Personal Watercraft Industry Association

September 30, 2014

VIA ELECTRONIC SUBMISSION

June LeTarte
Rules Coordinator
Oregon State Marine Board
435 Commercial Street, NE
Suite 400
P.O. Box 14145
Salem, OR 97309-5056

Re: OAR 250-020-0040. Petition to prohibit the use of personal watercraft within the estuary of the Salmon River in Lincoln County

Dear Ms. LeTarte:

The Personal Watercraft Industry Association and its member companies BRP, Kawasaki Motors Corp., and Yamaha Motor Corp., U.S.A (collectively, "PWIA") appreciate the opportunity to submit these comments in response to the petition requesting that the Oregon State Marine Board ("Marine Board") open rulemaking in OAR 250-020-0040 to: *Prohibit the use of personal watercraft within the estuary of the Salmon River in Lincoln County.*[1] These written comments supplement testimony provided by Michael Belitzky on behalf of the PWIA during the Marine Board's public meeting held on September 9, 2014. The PWIA's members are manufacturers of personal watercraft ("PWC"), and have unparalleled experience and institutional knowledge regarding PWC. The PWIA is an affiliate organization of the National Marine Manufacturers Association ("NMMA"), the leading trade association representing the recreational boating industry in North America.

The PWIA was founded in 1987 and is a longtime advocate for safe and responsible PWC operation. The PWIA supports reasonable and fair regulations, strong enforcement of boating and navigation laws, and mandatory boating safety and education for all PWC operators. There are 1.3 million registered PWC in the United States today.[2] The recent economic downturn in the U.S. economy has had a significant impact on the boating

[1] Oregon State Marine Board. *Public Notice*. OAR 250-020-0040. Aug. 12, 2014.
[2] National Marine Manufacturers Association. *Recreational Boating Statistical Abstract*. 2013.

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industry, with production and sales volume for PWC decreasing in the past several years. The overwhelming majority of PWC sold today are three-passenger models, and have undergone significant advancements to the design and improved technology. The modern design and environmental improvements have reduced PWC noise by 70 percent in the past decade, and all PWIA member manufacturers meet or exceed National Park Service ("NPS") noise level requirements. Furthermore, PWC have reduced emission levels by 90 percent since 1996.[3]

The State of Oregon has in place laws regulating recreational boating activities.[4] In addition, the Marine Board has adopted administrative rules with specific regard to PWC including, but not limited to, PWC operating rules and PWC access.[5] The Marine Board has the authority to enforce these rules and regulations; therefore, the petition adds unnecessary burdens to the Marine Board. More importantly, the Marine Board's mission is to "*serve Oregon's recreational boating public through education, enforcement, access, and environmental stewardship… and is dedicated to improving recreational boating throughout the state… [a]ssure that the agency's work scope includes all recreational boaters in the state*".[6] It is clear that the petitioners do not share the Marine Board's core values and seek to unravel the fabric of Oregon's commitment to recreational boating.

The health of our nation's rivers is of vital importance to the PWIA, and the PWIA appreciates the Marine Board's efforts to protect and improve the sustainability of Oregon's rivers, lakes and waterways. The PWIA wishes to be clear that PWC manufacturers support the Marine Board and strongly value the *Oregon Scenic Waterways Act*.[7] Yet, PWIA is concerned that the petition prejudicially targets and proposes banning PWC throughout a significant publicly accessed waterway without any supported evidence of PWC directly harming Salmon River and its estuary. The petition seeks to exclude PWC, even though they present the same or lesser noise, emission, safety and environmental impacts than other recreational vessels – including vessels whose use is permitted in those same areas – according to mandates of the U.S. Environmental Protection Agency (EPA) and data collected by the U.S. Coast Guard (USCG) and individual state governments.

The fundamental purpose of the *Oregon Scenic Waterways Act* is to achieve a balance between protecting the rivers' natural resources and allowing people access to them, recognizing that wise individual and public use of these special rivers and adjacent lands is necessary.[8] Here, the petitioners have not offered factual information justifying how such a ban creates such a balance between preservation and public use. As a result, the

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[3] Personal Watercraft Industry Association. *Personal Watercraft: The Next Generation*. 2013.; 40 C.F.R. 1045; SAE-J1970; ISO-14509.
[4] Oregon Revised Statutes. Ch. 830. 2013.
[5] Oregon State Marine Board. OAR 250-021-0030; OAR Ch. 250, Div. 20.
[6] Oregon State Marine Board: *About Us*. Retrieved from: www.oregon.gov/OSMB/Pages/About-Us.aspx. 2014.
[7] Oregon Revised Statutes. Ch. 390. 390.805 to 390.925. 2013.
[8] Oregon Parks and Recreation Department: Rules and Regulations. *Scenic Waterways Program*. Retrieved from: www.oregon.gov/oprd/RULES/pages/waterways.aspx. 2014.

petitioners have impaired PWIA and other stakeholders' right to participate in meaningful dialogue regarding their petition.

