

**Report to
Madison River Work Group
from
Commercial Management Sub-Group
March 21, 2022**

Over a series of meetings and very lively discussions, the following matters are presented to the Madison River Work Group and FWP staff for input and exploration. The Sub-Group anticipates follow-up discussions to refine a final set of recommendations for how to manage commercial outfitting on the Madison River.

Overall Goals: Establish rules for commercial outfitting and users on the Madison River that:

1. Manage real (or perceived) social conflicts and crowding on the river and at Fishing Access Sites ("FAS's"), particularly during Peak Season usage;
2. By managing commercial use, protect and optimize the opportunities and quality of the experience for diverse users of the river;
3. Are practical and least restrictive for outfitters, guides, regulatory agencies, and the local business communities to sustain healthy local economies; and
4. Provide the opportunity for new outfitters to operate on the Madison River and for existing outfitters to transfer all or portions of their permitted trip allowances as business conditions change.

Discussion Points:

1. **Regulatory Framework Recommendation.** *Flexible transferability (via lease or transfer) of regulated Outfitter Trips (in whole or in parts of an outfitter's allocated trips) is critical to an effective, smooth-running, and adaptive management system that places limits on current usage.* Given limitations on such flexible transferability under BLM/USFS national regulations and thus the 2007 Cooperative Management Agreement ("CMA") between BLM and FWP, the existing Special Recreation Permit ("SRP") process should NOT be the permit vehicle for managing commercial outfitter limits. The SRP process could continue in place to govern access to the Fishing Access Sites ("FAS"), reporting by outfitters, and collection of fees.

A second regulatory regime (a permit or an addition to the existing outfitter regulations) established and administered solely by the State of Montana is recommended to realize the full transferability contemplated by Senate Bill 275 (now part of MCA Section 37-47-310). We have tentatively named this new Montana permit a River Use Permit ("RUP"), but better names may be forthcoming. The RUP could be the vehicle for managing the outfitter trip limitations and requirements.

NOTE: We recommend FWP staff review the 2007 FWP/BLM 2007 materials for any necessary coordination of efforts. Also needed is legal review of the implications of SB 275 on other ARM's that currently reflect possible restrictions on transferability (see ARM Sections 12.11.450(3)

“Transferability of River Use Days”, and 12.14.120 (Paragraphs 1, 11-14) “Commercial Use Permits”).

2. **Geographical Scope of Commercial Management System (RUP).** Application of the RUP to the existing geographical scope of the SRP permit is recommended. In other words, this would apply from the outlet of Quake Lake to the junction with the Jefferson River, with the exception of Ennis Lake and the Bear Trap Wilderness boundaries. Commercial outfitting limits from Yellowstone National Park boundary down through Quake Lake are governed by U.S. Forest Service permits. And, the Bear Trap Canyon Wilderness is governed by BLM permit limitations. *NOTE: this leaves Ennis Lake without any regulatory limits on commercial outfitting numbers. We recommend that Montana implement a system to secure outfitter usage numbers on Ennis Lake (and possibly on sections covered by USFS or BLM permits) for consideration in any future river-wide adaptive management system or modifications of this commercial management system.*
3. Definition of a “Trip”. A Guided Trip is one float or wade party serviced by one guide or outfitter operating under an outfitter license on a given day; trips of any duration are considered to count as a full trip.
4. **Commercial Management Options** (for discussion and further refinements/not listed in any order of preference):
 - A. **River Wide Annual Management. No geographical restrictions & no seasonality.**
 - i. Apply “best of” 2019/2020 historical SRP trips (reported at 16,173) as set forth in current ARM rule 12.11.6705.
 - ii. This is the Annual Cap on all commercial sport fishing usage.
 - iii. No restrictions as to time of year or Upper/Lower River usage.
 - B. **Seasonality management limitation. No geographical restrictions.**
 - i. Define “Peak Season” and allow SRP historical usage from that defined season to create limit within that Peak Season.
 1. June 15 to September 30 “Peak Season” historical SRP usage is estimated at 13,200 trips (@ 81%) of current ARM cap.
 2. If Peak Season definition is expanded to June 1 to October 7, the Peak Season trip cap would increase to @ 14,250 or 88% of all trips.
 - ii. No geographical limitation from historical usage on Lower or Upper River. Allow usage to migrate freely between upper and lower sections as market or river conditions allow.
 - iii. Non-Peak Season:
 1. Option 1. The number of Non-Peak Season outfitted trips could be allowed to grow organically as river and markets change. Adaptive Management system could be used to limit future growth that may negatively impact either the fishery or experience on the river (crowding). Need further input and refinement on possible triggers and options for managing growth in the Non-Peak Season. New SRP holders/outfitters could operate and grow in Off-Peak Season.
 2. Option 2. Apply an annual limit of 16,173 (best of 2019/2020), define trips as either Peak or Off-Peak, and then develop a management system that limits or caps Peak Season growth. This would be a “hard cap” on

