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*Submitted via email to: FWComm@mt.gov*

**Re: Montana Trout Unlimited comments on *Proposed Fishing Regulation Amendment to Swan River – Vice Chair Tabor***

Commissioners:

Thank you for the opportunity to provide comments on the *Proposed Fishing Regulation Amendment to Swan River – Vice Chair Tabor*. We appreciate the opportunity to be involved in the process of statewide management planning and fishing regulation development through extensive discussions with state and regional staff and biologists as well as members of the public in structured public processes over the course of the last three years. Those processes led to a solid, scientific, and well-vetted 2023-2026 Statewide Fisheries Management Plan (Plan) and 2024 Fishing Regulations book. Now, we are actively engaged in the scoping process for the development of the 2025-2026 Fishing Regulation package. An inherent part of having these well-orchestrated planning periods and the resultant plans and regulations has been that the Commission would not change fishing regulations outside of the two-year cycle, except in true emergency situations or based on established adaptive management plans. Thus, we are perplexed as to why an amendment to the fishing regulations is being considered at this time that is inconsistent with the Plan, not grounded in scientific or biological reasoning, and certainly not an emergency change. As such our organization opposes this proposed amendment. Thank you in advance for your consideration of these comments.

Founded in 1964, Montana Trout Unlimited is the only statewide grassroots organization dedicated solely to conserving, protecting, and restoring Montana's coldwater fisheries. Montana Trout Unlimited is comprised of 13 chapters across the state, including the Flathead Valley Trout Unlimited chapter (signed below), and represents more than five thousand Trout Unlimited members and supporters. Our chapter leaders and members helped inform the comments on the proposed changes.

MTU has also consulted with our valued partners in native fish conservation within the Swan River on

these proposed regulation change. Those include the Confederated Salish and Kootenai Tribes, the U.S. Fish and Wildlife Service, the U.S. Forest Service, and members of the Swan Lake Bull Trout Working Group. Those discussions have helped inform and guide our position on this proposed regulation change under consideration.

First, we oppose the proposed amendment to the Swan River regulation concerning the change to catch and release harvest for rainbow trout from the western district standard because it is inconsistent with the management objectives for the fishery identified in the Plan. The Department embarked on an ambitious effort to draft a comprehensive statewide fisheries management plan that was adopted October 2, 2023, which set the scientifically justified management objectives and directives in 40 watersheds across Montana. That was an open, transparent, and public process in which angling organizations, outfitters and guides, and members of the public had the opportunity to weigh in and provide feedback at various public forums, comment periods, and through the Montana Environmental Policy Act review of the Plan. Not once through that process was the concern embodied in this amendment (negative impacts to rainbow trout populations from low levels of harvest) identified as a problem within the watershed (2.03, Swan River) that should be addressed. In fact, the entire argument that the public was unable to participate and comment on the current regulations on the Swan is disingenuous at best.

MTU believes that this proposal undermines the integrity of the management planning process as well as the work and robust public input that went into the Plan. Section 2.03 of the Plan identifies that “[t]he Swan drainage is a perfect example of FWP’s dual mission of providing recreational fishing opportunity while conserving our valuable native fish resources.” It further states that “[t]he Swan River is managed as a wild trout fishery, emphasizing natural reproduction. The basin is also the focus of native fish conservation efforts.” In balancing those efforts, “[t]he fishery of the Swan River itself is largely focused on rainbow trout and westslope cutthroat trout. Regulations for these species protect against overharvest and maintain a viable recreational angling experience.” The intent of the Plan was to balance both recreational fishing with reasonable and scientifically justified regulations on harvest (General Management Type) while simultaneously advancing native fish conservation (Conservation Management Type).

In MTU’s written comments on the Plan, we joined with the Confederated Salish and Kootenai Tribes in requesting more explicit suppression management type in the entire Swan River system (MTU Written Comments, Statewide Fisheries Management Plan, Sept. 25, 2023, p 9). The specific request we made was for a much more liberal harvest limit, if any limit, for rainbow trout in the Swan River. The Department did not incorporate our suggestions into the final Plan and rainbow trout won out, but we stand here today supporting the final product of the Plan because we believe that it means something. Therefore, we are certainly opposed to this ad hoc effort embodied in the proposal to eliminate harvest opportunity for rainbow trout entirely.

Further, we do not believe that the proposal for catch and release harvest for rainbow trout meets any scientific burden of need. In the recent past, this Commission has pushed hard for a strong biological justification to make changes to fishing regulations. We have agreed and helped to facilitate the greater understanding of the biological and scientifically credible data needed to support changes (see walleye regulations below Toston dam, fishing regulations in Southwest Montana rivers for examples). In this

case on the Swan River, we have a proposal in front of the Commission with zero biological justification and no scientifically credible data that substantiates that the current regulation is having any adverse effect on the fishery or rainbow trout population within the Swan River system. If you listen to the supporters of the amendment the only justification offered is that “we really think so.” That is not a burden of proof this Commission should find compelling.

