



September 10, 2026

To the Montana Fish and Wildlife Commission:

My name is **Jacob Andersen**, and I am the General Manager of Launch Watersports in Kalispell. I previously submitted comments when this petition was before the Commission earlier this year, and I appreciate the opportunity to comment again now that it has returned for consideration.

I respectfully urge the Commission to **deny the petition and maintain the existing rules on Swan Lake.**

To accompany these comments, I have uploaded a map of Swan Lake and a supporting table showing five illustrative cross sections labeled A through E. These materials demonstrate the practical effect of the proposed rule on the amount of water that would remain available for boating activity affected by the no-wake restriction. The five cross sections were selected at locations distributed along Swan Lake's length to demonstrate the rule's effect across a range of lake widths. The boundary lines and cross-section widths were created using Google Earth's measurement tools. The measurements are approximate, are not survey measurements, and the underlying Google Earth map file is available from me upon request.

The Question Before the Commission

I recognize that wake-enhanced boats can produce larger wakes than many conventional recreational boats. I also support responsible boating, appropriate enforcement, protection of shoreline property, public safety, and protection of Montana's natural resources.

But those general points do not answer the question that should control this decision:

Has the record established that boating activity outside Swan Lake's existing 200-foot no-wake zone is causing a problem serious enough to justify expanding that restriction by another 300 feet?

After reviewing the petition materials, exhibits, supporting information, and prior public comments, I do not believe that showing has been made.

The Existing 200-Foot Rule Should Be Evaluated Before It Is Expanded

Swan Lake is already subject to a no-wake restriction within 200 feet of shore. The petition asks the Commission to expand that restriction to 500 feet.

Because the restriction applies from both shores, increasing the buffer by 300 feet on each side removes **600 feet of usable operating width** from every applicable cross section.



At the five locations shown on the submitted map, the available width between the proposed 500-foot lines measures:

- Section A: 1,534 feet
- Section B: 697 feet
- Section C: 300 feet
- Section D: 1,264 feet
- Section E: 2,130 feet

At those same locations, the available width between the existing 200-foot lines is approximately:

- Section A: 2,134 feet
- Section B: 1,297 feet
- Section C: 900 feet
- Section D: 1,864 feet
- Section E: 2,730 feet

The proposed rule therefore reduces the available corridor by approximately **28.1% at Section A, 46.3% at Section B, 66.7% at Section C, 32.2% at Section D, and 22.0% at Section E.**

This proposal does not merely move boats another 300 feet from shore. It substantially reduces the water available for boating activity permitted outside the no-wake zone.

The Map and Table Show the Practical Effect

The map and table also illustrate what this reduction means when two boats pass one another.

For that limited illustration, I use a **200-foot interval between two passing boats**. This is not presented as a legal requirement, an ideal passing distance, or a complete measure of the space reasonably needed for safe operation. Rather, it is a deliberately conservative spacing assumption used to illustrate how quickly the remaining maneuvering room is consumed as the corridor narrows. It provides no additional allowance for course corrections, turning, changing conditions, or other ordinary maneuvering needs.

Using that illustrative interval, two passing boats require at least **600 feet of total lake width under the existing rule**: 200 feet from each shore and 200 feet between boats. Under the proposed rule, the same illustration requires at least **1,200 feet of total lake width**.

At Section A, the proposed corridor would be 1,534 feet wide, leaving approximately 1,334 feet beyond the illustrated interval.

At Section B, the corridor would narrow from 1,297 feet to 697 feet, leaving approximately 497 feet beyond that interval.



At Section C, the proposed rule would leave only a **300-foot corridor**. After a 200-foot interval between two boats, only **100 feet of total lateral margin** would remain—approximately 50 feet on each side if the boats were centered. Under the existing rule, that location provides approximately 900 feet of operating width.

The proposal would therefore eliminate **two-thirds of the usable corridor at Section C**.

At Section D, the corridor would decrease from approximately 1,864 feet to 1,264 feet, eliminating nearly one-third of the available width. At Section E, the proportional reduction is smaller, but the rule still removes the same 600 feet.

These measurements demonstrate an important problem with applying a fixed 500-foot rule to Swan Lake: **its practical effect changes dramatically with the width of the lake**. At Section E it reduces the available corridor by 22%; at Section C it removes two-thirds of it. A uniform distance therefore does not produce a uniform regulatory burden.

In narrower portions of Swan Lake, the rule creates significant pinch points and compresses boat traffic toward the center, reducing the room available for passing, turning, and maintaining separation.

The Public Record Suggests an Enforcement Problem

One prior commenter supporting the proposed restriction described boats operating too close to her property and causing damage to her dock and boats. She also stated that the existing 200-foot rule **“is not ever enforced”** and expressed hope that the rules would be enforced.

That distinction matters.

Before concluding that 200 feet is inadequate, the Commission should determine whether the existing rule is being consistently followed, clearly communicated, and enforced.

If the problem is that some operators violate the existing rule, changing the number from 200 feet to 500 feet does not solve that problem.

Irresponsible operation should be addressed. But responsible operators should not bear substantial restrictions intended primarily to address violations of rules that already exist.

The Supporting Research Does Not Establish the Need for This Restriction on Swan Lake

The studies submitted by petition supporters establish that wake-enhanced boats can produce larger and more energetic wakes under certain operating conditions. I do not dispute that.



But demonstrating that one boat produces a larger wake than another does not establish that boating outside Swan Lake's existing 200-foot zone is causing sufficient harm to justify the proposed restriction.

The University of Minnesota study provides information about wave height, energy, power, and attenuation, but its authors identify important limitations. Only four boats were tested, most were from one manufacturer, and the study did not examine the full range of boats or operating conditions.

More importantly, the authors distinguish the wave characteristics they measured from the environmental consequences policymakers ultimately need to understand. **Measuring wave height, energy, power, and attenuation does not itself establish the resulting degree of shoreline, riparian, aquatic-vegetation, or other environmental harm.**

And nothing in that study establishes the magnitude of those effects on Swan Lake under the existing 200-foot rule.

The Michigan literature review also provides information about potential effects and responsible operating practices. However, it expressly states that it does not address public safety or social considerations and does not provide departmental recommendations for regulation or legislation.

These studies can inform responsible boating practices. They do not establish that a 500-foot restriction is necessary or proportionate on Swan Lake.

Water-Quality Concerns Require a Demonstrated Causal Connection

Several prior commenters cited Swan Lake's water-quality impairment and discussed sediment, particulate organic carbon, nutrients, and dissolved oxygen. Those concerns should be taken seriously.

However, the existence of an impaired water body does not establish that boating outside the existing 200-foot zone materially contributes to that impairment.

The materials before the Commission do not quantify the contribution of wake-enhanced boating to Swan Lake's sediment loading, particulate organic carbon, or dissolved-oxygen conditions. They also do not establish what measurable improvement would result from moving the no-wake boundary from 200 feet to 500 feet.

A serious environmental concern deserves a response directed at its demonstrated causes. It should not become the basis for substantially restricting a lawful recreational activity without establishing the necessary causal connection.

The Practical and Safety Consequences Have Not Been Adequately Considered

Prior commenters familiar with Swan Lake raised concerns that extending the no-wake zone would substantially reduce available operating water and concentrate traffic toward the center of this long, narrow lake.

The submitted measurements put numbers to those concerns. Across the five cross sections, the proposal reduces the existing corridor by between **22% and 66.7%**. At Section B, nearly half of the corridor disappears. At Section C, two-thirds disappears.

Yet the current materials contain no Swan Lake-specific analysis of the reduction in operating width, the resulting concentration of traffic, the effect on passing and maneuvering room, or the degree to which lawful boating activity would be impaired.

Those consequences are part of the regulatory decision itself and should be evaluated before additional restrictions are initiated.

This Vote Is Not Simply Authorization to Conduct Research

I understand that the Commission is not being asked on October 15 to finally adopt a 500-foot rule. But neither is it simply being asked to authorize an open-ended scientific investigation.

The Department's information sheet states that the alternatives are to deny the petition or initiate formal MAPA rulemaking for consideration of the proposed amendment. It further explains that MAPA can serve as a framework for soliciting public input on that proposed amendment.

That is different from first conducting the Swan Lake-specific investigation necessary to establish whether additional regulation is warranted.