maximum RUP trips, with some mechanism to restrict or limit the number of Off-Peak trips from migrating into the Peak Season.

C. Seasonality limitation with Geographical restriction.

- i. Apply "Peak Season" limitation separately to the historical usage numbers of the Upper River and the Lower River. For this purpose we think of the Bear Trap Canyon as the separation between upper and lower river sections.
- ii. Upper River "Peak Season"
 1. June 15 – September 30 Peak Season historical SRP cap approximately 12,200 trips.
 2. June 1 – October 7 Peak Season would be approximately 12,930 trips.
- iii. Lower River "Peak Season"
 1. Historical SRP usage is June and September with very limited usage for July and August.
 2. Should the Lower River use the same definition of "Peak Season" as the Upper River? The June 15 to September 30 historical usage on the Lower River is approximately 1,000 trips.
 3. Total SRP usage on the Lower River is @11% of total river usage. Under best of 2019/2020 calculation this is approximately 1,800 trips.
- iv. Non-Peak usage and future management questions same as above.

5. Technical Questions to be developed further:

- A. For flexible management of the commercial limits, a simplified "Transfer or Lease" of an outfitter's authorized trip days to another licensed outfitter/SRP holder is critical. This should include "mid-season" leases or transfers to adapt to different outfitter needs. The online Montana Net Client Hunter Use ("NCHU") system for managing guided hunting use may be a useful template.
- B. What are the implications of an outfitter's "non-use" over a period of years? What triggers and where would forfeited/lost trips go?
 - i. Should the system rely solely on "free market" forces to encourage an active use and re-distribution of trip allowances and will such "free market" principles be sufficient incentive to avoid non-use of allocated days?
 - ii. If persistent non-use of trips develops (perhaps even by purchase of days by parties wanting to discourage commercial operations on the river), should there be a mechanism for FWP to issue additional trip allocations? What are the mechanics, triggers, and implications for any such a system.
 - iii. If there were to be a "non-use" forfeiture provision, should that be reviewed over a period of 3-5 years? And, should the trigger for forfeiture be set at a more than nominal level?
 - iv. How would forfeited trips be re-allocated? And who should administer this program review? Who and how would the winners and losers be identified?
- C. If we recommend an Adaptive Management program for periodic review of the caps, and particularly any "Off Peak" limits and triggers, what might those be?

- D. What kind of appeals process addressing the initial allocations should we consider? What issues are subject to appeal? How long should an appeals process be offered? Who should hear and decide appeals? Is there a second level of appeal? To whom? Would this be governed by the Montana administrative review rules and requirements?
- E. What are implications of the above alternatives for New Outfitter opportunities?
- F. Since the RUP is a new State of Montana permit governing only the allocation of trips, there would be no need to limit the recognition of new SRP holders under the FWP/BLM CMA. Any new SRP outfitter would also need to comply with the RUP requirements and limitations.
- G. Some proposals have included provisions that would limit any one RUP holder to a maximum of 10% (or some other cap) of the total RUP allocation. Discussions in our Sub-Group generally questioned whether such a limitation can be easily manipulated and worked around and does not accomplish anything more than "optics".
- H. Some proposals have included provisions that attempt to limit the daily number of launches any one outfitter can do from a specific FAS. Our Sub-Group generally believes this is unnecessary or ineffective. We would recommend it may be a consideration for future discussion in the periodic review of the RUP process or a river-wide recreation management plan.

6. Analysis & Questions for Commercial Management Options.

At this time the Commercial Management Sub-Group is not prepared to make a definitive recommendation as to which of the Section 4 Commercial Management Options should be advanced to the Commission. There have been lively discussions of the alternatives and competing issues and concerns. Below are some highlights from our group discussions for each Option.

