



Montana Fish, Wildlife & Parks

Region 2 Headquarters
3201 Spurgin Road
Missoula, MT 59804-3101
Phone 406-542-5500
May 26, 2011

Dear Interested Citizen:

Enclosed you will find for your review the Draft Environmental Assessment (EA) for a Montana Fish, Wildlife & Parks (FWP) proposal to change existing boating regulations that apply to the Bitterroot, Blackfoot, and Clark Fork Rivers located in west central Montana. The proposed regulation changes are in response to the increase in river use in the vicinity of Missoula. They are intended to provide for a diverse array of river recreation opportunities and to address public safety and social concerns associated with fast-moving motorized watercraft operating in proximity to other users.

The EA may also be obtained by mail from Region 2 FWP at the address above; by phoning 406-542-5500; by emailing shrose@mt.gov; or by viewing FWP's Internet website <http://fwp.mt.gov> ("Recent Public Notices," beginning May 26). For questions regarding the proposal, please contact Pat Saffel (FWP, Missoula) at 406-542-5507 or psaffel@mt.gov.

This proposal involves amendment of the Administrative Rules of Montana (ARM) 12.11.610, 12.11.615, and 12.11.620 regarding recreational use rules on the Bitterroot River, Blackfoot River, and Clark Fork River. Specific rules and proposed changes are also detailed in the attached Administrative Rule Notice.

Comments on the EA and/or the proposed rule change should be: mailed to Sharon Rose, Attention: Boating Regulation Changes, at the address above; faxed to 406-542-5529; or emailed to shrose@mt.gov. Comments must be received by FWP no later than June 27, 2011.

On June 16, 2011 at 6:00 p.m., the Montana Fish, Wildlife & Parks Commission will hold a public hearing for this proposal at the FWP Region 2 Office located at 3201 Spurgin Road, Missoula, Montana to consider the adoption of the above stated rules.

As part of the decision making process under the Montana Environmental Policy Act (MEPA), I expect to issue the Decision Notice for the EA soon after the end of the comment period. The Montana Fish, Wildlife & Parks Commission has the final decision-making authority for FWP rule changes, and the Commission will be asked to render its decision on this proposal at its August 11, 2011 meeting in Helena. The Commission's final decision is expected to be published in Issue 16 of the Montana Administrative Register on August 25, 2011 and any changes will be effective and enforceable the following day.

Sincerely,

A handwritten signature in black ink that reads "Mack Long".

Mack Long
Regional Supervisor

ML/sr

Draft Environmental Assessment

Proposed Boating Regulation Changes: Clark Fork, Blackfoot and Bitterroot Rivers



May 2011



**Montana Fish,
Wildlife & Parks**

Environmental Assessment MEPA CHECKLIST

PART I. PROPOSED ACTION DESCRIPTION

1. **Proposed state action:**

The Montana Fish, Wildlife & Parks (FWP) Commission proposes to change existing boating regulations that apply to the Clark Fork, Blackfoot and Bitterroot Rivers. The proposed regulation changes are in response to the increase in river use in the vicinity of Missoula. They are intended to provide for a diverse array of river recreation opportunities and to address public safety and social concerns associated with fast-moving motorized watercraft operating in proximity to other users.

2. **Agency authority for the proposed action:**

The FWP Commission has the authority to adopt and enforce boating rules through Montana Code Annotated (MCA) 87-1-303 - Rules for Use of Lands and Waters. Under MCA 87-1-303

(2) 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 the 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 public 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. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public.