If substantial questions remain about whether boating beyond 200 feet is causing a significant problem on Swan Lake, those questions should be answered before beginning formal rulemaking on a 500-foot restriction—not through a regulatory process searching for its justification afterward.

The Commission does not need perfect information before considering any rule. But there should be a reasonable evidentiary basis demonstrating that additional regulation is necessary.

This record does not establish that basis.

A More Proportionate Response Is Available



There is already a **controlled no-wake rule governing the first 200 feet of Swan Lake**, and the public record includes complaints that some operators violate that restriction while the existing rule goes unenforced.

The appropriate first response is straightforward:

Educate operators. Clearly communicate the existing restriction. Enforce it. Document violations and impacts. Then determine whether boating outside 200 feet continues to cause a measurable problem.

If reliable evidence ultimately demonstrates that the existing rule cannot adequately protect public safety, property, or natural resources even when followed and enforced, the Commission can consider that evidence at that time.

Additional regulation should follow demonstrated necessity, not precede it.

Conclusion

The evidence supports the proposition that wake-enhanced boats can produce larger wakes.

It does **not** establish that boating outside Swan Lake's existing 200-foot no-wake zone is causing sufficient harm to justify expanding that restriction to 500 feet.

The submitted map and table demonstrate that the proposed rule would remove **600 feet of usable operating width at each measured cross section**. In those locations, that represents reductions ranging from approximately **22% to 67%**. At one cross section, the available corridor would shrink from approximately **900 feet to just 300 feet**.

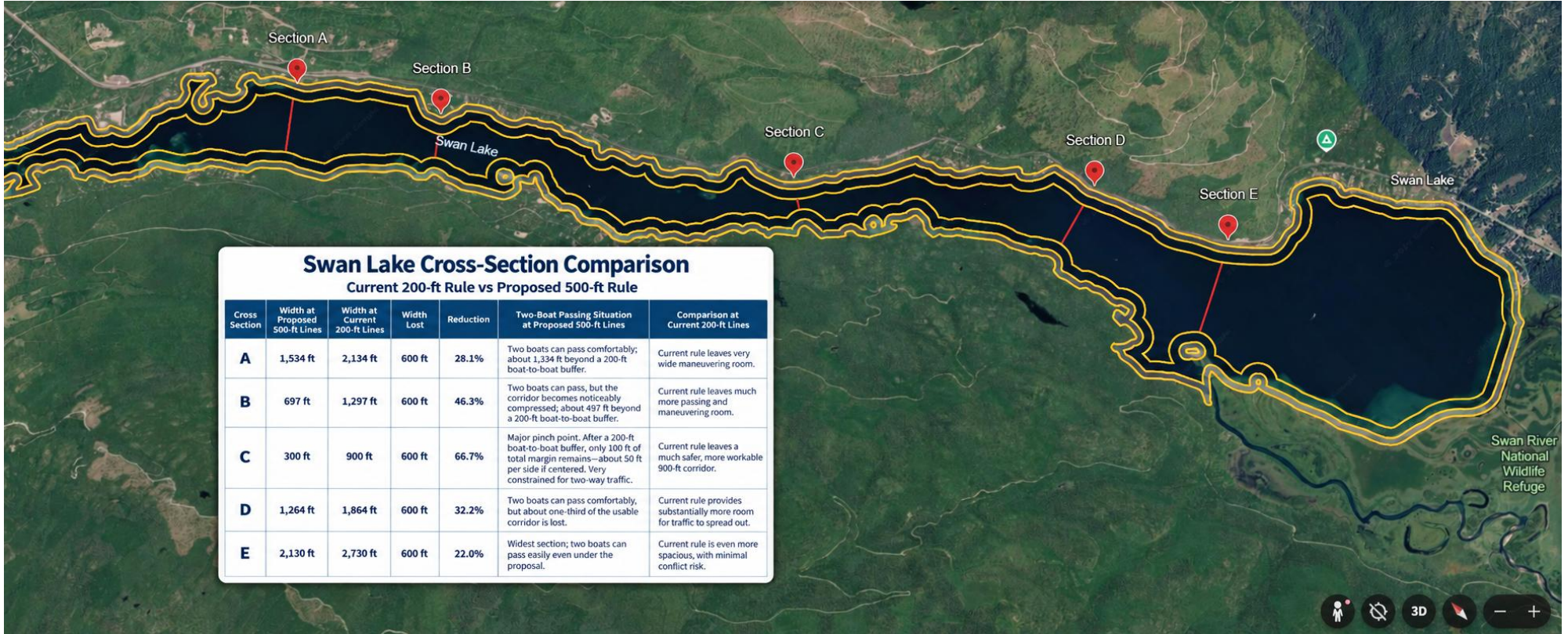
Before imposing those substantial consequences, the record should establish that the existing rule—**when followed and enforced**—is inadequate.

That showing has not been made.

For these reasons, I respectfully urge the Montana Fish and Wildlife Commission to **deny the petition and maintain the existing rule structure on Swan Lake**.

Thank you for your consideration.

Jacob Andersen
General Manager
Launch Watersports
Kalispell, Montana



SALES | SERVICE | PARTS | PRO SHOP

4250 Lower River Rd. | Great Falls, MT 59405 (406) 761-1851

2291 US 93 S | Kalispell, MT 59901 (406) 755-5790

launchwatersports.com

Montana Fish and Wildlife Commission
PO Box 200701
Helena, MT 59620-0701

Commission Meeting Public Comment
October 14, 2026

Agenda Item: Swan Lake Motorized Use Restrictions (Citizen Petition for Rulemaking)

**PETITION IN OPPOSITION TO PROPOSED NO-WAKE SETBACK
RULE CHANGES ON SWAN LAKE**

To the Montana Fish, Wildlife & Parks Commission:

We, the undersigned residents, property owners, business owners, recreationists, and citizens of Montana, respectfully submit this petition in opposition to the proposed rule changes regarding no-wake setback requirements on Swan Lake that are scheduled to be considered by the Montana Fish, Wildlife & Parks Commission.

Swan Lake is a treasured Montana resource that supports a wide range of recreational opportunities, local businesses, family traditions, and public access uses. While we support reasonable and evidence-based boating safety measures, we believe the currently proposed no-wake setback changes are overly restrictive and may create unintended consequences for public recreation, local tourism, property owners, and responsible boaters.

We respectfully ask the Commission to reject adoption of the proposed no-wake setback rule changes. We believe that any changes affecting public access and recreational use of Swan Lake should be supported by clear data, transparent public process, and balanced consideration of all users.

We respectfully request that the Montana Fish, Wildlife & Parks Commission preserve fair and reasonable access to Swan Lake for current and future generations.

This petition was signed by 43 individuals, listed on the following pages.

SIGNERS

No.	Printed Name	City/Town	Date
1	Garrett Wagner	Kalispell, MT	6/19/2026
2	Ben Bogart	Kalispell, MT	6/19/2026
3	Chad Cattron	Kalispell, MT	6/19/2026
4	Laura Ponder	Kalispell, MT	6/19/2026
5	Eric Gardner	Kalispell, MT	6/19/2026
6	Daniel Larsen	Kalispell, MT	6/19/2026
7	Jeremy Graham	Kalispell, MT	6/19/2026
8	Weston Blasses	Columbia Falls, MT	6/19/2026
9	Valerie St Germain	Kalispell, MT	6/19/2026
10	Bradlee Shepherd	Kalispell, MT	6/19/2026
11	Jim Stark	Columbia Falls, MT	6/19/2026
12	Jacob Andersen	Kalispell, MT	6/19/2026
13	Nicholas Wiggers	Lakeside, MT	6/19/2026
14	Jeremy Bolt	Lakeside, MT	6/19/2026
15	Lauren King	Kalispell, MT	6/19/2026
16	Anna Chuang	Kalispell, MT	6/19/2026
17	Sean Valentine	Kalispell, MT	6/19/2026
18	Bella Jepsen	Kalispell, MT	6/19/2026
19	Justin McNabb	Butte, MT	6/19/2026
20	Kassidy Carlson	Kalispell, MT	6/19/2026
21	Brenton Pomeroy	Bigfork, MT	6/19/2026
22	Hayley Heil	Kalispell, MT	6/19/2026
23	Jeremy Gibbs	Kalispell, MT	6/19/2026
24	Weston Brown	Kalispell, MT	6/19/2026
25	Gatlin Bruno	Kalispell, MT	6/19/2026
26	Hannah Stepan	Whitefish, MT	6/20/2026
27	Peter Mahlert	Kalispell, MT	6/20/2026
28	Matt Hittle	Kalispell, MT	6/20/2026