A. River Wide Annual Management. No geographical restrictions and no seasonality.

- i. This Option simply applies the 2020 ARM caps (best of 2019/2020) of approximately 16,200 trips without any limits to when or where the trips are used. It may be viewed as the "least restrictive" regulatory approach giving maximum flexibility to outfitters and interfering the least with organically developed patterns of use.
- ii. This Option is favored by some (e.g., FOAM leadership) since it may not require the Commission to either amend or rescind/replace the existing ARM language regarding the commercial cap.
- iii. If the principal driver for implementing this Commercial Management system (caps) is the concern for crowding on the Upper River during the Peak Season months of July and August, this Option could result in more trips being used in those times. Approximately 19% of historical SRP trips have been in the Non-Peak periods. Potentially these 3,000 trips could be used in the Peak Season if tourist and fishing demand grows further during the summer months.

- iv. Applying a single annual cap limits growth opportunities for local businesses, lodging facilities, outfitters, and guides to grow during the slower Off-Peak months. For small local businesses in Ennis or West Yellowstone, any growth during the spring and fall (that are currently often discounted) would be considered beneficial for them and their employees.

B. Seasonality Management Limitation & no geographical restrictions.

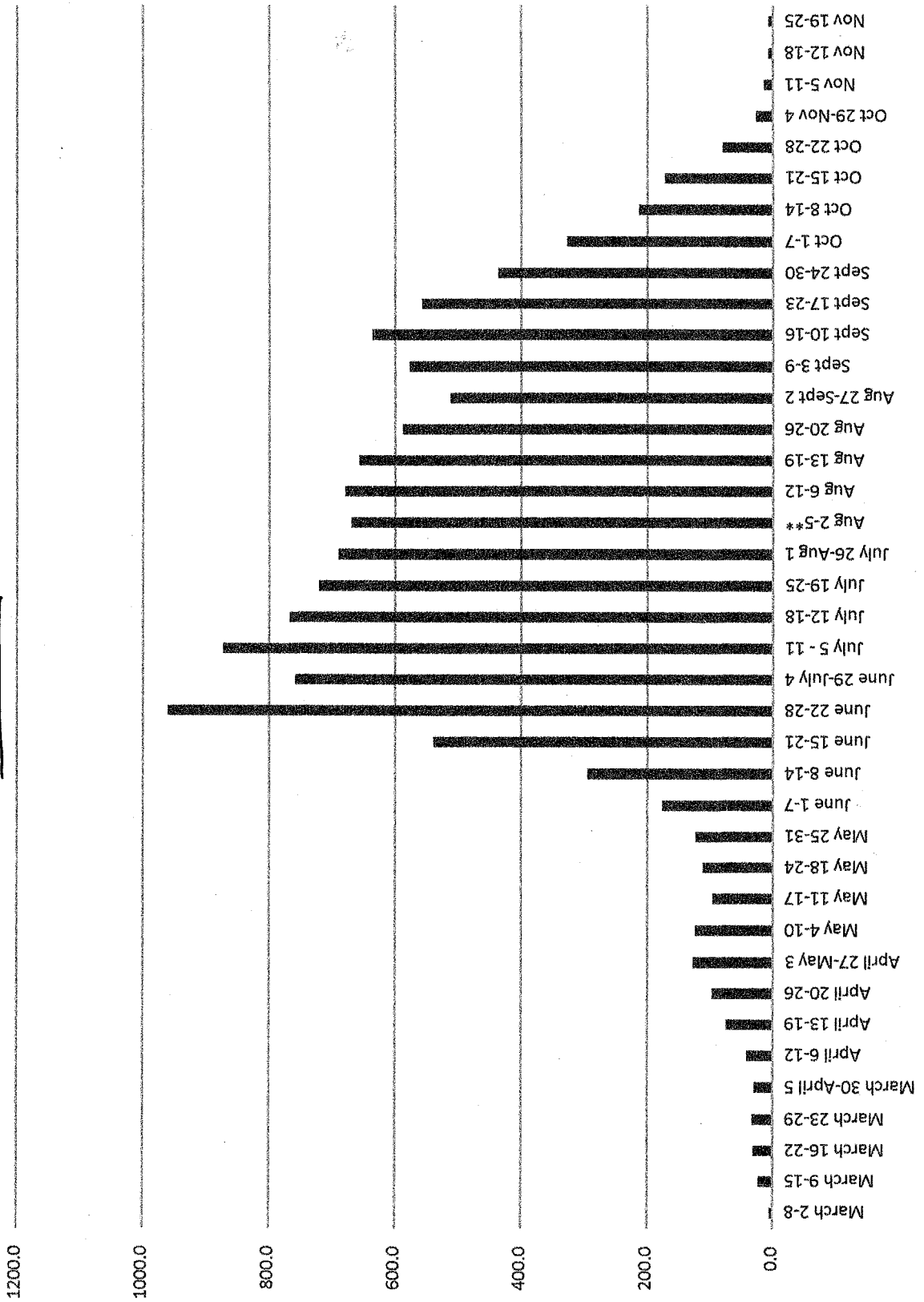
- i. Some are concerned that a seasonal limit (using the historical Peak Season usage as a cap) introduces too much complexity and regulatory limits on outfitters. The terminology the Sub-Group used was "multiple buckets" of use allocations that would have to be managed and monitored, e.g., Peak Upper, Early Peak Lower, and Late Peak Lower.