3. **Name of project:**

Proposed Boating Regulation Changes: Clark Fork, Blackfoot and Bitterroot Rivers

4. **Project sponsor:**

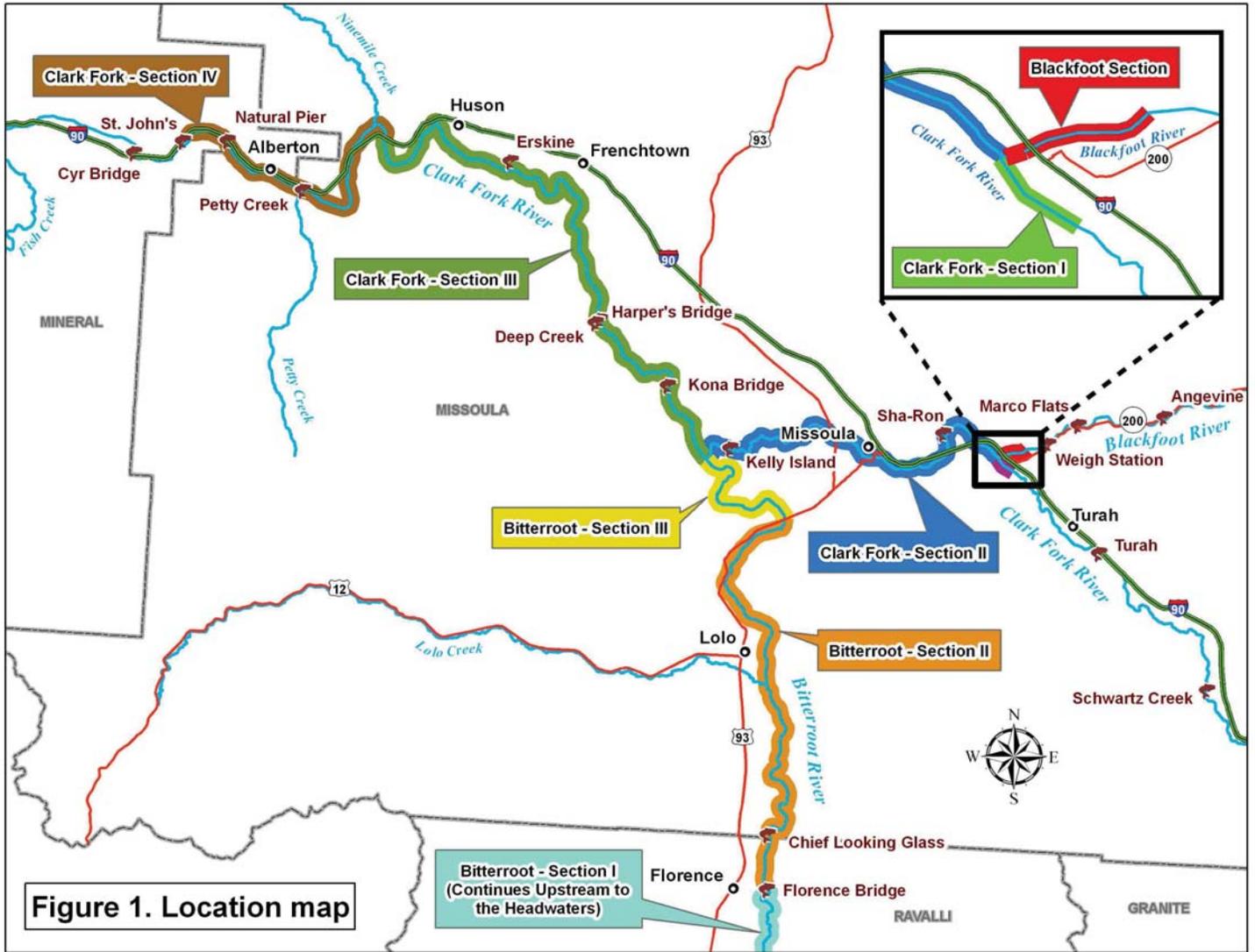
Montana Fish, Wildlife & Parks
3201 Spurgin Road
Missoula, MT 59804
406-542-5500

5. **Estimated Schedule of Events:**

Estimated completion date: The FWP Commission would make a decision in August 2011.

6. **Location Affected by the Proposed Action:**

The proposed boating regulation changes would affect: 1) the Clark Fork River in Missoula and Mineral Counties, Montana, 2) the Blackfoot River in Missoula County, Montana, and 3) the Bitterroot River in Ravalli and Missoula Counties, Montana. These rivers are located in west-central Montana and within FWP's Administrative Region 2 (Figure 1).



More specifically, the affected river sections under consideration within these three drainages are described below.

Blackfoot River

The affected section of the Blackfoot River is the section that used to be part of the Milltown Reservoir before the removal of the dam (Stimson Lumber Company to Milltown Dam).

Clark Fork River

Four sections of the Clark Fork River would be affected under the proposed action. The sections are as follows:

Section I: The section of Clark Fork River that used to be part of the Milltown Reservoir before the removal of the dam (Old Milwaukee Bridge Abutments to Milltown Dam).

Section II: The Blackfoot River to the Bitterroot River.

Section III: The Bitterroot River to the north side of the Interstate 90 Bridge east (upstream) of Ninemile Creek.

Section IV: The north side of the Interstate 90 Bridge east (upstream) of Ninemile Creek to St. John's Fishing Access Site.

Bitterroot River

Three sections of the Bitterroot River would be affected under the proposed action. The sections are as follows:

Section I: Headwaters to Florence Bridge.

Section II: Florence Bridge to Buckhouse Bridge.

Section III: Buckhouse Bridge to the Clark Fork River.

7. Project size:

The proposed action would affect boating regulations related to motorized use on 50 miles of the Clark Fork River, 1 mile of the Blackfoot River and 84 miles of the Bitterroot River.

8. Permits, Funding and Overlapping Jurisdictional Responsibilities:

(a) **Permits:** None required

(b) **Funding:** None

(c) **Other overlapping or additional jurisdictional responsibilities:** None

9. Summary of the Proposed Action

The current boating regulations for the Clark Fork, Blackfoot, and Bitterroot rivers regulate motorized watercraft use by section of river, county, time of year, size of motor, and/or speed of travel. Whereas most of the Blackfoot River is closed to motorized watercraft, sections of the Clark Fork and Bitterroot are open to motorized watercraft at different times of the year. The FWP Commission wishes to retain some motorized watercraft opportunities on these rivers and at the same time is proposing regulation

changes to address social and public safety concerns that exist in the sections of river close to Missoula.

River use has increased around Missoula. This includes boating, kayaking, canoeing, wade angling, and innertubing. Hazards arise when fast-moving motorized watercraft travel the same sections of river used by other users. In many locations there is limited visibility and insufficient channel width to safely accommodate both types of use. The noise, speed and wake associated with fast-moving motorized watercraft can also be a social concern to other types of river users and adjacent landowners.

The Department does not wish to eliminate motorized watercraft use on these rivers. Instead, the Department is proposing to modify the current regulations and establish sections of river in the vicinity of Missoula that would be either closed to motorized watercraft or limited by horsepower. Motorized watercraft would still have access to other sections of the Clark Fork and Bitterroot Rivers. The Blackfoot River is currently closed to motorboats and would remain the same.