No.	Printed Name	City/Town	Date
29	Will Timbers	Bozeman, MT	6/20/2026
30	Trevor Lindy	Big Sky / Hebgen Lake, MT	6/20/2026
31	Kenidi Campa	Big Sky, MT	6/20/2026
32	Fynlee Larsen	Kalispell, MT	6/19/2026
33	Joel Eddins	Kalispell, MT	6/20/2026
34	Tracy Toole	Bozeman, MT	6/20/2026
35	Greg Dice	Lakeside, MT	6/20/2026
36	James Lane	Kalispell, MT	6/20/2026
37	Tamara Lane	Kalispell, MT	6/20/2026
38	Beth Larson	Bigfork, MT	6/20/2026
39	Cameron Clark	Kalispell, MT	6/20/2026
40	Falon Clark	Kalispell, MT	6/20/2026
41	Norm Goodnough	Somers, MT	6/20/2026
42	Joanie Killion	Kalispell, MT	6/20/2026
43	Petr Stepan	Whitefish, MT	6/20/2026

September 24, 2026

Montana Fish and Wildlife Commission
c/o Commission Liaison Jesse May
PO Box 200701
Helena, MT 59620-0701

RE: Citizen Petition for Rulemaking – Swan Lake Motorized Use Restrictions (October 14, 2026 Commission Meeting)

Dear Commission Members,

On behalf of the Water Sports Industry Association (WSIA), I write to reiterate our opposition to the Swan Lake Citizen Petition for Rulemaking, which returns to the Commission's agenda for the October 14 meeting.

WSIA submitted comments on this petition in March 2026, ahead of its originally scheduled consideration at the Commission's April 16 meeting. Enclosed is a copy of that letter for the record. The concerns it raises — including the petition's reliance on a discredited, non-peer-reviewed study, its scapegoating of a single class of vessel, and the absence of any evidence of a problem on Swan Lake — remain fully applicable today, and we ask that it be considered alongside this letter as part of the record on this item.

We'd also encourage the Commission to consider the precedent at stake beyond this petition alone. Lake management decisions should be driven by conditions on the lake, not by the timing of when a petition is filed or refilled. Approving this petition could invite a wave of similar petitions on lakes across Montana, each timed by its sponsors for whatever moment seems most politically favorable.

For the reasons set out in our enclosed March letter, we respectfully ask the Commission to decline to initiate the MAPA rulemaking process on this petition. Thank you for your consideration.

Sincerely,

John Elizandro
Vice President of Government Relations
Water Sports Industry Association
917.520.7125
john@wsia.net

Enclosure: WSIA letter to the Montana Fish and Wildlife Commission, March 27, 2026

September 24, 2026

Montana Fish and Wildlife Commission
c/o FWP Liaison – Director's Office
PO Box 200701
Helena MT, 59620-0701

Public Comment on Swan Lake Wake Zone Petition (October 14, 2026, Commission Meeting)

Dear Members of the Commission,

On behalf of the National Marine Manufacturers Association (NMMA), I am writing regarding the Swan Lake Citizen Petition for Rulemaking scheduled for consideration at the Commission's October 14 meeting. NMMA continues to oppose the proposed 500-foot setback and supports maintaining the existing 200-foot setback on Swan Lake.

In March, NMMA submitted comments outlining our concerns with the proposed restriction, including its potential to substantially limit navigable water and recreational access on Swan Lake. NMMA continues to believe that the existing 200-foot setback, coupled with effective enforcement, boater education, and responsible boating practices, provides a more balanced approach. Our March 27 comments are enclosed for the Commission's consideration.

As the Commission considers this petition, we also encourage consideration of the implications of adopting lake-specific restrictions that depart significantly from existing standards. A consistent approach to recreational boating regulations provides greater clarity for boaters, supports effective enforcement, and helps preserve reasonable access to Montana's public waterways.

For these reasons, NMMA respectfully asks the Commission to decline to initiate the MAPA rulemaking process on this petition and maintain the existing 200-foot setback on Swan Lake.

Thank you for your consideration. NMMA welcomes the opportunity to continue working with the Commission and Montana stakeholders to advance safe, responsible boating and continued recreational access.

Best Regards,

Emily Villanueva
Western Government Relations Manager
National Marine Manufacturers Association

Enclosure: NMMA letter to the Montana Fish and Wildlife Commission, March 27, 2026

March 27, 2026

Montana Fish and Wildlife Commission
c/o FWP Liaison – Director's Office
PO Box 200701
Helena MT, 59620-0701

Public Comment on Swan Lake Wake Zone Petition

Dear Members of the Commission,

On behalf of the National Marine Manufacturers Association (NMMA), I write to request that the Commission deny the petition for rulemaking regarding the petitioners' request to establish a 500-foot setback distance on Swan Lake and urge the Commission to maintain the current 200-foot setback distance.

NMMA represents recreational boat, engine, and accessory manufacturers across North America, including businesses and stakeholders that contribute significantly to Montana's outdoor recreation economy. We appreciate the opportunity to engage on this issue and recognize the importance of balancing recreational access with environmental stewardship and public safety.

NMMA supports commonsense approaches to the regulation of wakesurfing and all recreational boating. Specifically, NMMA supports a setback of 200 feet from shorelines, docks, and other structures. This framework is designed to protect healthy waterways while maintaining reasonable access for recreational users.

We are concerned that the petition seeks to expand the existing setback distance from 200 to 500 feet. While NMMA supports efforts to promote safe and responsible boating, an expansion of this magnitude is not aligned with established, science-based standards and will create unnecessary restrictions on recreational access.

Based on available information, a 500-foot setback would significantly limit navigable water in certain portions of Swan Lake, particularly in narrower sections where the proposed buffer would occupy a substantial share of the usable waterway. This raises concerns regarding equitable access for a range of recreational users, including those participating in watersports such as wakesurfing, water skiing, fishing, and general boating activities.

NMMA respectfully encourages the Commission to consider a more balanced, common-sense approach. This could include optimizing existing regulations and enforcement while promoting boater education and best practices.

We also note that similar discussions are emerging in other regions, underscoring the importance of consistent, statewide standards rather than highly restrictive, lake-specific requirements that may create confusion for boaters and enforcement challenges for agencies.

NMMA stands ready to serve as a resource to the Commission and to collaborate with state agencies, local stakeholders, and the broader recreational community to support balanced, common-sense solutions that promote both responsible boating and continued access to Montana's waterways.

Thank you for your time and consideration of these comments. Should you have any questions or need additional information, please feel free to contact me at evillanueva@nmma.org.

Best Regards,

Emily Villanueva
Western Government Relations Manager
National Marine Manufacturers Association



202.737.9750



nmma.org



601 Pennsylvania Ave. NW, Suite 320 North
Washington DC, 20004

Don Smith
Swan Lake, Montana.

September 4, 2026

I am writing in support of the Petition to establish a 500 Ft No Wake Zone on Swan lake. I have had property on Swan Lake since about 1978.

To me Swan Lake has a Spiritual and Serene quality that is disappearing. In 2023 it became apparent that the nature of the lake was changing with the morphing of wake board boats into large powerful surf boats. Late at night marauding surf boats were plowing the waters of the lake in the dark at 11:00 pm and later with large spot lights and speaker systems blaring often vulgar music to set the tempo for a single surfer. Music broadcast from this unwelcome spectacle of light and sound echos for long distances across both sides of the lake disrupting the evening for everyone in earshot.

During the day Surf Boats plow up the lake with the driver looking back fascinated by the single surfer rather than paying attention to where the boat is going. While other boaters on the lake have to change their course to avoid the unguided Surf Boats and their huge trailing wakes.

Several residents in my neighborhood have tried to talk to and educate surf boaters as to the laws they are violating because of how and when they operate their new toys. The only result has been retaliation.

On several occasions at night, I Intercepted these boats and told them they can not engage in water sports activities after sunset. The boats did not have registration numbers and the drivers would not identify themselves. One young girl who had been surfing pulled herself on to the swim platform out of the dark waters and told me "you live your life, and I will live mine" and then threatened to file charges against me for harassing her. I have been told by neighbors of excessive use of alcohol and drugs. A family member of these surfers filed a comment opposing our Petition saying that summers are short and every one should have fun.