To put it simply, there is no evidence that the current regulation is having any deleterious effect at a population level for rainbow trout in this system. We can agree that more information and creel survey data could help inform this discussion, but we should not be expected to leap before looking. The data that does exist in the system from the river has been conducted by the U.S. Forest Service (Gardner, B. 2022. Relative Abundances of Fish Populations in the Swan River: 2014-2022. U.S. Forest Service, Flathead National Forest), which documents an expanding and well supported population of rainbow trout (both in numbers and healthy size distribution) in the Swan River. That data comes from surveys conducted prior to and after the current rainbow harvest limit was established in the regulations. There is no evidence that suggests that the current standard district regulations are diminishing the rainbow trout population or their healthy size distribution within the Swan River.

Interestingly, all indicators are that rainbow trout harvest under the current regulation on the Swan is low (along with most other rivers across the state where trout harvest is allowed), perhaps less than the catch-release mortality rates, since most anglers fishing the river are catch and release anglers. We understand that the catch and release mortality rates are consistent, low but consistent. In fact, one of the challenges facing fishery managers across the West is how to incentivize any harvest when it would have biological benefits to management objectives. The snorkel surveys referenced above provide great evidence that even combining harvest and catch and release mortality are not exceeding compensatory mortality in the system.

MTU’s support for cautious harvest of rainbow trout in the Swan is predicated on the need to offer diverse fishing opportunities for recreational anglers in region 1, which is consistent with the stated management objectives in the Plan (2.03) for the waterbody. Many outfitters and guides have themselves described the rainbow trout fishery in the Swan as “flourishing,” and given the priority for native fish conservation within the watershed and region, we believe that some level of recreational harvest opportunity was consistent with the management objectives for the Swan River. Allowing modest harvest of rainbow trout where the population can easily sustain the harvest, such as the Swan, takes harvest pressure off other places that would not be able to sustain it. If we are to remove the harvest opportunity from the Swan River, the few anglers that prefer to harvest fish will not quit fishing, they will simply move to another waterbody or tributary, where the native fish populations are more vulnerable and have a higher conservation value. Catch and release for the sake of catch and release is not effective fishery management, and in this case MTU believes that there are many compelling factors that harvest of rainbow trout is consistent with the management objectives for the waterbody (as stated in the Plan, 2.03).

The proposal does not meet any of the criteria for an emergency given the above factors. This Commission has given strong directives that off-cycle regulations should meet a compelling burden of need to change outside of the regular order of regulation setting. Those have included enforcement challenges, clarifications, changes to underlying management plans, or immediate conservation threats.

This proposal meets none of these criteria. In fact, all this regulation change will do is add confusion amongst anglers and enforcement challenges for wardens given that the current 2024 regulation book has already been printed and widely circulated.

If the proposal to shift from the standard district regulation to catch and release for rainbow trout is to be considered, it should be done with the entire package of proposed changes currently out for scoping. The proposal would have ample opportunity for public review, comment, compromise, and debate, which have arguably not occurred in this case given the lack of consensus in front of the Commission today. Setting fishing regulations in this ad hoc manner, outside of the regular process that does not meet these compelling emergency elements or based on scientifically credible new information, essentially tells the angling public to not bother with participating in the public processes for developing management plans and regulations because you can just change them on the fly through an amendment at the Commission. That behavior discredits the angling public that did participate as well as the professional biologists and managers at the Department that developed the Plan and regulations. We do not believe that is a precedent the Commission should be eager to establish.

It is worth noting here that we could support the second component of the proposed regulation change concerning gear restrictions within the Swan system because it does more plausibly pass the above standards of review regarding consistency with the Plan, biological need, and urgency. The proposed gear restriction change would have a demonstrable benefit to bull trout conservation and unintentional take of the species within the Swan River. However, we do believe that those gear restrictions should extend beyond the river and into Swan Lake. MTU could support the Commission in enacting the gear restrictions portion of the amendment while rejecting part one of the amendment dealing with rainbow trout. But even that would be more wisely handled as part of the regular regulation cycle scoping and change process that we are currently in the middle of participating.

Please do not hesitate to contact us with any questions or if you need additional information regarding the comments that we have submitted (via email at [clayton@montanatu.org](mailto:clayton@montanatu.org) or by phone at 406-543-0054). Again, we thank you for the opportunity to comment, and we appreciate the open public process used by the Fisheries Division has used to make these changes in the past and we hope that proposals such as this can go through a similar public vetting before being in front of the Commission.

Respectfully,



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Montana Trout Unlimited



Clayton Elliott  
Conservation Director  
Montana Trout Unlimited



Wade Fredenberg  
President  
Flathead Valley Chapter

cc:

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Fisheries Division Administrator Eileen Ryce