The removal of Milltown Dam and transition from reservoir to free-flowing river have changed the setting around the Blackfoot/Clark Fork confluence. In addition to addressing social and public safety concerns, the proposed regulations are intended to address the changes in setting around the old Milltown Reservoir area so that regulations appropriately fit the newly restored free-flowing river settings of the Clark Fork and Blackfoot.

History and Development of the Proposed Action

The greater Missoula area has continued to experience a general rise in the popularity of river recreation on the Blackfoot, Clark Fork and Bitterroot rivers. Additionally, the removal of Milltown Dam and development of Brennan's Wave (a kayak wave feature on the Clark Fork River in downtown Missoula) have increased public awareness of the community's river resources and associated recreational opportunities including angling, floating, inner-tubing, kayaking, and swimming.

In 2007, Fish Wildlife & Parks completed a site development project at Kona Bridge Fishing Access Site (FAS) on the Clark Fork River west of Missoula. This development included a concrete boat ramp and expanded parking at the previously primitive access point. As a result, overall recreational use increased, including the use of motorized craft such as fast moving jet boats and personal watercraft.

In 2010, FWP proposed design plans for the fishing access site at Harper's Bridge (about 4.5 miles downstream from Kona Bridge FAS on the Clark Fork River). During the public process for the proposal, concern developed over the potential for increased motorized use at Harper's Bridge – similar to the changes in use patterns that were observed at Kona Bridge a few years earlier. Of the 34 total comments that FWP received during the public process for the Harper's Bridge FAS development proposal, 21 (62%) of them included concerns regarding motorized river use. As a result, the decision included a revision of the original site design plans to eliminate development of a boat ramp, and a commitment by the Department to evaluate concerns related to motorized use and explore potential solutions in 2011.

In early 2011, FWP staff began to review the current boating regulations for the greater Missoula area and talked with individuals and organizations with an interest in river

recreation. While there were a variety of perspectives regarding recreational opportunities and desired conditions, two themes emerged as a common thread amongst users. Those commonalities were that: 1) social conflicts do exist between different types of river users and warrant the attention of FWP, and 2) reports on the types and numbers of users in given stretches of river were similar.

Following the review of current regulations and conditions, FWP staff drafted changes based on input from those contacted during the review as well as regional staff. As required by the statewide river recreation rules, the draft changes were presented to a subgroup (5 members) of the Region 2 FWP Citizen Advisory Committee for review. Discussion amongst the group and slight modifications to the original draft yielded all but one of the committee members supporting a recommendation to present the proposal to the FWP Commission for consideration. Comment letters were provided by three of the subcommittee members for presentation to the Commission, two of which were in support and the other in opposition.

At its May 12, 2011 meeting, the FWP commission tentatively adopted the proposed rule amendments for the Clark Fork, Blackfoot and Bitterroot Rivers and directed the department to proceed with rulemaking consistent with the Montana Administrative Procedures Act and the statewide river recreation administrative rules.

10. Alternatives

Alternative A (No Action):

The FWP Commission does not adopt proposed boating regulation changes for the Clark Fork, Blackfoot and Bitterroot Rivers.

Alternative B (Proposed Action):

The FWP Commission adopts proposed boating regulation changes for the Clark Fork, Blackfoot and Bitterroot Rivers. Current regulations would be modified to establish sections of river in the vicinity of Missoula that would either be closed to motorized watercraft or limited by horsepower. The following tables provide descriptions for sections of the Clark Fork, Blackfoot and Bitterroot Rivers with proposed regulation changes. The tables also include key points related to each section and the current regulations that are in place for that section compared to the regulations that are being proposed.

Blackfoot River: *Section of Blackfoot River that used to be part of the Milltown Reservoir before the removal of the dam (Stimson Lumber Company to Milltown Dam).*

Key Points	
<ul style="list-style-type: none"> • Current rules are out-dated as Milltown Reservoir is no longer in existence due to the removal of Milltown Dam. • The proposed changes would extend existing regulations on the Blackfoot downstream to the Clark Fork confluence, to include the site of the former Milltown Reservoir, which is now river. • The Blackfoot River Recreation Management Plan¹ lists closing this section to motorboats as a key consideration for maintaining desired conditions. 	
Current Rule	Proposed Rule
<ul style="list-style-type: none"> • No wake speed on Milltown Reservoir. 	<ul style="list-style-type: none"> • Closed to all motorboats.

Clark Fork River – Section I: *Section of Clark Fork River that used to be part of the Milltown Reservoir before the removal of the dam (Old Milwaukee Bridge abutments to Milltown Dam)*

Key Points	
<ul style="list-style-type: none"> • Current rules are out-dated as Milltown Reservoir is no longer in existence due to the removal of Milltown Dam. • The proposed changes would extend existing regulations on the Clark Fork downstream to the Blackfoot confluence, to include the site of the former Milltown Reservoir, which is now river. 	
Current Rule	Proposed Rule
<ul style="list-style-type: none"> • No wake speed on Milltown Reservoir. 	<ul style="list-style-type: none"> • Closed to all motorboats.