We organized Sharing the Swan in 2023 seeking the help of Fish, Wildlife and Parks to bring this situation under control. As the name indicates we are not trying to ban Surf Boats --what we are trying to do is to get FWP to help us moderate the situation.

The FWP's Legal Department is the Gate Keeper controlling the Petitions that reach the Commission for consideration. We have discussed many alternative remedies including:

1-zones for operating surf boats;

2-specific times for surfing, water skiing, kayaks, paddle boards, sailboats and even rowing sculls;

- 3-special boat registrations with educational programs;
- 4-establishing decibel levels for broadcasting music;
- 5-increasing enforcement and fines;
- 5-funding of state recreational boating safety program- certification of county Programs -administration by counties (MCA 23-2-534);
- 6-creating a boating advisory Council (MCA 23-2-536);
- 7-improving the Pamphlet on Montana Boating Laws to emphasis violations and penalties; and
- 8-handing out the Boating Laws at the Swan Lake State Park boat ramp.

None of these ideas have been acceptable to the FWP's legal department. The Chief Legal Counsel wrote us a letter stating that FWP did not have the power to promulgate rules and regulations governing boating. I wrote back with an extensive rebuttal citing specific statues wherein the legislature has authorized FWP to regulate boating. **This Rebuttal letter to FWP is attached as "Exhibit 1"below. We never received a response to my letter.**

Then without our knowledge and consent, and with no notice the Sharing the Swan Petition was put on the Commission's Schedule for February 2025. We did not have knowledge of the Hearing and consequently did not appear. The Commission inquired as to our absence, and the only response made by the Legal Department was the recommendation that our Petition be denied. We received no notice that our Petition had been denied. It is likely that this was an unethical action and violation of law. **I learned of the this action by viewing the video of the February 2025 Hearing –The video should still be available on the Commission's site as a record of the Hearing.**

I am not confident that FWP will admit that they approved the current Petition, but the fact is that **the current Petition is word for word exactly what FWP has proposed as being acceptable to present to the Commission. See "Exhibit 2" below on History of Communications.** One helpful FWP Attorney went to the Game Wardens and asked them what regulation they could enforce. And this 500 FOOT NO WAKE ZONE is what the Game Warden's Approved. Sharing the Swan accepted the Game Wardens recommendation because it is the only option to get our concerns before the Commission for consideration and establish a control on damaging wakes. By no means is it the complete answer but it does recognize the problem. And it presents an opportunity for the Commission to recognize and begin to address this growing

problem. It may be a first for Montana, but many many other states and jurisdictions have been taking action. This includes state and local jurisdictions from Maine, Connecticut, Vermont, Minnesota, Michigan, Wisconsin, Indiana, Pennsylvania, New Jersey, Tennessee, South Carolina, Alabama, and Georgia.

Opponents to the Petition challenge the actions of these jurisdictions saying their lakes are different than Montana's lakes. Sure, lakes come in a variety of sizes and characteristics, including the lakes in Montana. This Petition addresses only Swan Lake and is not intended to apply to any other lake. Lake Inez has a serious problem with Surf Boats and a 500 NO WAKE ZONE is not the answer to the problems of lake Inez and other very small lakes. And we do not purport to address concerns with Surf Boats, if there are any, on large lakes like Flathead Lake and Canyon Ferry.

I have looked at comments made in opposition to our Petition. And I find that there are several categories:

1. First are the Boating Associations that are funded by the for-profit manufacturers of boats and boating equipment. The boards of these organizations are the heads of manufacturers. Their comments are aimed at promoting the sale of their products and they commission studies to challenge and discredit the legitimate work of scientists analyzing the problems. For example they try to discredit the St. Anthony Study that we have cited as evidence of the damage caused by boat wakes. The St. Anthony Study is still recognized and accepted as an authority on the affect of boat wakes. **See "Exhibit 3" Rebuttal of arguments by Boating Associations.**
2. Then there are the "knee Jerk - Hell No -not in Montana" comments by the uninformed whose comments do not make substantive factual objections or Exhibit knowledge of the situation; they do not even know the present NO Wake Zone distances e.g. they quote Zones of 100 ft. and 150 ft.; it is apparent they are not familiar with or follow existing boating rules and are totally unaware of serious underlying issues such as: awareness of wave propagation; hard rock shore wave energy reflection; creation of super or rogue waves from crests meeting crests and trough meeting trough.

They simply do not want rules and they deny that boat wakes cause any damages to the shoreline, docks and environmental conditions without factual evidence. This group includes a comment against our Petition from a family that persistently and intentionally violates Montana's Boating Laws.

3. Then there are people who have Surf Boats, but are competent and conscientious boat operators that are not causing any problems.

However, many of those commenting may not be aware that there is a serious environmental issue that is developing. In the two deep basin of Swan Lake there are

algae blooms developing with reduced oxygen content. The lack of sufficient oxygen is one reason that the population of fish has decreased. The affect of boat wakes may be contributing to this problem. There is Research that has indicated that it actually takes 1500 ft to dissipate the wake of a Surf Boat to that of a normal boat wake.

See Exhibits that are to be posted with this Letter supporting the Petition

Exhibit 1 -Rebuttal of FWP letter stating that they do not have the power to create regulations regarding Boating Laws.

Exhibit 2-History - example of lapses in receiving communications FWP

Exhibit 3- Rebuttal of arguments by Boating Associations

Exhibit 1

Rebuttal of FWP letter stating that they do not have the power to create regulations regarding Boating Laws.

Sharing Swan Lake

January 7, 2025

Via E-Mail: jeff.hindoien@mt.gov

Jeff Hindoien
Chief Legal Counsel
Montana Fish, Wildlife & Parks

Dear Mr Hidoien:

The conclusions in your email dated December 17, 2024 came to us as a surprise after months of communicating with your office in good faith and working to analyze and draft a Petition to address legitimate needs for clarification and improvement of the boating regulations of Montana, as applied to Swan Lake.

Receiving your email at the beginning of the Holidays has made it difficult to research and evaluate your email and prepare our response. I apologize that in the interest of time and to give our members a record of the law and regulations under discussion I have inserted them in their entirety including with their legislative history. The marked, red and black underlined, bold face fonts are the Petitioners and intended to supply emphasis.

In support of our Petition we submitted a series of exhibits (“Exhibits”) from other states (“Jurisdictions”) that are reacting to a tidal wave of problems and public out cry that has been generated by the advent of Surf Boats.

These problems include public safety, protection of private and public property, and environmental damage to fisheries, shorelines, wet lands and lake and river bottoms. Jurisdictions evidenced in our Exhibits are passing statutes, regulations and rules (“Rules”) to address these problems and regulate Surf Boats.

We drafted our Petition based on our knowledge of Swan Lake, studies made of wave action, the Rules promulgated in other Jurisdictions, and a review of the summarized Montana Boating Laws published by FWP.

In response you have argued that the Department of Fish, Wildlife and Parks (which is also sometimes referred to as the Commission, Department, or FWP) does not have the power to promulgate rules and regulation to address our concerns. Following a review of the statutes, and ARM Rules, some of which you have actually cited, we have a different interpretation and seek an opportunity to discuss further.

For example, Section 87-1-303 MCA empowers the commission to adopt and enforce rules governing recreational use of all public lakes and rivers. These rules must be adopted, inter alia, in the interest of:

1. Public Safety
2. Public Welfare
3. Protection of Property

by regulating boating, including but not limited to the speed and operation of motor boats, the resolution of conflicts between motor and non motorized boats, water skiers and Surf Boats.

A primary objective of our Petition is to modify and adopt Rules to protect (a) the safety and welfare of all individuals

using the lake, including swimmers, boaters, canoeists, kayakers, paddle boarders, etc), and (b) private and public property adjacent to Swan Lake. It is our position that this gives the commission the power to adopt many of the rules we have proposed.

Rules For Use Of Lands And Waters

87-1-303. Rules for use of lands and waters. (1) Except as provided in **23-1-111**, **87-1-301**(6), and subsection (3) of this section, the commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements must itemize uses as listed in **87-1-209**.

(2) Except as provided in **87-1-301**(6), the commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules 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, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(3) (a) The commission may not regulate or classify domestic livestock trailing as a commercial activity or commercial use that is subject to licensing, permitting, or fee requirements. Domestic livestock trailing on land owned or controlled by the department is exempt from the requirements of Title 75, chapter 1, parts 1 through 3.