- ii. Others are concerned that seasonal limits create different "economic values" for Peak vs. Non-Peak RUP trip entitlements.
- iii. Some are concerned that the Non-Peak periods are already too busy given the low water conditions of spring and fall and possible impacts on spring or fall spawning trout populations.
- iv. Some are concerned that opening the spring and fall to future growth will require future management limits to be formulated and applied if the river usage increases significantly. There are also very lively debates as to how to measure or establish "triggers" on future growth that may be part of an adaptive management plan review and what future management limitations would work.
- v. Using a historical usage Peak Season limitation (approximately 13,200 trips) will place a hard cap on Peak Season growth and crowding and thus address the primary driver for the commercial management limits.
- vi. Allowing some growth in the shoulder seasons provides for economic vitality in the local economies during slow seasons when businesses and local employees historically struggle.
- vii. Opening the shoulder season to some reasonable growth provides an opportunity for new outfitters to gain access and experience on the Madison at a limited cost of entry. If they grow, they can then seek to lease or purchase SUP trips from existing outfitters.
- viii. The present volume of commercial guide trips in the shoulder seasons does not suggest there is crowding at this time. Similarly, there is no current demonstration of any adverse impacts on the Madison fisheries from shoulder season usage. An adaptive management system and periodic reviews of the SUP system can respond to any future growth concerns and needed limits.