Clark Fork River – Section II: *The Blackfoot River to the Bitterroot River*

Key Points	
<ul style="list-style-type: none"> • This section of the Clark Fork is a relatively narrow stretch of river. • Sediment transfer (resulting from the removal of Milltown Dam) is expected to make this section more dynamic. • The removal of Milltown Dam will likely lead to increased floating and angling use. • Existing motorboat use in this section is low. • Brennan’s Wave and other possible wave features in this section lead to increased multi-season float use. • Jacobs Island and Kelly Island Weirs deter motorboat use. 	
Current Rule	Proposed Rule
<ul style="list-style-type: none"> • No motorboat restrictions from the Blackfoot River to the north side of the Interstate 90 Bridge nearest East Missoula. • Closed to motorboats from July 1 – Sept. 30 from the north side of the Interstate 90 Bridge nearest East Missoula to the Bitterroot River. 	<ul style="list-style-type: none"> • Closed to all motorboats.

¹ FWP. 2009. Blackfoot River Recreation Management Plan.

Clark Fork River – Section III: *The Bitterroot River to the north side of the Interstate 90 Bridge east (upstream) of Ninemile Creek*

Key Points	
<ul style="list-style-type: none"> • The river above Harper’s Bridge FAS flows through sparse residential areas where noise levels can be a concern. • High volumes of summer float use and swimming occur above Harper’s Bridge FAS. • River access is limited below Harper’s Bridge FAS. • Motorized use in this section can be high, but limited to a few number of users. • Conflicts exist between motorboat users and those seeking solitude on this more remote (below Harper’s Bridge FAS) stretch of river. • Fast-moving motorized craft can have multiple encounters with other users. • Safety hazards could arise between anglers and motorboats on narrow and shallow side channels. • A 20 hp motor restriction provides for year-round fishing and fall waterfowl hunting. • 20 hp motors are common and are the largest hp available in most “portable” motor categories. 	
Current Rule	Proposed Rule
<ul style="list-style-type: none"> • No motorboat restrictions. 	<ul style="list-style-type: none"> • Motorized craft of 20 hp or less may be operated year-round.

Clark Fork River – Section IV: *The north side of the Interstate 90 Bridge east (upstream) of Ninemile Creek to St. John’s FAS*

Key Points	
<ul style="list-style-type: none"> • This section of the river is larger and less braided than upstream sections. • This river section (roughly 11 miles) provides a location close to urban areas (25 miles from Missoula) where larger horsepower motorized craft can be used. • Motorized use provides access to upstream and downstream angling opportunities (from Petty Creek FAS). 	
Current Rule	Proposed Rule
<ul style="list-style-type: none"> • No motorboat restrictions. 	<ul style="list-style-type: none"> • Same (no change).

Bitterroot River – Section I: *Headwaters to Florence Bridge*

Key Points	
<ul style="list-style-type: none"> • The recommended horsepower (hp) restriction change is intended to be consistent with nearby 20 hp recommendations on the Clark Fork River. • Floating and angling are popular activities through the summer and fall. • 20 hp motors are common and are the largest hp available in most “portable” motor categories. • Fall waterfowl hunting is popular and can be accommodated with a 20 hp motor. • Motorized use with larger than 20 hp continues to be incompatible with the existing braided channels and high volumes of float use. 	
Current Rule	Proposed Rule
<ul style="list-style-type: none"> • <u>15 hp</u> or less (Oct. 1 – Jan. 31). • Remainder of year – float only. 	<ul style="list-style-type: none"> • <u>20 hp</u> or less (Oct. 1 – Jan. 31). • Remainder of year – float only.

Bitterroot River – Section II: Florence Bridge to Buckhouse Bridge

Key Points

- Shortening the spring season (no motorboat restrictions) could reduce overlap between motorized and non-motorized users.
- Spring motorboat use has a low potential for use conflict and is an existing opportunity close to Missoula and communities in the Bitterroot Valley.
- Spring motorboat use is comprised of a limited number of users but can be frequent.
- Floating and angling are popular activities through the summer and fall.
- Fall waterfowl hunting is popular and can be accommodated with a 20 hp motor.
- 20 hp motors are common and are the largest hp available in most “portable” motor categories.

Current Rule	Proposed Rule
<ul style="list-style-type: none"> • No motorboat restrictions (May 1 – <u>June 30</u>). • <u>15 hp</u> or less (Oct. 1 – Jan 31). • Remainder of year – float only. 	<ul style="list-style-type: none"> • No motorboat restrictions (May 1 – <u>June 15</u>). • <u>20 hp</u> or less (Oct. 1 – Jan 31). • Remainder of year – float only.

Bitterroot River – Section III: Buckhouse Bridge to the Clark Fork River

Key Points

- The river in this section flows through sparse residential areas where noise levels can be a concern.
- High volumes of summer floating, angling and swimming occur in this section.
- Existing motorboat use in this section is low and comprised of a limited number of users.
- Safety hazards could arise between large and/or fast motor craft and other users (swimmers, tubers, anglers).
- Fall waterfowl hunting is popular and can be accommodated with a 20 hp motor.
- 20 hp motors are common and are the largest hp available in most “portable” motor categories.

Current Rule	Proposed Rule
<ul style="list-style-type: none"> • No motorboat restrictions (May 1 – June 30). • <u>15 hp</u> or less (Oct. 1 – Jan 31). • Remainder of year – float only. 	<ul style="list-style-type: none"> • <u>20 hp</u> or less (Oct. 1 – Jan 31). • Remainder of year – float only.