(b) The commission may authorize domestic livestock trailing across land owned or controlled by the department that is designated as a wildlife management area. The commission may adopt rules governing the timing of and the route to be used for domestic livestock trailing activities to the extent that the rules are necessary both to enable the trailing of domestic livestock across the designated wildlife management area and to protect and enhance state lands. The rules may not:

- (i) require a fee for domestic livestock trailing or related activities; or
- (ii) prohibit or unreasonably interfere with domestic livestock trailing activities.

(4) For the purposes of this section, the following definitions apply:

(a) "Domestic livestock" means domestic animals kept for farm and ranch purposes, including but not limited to horses, cattle, sheep, goats, and dogs.

(b) "Domestic livestock trailing" means the entering upon and crossing of department lands and the use of the lands for forage by domestic livestock for a maximum of 96 consecutive hours.

History: En. 26-104.9 by Sec. 10, Ch. 511, L. 1973; amd. Sec. 1, Ch. 332, L. 1975; R.C.M. 1947, 26-104.9; amd. Sec. 486, Ch. 418, L. 1995; amd. Sec. 560, Ch. 546, L. 1995; amd. Sec. 3, Ch. 569, L. 1999; amd. Sec. 2, Ch. 254, L. 2011; amd. Sec. 3, Ch. 370, L. 2011; amd. Sec. 30, Ch. 235, L. 2013; amd. Sec. 3, Ch. 349, L. 2017.

The following Statute states that the department has authority over fire extinguishers, the prescription of lights to be displayed on vessels, and when life jackets are mandatory.

The Petitioners note that very few of the Surf Boats have outboard motors, and that the most offensive Surf Boats have unusual lighting including blinding spot lights. It is also possible that the surfers, late at night and in the dark do not even wear life jackets. In encounters with these boats in the pitch black of night with surfers in the water, it is difficult to determine what they are doing, but it is clear that their activities are illegal and dangerous, even to the surfers.

In our Petition we proposed language to beef up the enforcement powers of the commission and its game wardens, because as citizens we have been rudely rebuffed, threatened, and in some cases subject to retaliation by Surf Boat operators. The situation is tense and hostile between property owners and Surf Boat operators.

In our current review we learned that in the Statutes and Regulations the commission and its officers do have the requisite power to enforce the Boat Laws; but unfortunately they are only briefly mentioned in your annual publication on Boat Laws. Our goal has been to put an emphasis on the penalties for failure to follow the law and rules, and consequently we encourage FWP to expand and accentuate your enforcement powers and the penalties.

Other Statutes cover a smattering of other matters that the department is to regulate. Although of lesser importance they are powers that the department has and are set forth below:

23-2-521. Equipment. (1) Every motorboat or vessel must have aboard:

(a) one personal flotation device that is approved by the United States coast guard and that is in good and serviceable condition for each person on board, provided that a person who has not reached 12 years of age must have a life preserver that is approved by the United States coast guard and that is properly fastened to the person when occupying a motorboat or vessel under 26 feet in length while the motorboat or vessel is in motion;

(b) if carrying or using an inflammable or toxic fluid in an enclosure for any purpose and if the motorboat or vessel is not an entirely open one, an efficient natural or mechanical ventilation system prescribed by the department that must be used and be capable of removing resulting gases prior to and during the time the motorboat or vessel is occupied by a person;

(c) hand portable fire extinguishers approved by the United States coast guard, the number of which is **to be determined by the department**, or a fixed fire extinguishing system that is approved by the United States coast guard, except that motorboats less than 26 feet in length of entirely open construction, propelled by outboard motors, and not carrying passengers for hire need not carry the portable fire extinguishers or fire extinguishing systems.

(2) The carburetor or carburetors of each of the engines of a motorboat or vessel (except outboard motors) that use gasoline as fuel must be equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) (a) Except as provided in subsection (3)(b), the exhaust of an internal combustion engine used on a motorboat or vessel must be

muffled either by discharge underwater or by a functioning muffler capable of muffling exhaust noise to 90 dbA or less when measured at a distance of 1 meter from the muffler at idle speed in accordance with the stationary sound level measurement procedure for pleasure motorboats (SAE J2005). The muffler may not be modified or altered, such as by a cutout. **The department may require a test at dockside to determine exhaust noise level.**

(b) The provisions of subsection (3)(a) do not apply to a motorboat or vessel:

(i) competing in a state-sanctioned regatta or boat race while on trial runs between 9 a.m. and 5 p.m. and during a period not more than 48 hours immediately preceding the regatta or boat race;

(ii) operating under a separate permit issued by the department for the purpose of tuning engines, making test or trial runs, or competing in official trials for speed records other than in connection with regattas or boat races; or

(iii) operated by an authorized agent of federal, state, or local government to carry out the duty of enforcement, search and rescue, firefighting, or research.

(4) (a) Except as provided in subsection (4)(b), a vessel may not be equipped with a siren, and a person may not use or install a siren on a vessel.

(b) An authorized emergency vessel may be equipped with a siren capable of sound audible under normal conditions from a distance of not less than 500 feet, but the siren may be used only when the vessel is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, and the operator of the vessel shall sound the siren when necessary to warn persons of the vessel's approach.

(5) **When in operation or at anchor or moored away from a docking facility between sunset and sunrise, all vessels must display lights as prescribed by the department.**

(6) **The department may designate waters where and the time of year on these waters when all persons aboard a motorboat or vessel shall wear approved life preservers at all times.**

(7) Vessels, including houseboats and floating cabins, equipped with a galley or toilet must have a wastewater holding system sealed to prevent the discharge of water-carried waste products, whether treated or untreated, into the surrounding waters.

(8) The department may adopt rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation and safety laws or with the navigation and safety rules promulgated by the United States coast guard.

(9) A person may not operate or give permission for the operation of a vessel that is not equipped as required by this section.

History: En. Sec. 5, Ch. 285, L. 1959; amd. Sec. 1, Ch. 138, L. 1961; amd. Sec. 2, Ch. 230, L. 1963; amd. Sec. 1, Ch. 169, L. 1965; amd. Sec. 52, Ch. 511, L. 1973; amd. Sec. 5, Ch. 514, L. 1973; amd. Sec. 1, Ch. 305, L. 1975; amd. Sec. 8, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3505; amd. Sec. 1, Ch. 348, L. 1987; amd. Sec. 2, Ch. 728, L. 1991; amd. Sec. 38, Ch. 130, L. 2005.

The following Statute gives the commission discretion to make a rule regarding where safety zones may not be established.

23-2-525. Restricted areas. (1) A person may not anchor a vessel or other obstacle for fishing or pleasure purposes on any body of water over which the state has jurisdiction in a position that obstructs a passageway ordinarily used by other vessels.

(2) A person may not operate a pleasure vessel within 20 feet of the exterior boundary of a water area that is clearly marked by buoys or some other distinguishing device as a bathing or swimming area. Swimming areas must be marked with white buoys having international orange markings in conformance with the uniform state waterway marking system by the owners of the areas.

(3) A person may not operate a vessel within 75 feet of a person engaged in fishing or hunting waterfowl, unless unavoidable. If unavoidable, the vessel must be operated at not greater than no-wake

speed or at a minimum speed necessary to maintain upstream progress while within 75 feet of the person engaged in fishing or hunting waterfowl.

(4) (a) A person may not purposely, knowingly, or negligently operate a motorboat upon the waters of this state within 200 feet of a tow-float or buoy displaying a "diver-down" symbol, red with a white slash, on a flag.

(b) The motorboat may enter the 200-foot safety zone by use of sail or oar. In an emergency or if there is insufficient water on either side of the 200-foot safety zone to pass by and stay out of the zone, the operator may use power within the zone but may not exceed no-wake speed. The burden of proving that an emergency exists or that there is insufficient water is on the operator.

(c) The fish and wildlife commission may by rule determine areas where establishment of a 200-foot safety zone is not allowed in order to provide for diver safety or the regulation of water traffic.

History: En. Sec. 10, Ch. 285, L. 1959; amd. Sec. 10, Ch. 514, L. 1973; R.C.M. 1947, 69-3510; amd. Sec. 1, Ch. 44, L. 1989; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 1, Ch. 569, L. 1999.