PWIA urges the Marine Board to deny the petitioners' request and offers these comments to assert the proposed ban as unfounded and unnecessary.

Concerns Not Addressed in Petition.

The petition presented an opportunity to thoroughly investigate human activities within the waterways in question, and to provide current scientific and socioeconomic data to justify the ban on PWC access. As Mr. Belitzky noted in his public comments at the September 9 hearing: "*The ban of PWC within the estuary of the Salmon River in Lincoln County has yet to be supported by any recent data and instead the petitioners cite a twenty-five year old study conducted in the Florida Everglades—based solely on brief, conclusory text—and obviously not comparable to the Salmon River's ecosystem*".[9]

A. PWC Use Does Not Significantly Affect the Salmon River's Resources.

PWC manufacturers use innovative design and technology to minimize the environmental impact of PWC by reducing emissions and sound disturbances. Additionally, studies show that PWC do not adversely impact wildlife or vegetation any more than other forms of boating. The petition claims that part of the reason for its call to restrict PWC access is because of alleged negative environmental impact, but the petitioners failed to provide data about the use of PWC within the Salmon River, including any actually observed air, water, sound, and biological impacts directly attributable to PWC; currently observed or measured discharges from PWC and other boats; actual visitor experiences of PWC and non-PWC river users; numbers and models of PWC; origins and usage trends for PWC within the Salmon River; and other relevant topics. Meanwhile, at least 15 national parks and two national marine sanctuaries have conducted environmental assessments of PWC use in recent years, and each and every one of them has reached the conclusion that PWC present no unique impact and should be allowed to operate where all other forms of motorized boating are allowed.

B. Air Quality: PWC Emissions Have Already Declined Substantially And Pose No Threat To Public Health Or Air Quality Even Under The Most Extreme Operating Assumptions.

The Environmental Protection Agency regulates emissions from PWC and other marine outboard engines under 40 C.F.R. Part 1045. EPA promulgated its most recent emissions standard in 2008, applicable to PWC model year 2010 and beyond. PWC are also subject to EPA evaporative emission standards at 40 C.F.R. Part 1060, most recently promulgated in 2009. Since 1996, PWC have achieved a 90 percent reduction in hydrocarbon and nitrogen oxide emissions. Today, PWC emit 16 gr/KW-hr of hydrocarbon and nitrogen oxides, compared to 300gr/KW-h prior to 1996. All PWC

[9] Oregon State Marine Board: Public Hearing. *Petition to Initiate Rulemaking to Protect the Salmon River Estuary and Wildlife from Impacts of Personal Watercraft Use*. Sept. 9, 2014.

manufacturers also meet the California Air Resource Board ("CARB") PWC emission requirements.[10] With the implementation of the EPA final rule in 2010, both CARB and EPA emission standards are harmonized. All new PWC engines built in the past several years are certified to meet both CARB Three Star and EPA 2010 standards, making them some of the cleanest engines on the water today.

Anti-PWC groups continue to cite outdated data from the 1990s that do not reflect the current PWC design. PWC emissions neither impair nor significantly impact air quality or human health, and cumulatively will have negligible adverse effects.

C. Water Quality: PWC-Related Contaminants Have Significantly Declined and Will Not Adversely Affect Human Health or Aquatic Resources.

The rapid transition to four-stroke and direct injected two-stroke engines to meet the requirements of the EPA 2006 and CARB 2004 and 2008 emissions standards has led to the cleaner-running models quickly replacing conventional carbureted two-stroke PWC in the marketplace. As fewer of the old models are used, the environmental impact of PWC, as with all recreational boats, will continue to decline. PWC pollutant loads are miniscule, and will become even less perceptible stemmed from mechanical innovation and advanced design of cleaner running engine technologies continues, outpacing the requirements established in prevailing regulations.