PART II. PREDICTED ENVIRONMENTAL OUTCOMES

If the No Action alternative were to be chosen, and the FWP Commission does not adopt boating regulation changes, public safety and social concerns associated with fast-moving motorized watercraft would continue to exist. As recreation expands and use patterns change, this could lead to an increased potential for conflict between user groups as well as public safety concerns. Ultimately these concerns may lead to the displacement of recreationists seeking recreational opportunities where conditions are more desirable and the potential for conflict and safety hazards are fewer.

Evaluation of the impacts of the Proposed Action including secondary and cumulative impacts on the physical and human environment.

A. PHYSICAL ENVIRONMENT

1. <u>LAND RESOURCES</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Soil instability or changes in geologic substructure?		X				
b. Disruption, displacement, erosion, compaction, moisture loss, or over-covering of soil, which would reduce productivity or fertility?		X				
c. Destruction, covering or modification of any unique geologic or physical features?		X				
d. Changes in siltation, deposition or erosion patterns that may modify the channel of a river or stream or the bed or shore of a lake?		X				1. d.
e. Exposure of people or property to earthquakes, landslides, ground failure, or other natural hazard?		X				

1. d. Localized erosion or modification of river channels could be associated with the use of fast-moving motorized watercraft in some areas. These types of impacts have not been documented on these rivers and are thought to be limited because the river and banks experience annual ice and water flow with greater erosion force than wakes. If impacts do exist, closing some areas to motorized craft or restricting horsepower would likely have a neutral or beneficial effect.

2. <u>AIR</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Emission of air pollutants or deterioration of ambient air quality? (Also see 13 (c).)		X				2. a.
b. Creation of objectionable odors?		X				
c. Alteration of air movement, moisture, or temperature patterns or any change in climate, either locally or regionally?		X				
d. Adverse effects on vegetation, including crops, due to increased emissions of pollutants?		X				
e. <u>For P-R/D-J projects</u> , will the project result in any discharge, which will conflict with federal or state air quality regs? (Also see 2a.)		X				

2. a. Impacts associated with emissions from motorized water craft have not been documented on these rivers. However, If motorized closures resulted in a decrease in motorized use, impacts to ambient air quality could be positive due to reduced emissions.

3. <u>WATER</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Discharge into surface water or any alteration of surface water quality including but not limited to temperature, dissolved oxygen or turbidity?		X				3. a.
b. Changes in drainage patterns or the rate and amount of surface runoff?		X				
c. Alteration of the course or magnitude of floodwater or other flows?		X				
d. Changes in the amount of surface water in any water body or creation of a new water body?		X				
e. Exposure of people or property to water related hazards such as flooding?		X				
f. Changes in the quality of groundwater?		X				
g. Changes in the quantity of groundwater?		X				
h. Increase in risk of contamination of surface or groundwater?		X				
i. Effects on any existing water right or reservation?		X				
j. Effects on other water users as a result of any alteration in surface or groundwater quality?		X				
k. Effects on other users as a result of any alteration in surface or groundwater quantity?		X				
l. For P-R/D-J, will the project affect a designated floodplain? (Also see 3c.)		X				
m. For P-R/D-J, will the project result in any discharge that will affect federal or state water quality regulations? (Also see 3a.)		X				

3. a. Impacts associated turbidity created by motorized water craft have not been documented on these rivers. However, If motorized closures result in a decrease in motorized use, impacts to water quality could be positive due to reduced turbidity.

4. VEGETATION Will the proposed action result in?	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Changes in the diversity, productivity or abundance of plant species (including trees, shrubs, grass, crops, and aquatic plants)?		X				
b. Alteration of a plant community?		X				
c. Adverse effects on any unique, rare, threatened, or endangered species?		X				
d. Reduction in acreage or productivity of any agricultural land?		X				
e. Establishment or spread of noxious weeds?		X				
f. For P-R/D-J, will the project affect wetlands, or prime and unique farmland?		X				

5. <u>FISH/WILDLIFE</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Deterioration of critical fish or wildlife habitat?		X				
b. Changes in the diversity or abundance of game animals or bird species?		X				
c. Changes in the diversity or abundance of nongame species?		X				
d. Introduction of new species into an area?		X				
e. Creation of a barrier to the migration or movement of animals?		X				
f. Adverse effects on any unique, rare, threatened, or endangered species?		X				
g. Increase in conditions that stress wildlife populations or limit abundance (including harassment, legal or illegal harvest or other human activity)?		X				5. g.
h. For P-R/D-J, will the project be performed in any area in which T&E species are present, and will the project affect any T&E species or their habitat? (Also see 5f.)		X				5. h.
i. For P-R/D-J, will the project introduce or export any species not presently or historically occurring in the receiving location? (Also see 5d.)		X				

5. g. Reduced motorized watercraft speeds and noise may reduce stress and improve conditions for waterfowl and other riparian species.

5. h. Bull trout are listed as a Threatened Species under the Endangered Species Act and occupy the rivers in this proposal. The proposed boating regulations would not impact bull trout.

B. HUMAN ENVIRONMENT

6. <u>NOISE/ELECTRICAL EFFECTS</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Increases in existing noise levels?		X				6. a.
b. Exposure of people to serve or nuisance noise levels?		X				6. b.
c. Creation of electrostatic or electromagnetic effects that could be detrimental to human health or property?		X				
d. Interference with radio or television reception and operation?		X				

6. a. and 6. b. Closing areas to motorized boating and restricting horsepower would reduce the noise associated with watercraft operating at high speeds. This would likely be a beneficial impact.