The following Statute states that the commission shall adopt rules regarding the observation and towing of persons on water skis.

The Petitioner interprets this Statute to give the commission the authority to adopted the rules the Petitioner is requesting to control the unique and novel problems caused by a new form of vessel, not previously contemplated, that is negatively impacting the waters of Swan Lake. We have suggested that the interpretation of what constitutes "sunset", when water sports must cease, to be when the sun falls below the horizon. The reason being: telling a Surf Boat that the sunset is a time on a table (i.e. 7:32 pm, or whatever it is for that day on a table)

does not make an impression on a Surf Boat crew. If the sun is down, it's down!

The following Statute clearly gives the commission the power to adopt rules advanced by our Petition:

23-2-529. Waterskis and surfboards. (1) A person may not operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on waterskis, a surfboard, or similar device unless the operator is accompanied by an observer. If the operator is 12 years of age or younger, there must be a second person, at least 18 years of age, in the vessel to observe the person being towed. The fish and wildlife commission shall adopt rules regarding the proper observation and safe towing of persons on waterskis or similar devices, based on density of use of a body of water.

(2) A person may not operate a motorboat or vessel towing a person engaged in waterskiing, surfboarding, or similar activity or towing some other contrivances nor may a person engage in those activities at any time between the hours from sunset to sunrise, except that this subsection does not apply to a performer engaged in a professional exhibition or a person engaged in a regatta or race authorized under this part.

(3) All right-of-way rules applying to a towing vessel apply to a person being towed.

History: En. Sec. 14, Ch. 285, L. 1959; amd. Sec. 12, Ch. 514, L. 1973; amd. Sec. 14, Ch. 124, L. 1977; R.C.M. 1947, 69-3514; amd. Sec. 5, Ch. 136, L. 1979; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 5, Ch. 728, L. 1991.

There are many other Statutes we could address, but for the present we are focusing our discussion on the foregoing.

However, in our research we discovered that the department shall:

- (1) coordinate a “state wide boat safety education program, and
- (2) Create a boating advisory counsel.

Both of these programs are of interest to us and we would like to receive more information on them from you, because they appear, with the commission’s assistance, to be tools that can help resolve, or at least mitigate, the current conflict with Surf Boats and their operators.

23-2-530. Education program. The department shall coordinate a statewide boat safety education program, including a home study testing program for motorboat operators.

History: En. Sec. 13, Ch. 514, L. 1973; amd. Sec. 16, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 69-3516.1; amd. Sec. 6, Ch. 728, L. 1991.

23-2-534. Funding of state recreational boating safety program -- certification of county programs -- administration by counties. (1) The department may in its discretion use available state funds and federal matching funds to contract with counties to implement designated parts of the state recreational boating safety program. If a county accepts a grant, the county shall agree to implement a program that is certified by the department as fulfilling the requirements of the state recreational boating safety program.

(2) A county may allocate funds to the department for the recreational boating safety program. This money must be used by the department for contracts with counties for the recreational boating safety program.

History: En. Sec. 1, Ch. 476, L. 1995; amd. Sec. 5, Ch. 95, L. 2001; amd. Sec. 247, Ch. 574, L. 2001.

23-2-536. Creation of boating advisory council -- appointment of members -- duties. (1) The department director appointed under 2-15-3401 shall appoint a boating advisory council to advise the department on the expenditure of funds in the motorboat account in the state special revenue fund.

(2) The boating advisory council must be composed of at least five members of the public, each of whom must be interested in boating activities and the use of public boating facilities.

(3) The boating advisory council is attached to the department in an advisory capacity only, as defined in 2-15-102.

The following ARM is of interest to us and could create a channel to report violations of the Boating Laws:

Enforcement. Each region shall develop internal procedures for receiving and ensuring proper consideration of evidence and information submitted by citizens. Public effort in reporting violations of fish and game laws or regulations shall be encouraged. Alleged violations shall be promptly investigated by the department.

In your letter, in Paragraph G, at page 8, you propose that Petitioner ask the commission to initiate a MAPA rulemaking process to consider our proposed zone for the operation of Surf Boats.

In creating our proposed zone we had considerable debate, based on our collective years of experience on the lake. Some advocated that the zone be limited to the west side of the south end of the lake. However, taking into consideration comments from Surf Boat owners we concluded that they needed to have access along the entire length of the lake. The 750 foot no surf zones on

the sides of the lake, where there is development, was influenced by the research in the other Jurisdictions where it has been concluded that Surf Boat waves do not dissipate in a 200 foot no wake zone. The research indicates that it takes at least 500 feet to reduce Surf Boat waves to the same force of impact as the waves from an ordinary boat. The distance from the shoreline could be adjusted based on the width of the Lake; 750 feet is our proposed starting point.

You have referred to 87-1-303 (2) MCA as the basis for the regulations that the commission has already adopted through MAPA and establish the controlled no wake speed limitations for Swan Lake. [This Statute can be found above in this response].

Reading this Statute we find that the commission can create a rule controlling where Surf Boats can create waves for Surfing. We want to clarify that we are not trying to create a No Wake Zone; we are asking for a rule designating areas where Surf Boats can use their specialized equipment to make large waves for surfing. On the rest of the lake they can operate the same as any other vessel making an ordinary wake.

The fact that the commission has created a no wake zone on the very north end of the lake extending from the outlet of the lake to the southern tip of the southern most island

near the outlet, and 200 feet from shorelines on the rest of the lake, does not preclude the commission from creating zones designating where Surf Boats may create “Giant Surf Waves”.

It would be interesting to know the genesis of the No Wake Zone at the northern end of the lake. It really missed the mark by not extending south to just before Sky Ranch (on the west) and Sentinel Pine (on the east). (see attached Photograph #1) The reefs on the north end of the lake extend far south of the southern island. Also, as a matter of safety and benefit to the public it would be well served to establish a no wake zone or provide warning buoys of shallow water on the shore of the west side of the lake in the area of Cedar Bay Drive and West Swan Lane. (see attached Photo #2)

In conclusion, there seem to be many tools available for us to work together to address the issues raised in our Petition.

ARM 12.2.303 states that individuals or groups may make appointments to meet with the commission regarding its concerns.

Having a working meeting with the commission may be the best way to come to a negotiated and agreeable resolution of our issues. And this meeting could include, but not limited to, a discussion on the recommendations

of your professional staff in mapping zones permissible for the creation of surf waves.

With this writing members of our group who have been prepared to present our petition have stated that they are willing to schedule a working meeting with you as the Chief Legal Counsel and/or with the commission to see if we can find come to an agreeable solution to the current conflict.

We are not waiving any of the issues discussed above, and reserve all rights thereto. We are not willing to end up in the untenable position where the commission can reject our Petition without a hearing, on the basis that the creation of zones for surfing are not within the powers of the commission.

How we proceed depends on your response, do we need to steam ahead with the Petition and the fast approaching February Hearing [which does not seem feasible based on the gap between our current respective positions], or can we can work informally with you and the commission, to find common ground that will achieve our objectives.

We are hopeful you are agreeable to working with us to find a reasonable solution.

Sharing Swan Lake

By: *Don Smith*

Don Smith, a member signing on behalf of the following members who have had the opportunity to review and support this response.

Doug Harwood
Tom Wolgamot
Bob Coffman
Dave and JoAnne Ford
Bert and Andrea Niehuis

Photograph #1 and Photograph #2 not included to save space

Exhibit 2

History - examples of lapses in communications from FWP and confirmation that a 500 NO Wake Zone was the recommendation of Game Wardens

History of Communications with FWP 11/27/2025

From: Don Smith <donald.s.smith@icloud.com>

Subject: Sharing the Swan / Sharing Swan Lake

Date: November 27, 2025 at 5:45:27 PM MST

To: Kevinreckkoff@mt.com

Cc: "Steed, Amber" <FWP >, Doug Harwood <dkharwood@aol.com>, Monte Eliason <monte.swan@usamontana.com>, Tom Wolgamot <twolgamot@dcengineering.net>, Tara Boswell <tara.boswell@hotmail.com>, Swan Lake Neighbor Casey And Tara Boswell <caseyboswell435@gmail.com>, Bert/Andrea Niehuis <amazingyarns@hotmail.com>, Bob Coffman <2dandhac@centurytel.net>, ford Dave And JoAnne <ford@montanasky.us>

Bcc: donald.s.smith@icloud

Kevin:

I had been concerned that we did not have a written confirmation of your undertaking to work directly with the Game Wardens to develop and propose enforceable rule(s) in writing by December 19, 2025. I had been planning to write to you when I received Amber's email and, whether proper or not, to expedite a written statement of our agreement I chose to commemorate our understanding in my response to Amber. I apologize if this stepped into a different lane of communication. However, since **in my experience we have received more communications from Amber than other personnel at FWP (with the exception of Jamie MacNaughton, the first attorney we interfaced with),** I decided that since this line of communication was open, that I would use it to commemorate our agreement, through

Amber who I am sure communicates with you.

