboat use, including personal watercraft, has become more common on Lake Alva. Numerous comments suggest that increased high-speed motorboat use is now reducing the opportunity to enjoy slower and quieter activities such as canoeing and fishing. Four other large to mediumsized lakes ranging in size from 288 to 1,211 acres in the chain already provide opportunity for faster forms of boating recreation such as water skiing. Managing Lake Alva with a no wake restriction would provide a one-of-a-kind opportunity in the Chain of Lakes to enjoy guieter, motorized and nonmotorized recreation on a medium-sized lake.

Lake Alva is also unique within the Clearwater Chain of Lakes, because common loons nest on an island in the center of the lake rather than using more secluded bays that loons select on other medium to large lakes where faster boating occurs. This exposes their nests and young chicks to more disturbance and wave action. Wave action and close human presence during nesting has been shown to lower common loon nesting success. In addition, fast-moving craft can separate loon chicks from parents resulting in susceptibility to predation or injury from motorboats including personal watercraft. Common loon nesting and rearing success could improve under a no wake regulation. Unsolicited public opinion and unique circumstances on Lake Alva for providing recreational opportunity and protection of loons indicates alternative regulations should be proposed.

## 12.11.3940 HARPERS LAKE (1) remains the same.

(2) Harpers Lake is closed to use for any motor-propelled watercraft limited to manually operated watercraft and watercraft powered by electric motors.

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

Reasonable Necessity: Harpers Lake is a small lake, 15 acres, located within the Harpers Lake Fishing Access Site (FAS). The lake is stocked with hatchery trout with the intention of harvest by anglers. As a result, the lake is a popular fishing destination and frequented by anglers in small boats and float tubes as well as bank anglers. With the popularity of the lake for anglers and the accessibility provided at

the FAS for those with small boats, the commission is proposing electric motors be allowed on the lake. Changing the boating regulations to allow electric motors would increase the accessibility to fish within the lake and likely increase the catch of stocked trout. Use of electric motors would likely be compatible with other recreational users and anglers due to the relatively slow speed and low noise levels associated with electric motors.

4. The rule as proposed to be adopted provides as follows:

NEW RULE I LAKE MARSHALL (1) Lake Marshall is located in Missoula County.

(2) Lake Marshall is limited to manually operated watercraft and watercraft powered by electric motors.

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

Reasonable Necessity: Lake Marshall is an 80 acre lake located in the northwest portion of the Marshall Creek Wildlife Management Area (WMA) and managed within the context of the Marshall Creek WMA Management Plan. As described in the management plan, "Management of the Marshall Creek WMA will be for the enhancement and protection of native fish and wildlife populations, the habitat that supports them, and for the provision of public recreational access." Furthermore, the management plan states that, "Public access will be provided to the extent that such access is compatible with vegetation, fish and wildlife goals." The management plan also specifically addresses boating on Lake Marshall by stating that, "Consistent with past and current use-patterns, use of non-motorized watercraft will be emphasized on Lake Marshall." Currently, access to Lake Marshall is primitive in nature, with no developed facilities, and only has carry-in launching. Existing boating regulations allow for use of any motorized watercraft on Lake Marshall, which is inconsistent with the management direction for the WMA and other similar-sized lakes and settings in the northern portion of the Clearwater drainage, such as Clearwater Lake and Rainy Lake. Use of electric motors would likely be compatible with WMA management goals, and other recreational users and anglers due to the relatively slow speed and low noise levels associated with electric motors.

- 5. Concerned persons may present their data, views, or arguments either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sharon Rose, Fish, Wildlife and Parks, 3201 Spurgin Road, Missoula, MT, 59804; fax 406-542-5529; e-mail shrose@mt.gov, and must be received no later than 5:00 P.M. on June 14, 2013.
- 6. Joe Jaquith or another hearing officer appointed by the department has been designated to preside over and conduct the hearings.

- 7. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notices and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1712 9th Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the commission department.
  - 8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Dan Vermillion/s/ Zach ZipfelDan Vermillion, ChairmanZach ZipfelFish, Wildlife and Parks CommissionRule Reviewer

Certified to the Secretary of State April 29, 2013