7. <u>LAND USE</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Alteration of or interference with the productivity or profitability of the existing land use of an area?		X				
b. Conflicted with a designated natural area or area of unusual scientific or educational importance?		X				
c. Conflict with any existing land use whose presence would constrain or potentially prohibit the proposed action?		X				
d. Adverse effects on or relocation of residences?			X			7. d.

7. d. There may be an impact to existing residents along the river who could be subject to motorized closures or restrictions. These people would have to select alternate locations to use motorized watercraft. Conversely, the proposed boating regulation changes may beneficially affect residents wanting a quieter setting with fewer disturbances, or perhaps those favoring increased watchable wildlife opportunity,

8. <u>RISK/HEALTH HAZARDS</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Risk of an explosion or release of hazardous substances (including, but not limited to oil, pesticides, chemicals, or radiation) in the event of an accident or other forms of disruption?		X				
b. Affect an existing emergency response or emergency evacuation plan, or create a need for a new plan?		X				
c. Creation of any human health hazard or potential hazard?		X				8. c.
d. For P-R/D-J, will any chemical toxicants be used? (Also see 8a)		X				

8. c. Adopting motorized closures and horsepower restrictions in the proposed locations would likely decrease public safety concerns related to motorized craft operating in proximity to other river users.

9. <u>COMMUNITY IMPACT</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Alteration of the location, distribution, density, or growth rate of the human population of an area?		X				
b. Alteration of the social structure of a community?		X				
c. Alteration of the level or distribution of employment or community or personal income?		X				
d. Changes in industrial or commercial activity?		X				
e. Increased traffic hazards or effects on existing transportation facilities or patterns of movement of people and goods?		X				

10. <u>PUBLIC SERVICES/TAXES/UTILITIES</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Will the proposed action have an effect upon or result in a need for new or altered governmental services in any of the following areas: fire or police protection, schools, parks/recreational facilities, roads or other public maintenance, water supply, sewer or septic systems, solid waste disposal, health, or other governmental services? If any, specify:		X				10. a.
b. Will the proposed action have an effect upon the local or state tax base and revenues?		X				
c. Will the proposed action result in a need for new facilities or substantial alterations of any of the following utilities: electric power, natural gas, other fuel supply or distribution systems, or communications?		X				
d. Will the proposed action result in increased use of any energy source?		X				
e. Define projected revenue sources		X				
f. Define projected maintenance costs.		X				

10. a. Montana Fish, Wildlife and Parks is responsible for enforcement of boating regulations. Changes in existing rules may require alteration of existing patrol plans by enforcement personnel.

11. <u>AESTHETICS/RECREATION</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Alteration of any scenic vista or creation of an aesthetically offensive site or effect that is open to public view?		X				
b. Alteration of the aesthetic character of a community or neighborhood?		X				11. b.
c. Alteration of the quality or quantity of recreational/tourism opportunities and settings? (Attach Tourism Report.)		X				11. c.
d. For P-R/D-J, will any designated or proposed wild or scenic rivers, trails or wilderness areas be impacted? (Also see 11a, 11c.)		X				

11. b. Reduced motorized watercraft speeds and associated noise may improve aesthetic conditions for those who enjoy quieter river settings.

11. c. Motorized opportunities would be modified by closing some areas to motorized craft in some locations and restricting watercraft horsepower in some locations. Opportunities would still exist for motorized boating, however they would be reduced from what is currently available. Motorized boating may be displaced to other locations. The quality of non-motorized use may increase.

12. <u>CULTURAL/HISTORICAL RESOURCES</u> Will the proposed action result in:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Destruction or alteration of any site, structure or object of prehistoric historic, or paleontological importance?		X				
b. Physical change that would affect unique cultural values?		X				
c. Effects on existing religious or sacred uses of a site or area?		X				
d. For P-R/D-J, will the project affect historic or cultural resources? Attach SHPO letter of clearance. (Also see 12.a.)		X				

SIGNIFICANCE CRITERIA

13. <u>SUMMARY EVALUATION OF SIGNIFICANCE</u> Will the proposed action, considered as a whole:	IMPACT					
	Unknown	None	Minor	Potentially Significant	Can Impact Be Mitigated	Comment Index
a. Have impacts that are individually limited, but cumulatively considerable? (A project or program may result in impacts on two or more separate resources that create a significant effect when considered together or in total.)		X				13. a.
b. Involve potential risks or adverse effects, which are uncertain but extremely hazardous if they were to occur?		X				
c. Potentially conflict with the substantive requirements of any local, state, or federal law, regulation, standard or formal plan?		X				
d. Establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?		X				
e. Generate substantial debate or controversy about the nature of the impacts that would be created?		X				
f. For P-R/D-J, is the project expected to have organized opposition or generate substantial public controversy? (Also see 13e.)		X				
g. For P-R/D-J, list any federal or state permits required.		X				

13. a. This EA found no significant impacts to the human or physical environment from the proposed action.

2. **Evaluation and listing of mitigation, stipulation, or other control measures enforceable by the agency or another government agency:** N/A

PART III. NARRATIVE EVALUATION AND COMMENT

Changes to the existing boating regulations on the Clark Fork, Blackfoot, and Bitterroot Rivers would have no significant negative impacts on the physical or human environment. Associated impacts would be very minor and are identified in this assessment.

Montana Fish, Wildlife & Parks would be responsible for enforcement of any boating regulation changes. These changes may require alteration existing patrol plans by enforcement personnel.