Please confirm your receipt of this email

Best Regards and Happy Thanksgiving

Sharing the Swan

Don Smith

Begin forwarded message:

From: Don Smith <dona1d.s.smith@icloud.com>

Subject: Re: [EXTERNAL] Sharing the Swan / Sharing Swan Lake

Date: November 27, 2025 at 12:26:30 AM MST

To: "Steed, Amber" <ASteed@mt.gov>

Cc: Doug Harwood <dkharwood@aol.com>, Monte Eliason <monte.swan@usamontana.com>, ford Dave And JoAnne <ford@montanasky.us>, Tara Boswell <tara.boswell@hotmail.com>, Swan Lake Neighbor Casey And Tara Boswell <caseyboswell435@gmail.com>, Tom Wolgamot <twolgamot@dcengineering.net>, Bob Coffman <2dandhac@centurytel.net>, Bert/Andrea Niehuis <amazingyarns@hotmail.com>

Thank you for your email. You are the best communicator at FWP.

Kevin and I finally connected and he expressed that the Department's concern is that Rule(s) to be presented to the Commission should be something that the Game Wardens believe that they can enforce. He offered that he would confer with the Wardens and

come back to our group with a proposal for an enforceable Rule(s) by Friday, December 19, 2025.

I accepted his offer because we are willing to work with a proposal for a meaningful rule that will help abate the current situation at Swan Lake. He then said we could move forward with the placement of our petition as modified (if necessary) on the Commission's Agenda. I hope that this will prove fruitful, but we have some concern because it was our understanding that Jeff Hindoien and Tom Wolgamot had worked from the time of the Kalispell meeting until mid summer in fleshing out revisions to the Petition that were acceptable to FWP; at that time when Tom withdrew from the Project I simply tried to incorporate their understanding into the Petition I filed with FWP on October 1, 2025. **I never received a comment regarding the Petition, until I finally had the recent conversation with Kevin and he stated the Department had a concern about making it enforceable. It does not seem reasonable to have delayed communication with such a generic response until I continued pressing for an answer. He also said that the Department was adverse to dealing with what could be considered "Social Issues" between people.**

To us this, and in other jurisdictions, this is not a Social Issue, but rather an effort to get FWP to create Rules that the Legislature has already given it authority to create to regulate boating and activity on Swan Lake, and to recognize the necessity of promulgating Rules regarding safety on Swan Lake and damage to the environment, wildlife and the property of land owners.

I deferred in having a Commission Hearing until we see what the Game Wardens propose and we can react to their suggestions. I certainly hope they are not disingenuous or impractical. Our group has acted in good faith through this entire process, but I sadly I do [not] believe that is the case with the Department.

Have a Great Thanksgiving.

Best Regards,

Don Smith

PS you can share this with Kevin as I do not have his email in my computer and it is already past midnight.

On Nov 26, 2025, at 1:46 PM, Steed, Amber <ASteed@mt.gov> wrote:

Hello, Don –

I appreciate you reaching out and your frustration. I gather that you and Kevin have talked since you sent your email, and that things are on a good path moving forward. Don't hesitate to reach out in the future if there's anything more you'd like to discuss.

Happy Thanksgiving, all.

Amber

Amber Steed | Region 1 Supervisor

Administrative Division

Montana Fish, Wildlife & Parks

Office: (406) 751-4566 | Cell: (406) 405-0092

<image001.png>

Montana FWP | Montana Outdoors Magazine

<image002.png> <image003.png> <image004.png> <image005.png>

From: Don Smith <donald.s.smith@icloud.com>

Sent: Tuesday, November 18, 2025 2:55 PM

To: Steed, Amber <ASteed@mt.gov>

Cc: Doug Harwood <dkharwood@aol.com>; Tom Wolgamot <twolgamot@dcengineering.net>;

Bob Coffman <2dandhac@centurytel.net>; Monte Eliason <monte.swan@usamontana.com>;

Swan Lake Neighbor Casey And Tara Boswell <caseyboswell435@gmail.com>; Bert/Andrea

Niehuis <bniehuis@cs.com>; ford Dave And JoAnne <ford@montanasky.us>; Hindoien, Jeff

<Jeff.Hindoien@mt.gov>

Subject: [EXTERNAL] Sharing the Swan / Sharing Swan Lake

Amber:

Since we last spoke I have not received any communication from FWP, including Kevin Rechko, Esq. who is to be the designated contact. I called and got the standard voice mail that he will call me back.

I was going to follow up with an email but, its been so long that his email is no longer in my address book.

So as a backstop I'm writing you to obtain his email address and also to ask if you can get our Petition for Rule making resurrected.

Its unfortunate that FWP continues to unresponsive to the formal Petition that we filed with the Department on October 1, 2025.

We submitted the Petition after our representative Tom Wolgamot spent months working out a compromise with Jeff Hindoien that was so simplified that no issues remained and the only thing left to do was prepare the final document.

Very Truly yours,

Don Smith

(602) 770-0653

(602) 942-5842

donald.s.smith@icloud.com

Exhibit 3

Rebuttal of arguments by Boating Associations

SHARING THE SWAN

April 6, 2026

To Eric Wickman, Kevin Rechko, and Jeff Hindoien:

Gentlemen:

We were surprised by the unexpected attack by the Boating Industry trying to unsettle the Petition we have worked closely with you for over 2 years. Consequently, in haste we have had to prepare this Memorandum and Rebuttal, of for the most part canned attacks, to prevent any rule that may impair their profit margins, and with no constructive resolutions or interest to work with us to share the waters of Swan Lake with all who seek to enjoy its magic wonder.

**This Memorandum and Rebutal has been prepared by
Sharing the Swan to present to Fish and Wild Life**

Commission for the April 16, 2026 Hearing in response to the unexpected comment filed by the Water Sports Industry Association (“WSIA”).

It may be also used to rebut the comments made by National Marine Manufacturers Association and Launch Enterprises, a Wake Boat Dealer from Great Falls with a location in Kalispell.

Sharing the Swan and FWP has been working on this Petition for over two years and have explored many alternatives; it is about as basic and unobtrusive as a rule can be drafted - extending a No Wake Zone by 200 feet. At least one of the current comments wrongly alleges that we represent only a handful of disgruntled people trying to enforce an unnecessary rule. The Public Comment Phase will reveal the opposite and that there is wide spread support for our Petition.

It is further submitted by the Petitioners that the Letter and attachments from John Elizandro, purportedly of Governmental Relations for Water Sports Industry Association (“WSIA”) should not be considered as a valid evidence or commentary.

Our research Public does not show anyone named Jon (or John) Elizandro holding any position at the Water Sports Industry Association. Mr. Elizandro, if he is with WISA, has given no verifiable credentials or knowledge to file the challenge he has made to our Petition or the present situation at Swan lake, a Petition that was drafted with the guidance and assistance of the FWP and its enforcement officers.

Our research further shows that National Marine and Wake Sport groups such as WSIA, the is a “Non Profit” organization used by boating manufacturers to oppose any regulations that would interfere with their profit motives. The Executive Committee of WSIA are executives at companies that manufacture boats and components for wake board boats, including towers and their Speaker systems that broadcast across lakes. If they were acting in the public interest they should be presenting solutions

to the current situation. At best this is a canned presentation that is sent out to challenge any regulations that may be perceived

not to be in the best interests of the Members who fund the Association.

They argue that the SAFL study is preliminary, not peer-reviewed, and not designed as a regulatory standard. But they offer no positive remedy for the damages their products cause. **They warn that stricter rules would unnecessarily hurt business** and recreational use of their products.

Opposition to wake-boat restrictions that cite the SAFL study comes mainly from boating-industry groups, some scientists, and pro-wake-surfing advocates, who argue the SAFL work is not strong enough science to justify far-reaching rules or bans.