- ix. Some suggest there is a natural "cap" on shoulder season growth due to uninviting Montana weather, high water periods, and competing seasonal destinations and activities (think skiing, spring golf, fall hunting, or a warm beach). The Madison Valley hospitality industry and outfitters offer discounts during these seasons to attract the few and the hardy customers.
- x. Allowing growth in the shoulder season also allows for outfitters and others to provide charitable contribution trips without reducing valuable Peak Season revenues. Many of the outfitters and lodges provide complimentary or discounted promotions to non-profits such as Wounded Warriors, Casting for Recovery, Boy Scouts, Big Hearts under the Big Sky, and others.

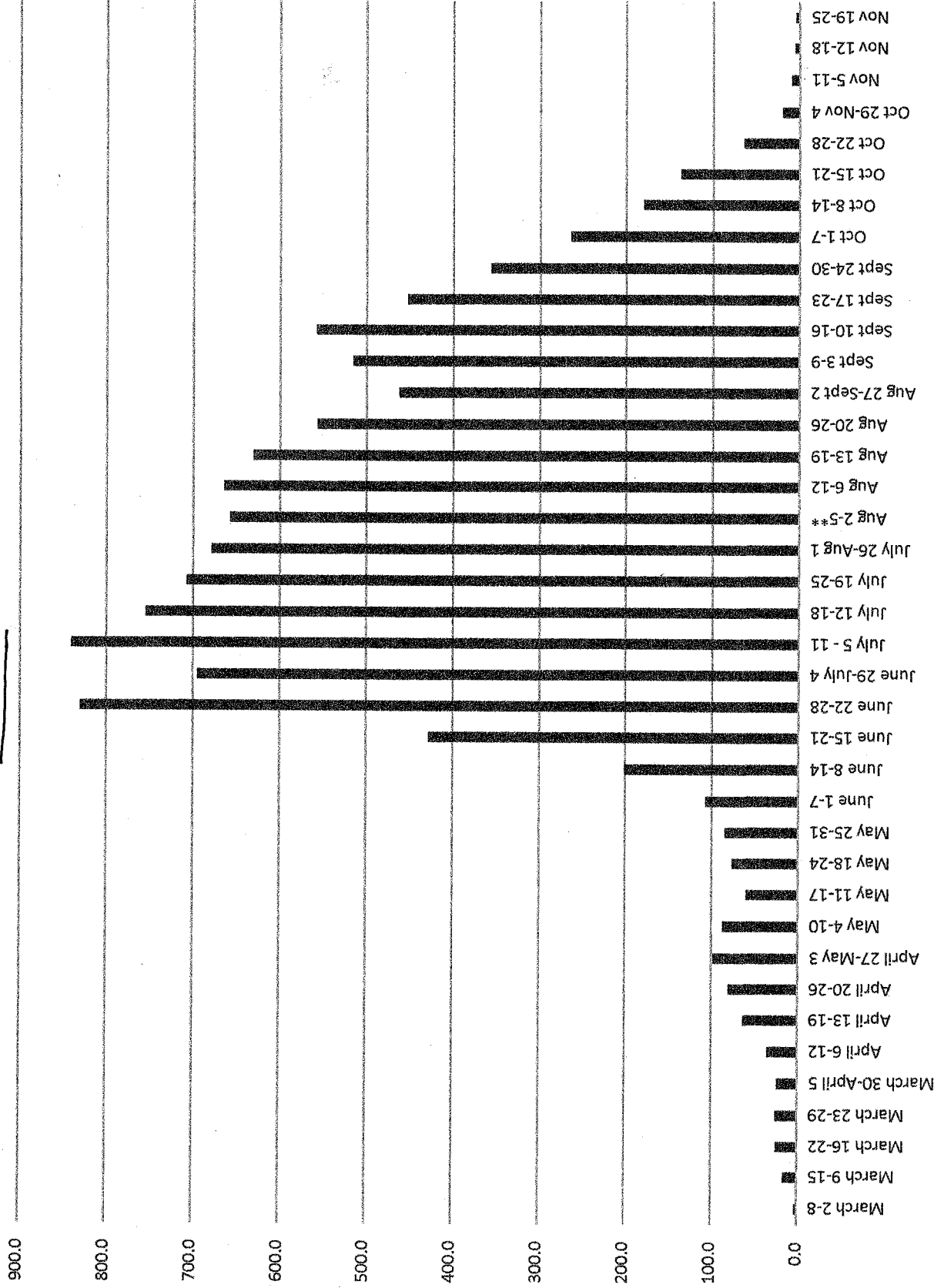
C. Seasonality Limitation with Geographical Restrictions.

- i. The Peak Season commercial usage on the Upper River is clearly shown by the charts as a relatively normal bell curve peaking in July. On the other hand, the Lower River (primarily Warm Springs to Grey Cliff) charts show a bimodal distribution peaking first in May and June, dropping precipitously in July and August, and then peaking again in September. Should the two sections be viewed differently for seasonal commercial fishing limits?
- ii. The 2019/2020 SRP records show Lower River usage of approximately 1,800 trips. Is it desired that these RUP days could potentially migrate to the Upper River?
- iii. Some feel the introduction of geographical restrictions would be cumbersome and confusing for outfitters and guide and add a layer of complexity and regulatory burden to how outfitters work as weather and river conditions influence operations. It could be disruptive to historical operational usage by outfitters.
- iv. Some feel the Lower River usage (about 11% of SRP usage) is not significant enough to warrant concerns or limits. If a river wide management plan is pursued (to address the recreational floaters and users), the Lower River commercial usage could be a part of that comprehensive review process and planning. On the other hand, some feel the Lower River should be included in both a commercial and recreation use management plan.

Avg. Entire River Trips (2017-2020)



Avg. Upper River Trips (2017-2020)



Avg. Lower River Trips (2017-2020)