Implementing changes to the boating regulations would likely result in minimizing the potential for conflict and public safety concerns between fast-moving watercraft and other river users. Additionally, adjusting the regulations surrounding the former Milltown Dam area would accurately reflect the existing setting and conditions now that the dam has been removed. Lastly, changes to boating regulations would likely address public concerns voiced in regard to development of the Harper's Bridge Fishing Access Site.

PART IV. PUBLIC PARTICIPATION

1. Public Involvement:

The proposed boating regulation changes were reviewed by a subcommittee of the Region 2 FWP Citizen Advisory Committee (CAC) in March of 2011. Following committee discussion and slight modifications to the original draft, four members supported the proposal and one member opposed the proposal. The majority of the committee recommended that the proposal be presented to the FWP Commission for consideration.

At its May 12, 2011 meeting, the FWP Commission tentatively adopted the proposed rule amendments for the Clark Fork, Blackfoot and Bitterroot Rivers and directed the department to proceed with rulemaking consistent with the Montana Administrative Procedures Act and the statewide river recreation administrative rules.

The public would be notified in the following manner to comment on this current EA, the proposed action and alternatives:

- Two public notice in each of these newspapers: *Missoulian*, *Independent Record* (Helena), *Mineral Independent* (Plains) and *Ravalli Republic* (Hamilton).
- One statewide press release;
- Direct mailing to interested parties;
- The EA will be posted on the FWP web page (<http://fwp.mt.gov>) under "Recent Public Notices."
- The EA will be available at FWP Region 2 Headquarters.
- Public hearing is scheduled at the FWP Region 2 Headquarters Office, 3201 Spurgin Road, Missoula, Montana, on Thursday, June 16th at 6:00 pm.
- FWP Commission will review public comment and make a final decision on the amended Administrative Rules at the regular Commission meeting in August 2011.

This level of public notice and participation is deemed appropriate for a proposal of this scope having few and only minor impacts.

2. Duration of comment period.

Written comments must be received no later than June 27, 2011 and can be mailed to the address below:

Attention: Boating Regulation Changes
Montana Fish, Wildlife & Parks
Region 2 Headquarters
3201 Spurgin Road
Missoula, MT 59804
Or submitted Online at <http://fwp.mt.gov>
Or emailed to shrose@mt.gov

PART V. EA PREPARATION

1. **Based on the significance criteria evaluated in this EA, is an EIS required? (YES/NO)?** No
If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action.

Through the preparation of this EA, FWP found no significant impacts to the human or physical environment from the proposed action.

2. Person(s) responsible for preparing the EA:

Chet Crowser
River Recreation Manager
Montana Fish, Wildlife & Parks
3201 Spurgin Road
Missoula, MT 59804
406-542-5562
ccrowser@mt.gov

Pat Saffel
Regional Fisheries Manager
Montana Fish, Wildlife & Parks
3201 Spurgin Road
Missoula, MT 59804
406-542-5507
psaffel@mt.gov

Charlie Sperry
Recreation Management Specialist
Montana Fish, Wildlife & Parks
PO Box 200701
Helena, MT 59620-0701
406-444-3888
csperry@mt.gov

3. Agencies consulted during preparation of the EA:

Montana Fish, Wildlife & Parks:
-Parks Division
-Fish & Wildlife Division
-Legal Bureau

APPENDICES

None

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 12.11.610, 12.11.615, and) PROPOSED AMENDMENT
12.11.620 regarding recreational use)
rules on the Bitterroot River, Blackfoot)
River, and Clark Fork River

TO: All Concerned Persons

1. On June 16, 2011 at 6:00 p.m. the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Region 2 office located at 3201 Spurgin Road, Missoula, Montana to consider the proposed amendment of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than June 10, 2011, to advise us of the nature of the accommodation that you need. Please contact Jessica Fitzpatrick, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; e-mail jfitzpatrick@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

12.11.610 BITTERROOT RIVER ~~(1) Bitterroot River is closed to use for any motor propelled watercraft in the following areas:~~

~~(a) Missoula County from the Ravalli County line to its confluence with the Clark Fork River with the following exceptions:~~

~~(i) any motorized watercraft may be used from May 1 through June 30 on the portion of the Bitterroot River from the Florence Bridge in Ravalli County downstream to the Clark Fork River;~~

~~(b) in Ravalli County from the Bitterroot River headwaters to the Missoula County line with the following exceptions:~~

~~(i) any motorized watercraft may be used from May 1 through June 30 on the portion of the Bitterroot River from the Florence Bridge in Ravalli County downstream to the Clark Fork River;~~

~~(2) Motorized watercraft powered by 15 horsepower or less may operate anywhere on the Bitterroot River from October 1 through January 31.~~

(1) Bitterroot River is closed to use of any motor propelled watercraft except:

(a) watercraft powered by 20 horsepower or less are permitted from October 1 through January 31; and

(b) any motorized watercraft are permitted between Florence Bridge in Ravalli County and the Buckhouse Bridge on Highway 93 in Missoula County from May 1 through June 15.