Arguments from industry and scientists

Effective arguments to counter Industry propaganda include focus on documented physical damage, ecological harm, and clear “time, place, and manner” solutions rather than trying to ban a single type of boat outright.

1. Shoreline erosion and property damage

- Scientific reviews conclude there is an unequivocal connection between boat-wake energy and shoreline erosion, sediment resuspension, and increased near-shore turbidity.
- Studies and homeowner surveys report loss of land, undercut banks, damage to docks and boats, and unsafe swimming conditions from repeated large wakes, especially on small or narrow lakes.

2. Water quality and algae blooms: **the Flathead Biological Station is starting a study of apparent algae blooms and related impairment of water quality at Swan Lake. Peititoners have noticed reduced clarity in the waters at Swan Lake.**

- **Large wakes resuspend bottom sediments, releasing** nutrients like phosphorus and nitrogen that can fuel algae blooms and reduce water clarity.
- Increased turbidity and nutrient release can lead to

hypoxia (low oxygen), harming overall lake health and making public investments in water-quality protection less effective.

3. Habitat, fish, and wildlife impacts

- Boat-wake turbulence and prop wash disturb spawning beds and shallow-water habitats, washing away fish eggs and displacing juvenile fish, which reduces reproductive success.
- Wakes also damage emergent and submerged vegetation that functions as nursery habitat and shoreline protection, and **can wash out nests of birds like loons, turtles, and other shore-dependent species.**

4. Safety and navigation concerns

- **Large wakes can swamp or destabilize small fishing boats, canoes, kayaks, and paddleboards, creating a clear safety hazard for slower craft and shoreline swimmers.**
- Concentrated wake activity in narrow channels and bays makes it difficult for others to navigate safely and increases **conflict between user groups, strengthening the case for designated wake zones.**

5. Scale and persistence of wake-boat impacts

- **Research shows wakes from wake-enhanced boats are significantly taller and more energetic than those from typical runabouts or ski boats, and their effects can extend hundreds of feet from shore.**
- **New turbulence studies find that wake boats in surf mode can disturb lake bottoms to at least 20 feet depth, resuspending more sediment and nutrients than other powerboats at similar speeds.**

6. Legally defensible regulatory framing

- Regulations can be framed as “time, place, and manner” controls: limiting enhanced wakes to deeper-water corridors, minimum distances from shore/structures, and away from sensitive habitats, rather than banning specific brands or activities.
- Policymakers can point to peer-reviewed and governmental syntheses (e.g., Chesapeake Bay review, fisheries and

vegetation studies) showing consistent concerns across regions, which helps defend rules against claims that they are arbitrary or based on a single controversial report.

The original St. Anthony Falls Laboratory (SAFL) wake-boat report has been both widely used in policy discussions but criticized, because it was never published in a peer-reviewed scientific journal, so its status as a “reliable” scientific study is contested.

How the study is treated today

- The SAFL report “A Field Study of Maximum Wave Height, Total Wave Energy, and Maximum Wave Power Produced by Four Recreational Boats on a Freshwater Lake” is hosted in the University of Minnesota’s Digital Conservancy and used as technical backing for distance and depth recommendations about wake boats.

- Lake and river groups, plus some municipalities, still cite SAFL work (including a related Phase II study on turbulence and lake-bottom disturbance) to support rules like operating wake boats in at least 20 feet of water and farther offshore.

Major criticisms of its scientific reliability

- A detailed external critique titled “Critical Issues with the Maars et al. MN St. Anthony Falls Wake Study” argues that the 2022 SAFL report was not novel, was never published in a scientific journal, did not undergo standard peer review, and “does not rise to the level required for policy decisions.”

How to interpret “reliable” in this context

- Within advocacy and management circles concerned about wake-boat impacts, **SAFL’s work is often treated as credible engineering research that provides useful baseline information, even though it is in report form rather than a journal article.**

To support shoreline-protection measures, you can point out that multiple independent studies (including SAFL Phase II on turbulence and lake-bottom disturbance) converge on similar recommendations: wake boats operated in surfing mode should be kept in deeper water (around 20 feet or more) and at greater

distances from shore to reduce impacts.

The SAFL wake-boat studies have strongly shaped Minnesota's local lake rules and statewide boating "best practices," but they have not yet produced a strict, uniform statewide wakesurfing law.

Key scientific recommendations from SAFL

- Phase 1 (surface waves) found that wakesurf boats produce waves 2–3 times higher and 3–9 times more energetic than typical recreational boats, and that those waves only decay to comparable levels beyond roughly 500–800 feet from shore.
- Phase 2 (lake-bottom impacts) recommended that wake boats operate in "surfing mode" only where water depth is at least about 20 feet, to reduce sediment disturbance, nutrient release, and vegetation damage.

How Minnesota has used these results

- Minnesota Lakes and Rivers Advocates and COLA groups explicitly use SAFL's Phase 1 results to argue for an 800-foot distance from shore for wake-enhanced boating and to design boater-education curricula for Minnesota's new mandatory education requirements.
- Local watershed districts and lake associations (for example, in the Lake Minnetonka area) cite the SAFL turbulence and sediment findings when pushing for ordinances that restrict wakesurfing to deeper "zones" of a lake.

Current regulatory situation on Minnesota lakes

- Many Minnesota lakes already had general wake and speed rules; SAFL's work has been added on top of that to justify more restrictive local ordinances or voluntary "best-practice" zones for wakesurfing (deep-water, offshore corridors).
- There is still no single statewide statute that bans wakesurfing or mandates SAFL's specific 20-foot/800-foot numbers; previous attempts to pass such limits at the Legislature have failed, so most implementation is through local rules and education, not a uniform state ban.

Influence beyond formal law

- News coverage and public-education materials repeatedly reference SAFL's findings when explaining why wake boats should stay in deeper water and farther from shore, which shapes public expectations and voluntary behavior even where ordinances are not yet adopted.

- Environmental and angling groups now frame wake-boat debates around SAFL's core concepts—sediment resuspension, phosphorus release, and habitat disturbance—so the studies effectively set the scientific terms of the policy conversation, even amid criticism.

Several states and individual lakes now have specific rules for wake boats and wake surfing, usually based on distance from shore, minimum depth, lake size, and “home lake” limits.

Statewide wake-surf/wake-boat laws

- **Vermont:** Wake surfing allowed only where water is at least 20 feet deep **and at least 500 feet from shore**, and only on lakes with at least one 50-acre area meeting those criteria. **Boats must designate a home lake; ballast must be decontaminated before trailering to another lake, and lakes can petition to be completely wake-surf-free.**

- **Maine:** Statewide law limits wake surfing to areas that are at least 300 feet from shore and at least 15 feet deep. Setback and size limits (multiple states)

- **South Carolina, Alabama, Georgia:** Laws (often modeled on WSIA “best practices”) generally prohibit wake surfing within 200 feet of shore, docks, or anchored boats, ban wake surfing on very small lakes (often under about 50 acres), and **require life jackets and daylight-only operation. (These are persistent violations on Swan Lake)**

- **Pennsylvania & New Jersey:** Treat wake surfing similar to water-skiing, requiring slow/no-wake speeds within 200 feet of

shore, docks, ramps, swimmers, or anchored boats.

Example: Vermont lake-specific rule

- **Vermont's implementing rule** (used as an example by lake groups) states that **wake boats in "wake sport mode" must be in at least 50 contiguous acres of water, with depth at least 20 feet, and at least 500 feet from shore, and must comply with the home-lake and decontamination requirements.**

- Many of the approximately 30 Vermont lakes that technically qualify under the 50-acre/500-foot/20-foot criteria have petitioned the state to be entirely wake-surf-free under the statute's petition process.

Other legislative and rule trends

- **Several states (for example, Indiana, Michigan, Tennessee) have considered or adopted bills that: restrict wake surfing to larger lakes, set curfews (no wakesurfing between sunset and sunrise), and require additional towed-watersports education or special certificates. (All good ideas)**

- Model provisions being discussed or implemented include: banning wake-enhancement in water shallower than 15–20 feet, requiring 400–500 foot setbacks from shore or structures for surf mode, and banning or severely limiting wake boats on narrow or small lakes (e.g., under 200–300 acres or where the lake is under about 500 feet wide over most of its area).

This research and response was supported by Perplexity
Submitted for Sharing the Swan
by Don Smith -