D. Sound: Existing PWC Meet Applicable Noise Standards and Newer Models are Quieter.

PWIA recognizes that improper maintenance and discourteous operation of any motorized vessel can lead to sound disturbances. Since 1998, PWC manufacturers have reduced engine sound levels by up to 70 percent. These reductions in sound levels also involve lowering the sound made as the "pitch" of the engine. Pitch is the measurement of the frequency that the wavelength of sound vibrates, and is the aspect of PWC-associated sound that some claim to be "disturbing." The PWIA's member companies have not only met, but exceeded, these noise requirements by complying with another sound emission standard, ISO 14509. The ISO 14509 limitation is 75dB, measured 75 feet from shore, at a test speed of 40 miles per hour. ISO 14509 is effectually different from SAE-J1970, which sets a 75dB recommended practice during shoreline testing at wide open throttle with no distance measurement. All PWIA member manufacturers meet the ISO 14509 noise standard. Advances in PWC hull design technology include the following features to achieve reduced sound emissions: engine mount isolation, quieter four-stroke technology engines, advanced water jacketing, water lock boxes/mufflers, and exhaust exits at the air/water interface. NPS studies measuring sound conclude PWC (75 dBA) are only 15dBA greater than conversational speech (60 dBA); 25 dBA less than thunder (100 dBA); and when compared to crickets (40 dBA) are only 35 dBA greater.[11] Finally, there is no evidence that PWC noise adversely affects aquatic

[10] Personal Watercraft Industry Association. *PWC: The Next Generation*. 2013.; 40 C.F.R. 1045; SAE-J1970; ISO-14509.; 40 C.F.R. 1045; SAE-J1970; ISO-14509.

[11] Personal Watercraft Industry Association. *The History, Evolution and Profile of Personal Watercraft*. 2013.

fauna or animals. PWC typically exhaust above the water or at the air/water transition area. Consequently, most PWC sound is transmitted through the air and not the water.

E. Wildlife and Vegetation: PWC Do Not Impact the Natural Resources More than Other Motorized Boats.

The petition failed to report cases of deliberate harassment or collisions with wildlife by PWC users and provided no evidence that PWC use disturbs wildlife along the shoreline, therefore its suggestion that PWC use may have negligible to minor impacts on wildlife is unfounded and lacks an evidentiary basis. The only evidence it presents refers to the *Environmental Impact Statement for the Cascade Head National Scenic Research Area Management Plan* ("Cascade EIS"), which discredits the petitioners' claim that PWC pose potential adverse impacts to wildlife and other natural resources. The Cascade EIS states *[m]otorized boat use at current levels has little impact or harassment effect on wildlife*.[12]

In contrast to other motorized boats, PWC are highly maneuverable and have a shallow draft. They do not have exposed propellers which could strike submerged or diving animals or damage sea grass beds. Based on these characteristics, PWIA suggests that the Oregon State Marine Board follow the findings of the NPS, which has properly concluded from its research that *it appears that personal watercraft are no more apt to disturb wildlife than are small outboard motorboats*.[13]

The suggestion that PWC will disturb shoreline and submerged vegetation lacks a factual basis. The petitioners did not provide any documented instance of vegetation disturbance from PWC, and instead merely claim that such disturbance is "possible". To the extent such impacts occur, they would not be peculiar to PWC. Any shoreline activity would have equal, if not greater, impacts than PWC. The Salmon River and its estuary are dynamic environments in which sand accretes and erodes naturally. These natural forces have far greater impact on vegetation than PWC use. Because PWC lack an exposed propeller, they are by far less invasive than traditional motor boats in shallow-water environments. Moreover, to prevent potential damage to the jet pump machinery that powers the vessels, manufacturers expressly caution against operation in water less than two and a half feet deep. On the Salmon River, such effects are further unlikely from PWC users given that disturbance of wildlife would undermine the reasons for PWC use in the first instance (e.g., for fishing).

Failure to Present Evidence is Unacceptable.

PWIA is highly concerned with the lack of data and/or studies contained within the petition. As required under the Marine Board's *Petition Procedures*, the petition must include "*facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment or repeal of the rule*". Yet, it appears that the petitioners considered

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[12] FEIS *Cascade Head National Scenic-Research Area Management Plan*.1977.

[13] National Park Service. Final Rule. 36 CFR Part 7. RIN 1024–AC96. *Bighorn Canyon National Recreation Area, Personal Watercraft Use*. 2005.

little if any evidence at all, let alone current information. The petitioners have had sufficient time to conduct studies and collect data to justify its prejudicial targeting of PWC, but the PWIA has located no such quantitative evidence in the petition with respect to PWC.

Indeed, the only two PWC-related reports listed among the references are outdated (1989, 2003) and do not take into account the vast technological innovation and design advancement to PWC. Therefore, these reports are not applicable and should not be used to support a discriminatory ban of PWC. Because the petitioners have not offered the public sufficient record support to evaluate their claims regarding PWC, the only discernible conclusion is that they are unfounded and unjust.

PWIA offers its expertise, studies, and data to the Marine Board throughout the review process. PWIA appreciates the opportunity to submit these comments. If you have any questions or concerns, please do not hesitate to contact me at (202) 737-9766 or mbelitzky@nmma.org.

Respectfully Submitted,

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Cc: Randolph H. Henry, Boating Law Administrator, Oregon State Marine Board