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

12.11.615 BLACKFOOT RIVER ~~(1) The Blackfoot River is limited to a controlled no wake speed, as defined in ARM 12.11.101(1) in the following areas:~~

~~(a) in Missoula County downstream from the Stimson Lumber Company chainlink fence, as posted, to and including the Milltown Reservoir, then upstream on the Clark Fork River to the old Milwaukee Railroad Bridge pilings.~~

~~(2) The Blackfoot River is closed to use for any motor propelled watercraft in the following areas:~~

~~(a) in Lewis and Clark County, the Blackfoot River and tributaries from their headwaters to the Powell County line;~~

~~(b) in Missoula County, the Blackfoot River and its tributaries from Missoula County line to the Stimson Lumber Mill Dam at Bonner; and~~

~~(c) in Powell County, the Blackfoot River and tributaries from the Lewis and Clark County line to the Missoula County line.~~

(1) The Blackfoot River and its tributaries from its headwaters to the confluence with the Clark Fork River is closed to use for any motor propelled watercraft.

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

12.11.620 CLARK FORK RIVER ~~(1) The Clark Fork River is closed to use for any motor propelled watercraft in the following areas:~~

~~(a) in Deer Lodge County;~~

~~(i) the Clark Fork River and tributaries from their headwaters to the Powell County line;~~

~~(b) in Granite County;~~

~~(i) the Clark Fork River and tributaries from Powell County line to Missoula County line;~~

~~(c) in Mineral County;~~

~~(i) the Clark Fork River from St. John's fishing access site to the mouth of Fish Creek, also known as the Alberton Gorge Whitewater section;~~

~~(d) in Missoula County;~~

~~(i) the Clark Fork River and tributaries from the Granite County line to the Milwaukee Bridge abutments on Milltown Reservoir;~~

~~(ii) the Clark Fork River from the north side of the Interstate Bridge nearest East Missoula to the Fish, Wildlife and Parks fishing access site and boat ramp located off Spurgin Road and Kelly Island, from July 1 through September 30; and~~

~~(e) in Powell County;~~

~~(i) the Clark Fork River and tributaries from Deer Lodge County line to the Granite County line.~~

(1) The Clark Fork River:

(a) and its tributaries are closed to any motor propelled watercraft from the headwaters to the confluence with the Bitterroot River;

(b) is restricted to motor propelled watercraft 20 horsepower or less from the confluence with the Bitterroot River to the Interstate Bridge east of Ninemile Creek; and

(c) is closed to any motor propelled watercraft from St. Johns Fishing Access Site to the mouth of Fish Creek.

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

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

Reasonable Necessity: The commission is proposing reorganizing the structure of ARM 12.11.610, 12.11.615, and 12.11.620 consistent with the flow of the river instead of basing the structure on county lines.

The commission is proposing amending ARM 12.11.610 to increase the horsepower of motorized watercraft allowed on the Bitterroot River from October 1 through January 31 from 15 to 20 horsepower because 20 horsepower is typically the largest portable motor available. The commission is proposing a decrease in the number of days and the section of river where any motorized watercraft may be used on the Bitterroot River. Currently, any motorized watercraft may be used from May 1 through June 30 on the portion of the Bitterroot River from the Florence Bridge in Ravalli County downstream to the Clark Fork River. The commission is proposing decreasing the days allowed by 15 days ending on June 15 and reducing the affected section of river to end at Buckhouse Bridge. The commission is proposing shortening the time any motorized watercraft may be allowed to reduce overlap between spring water use of large, fast-moving watercraft and more summertime use by slower, less maneuverable watercraft, wade anglers, and swimmers. The portion of the Bitterroot River downstream from Buckhouse Bridge is more urban with residences near the river and heavily used for nonmotorized recreation. Restricting motorized use addresses issues with noise and unsafe conditions associated with high horsepower watercraft. Watercraft powered by 20 horsepower or less will be allowed from October 1 through January 31 maintaining a time period in the fall for uses including waterfowl hunting.

Milltown Dam was removed in March 2008 making portions of ARM 12.11.615 and 12.11.620 obsolete. The Blackfoot River and its tributaries are closed to motorized watercraft. The proposed rule amendment would extend the closure of motorized use on the Blackfoot River to its confluence with the Clark Fork River, a section of river less than one mile, and extend the closure of motorized use on the Clark Fork River for less than one mile to its confluence with the Blackfoot River where Milltown Reservoir previously existed. Furthermore, the proposed amendment to ARM 12.11.620 would extend the closure of motorized use on the Clark Fork River and its tributaries from the confluence with the Blackfoot to its confluence with the Bitterroot River. This would help address social conflicts and safety concerns on a relatively narrow section of the river that is popular among other users that are, at times, not compatible with large, fast-moving watercraft. Use in this section of river is expected to increase with the removal of Milltown Dam that was a barrier to watercraft use traveling from above the Milltown area to urban

Missoula, as well as the popularity and development of recreational waves and river access.

Below the Clark Fork River's confluence with the Bitterroot River downstream to just above Ninemile Creek, the amendments would reduce the horsepower to 20 horsepower from currently being unrestricted. This is intended to reduce social conflicts and safety concerns in a stretch of river from the confluence of the Bitterroot to Harpers Bridge FAS that is popular with other users. Below Harpers Bridge FAS to about Ninemile Creek, the amendment promotes a unique and more remote experience by limiting horsepower and therefore the speed a boat can travel this section. This will limit encounters with other boats, or the number of times a single boat will be encountered.

4. 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 Rd., Missoula, MT 59804; fax 406-542-5529; e-mail shrose@mt.gov, and must be received no later than June 27, 2011.

5. Mack Long or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice 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, 1420 East Sixth 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 or department.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Bob Ream
Bob Ream, Chairman
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State May 16, 2011