BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12-11-330, ARM 12.11.610(1),12.11.620(1)(a)(ii) pertaining to the horsepower restrictions for motorized watercraft on the Clark Fork River and the Bitterroot River, hovercraft are should be exempt from the horsepower restrictions	))))	RULEMAKING PETITION

RECEIVED
OCT 28 2013
FISH, WILDLIFE & PARKS
DIRECTOR'S OFFICE

TO: All Concerned Persons

1. The Petitioner's name and address is James Vernon Crews of 316 9th Street, Stevensville, Montana 59870.

2. The Petitioner is affected because he owns several hovercraft which are classified as motorized watercraft when registered and titled in Montana and is compelled to obey ARM 12-11-610(1) and ARM 12-11-620(1)(a)(ii). As such is the case, all motorized watercraft which are not personal watercraft are subject to not exceeding the 20 horse power requirements set forth in the referenced ARMs.

3. The Petitioner asserts that requiring hovercraft to meet the 20-horsepower requirement adopted by the Montana fish, Wildlife and Parks Commission is unreasonable as there seem to be no hovercraft commercially available for purchase that can meet the horsepower restrictions enacted by the Commission.

4. The Petitioner has researched the availability of hovercraft that would meet the 20-horsepower limit placed on the use of motorized watercraft and has found none available. Most modern commercially available hovercraft have horsepower ranging from 29 horsepower to approximately 100 horsepower. Twin engine hovercraft utilizes one engine to provide lift and the second engine to provide thrust. Single engine hovercraft divides the horsepower to provide both lift and thrust with approximately 33.3% of the horsepower used for lift and the remaining horsepower to provide additional lift and thrust.

5. The Petitioner believes that hovercraft as a watercraft, were not evaluated as to the engineering and scientific differences between a boat and a hovercraft.

6. The Petitioner owns two hovercraft, both commercially available and can be used for recreational, commercial and rescue purposes. In the Commissions deliberations as reference in Montana Administrative Register Notice 12-368, the Commission stated that it adopted amendments to the ARMs referenced to balance the interests of all river users. The Petitioner does not believe that the Commission

considered hovercraft in their deliberations and as such has completely eliminated a class of Citizens from the use and enjoyment of the Bitterroot and Clark Fork Rivers.

7. The Petitioner further believes that the Commission in its deliberations did not address the recreational use of the Bitterroot River by recreational users during the warmer months of the year as the Commission established the dates of use by motorized watercraft from October 1 through January 31. By establishing these dates, the Commission has eliminated all use of the Bitterroot River by motorized watercraft users during the warmer months and relegated recreational use of the river to those times where there is increased danger on the river due to thermal conditions and may create conflict with the water fowl hunters.

ADOPTION:

The rules as proposed to be adopted would provide as follows:

Proposed rule ARM 12-11-330 Definition of Vessel is to be modified to include the term Hovercraft.

Proposed rules ARM 12-11-610(1)(a) and ARM 12-11-620 would exempt hovercraft from the horsepower requirements as specified for motor boats. These rule changes would recognize that hovercraft are not powered in the same manner as motorboats and as such have different operational capabilities and power requirements and less environmental impact and could provide immediate search and rescue resource for the communities of Montana by providing additional avenues of training.

AMENDMENT:

ARM 12.11.330 DEFINITION OF "VESSEL"

(1) The definition of "vessel" in 23-2-502 (13), MCA does not include inner tubes (motor vehicle type), float tubes (belly boats), air mattresses and sailboards when used without mechanical propulsion by one individual.

<u>(2) The definition of “motor boat” in 23-2-502(7)(a), MCA does not include hovercraft</u>

<u>(a) A Hovercraft is a vehicle that moves just above the surface of land or water on a cushion of air, generally propelled by a thrust fan, they can be of single or multiple engine design.</u>

ARM 12.11.610 BITTERROOT RIVER

(1) Bitterroot River is closed to use of any motorized watercraft except any motorized watercraft powered by 20 horsepower or less are permitted

from October 1 through January 31 from the headwaters of the Bitterroot River to the confluence with the Clark Fork River.

(a) Hovercraft are exempted from the horsepower requirements set forth in ARM 12-11-610(1).

(2) Floating of any kind, including the use of tube, raft, vessel, or similar device is prohibited on Fridays from July 1 through September 15 from Painted Rocks Dam to Applebury Forest Service Site.

ARM 12-11-620 CLARK FORK RIVER

(1) The Clark Fork River and its tributaries, unless specified elsewhere in this chapter, are closed to all motorized watercraft, including personal watercraft as defined in 23-2-502, MCA, except:

(a) from Kelly Island (Spurgin Road) Fishing Access Site boat ramp and the Grass Valley Ditch Diversion to harper's Bridge Fishing Access Site.

(i) any motorized watercraft, except personal watercraft as defined in 23-2-502, MCA, are permitted from May 1 to June 15, and

(ii) any motorized watercraft 20 horsepower or less are permitted from October 1 through January 31.

(iii) hovercraft are exempted from the horsepower requirements set forth in ARM 12-11-620(ii).

(b) From Harper's Bridge Fishing Access Site to St. John's Fishing Access Site.

(i) Any motorized watercraft, hovercraft, except personal watercraft as defined in 23-2-502, MCA are permitted from October 1 to June 15, and

(ii) Any motorized watercraft 20 horsepower or less are permitted June 16 through September 30.

(iii) Hovercraft are exempted from the horsepower requirements set forth in ARM 12-11-620(1)(b)(ii).

(c) from the mouth of Fish Creek to the Montana border.

Repeal

No rules are being requested to be repealed.

8. The Petitioner has no knowledge of any person who may have a particular interest in the proposed agency action.

9. The Petitioner requests a hearing for expression of petitioner's and other interested persons' views.

WHEREFORE, petitioner requests the Montana Fish, Wildlife and Parks Commission to recognize that Hovercraft are a separate category or class of powered watercraft, and that there are no commercially available hovercraft that can readily meet the Commissions 20-horsepower rule without significant financial hardship being imposed upon the Citizens of the State of Montana, thus the petitioner requests that hovercraft be exempted from the horsepower requirements imposed by the commission.

James Vernon Crews

October 23, 2019